F. James Donnelly, P.C. v. Copelco Capital Inc.
N.J.Super.A.D.,2007.
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.
Superior Court of New Jersey,Appellate Division.
F. JAMES DONNELLY, P.C., individually and on behalf of all others similarly situated, Plaintiff-Appellant,
v.
COPELCO CAPITAL INC.; Citicorp Vendor Finance, Inc., Defendants-Respondents.
Argued March 27, 2007.
Decided April 11, 2007.

SYNOPSIS

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, L-2808-04.

Scott A. Kamber (Kamber and Associates) of the New York bar, admitted pro hac vice, argued the cause for appellant (Sohmer Law Firm and Mr. Kamber, attorneys; Stephen M. Sohmer, on the brief).
James M. Hirschhorn argued the cause for respondent (Sills Cummis Epstein & Gross, attorneys; Joseph L. Buckley, Mr. Hirschhorn and Jonathan S. Jemison, of counsel and on the brief).

Before Judges COBURN, AXELRAD and R.B. COLEMAN.
PER CURIAM.
***1** Plaintiff sued defendants alleging breach of contract and consumer fraud. The trial judge granted defendants' motion for summary judgment, and plaintiff appeals.

In April 2000, plaintiff, a law firm located near Denver, Colorado, leased a 250-pound Ricoh 5840 photocopying machine and fax from defendants for three years. The lease provided, in pertinent part, that when it expired the lessee
shall return the Equipment to us at your cost, in good condition and working order in a manner and to a location designated by us or remit the purchase option.

When the lease was about to end, plaintiff advised defendants that he did not want to purchase the machine or renew the lease. Defendants responded by directing plaintiff to return the machine to a remarketing facility in North Carolina at a cost of $603.00. Plaintiff protested, complied, and then sued, claiming that defendants should have permitted him to return the machine to some location in the Denver area. Defendants submitted substantial evidence, which was not contradicted by plaintiff, showing that the lease's return provision was consistent with industry standards for office equipment leases, that for purposes of economy they dealt with two remarketing facilities, and that the one selected in this case was closest to plaintiff's office.

On appeal, plaintiffs argue, as they did below, that the return provision is ambiguous, and that in light of the implied covenant of good faith and fair dealing the provision should have been construed in its favor to allow redelivery to a location closer to plaintiff's office.

After carefully considering the record and briefs, we are satisfied that the judgment is based on findings of fact which are adequately supported by evidence, *R.* 2:11-3(e)(1)(A); that all of plaintiff's arguments are without sufficient merit to warrant discussion in a written opinion, *R.* 2:11-3(e)(1)(E); and that we should affirm substantially for the reasons expressed by Judge Jonathan Harris in his oral opinion delivered on September 23, 2005. Nonetheless, we add the following comments.

In its reply brief, plaintiff argues for the first time on appeal that the trial judge erred in dismissing its consumer fraud action. The argument is presented without citation of authority. Moreover, as defendants noted in their brief, plaintiff's initial brief contained no point heading on this subject, in violation of *R.* 2:6-2(a)(5), which requires that the

legal argument "be divided into as many parts as there are points to be argued." Claims not briefed are deemed abandoned. *Triffin v. Mellon PSFS,* 372 *N.J.Super.* 221, 226 (App.Div.2004). Thus, we are not required to consider the consumer fraud claim, which, in any case, is entirely without merit.

When a contract is unambiguous, resolution by summary judgment is appropriate. *Cedar Ridge Trailer Sales, Inc. v. Nat'l Cmty. Bank,* 312 *N.J.Super.* 51, 62-63 (App.Div.1998). The language of the return provision could not be any clearer, and given the uncontradicted facts regarding industry practices and defendants' purpose in selecting the North Carolina facility as the return location in this case, we cannot say that the judge erred in determining as a matter of law that enforcement did not violate the covenant of good faith and fair dealing. Therefore, we are obliged to affirm.

***2** Affirm.

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Not Reported in A.2d, 2007 WL 1062066 (N.J.Super.A.D.)

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