



defendant Pearlstein. The dispute concerns the meaning of language therein stating "only with respect to the [l]ease dated July 17, 1985" and of the following ambiguous language:

"The liability of the undersigned [guarantor Pearlstein] shall not be affected by the amount of credit extended hereunder, nor by any change in the form of said indebtedness, by note or otherwise, nor by any extension or renewal thereof."

Judicial estoppel is a "doctrine against the assertion of inconsistent positions." Scarano v. Central R. Co. of New Jersey, 203 F.2d 510, 513 (3d Cir. 1953). It is intended to "prevent parties from playing fast and loose with the courts." Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 361 (3d Cir. 1996). Determining whether judicial estoppel is appropriate involves a two-part inquiry: (1) is a party asserting a position inconsistent with a position previously asserted; and (2) if so, were either or both of the inconsistent positions asserted in bad faith, with the intent to play fast and loose with the court. Id. Thus, judicial estoppel will not apply unless an inconsistency was "intentional" and "used as a means of obtaining unfair advantage." Id. at 362 (quoting Scarano, 203 F.2d at 513.)

In denying defendant Pearlstein's motion to dismiss, the court determined that the above guarantee language could reasonably be construed to exclude coverage for liability under any renewal or extension or alternatively to cover renewals or

extensions of the lease but to exclude liability for other obligations incurred.

Defendant argues that plaintiff now seeks to hold defendant liable for maintenance and tube agreements not covered by the guarantee despite arguing a position to the contrary in its response to defendant's motion to dismiss. The alleged contradictory position asserted by plaintiff was that the guarantee "means that Pearlstein's liability is limited to the July 17, 1985 lease, as opposed to other leases." That statement, however, is consistent with plaintiff's argument that the maintenance and tube agreements are not "other leases" but are "ancillary agreements" that relate to or depend on the original lease for their very existence and are covered by the guarantee.

Defendant Pearlstein has not shown that plaintiff has asserted inconsistent positions, or that plaintiff has asserted any position in bad faith.

**ACCORDINGLY**, this                    day of August, 1997, upon consideration of defendant Pearlstein's Motion for Partial Summary Judgement, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

**BY THE COURT:**

---

**JAY C. WALDMAN, J.**

