NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2003-10T3

RUTH EISENBERGER,

Plaintiff-Appellant,

v.

BOSTON SERVICE COMPANY, INC.,
d/b/a HANN FINANCIAL SERVICES
CORPORATION,

Defendant-Respondent.

Submitted August 17, 2011 - Decided August 24, 2011

Before Judges J. N. Harris and Fasciale.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-10366-09.

The Wolf Law Firm, L.L.C., attorneys for appellant (Andrew R. Wolf, Henry P. Wolfe, and Elliot M. Gardner, on the brief).

Reed Smith, L.L.P., attorneys for respondent (Diane A. Bettino, Melissa A. Wojtylak, and Paul Bond, on the brief).

PER CURIAM

Plaintiff Ruth Eisenberger appeals from a November 5, 2010 order dismissing her complaint against defendant Boston Service Company, Inc. d/b/a Hann Financial Services Corporation (Hann). Eisenberger contends that the motion judge erred by applying

Florida law rather than the laws of the State of New Jersey. We agree and reverse.

Eisenberger entered into an automobile leasing agreement[1] in 2003 which stated in pertinent part:

> GOVERNING LAW: I [(Eisenberger)] agree that the laws of the State in which I reside at the time I sign this lease, as shown in item 1(b) above, shall govern this lease and my obligations.

It is undisputed Eisenberger resided in New Jersey when she signed the lease and that Hann's principal place of business was located in this State.

In 2008, Eisenberger moved to Florida and took the Maxima with her. When her lease ended, Eisenberger returned the Maxima to Hann in New Jersey. Hann then forwarded to Eisenberger an invoice totaling $3,712.71 for "damage . . . determined to be in excess of normal wear and tear as described in your lease agreement" and stated that "payment is due upon receipt."

Eisenberger declined to pay and filed a complaint against Hann, alleging that Hann violated the (1) New Jersey Consumer Protection Leasing Act (NJCPLA), <u>N.J.S.A.</u> 56:12-66(b); (2) New Jersey Truth in Consumer Contract, Warranty and Notice Act (NJTCCWNA), specifically <u>N.J.S.A.</u> 56:12-14; and (3) New Jersey

---

[1] Eisenberger entered into the agreement with a New Jersey car dealership to lease a 2004 Nissan Maxima. The dealer then assigned the lease to Hann.

Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. She contended that Hann charged her for end-of-lease property damage and failed to notify her of the right to challenge the charges through an independent appraiser within seven business days from receipt of the invoice.

Hann filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted, pursuant to Rule 4:6-2(e). The judge issued an oral opinion and granted the motion. The judge found that Florida law applied and stated that "while generally New Jersey will honor choice of law provisions between the parties, the facts of this case fall within a recognized exception," because "Florida, not New Jersey, . . . has an overriding interest" "in protecting its consumers." The judge then dismissed the complaint because Eisenberger failed to establish a claim for relief under the laws of Florida.

On appeal, Eisenberger argues primarily that the trial court erred when it ruled that Florida rather than New Jersey law governed the lease agreement. We agree.

"'Ordinarily, when parties to a contract have agreed to be governed by the laws of a particular state, New Jersey courts will uphold the contractual choice if it does not violate New Jersey's public policy.'" N. Bergen Rex Transp. v. Trailer

Leasing Co., 158 N.J. 561, 568-69 (1999) (quoting Instructional Sys., Inc. v. Computer Curriculum Corp., 130 N.J. 324, 341 (1992)). However, [the choice of law provision] will [not] govern if:

> "(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which would be the state of the applicable law in the absence of an effective choice of law by the parties."
>
> [Instructional Sys., Inc., supra, 130 N.J. at 342 (quoting Restatement (Second) of Conflicts of Laws § 187 (1969).]

Here, the choice of law provision explicitly stated that the lease agreement would be governed by the law of the residence of the lessee "at the time [the lessee] sign[s] this lease," and it is undisputed that Eisenberger was a resident of New Jersey when she signed the lease.

The choice of law provision is not superseded by Restatement §187(a) because New Jersey has a substantial relationship to the parties and the transaction, the agreement was executed in New Jersey, Eisenberger lived in New Jersey at the time she executed it, and the automobile was returned to New

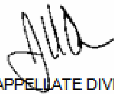
Jersey. Nor does Restatement §187(b) apply, because applying New Jersey law under these circumstances would not be against the "fundamental policy" of Florida and further, Restatement §187(b) applies when, in the absence of a choice of law provision, Florida law would govern. That requirement cannot be met because New Jersey has a greater interest in regulating the lease than Florida does. See Kramer v. Ciba-Geigy Corp., 371 N.J. Super. 580, 597-98 (App. Div. 2004); Gantes v. Kason Corp., 145 N.J. 478, 484 (1996).

"In reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). "[A] reviewing court 'searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Ibid. (quoting Di Christofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Thus, a motion to dismiss should be rarely granted. Printing Mart-Morristown, supra, 116 N.J. at 772. If the complaint, however, fails to state a basis for relief and discovery would not provide one, dismissal of the complaint is proper. Energy Rec. v. Dep't of Env. Prot., 320

N.J. Super. 59, 64 (App. Div. 1999), *aff'd o.b.*, 170 *N.J.* 246 (2001). Under New Jersey law, Eisenberger has stated a basis for relief in her complaint.

Reversed.

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



CLERK OF THE APPELLATE DIVISION