

To: New Jersey Law Review Commission
From: Michael Tadros
Re: *Cashin V. Bello* – Removal of Residential Tenants as linked with N.J.S. 2A:18-61.1
Date: February 03, 2016

M E M O R A N D U M

Executive Summary

Staff requests the Commission’s approval to begin research and analysis with a view towards potentially clarifying the definition of the word “building” in relation with the “Anti-Eviction Act” in N.J.S 2A:18-61(l) (3).

Introduction

For someone who rents an apartment in New Jersey, the fear of eviction may lurk behind every door. In New Jersey, which is said to have the strongest tenant protection laws in the country, there is one eviction for every six renting households.^[1] N.J.S 2A:18-61.1, part of the “Anti-Eviction Act”, is titled “Removal of Residential Tenants”; however it is to be “liberally construed to protect the rights of tenants, with all doubts resolved in favor of the tenant.”^[2] In *Cashin V. Bello*, the New Jersey Supreme Court declined to rule in favor of the tenant,^[3] based on its interpretation of the word “building” in the statute.

N.J.S. 2A:18-61.1 and N.J.S 2A:18-61.1(l)(3)

The language of N.J.S 2A:18-61.1, is as follows:

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 park or tenement leased for residential purposes, other than...

* * *

(l) (3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.

¹ Dewan, S. (2014, August 29). *Renters Suffer as Evictions Surge in U.S.* Retrieved January 27, 2016

² *Cashin V. Bello*, 223 N.J.328, at 336 (2015)

³ *Id.* at 331

N.J.S. 2A:18-61.1, is part of New Jersey’s “Anti-Eviction Act,” which is to protect a tenant “for as long as the tenant wishes to remain, provided [the tenant] pays rent...and provided there is no statutory cause for eviction under [the Act]”.^{[4][5]} This Act was intended to protect residential tenants from being evicted. This is illustrated by the Statement contained in Assembly Bill 1586, L.1974, c.49, s 2. The statement reads, in pertinent part:

“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 act shall limit the eviction of tenants by landlords to reasonable grounds and provide that suitable notice shall be given to tenants when an action is instituted by the landlord.” ...^[6]

Background

Plaintiff, Ann Mae Cashin and her husband purchased a plot of land in Hoboken in 1966. Two separate structures are located on that property: a six unit apartment building with the mailing address 627 Washington Street, and a two-story single family home built in a converted garage with the mailing address being 626 Court Street. Mrs. Cashin started renting out these apartments, when she moved out in 1971. They rented five of the six apartments in the building and rented the converted garage as well. The Defendant, Marisela Bello, began renting in the Court Street property, (the converted garage) in 1973.^[7]

Plaintiff tried to regain possession, from Mrs. Bello of the Court Street property on several occasions:

- In 1980, Mrs. Cashin verbally requested the apartment from Mrs. Bello. Mrs. Bello refused to leave.
- In 2009, Mrs. Cashin sent Mrs. Bello a notice to quit, giving her sixty days to vacate the house. In response, Mrs. Bello’s attorney sent a letter indicating that she refused to leave. Mrs. Cashin took no further action to evict Mrs. Bello at this time.
- In 2012, Mrs. Cashin, thru her lawyer, sent another letter to Mrs. Bello requesting the apartment identifying N.J.S 2A:18-61.1(l) (3) as the reason for eviction. When Mrs. Bello refused to leave the apartment, Mrs. Cashin filed a complaint for possession of the apartment.

Case Ruling

The trial court ruled in favor of the Defendant, dismissing the complaint.^[8] The Court reasoned that the ground for eviction in N.J.S 2A:18-61(l) (3) was not applicable to Court Street

⁴ *Maglies V. Estate of Guy*, 193 N.J. 108 (2007)

⁵ *Center Avenue reality, Inc. V. Smith*, 264 N.J. Super. 344, 350 (1993)

⁶ New Jersey Assembly Bill 1586, L.1974, c.49, s 2

⁷ *Cashin V. Bello*, 223 N.J.328, at 331 (2015)

⁸ *Id.* at 332

apartment, because it was not a “building” and could not be sold separately,^[9] from the Washington Street “building”. This made the two physical buildings, in essence, one building with a grand total of seven residential units, which is supported by the property’s tax records and zoning board records.^[10] Ground for eviction under N.J.S 2A:18-61(l) (3) requires “three residential units or less”.^[11]

A divided Appellate Division upheld the ruling of the trial court, counting six residential units (the seventh unit was deemed to be used for storage and not to be counted as a residential building).^[12] In doing so, the Appellate Court determined that the word “building”, considered in N.J.S 2A:18-61(l) (3), refers to the entire plot of land and not just physical structures with a roof and four walls. It was therefore concluded that “building” should be interpreted to mean “premises”.^[13]

The New Jersey Supreme Court reversed the ruling of the Appellate Division, holding that “the converted garage constitutes its own ‘building’ for purposes of this Act, and the plaintiff may therefore evict the defendant”,^[14] which resulted in the eviction of Marisela Bello since the landlord owned less than three residential units in that “building”.

Issue Presented

In *Cashin v. Bello* the courts considered the definition of the word “building”, to determine whether it can be said to “denote a single, unattached physical structure – an interpretation that would permit ouster of the tenant – or whether ‘building’ includes all structures owned by an individual that are located on the same parcel of land”.^[15]

The New Jersey Supreme Court looked to the literal and dictionary meaning of a “building” as “a usually roofed and walled structure built for permanent use.”^[16] The Supreme Court noted that: “ambiguity can arise when a statute...”^[17] “is subject to varying plausible interpretations”.^[18]

⁹ *Cashin V. Bello*, 223 N.J.328, at 332 (2015)

¹⁰ *Id.*

¹¹ N.J.S 2A:18-61(l) (3)

¹² *Cashin V. Bello*, 223 N.J.328, at 333 (2015)

¹³ *Id.*

¹⁴ *Id.* at 331

¹⁵ *Id.* at 330

¹⁶ *Cashin V. Bello*, 223 N.J.328, at 340 (2015) (quoting: Webster’s Third New Int’l Dictionary, 1789 3d ed. 1981)

¹⁷ *Id.* at 336

¹⁸ *State V. Fleischman*, 189 N.J. 539, 548, 917 (2007)

Conclusion

Staff seeks authorization from the Commission to undertake a project to conduct additional research in this area in order to determine whether a modification to the statutory language of N.J.S 2A:18-61.1(l) (3) could be of assistance.

It is of concern to Staff that although experienced practitioners will undoubtedly understand the significance of the decision of the New Jersey Supreme Court, the many pro se litigants in this area of the law may not have access to the Court's decision, or appreciate its importance. One option for modification would be based on the Legislature's approach in N.J.S 2A:18-53, in which the legislature does not merely say "building" but mentions, "any house, buildings, lands or tenements".^[19]

¹⁹ N.J.S 2A:18-53