

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Dedes Realty, LLC v. Union Plaza Diner Corp. A-0468-24

There are a lot of reasons to love a good diner, but even the bad diners have something in common with the great ones: You can pay the bill at the register. For some reason, diners are the only restaurant genre that have embraced this uber-efficient approach to ending the meal. While every steakhouse, roadhouse, and pizzeria requires you to wait for the bill, then wait for the server to see that you plopped your credit card on top of the bill, and then wait for the server to return with your credit card, at a diner they just want you to pay and leave as quickly as possible after you have stopped making purchases. I embrace that efficiency. In this case, it was the diner that had to quickly pay a bill.

In *Dedes Realty, LLC v. Union Plaza Diner Corp.*, the Appellate Division affirmed a judgment granting possession of a Union County restaurant space to its owner, Dedes Realty, after finding that Union Plaza Diner Corp. had breached a detailed settlement agreement meant to resolve chronic rent delinquencies.

The dispute traces back several years. Union Plaza Diner had operated at the location since 2012, but by early 2024, the landlord alleged a pattern of missed and late rent payments stretching back over a year. To avoid eviction, the parties entered into a June settlement that allowed the diner to remain in place provided it paid roughly \$100,000 in back rent and related expenses on a strict schedule. The agreement made clear that any breach would permit the landlord to seek an immediate judgment for possession.

According to the appellate court, that is precisely what occurred. The diner failed to make multiple settlement payments on time, issued checks that were returned for insufficient funds, missed rent payments for August and September, and did not pay required sewer charges for 2023. When the landlord moved for a warrant of removal, the tenant argued that the failures were either inadvertent or substantially cured, citing bank issues and administrative confusion.

The trial court was unpersuaded. It found six separate breaches and rejected the notion that the tenant had “substantially complied” with the agreement, describing instead what it called a “casual approach to compliance.” The court also denied the tenant’s request to adjourn the motion hearing, a ruling the appellate panel said fell squarely within the judge’s discretion.

By the time the appeal was heard, the diner had already been locked out and the premises vacated, rendering much of the dispute technically moot. Still, the appellate judges emphasized a broader principle: settlement agreements are contracts, and when their terms are unambiguous, courts are bound to enforce them as written.

“Whether the breaches were inconvenient or consequential was not the question,” the panel wrote in effect. “The agreement said what it said.”

In addition, the appellate panel provided thoughtful insight on the trial court’s discretion to evaluate adjournment requests. This is both useful and interesting to us litigators, because those types of applications are rarely the focus on an appeal even if they are a common feature of everyday litigation work.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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