

Superior Court of New Jersey

Appellate Division

LORD & SHEPHERD PROPERTIES, LLC

v.

NJ TEXTILES, LLC

DOCKET NO. A-002633-24

On Appeal From:
Superior Court of New Jersey
Special Civil Part
Passaic County

Docket No. PAS-LT-006588-24

Sat Below:

Hon. Vicki A. Citrino, J.S.C.

And

Hon. William E. Marsala, J.S.C.

BRIEF OF PLAINTIFF-APPELANT

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¹“1T” refers to the transcript of the February 4, 2025 Trial Hearing before the Hon. Vicki A. Citrino (“Judge Citrino”) in connection with its eviction action

²“2T” refers to the transcript of the March 20, 2025 Hearing before Hon. William E. Marsala J.S.C (“Judge Marsala”) in connection with Plaintiff’s motion for reconsideration.

PRELIMINARY STATEMENT

Plaintiff Appellant, Lord & Shepherd Properties, LLC (“Landlord”), appeals from (1) the February 4, 2025 Order dismissing with prejudice its summary dispossess action against Defendant Respondent, NJ Textiles, LLC (“Tenant”), and (2) the March 20, 2025 Order denying reconsideration. The Trial Court’s dismissal, entered midtrial, was based on legal error and a misapplication of both statutory and contractual standards.

Landlord sought possession of the commercial premises located at 1500 Main Avenue, Clifton, New Jersey, due to Tenant’s repeated violations of the lease agreement (the “Lease”) and the applicable municipal zoning ordinance. The Lease expressly restricts Tenant’s use of the premises to “wholesaling and warehousing of textiles and for no other purpose whatsoever.” Tenant admitted in its Civil Case Information Statement (“TCIS”) to engaging in retail sales, which are prohibited under both the Lease and Clifton zoning laws, through May 2024 and again in October 2024.

Landlord served a Notice to Cease on May 31, 2024, which Tenant acknowledged, and a Notice to Quit and Termination of Lease on November 5, 2024, following an uncured breach. Despite Landlord’s compliance with NJSAA 2A1853 and the Lease, the Trial Court dismissed the Complaint based on

purported deficiencies in the notices, erroneously requiring repeated notices for the same violation and applying residential tenancy standards to this commercial dispute.

The Trial Court improperly imposed an unsupported specificity requirement on the Notice to Cease, found the Notice to Quit defective due to a minor formatting issue, and required Landlord to issue a second Notice to Cease after the October breach. These rulings contradicted established law, including *Carteret Properties v. Variety Donuts, Inc.*, 49 NJ 116 (1967), and misinterpreted section 38 of the Lease, effectively affording Tenant unlimited opportunities to cure and shielding ongoing violations from enforcement.

The Trial Court further abused its discretion by dismissing the matter with prejudice, depriving Landlord of the opportunity to present a second witness or cure any perceived technical deficiencies. The decision was particularly unjust in light of Tenant's own admissions confirming the Lease violations at issue.

Accordingly, Landlord respectfully requests that this Court reverse the Trial Court's judgment and reinstate its complaint for possession based on Tenant's repeated, admitted breaches of the Lease.

PROCEDURAL HISTORY

On November 18, 2024, the Plaintiff filed a commercial eviction complaint in the Special Civil Part of the Superior Court of New Jersey, seeking judgment for possession of the Premises, alleging Tenant breached §3 of the Lease by conducting retail sales. P001, Complaint.

On January 31, 2025, the Defendant filed a TCIS Additional Information form with the court, admitting that it engaged in the alleged retail sales, and acknowledging receipt of Landlord's Notices. P046, Defendant's TCIS Additional Information.

On February 4, 2025, the Court conducted a trial in this matter. *See* February 4, 2025 Trial Transcript.³ Landlord brought two witnesses to testify. However, only the first witness was heard⁴ because the Trial Court Judge, Hon. Vicki A. Citrino, J.S.C., terminated the proceedings prematurely, and dismissed the Complaint with prejudice, after improperly determining that Landlord's Notices were defective. (1T21:19-T22:16; Da9-Da11); *see also* P078, Order of

³ The Hearing Transcript from the February 4, 2025 trial is cited herein as "1T21:19-T22:16".

⁴ Landlord's first witness, Sara Sozer, testified to Lease terms, breaches, and notices. Tenant's cross-examination challenged the May 31 notice's specificity and lack of a new notice for October (1T15:12-T16:25). Tenant's motion to transfer to the Law Division was denied (T18:9-T20:20).

Disposition. The court *sua sponte* dismissed the complaint with prejudice, finding the Notices defective under *Carteret* and requiring a new notice.

On February 23, 2025, the Plaintiff filed a motion for reconsideration with the Court. P080, Plaintiff's Motion for Reconsideration. On March 6, 2025, the Defendant filed opposition to that motion.

Thereafter, on March 20, 2025, following a hearing before a different judge, Hon. William E. Marsala, J.S.C., the Court denied the Plaintiff's motion for reconsideration. P090, Order and Statement of Reasons.

On April 28, 2025, the Plaintiff filed the present appeal.

STATEMENT OF FACTS

On January 1, 2020, Plaintiff's predecessor-in-interest, the former landlord, Lawrence and Emily Levine Real Estate II, LLC (hereinafter referred to as the "Former Landlord") and Defendant, NJ Textiles, Inc. (defined above as "Tenant") entered into a commercial lease agreement (defined above as the "Lease") for the property located at 1500 Main Ave., City of Clifton, County of Passaic, New Jersey 07011 (defined above as the "Premises"). P005, Lease.

On September 14, 2021, Plaintiff Lord & Shepherd LLC (defined above as "Plaintiff" or "Landlord") purchased the Premises and assumed all rights and obligations under the Lease Agreement. 1T6: 5 – 7; P001, Complaint at ¶ 3.

The Lease at §3 restricts Tenant's use of the Premises to "wholesaling and warehousing of textiles and for no other purpose whatsoever." P006, Lease at §3; Trial Transcript at 1T6:14-21. The Lease at §38 grants a 15-day cure period for non-monetary defaults, with re-entry rights if uncured. P023, Lease at §38; Trial Transcript at 1T14:8-18. The Lease at §25 requires zoning compliance. P018-0195, Lease at §25; Trial Transcript at 1T13:18-1T14:4. The Lease at §47 mandates written amendments. P026, Lease at §47; Trial Transcript at T7:20-T8:1. The Lease at §24 imposes double rent for holdover. P018, Lease at §24, Trial Transcript at 1T13:7-17.

Pursuant to the City of Clifton's Code of Ordinances, § 461-13.1, the Premises is subject to industrial zoning restrictions that prohibit its use for retail purposes. City of Clifton Code of Ordinances § 461-13.1 ("the Ordinance"). Trial Transcript at 1T7-8:24 –2. In accordance with the Ordinance, the Landlord is subject to daily fines for Tenant's violation(s). *Id* at § 461.71. In parallel, the Lease limited Tenant's use of the Premises to "the wholesaling and warehousing of textiles and for no other purposes whatsoever." P006, Lease Agreement at ¶ 3.

Tenant's TCIS admits it engaged in retail sales and alleges that Tenant was encouraged to do so by the Former Landlord, from 2018 until May 2024, when Tenant relocated to the second floor. P046-056, TCIS at ¶¶ 5-9, 35-36; Trial Transcript at 1T7:8-19. Tenant's website advertised "wholesale and retail fabrics." P031, Screenshot of Tenant's Website; Trial Transcript at 1T8:12-23.

On May 31, 2024, the Landlord served the Tenant with a Notice to Cease, directing the Tenant to cure its ongoing violation of the Lease Agreement. P033, Notice to Cease, dated May 31, 2024 (defined above as the "Notice to Cease"). The Notice to Cease specifically directed the Tenant "TO CEASE operating as a retailer in the leased premises immediately." *Id*. The Notice to Cease further specified, through express citation of the applicable provision in the Lease, that the Tenant was "in direct violation of" Paragraph 3 of the Lease, which limited

the permitted use of the Premises to the “. . . wholesaling and warehousing of textiles.” *Id.*

The Tenant responded to Landlord’s Notice to Cease by falsely denying that it had been operating as a “retail store.” P099, Tenant’s Response to the Notice to Cease, dated June 11, 2024. However, the Tenant subsequently admitted to engaging in retail transactions. P051-052, TCIS at ¶¶ 35, 36, 38, and 39. The parties mutually understood the Notice to Cease described a course of prohibited retail sales in and around May 2024, and both parties treated the Notice to Cease as requiring the Tenant to discontinue any conduct that is or could be construed as advertising, offering, or engaging in retail sales or transactions on the Premises. *Id.*

On October 25, 2024, a private investigator retained by the Landlord purchased three yards of cashmere from the Tenant at a retail price of \$35.00. P036, Summary of Investigation, dated October 25, 2024. The transaction was recorded on video, which Tenant characterized in its TCIS as an “isolated” employee error. P052-053, TCIS at ¶¶ 41-42, 45; Trial Transcript at 1T11:1-19. Tenant reprimanded the employee and issued a policy letter. P076, November 6, 2024 Reprimand Letter. Retail sales violated lease §3 and Clifton’s second-floor zoning. Trial Transcript at 1T7:25-1T8:8 and 1T17:12-1T18:5; Motion Transcript at 2T10:16-22. While Tenant’s TCIS disputes zoning, claiming a B-

C Overlay Zone permits retail, Sara Sozer testified only the first floor is zoned for retail. Trial Transcript at 1T17:12-T18:5.

On November 5, 2024, the Landlord served the Tenant with a Notice to Quit and Termination of Lease for cause, dated November 5, 2024 (defined above the “Notice to Quit”), citing the Tenant’s failure to cure its default and its repeated and continuous violations of the Lease Agreement.⁵ P083 Notice to Quit. The Notice to Quit specified the Tenant had repeatedly and continuously breached the Lease by engaging in retail sales on October 25, 2024, as depicted in a video captured by the private investigator, and demanded that the Tenant vacate the Premises no later than November 15, 2024. *Id.* The Tenant failed to comply with the Notice to Quit, which led to Landlord’s filing of the action for possession to evict Tenant from the Premises.

⁵ The copy of the Notice to Quit attached to the Complaint contained technical defects in printing or uploading, which obscured certain portions of the document. The Notice to Quit that Landlord actually served upon the Tenant contained no such defects and was subsequently resubmitted into the record.

ARGUMENT

APPLICABLE STANDARD OF REVIEW

The Appellate Division reviews questions of law de novo, giving no deference to the trial court's legal conclusions. *Rowe v. Bell & Gossett Co.*, 239 N.J. 531, 552 (2019) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference."). This includes the trial court's interpretation of statutes, such as N.J.S.A. 2A:18-53, and the construction of lease agreements, which are questions of law. *Grow Co. v. Chokshi*, 403 N.J. Super. 443, 476 (App. Div. 2008) ("[W]hether a contract provision is clear or ambiguous is a question of law.").

Accordingly, this Court should review de novo the trial court's determinations that: (1) a Notice to Cease was required under *N.J.S.A. 2A:18-53* for a commercial tenancy; (2) the Lease Agreement mandated a Notice to Cease; (3) the Notice to Cease lacked sufficient specificity; and (4) a second Notice to Cease was required for a continuing violation.

Additionally, the trial court's dismissal of the complaint with prejudice and its decision to deny the Landlord the opportunity to present its full case are reviewed for abuse of discretion. *Abtrax Pharms., Inc. v. Elkins-Sinn, Inc.*, 139 N.J. 499, 517 (1995) (dismissal with prejudice is a drastic remedy reviewed for

abuse of discretion); *In re Broad St. Nat'l Bank*, 37 N.J. Super. 171, 174 (App. Div. 1955) (abuse of discretion occurs when a decision is made without a rational explanation, departs from established law, or rests on an impermissible basis). An abuse of discretion occurs when the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." *Flagg v. Essex Cnty. Prosecutor*, 171 N.J. 561, 571 (2002) (quoting *Achacoso-Sanchez v. Immigration & Naturalization Serv.*, 779 F.2d 1260, 1265 (7th Cir. 1985)).

Here, the trial court's dismissal with prejudice, based on perceived technical deficiencies in the Notices and without allowing the Landlord to present its remaining witnesses or cure any defects, constitutes an abuse of discretion warranting reversal.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING RECONSIDERATION AND DISMISSING THE COMPLAINT WITH PREJUDICE, AS THE MAY 31, 2024, NOTICE TO CEASE WAS LEGALLY SUFFICIENT UNDER LEASE SECTION 38 AND N.J.S.A. 2A:18-53, AND THE COURT MISAPPLIED CARTERET PROPERTIES V. VARIETY DONUTS, INC. BY REQUIRING SPECIFICITY FOR COMMERCIAL NOTICES TO CEASE. (P090, P097; 1T21:19 – 16).

Reconsideration denials are reviewed for abuse of discretion, reversed if based on impermissible grounds or ignoring evidence. *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990); R. 4:49-2. Notice requirements are

reviewed de novo. *Ivy Hill Park, Section III, Inc. v. Abutidze*, 371 N.J. Super. 103, 112 (App. Div. 2004).

The trial court erred by finding the May 31, 2024, Notice to Cease defective under *Carteret Props. v. Variety Donuts, Inc.*, 49 N.J. 116 (1967), and denying reconsideration. Trial Transcript at 1T21:19-1T22:9; Motion Transcript, 2T5:14-2T7:7. The Lease at §38 requires a 15-day cure notice for non-monetary defaults. P023, Lease at §38. The May 31 Notice to Cease demanded Tenant cease retail operations, citing §3's wholesale-only restriction. P033, Notice to Cease. Tenant's TCIS confirms receipt of Landlord's Notice to Cease and admits that Tenant engaged in retail sales until May 2024. P051-0526, TCIS at ¶¶ 33-38.

N.J.S.A. 2A:18-53 does not require a notice to cease for commercial evictions unless mandated by the lease. *Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 570 (Super. Ct. 1989) (“Obviously, the purpose of the specificity requirement in *N.J.S.A. 2A:18-53(c)* is not that of aiding the tenant in changing his conduct, since no notice to cease is required.”), *aff'd*, 237 N.J. Super. 1 (App. Div. 1989). Section 38's notice was satisfied by identifying the breach and demanding cessation. Pa32, Notice to Cease. *Carteret*, 49 N.J. at 124, applies specificity (date, time, place) to notices to quit,

not notices to cease, which trigger cure periods. *Id.*; Trial Transcript at 1T21:19-1T22:9; and Motion Transcript at 2T5:19-2T6:7.

The notice referenced Tenant's website and reviews, and was later corroborated by the October retail sale. P036, Summary of Instigation; Trial Transcript at 1T8:12-23, 1T11:1-19; P052, TCIS at ¶41. Tenant's TCIS admits retail sales, negating claims of inadequate notice. P051, TCIS at ¶¶ 35-36. The court's hearsay ruling on reviews was irrelevant, as the notice's role was to alert Tenant. Trial Transcript at 1T22:7-9; Motion Transcript at 2T6:2-5. Reconsideration was warranted, as the court misapplied *Carteret* and ignored Tenant's admissions. Motion Transcript at 2T5:14-T7:7; *D'Atria*, 242 N.J. Super. at 401). For these reasons, the Trial Court abused its discretion and reversal is required.

II. THE TRIAL COURT ERRED IN FINDING THE NOVEMBER 5, 2024, NOTICE TO QUIT DEFECTIVE, AS THE SERVED NOTICE COMPLIED WITH LEASE SECTION 38 AND N.J.S.A. 2A:18-56, AND THE UPLOADED COPY'S PRINTING ERROR DID NOT INVALIDATE SERVICE. (P090, P097; 1T21:19 – 16).

The validity of Landlord's Notice must be reviewed pursuant to de novo a de nova standard. *Ivy Hill*, 371 N.J. Super. at 112. Here, the trial court erred by finding the November 5, 2024, Notice to Quit defective due to missing characters in the eCourts copy. Trial Transcript at 1T12:1-T12:22; Motion Transcript at 2T4:5-T5:13. The Lease at §38 permits termination after an

uncured default post-15-day notice. P023-024 , Lease at §38. The May 31 Notice to Cease triggered the cure period which Tenant failed to comply with, as evidenced by the October sale. P033, Summary of Investigation; Trial Transcript at 1T9:1-10 and 1T11:1-19; Motion Transcript at 2T8:5-2T9:15; P052, TCIS at ¶41. The November 5 Notice to Quit specified the October 25 breach and demanded that Tenant vacate by November 15. P083, Notice to Quit.

N.J.S.A. 2A:18-56 requires notices to quit to state the cause, which this notice did, detailing the \$35 sale. P083, Notice to Quit; Trial Transcript at 1T11:1-19. *Carteret*, 49 N.J. at 124, mandates specificity, which was satisfied here. The eCourts copy's printing error was harmless, as the Notice to Quit that Landlord served on Tenant was complete, and Tenant acknowledged receipt. Trial Transcript at 1T12:23-1T13:3; Motion Transcript at 2T4:5-T5:13; P053, TCIS ¶43. The Trial Court's focus on the upload was a legal error, therefore, reversal is warranted.

III. THE TRIAL COURT ERRED IN REQUIRING A NEW NOTICE TO CEASE FOR THE OCTOBER 25, 2024, BREACH, AS THE MAY 31, 2024, NOTICE SUFFICIENTLY ADDRESSED ONGOING RETAIL SALES UNDER LEASE SECTION 3, AND SECTION 38 DOES NOT MANDATE SEPARATE NOTICES FOR REPEATED BREACHES OF THE SAME TYPE. (P090, P097; 1T21:19 – 16).

Lease interpretations and notice requirements are also reviewed de novo. *Ivy Hill*, 371 N.J. Super. at 112. Here, the trial court erred by requiring a new

Notice to Cease for the October 25, 2024, breach. Trial Transcript at 1T21:19-1T22:9; Motion Transcript at 2T17:17-2T18:4. The Lease at §3 prohibits retail sales, and at §38 provides a 15-day cure period. P006 and 023-024, Lease at § 3 and 38. The May 31 Notice to Cease demanded cessation of retail operations, addressing ongoing breaches. P033, Notice to Cease. Tenant's TCIS admits retail sales until May 2024 and an October sale, confirming the breach's continuity. P051-052, TCIS at ¶¶ 35-36, 41.

Section of the Lease 38 does not mandate separate notices for repeated breaches of the same type. P038, Lease at §38. *Berzito v. Gambino*, 63 N.J. 460, 468 (1973), limits cure rights to reasonable compliance, which Tenant failed by resuming retail sales after receiving Landlord's Notice to Cease. Motion Transcript at 2T8:5-2T9:15. Tenant's TCIS claim of curing by June 2024 is undermined by the October sale. P052, TCIS at ¶¶ 38-41. Tenant's de minimis argument (\$35 sale) fails, as §3 of the Lease prohibits all retail sales. Therefore, the Trial Court erred by requiring multiple notices for the same continuing violation and reversal is required.

IV. THE TRIAL COURT'S DISMISSAL WITH PREJUDICE WAS ARBITRARY AND CAPRICIOUS, AS NOTICE DEFECTS WARRANT DISMISSAL WITHOUT PREJUDICE, AND THE COURT IGNORED TENANT'S TCIS ADMISSIONS AND EVIDENCE OF RETAIL SALES IN VIOLATION OF LEASE SECTION 3. (P090, P097; 1T21:19 – 16).

Dismissals are reviewed for an abuse of discretion and must be reversed if they are arbitrary or if the trial court ignored relevant evidence. *D'Atria*, 242 N.J. Super. at 401. Here, the trial court's dismissal with prejudice was erroneous, as notice defects warrant dismissal *without prejudice*. *Vill. Apartments v. Macall*, No. A-1724-19T3, 2020 N.J. Super. Unpub. LEXIS 2570, at *11 (App. Div. Dec. 30, 2020); Trial Transcript at 1T22:12-16. The court ignored Tenant's TCIS admissions of retail sales from 2018 to May 2024 and October 2024, violating lease §3. P051-0536, TCIS at ¶¶ 35-36, 41-42; Trial Transcript at 1T19:14-1T20:4; Motion Transcript at 2T6:15-2T7:19. Evidence of the October sale and website advertising was uncontroverted. P036, Summary of Investigation; and P031, Website.

Moreover, the *sua sponte* dismissal mid-trial barred Landlord's second witness. Trial Transcript at 1T21:19-1T22:16; Motion Transcript at 2T8:1-4. Tenant's TCIS claim of prior the Former Landlord's consent is void and irrelevant under §47 of the Lease, which requires any amendment(s) be in writing. P026, Lease at §47. The court's failure to consider these admissions and evidence was arbitrary. Therefore, reversal and reinstatement are warranted.

V. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FINDING THE LANDLORD FAILED TO SATISFY THE STATUTORY JURISDICTIONAL REQUIREMENTS. (P090, P097; 1T21:19 – 16).

Pursuant to *N.J.S.A.* § 2A:18-53, as a matter of jurisdiction, “[e]xcept for residential lessees and tenants included in section 2 of this act, any lessee or tenant . . . may be removed from such premises by the Superior Court, Law Division, Special Civil Part in an action . . . [w]here such person (3) shall constantly violate the landlord’s rules and regulations governing said premises, provided, such rules have been accepted in writing by the tenant or are made a part of the lease; or (4) shall commit any breach or violation of any of the covenants or agreements in the nature thereof contained in the lease for the premises where a right of re-entry is reserved in the lease for a violation of such covenants or agreements, and shall hold over and continue in possession of the demised premises or any part thereof, after the landlord or his agent for that purpose has caused a **written notice of the termination** of said tenancy to be served upon said tenant, and a demand that said tenant remove from said premises within three days from the service of such notice.” *N.J.S.A.* § 2A:18-53 (emphasis added); *see also Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 569 (Super. Ct. 1989), *aff’d*. 237 N.J. Super 1, 566 A.2d 820 (App. Div. 1989) (“The applicable statutory section for removal of commercial tenants is *N.J.S.A.* 2A:18-53 (dealing with removal of all but those residential tenants governed by *N.J.S.A.* 2A:18-61.1).”).

“The notice shall specify the cause of the termination of the tenancy[.]” *N.J.S.A.* § 2A:18-53. “‘Specify’ means to name in a specific or explicit manner; to state precisely or in detail, to point out, to particularize, or to designate by words one thing from another.” *Carteret Props. v. Variety Donuts, Inc.*, 49 N.J. 116, 124 (1967). “[T]he purpose of the specificity requirement in *N.J.S.A.* 2A:18-53(c) is not that of aiding the tenant in changing his conduct[.]” *Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 570 (Super. Ct. 1989), *aff’d*, 237 N.J. Super 1, 566 A.2d 820 (App. Div. 1989). Rather, “[t]he obvious reason is to permit the tenant to adequately prepare a defense, since the tenant may contest an alleged breach of a covenant or may raise equitable defenses.

Because an action to evict the tenant is normally a summary proceeding devoid of discovery, specification of the cause of termination is a means of adequately advising the tenant of the allegations against which it must defend.” *Id.* “The cause of termination is jurisdictional, and if at trial evidence is adduced from which a finding could reasonably be made that a proper notice was served and that the specified statutory cause existed, a judgment for possession is conclusive.” *Carteret Props. v. Variety Donuts, Inc.*, 49 N.J. 116, 123 (1967)(citing *Vineland Shopping Center, Inc. v. De Marco*, 35 N.J. 459, 462-464 (1961).

Here, on November 5, 2024, Landlord served Tenant with a Notice to Quit that complied with the requirements of *N.J.S.A.* § 2A:18-53. P083, Notice to Quit. Landlord also served Tenant with a Notice to Cease (P033, Notice to Cease) dated May 31, 2024, consistent with the terms of the Lease. P023-024, Lease at ¶38. Therefore, the trial court erred as a matter of law by finding that Landlord failed to satisfy the applicable statutory requirements.

A. The Trial Court Misapplied the Governing Statute and Controlling Case Law by Requiring a Notice to Cease as a Prerequisite for a Commercial Landlord to Invoke Jurisdiction under N.J.S.A. § 2A:18-53

In this matter, the Landlord first served a Notice to Cease, directing the Tenant to cure its ongoing violations of the Lease Agreement arising from its engagement in retail transactions. P 033, Notice to Cease. When the violative conduct continued, the Landlord served a Notice to Quit, directing the Tenant to vacate the Premises. P083, Notice to Quit. Once the Tenant failed to comply with the Notice to Quit, the Landlord brought this action for possession to evict Tenant from the Premises.

The Trial Court erroneously concluded that a commercial landlord seeking to remove a tenant must first serve a notice to cease, identifying with specificity each alleged violation, affording an opportunity to cure, and, only if uncured, thereafter serve a notice to quit and termination of lease. Trial Transcript at

1T21:24–22:9. Applying this flawed understanding of law, the Trial Court found that the Landlord’s Notice to Cease did not have sufficient specificity, and therefore, was deficient. *Id.* The Trial Court further determined that, although the Landlord’s Notice to Quit appeared sufficiently specific, it was insufficient on its own because the initial Notice to Cease was deemed defective. *Id.*

In addition, the Trial Court, without affording the Landlord an opportunity to submit a corrected copy, found the Notice to Quit improper solely because the version uploaded to the Court contained printing errors that obscured certain letters. Trial Transcript at 1T12:12-13:1 and 1T22:2-8. However, these purported errors were not present in the actual notice served on the Tenant but only in the Court’s copy. P083, Notice to Quit. Accordingly, the Trial Court’s dismissal of Landlord’s Complaint *with prejudice* was plain error to the extent it constitutes a manifest misuse of judicial discretion. *Id.* "*In re Broad St. Nat'l Bank*, 37 N.J. Super. 171, 174 (App. Div. 1955).

At the core of this appeal is the Trial Court’s fundamental error in conflating the distinct legal meanings of the *Notice to Cease* and the *Notice to Quit*. A *notice to cease* serves to notify the tenant of the alleged breaches of the lease and affords the tenant an opportunity to cure and remedy the default, “which owner was not even required to furnish under N.J.S.A. 2A:18-53(c).” *Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 571

(Super. Ct. 1989), aff'd. 237 N.J. Super 1, 566 A.2d 820 (App. Div. 1989). A *notice to quit and termination of lease* serves “to permit the tenant to adequately prepare a defense [against an action under N.J.S.A. 2A:18-53], since the tenant may contest an alleged breach of a covenant or may raise equitable defenses.” *Id* at 570.

In its decision, the Trial Court found that the Landlord’s Notice to Cease “must state with specificity, pursuant to *Carteret v. Donuts, Inc.*, that the date, time, place of the offense.” Trial Transcript at 1T21: 19 – 23. This assertion directly contradicts the governing statute and reflects a clear misreading of *Carteret*. In *Carteret*, the Court interpreted N.J.S.A. 2A:18-53, which unequivocally addresses the specificity required for a “written notice of termination,” not a notice to cease. *See also Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 570 (Super. Ct. 1989), aff'd. 237 N.J. Super 1, 566 A.2d 820 (App. Div. 1989)(“Obviously, the purpose of the specificity requirement in N.J.S.A. 2A:18-53(c) is not that of aiding the tenant in changing his conduct, since no notice to cease is required.”)

Based on this misreading, the Trial Court erroneously concluded that “the initial notice to cease was not based upon any specific act of the landlord... I find that both notices were not done properly, did not give notice of the specific act or incident because there was none prior to the notice to cease.” Trial

Transcript at 1T21:24 – 22:9. In doing so, the Trial Court imposed a requirement on the Landlord unsupported by law and dismissed the Landlord’s Complaint with prejudice for purported noncompliance with that unfounded requirement. To the extent the Trial Court dismissed the Complaint based on an alleged lack of specificity in the Notice to Cease, such ruling constitutes reversible error.

The Trial Court also abused its discretion by finding that the Notice to Cease “[was] not done properly.” With respect to the Notice to Quit, the Trial Court implicitly—and correctly—found that it satisfied the statutory specificity requirement. Trial Transcript at 1T22:10–15 (“If in fact a notice to cease was filed after the investigator went with the specificity outlined therein, then it would be -- would have been proper.”).

The sole basis for the Trial Court’s determination that the Notice to Quit and Termination of Lease was not ‘proper’ was a technical issue in uploading the document to the Court’s electronic system, which resulted in portions of the text being obscured. Trial Transcript at 1T22: 2 – 5 (“Again, as I indicated, the specific notice to quit in this instance had blanked out the actual date that the notice was terminated.”).

However, the actual Notice Landlord served upon the Tenant contained no such omissions. P083, Notice to Quit; Trial Transcript at 1T12:12–13:2 and 1T12:20–25:

MR SCHIELKE: I think a little bit lower than -- yeah, I see that there is an issue with this printed out version. I don't believe that it had affected the original.”); Motion Transcript at 2T4:11–20

THE COURT: Well, let me ask you a question. Did you show the judge the document that was served on the tenant?

MR. SCHIELKE: Well, I told –

THE COURT: Yes -- yes or no?

MR. SCHIELKE: I offered to. I argued this, and -- and she moved on to say that, well, the notice to cease was also defective. She said that the notice to cease was defective because it –

THE COURT: Well, all right...”); 2T5:5–13

THE COURT: So -- so my question again is, the notice to quit that was sent to the tenant, okay, was it different than the one that was uploaded?

MR. SCHIELKE: Yes.

THE COURT: So the one that was sent to the tenant didn't have the lines, and it -- it was legible?

MR. SCHIELKE: Correct.

THE COURT: Okay.”

Trial Transcript at 1T12:12–13:2 and 1T12:20–25

Therefore, the Trial Court abused its discretion by failing to consider the original Notice to Quit, and this constitutes a reversible error.

Furthermore, the Notice to Quit, in fact, satisfied the specificity requirement under *Carteret*. In particular, the Notice to Quit provided: a) that the Lease is terminated, b) the reasons why the Lease is terminated, including

the date, time, and specific conduct that constituted the breach under the Lease Agreement, c) the effective date of termination, and d) the demand of possession of the Premises. P083, Notice to Quit.

Significantly, it is undisputed that the Tenant breached Paragraph 3 of the Lease Agreement by engaging in retail sales on October 25, 2024, and that the Lease Agreement, in Paragraph 38(a), expressly reserves the Landlord's right of re-entry. P005, Lease; P083, Notice to Quit.

Moreover, the Tenant constantly violated the same provision dating back at least March 2024. P033, Notice to Cease; P031, Website - Screen Capture of www.njtextiles.com on March 22, 2024; P051-0520, TCIS at ¶ 35, 36, 38, and 39.

In addition, although the Tenant's breach and violation of the Ordinance presents a significant liability concern for the Landlord, the question of whether the retail transactions were substantial or de minimis is irrelevant to the statutory jurisdictional analysis. *See* N.J.S.A. 2A:18-53(c)(3) and (4) (imposing no requirement to establish a 'substantial breach' to obtain jurisdiction.) Accordingly, and apart from the discussion below, no jurisdictional issue arises under *N.J.S.A. 2A:18-53(c)(3) and (4)*.

In conclusion, the Trial Court misapplied the governing statute and controlling case law by imposing an unfounded requirement on the Landlord and

finding noncompliance, despite the Landlord's full adherence to the statutory and precedential requirements. Therefore, its decision should be reversed.

B. The Trial Court Abused Its Discretion in Concluding that the Notice to Cease Lacked Sufficient Specificity and Was Defective

Lease contains no contractual provisions prescribing the degree of specificity required in a notice to cease. Thus, any notice that is reasonably calculated to convey the conduct alleged to violate the Lease Agreement and demands that such conduct be cured is sufficient under the Lease. *See Karl's Sales and Serv., Inc. v. Gimbel Bros., Inc.*, 249 N.J. Super. 487,492 (App. Div.), certif. denied, 127 N.J. 548 (1991)(citing *Krosnowski v. Krosnowski*, 22 N.J. 376, 387 (1956))(finding the contractual language used must be interpreted "in accord with justice and common sense."); *Tessmar v. Grosner*, 23 N.J. 193,201 (1957) ("An agreement must be construed in the context of the circumstances under which it was entered into, and it must be accorded a rational meaning in keeping with the expressed general purpose."); *Karl's Sales, supra*, 249 N.J. Super. at 493 (citing *Levison v. Weintraub*, 215 N.J. Super. 273,276 (App. Div.), certif. denied, 107 N.J. 650 (1987)). (A "court has no right 'to rewrite a contract merely because one might conclude it might well have been functionally desirable to draft it differently.'").

Here, the Notice to Cease provided a level of specificity exceeding what the Lease or law requires. The Notice to Cease expressly directed the Tenant ‘TO CEASE operating as a retailer in the leased premises immediately.’ Pa30, Notice to Cease. It further specified, by expressly citing the applicable Lease provision, that the Tenant was ‘in direct violation of’ the requirement to use and occupy the Premises ‘only for the wholesaling and warehousing of textiles.’ *Id.* Although the Tenant initially denied operating as a ‘retail store,’ in Tenant’s Response to the Notice to Cease (June 11, 2024), the Tenant later admitted to engaging in retail transactions. *See* P051-052, TCIS at ¶¶ 35–36, 38–39. The parties mutually understood the Notice to Cease as identifying a course of retail transactions occurring on and around March 22, 2024, and treated it as requiring the Tenant to discontinue any conduct that is, or could reasonably be construed as, advertising, offering, or engaging in retail sales or transactions on the Premises. *Id.*

The Trial Court’s pursuit of an even higher degree of specificity was not only an erroneous application of law, but also palpably unreasonable, reflecting an overly formalistic and technical approach divorced from the core meaning, purpose, and function of a notice requirement. While such an overly formalistic approach might be defensible under other statutes for public policy reasons, no such approach is warranted with respect to a commercial tenant under *N.J.S.A.*

2A:18-53. *See 224 Jefferson Condo. Ass'n v. Paige*, 346 N.J. Super. 379, 383, 788 A.2d 296 (App. Div.)("The [Anti-Eviction Act, *N.J.S.A.* 2A:18-61.1 et seq.] affords 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.")(internal quotations omitted); *Id* ("It reflects a public policy barring dispossession actions except upon strict compliance with the notice and procedural requirements of the Act."); *Id* ("Such strict compliance is required even in circumstances in which the landlord has acted in good faith and the tenant has not been prejudiced."); *but see 350 Main St. LLC v. Ren Guan Li, No. A-3265-09T4*, 2011 N.J. Super. Unpub. LEXIS 686, at *18-19 (App. Div. Mar. 21, 2011) ("In contrast, no similar solicitude has been expressed by the Legislature for commercial tenants when enacting eviction statutes applicable to them. As a consequence, we have not insisted on as strict compliance with statutory notice requirements as we found to be mandated under the Anti-Eviction Act, so long as the purpose of the notice provision was met.").

At its core, a notice requirement centers on whether it is reasonably calculated to convey the conduct giving rise to the violation and the consequences of continuing such conduct. Here, the Notice to Cease did not fall short of achieving that purpose. Indeed, the Tenant itself has not disputed its understanding of the conduct in question or the consequences thereof. In

contrast, the Tenant acknowledged receipt of the Notice, admitted engaging in retail sales, and promised to cease such transactions. *See* P051-052 , TCIS at ¶¶ 35–36, 38–39.

Accordingly, the Notice to Cease was sufficient in form, and clearly sufficient in substance and function. The Trial Court ultimately abused its discretion in its interpretation of the ‘specificity’ for such notice under the particular circumstances of this case. Therefore, its decision must be reversed.

C. The Trial Court Committed Legal Error by Concluding a Second Notice to Cease Was Required

The Court presiding over the motion for reconsideration denied Landlord’s motion in part because it determined that a separate notice to cease and opportunity to court must be provided for Tenant’s continuing violation. P095, Order and Statement of Reasons at page 5 (“Any subsequent breaches would need further notice.”); *Id.* (“Case law in New Jersey emphasizes the need for separate notices for each tenant default. This proposition is illustrated in *Ivy Hill Park, Section III, Inc.*, where the court held that a landlord must continue to notify tenants of breaches, such as habitual late payment of rent, even after an initial notice has been served. *Ivy Hill Park, Section III, Inc. v. Abutidze*, 371 N.J. Super. 103, 117 (App. Div. 2004).”).

Here, even assuming *arguendo* that the initial Notice to Cease was required under the statute or the Lease, there is no basis for requiring a separate Notice to Cease for each breach, nor for mandating a second notice under the circumstances of this case.

To begin with, nothing in the Lease Agreement requires the Landlord to provide multiple notices for the same type of breach or continuous violation. In other words, a continuing breach does not trigger a requirement for successive or duplicative notices to cease, as the original notice remains operative so long as the violation persists. The time passed between the original notice to cease and a notice to quit is also irrelevant. *See A.P. Dev. Corp. v. Band*, 113 N.J. 485, 496 (1988) (“We decline to establish any particular time limit [between a notice to cease and a notice to quit under *N.J.S.A.* 2A:18-61.1 et seq.]. [] To apply a strict time limitation rule will result in unfairness in certain instances. A more flexible time period affords tenants a greater opportunity to change their pattern of late payments of rent. Indeed, a strict time limit may, under certain circumstances, force a landlord to institute an eviction action against a tenant sooner than he or she would have in the absence of a time limit.”).

Here, the Tenant’s retail activity constituted a continuing breach rather than discrete, isolated violations, the Landlord was not required to serve a second Notice to Cease. To hold otherwise would improperly reward a

defaulting tenant by allowing it to perpetuate its violation while forcing the Landlord to engage in an endless cycle of repetitive notices before seeking judicial relief.

Indeed, the logic underlying the Trial Court's conclusion leads to absurd results. The Trial Court noted that '[t]here is no language limiting the cure to one (1) default.' P097, Order and Statement of Reasons at page 7. Here, however, the Landlord had already served a Notice to Cease, afforded the Tenant an opportunity to cure that far exceeded any purported contractual cure period, and the record contains no evidence—beyond unsworn attorney argument—that the Tenant ever cured. Instead, the Tenant was again caught violating both the Lease and the applicable Ordinance. If, under these circumstances, the Landlord were still required to serve yet another Notice to Cease, such reasoning would effectively grant the Tenant unlimited opportunities to cure repeated defaults, while imposing undue burdens on the Landlord by necessitating frequent retention of private investigators or other costly measures to monitor compliance, thereby rendering the Landlord's contractual right of reentry meaningless.

Importantly, the Court's reliance on *Ivy Hill Park, Section III, Inc. v. Abutidze* is misplaced. 371 N.J. Super. 103, 117 (App. Div. 2004). This matter is distinguishable from *Ivy Hill Park, Section III, Inc. v. Abutidze* since that

decision addressed a different statute and a non-continuous violation, rendering its reasoning inapplicable to the present matter. *Id.* 371 N.J. Super. 103, 117 (App. Div. 2004); *see also A.P. Dev. Corp. v. Band*, 113 N.J. 485 (1988).

In *Ivy Hill Park, Section III, Inc.*, the court held that separate and progressively harsher notices were required for each instance of late payment. First, unlike this case, *Ivy Hill Park, Section III, Inc.* involved a residential tenant subject to eviction proceedings under *N.J.S.A. 2A:18-61.1(j)*, rather than a commercial tenant under *N.J.S.A. 2A:18-53*, thereby requiring the Court to apply the heightened safeguards and favorable protections afforded to residential tenants. Second, the Court in *Ivy Hill Park, Section III, Inc.* was concerned with whether the landlord had provided sufficient notice that habitual late payment could result in eviction—a context different from a failure to pay rent. In making that assessment, the Court examined the course of the landlord-tenant relationship and the increasing stringency of the notices issued over time. In that sense, the repeated notice requirement in *Ivy Hill Park Section III, Inc.* serves a distinct purpose: it differentiates between nonpayment of rent, which may trigger immediate eviction, and habitual late payments, which require multiple, progressively stringent notices to establish grounds for eviction. However, no such purpose is served here; rather, the Landlord is addressing the

same type of continuing violation, with no intervening communications during the relevant period, and the Tenant is fully aware of the consequences.

In sum, neither the statute nor the Lease requires successive Notices to Cease for a continuing breach. The Landlord's May 31, 2024 Notice to Cease fully satisfied any *arguendo* requirement, as the Tenant's retail activity constituted a single, ongoing violation rather than discrete defaults. The Trial Court's contrary conclusion—grounded in an unwarranted extension of *Ivy Hill Park* and a misapplication of both the Lease and *N.J.S.A. 2A:18-53*—improperly imposed obligations not supported by law. By demanding repeated notices for the same continuing violation, the Court effectively nullified the Landlord's contractual right of reentry and rewarded the Tenant's persistent noncompliance. Such a ruling is legally unsustainable and must be reversed.

VI. THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT WITH PREJUDICE (P090, P097; 1T21:19 – 16)

A dismissal with prejudice is considered a drastic remedy and is only warranted under limited circumstances where there is clear evidence of willful misconduct, contumacious behavior, or repeated noncompliance with court orders that prejudices the opposing party. *See Abtrax Pharms., Inc. v. Elkins-Sinn, Inc.*, 139 N.J. 499, 514–15 (1995) (explaining that dismissal with prejudice is a last resort reserved for 'deliberate and contumacious' violations); *Aetna Life*

& Cas. Co. v. Imet Mason Contractors, 309 N.J. Super. 358, 361 (App. Div. 1998) (“[S]ince dismissal with prejudice is the ultimate sanction, it will normally be ordered only when no lesser sanction will suffice to erase the prejudice suffered by the non-delinquent party.”); *see also Lang v. Morgan's Home Equipment Corp.*, 6 N.J. 333 (1951). The Supreme Court has recognized a "strong preference for adjudication on the merits rather than final disposition for procedural reasons." *Galik v. Clara Maass Med. Ctr.*, 167 N.J. 341, 356, 771 A.2d 1141 (2001) (quoting *Mayfield v. Cmty. Med. Assocs., P.A.*, 335 N.J. Super. 198, 207, 762 A.2d 237 (App. Div. 2000)).

Here, the Court dismissed the Plaintiff's complaint with prejudice based on the deficiencies it observed on the notice. However, the Court has not provided an opportunity to cure these deficiencies to the Plaintiff. The Plaintiff had three witnesses available, yet only the first witness was heard before the Court dismissed the case. This deprived the Landlord of its right to a full opportunity to prove its claims and is inconsistent with New Jersey's preference for decisions on the merits. *See Galik v. Clara Maass Med. Ctr.*, 167 N.J. 341, 356, 771 A.2d 1141 (2001) (quoting *Mayfield v. Cmty. Med. Assocs., P.A.*, 335 N.J. Super. 198, 207, 762 A.2d 237 (App. Div. 2000)).

Accordingly, the Trial Court's decision to dismiss the Complaint with prejudice was a clear abuse of discretion and legal error. The matter should be

reversed and remanded for trial so the Landlord may present its remaining witnesses and obtain an adjudication on the merits.

CONCLUSION

For the foregoing reasons, Landlord respectfully submits that this Court should reverse the Trial Court's judgment, reinstate Landlord's action for possession and enter a judgment for possession.

Respectfully Submitted,

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LORD & SHEPHERD
PROPERTIES, LLC,
Plaintiff-Appellant,

v.

NJ TEXTILES, LLC,
Defendant-Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-2633-24

On Appeal from:
Superior Court of New Jersey
Special Civil Part
Passaic County
Docket No.: PAS-LT-6588-24

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

CIVIL ACTION

DEFENDANT-RESPONDENT'S AMENDED BRIEF

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PRELIMINARY STATEMENT

Simply stated, Plaintiff-Appellant Lord and Shepherd Properties, LLC’s (“Landlord” or “Appellant”) Complaint for Eviction (the “Complaint”) against NJ Textiles, LLC (“Tenant” or “Respondent”) was properly dismissed *with prejudice* by the Trial Court because the Trial Court correctly determined that: (1) the May 31, 2024 Notice to Cease was insufficient to serve as the basis for a subsequent alleged breach; and (2) the November 5, 2024 Notice to Quit and Termination of Lease was improper because notice for this alleged breach was not provided to Tenant and, thus, Tenant was not provided with the requisite contractual right to cure. Landlord’s failure to serve such notice upon Tenant for a subsequent alleged breach of the Lease was fatal to the Complaint.

In its last-ditch effort to improperly evict Tenant, the Landlord here continues to ignore a basic requirement of the lease between the parties: that the Landlord is required to provide a 15-day cure period for an alleged breach. Landlord also conveniently dismisses out-of-hand the relationship between Tenant and the prior owner in which retail sales were not only permitted, but were also *encouraged*, to induce Teant to move to another floor at the property – all of which was known to the Property Manager that worked for the prior owner and the now current Landlord. It was not until almost three (3) years after Landlord purchased the property subject to the lease that Landlord began its

campaign to evict Tenant as a result of Tenant exercising its unilateral right to extend the lease, which included a favorable monthly rental price that Tenant negotiated for.

The Landlord's repetitive arguments, which are neither separate nor distinct, do not provide this Court with any basis to reverse the Trial Court's rulings, and in fact, compel affirmation of same. As set forth in detail herein, and in further contrast to Landlord's assertions, the Trial Court properly interpreted both the commercial lease that was negotiated between the Landlord and Tenant, as well established statutory law and caselaw, and determined that dismissal with prejudice was warranted.

Accordingly, Respondent respectfully requests that this Court affirm the Trial Court's Orders.

PROCEDURAL HISTORY¹

Landlord filed an eviction action against Tenant² on November 18, 2024 (P001)³. Tenant filed an Answer together with a CIS and Addendum on January 31, 2025 (P046). Trial was held in this matter before the Honorable Vicki A. Citrino, J.S.C. on February 4, 2025. Upon cross-examination of Landlord's witness by Tenant's counsel, Judge Citrino dismissed the matter with prejudice after finding that the Landlord's Notice to Quit and Termination of Lease was defective because a proper Notice to Cure was not served (P078).

On February 23, 2025, Landlord filed a Motion for Reconsideration, which was denied by the Honorable William E. Marsala, J.S.C. on March 20, 2025 (P090-097).

Landlord filed the instant appeal on April 28, 2025.

¹ Landlord's Procedural History includes improper legal conclusions and statements and Tenant disputes same. More specifically, Tenant disputes that it admits that it "engaged in the alleged retail sales...;" (Pb8). Tenant further disputes that the "Hon. Vicki A. Citrino, J.S.C. terminated the proceedings prematurely, and dismissed the Complaint with prejudice, after improperly determining that Landlord's Notices were defective." (Pb8).

² Plaintiff-Appellant has incorrectly identified Tenant as "NJ Textiles, LLC" since inception of this matter below. Tenant should be identified as "New Jersey Textiles, Inc."

³ "P____" refers to Plaintiff-Appellant's Appendix.

COUNTERSTATEMENT OF FACTS

Tenant has been in the wholesale fabric business for more than 38 years and has been a tenant at the property located at 1500 Main Avenue, Clifton, New Jersey (the “Property”) since March 1, 2009 pursuant to a lease between NJ Textiles as tenant, and Landlord’s predecessor in interest, Lawrence and Emily Levine Real Estate II, LLC (“Levine”), as landlord (the “Original Lease”) (P046 ¶1-2). The Original Lease was for the premises located on the third floor of the Property consisting of approximately 6,500 square feet. The permitted use under the Original Lease was for wholesale textiles and warehousing. (P046 ¶2-3).

In or about May, 2018, Tenant was asked by Levine to relocate to a less desirable location on the second floor of the Property (the “Premises”). The Original Lease did not contain a relocation clause requiring Tenant to relocate at Levine’s request (P046-47 ¶4-5). However, Levine’s property manager, Peter Scervo of Palestina Scervo Properties (“Scervo”), enticed Tenant to move by telling Tenan that the second floor of the Property would allow Tenant to expand its business to a retail presence by making it more accessible to the public (P046-47 ¶5-6). Levine and Scervo promoted Tenant’ expansion of its wholesale business to include a limited retail sales element if it so chose; however, Tenant’s main business remained wholesale goods. (Id.)

On January 1, 2020, Levine and Tenant entered into a new lease (the “2020 Lease”) as a result of the expiration of the Original Lease as of December 31, 2019 (P047 ¶7; P006). The permitted use under the 2020 Lease was the same as in the Original Lease (P047 ¶8). While Tenant business was primarily a wholesale business, with the change in location precipitated by Levine’s request that Tenan move to the second floor of the Property, Tenant was able to establish some retail sales. It did so with the knowledge and encouragement of Levine and Scrivo. (P047 ¶9).

On or about September 14, 2021, Landlord purchased the Property from Levine and assumed the Landlord’s rights and obligations under the 2020 Lease. The original term of the 2020 Lease was 5 years commencing on January 1, 2020 and ending on December 31, 2024 with a unilateral option or Tenant to extend the Lease for another 5-year period (P048 ¶12; P006 ¶2). Scrivo remained as Property Manager upon Landlord’s purchase and was thus well-aware of the modifications to the Lease to include Tenant’s ability to engage in retail sales if it so chose (P047 ¶10).

Despite such knowledge, and not until almost 3 years later, Landlord launched a series of actions directly aimed at harassing, and ultimately attempting to evict, Tenant. For example, within 2 weeks of exercising its unilateral right to the 5-year lease option renewal, Tenant received a notice from

the Landlord for 2022 & 2023 CAM charges totaling \$26,083.88, which was inaccurate (P049 ¶20-22). Within another 2 months, Tenant received Notice of Breach of Contract & Default regarding alleged weight load capacities at the Premises which was again, inaccurate. Here, the Lease was silent on this issue, and it was otherwise based on an engineering study that was never produced after multiple requests (P050 ¶28-30).

Finally, after 3 months, Landlord sent a Notice to Cease letter to Tenant on May 31, 2024 (the “May 2024 Notice”) (P033). The May 2024 Notice demanded that Tenant cease “operating as a retailer” at the Property based upon a reference on Tenant’s website and social media to “retail sales,” and *not* upon any *actual* retail sale (P033).

As a result, and consistent with the Lease regarding the 15-day cure period, on June 9, 2024 Tenant removed all references to “retail” on its website and other social media platforms (P023 ¶38; P052 ¶38-39). Further, Tenant modified its operations prospectively by instructing its sole employee that the business was only operating in a wholesale capacity and implemented a requirement that sales would be subject to collection of ST-3 forms (P052 ¶39; P053 ¶45).

Because Landlord’s attempt to default and evict Tenant again failed, Landlord hired an “investigator” six months later to trick their employee into

making a “retail” sale at the Premises. Said “investigator” masqueraded as a retail customer and induced Tenant’s employee into selling him \$35.00 worth of fabric. (P052 ¶41).

Said \$35.00 retail sale was de minimis event, wholly unrelated to the alleged basis for the May 2024 Notice (which was advertisement of “retail sales” as a result of the course of conduct that Tenant had occasionally engaged in with Landlord’s and Scrivo’s consent), and was not a continuation of said course of conduct which ceased following the May 31, 2024 Notice. (P053 ¶42; P051 ¶35-36).

Notwithstanding the foregoing, Landlord tried to capitalize on that one-time nominal transaction and issued a purported Notice to Quit and Termination of Commercial Tenancy Notice on November 5, 2024 (the “Notice to Quit”), demanding that Tenant vacate by November 15, 2024 (P083). Notably, Landlord did not issue a notice affording Tenant with the requisite 15 day opportunity to cure said alleged non-monetary default. (P053 ¶44).

However, Tenant took this matter very seriously and did cure this one-time minor purported infraction. In fact, the employee that mistakenly made the \$35.00 retail sale was reprimanded and threatened to be terminated. Further, said employee was asked to sign a letter on November 6, 2024 acknowledging that Tenant is exclusively a wholesale business and that if any future retail sales

were engaged in, said employee would be terminated (P076). Based upon this minor purported infraction, which was cured, Landlord filed an action for non-monetary breach eviction on November 18, 2024.

Assuming *arguendo* that Tenant engaged in two unrelated incidents of immaterial non-monetary breaches, which it cured promptly in accordance with the terms of the 2020 Lease, these alleged non-monetary breaches do not defeat the primary purpose of the 2020 Lease. No harm was suffered by Landlord and no damages were incurred by Landlord other than legal fees incurred by it as a result of its desire to file a frivolous eviction action for monetary gain (P055 ¶¶52-53). Further, where the default can be cured promptly as it was here, it would be improper to displace an exemplary tenant such as Tenant that has been leasing the Premises for over 15 years and, as Landlord acknowledged at trial, has consistently paid rent timely each month. Tenant should be permitted to live out the term of the 2020 Lease (2T 27:6-23).

The Trial Court agreed with this reasoning after hearing Landlord's testimony on both direct and cross-examination. Here, upon cross-examination, Landlord admitted that there was *no* proof supporting the May 31, 2024 Notice⁴ that was issued:

⁴ Assuming *arguendo* that Landlord had identified a specific incident that gave rise to the default notice premised on a violation by tenant of the permitted use ...Continued

Q. Good morning. I want to direct your attention back to the Exhibit C --

A. Okay.

Q. -- of the complaint, which is the May 31st notice to cease. Is there a specific instance that occurred that prompted this notice?

A. The website advertising and also there was reviews online.

Q. Was there an instance or do you have proof that any retail sales occurred?

A. No, just --

Q. No?

A. -- the reviews online.

THE COURT: I didn't hear the rest of the answer.

THE WITNESS: There was reviews and the website advertising retail.

BY MS. LEILI:

Q. But you don't have any proof?

A. Not to mention -- no. No, I don't have proof.

1T 15:8-16:2.

Nonetheless engaged in its campaign to conjure a purported rationale to evict Tenant, five months later Landlord issued the Notice to Quit in November 2024 which was purportedly based upon the Landlord's undercover operation in October 2024 when an employee of Tenant mistakenly made one immaterial and isolated sale in the amount of \$35.00. During trial, Landlord admitted that it

clause under the Lease, upon receipt of the May 31, 2024 Notice, Tenant took immediate steps to cure any such alleged breach (P052 ¶39-40).

was relying upon the May 2024 Notice in support of the Notice to Quit, and that it did not issue a Notice of Default in connection with the October 2024 alleged breach prior to issuing the Notice to Quit as required under the Lease:

- Q. Thank you. And when some many months later, when the investigator was there, was there a notice to cease issued per the lease to the tenant at that time?
- A. There was a notice to cease on May 31st. That's where that letter came in, yes.
- Q. Right. But once you sent an investigator out later - - months later; is that correct?
- A. Correct.
- Q. Okay. When that incident occurred, was there a notice to cease sent to the tenant per section 38 of the lease?
- A. I'm looking at the May 31st document, which was the notice to cease –

THE COURT: That's a yes or no.

THE WITNESS: I don't know.

THE COURT: No other notices to cease?

THE WITNESS: Is there another?

THE COURT: Ma'am, it's for you to answer.

MS. LEILI: So it's --

THE WITNESS: I don't know.

THE COURT: Okay.

1T 16:3-23.

As a result, the Court, *sua sponte*, determined that the May 2024 Notice failed to identify a specific breach, and that such improper notice could not serve as the basis for an alleged specific breach occurring five months later in October 2024. More specifically:

THE COURT: Thank you. In this matter what is extremely important in holdover cases are the actual notices to cease and notice to quit. They must state with specificity, pursuant to *Carteret v. Donuts, Inc.*, that the date, time, place of the offense.

What happened here, the initial notice to cease was not based upon any specific act of the landlord [sic]. Then there should be a notice to cure and a notice to quit. Again, as I indicated, the specific notice to quit in this instance had blanked out the actual date that the notice was terminated.⁵

I find that both notices were not done properly, did not give notice of the specific act or incident because there was none prior to the notice to cease. It was based on conjecture and a website and a review.

Again, those are -- a review would be hearsay and not admissible. If in fact a notice to cease was filed after the investigator went with the specificity outlined therein, then it would be -- would have been proper.

It was not done in this case. The case is dismissed.

1T 21:19-22:16.

In other words, the Trial Court found that Landlord was required to provide Tenant with a 15-day notice to cure as required under paragraph 38 of the Lease for any alleged breach occurring in October 2024. Failure to provide

⁵ During the Reconsideration Motion, Landlord's counsel confirmed that the Notice to Quit before the Court contained an error, but the Notice to Quit sent to the Tenant did not have any dates "blanked out." (2T 5:5-11).

such notice was fatal to its Complaint, which was therefore dismissed with prejudice.

LEGAL ARGUMENT

I. THE TRIAL COURT'S DISMISSAL, WITH PREJUDICE, OF PLAINTIFF'S COMPLAINT FOR EVICTION SHOULD NOT BE DISTURBED ON APPEAL (P078; P078)

A. Standard of Review

The standard of review for dismissal of a complaint with prejudice is whether the trial court abused its discretion, a standard that cautions appellate courts not to interfere unless injustice has been done. *Abtrax Pharm., Inc. v. Elkins-Sinn, Inc.*, 139 N.J. 499, 517 (1995); see also *St. James AME Dev. Corp. v. City of Jersey City*, 403 N.J. Super. 480, 484 (App. Div. 2008). In this matter, the Landlord did not provide notice to cure as required under the Lease for the alleged October breach. Here, the Trial Court based its decision on the fact that Landlord's May 2024 Notice was defective, and thus the subsequent November 2024 Notice to Quit was likewise defective (1T 21:19-22:16). The only injustice here would have been if the Trial Court re-wrote the Lease to benefit the Landlord by ignoring the express provision that the Tenant be provided with a notice to cure for an alleged breach, which is not permitted.

Contrary to Landlord's argument, the Trial Court did not err in its decision that the May 2024 Notice fails to serve as notice to cure for the subsequent

alleged October 2024 breach. Landlord ignores the law as well as the specific terms of the commercial Lease which governs the contractual rights and obligations between the parties with respect to the Premises including, what constitutes an event of default by Tenant under the Lease; the obligation of Landlord to provide Tenant with proper notice with respect to an event of default and; most importantly, Tenant's contractual right to cure all such events of default provided that it does so within a specific time frame (P023 ¶38). The Trial Court properly dismissed the Complaint because it recognized Landlord's utter failure to comply with such requirements.

B. The May 2024 Notice to Cease was Insufficient to Serve as the Basis for a Subsequent Alleged Breach (P094-P097).

The May 2024 Notice was served upon Tenant almost three (3) years after Landlord took possession of the Property subject to the Original Lease. Such Lease was amended by the parties to include the Tenant's ability to engage in retail transactions if it so chose – a fact which was known to Scrivo (P046-47 ¶5-6). It was not until Tenant exercised its unilateral right to extend the Lease that Landlord began its campaign to evict Tenant for an ulterior reason.

The May 2024 Notice was issued based upon a website reference to “retail sales.” There was no actual sale that occurred at that time that Landlord requested cease. Landlord's testimony during trial belies the improper basis upon which the May 2024 Notice was issued. Upon cross-examination,

Landlord admitted that there was *no* proof supporting the May 2024 Notice⁶ that was issued:

- Q. Good morning. I want to direct your attention back to the Exhibit C --
- A. Okay.
- Q. -- of the complaint, which is the May 31st notice to cease. Is there a specific instance that occurred that prompted this notice?
- A. The website advertising and also there was reviews online.
- Q. Was there an instance or do you have proof that any retail sales occurred?
- A. No, just --
- Q. No?
- A. -- the reviews online.

THE COURT: I didn't hear the rest of the answer.

THE WITNESS: There was reviews and the website advertising retail.

BY MS. LEILI:

- Q. But you don't have any proof?
- A. Not to mention -- no. No, I don't have proof.

1T 15:8-16:2.

Landlord is correct that “the Lease at issue in this case required Landlord to serve Tenant with a 15-day notice of default in the event of a breach.” (Pb 9; P023 ¶38). Essentially, the Lease requires that Landlord serve Tenant with

⁶ Assuming *arguendo* that Landlord had identified a specific incident that gave rise to the default notice premised on a violation by tenant of the permitted use clause under the Lease, upon receipt of the May 2024 Notice, Tenant took immediate steps to cure any such alleged breach (P076).

notice of default *for each breach* and Tenant has 15 days to cure same. Notably, ¶38 of the Lease does not contain *any* language that creates a waiver by Tenant, under any circumstance, of Tenant’s right to receive notices of default and the right to cure defaults within the applicable cure period (P023 ¶38). While such waiver provisions can be found, from time to time, in commercial lease agreements, they are heavily negotiated and, in this case, explicitly absent from the Lease.

Were the Trial Court to have found that an alleged breach occurring in May was “on-going” such that it could serve as the basis for any and all future alleged breaches or be deemed a waiver of Tenant’s contractual right to receive notice of, and an opportunity to cure, a future breach, such a finding would have been tantamount to the Court essentially re-writing the terms of the Lease in favor of Landlord, which again, is not permitted. See, *Karl's Sales & Serv., Inc. v. Gimbel Bros., Inc.*, 249 *N.J. Super.* 487, 493 (App. Div.), *certif. denied*, 127 *N.J.* 548 (1991) (a court may not "remake a better contract for the parties than they themselves have seen fit to enter into, or to alter it for the benefit of one party and to the detriment of the other."). Instead, the Trial Court correctly held that the May 2024 Notice was insufficient to serve as the basis for a subsequent alleged breach (1T 21:19-22:16).

C. The Trial Court Correctly Held that the November Notice and Purported Termination of the Lease was Improper (P094-097).

Nonetheless persisting in its campaign to conjure a purported rationale to evict Tenant despite its exemplary payment history, five months later Landlord issued the Notice to Quit on November 5, 2024 which was purportedly based upon an undercover operation in which Landlord learned that an employee of Tenant mistakenly made one immaterial and isolated sale in the amount of \$35.00 in October 2024 (P083).

In finding that the May 2024 Notice was defective to serve as “notice” for the alleged October breach, the Court not only properly relied upon the evidence and testimony provided, but also properly relied upon *Carteret Props. v. Variety Donuts, Inc.*, 49 N.J. 116 (1967), which is analogous to the facts herein. In *Carteret*, the Court stated:

But of more crucial significance in appraising the sufficiency of the notice is the failure to specify the nature of the alleged breach. It contains no particularization, no explicit or detailed statement as to the action or conduct of defendant which allegedly constituted such a violation of the use covenant as warranted a demand for a judgment for possession. The shortcoming is especially momentous because, as it later appeared by stipulation in the suit, the sale of bus tickets,

whether it was de minimis or substantial, had been going on for six years before the notice was served.⁷

Carteret at 124-125.

What Landlord continually ignores is the provision of the Lease which requires a 15-day notice to cure (P023 ¶38). A notice to cure was required for the alleged act that occurred in October 2024. Landlord could not rely upon the May 2024 Notice as a pre-cursor to the November Notice to Quit, because, by the Landlord's *own* admission, there was no proof of retail sales occurring at that time and there was no notice to cure for the alleged act that occurred in October 2024 (1T 15:16-16:23).

During trial, Landlord admitted that it was relying upon the May 2024 Notice in support of the Notice to Quit, and that it did not issue a notice to cure

⁷ As set forth herein, the de minimis engagement by Tenant in retail sales was permitted (and encouraged) by the prior owner, and is permitted in the overlay zone for the Property. Landlord did not attempt to raise any alleged "breach" until almost 3 years later and just 3 months *after* Tenant exercised its unilateral right to renew the Lease (P052 ¶37). In any event, such de minimis breach cannot serve as a basis for eviction even if a proper notice to cease, with opportunity to cure, had issued, which as the Trial Court correctly held, did not happen. See, *Mandia v. Applegate*, 310 N.J. Super. 435 at 310 (App. Div. 1998) ("when viewed in light of the prior business and personal relationship between the parties, defendants' compliance with their other obligations, and the good faith dispute between the parties as to their rights and obligations under the lease, that activity only constituted a minor breach of defendants' lease obligations," which did not warrant a termination of the lease).

in connection with the October 2024 alleged breach prior to issuing the Notice to Quit as required under the Lease:

- Q. Thank you. And when some many months later, when the investigator was there, was there a notice to cease issued per the lease to the tenant at that time?
- A. There was a notice to cease on May 31st. That's where that letter came in, yes.
- Q. Right. But once you sent an investigator out later - - months later; is that correct?
- A. Correct.
- Q. Okay. When that incident occurred, was there a notice to cease sent to the tenant per section 38 of the lease?
- A. I'm looking at the May 31st document, which was the notice to cease –

THE COURT: That's a yes or no.

THE WITNESS: I don't know.

THE COURT: No other notices to cease?

THE WITNESS: Is there another?

THE COURT: Ma'am, it's for you to answer.

MS. LEILI: So it's --

THE WITNESS: I don't know.

THE COURT: Okay.

1T 16:3-23.

The Court, *sua sponte*, properly found that because there was improper notice in May 2024, specifically that the May 2024 notice failed to identify a specific breach, such improper notice could not serve as the basis for an alleged specific breach occurring five months later in October 2024. Rather, Landlord was required to provide Tenant with the 15-day notice of default as required

under paragraph 38 of the Lease for any alleged breach occurring in October 2024 (P023 ¶38). More specifically:

THE COURT: Thank you. In this matter what is extremely important in holdover cases are the actual notices to cease and notice to quit. They must state with specificity, pursuant to *Carteret v. Donuts, Inc.*, that the date, time, place of the offense.

What happened here, the initial notice to cease was not based upon any specific act of the landlord [sic]. Then there should be a notice to cure and a notice to quit. Again, as I indicated, the specific notice to quit in this instance had blanked out the actual date that the notice was terminated.

I find that both notices were not done properly, did not give notice of the specific act or incident because there was none prior to the notice to cease. It was based on conjecture and a website and a review.

Again, those are -- a review would be hearsay and not admissible. If in fact a notice to cease was filed after the investigator went with the specificity outlined therein, then it would be -- would have been proper.

It was not done in this case. The case is dismissed.

1T 21:19-22:16.

Here, the improper May 2024 Notice, coupled with Landlord's failure to provide requisite notice of default for the alleged breach that occurred in October 2024 in compliance with the Lease, is fatal to the relief sought in Landlord's Complaint. What Landlord fails to recognize is that there can be no Notice to Quit absent a proper notice with opportunity to cure in accordance

with the specific terms of the Lease. Landlord *admitted* that did not happen in this case. Accordingly, the Trial Court properly dismissed the Complaint with prejudice.

II. THE TRIAL COURT’S DENIAL OF PLAINTIFF’S MOTION FOR RECONSIDERATION SHOULD NOT BE DISTURBED ON APPEAL (P090-97).

Upon reconsideration, a determination was made that the Trial Court considered the caselaw and evidence, including the May 2024 Notice and the testimony of the Landlord, and thus properly denied Landlord’s Reconsideration Motion (P097).

Landlord’s altogether specious argument that the Trial Court ignored Tenant’s alleged “admissions” in the TCIS is a red-herring. To be sure, such admissions, if any were regarding past actions. Even so, *nothing* in the TCIS (let alone the law) absolves Landlord from complying with the express terms of the Lease which include the right of the Tenant to cure upon notice of a specific act complained of. The “act” that was the basis for the May 2024 Notice was advertising on a website (which was cured) (P052 ¶¶39-40). The “act” complained of in October – for which Landlord failed to issue a notice to Tenant – was that of a de minimis \$35.00 sale which was orchestrated by Landlord.

The Trial Court heard testimony of the October “act” and ruled accordingly, finding that notice was required under the Lease so that Tenant was

provided its contractual right to cure. Because Landlord failed to provide such required notice, Judge Citrino correctly dismissed Landlord's Complaint. Upon reconsideration, Judge Marsala reviewed all of the evidence and testimony presented, and determined that Judge Citrino did not act in an arbitrary or capricious manner in dismissing the Complaint with prejudice (P097).

On appeal, the standard for review of a motion for reconsideration is abuse of discretion. The Appellate Division reviews a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under *Rule 4:49-2* (motion to alter or amend a judgment order) for an abuse of discretion. *Branch v. Cream-O-Land Dairy*, 244 N.J. 567, 582 (2021); *Kornbleuth v. Westover*, 241 N.J. 289, 301 (2020); *Hoover v. Wetzler*, 472 N.J. Super. 230, 235 (App. Div. 2022); *Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment*, 440 N.J. Super. 378, 382 (App. Div. 2015). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

Here, Judge Marsala specifically found that Judge Citrino properly held that the Tenant cured as a result of the May 2024 Order, and accordingly, the May 2024 notice could not serve as a basis for any future alleged breach. In so holding, the Court relied upon *Ivy Hill Park, Section III, Inc. v. Abutidze*, 372

N.J. Super. 103, 117 (App. Div. 1994) for the proposition that separate notices must be provided for each tenant default. The Court cogently and correctly stated:

The lease allows the [Tenant] 15 days to cure any default. There is no language limited the cure to one (1) default. Therefore, it can be mindful to the contract language that the Defendant is entitled to one of each default and shall have a chance to cure within fifteen (15) days. As Judge Citrino decided, there was no Notice to Cease to Defendant regarding the alleged default. In fact, the alleged retail sale in October 2024 was allegedly conducted by an employee who was reprimanded for doing so...

.....

Furthermore, even if this Court was to consider the argument that *N.J.S.A. §2A:18-53* does not require [Landlord] to serve written notice to cease prior to serving a notice to quit, the lease at issue allowed the Defendant a fifteen (15) day time period to cure say [sic] default. *Georgia King Associates v. Fraiser*, 201 N.J. Super. 146 (App. Div).

(P097).

Finally, Landlord’s reliance upon the unpublished decision in *Vill. Apartments v. Macall*, No. A-1724-19T3, 2020 N.J. Super. Unpub. LEXIS 2570, at*11 (App. Div. Dec. 30, 2020) is misplaced (and without precedential value). There, the issue was not whether the notice itself was defective, but rather, whether service of the notice was proper. The Court there dismissed the Complaint without prejudice so that the notice could be properly served. In contrast, there was *no* notice in the present matter to Tenant of any alleged “act”

in October 2024 – the Landlord merely issued the November 2024 Notice to Quit in violation of the express terms of the Lease.

Accordingly, the Trial Court correctly denied Landlord’s Reconsideration Motion.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the Trial Court’s decisions were proper and should be affirmed in their entirety.

Respectfully submitted,

PORZIO, BROMBERG & NEWMAN, P.C.
Attorneys for Defendant-Respondent,
New Jersey Textiles, Inc.

By:



LISA M. LEILI

DATED: October 31, 2025

Superior Court of New Jersey Appellate Division

LORD & SHEPHERD PROPERTIES, LLC

v.

NJ TEXTILES, LLC

DOCKET NO. A-002633-24

On Appeal From:
Superior Court of New Jersey
Special Civil Part
Passaic County

Docket No. PAS-LT-006588-24

Sat Below:

Hon. Vicki A. Citrino, J.S.C.

And

Hon. William E. Marsala, J.S.C.

REPLY BRIEF OF PLAINTIFF-APPELANT

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PRELIMINARY STATEMENT

Plaintiff-Appellant Lord & Shepherd Properties, LLC (“Landlord”) respectfully submits this reply brief in further support of its appeal from the February 4, 2025 Order dismissing its eviction complaint with prejudice (P078) and the March 20, 2025 Order denying reconsideration (P090).

Defendant-Respondent NJ Textiles, LLC (“Tenant”)’s claim that a new notice to cure is required for each repeated or ongoing breach contradicts the Lease and New Jersey law, which do not mandate repeated notices for the same violation and would impose an unreasonable burden on the Landlord.

Additionally, Tenant incorrectly claims the May 2024 Notice to Cease was deficient by conflating the lease’s reasonable notice requirement with the stricter standard for statutory notices to quit under Carteret Properties. In commercial tenancies, no statute mandates a notice to cease, and Lease §38 only requires reasonable notice of the breach. The Landlord’s Notice properly identified the Tenant’s violation—retail sales not permitted under the lease—and met all contractual obligations.

Moreover, the Landlord’s November 5, 2024 Notice to Quit (the “Notice to Cease”) met the required specificity standard by clearly detailing all relevant violations and the grounds for termination. Therefore, the Tenant’s objections lack merit, as their opposition misapplies *Carteret Properties v. Variety Donuts, Inc.*,

overlooks the commercial lease context, and disregards the Tenant's own admissions of retail sales in the Trial Court Information Statement (TCIS) (P046).

Further, the trial court erred in concluding that: (1) Landlord's Notice to Cease was insufficiently specific and noncompliant with the Lease; (2) Landlord's Notice to Quit was deficient under N.J.S.A. 2A:18-53(c) and *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967); (3) an additional notice was necessary for a continuing breach; and (4) dismissal with prejudice was appropriate, constituting an abuse of discretion.

Accordingly, reversal of the trial court's decision is warranted—or, at a minimum, the judgment should be modified to reflect a dismissal without prejudice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellant respectfully refers to the brief filed on September 16, 2025, for a full recitation of the statement of facts and procedural history.

ARGUMENT

POINT I

THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THE MAY 2024 NOTICE TO CEASE INSUFFICIENT

The trial court committed reversible legal error when it invalidated the Landlord's Notice to Cease (P032) as insufficiently specific. This ruling misapplied *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967) to this commercial eviction action. Because the sufficiency of a notice under a commercial lease presents a pure question of law, this Court reviews the trial court's determination de novo. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (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."). As demonstrated below, the notices fully complied with the express terms of Lease § 38, exceeded any reasonable specificity standard, and prompted the Tenant's own certification of cure—conclusively proving its effectiveness. Therefore, reversal is necessary and appropriate.

A. Carteret Governs Only Notices to Quit, Not Notices to Cease

The Tenant's opposition misreads *Carteret* by claiming the May 2024 Notice to Cease lacked detail. *Carteret* involved a Notice to Quit that was invalidated for failing to specify the cause for termination as required by N.J.S.A. 2A:18-53; it did

not address a notice to cease, and the statutory sequence and requirements were not followed in that case, unlike here (49 N.J. at 119, 124)

Critically, Carteret addressed only the Notice to Quit, not a prior Notice to Cease. These notices have different functions and standards: a notice to cease gives the tenant a chance to correct conduct, while the Notice to Quit under *N.J.S.A. 2A:18-53(c)* requires particularity to allow the tenant to prepare a defense, as explained in *Ivy Hill Park Apartments v. GNB Parking Corp.*, 236 N.J. Super. 565, 570 (Super. Ct. 1989), aff'd 237 N.J. Super 1, 566 A.2d 820 (App. Div. 1989).

However, a notice to cease does not itself initiate a summary eviction proceeding, so its specificity is a matter of contract, not the stricter jurisdictional standard governing a notice to quit. Under *350 Main St. LLC v. Ren Guan Li*, the focus is whether the May 2024 notice was reasonably calculated to inform Tenant of the offending conduct and the consequences of continuing it, consistent with the contract-interpretation principles in *Karl's Sales and Serv., Inc. v. Gimbel Bros., Inc. and Tessmar v. Grosner*.

Here, the trial court wrongly applied Carteret's notice to quit standard to Landlord's Notice to Cease, which is a preliminary cure notice and not a termination notice. *N.J.S.A. 2A:18-53* does not require particularity for notices to cease in commercial evictions; such notices need only meet the lease's terms. Commercial leases are enforced as written, unless affected by fraud or unconscionability, and

should be interpreted fairly, considering the contract's language, purpose, and the parties' intent.

Tenant cites no New Jersey case applying Carteret's heightened standard to notices to cease, because none exists. The trial court's conflation was a clear legal error requiring de novo reversal.

B. The May 2024 Notice to Cease Fully Complied with Lease

Where the lease is silent on specificity, a notice to cease or cure need only be reasonably calculated to inform the tenant of the violating conduct and the consequences of continuing it. The May 2024 Notice met and exceeded any requirements implied by Lease § 38 by: (1) providing written notice of default on May 31, 2024 (P033); (2) identifying the lease provisions and zoning ordinances limiting use to wholesaling and warehousing (P033); (3) expressly stating that operating a retail store breached the lease (P033); (4) warning that failure to stop could result in eviction (P033); (5) demanding that Tenant immediately and permanently cease retail operations (P033); (6) attaching screenshots of Tenant's retail advertising (P031); and (7) granting a 15-day cure period (P033).

Tenant's prompt changes—removing retail references online and altering operations after receiving the May 2024 Notice (P052, TCIS ¶ 39)—prove the notice was sufficient and effective. This confirms the notice clearly informed Tenant of the violation and gave a fair opportunity to cure, satisfying legal standards for adequacy.

See Rampersaud v. Hollingsworth, 456 N.J. Super. 502, 509 (App. Div. 2018) (finding a notice is sufficient if when it fairly informed the tenant of the nature of the violation.).

Tenant relies on Carteret's inapplicable standard for notices to quit, not notices to cease or cure. Even if a heightened specificity requirement were imposed, it would not apply where Tenant admitted the violation and claimed to have ceased the conduct, making further detail unnecessary. P051-052 , TCIS at ¶¶ 35-36, 38-39. Therefore, May 2024 Notice was sufficient under the Lease.

POINT II
THE TRIAL COURT ERRED
BY INVALIDATING THE NOTICE TO QUIT

N.J.S.A. 2A:18-53(c) governs notices to quit and terminate, and *Carteret Properties* sets the specificity standard under that statute. In this case, the trial court erred in finding the Notice to Quit noncompliant. *See* Trial Transcript at 1T22:19–23:17. The court further erred by invalidating the Notice to Quit (P083) based on a clerical printing glitch in the copy filed with the court. Notice validity turns on proper service and receipt, not defects in a filed copy, and Tenant does not dispute receiving and responding to the complete Notice without objection. *See* Trial Transcript at 1T12:23–1T13:3; Motion Transcript at 2T4:5–T5:13; P053, TCIS ¶ 43. Elevating this harmless technical defect over undisputed service and notice was an abuse of discretion. *See* Trial Transcript at 1T22:3–5.

A. The Notice to Quit Complied with N.J.S.A. 2A:18-53(c) and Carteret Properties

The Notice to Quit (P038, P083) satisfied all specificity requirements under *N.J.S.A.* 2A:18-53(c) and *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967). It clearly identified specific lease and zoning violations after proper notice to cease (P032, P083). It provided supporting evidence, including an investigation report and proof of violation (P085-087). It demanded Tenant vacate with a clear deadline and consequences for noncompliance (P083).

Unlike the landlord in *Carteret Properties*, which relied on a vague statement that the premises were “to be used and occupied only for the retail sale of food and allied products,” *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116, 124 (1967), the Landlord here (1) identified the specific lease provision barring retail transactions, (2) described Tenant’s conduct as engaging in retail sales, and (3) detailed the incident, including the date, time, and nature of the transaction.

The Tenant admits it engaged in the cited retail transaction—on the specified date, time, product, and amount—confirming the Notice to Quit’s clarity. The notice therefore fulfilled its purpose of giving Tenant a meaningful opportunity to respond, and Tenant raises no substantive defense to the breach, relying only on a claimed defect in notice. Therefore, Notice to Quit was sufficient under the applicable statutes and laws.

B. Service of the November 2024 Notice Was Undisputed and Proper

The Landlord served the November 2024, Notice to Quit via certified and regular mail to the Tenant’s registered address, in full compliance with Lease § 38 and *N.J.S.A.* 2A:18-53 (P38 and P83). The Tenant concedes receipt of the complete content of the November 2024 notice. Trial Transcript at 1T12:23-1T13:3; Motion Transcript at 2T4:5-T5:13; P053, TCIS ¶43.

C. The Printing Glitch in the Filed Copy Is Irrelevant to Validity

The trial court's focus on a harmless scanning error in the court-filed Notice to Quit—missing characters and numbers—was misplaced. See Trial Transcript at 1T12:23–1T13:3; Motion Transcript at 2T4:5–T5:13; P053, TCIS ¶ 43. The original notice served on the Tenant was complete and properly received. *Id.* The filing defect did not affect service or notice; thus, reversing the dismissal is warranted.

D. The Trial Court Abused Its Discretion by Dismissing on This Basis

The trial court's invalidation of the complaint due to a minor, non-prejudicial filing error was an abuse of discretion. *N.J.S.A.* 2A:18-53 prioritizes substance over form in eviction cases, and courts favor decisions on the merits, especially for sophisticated commercial parties. See *Ivy Hill Park Apts. v. Abutidze*, 371 N.J. Super. 103, 109 (App. Div. 2004). Here, service and receipt of the notice were undisputed, the error caused no prejudice, and the decision below must be reversed.

POINT III

NO NEW NOTICE TO CEASE WAS REQUIRED FOR THE OCTOBER 25, 2024 BREACH

The trial court committed reversible error by requiring a new notice to cease before the Notice to Quit (P083) based on the October 25, 2024 retail sale (P086). That sale was a continuation of Tenant's ongoing breach of Lease § 3, not a new default. Lease § 38 requires a notice to cease only for the initial default; once the cure period expires and the violation continues or recurs, the Landlord may proceed directly to termination. This Court reviews lease interpretation de novo. See *Karl's Sales & Serv., Inc. v. Gimbel Bros., Inc.*, 249 N.J. Super. 487, 492 (App. Div.), certif. denied, 127 N.J. 548 (1991). Because the record establishes continuity of the breach, the Notice to Quit was proper, and reversal is required.

A. The October 25, 2024 Retail Sale Continued the Original Violation

The Notice to Cease (P032) identified unauthorized retail sales as a breach of Lease § 3. Although Tenant claimed it cured (P051–052, TCIS ¶¶ 35–36, 38–39), the October 25, 2024 retail sale (P085–86) showed the same violation recurred and the breach was ongoing. Because this was not a new default, no additional Notice to Cease was required, and the Notice to Quit properly addressed the recurrent breach.

B. No Additional Notice Is Required Under the Lease or Applicable Statutes

At the outset, nothing in the Lease Agreement requires multiple notices for the same type of breach or a continuing violation; a continuing breach does not trigger successive notices to cease, and the time between a notice to cease and a notice to quit is immaterial. See *A.P. Dev. Corp. v. Band*, 113 N.J. 485, 496 (1988). The Tenant's reliance on *Ivy Hill Park Apartments v. Abutidze*, 371 N.J. Super. 103 (App. Div. 2004), is misplaced: *Ivy Hill* involved residential habitability claims under N.J.S.A. 2A:18-61.1, not commercial use restrictions under N.J.S.A. 2A:18-53, and concerned distinct grounds (nonpayment versus habitual late payment), not repeated breaches of the same covenant, as here with § 3.

Further, Tenant's theory that each recurrence of the same breach requires a new notice to cure would produce an untenable result, obligating the Landlord to restart the notice process after every retail transaction and effectively preventing issuance of a notice to quit against a repeatedly breaching tenant. Such a reading would make enforcement of Lease § 3 impractical and undermine the purpose of notice provisions, and it finds no support in the statutory framework or commercial leasing practice

POINT IV

DISMISSAL WITH PREJUDICE WAS AN ABUSE OF DISCRETION

The trial court abused its discretion by dismissing the Landlord's complaint with prejudice based on curable notice defects. New Jersey courts hold that such procedural defects in eviction notices warrant dismissal without prejudice, permitting correction and refiling. *See Vill. Apartments v. Macall*, No. A-1724-19T3, 2020 N.J. Super. Unpub. LEXIS 2570 (Super. Ct. App. Div. Dec. 30, 2020). Here, the merits are undisputed: Tenant admitted retail operations in its Trial Court Information Statement (P051-052, TCIS ¶¶ 35–36, 38–39), and a private investigator documented an illegal retail sale (P086). Dismissing this valid claim with prejudice permanently bars enforcement of the Landlord's lease rights and is an abuse of discretion. Because abuse of discretion encompasses arbitrary, capricious, or unreasonable rulings, this Court should reverse and modify the judgment to a dismissal without prejudice.

A. Curable Notice Defects Require Dismissal Without Prejudice

When eviction complaints fail due to technical notice defects, courts should dismiss without prejudice to allow correction. *See Vill. Apartments v. Macall*, No. A-1724-19T3, 2020 N.J. Super. Unpub. LEXIS 2570 (Super. Ct. App. Div. Dec. 30, 2020). Here, both alleged defects—the specificity issue and the November 2024

Notice’s filing glitch—are fully curable, as the Landlord can promptly serve corrected notices and refile.

B. The Merits of the Eviction Claim Are Well-Supported

Unlike cases warranting dismissal with prejudice, this eviction is supported by uncontested evidence. The Tenant expressly admitted “retail operations” at the industrial-zoned premises in its Trial Court Information Statement (P051-052, TCIS ¶¶ 35–36, 38–39). In addition, on October 25, 2024, a private investigator documented a retail sale, including payment, photos of retail displays, and receipts (P086). This evidence conclusively establishes the Tenant’s breach.

C. With-Prejudice Dismissal Permanently Bars a Valid Claim

Dismissal with prejudice irreparably harms the Landlord by blocking future eviction for the ongoing retail violation. The Lease § 3 breach occurs daily, but the Landlord cannot enforce it without filing a new action. This undermines *N.J.S.A.* 2A:18-53’s goal of efficient commercial evictions. See *Vill. Apartments v. Macall*, No. A-1724-19T3, 2020 N.J. Super. Unpub. LEXIS 2570 (Super. Ct. App. Div. Dec. 30, 2020). The Tenant suffers no prejudice from a dismissal without prejudice—it keeps possession during correction—while the Landlord loses its contractual and statutory rights. This imbalance is an abuse of discretion.

D. Policy Considerations Demand Reversal

Commercial eviction practice favors resolving cases on their merits, not dismissing them on technicalities. Here, Tenant knew retail sales violated Lease § 3, admitted the breach, and continued the conduct. Dismissing with prejudice unfairly rewards this behavior and undermines contract enforcement. The trial court abused its discretion by relying on curable defects when the Tenant's admissions and investigator evidence conclusively prove breach. This Court must reverse and direct dismissal without prejudice.

POINT V

DENIAL OF RECONSIDERATION WAS PALPABLY INCORRECT

The trial court abused its discretion by denying reconsideration of the February 4, 2025 dismissal with prejudice. Under *R. 4:49-2*, reconsideration is appropriate when the court overlooks key facts or makes palpably incorrect legal rulings. Dismissals are reviewed for abuse of discretion and must be reversed if arbitrary or if relevant evidence is ignored. *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Here, the court disregarded Tenant's TCIS admissions of retail sales from 2018 through May 2024 and October 2024 in violation of Lease § 3. P051-0536, TCIS ¶¶ 35-36, 41-42; Trial Transcript at 1T19:14-1T20:4; Motion Transcript at 2T6:15-2T7:19. The Landlord also showed the court misapplied *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967), to a notice to cease (Point I).

In addition, the sua sponte mid-trial dismissal prevented the Landlord from presenting its second witness. Trial Transcript at 1T21:19-1T22:16; Motion Transcript at 2T8:1-4. This denied a full opportunity to prove its claims and conflicts with New Jersey's preference for decisions on the merits. See *Galik v. Clara Maass Med. Ctr.*, 167 N.J. 341, 356, 771 A.2d 1141 (2001) (quoting *Mayfield v. Cmty. Med. Assocs., P.A.*, 335 N.J. Super. 198, 207, 762 A.2d 237 (App. Div. 2000)). These errors warranted reconsideration, and reversal is required.

CONCLUSION

For the foregoing reasons, Landlord respectfully submits that this Court should reverse the Trial Court's judgment, reinstate Landlord's action for possession and enter a judgment for possession.

Respectfully Submitted,

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