NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-41-22

TIMOTHY J. HARRIS; MEGAN HARRIS LOEWENBERG; and KRISTEN C. HARRIS,

Plaintiffs,

v.

MARY ELLEN HARRIS, Individually And as Executrix of the ESTATE OF ROBERT H. HARRIS; JUDITH LOLLI; PAUL PETIGROW; PREMIER TRUST, INC., as Trustee of THE ROBERT H. HARRIS 2011 GRANTOR RETAINED ANNUITY TRUST (GRAT); FIRST REPUBLIC TRUST COMPANY OF DELAWARE, LLC, as Trustee Of THE MARITAL TRUST under THE ROBERT HAROLD HARRIS 2015 DELAWARE LIVING TRUST; JOHN DOES 1-5; ABC TRUSTS 1-5; and XYZ INC. 1-5,

Defendants.

OPINION

Decided April 21, 2025.

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

Greenbaum Rowe Smith & Davis, LLP, attorneys for defendant Mary Ellen Harris (Emily A. Kaller, Esq., appearing).

Wilentz, Goldman & Spitzer, attorneys for defendant First Republic Trust Company of Delaware, LLC (Andrew J. DeMaio, Esq.).[1]

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

Plaintiffs Timothy J. Harris, Megan Harris Loewenberg, and Kristen C. Harris commenced this suit alleging, among other things, the tortious interference by their mother, defendant Mary Ellen Harris, and others, with what plaintiffs claim are their vested rights to assets formerly owned by Dr. Robert H. Harris, their late father. An earlier opinion about a number of dispositive motions contains more detailed of the underlying facts and circumstances. See Harris v. Harris, 2024 N.J. Super. Unpub. LEXIS 412 (Mar. 6, 2024).

More recently, defendant First Republic Trust Company of Delaware, LLC[2] moved, as has defendant Mary Ellen Harris, for dismissal of claims via

[1] The attorneys identified are those that argued for and against the motion. Other attorneys not listed appeared but did not argue.

[2] First Republic has changed its name to JTC Trustees (Delaware) LLC and now refers to itself in this action as "JTC Trustees (Delaware) LLC, formerly known

Rule 4:6-2(e) based on a transfer of funds from First Republic to Mary Ellen. The nature of the motion, of course, obligates the court to assume the truth of plaintiffs' allegations under the Printing Mart standard.[3] But movants also assert that this assumption doesn't matter and that they are entitled to dismissal because the legal standard or assumption on which the particular claims are based is plainly wrong; in response, to show that the applicable law favors their view of the transaction in question, plaintiffs refer to matters outside the amended complaint's four corners, an approach that may suggest the court should apply the Brill standard.[4]

In truth, the motion standard makes no difference. Whether the court were to consider whether the funds derived from a sale of Harris FRC Corp.'s assets that were transferred from First Republic to Mary Ellen constituted principal and not income – the legal conclusion that both parties agree lies at the heart of these motions – under the Printing Mart standard or the Brill standard, plaintiffs would be entitled to have the court either assume what they allege or rely on is true or at least should be viewed in the light most favorable to them.

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as First Republic Trust Company of Delaware, LLC." See FR brief at 1 n.1; FR reply brief at 1 n.1.

[3] Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989).

[4] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Some relevant facts appear undisputed. First, there seems no doubt that Harris FRC owned patent and licensing rights to an anti-seizure medication known as Vimpat. Second, Harris FRC sold those rights in July 2020 for approximately $342,000,000, which was then distributed to Harris FRC's shareholders. Third, one of those shareholders was the Robert H. Harris 2015 Delaware Living Trust ("the marital trust"), which received more than $71,000,000. Fourth, First Republic, the trustee of the marital trust, distributed $38,200,000 of those funds to Mary Ellen at her request, ostensibly under a provision in the marital trust entitling her to the marital trust's "entire net income."

In their amended complaint, plaintiffs, who are residuary beneficiaries of the marital trust, allege that First Republic breached its fiduciary duties by transferring those funds to Mary Ellen and that she is similarly or derivatively liable as a result. In moving to dismiss, First Republic and Mary Ellen contend that, as a matter of law, the proceeds received by the marital trust from the sale of Harris FRC's patent and licensing rights constituted net income, not principal. Plaintiffs disagree, alleging in response to these motions and in their amended complaint that those funds "did not constitute or represent 'net income' of the Marital Trust." Amended Complaint, ¶ 5.

The motions' resolution turns on whether there is any merit to plaintiffs' claim that the funds in question constitute principal. This question seems to turn on an understanding of the Delaware Principal and Income Act, specifically 12 Del. Code § 61-401. First Republic and Mary Ellen rely on subsection (b), which declares that, except as otherwise provided within § 61-401, "a trustee shall allocate to income money received from an entity" (emphasis added); they also argue the exceptions to that provision – which, if applicable, would lead to a finding that money received from an entity must be allocated to principal – don't apply. On the other hand, plaintiffs argue, among other things, that the characterization of the funds turns on one of those exceptions – § 61-401(c)(3) – which declares that "a trustee shall allocate . . . to principal . . . [m]oney received in total or partial liquidation of the entity" (emphasis added). Because there is evidence to support plaintiffs' contention the funds were received "in total or partial liquidation" of Harris FRC, First Republic and Mary Ellen are not entitled to the relief they seek in their motions.[5]

[5] For this reason, the court need not consider or determine whether or how 12 Del. Code § 61-401(d), and the twenty percent provision of 12 Del. Code § 61-401(d)(2), might apply. The court need only determine whether the challenged counts of the amended complaint may be sustained by assuming the truth of the allegations or at least viewing the question in the light most favorable to plaintiffs, and it is not necessary to determine whether there might be additional or other grounds to support it. See Oasis Therapeutic Life Ctrs., Inc. v. Wade, 457 N.J. Super. 218, 229 n.6 (App. Div. 2018).

It suffices to say for purposes of these motions that there is support for plaintiffs' contention that the funds constituted principal not income because it seems debatable, if not undisputed, that the sale of its patent and licensing rights constituted a sale of all or substantially all of Harris FRC's assets or, in other words, caused, in the language of § 61-401(c)(3), Harris FRC's "total or partial liquidation."[6] The distinction the movants seem to draw between an entity's sale of all or substantially all of its assets, on the one hand, and liquidation, on the other, is the type of fine distinction – if there even is a distinction, cf., Ramirez v. Amsted Indus., Inc., 86 N.J. 332 (1981) – that ought not be drawn against plaintiffs at this stage.

In either event, the court is satisfied there is support for plaintiffs' claim that the funds must be allocated to principal, not income, under the total or partial liquidation statutory provision because that is how the transaction was then characterized. The notice of a special meeting in August 2020 given to Harris FRC's shareholders clearly stated that approval would be sought for a sale "of substantially all of [Harris FRC's] assets and ongoing business." Henkel Certification, Exhibit C. And communications from Harris FRC's attorneys

[6] It is fair to equate these two descriptors, at least at this stage, because – to find a difference – would allow an entity to sell all or substantially all its assets and yet not dissolve but remain instead an empty vessel just so a distribution like that in question might be viewed as income.

about the transaction advised "that after the closing of the sale transaction, the corporation's board of directors intends, in due course, to wind up the business and affairs of the corporation, dissolve the corporation and make liquidating distributions to the corporation's shareholders in accordance with New Jersey law." Id., Exhibit B (emphasis added).

Plaintiffs don't have to prove their claims at this stage. See Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). A pleading, even if obscure, need only contain allegations suggestive of a fundament of a cause of action, Seidenberg v. Summit Bank, 348 N.J. Super. 243, 249-50 (App. Div. 2002), and the pleading's sufficiency at this stage is judged through an assumption that the alleged facts – here, that the funds are principal, not income – are true, Independent Daily Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). And, since any certainty about that critical fact or legal conclusion requires a venture outside the pleadings, the court is likewise satisfied – from the record presented on this motion – that plaintiffs have shown quite enough to defeat a summary judgment motion.

In short, movants argue the claims in question are not legally sound, while plaintiffs claim the applicable law compels a finding that their view is correct and that this correctness may be revealed by materials lying outside the pleadings; the court concludes from all this – particularly when cautiously

considering the "treacherous shortcut" movants would have the court utilize for the claim's disposition, see Grow Co. v. Chokshi, 403 N.J. Super. 443, 470 (App. Div. 2008) – that the applicable law may support plaintiffs' view, and that is enough to compel a denial of these motions.

Motions denied.