SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5052-15T4

RICHARD DELLAFAVE and
CATHERINE DELLAFAVE,

Plaintiffs-Respondents,

v.

ADAM SMITH, SEAN BULVANOSKI
and SHAWN RAFFERTY,

Defendants-Appellants.

Argued October 19, 2017 – Decided January 19, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. LT-012209-15.

Maureen Holahan-Saling argued the cause for appellants.

Vincent La Paglia argued the cause respondents.

PER CURIAM

In this landlord-tenant matter, defendants Adam Smith, Sean Bulvanoski, and Shawn Rafferty appeal from the October 29, 2015

judgment for possession, and the June 10, 2016 order granting the motion for reconsideration filed by plaintiffs Richard Dellafave and Catherine Dellafave. We reverse.

Defendants entered into a lease for an apartment owned by plaintiffs. The lease term was from November 1, 2013 to October 31, 2015, and the rent was $3000 per month, which defendants each paid one-third each.

On July 6, 2015, Smith notified plaintiffs of a mold condition in his bedroom. Smith claimed he could not use the bedroom because of the mold condition, and withheld his one-third share of the rent for August and September 2015. On July 23, 2015, Smith sent plaintiffs written notice of the mold condition and his intent to withhold his share of the rent. Although Rafferty and Bulvanoski paid their respective share of the rent each month, plaintiffs would not accept their payments.

On September 4, 2015, plaintiffs filed a complaint against defendants, seeking their eviction for non-payment of rent. By the time of trial, plaintiffs sought payment for August, September, and October 2015, for a total of $9000. Defendants asserted a Marini[1] defense and deposited $9000 into court. Defendants also asserted that plaintiffs failed to comply with: (1) landlord

[1] Marini v. Ireland, 56 N.J. 130 (1970).

registration statutes, N.J.S.A. 46:8-29, N.J.S.A. 46:8-33, and N.J.S.A. 55:13A-12 ; (2) the Anti-Reprisal Act, N.J.S.A. 2A:42-10.10 to -10.14; and (3) the Consumer Fraud Act, N.J.S.A. 56:8-1 to -20.

The parties appeared for trial on October 29, 2015. Defendants advised the trial court they were vacating the property on October 31, 2015. The judge found that under Marini and Berzito v. Gambino, 63 N.J. 460 (1973), mold is a condition which severely impacts the use and enjoyment of a property. Accordingly, the court determined the case should proceed to mediation, but concluded it would lose jurisdiction once defendants vacated the premises.

Following an unsuccessful mediation, the court found defendants waived their Marini defense by deciding to vacate the premises. The court gave defendants only two options: (1) release the $9000 deposited into court to plaintiffs and have the complaint dismissed; or (2) have the money returned to them and have a judgment for possession entered against them. Defendants chose the second option, and the court ultimately ordered the return of the money to defendants and entered a judgment for possession.

The court subsequently granted defendants' motion to vacate the judgment for possession, but gave no reasons for its decision. The court later granted plaintiffs' motion for reconsideration and

reinstated the judgment for possession, and issued a written statement of reasons. This appeal followed.

As a threshold matter, we find the appeal is not moot. "[A] case is moot if the disputed issue was resolved, at least with respect to the parties who instituted the litigation." Matthew G. Carter Apartments v. Richardson, 417 N.J. Super. 60, 67 (App. Div. 2010) (quoting Advance Inc. v. Montgomery Twp., 351 N.J. Super. 160, 166 (App. Div. 2002)). Furthermore, "[a]n issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Comando v. Nugiel, 436 N.J. Super. 203, 219 (App. Div. 2014) (alteration in original) (quoting Greenfield v. N.J. Dep't of Corr., 23 N.J. Super. 254, 257-58 (App. Div. 2006)). Even though defendants vacated the premises, the appeal is not moot because the prevailing party is entitled under the terms of the lease to seek in a separate action legal fees and costs incurred in the summary dispossess matter. See N.J.S.A. 2A:18-61.66; Matthew G. Carter, 417 N.J. Super. at 66-67.

The judgment for possession may only be entered in three ways: (1) by default judgment, Rule 6:6-3; (2) by the court after a trial, Rule 6:6-5; or (3) by consent, Rule 6:6-4. Our Supreme Court has held that

> [a] consent judgment has been characterized as being both a contract and a judgment[;] it is not strictly a judicial decree, but rather in the nature of a contract entered into with the solemn sanction of the court. A consent judgment has been defined as an agreement of the parties under the sanction of the court as to what the decision shall be.
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> [Cmty. Realty Mgmt. v. Harris, 155 N.J. 212, 226 (1998) (second alteration in original) (citations omitted).]

"[F]or a consent judgment to be valid, like a contract, the parties' consent must be knowing and informed. There must be the proverbial 'meeting of the minds.'" Ibid. (citations omitted). To be entered by the court, a consent judgment for possession "must be written, signed by the parties, and presented to a judge for approval on the day of trial or as the judge otherwise directs[.]" R. 6:6-4(a). In addition, Rule 4:42-1(d), made applicable to the Special Civil Part by Rule 6:6-1, authorizes the court to

> enter a consent judgment or order without the signatures of all counsel of record and parties pro se who have filed a responsive pleading or who have otherwise entered an appearance in the action, provided the form of judgment or order contains the recital that all parties have in fact consented to the entry of the judgment or order in the form submitted.
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> [(Emphasis added).]

Here, there was no default, trial, or decision on the merits. There was no testimony under oath and defendants were denied the opportunity to confront plaintiffs and present their Marini and other defenses. See Marini, 56 N.J. at 140 (holding that "equitable as well as legal defenses asserting payment or absolution from payment in whole or part are available to a tenant in a dispossess action and must be considered by the court").

Nor was there a consent judgment. While, arguably, defendants may have consented to the return of the $9000 and entry of the judgment for possession, plaintiffs did not consent. In addition, the purported consent was not in writing, signed by the parties, and presented to the court for approval, and the form of the judgment contained no recital that all parties in fact consented its entry. Accordingly, the judgment could not be entered under Rule 6:6-3, -4, or -5, and is void and must be vacated.

Reversed and remanded to the trial court to vacate the judgment for possession.