SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0355-21
A-0357-21
A-0358-21

120 NEWARK AVENUE REALTY LLC,

Plaintiff-Respondent,

v.

SQUARE TWO HOLDINGS, LLC,

Defendant-Appellant.

Submitted January 31, 2023 – Decided March 2, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket Nos. LT-006720-20, LT-006784-20, and LT-001759-21.

DeCotiis, Fitzpatrick, Cole & Giblin, attorneys for appellant (John A. Stone, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

In these three one-sided, back-to-back-to-back, consolidated appeals, defendants Square Two Holdings, LLC and Square Two Holdings I, LLC appeal from judgments for possession entered in favor of plaintiffs 120 Newark Avenue Realty, LLC and 116 Newark Avenue Realty, LLC in three commercial summary dispossess actions based on nonpayment of rent during the COVID-19 pandemic. We reverse the judgments of possession and the orders disbursing the funds deposited with the court to plaintiffs.

I.

The three leases encompassed four contiguous rental spaces that defendants used to operate a single restaurant.[1] In addition to arguing several errors by the trial court, which included the failure to dismiss the complaints for lack of jurisdiction, defendants argue the nonpayment of rent was excused due to impossibility or impracticability of performance, frustration of purpose, breach of the implied covenant of good faith and fair dealing, equitable principles, and because the risk of loss was borne by plaintiffs. Defendants attribute the nonpayment of rent to the severe loss of income caused by the COVID-19 pandemic and related Executive Orders issued by the Governor that

[1] For ease of reference, we refer to the leased premises as Space 1, Space 2, and Spaces 3 and 4. Spaces 3 and 4 were covered by a single lease. Space 4 contained the restaurant's kitchen.

temporarily closed and subsequently restricted restaurant operations for specified periods.

The issues presented require us to examine the pre-suit notice requirements imposed on plaintiffs by the three leases, whether the notice requirements were satisfied, and the resulting impact if defendants were not given the required notice. We also consider the proper disposition of the monies deposited with the court by defendants in their unsuccessful effort to avoid eviction, where judgments for possession were later entered in favor of plaintiffs. We first examine the pertinent language in the leases.[2]

Defendants claimed that prior to the COVID-19 pandemic, from March 14 to June 9, 2019, their restaurant had sales, after deducting taxes. of $138,148.13. During that same period in 2020, the restaurant had sales, after deducting taxes, of only $11,845.90. Defendants were current in paying the rent due until March 2020. Payment of the rent due on Spaces 3 and 4 fell behind in June 2020. No payment was made in July 2020. Defendants remained in arrears on the rents thereafter.

[2] The record on appeal does not include the lease for Space 1. Because the parties do not contend otherwise, we presume that the material language of that lease is identical to, or the functional equivalent of, the other leases.

The fifteen-year lease for Space 1 commenced on September 1, 2005, and ended on August 31, 2020. The complaint as to Space 1 was filed on July 9, 2021. The ten-year lease for Spaces 3 and 4 commenced on August 1, 2011, and ended July 30, 2021. The complaint as to Spaces 3 and 4 was filed on October 19, 2020. The ten-year lease for Space 2 commenced on September 1, 2012, and ended on August 30, 2022. The complaint as to Space 2 was filed on October 19, 2020. The leases for Space 2 and Spaces 3 and 4 had not yet expired.

On August 4, 2021, defendants filed motions to: (1) disqualify plaintiffs' counsel; (2) consolidate the three cases; and (3) dismiss the cases for failure to provide required notice of the cancellation of the leases or, in the alternative, to transfer the cases to the Law Division. The motions were supported by the certification of Jeffrey Favia, the sole member of defendant LLCs.

The following day, the court ordered defendants to deposit $200,000 with the court. Defendants immediately complied.

The motions were heard and decided on the day of trial. Regarding disqualifying plaintiffs' attorney due to conflict of interest, defendants argued they were represented during the negotiation of the leases by George Garcia, an attorney then with Genova Burns, LLC, which represented plaintiff at trial. Favia certified that he had meetings and discussions with Garcia regarding the

negotiation of the three leases, during which they discussed finances and business strategy. Plaintiffs maintained that Garcia joined Genova Burns in September 2012 and left the firm in April 2016. Plaintiffs contended the leases were negotiated and drafted before Garcia was affiliated with Genova Burns and that Garcia's only involvement related to an unnegotiated assignment of one of the leases. Defendants did not present specific evidence of the alleged conflict.

The leases state they were prepared by an attorney with Schumann Hanlon LLC. While the court found "Garcia represented defendants in the negotiation and drafting of the leases," it found "no evidence in the record that any lawyer currently working at Genova Burns has any information that is protected by [Rules of Professional Conduct (RPC)] 1.6 or 1.9(c)" as Garcia left Genova Burns in 2016. Applying RPC 1.10(b), the court denied disqualification of Genova Burns, finding no conflict of interest.[3]

Next, defendants argued plaintiffs failed to provide the notice of termination required by the leases. The leases provide that the "Landlord may, if the Landlord so elects, . . . terminate this lease and the terms hereof, upon

[3] Because defendants do not argue on appeal that the court erred by denying disqualification, we deem this issue waived. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) ("An issue not briefed on appeal is deemed waived.").

giving to the Tenant . . . five (5) days' notice in writing, of the Landlord's intention so to do." The leases also specified the method of service of the notice: "All notices required under the terms of this lease shall be given and shall be complete by mailing such notices by certified or registered mail, return receipt requested, to the address of the parties . . . ."

Defendants contended plaintiff did not serve any notices of termination of the leases by certified or registered mail, return receipt requested. Plaintiffs offered no evidence of serving the notice of cancellation of the leases in the manner required by the leases, nor did they plead doing so in the complaints. Instead, plaintiff argued that the leases had already expired, making defendants mere holdover "trespassers." However, the leases for Space 2 and Spaces 3 and 4 were not expired when the respective complaints were filed. Defendants argued the complaints should be dismissed for lack of jurisdiction due to the failure to provide the notice required by the leases.

The court declined to dismiss the complaints because of lack of notice of termination of the lease, noting N.J.S.A. 2A:18-53(b) imposes no such notice requirement for commercial tenancies where the basis for eviction is nonpayment of rent. The court did not address whether plaintiffs served notice of cancellation or the impact of the expiration of the leases.

In support of their motion to transfer the cases to the Law Division, defendants noted the need for equitable jurisprudence and relied on the factors commonly applied when determining whether transfer is appropriate. The court found none of those factors applied here and determined that defendants "failed to demonstrate how they would be significantly prejudiced if these matters were not transferred to the Law Division." The court declined to transfer the cases, noting its ruling did not preclude either party from seeking additional equitable relief regarding the amount of rent owed in the Law Division. As to the claimed debilitating effect that COVID-19 had on restaurants, the court stated there are only limited defenses to an action brought to evict a tenant based on nonpayment of rent pursuant to N.J.S.A. 2A:18-53(b). The court did not address the merits of the defenses of impossibility or impracticability of performance or frustration of purpose.

The court also rejected defendants' argument that plaintiffs' acceptance of rental payments resulted in a waiver of its claims and equitably estopped plaintiffs from evicting defendants. The court distinguished the case law cited by defendants but provided no further analysis regarding the alleged waiver.

The court found "no reason to consolidate" because it denied transfer to the Law Division. Defendants' motion to stay the court's rulings was denied.

The trial took place immediately after those rulings. Mauro Ferone testified for plaintiffs and Jeffrey Favia testified for defendants. In each of the three cases, which were tried jointly, the leases, floor plan, and rent ledger were admitted in evidence. An assumption of lease was admitted in evidence as to Space 1.

The court issued an oral decision on August 20, 2021. By that point, the leases for Spaces 1, 3 and 4 had expired but the lease for Space 2 had not. After recounting the underlying lease transactions, the court made the following findings.

Each lease contains a provision that if rent is late more than five days, a five percent late fee would be due as additional rent. Monthly rent payments for all three leases were typically paid in a single payment. Beginning in August 2020, defendants remitted payments for less than the full amount of the rent. The court recited the payments made between August 2020 and August 2021. The checks plaintiffs received from Favia did not indicate how the partial payments should be applied. After consulting with the owner of the property, Ferone chose to allocate most of the rent payments to the rent due for Space 2. The leases neither permitted nor prohibited this allocation. Upon the advice of counsel, Ferone did not deposit the last four $51,000 payments.

Ferone sent monthly invoices to Favia setting forth the amount paid, how the payments were allocated, and the outstanding balance due. Favia acknowledged receiving the monthly invoices but never objected to the allocation of the payments to Space 2. Favia claimed he did not understand the implications of the payment allocation on his business.

Plaintiffs alleged defendants owed $31,161.20 in rent and late fees for Space 1, $123,235 for Space 2, and $491,506.52 for Spaces 3 and 4, yielding an aggregate balance due of $645,902.72. Subtracting the $204,000 plus related late fees paid by defendants in June and July 2021, left an aggregate balance of $437,123.33.

Favia testified regarding the hardship the restaurant experienced due to the COVID-19 pandemic and resulting executive orders, which he claimed caused substantial revenue losses that prevented paying the full amount of rent due on each lease.

The court found Ferone's testimony was "very credible." Noting that Ferone had "a clear command of plaintiff[s'] books and records," maintained "good eye-contact," "provided prompt, intelligent answers," and testified in a "professional tone" without "embellishments." The court found his testimony "was measured," "appeared reasonable," and "was inherently believable and

corroborated by the other evidence admitted at trial." In contrast, the court found Favia's testimony "to be less credible. His testimony was cloaked in an agitated tone, and he often embellished his testimony with much more information and allegations than the testimony called for."

The court noted Favia "had been in the restaurant industry in various capacities for over [thirty] years," was "very intelligent," and had "secure[d] the advice and assistance of counsel" in negotiating the three leases. "For those reasons, the court [did] not find Mr. Favia's testimony that he didn't understand the ramifications of the landlord's chosen rent allocation to be credible." The court reasoned: "Anyone in the restaurant industry and with Mr. Favia's intelligence level can understand the general concept that if you have three separate debts, and only one is paid down, the others still remain."

Defendants argued plaintiffs should not be permitted to allocate the rent paid to only one of the leases. They contended that the court had the authority to reallocate the rent paid and urged the court to apply all the payments made from August 2020 to present, totaling $497,366.28, to satisfy the rent owed for Spaces 3 and 4, which totaled $491,506.52. Defendants asserted this was the most equitable result, as it would allow the restaurant to remain in business.

Noting that a court hearing a dispossess action "may hear equitable defenses and entertain equitable concepts," the court found the allocation of rent issue presented a "valid" equitable defense, which the court could consider in determining the amount of rent due.

The court then engaged in the following calculations. Considering the $497,366.28 paid after August 2020, the court found the aggregate rent due "for all the three lease agreements was approximately $52,000." Apportioning that amount equitably, the court found the approximate amount due for Space 1 was 20% or $10,000, the approximate amount due for Space 2 was also 20% or $10,000, and the approximate amount due for Spaces 3 and 4 was 60% or $32,000. Therefore, "the fairest way to reallocate the rent paid during that time period[, was] to split it between the three lease agreements," by applying 60% or $298,419.77 to Spaces 3 and 4, 20% or $99,473.25 to Space 1, and an identical amount to Space 2. This yielded $23,249.25 due for Space 1, $224,049.25 due for Space 2, and $189,825.05 due for Spaces 3 and 4.

While acknowledging defendants' argument that the COVID-19 pandemic and executive orders had a debilitating effect on the restaurant, the court found plaintiffs were "negatively affected by defendant['s] failure to pay over $400,000 in rent . . . due over the course of the last year." Without expressly

determining whether the defenses of impossibility or impracticability of performance or frustration of purpose applied, the court entered judgment for possession in each case for the amounts indicated. The court denied defendants' request for a stay of its rulings.

On August 23, 2021, the court ordered disbursement of the $200,000 deposited with the court to plaintiffs' attorney.

II.

These appeals followed. We granted defendants' motion to consolidate the appeals. They raise the following points for our consideration:

> POINT I
>
> THE TRIAL COURT'S RULINGS AND ORDERS SHOULD BE VACATED AND REVERSED, AND THIS MATTER SHOULD BE REMANDED FOR ENTRY OF AN ORDER (1) HOLDING THAT THE TENANT DOES NOT OWE THE LANDLORD THE RENT THAT THE TENANT PAID THE LANDLORD IN RESPONSE TO THE TRIAL COURT'S RULINGS AND ORDERS, (2) REQUIRING THE LANDLORD TO FORTHWITH PAY THE TENANT THE RENT THAT THE TENANT PAID THE LANDLORD AFTER AND IN RESPONSE TO THE TRIAL COURT'S RULINGS AND ORDERS, AND (3) DISMISSING THE LANDLORD'S COMPLAINTS WITH PREJUDICE.
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> > A. The Lease Imposes The Risk Of A Government-Ordered Shut Down Or Reduction In Business On The Landlord Which Bars The

Landlord From Obtaining Or Retaining Its Desired Rent.

B. The Landlord's Recover Of Any Relevant Rent Is Barred By The Landlord's Breach Of Its Duty Of Good Faith And Fair Dealing Which Bar The Landlord From Obtaining Or Retaining Its Desired Rent.

C. The Tenants' Defenses Of Impossibility Or Impracticality Of Performance And Frustration Of Performance Bar The Landlord From Obtaining Its Desired Rent.

D. The Tenants' Equitable Counterclaims, Remedies and Defenses Bar The Landlord From Obtaining or Retaining Its Desired Rent.

E. The Landlord's Breach Of Its Duty to Mitigate Damages Bars The Landlord From Obtaining Or Retaining Its Desired Rent.

F. The Landlord's Acceptance Of Rental Payments Without Reservation Bars The Landlord From Obtaining Or Retaining Its Desired Rent.

G. The Courts Lacked Jurisdiction To Adjudicate The Landlord's Claims Which Bars The Landlord From Obtaining Or Retaining Its Desired Rent.

POINT II

IF THE RULINGS AND RELIEF SOUGHT IN POINT I OF THIS BRIEF ARE NOT PROVIDED, THEN THIS COURT SHOULD REVERSE AND VACATE THE TRIAL COURT'S RULINGS, ORDERS AND

JUDGMENTS AND THIS MATTER SHOULD BE REMANDED FOR ENTRY OF AN ORDER (1) REQUIRING THE LANDLORD TO FORTHWITH PAY THE TENANT THE RENT THAT THE TENANT PAID AFTER ENTRY OF THE TRIAL COURT'S PRIOR RULINGS AND ORDERS, AND (2) CONSOLIDATING THE COMPLAINTS AND TRANSFERRING THIS MATTER TO THE LAW DIVISION.

Findings made by the trial court sitting in a non-jury case are subject to a limited scope of review. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). Factual findings "are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Seidman, 205 N.J. at 169 (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). "[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

A.

We first address defendants' argument that the court lacked jurisdiction because plaintiff did not serve notices of termination in accordance with the

requirements of the leases. The leases required plaintiff to serve defendants with five days' written notice of cancellation of the lease by registered or certified mail, return receipt requested. Relying on N.J.S.A. 2A:18-53(b), the trial court ruled that despite the terms of the leases, plaintiffs were not required to serve a notice of cancellation on defendants.

Subject to public policy, the parties to a lease may contract "for periods of notice of termination of tenancy different from those specified in the dispossess statute which will be binding on them." Hous. Auth. of Bayonne v. Isler, 127 N.J. Super. 568, 573 (App. Div. 1974) (citing Pa. R.R. Co. v. L. Albert & Son, Inc., 26 N.J. Super. 508 (App. Div. 1953)); accord Louclair Realty Co. v. Com. Lounge of N.J., 135 N.J.L. 8, 9-10 (Sup. Ct. 1946); Musselman v. Carroll, 289 N.J. Super. 549, 555 (App. Div. 1996). More rigorous notice of termination requirements imposed by a lease supplant lesser statutory requirements, and are binding on the landlord. Musselman, 289 N.J. Super. at 555; Isler, 127 N.J. Super. at 572-73.

The Special Civil Part "does not have jurisdiction to enter a judgment for possession" if the landlord fails to "comply with all statutory dictates" and the "provisions of the lease between the parties." Hous. Auth. of Jersey City v. Myers, 295 N.J. Super. 544, 547 (Law Div. 1996) (citing Isler, 127 N.J. Super.

at 572-73). Plaintiffs did not plead or establish that they met this jurisdictional requirement by serving notice of cancellation of the lease in accordance with the terms of the leases. The complaints should have been dismissed for lack of jurisdiction. Ibid. On that basis, we reverse the judgments of possession entered in each case.

Plaintiffs argued below that notice was not required because the leases had expired. That was not true as to the leases for Space 2 and Spaces 3 and 4 at the time the complaints were filed. The ten-year lease for Space 2 commenced on September 1, 2012, and ended on August 30, 2022. The ten-year lease for Spaces 3 and 4 commenced on August 1, 2011, and ended July 30, 2021. Plaintiffs filed the complaints as to Space 2 and Spaces 3 and 4 on October 19, 2020, long before either of those leases expired. The subsequent expiration of those leases is not controlling. Plaintiffs were obligated to provide notice of cancellation to defendants prior to filing the complaints as to Space 2 and Spaces 3 and 4, particularly considering they were accepting partial rent payments.

The fifteen-year lease for Space 1 commenced on September 1, 2005, and ended on August 31, 2020. Plaintiffs filed the complaint as to Space 1 more than ten months later on July 9, 2021. In the caption of its complaint, plaintiff stated the ground for eviction was "[n]on-payment." However, plaintiff alleged

defendant continued to occupy the rental premises as a "holdover tenant," "ha[d] not paid any rent since September 2020," and "remain[ed] in default."

We recognize that in Union Minerals & Alloys Corp. v. Port Realty & Warehousing Corp., 129 N.J. Super. 41 (Ch. Div. 1974), which involved unique, readily distinguishable facts, the Chancery judge stated:

> It is axiomatic that a landlord is entitled to possession of his leased property promptly upon the expiration of the term of the demise. A tenant who fails to quit the premises at the expiration of the term is considered a wrongdoer subject to an action for ejectment and for damages by the landlord. Beach Realty Co. v. Wildwood, 105 N.J.L. 317 (E. & A. 1929); Decker v. Adams, 12 N.J.L. 99 (Sup. Ct. 1830). As part of its use and enjoyment of leased premises every tenant must take timely steps to wind down or tail off its operations so that it will be able to meet the lease deadline.
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> [Id. at 44-45.]

The lease in Union Minerals involved an industrial building, where "vast quantities" of equipment and machinery of "immense size and weight" were placed. Id. at 43. As the end of the lease approached, the plaintiff feared the removal of the equipment and machinery would "extend beyond the expiration date of the lease." Ibid. The court considered the alleged inability to vacate the rental premises an anticipatory breach. Id. at 45. It ordered the defendant to "forthwith make necessary arrangements with a rigging company or other mover

to commence removal of the machinery and equipment" by a date three months before the expiration of the lease. Ibid.

Here, the lease for Space 1 did not involve even remotely similar facts. Notably, Space 1 did not contain the restaurant's kitchen. Plaintiffs did not claim the removal of defendants' furniture and restaurant equipment would entail a time-consuming or and complex task. Indeed, plaintiffs filed this summary dispossess action to expeditiously remove defendants.

Moreover, plaintiffs received sizable unallocated rent payments in the months leading up to the filing of the complaint as to Space 1. Importantly, plaintiffs accepted and deposited large unallocated payments after the stated expiration of the lease for Space 1 on August 31, 2020. Defendant made the following unallocated payments well after the expiration date: $21,390 in September 2020, $31,429.80 in October 2020, $29,500 in November 2020, $19,560.48 in December 2020, $16,650 in January 2021, $18,774 in February 2021, $22,200 in March 2021, two payments totaling $52,121 in April 2021, and two payments totaling $84,362 in May 2021. Those payments totaled more than $295,000. We reject plaintiffs' argument that they were not required to provide the notice of cancellation as to the lease for Space 1 when they continued to accept and deposit unallocated rent payments from defendants after the

expiration date of the lease. By accepting and depositing those unallocated payments for the five months after the lease expired, plaintiffs waived any defense to the notice requirement based on expiration of the lease. See Carteret Properties v. Variety Donuts, Inc., 49 N.J. 116, 129 (1967) ("There is no doubt that acceptance of rent with knowledge of the breach, if any, constitutes a waiver of all past breaches." (citing City of East Orange v. Bd. of Water Comm'rs, 41 N.J. 6, 18 (1963))); Plassmeyer v. Brenta, 24 N.J. Super. 322, 330 (App. Div. 1953) ("[T]he waiver resulted from acceptance of the monthly rent with knowledge of the right to terminate the lease."). Here, plaintiffs knew the lease for Space 1 had expired.

Contrary to the arguments of plaintiffs and the statements by the court, equitable defenses, such as waiver, are cognizable in summary dispossess actions heard in the Special Civil Part and must be considered. 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 465 (App. Div. 2004) (citing Vineland Shopping Ctr., Inc. v. De Marco, 35 N.J. 459, 469 (1961)); Olympic Indus. Park v. P.L., Inc., 208 N.J. Super. 577, 582 (App. Div. 1986). And, as we explain more fully in Section C infra, rulings on equitable defenses are fully appealable pursuant to Rule 2:2-3(a)(1). Twp. of Bloomfield v.

Rosanna's Figure Salon, Inc., 253 N.J. Super. 551, 556-58 (App. Div. 1992); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 6:3-4 (2023).

The fact that plaintiffs unilaterally allocated those payments to the other leases for their own strategic purposes does not change our decision. The provision in the lease that "the failure of the Landlord to enforce strict performance by the Tenant of the conditions and covenants of [the] lease . . . or the acceptance by the Landlord of any installment of rent after any breach by the Tenant . . . shall not be construed or deemed to be a waiver . . . by the Landlord" does not alter the result. See Carteret Properties, 49 N.J. at 129 (rejecting the landlord's reliance on a "lease provision that failure of the landlord to insist upon strict performance of lease covenants in one or more instances 'shall not be construed as a waiver' of breaches occurring thereafter"). We view the position taken by plaintiffs before the trial court to be particularly inequitable considering that Space 1 was an integral part of the operation of the restaurant and was used for no other purpose.

We reverse the three judgments of possession and remand for entry of orders vacating those judgments because the court lacked jurisdiction. Considering this ruling, we do not reach defendants' additional arguments except their challenge of the disposition of the monies deposited with the court.

B.

Defendants argue the court erred by ordering disbursement of the monies deposited by defendants with the court to plaintiffs. We agree it was error to disburse those funds to plaintiff where judgments of possession were entered in favor of plaintiffs.

A summary eviction action cannot be joined with any other action, nor shall a defendant file a counterclaim. R. 6:3-4(a). Therefore, a landlord cannot obtain a money judgment in a summary eviction action. Sprock v. James, 115 N.J. Super. 111, 113 (App. Div. 1971). However, if funds have been deposited with the court, the distribution of those funds must be determined by the court. See Chau v. Cardillo, 250 N.J. Super. 378, 380 (App. Div. 1990) (reversing judgment and remanding as to "disposition of defendant's payment into court").

If the tenant deposits "the rent claimed to be in default, together with accrued costs of the proceedings" with the court "on or before entry of final judgment," "all proceedings shall be stopped." N.J.S.A. 2A:18-55. Here, defendants deposited the sum of $200,000 with the court pursuant to the court's directive. The statute is silent as to the disposition of deposited funds in an amount less than the rent and costs found due by the court.

Common practice is that funds deposited with the court in an amount less than the rent arrears plus costs, are returned to the tenant following entry of a judgment for possession in favor of the landlord. That did not occur in this case. Rejecting defendants' equitable and legal defenses, the trial court found that the amount deposited did not satisfy the rent owed plus costs, entered judgments for possession, and ordered the funds on deposit be disbursed to plaintiffs' attorney.

The Legislature restricted appealable issues in summary eviction actions. N.J.S.A. 2A:18-59 provides that judgments entered in summary actions for possession "shall not be appealable except on the ground of lack of jurisdiction." Invoking that statute, when summary dispossess actions were still being heard in the former County District Courts,[4] we held:

> The latter statute permits review of the county district court judgment only on the question of lack of jurisdiction. In this regard, our cases in dealing with N.J.S.A. 2A:18-53 "have hewed a line separating the 'jurisdictional' issue from meritorious ones. The established principle is that the trial court had jurisdiction if there was evidence from which it could find a statutory basis for removal. If that test is met,

[4] "The County District Courts were not constitutional courts. Established by statute, they were 'courts of limited jurisdiction' within the meaning of N.J. Const., art. VI, § 1, ¶1." Twp. of Bloomfield, 253 N.J. Super. at 557. Because the jurisdiction of statutory courts could be "established, altered or abolished by law," N.J. Const., art. VI, § 1, ¶ 1, "the appealability of their judgments was subject to restriction by statute," Twp. of Bloomfield, 253 N.J. Super. at 557

> the judgment must be affirmed even though it is otherwise infected with error."
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> [Levine v. Seidel, 128 N.J. Super. 225, 228-29 (App. Div. 1974).]

The limitation on appealable issues ended when summary actions for possession began being heard and decided by the Special Civil Part, a constitutional court.[5] Pressler & Verniero, cmt. 2.1 on R. 6:3-4. "[A]ppeals may be taken to the Appellate Division as of right (1) from final judgments of the Superior Court trial divisions . . . ." R. 2:2-3(a)(1). Consequently, we review final judgments of the Special Civil Part in summary dispossess proceedings "to determine whether the trial court committed reversible error, not solely to determine whether it exceeded its jurisdiction." Twp. of Bloomfield, 253 N.J. Super. at 558.

Even if the trial court had jurisdiction to hear these matters, it would be fundamentally unfair and legal error to preclude defendants from appealing the

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[5] "Following the adoption of the 1978 constitutional amendment which abolished the County Courts, N.J. Const., art. VI, § 1, the County District Courts were eliminated by statute effective December 30, 1983." Twp. of Bloomfield, 253 N.J. Super. at 557 (citing N.J.S.A. 2A:4-3(a) et seq.). The Special Civil Part within the Law Division was established by Supreme Court order effective December 31, 1983. Ibid. Summary landlord/tenant actions are heard in the Special Civil Part pursuant to Rule 6:1-2(a)(3). Ibid. "[A]ppeals from the Special Civil Part . . . are protected from statutory restrictions by N.J. Const., art. VI, § 5, ¶ 2." Id. at 558.

disposition of the deposited funds on grounds other than lack of jurisdiction. Defendants clearly deposited the monies with the court for the sole purpose of contesting eviction, roughly equaling the four $51,000 checks plaintiff had not deposited. The deposited funds should have been returned to defendants.

We reverse the orders directing disbursement of the deposited funds to plaintiffs' attorney and remand for the entry of an order directing plaintiffs to turn over those funds to defendants.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.