NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1903-13T3

ROBERT WARREN,

Plaintiff-Respondent,

v.

BIRCHWOOD ADULT DAY CARE,
L.L.C.,

Defendant-Appellant,

and

E.I. REALTY, INC.,

Defendant.

Argued April 22, 2015 – Decided July 2, 2015

Before Judges Fuentes, Ashrafi, and
O'Connor.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket
No. L-3630-11.

Matthew R. Major argued the cause for
appellant (Callagy Law; attorneys; Mr. Major
and Thelma Akpan, on the brief).

Robert A. Vort argued the cause for
respondent.

PER CURIAM

Defendant Birchwood Adult Day Care, L.L.C., appeals from summary judgment on liability in favor of plaintiff Robert Warren. We affirm.

Birchwood leased a parking lot from Warren adjacent to Birchwood's adult day care facility. The parking lot comprised thirty-one percent of the total area of Warren's property, and the lease required that Birchwood pay one-third of the property taxes. Birchwood did so for five years. When the taxes increased dramatically, Birchwood seized upon one word in the lease, the word "premises," to claim that it was liable for only one-third of the property taxes attributable to the parking lot area rather than one-third of the taxes for the entire lot. Thus, Birchwood claimed it was only responsible for about one-ninth of the taxes on the entire lot. Birchwood's argument is untenable and was correctly rejected by the trial court.

The background facts are not in dispute, and the issue on appeal pertains to the interpretation of a written lease. We exercise plenary review of the trial court's decision on the interpretation of contract terms. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014); Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). "Appellate courts give 'no special deference to the trial court's interpretation and look at the contract

with fresh eyes.'" Manahawkin Convalescent, supra, 217 N.J. at 115 (quoting Kieffer, supra, 205 N.J. at 223).

Warren owns property designated as Block 710, Lot 7.01, located at 129 Evergreen Place in East Orange. The lot is 34,779 square feet in size. The front third of the property consists of a paved parking area that covers 10,769 square feet, or 30.96 percent of the lot. The back two-thirds consists of a one story building, 24,010 square feet in area or 69.04 percent of the total lot. Warren operated a mechanic's garage out of the building. Warren's employees and customers had to traverse the parking area to get to the garage.

Defendant E.I. Realty, Inc. owns property designated as Block 710, Lot 7, located at 115 Evergreen Place in East Orange, which is adjacent to Warren's lot. E.I. Realty's property consists of a two-story building and a rear parking lot.

On July 29, 1999, Warren leased 129 Evergreen Place's parking area to E.I. Realty. The lease was for a term of five years, from 2000 to 2005. E.I. Realty agreed to pay Warren $1,000 per month as base rent plus one-third of the property taxes and one-third of any increase in the property taxes over "the base amount," which was the amount of property taxes assessed on 129 Evergreen Place in 2000, $20,890.26.

Subsequently, Warren and E.I. Realty extended the lease for an additional five-year term, from 2005 to 2010.

On August 24, 2001, E.I. Realty leased its property at 115 Evergreen Place to Birchwood. Birchwood also obtained E.I. Realty's rights and obligations to the lease for the Warren parking area. Birchwood agreed to pay Warren a base monthly rent plus one-third of the property taxes and one-third of any increase in the property taxes over the base amount. Birchwood's lease commenced on May 1, 2002.

In 2002 or 2003, Warren and Birchwood also entered into an oral agreement for the lease of parking spaces within 129 Evergreen Place's garage. Although Birchwood had ample outdoor parking, it sought indoor parking space for the busses it used to transport its patrons. Birchwood agreed to pay Warren an additional $350 per month for the indoor parking spaces.

From 2002 through 2006, Warren charged Birchwood rent plus one-third of 129 Evergreen Place's property taxes and one-third of the property tax increases. The amount charged to Birchwood ranged from about $5,500 to about $7,000 in those years.[1]

[1] The parties' papers, both before the trial court and on appeal, contain mathematical errors. The errors are not material to this appeal because the parties entered into a consent judgment agreeing on the amount of damages Birchwood owes to Warren if the summary judgment on liability is affirmed.

Birchwood made all the required payments until 2007, at which time the property taxes increased drastically. Between 2007 and 2010, Birchwood's one-third portion of the property taxes increased to a range of about $18,000 to more than $23,000 per year.

The increase prompted Birchwood to re-examine the lease and the amount of taxes it had previously paid. Concluding it had been overcharged for more than five years, Birchwood refused to make any further payments toward the property taxes, although it continued to pay the base rent for use of the parking area. Warren charged Birchwood the rent plus one-third of the taxes until early 2010, at which time Birchwood declined to extend the lease for an additional five-year term.

In April 2011, Warren filed a complaint in the Law Division against E.I. Realty and Birchwood. In an amended complaint, Warren alleged he was owed $81,763.37 in unpaid property taxes plus attorney's fees. In September 2011, Birchwood filed an answer and a counterclaim seeking $22,672.27, the amount it alleged had been overpaid to Warren. In June and July 2012, both parties filed motions for summary judgment.

On August 10, 2012, the court granted summary judgment in favor of Warren on liability only. Trial eventually commenced on the issue of damages, but the parties stipulated before its

conclusion that Birchwood owes Warren $53,457 if the summary judgment order is upheld on appeal. As part of the stipulation, Warren withdrew all his remaining claims, including his claim for attorney's fees. A consent judgment was entered on November 6, 2013, incorporating the parties' agreement.

Birchwood claims the trial court erroneously interpreted the lease as requiring it to pay one-third of the property taxes on the entire lot. It argues the lease requires it to pay one-third of the taxes that are applicable to the "premises," which the lease defines as the "PARKING LOT OF 129 EVERGREEN PLACE, EAST ORANGE, NEW JERSEY." Thus, Birchwood claims it is only required to pay one-third of the taxes and tax increases that are charged for its thirty-one percent use of the property.

Our courts look to conventional doctrines of contract law when interpreting leases. McGuire v. City of Jersey City, 125 N.J. 310, 321 (1991). Leases, like contracts, "should be read 'as a whole in a fair and common sense manner.'" Manahawkin Convalescent, supra, 217 N.J. at 118 (quoting Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009)). "Courts enforce contracts 'based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.'" Ibid. (quoting Caruso v.

Ravenswood Developers, Inc., 337 N.J. Super. 499, 506 (App. Div. 2001)).

"The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose[]'" of the contract. Pacifico v. Pacifico, 190 N.J. 258, 266 (2007) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)). Generally, "[i]f the language of a contract 'is plain and capable of legal construction, the language alone must determine the agreement's force and effect.'" Manahawkin Convalescent, supra, 217 N.J. at 118 (quoting Twp. of White v. Castle Ridge Dev. Corp., 419 N.J. Super. 68, 74-75 (App. Div. 2011)).

However, "[e]ven in the interpretation of an unambiguous contract, [the court] may consider 'all of the relevant evidence that will assist in determining [its] intent and meaning.'" Ibid. (quoting Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 269 (2006)). "Such evidence may 'include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provision by the parties' conduct.'" Conway, supra, 187 N.J. at 269 (quoting Kearny PBA Local # 21 v. Town of

Kearny, 81 N.J. 208, 221 (1979)). "Semantics cannot be allowed to twist and distort [the words'] obvious meaning in the minds of the parties." Schwimmer, supra, 12 N.J. at 307. "[T]he words of the contract alone will not always control." Conway, supra, 187 N.J. at 270.

In this case, paragraph one of the lease states:

> Premises. The Landlord does hereby lease to the Tenant and the Tenant does hereby rent from the Landlord, the following described premises:
>
> PARKING LOT OF 129 EVERGREEN PLACE, EAST ORANGE, NEW JERSEY

Paragraph thirty states:

> Tax Increase. If in any calendar year during the term and of any renewal or extension of the term hereof, the annual municipal taxes assessed against the land and improvements leased hereunder or of which the premises herein located are a part, shall be greater than the municipal taxes assessed against the said lands and improvements for the calendar year 2000, which is hereby designated as the base year, then, in addition to the rent herein fixed, the Tenant agrees to pay a sum equal to ONE THIRD of the amount by which said tax exceeds the annual tax for the base year . . . .
>
> THE TENANT ALSO AGREES TO PAY ONE THIRD OF THE ANNUAL TAXES ON THE AFORESAID PREMISES.
>
> [(Emphasis added).]

The lease is a standardized, pre-printed form. The capitalized sentence and the year "2000" are terms added by E.I. Realty when it prepared the lease.

In holding Birchwood responsible for one-third of the taxes on the entire lot, the trial court stated:

> [T]he terms of the contract . . . refer[s] to the aforesaid premises. The aforesaid premises could refer to either, "parking lot of 129 Evergreen" or it could refer to "129 Evergreen."
>
> The court finds that the only logical interpretation is that the aforesaid premises refers to 129 Evergreen and that the tenant was supposed to pay a third of all the property taxes. There is no other logical interpretation of the contract.

We agree. The term "premises" is designated in the lease as referring to the parking lot of 129 Evergreen Place only. That is because Birchwood had no right to the use and enjoyment of other parts of the property without a separate contract, such as its agreement for extra parking spaces in the garage.

Nevertheless, the insertion of the word "premises" into the tax section of the lease cannot mean that the parties meant to charge the tenant for one-third of taxes on only the parking area. Not only is there no logical reason to charge Birchwood only one-third of the taxes on a part of the property that it had the full right to use but there is no separate tax that the municipality imposes for the parking area. The tax bill and the

base year taxes reference the entire amount of property taxes for the lot, not a portion of those taxes. Birchwood's argument that it is liable to pay approximately one-ninth of the taxes is devoid of logic or any other merit.

The express terms of a contract should not be read in isolation and should not be used to "twist and distort [the words'] obvious meaning in the minds of the parties." Schwimmer, supra, 12 N.J. at 307. E.I. Realty, and later Birchwood, leased approximately one-third of 129 Evergreen Place from Warren. It follows that the parties intended to include one-third of the total property taxes and property tax increases as part of the tenant's monetary obligation under the lease. Interpreting the lease to allow the tenant to utilize one-third of the property but to pay only one-ninth of the property taxes contradicts common sense and the underlying purpose of the lease. Manahawkin Convalescent, supra, 217 N.J. at 118; Pacifico, supra, 190 N.J. at 266. Without an express provision in the lease establishing a fraction other than one-third of the tax liability, Birchwood's interpretation is a distortion of the contract terms.

Birchwood's argument also contradicts the parties' interpretation of the lease for the first seven years it was in effect. E.I. Realty paid one-third of the property taxes and

property tax increases from 2000 to 2002. Birchwood continued to pay one-third from 2002 to 2006. It was only after the taxes increased drastically in 2007 that Birchwood developed its theory and its new interpretation of the lease terms. The trial court correctly rejected Birchwood's argument and entered summary judgment on liability in favor of Warren.

Finally, in his responding brief, Warren reiterates his claim for attorney's fees pursuant to the terms of the lease, but he did not cross-appeal. Nor could Warren have cross-appealed after he withdrew with prejudice his claim for attorney's fees and entered into a stipulation on damages that was incorporated into the consent judgment.

Affirmed.