SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2956-14T3

JENNIFER CORONA,

Plaintiff-Appellant,

v.

STRYKER GOLF, LLC, d/b/a
THE ARCHITECTS GOLF CLUB,

Defendant-Respondent.

Argued February 3, 2016 – Decided March 20, 2017

Before Judges Fuentes, Kennedy and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Warren County, Docket No. DC-1393-14.

Brad M. Russo argued the cause for appellant (Russo Law Offices, LLC, attorneys; Mr. Russo, on the brief).

Janine A. Getler argued the cause for respondent (Getler & Gomes, PC, attorneys; Ms. Getler, on the brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

This breach of contract case came before the Law Division, Special Civil Part, by way of cross-motions for summary judgment.

After conducting an off-the-record settlement conference with the attorneys in chambers, the trial judge denied plaintiff's motion, granted defendant's cross-motion and dismissed plaintiff's complaint with prejudice. Although both parties requested oral argument pursuant to Rule 1:6-2(d), the judge decided the summary judgment motions on the papers.

The judge stated the legal basis for his decision in a "Statement of Reasons" he attached to the order dismissing plaintiff's complaint with prejudice. Based on the parties' statement of material facts and certifications, the judge found plaintiff had "twice breached the contract." On the question of damages, plaintiff argued the contract's liquidated damages clause was "grossly disproportionate to actual damages sustained by defendant and thus unenforceable as a penalty." The judge rejected plaintiff's argument, concluding that because the terms of the contract were "clear and unambiguous . . . the courts must enforce those terms as written."

Plaintiff now appeals arguing the motion judge erred as a matter of law because the contract's liquidated damages clause constituted an unenforceable penalty. Plaintiff also argues she is entitled to a refund of any monies that are not related to an ascertainable measure of damages. Finally, plaintiff argues the motion judge violated Rule 1:6-2(d) by deciding the parties' cross-

motions for summary judgment without honoring counsel's requests for oral argument.

Defendant argues the motion judge properly dismissed plaintiff's complaint on summary judgment because the contract's "stipulated damage clause" is enforceable; defendant also argues there is no jurisdiction for this court to issue a refund to plaintiff. Finally, defendant claims the judge's off-the-record discussion with the attorneys in his chambers constituted "oral argument." However, even if this court were to disagree with defendant on this issue, defendant claims that a violation of Rule 1:6-2(d) is not a ground for reversing the motion judge's legally sound decision.

We review a trial court's decision to grant or deny a motion for summary judgment de novo, using the same standards the Law Division used in this case. Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016). That standard is codified in Rule 4:46-2(c). It compels the grant of summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). We are satisfied there are no material issues of fact in

dispute and the case is ripe for disposition as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

After reviewing the material facts de novo, we reverse the motion judge's decision and declare the liquidated damages clause an unenforceable penalty as a matter of law. Because plaintiff conceded defendant's right to retain the initial $2500 deposit as a measure of damages, we remand for the entry of judgment in favor of defendant accordingly. The following uncontested facts will inform our decision.

On May 25, 2012, plaintiff Jennifer Corona entered into a contract with defendant Stryker Golf, LLC, d/b/a The Architects Golf Club to hold her wedding reception at defendant's catering hall. Defendant agreed to provide the room where the event would take place, food, beverages, and an approximately twenty-two percent "service charge," for a contract price of $12,012.80, without including sales tax. Plaintiff paid an initial deposit of $2500 in May 25, 2012, a second payment of $5166.35 on January 26, 2013, and a third payment of $1725.35 on May 1, 2013, for a total of $9391.70.

Although the original wedding date was scheduled to take place on July 26, 2013, defendant agreed at plaintiff's request to reschedule the date to July 27, 2014. In a letter dated January 23, 2014, plaintiff apprised defendant she was cancelling the

wedding. Defendant's general manager Lawrence J. Turco does not dispute he received this letter.

Paragraph 13 of the contract is denoted CANCELLATION and provides as follows:

> Cancellation under any circumstances is not acceptable and, in addition to forfeiting all deposits, the Patron will remain responsible for paying the entire balance of the contract price (excluding service charge) for the Event even if the Event does not occur. If the Club's ballroom is reserved for the Event or if the Event includes a golf outing, the Patron must pay a non-refundable deposit in an amount specified by the Club upon the Patron's return of the signed Agreement for the Club. The Club will apply the non-refundable deposit (without any interest) to the contract price.

Turco submitted an affidavit in support of defendant's motion for summary judgment in which he acknowledged plaintiff paid defendant a total of $9391.70 by the time he received the notice of cancellation, six months before the scheduled contract date. Turco merely cited to the contract's cancellation clause to support defendant's breach of contract claim and as a measure of damages.

Fifty-three years ago, this court provided a clear definition to distinguish between an enforceable liquidated damages clause and an unenforceable penalty:

> Liquidated damages is the sum a party to a contract agrees to pay if he breaks some promise, and which, having been arrived at by a good faith effort to estimate in advance the

> actual damage that will probably ensue from the breach, is legally recoverable as agreed damages if the breach occurs. A penalty is the sum a party agrees to pay in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the threat of which is designed to prevent the breach.
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> [Westmount Country Club v. Kameny, 82 N.J. Super. 200, 205 (App. Div. 1964).]

Although the Supreme Court has cited our decision in Westmount approvingly, it expanded its reasoning to account for the evolution of these legal principles as applied in a variety of factual settings. Thus, the Court explained that "a stipulated damage clause 'must constitute a reasonable forecast of the provable injury resulting from breach; otherwise, the clause will be unenforceable as a penalty and the non-breaching party will be limited to conventional damage measures.'" Wasserman's Inc. v. Twp. of Middletown, 137 N.J. 238, 249 (1994) (citation omitted).

Here, it is clear to us the liquidated damages clause is untethered to any reasonable basis for determining the actual economic loss defendant may have sustained as a result of plaintiff's decision to cancel the contract six months before the scheduled performance date. In fact, the contract identifies $9680 as defendant's cost for food and beverages based on plaintiff's menu selection. This figure nearly matches the $9391.70 plaintiff paid defendant before cancellation. Because

defendant was obviously spared incurring this cost, retaining the full $9391.70 plaintiff paid constitutes the kind of unwarranted windfall we condemned in Westmount as an unenforceable penalty. Westmount, supra, 82 N.J. Super. at 205.[1]

Plaintiff has conceded defendant is entitled to retain the initial $2500 deposit. We thus reverse the order of the Law Division, Special Civil Part, and remand for the trial court to enter judgment against defendant and in favor of plaintiff in the amount of $6891.70. This figure constitutes the amount plaintiff paid defendant after deducting the initial $2500 deposit. Although the motion judge erred in failing to afford the parties oral argument as mandated by Rule 1:6-2(d), under the present circumstances, this error is legally inconsequential.

Reversed and remanded. We do not retain jurisdiction.

[1] Defendant cited an unpublished opinion from this court and argues we should give it precedential value here because the appellate panel in that case reached a different result on allegedly "identical facts." Defendant's argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E); see also R. 1:36-3.