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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3555-15T2

MIRFAT DAHER,

Plaintiff-Respondent,

v.

ANDIAMO RESTAURANT and
HAZEM SHALBY,

Defendants-Appellants.

Submitted March 27, 2017 – Decided June 15, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New
Jersey, Law Division, Special Civil Part,
Passaic County, Docket No. LT-1945-16.

Steven C. Schechter, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Defendants, Andiamo Restaurant and Hazem Shalby, appeal from the April 4, 2016 judgment of possession and denial of the motion to transfer the case to the Law Division. Because plaintiff Mirfat Daher was not the owner of the property, and therefore, had no

cognizable right to assert an eviction action, we reverse and remand for the entry of a dismissal of the eviction proceeding.

This action arises from a dispute concerning the alleged non-payment of rent for premises owned by Jolly Clifton, LLC. In 2012, Jolly Clifton leased the property to Yummy Restaurant, LLC. Yummy Restaurant was owned by plaintiff and her husband Jehad.¹

In 2015, plaintiff and her husband entered into a business transaction with Shalby and his partner, selling them the liquor license and the restaurant located on the premises owned by Jolly Clifton. Shalby intended to open Andiamo Restaurant. The parties also entered into a fifteen-year sublease agreement under which Andiamo Restaurant was required to pay monthly rent. Although defendants believed the rent was going to the owner of the premises, Jolly Clifton was unaware of the existence of this sublease and never received any of the payments defendants made to plaintiff.

On March 2, 2016, Jolly Clifton commenced an eviction proceeding for the non-payment of rent against plaintiff, Jehad, Yummy Restaurant, and defendants in the Special Civil Part. Jolly Clifton asserted that the subtenancy between plaintiff and defendants was not valid. Jolly Clifton further stated that its

¹ To avoid confusion among the family members, we refer to them by their first names, intending no disrespect.

lease with Yummy Restaurant prohibited any sublease of the premises without first providing notice to Jolly Clifton. As a result of this action, and learning for the first time that Yummy and plaintiff were not paying rent to Jolly Clifton, defendants stopped making rent payments to Yummy Restaurant.

On March 7, 2016, defendants filed a complaint in the Law Division against Jehad, Yummy Restaurant, and Jolly Clifton, seeking a declaratory judgment as to their rights in the property, the validity of the sublease and seeking reformation of the sublease. On March 8, plaintiff filed the instant tenancy action in the Special Civil Part, seeking to evict defendants for non-payment of rent. In response, defendants filed a motion to dismiss, or in the alternative, to transfer the action to the Law Division and consolidate the matter with the pending Law Division proceeding.

On April 4, 2016, both eviction proceedings were heard at the same time. A representative of Jolly Clifton testified that it was the owner and landlord of the premises, and that there was a lease in effect between Jolly Clifton and Yummy Restaurant. Yummy had stopped making payments under the lease. Jolly Clifton was not notified that plaintiff had entered into a sublease with defendants.

Plaintiff presented testimony as to her eviction complaint against defendants. According to her, she had prepared the sublease herself and her name was used as the sublessor, not Yummy Restaurant, in the sublease of the premises to defendants. Counsel for plaintiff stipulated that plaintiff did not own the property.

After reviewing both the Jolly Clifton lease and plaintiff's sublease and hearing some testimony, the Special Civil Part judge denied the motion to transfer the matter to the Law Division and entered a judgment of possession in favor of plaintiff, awarding her the unpaid rent. The judge determined that the lease and sublease established "much more than just a sublease. It's really a business relationship." In reaching her decision, the judge reasoned that "there's no need to transfer [this case] to the Law Division This is just a simple nonpayment of rent case. And that's what we do here in Landlord/Tenant Court."

On appeal, defendants contend that the Special Civil Part lacked statutory jurisdiction to enter a judgment for possession against them and was required to dismiss the action, the judge should have transferred the case to the Law Division, and defendants were deprived procedural due process.

We review this matter de novo, and therefore, owe no deference to the trial judge's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

N.J.S.A. 2A:18-51² mandates that only an "owner or his duly authorized agent, assignee or grantee" can institute a tenancy action to recover possession of the property. If the proponent of a tenancy action cannot prove "his right to the possession of the premises . . . the cause shall be dismissed."³ N.J.S.A. 2A:18-52 (emphasis added).

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If real estate is leased by an agent of the owner thereof, in his own name or as agent, the owner, his assignee or grantee may terminate the tenancy as the agent might do. The owner or his duly authorized agent, assignee or grantee may institute and maintain proceedings to recover the possession or the rentals thereof in their own names or in the name of the former agent, in the same manner and with the same effect as though the real estate had been leased in their own names.

[N.J.S.A. 2A:18-51].

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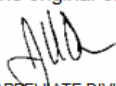
If upon trial of a landlord and tenancy proceeding the plaintiff shall not be able to prove, by lease or other evidence, his right to the possession of the premises claimed by him without proving title to lands, tenements and hereditaments, the cause shall be dismissed, provided however that an assignee or grantee of a landlord may, at the trial or hearing, offer in evidence a deed or other writing for the purpose of showing the assignment or grant by the landlord.

[N.J.S.A. 2A:18-52].

Here, plaintiff was not the owner of the subject premises nor was she the "duly authorized agent, assignee or grantee" of owner Jolly Clifton. N.J.S.A. 2A:18-51. Plaintiff's counsel stipulated that plaintiff did not own the real estate. Yummy Restaurant was the lessor of the property and it was undisputed that Yummy Restaurant did not sublease the property to defendants. Moreover, plaintiff had no authority under Yummy's lease with Jolly Clifton to sublet the property. The judge erred in her decision to broaden the meaning of the lease documents. Plaintiff had no legal right under N.J.S.A. 2A:18-52 to evict defendants.

Therefore, we reverse the Special Civil Part's judgment of possession and remand for the entry of a dismissal of the eviction proceeding. 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