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Case Number 311,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT KRAVIS,	)
	)
PETITIONER,	) C.A. NO.: 311, 2022
	)
V.	) On Appeal from the
	) Superior Court of the
JUSTICE OF THE PEACE	) State of Delaware in and for Sussex County
COURT #17,	) C.A. No. S22A-804-001
MHC MCNICOL PLACE, LLC,	)
	)
RESPONDENTS.	)

RESPONDENT, MHC MCNICOL PLACE, LLC'S ANSWERING BRIEF

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NATURE OF THE PROCEEDINGS

Before this Court is Petitioner's Appeal from the Superior Court's dismissal of his Petition for Writ of *Certiorari* seeking review of a decision of Justice of the Peace Court No. 17 in the matter known as *MHC McNicol Place, LLC v. Robert Kravis*, JP17-21-002617, whereby the *de novo* panel found in favor of McNicol Place and awarded possession of Kravis' rental lot to the landlord.

This initial matter arose as a result of McNicol Place filing a summary possession action against Kravis for violations of the lease agreement. McNicol Place complied with the lease agreement and the Manufactured Homes and Home Communities Act and as such was awarded possession of the rental lot.

Kravis, however, believed the well-reasoned decision by the Trial Court was in error, and, having exhausted his appeal rights, elected to pursue the tremendous remedy of a Writ of *Certiorari* in the Superior Court. After having reviewed the actions of the Trial Court, the Superior Court, on August 30, 2022, affirmed the Trial Court's well-reasoned decision, and again granted possession of the rental lot to McNicol Place. Petitioner thereafter appealed such dismissal to this Court. Kravis filed his Corrected Opening Brief on October 24, 2022. This is McNicol Place's Answering Brief in opposition to the Appeal.

STATEMENT OF FACTS

A. THE PARTIES

MHC McNicol Place, LLC ("McNicol Place") is a Delaware limited liability company whose business is operating and managing the manufactured housing community known McNicol Place.

Petitioner, Robert Kravis, ("Kravis") is a resident of McNicol Place. Kravis owns the home located on McNicol Place's rental lot.

B. BACKGROUND AND PROCEDURAL HISTORY

In McNicol Place, the residents own their homes, but rent ground space from the community owner. As with most residential communities, tenants are obligated by the lease and rules and regulations of the community. On September 14, 2012, Kravis entered into a lease agreement for the rental lot located at 34122 Pinewood Circle, Lewes, DE 19958 (the "Lease").

On May 12, 2021, it had come to the attention of McNicol Place that Kravis was in violation of his Lease and the rules and regulations governing the community resulting in the issuance of a notice to cure such violations. These violations, which were subsequently proven to be true, included Kravis permitting two (2) unauthorized occupants to reside in his home and his failure to repair damage to his home which resulted in it being unsightly. Moreover, the unauthorized occupants were not qualified to reside in the community due to their respective significant criminal histories. On June 17, 2021, after Kravis failed to

cure these violations in accordance with the notice he received, McNicol Place terminated his Lease and filed a summary possession action in the Justice of the Peace Court No. 17. A009; A019-032.

Trial was originally scheduled for August 12, 2021. A014. At that time, Kravis was not yet represented and failed to appear. *Id.* A default judgment was entered. *Id.* Counsel for Kravis thereafter entered her appearance and filed a Motion to Vacate. *Id.* The Motion to Vacate was granted and trial took place on December 1, 2021. A012. On December 23, 2021, after a full trial on the merits, judgment was entered on behalf of McNicol Place for possession of the rented lot. *Id.*

Despite having received multiple notices previously, it was only **after** the December 1, 2021 trial that Andrew Losonczy and Allison Jacobs, the unauthorized occupants, completed applications to reside at McNicol Place. A017. On December 10, 2021, Mr. Losonczy and Ms. Jacobs' applications were denied due to their criminal backgrounds and in accordance with the community's standard application criteria. They still did not vacate.

For the first time, and only after the unauthorized occupants' applications were denied, on January 3, 2022, Petitioner, through his attorney, made a reasonable accommodation request seeking to authorize Mr. Losonczy and Ms. Jacobs to reside with Kravis in order to care for him. A047-49. That request also

noted that Kravis was not residing in the community at that time, and therefore, there was no assistance to give. A048.

McNicol Place via a February 4, 2022 letter, indicated that the reasonable accommodation request was not ripe as Kravis, by his own admission, was not living in the home on the rented lot at that time, and, therefore, there was no disability related need for the accommodation at that time. A050. Furthermore, the response indicated that request would be held open until the Justice of Peace Court rendered its decision and once Kravis returned to the community. *Id.* McNicol Place neither granted nor denied Kravis' reasonable accommodation request at that time. *Id.*

Kravis filed a Notice of Appeal on December 30, 2021 which was accepted and approved on January 4, 2022. A011-012. On February 10, 2022, contrary to the rules of the court and applicable statute, Kravis filed a Counterclaim[1] and Motion for Discovery.[2] A011. McNicol Place filed a Motion to Quash the discovery request on February 14, 2022 and a Motion to Dismiss the Counterclaim on February 15, 2022. *Id.* Both of these Motions were granted via

[1] In Justice of the Peace Court, counterclaims can be filed in writing in anticipation of trial and/or made verbally at trial pursuant to 25 *Del. C.* § 5709. Pursuant to 25 *Del. C.* § 5717(b): "An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding."

[2] Discovery is not permitted in summary possession actions without the leave of the court pursuant to Justice of the Peace Civil Rule Civil Rule 27.

Judge Comly's February 15, 2022 Interim Order. A010. Despite his discovery request being denied, two (2) days prior, on February 17, 2022, Kravis served a subpoena upon McNicol Place. *Id.* McNicol Place filed a Motion to Quash on February 18, 2022. *Id.*

The *de novo* trial before a three (3) judge panel, took place on February 24, 2022. A009. Prior to the start of the trial, the *de novo* panel considered the Motion to Quash and once again considered Kravis' Counterclaim and Motion for Discovery. The panel quashed the Motion for Discovery and the subpoena and affirmed the dismissal of the counterclaim. A010; A016-018.

The *de novo* panel, after considering all of the evidence, including the reasonable accommodation request, issued their decision on March 21, 2022. A016-018. This Order once again found Petitioner had materially breached his lease, failed to cure such breach, finding explicitly that Petitioner's unauthorized occupants "[did] not abide by the community rules", and rightfully awarded possession of the rented lot to McNicol Place. *Id.* On March 21, 2022, McNicol Place renewed its request to the Court to have the Writ of Possession issued. A009. The Writ of Possession was issued on April 4, 2022, it was scheduled to finalize on April 18, 2022 at 11:00 a.m., however the Writ was stayed on April 21, 2022 by Superior Court due to the filing of the Writ of *Certiorari*. A004; A009.

After briefing was completed by both Parties, the Honorable Mark H. Conner dismissed Kravis' Petition on August 26, 2022. Judge Conner held that "The JP Court correctly determined that Respondent had sufficient grounds to initiate and prevail in a summary possession action." Mem. Op. ¶ 12. The JP Court did not proceed illegally or contrary to law. Furthermore, evidentiary findings cannot be disturbed where there "is no indication that that the JP Court committed an error of law, proceeded irregularly or exceeded its jurisdiction in applying the Delaware Rules of Evidence. . . '[i]n the summary possession statute, the General Assembly could not have been clearer that summary possession cases should end quickly without further evidentiary review.'" Mem. Op. ¶ 13 *quoting Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008). The Writ was again stayed on September 15, 2022 by the Superior Court pending this appeal.

SUMMARY OF THE ARGUMENT

1. **Denied.** The Superior Court properly found the Justice of the Peace Court did not proceed contrary to law in granting an order of possession as it considered Petitioner's reasonable accommodation request and still found that Respondent had met its burden of proof.

2. **Denied.** As properly determined by the Superior Court, the face of the record demonstrates that the Justice of the Peace Court considered Petitioner's reasonable accommodation request to the court and that it was ultimately rejected as required by the Delaware Fair Housing Act, 6 *Del. C.* § 4600 *et seq*. and the United States Fair Housing Act, 42 USC 3601 *et seq.*

3. **Denied.** The Superior Court did not err as it recognized that the Trial Court clearly and adequately analyzed Petitioner's reasonable accommodation request in light of Manufactured Home Owners and Community Owners Act and the Fair Housing Acts.

4. **Denied.** The Superior Court properly found the Justice of the Peace Court did not proceed contrary to law when it prohibited discovery and quashed a trial subpoena.

5. **Denied.** The Superior Court did not err in affirming that Justice of the Peace's prohibition of discovery as it found the information irrelevant which was an evidentiary decision that cannot be reviewed on *Certiorari*.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ERR IN FINDING THE JUSTICE OF THE PEACE COURT DID NOT PROCEED CONTRARY TO LAW IN GRANTING AN ORDER OF POSSESSION BECAUSE, AS IT CONSIDERED PETITIONER'S REASONABLE ACCOMMODATION REQUEST AND STILL FOUND THAT RESPONDENT HAD MET ITS BURDEN OF PROOF.

A. Question Presented

Did the Superior Court err in affirming the Justice of the Peace Court's determination that Kravis breached his lease agreement by failing to cure the alleged violations notwithstanding the reasonable accommodation request and in light of both the state and federal Fair Housing Acts?

B. Scope of Review

The Delaware Supreme Court reviews alleged errors of law *de novo. Est. of Jackson v. Genesis Health Ventures,* 23 A.3d 1287, 1290 (Del. 2011). To succeed on the issuance of a Writ of *Certiorari*, two threshold elements must be met; a final judgment and no other basis for review. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008); *In re Butler,* 609 A.2d 1080, 1081 (Del. 1992); WOOLLEY at § 895. The reviewing court does not weigh evidence or evaluate the factual findings, the court only considers "whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly." *Maddrey*

956 A.2d at 1213; *See also Black v. Justice of the Peace Court 13,* 105 A.3d 392, 395 (Del. 2014).

The Court reviews the record below which normally consists of "the initial papers, limited to the complaint initiating the proceeding, the answer or response (if required), and the docket entries." *Maddrey,* 956 A.2d at 1216. To create this record, the Justice of the Peace Court is to docket the basis for their decisions, this may be done on the docket itself and/or in a separate document reference on the docket. *Black,* 105 A.3d at 396, n. 17; *Maddrey,* 956 A. 2d at 1215. In the instant matter, the court below references the Order on the docket.

C. Merits of the Argument

Neither the Trial Court nor Superior Court erred in finding in favor of McNicol Place for Kravis' failure to cure the alleged lease violations. Pursuant to 25 *Del. C.* § 5702, a manufactured community owner may initiate a summary possession action "for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended."[3] In the instant matter, it is undisputed possession of the rental lot was sought pursuant to 25 *Del. C.* §7016 (b)(2).[4] If a plaintiff landlord, after sending the requisite notices, proves their case by

[3] 25 *Del. C.* §5702(11).

[4] "A landlord may terminate a rental agreement with a tenant by providing prior written notice as follows: (2) If the noncompliance is based upon a condition on or of the premises of the manufactured home community, the landlord shall notify the tenant in writing, specifying the condition constituting the noncompliance and allowing the tenant 12 days from the date of mailing or personal service to remedy the noncompliance. If the tenant remains in noncompliance at the expiration of the 12-day period, whether or not the 12-day period falls within 1 lease period or

a preponderance of the evidence, a judgment for possession will be awarded. 25 *Del. C.* §7016 (b)(2).

The Superior Court did not err in finding the record did not demonstrate any fundamental errors regarding the Justice of the Peace Court's relevancy determination with respect to the housing applications and fair housing law. While the Delaware and federal Fair Housing Acts require a landlord to make a reasonable accommodation under certain conditions, the finding by the Justice of the Peace Court, as affirmed by Superior Court, that such conditions did not exist here is not an error of law. Petitioner's primary argument relies on a blanket, and patently false, presumption that upon a reasonable accommodation being made, the landlord is *required* under state and federal law to provide that accommodation. *See* Opening Brief (O.B.) at p. 9. Indeed, Petitioner argues, "Where a landlord is violating the Fair Housing Acts by proceeding with an eviction complaint instead of granting the accommodation, the Justice of the Peace Court would be committing legal error by entering a judgment for possession." O.B. at p. 13. Of course, this is a gross misstatement of the law, and implies the mere request of a reasonable accommodation necessitates it be granted, completely foregoing its analysis, analysis that was in fact performed by the JP Court, and analysis which Petitioner disagreed with, but which certainly did not constitute legal error.

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overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession."

For a tenant to be entitled to a reasonable accommodation, the tenant, or a person upon whose bequest it is being made, must be disabled, there must be a disability related need for the request, and the request must of course be reasonable. *See generally* Federal Fair Housing Act and Delaware Fair Housing Act. Moreover, the law provides a number of reasons a landlord, as in this situation, may deny such a request.[5] Of course, it is black letter law that, "The Fair Housing Act does not prohibit all evictions—it prohibits only discrimination in housing-related transactions." *Mahdi Sufi El v. People's Emergency Ctr.*, 2020 U.S. Dist. LEXIS 20089, at *11, (E.D. Pa. Feb. 6, 2020); *See also*, *Lane v. Cole*, 88 F. Supp.2d 402, 405 (E.D. Pa. 2000)(eviction based upon racial discrimination violates fair housing). Neither the Delaware Fair Housing Act nor the federal Fair Housing Act prohibits evictions where the landlord has met their burden of proof for non-discriminatory reasons even if a reasonable accommodation request has been made. *Id* Of course, as would be expected, this is exactly what the JP Court reviewed, ultimately determining that such request was not reasonable, with the Superior Court properly finding it was not its place to disturb such finding where no fundamental error existed.

5 *See*, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act, May 14, 2004, https://www.justice.gov/crt/us-department-housing-and-urban-development. Paragraph 7: ". . . In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable - i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations."

Petitioner's argument fails because it required the Superior Court to weigh evidence and review the JP Court's factual findings which it was not permitted to do. *See Christiana Town Ctr., LLC v. New Castle Cnty*, 865 A.2d 521 (Del. Dec. 16, 2004) (TABLE). The relevant question at issue before the JP Court was whether Petitioner's accommodation request was reasonable, and it definitively determined that it was not. – as properly found by the Superior Court, there was "no fundamental error on the face of the record. Mem. Op. ¶ 14. Petitioner contends that, based upon the accommodation request, the Trial Court should have compelled McNicol Place to accept the two (2) unauthorized occupants, and allow them to reside in the community, despite the fact that they did not qualify to reside in the community due to their criminal histories. This of course, as the courts below found, is not reasonable and is inconsistent with the law.

Indeed, Petitioner's argument fails, as properly determined by the Superior Court, because it asked far too much of that Court. The Court properly held that it was limited to merely reviewing the record for "fundamental errors." Mem. Op. ¶ 14. Rather than presenting any such error, Petitioner requested that the Court make new factual and legal determinations, supplanting the JP Court's discretion with its own. For example, before this Court, Petitioner continues to proffer that "Kravis had a defense based on the Fair Housing Acts that had to be taken into account before Superior Court could conclude Justice of the Peace Court not acted contrary to law when it granted the order of possession." O.B. at p. 15. Such argument required the

Superior Court to make new factual determinations and new legal conclusions – both of which were beyond the Superior Court's limited review of the record on a Writ of *Certiorari*. As if to perfectly demonstrate such improper request by Petitioner, thereafter, Petitioner offers the same facts before the Justice of the Peace Court, yet seeks a different outcome. O.B. at pp. 15-16. Such request for a new factual determination was not appropriate below, and is certainly not appropriate before this Court.

It was not error for the JP Court to conclude, and Superior Court to affirm, that the evidence relating to the fair housing law was not relevant "because the applications were not submitted until several months after the summary possession action was initiated." O.B. at pp. 15-16. Once again, Petitioner seeks this Court to weigh evidence and make its own factual findings, rather than reviewing whether the Superior Court erred. Indeed, it was undisputed that Petitioner had unauthorized individuals in his home. It is further undisputed that those individuals did not qualify to reside in the community. Via the May 12, 2021 12 Day Notice, Petitioner was given twelve (12) days to correct the issue. Admittedly, Petitioner failed to remove the unauthorized occupants. He further failed to attempt to make them authorized occupants. As made clear by the record, an application was not submitted until after the first trial on December 1, 2021 and the reasonable accommodation request was not made until January 3, 2022, seven (7) months after the initial notice to cure. The request was not reasonable on its face as the request did not illustrate why Kravis

needed two (2) live-in aides, and further because the request admitted that Kravis was not currently living in the home, negating the need for any assistance at that time.

The rejection by the court of a proffered defense in a summary possession action does not constitute fundamental error. Petitioner argues that the Justice of the Peace Court, "ignore[d] the tenant's right to present defenses to an eviction complaint, both legal and equitable, pursuant to 25 *Del. C.* § 5709." O.B. at p. 14. This again is simply untrue, and misconstrues the holdings by both the Justice of the Peace Court, and the Superior Court, in that the record clearly indicated such defenses were raised, but rejected by the Trial Court. While Kravis was statutorily prohibited from submitting a counterclaim pursuant to *25 Del. C.* §5717(b), he did bring the reasonable accommodation request to the court's attention in support of his defense – although the JP Court ultimately rejected it. This is not an error of law. Petitioner was merely unhappy with the outcome. The court below, after weighing both of Kravis' defenses, which included his reasonable accommodation claim, and McNicol Place's claim of breach, held "[t]o allow the tenant to remain, with no change in conditions, would set a precedent that would handicap every landlord faced with the eviction of aged or infirm tenants, whose caregivers do not abide by the community rules." A018. The Trial Court did not err as it in fact considered Petitioner's reasonable accommodation request, applied the applicable laws, and still

found in favor of the landlord. This is not error but rather the result of normal and routine operation of the Trial Court and law.

Superior Court did not view the Landlord-Tenant Code as the only relevant law. Rather, the Court balanced all relevant laws, rules, and statutes with prior Supreme Court jurisprudence. In doing so, the Court stated: ". . . in the context of discussing Superior Court *Certiorari* review of a JP Court decision that, '[i]n the summary possession statute, the General Assembly could not have been clearer that summary possession cases should end quickly without further evidentiary review.'" Mem. Op. ¶13 *quoting Maddrey* 956 A.2d at 1213.

Petitioner seeks to create an error of law where none exists. Petitioner alleges that both Courts below failed to apply the Fair Housing Acts and Superior Court failed to recognize the Fair Housings Acts. Of course, as with Petitioner's prior arguments, this one also fails as such argument on its face is incorrect. The Trial Court directly addressed the issue, and held, "because the applications were not submitted during the time this action was initiated, nor during the timeframe allowed to cure, the information requested is not relevant." The Superior Court echoed this sentiment and properly affirmed its role in review of such determination – leaving discretion to the Justice of the Peace Court, and forbearing on making new factual determinations as requested by Petitioner.

Based on the foregoing, neither Court erred in finding in favor of McNicol Place but rather it considered the reasonable accommodation request, applied the applicable laws, and came to the correct conclusion.

II. THE SUPERIOR COURT DID NOT ERR IN AFFIRMING THE JUSTICE OF THE PEACE COURT'S RULING THAT INFORMATION RELATING TO THE LANDLORD'S REASONS FOR DENYING THE CARETAKERS PERMISSION TO RESIDE WITH KRAVIS WAS IRRELLEVANT AND AS SUCH IT EXEMPT FROM *CERTIORARI* REVIEW.

A. Question Presented

Did the Justice of the Peace Court act contrary to law when it denied discovery requests and quashed a subpoena seeking information about application denial of the unauthorized occupants?

B. Scope of Review

The Delaware Supreme Court reviews alleged errors of law *de novo. Est. of Jackson v. Genesis Health Ventures,* 23 A.3d 1287, 1290 (Del. 2011). To succeed on the issuance of a Writ of *Certiorari*, two threshold elements must be met; a final judgment and no other basis for review. *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008); *In re Butler,* 609 A.2d 1080, 1081 (Del. 1992); WOOLLEY at § 895. The reviewing court does not weigh evidence or evaluate the factual findings, the court only considers "whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly." *Maddrey* 956 A.2d at 1213; *See also Black v. Justice of the Peace Court 13,* 105 A.3d 392, 395 (Del. 2014).

The Court reviews the record below which normally consists of "the initial papers, limited to the complaint initiating the proceeding, the answer or response (if

required), and the docket entries." *Maddrey*, 956 A.2d at 1216. To create this record, the Justice of the Peace Court is to docket the basis for their decisions, this may be done on the docket itself and/or in a separate document reference on the docket. *Black*, 105 A.3d at 396, n. 17; *Maddrey*, 956 A. 2d at 1215.

C. Merits of the Argument

Petitioner's argument that the Superior Court erred because it failed to overturn the Trial Court's denial of his Motion to Quash fails because it sought to supplant the Trial Court's discretion with that of the Superior Court. Indeed, Petitioner ignored the standard upon which the Superior Court was required to make its review and merely parrots back his argument made before the Trial Court – albeit seeking a different result. Petitioner argues without authority, ". . . a request for reasonable accommodation under the Fair Housing Acts may be made at any time before there is an actual loss of possession. Thus, the application was timely under the Fair Housing Acts."[6] As the Superior Court properly held, the issue as to whether the application was timely or not was not, nor could it be, before it, as such argument necessitated the Court to review and weigh evidence – a task it had no authority to perform. Mem. Op. ¶ 14.

Moreover, the Trial Court had complete discretion to find, as it did, that the applications, and thus accommodation request, were untimely, regardless of the

6 O.B. at p. 24.

window within which a reasonable accommodation request could be made. It was clear from the record that the Trial Court properly exercised its discretion based upon the facts before it, and properly concluded that the information requested was not relevant due to the timing. Simply put, Petitioner's assertion that simply because an accommodation request **can be** made up and until the eviction, did not bar the Trial Court from considering the timing of such request. The Justice of the Peace Court Order, and the Superior Court Order are explicitly clear, with the Trial Court providing great deal as to why it denied Petitioner's discovery requests and the Superior Court holding the Trial Court had not erred or otherwise proceeded irregularly in making its findings. There is no evidence to support Petitioner's argument. The court denied discovery and quashed a trial subpoena, both seeking information about the landlord's reasons for refusing Kravis's request that his caretakers be allowed to resident with him, on the ground that 'the information requested is not relevant." A018. Here, the Court affirmed that the information requested was irrelevant to the pending matter and found that McNicol Place had met its burden of proof.

The March 21, 2022 Order does contain the court's reasoning for the denial of discovery and as such satisfies the requirements found in *Maddrey* and *Black*. Petitioner argues that the discovery rulings and the Trial Court's "failure" to address the reasonable accommodation request in the underlying matter constituted legal error. Petitioner contends that the Trial Court was required to "provide that

information by including it in its written decision denying the discovery, by setting forth the basis on the docket itself, . . ., or referring in the docket to separate documents that contain the information[.]" Petitioner, in effect, relied solely on the accommodation request as his defense to the unauthorized occupants claim. This was because there was no defense to it. It was acknowledged that two (2) unauthorized occupants did in fact reside in the home, and continued to do so after the cure period expired. Moreover, it was undisputed that their applications to lawfully reside in the community were denied due to their criminal histories. This outcome was determined by five (5) judges in total. The reality is that Petitioner was merely using the accommodation request as a work around to circumvent the rules and polices of the community, which are in place to keep the community safe and its residents secure. As the Trial Court confirmed and the Superior Court affirmed – this cannot be a permitted course of action.

As indicated *supra*, all reasonable accommodation requests by nature are not reasonable. Petitioner asserts that a reasonable accommodation request can be made at any time and such request supersedes any cure period or timeframe given. *See, Douglas*, 884 A.2d at 1121 citing *Radecki*, 114 F.3d at 116. A "reasonable accommodation defense is available at any time before a judgment of possession has been entered, ***if*** the other requirements of the defense are met." *Douglas*, 884 A.2d at 1121 (emphasis added). This does not mean, as Petitioner alleges, that every reasonable accommodation request is reasonable and must be granted, nor does it

mean that every reasonable accommodation request is a defense to an eviction action. In the instant matter, it is not the timing of the request but the unreasonableness of same which renders it moot.

The information sought in discovery was not relevant to the matter before the Trial Court because the reasonable accommodation request was not a sufficient defense to the summary possession action, which both the Trial Court and the Superior Court plainly saw. Petitioner argues that the information sought "was plainly relevant to Kravis's Fair Housing Act defense." Opening Brief at pp. 24-25. What Petitioner fails to realize is that a reasonable accommodation request is not always granted. A landlord does not have to grant a request that is unreasonable. An unreasonable request is one that "would fundamentally change the housing provider's business or poses a direct threat to others."[7] Landlords are free to determine the manner in which they run their business which includes regulations on who can and cannot live in their communities. As such, no legal error exits.

Again, Petitioner seeks to create an error of law where none exists. Petitioner is merely unhappy with outcome of the matter; this does not create legal error. The Trial Court clearly applied the Landlord Tenant Code and the Justice of the Peace

[7] *See*, https://statehumanrelations.delaware.gov/fair-housing-information-center/disability-status/ - Reasonable Accommodations & Reasonable Modification; Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act, May 14, 2004, https://www.justice.gov/crt/us-department-housing-and-urban-development - paragraph 7.

Court Civil Rules and properly denied discovery and quashed the subpoena. The Superior Court, in its review of the *de novo* Order, clearly and simply reviewed the Trial Court's decision and held despite Kravis' reasonable accommodation request and his discovery requests, "Petitioner's evidentiary contentions and the application of allegedly relevant disability accommodation statutes are not the proper subject of *Certiorari* review, the landlord 'had sufficient grounds to initiate and prevail in a summary possession action.'" Mem. Op. ¶ 14. Petitioner's argument that both Courts committed legal error is patently false.

CONCLUSION

For the reasons stated herein, McNicol Place, respectfully requests that Petitioner's Petition for a Writ of *Certiorari* be dismissed.

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