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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3458-21**

DONALD A. RICHARDSON, JR.,

Plaintiff-Appellant,

v.

T.D. BANK DELRAN NJ,

Defendant-Respondent.

Submitted August 1, 2023 – Decided August 14, 2023

Before Judges Sumners and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Burlington County, Docket No. L-2601-21.

Donald A. Richardson, appellant pro se.

Brown & Connery, LLP, attorneys for respondent
(Jennifer A. Harris, on the brief).

PER CURIAM

Plaintiff Donald A. Richardson appeals the Law Division's May 19, 2022 order dismissing his amended complaint with prejudice. For the reasons stated below, we affirm.

I.

We summarize the following facts from the record and the allegations in plaintiff's first and amended complaints, treating those allegations as true and extending all favorable inferences to plaintiff. See Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625-26 (1995). On December 6, 2021, plaintiff as a pro se litigant filed a complaint concerning his purchase of stock options. He claimed on multiple occasions defendant T.D. Bank, N.A. sold him Amazon stock options. He further claimed defendant "FRAUDULENTLY [d]eposited [his] money with [Amazon] on [r]eceipt."

In response, defendant moved to dismiss the complaint under Rule 4:6-2(e), which the judge granted without prejudice on February 28, 2022.

On March 9, 2022, plaintiff filed an amended complaint asserting fraud and negligence claims. Plaintiff claimed that in October 2008, he deposited funds into his account believing the funds were being used to "purchase Amazon and other stock [options]." He asserted that he made the deposits "many times under the impression that [he] was holding Amazon [options]" which would

"always be attached to [his] [s]ocial [s]ecurity number." He further claimed the "money was released to the State [of New Jersey] under a false [address] [in] . . . Newark, NJ," at which he never resided.

Defendant again moved to dismiss plaintiff's amended complaint under Rule 4:6-2(e).

On May 19, 2022, the motion judge conducted oral argument. The judge granted defendant's motion and dismissed plaintiff's amended complaint with prejudice. Viewing the facts alleged in a light most favorable to plaintiff, the judge found "[t]he amended complaint appear[ed] to fail as well as the initial complaint." After reciting the governing standard for Rule 4:6-2(e), the judge concluded plaintiff failed to plead facts for a common law fraud and equitable fraud. The judge further concluded the amended complaint "fell short of a fully articulated claim with specificity" that was required under Rule 4:5-8(a) because the only identifying date of the alleged fraud was October 7, 2008. Finding plaintiff's pleadings lacked specificity and failed to sufficiently plead the element of common law or equitable fraud, the motion judge dismissed the amended complaint with prejudice.

Lastly, in applying N.J.S.A. 2A:14-1, the motion judge concluded plaintiff's negligence claim was barred under the six-year statute of limitations for common law tort claims given the October 2008 date of deposit.

II.

On appeal, plaintiff contends the motion judge erred in dismissing his amended complaint with prejudice for the failure to state a cause for action. He argues: defendant breached a fiduciary duty owed to him by taking stock positions on deposited receipts; and defendant's negligent act prevented him from securing digital assets. Plaintiff's contentions lack merit.

We review de novo a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). "A reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107).

The test for determining the adequacy of a pleading is "whether a cause of action is 'suggested' by the facts." Teamsters Loc. 97 v. Slate, 434 N.J. Super. 393, 412 (App. Div. 2014) (first internal quotation marks omitted) (quoting

Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

Thus, we consider only "the legal sufficiency of the facts alleged on the face of the complaint." Nostrame v. Santiago, 213 N.J. 109, 127 (2013).

We search the complaint thoroughly "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." Baskin, 246 N.J. at 171 (quoting Printing Mart, 116 N.J. at 746). Furthermore, the plaintiff must receive "the benefit of every reasonable inference of fact." Ibid. (internal quotation marks omitted). "[I]t is the existence of the fundament of a cause of action . . . that is pivotal[.]" Teamsters Loc. 97, 434 N.J. Super. at 412-13 (second alteration in original) (quoting citing Banco Popular N. Am. v. Gandhi, 184 N.J. 161, 183 (2005)).

Under Rule 4:6-2(e), "dismissal with prejudice is 'mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.'" Mac Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div.), certif. denied, 252 N.J. 258 (2022) (quoting Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987)). An "impediment such as a statute of limitations" indicates the dismissal should be with prejudice. Nostrame, 213 N.J. at 127 (quoting Printing Mart, 116 N.J. at 772).

Having considered these principles, we affirm substantially for the reasons set forth by the motion court in its cogent oral decision. We add the following comments.

Plaintiff failed to assert a common law or equitable fraud claim against defendant. For a plaintiff to prevail on a common law fraud claim, it "must [be] show[n] that [a] defendant: (1) made a representation or omission of a material fact; (2) with knowledge of its falsity; (3) intending that the representation or omission be relied upon; (4) which resulted in reasonable reliance; and that (5) plaintiff suffered damages." DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 336 (App. Div. 2013). "Equitable fraud is similar to legal fraud," but "the plaintiff need not establish the defendant's scienter." Ibid. Scienter is the "defendant's knowledge of the falsity and intent to obtain an undue advantage." Ibid. "[P]laintiff must prove each element by 'clear and convincing evidence.'" Ibid. (quoting Stochastic Decisions, Inc. v. DiDomenico, 236 N.J. Super. 388, 395 (App. Div. 1989)).

Plaintiff failed to assert how defendant made material misrepresentations to him and how he relied on those misrepresentations. Further, he makes no assertion that defendant conveyed a false statement or factual misrepresentation to him. Instead, he claims that the 2008 deposit was made for the purchase of

stock options and he was "under the impression" that he was holding Amazon options. Plaintiff's claim that he was told the Amazon options would "always" be associated with his social security number did not constitute a material misrepresentation. Even assuming an unidentified bank employee made the statement, plaintiff's amended complaint fails to state that he relied on the statement to make the 2008 or any subsequent stock purchases. Absent from the amended complaint was how the alleged misrepresentations affected plaintiff.

As the judge highlighted, the "[t]he amended complaint appear[ed] to fail as well as the initial complaint." Plaintiff fails to cite to any law in support of his contention that the motion judge erred in dismissing his amended complaint. Rather, plaintiff reprises the facts presented in the amended complaint. We are satisfied the motion judge properly determined plaintiff's amended lack specificity and failed to plead a fraud claim.

Plaintiff raises for the first time on appeal a violation of § 10(b) of the Securities Exchange Act of 1934, 15 U. S.C. §§78a to 78qq.¹ Generally, we "will decline to consider questions or issues not properly presented to the trial

¹ Section 10(b) makes it unlawful to "use or employ, in connection with the purchase or sale of any security" a "manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Securities Exchange Commission may prescribe." 15 U.S.C. § 78j(b)

court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). We do not find defendant's arguments fit within either factor under Nieder.

On appeal, plaintiff does not directly address the motion judge's dismissal of his negligence claim based on the statute of limitations. Because plaintiff reiterates his argument that defendant was negligent in "taking stock positions on deposited receipts" and "prevented [him] from securing digital assets," for the sake of completeness, we elect to address the merits of his arguments.

N.J.S.A. 2A:14-1(a) provides in pertinent part, "[e]very action at law . . . for any tortious injury to real or personal property . . . shall be commenced within six years next after the cause of any such action shall have accrued." "The discovery rule delays the accrual of a cause of action until 'the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he [or she] may have a basis for an actionable claim.'" Baird v. Am. Med. Optics, 155 N.J. 54, 66 (1998) (quoting Lopez v. Swyer, 62 N.J. 267, 272 (1973)).

We discern from the record that on October 7, 2008 plaintiff made multiple deposits into his account with defendant, intending to purchase stock options. However, plaintiff failed to plead the specific date of subsequent deposits. With nothing more than the October 7, 2008 date and conclusory allegations, plaintiff failed to show how defendant prevented him from purchasing Amazon or other stock options for thirteen years. We therefore accept the motion judge's finding that plaintiff's negligence claim was barred by the statute of limitations based on October 2008 as the only identified date of defendant's negligent conduct.

Affirmed.

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



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