

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No. A-003246-24**

<p><b>J ALLEN NIMMO APARTMENTS,</b>  <i>Plaintiff-Respondent,</i>  vs.  <b>ASHLEY MARTINEZ,</b>  <i>Defendant-Appellant.</i></p>	<p><i>ON APPEAL FROM:</i>  Final Judgment of the Superior Court, Law Division, Special Civil Part, Landlord-Tenant, Camden County Docket No. CAM-LT-005455-23  <i>CIVIL ACTION</i>  <i>SAT BELOW:</i>  Hon. Richard F. Wells, J.S.C. (Ret./Rec.)</p>
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**AMENDED BRIEF  
OF APPELLANT ASHLEY MARTINEZ**

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**FILING FEES WAIVED R. 1:13-2  
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*Submitted: September 29, 2025*

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## **PRELIMINARY STATEMENT**

Defendant-Appellant Ashley Martinez is a single mother residing in project-based Section 8 housing with her three minor children. (Da14). She is currently working in the medical field with plans to continue her education to become a registered nurse. (Da14). She is seeking to have the records of this eviction action marked confidential pursuant to R. 1:38-3(f)(11) or in the alternative R. 1:38-11, where the Judgment for Possession that was entered after trial was subsequently vacated on appeal due to the trial court's having lacked jurisdiction to enter a Judgment for Possession in the first place (Da13).

## **COMBINED PROCEDURAL HISTORY<sup>1</sup> AND STATEMENT OF FACTS<sup>2</sup>**

Ms. Martinez's landlord had filed an eviction complaint against her on August 29, 2023, alleging that Ms. Martinez had, among other things, threatened the health, safety, or right to peaceful enjoyment of the property management staff, interfered with the management of the property, and threatened to assault a property management employee. (Da13). A trial was held on November 30, 2023, after which a Judgment for Possession was entered (Da10). On November 21, 2024, the

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<sup>1</sup> 1T – Transcript of April 17, 2025 – Motion Hearing; 2T – Transcript of May 22, 2025 – Reconsideration Motion Hearing.

<sup>2</sup> The Procedural History and Statement of the Facts are being combined since the procedure is closely intertwined with the important factual aspects of this motion and to avoid unnecessary repetition.

Appellate Division reversed the decision of the trial court, holding that the trial court lacked jurisdiction to enter a Judgment for Possession. (Da17). By order dated November 25, 2024, the Judgment for Possession entered November 30, 2023 was vacated, and the complaint dismissed. (Da13).

On April 2, 2025, Ms. Martinez filed a motion to classify the record of the eviction as confidential pursuant to R. 1:38-3(f) (11) on the basis that since the Judgment for Possession was vacated due to the court not having jurisdiction to enter it in the first place, the record should be confidential and not accessible to the public in the same way as if no Judgment for Possession had never been entered. (Da08). Ms. Martinez's motion to classify the record as confidential was denied on April 17, 2025. (Da08). On May 7, 2025, Ms. Martinez filed a motion for reconsideration of the denial of her request to have the record of the eviction marked confidential pursuant to R. 1:38-3(f) (11), or in the alternative to seal the record pursuant to R. 1:38-11. (Da07). Ms. Martinez's motion for reconsideration was denied on May 22, 2025. (Da07).

### **STANDARD OF REVIEW**

The interpretation of New Jersey Court Rules is subject to *de novo* review. See State v. Dickerson, 232 N.J. 2, 17 (2018). Issues that are solely questions of law, as opposed to questions of fact or mixed questions of both law and fact, are also subject to *de novo* review. See State v. Hyland, 238 N.J. 135, 143

(2019). The standard of review for all arguments in this appeal is *de novo* because the decision of the trial court below involved the interpretation of court rules, and the motion — having been decided without opposition — involved no questions of fact.

### LEGAL ARGUMENT

**I. THE COURT SHOULD EXCLUDE FROM PUBLIC ACCESS THE RECORDS OF THE EVICTION PROCEEDINGS PURUSANT TO R. 1:38-3(f)(11) WHERE THE JUDGMENT FOR POSSESSION ENTERED AFTER TRIAL WAS VACATED FOLLOWING THE APPELLATE DIVISION’S DECISION THAT THE TRIAL COURT LACKED JURISDICTION TO ENTER THE JUDGMENT FOR POSSESSION, AND NO ISSUE REQUIRES REMAND (Raised Below; 4/17/25 HEARING 1T3-1 through 1T6-2; 5/22/25 HEARING 2T10-23 through 2T11-14)**

Under the Rules of Court, “court records are excluded from public access . . . [if they are] [r]ecords of . . . adjudicated or otherwise disposed of landlord tenant cases in which no judgment for possession ever has been entered.” Rule 1:38-3(f)(11).

A judgment that has been vacated for lack of subject matter jurisdiction is a legal nullity, and is void ab initio, Lucas v. 1 on 1 Title Agency, Inc., 460 N.J. Super. 532, 541 (App. Div. 2019); Crusader Servicing Corp. V. Demarzino, 2006 WL 280519, p. 1. (App. Div. Feb. 7, 2006). The term “void ab initio” means “... null from the beginning” and treated as if it does not exist for any purpose.

First American Title Ins. Co. v. Lawson, 177 N.J. 125, 137, (referencing Black’s Law Dictionary 1568 (7<sup>th</sup> ed.1999)) (2003).

Here, the Appellate Division reversed the judgment for possession entered by the trial court finding that the trial court lacked subject matter jurisdiction to issue the same. See Opinion, p.11, para. 1, “Plaintiff’s failure to comport with the notice requirements under the Act divested the trial court of jurisdiction to issue the judgment for possession.” Accordingly, the Judgment for Possession entered in this matter which is void ab initio and must be treated as if it does not exist for any purpose.

Pursuant to Rule 1:38-3(f)(11), court records in eviction cases that did not result in a judgment for possession are excluded from public access. A case in which a judgment for possession was entered improperly and subsequently vacated by the Appellate Division as having been entered by a court that lacked jurisdiction to do so should be treated the same as a case where no judgment for possession was ever entered.

**II. THIS COURT SHOULD SEAL THE RECORD OF PROCEEDINGS UNDER RULE 1:38-11, MAKING ALL RECORDS OF THIS EVICTION CONFIDENTIAL, BECAUSE THE FAILURE TO DO SO WILL LIKELY CAUSE SERIOUS HARM, MS. MARTINEZ HAS AN OVERWHELMING INTEREST IN PRIVACY, AND NO ISSUE REQUIRES REMAND (Raised Below; 4/17/25 HEARING 1T3-1 through T6-2; 5/22/25 HEARING 2T10-23 through T11-14)**

Sealing judicial records through R. 1:38-11 requires that a petitioner satisfy a two-prong test for good cause, which “shall exist when: (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and (2) The person's or entity's interest in privacy substantially outweighs the presumption [favoring public access].” R. 1:38-11(b). The Supreme Court set governing guidelines for deciding motions to seal; see generally Hammock by Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356 (1995); summarized by the Appellate Division as follows:

The burden of proof rests with the person who seeks to overcome the “strong presumption of access” to establish “by a preponderance of the evidence that the interest in secrecy outweighs the presumption.” That need for secrecy “must be demonstrated with specificity as to *each document*. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient.”

[Lederman v. Prudential Life Ins. Co. of Am., 385 N.J. Super. 307, 317 (App. Div. 2006) (emphasis original) (citations omitted).]

Courts should be mindful that “there is a profound public interest [in access] when matters of health, safety and consumer fraud are involved.” Hammock, 142 N.J. at 379 (involving health and safety concerns of prescription drugs); see also Verni ex rel. Burstein v. Lanzaro, 404 N.J. Super. 16, 22-27 (App. Div. 2008) (observing motor vehicle safety and intoxication as “issues of significant public concern” while vacating overbroad seal); but see Matter of Tr. Created by Johnson, 299 N.J. Super. 415, 421-24 (App. Div. 1997) (preserving seal,

despite nephew’s “attenuated and remote” inheritance rights, due to financial records being “private matter not infected with any meaningful degree of public interest”); and Matter of T.I.C.-C., 470 N.J. Super. 596, 613-15 (App. Div. 2022) (sealing name change of transgender man,<sup>3</sup> despite broadly cognizable concerns of fraud and criminality, for lack of evidence actually implicating core public concerns).

Courts should evaluate the record at interest in its particular context. See Hammock, 142 N.J. at 381 (quoting Atl. City Convention Ctr. Auth. v. S. Jersey Pub. Co., 135 N.J. 53 (1994), and stating “requirements of confidentiality are greater in some situations than others”). In the context of complaints for summary eviction, plaintiffs invoke courts of limited jurisdiction at their own election. See R. 6:1-2(a) (identifying matters cognizable in landlord-tenant court); see also Carr v. Johnson, 211 N.J. Super. 341, 347–49 (App. Div. 1986) (agreeing “if proof of title is required, the [landlord-tenant] court loses jurisdiction of the action”); and C. F. Seabrook Co. v. Beck, 174 N.J. Super. 577, 590 (App. Div. 1980) (recognizing “[m]atters determined in summary dispossess actions are not res judicata in subsequent actions between landlord and tenant, even over the same subject matter”). Such austere strictures are fair

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<sup>3</sup> Matter of T.I.C.-C. involved judgment decided prior to R. 1:38-3 amendment that excluded name changes from public access, necessitating motion to seal.

because landlords choose litigation where their “sole remedy available in a summary dispossession proceeding is possession.” Hodges v. Sasil Corp., 189 N.J. 210, 226 (2007).

By contrast, tenants do not elect into summary proceedings, the cognizable legal consequences for tenants extend beyond mere possession, and so they should not be as strictly limited as plaintiffs. The Appellate Division recognizes that evictions may have an “adverse impact upon [a tenant’s] future opportunities to rent housing.” (Sangiuliano v. Walker, A-3074-10T3, 2011 WL 5299591, at \*1 (App. Div. Nov. 7, 2011)), para. 2. (Da36) The Supreme Court recently issued guidance, regarding adoption of Rule 1:38-3(f), which also recognizes these adverse consequences. See Da42 (Notice to the Bar, Landlord Tenant – Amendments to Rule 1:38(f) (Mar. 14, 2022)) (amending court rules because eviction records “should not create indefinite obstacles to rental housing”).

Here, the first prong is easily satisfied as the tenant has a clearly defined and serious injury: the record of eviction presently serves as a barrier to housing, and will continue to do so for a total period of seven years, unless the record of eviction is made confidential. Under the second prong, there can be no public interest in access to judicial records here because the rights of due process, meant to protect all who appear before our courts, means the judgment for

possession should have never entered. See Opinion, p.11, para. 1, (noting Appellate Division's agreement that entry of the judgment resulted from denial of due process).

Thus, the trial court in this matter abused its discretion in denying Ms. Martinez's motion to seal all documents that compose the eviction matter CAM-LT-5455-23 since: (a) public access will likely cause a clearly defined, serious injury to Ms. Martinez; (b) her interests in confidentiality overwhelmingly outweigh interests in continued public access; and (c) solely sealing the judgment (as opposed to the sealing the entire case record) would frustrate her interest in confidentiality. Accordingly, the Appellate Division should reverse the trial court's decision and remand with instructions to seal the record.

### **CONCLUSION**

Based on the above, Ms. Martinez asks this Court to reverse the trial court and hold that the records of this eviction should be excluded from public access pursuant to R. 1:38-3(f)(11) or, in the alternative, that R. 1:38-11(b) applies to tenants and to grant her relief by making all records of proceedings before the

trial court and before this Court confidential.

Dated: September 15, 2025

Respectfully submitted,  
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