IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MIDDLETOWN SQUARE)	
ASSOCIATES, LLC., a Delaware)	
limited liability company, a subsidiary)	
of Pettinaro Corporation,)	
•)	
Plaintiff,)	C.A. No. N10C-04-019 MMJ
)	
V.)	
)	
ROBERT A JASINSKI,)	
)	
Defendant.)	

Submitted: September 12, 2012 Decided: December 4, 2012

On Plaintiff's Motion for Summary Judgment **GRANTED**

MEMORANDUM OPINION

Gary A. Bryde, Esquire, Gary A. Bryde, P.A., Hockessin, DE 19707, Attorney for Plaintiff

Robert A. Jasinski, Defendant, Pro Se, Bear, Delaware 19701

JOHNSTON, J.

Before the Court is a Motion for Summary Judgment filed by Plaintiff Middletown Square Associates, LLC ("MSA"), the owner of a commercial space leased to Defendant Robert A. Jasinski ("Jasinski"). MSA seeks judgment as a matter of law, arguing that Jasinski's failure to pay rent, and subsequent abandonment of the premises, constituted a breach of the parties' commercial lease agreement.

The Court held oral argument on September 12, 2012. For the following reasons, MSA's Motion for Summary Judgment is granted.

FACTUAL BACKGROUND AND PROCEDURAL CONTEXT

MSA owns commercial property in the Middletown Square Shopping Center (the "Shopping Center") in Middletown, Delaware. Prior to April 2007, Shear Magic Hair Design II, a beauty salon, was located within the Shopping Center. On April 1, 2007, Jasinski took over ownership of Shear Magic, renaming it Salon du Jour, Inc. Jasinski intended to continue operating a full service beauty salon in the space.

On April 3, 2007, MSA and Jasinski entered into a five-year lease agreement for the commercial space occupied by Salon du Jour, to commence on April 1, 2007.

Terms of the Lease Agreement

Pursuant to the terms of the lease agreement, rental payments were to be submitted by Jasinski as follows:

Year 1: \$1,909.38/month

Year 2: \$1,985.75/month

Year 3: \$2,062.13/month

Year 4: \$2,138.50/month

Year 5: \$2,214.88/month

The lease agreement further provides:

Tenant shall not use the rental space for any prohibited use listed in the attached Rules and Regulations nor, without first obtaining the written consent of the Landlord, for any use other than the following: <u>Full service hair and beauty salon with retail sale of hair products and accessories.</u>

The accompanying "Rules and Regulations" (together with the commercial lease agreement hereinafter referred to as the "Lease Agreement") set forth "General Provisions," applicable to all tenants of the Shopping Center. The "Rules and Regulations" also enumerate several "Prohibited Uses" of spaces in the Shopping Center. Pertinent to the instant action, the "Rules and Regulations" prohibit the operation of a beauty salon in the Shopping Center. Jasinski contends that this prohibition constitutes an exclusivity clause, barring any other beauty salon from opening and operating in the Shopping Center.

Alleged Competition in the Shopping Center

In March 2008, approximately 11 months after opening Salon du Jour, Jasinski decided to work for his previous employer on a full-time basis. In his absence, Vicki Woomer, a stylist at the salon, agreed to manage the salon.

Beginning in June 2008, a tenant in the Shopping Center informed Jasinski that another business in the Shopping Center was operating what According to Jasinski, this business, named appeared to be a salon. Newtown Hair and Beauty Supply ("Newtown"), had recently expanded and added stylist stations. As further evidence of Newtown's operation of a beauty salon, Jasinski alleges the following: (1) in August 2008, Jasinski was contacted by Melessa Brown who reportedly observed wave relaxer services being performed on a customer at Newtown; (2) in February 2009, a flyer was left on Jasinki's windshield, advertising barber services at Newtown; and (3) in May 2009, Jasinski entered Newtown and observed a man in a barber's smock cutting the hair of a child. Jasinski believed that Newtown's operation of a beauty salon in the Shopping Center directly violated the alleged exclusivity clause in his Lease Agreement

For the next 17 months, Jasinski attempted to contact MSA to report this alleged breach of the exclusivity clause. Because of the apparent high

rate of turn-over of property managers at the Shopping Center, Jasinski was unable to resolve the matter in a manner he deemed acceptable.¹ On September 26, 2009, Jasinski closed Salon du Jour.

MSA Alleges Breach of Contract

On April 1, 2010, MSA filed suit against Jasinski, alleging breach of contract. MSA contends that Jasinski defaulted under the Lease Agreement by failing to pay all rent due, and then subsequently abandoned the rental space prior to the natural termination of the lease term. MSA seeks the rent due for the balance of the lease term, together with arrearages, for a total amount of \$76,175.15.

Jasinski filed an Answer to MSA's Complaint and asserted a Counterclaim. Jasinski alleges that MSA was in breach of the Lease Agreement by allowing another tenant in the Shopping Center to operate a beauty salon. Jasinski seeks the return of the security deposit, overpayment of a maintenance fee, and the fair market value of Salon du Jour, for a total amount of \$144,600.00.

alleged exclusivity clause in Salon du Jour's Lease Agreement.

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¹ In March 2009, Judy Sanders, the property manager of the Shopping Center at the time, advised Newtown that it was prohibited from performing any hair related services. It is not clear whether Ms. Sanders believed that such services constituted a breach of Newtown's own lease agreement, or whether Sanders believed such services violated the

On August 23, 2012, MSA filed the pending Motion for Summary Judgment, arguing that there are no genuine issues of material fact, and that it is entitled to judgment as a matter of law.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.² All facts are viewed in a light most favorable to the non-moving party.³ Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.⁴ When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.⁵ If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.⁶

² Super. Ct. Civ. R. 56(c).

³ Hammond v. Colt Indus. Operating Corp., 565 A.2d 558, 560 (Del. Super. 1989).

⁴ Super. Ct. Civ. R. 56(c).

⁵ Wootten v. Kiger, 226 A.2d 238, 239 (Del. 1967).

⁶ Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

DISCUSSION

The Lease Agreement is Clear and Unambiguous

Under Delaware statutory law, all rights and remedies under a commercial lease agreement are governed by general contract principles.⁷ If the language of a contract is clear and unambiguous, the Court must construe the contract terms by their ordinary and usual meaning.8 "Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language." If the contract clearly and unambiguously reflects the parties' intent, the Court must refrain from destroying or twisting the contract's language, and confine its interpretation to the contract's "four corners." ¹⁰

⁷ Parks v. John Petroleum, Inc., 2011 WL 1376275, at *2 (Del.).

⁸ GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P., 36 A.3d 776, 780 (Del. 2012) (citing Paul v. Deloitte & Touche, LLP, 974 A.2d 140, 145 (Del. 2009)). See also Rhone-Poulenc Basic Chems. Co v. American Motorists Ins. Co., 616 A.2d 1192, 1196 (Del. 1992) ("Ambiguity does not exist where the court can determine the meaning of a contract 'without any other guide than a knowledge of the simple facts on which, from the nature of the language in general, its meaning depends."").

⁹ GMG Capital Invs., 36 A.3d at 780 (citing Eagle Indus., Inc. v. DeVilbiss Health Care, Inc., 702 A.2d 1228, 1232 (Del. 1997)).

¹⁰ Doe v. Cedars Academy, LLC, 2010 WL 5825343, at *5 (Del. Super.); O'Brien v. Progressive Northern Ins. Co., 785 A.2d 281, 288-89 (Del. 2001).

A contract is not rendered ambiguous merely because the parties dispute the meaning of its terms.¹¹ "Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."¹² "[W]here reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence."¹³

The Court finds the language of the Lease Agreement to be clear and unambiguous. The Court is able to determine the meaning of the Lease Agreement from the plain terms of the contract. Therefore, the Court is barred by the parol evidence rule from considering extrinsic evidence.

Contract Interpretation

Jasinski contends that the Lease Agreement contains an exclusivity clause, barring any other tenant in the Shopping Center from operating a beauty salon. Specifically, Jasinski relies on the "Prohibited Uses" provision, set forth in the "Rules and Regulations," which provides: "No store [in the Shopping Center] shall be used for ... (2) a beauty salon."

¹¹ GMG Capital Invs., 36 A.3d at 780 (citing Rhone-Poulenc, 616 A.2d at 1195).

¹² *Rhone-Poulenc*, 616 A.2d at 1196.

¹³ GMG Capital Invs.. 36 A.3d at 776.

Jasinski argues that because Newtown's alleged operation of a beauty salon directly violates this exclusivity provision, he should be permitted to terminate the remainder of the lease term and be compensated for the financial loss he sustained as a result of the breach.

After a thorough review of the Lease Agreement, including the accompanying "Rules and Regulations," the Court finds no language, either express or implied, that could be construed as creating an exclusivity agreement. The plain language of the Lease Agreement does not grant Jasinski the exclusive right to operate a beauty salon on the Shopping Center. Rather, to the contrary, the "Rules and Regulations" explicitly prohibit the operation of a beauty salon by *any* tenant of the Shopping Center. Therefore, a reasonable person cannot interpret such language as creating an exclusivity agreement.

Even assuming, *arguendo*, that the "Prohibited Uses" provision in the "Rules and Regulations" grants Jasinski the exclusive right to operate a beauty salon in the Shopping Center (which clearly it does not), Jasinski has failed to prove that he is entitled to damages. The undisputed record establishes that Salon du Jour's net income actually increased during the time period in which Jasinski alleges that Newtown was directly competing with Salon du Jour. Moreover, to the extent that Jasinski saw any decline in

gross income during the relevant time period, such a profit loss could be attributable to a host of other factors, including the economic downturn, the increasing number of vacant spaces in the Shopping Center, or Jasinski's absence at Salon de Jour on a daily basis. Finally, Jasinski conceded, during oral argument on this matter, that he cannot prove that his business losses are solely attributable to the alleged breach of the "exclusivity clause."

CONCLUSION

The Court finds that Jasinski has failed to establish that the Lease Agreement contained an exclusivity clause, barring the operation of any other beauty salon within the Shopping Center.

The Court further finds that Jasinski breached the Lease Agreement by failing to pay all rent due, and then subsequently abandoning the rental space.

THEREFORE, Middletown Square Associates, LLC's Motion for Summary Judgment is hereby **GRANTED**. Judgment is entered in favor of Middletown Square Associates, LLC in the principal amount of \$76,175.15. Plaintiff shall submit an implementing order. Defendant Jasinski's counterclaim is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston