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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-5015-15T2

MODESTA M. MEZA-ROLE,  
and ELOY A. ROLE,

Plaintiffs-Appellants,

v.

RICHARD G. PARTYKA,

Defendant-Respondent.

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Argued February 27, 2018 – Decided March 23, 2018

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. L-8441-  
14.

Modesta M. Meza-Role and Eloy A. Role,  
appellants, argued the cause pro se.

Laurel A. Wedinger argued the cause for  
respondent (Barry, McTiernan & Wedinger, PC,  
attorneys; Laurel A. Wedinger, on the brief).

PER CURIAM

Plaintiffs Modesta M. Meza-Role and Eloy A. Role appeal from  
an order entered by the trial court on May 16, 2016, which

dismissed with prejudice counts one, three, four, and five of their complaint, and an order dated June 6, 2016, which dismissed count two with prejudice. We affirm in part, reverse in part, and remand for further proceedings on count four.

I.

We briefly summarize the relevant facts. In September 1997, Meza-Role entered into an agreement with defendant Richard G. Partyka to lease an apartment in Newark for an initial term of one year. Apparently, the parties thereafter renewed the lease. Disputes arose between the parties and in April 2011, plaintiffs filed an action in the United States District Court for the District of New Jersey, in which they asserted various claims under the federal Fair Housing Act (FHA), 42 U.S.C. § 3601 to -3619, and a claim under the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -49. The case was docketed as Civil Action No. 11-2307.

It appears that one of the disputes between the parties concerned a provision in the lease in which defendant agreed to provide hot water to the premises. The lease also provided that Meza-Role is responsible to pay for electric, gas, and heat. Meza-Role alleged that, under the lease, defendant was required to pay for the gas to heat the water for the premises, while defendant asserted that Meza-Role had to pay for gas supplied to the

apartment. At some point, Meza-Role directed the utility company to terminate the gas account for the apartment. Consequently, the apartment did not have hot water.

Plaintiffs filed a motion in the federal district court to compel defendant to restore the hot water immediately. It is unclear from the record whether the court ruled on the motion. However, in February 2012, plaintiffs moved in federal court for permission to establish an escrow account for the deposit of their lease payments. The record does not indicate whether the court ruled on that motion, but Meza-Role apparently began to deposit the monthly rent payments in a bank account, and she provided notice of those payments to the federal district court.

In March 2012, defendant filed an action in the Special Civil Part against Meza-Role seeking a judgment of possession based on non-payment of rent. Plaintiffs then filed another complaint in the federal district court, and plaintiffs again asserted claims under the FHA and NJLAD. The case was docketed as Civil Action No. 12-1879. The Special Civil Part judge stayed the proceedings on defendant's complaint until the federal court litigation between the parties was resolved.

On June 25, 2012, the federal district court entered an order in Civil Action No. 11-2307, dismissing with prejudice counts one through five of plaintiffs' complaint, in which plaintiffs

asserted claims under the FHA and NJLAD. The district court also dismissed without prejudice count six, in which plaintiffs asserted claims under the FHA and NJLAD based on alleged violations of the covenants of habitability and quiet enjoyment and the alleged disregard of their civil rights. The district court permitted plaintiffs to file another amended complaint within fourteen days to cure the pleading deficiencies in count six.

On July 23, 2012, Meza-Role and defendant appeared in the Special Civil Part. Defendant informed the court that Meza-Role had not paid rent since January 2012, and this was causing him a hardship. The judge determined that the court had jurisdiction in the matter and found that Meza-Role owed defendant rent in the amount of \$4416.

The judge ordered that a judgment of possession would be entered for defendant unless Meza-Role paid the amount due into court that day, along with filing fees of \$29. It appears Meza-Role paid the required amount into court and the court dismissed defendant's complaint. Meza-Role filed a notice of appeal from the court's July 23, 2012 order.

Meza-Role continued to withhold rent payments, however, and defendant filed another complaint in the Special Civil Part, again seeking a judgment of possession based on non-payment of rent. Meza-Role filed a motion to transfer the matter to the Civil Part.

The judge denied the motion. The judge then considered defendant's complaint, rejected Meza-Role's habitability defense, and found she owed rent in the amount of \$1470.

The judge entered an order dated September 18, 2012, which directed Meza-Role to pay defendant the rent due by the following day. The order stated that if Meza-Role failed to do so, a judgment of possession would be entered for defendant. It appears that Meza-Role paid the amount due and the court dismissed the complaint. Meza-Role filed a notice of appeal from the court's September 18, 2012 order.

On October 1, 2012, the federal district court entered an order in Civil Action No. 11-2307, dismissing with prejudice count six of plaintiffs' complaint. The district court noted that plaintiffs had not filed an amended complaint to cure the pleading deficiencies in that count, as the court had permitted them to do.

In addition, on October 15, 2012, the federal district court entered an order in Civil Action No. 12-1879. The court dismissed the federal claims with prejudice and the state-law claims without prejudice. In its written opinion, the district court noted that plaintiffs had asserted six causes of action that were nearly identical to the claims in Civil Action No. 11-2307. The district court found that res judicata barred plaintiffs' federal claims. The court also refused to exercise supplemental jurisdiction over

plaintiffs' remaining state-law claim. Plaintiffs filed appeals to the Court of Appeals for the Third Circuit from the federal district court's orders.

Thereafter, we affirmed the orders entered by the Special Civil Part on July 23, 2012 and September 18, 2012. Partyka v. Meza-Role, Nos. A-5738-11, A-0561-12 (App. Div. May 28, 2013) (slip op. at 11). In our opinion, we stated that the Special Civil Part judge correctly rejected Meza-Role's habitability defense. Ibid. We noted that the premises did not have hot water because Meza-Role had the utility company turn off the gas to the apartment. Ibid. We stated that Meza-Role could not assert that the premises are uninhabitable due to a lack of hot water, after she had cancelled the gas service, which rendered the hot water heater inoperable. Ibid.

In April 2013, the Third Circuit affirmed the federal district court's orders dismissing the claims in Civil Actions No. 11-2307 and No. 12-1879. Meza-Role v. Partyka, Nos. 12-3885; 12-4008, 2013 U.S. App. LEXIS 6838, at \*6 (3d Cir. Apr. 4, 2013). In its opinion, the Court of Appeals noted, among other things, that plaintiffs had not provided any legal or factual support for their allegation that defendant had violated the covenant of habitability.

This action followed. Plaintiffs filed an amended complaint on December 11, 2014. In count one, plaintiffs alleged that,

pursuant to the written lease agreement dated September 1, 1997, defendant was required to provide hot and cold water to their apartment. They claimed that due to defendant's failure to meet the obligation, they could not cook, bathe, or wash in the apartment. Plaintiffs claimed they suffered personal injuries and property damage.

In count two, plaintiffs alleged that on or about November 25, 2014, defendant "forcefully" entered the apartment and assaulted them. They alleged this unauthorized entry constituted a trespass, which interfered with their rights under the lease to sole possession and quiet enjoyment of the apartment. Plaintiffs claimed defendant's forced entry caused dust and debris to be scattered on their personal property.

In the third count, plaintiffs alleged that while the lease was in full force and effect, defendant deprived them of hot and cold water in the apartment. Plaintiffs also alleged they complained to defendant about "loud and unruly" tenants in an apartment on the second floor of the premises, who were "boisterous, noisy, [and] reckless" and left the premises "unsanitary."

Plaintiffs further alleged these other tenants smoked marijuana, cigarettes, and cigars in the hallway and inside the tenants' apartment. Plaintiff's alleged the smoke had a negative

effect on their health. They also alleged that the garbage receptacle that other tenants used leaked and, when taken out, "rotten garbage contaminate[d]" the hallway and stairs. Plaintiffs claimed these conditions made the premises substantially unsuitable for ordinary residential living and constituted a constructive eviction.

In count four, plaintiffs alleged that while the lease was in full force and effect, they attempted on numerous occasions to secure and enforce their rights to quiet enjoyment and habitability. They also alleged that Meza-Role had been burned by acid, which leaked into her apartment from the ceiling. Plaintiffs claimed they provided defendant with a notice of claim for damages arising from this incident. They alleged that in response to their efforts to secure their rights under the lease, defendant issued multiple notices to cease and finally a notice to quit the premises. They alleged they suffered damages due to this "retaliatory eviction."

In count five, plaintiffs alleged defendant had a duty to maintain the premises in a safe and habitable condition. They claimed defendant breached this duty by failing to provide hot and cold water to the apartment, and by failing to abate the noise and unsanitary conditions caused by the "disruptive" tenants. Plaintiffs claimed they suffered pain, discomfort, and sickness



as a result of defendant's breach. Plaintiffs also claimed they incurred "expensive and inconvenient alternatives to attempt to bring the apartment building to a habitable condition."

In January 2015, defendant, who was representing himself at that time, attempted to file an answer denying plaintiffs' allegations. It appears that the clerk of the court did not accept the pleading for filing because defendant failed to pay the required filing fee and a civil case information statement.

On February 6, 2015, defendant paid the fee and submitted the required statement to the court. On that same date, plaintiffs filed a motion seeking entry of default, apparently because defendant had not yet filed an answer. It appears that the court entered default. Later, defendant retained counsel, who filed a motion to vacate the default. The court entered an order dated October 2, 2015, granting the motion.

Thereafter, defendant filed a motion to dismiss all claims in the complaint with prejudice based on the doctrines of res judicata and collateral estoppel. The court granted the motion in part and dismissed counts one, three, four, and five. The court scheduled the matter for trial on June 6, 2016, on count two.

Sometime before the scheduled trial date, plaintiffs discharged their attorneys and decided to represent themselves. Plaintiffs failed to appear for trial on June 6, 2016, and the

court entered an order that day dismissing the complaint with prejudice. Plaintiffs then filed a motion pursuant to Rule 4:50-1 to vacate the court's June 6, 2016 order and reopen the matter. The court entered an order dated August 19, 2016, denying the motion. This appeal followed.

On appeal, plaintiffs argue that the court erred by dismissing counts one, three, four, and five of the complaint. They contend they presented meritorious claims in these counts. Plaintiffs further argue that the court erred by dismissing count two based on their failure to appear for trial. They claim their former attorney purposely did not inform them of the scheduled trial date. In addition, plaintiffs argue that the court erred by setting aside the default entered against defendant, and that defendant deprived Meza-Role of certain constitutional rights.

## II.

We turn first to plaintiffs contention that the court erred by dismissing counts one, three, four, and five. Plaintiffs contend the claims in these counts are meritorious. In response, defendant argues that the court correctly determined that the claims in these counts must be dismissed based on the doctrines of res judicata and collateral estoppel.

Res judicata precludes the re-litigation of claims or issues that have already been adjudicated. Velasquez v. Franz, 123 N.J.

498, 505 (1991). The doctrine "provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid.

For the court to apply res judicata, there must be (1) a final judgment by a court of competent jurisdiction; (2) identity of the parties; and (3) substantially similar or identical causes of action. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460-61 (1989). Claims are considered resolved by a final judgment for purposes of res judicata if they have been pleaded and disposed of by the court. Velasquez, 123 N.J. at 506.

Furthermore, regarding collateral estoppel or "issue preclusion," our Supreme Court has noted that "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, [that] determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Winters v. N. Hudson Reg'l Fire and Rescue, 212 N.J. 67, 85 (2012) (quoting Restatement (Second) of Judgments § 27 (Am. Law. Inst. 1982)). To apply collateral estoppel,

the party asserting the bar must show that:  
(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior

proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) (quoting In re Estate of Dawson, 136 N.J. 1, 20-21 (1994).]

Here, the trial court did not err by finding plaintiffs' claims in counts one, three, and five are barred by res judicata and collateral estoppel. As we have explained, in those counts, plaintiffs alleged that the leased premises were uninhabitable for various reasons, including defendant's alleged failure to provide hot and cold water, defendant's failure to maintain the premises, and the unsanitary conditions caused by other tenants.

As noted previously, in the prior actions in which defendant sought a judgment of possession, Meza-Role specifically raised a habitability defense. See Marini v. Ireland, 56 N.J. 130, 140 (1970) (holding that in summary dispossess actions, a tenant may seek to be absolved of paying rent, in whole or in part, due to the owner's breach of the covenant of habitability). The court rejected that defense, ordered Meza-Role to pay the rent due, and indicated that it would enter a judgment of possession for defendant if Meza-Role did not do so. In Meza-Role's earlier

appeal, we addressed and rejected the habitability defense. Partyka, (slip op. at 11).

Moreover, in their federal actions, plaintiffs also asserted habitability claims. The federal district court dismissed those claims with prejudice, and the Third Circuit affirmed the district court's orders, noting that plaintiffs had not provided any legal or factual support for their claim that defendant had violated the covenant of habitability. Partyka, slip op. at 7 (3d Cir. Apr. 4, 2013).

It is clear, therefore, that in counts one, three, and five, plaintiffs were seeking to re-litigate the issue of the habitability of the leased premises, an issue that was raised and decided in the landlord-tenant actions and the federal court litigation. The judge in this case correctly found that the doctrines of res judicata and collateral estoppel applied and precluded plaintiffs from re-litigating that issue.

We reach a different conclusion with regard to count four. As noted, in that count, plaintiffs allege that in July 2014, Meza-Role was burned when acid discharged into the apartment from an upstairs unit. Plaintiffs further allege that in response to their efforts to enforce their rights under the lease and Meza-Role's claim for personal injuries caused by the leaked acid, defendant served them with numerous notices to cease and a notice

to quit. They allege defendant's actions were an unlawful "retaliatory eviction."

Thus, it appears that in count four, plaintiffs are asserting a claim based in part upon actions or omissions that purportedly took place after the judgments were entered in the prior landlord-tenant matters and the federal court litigation. To the extent that the allegations in count four relate to actions or omissions that took place after those prior matters were concluded, they cannot be said to be barred by the doctrine of res judicata or collateral estoppel.

Therefore, we affirm the order dismissing counts one, three, and five, and affirm in part and reverse in part the order dismissing count four. Plaintiffs are barred from litigating any issue as to habitability or "retaliatory eviction" based on actions or omissions that occurred before the judgments were entered in the prior landlord-tenant actions and the federal court litigation. The claims in count four must therefore be limited to actions or omissions that occurred after the conclusion of those prior matters.

We remand the matter to the trial court for further proceedings on count four, limited to a claim based on acts or omissions that occurred after the conclusion of the prior litigation. We express no view as to the merits of the claim, and

do not preclude defendant from seeking dismissal or summary judgment on a basis other than res judicata and collateral estoppel.

### III.

We next consider plaintiffs' contention that the trial court erred by dismissing count two. It is undisputed that in April 2016, the court scheduled the matter for trial on June 6, 2016. Plaintiffs did not appear, and the court entered an order dated June 6, 2016, dismissing count two with prejudice. Thereafter, plaintiffs filed a motion pursuant to Rule 4:50-1 to vacate the June 6, 2016 order and reopen the matter. The court entered an order dated August 19, 2016, denying the motion.

On appeal, plaintiffs argue that the trial court should have vacated the order dismissing count two and restored the matter. Here, plaintiffs sought relief under various subsections of Rule 4:50-1 because their former attorney purportedly did not advise them of the scheduled trial date. Plaintiffs claim their former attorney purposely concealed the trial date.

We note that a trial court's determination under Rule 4:50-1 is entitled to substantial deference and will not be reversed in the absence of a clear abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). To warrant reversal of the court's order, the defendant must show that the decision was "made

without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 4:50-1 provides that a court can grant relief from an order or judgment for various reasons, including: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence that would probably alter the judgment or order; (c) fraud or misrepresentation; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged; or (f) any other reasons justifying relief from the operation of the judgment or order.

Here, the trial court correctly found that plaintiffs had not shown any basis for relief under Rule 4:50-1. The record shows that on April 4, 2016, the court issued a notice to all counsel stating that the case had been scheduled for trial on June 6, 2016. Plaintiffs apparently discharged their attorney, and counsel voluntarily withdrew from the matter on May 6, 2016. On May 7, 2016, plaintiffs filed a notice of substitution of counsel in the trial court, indicating they would be representing themselves in the case.

As noted, plaintiffs claim their former attorney purposely concealed the trial date. However, the record includes a copy of



an e-mail that Meza-Role sent to her former attorney, which is dated April 17, 2016, and is entitled, "Trial scheduled for June 6, 2016 and related issues." Therefore, plaintiffs knew at least as early as April 17, 2016, that the case had been scheduled for trial on June 6, 2016. They failed to appear.

Thus, the trial judge did not err by dismissing count two with prejudice based on plaintiffs' failure to appear for trial. See R. 1:2-4 (permitting dismissal of complaint for failure to appear). Moreover, the trial court did not err by denying plaintiffs' motion to vacate the June 6, 2016 order because plaintiffs did not establish any basis for relief under Rule 4:50-1. Therefore, we affirm the order dated August 19, 2016, denying plaintiffs' motion to vacate the June 6, 2016 order.

#### IV.

Plaintiffs also argue that the trial court abused its discretion by entering an order dated October 2, 2015, which granted defendant's motion to set aside the default that had apparently been entered against defendant for failing to file an answer. We note, however, that in their notice of appeal, plaintiffs did not indicate they were appealing from that order.

The court will only review orders or judgments designated in the notice of appeal. See Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div.), aff'd o.b., 138 N.J. 41 (1994);

Campagna v. Am. Cyanamid, 337 N.J. Super. 530, 550 (App. Div. 2001). Therefore, we will not consider plaintiffs' arguments regarding the October 2, 2015 order.

In addition, plaintiffs argue that defendant violated Meza-Role's civil rights after she submitted a claim to defendant's insurer for personal injuries she allegedly sustained in the leased premises. Plaintiffs did not, however, raise this issue in their complaint.

We will not consider an issue that was not raised in the trial court, unless the issue relates to the trial court's jurisdiction or concerns a matter of great public interest. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Plaintiffs' civil rights claim does not relate to the trial court's jurisdiction and it does not concern a matter of interest to the public.

Affirmed in part, reversed in part, and remanded to the trial court for further proceedings on count four in accordance 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