

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

**Superior Court of New Jersey – Appellate Division
Letter Brief**

Appellate Division Docket Number: A000826-23

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Pro Se

03/04/2024

Letter Brief on Behalf of: Self

500 PARK AVENUE EQUITIES, LLC

Plaintiff/Respondent

V.

COURTNEY WILLIAMS AND
ALL UNAUTHORIZED OCCUPANTS

Defendant/Appellant

Case Type: Civil

County/Agency: Essex

Trial Court/Agency Docket No: DC- 009248-23

Trial Court Judge/ Agency Name: Hon. Russell J. Passamano, J.S.C.

Dear Judges:

Pursuant to R.2:6-2 (b), please accept this letter brief in support of my appeal in this matter.

TABLE OF CONTENTS

PROCEDURAL HISTORY.....1

STATEMENT OF FACTS.....1

LEGAL ARGUMENT.....4

POINT 1

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO HEAR AND DETERMINE THE MATTER. PURSUANT TO RULE 6:1-2 (a)(4) AS THE MATTER WAS OUTSIDE THE JURISDICTION OF THE SPECIAL CIVIL PART.

Raised below (1T12-14; Pa 18a)

POINT 2

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT IMPROPERLY ISSUED AN EX PARTE ORDER TO SHOW CAUSE IN THIS MATTER AS PLAINTIFF’S APPLICATION TO THE COURT ON ITS FACE PROVIDED NO LEGAL BASIS FOR A SUMMARY PROCEEDING PURSUANT TO R. 4:67-1(a).

Raised below (Pa 18a)

CONCLUSION..... 11

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

**TABLE OF JUDGEMENTS(S), ORDERS, RULING(S), AND
DECISION(S) ON APPEAL**

<u>Document Name</u>	<u>Date</u>	<u>Appendix Page # or Transcript</u>
Order	8/28/23	Pa 1a
Oral Opinion	8/28/23	1T15

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

INDEX TO APPENDIX

<u>Document/Exhibit Title or Description</u>	<u>Date</u>	<u>Appendix Page Number</u>
Order for Ejectment	8/28/23	Pa 1a
Verified Complaint for Ejectment	7/11/23	Pa 3a
Plaintiff Exhibit A – Purported Deed	7/11/23	Pa 6a
Certif. in Support of OTSC- J. Marcus	7/11/23	Pa13a
Signed Order to show Cause	7/11/23	Pa15a
Defendant Letter in place of Answer	8/24/23	Pa18a
Defendant Exhibit D-A share certificate	8/24/23	Pa19a
Defendant Exhibit D-B extract of lease	8/24/23	Pa20a
Notice of Appeal (amended)	10/13/23	Pa22a
Stay Pending Appeal Order	11/01/23	Pa25a
Notice of Motion (attached to stay order)	10/18/23	Pa26a
Certification in Support of Motion	10/18/23	Pa28a
Unpublished App. Div. Opinion #1 Per Rule 2:6-1(a)(1)(h)	03/04/24	Pa33a
Unpublished App. Div. Opinion #2 Per Rule 2:6-1(a)(1)(h)	03/04/24	Pa37a

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

LIST OF PARTIES

<u>Party Name</u>	<u>Appellate Party Designation</u>	<u>Trial Court/ Agency Party Role</u>	<u>Trial Court/Agency Party Status</u>
Cortney Williams	Appellant	Defendant	Participated Below
500 Park Avenue Equities, LLC	Respondent	Plaintiff	Participated Below

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

TABLE OF TRANSCRIPTS

<u>Proceeding Type</u>	<u>Proceeding Date</u>	<u>Transcript Number</u>
Order to Show Cause Hearing	8/28/23	1T

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

PROCEDURAL HISTORY

<u>Date</u>	<u>Event/ Proceeding</u>	<u>Filed By</u>	<u>Result</u>	<u>Appendix Page Number/ Transcript</u>
7/11/23	Complaint	Plaintiff	Filed	Pa 3a
7/11/23	OTSC	Court	Granted	Pa15a
8/24/23	Exhibit upload	Defendant	Filed	Pa18a
8/24/23	Order	Court	Granted	Pa 1a
11/01/23	Cert. relief	Defendant	Filed	Pa40a
11/01/23	Order	Court	Granted	Pa25a

STATEMENT OF FACTS

On March 13, 2002, defendant acquired shares in 500 Park Ave. E.O. Inc., a corporate entity in NJ that owns a multifamily apartment building managed as a housing cooperative. (Pa 19a) In concert with the purchase defendant was issued a proprietary lease entitling defendant possession of Apt. 19 within the real property commonly known as 500 Park Avenue, East Orange, NJ 07017.(Pa 20a) Defendant established full-time residency at the premises about two weeks later after changing the locks in April 2002.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

On July 15, 2023 defendant returned home to find a small envelope with two keys propped in the corner of her unit door. The envelope was unaddressed but bore the mark of the number '2' and contained no correspondence.

On July 18, 2023 defendant returned home to find the locks to the entryway to her wing of the building had been changed. After gaining entry to the building via a neighbor defendant retrieved the envelope with the keys that had been left by her door and realized the new keys were indeed the keys to the new entryway locks.

On or about July 24, 2023 Defendant received a signed order to show cause naming 500 Park Avenue Equities, LLC as the plaintiff in an ejectment action filed in the Superior Court of New Jersey Law Division Special Part (Pa 15a). The OTSC was accompanied by a verified complaint for ejectment (Pa 3a) and a certification in support of an order to show cause for ejectment (Pa 13a).

In August, 2023. Defendant received a letter titled 'scam alert' claiming that individuals were falsely representing themselves 'as my landlord and not to pay them any rent payments. The letter directed that all communication for changes in the building would be hand delivered (i.e. communicated in writing) by Judah Klein or Jacob Marcus.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

On August 24, 2023 after failing the day prior to be able to upload evidence in preparation for the scheduled 8/28/2023 OTSC hearing being conducted remotely the defendant attempted to file an answer with the SPC clerk per the signed OTSC defendant received in person. The answer was denied and defendant was informed that answers were not permitted in summary ejectment proceedings. After extended exchanges with various court staff the defendant was permitted to upload documents with the clerk and present a handwritten letter to the case file (Pa 18a; Pa 19a and Pa 20a)

On August 28, 2023 the order to show cause hearing was conducted and the court issued an order for ejectment to remove defendant from the premises but stayed the motion for 45 days. Defendant attended the hearing in person since the remote call details for the 10 am scheduled hearing were still not available from the Special Civil Part's customer service personnel as late as 9:15 am the day of the hearing (Pa 1a).

Defendant applied to the court for a stay pending appeal to ensure she was not removed from the premises while the order for ejectment was appealed. The court granted the application (Pa 25a).

LEGAL ARGUMENT

POINT 1

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO HEAR AND DETERMINE THE MATTER. PURSUANT TO RULE 6:1-2 (a)(4) AS THE MATTER WAS OUTSIDE THE JURISDICTION OF THE SPECIAL CIVIL PART.

Raised below (1T12-14; Pa 18a)

The order for ejectment issued in favor of plaintiff and signed by the court on August 28, 2023 states two statutes and one court rule on its face, specifically N.J.S.A. 2A:35-1, N. J.S.A 2A:39-8 and R. 4:67-1. The court in citing the above authorities misapplied statutes and assumed jurisdiction in a matter where there was none per court Rule 6:1-2 (a)(4). The order stated that defendant was to be ejected from the premises pursuant to N.J.S.A. 2A:35-1; titled jurisdiction in real property possessory actions, for its part the statute reads:

Any person claiming the right of possession of real property, shall be entitled to have his rights determined in an action in Superior Court.

As the plain language of the statute states 'claiming' and not 'having' or such other language, the defendant recognizes plaintiff's ability to institute action in Superior Court. Defendant does not however recognize the plaintiff's right to have their 'claimed' rights determined in the Special Civil Part, Law Division. The

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

jurisdiction of the Special Civil Part is limited. Rule 6:1-2(a)(4) explicitly states that the following matters shall be cognizable in the Special Civil Part...

(4) Summary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1, et seq., where defendant has no colorable claim of title or possession or pursuant to N.J.S.A 2A:39-1 et seq.

“A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” *Manalapan Realty, L.P. V Twp. Comm. of the Twp. of Manalapan*, 140 N.J. 366, 378 (1995); accord *Nicholas V. Mynster*, 213 N.J. 463, 478 (2013). Interpretation of court rules is also subject to de novo review. *Myron Corp. V Atl. Mut. Ins. Corp.*, 407 N.J Super. 302, 309 (App. Div 2009) aff’d 203 N. J. 537 (N.J 2010). A colorable claim is a plausible claim that may reasonably be asserted, given the facts presented and the current law (*Imfeld V. Buttery* A-2690-19 (App. Div July 29, 2021) cited pursuant to Rule 1:36-3. (Pa 36a). The defendant asserted a claim to possession based on a proprietary lease (Pa 20a; Pa 18a; IT5-15; 1T14-9; IT18-6) with the entity she asserted was the true owner of the premises. After some back and forth with the court, the court confirmed that it was aware the defendant asserted a claim of possession under oath (1T33-5:9) at the order to show cause hearing. The court further clarified that title to the property and the right to possess the premises were two different things and that both ‘issues’ had been presented to the court by the

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

defendant (IT32-22). The claim of possession asserted by the defendant was a colorable claim to possess the property and deprived the Special Civil Part of jurisdiction to hear and determine the matter per court rule. The trial court erred in not heading the substantive requirement of Rule 1:13-4(a) which states that

...if any court is without jurisdiction of the subject matter of an action or issue therein... it shall on motion or its own initiative, order the action, with the record and all papers on file, transferred to the proper court. R.1:13-4(a)

The trial court in keeping with its constrained ability to determine equitable considerations, like the ownership interest of the defendant in the entity with the competing ownership sought to recast the 'issues' as outside of the action despite the unavoidable reality that the action was a summary ejectment proceeding. Where to prevail a party seeking possession must demonstrate ownership of or control over the property and that the person facing ejectment has no right to remain at the property. (Knight V Williams A-1306-20 (App.Div. Dec. 29, 2023) citing Phoenix pinelands Corp V. Davidoff, 467 N.J. Super . 532, 615 (app. Div 2021) (Pa 38a).

The issues present before the court begged discovery given the characteristics of the defendant's occupancy in the premises at the center of the action. Nothing in

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

N. J. S. A 2A:35-1 et seq. statutorily required that jurisdiction rests solely in the Special Civil Part, Law Division as the statute directly references the Superior Court. The pretext that the court was somehow constrained to consolidating the ejectment action with an already pending case to address the issues presented was not based in fact given the court's power under R. 1:13-4(a).

To address Rule 6:1-2(a)(4)'s stated second avenue for a summary action in the Special Civil Part ... N.J. S. A 2A:39-1 et seq. defines unlawful detainer in N.J.S.A 2A:39-4 as:

Any tenant or other person in possession of any real property after demand and notice in writing given for the delivery of the possession thereof by a lessor or the person to whom the remainder or reversion of such real estate shall belong, such tenant or other person, so holding over, shall be guilty of an unlawful detainer.

N. J. S. A 2A:39-1 et seq. could not be invoked as a basis for the order to show cause hearing on 8/28/23 proceeding as a summary proceeding in the Special Civil Part until and unless the case could be brought under the ambit of N.J.S.A. 39-1 et. seq. as a statute. On this point the record is clear the trial court was precluded from making the determination that defendant was an unlawful detainer under the statute because the requirement of demand and written notice was never complied with. The plaintiff offered one exhibit, a deed dated 7/4/ 2023 and applied for summary relief with the court on 7/11/2023. They made no statements

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

that they complied with the statute's requirement of demand and written notice nor did they annex an exhibit of written notice despite #6 and #7 of their verified complaint referring to the defendant as illegally squatting and 'unlawful' conduct. Plaintiff failure to meet the various demand and written notice requirements in various chapters of N. J. S. A. 39-1 et seq. bar it from accessing relief under said statute including jurisdiction under Rule 6:1-2(a)(4).

POINT 2

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT IMPROPERLY ISSUED AN EX PARTE ORDER TO SHOW CAUSE IN THIS MATTER AS PLAINTIFF'S APPLICATION TO THE COURT ON ITS FACE PROVIDED NO LEGAL BASIS FOR A SUMMARY PROCEEDING PURSUANT TO R.4:67-1(a).

Raised below (Pa 18a)

The ten enumerated 'facts' of the plaintiff's complaint did not explicitly cite what statutes or legal authorities plaintiff's application was pursuant to. However the signed order to show cause that issued from the trial court on 7/11/23 denoted plaintiff sought relief by way of summary action and the court determined that the matter could be commenced by order to show cause as a summary proceeding to obtain possession of the premises. As the order to show cause issued ex parte on the same day it was submitted to the court, it is safe to assume the court regarded the application under some interpretation of Rule 4:67-1(a) as notice to the

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

defendant did not occur as would be required under 4:67-1(b). For its part R.4:67-1(a) reads:

This rule is applicable (a) to all actions in which the court is permitted by rule or by statute to proceed in a summary manner.

“A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” *Manalapan Realty, L.P. V Twp. Comm. of the Twp. of Manalapan*, 140 N.J. 366, 378 (1995); accord *Nicholas V. Mynster*, 213 N.J. 463, 478 (2013). Interpretation of court rules is also subject to de novo review. *Myron Corp. V Atl. Mut. Ins. Corp.*, 407 N.J Super. 302, 309 (App. Div 2009) *aff’d* 203 N. J. 537 (N.J 2010). Two statutes are broadly cited to support ejection, N.J.S.A. 2A:35-1 et seq. does not contain any language in the statute that dictates proceeding in a summary manner. While court Rule 6:1-2(a)(4) allows for summary actions for the possession of real property pursuant to N.J.S.A 2A:35-1 et seq., this rule is applicable to R.4:67-1(b) and requires notice to the parties in the suit. In accordance with law, an application made pursuant to N.J.S.A 2A:35-1 in the Special Civil Part would not result in a summary action and the issuance of an ex parte order to show cause since language directing such summary action is not present in the statute.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

The plain language of N.J.S.A. 2A:39-1 et seq. does provide a statutory basis for detainer actions before the Superior Court in a summary manner through N.J.S.A. 2A:39-6 which reads:

Any forcible unlawful entry and detainer, forcible detainer and unlawful detainer as defined in this chapter shall be cognizable before the Superior Court and the court may hear and determine an action therefor in a summary manner. N.J.S.A. 2A:39-6

The phrase 'as defined in the chapter' is instructive as unlawful detainer is defined in section N.J.S.A. 2A:39-4. It reads:

Any tenant or other person in possession of any real property after demand and notice in writing given for the delivery of the possession thereof by a lessor or the person to whom the remainder or reversion of such real estate shall belong, such tenant or other person, so holding over, shall be guilty of an unlawful detainer (N.J.S.A. 2A:39-4)

It is clear that to contemplate, let alone reach a determination of, in an unlawful detainer action a plaintiff must make a showing of meeting the statues demand and written notice requirements. The plaintiff's application on its face does not reflect that such a showing was made to the court. It follows that N.J.S.A 2A:39-1 et seq was inapplicable to this case because the failure to meet the requirement kept plaintiff from accessing its protections. Furthermore none of the N.J.S.A. 39-1 et seq. statues could authorized this ejectment action to proceed in a summary manner or serve as the basis of cognizability for R. 6:1-2 (a)(4) in the Special Civil Part.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

Because N.J.S.A. 2A:39-1 et seq. was legally inapplicable given the lack of demand and written notice there was never a basis for the issuance of an ex parte OTSC to commence this action and the resulting limitations placed upon defendant, such as the restrictions of R.6:3-1(6) were pre-textual and the direct result of the improper issuance of the order and the designation of the case as a summary ejectment proceeding in the Special Civil Part (Pa 18a). The trial court's error was clearly capable of producing an unjust result as despite the signed order to show cause referencing in enumerated point #3 that the defendant may file and serve the plaintiff with an answer, Special Civil Part staff and the cashier refused the filing of defendant's answer on the prescribed forms available to pro se litigants pursuant to Rule 6:3-1(6), (Pa 15a; Pa 18a; R.6:3-1(6); R.6:3-1(3)).

Conclusion

As the Special Civil Part, Law Division lacked subject matter jurisdiction of the matter defendant asks that the orders issued in this case be vacated and the decisions of the court be reversed.

Dated March, 4 2023

Respectfully Submitted,
Courtney Williams
Courtney Williams

BARRY A. KOZYRA¹
JUDITH A. HARTZ



* * *

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March 27, 2024

VIA E-COURTS ONLY

Judges of the Superior Court of New Jersey
Appellate Division's Clerk's Office
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 006
Trenton, New Jersey 08625-0006
Attention: Joseph H. Orlando, Esq.
Clerk of the Appellate Division

**RE: 500 Park Avenue Equities, LLC vs. Courtney Williams
and All Unauthorized Occupants
Appellate Division Docket No.: A-000826-23
Superior Court of New Jersey
Law Division - Essex County Special Civil Part
Docket No.: ESX-DC-009248-23
Plaintiff-Respondent, 500 Park Avenue Equities, LLC's
Letter Brief – Due April 3, 2024**

Dear Honorable Judges:

This office represents Plaintiff-Respondent, 500 Park Avenue Equities, LLC ("Plaintiff"). Pursuant to R. 2:6-2(b), please accept this letter brief in response to the appeal filed in this matter.

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 2

<u>TABLE OF CONTENTS</u>		<u>Page</u>
I. <u>PRELIMINARY STATEMENT</u>		4
II. <u>PROCEDURAL HISTORY</u>		6
III. <u>COUNTER STATEMENT OF FACTS/FACTUAL BACKGROUND</u>		8
IV. <u>LEGAL ARGUMENT</u>		12

POINT I

THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION AND DID NOT ERR IN GRANTING PLAINTIFF'S APPLICATION FOR EJECTMENT ON AUGUST 28, 2023..... 12

POINT II

THE TRIAL COURT CORRECTLY ISSUED THE JULY 11, 2023 ORDER TO SHOW CAUSE FOR EJECTMENT OF THE DEFENDANT FROM PLAINTIFF'S PROPERTY 19

V. CONCLUSION..... 20

<u>TABLE OF JUDGMENTS</u>		<u>Page</u>
August 28, 2023 Trial Court Order for Ejectment.....		Pa001-Pa002
November 1, 2023, Trial Court Emergent Stay Without Bond or Security Pending an Appeal to The Appellate Division.....		Pa003

<u>TABLE OF AUTHORITIES</u>		<u>Page</u>
<u>Cases</u>		
<u>Aeon Realty Co. v. Arth</u> , 144 N.J. Super. 309, 313, 365 A.2d 477 (App. Div.1976).....		13

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 3

Cahayla v. Saikevich, 119 N.J. Super. 116, 118 (Bergen Cty. Ct. 1972)..... 14

Gretkowski v. Wojciechowski, 26 N.J. Super. 245, 247, 97 A.2d 701
(App.Div.1953)..... 14

Hammett v. Rosensohn, 46 N.J. Super. 527, 535 (App. Div. 1957)..... 15

Imfield v. Buttery, A-2690 (App. Div.2021)..... 16

Island Venture v. N.J. Dep’t of Env’tl. Prot., 359 N.J. Super. 391, 397
(App. Div. 2003)..... 15

J & M Land Co. v. First Union Nat’l Bank, 166 N.J. 493, 520 (2001)..... 13

Knight v. Williams, A-1306-20 (App. Div. 2023).....17, 18

Marder v. Realty Constr. Co., 84 N.J. Super. 313, 320, 321, 202 A.2d 175
(App.Div.), aff’d, 43 N.J. 508, 205 A.2d 744 (1964)..... 13, 14

Mountain Hill, L.L.C. v. Township of Middletown, 399 N.J. Super. 486,
498 (App. Div. 2008)..... 14

Normanoch Assoc. v. Deiser, 40 N.J. 100, 104 (N.J. 1963); 23A
N.J. Prac., Landlord and Tenant Law § 45.1 (5th ed.).....13

Reaves v. Egg Harbor, 277 N.J. Super. 360, 365-66 (Ch. Div. 1994).....15

Reilly v. Weiss, 406 N.J. Super. 71, 77 (App. Div. 2009)..... 14

Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 483-84 (1974)..... 14

State v. Barone, 147 N.J. 599, 615 (1997)..... 14

Stump v. Whibco, 314 N.J. Super. 560, 565, 582, 715 A.2d 1006
(App. Div. 1998)..... 14

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 4

<u>Swift v. Rice</u> , 98 N.J.L. 538, 539 (E. & A. 1923).....	16
<u>Venesky v. West Essex Bldg. Supply Co.</u> , 28 N.J. Super. 178, 187 (App. Div. 1953).....	15
<u>Wilke v. Geohrig</u> , 24 N.J. Misc. 329 (Sup. Ct. 1946).....	16

STATUTES AND RULES

N.J.S.A. 2A:18-61.1 to - 61.12.....	18
N.J.S.A. 2A:35-1.....	12, 13, 19
N.J.R. 6:1-2 (a)(4).....	6,13

PLAINTIFF’S APPENDIX

Page

August 28, 2023 Trial Court Order for Ejectment.....	Pa001-Pa002
November 1, 2023, Trial Court Emergent Stay Without Bond or Security Pending an Appeal to The Appellate Division.....	Pa003
Defendant’s November 1, 2023 Certification for Relief in Ejectment (Writ of Possession).....	Pa004
<u>Knight v. Williams</u> , A-1306-20 (App. Div. 2023).....	Pa005-Pa007

I. PRELIMINARY STATEMENT

Based on a clean title search Plaintiff bought Property located at 500 Park Avenue, East Orange, New Jersey (“Property”) on July 4, 2023 from the prior owner, 500 Park Ave EO NJ LLC, which had in turn bought the Property from 500 Park

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 5

Avenue E.O. Inc. (“Cooperative Association”) on December 31, 2021 (Deed recorded March 22, 2022).

Defendant claims a possessory interest in the Property based on unrecorded shares and a proprietary lease she had with the Cooperative Association. Defendant was aware for almost 16 months before Plaintiff’s purchase of the Property that the Cooperative Association had sold the Property. Defendant’s name and any alleged possessory interest in the Property did not appear anywhere in Plaintiff’s chain of title or otherwise.

Doing nothing about her Cooperative Association claims, Defendant chose to sit back and occupy the Property without a lease or payment to anyone or notice to any prospective buyer of the Property. Defendant chose to secretly oust Plaintiff from lawful title and possession to the Property based on her hidden “interest”.

These are the facts – Plaintiff did 100% of what it was supposed to do in acquiring title and filing for ejectment. Defendant did not and would not do what she needed to do as to claims involving the Cooperative Association. That is not fair and not just to the innocent Plaintiff – the Trial Court would have none of that and neither should this Court - the ejectment should be affirmed.

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Clerk of the Appellate Division
Page 6

PROCEDURAL HISTORY

A Verified Complaint for Ejectment was filed by Plaintiff 500 Park Avenue Equities, LLC in the Special Civil Part of the Superior Court in Essex County, New Jersey on July 11, 2023 pursuant to N.J.R. 6:1-2 (a)(4). (Da3-Da5) The Verified Complaint was supported by the Certification of Jacob Marcus who averred that Plaintiff owned the Premises (or Property), that Defendants were believed to be former owners who had lost the Premises after the sale of the condominium (sic) association, that Defendants were illegal squatters with no legal right to the Premises, that there was no written or oral lease with Defendants, that Plaintiff has not received any type of rent/compensation from Defendants, that Plaintiff had not authorized Defendants to reside at the Premises, and that Plaintiff has suffered and will continue to suffer hardships by reason of the inability to take possession of the Premises use it as intended. (Da13-Da14)¹

On July 11, 2023, Plaintiff also filed a copy of the Deed by which it had taken title on July 4, 2023 from the prior owner, 500 Park Ave EO NJ LLC. (Da6-Da12)

¹ Da references are to Defendant's Appendix which was incorrectly marked as "Pa" while "Pa" references are to Plaintiff's Appendix.

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 7

On July 11, 2023, an Order to Show Cause issued (returnable on August 28, 2023) in which Plaintiff sought an Order of Possession to eject the Defendant and any and all Unauthorized Persons from Unit 19 at the Property. (Da15-Da17)

On August 24, 2023, Defendant filed an Answer alleging the Plaintiff “did not file this lawsuit in the proper place.” (Da18-Da21) Defendant agreed that she had no written or oral lease nor paid rent or other monetary amount to Plaintiff. (Da18)

On August 28, 2023, the Defendant appeared and presented her claims before the Honorable Russell Passamano, J.S.C., as did the Plaintiff. The Defendant did not dispute any of the essential allegations of the Verified Complaint as set forth therein. Defendant did not claim to have ever been a tenant at the Property or to paying rent or any money to Plaintiff – or to anyone else. After taking testimony, considering the documents offered by both parties as evidence and listening to testimony and argument, the Trial Court granted the Plaintiff’s application for ejectment and on Defendant’s application stayed the Order until October 12, 2023. (Da1-Da2)

On October 13, 2023, Defendant filed a Notice of Appeal (Da22-Da24).

On November 1, 2023, the Trial Court on ex parte application of the Defendant entered an emergent stay of the Order without bond or security pending an appeal to the Appellate Division (Da25-Da30).

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Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 8

II. COUNTER STATEMENT OF FACTS/FACTUAL BACKGROUND

The trial was conducted in person although Plaintiff's counsel and Plaintiff's witness, Jacob Marcus, the property manager on behalf of 500 Park Avenue Equities, LLC, appeared via Zoom (T3-1 to 14).

Plaintiff's counsel indicated the relief being sought was for possession of Unit 19 at the Property, that the Plaintiff had bought the Property from the prior owner (500 Park Ave EO NJ LLC), that Defendant was believed to be a former owner of cooperative shares (Da19), that the Cooperative Association had voted to sell all shares to the prior owner which assumed ownership of the Property, that Defendant had continued to reside at the premises after the prior owner acquired title and that Plaintiff now sought possession of the premises as part of the Property purchased from the prior owner (T4-20 to T5-8; T15-1 to 7). As part of the Order to Show Cause, Plaintiff had filed a copy of the Deed from the prior owner together with other associated title papers. (Da6-P12)

Defendant's reasons given on appeal for the lawsuit being improperly brought in the Special Civil Part were (1) the Plaintiff's supporting verification mistakenly referenced a prior "condominium" association - not the correct "cooperative" association involved with the Property, and (2) the Special Civil Part Court lacked subject matter jurisdiction over Plaintiff's action as Defendant had unasserted and

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Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 9

unfiled claims against her Cooperative Association involving a proprietary lease (two pages were offered by Defendant as evidence) (Da20-Da21) – an entity which had no involvement with Plaintiff or the Deed (Da19-Da21)

Defendant claimed that the Cooperative Association was still the “true owner” of the Property, that the Deed was “not accurate” and that she remained in possession under a proprietary lease with her Cooperative Association (not a rental lease of the Property from anyone). (T5-9 to 17) She observed that the Deed referred to the grantor (500 Park Ave EO NJ LLC) “who supposedly then brought (sic) the unit from the coop. So, when I look at the deed, it is not signed by anyone who had authority to sign it, to execute that instrument.” (T5-23 to T6-1) She then explained that “(unidentified) people who were associated with the supposed sale” explained to her that the Cooperative Association had sold the unit and the Property. (T6-3 to 10) She apparently also asked another unidentified person about the sale by the Cooperative Association and was told the articles of incorporation might not have been followed by the Cooperative Association (T7-5 to 22)

Defendant said she was contesting the Deed into Plaintiff’s grantor as being without authority in her opinion. (T7-23 to T8-8) The Deed to Plaintiff referenced the earlier deed to the grantor as having been effective December 31, 2021 and recorded March 22, 2022. (T8-21 to 24) The Deed to Plaintiff was dated almost 16

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 10

months later, July 4, 2023. (T9-14 to 16) Defendant did not produce a copy of the deed from the Cooperative Association to the prior owner. (T10-22 to 25)

Defendant's position at trial was that because Plaintiff bought the Property from the prior owner the Court did not have jurisdiction over the ejectment action because she had shares in the Cooperative Association and the Plaintiff's Deed "seems not to be accurate" and she opined she was not a "true squatter". (T11-17 to 25; T12-6 to 20)

Plaintiff's counsel indicated that Defendant could have sued the Cooperative Association, the prior owner to which the Property had been transferred by the Cooperative Association or even the attorneys involved in the transfer as to her claims pointing out that Defendant was aware of all of the facts and her claims in 2021, 16 months before Plaintiff purchased the Property. (T12-23 to T13-3)

Defendant admitted that other than the shares in the Cooperative Association that she only had an unrecorded proprietary lease from the Cooperative Association to show her title to the Property. (T13-24 to T14-14)

Defendant admitted there was no known or contemplated court action or arbitration proceeding by her or anyone against the Cooperative Association or any other non-parties to establish Defendant's claims. (Pa1) In essence, Defendant would

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 11

never have to do or prove anything more than show her documents to oust Plaintiff from possession despite the latter having paid for recorded clear title to the Property.

The Trial Court explained the jurisdiction of the Special Civil Part in ejectment actions and that Defendant's claims related to her alleged rights involving the transfer of shares by the Cooperative Association and the Property to the prior owner neither of which involved Plaintiff. (T16-2 to T16-13) The Trial Court analyzed the Plaintiff's Deed and other associated title documents which Defendant opined (without proof) was "not properly executed" (T16-15 to T17-13) while admitting her own challenge to the Cooperative Association was not the subject of litigation elsewhere – by her or anyone else (T17-18 to 21) and that there were no relevant factual disputes. (T19-21 to 22) Defendant also opined (without citation) that the Deed did not establish Plaintiff's title because it was not recorded when received. (T19-23 to 21-3) The Trial Court went on to find that Defendant's unasserted claims against the Cooperative Association and others as to shares of stock and the proprietary lease did not form the basis for a challenge to the Plaintiff's established chain of title and right to possession by way of the Deed from the prior owner. (T22-21 to T24-5) The Trial Court specifically found that Plaintiff had met its burden of proof in establishing ownership of the Property and the absence of a landlord-tenant relationship with Defendant and that Defendant had not established

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 12

her possession under color of right as to Plaintiff's established ownership and possessory rights but only as a possible legal claim against non-parties. (T26-18 to 29-16)

On this appeal the Defendant raises two points; the Trial Court lacked subject matter jurisdiction (Point 1) (Db4) and the Trial Court erred as a matter of law when issuing the Order to Show Cause as the Plaintiff's application did not provide a legal basis for a summary proceeding (Point 2) (Db8) To argue her position before this Court, Defendant has gone outside the record to suggest that she had been locked out of the premises in July 2023 before Plaintiff sought the Order to Show Cause and was allegedly harassed later in August 2023 (both of the acts are denied). (Db1)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION AND DID NOT ERR IN GRANTING PLAINTIFF'S APPLICATION FOR EJECTMENT ON AUGUST 28, 2023

Actions for Ejectment are authorized pursuant to N.J.S.A. 2A:35-1, which states:

Any person claiming the right of possession of real property in the possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the Superior Court.

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 13

The law was intended to permit a remedy to someone who claims title to realty in the possession of another and replaces the common law action of ejectment. Marder v. Realty Const. Co., 84 N.J. Super. 313, 320 (App. Div. 1964). To establish a prima facie case for an action for ejectment, a plaintiff must plead and prove that the plaintiff has title or right to possession of the subject property, the defendant has current possession of the property, and the defendant's possession is an ouster of the plaintiff. The plaintiff bears the burden of proving each element of an ejectment claim by a preponderance of the evidence. See, Normanoch Assoc. v. Deiser, 40 N.J. 100, 104 (N.J. 1963); 23A N.J. Prac., Landlord and Tenant Law § 45.1 (5th ed.). Plaintiff has proven each element of the claim for ejectment.

Jurisdiction in the Special Civil Part is established by N.J.R. 6:1-2(a)(4) which expressly provides that “[s]ummary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession” are “cognizable in the Special Civil Part”; see J & M Land Co. v. First Union Nat’l Bank, 166 N.J. 493, 520 (2001). As the J&M Land Co. court observed:

That statute replaces the common-law action of ejectment and ordinarily is addressed to matters involving both claims to possession by a [landowner] as well as claims by him—real or constructive—to title to the realty.” Aeon Realty Co. v. Arth, 144 N.J. Super. 309, 313, 365 A.2d 477 (App.Div.1976) (citing Marder v. Realty Constr. Co., 84 N.J. Super. 313, 321, 202 A.2d 175

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 14

(App. Div.), *aff'd*, 43 N.J. 508, 205 A.2d 744 (1964)). In Marder, which involved an action for ejectment based on N.J.S.A. 2A:35-1, the Appellate Division observed that “[t]here can be no doubt that N.J.S.A. 2A:35-1 is intended to allow a remedy to one who claims title to property in the possession of another. The statute replaces the common law action of ejectment.” *521 Marder, *supra*, 84 N.J.Super. at 320, 202 A.2d 175. Consequently, a landowner can elect to pursue an action in the Superior Court claiming title to real property or claiming the right to possession in lieu of an ejectment action, Gretkowski v. Wojciechowski, 26 N.J.Super. 245, 247, 97 A.2d 701 (App.Div.1953), even when the wrongful possessor has been in possession for twenty years or more. Stump, supra, 314 N.J.Super. at 565, 582, 715 A.2d 1006. (Emphasis supplied)

Without a landlord-tenant relationship a plaintiff must seek possession of property through a Superior Court ejectment action. Cahayla v. Saikevich, 119 N.J. Super. 116, 118 (Bergen Cty. Ct. 1972). Plaintiff did exactly that and Defendant’s personal misunderstanding of the law cannot be the basis for reversing the Trial Court.

Nor can Defendant’s decision to ignore the effect of the Trial Court’s findings of fact. A trial judge’s factual findings made following a bench trial are accorded deference and will be left undisturbed so long as they are supported by substantial credible evidence. Reilly v. Weiss, 406 N.J. Super. 71, 77 (App. Div. 2009) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 483-84 (1974)); see also Mountain Hill, L.L.C. v. Township of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (noting appellate courts “do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence” (quoting State v. Barone, 147

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 15

N.J. 599, 615 (1997)). The Trial Court’s factual and legal findings were detailed and based on the record below.

Purchasers of real estate are chargeable only with what appears in the record or a “reasonable” search of title. See Island Venture v. N.J. Dep’t of Env’tl. Prot., 359 N.J. Super. 391, 397 (App. Div. 2003) (noting that “the very purpose of the [Recording] Act is to protect those who have made a ‘reasonable search of the record title’” and “ a bona fide purchaser is chargeable only with what appears in the record.”), aff’d, 179 N.J. 485 (2004). “A purchaser is not required to go back through his chain of title and inquire of each owner as to whether or not the premises are restricted.” Hammett v. Rosensohn, 46 N.J. Super. 527, 535 (App. Div. 1957).

The facts as applied by the Trial Court were largely undisputed even when Defendant argues about how only she interprets them. When one has acquired title to property and has paid valuable consideration , ““the purchaser is presumed to be a bona fide purchaser for value without notice until the contrary appears[.]”” Reaves v. Egg Harbor, 277 N.J. Super. 360, 365-66 (Ch. Div. 1994) (quoting Venesky v. West Essex Bldg. Supply Co., 28 N.J. Super. 178, 187 (App. Div. 1953)). A bona fide purchaser for value takes title free and clear of outstanding interests. Id. One challenging the rights of a bona fide purchaser for value without notice bears the burden of showing that “title was acquired by the purchaser with notice of an

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 16

outstanding equity or claim.” Reaves, 277 N.J. Super. at 366 (quoting Venesky, 28 N.J. Super. at 187). Defendant produced no such evidence and does not dispute that Plaintiff was not aware of her unrecorded claim which on its face undercuts any legitimate colorable claim of right by Defendant as to Plaintiff.

See Swift v. Rice, 98 N.J.L. 538, 539 (E. & A. 1923) (defendants’ claim that plaintiff’s deed was fraudulently obtained could not be raised in an ejectment action where plaintiff held a “record or paper title which purports to convey an absolute legal title in the plaintiff”); see also Wilke v. Goehrig, 24 N.J. Misc. 329, 330 (Sup. Ct. 1946). Defendant’s belief that her unsupported and unpursued proprietary lease claims – which she has no intent of ever establishing - somehow defeats Plaintiff’s documented rights under the Deed cannot be accepted.

Defendant’s reliance on the unreported decision of Imfield v. Buttery, A-2690 (App. Div. 2021) is both improper and misplaced. (Da33) The Buttery litigants had multiple claims and causes of action being actively litigated between the parties in multiple courts related to issues involving contract law, a life estate, promissory estoppel, partition, reformation and damages which the Buttery defendants sought to address all of these interrelated issues in a Chancery Division action. (Da34) Moreover, the Imfeld Plaintiffs introduced documents contradicting the core contract – which the Buttery defendants argued supported their motion to dismiss the

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 17

ejectment action. (Da35) In reversing the trial court the Appellate Division noted the disputed land titles between the parties and complex equitable issues between the parties which involved positions between the parties which were not “readily apparent” and were the subject of a separate legal action. (Da36)

The Trial Court was not faced with multiple overlapping court proceedings, a multitude of complex legal issues or an array of evidence that in any way contradicted Plaintiff’s Deed. The Deed established Plaintiff’s legal title and right to possession of the Property. The Trial Court even asked Defendant whether her claims as to the Cooperative Association’s Deed (involving her proprietary lease) were the subject of litigation to which she answered in the negative (T17-14 to 17-23)) and Defendant later stated that there were no other persons to join as parties involving her issues or claims. (Pa1) What Defendant failed to accept is the fact that her unrecorded proprietary lease was with the Cooperative Association, an entity outside Plaintiff’s chain of title, and her physical possession of Unit 19 did not establish a colorable claim as to Plaintiff but to the Cooperative Association alone.

Defendant’s reliance on the unreported decision of Knight v. Williams, A-1306-20 (App. Div. 2023)² is equally improper and misplaced. (Pa005 - 007) In

² The copy of the decision provided in Appellant’s Appendix is incomplete. A full copy is provided with this brief at Pa005 – Pa007.

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 18

Knight, the defendant had claimed to have had a lease with a prior owner and having paid rent to the landlord. (Pa005 - 007) Plaintiff denied both the prior lease and the defendant's payment of rent. (Pa005 - 007) The parties disputed whether defendant was given notice to leave the premises. (Pa005 - 007) Plaintiff countered that if a lease existed it had expired while defendant claimed to still owing Plaintiff rent. (Pa005 - 007) The Knight trial court went on to make inconsistent findings of fact as to the purported lease, a notice to vacate and a demand for possession. (Pa005 - 007) The Knight court's analysis of the record and decision below rested squarely on plaintiff having failed to demonstrate that defendant's tenancy terminated, plaintiff having failed to comply with her obligation to serve requisite notices on defendant prior to filing her ejectment action and the incorrect legal finding that defendant's month-to-month tenancy expired when her building was sold to plaintiff. (Pa005 - 007) What Defendant chooses to ignore is that she is not and never was a tenant of Plaintiff nor anyone else, that she paid no rent or any money to Plaintiff, that she was given notice of the ejectment proceeding in which she fully participated and that she, as observed in Knight, supra, is not entitled to protection from ejectment under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to 61.12 or any other applicable law. (Pa005 - 007)

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 19

Defendant's argument and juggling of Court Rules and statutes does not defeat the Trial Court's subject matter jurisdiction or prove the incorrectness of that ruling. And the claim that the Trial Court felt "constrained" about removal of the case from the Special Civil Part for any reason is not supported by the record and thus merits no further response.

POINT II

**THE TRIAL COURT CORRECTLY ISSUED THE JULY 11, 2023 ORDER
TO SHOW CAUSE FOR EJECTMENT OF THE DEFENDANT FROM
PLAINTIFF'S PROPERTY**

Defendant's second line of attack on the Trial Court relates to her claim that the July 11, 2023 Order to Show Cause issued in error. (Db8) Initially, Defendant recites various Rules of Court and legal concepts applicable as to a trial court's legal findings on appeal. (Db9) However, Defendant then leaps to the conclusion that an application for ejectment pursuant to N.J.S.A. 2A:35-1 made by way of Order to Show Cause (without temporary restraints) is void because Defendant was not given advance notice of the filing. Defendant then claims without explanation that her defense was somehow hampered by the Order to Show Cause process because she had difficulty downloading documents to the court's e-court system. While she cites to alleged initial difficulty filing papers with the Special Civil Part, she concedes that

KOZYRA & HARTZ, LLC

Joseph H. Orlando, Esq.
Clerk of the Appellate Division
Page 20

the papers were actually timely filed and presented to the Trial Court. Indeed, the very papers she writes about are part of the record on this appeal.

Not surprising is the fact there are no cited cases to support Defendant's theory of law. Defendant's "analysis" of the law and its impact on her case is absent claim of unfair advantage to Plaintiff or prejudice to her case – as there was none. The Order to Show Cause was correctly issued and the Trial Court should be affirmed.

V. CONCLUSION

For all the foregoing reasons, Plaintiff, 500 Park Avenue Equities, LLC respectfully requests that this Court affirm the Trial Court's August 28, 2023 Order for Ejectment and vacate any stays of the Order for Ejectment.

Respectfully submitted,

s/s Barry A. Kozyra

Barry A. Kozyra, Esq.
Attorney for Plaintiff - Respondent
500 Park Avenue Equities, LLC
(023641978)

BAK:daf
Enclosure
cc: Courtney Williams (*via e-courts only*)

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

**Superior Court of New Jersey – Appellate Division
Letter Brief (Reply)**

Appellate Division Docket Number: A000826-23

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04/15/2024

Reply Brief on Behalf of: Self

500 PARK AVENUE EQUITIES, LLC

Plaintiff/Respondent

V.

COURTNEY WILLIAMS AND
ALL UNAUTHORIZED OCCUPANTS

Defendant/Appellant

Case Type: Civil

County/Agency: Essex

Trial Court/Agency Docket No: Special Civil Part/DC-009248-23

Trial Court Judge/ Agency Name: Hon. Russell J. Passamano, J.S.C.

Dear Judges:

Pursuant to R.2:6-2 (b), please accept this letter brief as my reply in this matter.

TABLE OF CONTENTS

COMMENTS ON PROCEDURAL HISTORY.....1

COMMENTS ON STATEMENT OF FACTS.....3

REPLY6

POINT 1

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO HEAR AND DETERMINE THE MATTER. PURSUANT TO RULE 6:1-2 (a)(4) AS THE MATTER WAS OUTSIDE THE JURISDICTION OF THE SPECIAL CIVIL PART.

POINT 2

14

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT IMPROPERLY ISSUED AN EX PARTE ORDER TO SHOW CAUSE IN THIS MATTER AS PLAINTIFF’S APPLICATION TO THE COURT ON ITS FACE PROVIDED NO LEGAL BASIS FOR A SUMMARY PROCEEDING PURSUANT TO R. 4:67-1(a).

CONCLUSION.....15

PROCEDURAL HISTORY

Plaintiff offers that the case was filed pursuant to N.J.R. 6:1-2(a)(4), the document cited in the record, the complaint, contains no corroborating citation. (Pb6) (Da3a-Da5a)

Plaintiff's assertion that the defendant did not dispute any of the essential allegations of the verified complaint is not supported by the record. (Pb7)

Defendant asserted at the order to show cause hearing that the owner (current tense) of the premises was 500 Park Ave. E.O. Inc. which is squarely at odds with conceding that plaintiff, 500 Park Avenue Equities, LLC, was the owner as alleged in the complaint.(1T5-12)(Da3a) Defendant also stated that her occupancy was authorized via proprietary lease in direct opposition to plaintiff's claim that the defendant was a squatter with no legal right to the premises. (1T5-12)(Da3a)

Further the second subparagraph of the 8/24/23 letter defendant was allowed to submit to the record, and plaintiff admits receiving, states that the defendant denies that plaintiff is the owner of the premises, entitled to its possession or that the relief demanded premised upon plaintiff's ownership is appropriate in the matter. (Da 18a)(Pb20). For plaintiff's statement to be true, these denials, who owned the premises, what authorized defendant's occupancy are ancillary issues in the

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

determination of an ejectment action and the essential allegations are an agreement/relationship with plaintiff and rent/payment to plaintiff which is in direct contrast to what plaintiff laid out as the governing principles widely applied to prevailing in an ejectment action. (Pb7;Pb13)

The Plaintiff is correct that the order of ejectment was issued 8/28/23 but the order was not stayed (until 10/12/23) upon application of the defendant but was stayed per the judge at the conclusion of the hearing and on their own power. (Pb7, Da1a, 1T30-9) Defendant's application to stay the order pending appeal was made to the Special Civil Part on 11/1/23 after it was clear that defendant's 10/18/23 motion would conflict with Sheriff's Office scheduling of defendant's lockout.(Da25a-26a)

Further to the point the 11/1/23 stay order was not an ex parte application or proceeding as clearly evidenced on the face of the 11/1/23 order itself. The judge memorialized that plaintiff did not have counsel available to appear, information the court obtained when the trial judge personally called the office of plaintiff's attorney to inquire about their participation in the proceeding. The court did not solely rely on the emailed ecourts generated notice of the emergent application that issued when defendant applied for the emergent application that morning or defendant's information that designated counsel was on 'leave'. (Pb7;Da25a)

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

Judicial note was taken that defendant's motion paperwork included the certified mail number obtained when plaintiff was served with the standard notice of motion seeking a stay pending appeal and that more than ten days had elapsed between notice to plaintiff that a stay pending appeal was being sought and when the stay pending appeal would issue from the court even under emergent application. It was further noted that no opposition or request for oral argument from the plaintiff had been received by the court at that time. (Da27a) Additionally, neither the procedural history of plaintiff or defendant indicates any activity related to exercising plaintiff's rights on the stay pending appeal that issued.

STATEMENT OF FACTS

Plaintiff's statement that the 'trial' was in person is contradicted by the 7/11/23 order to show cause, as it clearly states it was a hearing to be conducted remotely (Pb8; Da15a).

Plaintiff's statement that Jacob Marcus appeared or participated as a witness in the 8/28/23 OTSC hearing is a whole cloth fallacy and not supported by the record.(Pb8) The transcript makes no reference to Mr. Marcus (1T1) and no oath or affirmation was taken of Mr. Marcus by Sheriff's officer (1T3).

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

Plaintiff's declaration that one of the reasons defendant provided for the appeal was an erroneous information and belief statement provided by Jacob Marcus, specifically that 'the premises had a history as a condominium' is false. Plaintiff's lack of citation to the record confirms as much. (Pb8) If clarification is needed, the defendant's jurisdictional opposition to the determination of the matter in the Special Civil Part is based on 6:1-2 (a)(4). (Db4)

Plaintiff also offers in the reply brief that, at trial, defendant claimed the court did not have jurisdiction over the ejectment action because 'she had shares in the cooperative association' (Pb10) and yet the record reflects that the defendant as a response to the court's question of 'what's your position' offered that there was a proprietary lease that granted defendant possession of the premises at the center of the ejectment action. (1T5-9;1T5-15)

Plaintiff advances in their brief 'that defendant admitted that other than shares in the cooperative association that she only had an unrecorded proprietary lease from the cooperative association to show her title to the property' (1T13-24 to 1T14-14) (Pb10). In the transcript lines plaintiff cites to support this phantom statement, 'title' is not mentioned once and the proprietary lease was asserted as a right of possession in accordance with defendant's position that the lease was being asserted as a claim of possession that ultimately cast this matter outside of R.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

6:1-2(a)(4) and beyond the cognizability of the Special Civil Part. The proprietary lease is essentially an occupancy agreement that does not grant title to the lessee under the agreement but possession to the particular residential unit. That the agreements are labeled 'proprietary' has more to do with who they are issued to. ..owners of corporate shares (proprietors, if you will) and not that the document signifies the lessee's 'title' to the premises.

The mischaracterizations in the plaintiff's counter facts continues when plaintiff advances that "defendant also opined (without citation) that the deed did not establish plaintiff's title because it was not recorded when received (T19-23 to 21-3)" when read further the citation to the transcript, is wholly unresponsive of this statement since the fact that the plaintiff submitted an unrecorded deed to the trial level court with their complaint was not discussed and those sections of the hearing were largely an exchange about what a recorded deed in this state entails and can be relied on to represent in a probative sense. (1T20-2 to 21-13;1T22-9)

Plaintiff provided a denial to an allegation of harassment and a citation to the record that is void of any allegation of harassment.(Pb12;Db1) Furthermore, the defendant did not suggest that they were locked out of the premises before plaintiff sought the order to show cause as both procedural histories state that the OTSC was sought on 7/11/23 and the change of locks detailed in the statement of facts

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

provided by defendant occurred on 7/18/23, additionally the incident was not expressly attributed to plaintiff. (Pb12;Db2)

LEGAL ARGUMENT

POINT 1

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO HEAR AND DETERMINE THE MATTER. PURSUANT TO RULE 6:1-2 (a)(4) AS THE MATTER WAS OUTSIDE THE JURISDICTION OF THE SPECIAL CIVIL PART.

Plaintiff has clarified that the Special Civil Part ejectment action that produced the order at the center of this appeal was filed pursuant to N.J.R. 6:1-2 (a)(4). (Pb6) The trial level court placed its oral reasons on the record, and incorporated them into the 8/28/23 order of ejectment via 'and for the reasons stated on the record' language, indicated that the matter was decided in contemplation of Rule 1:6-2 (a)(4) (sic) (Da 1a)(1T15-21). Lastly, the defendant advanced as point 1 of the appeal that they sought review in this court of whether the trial level court had subject matter jurisdiction of the matter pursuant to R. 6:1-2 (a)(4). (Db4;Pa12)

Yet the plaintiff, in their reply brief, seeks to escape the obvious, Rule 6:1-2 (a)(4) is a NJ court rule. More specifically, it is a court rule that implicates two New Jersey statutes within its text. In fact the substance of the court rule as

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

confirmed by the rule's title is the cognizability of matters in the Special Civil Part, i.e. subject matter jurisdiction.

All three of these matters; interpretation or applicability of court rules, statutory interpretation, and subject matter jurisdiction are reviewed at the appellate level de novo. Myron Corp V. Atl Mut Ins Corp., 407 Super 302, 309 (App. Div 2009) aff'd 203 N.J. 537 (N.J. 2010), Kocanowski V. Twp of Bridgewater, 237 N.J. 3 (N.J. 2019) Santiago V. N.Y. & N.J. Port Auth., 429 N.J. Super. 150, 156 (App. Div. 2012).

The court should find the plaintiff's position that the determinations in these matters were 'actually' trial court findings of fact and therefore due a highly deferential standard of review an unnecessary distortion and unconvincing. (Pb14) Where the points on appeal involve the statutes and court rules listed in the order on appeal and the corresponding incorporated reasons the trial court placed on the record, this court should apply a de novo standard of review.

Plaintiff advances a false equivalency between the Special Civil Part and the Superior Court in their brief, plaintiff would have this court believe that the sum total of their filing options for an ejectment action was in the Special Civil Part. Rule 4:3-1 detailing the divisions of court and providing guidance for the commencement or transfer of actions specifically and in relevant part provides for:

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

(F) Ejectment. If ownership interest or monetary damages pertaining to an ejectment is the only relief sought, the matter shall be filed and heard in the Law Division, Civil Part, the Law Division, Special Civil Part, or the Chancery Division, General Equity..... R. 4:3-1(a)(4)(f)

The position that the course of action plaintiff pursued was the only course of action they had can not be maintained given the filing options were provided via the plain language of court rule R:4:3-1(a)(4)(f)

The unpublished appeals cited by the defendant are instructive because the Knight and Buttery appeal opinions were both adjudged to be matters that had to be reversed or vacated based on the lack of subject matter jurisdiction of the Special Civil Part. One of the central determinations of both opinions was that the defendant's either asserted or had a colorable claim to possess the premises the plaintiff's were seeking ejection from. On appeal both panels came to the same conclusion; that a colorable claim of possession deprived the Special Civil Part of subject matter jurisdiction given the actions were filed pursuant to Rule 6:1-2 (a)(4). The inclusion of the Buttery case was to ascertain if the Appellate division had interpreted rule 6:1-2 (a)(4) in a Special Civil Part ejectment case where occupancy/possession was derived from agreement to possess a property (and did not flow solely from a claim of title to the property), with full awareness that it is not binding on this court. I will however draw this court's attention to the fact that

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

an opinion unpublished or otherwise interpreting this rule to the contrary has not been submitted in the plaintiff's or defendant's appendix in accordance with R.1:36-3 because no such cases are known to the defendant. (Pa33a)

Specifically, the Buttery appeal involved a Special Civil Part issued order for ejectment that was vacated by the Appellate court because the defendant asserted a colorable claim of possession even though the trial court sought to adjudicate and nullify their claim in order to retain jurisdiction. That the Buttery's had other claims against the party in the litigation pending in another court or was simultaneously appealing the denial of a motion to dismiss can not obfuscate that fact. So central was the lack of subject matter jurisdiction to the appeal that the panel declined to address/resolve many of the other points in the appeal. (Pa 36a)

Like the Butterys the defendant's possession of the premises was based on a written agreement to occupy the premises at the center of the ejectment action, in the Buttery appeal it was a 'life estate' and in this case it is a proprietary lease. An occupancy agreement by whatever name it goes by is a claim to possession.

The defendant relies on the initial brief for instances in the record where the trial level court was aware that the defendant asserted a claim of possession through a proprietary lease. (Db5). The trial level court interspersed alternate rationales at the order to show cause hearing regarding why the proprietary lease

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

could not be a claim to possession including (1) that a claim to possession by a defendant in an ejectment action has to be against the plaintiff, despite nothing in 2A:35-1 or 2A:39-1 being cited that contemplates requiring a relationship between the plaintiff and defendant as a jurisdictional requisite (1T-34) or (2) that the claim to possession was terminated because the defendant's lease was issued concurrently with 'ownership' in the issuing entity through shares. The logic being that the purported realty transfers extinguished the lease. (1T19-9) The court offered nothing to support that a proprietary lease conveyed title to realty in any manner and acknowledged that it addresses occupancy. Concurrent is not commingled and the court confirmed it was generally aware of the various components such as corporate bylaws and/or corporate articles of incorporation that also accompanied the housing arrangement. (1T18-20) The signature page of the defendant's lease plainly states at '38.' that all changes to the lease would be in writing (Da21a). The plaintiff claims to have documents from the cooperative association and yet did not produce a termination to the lease which addresses the right to occupy. The defendant did not produce a termination because they did not receive one. The record does not contain a written termination of the proprietary lease from either party. (1T13-10)

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

The Knight appeal involved a Special Civil Part order for ejectment that was vacated because the defendant had a colorable claim of possession to occupy the premises through a tenancy that continued due to plaintiff's failure to provide written notice to quit which was a prerequisite to the termination of her tenancy, thereby depriving the Special Civil Part of jurisdiction in the plaintiff's action. The correlate to this appeal is that the trial level court's determination of unlawful detainer proffered in the oral reasons as an alternate or additional basis under R. 6:1-2(a)(4) was likewise statutorily barred due to the plaintiff's lack of written demand and notice as a requirement to obtain the relief specified within N.J.S.A. 2A:39 et seq statutes. As such the applicability of the Knight case in this matter is clearly to bring the appellate court's attention to the lack of written notice and demand required in any attempt by plaintiff or the trial court level judge to apply N.J.S.A 2A:39-1 et seq. statutes to this matter, which was clearly done during the oral reasons placed on the record, and not an attempt to cast the defendant as a tenant entitled to protections under N.J.S.A 2A:18-61.1 as plaintiff advances in their brief. (1T15-16;Pb18; Da39a) The legal determination of unlawful detainer can not be maintained as a basis for defendant's ejectment in the Special Civil Part under R.6:1-2(a)(4) pursuant to a detainer action when the record is clear that the written notice and demand requirement necessary to satisfy the statutory definition

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

provided in N.J.S.A 2A:39-4 was not met and the relief that is detailed in N.J.S.A 2A:39-8 should not have been granted. The defendant relies on the initial brief submitted in this appeal on this matter but adds that during the oral reasons placed on the record during the order to show cause hearing 3 citations of N.J.S.A 2A:39-1 et seq., specifically 2A:39-5, 2A:39-6, and 2A:39-7 were made. The trial court's reading of 2A:39-5, titled Unlawful detainer; notice, specifically was truncated at the order to show cause hearing in such a manner as to remove the actual plain language of the statute that directly addresses notice, in spite of notice prominently displaying in the section's title. To illustrate, the full language of the statute reads:

2A:39-5 Unlawful detainer; notice

A person taking possession of real property, without consent of the owner or without color of title, and willfully and without force holding or detaining the same after demand and written notice given for the delivery of the possession thereof, by the owner or person entitled to possession or right to possession shall be guilty of an unlawful detainer.

The trial level court however read into the record a truncated version of 2A: 39-5 that reads:

“a person that has possession of the property without consent or color of title is guilty of an unlawful detainer” (1T-15)

The truncated version is precisely how the trial court applied the statute; it disregarded the law as written and applied its own version to the case where it

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

could overlay its ability to establish a 'factual finding' of the plaintiff as owner of the premises and consent to possess/occupy thereby had to be given by plaintiff. That application jettisoned the dictates of the statute as written that clearly define unlawful detainer as occurring after demand and written notice for the delivery of the premises and was an error of law. After determining that defendant was an unlawful detainer according to an abbreviated reading of the statute. The court then goes on to authorize the order to show cause hearing as a summary proceeding by invoking N.J.S.A. 2A:39-6 and vesting jurisdiction in the Special Civil Part under Court Rule 1:6-2 (a)(4) (sic). Lastly, the Court invoked N.J.S.A. 2A:39-7 and states that the statute "provides that title shall not be an issue in any action commenced under this chapter. So title can not be at issue in an ejectment." (1T15-23) The full language of N.J.S.A. 2A:39-7 reads:

Title shall not be an issue in any action commenced under this chapter. 3 years peaceable possession by the defendant shall be a defense to the action. (N.J.S.A. 2A:39-7).

The invocation of N.J.S.A. 2A:39-5, N.J.S.A. 2A:39-6 and N.J.S.A. 2A:39-7 et seq departs from the basis stated in the written order of ejectment but as the reasons were incorporated into the order, the defendant believes they are squarely within the sphere of this court's review.

Appellate Division Docket Number: A-000826-23

Appellate Letter Brief

Lastly plaintiff's reply brief lays out a chain of title (that plaintiff advances was obtained from a clean title search) from plaintiff to a prior owner, 500 Park Ave EO NJ LLC and an even earlier owner 500 Park Avenue E.O. Inc. (sic) which it deems the "(Cooperative Association)" in direct contrast to their later statement that the defendant's proprietary lease is with an entity outside plaintiff's chain of title and the statement that plaintiff was unaware of the defendant's lease. A title search on the property would have clearly denoted that 500 Park Ave. Inc. E.O. Inc. was in the chain of title and the structure of that entity would have been equally apparent in a competent search. Notwithstanding, the plaintiff filed this action in ejectment verifying that defendant(s) were former owners and can not now be said to have no information regarding their occupancy.

(Pb4-5;Pb17;1T5;Da13a;1T13-10)

POINT 2

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT IMPROPERLY ISSUED AN EX PARTE ORDER TO SHOW CAUSE IN THIS MATTER AS PLAINTIFF'S APPLICATION TO THE COURT ON ITS FACE PROVIDED NO LEGAL BASIS FOR A SUMMARY PROCEEDING PURSUANT TO R.4:67-1(a).

The order to show cause issued on July 11, 2023 memorializes that plaintiff sought and the trial level court granted that this matter be commenced as a summary proceeding. (Da15a) Plaintiff offers nothing in their reply brief clarifying what

Appellate Division Docket Number: A-000826-23

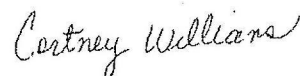
Appellate Letter Brief

rule or statute authorized the application for ejectment pursuant to N.J.S.A. 2A:35-1 to proceed as a summary action. Plaintiff simply confirms that the defendant was not given notice of motion as required under R.4:67-1(b) and states that answer papers were timely filed by the defendant with no citation to the record on that filing (Pb20). The answer was not, in fact, filed and does not appear in the record precisely because the court staff in the Special Civil Part did take plaintiff's position. The defendant was denied an opportunity to oppose a motion to proceed by summary action as was due process under R.4:67 in this matter and could not issue interrogatories or engage in other tools of discovery. The defendant relies on the arguments advanced in the initial brief on this point.

Conclusion

For the reasons put forth in the initial brief and this reply brief, the defendant respectfully asks this court to vacate the order of ejectment issued by the Special Civil Part.

Respectfully submitted,



Cortney Williams

Dated: 4/15/24