NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2198-13T2

MARGATE TOWERS, INC.,

Plaintiff-Respondent,

v.

JIM PLAMANTOURAS AND
JOHN PLAMANTOURAS,

Defendants-Appellants.

Submitted April 21, 2015 – Decided August 13, 2015

Before Judges Messano and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. LT-4850-13.

George N. Polis, attorney for appellants.

Kristopher J. Facenda, attorney for respondent.

PER CURIAM

Following a non-jury trial in the Special Civil Part, Judge Allen J. Littlefield entered judgment for possession in favor of plaintiff-landlord Margate Towers, Inc., against defendants-tenants, Jim and John Plamantouras. Defendants' subsequent motion for reconsideration was denied. We briefly summarize the evidence at trial.

Plaintiff owns Margate Towers, a mixed-use building that contains seven commercial storefronts on the ground floor with residential condominium units above. The parties first entered into written lease agreements for three of the commercial units, Units 105, 106, and 107, beginning in 2008 (the 2008 leases). Plaintiff's property manager, Charles Conant, testified that the three leases had different start dates, roughly six months apart. Defendants made various modifications inside the units to accommodate their restaurant, which was located in two of the units with the third housing defendants' office space.[1]

The initial lease for Unit 107 was for a three-year term with an option to renew for a fourth and fifth year at a five percent rent increase. The leases for the other units had similar renewal terms. At some point after defendants took possession, the parties executed an addendum to the lease for Unit 107, in which the majority of the restaurant was situated. The addendum included a renewal option for two additional five-year terms which defendants could exercise at the end of the existing lease.

[1] Conant served as property manager for the condominium association. The leases at issue were executed by plaintiff, but, as we discuss below, the board of the condominium association took action in approving the leases. The exact relationship between plaintiff and the condominium association is unclear from the record.

In July 2011, defendants sent notice of their intention to exercise their option and renew the lease for Unit 107 only. The testimony revealed that plaintiff wanted defendants to renew leases for all three units, but defendants resisted, claiming their largest investment was in Unit 107. In any event, in fall 2011, the parties entered into renegotiations of the existing leases. Conant said this was done because defendants were having financial difficulties.

Defendants rejected plaintiff's first proposed lease, which incorporated all three units into one document. However, the parties apparently agreed to three separate leases, one for each unit (the 2011 leases). Each of the 2011 leases was for a one-year term beginning October 1, 2011, and ending September 30, 2012,[2] with an option to renew for two additional one-year terms, subject to a five percent rent increase, as well as a right of first refusal to purchase Unit 107. The 2011 leases also substantially reduced defendants' total monthly rent obligation from approximately $4100 to $3330. Paragraph twenty-nine of the 2011 leases provided that each lease was the parties' "full

[2] The end date was recorded on the lease as September 31, 2012, but that date does not, in fact, exist. We assume the parties intended the lease to conclude on the last day of September 2012.

agreement," which could not be "changed except in writing signed by" both.

Defendants executed the new leases, but in doing so, they forwarded executed addenda that purported to incorporate the terms of the addendum to the 2008 leases, i.e., an option to renew for two additional five-year terms.[3] At its November 2011 meeting, with defendants present, plaintiff's board considered and rejected the addenda, citing defendants' "lowered" rent, "past payment record" and future ability to renegotiate lease terms when the 2011 leases expired. On November 14, 2011, the board formally notified defendants of its decision. Plaintiff executed the 2011 leases and crossed out the addenda. Defendants claimed they never were provided with fully executed copies of the 2011 leases; however, the judge specifically found that James Plamatouras' testimony regarding the November 2011 meeting was incredible, and defendants were aware that their proposed additions to the 2011 leases were rejected.

Defendants paid rent in accordance with the terms of the 2011 leases and, in 2012, exercised their option to renew in accordance with the terms of those leases. In June 2013, plaintiff served defendants with a notice to quit and demanded

[3] The record contains proposed addenda for Units 106 and 107, but apparently it is uncontested that defendants attempted to include addenda for all three units.

possession, effective September 30, 2013. Defendants responded by notifying plaintiff that they were exercising their option to renew for "two (2) consecutive five-year periods" and that the "Notice to Quit and Demand for Possession is of no consequence or effect." In October 2013, plaintiff rejected defendants' rent payments and on October 11, plaintiff filed its eviction complaint.

At trial, defendants essentially argued that the 2011 leases were actually continuations of the original 2008 leases. They contended that the one-year term plus one-year renewal option in the 2011 leases meant a possible total term of five years, the same maximum term if they had exercised their options contained in the 2008 leases. Defendants' principal testified that the reduction in rent was a negotiated accommodation for habitability issues. Defendants contended that without any specific cancellation of the terms of the addenda, they remained in full force and effect under the 2008 leases, entitling defendants to exercise their option to renew for the first of the two five-year terms.

Plaintiff contended that the 2011 leases terminated and replaced the 2008 leases. It also argued that defendants' claims were debunked by the fact that they paid the reduced rent for two years and knew that plaintiff's board refused to

consider the proposed addendum at the time of the execution of the 2011 leases.

Judge Littlefield found that defendants agreed to the terms of the 2011 leases and counteroffered with the proposed addenda. He reasoned the counteroffer was rejected by plaintiff, thereby nullifying defendants' acceptance. The judge rejected defendants' claim that the 2011 leases were merely continuations of the 2008 leases, noting that defendants proposed new addenda, which demonstrated an understanding that the 2008 leases were terminated. Because defendants acted in conformity with the 2011 agreements and paid the lower rent for two years, the judge concluded they accepted the terms of the 2011 leases without any addenda. He found that plaintiff had served a timely notice to quit and terminated the tenancy, entitling plaintiff to a judgment of possession.

Defendants' motion for reconsideration provided no new arguments. In a short written statement of reasons, Judge Littlefield concluded that he had not "misstated the law, nor . . . failed to consider evidence [that] . . . should have [been] considered in [his] prior ruling." He denied defendants' motion and this appeal followed.

Before us, defendants contend plaintiff unilaterally modified the proposed 2011 leases, and absent an agreement, the

parties relationship was governed by the 2008 leases. Since the 2008 lease for Unit 107 provided defendants with an option to renew for two five-year terms which they timely invoked, defendants argue the judgment of possession for Unit 107 should be reversed. Having considered these arguments in light of the record and applicable legal standards, we affirm.

Our Standard of review is well settled:

> Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review: "we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]"
>
> [Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created By Agreement Dated December 20, 1961, ex. rel. Johnson, 194 N.J. 276, 284 (2008) (internal quotation marks and citations omitted)).]

"'[W]e do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (quoting State v. Barone, 147 N.J. 599, 615 (1997)). On the other hand, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan

Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"The interpretation of contracts and their construction are matters of law for the court subject to de novo review." Sealed Air Corp. v. Royal Indem. Co., 404 N.J. Super. 363, 375 (App. Div.) (citation omitted), certif. denied, 196 N.J. 601 (2008). We apply basic principles of contract interpretation to a lease. Town of Kearny v. Disc. City of Old Bridge, Inc., 205 N.J. 386, 411 (2011). "Our function in interpreting a contract is to give meaning to the symbols of expression chosen by the parties." Ibid. However, "we permit a broad use of extrinsic evidence to achieve the ultimate goal of discovering the intent of the parties." Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 270 (2006); see also Renee Cleaners, Inc. v. Good Deal Super Mkts. of N.J., Inc., 89 N.J. Super. 186, 190 (App. Div. 1965) ("In general, the polestar of construction is the intention of the parties as disclosed by the language used, taken in its entirety, and evidence of the attendant circumstances may be considered, not to change the agreement made but to secure light by which to measure its actual significance."), certif. denied, 46 N.J. 216 (1966).

If an agreement is reached through an offer and acceptance and is sufficiently definite so that the performance to be

rendered by each party can be ascertained with reasonable certainty, a contract arises. Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992). "A written contract is formed when there is a 'meeting of the minds' between the parties evidenced by a written offer and an unconditional, written acceptance." Morton v. 4 Orchard Land Trust, 180 N.J. 118, 129-30 (2004) (citation omitted); see also Weichert, supra, 128 N.J. at 435-36 (noting that generally speaking, there must be an unqualified acceptance of the offer in order to conclude the offeree has assented to the terms of the contract).

"An offeree may manifest assent to the terms of an offer through words, creating an express contract, or by conduct, creating a contract implied-in-fact." Id. at 436 (citation omitted). However, generally speaking, "'[a]n expression of assent that modifies the substance of the tender, while it may be operative as a counter-offer, is yet not an acceptance and does not consummate a contract.'" State v. Ernst & Young, L.L.P., 386 N.J. Super. 600, 612 (App. Div. 2006) (quoting Johnson & Johnson v. Charmley Drug Co., 11 N.J. 526, 538 (1953)).

Judge Littlefield properly applied these basic tenets to the credible testimony in the record. Defendants argue that the legal effect of this determination was that the parties remained

governed by the 2008 leases which were still in effect. This of course ignores what actually happened.

"[W]hen an offeree accepts the offeror's services without expressing any objection to the offer's essential terms, the offeree has manifested assent to those terms." Weichert, supra, 128 N.J. at 436. Assent may also be manifested by the offeree's actions. Ibid.

Here, plaintiff rejected defendants' counteroffer and executed the 2011 leases. Judge Littlefield found as a fact that defendants were aware of plaintiff's rejection of their counteroffer and the board's approval of the 2011 leases as originally submitted. Thereafter, defendants did not protest. Instead, their actions indicated acceptance of the 2011 lease terms, and they performed in accordance with those terms for nearly two years. Indeed, defendants exercised the option to renew the 2011 leases for an additional year in 2012 and did so in accordance with the terms of the 2011 leases.

We agree with Judge Littlefield that defendants accepted the terms of the 2011 leases through their subsequent conduct without protest. The judgment of possession was properly entered.[4]

[4] Defendants advance no specific argument regarding the order denying their motion for reconsideration. "An issue not briefed (continued)

Affirmed.

(continued)
on appeal is deemed waived." Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).