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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0621-20
A-3211-21

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, and ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs-Appellants,

v.

ANTHONY C. CARABASI, D.C., DANIEL DEPRINCE, III, D.O., CHARLES G. AVETIAN, D.O., GERALD M. VERNON, D.O., SOUTH JERSEY HEALTH AND WELLNESS, LLC, MARKLEY S. RODERICK, ESQ., and FLASTER GREENBERG, PC,

Defendants-Respondents,

and

JARRID BERNHARDT, D.O.,

Defendant.

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, and ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs-Respondents,

v.

ANTHONY C. CARABASI, D.C., MICHAEL J. EDENSON, D.C., DANIEL DEPRINCE, III, D.O., CHARLES G. AVETIAN, D.O., GERALD M. VERNON, D.O., THOMAS MCCREIGHT, KRISTEN SHIELDS, KRISTAN BROECKER, LAUREN BUCHANAN, EILEEN PRICE, LAUREN FALLO, SOUTH JERSEY HEALTH AND WELLNESS, LLC, MARKLEY S. RODERICK, ESQ., and FLASTER GREENBERG, PC,

Defendants-Respondents,

and

JARRID BERNHARDT, D.O.,

Defendant.

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Argued November 30, 2022 – Decided April 19, 2023

Before Judges Vernoia, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2723-19, and an interlocutory order of the Superior Court of New Jersey, Gloucester County, Docket No. L-0795-13.

Douglas M. Alba argued the cause for appellants Allstate New Jersey Insurance Company, Allstate Indemnity Company, Allstate Insurance Company, Allstate Property and Casualty Insurance Company, and Allstate New Jersey Property and Casualty Insurance Company in A-0621-20 (Kennedy Vuernick, LLC and Peri & Stewart, LLC, attorneys; Douglas M. Alba and Michael A. Malia, on the briefs).

Frank P. Brennan argued the cause for respondents Anthony C. Carabasi, D.C., Daniel Deprince, III, D.O., Charles G. Avetian, D.O., Gerald M. Vernon, D.O., and South Jersey Health and Wellness, LLC in A-0621-20 (Flynn & Associates, PC, attorneys; Frank P. Brennan, on the briefs).

George M. Vinci, Jr. argued the cause for respondents Markley S. Roderick, Esq., and Flaster Greenberg, PC in A-0621-20 (Spector Gadon Rosen Vinci PC, attorneys; George M. Vinci, Jr. and Neal R. Troum, on the briefs).

Frank P. Brennan argued the cause for appellant Flynn & Associates, PC in A-3211-21.

David R. York argued the cause for respondent Anthony C. Carabasi, D.C. in A-3211-21 (Pressman, Doyle, Bloom & York and Weir Greenblatt Pierce, LLP, attorneys; Walter Weir, Jr., on the joint brief).

Jan Alan Brody argued the cause for respondent Gerald M. Vernon, D.O. in A-3211-21 (Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC, attorneys; Jan Alan Brody, on the joint brief).

PER CURIAM

We have consolidated these two appeals for purposes of issuing a single opinion. Both appeals arise from claims originally filed in Gloucester County by plaintiffs Allstate New Jersey Insurance Company, Allstate Indemnity Company, Allstate Insurance Company, Allstate Property and Casualty Insurance Company, and Allstate New Jersey Property and Casualty Insurance Company (collectively Allstate) against defendants South Jersey Health and Wellness, LLC (SJHW) and its current and previous practitioners and co-owners, Anthony C. Carabasi, D.C., Daniel DePrince, III, D.O., Charles G. Avetian, D.O., Jarrid Bernhardt, D.O., and Gerald M. Vernon, D.O. (collectively the medical defendants), alleging violations of the Insurance Fraud Prevention Act (IFPA), N.J.S.A. 17:33A-1 to -34, and N.J.A.C. 13:35-6.16.

In December 2019, over six years after filing its initial complaint and within one month of trial, Allstate moved to file a fourth amended complaint adding defendants Markley S. Roderick, Esq., his firm, Flaster Greenberg, P.C. (collectively the attorney defendants), and a conspiracy claim. After the Law Division in Gloucester County denied its motion, Allstate filed a complaint in Burlington County arising from the same transactional facts and naming the same defendants as in the original Gloucester County action, including the attorney defendants. The Law Division in Burlington County dismissed Allstate's complaint with prejudice. In A-0621-20, we primarily consider whether the Law Division in Burlington County properly applied the entire controversy doctrine (ECD) in dismissing Allstate's complaint.

Since this litigation's inception, Flynn and Associates, P.C. (Flynn Firm) has represented the medical defendants including Dr. Carabasi and Dr. Vernon, who were SJHW's co-owners and co-presidents from 2014 to 2019. In December 2020, Dr. Vernon filed a complaint against Dr. Carabasi in Camden County relating to SJHW's 2019 dissolution. Asserting a conflict of interest, the Flynn Firm filed a motion to be relieved as counsel in the Gloucester County matter, which the court denied. In A-3211-21, by leave granted, we consider

whether the court properly denied the Flynn Firm's motion to withdraw under New Jersey's Rules of Professional Conduct (RPC).

We have considered the parties' contentions in light of the applicable law. In A-0621-20, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. In A-3211-21, we affirm, albeit for reasons different from those expressed by the trial court.

I.

As noted, these back-to-back appeals share a common factual genesis. In May 2013, Allstate filed a complaint against the medical defendants in Gloucester County alleging numerous violations of the IFPA. Allstate subsequently filed three amended complaints, the last of which on June 9, 2015. According to Allstate, the medical defendants "defraud[ed] Allstate out of millions of dollars in insurance claims." Specifically, it claimed SJHW operated under an unlawful practice structure, as "[Dr.] Carabasi, a chiropractor, unlawfully owned and controlled the practice rather than plenary-licensed physicians" in violation of N.J.A.C. 13:35-6.16(f)(3)(i), which states in part, "a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license."

In response to Allstate's first amended complaint, the medical defendants asserted that, in structuring the practice, they relied on the advice of the attorney defendants, who were not named as defendants in Allstate's initial complaint or first three amended complaints. Allstate then sent the medical defendants supplemental notices to produce, requesting all communications "relating to the creating, negotiating, drafting or execution" of SJHW's January 1, 2003 and January 1, 2013 operating agreements. The medical defendants did not respond until compelled by the court over eighteen months later, at which point they indicated that no such communications existed.

In its third amended complaint, Allstate continued to assert SJHW's practice structure violated N.J.S.A. 17:33A-4 and N.J.A.C. 13:35-6.16 because Dr. Carabasi, a chiropractor, had a majority ownership interest and control of the business. Allstate also sought disgorgement of personal injury protection (PIP) medical expense benefits paid to the medical defendants due to their unlawful practice structure. In their October 2015 answer to the third amended complaint, the medical defendants again asserted an advice-of-counsel defense.

In February and March 2017, Allstate deposed Drs. Carabasi and Vernon, both of whom claimed to have relied on counsel in organizing SJHW's corporate structure. Allstate thereafter served a subpoena on the attorney defendants

seeking "[a]ny and all correspondence including but not limited to all emails and all other written evidence of communications and all notes of all oral communications" relating to each of the medical defendants individually. The Law Division in Gloucester County quashed the subpoena "as it pertain[ed] to privileged documents" and ordered the attorney defendants to produce a privilege log, which identified seventy-three privileged documents.

On August 28, 2018, the Law Division in Gloucester County granted Allstate partial summary judgment, finding SJHW and Dr. Carabasi violated N.J.S.A. 17:33A-7 from July 1, 2012, to December 31, 2012. In January 2019, Allstate filed a second motion for partial summary judgment as to SJHW's corporate structure. The medical defendants reasserted their reliance on counsel defense and Allstate withdrew its motion.

In March 2019, Dr. Bernhardt served a subpoena ad testificandum upon Roderick. During his deposition, Roderick stated SJHW was legally structured but declined to answer any questions with respect to legal advice provided pursuant to the attorney-client privilege. Allstate thereafter moved for reconsideration of the August 2017 order quashing its April 2017 subpoena with respect to privileged documents. The court granted Allstate's motion, noting "it is well established that a defendant cannot claim that the assurances of counsel

protect him from liability [and] at the same time preclude discovery of attorney-client communications related to that advice."

In October 2019, the attorney defendants produced the communications previously withheld. According to Allstate, these communications revealed the attorney defendants conspired with Dr. Carabasi to grant him control of SJHW contrary to N.J.A.C. 13:35-6.16, and unlawfully conceal that control from Allstate.

Allstate moved to file a fourth amended complaint, seeking to add the attorney defendants. The court denied Allstate's motion in an oral opinion and December 11, 2019 order. The court found the medical defendants "clearly put [Allstate] on notice" of their potential claims against the attorney defendants by raising an assistance-of-counsel defense as early as 2014. Further, it concluded Allstate had the means to discover the extent of the attorney defendants' role in structuring SJHW earlier in the litigation, such as by deposing Roderick.

The court also determined Allstate failed to provide sufficient reasons for not amending the complaint earlier and granting the motion would impose "overwhelming" prejudice on the medical defendants. It therefore concluded

the relief sought was unwarranted after "six and a half years of litigation, 2,000 days of discovery," and within one month of the scheduled trial date.[1]

On December 31, 2019, Allstate filed both a motion for leave to appeal the court's denial of its motion to amend, which we denied in a January 22, 2020 order, as well as a complaint in Burlington County arising from the same transactional facts. The Burlington County complaint named all of the defendants from the Gloucester County action and included the attorney defendants. The three-count complaint alleged defendants acted in concert to implement an unlawful practice structure in violation of N.J.A.C. 13:35-6.16 (count one), sought a declaratory judgment that it owed no PIP benefits to the medical defendants (count two), and requested disgorgement of PIP medical expense benefits paid to all defendants (count three). The attorney defendants moved to dismiss counts one and three and the medical defendants moved to dismiss all counts.

At oral argument, Allstate's counsel stated it brought the Burlington County action because "it was made abundantly clear" the Law Division in Gloucester County "was not going to entertain this complaint." Counsel also

[1] At the time Allstate filed its motion, the trial was scheduled for January 21, 2020. The court later postponed the trial due to the sudden illness of one of the attorneys and again due to court closures caused by the COVID-19 pandemic.

asserted that if the Law Division in Burlington County denied the dismissal motions, Allstate had no intention to merge the two actions because it "already raised [its] hand [in Gloucester County] and [the court] said 'no.'"

The court dismissed Allstate's Burlington County complaint with prejudice in an oral opinion and September 21, 2020 order, concluding the ECD "require[d] [it] to dismiss this case in Burlington County because the Gloucester County case [was] preceding." The court noted it had no authority to overrule the Law Division's decision in the Gloucester County action denying Allstate's motion to amend its complaint and "[t]o undertake a second case in Burlington County when Gloucester County ha[d] been working this case for seven years . . . [was] very judicially inefficient."

Relying substantially on the factual findings of the court in the Gloucester County action, the Law Division in Burlington County found allowing simultaneous duplicative litigation in two counties undermined the purposes of the ECD. Specifically, it concluded a second action would result in piecemeal adjudication, prejudice to the defendants who would have to litigate the same claims in two different forums, a waste of judicial resources, and a delay in the resolution of the parties' dispute.

Additionally, the court concluded, even if the ECD did not bar the action, the relevant six-year statute of limitations precluded Allstate's claims against the medical defendants. The court also found it was "inappropriate to have a count against [the attorney defendants] to disgorge anything they received from PIP because there's no information that they received anything."

II.

The following facts relate to the Flynn Firm's application to be relieved as counsel for the medical defendants in the Gloucester County case. In April 2014, Dr. Vernon and Dr. Carabasi executed an operating agreement granting each of them an ownership interest in SJHW and designating them as the company's co-presidents. In January 2019, Dr. Vernon delivered his resignation to Dr. Carabasi, triggering SJHW's dissolution. As part of SJHW's dissolution, Dr. Carabasi agreed to immediately form a new company, South Jersey Wellness Group LLC (Wellness Group), which would assume SJHW's rent, lease obligations, and expenses associated with the office space.

Almost two years later, in December 2020, Dr. Vernon filed a complaint against Dr. Carabasi in Camden County alleging mismanagement in SJHW's dissolution (dissolution action). On September 2, 2021, Wellness Group filed a Chapter 7 bankruptcy petition. The Flynn Firm submitted a bankruptcy claim

for $82,532.28 for services rendered that remained unpaid and Allstate submitted a claim as a creditor for approximately $10 million.

As a result of the bankruptcy filing, the Camden County court dismissed the dissolution action without prejudice to reinstatement within ninety days after the conclusion of the bankruptcy action. The bankruptcy court lifted its stay in March 2022, at which point Allstate moved to re-open discovery for ninety days in the Gloucester County litigation, and the Flynn Firm moved to be relieved as counsel.

According to the Flynn Firm, it was first informed in January 2021 by Dr. Vernon's counsel in the corporate dissolution action, Jay Brody, Esq., that Dr. Vernon had filed an order to show cause to appoint a receiver, Geoffrey Bray, Esq., with respect to the dissolution dispute. The Flynn Firm subsequently spoke with Brody, Bray, and Dr. Carabasi's counsel in the dissolution action, Gina Stowe, Esq., and determined the dissolution dispute did not create a conflict in the Flynn Firm's joint representation of Drs. Vernon and Carabasi in the Gloucester County litigation.

On January 5, 2022, however, Allstate filed a letter with the Law Division in Gloucester County addressing the impact of the bankruptcy filing, arguing the Flynn Firm must be disqualified. According to the Flynn Firm, "[Dr.]

Vernon['s] [c]omplaint that was attached as an [e]xhibit to . . . Allstate's letter was [its] first notice of a significant adversarial position existing between [Drs.] Vernon and Carabasi."

The Flynn Firm retained ethics counsel, Justin T. Loughry, Esq., who concluded "it [was] virtually indisputable that the Flynn Firm face[d] an RPC 1.7 concurrent conflict of interest problem." Loughry explained Allstate alleged Drs. Vernon and Carabasi "operated an illegally structured medical interdisciplinary practice, with the non-physician arranging . . . to have greater power than the physician in the ownership and operation of the practice." It would therefore be a valid defense for the medical defendants to assert Dr. Carabasi, the non-physician, was subservient to Dr. Vernon, the physician. Such a position, however, would be contrary to Dr. Vernon's interests in the dissolution action, as he claimed Dr. Carabasi improperly usurped control over the practice.

Loughry therefore concluded continued representation would put the Flynn Firm "in an unresolvable conflict over loyalty to simultaneous clients with conflicting interests" in violation of RPC 1.7(a). He further determined the conflict was not waivable, as "a belief that the [Flynn Firm] [could] not

simultaneously fulfill [its] responsibilities to the two clients [was] well-founded."

The court in the Gloucester County matter denied the Flynn Firm's motion in an oral opinion and April 21, 2022 order. The court noted the Flynn Firm had "been involved with the matter since its inception and [its] knowledge of the case would be very difficult or impossible for another attorney to duplicate." It further explained the case was ready for trial and would have been tried already but for adjournments due to attorney illness and the COVID-19 pandemic.

According to the court, the Flynn Firm failed to establish a conflict requiring its disqualification. Relying on the Restatement (Third) of the Law Governing Lawyers § 122 (Am. Law. Inst. 1998), the court explained Drs. Carabasi and Vernon did not oppose each other on any materially disputed issue in the Allstate litigation, as their dissolution issues did not bear on that litigation and could be resolved separately. It also observed there was no pending litigation between Drs. Carabasi and Vernon, as Dr. Vernon had not reinstituted his claims against Dr. Carabasi after those claims were dismissed without prejudice due to Dr. Carabasi's bankruptcy filing. To the extent a conflict existed, the court found the doctors knowingly and voluntarily waived that conflict, consented to the Flynn Firm's continued representation, and affirmed

their agreement on the handling of the Allstate litigation after conferring with independent counsel.

In addition, the court determined granting the Flynn Firm's motion would have "devastating consequences to the litigants" and "cause extreme prejudice to the [medical] defendants." The court concluded it would be unduly expensive and time-consuming for another firm to reproduce the Flynn Firm's work and prepare itself for trial in the Gloucester County matter. Additionally, the court credited certifications by Drs. Carabasi and Vernon that they lacked the funds required to substitute competent counsel and found relieving the Flynn Firm of its representation would effectively leave the medical defendants without counsel. Finally, the court determined the Flynn Firm further prejudiced the medical defendants by unreasonably delaying in moving to withdraw over one year after learning a receiver was appointed in the Camden County action.

III.

In A-0621-20, Allstate contends the court erred in applying the ECD to dismiss its claims in the Burlington County matter because: (1) the Gloucester County action was still pending, (2) the doctrine does not apply to the attorney defendants, (3) "public policy favoring the elimination of the type of fraud committed by the defendants should have outweighed any concern for judicial

economy," and (4) the court in Burlington County applied an incorrect standard in dismissing its complaint. Allstate also argues the court erred in relying on the applicable statute of limitations as an alternative basis for dismissal, as the court failed to support that determination with appropriate factual findings, particularly as to the attorney defendants. Finally, Allstate asserts the court failed to apply the appropriate standard in dismissing its disgorgement claim.

To facilitate our review of the court's application of the ECD, we consider separately the doctrine's applicability to Allstate's claims against the medical defendants, who are party to the Gloucester County action, and the attorney defendants, who Allstate added in its Burlington County complaint. We reject Allstate's contentions with respect to the medical defendants, concluding the court properly applied the doctrine to dismiss the duplicative claims against them in the Burlington County action.

With respect to the attorney defendants, however, we are constrained to reverse the court's dismissal on entire controversy grounds and remand the matter for factual findings and legal conclusions under Rule 4:5-1(b)(2), which provides the appropriate standard for dismissing claims against non-parties to a previous action. As we reverse the Burlington County Law Division's dismissal of Allstate's complaint against the attorney defendants on entire controversy

grounds, we also address Allstate's statute of limitations and disgorgement arguments as they relate to those defendants.

A.

We begin with a discussion of the applicable standard of review and the principles that undergird the ECD. "An appellate court reviews de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)." Dimitrakopoulous v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 108 (2019). While application of the ECD is discretionary, id. at 114, the questions presented on this appeal are questions of law, which we review de novo, Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"The [ECD] 'embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court.'" Dimitrakopoulous, 237 N.J. at 108 (quoting Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989)). "Originally a claim preclusion rule, over time, the doctrine evolved to require joinder of parties as well, and culminated in the 1990 adoption of Rule 4:30A." Kent Motor Cars, Inc. v. Reynolds & Reynolds Co., 207 N.J. 428, 443 (2011) (citations omitted). "In its first formulation, Rule 4:30A was broad, requiring joinder of claims and parties and imposing

preclusion as a penalty to ensure compliance with that mandate." Ibid. Following "[s]cholarly criticism of the doctrine's growth," however, the Court ultimately agreed with "two significant changes" recommended by the Civil Practice Committee. Id. at 444. "First, Rule 4:30A was amended to limit its scope to mandatory joinder of claims. Second, Rule 4:5-1(b)(2) was adopted to address joinder of parties." Ibid.

Rule 4:30A states, "[n]on-joinder of claims required to be joined by the [ECD] shall result in the preclusion of the omitted claims . . . ." In addition, Rule 4:5-1(b)(2) requires "names of potentially liable or relevant parties be disclosed to the court leaving to it the decision about whether to join them or not." Kent Motor Cars, Inc., 207 N.J. at 444; Dimitrakopoulous, 237 N.J. at 109.

"The doctrine has three fundamental purposes: '(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.'" Bank Leumi USA v. Kloss, 243 N.J. 218, 228 (2020) (quoting DiTrolio v. Antiles, 142 N.J. 253, 267 (1995)). The "essential principle" of the ECD is found in our Constitution and derived from common law principles. Kent Motor Cars Inc.,

207 N.J. at 443 (citing N.J. Const. art. VI, § 3, ¶ 4). "Taken together, those sources express our long-held preference that related claims and matters arising among related parties be adjudicated together rather than in separate, successive, fragmented, or piecemeal litigation." Ibid.

B.

We next address Allstate's contentions as they relate to the Burlington County Law Division's dismissal of its claims against the medical defendants. Allstate contends the ECD does not apply to its Burlington County complaint because "the Gloucester County action has not been tried to judgment or settled." We disagree. Although we have recognized certain circumstances in which it is inappropriate to dismiss a complaint based on the ECD prior to an adjudication on the merits in the first action, we have rejected such a blanket prohibition on the doctrine's applicability in all cases.

In Kaselaan & D'Angelo Associates., Inc. v. Soffian, 290 N.J. Super. 293, 299 (App. Div. 1996), we stated the "doctrine only precludes successive suits involving related claims," and "does not require dismissal when multiple actions involving the same or related claims are pending simultaneously." In that case, the plaintiffs filed a diversity action in federal court and a second action in the Law Division arising from the same transactional facts, but against different

defendants. Id. at 296. After the defendants in the Law Division action asserted the ECD as a defense, the plaintiffs moved to add those defendants to the federal action. Id. at 297. The federal court granted the plaintiffs' motion but held adding the defendants would destroy diversity jurisdiction. Ibid. Accordingly, the plaintiffs dismissed their federal complaint against those defendants. Ibid. Because the plaintiffs could not join the defendants in the federal action without causing its dismissal, the Law Division held the ECD did not preclude their claims, and we affirmed. Id. at 298.

In Archbrook Laguna, LLC v. Marsh, 414 N.J. Super. 97, 107 (App. Div. 2010), however, we rejected the plaintiff's contention "it had the unfettered right to file [a] second suit without fear of the [ECD] solely because the first suit was still pending." We stated, "our acceptance of the argument that such a bright line rule exists would encourage the type of forum shopping and fragmentation of controversies the [ECD] was intended to preclude." Ibid.

In that case, the defendant had brought claims against the plaintiff in Georgia state court. Id. at 102. The plaintiff then filed its complaint in the Law Division while the Georgia action was still pending. Id. at 101-02. We distinguished Kaselaan, holding the ECD barred the plaintiff's complaint,

notwithstanding the still-pending Georgia action, as the plaintiff could have brought his claims as counterclaims in the Georgia action. Id. at 107.

Although we acknowledged our holding in Kaselaan, we explained the plaintiffs in that case were required to file multiple suits due to the risk of being "barred from the federal court due to subject matter jurisdiction." Id. at 108. We observed, "[a]bsent a second suit in state court, the dismissal of the initial federal suit on jurisdictional grounds could [have] potentially prove[d] fatal to the plaintiff's attempt to obtain anywhere an adjudication on the merits." Ibid. Accordingly, we concluded that potential outcome provided "a sound basis for permitting multiple pending actions arising out of the same operative facts without offending the objectives of the [ECD]. It is in that context that we said the [ECD] applies only to 'successive' suits." Ibid.

We similarly distinguished Kaselaan in J-M Manufacturing Co. v. Phillips & Cohen, LLP, 443 N.J. Super. 447, 461 (App. Div. 2015), holding the ECD required dismissal due to the issues having been raised in a pending qui tam action in California. We acknowledged Kaselaan's holding, but also the following language from that opinion: "where it would be inappropriate for both cases to proceed simultaneously, the general rule [is] that the court which first

acquires jurisdiction has precedence in the absence of special equities." Id. at 459 (quoting Kaselaan, 290 N.J. Super. at 300).

We noted "the California court was not only the first, but was for several years, the only court dealing with these parties." Ibid. Further, we explained, "[s]ince a defendant in a qui tam proceeding has the right to pursue a counterclaim against the relator seeking money damages, and even to pursue an independent claim against third parties, the circumstances approximate those in Archbrook, not Kaselaan." Id. at 460.

Here, it is undisputed Allstate brought its claims in Burlington County after litigating the same claims in Gloucester County for over six years. Allstate admits it brought its second action in Burlington County only because the Law Division in Gloucester County already determined allowing Allstate to amend its complaint would severely prejudice the defendants. Allstate was not precluded from amending its complaint by a jurisdictional or procedural bar, cf. Kaselaan, 290 N.J. Super. at 298, but instead, according to the court, by its own failure to timely assert its claims.

Allowing Allstate to circumvent the Gloucester County Law Division's denial of its motion to amend the complaint by bringing a duplicative suit in Burlington County would impermissibly "encourage the type of forum shopping

and fragmentation of controversies the [ECD] was intended to preclude." Archbrook, 414 N.J. Super. at 107. As Allstate brought its claims against the medical defendants in the Gloucester County action, we discern no support for its contention the pending nature of that action precludes application of the ECD. See J-M Manufacturing Co., 443 N.J. Super. at 461; Archbrook, 414 N.J. Super. at 108. Additionally, "it would be inappropriate for both cases to proceed simultaneously" and Gloucester County, as the venue first acquiring jurisdiction, is the proper venue for this action. See J-M Manufacturing Co., 443 N.J. Super. at 459.

Additionally, we reject Allstate's contention the Burlington County Law Division's application of the ECD violated public policy. Allstate relies upon our State's interest in eliminating and preventing the type of fraud alleged to have been committed by the defendants in this case. See e.g., Allstate v. Cherry Hill Pain and Rehab. Inst., 389 N.J. Super. 130, 141 (App. Div. 2006). It further asserts this interest outweighs our State's interest in judicial economy, which it contends served as the sole basis for the court's dismissal on entire controversy grounds in the Burlington County matter.

We have noted "[a]pplication of the [ECD] . . . should not be used to undermine public policy." Ibid. We discern no public policy violation here,

however, as Allstate has been afforded "a fair and reasonable opportunity" to litigate its claims in Gloucester County. Hobart Bros. Co. v. Nat'l Union Fire Ins. Co., 354 N.J. Super. 229, 241 (App. Div. 2002). Allstate has litigated its claims in Gloucester County since 2013. Its contention the court in Burlington County relied solely on judicial economy in support of its dismissal order is belied by the record, as the court clearly found allowing Allstate to continue its action would severely prejudice the defendants and result in unwarranted duplicative litigation.

Finally, Allstate argues the Law Division in Burlington County "repeatedly referred to or relied on matters/facts outside of Allstate's Burlington County Complaint," specifically the court's December 11, 2019 oral opinion denying Allstate's motion to amend in the Gloucester County action. According to Allstate, the court in the Burlington County action therefore erred in applying Rule 4:6-2(e)'s dismissal standard, as opposed to the standard in Rule 4:46-2. Again, we disagree.

"If the court considers evidence beyond the pleadings in a Rule 4:6-2(e) motion, that motion becomes a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos, 237 N.J. at 107. "In its review, [however,] a court may consider documents specifically referenced in

the complaint 'without converting the motion into one for summary judgment.'" Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015) (quoting E. Dickerson & Son v. Ernst & Young, LLP, 361 N.J. Super. 362, 365 n.1 (App. Div. 2003)). "In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Ibid. (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005)).

Here, Allstate specifically referenced in its complaint the Gloucester County Law Division's December 11, 2019 denial of its motion to amend. We discern no error in the court's review of that decision. See Myska, 440 N.J. Super. at 482. We therefore affirm the court's dismissal of Allstate's claims against the medical defendants in the Burlington County case.

C.

As noted, we separately address the court's application of the ECD to Allstate's claims against the attorney defendants in the Burlington County action. Allstate contends the court committed reversible error because the ECD "does not apply to the new defendants added in the Burlington County action." We agree the court erred by failing to distinguish between the medical defendants and the attorney defendants when applying the doctrine. As the

attorney defendants were not party to the Gloucester County action, the attorney defendants' motion to dismiss Allstate's claims against them is governed by Rule 4:5-1(b)(2).

In Olds v. Donnelly, 150 N.J. 424, 431-32 (1997), our Supreme Court explained the difference between claims-joinder and party-joinder for the purposes of the ECD. It stated, "[o]ne part of the doctrine, described generally as 'claims joinder,' requires that parties should present all affirmative claims and defenses arising out of a controversy. Another part, known as 'party joinder,' requires the mandatory joinder of all parties with a material interest in a controversy." Ibid. (citations omitted).

While Rule 4:30A applies to "non-joinder of claims," Rule 4:5-1(b)(2) "address[es] joinder of parties." Kent Motor Cars, Inc., 207 N.J. at 444. The purpose of Rule 4:5-1(b)(2) "is to implement the philosophy of the [ECD]." Pressler and Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:5-1 (2023) (citing R. 4:27-1, R. 4:29-1(b), R. 4:30A and commentary). Rule 4:5-1(b)(2) requires each party to include the following with its first pleading:

> a certification as to whether the matter in controversy is the subject of any other action pending in any court . . ., or whether any other action . . . is contemplated; and, if so, . . . identify such actions and all parties thereto. Further, each party shall disclose in the certification the names of any non-party who should be

> joined in the action pursuant to [Rule] 4:28 or who is subject to joinder pursuant to [Rule] 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. Each party shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in the original certification. The court may require notice of the action to be given to any non-party whose name is disclosed in accordance with this rule or may compel joinder pursuant to [Rule] 4:29-1(b).
>
> [R. 4:5-1(b)(2).]

The disclosure requirement ensures the "ultimate authority to control the joinder of parties and claims remains with the court." Kent Motor Cars, Inc., 207 N.J. at 446. The Rule continues:

> If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed or the imposition on the non-complying party of litigation expenses that could have been avoided by compliance with this rule. A successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.
>
> [R. 4:5-1(b)(2).]

Thus, Rule 4:5-1(b)(2)'s "only authorization for a dismissal relates to the preclusion 'of a successive action' that is appropriate only if 'the failure of

compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.'" Alpha Beauty Distributors, Inc. v. Winn-Dixie Stores, Inc., 425 N.J. Super. 94, 101 (App. Div. 2012) (quoting R. 4:5-1(b)(2)).

We have explained:

> [A] trial court deciding an entire controversy dismissal motion must first determine from the competent evidence before it whether a Rule 4:5-1(b)(2) disclosure should have been made in a prior action because a non-party was subject to joinder pursuant to Rule 4:28 or Rule 4:29-1(b). If so, the court must then determine whether (1) the actions are "successive actions," (2) the opposing party's failure to make the disclosure in the prior action was "inexcusable," and (3) "the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action."
>
> [700 Highway 33 LLC v. Pollio, 421 N.J. Super. 231, 236 (App. Div. 2011) (quoting R. 4:5–1(b)(2)).]

"If those elements have been established, the trial court may decide to impose an appropriate sanction. Dismissal is a sanction of last resort." Id. at 236-37; see also Alpha Beauty Distributors, Inc., 425 N.J. Super. 94 at 101-02 (concluding the trial court's "leap to dismissal rather than some lesser sanction was inappropriate").

Here, the Law Division in Burlington County applied the ECD without distinguishing between the parties to the Gloucester County action and those added in Allstate's Burlington County complaint, and the court appears to have applied a claims-joinder analysis. Specifically, the court rested its decision substantially on the judicial inefficiency of allowing Allstate to bring identical claims in two different forums and the prejudice such a result would impose on the defendants already party to the Gloucester County action. While such considerations are meaningful to the ECD analysis under Rule 4:30A, Rule 4:5-1(b)(2) requires analysis of the prejudice incurred specifically to the non-parties sought to be joined in the successive action.

We acknowledge the court addressed Allstate's addition of the attorney defendants in its Burlington County complaint to the extent it found Allstate brought the Burlington County action solely to circumvent the denial of its motion to amend. The court also made certain findings relevant to a Rule 4:5-1(b)(2) analysis, as it concluded Allstate's delay in seeking to add the attorney defendants was inexcusable and the delay prejudiced the attorney defendants. These findings, however, were not made in the context of a Rule 4:5-1(b)(2) analysis and largely consisted of the court concluding the Gloucester County Law Division's determinations as to judicial economy and party fairness were

well-grounded and supported by the record. Additionally, the court failed to consider whether any sanctions short of dismissal were appropriate. We therefore vacate the court's order dismissing the Burlington County complaint against the attorney defendants and remand for further proceedings.

On remand, the Law Division in Burlington County should engage in the analysis prescribed in 700 Highway 33 LLC, and make specific factual findings as to whether: (1) Allstate violated Rule 4:5-1(b)(2) in the Gloucester County action, (2) the Burlington County action is successive to the Gloucester County action, (3) Allstate's failure to make the required disclosure was inexcusable, and (4) the attorney defendants were substantially prejudiced by that failure. If the court determines all of those conditions are met, it should determine whether dismissal, or a lesser sanction, is appropriate.

D.

Allstate also argues the court erroneously concluded, as an alternative basis for dismissing its complaint in the Burlington County action, the relevant six-year statute of limitations had expired as to its claims against the medical defendants. With respect to the attorney defendants specifically, Allstate contends the earliest possible date the statute of limitations could have begun to accrue was September 2014 when the medical defendants first asserted an

advice-of-counsel defense, and it therefore timely filed its complaint on December 31, 2019. The attorney defendants assert the court's statute of limitations findings do not warrant reversal as they "did not move to dismiss based on the statute of limitations, and the trial court did not dismiss the action against them on that basis."

The court only briefly addressed the relevant statute of limitations, stating: "[I]f there's any analysis of this, . . . it's obvious that the doctors that were involved with [SJHW] before the six years before the statute [sic], . . . applying the statute of limitations to those doctors should apply and that's dismissed." The court's conclusory statement as to the statute of limitations' applicability fails to set forth factual findings or legal conclusions as required by Rule 1:7-4(a).

Rule 1:7-4(a) states that in addition to entering an appropriate written order, a trial court "shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury . . . ." "The Rule requires specific findings of fact and conclusions of law . . . ." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2023). "Meaningful appellate review is inhibited unless the [court] sets forth

the reasons for [its] opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)).

As a result of the court's failure to make factual findings or legal conclusions in connection with its statute of limitations' ruling, we are unable to discharge our appellate function properly. On remand, to the extent the court does not dismiss Allstate's claims pursuant to Rule 4:5-1(b)(2), the court should address whether the applicable statute of limitations bars Allstate's claims against the attorney defendants and provide appropriate factual findings and legal conclusions.

E.

Allstate also contends the court in the Burlington County case erred by summarily dismissing its disgorgement claim without analysis. According to Allstate, a factual dispute exists as to whether the attorney defendants unjustly enriched themselves at Allstate's expense, as "Roderick's privilege log revealed there were invoices from Flaster to [Dr.] Carabasi," and "[t]hese invoices were presumably paid by [Dr.] Carabasi via monies unlawfully obtained from Allstate." Additionally, relying on Driscoll v. Burlington-Bridge Co., 8 N.J. 433, 499-500 (1952), and Franklin Medical Associates v. Newark Public Schools, 362 N.J. Super. 494, 510 (App. Div. 2003), Allstate asserts the

defendants "can be found jointly and severally liable and Allstate would be entitled to disgorgement of the monies paid for . . . improperly rendered services from the [attorney] [d]efendants."

"We review a grant of a motion to dismiss a complaint for failure to state a cause of action de novo, applying the same standard under Rule 4:6-2(e) that governed the motion court." Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014). That standard is whether the pleadings even "suggest[]" a basis for the requested relief. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). As a reviewing court, we assess only the "legal sufficiency" of the claim based on "the facts alleged on the face of the complaint." Green v. Morgan Props., 215 N.J. 431, 451 (2013) (quoting Printing Mart-Morristown, 116 N.J. at 746).

Consequently, in our review of a cause of action under Rule 4:6-2(e), we are "not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Printing Mart-Morristown, 116 N.J. at 746. "[T]he ability of the plaintiff to prove its allegations is not at issue," rather the facts as pled are considered "true" and accorded "all legitimate inferences." Banco Popular N. Am., 184 N.J. at 166, 183. We "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned

even from an obscure statement of claim." Printing Mart-Morristown, 116 N.J. at 746 (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

"[W]e have . . . cautioned[,however,] that legal sufficiency requires allegation of all the facts that the cause of action requires." Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010). In the absence of such allegations, the claim must be dismissed. Ibid.

"[D]isgorgement is an equitable remedy, not a cause of action." Johnson v. McClellan, 468 N.J. Super. 562, 577 (App. Div. 2021). "Our Supreme Court has construed disgorgement as an appropriate remedy in cases involving claims of unjust enrichment." Id. at 15. Additionally, "[t]he Restatement indicates disgorgement is a form of restitution, stating '[r]estitution measured by the defendant's wrongful gain is frequently called "disgorgement."'" Ibid. (second alteration in original) (quoting Restatement (Third) of Restitution and Unjust Enrichment § 51 cmt. a (Am. L. Inst. 2011)). Disgorgement is "imposed against 'conscious wrongdo[ers] . . . .'" Ibid.

Here, count three of Allstate's complaint alleged the medical and attorney defendants acted in concert to unjustly enrich themselves at Allstate's expense. The court failed to address Allstate's allegations, however, as the totality of its

disgorgement analysis consisted of the following: "In addition . . . it's inappropriate to have a count against [the attorney defendants] to disgorge anything they received from PIP because there's no information that they received anything."

The court's conclusory statement again failed to satisfy the mandatory requirements of Rule 1:7-4(a), as the court did not provide any meaningful analysis of the factual findings and legal conclusions supporting its dismissal. As a result of the court's failure to set forth appropriate factual findings or legal conclusions supporting its dismissal of Allstate's disgorgement claim, we cannot discern whether the court accepted Allstate's allegations as true or afforded it "all legitimate inferences" as required at the pleading stage, Banco Popular N. Am., 184 N.J. at 166. See Estate of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301-02 (App. Div. 2018) (Notwithstanding our de novo standard of review, "our function as an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa."). As we noted with respect to the statute of limitations, if the court determines Rule 4:5-1(b)(2) does not bar Allstate's claims, the court should address Allstate's disgorgement claim against the attorney defendants and provide appropriate factual findings and legal conclusions.

IV.

In A-3211-21, the Flynn Firm contends the court in the Gloucester County case erred in denying its motion to be relieved as counsel for the medical defendants, as Dr. Vernon's dissolution action against Dr. Carabasi created a disqualifying conflict of interest under RPC 1.7(a). The Flynn Firm argues, "[w]ith the demise of the SJHW entity in [b]ankruptcy, the individuals stated position at the outset of the case that any potential liability would be paid by the entity and thus shared between all defendants has vanished." It also asserts Dr. Vernon's allegations against Dr. Carabasi constitute "unanticipated extenuating circumstances that have significantly altered the original agreement regarding representation at the outset of this litigation." Further, according to the Flynn Firm, the conflict is non-waivable under RPC 1.7(b), as Dr. Vernon filed claims directly against Dr. Carabasi and the law firm no longer reasonably believes it can provide competent counsel to both parties in the Gloucester County litigation.

We decline to adopt the court's finding that Dr. Vernon's claims against Dr. Carabasi did not create a RPC 1.7 disqualifying conflict of interest for the Flynn Firm. Nevertheless, we are satisfied the court did not abuse its discretion in denying the Flynn Firm's motion to withdraw as counsel.

The decision to grant a motion to be relieved as counsel "is generally in the discretion of the [trial] court and depends on such considerations as proximity of the trial date and possibility for the client to obtain other representation." In re Simon, 206 N.J. 306, 320-21 n.8 (2011) (quoting Jacobs v. Pendel, 98 N.J. Super. 252, 255 (App. Div. 1967)); see also Haines v. Liggett Group, Inc., 814 F. Supp. 414, 422 (D.N.J. 1993) ("RPC 1.16 provides that withdrawal is entirely within the discretion of the court and a court may refuse to allow withdrawal despite a showing of good cause."); Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering § 16:4-1 at 258 (2023). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Castello v. Wohler, 446 N.J. Super. 1, 24 (App. Div. 2016) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

Unless the client consents, counsel must give notice to the client and obtain leave of court to withdraw from a representation. R. 1:11-2(a)(2); see also RPC 1.16(c) ("A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation."). RPC 1.16 governs motions to withdrawal as counsel. Haines, 814 F. Supp. at 422; see also Michels, § 16:1-1 at 247 ("RPC 1.16 governs a lawyer's termination of an

existing representation."). One recognized basis for permitting counsel to withdraw under RPC 1.16 is if "the representation will result in violation of the [RPC] or other law." RPC 1.16(a)(1).

RPC 1.7(a) provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
>
> [RPC 1.7(a).]

Notwithstanding a conflict under RPC 1.7(a), RPC 1.7(b) provides:

> [A] lawyer may represent a client if:
>
> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (3) the representation is not prohibited by law; and
>
> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
>
> [RPC 1.7(b).]

An attorney is not automatically relieved from representing a client upon discovering their representation is in violation of a RPC. See e.g., Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988). Rather, "[b]oth RPC 1.16(a), requiring withdrawal from certain representations, and RPC 1.16(b), permitting withdrawal under certain circumstances, provide an exception 'as stated in paragraph (c).'" Michels, § 16:4-1 at 258. RPC 1.16(c) provides: "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." RPC 1.16(c); see also Simon, 206 N.J. at 320. "The theory behind [RPC 1.16(c)] is that, even if withdrawal is otherwise appropriate, other considerations must sometimes take precedence, such as maintaining fairness to litigants and preserving a court's resources and efficiency." Haines, 814 F. Supp. at 423.

"Thus, a court can order a lawyer to continue representing a client in a matter despite the existence of circumstances that would ordinarily require the lawyer to withdraw from the case." Michels, § 16:4-1 at 258. "Typically, a court will exercise its discretion under RPC 1.16(c) to deny an attorney's application to withdraw from a matter when the withdrawal will result in material prejudice to the client's interests or to the administration of justice." Id. § 16:4-2 at 259.

For example, in Dewey, our Supreme Court weighed a disqualifying imputed conflict against the client's "interest in being represented by counsel of her choice," and ordered the attorney to continue representation notwithstanding the ethics violation. 109 N.J. at 218-19. In that case, the Court concluded the attorney's continued representation would violate RPC 1.10(a), ordinarily mandating withdrawal. Id. at 217. The Court explained that if finding a RPC violation ended its inquiry, it "would be constrained to order the [attorney's] disqualification. However, . . . a motion for disqualification calls for us to balance competing interests, weighing the 'need to maintain the highest standards of the profession' against 'a client's right freely to choose his counsel.'" Id. at 218 (quoting Government of India v. Cook Indus., Inc., 569 F.2d 737, 739 (2d. Cir. 1978)).

In light of the litigation's duration and complexity, as well as the resources already expended by the attorney's law firm, the Court doubted whether "another attorney could effectively master the complicated technical aspects of the case . . . [or] develop the knowledge of and personal relationship with the various witnesses and with the plaintiff herself." Id. at 219. The Court therefore required the attorney to continue representation notwithstanding the resulting violation of RPC 1.10(a). Ibid.; see also Prudential Ins. Co. of America v. Anodyne, Inc., 365 F. Supp. 1232, 1238-39 (S.D. Fla. 2005) (explaining the court's authority under Florida's counterpart to RPC 1.16(c) to order an attorney to continue representation notwithstanding a disqualifying conflict of interest under Florida's counterpart to RPC 1.7).

Similarly, in Rusinow v. Kamara, 920 F. Supp. 69, 72 (D.N.J. 1996), the United States District Court for the District of New Jersey, applying our State's RPC, held equitable factors precluded a law firm's motion to withdraw as counsel. The court explained, "[a]s counsel for [the] [p]laintiffs . . . for almost two years, movants [were] uniquely aware of the facts, documents, and legal issues relating to [the] [p]laintiffs' case." Ibid. It therefore concluded withdrawal would prejudice the firm's clients and interfere with the court's administration of justice. Ibid.; see also Kriegsman v. Kriegsman, 150 N.J.

Super. 474, 479 (App. Div. 1977) (affirming denial of a law firm's application to be relieved as counsel, as "[w]ith trial imminent, it would be extremely difficult for plaintiff to obtain other representation, and therefore she clearly would be prejudiced by the . . . firm's withdrawal"); Simon, 206 N.J. at 320-21 n.8 ("[T]he more time and effort an attorney puts into a case, and the closer the matter is to trial, the more prejudicial it is for the client if counsel is relieved.").

Having reviewed the record in light of the applicable law, we discern no abuse of discretion in the court's denial of the Flynn Firm's application to withdraw from representing the medical defendants in the Gloucester County action. The Flynn Firm has been counsel for the medical defendants since the inception of the Gloucester County litigation and has fully prepared this matter for trial. Like in Dewey, the court found it would be near impossible for substituted counsel to develop the same knowledge of this complex litigation as the Flynn Firm, and any attempt by substituted counsel to do so would be prohibitively expensive and time-consuming, thereby unduly extending this litigation for all parties.

There is no question the Flynn Firm is "uniquely aware of the facts, documents, and legal issues relating to" this matter. Rusinow, 920 F. Supp. at 72. The record also supports the court's conclusion the medical defendants

would effectively be left without counsel if the Flynn Firm was to be relieved, as both Drs. Carabasi and Vernon certified they would be unable to afford substituted counsel. Thus, the medical defendants would be materially prejudiced by the Flynn Firm's withdrawal.

In Dewey, the Court stated, "only in extraordinary cases should a client's right to counsel of [their] choice outweigh the need to maintain the highest standards of the profession." 109 N.J. at 220. We are satisfied this is such a case, as the Flynn Firm moved to be relieved as counsel approximately nine years after the initial complaint was filed in this complex litigation and after having fully prepared for trial, and granting its motion would effectively leave the medical defendants without counsel.

As noted, we depart from the court's reasoning to the extent it determined the Flynn Firm was not faced with a disqualifying conflict of interest under RPC 1.7. As explained in Loughry's ethics review, Dr. Vernon's claims against Dr. Carabasi could have a material impact on the Flynn Firm's joint representation of the medical defendants in the Gloucester County litigation. Even if a disqualifying conflict existed, however, the court was within its discretion to determine equitable factors precluded the Flynn Firm's withdrawal. See Dewey, 109 N.J. at 218-19; Rusinow, 920 F. Supp. at 72; Michels, § 16:4-2 at 259. We

therefore affirm the April 21, 2022 order denying the Flynn Firm's motion to be relieved as counsel.

V.

In sum, in A-0621-20, we affirm the Burlington County Law Division's September 21, 2020 order in part, reverse in part, and remand for further proceedings consistent with this opinion. Nothing in our opinion should be construed as suggesting our view on the outcome of the remanded proceedings. In A-3211-21, we affirm the Gloucester County Law Division's April 21, 2022 order denying the Flynn Firm's motion to be relieved as counsel. To the extent we have not addressed any of the parties' arguments, it is because we have determined they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION