

Prepared by the Court

MARIA and JOSEPH IATAROLA,
FRANCESCO and MARIA MENZA,
GERARDO and GREGORIO RAGO,
ANTONIO and IDA MOLINO,
MICHELANGELO and ANGELINA
COLAVITA, GIUSEPPE CARULLI,
FILOMENA CARULLI, LUIGI
CARULLI, ANTHONY IATAROLA,
DR. ROBERT MARINO, JENNIE and
ARMAND FIGLIUOLO, JOHN
THOMAS, MICHAEL SCANIO,
ANTHONY BENTIVEGNA, ROBERT
TYBURCZY, and DR. RICHARD
MANCINO,

Plaintiffs,

v.

ALEX EFROSMAN a/k/a ALEX
BASSER, JOSEPH CHIARELLA,
STEPHEN CHIARELLA, AJR
CAPITAL, INC., NORTH FORK
BANCORPORATION, and JOHN
DOES 1 through 100,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MORRIS COUNTY
CIVIL PART

DOCKET NO. MRS-L-2148-05

CIVIL ACTION

FILED

JUN 22 2007

JOHN J. HARPER, J. S. C.
JUDGE'S CHAMBERS
MORRIS COUNTY
COURTHOUSE

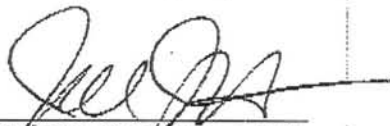
ORDER

THIS MATTER having been brought before the Court by G. Martin Meyers, Esq., counsel for Plaintiffs, upon a Motion to Restore and Amend the Complaint and the Court having considered all the papers submitted and for good cause shown:

IT IS on this 22nd day of June 2007:

ORDERED that Plaintiffs' Motion to Restore and Amend the Complaint is denied for the reasons set forth in the attached Findings of Fact/Conclusions of Law; it is

FURTHER ORDERED that a copy of this order shall be served upon all counsel within seven (7) days.



JOHN J. HARPER, J.S.C.

FINDINGS OF FACT/CONCLUSIONS OF LAW

In the instant matter, Plaintiffs seek to amend their Complaint to name inadvertently omitted Salvatore Stagno as a Plaintiff and Defendants Stephen and Joseph Chiarella (hereinafter the "Chiarella Defendants") as Plaintiffs. Plaintiffs also seek to amend the Complaint against North Fork Bancorporation (hereinafter "North Fork") and A.G. Edwards to allege negligence and negligent misrepresentation against these entities. Plaintiffs argue that they are entitled to this relief based upon the terms of the settlement of this action between Plaintiffs and the Chiarella Defendants. In pertinent part, as consideration for settlement, the Chiarella Defendants agreed to assign their claims for negligence and malpractice against North Fork and A.G. Edwards to Plaintiffs. Lastly, Plaintiffs seek to reinstate the matter to the active trial list, contending that the matter was only dismissed as to the Chiarella Defendants.

North Fork opposes the motions. In opposition, North Fork argues Plaintiffs lack standing to assert the proposed claims, Plaintiffs have not shown a meritorious basis for reinstatement and amendment of the pleadings, and there would be undue prejudice to North Fork if the relief sought is granted at this stage in the litigation.

The Standard

The applications before the Court are for restoration and amendment. A matter may be restored to the active trial calendar pursuant to R. 1:13-7. For the reasons discussed *infra*, the Court finds that Plaintiffs are not entitled to amend the pleadings. Accordingly, the application to restore is denied as moot.

Leave to amend pleadings is to be liberally granted as long as good cause is shown. See R. 4:9-1; Young v. George C. Fuller Contracting Co., Inc., 12 N.J. Super. 554, 559 (1951). Rule 4:9-1 provides in pertinent part:

The party may amend any pleading as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. Thereafter, a party may amend a pleading only by written consent of the adverse party, or by leave of the court, which shall be freely given in the interest of justice.

R. 4:9-1. In Kernan v One Washington Park, 154 N.J. 437, 456-457 (1998), the Supreme Court held that a motion for leave to amend must be liberally granted and without consideration of the ultimate merits of the amendment. Moreover, "the broad power of amendment should be liberally exercised at any stage of the proceedings." Coastal Group v Dryvit Systems, 274 N.J. Super. 171, 180 (App. Div. 1994) leave to appeal granted and remanded, 147 N.J. 574 (1997). Indeed, amendments may even be granted after remanded on appeal, unless undue prejudice would result. Zacharias v Whatman, PLC 345 N.J. Super. 218, 226 (App. Div. 2001) certif. den. 171 N.J. 444 (2002).

Here, the Court finds the presence of both prejudice and futility in regards to Plaintiffs' proposed amendments such that the Court denies Plaintiffs' motion for leave to amend. The Complaint was filed July 25, 2005 and was amended twice prior to the voluntary dismissal of North Fork on March 31, 2006. In fact, in response to a similar application to amend the pleadings made on the eve of trial, the Court denied the application by Order, dated December 1, 2006, finding prejudice and futility. As eluded to, for the same reasons previously offered, the Court denies the instant application for leave to amend. North Fork has not been a party to the litigation since March 2006 and the matter was marked closed based upon counsel's representations to the Court at the trial call that the lawsuit was settled. To re-open the case against North Fork in light of this history would be highly prejudicial.

Furthermore, the proposed amendments are futile. The Court has already determined that Plaintiffs do not have a right to assert claims against North Fork. See Order, dated December 1, 2006. Now, Plaintiffs seek to directly assert the claims against North Fork as assignees of the Chiarella Defendants' rights. Assignee's rights can be no greater than the assignor's rights and all defenses available against the assignor are available against the assignees. Mayo v. City Nat. Bank & Trust Co., 56 N.J. 111, 117 (1970); Allstate Ins. Co. v. Lopez, 325 N.J. Super. 268, 277-78 (1999). The Chiarella Defendants never possessed a contractual right in regards to the North Fork account, so no right in connection with this account can be transferred to Plaintiffs. Thus, Plaintiffs, as assignees of the Chiarella Defendants' rights, lack standing to assert the proposed claims against North Fork so the amendment would be futile.

Based upon the foregoing, the Court denies Plaintiffs' motion to restore and amend the Complaint.