NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5218-11T4

YELLOW BOOK SALES AND
DISTRIBUTION COMPANY, INC.
(a Delaware Corporation),

Plaintiff-Respondent,

v.

FRANK & ROBERT ENTERPRISES, INC.
d/b/a PARADISE CHEM DRY, and
ROBERT ALLIANO, a/k/a ROBERT
ALLIANO SR., and FRANK PARADISE,
a/k/a FRANK PARADISE, III, JSA,

Defendants-Appellants.

Argued September 23, 2013 - Decided October 15, 2013

Before Judges Harris and Guadagno.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-77-10.

Ronald P. Sierzega argued the cause for appellants (Puff & Cockerill, L.L.C., attorneys; Mr. Sierzega, on the brief).

James T. Hunt, Jr. argued the cause for respondent (Slater, Tenaglia, Fritz & Hunt, P.A., attorneys; Mr. Hunt and Emily Daher, on the brief).

PER CURIAM

Defendants Frank and Robert Enterprises, Inc. d/b/a Paradise Chem Dry (Chem Dry), Frank Paradise, and Robert Alliano

appeal from the April 4, 2012 judgment of the Law Division in favor of plaintiff, Yellow Book Sales and Distribution Co., Inc. (Yellow Book). Defendants also appeal from the May 17, 2012 amended judgment awarding plaintiff prejudgment interest and counsel fees. The sole issue on appeal is whether individual defendants, Paradise and Alliano, are responsible for the debt of Chem Dry.

Paradise and Alliano are fifty-percent co-owners of Chem Dry, a Subchapter S corporation, which has been in business for eighteen years. Chem Dry is in the business of cleaning residential and commercial carpets and upholstery. Much of Chem Dry's business is generated through advertising and it has been a customer of Yellow Book since 1998. During that period, Chem Dry entered into eleven separate advertising contracts with Yellow Book, but ended its relationship in 2006 due to a decline in business and dissatisfaction with results.

A year later, a Yellow Book salesman convinced Paradise and Alliano to advertise again with Yellow Book by offering incentives such as "bigger ads, colored background, [and] . . . a cheaper price." According to Paradise, the salesman promised the advertising would "double or triple the amount of dollars that the book would cost." According to Paradise and Alliano, that promise never materialized and they grew dissatisfied with

the service. Between September 6, 2005, and February 9, 2008, Paradise and Alliano signed eleven contracts for advertising with Yellow Book. The total amount of advertising purchased by defendants exceeded $131,000. Defendants paid slightly more than $41,000.

On January 11, 2010, plaintiff filed a complaint naming Chem Dry, Paradise, and Alliano as defendants. The case was tried before Judge David W. Morgan on March 21, 2012. Judge Morgan heard the testimony of Paradise, Alliano and Sean Ebling, a corporate representative for Yellow Book. On April 4, 2012, Judge Morgan read a lengthy decision into the record and awarded judgment in favor of plaintiff in the amount $89,112.39 against Chem Dry, $41,393.95 against Paradise, and $18,465.40 against Alliano.

On appeal, defendants claim the judgment must be vacated against Paradise and Alliano, as they were not individually liable under the contracts. Defendants also claim Yellow Book is estopped from relying on a theory of suretyship, as it waived that claim before trial.

We reject these arguments and affirm both judgments substantially for the reasons expressed by Judge Morgan in his comprehensive oral decision. We add only the following brief comments.

If the terms of a contract are "clear and unambiguous, there is no room for construction and the court must enforce those terms as written, giving them 'their plain, ordinary meaning.'" Barr v. Barr, 418 N.J. Super. 18, 32 (App. Div. 2011) (citing Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008)). See also E. Brunswick Sewerage Auth. v. E. Mill Assocs., 365 N.J. Super. 120, 125 (App. Div. 2004). Ultimately, courts do not, and will 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." Barr, supra, 418 N.J. Super. at 31-32 (citing Maglies v. Estate of Guy, 193 N.J. 108, 143 (2007)).

It is a "well-settled principle that affixing a signature to a contract creates a conclusive presumption, except as against fraud, that the signer read, understood, and assented to its terms." Wade v. Park View Inc., 25 N.J. Super. 433, 440 (Law Div.), (citing Fivey v. Pa. R.R. Co., 67 N.J.L. 627, 632 (E. & A. 1902)), aff'd, 27 N.J. Super. 469 (App. Div. 1953). Unless the evidence clearly indicates there is mistake, fraud, duress, unconscionability, or illegality when entering into the contract, the unambiguous terms of the contract are binding and a court will "enforce the contract as written." Barr, supra,

418 N.J. Super. at 32 (citing Pacifico v. Pacifico, 190 N.J. 258, 266 (2007)).

Moreover, when two parties enter into a contract, those parties "have an obligation to read the contract because if they assent without so doing, they cannot later assert that their agreement was different from that expressed in writing." Aden v. Fortsh, 169 N.J. 64, 86 (2001). Ultimately, "in the absence of fraud, one who does not choose to read a contract before signing it cannot later relieve himself of its burdens." Moreira Constr. Co. v. Moretrench Corp., 97 N.J. Super. 391, 394 (App. Div. 1967) (citing Fivey, supra, 67 N.J.L. at 632; see also Pisker v. Metro. Life Ins. Co., 115 N.J.L. 582, 587 (E. & A. 1935) ("[f]ailure to read [a contract] or otherwise learn of its provisions furnishes no legal grounds for nullifying its conditions.").

Here, Judge Morgan found the language of the contracts was unambiguous. Paradise and Alliano identified their signatures on the eleven contracts in dispute, and below their signatures, the language "Authorized Signature Individually and for the Customer"[1] appears as well as an instruction to "Read paragraph 15F on the reverse hereto[,]" which provides:

[1] On three of the eleven contracts, the language under the signature identified "Company" and not "Customer."

> The signer agrees that he/she has the authority and is signing this agreement (1) in his/her individual capacity, (2) as a representative of the Customer, and (3) as a representative of the entity identified in the advertisement or for whose benefit the advertisement is being purchased (if the entity identified in the advertisement is not the same as the Customer or the signer). By his/her execution of this agreement, the signer personally and individually undertakes and assumes, jointly and severally with the Customer, the full performance of this agreement, including payment of amounts due hereunder.

Judge Morgan correctly concluded that the language following the signature line, by itself, is not enough to alert the signer that by signing, he or she is exposed to individual liability. However, the language to the immediate left directing the signer to Paragraph 15, 15F, or 15G (depending on the contract) on the reverse side, clearly alerts the signer that he or she is not only signing as an authorized representative of the customer/company, but also in an individual capacity. Judge Morgan concluded that the last line of the paragraph removes all doubt concerning individual liability:

> the last line, that's where you're kind of dead on the issue and that it says by his or her execution of this agreement the signer personally, that means you personally and individually, again that means you, undertake and assume jointly and separately with the customer, that means not just the customer is responsible but you individually

> and personally with the customer are responsible to the full performance of the agreement including payment of the amounts due thereunder.
>
> Well at that point in time it's unmistakable that notwithstanding the fact that it's faint, it's small, from a technical standpoint it makes you responsible for the obligation.

Paradise and Alliano had done business with Yellow Book for twelve years and they were presented with virtually the same Yellow Book contract eleven times. They admittedly chose not to read the "Terms and Conditions" of the contract each time they signed. These are not unsophisticated men. They are both high school graduates, eighteen-year co-owners of a franchised business, and admitted they have signed contracts in both their business and personal lives on numerous occasions.

Defendants' remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

We find no support in the record for defendants' claim that Yellow Book abandoned its claim of a suretyship agreement. The brief exchange cited by defendants does not support that claim:

> [DEFENDANTS' COUNSEL]: So that brings me to their next argument, which I am anticipating will be this is a suretyship contract. . . .
>
> THE COURT: Can I shortcut that? Because I don't think he's -- now I think I understand his argument. He's not asserting either one

> of those. He's saying, "You're a Co-Obligor. You're like the company signed it and you signed it." It's like husband and wife signed the Note Mortgage, the Note for the Mortgage and the Mortgage. But each as a Co-Obligor on the Note.
>
> And so he's not saying this is a guarantee, not a suretyship. It's as if this contract were signed by Mr. Paradise in his own individual capacity.
>
> Can we understand that's your position?
>
> [PLAINTIFF'S COUNSEL]: That is my position, Your Honor.
>
> THE COURT: You're not taking guarantee position or a suretyship?
>
> [PLAINTIFF'S COUNSEL]: No. Those [sic] no separate contract, Your Honor.
>
> THE COURT: So we can get rid of those.

When read in isolation, this response may appear confusing. In context, it is clear that plaintiff's counsel maintained throughout the trial that Yellow Book was not advancing a personal guarantee theory, as there was no separate contract. Earlier in the trial, plaintiff's position was made clear when its counsel stated: "[S]ince there isn't a separate contract, that the personal guarantee arguments fail and that this is actually a co-obligator/suretyship clause."

Judge Morgan's decision clearly explained his reasoning for determining that Paradise and Alliano were liable under the contract:

> The difficulty with calling either the individuals either a primary obligor under the contract, is that it's pretty clear that the principal obligation is to Paradise Chem Dry and that the individuals are signing in their individual capacity and as authorized rep but then the language of Paragraph 15G, F or 15, whichever contract you take basically says that you, signer, are personally and individually undertaking and assuming jointly and severally the obligation with the customer and the full performance of the agreement including the payment, the amounts due hereunder. And it's basically piggy-backing off customer's obligations. So if you review 99 percent of the contract, it's talking about customer being obligated, customer being imposed with this duty, this obligation, this payment, this whatever and what the signer individual is doing is saying that okay, I'm now taking on the obligation of customer but it's not the direct obligation of the signer. It's not the individual who's advertising or receiving the advertising services. It's not their benefit at all. It is the benefit of the corporate entity that's getting the advertising services and the signers, the individuals, are simply signing to assure payment alongside of the customer.

There was ample support in the record for Judge Morgan's conclusion that the Yellow Book contracts imposed personal liability on the individual defendants as co-obligors.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION