SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0753-21

806 6TH ST. HCPVI, LLC,

Plaintiff-Respondent,

v.

NELSON NUNEZ,

Defendant-Appellant.

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Argued March 22, 2023 – Decided August 23, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. LT-003236-19.

Cindy Nan Vogelman argued the cause for appellant (Chasan Lamparello Mallon & Cappuzzo, PC, attorneys; Cindy Nan Vogelman and John V. Salierno, on the briefs).

Adrienne LePore argued the cause for respondent (Feinstein Raiss Kelin Booker & Goldstein, LLC, attorneys; Adrienne LePore, on the brief).

PER CURIAM

Defendant Nelson Nunez appeals from a November 10, 2021 Special Civil Part order denying his motion to vacate an April 4, 2019 consent judgment for possession entered in favor of his landlord, plaintiff 806 6th Street HCPVI, LLC. Defendant argues because he had the ability to satisfy his outstanding rent obligation, the court's decision to deny his application was contrary to N.J.S.A. 2A:42-10.16a (Stack Amendment[1]), which became effective on March 1, 2020, as part of the Fair Eviction Notice Act, N.J.S.A. 2A:42-10.15 to 10.17. We conclude the Stack Amendment does not apply under the circumstances underlying defendant's eviction and accordingly affirm.

I.

Plaintiff initiated this summary dispossess action on March 14, 2019, due to defendant's nonpayment of rent. See N.J.S.A. 2A:18-61.1(a). At that time, defendant resided at plaintiff's property, 806 6th Street in Union City, along with his elderly parents, then ninety-five and eighty-two respectively, for over twenty years. On April 4, 2019, defendant consulted with plaintiff's attorney and agreed to enter a consent judgment, which permitted him and his parents to continue residing in plaintiff's property until January 9, 2020, conditioned on defendant's

[1] We refer to N.J.S.A. 2A:42-10.16a as the Stack Amendment because Senator Brian P. Stack was the primary sponsor of the legislation.

ability to trace and replace money orders allegedly sent for his July and August 2018 rent, pay all outstanding rent due, and satisfy his monthly rent obligation by the first of each month.

Defendant paid all outstanding rent and replaced the August 2018 money order but failed to either locate or replace the July 2018 money order as required by the terms of the consent judgment. As a result, plaintiff applied for a warrant for removal. Prior to the first scheduled lockout date, defendant, represented by counsel from the Union City Tenant Advocate's office, filed an order to show cause seeking to vacate the consent judgment. The court denied defendant's application and issued an order for orderly removal, which allowed defendant to remain in the premises until June 24, 2019.

Prior to the scheduled lockout, defendant filed a second application seeking to vacate the consent judgment. On the return date for the order to show cause, defendant's counsel contended the April 4, 2019 consent judgment was invalid because defendant, a native Spanish speaker, met with plaintiff's attorney without counsel, a mediator, or an interpreter and did not understand the nature or scope of the parties' agreement.

The court ordered briefing and scheduled a hearing. In his submission, defendant claimed he "lack[ed] the ability to read and understand legal

terminology" and entered the consent judgment with the good faith belief that he would not be evicted if he paid all outstanding rent.

The parties appeared before the court on October 1, 2019, and, in lieu of arguing the motion, agreed to a hardship stay. The court accordingly entered an order keeping in place the April 4, 2019 consent judgment but permitted defendant to remain in the premises until February 29, 2020, again conditioned on his obligation to pay rent. Defendant paid all outstanding rent and continued to satisfy his rental obligations throughout the duration of the hardship stay.

Anticipating defendant would not voluntarily vacate the premises by February 29, 2020, on February 18, 2020, plaintiff filed an application for a warrant of removal for March 2, 2020. On March 3, 2020, defendant filed a third order to show cause seeking to pay all outstanding rent and dismiss plaintiff's complaint and the consent judgment based on the newly enacted Stack Amendment.

The court ordered briefing on the Stack Amendment's impact on the eviction proceedings but, due to the COVID-19 pandemic, the resulting closure of the courts, and the Governor's order temporarily placing a moratorium on

evictions,[2] the parties did not submit the requested briefing. During the moratorium, defendant purchased money orders to satisfy his rent obligations, but plaintiff refused to accept those payments.

Once the moratorium was lifted, plaintiff applied for yet another warrant for removal with a November 8, 2021 lockout date. On that date, defendant, again through his Union City Tenant Advocate attorney, filed a fourth order to show cause to vacate the consent judgment. In support, he filed a certification attesting he had "all the rent and [accordingly] move to vacate the judgment under N.J.S.A. 2A:42-10.16(a)."

At the motion hearing, plaintiff argued the Stack Amendment "does not apply to hardship stay cases. It applies where the tenant didn't have the money and the tenant is going to be locked out and comes up with the money later." On this point, plaintiff maintained its warrant for removal was not based on nonpayment of rent but rather because defendant did not vacate the premises by the agreed upon date. It specifically argued "[t]his warrant was not requested or

[2] "[O]n March 19, 2020, the Governor issued Executive Order 106, . . . which placed a temporary emergency moratorium on evictions, with the moratorium expiring two months after the ongoing public-health emergency ends." Kravitz v. Murphy, 468 N.J. Super. 592, 606 (App Div. 2021) (citing Exec. Order No. 106 (March 19, 2020)).

posted as a result of his nonpayment of rent. His rent was paid through the hardship stay. It was posted and it was requested because he failed to vacate pursuant to the court order." Plaintiff further asserted it would be nonsensical to apply the legislation to a hardship stay "because a hardship stay only happens where the tenant has to pay" outstanding rent.

Defendant disagreed with plaintiff's interpretation of the Stack Amendment. According to defendant, the statute applies in "all eviction actions for nonpayment of rent" and does not "reference anything about consent judgments[,] . . . settlements[,] or hardship stays." Defendant further maintained the nonpayment of rent was the basis for eviction and neither the consent judgment nor hardship stay changed the fundamental nature of the proceedings. He also contended "the language of the statute essentially renders the hardship statute meaningless."

After considering the parties' arguments and the statutory language, the court denied defendant's application, entered the November 10, 2021 order for orderly removal, and stayed the lockout for seven days. The court explained it "agree[d] with the landlord's position that the hardship stay turned this matter . . . into a matter of, you may stay in the property through this period of time

and rent is no longer an issue." It therefore concluded as the eviction was not for nonpayment of rent, the Stack Amendment did not apply.

The court stayed defendant's eviction pending appeal. After defendant filed a notice of appeal, his counsel left the Union City Tenant Advocate's Office without filing a substitution of attorney. In the interim, we granted plaintiff's application requiring defendant to provide certain hearing transcripts in support of his appeal. Defendant failed to comply with our order and we administratively dismissed his appeal.

In May 2022, plaintiff applied for a warrant for removal stating defendant's appeal was dismissed due to his failure to produce the ordered transcripts. The court granted plaintiff's application and scheduled the lockout date for June 14, 2022.

Prior to the lockout date, defendant, represented by new counsel, applied for emergent relief seeking to reinstate his appeal and continue the stay, and explained in light of his prior counsel's failure to file a substitution, he was unaware of our order compelling the production of transcripts. We granted defendant's motion to reinstate but denied his "emergent motion for a stay of the warrant for removal on the basis of the Stack Amendment." 806 6th St. HCPVI, LLC v. Nunez, No. M-5757-21 (App. Div. June 28, 2022). After considering

defendant's application against the factors set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), "we conclude[d] defendant ha[d] not demonstrated a reasonable probability of success on the merits of his appeal." We granted defendant ten days from the date of our order to vacate the premises. Defendant was locked out of the premises on July 8, 2022.

II.

Defendant maintains the court erred in denying his application to vacate the April 4, 2019 consent judgment and rejecting his request to be restored to the premises, because his action is one "for non[]payment of rent to which the [Stack Amendment] clearly applies" and the court erred in reading an "exception" into that statute based on the consent judgment and hardship stay. Alternatively, relying on Community Realty Management Inc. v. Harris, 155 N.J. 212, 226 (1998), defendant contends the April 4, 2019 consent judgment should be vacated in accordance with Rule 4:50-1 because he entered into that judgment without representation, or the aid of an interpreter.

Plaintiff argues defendant's appeal is procedurally deficient on several bases. First, it contends defendant's appeal is moot due to his July 2022 eviction. Plaintiff also maintains defendant's appeal is time-barred, as he did not appeal the October 1, 2019 hardship stay within forty-five days, see Rule 2:4-1(a), and

the October 1, 2019 order "is not appealable" in any event. Additionally, according to plaintiff, the Stack Amendment provides relief only "to tenants who have judgments entered against them after the effective date" and should not be applied retroactively.

On the merits, plaintiff reprises its arguments made before the court. It maintains the warrant for removal was posted due to defendant's "failure to vacate as agreed, not for his failure to pay rent" and the Stack Amendment is therefore inapplicable. Because defendant entered into the April 4, 2019 consent judgment, and agreed to a hardship stay that postponed the lockout date, plaintiff asserts "[n]onpayment of rent was no longer an issue and is never an issue by the very terms of any [h]ardship stay."

Plaintiff also argues the Stack Amendment is "not applicable when post judgment relief has already been granted." On this point, plaintiff specifically argues the legislation did not "reference, alter or repeal" Rule 6.6(b), which permits a court to issue an order for orderly removal to provide the tenant more time to relocate, or N.J.S.A. 2A:42:10.6, which allows the court to grant tenants a hardship stay conditioned on the tenant paying "all arrears in rent and the amount that would have been payable as rent if the tenancy had continued."

Finally, plaintiff contends the Stack Amendment "does not actually require landlords to return the tenant to possession upon payment of the rent."

III.

We review a court's decision on a motion to vacate a consent judgment for an abuse of discretion. DEG, LLC v. Township of Fairfield, 198 N.J. 242, 261 (2009). We owe no deference to the "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citations omitted).

A consent judgment is "in the nature of a contract entered into with the solemn sanction of the court." Harris, 155 N.J. at 226 (quoting Stonehurst at Freehold v. Twp. Comm. of Freehold, 139 N.J. Super. 311, 313 (Law Div. 1976)). Its "adjudicative effect" is equal to a judgment "entered after trial or other judicial determination." Ibid. (quoting Stonehurst at Freehold, 139 N.J. Super. at 313). "[A] consent judgment may only be vacated in accordance with [Rule] 4:50-1." Ibid. (quoting Stonehurst at Freehold, 139 N.J. Super. at 313).

Generally, "[c]ourts should use Rule 4:50-1 sparingly, [and only] in exceptional situations." Badalamenti v. Simpkiss, 422 N.J. Super. 86, 103 (App. Div. 2011) (alterations in original) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994)). Relief under Rule 4:50-1 is designed "to reconcile

the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." LVNV Funding, LLC v. Deangelo, 464 N.J. Super. 103, 109 (App. Div. 2020) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)).

Rule 4:50-1(f) provides relief for "any other reason justifying relief from the operation of the judgment or order." Relief from a judgment under Rule 4:50-1(f) is expansive but presents a difficult burden to meet. See US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 484 (2012). Under Rule 4:50-1(f), relief "is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. (quoting Little, 135 N.J. at 289). Therefore, the party seeking relief from a judgment under the Rule must show that "truly exceptional circumstances are present." Id. at 468 (quoting Little, 135 N.J. at 286). Rule 4:50-1(f) is the "so-called catchall provision, which permits relief in 'exceptional situations.'" Id. at 484.

The Anti-Eviction Act permits a court to evict a tenant for nonpayment of rent. N.J.S.A. 2A:18-61.1(a). "The Act affords 'residential tenants the right, absent good cause for eviction, to continue to live in their homes without fear of eviction . . . and thereby to protect them from involuntary displacement.'"

224 Jefferson Condo. Ass'n v. Paige, 346 N.J. Super. 379, 383 (App. Div. 2002) (quoting Morristown Mem'l Hosp. v. Wokem Mortg. & Realty Co., 192 N.J. Super. 182, 186 (App. Div. 1983)). It is well-recognized "the Anti–Eviction Act is remedial legislation deserving of liberal construction," 447 Associates v. Miranda, 115 N.J. 522, 529 (1989), and its "overall purpose" is to "protect[] blameless tenants from eviction," Chase Manhattan Bank v. Josephson, 135 N.J. 209, 226 (1994).

As noted, the Stack Amendment became effective on March 1, 2020, as part of the Fair Eviction Notice Act. In relevant part, the Stack Amendment states:

> In an eviction action for nonpayment of rent, pursuant to subsection a. of section 2 of [N.J.S.A. 2A:18-61.1], the court shall provide a period of three business days after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment. A late fee shall not be imposed in excess of the amount set forth in the application for a warrant for removal if all rent due and owing is paid within the three business day period established by this subsection.
>
> [N.J.S.A. 2A:42-10.16a(a) (emphasis added).]

Against this legal backdrop, we interpret the issue before us as whether the Stack Amendment provides a basis to vacate the consent judgment under Rule 4:50-1. See Harris, 155 N.J. at 226. In doing so, we must determine

whether defendant may avail himself of the Stack Amendment's three-day post-lockout grace period when the warrant for removal was posted to enforce the terms of a consent judgment negotiated and executed by the parties. In our view, this issue turns on whether the warrant for removal was posted, and the lockout was executed, "due to nonpayment of rent." N.J.S.A. 2A:42-10.16a(a).

As a threshold matter, we reject plaintiff's argument this issue is moot in light of defendant's eviction from the premises in July 2022. Although, "[o]rdinarily, where a tenant no longer resides in the property, an appeal challenging the propriety of an eviction is moot," Sudersan v. Royal, 386 N.J. Super. 246, 251 (App. Div. 2005), we will decide an otherwise moot appeal "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review," Zirger v. General Acc. Ins. Co., 144 N.J. 327, 330 (1996). We are satisfied the substantial importance of the issue before us warrants our appellate review.

We also disagree with plaintiff that defendant's appeal is time-barred, as his appeal arises from the court's November 10, 2021 order denying his motion to vacate the consent judgment, and not from the consent judgment itself, and was therefore timely filed on November 14, 2021. Similarly, although a consent judgment "is ordinarily not appealable," Jacobs v. Mark Lindsay and Son

Plumbing & Heating, Inc., 458 N.J. Super. 194, 205 (App. Div. 2019), a tenant may appeal the trial court's denial of a motion to vacate a consent judgment, see e.g., Harris, 155 N.J. at 218.

Having carefully reviewed the parties' arguments, we conclude the warrant for removal was not posted "due to nonpayment of rent" within the meaning of the Stack Amendment. We are therefore satisfied the Stack Amendment does not apply and, consequently, does not provide a basis under Rule 4:50-1 to vacate the consent judgment.[3] Accordingly, as we conclude the Stack Amendment does not apply, we need not address plaintiff's argument that it should not be applied retroactively to the circumstances here. Because our

[3] We note, to the extent defendant argues the consent judgment should be vacated under Rule 4:50-1 because he entered that judgment without representation or aid of an interpreter, he did not raise those arguments before the motion court in the proceedings leading to the court's November 10, 2021 order under appeal. We typically decline to address "questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). We are satisfied neither exception applies here. Additionally, before us, defendant raised his lack of informed consent Rule 4:50-1 arguments for the first time in his reply brief. We could alternatively decline to address those arguments based on that procedural deficiency. See Bacon v. N. J. State Dep't of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015) ("We generally decline to consider arguments raised for the first time in a reply brief.").

resolution requires us to interpret the Stack Amendment, we recite well-recognized principles of statutory interpretation.

We review issues of statutory interpretation de novo. N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021). When interpreting a statute, the "paramount goal" is to effectuate the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). "The statute's language is ordinarily the 'surest indicator' of that intent." Frugis, 177 N.J. at 280 (quoting Cornblatt, P.A. v. Barow, 153 N.J. 218, 231 (1998)). Courts should "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." DiProspero, 183 N.J. at 492 (citations omitted).

"If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007) (citing DiProspero, 183 N.J. at 492). "[A] court may not rewrite a statute or add language that the Legislature omitted." State v. Munafo, 222 N.J. 480, 488 (2015) (citing DiProspero, 183 N.J. at 492). Courts "should 'seek to effectuate the "fundamental purpose for which the legislation was enacted."'" Klumb v. Bd. of Educ., 199 N.J. 14, 25 (2009) (quoting Twp.

of Pennsauken v. Schad, 160 N.J. 156, 170 (1999)). "If, however, a literal interpretation of a provision would lead to an absurd result or would be inconsistent with the statute's overall purpose, 'that interpretation should be rejected' and 'the spirit of the law should control.'" Pfannenstein v. Surrey, 475 N.J. Super. 83, 95 (App. Div. 2023) (quoting Hubbard v. Reed, 168 N.J. 387, 392-93 (2001)).

As noted, the Stack Amendment applies in eviction actions for "nonpayment of rent" and when "a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent." N.J.S.A. 2A:42-10.16a(a). Here, the warrant for removal was posted to enforce the terms of a hardship stay, which postponed the lockout date the parties agreed upon in the consent judgment. Additionally, it is undisputed that, in accordance with the terms of the consent judgment and hardship stay, defendant satisfied all of his rental obligations when the warrant for removal was posted. We agree with plaintiff that the warrant for removal was therefore posted, not due to defendant's nonpayment of rent, but instead for his failure to vacate the premises per the terms of the hardship stay and consent judgment.

Defendant requests we nevertheless conclude the Stack Amendment applies because plaintiff initiated the eviction proceedings due to his

nonpayment of rent. We are satisfied, however, such a broad reading of the Stack Amendment "would lead to an absurd result [and] would be inconsistent with the statute's overall purpose." Pfannenstein, 475 N.J. Super. at 95. Indeed, allowing tenants to remain in possession of a rental property by satisfying their rental obligations within three days after a lockout is executed, despite the terms of a consent judgment by which they agreed to surrender possession back to the landlord on a specified date, would obviate the need for such consent judgment. In such circumstances, the consent judgment would do nothing more than extend the period of time in which a tenant could satisfy their rental obligations without being removed from the property. The parties' agreed upon move out date would therefore be rendered meaningless.

Further, were we to adopt defendant's proposed interpretation, landlords seeking to regain possession of their properties would be wholly disincentivized to enter consent judgments, as such judgments would be accompanied by the risk that tenants could ultimately remain in possession by tendering their outstanding rental obligations at the last second and contrary to the terms of those negotiated, court approved agreements. Here, while the eviction proceedings may have had their genesis in nonpayment, defendant ignores the fact that he reaped the benefits of the consent judgment by remaining in

possession of the rental property for over two years after the parties reached an agreement with respect to his initial failure to pay rent.

Plaintiff clearly agreed to the consent judgment allowing defendant to remain in possession of the property, notwithstanding his failure to pay rent, only for the benefit of regaining possession. We therefore reject defendant's proposed interpretation, see Pfannenstein, 475 N.J. Super. at 95, and conclude where, as here, a tenant and landlord memorialize an agreed upon move out date in a consent judgment and a warrant for removal is posted to enforce that judgment, the warrant for removal is not one "executed due to nonpayment of rent" to which the Stack Amendment applies. N.J.S.A. 2A:42-10.16a(a).

In light of our conclusion the Stack Amendment does not constitute a sufficient basis to vacate the consent judgment under Rule 4:50-1, we need not also address whether any post-judgment relief alternatively precluded defendant from availing himself of the Stack Amendment's three-day post-lockout grace period or if restoring defendant's possession of the property would be the appropriate remedy.

To the extent we have not specifically addressed any of defendant's remaining arguments, it is because we have concluded they are without

sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION