

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

905

CA 19-00266

PRESENT: WHALEN, P.J., SMITH, CENTRA, NEMOYER, AND TROUTMAN, JJ.

EDWARD J. HAGGERTY, AS TRUSTEE OF THE JAMES J.
HAGGERTY TRUST, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

PHILIP M. STEITZ, DOING BUSINESS AS PREMIER TIRE
COMPANY, INC., DEFENDANT-RESPONDENT.

GUSTAVE J. DETRAGLIA, JR., UTICA, FOR PLAINTIFF-APPELLANT.

PAPPAS, COX, KIMPEL, DODD & LEVINE, P.C., SYRACUSE (P. DOUGLAS DODD OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County
(Donald A. Greenwood, J.), entered December 10, 2018 after a nonjury
trial. The order dismissed the complaint.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Plaintiff, the lessor of a building, commenced this
action to recover damages allegedly resulting from, inter alia,
defendant's breach of a lease requiring defendant to obtain
"[b]usiness liability and property damage insurance." After a nonjury
trial, Supreme Court determined that plaintiff failed to establish by
a preponderance of the evidence that defendant breached the lease by
failing to obtain fire insurance, and the court therefore dismissed
the complaint. We affirm. Contrary to plaintiff's contention, the
lease is ambiguous with respect to the kind of insurance that
defendant was required to obtain because the language used in the
lease's insurance clause " 'is reasonably susceptible of more than one
interpretation' " (*Roche v Lorenzo-Roche*, 149 AD3d 1513, 1514 [4th
Dept 2017], quoting *Chimart Assoc. v Paul*, 66 NY2d 570, 573 [1986]).
Because the lease is ambiguous, the parties were properly permitted to
offer extrinsic evidence to establish their intent in using the
language in the insurance clause (see *Greenfield v Philles Records*, 98
NY2d 562, 569 [2002]; *Ames v County of Monroe*, 162 AD3d 1724, 1726
[4th Dept 2018]). Upon our review of the record, we conclude that the
court's determination is supported by "a fair interpretation of the
evidence" (*Cianchetti v Burgio*, 145 AD3d 1539, 1541 [4th Dept 2016],
lv denied 29 NY3d 908 [2017]; see *Suprunchik v Viti*, 139 AD3d 1389,

1390 [4th Dept 2016]).

Entered: October 4, 2019

Mark W. Bennett
Clerk of the Court