December 13, 2024

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LETTER BRIEF AND APPENDIX ON BEHALF OF PLAINTIFF-APPELLANT

IVE SKROCE & ESTATE OF MATE SKROCE

Plaintiff-Appellant

v.

CLARITAS DELI L.L.C. & WENDY M. DUARTE-OSUNA

Defendant-Respondent

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3582-23

CIVIL ACTION

On appeal from Order Entering Judgement dated June 7, 2024 entered in the Superior Court, Law Division, Bergen County

Sat Below: Hon. Lina P. Corriston, JSC

Your Honors:

Pursuant to R. 2:6-2(b), this letter is submitted in lieu of a formal brief.

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TABLE OF JUDGMENTS, ORDERS AND RULINGS

PROCEDURAL HISTORY

On August 16, 2022, Plaintiff-Appellant (Plaintiff) filed a complaint in the Bergen County Special Civil Part bearing Docket No. BER-DC-8321-22 alleging breach of lease. (Pa 1 to Pa 3). On September 8, 2022, Defendant-Respondent (Defendant) filed an Answer with Separate Defenses and Counter-Claim. (Pa 4 to Pa 7). On the same date, Plaintiffs filed an Answer to Counterclaim. (Pa 9 to Pa 11). On November 2, 2022, an order was entered transferring the matter to Superior Court, Law Division, Bergen County bearing Docket No. BER-L-1739-23. (PA 12).

On August 10, 2023, Defendants filed a Notice of Motion for Summary Judgment. (Pa 13 to Pa 14). Defendants filed a certification in support of its motion. (Pa 15 to Pa 52). Plaintiffs filed an Answering Certification in opposition thereto. (Pa 53 to Pa 56) and a Counterstatement of Material Facts (Pa 57 to Pa 58). On September 22, 2023, an order was entered denying Defendants' motion for summary judgment. (Pa 59 to Pa 60).

Trial was held on May 6, 2023 via stipulated facts. Prior thereto, Plaintiffs submitted their Proposed Findings of Facts. (Pa 61 to Pa 64). On June 17, 2024,

the court entered an order in favor of Defendants on their counterclaim and against the Plaintiffs in the amount of $101,553.93 plus costs (Pa 65 to Pa 66).

On July 18, 2024, Plaintiffs filed the within Notice of Appeal. (Pa 67 to Pa 69).

STATEMENT OF FACTS

On or about September 27, 2021, the parties entered into a lease agreement for the premises known as 478 Broad Avenue, Palisades Park, New Jersey (Pa 18- to Pa 24). Said lease was introduced as J-1 into evidence (1T 28-16-22)*. The lease provided that the rent was $3,500.00 per month and a rent ledger was introduced as J-2 into evidence. (1T 6-9-11; 28-16-22). Defendant maintained she incurred repairs after the fire which bills were introduced as J-3 into evidence. (1T 6-12-14; 28-16-22). The Plaintiff introduced photographs of the establishment taken 1-2 days after the fire which was introduced as J-4 into evidence. (1T 6-15-17). The Defendant introduced a photograph of the premises taken shortly after the fire which was introduced as J-5 into evidence. (1T 6-18-21; 28-16-22).

No testimony was adduced at trial and the matter proceeded by arguments of counsel. (1T 6-23 to 27-23). On May 30, 2024, the court rendered its opinion from the bench dismissing the complaint and entering judgment in favor of the Defendant on the counterclaim. (Pa 65).

1T refers to Transcript dated May 6, 2024
2T refers to Transcript dated May 9, 2024
3T refers to Transcript dated May 30, 2024

POINT I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY MISINTERPRETING THE LEASE AND RIDER (3T 16-19 TO 23-9)

As stated in the Procedural History, supra, Judge Corriston dismissed Plaintiffs' complaint and entered judgment on Defendants' counterclaim. (Pa 64 to Pa 65). The court reasoned that Plaintiffs failed to demonstrate that there was no proof that Defendants caused the fire which occurred on April 21, 2022. (3T 16-19 to 23-9). It is respectfully submitted that the trial misinterpreted the lease and rider as a whole as Paragraph 42 of the rider obligated the Defendants to make repairs after the fire. (Pa 24).

The construction of the terms of a written lease agreement is a matter of law for the court. Crest Drug Store, Inc. v. Levine, 142 N.J. Eq. 652 (E&A 1948). The fundamental rule in construing contracts calls for the ascertainment of the intention of the parties in the light not only of the language used but also of the surrounding circumstances and the objects sought to be attained by them under their agreement. Stern v. Larocca, 49 N.J.

Super. 496, 501 (App. Div. 1958). The judicial quest is for the reasonably certain meaning of the language used, taken as an entirety, considering the situation of the parties, the attendant circumstances, the operative usages and practices and the objects that the parties were striving to achieve. George M. Brewster Son v. Catalytic Const. Co., 17 N.J. 20, 32 (1954).

In this case, the trial court failed to give the rider its full intention meaning. (Pa 24). Paragraph 42 of the rider obligated the Defendants to make all interior repairs. The fire damage was limited to inside the Defendants' rented space, There was no proof submitted by Defendants at trial that the fire damage was attributable to the roof, foundation and structural repairs which Paragraph 42 would have obligated Plaintiffs to address.

Defendants argued at trial that Paragraph 15 of lease obligated Plaintiffs to make the repairs because there was no proof that Defendants caused the fire. (Pa 19). The trial court concluded that Paragraph 15 applies in terms of a fire loss or other casualty and that Paragraph 45 of the applies to routine repairs and maintenance. (3T 16-11-23).

The rider clearly obligates the Defendants to make all repairs to the property. It does not exclude Defendants from any loss due to fire or other casualty. Paragraph 46 is clear that any inconsistency between the

Lease and Rider, the terms of the Rider prevail. Defendants offered no evidence, other then the fire was not her fault, to overturn the unambiguous language of the Rider.

The chosen words and phrases in a contract are to be realistically assessed in relation to the context and obvious general purpose of the compact, for the meaning that is reasonably clear, such as is within the reasonable understanding of the symbols of expression. Cozzi v. Owens Corning Fiber Glass Corp., 63 N.J. Super. 117, 121 (App. Div. 1960). The trial court failed to take into consideration that this was a commercial lease for a commercial establishment so the bargaining positions of the parties was equal. The trial court clearly misinterpreted as a matter of law the clear intention of the Lease and Rider. Plaintiffs are entitled to a judgment on its complaint for the rent due and Defendants' counterclaim should have been dismissed.

The cause of the fire is irrelevant. The lease and rider absolve Plaintiffs of any obligation to repair the premises after the fire. The court's reasoning was that if Paragraph 42 was to absolve the Plaintiffs, then Paragraph 15 of the lease would essentially have no effect. (3T 18-6-21). This reasoning does not conform to the clear language of the Lease and Rider. The parties were free to change any paragraph in the Lease through the language in the

Rider. The lease obligated the Defendants to carry insurance which it apparently did. Her insurance should have covered the loss. If the insurance obtained by the Defendants was inadequate for whatever reason, the fallout from that should not be shouldered by the Plaintiffs.

The polestar of contract construction is the intention of the parties as revealed by the language used taken as an entirety. Atl. N. Airlines v. Schwimmer, 12 N.J. 293,301 (1953). It is not real intent but the intent expressed or apparent in the writing that controls. George M. Brewster & Son, Inc. v. Catalytic Constr. Co., 17 N.J. 20, 32 (1954). The quest is for the reasonably certain meaning of the language used, taken as an entirety, considering the situation of the parties, the attendant circumstances, the operative usages and practices, and the objects the parties were striving to achieve. Nestor v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997).

In this case, the language in the lease and especially the rider make it clear that the Defendants were responsible for the repairs after the fire. Given the plain language of the lease and rider, the trial court committed reversible error in dismissing the complaint and entering judgment in favor of the Defendants on the counterclaim. This court should enter judgment

in favor of the Plaintiffs in the amount of $ 53,725.00 representing the monies due Plaintiffs and dismissing the counterclaim.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the order for judgment entered on June 7, 2024 be reversed and judgment be entered in favor of the Plaintiffs in the amount of $ 53,725.00.

Respectfully submitted,

Mark S. Carter

Dated: December 13, 2024

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RE: Ive Skroce & Estate of Mate Skroce (Plaintiff-Appellant) vs. Clarita's Deli, LLC & Wendy M. Duarte-Osuna (Defendants-Respondents)

Docket Number A-3582-23

Trial Court Judge: Hon. Lina P. Corriston, JSC

RESPONDENT'S LETTER BRIEF IN OPPOSITION TO APPELLANT'S APPEAL OF THE MAY 30, 2024 BENCH TRIAL VERDICT OF THE HON. LINA P. CORRISTON, JSC

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DEFENDANT'S COUNTERSTATEMENT OF MATERIAL FACTS PURSUANT TO RULE 2:6-4(a)

For sake of clarity, Defendants wish to point out to the Honorable Court that the Plaintiff's Proposed Findings of Facts (Pa 61-64) was never agreed to by Defendants and was simply just "proposed" by Plaintiff.

Further, the date of the fire which gutted the premises was April 21, 2022 and the reopening date of Clarita's Deli after Defendants made the repairs was May 10, 2023. (T3 5:7-12. 29:11-20)

STANDARD OF REVIEW

Judge Corriston's verdict in this case was clear and supported by the adequate, substantial, and credible evidence in this case.

> The scope of appellate review of a judgment entered in a non-jury case is limited. The findings on which the judgment is based should not be disturbed unless they are not supported by adequate, substantial and credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 *N.J.* 474, 483-84; Pioneer National Title Ins. Co. v. Lucas, 155 *N.J. Super.* 332, 338, 382 *A.*2d 933 (App.Div.), aff'd o.b., 78 *N.J.* 320, 394 *A.*2d 360 (1978). The fact findings and legal conclusions of the trial judge should not be disturbed unless the appellate court is convinced they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc., 65 *N.J.* at 484, 323 *A.*2d 495.

Liqui-Box Corp. v. Estate of Elkman, 238 N.J. Super. 588, 596, 570 A.2d 472, 476 (Super. Ct. App. Div. 1990)

Judge Corriston relied on the plain and obvious language of the lease agreement as explained in the 20 written pages of the decision transcript. (3T:3-23)

Inasmuch as Judge Corriston's reasoning was supported by the "adequate, substantial, and credible evidence" presented at trial, Plaintiff's appeal should be denied.

LEGAL ARGUMENT

POINT ONE

THE LEASE AGREEMENT WAS CLEAR AND UNAMBIGUOUS ON ITS TERMS AND WAS PROPERLY INTERPRETED BY JUDGE CORRISTON (3T:9:4 – 13:2, 15:11 – 19:10).

The lease here is clear and is to be construed against the Landlord and in favor of the Tenant. *See* Crewe Corp. v. Feiler, 49 *N.J. Super.* 532, 542 (*App. Div.* 1958), reversed on other grds. 28 *N.J.* 316 (1958). Carteret Props. v. Variety Donuts, Inc., 49 N.J. 116, 127 (1967). Furthermore, the Courts cannot "rewrite the contract of the parties by substituting a new or different provision from that clearly expressed in the instrument". Kampf v. Franklin Life Ins. Co.,

33 *N.J.* 36, 43 (1960); Garden State Plaza Corp. v. S.S. Kresge Co., 78 *N.J. Super.* 485, 500 (*App. Div.* 1963), certification denied 40 *N.J.* 226 (1963).

The bench trial below concerned the interpretation of the lease's provisions in terms of the rights and responsibilities of each party in the event of a fire at the leased premises. (1T 7:6 – 8:12)

Essentially, the Court had to consider two paragraphs of the lease agreement (Pa18). Paragraph 15 of the Lease is entitled "Fire and Other Casualty". (Pa19) It reads, in pertinent part[1]:

> If the premises are partially damaged by fire. . .the Landlord will repair the same as speedily as practicable. . .If, in the opinion of the Landlord, the Premises are so substantially damaged as to render them untenantable. . .then the rent will cease until such time as the Premises are made tenatable by the Landlord.

It is clear that there is only one party here that has a duty to repair the premises after a fire loss – the Landlord. The Plaintiff Landlord refused to do so, arguing that somehow the Tenant is responsible for repairing fire damage. Furthermore, it is unquestionable based on the photographic evidence that the premises was untenantable after the fire. (Da1 – Da12) The Court found, based on the substantial damage, that the premises were untenantable. (3T 12:10-15)

[1] The remainder of the paragraph discusses how the rights of the parties hinge upon whether the fire was the cause of the Tenant. The parties agreed at trial that the fire was of an unknown origin. (1T 30:1-5)

Of note, Plaintiff, quite incredulously, denied that the premises were untenantable following the fire despite the destruction shown in the photos admitted as trial exhibits J4 and J5. (Da1 – Da12) (T1 23:7-11)

The Plaintiff urges this Court to turn their attention to Paragraph 42 of the Lease (Pa24). That paragraph states:

> The Tenant shall be responsible for all interior repairs and maintenance, including but not limited to, plumbing, electrical, heating system, mechanical, etc. Landlord shall be responsible for all roof, foundation, and structural repairs.

Essentially, Plaintiff posits that "interior repairs and maintenance" such as fixing a leaky pipe or repairing a heating unit is somehow akin to a wholesale fire loss. Adopting the Plaintiff's reading of the Lease, if a hurricane was to destroy the premises, Defendant would be responsible for the "repairs and maintenance" following the destruction. Plaintiff's argument is simply not credible. Further outlining the specious nature of Plaintiff's argument, Paragraph 15 speaks to the Tenant's rent obligations if the premises were made untenantable while Paragraph 42 is silent as to rent obligations. Clearly Paragraph 42 was not meant to address a fire which makes the premises untenantable. (Pa19, Pa24)

While Plaintiff believes Paragraph 42 somehow modifies Paragraph 15 of the Lease concerning fire damage, a more believable reading of the Lease would

lead to the conclusion that Paragraph 42 modifies Paragraph 5 of the Lease entitled "Repairs and Care". (Pa18)(T3 16:14-17:13) Even if this Court was inclined to perceive these paragraphs as an ambiguity, "it is only just that ambiguities in a lease which are reasonably susceptible of disparate interpretations should be resolved in favor of the tenant. Where doubt exists courts generally favor the tenant rather than the landlord." Porter & Ripa Assocs., Inc. v. 200 Madison Ave. Real Estate Grp., 167 N.J. Super. 48, 54 (Super. Ct. App. Div. 1979) The lower Court correctly found that Paragraph 45 of the Lease modified the Tenant's obligation to make general repairs under paragraph 5 of the Lease. Paragraph 45 did not modify the Landlord's obligation to repair the premises after a fire loss. (3T:16:3 – 17:7)

Also belying Plaintiff's claim that Defendant is responsible for fire loss is Paragraph 17 of the Lease which allows the Landlord to terminate the Lease if the Landlord cannot obtain "fire and other hazard insurance on the buildings and improvements. . .in an amount and in the form and from insurance companies acceptable to Landlord" (Pa19). One would have to wonder why the Landlord would have to obtain fire insurance if the Tenant were responsible for fire loss under the Lease as Plaintiff argues.

Lastly, Plaintiff interjected a new argument about insurance which was outside the scope of what was represented to the Court to be the issues decided

at trial. (Pb7; 1T 7:6 – 8:12) It is respectfully requested that this Court ignore this speculation and clear contradiction of what was represented to be the scope of the trial.

POINT TWO

IN THE EVENT THAT THIS COURT REVERSES THE JUDGMENT, THE CASE SHOULD BE REMANDED FOR FURTHER FACTFINDING.

Plaintiff requests a reversal of Defendant's judgment and an entry of judgment in favor of his client in the amount of $53,725.00. Plaintiff requests this although Judge Corriston specifically found that there were improper tax increases and late fees imposed by the Plaintiff. (T3 13:23 – 15:10) Further, Plaintiff has already admitted that the tax increases were improper. (Da20)

Following a May 9, 2024 phone conference with Judge Corriston[2], the Judge requested additional information regarding late fees and tax increases under the lease which were claimed as part of Plaintiff's damages. (T2 4:13 – 5:21) Defendant provided a supplemental submission to the Court outlining the errors made by Plaintiff in calculating his damages. (Da13) After being

[2] This May 9, 2024 transcript was omitted by Plaintiff and ultimately filed by Defendant after unsuccessfully asking Plaintiff three times to do so.

confronted with the improper assessment of tax increases as part of his damages, Plaintiff admitted same to be incorrect. (Da20)

For those reasons, in the event that the appeal is granted, this matter should be remanded for further factfinding as the sum submitted by Plaintiff as his damages is patently incorrect.

CONCLUSION

For all of the reasons set forth herein, it is respectfully requested that the appeal herein be denied in full.

LaBARBIERA & MARTINEZ

Dated: January 9, 2025

By: Richard LaBarbiera, Esq.
Attorney for Defendants, Clarita's Deli and Wendy Duarte-Osuna