

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GFP FIREDANCER LLC,)
a Delaware limited liability company,)

Plaintiff,)

v.)

EAST COAST CYCLES, INC.,)
A Delaware corporation,)

Defendant.)

C.A. No. N15C-11-114 CEB

Date Submitted: January 22, 2016

Date Decided: April 29, 2016

ORDER DENYING MOTION TO DISMISS

On this 29th day of April 2016, upon consideration of Defendant's Motion to Dismiss, and Plaintiff's Response thereto, it appears that:

1. In November 2014, the parties entered into a lease pursuant to which Defendant would lease a portion of Plaintiff's property in Bear, Delaware. Article 31.08 of the Lease, the provision underlying this dispute, provides in its entirety:

This Lease shall be subject and contingent upon Tenant selling Tenant's Property located at 620 Pulaski Highway Bear, DE 19701. If Tenant does not sell Tenant's property prior to the Commencement Date [January 15, 2015], both Tenant and Landlord shall have the option to terminate this lease with 30 days written notice to the other party.

2. Defendant took possession of the property pursuant to the Lease on January 15, 2015. On August 31, 2015, Defendant gave written notice that it was terminating the Lease in accordance with Article 31.08. The termination date was September 30, 2015. After Defendant vacated the property, Plaintiff filed this lawsuit, claiming that Defendant's exercise of the option to terminate is a breach of the lease because the option ended on the commencement date and therefore, did not exist on August 31, 2015.

3. Defendant filed a Motion to Dismiss on the grounds that Plaintiff fails to state a claim upon which relief can be granted.¹ Defendant contends that Plaintiff cannot recover under the facts alleged because Defendant exercised a valid option to terminate, and that Plaintiff's promissory estoppels claim is precluded by the lease.

4. "A motion to dismiss for failure to state a claim upon which relief can be granted made pursuant to Superior Court Rule 12(b)(6) will not be granted if the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."² All well-pled allegations in the

¹ Super. Ct. Civ. R. 12(b)(6).

² *Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at *2 (Del. Super. Ct. June 4, 1992) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

complaint must be accepted as true,³ and every reasonable factual inference will be drawn in favor of the plaintiff.⁴

5. As a general rule, when “matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.”⁵ However, the Court may consider documents outside the pleadings without converting the motion if “the document is integral to a plaintiff’s claim and incorporated into the complaint.”⁶

6. To survive a motion to dismiss for failure to state a breach of contract claim, a plaintiff must allege: (1) existence of a contract; (2) breach of an obligation imposed by the contract; and (3) resulting damage.⁷ Here, Plaintiff met this burden by alleging that a lease existed, that Defendant stopped complying with his duties under the lease, and that Plaintiff was damaged as a result.

7. Defendant contends that the plain language of Article 31.08 is unambiguous and the Court should decline Plaintiff’s invitation to re-write the Lease in Plaintiff’s favor. Of course, Plaintiff disagrees. On a motion to dismiss,

³ *Id.* (citing *American Ins. Co. v. Material Transit, Inc.*, 446 A.2d 1101, 1102 (Del. Super. 1982)).

⁴ *Master Mechanical Inc. v. Shoal Construction, Inc.*, 2009 WL 1515591, at *1 (Del. Super. May 29, 2009).

⁵ Super. Ct. Civ. R. 12(b).

⁶ *Furman v. Delaware Dept. of Trans.*, 30 A.3d 711, 774 (Del. 2010).


⁷ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003) (internal citations omitted).

the Court cannot choose between two differing reasonable interpretations of ambiguous provisions.⁸ Dismissal pursuant to Rule 12(b)(6) is proper “only if the defendant[’s] interpretation is the *only* reasonable construction as a matter of law.”⁹ “[W]hen parties present differing—but reasonable—interpretations of a contract term, the Court turns to extrinsic evidence to understand the parties’ agreement. Such an inquiry cannot proceed on a motion to dismiss.”¹⁰

8. Plaintiff alleges in its Complaint that Plaintiff spent a substantial amount of money on certain improvements specifically designed for Defendant’s use of the premises. Defendant took up occupancy of the premises, exercised its rights and fulfilled its obligation under the Lease for almost eight months. In light of these facts, the Court cannot conclude that Defendant’s is the only reasonable construction of Article 31.08. Rather, the parties should take discovery and present the issue with a fully fleshed out record.

9. Accordingly, Defendant’s Motion to Dismiss is DENIED.

IT IS SO ORDERED.



Judge Charles E. Butler

⁸ *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2.d 609, 613 (Del. 1996).

⁹ *Id.*

¹⁰ *Renco Group, Inc. v. MacAndrews AMG Holdings LLC*, 2015 WL 394011, *5 (Del. Ch. January 29, 2015).