

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1567-21**

**MAY FUNERAL HOME, INC.
and THOMAS E. MAY,**

Plaintiffs-Appellants,

v.

**THE ESTATE OF JOSEPH
SAITTA,**

Defendant-Respondent.

Submitted February 6, 2023 – Decided February 13, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Docket No. L-2065-21.

Lento Law Group, PC, attorneys for appellants (Samuel
D. Jackson, on the brief).

Del Duca Lewis, LLC, attorneys for respondent
(Kristopher J. Berr, on the brief).

PER CURIAM

Plaintiffs May Funeral Home, Inc. and Thomas E. May appeal from the Law Division's October 22, 2021 order dismissing their complaint against defendant The Estate of Joseph Saitta under the entire controversy doctrine. Plaintiffs also challenge the court's December 17, 2021 order denying their motion for reconsideration. We affirm.

The procedural history and material facts of this case are not in dispute. On May 1, 2019, defendant filed a complaint against plaintiffs, alleging the breach of a lease/purchase agreement that was subsequently converted to a month-to-month tenancy subject to the same lease terms. Estate of Joseph Saitta v. May Funeral Home, Docket No. A-0836-20 (App. Div. Jan. 20, 2022) (slip op. at 1). The lease required plaintiffs to pay real estate taxes, utilities, and maintenance and repair costs on the property. Ibid. Defendant alleged that plaintiffs failed to meet their obligations under the lease and sought reimbursement of unpaid repair bills and an award of counsel fees. Id. at 1-2.

Plaintiffs did not file an answer to the complaint and the court entered a default judgment on June 18, 2019. Id. at 2. On December 6, 2019, defendants moved for final judgment by default. Ibid. The 150-day discovery period ended January 3, 2020 and plaintiffs sought no discovery from defendant prior to that date. Ibid. However, plaintiffs later notified the clerk's office that by

agreement, discovery would extend sixty days. Ibid. Plaintiffs also failed to seek any discovery from defendant during this additional period.

Two days before the January 10, 2020 return date of defendant's application for the entry of a final judgment by default, plaintiffs asked the trial court to adjourn the case to allow them additional time to oppose the request. Ibid. The court carried the motion to January 20, 2020. Ibid. After plaintiffs failed to file the promised opposition, the court entered judgment on January 24, 2020. Ibid.

Plaintiffs filed a motion to vacate the final judgment on February 12, 2020. Ibid. They did not seek an order permitting any additional discovery. On February 28, 2020, the court granted plaintiff's motion to vacate the judgment. Ibid. Plaintiffs filed their answer to defendant's complaint on March 16, 2020. They did not file a counterclaim against defendant for breach of contract or for any other reason. On March 31, 2020, the court sent a notice to counsel setting a June 8, 2020 trial date. Ibid.

Thereafter, plaintiffs filed a motion to extend discovery, but failed to identify any exceptional circumstances supporting their request. Id. at 3. They also did not specify what additional discovery was needed. Accordingly, the court denied the motion. Ibid.

In June 2020, defendant filed a motion for summary judgment, which plaintiffs opposed. In a certification, Toni May, the Director of Operations of the May Funeral Home, stated she was aware that, "[s]ometime in 2018," defendant had entered into a lease with a new tenant for the property that was the subject of the litigation. This individual's name was Angel Colon. Director May also stated that "[s]ometime in 2019," one of defendant's representatives told her that part of the property was going to be sold to Colon. At oral argument on defendant's summary judgment motion, plaintiffs' attorney argued that defendant breached the lease agreement by entering into a separate lease agreement with Colon. Defendant's attorney responded by noting that plaintiffs had never filed a counterclaim alleging a breach of the lease by defendant.

Following oral argument on August 28, 2020, the trial court granted defendant's motion for summary judgment. Estate of Saitta, slip op. at 3-4. The court

compared the submissions in support of and in opposition to the summary judgment motion, finding that [plaintiffs] essentially acknowledged having received notice over the nine-month period in which repairs were made. [The court] also found no support for [plaintiffs'] claim that some of the repairs were actually improvements intended to enhance the property's value rather than address ordinary wear and tear. The [court] further noted that [plaintiffs] neither objected to the work being performed nor requested the

opportunity to obtain other quotes or another contractor. Thus, [the court] concluded that no material facts were in issue. [The court] awarded [defendant] \$31,061.93, but denied the request for attorney's fees.

[Ibid.]

After the trial court denied their motion for reconsideration, plaintiffs filed a notice of appeal of the August 28, 2020 order to this court. Id. at 4.

While that appeal was pending, plaintiffs filed a complaint against defendant in the Law Division.¹ In the complaint, plaintiffs raised the identical argument they had previously presented in opposition to defendant's motion for summary judgment in the earlier litigation. Plaintiffs alleged defendant breached the parties' lease agreement by leasing portions of the property to Colon and by collecting rent from both Colon and plaintiffs.

Defendant filed an answer, raising the entire controversy doctrine as an affirmative defense. Defendant then moved for summary judgment. Defendant argued that plaintiffs' complaint against it was barred by the entire controversy doctrine because plaintiffs' claim arose from the same set of facts at issue in the prior action and should have been brought at that time. Plaintiffs opposed defendant's motion, and argued that the doctrine should not be applied to them

¹ Plaintiffs filed the complaint on July 8, 2021.

in this case because they did not have the opportunity to take discovery in the prior action. As noted above, however, plaintiffs had 210 days of discovery available to them in the first action, failed to timely seek an extension of that lengthy discovery period, failed to demonstrate any exceptional circumstances for their belated request for additional time, and failed to identify any specific discovery that prevented them from filing a breach of contract counterclaim against plaintiff in the initial action.

On October 22, 2021, the trial court granted defendant's motion and dismissed plaintiffs' complaint. In its oral decision, the court found that plaintiffs were aware of Colon's involvement at the property in ample time to have pursued a counterclaim in the first action. Because they did not, the court ruled that plaintiffs' new complaint was barred by the entire controversy doctrine.

Plaintiffs subsequently filed a motion for reconsideration, raising the same arguments they unsuccessfully presented in opposing defendant's motion for summary judgment. The trial court denied this motion on December 17, 2021.

Just a month later, we issued our decision in Estate of Saitta. (slip op. at 1). We affirmed the trial court's denial of plaintiffs' motion for an extension of the discovery period, finding that plaintiffs failed to file a timely motion for an

extension, and then failed to demonstrate exceptional circumstances in support of their belated request. Id. at 6-7. We also affirmed the trial court's decision granting summary judgment to defendant on its breach of contract claim against plaintiffs. Id. at 7-8.

Two weeks later, plaintiffs filed their notice of appeal from the trial court's two orders in the present action. In its brief, plaintiffs argue that the trial court erred by applying the entire controversy doctrine to the facts of this case, and by denying their motion for reconsideration. We disagree with both of plaintiffs' contentions.

We begin by addressing the trial court's grant of summary judgment to defendant and the dismissal of plaintiffs' complaint under the entire controversy doctrine. Our review of a trial court's grant of summary judgment is de novo, applying the same legal standard as the trial court. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). Under that standard, summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as

a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat, 217 N.J. at 38); see also R. 4:46-2(c).

"An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande, 230 N.J. at 24 (quoting R. 4:46-2(c)). We owe no special deference to the motion judge's legal analysis. RSI Bank, 234 N.J. at 472 (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)).

"The entire controversy doctrine 'seeks to impel litigants to consolidate their claims arising from a single controversy whenever possible.'" Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 98 (2019) (quoting Thornton v. Potamkin Chevrolet, 94 N.J. 1, 5 (1983)). "The doctrine serves 'to encourage complete and final dispositions through the avoidance of piecemeal decisions and to promote judicial efficiency and the reduction of delay.'" Ibid. (quoting Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 610 (2015)).

The entire controversy doctrine requires that a party "litigate all aspects of a controversy in a single legal proceeding." Kaselaan & D'Angelo Assocs. v.

Soffian, 290 N.J. Super. 293, 298 (App. Div. 1996) (quoting Leisure Tech.-Ne., Inc. v. Klingbeil Holding Co., 137 N.J. Super. 353, 357 (App. Div. 1975)). "[A]ll claims arising from a particular transaction or series of transactions should be joined in a single action." Archbrook Laguna, LLC v. Marsh, 414 N.J. Super. 97, 105 (App. Div. 2010) (quoting Brennan v. Orban, 145 N.J. 282, 290 (1996)). "Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims." R. 4:30A.

Causes of action which arise out of the same transaction or transactional circumstances are considered duplicative if the "factual circumstances giving rise to the controversy itself" are the same. Brennan, 145 N.J. at 290. In addition, "[c]laim preclusion applies not only to matters actually determined in an earlier action, but to all relevant matters that could have been so determined." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 412 (1991). Underlying the doctrine of claim preclusion is the policy "that fairness to the defendant and sound judicial administration require a definite end to litigation." Velasquez v. Franz, 123 N.J. 498, 505 (1991).

The entire controversy doctrine, which is a form of claim preclusion, was designed:

- (1) to encourage the comprehensive and conclusive determination of [the] legal controversy;
- (2) to achieve party fairness, including both parties before the court as well as prospective parties; and
- (3) to promote judicial economy and efficiency by avoiding fragmented, multiple and duplicative litigation.

[Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 322 (1995).]

The doctrine, however, is ultimately "one of judicial fairness and will be invoked in that spirit." Archbrook Laguna, 414 N.J. Super. at 104 (quoting Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 343 (1984)). "Because a violation of the entire controversy doctrine may result in the preclusion of a claim, a court must consider whether the party against whom the doctrine is sought to be invoked has had a fair and reasonable opportunity to litigate the claim." Hobart Bros. Co. v. Nat'l Union Fire Ins. Co., 354 N.J. Super. 229, 241 (App. Div. 2002).

Applying these principles to the specific facts of this case, it is clear that any claim plaintiffs had against defendant for breach of the lease agreement was barred by the entire controversy doctrine once the trial court granted defendant's motion for summary judgment in the initial litigation. The facts that gave rise to plaintiffs' claims against defendant in their own complaint were exactly the same as those raised by plaintiffs in defending against defendant's summary

judgment motion. Thus, plaintiffs were required to bring any claim they had concerning the lease in the first action. Because they did not, any claim they might have raised in that matter, including their belated breach of contract claim, was clearly barred by the entire controversy doctrine.

Plaintiffs' unpersuasively argue that they did not have a fair opportunity to litigate their breach of contract claim in the first action. However, the record demonstrates that plaintiffs had 210 days of discovery available to them in that matter, but they never sought discovery from defendant. In addition, Director May admitted plaintiffs knew of Colon's alleged involvement in the property, which was the only factual basis for the claim they raised in their complaint, well before the trial court ruled in favor of defendant in the initial action. In addition, we held in plaintiffs' first appeal that the trial court correctly denied plaintiffs' motion for an extension of the discovery period because they failed to demonstrate any valid reason for such an extension. Estate of Saitta, (slip op. at 6-7). Therefore, we reject plaintiffs' argument that they needed additional discovery to be able to present a timely counterclaim in the initial action.

Turning to plaintiffs' remaining argument, we review the denial of a motion for reconsideration to determine whether the trial court abused its discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).

"Reconsideration cannot be used to expand the record and reargue a motion." Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). A motion for reconsideration is meant to "seek review of an order based on the evidence before the court on the initial motion . . . not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Ibid.

For these reasons, reconsideration should only be granted in "those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). Therefore, we have held that "the magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010).

Here, the trial court properly concluded that plaintiffs' claims in the second litigation were barred by the entire controversy doctrine. In their motion for reconsideration of that ruling, plaintiffs raised the exact same contentions that were previously unsuccessful. Under those circumstances, the trial court

did not abuse its discretion by denying the motion. Cummings, 295 N.J. Super.
at 389.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION