SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2885-20

ALBERT A. TROIANO, JR.,

Plaintiff-Appellant,

v.

STEPHEN TROIANO, individually, and as the executor of the Estate of ALBERT A. TROIANO, SR., and as the holder of power of attorney for DIVA TROIANO,

Defendants-Respondents.

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Argued March 6, 2023 – Decided April 21, 2023

Before Judges Gooden Brown, Mitterhoff and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-1790-19.

A. John Falciani argued the cause for appellant.

Jordan L. Barbone argued the cause for respondents (Jacobs & Barbone, PA, attorneys; Edwin J. Jacobs, Jr., on the brief).

PER CURIAM

In this estate dispute, plaintiff Albert Troiano, Jr. appeals from the May 3, 2021 Law Division order dismissing his complaint with prejudice for failure to state a claim upon which relief can be granted, R. 4:6-2(e). The two-count complaint asserted causes of action based on breach of duty against his brother, defendant Stephen Troiano, individually and in his capacity as executor of their father's estate as well as the holder of power of attorney for their mother, Diva Troiano. We affirm.

The underlying dispute arises from the distribution of properties in the parties' father's estate. By way of background, the parties' father died on September 24, 2003, and his Last Will and Testament (LWT), which named Stephen[1] as executor, was admitted to probate on September 10, 2004. In the LWT, the decedent left real property "located at 9600 Amherst Avenue, Margate City, . . . commonly known as Madison Bay Condominiums" to his wife, Diva, who resided at the property. The remainder of decedent's property was left "in equal shares" to both sons.

[1] Because of the common surname, we refer to the parties by their first names and intend no disrespect.

At the time of his death, decedent owned several parcels of real property. One of the properties was located at "9306 Amherst Avenue" in Margate City.[2] The property was used by "Maynard's Café," a business owned by decedent. After their father died, Albert and Stephen each executed a partial disclaimer of inheritance dated May 10, 2004, giving up their respective fifty-percent shares in 9306 Amherst Avenue (the Maynard's property).

Each disclaimer provided, in pertinent part:

> WHEREAS Article III of the [LWT] gave, devised and bequeathed one-half interest in the property known as 9306 Amherst Avenue to myself, the other half going to my brother . . . ; and
>
> . . . .
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> NOW, THEREFORE, . . . I forever disclaim and renounce absolutely for myself, my heirs and assigns, all right, title and interest in and to the part of and so much of the estate as is equal to $600,000[] in cash or the equivalent thereof.

When the disclaimer was executed, the Maynard's property passed to Diva, decedent's surviving spouse, pursuant to N.J.S.A. 3B:5-3(a).

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[2] Decedent's other properties were located at 3801 Boardwalk, Unit B-3, Atlantic City, and 3501 Boardwalk, Unit B-229, Atlantic City.

Thirteen years later, on August 18, 2017, Albert filed a verified complaint against Stephen asserting causes of action based on breach of duty and shareholder oppression in connection with Stephen's operation of Maynard's, Inc., the corporation that owned and operated Maynard's Café and in which each brother held a fifty-percent ownership interest under their father's LWT. On April 30, 2018, the parties settled the case.

Under the settlement agreement, in exchange for Albert's fifty-percent ownership interest in Maynard's, Inc., Stephen paid Albert $300,000. However, the agreement expressly exempted any parties' claims to real property, providing:

> WHEREAS, except with respect to any claims surrounding any real property owned by the [p]arties, . . . the [p]arties now desire to settle and/or dismiss all claims and potential claims related to the [l]itigation, including all claims asserted and potential claims that could have been asserted in the [l]itigation and relate in any way to Albert's interest in and or employment with Maynard's [Inc.] and any and all related entities . . . .[3]

[3] Following the settlement, in an October 3, 2018 letter to Stephen's attorney, Albert's attorney indicated that the remaining open issues consisted of "the circumstances surrounding the transfers of certain real property," including Diva's residence and the Maynard's property.

On January 9, 2019, Albert filed a second complaint against Stephen, alleging oral misrepresentations were made to him when he executed the disclaimer of inheritance in May 2004, giving up all rights to the Maynard's property.[4] After Stephen sent formal notice to Albert and his attorney under the frivolous litigation statute and court rule, N.J.S.A. 2A:15-59.1 and Rule 1:4-8(b), Albert voluntarily dismissed the second complaint without prejudice on February 13, 2019.

On July 3, 2019, Albert filed a third verified complaint against Stephen, which complaint is the subject of this appeal. Both counts of the complaint alleged breach of duty by Stephen and sought "compensatory damages" and other relief. The first count involved the property transfer of Diva's residence, and the second count involved the transfer of the Maynard's property.

As to the latter, in the complaint, Albert alleged he was "advised" by the estate's attorney to "execute a [p]artial [d]isclaimer with respect to the Maynard's [p]roperty bequeathed to [him] under the [LWT]" to "allow the Maynard's [p]roperty to devolve to [Diva]." Albert asserted he was told by the estate attorney and his brother that the disclaimer "was intended solely to reduce the estate and inheritance tax liabilities and [he] would receive his share of his

[4] The second complaint was not provided in the record.

father's estate upon the death of Diva." According to the complaint, based on those oral representations, Albert understood that after he executed and filed the disclaimer, "the deed to the Maynard's [p]roperty would be held by a newly created limited liability company [called] DivaT, LLC," and Diva, Stephen, and Albert would each "hold equal interests in DivaT, LLC."

Instead, a 2018 title search allegedly revealed that on October 6, 2008, Tract I of the Maynard's property was transferred from Diva to DivaT, LLC, but Tract II of the property was in the name of his father's estate, with Stephen as executor. The complaint alleged that Albert was "not reflected . . . as an owner of the Maynard's [p]roperty or DivaT, LLC" in "any public filings," constituting fraud on his brother's part. Similarly, as to Diva's residence, Albert alleged that "instead of dividing the ultimate ownership of th[e] . . . property as intended . . . and as expressly provided in his [father's LWT]," on January 27, 2012, the estate attorney "filed a [d]eed transferring [Diva's r]esidence from [Diva's] name alone to [Diva] as the holder of a life estate, with a remainder interest to Stephen . . . alone."

In count one, Albert alleged "Stephen . . . breached his duty as the holder of the power of attorney by transferring real property from his mother's name to his own name," which conduct caused Albert to be "effectively disinherited from

both his mother's [and his father's] estate[s]." In count two, Albert alleged Stephen caused him "to execute [the] disclaimer[] with the understanding that he would regain his inheritance on the passing of [Diva]," and that Stephen's "conduct in continuing the legal ownership of the Maynard's property in the name of [his father's e]state . . . is grossly negligent."

Stephen moved to dismiss the complaint on various grounds, including failure to state a claim pursuant to Rule 4:6-2(e). Following oral argument, the trial judge entered an order on May 3, 2021, granting Stephen's motion and dismissing the complaint with prejudice. In an accompanying written opinion, the judge provided comprehensive reasoning for his decision. First, the judge articulated the applicable standard for dismissal motions, noting "[t]he court . . . treats [Albert's] version of the facts as uncontradicted[,] . . . accords it all legitimate inferences," and "accepts them as fact for the purpose of reviewing the motion to dismiss" under Rule 4:6-2(e).

Next, the judge focused on the disclaimer Albert executed renouncing any interest in the Maynard's property, and the fact that the complaint sought to relieve him of his obligations under the disclaimer "[n]othwithstanding the clear language of the disclaimer." In that regard, the judge noted that the complaint sought to reclaim Albert's inheritance from his father's estate by invalidating the

disclaimer based on alleged oral misrepresentations made to Albert at the time the disclaimer was executed. According to the judge, Albert asserted "there was never a true intention to disclaim any portion of his father's estate" but rather that "he walked away from his inheritance because he was advised that he would reduce tax liabilities and that he would receive his inheritance through his mother's [e]state upon her death."

However, in concluding that the complaint failed to state a claim, the judge determined that the claims were barred by the parol evidence rule, which prohibits the introduction of oral promises to alter or vary a written contract. The judge explained:

> This is not a situation where [Albert] is seeking to admit evidence to uncover the true meaning of a contractual term. That is, [Albert's] reference to the alleged representations made by [Stephen] and the estate's attorney at or around the time [Albert] signed a disclaimer is not being offered to "throw light" on the meaning of specific language in the disclaimer. Here, [Albert] is seeking to rely on representations made to him by [Stephen] and the estate's attorney in the context of him executing a disclaimer. Specifically, [Albert] alleges he was caused to execute the disclaimer with the understanding that he would regain his inheritance on the passing of [their mother]. Those oral representations can only be viewed as modifying or enlarging the terms of the disclaimer. In other words, the representations relied on by [Albert] are not offered to uncover the true meaning of the disclaimer, but rather are offered to suggest an intention wholly

> unexpressed in the writing in contravention of the parol evidence rule.
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> [(footnotes omitted).]

The judge acknowledged that "there [was] an exception to the parol evidence rule with respect to claims involving fraud in the inducement." However, relying on Filmlife, Inc. v. Mal "Z" Ena, Inc., 251 N.J. Super. 570 (App. Div. 1991), the judge determined:

> [Albert's] attempt to vary the intent of the parties as expressed in writing does not fit within the fraud exception to the parol evidence rule. [Albert] signed the disclaimer with knowledge that he was bound by the express terms of the written document. [Albert's] allegations are insufficient to relieve [him] from the disclaimer he executed.
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> [(footnote omitted).]

Because both counts implicated the disclaimer, the judge treated both counts in the same fashion. However, regarding Albert's specific claim pertaining to the transfer of their mother's residence to Stephen, the judge stated that given the fact that Diva "received the Troiano [r]esidence when her husband passed, she was free to dispose of the property as she wished." The judge dismissed the complaint "with prejudice" because "[t]his [was] not a situation where the dismissal [was] based on deficient pleadings . . . that . . . [could] be cured by filing an amended complaint." In light of his decision, the judge did

not address Stephen's remaining arguments supporting his dismissal motion, including Stephen's contention that the claims were barred by the statute of limitations. This appeal followed.

On appeal, Albert argues the judge misapplied the standard for dismissal under Rule 4:6-2(e) and failed to apply the "liberality" required by the law. He asserts "even though several claims of breach of fiduciary duty can be gleaned from a 'meticulous and indulgent' examination of the complaint," the judge "ignored this specific instruction" and "refused to allow a clarifying amendment or dismissal without prejudice." He also argues the judge "mistakenly viewed [his] partial disclaimer as an absolute disclaimer to all interests in decedent's estate."

We review de novo the trial court's grant of a motion to dismiss under Rule 4:6-2(e) and "owe[] no deference to the trial court's legal conclusions." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). Our review requires an examination of "'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (quoting Dimitrakopoulos, 237 N.J. at 107).

Rule 4:6-2(e) provides that a claim may be dismissed for "failure to state a claim upon which relief can be granted." In interpreting the Rule, our Supreme Court 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)). The Court directed judges to "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, 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)).

The Court also emphasized that motions to dismiss under Rule 4:6-2(e) "should be granted in only the rarest of instances" and generally "without prejudice to a plaintiff's filing of an amended complaint." Id. at 772. "As such, '[i]f a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.'" Smith v. SBC Commc'ns Inc., 178 N.J. 265, 282 (2004) (alteration in original) (quoting F.G. v. MacDonell, 150 N.J. 550, 556 (1997)).

Nonetheless a complaint should be dismissed where it "states no claim that supports relief, and discovery will not give rise to such a claim." Dimitrakopoulos, 237 N.J. at 107. Indeed, "the essential facts supporting [the] plaintiff's cause of action must be presented in order for the claim to survive," and "conclusory allegations are insufficient in that regard." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012). Thus, "a 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).

Central to the parties' dispute is the parol evidence rule. Under the parol evidence rule,

> [w]hen two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing.
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> [Filmlife, Inc., 251 N.J. Super. at 573 (quoting 3 Corbin on Contracts § 573 (1960)).]

Stated differently, "the parol evidence rule prohibits the introduction of evidence that tends to alter an integrated written document." Conway v. 287 Corp. Ctr.

Assocs., 187 N.J. 259, 268 (2006) (citing Restatement (Second) of Contracts § 213 (Am. Law Inst. 1981)).

"Introduction of extrinsic evidence to prove fraud in the inducement, however, is a well[-]recognized exception to the parol evidence rule." Filmlife, Inc., 251 N.J. Super. at 573. A party cannot, "'simply by means of a provision in the written instrument, create an absolute defense or prevent the introduction of parol evidence in an action based on fraud in the inducement to contract.'" Bilotti v. Accurate Forming Corp., 39 N.J. 184, 204 (1963) (quoting Ocean Cape Hotel Corp. v. Masefield Corp., 63 N.J. Super. 369, 377-78 (App. Div. 1960)). "Extrinsic evidence to prove fraud is admitted because it is not offered to alter or vary express terms of a contract, but rather, to avoid the contract or 'to prosecute a separate action predicated upon the fraud.'" Filmlife, Inc., 251 N.J. Super. at 573-74 (quoting Ocean Cape Hotel Corp., 63 N.J. Super. at 378). Thus, "parol proof of fraud in the inducement is not considered as either additional or substitutionary but rather as indicating that the instrument is, by reason of the fraud, void or voidable." Ocean Cape Hotel Corp., 63 N.J. Super. at 378.

The exception is not, however, without limits, and "[t]here is a distinction between fraud regarding matters expressly addressed in the integrated writing and fraud regarding matters wholly extraneous to the writing." Filmlife, Inc.,

251 N.J. Super. at 574. Although extrinsic evidence may be used to prove certain types of fraud, such as "fraud regarding matters wholly extraneous to the writing," the exception cannot be utilized when the matter at issue is "expressly addressed in the integrated writing." Id. at 574-75.

In Filmlife, Inc., the plaintiffs "entered into a written lease for a 1989 Lincoln Town Car." Id. at 572. "At the time the lease was signed," the plaintiffs "traded in a 1984 Cadillac for a $6,000 allowance." Ibid. "The lease provided that the $6,000 trade-in was a capitalized cost reduction applied as the down payment to reduce the costs of the lease" and thereby "reduce [the plaintiffs'] monthly lease payments." Ibid. Despite the provisions of the lease agreement, the plaintiffs filed a complaint alleging common law fraud and other causes of action, contending "that the $6,000 trade-in was to be paid to [the plaintiffs] in cash." Ibid.

The trial court dismissed the complaint pursuant to Rule 4:6-2(e) and we affirmed. Id. at 573. We held that the plaintiffs could not "overcome the substantive barrier of the parol evidence rule to vary the clear and explicit terms of the written lease agreement." Ibid. Furthermore,

> despite [the] plaintiffs' claim of fraud and misrepresentation with respect to the payment of the trade-in value in cash, [the] plaintiffs signed a leasing agreement which not only did not include such terms

> and conditions, but expressly contradicted such an oral understanding by providing that the trade-in value was a capitalized cost reduction. [The p]laintiffs' attempt to vary the intent of the parties as expressed in writing does not fit within the fraud exception to the parol evidence rule, and, therefore, the trial court properly dismissed the complaint against [the] defendants on the ground that it failed to state a claim against them upon which relief can be granted.
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> [Id. at 576-77.]

Cf. Walid v. Yolanda for Irene Couture, Inc., 425 N.J. Super. 171, 185-86 (App. Div. 2012) (holding that extrinsic evidence was admissible where, unlike Filmlife, Inc., the matters misrepresented were not expressly addressed in the integrated contract, were peculiarly within the misrepresenting party's knowledge, and were, in fact, intentionally misrepresented).

Here, to establish his claim, Albert alleged extrinsic evidence of oral misrepresentations to contradict the express terms of the written disclaimer renouncing his share in the Maynard's property. The judge correctly concluded that he could not do so. "'The alleged oral misrepresentations, being contradictory of the undertakings expressly dealt with by the writings, are not effectual in that circumstance to avoid the obligation he knowingly assumed.'" Filmlife, Inc., 251 N.J. Super. at 575 (quoting Winoka Village, Inc. v. Tate, 16 N.J. Super. 330, 333 (App. Div. 1951)). Regarding the claim pertaining to the

transfer of Diva's residence, as the judge correctly stated, Diva had every right to deed her property to whomever she wanted. Thus, Albert's claims fail. We also agree that dismissal with prejudice is appropriate because the factual allegations are palpably insufficient to support a claim upon which relief can be granted and discovery will not give rise to such a claim. See Dimitrakopoulos, 237 N.J. at 107

Affirmed.