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New Jersey Judiciary
Superior Court – Appellate Division
Application for Permission to File Emergent Motion

To: Appellate Division Emergent Judge

Date: 6/29/2023

From: Michael Kimm, Esq.

Telephone: (201) 569-2880 x.

The following questions are to be answered by the attorney or self-represented litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **Completion of This Application Does Not in Any Sense Constitute the Filing of an Appeal or Motion.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed unless directed by the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. See njcourts.com for notice of appeal and Court Rules. You must also pay the applicable filing fee (\$50 for a motion for leave to appeal; \$250 for a notice of appeal), direct the charging of an attorney's account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

Case Name: NICKAL, LLC V KEITH CARDINALI ET AL

Appellate Division Docket Number: (if available): A-3218-22

Trial Court or Agency Docket Number: HUD-DC-5497-22

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)

Hudson County Superior Court

2. a) What is your name, address, including any e-mail address, phone number and fax number?

Michael S. Kimm, Esq. KIMM LAW FIRM
333 Sylvan Avenue, Suite 106, Englewood Cliffs, NJ 07632
Tel 201-569-2880; Fax 201-569-2881; Email msk@kimmlaw.com

- b) Who do you represent? (i.e., client, yourself)

Appellants/Defendants/Tenants

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

Respondent/Plaintiff is represented by
ALAIN MULKAY, Esq.
MULKAY & RENDO
700 79TH ST., NORTH BERGEN NJ 07047
Tel 201-868-6881; email amulkay@mulkayrendo.com

4. What is the nature of the emergency?

Appellants have been removed from their residence/apartment as trespassers even though they have been co-tenants for 5 years.

5. What is the irreparable harm, and when do you expect this harm to occur?

Wrongful removal of Appellants from their dwelling of 5 years, resulting in homelessness.

6. What relief do you seek?

Restore of tenancy, suspension of removal pending expedited appeal.

7. Do you have a written order or judgment entered by the trial judge or a written agency decision?

You must attach a copy of the order, judgment or decision.

Yes; 5/24/23 and 6/9/23; also denial of stay Order 6/28/23.

8. a) Have you filed for a stay before the trial court or agency?

Yes at the conclusion of trial decision; orally denied by judge; also denied by order 6/28/23.

b) If so, do you have a court order or agency decision denying or granting same?

Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision or other evidence of the ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)

Denial of stay pending review is in the transcript; transcript is pending; also order 6/28/23.

9. If you did not immediately seek a stay from the trial court or agency, or if you did not immediately file this application with the Appellate Division after the trial court or agency denied your stay application, explain the reasons for the delay.

NA

10. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?
If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought. (Court Rules 2:2-4 and 2:5-6)

Final order was entered 5/24/23.

11. If the order or agency decision is interlocutory (i.e., not final), are you filing a motion for leave to appeal?

NA

12. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

NA

13. If the order, judgment or agency decision is final, have you filed a notice of appeal?

Yes; notice of appeal filed 6/25/23.

14. What is the essence of the order, judgment or agency decision?

Order 5/24/23 granted possession to landlord and directed removal of appellants as trespassers, even though they have resided in the dwelling for 5 years.

Order 6/9/23 issued writ of possession.

Order 6/28/23 denied stay/restoration of tenancy pending review.

15. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

Yes; it was previously before the Appellate Division resulted in summary reversal.
See Kimm Cert.

b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part of the Appellate Division?

No; we are prepared to proceed with expedited appeal.

16. a) Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?

Yes.

b) If so, specify method of service.

Email/ecourts.

17. a) Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?
Yes 5/24/23.

b) If so, when will the transcript(s) be available?

Upon the Court's approval of indigency application for filing fees.

18. Please give a brief summary of the facts of your case.

Landlord filed a verified complaint dated July 2022, stating that they had discovered trespassers for the first time on Jul 1, 2022. Verified petition sought removal. At the first trial, landlord testified that she had never seen or known about Appellants, family of dad and 2 minor children. Two point blank questions by the first judge resulted in landlord's answers that she had never known about Appellants before July 1, 2022.

At the second trial, Appellants proved that the landlord had always known that the family of 3 had been residing with the original lessee, mother and grandmother of the family of 3. The landlord used perjurious testimony and certifications to effectuate a removal so that she could provide the dwelling to her own nephew.

The use of the justice system by false testimony should not be condoned, but has been condoned by two separate judges. The first trial was reversed on procedural grounds, due to the first judge's failure to provide new defense counsel with opportunity to prepare. The second trial was a miscarriage of justice because the landlord's perjurious testimony was disregarded even though the false facts were the basis of removal of alleged "trespassers." Reversal is warranted.

On 6/28/23, Appellate Division staff directed plaintiff to seek restoration of tenancy. Appellant Keith Cardinali went to Special Civil Part in person and sought relief; same afternoon, Judge Turula entered Order denying relief.

19. What legal citation (i.e., statute, regulation, court case) is most important for the proposition that you are likely to prevail on appeal?

Maglies v. Estate of Guy, 193 N.J. 108, 936 A.2d 414 (2007)

Ctr. Ave. Realty, Inc. v. Smith, 264 N.J. Super. 344, 624 A.2d 996 (App. Div. 1993)

Golden Peak, LLC v. Melgar, No. A-3004-07T2, 2009 N.J. Super. Unpub. LEXIS 2395 (App. Div. 2009)

Harden v. Pritzert, 178 N.J. Super. 237, 240 (App.Div.1981).

These cases hold that tenancies are effectively perpetual; eviction of tenants must be sought under 17 grounds under Anti-Eviction Act N.J.S.A. 2A:18-61.3(a). Family members of a lessee/tenant must be treated as tenant or under-tenant and not as trespassers. Special Civil Part wrongly treated Appellants as "trespassers" instead of treating Appellants as "tenants." Because the Special Civil Part failed to follow the law, legal errors warrant reversal.

By signing below, I certify that this application is made in good faith, and not for any improper purpose such as to harass or to cause unnecessary delay or expense. I further certify that the factual statements contained in this application are true to the best of my knowledge.

Date: 6/29/2023

/s/ Michael S. Kimm, Esq.

Print/Type Name of Attorney or Self-Represented Litigant

Signature of Attorney or Self-Represented Litigant

NICKAL, LLC V KEITH CARDINALI ET AL

**Superior Court of New Jersey
Appellate Division**

Appellate Division

Docket Number

(if available)

A-3218-22

Trial Court or

Agency Below: _____

Trial Court or

Agency Docket

Number: _____

HUD-DC-5497-22

Case Name

**Disposition on Application for
Permission to File
Emergent Motion - Denied**

Do Not Fill in This Section – For Court Use Only

The application of _____ for leave to file an emergent motion on short notice is **Denied** for the following reasons:

- The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- The threatened harm or event is not scheduled to occur prior to the time in which a motion could be filed in the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- The application concerns an order entered during trial or on the eve of trial as to which there is no prima facie showing that the proposed motion would satisfy the standards for granting leave to appeal.
- The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant

seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.

Other reasons:

, J.A.D.

Date

NICKAL, LLC V KEITH CARDINALI ET AL

_____ Case Name

**Superior Court of New Jersey
Appellate Division**

Appellate Division

Docket Number

(if available) A-3218-22

Trial Court or

Agency Below: _____

Trial Court or

Agency Docket

Number: HUD-DC-5497-22

**Disposition on Application for
Permission to File
Emergent Motion - Granted**

Do Not Fill in This Section – For Court Use Only

The application of _____ for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. By no later than _____, one copy of the motion for emergent relief must be delivered to the chambers of Judges _____ and _____, and to all counsel/self-represented litigants. Copies must also be sent to the trial judge or agency whose decision is being appealed. If this is a newly-filed appeal, one copy each of the notice of appeal or motion for leave to appeal, and any application for a fee waiver, must also be delivered to the judges and all counsel/self-represented parties.

If the applicant is a self-represented litigant, the applicant must file the original and one copy of the motion for emergent relief with the Clerk of the Appellate Division in Trenton, by no later than the day after those papers are due to the judges' chambers, _____. If the matter is not yet pending in the Appellate Division, the applicant must, on that same schedule, file with the Clerk's Office, attention Emergent Applications Unit, the original and one copy of a notice of appeal or motion for leave to appeal, together with the required fees or an application for a fee waiver. Failure to overnight mail or hand deliver papers to the Clerk's Office or to submit the required fees may result in dismissal of the appeal and vacating of any stays granted.

If the applicant is a licensed, practicing New Jersey attorney, the emergent motion papers shall be electronically filed with the Clerk of the Appellate Division

through the eCourts Appellate e-filing system. If the matter is not yet pending in the Appellate Division, the applicant must also electronically file a notice of appeal or motion for leave to appeal through the eCourts Appellate system along with the emergent motion. Failure to electronically file papers through the eCourts Appellate e-filing system may result in dismissal of the appeal and vacating of any stays granted.

- B. Any opposition must be served and filed/e-filed by no later than _____.
- C. No reply submissions will be allowed.
- D. A copy of all papers shall be emailed to **AppellateJudge.Mailbox@njcourts.gov** That email will suffice as service on the Judges' Chambers.
- E. Pending the court's disposition of the emergent motion, a temporary stay/other relief pursuant to Rule 2:9-8 is:
 - Denied**
 - Granted**

F. Other terms:

_____, J.A.D.

Date

1/CMCardinali@gmail.com
CERTIFICATION FOR RELIEF:

DOCKET # LT DC-5497-22

INSTRUCTIONS TO TENANTS: COMPLETE ALL 7 QUESTIONS TRUTHFULLY AND TO THE BEST OF YOUR ABILITY. THIS PAGE WILL BE ATTACHED TO AN ORDER TO SHOW CAUSE OR FOR ORDERLY REMOVAL. YOU MAY HAVE TO MAKE A DEPOSIT AS STATED IN PARAGRAPH 3 OF THE ORDER AND THAT MONEY ON DEPOSIT MAY BE PAID TO THE LANDLORD EVEN IF YOU ARE EVICTED. YOU MUST SERVE A COPY OF THE ORDER ON YOUR LANDLORD OR PROPERTY MANAGER, IMMEDIATELY AFTER THE JUDGE SIGNS THE ORDER. FOR LEGAL HELP, YOU MAY CONTACT AN ATTORNEY OR LEGAL SERVICES. THE CLERK'S OFFICE WILL GIVE YOU ADDRESSES AND PHONE NUMBERS.

CERTIFICATION OF TENANT(Print your name) Keith Cardinali ^{cell} 9298557512
8325 Kennedy Blvd, North Bergen, NJ, 07047
(Print your address and phone/cell/beeper number)

- 1) Judgement for possession has been entered against me/us in this action: YES NO
- 2) A Warrant for Removal has been issued and I may be locked out after: (date) 6/27/23
- 3) At the hearing of this action, I did did not appear (if you did not appear, state why):

- 4) My family residing with me consist of (how many in your family) 2 minors
- 5) The reason that judgement should not be entered or that the eviction should be stopped is because (explain why): Notice of Appeal. ~~we~~ we have no place to live during the appeal process.

- 6) My monthly/weekly rent is \$ _____, and I owe \$ _____. I have \$ _____ to deposit with the court today.
- 7) I hereby certify that before coming to Court today, I notified the landlord (or landlord's lawyer) that I was going to make this application. (Explain how you notified the landlord or lawyer and what they said): In Person at lockout on 6/27/23

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the forgoing statements made by me are willfully false, I am subject to punishment.

Date 6/27/23

JC Cardinali
Your Signature

RECEIVED #71
SPECIAL CIVIL PART
JUN 28 2023

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON

FILED

JUN 28, 2023

JOSEPH A. TURULA, P.J. Cv.

PREPARED BY THE COURT FOR THE CONVENIENCE OF THE PARTIES

PLAINTIFF:

NICKAL LLC,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION; SPECIAL CIVIL PART
HUDSON COUNTY

vs.

DEFENDANT/S:

KEITH CARDINALI; SOPHIA CARDINALI,
SEBASTIAN CARDINALI, JANE AND JOHN
DOES 1-5; JANE AND JOHN DOES 6-10

DOCKET # HUD-DC-5497-22

CIVIL ACTION

ORDER TO SHOW CAUSE

This matter having come before the court on the application of Defendant/~~tenant~~ for relief following the entry of a [~~default~~] [~~default judgment~~] [judgment following trial], and the court having considered the application for relief, and [~~on notice to Plaintiff/Landlord~~] (or Plaintiff's attorney of record) [~~Plaintiff or Plaintiff's attorney having appeared~~] and the court having considered any objection thereto, and finding good cause for this Order, it is on this

28th day of JUNE, 2023

~~Ordered that: 1. On 2022 at _____ a.m. p.m. Plaintiff show cause before this court why the [default] [judgment] previously entered in this matter should not be vacated, or why other appropriate relief should not be granted.~~

~~2. All further proceedings in this action are hereby immediately stayed, pending the further Order of this court, and, until such further Order, the landlord and the court's officers shall make reasonable efforts to keep or restore defendants in possession of the subject premises.~~

~~3. Defendant/s-tenant/s shall deposit \$ _____ no later than _____ with the clerk of this court and/or bring to court the balance of all rent due on the date shown in paragraph #1. If the tenant does not have the full amount of rent finally determined to be due to the Plaintiff, this Order may be vacated, the judgment and warrant reinstated, and the lockout (eviction) may be completed two business days later, unless otherwise agreed by the Plaintiff.~~

~~4. This Order shall not be effective until Defendant has served a copy of this Order on the Plaintiff, Plaintiff's attorney, or Plaintiff's agent (property manager, superintendent, or the like) personally, or by "Fax".~~

~~5. Plaintiff may apply to the court to modify or dissolve this Order, or to accelerate the return date, by giving written notice of the application therefor to [Defendant] [Defendant's attorney] personally or by "Fax", at least two business days before the date for the acceleration hereof.~~

6. [Other]

This application is DENIED for the reasons stated on the record on June 28, 2023 at 4:20 PM.


JOSEPH A. TURULA, P.J.Cv.

FILED

JUN 28, 2023

JOSEPH A. TURULA, P.J. Cv.

NOTICE: This is a public document. Do not enter personal identifying information on it, such as your full Social Security number, driver's license number, insurance policy number, vehicle plate number or active financial account or credit card number. This document as submitted will be available to the public upon request.

Name Keith Cardinali
Address 8325 Kennedy Blvd - Apt 3AN, B.N.J.
Telephone 929-855-7512
E-Mail KMCARDINALI@GMAIL.COM

Superior Court of New Jersey
Hudson County (if applicable)
Docket Number: DC 5497-22

Nickal, LLC
Plaintiff(s)/Appellant(s)

Order Waiving Filing Fees

v.
Keith Cardinali, Sophia Cardinali
Sebastian Cardinali
Defendant(s)/Respondent(s)

This matter having been brought before the court on application of
(plaintiff(s)/ appellant(s)/ defendant(s)/ respondent(s)) for an **Order** waiving filing fees pursuant to *Rule 1:13-2* or *Rule 2:7-1*, and the Court having considered the moving party's financial information, the matter and for good cause appearing:

(Do not write below this line, For Court Use Only)

It is on this 28th day of JUNE, 2023, **ORDERED** that the application for a fee waiver is

Granted **Denied without prejudice - for the reasons stated on the record on June 28, 2023 at 4:20 PM**

The denial was based on the fact that the information necessary for the court to make a decision was redacted.


JOSEPH A. TURULA, P.J. Cv.