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# Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-002972-23T2

**FAIRKINGS PARTNERS, LLC**

**Plaintiff/Appellant,**

vs.

**ESSENCE DANIELS,**

**Defendant/Respondent.**

**CIVIL ACTION**  
*ON APPEAL FROM*

**LAW DIVISION  
SPECIAL CIVIL PART  
LANDLORD-TENANT DIVISION  
ESSEX COUNTY**

*SAT BELOW*

**HON. DAMIAN SANTOMAURO,  
J.S.C.**

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## APPELLANT'S BRIEF

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**Date of Submission: August 23, 2024**

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### PRELIMINARY STATEMENT

Appellant, Fairkings Partners, LLC (“Appellant”), respectfully contends that the trial court erred in its interpretation of N.J.S.A. 2A:42-10.16a (commonly referred to as the “Stack Amendment”). Specifically, the trial court held that to stop eviction, the Stack Amendment only requires a tenant to pay the rental arrears set forth in the judgment of possession (“JOP”), rather than the full arrears due and owing at the time payment is tendered. In other words, the trial court found that a tenant may stop or reverse a lockout by paying the amount that was due a month (or more) earlier, when the JOP was entered, rather than the current amount due from a tenant who has remained in possession of the rental unit.

Appellant maintains that this interpretation is not only inconsistent with the language of the Stack Amendment, but is fundamentally incongruous with well-settled law and procedure in the Landlord-Tenant Division. Had the legislature intended to bulldoze this established framework, it would have explicitly said so. Rather, Appellant submits that the purpose of the Stack Amendment was to create a new mechanism enabling tenants to stop an eviction after the entry of the JOP, without further penalty, that lends consistency to prevailing practice and complements related statutory mechanisms. The Stack Amendment was not intended to limit a landlord’s ability to assert its right to all rent due and owing at

the time payment is made, nor was it intended to repeal other legislation governing dismissal of eviction actions upon payment of rent.

Appellant respectfully urges this Court to reverse the trial court's decision and uphold established law and practice in this area.



### **PROCEDURAL HISTORY**

On January 30, 2024, Appellant filed a summary dispossess, bearing Docket Number ESX-LT-1879-24 (“Eviction Action”), seeking the eviction of Essence L. Daniels (“Respondent”) for failure to pay rent pursuant to subsection (a) of N.J.S.A. 2A:18-61.1, otherwise known as the Anti-Eviction Act (“AEA”). Pa001 to Pa026. Default was entered against Respondent on the March 18, 2024 trial date due to Respondent’s failure to appear. Pa027 to Pa028. On March 19, 2024, Appellant filed its request for the entry of the JOP and the issuance of the warrant of removal (“Warrant Request”), alleging that \$5,482.31 (“Judgment Amount”) in rent and additional rent was due and owing from Respondent at that time. Pa029 to Pa035. However, the court did not enter the JOP until April 4, 2024. Pa036 to Pa038.

Even though three weeks had lapsed between the trial date and the entry of the JOP (despite Appellant’s timely filing of its Warrant Request), the JOP indicated that the warrant could not issue until after April 8, 2024. Id. Thus, when Respondent filed her application for post-judgment relief on April 4, 2024, the JOP had just been entered and the warrant had not yet issued. Pa039 to Pa040.

In her application asking the court to stay the JOP, Respondent contended that she owed \$1,656.74, but only had \$1,500.00 to deposit with the court. Id.

Appellant, through its counsel, submitted written opposition to Respondent's application arguing, amongst other things, that it should be denied because Respondent admitted that she only had \$1,500.00 available to pay, which was less than both the Judgment Amount or the amount due through April 2024 (as another month's rent had come due), and there was therefore no basis to vacate the JOP under R. 4:50-1.

On April 8, 2024, the parties appeared for a hearing on Respondent's post-judgment application before the Honorable Damian V. Santomauro, J.S.C.<sup>1</sup> Initially, during such hearing, Judge Santomauro asked if Respondent had the Judgment Amount to pay to Appellant to which she responded that she only had \$3,100, as she was waiting for a determination on her rental assistance application. 1T5-15 to 24. The court therefore advised Respondent that it could not undo the JOP and that it only had the authority to give her an Order for Orderly Removal extending the lockout for seven days. 1T5-25 to 1T6-23.

However, at this point, the court and Appellant's counsel realized that the lockout was not yet scheduled, as the warrant had still not been issued, making the intended Order for Orderly Removal procedurally ambiguous. 1T10-5 to 15. After hearing further from the parties, Judge Santomauro decided to give Respondent an

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<sup>1</sup> Transcript from the hearing on April 8, 2024 will be referred to as "1T". Transcript from the hearing on April 29, 2024 will be referred to as "2T".

Order for Orderly Removal “extending” the lockout for fourteen days, instead of the standard seven days. 1T14-18. Because this Order would delay the eviction until April 22, 2024, and because it is customary at the post-judgment stage for the court to require tenants to pay any additional month(s)’ rent that have accrued since the Judgment Amount, Appellant’s counsel clarified that the amount that would need to be paid to stop the lockout was \$6,888.13, which included rent for April 2024. 1T14-21 to 23.

It was at this point in the hearing that the central issue of this case arose. Judge Santomauro questioned whether the Stack Amendment permits the Judgment Amount entered in the JOP to be “amended” to include rent that accrued after its entry. 1T15-5 to 14; 1T17-2 to 24. While initial arguments were made on the issue, the court determined that briefing would be appropriate to aid in its review and to allow Appellant the opportunity to prepare its argument. 1T19-18 to 1T21-5. Accordingly, the court stayed the JOP, set a briefing schedule, and directed the parties to appear virtually on April 29, 2024 for further argument. 1T27-9 to 24; see also Pa041 to Pa042.

On April 15, 2024, Appellant submitted its letter brief to the court, along with the required Proof of Service. On April 17, 2024, Respondent filed her responsive brief with the court. The parties then appeared before Judge

Santomauro on April 29, 2024 for additional arguments. At the conclusion of such hearing, the judge reserved on his decision. 2T50-14 to 19. On May 9, 2024, the court entered an Order and issued an Opinion finding that pursuant to the Stack Amendment, Respondent only needs to pay \$5,482.31 – the Judgment Amount (which only included the amounts certified to in the March 19<sup>th</sup> Warrant Request) – up to three days after the lockout to stop her eviction. Pa046 to Pa069.

On May 17, 2024, over three months after the trial date and the filing of the Warrant Request, Respondent filed a second post-judgment application alleging that she had \$5,483.00 to pay the Landlord, in accordance with the court's May 9<sup>th</sup> Order and Opinion. Pa070 to Pa079. That same day, the court held a telephonic conference to provide details to Respondent on where payment should be tendered. Following this, the case was marked “disposed” by the court.

### **STATEMENT OF FACTS**

Appellant is the owner of the multi-family, residential apartment complex located at 2000, 3000, and 4000 Murray Court, Fairfield, New Jersey 07004. Pa012. Respondent resides in Apartment 3202 at 3000 Murray Court, Fairfield, New Jersey 07004 (“Premises”) pursuant to a written lease agreement with Appellant. Pa013 to Pa022.

Pursuant to that lease, Respondent is obligated to pay her monthly base rent of \$1,029.00 by the 1<sup>st</sup> day of each month, along with certain additional charges such as utilities and insurance fees, identified as “additional rent” in the lease. Id. In addition, in the event of her breach, Respondent is also liable for late fees and attorney’s fees, also identified as “additional rent” in the lease. Id.

Appellant filed the Eviction Action on January 30, 2024. Pa001 to Pa026. Default was entered against Respondent on March 18, 2024, based on Respondent’s failure to appear for trial. 1T5-9 to 18. On March 19, 2024, pursuant to R. 6:6-3(b), Appellant filed the Warrant Request, which included a Certification by Landlord and a Certification by Landlord’s Attorney (collectively, the “JOP Certifications”) requesting the entry of a JOP by default and certifying that \$5,482.31 was due and owing as of that date. Pa029 to Pa035.

On April 4, 2024, the clerk entered the JOP based on the Warrant Request. Pa036 to Pa038. At the time the JOP was entered, April 2024 had become due pursuant to the terms of the lease and Respondent's rental balance was \$6,888.13. 1T7-13 to 1T8-5. The JOP also provided that the warrant could not be issued until after April 8, 2024. Pa037.

On April 4, 2024, Respondent filed a post-judgment application alleging that she owed \$1,656.74 in rent and was able to deposit \$1,500.00 with the court. Pa039 to Pa040. On April 8, 2024, during a hearing on Respondent's application, Respondent represented that she had \$3,100.00. 1T5-15 to 24. While the court was initially prepared to give Respondent an Order for Orderly Removal extending the lockout for seven days, the court realized that there was no lockout to extend. 1T6-4 to 1T10-5. As explained in the preceding section, it was at this point that the central issue in this case arose and the parties were asked to submit briefs on that issue.

Significantly, by the time the parties appeared again before the court on April 29, 2024, Respondent owed Appellant \$6,836.68 with April 2024 rent. 2T7-9 to 21. However, Respondent indicated on the record that she could not pay that amount until May 9, 2024, at which point another month's rent would be due for

May 2024. 2T10-3 to 13. Critically, at no point during the proceedings was Respondent able to pay the amount due to Appellant at that time.

On May 9, 2024, the court entered its Order and issued its Opinion, finding that Respondent only had to pay the Judgment Amount, up to three days after the lockout, to stop the eviction, pursuant to the Stack Amendment. Pa046 to Pa069. Respondent finally tendered payment of the Judgment Amount to Appellant shortly after filing her second post-judgment application on May 17, 2024. Pa070 to Pa079. Thus, by the time Respondent paid the Judgment Amount to stop the eviction in late May 2024, pursuant to the court's interpretation of the Stack Amendment, two additional months' rent had accrued (as Respondent remained in possession) and were unpaid at the time the case was dismissed.

### **SCOPE OF REVIEW**

In Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995), the New Jersey Supreme Court held 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.” Further, the Appellate Court reviews issues of statutory interpretation de novo. N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021).

Consequently, an Appellate Court may freely reverse a lower court decision when such decision is based upon a misinterpretation of the law. Since Appellant’s claim herein is based on the trial court’s misinterpretation of relevant law, the Appellate Court need not pay deference to the trial court’s decision and may reverse on the grounds set forth below. As will be explained below, the trial court’s interpretation of the Stack Amendment was erroneous.



## LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT THE STACK AMENDMENT ONLY REQUIRES THE TENANT TO PAY THE AMOUNT OF RENT JUDICIALLY DETERMINED TO BE DUE AT THE TIME THE JUDGMENT OF POSSESSION IS ENTERED TO STOP EVICTION. (Pa046 to Pa069).

Appellant respectfully submits that the trial court erred in finding that the Stack Amendment limits the amount to be paid to stop eviction – up to three days after the lockout – to the amount set forth on the JOP, rather than the amount due at the time the tenant is tendering payment. As will be established below, such interpretation is (i) contrary to well-established law and procedure in the Landlord-Tenant Division, (ii) unsupported by language of the statute or any stated or implied legislative intent, and (iii) fundamentally at odds with court rules and the doctrine of judicial economy.

*A. THE TRIAL COURT ERRED IN DISREGARDING THE LAW AND PROCEDURE GOVERNING POST-JUDGMENT APPLICATIONS. (Pa046 to Pa069).*

While the trial court certainly took pains to issue a detailed and thoughtful opinion, Appellant submits that its analysis is critically flawed. First, the trial court's review of the Stack Amendment in a vacuum, without regard for the well-settled law and procedure that has governed post-judgment relief in the Landlord-Tenant Division for decades, was erroneous and produces an absurd result. Indeed,

the historical development of the court's post-judgment relief practice, along with its current practice, are key to understanding the operation of the Stack Amendment.

We can begin with a long-standing, central principle of Landlord-Tenant practice. Specifically, it is well-settled that, in a non-payment of rent summary dispossession case, tenants must pay all outstanding amounts due to the landlord on or before the trial date to have such case dismissed. See N.J.S.A. 2A:42-9 (providing that, "If the tenant... shall at any time before the trial in the action for possession of the demised premises, pay or tender to the lessor or landlord... or pay into the court where the action for possession of the demised premises shall be pending, all the rents and arrears, together with the costs, all further proceedings in the action shall be dismissed..."); see also N.J.S.A. 2A:18-55. These statutes continue to be "good law" and remain the starting point of a court's inquiry on a post-judgment application by a tenant.

However, over time, the courts have recognized their inherent equitable power pursuant to R. 4:50-1 to vacate a JOP even after its entry, if the tenant has all the outstanding rent to pay to the landlord. In Stanger v. Ridgeway, 171 N.J.Super. 466 (App. Div. 1979), the Appellate Division concluded that N.J.S.A. 2A:18-55 only permitted the dismissal of the eviction case if the tenant pays the

amount found due and owing on the day judgment is entered. See Id. at 473 (“We hold that to terminate proceedings under N.J.S.A. 2A: 18-55 the rent must be deposited on or before the day that judgment is entered.”). However, the Appellate Division affirmed the trial court’s reliance on R. 4:50-1 to vacate the JOP since the tenant paid the amount due within three days after the entry of the JOP, agreeing that to evict the tenant under those circumstances would be a “perversion of justice”. Id. at 473-74. Thus, the Appellate Division sanctioned the use of R. 4:50-1 to vacate the JOP when a tenant pays the entire amount of back rent after its entry, but before the issuance of the warrant.

Thereafter, in Housing Auth. of Morristown v. Little, 135 N.J. 274 (1994), the Supreme Court confirmed that R. 4:50-1 may be utilized to vacate a JOP even after the warrant has issued. Notably, in Little, the JOP was entered on May 29, 1992, and the warrant was requested by the landlord on June 1, 1992. Housing Auth. of Morristown v. Little, 263 N.J.Super. 368, 369 (App. Div. 1993). The tenant initially applied for post-judgment relief on June 17, 1992, but failed to appear at the June 19, 1992 hearing, resulting in the execution of the warrant that same day (i.e. the lockout occurred). Id. The tenant then applied for a second order to show cause on June 22, 1992, asking for the JOP to be vacated and permitting her to re-enter the subject unit. Id. At the hearing on June 26, 1992, almost a month

after the entry of the JOP, the trial court vacated the JOP pursuant to R. 4:50-1, “upon payment of the full balance of rent.” Id. The Supreme Court affirmed.

Although the Appellate Division and Supreme Court decisions do not specify amounts, it is unquestionable that the amount tendered by the tenant in Little to vacate the JOP was not the amount determined to be due at the time the JOP was entered on May 29, 1992 but, instead, the “full balance of rent” then due on June 26, 1992. This is clear for several reasons, as explained below.

First, if the court intended for the tenant to pay only the amount determined to be due at the time of the entry of the JOP, it presumably would not have used the phrase, “full balance of rent”, as that would be inaccurate. Payment of the amount due at the entry of the JOP on May 29, 1992 does not constitute payment of the “full balance of rent” which would have been due on June 26, 1992, as another month’s rent had come due. The phrase, “full balance of rent,” unmistakably denotes payment of all rent due at the time to make the landlord whole and justify the vacating of the JOP pursuant to R. 4:50-1.

Second, the Supreme Court, like the Appellate Division in Stanger, clarified that “[c]ourts should use Rule 4:50–1 sparingly, in exceptional situations; the *Rule* is designed to provide relief from judgments in situations in which, were it not applied, a grave injustice would occur.” Housing Auth. of Morristown v. Little,

135 N.J. at 293. An “exceptional situation” does not exist where a tenant, after the entry of the JOP or the issuance of the warrant, attempts to pay the amount that was due at the time judgment was entered. A finding to the contrary - that an “exceptional situation” exists when a tenant can pay the “judgment amount” after the entry of a JOP and/or the issuance of the warrant, despite additional rents having become due - is inconsistent with established practice and would fatally undermine the clear temporal requirements of N.J.S.A. 2A:42-9 or N.J.S.A. 2A:18-55 (i.e. that the amount found due at the time of the JOP be paid by 4:30 p.m. that same day). In other words, a late cure which fails to satisfy the clear statutory requirements for dismissal, is not the “exceptional situation” envisioned by the Supreme Court to justify vacating a JOP under R. 4:50-1. Conversely, consistent with precedent and established practice, a tenant appearing on a post-judgment application with all the rent due and owing at that time can provide the court with a viable basis to conclude that a grave injustice may occur if the eviction proceeds, justifying the application of R. 4:50-1 to save the tenancy.

Finally, following Little, the practice seemingly adopted in nearly all (if not all) Landlord-Tenant courts throughout the state has been consistent with Appellant’s position. Based on our considerable experience in this area, Appellant’s counsel respectfully submits that the following is the standard

procedure and practice on post-judgment applications in a nonpayment of rent case (where judgment is not based on a breach of a Consent Judgment in which the tenant was required to vacate): First, the court will review the docket to ascertain the procedural history and assess the basis of the complaint. It will also review the tenant's application to determine the relief being sought. If the tenant is seeking to vacate the JOP, the court will then conduct a hearing during which it will invariably refer to the JOP, but will also permit the landlord to present proofs as to the amounts that have become due since then, pursuant to the parties' lease, so that it can reach a determination as to the amount currently due. If the tenant verifies that they have the full amount to pay, the court will engage in an analysis under R. 4:50-1 to determine if there are sufficient circumstances present to support vacating the JOP. If the tenant does not have the full amount to pay, the court then, almost always, issues an Order for Orderly Removal extending the lockout for seven days pursuant to R. 6:6-6(b). This practice and procedure is compliant with the Supreme Court's directive that R. 4:50-1 only be used sparingly to prevent grave injustices.

The foregoing history is crucial to understanding the purpose and operation of the Stack Amendment. When the Stack Amendment took effect on March 1, 2020, it was established statutory law that tenants must, on the day of trial, pay all

the rent currently due and owing for the case to be dismissed, subject only to the court's equitable powers under R. 4:50-1 in "exceptional situations", as sanctioned by the Supreme Court. It is axiomatic that if the legislature intended the Stack Amendment to repeal N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55, and overturn the robust body of law and procedure developed in the wake of Little, it would have explicitly said so. But, neither N.J.S.A. 2A:42-9 or N.J.S.A. 2A:18-55 are marked as "repealed" and both continue to be "good law".

Nevertheless, the trial court's holding inevitably forces seismic impacts on this well-established, long-standing legal framework. Prior to the Stack Amendment, the law granted tenants the right to have an eviction action dismissed upon payment of "all the rent and arrears" at "any time before the trial", in the case of N.J.S.A. 2A: 42-9, or "the rent claimed to be in default" at "any time on or before entry of final judgment", in the case of N.J.S.A. 2A:18-55. The trial court's decision, however, completely upends these established laws by crafting a novel right to dismissal with prejudice of an eviction action (1) upon payment of only the amount due at trial (2) at any time up to three days after the execution of the Warrant of Removal – which commonly occurs at least three to four weeks (or even more) after the trial date – irrespective of how much time has elapsed or how much additional rent has become due. Given their explicit temporal limitations,

N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55 become incoherent under the trial court's new framework. Accordingly, the trial court's interpretation is only sustainable if this Court also concludes that by enacting the Stack Amendment, the legislature impliedly repealed N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55. Absent repeal, N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55 are entirely superfluous.

In that regard, it is well established that there is a "strong presumption in the law against implied repealers," and a "repeal by implication requires clear and compelling evidence of legislative intent, and such intent must be free from reasonable doubt." Bd. Of Educ. Of City of Sea Isle v. Kennedy, 393 N.J. Super. 93, 105 (App. Div. 2007); Mahwah Twp. v. Bergen Cty. Bd. Of Tax'n, 98 N.J. 268, 280 (1985). There is no indication in the Stack Amendment that the legislature intended to surgically eliminate the temporal restrictions of N.J.S.A. 2A: 42-9 and N.J.S.A. 2A:18-55 and a finding of an implied repealer is not sustainable. On the other hand, N.J.S.A. 2A: 42-9 and N.J.S.A. 2A:18-55 suffer from fatal surplusage if they were not repealed by the Stack Amendment. If one statute (the Stack Amendment, according to the trial court) permits a tenant to pay the arrears due on the day of trial up to three days after the actual lockout, what possible purpose is served by a different law which requires that same payment to be made on or before the day of trial?



On the other hand, the Stack Amendment complements N.J.S.A. 2A: 42-9 and N.J.S.A. 2A:18-55 if its language is construed according to its ordinary meaning. A new right to dismissal of a summary dismiss action, after entry of the JOP, upon payment up to three days after the execution of the Warrant of Removal of all rent then due and owing, sits comfortably alongside the existing statutory rights to dismissal on or before entry of the JOP. Accordingly, the trial court's analysis in this case, *sub judice*, is also premised on a flawed conception of final judgments and a misplaced reliance on the supposed inability of a JOP to be "self-amending". Pa063 to Pa064. To bolster this position, the trial court cites dicta from Green v. Morgan Props. 215 N.J. 431, 449 (2013), but leaves out a critical portion:

Although the only judgment entered at the conclusion of the summary dispossession proceeding is a judgment for possession of the premises..., part of the court's findings include the amount of rent, including additional rent, that is due and owing. That sum fixes the amount that the tenant may post into court or pay to the landlord in order to prevent the eviction from taking place. **R. 6:3-4(c) (setting forth obligation to alert tenant in complaint about opportunity to have complaint dismissed by payment of rent due on or before 4:30 p.m. on trial date).** It thus protects the tenant by identifying the sum the tenant must pay or post to prevent the eviction.

[emphasis added to reflect the missing portion from the trial court's opinion].

Green does not support the trial court's contention that the JOP and the specific quantum of arrears found to exist when it was entered, are *together*

indissoluble, final, and immutable. To the contrary, Green affirms what we already knew – that the court fixes an amount due at the time the JOP is entered so that tenants know what they must pay that day to have the case dismissed, pursuant to N.J.S.A. 2A:42-9, N.J.S.A. 2A:18-55 and R. 6:3-4(c). The trial court’s additional proposition that the arrears calculated at the time the JOP was entered also fix *in perpetuity* the amount a tenant must pay to vacate the JOP does not emerge from case law or statutory authority; for that proposition to be the current law it must derive from the explicit text of the Stack Amendment.

Moreover, the trial court’s application of Green also overstates the importance of “fixing” the sum which a tenant must pay to prevent eviction by ignoring the context in which the instant matter arose. The JOP in this matter, and in countless cases throughout the state, was entered by default after Respondent failed to appear for trial. Neither R. 6:6-3(b), which provides for the entry of a default JOP by the clerk upon submission of an affidavit from the landlord or their attorney, nor R. 6:7-1, which governs requests for Warrants of Removal, require copies to be served on the tenant. Thus, when default judgments are entered (following the unilateral application from the landlord), tenants are not notified of the “judgment amount”. Rather, consistent with established law and practice prior to the Stack Amendment, the tenant may make an application for post-judgment

relief under R. 4:50-1 whereupon a court will then determine the current rental arrears and notify the tenant of what needs to be paid to stop the eviction. Green emphasized the importance of fixing the amount due at the time of trial because, prior to the Stack Amendment, that was the only point at which a tenant had a statutorily guaranteed right to pay all the rental arrears to avoid eviction. The Stack Amendment introduced statutory consistency to the prevailing process, it did not fundamentally alter it.

As evidenced by the foregoing, the Stack Amendment must be construed alongside the well-settled law of Housing Auth. of Morristown v. Little and Stanger v. Ridgeway, both of which unequivocally affirm the requirement that the “judgment amount” be paid in full on the date of its entry to obtain dismissal, but also authorize a trial court to employ its equitable power under R. 4:50-1 even after the warrant has issued to prevent a grave injustice, such as when the tenant has the full amount of rent to pay to the landlord. Notably, nothing in Green undermines or alters the Supreme Court’s finding that R. 4:50-1 can be applied post-judgment to vacate the JOP when the tenant has made “payment of the back rent in full”. Little, 135 N.J. at 277. The Stack Amendment did not demolish this entire, well-settled area of Landlord-Tenant jurisprudence.

To the contrary, as will be explained *infra*, the Stack Amendment codified this law, making it so that tenants no longer face the uncertainty of a R. 4:50-1 analysis when they are able to tender full payment of rent after the issuance or execution of the warrant.<sup>2</sup> One need only look to the Landlord Tenant Trial Information found in Appendix XI-S of the Court Rules, often referred to as the “Harris Announcement,” for confirmation of this. The latest version of the Harris Announcement promulgated on 06/12/2023, after the enactment of the Stack Amendment, provides, in relevant part:

#### **5. Non-Payment of Rent Cases...**

**A. Dismissal of Case Upon Payment or Deposit.** If you are a tenant, the case against you will be dismissed if you pay all of the rent that is due plus court costs to the landlord or to the court on or before the date a judge enters a judgment for possession...

#### **9. Options After a Judgment for Possession...**

**B. Paying all Rent Due and Owning.** By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction...

Pa081 to Pa085.

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<sup>2</sup> It must be noted a tenant who failed to appear on the original trial date, resulting in the entry of a default judgment, must still demonstrate, on a post-judgment application, that there was excusable neglect for failing to appear and a meritorious defense to support the vacating of the JOP. See e.g., Marder v. Realty Constr. Co., 84 N.J.Super. 313, 319, 202 A.2d 175 (App.Div.), aff'd, 43 N.J. 508, 205 A.2d 744 (1964); see also US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 468-469 (2012).

The Harris Announcement clearly confirms the established legal framework which (i) authorizes the dismissal of the case pre-judgment if the tenant pays all rent that is due on or before the date a judge enters a JOP (pursuant to N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55) and (ii) authorizes the dismissal post-judgment if the tenant can pay “all rent due and owing” (pursuant to the Stack Amendment). It is clear that the Harris Announcement reflects the settled and long-standing distinction between what is required to be paid pre-judgment and what is required to be paid post-judgment to have the eviction case dismissed.

Accordingly, it is respectfully submitted that the trial court erred in failing to consider the established law and procedure governing post-judgment applications in the Landlord-Tenant court.

*B. THE TRIAL COURT'S INTERPRETATION OF THE LANGUAGE OF THE STACK AMENDMENT WAS ERRONEOUS. (Pa056 to Pa069).*

As Appellant argued below, the language of the Stack Amendment is capable of no other coherent construction than that the tenant must pay “all rent due and owing” as of the date payment is being made to remain in the premises, and not the amount found to be due at the time the JOP is entered. See N.J.S.A. 2A:42-10.16a.

The Stack Amendment provides, in relevant part:

a. In an eviction action for nonpayment of rent, pursuant to subsection a. of [N.J.S.A. 2A:18-61.1] the court shall provide a period of three business days after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment. A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if **all rent due and owing** is paid within the three business day period established by this subsection.

b. (1) A landlord shall accept all payments of rent made by a tenant within the three business day period established by subsection a. of this section and upon payment of **the rent due and owing**, within two business days thereafter, the landlord shall provide the court with written notice that **the rent due and owing** was paid...

[emphasis added].

The trial court concluded that the Stack Amendment's invocation of the phrases "rent due and owing" and "all rent due and owing" is ambiguous. Appellant respectfully disagrees. When interpreting a statute, the "Legislature's intent is the paramount goal [and] generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). "If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." Richardson v. Bd. Of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007). A reviewing court should "ascribe to the statutory words their ordinary meaning and significance, and

read them in context with related provisions so as to give sense to the legislation as a whole.” DiProspero, supra, 183 N.J. at 492.

The plain, ordinary meaning of the phrase, “the rent due and owing,” is readily ascertainable without a definition section in the statute – it is the debt that is unpaid and outstanding. There is no apparent ambiguity arising from its use in the Stack Amendment specifically, and the commonly accepted meaning is consonant with the use of similar language in related legislation. See N.J.S.A. 2A:42-9 (requiring the payment of “all rents and arrears” prior to trial to secure dismissal of a summary dispossession complaint); N.J.S.A. 2A:18-55 (providing for the payment of “the rent claimed to be in default” on or before the entry of judgment for a summary dispossession complaint to be dismissed). Because this phrasing contains no temporal limitation (such as, “all rent due and owing when the judgment of possession was entered” or “the rent determined to be due and owing at trial”), it is reasonable and natural to conclude that the legislature was not imposing any such limitation. See State v. Munafo, 222 N.J. 480, 488 (2005) (stating that “a court may not rewrite a statute or add language that the Legislature omitted.”).

Further, as evidenced by the drafting history, the legislature specifically added in the word “all” to subsection (a) of the Stack Amendment. Pa043 to Pa045. This confirms that the legislature expected that, to invoke the protections of

the statute, the tenant must pay the full balance of rent due and owing, as such would be the plain meaning of that phrasing. Had the legislature intended to circumscribe this amount in any way, including limiting it to what was found due at the time of entry of the JOP, it would have said this. This is especially true when such a limitation would effectively nullify N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55 (requiring payment of amount due at the time of the entry of the JOP to be made by 4:30 p.m. on the date of entry).

Appellant also maintains that the trial court's interpretation of the Stack Amendment renders the second sentence of subsection (a) superfluous. The Appellate Division has held that, "legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless." Bd. of Ed. of City of Hackensack v. City of Hackensack, 63 N.J. Super. 560, 569 (App. Div. 1960) (citing Abbotts Dairies, Inc. v. Armstrong, 14 N.J. 319 (1954)).

Appellant maintains, as argued before the trial court below, that the second sentence of subsection (a) ("A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if all rent due and owing is paid within the three business day period established by this subsection.") is without purpose or consequence if a tenant need only pay the "judgment amount" to stop the lockout. In a residential tenancy, late fees do not accrue by



virtue of the entry of a JOP or the issuance of a warrant. Rather, in a post-judgment context, late fees generally only accrue by virtue of additional base rent coming due following the entry of the JOP. Accordingly, the Stack Amendment clearly contemplated that additional months of rent would become due and owing, as this is the main reason subsequent late fees would appear on a tenant's rental account after the initial entry of the JOP. While the legislature specifically prohibits the Landlord from requiring the payment of post-judgment late fees, it does not similarly restrict requiring the payment of the post-judgment rent that has accrued. On the other hand, had the legislature intended limit the payment to the "judgment amount," there would be no need to specify that late fees for prohibited rents are also restricted.

In any event, such a radical change from established practice and procedure would not have been left implicit. Further, reading "rent due and owing" in accordance with its plain and common sense meaning avoids such surplusage and is fully consistent with the standard practice and procedure utilized by courts on post-judgment applications throughout the state.

In rejecting Appellant's argument, the trial court found that the language of subsection (a) simply prevents a landlord from assessing a late fee when a tenant

pays rent late pursuant to the statute. Pa066. Respectfully, this overly narrow interpretation misses the point.

In its opinion, the trial court observed in a footnote that “[t]he tenant is paying to remain in the tenancy and dismiss the judgment of possession – it would be odd for the Legislature to create such a remedy and immediately start the tenant behind the proverbial 8-ball by allowing the tenant to assess late fees on the payment of the very amount that restored the tenancy.” Pa066 to Pa067. However, under the trial court’s interpretation of the Stack Amendment, the tenant is already behind the 8-ball as additional base rent has undoubtedly come due by the time the lockout is executed. One need only look at the instant matter, *sub judice*, to see how this operates in practice.

When Respondent filed her first post-judgment application on April 4, 2024, the JOP had only just been entered that day, even though the Warrant Request was filed in mid-March 2024 representing the amounts then due. Putting aside the fact that the late entry of the JOP delayed Appellant’s right to the issuance of the warrant in March 2024, by the time that Respondent appeared in court on April 8, 2024, April rent had come due. And, by the time the warrant was executed in May 2024, that month’s rent had also come due. Thus, when the eviction case was stopped pursuant to her payment of the Judgment Amount in accordance with the

trial court's decision, Respondent owed another two months of rent. Unwilling to wait on collection of such amounts, understandably, Appellant immediately re-filed for eviction, landing the parties back in Landlord-Tenant court in July 2024.

As the trial court noted, it is odd that the legislature would create a remedy to restore the tenancy but which simultaneously leaves the tenant "behind the 8-ball" and susceptible to another imminent eviction filing. But, as is evident from the foregoing facts, the late fee is the least of the concern. By the time that the warrant has issued and the lockout is being executed, it is almost guaranteed that at least another month's rent (maybe more) has accrued since the entry of the JOP and is now due and owing from the tenant. It is bizarre and incredulous for the trial court to infer that the legislature was concerned with a late fee but was unbothered by the inevitable and imminent exposure tenants would face for the outstanding rent that has accumulated between the entry of the JOP and the execution of the lockout. Such interpretation of the language of the Stack Amendment is therefore nonsensical and inconsistent with its purpose.

Again, Appellant maintains that the language of the statute is unambiguous, permitting no other coherent construction than that the tenant is required to pay all outstanding rent due to stop or reverse the lockout. Notwithstanding, to the degree that the Court agrees with the trial court that the language of the statute is

ambiguous, Appellant submits that the trial court's analysis is still fatally flawed and leads to an "absurd" result. Pfannenstein v. Surrey, 475 N.J. Super 83, 95 (App. Div. 2023).

The trial court's analysis concludes that because the phrasing "rent payment" or "rent due and owing" is ambiguous, it has no choice but to revert to the concept that judgments are final and not self-amending. But this conclusion completely ignores the existing and well-established law in place at the time the Stack Amendment was enacted, which permitted courts to use R. 4:50-1 to render a determination as to the full amount of rent then due. Without any indication from the legislature that it intended to repeal N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55 or reverse the well-settled law developed in the wake of Little and Stanger, it is simply implausible to conclude that the Stack Amendment silently bulldozed this entire jurisprudence, stripping the courts of their equitable power under R. 4:50-1 to make a post-judgment determination as to an amount then due. Such a result is absurd and cannot be the default position in the face of an alleged statutory ambiguity.

Rather, any alleged ambiguity within the statute can be readily and easily resolved by examining its purpose. See Klumb v. Bd. of Educ., 199 N.J. 14, 25 (2009). Although the legislative notes provide little guidance, it is evident from the

statute itself that it was intended to extend the time in which the tenant can pay their outstanding rent to the landlord to save their tenancy. In essence, this statute codified the law and procedure developed after Little, ensuring that tenants have up until three days after the lockout to “pay to stay” and alleviating the uncertainty of a trial court’s case-by-case R. 4:50-1 analysis. The objective of this statute is therefore to allow tenants to save their tenancy with a late payment of “all rent due and owing”, without nullifying the requirements of N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55. This objective is only accomplished if the tenant is required to pay all that is due at that time.

Accordingly, Appellant respectfully submits that the trial court erred in its interpretation of the language of the Stack Amendment.

*C. THE TRIAL COURT’S DECISION IS CONTRARY TO COURT RULES AND THE DOCTRINE OF JUDICIAL ECONOMY. (Pa046 to Pa069).*

Finally, Appellant maintains that the trial court’s decision is fundamentally contrary to court rules and the doctrine of judicial economy.

Pursuant to R. 6:4-3, landlords are entitled to pursue a lawful basis for eviction in an efficient summary proceeding. It is well-settled that the statutory creation of a summary dispossess action was intended to afford landlords, “an expedited procedure to regain possession of leased premises...” Hous. Auth. of

Morristown v. Little, 135 N.J. 274, 280 (1994). This right to efficient summary proceedings is defeated under the trial court's interpretation of the Stack Amendment. The time to process a warrant and execute a lockout is considerable and invariably brings the parties into at least the next month, when another month of rent is due. Rather than there being a final resolution in a summary manner, as required by law, the landlord is now forced to immediately re-file for non-payment of rent to assert its right to the rent which has unquestionably come due between the entry of the JOP and the execution of the lockout, which is precisely what happened in the instant case. This eviction "merry-go-round" is not only a violation of the landlord's right to efficient, summary relief, it operates as a terrible drain on the court's already limited resources, as all landlords will be forced to do what Appellant did here if the trial court interpretation stands. While the trial court perceives this fear as "more imaginary than real," the facts show otherwise. Pa068-Pa069.

Furthermore, it is not for the trial court to elect the landlord's remedies. Id. That the landlord may also pursue collection of the rent in a separate action is irrelevant, as N.J.S.A. 2A:18-61.1(a) clearly provides for the specific remedy of eviction to landlords in the event of a tenant's non-payment of rent. The remedy of collection does not supplant a property owner's right to repossess its property

when contractual consideration is not being tendered to it. Nevertheless, the remedy of collection is far less enticing and far less effective, particularly when the tenant remains in possession and continues to accrue arrearages.

Accordingly, the trial court's decision is critically at odds with court rules and the doctrine of judicial economy.

**CONCLUSION**

Given the foregoing, Appellant respectfully requests that this Court reverse the decision of the trial court and find that the Stack Amendment requires payment in full of the amount due at the time the tenant is paying to remain in the premises, and not the amount entered with the JOP.

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Dated: August 23, 2024

By: *Derek D. Reed*  
DEREK D. REED

BrFairkings(Daniels)EC



FAIRKINGS PARTNERS, LLC

Plaintiff/Appellant,

v.

ESSENCE DANIELS,

Defendant/Respondent.

SUPERIOR COURT OF  
NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-002972-23T2

CIVIL ACTION

On Appeal From Essex County,  
Law Division, Special Civil Part  
Landlord-Tenant Division

Sat Below:  
Hon. Damian Santomauro

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**BRIEF OF DEFENDANT/RESPONDENT**

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Date Submitted: November 18, 2024

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## **PRELIMINARY STATEMENT**

Until 2020, a tenant in a dispossession action had a statutory right to dismiss the action if they paid the full amount that was owed before trial or by 4:30 p.m. on the date the judgment for possession (commonly called a “JOP”) was entered. Once that deadline passed, the JOP terminated the tenancy and the only basis for relief was based on a court’s equitable powers under Rule 4:50-1 to ensure that justice is served. Over the past several decades, courts have utilized that discretion to allow tenants to vacate a JOP even after a warrant of removal had been where the tenant could prove there were “exceptional circumstances,” and the balancing of the equities favored doing so. “Exceptional circumstances” often meant that the tenant could not only satisfy the JOP but could also pay the full amount of rent that had come due. In such circumstances, courts used their discretion to vacate the JOP because enforcing the judgment and evicting the tenant would be unjust, especially considering the state’s strong public policy in favor of keeping tenants housed.

In 2020, the law significantly changed. Under an amendment to the Anti-Eviction Act that is commonly called the “Stack Amendment,” tenants no longer must rely upon a trial court’s discretion to receive post-JOP relief. Instead, the Stack Amendment provides that a tenant has a statutory right to vacate a JOP

and reinstate the tenancy if they pay all rent due and owing within three business days after the execution of the warrant of removal (i.e., the lockout or eviction). Tenants no longer need to convince a court that the equities weigh in their favor or that there are exceptional circumstances that justify the trial court exercising its discretion to grant relief. Instead, the relief is automatic.

The issue in this appeal is whether, as the trial court held, a tenant is entitled to relief under the Stack Amendment if they satisfy the JOP. Or, whether, as the landlord argues, the tenant must also pay amounts that have come due after the JOP was entered. In supporting its appeal, the landlord fails to recognize that the Stack Amendment is a drastic departure from the practices of the past; it instead argues those past procedures must be followed, as if there was no change in the law at all.

As argued below, the lower court correctly concluded that the Stack Amendment requires a tenant to pay only the amount of the JOP, which was judicially determined to be owed. Where the Legislature has decided that a tenant must pay more than a judgment amount, it has clearly stated so. The trial court's conclusion comports with basic legal principles by requiring a tenant to satisfy a judgment and nothing more. After reviewing this matter and construing

the Stack Amendment liberally in favor of the tenant, as required, the Court should affirm.

### **STATEMENT OF FACTS & PROCEDURAL HISTORY**<sup>1</sup>

On August 24, 2023, Defendant Essence Daniels, a single mother with two children, signed a lease to rent a two-bedroom affordable housing unit from Plaintiff Fairkings Partners LLC. (Pa13).<sup>2</sup> The rent is \$1,029 per month. Various other charges, such as sewer charges, late fees, and attorneys' fees, are identified as forms of "additional rent." Ibid.

On January 30, 2024, Fairkings filed a summary dispossess action, seeking to evict Ms. Daniels from her apartment for unpaid rent. (Pa4). The complaint alleged that \$1,656.74—the January rent payment and more than \$600 in other fees listed on an attached ledger—was overdue and could be paid by February 1, 2024 to have the case dismissed. (Pa4). If February 1, 2024 passed and the trial had not yet taken place, the complaint stated that \$2,685.74 would be the new balance to be paid on or before trial to have the complaint dismissed.

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<sup>1</sup> Ms. Daniels combines the Statement of Facts and Procedural History for convenience because most of the facts in this case are procedural in nature.

<sup>2</sup> Pa = Plaintiff's Appendix; Da = Defendant's Appendix; Pb = Plaintiff's Brief; 1T = April 8, 2024 hearing; 2T = April 29, 2024 hearing.

(Pa4). The complaint further stated that Fairkings “reserves the right to amend this complaint on the court date for all additional rent due.” (Pa4).

An in-person trial was scheduled for March 18, 2024. (Pa27). Ms. Daniels did not appear, which she later explained was due to a death in her family. (Pa52; Da5). Default was entered against her.

On March 19, 2024, Fairkings filed a request for the entry of a JOP and warrant of removal. (Pa29-Pa35). Fairkings completed the “certification by landlord” form and asserted that \$5,482.31 was now overdue. (Pa32). It labeled the full \$5,482.31 as “basic rent,” but an attached ledger showed that this amount included other charges such as a \$100 recycling fine and a nearly \$3,000 fine for purported repairs to a light pole. (Pa35). The attached ledger showed that Fairkings posted a \$700 payment from Ms. Daniels on February 5, 2024, and a \$900 payment from her on March 1, 2024. (Pa35).

April 1, 2024 passed without the entry of a JOP. Fairkings did not take any action to amend its certification to reflect that additional rent and charges had come due under the lease. Accordingly, on April 4, 2024, the court entered the JOP for \$5,482.31—the amount stated in Fairkings’ March 19, 2024 certification. (Pa36). More than half that amount was for various fees, not base rent.



Later on April 4, 2024, Ms. Daniels<sup>3</sup> filed an application for post-judgment relief. (Pa39). In her application, Ms. Daniels complained that she had sent two cashier checks for \$1,600 to Fairkings, but they were not applied to her past rent. She further stated that she had \$1,500 to pay and had sought the assistance of a social services organization. (Pa39-Pa40).

On April 5, 2024, Fairkings responded and treated Ms. Daniels' application as a motion to vacate the default and argued she did not prove excusable neglect for failing to attend the trial. (Da1). Further, it argued that "even if" it was holding the \$1,600 in cashier checks that Ms. Daniels had sent in February, that amount would not have been enough because at the time of trial Ms. Daniels owed \$5,482.91. (Da3). It claimed she now owed \$6,836.88. (Da3).

Later on April 5, 2024, Ms. Daniels filed a reply. She stated the reason she could not attend trial was because her four-year-old cousin had died in a tragic accident. (Da4). She reiterated that she had tried to give Fairkings \$1,600 in cashier checks in February, and that if the JOP was stayed for a short time then she could pay the full \$5,482.91 judgment amount via the help of a social services organization. (Da5).

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<sup>3</sup> Ms. Daniels appeared pro se in all proceedings below.

On April 8, 2024, the parties appeared before Judge Damian Santomauro. The judge asked Ms. Daniels how much money she had to pay toward the balance due, but did not ask her whether she had any other objections to the numerous charges other than base rent that constituted more than half of the balance due. He also made no inquiries regarding the \$1,600 in checks Ms. Daniels had issued to the landlord at some point in February, to determine how those checks (and the timing of when they were issued) would impact the balance owed.<sup>4</sup>

After Ms. Daniels stated she had \$3,100 on hand that day to pay, the judge indicated that the amount was insufficient to vacate the JOP. (1T5-1T6). The judge explained that he would issue an order for orderly removal to extend the lockout period for an additional seven days. (1T7). However, after noticing that the warrant for removal had not been served and a lockout date had not yet been set, the judge indicated that he would instead issue an order for orderly removal for 14 days. (1T14).

Counsel for Fairkings stated that the rent due was now \$6,888.13, not the \$5,482.91 listed in the JOP, because April's rent had come due. (1T8). The judge

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<sup>4</sup> For example, the payments would impact the amount that could be charged at the beginning of each as late charges.

questioned whether under the Stack Amendment a tenant could be obligated to pay more than the amount listed in the JOP to avoid eviction. The trial court thus stayed the JOP, set a briefing schedule, and set argument for April 29, 2024. (1T27); (Pa41-Pa42).

Fairkings filed its brief on April 15, 2024, explaining why it felt \$6,836.68<sup>5</sup> was due rather than the amount in the JOP. Ms. Daniels sent a letter to the court on April 17, 2024, expressing her concern about having to pay \$6,836.68. (Da6). She again reiterated that she had been sending in checks but that her payments were being applied to charges other than rent. She also said she had sent a check for April's rent, and it was returned to her by mail. (Da6). She indicated she could submit the payment for \$5,482.91—the JOP amount. Ibid.

On April 29, 2024, the judge heard oral arguments. At argument, Ms. Daniels again repeated that she could pay the JOP amount of \$5,482.91 and that her attempts to make payments were rejected. (2T6). When asked what her plan was to pay April and May rent, she stated that she had assistance and would need until the following Thursday—May 9, 2024. (2T10).

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<sup>5</sup> It is unclear why there is a discrepancy between the amount stated at the April 8, 2024 hearing and the amount stated in the April 15, 2024 brief. There is no certification in the record.

On May 9, 2024, the trial court entered an order and opinion finding that pursuant to the Stack Amendment, Ms. Daniels need only pay the \$5,482.31 amount stated in the JOP within three days of the lockout to stop her eviction. (Pa46-Pa69).

The warrant of removal was served on Ms. Daniels on May 16, 2024. (Pa71). On May 17, 2024, Ms. Daniel's filed a post-judgment application stating she could fulfill the JOP and pay \$5,482 to Fairkings, in accordance with the trial court's May 9, 2024 order and opinion. (Pa70-Pa71). After a telephone conference, the case was marked "disposed" by the court.

### **LEGAL ARGUMENT**<sup>6</sup>

#### **I. The Stack Amendment Establishes a New Process That No Longer Relies Upon a Court's Equitable Powers to Grant Relief in Exceptional Circumstances Under Little and Instead Gives Tenants a Statutory Right to Regain Possession of Their Rental Units if They Pay the Amount That is Judicially Determined to be Due and Owing, As Stated in the JOP**

##### **A. Actions for Non-Payment of Rent in New Jersey**

In New Jersey, dispossession actions for nonpayment of rent are summary actions brought under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1(a). The process begins when a landlord files a verified complaint in the Special Civil

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<sup>6</sup> Ms. Daniels agrees with Fairkings that the standard of review is de novo.

Part using a model form. R. 6:3-4. The verified complaint “must expressly state the owner's identity, the relationship of the plaintiff to the owner, the amount of rent owed as of the date of the complaint and that if this amount and any other rent that comes due is paid to the landlord or the clerk at any time before the trial date, or before 4:30 p.m. on the day of trial, the case will be dismissed.” Ibid.

If the tenant does not pay the landlord the overdue rent or otherwise reach a settlement, a trial is held. At the trial, “the judge hears the parties, makes findings of fact as to the allegations, and reaches a conclusion of law about which party is entitled to possess the premises.” Green v. Morgan Properties, 215 N.J. 431, 449 (2013). Alternatively, if there is a default, the court determines the amount due based on the landlord’s certification. R. 6:6-3(b). Thereafter, the court enters a JOP that gives the landlord possession of the premises and states the amount of rent (including anything included as “additional rent”) that is due and owing. Ibid.

The JOP terminates the tenancy and gives the landlord possession of the property. Musselman v. Carroll, 289 N.J. Super. 549, 555 (App. Div. 1996). However, the tenant has a statutory right to vacate the JOP and reinstate the tenancy by paying the amount of the JOP by 4:30 p.m. on the date of the trial.

Green v. Morgan Props., 215 N.J. 431, 449 (2013); N.J.S.A. 2A:42-9; N.J.S.A. 2A:18-55. If the tenant does not do so, the landlord can apply for a warrant of removal to officially take possession and evict the tenant. The warrant cannot issue until three days after the entry of the JOP. N.J.S.A. 2A:18-57. The execution of the warrant—i.e., the actual lockout or eviction—cannot occur until three business days after the warrant is served. N.J.S.A. 2A:42-10.16. The trial court retains jurisdiction for ten days after the warrant of removal is executed to hear applications for “lawful relief” by the tenant. Ibid.

Until 2020, any post-JOP relief was left to the sound discretion of the trial judge based on a court’s equitable powers under Rule 4:50-1. In Stanger v. Ridgeway, 171 N.J. Super. 466 (App. Div. 1979), the Appellate Division held that even though a tenant is only entitled to statutory relief if the JOP is paid on the day it is entered, a court can exercise its equitable powers to vacate the JOP if the tenant pays the amount due before the warrant of removal is served (i.e., up to three days after the JOP). Id. at 473-74. Payment vacates the JOP, restoring the tenancy and allowing the tenant to avoid eviction.

Thereafter, the Supreme Court went even further. In Housing Authority of Morristown v. Little, 135 N.J. 274 (1994), the Court held that trial courts have equitable powers to vacate a JOP and restore a tenancy even after a warrant of

removal has been served if there are “exceptional circumstances” and vacating the default is necessary to “achieve equity and justice.” Id. at 294. Before making such a decision to grant relief under Rule 4:50-1, courts balance the equities and consider not only factors in favor of the tenant, but also evidence that “militates against the grant of relief.” Ibid. This process is fact-sensitive and uncertain, forcing tenants to rely upon the discretion of the trial court.

Enacted in 2019 and effective March 1, 2020,<sup>7</sup> the “Stack Amendment, N.J.S.A. 2A:42-16a, alleviates a tenant’s need to rely upon Little and instead provides statutory post-JOP relief. The Stack Amendment provides that:

- a. In an eviction action for nonpayment of rent, pursuant to [the Anti-Eviction Act], the court shall provide **a period of three business days after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment.** A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if all rent due and owing is paid within the three business day period established by this subsection.
- b. (1) **A landlord shall accept all payments of rent made by a tenant within the three business day period established by subsection a. of this section and upon payment of the rent due and owing, within two business days thereafter, the landlord shall provide the court with written notice that the rent due and**

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<sup>7</sup> P.L. 2019, c.316

**owing was paid.** A copy of this notice shall be provided to the tenant.

(2) Upon receipt of the written notice as provided in this subsection, **the court shall dismiss with prejudice the action for nonpayment of rent.**

(3) If the tenant makes a timely payment within the three business day period established by subsection a. of this section, and the landlord fails to provide the court with written notice of the rent payment, the tenant may file a motion to dismiss with prejudice the action for nonpayment of rent upon notice to the landlord.

[N.J.S.A. 2A:42-10.16a (emphasis added).]

The trial court concluded that the Stack Amendment is ambiguous, because the terms “rent payment” and “rent due and owing” are not defined. (Pa60). After engaging in a statutory construction analysis, it concluded the Stack Amendment requires a tenant to pay only the amount stated in the JOP to receive relief and vacate the JOP. (Pa69).

Although Fairkings argues the Stack Amendment requires a tenant to pay all rent that has become due as of the date the post-lockout payment is paid (i.e., the amount of the JOP plus any additional rent that has become due after the JOP was entered), there are several reasons why this argument is wrong. As argued below, the trial court correctly concluded that the Stack Amendment requires that a tenant pay only what is due and owing under a JOP itself.



**B. Because the Stack Amendment is Ambiguous, the Court Must Look to Extrinsic Evidence of Intent and Construe the Statute in Favor of Tenants**

Although ordinarily a statute’s plain language is the “surest indicator” of legislative intent, Frugis v. Bracigliano, 177 N.J. 250, 280 (2003), where “there is ambiguity in the statutory language that leads to more than one plausible interpretation,” courts can “turn to extrinsic evidence, ‘including legislative history, committee reports, and contemporaneous construction.’” Disprospero v. Penn, 183 N.J. 477, 493 (2005). The trial court correctly concluded that the Stack Amendment is ambiguous because it does not define “rent payment” or “rent due and owing.” Because ambiguous language in the statute can “lead[] to more than one plausible interpretation”—i.e., either to the trial court’s conclusion or to Fairkings’ conclusion—the Court must engage in a statutory construction analysis. Ibid.

When performing this statutory construction analysis, this Court must construe the Stack Amendment in favor of the Legislature’s goal of avoiding evictions and keeping tenants in their homes. As noted above, dispossession actions for nonpayment of rent are brought under the Anti-Eviction Act, N.J.S.A. 2A:18–61.1 to –61.12, a remedial piece of legislation designed to protect the rights of tenants. The “the dominating principle in construing the Act [is] that it

must be construed liberally with all doubts construed in favor of a tenant[.]” 224 Jefferson St. Condo. Ass'n v. Paige, 346 N.J. Super. 379, 389 (App. Div. 2002). This is because in enacting the Anti-Eviction Act, the Legislature declared that “[i]t is in the public interest of the State to maintain for citizens the broadest possible protections available understate eviction laws to avoid . . . displacement” because the loss of housing can cause “personal hardship,” including, but not limited to:

economic loss, time loss, physical and emotional stress, and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from strain of eviction controversy; relocation search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; employment, education, family and social disruption; relocation and empty unit security hazards; relocation to premises of less affordability, capacity, accessibility and physical or environmental quality; and relocation adjustment problems, particularly of the blind or other disabled citizens.

[N.J.S.A. 2A:18-61.1a(e).]

In interpreting numerous tenancy and eviction laws, our courts have consistently made “pragmatic” decisions in “recognition of the State’s homelessness-prevention policies.” Little, 135 N.J. at 293. The Stack Amendment must similarly be construed liberally and pragmatically in favor of the tenant and in accordance with the State’s legislative policy against displacing

tenants. That is the lens through which this Court must apply its statutory analysis. If the Court agrees that the trial court's interpretation is equally plausible to the one that Fairkings puts forth, then it must choose the application that favors the tenant, Ms. Daniels.

a. **The Stack Amendment Does Not Simply Codify Little and Old Landlord-Tenant Procedures, It Replaces Them**

Fairkings focuses its interpretative analysis heavily on Little, 135 N.J. 274, asking this Court to view the case through the lens of Little and apply the procedures and practices of the past to guide the outcome in this case. That is not the proper approach because the Stack Amendment is a significant departure from Little and the practices of the past.

As noted above, Little made it clear that courts have equitable powers pursuant to Rule 4:50-1 to vacate a JOP even after a warrant of removal has been issued if there are “exceptional circumstances” and vacating the default is necessary to “achieve equity and justice.” Id. at 294. To determine whether to grant relief, courts would balance the equities to determine what was fair and whether enforcing the JOP would be a miscarriage of justice. The Court declined to define the limits of its ability to vacate the JOP. Id. at 288. Among the factors considered were the presence of children in the home, lack of alternate suitable housing, the landlord being a public housing authority, and the tenant's ability

to pay “the entire amount of rent due.” Id. at 291; Cmtty. Realty Mgmt. v. Harris, 155 N.J. 212, 237 (N.J. 1998).

The Stack Amendment eliminated the need for courts to exercise equitable powers during the three-day post-lockout period. It instead gives tenants a guaranteed statutory right to relief without having to establish the exceptional circumstances of proving they can pay not only the JOP, but also the full balance of everything that has come due after the JOP. This new statutory process provides certainty both to landlords and to tenants and it relieves courts of the burden of hearing applications for relief and engaging in balancing.<sup>8</sup> A tenant is

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<sup>8</sup> This is not to say that the Stack Amendment deprives a court of its equitable powers altogether. It does not. The Stack Amendment simply eliminates the need for equitable relief for three days after a lockout and instead provides automatic relief from the eviction if the JOP is satisfied. The power to vacate a JOP where the tenant cannot pay all rent but the totality of all factors would otherwise make enforcing the judgment a grave injustice still remains. Courts retain jurisdiction for a period of ten days after the lockout, N.J.S.A. 2A:42-10.16, and should continue to grant additional relief beyond the Stack Amendment’s three-day period where there are exceptional circumstances. For example, a court might use its equitable powers to vacate a JOP even after the Stack Amendment’s three-day post-lockout period expires where extenuating circumstances stood in the way of the tenant delivering the payment to the landlord, where the tenant has firm commitment from a rental assistance program lined up, or where it is otherwise “no longer equitable” to enforce the judgment. Little, 135 N.J. at 285. One equitable consideration favoring vacating the JOP beyond the three-day period may be that the tenant is able to pay not only the JOP amount as required by the Stack Amendment, but also all subsequent rent that has come due since the complaint was filed. Id. at 291 (finding the trial court properly exercised its equitable powers to vacate the JOP because the tenant was able to pay the “entire

guaranteed that if they pay the amount stated in the JOP within three business days of the lockout, they will not become homeless. And they do not have to file orders to show cause and plead with the court to receive that relief. The JOP is vacated, and their tenancy is restored. The State's public policy against displacing tenants is advanced.

Thus, this Court should reject Fairkings' suggestion to impose past landlord-tenant procedures under Rule 4:50-1 and Little or its argument that exceptional circumstances should play any role in interpreting what "rent payment" or "all rent due and owing" means under the Stack Amendment. See Pb15 (arguing that "[a] finding to the contrary—that an 'exceptional situation' exists when a tenant can pay the 'judgment amount' after the entry of a JOP and/or the issuance of the warrant, despite additional rent having become due—is inconsistent with established practice[.]"). It might have been true under Little that courts generally granted equitable relief where the entire amount of outstanding rent due under the lease was paid, but that is only because the legal framework focused on exceptional circumstances, equity, and justice and a

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amount of rent due"). In such circumstances, a court may decide that the equities weigh in favor of vacating the JOP. But full payment of all rent that has come due under the lease is not necessary to obtain relief under the Stack Amendment.

court's authority to grant discretionary relief. Nothing in the Stack Amendment or its legislative history suggests that the Legislature intended to codify the Little practice or give any deference to it; rather, it adopted a straightforward statutory approach that makes no consideration whatsoever of the equities and guarantees a statutory right to relief for the mere payment of the rent due and owing under the JOP, even in the absence of exceptional circumstances.

**b. The Language of the Stack Amendment and Related Statutes Demonstrate that the JOP Amount is All a Tenant Must Pay**

The terms “rent payment” and “rent due and owing” are not defined by the Stack Amendment, but the trial court's conclusion that a tenant need pay only the JOP amount is the most logical and legally supportable interpretation for several reasons.

First, where the Legislature has intended to impose a requirement that a tenant pay more than what the JOP states, it has clearly stated so. See Ramsey Teachers Ass'n v. Bd. of Educ. of Borough of Ramsey, 382 N.J. Super. 241, 248 (App. Div. 2006) (“Our determination of legislative intent includes consideration of not only the particular statute in question, but the entire legislative scheme of which it is a part.”). For example, both N.J.S.A. 2A:42-10.1 and N.J.S.A. 2A:42-10.6 allow courts to grant a hardship stay for up to six

months after a JOP where an evicted tenant cannot find other housing accommodations.<sup>9</sup> However, the hardship stay is conditioned upon the tenant paying “all arrears in rent and the amount that would have been payable as rent if the tenancy had continued, together with costs of the action.” Ibid. (emphasis added). A JOP “terminates the tenancy.” Musselman, 289 N.J. Super. at 555. Thus, by using this language in the hardship statute, the Legislature makes it that “all arrears in rent” means the amount that accrued under the lease up until the date of the JOP. And the amount that accrues after the JOP is entered is separate and distinct from the “rent arrears” because “rent” is no longer owed under a lease after a tenancy is terminated.

This language is in sharp contrast to the Stack Amendment, which simply refers to payment of “all rent due and owing” and does not specify that the tenant must also pay the amount that would have been payable as rent under the lease as if the tenancy had continued (i.e., the amount that accumulated after the tenancy was terminated by the JOP). N.J.S.A. 2A:42-10.16a. The Stack Amendment’s “all rent due and owing” language is very similar to “all arrears

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<sup>9</sup> N.J.S.A. 2A:42-10.1 applies to units under rent control, while N.J.S.A. 2A:42-10.6 applies to units not under rent control. Otherwise, the statutes are essentially identical.

in rent,” which the Legislature views as separate and distinct from amounts that accrue after the entry of a JOP. Thus, viewing the Stack Amendment in the context of the overall legislative scheme, the Legislature clearly intended that a tenant only need to pay the amount in the JOP—the rent arrears or rent due and owing—to avoid the eviction, and not amounts due after the tenancy terminated with the JOP. After all, no “rent” can accrue after a tenancy ends.

Second, as the trial court noted, the Stack Amendment “create[s] a statutory scheme centered on the tenant’s submission of ‘a rent payment’ to obtain dismissal with prejudice of the judgment for possession.” (Da62) (citing N.J.S.A. 2A:42-10.16a). It would be inconsistent to require a tenant to pay an amount that is greater than what is stated in a JOP to have that same JOP dismissed. The two are linked together and the basis for dismissal is statutory, not “exceptional circumstances” that might require a tenant to go above and beyond what is adjudicated to be due and owing under a JOP. A consistent interpretation is that to dismiss the JOP with prejudice, the tenant must satisfy the amount stated in the JOP.

Finally, interpreting “rent payment” and “rent due and owing” to mean the amount identified in the JOP is consistent with general legal principles. In any case, a judgment is the court’s legal conclusion as to one party’s liability to



another (if any) and it concludes the case, except for post-judgment relief and enforcement actions. See JUDGMENT, Black's Law Dictionary (12th ed. 2024) (“A court or other tribunal's final determination of the rights and obligations of the parties in a case”); State v. Wood, 23 N.J.L. 560, 561 (1850) (“A judgment is a definite sentence upon the matter at issue between the parties.”). In a dispossession action, the JOP is the final judgment regarding who has the right of possession and all actions taken after—the request for a warrant of removal and the execution of the warrant—are post-judgment actions to enforce the JOP. Other post-judgment actions include forms of relief from the JOP available to tenants, such as the Stack Amendment or Rule 4:50-1 motions for equitable relief. It is thus common sense that to receive relief and have the JOP vacated under the Stack Amendment, the tenant would only need to pay the amount in the JOP itself—it is the final judgment in the dispossession case from which post-judgment relief spawns.

As the trial court explained, this is consistent with case law stressing the importance of the court fixing the amount of rent owed at the time of trial, after hearing testimony, making findings of fact about the amount of rent that is owed at that time, and reaching conclusions of law about which party is entitled to possession of the premises. See Green, 215 N.J. at 449-50. This protects tenants

by identifying the sum certain a tenant must pay to avoid eviction.<sup>10</sup> Ibid. And it is an amount based on evidence in the record—an amount found to be owed by the court after trial, or, in the case of a default judgment, an amount certified by the landlord and accepted by the court. R. 6:6-3(b) (allowing clerk to enter JOP after default if the landlord and its attorney submits affidavits setting forth the charges and fees owed and that they are permitted by the lease and by federal, state, and local law). A practice that instead requires tenants to pay more than what was adjudicated by the court or certified by the landlord would provide

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<sup>10</sup> Fairkings argues that the trial court’s decision “repeals” N.J.S.A. 2A:42-9 or N.J.S.A. 2A:18-55, but it does no such thing. Those statutes still allow a tenant to voluntarily pay all that is alleged to be due on or before trial to stop all proceedings, saving them the stress of litigation, hassle of attending trial, and housing uncertainty. After entry of the JOP, the Stack Amendment separately permits tenants to pay the amount adjudicated to be due and owing, as stated in the JOP, to vacate the JOP. Thus, tenants who dispute what was alleged in the complaint are still given the chance to obtain relief by paying what was adjudicated to be owed. The deadline is three days after the lockout.

less protection to tenants, making them susceptible to eviction over evolving charges<sup>11</sup> that could be unlawfully imposed.<sup>12</sup>

Thus, when looking at the statute as a whole, including related provisions, it is clear that the trial court's interpretation best carries out the Legislature's intended public policy of protecting tenants and preventing evictions.

**c. The Trial Court's Interpretation Does Not Conflict with the Provision Regarding Late Payments**

The Stack Amendment states: "A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if all rent due and owing is paid within the three business day period established by this subsection." N.J.S.A. 2A:42-10.16a(a). Under the court's interpretation, any rent that has come due after the JOP is not forgiven, it is simply not part of the current eviction case. Such rent still may be collected by the landlord and may be the basis of a future eviction case if unpaid. Tenants still have an obligation

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<sup>11</sup> There is nothing in the record to prove that Ms. Daniels owed \$6,836.68 as of the April 29, 2024 hearing. At the April 4, 2024 hearing, counsel for Fairkings had stated the amount owed was \$6,888.13. (1T7). It is unclear whether these amounts include late fees on the \$5,482.31, but that is likely the case. See footnote thirteen.

<sup>12</sup> A tenant could, of course, challenge such charges via Rule 4:50-1, if they understood their rights and responsibilities. But, as discussed in Point I(B), infra, reliance on Rule 4:50-1 is not the best basis to protect a tenant's rights and does not promote judicial economy.

to pay every month's rent and an incentive to do so with swiftness if they seek to avoid a future eviction case. What the statute makes clear is that a late fee shall not be imposed for rent paid in the three-day window created by this law. This protects tenants where a landlord may refuse a partial payment post-judgment seeking to avoid waiver for a tenant who cannot pay the full amount owed in the judgment. See Carteret Props. v. Variety Donuts, Inc., 49 N.J. 116, 129 (1967) ("There is no doubt that acceptance of rent with knowledge of the breach, if any, constitutes a waiver of all past breaches."). In other words, if the tenant satisfies the full JOP, a late fee cannot have accrued on that amount even if payment comes much later.

Here, the amount of the JOP was \$5,482.31. On April 1, 2024, another \$1,029 in rent came due. To reach the \$6,836.68 that Fairkings claims was due as of April 29, 2024, it clearly must have imposed a five percent late fee not only on the \$1,029 for April rent, but also on the \$5,482.31 JOP amount that had not yet been paid.<sup>13</sup> The Stack Amendment makes it clear that such a late fee is prohibited if the tenant satisfies the JOP, even if they satisfy the JOP after a new month passes and a new rent statement issued. If the landlord pursues a new

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<sup>13</sup> \$5,482.31 (JOP amount) plus \$1,029 (April rent), totals \$6,511.31. A five percent interest on that amount equals \$325.57, bringing the total to \$6,836.88.

eviction action for post-JOP rents that have come due, the new dispossession action also cannot include any late fees for the JOP amount.

**C. Judicial Economy is Best Promoted by Affirming the Lower Court's Ruling**

Fairkings argues that the trial court's decision sends landlords and tenants on a "merry-go-round" where a landlord would need to file a new eviction almost immediately after Stack Amendment relief is granted, to assert its right to the rent which became due after the entry of the JOP. It maintains that judicial economy is best promoted by an interpretation that requires the tenant to pay all rent due under the lease as of the date the Stack Amendment is paid, not the amount of the JOP. Ms. Daniels respectfully disagrees.

The Stack Amendment must be construed in favor of the tenant, not in favor of what might best promote judicial economy. But even putting that aside, judicial economy is best promoted by upholding the trial court's ruling (which simultaneously best promotes the State's public policy in favor of keeping tenants housed) and requiring a landlord to file a new action if it seeks to enforce its rights for a tenant's failure to pay rent that accrued after the entry of the JOP.

The clarity of using the amount in the judgment promotes judicial economy. If the tenant agrees with the amount in the JOP and can pay it within the prescribed time after trial, the landlord knows it must accept the payment

and dismiss the case. Where the landlord seeks to add an additional month's rent, it is more likely the parties will dispute the total, particularly since landlords will frequently add fees. Even with the prohibition on imposing a late fee on the JOP amount, a landlord may still try to impose other fees considered additional rent in the lease.

The Stack Amendment contemplates a clear, orderly process in which tenants can pay the rent in the prescribed period and in turn the landlord will accept the rent, notify the court within two days, and the court will dismiss the eviction. N.J.S.A 2A:42-10.16a(b)(1) – (b)(2). If this process is followed, the court's only role will be to dismiss the action upon notice from the landlord.

Adding additional amounts as rent increases the likelihood that a landlord and tenant will disagree on the amount and require the review of a judge to decide what is owed to avoid eviction. Indeed, Fairkings asserts, without proof or notice of its computation, that \$6,836.68 was due as of April 29, 2024. If the trial court had required Ms. Daniels to pay that amount under the Stack Amendment, there likely would have been a dispute as to whether that was the amount actually owed.

An eviction action is a summary proceeding. A landlord files a simple form complaint. The case is then scheduled for trial, which is short and handled

in one day. The clerk's office can choose how many cases are scheduled for one day based on the availability of staff and judges. Most cases end up settling or defaulting, so there is no trial at all.

In comparison, where a tenant is facing an imminent lockout and an order to show cause is filed, the matter is heard that same day by a hearing officer or a judge who then has to make other scheduled trials wait. If the court thinks the tenant's argument has merit, then they are given a return date. This means at least two appearances for an order to show cause versus one for a trial.

Although a landlord will have the ability to refile a new dispossession action immediately should the tenant pay the JOP amount and not the next month's rent if it has come due, it is not a certainty that every landlord will immediately file. A tenant who has demonstrated a renewed ability to pay rent may be able to work out an agreement with the landlord for when the month's rent can be paid. It could be a benefit to both parties to resolve the matter without the intervention of a court where the tenant expects to be able to pay in a short period of time.

Accordingly, the trial court correctly concluded that the Stack Amendment simply requires a tenant to satisfy the JOP within three days of a lockout in order to obtain relief.

### **CONCLUSION**

For all the reasons argued above, this Court should construe the Stack Amendment liberally in favor of tenants and affirm the trial court's decision below.

Respectfully Submitted,

Pashman Stein Walder Hayden, P.C.

/s/ CJ Griffin, Esq. \_\_\_\_\_



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# Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-002972-23T2

**FAIRKINGS PARTNERS, LLC**

**Plaintiff/Appellant,**

vs.

**ESSENCE DANIELS,**

**Defendant/Respondent.**

**CIVIL ACTION**  
*ON APPEAL FROM*

**LAW DIVISION  
SPECIAL CIVIL PART  
LANDLORD-TENANT DIVISION  
ESSEX COUNTY**

*SAT BELOW*

**HON. DAMIAN SANTOMAURO,  
J.S.C.**

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## APPELLANT'S REPLY BRIEF

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**Date of Submission: December 16, 2024**

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### **PROCEDURAL HISTORY**

For the purposes of this Reply Brief, Appellant, Fairkings Partners, LLC (“Appellant”), shall continue to rely upon the Procedural History set forth in its Amended Brief dated August 23, 2024.

### **STATEMENT OF FACTS**

For the purposes of this Reply Brief, Appellant shall continue to rely upon the Statement of Facts set forth in its Amended Brief dated August 23, 2024.<sup>1</sup>

### **SCOPE OF REVIEW**

For the purposes of this Reply Brief, Appellant shall continue to rely upon the Scope of Review set forth in its Amended Brief dated August 23, 2024.

### **LEGAL ARGUMENT**

#### **I. THE STACK AMENDMENT DID NOT ESTABLISH AN ENTIRELY NEW PROCESS THAT SILENTLY OVERHAULED A WELL-ESTABLISHED BODY OF LAW AND PROCEDURE.**

Respondent argues that the Stack Amendment, N.J.S.A. 2A:42-10.16a and N.J.S.A. 46:8-49.3, effective March 1, 2020, “is a significant departure from [Housing Auth. of Morristown v. Little, 135 N.J. 274 (1994)] and the practices of

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<sup>1</sup> Appellant would also like to clarify that it did not impose a “five percent late fee not only on the \$1,029 for April rent, but also on the \$5,482.31 JOP amount that had not yet been paid.” Db24. Appellant only ever charged a 5% late fee on the outstanding base rent owed for that particular month. Pa006 to Pa007; Pa034 to Pa035. At the time the parties appeared in April 2024 on Appellant’s post-judgment application, \$6,888.13 was alleged to be due, which included a late fee of \$51.45 (5% of the base rent of \$1,029) as well as other charges that accrue as “additional rent” per her lease, such as monthly utility and water charges. In accordance with the Stack Amendment,.

the past.” Db15. The Stack Amendment, in Respondent’s view, relieves tenants from the burden of establishing “the exceptional circumstances of proving they can pay not only the JOP, but also the full balance of everything that has come due after the JOP.” Db16 (emphasis added). Respondent echoes the trial court in arguing that a tenant may save their tenancy by paying, up to three days after a lockout, *only* the amount alleged to be set forth in the Judgment of Possession (“JOP”). This, she says, leads to less court intervention, less discretionary rulings, less evictions, and is consonant with this State’s public policy to prevent homelessness.

As explained herein, Respondent’s analysis suffers from willful blindness, offering a distorted perception of statutory intent without any textual support. It ignores the detrimental and inconsistent impact that the trial court’s ruling would have on other legislative enactments and court processes. It prioritizes short-term benefit over long-term sense. Appellant submits that there is far more harm to be done than good, if Respondent’s novel interpretation of the Stack Amendment were to be accepted.

*A. THE PLAIN LANGUAGE OF THE STACK AMENDMENT IS UNAMBIGUOUS AND COMPLEMENTS THE PREVAILING UNDERSTANDING OF POST-JUDGMENT PROCEDURE.*



Respondent's claim that the Stack Amendment, which became effective nearly five years ago, was intended to fundamentally change the post-judgment procedure in non-payment of rent summary dispossession cases, compels the following question: If the legislature intended to undo years of settled law and replace it with an entirely new procedure as of early 2020, how did nobody know it? More importantly, how could we have known it? According to Respondent and the trial court, the legislature elected, through its silence, to drastically alter a core proposition of Landlord-Tenant jurisprudence and statutory authority – that a landlord is entitled to payment *in full* in order for a nonpayment case to be dismissed. We submit, once again, that this simply cannot be.

As noted in Appellant's original brief, the Stack Amendment was enacted without any concomitant repeal of previously existing statutes (such as N.J.S.A. 2A:42-9 and N.J.S.A. 2A:18-55) and without any expressed legislative intent to overhaul the long-established law and procedure on post-judgment applications. Therefore, upon its enactment, jurists and practitioners understood the Stack Amendment to have created a *third* statutory right of dismissal for tenants: (1) upon payment of "all rents and arrears" prior to trial, N.J.S.A. 2A:42-9, (2) upon payment of "the rent claimed to be in default" on or before the entry of the JOP,

N.J.S.A. 2A:18-55, and *now*, (3) upon payment of “the rent due and owing” up to three days after the lockout, N.J.S.A. 2A:42-10.16a.

The court itself adopted such understanding, recognizing in the post-Stack Amendment iteration of the “Harris Announcement” that the tenant can have their case dismissed if they pay “*all of the rent that is due*” on or before the date a judge enters a JOP or if they pay “*all rent due and owing*” up to three business days after the eviction. Pa081 to Pa085. Critically, the Harris Announcement makes no distinction between pre- or post-judgment amounts, nor does it supplant the commonsense understanding of those words with any alternative definition. More pointedly, like the Stack Amendment itself, nowhere does the Harris Announcement limit the amount that must be paid by the tenant to dismiss the case *after* the entry of a JOP to the “judgment amount”. Rather, the Harris Announcement instructs tenants to pay *all* the rent that is due to have the case dismissed, consistent with the prevailing, commonsense understanding of post-Stack Amendment, post-judgment practice.

Respondent’s legal gymnastics in support of her novel conclusion are both dizzying and unconvincing. Like the trial court, Respondent erroneously builds her argument on the flawed foundation that the Stack Amendment is ambiguous because the legislature failed to define “rent payment” or “rent due and owing”.

First, this premise ignores that many statutes refer to the payment of rent without providing a definition. For example, N.J.S.A. 2A:42-9 does not define “all the rents and arrears” that can be paid “before the trial” (i.e. before judicial determination) to have the eviction case dismissed. Instead, the legislature assumes that its words will be interpreted according to their ordinary meaning and, to date, this has been done without issue.

Second, the trial court’s interpretation leads to an anomalous result where similar language in separate but related statutes is required to be read differently. N.J.S.A. 2A:42-9 requires payment of “all the rents and arrears” for a tenant to secure dismissal before the trial date, and N.J.S.A. 2A:18-55 similarly requires payment of “the rent claimed to be in default” upon or before the entry of a JOP for dismissal. There is no textual basis for inserting a phantom limitation into the Stack Amendment – “all rent [*judicially determined to be*] due and owing [*as set forth in the Judgement of Possession*]” – while declining to do so in these related statutes. All of these statutes address the payment of rent to secure dismissal, and the legislature is assumed to act consistently to achieve similar results. Appellant’s approach, rather than Respondent’s achieves this result.

Third, Respondent’s comparison of the Stack Amendment to the statutory hardship stay, N.J.S.A. 2A:42-10.1 and N.J.S.A. 2A:42-10.6, in a mistaken effort



to demonstrate the alleged ambiguity of the former, fails because the two statutes have fundamentally different purposes and areas of operation. Notably, the Stack Amendment applies when a JOP is entered based on an amount due while the hardship stay statute will *only* apply when the JOP (and/or resulting Warrant of Removal) is based on something other than nonpayment. See 806 6<sup>th</sup> St. HCPVI, LLC v. Nunez, unpublished, A-0753-21 (App. Div. 2023). Thus, a tenant who can pay all outstanding rent would only be seeking a hardship stay if the Stack Amendment was inapplicable to them because their eviction is not based on nonpayment. Thus, as a matter of axiomatic proof, Respondent's analogy fails. As a necessary consequence of these differences, Respondent's contention that "where the Legislature has intended to impose a requirement that a tenant pay more than what the JOP states, it has clearly stated so" is categorically false and the conclusions which flow from this error are specious. Db18.

Moreover, the two statutes are, as noted, functionally distinct. The statutory hardship stay authorizes courts to give certain tenants the ability to remain in temporary possession of the rental unit while *preserving* the termination of the tenancy. The Stack Amendment, on the other hand, results in the dismissal *with prejudice* of the cause of action for eviction. This critical distinction is reflected in the language utilized by the legislature within each statutory scheme. It is readily

apparent that the hardship statute is specially tailored to ensure that, while the tenant remains in possession, the landlord can collect all monies due to it, as if the tenancy was continuing, *without jeopardizing* the termination of the tenancy and the landlord's ability to enforce the JOP at the conclusion of the hardship stay.

This is a stark contrast to the Stack Amendment, which is specifically designed to permit tenants to reinstate their tenancy through payment of "the rent due and owing". The legislature did not circumscribe this phrase with any temporal limitation. It did not make any distinction between the *arrearages* and the amounts that "would be due if the tenancy had continued." It did not do so because there was no need to carefully preserve the JOP. Indeed, the intention is the opposite – to give tenants the statutory right to "pay to stay" even after the entry of the JOP and the execution of the lockout.

To the extent a comparison is appropriate, the language of the hardship stay statute demonstrates the legislature's recognition that any tenant seeking to remain in possession of a rental unit, even on a temporary basis, must pay the full contractual consideration for such rental premises. Indeed, it would be irrational for the legislature to take such great pains to ensure that a tenant, on a hardship stay application, pay all the pre- *and* post-judgment monies due to the landlord to remain temporarily in possession, while also allowing a different tenant to dismiss

the eviction case and reinstate their tenancy upon payment of less than the full amount of rent due and owing.

It is also worth noting that Respondent curiously overlooks that the hardship stay statute itself fails to define “all arrears in rent” or “the amount of rent that would be due if the tenancy had continued”. Appellant sees no need for the legislature to provide specific definition, as the language is apparent. Nevertheless, Respondent fails to explain why this language is unambiguous, while the Stack Amendment is ambiguous.

Furthermore, Respondent’s argument that “this Court must construe the Stack Amendment in favor of the Legislature’s goal of avoiding evictions and keeping tenants in their homes,” is misguided. Db13. This Court has already demonstrated its willingness to limit the application of the Stack Amendment, without an express directive from the legislature and despite public policy interests, as it already determined that the statute is inapplicable when a tenant executes an agreement to vacate, even if the original cause of action for eviction was based on nonpayment. 806 6<sup>th</sup> St. HCPVI, LLC v. Nunez, unpublished, A-0753-21 (App. Div. 2023). Pra001 to Pra019. Thus, even when the statute is silent, the Court’s pragmatism does not need to favor public policies at the expense of a sensible and cohesive interpretation of an established body of law.



As the foregoing demonstrates, Respondent's argument that the language of the statute is ambiguous is a red herring. It is designed to convince this Court that its commonsense understanding of the legislature's language should not be trusted and that it should instead turn to unrelated extrinsic evidence and anti-homelessness public policy arguments to reach a conclusion that would not otherwise be naturally derived from the statutory language. Appellant again submits that if the legislature intended to impose such a significant and novel limitation on the amount that is to be paid by the tenant to dismiss the eviction case post-judgment, even after a lockout, it would have said it *explicitly*, so that we all knew it.

*B. THE STACK AMENDMENT WAS NOT INTENDED TO REPLACE  
HOUSING AUTH. OF MORRISTOWN V. LITTLE AND THE WELL-  
ESTABLISHED LANDLORD-TENANT PROCEDURES.*

First, as discussed in Appellant's original brief, there is simply no authority for the proposition that the specific quantum of arrears found to exist with the entry of the JOP is fixed *in perpetuity*. Nevertheless, Respondent, like the trial court, over-emphasizes the importance of the amount determined to be due at the time of the entry of the JOP and takes for granted that the tenant is aware of this amount. As explained in the original brief, countless JOPs are entered by a *court clerk* (not a judge) following a tenant's default, in reliance on the landlord's *ex parte*

application pursuant to R. 6:6-3(b). In cases where a nonpayment JOP is entered by default, there is no mechanism for the defaulting tenant to be given notice of the JOP amount. Had the Stack Amendment intended to limit the payment to the JOP amount, it is reasonable to expect that the legislature would have created some procedure for the tenant to receive notice of it.

It is during this post-judgment hearing that the amounts are meaningfully discussed by the parties and the previously defaulting tenant is given the opportunity to counter the landlord's representation of the amount due. Thus, Respondent's contention that fixing the amount to be paid per the Stack Amendment to the "judgment amount," provides clarity to tenants and relieves the courts of the burdens of post-judgment applications, is simply untrue and may actually be detrimental to tenants who, to this very day, frequently utilize this tool for their benefit.

In addition, Respondent's contention that the Stack Amendment upends the need for post-judgment judicial intervention is inconsistent with the language of the Stack Amendment itself. N.J.S.A. 46:8-49.3 provides, in pertinent part:

c. In the event that a landlord of a rent-controlled property is entitled to recover attorney's fees or expenses under the lease agreement, incurred as a result of the failure of the tenant to pay rent due and owing, unless otherwise limited by local ordinance, ***the court shall take into consideration all factors associated with each case and***

*may limit the amount awarded to the landlord to a reasonable fee based on those factors.* [emphasis added.]

The foregoing section demonstrates, quite clearly, that the legislature specifically contemplated the ongoing need for post-judgment judicial intervention. The foregoing section also demonstrates that the courts remain fully equipped to render a post-judgment determination on the amounts then due, at the precise time that the tenant is trying to make payment to reinstate their tenancy. Finally, and quite critically, the foregoing section demonstrates that the legislature *expected* and *anticipated* that additional amounts would accrue on the tenant's rental account which would need to be resolved by a court in a post-judgment judicial determination. This section is therefore entirely antithetical to Respondent's interpretation of the Stack Amendment.

While the court may still entertain a tenant's post-judgment application under R. 4:50-1 to vacate the JOP, the Stack Amendment ensures that tenants are not reliant on the court's discretion in granting such relief. Instead, the court can determine the amount then due, after hearing from both the landlord and the tenant. If the tenant can pay that amount up to three days after the lockout, they can invoke the safeguards of the Stack Amendment to have the eviction case dismissed. *This* is the precise purpose of the Stack Amendment.



*C. RESPONDENT'S ARGUMENT PRIORITIZES SHORT-TERM RELIEF WITHOUT REGARD FOR THE CONSEQUENCES TO THE TENANT, THE LANDLORD AND THE COURTS.*

Respondent's arguments regarding the dangers and confusion that befall tenants who are subject to post-judgment rental account charges are largely dramatized, inconsistent with the law, and ignore the larger consequences that will negatively impact not just the landlord and the courts, but the tenants.

While this state has strong public policy against homelessness, the Anti-Eviction Act specifically carves out a right to eviction when a tenant fails to pay rent. N.J.S.A. 2A:18-61.1(a). It is also well-settled that the statutory creation of a summary dispossess action was intended to afford landlords "an expedited procedure to regain possession of leased premises..." Little, 135 N.J. at 280. Therefore, even with its public policy interests, the state has still recognized that tenants cannot live for free.

Given this, it is unclear precisely what inequities Respondent believes befall the tenant who is required to pay the rent and additional rent that has contractually accrued while they remain in possession of a rental unit, at the time they are trying to avoid eviction. Such amounts are contractually owed by virtue of the tenant continuing in possession of the rental unit, regardless of the termination of the

tenancy.<sup>2</sup> Respondent's fixation on a distinction between the rents due before and after the formal termination of the tenancy (with the entry of the JOP) is yet another red herring. If the tenant wants to reinstate their tenancy, the amounts due per their lease are the inevitable guideposts. The Stack Amendment, in effect, gives the tenant the ability to execute a late cure of a breached lease contract. There is simply no authority for Respondent's novel proposition that the tenant be able to pay less than the contractually owed amount to reinstate that lease contract.

Finally, Respondent's interest in immediate, short-term relief is woefully short-sighted. While tenant advocates no doubt believe that preserving housing in the short-term is the paramount goal, this position not only ignores the lack of legal underpinning for their unprecedented position (as explained above), but it also ignores certain inescapable realities that will have detrimental consequences for tenants.

Under most leases, like the one executed by Appellant and Respondent (and where permitted by local rent control), the tenants are obligated to pay the filing fees and attorney's fees incurred by the landlord as a result of their lease defaults. When the landlord is inevitably forced to refile against the tenant, and begin the

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<sup>2</sup> Respondent acknowledges that the landlord may still file a collection case for the rent that has accrued after the JOP, and that it may refile for eviction based on those amounts. Db23. Both actions are based upon the tenant's obligation to pay the contracted-for rent for their use of another's property, even if a JOP had been previously entered.



eviction “merry-go-round”, the previously avoidable filing fees and attorney’s fees for each successive case will be passed to the tenant. In addition, the landlord will not be precluded from assessing the contractual late fee on each additional month of rent that accrued *after* the entry of the JOP (since those additional months are not part of the amount being paid to stop the lockout). Moreover, the tenants will need to take time off from their employment to appear at successive trial dates. Accordingly, when all is said and done, Respondent’s proposed short-term relief will end up greatly exacerbating tenants’ financial burden in the long run.

Respondent’s belief that its construction of the Stack Amendment will bolster the opportunity for settlements between landlords and tenants is similarly naïve. In fact, landlords may become unwilling to execute the form “Settlement Agreement (Tenant to Remain)”, found in Appendix XI-V. Pa020 to Pa021. In this form, the landlord may *immediately enter the JOP* based on the amount agreed to then be due, as set forth in Paragraph 2. Id. Future rents are not incorporated into the existing “judgment amount” since they are not then due, though the failure to pay such ongoing rent is deemed a breach of the terms of the agreement. But, under Respondent’s theory, if the tenant breaches, they would only need to pay the amount originally set forth as due in Paragraph 2, as this was the amount agreed to be due when the JOP was entered. Such a result fundamentally deprives the

landlord of the benefit of its bargain and is catastrophic for settlement practices. After all, why would any landlord agree to give a tenant time to repay arrearages if the tenant can breach that agreement months later and only be required to pay the original JOP amount to save themselves from eviction? Of course, if Appellant's understanding of the Stack Amendment were to be accepted, no such catastrophe would occur, as the tenant could simply pay all that is due to save their tenancy.

As the foregoing demonstrates, Respondent's interpretation of the Stack Amendment does not protect tenants from "unfair" post-judgment practices, nor does it provide clarity to post-judgment procedures or promote judicial economy. To the contrary, the legal and practical consequences of such interpretation are dubious and cause for great concern.

### **CONCLUSION**

Given the foregoing, Appellant respectfully reiterates its request that this Court reverse the decision of the trial court and find that the Stack Amendment requires payment in full of the amount due at the time the tenant is paying to remain in the premises, and not the amount entered with the JOP.

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Dated: December 16, 2024

By: *Derek D. Reed*  
DEREK D. REED

FAIRKINGS PARTNERS LLC,

Plaintiff/Appellant,

v.

ESSENCE DANIELS,

Defendant/Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET No. A-002972-23-T02

Civil Action

On appeal from:  
Superior Court of New Jersey,  
Essex County Law Division, Special  
Civil Part Landlord-Tenant Division

Sat Below:  
Honorable Damian V. Santomauro,  
J.S.C.

Docket No. ESX-LT-1879-24

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**BRIEF OF AMICUS CURIAE**  
**SETON HALL UNIVERSITY SCHOOL OF LAW, CENTER FOR**  
**SOCIAL JUSTICE, HOUSING JUSTICE PROJECT**

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**Date Submitted: November 13, 2024**

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**STATEMENT OF INTEREST OF AMICUS CURIAE**

The **Seton Hall University School of Law, Center for Social Justice, Housing Justice Project (“Housing Justice Project”)**, established in 2021 with funding from the State of New Jersey, N.J.S.A. 22A:2-51a, et seq., provides free legal services to low- and moderate-income tenants who are in need of housing assistance. The Housing Justice Project is part of the Center for Social Justice, which houses most of the clinical legal programs at Seton Hall University School of Law. The Housing Justice Project regularly represents vulnerable tenants in New Jersey eviction proceedings, including tenants with disabilities, families, tenants who speak a language other than English, and those with other challenges. The Project is dedicated to advancing the right of tenants to stable, secure, and affordable housing.

Each year, the Housing Justice Project engages more than 30 law students and volunteers who work to provide crucial representation and support to tenants facing eviction and other housing problems. The Housing Justice Project directly witnesses the consequences to tenants of the laws applied in eviction cases. Beyond its direct client services, the Housing Justice Project is an advocate for implementing and enforcing critical reform measures, ensuring that tenants’ voices are heard.



## **PRELIMINARY STATEMENT**

The Legislature amended the State’s landlord-tenant laws in 2019 to create a mechanism for residential tenants to regain possession of their rental unit after a trial court issues a judgment for possession (commonly known as a “JOP”) in an eviction action for nonpayment of rent. See N.J.S.A. 2A:42-10.16a and N.J.S.A. 46:8-49.3 (“Stack Amendment”). The Stack Amendment gives tenants an automatic, statutory right to have the nonpayment case “dismiss[ed] with prejudice” and the tenancy reinstated post-judgment if the tenant pays the landlord the “rent due and owing” no later than three business days after a lockout occurs. Ibid. The question presented in this appeal is whether the “rent due and owing” refers to the amount set forth in the JOP (as the trial court concluded), or the amount set forth in the JOP *plus any additional* rent the landlord claims has accrued between the entry of the JOP and the expiration of the three-day, post-lockout grace period afforded under the Stack Amendment. Notably, the additional rent the Plaintiff-Appellant (hereinafter “Fairkings” or “Plaintiff”) argues it is entitled to: (1) accrued after the entry of the JOP and therefore during a time when the tenancy was terminated, and (2) was never subject to judicial review.

Proposed Amicus submits that the trial court correctly interpreted “rent due and owing” under the Stack Amendment to mean the amount judicially

determined to be due as specified in the JOP. (Pa50).<sup>1</sup> To hold otherwise would misinterpret the statute from a textual standpoint, as outlined in the trial court’s opinion and elaborated upon by Defendant-Respondent (“Defendant”). Such a misinterpretation would also: (1) significantly undermine the remedial purpose of the Stack Amendment by making it harder for tenants—who are often already at a disadvantage—to access the remedy envisioned by the Legislature; (2) create uncertainty and confusion by requiring tenants to pay an amount that they are essentially asked to guess because they are not provided notice of what the landlord believes is “due and owing” until the time of payment; and (3) compromise the judiciary’s role as a neutral arbiter of landlord-tenant disputes by allowing the landlord to determine unilaterally what rent is “due and owing.”

While Fairkings is correct that landlord-tenant matters are summary proceedings, that does not mean that tenants are deprived of basic due process for the sake of expediency. To the contrary, the Anti-Eviction Act, Fair Eviction Notice Act, and governing court rules ensure that tenants are afforded notice and an opportunity to challenge and obtain judicial review of the rental amount plaintiff landlords allege to be owed. Limiting “rent due and owing” under the

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<sup>1</sup> As set forth in Rule 2:6-8: Pa = Plaintiff’s Appendix; Da = Defendant’s Appendix; Pb = Plaintiff’s Brief; Db = Defendant’s Brief.

Stack Amendment to the amount set forth in the JOP affords tenants the requisite notice and process.

Any additional rent that comes due once the JOP is vacated and the tenancy is reinstated can be the subject of a separately filed eviction action where tenants are provided with a complaint that clearly identifies the rent and fees that the landlord alleges are due, along with the requisite certifications from the landlord; tenants are thereby afforded notice of the pleaded rental amounts and fees, with an opportunity for judicial review of their accuracy and legality. Such a scheme comports with the Legislature's goals in enacting the Anti-Eviction Act and the Stack Amendment. If the Legislature wanted to abandon the notice requirements normally afforded to tenants and to abdicate the court's role in adjudicating the amount and legality of the alleged rent and fees, it would have explicitly said so when enacting the Stack Amendment.

For all these reasons and those set forth in Defendant's brief, the trial court's decision should be affirmed.

#### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Amicus curiae incorporate by reference the Statement of Facts and Procedural History recited in the brief of Defendant. Db3–8.

## **LEGAL ARGUMENT**

### **I. Interpreting the Stack Amendment to Require Tenants to Pay an Amount Beyond What Is Judicially Determined To Be Due and Owing in the JOP Would Impose Uncertainty and an Unfair and Unreasonable Burden on Tenants, Undermining the Remedial Purposes of the Anti-Eviction Act and Fair Eviction Notice Act.**

As an initial matter, Amicus agrees with Defendant’s recitation of how a nonpayment of rent action is adjudicated under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to –61.12, and the Fair Eviction Notice Act, N.J.S.A. 2A:42-10.15 to –10.17. Amicus also agrees with Defendant’s explanation of how the Stack Amendment changed post-judgment relief for tenants and how this Amendment, the Court Rules, and precedential caselaw (including Housing Authority of Morristown v. Little, 135 N.J. 274 (1994)) intersect and co-exist to govern the current process for obtaining post-judgment relief in landlord-tenant proceedings. See Db8–12, 15–18.

The trial court concluded that the statutory language at issue in the Stack Amendment is ambiguous and, therefore, the court may consider “extrinsic evidence, ‘including legislative history, committee reports, and contemporaneous construction.’” (Pa59) (quoting DiProspero v. Penn, 183 N.J. 477, 492–93 (2005)) (internal quotations omitted).<sup>2</sup> Here, the trial court

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<sup>2</sup> Fairkings argues that the Stack Amendment is not ambiguous. Although Fairkings recognizes that “[w]hen interpreting a statute, the ‘Legislature’s intent is the paramount goal . . . ,” Pb24 (citing DisProspero, 183 N.J. at 492), it fails to

correctly recognized that the Stack Amendment “create[s] a statutory scheme centered on the tenant’s submission of ‘a rent payment’ to obtain dismissal with prejudice of the judgment for possession.” (Pa62) (citing N.J.S.A. 2A:42-10.16a) (emphasis added). The Stack Amendment does not set forth a mechanism for a landlord to collect outstanding rent or other sums that a tenant may owe; the landlord already has a civil remedy through a small claims court action for seeking compensation and payment of all arrears, see, e.g., Moyano v. Williams, 267 N.J. Super. 213, 216–17 (Law Div. 1993). Rather, the Stack Amendment provides a post-judgment, statutory mechanism for a tenant to regain the legal right to possess the rental property and to avoid eviction and potential homelessness. The Stack Amendment must therefore be understood within the broader context of New Jersey’s long-standing commitment to protecting tenants from the harsh consequences of eviction.

The Stack Amendment was enacted in 2019. P.L. 2019, c. 316. At that time, there were approximately 156,000 eviction filings in New Jersey annually,

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recognize or address the Legislature’s stated goals of providing broad protections to tenants to avoid the harms of displacement. See infra pp. 7 –9. Even if this Court determines that there is no ambiguity and that a plain language reading of the statute is appropriate, the statutory language at issue must be read “in context with related provisions so as to give sense to the legislation as a whole,” DiProspero, 183 N.J. at 492, and the overarching goals of the Anti-Eviction Act and Fair Eviction Notice Act cannot be ignored.

based on the average number of filings from 2016–2019;<sup>3</sup> see also Eviction Lab, Princeton University, New Jersey Report (Aa269–75) (showing that in 2018 there were 417 eviction filings per day in New Jersey, which amounted to approximately 12% of renters facing eviction). Tens of thousands of tenants were—and continue to be—evicted annually, resulting in severe consequences for those who were forced out of their home with potentially nowhere to go<sup>4</sup>. Making matters worse, the overwhelming majority of residential tenants have no lawyer to defend them in eviction proceedings. The most recent statistics show that approximately 97% of residential tenants have no counsel asserting defenses on their behalf,<sup>5</sup> leaving many—often low-income tenants—vulnerable to displacement.

The Legislature has made no secret of the fact that it views loss of housing as a public health and safety concern:

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<sup>3</sup> Allen Mallach, Center for Community Progress, “New Jersey Renters at Risk of Eviction in 2022,” [tinyurl.com/3s9yxa2p](https://tinyurl.com/3s9yxa2p) (last visited Nov. 13 2024) (Aa1–8); see also Publications, Reports, and Statistics, New Jersey Courts, “Court Management Statistics” for years 2015–2019, at 50 (showing an average of 157,367 annual eviction filings between 2015–2019) (Aa62, Aa127, Aa192, Aa257).

<sup>4</sup> See infra pp. 17–19 for statistics on homelessness rates and the negative consequences of homelessness in New Jersey.

<sup>5</sup> The AOC reports that 97% of tenants appeared without legal representation in residential eviction cases in calendar year 2023. See E-mail and Attached Chart from Cheryl Hicks, Data Analytics, Rsch. and Statistics, AOC, to Catherine Weiss, Lowenstein Sandler (Oct. 23, 2024) (Aa276–79).

It is in the public interest of the State to maintain for citizens the broadest protections available under State eviction laws to avoid such displacement and resultant loss of affordable housing, which, due to housing's uniqueness as the most costly and difficult to change necessity of life, causes overcrowding, unsafe and unsanitary conditions, blight, burdens on community services, wasted resources, homelessness, emigration from the State and personal hardship, which is particularly severe for vulnerable seniors, the disabled, the frail, minorities, large families and single parents.

N.J.S.A. 2A:18-61.1a(d). New Jersey courts have consistently and emphatically recognized the Legislature's intent to protect tenants from the severe consequences of eviction. As the New Jersey Supreme Court has underscored time after time, laws protecting tenants against eviction are "remedial" and "deserving of liberal construction." Maglies v. Estate of Guy, 193 N.J. 108, 123–24 (2007) (interpreting the Anti-Eviction Act); see also Taylor v. Cisneros, 102 F.3d 1334, 1337 (3d Cir. 1996) (noting that New Jersey is "quite protective" of residential tenants). New Jersey's eviction scheme "should therefore be liberally construed to protect the rights of tenants, with all doubts resolved in favor of the tenant." Cashin v. Bello, 223 N.J. 328, 336 (2015) (citing N.J.S.A. 2A:18–61.39; Cmt'y. Realty Mgmt., Inc. for Wrightstown Arms Apartments v. Harris, 155 N.J. 212, 227 (1998)).

The underlying purpose of anti-eviction legislation such as the Anti-Eviction Act and the Stack Amendment is to avoid the social ills that often

follow eviction such as “homelessness, [and] family and social disruption,” and to protect residential tenants—“especially those vulnerable to homelessness”—from “becoming a strain on the community’s resources.” Maglies, 193 N.J. at 124. Such legislation is critical given the historical “inequities existing between landlords and tenants in residential housing.” Rogers v. Donovan, 213 N.J. Super. 309, 312 (Law Div. 1986) (recognizing a 1969 study to propose “legislation to correct the inequities existing between landlords and tenants in residential housing”) (citations omitted).

As a remedial statute, the Stack Amendment is designed to prevent immediate displacement by giving tenants a final opportunity to avoid eviction through payment of rent. As such, the Stack Amendment must be “liberally construed to suppress the evil [following the forceable removal of a person or a family from their home] and to advance the remedy” afforded by the legislation. 3 Norman J. Singer, *Sutherland Statutory Construction* § 60:1 at 183 (8th ed. 2024) (citation omitted). In other words, courts must interpret the statute in a way that makes it easier, not harder, for tenants to take advantage of the legislative remedy. At the very least, the process should be fair and reasonable.

Plaintiff’s interpretation of the Stack Amendment is anything but fair and reasonable—it undermines the statute’s remedial purpose by making it more difficult for tenants to avail themselves of the protections the Stack Amendment



affords and deprives them of the basic notice requirements that form the foundation of all landlord-tenant proceedings. The outcome of Plaintiff's interpretation of the Stack Amendment would also have broad societal implications, including increased homelessness and additional strain on community resources, in direct contradiction to New Jersey's public policy objectives.

**A. Requiring Tenants to Pay Additional Rent Beyond the JOP Amount Imposes Significant Burdens and Deprives Them of Notice They Are Entitled to Under the Anti-Eviction Act and Fair Eviction Notice Act.**

Plaintiff's interpretation of the Stack Amendment creates undue and potentially prohibitive burdens on tenants by making it more costly, complex, and confusing for them to access the relief afforded under the statute.

*First*, requiring tenants to pay more than the amount specified in the JOP—specifically, additional rent and costs that accrue after the JOP but before the expiration of the three-day period allowed for payment under the Stack Amendment—would significantly increase the financial burden on tenants, thereby making it more difficult for them to access and benefit from the remedial protections of the legislation.

New Jersey courts have recognized that even minor charges can have a substantial impact on a tenant's ability to raise the necessary funds to avoid eviction. This is particularly true for low-income tenants living in subsidized housing. In

Harris, the Court observed that landlords that lease subsidized housing “must be charged with the knowledge of the substantial impact a few extra dollars for late charges will have on their tenants’ budgets and consequent abilities to avoid eviction for non-payment of rent.” 155 N.J. at 232–33. Similarly, in Green v. Morgan Props., the Appellate Division underscored that “the consequences of inflating the amount due . . . can be particularly devastating when applied to low-income tenants,” and that the “economic hardship resulting from even a few extra dollars in late charges and attorneys’ fees may substantially impact a family’s ability to survive.” No. A-1247-16T3, 2017 WL 4171613, at \*8 (N.J. Super. Ct. App. Div. Sept. 21, 2017) (quoting Hodges v. Sasil Corp., 189 N.J. 210, 228 (2007)).<sup>6</sup>

Plaintiff’s interpretation, which would require tenants to pay amounts beyond what is listed in the JOP, could make it prohibitively expensive for tenants to take advantage of the Stack Amendment.

**Second**, Plaintiff’s interpretation exacerbates procedural confusion, particularly for the more than 97% of tenants in eviction proceedings who are unrepresented by counsel and, in Amicus’s experience, often face additional challenges such as disabilities or language barriers.

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<sup>6</sup> Pursuant to R. 1:36-3, counsel includes this unpublished opinion in an Appendix at pages Aa280–89. Counsel is aware of no contrary precedent.

New Jersey courts have underscored the critical need for clear and comprehensible notice in eviction proceedings, particularly for those most vulnerable to displacement. See, e.g., A.P. Dev. Corp. v. Band, 113 N.J. 485, 506 (1988) (“[L]ow-income tenants, ever vulnerable to eviction, will be particularly confused by ambiguous notices.”). This recognition highlights the necessity for clarity and simplicity, ensuring that tenants can fully understand their rights and obligations throughout the eviction process. Ibid. (“The Legislature envisioned that valid notice should serve the dual purpose of warning tenants that if certain conduct does not stop, eviction will result, and giving them an opportunity to correct that conduct.”).

With respect to the Stack Amendment, neither the standard court forms, the relevant statutes, the Harris Announcement<sup>7</sup>, nor any other documentation readily accessible to tenants during the eviction process informs them that they would need

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<sup>7</sup> Fairkings argues that the Harris Announcement supports its interpretation of the Stack Amendment by purportedly affirming a “settled and long-standing distinction between what must be paid pre-judgment and what must be paid post-judgment to dismiss an eviction case.” Pb22–23. However, the Harris Announcement merely echoes the language of the Stack Amendment that a tenant must pay “rent due and owing.” See, e.g., Pa38 (providing notice that: “By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction (Step 4 above). The landlord must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.”). Contrary to Fairkings’ assertion, the Announcement does not explain to tenants that they may be responsible for an amount that exceeds the rent “due and owing” set forth in the JOP.

to pay amounts beyond those specified in the JOP. As an initial matter, the language in the verified complaint implies the opposite. The Complaint filed in this case, for example, states:

The date that the next rent is due is 2/1/2024. If this case is scheduled for trial before that date, the total amount you must pay to have this complaint dismissed is 1,656.74. If this case is scheduled for trial on or after that date, the total amount you must pay to have this complaint dismissed is [the amount set forth in the complaint claimed to be due and owing plus the next month's rent.] Plaintiff reserves the right to amend this complaint on the court date for all additional rent due.

(Pa4). This language suggests that, in the context of the eviction proceeding, the landlord cannot add additional rent to the complaint after the trial date, let alone after entry of a JOP. It would therefore be confusing for a tenant to learn that she must pay more than the amount fixed at trial and set forth in the JOP to avoid eviction under the provisions of the Stack Amendment.

Moreover, the JOP itself specifies an amount as “due and owing” and includes an attached form that instructs tenants of their rights under the Stack Amendment to pay “all rent due and owing” to avoid eviction. (Pa36–38). It is unreasonable to expect tenants, especially those representing themselves, to interpret the amount mentioned in the instructions as “due and owing” as anything other than the amount explicitly stated in the JOP. As noted in Harris, 155 N.J. at 228, “a person should be able to read a judgment . . . and glean what relief was granted, thereby avoiding future disputes.” The absence of clear guidance in the complaint or the JOP,

combined with the lack of explicit language in the Stack Amendment requiring payment beyond the JOP amount, creates significant confusion for tenants seeking relief under the Stack Amendment should landlords demand more than the amount specified in the JOP. Indeed, any finding that a pro se tenant would understand they are required to pay anything more than what is set forth in the JOP to avail themselves of the protections of the Stack Amendment is “so wholly insupportable as to result in a denial of justice.” Harris, 155 N.J. at 232 (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483–84 (1974)).

One of the pillars of the Anti-Eviction Act and Fair Eviction Notice Act is the need to afford tenants notice of the allegations against them (such as the precise amount of rent that is owed that can form the basis for eviction), and New Jersey courts have demanded “strict compliance” with such requirements. See Vander Sterre Bros. Constr. v. Keating, 284 N.J. Super. 433, 438 (App. Div. 1995) (“The statute leaves no latitude for a judicial construction which excuses failure to give the specified notice.”). Adopting Plaintiff’s position would leave tenants confused and without adequate notice, ultimately undermining the very protections the Anti-Eviction Act and subsequent Stack Amendment were designed to provide.

**Third**, Plaintiff’s interpretation creates a “moving target” in a high-stakes scenario, injecting uncertainty and anxiety into an already stressful process. Under Plaintiff’s proposed framework, tenants could be forced to guess the total amount

due to avoid eviction, effectively gambling on their ability to meet their obligations and remain sheltered in their homes.

This is particularly problematic for tenants seeking rental assistance to cover their arrears, which may take time to secure. In Amicus's experience, tenants are sometimes able to secure rental assistance from governmental and charitable sources by bringing the JOP as proof of the amount owed in the eviction proceeding, and the agency or nonprofit often provides that exact amount. Under Plaintiff's framework, a tenant could secure rental assistance to avoid eviction only to discover they still owe additional rent that accrued during the process. This approach undermines the tenant's ability to comply with and frustrates the legislative intent behind the Stack Amendment, which is to provide a final opportunity to avert eviction. The stakes are simply too high for tenants and rental assistance agencies to be left guessing in such a precarious situation.

Plaintiff does not dispute that its interpretation would impose burdens on tenants but appears to argue that affirming the trial court's decision would place a greater burden on landlords. See, e.g., Pb31. Anti-eviction legislation like the Stack Amendment, however, was not designed to relieve pressures on the landlord; it was designed to alleviate burdens on the tenant. See, e.g., N.C. Hous. Assocs., No. 100 v. Hightower-Cooper, 281 N.J. Super. 317, 323 (Law Div. 1995) (“[The Anti-Eviction Act] places no burden on the residential tenant, a person who ordinarily is

not represented at trial, who is not in the business of renting apartments and is not as likely to know the law.”) (quoting Vill. Bridge Apts. v. Mammucari, 239 N.J. Super. 235, 240 (App. Div. 1990)) (alternation in original).

Although summary dispossession proceedings should be swift, tenants’ rights must not be sacrificed for the sake of speed. Tenants facing eviction are entitled to all protections afforded by law. See, e.g., Hodges, 189 N.J. at 234 (“[L]andlords and their attorneys maintain the right to pursue summary dispossession proceedings, but they are subject to our overarching concern that the process must provide protection to those most in need of it—low-income tenants.”); Harry’s Vill., Inc. v. Egg Harbor Twp., 89 N.J. 576, 584 (1982) (describing remedial efforts by the Legislature and the courts to “protect tenants” and “equalize the position” of landlords and tenants in order to “assure fairness in the landlord-tenant relationship” despite “housing shortage”).

Moreover, landlords have alternative avenues: they can immediately commence a new summary dispossession proceeding or file suit to recover money damages. Tenants forced out of their homes, however, face a permanent consequence and they may not have any other readily available housing option and may end up homeless. Ultimately, keeping tenants in their homes is the Legislature’s desired result. See Hightower-Cooper, 281 N.J. Super. at 326 (“To the extent that the regulations give the tenant a longer period of time to re-certify their

income or find alternative housing, ‘the legislative policy is advanced, not undermined’”) (quoting Harrison Assoc. v. Rent Leveling Bd., 215 N.J. Super. 1, 8 (App. Div. 1986), certif. denied, 107 N.J. 135 (1987)).

In sum, the Stack Amendment must be interpreted to advance, not undermine its remedial purpose. Plaintiff’s interpretation of the Stack Amendment injects unnecessary confusion and uncertainty into the eviction process, and unfairly burdens tenants—particularly those who are low-income and at highest risk of displacement.

**B. Adopting Plaintiff’s Interpretation of the Stack Amendment Would Have Broad and Detrimental Societal Implications.**

The implications of adopting Plaintiff’s interpretation extend beyond individual tenants and affect New Jersey as a whole. Without robust and accessible tenant protections like those embedded in the Stack Amendment, the number of JOPs in favor of landlords would likely increase, leading to more evictions and heightened homelessness. According to a 2024 report by the New Jersey Housing and Mortgage Finance Agency (“NJHMFA”)<sup>8</sup>, 9,148 households, comprising 12,680 individuals, were experiencing homelessness as of January 2024. (Aa300). This data reflects a significant increase of 19% in the number of people experiencing homelessness compared to 2023. (Aa294).

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<sup>8</sup> See NJ Counts 2024, New Jersey’s Annual Point-In-Time (PIT) Count of the Homeless (Jan. 24, 2024) (Aa290–344).



Among those homeless, 16.2% were families with at least one child under 18, and 46% of homeless individuals reported having some type of disability. (Aa302–05).

Compounding the issue of homelessness, New Jersey is in the midst of a housing crisis. According to information cited in the NJHMFA Report, for every 100 households searching for a home, only 30 units are available, creating a shortage of 214,475 homes for extremely-low-income households. (Aa294). Moreover, in 2022, New Jersey had a vacancy rate of 3.7% for rental units, a “significant drop” from an 11.2% vacancy rate in 2012.<sup>9</sup> This shortage, coupled with significant rent increases that exceed national averages, amplifies the risk that adopting Plaintiff’s interpretation would exacerbate eviction rates and deepen the housing crisis. Indeed, according to the NJHMFA Report, 14.8% of homeless households in 2023 attributed their homelessness to “eviction or risk of eviction.” (Aa309).

Adding to these considerations are studies showing that children face the highest risk of eviction in the United States,<sup>10</sup> and frequent relocations due to housing instability significantly disrupt a child’s learning, impeding academic

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<sup>9</sup> See NJ Counts 2023, New Jersey’s Annual Point-In-Time (PIT) Count of the Homeless (Jan. 24, 2023), at 4 (Aa349).

<sup>10</sup> See Nick Graetz, et al., Who Is Evicted in America?, Eviction Lab (Oct. 3, 2023), [tinyurl.com/4ahbz6wc](https://tinyurl.com/4ahbz6wc) (Aa392–98).

performance.<sup>11</sup> Moreover, for the lowest-income tenants relying on subsidies, eviction can mean not only a loss of housing but can also jeopardize future participation in subsidy programs such as Section 8, making it even harder for tenants to recover housing stability.<sup>12</sup>

Plaintiff's interpretation would lead to increased evictions, family displacement, and greater social disruption. The legislative intent behind the Stack Amendment, and similar anti-eviction measures, reflects New Jersey's commitment to preventing such outcomes. A construction that makes it harder for tenants to avoid eviction conflicts with this intent and creates consequences that ripple across society—driving up public assistance costs and straining community resources. Thus, to advance the purpose of the Stack Amendment and adhere to New Jersey's public policy of protecting tenants and preventing homelessness, the statute must be interpreted to impose clear, predictable obligations that enable tenants to secure their homes without unreasonable barriers.

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<sup>11</sup> See Brendan Chen, *How Housing Instability Affects Educational Outcomes*, Housing Matters (Feb 28, 2024), [tinyurl.com/33jjsxhh](https://tinyurl.com/33jjsxhh) (Aa399–401).

<sup>12</sup> N.J. Dep't of Cmty. Affs., *Guide to the Housing Choice Voucher Program*, Appendix D (2019), at 7–8 (Aa410–11).

## **II. Plaintiff's Interpretation of the Stack Amendment Undermines the Court's Role in Ensuring Compliance with the Anti-Eviction Act.**

Courts play a critical role in the eviction process by ensuring that all preconditions for eviction are met and that the amount due and owing is legally fixed. The presence of the court in all aspects of the eviction process is not merely procedural but foundational, ensuring that the strict preconditions outlined in the Anti-Eviction Act (and other state and federal tenant protection laws) are met. Courts act as gatekeepers to prevent landlords from pursuing eviction arbitrarily or without due cause. This role is particularly crucial in nonpayment cases, where the court must determine whether rent is “legally” “due and owing” and confirm that it is a sum certain or one capable of being ascertained with certainty.

Under the Anti-Eviction Act, a landlord may evict a tenant from a residential apartment if the tenant “fails to pay rent due and owing under the lease whether the same be oral or written.” N.J.S.A. 2A:18-61.1(a). However, “the amount claimed to be due must be ‘legally owing’ at the time the complaint was filed.” McQueen v. Brown, 342 N.J. Super. 120, 126 (App. Div. 2001) (quoting Chau v. Cardillo, 250 N.J. Super. 378, 384 (App. Div. 1990)). In default cases, courts require landlords to certify that unpaid rent is “legally owing” such that its nonpayment can serve as a basis for eviction. McQueen, N.J. Super. at 126; see also Harris, 155 N.J. at 240 (“When a judgment is entered by default based on a tenant’s failure to appear, plead,

or otherwise defend, Rule 6:6–3 requires that an affidavit be filed with the court before the clerk may enter a judgment for possession.”).

Once the court is satisfied that the amount claimed by the landlord as rent is legally due and owing, it must fix that amount in the JOP. The New Jersey Supreme Court has underscored the significance of this step, stating that “[f]ixing the rent, including any additional rent, that is due is a crucial step in the process of entering a judgment of possession.” Green v. Morgan Props., 215 N.J. 431, 450 (2013). Indeed, it is this judicially determined amount that serves as the basis for the tenant’s eviction for nonpayment of rent under the Anti-Eviction Act.

Moreover, setting a clear and specific amount that is “due and owing” helps eliminate any uncertainty about what tenants must do to avoid eviction. As discussed above, ensuring that tenants fully understand their obligations is crucial in eviction proceedings, especially for the 97% of tenants representing themselves.<sup>13</sup> This concern was poignantly illustrated by the New Jersey Supreme Court in Hodges:

[T]he amount due to prevent eviction should be explicitly itemized in the pleadings and should be limited so as not to include any requests or demands for money to be owed, such as future rent. The clarity . . . will provide tenants with a comprehensive understanding of the debts they owe and will permit them to make informed decisions as they seek to fulfill payment obligations and utilize the [statute’s] protections.

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<sup>13</sup> See supra note 4.

189 N.J. at 232. Justice LaVecchia’s concurrence in Hodges further emphasizes the need to identify a specific and definite amount that tenants must pay to avoid eviction because it reduces the risk of landlord abuse, and advances the “Court’s general supervisory interest and constitutional responsibility for fairness in the practice and procedure in our courts”:

I applaud the Court’s determination henceforth to require that the verified complaint in a summary dispossess action shall “expressly and conspicuously” identify precisely “the amount [of rent] the tenant is required to remit to avoid eviction.” That added protection improves summary dispossess practice and procedure. It will curb overreaching by landlords and lawyers who take advantage of uninformed tenants facing ejectment by alleging in the summary dispossess complaint an amount due that is in excess of what is allowed by law to be charged as “rent” and, therefore, is more than must be paid by the tenant to avoid eviction.

Hodges, 189 N.J. at 235–36 (LaVecchia, J., concurring) (alteration in original) (internal citations omitted).

Plaintiff’s interpretation of the Stack Amendment fundamentally undermines the court’s role in determining whether unpaid rent is legally due and owing, a necessary condition for it to serve as the basis for eviction under New Jersey law. Plaintiff’s interpretation not only bypasses judicial oversight but also erodes the courts’ authority to establish a clear amount of unpaid rent, leaving tenants uncertain about how much they need to pay to access post-eviction remedies, such as those provided pursuant to the Stack Amendment.

Under Plaintiff’s framework, landlords would be permitted to evict tenants for failing to pay additional rent beyond what is listed in the JOP—amounts that were neither reviewed nor approved by the court. It is common for landlords to seek to recover rental amounts and fees that are not legally due and owing.<sup>14</sup> Despite the plaintiff’s certification requirements, see, e.g., Rules 6:3-4, 6:6-3(b), complaints routinely seek amounts that do not accurately represent the base rent; do not reflect payments that were in fact made by the tenant; or demand fees that may not be included as rent for subsidized tenants, exceed the limits of rent control ordinances, or are not permissible where there is no written lease or the lease does not specify that the charges constitute “additional rent.”<sup>15</sup> The court plays a crucial role in protecting tenants from being evicted for failure to pay rent that was not legally owed.

In sum, Fairkings asks this Court to adopt a framework where a landlord can collect additional rent from tenants who are desperate to avoid eviction and possible homelessness without any judicial review. This concern is heightened by the fact

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<sup>14</sup> See Diane K. Smith et al., Unjustified Evictions in New Jersey 10 & Table 4 (Oct. 2024) (documenting that in 39% of the study sample of residential eviction cases in which a landlord acknowledged that the tenancy was subsidized, the landlord sought late fees, attorney fees, or other fees not permitted under the law) (Aa427).

<sup>15</sup> See, e.g., Harris, 155 N.J. at 233–36; Hous. Auth. & Urban Redev. Agency of Atlantic City v. Taylor, 171 N.J. 580, 588–95 (2002); Hodges, 189 N.J. at 232; Ivy Hill Park Apartments v. Sidisin, 258 N.J. Super. 19, 22–23 (App. Div. 1992); Opex Realty Mgmt. v. Taylor, 460 N.J. Super. 287, 291–96 (Law Div 2019).

that there is no requirement for landlords to certify additional costs or rents after they obtain a warrant for removal post-JOP. Without the safeguard of judicial review, tenants may be blindsided by added charges, lacking the procedural protections they would otherwise have had under the Anti-Eviction Act.<sup>16</sup> This shift in power diminishes the court's oversight, creating scenarios where landlords, intentionally or unintentionally, can impose arbitrary or excessive fees at any point until the expiration of the three-day period under the Stack Amendment. As recognized in Hightower-Cooper, "one can easily envision the potential for mischief" if the Court were to adopt Plaintiff's proposed method. 281 N.J. Super. at 324.

Indeed, it is not an exaggeration that tenants could face eviction or be forced to pay exorbitant rental amounts or fees that they do not legally owe. In the case *sub judice*, more than half of the amount set forth in the JOP was attributed to additional charges, including late fees, attorney fees, and a nearly \$3,000 fee for damage to a light pole. (Pa35.) While these charges were at least certified and supported by a sworn affidavit, one can easily imagine the types of post-JOP fees and costs a landlord could assert as being due and owing if left unchecked. Such claims could

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<sup>16</sup> Although tenants can challenge the validity of additional charges under R. 4:50-1, many—particularly those without legal representation—may not be aware of this option or fully understand it. In any event, the purpose of the Stack Amendment was to relieve tenants from relying solely on equitable relief under R. 4:50 by providing an automatic, statutory mechanism for vacating the JOP upon payment.

effectively render meaningless the protections provided under the Stack Amendment.

A court's role should be to ensure fairness and balance, especially in proceedings where tenants are regularly at a disadvantage. The Legislature and Supreme Court of New Jersey have repeatedly explained why the Judiciary should act as a safeguard against overreach, protecting tenants who may be unaware of their rights and/or unable to respond effectively to sudden, unreviewed demands. Permitting the addition of rent post-JOP destabilizes the eviction process by removing essential judicial oversight, enabling landlord overreach, and unfairly burdening tenants.

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In conclusion, interpreting the Stack Amendment to allow the addition of post-JOP rent and costs fundamentally undermines the protective framework that New Jersey has established to safeguard tenants from eviction. The Stack Amendment's intent is clear—to provide tenants with a final opportunity to pay their rent and retain their housing. Any interpretation that complicates or expands the obligations of tenants beyond what is explicitly outlined in the statute or the JOP should be rejected.

Plaintiff's approach not only creates undue financial burdens and procedural confusion, but also risks exacerbating the existing inequalities



between landlords and tenants, especially affecting low-income individuals who lack legal representation. Moreover, the potential increase in evictions resulting from such interpretations would have far-reaching societal implications, contributing to homelessness and straining community resources.

### CONCLUSION

For these reasons, Amicus respectfully urges this Court to affirm the decision of the trial court.

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