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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3265-15T1

NAN JIN SUH KIM, SUK CHANG SUH,  
and SC & NJ SUH REALTY LIMITED  
LIABILITY COMPANY,

Plaintiffs-Appellants,

v.

REDSTONE TREMATORE WESTAMPTON,  
LLC, BRIAN TREMATORE,  
TREMATORE WESTAMPTON, LLC,  
MARQUIS REALTY MANAGEMENT,  
LLC, MARQUIS REALTY HOLDING  
COMPANY, LLC, REDSTONE RIDGE,  
LLC, and CHRISTOPHER SMARGISSO,

Defendants-Respondents.

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Argued October 31, 2017 — Decided November 27, 2017

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Docket No. L-  
1181-15.

Stacey E. Boretz argued the cause for  
appellants (Lindabury, McCormick, Estabrook &  
Cooper, PC, attorneys; Peter M. Burke, on the  
brief).

Josiah Contarino argued the cause for respondents Redstone Ridge, LLC and Christopher Smargisso (Archer & Greiner, PC, attorneys; Michael S. Horn, of counsel and on the brief; Mr. Contarino, on the brief).

Mara P. Codey argued the cause for respondents Brian Trematore, Trematore Westampton, LLC, Marquis Realty Management, LLC, and Marquis Realty Holding Company, LLC (Mandelbaum Salsburg, PC, attorneys; Ms. Codey, on the brief).

PER CURIAM

Plaintiffs appeal from two June 12, 2015 orders dismissing their complaint for failure to state a claim. For the reasons that follow, we affirm.

I.

The following facts are taken from the record. On May 22, 2012, plaintiffs Nan Jin Suh Kim and Suk Chang Suh entered into a purchase and sale agreement (PSA) with defendant Redstone Trematore Westampton, LLC (Redstone) to acquire a commercial property located in Westampton.

On July 18, 2012, the parties executed an amendment permitting Kim and Suh to assign the PSA to their company, Suh Realty, the ultimate purchaser. On September 28, 2012, Suh Realty purchased the property. The purchase was subject to a written lease agreement between Redstone and TLE Westampton, LLC dated June 15, 2010.

On September 28, 2012, in conjunction with the closing of Suh Realty's purchase of the property, Redstone, as assignor, and Suh Realty, as assignee, executed an assignment and assumption of lease agreement (assignment).

The lease provided for Redstone to pay ComRealty, LLC, the broker who produced the lease, a total commission of \$100,000 with "fifty percent [] payable upon the issuance of the CO [certificate of occupancy] and fifty percent [] upon the twelfth [] month of the Lease Term." Accordingly, the first payment was due in March 2012, and the second payment was due in March 2013.

Section 14.1(b) of the lease did not require payment of the second half of the commission until March 2013. However, section 14.1(c) of the lease accelerated the second payment: "In the event the Leased Premises are conveyed to a third party, any unpaid portions of the Commission shall be due and payable on the closing date of the conveyance." The lease also provided:

In the event of any sale of the Leased Premises by Landlord, Landlord shall be entirely freed and relieved of all liability under all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission, occurring after the consummation of such sale; and the purchaser at such sale or any subsequent sale of the Leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and such purchaser, to have assumed and agreed to carry out any and

all of the covenants and obligations of  
Landlord under this Lease.

The Assignment provided:

C. The Agreement requires Assignor to assign  
to Assignee all of Assignor's right, title and  
interest in the Lease and requires Assignee  
to assume Assignor's obligations under the  
Lease.

2. Assignor agrees that it shall be  
responsible for the discharge or  
performance of any duties or obligations  
to be performed or discharged by Assignor  
as Landlord under the Lease prior to the  
date hereof, but Assignor shall not be  
responsible for the discharge or  
performance of the duties or obligations  
to be performed or discharged by Assignor  
as Landlord under the Lease after the  
date hereof.

3. Assignee hereby assumes and agrees to  
perform all of the terms, covenants and  
conditions of the Lease on the part of  
Assignor required to be performed by  
Landlord thereunder, from and after the  
date hereof (but not those arising or  
required to be performed prior thereto).

On September 28, 2012, the parties closed on the property.  
Pursuant to the lease, ComRealty, LLC's second commission payment  
became due on that date.

Suh Realty failed to pay the \$50,000 commission, alleging it  
was Redstone's obligation to make the payment at closing. On  
February 21, 2013, ComRealty sent notice to Suh Realty demanding  
payment.

Plaintiffs filed a complaint in the Law Division alleging breach of contract, asserting it was Redstone's obligation to make the commission payment. The complaint further asserted fraudulent transfer and veil piercing claims, and sought to impose liability against defendants Brian Trematore and Christopher Smargisso on these grounds. Defendants filed motions to dismiss for failure to state a claim. The motion judge granted defendants' motions to dismiss and determined the plain language of the lease and assignment obligated plaintiffs to pay the commission. This appeal followed.

## II.

We recite our standard of review. "On appeal, we engage in a de novo review from a trial court's decision to grant or deny a motion to dismiss filed pursuant to Rule 4:6-2(e)." Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div. 2017) (citing Rezem Family Assoc., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011)). When a court grants a party's motion to dismiss for failure to state a claim "[w]e approach our review of the judgment below mindful of the test for determining the adequacy of a pleading: whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing Valentzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). "In reviewing a complaint dismissed under Rule 4:6-

2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Ibid. (citation omitted). "However, a reviewing court 'searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Ibid.

"[T]he Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Ibid. (citing Somers Constr. Co. v. Bd. of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961)). "For purposes of analysis plaintiffs are entitled to every reasonable inference of fact." Ibid. (citing Indep. Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956)). "The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid.

### III.

Plaintiffs contend defendants "had a clearly defined obligation to pay the \$50,000 commission to ComRealty." They argue pursuant to section 14.1(c) of the lease, the second commission installment became "due and payable on the closing date of the conveyance." We disagree.

"A contract is an agreement resulting in obligation enforceable at law. . . . To be enforceable as a contractual undertaking, an agreement must be sufficiently definite in its terms that the performance to be rendered by each party can be ascertained with reasonable certainty." W. Caldwell v. Caldwell, 26 N.J. 9, 24-25 (1958) (citing Friedman v. Tappan Dev. Corp., 22 N.J. 523, 531 (1956)). "The polestar of contract construction is to discover the intention of the parties as revealed by the language used by them." Karl's Sales & Serv. v. Gimbel Bros., 249 N.J. Super. 487, 492 (1991).

"Generally, the terms of an agreement are to be given their plain and ordinary meaning." M.J. Paquet v. N.J. DOT, 171 N.J. 378, 396 (2002). "[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." Karl's Sales, 249 N.J. Super. at 493 (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)); see Cty. of Morris v. Fauver, 153 N.J. 80, 103 (1998) (citation omitted).

The courts may not "remake a better contract for the parties than they themselves have seen fit to enter into, or to alter it for the benefit of one party and the detriment of the other." Ibid. (citing James v. Fed. Ins. Co., 5 N.J. 21, 24 (1950)). "A court has no power to rewrite the contract of the parties by

substituting a new or different provision from what is clearly expressed in the instrument." E. Brunswick Sewerage Auth. v. E. Mill Assocs., Inc., 365 N.J. Super. 120, 125 (App. Div. 2004) (citations omitted).

Here, the assignment stated:

Assignee hereby assumes and agrees to perform all of the terms, covenants and conditions of the Lease on the part of Assignor required to be performed by Landlord thereunder, from and after the date hereof (but not those arising or required to be performed prior thereto).

The motion judge concluded:

The Assignment is dated September 28, 2012, the same date the second commission payment became due to ComRealty under the Lease. Accordingly, as the second commission payment was due on the date of the closing – which was the day Suh Realty assumed its obligations under the Lease – and not prior to that date, it is undisputed that the obligation to pay the second installment for the commission was none other than Suh Realty's. Contrary to Plaintiff's argument that Defendants' focus [is] on the wrong assignment provision – and should focus on paragraph 2 – the two paragraphs are not mutually exclusive. Paragraph 2 specifies the assignor would not be responsible for the duties or responsibilities under the Lease after September 28, 2012. Paragraph 3 further narrows the scope of the assignor's obligations by placing those obligations upon the assignee for the date of the transaction. Accordingly, Suh Realty's complaint is dismissed pursuant to [Rule] 4:6-2(e), as it has failed to plead a cause of action upon which relief may be granted.



Our de novo review leads us to the same conclusion as the motion judge. Plaintiffs' complaint could only proceed if defendants were responsible for payment of the \$50,000 commission. The plain language of the contract indicates plaintiffs were responsible for payment of the commission. Therefore, the motion judge properly dismissed plaintiffs' complaint for failure to state a claim.

#### IV.

Plaintiffs contend "Redstone was just one entity among many that Smargisso and Trematore intentionally set up to shield themselves and hide their assets." Therefore, plaintiffs assert the motion judge should not have barred them from asserting their fraudulent conveyance and veil piercing claims by dismissing the complaint.

Because the plain language of the lease and assignment demonstrate Suh Realty was obligated to pay the second \$50,000 commission payment, we do not reach the fraudulent conveyance and veil piercing arguments. These arguments, along with the argument the motion judge erred by dismissing their claim for punitive damages, lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION