VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-02973

Catamount/Riverside Company v. VT/CBD-Labs, LLC et al

DECISION ON MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff Catamount/Riverside Company sued Defendants VT/CBD-Labs, LLC and Jeffry Knight on a commercial lease and guaranty. Defendants answered and counterclaimed. Facing a motion for judgment on the pleadings seeking to dismiss the counterclaim and most of their affirmative defenses, Defendants moved to amend their answer. Either as initially stated or as amended, however, the counterclaim runs up against clear and conclusive provisions of the lease. Accordingly, the court grants the motion for judgment on the pleadings and denies the motion to amend as futile.

The pleadings establish the material facts. Pursuant to a lease dated January 23, 2019 by and between Plaintiff and Defendant VT/CBD-Labs, LLC, and as amended by a First Amendment to Lease Agreement dated April 30, 2021 (the "Lease"), VT/CBD-Labs leased premises at 133 Elm Street Extension in Winooski from Plaintiff. Defendant Knight executed a guaranty of the lease obligations. The Lease and guaranty are both attached to and incorporated in the Complaint, and so are properly before the court on this motion. *See Davis v. American Legion, Dep't of Vermont*, 2014 VT 134, ¶ 13, 198 Vt. 204 (quoting *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 n.4, 186 Vt. 605 (mem.)) ("[w]here pleadings rely upon outside documents, those documents 'merge[] into the pleadings and the court may properly consider [them] under a Rule 12(b)(6) motion to dismiss' ").

In their counterclaim, both as originally stated and as (putatively) amended, Defendants allege that during lease negotiations, Plaintiff made statements concerning the suitability of the premises for Defendants' business that were either fraudulent or at least negligently misrepresentative. They claim further to have suffered financial harm as a result of their reliance on these statements. Thus, they assert claims of fraud in the inducement, negligent misrepresentation, and unjust enrichment. In their answer, they also assert a myriad of affirmative defenses, many of which appear on their face to rely on the same allegations.

The Lease contains two provisions that bear on this dispute. First, Section 6 states:

Section 6. **Condition of Premises.** Tenant shall take and accept the Leased Premises in "as is" condition with no representations or warranties of any kind with respect to the quality of the Premises or the suitability of the Premises for Tenant's intended use. Tenant shall be responsible for the making of all alterations to the Premises or Property which are or become necessary to comply with the Americans with Disabilities Act because of any action, use, or characteristic of Tenant or in order to accommodate the needs of any employee of Tenant or any visitor, licensee or invitee to the Premises, and Tenant shall comply with the requirements of this Lease with respect to all such alterations.

Next, Section 35 states:

Section 35. **Entire Agreement, Applicable Law.** This Lease with any exhibits and riders attached hereto contains the entire agreement of the parties and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect, unless the same are in writing and signed by or on behalf of the party to be charged. The captions of particular Sections are inserted as a matter of convenience only and are in no way to affect or define the scope or intent of this Lease or any provision thereof. This Lease shall be governed by and interpreted in accordance with the laws of the State of Vermont.

Taken together, these provisions foreclose Defendants' claims.

Vermont law clearly establishes that "entire agreement" or "merger" clauses are valid, operating to negate any reliance on any statements or representations made during the course of negotiations.

> Generally, a "merger clause," such as the one here, is designed to avoid the confusion created when parties may have several agreements or contracts between them prior to completing a written agreement. The merger clause confirms that the contract is "adopted by the parties as a *complete and exclusive* statement of the terms of the agreement." Restatement (Second) of Contracts § 210 (1981) (emphasis added). Thus the written contract becomes the exclusive medium for determining the understanding of the parties, see *Dartmouth Sav. Bank v. F.O.S. Assocs.*, 145 Vt. 62, 69, 486 A.2d 623, 626–27 (1984), and prior agreements covering the same subject matter are unenforceable. *See United Park Ass'n v. Ringuette*, 168 Vt. 603, 606–07, 719 A.2d 884, 887–88 (1998) (mem.).

Hoeker v. Dep't of Soc. & Rehab. Servs., 171 Vt. 620, 621–22 (2000) (mem.). The parties to an agreement containing such a clause are bound by its "plain and express meaning." *Id.* at 622. More recently, the Vermont Supreme Court extended these teachings to a case in which, as here, the plaintiffs alleged "explicit and implicit representations" on which they relied in entering into an agreement to purchase real estate. *A2, Inc et al. v. Champlain Advisory Group, Inc.*, 2009 VT 50, 186 Vt. 530. As with the Lease here, the purchase and sales agreements for two of the three parcels at issue in that case included a provision precluding reliance "upon any representations, warranties or other statements, whether verbal or in writing, except as expressly stated in this Agreement in connection with the premises and the transactions contemplated hereunder." *Id.* ¶ 14. The agreement for the third parcel included a merger clause similar to the one at issue here:

> This Agreement states the whole agreement of the parties hereto regarding the purchase and sale of the property, and all prior agreements, understandings, representations . . . and warranties made by either party prior to the date of this Agreement are merged

> herein, and this Agreement alone fully expresses the understanding and agreements of the parties hereto.

Id. The Court held that even assuming the defendant had made the alleged misrepresentations, "these provisions in the purchase and sales agreements preclude reliance on such assertions as they were not ultimately reflected in the contract." *Id.*

These teachings control here with full force. The Lease contains not one but two clauses that foreclose any reliance on any statements Plaintiff may have made prior to the parties' execution of the Lease. There is no suggestion here of a separate agreement that might afford an end-run around these provisions. *Cf. Hoeker*, 171 Vt. at 622 ("We note this is not a case where two independent contracts covering different subject matter govern the same transaction."). Thus, the court is bound to enforce the provisions according to their plain meaning. *Id.*

This conclusion requires dismissal of the counterclaim, either as originally stated or as (putatively) amended. The motion to amend is therefore denied as futile. This leaves only consideration of Defendants' affirmative defenses. While many of these would appear to be foreclosed, the sparseness of their pleading—as allowed by V.R.C.P. 8—leaves open the possibility that Defendants could prove facts, beyond the alleged misrepresentations, that would support one or more of these defenses. Only defenses 6, 7, 8, 9, and 13 (breach of warranties, failure to disclose, unjust enrichment, deceit or misrepresentation, fraud in the inducement) are categorically foreclosed. The court therefore strikes those defenses.

ORDER

The court grants the motion for judgment on the pleadings and denies the motion to amend the answer as futile. The counterclaim is dismissed with prejudice. Affirmative defenses 6,7,8,9, and 13 are stricken.

Electronically signed pursuant to V.R.E.F. 9(d): 7/7/2022 3:44 PM

Samuel Hoar, Jr.
Superior Court Judge