

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1377-16T4

SUSAN TREVEJO,

Plaintiff-Appellant,

v.

LEGAL COST CONTROL, INC. and
JOHN MARQUESS,

Defendants-Respondents.

Argued February 27, 2018 - Decided April 2, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Docket No.
L-0703-16.

Deborah L. Mains argued the cause for
appellant (Costello & Mains, LLC, attorneys;
Deborah L. Mains, on the brief).

Walter F. Kawalec, III, argued the cause for
respondents (Marshall Dennehey Warner Coleman
& Goggin, attorneys; Walter F. Kawalec, III,
on the brief).

PER CURIAM

Plaintiff Susan Trevejo appeals from a December 2, 2016 order granting summary judgment in favor of defendants Legal Cost Control (LCC) and John Marquess, as well as discovery orders dated June 10, 2016 and August 5, 2016. Plaintiff contends the motion judge prematurely granted summary judgment to defendants absent full and complete discovery. We agree and reverse.

Plaintiff filed an age discrimination complaint against defendants alleging violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -42. Defendants moved for summary judgment, arguing plaintiff was not an "inhabitant" of New Jersey and, therefore, could not pursue a NJLAD claim. By order dated June 10, 2016, the motion judge denied defendants' motion without prejudice, and ordered limited discovery "on the issue of plaintiff's status to make a claim under the NJLAD."

Plaintiff served supplemental interrogatories in accordance with the June 10, 2016 order. Defendants objected to the interrogatories as beyond the scope of the court's order, causing plaintiff to file a motion to compel discovery responses. By order dated August 5, 2016, the motion judge granted plaintiff's motion, in part, compelling defendants to respond to the interrogatory seeking information on the individual or individuals who supervised plaintiff in 2015, and extending the time for

discovery limited to "[p]laintiff's status to make a claim under the NJLAD."

The motion judge also permitted the parties to conduct depositions on the limited issue framed in the discovery orders. The depositions of plaintiff, Marquess, and Marquess' wife were conducted in or around September 2016. During the depositions of Marquess and his wife, defense counsel instructed them not to answer questions that counsel believed were "beyond the scope" of the discovery orders. When it became apparent that defense counsel objected to any questions perceived to be "beyond the scope" of the judge's discovery orders, plaintiff's counsel terminated the depositions of defendants' witnesses.¹

Two weeks later, defendants renewed their motion for summary judgment, arguing plaintiff was not an "inhabitant" entitled to pursue a NJLAD claim. Plaintiff opposed the motion, arguing defendants' failure to allow complete and full discovery foreclosed plaintiff's ability to demonstrate her right to pursue a NJLAD claim. Plaintiff argued the meaning of the term

¹ Rule 4:14-3(c) specifies that the only objections permissible during a deposition are as to "the form of a question or to assert a privilege, a right to confidentiality," or protective orders previously entered. See also Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 4:14-3 (2018) (noting "[a] witness may not be instructed not to answer unless the objection is one permitted by the rule").

"inhabitant" in the NJLAD was a novel issue that required sufficient discovery prior to any determination by the court as a matter of law.

When defendants refiled their summary judgment motion, the following facts were undisputed.

LCC is a New Jersey corporation located in Haddonfield. Marquess is president and part owner of LCC. Plaintiff was employed by LCC from May 2003 until she was terminated in February 2015. Plaintiff is not a resident of New Jersey. Plaintiff never lived in New Jersey. Plaintiff never sought, or received, benefits from the State of New Jersey. Plaintiff lives in Massachusetts, pays property taxes in Massachusetts, and has a Massachusetts driver's license.

During her employment with LCC, plaintiff worked from her home. LCC provided a company computer to plaintiff, which she used to connect remotely from her home to LCC's computer server. Plaintiff used a company-paid telephone for daily conference calls with other LCC employees, some of whom were located in New Jersey.

Plaintiff never worked in LCC's Haddonfield office, although she did visit New Jersey on company business a few times between 2003 and 2008. Plaintiff did not travel to New Jersey from 2009 through her termination in 2015.

Plaintiff received health insurance through LCC's insurance provider, Amerihealth New Jersey. LCC employees were not required to be New Jersey residents to qualify for the company health plan.

Based on these facts, the motion judge found plaintiff failed to show sufficient contacts with New Jersey to be an "inhabitant" to pursue a NJLAD claim. The judge concluded:

[S]he's not an inhabitant. . . . Not even close. . . . The point is, New Jersey doesn't even have an interest. In this case, from the plaintiff's perspective, she did not perform her work her[e]. She did not do anything of any consequence that was job related here and that's the [c]ourt's determination.

. . . .

There is not sufficient contact to - - even under the most liberal of constructions that are permitted, [to] have her avail herself of the LAD statute.

Plaintiff appealed. On appeal, plaintiff argues that the motion judge (1) misapplied his discretion in limiting the scope of discovery; and (2) granted summary judgment prematurely absent a full factual record.

We apply "an abuse of discretion standard to decisions made by our trial courts relating to matters of discovery." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011). "That is, '[w]e generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or

its determination is based on a mistaken understanding of the applicable law.'" Ibid. (alteration in original) (quoting Rivers v. LSC P'ship, 378 N.J. Super. 68, 80 (App. Div. 2005)).

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." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015) (citation omitted); see also Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007) ("A party opposing summary judgment on the ground that more discovery is needed must specify what further discovery is required, rather than simply asserting a generic contention that discovery is incomplete.").

We find the motion judge misapplied his discretion by overly restricting the scope of discovery. Plaintiff required broader discovery to prove she was entitled to pursue her NJLAD claims and articulated the specific discovery necessary to maintain her discrimination claim in New Jersey. Plaintiff alleged she was "telecommuting" from Massachusetts to New Jersey through the use of the software connecting her, via a company supplied computer, to LCC's network and her use of a company supplied telephone to conduct telephone conferences with other LCC employees. Plaintiff asserts she requires discovery regarding "the nature and substance of [p]laintiff's electronic and other 'virtual' contact and

connection to [d]efendants' New Jersey office as part of her day to day work." These inquiries, as well as other inquiries, must be permitted to allow plaintiff to develop a full and complete record prior to any judicial determination that plaintiff is, or is not, entitled to protection under the NJLAD.

The predominant goal of the NJLAD "is nothing less than the eradication of the cancer of discrimination in the workplace." Garnes v. Passaic County, 437 N.J. Super. 520, 532 (App. Div. 2014) (quoting Bergen Commercial Bank v. Sisler, 157 N.J. 188, 199 (1999)). The NJLAD is a remedial statute that has been broadly construed to protect not only "aggrieved employees but also to protect the public's strong interest in a discrimination-free workplace." Hoag v. Brown, 397 N.J. Super. 34, 47 (App. Div. 2007).

Defendants focus on the term "inhabitant" set forth in the legislative findings and declarations section of the NJLAD. See N.J.S.A. 10:5-3. Nowhere in the NJLAD statute is the term "inhabitant" defined or otherwise expressed. Nor is there any published case issued by a New Jersey court defining the term "inhabitant" under the NJLAD. Contrary to defendants' argument, the NJLAD prohibits unlawful employment practices and unlawful discrimination against "any individual." See N.J.S.A. 10:5-12(a). While a statute's preamble may aid in determining legislative

intent, "[t]he preamble, however, should be read in harmony with the statute that it introduces, whenever possible." DiProspero v. Penn, 183 N.J. 477, 496 (2005).

The NJLAD explicitly uses the term "person[]" to identify who is protected from discriminatory and unlawful employment practices and conduct. As defined in the statute, the term "person" is not restricted to "inhabitants" of this State. See N.J.S.A. 10:5-5(a). Instead, the NJLAD affords

all persons . . . the opportunity to obtain employment, and to obtain all accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression . . . , subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

[N.J.S.A. 10:5-4.]

A plain reading of the NJLAD reveals the term "person" is used throughout the statute, while the term "inhabitant" is only mentioned in the legislation's preamble. For example, N.J.S.A. 10:5-12(d) protects "any person because that person has opposed any practices or acts forbidden under [the NJLAD] or because that person has filed a complaint, testified or assisted in any

proceeding under [the NJLAD] . . . ;" N.J.S.A. 10:5-12(f) protects "any person" in a place of public accommodation; N.J.S.A. 10:5-12(g) and (h) protect "any person" in the transacting of real property; N.J.S.A. 10:5-12(i) protects "any person" in the transacting of any loan, extension of credit or financial assistance; N.J.S.A. 10:5-12(l) protects "any person" in the transacting of goods and services; and N.J.S.A. 10:5-12(q) protects "a person" based on their religious observances and beliefs.

Given the consistent use of the term "person[]" in the substantive provisions of the NJLAD, limiting protection of the statute to "inhabitants" of this State would be an overly restrictive reading of a statute with an expressly broad purpose – the elimination of discriminatory conduct. We conclude that discovery is required to determine where the discriminatory conduct took place – in New Jersey or Massachusetts – and to explore whether plaintiff was employed in New Jersey or Massachusetts. To limit discovery on whether plaintiff is an "inhabitant" of New Jersey cannot be harmonized with the overarching goal of the NJLAD, affording protection to "persons" who experience discrimination in this State.

On this limited record we are unable to determine whether plaintiff is protected under the NJLAD. We agree that plaintiff requires additional discovery, including the following: where plaintiff's co-employees worked; whether those co-employees worked from home; the nature of the software used by plaintiff and other LCC employees to conduct business on behalf of LCC; the location of the server used to connect plaintiff and other employees to LCC's office in New Jersey; the location of the internet service provider allowing plaintiff and other employees to connect to LCC's office in New Jersey; the individual or individuals who made the decision to terminate plaintiff and the basis for the decision; and any other issues relevant to plaintiff's contacts with New Jersey and her work for LLC that may demonstrate her entitlement to protection under the NJLAD.

Based upon current computer technology and the forward thinking concept of "telecommuting," we are satisfied that determining who may be entitled to protection under the NJLAD is a novel question of law that involves highly significant policy considerations. Discovery yet to be completed may shed light on the matter. See Jackson v. Muhlenberg Hosp., 53 N.J. 138, 142 (1969); see also Edwards v. McBreen, 369 N.J. Super. 415, 423 (App. Div. 2004) (declining to reach a novel issue of law on an incomplete record).

For these reasons, we reverse the order granting summary judgment in favor of defendants and remand for further proceedings to permit development of a fact-specific record to determine whether plaintiff is entitled to protection under the NJLAD.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION