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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0610-22**

**FRANKLIN LAKES
AFFORDABLE REALTY,
LLC,**

Plaintiff-Respondent,

v.

BRADFORD VANCE,

Defendant-Appellant,

and

MARINA VANCE,

Defendant.

Argued April 25, 2023 – Decided May 10, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Bergen County, Docket No. LT-004403-22.

Anthony J. Brady, Jr. argued the cause for appellant.

Bruce E. Gudin argued the cause for respondent (Ehrlich, Petriello, Gudin, Plaza & Reed, attorneys; Bruce E. Gudin and Erin Ehrlich Caro, on the brief).

PER CURIAM

Defendant Bradford Vance appeals from a Special Civil Part order denying his motion to transfer this summary eviction action to the Law Division and consolidate it with Docket No. L-4860-22.¹

We take the following facts from the record. Vance is a residential tenant of plaintiff Franklin Lakes Affordable Realty, LLC (landlord). His apartment is in an apartment building in Franklin Lakes. Vance has lived there for several years. Paragraph fourteen of the lease prohibited tenants from damaging, defacing, or obstructing the apartment complex, or any part thereof.

In 2016, Vance filed a discrimination complaint against the landlord with the New Jersey Division of Civil Rights "to secure his tenancy." Without specifying the nature of the discrimination, Vance represents he was successful in that matter.²

¹ Defendant Marina Vance has not participated in this appeal. Unless otherwise indicated, references in this opinion to defendant or Vance refer solely to Bradford Vance.

² Neither the complaint nor the decision is part of the record.

On July 12, 2022, Vance suffered a head injury in a serious motor vehicle accident. When Vance returned to his apartment, he realized he was not in possession of his key. Vance requested his landlord to let him into his apartment. An employee of the landlord informed Vance that it would cost him \$100 to unlock the apartment, notwithstanding the lease specifying the cost for a replacement key was \$25, and employees routinely open locked doors without charge. Rather than agreeing to pay the \$100 fee, Vance attempted to gain entry to his locked apartment by striking the door lock with his cane, which caused dents in the aluminum door. A security camera recorded the incident. Vance asserts that there is a twenty-six-second deletion in the recording. He also claims he "acted irrationally" and "without a sound mind" due to the injuries suffered in the motor vehicle accident. Later that day, a Franklin Lakes Police Department officer told Vance that he was not to enter the apartment building, or he would be charged with trespassing.

On July 13, 2020, Vance posted a negative review on social media about the apartment complex, complaining about rats, foul odors, and other issues. The review ostensibly suggested potential tenants should look elsewhere for an apartment. Vance maintains the negative review was protected by the First Amendment right to freedom of speech.

That same day, Louis Friedman (a defendant in the Law Division action), contacted the Franklin Lakes Police Department to make a complaint against Vance for the incident the previous day. Vance was charged with cyber harassment, N.J.S.A. 2C:33-4.1. The County Prosecutor's Office declined to prosecute Vance.

In response to the incident on July 12, 2022, the landlord served Vance with a notice to quit and demand for possession on July 14, 2022.

On July 22, 2022, the landlord filed this summary eviction action against Vance pursuant to N.J.S.A. 2A:18-61.1(c), for causing destruction, damage, or injury to the rental premises. The complaint alleged:

On July 12, 2022, you willfully, intentionally and maliciously struck your apartment door with your cane, multiple times, damaging the metal door causing substantial damage. At approximately 3:39 [p.m.], you were captured on your [l]andlord's security footage pacing in the hallway outside your unit and speaking with another resident. You suddenly started to violently jab at your apartment door with your cane, apparently in an effort to break the door down. You then continued to pace the hallway and tried to enter another unit.

You left the hallway via the stairwell but returned approximately two minutes later and continued to pace. At approximately 3:44 [p.m.,] you undressed and exposed yourself to a small child, took a phone call, and again started to viciously pound on the door with your cane repeatedly.

You loitered in the hallway for more than ten minutes proceeding to lie on the floor looking at your phone with your possessions scattered around the hall. At approximately 3:56 [p.m.], while lying on the floor, you rolled over, grabbed your cane, and started to strike the hallway wall and drag the rubber cane tip up and down the wall, causing black marks and streaks.

At around 4:03 [p.m.,] you stood up, stumbled to your door, and, for a third time, forcefully stabbed at your door with your cane. You then turned the cane around and brutally hammered at your door and the hardware more than ten times. You finally tried the force the door open by ramming it with your shoulder.

As a result of your intentional destructive behavior, your unit's metal door and the metal door frame have numerous dents and indentations as well as black scuff marks. The door cannot be repaired due to the deep gouges around the lock and handle. The door and door frame will need substantial repairs or will have to be replaced.

Your dissatisfaction with residing in the premises was then expressed by you on July 13, 2022 with an [online] Google review that included inaccurate, derogatory and defamatory statements about management's employees and the property in general

Vance claims he was "in acute distress" and the security camera footage shows his basketball warm up pants suddenly and involuntarily dropped, and Vance promptly pulled up his pants, but had difficulty adjusting them because of his disability. Vance asserts his pants fully covered his legs when a family

entered the hallway. He maintains that his genitalia were always covered by his basketball shorts. Vance contends the allegations in the summary eviction complaint are false and malicious, and the landlord's attempt to evict him violated his federal and state constitutional rights.

On September 2, 2022, Vance served a tort claim notice on the Franklin Police Department, alleging that pursuant to his lease, he had the right to use the gym and patio at the apartment building. Two days later, police responded to the apartment building and told Vance to leave immediately and that if he returned, he would be charged with criminal trespass. Vance alleges the landlord misinformed the police of his rights as a tenant.

On September 7, 2022, Vance, Gary Vance, Mark Fultz, and Advocates For Disabled Americans (AFDA) filed a multicount complaint in the Law Division against various defendants, including the landlord, the Franklin Lakes Police Department, and the Borough of Franklin Lakes (Docket No. L-4860-22). The complaint states that Vance is a disabled Armenian Jew, and the son of Soviet immigrants; Gary Vance is Bradford Vance's father and is a disabled Armenian Jew who emigrated from the former USSR; and Mark Fultz is disabled and an AFDA member. Vance alleged the landlord and its employees and agents engaged in a pattern of retaliation against Vance. This included the withholding

an exculpatory twenty-six-second segment of the surveillance videotape that showed the landlord's allegation that Vance exposed himself to a child was false and malicious. The complaint further alleged that a Franklin Lakes police officer targeted and harassed Vance by serving him with twelve baseless summonses relating to Vance's use of a motorized bicycle.

The complaint asserts causes of action for: (1) violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2; (2) violation of N.J.S.A. 2A:39-1 and self-help eviction; (3) retaliation in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42, and N.J.S.A. 2A:42-10.10 to -10.14; (4) fraudulent concealment; (5) lack of handicap access in violation of the LAD; and (6) vicarious liability of the Borough of Franklin Lakes and the Franklin Lakes Police Department for the actions of its police officers.

On September 9, 2022, Vance filed a motion to transfer the summary eviction action to the Law Division and consolidate it with Docket No. L-4860-22. Following oral argument, the trial court issued an oral decision and subsequent corrective order denying the motion.³ The judge found the summary eviction action presented a "simple issue"—whether Vance damaged the door

³ The order also dismissed the summary eviction action as to defendant Marina Vance "as she did not reside in the rental premises," even though she is listed as a tenant on the lease.

and gave Vance "adequate notice" under the statute before commencing the case. The judge also stated that equitable defenses did not apply in the case.

Vance then filed a motion in this court for leave to appeal. While that motion was pending, the trial court proceeded to partially try the case on two dates in October. On October 25, 2022, we granted Vance's motion for leave to appeal. The trial court then stayed the remainder of the trial pending appeal.

Defendant raises the following points for our consideration:

I. THE COURT ERRED AS A MATTER OF LAW HOLDING IN NOT REMOVING AND CONSOLIDATING THE LANDLORD TENANT CASE.

II. [DEFENDANT] HAS THE RIGHT TO ASSERT AFFIRMATIVE DEFENSES OF UNCLEAN HANDS, VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION AND HIS CIVIL RIGHTS AS WELL AS SELF HELP EVICTION PROTECTIONS. CLEARLY THE TRIAL COURT ERRED IN HOLDING EQUITABLE DEFENSES ARE NOT AVAILABLE.

III. A TENANT CAN ASSERT EQUITABLE AND AFFIRMATIVE DEFENSES. THE LANDLORD TENANT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION TO DECIDE [RETRALIATION] DEFENSES UNDER THE NJLAD AND THE NEW JERSEY CIVIL RIGHTS ACT VIOLATIONS. THEREFORE, THE [LANDLORD TENANT] CASE SHOULD BE REMOVED TO THE LAW DIVISION.

IV. THIS COURT SHOULD APPLY A DE NOVO REVIEW STANDARD.

V. A SUMMARY LANDLORD TENANT COURT IS NOT A PROPER VENUE UNDER DUE PROCESS TO JUDGE A COMPLEX CASE.

Findings made by the trial court sitting in a non-jury case are subject to a limited scope of review. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). Factual findings "are binding on appeal when supported by adequate, substantial, credible evidence." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). "[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We first address the denial of Vance's motion to transfer this matter to the Law Division pursuant to N.J.S.A. 2A:18-60, which provides:

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

"[E]ither party to a summary dispossession proceeding may move to have the matter transferred to the Law Division." Benjoray, Inc. v. Acad. House Child Dev. Ctr., 437 N.J. Super. 481, 486 (App. Div. 2014). We review the decision to grant or deny a motion to transfer to the Law Division for abuse of discretion. Ibid. (citing Master Auto Parts, Inc. v. M. & M. Shoes, Inc., 105 N.J. Super. 49, 53 (App. Div.1969)).

In turn, "[a]n action pending in the Special Civil Part may be transferred to another court for consolidation with an action pending in such other court in accordance with [Rule] 4:38-1." R. 6:4-1(a). "When actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party's or its own motion may order the actions consolidated." R. 4:38-1(a). The test for transferring a case from the Special Civil Part to the Law Division is used when the movant seeks to consolidate it with a pending Law Division case. Lopez v. Medina, 262 N.J. Super. 112, 117-18 (Law. Div. 1992). "A trial court's decision to grant or deny a party's motion to consolidate actions is discretionary." Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015).

"A court abuses its discretion when its 'decision is "made without a rational explanation, inexplicably departed from established policies, or rested

on an impermissible basis."'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

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

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

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

In Morrocco v. Felton, the court enumerated factors to be considered when determining whether a summary eviction action should be transferred to the Law Division. 112 N.J. Super. 226, 235-36 (Law Div. 1970). "If one or more of those factors compel a transfer, the court should do so" Carr, 211 N.J. Super. at 349 (citing Morrocco, 112 N.J. Super. at 236). Three of those factors applies here: (1) "[t]he complexity of the issues presented, where discovery or other pretrial procedures are necessary or appropriate"; (2) the need for uniformity of result; and (3) "[t]he necessity of joining additional parties or claims in order to reach a final result." Benjoray, 437 N.J. Super. at 486-87 (quoting Twp. of Bloomfield, 253 N.J. Super. at 562-63).

In denying Vance's motion for transfer and consolidation, the judge stated that equitable defenses do not apply in a summary eviction action. We recognize that "a court hearing a summary dispossess action lacks general equitable jurisdiction." Id. at 488. However, "the court may consider equitable defenses," but "it is beyond the power of the court to grant permanent injunctive or other equitable relief to parties." Ibid. (quoting WG Assocs. v. Est. of Roman, 332 N.J. Super. 555, 563 (App. Div. 2000)). Thus, "the equitable jurisdiction of the

Special Civil Part in a summary dispossession action is limited to matters of defense or avoidance asserted by the tenant." Ibid. (quoting Chau v. Cardillo, 250 N.J. Super. 378, 385 (App. Div. 1990)).

Here, Vance attempted to assert the affirmative defense of retaliation. As we explained in Les Gertrude Associates v. Walko, landlord retaliation is a statutory defense to eviction of a residential tenant:

N.J.S.A. 2A:42-10.10 prohibits the landlord from evicting a tenant "[a]s a reprisal for the tenant's efforts to secure or enforce any rights . . . under the laws of the State of New Jersey or its governmental subdivisions . . ." Section 10.12 of the statute establishes a rebuttable presumption of retaliation if tenant engages in any activity described in the statute.

[262 N.J. Super. 544, 550 (App. Div. 1993).]

The affirmative defense of retaliation applies in summary eviction actions.

Moreover, transfer of a case seeking equitable relief to the Law Division is permissible. See Benjoray, 437 N.J. Super. at 488-89 (transferring case seeking rescission of a commercial lease to the Law Division). The affirmative defense raised by Vance should have been considered when determining whether to transfer and consolidate the case with the Law Division action.

Based on our careful review of the record, we conclude the trial court misapplied its discretion by denying Vance's motion to transfer this matter to

the Law Division and consolidate it with the pending Law Division case that Vance and others filed against Louis Friedman and others, in which defendant filed a counterclaim against plaintiff. The complexity of the issues raised, coupled with the related issues raised in defendant's pending Law Division counterclaim, require discovery, and provide Vance the right to a jury trial. We reverse and remand for entry of an order transferring this matter to the Law Division and consolidating it with Docket No. L-4860-22. The parties shall be permitted to engage in discovery relating to the issues raised in this case. On remand and transfer, the trial court shall conduct a management conference setting a reasonable discovery schedule.

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

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



CLERK OF THE APPELLATE DIVISION