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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." 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-4467-19**

DENISE COX,

Plaintiff-Respondent,

v.

AARON IVERY,

Defendant-Appellant.

Submitted February 17, 2022 – Decided April 29, 2022

Before Judges Mitterhoff and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. SC-000220-20.

Green, Lundgren & Ryan, PC, attorneys for appellant
(Charles F. Blumenstein, II, on the briefs).

Denise Cox, respondent pro se.

PER CURIAM

Pursuant to Rule 6:1-2(a)(2), matters cognizable in the Small Claims Division of the Special Civil Part of the Law Division shall not exceed \$3,000

exclusive of costs. The jurisdictional limit of the Special Civil Part is \$15,000. For the reasons that follow, we vacate a consent judgment which exceeded the Small Claims jurisdictional limit and direct the matter be transferred to the Special Civil Part for disposition.

Plaintiff Denise Cox's form Small Claims complaint indicates she is demanding \$3,000 from defendant Aaron Ivery. The claim arose from a car accident apparently attributable to defendant's negligence. Plaintiff's car was a total loss, and she had to rent a vehicle for some unspecified period of time for total damages of \$4,791.60. The day scheduled for trial, both parties appeared without attorneys, and defendant unsuccessfully requested a postponement so he could obtain counsel.

At that June 30, 2020 Zoom hearing, plaintiff explained that she had sued defendant because although his insurance company had initially made her an offer, the company rescinded it as "there was a third party involved and there wasn't enough coverage for all the vehicles." The parties agreed to mediate the dispute with the assistance of a judicial law clerk. After an agreement was reached, each party testified under oath that they willingly and voluntarily entered into the agreement. No one present—not the judge, the law clerk, nor

the parties—mentioned the \$3,000 jurisdictional limit. The agreement included monthly payment terms.

Defendant subsequently retained counsel. Defendant's attorney filed an application, heard by another judge via Zoom on August 13, 2020, seeking to amend the judgment to the \$3,000 jurisdictional limit. Although the record is somewhat unclear because of transmission problems, it appears that counsel argued that the settlement was made when defendant was effectively "under duress" because he was not given the opportunity to consult with an attorney.

The judge denied the request to modify the judgment given precedents that strongly favor the enforcement of settlements. Nor did he agree that defendant made the agreement under duress. Stating that he could not act as an appellate court reviewing the propriety of the first judge's decision to deny defendant's request for a postponement, the judge deemed the outcome to have been fair. He noted that in landlord tenant cases, settlements are often reached that exceed or vary from the jurisdictional limits in "landlord/tenant court."

The amount in controversy indisputably exceeds the jurisdictional limit. But a more equitable outcome than an after-the fact molding of the judgment is to transfer the case to the Special Civil Part, analogous to transfers from the Special Civil Part to other courts under Rule 6:4. The rule allows a transfer

motion any time prior to trial. Such motions are to be routinely granted if a defendant will not be prejudiced thereby. See Splash of Tile, Inc. v. Moss, 357 N.J. Super. 143, 151-52 (App. Div. 2003). There was no trial here; both parties were unrepresented during the mediation that resulted in a judgment exceeding the jurisdictional amount. Except for the inconvenience that will result from starting the case anew, neither party will be prejudiced.

The rule states even counterclaims may trigger the transfer of a case from the Special Civil Part to the Law Division when the monetary limits are exceeded. No similar rule exists permitting the transfer of a Small Claims case to the Special Civil Part; however, the rule does allow the transfer back to the Special Civil Part from the Law Division under certain circumstances.

Given these atypical facts, we note that the court rules generally

shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes and, in civil cases, consistent with the case management/trial management guidelines set forth in Appendix XX of these rules.

[R. 1:1-2.]

No rule specifically authorizes this transfer, however, fairness in the administration of justice requires it. We are setting aside the settlement—a rare step—because both parties negotiated on a mistaken premise—that the agreed-to amount was proper. See Wallace v. Summerhill Nursing Home, 380 N.J. Super. 507, 509 (App. Div. 2005) (quoting Lampley v. Davis Mach. Corp., 219 N.J. Super. 540, 550 (App. Div. 1987)) ("A compromise which is the result of a mutual mistake is not binding and consent to a settlement agreement is not considered freely given when it is obtained as the result of a mistake."); Smith v. Fireworks By Girone, Inc., 380 N.J. Super. 273, 292 (App. Div. 2005) (citing Lampley, 219 N.J. Super. at 549) (stating that a settlement is voidable by the disadvantaged party when there has been a mutual mistake as to a basic assumption on which the contract was made).

It would be inequitable to deny a self-represented plaintiff the opportunity to establish her damages in a forum where a claim in the amount she seeks could be entertained. It would similarly be inequitable to compel defendant to make payments on an amount exceeding the jurisdictional bar. Someone should have raised this procedural problem when the settlement was reached. It is not clear that either party understood, or that plaintiff, who remains pro se in this appeal, understands the \$3,000 jurisdictional limit of the court in which she filed. By

vacating the judgment and directing the transfer to the Special Civil Part, we afford both parties relief that allows them to commence anew in the correct forum.

Vacated, and the matter shall be transferred to the Special Civil Part.

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



CLERK OF THE APPELLATE DIVISION