SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CARROL ST LLC Plaintiff-Respondent, vs. MARCUS LILES Defendant-Appellant	Docket No. A-001692-24 CIVIL ACTION ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY, SPECIAL CIVIL PART-PASSAIC COUNTY Sat Below: Honorable William Marsala, J.S.C. Honorable Vicki Citrino, J.S.C

BRIEF AND APPENDIX

FOR

APPELLANT MARCUS LILES

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Party Name	Appellate Party Designation	Trial Court / Agency Party Role	Trial Court / Agency Party Status
Marcus Liles	Appellant	Defendant	Participated Below
Carrol St LLC	Respondent	Plaintiff	Participated Below

PRELIMINARY STATEMENT

This is an action seeking to evict a residential tenant for nonpayment of rent pursuant to N.J.S.A. § 2A:18-61.1 (a). (1T4-5 to 1T5-18)[1]. Significant jurisdictional issues mandate reversal and dismissal of Plaintiff's complaint. (Da1 – Da26)[2]. The case should have been dismissed because Defendant had secured all rent due and owing before the lockout was scheduled, Plaintiff accepted rent after expressing that they would evict Defendant, and they refused to take Passaic County Board of Social Services' ("Social Services" hereinafter) checks in open court. First, the trial court erred in determining that Defendant did not have a right to submit a rent payment to obtain a dismissal despite the relevant statute which allows it. Second, the trial court erred in not dismissing the complaint based on equitable grounds. Third, the trial court also erred in determining that Plaintiff did not waive its right to refuse more payments when it accepted January 2025 rent. This ruling inappropriately expanded

[1] Citation to transcript shall be as follows: "1T" refers to September 10, 2024 transcript of Order to Show Cause Hearing, "2T" refers to November 1, 2024 Phone Conference, "3T" refers to November 4, 2024 Order to Show Cause Hearing, "4T" refers to December 2, 2024 Order to Show Cause Hearing, "5T" refers to December 17, 2024 Order to Show Cause Hearing, "6T" refers to January 2, 2025 Order to Show Cause Hearing, "7T" refers to January 3, 2025 Order to Show Cause Hearing, "8T" refers to January 9, 2025 Order to Show Cause Hearing, "9T" refers to January 24, 2025 Order to Show Cause Hearing, "10T" refers to February 12, 2025 Order to Show Cause Hearing.

[2] The appendix shall be cited as follows: (Da1 – Da26) means appendix page number.

the Plaintiff's rights under the Anti-Eviction Act while depriving the Defendant of his statutory rights and privileges.

The trial court entered judgment of possession in favor of the Plaintiff on January 24, 2025 (Da106) and denied Defendant's Motion for Reconsideration on February 7, 2025 (Da 117 – Da118). A warrant of removal was issued, with a lock out scheduled for Thursday, February 20, 2025. This Court has stayed the lockout pending disposition of this Appeal on February 28, 2025. (Da152 – Da153). Defendant respectfully requests this Court reverse the trial court's decision to enter judgment of possession in favor of Plaintiff and dismiss the complaint.

PROCEDURAL HISTORY

On May 8, 2024, Plaintiff filed a complaint pursuant to the Anti-Eviction Act, N.J.S.A §2A:18-61.1(a) for nonpayment of rent. (Da1 – Da26). The parties appeared for the non-jury trial on July 1, 2024. Defendant appeared without counsel and signed a settlement agreement with Plaintiff who was represented by counsel. (Da28 – Da29). Plaintiff filed for breach of the settlement on August 21, 2024 for failure to pay $1,897 on August 21, 2024. (Da31 – Da35). A Special Civil Part Judge signed a Judgment for Possession after breach. (Da36 – Da38). Defendant filed a pro se Application for an Order to Show Cause stating that Social Services will pay three month rent on September 4, 2024. (Da40 – Da45). The court below granted Orderly

Removal until September 11, 2024. (Da46). Defendant retained Northeast New Jersey Legal Services who filed an Application for an Order to Show Cause hearing on behalf of Defendant on September 10, 2024. (Da48 – Da53).

On September 17, 2024, the parties entered into a new settlement agreement in which Defendant with counsel representing him promised to pay $230 by September 20, 2024 and $690 by October 7, 2024 for a total of $920. (Da55 – Da57). Defendant was to continue to pay $230 which is his portion of the rent each month as determined under the Section 8 Housing Choice Voucher Program. On October 11, 2024, Plaintiff filed a breach of the settlement agreement because Defendant failed to pay October 2024 rent on time. (Da58 – Da63). On October 23, 2024, the trial court Judge signed a Judgment for Possession after Breach and a Warrant of Removal was issued for a lockout on November 1, 2024. (Da65 – Da68). Defendant through counsel filed an Order to Show Cause on October 31, 2024. (Da70 – Da87). The parties appeared on a phone conference with the Honorable Judge Citrino on November 1, 2024 and the Order to Show Cause hearing was scheduled for November 4, 2024. On November 4, 2024, Judge Citrino issued an order stating that Defendant paid his portion in full in court totaling $630 and needed to confirm payment by Social Services. (Da89). The court below carried the hearing to November 18, 2024 which was adjourned again to December 2, 2024 to allow the Social Services' payment to arrive. The parties appeared on December 2, 2024 and

Judge Citrino ordered that Plaintiff can accept December 2024 rent without prejudice and adjourned the matter to December 17, 2024. (Da90). On December 17, 2024, Defendant did not have the December 2024 rent, therefore, the trial judge issued an Order for Orderly Removal until January 2, 2025. (Da91).

Defendant then filed a pro se Application for an Order to Show Cause hearing on January 2, 2025 (Da93 - Da103) and appeared before Judge Mongiardo who granted an Orderly Removal until January 3, 2025. Thereafter, Defendant with counsel filed an Order to Show Cause and appeared before Judge Marsala on January 9, 2025 who ordered the lockout to be stayed until January 24, 2025 and ordered the parties to submit briefs. (Da105). Defendant submitted a brief on January 15, 2025[3] and Plaintiff submitted a reply brief on January 21, 2025. On January 24, 2025, the parties appeared for a hearing after the briefs were reviewed by Judge Marsala and he issued an Order for Orderly Removal until February 7, 2025. (Da106). Defendant filed a Motion to Reconsider on February 4, 2025 (Da108 – Da115). Plaintiff filed an opposition on February 6, 2025 and Judge Citrino denied the application on February 7, 2025. (Da117 – Da118).

[3] Defendant's trial briefs filed on January 15, 2025, February 4, 2025, February 12, 2025 under PAS-LT-2588-24 are omitted, but the attachments are included and cited by appendix page numbers.

Defendant had filed a Notice of Appeal regarding Judge Marsala's order on January 24, 2025 denying Defendant's Order to Show Cause and Judge Citrino's February 7, 2025 Order denying the Motion to Reconsider. (Da120 – Da132). Defendant filed a Motion to Stay Pending Appeal to the court below on February 12, 2025 (Da133 – Da140) but it was denied on the same day. (Da142 – Da143). Defendant then filed a Motion for Emergent Relief because a Warrant of Removal was posted on February 12, 2025 with a lockout scheduled for February 20, 2025. On February 20, 2025, Judge Citrino vacated the previous issued Warrant of Removal to give time to Defendant to request emergent relief from the Appellate Division. (Da145). Judge Citrino even issued a follow up correspondence on February 24, 2025 because Plaintiff objected to vacating the stale Warrant of Removal. (Da147). The Appellate Division entered an order granting Emergent Relief staying the Warrant of Removal on February 28, 2025. (Da149 – Da150).

STATEMENT OF FACTS

Defendant is a tenant of 190 Carroll Street Apt. 45, Paterson, New Jersey 074501. (3T7-4 to 3T7-10). The building is a multiple unit apartment dwelling. Defendant's only source of income is $974.25 per month from Social Security and the food stamps of $200. Defendant suffers from bipolar disorder, schizophrenia and poor vision. (Da51). He is a Section 8 Housing Choice Voucher recipient through N.J. Department of Community Affairs. The full rent was $1,375 per month and now

is $1,423.12 per month. (1T5-2 to 1T5-18).

On May 8, 2024, Plaintiff filed a nonpayment of rent complaint for March 2024, April 2024 and May 2024 rent. (Da1-Da26). Defendant was unrepresented in court and signed a settlement agreement on July 1, 2024. (Da28 – Da29). Defendant mentioned that the Passaic County Board of Social Services ("Social Services") was willing to assist with three months of rent. (Da40). The agreement stated that Defendant would pay $2,357: $460 by the end of July 1, 2024 and $1,897 by August 19, 2024. (Da28 – Da29). This agreement was unlawful and unreasonable because it improperly included late fees and attorney's fees while "[a]n owner may not evict a tenant for failure to pay late charges pursuant to HUD Handbook 4350.3, Section 6-23." Moreover, the court in Housing Auth. & Urban Redev. Agency v. Taylor, 171 N.J. 580, 595 (2002) held that "the Housing Authority may not recover attorneys' fees and late charges as additional rent in a summary dispossess proceeding." Defendant lives off Social Security so it was never possible for him to pay $2,357 in a span of one month. (Da51). In addition, the amount of rent due and owing was completely wrong because Defendant's portion of rent was only $230 per month yet Plaintiff claimed he owed $2,357. (Da76). On August 21, 2024, Plaintiff filed a breach of the settlement terms for a failure to pay $1,897 by August 19, 2024.

Defendant retained Northeast New Jersey Legal Services as counsel who filed an Order to Show Cause on behalf of Defendant on September 10, 2024. A new

settlement agreement was entered on that date correcting the rent due and owing to $920. Defendant was to pay $230 by September 20, 2024 and Social Services would pay the balance of $690 by October 7, 2024. (Da55 – Da56). Defendant paid $230 by September 20, 2024 as required by the agreement. (Da80). Plaintiff accepted the voucher for $690 from Social Services on October 3, 2024. (Da84). By this date, Plaintiff is deemed to have received all of the rent due and owing under the September 17, 2024 settlement agreement: $230 paid by Defendant and the voucher for $690 Plaintiff accepted from Social Services. Defendant paid October 2024 rent of $230 on October 8, 2024 via Zelle. (Da114). On October 11, 2024, Plaintiff filed for a breach of the settlement agreement (Da58 - Da63) because Defendant paid October rent late and tried to return the rent payment by issuing its own check for $230. (Da82). On November 1, 2024, both parties' counsel appeared via telephone before Judge Citrino and Defendant's counsel argued that Defendant had the right to cure the breach by paying the rent in full and Judge Citrino agreed. (2T9-1 to 2T9-5). On November 4, 2025, Judge Citrino issued an Order of Disposition, stating that tenant paid his portion in full in court $630 and need to confirm payment by Social Services. (Da89). The case was adjourned a couple more times to allow the check from Social Services to arrive. On December 2, 2024, Judge Citrino asked if the Defendant would allow Plaintiff to collect December 2024 rent and Defendant agreed with the understanding that the only payment remaining to arrive for Plaintiff

was the check from Social Services. (Da90). The case was adjourned to December 17, 2024.

On December 17, 2024, the Order to Show Cause hearing was scheduled and both parties appeared before Judge Citrino. Defendant was able to provide proof that the checks from Social Services were issued on December 10, 2024 and were on the way. Unfortunately, Defendant did not have December rent money at the hearing on December 17, 2024. Judge Citrino granted an orderly removal until January 2, 2025 and allowed the lockout to proceed as per Plaintiff's request. (Da91). On December 31, 2024, Defendant paid $592 in cash for December 2024 and January 2025 rent and the landlord accepted it and issued a receipt. (Da103).

On January 3, 2025, the counsel for Defendant filed another Application for an Order to Show Cause and appeared for a hearing on January 9, 2025. Judge Marsala stayed the lockout until January 24, 2025 and ordered both parties to submit briefs. (Da105). After submitting the brief and at the hearing on January 24, 2025, Defendant asserted he had the right to cure by paying the rent balance with the checks from Social Services and with the $592 he had already paid to Plaintiff in cash on December 31, 2024.

However, Judge Marsala denied Defendant's request to cure and dismiss the complaint and ruled that because there was a contract breach, Plaintiff had no obligation to accept the checks from Social Services. Defendant argued that by

tendering the Social Services check of $690 and paying $592 by himself on December 31, 2024, he became current and the rent would be paid in full, but Judge Marsala did not agree. (Da106). Defendant filed a motion to reconsider but it was denied on February 7, 2025. (Da117 – Da118). Defendant filed a Motion for Stay Pending an Appeal but it was denied on February 12, 2025. (Da142 – Da143). Defendant filed a Notice of Appeal on February 11, 2025. Plaintiff had filed request for Warrant of Removal on October 11, 2024 but it was expired after 30 days pursuant to Rule 6:7-1(d) which states that "[if] the warrant is not executed within 30 days of its issuance, such warrant shall not thereafter be issued or executed." However, the court issued a Warrant of Removal on February 13, 2025 in error with lockout date of February 20, 2025. Upon realizing that the request for Warrant of Removal had expired, Judge Citrino vacated the old warrant on February 20, 2025 (Da145) to give time for Defendant to file for emergent relief from the Appellate Division which was later granted on February 28, 2025.

LEGAL ARGUMENT

POINT ONE: DEFENDANT HAD A RIGHT TO PAY ALL RENT DUE UP TO 3 BUSINESS DAYS AFTER EVICTION PURSUANT TO N.J.S.A 2A:42-10.16(A) (RAISED BELOW: 10T11-13 TO 10T11-19)

Defendant has a right to pay all money that is due and owing up to three business days after the lockout pursuant to N.J.S.A 2A:42-10.16(a). The plain

language of the statute, the statewide landlord-tenant procedures, and the language of the settlement support this position.

1. Standard of Review

A trial court's interpretation of a statute is subject to de novo review on appeal, with no deference to the trial court's interpretation of same. Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995); see 30 River Court E. Urban Renewal Co. v. Capograsso, 383 N.J. Super. 470, 476 (App. Div. 2006) (citing Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483–84 (1974). The Anti-Eviction Act, and relevant case-law, are controlling law in Defendant's appeal. It is of course well settled that in interpreting a statute, courts will seek to apply the Legislature's intent and that intent is best found in the plain language chosen by the Legislature. State v. Frye, 217 N.J. 566, 575 (2014); State v. Gandi, 201 N.J. 161, 176 (2010). Where a "statute's plain language is clear, [the court will] apply that plain language and end our inquiry." Garden State Check Cashing Serv., Inc. v. Dep't of Banking and Ins., 237 N.J. 482, 489 (2019).

2. Plain language of the Statute

The statutory language is clear. N.J.S.A 2A:42-10.16(a) reads as follows:

> In an eviction action for nonpayment of rent, pursuant to subsection a. of section 2 of P.L.1974, c. 49(C.2A:18-61.1), the court shall provide a period of three business days after the date on which a warrant of removal is posted to the unit or a lockout is executed due to nonpayment of

> rent, for the tenant to submit a rent payment. A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if all rent due and owing is paid within the three business day period establish by this subsection.

Under the statute, the court shall provide a period of three business days after the date on which a warrant of removal is posted to the unit or a lockout is executed due to nonpayment of rent. It allows a tenant in a nonpayment to submit a rent payment up to three business days from either of the two dates: 1) the date when a warrant of removal is posted to the unit; or 2) when a lockout is executed. The statute clearly states that Defendant has the right to pay all the money to up to three business days after a lockout is executed to retain possession of the premises. However, the trial judge denied Defendant's right to submit a rent payment at the hearing on January 24, 2025 although Defendant had not been evicted and the Warrant of Removal was not executed. Judge Marsala stated that "once you have a settlement agreement and that agreement's breached, it's no longer a non-possession for non – payment, it becomes basically a simple breach of contract action." (9T3-18 to 9T3-25). Judge went on to say "two settlement agreements were breached" (9T19-25) and "I'm not going to force the landlord to take the money." (9T20-23 to 9T20-24). The trial judge erred by denying the statutory right to submit rent payment without providing any legal basis and said it becomes a breach of contract case.

Plaintiff argued that the three business days to cure had expired because the

Warrant of Removal was posted in October 2024. (9T5-12 to 9T5-25). The warrant was posted to the unit on October 24, 2024 with a lockout date of November 1, 2024. (Da68). However, Defendant was never locked out of the premises. The statute does not mention any other requirement or condition for a tenant to exercise this right under the statute. The statute is silent and does not state that a tenant loses the right to pay up to three business days if there was a prior settlement agreement followed by a breach. Therefore, Defendant retained the right to pay the full balance, which may be paid up until three business days after a lockout is executed.

The statute could not be clearer and states that "in an eviction action for nonpayment of rent, the court shall provide a period of three business days after the date on which a warrant of removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment." Defendant had a right to submit a rent payment up to three business days after a warrant of removal is posted or a lockout is executed. [Emphasis added]. In this case, the lockout was never executed because Defendant is still in the unit and the Warrant of Removal was vacated by Judge Citrino on February 20, 2025. (Da145 – Da147).

This case essentially turns on two contrasting methods for interpreting the statute. As demonstrated below, Plaintiff's reading that the three business day to submit a payment expired after three business days had passed after the warrant of removal was posted to the unit acts to render meaningless the "after execution"

provision within the statute which provides an alternative date by having "or" in the same sentence. In contrast, Defendant's position is that the statute provides two possible dates to calculate the three business days to submit a rent payment: the date when a warrant of removal is posted to the unit or when a lockout is executed. Unlike Plaintiff's reading which limits the statue to only to the first option, Defendant's reading gives a tenant the ability to submit a rent payment at a later date to avoid eviction which is more in line with the spirit of the Anti Eviction Act. While Plaintiff's reading of the statute only considers a half of the relevant provision while ignoring the other half, Defendant's reading considers the entire provision and two possibilities that are built in the statute. Of the two interpretations, only Defendant's interpretation harmonizes the entire language in the statute. In Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 613 (1991), the court stated that the statute "should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. of Neptune v. Neptune Township Educ. Assn., 144 N.J. 16, 25 (1996). When constructing a statute, the judicial role is to give effect to the legislative intent. Brooks v. Odom, 150 N.J. 395, 401 (1997). Because the language of the statute at issue here is clear, the judgment below must be reversed and the case should be dismissed. Defendant had the right to pay rent in full up to three business days after a lockout is executed and a locked out never happened in this case. The trial court erred when it denied this right to

Defendant on January 24, 2025. (9T20-23 to 9T20-24).

3. Plaintiff's Interpretation Renders the Statute Surplusage

Equally compelling is the principle that courts will not interpret a statute in a manner that renders a part mere surplusage or meaningless. Burgos v. State, 222 N.J. 175, 203 (2015); Innes v. Innes, 117 N.J. 496, 509 (1990). The New Jersey Supreme Court has directed that when interpreting a statute or regulation, courts endeavor to give meaning to all its words. DKM Residential Props. Corp. v. Twp. of Montgomery, 182 N.J. 296, 307 (2005). See also, Matter of Sussex County Mun. Utils. Auth., 198 N.J. Super. 214, 217 (App. Div. 1985) (quoting Hackensack Bd. of Educ. v. Hackensack, 63 N.J. Super. 560, 569 (App. Div. 1960).

In Merin v. Maglaki, 126 N.J. 430, 434 (1992), the Court stated that construction of any statute necessarily begins with consideration of its plain language, citing Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128 (1987); Renz v. Penn Cent. Corp., 87 N.J. 437, 440 (1981). Such language should be given its ordinary meaning, absent a legislative intent to the contrary. Town of Morristown v. Woman's Club, 124 N.J. 605, 610 (1991); Mortimer v. Board of Review, 99 N.J. 393, 398 (1985); Levin v. Township of Parsippany-Troy Hills, 82 N.J. 174, 182 (1980). "The primary task for the Court is to effectuate the legislative intent in light of the language used and the objects sought to be achieved." Merin, Id. at 485, citing State v. Maquire, 84 N.J. 508, 514 (1980). The court fulfills its role by construing a

statute in a fashion consistent with the statutory context in which it appears. Waterfront Comm'n v. Mercedes Benz, 99 N.J. 402, 414 (1985).

The Legislature clearly established its intent and purpose under N.J.S.A 2A:42-10.16(a) by allowing a tenant in a nonpayment of rent case to submit a rent payment up to three business days from when a warrant of removal is posted or when a lockout is executed which will always be at a later date. Therefore, Plaintiff cannot deprive Defendant's right to submit a rent payment by a deadline based on only one part of the statute while ignoring another part which allows a tenant to pay at a later date which the legislator clearly provided by adding "or" within the section and specifically identifying a lockout execution as the second option.

4. The Statutory Purpose

The Anti–Eviction Act, N.J.S.A. 2A:18–61.1 to –61.12, was enacted in 1974 to address a "severe shortage of housing statewide, a shortage that continues to exist today." 447 Assocs. v. Miranda, 115 N.J. 522, 527 (1989) (citing A.P. Dev. Corp. v. Band, 113 N.J. 485, 492, 550 (1988)). The Anti–Eviction Act was "designed to limit the eviction of tenants to 'reasonable grounds' and to provide for 'suitable notice' of tenants in the event of an eviction proceeding." 447 Assocs., supra, 115 N.J. at 527 (citing A.P. Dev. Corp. v. Band, supra, 113 N.J. at 492 (1988)). The Anti–Eviction Act is remedial legislation, establishing tenants' rights to continued occupancy of their rental dwellings, and is "deserving of liberal construction." 447 Assocs., supra,

115 N.J. at 529 (citing A.P. Dev. Corp. v. Band, supra, 113 N.J. at 506 (1988); Cima v. Elliott, 224 N.J. Super. 436 (Law Div.1988); Royal Assocs. v. Concannon, 200 N.J. Super. 84, 93 (App. Div. 1985)).

The Act provides "'residential tenants the right, absent good cause for eviction, to continue to live in their homes without fear of eviction ... and thereby to protect them from involuntary displacement.' " 224 Jefferson St. Condo. Ass'n v. Paige, 346 N.J. Super. 379, 383 (App. Div. 2002) certif. denied, 172 N.J. 179 (2002). (quoting Morristown Mem'l Hosp. v. Wokem Mortgage Realty Co., 192 N.J. Super. 182, 186, (App. Div. 1983)). "The purpose of the [Act] was not to eliminate evictions but to limit them to reasonable grounds." Les Gertrude Associates v. Walko, 262 N.J. Super. 544, 548 (1993). Finally, "the dominating principle in construing the Act [is] that it must be construed liberally with all doubts construed in favor of a tenant." 224 Jefferson St. Condo. Ass'n, supra, 346 N.J. Super. at 389.

Plaintiff tries to limit the statute's purpose of allowing more time for tenants to submit a rent payment by focusing one part of the provision while ignoring the second part which is provided in the clear language of the statute. As noted by the United States Court of Appeals "New Jersey is quite protective of tenants in residential units...." Taylor v. Cisneros, 102 F.3d 1334, 1337 (3rd Cir. 1996). In interpreting the Anti-Eviction Act (N.J.S.A. 2A:18-61.1) courts are to construe the Act liberally with all doubts construed in favor of the tenant. 224 Jefferson St.

Condominium Assoc. v. Paige, 346 N.J. Super. 379, 389 (2002). In the statute at issue here, there is no doubt that the Legislature sought to allow tenants more time to submit rent payments in nonpayment cases and avoid eviction than before this amendment was passed. Thus, under the statute, a tenant in a nonpayment case can submit a rent payment up to three business days from either the date when a warrant of removal is posted to the unit or when a lockout is executed. A lockout was never executed in this case, therefore, Defendant had a right to submit a rent payment at the hearing on January 24, 2025 and the trial court erred by denying Defendant to submit a payment.

Defendant's reading of the statute is supported not only from the clear language of the provision, but is more in line with the intended purpose of the statute which is to allow a tenant in a nonpayment case more time to pay even after a lockout is executed. In the Legislative History Checklist when N.J.S.A 2A:42-10.16(a) was passed stated that "this bill would require the court to provide tenants a grace period of three business days after the date on which an eviction order or lockout is executed due to late payment of rent, to submit a payment of rent." (Da158). The fact that legislature referred it as "grace period of three business days" indicates that the legislature's intent was to provide more time for tenants to pay. Plaintiff's argument would render the statute to result in exactly the opposite consequence from the intended purpose and shorten the time period for a tenant to cure.

5. Definition of Execution of Warrant of Removal pursuant to Landlord-Tenant Statewide Procedures Instructions

Since N.J.S.A 2A:42-10.16(a) states that a tenant can submit a rent payment for a period of three business days after a lockout is executed, it's important to define when "a lockout is executed." In the statewide Landlord-Tenant Procedures publication, the execution of warrant of removal/eviction is defined as "three business days after the warrant of removal is served, a landlord can request that the Special Civil Officer return to the residential rental property a second time to execute the warrant of removal by requiring the tenant to vacate the premises and permitting the landlord to change the locks. This is when the eviction (lockout) is completed." (Da20). The Landlord Tenant Procedures help to clarify the statute because it defines what the execution of the warrant of removal is. Defendant was served with the warrant but it was never executed, therefore, he still has a right to pay any rent due and owing based on the statute. In addition, the statewide Landlord Tenant Procedures do not mention anything about a pay and stay settlement agreement and a breach. The only date relevant in determining whether a tenant still has a right to cure is when a lockout is completed. The procedures state that after a Judgment of Possession is entered, a tenant may make a settlement, pay all the rent or ask the court for relief. "By law, a residential tenant can pay all rent due and owing plus proper costs up to three business days after the eviction. The landlord must accept

this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent." (Da20).

6. The language of a Pay and Stay Settlement

The language of a pay and stay settlement agreement supports the position that Defendant can still pay all the money to avoid eviction after a breach of the settlement agreement. Plaintiff argued that Defendant cannot submit a rent payment to vacate the judgment because there was a breach of the settlement agreement. Paragraph five of the Pay and Stay Agreement states, "this agreement shall end when the tenant has paid the full amount of back rent stated in paragraph two. Once paid in full, the judgment, if any, shall be vacated and the complaint shall be dismissed". (Da29). There is nothing in the standard Pay and Stay Agreement drafted by the court to indicate that a tenant loses a right to submit a rent payment as result of breaching a pay and stay settlement agreement. It clearly states once the balance is paid in full, the judgment shall be vacated. At the hearing on January 24, 2025, Defendant had already paid $592 which was still deposited in Plaintiff's bank account and also tendered the check of $690 from Social Services that finally arrived. The amount Defendant paid plus the checks from Social Services was greater than what was claimed to be due and owing. Thus, Defendant had all the money due and owing and could continue to pay during the stay, but the trial judge erroneously denied Defendant's right to submit the rent payment.

POINT TWO: THE CASE SHOULD HAVE BEEN DISMISSED DURING THE ORDER TO SHOW CAUSE ON JANUARY 24, 2025 BECAUSE THE EVICTION OF DEFENDANT WOULD BE INEQUITABLE UNDER NEW JERSEY COURT RULE 4:50-1. (RAISED BELOW: 9T23-20 TO 9T24-1)

The eviction of Defendant would be an inequitable outcome that justifies a stay pending appeal because the judgment should have been vacated pursuant to Rule 4:50-1. This rule provides in pertinent part that:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party… from a final judgment for the following reasons: (e) the judgment or order has been satisfied, released or discharged or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; (f) any other reason justifying relief from the operation of the judgment or order.

"Relief under Rule 4:50-1 is designed "to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." LVNV Funding, LLC v. Deangelo 464 N.J Super. 103, 109 (App. Div. 2020) (quoting Manning Eng'g Inc. v. Hudson County. Park Comm'n, 74 N.J. 113, 120 (1977). "Courts should use *Rule* 4:50–1 sparingly, in exceptional situations; the *Rule* is designed to provide relief from judgments in situations in which, were it not applied, a grave

injustice would occur." Housing Authority of Morristown v. Little 135 N.J. 274, 289 (1994). (See also US Bank Nat. Ass'n v. Guillaume, 209 N.J 449, 484 (2012)).

In Housing Authority of Morristown v. Little 135 N.J 274, 289 (1994), the trial judge vacated a Judgment of Possession allowing a Public Housing tenant to pay all the back rent and retain her apartment. The tenant also had five children and her rent was $150. The tenant fell behind on rent and was locked out of the apartment. The tenant tried to pay the Housing Authority and they refused to take the money. Id at 291. The tenant filed an order to show cause and was restored to the apartment pending a hearing. She also tried again to pay her rent but was refused. The trial court vacated the judgment on payment in full by the tenant. The landlord appealed and the Appellate division ruled in favor of the landlord. The tenant appealed the case to the N.J Supreme Court. The court ruled that the trial court judge had the authority to vacate the judgment. Id at 290. "We note that the Legislature enacted the Prevention of Homelessness Act of 1984, *L.* 1984, *c.* 180 in recognition of the fact that "[i]t is both more economical and more socially desirable to *** enable people to retain possession of their houses or apartment *** than to house them in hotel rooms or in other facilities intended for short-term occupancy." N.J.S.A. 52:27D–281c. "The trial court's exercise of discretion to vacate the judgment evicting Little reflected a pragmatic recognition that the state's homelessness-prevention policies would be disserved by the eviction of a tenant in

public housing who had demonstrated satisfactorily her ability to fulfill her rental obligations. We are satisfied that the trial court did not abuse its discretion in vacating the judgment for possession." Id at 293.

In the case at hand, Defendant is a participant of the Section 8 Housing Choice Voucher Program which will be jeopardized by his eviction. Given Defendant's low income, the loss of the Section 8 voucher may result in his homelessness notwithstanding his present ability to cure the nonpayment case which the law allows.

1. Rule 4:50-1(e)

The case should have been dismissed because the judgment can be satisfied. The Judgment for Possession was entered because Defendant failed to make the October 2024 rent payment on time. (Da65-Da68). Currently, Defendant has paid rent for September 2024, October 2024, November 2024, December 2024, January 2025 and February 2025. Social Services issued a check to cover the remaining balance. Defendant had paid rent in full at the last Order to Show Cause on January 24, 2025 and had the Social Services' check to satisfy the Judgment amount and avoid an eviction. Similar to the tenant in Little, Defendant had all the money to become current on his rent.

2. Rule 4:50-1(f)

The Judgment should have been vacated based on R. 4:50-1(f). "Courts should

use *Rule* 4:50–1 sparingly, in exceptional situations; the *Rule* is designed to provide relief from judgments in situations in which, were it not applied, a grave injustice would occur." Housing Authority of Morristown v. Little, 135 N.J. 274, 289 (1994). "The nature of the exceptional relief afforded by Rule 4:50–1(f) requires courts to focus on equitable considerations in determining whether the specific circumstances warrant the unique remedy authorized by the *Rule*." Id at 294. If Defendant is evicted even though the rent was fully secured and tendered to Plaintiff, a grave injustice would occur. He also is in a very similar position as the tenant in Little. Defendant has mental disabilities such as bipolar and schizophrenia. He is on a fixed income from Social Services and he is a participant of Section 8 Housing Choice Voucher Program. (Da76-Da78). Defendant's personal and mental difficulties indicate that if he were to be evicted, he will be homeless and will not have any way to secure other housing. In addition, if Defendant is evicted, his Section 8 Voucher will be in jeopardy and will prevent him from applying for any other subsidies for rental assistance. If Defendant is evicted, it would be a grave injustice because it will result in perpetual homelessness, as he cannot afford to pay market rate rent. It is important to note that Defendant has all the money that is due and owing and should not be evicted, especially when the legislator amended the law to allow tenants in nonpayment cases to submit rent up to three business days even after a lockout was already executed. Defendant is continuing to pay his portion of the rent while this

appeal is pending. Evicting Defendant would create a serious unequitable precedent and work against the very purpose of the Anti Eviction Act and the right to cure.

Plaintiff argued that Defendant should be evicted because there were multiple Order to Show Cause motions and hearings. However, the Order to Show Cause motions were necessary because Plaintiff kept filing breach of settlement certifications while waiting for Social Services checks to arrive although the vouchers which promised to pay were already executed by all parties. Defendant only breached the second settlement agreement (Da55-Da56) twice by paying October 2024 rent late on October 8, 2024 (Da114) and paying December 2024 rent late on December 31, 2024. (Da103). However, Defendant did not actually breach the first Settlement Agreement (Da27 – Da29) because the amount due was wrong by including attorney's fees and late fees. Furthermore, there is nothing in the Anti Eviction Act under N.J.S.A 2A:18-61.1 Removal of residential tenants which states that multiple filing of Order to Show Cause is a valid ground to evict a tenant. It would create a grave injustice if Defendant is evicted for breaching the settlement agreement twice by paying late.

POINT THREE: PLAINTIFF WAIVED ITS CLAIM WHEN JANUARY 2025 RENT WAS ACCEPTED, THEREFORE, THE CASE SHOULD HAVE BEEN DISMISSED (RAISED BELOW: 8T14-13 TO 8T14-24)

Plaintiff waived its right to evict Defendant when they accepted the rent payment of $592 in cash from Defendant on December 2024. In Montgomery Gateway, East I v. Herrera 261 N.J. Super. 235 (App. Div. 192) the court held that, signing a new lease and accepting rent payments under the lease "is so inconsistent with an intention to require a surrender of possession of the premises as to amount to an election to waive the right to terminate the tenancy because of the past rent defaults." Id at 240.

Similarly, Plaintiff acted very inconsistently when they accepted rent after terminating Defendant's tenancy and seeking judgment for possession. On December 17, 2024, when both parties appeared before Judge Citrino, the only remaining issue was whether Defendant had the rent for December 2024 at that time. Defendant did not have it and Plaintiff's counsel on the record stated that Plaintiff wishes to proceed with the lockout. Judge Citrino granted orderly removal due to the moratorium during the holidays. Plaintiff's counsel clearly stated they wanted to lockout Defendant for nonpayment of rent and yet accepted $592 in cash from Defendant to cover rent for December 2024 and January 2025 and issued a receipt on December 31, 2024. After realizing their own inconsistent action, Plaintiff tried

to return $592 to Defendant by issuing their own check and mailing it, but it was too late and Defendant never cashed that check. It was held that "there is no doubt that acceptance of rent with knowledge of the breach, if any, constitutes a waiver of all past breaches". Carteret Properties v. Variety Donuts Inc. 49 N.J 116 at 129 (1967) citing City of East Orange v. Bd. Of Water Com'rs etc., 41 N.J. 6, 18 (1963).

In this case, after pleading to execute a lockout, Plaintiff accepted both December 2024 rent and January 2025 rent on December 31, 2024 for a total of $592. In addition, the very nature of a Judgment for Possession suggests Plaintiff had the intention to evict the tenant. The plaintiff will try to counter this by arguing that Judge Citrino allowed the acceptance of rent for December 2024. However, the issue with this argument is that the court below only allowed for December 2024 rent to be accepted without prejudice, not rent for January 2025. In addition, that order was in effect when the previous Order to Show Cause was being continued. Once Judge Citrino granted Orderly Removal and Plaintiff on the record stated that they wished to evict the tenant, any rent acceptance would constitute waiver. This is a waiver because the acceptance of rent contradicts their intention to evict the defendant as stated on the record. At minimum, the acceptance of January 2025 rent would constitute waiver and create a new tenancy, as the tenancy essentially was over with the granting of the Orderly Removal application.

After Plaintiff manifested the intent to go through with the lockout, Plaintiff accepted rent for January 2025. (Da103). Plaintiff argued that the rent was returned but it was only an attempt to return by sending in mail, but the check was never cashed by Defendant. Plaintiff not only accepted $592 but issued a receipt acknowledging its acceptance. It's another evidence of Plaintiff's inconsistent action of accepting rent while claiming that the lockout should proceed. Therefore, Plaintiff accepting $592 knowing that Defendant was scheduled for a lockout on January 2, 2025 is clearly a waiver, therefore, the case should be dismissed.

Plaintiff also argued below that there is no waiver because the money paid on December 31, 2024 would be applied to the back rent that the tenant still owes, meaning rent for April, May and June 2024. However, this argument does not hold up for two reasons.

First, the language of the Social Services Voucher signed by Plaintiff states that "I have not and will not accept additional payments for any of the items from any person or persons." (Da84). Plaintiff signed this voucher and is bound by its terms since the voucher is a contract and the language makes it clear that Plaintiff cannot apply future payment to these three months. Therefore, $592 paid on December 31, 2024 has to be applied for December 2024 and January 2025 rent and not to prior months as Plaintiff argued.

Secondly, the Stack Amendment states that a tenant's rent must first be applied to the months that they are paying for. N.J.S.A. §52:27D-287.9 states that "[p]ayments made by a tenant after the covered period ends shall be credited first to the current month's rental obligation, and any balance shall be credited to any arrearage owed by the tenant incurred following the conclusion of the covered period, and then to any arrearages incurred during the covered period." The rent cannot be retroactively applied, therefore, $592 paid on December 31, 2024 must be applied towards December 2024 and January 2025.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the judgment of possession be reversed and the complaint be dismissed.

Respectfully submitted,

/s/ Soo H. Woo

Northeast New Jersey Legal Services
By Soo H. Woo, Esq.
Leah B. Ashe, Director
Attorney for Defendant
Marcus Liles

Dated: May 13, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1692-24

CARROL STREET, LLC,

Plaintiff-Respondent,

v.

MARCUS LILES,

Defendant-Respondent.

On Appeal from Final Order of the Law Division, Special Civil Part, Passaic County (Docket No. PAS-LT-2588-24)

Sat Below:

Hon. Vicki A. Citrino, J.S.C.
Hon. William E. Marsala, J.S.C.

BRIEF OF PLAINTIFF-RESPONDENT, CARROL STREET, LLC.

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"3T" refers to November 4, 2024 Order to Show Cause Hearing

"4T" refers to December 2, 2024 Order to Show Cause Hearing

"5T" refers to December 17, 2024 Order to Show Cause Hearing

"6T" refers to January 2, 2025 Order to Show Cause Hearing

"7T" refers to January 3, 2025 Order to Show Cause Hearing

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"10T" refers to February 12, 2025 Order to Show Cause Hearing

PRELIMINARY STATEMENT

This matter involves a breach of contract involving a residential lease. The Defendant-Appellant tenant, after having failed to pay rent for three months and facing eviction after the filing of a Complaint by the landlord in the Special Civil Part, entered into a Settlement Agreement to pay back rent and future rent when it became due, in exchange for remaining in possession of the premises.

The Defendant, however, breached the Settlement Agreement by failing to remain current with his payments under the lease. After filing an Order to Show Cause, the parties entered into a second Settlement Agreement, which was similarly breached by the Defendant.

During the course of the protracted proceedings in the Law Division, which involved ten separate hearings before two Judges, the Defendant filed a total of seven Orders to Show Causes in an attempt to avoid eviction, all of which were denied.

On appeal, the Defendant contends that he made payments for back rent and rent for the month of January 2025, relying upon the three-day provision under the Stack Amendment to N.J.S.A. 2A:42-10.16a.

However, this position was rejected by both Judges, on two grounds.

First, the Judgment of Possession and Warrant for Removal was appropriately grounded upon a breach of contract and not a breach of the Lease.

Here, the Defendant breached both the first Settlement Agreement (entered on July 1, 2024) and the second Settlement Agreement (entered on September 17, 2024).

As a result, the "three business days" payment provision under the anti-eviction statute does not apply. The various arguments advanced on appeal by the Defendant are thus untenable and without support, and run headlong into well established law.

Second, for the sake of argument, even if the "three business days" provision applies, the record shows that, following the execution of the first Settlement Agreement, the Defendant at no point was fully paid up on his obligations under the Lease. His position, for example, that he made full payment of rent for the month of January 2025 and that his rent payments were paid up until that date, finds no support in the record. Even if the Defendant had the right to cure at that point -- a right which he did not have under the law -- he never provided the necessary amount of rent to achieve a cure of past and present rent due.

The Defendant's appeal thus lacks merit, and finds no support in either the factual record or applicable law.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[2]

On September 11, 2023, the Plaintiff-Respondent, Carrol Street, LLC ("Plaintiff"), as landlord, and the Defendant-Appellant, Marcus Liles ("Defendant"), as tenant, entered into a residential lease agreement ("Lease") for an apartment located at 190 Carroll Street, Unit 45, in Paterson, New Jersey. (Da 7-13). The Lease called for a monthly rent payment of $1,375, to be paid on the first day of each month. (Da 7).

The Defendant occupied the premises under the Section 8 Housing Choice Voucher Program administered by the New Jersey Department of Community Affairs ("DCA"). He also received rental assistance money from the Passaic County Board of Social Services. (3T6-3 to 7). At the outset of the Lease, the Defendant was required to pay his monthly portion of $230 towards the monthly rent. (1T4-5 to 5-8).

The Defendant failed to make his $230 payment of rent for the months of March, April, and May of 2024. (Da 3).

On May 8, 2024, the Plaintiff filed a Complaint in the Law Division, Special Civil Part, Landlord/Tenant Section of the Superior Court of Passaic County, seeking eviction, $690 in unpaid rent, and related relief. (Da 2-26).

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[2] Because the facts and procedural history are intertwined, they will be presented together.

On July 1, 2024, the initial trial date, the parties entered into a Settlement Agreement (Tenant to Stay in Premises) ("First Agreement"). (Da 28-29). Under the First Agreement, the Defendant agreed to pay $460 by the end of the day, $1,897 by August 19, and resume paying the monthly rent during the term of the agreement. (Da 28). The First Agreement also states:

> This agreement shall end when the tenant has paid the full amount of back rent stated in paragraph 2. Once paid in full, the judgment, if any, shall be vacated and the complaint shall be dismissed.

(Da 29).

The Defendant breached the First Agreement by failing to make the required payment of $1,897 by August 19, 2024. As a result, the Plaintiff filed a Certification of Breach of Settlement and a Request for Residential Warrant of Removal. (Da 31-35).

On August 29, 2024, the Honorable William E. Marsala**,** J.S.C., entered a Judgment for Possession After Breach. (Da 36-38).

On September 4, 2024, the Defendant filed an Order to Show Cause ("First OSC"), claiming that the DCA will be paying the delinquent back rent. (Da 40-45). The Honorable Vicki A. Citrino, J.S.C. entered an Order for Orderly Removal on the same day, denying the requested relief and staying the Warrant of Removal until September 11, 2024. (Da 46). This Order states: "**NO FURTHER APPLICATIONS WILL BE GRANTED FOR EXTRA TIME**

TO MOVE OR TO REMOVE TENANT'S PERSONAL PROPERTY FROM THE PREMISES." (Da 46; emphasis original).

On September 10, 2025, the Defendant filed a second Order to Show Cause ("Second OSC"), seeking to vacate the Judgment for Possession After Breach entered by Judge Marsala, claiming that he "did not completely understand the payment agreement. (Da 52). He alleged that he had various mental health issues preventing him from understanding the agreement, the total amount negotiated as part of the agreement was not accurate, and that he was "in the process of getting social services" to cover any remaining rent balance. (Da 52).

Despite the Defendant's admission that he did not have the rent then due and owing, Judge Citrino scheduled an Order to Show Cause hearing. On the September 17, 2024 return date, the parties entered into a second Settlement Agreement (Tenant to Stay in Premises) ("Second Agreement"). (Da 55-56). The Second Agreement required the Defendant to pay $230 by September 20, $690 by October 7, and to maintain his monthly rent obligation. (Da 55-56). This Order also states:

> This agreement shall end when the tenant has paid the full amount of back rent stated in paragraph 2. Once paid in full, the judgment, if any, shall be vacated and the complaint shall be dismissed.

(Da 56).

The Defendant breached the Second Agreement by failing to make the required payments. As a result, on October 11, 2024, the Plaintiff filed a Certification of Breach of Settlement and a Request for Residential Warrant of Removal. (Da 58-63).

On October 23, 2024, Judge Citrino entered a Judgment for Possession After Breach. (Da 65-68).

On October 31, 2024, the Defendant filed a third Order to Show Cause application ("Third OSC"). (Da 70-87). In his Third OSC, the Defendant falsely claimed that he did not breach the Second Agreement (Da 74), notwithstanding that his own evidence establishes that he did, in fact, breach the agreement. He alleged that his October rent was paid timely; however, his exhibits include a check and an email dated October 9, 2024, both of which establish that neither the October 1 rent nor the October 7 arrears payment were made timely. (Da 80-82; 2T5-14 to 7-24).

On November 1, 2024, Judge Citrino presided over the Third OSC application. Despite clear evidence -- provided by the Defendant -- that he had breached the Second Agreement, Judge Citrino signed the Third OSC, and scheduled a return date of November 4. (Da 89-91). In this respect, the Court commented:

> Nevertheless, since it appears that he does have all the funds, I don't know when he paid the October's rent. I will give him the benefit of the doubt. I will sign the Order to Show Cause.

(2T8-18 to 22).

On November 4, 2024, Judge Citrino permitted the Defendant to make a portion of his rent payment into Court, and adjourned the Third OSC hearing until November 18, 2024, requiring the Defendant to confirm payment by Social Services of Passaic County on or before that date. (Da 89; 3T7-11 to 14).

At the November 18, 2024 hearing, the Defendant failed to provide proof of payment by Social Services, and the Third OSC was adjourned for a second time, to December 2, 2024.

On December 2, the Defendant again failed to provide proof of payment by Social Services. As a result, Judge Citrino adjourned the Third OSC for a third time providing a new date of December 17. (Da 90; 4T3-2 to 7-4). The order also states: "LL may accept Dec'24 rent without prejudice." (Da 90).

At the outset of the return date hearing on December 17, 2024, the Court and Plaintiff's counsel noted the protracted nature of the proceedings, as shown in the following colloquy:

> MS. LUTZ: It's -- we're a half a year past the trial date, Your Honor.
>
> THE COURT: Yeah. I'm looking. How many –

> MS. LUTZ: We've never objected to any adjournment requests.
>
> THE COURT: There's been Order to Show Cause after Order to Show Cause. There was settlement agreement –
>
> MS. LUTZ: At least two.
>
> THE COURT: May I? The complaint was filed May 8th. There was a settlement agreement July 8th. There was JOP after that. An order for orderly removal, 9/4 is what's in the system. 9/10, another application Order to Show Cause. And another settlement agreement in September. Another breach. And there's -- there's -- when was the last payment?
>
> MR. SABIR: November. November.

(5T5-2 to 18). At the December 17 hearing, the Defendant failed for the third time to provide proof of payment by Social Services. He also did not pay the December rent, despite his representation to the Court on December 2, 2024[3] that it would be paid. (5T6-1 to 10; 5T14-2 to 15-18).

As a result, on December 17, 2024, Judge Citrino issued a second Order for Orderly Removal, and extended the lockout date to January 2, 2025. (5T18-19 to 19-1; Da 91). This Order also states:

> **NO FURTHER APPLICATIONS WILL BE GRANTED FOR EXTRA TIME TO MOVE OR TO REMOVE TENANT'S PERSONAL PROPERTY FROM THE PREMISES.**

3 See, 4T5-20 to 6-16.

(Da 91; emphasis original).

On January 2, 2025, the final day of the lockout extension, the Defendant filed a fourth Order to Show Cause application ("Fourth OSC"), this time on a *pro se* basis. (Da 93-103). The Defendant falsely certified that he had paid all rent due and owing in full. (Da 93-94).

At the January 2, 2025 hearing on the Fourth OSC before the Honorable Bruno Mongiardo, the Defendant failed to appear, sending his girlfriend in his place, on the alleged basis that he was sick. Because there was no proof that the rent was paid up and current[4], Judge Mongiardo entered a third Order for Orderly Removal, and stayed the execution of the warrant of removal until the following day, January 3, 2025. (6T3-2 to 27-12; Pa 1)[5].

On January 3, 2025, the Defendant filed a fifth Order to Show Cause application ("Fifth OSC"), again falsely claiming that the rent had been paid in full. (Pa 2-21). Judge Mongiardo adjourned the matter until January 9, stating:

> Obviously, I can't -- what I can do is continue this matter. I can't rule on it without giving the opposite side -- they would have to be represented by counsel and -- giving them the opportunity the make whatever argument. They may not have any. They may agree totally with you. But

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[4] Given the last-minute filing, Plaintiff's counsel was unavailable and could not be reached by the Court. (6T12-2 to 12).

5 Because the Defendant neglected to place this Order and other documents of record into his Appendix, the Plaintiff has inserted those omitted documents into its own Appendix, which contains the prefix "Pa."

> I can't just go ahead and do it sua sponte. I have to carry this until I can at least give them an opportunity to be heard.

(7T5-10 to 17).

Judge Marsala entered an Order staying the lockout until January 24, setting a briefing schedule, and setting the return date for the Fifth OTSC for January 24. (Da 105; 8T16-22 to 17-15).

At the outset of the January 24, 2025 hearing, the following colloquy occurred between Judge Marsala and defense counsel:

> THE COURT: So I -- I read your papers, counsel, and you -- you're citing the Anti-Eviction Act and all of that stuff, but once you have a settlement agreement and -- from my understanding, unless you could tell me I'm wrong, my understanding is once you have a settlement agreement and that agreement's breached, it's no longer a non -- possession for non-payment, it becomes basically a simple breach of contract action. Yes, or no?
>
> MR. SABIR: No. I'm -- Your Honor, I cannot agree with that position.
>
> THE COURT: No. I -- I -- whether you agree with it or not, isn't that the law?

(9T3-18 to 4-5). Defense counsel contended that Section 8 had not been paying its share of the rent. However, Plaintiff's counsel noted that the Defendant "hasn't been paying his portion, for months and months and months." (9T10-21 to 11-10). Judge Marsala noted that the Defendant "doesn't have the rent in full here today. Okay?" (9T15-12). He further observed that

> * * * right now it's a breach of contract action. It's not even a judgment of possession. Okay? There were two settlement agreements.

(9T18-10 to 13). The Court posed the question of "how long's this going to go on for and how many chances does he get?" (9T21-5 to 6). The Court later stated:

> There were two settlement agreements, two breaches. All right? The tenant doesn't have the full amount of money to pay today. Okay? So I can't even, you know, say to the landlord well, he has the money here today and I'm going to keep him in the property because he can pay in full right here and now.

(9T24-8 to 13).

At the end of the hearing, Judge Marsala denied the Defendant's Fifth OSC application, finding that the Defendant had already breached two settlement agreements and that it could not force the Plaintiff to enter into a third agreement. The lockout was further stayed until February 7, 2025. (Da 106; 9T28-8 to 29-25).

On February 4, 2025, the Defendant filed a sixth Order to Show Cause ("Sixth OSC") and a motion for reconsideration. (Da 108-115). Judge Citrino denied these applications in an Order entered on February 7, 2025. (Da 117-118). The Court supplied the following reason for its decision:

> Defendant Tenant has had numerous opportunities, settlement Agreement and OTSCs that were granted. His time in this apartment has come to an end. There will be no further stays of the Warrant of Removal.

(Da 118).

On February 11, 2025, the Defendant filed a Notice of Appeal with the Superior Court, Appellate Division, which was marked as deficient. (Da 174-182). He filed an Amended Notice of Appeal on February 19, 2025. (Da 183-192).

On February 12, 2025, the Defendant filed a seventh Order to Show Cause application ("Seventh OSC") requesting a stay of the eviction pending the outcome of the appeal. (Da 133-140). Judge Citrino at the outset of the February 12 hearing noted the "long and tortured history" of the instant case. (10T3-15 to 16). At the hearing, the Defendant essentially repeated the various arguments and positions advanced in the hearing for the Sixth OSC and previous hearings, including the presentation of false accounting and rental payment figures. (10T8-10 to 13-4).

At the conclusion of the hearing, Judge Citrino denied both the Defendant's Seventh OSC and motion for reconsideration, and entered an Order to that effect. (10T13-17 to 14-5; Da 142-143).

On February 13, 2025, a Warrant of Removal reissued and on February 19, 2025, the Defendant was locked out. On February 20, 2025, Judge Citrino

sua sponte vacated the Warrant of Removal and required that the Defendant be restored to possession. (Da 145).

On February 21, 2025, the Plaintiff filed a motion for reconsideration of Court's February 20 Order, which was denied by Judge Citrino on February 24, 2025. (Da 147). The Court also wrote the following: "There will be no further hearings in this matter while it is pending in the Appellate Division." (Da 147).

On February 25, 2025, the Appellate Division entered an Order staying lockout pending disposition of the appeal. (Da 149-150).

STATEMENT OF STANDARD OF REVIEW

This case presents mixed questions of fact and law. The Appellate Division gives deference to the supported factual findings of the trial court but reviews de novo the trial court's application of legal rules to the factual findings. *State v. Pierre*, 223 N.J. 560, 576 (2015); *State v. Nantambu*, 221 N.J. 390, 404 (2015). "The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." *Gnall v. Gnall*, 222 N.J. 414, 428 (2015), quoting *Cesare v. Cesare*, 154 N.J. 394, 411-12 (1998); *See, State v. Camey*, 239 N.J. 282, 306 (2019) ("[w]e will not disturb the trial court's findings; in an appeal, we defer to findings that are supported in the record and find roots in credibility assessments by the trial court"); *Motorworld, Inc. v. Benkendorf*, 228 N.J. 311, 329 (2017)("[w]e review the trial court's factual findings under a deferential standard: those findings must be upheld if they are based on credible evidence in the record").

LEGAL ARGUMENT

POINT I

THE DEFENDANTS' BREACH OF THE SETTLEMENT AGREEMENT PROVIDED A LAWFUL BASIS FOR ENTERING THE WARRANT OF REMOVAL FROM THE PREMISES.

In Point I, the Defendant contends that he had a right to pay all rent due owing at the hearing before Judge Marsala on January 24, 2025, which was scheduled as a result of the Defendant's fifth Order to Show Cause. Putting aside the fact that the Defendant did not produce the back rent owed to the Plaintiff (as addressed in Point III below), it is clear that by the time of Defendant's fifth Order to Show Cause application, the time had long passed for simply attempting to get current on rental payments.

The Judgment of Possession and Warrant for Removal was appropriately grounded upon a breach of contract and not a breach of the Lease. Here, the Defendant breached both the First Agreement (entered on July 1, 2024) and the Second Agreement (entered on September 17, 2024).

As a result, the "three business days" payment provision under NJSA 2A:42-10.16a does not apply. Thus, the various arguments advanced in Point I are untenable and without support, and run headlong into well established law.

A Because the Defendant Entered into and Breached the Settlement Agreement, the "Three Business Days" Payment Provision Under the Anti-Eviction Statute Does Not Apply to the Instant Breach of Contract Matter.

A settlement agreement is a contract under New Jersey law, and subject to contractual principles. *Nolan v. Lee Ho*, 120 N.J. 465, 472 (1990). New Jersey jurisprudence values settlement agreements as an appropriate way to resolve disputes. *Gere v. Louis*, 209 N.J. 486, 500 (2012). Settlement agreements are to be encouraged and enforced. Ibid. "This policy rests on the recognition that 'parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone.'" Ibid., quoting *Impink ex rel. Baldi v. Reynes*, 396 N.J. Super. 553, 563 (App. Div. 2007).

In addition, a settlement "spares the parties the risk of an adverse outcome and the time and expense — both monetary and emotional — of protracted litigation." *Kernahan v. Home Warranty Adm'r of Fla., Inc*., 236 N.J. 301, 323 (2019), quoting *Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C*., 215 N.J. 242, 253-54 (2013). Therefore, settlement agreements, like contracts freely and voluntarily entered, should be honored and enforced in the same way as other contracts. *Pascarella v. Bruck*, 190 N.J. Super. 118, 124-125 (App. Div. 1983), citing *Honeywell v. Bubb*, 130 N.J. Super. 130, 136 (App. Div. 1974).

It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear. *Quinn v. Quinn*, 225 N.J. 34, 45 (2016). Stated differently, the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves. Ibid.

Thus, settlement agreements are "governed by basic contract principles" and absent "a demonstration of fraud or other compelling circumstances," are to be enforced. *Capparelli v. Lopatin*, 459 N.J. Super. 584, 603-04 (App. Div. 2019).

Here, on July 1, 2024, the initial trial date, the parties entered into a Settlement Agreement (Tenant to Stay in Premises) ("First Agreement"), under which the Defendant agreed to pay $460 by the end of the day, $1,897 by August 19, and resume paying the monthly rent during the term of the agreement. (Da 28). The First Agreement also states:

> This agreement shall end when the tenant has paid the full amount of back rent stated in paragraph 2. Once paid in full, the judgment, if any, shall be vacated and the complaint shall be dismissed.

(Da 29).

The Defendant breached the First Agreement by failing to make the required payment of $1,897 by August 19, 2024. As a result, the Plaintiff filed a Certification of Breach of Settlement and a Request for Residential Warrant of Removal, which was granted by Judge Marsala, who entered a Judgment for

Possession After Breach. Judge Citrino subsequently entered an Order for Orderly Removal.

Had the Defendant satisfied the terms of the First Agreement, the Complaint would have been dismissed. However, he breached that contract. That breach represented a material breach of the First Agreement. See, *Roach v. BM Motoring, LLC*, 228 N.J. 163, 174 (2017) (a breach is material if it "goes to the essence of the contract").

As a result of the Defendant's unceasing and unjustified Order to Show Cause application tactics, removal of the Defendant as a tenant was delayed, and the parties entered into a second Settlement Agreement (Tenant to Stay in Premises) ("Second Agreement"), which required the Defendant to pay $230 by September 20, $690 by October 7, and to maintain his monthly rent obligation. Like the First Agreement, the Second Agreement was breached in a material manner by the Defendant when he failed to pay either the monthly rent for October on time, or the arrears payment due on October 7 on time. As a result, on October 11, 2024, the Plaintiff filed a Certification of Breach of Settlement and a Request for Residential Warrant of Removal, which was granted.

Thus, the Defendant in the instant case could not avoid removal from the property by simply attempting to pay back rent at the very late stages in this

case, after the breach of two settlement agreements. The three-day provision[6] under the anti-eviction statute was thus rendered moot and unavailable, as recognized by Judge Marsala:

> THE COURT: So I -- I read your papers, counsel, and you -- you're citing the Anti-Eviction Act and all of that stuff, but once you have a settlement agreement and -- from my understanding, unless you could tell me I'm wrong, my understanding is once you have a settlement agreement and that agreement's breached, it's no longer a non -- possession for non-payment, it becomes basically a simple breach of contract action.

(9T3-18 to 25).

The Defendant cited no authority below to contradict or challenge this principle. On appeal, he similarly cites no such authority, except to state:

> The statute is silent and does not state that a tenant loses the right to pay up to three business days if there was a prior settlement agreement followed by a breach.

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[6] In 2019, the New Jersey Legislature enacted N.J.S.A. 2A:42-10.16a ("the Stack Amendment"), which provides an additional safeguard against evictions for non-payment of rent under the anti-eviction Act, N.J.S.A. 2A:18-61.1a. The statute permits a tenant to pay all of the rent due and owing up to three business days after a warrant of removal is posted, or a lockout occurs, and have the action dismissed with prejudice. N.J.S.A. 2A:42-10.16a(a) provides in pertinent part:

> In an eviction action for nonpayment of rent, pursuant to subsection a. of section 2 of P.L. 1974, c. 49 (C. 2A:18-61.1), the court shall provide a period of three business days after the date on which the warrant of removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment[.]

(Db 12). Such a position, untethered to any legal principle or supporting authority, lacks merit.

Relevant case law, albeit unpublished, supports the position of the Plaintiff and Judge Marsala.

On point is *Maslow v. Donato*, A-3748-15T4, 2017 WL 4320381 (App. Div. Sept. 29, 2017), cert. denied, 232 N.J. 489 (2018) (Da 22-24)[7], a landlord-tenant eviction proceeding involving a settlement agreement. There, the Law Division determined any Certificate of Occupancy evidence was irrelevant, because the issues presented involved enforcement of the settlement agreement, which allowed for eviction if certain conditions were not satisfied, not whether plaintiff violated occupancy requirements. In this respect, any defense related to the lack of a C.O. was waived when the defendants entered into the settlement agreement. (Pa 22).

The Law Division in *Maslow* also rejected the tenant's reliance upon N.J.S.A. 2A:18–55,[8] a provision directly analogous to the Stack Amendment

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7 Pursuant to Rule 1:36-3, all cited unpublished opinions have been included in the Plaintiff's Appendix. The Plaintiff found no unpublished decisions contradicting the cited decisions.

8 This statute states:

> If, in actions instituted under paragraph "b" of section 2A:18-53 of this title, the tenant or person in possession of the demised premises shall at any time on or before entry of final judgment, pay to the clerk of the

relied upon by the Defendant here. There, the tenant contended that the court's jurisdiction to evict them ended when they paid $8000 in past due rent in accordance with the settlement agreement. However, since the parties' settlement agreement required both this payment and the satisfaction of other conditions not met by the Defendant, breach of contract principles justified the termination of the lease and eviction from the property. (Pa 22-23).

Relevant as well is *Oceanfront Investments, LLC v. Philomenas, LLC,* A-0988-14T2, 2016 WL 3525231 (App. Div. June 29, 2016), cert. denied, 228 N.J. 28 (2016) (Pa 25-28), the parties entered a settlement agreement in a landlord-tenant lawsuit, whereby the Defendants admitted that they owed $30,700 in back rent. Payments thereafter were not made on schedule, with the 2012 back rent still not paid in full. The Defendants agreed to surrender possession if payments were not made. Thereafter, the payments stopped and the property was abandoned. The Law Division entered judgment terminating the Defendants' lease interests and their right to possession, a decision affirmed by the Appellate Division.

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court the rent claimed to be in default, together with the accrued costs of the proceedings, all proceedings shall be stopped. The receipt of the clerk shall be evidence of such payment.

Similarly, in *Bastress v. Simmons*, A-1947-10T2, 2012 WL 787357 (App. Div. Mar. 13, 2012) (Pa 29-30), which like the instant case involved a "tortured procedural history," the Appellate Division affirmed the trial court's eviction of the tenant based upon a breach of a settlement agreement. Id. at *1-2.

Finally, the Appellate Division's decision in *806 6th St. HCPVI, LLC v. Nunez*, A-0753-21, 2023 WL 5425617 (App. Div. Aug. 23, 2023), *cert. denied,* 256 N.J. 192 (2024) (Pa 35-39) provides further support for the Plaintiff's position. There, the Appellate Division held that the tenant does not have right to cure and pay after the entry of a consent order and warrant for removal. In so holding, it concluded that

> * * * the warrant for removal was not posted "due to nonpayment of rent" within the meaning of the Stack Amendment. We are therefore satisfied the Stack Amendment does not apply and, consequently, does not provide a basis under Rule 4:50-1 to vacate the consent judgment.

(Pa 38). In the instant case, the warrant of removal was not posted "due to nonpayment of rent" but for the Defendant's breach of the settlement agreement.

In addition, the Defendant in this matter twice received a Rule 6:6-6(b) Order for Orderly Removal. (Da 46, 91). As recognized by the panel in *Nunez,* the intent of such an order is to give the tenant more time to move, not more time to pay. (Pa 37).

Finally, noteworthy is the fact that the Stack Amendment does not say that if the tenant pays, they get returned to possession. That was in the original text of the bill and stricken before it passed. (Pa 41-46).

Accordingly, for all of the above reasons, the Defendant's argument in Point I is untenable and without support in either the record or law.

B. The Law Division's Reasoning in Support of Its Orders Are Sound and Do Not Warrant Reversal.

On appeal, the Defendant challenges Judge Marsala's Order entered on January 24, 2025 Order and Judge Citrino's Order entered on February 7, 2025. Both Orders should be affirmed on appeal.

January 24 Order

At the outset of the January 24, 2025 hearing, the following colloquy occurred between Judge Marsala and defense counsel:

> THE COURT: So I -- I read your papers, counsel, and you -- you're citing the Anti-Eviction Act and all of that stuff, but once you have a settlement agreement and -- from my understanding, unless you could tell me I'm wrong, my understanding is once you have a settlement agreement and that agreement's breached, it's no longer a non -- possession for non-payment, it becomes basically a simple breach of contract action. Yes, or no?
>
> MR. SABIR: No. I'm -- Your Honor, I cannot agree with that position.

> THE COURT: No. I -- I -- whether you agree with it or not, isn't that the law?

(9T3-18 to 4-5). Defense counsel failed to respond to this issue in a direct manner, and has failed to rebut this reasoning on appeal.

Judge Marsala noted that the Defendant "doesn't have the rent in full here today. Okay?" (9T15-12). He further observed that

> * * * right now it's a breach of contract action. It's not even a judgment of possession. Okay? There were two settlement agreements.

(9T18-10 to 13). The Court posed the question of "how long's this going to go on for and how many chances does he get?" (9T21-5 to 6). The Court later stated:

> There were two settlement agreements, two breaches. All right? The tenant doesn't have the full amount of money to pay today. Okay? So I can't even, you know, say to the landlord well, he has the money here today and I'm going to keep him in the property because he can pay in full right here and now.

(9T24-8 to 13).

At the end of the hearing, Judge Marsala denied the Defendant's Fifth Order to Show Cause application, finding that the Defendant had already breached two settlement agreements and that it could not force the Plaintiff to enter into a third agreement. (Da 106; 9T28-8 to 29-25).

Such reasoning is sound, and in no way should be disturbed on appeal.

February 7 Order

On February 4, 2025, the Defendant filed his sixth Order to Show Cause and a motion for reconsideration. (Da 108-115). Judge Citrino denied these applications in an Order entered on February 7, 2025. (Da 117-118). The Court supplied the following reason for its decision:

> Defendant Tenant has had numerous opportunities, settlement Agreement and OTSCs that were granted. His time in this apartment has come to an end. There will be no further stays of the Warrant of Removal.

(Da 118).

Again, such reasoning is sound, and in no way should be disturbed on appeal.

Emphasis is drawn to the fact that it is axiomatic that a Court may not force the parties to settle and that it may not make the landlord wait for the rent or accept it in installments. *See* Pressler & Verniero, *N.J. Court Rules*, 2023 Edition, Appx. XI-S. It is black letter law that a settlement agreement is a contract and, once breached, is terminable at the option of the non-breaching party. It is well-settled precedent that a court cannot re-write a contract to give the parties a better deal than they made for themselves. It is undisputed that neither settlement agreement entered into in this case gave the tenant any sort of "safe harbor" to redeem the tenancy after a breach of the settlement.

Notwithstanding that there is no law or fact that supports his argument, the Defendant argues that he should have been given not a second "bite of the apple," because he got that when the landlord agreed to a second settlement agreement. Defendant's appeal is based on his seventh and eighth attempts to relitigate this case—his seventh and eighth "bites of the apple".

POINT II

RULE 4:50-1 DOES NOT PROVIDE A BASIS FOR VACATING THE JUDGMENT OF POSSESSION AND WARRANT OF REMOVAL.

In Point II, the Defendant's argument fails both on the facts and law. It relies upon unproven factual allegations advanced below, and cites case law having no application to the instant case.

Generally, courts "should use Rule 4:50-1 sparingly" and only "in exceptional situations." *Badalamenti v. Simpkiss*, 422 N.J. Super. 86, 103 (App. Div. 2011), quoting *Hous. Auth. of Morristown v. Little*, 135 N.J. 274, 289 (1994). Relief under Rule 4:50-1 is designed "to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." *LVNV Funding, LLC v. Deangelo*, 464 N.J. Super. 103, 109 (App. Div. 2020), quoting *Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n,* 74 N.J. 113, 120 (1977).

The Defendant relies upon subsection (e) of Rule 4:50-1, on the alleged basis that "the judgment can be satisfied." (Db 22). This argument fails on both the law and facts, for the reasons set forth in Points I and III of this brief.

The Defendant also relies upon subsection (f) of Rule 4:50-1 (Db 22-23), which provides relief for "any other reason justifying relief from the operation of the judgment or order." Relief from a judgment under Rule 4:50-1(f) is

expansive but presents a difficult burden to meet. See, *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 484 (2012). Under Rule 4:50-1(f), relief "is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. Therefore, the party seeking relief from a judgment under the Rule must show that "truly exceptional circumstances are present." Id. at 468. Rule 4:50-1(f) is the "so-called catchall provision, which permits relief in 'exceptional situations.'" Id. at 484.

Here, there are no exceptional circumstances, nor did a "grave injustice" occur below, again, for the reasons set forth in Points I and III of this brief, and as detailed in the Statement of Facts and Procedural History. Judge Marsala and Judge Citrino provided every opportunity for the Defendant to satisfy the First and Second Agreements, to no avail. The Defendant filed seven Orders to Show Cause, in which repetitive, unsustainable positions were advanced. At the Sixth Order to Show Cause hearing, Judge Citrino declared:

> Defendant Tenant has had numerous opportunities, settlement Agreement and OTSCs that were granted. His time in this apartment has come to an end. There will be no further stays of the Warrant of Removal.

(Da 118). As a result, relief is not appropriate under the stringent test of subsection (f) of the Rule.

In seeking relief under Rule 4:50-1, the Defendant relies heavily upon the New Jersey Supreme Court's decision in *Hous. Auth. of Town of Morristown v. Little*, 135 N.J. 274 (1994). (Db 21-22). Such reliance is inapposite and fails to support the Defendant's position, for four reasons.

First, as noted by the New Jersey Supreme Court, "the issue presented by this appeal is whether N.J.S.A. 2A:42–10.6 of the Tenant Hardship Act, which grants courts the power to stay an eviction up to a maximum of six months, restricts a court's power to vacate a judgment for possession on equitable grounds pursuant to Rule 4:50–1." Id. at 277. This case presents no such issue, and contains no facts or law having relevance to the decision in *Little.*

Second, the *Little* case is fundamentally distinguishable because unlike here, there was not a settlement agreement entered into between the landlord and tenant. Thus, in sharp contrast to *Little,* the anti-eviction statute does not apply in the instant case, which involves a breach of contract.

Third, the landlord in *Little,* again in sharp contract to the instant case, was not a private landlord, but a public-housing authority, created pursuant to N.J.S.A. 55:14A–1. Id. at 278. As noted by the court in *Little*:

> Another factor that may have affected the court's exercise of discretion was that the Authority, a publicly-subsidized provider of housing of last resort, is subject to public-policy responsibilities <u>not generally imposed on private landlords</u>.

Id. at 291 (emphasis added).

Fourth, as recognized by the Court, in *Little*, "five minor children lived in the apartment and that suitable housing was not readily available at the same monthly rental." Id. at 291. In this case, there are no minor children in the unit.

Accordingly, the New Jersey Supreme Court's decision in *Little* has no relevance or bearing upon the instant case.

Finally, attention is drawn to the following argument made by the Defendant in its Point II:

> Plaintiff argued that Defendant should be evicted because there were multiple Order to Show Cause motions and hearings.

(Db 24). The Plaintiff made no such argument. Its argument was grounded upon breaches of two contracts, not the mere fact that the Defendant filed seven Orders to Show Cause.

For all of the above reasons, the Defendant's arguments in Point II lack merit, and do not warrant a reversal of the Orders entered by the Law Division.

POINT III

AT NO POINT AFTER THE EXECUTION OF THE FIRST AGREEMENT DID THE DEFENDANT SATISFY HIS OBLIGATION TO PAY RENT.

Throughout his brief, the Defendant makes various assertions claiming to have satisfied his rental obligations at various points. The record, however, plainly shows that following the execution of the First Agreement, the Defendant at no point was fully paid up on his obligations under the Lease.

This fact is made clear in the record, as detailed in the Statement of Facts and Procedural History, which requires no repetition here.

In short, the details of the payments at all relevant times was set forth in the Plaintiff's ledger filed with the Law Division on January 21, 2025[9] and discussed at various oral arguments at the Order to Show Cause hearings. (9T6-1 to 8-6; 10T12-17 to 23). As noted by Plaintiff's attorney at the December 17, 2024 Order to Show Cause hearing: "This ledger reflects all amounts that may have been provided to the landlord at any point in the last six months, including past trial dates." (5T8-20 to 22).

9 Because this ledger excerpt was contained in the Plaintiff's brief, it has not been included in the Appendix. See, Rule 2:6-1(a)(2).

LEDGER:

Total Amount of Rent Due to date: **$1,260.60** ($2,120.60 (total rents) - $860.00 (total credits))

Charges:

$920.00 Arrears (including September Rent). (See Attached 9/17/24 Stipulation)
$ 56.12 September Rent Additional. (See Attached Sect 8 portion letter)
$286.12 October Rent
$286.12 November Rent
$286.12 December Rent
$286.12 January Rent

$2,120.60 Total Rents Due

Payments:

$230.00 09/19/24. Payment accepted in accordance with Stipulation of Settlement
-$230.00 10/08/24. Payment received
+$230.00 10/09/24. Payment returned. Post breach.
-$230.00 11/4/24. Payment accepted in court. As per Judge Citrino
-$400.00 11/4/24. Payment accepted in court. As per Judge Citrino
-$592.00 12/31/24. Payment made new year's eve to management office.
+$592.00 1/3/25. Payment returned after holiday.

$860 Total Payments

The Defendant failed to produce any documentation, materials, or credible testimony to contradict the payment details set forth in the Ledger. At no point following the First Agreement was he current and up-to-date in his rental payments.

The Plaintiff acknowledges that the Defendant receives Section 8 rental assistance and appears to have struggled with personal and financial issues. But his current $286.12 portion is an amount that the State has determined is reasonable and within his means. Yet the Defendant has consistently failed to make even these payments. This litigation commenced as a result of the Defendant's failure to make his $230 payment of rent for the months of March, April, and May of 2024. While there have been issues regarding the timeliness of payments by Social Services, the record shows a consistent failure by the Defendant to pay his portion of the monthly rent.

Throughout this matter, the Plaintiff has always cooperated with Social Services. However, the Defendant failed to comply with the terms of the two settlement agreements and further failed to comply with the grace periods generously provided by the Law Division on several occasions.

As a result, any claim by the Defendant that he was current with rent payments at relevant times lacks merit, and flies in the face of the record.

POINT IV

THE PLAINTIFF DID NOT WAIVE ANY CLAIM WITH RESPECT TO ACCEPTING ALLEGED JANUARY RENT.

In Point III, the Defendant contends that "Plaintiff waived its right to evict Defendant when they accepted the rent payment of $592 in cash from Defendant on December 2024." (Db 25).

The Plaintiff's response to this argument is two-fold.

First, even if the Plaintiff had accepted the January rent, there was no waiver of any kind, as the Law Division ruled that any acceptance of rent would be "without prejudice" to the Plaintiff.

Second, there was no payment made for rent for the month of January 2025.

As to the waiver argument, on December 2, 2024, the Defendant again failed to provide proof of payment by Social Services. As a result, Judge Citrino adjourned the Third OSC for a third time providing a new date of December 17. Her Order states in relevant part: "LL may accept Dec'24 rent without prejudice." (Da 90; emphasis added). In this respect, Plaintiff's counsel noted:

> MS. LUTZ: And the Court was kind enough to specifically put language in the order that the landlord can accept the rent without prejudice -- prejudicing their case, because as time went on, more amounts accrued, landlord's not accepting those amounts.

(5T7-6 to 11). This statement was not contradicted or challenged by defense counsel either below or on appeal.

It is undisputed that the phrase "without prejudice" indicates that certain communications or actions are being taken without affecting a party's legal rights or positions. It essentially means that any concessions or admissions made during the communication are not meant to be taken as an admission of liability or as a binding agreement. See, *Black's Law Dictionary,* p. 1437 (5th ed. 1979).

Thus, any acceptance of rent at the time in question was not, as a matter of definition, waived by the Plaintiff. Moreover, a high standard exists for the showing of waiver, as it "involves the intentional relinquishment of a known right and must be evidenced by a clear, unequivocal and decisive act from which an intention to relinquish the right can be based." *Scibek v. Longette*, 339 N.J.Super. 72, 82 (App. Div. 2001). Such intentional relinquishment exists nowhere in the record in this matter.

In any event, January rent was never fully produced or accepted. The Defendant made a payment on the eve of New Year's Eve in the amount of $592, stating to the Plaintiff that this amount equaled all rent due. The Defendant then seemed to have handwritten on the receipt "Dec back Rent 305.88. JAN Rent 286.12". (Pa 34). The Plaintiff returned the rent once the management office

returned after the New Years holiday. Ignored by the Defendant is that as of December 31, 2024, the rent arrears totaled $974.48. However, the Defendant only dropped $592 at the management office. Because there was still an open balance $382.48, the amount paid failed to cover December, let alone January rent.

As a result, there was in fact no January payment.

Accordingly, the Defendant's argument in Point III lacks merit all around, and does not constitute a reason to reverse the well considered Orders entered by Judge Citrino and Judge Marsala.

CONCLUSION

For the foregoing reasons, the Plaintiff-Respondent, Carrol Street, LLC, respectfully requests the Appellate Division to affirm the Orders entered on January 24, 2025 and February 7, 2025 by the Law Division, Special Civil Part, of Passaic County.

Respectfully Submitted,

TOVA LAW GROUP, LLC
Attorneys at Law
Attorneys for Plaintiff-Respondent

By: // *Tova L. Lutz* //
TOVA L. LUTZ, ESQ.
For the Firm

Date: May 30, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CARROL ST LLC Plaintiff-Respondent, vs. MARCUS LILES Defendant-Appellant	Docket No. A-001692-24 CIVIL ACTION ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY, SPECIAL CIVIL PART-PASSAIC COUNTY Sat Below: Honorable William Marsala, J.S.C. Honorable Vicki Citrino, J.S.C

REPLY BRIEF

FOR

APPELLANT MARCUS LILES

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TABLE OF AUTHORITIES

LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court / Agency Party Role	Trial Court / Agency Party Status
Marcus Liles	Appellant	Defendant	Participated Below
Carrol St LLC	Respondent	Plaintiff	Participated Below

PRELIMINARY STATEMENT

This is an action seeking to evict a residential tenant for nonpayment of rent pursuant to N.J.S.A. §2A:18-61.1(a). A tenant in a nonpayment eviction case can submit rent payment up to three business days after a lockout is executed pursuant to N.J.S.A §2A:42-10.16(a). The case should have been dismissed because Defendant had secured all rent due and owing before a lockout was executed. Plaintiff incorrectly argues that the statutory right does not apply to Defendant because he entered into a settlement agreement where he promised to pay rent and breached it. However, such assertion is baseless and lack legal authority and the trial court erred in entering the judgement of possession in favor of the Plaintiff. The cases cited by Plaintiff in its brief were misconstrued and do not apply for the case at hand.

PRELIMINARY STATEMENT AND STATEMENT OF FACTS

Defendant relies on the procedural history and statement of facts set forth in our Initial Brief.

LEGAL ARGUMENT

POINT ONE: BREACH OF CONTRACT IS NOT GOOD CAUSE FOR EVICTION UNDER THE ANTI-EVICTION ACT PURSUANT TO N.J.S.A §2A:61.1-61.12

Plaintiff argued that the Judgment of Possession and Warrant for Removal was appropriately grounded upon a breach of contract and not a breach of the Lease, but did not provide any legal authority to support that position. The Anti-Eviction Act, N.J.S.A. §2A:18-61.1-61.12 was "designed to limit the eviction of tenants to 'reasonable grounds' and to provide for 'suitable notice' of tenants in the event of an eviction proceeding." 447 Assocs. V. Miranda, 115 N.J. 522, 527 (1989) (citing A.P.dev. Corp. v. Band, 113 N.J. at 492) (1988). The Act provides "residential tenants the right, absent good cause for eviction, to continue to live in their homes without fear of eviction ... and thereby to protect them from involuntary displacement." 224 Jefferson St. Condo. Ass'n v. Paige, 346 N.J. Super. 379, 383 (App. Div. 2002) certif. denied, 172 N.J. 179 (2002). (quoting Morristown Mem'l Hosp. v. Wokem Mortgage Realty Co., 192 N.J. Super. 182, 186, (App. Div. 1983)). A breach of contract is not one of the good cause grounds for eviction under the Anti-Eviction Act and Plaintiff tries to expand its rights while depriving the Defendant's statutory rights. In Chapman Mobile Homes, Inc. v. Huston, 226 N.J. Super 405, 407 (1988), the court clearly established that the

"history of the Anti-Eviction Act plainly dictates that the statutory provisions authorizing summary eviction be strictly construed" and thus, "a residential tenant may be evicted in a summary proceeding only upon the showing of "good cause.", citing Parkway Inc. v. Mabel Briggs Curry, 162 N.J. Super 410, 416 and 420. (Cty. D. Ct. 1978). Furthermore, the two settlement agreements that the parties entered into only required Defendant to pay money and not to vacate from the unit at any point. Therefore, Plaintiff's arguments that eviction was appropriate for breach of contract does not stand since the 'contract' did not call for any vacate term.

Plaintiff incorrectly asserts that the trial judge's ruling that 'it's no longer a possession for nonpayment and it becomes a basically a simple breach of contract action' is a well found legal principle, but provides no legal authority to support it. It's almost analogous to imply that since the trial judge said it, it must be correct. Plaintiff fails to show any statute or case law where it is mentioned that an eviction complaint for nonpayment becomes a breach of contract action. This is exactly the decision of the lower court which Defendant is appealing as the trial court erred in determining that the Defendant did not have a right to submit a rent payment to obtain a dismissal which was granted under N.J.S.A §2A:42-10.16(a), referred to as the Stack Amendment. Plaintiff cited an unpublished opinion Maslow v. Donato, A-3748-15T4, 2017 WL 4320381 (App. Div. Sept. 29, 2017) to support its claim, but that case can be distinguished from the case at hand because the

settlement agreement in Maslow had many other terms that were breached and it went beyond just non-payment which was a basis to deny relief. In contrast, the case at hand is just a non-payment agreement that has to be satisfied and there were no other terms. N.J.S.A §2A:42-10.16(a) allows a tenant to submit a rent payment up to three business days after a lockout is executed due to nonpayment of rent. Therefore, Maslow is not applicable to this case at hand. Plaintiff also relies on another unpublished opinion Oceanfront Investments, LLC v. Philomenas, LLC, A-0988-14T2, 2016 WL 3525231 (App. Div. June 29, 2016) which is not relevant to this case at hand as it involved a commercial tenancy that has no bearing on a residential rights under N.J.S.A §2A:42-10.16(a). Also, Oceanfront was decided before N.J.S.A §2A:42-10.16(a) was adopted and involved a breach of a settlement agreement about the rental of a Marina. Oceanfront had none of the post judgment considerations of the loss of affordable residential housing which is essential element of the case at hand, therefore, has no relevance at all. Plaintiff relies on another unpublished opinion 806 6th St. HCPVI, LLC. v. Nunez, A-0753-21, 2023 WL 5425617 (App. Div. Aug. 23, 2023) to argues that the warrant of removal was for the Defendant's breach of the settlement agreement. However, Plaintiff misapplies Nunez because it involved a settlement agreement where the tenant signed an agreement to vacate after a hardship stay period where as the Defendant in this case at hand never signed a vacate agreement. The court found that the

Stack Amendment did not apply to Nunez because "the warrant for removal was not posted due to nonpayment of rent" Id at paragraph 5, but rather because defendant did not vacate the premises by the agreed upon date. In contrast, Defendant in this case only signed two settlement agreements which involved a promise to pay rent and he never agreed to vacate from the premises.

Plaintiff incorrectly argued that Defendant never provided the necessary amount of rent to achieve a cure of past and present rent due, because Defendant became current twice: when Defendant paid his portion in full in court on November 4, 2024 (Da89) and when he paid rent for December 2024 and January 2025 on December 31, 2024 which was accepted by Plaintiff (Da103). Defendant continues to reside in the premises, therefore, a lockout was never executed which allowed him to submit rent payment when it was tendered in open court January 24, 2025.

POINT TWO: THE CASE SHOULD HAVE BEEN DISMISSED DURING THE ORDER TO SHOW CAUSE ON JANUARY 24, 2025 BECAUSE THE EVICTION OF DEFENDANT WOULD BE INEQUITABLE UNDER NEW JERSEY COURT RULE 4:50-1.

In Housing Authority of Morristown v. Little, 135 N.J. 274, 289 (1994), the trial judge vacated a Judgment of Possession allowing a Public Housing tenant to pay all the back rent and retain her apartment. In the case at hand, Defendant has

essentially satisfied the amount owed by paying all his share of the rent from September 2024 to February 2025 and continuing thereafter, so is entitled to the relief under Rule 4:50-1. Plaintiff's attempt to return some payments which were not accepted or cashed by Defendant does not negate the fact that Defendant came up with the rent and paid it.

Although Plaintiff is a private landlord, Defendant is a participant of the Section 8 Housing Choice Voucher Program which will be jeopardized by his eviction, therefore, eviction would be inequitable under Rule 4:50-1. Given Defendant's low income, the loss of the Section 8 voucher may result in his homelessness notwithstanding his present ability to cure the nonpayment case which the law allows.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the judgment of possession be reversed and the complaint be dismissed.

Respectfully submitted,

/s/ Soo H. Woo

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