PELAEZ CONSTRUCTION, LLC. Plaintiff/Appellant, -vs- GREEN FIELD CONSTRUCTION GROUP, LLC, GREEN FIELD BUILDERS GROUP LLC, as Successor to GREEN FIELD CONSTRUCTION, LLC, SEAN BRENNAN, MICHAEL TENNYSON, AND JOHN DOE(S) 1-10 AND JOHN DOE CORPORATIONS/ENTITIES 1-10, Defendants/Respondents,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-000371-24(Team 4) Civil Action ON APPEAL FROM SUPERIOR COURT, LAW DIVISION, MIDDLESEX COUNTY DOCKET NO. MID-L-002155-21 Hon. Bina K. Desai, J.S.C Sat Below

REPLY BRIEF OF APPELLANT IN RESPONSE TO RESPONDENTS' BRIEF

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PRELIMINARY STATEMENT

The Respondents, Sean Brennan and Michael Tennyson, argue repeatedly that the Appellant failed to prove that said Respondents were liable for the damages sustained by Appellant. In doing so, the Respondents attempt to distance themselves from their discovery abuses - which were willful, deliberate and contumacious. To put this case in the proper context, one must consider the circumstances that led to the Appellant moving to amend its complaint to add additional defendants and causes of actions. By doing so, one immediately recognizes that the Appellant was not engaged in some fishing expedition but rather was attempting to connect the dots as to why the Respondents refused to pay Appellants the monies it was owed.

In November 2022, Appellant moved to amend its complaint (Pa 73) because two (2) complaints were discovered that had recently been filed regarding the Respondents: one was a case filed in Federal Court in April 2021 captioned *Green Field Construction Group, LLC, a N.J. Limited Liability Company, Michael Tennyson, Sean Brennan, and LVT Power Solutions, LLC, a N.J. Limited Liability Company vs. Russell Lewis, et al.* (Pa 1239) In their complaint, Tennyson and Brennan, alleged that they together with Defendant Lewis each owned (30) percent of the Plaintiff Green Field Construction Group and that the Defendant Lewis converted hundreds of thousands of dollars from the company. Lewis in response filed an Answer and Counterclaim alleging that Tennyson, aided by Brennan,

diverted key assets from Green Field Construction Group to another company.

The second complaint that the Appellant discovered was one filed in the Superior Court of New Jersey captioned *Pier Village III Urban Renewal Company LLC v. Green Field Construction Group, LLC, GF Builders, Sean V. Brennan* under Docket No. MTN-L-456-22. (Pa 79 and 337) Most importantly, the Plaintiff Pier Village was the owner of the project when Appellant, in June 2020, was hired pursuant to an oral agreement with the Respondent Brennan to perform dry wall, plaster and other related work. In its amended complaint, (Pa 79 and 337) Pier Village alleged:

> 17. In late 2020, however, Pier Village discovered that GF Construction – and Tennyson and Brennan, personally – breached the CMA and materially falsified certified facts in both the Applications for Payment and the Lien Waiver and Release by diverting millions of dollars paid to it by Pier Village for the work of contractors and material suppliers.
>
> 20. In late 2020, GF Construction acknowledged that it had diverted well in excess of a million dollars that was duly owed to its subcontractors and suppliers for work performed from August 2020 to October 2020.

Having had the benefit of the above-described Complaints, Appellant successfully moved to Amend its Complaint which motion was granted by the Court. (P 214) With the Amended Complaint adding additional Defendants and causes of action, Appellant tailored its discovery requests accordingly. And as will be demonstrated hereafter, the arguments advanced by the Respondents will be put in their proper context – that is to say their arguments that they provided all the documents that they "possessed or were in their possession" blatantly ignores the absolute obligation of our discovery rules, Rule 4:18-1, which requires production of materials which are in the "possession, custody or control" of a party. Going further, Respondents further argument that they were sanctioned because a "thief" took their documents was rejected by the trial court as it was ultimately shown to be what it was – a false narrative bereft of factual support.

Finally, the Respondents' argument that the Court had the discretion to require the Appellant provide evidence of each individual Respondent's liability not only ignores the concept of joint and several liability but more fundamentally ignores the fact that the Respondents willfully, deliberately, and contumaciously refused to produce documents in their exclusive control which Appellant needed to prove its case against the Respondents. Simply stated, the Respondents corrupted the discovery process.

POINT I

RESPONDENTS' ARGUMENTS CONTAINED IN POINTS I AND II OF THEIR BRIEF IN OPPOSITION ARE, WITHOUT MORE, INAPPLICABLE TO THE FACTS AND CIRCUMSTANCES OF THIS CASE.

In Appellants' Amended Complaint, (Pa 216) it alleged that the Respondents Brennan and Tennyson had, as owners of Green Field Construction Group, induced Green Field to breach its contract with Appellant by misappropriating the funds paid by Pier Village Urban Renewal to Green Field which were intended to and earmarked to be paid to the subcontractors and Appellant. In addition, Appellant asserted that the individual Respondents herein misappropriated the monies that were paid to Green Field for Appellant for their own personal use or for funding a separate entity owned exclusively by the individual Respondents, Green Field Builders Group LLC.

Having asserted the aforesaid allegations, Appellant served discovery specifically tailored to obtain information directly related to those allegations. In this regard, Appellant was mindful of the admonition given in All the President's Men ("follow the money"), thus Appellants served the following, requests (see Pa 497, 507, 517, 646, and Respondents' Responses 549) on all the Respondents:

1. Copy of Notice of Unpaid Balance filed by Green Field against Pier Village on March 21, 2021 and all supporting documentation.

2. Copy of the Application For Payment for Requisitions numbered 28, 29, 30 and 31 submitted by Green Field to Pier Village.
3. Copies of all checks received by Green Field from Pier Village between August 2020 and January 31, 2021.
4. Copies of all bank statement of Green Field between August 2020 and January 31, 2021 showing deposit of all checks received from Pier Village between July 2020 to January 2021.
5. Copies of all reports of any expert witness that Respondents intend to rely upon to support any of their defenses.
6. Copies of all bank statements of Green Field between August 2020 and January 31, 2021 showing all check deposits of checks received from Green Field.
7. Copies of all checking account statements reflecting where checks received from Pier Village between July 2020 and January 31, 2021 were deposited.
8. The name and address of each full-time employee of Green Field employed between August 2020 and January 31, 2021 that were responsible for:
    a. Depositing checks
    b. Preparing and maintaining the accounts receivable leger

c. Preparing and maintaining the accounts payable ledger

d. Preparing and maintaining the general ledgers.

9. All emails exchanged between and among the Respondents Tennyson, Brennan, and representatives of Pier Village regarding the diversion of monies.

10. Copies of responses of Respondents to interrogatories propounded by Pier Village in its litigation with Respondent.

11. Respondents were requested to search their individual computer using search terms identified by Appellant and to produce any and all email responses to the search terms which focused on the diversion of monies.

In response to all of the above discovery requests, the Respondents stated:

> Respondents (Defendants) do not have any responsive documents related to the project for the reasons stated above (that the former employee deleted documents from the shared Drop Box). And that the Respondents object that the documents are not relevant and cannot lead to relevant evidence. (Pa 549)

With the exception of producing the Notice of Unpaid Balance (without supporting documentation) and one Application for Payment, the Respondents refused to produce any of the above-described information relying, in part, upon the false narrative that a former employee (whom they concede was not an

administrator and as such couldn't delete files from the shared Drop Box) deleted the information in the shared Drop Box. Without more, the Respondents refusal was willful, deliberate, and contumacious. And as a consequence, the Appellant was completely deprived of the ability to prove its case against the Respondents. In such circumstance, the Respondents deliberately corrupted the discovery[1] process warranting the trial court to apply the admonition of the Supreme Court in *Abtrax Pharmaceuticals, Inc. v. Elkins – Sinn, Inc.,* 139 N.J. 499 (1995) and to consider and apply those cases that support the court piercing the veil of the corporation where the corporate form is used to perpetrate a fraud, commit an injustice, and/or evade the law or commit a crime. See *Richard A. Pulaski Const. Co. Inc. v. Air Frame Hangars, Inc.*, 195 N.J. 457 (2008). Indeed, our courts have gone so far as to uphold a trial court not conducting a proof hearing on liability or damages where the Defendant corporation and its officer defaulted by not filing an answer concluding that "because the Defendants defaulted that discovery opportunity was lost, thus the case was one in which, from the trial court's perspective, he [the trial judge] could properly decline to require Zurich (the plaintiff) to prove Caridi's [the corporate officer] liability, since he as the defaulting defendant controlled all of the key evidence."

[1] Respondents claim they produced over 3,000 pages of documents. However, their documents were irrelevant – they either predated the time frame June 2020 and January 2021 or completely ignored it. Simply stated they were unresponsive.

American Zurich Insurance Company v. SRC Construction Corp. of New Jersey and Scott Caridi, 2008 WL 4875611 (App. Div. 2008) at pl 4. Here the situation is even more egregious as the Respondents were served with specific discovery requests and willfully, deliberately and contumaciously refused to provide the documentation – documentation which went to the heart of the Appellant's case.

POINT II

THE RESPONDENTS' RELIANCE UPON *LAWSON V. DEWAR*, 468 N.J. SUPER 128 (APP. DIV. 2021) IS MISPLACED AND DOES NOT SUPPORT THE TRIAL COURT'S DISREGARD OF THE DEFAULT JUDGMENT ENTERED AGAINST ALL THE RESPONDENTS, INCLUDING THE INDIVIDUAL RESPONDENTS, ON A JOINT AND SEVERAL LIABILITY BASIS.

At the outset, it cannot be over emphasized that there is nothing in the record to even remotely suggest that the trial court considered the law of the case doctrine.

Thus, completely unlike the case herein, the *Lawson* case dealt exclusively with the situation wherein one of the parties filed a motion for reconsideration of an interlocutory order. In denying the motion, the trial court relied, for its reasoning, upon cases dealing with motions for Reconsideration for Final Orders. On leave to appeal an interlocutory order, the Appellate Division granted leave to appeal and reversed the order of the trial court holding that Rule 4:42-2 declares that interlocutory orders "shall be subject to revision at any time before the entry of final [judgment]…."

In the matter herein, the Respondents' Answers were struck with prejudice pursuant to Rule 4:23-5(2). The aforesaid Rule provides that a properly entered order with prejudice operates as an adjudication on the merits. And a party seeking relief from an aforesaid order of dismissal with prejudice must show extraordinary circumstances to obtain relief pursuant to Rule 4:50-1. Thus, contrary to what Respondents argue, even if the trial court were to have considered overruling the Default Judgment, it would have had to be done on notice to all the parties and that the court would have had to determine if the Respondents could demonstrate extraordinary circumstances justifying relief. In light of the afore-described conduct of the Respondents in deliberately refusing to provide discovery which went to the heart of the Appellant's case, Respondents would be incapable of meeting this burden. And in such circumstance, the trial court would be compelled to deny relief to the Respondents.

POINT III

RESPONDENTS IN POINT III OF THEIR BRIEF ARGUE THAT THEY DID NOT SPOLIATE OR DESTROY EVIDENCE. THE FACTS DEMONSTRATE THEY DID.

In *Rosenblit v. Zimmerman*, 166 N.J. 391 (2001) the Supreme Court stated "Spoliation, as its name implies, is an act that spoils, impairs, or taints the value or usefulness of a thing. Black's Law Dictionary 1409 (7th ed 1999). In Law, it is the term that is used to describe the hiding or destroying of litigation evidence,

generally by an adverse party. Bart S. Wilhoit, Comment, Spoilation of Evidence, the Viability of Four Emerging torts, 46 UCLA L. Rev. 631, 633, (1998)" at pg. 400. (emphasis added)

Here the Respondents were served with Discovery Requests to Produce Documents Pursuant to Rule 4:18-1 (in part as outlined in the preceding arguments). The comments to Rule 4:18-1 specifically state:

> "…a party seeking production or inspection to simply serve a written request for the specified discovery in the manner prescribed by paragraph (b) upon the person having custody, control, or possession of the desired materials or property ….. the rule expressly includes electronically stored information …" (emphasis added)

Applying the above quoted to the facts herein, Appellant served the individual Respondents, as well as the Respondent Green Field Construction Group, with Requests for Production pursuant to Rule 4:18-1. Each of the Respondents refused claiming that a former employee accessed the shared Drop Box, removed and transferred Green Field's records to another folder, and then went back and deleted Green Field's documents from the original folder. In short, this false narrative was debunked when the Respondent's only witness, Lizzette Darouichi, who made this claim conceded in her deposition that the former employee Brett Coleman was not an administrator. The witness further testified that only administrators, of which she was one, had the ability to delete

information from the shared Drop Box. (Pa 696)

Separate and apart from the false narrative, each of the Respondents as owners, had the ability to go to the banks where Green Field maintained its bank accounts and obtain copies of the bank statements, checks, deposits, etc. The Respondent not only refused to do this but further refused to identify the banks and/or the employees who maintained the underlining books of account. Moreover, each of the Respondents refused to conduct a search of their computers using the search terms provided by Appellant. Not only did the Respondents refuse to produce the afore-described information, Rule 4:23-6, the Respondents either refused to produce or were incapable of producing the hand written invoices, including and not limited to P-1 in evidence, that the Appellant prepared and gave to the supers on the job and/or to Respondent Brennan himself.

One is hard pressed to argue, in good faith, that Respondents did not spoliate given the above-described circumstances. And even looking beyond spoliation, the conduct of the Respondents herein bespeaks a deliberate and willful effort to stone wall and obstruct applicant's ability to prove its case against them.

POINT IV

RESPONDENTS ATTEMPT TO ARGUE THAT P-1 EVID WAS PRODUCED LATE IN DISCOVERY AND THAT SOMEHOW THIS LATE PRODUCTION NEGATIVELY IMPACTS APPELLANT'S CASE. SIMPLY STATED, RESPONDENTS' ARGUMENT IS MISPLACED.

Respondents made a similar argument before the discovery judge, and it was rejected. Of particular importance is that the Respondents' attempted to argue that they were somehow prejudiced by this alleged late production. In opposition to the Respondents' motion, Appellant submitted the affidavit of Eliseo Pelaez, (Pa 1108) the owner of Appellant, who stated under oath, that he personally gave handwritten invoices to either the Respondent Brennan and/or to one of the supers on the job. And with respect to P-1 Evid, he specifically stated that he gave P-1 Evid to one of supers on the job site. (Pa 1109) In addition, he texted a copy of the last page of P-1 Evid to the Respondent Brennan in early 2021 when he was asked by Brennan how much he was owed. (Pa 1110) Upon his receipt of the last page of P-1 Evid (which showed a balance of $346,700.00), Brennan texted back Pelaez and stated "we are close." (Pa 315) The clear inference being that Brennan recognized that Appellant was owed money and that the amount of money was close to "$346,700.00."

Although Respondents were now confronted with a sworn statement that P-1 Evid was given to Respondents during the course of construction, the Respondents never denied that they received it.

CONCLUSION

For the reasons expressed in the foregoing arguments, as well as those expressed in Appellant's initial brief, it is respectfully requested that this court

reverse the decision of the trial court and enter judgment against the individual Respondents on a joint and several basis for the sum of $346,700.00, Alternatively, it is respectfully requested that the court reverse the decision of the trial court and remand the matter back for a new hearing and award Appellant all the fees it incurred during the discovery process together with costs.

Respectfully submitted,

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Dated: May 13, 2025