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

« Citation DR. HARSHAD C. PATEL and
Data A.P. DIAGNOSTIC IMAGING, INC.

Plaintiffs-Appellants,

v.

HABIB AMERICAN BANK,

Defendant-Respondent.

September 2, 2014

Before Judges Simonelli and O'Connor.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-5020-12.

Kilpatrick Townsend & Stockton LLP, attorneys for appellants (Carl A. Salisbury, on the briefs).

Forman Holt Eliades & Youngman LLC, attorneys for defendant (Andrew J. Karas, on the brief).

PER CURIAM

Plaintiffs A.P. Diagnostic Imaging, Inc. (A.P. Diagnostic) and Dr. Harshad C. Patel (Patel)¹ appeal from two May 15, 2013 Law Division orders, which granted summary judgment to defendant Habib American Bank (HAB), dismissed the complaint with prejudice, and denied plaintiffs' cross-motion for summary judgment. We affirm.

We derive the following facts from evidence submitted by the parties in support of, and in opposition to, the summary judgment motions, viewed in the light most favorable to the non-moving party. Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013). Patel is the chief executive officer of A.P. Diagnostic. Since 2004, he has opened several business and individual bank accounts at HAB, and executed a deposit agreement for those accounts. HAB's deposit agreement contains two sections: one designating the account as an individual account,² joint account, or trust account owned for a "personal purpose," and the other designating the account as a sole proprietorship account, corporation account, or partnership account owned for a "business purpose."

On April 5, 2004, Patel, Devika Patel, and Anup H. Patel signed a deposit agreement for a checking account at HAB (the corporate account). They designated the account as a "corporation account" owned for a "business purpose," and designated A.P. Diagnostic as the account owner. A.P. Diagnostic's taxpayer identification number appears on the deposit agreement. The Patels each signed the deposit agreement and an accompanying corporate resolution authorizing the transaction on behalf of A.P. Diagnostic.

On September 9, 2006, Patel signed a deposit agreement for a checking account at HAB, which he designated as an "individual account" owned for a "personal purpose" (the individual account). He also designated himself as the account owner with the notation "(AP)" following his name, and he did not dispute that his social security number appears on the deposit agreement. Unlike the corporate account, only Patel signed the deposit agreement for the individual account, he signed it individually and not as an officer or representative of A.P. Diagnostics, and there is no corporate resolution authorizing the transaction on behalf of A.P.

Diagnostic. The deposit agreement permitted HAB to set off and withdraw funds from the individual account for any debt Patel owed the bank then or in the future, including a debt arising from a note.

In connection with the individual account, Patel also signed a telephone banking enrollment form, which identified the account as a "personal account." Patel signed the form individually, not as an officer or representative of A.P. Diagnostic.

Patel was also a principal of Ganesh Development, LLC (Ganesh). On August 21, 2007, Ganesh executed a promissory note to HAB in the amount of \$500,000. To secure payment of the note, Ganesh executed a mortgage on property located in Old Bridge. Patel executed a personal guaranty of payment of the note, which permitted HAB to retain and set off any money Patel had on deposit at HAB in the event of Ganesh's default. Ganesh defaulted in January 2010. In accordance with the personal guaranty, on April 26, 2011, HAB set off \$470,740.86 from the individual account.³

In January 2012, Patel and his wife filed a verified complaint against HAB in the Superior Court, Monmouth County, alleging breach of contract and conversion (the Monmouth County complaint).⁴ Patel signed a verification certifying, under penalty of punishment, that: he and his wife were "joint owners" of the individual account; the individual account had a balance of \$598,497.76 as of April 26, 2011; and Patel had an "ownership interest" in one-half of the balance, which "was available to HAB as a set-off in connection with [his] guaranty."

On April 13, 2012, plaintiffs instituted the present matter against HAB in the Superior Court, Middlesex County, alleging breach of contract, conversion, and fraud (the first Middlesex County complaint). Plaintiffs asserted that the individual account was a corporate account owned by A.P. Diagnostic, A.P. Diagnostic did not guarantee the note, and HAB improperly converted money from the individual account. Plaintiffs did not advise the court of the pending Monmouth County complaint in violation of Rule 4:5-1.

Patel and his wife filed a motion to dismiss the Monmouth County complaint, and HAB filed a cross-motion to transfer the matter to Middlesex County. After the transfer of the Monmouth County complaint to Middlesex County, plaintiffs voluntarily dismissed the first Middlesex County complaint. Plaintiffs then filed an amended complaint in Middlesex County, wherein they abandoned the claims raised in the Monmouth County complaint, and raised the

same claims they raised in the first Middlesex County complaint.

HAB filed a motion for summary judgment and plaintiffs filed a cross-motion for summary judgment. In granting HAB's motion and denying plaintiffs' motion, the trial judge determined the deposit agreement was "clear and unambiguous on its face," and the parol evidence rule barred the introduction of extrinsic evidence. The judge found that the deposit agreement for the individual account, which bore Patel's signature as an individual, confirmed the account was an individual account owned for personal purposes, not a corporate account owned for business purposes. This appeal followed.

On appeal, plaintiffs contend that because the notation "(AP)" appeared after Patel's name as the account's owner, there was an ambiguity and inconsistency in the deposit agreement that required the judge to consider extrinsic evidence to determine the parties' intentions with respect to ownership of the account. This contention is devoid of merit.

In reviewing a ruling on summary judgment, we apply the same legal standard as the motion court. Nicholas v. Mynster, 213 N.J. 463, 477-78 (2013). We consider, as the motion judge did, "whether the evidence . . . is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

"The interpretation of a contract is ordinarily a legal question for the court and may be decided on summary judgment unless there is uncertainty, ambiguity or the need for parol evidence in aid of interpretation. . . ." Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009) (citation and internal quotation marks omitted). Accordingly, the court interprets the terms of a contract "as a matter of law unless the meaning is both unclear and dependent on conflicting testimony." Ibid. (citation and internal quotation marks omitted). "When a trial court's decision turns on its construction of a contract, appellate review of that determination is de novo." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). "[We] give 'no special deference to the trial court's interpretation and look at the

contract with fresh eyes.'" Ibid. (quoting Kieffer v. Best Buy, 205 N.J. 213, 223 (2011)).

"In interpreting a contract, a court must try to ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd., supra, 404 N.J. Super. at 528 (citation omitted). However, a court must be careful not to make a better contract for the parties than the one they made for themselves. Kotkin v. Aronson, 175 N.J. 453, 455 (2003) (citations omitted). "[W]here the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written." J.L. Davis & Assocs. v. Heidler, 263 N.J. Super. 264, 271 (App. Div. 1993) (citations omitted).

"In general, the parol evidence rule prohibits the introduction of evidence that tends to alter an integrated written document." Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 268 (2006). As the Court explained

[Extrinsic] evidence is adducible only for the purpose of interpreting the writing – not for the purpose of modifying or enlarging or curtailing its terms, but to aid in determining the meaning of what has been said. So far as the evidence tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant.

[Id. at 269.]

A court may only rely on parol evidence to determine the parties' intent where a contract's language is ambiguous. Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008). "An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations. . . . To determine the meaning of the terms of an agreement by the objective manifestations of the parties' intent, the terms of the contract must be given their plain and ordinary meaning." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997) (quoting Kaufman v. Provident Life & Cas. Ins. Co., 828 F. Supp. 275, 283 (D.N.J. 1992), aff'd, 993 F.2d 877 (3d Cir. 1993)). Importantly, however, "[a] court should not torture the language of [a contract] to create ambiguity." Ibid. (second alteration in original) (quoting Stiefel v. Bayly, Martin and Fay of Conn., Inc., 242 N.J. Super. 643, 651 (App. Div. 1990)).

There is no ambiguity or uncertainty whatsoever in the deposit agreement for the

individual account. The deposit agreement clearly and unambiguously designates the checking account as an "individual account" owned by Patel for "personal purposes." Patel signed the deposit agreement individually and not as an officer or representative of A.P. Diagnostics, he did not dispute that his social security number appears on the deposit agreement, and there is no corporate resolution indicating the account was a corporate account. In addition, the deposit agreement explicitly permitted HAB to set off and withdraw funds from the individual account for the debt Patel owed the bank pursuant to his guaranty of the note executed by Ganesh. Accordingly, because the deposit agreement was clear and unambiguous, there was no need for the judge to consider extrinsic evidence.

Affirmed.

certify



1 We shall sometimes refer to A.P. Diagnostic and Patel collectively as plaintiffs.

2 The agreement states that an "individual account" is an account "owned by one person."

3 This amount represented the balance due of \$364,746.18; \$52,897.35 in accrued interest; \$29,179.69 in default interest; \$23,672.71 in attorney's fees and costs; and \$250.00 in late fees.

4 Plaintiffs did not mention the Monmouth County complaint in their merits or reply briefs, nor did they include a copy of the pleading in their appendix. HAB supplied the document to this court.

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