SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION
LETTER BRIEF

APPELLATE DIVISION DOCKET NUMBER A – 000458 – 24

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Letter Brief on Behalf of: ***Susan Shurina***

Thursday, March 6, 2025

Stephen Shurina, Plaintiff – Respondent,

VS.,

Susan Shurina, Defendant – Appellant.

Case Type: **Civil**

County: **Monmouth**

Trial Court Docket Number: **MON – C – 109 – 23**

Sat Below: **HON. MARA E. ZAZZALI-HOGAN, P.J.CH.**

Robert A. Russell, Esq.
On the Brief

Dear Judges:

LETTER BRIEF STATEMENT

Please accept the filing of this letter brief in lieu of a more formal brief.

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COMBINED STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

Plaintiff – Respondent Stephen Shurina ("Plaintiff" and Defendant – Appellant Susan Shurina ("Defendant") are brother and sister and co – owners of a deed restricted summer bungalow real property which is not encumbered by a mortgage **(Da1, Da60 & Da32 – Da51)**. Neither party is or was during the pendency of this action, a resident of the State of New Jersey **(Da1)**. On August 15, 2023, the Plaintiff filed a single count complaint

[1] The procedural history and statement of facts were intentionally combined as they are inextricably intertwined.

for partition sale in the Superior Court Chancery Division General Equity Part Monmouth County. The complaint sought only the following prayer for relief:

> WHEREFORE Plaintiff requests judgment entered against the Defendant, ordering the division of the subject property based on equitable contribution or, if the court sees fit, a partition sale of the premises located at 15 Cedar St., #23 Highlands, New Jersey. In addition, the Plaintiff demands cost of suit, reasonable attorney's fees, and all other relief as the Court may deem proper. **(Da1 – Da4)**.

On November 17, 2023, the Plaintiff took default judgment against the Defendant **(Da5)**. On February 22, 2024, the Plaintiff took amended default judgment against the Defendant **(Da6 – Da7)**. On April 10, 2024, Defendant moved to vacate default judgment and to dismiss Plaintiff's Complaint for Failure to State a Cause of Action Upon which Relief Could be Granted **(Da8 – Da12)**. Plaintiff opposed and on April 26, 2024, the trial court vacated default judgment on account of improper service upon the Defendant and denied the motion to dismiss **(Da13 – D14)**. Plaintiff never served Defendant with the complaint and Plaintiff never amended his complaint. On May 28, 2024, the parties entered into a stipulation to extend time to answer **(Da15)**. On July 12, 2024, Plaintiff requested and obtained

default against the Defendant **(Da16)**. On July 16, 2024, the Plaintiff filed a notice of motion to enter default judgment seeking judgment beyond his prayer for relief in his complaint **(Da17 – Da21)**. Defendant objected and explained why she never filed an answer **(Da22 – Da51)**. On July 24, 2024 Plaintiff filed a reply **(Da52 – Da55)**. On September 11, 2024, the trial court entered default judgment against the Defendant for "liability," ordered a proof hearing to take place and issued a cantankerous Statement of Reasons **(Da56 – Da62)**. On October 8, 2024, the trial court conducted the proof hearing.[2] Plaintiff offered *one* (1) exhibit **(1T – 3 & Da63 – Da102)** and *one* (1) witness **(1T – 3)**. On October 11, 2024, the trial court entered a final "order" against the Defendant as follows:

> **ORDERED** that plaintiff be allowed to buy out the defendant's interest in the property
> for $50,000.00 which represents half of the property's fair market value. The plaintiff, upon execution of this order shall within thirty (30) days provide the defendant with:
>
> 1. A copy of this Order;
> 2. A proposed Quitclaim deed; and
> 3. Tender $50,000.00 by way of certified check.
>
> The defendant shall have forty-five days to sign, notarize, and return the above referenced Deed to the plaintiff. If the defendant either fails, or refuses, to return the deed within forty-five days of its delivery, then plaintiff's counsel shall be granted limited power of attorney to execute the deed on behalf of the defendant **(Da110)**.

[2] This transcript shall be referred to a "1T."

The trial court placed its statement of reasons on the record on October 11, 2024.[3] The trial court's statement of reasons contained absolutely no supporting legal authority **(2T)**. On October 15, 2025, Defendant made inquiry of the trial court pursuant to R. 2:5 – 1 **(Da104)**. On October 15, 2024, the Defendant filed a Notice of Appeal and Case Information Statement with this Court **(Da105 – Da110)**. Defendant never filed an Appellate Division Case Information Statement in accordance with R. 2:5 – 1(e) or otherwise. The trial court never filed a R. 2:5 – 1(d) amplification or even declared it was not going to do so.

ARGUEMENT

I. STANDARD OF REVIEW (NOT ARGUED BELOW).

The Appellate Division's standard of review of a trial court's factual findings and conclusions of law is well-settled. This Court is only bound by the findings of the court below when that are supported by adequate, substantial, and credible evidence. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484, (1974). Thus, this Court is empowered to disturb the factual findings and legal conclusions of the trial judge when it is convinced that they are so manifestly unsupported

[3] This transcript shall be referred to as "2T."

by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice. Rova Farms id. A trial court's interpretation of the law and the legal consequences that flow form established facts are not entitled to any special deference. See Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). When a court of review address a trial court's construction of a statute, its review is *de novo*. In that inquiry, the court of review looks to the Legislature's intent as expressed in the statute's plain terms. Matter of A.D., 259 N.J. 337, 351 (2024).

If a judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation and it becomes an arbitrary act, not subject to the usual deference. Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020); Alves v. Rosenberg, 400 N.J. Super. 553, 563 (App. Div. 2008). In such a case, the reviewing court must instead adjudicate the controversy in the light of the applicable law in order that a manifest denial of justice be avoided. State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010); State v. Steele, 92 N.J. Super. 498, 507 (App.

Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960).

The due process guarantee expressed in the Fourteenth Amendment to the United States Constitution includes "the requirement of 'fundamental fairness'" in a legal proceeding. D.N. v. K.M., 429 N.J. Super. 592, 602 (App. Div. 2013).

II. THE TRIAL COURT FAILED TO COMPLY WITH R. 1:7 – 4 IN ITS OCTOBER 11, 2024 STATEMENT OF REASONS WHICH CONTAINED ABSOLUTELY NO SUPPORTING LEGAL AUTHORITY (NOT ARGUED BELOW).

In a non – jury civil action, the role of the trial court at the conclusion of the trial is to find the facts and state conclusions of law. R. 1:7-4. Failure to perform that duty "constitutes a disservice to the litigants, the attorneys and the appellate court." Naked conclusions do not satisfy the purpose of R. 1:7-4. Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions. See Curtis v. Finneran, 83 N.J. 563, 569–70 (1980). Without a statement of reasons, we are "left to conjecture as to what the judge may have had in mind." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her

opinion." Ibid. The trial court made no findings of facts and conclusions of law in its October 11, 2024 Statement of Reasons **(2T)**. The trial court made no amplification of the record to this Court in accordance with R. 2:5 – 1(d) and it did not even respond to the Defendant's inquiry in this regard **(Da104)**.

III. N.J.S.A. 2A:56 – 2, *ET SEQ*. DID NOT EMPOWER THE TRIAL COURT TO GRANT THE PLAINTIFF THE FINAL RELIEF ORDERED AS A MATTER OF LAW AND, AS A MATTER OF FACT, WHEN THE SAID RELIEF WAS NOT DEMANDED IN THE PLAINTIFF'S COMPLAINT WHICH WAS NEVER AMENDED PRIOR TO THE ENTRY OF DEFAULT AND DEFAULT JUDGMENT ON LIABILITY & DAMAGES (Da22 – Da28).

N.J.S.A. 2A:56 – 2 provides as follows:

> The superior court may, in an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein.

In addition to an award of attorney's fees and costs, the Plaintiff's Complaint sought the specific limited relief of "ordering the division of the subject property based on equitable contribution, or if the court see fit, a partition sale of the [subject] premises" **(Da3)**. The trial court cited to no legal authority which empowers it to order one property owner to "buy out"

the other property owner in a partition proceeding for an arbitrary amount of money. None exists. In fact, the trial court did not even make a conclusion that "a partition [of the real estate] cannot be made without great prejudice to the owners" **(Da59 – Da62 & T2)**.

IV. THE TRIAL COURT NEVER OBTAINED PERSONAL JURISDICTION OVER THE DEFENDANT CONSISTENT WITH DUE PROCESS WHEN SERVICE OF PROCESS WAS DETERMINED BY THE TRIAL COURT TO BE DEFECTIVE AND THE DEFENDANT WAS NEVER PROPERLY SERVED WITH THE PLAINTIFF'S COMPLAINT (ARGUED BELOW Da10 – Da12 & Da13 – Da14).

On April 26, 2024, the trial court ruled that the Defendant was not properly served with the Plaintiff's complaint **(Da16 – Da17)**. The Plaintiff never served the Defendant after the trial court issued its April 26, 2024 Order Vacating Default Judgment based on improper service. Nevertheless, the trial court allowed the Plaintiff to default the Defendant and take default judgment against her **(Da13 – Da14, Da56 – Da62 & Da110)**.

The requirements of the rules with respect to the service of process go to the jurisdiction of the court and must be strictly complied with. Any defects are fatal and leave the court without jurisdiction. See

Driscoll v. Burlington – Bristol Bridge Co., 8 N.J. 433, 493 (1952). It is not sufficient that a defendant somehow receive a copy of the summons and complaint within sufficient time to file an answer. See Sobel v. Long Island Entertainment Prods., Inc., 329 N.J. Super. 285, 293 (App. Div. 2000).

V. AS A MATTER OF FACT AND LAW THE TRIAL COURT ACTED ARBITRARILY AND CAPRICIOUSLY WHEN GRANTING THE PLAINTIFF THE RELIEF CONTAINED IN THE OCTOBER 11, 2024 FINAL ORDER AND STATEMENT OF REASONS (NOT ARGUED BELOW).

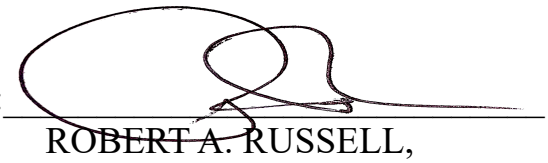
A court abuses its discretion when its "decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." See State v. Chavies, 247 N.J. 245, 257 (2021). The trial court's decision was made without a rational explanation in law and therefore departed from established policies and solely rested on an impermissible basis.

CONCLUSION

In light of the foregoing, as a matter of fact and law, the trial court's final judgment must be reversed.

DATED: March 5, 2025

Respectfully submitted,

By: 

ROBERT A. RUSSELL,
Attorney for the Defendant – Appellant

	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
STEPHEN SHURINA Plaintiff/Respondent, vs. SUSAN SHURINA Defendant/Appellant	Docket No.: A-000458-24 CIVIL ACTION On Appeal From: Superior Court of New Jersey Chancery Division – General Equity Part Monmouth County Heard Below: Hon. Mara E. Zazzali-Hogan, P.J. Ch. P.

AMENDED BRIEF FOR RESPONDENT STEPHEN SHURINA

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PRELIMINARY STATEMENT

This appeal arises from a partition action brought by the Plaintiff, Stephen Shurina, against the Defendant, Susan Shurina, his biological sister. The trial court properly awarded the Plaintiff a Default Judgment allowing him to purchase the Defendant's ownership interest for fair market value. The court acted within its lawful power and jurisdiction in granting this relief, as the Defendant, and her attorney, failed to properly answer or otherwise plead, and the relief sought was not only permissible by statute, but a customary outcome for partition actions in New Jersey.

The Defendant presents several untethered arguments on appeal in a veiled attempt to undo the decision of the trial court. Whether this appeal serves as a good faith attempt to challenge the trial court's judgment as a matter of law, or an attempt to correct a fiduciary blunder on the part of the Defense counsel, remains uncertain. What is certain is the statutory and case law which provides no basis to support the Defendant's arguments on appeal.

As an aside, due to Defense counsel failing to separate the procedural history from the statement of facts (which denies me the opportunity to discern them individually), I will be presenting my own individual procedural history and statement of facts below.

PROCEDURAL HISTORY

The Plaintiff filed a complaint for partition on August 15, 2023 (Da1 – Da4).[1] As part of the complaint, Plaintiff included a prayer for relief requesting the following:

> "WHEREFORE, Plaintiff requests judgment be entered against Defendant**, ordering the division of the subject property based on equitable contribution or**, if the court sees fit, a Partition sale of the premises located at 15 Cedar Street, #23, Highlands, New Jersey. **In addition**, the plaintiff demands cost of suit, reasonable attorney's fees, **and all other relief as the Court may deem proper** (Da3)."

The complaint was served on the Defendant by way of personal service on August 21, 2023, as evidenced by the Affidavit of Service, which was uploaded to the court on August 31, 2023 (Pa2).[2] Specifically, the Affidavit notes that:

> "TENANT IDENTIFIED AND CONFIRMED HERSELF AS THE DEFENDANT BUT REFUSED SERVICE. I LEFT DOCUMENTS AT HER FEET AND ANNOUNCED SERVICE (Pa2)."

The Defendant failed to answer or otherwise plead, so Plaintiff filed a Request to Enter Default, and subsequently, a Motion to Enter Judgement dated October 23, 2023 (Pa3 – Pa5). Plaintiff's motion provided a form of

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[1] Da = Defendant/Appellant Appendix.
[2] Pa = Plaintiff/Respondent Appendix.

order which would require that the subject property be sold in accordance with the court's supervision (Pa5). On November 17, 2023, the court granted the motion ordering the sale of the premises (Da5). On January 31, 2024, the Plaintiff filed a subsequent motion to amend the order, requesting that the court allow the Plaintiff to purchase the Defendant's interest in the subject property for fair market value (Pa6 – Pa9). The order was granted on February 22, 2024, requiring the Plaintiff to present the Defendant with a copy of the court's order, a proposed Quitclaim Deed, and $50,000 in certified funds (Da6 – Da7). The Defendant was required to execute the Quitclaim Deed and return the Deed to the Plaintiff within forty-five (45) days (Da6 – Da7).

The Defendant failed to execute the deed, and instead filed a Motion to Vacate Default Judgement, and Dismiss Plaintiff's Complaint, on April 10, 2024 (Da8 – Da12). The motion was granted in part, and denied in part, on April 26, 2024 (Da13 – Da14). The Default Judgment was vacated, and the Defendant was ordered to answer, or otherwise plead, withing thirty (30) days. (Da13 – Da14)

On May 28, 2024, the parties executed a stipulation among their attorney's which allowed the Defendant an additional thirty (30) days to respond (Da15). The Defendant failed to formally answer by the new deadline of June 25, 2024, leading the Plaintiff to request default again on July 12, 2024

(Da16), along with another Motion to Enter Judgment on July 16, 2024 (Da17 – Da19). On September 11, 2024, the court entered judgment in favor of the Plaintiff and annexed a detailed decision to its order (Da56 – Da62).

The September 11 decision granted judgement as to liability[3], but allowed for a proof hearing to be scheduled to determine damages (Da58 – Da62). A proof hearing took place on October 8, 2024, where the Plaintiff's expert appraiser was presented for direct and cross examination, along with his appraisal report (Da63 – Da103). On October 11, 2024, the trial court issued a written order which allowed the Plaintiff to purchase the Defendant's interest in the property for $50,000, essentially reinstating the February 22, 2024 order that had previously entered (Pa1). The final order was delivered orally by Judge Zazzali-Hogan on October 11, 2024, via zoom (Pa1, 2T3-1 – 2T10-20)[4].

Defendant filed a Notice of Appeal to this court on October 15, 2024 (Da105 – Da 108).

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[3] The trial court's written decision held that the Plaintiff was entitled to purchase the Defendant's share of the premises (Da61 – Da62) as a matter of law, but in accordance with *Chakravarti v. Pegasus Consulting Group, Inc.*, 393 N.J. Super. 203, 210 (App. Div. 2007) the Defendant was entitled to a proof hearing to challenge Plaintiff's expert's assessment of the fair market value of the home (Da62).

[4] 2T3-1 = The transcript of the oral decision which Defendant/Appellant failed to include in their appendix.

STATEMENT OF FACTS

The parties to this action are biological brother and sister. In August of 2008, the parties jointly purchased a small bungalow located at 15 Cedar Street, #23, Highlands, New Jersey (Da1). The property was purchased for $31,000 cash and was intended to serve as a vacation home for the parties' respective families (Da1). The Plaintiff originally took title of the property through his business entity known as Team Freedom Investments LLC, so the original deed listed Team Freedom Investments LLC and Susan Shurina as tenants in common (Da2). After the dissolution of Team Freedom Investments LLC in October of 2020, the property was deeded to Stephen Shurina and Susan Shurina as tenants in common (Da2).

The parties' relationship soured over the years during their ownership of the property, which led to several disputes at the bungalow, some of which required intervention from the local authorities (Da2). Specifically, the Defendant, on multiple occasions, would call the police on the Plaintiff's children when they attempted to utilize the property at the same time as the Defendant (Da2). This led to the Plaintiff and his family feeling unsafe to enter the bungalow when the Defendant was present (Da2).

Over the years, the Plaintiff would propose different terms so that the parties could be able to cohabitate in peace (Da2). The Defendant refused to accept or comply with any time-sharing arrangement, and she also refused to accept any sort of sensible buyout offered by the Plaintiff (Da2). After exhausting all options, the Plaintiff filed a complaint for partition (Da1 – Da3).

Just as the Defendant was set to default, Plaintiff's counsel was contacted by Defense counsel (Robert Russell, Esq.) to facilitate a possible settlement (Pa13). In fact, Mr. Russell issued an email to Plaintiff's counsel on September 26, 2023 to "confirm that I represent the Defendant Susan Shurina (Pa13)." The Defendant, through counsel, continued their attempts to settle the matter to no avail, which led to the filing of the original motion to enter default judgement (Pa3 – Pa5).

Despite being made aware that default had entered, and that two different motions to enter judgment had entered, Defendant still refused to file a responsive pleading. (Pa10 – Pa12). The Defendant then went on to certify that she "never interacted with the process server (Da11, line 8)," and that her lack of response was due to "delays with me appreciating an understanding my legal responsibilities with regard to what to do with the documents (Da12, one 12)."

This delay in appreciating legal responsibilities continued inauspiciously for several months to follow, even after the Defendant was granted until June 25, 2024, to file an answer (Da15). In her September 11th written decision, Judge Zazzali-Hogan even noted that the Defendant's reasoning for failing to answer "bewilders the Court (Da61)."

ARGUMENT

I. STANDARD OF REVIEW (NOT ARGUED BELOW)

The Appellate Court's review of rulings of law and issues regarding applicability, validity or interpretation of laws, statutes, or rules is de novo. *See In re Ridgefield Park Bd. of Educ.*, 244 N.J. 1, 17 (2020). "[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Rowe v. Bell & Gossett Co.*, 239 N.J. 531, 552, (2019) (quoting *Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan*, 140 N.J. 366, 378, (1995)).

If a judge makes a discretionary decision but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation and it becomes an arbitrary act, not subject to the usual deference. *Summit Plaza Assocs. V. Kolta*, 462 N.J. Super. 401, 409, (App. Div. 2020). In such a case, the reviewing court must instead adjudicate the controversy in light of the applicable law in order to avoid a manifest denial of justice. *State*

v. Lyons, 417 N.J. Super. 251, 258, (app. Div. 2010); *Sackman Enters., Inc. v. Mayor*, No. A-1102-22, 2024 N.J. Super. LEXIS 18, 7-8 (Super. Ct. App. Div. Feb. 20, 2024).

However, the New Jersey Appellate Court's standard of review warrants substantial deference to a trial court's determination on orders for default judgment, which "should not be reversed unless it results in a clear abuse of discretion." *U.S. Bank Nat'l Ass'n v. Guillaume*, 209 N.J. 449, 467, 38 A.3d 570 (2012). An abuse of discretion occurs when a decision "is made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." *Ibid.*

In their review, the Appellate court does not "decide whether the trial court took the wisest course, or even the better course, since to do so would merely be to substitute our judgment for that of the lower court. The question is only whether the trial judge pursue[d] a manifestly unjust course." *Gillman v. Bally Mfg. Corp.*, 286 N.J. Super. 523, 528, 670 A.2d 19 (App. Div. 1996), *certif. denied*, 144 N.J. 174, 675 A.2d 1122 (1996).[5]

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[5] *See also Burns v. Hoboken Rent Leveling & Stabilization Bd.*, 429 N.J. Super. 435, 443, 59 A.3d 1096 (App. Div. 2013).

II. THE TRIAL COURT DID NOT VIOLATE R. 1:7-4 IN ITS OCTOBER 11, 2024 ORDER (Da109).

In a non-jury trial, or in ruling on a motion, R. 1:7-4(a) states that:

> "The court shall, by an opinion or memorandum decision, either written or oral, **find the facts** and **state its conclusions of law** thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29 the court shall thereupon enter or direct the entry of the appropriate judgement." R. 1:7-4(a).

The trial court must "state clearly its factual findings and correlate them with the relevant legal conclusions." *Curtis v. Finneran*, 83 N.J. 563, 570, 417 A.2d 15 (1980); *Ronan v. Adely*, 182 N.J. 103, 110, 861 A.2d 822 (2004) (finding the record in a child name change dispute "deficient to make a meaningful review" because "the trial court received no testimony from either of the parties and made no findings of fact"). Concurrently, the court's responsibility includes an obligation to decide all critical issues. Pressler & Verniero, *Current N.J. Court Rules*, comment. 1 on R. 1:7-4(a) (2025).

The Defendant notes, in their comprehensive two sentence argument, that the trial court "made no findings of facts and conclusions of law in its October 11, 2024 Statement of Reasons (Db9, 2T)," and that "The trial court made no amplification of the record to this Court in accordance with R. 2:5-1(d) and it did not even respond to the Defendant's inquiry in this regard (Db9,

Da104)." The former assertion is completely devoid of veracity, which also rationalizes the latter.

First we must reiterate the some context to address the former statement that the trial court made no finding of facts, or conclusions of law, in its October 11, 2024 Statement of Reasons (Db9). As the procedural history indicates, the October 11, 2024 written order, which was supplemented by an oral statement, was not a standalone order. (Da56 - Da62, Da 109, Pa1, 2T3-1 – 2T10-20). The October 11, 2024 order was issued following a proof hearing which took place on October 8, 2024 (Da63 – Da102, 1T) in accordance with the court's September 11, 2024 written decision (Da56 – Da62) on Plaintiff's Motion to Enter Judgment (Da17 – Da21).

In her September 11, 224 written decision, the trial judge provided a thorough five page decision which included a statement of facts (Da59), a recital of the Defendant's opposition (Da59-Da60), a recital of the plaintiff's reply (Da60), the court's legal standard governing entry of default judgement (Da61), the court's analysis and decision (Da61 – Da62).

In relevant part, the September 11, 2024 written opinion outlines a number of legal and factual findings which include:

- "The [P]laintiff has provided the necessary documentation and fulfilled all of the necessary requirements pursuant to R. 4:43-2 (Da61)."
- "[T]o date, [D]efendant has **not** filed an Answer to the Complaint. [D]efendant's argument that R. 1:4-8(a) and R.P.C. 3.1 prohibited her from filing an answer in this proceeding bewilders the Court (Da61)."
- "[P]laintiff's complaint avers that "[P]laintiff requests judgment be entered against [D]efendant, ordering the division of the subject property based on equitable contribution or, if the court sees fit, a partition sale of the premises…" The Court finds that this is the same type of relief that [P]laintiff is now seeking in the current motion (Da61).

The court's decision correctly divided the issue liability and damages with Judge Zazzali-Hogan distinguishing the former as the Plaintiff's right to the legal relief of partition, with the latter being a determination of the fair market value of the Defendant's share of the home (Da61). Judge Zazzali-Hogan cited to R. 4:43-2(b) and *Chakravarti v. Pegasus Consulting Group, Inc.*, 393 N.J. Super. 203, 210 (App. Div. 2007) to determine that the Defendant, at the court's discretion, was entitled to a proof hearing to challenge or cross-examine a witness regarding Plaintiff's proofs (Da61).

That proof hearing did take place on October 8, 2024, which resulted in a final order and oral statement rendered October 11, 2024 (Pa1, 2T3-1 – 2T10-20). In her oral statement Judge Zazzali-Hogan stated that the court heard testimony of the appraiser (2T6-15), which the court deemed to be an expert on residential real estate appraisals based on his resume and testimony (2 T6-17 – 2T6-19). She then went on to highlight the methods employed by the appraiser, and how his calculations were derived (2T6-20 – 2T7-5).

Based on the foregoing, Judge Zazzli-Hogan stated "the court finds that the expert testified within a reasonable degree of probability with the house as valued or put up for sale was $100,000, and makes such showing by a preponderance … of the evidence (2 T8-13 – 2T8-17)."

The amalgamation of the September 11th written decision with the October 11, 2024 oral statement makes the court's stance more than clear as to their findings of fact, their rationale employed in finding those facts, and their legal conclusions derived from those facts (Da56 - Da62, Da 109, Pa1, 2T3-1 – 2T10-20). The Defendant's contention to the contrary is devoid of logic and common sense (Db9). This also provides clarity on the Defendant's other contention that the court made no amplification of the record in accordance with R. 2:5-1(d) (Db9). R. 2:5-1(d) states that the trial judge or agency, within thirty days of an appeal, "***may*** file and send to the clerk of the appellate court

and the parties an amplification of a prior written or oral statement, opinion or memorandum." The rule does not require the trial judge to do so, and such an amplification is unnecessary in light of the exhaustive record reiterated above.

III. THE TRIAL COURT WAS PERMITTED TO GRANT THE FINAL RELIEF REQUESTED BY THE PLAINTIFF SINCE THE RELIEF REQUESTED WAS THE SAME TYPE THAT WAS SOUGHT IN THE COMPLAINT (Da1 – Da4, Da109).

A. THE COURT HAS DISCRETION IN EFFECTUATING THE METHOD OF PARTITION IN ACCORDANCE WITH N.J.S.A. 2A:56-2 ET SEQ. (Da109).

The Defendant contends that the court was unable to issue the relief sought under N.J.S.A. 2A:56-2 since the relief sought was different that that requested in the original complaint (Db9). The Defendant also contends that there is no legal authority allowing the court to force one owner to buy out the interest of another (Db9 – Db10). Both of these assertions are incorrect.

A Partition is an equitable remedy by which property, held by at least two people or entities as tenants in common or joint tenants, may be divided. *Newman v. Chase*, 70 N.J. 254, 260-61, 359 A.2d 474 (1976); *see also* N.J.S.A. 2A:56-1 to - 44; R. 4:63-1. Though it is an often underutilized outcome in partition actions today, a physical division of the property is one possible remedy. N.J.S.A. 2A:56-2 provides that "[t]he superior court may, in

an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein." Whether and how partition is ordered is within the discretion of the court since "the statutory language is **permissive** rather than **mandatory**." *Greco v. Greco*, 160 N.J. Super. 98, 102, 388 A.2d 1308 (App. Div. 1978) (citing *Newman*, 70 N.J. at 263).

Such discretion was displayed in an unpublished decision *Muenzer v. Nastasi*, No. A-0033-23, 2024 N.J. Super. Unpub. LEXIS 1681 (Super. Ct. App. Div. Jul. 16, 2024). The matter involved the partition of a condominium unit and boat slip owned by a couple as tenants in common. *Id.* at 3. The court ordered that the parties, in lieu of selling the property a third party, to submit bids against one another for the other parties interest, which would result in a sale to the highest bidder. *Id.*

Though *Muenzer* involved two pleading parties, and a distinct method for partition, the methodology is nonetheless analogous. The case law shows that the court may exercise great discretion in effectuating a partition, so long as neither owner is prejudiced. The Defendant has made no argument as to how she may have been unfairly prejudiced by the trial court. This is likely because no such prejudice exists.

The court required the twice-defaulted Defendant to sell her interest in the subject property for $50,000 (Da56 – Da62), which the court determined to be half of the fair market value of the home following the proof hearing (2T8-13 – 2T8-17). It logically follows that the Defendant would not be prejudiced since she would still be gaining the benefit of her interest, with the Plaintiff being required, rightfully, to pay fair market value for that interest. Whether that amount *could* have been more or less in a private bid, or in a public sale, is irrelevant to this discussion, nor is it even argued by the Defendant. This is because the issue before this Court is not fairness of the outcome, but rather, the lawful authority exercised in reaching that outcome. Neither the outcome, nor the authority to issue this outcome, run afoul of any statute or prevailing case law precedent.

B. THE RELIEF REQUESTED WAS NOT DIFFERENT IN KIND FROM THE PLAINTIFF'S ORIGINAL COMPLAINT (Da1, Da109).

The second prong of the Defendant's argument was that the court was not empowered to enter judgment since the relief requested was "different in kind" from the original complaint (Db9). Though the Defendant makes this assertion in a point heading of their brief, they provide no citation, or any argument, to support it as a matter of law (Db9 – Db10). However, in their opposition to the motion to enter judgment the Defendant relied on R. 4:43-

2(c) to argue that the court is prohibited from entering judgement that is different in kind from the pleadings (Da22 – Da24).

R. 4:43-2(c) state sin relevant part:

> "**The final judgment shall not be different in kind nor exceed the amount demanded in the pleading**, except that in continuing causes, installments coming due after the filing of the pleading but before entry of judgment may be added to the amount of the demand stated in the pleading."

In Plaintiff's original Complaint, the prayer for relief stated:

> "WHEREFORE, Plaintiff requests judgement be entered against Defendant, **ordering the division of the subject property based on equitable contribution** or, if the court sees fit, a Partition sale of the premises located at 15 Cedar Street, #23, Highlands, New Jersey. In addition, the Plaintiff demands costs of suit, reasonable attorney's fees, **and all other relief as the Court may deem proper**. (Da3)"

The Complaint does not request that the court order a singular method of partition, rather, it requests either a division of the property based on equitable contribution, a sale, **or** any other form of relief as the court deems proper (Da3). Outside of explicitly calling for a buy-out, the pleadings do make clear that the Plaintiff requested to have the property divided in accordance with equitable contribution (Da3). Since the record reflects nothing to discern the party's ownership interests being anything other than 50-50, it would follow that a buy-out of one owner's interest for fair market value would coincide

with such a request. The trial court echoed this sentiment in the September 11, 2024, written decision in stating that the "[t]he Court finds that that this is the same type of relief that [P]laintiff is now seeking in the current motion. Thus, [D]efendant's argument regarding R. 4:43-2(c) fails (Da62)."

IV. THE TRIAL COURT DID HAVE PERSONAL JURISDICTION OVER THE DEFENDANT WHEN THE PARTIES EXECUTED THE STIPULATION TO EXTEND DEFENDANT'S TIME TO ANSWER (Da15, Da56 – Da62, Da109).

It is unclear what the Defendant is attempting to argue in part IV of their brief (Db10). The Defendant mentions that they were not served with the original Complaint, which was already adjudicated by the trial court when the original Default Judgment was vacated by Judge Bauman's order on April 26, 2024 (Db10, Da14). It is worth noting that the Plaintiff has no intention on re-litigating this issue.

The April 26 2024 order required the Default Judgment to be vacated, and ordered the Defendant to respond to file an answer, or otherwise plead, within 30 days (Da15). However, the Defendant goes on to argue about personal jurisdiction by stating that she was never re-served with the Complaint after the April 26, 2024 order, and therefore, the court did not have jurisdiction to subject to an another default (Db10). As outlined below, the trial court maintained jurisdiction to issue the second Default Judgement.

The Appellate Division has held that "[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 *U.S.* 310, 316, 66 *S.Ct.* 154, 158, 90 *L.Ed.* 95, 102 (1945) (quoting *Milliken v. Meyer*, 311 *U.S.* 457, 463, 61 *S.Ct.* 339, 342, 85 *L.Ed.* 278, 283 (1940)).

If the cause of action relates directly to the contacts, as here, it is one of "specific jurisdiction." "When a [s]tate exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising 'general jurisdiction' over the defendant." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 *U.S.* 408, 414 n. 9, 104 *S.Ct.* 1868, 1872 n. 9, 80 *L.Ed.*2d 404, 411 n. 9 (1984). In the context of specific jurisdiction, the minimum contacts inquiry must focus on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 *U.S.* 186, 204, 97 *S.Ct.* 2569, 2579, 53 *L.Ed.*2d 683, 698 (1977).

The "minimum contacts" requirement is satisfied so long as the contacts resulted from the defendant's purposeful conduct and not the unilateral

activities of the plaintiff. *World-Wide Volkswagen Corp. v. Woodson*, 444 *U.S.* 286, 297-98, 100 *S.Ct.* 559, 567-68, 62 *L.Ed.*2d 490, 501-02 (1980). The question is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen, supra*, 444 *U.S.* at 297, 100 *S.Ct.* at 567, 62 *L.Ed.*2d at 501.

Once it is established that defendant's activities relating to the action established minimum contacts with the forum state, the "fair play and substantial justice" inquiry must still be made. *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 328 (1989). This determination requires evaluation of such factors as "the burden on the defendant, the interests of the forum State, ... the plaintiff's interest in obtaining relief[,] ... 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.'" *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 *U.S.* at 113, 107 *S.Ct.* at 1034, 94 *L.Ed.*2d at 105 (1987) (quoting *World-Wide Volkswagen, supra*, 444 *U.S.* at 292, 100 *S.Ct.* at 564, 62 *L.Ed.*2d at 498 (citations omitted)).

The record reflects that the Defendant (i) is a resident of New York state (Da9), (ii) that she co-owned the property subject to this dispute (Da1 – Da2,

Da9), and (iii) that she would regularly visit the property as her summer vacation home (Da11). This would satisfy the minimum contact criteria for jurisdiction over the Defendant as it clearly reasonable that someone who owns real estate within New Jersey could, and should, expect that they may be called upon to litigate issues pertaining to the property itself, or to their interest in said property, within the state. The same rationale would satisfy the criteria for fair play and substantial justice. This forum state is clearly well equipped to adjudicate such a case, and the burden would be more detrimental to the Plaintiff if the trial court of New Jersey did not have jurisdiction.

The Defendant and her attorney's actions also display clear submission to this forum. Right as the Defendant was set to default originally in September of 2023, she retained counsel who contacted Plaintiff's counsel by phone and email (Pa13). Furthermore, in their motion to vacate Default Judgment Defendant made no contention as to the court's jurisdiction, but rather, to the Defendant's failure to answer based on improper service and excusable neglect (Da8 – Da13). Even after the Default Judgement was vacated, the Defendant stipulated to extending time to answer for an additional 30 days (Da15). At no point during this extension did Defendant petition to the court to dismiss for lack of jurisdiction.

The Defendant also failed to make such a defense in their opposition to the second motion to enter default judgment in their July 23, 2024 submission (Da 22 – Da 56).[6] Judge Zazzali-Hogan put it best in her October 11 oral statement when she stated:

> "[W]hat the Defendant omits is that Judge Bauman had previously granted [P]laintiff's request for a partition and that [P]laintiff be compelled to buy out [D]efendant for $50,000, which was vacated based upon a motion to vacate, **even though several months later, [D]efendant still failed to answer and default judgment was entered here again** … Defendant's ability to challenge the judgment on liability, the cause of action **was nullified by his own inaction** (2 T7-22 – 2T8-6)"

Therefore, the trial court held specific *in personam* jurisdiction, as well as *in rem* jurisdiction, over the Defendant and the subject property, and her participation, coupled with the lack of challenge to personal jurisdiction throughout the litigation, would constitute a clear submittal to jurisdiction.

V. THE TRIAL COURT DID NOT ACT ARBITRARILY OR CAPRICIOUSLY WHEN GRANTING THE PLAINTIFF'S PRAYER FOR RELIEF (Da109).

A. THE COURT'S ACTIONS DID NOT VIOLATE THE ABUSE OF DISCRETION STANDARD (Da109).

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[6] R. 4:6-3 requires that any objection to personal jurisdiction (pursuant to R. 4:6-2(b)) be made within 90 days after service of the answer.

In the Defendant's final argument heading, the note that the trial court acted, as a matter of **fact** and **law**, arbitrarily and capriciously when granting the Plaintiff relief (Db11). It is worth noting that the Defendant, in their one sentence argument, fails to identify any fact, or legal conclusion, which they claim to run afoul of this standard (Db11). Furthermore, the Defendant fails to realize that the arbitrary and capricious standard is only utilized to challenge decisions by administrative agencies, not trial court decisions. Since the Defendant attempts to rely on this standard, but also on the holding of *State v. Chavies*, 247 N.J. 245, 257 (2021)[7], the Plaintiff shall address both standards. For the reasons more exhaustively stated above, and reiterated in relevant part below, it is clear that the trial court's actions were miles away from anything that could be considered abuse of discretion, arbitrary or capricious.

Starting first with the abuse of discretion standard, an abuse of discretion occurs when a decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." *Flagg v. Essex Cty. Prosecutor*, 171 N.J. 561, 571, 796 A.2d 182 (2002).

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[7] It is also worth noting that the "abuse of discretion" standard outlined in *State v. Chavies*, 247 N.J. 245, 257 (2021), though similar to the civil standard, applies to criminal cases.

Judge Zazzali-Hogan issued a five-page written decision on September 11, 2024 (Da59 – Da62) in which she recited the statement of facts and procedural history (Da59), the opposing legal arguments (Da59 – Da60), and her legal analysis (Da61 – Da62). In her analysis, Judge Zazzali-Hogan cited to several legal standards including the default judgment standard of R. 4:43-2[8] (Da61), the frivolous litigation standards of R. 1:4-8(a) and R.P.C. 3.1 (Da61), the standard for partition under N.J.S.A. 2A:56-2 et seq. (Da60), and the case law regarding the necessity of a proof hearing under *Chakravarti v. Pegasus Consulting Group, Inc.*, 393 N.J. Super. 203, 210 (App. Div. 2007) and *Fox v. Fox*, No. A-0700-17T3, 2019 N.J. Super. Unpub. LEXIS 823 (Super. Ct. App. Div. Apr. 9, 2019) (Da62).

Furthermore, Judge Zazzali-Hogan supplemented the opinion orally in her October 11, 2024 decision where she exhaustively reiterated the court's factual findings more adequately described in section II of this brief (Pb10 – Pb12, Pa1, 2T3-1 – 2T10-20). The opinion, and oral statement, were rationally explained, complied with the relevant policies and legal standards, and were not contrived from an impermissible basis. Therefore, no abuse of discretion is

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[8] The decision also referred specifically to R. 4:43-2(c) regarding Defendant's claim that the judgment was different in kind from that requested in the Complaint (Da61), and to R. 4:43-2(b) regarding the requirement for a proof hearing.

present. If, for some reason, this Court chooses to apply the arbitrary and capricious standard, the same result occurs.

B. THE COURT'S ACTIONS DID NOT VIOLATE THE ARBITRARY AND CAPRICIOUS STANDARD (Da109).

Appellate courts generally defer to final agency actions, only "reversing those actions if they are 'arbitrary, capricious or unreasonable or [if the action] is not supported by substantial credible evidence in the record as a whole.'" *N.J. Soc'y for the Prev. of Cruelty to Animals v. N.J. Dep't of Agric.*, 196 N.J. 366, 384-85, 955 A.2d 886 (2008) (alteration in original) (quoting *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80, 410 A.2d 686 (1980)).

Under the arbitrary, capricious, or unreasonable standard, the scope of review is guided by three major inquiries: (l) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion. *In re Stallworth*, 208 N.J. 182, 194, 26 A.3d 1059 (2011). When an agency decision satisfies such criteria, the Appellate Court accords substantial deference to the agency's fact-finding and legal conclusions, acknowledging "the agency's 'expertise and superior knowledge of a particular field.' " *Circus Liquors, Inc. v. Governing Body of Middletown Twp.*, 199 N.J. 1, 10, 970 A.2d

347 (2009) (quoting *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513, 606 A.2d 336 (1992)). If this standard is applied to the case at bar, there is no indication that the trial court acted arbitrary or capriciously for the reasons mor exhaustively detailed previously in section V(a) of this brief (Pb21 – 23).

CONCLUSION

The Defendant has provided nothing that even resembles a sound legal basis for overturning the trial court's ruling. The default judgment was well supported by the court's finding of facts, and its application of those facts to the relevant legal standards. The Defendant's appeal appears to serve as a veiled attempt to make up for prior inaction and an apparent ignorance of the standards for partition. Whether such inaction or ineptitude is on the part of the Defendant, her attorney, or both, is unclear. What is clear is the law, and the law was sound in the trial court's ruling. Therefore, the Plaintiff respectfully requests that this court affirm the trial court's order of default judgment.

Dated: April 8, 2025

Respectfully submitted,

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Attorney for Plaintiff - Respondent

SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION
LETTER REPLY BRIEF

APPELLATE DIVISION DOCKET NUMBER A – 000458 – 24

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Letter Brief on Behalf of: ***Susan Shurina***

Wednesday, April 30, 2025

Stephen Shurina, Plaintiff – Respondent,

VS.,

Susan Shurina, Defendant – Appellant.

Case Type: **Civil**

County: **Monmouth**

Trial Court Docket Number: **MON – C – 109 – 23**

Sat Below: **HON. MARA E. ZAZZALI-HOGAN, P.J.CH.**

Robert A. Russell, Esq.
On the Brief

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Dear Judges:

LETTER BRIEF STATEMENT

Please accept this letter brief in lieu of a more formal brief.

ARGUMENT

I. PLAINTIFF'S RELIANCE ON MUENZER V. NASTASI IS MISPLACED. (NOT ARGUED BELOW).

Plaintiff's brief is largely supported by the unpublished opinion of Muenzer v. Nastasi **(Pb14)**. He does not include a copy of this unpublished opinion in his amended appendix. This is a violation of R. 2:6 – 1. More important, R. 1:36 – 3 provides as follows:

> No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.

III. DEFENDANT HAS FAILED TO CITE TO ANY LEGALLY BINDING AUTHORITY WHICH AUTHORIZES A TRIAL COURT TO ORDER ONE PARTY TO "BUY OUT" THE OTHER PARTY AS A LAWFUL REMEDY IN AN ACTION FOR PARTITION SALE. (NOT ARGUED BELOW).

Questions related to statutory interpretation are legal ones. Appellate Courts review such decisions *de novo*, "unconstrained by deference to the decisions of the trial court or the appellate panel." The overriding goal of all statutory interpretation "is to determine as best we can the intent of the

Legislature, and to give effect to that intent." To ascertain legislative intent, the Court must begin with the statute's plain language and give terms their ordinary meaning. In order to construe the meaning of the Legislature's selected words, a Court can also draw inferences based on the statute's overall structure and composition. If the Legislature's intent is clear on the face of the statute, then the "interpretative process is over." See State v. S.B., 230 N.J. 62, 67–68 (2017).

A modern action for partition in sale arise is borne not of the common law, but rather statutory law. The governing statute is N.J.S.A. 2A:56 – 2 which provides as follows:

> The superior court [sic] may, in an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein.

Putting aside for the moment that the trial court never specifically found as a matter of law or fact that "it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein," **(2T)** N.J.S.A. 2A:56 – 2 does not authorize a trial court to arbitrarily "pick a winner" and then set a price for that winner to "buy out" the loser. No reported decision has ever interpreted N.J.S.A. 2A:56 – 2 to authorize a trial court to issue a final judgment ordering on party to be involuntarily "bought out" by the other co –

tenant for 50% of the "appraised value." No reported decision has ever interpreted N.J.S.A. 2A:56 – 2 to authorize a trial court to issue a final judgment ordering on party to be involuntarily "bought out" by the other co – tenant based solely on a Plaintiff's "appraised value." No reported decision has ever interpreted N.J.S.A. 2A:56 – 2 to authorize a trial court to issue a final judgment ordering on party to be involuntarily "bought out" by the other co – tenant without a competitive free market bidding process.

N.J.S.A. 2A:56 – 2 clearly and unambiguously limits remedy to "direct[ing] the sale" of the subject property. It does not authorize the remedy of an involuntary "buy out" for "appraised value." The trial court cites to none and neither does the Plaintiff. Perhaps it is one thing if a trial court "direct[s] the sale" of the property and, during the "sale process" the co – tenants out bid each other (against competitive market forces) and a "winner emerges" from the competitive process. Such is not the case here, nor, as a matter of law or fact, should it be until such time as the Legislature (as opposed to the Judiciary) take such action. Simply put, it is not the role of the Judiciary (especially a trial court regardless of whether or not it is a "court of equity") to alter or change the explicit and plain ordinary language of a constitutionally valid statute.

IV. THE BALANCE OF THE PLAINTIFF'S BRIEF LACKS MERIT AND DOES NOT WARRANT DISCUSSION. (NOT ARGUED BELOW).

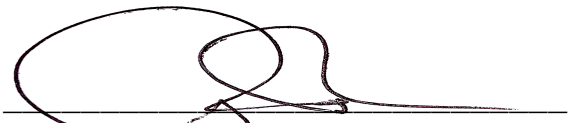
The balance of the Plaintiff's Opposition Brief lacks merit and does not warrant discussion **(*Passim*)**.

V. CONCLUSION. (NOT ARGUED BELOW).

In light of the foregoing, the trial court's final judgment must be reversed.

DATED: April 30, 2025

Respectfully submitted,

By: 

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