

 KeyCite Yellow Flag - Negative Treatment
Distinguished by 1099, L.L.C. v. Recreational Health Care
Concepts, Inc., N.J.Super.A.D., December 30, 2009

398 N.J.Super. 299

Superior Court of New Jersey,
Appellate Division.

CAPITAL FINANCE COMPANY
OF DELAWARE VALLEY, INC.,
Plaintiff–Respondent/Cross–Appellant,

v.

Maureen Bell ASTERBADI, Defendant–
Appellant/Cross–Respondent,
and

PNC Bank and Botool M. Hilni, Defendants.

Argued Oct. 1, 2007.

|

Decided Feb. 19, 2008.

Synopsis

Background: Judgment creditor that obtained debtor's interest in vacation home brought action against debtor's wife to partition the property. After denying creditor's application for partition but granting creditor's application for an accounting, 389 N.J.Super. 219, 912 A.2d 191, the Superior Court, Chancery Division, Cape May County, denied wife's request that creditor account for payments on first mortgage, but directed creditor to account to wife for payments on second mortgage. Wife appealed and creditor cross-appealed.

Holdings: The Superior Court, Appellate Division, Gilroy, J.A.D., held that:

[1] creditor acquired title as tenants by the entirety as measured by lives of debtor and wife;

[2] creditor was not entitled to partition as of right;

[3] HUD-1 closing statement warranted granting of wife's motion for reconsideration;

[4] creditor was obligated to account to wife for principal and interest on first mortgage; and

[5] wife was accountable to creditor for one-half of the imputed rental value of the property.

Affirmed in part, reversed in part, and remanded.

West Headnotes (17)

[1] Marriage and Cohabitation

 Real property in general

Marriage and Cohabitation

 Mortgages and Deeds of Trust

253 Marriage and Cohabitation

253IV Marital Rights, Duties, and
Liabilities in General

253IV(B) Property in General

253IV(B)4 Tenancy by Entirety

253k473 Particular Property or
Circumstances of Acquisition

253k475 Real property in general

(Formerly 205k14.2(2) Husband
and Wife)

253 Marriage and Cohabitation

253IV Marital Rights, Duties, and
Liabilities in General

253IV(F) Property Transactions by
Spouses

253k601 Mortgages and Deeds of Trust

253k602 In general

(Formerly 205k14.11 Husband and
Wife)

Debtor and his wife acquired title to property they purchased at sheriff's sale following foreclosure of second mortgage as tenants by the entirety with right of survivorship, even though sheriff's deed did not state that the conveyance was made to them as husband and wife, and thus, when judgment creditor obtained debtor's interest in the property at subsequent sheriff's sale on judgment obtained solely against debtor, judgment creditor acquired title with debtor's wife as tenants in common, as measured by the lives of debtor and wife.

1 Cases that cite this headnote**[2] Partition** Property and Estates ThereinSubject to Partition288 Partition288II Actions for Partition288II(A) Right of Action and Defenses288k12 Property and Estates ThereinSubject to Partition288k12(1) In general

(Formerly 205k14.11 Husband and Wife)

Judgment creditor was not entitled to partition as of right of property in which it obtained debtor's interest, where creditor and debtor's wife held title as tenants by the entirety as measured by the lives of debtor and wife.

Cases that cite this headnote**[3] Motions** Reargument or rehearing267 Motions267k39 Reargument or rehearing

Reconsideration is a matter to be exercised in the trial court's sound discretion.

46 Cases that cite this headnote**[4] Motions** Reargument or rehearing267 Motions267k39 Reargument or rehearing

A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the court; reconsideration should be utilized only for those cases that fall within that narrow corridor in which either (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the

significance of, probative, competent evidence.

50 Cases that cite this headnote**[5] Motions** Reargument or rehearing267 Motions267k39 Reargument or rehearing

A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record. R. 1:7–4.

15 Cases that cite this headnote**[6] Account** Trial or hearing and interlocutory judgment or decree9 Account9II Proceedings and Relief9k13 Equitable Actions9k19 Trial or hearing and interlocutory judgment or decree

Debtor's wife's presentation of uniform HUD-1 loan closing statement, in her motion for reconsideration of trial court's finding that mortgage loan was a mortgage refinance loan rather than a purchase money mortgage loan, warranted granting of the motion, although the documents could have been presented at original argument; the evidence dovetailed with evidence already in the record and would have led court to conclude that loan was taken out to preserve the property, and it was significant to issue of whether debtor's wife was entitled to accounting from creditor that obtained debtor's interest in the property.

2 Cases that cite this headnote**[7] Marriage and Cohabitation** Individual debts and expenses

253 Marriage and Cohabitation
253IV Marital Rights, Duties, and Liabilities in General
253IV(D) Debts, Expenses, and Rights of Creditors in General
253k533 Individual debts and expenses (Formerly 205k14.11 Husband and Wife)

When a court denies partition to a creditor that has acquired the property interest of a debtor spouse, the creditor is entitled to the alternative equitable remedy of an accounting from his or her cotenant, the non-debtor spouse.

Cases that cite this headnote

[8] Tenancy in Common

 Expenses and losses

373 Tenancy in Common
373II Mutual Rights, Duties, and Liabilities of Cotenants
373k32 Expenses and losses

A cotenant who has paid operating and maintenance expenses of the common property is entitled to an accounting for a pro-rata share from the other cotenants, regardless of who is in possession; operating and maintenance expenses include, but are not limited to, charges such as taxes, mortgage, interest, and necessary repairs essential to the maintenance of the capital value of the property.

2 Cases that cite this headnote

[9] Tenancy in Common

 Expenses and losses

373 Tenancy in Common
373II Mutual Rights, Duties, and Liabilities of Cotenants
373k32 Expenses and losses

On principle, the mere fact of possession by a cotenant making advances for the benefit of the common estate should not preclude reimbursement by contribution from the cotenants sharing in the benefits

by the preservation of the common property.

1 Cases that cite this headnote

[10] Tenancy in Common

 Rents and Profits, and Use and Occupation

373 Tenancy in Common
373II Mutual Rights, Duties, and Liabilities of Cotenants
373k28 Rents and Profits, and Use and Occupation
373k28(1) In general

Generally, a cotenant in possession of tenancy in common property does not have to account to other cotenants for the use and possession of the property because all tenants in common have a right to occupy all of the property and if one chooses not to do so, that does not give him or her the right to impose an occupancy charge on the other.

Cases that cite this headnote

[11] Tenancy in Common

 Extent of liability on accounting

373 Tenancy in Common
373II Mutual Rights, Duties, and Liabilities of Cotenants
373k28 Rents and Profits, and Use and Occupation
373k28(4) Extent of liability on accounting

When a cotenant who has been in sole possession of tenancy in common property demands contribution toward operating and maintenance expenses from his co-owner, fairness and equity dictate that the one seeking that contribution allow a corresponding credit for the value of his or her sole occupancy of the premises.

1 Cases that cite this headnote

[12] Tenancy in Common

🔑 Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k28 Rents and Profits, and Use and Occupation

373k28(3) Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

Where possession by one tenant in common is accompanied by an ouster or exclusion of a cotenant, the excluded cotenant may recover the reasonable rental value of the portion of the property so occupied.

1 Cases that cite this headnote

[13] **Tenancy in Common**

🔑 Disseisin

Tenancy in Common

🔑 Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k14 Disseisin

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k28 Rents and Profits, and Use and Occupation

373k28(3) Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

Generally, an ouster by a tenant in common requires more than an occupation by one tenant and a failure or forbearance to occupy by the cotenant.

Cases that cite this headnote

[14] **Tenancy in Common**

🔑 Disseisin

Tenancy in Common

🔑 Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k14 Disseisin

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k28 Rents and Profits, and Use and Occupation

373k28(3) Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant

An ouster by a tenant in common may be actual or constructive; a constructive ouster occurs when a cotenant takes possession of property that is not susceptible to joint occupancy.

1 Cases that cite this headnote

[15] **Tenancy in Common**

🔑 Extent of liability on accounting

373 Tenancy in Common

373II Mutual Rights, Duties, and Liabilities of Cotenants

373k28 Rents and Profits, and Use and Occupation

373k28(4) Extent of liability on accounting

When there has been an ouster but the ousted cotenant receives an accounting based on the value of the use and occupation by the cotenant in possession of the common property, equity requires that appropriate payments made by the cotenant in possession be credited in calculating what is due to the cotenant out of possession.

Cases that cite this headnote

[16] **Marriage and Cohabitation**

🔑 Mortgages and Deeds of Trust

253 Marriage and Cohabitation

253IV Marital Rights, Duties, and Liabilities in General

253IV(F) Property Transactions by Spouses
253k601 Mortgages and Deeds of Trust
253k602 In general
 (Formerly 205k14.11 Husband and Wife)

Judgment creditor, which held property with debtor's wife as tenants by the entirety, was obligated to account to debtor's wife for principal and interest paid on first mortgage on the property, given finding that debtor and wife took loan out to preserve the property, not as a mortgage refinance loan.

Cases that cite this headnote

[17] **Marriage and Cohabitation**

Individual debts and expenses

253 Marriage and Cohabitation
253IV Marital Rights, Duties, and Liabilities in General
253IV(D) Debts, Expenses, and Rights of Creditors in General
253k533 Individual debts and expenses
 (Formerly 205k14.11 Husband and Wife)

Occupancy of property by debtor's wife, who held the property as tenants in common with judgment creditor that obtained debtor's interest in the property, was an ouster of creditor, and thus debtor's wife was accountable to creditor for one-half of the imputed rental value of the property, subject to offset for any payments made to preserve the property, where the property was not susceptible to being occupied by both parties jointly.

Cases that cite this headnote

attorneys; Mr. Ziegler and Samuel J. Myles, on the brief).

Anne S. Cantwell argued the cause for Respondent/Cross-Appellant (Dembo & Saldutti, attorneys; Ms. Cantwell, Leon D. Dembo, and William F. Saldutti, III, Cherry Hill, on the brief).

Before Judges S.L. REISNER, GILROY and BAXTER.

Opinion

The opinion of the court was delivered by

GILROY, J.A.D.

*304 Defendant Maureen Bell Asterbadi¹ appeals from that part of the order of the Chancery Division of May 5, 2006, which denied her request that plaintiff Capital Finance Company of Delaware Valley, Inc., the purchaser at an execution sale of her surviving husband's interest in a single-family residence located at Two 111th Street, Stone Harbor (the Property), account for principal and interest paid on the Property's first mortgage. Defendant also appeals from the order of October 17, 2006, denying her motion for reconsideration, and from the consent judgment of August 7, 2006, confirming the trial court's prior rulings and preserving the parties' rights to appeal therefrom. Plaintiff cross-appeals from that part of the order of March 16, 2006, denying its request for partition of the Property and from the consent judgment of August 7, 2006, as it confirmed that part of the prior order of March 16, 2006. We affirm in part and reverse in part.

¹ Because the two other defendants, PNC Bank and Botool M. Hilni, are not directly involved in this appeal, the term "defendant" shall only refer to Maureen Bell Asterbadi.

I.

Attorneys and Law Firms

**23 William F. Ziegler, Woodbury, argued the cause for Appellant/Cross-Respondent (Holston, MacDonald, Uzdavinis, Eastlack, Ziegler & Lodge,

The procedural history and statement of facts are contained in the trial court's reported decision, Capital Fin. Co. v. Asterbadi, 389 N.J.Super. 219, 912 A.2d 191 (Ch.Div.2006). However, the following **24 summary will place this appeal

in context. On August 17, 1993, defendant and her husband, Nabil J. Asterbadi, acquired title to the Property by a sheriff's deed, following a foreclosure action brought by a second mortgagee. The Property was purchased for \$208,000, subject to the first mortgage lien of Chemical Bank of New Jersey in the amount of \$450,000. Although the Asterbadis were married at the time of the purchase, the sheriff's deed did not state that the conveyance was made to them as husband and wife.

***305** On November 18, 1993, the Asterbadis obtained a mortgage loan from Chemical Bank in the amount of \$526,400, secured by a mortgage lien on the Property. The proceeds of the loan were used to satisfy the original first mortgage of Chemical Bank in the amount of \$450,000; pay part of the balance due to the sheriff in the amount of \$179,771.65; and pay the loan closing charges of \$22,332.39. In addition to the monies borrowed from Chemical Bank, the Asterbadis contributed \$85,704.04 towards the balance due to the sheriff.²

² The breakdown of the loan closing proceeds is contained in a certification of Nabil J. Asterbadi that was not before the trial court on the original cross-motions for summary judgment but was submitted to the court on defendant's motion for reconsideration.

In the interim, on October 4, 1993, CIT Group Equipment/Financing, Inc., obtained a judgment in the United States District Court for the Eastern District of Virginia against Nabil J. Asterbadi only in the amount of \$2,286,009.97. On August 19, 2003, the judgment was docketed with the Clerk of the Superior Court of New Jersey. On May 18, 2005, the Sheriff of Cape May County, pursuant to a writ of execution, exposed for sale Nabil's interest in the Property. Plaintiff purchased Nabil's interest in the Property at the sheriff's sale for the sum of \$551,100, subject to other interests of record, including defendant's ownership interest; the first mortgage lien of Washington Mutual Bank, the successor in interest to Chemical Bank; and the second mortgage held by Batool Hilni.³

³ The November 18, 1993, mortgage in the amount of \$450,000 held by Chemical Bank

was subsequently transferred to PNC Bank, a named defendant, and then to Washington Mutual Bank. The Hilni mortgage, dated February 18, 1997, resulted from a judgment entered against Nabil J. Asterbadi on April 19, 1996, in favor of Scope Leasing, Inc., in the amount of \$381,608.30. The judgment was subsequently assigned to Hilni who resolved the issue of collection on the judgment, by accepting a second mortgage on the Property executed by defendant and her husband.

On July 20, 2005, plaintiff notified defendant that it had acquired her husband's interest in the Property, demanded an ***306** inspection of the Property, as well as an accounting of the Property's income and expenses. On August 26, 2005, plaintiff filed a complaint seeking a partition by sale of the Property, an accounting, and an appointment of a rent receiver. The parties moved to resolve the issues raised in the complaint on cross-motions for summary judgment.

On February 24, 2006, the trial judge issued a written opinion in which he: 1) determined that defendant and her husband had acquired title to the Property as tenants by the entirety, and plaintiff's acquisition of defendant's husband's interest does not impair defendant's right of survivorship; 2) determined that plaintiff and defendant possessed title to the Property as tenants in common with a right of survivorship, measured against the lives of defendant and her husband; 3) denied plaintiff's application for partition of the Property; 4) granted plaintiff's application for an accounting of defendant's possession ****25** of the Property from July 20, 2005; 5) directed plaintiff and defendant to establish a fair rental value for the Property to determine the basis of defendant's financial responsibilities to plaintiff; 6) directed plaintiff to account to defendant for payments of real estate taxes, municipal assessments, if any, and insurance premiums on the Property; and 7) granted plaintiff's request for inspections of the Property on reasonable notice to defendant. *Id.* at 230–34, 912 A.2d 191. A confirming order was entered on March 16, 2006.

Remaining unresolved were issues concerning the parties' responsibilities for payments made on the first and second mortgages. On April 21, 2006, the

trial judge rendered an oral decision addressing these open issues. The judge denied defendant's request that plaintiff account for payments made on the first mortgage, then held by Washington Mutual Bank, concluding that defendant could seek contribution for one-half of those payments from her husband. As to the second mortgage held by Hilni, the judge determined that both parties were equally obligated on that mortgage and directed that plaintiff account to defendant for any *307 monies paid against that mortgage. In reaching his decision, the trial judge stated in relevant part:

With respect to the first mortgage, both Mr. and Mrs. Asterbadi are individual obligors. As between the plaintiff ... and Mrs. Asterbadi, she is responsible as far as I am concerned for any and all costs attendant to the satisfaction of and maintaining that mortgage....

....

[M]r. and Mrs. Asterbadi acquired the property presumably for cash because there's no purchase money mortgage ... attendant to it, and if there was originally a mortgage, it has since been satisfied by their equity.

So they are sitting there with all of the equity in the property and they then take a mortgage, which is now the first mortgage, and they take that mortgage and receive the equity from it[,] impairing their equity in the property to that extent. That is, Mr. and Mrs. Asterbadi collectively. I have no way of knowing and it's not before me today, what the respective rights and obligations as between the two of them may be.

In any event prior to the acquisition of the interest by the plaintiff here, they ... have the equity in the property that is represented by the lien of that mortgage. They've had that. They've had the use of it. It is theirs. It is, therefore, in my view fundamentally unfair to impose upon the plaintiff in this action, who ..., while standing in the shoes of Mr. Asterbadi [,] is a separate party, the responsibility to account for the repayment of that equity when that property belonged and is held by Mr. and Mrs. Asterbadi.

Concerning the second mortgage, the judge stated:

[N]either the plaintiff nor Mrs. Asterbadi is individually an obligor. The mortgage is a lien against the equity of both of them. Neither has any affirmative obligation to anybody or to each other to pay anything to satisfy the mortgage. The mortgage, however, impairs the equity of each of them in the property and to the extent that anybody at any point undertakes to enforce that mortgage and does so successfully, any burden of that enforcement will be born by the parties together.

A confirming order was entered on May 5, 2006. On June 16, 2006, the court denied defendant's motion for reconsideration. For reasons not clear in the record, a confirming order was not entered until October 17, 2006. In the interim, the parties **26 resolved all other outstanding issues. On August 7, 2006, a consent judgment was entered that incorporated the court's prior orders and reserved unto the parties the right to appeal from the trial court's prior orders.

On appeal, defendant argues:

***308 POINT I.**

THE TRIAL COURT ERRED IN FAILING TO FIND THAT A CO[]TENANT MUST, AS A MATTER OF LAW, ACCOUNT TO A FELLOW CO[]TENANT FOR MORTGAGE INTEREST AND PRINCIPAL PAYMENTS.

POINT II.

THE TRIAL COURT ERRED AS IT BASED ITS DECISION UPON INCORRECT FACTS WHICH IT "PRESUMED" WERE TRUE.

On its cross-appeal, plaintiff argues:

POINT I.

CAPITAL FINANCE IS ENTITLED TO AN ORDER FOR PARTITION BY SALE OF THE REAL PROPERTY.

POINT II.

IF THIS COURT DETERMINES TO UPHOLD THE TRIAL COURT'S ORDER DENYING PARTITION AND ORDERING THE DEFENDANT TO ACCOUNT, THEN THERE IS NO BASIS TO REVERSE THE COURT'S DETERMINATIONS OF THE REQUIREMENTS OF THE ACCOUNT.

POINT III.

THERE IS NO BASIS TO SUPPORT DEFENDANT'S ARGUMENT THAT THE TRIAL COURT'S FINDINGS OF FACT SHOULD BE REVERSED.

II.

We begin by addressing plaintiff's cross-appeal. Plaintiff argues that the trial court erred in determining that defendant and her husband acquired the Property as tenants by the entirety. Plaintiff contends that the trial court's denial of its request for a partition was not in accord with established precedent, "establishing that the right [to partition] is to be liberally afforded, except in compelling circumstances." Plaintiff contends that the Property is not suitable for division between the parties "by metes and bounds method, and that partition by sale is thus the appropriate remedy." Defendant counters that the trial court correctly found that she and her husband acquired title as tenants by the entirety because the record is devoid of any evidence establishing otherwise. Defendant contends that the trial court correctly determined that the parties presently hold title as tenants in common with right of survivorship as measured against the lives of herself and her husband. Lastly, defendant asserts that the court properly exercised its discretion, denying plaintiff's request for a *309 partition, because there were other equitable remedies available to plaintiff.

[1] [2] We have considered plaintiff's arguments in light of the record and applicable law, and are not persuaded by any of them. We conclude that the trial judge correctly determined that defendant and her husband acquired title as tenants by the entirety; that plaintiff holds title to the Property with defendant as tenants in common as measured by the lives of defendant and her husband; and plaintiff was not entitled as of right to a partition of the Property. We affirm on the issues appealed by plaintiff for the reasons cogently stated by the trial judge, *id.* at 225–34, 912 A.2d 191, R. 2:11–3(e)(1) (A).

III.

We now address defendant's appeal. Defendant argues that the trial court erred in denying her request that plaintiff **27 account for one-half of the principal and interest that she has paid on the first mortgage of Washington Mutual Bank. Defendant contends that the court mistakenly presumed that the November 18, 1993, mortgage loan in the amount of \$526,400 that had been obtained from Chemical Bank, was a mortgage refinance loan with defendant and her husband taking out equity from the Property, rather than a purchase money mortgage loan.⁴ Defendant contends that although she had not presented the court with a copy of the Uniform HUD–1 loan closing statement on her original motion for summary judgment, showing the disbursement of the loan proceeds, she did present a copy of the closing statement in support of her motion for reconsideration, together with her husband's certification confirming that the loan proceeds were used only for *310 the purposes of paying off the pre-existing first mortgage, and paying the purchase monies owed to the sheriff.

⁴ This finding was significant because, if defendant and her husband had taken out the Chemical Bank loan for their own economic benefit, rather than to preserve the Property, defendant could not have claimed credit from plaintiff for her mortgage payments.

[3] [4] Motions for reconsideration are governed by *Rule* 4:49–2. Reconsideration is a matter to

be exercised in the trial court's sound discretion. *Johnson v. Cyklop Strapping Corp.*, 220 N.J.Super. 250, 257, 531 A.2d 1078 (App.Div.1987), *certif. denied*, 110 N.J. 196, 540 A.2d 189 (1988). "A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt." *D'Atria v. D'Atria*, 242 N.J.Super. 392, 401, 576 A.2d 957 (Ch.Div.1990). "Reconsideration should be utilized only for those cases ... that fall within that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." *Ibid*.

[5] Reconsideration cannot be used to expand the record and reargue a motion. Reconsideration is only to point out "the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49–2. A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, R. 1:7–4, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record. *Cummings v. Bahr*, 295 N.J.Super. 374, 384, 685 A.2d 60 (App.Div.1996).

[6] We are satisfied on the motion for reconsideration, that the trial judge mistakenly exercised his discretion by not considering defendant's husband's certification and the attached copy of the closing statement from the November 18, 1993, Chemical Bank mortgage loan. Although the documents could have been presented at the original argument, the issue of whether the first mortgage was a purchase money loan or a refinance loan, and whether the difference would have affected the outcome, was neither raised nor argued. Defendant presented the additional evidence on the *311 motion for reconsideration in furtherance of her argument that the judge had expressed his decision on an incorrect basis.

The evidence dovetailed and amplified the evidence already in the record, via the affidavit of consideration attached to the sheriff's deed, indicating that plaintiff had purchased the

Property, subject to a first mortgage lien of \$450,000. The newly-submitted evidence, if considered, would have led the trial judge to conclude that **28 defendant and her husband used the Chemical Bank loan to preserve the Property, rather than to take equity out of the Property. We next consider the legal significance of that conclusion.

[7] [8] [9] When a court denies partition to a creditor that has acquired the property interest of a debtor spouse, the creditor is entitled to the alternative equitable remedy of an accounting from his or her cotenant, the non-debtor spouse. *Newman v. Chase*, 70 N.J. 254, 266, 359 A.2d 474 (1976). A cotenant who has paid operating and maintenance expenses of the property is entitled to an accounting for a pro-rata share from the other cotenants, regardless of who is in possession. *Esteves v. Esteves*, 341 N.J.Super. 197, 201–02, 775 A.2d 163 (App.Div.2001). Operating and maintenance expenses include, but are not limited to, charges such as taxes, mortgage, interest, and necessary repairs essential to the maintenance of the capital value of the property. *Baird v. Moore*, 50 N.J.Super. 156, 169, 141 A.2d 324 (App.Div.1958). "[O]n principle, the mere fact of possession by the cotenant making advances for the benefit of the common estate should not preclude reimbursement by contribution from the cotenants sharing in the benefits by the preservation of the common property." *Id.* at 165–66, 141 A.2d 324.

[10] [11] Generally, the cotenant in possession of property does not have to account to other cotenants for the use and possession of the property because all tenants in common "have a right to occupy all of the property and if one chooses not to do so, that does not give him [or her] the right to impose an 'occupancy' charge on the other."

*312 *Esteves, supra*, 341 N.J.Super. at 202, 775 A.2d 163. However, when a cotenant "who ha[s] been in sole possession of the property demands contribution toward operating and maintenance expenses from his co-owner, fairness and equity dictate that the one seeking that contribution allow a corresponding credit for the value of his [or her] sole occupancy of the premises." *Ibid*.

[12] [13] [14] [15] Where, however, “possession by one tenant [is] accompanied by an ouster or exclusion of a [cotenant],” the excluded cotenant may recover the reasonable rental value of the portion of the property so occupied. *Lohmann v. Lohmann*, 50 N.J.Super. 37, 68, 141 A.2d 84 (App.Div.1958), (Haneman, J.A.D., concurring in part and dissenting in part), *certif. denied*, 31 N.J. 187, 155 A.2d 803 (1959). Generally, an ouster requires “more than an occupation by one tenant and a failure or forbearance to occupy by the [cotenant].” *Ibid.* An ouster may be actual or constructive. A constructive ouster occurs when a cotenant takes possession of property that is not susceptible to joint occupancy. *Ibid.* When there has been an “ouster but the ousted cotenant receives an accounting based on the value of the use and occupation by the cotenant in possession, equity requires that appropriate payments made by the cotenant in possession be credited in calculating what is due [to] the cotenant out of possession.” *Newman, supra*, 70 N.J. at 267, 359 A.2d 474.

[16] [17] Applying these principles, we determine that, like the second mortgage, plaintiff is obligated to account to defendant for principal and interest paid on the first mortgage. When plaintiff bought the husband's interest at the sheriff's sale, plaintiff became a cotenant with defendant, the non-debtor spouse. Defendant continues to remain in possession of the Property, and that conduct, as correctly determined by the trial judge, equates to an ouster of plaintiff because the Property is not susceptible to being occupied by both parties jointly. Accordingly, defendant is accountable for one-half of the imputed **29 rental value of the Property, subject, however, to an offset for any

payments made to preserve the Property, including payments made on both mortgages, as well as taxes, insurance, and repairs. *Ibid.* There is nothing *313 unjust in obligating plaintiff to pay its proportionate share of the first mortgage payments, because it was aware of that mortgage, either actually or constructively, when plaintiff purchased the Property at the sheriff's sale. Any monies paid against the mortgage proportionally benefit plaintiff by increasing the equity in the Property should the Property be sold, or should plaintiff survive defendant and her husband. Moreover, failure to pay either mortgage would impair both parties' title, subjecting the Property to a possible foreclosure sale.

We affirm the order of March 16, 2006. We reverse that part of the order of May 5, 2006, which denied defendant's request that plaintiff account for payments made by defendant against the principal and interest of the first mortgage held by Washington Mutual Bank. We also reverse the order of October 17, 2006, which denied defendant's motion for reconsideration. We affirm all other provisions of the May 5, 2006, and August 17, 2006, orders. We remand the matter to the trial court to enter an amended order of judgment in accordance with this opinion.

Affirmed in part; reversed in part; and remanded to the trial court for further proceedings consistent with this opinion.

All Citations

398 N.J.Super. 299, 942 A.2d 21

Negative Treatment**Negative Citing References (1)**

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	1. <u>1099, L.L.C. v. Recreational Health Care Concepts, Inc.</u> MOST NEGATIVE 2009 WL 5125076 , N.J.Super.A.D. COMMERCIAL LAW - Debt Collection. The trial court did not err in allowing a judgment creditor to levy monies owed to a judgment debtor under an oral month-to-month lease.	Dec. 30, 2009	Case		1 A.2d

Citing References (99)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	1. Capital Finance Co. of Delaware Valley, Inc. v. Asterbadi ” 2008 WL 5083498, *1+ , N.J.Super.A.D. Defendant Maureen Bell Asterbadi appeals from the December 14, 2007 order entered on cross-motions to enforce litigant's rights. This is the second appeal in this matter. The...	Dec. 04, 2008	Case		8 9 11 A.2d
Distinguished by NEGATIVE	2. 1099, L.L.C. v. Recreational Health Care Concepts, Inc. 2009 WL 5125076, *5+ , N.J.Super.A.D. COMMERCIAL LAW - Debt Collection. The trial court did not err in allowing a judgment creditor to levy monies owed to a judgment debtor under an oral month-to-month lease.	Dec. 30, 2009	Case		1 A.2d
Discussed by	3. Sanderson v. Schoick ” 2016 WL 6518600, *2+ , N.J.Super.A.D. Defendants appeal a May 13, 2015 Chancery Division order denying their motion for reconsideration and for a new trial. We affirm. Defendant Van Schoick and her associated entities,...	Nov. 03, 2016	Case		5 A.2d
Discussed by	4. Rosenblum v. Borough of Closter ” 2011 WL 1135131, *7+ , N.J.Super.A.D. Plaintiff Jesse Rosenblum appeals from an October 30, 2009, final order denying “all applications for reconsideration, re-opening, or amendment of findings and judgments [in Tax...	Mar. 30, 2011	Case		4 5 A.2d
Discussed by	5. Chrisman v. Chrisman ” 2010 WL 5376376, *3+ , N.J.Super.A.D. Defendant William M. Chrisman appeals from the Family Part's order of March 18, 2009 that denied his motion for reconsideration of an earlier order entered on January 12. We have...	Oct. 25, 2010	Case		5 A.2d
Discussed by	6. Flecker v. Statue Cruises, LLC ” 129 A.3d 1147, 1150+ , N.J.Super.L. Background: Deckhand brought class action against employer, which provided passenger ferry service from ports in New York and New Jersey, alleging violations of the New Jersey...	July 26, 2013	Case		3 4 A.2d
Cited by	7. Guido v. Duane Morris LLP 995 A.2d 844, 849 , N.J. LEGAL SERVICES - Malpractice. Malpractice claim was not barred by former client's failure to attempt to obtain vacatur of underlying settlement order.	June 03, 2010	Case		3 A.2d
Cited by	8. D.M. v. K.M. ” 2017 WL 5186287, *2 , N.J.Super.A.D. Defendant appeals from the February 23, 2016 Family Part order denying reconsideration of the court's October 8, 2014 and December 16, 2014 orders. The October 8, 2014 order...	Nov. 09, 2017	Case		4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	9. <u>Taylor v. Jones</u> 2017 WL 3707932, *4 , N.J.Super.A.D. In this non-dissolution case, plaintiff appeals from the March 30, 2016 order of the Family Part denying his motion for reconsideration. We affirm substantially for the reasons...	Aug. 29, 2017	Case		4 5 A.2d
Cited by	10. <u>Moodie v. Moodie</u> 2017 WL 3255347, *9+ , N.J.Super.A.D. Defendant appeals from orders that terminated plaintiff's obligation to pay her alimony and maintain life insurance for her benefit and denied her motion for reconsideration. We...	Aug. 01, 2017	Case		3 4 A.2d
Cited by	11. <u>Lai v. Shimoni</u> 2017 WL 2437125, *2+ , N.J.Super.A.D. Plaintiff Katharine Lai appeals from two December 4, 2015 Law Division orders, which denied her motion for reconsideration of an October 30, 2015 order that denied her motion to...	June 06, 2017	Case		4 A.2d
Cited by	12. <u>Mansions Apartments v. Husband</u> 2017 WL 1381861, *4 , N.J.Super.A.D. Defendant Toniann Husband appeals from a July 9, 2015 judgment of possession granted to her landlord, plaintiff Mansions Apartments, and an August 20, 2015 order denying her...	Apr. 18, 2017	Case		3 A.2d
Cited by	13. <u>Gallagher v. Gallagher</u> 2017 WL 672380, *5+ , N.J.Super.A.D. Defendant Marybeth Lachenauer appeals a July 25, 2014 Family Part order declaring the parties' daughter Alexa emancipated and terminating plaintiff Christopher Alan Gallagher's...	Feb. 21, 2017	Case		5 A.2d
Cited by	14. <u>Wells Fargo Bank, N.A. v. Davis</u> 2017 WL 476166, *4 , N.J.Super.A.D. Defendant Kim Davis appeals from a February 24, 2015 Chancery Court order denying her motion for reconsideration of a December 5, 2014 order that also denied her motion for...	Feb. 06, 2017	Case		4 A.2d
Cited by	15. <u>U.S. Bank National Association v. Beisser</u> 2016 WL 7233998, *1 , N.J.Super.A.D. In May 2008, an order was entered granting final judgment to Indymac, F.S.B. against defendant Jeffrey W. Beisser in this foreclosure action. U.S. Bank National Association was...	Dec. 14, 2016	Case		3 4 A.2d
Cited by	16. <u>D.G. v. G.M.</u> 2016 WL 5854326, *5+ , N.J.Super.A.D. Defendant G.M. (Gaby) appeals from a December 3, 2014 Family Part order denying her motion for reconsideration and awarding attorney's fees to defendant D.G. (David). Gaby had...	Oct. 07, 2016	Case		3 4 5 A.2d
Cited by	17. <u>K.L. v. D.L.</u> 2016 WL 3199536, *3 , N.J.Super.A.D. Plaintiff K.L. (husband) appeals from a November 21, 2014 order, insofar as it addresses his support obligation to defendant D.L. (wife) and insofar as it denied his...	June 10, 2016	Case		3 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	18. <u>Marolda Farms, Inc. v. Maryland Cas. Ins. Co.</u> 2015 WL 10384118, *5 , N.J.Super.A.D. This matter is before us a second time. We provided the factual background in our prior decision. South Jersey Clothing Company (SJCC) is a New Jersey partnership that had been...	Mar. 03, 2016	Case		3 A.2d
Cited by	19. <u>Port Authority of New York and New Jersey v. Bear Metal Transport, Inc.</u> 2015 WL 7199677, *3 , N.J.Super.A.D. In this property damage action arising out of a single-vehicle accident that occurred on December 7, 2009, plaintiff appeals the Law Division's order granting defendant Bear Metal...	Nov. 17, 2015	Case		3 4 A.2d
Cited by	20. <u>N.T.B. v. D.D.B.</u> 121 A.3d 910, 917 , N.J.Super.A.D. FAMILY LAW - Protection Orders. Husband's destruction of wife's bedroom door was criminal mischief, as predicate act supporting finding of domestic violence	Sep. 09, 2015	Case		—
Cited by	21. <u>Hall v. City of East Orange</u> 2015 WL 4757224, *2 , N.J.Super.A.D. Defendant City of East Orange appeals from an order enjoining it from terminating the employment of plaintiffs Kenneth J. Hall, Edward G. Johnson and Derrick Griffin, as well as...	Aug. 13, 2015	Case		3 A.2d
Cited by	22. <u>Gomez v. Cumberland USA, Inc.</u> 2015 WL 4742919, *2 , N.J.Super.A.D. In this interlocutory appeal, defendant Montclair State University (MSU) challenges the trial court's denial of its motion for reconsideration of the court's prior order denying...	Aug. 12, 2015	Case		4 A.2d
Cited by	23. <u>Wainco Partners, LLC v. Steve's Mobile Home Park, LLC</u> 2015 WL 4557772, *6 , N.J.Super.A.D. Plaintiff Wainco Partners, LLC appeals from the November 8, 2013 order of the Chancery Division that denied its cross-motion for partial summary judgment, granted summary judgment...	July 30, 2015	Case		3 A.2d
Cited by	24. <u>Ackerman v. Freitag</u> 2015 WL 4164825, *3 , N.J.Super.A.D. Plaintiff appeals from an order dated April 25, 2014 that denied her unopposed motion for reconsideration of her request for an award of alimony based on changed circumstances, an...	July 13, 2015	Case		3 4 A.2d
Cited by	25. <u>Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment</u> 113 A.3d 1217, 1219 , N.J.Super.A.D. LITIGATION - Attachment and Garnishment. Wages due and owing from judgment debtor's bank account on date of levy were statutorily exempt from execution.	May 08, 2015	Case		3 4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	26. <u>Callahan Bail Bonds v. Jeon</u> 2014 WL 8396814, *4 , N.J.Super.A.D. Defendant Matthew Jeon, Esq., appeals from the June 7, 2013 Law Division order, which denied his motion for reconsideration of the April 8, 2013 order granting judgment in favor of...	Apr. 06, 2015	Case		3 4 A.2d
Cited by	27. <u>Mohammad v. Cohen</u> 2014 WL 5880139, *2 , N.J.Super.A.D. Plaintiffs Mohammad Mohammad, Ahmad Mohammad, Ali Mohammad, and Lama Mohammad appeal from a December 6, 2013 Law Division order denying their motion to reinstate their complaint...	Nov. 14, 2014	Case		3 A.2d
Cited by	28. <u>Happold v. Happold</u>  2014 WL 5393347, *7 , N.J.Super.A.D. The opinion of the court was delivered by This divorce case returns to us after a remand. The parties had a long-term marriage, and the wife was substantially dependent on the...	Oct. 24, 2014	Case		5 A.2d
Cited by	29. <u>Shearer v. Rodriguez</u> 2014 WL 4798786, *3 , N.J.Super.A.D. In this post-judgment divorce matter, defendant appeals the June 10, 2013 Family Part order denying his request for reconsideration of the April 16, 2013 order modifying the amount...	Sep. 29, 2014	Case		4 A.2d
Cited by	30. <u>Callaham v. Callaham</u> 2014 WL 4098143, *8 , N.J.Super.A.D. Defendant Edward Callaham appeals from the entry of a default final judgment of divorce based on the complaint filed by his wife, plaintiff Deana Callaham, following his failure to...	Aug. 21, 2014	Case		3 4 A.2d
Cited by	31. <u>Brake v. Martin</u> 2014 WL 3510898, *4 , N.J.Super.A.D. Plaintiffs Dennis and Sheryl Brake appeal the Law Division's June 7, 2013 order denying their motion for reconsideration of the March 12, 2013 order dismissing their complaint with...	July 17, 2014	Case		—
Cited by	32. <u>Martucci v. Vitale</u> 2014 WL 2742578, *2 , N.J.Super.A.D. Plaintiff William Martucci appeals from an order entered by the trial court on March 22, 2013, denying his motion to reconsider an earlier order granting the motion to dismiss by...	June 18, 2014	Case		3 4 A.2d
Cited by	33. <u>Carney v. Cannon</u>  2014 WL 2533786, *2+ , N.J.Super.A.D. Appellant, Brian P. Carney, the adult son of plaintiff Deborah A. Carney, and defendant, Thomas P. Cannon, appeals from that portion of a Family Part order entered on December 11,...	June 06, 2014	Case		3 4 5 A.2d
Cited by	34. <u>Harbert v. Fonrose</u> 2014 WL 2480035, *3 , N.J.Super.A.D. Defendant Nicholas Fonrose appeals from an order entered on June 15, 2012, denying his motion to vacate a default judgment entered against him on March 20, 2012. Defendant also...	June 04, 2014	Case		3 4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	35. <u>Geisler v. Leonard</u> 2014 WL 1302104, *2 , N.J.Super.A.D. Plaintiff appeals from the denial of her motion to reconsider an earlier order of the court denying her motion to “reinstate [the] case and enter judgment” against defendant....	Apr. 02, 2014	Case		4 A.2d
Cited by	36. <u>Garofalo v. East Whitehouse Fire Dept.</u> 2014 WL 1257123, *4 , N.J.Super.A.D. Plaintiff appeals from a February 28, 2013 order of the Division of Workers' Compensation (Division) dismissing his complaint for benefits. Plaintiff also appeals from a May 3,...	Mar. 28, 2014	Case		4 A.2d
Cited by	37. <u>New Century Financial Services, Inc. v. Oughla</u> 98 A.3d 583, 602 , N.J.Super.A.D. COMMERCIAL LAW - Consumer Credit. Lack of notice to debtors of the sale of their credit card debt did not affect the validity of the assignment.	Mar. 05, 2014	Case		—
Cited by	38. <u>Brown v. Brown</u> ” 2014 WL 620691, *2 , N.J.Super.A.D. Defendant appeals from orders that denied his post-judgment motions for a change of custody, and for reconsideration, and awarded a counsel fee to plaintiff. We affirm the denial...	Feb. 19, 2014	Case		3 4 A.2d
Cited by	39. <u>Verhoorn v. Cardinal Health 110, Inc.</u> ” 2013 WL 6096508, *5+ , N.J.Super.A.D. Plaintiff Carolyn Verhoorn appeals the dismissal of her claim against defendants for violation of both the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, and the...	Nov. 21, 2013	Case		3 4 5 A.2d
Cited by	40. <u>Salama v. Salama</u> 2013 WL 5268967, *5 , N.J.Super.A.D. Plaintiff Nadeen Salama appeals from a February 3, 2012 Family Part order, which entered an amended dual judgment of divorce (ADJD) incorporating an oral settlement agreement and a...	Sep. 19, 2013	Case		4 A.2d
Cited by	41. <u>Jost Imports, Inc. v. Ciccone</u> 2013 WL 5221205, *1 , N.J.Super.A.D. Plaintiff Jost Imports, Inc., which does business as Acura of Denville, appeals the Law Division's order denying its motion for reconsideration. We affirm. Defendant Gregory...	Sep. 18, 2013	Case		3 4 A.2d
Cited by	42. <u>Grunfeld v. Seltzer</u> 2013 WL 4515998, *4 , N.J.Super.A.D. Plaintiffs appeal from an order of the Law Division denying reconsideration of an earlier order dismissing their complaint with prejudice and denying their cross-motion to...	Aug. 27, 2013	Case		4 A.2d
Cited by	43. <u>Cafuli v. Paszul</u> 2013 WL 776614, *3 , N.J.Super.A.D. Plaintiff appeals from the denial of his second motion to vacate the dismissal of his complaint with prejudice and the denial of his motion for reconsideration. We affirm. The...	Mar. 04, 2013	Case		3 4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	44. <u>Retik v. Retik</u> 2013 WL 561043, *5 , N.J.Super.A.D. Defendant appeals from two post-judgment orders. The first order, dated January 27, 2011, granted plaintiff's motion for reconsideration and denied defendant's motion to increase...	Feb. 15, 2013	Case		3 A.2d
Cited by	45. <u>Chelsea View Condominium Ass'n, Inc. v. Beyer</u> 2013 WL 425163, *1 , N.J.Super.A.D. Plaintiff, Chelsea View Condominium Association, Inc., appeals from orders that denied its motion to permit the sale of defendant's real property to satisfy its docketed judgment...	Feb. 05, 2013	Case		3 A.2d
Cited by	46. <u>Rivera v. Corrales</u> ” 2013 WL 362733, *5 , N.J.Super.A.D. Plaintiff appeals from two post-judgment orders, dated August 19 and October 14, 2011, in this matrimonial action. We affirm. It is fair to state that this matrimonial litigation...	Jan. 31, 2013	Case		3 4 A.2d
Cited by	47. <u>Mederos v. H & C Development Corp.</u> 2013 WL 257244, *3 , N.J.Super.A.D. Plaintiffs Ciro Mederos, Eugene Vasquez, Cesar Ramos and Juan Castillo entered into a contract of sale with H & C Development Corp ., Marshall Weisman, Hudson 3312 LLC, Palisades...	Jan. 24, 2013	Case		4 A.2d
Cited by	48. <u>Proetto v. Proetto</u> ” 2012 WL 5372055, *2 , N.J.Super.A.D. Plaintiff Philip M. Proetto appeals from the three provisions of a post-judgment Family Part order that: denied reconsideration of a previous order that dismissed his motion to...	Nov. 02, 2012	Case		3 4 5 A.2d
Cited by	49. <u>Ghulyani v. Dowd</u> 2012 WL 2035782, *3 , N.J.Super.A.D. Plaintiff appeals from an order entered on January 5, 2011, denying his motion to vacate a December 21, 2009 order dismissing his complaint without prejudice for failure to appear...	June 07, 2012	Case		3 4 A.2d
Cited by	50. <u>M.P.C. v. A.B.C.</u> ” 2012 WL 1205805, *1 , N.J.Super.A.D. Plaintiffs M.P.C. (Morris) and his wife D.C. (Diane) appeal the April 7, 2011 order of the court denying their application to (1) declare Morris's son, P.C. (Paul), born September...	Apr. 12, 2012	Case		5 A.2d
Cited by	51. <u>Schanz v. Township of Winslow</u> ” 2012 WL 360294, *10 , N.J.Super.A.D. Plaintiff Anthony Schanz, who sustained serious injuries as a result of a one-car accident at a Y-shaped intersection located in defendant Township of Winslow, appeals from orders...	Feb. 06, 2012	Case		3 4 A.2d
Cited by	52. <u>Struss v. Poe & Freireich</u> 2011 WL 5419742, *4+ , N.J.Super.A.D. This appeal presents a recurrent scenario familiar to those engaged in civil litigation in the Law Division: the application of Rule 4:23–5(a)(2)'s dismissal sanction because of a...	Nov. 10, 2011	Case		3 4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	53. <u>Bursey v. 497 Communipaw Avenue Corp.</u> 2011 WL 5041325, *2 , N.J.Super.A.D. In this insurance coverage dispute, 497 Communipaw Avenue Corp. (Communipaw) appeals from an August 31, 2010 order denying its motion to amend two prior orders. The first was a...	Oct. 25, 2011	Case		—
Cited by	54. <u>DeMaio v. Karmin</u> 2011 WL 4502037, *2+ , N.J.Super.A.D. The matter on appeal involves the entry of a default judgment for unpaid emergency dental services in favor of plaintiff Joseph D. DeMaio, D.D.S. Defendant Edward Karmin appeals...	Sep. 30, 2011	Case		4 A.2d
Cited by	55. <u>Greenberg v. Pro Shares Trust</u> 2011 WL 2636990, *5+ , N.J.Super.A.D. Plaintiffs Richard Greenberg (Greenberg) and Epic, LLC (Epic), appeal from the dismissal of their second amended complaint against defendants Pro Shares Trust (Pro Shares) and Pro...	July 07, 2011	Case		4 A.2d
Cited by	56. <u>Dickman Business Brokers v. Tomasulo</u> 2011 WL 2348480, *4 , N.J.Super.A.D. In this action to recover a sales commission for the sale of its luncheonette, defendants, J.M. Tomasulo, Inc., t/a John & Michelle's Best Little Luncheonette, and John Tomasulo in...	June 09, 2011	Case		5 A.2d
Cited by	57. <u>Sika Corp. v. Hostler</u> 2011 WL 2314408, *5+ , N.J.Super.A.D. Plaintiff Sika Corporation appeals from two final orders entered on November 6 and December 18, 2009, denying its application for an award of counsel fees to be paid by defendant...	May 11, 2011	Case		3 A.2d
Cited by	58. <u>King v. Harmony Tp. Land Use Bd.</u> 2011 WL 1642188, *3+ , N.J.Super.A.D. Plaintiff, Michael J. King, who states that he serves as Coordinator of REALSmart, The League of Real Smart Growth, a committee of the non-profit Phillipsburg, New Jersey,...	May 03, 2011	Case		3 4 5 A.2d
Cited by	59. <u>Madera v. Horizon Blue Cross Blue Shield Of New Jersey</u> 2011 WL 1530980, *7+ , N.J.Super.A.D. Plaintiff Kim Madera appeals from the summary judgment dismissal of her complaint, alleging her employer Horizon Blue Cross Blue Shield of New Jersey (Horizon), along with the...	Apr. 25, 2011	Case		3 4 5 A.2d
Cited by	60. <u>Financial Freedom Senior Funding Corp. v. Fischer</u> 2011 WL 1161123, *8 , N.J.Super.A.D. Defendant Annette C. Fischer appeals the April 1, 2010 order of the Law Division denying her motion to set aside a default judgment entered on February 20, 2009. We affirm. We...	Mar. 31, 2011	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	61. <u>Ullmann v. Ullmann</u> ¶¶ 2011 WL 1004594, *2, N.J.Super.A.D. Plaintiff ex-husband appeals from a post-judgment order dated January 15, 2010, pertaining to expenses he incurred for the parties' children. The Family Part relieved defendant...	Mar. 23, 2011	Case		3 A.2d
Cited by	62. <u>Ridgway & Stayton, L.L.C. v. Hettinger</u> 2011 WL 408792, *2, N.J.Super.A.D. Defendant, Grace Hettinger, appeals from an order that granted plaintiff's motion for reconsideration and entered judgment against her, based upon a Fee Arbitration Committee...	Feb. 09, 2011	Case		3 A.2d
Cited by	63. <u>Nead v. Union County Educational Services Com'n</u> 2011 WL 166245, *4, N.J.Super.A.D. Plaintiff Marco Nead was a physical education teacher employed by defendant Union County Educational Services Commission (UCESC) from 1992 until 2006. He appeals from the dismissal...	Jan. 20, 2011	Case		4 A.2d
Cited by	64. <u>Growney v. Glassman</u> 2010 WL 909602, *2, N.J.Super.A.D. TRANSPORTATION - Motor Vehicles. The trial court did not err in denying a plaintiff's motion for reconsideration of the summary dismissal of his personal injury suit.	Mar. 12, 2010	Case		3 A.2d
Cited by	65. <u>Williams v. Nunn</u> ¶¶ 2009 WL 3078661, *3+, N.J.Super.A.D. Plaintiff Robert Williams appeals from the August 1, 2008 order that denied his motion for reconsideration of a prior order denying his motion to reinstate his complaint against...	Sep. 28, 2009	Case		3 A.2d
Cited by	66. <u>Guido v. Duane Morris, LLP</u> 2009 WL 2031013, *5, N.J.Super.A.D. Pursuant to leave granted, defendant Duane Morris, LLP, a law firm, and two of its partners, defendants Frank A. Luchak and Patricia Kane Williams, appeal from the motion judge's...	July 15, 2009	Case		3 A.2d
Cited by	67. <u>Delanco Tp. v. 325 Delaware Ave., LLC</u> 2009 WL 1118767, *5, N.J.Super.A.D. In this condemnation case, Delanco Township (the Township) seeks to condemn a small portion of Lot 5, Block 1208 in order to connect Delaware Avenue with Lot 6. The owner of Lot 5,...	Apr. 28, 2009	Case		6 A.2d
Cited by	68. <u>Bove v. Bove</u> ¶¶ 2009 WL 1011233, *6, N.J.Super.A.D. This case arises from a dispute between former spouses, defendant, Diane M. Bove, and plaintiff, Philip A. Bove. Defendant appeals an order requiring her to pay counsel fees for a...	Apr. 15, 2009	Case		3 A.2d
Cited by	69. <u>Citibank South Dakota, N.A. v. Razvi</u> 2008 WL 2521082, *2+, N.J.Super.A.D. In these two appeals, calendared back-to-back and consolidated for the purpose of this opinion, we consider defendant Syed A. Razvi's pro se challenge to the entry of judgments...	June 26, 2008	Case		3 4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	70. <u>Kousmine v. Bostic</u> 2008 WL 1901329, *3 , N.J.Super.A.D. We review plaintiff's appeal from a bench decision dismissing her complaint and granting judgment to defendant on his counterclaim. Plaintiff argues the trial court misapplied the...	May 01, 2008	Case		—
Cited by	71. <u>Gurvey by Gurvey v. Montclair Township</u> ” 2017 WL 3879326, *5 , N.J.Tax This letter constitutes the court's opinion with respect to plaintiffs' motions: (1) seeking vacatur/ reconsideration of portions of the court's May 8, 2017 Order; (2) to admit...	Sep. 05, 2017	Case		4 5 A.2d
Cited by	72. <u>Trocki Hotels LP v. Egg Harbor Township</u> 2017 WL 510543, *3 , N.J.Tax This letter constitutes the court's opinion with respect to Trocki Hotels LP's ("plaintiff") motion for reconsideration of the court's November 30, 2016 letter opinion following...	Feb. 03, 2017	Case		3 4 A.2d
Cited by	73. <u>Berkeley Heights Township v. Connell Corporate Center I, LLC</u> 2016 WL 5377910, *2 , N.J.Tax This letter constitutes the court's opinion with respect to defendants', Connell Corporate Center I, LLC and The Connell Company (collectively referred to as "defendants"), motion...	Sep. 23, 2016	Case		3 4 A.2d
Cited by	74. <u>Ruskowski v. Director, Division of Taxation</u> ” 2016 WL 4474321, *4+ , N.J.Tax Dear Mr. Ruskowski and Deputy Attorney General Buonaguro: This constitutes the court's decision on plaintiff's motion for reconsideration of the court's June 7, 2016 letter opinion...	Aug. 22, 2016	Case		3 4 A.2d
Cited by	75. <u>Blum v. Township of Monroe</u> ” 2015 WL 300632, *2 , N.J.Tax This letter constitutes the court's opinion with respect to plaintiff's motion for a reconsideration of this court's Order dated October 31, 2014. That Order affirmed the...	Jan. 15, 2015	Case		4 A.2d
Cited by	76. <u>Purcell v. Borough of Woodcliff Lake</u> 2014 WL 7206381, *2 , N.J.Tax This letter serves as the court's opinion with respect to Plaintiffs Richard and Elizabeth Purcell's ("Plaintiff" or "Plaintiffs") motion for reconsideration of this court's Order...	Dec. 12, 2014	Case		3 4 A.2d
Cited by	77. <u>Tuck v. West Caldwell Tp.</u> ” 2012 WL 6712088, *4 , N.J.Tax This is the court's opinion in connection with plaintiff's email of November 2, 2012, treated as a timely, but deficient, motion for reconsideration of this court's judgment dated...	Dec. 24, 2012	Case		4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	78. <u>Palombi v. Palombi</u> 997 A.2d 1139, 1147 , N.J.Super.A.D. FAMILY LAW - Spousal Support. Former husband was not entitled to plenary hearing on his motion to terminate his alimony obligation.	July 08, 2010	Case		4 A.2d
Cited by	79. <u>O'Donnell v. Hennessey</u> 2010 WL 45909, *8 , N.J.Super.A.D. LABOR AND EMPLOYMENT - Wrongful Discharge. Termination of at-will employees who disagreed with restructuring was not contrary to a clear mandate of public policy.	Jan. 08, 2010	Case		4 A.2d
Cited by	80. <u>Marano v. Romero</u> 2009 WL 1011179, *1 , N.J.Super.A.D. Defendant City of Elizabeth (City) appeals from the Law Division's order permitting plaintiff Rosina Marano and her husband, plaintiff Silvestri Marano, to file a late notice of...	Apr. 16, 2009	Case		3 A.2d
Cited by	81. <u>Mack v. Hoffman</u> 2008 WL 4949849, *8 , N.J.Super.A.D. Defendant Jennifer K. Hoffman appeals from a September 25, 2007 order of the Family Part denying, among other claims for relief, her request to remove a parent coordinator, and...	Nov. 21, 2008	Case		—
Cited by	82. <u>Whippie v. O'Connor</u> 30 A.3d 1292, 1297 , Vt. REAL PROPERTY - Joint Tenancies and Tenancies in Common. Ousting cotenant was entitled to credit for maintenance costs incurred during ouster period in partition action.	Aug. 15, 2011	Case		8 12 A.2d
Cited by	83. <u>RALPH NEGLIA, Petitioner v. CRAFT CARPENTRY & DRYWALL, Respondent</u> 2014 WL 3055556, *3 , N.J. Adm. This matter comes before the court by way of a Notice of Motion for Reconsideration filed by the petitioner, Ralph Neglia (hereinafter ""petitioner""), in which petitioner seeks...	June 10, 2014	Administrative Decision		3 4 A.2d
Mentioned by	84. <u>Lewison v. Horsburgh</u> 2018 WL 389188, *4+ , N.J.Super.A.D. Paul Lewison and Wendy Lewison appeal from an order entered by the Law Division February 24, 2015, which denied their motion for reconsideration of an order entered on December 5,...	Jan. 12, 2018	Case		3 4 A.2d
Mentioned by	85. <u>Petrone v. Petrone</u> 2013 WL 5777894, *9 , N.J.Super.A.D. This partition action stems from a family feud over the ownership interests plaintiff Rose Petrone, the family matriarch, and defendant Diane Petrone, plaintiff's only daughter...	Oct. 28, 2013	Case		—
Mentioned by	86. <u>Aslanian v. Borough of River Edge</u> 2011 WL 1434076, *2 , N.J.Super.A.D. Defendant Ian Doris (Doris) appeals from two orders entered on December 8, 2009, and February 11, 2010. The 2009 order denied Doris's application for counsel fees pursuant to Rule...	Apr. 15, 2011	Case		4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	87. <u>New Jersey Schools Const. Corp. v. Lopez</u> 990 A.2d 667, 674 , N.J.Super.A.D. REAL PROPERTY - Eminent Domain. Owner did not seek to enhance value of condemnation award in bad faith by adding improvements.	Feb. 19, 2010	Case		6 A.2d
Mentioned by	88. <u>In re Estate of Halbig</u> 2008 WL 2572591, *4 , N.J.Super.A.D. In 1953 decedent Wilton J. Halbig married his first wife, Nancy D. Halbig. Three children were born of the marriage: James Halbig, Elizabeth Weller and Donna Parisi (Respondents)....	June 30, 2008	Case		14 A.2d
—	89. <u>Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt</u> 75 A.L.R.2d 1172 This annotation, superseding one in 47 A.L.R. 437 and supplementing another in 166 A.L.R. 969, discusses, by means of relevant cases, (1) the question whether a creditor of an...	1961	ALR	—	1 2 16 A.2d
—	90. <u>Accountability of cotenants for rents and profits or use and occupation</u> 51 A.L.R.2d 388 This annotation supplements 27 A.L.R. 184 and supersedes 39 A.L.R. 408. The subject is the accountability, and liability, of joint tenants, tenants in common, and coparceners, and...	1957	ALR	—	10 12 A.2d
—	91. <u>26 Causes of Action 521, Cause of Action for Contribution by Cotenant for Expense Necessary or Beneficial to Real Property</u> This article discusses a cotenant's action to recover from another cotenant for payment of a disproportionate share of an expense necessary or beneficial to real property. The...	2017	Other Secondary Source	—	9 10 11 A.2d
—	92. <u>1 N.J. Prac. Series R 1:7-4, 1:7-4. Findings by the Court in Non-jury Trials and on Motions</u> N.J. Prac. Series 1. This rule retains the present distinction between civil actions and criminal and quasi-criminal actions in respect of the court's fact-finding obligation, viz., in the former,...	2017	Other Secondary Source	—	5 A.2d
—	93. <u>13 N.J. Prac. Series s 5:14, Estates by the entirety-Creation</u> N.J. Prac. Series It is stated generally that an estate by the entirety may exist if an estate is in fee, for years, for life, or for a reversion or remainder. Where a husband pays the down payment...	2017	Other Secondary Source	—	1 A.2d
—	94. <u>13 N.J. Prac. Series s 5:17, Tenancy by the entirety-Severance and termination of</u> N.J. Prac. Series An estate by the entirety may be destroyed or terminated by the joint acts of husband and wife but not by the act of any one of them. In one case, a tenant by the entirety was held...	2017	Other Secondary Source	—	17 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	95. 29 N.J. Prac. Series s 5.2, Estates in land N.J. Prac. Series Every estate or interest in real property which is saleable or assignable generally may be mortgaged. Estates in fee simple, for life, or for years, reversions and vested...	2017	Other Secondary Source	—	1 A.2d
—	96. 30A N.J. Prac. Series s 36.1, Title of purchaser-Estate and interests included; reforeclosure N.J. Prac. Series The deed from the selling officer to the foreclosure sale purchaser will transfer to the purchaser the title and estate acquired by the mortgagee and the estate of the mortgagor at...	2017	Other Secondary Source	—	—
—	97. Am. Jur. 2d Cotenancy and Joint Ownership s 67, Repairs and maintenance Am. Jur. 2d Cotenancy and Joint Ownership Generally, a cotenant is required to bear a proportionate share of the expense of maintaining and keeping property in repair, as long as such maintenance and repairs were...	2018	Other Secondary Source	—	8 10 A.2d
—	98. Am. Jur. 2d Cotenancy and Joint Ownership s 85, Accounting Am. Jur. 2d Cotenancy and Joint Ownership Under statutes enacted in many jurisdictions, a cotenant has a remedy at law to recover a proper share of rents and profits from another cotenant by means of an action of account...	2018	Other Secondary Source	—	8 11 A.2d
—	99. P 206,994 KENNETH J. HALL, EDWARD G. JOHNSON AND DERRICK GRIFFIN, PLAINTIFFS-RESPONDENTS, V. CITY OF EAST ORANGE, DEFENDANT-APPELLANT. Labor & Employment Law KENNETH J. HALL, EDWARD G. JOHNSON and DERRICK GRIFFIN, Plaintiffs-Respondents, v. CITY OF EAST ORANGE, Defendant-Appellant. No. A-4348-13T3.. Superior Court of New Jersey,...	2015	Other Secondary Source	—	3 A.2d