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SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

	DOCKET NO. A-001766-24
PAULA FORSHEE OF CATALYST PROPERTIES PROPERTY SOLUTIONS Plaintiff-Respondent	**ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: ESSEX COUNTY** **SPECIAL CIVIL PART/TENANCY**
v.	**DOCKET NO. LT-017737-24**
LISA MOORE, Defendant-Appellant	**Sat Below:** **Hon. Aldo J. Russo, J.S.C.**

BRIEF IN SUPPORT OF APPEAL OF DEFENDANT-APPELLANT LISA MOORE

On the Brief:
Ellery Ireland, Pursuant to N.J. R. 1:21-(3)(c)
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PRELIMINARY STATEMENT

Defendant-Appellant Lisa Moore (hereinafter "Appellant" or "Ms. Moore") appeals the order and possessory judgment dated January 6, 2025 (hereinafter "the Order") of the Superior Court of the State of New Jersey, Essex County, Special Civil Part, Landlord-Tenant Division (hereinafter "the Lower Court"). [85a (Judgment of Possession)]

Appellant is the tenant of record of 75 Prospect Street, Apt. 8D, East Orange, New Jersey ("the Subject Premises"). In 2023, Appellant and other tenants filed a petition for the appointment of a receiver under Docket Number ESX-C-140-23, which is referenced in the order dated December 31, 2023, which appointed Paula Forshee (hereinafter "Respondent" or "the Receiver") to be rent receiver for 75 Prospect Street, East Orange (hereinafter "the Building")in the hope of improving their living conditions and resetting their rents, which had been illegitimately inflated by previous landlords. [20a (Appointment Order)] ("The failure to maintain the premises is the basis for a corresponding lawsuit, ESX-C-140-23.")

Before the tenants' petition for the appointment of a receiver progressed, Fannie Mae filed its own request for the appointment of a receiver which was granted on December 1, 2023.

After being appointed, the Receiver did not issue leases to the tenants, like the Appellant, who did not have current leases. Rather, the Receiver sued tenants like the Appellant for non-payment of rent, using figures borrowed from the previous landlord whom Fannie Mae had foreclosed on.

The Landlord-Tenant Division of the Special Civil Part does not have the authority to work through the complicated regulatory issues presented by this case, because the Special Civil Part is a court of limited jurisdiction.

Nevertheless, even after the Lower Court deemed insufficient Respondent's evidence regarding the arrears claimed in the Complaint because there was no signed lease, the Lower Court took a further and erroneous step of engaging in an idiosyncratic review of the history of Appellant's testimony that did little to fulfill one of the promises of the Anti-Eviction Act: protecting affordable housing and tenants from unjustified increases.

The Lower Court's award of a possessory judgment to Respondent, despite the failings of all the evidence it offered, was contrary to law and thus constitute reversible error.

PROCEDURAL HISTORY

On September 22, 2024, Plaintiff-Appellant Paula Forshee of Catalyst Property Solutions (hereinafter "Respondent" or "the Receiver") commenced this summary proceeding for nonpayment of rent under docket number LT-17737-24, alleging that $21,346 was due and owing. [1a]

Trial commenced the afternoon of November 14, 2024, with the testimony of Tracey Hopson, who testified that she has been an employee of Catalyst Property Solutions since January 22, 2024 [1T[1]5-5]; she described her duties as "general management," which means to, "manage the property, to go over rents, to collect rents, to go over budgets, meet with vendors, meet with contractors, meet with residents, discuss repairs" [1T5-8]; she explained that when she began working at the Building was, "under a Court-appointed receivership and the receiver hired Catalyst Property Solutions to manage the property" [1T5-20]; she explained that the unsigned lease that was eventually entered into evidence at trial as Plaintiff's Exhibit 2 [39a], was initially "received from the owner's attorney in a flash drive" [1T9-16]; the Lower Court admitted Plaintiff's Exhibit 2 [39a], an unsigned document from 2020 that the Receiver obtained from the landlord's attorney, as a

[1] Submitted herewith are three (3) stenographic transcripts: references to the stenographic transcript for November 14, 2024 will be denoted by "1T"; references to the stenographic transcript for December 5. 2024 will be denoted by "2T"; and references to the stenographic transcript for January 6, 2025 by "3T."

business record even though the document was created by an entity other than Ms. Hopson's employer, Catalyst Property Solutions [1T11-13]; Ms. Hopson testified to receiving Plaintiff's Exhibit 3 [80a] from Wanda Watson (hereinafter "Ms. Watson") of the East Orange Rent Control Board, even though she had no personal knowledge as to the accuracy of the registrations recorded in the document [1T20-4] nor did know who had made the markings on the document [1T21-22]; the Lower Court admitted Petitioner's Exhibit 3 [80a] as a business record of Catalyst Property Solutions, even though it was not created by Catalyst Property Solutions and the witness could not identify who it had been created by or how it had been maintained prior to Ms. Hopson's obtaining it in 2024 [1T23-11]; Ms. Hopson testified that the documents from the Rent Control Board containing conflicting entries, "There's two numbers. One says 2594 and one says 2495" [1T24-13], before admitting that the Receiver just decided to sue for the greater amount without any stated justification.

Even though Ms. Hopson did not work for Catalyst in December 2023, she testified about a payment of $2,400 in December 2023 and a payment from DCA for $4,800 (1T27-23]; Respondent rested after entering Exhibits 6 [82a] and 7 [83a] into evidence; Respondent marked Exhibit 4 and 5 for identification but those exhibits were not entered into evidence [1T35-24], though the Lower Court referred expressly to Exhibit 4, a document not admitted into evidence, in the Order appealed here. [3T3-17]

On cross-examination, Ms. Hopson acknowledged that Plaintiff's Exhibit 3 was incomplete, that is had initially included other documents that had been removed [1T47-10] but that document was also accepted into evidence by the Lower Court.

After Ms. Hobson's testimony, Respondent rested and the Appellant commenced her defense, beginning with her own testimony [1T97-4]; she testified that she moved to the Building in 2019, initially residing in Apartment 9C, because the unit she had contracted to rent, Apartment 8D, was not ready in June, but she eventually moved into Apartment 8D in August or September of 2019 [1T97-5]; she testified to meeting Ms. Hopson in January of February 2024 and to discussing the rent for the Apartment with Ms. Hopson, who claimed different amounts as the rent, $2,595 on occasion and $2,697 on another occasion, though neither of these figures is justified under the ordinances of the City of East Orange [1T99-16]; the Judge Russo engaged in a direct colloquy with the Appellant:

> Q Ms. Moore, do you have any idea what the allowable rent for your unit is?
>
> MS. KYLER: Objection, Your Honor. If he's using allowable to equate with legal, --
>
> THE COURT: What is your rent?
>
> THE WITNESS: Currently?
>
> THE COURT: What is your rent?
>
> THE WITNESS: I don't know what my rent is.
>
> THE COURT: What was your rent?
>
> THE WITNESS: What my rent was, twenty-four-ninety-five.
>
> THE COURT: Okay. And when when – when was the last time you paid rent?

> THE WITNESS: January.
> THE COURT: Of this year?
> THE WITNESS: Yep.
> THE COURT: And you paid twenty-four-ninety-five?
> THE WITNESS: I paid 2,400.
> THE COURT: Okay. You paid 2,400. Okay. For the one month?
> THE WITNESS: Yes.
> [1T109:4]

On December 5, 2024, Appellant continued her testimony, with the Lower Court directly asking the witness hypothetical questions about rent over the objection of Appellant's counsel:

> Q Ms. Moore, how much do you think you owe your landlord?
> A Monthly or currently today?
> Q Currently today.
> A Nothing.
> THE COURT: Why is that?
> THE WITNESS: Because after I left here the last time, I went back and got documents from City Hall8 that showed the last legal rent amount for that unit was 1950.
> THE COURT: Okay.
> THE WITNESS: So, --
> THE COURT: Hold on. So, the le -- the last legal rent was 1950.
> THE WITNESS: Um-hum.15 THE COURT: Why don't you think you owe 1950 times 12?
> MR. IRELAND: Ob -- objection. That's a legal que –
> THE COURT: Hold on a second. You can't object to my question. The -- okay? Until she -- you want to object, go ahead. What's your objection to my question?
> MR. IRELAND: My objection is that that calls for an interpretation of the exact East Orange code provision

> that I offered to explain earlier. It says in the code how increases are sought and obtained.
>
> THE COURT: Counsel, you opened the door with this witness that she believes she owes nothing and asked her why and she said because I went to East Orange and the last legal rent was 1950. Okay? My question to her is then why don't you owe 1950 times 12. Why don't you owe 1950 times 12?
>
> THE WITNESS: Because if, Your Honor, if you take the years that I've been there –
>
> THE COURT: Um-hum.
>
> THE WITNESS: -- and I was paying rent, they owe me the difference for what I paid and what I should have been paying. And I have -- I can show you how I calculated it.
>
> THE COURT: Taken directly from the Chau case. [2T21-1]

For her second witness, Appellant called Ms. Watson, who testified that she is a Rent Regulation Officer for the City of East Orange [2T28-17]; Ms. Watson that in the City of East Orange a landlord must apply to the Rent Control Board for the increase, which the Rent Control Board has the authority to deny [2T30-3]; Ms. Watson testified that she had brought with her all of the registrations that her office had, from 2006 to 2021, but that she had not registrations for 2012 and 2014 [2T39-6]; Ms. Watson testified that the Rent Control Board does not verify the accuracy or investigate the legitimacy of any increase: "We just take them in and stamp them in" [2T43-14];

On January 6, 2025, the Lower Court issued the order and judgment appealed herein, granting Plaintiff a possessory judgment in the amount of $25,550. [96a]

The Lower Court determined the rent amount for the period of January 2024 to January 2025 was $2,400 per month. [3T17-21] The Lower Court also included late fees at a rate $50 per month, totaling of $550, even though the basis for liability was an oral agreement, not a written contract. [3T18-9]. It is noteworthy that in the Decision the Lower Court also referred to evidence that was not actually admitted at trial, such as the handwritten notes of Ms. Hopson that were referred to as Respondent's Exhibit 4 but were never entered into evidence.

STATEMENT OF FACTS

In April 2022, Prospect Castle LLC acquired the property known as 75 Prospect Street, East Orange, New Jersey ("the Building").

On or about November 9, 2023, Fannie Mae commenced foreclosure proceedings against Prospect Castle LLC in the Chancery Division of Essex County Superior Court. [20a] By order dated December 1, 2023, Paula Forshee was appointed to be receiver of the Building. [20a]

On December 1, 2023, the Receiver was appointed to manage the Building. Once appointed, the Receiver hire Catalyst Property Solutions, which she is the CEO of, to handle management of the Building. However, the Chancery Division did not appoint Catalyst Property Solutions to be receiver.

On September 22, 2024, the Receiver filed this summary non-payment proceeding in Superior Court, Essex County, Special Civil Part, Landlord-Tenant Division.

Trial of the Receiver's Complaint began on November 14, 2024. The Receiver called one witness, Tracy Hobson, an employee of Catalyst Property Solutions.

On December 5, 2024, the trial continued, and Appellant gave her own testimony and called two other witnesses, Wanda Watson and Eladio Negron, both of East Orange Code Enforcement.

On January 6, 2025, the Lower Court rendered its decision orally and issued a judgment of possession. [85a]

This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a trial court's conclusions of law *de novo*. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 379, 658 A.2d 1230 (1995)("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference*."* citing *State v. Brown*, 118 N.J. 595, 604 (1990)). Instead, the Court instead should adjudicate the

controversy in light of the applicable law in order that a manifest denial of justice be avoided. *State v. Steele*, 92 N.J. Super. 498, 507 (App. Div. 1966).

The Anti-Eviction Act ("AEA") governs Evictions in New Jersey. N.J.S.A. § 2A:18-61.1. The Anti-Eviction Act has been liberally construed in favor of tenants. *224 Jefferson St. Condo. Ass'n v. Paige,* 346 N.J. Super. 379, 389 (App. Div. 2002)("The Anti Eviction Act must be construed liberally with all doubts construed in favor of a tenant."). The Legislature has stated "it is in the public interest of the State to maintain for citizens the broadest protections available under the state eviction laws to avoid such displacement and resultant loss of affordable housing…." N.J.S.A. 2A:18–61.1a(d).

Under the AEA, residential tenants may only be removed for good cause. N.J.S.A. § 2A:18–61.1 et seq. If a landlord's claim is not a "good cause" as defined by the AEA, then the Lower Court does not have jurisdiction over the claim. In the Landlord-Tenant Division of the Special Civil Part, if the arrears sought in a complaint is not due and owing, then the complaint must be dismissed.

What this means is that not all landlord-tenant disputes will be cognizable in the Special Civil Part, Landlord-Tenant Division. Where the amount of the arrears is unclear, contested or based on equitable considerations (as opposed to contractual right), the Special Civil Part, Landlord-Tenant Division is not appropriate venue, in

large part because of the procedural restraints placed upon the tenant, who cannot engage in discovery.

II. THE LOWER COURT ERRED IN GRANTING THE JUDGMENT OF POSSESSION, BECAUSE THE AMOUNT SOUGHT IN THE COMPLAINT WAS NOT DUE AND OWING [3T7-4]

"The sole purpose of such an action is to enable the landlord to obtain speedy recovery of the premises…The jurisdictional powers of the county district court in a summary dispossess proceeding are strictly statutory… In furtherance of the policy behind the summary nature of the proceeding, our court rules do not permit the filing of an answer, a counterclaim, or discovery proceedings." *C. F. Seabrook Co. v. Beck*, 174 N.J. Super. 577, 589–90 (App. Div. 1980).

The Lower Court determined that the monthly rent sought in the Complaint ($2,595) was not due and owing because the proposed lease was not signed. *See* Exhibit B 95:8-13. After engaging in its own inquiry with witnesses, the Lower Court determined that a possessory judgment should issue at a different monthly rate, one that was lower than the amount sought in the Complaint.

"The amount of rent owed for purposes of the dispossess action can include only the amount that the tenant is required to pay by federal, state or local law and the lease executed by the parties." R. 6:3-4(c).

The Lower Court's analysis still features errors and mistakes that cannot be appealed, because there is only one basis for appeal from an order of the Landlord-Tenant Division, jurisdiction. *See* N.J.S.A. 2A:18-59 ("Proceedings had by virtue of this article shall not be appealable except on the ground of lack of jurisdiction.").

A. There is No Written Lease for the Relevant Time Period [3T13-12]

The Receiver alleges in the Complaint that $21,346 is due and owing for the period from January 2024 to September 2024 pursuant to a *written lease*. [1a] The Receiver's claim rests entirely on an unsigned document [39a] that it received from the Landlord in the foreclosure process. In short, the Receiver did not call any witness who could authenticate this unsigned document. In fact, Judge Russo stated that the Receiver had failed to establish the existence of a written lease entitling them to $2,595 in monthly rent:

> THE COURT: Counsel, I'm -- I'm going to make this really easy for you. Okay? Because there's no signed lease, there's no additional rents. So, I'm not going to allow the $50 in late payments -- in late fees. [1T59-15]

The Lower Court reached the same conclusion regarding the late fees sought in the Complaint:

> THE COURT: And I can—and I--no. It just means the plaintiff hasn't met their burden of proof on the late fees.

> You defended the late fees by showing me that there's no signed lease; therefore, there can't -- there's no clause for additional rents.
> So, they didn't prove their case on the late fees. I'm giving you that. The late fees from January to now are removed. So, it's 11 months times 50 is 500 and -- $550. And I think I did it right in my head.
> [1T60-4]

However, the Lower Court still awarded $550 in late fees. [3T18-14] ("So, late fees will only be assessed for late—11 months, at $50 per month, therefore, $550.") After stating that the Receiver had proven entitlement to late fees, the Lower Court awarded Plaintiff $550 in late fees—the Lower Court provided no explanation for this contradictory determination.

Exhibit 2, the unsigned lease [39a], was introduced into evidence via the testimony of Ms. Hopson, who began working at the 75 Prospect in approximately January 2024. [1T38-18] Therefore, as she admitted when she testified to receiving Exhibit 2 initially from the Receiver, she had no personal knowledge of where the unsigned lease originally came from.

> Q Isn't it true you have no idea where this document came from?
> A I just answered I don't know.
> Q And you have no idea if it was ever offered to Ms. Moore?
> A I don't know.
> [1T63-25]

The Lower Court admitted into evidence an unsigned lease whose origin the witness did not know. This unsigned document was the basis for the Receiver's claim.

Even though the Lower Court erred in admitting Exhibit 2 into evidence, ultimately Exhibit 2 was not the basis for the Lower Court determination that the arrears due and owing should be calculated at a rate of $2,400 per month. After stating that the Receiver had not met its burden of establishing that amounts sought in the Complaint were due and owing, the Lower Court inquired directly of the Appellant:

> THE COURT: What is your rent?
> THE WITNESS: I don't know what my rent is.
> THE COURT: What was your rent?
> THE WITNESS: What my rent was, twenty-four-ninety-five.
> THE COURT: Okay. And when -- when – when was the last time you paid rent?
> THE WITNESS: January.
> THE COURT: Of this year?
> THE WITNESS: Yep.
> THE COURT: And you paid twenty-four-ninety-five?
> THE WITNESS: I paid 2,400.
> THE COURT: Okay. You paid 2,400. Okay. For the one month?
> THE WITNESS: Yes.
> THE COURT: $2,400 for a month of rent?
> THE WITNESS: Yes.
> THE COURT: There you go. Let's cut to the chase. Any other questions?
> [1T108-10]

The Lower Court erred in extrapolating from this testimony the existence of an ongoing and binding oral lease agreement to pay $2,400.00 per month. There was no evidence at trial of an intention to create an oral lease agreement.

B. The Lower Court Erroneously Disregarded East Orange Ordinance § 159-45 [3T14-24]

The amount sought in the Complaint was not due and owing because East Orange Ordinance § 159-45 ("EOO § 159-45") prohibits the collection of rent under these circumstances.

Established on November 25, 1974 by East Orange Ordinance Number 61-1974, EOO § 159-45 created the Certificate of Habitability ("CoH") requirement: prior to renting a unit for residential purposes, every landlord in East Orange must obtain a new CoH; renting in the absence of a CoH is prohibited:

> It shall henceforth be unlawful for any property owner, tenant placement organization, landlord or tenant to rent, make rental payments, accept rental payments or otherwise assist with the rental or lease or in any way deliver up for occupancy any building, premises, apartment or any other dwelling unit until a certificate of habitability to the effect that said building, premises, apartment or any other dwelling unit conforms to the provisions of this chapter shall have been issued by the Public Officer or his designee.

Let it be noted that EOO § 159-45 describes it as "unlawful" to engage in this proscribed conduct.

Plaintiff stipulated that no CoH had been obtained at any point relevant to this proceeding. [2T57-15]

The Lower Court erred in disregarding EOO § 159-45. New Jersey courts have noted that New Jersey allows municipalities to create laws that require landlords to obtain a certificate after inspection that the premises are in the interest of public safety, health, and welfare. *See* N.J.S.A. 40:48-2.12m ("Such ordinances shall require the owner of any residential rental property, prior to rental or lease involving a new occupancy of any unit of dwelling space in such property, to obtain a certificate of inspection or occupancy for the unit of dwelling space.").

The Lower Court's disregard of the EOO § 159-45 was based on an erroneous interpretation of two cases, *Khoudary v. Salem Cty.*, 615 A.2d 281 (App. Div. 1993) and *McQueen v. Brown*, 342 N.J. Super. 120, 128, 775 A.2d 748, 753 (App. Div. 2001), aff'd, 175 N.J. 200, 814 A.2d 1042 (2002), which were subject of extensive colloquy that left little doubt about the Lower Court's interpretation of the scope of the Lower Court's jurisdiction.

C. Khoudary v. Salem Cty. [3T14-24]

In *Khoudary*, a landlord sued a social services agency for rent after the social services agency directed its beneficiary to vacate the landlord's premises, which had been deemed uninhabitable for the landlord's failure to comply with local municipal

ordinances that closely resembles EOO § 159-45. The lower court in *Khoudary* dismissed the landlord's complaint but also denied the tenant's motion for attorney's fees, holding that, "the element of bad faith required by the Act was not satisfied." *Id*. at 282.

The Appellate Division reversed the lower court and remanded the matter for a hearing, holding that, "[a] landlord cannot require of a tenant what the law forbids." *Khoudary* at 284.

"A landlord's right to receive payment of rent for a residential unit is contractual, and is based upon consideration in the form of the landlord's providing the tenant with a habitable living unit *which complies with the requirements of the state and municipal law*." (emphasis added) *Ibid*.

In *Khoudary*, the Appellate Division went so far as declare that, "no lay person would believe that a landlord is entitled to rent for premises that he could not lawfully rent." *Ibid*. However, the Lower Court had a different interpretation of its authority to disregard municipal ordinances:

> THE COURT: Okay. So, this unit didn't have a certificate of habitability. What's the relevancy in this case?
>
> MR. IRELAND: It is illegal in East Orange to rent an apartment without a certificate of habitability.
>
> THE COURT: It's not illegal. It's a violation of a City ordinance. It's two different things. It's not a crime. [1T56-3]

Appellant argued that the Lower Court did not have jurisdiction over Respondent's claim, because Respondent should not be permitted to collect rent for a unit that it prohibited from renting. At trial, the Lower Court categorically rejected this argument based on *Khoudary*: "No. No. The -- the effect of the municipal ordinance does not render this Court without jurisdiction. Okay? Once again, the ramifications to the landlord is a fine." [1T57-13]

In its decision, the Lower Court set forth its interpretation of *Khoudary*:

> In *Khoudary v. Salem County*, the landlord was attempting to collect rent for three-month period --for a three-month period that the tenant did not occupy the premises on a building the was previously condemned. [3T16-5]

The Lower Court's analysis does not mention the municipal ordinance in question, which was the actual basis for the dismissal by the lower court. In *Khoudary*, the Appellate Division specifically noted that the landlord was aware of the certificate of occupancy requirement. *See Khoudary* at 86. Ms. Hopson also testified to knowing about the CoH requirement for 20 years. [1T41-4]

Here, the Lower Court's determination is inconsistent with the holding in *Khoudary*, where there was actually a written lease entitling the landlord to rent and the complaint was still dismissed because the landlord had not complied with a local municipal ordinance requiring a certificate of occupancy prior to renting. Here, there

was no written lease entitling Respondent to rent and Respondent failed to comply with the CoH requirement, the Lower Court erred in issuing a possessory judgment.

D. McQueen v. Brown [3T15-3]

In the decision read into the record on January 6, 2025, the Lower Court discussed *McQueen v. Brown*, 342 N.J. Super. 120, 128, 775 A.2d 748, 753 (App. Div. 2001), aff'd, 175 N.J. 200, 814 A.2d 1042 (2002). *McQueen* is an appeal of two different lower court decisions involving the same parties. In the first action, the landlord sued for nonpayment of rent and the complaint was dismissed because the landlord, "had not obtained a municipal occupancy permit as required by Chapter 194 of the Atlantic City Municipal Code" *McQueen v. Brown*, 342 N.J. Super. 120, 124 (App. Div. 2001). In the second action, the landlord claimed the building was exempt from regulation under the AEA because it was owner-occupied, but the lower court also dismissed that complaint.

The landlord appealed both dismissals and the Appellate Division remanded them for further proceedings consistent with the Appellate Division's holding. The Appellate Division's determination, however, was nuanced:

> We believe the better course was for the court to have adjourned the matter to allow plaintiff to apply for an occupancy permit and thereafter to have conducted a *Marini* hearing at which the tenants could have presented evidence with respect to the apartment's alleged

> habitability defects. Substituting a *Marini* defense in place of an illegality defense to the landlord's eviction action for non-payment of rent does not diminish the importance of the public policy underlying the ordinance for, either way the policy is vindicated.

McQueen v. Brown, 342 N.J. Super. 120, 129 (App. Div. 2001)

The *McQueen* court balanced "the importance of the public policy underlying the ordinance" with the landlord's interests and struck a compromise that acknowledged both concerns.

Here, the Lower Court went further than the *McQueen* court and abandoned any concern for the public policy underlying both the AEA and East Orange Ordinance § 159-45: "The Appellate Division, in *McQueen*, held that failing to obtain a certificate of occupancy standing alone did not render the lease illegal and unenforceable." [3T15-14]

The Lower Court then states, "[i]n the case at bar, defendant did not want to take this course of action, when asked by the Court." [3T16-304]

This is categorically false and serves to illustrate the distorted view the Lower Court had of the Appellant's claims. The Lower Court suggested a *McQueen*-type solution, whereby Appellant would deposit $1,950 per month, totaling $16,200 and the trial would be adjourned for the Receiver to obtain a CoH, after which the Lower Court would conduct a *Marini* hearing. [2T80-22] The Lower Court asked the attorneys to consult with their clients and counsel for the Receiver rejected the

proposal. [2T83-8] The Lower Court attributed the Receiver's intransigence to the Appellant.

Similarly, the Lower Court precluded Appellant's every attempt to discuss the conditions of the Subject Premises, and then held that there was no reason to follow *Khoudary* when there was not testimony about habitability issues.

The Lower Court's interpretation of *McQueen* contradicts case law regarding the enforceability of contracts that are contrary to law. In *Ryan v. Motor Credit Co.*, 130 N.J. Eq. 531, 541 (1941), the Chancery Court held that, "loans in violation of section do not, under the act, constitute misdemeanors and they are not expressly declared void; but, *being prohibited by the statute, they are undoubtedly void and unenforceable*." (emphasis added)

More recently, the Supreme Court, citing Black's Law Dictionary, held that, "a void contract is '[a] contract that is of no legal effect, so that there is really no contract in existence at all. A contract may be void because it is technically defective, contrary to public policy, or illegal.'" *D'Agostino v. Maldonado*, 216 N.J. 168, 194 n.4 (2013).

III. LOWER COURT'S CALCULATION OF LEGALLY ALLOWABLE RENT WAS ERRONEOUS [3T7-13]

Appellant has argued above that the Lower Court did not have jurisdiction to determine what rent *ought to be due and owing*. Rather, the Lower Court should

have limited its inquiry to whether the exact amount sought in the Complaint was due and owing and, after determining that it was not due and owing, dismissed the Complaint.

Instead, the Lower Court engaged in its own independent inquiry to determine what rent *should be due and owing*. In determining that $2,400.00 per month seemed a good amount, the Lower Court overlooked important parts of rent control ordinance the City of East Orange. The Lower Court is not authorized to engage in this type of open-ended inquiry, nor is it authorized to disregard municipal ordinances. One reason that the Lower Court should not have engaged in its own analysis of what the rent should be is that such a determination is not appealable: N.J.S.A. 2A:18-59 only permits appeals on jurisdictional grounds.

A. Rent Increases Were Obtained in Violation of East Orange Ordinance § 218-10, which Requires Pre-Authorization for Increases [3T11-19]

Even in the face of incontrovertible evidence of proscribed evidence, delivered by a member of the East Orange Rent Control Board, the Lower Court continued to assume that the rent sought was lawful. In its decision, the Lower Court held that, "Defense counsel misinterprets the holding in Chau and fails to acknowledge the holding in Marini v. Ireland." [3T11-22].

In *Chau*, the Appellate Division, "the amount claimed to be due must also be 'legally owing' at the time the complaint was filed," citing *Housing Auth. of Passaic v. Torres*, 143 *N.J. Super.* 231, 236, 362 *A.*2d 1254 (App.Div.1976). Appellant argued that because $2,595.00, the amount sought in the Complaint, was not due and owing, as even the Lower Court acknowledged, the Complaint should have been dismissed.

The Lower Court's interpretation of *Chau* is that the basis for dismissal was not what the Appellate Division stated, to wit "the amount claimed to be due must also be 'legally owing' at the time the complaint was filed," but rather because of an array of procedural reasons that were not actually cited by the *Chau* court as the basis for the reversal and remand:

> There was no rent due because the rent contained an illegal increase and the Rent Leveling Board determined, prior to the filing of the complaint by the landlord that the tenant was overcharged and was due a credit. In addition, there was an appeal pending as to the Board's determination, so the amount and owing, if any, was still in dispute.
> [3T12-1]

Once the Lower Court determined that Respondent had not established that $2,595.00 was not due and owing, the inquiry should have ceased. The Lower Court should not have set out on a search for a figure that could serve as the basis for a possessory judgment.

In *Chau,* the Appellate Division held that under the AEA, "a landlord may not remove a tenant from premises for failure to pay an increase in the rent unless the rental increase complies with the applicable municipal rent leveling ordinance." *Chau v. Cardillo*, 250 N.J. Super. 378, 385, 594 A.2d 1334, 1338 (App. Div. 1990) Ms. Watson's testimony established that neither the Receiver nor the prior landlords had in fact complies with the applicable municipal ordinances.

Ms. Watson testified that the rent registered for the Subject Premises in 2008 was $1,950 [2T40-2] and that she had no applications for increases for the Subject Premises. She also testified to numerous increases after 2008. Without an application for rent increases that is approved by the City of East Orange, all the post-2008 increases are illegitimate.

More problematic still is that the Lower Court expressly stated that some of the increases reported by Ms. Watson appeared to exceed the 4% allowed by the East Orange Rent Control Ordinance:

> THE COURT: We listened to the testimony of the -- the representative from the City of East Orange and do the calculations from 20-whatever it was. Okay? It appears that the 4 percent requirement may not have been adhered to. But I haven't really sat down and done -- I've quickly done it, but it appears that some of the increases were in excess of 4 percent.
> [2T81-5]

For the Court to find that the rent increases for the Subject Premises were illegitimate and then to award a possessory judgment that incorporates those same illegitimate increases, flies in the face of the holding in *Chau* that:

> The good cause provisions of the Anti-Eviction Act must be read in pari materia in order to ascertain the legislative purpose. It is apparent from the statute that a landlord may not remove a tenant from premises for failure to pay an increase in the rent *unless the rental increase complies with the applicable municipal rent leveling ordinance*. *Chau v. Cardillo*, 250 N.J. Super. 378, 384 (App. Div. 1990) (emphasis added)

The Lower Court's Order incorporated illegitimate increases and is inconsistent with the holding in *Chau*.

CONCLUSION

The mistakes of law committed by the Lower Court justifies an order vacating the judgment of possession and dismissing the Complaint.

Respectfully submitted,

Ellery Ireland, Esq.
Pursuant to N.J. R. 1:21-(3)(c)

Dated: May 12, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-001766-24

PAULA FORSHEE OF CATALYST PROPERTY SOLUTIONS, *Plaintiff-Respondent*, vs. LISA MOORE, *Defendant-Appellant*.	CIVIL ACTION ON APPEAL FROM: THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, SPECIAL CIVIL PART LANDLORD/ TENANT ESSEX COUNTY DOCKET NO. ESX-LT-017737-24 Sat Below: HON. ALDO J. RUSSO, J.S.C.

BRIEF OF PLAINTIFF-RESPONDENT PAULA FORSHEE OF CATALYST PROPERTY SOLUTIONS, COURT-APPOINTED RECEIVER

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PRELIMINARY STATEMENT

This is an appeal from a judgment of possession based on nonpayment of rent under N.J.S.A. 2A:18-61.1(a). After two days of trial, the Trial Court entered a judgment of possession in the amount of $25,550.

It is undisputed that Defendant failed to pay rent during the 13-month period from the date that the Plaintiff was appointed as a Receiver for the property to the date the Judgment of Possession was entered. Aside from one payment made in January 2024 and one additional payment from the Department of Community Affairs, no other rent was paid by Defendant to Plaintiff during this time period.

In entering the Judgment of Possession, the Trial Court found the testimony of Plaintiff's witness to be "credible and impressive." On the other hand, the Trial Court found that counsel for the Defendant "failed to elicit any testimony as to how much rent she paid, when it was paid, and how much she overpaid. He simply ignored the issue, probably because the evidence would reveal that Ms. Moore has not paid rent in over two years."

Defendant argues on appeal that the Trial Court had no authority to determine how much rent was due and owing and made mistakes of law that require this Court to vacate the Judgment of Possession. In doing so, Defendant misconstrues the cases she cites, ignores her own testimony that that she signed

and entered into a lease, and fails to acknowledge that it was her burden to prove at trial that the rent charged exceeded the allowable rents under rent control, and that she failed to meet her burden.

The Trial Court correctly concluded that the rent charged did not exceed the allowable rent under rent control. The Trial Court also properly rejected Defendant's legal argument that the court had no jurisdiction to determine the amount due and owing by Defendant. The Trial Court's findings and conclusions are amply supported by and consistent with the evidence and testimony at trial and there is absolutely no basis in law or fact to vacate the judgment. Accordingly, the Trial Court's January 6, 2025 decision and Judgment should be affirmed.

PROCEDURAL HISTORY

On September 22, 2024, Plaintiff filed a complaint against Defendant initiating a summary proceeding for nonpayment of rent under docket no. ESX-LT-17737-24. (Da1-18). Trial was conducted by the Honorable Aldo J. Russo, J.S.C. on November 14, 2024 and December 5, 2024.[1]

On January 6, 2025, the Trial Court entered a Judgment for Possession in Plaintiff's favor, finding that Plaintiff had proven a cause of action for

[1] Pursuant to Rule 2:6-8, the transcript of the November 14, 2024 trial is designated "1T" and the transcript of the December 5, 2024 trial is designated "2T".

possession on the basis of nonpayment, and there is rent due and owing in the amount of $25,550. (Da85-87). The court placed its reasoning and decision on the record.[2] (3T).

The Trial Court first found that Ms. Hopson's testimony on behalf of the Plaintiff was "credible and impressive." (3T5:3-4). It noted:

> This Court found Ms. Hopson's testimony to be credible and impressive. She was very well prepared and provided the Court with detailed information about the tenancy. She did not contradict herself. She listened carefully to all questions and her responses appeared to the Court to be thoughtful and candid. Throughout her testimony, on both direct and cross, she demonstrated a demeaner of measured and careful confidence and displayed good recollection.
>
> 3T5:4-11.

The Court then found that Defendant entered into a written lease on or about June 3, 2019 and signed a lease with a monthly rent of $2,495. (3T6:24-7:3). The Court held that the lease expired on May 31, 2020 creating a month-to-month tenancy. (3T7:9-10). The Court further held that the $2,495 amount was an allowable rent. (3T7:10-13); (3T17:12-20). The Court found that in December 2023, Plaintiff and Defendant negotiated a new rent of $2,400 per month for the month of January 2024. (3T8:7-9).

---

[2] Pursuant to Rule 2:6-8, the transcript of the January 6, 2025 decision is designated "3T".

The Trial Court rejected Defendant's argument that the amount of rent sought in the complaint was not "due and owing" under the lease. The Court further rejected Defendant's arguments that the complaint must be dismissed because the amount as pled in the complaint cannot be changed by the Court and that the Court cannot fashion an equitable remedy. (3T11:5-13:11). The Court held that the lack of a certificate of habitability did not render the lease unenforceable. (3T14:24-16:9). Based on the evidence and testimony at trial, the Court then calculated the amount due, unpaid and owing as $25,550 for the period of January 2024 through January 2025. (3T17:21-18:22).

Defendant paid the amount in the Judgment to Plaintiff and remained in possession. On February 19, 2025, Defendant filed a Notice of Appeal of the Court's January 6, 2025 decision and Judgment. (Da89-94).

STATEMENT OF FACTS

On December 1, 2023, Plaintiff-Respondent Paula Forshee of Catalyst Property Solutions, Court-Appointed Receiver ("Plaintiff"), was appointed by the Court as the receiver for the subject property located at 75 Prospect Street, East Orange, New Jersey (the "Property") in a foreclosure action entitled Fannie Mae v. Prospect Castle LLC, et al, Docket No. F-012968-23. (Da20-38).[3]

[3] Pursuant to Rule 2:6-8, Defendant-Appellant's appendix is hereby labeled as "Da".

Pursuant to the Order, the Plaintiff as Receiver has full authority to possess, control and manage the Property, including the power to "oversee and approve any actions with respect to the Property." (Da23). The Plaintiff is further authorized to institute and pursue all legal proceedings necessary for the protection of the Property; to recover possession of any part of the Property; and to remove any tenant through a summary proceedings. (Da29). The Order required the Property owner, Prospect Castle LLC ("Owner"), to turn over all tenant information including leases, financial records, payment histories, and ledgers to Plaintiff. (Da23-24).

Defendant Lisa Moore testified that she first moved to the Property in June 2019. (1T97:7-8). Defendant signed and entered into a lease for Unit 8D in June 2019 with a rental rate of $2,495.00 per month. (1T119:11) ("I signed a lease for 8D"); (1T120:11-19). Defendant further testified that when she applied for rental assistance from the Department of Community Affairs ("DCA"), she told DCA that her monthly rent was $2,495. (1T154:10-14).

Defendant testified at trial[4] that the last time she paid rent was for the month of January 2024 and that she paid $2,400 at that time. (1T109:15-110:2).

[4] Defendant testified at trial on November 14, 2024 and December 5, 2024. (1T96:12-154:19); (2T18:10-25:7).

Ms. Tracey Hopson, the Area Manager for Catalyst Property Solutions, testified that the Receiver received a copy of a lease commencing on June 3, 2019 that was provided by the Owner to the Receiver pursuant to the Receivership Order entered on December 1, 2023. (1T9:12-17); (Da42-74). The monthly rent under the lease was $2,495.00. (Da42); (1T14-3-7). Pursuant to Section 2B and 2E of the lease, there is a late charge of $50.00 per month if rent is not received by the fifth day of the month, and all amounts due and payable under the lease are considered additional rent. (Da44-45). The Receiver also received a copy of a Notice to Quit and to increase rent, reflecting a rental increase to $2,594 as of June 1, 2020. (Da40).

Ms. Hopson testified that after the Receiver was appointed, she met with Ms. Wanda Watson of the City of East Orange to verify the rents at the Property. Ms. Watson provided her with a copy of a registration statement from September 2021 showing that the approved rent for Unit 8D was $2,594.00. (Da81); (1T15:2-19); (1T17:18-22); (1T18:2-14); (1T20:12-22). Ms. Watson also testified that the registered legal rent for Unit 8D in 2021 was $2,594. (2T40:4-43:24).

After the complaint was filed in this action and before the trial date, the Receiver received a check from the DCA in September 2024 in the amount of $4,800.00 for Ms. Moore. (Da82). It is undisputed that the DCA check and the

$2,400 payment Ms. Moore made in January 2024 are the only rent payments made between the time the Receiver was appointed in December 2023 to the time Judgment was entered on January 6, 2025. (1T29:2-7).

LEGAL ARGUMENT

I. STANDARD OF REVIEW

Following a bench trial, Appellate Courts apply a limited scope of review. See Sebring Assocs. v. Coyle, 347 N.J. Super. 414, 424 (App. Div. 2022). The record must be reviewed by Appellate Courts, "but not initially from the point of view of how it would decide the matter if it were the court of first instance." State v. Johnson, 42 N.J. 146, 161 (1964). The trial court's findings will "not be disturbed unless they are so wholly insupportable as to result in a denial of justice." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). Factual findings that are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence" need not be accepted by the Appellate Division. Id. at 484. The trial court's legal conclusions are reviewed de novo. Kaye v. Rosefielde, 223 N.J. 218, 229 (2015).

Appellate courts apply a deferential standard in reviewing factual findings by a judge. See Balducci v. Cige, 240 N.J. 574, 595 (2020). In an appeal from a non-jury trial, appellate courts "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions."

Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). "Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg, 220 N.J. at 254 (quoting Rova Farms, 65 N.J. at 484).

II. THE TRIAL COURT'S JUDGMENT FOR POSSESSION SHOULD BE AFFIRMED BECAUSE PLAINTIFF ESTABLISHED GOOD CAUSE FOR EVICTION BASED ON DEFENDANT'S NONPAYMENT OF RENT.

Plaintiff filed its complaint to evict Defendant for nonpayment of rent under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1(a). Under this Act, a landlord can only initiate eviction proceedings against a tenant for "good cause," including nonpayment of rent "due and owing under the lease whether the same be oral or written[.]" Id. As the Trial Court correctly determined, through the evidence and testimony at trial, Plaintiff established good cause under the Act based on Defendant's nonpayment of rent.

Defendant first argues there was no written lease for the Property. The evidence and testimony at trial contradict this argument. Indeed, Defendant herself admitted to signing a written lease in June 2019 for the amount of $2,495 a month and then negotiating a rent in the amount of $2,400 for the month of January 2024. The Trial Court correctly noted that, in making this same argument at trial, Defendant's counsel "fail[ed] to acknowledge that his own client testified that she had a signed lease calling for rent in the amount of $2,495 to be paid monthly, plus late fees, if not paid by a certain date." (3T13:18-22). Plaintiff further affirmed the existence of the lease through the testimony of Ms. Hopson, Area Manager for Catalyst, who stated Plaintiff received a copy of the lease agreement from the Owner that was provided pursuant to court order.

Based on the testimony at trial, the Trial Court correctly found that "on or about June 3, 2019, defendant entered . . . into a written lease . . . . According to her own testimony, she signed a lease with a monthly rent of $2,495. The lease would end on May 31, 2020. The lease was submitted into evidence, P-2, as an exemplar lease, as it appeared that the original lease was lost." (3T6:24-7:5). When the lease expired, a month-to-month tenancy was created. (3T7:9-10).

Even if the testimony didn't establish that a lease was signed, an unsigned lease is an enforceable contract. See Roseville Group v. Dixon, No. A-4354-

18T2, 2020 WL 1696689, at *3 (App. Div. Apr. 8, 2020) (rejecting the argument that an unsigned lease is unenforceable in a summary dispossess action and noting that tenant "failed to explain why plaintiff had allowed him to reside in the apartment for a decade without a lease.").

The Trial Court also correctly found, based on the evidence and testimony at trial from Ms. Hopson and Ms. Watson, that the amount of $2,495 per month was an allowable rent. (3T7:14-21). The Trial Court correctly noted that defense counsel "failed to elicit [any testimony from Ms. Watson] that the $2,495 per month rent was not allowable." (3T7:14-16).

The Trial Court then found, based on the testimony of Defendant, that in December 2023, plaintiff and defendant negotiated a new rental agreement. "Beginning in January 1, 2024, the new negotiated rent was $2,400." (3T8:8-9). The Trial Court correctly concluded that there was no "credible fact" to support Defendant's position that the monthly rental amount should be $1,950. (3T8:24-9:1). The Trial Court also correctly noted that Defendant never petitioned the Rent Leveling Board to calculate what she claimed to be an allowable rent. As the Court stated, "[s]he simply stopped paying the rent altogether." (3T8:5-6).

Defendant contends the Court incorrectly included late fees in calculating the amount due and owing in the Judgment for Possession. (Db12-13).[5] However, the commentary from the Court that Defendant relies upon are comments of the Court *before* Defendant herself testified that she did in fact sign a lease. Thus, as the Court correctly determined, "[Defendant] argues that because there is no signed lease, there is no legal basis for hundreds of dollars in fees sought in the complaint" but "[Defendant] fails to acknowledge that his own client testified that she had signed a lease calling for rent in the amount of $2,495 to be paid monthly, plus late fees, if not paid by a certain date." (3T13:12-22).

It is well established that "when a tenancy for a stated term of a year or more is converted to a holdover month-to-month tenancy by reason of expiration of a written lease without execution of a renewal lease, the holdover tenancy is ordinarily subject to all the terms and conditions of the written lease other than its durational term." Ctr. Ave. Realty, Inc. v. Smith, 264 N.J. Super. 344, 348 (App. Div. 1993); see also Newark Park Plaza Assocs. v. Newark, 227 N.J. Super. 496, 499 (Law Div. 1987) ("It is well-settled law in New Jersey that when a tenant continues to occupy a premises after the termination of a lease, his status becomes that of a month-to-month holdover tenant."); N.J.S.A. 46:8-10. Thus,

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[5] Pursuant to Rule 2:6-8, Defendant-Appellant's brief is designated "Db".

the Court correctly determined Defendant's original lease provisions remained in "full force and effect." (3T13:24-25).

Defendant's argument that the Trial Court erred in disregarding the effect of lack of a certificate of habitability is similarly unavailing. Case law is clear that lack of a certificate of occupancy is not a basis for dismissal or voiding a lease in a summary dispossess action for non-payment of rent. Defendant misconstrues McQueen v. Brown, 342 N.J. Super. 120 (App. Div. 2001) aff'd, 175 N.J. 2000 (2002) and Khoudary v. Salem County Board of Social Services, 260 N.J. Super. 79 (App. Div. 1993).

In McQueen v. Brown, 342 N.J. Super. 120, 128 (App. Div. 2001), the Court held that failure to obtain a certificate of occupancy, standing alone, did not render the lease illegal and unenforceable. The Court reasoned that the public policy behind requiring an occupancy permit was not advanced by a rule that would declare a lease void because the landlord did not obtain an occupancy permit at its inception or even thereafter, where, as here, tenants had received the benefits of occupancy for some time. Id. at 128-29. As the Court in McQueen explained, the tenant had been in possession of the leased premises for approximately five years and had been receiving the benefits of the occupancy. Id. at 128. Permitting a rent-free occupancy solely because the

landlord did not have an occupancy permit would result in an impermissible forfeiture on the landlord and unjustifiable windfall to the tenant.

> We also believe that declaring the lease unenforceable after such a long period of time results in an unjustifiable burden on the landlord, and an undeserved benefit to the tenants who were permitted to live in the premises rent-free for the period the landlord did not have a permit. Where the tenants have not demonstrated their right to a rent abatement, let alone a rent-free occupancy, declaring the lease void solely because the landlord did not have an occupancy permit in these circumstances works an impermissible forfeiture on the landlord and gives the tenants an unjustifiable windfall. It should hardly need saying, but "equity abhors a forfeiture."

Id. at 129-130. Accordingly, the Appellate Division reversed the dismissal of plaintiff's summary dispossess complaint for non-payment of rent and remanded the matter for a Marini hearing.[6] Here, it is undisputed that since the Receiver was appointed, Defendant had been in occupancy without paying rent for a period of over 13 months.

The relevant provisions of the East Orange municipal code are in accord with McQueen. Pursuant to Section 218-8.B(5) of East Orange Rent Control Code, failure to secure a certificate of habitability simply prohibits a landlord from collecting rent *in excess* of that paid by the former tenant until the first day of the calendar month following the landlord obtaining the required certificate

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[6] Marini v. Ireland, 56 N.J. 130 (1970).

of habitability. It does not mean that the landlord is prohibited from collecting *any* rent.

> If the rent to a new tenant is higher than that paid by the previous tenant, even if not in violation of Subsection B(1) above, and if the landlord has failed to secure a certificate of habitability as required by the Code, then, upon complaint, the Rent Control Board shall prohibit the landlord from collecting any rent in excess of that paid by the former tenant until the first day of the calendar month following the landlord's obtaining the required certificate. Any rents in excess of those paid by the present tenant must be refunded to the tenant who paid the increased rent.

Section 218-8.B(5), East Orange Rent Control Code. Moreover, it requires a tenant to file a complaint with the Rent Control Board and obtain a remedy from the Rent Control Board – it is undisputed that Defendant did neither here.

Defendant's reliance on Khoudary v. Salem Cty Bd of Social Services, 260 N.J. Super. 79 (App. Div. 1993) is also misplaced. Khoudary was not an eviction case, but a claim filed by the landlord for unpaid rent and damages. The landlord attempted to collect rent for a three-month period during which the tenant had not been occupying the premises. Id. at 81. In fact, the premises had been condemned prior to the tenant taking possession of the premises and the tenant had never even occupied the premises. Id. at 83. The court held that because the house had been condemned, the landlord was prohibited by law from delivering occupancy to any prospective tenant without a certificate of

occupancy, and thus could not demand rent for that three-month period. Id. at 85. The facts in Khoudary are clearly distinguishable from the case at bar, where the Defendant has been in possession of Unit 8D since at least 2019, and has failed to pay rent for the first 13 months since the Receiver has been appointed.

Defendant cannot demonstrate the Trial Court erred in entering the Judgment for Possession because Plaintiff rightfully sought amounts due and owing under Defendant's lease. Accordingly, the Trial Court's decision and Judgment must be affirmed.

III. THE TRIAL COURT'S DECISION DETERMINING THE AMOUNT OF RENT DUE AND OWING SHOULD BE AFFIRMED.

Defendant argues that the Trial Court did not have jurisdiction to determine the amount of rent due and owing and that it misinterpreted Chau v. Cardillo, 250 N.J. Super. 378 (App. Div. 1990). (Db21-25). In making this argument, Defendant misconstrues the law and ignores the fact that it failed to meet its burden of proof at trial.

The cases cited by Defendant do not support the argument that the Trial Court lacked jurisdiction to determine the amount of rent due and owing. To the contrary, each of the cases makes it crystal clear that should a tenant wish to dispute any facts alleged in the complaint, including the amount of rent due and owing, the tenant has the right to raise that issue as a defense at trial. See

Community Realty Management v. Harris, 155 N.J. 212, 240 (1998). It does not mean that the Court is deprived of jurisdiction. Rather, the tenant has the right to raise as a defense at trial either that there is no default in payment of rent or that the default is not in the amount as alleged by the plaintiff-landlord. Id.

Defendant's interpretation of Chau v. Cardillo, 250 N.J. Super. 378 (App. Div. 1990) is incorrect. In Chau, the tenant raised as a defense to nonpayment a decision of a municipal rent leveling board which held that tenant was entitled to certain credits as a result of an overpayment of rent. Thus, at the time the plaintiff filed the complaint for nonpayment, as a result of credits awarded to the tenant during the relevant period by the rent leveling board, tenant did not owe any rent. Id. at 382. Chau makes it clear that a tenant who claims rent is not legally owing has the burden of proof as a defense.

In this case, as the Trial Court correctly held, it was Defendant's burden of proof to show that the rent due and unpaid is not "owing" in this case. Defendant failed to meet that burden here. Defendant also mischaracterizes Ms. Watson's testimony at trial. (Db24). Contrary to Defendant's assertion, Ms. Watson did not testify that the Receiver or prior landlords failed to comply with applicable municipal ordinances. Defendant fails to cite to any part of the record to support this assertion, because none exists. Rather, as the Trial Court

correctly held, Defendant "never admitted any documents into evidence nor elicited any testimony from Ms. Watson which proved that the rents exceed the allowable rate. Regardless, the tenant did not . . . enter a lease that exceeded the allowable rent." (3T17:6-11).

Accordingly, the Trial Court correctly determined the amount due and owing by Defendant.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Trial Court's January 6, 2025 decision and Judgment be affirmed.

Respectfully submitted,

McCARTER & ENGLISH, LLP
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Dated: July 7, 2025

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SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

PAULA FORSHEE OF CATALYST PROPERTY SOLUTIONS Plaintiff-Respondent v. LISA MOORE, Defendant-Appellant	**DOCKET NO. A-001766-24** **ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: ESSEX COUNTY** **SPECIAL CIVIL PART/TENANCY** **DOCKET NO. LT-017737-24** **Sat Below:** **Hon. Aldo J. Russo, J.S.C.**

REPLY BRIEF IN SUPPORT OF APPEAL OF DEFENDANT-APPELLANT LISA MOORE

On the Brief:
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PRELIMINARY STATEMENT

The trial record justifies remanding this matter to vacate the judgment and dismiss the summary dispossess complaint for lack of jurisdiction. Plaintiff-Respondent's brief fails to rebut that their complaint, and ultimately the judgment of possession, include rents not due and owing because Plaintiff-Respondent sought to collect amounts in excess of what is permitted by the East Orange Rent Control Ordinance in three separate ways. First, Plaintiff-Respondent sought and the judgment awarded possession based on rents in excess of the permitted 4% annual increase. Second, the complaint sought and the judgment awarded possession based on rents that could not have been lawfully collected due to Plaintiff-Respondent's failure to apply for rent increases pursuant to the East Orange Rent Control Ordinance §218. Third, Plaintiff-Respondent sought and the trial court awarded possession based on rents charged in violation of the East Orange Certificate of Habitability Ordinance §159-45.

I. THE TRIAL RECORD SHOWS UNLAWFUL RENT INCREASES BEYOND THE 4% RENT CONTROL CAP, CHARGING RENTS LEGALLY DUE AND OWING AS THE BASIS OF THE JUDGMENT OF POSSESSION [3T11-19; 3T7-13][1]

[1] Previously submitted with initial papers are three (3) stenographic transcripts: references to the stenographic transcript for November 14, 2024 will be denoted by "1T"; references to the stenographic transcript for December 5. 2024 will be denoted by "2T"; and references to the stenographic transcript for January 6, 2025 by "3T."

Turning first to East Orange Rent Control Ordinance §218-10, Plaintiff-Respondent Landlord failed to rebut that the trial court below erred by including rent increases beyond 4% in the judgment of possession. The amount of rent claimed must be "legally owing" at the time the time the complaint was filed. Chau v. Cardillo, 250 N.J. Super. 378, 385 (App. Div. 1990)(holding that "a landlord may not remove a tenant from premises for failure to pay an increase in the rent unless the rental increase complies with the applicable rent leveling ordinance."); Housing Authority of Passaic v. Torres, 143 N.J. Super. 231, 236 (App. Div. 1976). The trial court should have dismissed Plaintiff-Respondent's for lack of jurisdiction because the rent increases beyond the 4% rent control cap are not legally due and owing.

Plaintiff-Respondent concedes that the trial court's calculation of rental arrears includes increases exceeding what is permissible pursuant East Orange Rent Control Ordinance §218-10. The trial record shows that the East Orange Rent Control Ordinance caps rents for periodic tenants at 4%. [3T17-18; 2T16-17; 2T47-18]; §218-10(A). East Orange Rent Control Officer Wanda Watson testified that she must pre-authorize increase applications. [2T48-11]. The trial court found that some rent increases exceeded 4%. [2T48-20; 2T81-5]. Nevertheless, the trial court included the monthly rents charged in excess of that 4% cap in the Judgment of Possession. Pursuant Chau and Torres, the trial court lacked jurisdiction to grant

a judgment of possession because it contained rents not legally due and owing, justifying a remand vacate the judgment and dismiss the claim.

II. THE TRIAL RECORD SHOWS THAT PLAINTIFF-RESPONDENT FAILED TO APPLY FOR RENT INCREASES, CHARGING RENTS NOT LEGALLY DUE AND OWING AS THE BASIS OF THE JUDGMENT OF POSSESSION [3T11-19; 3T14-24]

The East Orange Rent Control Ordinance outlines the procedure for rent increase applications in § 218-10 "Establishment of rent increase for current residents." In that section, rent increases for month-to-month tenants are capped at 4%. § 218-10(A). Furthermore, this section mandates automatic denials of rent increase applications when a landlord fails to "have a current rent roll on file in accordance with the provisions of §218-14 […] at the time he demands a rental increase." § 218-10(A). The relevant portions of §218-14 require annual filing of rent rolls on September 1st and that "[a]ny rental increase application not in compliance with this subsection will automatically be denied." §218-14. An additional penalty in the application section is that the landlord "shall be precluded from obtaining any increase from said tenant for a period of 12 months […]." § 218-10(A). Landlords in violation of these sections "may not remove a tenant from premises for failure to pay an increase in the rent." Chau at 385.

At trial, East Orange Rent Control Officer Wanda Watson testified that she had all the registered rent rolls for the subject property and that 2012, 2014, and 2022 were missing. [2T35-11; 2T36-1; 2T39-6; 2T43:4]. Neither Ms. Hopson, nor

any other witness, provided copies of the notices required for rent increases under §218-10(A). [1T71-15]. Nevertheless, the trial court overlooked the incomplete applications, permitting the landlord to charge rents as if all applications for increases were properly submitted. This exceeds the amount legally permissible pursuant the Rent Control Ordinance by charging increased rents after prior owners failed to submit annual rent rolls. Therefore, pursuant to Chau, the case should be remanded, the judgment vacated, and the matter dismissed for lack of jurisdiction.

III. THE TRIAL RECORD SHOWS THAT RESPONDANT'S NONPAYMENT CLAIM INCLUDES MORE THAN ONLY WHAT TENANT IS REQUIRED TO PAY BY LOCAL LAW, VIOLATING R. 6:3-4(C) [3T7-4; 3T14-24]

Plaintiff-Respondent and the trial court failed to appreciate the legal impact of East Orange Ordinance Number 61-1974, EOO § 159-45 ("EOO § 159-45"). EOO § 159-45 forbids *all* rental transactions *generally* in the absence of a Certificate of Habitability.[2]

The trial court erroneously granted the Judgment of Possession because the failure to comply with EOO § 159-45 results in a complaint alleging nonpayment of more than "only the amount that the tenant is required to pay by federal, state or local law and the lease executed by the parties." NJ Ct. R. 6:3-4(c). Whether a

[2] The ordinance states that it is: "unlawful for any property owner […] landlord […] or tenant to rent, make rental payments, accept rental payments or otherwise assist with the rental or lease or in any way deliver up for occupancy any […] dwelling unit until a certificate of habitability […] shall have been issued […]." EOO § 159-45

landlord violating local law is entitled to a Judgment of Possession is separate and distinct from Plaintiff-Respondent's concern about whether a landlord is able to sue a tenant to collect arrears.

At trial, Plaintiff-Respondent stipulated to having no Certificate of Habitability for Defendant-Appellant's apartment. [2T57-15]. The trial court below found that the Plaintiff-Respondent's failure to obtain a Certificate of Habitability was a violation of city ordinance. [1T56-3]. The trial court and Plaintiff-Respondent reach the question of how much rent is owed without addressing that the East Orange Rent Control Ordinance does not permit the collection or payment of rent at all. Under these circumstances, the initial complaint violates R. 6:3-4(c) and the court's holding in Chau by granting a judgment based on more than only the amount of rent required by law, justifying a remand to vacate the judgment and dismiss the claim.

CONCLUSION

For the reasons elaborated above and based on the trial record, this matter should be remanded, the judgment of possession entered against Defendant-Appellant should be vacated, and the summary dispossess complaint dismissed.

Dated: July 21, 2025

s/Victor Monterrosa, Jr., Esq.
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