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SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
CHANCERY DIVISION
DOCKET NO. C-104-16

DEAN MARZETA, KRISTINE FREISINGER
AND BROADWAY CONTRACTING CO.,
ELECTRICAL CONTRACTORS, INC.

Plaintiff,

v.

OPINION

STANOY TASSEV, DAVID LEVINE, AND
DESIREE WEAVER, AND OCEAN COAST
ELECTRIC, LLC

Defendants.

Decided: March 14, 2018

Robert J. Donaher, Esq., Herold Law P.A., attorney for
Plaintiffs.

Michael Stafford, Esq., Nord & DeMaio, attorney for Defendants
Stanoy Tassev, David Levine, and Desiree Weaver.

Stuart Reiser, Esq., Shapiro, Croland, Reiser, Apfel, & Di
Iorio, LLP, attorney for Defendant Ocean Coast Electric, LLC.

HON. ARNOLD L. NATALI JR., P.J.Ch.

The issue presently before the Court concerns the
jurisdiction of the Chancery Division and the right to a jury
trial for ancillary legal claims. Specifically, the Court is
called upon to address whether Dean Marzetta, Kristine
Freisinger, and Broadway Contracting Electrical Contractors,

Inc. (collectively, "Plaintiffs") are entitled to have their remaining legal claims against Stanoy Tassev, David Levine, Desiree Weaver, and Ocean Coast Electric, LLC ("Ocean Coast") (collectively, "Defendants") resolved by a jury or by this Court. Plaintiffs' Verified Complaint, filed in the New Jersey Superior Court, Chancery Division, contained a principal demand for equitable relief. For the reasons that follow, the Court concludes that Plaintiffs do not have a right to a jury trial to resolve any ancillary legal claims as the initial relief sought in the Verified Complaint was primarily equitable in nature and those remaining legal claims are "germane to or grow out of the subject-matter" of the Court's equitable jurisdiction. Finally, the Court concludes that this matter shall remain in the Chancery Division for resolution.

I. Factual and Procedural History

Plaintiffs commenced this action on June 30, 2016 by the filing of an Order to Show Cause and Verified Complaint in the Chancery Division. In the Verified Complaint, Plaintiffs asserted seven causes of action: rescission (Count 1); fraud (Count 2); interference with economic advantage (Count 3); breach of contract (Count 4); breach of the covenant of good faith and fair dealing (Count 5); unjust enrichment (Count 6); and civil conspiracy (Count 7). The facts underlying the Verified Complaint relate to Plaintiffs' purchase of Defendants'

business, Broadway Contracting Electrical Contractors, Inc., pursuant to a Stock Purchase Agreement ("Agreement").

Significantly, all seven counts of the Verified Complaint seek nearly identical relief:

- a. Rescinding the Stock Purchase Agreement;
- b. Rescinding and declaring the seller notes void;
- c. Rescinding and declaring the seller lease void;
- d. Directing that Defendants Tassev and Levine return to Plaintiffs the \$2,400,000.00 paid to Defendants at closing;
- e. Awarding Plaintiffs restitution, reliance, compensatory and punitive damages;
- f. Awarding Plaintiffs reasonable attorneys' fees and costs;
- g. Reimbursing Plaintiffs for transactional costs of closing;
- h. All litigation costs pre and post-closing associated with Flushing Bank in reference to the loan; and
- i. Such additional relief as the Court deems proper and just.

On July 8, 2016, the Honorable Frank M. Ciuffani, P.J. Ch. (Ret.), entered an Order directing the Defendants to show cause why an order should not be entered rescinding the Agreement, rescinding the seller promissory notes, rescinding the lease agreement, and directing Defendants to make restitution of the amount paid by Plaintiffs at closing, among other relief. At the September 1, 2016 Order to Show Cause hearing, the Court denied Plaintiffs' request to rescind the contract and discussed potential discovery deadlines. Thereafter, the Court denied Defendants' motion to dismiss the complaint on September 16, 2016.

Plaintiffs filed a First Amended Verified Complaint on September 30, 2016 and a Second Amended Verified Complaint on April 26, 2017. The First Amended and Second Amended Complaints contain the same requests for relief that were articulated in the Verified Complaint, in addition to added demands for disgorgement and the return of accounts receivable payments.

On July 7, 2017, the parties appeared before the Court by way of Plaintiffs' motion to compel discovery and Defendants' cross-motion to dismiss the Verified Complaint for failure to provide discovery. During oral argument, the Court inquired as to whether additional equitable issues remained in the matter or, in the alternative, whether the matter sought only legal relief and was properly venued in the New Jersey Superior Court, Law Division. Specifically, the Court sought clarification with respect to whether Plaintiffs continued to pursue their rescission claim, as the matter was commenced by the filing of an Order to Show Cause seeking rescission. Plaintiffs' counsel indicated on the record that they were presently "not seeking rescission" and that they were "seeking money damages." Upon being advised by Plaintiffs' counsel that the Plaintiffs consented to transferring the matter to the Law Division, the Court entered a July 12, 2017 Order transferring the matter to the Law Division pursuant to R. 4:3-1(b). However, after the Defendants raised the issue of whether the Plaintiffs had waived

their right to a jury trial by virtue of initially proceeding as an Order to Show Cause in the Chancery Division seeking equitable and legal relief, the Court issued a July 27, 2017 Order rescinding the portion of the July 12, 2017 Order transferring the matter to the Law Division and the matter remained in the Chancery Division. The Court further ordered supplemental briefing related to Plaintiffs' right to a jury trial.

On January 8, 2018, the parties appeared before the Court to address a motion to quash filed by Defendants and to further argue the issue of Plaintiffs' potential waiver of their right to a jury trial. Plaintiffs' counsel again clarified that they have elected to forgo the equitable relief of rescission in favor of a claim for monetary damages. While an claim for disgorgement remains, Plaintiffs' counsel explained that he did not believe the claim to be inherently equitable in nature.

II. Contentions of the Parties

A. Plaintiffs' Arguments

Plaintiffs argue that they have a constitutional right to a trial by jury that was not waived upon filing their Verified Complaint in the Chancery Division. Specifically, Plaintiffs contend that jury trials are permissible in the Chancery Division as the Chancery Division is empowered to exercise concurrent jurisdiction over both legal and equitable claims.

According to Plaintiffs, a party retains the right to a trial by jury unless that right is expressly or implicitly waived. In this regard, Plaintiffs note that the Verified Complaint contains an express jury demand.

Further, Plaintiffs acknowledge that, while the right to a jury may be waived upon the filing of a complaint that primarily seeks equitable relief, that did not occur in the instant matter. Although Plaintiffs concede that the Verified Complaint contained a claim for rescission thereby invoking the Chancery Court's jurisdiction, Plaintiffs correctly point out that the Verified Complaint also contained legal claims for fraud, breach of contract, tortious interference with a contract, and the breach of the implied covenant of good faith and fair dealing. These legal claims, according to Plaintiffs, were at least as substantial as their equitable claim for rescission and arose naturally from the same rights giving rise to their rescission claim.

In sum, Plaintiffs contend that they did not voluntarily waive their right to a jury by virtue of filing the Verified Complaint, of which contained an express jury demand, in the Chancery Division. Further, and as indicated, at oral argument in July 2017 and January 2018, Plaintiffs clarified that they are no longer pursuing their claims for rescission and now seek solely money damages.

B. Defendant Ocean Coast's Arguments

Ocean Coast maintains that Plaintiffs may not pursue a trial by jury in this case because, since the outset of the litigation, they have asserted primarily equitable claims and relief. Ocean Coast avers that a Chancery Court's jurisdiction must be determined at the inception of the litigation. Further, Ocean Coast notes that a Chancery Court's jurisdiction extends to ancillary legal issues that grow out of the subject matter of the equitable claims; thus, the mere presence of legal issues in a complaint does not necessarily give rise to a jury trial.

In this regard, Ocean Coast argues that the Plaintiffs' claims are predominantly equitable in nature and that the primary relief sought with respect to each count of the Verified Complaint is rescission - an equitable remedy. While the Verified Complaint also contains legal claims, Ocean Coast contends that these claims are incidental to the primary equitable claims and allegations. Specifically, Plaintiffs' equitable claims for rescission and disgorgement are based upon Defendants' wrongful conduct concerning the sale of the business; likewise, Plaintiffs' legal claims are based upon Defendants' same conduct. Thus, Ocean Coast maintains that the legal claims are properly before this Chancery Court under the Court's ancillary jurisdiction.

C. Defendants Stanoy Tassev, David Levine, and Desiree Weaver's Arguments

Defendants Tassev, Levine, and Weaver support the arguments made by Ocean Coast and similarly argue against Plaintiffs' right to a jury trial in this matter. These Defendants add that Plaintiff Kristine Freisinger testified at her deposition that Plaintiffs relied upon the advice of their former counsel to shut down Broadway Contracting Electrical Contractors, Inc.'s business operations three months after purchasing the company from Defendants in order to preserve and prosecute an action for rescission of the Agreement. Tassev, Levine, and Weaver contend that this testimony further demonstrates that Plaintiffs primary purpose in filing the Order to Show Cause and Verified Complaint was to seek the equitable remedy of rescission. Thus, the legal relief asserted in the Verified Complaint is merely ancillary to the equitable claim for rescission.

III. Conclusions of Law

Under Article 1, Paragraph 9 of the New Jersey Constitution, the right to a jury trial "remain[s] inviolate." In other words, the right to a jury trial remains as it was under the prior New Jersey Constitution of 1844, which was implemented by a 1915 statute stating:

If any question, ordinarily determinable at law and requiring a jury trial arise in a suit of which the court of chancery has jurisdiction, a jury trial, if required, may be ordered, but shall be deemed to be

waived unless demanded in the pleadings. If demanded, and the issue be one requiring a jury trial, the court shall send such issue of fact to a court of law for trial according to the existing practice.

Eckerd Drugs of New Jersey, Inc. v. S.R. 215, Rite-Aid Corp., 170 N.J. Super. 37, 39 (Ch. Div. 1979). The right to order a jury trial shall "be exercised with discretion and only in cases of serious doubt, for the purpose of informing the conscience of the court; except in cases of real difficulty, the court has the duty to decide both the facts and the law." Id. at 42.

Further, where a court of equity has assumed jurisdiction over a cause of action, it "may retain the cause for all purposes, and proceed to a final determination of the entire controversy and, except where the jurisdiction of equity depends on the prior establishment of a right at law, settle purely legal rights and grant legal remedies." Fleischer v. James Drug Stores, Inc., 1 N.J. 138, 150 (1948). See also O'Neill v. Vreeland, 6 N.J. 158, 166 (1951) ("[I]f an action is properly brought in the Chancery Division, that division shall proceed to grant both equitable and legal relief. This is so irrespective of the fact that before or during the trial the equitable phases of the cause have been fully disposed of leaving only purely legal issues remaining for determination. . . ."). An equitable cause of action "draws the cause completely within the cognizance of equity" in order to avoid a multiplicity of lawsuits. Fleischer, supra, 1 N.J. at 150.

Equitable jurisdiction is specifically tested by the facts that exist at the "inception of the suit" and "will not be defeated by subsequent events which render equitable relief impracticable or unnecessary or unsuitable." Mantel v. Int'l Plastic Harmonica Corp., 141 N.J. Eq. 379, 393 (1947).

Additionally, the constitutional right to a jury trial is subject to a court's equitable jurisdiction:

Equity has a general jurisdiction to adjudicate ancillary and incidental matters. This jurisdiction is co-extensive with the rights of the parties in the subject-matter of the suit. . . . It suffices if the matters to be adjudicated be germane to or grow out of the subject-matter of the equitable jurisdiction.

Fleischer, supra, 1 N.J. at 150-51. See also Apollo v. Kim Anh Pham, 192 N.J. Super. 427, 430-31 (Ch. Div. 1983) (explaining that the right to a jury trial "is subject to the inherent jurisdiction of equity, which has general jurisdiction to adjudicate ancillary and incidental matters").

In O'Neill, the New Jersey Supreme Court explained that, regardless of whether an action is commenced in the Law or Chancery Division,

all issues of fact triable as of right by a jury shall be decided by a jury, unless the right to jury trial be waived, expressly or impliedly, ... All issues of fact not triable of right by a jury, except as provided by [R. 4:35-1(d)], are to be determined by the court without a jury and when certain issues are to be decided by the court and others by a jury, the court may determine the sequence in which such issues shall be tried, . . . It is within the contemplation of the Constitution and

the rules that a jury trial may be had in the Chancery Division of the Superior Court.

6 N.J. at 168. The essential question a court must answer is whether the relevant legal issues were triable without a jury under the New Jersey Constitution of 1844. Boardwalk Properties, Inc. v. BPHC Acquisition, Inc., 253 N.J. Super. 515, 527 (App. Div. 1991). If the issues were triable without a jury under the New Jersey Constitution of 1844, then they are also presently triable without a jury. Ibid. To make this determination, a court must evaluate whether the legal issues are ancillary or incidental to the equitable claim in relation to the facts existing at the inception of the lawsuit. Ibid.; Mantel, supra, 141 N.J. Eq. at 393. Therefore, a Chancery court possesses the "power to adjudicate legal matters without a jury if the issues are 'germane to or grow out of the subject-matter of the equitable jurisdiction.'" Ibid. at 528. However, not all claims arising out of the same controversy are "germane to or grow out of the subject-matter of the equitable jurisdiction." Ibid. Legal claims may arise from a controversy that is independent of an equitable action. See N.J. Highway Auth. v. Renner, 18 N.J. 485, 494 (1955) (finding that defendant's counterclaim based upon plaintiff's wrongful interference with the right to remove a building from condemned property was independent of plaintiff's specific performance claim).

As Plaintiffs' and Defendants' legal memoranda cite to Boardwalk, supra, 253 N.J. Super. 515 and Lyn-Anna Props. v. Harborview Dev. Corp., 145 N.J. 313 (1996), the Court finds that a brief discussion of the cases is warranted. First, in Boardwalk, the plaintiff initiated suit in the Chancery Division seeking specific performance as a result of defendant's failure to convey property in accordance with several contracts. 253 N.J. Super. at 521-22. The defendant filed an answer, counterclaim, and third-party complaint seeking rescission, specific performance, and other relief and demanded a trial by jury. Ibid. at 521-22. The Chancery Division, however, denied defendant's application for a jury trial. Subsequently, the defendant amended its answer and complaint to strike all equitable remedies from the pleadings and asked the trial court to reconsider its application for a jury trial. Ibid. at 522. The Chancery judge denied the application and determined that, "whether a party had a right to trial by jury in the Chancery Division must be determined at the beginning of the case and not by the voluntary conduct of a party during the course of the litigation who removes the equitable remedies that formed the principal grounds for relief in the initial pleadings." Ibid. at 523.

On appeal, the New Jersey Superior Court, Appellate Division explained that, just as the Law Division has the constitutional power to afford equitable relief in a matter primarily seeking

equitable relief that is inappropriately filed in the Law Division, the Chancery Division has the power to afford the appropriate legal relief. Ibid. at 526. The forum is not determinative of a party's right to a jury trial. Ibid. at 527. When the primary relief in a complaint is equitable in nature, the court elaborated that a court of equity has jurisdiction to settle all issues, even legal issues, "where subsequent events made it impractical or unnecessary to award equitable relief." Ibid. at 527.

The court held that the Chancery Division has "power to adjudicate legal matters without a jury if the issues are 'germane to or grow out of the subject-matter of the equitable jurisdiction.'" Ibid. at 528 (quoting Fleischer, supra, 1 N.J. at 150). The court specifically agreed with the Chancery judge's finding that the complaint, counterclaim, and third-party complaint were "essentially equitable in nature" and that the legal claims presented were "so intertwined with the equitable issues" that the court was permitted to adjudicate the legal claims without a jury. Ibid. at 528-29. Despite the defendant's efforts to strike all equitable claims for relief, the court held that the remaining legal claims were so intertwined with the predominant equitable claims that existed at the inception of the suit. Thus, Boardwalk demonstrates that legal claims must arise independently of equitable issues in order to be eligible for jury trials. See Bruce

D. Greenberg & Gary K. Wolinetz, The Right to a Jury Trial in New Jersey, 47 Rutgers L. Rev. 4, 1478 (1995).

In Lyn-Anna Props. v. Harborview Dev. Corp., 145 N.J. 313 (1996), the New Jersey Supreme Court similarly held that the defendant's counterclaims were incidental to the equitable claims asserted by the plaintiffs and, thus, defendants were not entitled to a jury trial. In that case, the plaintiffs filed suit in the Chancery Division seeking to prevent the defendants from the disbursement of funds and to obtain an accounting of monies already disbursed as a result of a failed real estate development project. Ibid. at 316. Plaintiffs' complaint contained a jury trial demand. Ibid. at 317. Defendants filed a counterclaim alleging that plaintiffs' conduct constituted legal malpractice and fraud. Ibid. The defendants also demanded a jury trial. Ibid. While the plaintiffs subsequently waived their jury trial demand, the defendants sought a jury trial. The trial court denied their request. Ibid. On appeal, the appellate division noted that the parties' claims arose from the same transaction—namely, the parties' December 1987 agreement—and concluded that "defendants' counterclaim was ancillary to the equitable claims raised by plaintiffs' complaint. Thus, the trial court properly applied the doctrine of ancillary jurisdiction that enables a court in equity to try without a jury those legal counterclaims that are ancillary

or incidental to the equitable claims raised in plaintiffs' complaint." Ibid.

After granting certification, the New Jersey Supreme Court explained that, under the "incidental legal claims doctrine," "the right to trial by jury may be lost as to legal issues where those issues are characterized as 'incidental to equitable issues[.]'" Ibid. at 325. There, the Court found that, though the claims for relief were limited to money damages, the entitlement to relief arose from the parties' fiduciary relationship. Ibid. at 331-32. Specifically, "there [was] no clear cut line of demarcation between the attorney malpractice issues [asserted by defendants] and the partnership management issues [asserted by plaintiffs]." Ibid. The Court further upheld the determination of the Chancery Division that:

[T]he claims made by the defendants on the actions of [plaintiff] are so interrelated with the equitable issues in this matter that they are properly deemed ancillary. Plaintiffs have asserted that defendants breached their fiduciary duties and mismanaged this project. Defendants have raised as an equitable defense the conduct of the plaintiffs in first inducing them into this project and then encouraging defendants to take an even greater stake in it. Those issues are subject to the general jurisdiction of this court to consider and dispose of ancillary legal issues without a jury.

Ibid. at 332. Thus, the Court found that the defendants' legal claims were ancillary to plaintiffs' equitable claims as they arose out of the fiduciary relationship underlying plaintiffs' claims.

The Chancery Division appropriately exercised its jurisdiction to resolve the equitable and legal rights of the parties and the defendants were not entitled to a jury trial, despite their express demand.

IV. Analysis

First, the Court finds that this matter is properly venued in the New Jersey Superior Court, Chancery Division. Plaintiffs initially filed this matter as an Order to Show Cause with an accompanying Verified Complaint in the Chancery Division. As noted, supra, the relief sought in the Verified Complaint included:

- a. Rescinding the Stock Purchase Agreement;
- b. Rescinding and declaring the seller notes void;
- c. Rescinding and declaring the seller lease void;
- d. Directing that Defendants Tassev and Levine return to Plaintiffs the \$2,400,000.00 paid to Defendants at closing;
- e. Awarding Plaintiffs restitution, reliance, compensatory and punitive damages;
- f. Awarding Plaintiffs reasonable attorneys' fees and costs;
- g. Reimbursing Plaintiffs for transactional costs of closing;
- h. All litigation costs pre and post-closing associated with Flushing Bank in reference to the loan; and
- i. Such additional relief as the Court deems proper and just.

Clearly, at the inception of the case, the matter was properly an action within the jurisdiction of the Chancery Division, as the rescission claim here (seeking to void the Agreement) is an equitable remedy. See Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515, 527 (2008). While Plaintiffs have since clarified on the

record in July 2017 and, more precisely in January 2018, that they no longer seek the equitable relief of rescission, this Court retains jurisdiction and may grant any remaining relief irrespective of the fact that the "equitable phases of the cause have been fully disposed of leaving only purely legal issues remaining for determination." O'Neill, supra, 6 N.J. at 166. Simply, the initial filing of this matter as a cause of action seeking equitable relief draws the matter "completely within the cognizance of equity." Fleischer, supra, 1 N.J. at 150.

The Court further holds that Plaintiffs are not entitled to a trial by jury. Plaintiffs' initial filing, the Order to Show Cause and Verified Complaint (and subsequent amendments), primarily sought the equitable relief of rescission of the Agreement. Indeed, Plaintiffs' Verified Complaint centered around the fact that they sought to void the Agreement. Moreover, the memorandum of law submitted in support of the Order to Show Cause asserted two legal arguments: 1) the equities presented permit Plaintiffs to proceed by way of an Order to Show Cause on their rescission claim; and 2) Plaintiffs are entitled to rescission and restitution of all amounts paid to Defendants in the Agreement. In sum, the initial pleadings emphasized Plaintiffs' primary equitable rescission claim. The predominantly equitable nature of the relief sought in Plaintiffs' initial pleadings demonstrates that Plaintiffs did

not possess a right to a jury trial upon the filing of this action.

The Court recognizes that Plaintiffs no longer seek to rescind the Agreement and are only pursuing monetary damages at this time. However, in accordance with Broadway, supra, 253 N.J. Super. at 523, "whether a party had a right to trial by jury in the Chancery Division must be determined at the beginning of the case and not by the voluntary conduct of a party during the course of the litigation who removes the equitable remedies that formed the principal grounds for relief in the initial pleadings." At the inception of the lawsuit and for a not insubstantial period thereafter, Plaintiffs primarily sought equitable relief and are therefore not entitled to a jury trial.

Likewise, the fact that the Verified Complaint contained an express jury demand does not alter the Court's analysis. While the Plaintiffs intended to preserve their purported right to a jury trial, again, the primary relief sought in the initial papers was equitable in nature. Thus, based upon the nature of their claims and the manner in which relief was sought, Plaintiffs did not possess a right to a trial by jury at the commencement of the Order to Show Cause and Verified Complaint and were unable to preserve this right.

With respect to the remaining legal claims, Plaintiffs argue that the aforementioned legal claims are as substantial as

their equitable claim for rescission. However, the record is clear that the aforementioned legal claims are "germane to or grow out of the subject-matter of the equitable jurisdiction." Fleischer, supra, 1 N.J. at 150-51. As detailed in Plaintiffs' pleadings, the claim for rescission seeking to void the transaction arises out of the alleged scheme implemented by the Defendants to defraud the Plaintiffs in their acquisition of Broadway Contracting Electrical Contractors, Inc. under the Agreement. Specifically, Plaintiffs' sought rescission based upon their allegation that, after the Agreement was executed, the Defendants acted nefariously and misappropriated the business's assets and allegedly continued to operate improperly and adversely affect the business. The legal claims clearly "arise out of" and are "incidental to" the claim for rescission as they are based upon the same purported wrongful conduct and alleged scheme. In essence, the legal claims "are so interrelated with the equitable issue[]" that they are "properly deemed ancillary" to the rescission claim. Lyn-Anna Props., supra, 145 N.J. at 132. This is simply not an instance where the legal claims arise from a controversy that is independent of the equitable claims. As ancillary legal claims, this Court may properly dispose of the claims without a jury. While the rescission claim is no longer being pursued by Plaintiffs, at the inception of the lawsuit, the legal claims grew out of the

rescission claim and the Court must abide by the facts in existence upon the commencement of the suit. Mantel, supra, 141 N.J. Eq. at 393; Boardwalk, 253 N.J. Super. at 527.

Lastly, the instant matter shall remain in the Chancery Division for adjudication by this Court without a jury trial. The Court may "settle purely legal rights and grant legal remedies" irrespective of that fact that Plaintiffs no longer seek equitable relief. Fleischer, supra, 1 N.J. at 150. At the inception of the lawsuit, this matter was properly within the jurisdiction of the Chancery Division and, thus, this matter remains completely within the "cognizance of equity." Ibid. See also Mantel, supra, 141 N.J. Eq. at 393.

V. Conclusion

Based upon the aforementioned reasons, the Court concludes that the Plaintiffs are not entitled to a jury trial for the remaining legal claims and that this matter shall remain within the Chancery Division for adjudication by this Court.