SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0117-16T3

MAHWAH VENTURES, LP,

Plaintiff-Appellant,

v.

NEW YORK STEAKHOUSE & PUB, INC., d/b/a BOOM BURGER,

Defendant-Respondent.

Submitted February 13, 2017 – Decided February 28, 2017

Before Judges Nugent and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Passaic County, Docket No. LT-5403-16.

Milber Makris Plousadis & Seiden, LLP, attorneys for appellant (David J. Montag, on the briefs).

Karounos & Associates, LLC, attorneys for respondent (Christopher T. Karounos, on the brief).

PER CURIAM

Plaintiff Mahwah Ventures, L.P. appeals the August 16, 2016 order dismissing its complaint and compelling the parties to arbitration. After a review of the record in light of the applicable principles of law, we affirm.

Plaintiff is the owner of a hotel. Defendant, New York Steakhouse & Pub, d/b/a/Boom Burger, leases space in the hotel to run a restaurant and provide food services to plaintiff's guests, including catering and room service. The lease requires defendant to pay an annual fixed amount of rent on a monthly basis, as well as real estate taxes and utility charges. Since the inception of the lease in 1996, plaintiff has collected all of the monies charged by the hotel for its customers and corporate accounts for defendant's banquet and room services. At the end of each month, plaintiff would either write a check to defendant for the monies Boom Burger was owed, over its rent obligation, or it would ask for a check from defendant for rent monies owed.

In May 2016, plaintiff sent a letter to defendant advising it had failed to pay rent, real estate taxes and utilities and as a result, it was in default under the lease. Plaintiff requested the immediate payment of rent and other charges totaling $122,099.26.

The following month, plaintiff served a notice of termination of the lease and demanded defendant vacate the premises. On June

15, 2016, plaintiff instituted a summary proceeding; in response, defendant filed a motion to compel arbitration. In a supporting certification, Michael Gubitosi, defendant's Vice President of Operations, asserted that during his twenty-year tenure doing business with plaintiff and its predecessors, the parties engaged in an agreed-upon course of conduct and accounting procedures. During this time period, room service, banquet fees, catering fees, breakfast coupons, and other charges were credited each month to the amount defendant owed in rent, taxes, utilities and other charges. Gubitosi stated that these practices were not setoffs or abatements, but rather the common accounting practice for their business relationship.

In further support of its motion, defendant relied upon Section 29.1 of the lease (the arbitration clause), which provided that "[i]n the event of a dispute between [plaintiff] and [defendant] with respect to any issue of fact such dispute shall be determined by arbitration as provided in this Article . . . ."

In opposition, plaintiff supplied a certification from Vice President Maria D'Alessandro. She stated that defendant was required to pay rent on a monthly basis without any abatement or setoff and it had defaulted on its obligation to do so. D'Alessandro did not dispute that the parties had engaged in the accounting practices described by Gubitosi but instead asserted

that as defendant had not disputed the amount of rent due or additional charges such as real estate taxes and utilities, those issues were not subject to arbitration.

At oral argument, defendant advised the judge that it had filed an action prior to plaintiff's landlord-tenant complaint for the unpaid monies due to it. However, upon reviewing the lease, counsel discerned the arbitration clause and voluntarily dismissed its Law Division action.

The judge observed the extensive exhibits provided by each party setting out charges, credits, and amounts due, and she remarked to counsel that an accountant would be required to perform an in-depth review of the parties' accounting procedures. The judge also noted the four paragraphs in the arbitration section detailing the requirements of an arbitrator and the selection procedure. She determined that in the event of an issue between the parties, the lease provided that the proper forum for a resolution of the issues was arbitration. Defendant's motion to compel arbitration was granted and the complaint was dismissed.

In this appeal, plaintiff argues that the motion judge erred in dismissing the complaint and compelling the parties to arbitration.

Orders compelling arbitration are reviewed de novo. Hirsch v. Amper Fin. Sec'ys, LLC, 215 N.J. 174, 186 (2013). The reviewing

court does not "accord any special deference to the [trial] court's conclusions." NAACP of Camden Cty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 430 (App. Div.), certif. granted, 209 N.J. 96 (2011), appeal dismissed, 213 N.J. 47 (2013). See also Coast Auto. Grp., Ltd. v. Withum Smith & Brown, 413 N.J. Super. 363, 369 (App. Div. 2010) (noting that the "[i]nterpretation of an arbitration clause is a matter of contractual construction that this court should address de novo"). In reviewing such orders, the Supreme Court has recognized the strong preference to enforce arbitration agreements, both at the state and federal level. See Hojnowski v. Vans Skate Park, 187 N.J. 323, 341-42 (2006) (noting federal and state preference for enforcing arbitration agreements)).

To determine the validity of the parties' written agreement, we turn to the lease for a consideration of the intentions of the parties as reflected in the four corners of the written instrument. NAACP of Camden Cty. E., supra, 421 N.J. Super. at 425. It is "the intent expressed or apparent in the writing that controls." Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 135 (2001) (citations omitted).

Plaintiff argues that there is no dispute of fact between the parties to trigger the arbitration clause. This statement is disingenuous as the parties attached multiple pages of

certifications and spreadsheets with tables of figures. There is a twenty-year history of a complicated accounting practice in which plaintiff collected all the monies paid towards defendant's services, and then credited the amounts owed for defendant's rent, taxes, utilities and other charges. Defendant disputes that it is in default on its rent obligations; to the contrary, it asserts that it is owed over $116,000 from plaintiff.

The arbitration clause in section 29 of the lease states: "[i]n the event of a dispute between [plaintiff] and [defendant] with respect to any issue of fact such dispute shall be determined by arbitration as provided in this Article . . . ." (emphasis added). The addition of the word "any" suggests that this term was meant to be construed broadly. Following the plain meaning of the lease, the intent of the parties explicitly expressed in the lease requires that any dispute of fact between the parties is subject to arbitration; there are no exceptions noted under the arbitration clause. This arbitration clause remained intact despite several amendments to the lease in the years since its inception.

The financial issues that exist between the parties are very much in dispute. There are clear issues of fact that must be resolved, and under the document governing their responsibilities, the parties intended arbitration to be the forum to address their

disputes. We are satisfied that the judge's decision to compel arbitration and dismiss the complaint was supported by the record and applicable principles of law.

Affirmed.