
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No. A-000814-21

EKA MANAGEMENT, LLC,

CIVIL ACTION

Plaintiff-Respondent,

ON APPEAL FROM

v.

SUPERIOR COURT, LAW DIVISION,
SPECIAL CIVIL PART,
CAMDEN COUNTY
No. CAM-LT-1601-20

HELEN BANKS,

Sat below:

Defendant-Appellant.

Hon. Richard F. Wells, J.S.C.

BRIEF OF AMICI CURIAE

American Civil Liberties Union of New Jersey, Camden Coalition of Healthcare Providers, Community Health Law Project, Elizabeth Coalition to House the Homeless, Essex County Legal Aid Association, Fair Share Housing Center, Housing and Community Development Network of New Jersey, Ironbound Community Corporation, Latino Action Network Foundation, Latino Coalition of New Jersey, Make the Road New Jersey, National Association for the Advancement of Colored People—New Jersey State Conference, New Jersey Citizen Action, New Jersey Coalition to End Homelessness, New Jersey Institute for Social Justice, New Jersey Tenants Organization, Rutgers Law School (Camden) Housing Justice Program, Seton Hall Law School Center for Social Justice, Solutions to End Poverty Soon, and Volunteer Lawyers for Justice

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INTERESTS OF AMICI

The **American Civil Liberties Union of New Jersey** (“**ACLU-NJ**”) is a private, nonprofit, nonpartisan membership organization dedicated to protecting and expanding civil rights and civil liberties. Founded in 1960, the ACLU-NJ has approximately 41,000 members and supporters in New Jersey. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of more than 1,750,000 members and supporters nationwide. As part of its work on economic justice, during the COVID-19 pandemic the ACLU-NJ has focused on protecting the rights of renters by advocating for process protections in the courts and for the passage of the COVID-19 Eviction Prevention Act.

The **Camden Coalition of Healthcare Providers** works to advance the field of complex care by creating and implementing programs that address chronic illness and social barriers to health and wellbeing. It engages on a daily basis with Camden-area residents struggling to overcome complex medical conditions while facing crippling poverty. The organization has long recognized that *housing is medicine*. For its participants—and so many others across the state—eviction is not merely a matter of losing a residence; it represents a catastrophic healthcare setback. At this time of extraordinary difficulty, Camden

Coalition participants are relying on the tenant protections enacted by the Legislature—and particularly the extension of the covered period to the end of 2021—to avoid this devastating outcome. In addition, the uncertainty resulting from inconsistent implementation of the Eviction Prevention Act creates anxiety for the Coalition's participants and confusion for its support teams. Accordingly, the Camden Coalition has great interest in this appeal.

The **Community Health Law Project ("CHLP")** is a statewide nonprofit organization with the mission of providing free legal and advocacy services to residents in the State of New Jersey who suffer from disabilities and chronic health conditions, as well as the frail elderly. CHLP has been fighting for the rights of the most vulnerable members of society and providing its clients with an unmatched level of attention and care for the past forty-five years. During the pandemic, the mental health of many of CHLP's clients declined due to isolation and lack of resources. Its clients then faced housing instability related to lack of income to pay rent, habitability issues, and discrimination. When confronted with eviction proceedings, CHLP's client population became even more confused and experienced challenges in connecting remotely to the courts and understanding their rights under the COVID-19 Eviction Prevention Act. CHLP is committed to upholding the rights of

tenants facing eviction and obtaining final clarification on N.J.S.A. 52:27D-287.9 to ensure the dismissal of eviction proceedings as required by law and the uniform interpretation of the law throughout the state.

Since 1981, the **Elizabeth Coalition to House the Homeless** has been a leader serving the homeless and poor in Union County, New Jersey. The organization provides a safety net to more than 2,500 individuals every year with emergency shelter, homelessness prevention, and comprehensive services that help families work toward self-sufficiency. The Elizabeth Coalition has expanded its services to include treating the root causes and impacts of housing instability and has created cutting-edge programs that have been adopted by several agencies throughout the State. The organization strives to empower people with the tools to transition to safe, affordable, and permanent housing. Advocating for housing equity and stability is central to its mission.

Essex County Legal Aid Association provides free legal advice and representation to thousands of impoverished individuals per year. It stands witness to the negative consequences of evictions on families, adults, and children. Its clients are one step and one paycheck away from homelessness. This case is of importance to Essex County Legal Aid Association because a misinterpretation of the new law and

the new landlord-tenant procedures can, and will, result in unjustified homelessness for many of its clients, their families, and their children.

Fair Share Housing Center, founded in 1975, is a public interest organization dedicated to defending the housing rights of New Jersey's working families. FSHC's mission is to end discriminatory and exclusionary housing patterns that deprive lower-income households of the realistic opportunity to live in safe, decent, and affordable housing with equal access to educational and economic opportunities. FSHC's primary work has been to enforce the *Mount Laurel* doctrine, which is a series of landmark decisions from the New Jersey Supreme Court that requires each town in New Jersey to provide for its "fair share" of its region's need for affordable housing. FSHC is concerned that the lack of proper enforcement of the COVID-19 landlord-tenant reforms will lead to increased evictions and displacement of tenants who should be legally protected from eviction, further exacerbating the state's existing affordable housing crisis.

The **Housing & Community Development Network of New Jersey ("HCDNNJ")**, founded in 1989, is the statewide association of nearly 300 nonprofit housing and community development corporations, landlords, individuals, professional organizations, and prominent New Jersey corporations that

support the creation of housing choices and economic opportunities for low- and moderate-income community residents. The Network is a policy advocate at the state and local level for increased economic opportunities for lower-income households, and stronger, healthier communities for all New Jerseyans. The Network and its members share a commitment to promoting economic justice and the empowerment of lower-income individuals and communities, and encouraging wider participation in the framing and implementation of public policies.

Ironbound Community Corporation ("ICC") has been advocating for justice and equality for all in Newark's Ironbound area for over fifty years. ICC engages individuals, families, and groups to work together to create a just, vibrant, fully inclusive, and sustainable community. ICC promotes accessible opportunities, respect, empathy, and fairness for all in the Ironbound community. ICC provides many programs to support and aid underserved individuals and families, including its housing program, which works to ensure that all families maintain affordable housing and dignified living conditions. In its housing justice advocacy, ICC leads grassroots efforts that promote inclusive government policies, right-to-counsel legislation, and homes for all of Newark's residents. ICC therefore has a strong interest in the enforcement of the COVID-19 Eviction Prevention Act,

which it helped to pass, and in promoting fairer procedures in landlord-tenant court.

The **Latino Action Network Foundation ("LANF")** is a grassroots organization that brings together individuals and other organizations that are committed to advancing the equitable inclusion of diverse Latino communities in American society. LANF advocates for the Latino community in New Jersey in multiple areas, including immigrant rights, education, healthcare, criminal justice reform, and affordable housing. LANF members communicate with legislators and speak at public hearings to promote a greater understanding of and solutions to the many issues Latino people, people of color, and those in poverty face, such as segregation in New Jersey schools and unfair housing policies. LANF is committed to promoting protection from eviction for those tenants throughout New Jersey's Latino communities who were most affected by the pandemic and the associated economic downturn, and LANF supports procedural advances to ensure that tenants get a fair hearing in landlord-tenant court.

The **Latino Coalition of New Jersey ("LCNJ")** is affiliated with LANF and develops programs that assist communities in Monmouth and Ocean County. LCNJ is dedicated to protecting civil rights for all, with a focus on Latino communities. LCNJ advocates at a legislative level, working with local and state

governments to protect the equal rights of all people. LCNJ promotes affordable housing and is committed to protecting tenants from eviction in accordance with recent legislative and judicial reforms.

Make the Road New Jersey ("MRNJ"), founded in 2014, is a community-based organization that provides services across New Jersey, with organizing hubs based in Elizabeth, Passaic, Newark, and Perth Amboy. MRNJ builds the power of immigrant, working-class, and Latinx communities to achieve dignity and respect through community organizing, legal and support services, policy innovation, and transformative education. MRNJ has provided legal services and educational programming to 7,000 immigrant families in New Jersey, the majority of whom live in rental housing.

The **National Association for the Advancement of Colored People, New Jersey State Conference ("NAACP NJSC")** is a civil rights organization with multiple units throughout New Jersey. NAACP NJSC volunteers advocate for freedom and equal justice for all. The organization contains numerous committees and programs, such as committees for criminal justice, environmental and climate justice, education, and a housing program that provides resources and connections for tenants who need assistance in housing, including information on COVID-19 relief for tenants. NAACP NJSC is committed to the proper

implementation of legislative and judicial protections for tenants at risk of eviction.

New Jersey Citizen Action ("NJCA") is a statewide grassroots nonprofit organization that fights for social, racial, and economic justice by combining on-the-ground organizing, legislative advocacy, and electoral campaigns. Its advocacy campaigns include working to ensure all New Jerseyans have safe and affordable housing in general and in particular that no resident is displaced because of the COVID-19 pandemic. In addition to its issue advocacy campaigns related to housing, healthcare, consumer finances, and utilities, NJCA provides free direct services to low- and moderate-income individuals and families across New Jersey to empower people to take advantage of their economic futures. NJCA and its members have a significant interest in this appeal, both to advance the organization's housing advocacy agenda and because the outcome will directly affect the economic security of the low- and moderate-income New Jerseyans served through NJCA's direct service programs.

The mission of the **New Jersey Coalition to End Homelessness ("NJCEH")** is to eradicate homelessness in New Jersey by advocating, educating, organizing, and, if necessary, litigating for emergency and permanent solutions to homelessness. NJCEH envisions a New Jersey where no one is forced to sleep outside

and where every man, woman, and child lives in safe, affordable housing. NJCEH has an interest in this appeal because the decision below would increase inappropriate evictions and thus, in many cases, homelessness in New Jersey.

The **New Jersey Institute for Social Justice ("NJISJ")** uses cutting-edge racial and social justice advocacy to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power—from the ground up—in New Jersey. The Institute is interested in this appeal because clarity and consistency regarding the COVID-19 Eviction Prevention Act's provisions governing arrears accrued during the "covered period" and "extended covered period" would protect tenants from unlawful evictions. Preventing unlawful evictions would not only maintain housing stability but would also prevent tenants from being unnecessarily exposed to COVID-19, particularly when people of color have been disproportionately impacted by the COVID-19 pandemic. The virus was the leading cause of death for Black people in New Jersey in 2020. Additionally, clarity and consistency of the rules would empower tenants who are overwhelmingly pro se and thus rely on the courts to set clear guidelines and function as a backstop for fundamental fairness in landlord-tenant proceedings.

The **New Jersey Tenants Organization ("NJTO")** has been the voice of tenants in New Jersey since 1969. The NJTO is a

statewide tenant membership group, advocating for the civil rights of tenants in New Jersey. The organization played a central role in the negotiations leading to the passage of the COVID-19 Eviction Prevention Act, and is vitally concerned with its proper implementation by the courts. The organization is equally committed to protecting due process for tenants facing eviction.

With investment of funding from the Legislature, **Rutgers Law School, Camden location** has established a **Housing Justice Program**. The Housing Justice Program, through its Housing Advocacy Clinic, provides legal assistance and representation to very low-, low-, and moderate-income tenants at risk of eviction due to nonpayment of rent during the covered periods delineated in N.J.S.A. 52:27D-287.7 to 287.11. This appeal addresses issues that have a direct impact on the Program's client population.

The **Seton Hall Law School Center for Social Justice** is both a state-certified legal services program and a clinical education program where law students and professors work together on issues of public interest, including the rights of tenants in landlord-tenant proceedings and other housing matters. The Center has provided free legal assistance to lower-income New Jersey residents for thirty years through its Housing and Homelessness Clinic and Civil Litigation Clinic. In

the summer of 2021, with funding from the State of New Jersey, the Center established the **Housing Justice Project** and significantly expanded its work on behalf of tenants to address the eviction crisis brought on by the pandemic as well as broader housing issues that impact low- and moderate-income tenants.

Solutions to End Poverty Soon ("STEPS") is a statewide coalition whose mission is to promote public awareness of the extent, causes, and effects of poverty in New Jersey. The organization seeks to provide solutions and help to low-income and economically distressed people of this state by distributing educational information, building relationships, and fostering connections among all those concerned with poverty. STEPS provides training workshops and educational materials to both educate and counsel tenants facing homelessness or the threat of losing their homes. In line with its goal of preventing homelessness, the organization is deeply interested in ensuring the proper enforcement of the new COVID-19 Eviction Prevention Act and the new landlord-tenant court procedures.

Volunteer Lawyers for Justice ("VLJ") is a nonprofit legal services office that provides free legal assistance to low-income people throughout the state of New Jersey. Headquartered in Newark for more than 20 years, VLJ provides legal services in a variety of civil legal issues including tenancy, consumer law,

bankruptcy, re-entry, family law, education law, and estate issues. VLJ also provides holistic legal services to survivors of human trafficking, veterans, and families in Newark's South Ward. VLJ's tenancy work includes statewide representation of tenants facing eviction, as well as broader advocacy work on issues impacting New Jersey tenants.

PRELIMINARY STATEMENT

Tens of thousands of New Jersey households are currently at risk of eviction and homelessness as a result of the COVID-19 pandemic. To alleviate the negative consequences attendant to mass displacement, especially during a time when overcrowded, congregate settings can lead to increased infection rates and deaths, the State enacted the COVID-19 Eviction Prevention Act. Pursuant to the Act, landlord-tenant courts must dismiss eviction actions based on nonpayment of rent, habitual late payment of rent, or failure to accept a rent increase that accrued during the applicable covered period for tenants who are eligible for relief. The trial court here declined to dismiss this case despite this statutory mandate.

Sharing the commitment to equity displayed by all three branches of New Jersey government during the pandemic, the Judiciary responded to the threat of mass eviction by looking for ways to enhance fairness in landlord-tenant proceedings. The State Supreme Court instituted major landlord-tenant reforms

with the overarching goal of providing appropriate procedural safeguards, particularly in light of the overwhelming number of pro se litigants in landlord-tenant court. Among other things, the reforms placed additional obligations on the courts to ensure that landlords establish their entitlement to relief before the entry of a judgment for possession. Here, the trial court twice failed to undertake the required review of the landlord's facially deficient complaint and issued a judgment for possession despite manifest infirmities in the pleading that precluded judgment.

As set forth below and in Ms. Banks's appellate briefs, the trial court misinterpreted the new law and failed to follow the governing rules and procedures for adjudicating landlord-tenant matters. These are reversible errors, and Amici join Ms. Banks in asking the Court to vacate the judgment for possession and dismiss the case.

Significantly, the errors below are emblematic of a larger problem in landlord-tenant courts around the State. As recently documented in a report issued by Seton Hall School of Law and Rutgers Law School (Camden), many courts are misinterpreting the new statute and failing to abide by the new landlord-tenant rules and procedures. The resulting erroneous and inconsistent rulings are harming individual litigants and undermining the remedial goals of the Legislature and the Judiciary. This is

particularly concerning in a docket that is overwhelmingly self-represented, where parties often do not have the means or knowledge to challenge errors, and trial courts are therefore rarely subject to appellate review or guidance. Amici respectfully ask this Court to clarify the meaning of the new law and procedures and to give landlord-tenant courts clear direction as they continue to adjudicate tens of thousands of pending residential eviction cases.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amici incorporate by reference the Combined Procedural History and Statement of Facts in the Brief of Defendant-Appellant. Db4-8.

ARGUMENT

I. This Court Should Reach the Issues Involving Interpretation of the COVID-19 Eviction Prevention Act and Implementation of the New Procedural Rules in Landlord-Tenant Court.

This appeal presents a critical opportunity to ensure that landlord-tenant courts properly apply the new statute and follow the new landlord-tenant rules and procedures. Amici urge the Court to reach these issues despite the availability of other grounds for reversal.

As Ms. Banks argues in her brief, there are several independent grounds for reversing the trial court's decision. Db9-29 (identifying four reversible errors). Some are simple,

including, for example, that the trial court declined to dismiss the complaint even though the corporate plaintiff was unrepresented, in violation of New Jersey Court Rules 6:10 and 1:21-1(c). Db26-28. The issues that demand appellate attention, however, are the more complex ones involving the statutory mandate to dismiss certain complaints arising from rental debt that accrued during the COVID period and the new procedural rules meant to ensure fairness in eviction proceedings. It is these more challenging issues that Amici respectfully request that the Court consider and resolve.

New Jersey law vests courts with discretion to reach issues of public importance presented in a case even when the controversy has otherwise been resolved. Nini v. Mercer Cnty. Cmty. Coll., 202 N.J. 98, 105 n.4 (2010) (“We have often declined . . . to dismiss a matter on grounds of mootness, if the issue in the appeal is an important matter of public interest.”) (quoting Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 484 (2008)). A fortiori, then, a court may choose to reach the more pressing issues in a live controversy even if the case is resolvable on more settled grounds. In assessing public importance, the courts look to both the effect on litigants and other similarly situated members of the public and to division in the courts. Ibid.

By these metrics, there can be little doubt of the public importance of the novel issues presented in this appeal. As this Court earlier concluded in granting Ms. Banks's motion to stay the execution of the warrant for removal, a stay was "necessary to prevent the homelessness of defendant and her three children." EKA Mgmt. v. Banks, No. A-000814-21, slip op. at 3 (N.J. Super. Ct. App. Div. Jan. 6, 2022) (Da76). Ms. Banks is far from alone in facing this potential consequence. As of December 2021, the New Jersey Courts reported a statewide backlog of 41,265 tenancy cases. N.J. Judiciary Ct. Mgmt. Stats. at 50 (Dec. 2021).¹ One recent analysis of the relevant data concludes that nearly 75,000 New Jersey households remain at risk of eviction in 2022 despite the rental assistance programs the State has administered with such success. Alan Mallach, New Jersey Renters at Risk of Eviction in 2022 (Jan. 20, 2022).² Given the persistent threat of COVID-19 and its variants, eviction is still associated with increased infection rates, illness, and death, as displaced tenants move into congregate shelters or the overcrowded homes of family and friends. Emily A. Benfer et al., Eviction, Health Inequity, and

¹ Available at <https://www.njcourts.gov/public/assets/stats/cman2112.pdf?c=Vwa>.

² Available at <https://www.hcdnnj.org/assets/documents/Mallach%20NJ%20Renters%20at%20risk%20final%201%2017%2022%20Rev%202%207%2022.PDF>.

the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy, 98 J. Urban Health 1 (2021).³ And research has repeatedly confirmed that the harms of both eviction and COVID-19 infection fall disproportionately on Black and Brown residents. Ctr. on Budget and Policy Priorities, COVID Hardship Watch (Feb. 10, 2022) (analyzing Census Bureau data revealing that economic hardships associated with the pandemic, including inability to keep up with rent, fall disproportionately on Black, Latino, and Asian households);⁴ Deena Greenberg, Carl Gershenson & Matthew Desmond, Discrimination in Evictions: Empirical Evidence and Legal Challenges, 51 Harv. C.R.-C.L. L. Rev. 115 (2016);⁵ Ctrs. for Disease Control and Prevention, Risk of Severe Illness or Death from COVID 19: Racial and Ethnic Disparities (Dec. 10, 2020).⁶

The State enacted the COVID-19 Eviction Prevention Act for the express purpose of alleviating these risks. N.J. Pub. L. 2021, ch. 188 (codified at N.J.S.A. 52:27D-287.7 to -287.11

³ Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7790520/>.

⁴ Available by copying and pasting into browser: <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economy-effects-on-food-housing-and>.

⁵ Available at <https://scholar.harvard.edu/mdesmond/publications/disparate-impact-eviction>.

⁶ Available at <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html>.

(2021)) (the "Act"). Signed into law on August 4, 2021, the Act aims to provide financial relief for landlords and tenants and to prevent mass eviction in the wake of the pandemic. N.J.S.A. 52:27D-287.7 (findings and declarations). The statute accomplishes these goals in two primary ways. First, it appropriates \$500 million for rental assistance and \$250 million for utility assistance for qualifying households. N.J. Pub. L. 2021, ch. 188, § 7. Second, it protects qualifying households from eviction based on nonpayment of rent, habitual late payment of rent, or failure to pay a rent increase (collectively, "rental debt") if the household establishes its eligibility, and the rental debt at issue accrued during the "covered period." N.J.S.A. 52:27D-287.9(a).

Households with incomes below 120% of area median income gain protection from eviction based on rental debt that arose during the baseline covered period, which runs from March 1, 2020, to August 31, 2021. N.J.S.A. 52:27D-287.8 ("Covered period' means the period beginning on March 1, 2020, and ending on August 31, 2021.") ("baseline covered period"). Households with incomes below 80% of area median income may qualify for an extended covered period, through December 31, 2021, if they certify in addition that they lost income because of the pandemic and applied for rental assistance. N.J.S.A. 52:27D-287.9(d)(1)(a) ("extended covered period"). The Act places no

time limit on when a tenant must certify eligibility, and the protection from eviction is permanent. The Act requires the courts to dismiss eviction complaints based on alleged rental debt that accrued during the applicable covered period. N.J.S.A. 52:27D-287.9(e). Landlords may sue tenants to recover such rental debt, but they may never evict tenants on the basis of such debt. N.J.S.A. 52:27D-287.9(d).

Misinterpretations of the statute, like the one at issue here, undermine its critical purpose. Unfortunately, the trial court in this case is only one among many struggling to understand the Act's provisions. In particular, a recent report published by Seton Hall School of Law and Rutgers Law School (Camden) documents cases in several vicinages in which courts have declined to dismiss eviction complaints in accordance with the Act despite a qualifying certification from the tenant. Diane K. Smith & Anne M. Mallgrave, Rep. of Observations on Implementation of Landlord-Tenant Reform in N.J., Seton Hall School of Law & Rutgers Law School (Camden), 11-16 (Feb. 7, 2022) ("SH/R Rep.")⁷ In Burlington, Camden, Essex, Hudson, Middlesex, and Somerset Counties, for example, courts refused to dismiss cases for nonpayment of rent during the extended covered

⁷ Available at <https://issuu.com/seton-hall-law-school/docs/csj-report-housing-justice-project-20220207?fr=sNzc1MzQ2MzY0NzY>.

period, even though the tenants had submitted the necessary certification for protection from eviction based on rental debt that came due during this period. Id. at 11-14; N.J.S.A. 52:27D-287.9(d)(1)(a). Similarly, courts in Burlington, Camden, Essex, Hudson, and Middlesex Counties declined to dismiss cases in which landlords demanded rent that accrued both during and outside the covered period. SH/R Rep. at 15-16. The Act expressly calls for dismissal in such cases, followed by the reinstatement of claims based solely on arrears that accrued outside the covered period (with filing fees waived). N.J.S.A. 52:27D-287.9(e), (f).⁸

The new landlord-tenant procedures, introduced over the last several months, have likewise flummoxed many trial courts. The Judiciary used the hiatus in eviction proceedings under New Jersey's eviction moratorium and the associated Supreme Court Orders suspending landlord tenant trials, Db11-19, to embark in a "comprehensive reexamination and reimagination of the landlord tenant process," N.J. Courts, Maintaining Our Communities: Rep. of the Judiciary Special Comm. on Landlord Tenant 2, 32 (Apr.

⁸ As the Seton Hall/Rutgers Report notes, this process is critical to ensure that unrepresented tenants, who constitute the overwhelming majority of all tenants in proceedings, know what they must pay to avoid eviction. SH/R Rep. at 14-15; see also Hodges v. Sasil Corp., 189 N.J. 210, 232 (2007) ("[T]he complaint filed against a defaulting tenant should expressly and conspicuously emphasize the amount the tenant is required to remit to avoid eviction."); id. at 233-34 (requiring verified complaints that "expressly state the amount of debt owed").

2021).⁹ Recognizing that “strength in the court processes that resolve eviction actions is critical to the welfare of individual tenants and landlords and our communities,” the interdisciplinary committee that proposed the reforms described the overarching goal: “[t]o support housing stability” by “handl[ing] eviction actions in a manner that is fair to all parties, with appropriate procedural safeguards and reasonable timeliness to resolution.” Id. at 1. When landlord-tenant courts ignore these “procedural safeguards,” as the trial court did here, the reforms cannot achieve the fair outcomes the Judiciary intended.

Again, the trial court in this matter is in the company of many other courts stumbling over the new procedures. The Seton Hall/Rutgers Report, while only a preliminary look at implementation, catalogs cases in which the courts overlooked the new requirements. SH/R Rep. at 21-24, 26-28. For example, courts in many counties have entered judgments for possession or issued warrants of removal without first ensuring that the eviction complaint or landlord affidavit under review met the jurisdictional prerequisites to support such court orders. Id. at 21-24. Similarly, in some cases, the courts have denied litigants the pretrial processes introduced by the new reforms,

⁹ Available at <https://www.njcourts.gov/courts/assets/supreme/reports/2021/landlordtenantcomm.pdf>.

e.g., id. at 24 (describing “Mercer-2”), or allowed technological barriers to block access to justice, e.g., id. at 27 (describing “Hudson-3”).

Such missteps are especially problematic given the overwhelming number of unrepresented litigants in landlord-tenant matters. The Administrative Office of the Courts reports that in 2021, 98.2% of tenants and 13.6% of landlords appeared pro se in residential eviction matters. Reporting and Business Data Analysis, Trial Court Services/Data Division, N.J. Administrative Office of the Courts (Jan. 27, 2022) (on file with the author).¹⁰ In these circumstances, the courts may be the only guardians of the procedural regularities that prevent eviction when the landlord has not established jurisdiction or adequately supported the claims asserted in the complaint.

Because the issues presented here carry life-altering and potentially life-threatening consequences for a large swath of the public, and because the courts are divided on the meaning of the new statute and procedures, this appeal presents issues of

¹⁰ The Administrative Office of the Courts also provided pre-pandemic numbers from 2019, when 98.8% of tenants and 16.5% of landlords had no lawyers. These data encompass both residential and commercial evictions in 2019, although 95% of the cases are residential.

great public importance. Amici urge the Court to reach and clarify these issues for trial courts throughout the State.¹¹

II. This Court Reviews Errors of Law De Novo.

The issues presented in this appeal involve errors of law. Although this Court generally asks whether a trial court abused its discretion in declining to set aside a default judgment under Rule 4:50-1, U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012), the Court owes no "special deference" to a "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); In re Civ. Commitment of W.W., 245 N.J. 438, 448 (2021) ("Our Court reviews issues of statutory interpretation de novo."); Talmadge Vill. LLC v. Wilson, 468 N.J. Super. 514, 517 (App. Div. 2021) ("[W]e review a statute de novo, owing no deference to the trial court's interpretation."). Thus, the Court draws its own conclusions on the legal issues that warrant reversal here. In any case, the result would be the same if the Court reviewed the trial court's decision under the abuse-of-

¹¹ For the same reasons, Amici respectfully request that the Court publish its opinion. New Jersey Court Rule 1:36-2 calls for publication in an array of circumstances, including when the decision "determines a new and important question of law," "is based upon a matter of practice and procedure not theretofore authoritatively determined," or "is of continuing public interest and importance." Amici believe these criteria are met here.

discretion standard, because a decision that results from a material legal error inevitably “rest[s] on an impermissible basis” and therefore amounts to an abuse of discretion. Guillaume, 209 N.J. at 467-68 (citations omitted).

III. The Trial Court Misread the COVID-19 Eviction Prevention Act, Which Requires Dismissal of the Eviction Complaint Against Ms. Banks.

In denying Ms. Banks’s motion to vacate the judgment of possession and dismiss the complaint, Da54, the trial court acted in direct contravention of the COVID-19 Eviction Prevention Act. Amici respectfully ask the Court to reverse on this ground.

On November 4, 2021, Ms. Banks completed a certification entitling her to protection from eviction throughout both the baseline and extended covered periods. Da47-49. In accordance with N.J.S.A. 52:27D-287.9(d)(1), she certified to a household income that placed her family below 80% of area median income in Camden, their county of residence. Da48. She certified further that her inability to pay the rent resulted from COVID-related hardship, ibid.; her household income had dropped when she lost her job during a pandemic shutdown, Cert. of Helen Banks, ¶¶ 20-24 (Nov. 18, 2021) (Da57). Finally, she certified that she had applied for rental assistance. Da48. Her certification of these facts satisfied the requirements for protection during the extended covered period and triggered the same “protections from

evictions as those that are applicable during the [baseline] covered period.” N.J.S.A. 52:27D-287.9(d)(1)(a).

Chief among these protections is the right to have the court dismiss an eviction complaint “alleging nonpayment or habitual late payment of residential rent” during the applicable covered period. N.J.S.A. 52:27D-287.9(e). The complaint EKA Management filed against Ms. Banks is inscrutable. It demands allegedly overdue rent from February and March 2020, although it was filed on February 11, 2020, weeks before the March rent was due. Da1-2. It also makes reference to “excessive late payments,” Da2, but it does not append the notices necessary to assert a claim for habitual late payment of rent.¹² The more pertinent, current demand is appended to the landlord’s request for a warrant of removal, certifying that Ms. Banks owed rent for June, July, partial rent for August, September, October, and “possibly November” 2021, but for no other months. Da10. It is unclear whether Ms. Banks in fact owes rent for each of these months. See Da43-44 (rent receipts for June and August 2021). It is clear, however, that EKA Management cannot evict Ms. Banks for rent owed during these months, even if it can prove the arrears it asserts. N.J.S.A. 52:27D-287.9(d), (e). The words

¹² N.J.S.A. 2A:18-61.1(j) (requiring notice to cease for habitual late payment claim), -61.2(b) (requiring notice to quit one month before filing action); R. 6:3-4(d) (requiring landlords to attach all mandatory notices to the complaint).

of the Act are mandatory: such complaints "shall be dismissed." Id. 52:27D-287.9(e) (emphasis added); Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 325 (2000) ("Under the 'plain meaning' rule of statutory construction, the word 'may' ordinarily is permissive and the word 'shall' generally is mandatory.").

Despite this clear legislative directive, and despite Ms. Banks' express reliance on the Act in seeking vacatur of the judgment for possession and dismissal of the complaint, the trial court denied her motion. Da54. Amici urge this Court to correct this error and clarify that trial courts must dismiss eviction complaints based on rental debt arising during the baseline and/or extended covered period, assuming that the tenant has sworn to the facts that establish eligibility.¹³

IV. The Trial Court Failed to Follow Mandatory Procedures That Are Designed to Protect Due Process.

The trial court disregarded key procedural protections when it entered the default judgment against Ms. Banks and denied her subsequent motion to vacate the judgment and dismiss the complaint. Indeed, the number of procedural mistakes in this case could lead litigants to assume that evictions can and will

¹³ A tenant gains protection from eviction based on rental debt that accumulated during the baseline covered period by virtue of household income alone; the additional certifications pertaining to COVID-related hardship and prior application for rental assistance apply only to the extended covered period. Compare N.J.S.A. 52:27D-287.9(a) with -287.9(d) (1).

go forward regardless of the rules. Yet the Court adopted the recent reforms of the landlord-tenant process in part to dispel this perception. This Court can help ensure that the tens of thousands of landlord-tenant matters currently pending statewide are adjudicated in a fair and consistent manner by reminding the courts that they must follow the new procedures and must ensure that a landlord establishes entitlement to relief before issuing a judgment for possession.

As finally adopted by the Supreme Court, the new landlord-tenant procedures include novel filing requirements, pretrial appearances and conferences with freshly hired "Landlord Tenant Legal Specialists," virtual trials, updated materials for distribution to the parties, new judgment forms, and host of other changes. Notice to the Bar and Pub., Landlord Tenant - Supreme Ct. Action: (1) Admin. Determinations on the Rep. and Recommendations of the Judiciary Special Comm. on Landlord Tenant; (2) Establishment of New Residential Landlord Tenant Process as of Sept. 1, 2021; and (3) Amends. to the Rules of Ct. (July 14, 2021) ("New L-T Procedures");¹⁴ N.J. Supreme Ct. Order (July 14, 2021) ("July 14 Order").¹⁵

¹⁴ Available at <https://www.njcourts.gov/notices/2021/n210715b.pdf?c=kkQ>.

¹⁵ Available at <https://www.njcourts.gov/host/pr/orderestablishnewresidentiallandlordtenant.pdf>.

Before the New L-T Procedures took effect on September 1, 2021, the Court issued a series of interim orders aimed at promoting the resolution of long-pending residential eviction cases. One such order was in effect when the trial court entered the default judgment at issue here. Notice to the Bar and Pub., Landlord Tenant - Interim Process for Mandatory Settlement Confs. (July 1, 2021) ("July 1 Interim Order").¹⁶ Under that order, the trial courts were to begin holding mandatory settlement conferences by videoconference. The order directed how the trial courts should respond to a tenant's failure to appear:

If the tenant does not appear, default will be entered by the clerk. If the landlord is prepared to proceed, the court will hold a proof hearing. If the landlord is not prepared, a proof hearing will be held within 10 days of the mandatory settlement conference date. If the landlord establishes entitlement to relief, the court will enter default judgment.

[Id. ¶ 2.c.]

The trial court failed to follow this directive.

On August 5, 2021, the trial court entered a default judgment against Ms. Banks after she did not appear at the mandatory settlement conference that day. Da6. The July 1 Interim Order, however, conditions the entry of a default judgment on the landlord's having "establishe[d] entitlement to

¹⁶ Available at <https://www.njcourts.gov/notices/2021/n210702k.pdf?c=rGC>.

relief." July 1 Interim Order ¶ 2.c. This requirement was not simply a temporary protection that judges are now free to ignore. The New L-T Procedures likewise require a landlord to "establish[] entitlement to relief" before the court will enter a default judgment for a tenant's failure to appear at trial. July 14 Order ¶ 11.¹⁷ And Rule 6:6-3(b), governing the entry of default judgments in eviction cases, also requires sworn proofs to support the landlord's legal right to possession of the property. See Cnty. Realty Mgmt., Inc. v. Harris, 155 N.J. 212, 296 (1998) ("As a matter of jurisdictional prerequisite, one of the enumerated statutory 'good causes' in the Anti-Eviction Act must be pleaded and established."); James v. Francesco, 61 N.J. 480, 485 (1972) ("A judgment is void if there has been a failure to comply with a requirement which is a condition precedent to the exercise of jurisdiction by the court.").

In this case, EKA Management cannot have established its entitlement to relief based on the complaint it filed. Even a cursory review of the complaint would have revealed any or all of the following issues that precluded judgment:

¹⁷ Notably, under the New L-T Procedures, tenants who do not appear for a case management conference still receive a trial date and have an opportunity to present their case to a judge before entry of a default judgment, further underscoring that equity demands a fair opportunity for an adversarial process and judicial review before tenants are dispossessed of their residence. July 14 Order ¶¶ 7-11.

- EKA Management, a registered limited liability corporation, Da50, filed this eviction action without counsel, Da2. Rules 6:10 and 1:21-1(c) prohibit corporations, among other entities, from filing "any paper in any action in any court of this State except through an attorney authorized to practice in this State."
- The complaint demanded \$1250 in allegedly overdue base rent for each of February and March 2020, Da2, but the complaint was filed on February 11, 2020, weeks before the March rent came due.
- The complaint demanded \$90 in late fees for each of February and March 2020, but the March rent cannot have been late at the time of filing. Moreover, the July 1 Interim Order required the landlord to submit the lease five days before the mandatory settlement conference, July 1 Interim Order ¶ 2, presumably to allow the court to verify the landlord's entitlement to relief in just such circumstances as were presented here. The lease provides for a \$50 fee for "lateness of 1-14 days," increasing by \$20 per week thereafter, with an eviction action to be filed "[i]f rent is not received by the 12 day late [sic]." Da13. If February's rent was in fact unpaid when the complaint was filed on February 11, Ms. Banks might have owed a late fee of \$50, but she cannot have owed a late fee of \$90.¹⁸ Moreover, the complaint was filed a day

¹⁸ The Supreme Court has repeatedly recognized that unrepresented tenants (as Ms. Banks was when the court entered judgment) "cannot be expected to appreciate . . . what constitutes a legally-acceptable method of challenging the reasonableness of items included as late charges and fees." Harris, 155 N.J. at 232 (internal quotations omitted); see also Hodges, 189 N.J. at 228. For this reason, the Court has long required both the landlord and the landlord's counsel, if any, to certify to the following statement: "[T]he charges and fees sought, other than rent, are permitted by applicable federal, state, and local law as well as the lease." Harris, 155 N.J. at 241. EKA Management swore to this statement in its verified complaint. Da2 ("The late charges, attorney fees and other charges are permitted to be charged as rent for purposes of this action by federal, state

before the grace period provided in the lease had elapsed.

For all of these reasons, the trial court erred by entering a default judgment based on this facially defective complaint.

The trial court had an opportunity to reconsider its issuance of a judgment when Ms. Banks filed an Order to Show Cause. Da45-46. Yet, inexplicably, it allowed the default judgment to stand and compounded its errors by failing to make findings of fact or conclusions of law. Da54; but see R. 1:7-4(a) (requiring findings and conclusions). Indeed, this case presents a textbook example of why the July 1 Interim Order and the July 14 Order condition the entry of a default judgment on the court's determination that the landlord has "establishe[d] entitlement to relief." July 1 Interim Order ¶ 2.c.; July 14 Order ¶ 11.

The Legislature and the Supreme Court of New Jersey have consistently recognized the inherent inequality of bargaining power between a landlord and tenant, which has led them to enact measures like the COVID-19 Eviction Prevention Act and the New L-T Procedures to ensure that landlord-tenant proceedings are conducted fairly. See Hodges, 189 N.J. at 234 ("[L]andlords and their attorneys maintain the right to pursue summary dispossession

and local law (including rent control and rent leveling) and by the lease.") As is too often the case, this sworn statement was false.

proceedings, but they are subject to our overarching concern that the process must provide protection to those most in need of it—low-income tenants.”); Harry’s Vill., Inc. v. Egg Harbor Twp., 89 N.J. 576, 584 (1982) (describing remedial efforts by the Legislature and the courts to “protect tenants” and “equalize the position” of landlords and tenants in order to “assure fairness in the landlord-tenant relationship” despite “housing shortage”). In a docket populated by thousands of unrepresented litigants, the courts are often the only backstop against the entry of judgments based on pleadings that are unsupported by the facts and out of compliance with the governing rules. Due process and fairness in landlord-tenant proceedings can be preserved only when the courts fulfill this obligation before entering judgment.

CONCLUSION

For these reasons, Amici respectfully request that the Court publish an opinion reversing the trial court, explaining the operation of the COVID-19 Eviction Prevention Act, and reinforcing the trial courts’ obligation to adhere to the new landlord-tenant procedures.

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