

**NOT FOR PUBLICATION WITHOUT THE
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KUNLGUNDA DIRAUF, et al.,

Plaintiffs,

LAWRENCE S. BERGER, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MORRIS COUNTY

DOCKET NO. MRS-L-1953-19

CIVIL ACTION - CBLP

OPINION

Argued: March 27, 2025

Decided: March 27, 2025

Valerie A. Vladyka, Esq. of Shapiro, Croland, Reiser, Apfel & DiIorio, LLP and Daniel F. Schreck, Esq. of McLaughlin & Stern, LLP, attorneys for the Plaintiffs.

William J. Pinilis, Esq. of Pinilis Halpern, LLP, attorneys for the Defendants.

Frank J. DeAngelis, P.J. Cv.,

I. BACKGROUND INFORMATION

This matter comes before the Court by way of a motion for partial summary judgment. By way of background, Plaintiffs are fifty-one individuals who reside in Germany. The New Jersey-based Defendants are Lawrence S. Berger, Berger & Bornstein, United States Realty Resources (“USRR”), and others. Defendant Eckart R. Straub (“Straub”) is a resident of Germany. Defendant Success Treuhandgesellschaft GMBH (“STG”) (collectively with Straub, “German Defendants”) is a German business association with its principal office and “centre of main interest” located in Germany. Straub is the sole owner and officer of STG. Plaintiffs allege that they were induced by Defendants to invest five million dollars over several years into seventeen alleged commercial real estate projects located in New Jersey (the “Projects”).

Plaintiffs commenced this action with the filing of the Complaint on September 12, 2019 alleging claims that include fraud, New Jersey and Federal RICO violations, breach of contract, and breach of fiduciary duty. In the instant application, Defendants move for partial summary judgment dismissing certain claims that are time barred by applicable the statute of limitations.

II. STANDARD OF REVIEW

Summary judgment must be granted if “the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). The trial court's “function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Id. When the facts present “a single, unavoidable resolution” and the evidence “is so one-sided that one party must prevail as a matter of law,” then a trial court should grant summary judgment. Id.

III. ANALYSIS

Defendants assert that the Complaint alleges that 2007 was the last time any Plaintiff received any payment on account of their alleged investments in the Projects. Defendants note that the Complaint further alleges that Plaintiffs initially received financial statements from STG, but that STG stopped sending financial statements more than eight years prior to the filing of the Complaint. Defendants argue that when payments ceased and Plaintiffs stopped receiving financial statements, Plaintiffs knew or should have known, that they had a potential claim against the

Defendants. Defendants note that as early as 2009 Plaintiffs' counsel admitted that investors started questioning the lack of financial statements, yet Plaintiffs still waited ten years, until 2019, to assert their claims, violating the applicable statutes of limitations.

Defendants note that N.J.S.A. 2A:14-1 sets the statute of limitations on claims and provides that every action falling within the statute's ambit, is to be commenced within six years after the cause of any such action shall have accrued. Defendants assert that the New Jersey Racketeer Influenced and Corrupt Organizations ("NJ RICO") claims have a statute of limitations of four years. See Agency Holding Corp. v. Malley-Duff & Assoc., 483 U.S. 143, 146, 157 (1987). Defendants note that the statute of limitations for breach of fiduciary duties resulting in economic loss is six years. Estate of Warner v. Koo, 2018 N.J. Super. Unpub. LEXIS 2357, *11 2018 WL 5289050. Defendants assert that there is no specific limitation period for a claim by a partner against another partner, thus the claim is governed by N.J.S.A. 42:1A-25, which presumes a six-year limit. N.J.S.A. 42:1A-25. Defendants maintain that the statute of limitations for fraud, conversion and unjust enrichment is six years after the cause of action has accrued. See N.J.S.A. 2A:14-1; Joan Frances Luciano Irrevocable Trust v. Waste Mgmt., 2018 N.J. Super. Unpub. LEXIS 1930, 2018 WL 3863611.

Defendants argue that the partnership's interest in the property identified as 299 Jefferson Project ("Jefferson Project") was sold on June 12, 2007, twelve years before the Complaint was filed, and no further injuries could have been suffered after September 12, 2013. Next, Defendants contend that the limited partnership referred to as Industrial LP was sold on October 16, 2007, twelve years before the Complaint was filed and no further damages suffered by Plaintiffs after September 12, 2013. Defendants assert that the limited partnership referred to as Kings LP was

sold on or about March 4, 2002, seventeen years before the Complaint was filed and no further injuries were suffered by Plaintiffs after September 12, 2013.

Defendants contend that the property owned by the limited partnership referred to as Waterford LP was the subject of an unconventional mortgage conveyed to a lender in 1997. Defendants argue that Waterford LP was sold in 2003, and the 2008 lawsuit seeking redress against the lender was dismissed with prejudice, and as such no claims could be viable in the Complaint which was filed in 2019. Further, Defendants assert that the property referred to as Carlstadt LP is barred by the statute of limitations because the foreclosure sale occurred over sixteen years before the Complaint was filed.

Defendants argue that the property referred to as New Durham LP and Express LP were sold more than six years before the Complaint was filed. Further, Defendants note that the Macarthur Investors, who invested in a limited partnership referred to as Macarthur LP had no distributions after 2007, twelve years passed from the last distribution to Plaintiffs. Additionally, Defendants assert that the Plaintiffs invested in the Union Shopping Plaza Project in 1994, and that the subject property was sold on or about August 29, 2002. Defendants note that this sale is seventeen years before Plaintiffs filed the Complaint and, as the property was sold in 2002, no claim is viable after August 29, 2008. Finally, Defendants assert that the limited partnership referred to as Milik Street LP, which owned real property identified in the Complaint as the Milik Property, the Complaint alleges that the property was sold on or about October 21, 1998, twenty-one years before the Plaintiffs filed the Complaint.

Defendants assert that the last alleged event related to the real estate project involving the 18 Central Property occurred on November 1, 2011, eight years before the Complaint was filed. Defendants contend that the claims identified and referred to as the 18 Central Investors in

Plaintiffs' Complaint happened six years before the Complaint was filed, and as such any NJ Rico claims occurring before September 12, 2015, are barred by the statute of limitations. Defendants argue that several mortgages and mortgage refinancings that Plaintiffs allege were fraudulent are time barred, as the last claim covers allegations sixteen years before the Complaint was filed. Next, Defendants assert that the New Milik Street Project arose eight years before the Complaint was filed and any claims by the New Milik Investors is time barred. Additionally, Defendants contend that the Washington Shopping Center Property is time barred as the last refinancing is alleged to have occurred on November 1, 2011, eight years before Plaintiffs filed the Complaint.

Defendants assert that the Branchburg Plaza Project and Branchburg Investors are time barred as such claims relate to events that took place more than six years before the filing of the Complaint. Further, Defendants contend that the Route 206 Project is time-barred as the last alleged event occurred eight years before the Plaintiffs filed the Complaint. Similarly, Defendants assert that the events related to the Route 206 Investors property are time-barred as such events occurred six years before the Complaint was filed.

Defendants also argue that Plaintiff, Volodymyr Koltyarov's allegations occurred six years before the Complaint was filed, making it time barred by the statute of limitations. Finally, Defendants maintain that the sale of the Bank Building Property occurred more than four years before the filing of the Complaint, making it time barred by the NJ RICO statute of limitations.

In opposition, Plaintiffs assert that Defendants' motion for summary judgment is prematurely made. Plaintiffs contend that a party claiming summary judgment is premature must "demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action." T.D. Bank, N.A. v. Shree Swaminarayan Satsang Mandal, Inc., No. A-0575-17T1, 2018 LEXIS 39934, *7 (App. Div. Sept. 18, 2018) (citing Badiali

v. New Jersey Mfrs. Ins. Group, 220 N.J. 544, 555 (2015)). Plaintiffs assert that the responsive documents of Anton Hell (“Hell”) provides substantial evidence to support the tolling doctrines for the statute of limitations alleged in the Complaint. Plaintiffs contend that Hell promised payment on multiple investments several times between 2011 and 2016. Plaintiffs maintain that Defendants sent Hell bounced checks and promised to waive any defense based upon the statute of limitations. Further, Plaintiffs argue that they have not had the opportunity to depose Defendant Lawrence Berger, the principal architect of the scheme at issue.

Next, Plaintiffs assert that the law of the case doctrine bars the re-litigation of issues within the Complaint. Plaintiffs aver that the law of the case doctrine “is a non-binding rule intended to ‘prevent [re-litigation] of a previously resolved issue’” in the same case. State v. K.P.S., 221 N.J. 266, 276 (2015) (citing Lombardi v. Masso, 207 N.J. 517, 538 (2011)). Plaintiffs contend that the law of the case is a discretionary rule that calls on one court to balance the value of judicial deference for the ruling of a coordinate court against those factors that bear on the pursuit of justice and, particularly, the search for truth. Id. Plaintiffs assert that the law of the case is applicable here and should bar Defendants’ motion for summary judgment as Defendants argued that the applicable statute of limitations barred all of Plaintiffs’ claims in this action. See Robert E. Michael Certification, at Ex. 3. Plaintiffs contend that in Judge Boogard’s motion to dismiss decision, the court found that evidence would be required to find that Plaintiffs’ claims of tolling had no basis. Id. Plaintiffs maintain that Defendants offer no new arguments or evidence why such findings of Judge Bogaard should be disregarded, and as such, Plaintiffs Complaint made specific allegations concerning Defendants’ ongoing duty to disclose information to Plaintiffs and Defendants failure to do so.

Further, Plaintiffs argue that the claims related to financial disclosures are not time barred under the statute of limitations as such claims under N.J.S.A. 42:1A-23 are ongoing. Plaintiffs contend that the rules of equity prevent enforcement of the statute of limitations as Defendants should not be allowed to benefit from misleading Plaintiffs with regard to their distributions and investments.

Plaintiffs note that the discovery rule provides that, in an appropriate case, a cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action. Burd v. New Jersey Telephone Co., 76 N.J. 284, 291-92 (1978). Plaintiffs assert that the purpose of the discovery rule is to mitigate unjust results that otherwise might flow from strict adherence to a rule of law. Lopez v. Swyer, 62 N.J. 267, 273-274 (1973). Plaintiffs note that tolling of the statute of limitations is the fair and responsible result, because the “[u]nserving mechanistic application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing [the] legislative purpose.” Galligan v. Westfield Ctr. Serv., Inc., 82 N.J. 188, 192 (1980). Plaintiff asserts that the discovery rule requires knowledge not only of the injury but also that another is at fault. Martinez v. Cooper Hosp-Univ. Med. Ctr., 163 N.J. 45, 52 (2000). Plaintiffs argue that they have alleged numerous facts that warrant the application of the discovery rule. Plaintiffs contend that Defendant Berger made several misrepresentations that the investments were in good standing and that income was only being delayed because of a downturn in the economy, all while concealing that while he was making such statements virtually all of the properties that were at the heart of the investments had been transferred, voluntarily or involuntarily. Plaintiffs argue that Defendants actively concealed the properties had been financed, sold, foreclosed upon or otherwise transferred. Plaintiffs maintain that Defendants fraudulent

conduct in this matter precludes enforcement of the statute of limitations pursuant to the discovery rule.

Next, Plaintiffs assert that the doctrines of equitable estoppel and equitable tolling bar the application of the statute of limitations to Plaintiffs' claims. Plaintiffs contend that equitable estoppel applies when a party makes an intentional misrepresentation knowing that the other party would rely upon the false statement, and the opposing party did so to his detriment. Scibek v. Longette, 339 N.J. Super. 72, 84 (App. Div. 2001). Plaintiffs note that the doctrine of equitable estoppel is intended to invoke the duty to fair dealing imposed by law. Knorr v. Smeal, 178 N.J. 169, 178 (2003). Plaintiffs state that estoppel may arise if a defendant wrongfully conceals or withholds information which it has a duty to provide to the plaintiff, thus causing the plaintiff to miss a filing deadline. Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 171 (App. Div. 2007). Plaintiffs contend that Defendants' lies and falsehoods prevented Plaintiffs from knowing the status of their investments and from taking timely action. Plaintiffs assert that it would be inequitable to allow the Defendants to prosper from such conduct and that the discovery rule and the doctrines of equitable tolling and equitable estoppel are designed to prevent this inequitable result. Finally, Plaintiffs maintain that Defendants offer no evidence in support of their motion and just rely on allegations of the Complaint.

In reply, Defendants assert that since the NJ RICO claims have been withdrawn by Plaintiffs, Defendants are entitled to summary judgment dismissing the Second Cause of Action. Defendants assert that Plaintiffs do not dispute Defendants' recitation of the facts set forth in the Complaint as applied to the various projects.

Further, Defendants argue that summary judgment is not premature as fact discovery has ended as of July 31, 2025, Hell's documents are not relevant to the claims of any Plaintiff other

than Hell, and Plaintiffs have not identified any discovery needed or that any discovery is likely to show that there are material issues of fact. Defendants contend that contrary to Plaintiff's assertion, the issue of whether the statute of limitations bars the Complaint was not adjudicated or resolved by Judge Bogaard in his 2022 decision. Defendants aver that their motion to dismiss on that issue was denied without prejudice, thus making the doctrine of the law of the case inapplicable. Additionally, Defendants note that this Court is not bound by the doctrine with respect to prior decisions in this case. See State v. Randolph, 441 N.J. Super. 533, 553 (App. Div. 2015), aff'd in part and rev'd in part on other grounds, 228 N.J. 566 (2017).

Defendants argue that the tolling allegations in the Complaint cannot defeat Defendants' summary judgment motion. Defendants contend that a claim that the statute of limitations does not bar the Plaintiffs' claims must be demonstrated by proper admissible evidence, in the form of admissions by Defendants or affidavits from each of the Plaintiffs who claim tolling of their respective claims. Defendants assert that contrary to Plaintiffs' Opposition Brief, Defendants have no contract with Plaintiffs and are not partners with Plaintiffs and if Plaintiffs made investments, such investments were with a third party in Germany. Defendants maintain that there are no affidavits from Plaintiffs alleging: (1) they invested in the projects which are the subject of their Complaint; (2) that they each met with Defendant Berger in Germany or when such meetings took place; (3) that Berger made repeated misrepresentations to Plaintiffs; (4) or that Plaintiffs received documents any Defendant evidencing a "misrepresentation" or an attempt to wrongfully delay inquiry or action by the Plaintiffs.

Upon reviewing the parties' submissions, the Court denies Defendants' motion. As a preliminary matter, the law of the case doctrine is inapplicable here. The law of the case doctrine is inapplicable to an interlocutory order in the same case. Further, the application of the doctrine

is discretionary rather than mandatory and Courts are not irrevocably bound by prior interlocutory rulings, and the doctrine is applied flexibly to serve the interests of justice. Jacoby v. Jacoby, 427 N.J. Super. 109, 117 (App. Div. 2012) (citing Daniel v. N.J. Dep't of Transp., 239 N.J. Super. 563, 581, (App. Div. 1990)). Here, the Court finds that applying the law of the case doctrine does not apply to the May 9, 2022, interlocutory order in this matter.

Next, Plaintiffs argue that Defendants summary judgment motion is premature, alleging that there is evidence to support the tolling doctrines for the statute of limitations alleged in the Complaint through document responses of Hell. Defendants, in contrast, argue that Hell is the only Plaintiff who argues that Defendants promised payment to Hell on multiple investments between 2011 and 2016. Further, Defendants assert that Hell's document responses are not properly authenticated and if done so would only extend to Hell. The Court finds that there are genuine issues of fact here as to whether Hell was promised payment on his investments between 2011 and 2016. Additionally, the Court finds that despite the seven years of this case, Plaintiffs have not had the ability to depose Defendant Berger. The Court also notes that discovery continues based on the most recent Order from the Special Discovery Adjudicator and the Court's March 27, 2026 Order. As such, the Court finds that the grant of summary judgment would be premature.

Further, turning to whether Plaintiffs' claims are time-barred, the discovery rule provides a rule of equity as a means of mitigating the often harsh and unjust results which flow from a rigid and automatic adherence to a strict rule of law. Lopez, 62 N.J. at 274. The issue will be whether a party, either plaintiff or counterclaimant, is equitably entitled to the benefit of the discovery rule. Id. at 275. The determinative factors may include but are not limited to the nature of the alleged injury, the availability of witnesses and written evidence, the length of time that has elapsed since the alleged wrongdoing, whether the delay has been to any extent deliberate or intentional, whether

the delay may be said to have peculiarly or unusually prejudiced the defendant. Id. at 276. Further, the plaintiff need not have knowledge of specific basis for legal liability or a provable cause of action before the statute of limitations begins to run or requires knowledge not only of the injury but also that another is at fault. Martinez, 163 N.J. at 52 (citing Savage v. Old Bridge-Sayreville Med. Group, 134 N.J. 241, 248 (1993)).

Here, while Plaintiffs were aware that Defendants stopped paying distributions to Plaintiffs, Plaintiffs allege that Berger met with Plaintiffs in Germany and in the United States and represented to Plaintiffs that the investments were in good standing and that the failure to pay the distributions to Plaintiffs was due to a downturn in the economy. Further, while Plaintiffs may have been aware of the lack of distribution of funds from the investments, Plaintiffs were not aware that Defendants representations were false, nor did Plaintiffs have a reasonable belief of fraud necessitating an independent investigation to determine if such representations by Defendants were truthful. Additionally, Defendants had an affirmative duty to disclose information concerning the limited partnerships and to not make fraudulent representations regarding the distributions. As discovery is not completed the Court is not able to determine whether the discovery rule applies. The Court reserves the right to conduct a Lopez hearing prior to trial to address the applicability of the discovery rule to Plaintiffs' claims.

IV. CONCLUSION

Accordingly, Defendants' motion for summary judgment is denied.