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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1307-21**

SHORE POINT INN, INC.,

Plaintiff-Respondent,

v.

HEILONGJIANG BARN, LLC,

Defendant-Appellant.

Argued September 13, 2023 – Decided September 25, 2023

Before Judges Sabatino and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No.
LT-001681-20.

James M. Cutler argued the cause for appellant.

Jeffrey B. Gale argued the cause for respondent (Gale
& Laughlin, LLP, attorneys; Jordan S. Gale, on the
brief).

PER CURIAM

Defendant Heilongjiang Barn, LLC ("HBLLC") appeals from the trial court's orders dated April 23, 2021, and July 13, 2021, denying its motion to transfer the landlord-tenant action to the Law Division to consolidate the case with defendant's pending action against plaintiff Shore Point Inn, Inc. ("Shore Point"). HBLLC further appeals the November 16, 2021 order granting Shore Point a judgment of possession. Based on our review of the record and applicable legal principles, we vacate without prejudice the judgment of possession, reverse the orders denying HBLLC's motion to transfer the action to the Law Division, and remand for further proceedings. However, we do not restore HBLLC to the property¹ pending the outcome of the Law Division case, subject to the discretion of the trial court.

I.

On October 31, 2014, HBLLC and Shore Point entered into a commercial lease agreement for a property located in Hazlet. The lease commenced on October 31, 2014, and terminated on December 31, 2019.² In addition to base

¹ Counsel advised during oral argument the property was not occupied at this time.

² The lease was amended following a prior landlord-tenant dispute, and the parties agreed to extend the term of the lease until June 30, 2020.

rent of \$10,000 a month, defendant was obligated to reimburse Shore Point for real estate taxes, and water and sewer bills. HBLLC was also responsible to maintain insurance for the property. HBLLC further had a \$3,000,000 purchase option in the lease.

In June 2018, HBLLC closed its commercial enterprise (The Park Tap & Grill Restaurant) "in order to change the premises from a nightclub-type venue into a family[-]oriented restaurant." On January 19, 2019, "as renovations were nearing completion (at a cost to that date of approximately \$82,000), a fire sprinkler pipe froze and burst on the second floor of the premises, causing extensive flooding damage throughout the building."³

Defendant notes the lease grants termination rights to Shore Point subject to a certain level of damage to the property, but if the termination right is not exercised, "[Shore Point] shall[,] subject to the availability and adequacy of insurance to be provided by [HBLLC,] restore the . . . premises with reasonable promptness" Shore Point was billing HBLLC for insurance expenses as part of added rent. Shore Point advised HBLLC the insurance policy did not

³ The parties dispute the cause of the pipe bursting in their briefs. However, HBLLC never disputed before the landlord-tenant court that it failed to make timely payments for its gas bill and that the service was shut off causing the pipes to freeze and burst.

cover the damage caused by exploding pipes. However, Shore Point subsequently obtained at least \$127,000 in insurance proceeds⁴ but did not advise HBLLC.

Beginning in March 2020, at the outset of the COVID-19 pandemic, defendant stopped paying rent. In May 2020, Shore Point filed a complaint in the Special Civil Part for possession of the property for non-payment of rent. In July 2020, Shore Point amended its complaint to allege HBLLC breached the lease because HBLLC refused to deliver possession of the property at the conclusion of the lease term. On February 19, 2021, Shore Point filed an order to show cause and an amended complaint for judgment of possession to include a count alleging HBLLC abandoned the property.⁵

Five days later, on February 24, 2021, HBLLC filed a complaint in the Law Division asserting causes of action for breach of contract, fraud, conversion, unjust enrichment, breach of implied covenant of good faith and fair dealing, and seeking enforcement of the lease's purchase option. On March 24,

⁴ HBLLC maintains Shore Point received \$168,000.

⁵ The landlord-tenant action was not tried earlier because the Supreme Court authorized the temporary suspension of commercial landlord-tenant trials, subject to narrow exceptions, beginning on March 16, 2022, in response to the COVID-19 public health emergency moratorium.

2021, HBLLC moved to transfer the landlord-tenant matter from the Special Civil Part to the Law Division and consolidate the summary dispossess case with its action for damages against Shore Point.

On April 23, 2021, the court addressed HBLLC's motion to transfer. The court relied on Rule 6:4-1(c) in analyzing the motion. The court noted HBLLC made the motion on the eve of trial. It further commented defendant had failed to file a counterclaim in the landlord-tenant action, and the monetary issues could be addressed in the Law Division. The court determined HBLLC did not provide "credible" evidence that it took action to reopen the restaurant, and it ultimately denied the motion to transfer the case to the Law Division. The court then sua sponte entered a judgment of possession in favor of Shore Point.

Defendant moved for reconsideration of the motion to transfer and the judgment of possession. On July 20, 2021, a different judge granted reconsideration, in part, and vacated the judgment of possession.⁶ However, the judge denied reconsideration as to defendant's motion to transfer the landlord-tenant case to the Law Division. In denying the motion to transfer, the court

⁶ The second judge noted the judgment of possession had been improperly entered because defendant was never given its due process rights and was entitled to a trial on the merits.

recounted the findings made by the first judge, including: the credibility determination that defendant failed to take the necessary steps to reopen the facility, the lack of complexity of issues, and that no counterclaim was filed in the landlord-tenant action. Although acknowledging the first judge referenced the wrong provision for the purposes of ruling on a motion to transfer a case from the landlord-tenant court to the Law Division, the second judge determined the prior court's "reasoning [was] still valid as applied to the proper [r]ule and case law." The matter was then scheduled for trial.

The virtual landlord-tenant trial began on August 25, 2021, but defendant's counsel experienced technology issues which interrupted the proceedings, and the case was rescheduled.⁷ Trial continued and concluded on October 8, 2021. On November 16, 2021, the court entered a judgment of possession in favor of Shore Point. This appeal followed.

⁷ On September 2, 2021, defendant filed a petition for Chapter 11 bankruptcy. Accordingly, the landlord-tenant matter was stayed. The bankruptcy court subsequently dismissed the bankruptcy proceedings on September 10, 2021, thereby ending the stay.

II.

A.

HBLLC asserts the trial court erred in denying the application to transfer the landlord-tenant matter to the Law Division to consolidate with the pending action against plaintiff. HBLLC further challenges the trial court's order entering a judgment of possession for Shore Point. HBLLC also argues the trial court should have continued the trial to allow it to call an important witness.

We first address the denial of HBLLC's motion to transfer this matter to the Law Division. HBLLC argues the trial court "overlooked a large array of potential complex issues, bearing on the claim for possession, which warranted transfer of the matter for plenary consideration in a Law Division proceeding where these issues might be litigated with the aid of discovery." Specifically, HBLLC asserts Shore Point's alleged misrepresentations concerning insurance coverage and subsequent receipt of insurance proceeds, along with questions surrounding the purported abandonment of the property, are complex issues impacting the landlord-tenant case.⁸ In addition, HBLLC argues "this is not a routine summary dispossess case" because "issues to be determined relating to

⁸ HBLLC asserts there are questions of fact as to whether there were substantial renovations being conducted pursuant to the lease's abandonment provision.

the dispossess claim involve an intricate and comprehensive lease, an unusual set of circumstances arising from or connected with a catastrophic flooding event, the effects of a long-lasting pandemic and its effect on the [f]orce [m]ajeure clause of the [l]ease[,] and other matters" HBLLC also contends transfer was warranted "to avoid inconsistency and the wasting of judicial resources in trying the same issues twice." HBLLC further asserts there was a need for expert testimony, an evaluation of its entitlement to credits for renovation work, and the need for discovery regarding the mold issues.

B.

Rule 6:4-1(g) and N.J.S.A. 2A:18-60 govern the transfer of landlord-tenant actions to the Law Division. N.J.S.A. 2A:18-60 provides:

At any time before an action for the removal of a tenant comes on for trial, either the landlord or person in possession may apply to the Superior Court, which may, if it deems it of sufficient importance, order the cause transferred from the Special Civil Part to the Law Division.

"[E]ither party to a summary dispossession proceeding may move to have the matter transferred to the Law Division." Benjoray, Inc. v. Acad. House Child Dev. Ctr., 437 N.J. Super. 481, 486 (App. Div. 2014).

"An action pending in the Special Civil Part may be transferred to another court for consolidation with an action pending in such other court in accordance

with [Rule] 4:38-1." R. 6:4-1(a). "When actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party's or its own motion may order the actions consolidated." R. 4:38-1(a). The test for transferring a case from the Special Civil Part to the Law Division is used when the movant seeks to consolidate it with a pending Law Division case. Lopez v. Medina, 262 N.J. Super. 112, 117-18 (Law. Div. 1992). We review the decision to grant or deny a motion to transfer to the Law Division for abuse of discretion. Benjoray, 437 N.J. Super. at 486 (citing Master Auto Parts, Inc. v. M. & M. Shoes, Inc., 105 N.J. Super. 49, 53 (App. Div. 1969)). Likewise, "[a] trial court's decision to grant or deny a party's motion to consolidate actions is discretionary." Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015).

"A court abuses its discretion when its 'decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'"" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App.

Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

"The summary dispossession statute, N.J.S.A. 2A:18-51 to -61, was designed to provide landlords with a swift and simple method of obtaining possession." Benjoray, 437 N.J. Super. at 486 (citing Carr v. Johnson, 211 N.J. Super. 341, 347 (App. Div. 1986)). Nevertheless, transfer is appropriate in cases involving "rights or issues too important to be heard in a summary manner" Master Auto Parts, 105 N.J. Super. at 52. To that end:

In general, a motion for transfer should be granted whenever the procedural limitations of a summary action (other than the unavailability of a jury trial) would significantly prejudice substantial interests either of the litigants or of the judicial system itself, and, because of the particular facts and circumstances of a specific case, those prejudicial effects would outweigh the prejudice that would result from any delay caused by the transfer.

[Benjoray, 437 N.J. Super. at 486 (quoting Twp. of Bloomfield v. Rosanna's Figure Salon, Inc., 253 N.J. Super. 551, 563 (App. Div. 1992)).]

In Morrocco v. Felton, the court enumerated factors to be considered when determining whether a summary eviction action should be transferred to the Law Division. 112 N.J. Super. 226, 235-36 (Law Div. 1970). In Bloomfield, we noted:

Among the guidelines suggested by Morrocco, the following still seem applicable to the current court system:

[1] The complexity of the issues presented, where discovery or other pretrial procedures are necessary or appropriate;

. . . .

[2] The presence of multiple actions for possession arising out of the same transaction or series of transactions, such as where the dispossesses are based upon a concerted action by the tenants involved;

[3] The appropriateness of class relief;

[4] The need for uniformity of result, such as where separate proceedings are simultaneously pending in both the Superior Court and the County District Court arising from the same transaction or set of facts, and

[5] The necessity of joining additional parties or claims in order to reach a final result.

[253 N.J. Super. at 562-63.]

We have noted, "[i]f one or more of those factors compel a transfer, the court should do so" Carr, 211 N.J. Super. at 349 (citing Morrocco, 112 N.J. Super. at 236). Two of the Bloomfield factors are implicated here: (1) "[t]he complexity of the issues presented, where discovery or other pretrial procedures are necessary or appropriate"; and (2) "[t]he need for uniformity of result." Bloomfield, 253 N.J. Super. at 562-63.

This was not a conventional or routine landlord-tenant action given the myriad of issues allegedly impacting the actions of HBLLC in renovating the property following the water damage, including the alleged misappropriation of insurance proceeds. The Special Civil Part judges did not squarely address the alleged misrepresentations regarding the insurance proceeds and the potential, corresponding impact on HBLLC's payment of rent and the renovation of the premises. The judges determined the issues before the court were not complex and did not justify the requested transfer. We respectfully disagree. The issues raised by HBLLC in the context of a landlord-tenant action were sufficiently complex and interconnected with the Law Division matter to warrant transfer to the Law Division and consolidation with HBLLC's pending case. This, in turn, would allow the issues to be fully investigated and developed because of the discovery procedures available to the parties.

We further observe both Special Civil Part judges denied the motion to transfer based, in part, on HBLLC's failure to file a counterclaim in the landlord-tenant action. However, HBLLC was not permitted under the Rules of Court to file a counterclaim. Rule 6:3-4(a) provides that summary eviction actions "shall not be joined with any other cause of action, nor shall a defendant in such proceedings file a counterclaim" Moreover, the first judge incorrectly

relied on Rule 6:4-1(c) in deciding the motion to transfer to the Law Division. Instead, the court should have evaluated the motion under Rule 6:4-1(g), N.J.S.A. 2A:18-60, and the corresponding case law, including an assessment of the Bloomfield factors noted above.

Both judges also made factual findings on the abandonment issue⁹ in deciding to deny the transfer, despite conflicting proffers from the parties. It is axiomatic that trial courts should not decide contested issues of material fact on the basis of conflicting affidavits without considering the demeanor of witnesses at a hearing. Conforti v. Guliadis, 245 N.J. Super. 561, 565 (App. Div. 1991).

Lastly, the first judge noted the motion to transfer was made on the eve of trial and denied same by order dated April 14, 2021. Rule 6:4-1(g), however, permits the filing of the application "no later than the last court day prior to the date set for trial." The court can certainly consider whether an application is filed for the purpose of delay, and we appreciate the court's concern with calendar control. However, there was no specific determination that HBLLC's motion was filed for the purpose of delay. Moreover, the motion was not an

⁹ HBLLC asserts no determination was made with respect to the abandonment issue as to whether substantial renovations were still being made pursuant to the lease provision.

unfair surprise to Shore Point, as the court had entertained an earlier oral application to transfer the case to the Law Division and denied the same by order dated March 11, 2021. Although HBLLC filed the written application on the eve of trial, Shore Point and the court were previously aware of HBLLC's desire to transfer the matter to the Law Division, and it is not apparent from the record the request was an attempt to delay the proceeding.

In short, based on our review of the record, we conclude the judges misapplied their discretion in denying HBLLC's motion to transfer the landlord-tenant case to the Law Division and consolidate same with the pending action against Shore Point. The issues in this case were not amenable to adjudication in a summary dispossess action. Given the complexity of the matters involved, coupled with the interrelated issues between the two cases and the need for discovery, the case should have been transferred and consolidated with the Law Division case.

We therefore vacate and remand for entry of an order transferring this matter and consolidating it with the Law Division case. As noted above, we do not restore HBLLC to the property, subject to the discretion of the trial court. The ultimate disposition of the property, along with money damages, will be

addressed by the Law Division. Because we are vacating these orders, we need not address defendant's remaining arguments.

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

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



CLERK OF THE APPELLATE DIVISION