
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002954-23

MARC CELLER,

CIVIL ACTION

Plaintiff-Appellant,

ON APPEAL FROM

v.

SUPERIOR COURT, LAW DIVISION,
CIVIL PART
HUDSON COUNTY

ESTATE OF VINCENZA
PETRUZZELLA, 1017 PARK
AVENUE, LLC, VITO
PETRUZZELLA, LAZZARO
PETRUZZELLA, GAETANO
PETRUZZELLA,

Respondents.

Honorable Joseph A. Turula, Defendants-
P.J.Cv., Sat below

BRIEF AND APPENDIX FOR
PLAINTIFF-APPELLANT, MARC CELLER

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Date: September 4, 2024

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PRELIMINARY STATEMENT

The Plaintiff-Appellant appeals the trial court's denial of both of his Motions for Summary Judgment and Reconsideration, as well as the Judgment of no cause. This matter has been ripe for adjudication since 2020, when the Appellant's statement of material facts was not disputed by the Respondents. Summary judgment was appropriate again in 2021, when the trial court adopted all of the Appellant's statement of undisputed material facts, but inexplicably denied summary judgment on the basis of evidence that it did not find as fact. After waiting over two years for trial, the parties relied on the same facts that were found by the trial court in deciding the second Motion for Summary Judgment. At the trial, the trial court used these same facts to dismiss the Complaint and enter a Judgment of no cause, without any accompanying letter, memorandum, or opinion. While all of the orders now being appealed found in favor of the Respondents, none disposed of their Counterclaim.

Despite the straightforward and undisputed nature of the facts of this simple Consumer Fraud Act claim, the Appellant has unnecessarily waited nearly five years due to the trial court's unnecessary delay and refusal to decide issues of law — not fact. When the trial date finally arrived, the trial court disposed of the case by blindly embracing the two prior erroneous decisions, and failing to engage in any meaningful legal analysis of its own.

PROCEDURAL HISTORY

On December 8, 2019, the Appellant filed the Complaint in this matter against the Defendants-Respondents, the Estate of Vincenza Petruzzella, 1017 Park Avenue, LLC, Vito Petruzzella, Lazzaro Petruzzella, and Gaetano Petruzzella, the members of 1017 Park Avenue, LLC (Pa027).

On January 2, 2020, the Respondents filed an Answer and Counterclaim, alleging that the Appellant was liable for unpaid rent (Pa034).

On April 15, 2020, the Appellant filed a Motion for Summary Judgment, and the Respondents cross moved on May 1, 2020. The trial court denied both motions in a Letter of Opinion filed on May 22, 2020 (Pa001-007).

On June 16, 2020, the Appellant filed a Motion to Reconsider, which the trial court denied on July 10, 2020 (Pa008).

On September 16, 2020, the trial court granted the Respondents Motion to File an Amended Answer and Counterclaim (Pa115).

On November 15, 2020, the Appellant filed a second Motion for Summary Judgment, which the trial court denied in a Memorandum of Decision on February 8, 2021 (Pa010-Pa019).

On March 1, 2021, the Appellant filed a second Motion to Reconsider, which the trial court denied on May 5, 2021 (Pa020).

On October 2, 2023, counsel for all parties appeared for trial and stipulated to facts for the trial court's consideration. On the same date, the trial court entered a Statement of Verdict of no cause (Pa024).

On May 28, 2024, the Appellant filed a Notice of Appeal (Pa199).

On July 22, 2024, the Appellant filed a Motion to Extend Time to File Appellant's Brief, which was granted on August 5, 2024 (Pa025).

STATEMENT OF FACTS

In August, 2015, the Appellant entered into a lease for a rent-controlled apartment then owned by Vincenza Petruzzella (Pa049; Pa133). Mrs. Petruzzella died in November, 2016, and title to the property transferred to the Respondent, 1017 Park Avenue, LLC (Pa091; Pa130).

After learning that he had paid in excess of the legal rent permitted by the rent control ordinance, the Appellant commenced this action against the Respondents, seeking treble damages for the rent overcharge, pursuant to the New Jersey Consumer Fraud Act ("CFA") (Pa027). In the Complaint, the Appellant specifically alleged that he had been overcharged for the period from August, 2015 through December, 2019. Id.

Relying on the official documents from the City of Hoboken establishing the legal rent (Pa072-73; Pa077-86; Pa159-160; Pa164-173), the Appellant filed a Motion for Summary Judgment. Without disputing any material facts, the

Respondents filed a Cross Motion for Summary Judgment, arguing that (1) the rent control ordinance barred refunds of rent overpayments beyond two years, and (2) the Appellant owed back rent based on a tax surcharge increase that was approved by the City of Hoboken in 2019 (Pa094-Pa). The Appellant argued in opposition that N.J.S.A. 2A:14-1, the statute of limitations applicable to his CFA claims, preempted the rent control ordinance's two-year cap, and that the alleged tax surcharge rent increase was never effectuated by the service of a notice to quit, as required by law. In reply, the Respondents submitted a certification with a notice to cease attached, but misrepresented to the trial court that it was a notice to quit (Pa109).

In denying the Appellant's first Motion for Summary Judgment, the trial court expressly found that the CFA did apply to the Respondents' violations of the rent control ordinance, and that 1017 Park Avenue, LLC was a professional seller subject to CFA liability (Pa002). The trial court also found, however, that the rent control ordinance's two-year limitation period applied. Id. Even though no facts were in dispute, the trial court nonetheless denied both motions, holding that genuine issues of material fact existed as to whether the Appellant owed back rent based on the tax surcharge. Id.

Regarding the Appellant's specific argument that no notice to quit was ever served, the trial court mistakenly relied upon the notice to cease that the Respondents included as an exhibit in their reply certification. Id. The trial court went along with

the Respondents' misrepresentation, and mistook the notice to cease for a notice to quit. This error led the trial court to wrongly conclude that the notice to cease was material to the issue of whether the Appellant was required to pay the tax surcharge increase, and thus liable on the Counterclaim. Id. Thus, while the trial court correctly stated the law that a notice to quit was a legal prerequisite to increase the rent, it misapplied the law to the facts before it. Instead of recognizing that the Respondents' exhibit was in fact a notice to cease and not a notice to quit, the trial court erroneously ruled that there was "a question as to whether Plaintiff was required to pay the surcharge in light of the notices sent to Plaintiff." Id.

The Appellant filed a Motion to Reconsider, pointing out the trial court's conflation of the notice to cease with a notice to quit, and the absence of any notice from the Respondents' statement of material facts. The Appellant also argued that the ordinance's two-year cap was preempted by N.J.S.A. 2A:14-1. The trial court addressed neither argument in denying the Appellant's Motion for Reconsideration (Pa008).

After his Motion for Leave to Appeal was denied, the Appellant filed another Motion for Summary Judgment. This time, the trial court adopted the entirety of the Appellant's statement of undisputed material facts, and completely disregarded the Respondents' statement (Pa011). Without providing any insight as to its arithmetic, the trial court concluded that the Appellant owed \$702.00. Id. Rather than analyze

the legal arguments pertaining to the validity of any rent increase, the trial court merely regurgitated the Respondents' calculation of alleged back rent, which included the tax surcharge that was never properly passed along to the Appellant during his tenancy by service of a notice to quit. Id. Additionally, the trial court again ignored the Appellant's legal arguments pertaining to preemption and the notice to quit. Id.

Given the trial court's failure to provide any rational explanation for its decision, the Appellant filed a second Motion to Reconsider. The Appellant pointed to (1) the arbitrariness of the trial court's calculation of the rent overcharge beginning in February, 2018 (even though the first overpayment was in May, 2017); and (2) the trial court's wholesale adoption of the Respondents' arithmetic, which factored in the disputed tax surcharge without ever addressing its validity. The trial court again ignored the preemption argument, offering no explanation as to why N.J.S.A. 2A:14-1 did not apply (Pa020).

After seven adjournments, the matter finally proceeded to a bench trial where the parties stipulated to the same facts upon which the second motion court relied to deny summary judgment. 1T8:8-25 to 15:1-23. Without conducting any legal analysis, the trial court simply affirmed the decision of the motion court. 1T20:18-25. As did the four prior erroneous decisions, the trial court completely ignored the legal issues raised by the Appellant of preemption of the rent control ordinance by

N.J.S.A. 2A:14-1, and the Respondents' entitlement to back rent based on the tax surcharge increase in light of their failure to serve a notice to quit. Id. Additionally, the trial court similarly failed to dispose of the Counterclaim. Id.

STANDARD OF REVIEW

The trial court's denial of summary judgment constitutes harmful error, "clearly capable of producing an unjust result." R. 2:10-2. The standard of review of the trial court's decision is abuse of discretion. Exercises of discretion "are entitled to respectful review under an abuse of discretion standard." Serenity Contracting v. Fort Lee, 306 N.J. Super. 151, 159 (App. Div. 1997). If a judge makes a discretionary decision, but acts under a misconception of the applicable law, rather than give the usual deference, the appellate court instead must adjudicate the controversy in light of the applicable law to avoid a manifest denial of justice. State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960). In any case, a "trial court's interpretation of the law and the consequences that flow from established facts are not entitled to any special deference." State v. Pomianek, 221 N.J. 66, 80 (2015) (quoting Manalapan Realty v. Manalapan Tp. Comm., 140 N.J. 366, 378 (1995)).

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED BY DENYING BOTH MOTIONS FOR SUMMARY JUDGMENT WHEN NO GENUINE ISSUES OF MATERIAL FACT EXISTED.

(Raised below: Appellant's Motions to Reconsider)

Summary judgment must be granted when

“the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

R. 4:46-2.

The trial court must not decide issues of fact, but only whether issues of fact exist.

Brill v. Guardian Life Ins. Co., Inc., 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954); R. 4:46-5. To determine whether there is a genuine issue of fact, the trial court must engage in a weighing process like the one used in deciding motions for directed verdicts under Rule 4:37-2(b) and Rule 4:40, and decide whether “the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill supra, 142 N.J. at 540. “An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the

non-moving party, would require submission of the issue to the trier of fact.” R. 4:46-2(c).

This Court must use the same standard as the trial court in reviewing the trial court’s denial of summary judgment. Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016); Bhagat v. Bhagat, 217 N.J. 22, 38 (2014); Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). It must first decide whether there was a genuine issue of fact; if there was none, it must decide whether the trial court’s application of the law was correct. Walker v. Alt. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987). “When no issue of fact exists, and only a question of law remains, this Court affords no special deference to the legal determinations of the trial court.” Templo Fuente De Vida Corp. v. Nat’l. Union Fire Ins. Co., 224 N.J. 189, 199 (2016); see Freedom from Religion Found. v. Morris Cty. Bd. of Chosen Freeholders, 232 N.J. 543, 553 (2018).

It cannot be overemphasized that, in the first Motion for Summary Judgment, the Respondents did not contest any of the Appellant’s Rule 4:46-2(a) statement of undisputed material facts. The fact that the Appellant overpaid the Respondent, 1017 Park Avenue, LLC \$7,526.00 was undisputed.¹ As a matter of law, the trial court

¹ Period	Rent Paid	Legal Rent	Overcharge
Aug., 2015 – July, 2016	\$2,150.00	\$1,991.00	\$1,908.00
Aug., 2016 – July, 2017	\$2,150.00	\$2,009.00	\$1,692.00

embraced the Appellant's position that service of a notice to quit was absolutely essential to the Respondent's Counterclaim for back rent (Pa006).² However, it erroneously found an issue of fact by confusing the notice to cease with a notice quit (Pa006).

Even had the Respondent properly served a notice to quit, the issue of whether the Appellant owed back rent was a purely legal, not factual, issue. Additionally, the trial court further failed to thoroughly analyze the undisputed facts pertaining to the Appellant's ascertainable loss. Since the earliest the increase could have been implemented was June, 2019, the trial court should have logically concluded that the Respondents' Counterclaim for back rent was irrelevant to the Appellant's CFA

Aug., 2017 – Dec., 2017	\$2,150.00	\$2,045.00	\$525.00
Jan., 2018 – July, 2018	\$2,200.00	\$2,045.00	\$1,085.00
Aug., 2018 – Jan., 2019	\$2,200.00	\$2,090.00	\$660.00
Feb., 2019 – July, 2019	\$2,244.00	\$2,090.00	\$924.00
Aug., 2019 – Jan. 2019	\$2,244.00	\$2,122.00	\$732.00

² The Appellant also raised the defense of waiver in his Answer to the Counterclaim and Motion to Reconsider, since the Respondent took no action to collect the alleged rent increase and continued accepting the lower rent for six months. See Carteret Props. v. Variety Donuts, Inc., 49 N.J. 116, 129 (1967); Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 259 (App. Div. 1978); Montgomery Gateway E. I v. Herrera, 261 N.J. Super. 235, 241 (App. Div. 1992).

claims, which were based on rent overpayments from August, 2015 through January, 2019 (Pa027).

It was also undisputed that the tax surcharge increase of \$329.00 per month was approved in May, 2019.³ Even assuming *arguendo* the validity of the ordinance's two-year limitation, the Appellant would still have been entitled to a refund for two years of overpayments. Since he stopped overpaying in January, 2019, the trial court should have entered summary judgment for \$14,739.00 — calculating the overcharge from January, 2017 at \$4,913.00, and trebling it. If the Respondent were entitled to any damages on the Counterclaim, the trial court should have offset them. Instead, the trial court not only failed to engage in this simple analysis to calculate the Appellant's damages, but it left the Counterclaim open, forcing the parties to wait years for a trial and appeal.

³ The Appellant disputed the validity of the tax surcharge because the date of change in ownership used to calculate it was 1988, instead of 2018, when the Estate of Vincenza Petruzzella transferred title to 1017 Park Avenue, LLC.

II. THE TRIAL COURT ERRED BY DISREGARDING THE RESPONDENTS' FAILURE TO SERVE THE DISCLOSURE STATEMENT UPON THE APPELLANT, AS REQUIRED BY THE RENT CONTROL ORDINANCE.

(Raised below: Appellant's Motions for Summary Judgment and Reconsideration)

The rent control ordinance bars a “refund and/or credit of excess rents” if the tenant’s request for a legal rent calculation is not made within two years from the service of the disclosure statement upon the tenant by the landlord. Hoboken, New Jersey, Municipal Code § 155-4(B). The ordinance also disallows a tenant to “collect rental overcharges for a period in excess of two years” as determined by the City, even though the City may determine the actual rent beyond two years. Id., § 155-4(C).

The entire record before the trial court is completely devoid of any evidence of the disclosure statement required by § 155-4(B). The Respondents offered nothing in their undisputed statements of material facts to establish compliance with the ordinance’s disclosure statement requirement, and that fact was never explored by the trial court. This glaring omission by the trial court was absolutely fatal to its analysis of the ordinance, as the two-year clock begins to run only after the disclosure statement is served. The judgment of the trial court must be reversed and remanded for further fact-finding on this issue.

III. THE TRIAL COURT ERRED BY REFUSING TO RULE ON THE LEGAL ISSUE OF PREEMPTION OF THE RENT CONTROL ORDINANCE'S TWO-YEAR PERIOD OF REPOSE BY NEW JERSEY STATE LAW.

(Raised below: Appellant's Motion for Reconsideration)

"[A] court should not reach and determine a constitutional issue unless absolutely imperative in the disposition of the litigation." State v. Crawley, 187 N.J. 440, 451 (2006) (quoting Donadio v. Cunningham, 58 N.J. 309, 325-26 (1971)).

"We do not read the language literally if that would lead to an absurd result or a result completely at odds with the overall statutory scheme. Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000) ("Where a literal reading will lead to a result not in accord with the essential purpose and design of the act, the spirit of the law will control the letter."); Bd. of Educ. v. Caffiero, 86 N.J. 308, 317 ("A statute should not be read literally where such a reading is contrary to its purposes."), appeal dismissed, 454 U.S. 1025 (1981). In construing a statute, we attempt to capture the essence of the law — its logic, sense, and spirit — to achieve a result contemplated by the Legislature. Aponte-Correa, supra, 162 N.J. at 323 (stating that goal of statutory interpretation is "to effectuate the fundamental purpose for which the legislation was enacted" (internal quotation marks omitted)).

Crawley, supra, 187 N.J. at 451-52.

An ordinance may not forbid what a statute expressly authorizes. Brunetti v. New Milford, 68 N.J. 576, 601 (1975). A municipality may not deal with a subject if the State legislature intended its own action — regardless of whether it exhausted the field or touched only part of it — to be exclusive. State v. Crawley, 90 N.J. 241, 250 (1982) (quoting State v. Ulesky, 54 N.J. 26, 29 (1969)). A statute may invalidate

an ordinance even if it does not occupy the field or facially conflict with the local law. Crawley, *supra*, 90 N.J. at 250. Brunetti, *supra*, held that the New Jersey Anti-Eviction Act preempted an ordinance that provided for independent grounds for eviction, even though there was no apparent conflict between the two laws. *See also* Wein v. Town of Irvington, 126 N.J. Super. 410 (App. Div.), *certif. den.*, 65 N.J. 287 (1974); Ulesky, *supra*, 54 N.J. 26; Chester Tp. v. Panicucci, 116 N.J. Super. 229, 234-35 (App. Div. 1971), *aff'd* 62 N.J. 94 (1973); Coast Cigarettes Sales v. Mayor, Coun., Long Branch, 121 N.J. Super. 439, 446 (Law Div. 1972); Dimor, Inc. v. Passaic, 122 N.J. Super. 296 (Law Div. 1973); Barry Gardens v. Passaic, 130 N.J. Super. 369, 380 (Law Div. 1974).

New Jersey has codified statutes of limitations for various causes of action. N.J.S.A. 2A:14-1, *et seq.* The statute of limitations applicable to the Appellant's CFA claim is six years. *See* N.J.S.A. 2A:14-1; Belmont Condominium Ass'n. v. Geibel, 432 N.J. Super. 52, 82 (App. Div. 2013); DiIorio v. Structural Stone & Brick Co., Inc., 368 N.J. Super. 134, 142 (App. Div. 2004) (citing D'Angelo v. Miller Yacht Sales, 261 N.J. Super. 683, 688 (App. Div. 1993)). Certainly, neither the intent nor the effect of the ordinance could be to alter New Jersey statutes or CFA case precedent. The trial court's application of the ordinance undercuts N.J.S.A. 2A:14-1, overrules CFA case law, and produces varying results in CFA claims by tenants depending on the municipality.

IV. THE TRIAL COURT ERRED BY FAILING TO MAKE ANY CONCLUSIONS OF LAW BEFORE ENTERING A JUDGMENT OF NO CAUSE.

(Not raised below)

A trial court “shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury” R. 1:7-4(a). A trial court’s failure to provide findings of fact and conclusions of law “constitutes a disservice to the litigants, the attorneys and the appellate court. Curtis v. Finneran, 83 N.J. 563, 569-70 (quoting Kenwood Assocs. v. Bd. of Adjustment, Englewood, 141, N.J. Super. 1, 4 (App. Div. 1976)). “Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion.” Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). The function of an appellate court is to review the trial court’s decision, not to decide the issues heard below *tabula rasa*. See Estate of Doerfler v. Federal Ins. Co., 454 N.J. Super. 29, 301 (App. Div. 2018). As with any other case, the resolution of this matter “required a careful analysis and the requisite findings to insure a just result.” Bailey v. Bd. of Review, 339 N.J. Super. 29, 33 (App. Div. 2001).

Here, the trial court merely recited the stipulated facts and affirmed the decisions of both motion courts. 1T20:18-25. The trial court provided absolutely no reasons for its decision, and duplicated the errors made by the motion courts. It identified no statute, court rule, or caselaw in arriving at its decision. Id. For the fifth

time, the legal issues raised by the Appellant were completely ignored by the trial court. The trial court paid no attention to the critical issues of preemption of the rent control ordinance by N.J.S.A. 2A:14-1, or whether the Respondents had proven damages based on the tax surcharge increase in light of their failure to serve a notice to quit. Id. Similarly, the trial court failed to either dismiss or enter judgment on the Counterclaim. Id.

CONCLUSION

In four motions spanning the course of four years, the Appellant's cogent legal arguments seeking to adjudicate a legally and factually uncomplicated case without the need for trial have been repeatedly ignored. Most unfortunately, the trial court found issues of material fact where none existed, and skirted decisions of purely legal issues. The denial of summary judgment is totally inappropriate when all parties agree that no genuine issue of material fact exists.

For the foregoing reasons, this Court ought properly reverse all orders of the trial court, and remand the matter for entry of judgment in favor of the Appellant.

LAW OFFICES OF PETER W. TILL

*Attorneys for the Plaintiff-Appellant,
Marc Celler*

Date: September 4, 2024

By:

John V. Salierno, Esq.

MARC CELLER,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Plaintiff-Appellant,	:	DOCKET NO.: A-2954-23
	:	
v.	:	ON APPEAL FROM:
	:	SUPERIOR COURT OF NEW JERSEY
ESTATE OF VINCENZA	:	LAW DIVISION
PETRUZZELLA, 1017 PARK	:	HUDSON COUNTY
AVENUE, LLC, VITO PETRUZZELLA,	:	Docket No. Below: HUD-L-4735-19
LAZZARO PETRUZZELLA,	:	
GAETANO PETRUZZELLA,	:	
	:	Sat Below:
Defendants-Respondents.	:	Hon. Joseph A. Turula, P.J.S.C.
	:	
	:	
	:	
	:	
	:	

DEFENDANTS-RESPONDENTS' BRIEF

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INTRODUCTORY STATEMENT

Plaintiff filed this matter against Defendants 1017 Park Avenue, LLC, the Estate of Vincent Petruzzella, Gaetano Petruzzella, Vito Petruzzella, and Lazzaro Petruzzella (collectively referred to as “Defendants”), alleging breach of contract and consumer fraud against the Defendants as it related to the landlord tenant relationship between the parties, at all times relevant to this matter.

Unfortunately, this appeal is not even the proverbial “second bite of the apple” but actually has become the proverbial “petulant child” that has simply not gotten their way or their desired result so basically Plaintiff just keeps trying to play even after the whistle has basically blown for time. This appeal comes after Plaintiff filed two (2) summary judgment motions, then two (2) more separate motions for reconsideration of the two (2) respective summary judgment motion denials, and then tried to do it again with a *Hail Mary* attempt the day of trial. By way of calculation, this is the sixth attempt by the Plaintiff to commandeer the narrative and the final outcome; this has simply become a waste of resources and an *antithesis* to the interest of judicial economy. Furthermore, the in-depth memorandums of opinion submitted by the trial court below provided clear and indisputable findings of both fact and law that cannot be undone. Clearly, the Plaintiff has

vehemently disagreed with the trial court's findings below, which is why this is the sixth attempt to undo sound judicial decisions and is now a resounding and defiant abuse of the judicial process.

This matter is now before this Court because after years of prolonged and tortured procedural history, the Plaintiff cannot accept the fact that he lost at every step of the fair and impartial process below. Furthermore, Plaintiff has even introduced a point in his appellate brief that was never raised below which is procedurally improper and has also appealed this matter using the incorrect appellate standard of review. Therefore, the trial court's decisions below should not be disturbed as Plaintiff has not met the burden for the requisite standard of review for this appeal and therefore this appeal should be denied.

PROCEDURAL HISTORY MATERIAL AND RELEVANT TO THE ISSUES ON APPEAL

A. The Parties and the Initial Pleadings

On December 8, 2019, Plaintiff Marc Celler ("Plaintiff") filed a two-count complaint alleging breach of contract and consumer fraud in the Superior Court of New Jersey, Law Division, Hudson County. Pa027.¹

¹ "Pa" denotes the Appellant's appendix whereas "a" denotes the accompanying appendix. Transcript references are as follows:

1T= October 2, 2023 Transcript of Trial

Defendants filed an answer and counterclaim to the Complaint on January 2, 2020. Pa034. On January 11, 2020, Plaintiff filed an answer to Defendants' counterclaim. Pa040. Very shortly thereafter, motion practice commenced.

B. Plaintiff's two Motions for Summary Judgment and two Motions for Reconsideration

On April 15, 2020, Plaintiff filed his first motion for summary judgment. Pa044. The motion was timely opposed by the Defendants along with a cross-motion for summary judgment. Pa093. On May 22, 2020, the Honorable Joseph V. Isabella denied both motions for summary judgment and provided a written opinion accompanying the orders. Pa001. Unhappy with the trial court's decision, Plaintiff filed a motion for reconsideration on June 16, 2020. (???). This motion was denied on July 10, 2020. (????). In Plaintiff's third attempt to obtain the ultimate result desired, Plaintiff filed a second motion for summary judgment on November 5, 2020. Pa120. The motion was timely opposed on December 29, 2020. Pa194. On February 8, 2021, the Honorable Kimberly Espinales-Maloney denied Plaintiff's second motion for summary judgment and provided a memorandum of opinion accompanying the order. Clearly not satisfied after four defeated motions and losing at trial, Plaintiff filed a notice of appeal. Pa199. It is important to note that in the Plaintiff's Appellate Case Information Statement, Plaintiff listed two issues to be raised on appeal: 1) The trial court misapplied the

ordinance's period of repose in a manner at odds with its purpose and 2) The trial court failed to consider that the ordinance's period of repose is preempted by N.J.S.A. 2A:14-1. However, the Plaintiff's appellate brief goes beyond same as will be addressed below.

STATEMENT OF FACTS

On or about July of 2015, Plaintiff entered into a lease agreement with then owner and landlord, Vincenza Petruzzella ("Mrs. Petruzzella"), of the property located at 1017 Park Avenue, Hoboken, New Jersey (the "Property") for the term of one year. At that time, Plaintiff rented the apartment through a real estate broker that represented Mrs. Petruzzella. Mrs. Petruzzella's real estate broker drafted and prepared said lease agreement and presented Plaintiff with the same. Thereafter, Mrs. Petruzzella unfortunately passed away, and Plaintiff entered into a "second" lease agreement with Mrs. Petruzzella's Estate in 2018. Defendant Vito Petruzzella was the executor of Mrs. Petruzzella Estate and executed Plaintiff's "second" lease agreement in his capacity as such on behalf of the Estate. The "second" lease was not prepared by Defendant Vito Petruzzella. Indeed, the second lease agreement was drafted, prepared and given to Plaintiff by the Estate's real estate broker. Thereafter, 1017 Park Avenue, LLC ("1017 Park") acquired the Property. Defendants Vito, Gaetano, and

Lazzaro Petruzzella are members of the limited liability company 1017 Park.

Plaintiff alleges that in January of 2019, the Defendants attempted to increase his rent by way of letter. In April of 2019, the City of Hoboken, Department of Human Services, Division of Rent Leveling, (“Hoboken”) calculated the legal base rent for the Property and this occurred again later that year when the rent was allegedly attempted to be increased again. However, it must be noted that on May 7, 2019, Hoboken granted a tax surcharge of \$329 per unit per month. As the trial court found below on five separate occasions, Plaintiff did not suffer a loss under the Consumer Fraud Act of New Jersey (CFA) as Hoboken’s surcharge of \$329 was legally permitted to be transferred to Plaintiff and therefore the simple mathematical equation that this case is really only about shows that Plaintiff is indebted to the Defendants in the amount of \$702.00, further evincing the waste of judicial economy and resources in this matter. The filing fees in this matter alone have surpassed the amount of what is actually owed to any of the parties in this matter.

STANDARD OF REVIEW

Plaintiff obviously posits that the standard of review should be the “abuse of discretion” standard which is clearly incorrect here. The correct

standard that should be applied is the “*de novo*” standard. An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is *de novo*. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); State v. G.E.P., 243 N.J. 362, 382 (2020) (retroactivity of statute); State v. Hemenway, 239 N.J. 111, 125. (2019) (constitutionality of a statute); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation).

Plaintiff's Standard of Review section actually includes language that is relative to the *de novo* standard which further corroborates the applicable standard in this appeal. Furthermore, as cited by Plaintiff's own notice of appeal, the two alleged issues in this appeal are 1) that the trial court misapplied the ordinance's period of repose in a manner at odds with its purpose and 2) the trial court failed to consider that the ordinance's period of repose is pre-empted by N.J.S.A. 2A:14-1. Therefore, it is clear that the Plaintiff's appeal is solely predicated on the trial court's alleged improper interpretation of laws, statutes, and/or rules argued below.

POINT I

THE TRIAL COURT DID NOT ERR BY DENYING BOTH MOTIONS FOR SUMMARY JUDGMENT.

A statement that Plaintiff has repeated ad nauseum throughout his appeal, and even in his motions for reconsideration filed below, is that Defendants did not contest any of the of Plaintiff's statement of undisputed facts. This is utterly incorrect. As can be easily seen in the May 1, 2020 Defendant's Statement of Undisputed Material Facts (Pa093), Defendants highlight two material facts that Plaintiff intentionally omitted and which were crucial in the matter below: 1) The Hoboken rent control ordinance provides that a tenant is limited to recover overpayment of rent to two years (Ordinance 155-4(c)) and 2) that on May 7, 2019, the City of Hoboken granted to the Defendants a tax surcharge of \$329.00 per month per unit which is in addition to the legal rent calculation. Furthermore, the Plaintiff blatantly misrepresents the key parts of the trial court's ruling of May 22, 2020 where the trial court actually held as follows: *"...Plaintiff claims that no Notice to Quit was served upon him, and therefore Defendants fail to establish that Plaintiff's rent was ever increased subsequent to the Board's approval of the tax surcharge. However, in reply, Defendant provides a notice to quit dated November 26, 2019. The notice is addressed to Plaintiff*

and indicates that on or about October 1, 2019 a notice was sent to Plaintiff advising Plaintiff of an increase in rent. The notice references the lease agreement between the parties which states under line 27 that Plaintiff was required to respond to the letter increasing rent within 15 days. The lease further states that failure to respond would indicate rejection. However, the notice to quit indicates that on November 6, 2019 Plaintiff informed Defendant that he would remain in the unit. However, there is a genuine issue of material fact as to whether Defendant is entitled to rent based upon the tax surcharge. The surcharge was granted to Defendant on May 7, 2019 and there is a question as to whether Plaintiff was required to pay the surcharge in light of the notices sent to Plaintiff.”

The trial court did not make any error with respect to the required notice because even though a typographical error may have been made as to the name of the notice, the notices of October 2019 and November 2019 clearly notified the Plaintiff of Hoboken’s tax surcharge, attached the surcharge documents, and provided a follow up notice to cease. Then, the Court’s decision makes it clear that there was a question at that point in the procedural history of the matter as to whether Plaintiff was required to pay the surcharge in light of said notices. Therefore, the trial court did not err in denying the motion as the summary judgment standard is clear as to when

motions must be denied and same was applicable here. Again, a trial court must grant a summary judgment motion if “*the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.*” R. 4:46–2(c). “An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.” Brill v. Guardian Life In. Co. of Am., 142 N.J. 520, 540 (1995). Here, Plaintiff had not established the burden placed on the moving party.

POINT II

THE TRIAL COURT DID NOT ERR BY DISREGARDING THE RESPONDENT’S ALLEGED FAILURE TO SERVE THE DISCLOSURE STATEMENT UPON THE APPELLANT, AS REQUIRED BY THE RENT CONTROL ORDINANCE AS THIS ARGUMENT WAS NEVER RAISED BELOW.

Plaintiff raises this argument even though it was never raised below and tries to sneak it in through the proverbial back door. Furthermore, Plaintiff is making this argument in conjunction with his Point III so, they can be addressed collectively. As stated to the trial court below, for the period of

repose, this Court in Knight v. City of Hoboken, 332 N.J. supra 547 (App. Div. 2000), invalidated Hoboken's then regulation 18:54(B) limiting a tenant's right to realize recoupment established as an entitlement in Ordinance section 155-4. This Court reasoned that the board could not promulgate a significant limiting regulation which the empowering Ordinance grants unconditionally. The controlling Ordinance section 155-4 was amended on March 3, 2011 by Ordinance No. Z-88 wherein Hoboken added the following language "and subject to the limitations and repose period set forth herein" specifically to cure the problem presented when the Knight decision came down and this Court held in Collins v. Albro, 296 N.J. supra 191 (App. Div. 1996) that a limitations period enacted as part of that governing ordinance is sustainable. The trial court in fact ruled on this issue stating that "*Plaintiff argues that the ordinance was invalidated in Knight v. City of Hoboken Rent Leveling & Stabilization Bd., 332 N.J. Super. 547 (App. Div. 2000). In Knight, however, the Court addressed a different issue of administrative law and held that a previous version of the subject provision, 155-4, was invalid where authority was not codified. However, 155-4 was amended in 2011 to be consistent with the holding of Knight. As such, the case provides no basis to invalidate application of the two-year limitation in this matter. Plaintiff's Complaint was filed on December 8, 2019. Plaintiff seeks reimbursements for*

rent paid during his tenancy since August 2015. It is undisputed that the apartment is in Hoboken and is governed by Hoboken ordinance and thus, the two-year limit applies here to Plaintiff's claim for overpaid rent." Therefore, these issues are moot, especially via the correct standard of review.

Furthermore, the argument of the statute of limitations of the CFA is a red herring. The ordinance is clearly not attempting to reduce the statute of limitations whatsoever. The ordinance in fact does not state when a complaint must be filed by but rather limits the years applicable to potential recovery of damages. Therefore, this point is also moot.

POINT III

THE TRIAL COURT DID NOT ERR AS IT DID NOT FAIL TO MAKE ANY CONCLUSIONS OF LAW AT TRIAL.

Unlike the Plaintiff posits, the transcript of the October 2, 2023 trial is quite clear. The Honorable Joseph A. Turula recited language from the Orders entered by the trial court judges and then ultimately on page 15 of the transcripts ruled: *"The Court finds it has no basis really – the application is like an application for – to set aside their decisions based upon the law of the case and – which I'm not married to but, because of these well-written and well-argued opinions by both Judge Isabella and Judge Espinales-Maloney,*

I am going to affirm the decisions of judge Maloney and Judge Isabella and deny that request. So the defendants relief is granted and therefore, the case is decided and resolved.” Furthermore, as the transcript demonstrates at the beginning of the hearing, the parties made specific requests of the remaining issues in the matter and the Plaintiff requested a monetary award whereas the Defendants requested the affirmation of the orders entered by the trial court judges. Therefore, the trial judge did in fact make conclusions of law by affirming the decisions of Judge Isabella and Judge Espinales-Maloney which did in fact make findings of law.

CONCLUSION

For the reasons set forth above, Defendants respectfully submits that this Court should uphold the decisions of the trial court below.

Dated: March 3, 2025

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