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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-0199-22**

MARK YILDIZICAN,

Plaintiff-Respondent,

v.

ROMEO JIMENEZ-CRUZ,

Defendant-Appellant.

Argued September 14, 2023 – Decided October 20, 2023

Before Judges Gummer and Walcott-Henderson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
LT-000697-22.

Steven N. Kropf argued the cause for appellant
(Heilbrunn Pape, LLC, attorney; Steven N. Kropf, of
counsel and on the briefs).

Michael D. Mirne argued the cause for respondent.

PER CURIAM

In this landlord-tenant matter, defendant-tenant Romeo Jimenez-Cruz appeals the entry of a judgment of possession granted to plaintiff-landlord Mark Yildizican on August 12, 2022.¹ Plaintiff sought possession of the property, citing several violations, including defendant's unauthorized structural modifications. After a bench trial, the court concluded the construction of a bathroom in the basement without approval violated the lease agreement. We affirm.

The pertinent and undisputed facts are plaintiff is the owner of a single-family residence that has long been occupied by defendant and his family pursuant to several leases commencing April 10, 2008. At the time of the filing of the complaint, defendant and his family had occupied the home for fourteen years. On July 10, 2019, the parties signed a two-year residential lease agreement (the lease) specifying that the term would end on July 10, 2021.² Clause 10 prohibits the tenant from subletting any part of the premises or assigning the lease without the prior written consent of the landlord. Clause 12 provides, "[e]xcept as provided by law, or as authorized by the prior written

¹ In the complaint and trial court order, defendant is identified as Romeo Cruz Jimenez. We use the name in his appellate submissions: Romeo Jimenez-Cruz.

² Not all leases were included in this record.

consent of Landlord, Tenant will not make any repairs or alterations to the premises, including nailing holes in the walls or painting the rental unit."

In 2021, when plaintiff sought to sell the rental property, he authorized a realtor to conduct a pre-sale walk-through. The realtor observed structural modifications made by defendant—without authorization from plaintiff or city officials—and in violation of the parties' written lease.

On January 21, 2022, plaintiff served defendant with a notice to cease, citing several violations, including breach of the most recent lease by allowing unauthorized occupants to live on the premises and sleep in the basement; installation of an unauthorized bedroom and bathroom in the basement; the addition of a fence and pavers on the exterior of the premises; and diversion of electricity and water from the rental home to defendant's restaurant, which was adjacent to the residence.

Weeks later, plaintiff served defendant with a notice to quit, reiterating the allegations made in the prior notice to cease and adding one new allegation of willful or grossly negligent destruction of the rented premises—based on the construction of the unlawful bathroom in the basement and unauthorized fence and pavers on the exterior of the property. Plaintiff sought termination of the tenancy.

Plaintiff ceased collecting rent from defendant after filing the notice to quit and began eviction proceedings on March 17, 2022. After a three-day bench trial, the trial judge issued an oral decision and granted a judgment of possession to plaintiff.

I.

Our review of a judgment entered following a bench trial is very limited. We apply a deferential standard of review. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). When the trial judge acts as the fact finder in a bench trial, we "must accept the factual findings of" that trial judge, when such findings "are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). We will "'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

Defendant raises the following three arguments on appeal: plaintiff was aware of the installation of the bathroom; plaintiff waived any claims against

him by continuing to accept rent payments pursuant to each new lease entered after the installation of the bathroom (at least ten years ago), and each lease constitutes a new tenancy; and the judge's questioning of defendant crossed the line from neutrality to advocacy.

Neither party disputes that defendant was a long-term tenant or the existence of the July 10, 2019, lease. Plaintiff alleges defendant refused to accept reasonable changes to the lease—including an increase in rent and the modification or addition of provisions concerning disorderly conduct, breaches of the landlord's rules and lease covenants, and causing damages to the premises. Of these, the court found only willful destruction of the property by the installation of a bathroom in the basement without prior approval. The court expressly considered and rejected the defense of uninhabitability and abatement and concluded defendant violated the lease and municipal law by installing the basement bathroom without authorization. We find the court's determinations are supported by sufficient credible evidence and are well grounded in the applicable law.

In its oral decision, the court discussed the evidence and testimony of the witnesses, including plaintiff's realtor, who testified that based on observations made in 2021 during an inspection of the property, the number of people living

in the home exceeded six, in violation of the municipal ordinance and rental agreement; there was an additional basement bedroom and bathroom; a stand-alone freezer with an extension cord running across the patio towards defendant's restaurant next door; and a fence and pavers added to the exterior of the home.

The trial court concluded the unauthorized construction and installation of the basement bathroom constituted a violation of the lease and dismissed all other claims, citing a lack of evidence. The court found no credible evidence that plaintiff had prior knowledge of the basement bathroom or approved its construction. The court specifically found:

[t]he evidence by the other two witnesses, and I think Mr. Yildizican was[,] when he was trying to sell the house is when all that came up. They noticed it, and they had been to that house previously and they didn't know it, probably maybe weren't always in the bathroom. They went down there to take pictures for the sale of the house, and that's when it was noticed . . . and he didn't remove it.

Furthermore, in referencing the contract, the court found:

[t]he contract says you can't do any alterations and clearly I will say that I know that that bathroom would have required permits. It's not denied that he didn't get permits. He admitted it. He admitted that – or by Mr. Cruz's own testimony when he spoke to Yildizican about it, Yildizican said, you know, that may have to be dismantled, and he said, no problem. If it's necessary

we'll do it. He got the notice to cease to do it and it wasn't done.

So, accordingly, for that reason I have to say that the landlord is entitled to a judgment for possession because of that.

Defendant claims plaintiff sought to evict him for failing to agree to an increase in rent; however, this argument is of no consequence because that was not the basis of the court's decision. Upon hearing the evidence, the trial court did not find credible evidence that plaintiff had known or approved of the installation of the basement bathroom, which also had been completed without municipal permits.³ Additionally, the court concluded defendant had been advised that the bathroom had to be dismantled and removed and had failed to do so.

From this record, the court considered the testimony and evidence, made credibility determinations, and concluded plaintiff was not entitled to the relief sought based on all the circumstance plaintiff offered, citing a lack of evidence as to the construction of the basement bedroom, among other claims.⁴ However, the court found defendant's testimony evasive when asked why he had

³ Defendant's witness, Jack Jacobson, testified plaintiff had indicated in 2014 or 2015 he was happy there was a bedroom and bathroom in the basement.

⁴ Additionally, the judge made no findings as to when the bathroom was constructed.

constructed a basement bathroom without approval from the landlord. Additionally, the court found defendant's claim that he did not speak English well enough to comprehend the restrictions in the lease questionable—given that he had previously signed multiple similar leases with plaintiff. Moreover, defendant's apparent confusion concerning the identity of other occupants in the home also raised issues about his credibility.

Credibility determinations made by trial judges are entitled to deference and will not be disturbed so long as they are supported by substantial, credible evidence. Cesare v. Cesare, 154 N.J. 394, 412 (1998). In this case, we are satisfied that the findings of the trial court are based on sufficient credible evidence present in the record. The court carefully considered the evidence and even rejected certain claims made by plaintiff based on a lack of evidence. Nonetheless, the court's determination plaintiff established defendant, by constructing a bathroom in the basement without plaintiff's approval and in the absence of required municipal approvals, had violated the lease and warranted eviction is amply supported by the evidence. On this record, we find no basis to disturb the court's decision.

II.

We now address defendant's argument that the trial court's questioning of defendant was improper and indicative of bias.

We begin by noting that in a bench trial, the judge is the finder of fact. R. 1:7-4. Here, the trial court conducted a lengthy three-day bench trial, and its examination of defendant was brief and intended to "clarify a couple of things." The court inquired about defendant's testimony on direct examination regarding other occupants purportedly residing in the home. Defendant testified his in-laws were residing in the living room, and at least one other individual was living in the basement in an area under the stairs behind a makeshift partition because they had no place to go. Defendant also admitted to the addition of another room in the basement, which he described as an office, although the evidence suggests yet another individual was using it as a bedroom.

Under these circumstances, the questions posed by the trial judge during the bench trial were not improper. See N.J.R.E. 614(b) (providing "[t]he court may examine a witness regardless of who calls the witness"). Rather, as the court explained, the court was seeking clarification of defendant's testimony. See State v. Medina, 349 N.J. Super. 108, 132 (App. Div. 2002) (finding judge in a bench trial "acted appropriately in his interrogation of witnesses" because "[h]is questions were clearly designed to clarify issues and ascertain the truth").

Notably, when defendant's counsel objected to a question posed by the court, the court promptly withdrew it.

For these reasons, we are not persuaded that the trial judge's brief questioning of defendant was prejudicial or constituted reversible error.

Affirmed.

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



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