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TRUMP ENTERTAINMENT RESORTS,
INC.; TERH L.P. INC.; TRUMP
ENTERTAINMENT RESORTS HOLDINGS
L.P.; TRUMP TAJ MAHAL ASSOCIATES,
LLC d/b/a TRUMP TAJ MAHAL CASINO
RESORT, and TRUMP PLAZA
ASSOCIATES, LLC d/b/a TRUMP PLAZA
HOTEL AND CASINO,

Plaintiffs,

v.

LEXINGTON INSURANCE COMPANY;
ASPEN SPECIALTY INSURANCE
COMPANY, "ABC CORPORATIONS" 1-10
(Names Fictitious); and "JOHN DOES" 1-10
(Names Fictitious),

Defendants.

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY: LAW DIVISION
Docket No. ATL-L-2458-15

Civil Action

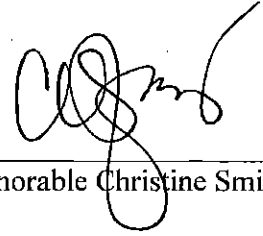
ORDER

THIS MATTER having been brought before the Court by Defendants Lexington Insurance Company and Aspen Specialty Insurance Company, by and through their counsel, Mound Cotton Wollan & Greengrass LLP, seeking an Order granting summary judgment in their favor, and the Court, having considered the moving, opposition, and any reply submissions, and the argument of counsel, and for the reasons placed on the records and good cause shown,

IT IS on this 14th day of March, 2018:

ORDERED that Defendants' Motion for Summary Judgment is GRANTED; and it is further

ORDERED that the Amended Complaint herein is hereby **DISMISSED** with prejudice and without costs.



Honorable Christine Smith

Opposed

Unopposed

See attached Memorandum of Decision



**SUPERIOR COURT OF NEW JERSEY
COUNTIES OF ATLANTIC AND CAPE MAY
VICINAGE 1**

CHRISTINE SMITH, J.S.C.
Civil Division

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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS**

MEMORANDUM OF DECISION PURSUANT TO RULE 1:6-2(F)

RE: Trump v. Lexington Insurance Co., et al.

DOCKET #: ATL-L-2458-15

DATE: March 14, 2018

MOTION: Motion for Summary Judgment

MOVANT: Scott J. Sheldon, Esq. – Defendant, Lexington Ins. Co.
and Aspen Specialty Insurance Co.

MATERIALS REVIEWED: Notice of Motion, Brief and Exhibits
Plaintiff's Opposition and Defendant's Reply Brief
Oral Argument held on March 2, 2018

**HAVING CAREFULLY REVIEWED THE PAPERS SUBMITTED CONCERNING THE
ABOVE CAPTIONED MOTION, AND HAVING HEARD ORAL ARGUMENT, I HAVE
RULED AS FOLLOWS:**

Nature of Motion and Procedural History

Defendants, Lexington Insurance Company and Aspen Specialty Insurance Company (hereinafter “Lexington” and “Aspen”), bring this motion seeking summary judgment as to claims brought against them by Plaintiffs, Trump Taj Mahal and Trump Plaza Hotel and Casinos (hereinafter “Trump Casinos”). This is an insurance coverage dispute wherein Plaintiffs filed a claim under the insurance policy they held with Defendants for lost profits allegedly resulting from conditions caused by Hurricane Sandy. Plaintiffs allege that the aftermath of Hurricane Sandy caused their patrons to stay away from Trump’s casinos. Plaintiffs now seek to recover \$12.3 million dollars in alleged lost gaming profits. Defendants have denied Plaintiffs’ claim, as the policy held by Plaintiffs is a property damage policy only, one which does not insure against a general downturn in business. Defendants now argue that no evidence has been presented substantiating Plaintiffs’ claims, thus making summary judgment appropriate.

Legal Standard

Summary Judgment

Motions for summary judgment are made pursuant to R. 4:46-1. A court should grant summary judgment when:

[T]he pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

R. 4:46-2(c). This rule directs a court to “deny a summary judgment motion *only* where the party opposing the motion has come forward with evidence that creates “a genuine issue as to any material fact challenged.”” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 529 (1995) (emphasis in

original). Further, “summary judgment should be denied where determination of material disputed facts depends primarily on credibility evaluations or where the existence of a genuine issue of material fact appears from the discovery materials or from the pleadings and affidavits on the motion.” *See* Comment 2.3.2 to R. 4:46-2; Parks v. Rogers, 176 N.J. 491, 502 (2003). All inferences of doubt are drawn against the movant in favor of the opponent of the motion. *See Brill, supra* at 520.

Discussion

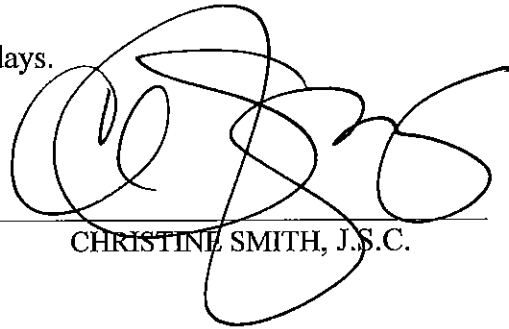
Defendants argue that the coverage Plaintiffs seek is for lost profits due to ‘General Post-Storm Business Downturn,’ which is not covered under the Policy. Notwithstanding that fact, Plaintiffs fail to allege any lost profits that can reliably be attributed to Hurricane Sandy’s effect on customers. This Court’s decision turns on the question of whether there is any evidence in the record showing a causal connection between Hurricane Sandy’s aftermath and lost profits from actual customers no longer gambling at Trump Casinos. After careful consideration of the evidence and arguments presented, the Court finds that Plaintiffs have not provided any evidence to support their contention that post-storm conditions effected actual gambling customers.

Plaintiffs’ case is based primarily on the claim that the Sandy-related damage to their customers’ homes resulted in the downturn of gambling profits, as time and finances were thereafter focused on rebuilding, as opposed to leisure activities such as gambling at Trump Casinos. In their moving papers, Defendants note, and the Court agrees, that there is a complete lack of evidence identifying or quantifying the portion of alleged reduced gambling profits that can be attributed to Hurricane Sandy’s damage to customers’ properties. In opposition, Plaintiffs’ merely note the “player database” produced in evidence which documents customers’ addresses, noting the correlation between these addresses with “resources documenting what areas were

impacted by Superstorm Sandy.” (Plaintiffs’ Memorandum of Law in Opposition at 10, ¶2). This statement alone, without any quantifiable and specific evidence, is not enough to sustain Plaintiffs’ case and, as such, Defendants’ motion for summary judgment is hereby **GRANTED**.

Conclusion

An appropriate Order has been entered. Conformed copies will accompany this Memorandum of Decision. Counsel for the movant is directed to file a copy of this Memorandum and the Orders with all parties within seven (7) days.



CHRISTINE SMITH, J.S.C.