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ZEYTINIA XANADU, LLC, *Plaintiff,* v. TRIPLE FIVE GROUP, LTD.; AMEREAM, LLC AND ABC CORPS 1-10, *Defendants.*	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY DOCKET No. BER-C-117-15 CIVIL ACTION OPINION

Argued: July 10, 2015
Decided: August 3, 2015

Honorable Robert P. Contillo, P.J.Ch.

Christopher Farella, Esq., appearing on behalf of the plaintiff, Zeytinia Xanadu, LLC (Epstein Becker & Green, P.C.).

Gage Andretta, Esq. appearing on behalf of the defendants, Triple Five Group, LTD. and Ameream, LLC (Chiesa Shahinian & Giantomasi, P.C.).

I. Statement of the Case

This matter is before the court by way of a Motion to Dismiss the Complaint filed defendants on June 12, 2015. The matter was argued on July 10, 2015 and the court reserved decision.

The matter relates to leased property in the partially completed entertainment and retail complex previously known as the "Xanadu Project," and now known as the "American Dream at Meadowlands" (hereinafter "American Dream"). (Ex. A (hereinafter "Complaint") to the Certification of Christopher Farella, Esq. ("Farella Cert.")). Plaintiff Zeytinia Xanadu, LLC

("Zeytinia") is the company that purportedly holds the leasehold interest in dispute here. Defendant Triple Five Group, Ltd. ("TFG") is a shopping mall and hotel owner and operator, and is the present owner/developer of American Dream. Ameream LLC ("Ameream") is a special purpose entity owned and controlled by TFG, specifically created to serve as developer for the American Dream project.

A. Background of Lease & Complaint

In June 2002, the New Jersey Sports and Exposition Authority (NJSEA) began planning for a major redevelopment project at the Meadowlands Sports Complex, which currently exists in uncompleted and unoccupied form as American Dream. (Id. at ¶ 8). The ground lease for the Entertainment/Retail Component of the project and the rights to develop that component (hereinafter the "ERC Ground Lease") were transferred to ERC Meadowlands/Mills/Mack-Cali Limited Partnership in June 2005. (Id. at ¶ 10). Then, on November 22, 2006, the NJSEA consented to the assignment of the rights, titles, and interest in the ERC Ground Lease to ERC 16W Limited Partnership ("ERC 16W"). (Id. at ¶ 11).

On October 2, 2007, plaintiff Zeytinia Xanadu, LLC ("Zeytinia") entered into a lease agreement (the "Lease Agreement") with ERC 16W for property titled "Space number 41200" (the "Leased Premises"). (Ex. A, ("Lease Agreement") to the Certification of Gage Andretta, Esq. ("Andretta Cert.")). The Leased Premises were to be used solely as a first-class retail grocery and gourmet food market. (Complaint at ¶ 13). After experiencing funding problems, ERC 16W abandoned responsibility for the Entertainment/Retail Component on August 9, 2010. (Complaint at ¶ 19). In May 2011, TFG took over the American Dream project, and Ameream was assigned all interests in the ERC Ground Lease. (Id. at ¶ 20).

Between 2013 and 2014, Ameream denied Zeytinia access to the Leased Premises, and prevented Zeytinia from inspecting the contents of the premises, and from ensuring that equipment previously installed by Zeytinia remained on the premises. (Id. at ¶¶ 21–22). Section 3.2(b) of the Lease states that "[Zeytinia] may . . . subject to the Landlord's reasonable rules and regulations . . . enter the Leased Premises during normal working hours during the course of Landlord's work for the purposes of inspecting the Leased Premises and making measurements." (Lease Agreement). The Lease further permits Zeytinia to "perform all work of whatever nature . . . and all other related work necessary to prepare for the opening to the public of the Leased Premises." (Lease Agreement at § 3.3).

On April 20, 2015, Zeytinia filed a Complaint seeking (1) declaratory judgment adjudging and declaring that a binding and enforceable lease exists between the parties and that Defendants are required to recognize and abide by the lease, and (2) specific performance compelling Defendants to undertake all actions reasonably necessary to enforce the lease or alternatively, to enforce the economic and business terms that otherwise would have been applicable to the contemplated transaction. In the alternative, Zeytinia alleges breach of contract and estoppel claims.

B. Terms of the Lease and Ownership of Zeytinia

At the time Zeytinia and ERC 16W entered into the Lease, Zeytinia consisted of three (3) members: Adem Arici, Omer Ipek, and Attila Yayla (the "Original Owners"). (Lease Agreement at p. 4; Ex. B to Andretta Cert.). On October 7, 2007, the Original Owners executed a Guaranty of Lease (the "Guaranty") providing that each would collectively, jointly, and severally serve as a guarantor under the Lease. (Ex. E to Andretta Cert.; Lease Agreement at p. 4). The Guaranty requires that the Original Owners maintain a collective net worth of $20 million. (Ex. E to

Andretta Cert. at ¶ 7). Pursuant to the Lease, Zeytinia's failure to perform or observe any condition of the Lease shall be an event of default, and the failure to cure such default entitles the Landlord to terminate the Lease. (Lease Agreement at § 14.1). The Lease further provides, "if [Zeytinia] is a limited liability company, the sale, issuance or transfer of the controlling member shall be deemed a prohibited transfer hereunder." (Id. at § 11.1(b)). Also, the Lease contains a non-waiver provision that reads:

> no failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy available upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any term, covenant, agreement, condition or limitation.

(Id. at § 20.12).

On October 29, 2008, Alper Ture ("Ture") purchased a 25% ownership interest in Zeytinia from the Original Owners. (Ex. B to Andretta Cert.). On October 29, 2010, following an action filed by Ture in the Supreme Court of New York, Ture and the Original Owners entered into a settlement, which resulted in Ture's acquisition of the remaining 75% interest in Zeytinia. (Ex. C to Andretta Cert.). Ture is now the sole owner/member of Zeytinia. (Ibid.). Ture began contacting alleged Ameream representatives in 2011 to discuss the project, but did not receive any responses from the individuals he contacted. (Certification of Alper Ture ("Ture Cert.") at ¶¶ 4–8). Ture then personally visited the site of the project on October 6, 2011, and spoke with Jill Renslow ("Renslow"), Vice President of Marketing. (Id. at ¶ 9). Renslow denied Ture access to the Leased Premises and told Ture to have his lawyer contact her to discuss the project. (Id. at ¶ 12).

On October 11, 2011, Thomas Luz, Esq., Ture's attorney, sent Renslow a letter naming Ture as the 100% owner of Zeytinia, and requesting a meeting to discuss issues regarding the

project. (Ex. 1 to Certification of Thomas J. Luz, Esq. ("Luz Cert.")). Although Renslow responded to Mr. Luz's letter and indicated she would forward his request to the appropriate persons, there was never any meeting, and Renslow stopped responding to Mr. Luz. (Id. at ¶¶ 9–10). Then, on November 18, 2013, Mr. Luz contacted Jeremy Edwards, an onsite manager, who agreed to set up a meeting with Mr. Luz, himself, and an unnamed individual. (Exs. 4–5 to Luz Cert.). In Mr. Luz's initial email, he stated he represented "Zeytinia Xanadu, and its owner Allen Ture." (Ex. 4 to Ture Cert.). Edwards, however, cancelled the meeting when the unnamed individual could not attend, and there was no further correspondence between Mr. Luz and Edwards from that point forward. (Exs. 5–7 to Luz Cert.). Finally, Mr. Luz spoke with Alan Glazer, Esq., an attorney with the American Dream project, on April 25, 2014. (Luz Cert. at ¶ 18). At that time, Mr. Luz certifies that Mr. Glazer informed him that Zeytinia's lease had been invalidated in a foreclosure process. (Ibid.). Mr. Luz attempted to further discuss the Lease with Mr. Glazer by email and phone, but as of May 30, 2014, Mr. Luz received no response. (Id. at ¶¶ 19–23). Zeytinia then filed its Complaint on April 20, 2015, and Defendants filed their motion to dismiss on June 12, 2015.

II. Defendants' Argument

Defendants argue the court should dismiss the Complaint for failure to state a claim. (Defendants' Brief at p. 4). Defendants contend the Lease relied on the expertise of the prior individual owners, since it specifically prohibits the unauthorized transfer of ownership in an LLC, including Zeytinia. (Id. at p. 5). Since there has been a 100% ownership change in Zeytinia since the execution of the Lease, Defendants contend the Lease is unenforceable, and Zeytinia cannot seek relief under the provisions of the Lease. (Ibid.). In the alternative, Defendants seek summary judgment against Zeytinia due to Defendants' use of documents outside the pleadings, specifically

the documents from the Supreme Court of New York action that show Zeytinia is under new ownership. (Id. at pp. 5–6). Additionally, Defendants contend the Original Owner's indictments have in effect eliminated the Guaranty, which requires the Original Owners maintain a collective net worth of $20 million. (Id. at p. 6). Lastly, Defendants argue the court should dismiss TFG as a party to the lawsuit because it is not the purported landlord under the lease. (Id. at p. 7).

III. Plaintiff's Opposition

First, Zeytinia argues equity demands the court deny dismissal of the specific performance and declaratory judgment claims to enforce the validity of the Lease because the doctrines of laches and waiver bar Defendants from asserting a breach of the Lease. (Opposition Brief ("Opp. Brief") at p. 7). Zeytinia contends the court should deny Defendants' attempt to use the change in control of Zeytinia or the Guaranty as a way to invalidate the Lease on the basis of the doctrine of laches because Defendants had several opportunities over the course of nearly four (4) years to assert the right and terminate the Lease based on the change of control provision. (Id. at p. 8). Zeytinia asserts it would be inequitable and manifestly unfair for the court to allow Defendants to raise their arguments regarding ownership at this time, when they had the ability to do so multiple times in the past. (Id. at p. 9).

Next, Zeytinia argues the court should deny Defendants' motion because Defendants' failure to notify Zeytinia of any alleged breach of the Lease until this application was a waiver of that defense. (Id. at p. 10). Defendants were on notice of the change of control as early as July 2011, when Ture began reaching out to American Dream representatives. (Id. at pp. 10–11). Zeytinia contends Defendants acted as if the Lease was extant for years after Ture gained ownership of Zeytinia, by promising to arrange meetings with TFG and Ameream executives to discuss the Lease. (Id. at p. 11). Zeytinia further contends that, had Defendants given Zeytinia

notice that change in the ownership invalidated the Lease, Zeytinia could have had the ability to cure the default and fully comply with its obligations. (Opp. Brief at p. 12). Finally, Zeytinia argues Defendants' willful refusal to provide notice of default under the Lease, and denial of Zeytinia's access to the Leased Premises, is without reason and in bad faith. (Id. at p. 12). As such, Zeytinia contends the doctrine of unclean hands bars Defendants from raising the change of ownership as a defense to this action, and asserts that dismissal of this action would be unjust and inequitable. (Id. at pp. 12–14).

IV. Defendants' Reply

First, Defendants reassert that TFG is not a proper party to this action, as it is not, and has never been alleged to be, the landlord under the Lease Agreement. (Reply Brief at p. 1). Therefore, Defendants contend the court should dismiss all claims against TFG. (Ibid.). Second, Defendants argue Zeytinia's admitted breach of the Lease warrants dismissal of the complaint in this action. (Id. at p. 2). Defendants contend Zeytinia cannot raise its waiver argument because the Lease contains a non-waiver provision. (Ibid.). Furthermore, Defendants contend it never took any decisive act waiving any rights it would have under the Lease. (Id. at p. 4). Ameream then claims it had no reason to declare Zeytinia in breach because it had taken the position that there was never an enforceable lease between Zeytinia and Ameream, only between Zeytinia and ERC 16W. (Ibid.).

Next, Defendants argue Zeytinia's laches argument fails because Zeytinia has not alleged any prejudice resulting from any conduct of Ameream. (Reply Brief at p. 5). Defendants contend even if Zeytinia was aware of the breach, it would not have been able to cure the breach because the Lease does not allow for unauthorized transfers of ownership, nor does the Guaranty provide Zeytinia the unilateral right appoint substitute guarantors. (Id. at pp. 5–6). Defendants further

contend Zeytinia's unclean hands argument is unpersuasive and improper because Defendants are not the parties seeking equitable relief, Zeytinia is. (Id. at p. 6). Defendants assert unclean hands only applies as a defense against a party seeking equity, and bars that party from equitable relief if it has acted inequitable as well. (Id. at p. 7). Defendants then contend Zeytinia is the party with unclean hands, as it is the party who came to court seeking equitable relief under a Lease Agreement that it breached. (Ibid.). In the alternative of Defendants' motion to dismiss for failure to state a claim, Defendants argue the court should grant summary judgment against Zeytinia based on Zeytinia's unauthorized change of ownership in violation of the Lease Agreement. (Id. at pp. 7–8).

V. Analysis

A. Standard of Review

A defendant may move to dismiss a plaintiff's complaint for failure to state a cause of action under R. 4:6-2(e). On a motion under R. 4:6-2(e), the court must search the complaint in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken. See Printing Mart v. Sharp Electronics, 116 N.J. 739, 746 (1989). The court must afford the plaintiff every reasonable inference of fact. Ibid. If the complaint states no basis for relief and discovery would not provide one, dismissal of the complaint is appropriate. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005). But, if a generous reading of the allegations "merely suggests a cause of action," the complaint will survive the motion. F.G. v. MacDonell, 150 N.J. 550, 556 (1997). A motion to dismiss for failure to state a claim may be addressed to specific counts of the complaint, and the court, on a motion to dismiss the entire complaint, has the discretion to dismiss only some of the counts. See Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997), certif. den. 153 N.J. 405 (1998)

(dismissing contract and fraud claims, but sustaining intentional interference and promissory estoppel theories).

If the court relies on any materials outside of the pleadings, a motion to dismiss for failure to state a cause of action automatically converts to a summary judgment motion. R. 4:6-2(e); Lederman v. Prudential Life Ins., 385 N.J. Super. 324, 337 (App. Div.), certif. den. 188 N.J. 353 (2006). But, a motion to dismiss on the pleadings does not convert into a summary judgment motion when a party files, and the court relies on, documents referred to in the pleadings. See N.J. Sports Prods., Inc. v. Bostick, 405 N.J. Super. 173, 178 (Ch. Div. 2007); see also Dickerson &Sons, Inc. v. Ernst & Young, LLP, 361 N.J. Super. 362, 365 n.1 (App. Div. 2003) (reasoning that the courts may consider "a document integral to or explicitly relied upon in the complaint" without converting a motion to dismiss into a summary judgment motion), aff'd, 179 N.J. 500 (2004). Courts will also consider exhibits attached the complaint and matters of public record in consideration of a motion to dismiss. See Banco, supra, 184 N.J. at 183.

B. Validity of the Lease Agreement

Zeytinia filed the Complaint in this action seeking declaratory relief adjudging Zeytinia's rights under the Lease Agreement, and compelling defendants TFG and Ameream to fulfill their rights under the Lease. TFG and Ameream argue they have no obligations under the Lease because Zeytinia breached the Lease, and thus Zeytinia has no cause of action against them. As such, the issue here is whether Zeytinia's change of ownership breached the Lease Agreement so as to release Defendants from any obligations to Zeytinia under the Lease. The court finds Zeytinia did breach the Lease, and that the agreement between the parties is no longer valid. Accordingly, the court dismisses Zeytinia's Complaint for failure to state a cause of action.

A material breach by either party to a bilateral contract excuses the other party from rendering any further contractual performance. See Magnet Res., Inc. v. Summit MRI, Inc., 318 N.J. Super. 275, 285 (App. Div. 1985); see also Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) ("[w]hen there is a breach of a material term of an agreement, the non-breaching party is relieved of its obligations under the agreement."). A material breach occurs when one party fails to perform its obligations to such an extent that the other party is denied the benefit of its bargain. See, Magnet Res., supra, 318 N.J. Super. at 286.

In the present case, Section 11.1(b) of the Lease Agreement expressly states, "if Tenant is a limited liability company, the sale, issuance or transfer **of the controlling member** shall be deemed a prohibited transfer hereunder." There is no dispute that at the time Zeytinia executed the Lease with ERC 16W on October 2, 2007, the owners of Zeytinia were Adem Arici, Omer Ipek, and Attila Yayla. On October 29, 2008, Alper Ture purchased a 25% interest in Zeytinia. Then, after suing original owners in the Supreme Court of New York, Ture entered into a settlement with the Original Owners on October 29, 2010, which resulted in his acquisition of the remaining 75% of Zeytinia. At that point, Ture became the sole owner and controlling member of Zeytinia. The transfer of ownership and control to Ture was a direct breach of Section 11.1(b) of the Lease Agreement.

Zeytinia's breach was a material breach of the Lease Agreement. ERC 16W executed the Lease with the understanding that Arici, Ipek, and Yayla would operate a first-class retail grocery and gourmet food market on the Leased Premises. The court finds an uncontroverted fundamental understanding and agreement existed between Zeytinia and ERC 16W that the Original Owners would remain in control of the business operating on the Leased Premises, and that the business would be run in the manner that Arici, Ipek, and Yayla intended to run it. This is evidenced by

the Guarantor provision in the Lease, which names Arici, Ipek, and Yayla as the original guarantors, and states that any substitute guarantor must have the same net worth as the original guarantors, must operate or own at least four (4) stores comparable in size and type of business as Zeytinia, and must be "under the day-to-day management of the initial Guarantor . . . ." This is clear evidence that the parties to the Lease intended the Original Owners to own and/or control the business operating on the Leased Premises, and that is no longer the case here. ERC 16W, and its successors and assigns, no longer receive the benefit of the bargain with Ture as the proposed substitute owner and operator of Zeytinia. Ture was not an original guarantor, nor was he an owner at the date of the execution of the Lease. Furthermore, it is clear that Ture is not under the management of any of the Original Owners, as he gained full control of Zeytinia due to a settlement of a lawsuit against those individuals. Therefore, Ture's takeover of ownership of Zeytinia, which is a breach of the Lease Agreement, invalidates the Lease and extinguishes any rights Zeytinia had under the Lease.

C. Laches, Waiver, and Unclean Hands

The next issue to be decided after the determination that Ture's ownership of Zeytinia breached the Lease Agreement is whether the doctrines of laches, waiver, or unclean hands bars TFG and Ameream from asserting that the breach invalidates the Lease. The court finds that they do not.

First, the doctrine of laches does not apply here. Laches is an equitable doctrine that a party can raise as an affirmative defense, and that precludes relief when there exists an "unexplainable and inexcusable delay in exercising a right, which results in prejudice to another party." Fox v. Millman, 210 N.J. 401, 417 (2012); County of Morris v. Fauver, 153 N.J. 80, 105 (1998). The doctrine is available when the delaying party had an opportunity to assert its right,

and the prejudiced party acted in good faith in believing that the right had been abandoned. See Fox, supra, 210 N.J. at 418. The most important factors to consider when determining whether the doctrine applies are the "length of delay, reasons for the delay, and changing conditions of either or both parties during the delay." Lavin v. Hackensack Bd. of Ed. 90 N.J. 145, 151 (1982). In the instant action there is no evidence of prejudice to Zeytinia that would warrant preclusion of the invalidation of the Lease Agreement based on the time it took Defendants to assert the breach of the Lease.

Zeytinia does not allege it took any action in reliance of Defendants' failure to assert a breach between the transfer of ownership to Ture and the instant action. Nor does Zeytinia plead any change in its position as a result of any reliance on Defendants' failure to assert a breach of the Lease. Indeed, Zeytinia was aware that it did not have access to the Leased Premises as early as October 2011, when Renslow denied Ture access to the Premises. Furthermore, Zeytinia has no ability to cure the breach, and had no ability to cure the breach at the time of the breach. The only conceivable remedy available to Zeytinia to cure the breach is a transfer of ownership and control from Ture back to the Original Owners, something not pled, not likely to happen, and of no moment as to the present application. Zeytinia does not plead or allege any prejudice whatsoever to Zeytinia based on Defendants' failure to formally notify Ture of the breach of the lease at the time Defendants became aware of Ture's ownership in October 2011. As long as the parties are in the same condition, it does not matter whether one presses a right promptly or slowly, within limits allowed by law. See Allstate Ins. Co. v. Howard Sav. Inst., 127 N.J. Super. 479, 489–90 (Ch. Div. 1974). Zeytinia remains in the same condition today as it was on October 29, 2010, when Ture gained ownership and control of the company, and on October 6, 2011, when

Ture first advised Defendants' representative that he was the new owner of Zeytinia. Therefore, the doctrine of laches does not apply.

Zeytinia then argues Defendants waived their right to rely on Zeytinia's breach to invalidate the Lease Agreement. The Lease Agreement, however, included a non-waiver provision, that expressly states:

> no failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy available upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any term, covenant, agreement, condition or limitation.

Pursuant to the above provision, Zeytinia cannot raise any waiver argument as to Defendants' silence on the breach of the Lease Agreement until the filing of this action. Furthermore, waiver requires "a clear, unequivocal, and decisive act of the party showing such a purpose or acts amounting to an estoppel on [its] part." W. Jersey Title & Guaranty Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958). Waiver is "a voluntary act, and implies an election by the party to dispense with something of value, or to forego some advantage which he might at his option have demanded and insisted on." See Allstate Ins. Co., supra, 127 N.J. Super. at 487–88. Whenever a party to a contract consistently acts in such a way as to indicate to the co-contractor that it does not intend to hold the latter to a particular provision of the agreement, that party waives its right to enforce that particular provision. See Schlegel v. Bott, 93 N.J. Eq. 607, 610 (1922). The court finds no voluntary act on behalf of Defendants that implied their election to dispense with their right to invalidate the Lease Agreement as a result of the breach.

First, Zeytinia does not plead that Ture based his decisions to purchase his original 25% interest or to enter into the settlement that transferred to him the remaining 75% interest in Zeytinia

on any representations or actions on behalf of Defendants that the Lease would remain in effect subsequent to Ture's takeover. Zeytinia conceded at oral argument that Ture acquired his interests in Zeytinia absent any influence from or reliance on any voluntary acts made by Defendants, and that Ture did not seek prior approval of his acquisition of Zeytinia from the lessor at the time of his acquisition. As such, Zeytinia cannot base its waiver argument on Ture's acquisition of Zeytinia, because there is no evidence that Defendants, or any predecessor under the Lease, ever took any voluntary act to condone Ture's acquisition of Zeytinia or to promise the continued validity of the Lease prior to said acquisition.

Additionally, the promise of meetings with Ture to discuss the American Dream project cannot, even on a motion to dismiss, rise to the level of clear and unequivocal acts constituting a waiver of Zeytinia's breach or a waiver of the provision in the Lease that prohibits a change of ownership. The court cannot find that Ture's disclosure to American Dream representatives that he was the owner of Zeytinia, followed by complete inaction on behalf of Defendants other than promises to set up meetings to discuss the project is a waiver of Defendants' right to assert a breach of the Lease. Furthermore, the mere absence of a formal termination notice before Zeytinia ever raised the issue of its rights under the Lease cannot be considered a waiver of Defendants' right to assert the invalidity of the Lease based on Zeytinia's material breach. Waiver requires a voluntary act that clearly indicates that the subject party chose to forego its rights, and the pleadings fail to illuminate even a scintilla of evidence to that effect. Therefore, Zeytinia's waiver argument is unavailing.

Lastly, Zeytinia argues Defendants come into this action with unclean hands, and are thus barred from asserting the breach of the Lease Agreement as a defense to this action. Courts may invoke the doctrine of unclean hands and deny equitable relief to a party that is itself guilty of

inequitable conduct in reference to the matter in controversy. See Hageman v. 28 Glen Park Assoc., LLC, 402 N.J. Super. 43, 48 (Ch. Div. 2008). Unclean hands may exist when a party breaches its duty by engaging in acts of bad faith, fraud, or unconscionable conduct in commercial transactions. See Brunswick v. Route 18 Shop. Ctr., 182 N.J. 210, 222–23 (2005). In Brunswick the court found unclean hands when a landlord failed to provide notice to that a tenant was in default of a lease renewal option when the tenant gave notice of its intent to renew, but did not make the requisite payment, believing it was due at closing. Id. at 220. The landlord was aware of tenant's non-payment for two (2) years, but said nothing until the deadline for payment passed, at which time the landlord announced that the option had passed. Ibid. The situation here is unlike Brunswick. Zeytinia's breached the Lease the moment Ture took control of the company. No notice to Zeytinia from the Defendants could change that. In Brunswick, the landlord was aware that the tenant intended to exercise the option, and was aware that the tenant had not remitted the proper payment, but still actively failed to notify the tenant of its failed payment until after the landlord could assert that the time to purchase the option had passed. It was the actions of the landlord to lull the tenant into believing it had exercised the option, just to then notify the tenant that it did not exercise the option, that the court found to be consciously evasive and in bad faith. Id. at 231. The court does not find the same evasive or underhanded conduct to be alleged here. Therefore, the doctrine of unclean hands does not preclude Defendants from raising the breach of the Lease Agreement as a defense to this action.

VI. Conclusion

For the foregoing reasons, the court grants Defendants' motion to dismiss the complaint. An Order accompanies this decision.