

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4154-12T1

CIT SMALL BUSINESS LENDING
CORPORATION,

Plaintiff-Respondent,

v.

LAUREN MEADE,

Defendant/Third-Party
Plaintiff,

and

MARK C. MEADE,

Defendant/Third-Party
Plaintiff-Appellant,

v.

MARK MORENO and KIDDIE ACADEMY
DOMESTIC FRANCHISING,

Third-Party Defendants-Respondents.

Submitted September 22, 2014 - Decided October 22, 2014

Before Judges Sabatino and Guadagno.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, Docket
No. L-9319-11.

Mark C. Meade, appellant pro se.

Aronsohn Weiner Salerno & Bremer, P.C.,
attorneys for respondents CIT Small Business
Lending Corp. and Mark Moreno (Robert M.
Adams, on the brief).

Nixon Peabody LLP, attorneys for respondent
Kiddie Academy Domestic Franchising (Craig
R. Tractenberg, on the brief).

PER CURIAM

Mark C. Meade appeals from an order entered by the Law
Division on February 22, 2013, granting the motions of CIT Small
Business Lending Corporation (CIT) and Mark Moreno for summary
judgment against Meade, denying Meade's motion for summary
judgment against Kiddie Academy Domestic Franchising (Kiddie),
and granting Kiddie's cross-motion for summary judgment against
Meade. Meade also appeals the April 5, 2013 order denying his
motion for reconsideration. We affirm.

In 2006, Meade established the Dasoda Corporation (Dasoda)
for the purpose of opening a Kiddie childcare learning center
franchise. Dasoda and Kiddie entered into a franchising
agreement to operate a learning center in Jackson, New Jersey.
To finance the opening and operation of the center, Dasoda
obtained a \$475,000 Small Business Administration (SBA) loan
from CIT. In consideration for the loan, Dasoda executed a note
promising to repay the principal plus interest at an annual rate
of prime plus 2.5%. As security for the note, Meade executed an
unconditional personal guarantee in favor of CIT.

The business was unsuccessful. Dasoda defaulted on its obligations under the note and filed for bankruptcy in September 2010.

The multi-court litigation in this matter began in January 2011, when Kiddie filed a suit in connection with the franchise agreement in Harford County Circuit Court in Maryland. Meade filed a counterclaim and third-party complaint naming CIT and Mark Moreno, an employee of CIT. On May 28, 2013, the Maryland judge denied Meade's motion for summary judgment.

In February 2011, Meade commenced an action in the federal district court of New Jersey, naming Kiddie and four of its employees. Meade alleged that defendants: (1) made false and misleading statements or omissions that he relied on to enter into the franchise agreement; (2) made false and misleading statements in the preparation of the SBA business loan; (3) failed to provide services promised by the franchise; (4) misrepresented that he would earn substantial income; and (5) caused him to enter into agreements with equipment and service providers that were harmful to him. By order entered October 25, 2011, the district court dismissed the complaint because Meade failed to satisfy the applicable pleading requirements, he lacked standing to file the suit, his claims were subject to arbitration provisions in the franchise agreement, and the

district court was the wrong forum for his action. Meade v. Kiddie Acad. Domestic Franchising, No. 11-cv-0900, 2011 U.S. Dist. LEXIS 123382, 2011 WL 5104501, at *3-6 (D.N.J. Oct. 25, 2011).

In June 2011, Meade filed a complaint in the Law Division against Kiddie, CIT, and several individual employees with essentially the same allegations as he had asserted in his federal complaint, which the Third Circuit later described as follows:

Meade claimed that the Kiddie Academy Defendants made various fraudulent statements and misrepresentations in order to induce him to sign the franchise agreement. For example, Meade claimed that the Kiddie Academy Defendants had grossly overstated the financial performance data and misrepresented the costs of operating the business. Meade also claimed that the Kiddie Academy Defendants had breached various terms of the agreement by, for example, failing to assist him with finding a location for his franchise, and failing to assist with teacher instruction, classroom set up, training, and licensing requirements. Meade's complaint set forth a host of other alleged wrongdoings by the Kiddie Academy Defendants, including violations of state consumer rights laws, federal racketeering violations, bank fraud, and more. Meade sought approximately eight million dollars in damages from the Kiddie Academy Defendants, as well as an injunction to stop the sale of all Kiddie Academy franchises in the state of New Jersey. In addition to the Kiddie Academy Defendants, Meade also named as defendants CIT Group and one of its former employees (the "CIT Group

Defendants"). Meade sought more than two million dollars in damages from the CIT Group Defendants.

[Meade v. Kiddie Acad. Domestic Franchising, 501 F. App'x 106, 107-08 (3d Cir. 2012).]

The Kiddie defendants removed the complaint to federal district court in July 2011. Defendants moved to dismiss, and by order entered March 28, 2012, the United States District Court granted the defendants' motions and dismissed the complaint. Meade appealed and the Court of Appeals affirmed, finding that Meade lacked standing, as all of his claims involved injuries to Dasoda stemming from the franchise agreement, and Meade did not allege any actions against him in his individual capacity. Id. at 108.

Following this dismissal, CIT filed the instant action against Meade and his wife, Laura,¹ as guarantors on the SBA loan. Meade counterclaimed and joined Moreno as a third-party defendant.

On appeal, Meade raises the following arguments:

1. THE ISSUE BEFORE THE COURT IS DOES RES JUDICATA BAR LITIGATION OF APPELLANTS COUNTERCLAIMS THAT WERE DISMISSED FOR LACK OF STANDING BY THE DISTRICT COURT.

¹ There is no indication in the record before us that Laura Meade has made an appearance in this matter, and all references to "Meade" refer to Mark C. Meade.

2. THE ISSUE BEFORE THE COURT IS WHETHER THE COURT BELOW RULES CONTRARY TO THE AFFIRMATIVE DEFENSE RULE OF RES JUDICATA WHEN IT HAS NOT BEEN TIMELY RAISED AND THEREFORE HAS BEEN WAIVED AND ABANDONED BY RULE.

3. DOES THE COURT BELOW DENY APPELLANT THE RIGHT TO PARTICIPATE IN LEGAL PROCEEDINGS THAT DIRECTLY AFFECT HIM.

4. DOES THE COURT BELOW ERRONEOUSLY DENY A MOTION FOR SUMMARY JUDGMENT BROUGHT AGAINST KIDDIE ACADEMY.

5. DOES THE COURT BELOW, IN GRANTING SUMMARY JUDGMENT FOR CIT SMALL BUSINESS LENDING, FAIL TO CONSTRUE THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY AND FAILS TO DRAW ALL INFERENCES IN FAVOR OF THE NON-MOVING PARTY.

6. THE ISSUE IS THE COURT BELOW GRANTS SUMMARY JUDGMENT WHEN CIT CANNOT PROVE IT IS THE OWNER OF THE NOTE WITH STANDING TO BRING THIS ACTION.

7. THE ISSUE IS THE COURT BELOW GRANTS SUMMARY JUDGMENT IN AMOUNTS IN EXCESS OF THE LOAN AMOUNT AND WITHOUT A SCHEDULE OF PAYMENT HISTORY WHICH IS CLEARLY CAPABLE OF PRODUCING AN ADJUST RESULT.

8. VENUE IS IMPROPERLY LAID BY THE PLAINTIFF IN BERGEN COUNTY.

Meade argues that there are various genuine issues of material fact, rendering the grant of summary judgment in favor of CIT erroneous, including whether Moreno misrepresented and fraudulently represented material information in the deal, and whether CIT is the owner of the note. We reject these and

defendant's other arguments and affirm the order of February 22, 2013, on the basis of the comprehensive written opinion of Judge Robert C. Wilson. We add only these brief comments.

In granting CIT's motion for summary judgment, Judge Wilson found that there were no genuine issues of material fact:

Meade issued a personal guarantee for a small business loan from CIT. Dasoda Corp, the borrower, ultimately ceased making payments and defaulted on the loan, and CIT is seeking payment of the amount due and owing from Meade. It is clear Meade is obligated to pay the amount due pursuant to his personal guarantee of the loan. There has been no introduction of evidence of fraud that would allow Meade to discharge his duty as a guarantor or to lend credence or merit to his counterclaim. Thus, Meade is obligated to pay the \$554,114.90 owing to CIT.

Meade's various claims of fraud and misrepresentation are totally devoid of factual support and are insufficient to create a question of material fact that would defeat a summary judgment motion. See United States Pipe & Foundry Co., 67 N.J. Super. 384, 399-400 (App. Div. 1961) ("Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a [meritorious] application for summary judgment.").

The trial court did not misapply its discretion in ruling on the summary judgment motion before Meade obtained certain discovery. There is no reasonable indication in the record that such discovery would have shown that Meade's claims had legal

merit. See R. 4:46-5(a) (granting trial courts the discretion to permit discovery to enable an opposing party to respond to a summary judgment, but only where the opposing party has shown by affidavit that it was "unable to present by affidavit facts essential to justify opposition").

Affirmed.

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


CLERK OF THE APPELLATE DIVISION