SUPREME COURT OF NEW JERSEY
Docket No. 59,953

ROBERT MAGLIES, *Plaintiff-Respondent,* *v.* ESTATE OF BERTHA GUY, *Defendant,* *and* SHERRI JENNINGS, *Defendant-Petitioner,*	**CIVIL ACTION** **ON CERTIFICATION FROM THE FINAL JUDGEMENT OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **Docket No. A-5721-04T5**

BRIEF AND APPENDIX OF AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY

LEGAL SERVICES OF NEW JERSEY
MELVILLE D. MILLER, JR., PRESIDENT
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ATTORNEYS FOR AMICUS CURIAE

On the Brief

CONNIE PASCALE, ESQ.
MELVILLE D. MILLER, JR., ESQ.

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PRELIMINARY STATEMENT

The critical shortage of affordable housing has left tenants in New Jersey in a very vulnerable position. For low-income renters it has caused, and will continue to cause, severe hardship. Their housing options and mobility are precarious and extremely limited.

In order to provide some measure of protection to tenants, New Jersey has during the past 40 years established, and continuously refined, a strong core of laws designed to address those areas where tenants are most at risk. The Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et seq. (hereafter the "AEA"), is at the heart of this statutory scheme.

The instant case is of critical public importance because it directly addresses the question of *who* is entitled to just-cause eviction protection under the AEA. The issue on appeal is proper construction of the opening words of the Act: "No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court" without good cause. The Appellate Division decided that petitioner – the disabled adult child of a deceased tenant with whom she had lived for years – did not fall within the zone of protection established by those words, thereby leaving her subject to removal through ejectment.

This ruling would curtail dramatically the scope and extent of the AEA. LSNJ asserts that the decision below must be reversed because *petitioner is a tenant in her own right* under the AEA, and therefore entitled to all of the protections the Act provides. The Appellate Division decided that the petitioner was not an "assign, under-tenant or legal representative" of her deceased mother. It clearly erred, however, by declining to determine whether she is a "lessee or tenant". The failure of the lower court to acknowledge petitioner's status as a tenant contradicts

the common understanding of the AEA which has prevailed for decades among tenants and landlords. It is also in conflict with the language, history, purpose and remedial goals of the Act.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies upon and incorporates herein the procedural history and statement of facts set forth in the Petition for Certification filed by defendant-petitioner.

INTRODUCTION: THE DEEPENING HOUSING CRISIS

For decades New Jersey has been confronted by a critical shortage of affordable housing. More than 20 years ago a legislative report deemed the shortage to be of "emergency proportions." Final Report of the Assembly Housing Emergency Action Team (June, 1981). In 1983, this Court summarized the problem:

> Upper and middle income groups may search with increasing difficulty for housing within their means; for low and moderate income people there is nothing to search for. Southern Burlington County N.A.A.C.P v. Mt. Laurel, 92 N.J. 158, 212 (1983).

Courts have frequently taken judicial notice of this crucial problem. *See* Ramapo Brae Condo. v. Bergen Cty, 328 N.J. Super. 561, 571 (App. Div. 2000); Chase Manhattan Bank v. Josephson, 135 N.J. 209, 226 (1994); A.P. Development Corp. v. Band, 113 N.J. 485, 492 (1988); Maticka v. City of Atlantic City, 216 N.J. Super. 434, 448 (App. Div. 1987); Marini v. Ireland, 56 N.J. 130, 146 (1970).

In 1989, in a case dealing with homelessness among people receiving public assistance, the Court was even more succinct: "There is no such thing as cheap housing today." Williams v. Dept. of Human Services, 116 N.J. 102, 110 (1989). During the intervening years, decent

affordable housing has become an ever more scarce, ever more precious commodity. The New Jersey Department of Community Affairs has estimated that the state's current unmet affordable housing need exceeds 895,000 units. State of New Jersey 2005-2009 Consolidated Plan, "Priority Needs Summary Table 2A," (2005).

The housing crisis is particularly acute for tenants. More than 1 million of New Jersey's 3.1 million households are renters.[1] Almost 20% of families in rental housing have incomes below the federal poverty threshold (adjusted for family size), and more than 74% of poor families rent.[2] When the larger low-income community is included, more than 36% of occupied rental units are home to tenant households with annual incomes below $25,000, and almost two-thirds (66.6%) are rented by households with annual incomes below $50,000.[3]

As a result of the overwhelming shortage of affordable housing, New Jersey is the 4th least-affordable state in the country for tenants. According to a recent study, a full time worker would have to earn at least $20.87 an hour to be able to afford a two-bedroom apartment at the then-current Fair Market Rent (FMR) of $1,085.[4] Out of Reach 2005, National Low Income Housing Coalition, http://www.nlihc.org/oor2005/. The estimated average wage for renters, however, is only $14.49 per hour, with many earning far less. *Id.*

As a consequence, half of the renters in our state need to use 30% or more of their income for housing; more than a quarter have housing costs that exceed 50% of their income.

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[1] U.S. Census Bureau, 2005 American Community Survey, table B25106.

[2] U.S. Census Bureau, 2005 American Community Survey, table C17019, calculations by LSNJ.

[3] U.S. Census Bureau, 2005 American Community Survey, table B25118, calculations by LSNJ.

[4] Housing costs that exceed 30% of household income are generally considered unaffordable. The FMR reflects HUD's estimate of the 40th percentile rent paid by recent movers, and is used when determining subsidy payments under the federal Housing Choice Voucher program, the NJ State Rental Assistance Program, and other federal and state subsidized housing programs. *See*, Out of Reach 2005, National Low Income Housing Coalition, http://www.nlihc.org/oor2005/.

"Jersey's Housing crisis: High costs," Jersey Journal, October 4, 2006. Sadly, the situation continues to grow worse: even though home prices have begun to moderate, rents nationally are currently rising. "Across Nation, Housing Costs Rise as Burden," New York Times, October 3, 2006.

The housing crisis has been seriously exacerbated by the nature and location of development in New Jersey. "Enough new housing is not getting built to meet the demand, and the right type of housing is not getting to the right places . . . . Almost two-thirds of New Jersey municipalities added no multi-family or apartment housing (three or more units) in the 1990s . . . Half of all the multi-family housing in the state is concentrated in a handful of municipalities (32), often far away from growing employment centers." *Id.*

Unfortunately, not enough help is available to assist low- and moderate-income households increasingly unable to obtain or retain dwellings they can afford. The New Jersey Department of Community Affairs (DCA) receives three times more applications for affordable housing assistance than there is funding available. *See* N.J. 2005-2009 Consolidated Plan, New Jersey Department of Community Affairs.

As a result, for many low-income households illegal apartments have become the "new" affordable housing, the housing of last resort. "A growing portion of our population is being forced into a burgeoning illegal housing sector, putting at risk their own health and safety and overburdening both the structures and communities in which they are located." Balanced Housing for a Smart Region, CHC and Regional Plan Association, July, 2006; http://www.rpa.org/mint/pepper/orderedlist/downloads/download.php?file=http%3A//www.rpa.org/pdf/Smart_Region_RPA_CHPC_0806.pdf. And homelessness remains a major problem. "Everyone agrees on this point: 'It is the structural problem of too little affordable housing that

gives rise to most homelessness' . . . ." Franklin v. New Jersey Dept. of Human Services, 111 N.J. 1, 6 (1988).

State government has persistently acknowledged the extent and severity of the housing crisis. In 2003 the Commissioner of the New Jersey Department of Community Affairs DCA stated that there is not enough affordable housing in New Jersey, and said that the state must make it a priority to address the affordable housing shortage as quickly as possible. *See,* Commissioner Levin Relcases Statement in Response to N.J. Future Report on Affordable Housing, July 15, 2003 at http://www.state.nj.us/dca/news/2003/pr071503. In July, 2006, Governor Corzine initiated a plan to produce 100,000 affordable housing units over the next 10 years in an attempt to meet part of the need. "100,000 Units of Housing are Planned in New Jersey," New York Times, August 10, 2006. He has emphasized that the housing shortage has become an issue for working class and even middle-income people, while it continues to batter families with low and moderate incomes. *Id. See also* The State of New Jersey Housing Policy and Status Report, Department of Community Affairs, August 10, 2006; http://www.nj.gov/dca/housingpolicy06.doc..

Faced with this bleak reality, hundreds of thousands of tenants in New Jersey have only the Anti-Eviction Act to protect them from unscrupulous landlords or arbitrary eviction into an ever-tightening housing market. The instant case is therefore of vital importance, for the decision of this Court will determine whether thousands of our must vulnerable tenant families and individuals will maintain that protection.

ARGUMENT

IN ORDER TO VINDICATE THE PURPOSE OF THE ANTI-EVICTION ACT, THE WORDS "LESSEE OR TENANT" MUST BE CONSTRUED TO INCLUDE REMAINING HOUSEHOLD MEMBERS WHO ARE LAWFULLY RESIDING IN THE RENTAL DWELLING, WITH THE KNOWLEDGE OF THE LANDLORD, AT THE TIME THE PURPORTED LEASEHOLDER DIES.

As this Court has consistently held, the overall purpose of the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 (hereafter the "AEA") is to protect blameless residential tenants from the potentially devastating effects of a critical shortage of affordable housing by preventing them from being arbitrarily and unfairly evicted. *See* Chase Manhattan Bank v. Josephson, 135 N.J. 209, 226 (1994); Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 614 (1999). It is all too clear from the preceding section that the housing shortage has, if anything, grown worse, especially for low- and moderate-income people, with even middle-income households now feeling its effects. As will be shown below, the Appellate Division's interpretation of the AEA, which implicitly authorizes the ejectment of remaining family members solely because the one who signed the lease has died or left, conflicts with the intent and purpose underlying the statute and must be reversed.

(Although not briefed and argued below, the instant case also raises issues under the anti-discrimination laws. Since the landlord knew petitioner is disabled, he was required to treat her stated intention to remain as a request for a "reasonable accommodation" under both the federal Fair Housing Act , 42 U.S.C.A. 3604 (f)(3)(B), and the regulations enforcing the New Jersey Law Against Discrimination, N.J.A.C. 13:13-3.4(f)(2).)

Allowed to stand, the lower court's ruling will leave many innocent people – disabled or minor children, single parents, the frail elderly, disabled adults - at risk of displacement and homelessness. The overall goal of the AEA – to protect blameless residential tenants from the rigors of eviction – can only be vindicated if its protections are accorded to all lawful members of a tenant household.

Protection for petitioner as a tenant is compelled by a textual analysis of the AEA drawing upon the statute's legislative history. The general rules of statutory interpretation were succinctly set forth in J.M.J. New Jersey Properties, Inc. v. Khuzam, 365 N.J. Super. 325, 333 (App. Div. 2004):

> When a court interprets a legislative enactment, it may "properly consider both language of the [A]ct and the object sought to be attained by the legislation." 2A Sutherland Statutory Construction, § 45:08 (6th ed.2000). Construing a statute, we look to its legislative purpose and give the words "a common-sense meaning within the context of that purpose." In re T.S., 364 N.J. Super. 1, 6, 834 *A*.2d 419 (App. Div.2003). Legislation must be read so as to give effect to all of its provisions and to the legislative will, while "[a]t the same time we should strive to avoid an anomalous, unreasonable, inconceivable or absurd result." Bradley, supra, 132 N.J. Super. at 433, 334 *A*.2d 61. Not the words, but the internal sense of the statute controls. In re T.S., supra, 34 N.J. Super. at 7, 834 *A*.2d 419. Statutes are to be construed by the "common sense of the situation... rather than [with] 'scholastic strictness.'" Bradley, supra, 132 N.J. Super. at 433, 334. *A*.2d 61.

The interpretation also must take into account the remedial purposes and goals of the act, which our courts have repeatedly recognized when construing its provisions. "In establishing tenants' rights to continued occupancy of their rental dwellings the Anti-Eviction Act is remedial legislation deserving of liberal construction." 447 Associates v. Miranda, 115 N.J. 522, 529 (1989). "Consistent with those remedial goals, section h, like the Anti-Eviction Act, must be

liberally construed in favor of the tenant." Miah v. Ahmed, 170 N.J. 511, 525 (2004) (emphasis added). As this Court stated in Franklin Tower One, L.L.C., supra,:

> Although the Anti-Eviction Act "is in derogation of the landlord's common-law rights of ownership . . .landlord rights must to some extent and on general welfare grounds defer to the needs of the tenant population in this state. (157 N.J. at p. 614; citation omitted.)

The foregoing rules and context provide the operative framework within which critical elements of the AEA must be construed. At issue in this case are the statute's opening words, which estahlish the identity of those it protects.

> *No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant* may be removed by the Superior Court from any house, building, mobile home or land in a mobile home part or tenement leased for residential purposes . . . . except upon establishment of one of the following grounds as good cause:
> [N.J.S.A. 2A:18-61.1; emphasis added.]

The legislative findings and intent underlying the statute can be found in the statement to the bill that became the AEA:

> At present, there are no limitations imposed by statute upon the reasons a landlord may utilize to evict a tenant. *As a result, residential tenants frequently have been unfairly and arbitrarily ousted from housing quarters in which they have been comfortable and where they have not caused any problems.* This is a serious matter, particularly now that there is a critical shortage of rental housing space in New Jersey. *This act shall limit the eviction of tenants to reasonable grounds* and provide that suitable notice shall be given to tenants when an action for eviction is instituted by the landlord.
> [Statement attached to L. 1974, c. 49, codified as the AEA, N.J.S.A. 2A:18-61.1; emphasis added.]

The legislative intent is also manifest in the plain language of the Act itself:

> d. *It is in the public interest of the State to maintain for its citizens the broadest protections available under State eviction laws to avoid such displacement and resultant loss of affordable housing, which, due to housing's uniqueness as the most costly and difficult to change necessity of life, causes overcrowding, unsafe and unsanitary conditions, blight, burdens on community services, wasted resources, homelessness, emigration from the State and personal hardship, which is particularly severe for vulnerable seniors, the disabled, the frail, minorities, large families and single parents.*
>
> *e.* Such personal hardship includes, but is not limited to: economic loss, time loss, physical and emotional stress, and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from strain of eviction controversy; relocation search and moving difficulties; anxiety cause by lack of information, uncertainty, and resultant planning difficulty; employment, education, family and social disruption; relocation and empty unit security hazards; relocation to premises of less affordability, capability, accessibility and physical or environmental quality; and relocation adjustment problems, particularly of the blind or other disabled citizens.
> [N.J.S.A. 2A:18-61.1a(d) and (e); emphasis added.]

The court below focused all of its attention on construing the words "assigns, under-tenants or legal representatives" as used in the opening paragraph of the Act. The lower court however, virtually ignored the preceding, and far more important, terms "lessee or tenant." The court should have determined the "common sense meaning" of those words, guided by the clear, forceful and unequivocal language of the legislative statement and the statute itself.

The provisions quoted at length above contain a litany of the potentially devastating consequences of eviction, consequences that affect individuals, families and society, consequences which the legislature clearly wanted to prevent to the greatest extent possible. In order to achieve this end, it took a bold step forward, enacting legislation that "dramatically changed the rights of tenants and landlords" by prohibiting the displacement of residential tenants or lessees simply because their leases had expired. Chase Manhattan Bank, supra, at 219.

The breadth and extent of this change – this alteration in long-established property rights – provides clear evidence of the length to which the legislature intended to go in preventing arbitrary eviction.

Given this context, the words "lessee or tenant" can have only one "common sense" interpretation: they must be construed to include all of the members of a household who lawfully reside in a residential rental dwelling with the knowledge of the landlord. This is the only construction which assures that New Jersey "maintains for its citizens the broadest protections available under State eviction laws." N.J.S.A. 2A:18-61.1a(d). It is the only interpretation that prevents those who "have not caused any problems," including "vulnerable seniors, the disabled, the frail, minorities, large families and single parents," from being "unfairly and arbitrarily" "ousted from housing quarters in which they have been comfortable." *Id.* It is the only "common sense" interpretation of the AEA because it most completely advances the statute's remedial legislative purpose. *See* Cressey v. Campus Chefs. Div. of CVI Service, Inc., 204 N.J. Super. 337, 342-343 (App. Div. 1985). It is also the interpretation most in accord with the word "tenant" as commonly understood by those who are members of tenant families, all of whom describe themselves as "tenants" whether they signed the lease or not. (See also the American Heritage Dictionary or the English Language, Third Edition, which defines a "tenant" as: 1. One that pays rent to use or occupy land, a building, or other property owned by another. 2. *A dweller in a place; an occupant.* (emphasis added).)

It is manifestly not consonant with the *broad* sweep of N.J.S.A. 2A:18-61.1a(d) to construe the term "tenant" so narrowly as to exclude from its protection household members of whom the landlord has knowledge, and for whom the dwelling has become "home," maybe the only home they have ever known. Such a construction is clearly not in the public interest – a

concern prominently noted in that section. Given the salutary purpose and goals of the AEA, to interpret it so as to permit blameless people to be evicted from their home, *solely and simply* because another household member – the one who happened to sign the lease - has died, manifestly defies common sense and yields an "anomalous and unreasonable" result. J.M.J. New Jersey Properties, Inc., supra, 365 N.J. Super. at p. 333.

The dangers of not providing protection under the AEA in the context of very limited affordable housing are well illustrated by the situation in Manach Realty Corp. v. Fountain, (September 28, 1989) (attached at Amicus Appendix 1a), an unpublished Appellate Division decision. In that case the court was asked to consider "whether a long-term resident of an apartment remains within the protection of the AEA after the death of the co-resident whose name appears on the lease as lessee." (Aa1.) The Appellate Division noted that plaintiff, "after expressing appropriate sympathies, demanded possession of the apartment *while also suggesting its availability at an increased rental.*" (Aa2); emphasis added.) *See also,* Gonzalez and Gonzalez v. Cullen and Cullen, (February 10, 1992) (attached at Amicus Appendix 6a), another unpublished decision of the Appellate Division. In that case defendant, a son of the lessee, claimed the right to remain as a tenant after his mother, the ostensible lessee, moved out and the landlord commenced an action to eject him. The defendant son alleged that "the reason for the eviction action was the fact that his family had requested repairs be made to the apartment and *plaintiff's desire to raise the rent 'well above'" the rent he was than paying.* (Aa 8; emphasis added.)

In fact, courts have rarely been asked to address abuses such as those described above. The reason for this dearth of cases is that those who have dealt with the AEA and its ramifications for more than 40 years – landlords, tenants, real estate professionals and advocates

on both sides – have consistently viewed the protections of the AEA as extending to all members of a decedent's household known to be living there at his or her death. This has been the common understanding of the AEA. Widows and children, disabled adults and other remaining family members are understood to have the right to remain as long as they pay the rent and meet all of their other obligations as tenants.

The conclusion reached by the Court below is anomalous and untenable for other reasons as well. For example, thousands of tenant households have no written lease. Under the Appellate Division's ruling, who exactly is the "tenant" in such a situation? Only the father, who dealt with the landlord, but not the spouse or children? Both parents, if they happened to communicate at different times with the owner? The non-resident grandparents if they arranged the tenancy? Or should the whole household, the whole family, be considered the "tenant or lessee." The latter construction makes the most sense in no-written-lease situations – and by logical extension in the written-lease context as well. Only a conclusion that all members of a household are tenants - that it is the "tenant household" which is protected by the AEA – provides the "broadest protection" possible, and avoids injustice, uncertainty, unfairness, and the severe hardships that the Legislature sought to prevent.

This Court's decision in Chase Manhattan Bank v. Josephson, 135 N.J. 209 (1994), is instructive. The Chase court held that certain amended provisions of the AEA provide pre-foreclosure tenants with protection from removal by a foreclosing mortgagee. It found this construction "consistent with the overall purpose of protecting blameless tenants from eviction." *Id.* at p. 226.

> Application of the Act to the tenants of defaulting mortgagors would protect those tenants from having to confront the devastating effects of eviction not through any fault of their own but merely because they had rented property from landlords that

were either unwilling or unable to meet their mortgage obligations. (*Id.*)

Although this decision adversely affected the property rights previously assigned to mortgagees – thereby extending the scope and reach of the AEA well beyond the normal landlord/tenant sphere - the Court found such restrictions to be valid *because the public interest involved in broadly applying the amended Act clearly outweighed the property interests impaired. Id.* at p. 233-234.

So too here. Should this Court reverse the decision below, landlords will retain all of the rights they had before a member of the tenant household died, or entered a nursing home, or simply left. They will retain the right to evict tenants who do not pay their rent, substantially violate lease provisions, or fall within any of the other "good cause" grounds established by the Act. The remaining members of the tenant household will also retain all of their rights and obligations as tenants. The public interest will be served because "blameless tenants" will be shielded from arbitrary eviction into an impossible housing market that may have no place for them.

The remedial objectives evident in the various sections and overall scheme of the AEA reinforce the foregoing analysis. In addition to the express legislative findings and intent articulated at N.J.S.A.2A:18-61.1a (previously quoted at length), the AEA contains numerous substantive and procedural provisions clearly devised to protect tenants from capricious displacement. For example, the grounds for eviction are strictly limited and exclusive. (N.J.S.A. 2A:18-61.1). Mandatory notices must be given in most cases, and must be "punctiliously" complied with. Sacks Realty v. Batch, 248 N.J. Super. 424, 426 (App. Div. 1991). In some instances, involving lease violations or other improper actions, tenants must be provided with a

"notice to cease," and be given a second chance to avoid being evicted. (N.J.S.A. 2A:18-61.2.) The AEA also mandates that, absent good cause, all leases – oral or written – must be renewed. (N.J.S.A.2A:18-61.3(a).)

The legislature has continually acted to safeguard blameless tenants against new or intensified threats as it has become aware of them. For example, the AEA was amended to address the plight of those senior tenants deemed most vulnerable to the displacement and hardship resulting from a sharp increase in condominium conversions. In addition to the already substantial protections accorded to all tenants in conversion situations, eligible seniors who live in converted apartments were granted the right to remain undisturbed as tenants for 40 years. N.J.S.A. 2A:18.61.22 et seq. In a matter somewhat analogous to the present one, protected tenancy status was accorded to a senior citizen under N.J.S.A. 2A:18-61.24(a) and 28(d) even though her daughter was the *named tenant and sole* signatory of the lease. Edgewater Invest. Assoc. v. Borough of Edgewater, 201 N.J. Super. 286, 295 (Ch. Div. 1984), aff'd in part, rev'd in part on other grounds, 201 N.J. Super. 267 (App. Div. 1985), aff'd 103 N.J. 227 (1986).

The sweep and expanse of this statutory scheme strongly reinforce an interpretation of the AEA that provides broad protection to remaining household members in situations such as petitioner's. Construing the words "lessee or tenant" to encompass all known and lawful members of a tenant household is in accord with and compelled by the AEA's remedial objectives. It is the construction most consistent with a statutory scheme designed to prevent eviction of the blameless. It is the construction that resolves all doubts in the tenant's favor by removing all doubt as to whom the Act protects. *See,* Jijon v. Custodio, 251 N.J. Super. 370, 372 (L.Div. 1991), quoted with approval in Community Realty Management v. Harris, 155 N.J. 212, 227 (1998). Finally, it is the construction most reflective of New Jersey's strong public

policy of protecting tenants – especially lower-income tenants - from unjustified eviction. Franklin Tower One, supra, 157 N.J. at p. 614. *See also,* Community Realty Management v. Harris, 155 N.J. 212, 239 (1998).

CONCLUSION

For the foregoing reasons, *amicus curiae* Legal Services of New Jersey submits that this Court must reverse the decision of the lower court and construe the words "lessee or tenant," as used in the first paragraph of the Anti-Eviction Act, N.J.S.A. 2A:18-61.1, to include remaining members of the tenant household lawfully residing in a rental dwelling, with the knowledge of the landlord, at the time the purported leaseholder dies of leaves.

Respectfully submitted,

Date: 11/28/06

LEGAL SERVICES OF NEW JERSEY

By: _____
Melville D. Miller, Jr., President

_____
Connie M. Pascale, Esq.

CONTENTS OF AMICUS APPENDIX

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2516-88T1

MANACH REALTY CORPORATION,
a corporation,

Plaintiff-Appellant,

v.

FRED FOUNTAIN,

Defendant-Respondent.

Submitted September 19, 1989 - Decided SEP 28 1989

Before Judges Antell and Bilder.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County.

Richard D. Forest, attorney for appellant.

Harry J. Katz, Attorney for Bergen County Mental Health Law Project, attorney for respondent

PER CURIAM

On this appeal we are asked to consider whether a long-time resident of an apartment remains within the protection of the Anti-Eviction Act, N.J.S.A. 2A:18-61.1, after the death of the co-resident whose name appears in the lease as lessee.

The facts are simple and uncontroverted. Plaintiff is the owner of an apartment building in Hackensack. From

December 1, 1966 until her death in January 1988, Ruth Fountain resided in an apartment in plaintiff's building under annual written leases. In the beginning her two children lived with her. At some point, a daughter married and moved out. Throughout, her psychiatrically disabled son, defendant Fred Fountain, lived with her in that apartment. His residential right as an unmarried child was specifically recognized in a clause of the latest lease (for the period December 1, 1987 to November 30, 1988), which provided:

> The Tenant may use the apartment only as a private residence of the people whose names appear at the beginning of the Lease and their unmarried children.

Ruth Fountain was the person whose name appeared as Tenant at the beginning of the Lease and who signed it as such. The lease is devoid of any reference to the contingency of a tenant's death.

Another clause provided:

> The apartment may not be occupied by anyone other than the Tenant whose name or names appear on the lease and their unmarried children. The Tenant may not sublet the apartment nor may Tenant assign this lease.

Upon Mrs. Fountain's death, plaintiff, in a letter to her daughter, after expressing appropriate sympathies, demanded possession of the apartment while also suggesting its availability at an increased rental. Two days later in another letter plaintiff demanded possession by March 31, 1988. Attempts to pay the existing rental on behalf of (2a)

defendant were rebuffed. On April 20, 1988 an action for possession was commenced in the Law Division.

Following a hearing at which the facts were put before the court by certifications and stipulations without testimony, the trial judge dismissed the complaint. It is from the resulting judgment that plaintiff appeals.

In examining the instant problem there appear to be two questions: (1) whether a prolonged continuous residential occupancy makes an individual a tenant within the meaning of the Anti-Eviction Act; and (2) whether defendant's status as the personal representative of his mother gives him occupancy rights such as would bring him within the protection of that Act. It is the latter status that formed the basis of the trial judge's ruling that his occupancy could not be terminated. It would seem the two are really intermixed.

The Anti-Eviction Act in relevant part provides:

> No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the county district court or the Superior Court from any house, building ... or tenement leased for residential purposes, ... except upon establishment of one of the following grounds as good cause: ... . (N.J.S.A. 2A:18-61.1)

Initially we must recognize that this Act is in derogation of the common law. It established new rules which made many of the traditional landlord and tenant theorems obsolete. Chief among these is the present rule that expiration of the term reserved in a lease is no longer a cause for removal of a residential tenant. By implication the Act grants to

tenants a right to renew. See generally 2 Powell, Law of Real Property, ¶234 (1988) at 168-81.

We must also recognize the problem the Act was intended to address — the critical shortage of residential housing — and the evil it sought to eliminate — the dispossession of occupants who were paying their rent and generally complying with the obligation of good tenants. See generally discussion in Guttenberg S. & L. Ass'n v. Rivera, 85 N.J. 617, 623-626 (1981); also Inganamort v. Bor. of Fort Lee, 62 N.J. 521, 527 (1973); Marini v. Ireland, 56 N.J. 130, 146 (1970). The question before us is one of legislative intent which cannot be solved by strict definition of technical terms. See City of Newark v. County of Essex, 160 N.J. Super. 105, 113 (App. Div. 1978), aff'd 80 N.J. 143 (1979). We must construe the act in a common-sense way which advances the legislative purpose. Cressey v. Campus Chefs, Div. of CVI Service, Inc. 204 N.J. Super. 337, 342-343 (App. Div. 1985).

Defendant, in the instant case, has resided in plaintiff's apartment for over 22 years. He has, in Justice Pashman's words, been a non-offending tenant. See Guttenberg S. & L. Ass'n v. Rivera, supra at 637 (dissent). His occupancy was provided for in plaintiff's lease. And if he is his mother's legal representative (a fact unclear in the record but apparently assumed, at least arguendo, by both parties and the trial judge), his continued occupancy is a common law right. See State v. Pierce 175 N.J. Super. 149,

152 (Law Div. 1980) and cases cited therein; also Gross v. Peskin, 101 N.J. Super. 468, 469 (App. Div. 1968).

Moreover, an examination of the plain language of the statute shows an intention by the Legislature to afford protection to a broader group than merely the individual who signed the lease -- the "tenant" in a technical sense. The language of the Act provides for assigns, under-tenants and legal representatives. It can be fairly reasoned that an individual such as defendant who occupies a residential apartment for a prolonged period of time and whose occupancy was contemplated under the terms of lease is within the group protected by the Act. Borrowing again from Justice Pashman:

> The Anti-Eviction Act was broad and salutary social legislation intended to reduce the fear and insecurity of tenants that they might, for no fault of their own, suddenly face the loss of their homes. A non-offending tenant should not, in these times of acute shortage of low- and moderate-income housing, face such a loss merely because [the individual who signed the lease has died]. [Guttenberg, supra at 637 (dissent).]

Affirmed.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4317-90T3

MIGUEL GONZALEZ and
ALEJANDRINA GONZALEZ,

Plaintiffs-Respondents,

v.

JOHN CULLEN,

Defendant,

and

TIMOTHY CULLEN,

Defendant-Appellant.

Submitted January 22, 1992 - Decided FEB 10 1992

Before Judges Havey and Conley.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County.

Hudson County Legal Services Corporation, attorneys, for appellant (Kevin B. Kelly, of counsel and on the brief).

Anthony X. Arturi, attorney for respondents (Ralph L. Pineda, of counsel and on the brief).

PER CURIAM.

Defendant appeals summary judgment granted in an ejectment action brought pursuant to N.J.S.A. 2A:35-1. Defendant contends he is a tenant of plaintiffs landlords and, as such, entitled to the protection of the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et. seq. We think there are material issues of facts in dispute

bearing upon the relationship between plaintiffs and defendant which would be dispositive of plaintiffs' claim they can proceed by way of ejectment and defendant's claim of protection under the Anti-Eviction Act. We, thus, conclude the grant of summary judgment was mistaken.

Plaintiffs own a multiple unit apartment building in West New York which they bought in August 1979. In their verified complaint and in their certification filed in support of their motion for summary judgment they allege that at the time they purchased the building in 1979, Gloria Cullen rented Apartment #4 and that she lived there with her two daughters. She also has two sons of which defendant is one; but plaintiffs claim the sons did not reside in the apartment at that time. Mrs. Cullen's daughters eventually moved out and in August 1990, Mrs. Cullen also moved, terminating her tenancy with plaintiff. Plaintiffs allege that just a few weeks prior to Gloria's moving out, her two sons began living with her and remained in the apartment after she left. No authorization, plaintiffs assert, was given by them for the sons' tenancy, neither were any rental monies paid by or accepted from either of the sons. In August 1990 plaintiffs attempted to have the sons leave the apartment by sending a letter requesting that they vacate. In September one of the sons left; defendant did not. Thus the complaint for ejectment.

The answer to the verified complaint essentially denied the claims and raised the defense of N.J.S.A. 2A:18-61.1 et. seq. In

response to plaintiffs' motion for summary judgment, defendant filed a cross-motion for summary judgment with a supporting certification. He alleges in his certification that, contrary to plaintiffs' claims, he had lived with his parents and siblings in the apartment since 1971 when he was seven or eight years old. He claims he lived in the apartment continuously since that time and was living there at the time plaintiffs purchased the building. He was then 16 and attending Memorial High School in West New York. When his parents moved to subsidized housing in August 1990, he and his brother remained. His brother shortly moved out, but he remained. He further asserts in his certification as to the landlord/tenant relationship between his family and the landlord, that not only was there never a signed lease identifying who the tenants were or who could reside in the leased premises, but that over the years the landlords always recognized the entire family as tenants. Finally, he claims that the reason for the ejection action was the fact his family had requested repairs be made to the apartment and plaintiffs' desire to raise the rent "well above" the $330 monthly rent he was then paying.

The motion was heard on the pleadings, certifications and oral arguments on March 22, 1991. The trial judge granted plaintiffs' motion for summary judgment. In doing so, the following portion of the transcript reflects the basis for his decision.

> MR. KELLY [defendant's attorney]: ...and I would argue here that by vacating the premises, the mother vacating

the premises does not terminate the month to month tenancy, and it passes to her legal representatives.

THE COURT: No, because she's still alive. There's not a property right that her son inherited. She left. She is living someplace else now. Her tenancy is terminated. As I see it, she had no right to assign her tenancy to anybody else.

I've given you all kinds of hypothetical situations during the course of our discussion. I think the housing shortage that exists is recognized by the Courts regularly. What we have here is we have the Cullen family claiming the right to have two apartments. Mrs. Cullen decided to go someplace else. She went someplace else. Her tenancy is terminated. As far I'm concerned, she doesn't have the right to assign it to anybody.

MR. KELLY: Your Honor, can I just ask, does that -- are you saying that that's the case whether he's lived there since August of 1990 or whether he's lived there continuously 22 years?

THE COURT: Yes. She has moved out. That's the end of her tenancy. And she has to take everybody with her. She has no right to leave anybody behind.

MR. KELLY: All right, but there is no lease in this case that says who are the named tenants, who aren't. They're maintaining that the son didn't move in until August of 1990.

THE COURT: I don't care. I'm accepting for the purpose of summary judgment your position that he lived there for years. It's not his apartment. It's his mother's apartment. She has moved out. End of tenancy. I don't think she can create her rights in her son that she didn't have herself.

And again, the waiting list situation that I mentioned before.

MR. KELLY: Except this is not public housing.

THE COURT: Well, many private homes, apartment houses have waiting lists. There's one in Bayonne called Boulevard Gardens. A garden apartment, nice development, long waiting list. It's private property. There are other apartment houses that have waiting lists. The condos now, the developers are waiting for people to move in, but in most regular apartments,

prospective tenants are waiting for somebody to move out so that they can move in. There's a housing shortage.

I don't see a tenancy relationship here. I'm going to -- summary judgment is for possession... .

We disagree.

Designed to protect residential tenants against unfair and arbitrary evictions and thus remedial in nature and "deserving of liberal construction", 447 Associates v. Miranda, 115 N.J. 522, 528, 529 (1989), the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et. seq., extends its protection to not only lessees and tenants, but as well to the "assigns, under-tenants or legal representatives of such lessee or tenant." N.J.S.A. 2A:18-61.1. The inclusion of "assigns, under-tenants and legal representatives" evinces a legislative intent to afford protection to a category of residents broader than merely the person who signs the lease or, if no written lease exists, who enters into an oral lease with the landlord. Thus, in State v. Pierce, 175 N.J. Super. 149, 152 (Law Div. 1980), a defendant who had lived with his father in premises the father had leased on a month-to-month basis, it was held the death of the father did not terminate the tenancy. See also Gross v. Peskin, 101 N.J. Super. 468, 469 (App. Div. 1968). Similarly, in Edgewater Invest. Assoc. v. Borough of Edgewater, 201 N.J. Super. 286, 295 (Ch. Div. 1984), aff'd in part, rev'd in part on other grounds 201 N.J. Super. 267 (App. Div. 1985), aff'd 103 N.J. 227 (1986), the protected tenancy status of a senior citizen under the Anti-Eviction Act, N.J.S.A. 2A:18-61.24(a) and 28(d), was found applicable notwithstanding the fact the daughter

of the senior citizen was the named tenant on the lease. But see Maltese v. Luciano, 3 N.J. 130, 138-39 (1949) (sister Elsie who had resided in premises rented by sister Rose deemed to have no tenancy status where she claimed Rose had no tenancy rights, but that Elsie's occupancy was on behalf of father whose separate claim to a rental agreement was rejected).

Generally, whether a landlord and tenant relationship exists is dependent upon the intention of the parties and may be determined from the language of any agreement, its circumstances and the course of dealings thereunder. Thiokol Chem. Corp. v. Morris Cty. Bd. of Tax., 41 N.J. 405, 417 (1964). See Young v. Savinon, 201 N.J. Super. 1, 8-10 (App. Div. 1985) (landlord by actions binds himself and successor landlord to continue possession of pets as an implied contract, transcending terms of current lease). Moreover, the relationship of landlord and tenant may be implied from occupancy of premises under either agreement to pay rent or accompanied by the payment of rent. Housing Auth. of East Orange v. Leff, 125 N.J. Super. 425, 434-35 (Law Div. 1973). See 22 N.J. Practice, Landlord and Tenant Law (Mark and Korona), §42, p. 35 (1990).

Here the facts as asserted in defendant's certification would suggest the tenancy relationship arose upon the family's occupancy of the apartment, not just the occupancy of the mother. It may be that the particular nature, circumstances of or course of dealing during the month-to-month tenancy between plaintiffs and their predecessors and defendant's family might lead to a

(11a)

conclusion the tenancy was coincidental to defendant's mother's occupancy which terminated upon her vacating the premises. Moreover, it may be true, as plaintiffs' assert, that defendant moved in only two weeks before his mother moved out. If that were so, we do not think the landlord-tenant relationship would extend to defendant. These issues, however, cannot be resolved by way of summary judgment. E.g. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 84 (1954).

Reversed and remanded for further proceedings.