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THE COMMITTEE ON OPINION

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-118-25

TIMOTHY J. HARRIS, MEGAN HARRIS LOEWENBERG, and KIRSTEN C. HARRIS,

Plaintiffs,

v.

FIRST REPUBLIC TRUST COMPANY OF DELAWARE, LLC (n/k/a JTC TRUST COMPANY (DELAWARE) LIMITED), as TRUSTEE OF THE 2011 MARY ELLEN HARRIS GRANTOR RETAINED ANNUITY TRUST, JOHN DOES 1-3, ABC CORPS. 1-3,

Defendants.

OPINION

Decided: December 9, 2025.

DeCotiis, Fitzpatrick, Cole & Giblin, LLP (Benjamin Clarke, Esq., and Gregory J. Hazley, Esq., appearing), attorneys for plaintiff Timothy J. Harris.

Lauletta Birnbaum, LLC (Gregory Lomax, Esq., appearing), attorneys for plaintiff Megan Harris Loewenberg.

Pierson Ferdinand LLP (Joseph Schramm, III, Esq., appearing), attorneys for plaintiff Kristen C. Harris.

Greenbaum, Rowe, Smith & Davis, LLP (Emily A. Kaller, Esq., and Charles J. Vaccaro, Esq., appearing), and Wilentz, Goldman & Spitzer, P.A. (Andrew J. DeMaio, Esq., appearing), attorneys for defendant First Republic Trust Company of Delaware, LLC (n/k/a JTC Trust Company (Delaware) Limited).

FISHER, P.J.A.D. (t/a, retired on recall).

Defendant's Rule 4:6-2(e) motion presents an unusual question about the impact of an earlier tolling agreement. In December 2021, while pursuing claims against their mother and others in Delaware's chancery court about a closely-held corporation named Harris FRC, and a Grantor Retained Annuity Trust (GRAT), to which they are beneficiaries, plaintiffs Timothy J. Harris, Megan Harris Loewenberg, and Kristen C. Harris first entered into a series of tolling agreements with defendant First Republic Trust Company of Delaware, LLC, the GRAT's trustee. On the eve of a July 2025 trial in the Delaware action, however, First Republic refused to further extend the tolling agreement, forcing plaintiffs to commence a separate action, which they filed here. In seeking this action's dismissal, First Republic invokes the entire controversy doctrine, arguing the claims asserted here should have been incorporated, or actually were

subsumed, within those tried (but not yet decided) in Delaware, and arguing further that the tolling agreement does not insulate plaintiffs from the entire controversy doctrine's reach.

First Republic argues in part that the tolling agreement should not now be considered. A Rule 4:6-2(e) motion, however, requires more than a simple examination of what lies within a complaint's four corners since it is well established that such a motion allows for the court's consideration and examination of not only the complaint's allegations and its exhibits but also "matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005); see also AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co., 256 N.J. 294, 311 (2024); Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015). That opens the door to some things lying on a complaint's periphery and, in this court's view, compels consideration of the tolling agreement and what both sides may have intended to accomplish by agreeing to what ultimately became a three-and-one-half-year stasis of the disputes asserted in plaintiffs' complaint here, all of which presents too murky a picture to allow for dismissal.

To put further in context the possible application of the entire controversy doctrine, this action is the third involving circumstances relevant to all three. The first was filed and remains pending in Delaware, and the second, like this

third action, is pending here. The Delaware chancery action was commenced in 2019 by plaintiffs against Mary Ellen Harris, and others, regarding the management of Harris FRC, a closely-held corporation founded by plaintiffs' father (the late Dr. Bob Harris), and Mary Ellen, their mother. Among other things, plaintiffs alleged in the Delaware action, on their own behalf and derivatively on behalf of Mary Ellen's GRAT, that in December 2018 Mary Ellen recouped 245 shares of Harris FRC stock held by the GRAT in exchange for $52,677,000. This swap, according to plaintiffs, was not for "equivalent value"; they claim the stock was worth something more like $100,000,000. In this action, plaintiffs reprise these same allegations, see Complaint, ¶s 15-16, but claim further that First Republic, as trustee of Mary Ellen's GRAT, breached its fiduciary duties – to their detriment as GRAT beneficiaries – in allowing the alleged unequal stock swap to occur. Whether there is merit in plaintiffs' claim of an unequal stock swap is something that may be answered by the vice-chancellor in the Delaware matter, but that action has not yet been finally adjudicated. The Delaware claims went to trial in July 2025, and the parties advise that a decision is not expected any sooner than March 2026. First Republic argues, however, that plaintiffs' claim that it breached its fiduciary

duties either was or could have been asserted in the Delaware action and, for that chief reason, as well as others, they seek this action's dismissal.[1]

The court will first discuss the entire controversy doctrine as well as other procedural doctrines First Republic invoked in seeking dismissal and then, in this opinion's second part, will discuss First Republic's contention that the complaint lacks sufficient merit to be maintained.

I

In seeking dismissal, First Republic urges application of the first-filed doctrine, res judicata, collateral estoppel, and the entire controversy doctrine. To cut to the chase, at this time the entire controversy doctrine is arguably the only preclusion doctrine that might give rise to a dismissal.[2] In applying the

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[1] During oral argument, First Republic acknowledged that it does not seek dismissal on issue or claim preclusion grounds for plaintiffs' failure to assert the claims in this third action in their second, still pending, action – Harris v. Harris, MON-C-41-22 – which asserts, among other things, that Dr. Bob was unduly influenced to make changes to his estate plan.

[2] The first-filed doctrine is based on comity principles that require, absent special equities, deference to the forum of the first-filed action when that first action involves the same operative facts and transactions as the second. Yancoskie v. Del. River Port Auth., 78 N.J. 321, 324 (1978). To be sure, the Delaware action was filed first, but even if this doctrine were applied, it would only suggest entry of a stay, not a dismissal (or at least not a dismissal with prejudice), Sensient Colors Inc. v. Allstate Ins. Co., 193 N.J. 373, 386 (2008), because there would likely still be a need for this court to determine the impact of the Delaware findings on plaintiffs' claims against First Republic. Res judicata attaches when

familiar standard that governs Rule 4:6-2(e) motions – a standard that requires an assumption of the truth of the pleading's allegations, Smith v. SBC Commc'ns, Inc., 178 N.J. 265, 268-69 (2004), entitles the pleader to the benefit of all reasonable factual inferences, Indep. Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956), obligates the court to search the pleading "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement," Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989), and presents "a very low bar for pleaders to hurdle," Robey v. SPARC Grp. LLC, 474 N.J. Super. 593, 599 (App. Div. 2023), rev'd on other grds., 256 N.J. 541 (2024) – the court concludes the extent to which the entire controversy doctrine might preclude this action isn't sufficiently clear to allow for dismissal at this stage.

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another court has adjudicated the same claim. Ten Stary Dom Partnership v. Mauro, 216 N.J. 16, 39 (2013); Tarus v. Bor. of Pine Hill, 189 N.J. 497, 520 (2007); Velasquez v. Franz, 123 N.J. 498, 505 (1991). It seems abundantly clear the Delaware court will not be adjudicating the same claims asserted in the complaint here since those claims were not asserted against First Republic there. Collateral estoppel, an offspring of res judicata, however, has a broader application; it bars re-litigation of an issue which was "actually determined in a prior action, generally between the same parties, involving a different claim or cause of action," State v. Gonzalez, 75 N.J. 181, 186 (1977) (emphasis added); see also Sacharow v. Sacharow, 177 N.J. 62, 76 (2003), a doctrine that might eventually apply but certainly not until the Delaware court decides that same issue. And so, not one of these three other doctrines justifies a dismissal of this action at this time.

The entire controversy doctrine's essential purposes are to protect parties from being dragged into a second lawsuit and to eliminate the burden on courts when asked to adjudicate disputes in multiple pieces. That is, as declared by the Supreme Court, the doctrine was designed "(1) to encourage the comprehensive and conclusive determination of a 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 & Nehman, 142 N.J. 310, 322 (1995). The second objective isn't served by dismissal here because the deliberate withholding of the claims until now spared First Republic from immersion into the lengthy and involved Delaware action. The first and third, however, are implicated because what has procedurally occurred did not necessarily encourage one "comprehensive and conclusive" litigation and did not promote judicial economy or efficiency by avoiding "fragmented, multiple and duplicative litigation."[3] Ibid. These stated objectives

[3] There is nothing in our jurisprudence to suggest the doctrine's application is determined by resort to the sum of its parts; in other words, courts shouldn't just identify those objectives that favor dismissal and those that don't and see which has the higher score. A mature jurisprudence does not act so simply or rigidly. Even if it did, a mathematical process here would require double-counting, since the first and third objectives really deal with the same subject; they are just mirror images of each other.

must inform a court's decision in such matters, but courts also shouldn't lose sight of the entire controversy doctrine as "an equitable principle" and that its applicability is always "left to judicial discretion based on the particular circumstances inherent in a given case." Id. at 323. That discretion allows for consideration of whether prejudice would result from the doctrine's application in a particular case, Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 27 (1989); Higgins v. Thurber, 413 N.J. Super. 1, 12 (App. Div. (2010), aff'd o.b., 205 N.J. 227 (2011), and, in the final analysis, the doctrine is "one of judicial fairness" and must be "invoked in that spirit." Crispin v Volkswagenwerk, A.G., 96 N.J. 336, 343 (1984).

This is where the tolling agreement enters the scene. Apparently, plaintiffs came to believe at some point during the Delaware litigation that they possessed actionable claims against First Republic. But they didn't immediately seek to amend their Delaware pleadings to include those claims; instead, and for reasons not explained in the motion papers, starting in December 2021, plaintiffs and First Republic entered into their series of tolling agreements that postponed the assertion of plaintiffs' claims against First Republic for three and one-half years. By the most recent of this series of agreements, the parties consented to "toll" any

> statute or period of limitations, statute of repose, or other time-based limitations or defenses, whether at

> law, in equity, under statute, contract, or otherwise (including, but not limited to, the doctrine of laches or waiver), which might be asserted as a time bar and/or limitation to a claim by any of the parties . . . .
>
> [Clarke Certif., Exhibit C.]

The last such agreement expired on June 30, 2025, and was not renewed.

Although this agreement ostensibly tolls only time-based limitations, and does not expressly speak about issue or claim preclusion doctrines like the entire controversy doctrine, the particular circumstances here do not foreclose the agreement's potential for sparing plaintiffs of a potential dismissal of their claims against First Republic under any preclusion doctrine, or at least not when considering the low hurdle an opponent of a Rule 4:6-2(e) motion must overcome.[4]

As asserted in opposition to the motion, the parties repeatedly extended their tolling agreement until First Republic decided not to enter into yet another shortly before commencement of the July 2025 Delaware trial. By taking that

[4] It should be added that while seeing no obstacle in many cases to the application of issue or claim preclusion doctrines through a Rule 4:6-2(e) motion to dismiss, the court cannot fairly preclude maintenance of a suit without allowing for consideration of a tolling agreement, like here, or the reasons why the claim was not asserted in an earlier suit. And in some cases, a consideration of such an agreement or the reasons for delay may take the controversy beyond what Rule 4:6-2(e) was intended to accomplish.

stance, First Republic put plaintiffs in the difficult position of being relegated to seeking the Delaware vice-chancellor's leave at such a late date to allow an amendment and, thus, an expansion of the issues then about to be tried – an application, if things work in Delaware like they do here in New Jersey, see, e.g., Young v. Schering Corp., 275 N.J. Super. 221, 232 (App. Div. 1994), was not likely to be granted – or to pursue their claims against First Republic in a separate suit knowing they were likely to face an entire-controversy-based attack that, in fact, is before us now.

To be sure, the record on this motion is bereft – by the motion's very nature – of an explanation of why the parties entered into these tolling agreements or the intended scope of those agreements, but does it make sense for plaintiffs, who do not appear to be bashful about asserting claims or instituting legal actions, even against their own mother, to have agreed to string out their pursuit of claims against First Republic without reasonably believing the tolling agreement protected them from issue or claim preclusion doctrines? Indeed, assuming the tolling agreement is a Delaware agreement, Delaware – like New Jersey, see Sons of Thunder v. Borden, Inc., 148 N.J. 396, 420 (1997) – recognizes that contracts impliedly contain a covenant of good faith and fair dealing and that this implied covenant may "fill in the spaces between the written words" to "ensure[] that the parties deal honestly and fairly with each

other when addressing gaps in their agreement." Glaxo Grp. Ltd. v. Drit LP, 248 A.3d 911, 919 (Del. 2021).

The tolling agreement may not – on its face – disclose or explain the parties' intentions about what would come of plaintiffs' claims against First Republic if the tolling period took them to a point in time that would preclude the assertion of the claims in the pending Delaware matter, but does it make sense that the parties would agree to fending off the potential impact of a time-bar without additionally understanding that a late assertion of the claim – to which they all agreed – would nevertheless lead to its termination on other procedural grounds? Was First Republic's gameplan to continue to agree to tolling until a point was reached when plaintiffs could no longer pursue its claims in the Delaware suit? If so, is First Republic's unwillingness to extend beyond June 2025 the tolling agreement akin to the type of "sharp practice" Justice Handler spoke about in his concurring opinion in Crispin, 96 N.J. at 356? And if it is, might not a court reject, in its exercise of equitable discretion, the invitation to be a party to such a "sharp practice"[5] and choose instead to decline

[5] The allegation that First Republic engaged in such a sharp practice is further illuminated and supported by the fact, as First Republic acknowledges, see Db at 10, that, on June 19, 2025, after First Republic declined to extend the tolling agreement, Mary Ellen, who is obligated to defend and indemnify First Republic on these claims, see Db at 13 n.5, moved in limine in the Delaware matter for an order barring plaintiffs from asserting the claims against First Republic in that action. That motion was rendered moot by the filing of this action.

dismissing the claim under the entire controversy doctrine as a result? Now is not the time to answer those questions; the only relevant question to be answered at this time concerns whether – when viewing the matter expansively in favor of plaintiffs as the opponents of the Rule 4:6-2(e) motion – the entire controversy doctrine must bar this suit notwithstanding these equitable or contractual concerns. And the answer to that question is, clearly, no. At the very least, the court must hear more about the tolling agreement and what it was the parties were seeking to achieve by postponing the assertion of plaintiffs' claims for three and one-half years.

In short, the court finds – in applying a "generous and hospitable approach" favorable to the pleader when ruling on a motion to dismiss, Printing Mart-Morristown, 116 N.J. at 746 – that there is a potential for the application of the entire controversy doctrine but that it cannot, without further amplification or illumination, be the basis for dismissal under Rule 4:6-2(e).

The issue and claim preclusion doctrines asserted by First Republic having been found insufficient – at least at this time and stage – because, in part, the purpose and scope of the tolling agreement[6] are too uncertain to allow for a

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[6] These questions also raise another interesting issue not briefed by the parties: are tolling agreements like this binding on courts? That question requires consideration of the many competing policy interests they impact. For example,

on its face, a typical tolling agreement contains only a stipulation that the tolling period will not count in any future application of a statute of limitations or other time-bar defense. Yet, in most instances, such an agreement would likely run contrary to the policies underlying the Legislature's creation of time-bars for particular types of cases. Statutes of limitations impose arbitrary limits within which an action must be brought in our courts or otherwise be forever barred; these types of statutes do not normally express that the stated time-bar may be expanded for any length of time to which the parties might agree. See, e.g., N.J.S.A. 2A:14-2 (emphasis added) (declaring that "every action at law for an injury to the person . . . shall be commenced within two years . . ."; this statute expresses no exception (other than when the injured person is a minor) for cases in which the parties agree to extend that two-year period). So viewed, a tolling agreement would appear to be against the public policy that drove the Legislature to create statutes of limitations. On the other hand, our court rules require the assertion of a statute-of-limitations defense in a responsive pleading or else it will be deemed waived, see Anske v. Palisades Park, 139 N.J. Super. 342, 350 (App. Div. 1976), so ostensibly the court rules adopt a policy that permits a waiver of the time for commencing a suit in some instances that would render the Legislature's contrary deadline inapplicable. Another policy interest potentially implicated is that which favors the amicable settlement of disputes. See Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Plaintiffs' counsel cleverly argues that the tolling agreement is a "provisional settlement agreement" and that the agreement should therefore be favored and expansively interpreted. All these considerations, and likely others, ought to be weighed before determining whether these parties – or, for that matter, any parties to similar agreement – may unilaterally agree to waive common law and court-rule-based doctrines designed to protect the misuse of our courts, like the entire controversy doctrine. These doctrines, as already discussed, seek to preclude duplicative, repetitive and inefficient lawsuits that burden the forums provided by taxpayers. One might fairly ask by what right private parties may agree to supersede those protections against inefficient or wasteful litigation? In the spirit of Rule 4:5-1(b)(2), shouldn't the court be a party to or at least contemporaneously be made aware of such an agreement? No evidence was presented in support or opposition to the motion at hand that the Delaware vice-chancellor was advised or otherwise aware or approved of the tolling agreement or the ultimate segregation of plaintiffs' claims against First Republic from the other Delaware claims, let alone the more than three-year delay in their assertion.

dismissal, the court turns to First Republic's next argument that the complaint itself lacks merit.

II

In turning to First Republic's argument that there is no merit to the complaint regardless of the application of any issue or claim preclusion doctrines, the court finds no reason to dismiss either of the complaint's two counts, the first of which is referred to as the "stock purchase" count, and the second as the "tax reimbursement" count. In fact, the motion does not appear to attack the stock purchase count on its merits.[7] Nevertheless, because the tax reimbursement count incorporates the allegations of the stock purchase count, all the complaint's allegations should be considered in determining whether the tax reimbursement count states a claim on which relief may be granted.

The stock purchase count alleges facts, apparently undisputed, about the creation and formation of Mary Ellen's GRAT, First Republic's assumption of

[7] First Republic's moving brief contains three points. The first provides a discussion of the rule's standard and clearly explains that First Republic believes both counts should be dismissed on issue and claim preclusion grounds but only the second count should be dismissed for failing to state a claim on which relief may be granted. Db at 10-11. The second point discusses the issue and claim preclusion doctrines. Db at 11-21. And the third argues only that the second count fails to state a claim if the preclusion doctrines have no application. Db at 21-23. There is no point in its brief in which First Republic argues that the stock purchase count fails to state a claim on which relief may be granted.

the position of the GRAT's trustee, plaintiffs' positions as three of the GRAT's beneficiaries, and the basic facts of the stock swap, which was based on the GRAT's section 6.08, through which Mary Ellen regained ownership of the GRAT's 245 shares of Harris FRC in exchange for her payment into the GRAT of $52,677,000. See Complaint, ¶s 1, 4-5, 8-15. Plaintiffs further assert that Mary Ellen paid less than equivalent value when obtaining the stock from the GRAT, and that First Republic breached its fiduciary duties to the GRAT's beneficiaries by allowing this alleged unequal swap to occur. Id., ¶s 16-17.

The tax reimbursement count reasserts the allegations of the stock purchase count, id., ¶ 18, and further alleges that in retaining the power to make the swap referred to in the stock purchase count Mary Ellen remained obligated to "pay all income taxes on the property held by the GRAT," id., ¶ 19. Plaintiffs further allege that Mary Ellen released the swap power on March 1, 2019 – effective on January 1, 2019 – that was done "to prevent [her] from being obligated to pay income taxes on all earnings within an irrevocable trust." Id., ¶ 20. They claim in this tax reimbursement count that the GRAT's section 6.08 empowered "the Trustee to reimburse [Mary Ellen] for the income tax obligations associated with the trust income," ibid., but that First Republic, in breach of the GRAT's terms and its own fiduciary duties, allowed Mary Ellen

to withdraw $5,794,579 from the GRAT "as 'reimbursement' for taxes she had paid on her own behalf," id., ¶ 21.

The motion might be denied simply because the reimbursement count is actionable and if First Republic breached its fiduciary duties in allowing the alleged unequal swap it a fortiori breached its fiduciary duties by allowing Mary Ellen an additional $5,794,579 months later. But there are other matters as well that explain why dismissal is not presently appropriate.

That is, as mentioned, plaintiffs allege that in March 2019, Mary Ellen renounced and revoked, without reservation, the GRAT's section 6.08, which contains the provision on which – seven months later – First Republic shelled out to her $5,794,579, allegedly to pay her taxes.[8] Perhaps, the renunciation may be the subject of interpretation, but it does state, after references to section 6.08, that "Mary Ellen does hereby, effective immediately, absolutely and irrevocably

[8] Plaintiffs also question whether that was the use to which that money was put. Specifically, plaintiffs argue that they have alleged in their complaint "that the reimbursement was for Mary Ellen's payment of taxes on incomes attributable to the Shares but no documentary evidence has been provided to establish that Mary Ellen actually paid that amount in taxes and that the taxes paid were for income earned on the Shares." Pb at 5 n.2. The complaint, however, is not that specific. Under the applicable standard, courts are to liberally grant the pleader the right to amend; should plaintiffs feel the distinction discussed in their second footnote is relevant, the court will allow them to file an amended complaint so that they might more clearly express their contentions about the tax reimbursement.

renounce her Right of Substitution with respect to all trusts created under the Trust Agreement." Kaller Certif., Exhibit D. Assuming the truth of plaintiffs' allegations about the renunciation and the GRAT and giving plaintiffs the benefit of all reasonable factual inferences, the court cannot conclude that the renunciation did not encompass that part of 6.08 on which First Republic's actions questioned in this count are based. The document in question, id., Exhibit D, contains Mary Ellen's "absolute[]" renunciation of the right of substitution and the $5,794,579 challenged payment is based on that same section of the GRAT.

This, of course, is not the time to parse or interpret either the GRAT in general, section 6.08 specifically, or the renunciation. Information beyond the four corners of the complaint or the documents referred to will be required before determining the sufficiency of First Republic's conduct. The procedure authorized by Rule 4:6-2(e) – that addresses only the sufficiency of the pleading – constitutes too fragile a foundation to support a determination about the meaning and scope of either the renunciation or the GRAT.

* * *

First Republic's motion to dismiss is denied in all respects. An appropriate order has been entered.