

NOT TO BE PUBLISHED WITHOUT APPROVAL
FROM THE COMMITTEE ON OPINIONS

JAY ADONI,

Plaintiff,

v.

STANLEY LIEBOWITZ and STANLEY
LIEBOWITZ d/b/a JILLCO ASSOCIATES;
JILLCO ASSOCIATES, LLC; JILL
LIEBOWITZ GRANTOR TRUST; JILL
LIEBOWITZ; and SUSAN LIEBOWITZ,

Defendants.

JILLCO ASSOCIATES, LLC,

Third-Party Plaintiff,

v.

A.J.A., LLC; HARBOR PARK REALTY,
LLC; JORDAN ADONI; JENSEN ADONI;
AJ EMPIRE, LLC; ABC CORPS. 1-10; and
KEEP HEALTHY, INC.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO: **BER-L-3443-20**

Civil Action

OPINION

Argued: November 18, 2022
Decided: December 12, 2022

Howard B. Leopold, Esq., appearing on behalf of Defendants, Stanley Liebowitz; Stanley Liebowitz d/b/a Jillco Associates; Jillco Associates, LLC; Jill Liebowitz Grantor Trust; Jill Liebowitz; and Susan Liebowitz (from Leopold Law, L.L.C.)

Gerald R. Salerno, Esq., and Steven R. Vanderlinden, Esq., appearing on behalf of Plaintiff Jay Adoni and Third-Party Defendants A.J.A., LLC; Harbor Park Realty, LLC; Jordan Adoni; Jensen Adoni; AJ Empire, LLC; ABC Corps, 1-10; and Keep Healthy, Inc. (from Aronsohn Weiner Salerno & Kaufman, P.C.)

FACTUAL BACKGROUND

This matter stems from a series of business transactions between Plaintiff Jay Adoni (hereinafter "Plaintiff"), Defendants Stanley Liebowitz d/b/a Jillco Associates, LLC (hereinafter

“Mr. Liebowitz” or “Jillco” and collectively “Defendants”), and allegedly Third-Party Defendants Susan and Jill Liebowitz (hereinafter collectively “Susan and Jill Liebowitz”).

Plaintiff and Defendants have engaged in a personal and business relationship spanning approximately fourteen (14) years. During this time, Plaintiff has executed multiple promissory notes in favor of Mr. Liebowitz and Jillco only. Those parties entered into several joint business ventures. Many of the investments or loans made for the benefit of Plaintiff were also made by the Jill Adoni Grantor Trust (hereinafter the “Trust”) at the direction of Mr. Liebowitz. Susan and Jill Liebowitz, the wife and daughter of Mr. Liebowitz, respectively, are the Trust’s only Trustees. It is clear from the depositions of Susan and Jill Liebowitz that they approved the transactions with Plaintiff based solely upon the recommendation of Mr. Liebowitz, who simply is not a Trustee of the Trust.

Plaintiff separately operates a shoe, handbag, and accessory business; Mr. Liebowitz had promised to provide the business with a significant investment, in the process convincing Plaintiff not to seek additional investors. Such an investment was to be funded from the Trust, therefore requiring the approval of Susan and Jill Liebowitz. Apparently, the Trust failed to provide the promised funding to Plaintiff. Plaintiff responded by filing a complaint against Mr. Liebowitz and Jillco on June 20, 2020 (hereinafter the “Initial Complaint”).

On October 20, 2020, Plaintiff subsequently amended his complaint (hereinafter the “Amended Complaint”) to include Susan and Jill Liebowitz. Plaintiff’s stated purpose in doing so is that they are individually responsible for loans and investments given to Plaintiff’s company due solely to their status as Trustees of the Trust. In his moving papers, Plaintiff actually claims that Susan and Jill Liebowitz are personally liable for willful and wanton omissions committed as Trustees of the Trust. Plaintiff further claims that Susan and Jill Liebowitz failed to properly

administer the Trust to the detriment of Plaintiff, despite the fact that he has no standing to make such a claim.

Plaintiff had never engaged in a business relationship with Susan and Jill Liebowitz. Susan and Jill Liebowitz certified under oath that their only interactions with Plaintiff occurred at social events. Further, Plaintiff is not a beneficiary of the Trust; his sole connection to the Trust is an alleged promise by Mr. Liebowitz to provide an investment from the Trust's funds. Plaintiff never had a fiduciary relationship with Susan and Jill Liebowitz.

For the reasons stated herein, Defendant's Motion for Summary Judgment is **GRANTED** as to Susan and Jill Liebowitz.

STANDARD OF REVIEW

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the 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). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

RULE OF LAW AND DECISION

Susan and Jill Liebowitz Owed No Fiduciary Duty to Plaintiff

Plaintiff may not hold Susan and Jill Liebowitz liable in tort for their actions or omissions in administering the Trust's funds because he has no fiduciary relationship with the Trustees and is therefore not owed a fiduciary duty of good faith and fair dealing. "The essence of a fiduciary relationship is that one party places trust and confidence in another who is in a dominant or superior position." F.G. v. MacDonell, 150 N.J. 550, 563 (1997). "Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity." N.J.S.A. 3B:31-79(a). A fiduciary relationship between a trustee and the trust mirrors the relationship between an attorney and client. In re Niles Tr., 176 N.J. 282, 297 (2003). The most fundamental duty of a trustee is their duty of loyalty to the trust's beneficiaries. Id.

Further, the Restatement (Second) of Torts § 874 provides that "one standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." The above caselaw from New Jersey courts makes it clear that the courts will only find that a trustee of a trust owes another person a fiduciary duty when that person is a beneficiary of the trust. Absent such a trustee-beneficiary relationship, no fiduciary duty is owed, and a third party may not hold the trustee personally liable in tort for their actions in administering the trust's funds.

Here, there are simply no facts upon which the Court may find that a fiduciary relationship exists between Susan and Jill Liebowitz and Plaintiff. Plaintiff is not a beneficiary of the Trust, nor does he have any relation to the Trust beyond a mere promise made by Defendants. These

facts do not create a fiduciary relationship which may allow Plaintiff to hold Susan and Jill Liebowitz personally liable in tort. Whether or not Susan and Jill Liebowitz breached their respective fiduciary duties to the Trust's beneficiaries by approving the investment in Plaintiff's company and allegedly failing to provide same is not an issue which may be litigated by Plaintiff. As such, Plaintiff clearly does not have standing to bring suit against Susan and Jill Liebowitz for their actions in administering the Trust's funds.

Susan and Jill Liebowitz's Certifications Are Not Shams and Do Not Create an Issue of Fact

The certifications submitted by Susan and Jill Liebowitz in support of their motion do not create an issue of fact precluding the Court from granting the instant motion. Self-serving statements, without support from evidentiary proof, are insufficient support for granting a Summary Judgment motion. Globe Motor Co. v. Igdalev, 436 N.J. Super. 594, 603 (App. Div. 2014); Heyert v. Taddese, 431 N.J. Super. 388, 414 (App. Div. 2013); Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002). Further, a trial court "may reject an affidavit as a sham when it contradict[s] patently and sharply" testimony from a prior deposition, where the contradiction cannot be reasonably explained. Hinton v. Meyers, 416 N.J. Super. 141, 150 (App. Div. 2010).

However, Susan and Jill Liebowitz's certifications are not self-serving statements which lack evidentiary proof. Plaintiff asserts that Susan and Jill Liebowitz failed to provide evidentiary proof as to the lack of involvement with the allegations in the underlying suit. Plaintiff subsequently fails to explain how a party can provide evidence as to the lack of a relationship between two parties.

Further, Plaintiff appears to conflate the issue of Susan and Jill Liebowitz's personal involvement in the underlying suit with their involvement in their capacities as Trustees of the

Trust. Susan and Jill Liebowitz have no personal involvement in the underlying suit, or the alleged promise made by Mr. Liebowitz to Plaintiff. It is clear based upon Susan and Jill Liebowitz's certifications that their only interactions with Plaintiff were due to Mr. Liebowitz's business relationship with Plaintiff. The extent of their interactions with Plaintiff were limited to interactions at a few social events, which Plaintiff attended due to his business relationship with Mr. Liebowitz. Susan and Jill Liebowitz merely approved the Trust's investment in Plaintiff's company. As such, they were merely acting on behalf of the Trust itself, and not in a personal capacity. Their certifications claiming no involvement whatsoever with the allegations in the underlying suit are not shams, but sworn testimony.

As stated above, Susan and Jill Liebowitz's involvement in the underlying suit through their roles as Trustees of the Trust is simply insufficient to sustain a tort claim raised by Plaintiff.

Plaintiff Has Not Pled Sufficient Facts to Sustain Claims for Fraud, Breach of Contract, or Usury Against Susan and Jill Liebowitz

Plaintiff's Amended Complaint contains insufficient facts to sustain his claims for Fraud, Breach of Contract, or Usury against Susan and Jill Liebowitz. The common-law elements of fraud are as follows: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997) (citing to Jewish Ctr. of Sussex County v. Whale, 86 N.J. 619, 624-25 (1981)). "To prevail on its breach of contract claim, defendant must prove the following elements: (1) a valid contract existed between plaintiff and defendant; (2) plaintiff breached the contract; (3) defendant performed its obligations under the contract; and (4) defendant was damaged as a result of the breach." Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc., 275 F. Supp. 2d 543, 567 (D.N.J. 2003). N.J.S.A. § 31:1-1 et. seq., dictates that a lender may not

charge an interest rate in excess of sixteen percent (16%) per year.

Plaintiff has pled no facts in the Amended Complaint or in his opposition to the instant motion upon which the Court may conclude that Susan and Jill Liebowitz may be liable for the above causes of action. Plaintiff has made no showing that Jill and Susan Liebowitz had any interactions with him beyond their capacities as Trustees of the Trust; thus, they may not be held liable for common-law fraud. Additionally, Susan and Jill Liebowitz are not parties to any of the promissory notes executed between Plaintiff and Defendants, precluding any breach of contract or usury claims against them. As such, all claims against Susan and Jill Liebowitz in the Amended Complaint are without merit and must be dismissed.

At this juncture, however, it is not entirely clear whether or not Plaintiff has a viable cause of action under any of the claims in his Amended Complaint against the Trust itself. As such, Defendant's Motion is granted towards Susan and Jill Liebowitz only.

CONCLUSION

For the aforementioned reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED** as to Susan and Jill Liebowitz.