MODIFIED BY THE COURT

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145 B.A. REALTY, LLC, 101 BROAD AVENUE, LLC, and BEYER BROS. CORP.,

Plaintiffs / Counterclaim Defendants,

v.

RLF ACQUISITIONS, LLC, BEN ANDREYCAK, REALTERM LOGISTICS, REALTERM US, INC., GZA GEOENVIRONMENTAL, INC., and CBRE, INC.,

Defendants.

and

RLF ACQUISITIONS, LLC,

Counterclaim Plaintiff / Third-Party Plaintiff,

v.

NEW AGE VENTURES, INC., a New Jersey corporation,

Third-Party Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. BER-L-001241-23

CIVIL ACTION
CBLP ACTION

ORDER

THIS MATTER having been opened to the Court by Day Pitney LLP, attorneys for Defendant / Counterclaim Plaintiff / Third-Party Plaintiff RLF Acquisitions, LLC ("RLF"), for an Order granting RLF's Motion for Judgment on the Pleadings as to the Third-Party Complaint against Third-Party Defendant New Age Ventures, Inc. and in favor of RLF; and the Court having considered the moving papers and the papers filed in opposition and/or reply, if any, and heard the argument of counsel, if any; and for good cause shown;

IT IS on this 26th day of February, 2025;

ORDERED as follows:

1. ~~RLF's motion is hereby GRANTED~~. **DENIED**

2. ~~Judgment shall be and hereby is granted in favor of RLF Acquisitions, LLC as to RLF's Third-Party Complaint against New Age Ventures, Inc.~~ **DENIED**

3. ~~The Court hereby declares that RLF is entitled to return of $729,000 of the Deposit, plus accrued interest.~~ **DENIED**

4. ~~There is no just reason for delay of enforcement of this judgment and, therefore, pursuant to R. 4:42-2(a), the Court orders that this judgment is final as to the claims against New Age Ventures, Inc., without prejudice to the remaining claims between the other parties in the case and the proper disposition of the remainder of the De~~posit. **DENIED**

5. ~~Upon entry of judgment, the Clerk of the Court shall dismiss and excuse New Age Ventures, Inc. from these proceedings~~. **DENIED**

6. A Case Management Conference is hereby scheduled for March 11, 2025 at 10:00 via Zoom videoconferencing;

7. A true copy of this Order shall be served upon all counsel of record via e-courts within 7 days of receipt of same.

HON. WILLIAM C. SOUKAS, J.S.C.

[ ] Unopposed

[x] Opposed

RLF Acquisitions, LLC's motion for judgment on the pleading, converted to a motion for summary judgment by the Court pursuant to R. 4:6-2, is denied for the reasons set forth in the court's attached Statement of Reasons for Order of February 26, 2025.

NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

145 B.A. REALTY, LLC, 101 BROAD AVENUE, LLC, and BEYER BROS. CORP, Plaintiffs, -against- RLF ACQUSITIONS, LLC, BEN ANDREYCAK, REALTERM LOGISTICS, REALTERM US, INC., GZA GEOENVIRONMENTAL, INC. and CBRE, INC., Defendants. and RLF ACQUSITIONS, LLC Counterclaim Plaintiff/ Third-Party Plaintiff -against- NEW AGE VENTURES, INC., a New Jersey Corporation, Third-Party Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. UNN-L-1241-23 Civil Action- CBLP **OPINION**

Decided on February 26, 2025

Naju R. Lathia, Esq. and Chelsea Turiano, Esq., counsel for Defendant/Third-Party Plaintiff RLF Acquisitions, LLC.

Marc J. Gross, Esq., counsel for Plaintiffs 145 B.A. Realty, LLC, 101 Broad Avenue, LLC, and Beyer Bros. Corp.

Hon. William C. Soukas, J.S.C.

I. Introduction

This matter comes before the Court upon the filing of a motion on July 3, 2024 for a judgment on the pleadings as to the Third-Party Complaint in favor of defendant/third party plaintiff RLF Acquisitions, LLC ("RLF") and against third party defendant New Age Ventures, Inc. ("New Age") filed by Naju R. Lathia, Esq. and Chelsea Turiano, Esq. (Day Pitney, LLP. appearing) on behalf of Defendant/Third-Party Plaintiff RLF Acquisitions, LLC ("RLF").

On July 23, 2024, opposition to RLF's motion was filed by Marc J. Gross, Esq. (Fox Rothschild LLP appearing) on behalf of 145 B.A. Realty, LLC ("BA Realty"), 101 Broad Avenue, LLC ("101 Broad"), and Beyer Bros. Corp. ("Beyer")(collectively, "Plaintiffs"). Third party defendant New Age, represented by William D. Wallach of McCarter & English, LLP, did not file any opposition. Oral argument was held on September 23, 2024.

RLF originally moved for "judgment on the pleadings" under R. 4:6-2(e). Because the papers submitted in connection with the motion presented matters outside the pleadings, the court converted and treated the motion as one for summary judgment, as permitted under R. 4:6-2.

RLF's motion seeks the release of $729,000, plus accrued interest, representing a portion of the deposit paid by RLF in connection with an agreement to purchase real property by and among RLF, as purchaser, and sellers 101 Broad,

BA Realty, and New Age. The amount sought to be recovered by RLF in this motion represents, according to the plaintiff, New Age's "allocated share" of the deposit. At the time of oral argument, counsel for RLF indicated that New Age didn't furnish notice of objection per the contract and joins in the motion for entry of judgment.

II. Factual Background

This action arises out of RLFs' attempted termination of a contract to purchase real estate prior to closing on a commercial real estate property. The seller of the property consists of three (3) entities, Plaintiffs 145 B.A. Realty, LLC and 101 Broad Avenue, LLC, (collectively, "the Beyer Entities"), and Third-Party Defendant New Age Ventures, Inc. (the "Stagnari Entity"). The Beyer Entities and the Stagnari Entity are collectively referred to herein as "Sellers" or "Plaintiffs."

For purposes of this motion, and based on the record presented, the Court finds as follows: The parties entered into an agreement for the purchase and sale of the real property on September 22, 2022 (the "Agreement"), which is the "Effective Date," defined in Article 1.1(t) as the date both parties are in receipt of a fully executed Agreement and as specified in the opening paragraph of the Agreement. The parties amended the Agreement on October 14, 2022, November 23, 2022, and on January 25, 2023 (Lathia Statement of Facts, Par. 1).

The real property to be purchased by RLF involved the following parcels of property: (a) the property commonly known as 99, 101, 121, 127, 137, 145 and 155

Broad Avenue and 680 West Prospect Avenue (identified as lots 1, 5, and 6 in Block 101 and Lots 5, 6, 7, 8, 9, and 10 in Block 810 on the tax maps of Township of Fairview, New Jersey) referred to in the Agreement as the "Beyer Property"; and, (b) 109-117 Broad Avenue (identified as lot 2, Block 501 on the tax maps of the Township of Fairview, New Jersey) referred to in the Agreement as the "Stagnari Property."

The purchase price under the Agreement is forty-one million ($41,000,000) dollars. (Agreement, Par. 3.1). The total deposit to be paid in connection with the Agreement was $4,000,000, and RLF was required to pay an initial deposit of $2,000,000 within three (3) business days of the effective date, and an additional $2,000,000 within 45 days of the Effective Date (Agreement, Art. 3.2). The "Effective Date" is defined in the Agreement as the date both parties receive a fully executed Agreement (Agreement, Art. 1.1(t)).

On February 28, 2023, RLF, through counsel, provided a Notice of Termination of the Agreement under Article 4.1, asserting its dissatisfaction with "Environmental Diligence Activities" because the property was contaminated and required remediation (Third Party Complaint, Ex. B; Lathia Statement of Facts, Par. 12; Lathia Cert., Ex. B). In its termination letter, RLF requested that its initial deposit of $2 million be returned pursuant to Articles 3.2 and 3.4(b) of the Agreement (Third Party Complaint, Ex. C; Lathia Statement of Facts, Par. 13; Lathia Cert., Ex. B).

On February 28, 2023, Eric H. Melzer, Esq. forwarded correspondence on behalf of 101 Broad Avenue and 145 B.A. Realty under Article 3.4(b) of the Agreement objecting to the delivery of the Deposit, stating that the basis for the objections shall be forth under separate cover within five (5) business days. (Lathia Cert., Ex. C).

New Age did not deliver a notice of objection to the Escrow Agent's release of the Deposit or file objection to RLF's motion. (Third Party Complaint, Par. 55 and Answer, Par. 55). During a Case Management Conference with the Court on July 2, 2024, New Age stated that it did not object to the return of their portion of the deposit.

The portions of the Agreement relevant to defendant's current motion include the following:

> 3.2 Deposit. The Deposit shall be released to Seller upon Closing; or, if payable earlier, to the Party to whom the Deposit belongs pursuant to terms of this Agreement. . . Notwithstanding anything to the contrary contained in this Section of the Agreement, following the deposit of the Additional Deposit, except in the case of a Seller Event of Default or a termination of this Agreement pursuant to Article 7 of the Agreement the Deposit shall not be refunded to Purchaser in the event of a termination of this Agreement.
>
> 3.3 Balance of Purchase Price. At Closing, Purchaser shall deliver to Seller the balance of the Purchase Price, less the Deposit, and subject to adjustments and prorations in accordance with the terms of this Agreement. . . The Purchase Price (and the Deposit) shall be allocated and paid as follows: (a) sixty-three and fifty five hundredths percent (63.55%) of the Purchase Price

. . . shall be paid to the Beyer Entities, and (b) thirty six and forty five hundredths percent (36.45%) of the Purchase Price . . . shall be paid to the Stagnari Entity.

3.4 Escrow Terms.

(b) If Seller or Purchaser claims it is entitled to receive all or any portion of the Deposit pursuant to the terms of this Agreement, that Party shall notify Escrow Agent in writing and shall simultaneously deliver written notice of its demand to the other Party. The other Party shall have the right to object to the delivery of the Deposit by sending written notice of such objection to Escrow Agent within five (5) Business Days after Escrow Agent delivers a copy of the written demand to the objecting party, but not thereafter. Such notice must set forth the basis for objecting to the delivery of the Deposit.

(c) In the event of any dispute between the Parties regarding the Deposit, Escrow Agent, at its option, may disregard all instructions received and either (i) hold the Deposit until the dispute is resolved and Escrow Agent is advised of this fact in writing by Seller and Purchaser, or Escrow Agent is otherwise instructed by a final judgment of a court of competent jurisdiction, or (ii) deposit the Deposit into a court of competent jurisdiction . . . .

4.1 Feasibility Period. Purchaser shall have until 5:00 p.m. Eastern Time on the date that is forty five (45) days from the Effective Date (the "Feasibility Period") to determine the feasibility of its intention to purchase the Premises . . . Purchaser may, in its sole discretion, terminate this Agreement prior to the expiration of the Feasibility Period by written notice to Seller that the Purchaser is not satisfied with the Property as a result of its Diligence activities, in which event Purchaser shall provide Seller with copies of all reports obtained during its Diligence Activities (collectively the "Due Diligence Reports"), Escrow Agent shall return the Initial Deposit to Purchaser, and thereafter, neither party shall have any further obligations hereunder except for such obligations that specifically survive the termination of this Agreement . . . If Purchaser fails to deliver

> a notice to terminate as aforesaid, time being of the essence, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 4.1 and shall proceed to Closing in accordance with the terms of this Agreement and the Deposit (to include both the Initial Deposit and the Additional Deposit) becomes non-refundable.

III. Contentions of the Parties

A. RLF's Motion for Summary Judgment

RLF argues that under Article §4.1 of the Agreement, it is entitled to the return of the portion of its deposit attributable to the Stagnari Entity interest, as RLF terminated the Agreement during the feasibility period after being informed that the Property was contaminated and required remediation. RLF argues that during the "feasibility period," set forth in Article 4.1, RLF may, in its discretion, "terminate the agreement by written notice to the seller, that the Purchaser is not satisfied with the property as a result of the Diligence Activities". In the event of a termination, RLF argues, that the escrow agent is required return the initial deposit to RLF, citing Article 4.1 of the Agreement.

Furthermore, RLF argues, New Age admits that its portion of the deposit should be released as RLF provided the Sellers with a written Termination Notice on February 28, 2023 requesting the release of the deposit and New Age did not object. Thus, New Age's allocated portion of the Deposit should be returned.

Lastly, RLF argues that although the Escrow Agent is holding the entire deposit at the demand of the Beyer Entities, under the express language of the

Agreement, there are no circumstances under which the Beyer Entities are entitled to New Age's portion of the Deposit, as Article § 3.3 of the Agreement expressly allocates one portion of the Deposit to New Age and another to the Beyer Entities.

B. Plaintiff 145 B.A Realty's Opposition

In opposition, Plaintiff 145 B.A. Realty argues that the affirmative relief sought by Defendant RLF is not available under R. 4:6-2 as RLF has not moved for relief based upon a *defense* to the complaint filed against it. Instead, RLF moves for affirmative relief in the form of a judgment on its claims asserted in its Third-Party Complaint filed against New Age. Thus, 145 B.A. Realty contends that the proper mechanism in the Rules for the pre-trial affirmative relief which RLF is seeking, is by way of motion for summary judgment, filed in conformity with R. 4:46.

According to145 B.A. Realty, RLF's motion should be denied because the requested relief is contrary to the express terms of the parties' negotiated agreement, which is unambiguous and should be enforced as written. Furthermore, plaintiff argues, the Court should not make a better contract for either party than the one the parties made for themselves.

145 B.A. Realty relies on Article 3.4(c) of the Agreement which provides, in part, that in the event of any dispute between the Parties regarding the Deposit, the Escrow Agent, at its option, may disregard all instructions received and either hold the Deposit until the dispute is resolved and Escrow Agent is advised of this fact in

writing by Seller and Purchaser, or Escrow Agent is otherwise instructed by a final judgment of a court of competent jurisdiction. Furthermore, plaintiff argues, while Article § 3.3 of the agreement allocates the purchase price and deposit among the Sellers, it does so only "at closing." It does not permit the deposit to be released in parts prior to, or absent, a closing taking place.

C. Defendant RLF'S Reply

In Reply, RLF argues that there is no question that the Court can enter Judgment against a party based on its admission of the dispositive facts in its answer and based on its consent to Judgment. According to RLF, New Age has admitted it has no interest in its allocated share of the deposit, and that as such, good cause exists for relief to be granted to RLF.

RLF further argues that the Beyer Entities have no interest in New Age's allocated share of the deposit. In support of this argument Defendant RLF refers to Articles 4.1, 3.2, and 3.3 of the Agreement, which provide for the disposition of the deposit in the event of the termination of the Agreement.

Lastly, with respect to plaintiff's argument that the Agreement does not permit the Escrow Agent to disburse the deposit "in parts," RLF argues that RLF contends that New Age's admission is dispositive under the terms of the parties' Agreement and requires that its share of the deposit be returned to RLF.

IV. Summary Judgment Standard

In accordance with *Rule* 4:6-2(e), if material outside the pleading is presented on a motion to dismiss, the motion is converted into one for summary judgment. Lederman v. Prudential Life Ins. Co. of America, Inc., 385 N.J. Super. 324, 337 (App. Div. 2006). As indicated above, because RLF's original motion and papers submitted in response to the motion included information outside the scope of the pleadings RLF's motion was converted to one for summary judgment under R. 4:6-2.

New Jersey's standard for summary judgment as set forth in R. 4:46-2 which provides that a motion for 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 of material fact challenged. R. 4:46-2(c). The New Jersey Supreme Court, in Brill v. Guardian Life Ins. Co. Am., 142 N.J. 520, 540 (1995) stated that, the plain language of R. 4:46-2 requires that a court deny summary judgment "*only* where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Id. at 529. In deciding whether there is a genuine issue of fact for trial, the motion judge should consider whether the competent evidence submitted on the motion, viewed in the light most favorable to the non-moving party, is sufficient to allow a rational factfinder to resolve the fact issue in favor of the non-moving party. Brill, 142 N.J. at 540; R. 4:46-2(c).

A non-moving party cannot defeat a summary judgment motion simply by pointing to any fact in dispute. Id. If the non-moving party "points only to disputed issues of fact that are of an insubstantial nature, the proper disposition is summary judgment." Brill, 142 N.J. at 529. Bare conclusions in the pleadings without factual support in affidavits will not defeat a motion for summary judgment. Brae Asset Fund, L.P. v. Newman, 327 N.J. Super 129, 134 (App. Div. 1999). Summary judgment should be granted only where the evidence is "so one-sided" that reasonable minds cannot differ as to the result. Brill, 142 N.J. at 536, citing, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)).

V. Analysis

A. Contract Construction and Interpretation

RLF's motion presents a question of contract construction and interpretation. The construction of contract terms presents a question of law for the court. See Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001). The scope of the court's review includes deciding whether a contract provision is clear and unambiguous. Grow Co. v. Chokshi, 403 N.J. Super. 443, 476 (App. Div. 2008); Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997). Generally, the interpretation of contract terms "are decided by the court as a matter of law unless the meaning is both unclear and dependent on conflicting testimony." Bosshard, 345 N.J. Super. at 92.

When interpreting a contract, "we first examine the plain language of the [contract] and, if the terms are clear, they 'are to be given their plain, ordinary meaning.'" Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251, 270 (2008) (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). "We do not supply terms to contracts that are plain and unambiguous, nor do we make a better contract for either of the parties than the one which the parties themselves have created." Maglies v. Estate of Guy, 193 N.J. 108, 143 (2007). Where the terms of a contract are clear and unambiguous, there is no room for interpretation and the Courts must enforce the terms of the contract as written. Levinson v. Weintraub, 215 N.J. Super. 273, 276 (App. Div. 1987).

When courts are called upon to enforce contractual agreements, the court's objective is to carry out the mutual intent of the parties. Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 269 (2006). "A basic principle of contract interpretation is to read the document as a whole in a fair and common-sense manner." Hardy ex. rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009). When "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. v. Essex Cnty. Imp. Auth., 404 N.J. Super. 514, 528 (App. Div. 2009).

When the terms of the contract are clear, New Jersey Courts will enforce the agreement as written. E. Brunswick Sewage Auth. v. E. Mill Assocs. Inc., 365 N.J. Super. 120, 125 (App. Div. 2004). Where an ambiguity appears in a written agreement, the writing is to be strictly construed against the drafter. Terminal Construction Corp. v. Bergen County Hackensack River Sanitary Sewer Dist. Authority, 18 N.J. 294, 302 (1955); Fletcher v. Interstate Chemical Co., 94 N.J.L. 332 (Sup. Ct. 1920). A contract "should not be interpreted to render one of its terms meaningless." Cumberland County Improvement Auth. v. GSP Recycling Co. Inc., 358 N.J. Super. 484, 497 (App. Div. 2003).

Parties are "entitled to make their own contracts. Kampf v. Franklin Life Ins. Co., 33 N.J. 36 (1960). Courts do not have the power to rewrite the contract the parties have made or make a better contract for one party over the other. Id. at 43; Levinson v. Weintraub, 215 N.J. Super. 273, 276 (App. Div. 1987). The Court cannot "rewrite a contract merely because one might conclude that it might well have been functionally desirable to draft it differently." Levinson, 215 N.J. Super at 276, citing, Brick Twp. Mun. Util. Auth. v. Diversified RB&T, 171 N.J. Super. 397, 402 (App. Div. 1979). "It is of course not the province of the court to make a new contract or to supply any materials, stipulations or conditions which contravene the agreement of the parties." Marini v. Ireland, 56 N.J. 130, 143 (1970).

B. Decision

The issue presented in this motion is whether the parties Agreement for the purchase and sale of real estate permits the return of a portion of the purchaser's deposit over the objection of two (2) of three (3) sellers who are party to the Agreement to the return of the deposit.

RLF relies upon Article 4.1 of the Agreement for the proposition that RLF timely terminated the Agreement during the Feasibility Period after it determined the property is contaminated. Article 4.1 allows Purchaser 45 days within which to determine "the feasibility of its intention to purchase the Premises" and, in its sole discretion, to terminate the Agreement prior to expiration of the Feasibility Period by written notice to Seller. Article 4.1 requires that the Purchaser also provide Seller with "all reports obtained during its Diligence Activities . . . [and] Escrow Agent shall return the Initial Deposit to Purchaser and, thereafter neither party shall have any further obligations hereunder except for such . . . that specifically survive the termination of this Agreement[.]"

The court finds the language used by the parties in Article 4.1 clearly and unambiguously provides for a return of the "Initial Deposit" upon the purchaser properly notifying Seller of termination in writing. The construction of this contract provision, and its application to the dispute at issue, necessarily turns upon the analysis of any definition supplied in the Agreement to the term "Initial Deposit."

The "Initial Deposit" is not defined in Article 1 of the Agreement, entitled "Definitions; Construction." A definition of the term "Deposit" is found in Article 1.1(q), which provides **"Deposit"** has the meaning specified in Section 3.2. Section 3.2 is entitled "Deposit" and, among other things identifies the following terms and their meanings: (a) "Initial Deposit" as the initial $2 million payment by the purchaser within three (3) days of the effective date; (b) "Additional Deposit" as the additional $2 million payment made by the purchaser within 45 days of the Effective Date; and (c) "Deposit" as the Initial Deposit, the Additional Deposit and any interest earned thereon.

The court finds that the language in the Agreement defining the term "Initial Deposit" to be clear and unambiguous as referring to RLF's initial payment of $2 million paid within three business days following the parties' receipt of the Agreement. The court finds that neither Article 4.1 nor Article 3.2 includes any language or provision permitting the Escrow Agent to return a portion of the Initial Deposit, or an allocated share, to the purchaser, here, RLF.

Similarly, the Court finds that Article 3.3 does not provide RLF with a basis for a return of the proportionate share of the deposit argued to belong to the Stagnari Entity (New Age). Article 3.33 provides that "at Closing" the purchase price, less Deposit and subject to adjustments and prorations, shall be delivered to Seller. Article 3.3 further provides that the "[t]he Purchase Price (and the Deposit) shall be

allocated and paid as follows: "(a) sixty three and fifty five hundredths percent (63.55%) of the Purchase Price which is Twenty Six Million Fifty Five Thousand Five Hundred Dollars ($26,055,500.00) shall be paid to the Beyer Entities, and (b) thirty six and forty five hundredths percent (36.45%) of the Purchase Price which is Fourteen Million Nine Hundred Forty Four Thousand Five Hundred Dollars ($14,944,500.00) shall be paid to the Stagnari Entity."

The Court finds that Article 3.3 clearly and unambiguously provides, for the allocation of the purchase price and the total deposit as between the Beyer Entities and the Stagnari Entity, effective upon closing. The Court finds that no other language is included in Article 3.3 stating that the allocation of the Deposit or Initial Deposit may be allocated prior to closing in the event of a request for return of the Initial deposit, in whole or in part, over the objection of one or more of the entities comprising the Seller.

There is no question that the Beyer entities submitted an objection to the Escrow Agent after receiving notice of RLF's intention to terminate the contract consistent with Article 3.4(b) of the Agreement which pertains to Seller's or Purchaser's claim to "all or any portion of the Deposit pursuant to the terms of this Agreement." RLF argues that the Plaintiffs have no interest in New Age's portion of the deposit. The Court finds RLF's argument to be unpersuasive as the Agreement includes no provision which allocates the deposit between the Selling entities to take

effect upon purchaser's termination of the Agreement during the Feasibility, even with the consent of one of the selling entities, here, the Stagnari entity.

The court finds that the relief sought by RLF in this motion is incompatible with the plain language of the Agreement, the relevant portions of which the Court finds to be clear and unambiguous. "The function of a court is to enforce "a contract" as written and not to make a better contract for either of the parties. Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)(citations omitted).

For those reasons, the motion of defendant/Counterclaim Plaintiff/Third Party Plaintiff RLF Acquisitions, LLC is DENIED.