

2015 WL 1781552

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

HILLSBOROUGH PARK,
LLC, Plaintiff–Respondent,

v.

BURNT HILL ROAD, LLC and James
Bumstead, Defendants–Appellants.

Submitted April 14, 2015.

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Decided April 21, 2015.

On appeal from Superior Court of New Jersey, Law
Division, Somerset County, Docket No. L–852–12.

Attorneys and Law Firms

Maselli Warren, PC, attorneys for appellants (**Perry S. Warren**, of counsel and on the brief).

Mauro, Savo, Camerino, Grant & Schalk, PA, attorneys
for respondent (**Michael P. O'Grodnick**, on the brief).

Before Judges **HAAS** and **HIGBEE**.

Opinion

PER CURIAM.

*1 In this commercial loan guaranty case, defendants Burnt Hill Road, LLC (Burnt Hill), and James Bumstead appeal from the January 31, 2014 Law Division order granting plaintiff Hillsborough Park, LLC's motion for summary judgment, and denying defendants' cross-motion for summary judgment. Defendants also appeal from the court's April 1, 2014 order denying their motion for reconsideration. After reviewing the record in light of the contentions advanced on appeal, we reverse.

In November 2010, plaintiff leased a commercial premises to Burnt Hill. The lease incorporated a guaranty provision. The parties dispute whether, pursuant to the terms of the guaranty, defendant Bumstead was

personally liable in the event Burnt Hill failed to pay its rent and, if so, the amount of his liability.

In June 2012, plaintiff filed a complaint against defendants, asserting that Burnt Hill had defaulted on its obligation to pay rent, and seeking to hold Bumstead personally liable under the guaranty. Defendants filed an answer and the parties completed discovery.

Thereafter, plaintiff filed a motion for summary judgment, and defendants responded with a cross-motion for summary judgment. Defendants' cross-motion contained an explicit request for oral argument. However, the trial judge did not conduct oral argument. Instead, the judge issued a brief oral opinion granting plaintiff's motion and denying defendants' cross-motion, and entered a \$175,000 judgment against both defendants. The judge did not explain why defendants' request for oral argument was not granted.

When defendants moved for reconsideration, they again requested oral argument. However, the trial judge did not entertain the request, and denied the motion after reviewing the papers. The judge did not make any findings of fact or conclusions of law on the issues raised in defendants' motion for reconsideration.

This appeal followed and defendants contend that the judge should have granted their requests for oral argument. We agree. Under *Rule* 1:6–2(d), a request for oral argument “shall be granted as of right” for all motions not involving pretrial discovery or calendar control. Thus, litigants should be permitted oral argument on dispositive motions when requested “as a matter both of due process and the appearance of due process.” *Filippone v. Lee*, 304 N.J. Super. 301, 306 (App.Div.1997).

Here, the parties' summary judgment motions presented issues, both of law and of fact, that clearly could have benefited from further elucidation by way of oral argument. We discern “no special or unusual circumstance here warranting the court's dispensing with an entirely appropriate request for oral argument of a motion presumptively entitled to argument on request.” *Ibid*. We therefore reverse and remand this matter for further proceedings consistent with this opinion.¹

¹ In light of our disposition of this matter, we need not address in detail the judge's failure to make any

findings of fact or conclusions of law concerning the denial of defendants' motion for reconsideration. However, we note that clearly stated factual findings and conclusions of law are required "on every motion decided by a written order that is appealable as of right[.]" R. 1:7-4(a); See *Shulas v. Estabrook*, 385 N.J.Super. 91, 96 (App.Div.2006) (requiring an adequate explanation of basis for court's action).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

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