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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0498-22**

**MARK K. LUDWIG and
MARK G. MUNTZNER,**

Plaintiffs-Appellants,

v.

OWLPOINT, LLC,

Defendant,

and

**MARK S. BLANKE and
LAURA AYRES,**

Defendants-Respondents.

Argued March 4, 2024 – Decided June 17, 2024

Before Judges Gilson, Berdote Byrne, and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-0197-22.

R. Armen McOmer argued the cause for appellants (McOmer McOmer & Luber, PC, attorneys; Matthew A. Luber and Jeffrey D. Ragone, on the briefs).

Jason S. Haller argued the cause for respondent Mark S. Blanke (Haller Sirot LLC, attorneys; Jason S. Haller, of counsel and on the joint brief).

Barry A. Kozyra argued the cause for respondent Laura Ayres (Kozyra & Hartz, LLC, attorneys; Robert W. Evans, of counsel and on the joint brief).

PER CURIAM

Plaintiffs Mark Ludwig and Mark Muntzner are former employees and shareholders of defendant OwlPoint, LLC (OwlPoint). Following their terminations from OwlPoint, plaintiffs brought claims against OwlPoint, defendant Mark Blanke, the former Chief Executive Officer (CEO) and majority shareholder of OwlPoint, and defendant Laura Ayres, a former employee of OwlPoint. Most of plaintiffs' claims against Blanke and OwlPoint were resolved in an arbitration. After the arbitration award was confirmed in a court order, plaintiffs reinstated certain claims they contended were not decided in arbitration, and they sought to amend their complaint to add new claims and five new defendants.

Plaintiffs appeal from an order granting partial summary judgment to Blanke and Ayres and denying their motion to add new claims and new

defendants. Because plaintiffs' claims are either barred by the applicable statutes of limitations, fail to assert viable causes of action, or are precluded by the arbitration, we affirm.

I.

OwlPoint was an information technology consulting firm founded in 2008 by Blanke and a former business partner who left the company in 2010. In July 2016, Ludwig, Muntzner, and Blanke entered into an operating agreement (the Operating Agreement) under which Ludwig and Muntzner became employees and minority shareholders of OwlPoint, with each of them owning twenty-five percent of OwlPoint. Blanke retained fifty-percent ownership of OwlPoint and was named president and CEO. The Operating Agreement contained an arbitration clause requiring any disputes arising out of or relating to the Operating Agreement to be submitted to binding arbitration.

In 2017, Blanke hired Ayres as a part-time bookkeeper for OwlPoint. Approximately a year later, Blanke promoted Ayres to Director of Operations and made her a full-time employee.

In November 2018, Ludwig came to believe that Blanke and Ayres were having an "unprofessional" relationship. At around the same time, Blanke informed Ludwig and Muntzner that OwlPoint was experiencing financial

difficulties, and that they would not receive their monthly \$6,250 draws for October or November 2018.

Shortly thereafter, Ludwig asked Blanke for access to OwlPoint's accounting software and urged Blanke to make changes to how OwlPoint delivered its consulting services. On November 14, 2018, Blanke informed Ludwig that he was terminated. In the following weeks, Ludwig and Muntzner sent Blanke "litigation hold" letters. Blanke then terminated Muntzner.

In January 2019, plaintiffs sued OwlPoint, Blanke, and Ayres. In their complaint, plaintiffs asserted twelve counts, including a claim for injunctive relief (count one), ten causes of action (counts two through eleven), and a claim for declaratory judgment to dissolve OwlPoint (count twelve). The ten causes of action were: minority shareholder oppression, asserted against OwlPoint and Blanke (count two); breach of OwlPoint's Operating Agreement, asserted against OwlPoint and Blanke (count three); breach of fiduciary duty, asserted against Blanke (count four); civil conspiracy, asserted against Blanke and Ayres (count five); fraudulent transfer of assets, asserted against Blanke and Ayres (count six); fraud, asserted against OwlPoint, Blanke, and Ayres (count seven); unjust enrichment, asserted against OwlPoint, Blanke, and Ayres (count eight); conversion, asserted against OwlPoint and Blanke (count nine); retaliation in

violation of the New Jersey Conscientious Employee Protection Act (the CEPA), N.J.S.A. 34:19-1 to -14, asserted against OwlPoint, Blanke, and Ayres (count ten); and wrongful discharge, asserted against OwlPoint, Blanke, and Ayres (count eleven). In addition to the injunctive relief and declaratory judgment, plaintiffs sought money damages.

In response to the complaint, Blanke and OwlPoint moved to compel arbitration under the Operating Agreement. Plaintiffs cross-moved for leave to file an amended complaint. In the proposed amended complaint, plaintiffs sought to add Stephanie Solyon, another former OwlPoint employee, as a plaintiff, and they sought to add additional counts, including claims of tortious interference and violations of New Jersey's Law Against Discrimination (the LAD), N.J.S.A. 10:5-1 to -50. Ayres responded with a cross-motion to dismiss the claims against her or, in the alternative, to stay those claims pending arbitration.

After hearing oral argument, on April 12, 2019, the chancery court entered an order that (1) denied in part and granted in part plaintiffs' motion for leave to amend their complaint, (2) compelled the majority of plaintiffs' claims against OwlPoint and Blanke to be addressed at arbitration; (3) dismissed the fraud, unjust enrichment, CEPA, and wrongful discharge claims against Ayres; and (4)

stayed, pending arbitration, three claims: (i) the civil conspiracy claim against Ayres; (ii) the fraudulent transfer of assets claim against Ayres; and (iii) the CEPA claim against OwlPoint and Blanke.

Accordingly, the claims sent to arbitration were (1) the minority shareholder oppression claim against OwlPoint and Blanke; (2) the breach of contract claim against OwlPoint and Blanke; (3) the breach of fiduciary duty claim against Blanke; (4) the civil conspiracy claim against Blanke; (5) the fraudulent transfer of assets claim against Blanke; (6) the fraud claim concerning defendants' expenses against OwlPoint and Blanke; (7) the fraud claim related to Blanke's capital contribution asserted against OwlPoint and Blanke; (8) the unjust enrichment claim against OwlPoint and Blanke; (9) the conversion claim against OwlPoint and Blanke; (10) the wrongful discharge claim against OwlPoint and Blanke; and (11) the tortious interference with business relationships claim against OwlPoint and Blanke.¹

Plaintiffs, Blanke, and OwlPoint proceeded to arbitration. In the arbitration proceeding, plaintiffs asserted all the claims that had been referred

¹ The chancery court initially stayed its order compelling the matter to arbitration pending settlement negotiations among the parties. On December 17, 2019, after a settlement was not reached, the court entered an order lifting the stay and allowing the claims to proceed to arbitration, and it restated the reservation of claims set forth in the April 12, 2019 order.

to arbitration, and Blanke and OwlPoint asserted counterclaims. An arbitration proceeding was then conducted between April and June 2021.

In November 2021, the arbitrator issued a final award and a written decision detailing that award. The arbitrator found that Blanke had undercapitalized OwlPoint and plaintiffs had been improperly terminated from OwlPoint. The arbitrator also determined that plaintiffs were entitled to a buyout of their interests in OwlPoint as of December 21, 2018. Although the arbitrator did not expressly identify the causes of action she was addressing, her rulings disposed of plaintiffs' claims of shareholder oppression, breach of the Operating Agreement, breach of fiduciary duty, fraud, wrongful discharge, and tortious interference with business relationships. The arbitrator also rejected all the claims asserted by OwlPoint and Blanke. Finally, the arbitrator stated that any claim not expressly addressed "and for which no award has been made, is hereby dismissed."

Based on those findings, the arbitrator awarded plaintiffs \$652,615.04. The arbitrator explained that that award included an award of \$326,307.52 to each plaintiff and, of that amount, OwlPoint alone was responsible for \$257,465, and OwlPoint and Blanke were jointly responsible for the remaining \$68,842.52. In other words, of the total arbitration award of \$652,615.04, OwlPoint was

responsible for paying plaintiffs \$514,930, and Blanke and OwlPoint were jointly responsible for paying \$137,685.04.

Following the issuance of the arbitration award, plaintiffs filed a motion in the chancery court to confirm the arbitration award, reinstate the reserved claims, and obtain leave to file a second amended complaint. Apparently, while that motion was pending, OwlPoint filed for protection under federal bankruptcy laws.

In December 2021, the chancery court entered an order directing plaintiffs to file a summary action to confirm the arbitration award. The order also stated that after the court ruled on plaintiffs' request to confirm the arbitration award, it would "reinstat[e] this action and transfer[] it to the Law Division," and plaintiffs would then be allowed to file a motion for leave to file a second amended complaint in the Law Division.²

In accordance with that order, plaintiffs brought a summary action to confirm the arbitration award. On January 31, 2022, the chancery court entered

² In 2019, the chancery court had dismissed the three stayed claims. That dismissal was an error because the claims should have been stayed pending the arbitration. See 9 U.S.C. § 3; N.J.S.A. 2A:23B-7(g). The incorrect dismissal has no effect on our analysis because we treat the reinstated matter as a continuation of the action filed in 2019.

orders (1) confirming the arbitration award against Blanke and (2) staying the summary action against OwlPoint, pending resolution of OwlPoint's bankruptcy.

Thereafter, on February 15, 2022, the chancery court entered an order reinstating the claims that had been stayed pending arbitration, "to wit: [c]ounts [five] and [six] as to defendant Ayres, and [c]ount [eleven]." In other words, the chancery court reinstated the civil conspiracy claim against Ayres, the fraudulent transfer of assets claim against Ayres, and the CEPA claim against Blanke and OwlPoint. The order also transferred the matter to the Law Division.

In the Law Division, plaintiffs moved to file a second amended complaint, asserting six causes of action and adding five new defendants. The proposed new defendants were: (1) CIO Initiative (CIO); (2) CinGin Property Group, LLC (CinGin); (3) Blanke Holdings, LLC (Blanke Holdings); (4) Curcio Mirzaian Sirot, LLC (CMS); and (5) Aristotle Mirzaian. The first three proposed defendants were companies allegedly associated with OwlPoint and Blanke. The fourth and fifth proposed defendants were the law firm and one of the lawyers that represented OwlPoint and Blanke.

Plaintiffs' proposed causes of action in the second amended complaint were: (1) retaliation in violation of the CEPA, asserted against Blanke, Ayres, and the proposed new defendants; (2) a LAD claim of "retaliation/improper

reprisal," asserted against Blanke, Ayres, and the proposed new defendants; (3) wrongful discharge, asserted against Blanke, Ayres, and the proposed new defendants; (4) negligence, asserted against CMS and Mirzaian; (5) tortious interference with business relationships, asserted against CMS and Mirzaian; and (6) civil conspiracy, asserted against Blanke, Ayres, CMS, and Mirzaian. In their proposed second amended complaint, plaintiffs did not assert any causes of action against OwlPoint, nor did they assert a claim of fraudulent transfer of assets against Ayres.

Defendants opposed the motion to file a second amended complaint. Defendants also moved for summary judgment to dismiss the reinstated civil conspiracy, fraudulent transfer of assets, and CEPA claims.

On June 10, 2022, the Law Division heard arguments on plaintiffs' motion to file a second amended complaint and defendants' cross-motion for summary judgment. On August 9, 2022, the Law Division issued an oral decision and an order. The Law Division (1) denied plaintiffs' motion for leave to file a second amended complaint, and (2) granted partial summary judgment to defendants. Specifically, the Law Division dismissed all claims except the civil conspiracy claim against Blanke and Ayres.

On October 5, 2022, the parties agreed to a consent order dismissing the remaining civil conspiracy claim with prejudice. Plaintiffs now appeal from the August 9, 2022 order.

II.

On appeal, plaintiffs make six related arguments. They contend that the Law Division erred in (1) dismissing their CEPA, LAD, and wrongful discharge claims, contending that those claims were not adjudicated in the arbitration; (2) dismissing their LAD claims, contending that the dismissal of the LAD claims in 2019 was not a final adjudication and was without prejudice; (3) dismissing their negligence and tortious interference claims against the proposed new defendants CMS and Mirzaian, contending that those claims related back to the original complaint; (4) dismissing the claims against the proposed new defendants CIO, CinGin, and Blanke Holdings, contending that those entities are "subject to joint-employer liability and successor liability"; (5) denying their motion to amend their complaint; and (6) granting summary judgment to Ayres.

We begin our analysis by setting forth our standard of review. Appellate courts review de novo a trial court's decision to dismiss for failure to state a claim. Hargett v. Hamilton Park OPCO, LLC, 477 N.J. Super. 390, 395 (App. Div. 2023). Similarly, a trial court's grant of summary judgment is reviewed de

novo. Scaduto v. Dep't of Env't Prot., 474 N.J. Super. 427, 435 (App. Div. 2023). In evaluating a grant of summary judgment, we determine whether there are any material issues of disputed fact and whether the moving party is entitled to a judgment as a matter of law. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). We do not defer to the trial court's legal conclusions. In re Est. of Jones, 477 N.J. Super. 203, 216 (App. Div. 2023).

The decision of whether to grant leave to amend a complaint is left to "the trial 'court's sound discretion,'" and a trial court's decision will only be disturbed on a showing of abuse of that discretion. C.V. by and through C.V. v. Waterford Twp. Bd. of Educ., 255 N.J. 289, 306 (2023) (quoting Kernan v. One Wash. Park Urb. Renewal Assocs., 154 N.J. 437, 456-57 (1998)). An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg

v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Plaintiffs' arguments are best analyzed by reviewing their claims against the proposed new defendants and then reviewing their claims against Ayres and Blanke. A de novo examination of those claims establishes that the claims are either time-barred by the applicable statutes of limitations, fail to state viable causes of action, or are precluded by the resolution of the claims that were arbitrated.

A. The Claims Against the Proposed New Defendants.

In their proposed second amended complaint, plaintiffs sought to assert six causes of action against five new defendants. Specifically, plaintiffs sought to assert that the new defendants had violated the CEPA and the LAD, and that they had engaged in wrongful discharge, negligence, tortious interference, and a civil conspiracy. All those claims are barred by the applicable statutes of limitations.

Claims asserting a violation of the CEPA must be brought within one year. N.J.S.A. 34:19-5. A two-year statute of limitations governs claims alleging a violation of the LAD. Stoney v. McAleer, 417 N.J. Super. 574, 578 (App. Div. 2010); N.J.S.A. 2A:14-2. Similarly, a two-year statute of limitations governs

claims of wrongful discharge, negligence, civil conspiracy, and tortious interference. N.J.S.A. 2A:14-2.

Plaintiffs sought to name two groups of new defendants. Three of the proposed new defendants were companies which allegedly had relationships with OwlPoint or Blanke: CIO, CinGin, and Blanke Holdings. None of those proposed defendants were originally named in the complaint filed in 2019. Instead, they were first proposed as defendants when plaintiffs moved to amend their complaint a second time in 2022. Plaintiffs have presented no evidence that any of the new entities were their joint employers along with OwlPoint, nor have they presented any facts showing that those entities are successors of OwlPoint. Thus, all the claims plaintiffs seek to bring against CIO, CinGin, and Blanke Holdings are time-barred. Accordingly, the Law Division correctly denied plaintiffs' motion to amend their complaint because the claims were futile and were subject to dismissal based on the statutes of limitations. See C.V., 255 N.J. at 306 (explaining that "[g]ranted an amendment would be futile, and leave to amend properly denied, 'when the newly asserted claim is not sustainable as a matter of law'" (quoting Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006))).

Plaintiffs also sought to assert claims against CMS and Mirzaian. The CEPA, LAD, wrongful discharge, negligence, tortious interference, and civil conspiracy claims are all time-barred.

Plaintiffs argue that the statute of limitations had not run on their tortious interference claim, again contending that the claim related back to their original complaint filed in January 2019. The record refutes that argument because nothing in the original complaint would have put CMS or Mirzaian on notice that they were being or might be sued. See R. 4:9-3 (providing that for an amendment to a complaint asserted against a new party to relate back, it is required that that party "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party to be brought in by amendment"); see also *Ribeira & Lourenco Concrete Constr., Inc. v. Jackson Health Care Assocs.*, 231 N.J. Super. 16, 26-27 (App. Div. 1989) (holding that an amendment did not relate back where the plaintiff's failure to join a surety resulted from the plaintiff being "unaware of the existence of a surety bond from which it could obtain payment," rather than from any "mistake concerning the surety's identity as a proper party to the action").

Moreover, the tortious interference claim against CMS and Mirzaian also fails as a matter of law. To establish a claim of tortious interference with business relationships, plaintiffs must prove four elements: "(1) a protected interest; (2) malice—that is, defendant's intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages." Vosough v. Kierce, 437 N.J. Super. 218, 234 (App. Div. 2014) (quoting DiMaria Constr., Inc. v. Interarch, 351 N.J. Super. 558, 567 (App. Div. 2001)).

Plaintiffs allege that CMS and Mirzaian, as corporate counsel for OwlPoint, assisted Blanke and OwlPoint with terminating plaintiffs, drafted documents related to plaintiffs' terminations, and failed to answer plaintiffs' questions about their terminations. They argue that through these actions, CMS and Mirzaian "intentionally and tortiously interfered with plaintiffs' personal client networks," which plaintiffs had maintained since before their employment with OwlPoint. Plaintiffs have failed to allege any facts evidencing that CMS and Mirzaian intentionally took these actions to interfere with plaintiffs' client relationships, nor have they explained how CMS's and Mirzaian's actions caused the loss of any prospective gain from those relationships. Thus, plaintiffs have

failed to allege a claim of tortious interference against CMS and Mirzaian as a matter of law.

B. The Claims Against Ayres and Blanke.

In their proposed second amended complaint, plaintiffs asserted four claims against Ayres and Blanke: (1) wrongful discharge; (2) civil conspiracy; (3) a violation of the CEPA; and (4) a violation of the LAD. Those claims fail for several related reasons.

1. The Wrongful Discharge and Civil Conspiracy Claims Against Blanke.

The claims of wrongful discharge and civil conspiracy against Blanke were sent to and were resolved in the arbitration. Plaintiffs asserted claims of wrongful discharge and civil conspiracy against Blanke in their initial complaint filed in January 2019. The chancery court compelled those claims to arbitration. The arbitrator expressly found that Blanke had wrongfully discharged plaintiffs and awarded plaintiffs damages based on that claim. The arbitrator also dismissed the civil conspiracy claim against Blanke. Consequently, plaintiffs cannot now reassert those claims because they have been resolved in arbitration. See Konieczny v. Micciche, 305 N.J. Super. 375, 380 (App. Div. 1997) (explaining that parties which have submitted claims to binding arbitration cannot later seek additional relief in court for those same claims).

2. The Wrongful Discharge and Conspiracy Claims Against Ayres.

Plaintiffs also have not asserted a viable claim of wrongful discharge against Ayres. To establish a claim of wrongful discharge, an employee generally "must show retaliation that directly relates to [the] employee's resistance to or disclosure of an employer's illicit conduct." McVey v. AtlantiCare Med. Sys. Inc., 472 N.J. Super. 278, 286 (App. Div. 2022) (quoting MacDougall v. Weichert, 144 N.J. 380, 393 (1996)). The record establishes that Ayres did not discharge plaintiffs. Instead, as already determined in the arbitration, Blanke was the person who wrongfully discharged both plaintiffs.

Plaintiffs also dismissed "with prejudice" their civil conspiracy claim against Ayres. In the consent order entered on October 5, 2022, plaintiffs agreed to dismiss the civil conspiracy claim against Ayres with prejudice. Therefore, plaintiffs cannot resurrect that claim.

3. The CEPA Claims.

The "CEPA's critical substantive provisions are contained in N.J.S.A. 34:19-3," which "sets forth the statute's essential prohibition of employer retaliation for an employee's protected activities." Allen v. Cape May County, 246 N.J. 275, 289 (2021) (quoting Chiofalo v. State, 238 N.J. 527, 540 (2019)). The CEPA defines an "employer" as "any individual, partnership, association,

corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent." N.J.S.A. 34:19-2(a).

N.J.S.A. 34:19-3 prohibits employer retaliation in three scenarios: (1) where an employee "[d]iscloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer . . . that the employee reasonably believes" violates the law, including a rule or regulation, or is "fraudulent or criminal," N.J.S.A. 34:19-3(a); (2) where an employee "[p]rovides information to, or testifies before, any public body conducting an investigation, hearing or inquiry" into the employer, N.J.S.A. 34:19-3(b); and (3) where an employee "[o]bjects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes" violates the law, including a rule or regulation, is "fraudulent or criminal," or is "incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment," N.J.S.A. 34:19-3(c).

Plaintiffs do not expressly identify which subsection of the CEPA Ayres and Blanke allegedly violated. Nevertheless, a review of the allegations in their second amended complaint only supports a claim under subsection 3(a). See N.J.S.A. 34:19-3(a)(1). Plaintiffs allege that Ludwig confronted Blanke and

challenged his alleged inappropriate relationship with Ayres. Plaintiffs do not cite a law, rule, or regulation that Blanke and Ayres allegedly violated. To the extent that they seek to argue that Blanke was unlawfully sexually harassing Ayres or that she was in the relationship to gain employment benefits to the detriment of plaintiffs, they fail to support those claims with any facts.

The CEPA claims, however, also fail for additional reasons. Plaintiffs have presented no facts supporting the claim that Ayres retaliated against them. The arbitrator found that Blanke was the person responsible for plaintiffs' discharges, and plaintiffs have presented no facts that Ayres was involved with or had responsibility for their discharges.

Plaintiffs' CEPA claims against Blanke are barred by the CEPA's waiver provision. See N.J.S.A. 34:19-8. The CEPA states that the institution of a CEPA action "shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law." Ibid. Courts have construed that waiver provision to require plaintiffs to make an election of remedies when they assert CEPA claims and claims based on the same retaliatory or wrongful discharge assertions. Young v. Schering Corp., 141 N.J. 16, 27 (1995). Although the chancery court expressly stayed the CEPA claim against Blanke, when plaintiffs

pursued their wrongful discharge and related common law claims in the arbitration, they effectively made an election of their remedies. In asserting their common law wrongful discharge claim, plaintiffs alleged that Blanke discharged them in retaliation for disclosing his relationship with Ayres. They, therefore, cannot now assert that the same conduct constitutes a violation of the CEPA.

4. The LAD Claims.

Plaintiffs claim that Blanke and Ayres "took retaliatory action" against them because they "complained and/or protested against the quid pro quo sexual relationship" of Blanke and Ayres. They argue that this is "unlawful retaliatory conduct in violation of [the LAD] pursuant to N.J.S.A. 10:5-12(d)."

Plaintiffs' LAD claims fail for two reasons. First, plaintiffs waived their right to bring retaliation claims under the LAD when they filed and pursued their CEPA and wrongful discharge claims. See Ehling v. Monmouth-Ocean Hosp. Serv. Corp., 961 F. Supp. 2d 659, 672 (D.N.J. 2013); see also Royster v. N.J. State Police, 227 N.J. 482, 498 (2017) (explaining that the CEPA's waiver provision may bar LAD retaliation claims unless the LAD claims asserted are "substantially independent" of the CEPA claim (quoting Young, 141 N.J. at 29)).

Second, the LAD claims fail as a matter of law. The New Jersey Supreme Court has explained what is necessary to assert a retaliation claim under the LAD:

The LAD makes it illegal "[f]or any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act[.]" N.J.S.A. 10:5-12(d). . . . When the claim arises from alleged retaliation, the elements of the cause of action are that the employee "engaged in a protected activity known to the [employer,]" the employee was "subjected to an adverse employment decision[,]" and there is a causal link between the protected activity and the adverse employment action. Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 274 (App. Div. 1996). In addition, in order to recover for LAD retaliation, plaintiff must also demonstrate that the original complaint was both reasonable and made in good faith. Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007).

[Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 546-47 (2013) (alterations in original) (citations reformatted).]

So, to assert a retaliation claim under the LAD, plaintiffs must show that they "opposed any practices or acts forbidden under [the LAD]" and had a "good faith, reasonable basis" for the original complaint. Tartaglia v. UBS PaineWebber Inc., 197 N.J. 81, 125 (2008) (quoting N.J.S.A. 10:5-12(d)). The original complaint must be about "behavior or activities in the workplace" that plaintiffs "think[] are discriminatory," but plaintiffs need not "understand the

nuances of the LAD" or be able to prove an "identifiable discriminatory impact upon someone of the requisite protected class." Battaglia, 214 N.J. at 548-49.

Furthermore, plaintiffs need not have been the target of the alleged discriminatory behavior. See id. at 549 (holding that a male plaintiff's complaints about his supervisor's use of derogatory and vulgar language about women were protected activity within the meaning of the LAD). In some cases, allegations about a coworker's relationship with a supervisor may be sufficient to support a LAD retaliation claim. See id. at 549-50 (holding that where a plaintiff complained "about what [he] believed was a sexual relationship" between his supervisor and a female coworker and was subsequently retaliated against, the plaintiff could recover under the LAD "if [the] plaintiff in good faith believed that [the relationship] violated company policy because it was a form of sex discrimination").

Plaintiffs' LAD claims fail because they do not allege a good-faith underlying complaint. They assert that they protested against Blanke's and Ayres' alleged relationship; however, that allegation does not constitute a good-faith, reasonable complaint about discriminatory conduct. In contrast to the plaintiff in Battaglia, plaintiffs did not complain that Blanke's and Ayres' alleged conduct constituted discrimination of any kind, and they do not identify a


protected class targeted by the alleged behavior. Moreover, they do not allege that Blanke gave Ayres, a woman, preferential treatment over them as men. They also do not allege that Ayres was discriminated against based on her gender. Indeed, they are the ones seeking to sue Ayres. In short, plaintiffs' complaints about Blanke and Ayres were not good-faith, reasonable complaints about discriminatory conduct sufficient to support a retaliation claim under the LAD.

III.

In summary, defendants were entitled to summary judgment, and the Law Division did not abuse its discretion in denying plaintiffs' motion to file a second amended complaint. All the claims asserted in the second amended complaint were futile because they were either barred by the statutes of limitations, they failed to state a viable cause of action on which relief could be granted, or they were precluded by the arbitration award.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION