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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0785-21**

80 WEST CENTURY LLC,

Plaintiff-Respondent,

v.

DROSOS LORENZO &
ASSOCIATES, P.C.,

Defendant-Appellant.

Submitted October 12, 2022 – Decided November 22, 2022

Before Judges Messano, Rose, and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. LT-004328-20.

Zervas Law LLC, attorney for appellant (John Zervas,
on the briefs).

Robert P. Travers Law, LLC, attorney for respondent
(Robert P. Travers, on the brief).

PER CURIAM

In this commercial landlord-tenant case, defendant Drosos Lorenzo & Associates, PC, appeals a November 16, 2021 judgment of possession (JOP), which was issued in favor of plaintiff 80 West Century LLC after a trial. Because a lockout was performed and defendant no longer possesses the property at issue, we dismiss the appeal as moot.

I.

On August 24, 2020, plaintiff filed a verified complaint in the Landlord-Tenant Division, asserting it was the owner and landlord of property defendant had occupied since December 1, 2018, pursuant to a written lease agreement. Plaintiff alleged defendant owed base rent for the months April, May, and June 2020, plus electricity and late charges and attorney's fees and costs. Plaintiff sought a JOP.

On or about January 4, 2021, plaintiff filed a complaint in the Law Division against defendant and its majority shareholders, Angelo Drosos and Hector Lorenzo, claiming, among other things, breach of a lease and damages based on defendant's failure to pay rent and other charges. In the answer to the Law Division complaint, defendant admitted plaintiff owned the property at issue, defendant was the tenant in possession of the property, and that a written lease containing terms requiring the tenant to pay rent and other charges existed.

In a counterclaim, defendant asserted plaintiff was the landlord and owner of the property, plaintiff had agreed to lease the property to defendant pursuant to a written lease agreement dated October 25, 2018, and defendant had paid plaintiff "continuous monthly rent." Defendant subsequently filed a third-party complaint against plaintiff and its "majority interested [m]embers," Elie Cohen and Isaac Cohen (Isaac).¹ Defendant alleged it had been "constructively evicted" by plaintiff and the Cohens. Defendant unsuccessfully moved in the Law Division for the transfer of the Landlord-Tenant Division case to the Law Division and for the consolidation of the two cases.

The initial trial date of the Landlord-Tenant Division case was September 20, 2021. In anticipation of that trial date, the parties filed pretrial exchange statements, in which they identified the exhibits they intended to offer into evidence, and provided the court and each other with copies of their exhibits. Plaintiff's exhibits included a lease and rent ledger; defendant's exhibits included a lease dated October 25, 2018, which had been executed on behalf of both parties. During the September 20, 2021 proceeding, defendant requested a

¹ For the sake of clarity, we use Isaac's first name to refer to him given that he has the same last name as Elie Cohen. We mean no disrespect.

Marini hearing.² The court issued an order directing defendant to deposit with the court \$146,161.36 within five days. Defendant did not make that deposit. The court ultimately rescheduled the trial for November 16, 2021.

Isaac was the only witness to testify during the trial. On direct examination, Isaac described himself as "part" of plaintiff's "property management team." Isaac testified that he and his "accounting team" had prepared a rent ledger, which was "an accounting of the rent due and owing." Isaac testified defendant owed a total of \$179,283.25: \$147,600 in base rent, \$13,120 in electricity charges, and \$18,563.25 in late fees. Plaintiff's counsel showed Isaac a document, and Isaac confirmed it was the parties' lease.

On cross-examination, Isaac confirmed plaintiff owned the property at issue. Isaac acknowledged the copy of the lease presented by plaintiff's counsel contained only a signature on behalf of defendant and did not contain a signature on behalf of plaintiff. Defense counsel then moved to dismiss the case "for failure to provide any [evidence of] ownership or [otherwise] t[ie] the parties together [regarding] this lease. There's no deed that was provided, and there

² In a summary dispossess action, a "tenant may raise lack of habitability claims . . . and obtain a Marini hearing, provided the tenant deposits the rent with the Clerk of the Court." Daoud v. Mohammad, 402 N.J. Super. 57, 59 (App. Div. 2008) (citing Marini v. Ireland, 56 N.J. 130 (1970)).

[are] no copies of a fully-executed lease." The court denied the motion, finding the lease contained a signature on behalf of defendant and that plaintiff had been "identified as the landlord."

Defense counsel also questioned Isaac about the rent ledger. According to Isaac, the rent ledger was prepared using information from plaintiff's "accounting system." Isaac confirmed the last due date on the rent ledger was September 1, 2021, but testified he had "an updated rent ledger . . . showing \$179,283.25 owed today." Plaintiff's counsel provided the court and defense counsel with the updated rent ledger. When asked about a particular entry on the ledger, Isaac explained that because defendant paid its rent by credit card, defendant's total payment included an additional credit-card fee, which "was deducted on the back end for QuickBooks." The amount of the deductions for credit-card fees did not appear in the rent ledger. In his closing argument, defense counsel criticized plaintiff for submitting a ledger that had not been "uploaded" and had "different late fees and charges that are not made a record of the court."

In an oral decision, the court found "based on the testimony . . . from the managing agent for . . . plaintiff that . . . plaintiff is, indeed, the owner of the property, and that the lease has been signed by the person or entity to be charged

with the compliance under the terms of the lease." The court was "also satisfied that but for late fees that may be improperly calculated or credit card fees that do not appear on the ledger, that there is an amount due and owing in excess of \$170,000." Accordingly, the court held that plaintiff was entitled to a JOP.

In the judgment, the court found plaintiff had "proven a cause of action for possession on the basis of [n]on payment of base rent," with rent "due and owing to [plaintiff] in the amount of \$179,283.25." The court expressly rejected the defenses based on the lease being signed only by defendant and the rent ledger not reflecting accurately the amount due. The court issued a warrant for removal on December 6, 2021. Nothing in the record indicates defendant sought a stay of the JOP or warrant for removal. In its appellate brief, defendant concedes "[a] lockout was performed on December 9, 2021."

On appeal, defendant argues the trial court erred in finding in plaintiff's favor because plaintiff had not established a right of ownership or possession by producing a deed or valid lease and had failed to produce an accurate rent ledger or registration statement. In response, plaintiff argues the appeal is moot because defendant was evicted and is no longer in possession of the property. Plaintiff asserts, with no citation to the record, it has re-rented the property to a new tenant pursuant to a lease agreement. Alternatively, plaintiff contends it

was not required to provide a registration statement and that substantial, credible evidence in the record supported the court's findings that plaintiff was the owner of the property and defendant owed plaintiff rent. In reply, defendant again acknowledged it had been "evicted on or about December 9, 2021," but argued the appeal is not moot because some of defendant's property "remains in the custody of [plaintiff]." That factual assertion was not supported by any citation to the record.

II.

"Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Stop & Shop Supermarket, LLC v. Cnty. of Bergen, 450 N.J. Super. 286, 291 (App. Div. 2017) (quoting Betancourt v. Trinitas Hosp., 415 N.J. Super 301, 311 (App. Div. 2010)). Courts "normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot." Int'l Brotherhood of Elec. Workers Loc. 400 v. Borough of Tinton Falls, 468 N.J. Super. 214, 224 (App. Div. 2021) (quoting De Vesa v. Dorsey, 134 N.J. 420, 428 (1993)). Further, our courts generally "do not resolve issues that have become moot due to the passage of time or intervening events." Wisniewski v. Murphy, 454 N.J. Super. 508, 518 (App. Div. 2018) (quoting State v. Davila,

443 N.J. Super. 577, 584 (App. Div. 2016)). "An issue is 'moot when [the] decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)).

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" Daoud, 402 N.J. Super. at 61. The landlord's repossession of the premises, either by execution of a warrant for removal or a voluntary vacation of the premises, renders moot an appeal from the JOP. Accordingly, we ordinarily dismiss as moot an appeal challenging an eviction when the tenant was removed from or otherwise vacated the premises. See e.g., ibid. (finding "the issue of the landlord's right to possession of the premises . . . can no longer be determined" when "the tenant [has] vacated the premises"); Sudersan v. Royal, 386 N.J. Super. 246, 251 (App. Div. 2005) (holding "where a tenant no longer resides in the property, an appeal challenging the propriety of an eviction is moot.").

Both parties make unsupported allegations in their appellate briefs: plaintiff asserting it has rented the property to another tenant and defendant stating some of its property "remains in the custody of [plaintiff]." We do not

consider those unsupported assertions. And they don't matter anyway. The parties agree on this uncontested fact: defendant is no longer in possession of the premises because it was locked out and evicted. That fact renders this appeal moot.

Appellate courts will decide moot issues "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Wisniewski, 454 N.J. Super. at 519 (quoting Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996)). "Before continued jurisdiction will be invoked in moot cases there must be an 'issue of great public importance compelling definitive resolution despite mootness[.]'" Ibid. (quoting Oxfeld v. N.J. State Bd. of Educ., 68 N.J. 301, 303 (1975) (alteration in original)). Defendant's evidential arguments do not meet that high standard, especially when defendant requested a Marini hearing – the basis of which is a landlord-tenant relationship – and never asserted it had fully paid its rent.

An evicted tenant may seek in the Law Division damages arising from a wrongful eviction. Daoud, 402 N.J. Super. at 61. Thus, we dismiss the appeal without prejudice to defendant's pursuing whatever remedies may be available to it in the Law Division, subject to plaintiff's valid defenses, if any. As in Daoud, "[w]e do not suggest that such an action should be pursued or would

have a favorable outcome; we simply point out that there are means of relief for an aggrieved tenant other than retention of the premises." Id. at 61-62.

Appeal dismissed.

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



CLERK OF THE APPELLATE DIVISION