SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1383-21

806 6TH ST HCPVI LLC,

Plaintiff-Respondent,

v.

ANA TINEO REYES, JOSE REYES, ANDRES RAMIREZ, JAYLINE RAMIREZ, JOSELIL RAMIREZ, and JEFFREY RAMIREZ,

Defendants-Appellants.

———————————————————

Argued March 8, 2023 – Decided May 10, 2023

Before Judges Vernoia, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. LT-003235-19.

Cindy Nan Vogelman argued the cause for appellants (Chasan Lamparello Mallon & Cappuzzo, PC, attorneys; Cody W. Pansing, of counsel and on the briefs; Cindy Nan Vogelman and Priscilla E. Savage, on the briefs).

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

PER CURIAM

In this summary dispossess action, defendants Ana Tineo Reyes, Jose Reyes, Andres Ramirez, Jayline Ramirez, Joselil[1] Ramirez, and Jeffrey Ramirez appeal from the December 13, 2021 order denying their Rule 4:50-1(e) and (f) motion to vacate a January 10, 2020 amended consent judgment of possession (amended consent judgment) entered in favor of their landlord, plaintiff 806 6th Street HCPVI, LLC. Defendants argue the court erred by denying the motion because Ana[2] is elderly, cannot read English, only speaks Spanish, and was self-represented when she entered the amended consent judgment under review.

Ana also claims she has paid all rent due and owing following entry of the amended consent judgment; the court did not decide whether her continuing tender of rent constituted a waiver of the terms of the amended consent judgment and its right to remove her from the tenancy; and the court erred in not vacating the judgment of possession consistent with the Stack legislation, N.J.S.A.

[1] This defendant is referred to as "Joselil" and "Joselin" interchangeably in the record. We refer to this defendant as "Joselil" in our opinion.

[2] For ease of reference, we refer to defendants by their first names, intending no disrespect. In some instances, we refer to them collectively as defendants.

2A:42-10.16a, 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. The Stack legislation provides a tenant with the right to possession if all rent is paid within three days after a lockout. The court entered an order for orderly removal on December 13, 2021, which was stayed pending this appeal.

Because the court did not address Ana's claim that the amended consent judgment should be vacated or make sufficient factual findings as to whether she comprehended the terms of the amended consent judgment, we vacate the December 13, 2021 order and remand for the court to conduct an evidentiary hearing on defendants' claimed entitlement to vacatur of the amended consent judgment under Rule 4:50-1(e) and (f). We also remand for the court to determine if Ana or the other defendants have paid the outstanding rent due, and if so, whether the Stack legislation applies.

I.

In March 2002, Ana leased a two-bedroom apartment from plaintiff in Union City. Ana signed a lease agreeing to pay $700 per month in rent. The lease states Ana, Jose (Ana's husband), Joselil (Ana's daughter), and Andres (Ana's son-in-law) would occupy the premises. Jayline (Ana's granddaughter) and Jeffrey (Ana's grandson) are also occupants but are not named in the lease.

The rent is currently $571.63 a month, and the apartment is rent controlled. Ana pays the rent and claims defendants contribute toward the rental payments.

On March 14, 2019, plaintiff filed a verified complaint for nonpayment of rent against Ana alleging $1,995.50 was due for unpaid base rent dating back to July 2018 and other unpaid base rent and late charges. At a court proceeding on April 4, 2019, Ana appeared as a self-represented litigant. Ana is not proficient in the English language and requires the assistance of a Spanish interpreter. Ana did not have a court designated Spanish interpreter at the April 4, 2019 proceeding. Nonetheless, that day, plaintiff's counsel and Ana entered into a consent judgment, which was handwritten on a template prepared by plaintiff's law firm, which contained the same language as the court prepared form and included the firm's letterhead. The consent judgment for "tenant to stay in premises," written in English, provides in pertinent part:

> 1. The tenant/s shall pay to the landlord $1,193.40, which the tenant/s admits is now due and owing and AGREES TO THE IMMEDIATE ENTRY OF JUDGMENT FOR POSSESSION.
>
> . . .
>
> 2. The tenant/s shall pay the amount . . . of $533.40 immediately, which the landlord admits receiving.
>
> . . .

> Tenant shall trace and replace money order #25227980370 ($533.47) by 5/5/19. Tenant shall pay $88.00 with May rent (total $659.63) by 5/7/19. Parties agree that the rent increase to $571.63 was effective 1/1/19.

The terms of the consent judgment were not placed on the record.

In addition, the consent judgment confirmed the rent was $571.63 per month and that failure to make payment or the breach of any term of the agreement may result in the tenants being evicted "as permitted by law after the service of the warrant of removal." According to Ana, she mistakenly thought the April 4, 2019 consent judgment confirmed she had paid May's rent and that she was required to pay her ongoing monthly rent. Subsequently, plaintiff filed a certification seeking a warrant of removal because Ana failed to trace and replace the money order by the May 5, 2019 deadline.

On June 3, 2019, the court issued a warrant of removal. A hearing was held on June 10, 2019. Plaintiff was represented by counsel, and Ana was represented by an attorney serving as a tenant advocate for Union City. A Spanish interpreter was also present for the hearing. Ana's counsel conceded Ana's outstanding payments included the money order and June's rent. Ana filed a certification stating she "always pa[id] rent on time." No testimony was

elicited on this issue, and the court did not conduct an evidentiary hearing. The court simply stayed the warrant of removal until June 18, 2019.

Another hearing was held on June 18, 2019. Ana's counsel argued she was "not represented when she entered into the consent judgment," and this is a "lost payment case." Ana's counsel represented that Ana "traced and replaced" the money order, which stems from July 2018's rent. Ana also "traced and replaced" the May 2019 rent and had the June 2019 rent money in hand. According to Ana's counsel, Ana did not comprehend the terms of the settlement as evidenced by the fact Ana thought her June 3, 2019 payment was for June's rent.

Ana filed another certification, which was written in Spanish and translated into English, explaining she is "paying all rent" and it was "just a mistake." With the aid of a Spanish interpreter, the court instructed Ana to make timely rental payments and stayed the warrant of removal for six months until December 2, 2019. The court did not elicit any testimony from Ana as to her understanding of the April 4, 2019 consent judgment.

On November 12, 2019, Ana filed a certification in support of a further stay of eviction, stating she has "not found a new apartment." On November 25, 2019, plaintiff filed a certification asserting Ana failed to pay rent due and

owing. On December 9, 2019, the court issued a warrant of removal. Eight days later, Ana filed a certification in Spanish that was translated, stating, "I have paid my rent on time." That day, the court stayed the warrant of removal until January 2, 2020.

On January 2, 2020, an order to show cause (OTSC) was filed on behalf of intervenors Jose, Joselil, Andres, Jayline, and Jeffrey by their attorney seeking to vacate the judgment of possession on the basis their rights were prejudiced because they were not named as defendants in the tenancy complaint. In support of the OTSC, Jayline submitted a certification stating that Ana does not speak English and "had no understanding of the ramifications of what she signed," referring to the April 4, 2019 consent judgment.

Jayline added that Ana "felt pressured," "went to court alone," and thought "she was required to sign it in order to stay in the apartment." Jayline also certified that defendants—including Ana—had never missed or been late with a rental payment, and Ana has "receipts for every rental payment." According to Jayline, neither Ana nor co-defendants knew that they were required to move out and they "learned of this only in December 2019, when [they] received the warrant of removal from the court."

On the January 10, 2020 OTSC return date, plaintiff's counsel appeared for the hearing. Ana appeared for the hearing, but her tenant advocate counsel did not.[3] Ana thus proceeded as a self-represented litigant. Counsel for Jayline and the other defendants as "intervenors" appeared, but the record shows he did not represent Ana. At the OTSC hearing, Ana and the attorney for defendants/intervenors signed an amended consent judgment for possession, which included all defendants. Defendants—including Ana—agreed to vacate the apartment by May 10, 2020, as per the terms of the amended consent judgment. The amended consent judgment also stated that if they moved out by May 10, plaintiff would refund them any rental payments made for the months of January, February, March, and April. If defendants requested an extension of the May 10 move-out date, plaintiff agreed to extend them an additional two months, but the previous rental payments would not be refunded.

Defendants/intervenors' counsel stated on the record, "the agreement is exactly what [c]ounsel [for plaintiff] and I negotiated," and that he had the "opportunity to speak to [his] clients about post[-]judgment issues." Ana and Jayline testified they understood the agreement. Ana then asked, "[w]hat else

[3] It is unclear from the transcript of the January 10, 2020 hearing why Ana's tenant advocate attorney did not appear.

can I do[?]" and "[w]hat happens . . . to find something that I didn't even know where it was, because I don't know how to speak English." Ana also asked if she could obtain an extension because "the rent in Union City is very high."

On May 15, 2020, plaintiff filed a certification stating defendants failed to vacate the apartment by May 10, 2020. On June 17, 2020, plaintiff filed another verified complaint for nonpayment of rent under a new docket number, LT-4763-20.[4] In the meantime, no lockouts were being executed due to the COVID-19 pandemic.[5]

On November 3, 2021, plaintiff again sought a warrant of removal for nonpayment of rent because the moratorium ended. The landlord certified "[e]viction is sought because tenant was to vacate by 05/10/2020, and a warrant of removal was submitted on 06/05/2020 to the court." The landlord certified no lockouts were being executed as a result of the COVID-19 moratorium. Plaintiff also claimed defendants breached the terms of the amended consent

---

[4] Plaintiff contends it mistakenly filed this complaint because it already obtained a judgment of possession in the matter under review that was not vacated. As a result, the subsequent complaint was dismissed.

[5] "[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)).

judgment and owed $11,907.22 in basic rent. On December 3, 2021, the court issued the warrant of removal. Four days later, Ana filed a certification seeking relief and asserting she has "all the rent." Ana moved to vacate the third warrant of removal, this time with the assistance of another Union City tenant advocate attorney.

On December 13, 2021, the court conducted oral argument on Ana's application for relief from the amended consent judgment. Ana's tenant advocate counsel was unaware of the amended consent judgment but was under the impression that there was a continuing hardship stay in place. Ana's counsel represented defendants were current with their rental payments, and they were not returned. Plaintiff's counsel argued the Stack legislation was inapplicable to this case because the legislation does not provide retroactive relief and is otherwise irrelevant in light of defendants' breach of the amended consent judgment.

Plaintiff's counsel explained that starting on May 10, 2020, plaintiff ceased accepting rental payments from defendants arguably on the basis plaintiff already had a judgment and defendants were supposed to vacate the apartment. Plaintiff's counsel also represented that none of Ana's money orders were cashed but had been placed in a "no man's land lockbox," which plaintiff uses "for cases

where [it does not] want the money." The money orders were not returned to Ana. The court requested that plaintiff file a certification or affidavit verifying the money orders have not been cashed, but none was ever provided.

The court denied defendants' application to vacate the amended consent judgment. In its terse decision, the court noted it would have voided the judgment if plaintiff had deposited defendants' rental payments. The court did not address Ana's assertion that she did not understand the terms of the amended consent judgment or whether Rule 4:50-1(e) and (f) relief was appropriate. While the court commented that Ana needs to get her money orders back "if the [money orders] are not going to be cashed," the court did not make any determination as to whether all the rent due was paid as claimed by Ana and defendants. The court stayed the warrant of removal until January 4, 2022, but noted if the case goes to the Appellate Division, "the application would be to hold off any further action" until we render a decision.

On appeal, defendants argue the court erred by denying post-judgment relief to defendants pursuant to Rule 4:50-1(e) and (f); the court abused its discretion in declining to find a waiver defense based on Ana's rental payments; and the court erred in failing to apply pertinent provisions of the Anti-Eviction

Act, N.J.S.A. 2A:18-16.1 to -61.12; and the Stack legislation because Ana never missed a rental payment.

II.

"[A] consent judgment may only be vacated in accordance with [Rule] 4:50-1." Cmty. Realty Mgmt., Inc. v. Harris, 155 N.J. 212, 226 (1998) (quoting Stonehurst at Freehold v. Twp. Comm. of Freehold, 139 N.J. Super. 311, 313 (Law Div. 1976)). A court's determination under Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An appellate court "finds an abuse of discretion when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

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 provides six specified grounds for relief from a judgment or order entered in this State. The court may relieve a party or their representative from a final judgment or order under subsection (e) if "the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been revised or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application." Subsection (f) provides 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 Guillaume, 209 N.J. at 484 (citation omitted) (providing that "Rule 4:50-1(f) is 'as expansive as the need to achieve equity and justice'"). 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.

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, 139 N.J. Super. at 313). 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). When an unrepresented tenant enters a consent judgment for possession, the court must "review it in open court" to assure the tenant has entered it knowingly and voluntarily. See R. 6:6-4(a);[6] Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 6:6-4 (2023).

[6] Rule 6:6-4(a) provides in pertinent part:

> A stipulation of settlement or an agreement that provides for entry of a judgment for possession against an unrepresented tenant must be written, either signed by the parties or placed on the record in lieu of signature, and reviewed, approved, and signed by a judge on the day of the court proceeding. Additionally, if it requires the unrepresented tenant to both pay rent and vacate the premises, the judge shall also review it in open court.

A.

Rule 4:50-1(e) and (f)

We turn first to defendants' claim that Ana was unrepresented by counsel when she signed the April 4, 2019 and January 10, 2020 consent judgments, which were "fatal to her ability to retain her tenancy." Defendants claim Ana "mistakenly" signed the consent judgments and plaintiff "used every opportunity to take advantage of her [old] age" and lack of proficiency in the English language.

Here, the January 10, 2020 amended consent judgment—which supersedes the April 4, 2019 consent judgment—was written, signed by the parties, including Ana as a pro se litigant, and submitted to the court for approval the day of the hearing. See R. 6:6-4(a). But, the record is clear that as of June 10, 2019, Ana was represented by a tenant advocate attorney who was not present to advise and represent her at the January 10, 2020 hearing. Instead, defendants/intervenors' counsel, who entered his appearance before the court only on behalf of Jayline that day, stated Jayline "is joined by the master tenant Ana . . . who require[s] the services of an interpreter in Spanish." Jayline's attorney also stated that Jayline "represents everyone's interests," including Ana's, and "[s]he has been apprised of what this means."

Based upon our careful review of the record, we are convinced that Ana was not represented by counsel at the January 10, 2020 proceeding. Our review of the transcript reveals the court noted Ana had been previously represented by the Union City tenant advocate, and her counsel was given notice of the proceeding but did not appear. Moreover, the record does not reflect the court took any action to determine the reason for Ana's counsel's failure to appear or to offer her an opportunity for an adjournment to secure her counsel's appearance before proceeding with the hearing.

Instead, the court relied on the representations of Jayline's counsel that the parties had resolved the pending eviction proceeding in accordance with the terms of the amended consent judgment. But Jayline's counsel, who never entered an appearance on behalf of Ana, had no authority to make those representations on Ana's behalf—he had no attorney-client relationship with Ana, and therefore, could not and did not represent her. See Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 475 (App. Div. 1997) (finding that an attorney may not act on behalf of a client without consent unless specifically authorized).

Moreover, Jayline had no apparent or actual authority to represent Ana's interests. See N.J. Lawyers' Fund for Client Prot. v. Stewart Title Guar. Co., 203 N.J. 208, 220 (2010) (quoting Carlson v. Hannah, 6 N.J. 202, 212 (1951)

(noting that "an agent may only bind [their] principal for such acts that 'are within [their] actual or apparent authority'")). We also question the enforceability of the amended consent judgment because Ana and Jayline signed it but not the other defendants/tenants.

We observe the court asked Ana, under oath with the aid of a Spanish interpreter, but without her counsel, one question—whether she understood the terms of the settlement placed on the record, and her response was, "[y]es, I understand it." But the court did not voir dire Ana any further to ascertain if she comprehended the settlement terms. Therefore, we cannot discern the basis for Ana's response—"yes, I understand it"—nor whether her acknowledgment reflected an understanding of the settlement terms. For example, the record is bare of any evidence that Ana was questioned about her willingness to proceed without her counsel from the tenant advocate's office, her consent to the terms, whether she voluntarily entered the amended consent judgment, or whether she was suffering from any physical or mental ailment that would have prevented her from understanding the document or the proceedings, notwithstanding the fact she was eighty-five years old at the time.

In light of the long, convoluted history of the case, the court should have been circumspect and conducted a thorough and probing voir dire of Ana to

ensure what her understanding of the amended consent judgment entailed and how it applied to her individually. Our careful review of the record shows an absence of factual findings with respect to Ana's assertion she did not understand the terms of the amended consent judgment and whether she was entitled to Rule 4:50-1(e) or (f) relief. The court shall take this into consideration on remand.

At the December 13, 2021 hearing, the court failed to set forth any factual findings or legal conclusions as required by Rule 1:7-4(a) as to whether Ana was entitled to Rule 4:50-1(e) and (f) relief and whether the January 10, 2020 amended consent judgment should be vacated. Specifically, the court did not consider or determine if there had been compliance with Rule 6:6-4(a).

Rule 1:7-4(a) states that in addition to entering an appropriate written order, a trial court "shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury." "The [Rule] requires specific findings of fact and conclusions of law . . . ." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4(a) (2023). "Meaningful appellate review is inhibited unless the [court] sets forth the reasons for [its] . . . opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)).

As a result of the court's failure to make factual findings or legal conclusions in connection with its approval of the amended consent judgment, we are unable to discharge our appellate function properly. In light of our determination that Ana was not represented by counsel at the time the terms of the January 10, 2020 amended consent judgment were placed on the record, on remand, the court shall address whether Ana is entitled to relief under Rule 4:50-1(e) and (f) and vacatur of the January 10, 2020 amended consent judgment and provide appropriate factual findings and legal conclusions. The court shall determine whether the parties' proofs on demand are limited to the motion record or whether additional evidence and arguments pertaining to the issues raised may be presented.

B.

The Anti-Eviction Act

We next turn to defendant's waiver claim. Defendants assert the court did not render a decision regarding Ana's "continuing tender" of rent and plaintiff's "continuing failure" to return the money orders to Ana. In addition, defendants argue that plaintiff's receipt and retention of Ana's money orders for the past two years constitutes a waiver under the Anti-Eviction Act, warranting dismissal of the matter with prejudice.

The Anti-Eviction Act permits a court to evict a tenant for nonpayment of rent. See N.J.S.A. 2A:18-61.1(a). The Act "was designed to protect residential tenants against unfair and arbitrary evictions." 447 Assocs. v. Miranda, 115 N.J. 522, 528 (1989). Our Supreme Court has directed courts to liberally construe the Anti-Eviction Act, id. at 529; thus, when judges are evaluating an agreement between a landlord and tenant, they are "directed to 'generally favor the tenant rather than the landlord,'" Harris, 155 N.J. at 226-27 (quoting Carteret Properties v. Variety Donuts, Inc., 49 N.J. 116, 127 (1967)). There is a heightened level of protection for tenants because "the majority of [them] facing eviction and consequently involved in consent judgments for possession are unrepresented by counsel." Id. at 240.

We agree the court did not address the waiver issue. "Waiver is the voluntary and intentional relinquishment of a known right." Knorr v. Smeal, 178 N.J. 169, 177 (2003) (citation omitted). A valid waiver requires not only that a party "have full knowledge of [their] legal rights," but also that the party "clearly, unequivocally, and decisively" surrender those rights. Ibid.

Here, the court specifically refrained from determining whether plaintiff's continued receipt and failure to return Ana's money orders to her over the course of two years constituted a waiver of the amended consent judgment. See Starns

v. Am. Baptist Ests. of Red Bank, 352 N.J. Super. 327, 331 (App. Div. 2002) ("As long as the tenant continues to pay the rent and complies with obligations assumed in the lease, the tenant may not be evicted except for good cause as established by statute.").

Moreover, there was no finding or ruling as to why plaintiff retained the money orders. Plaintiff denied accepting Ana's payments but maintained a considerable amount of the funds in a "no man's land lockbox" for two years after May 2020. Plaintiff contends its P.O. box was "intentionally blocked from receiving payment from [d]efendants to avoid a waiver," but offers no proof in support of its position.

While plaintiff's counsel represented that Ana's rental payments were not cashed, no supporting certification or affidavit was submitted to support this contention. In fact, the court stated:

> [Defendants] also were sending the checks[7] to the landlord, even though they weren't – I assume they have not been cashed, and you're [going to] file that affidavit or certification. So the money's tied up because the money has been paid, if it's to the post office, for the money order that year and a half of rent which would mean they could put a down payment on a condo or whatever the case may be, it's tied up in limbo and it's [going to] take a long time to extract that money. And

[7] We presume the court incorrectly referred to defendants' rental payments as "checks." The record shows only money orders were sent by Ana to plaintiff.

> so that's . . . the practical problem because they may have all that money lying around.
>
> [(emphasis added).]

Here, on remand, the court must make a credibility and evidential determination on the issue of whether Ana's money orders were cashed by plaintiff, and it cannot rely solely on plaintiff's counsel's representation. Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 263 (App. Div. 1978) (finding that the waiver issue cannot "be determined upon a stipulated set of facts; live testimony will be necessary"). We have recognized that "acceptance of payment after a notice to quit provides merely evidence of waiver[,] which nevertheless remains a question of intent." Id. at 262-63 (citations omitted). In Lynch, we reasoned that:

> While the unconditional acceptance by a landlord of moneys as rent, which rent has accrued after the time the tenant should have surrendered possession, will constitute strong evidence of the landlord's waiver of the notice to quit, waiver always rests on intent, and is ever a question of fact.
>
> [Id. at 262 (quoting United Illuminating Co. v. Syntex Rubber Corp., 231 A.2d 89, 91 (Conn. Cir. Ct. 1966)).]

Ana claims she has continued to pay rent to plaintiff by remitting money orders to plaintiff for the past two years. And, plaintiff admittedly has not returned the money orders to Ana. The record shows Ana mailed United States

postal money orders to plaintiff to a United States post-office box. We cannot discern from the record if plaintiff's use of the term "lock-box" refers to a United States post-office box or something else. Whether Ana's money orders were accepted or cashed by plaintiff may have an impact on its intent in establishing whether there was a waiver of the amended consent judgment's terms. Receipt of "payments after the initiation of statutory dispossess proceedings provides only evidence of a waiver, which should be considered together with all other existing circumstances in determining whether the defense of waiver has been sustained." Id. at 263; accord A.P. Dev. Corp. v. Band, 113 N.J. 485, 497-98 (1988). We direct the court on remand to determine as a matter of fact if Ana and defendants paid all the rent due.

The filing of the second verified complaint on June 17, 2020 for Ana's alleged nonpayment of rent—although an allegedly inadvertent filing that was dismissed by plaintiff—may nevertheless also evidence plaintiff's intent to relinquish certain rights under the amended consent judgment. The court did not consider this procedural history in its decision. On remand, the court should also analyze the impact, if any, of the March 2020 lockout moratorium had vis-à-vis plaintiff's filing of its second verified complaint for nonpayment of rent.

C.

The Stack Legislation

Lastly, defendants argue the court erred in not granting Ana relief under the Stack legislation by finding that the January 10, 2020 amended consent judgment controls. Since plaintiff filed a second complaint regarding nonpayment of rent on June 17, 2020, two months after the effective date of the Stack legislation, defendants claim Ana reasonably expected to be protected under its statutory scheme. In 2019, this State enacted N.J.S.A. 2A:42-10.16a, which pertains to nonpayment of rent in eviction actions. The Stack legislation took effect on March 1, 2020.

Legal questions of statutory interpretation are reviewed de novo. Bowser v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 165, 170-71 (App. Div. 2018). "When a court construes a statute, its 'paramount goal' is to discern the Legislature's intent." In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 18 (2020) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). We "look first to the statute's actual language and ascribe to its words their ordinary meaning." Ibid. (quoting Kean Fed'n of Tchrs. v. Morell, 233 N.J. 566, 583 (2018)). "[T]he best indicator of [the Legislature's] intent is the statutory language, thus it is the first place we look." Ibid. (first alteration in original) (internal quotation marks

omitted) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)). "If the plain language leads to a clear and unambiguous result, then our interpretive process is over." Ibid. (quoting Richardson, 192 N.J. at 195).

In relevant part, the Stack legislation 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).]

Since the court did not make findings of fact and conclusions of law on the waiver issue, the court could not properly address the Stack legislation's applicability. On remand, the court shall make findings of fact and conclusions of law and determine: (1) whether the amended consent judgment is valid and enforceable; and if not (2) whether Ana and defendants have satisfied the statutory requirements to avail themselves of relief under the Stack legislation.

The judgment of possession is reversed, and the matter is 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