

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

ROSALIE GADSDEN JAMES, : SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION-ESSEX COUNTY
 Plaintiff, : Docket No.: ESX-L-9471-09
 :
 :
 :
 vs. :
 : CIVIL ACTION
 :
 : OPINION
 JOSEPH MURRAY, ESQ. and :
 NORTHEAST NEW JERSEY LEGAL :
 SERVICES, INC., :
 :
 Defendants. : May 13, 2011
 :
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Dominic J. Aprile on behalf of plaintiff
(Bathgate, Wegener & Wolf, P.C.)

Christopher Carey on behalf of defendants
(Graham Curtin)

KENNEDY, J.S.C.

Defendants Northeast New Jersey Legal Services, Inc. ("NNJLS") and its employee, Joseph Murray, Esq. (collectively, "Legal Services") move for summary judgment. Plaintiff Rosalie Gadsen James opposes the motion. For the reasons that follow, this motion will be denied.

INTRODUCTION

Between December 2006 and November 2007, Plaintiff Rosalie Gadsen James retained Legal Services to represent her. (Cert. of William D. Tully, Jr., Ex. L.) Plaintiff alleges that during the

pendency of that representation, defendants failed to properly protect plaintiff's rights to certain insurance proceeds, and that as a result of defendants' negligent legal representation, she lost her right to those proceeds.

Defendants contend that even if their representation of plaintiff was negligent, they are immune from liability as an entity protected by the Charitable Immunity Act ("CIA"), N.J.S.A. § 2A:53A-7(a). NNJLS is a non-profit corporation, incorporated in 1967. (Tully Cert. at Ex. C.) NNJLS's mission statement is to provide "free legal services to low-income, senior and disabled county residents in order to assure that their legal rights are protected and that access to the civil justice system is not denied . . . simply because they cannot afford a private attorney." (Id. at Ex. E.) Notably, based on NNJLS' federal tax returns, it appears that from at least 2006, virtually all of NNJLS's funding has been derived from government funding.¹ (Id. at Ex. F.)

ANALYSIS

The Charitable Immunity Act seeks to preserve and encourage continued private philanthropy, and grants statutory immunity to

¹ Defendants' Reply Brief presents financial records suggesting that approximately 50% of its over \$9,000,000 income for the fiscal year ending June 30, 2007 was derived from non-government entities, with \$4,000,000 coming from an IOLTA grant. This vastly differs from the information provided on its 2006 and 2007 federal tax returns, which state that virtually all money is derived from "Government contributions (grants)." The Reply Brief further notes that IOLTA is an acronym for Income on Non-Interest Bearing Lawyer Trust Accounts, and that participation in New Jersey's IOLTA program is mandatory for lawyers, but fails to explain why IOLTA is not reported separately from other "Government contributions (grants)" on tax documents. On summary judgment, the Court affords all favorable inferences to plaintiff, the non-moving party. Brill v. Guardian Life. Ins. Co. of Am., 142 N.J. 520, 540 (1995). Accordingly, for purposes of this motion, the Court assumes that the federal tax returns are an accurate portrayal of NNJLS's funding.

qualifying non-profit organizations to accomplish this goal. Abdallah v. Occupational Ctr. of Hudson Cty., Inc., 351 N.J. Super. 280, 284 (App. Div. 2002); Parker v. St. Stephen's Urban Dev. Corp., 243 N.J. Super. 317, 326 (App. Div. 1990). Specifically, the Act states:

No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association

[N.J.S.A. 2A:53A-7(a).]

In order to receive CIA immunity, a defendant institution must show that it: (1) was formed for nonprofit purposes; (2) is organized exclusively for religious, charitable, or educational purposes; and (3) was promoting such objectives and purposes at the time of the injury to plaintiff who was then a beneficiary of the charitable works. Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 175 (2001).

Defendants move for summary judgment based on CIA immunity. Summary judgment must be granted if there "is no genuine issue as to any material fact challenged [so] that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c);

Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). For purposes of this motion, the only issue in dispute is whether NNJLS is organized exclusively for charitable purposes, thereby falling within the CIA's statutory intendment.

An entity automatically satisfies the second prong of the CIA test if it is organized "exclusively for educational or religious purposes." Ryan v. Holy Trinity Evangelical Lutheran Church, 175 N.J. 333, at 343, 346 (2003). However, as in the present matter, where defendant seeks the protection of the CIA based on its status as an entity organized exclusively for charitable purposes, courts must undertake the fact-sensitive analysis set forth in Parker v. St. Stephen's Urban Development Corp., Inc., supra at 325, to determine the extent of the entity's commitment to charity. Ryan at 344. In these situations, "an organization claiming immunity under the [CIA] must demonstrate some[thing more than a nominal] level of support from charitable donations and/or trust funds as it is those sources of income the Act seeks to protect." Bieker at 178.

The Parker analysis recognizes that an entity's non-profit and/or tax-exempt status is irrelevant to the determination of whether that entity is organized exclusively for a charitable purpose. Parker at 324. Rather, the relevant inquiry is whether the non-profit entity's "aims, its origins, and its method of operation" demonstrate that "its dominant motive is charity [and not] some other form of enterprise." Id. at 325. The analysis must look "beyond the organization's non-profit structure and social service activities" to "take into account the organization's

source of funds as a critical element of charitable status." Abdallah at 284.

In Parker, the Appellate Division determined that defendant nonprofit corporation, which received funding exclusively from federal government funds, did not qualify for charitable immunity because the defendant was not an entity "organized exclusively for . . . charitable . . . purposes" within the meaning of N.J.S.A. 2A:53A-7. In arriving at this conclusion, the court noted "the absence from defendant's operation of fund-raising activities and charitable contributions" and that "[p]rivate charitable contributions have been involved at least in part in every case in which [charitable] immunity has been conferred." Parker at 326. The court held that in situations where an "entity is expressly conceived, created and operated to serve purely as a conduit for [government] funds . . . its denomination as a charity for immunity purposes is incorrect." Parker at 328.

The Appellate Division reached a similar result in Abdallah v. Occupational Center of Hudson County, Inc. ("OCHC"), supra, 351 N.J. Super. 280. There, OCHC was neither a religious or educational organization. Instead, the non-profit corporation sought to provide vocational opportunities for disabled persons. In 1995, OCHC's total support and revenue amounted to three and a half million dollars, derived mainly from government grants and payments made by the private market for subcontracted labor and services. Of that sum, \$48,000, or 1.5% of OCHC's total support was derived from private charitable contributions. In 1996, it received only \$3,000, or less than one-tenth of a percent of total

funding from private charitable contributions. Furthermore, the record failed to demonstrate that defendants solicited or were dependent upon private contributions.

The Abdallah Court noted the "underlying purpose and rationale [of the] CIA [is] the protection and encouragement of private philanthropy both to assure the continued provision of beneficent services and to relieve the government of the burden of providing them." Id. at 285. Accordingly, "an organization claiming immunity under the [CIA] must demonstrate some level of support from charitable donations and/or trust funds as it is those sources of income the act seeks to protect." Abdallah at 285-86 (citing Bieker at 178). Based on the limited amount of private funding OCHC received, the court determined that OCHC appeared to be a non-profit quasi-governmental agency for which the underlying purposes and rationale of the CIA were inapplicable. Accordingly, the Appellate Division reversed the trial court's granting of summary judgment on the basis that defendants were entitled to charitable immunity. Abdallah at 287-288.

Turning to the facts in the present matter, NNJLS's 2006 federal tax return indicates that its total revenue was \$11,072,208.00. Of that, \$10,947,752 came from "Government contributions (grants)", whereas only \$124,456.00, or 1.1%, was derived from "Direct public support." Additionally, NNJLS's 2007 return indicates that its sole source of revenue came from "Government contributions (grants)" (emphasis added). In short, it appears that the critical element of charitable status -- NNJLS's source of funds, and the fact that they are derived almost

exclusively from government funds -- suggests that charitable immunity is not appropriate. Moreover, defendants have failed to present evidence suggesting that they solicit or depend upon private charitable contributions for funding. While NNJLS is a non-profit organization, this fact alone does not entitle defendants to CIA immunity. In short, on the record before the Court, defendants have failed to demonstrate that they are organized exclusively for charitable purposes. Accordingly, defendants' motion for summary judgment on the basis they are entitled to CIA immunity is **DENIED**. An appropriate order follows.

s/ John C. Kennedy
JOHN C. KENNEDY, J.S.C.