NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1601-12T1

CROSSPOINTE DEVELOPERS, L.L.C.,

Plaintiff-Appellant,

v.

WEGMANS FOOD MARKETS, INC.,

Defendant-Respondent.

Argued July 9, 2013 – Decided November 12, 2013

Before Judges Ostrer and Hayden.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-5910-11.

Mark A. Rothberg argued the cause for appellant (Wilf Law Firm, L.L.P., attorneys; Mr. Rothberg and Jeffrey J. McIlmail, on the brief).

Jaclyn K. Ruocco argued the cause for the respondent (Pepper Hamilton, L.L.P., attorneys; Ms. Ruocco and Matthew V. DelDuca, on the brief).

PER CURIAM

Plaintiff, Crosspointe Developers, L.L.C., owns a shopping center in Woodbridge where defendant, Wegmans Food Markets, Inc., leases space for a large supermarket. Crosspointe brought

suit against Wegmans for back rent. Crosspointe appeals from an October 18, 2012 Law Division order granting summary judgment to Wegmans and dismissing the complaint with prejudice. We affirm.

We glean the following facts from the record. Crosspointe and Wegmans entered into a lease agreement in June 2001 with an initial term of twenty-five years. The lease agreement specified that the term "Landlord" referred to Crosspointe and the term "Tenant" referred to Wegmans. The lease agreement provided for Wegmans to pay a set base monthly rent. Further, Wegmans agreed to pay as "additional rent" its pro rata share of common area expenses, taxes, and insurance premiums. Crosspointe estimated the additional rent annually and determined the actual additional rent at the end of the year. Wegmans was entitled to perform an audit to ascertain the accuracy of the additional rent charges.

Under Section 6.2 of the lease agreement, Wegmans had the right to contest the amount of any assessment or property tax bill in its own name and in the name of the landlord. Crosspointe agreed to cooperate with the process. Specifically, Section 6.2 provided: "In the event that Tenant shall obtain any reduction in assessment or in the amount of taxes, Tenant shall be entitled to its pro rata share of such reduction or rebate of Taxes paid and its reasonable costs in contesting such

assessment or tax bill, including attorneys' fees[.]" Moreover, Section 6.2 provided a self-help remedy that "in the event that Landlord shall not promptly reimburse Tenant for such amounts, Tenant may deduct them from future installments of Rent and Additional Rent due hereunder."

Another tenant in the shopping center, Lowes Home Center, Inc., appealed the tax assessment of the entire shopping center for 2007 and 2008, and obtained a substantial reduction. Crosspointe duly credited Wegmans with its pro rata share of the property tax reduction. However, as a result of an audit of the additional rent charges, Wegmans learned that Crosspointe charged it with a pro rata share of both Crosspointe's and Lowe's attorneys' fees from obtaining the reduction, totaling $57,886.31.

Thereafter, Wegmans, maintaining it had no lease obligation to pay these attorneys' fees as additional rent, deducted from its rent the attorneys' fees charged. Crosspointe brought a summary dispossess action in the Special Civil Part, seeking to evict Wegmans for non-payment of rent. Wegmans successfully removed the case to the Law Division.

After the completion of discovery, Wegmans filed a motion for summary judgment. On October 18, 2012, the trial judge heard oral argument and then granted Wegmans' motion to dismiss

Crosspointe's complaint with prejudice. The judge observed that the lease agreement was an "extremely detailed, negotiated, integrated contract" between two "sophisticated corporations" and that both parties bargained for the result. The judge concluded that Section 6.2 of the lease agreement clearly provided that the tenant was entitled to receive attorneys' fees from the landlord and did not provide that the landlord could charge the tenant for its counsel fees in obtaining a similar reduction. This appeal followed.

"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). Since it presents a purely legal question, "[t]he interpretation of a contract is subject to de novo review by an appellate court." Kieffer v. Best Buy, 205 N.J. 213, 222 (2011) (citing Jennings v. Pinto, 5 N.J. 562, 569-70 (1950)).

In interpreting a contract we are guided by established principles. "A basic principle of contract interpretation is to read the document as a whole in a fair and common sense manner." Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009). "We do 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." Maglies v. Estate of Guy, 193 N.J. 108, 143 (2007); see also Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999).

So too, we enforce the contract as written. The parties are bound by the contracts they make for themselves. Ctr. 48 Ltd. P'ship v. May Dept. Stores Co., 355 N.J. Super. 390, 406 (App. Div. 2002). The court may not "'rewrite the contract merely because one might conclude that it might well have been functionally desirable to draft it differently.'" Karl's Sales & Serv., Inc. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 493 (App. Div.) (quoting Levinson v. Weintraub, 215 N.J. Super. 273, 276 (App. Div.), certif. denied, 107 N.J. 650 (1987)), certif. denied, 127 N.J. 548 (1991).

If we find the terms "are clear and unambiguous, there is no room for construction and the court must enforce those terms as written," Watson v. City of E. Orange, 175 N.J. 442, 447 (2003), giving them "'their plain, ordinary meaning.'" Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008) (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). However, "if the terms of the contract are susceptible to at least two reasonable alternative interpretations, an ambiguity exists. In that case, a court may look to extrinsic evidence as an aid to interpretation." Chubb Custom Ins. Co. v. Prudential

Ins. Co. of Am., 195 N.J. 231, 238 (2008) (citing Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997)). If a contract is ambiguous, the writing is construed against the party preparing the contract, as long as the construction is sensible and conforms to the expressed intent of the parties. Broadway Maint. Corp. v. Rutgers, 90 N.J. 253, 270-71 (1982).

With these principles in mind, we review Crosspointe's request for reversal of the trial judge's judgment for Wegmans. Not surprisingly, the parties view the terms on the lease agreement differently. Crosspointe argues that Section 6.2 of the lease agreement obligated Wegmans to pay its pro rata share of attorneys' fees to Crosspointe for obtaining the property tax reduction. Crosspointe argues that the use of the term "Tenant" in that section, whereby the tenant secures a tax reduction and is reimbursed by the landlord, is solely an example to show how reimbursement would work for any party to the contract who secured a tax reduction.

Crosspointe also argues that the trial judge failed to take into consideration the equitable principle "that all those who enjoy a common benefit should be obligated to pay their fair share of the costs[.]" Thus, according to Crosspointe, it is entitled to reimbursement for its successful efforts "whether or not the Lease specifically provides for same."

Wegmans, on the other hand, contends that the contract terms are plain and unambiguous and were properly interpreted by the trial judge. The lease agreement provides for rent and additional rent, and neither includes landlord's attorneys' fees. Wegmans contends that Crosspointe's vague claims of equity do not trump the express terms of the contract.

After a careful review of the entire lease agreement, we conclude that the Section 6.2 is not ambiguous. As indicated by the clear wording of the agreement, the term "Tenant" refers solely to Wegmans throughout the agreement. Utilizing the parties' definition, we do not perceive that the use of the term in Section 6.2 is susceptible to two reasonable alternative meanings. Section 6.1 requires Wegmans to pay real estate taxes and Section 6.2 permits Wegmans to challenge those taxes. If Wegmans is successful, it would be reimbursed for costs, "including attorneys' fees." Nothing in this section suggests that the term "Tenant" has any other meaning than the meaning given throughout the agreement.

Crosspointe's claim that in Section 6.2 the term "Tenant" was used merely as an example, as opposed to its meaning in the rest of the lease agreement, leads to an inconsistent and incongruous result. In our view, this tortured reading misconstrues the term "Tenant" as it was defined by the parties

in the agreement itself. By characterizing the use of the term "Tenant" in Section 6.2 as an example, and insisting that the Landlord is also entitled to attorneys' fees pursuant to this example, Crosspointe seeks to impose a new term that is not explicit or necessary to the creation of rights and obligations under this contract.

Crosspointe also contends that, even if the explicit terms of the contract do not require reimbursement, "general equitable principles," which require that a party should not get a benefit without paying its share of the cost, oblige Wegmans to pay the attorneys' fees. It is notable that Crosspointe does not provide any precedential support for this alleged "principle" or identify any specific equitable principle that necessitates eviscerating the express terms of a contract.

Relief is not available merely because enforcement of a contract produces a result one side considers inequitable. Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 223 (2005). "A court cannot 'abrogate the terms of a contract' unless there is a settled equitable principle, such as fraud, mistake, or accident, allowing for such intervention." Id. at 2224 (quoting Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 183-84 (1985)).

The record is bereft of any such evidence. The circumstances here provide no basis in law or equity for disregarding the terms of the parties' negotiated agreement. See id. at 223 ("Courts generally should not tinker with a finely drawn and precise contract entered into by experienced business people that regulates their financial affairs."). Rather, we afford them their plain meaning.

Affirmed.