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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5568-15T3

CHRISTOPHER WILLIAMS,

Plaintiff-Appellant/  
Cross-Respondent,

v.

MARVIN DANIEL and WENDYANN  
DANIEL,

Defendants-Respondents/  
Cross-Appellants.

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Argued January 10, 2018 — Decided March 9, 2018

Before Judges Koblitiz, Manahan, and Suter.

On appeal from Superior Court of New Jersey,  
Law Division, Special Civil Part, Essex  
County, Docket No. LT-6039-16.

Bruce Edward Gudín argued the cause for  
appellant/cross-respondent (Ehrlich,  
Petriello, Gudín & Plaza, PC, attorneys;  
Thomas S. Garlick, on the brief).

Anthony G. Del Guercio argued the cause for  
respondents/cross-appellants (Gaccione  
Pomaco, PC, attorneys; Anthony G. Del  
Guercio, of counsel and on the brief).

PER CURIAM

Plaintiff Christopher Williams appeals from a June 7, 2016 order that vacated a judgment of possession entered in a summary dispossess action and that released funds held on deposit with the court to defendants Marvin and Wendyann Daniel. Plaintiff also appeals from an August 5, 2016 order that denied reconsideration. Defendants' cross-appeal the same orders "to the extent the court ruled it had subject matter jurisdiction to dispose of the funds on deposit." We affirm the orders.

Plaintiff met defendants in June 2015, when they signed a one-year lease of a single-family home in Cedar Grove Township, effective as of July 1, 2015. Defendant Wendyann Daniel testified that plaintiff identified himself as "the owner of the house." The lease provided that plaintiff was the "fee owner" of the property although it was titled as a "sublease." The lease required defendants to pay rent of \$3,000 per month and the utility charges.

Defendants paid rent to plaintiff for July, August, September and October 2015. In October 2015, defendants received notice that the house was to be sold at a sheriff's sale. They were not aware the property was in foreclosure. In November 2015, they received notice from a company named Solutionstar, advising that the lienholder had acquired the property and now was the owner.

Beginning in November 2015, defendants escrowed the rent payments with their attorney.

Plaintiff first rented a room at the property in 2009 from its owner, Glenville Field,<sup>1</sup> for \$650 per month. Beginning in April 2010, plaintiff signed a five-year lease with Field to rent the entire five-bedroom house for \$1,000 per month. By 2010 or 2011, plaintiff was aware the property was pending foreclosure.

In January 2011, Field and plaintiff executed a quitclaim deed, which purported to transfer all "right, title and interest" in the property to plaintiff. Plaintiff acknowledged the quitclaim deed was signed in order for him to negotiate a short sale of the property with the bank. The quitclaim deed was not recorded.

Although the initial foreclosure case involving this property was dismissed in 2013, Deutsche Bank National Trust Company (Deutsche Bank) filed another foreclosure complaint against Field in September 2014, and recorded a lis pendens. Plaintiff learned about this foreclosure from Field. A final judgment of foreclosure was entered on April 28, 2015, for \$1,564,243.61.

On June 17, 2015, which was after the final judgment but before the sheriff's sale, plaintiff and Field signed another lease. The June 2015 lease provided it was retroactively effective

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<sup>1</sup> Field is not a party to this case.

to April 1, 2015. Under the lease, plaintiff was to pay rent of \$1,500 per month for ten years. He had an option to purchase the property for \$500,000 within the next three years. For the first twelve months, plaintiff's rent payment was abated because the lease provided a \$21,500 credit for repairs at the property. Field agreed to pay all utility charges. Plaintiff did not dispute that the rent payments under this lease were not sufficient to pay the annual taxes on the property of \$23,290 or the debt service on the mortgage.

At the same time in June 2015, plaintiff rescinded ownership of the property under the quitclaim deed. He executed a power of attorney with Field, which stated that he was not able to obtain a short sale of the property as contemplated due to his "financial situations."

Following notice in August, the property was sold to Deutsche Bank at a sheriff's sale on October 27, 2015. A sheriff's deed was issued to Deutsche Bank on January 22, 2016, and recorded on February 18, 2016. However, just before the sheriff's sale, plaintiff recorded both the power of attorney and the June 2015 lease on October 22, 2015.

Defendants began escrowing their rent payments in November 2015 when they learned of the foreclosure sale. In December 2015, Field and plaintiff executed and recorded a "Durable Power of

Attorney," that appointed plaintiff to act as attorney-in-fact for Field. The durable power of attorney granted plaintiff the power to "deal with any interest [Field] may have in this real property and sign all documents on [Field's] behalf concerning [his] interest."

On February 22, 2016, plaintiff filed a verified complaint against defendants, seeking a judgment of possession under N.J.S.A. 2A:18-61.1(a) for unpaid rent. That pleading described plaintiff's interest in the property as an "equitable owner" based on an unrecorded deed, that he held a durable power of attorney from the legal title owner (Field) and that he also held a "prime lease" that enabled him to sublet the property. Plaintiff's verified complaint did not say that the property had been sold on October 27, 2015, to Deutsche Bank or that the sheriff's deed had been recorded on February 18, 2016.

At the hearing in the summary dispossess action, defendants were not able to provide proof of the sheriff's sale. The court found plaintiff was entitled to rent under the lease. A judgment of possession was entered on March 29, 2016, with an amount of rent due and owing of \$15,375. A warrant of removal was issued.

Defendants filed an order to show cause, seeking to vacate the judgment of possession. The court required defendants to

deposit \$18,000 with the court for the disputed rent and stayed the eviction.

On the return date of the order to show cause, plaintiff's counsel advised the court that plaintiff was not,

even looking to remove the tenants at this point, we're just looking to have the money released. That's -- that's why we're here . . . . We're not even looking for possession of the property at this point. We're just looking for a release of the rent that was due to my client under the sublease.

Following testimony of the parties and witnesses, the court vacated the judgment of possession. In its written decision of June 7, 2016, the court found that the "transactions between Field and [p]laintiff were not arms-length business transactions," nor were they "legitimate business transactions." Rather, the transactions "were to avoid or delay the foreclosure in some manner, or gain some advantage in the foreclosure action."

The court found that plaintiff had no standing to seek eviction of defendants because any interest he claimed through the unrecorded quitclaim deed was extinguished by the foreclosure under N.J.S.A. 2A:50-30. The court found plaintiff did not own the property when it was subleased. Plaintiff was bound by the outcome of the foreclosure action because he had actual notice of the foreclosure and constructive notice through the recording of the lis pendens. The court held that plaintiff was not legally

able to collect rents from defendants after the sheriff's sale because he had no right to the property.

The court found it had jurisdiction to determine the disposition of the rent money that was deposited with the court, and that issue was not moot. All of the rent that plaintiff claimed was due and owing accrued after the sheriff's sale. Although the court could not enter a money judgment for damages, it ordered the \$18,000 on deposit with the court to be returned to defendants, vacated the judgment of possession, and dismissed plaintiff's verified complaint. Plaintiff's motion for reconsideration also was denied.

On appeal, plaintiff does not dispute the dismissal of his complaint for possession because funds were deposited with the court. His claim is for the funds on deposit. He asserts he has a contractual and statutory right to the funds that was not voided by the lis pendens or sheriff's deed. Plaintiff disputes that there was fraud or any intention to delay or avoid the foreclosure.

Defendants' cross-appeal, contending that the court had no jurisdiction to decide who is entitled to the monies on deposit with the court. They contend plaintiff had no right to possession of the property because the quitclaim deed and June 2015 lease were "instruments of fraud" and were discharged in the foreclosure by the lis pendens.

We afford a deferential standard of review to the factual findings of the trial court on appeal from a bench trial. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 483-84 (1974). These findings will not be disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 484 (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). However, our review of a trial court's legal determinations is plenary. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

In a summary dispossess action, "[p]ossession of the premises is the only available remedy for nonpayment of rent." Hodges v. Sasil Corp., 189 N.J. 210, 221 (2007). "[N]o money damages may be awarded." Housing Auth. of Morristown v. Little, 135 N.J. 274, 280 (1994); see Daoud v. Mohammad, 402 N.J. Super. 57, 61 (App. Div. 2008) (holding that in a summary dispossess action, the "court's jurisdiction is limited to determining the issue of the landlord's right to possession of the premises"); see also N.J.S.A. 2A:18-52 (providing for dismissal of an action if plaintiff cannot prove "his right to possession of the premises claimed").

A judgment of possession may be entered if a landlord can prove "one of the statutorily enumerated 'good cause' grounds for



eviction." Sudersan v. Royal, 386 N.J. Super. 246, 251 (App. Div. 2005) (citing N.J.S.A. 2A:18-61.1). The nonpayment of rent that is "due and owing under the lease" is good cause for eviction. N.J.S.A. 2A:18-61.1(a).

Here, plaintiff did not contend at the trial that he was seeking possession of the premises from defendants. Rather, based on the June 2015 lease, he claimed an entitlement to the \$18,000 on deposit with the court. Plaintiff's concession that possession of the premises was not sought in the summary dispossess action served as a basis to vacate the judgment of possession. Possession was the only available remedy for plaintiff in the summary dispossess action. Because he did not seek that remedy, the judgment of possession was properly vacated.

Plaintiff's reliance on N.J.S.A. 2A:18-55 for his claim to the funds on deposit is misplaced. That statute provides that in actions instituted under N.J.S.A. 2A:18-53, a tenant can pay to the clerk of the court "on or before entry of a final judgment" the amount of rent claimed to be in default and "all proceedings shall be stopped." N.J.S.A. 2A:18-55. The clerk then "shall . . . pay all moneys so received to the landlord, his agent or assigns." Ibid. The statute only applies to payments made into court before entry of the final judgment. Here, because the payment was ordered by the court after entry of the judgment of

possession, the statute does not provide a basis for paying those funds to plaintiff.

We would reach the same result even without plaintiff's acknowledgement that he is not seeking possession of the premises. Under the common law, a "foreclosing mortgagee obtains an ownership interest in the property only when the mortgagee purchases the property at the foreclosure sale." Chase Manhattan Bank v. Josephson, 135 N.J. 209, 218 (1994). Prior to that, the mortgagee has a lien on the property. Id. Here, the property was sold to Deutsche Bank on October 27, 2015, making it the owner. If plaintiff claimed an ownership interest in the property under the quitclaim deed, it was extinguished by the sale.

At best, plaintiff is a non-resident tenant. He cites no authority to support possession in this post-sale context. "[T]he intent of the Anti-Eviction Act is to protect (1) blameless tenants (2) from pretextual evictions." Sec. Pac. Nat. Bank v. Masterson, 283 N.J. Super. 462, 468-69 (Ch. Div. 1994). "[A] person who enters into a lease agreement in other than an arm's length transaction does not qualify as 'blameless' and will not be afforded shelter under the Anti-Eviction Act." Id. at 469.

Masterson involved a back-dated sham lease. The defendants there were unable to provide canceled checks indicating that rent was being paid, the rent was far below what would be expected for

such a property, and the lease was for a ten-year term. Id. at 466.


Here, there was substantial evidence to support the court's finding that the transactions between plaintiff and Field were not arms-length. Plaintiff did not contend he paid rent to Field. The payments under the lease would not have paid the taxes on the property and contained favorable terms extending for ten years. It was backdated to appear as if it were entered before entry of the final judgment of foreclosure. We agree with the trial court on these facts that there was substantial evidence that the lease with Field was not arms-length and that the judgment of possession should be vacated.

We also agree that the trial court had authority to order the return of the funds on deposit to defendants once the judgment of possession was vacated. The court's order was not a determination on the merits of plaintiff's claim to entitlement to those funds; it simply was based on the lack of a judgment of possession.

After carefully reviewing the record and the applicable legal principles, we conclude that the parties' further arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm the trial court's orders that vacated the judgment of possession, denied reconsideration and dismissed plaintiff's verified complaint.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION