SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2099-21

VAMA F.Z.CO.,

Plaintiff-Appellant,

v.

DILIP RAHULAN, PACIFIC CONTROL SYSTEMS LLC, a United Arab Emirates Limited Liability Company, and PACIFIC CONTROL SYSTEMS LLC, a New Jersey Limited Liability Company,

Defendants-Respondents.

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Argued May 30, 2023 – Decided July 18, 2023

Before Judges Haas and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1829-21.

Reymond E. Yammine argued the cause for appellant (K&L Gates LLP, attorneys; Steven L. Caponi (K&L Gates LLP) of the Delaware Bar, admitted pro hac vice, of counsel; Matthew B. Goeller (K&L Gates LLP) of

the Delaware Bar, admitted pro hac vice, and Reymond E. Yammine, on the briefs).

David C. Dreifuss argued the cause for respondents (Dreifuss, Bonacci & Parker, PC, attorneys; David C. Dreifuss, of counsel and on the brief; Paul M. McCormick, on the brief).

PER CURIAM

Plaintiff Vama F.Z.Co. (Vama) appeals from the February 16, 2022 Law Division order dismissing its complaint against defendants Dilip Rahulan, Pacific Control Systems (L.L.C.), a United Arab Emirates limited liability company (PCS Dubai), and Pacific Control Systems (L.L.C.), a New Jersey limited liability company (PCS NJ), pursuant to the entire controversy doctrine. We affirm.

The prior complaint upon which the application of the entire controversy doctrine was predicated was filed in 2018 and sought to have a foreign money judgment entered in Dubai, United Arab Emirates (UAE), in the amount of $5.9 million recognized in this State under the Foreign Country Money-Judgments Recognition Act of 2015 (the Recognition Act), N.J.S.A. 2A:49A-16.1 to -16.11. The Recognition Act authorizes New Jersey courts to recognize "final, conclusive, and enforceable" foreign-country judgments that "grant[] or den[y] recovery of a sum of money," N.J.S.A. 2A:49A-16.3(a), unless an

exception enumerated in N.J.S.A. 2A:49A-16.4(b) or (c) applies, N.J.S.A 2A:49A-16.4(a).

The statutory exceptions bar recognition of a judgment where "the foreign court did not have personal jurisdiction over the defendant," N.J.S.A. 2A:49A-16.4(b)(2), "the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend," N.J.S.A. 2A:49A-16.4(c)(1), "the judgment . . . is repugnant to the public policy of this State or of the United States," N.J.S.A. 2A:49A-16.4(c)(3), or the judgment was rendered under procedures that are not "compatible with the requirements of due process of law," N.J.S.A. 2A:49A-16.4(b)(1); N.J.S.A. 2A:49A-16.4(c)(8). Where an exception applies, "[a] party against whom a foreign-country judgment is entered may file an action for a declaration that the foreign-country judgment shall not be subject to recognition." N.J.S.A. 2A:49A-16.6(c). Where the judgment is entered by default, the party seeking recognition bears the burden of proof. N.J.S.A. 2A:49A-16.4(d).

The Dubai judgment that was the subject of the 2018 New Jersey recognition action was entered in favor of Vama for unpaid debts PCS Dubai and its then-Chief Executive Officer (CEO) and Chairman, Rahulan, allegedly owed to Vama. Plaintiff also filed a parallel application in Delaware seeking

recognition of the Dubai judgment in that state. In 2019, a New Jersey Superior Court judge granted Rahulan's and PCS Dubai's motion for summary judgment, barring recognition of the Dubai judgment, and we affirmed in an unpublished decision. Vama F.Z. Co. v. Pac. Control Sys. (L.L.C.), No. A-1020-19 (App. Div. Jan. 20, 2021) (slip op. at 2). Defendants' motion for dismissal of Vama's parallel Delaware recognition application was also granted. Id. at 11. In dismissing the application, "[t]he Superior Court of Delaware . . . appl[ied] preclusive effect to the [New Jersey] trial court's decision . . . under the doctrine of res judicata," and "[t]he Delaware Supreme Court affirmed." Ibid. (first citing Vama F.Z. Co. v. Pac. Control Sys. (L.L.C.), No. N18J-07985, 2019 Del. Super. LEXIS 3983 (Del. Super. Ct. Oct. 22, 2019); and then citing Vama F.Z. Co. v. Pac. Control Sys. (L.L.C.), 239 A.3d 388 (Del. 2020)).

In our unpublished opinion, we recounted the underlying facts as follows:

> Vama is a UAE corporation whose majority owner is Tejas Shah. [PCS Dubai] is a UAE limited liability company located in Dubai, and Rahulan was its Chairman and [CEO]. Rahulan is an Australian citizen who lived in Dubai until May 1, 2016, when he moved to New Jersey.
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> During 2016, Shah attempted to cash two checks drawn on [PCS Dubai's] checking account that were payable to Vama. Both checks, signed with Rahulan's name, were issued to pay a debt [PCS Dubai] owed to Vama. The checks totaled 21,852,500 UAE dirham

(AED), or $5,949,255 on the dates they were issued.[1] Neither check cleared due to insufficient funds in [PCS Dubai's] account.

In August 2016, Vama's attorney issued a notice informing [PCS Dubai] and Rahulan that the checks had been returned for insufficient funds, and that Vama would take legal action if the debt was not paid. The notice listed [PCS Dubai's] and Rahulan's address as "Dubai, Bur Dubai, Sheikh Zayed Street, TP 101423, Techno Park."

Rahulan alleged that he did not sign either check, was not aware the checks had been issued, and did not know the reason for issuance. He believed his signature had been forged by Srinivasan Narasimhan, [PCS Dubai's] former Chief Financial Officer (CFO).

. . . .

Having received no payment from [PCS Dubai] or Rahulan, Vama commenced a civil action against them in Dubai. On August 23, 2016, a Dubai court officer served notice of the action on defendants by delivering it to a receptionist named Adeel Gawanico at "Bur Dubai- Sheikh Zayed Road – Guidance Phone No.: 0506539145." The notices stated delivery to [PCS Dubai] was made "in the area of Technopark Co," and to Rahulan "in the area of Sheik Zayed Road." A month later, on September 22, 2016, the Dubai Court of First Instance entered an order for execution of provisional attachments on [PCS Dubai's] and Rahulan's bank accounts. According to Shah, the court served provisional attachments on defendants' bank accounts a few days later.

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[1] The dirham is the currency of the UAE.

Defendants did not file a responsive pleading or participate in the proceedings. On January 17, 2017, the Dubai Court of First Instance issued a judgment against them for 21,852,500 AED plus interest. Rahulan certified he did not learn of the judgment until May 2017, when he asked his Dubai counsel to investigate after Shah called him and mentioned the lawsuit.

Rahulan asserted that he never received notice of the lawsuit. He certified he could not have received notice personally, as he had "left Dubai (U.A.E.) on May 1, 2016 and was living in New Jersey throughout the pendency of the civil proceedings and the entry of [a] criminal judgment against [him]." Moreover, [PCS Dubai's] correct address "was and is: Pacific Control Systems (L.L.C.), Post Box 37316, Techno Park, Sheikh Zayed Road, Dubai, [UAE]. Techno Park is a large complex with numerous businesses which is miles away from Bur Dubai. Therefore, it is clear that the [process] server went to the wrong address." He averred that no one named Adeel Gawanico had ever worked for [PCS Dubai], and [PCS Dubai's] actual receptionist was not authorized to accept important documents. In addition, Rahulan certified that he never received notification from the banks about the provisional attachments served on his and [PCS Dubai's] accounts.

On June 19, 2017, defendants filed an appeal challenging the Dubai judgment. The Dubai Court of Appeal affirmed the judgment without considering the merits of the case, finding that the appeal was untimely because appeals in Dubai must be filed within thirty days of the issuance of the judgment being challenged. In its opinion, the court noted that [PCS Dubai] received notice of the judgment through service on its accountant Sobish Sondran on February 20, 2017, and

> Rahulan had been notified by publication on March 28, 2017. Rahulan certified that Pacific did not employ an individual named Sobish Sondran, and he was not aware of any such published notice.
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> [Id. at 2-5 (footnote omitted) (thirteenth, fourteenth, fifteenth, and sixteenth alterations in original).]

After defendants filed a declaratory judgment action against Vama in New Jersey barring recognition of the Dubai judgment "on grounds of lack of jurisdiction, lack of notice, lack of due process, and violation of public policy," id. at 5, Vama "filed an answer and counterclaim seeking recognition of the Dubai judgment pursuant to [the Recognition Act]," id. at 6. Although the complaint initiating the 2018 recognition action was filed by defendants, the caption was subsequently amended to designate Vama as plaintiff and Rahulan and PCS Dubai as defendants. Id. at 6 n.2.

Defendants later moved for summary judgment over Vama's objection. Id. at 7-8. In a September 24, 2019 order and written statement of reasons, the motion judge granted defendants' motion. Id. at 8. In his decision,

> [t]he judge identified the controlling issue as "whether the UAE judiciary system afforded [d]efendants sufficient due process as to legitimize the Dubai [j]udgment consistent with this State's standards." Because the Dubai judgment was entered by default, the judge shifted the burden of proof to Vama pursuant to N.J.S.A. 2A:49A-16.4(d).

> The judge concluded that American due process standards applied when examining a foreign country's legal procedures. As to Rahulan, the judge determined that service upon the receptionist did not comport with "American due process standards" or "meet our sense of due process," citing Rule 4:4-4. The judge noted that the address served was incorrect, and [PCS Dubai] did not employ an Adeel Gawanico, the purported receptionist. More fundamentally, Rahulan was not living in Dubai at the time service was attempted. Moreover, Vama was aware of Rahulan's email address and telephone number.
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> . . . While the method of service of process used by Vama may be permitted in UAE, the judge found it "is repugnant to the public policy of this State or of the United States," quoting N.J.S.A. 2A:49A-16.4(c)(3).
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> Lastly, the judge rejected Vama's assertion that Rahulan's counsel could not also represent [PCS Dubai], finding the summary judgment motion was properly brought, because "Rahulan remains President at this time."
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> [Id. at 8-10 (second and third alterations in original).]

In affirming the decision barring recognition, we agreed with the judge that "Vama did not meet its burden of proof by demonstrating that [PCS Dubai] and Rahulan were served with process in compliance with Dubai law or this State's due process requirements." Id. at 16.

On August 25, 2021, Vama filed the complaint that is the subject of this appeal against Rahulan, PCS Dubai, and PCS NJ. Underlying the complaint is

the alleged loan transactions that gave rise to the Dubai judgment. Specifically, the complaint alleged that "Rahulan successfully tricked Vama into loaning him . . . approximately $6 million USD[] with the pretext that th[e] money would be used to fund a data center project by PCS [Dubai] in Dubai." In lieu of "a formal loan agreement," Rahulan purportedly "postdated and signed . . . check[s] in the amount of the loan," "as [was] customary in Dubai." However, when payments "became due," Rahulan "did not pay the portion of the money he owed Vama." Instead, "Rahulan fled from the [UAE] to the United States where he has avoided Vama's efforts to recover its funds" and "used Vama's funds to purchase property in New Jersey, to fund PCS NJ, and [to] purchase stock in a company named WSO2, Inc.," despite Rahulan's removal from PCS Dubai in 2019.[2]

In the complaint, Vama asserted the following causes of action as to all defendants: fraud (count one); breach of contract (count two); promissory estoppel (count three); unjust enrichment (count four); fraudulent transfer under the New Jersey Uniform Voidable Transactions Act (UVTA), N.J.S.A. 25:2-20

[2] "In February 2019, the Dubai Court of First Instance issued a decision in a separate action brought by two directors of [PCS Dubai], dismissing Rahulan from his management role in the company. In July 2019, the Dubai Court of Appeal affirmed. Rahulan participated in both proceedings through his UAE counsel." Vama F.Z. Co., slip op. at 6-7.

to -36 (count five); and piercing the corporate veil (count six). As to Rahulan, Vama alleged two additional claims: a declaratory judgment that "Rahulan has been removed from his positions at PCS [Dubai]" and "no longer has the authority" to "act on behalf of PCS [Dubai] and take such actions that harm Vama" (count seven); and injunctive relief "preventing Rahulan from . . . holding himself out as capable of acting on behalf of PCS [Dubai]" to "transfer the final remaining assets of PCS [Dubai] to PCS NJ, to avoid creditors such as Vama" (count eight).

Over Vama's objection, defendants moved to dismiss Vama's complaint for failure to state a claim upon which relief may be granted pursuant to Rule 4:6-2(e). Defendants argued that Vama's complaint was barred under the entire controversy doctrine and res judicata based on the proceedings that had taken place in New Jersey and Delaware. Following oral argument, the judge entered a February 16, 2022 order granting defendants' motion.

In an accompanying statement of reasons, the judge determined Vama's complaint was barred under the entire controversy doctrine. After reciting the governing legal principles, the judge concluded that Vama was "trying to get a second bite of the apple" because Vama "could have and should have included alternate causes of action" in the 2018 recognition action "in anticipation of the

judgment not being recognized." The judge explained that "[Vama] had the opportunity to seek . . . alternate relief but chose not to," which "is precisely what the entire controversy doctrine is intended to resolve."

The judge also rejected Vama's claim that, because it had not addressed "the merits . . . in the prior proceeding," it "should have the opportunity to do so" in a subsequent complaint. The judge reiterated that "[Vama] had the opportunity to raise these issues and was required to [do so]" because the newly pled causes of action involved "the same occurrence" as the 2018 recognition action. The judge explained that Vama was "merely re-characteriz[ing] the causes of action" to "essentially re-litigate the issues" and "enforce the money judgment" that "two state courts" refused to recognize. This appeal followed.

On appeal, Vama argues the judge's "interpretation of the [e]ntire [c]ontroversy [d]octrine, so as to require that Vama re-litigate the merits of a foreign judgment while also seeking its recognition under the Recognition Act, is manifestly unfair and not consistent with the purpose of the Recognition Act." Vama also asserts the judge's ruling prevents it from litigating causes of action that occurred after the 2018 recognition action and thereby "rests on factual impossibilities."

Rule 4:6-2(e) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Our Supreme Court has explained that "the test for determining the adequacy of a pleading[is] whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). To that end, "a reviewing court 'searches 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, opportunity being given to amend if necessary.'" Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Still, "dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted," Rieder v. State, Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987), or if "discovery will not give rise to such a claim," Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019).

"The entire controversy doctrine 'stems directly from the principles underlying the doctrine of res judicata . . . .'" Bank Leumi USA v. Kloss, 243 N.J. 218, 227 (2020) (quoting Prevratil v. Mohr, 145 N.J. 180, 187 (1996)). Yet, our Supreme Court has made clear that "[t]he doctrine is a broad one," and its

preclusive effects go beyond those recognized by "res judicata." Ibid. (alteration in original) (internal quotation marks omitted) (quoting Kozyra v. Allen, 973 F.2d 1110, 1111 (3d Cir. 1992)). As codified in Rule 4:30A, the "'[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine.'" Kloss, 243 N.J. at 226 (alteration in original) (quoting R. 4:30A). """[A]ccordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy."" Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 605 (2015) (quoting Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009)).

The entire controversy doctrine is rooted in the goal of encouraging parties to resolve all their disputes in one action. Dimitrakopoulos, 237 N.J. at 98. In determining "what claims are 'required to be joined' by the doctrine, . . . th[e] Court has explained that the 'claims must "arise from related facts or the same transaction or series of transactions" but need not share common legal theories.'" Kloss, 243 N.J. at 226 (quoting Dimitrakopoulos, 237 N.J. at 119). Accordingly, not only are parties barred under the entire controversy doctrine from subsequently bringing claims that were litigated, but they are also barred from

litigating "all relevant matters that could have been so determined." Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991). The doctrine has also been applied to bar a second suit when the first suit was in a different state. See Giudice v. Drew Chem. Corp., 210 N.J. Super. 32, 42 (App. Div. 1986).

"However, because the entire controversy doctrine is an equitable principle, its applicability is left to judicial discretion based on the particular circumstances inherent in a given case." Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995). As such, "[a] court should not preclude a claim under the entire controversy doctrine if such a remedy would be unfair in the totality of the circumstances and would not promote the doctrine's objectives of conclusive determinations, party fairness, and judicial economy and efficiency." Kloss, 243 N.J. at 227-28 (quoting Dimitrakopoulos, 237 N.J. at 119).

The application of the entire controversy doctrine is a question of law which we review de novo. See Higgins v. Thurber, 413 N.J. Super. 1, 6 (App. Div. 2010) (finding the application of the entire controversy doctrine is a legal issue). Likewise, we "review[] de novo the trial court's determination of [a] motion to dismiss under Rule 4:6-2(e)." Dimitrakopoulos, 237 N.J. at 108.

Consequently, we "owe[] no deference to the trial court's legal conclusions." Ibid.

Applying these principles, we are satisfied that the judge properly dismissed counts one through six of Vama's complaint pursuant to the entire controversy doctrine. The doctrine's transactional nexus requirement is satisfied because all six claims relate to the same core facts that were at issue when Vama attempted to enforce the Dubai judgment—Vama's alleged $5.9 million loan to Rahulan and PCS Dubai and the ensuing events. When Vama sought to enforce the Dubai judgment in the prior recognition proceedings in New Jersey and Delaware, it could have raised as alternative forms of relief the causes of actions set forth in its current complaint. Because Vama failed to do so, the entire controversy doctrine bars Vama's claims related to the underlying loan transaction.[3]

Vama argues that the judge's decision "[r]ests on [f]actual [i]mpossibilities" because "[t]he [c]omplaint allege[d] that in 2020, Rahulan

[3] In count six, Vama seeks to pierce the corporate veil, claiming that PCS Dubai and PCS NJ "are liable to Vama" because "Rahulan abused PCS [Dubai's] and PCS NJ's corporate form[s] to perpetrate a fraud." Because counts one through five were properly dismissed under the entire controversy doctrine, Vama's corporate veil cause of action necessarily fails. See State, Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 500 (1983) (explaining "courts will not pierce a corporate veil" in the absence of fraud or other injustice).

attempted to transfer PCS Dubai's assets to PCS NJ," whereas "[t]he 2018 [r]ecognition [a]ction was filed in 2018," two years earlier. Although Vama could not have named PCS NJ as a defendant in the 2018 recognition action, the entire controversy doctrine nevertheless bars Vama's claims. "It is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding." DiTrolio v. Antiles, 142 N.J. 253, 267-68 (1995). Because Vama "was in control of [the] litigation," it "must suffer the preclusionary consequences of the entire controversy doctrine." Giudice, 210 N.J. Super. at 42.

As to counts seven and eight, Vama argues the claims should not be barred by the entire controversy doctrine because neither cause of action relates to "the 'same occurrence' at issue in the 2018 [r]ecognition [a]ction." We agree. In count seven, Vama sought a declaratory judgment that Rahulan was in fact removed from PCS Dubai in 2019 by the courts in Dubai. Because Rahulan's removal was "unknown, unarisen, [and] unaccrued at the time of the" recognition proceedings in New Jersey and Delaware, the entire controversy doctrine cannot bar the claim. Mystic Isle Dev. Corp., 142 N.J. at 323. Further, Rahulan's removal from his positions in PCS Dubai cannot be categorized as

"the same transaction or series of transactions" as the recognition actions. Kloss, 243 N.J. at 226 (quotation marks omitted) (quoting Dimitrakopoulos, 237 N.J. at 119). Although Rahulan's alleged fraud may have been a factor in his removal from PCS Dubai, this limited record provides insufficient support for dismissal under the entire controversy doctrine.

In count eight, Vama sought an injunction against Rahulan because Rahulan allegedly continued to hold himself out as having "authority to speak on behalf of PCS [Dubai]" despite Rahulan's 2019 removal from PCS Dubai. In its complaint, Vama points to several instances between 2019 and 2021 where Rahulan allegedly certified under oath that he remained the "'CEO and Chairman'" of PCS Dubai. Thus, for the same reasons as those explained in connection with count seven, the entire controversy doctrine cannot bar count eight. Simply put, the cause of action seeking an injunction is premised on facts unrelated to the recognition actions.

Although the entire controversy doctrine does not bar counts seven and eight, we nevertheless affirm their dismissal on different grounds. See Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) ("It is a commonplace of appellate review that if the order of the lower tribunal is valid, the fact that it was predicated upon an incorrect basis will not stand in the way of its

affirmance."). We affirm because Vama lacks standing to assert claims against Rahulan on behalf of PCS Dubai.

"Ordinarily, a litigant may not claim standing to assert the rights of a third party." Jersey Shore Med. Ctr.-Fitkin Hosp. v. Est. of Baum, 84 N.J. 137, 144 (1980) (citations omitted). New Jersey's courts will not "'entertain proceedings by plaintiffs who are "mere intermeddlers," or are merely interlopers or strangers to [a] dispute.'" Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 647 (2009) (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971)). However, a party has standing to assert the rights of third parties if it can show "'a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision." Id. at 645 (alteration in original) (quoting In re Adoption of Baby T, 160 N.J. 332, 340 (1999)).

Here, Vama is attempting to vindicate the rights of PCS Dubai. However, Vama "is a total stranger to, and indeed an intermeddler in," issues of corporate governance between PCS Dubai and Rahulan. Baby T, 160 N.J. at 342. Critically, PCS Dubai does not claim that Rahulan has been removed from his positions or that he has exceeded his authority by acting on PCS Dubai's behalf. If members of PCS Dubai believe that PCS Dubai has "refuse[d] to enforce

rights which [it] may properly . . . assert[]" against Rahulan, R. 4:32-3, then PCS Dubai's members, not Vama, may have standing to bring a derivative action for a declaratory judgment and injunctive relief. See N.J.S.A. 42:2C-68 (permitting under certain circumstances a "member" of a limited liability company to "maintain a derivative action to enforce a right of a limited liability company"); N.J.S.A. 42:2C-69 ("[A] derivative action under [N.J.S.A. 42:2C-68] may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues."); c.f. Schulman v. Wolff & Samson, PC, 401 N.J. Super. 467, 479 (App. Div. 2008) ("'[A] shareholder derivative action permits a shareholder to bring suit against wrongdoers on behalf of the corporation, and it forces those wrongdoers to compensate the corporation for the injury they have caused.'" (alteration in original) (quoting In re PSE & G S'holder Litig., 173 N.J. 258, 277 (2002))).

Affirmed.