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OF THE COMMITTEE ON OPINIONS

CENTRAL BERGEN PROPERTIES,  
Plaintiff(s),  
vs.  
SHAF INTERNATIONAL, INC.,  
Defendant  
And  
SHAF INTERNATIONAL, INC.,  
Third Party Plaintiff,  
vs  
ONYX EQUITIES, LLC,  
Third Party Defendant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-1043-17

CIVIL ACTION

OPINION

**Argued: March 29, 2018**

**Decided: March 29, 2018**

**Honorable Robert C. Wilson, J.S.C.**

Anthony DelGuercio, Esq., appearing for the Plaintiff Central Bergen Properties,  
(Gaccione Pomaco, P.C.).

Mercedes Diego, Esq appearing for the Defendant Shaf International Inc., (Cohn Lifland  
Pearlman Herrmann & Knopf LLP)

Leah Kelman, Esq. appearing for the Defendant Onyx Equities, LLC, (Herrick, Feinstein  
LLP)

## **FACTUAL BACKGROUND**

**THIS MATTER** arises from a lease entered into by Central Bergen Properties (“Plaintiff”) and Shaf International, Inc. (“Shaf”). The Plaintiff is the owner of property located at 141 Lanza Avenue, Garfield, New Jersey. On May 9, 2014 Onyx Equities LLC (“Onyx”) was appointed as rent receiver for 141 Lanza Avenue pursuant to a Court Order in the matter of Wells Fargo Bank, N.A. v. Central Bergen Properties and Anthony V. Pugliese, III in the United States District Court for the District of New Jersey. That appointment authorized Onyx to negotiate and enter into new leases, or review and modify current leases with tenants at the 141 Lanza Avenue property.

On March 27, 2015 Onyx entered into a lease as the receiver of the property with Shaf to lease 77,749 square feet of Building One and a portion of Building 2 at 141 Lanza Ave. Directly beneath the leased building is a basement area of about 72,000 feet. In the “Summary of the Lease” the property is described as “Approximately 77,749 square feet in Building One and a portion of Building Two (including the appurtenant 2 bay interior dock) within Central Bergen Industrial Park, 141 Lanza Avenue, Garfield, New Jersey, as further depicted in Exhibit A hereto.” The attached exhibit A highlighted the rental property. Exhibit A did not highlight the basement portion of the property.

On November 30, 2015 an order terminating Onyx’s receivership over the property was entered in the District Court matter. Afterwards, Central Bergen, having resumed their ownership of the property, observed that Shaf was utilizing the basement of the rental property. Neither Onyx nor the Plaintiff executed a subsequent amendment or modification to the lease. The base rent of for the property under the lease agreement was calculated using the 77,749 square foot value. On September 16, 2016 the Plaintiff Central Bergen Properties served a Notice to Cease upon Defendant Shaf. This litigation grew out of the dispute over the use by Defendant Shaf of the basement area of the rental property.

There are currently three motions for summary judgment before this Court. First, Onyx Equities has moved for summary judgment, arguing that they cannot be liable as a court appointed receiver of the property, and that each of the claims against it fail as a matter of law. Central Bergen Properties filed a cross motion for summary judgment, also arguing that Onyx Equities cannot be held liable. Finally, Central Bergen Properties filed a second motion for partial summary judgment and to turn over funds.

For the reasons stated below, Onyx Equities' motion for summary judgment is **GRANTED**, Central Bergen Properties cross motion for summary judgment is **GRANTED**, and Central Bergen Property's motion for summary judgment and to turn over funds is **DENIED**.

#### **SUMMARY JUDGMENT STANDARD**

The New Jersey procedural rules state that a court shall grant summary judgment "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." N.J.S.A. § 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under N.J.S.A. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on N.J.S.A. § 4:37-2(b) or N.J.S.A. § 4:40-1, or a judgment notwithstanding the verdict under N.J.S.A. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be

considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of N.J.S.A. § 4:46-2.” Id. at 540.

### **DECISION**

First, this Court considers Onyx Equities’ motion for summary judgment. Here, where the moving party is a court appointed receiver, being sued over the actions which they allegedly took during their tenure administrating the rental property, the motion for summary judgment must be granted. In the context of court appointed receivers, the United States Supreme Court has explained “Actions against the receiver are in law actions against the receivership, or the funds in the hands of the receiver, and his contracts, misfeasances, negligences and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands.” McNulta v. Lochridge, 141 U.S. 327, 332, (1891). Thus, lawsuits against the receiver are in fact lawsuits against the receivership, and a court-appointed receiver cannot be personally liable for the contracts, misfeasances, negligences, and liabilities which accrue during the course of the receivership. Instead, these are payable only from the receivership estate itself. Therefore, Onyx Equities, acting as a court-appointed receiver, cannot be personally liable for the contractual negotiations or lease which resulted from their control of the rental property. Consequently, Onyx’s motion for summary judgment must be granted.

The Court next addresses the cross motion for summary judgment filed by Central Bergen Properties. Here, the Plaintiff argues that the breaches of contract alleged in the Defendant’s counterclaims do not fall under the purview of the Consumer Fraud Act, and thus those counterclaims must be dismissed. For the reasons stated below, the motion is granted.

While the Consumer Fraud Act has generally been interpreted broadly, it applies to those who “use and consume economic goods and services,” and extends these protections to corporations which are in a “consumer oriented situation.” Papergraphics Intern., Inc. v. Correa, 389 N.J. Super. 8, 12 (App. Div. 2006) (citing BOC Group, Inc. v. Lummus Crest, Inc., 251 N.J. Super. 271, 277 (Law Div. 1990)). Further, the Consumer Fraud Act does not apply when the parties to the underlying transaction are experienced, sophisticated parties of relatively equal bargaining power. Papergraphics Intern., 389 N.J. Super. at 14 (2006). In the Papergraphics Intern case, the Court found that the bulk shipment of printer ink cartridges was bought for resale, by and from experienced parties, and thus held that the transaction “belies the CFA application.” Similarly, the instant case presents two sophisticated parties, which engaged in an arms-length negotiation over the execution of a lease to rent space for commercial use. Thus, the Consumer Fraud Act does not apply. As a result, Central Bergen Properties’ cross motion for summary judgment must be granted.

Finally, the Court considers Central Bergen Properties’ motion for summary judgement and to turn over funds. The Plaintiff argues that because the lease contains an integration clause, the Defendant is barred from asserting that the basement is included as part of the rental property. Further, that the lease specifically prohibits the Defendant Shaf International from withholding or abating rent pending the outcome of litigation. Shaf argues that the case abounds with material fact issues, including: whether the basement was included in the lease, whether Shaf is entitled to the basement, whether the Plaintiff breached the lease for failing to perform repairs, whether the Plaintiff’s attempt to evict the Defendant constitutes bad faith, whether the Plaintiff was negligent in their maintenance of the property, whether the Plaintiff violated the covenant of quiet enjoyment provided in the lease, and finally, whether the Plaintiff violated the covenant of good faith and fair dealing under the lease with respect to their failure to maintain the property.

When the text of a contract supplies the answer to a dispute between the parties, there is no justifiable reason to consider extraneous sources. Karl's Sales & Serv. v. Gimbel Bros., 249 N.J. Super. 487, 493 (App. Div. 1991). Extrinsic evidence “include[s] consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provision by the parties’ conduct.” Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 269-70 (2006). Courts in this jurisdiction may employ “a broad use of extrinsic evidence to achieve the ultimate goal of discovering the *intent of the parties*... [and] to uncover the true meaning of contractual terms.” Id. at 270 (emphasis added). While extrinsic evidence assists in discerning the intent of the parties, “[i]t is not the real intent but the intent expressed or apparent in the writing that controls.” Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 266 (App. Div. 2000) (quoting Friedman v. Tappan Dev. Corp., 22 N.J. 523, 531, 126 A.2d 646 (1956)).

“The interpretation of a contract is 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. Imp. Auth., 404 N.J. Super. 514, 528 (App. Div. 2009) (internal citations omitted). Here, the Defendants have presented evidence which creates ambiguity and therefore an issue of material fact. While the lease does contain an integration clause, the Defendants have presented evidence that the basement was in use for seventeen months prior to the Plaintiff’s attempt to evict the Defendant after settlement negotiations failed to resolve this matter. Further, that Defendant Shaf was given exclusive access to an elevator which gave access from the ground floor to the basement, which are the only two floors in the rental property. The Defendants further state that their exclusive access to the elevator was solidified through the construction of a fence around that area of the rental property.

Taking the above facts in the light most favorable to Shaf International, it is clear that there exists a genuine issue of material fact relating to their entitlement to use the basement of the rental property. Specifically, whether, as the Defendant Shaf contends, the above facts illustrate a pattern of conduct which entitled the Defendants to use of the basement area of the rental property. Thus, the motion for partial summary judgment and to turn over funds must be denied.

For the reasons above, the motion for summary judgment by Onyx Equities is **GRANTED**, the cross motion by Central Bergen Properties is **GRANTED** and the motion for partial summary judgment and to turn over funds by Central Bergen Properties is **DENIED**.