
Superior Court of New Jersey

360 PARKER STREET LLC,

Plaintiff/Respondent,

v.

EVA SOTO,

Defendant/Appellant.

APPELLATE DIVISION

DOCKET NO: A-002837-23-T2

Civil Action

On Appeal from a Final Judgment of the
New Jersey Superior Court, Special
Civil Part, Essex County,
ESX-LT-002025-23

Sat Below: Jeffrey B. Beacham, J.S.C.

BRIEF AND APPENDIX OF DEFENDANT/APPELLANT EVA SOTO

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PROCEDURAL HISTORY

On February 1, 2024, Plaintiff, 360 Parker Street LLC, filed the instant complaint, ESX LT 2025-24, against Defendant. (Da1).

On March 19, 2024, the scheduled trial date was adjourned to April 2, 2024¹.

On April 2, 2024, the court heard Defendant's motion to transfer based on a claim of ownership.

The Court after hearing the pre trial argument of counsel, ruled against Defendant's claim to ownership and immediately proceeded to trial on the nonpayment of rent and entered judgment for possession against Defendant.²

On May 17, 2024, Defendant filed a notice of appeal.

¹ Transcript for March 19, 2024 has number designation 1T.

² Transcript for April 2, 2024 has number designation 2T.

STATEMENT OF FACTS

In March 2000, Eva and Ramon Soto purchased their home, 360 Parker Street, Newark N.J., from Gary Thomas for \$160,000. (2T11-18). With the buyers and seller agreeing that the purchase would be seller financed, Mr. Thomas then provided the Sotos with a mortgage payoff schedule. (2T45-24) (Da15). The Sotos aggressively paid on their mortgage so that by September 1, 2011, they had reduced the mortgage balance to \$110,090. (Da15, Da22).

In 2007, the Sotos, through inadvertence, missed a \$759.12 property tax assessment payment. (Da24). The city of Newark subsequently sold the debt as tax certificate #2008-0391 to AMACO, a third party purchaser of municipal tax liens. (Da24). In August 2011, AMACO served a notice of tax foreclosure on the Sotos. (Da24).

Ramon Soto, a person of little formal education, and his homemaker wife panicked upon receiving the notice of impending foreclosure. (2T46-6). Desperate to save their home and not knowing what to do, they reached out to Angel Nieves, a landlord with numerous properties for whom Mr. Soto had done repair work. (2T22-3, 2T53-12, 2T54-14). They believed Mr. Nieves would have the knowledge to counsel them. (2T22-3, 2T53-12, 2T54-14).

Angel Nieves then told Ramon that he would help. (2T22-3, 2T53-12, 2T54-14). On September 30, 2011, on the instruction of Mr. Nieves, Ramon Soto appeared

at the law office of William Agrait. (Da15, Da22, Da37). Present there were Attorney Agrait, Felix Lopez Montalvo, Esq. and Angel Nieves. (Da15, Da22, Da37). There, Mr. Soto was told that liens on his home totaling \$28,200 needed to be paid quickly if the home was to be saved. (2T14-11, 2T22-3, 2T53-12, 2T54-14). Mr. Agrait then presented Mr. Soto with a rescue plan that involved Angel Nieves making a loan to the Sotos and the Sotos, in the form of collateral to insure repayment of the loan, transferring title in their home to 360 Parker Street LLC, an entity Mr. Nieves had just set up. (2T24-16) (Da15, Da22, Da37). Mr. Agrait further explained to Ramon Soto that if he and his wife made monthly payments of \$2,100 to Angel Nieves for the next twelve (12) years, the loan would be repaid and they would regain title to their home. (2T24-16, 2T53-15, 2T53-1).

At the instruction of the lawyers, Ramon Soto then called his wife to the office. (2T53-20). Once she had arrived, the Sotos then executed the documents they were told were necessary to the plan that would save their home. (2T53-20). Among the documents executed was a HUD-1 settlement agreement, a deed transfer and a mortgage note assumption. (1T4-19, 2T13-6) (Da15, Da22, Da37). One document not presented to the Sotos nor executed was a sales contract involving the home. (1T4-19, 2T13-6) (Da15, Da22, Da37).

Believing that they had done what was needed to save their home, the Sotos walked out of Attorney Agrait's office with no money in their pocket from the

transfer of title, with a higher monthly financial obligation and without title to their home. (2T21-16, 2T53-12) (Da15, Da22, Da37). Now saddled with a \$2,100 monthly obligation to Angel Nieves, Mrs. Soto took on a part time job as a health aide in order to assist her husband with the payments.

In March 2020, Mr. Soto passed away. (2T33-6). Approximately two months later, Angel Nieves called Eva Soto and, addressing her and her daughter Chaianna Fernandez, Angel Nieves then offered to sell the home back to Mrs. Soto for \$300,000. Reminded by Mrs. Soto that he had promised that he would return the home once the loan had been repaid, Angel Nieves then denied having entered into any such bargain.

In September 2023, after making what she believed was the final payment under the loan, Mrs. Soto told Mr. Nieves that she now expected him to give back her home. (2T12-12). Angel Nieves then responded by offering a lease, which Mrs. Soto recognized as his trying to make her a tenant. (2T12-12, 2T54-7) (Da43). Accordingly she refused to sign it or to make any further payments, as she had completed her end of the bargain. (2T31-6) (Da43).

On March 14, 2024, Mrs. Soto was served with a summary eviction action 360 Parker Street LLC v. Eva Soto docket ESX-LT-2025-24. The complaint alleged nonpayment of rent. (Da1).

On April 2, 2024 Mrs. Soto, represented by Essex-Newark Legal Services, made a pretrial motion to have the matter dismissed or transferred to the Chancery Division.

Counsel for Mrs. Soto began by pointing out that under the holding in Essex Property Services, Inc. v. Wood, 246 N.J. Super. 487, 488 (1991) if the predominant relationship between the parties is not that of a landlord and tenant, then the tenancy court has no jurisdiction to hear the matter or enter judgment. (2T11-2, 2T46-24).

Counsel for Mrs. Soto related to the Court how title to the Soto home had come into the hands of the Plaintiff, an LLC owned by Angel Nieves. (2T21-8, 2T22-14, 2T29-16) (Da15, Da22, Da37). Counsel further offered that the transfer of title had involved a foreclosure rescue plan that included the issuance of a loan by Angel Nieves to the Sotos to pay off a tax lien and the promise that at the completion of a twelve year period of the Sotos making payments to Angel Nieves, title would be transferred back from the LLC to the Sotos. (2T21-8, 2T24-16).

Counsel next stated that in 2023 Mrs. Soto had made the final payment on the loan but that Angel Nieves was now refusing to return title of the home to her. (2T12-12).

The response by plaintiff's attorney was that a sale had taken place and that Mr. Nieves, through 360 Parker LLC, now owned the property. (Da15, Da22, Da37). Counsel further argued that given the sale, Mrs. Soto was a tenant of Mr. Nieves.

(1T14-19, 2T13-6, 2T14-1, 2T15-1) (Da15, Da22, Da37). However, counsel for Plaintiff admitted that there was no contract of sale as to the property's ownership. (1T4-19, 2T13-6, 2T14-1, 2T15-1). Counsel also agreed that there was no written lease that might evidence the existence of a landlord tenant relationship. (2T30-20, 2T31-3) (Da43).

Following the conclusion of argument by counsel, the Court, and without having had the benefit of any witness testimony or a careful examination of the documentary evidence, rendered its decision declaring Defendant to be a tenant and denying Defendant's motion to transfer. (2T50-21) (Da11).

If we look at all of the evidence in this case, all of the evidence in this case indicates that the Sotos were paying rent, \$2,100 every month for a long time. They were not making payments to payoff the mortgage. They were paying \$2,100. The Court finds there's no evidence of fraud. There's no basis of fraud. There's no reason to transfer this case, so your request to transfer the case is denied. (2T51-21, 2T52-1).

Having denied the motion, the Court then proceeded to conduct a nonpayment of rent trial and, finding for the Plaintiff, entered Judgment for Possession. (Da12).

LEGAL ARGUMENT

I. **THE TENANCY COURT LACKED JURISDICTION TO DETERMINE ISSUES OF OWNERSHIP AND ERRED IN DOING SO PARTICULARLY WITHOUT THE BENEFIT OF WITNESS TESTIMONY OR CAREFUL EXAMINATION OF DOCUMENTARY EVIDENCE (2T11-25)**

The prerequisite to jurisdiction in tenancy court is the existence of a landlord-tenant relationship. N.J. Ct. R. 6:1-2(a)(3); Carr v. Johnson, 211 N.J. Super. 341, 348 (App. Div. 1986); Essex Prop. Servs., Inc. v. Wood, 246 N.J. Super. 487, 491 (1991). In Carr, the Court recognized that the legislature:

“did not intend for the Special Civil Part (as successor to the County District Court) to determine disputed land titles and complex equitable issues in the context of a landlord-tenant dispossession action... since it is a summary proceeding in which discovery is not permitted.”

Quoting Cahayla v. Saikevich, 119 N.J. Super. 116, 118 (Dist. Ct. 1972), the Court in Carr went further by making clear that “in fact, if proof of title is required in tenancy actions the court loses jurisdiction of the action.” 211 N.J. Super. 341, 348.

The holding in Carr also makes clear that a defendant does not need title documents to assert a defense that she is an owner in fact or in equity. Carr, 211 N.J. Super., 345.

That the plaintiff gives rent receipts, marked rent, to a defendant and the defendant is aware that the plaintiff is marking payments from the defendant to the

plaintiff as rent is not dispositive of a landlord tenant relationship. Carr, 211 N.J. Super, 344-345; Howard v. Diolosa, 241 N.J. Super. 222, 227 (App. Div. 1990).

Further, equitable defenses and remedies directed to title of the property are substantial issues, which necessitate transfer or dismissal. Carr, 211 N.J. Super. 341, 348. According to Carr, a trial court in tenancy actions does not have the power to include a determination regarding equitable defenses or counterclaims that relate to questions of ownership and doing so would be to permit counterclaims affecting title of property. Id. Therefore, the matter **must** be transferred as the court lacks jurisdiction to hear the matter. Id.

In the case at bar, counsel for Eva Soto at the pre trial hearing on the Defendant's motion to transfer made clear that the Defendant had equitable defenses and affirmative causes of action all of which would point to Ms. Soto's claim of ownership to the property. Counsel also stressed that documentary evidence including the HUD-1 and the entries therein pointed to the Sotos having been victims of a foreclosure rescue scam. Despite this, the Court, ignoring the holding in Carr, nevertheless proceeded to rule on the merits on the issues of ownership and did so in the context of a pre trial motion without the benefit of any witness testimony or a careful examination of the documentary evidence. Defendant submits that this failure by the trial Court to adhere to precedent or to have provided Defendant with a plenary hearing before deciding ownership violated Defendant's right to due

process. Accordingly, Defendant submits that the trial Court's findings of fact and entry of judgment must be vacated.

CONCLUSION

For all of the reasons raised above, the trial Court's findings and its entry of judgment of possession against Defendant must be vacated.

Respectfully submitted,

Dated: July 25, 2024

By:  _____

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and,

By:  _____

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Eva Soto

360 PARKER STREET L.L.C.

Plaintiff/Respondent

v.

EVA SOTO

Defendant/Appellant

SUPERIOR COURT OF NEW JERSEY

Appellate Division

DOCKET NO: A-002837-23-T2

Civil Action

On Appeal from a Final Judgment of the
New Jersey Superior Court, Essex
County ESX-LT-002025-24

Sat Below: Jeffrey B. Beacham, J.S.C.

PLAINTIFF/RESPONDENT 360 PARKER STREET LLC RESPONSE TO
DEFENDANT/APPELLANT EVA SOTO BRIEF AND APPENDIX

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18 *N.J. Practice (McDonough, County District and
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STATEMENT OF THE CASE

PROCEDURAL HISTORY

Plaintiff/Appellee concurs with Defendant/Appellant's rendition of the Procedural History of the Instant Case.

STATEMENT OF FACTS

Defendant failed to submit Counsel Certification, or Defendant Certification regarding the Motion for Transfer. Plaintiff asserted that Plaintiff's factual representations regarding discussions and occurrences in his Motion for Transfer is speculation, "not based on observation, or fact" but based upon what a dead man told his wife and now she is telling her Attorney" (2T15-19)(2T43-4)

The record substantiates that on September 30, 2011 Angel Neives assumed the Mortgage Note between Ramon Soto and Eva Soto, the original mortgagors; the original Mortgagee/Lender was Gary Thomas, Kaitelin Thomas as Beneficiary of the estate of Gary Thomas. (Da15)

The new borrower Angel Neives for permission to assume the Mortgage promised to pay the outstanding principle and interest a lump sum of 20,000 toward the outstanding balance of 110, 909.78. (Da15) A schedule of payment was attached to the agreement. (Da18) Also, a Hud -1 and a Deed Transfer was completed and executed by the parties. (Da 22, Da37) According to the records all parties were represented by Attorneys. (Da37) (Da38)

The record indicates prior to the above Mortgage note assumption, HUD 1, and Deed Transfer, AMACO, a third party purchase of municipal tax lien, in August 2011 served a Summons and Civil Action Foreclosure Complaint of tax foreclosure on the property. (Da 26).

After reviewing all the evidence for the Motion to Transfer, the Landlord Tenant Court found that the evidence in the case was indicative of the Defendant paying rent, 2100 dollars every month for a long time. Defendant was not making payments to payoff the Mortgage. Moreover, there is no evidence of fraud. 2T51-21.

Consequently, the Court proceeded with the trial for nonpayment. The Trial Testimony elicited that Plaintiff is the owner of 360 Parker Street LLC. The rent charged to Defendant-Tenant is 2100 dollars per month. Defendant owes rent from October to April---7 months. The balance owed is 14, 700 dollars. 2T52-9.

Before Defendant cross examined Plaintiff, Defendant Ms. Soto requested to speak to the court which is referred to on the Transcripts as “Colloquy”. Ms. Soto asserted (no indication she was under Oath on the record) that she had been in the house since 1992, not 2013. 2T53-12 She admitted that a Lien was on the House and her husband told the Plaintiff to pay the Lien and then Ms. Soto and her husband would pay Plaintiff. Then once Defendant paid the Plaintiff the house

would return to Defendants. But Defendant never put anything in writing. 2T53-12

Moreover, Ms. Soto asserted that she was not present at the time of the communications between Plaintiff and her husband because she was at chemotherapy with her mom. But she told them to make sure that the house is being returned to Defendant but Plaintiff did not put in writing that the house will be returned back to Defendants. 2T53-20

Ms. Soto further asserted that she paid for water and the roof collapsed and Plaintiff failed to pay for it, and that is when he came to her with a lease and she refused to sign the lease. Moreover, she asserted that Defendants were paying the Mortgage and even paid extra . 2T54-19

Defendant cross examined Plaintiff regarding roof repairs. Plaintiff asserted that Defendant called the city of Newark and was willing to do the repairs but Defendant did not allow him inside the house. Once Defendant was permitted inside the house, the repairs were completed to the City of Newark's satisfaction and to the inspector's satisfaction. 2T58-3.

Defendant direct examined Ms. Soto only as the case relates to a collapsed roof that allegedly was never repaired by Plaintiff. 2T-59:16

The Court advised Defendant that he lacks an agreement that is in writing, her husband should have put the Agreement to sell back the property in writing. Moreover, as evidenced in the Motion, the Rent had been paid for a

long time. The Judge Ordered payment of 14,700 dollars and possession of the property. 2T61-2

Finally, the Court denied the requests for a Stay of the Ruling in the Case. 2T62-15

SUMMARY OF ARGUMENT

The Instant case involves Defendant's Motion to Transfer the Special Civil-Part Landlord Tenant Case to the Chancery Division or the Law Division. 2T50-21. The Defendant is asserting no rent is due because Defendant owns her home after having made all of the necessary payments pursuant to the agreement Defendant made with 360 Parker LLC. 2T51-5.

The Court used the relevant factors and legal standard related to transfer of Landlord Tenant cases established under *Morroco v. Felton* 112 N.J. Super 226 (1970) and *Rosanna's Figure Salon v. Bloomfield Top*, 253 N.J. Super. 551 (1992). The Court concluded after an extensive Motion hearing that all evidence supports that Defendant was paying rent, no evidence that they were making payments to pay off a Mortgage, and no indication of fraud. 2T51-21

The Court later conducted a Trial for unpaid rent and entered judgment for possession and unpaid rent. The Court reasoned in part again that no agreement existed that evidenced any agreement to transfer Ownership to Defendant and

the information on the written piece of paper states repeatedly “rent” . 2T61-2-23

The Defendant’s Appellate Brief concentrates on the issue of whether the Landlord-Tenant Court had “Jurisdiction to Determine Issues of Ownership and Erred in Doing So Particularly without the Benefit Of Witness Testimony Or Careful Examination of Documentary Evidence.” (Defendant Appellate Brief at 7)

Plaintiff concurs with the result of the Landlord Tenant case and the reasoning of the decision; moreover, the Plaintiff asserts additional points to buttress the Court’s Decision.

The dispositive issue is whether a Landlord Tenant Relationship exists thereby giving the Landlord Tenant Court Jurisdiction to hear the casw. The Plaintiff established on uncontroverted direct examination of Mr. Nieves: (1) Plaintiff Owned the Property (2) Evidence existed that a Landlord Tenant relationship exists between the parties (3) Defendant owed money to the property owner Landlord. These three points will be argued in the instant brief via case law. 2T-51-21,

Moreover, the Court on the motion ruling and the trial issue concluded that no Written Agreement was presented by the Defendant evidencing an agreement to sell the property back to the Defendant upon payment of rent. 2T61-2

Also, Plaintiff informed the Court that a Mortgage note of the Private

mortgage showed “nothing” about a right of reversion---a right of Defendant to claim this property in any type of reversion. 2T14-19

Moreover, a Deed was prepared with evidence of representation by an Attorney and duly signed by owner of property. Da37 The Defendant then paid rent of 2100 a month for a long time. 13 years evidencing the arrangement by notations regarding payment of Rent. 2T15-10

The Court’s Ruling on the Motion and the Trial were based on justifiable jurisdiction as a Judge in Landlord Tenant Case; and in New Jersey landlord-tenant cases, the standard of review gives substantial deference to the trial court's factual findings, which the Appellate court should uphold if the findings are supported by sufficient credible evidence in the record.

The instant Appeal must be denied because the Landlord Tenant Court had jurisdiction, and prudently applied relevant law to sufficient credible evidence on the record.

LEGAL ARGUMENT

POINT I

THE TENANCY COURT CORRECTLY RETAINED JURISDICTION TO DETERMINE THE MOTION FOR TRANSFER AND THE TRIAL FOR POSSESSION AND NON-PAYMENT BECAUSE THE INSTANT CASE FACTUALLY DEALT WITH LANDLORD TENANT RELATIONSHIP

Carr v. Johnson, 211 Super 341 (App. Div. 1986) (citing N.J.S.A. 2A: 18-59;

Marini v. Ireland, 56 N.J. 130, 136 (1970) (*Vineland Shopping Center, Inc. v DeMarco*, 35 N.J. 459, 463 (1961)) asserts to ensure the quickness of the remedy, the Legislature has limited the right of appeal to lack of jurisdiction only.

Defendant asserts in his brief that the “Tenancy Court lacked jurisdiction to determine ownership and erred in doing so particularly without the benefit of witness testimony or careful examination of documentary evidence”. (Defendant Brief at 7)

“*N.J.Ct. R 6-1-2(3)* asserts that the Special Civil Part retains Jurisdiction over Summary Landlord-Tenant Actions. Plaintiff established the Landlord/Tenant relationship by Verified Complaint For Nonpayment of Rent (Da3), Certification of Lease, Registration Statement Residential, and Summons which is required for Notice. (Da6) (Da9)

Also, the verified Complaint Landlord Tenant specifically checks the box that the “Owner has not given the tenant(s) an option to purchase the property.” (Da3)

The Landlord Tenant Court conducted Testimony regarding the basis for the Complaint and the remedy of payment and possession for the owner. 2T52-9

Q Mr. Nieves, are you the owner of 30 -- are you a member of 360 Parker Street LLC which owns 360 Parker Street, Newark, New Jersey?

A Yes, I am.

Q And are you owed -- is the rental \$2,200?

A Yes, it is.

Q Or \$2,100 a month?

A Yes, it is.

Q And they owe from October through April which is seven months. Correct?

The testimony regarding Ownership of the property was never disputed under Oath on the record Defendant never cross-examined Plaintiff for truthfulness regarding Ownership of the property or past due rent. (Ms. Soto engaged in a colloquy 2T53-9) Later after the colloquy on Direct Examination Defendant questioned Ms. Soto on issues of lack of Landlord Repairs. 2T59-9

Finally, the Court did examine carefully documentary evidence. The record reflects that no evidence existed that showed a right of revision of property to the Defendant. The Court moreover informed the Defendants that the evidence supported the payment of Rent and no evidence of Fraud. 2T51-21

POINT II

THE FACTS OF THE CASE APPLIED TO RELEVANT CASE LAW AND STATUTES LACK SUPPORT FOR TRANSFER TO THE CHANCERY COURT OR THE LAW DIVISION CIVIL PART

Defendant cites *Carr v. Johnson*, 211 N.J. Super 341 (App. 1986) to support his argument that the instant case should be transferred to the Chancery Court or Law Division Civil Part. (Brief at 7)

Carr v. Johnson held that the Special Civil part lacked jurisdiction to adjudicate the issues raised by the parties in the dispossess action because a landlord-tenant relationship did not exist between the parties. The decision was based on the understanding that the summary dispossess statute N.J.S.A. 2A:18-51 et seq., is suppose to provide landlords with a quick remedy for possession. *Id.* At 347 (Citing 18 N.J. Practice (McDonough, County District and Municipal Courts)

(2ed 1971), § 1567 at 303 *Accord Vineland Shopping Center, Inc. v DeMarco*, 35 N.J. 459 , 462 (1961). The summary dispossess remedy under N.J.S.A. is created by the legislature and the provisions should be strictly construed. *Id.* At 347 citing *Cahayla v. Saikevich*, 119 N.J. Super. 116 , 118 (Cty.Ct. 1972); *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 , 123 (1967)

The facts of *Carr* are distinguishable from the instant case where Landlord Tenant relationship was at issue. Plaintiff argued above that the Court conducted a trial where Plaintiff established the relationship of Landlord Tenant under Oath. 2T52-9 The testimony is not controverted and no evidence on the record corroborates that the Judge precluded Ms. Soto from testifying as to Ownership of the property or the lack of owing rent.

In *Carr*, a copious record exists that outlines through trial and documentation that many complex issues existed in the case, and the Landlord-Tenant Judge even questioned whether he had jurisdiction over the multifaceted and confusing case. *Id.* at 346

Also, *Carr* citing N.J.S.A. 2A: 18-52 asserts furthermore a deed or other writing may be received for the purpose of showing the right to possession of the premises for the recovery of which the proceedings are brought. *Id.* At 347 In the instant case, factually the Plaintiff produced

the Deed and other writings that were indicative of ownership. (Da15)
(Da38)

The prime requisite for a summary dispossess action is the existence of a landlord-tenant relationship between the parties. *Carr* at 348 (Citing *Cahayla v. Saikevich*, 119 N.J. Super 116, 118 (Cty. Ct. 1972) The instant court in the Motion decision and the Decision for Plaintiff's possession of Property and Defendant's payment of Rent clearly applied the facts of the case to decide a landlord tenant relationship existed among the parties as opposed to the payment of a mortgage by Defendant. All the evidence substantiated the payment of rent with no evidence that the payment of rent and no evidence that if Defendant paid the rent the property would be returned *back* to Defendant. Moreover, no evidence of fraud 2T50-13

Defendant also cites *Howard v. Diolosa*, 241 N.J. Super 222, 227 (App. Div. 1990) The case is inapplicable to the instant facts. First, the case was heard in the Chancery Court and not a landlord tenant court, second an uncertain leaseback agreement existed, and third the bank was involved in the matter. In the instant case, landlord tenant relationship has been established, no leaseback agreement exists; and no bank is involved in the legal action.

POINT III

THE LANDLORD TENANT COURT CORRECTLY APPLIED THE FACTS OF THE CASE TO THE SEMINAL SPECIAL CIVIL PART TRANSFER CASE *MORROCCO v. FELTON* 112 N.J. 226 (Law Div. 1970)

In deciding the case of *Carr v. Johnson*, 211 N.J. Super 341, Appellate Court asserted the factors articulated in *Morocco v. Felton* 112 N.J. 226 (Law) should be considered in handling Transfer cases. The instant court correctly applied *Morocco v. Felton* in correctly deciding the case : 2T50-21

So the application is to transfer and consolidate this action into the Chancery Division or to the Law Division. And we have to look at the criteria *Morocco versus Felton*. . .

Morocco v. Felton articulated the factors that the court must consider in determining whether the case should be transferred to another Court: (1) The importance to the public good; (2) Complexity of the issues presented; (3) Amount in controversy, alleged extensiveness of defects, costs of repairs, amount of rent claimed in default (4): The need for equitable relief of a permanent nature , such as guarding against retaliatory measure or otherwise preserving the jurisdiction of the Court: (5) The need for clarification or reexamination of the substantive law involved, requiring a right of appeal to the parties on non-jurisdictional matters.

The Court also considered *Bloomfield Tp. v. Rosanna's* 253 N.J. Super 551

(App. Div. 1992) which corroborated the factors cited in *Morrocco v. Felton* in transferring of cases that was approved by the Appellate Court in *Carr v. Johnson*, 211 N.J. Super., 341, 349 (App. Div. 1986)

As mentioned repeatedly in the brief the Court found “all the evidence in this case indicates that the Sotos were paying rent.” The factors mentioned in *Morrocco v. Felton* do not apply to the instant case. Moreover, as Plaintiff counsel makes clear in his rebuttal the facts in the Motion are speculative because of no Certification and the many alleged statements that are material to the alleged issue of ownership were made by a deceased man. 2T15-20
Moreover, as the Court noted the alleged right to repurchase the agreement was never reduced to any writing for the Court to evaluate. 2T61-2

Finally in New Jersey landlord-tenant cases, the standard of review gives substantial deference to the trial court's factual findings, which the court ““must uphold ... so long as those findings are supported by sufficient credible evidence in the record. ” *State v. Handy*, 206 N.J. 39, 44, 18 A.3d 179 (2011) (quoting *State v. Elders*, 192 N.J. 224, 243, 927 A.2d 1250 (2007)).

CONCLUSION

The Tenancy Court correctly retained jurisdiction to determine the Motion for

Transfer and the Trial for Non-Payment and Possession because the Court established a Landlord-Tenant Relationship pursuant to *N.J. Ct. R. 1-2(3)* based upon the Evidence in the Case, and no testimony under Oath was given that disputed the Landlord Tenant relationship based upon the Evidence.

Also, *Carr v. Johnson* 211 N.J. Super 341 (App. 1986) is distinguishable from the instant case because in *Carr* complex issues existed and a detailed confusing record when the instant case is based on speculation without a certification on any evidence contravening a Landlord Tenant relationship. 2T52-9

Moreover, the Landlord Tenant Court specifically cited the relevant standard under *Morocco v. Felton*, 211 N.J. 226 (Law Division 1970). The Court cited the case and after application of the facts and the speculation without a Certification, the Court concluded no evidence of fraud and the transfer was meritless. 2T51-12

Also, the Court conducted a Trial where Landlord Tenant relationship nor the owing of rent was never controverted by Defendant on the record under Oath. 2T51-9 No evidence of any agreement was presented in writing that Plaintiff agreed to give the property to Defendant after payment of a certain amount of rent. 2T61-2

Lastly, in New Jersey landlord-tenant cases, the standard of review gives substantial deference to the trial court's factual findings, which the court “must uphold ... so long as those findings are supported by sufficient credible evidence in

the record. “ *State v. Handy*, 206 N.J. 39, 44, 18 A.3d 179 (2011) (quoting *State v. Elders*, 192 N.J. 224, 243, 927 A.2d 1250 (2007)).

Wherefore, Plaintiff Requests that the New Jersey Appellate Court Affirm the Trial Court’s findings and its entry of judgment granting possession and payment of rent owed to Plaintiff.

12/10/2024

Respectfully submitted,

LAW OFFICE OF CHARLES DAWKINS JR.

s/Charles Dawkins Jr.
Counsel for Plaintiff
360 Parker St., LLC

Superior Court of New Jersey

360 PARKER STREET LLC,

Plaintiff/Respondent,

v.

EVA SOTO,

Defendant/Appellant.

APPELLATE DIVISION

DOCKET NO: A-002837-23-T2

Civil Action

On Appeal from a Final Judgment of the
New Jersey Superior Court, Special
Civil Part, Essex County,
ESX-LT-002025-23

Sat Below: Jeffrey B. Beacham, J.S.C.

REPLY BRIEF OF DEFENDANT/APPELLANT EVA SOTO

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant Eva Soto relies on the Statement of Facts and Procedural History set forth in her original brief. She adds only that on July 24, 2024 Plaintiff filed an action to Quiet Title and for Non Payment of Rent, 360 Parker Street LLC v Eva Soto Docket No. ESX L 004217-24 wherein Plaintiff relies on the very tenancy court decision here on appeal as support for its claims.

SCOPE of REVIEW

This appeal is from the decision of the tenancy court to retain jurisdiction despite Defendant Eva Soto's claims that she was not a tenant but the homeowner whose title to the property had been fraudulently taken from her and her late husband by the Plaintiff. Rendering its decision on ownership, the trial court ignored the bright line this Court established in Carr v. Johnson, 211 N.J. Super. 341, 348 (App. Div. 1986) holding that the legislature:

“did not intend for the Special Civil Part (as successor to the County District Court) to determine disputed land titles and complex equitable issues in the context of a landlord-tenant dispossession action... since it is a summary proceeding in which discovery is not permitted.”

As such, the trial court's judgment is subject to plenary review. See Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan, 140 N.J. 366, 378 (1995) (holding that “a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.”).

LEGAL ARGUMENT

REPLY TO PLAINTIFF'S LEGAL ARGUMENT

In the section of its brief titled SUMMARY OF ARGUMENT, Plaintiff offers that the Court's Ruling on the motion and the trial were based on "justifiable jurisdiction as a judge in [a] landlord tenant case." Plaintiff thereafter fails to cite to any legal authority for "justifiable jurisdiction as a judge in [a] landlord tenant case" or explain how such jurisdiction justified the tenancy court's adjudication of the parties contested issues of ownership and on the basis of hearing argument on a pre trial motion to transfer.

In Point I of its brief, the Plaintiff asserts that due to the case's factual basis in a landlord-tenant relationship the trial court properly had jurisdiction to determine the motion for transfer and hold trial for non payment of rent. This position mirrors that of the trial court in the failure to understand that given the holding in Carr v. Johnson the jurisdiction the trial court initially had in the matter terminated once substantial issues directed at ownership of the property were raised.

In Point II of its brief, Plaintiff seeks to distinguish the instant case from Carr in that here the Plaintiff produced the deed and other writings that were indicative of ownership.

Misrepresenting the record, Plaintiff asserts that unlike Carr, there were no substantial issues raised below directed at title. This attempt to minimize ignores that given Ms. Soto's claims that she was not a tenant but the victim of a foreclosure rescue scam perpetuated by Plaintiff the court below did not have before it a contract of sale for the property. The court also did not have a written lease evidencing a landlord-tenant relationship between the parties. The record instead is that faced with the non existence of a contract of sale, the court below undertook a cursory examination of closing documents including the HUD 1.

Defendant submits that given the issues going to ownership that were present below no defense exists for the court's failure to adhere to precedent. This failure on the court's part and the judgment it issued deprived Ms. Soto of her right to due process.

In Point III of its brief, Plaintiff declares that the factors outlined in Morocco v. Felton, 112 N.J. Super 226 (Law Div. 1970) do not apply to the instant case. The Plaintiff makes much of the fact that Mr. Soto is now deceased and that the alleged agreement for the return of the property was never reduced to writing. But staying with writings, the facts below are also that there was no contract of sale executed or a written landlord tenant lease. This begs the question of why, if indeed the Soto's sold their home, there is lacking an executed contract evidencing both the Soto's intent to sell their home and the terms of such transaction. Similarly, why is there

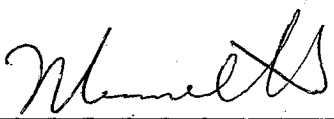
not a written lease evidencing that the Soto's would be remaining in possession now as tenants. Defendant submits that these questions, the import of which was apparently lost on the court, go to the very heart of the defenses and counterclaims underlying her motion to transfer.

CONCLUSION

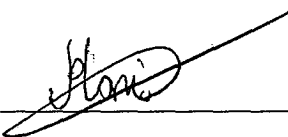
For these reasons, Defendant Ms. Soto respectfully asks this court to vacate the trial court's judgement on ownership and for possession.

Respectfully submitted,

Dated: January 13, 2025

By:  _____

Maria D. Castruita (ID 010992005)
and,

By:  _____

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