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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1792-21**

**PHILLIPSBURG DELI & MINI
MARKET, LLC,**

Plaintiff-Appellant,

v.

BABLA FUEL STOP, LLC,

**Defendant/Third-Party
Plaintiff-Respondent,**

v.

**PHILLIPSBURG DELI & MINI
MARKET, LLC,**

**Third-Party Defendant-
Appellant,**

and

**BASSAM JAFAR and
MAJIDA JAFAR,**

Third-Party Defendants.

Submitted November 14, 2022 – Decided December 8, 2022

Before Judges Whipple, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1007-20.

Abrams, Gran, Hendricks, Reina & Rosenberg, PC, attorneys for appellant (Barry E. Rosenberg, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff Phillipsburg Deli & Mini Market, LLC appeals from the trial court's order dated January 21, 2022, denying plaintiff's motion for reconsideration. Based on our review of the record and the applicable legal principles, we reverse.

I.

Plaintiff owns real property in Phillipsburg, which it leased to defendant Babla Fuel Stop, LLC. The premises consists of a convenience store, a gas station, and garage. Plaintiff contends defendant did not pay rent between April 2017 and September 2017. Plaintiff additionally claims defendant failed to pay rent between April 2020 and December 2020, during the initial COVID-19 lockdown.

On May 6, 2020, plaintiff filed a complaint against defendant in the Law Division in Morris County for unpaid rent. Defendant filed an answer¹ denying the allegations concerning unpaid rent and a counterclaim asserting various causes of action.²

On May 18, 2020, plaintiff filed a separate action in the Special Civil Part of Warren County seeking a judgment of possession for nonpayment of rent. Plaintiff later amended the complaint alleging defendant abandoned the property and failed to maintain the property pursuant to the lease. Defendant subsequently filed a motion to have the two complaints consolidated in the Law Division in Morris County, which plaintiff opposed. The motion was denied.³

¹ Defendant denied the claims concerning the 2017 rent, asserting the rent was "abated by agreement with [t]hird [p]arty [d]efendant Bassam H. Jafar." With respect to the unpaid rent in 2020, defendant agreed it had "intentionally withheld rent payments since April 2020, when advised by . . . Jaffar that prompt repairs of the partial destruction occurring on February 28, 2020[,] would not be forthcoming. . . ." In its third-party complaint, defendant further explained it would continue to withhold the rent because plaintiff's failure to repair the property constituted constructive eviction.

² Defendant's counterclaims were dismissed on summary judgment and are not before us on appeal.

³ In denying the motion to consolidate, the court noted:

[g]enerally, matters such as those presented should proceed as two separate

Following a trial, the Warren County Special Civil Part judge denied plaintiff's request for a judgment of possession. In denying plaintiff's application, the court noted the partial destruction of the property "reasonably prevented defendant from operating the gas station" and raised concerns regarding its use and safety. The court also abated defendant's rent. Notably, the court further noted, "[i]f indeed there was testimony in front of me today from the carrier that something had been adjusted, or there was denial or whatever, the fact may indeed be different here, which I strongly suspect . . . may happen when the two of you get to Morris County."

actions with the eviction/summary dispossess claim being heard by the landlord[-]tenant court and the parties' respective claims for damages being heard by the Law Division. From what is before this [c]ourt, the tenant has failed to cogently set forth any special circumstances or complexities that would warrant a transfer or order of consolidation at this time. In the interest of justice, however, the [c]ourt does find that it is incumbent upon the parties to make the landlord/tenant judge aware of the pending Law Division matter so that any [o]rder in that matter takes into account the pendency of the Morris County Law Division case.

In March 2021, plaintiff filed another action in the Special Civil Part in Warren County seeking a judgment of possession based on allegations defendant abandoned the property and failed to properly maintain the property. This second landlord-tenant action was also dismissed following a trial in July 2021 based on plaintiff's failure "to prove its case due to credibility of witnesses."

Subsequent to the dismissal of the landlord-tenant actions, plaintiff filed a motion for partial summary judgment in the Morris County collection action, and defendant filed a cross-motion for summary judgment. Plaintiff argued the decisions in the landlord-tenant cases were not binding on the Morris County judge and also noted there had been no opportunity to conduct discovery in those matters. The Morris County judge ultimately dismissed both parties' complaints with prejudice. The court applied the doctrine of res judicata based on its determination the issues had been litigated in the previously filed landlord-tenant summary dispossess actions. The court further denied plaintiff's motion for reconsideration and noted the unpaid rent issue had been fully litigated in both prior landlord-tenant actions.⁴ This appeal followed.

⁴ It does not appear the second landlord-tenant action was based on unpaid rent. As noted, the complaint alleged abandonment and defendant's alleged failure to maintain the property.

II.

Plaintiff raises the following issue on appeal:

POINT I

THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND REFUSING TO REINSTATE PLAINTIFF'S COMPLAINT BECAUSE THE TRIAL COURT'S DISMISSAL OF PLAINTIFF'S COMPLAINT RELIED ON PALPABLY INCORRECT LEGAL REASONING WHICH DISREGARDED MORE THAN 150 YEARS OF LEGAL PRECEDENT THAT HOLDS THAT THE PRINCIPLES OF RES JUDICATA AND COLLATERAL ESTOPPEL DO NOT APPLY TO SUMMARY PROCEEDINGS FOR EVICTION ADJUDICATED IN THE LANDLORD-TENANT COURT.

More particularly, plaintiff asserts the courts in the landlord-tenant summary dispossess actions had limited jurisdiction. Specifically, plaintiff asserts those courts were confined to determining whether plaintiff was entitled to possession of the property. Moreover, the parties were not entitled to conduct discovery in the summary proceedings. Plaintiff further notes defendant's motion to consolidate the landlord-tenant case with the pending collection action was denied, and plaintiff had no other recourse than to litigate the cases separately. Plaintiff further observes the first landlord-tenant judge recognized

his decision was not dispositive concerning the unpaid rent issue given the pending collection action in Morris County.

III.

"Motions for reconsideration are governed by Rule 4:49-2, which provides . . . the decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (citing Capital Fin. Co. of Delaware Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008)). "Reconsideration should be used only where '1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious . . . the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Ibid. (quoting Capital Fin. Co., 398 N.J. Super at 310). Therefore, an appellate court will not disturb a trial court's decision on a motion for reconsideration unless there is a clear abuse of discretion. Ibid. "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, 440 N.J. Super. at 382).

Ordinarily, we would confine our review to the order denying reconsideration, and we would not consider the order granting summary judgment and dismissing plaintiff's claims. Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 461-62 (App. Div. 2002). However, there are situations when the order for reconsideration and underlying summary judgment order are so intertwined it is necessary to address the summary judgment order as well. The instant appeal is distinguishable from that in Fusco, where we noted there was no indication in the notice of appeal or appellate case information statement appellant was appealing from the underlying order, which had granted summary judgment. Rather, the appellant there focused on the reconsideration order. 349 N.J. Super. at 460. However, we noted:

[w]e are mindful . . . that in some cases a motion for reconsideration may implicate the substantive issues in the case and the basis for the motion judge's ruling on the summary judgment and reconsideration motions may be the same. In such cases, an appeal solely from the grant of summary judgment or from the denial of reconsideration may be sufficient for an appellate review of the merits of the case, particularly where those issues are raised in the [case information statement].

[Id. at 461.]

Here, although the better practice would have been for plaintiff to appeal from both the underlying order and the reconsideration order, the issues are so interconnected we address both orders in this appeal.

The doctrine of res judicata⁵ generally does not apply to judgments from summary dispossess actions and does not bar "subsequent actions between landlord and tenant, even over the same subject matter." C.F. Seabrook Co. v. Beck, 174 N.J. Super. 577, 590 (App. Div. 1980) (citing Levine v. Seidel, 128 N.J. Super. 225, 229-30 (App. Div. 1974)). Even though it is the policy of this state to "avoid the delays and wasteful expense of the multiplicity of litigation which results from the splitting of a controversy[.]" actions for possession in

⁵ Under principles of res judicata, 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 . . . in a new proceeding." Velasquez v. Franz, 123 N.J. 498, 505 (1991) (citing Roberts v. Goldner, 79 N.J. 82, 85 (1979)). There are three basic elements for res judicata to apply:

(1) [T]he judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.

[McNeil v. Legis. Apportionment Comm'n of State, 177 N.J. 364, 395 (2003) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991)).]

landlord-tenant court "are not like other lawsuits [because their] sole purpose . . . is to enable the landlord to obtain speedy recovery of the premises." William Blanchard Co. v. Beach Concrete Co., 150 N.J. Super. 277, 292 (App. Div. 1977); C.F. Seabrook Co., 174 N.J. Super. at 589 (citing Vineland Shopping Ctr., Inc. v. De Marco, 35 N.J. 459, 462 (1961)).

In a subsequent proceeding, both the landlord and tenant are privileged "to deny o[r] disprove the fact upon which such a judgment is based." Twp. of Bloomfield v. Rosanna's Figure Salon, Inc., 253 N.J. Super. 551, 563 (App. Div. 1992) (quoting Constr. & Renting Corp. v. Stein, 6 N.J. Super. 239, 241 (App. Div. 1950)). Furthermore, "a summary dispossess action does not permit either a landlord or tenant to plead a claim for damages." Raji v. Saucedo, 461 N.J. Super. 166, 170 (App. Div. 2019) (citing Hodges v. Sasil Corp., 189 N.J. 210, 221 (2007)). "By confining itself to the landlord's right to possession, and fixing of the amount of rent due to afford the tenant the opportunity to avoid eviction by its payment, the statutory summary dispossess device provides a quick disposition of the landlord's claim for possession." Id. at 170-71 (internal citation omitted); see also Hous. Auth. of Morristown v. Little, 135 N.J. 274, 280 (1994) (recognizing the statute's purpose was to provide landlords with "an expedited procedure to regain possession of leased premises, thereby avoiding

the delays ordinarily associated with common-law ejectment actions"); Terrill Manor, Inc. v. Kuckel, 94 N.J. Super. 25, 28 (App. Div. 1967) (a judgment of dismissal will not prevent a redetermination of any issue as res judicata). Lastly, Rule 6:3-4(a) provides: "Summary actions between landlord and tenant for recovery of premises shall not be joined with any other cause of action" Guided by these principles, we turn to the trial court's granting summary in favor of defendant.

The trial court dismissed plaintiff's complaint because it determined the issue of unpaid rent had been decided by two judges in landlord-tenant court and was barred by the doctrine of res judicata. The court relied on Bloomfield for the proposition that it was "seeking to prevent an issue litigated in a summary proceeding from being relitigated again in the law division." 253 N.J. Super. 551 (App. Div. 1992). However, this misconstrues our decision in Bloomfield.

In Bloomfield, we wanted to avoid an unnecessary remand where the trial court had correctly ruled upon a legal issue involving undisputed facts. Id. at 565. Specifically, the trial court correctly determined a jurisdictional issue, along with finding Bloomfield had effectively terminated the lease at issue. Id. at 565-66. We concluded the "trial evidence was either duplicative of the undisputed facts or was entirely superfluous. There [were] no material facts

which would be properly triable to a jury in the event of a remand, and remand would therefore be useless." Id. at 566. Importantly, however, we also addressed the significance of res judicata in proceedings subsequent to a landlord tenant action. We observed:

[a] judgment entered in a summary eviction proceeding in Special Civil Part does not have a preclusive effect in subsequent litigation. It "settles nothing judicially, not even the right of possession, except for the purposes of that proceeding." 18 New Jersey Practice, County District and Municipal Courts § 1566 at 302 (Robert P. McDonough) (2d ed. 1971). See Constr. & Renting Corp., 6 N.J. Super. at 241, where this court held:

The determination in the dispossess proceedings only affected the respective rights of the landlord and the tenant "for that occasion" and nothing more. Either of them was privileged, in a subsequent proceeding, to deny or disprove the facts upon which such a judgment is based. [Citations omitted.] Thus, the tenant might recover damages from the landlord in an action at law in the nature of trespass for any unlawful proceeding under the act.

[Id. at 563-64 (emphasis added) (alteration in original).]

Because of the complexity of the issues involved in Bloomfield (inverse condemnation), we indicated the trial court should have transferred the case to

the Law Division for disposition.⁶ We commented, "[i]f the court had transferred this case to the [Law Division] before its decision on the merits, the judgment which was entered would prevent relitigation to the same extent as any other Law Division judgment entered in a plenary proceeding." Id. at 565. "Consequently, the doctrine of collateral estoppel would have been dispositive of [defendant's] claim." Ibid. We further added, "[f]or that reason, the trial court should have granted [defendant's] motion to transfer this matter for disposition as a plenary Law Division action." Ibid. Because the trial court did not transfer the case to the Law Division in Bloomfield, res judicata did not operate to preclude future claims. However, as noted above, we exercised original jurisdiction to enter the same judgment as the trial court with the same

⁶ We noted:

If [defendant] institutes such an action, a central issue will be whether Bloomfield has effectively terminated the lease. Relitigation of that issue in an action for inverse condemnation will be almost inevitable unless barred by the present suit. Therefore, a decision in this proceeding that does not have preclusive effect on the issue would be an egregious waste of the resources of the court system and of the litigants.

[Id. at 565.]

preclusive effect as if the trial court had granted a motion to transfer so as to avoid an unnecessary remand. Id. at 566.

Here, because the cases were not consolidated,⁷ the previously litigated landlord-tenant actions did not have a preclusive effect on the Morris County case as the trial court determined. Moreover, the case at bar is distinguishable from Bloomfield because the landlord-tenant cases were not based on undisputed facts. In fact, as noted previously, the judge in the initial landlord-tenant action anticipated there would be additional evidence that could produce a different conclusion from his decision.

The fact the proceedings in landlord-tenant court discussed the issues of nonpayment of rent does not preclude plaintiff from raising the same issue in its Law Division claim. When a summary dispossess action is based on nonpayment of rent, the unpaid rent will obviously be part of the proofs adduced at trial. Rule 6:3-4(c) provides, "[c]omplaints in summary actions for possession of residential premises based on non-payment of rent . . . must expressly state . . . the amount of rent owed as of the date of the complaint" However, that does not take away the parties' right to "to deny o[r] disprove the fact upon which

⁷ Unlike Bloomfield, we are not suggesting the cases in this matter should have been consolidated.

[the judgment in a summary dispossession action] is based" in a subsequent proceeding. Constr. & Renting Corp., 6 N.J. Super. at 241. Moreover, Rule 6:3-4(a) does not permit the joinder of other claims in the context of a landlord-tenant action and the landlord-tenant judge cannot award damages. Accordingly, plaintiff's remedy to recover unpaid rent was to file a separate collection action.

Reversed.

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



CLERK OF THE APPELLATE DIVISION