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

**IVE SKROCE and ESTATE OF
MATE SKROCE,**

Plaintiffs-Appellants,

v.

**CLARITA'S DELI, LLC and
WENDY M. DUARTE-OSUNA,**

Defendants-Respondents.

Argued May 5, 2025 – Decided June 13, 2025

Before Judges Gummer and Jablonski.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-1739-23.

Mark S. Carter argued the cause for appellants.

Richard LaBarbiera argued the cause for respondents
(LaBarbiera & Martinez, attorneys; Richard
LaBarbiera, on the brief).

PER CURIAM

Plaintiffs Ive Skroce and the Estate of Mate Skroce sued their tenants, defendants Clarita's Deli, LLC and Wendy M. Duarte-Osuna for nonpayment of rent. Defendants countersued, claiming they were dispossessed of the leased property and damaged by plaintiffs' failure to repair the property after a fire. After conducting a bench trial, the trial court entered an order awarding defendants a \$101,553.93 judgment. Plaintiffs appeal that order. Based on the trial court's factual findings and the unambiguous language of the parties' lease and its rider, we affirm.

I.

On September 27, 2021, plaintiffs, as "Landlord," and defendants, as "Tenant," entered a lease agreement with an attached rider regarding premises located in Palisades Park. The lease had a five-year term, which began on October 1, 2021. For the first year of the lease, the monthly rent was \$3,500; it increased by \$100 each subsequent year. Late rent payments were subject to a charge of \$150 as additional rent. The lease permitted the premises "to be used and occupied only and for no other purposes than Deli."

Paragraph 5 of the lease is entitled "Repairs and Care." It requires the Tenant "at the Tenant's own cost and expense, [to] make all repairs, including painting, decorating and [to] maintain the [p]remises in good order and condition." It also requires Tenant at the end of the lease term to return the

premises "in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of the Tenant, excepted."

Paragraph 11 of the lease is entitled "Liability Insurance" and provides:

The Tenant, at Tenant's own cost and expense, will obtain or provide and keep in full force for the benefit of the Landlord, during the term hereof, general public liability insurance, insuring the Landlord against any and all liability or claims of liability arising out of, occasioned by or resulting from any accident or otherwise in or about the [p]remises for injuries to any persons, for limits of not less than \$1,000,000.00 for property damage, \$1,000,000.00 for injuries to one person and \$2,000,000.00 for injuries to more than one person, in any one accident or occurrence. The insurance policies will be with companies authorized to do business in this State and will be delivered to the Landlord, together with proof of payment, not less than fifteen (15) days prior to the commencement of the term hereof or of the date when the Tenant enters in possession, whichever occurs sooner. At least fifteen days prior to the expiration or termination date of any policy, the Tenant will deliver a renewal or replacement policy with proof of the payment of the premium therefor.

Paragraph 12 addresses the Tenant's indemnification obligations:

The Tenant will hold harmless and indemnify the Landlord from and for any and all payments, expenses, costs, reasonable attorney fees (including attorney fees incurred in enforcing the Tenant's obligations under this [p]aragraph 12) and from and for any and all claims and liability for losses or damage to property or injuries to persons occasioned wholly or in part by or resulting

from any acts or omissions by the Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors, or for any cause or reason whatsoever arising out of or by reason of the occupancy of the [p]remises by the Tenant or business of the Tenant.

Paragraph 15 of the lease is entitled "Fire and Other Casualty." It reads:

If there is a fire or other casualty, the Tenant will give immediate notice to the Landlord. If the [p]remises are partially damaged by the fire, the elements or the casualty, the Landlord will repair the same as speedily as practicable, but the Tenant's obligation to pay the rent hereunder will not cease. If, in the opinion of the Landlord, the [p]remises are so substantially damaged as to render them untenable, then the rent will cease until such time as the [p]remises are made tenantable by the Landlord. If, however, in the opinion of the Landlord, the [p]remises are so substantially damaged that the Landlord decides not to rebuild, then the rent will be paid up to the time of such destruction and this Lease will terminate as of the date of such destruction. The rent, and any additional rent, will be apportioned as of the termination date, and any rent paid for any period beyond that date will be repaid to the Tenant. However, the preceding provisions of this [p]aragraph 15 will not become effective or be applicable if the fire or other casualty and damages are the result of the carelessness, negligence or improper conduct of the Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors. In such case, the Tenant's liability for the payment of the rent and the performance of all the covenants, conditions and terms hereof on the Tenant's part to be performed will continue and the Tenant will be liable to the Landlord for the damage and loss suffered by the Landlord. If the Tenant is insured against any of the risks herein covered, then the proceeds of such

insurance will be paid over to the Landlord to the extent of the Landlord's costs and expenses to make the repairs hereunder, and such insurance carriers will have no recourse against the Landlord for reimbursement.

Paragraph 17 of the lease is entitled "Increase of Insurance Rates." It provides:

If for any reason it is impossible to obtain fire and other hazard insurance on the buildings and improvements on the [p]remises in an amount and in the form and from insurance companies acceptable to the Landlord, the Landlord may, at any time, terminate this Lease, upon giving to the Tenant fifteen (15) days' notice in writing of the Landlord's intention to do so. Upon the giving of such notice, this Lease will terminate as of the date specified in such notice. If by reason of the use to which the [p]remises are put by the Tenant or character of or the manner in which the Tenant's business is carried on, the insurance rates for fire and other hazards increase, the Tenant will, upon demand, pay to the Landlord, as additional rent, the amounts by which the premiums for such insurance are increased.

Paragraph 23 of the lease is entitled "Non-Liability of Landlord." It limits the Landlord's liability as follows:

The Landlord will not be liable for any damage or injury which may be sustained by the Tenant or any other person, as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, sewer, waste or soil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like or of the electrical, gas, power conveyor, refrigeration, sprinkler, air-conditioning or heating systems, elevators or hoisting equipment; or by reason of the elements; or resulting from the carelessness, negligence or improper conduct

on the part of any other tenant or of the Landlord or the Landlord's or the Tenant's or any other tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors; or attributable to any interference with, interruption of, or failure beyond the control of the Landlord, of any services to be furnished or supplied by the Landlord. This limitation on the Landlord's liability will not apply to damage or injury resulting from the gross negligence or willful misconduct of the Landlord or of the Landlord's agents, employees, guests, licensees, invitees, assignees or successors.

Paragraph 31 of the lease addresses tax increases and requires Tenant to "pay a sum equal to 1/9th of the amount by which such tax exceeds the annual tax for the base year." Any tax increase allocated to Tenant is treated as additional rent under the Lease.

Paragraph 42, which is in the rider, provides: "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." Paragraph 45, which also is in the rider states, "[i]f there is any conflict between the provisions of this [r]ider and the main [l]ease to which it is annexed, the provisions of the [r]ider shall govern."

On August 16, 2022, plaintiffs filed a complaint, alleging defendants had breached the lease by failing to pay the rent and related late charges. Plaintiffs

demanded judgment in the amount of \$20,000 plus interest, legal fees, and costs. Defendants filed an answer, admitting they had refused to pay rent but asserting their refusal was "justified" because "the premises were not habitable."

Defendants also filed a counterclaim in which they alleged they had been "dispossessed of their leasehold property due to . . . [p]laintiffs' refusal to repair and restore the property after a fire." Defendants claimed that refusal constituted a material breach of the lease and had caused them damages, including "loss of use, loss of profits, repair costs, [and] loss of economic advantage." Defendants also asserted plaintiffs had engaged in fraudulent conduct when they "wrongfully demanded rent payments from [defendants] while knowing that [rent] would not be due and owing because of . . . [p]laintiffs' refusal to repair and restore the premises." Defendants sought compensatory damages, treble damages, interest, attorney's fees, and costs of suit. Plaintiffs filed an answer, denying defendants' allegations.

The case was before the court for a bench trial on May 6, 2024. The parties waived the right to present testimony. The parties stipulated a fire had occurred at the premises on April 21, 2022, and defendants' deli had reopened on May 10, 2023. The cause of the fire was undetermined, and neither side argued the other side was at fault. As summarized by the court, the parties asked the court to determine "whether the lease requires the defendant tenants to make

rental payments during the time period from the date of the fire . . . to the date of reopening" and "whether the lease provisions place the obligation for repair to the premises after the fire on the landlord or the tenant."

The parties submitted five joint exhibits into evidence: the September 27, 2021 lease with the attached rider; plaintiffs' ledger sheet for the premises, which reflected the rent due, late fees, insufficient fund fees, and tax increases, totaling \$53,725; invoices submitted by defendants for the costs they had incurred for repairs made to the premises after the fire in the amount of \$101,650; photographs of the premises submitted by plaintiffs; and defendants' photographs of the premises, taken the day after the fire. Plaintiffs did not submit any evidence they had made any effort to repair the premises after the fire.

The court heard counsel's arguments based on those exhibits and stipulations. Plaintiffs' counsel asserted, "[t]here's no indication . . . that the roof, the structure, or the foundation was repaired" and that "the fire was confined to inside the demised rental premises." He argued paragraph 42 of the rider required defendants to make and pay for all interior repairs. He also contended nothing in paragraph 15 relieved defendants of their obligation to pay rent while the premises were being repaired.

Defense counsel argued defendants had no obligation under the lease to pay rent for the months the premises were untenable and defendants were unable to operate their deli. Based on the photographs, he described the premises as being "stripped down to its core" and "not fit for use of the delicatessen . . . [or] for anything" until repaired. He asserted defendants were entitled to reimbursement for the costs of the repairs they had incurred. He described the invoices submitted by defendants as being for "electrical work, air conditioning, pouring of concrete, [and] replacement windows." He also asserted defendants had paid rent for May, June, and November 2022 but did not otherwise pay rent for the time the deli was not operating. The parties did not dispute that defendants had resumed paying rent in September 2023.

The trial court placed its decision on the record on May 30, 2024. The court first addressed defendants' rent obligation. Interpretating the "clear and unambiguous language" of paragraph 15 of the lease, the court held defendants were not obligated to pay rent from the date of the fire, April 21, 2022, until when their deli reopened on May 10, 2023. Recognizing the cause of the fire was undetermined, the court found inapplicable the portion of paragraph 15 that required defendants to pay rent if the fire "was a result of [their] carelessness, negligence, or improper conduct."

Reviewing the remaining language of paragraph 15, the court found plaintiffs had not terminated the lease given that they were suing defendants for rent payments allegedly due after the fire. Thus, the court held "the determination of the Tenant's obligation to pay rent hinge[d] on whether the premises were only partially damaged and were tenantable." The court concluded plaintiffs had failed to sustain their burden to prove they were entitled to rent, having submitted no proofs to support their claim that "the premises were only partially damaged, and therefore tenantable."

Referencing the photographs submitted by both parties and "the absence of any proof to the contrary," the court found "the Tenant was unable to operate its business as a result of the fire damage. It was deprived of its use of the demised premises, and the premises were untenable from the date of the fire until the date of the reopening on May 10th, 2023." Accordingly, the court found defendants had no obligation to pay rent from April 21, 2022, to May 10, 2023. Considering rent payments defendants had made during that period of untenability, rent payments they had failed to make when the deli reopened, late rent charges, and tax increases, the court calculated defendants owed plaintiffs \$96.07.

The court then addressed the obligation to repair the premises after the fire. The court expressly reviewed the language of paragraphs 5, 15, 42, and 45

of the lease. The court found "repairs necessitated by fire damage are not contemplated by paragraph 45, and are governed by paragraph 15." The court also found fire-damage repairs were "treated separately and distinctly from repairs for routine maintenance issues" under paragraph 5 of the lease and paragraph 42 of the rider and "fall outside of the more routine repairs covered by paragraph five as modified by the rider." The court held plaintiffs were responsible for repairing damage to the premises caused by the fire. The court awarded judgment in defendants' favor in the amount of \$101,553.93, which represented what defendants had paid for the repairs less what they owed plaintiffs. On June 7, 2024, the court issued an order memorializing that award.

Plaintiffs appeal from that order, arguing the trial court erred by misinterpreting the lease and rider. We disagree and affirm.

II.

"Our review of a judgment following a bench trial is limited." Accounteks.Net, Inc. v. CKR Law, LLP, 475 N.J. Super. 493, 503 (App. Div. 2023). The trial court's findings of fact "are considered binding on appeal when supported by adequate, substantial and credible evidence." Mountain Hill, L.L.C. v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 192 (App. Div. 2008) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). The judgment should not be disturbed unless it is "so wholly

insupportable as to result in a denial of justice." Id. at 192-93 (quoting Rova Farms, 65 N.J. 474, 483-84 (1974)). Therefore, this court determines only "whether the findings made [by the trial court] could reasonably have been reached on sufficient credible evidence present in the record." Id. at 193 (alteration in original) (quoting Sebring Assocs. v. Coyle, 347 N.J. Super. 414, 424 (App. Div. 2002)). However, we owe no deference to the trial court's legal conclusions. JPC Merger Sub LLC v. Tricon Enter., Inc., 474 N.J. Super. 145, 159-60 (App. Div. 2022).

A lease is a contract. Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386, 411 (2011). "Because contract interpretation is a question of law we review de novo, we 'pay no special deference to the trial court's interpretation and look at the contract with fresh eyes.'" Del. River Joint Toll Bridge Comm'n v. George Harms Constr. Co., 258 N.J. 286, 303 (2024) (quoting Kieffer v. Best Buy, 205 N.J. 213, 223 (2011)).

Our review of the lease with its attached rider at issue in this appeal is guided by our familiar principles of contract construction. Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super. 495, 501 (App. Div. 2000); see also Town of Kearny, 205 N.J. at 411. Courts "enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract." Barila v. Bd. of Educ. of Cliffside Park,

241 N.J. 595, 615 (2020) (quoting In re County of Atl., 230 N.J. 237, 254 (2017)) (internal quotation marks omitted). "The plain language of the contract is the cornerstone of the interpretive inquiry; 'when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.'" Id. at 616 (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)). The "court's task was 'not to rewrite a contract for the parties better than or different from the one they wrote for themselves.'" Globe Motor Co. v. Igdaley, 225 N.J. 469, 483 (2016) (quoting Kieffer, 205 N.J. at 223); see also Liqui-Box Corp. v. Est. of Elkman, 238 N.J. Super. 588, 600 (App. Div. 1990) (a court's function is to "enforce the lease as written, not to write for the parties a different or better contract").

"Contracts should be read 'as a whole in a fair and common sense manner.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014) (quoting Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009)). "Contract terms are generally 'given their plain and ordinary meaning.'" JPC Merger, 474 N.J. Super. at 160-61 (quoting M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2017)). "If we conclude that a contractual term is ambiguous, we 'consider the parties' practical construction of the contract as evidence of their intention and as controlling weight in determining a contract's

interpretation.'" Barila, 241 N.J. at 616 (quoting County of Atl., 230 N.J. at 255).

Based on our de novo review, we are satisfied the trial judge, the Honorable Lina P. Corrison, J.S.C., applied those bedrock principles and correctly interpreted the lease. Like the trial judge, we perceive no ambiguity or conflict in the provisions of the lease and rider. The judge considered the lease and rider as a whole and did not give undue weight to any particular provision. To the extent she focused on paragraph 15 of the lease, she did so appropriately. That provision, entitled "Fire and Other Casualty," directly addresses the parties' obligations when a fire damages the premises – which is what happened here.

Paragraph 5 of the lease addresses repairs to and maintenance of the premises. Paragraph 42 of the rider modifies paragraph 5 with respect to repairs and routine maintenance but does nothing to alter the parties' obligations when fire damages the premises as governed by paragraph 15. And the other provisions of the lease support the judge's interpretation of the parties' obligations. For example, under paragraph 17 the Landlord can collect additional rent from the Tenant if the Tenant's business causes an increase in the cost of fire insurance – a clear indication the Landlord was responsible for maintaining fire insurance. Paragraph 23 contains a long list of the types of

damages for which the Landlord is not liable. Notably absent from that list is fire damage. Under paragraph 12 the Tenant is responsible for indemnifying the Landlord for damages caused by the Tenant. Paragraph 12 says nothing about the Tenant having to indemnify the Landlord for fire damage.

In terms of defendants' obligation to pay rent, paragraph 15 sets forth the procedure to be followed if a fire damages the premises. The Landlord determines if the premises were "partially damaged," "so substantially damaged as to render [the premises] untenable," or "so substantially damaged that the Landlord decides not to rebuild." Based on that determination, the Landlord: (1) repairs the premises "as speedily as practicable" if they were only "partially damaged" and the Tenant has to pay rent while the Landlord is making those speedy repairs; (2) makes the premises "tenantable" if they were substantially damaged and the Tenant does not have to pay rent until the premises are tenantable again; or (3) "terminate[s the lease] as of the date of such destruction," thereby ending the Tenant's rent obligation. Plaintiffs did not present at trial any evidence they had made a determination about the extent of the damages, they had engaged in any repair efforts, or that the premises were tenantable. We know plaintiffs did not terminate the lease because they continued to demand rent from defendants.

The trial court correctly held the obligation to pay rent "hinge[d] on whether the premises were only partially damaged and were tenantable." The court found the premises were not tenantable until the day the deli reopened. Considering the evidence presented at trial regarding the post-fire condition of the premises and the repair efforts undertaken by defendants and the lack of evidence regarding tenantability before defendants resumed their use of the premises, we have no basis to disturb that factual finding. Given that finding and the clear language of the lease, the court correctly concluded defendants did not have to pay rent from the date of the fire until their business reopened.

In their merits brief, plaintiffs contend defendants' "insurance should have covered the loss" and argue any inadequacy in defendants' insurance coverage should be borne by defendants. We find that wholly-speculative argument without merit. If plaintiffs wanted to challenge defendants about the insurance proceeds they received and the adequacy of their insurance coverage, the time to do so was at trial. But plaintiffs presented no evidence on that topic at trial.

Based on the trial court's factual findings and our de novo review of the lease and rider, we agree with the trial court's conclusion that plaintiffs were responsible for the costs of repairing the damages to the premises caused by the fire and defendants were not responsible for paying rent from April 21, 2022, to May 10, 2023. Accordingly, we affirm the June 7, 2024 order.

Affirmed.

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

M.C. Hanley

Clerk of the Appellate Division