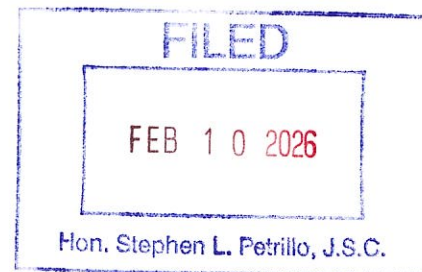


SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ESSEX VICINAGE
DOCKET NO.: ESX-L-6826-25

McClellan One Owner, LLC,
Plaintiff

v.

Barsan Global Logistics, Inc., et al.,
Defendants.



OPINION

Petrillo, J.S.C.

I. INTRODUCTION

This matter comes before the Court by way of (i) the motion of plaintiff, McClellan One Owner, LLC (“plaintiff” or “landlord”), for partial summary judgment declaring that substantial completion of landlord’s Work and the Lease’s Commencement Date occurred on June 9, 2025, pursuant to the express terms of the Lease, and (ii) the cross-motion of defendants Barsan Global Logistics, Inc. and Barsan Global Logistik A.S. (“defendants” or “tenant/guarantor”) for partial summary judgment on their counterclaims, including alleged breaches of contract, the implied covenant of good faith and fair dealing, breach of express warranty, and declaratory judgment.

For the reasons explained below, plaintiff’s motion is **GRANTED** as to the declaration of substantial completion and Commencement Date only, and **DENIED** in all other respects. Defendants’ cross-motion for summary judgment is **DENIED WITHOUT PREJUDICE** as premature.

II. FACTUAL AND PROCEDURAL HISTORY

Plaintiff is the developer and landlord of commercial premises at McClellan Street, Newark, New Jersey, for use as a first-class industrial warehouse (the “Premises”). See Pl. Stmt. Undisp. Mat. Facts (“SOF”) ¶¶ 6–7. On March 20, 2023, plaintiff and Barsan Global Logistics, Inc. entered into a lease (as amended July 11, 2023, and January 30, 2025), by which defendants leased the Premises for a term of ten years and three months beginning on the “Commencement Date,” as defined by

the Lease. SOF ¶¶ 8–9. The lease required landlord to perform specific site and tenant improvements (collectively, “landlord’s work”), and for tenant to pay rent in excess of \$65 million through the lease’s term. SOF ¶¶ 7–8, 12.

A key provision of the lease, Section 2.1, defines the commencement date as the earlier of substantial completion of landlord’s work or the date that substantial completion would have occurred but for a tenant delay. Section 2.1 provides that “substantial completion” is achieved when a certificate of occupancy for the building is received; such certificate may be temporary, provided that any conditions do not interfere with tenant’s operations.

On June 5, 2025, the City of Newark issued a Temporary Certificate of Occupancy (“TCO”) for the building. Landlord received the TCO on June 9, 2025, and on June 9, 2025, provided notice to Tenant that the Commencement Date had occurred. SOF ¶¶ 13–15. On June 23, 2025, the City issued the final Certificate of Occupancy (“CO”). Defendants dispute the occurrence of the Commencement Date and have refused to take possession, citing as a primary reason Plaintiff’s alleged failure to provide the agreed-upon electrical capacity and the adequacy of the transformer installed by the public utility, PSE&G. See SOF ¶¶ 6, 19.

Following tenant’s refusal to take possession and its failure to pay alleged rent and additional rent, plaintiff initiated this action on September 8, 2025, seeking declarations regarding the commencement date, tenant’s default, and damages. Defendants answered and asserted counterclaims for declaratory relief, breach of contract, breach of the implied covenant, breach of warranty, and certain claims for fraud and violations of the Consumer Fraud Act (proposed in an Amended Counterclaim). On February 4, 2026, after oral argument, the court granted Defendants’ motion for leave to file an amended counterclaim as to all proposed new counts except the two fraud-based claims, the addition of which was denied without prejudice.

III. LEGAL STANDARD

Summary judgment is appropriate under R. 4:46-2 when “the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are insufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Shields v. Ramslee Motors, 240 N.J. 479, 487 (2020); Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016). Once the movant has established entitlement to judgment as a matter of law, the burden

shifts to the non-movant to demonstrate a genuine issue of fact requiring trial. See Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985); CSFB 2001-CP-4 Princeton Park Corp. Ctr., LLC v. SB Rental I, LLC, 410 N.J. Super. 114, 120 (App. Div. 2009).

IV. ANALYSIS

A. Plaintiff's Motion: Substantial Completion and Lease Commencement

The core dispute centers on whether, as a matter of law, landlord achieved substantial completion of landlord's work, and thus triggered the lease's commencement date, per Section 2.1 of the Lease, when it received the TCO from the City of Newark on June 9, 2025.

The law is clear that "a lease is like any other written contract," and unambiguous terms are enforced as written. Ringwood Assocs., Ltd. v. Jack's of Route 23, Inc., 153 N.J. Super. 294, 309 (Law Div. 1977), aff'd, 166 N.J. Super. 36 (App. Div. 1979); M.J. Paquet v. N.J. DOT, 171 N.J. 378, 396 (2002); Levison v. Weintraub, 215 N.J. Super. 273, 276 (App. Div. 1987); Namerow v. PediatriCare Assocs. LLC, 461 N.J. Super. 133, 140 (App. Div. 2018).

Section 2.1 of the Lease unambiguously defines Substantial Completion as receipt of a certificate of occupancy, whether temporary or final, provided any TCO conditions do not interfere with Tenant's operations. SOF ¶¶ 10–12; Lease, § 2.1. Defendants do not put forth competent evidence (as opposed to argument or speculation) that issuance of the TCO was conditioned upon, or otherwise impaired, tenant's occupancy or intended operations. It is undisputed that landlord received the TCO on June 9, 2025, and that notice of same was provided to tenant. SOF ¶¶ 13–15.

1. Contract Interpretation as a Pure Question of Law

Contract interpretation in this context is particularly suited to summary judgment. See CSFB 2001-CP-4 Princeton Park Corp. Ctr., 410 N.J. Super. at 119; Badiali v. N.J. Mfrs. Ins. Group, 220 N.J. 544, 555 (2015). There is no ambiguity in Section 2.1; the court's role is not to supply additional terms nor to "rewrite the contract merely because one might conclude that it might well have been functionally desirable to draft it differently." Namerow, 461 N.J. Super. at 140

(quoting Connecticut Gen. Life Ins. Co. v. Punia, 884 F. Supp. 148, 152 (D.N.J. 1995)); see also Petersen v. Twp. of Raritan, 418 N.J. Super. 125, 133 (App. Div. 2011).

2. Application to the Record

In sum, the “uncontroverted” material facts are:

- Lease Section 2.1 defines substantial completion in terms of TCO/CO;
- The City of Newark issued the TCO on June 5, 2025, received by landlord on June 9, 2025;
- Notice of commencement was given to tenant on the same date;
- There are no competent factual submissions demonstrating that the TCO was conditional so as to interfere with tenant’s intended operations.

Accordingly, the Commencement Date of the lease occurred on June 9, 2025, as a matter of law. The plain language of the lease resolves count one of the complaint in plaintiff’s favor. See CSFB 2001-CP-4 Princeton Park Corp. Ctr., 410 N.J. Super. at 119–20.

B. Defendants’ Arguments in Opposition—Material Breach, Unclean Hands, and Need for Discovery

Defendants contend that landlord’s failure to ensure PSE&G provided a transformer of sufficient size or capacity to supply tenant’s alleged needs for “3,000A current” constitutes a material breach excusing their performance, and that this renders the TCO ineffective or procured by fraud.

The court is unpersuaded by these arguments as they relate to the question of substantial completion and lease commencement. First, as correctly stated in plaintiff’s reply, the Lease does not expressly require landlord to supply any specific transformer size or guarantee delivery of 3,000A current in any manner other than as provided in Exhibit H-1—a “3,000A 277/480 volt, 3-phase, 4-wire electrical service ... with a main switch.” Plaintiff has provided unrebutted expert opinion and documentation that this electrical service (and main switch) were furnished and that PSE&G, the public utility, selected and installed the transformer as per usual practice based on the actual load requirements and the load letter. Georgiadis Reply Cert. ¶5; Pitman Reply Cert. ¶¶ 6–7; SOF ¶¶ 17–18; see also August 14, 2025, letter from plaintiff’s counsel.

Second, defendants' assertion that the TCO was procured by fraud or unclean hands is unsupported by any competent evidence. Plaintiff submitted the certification of an experienced permit expeditor to the effect that private lease terms are not required to be disclosed in a TCO application in the City of Newark, and more importantly the relevant N.J.A.C. 5:23-2.23 and 2.24 provisions do not impose such requirements. Fonseca Reply Cert. ¶6; N.J.A.C. 5:23-2.23, 2.24.

Third, defendants' arguments regarding material breach and withholding of rent rely primarily on Westrich v. McBride, 204 N.J. Super. 550 (Law Div. 1984), which concerned a small optometry office rendered actually unusable by lack of heat. This case, by contrast, involves sophisticated parties, a heavily negotiated commercial lease, and undisputed completion of all "core" delivery and governmental approval items under the contract terms. As the plaintiff's submissions correctly note, even if defendants have a viable claim for breach, the lease here (Section 4) prohibits tenant from setting off or withholding rent except as expressly provided (e.g., by explicit abatement provisions not applicable here). Cf. Levison, 215 N.J. Super. at 276 ("Where the terms of a contract are clear and unambiguous there is no room for interpretation or construction and we must enforce those terms as written").

Finally, defendants' purported need for discovery is speculative and insufficient to forestall summary judgment on the interpretation and application of Section 2.1, which is a pure legal question. See Midland Funding LLC v. Thiel, 446 N.J. Super. 537, 547–48 (App. Div. 2016); Badiali, 220 N.J. at 555.

C. Disposition of Defendants' Cross-Motion for Summary Judgment

Defendants move for summary judgment on the entirety of their (as amended) counterclaims, including claims for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of express warranty, and declaratory/injunctive relief. The court, as noted on the record on February 4, 2026, previously granted in part defendant's motion for leave to amend its counterclaim, except as to two fraud-based claims, which was denied without prejudice. As to the remaining claims, defendants' cross-motion for summary judgment is **DENIED WITHOUT PREJUDICE** as premature.

As explained in plaintiff's briefing, summary judgment is not appropriate at this stage on defendants' counterclaims, which raise factual questions regarding the

performance and adequacy of landlord's alleged delivery of electrical capacity and the transformer. The court makes no ruling on the ultimate merits of those claims. Defendant is free to conduct discovery and to renew these arguments at a more appropriate time. The denial of summary judgment to defendants is without prejudice to renewal.

V. CONCLUSION

For all the foregoing reasons, plaintiff's motion for partial summary judgment is **GRANTED** solely as to declare that substantial completion (within the meaning of Lease Section 2.1) and the lease's commencement date occurred as a matter of law on June 9, 2025. No other relief is granted to plaintiff at this time.

Defendants' cross-motion for summary judgment is **DENIED WITHOUT PREJUDICE**, subject to renewal following further factual development, consistent with the ruling on defendant's motion to amend as placed on the record on February 4, 2026. This opinion does not address the merits of any other issues or claims raised in the amended counterclaims, which remain for further proceedings.

Plaintiff's claims for additional declarations, damages, or rent, and any other relief, and defendants' additional claims, are reserved for later adjudication.

An appropriate order will be filed simultaneously with this opinion.