SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5008-14T4

MICHELE COLÓN, a New Jersey resident,

Plaintiff-Appellant,

v.

WORLD MISSION SOCIETY CHURCH OF GOD, a New Jersey Nonprofit Corporation; DONG IL LEE, a.k.a. Daniel Lee, a New Jersey resident; BONG HEE LEE, a.k.a. Bong Hee Kim, a New Jersey resident; TARA WHALEN, a.k.a. Tara Byrne, a New Jersey resident; RICHARD WHALEN, a New Jersey resident; VICTOR LOZADA, a New Jersey resident; JUN SEOK LEE, a.k.a. John Lee, a New Jersey resident; BIG SHINE WORLDWIDE, INC., a New Jersey corporation; ALBRIGHT ELECTRIC, LLC, a New Jersey limited liability company; and LINCOLN GRILL & CAFÉ LIMITED LIABILITY COMPANY, a New Jersey limited liability company,

Defendants-Respondents,

and

WORLD MISSION SOCIETY CHURCH OF GOD, a South Korean corporation; GIL JAH CHANG, a.k.a. Gil Jah Zhang, a South Korean resident; JOO CHEOL KIM, a South Korean resident,

Defendants.

Argued September 28, 2016 – Decided November 29, 2016

Before Judges Alvarez, Accurso, and Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3007-13.

Paul S. Grosswald argued the cause for appellant.

Steven L. Procaccini argued the cause for respondent (Nissenbaum Law Group, LLC, attorneys; Gary D. Nissenbaum, of counsel; Mr. Procaccini, of counsel and on the brief; Judith N. Soto, on the brief).

PER CURIAM

Plaintiff Michele Colón sued defendants World Mission Society Church of God (WMSCOG), the New Jersey branch of the church (World Mission N.J.), three church-owned enterprises, and several named church leaders (collectively defendants), in a fifty-one-count complaint setting forth multiple causes of action in 1246 numbered paragraphs. Colón, a church member from 2009 to 2011, had publicly and actively expressed her opinion on her internet blog and otherwise that the church was a cult that defrauded its members, and was operated for the financial benefit of its leaders. Some of the defendants had, prior to this suit, filed a defamation complaint against Colón, later dismissed with prejudice. In this suit, Colón sought to recover damages for defendants' allegedly tortious and fraudulent conduct.

On June 6, 2014, the judge granted defendants a protective order in this proceeding, along the lines of the order issued in the defamation case. It barred internet dissemination of discovery, including depositions. This order is being appealed.

Defendants filed a motion to dismiss Colón's complaint with prejudice, which by the time of the decision she had voluntarily reduced to thirty counts. Defendants' motion was granted in a cogent and thorough March 17, 2015 written decision. On May 22, 2015, the judge denied Colón's motion for reconsideration of the dismissal and for leave to amend her complaint. Both decisions are also appealed. With the exception of the dismissal of the count seeking damages for invasion of privacy "arising out of computer hacking," and the related denial of the motion to file an amended complaint as to that count only, we affirm.

Plaintiff raises the following points for our consideration:

> I. STANDARD OF REVIEW.
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> II. THE LOW[ER] COURT ERRED BY REFUSING TO AFFORD PLAINTIFF AN OPPORTUNITY TO AMEND THE COMPLAINT WHEN THERE HAS BEEN NO DISCOVERY, NO OTHER AMENDMENTS, AND THE PROPOSED AMENDMENT DOES NOT SEEK TO ADD ANY ADDITIONAL CLAIMS OR PARTIES.
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> III. THE LOW[ER] COURT ERRED BY FINDING THAT THE HACKING ALLEGATIONS CONSTITUTE A "FISHING EXPEDITION."

IV. THE LOW[ER] COURT ERRED BY NOT AFFORDING PLAINTIFF AN OPPORTUNITY TO PLEAD FRAUD WITH MORE SPECIFICITY.

A. Cause of Action #1 in the Proposed Amended Complaint Is Pled with Specificity.

B. Cause of Action #2 in the Proposed Amended Complaint is Pled with Specificity.

C. Cause of Action #3 in the Proposed Amended Complaint is Pled with Specificity.

V. THE LOW[ER] COURT ERRED BY APPLYING THE "CHURCH AUTONOMY" DOCTRINE WITHOUT AFFORDING PLAINTIFF AN OPPORTUNITY TO SHOW THAT SHE CAN PROVE HER CLAIMS WITHOUT CAUSING EXCESSIVE ENTANGLEMENT WITH RELIGION.

A. Cause of Action #1 in the Proposed Amended Complaint Is Not Barred by the First Amendment.

B. Cause of Action #2 in the Proposed Amended Complaint Is Not Barred by the First Amendment.

C. Cause of Action #3 in the Proposed Amended Complaint Is Not Barred by the First Amendment.

D. Conclusion Regarding the First Amendment Defense to the Fraud Claims.

VI. THE LOW[ER] COURT ERRED BY ASSUMING THAT WORLD MISSION IS A "RELIGION" WITHOUT SUFFICIENT FACTUAL SUPPORT.

A. Plaintiff Is Entitled to Take Discovery on the Issue of Whether World Mission is a Bona Fide Religion Before

Having Her Claims Barred by the First Amendment.

B. The Court Erred By Relying on Tax Exemption As the Basis for Concluding That World Mission Is a Religion.

1. The Court Erred by Relying on World Mission New Jersey's Tax Exemption Because World Mission New Jersey Is the Only Defendant in the Case With Such Exemption.

2. The Court Erred by Relying on World Mission New Jersey's Tax Exemption Because the Facts Supporting the Exemption Are Out of Date.

3. The Court Erred by Relying on World Mission New Jersey's Tax Exemption Because the Exemption Was Issued Pursuant to a Non-Adversarial Process That Plaintiff Did Not Participate In.

VII. THE LOW[ER] COURT ERRED BY DISMISSING THE EMOTIONAL DISTRESS CLAIM ON FIRST AMENDMENT GROUNDS.

VIII. THE LOW[ER] COURT ERRED, AND VIOLATED THE FIRST AMENDMENT, BY PROHIBITING PLAINTIFF FROM POSTING UNSEALED, PUBLICLY FILED COURT DOCUMENTS ONLINE.

Except for the invasion of privacy count, we affirm for the reasons stated by the judge. We describe the relevant sections of the judge's written opinion as necessary.

I.

The following summarizes the portions of the judge's analysis most relevant to our discussion. The judge cogently analyzed defendants' asserted First Amendment, U.S. Const. amend. I, protection from Colón's causes of action, and their assertion "that the invasion of privacy claim based on hacking is time barred by the statute of limitations."

The judge began by reiterating the Rule 4:6-2(e) standard. Before the dismissal of a complaint, the legal sufficiency of the facts alleged must be thoroughly examined with liberality, pursuant to Printing Mart Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989), and all reasonable inferences drawn in favor of the non-moving party. Having done so, the judge concluded that, in addition to some fatal voids in necessary proofs, Colón's claims were indeed barred by the First Amendment. See McKelvey v. Pierce, 173 N.J. 26, 39 (2002) ("[T]he Religion Clauses of the First Amendment, applicable to the states through the Fourteenth Amendment, forbid laws 'respecting the establishment of religion, or prohibiting the free exercise thereof[.]'" (quoting U.S. Const. amend. I.)).

"[T]he [e]stablishment [c]lause prohibits states from promoting religion or becoming too entangled in religious affairs[.]" Id. at 40 (citing Cty. of Allegheny v. Am. Civil

Liberties Union, Greater Pittsburgh Chapter, 492 U.S. 573, 590-91, 109 S. Ct. 3086, 3099, 106 L. Ed. 2d 472, 492-93 (1989)). Although the entanglement has to be excessive before running "afoul" of the establishment clause, see id. at 43, the trial judge concluded such entanglement would occur if Colón's anticipated discovery into church administrative matters went forward. See id. at 43.

"The cognate 'church autonomy doctrine' arose out of the Free Exercise Clause . . . . The doctrine has since been described as being rooted in both of the [r]eligion [c]lauses to protect a church's freedom to regulate its own internal affairs by 'prohibit[ing] civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity.'" Id. at 43-44 (citing Bryce v. Episcopal Church in the Diocese of Colo., 289 F.3d 648, 655 (10th Cir. 2002)). The purpose behind the church autonomy doctrine is to protect a church's fundamental right to decide for itself matters of church governance as well as to protect matters of faith. Ibid.

The judge quoted the "specific guidelines" set forth in McKelvey for determination of whether claims are barred by the church autonomy doctrine:

> Before barring a specific cause of action, a court first must analyze each element of every claim and determine whether adjudication would

> require the court to choose between "competing religious visions," or cause interference with a church's administrative prerogatives, including its core right to select, and govern the duties of, its ministers. In so doing, a court may "interpret provisions of religious documents involving property rights and other nondoctrinal matters as long as the analysis can be done in purely secular terms." The court must next examine the remedies sought by the plaintiff and decide whether enforcement of a judgment would require excessive procedural or substantive interference with church operations.
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> If the answer to either of those inquiries is in the affirmative, then the dispute is truly of a religious nature, rather than theoretically and tangentially touching upon religion, and the claim is barred from secular court review. If, however, the dispute can be resolved by the application of purely neutral principles of law and without impermissible government intrusion (e.g., where the church offers no religious-based justification for its actions and points to no internal governance rights that would actually be affected), there is no First Amendment shield to litigation.
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> [Id. at 51-52 (internal citations omitted).]

The judge considered each of Colón's causes of action or theories of recovery within that analytical framework, including: fraud, intentional infliction of emotional distress, negligent misrepresentation, breach of fiduciary duty, unjust enrichment, the Consumer Fraud Act, N.J.S.A. 56:8-1 to -198, bias crimes, civil conspiracy, liability for concerted action, vicarious liability, direct liability, and joint enterprise liability. The

judge opined that to allow the matter to proceed would clearly interfere with a "church's administrative prerogative" and inject the courts into church operations. This was not a dispute that could be resolved by the application of neutral principles of law.

The judge also determined that to allow discovery would, as to each and every claim, thrust the court into an examination of the religious tenets and practices of the institution. This was not a case in which there is a dispute, for example, between a contractor and the church, or a minister challenging the terms of employment and the church, or of a client in counseling with a minister alleging improprieties in the course of treatment. See McKelvey, supra, 173 N.J. at 45-51. All the alleged wrongs here resulted from Colón's membership in the congregation, participation in church activities, and concerns about church management.

Each claim springs from Colón's contention that WMSCOG is a cult, not a church, and that she was essentially defrauded by this cult. The conflict arises from her disagreement about the manner in which the church implemented its doctrinal beliefs, managed its clergy and parishioners, and invested donations.

Therefore Colón's complaint necessarily required the court to examine the interior workings and structure of the church, a constitutionally unacceptable process. McKelvey, supra, 173 N.J.

at 51-52. Although a church may clearly be held liable for tortious conduct and obligated on contractual undertakings, neither existed in this case. See id. at 45. Hence, the Law Division judge properly dismissed the matter with prejudice because after a thorough review, drawing all reasonable inferences in Colon's favor, the claims violated the church autonomy doctrine.

Our de novo review of the trial court's dismissal order leads us to the same result. Although the legal conclusions are not entitled to deference, we nonetheless agree that plaintiff's complaint, with the exception of the invasion of privacy cause of action, violated the church autonomy doctrine and required dismissal. See Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 287 (App. Div. 2014).

II.

Finding that she had not expressed her decision on a palpably incorrect or irrational basis, the judge did not grant Colón's motion for reconsideration of the dismissal. Such applications are addressed to "'the sound discretion of the court, to be exercised in the interest of justice.'" Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 400 (App. Div. 1990)). Only where the earlier decision is based on incorrect reasoning or the court ignored material facts, or such facts were previously unknown to the movant

despite diligent efforts, should such applications be granted. R. 4:49-2 ("The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred . . . .").

We review the denial of a motion for reconsideration under an abuse of discretion standard. Cummings, supra, 295 N.J. Super. at 389. In performing this review, the findings of a trial judge will be affirmed where supported by "adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974). This judge's thoughtful analysis of the church autonomy doctrine as relates to Colón's claims was legally correct, and her assessment of the pleadings correct as well. She did not abuse her discretion in denying the motion.

The judge also denied Colón leave to file an amended complaint. The proposed amended complaint unquestionably provided additional details in support of each cause of action. But, as with the initial complaint, the allegations were grounded in the facts and circumstances which intrude into church doctrine, affairs, and management and therefore violate the church autonomy doctrine. All, with the exception of the invasion of privacy, went to Colón's assertion that as a member of the church congregation, she was defrauded by church governance. The reasons

for dismissal of the complaint barred the filing of an amended complaint. Thus the judge did not err by denying the motion, with the exception of the invasion of privacy cause of action. See Cummings, supra, 295 N.J. Super. at 389.

III.

The judge dismissed the invasion of privacy count as lacking sufficient factual support. She denied Colón's motion for leave to file an amended complaint, which provided additional details, but did not discuss the new information with particularity.

From this record, we cannot determine when Colón learned about the conduct, or if the time may have been tolled by the defamation lawsuit or this case, or whether the cause of action is at all viable. Thus we do not reach defendants' assertion that, regardless, Colón is out of time under the statute of limitations, N.J.S.A. 2A:14-2. Whether plaintiff's claim ultimately survives will depend on facts not presently available.

We review a "trial court's dismissal order" under a de novo standard. Flinn, supra, 436 N.J. Super. at 287. The judge's legal conclusions are not entitled to any deference. Ibid.

It has long been established that New Jersey's pleading requirements are liberal and flexible. Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 166 n.3 (2003). As set forth in Rule 4:5-7, pleadings are to be liberally construed in the

interest of justice. Ibid. "Rule 4:6-2(e) motions should be granted in 'only the rarest [of] instances.'" Banco Popular N. Am. v. Gandi, 184 N.J. 161, 165 (2005) (alteration in original) (quoting Lieberman v. Port Auth. of N.Y. & N.J., 132 N.J. 76, 79 (1993)). Trial courts are bound to search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart, supra, 116 N.J. at 746 (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1989)).

A court should not be "'concerned with the ability of plaintiffs to prove the allegation contained in the complaint.'" Banco Popular N. Am., supra, 184 N.J. at 165 (quoting Printing Mart, supra, 116 N.J. at 746). Plaintiff's version of the facts should be viewed "as uncontradicted [and be] accord[ed] . . . all legitimate inferences." Id. at 166. "The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Id. at 165 (quoting Printing Mart, supra, 116 N.J. at 746).

"Notwithstanding this 'indulgent standard,' '[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one.'" Flinn, supra, 436 N.J. Super. at 286

(internal citation omitted) (quoting Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div.), certif. denied, 208 N.J. 366 (2011)).

In those "rare instances" where a motion to dismiss is granted, it is ordinarily granted without prejudice. Flinn, supra, 436 N.J. Super. at 286-87. We will reverse "with-prejudice" dismissal of a plaintiff's complaint when it is "premature, overbroad" or based upon a "mistaken application of the law." Id. at 287.

On the other hand, while motions for leave to amend are to be granted liberally, "'the granting of a motion to file an amended complaint always rests in the court's sound discretion.'" Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006) (quoting Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 457 (App. Div. 1998)). The "exercise of discretion requires a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile." Ibid.

Where the newly asserted claims "'are based on the same underlying facts and events set forth in the original pleading[,]'" dismissal does not result in prejudice. Ibid. No prejudice would result in this case, because although the amended complaint contains more detail, it is essentially the same allegation as in the original complaint. Such motions are determined "'without

consideration of the ultimate merits of the amendment[.]'" Ibid. (quoting Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 256 (App. Div. 1997)).

Colón had a reasonable expectation of privacy in her personal login information and anonymous postings. Unauthorized access is akin to directly hacking into a person's private computer to obtain information. See Coal. for an Airline Passenger's Bill of Rights v. Delta Airlines, Inc., 693 F. Supp. 2d 667, 675 (F.D. Tex. 2010) ("hacking into a person's private computer and stealing personal correspondence would represent an intentional intrusion on the victim's private affairs and . . . would be highly offensive to a reasonable person").

Our Supreme Court has held that individuals have a privacy interest even "in the subscriber information he or she provides to an Internet service provider." State v. Reid, 194 N.J. 386, 399 (2008). On that score, we note that defendants acknowledge obtaining Colón's IP and email address directly from the websites involved. Although the invasion of privacy claim in this case has inherent difficulties of proof because it relates to the internet, that acknowledgment when added to the additional information in the amended complaint does give rise to the "fundament of a cause of action." See Printing Mart, supra, 116 N.J. at 746.

After examining the claims de novo, we disagree with the judge's legal conclusion that discovery would not advance Colón's cause of action, or lead to additional information that would enable her to prove the claim. It is possible that Colón, after an opportunity to engage in discovery, could gain sufficient information to present to a jury. Therefore, we conclude the judge prematurely and improperly exercised her discretion by dismissing Colón's cause of action. See Flinn, supra, 436 N.J. Super. at 287. Although allowing the amendment may prove futile in the long run because of the statute of limitations, Colón should be given the opportunity to develop the information necessary to pursue the claim. Accordingly, we reverse the trial judge's dismissal with prejudice as premature, as well as the denial of the motion to amend that claim.

IV.

The judge's protective order did not infringe on Colón's First Amendment rights. Rule 4:10-3 permits a party from whom discovery is sought, upon a showing of good cause, to seek an order protecting him or her "from annoyance, embarrassment, oppression, or undue burden or expense[.]" Ordinarily, absent a protective order, parties may disclose discovery documents, including on the internet. Estate of Frankl v. Goodyear Tire & Rubber Co., 181 N.J. 1, 10 n.5 (2004) (citing Jepson, Inc. v.

Makita Elec. Works, Ltd., 30 F.3d 854, 858 (7th Cir. 1994)). A protective order may limit dissemination of information obtained through discovery without violating the First Amendment. See generally Seattle Times Co. v. Rhinehart, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984).

In Seattle Times Co., respondent Rhinehart —— a religious leader —— filed an action for defamation and invasion of privacy against a newspaper for publishing articles containing false statements about him. Id. at 22-23, 104 S. Ct. at 2202, 81 L. Ed. 2d at 20-21. When the Seattle Times sought discovery, including respondent's financial documents, the court granted Rhinehart's request for a protective order. Id. at 27, 104 S. Ct. at 2204, 81 L. Ed. 2d at 23.

On appeal, the Seattle Times claimed that the protective order violated its First Amendment right to disseminate information. Id. at 30-31, 104 S. Ct. at 2206, 81 L. Ed. 2d at 25. In affirming the trial court's protective order, the Supreme Court explained that despite the public's interest regarding respondent, a litigant did not have "an unrestrained right to disseminate information that has been obtained through pretrial discovery." Id. at 31, 104 S. Ct. at 2206-07, 81 L. Ed. 2d at 26.

The order was "not the kind of classic prior restraint that require[d] exacting First Amendment scrutiny" because it was

limited to dissemination of information obtained through discovery. Id. at 33, 104 S. Ct. at 2208, 81 L. Ed. 2d at 27. Hence, the protective order "[did] not offend the First Amendment," as it did not restrict dissemination of the information "gained through means independent of the court's process[,]" and was based on a finding of good cause. Id. at 34, 37, 104 S. Ct. at 2208-10, 81 L. Ed. 2d at 27, 29.

In the certifications submitted in support of the motion for a protective order, church members reported incidents they found harassing or threatening in nature as a result of Colón's anti-WMSCOG online postings, which included material obtained through discovery in the defamation case. Thus, this decision was based on good cause. The trial court issued the order to shield individuals involved with the church, or named as defendants, from the public. As she said in ruling on the request for a protective order in the defamation case, she found the certifications regarding "what individuals have done recently to members of the World Mission Society Church of God is . . . disturbing." Apparently unknown persons had "taken negative personal action against members of the church[,]" via the internet, in addition to, on at least one occasion, outside the church.

The judge was clear that only discovery, whether depositions, interrogatory answers, notices to produce or already produced

documents, were not to be posted online. The order did not prevent Colón from posting information available to the public obtained by means other than discovery.

"The trial court is in the best position to raise thoroughly the competing needs and interests of parties affected by discovery. The unique character of the discovery process requires that the trial court has substantial latitude to fashion protective orders." Seattle Times Co., supra, 467 U.S. at 36, 104 S. Ct. at 2209, 81 L. Ed. 2d at 29. This trial court's protective order did not violate the First Amendment.

V.

Any points on appeal not specifically addressed we consider so lacking in merit as to not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Thus, we affirm the judge's dismissal with prejudice of all of Colón's claims with the exception of the invasion of privacy cause of action. We also affirm the trial judge's issuance of a protective order.

Affirmed in part; reversed in part.