NARENDRA LAKHANI, SONALI MODY and DARSHAN LAKHANI

Plaintiffs,

vs.

ANIL PATEL, MANISH PATEL, RAJNI PATEL, JAYESH PATEL, NORTHSTAR HOTEL GROUP, INC., NORTHSTAR MANAGEMENT, INC., NORTHSTAR KENILWORTH, LLC, NORTHSTAR LAUREL, LLC, NORTHSTAR TECHNOLOGIES, LLC, AMSTAR HOSPITALITY, LLC, ABC CORPORATIONS 1-10 AND JOHN DOES 1-100, NORTHSTAR HOLDING, LP, HARIT KAPADIA, CPA, ASHWIN PANDYA, CPA, PANDYA, KAPADIA & ASSOCIATES, CPA, PA,

Defendants,

BRIX RESOURCES, INC., BRIX HOSPITALITY, LLC, BRIX KENNILWORTH, LLC and BRIX LAUREL, LLC,

Third-Party Defendants

Superior Court of New Jersey
APPELLATE DIVISION

Docket No. A-577-24

On Appeal from Final Collateral Judgment of the Superior Court of New Jersey, Law Division, Somerset County
Docket Nos. Below: SOM-L-386-11
SOM-L-758-11

Civil Action

Sat Below: Hon. Robert A. Ballard, Jr., P.J.Cv.

BRIEF IN SUPPORT OF APPEAL

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Dated submitted: February 12, 2025

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PRELIMINARY STATEMENT

Non-Party Appellant, Dennis Block, Esq., attorney for the Defendants, Anil and Manish Patel, appeals the final trial court judgment compelling him to pay the court-appointed Receiver $44,590 in attorney's fees and costs when Mr. Block had sought a ruling from the court to review documents *in camera* for a claim of privilege. The Receiver sought these documents created in 2023 and 2024 via a subpoena served upon Mr. Block within days of his appearance in the case. Mr. Block did not willfully refuse to produce the documents; instead, he asked for the court's help in determining whether the documents were privileged as his clients hold the privilege not Mr. Block.

Rather than reviewing the documents *in camera*, the trial court denied the request and found Mr. Block had no basis to claim privilege because of a prior court Order regarding the crime-fraud exception to the attorney-client privilege entered in 2019 – years before Mr. Block began to represent Defendants. Not only was the Order entered long before Mr. Block was counsel in the matter, but it was also entered years before the documents at issue were even created.

The trial court erroneously attributed prior findings of bad faith and delay of the Patels and their prior counsel to Mr. Block, who had just appeared in the matter days before the subpoena was served on him. He took his ethical duties of confidentiality seriously when served with a subpoena by immediately retaining ethics counsel to explain to him the issues about attorney-client

privilege, confidentiality, and work-product. Despite the trial court's sanction, Mr. Block acted in good faith, complying with the prior trial judge's statement on the record that she would review documents *in camera*. Mr. Block moved to submit them *in camera* on the same return date as the Receiver sought to sanction him. In an incredibly unjust result, the trial court found Mr. Block in contempt when he had appropriately asked the trial court to review the documents for privilege prior to turning the documents over to the other side.

The trial court then erred by awarding the Receiver fees in excess of what the bills justified—doing so without any inquiry into the applicable R.P.C. 1.5 factors and basing its award on wholesale redactions of the invoices that effectively denied Mr. Block a fair opportunity to contest whether the charges were directly related to the narrow grounds for his alleged contempt. The irony of the Receiver submitting wholesale redactions without leave of Court in violation of R. 1:38-11(b) when the Receiver sought to sanction Mr. Block for complying with R. 1:38-11(b) cannot be tolerated by this Court. Mr. Block asks this Court to vacate the judgment of contempt because he acted with good faith and upon his reasonable understanding of the facts and law applicable at the time. He did not willfully disobey any Order, and a sanction – particularly one seeking nearly $50,000 – is not warranted under these circumstances.

COMBINED STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

This matter arises from a fractured business relationship between Plaintiffs Narendra and Darshan Lakhani, and Sonali Mody (collectively "the Lakhanis" or "Plaintiffs") and Defendants Manish Patel and Anil Patel ("Defendants" or "the Patels"). Brix Hosp., LLC v. Patel, No. A-0196-21, 2023 WL 4196033, at *1 (App. Div. June 27, 2023).[2] Together these parties owned Brix Hospitality LLC, Brix Kenilworth LLC and Brix Laurel LLC with Plaintiffs owning the controlling interest of each company. Id. The parties through their interest in Brix Kenilworth purchased the Kenilworth Inn for $11.6 million in April 2008. Id. at *1. Sun National Bank provided $8.7 million of financing for the purchase. Id. Due to the economic downturn in 2008, the Brix entities experienced reduced revenues leading to disagreements among the parties. Id. The Lakhanis then removed the Patels as managers. Id.

On October 1, 2010, Sun National Bank filed a complaint against the Patels seeking to collect on the guaranties. Id. Sun National Bank also filed for foreclosure on October 7, 2010. Id. Sun National Bank obtained an uncontested final judgment in the action on the guaranties against the Patels and Northstar

[1] Due to the intertwined nature, these sections have been combined.

[2] The Appellate Division has previously considered this matter, and therefore, for the Court's convenience, citation is made to the prior non-precedential decision of this Court.

Kenilworth for $9,747,461.90 plus $477.41 in per diem interest. Id. The Patels did not appeal that final judgment.

Sun National Bank, the Lakhanis, and the Patels attempted to mediate the foreclosure. Id. at *2. On December 7, 2011, Sun National Bank assigned the mortgage, note, and note modification agreement to the Lakhanis. Id. Sun National Bank also assigned the $9.7 million judgment to the Lakhanis. Id. On December 20, 2012, the Lakhanis purchased Sun National Bank's foreclosure rights through a separate entity, Lakhani Associates. Id. Rather than going through with a Sheriff's sale in the foreclosure matter, the Lakhanis transferred Brix Kenilworth's interest to Lakhani Associates with a deed in lieu of foreclosure. Id. Sun National Bank's mortgage was then discharged and satisfied with the Lakhanis retaining the hotel and continuing to pursue the money judgment on the guaranties. Id.

On September 16, 2011, Plaintiffs were granted summary judgment on the note debt, but the Patels had valid counterclaims against the Lakhanis, and therefore, the Patels were unable to appeal because final judgment as to all issues had not been entered. (Ba1128.)[3] The business dispute still does not have a final

[3] The term "Ba" refers to Non-Party Appellant Dennis E. Block, Esq.'s Appendix in support of appeal. The term "1T" refers to the transcript of motion dated April 26, 2024; the term "2T" refers to the transcript of motion dated July 19, 2024; and the term "3T" refers to the transcript of motion dated September 4, 2024.

resolution. On November 7, 2016, the trial court appointed Jonathan I. Rabinowitz, Esq., as a Receiver in aid of execution to attempt to collect the Lakhanis' judgment against the Patels. (Ba165.)

On November 19, 2018, the Patels filed a motion to mark the judgment satisfied, but it was denied by the Honorable Thomas C. Miller, P.J.Cv., on February 22, 2019. (Ba995.) Although the Patels' prior counsel had moved for leave to appeal the motion to mark the judgment deemed satisfied, this Court summarily denied the motion on January 7, 2020. (Ba1587.)

On February 6, 2024, Dennis Block, Esq. entered an appearance on behalf of the Patels at a case management conference. Six days later, the Receiver served Mr. Block with a deposition subpoena demanding documents, including communications with the Patels' co-counsel. (Ba97, Ba120 at ¶ 3.) The subpoena instructed Mr. Block to not produce the requested documents until the date of the deposition. (Ba97). The instructions accompanying the subpoena also limited production of documents to non-privileged documents:

> If any documents are not produced on the ground of a privilege, you shall prepare a listing of a description of all such documents, including the date of all such documents, the drafter of all such documents, the recipient of all such documents, the identity of all persons in possession of all such documents, the privilege upon which you rely in refusing production of all such documents, and you shall produce to the Receive a redacted version of all such documents to the extent of any non-privileged material contained therein.

[Ba101.]

Concerned with the competing interests of the duties owed to his clients but the duty to comply with the subpoena, Mr. Block sought ethics legal advice to see if the communications were privileged. (Ba120 at ¶¶ 3-5.) Mr. Block then engaged this counsel to quash the subpoena, which was unsuccessful. (Ba120 at ¶ 4.) That said, based on the trial judge's comments on the record, Mr. Block believed he could still serve a privilege log for any claims of privilege, which he did. (Id.) In issuing her ruling, Judge Reek held: "There has been a representation by Mr. Rabinowitz today that if there are in – indeed privileged communications between Mr. Block and Mr. Patel that should be redacted that has to do with advice, that they should be redacted." (1T42:15-23.)

Judge Reek further stated:

> And so the Court will -- will grant the Motion to compel the production of the documents sought in the deposition subpoena. Counsel for Mr. Block has the opportunity to redact that which she feels should be redacted. And subject to the review by Mr. Rabinowitz as to whether or not there's a belief that there's information underneath those redactions or those blackouts that shouldn't be blacked out, of course, he can move before the Court for an *in camera* review which I'm happy to do if necessary.

(1T43:13-22.) Block's counsel specifically requested on the record, "anticipating that there's going to be redactions . . . I would respectfully request

. . . 30 days to comply." (1T44:17-22.) The Court then ordered Block to comply within twenty days. (1T45:8-11.)

Yet, despite this exchange and the language in the trial court's Order of May 14, 2024, on June 6, 2024, the Receiver objected to Mr. Block's privilege log that was timely served and demanded the documents by June 10, 2024. (Ba174, Ba195, Ba401.)

After the Receiver objected to the privilege log, the parties engaged in a second round of motion practice that included Mr. Block's request that the trial court review the documents in camera. (Ba176, Ba409.) During oral argument, Mr. Block's attorney noted, "all the unredacted documents at issue [are] ready to be submitted" to the trial court, and that the motion to file those documents under seal was submitted so the documents "wouldn't become part of the public record under our court rules." (2T16:1-10.)

By Order dated September 12, 2024, the trial court granted the Receiver's motion to find that Mr. Block be held in contempt and that "sanctions shall be imposed on Block." (Ba1440.) The trial court did not review the documents *in camera* and gave Mr. Block only three days to produce the documents, which he did. (Ba1440, Ba1473.) The Order further stated, "Block shall pay the Receiver's attorneys fees and costs in connection with the Motion." (Ba1440)(emphasis added).

In entering the Order, the trial court provided a statement of reasons explaining that Block withheld or redacted twenty-six documents on the grounds of attorney-client or work-product privilege that were dated between May 16, 2023 and May 6, 2024. (Ba1443.) The trial court noted that the Patels' prior counsel was copied on twenty-four of the twenty-six documents. (Ba1443.) Without analyzing the cases that Mr. Block cited regarding the requirement for a court to review documents before finding a waiver of privilege, the trial court found that Mr. Block's motion regarding privilege "is moot," because of "Judge Miller's April 1, 2019 Order, attorney-client privilege as to Calzaretto is waived under the crime-fraud exception." (Ba1455.)

Further, without analyzing that the documents were created in 2023 and 2024 or the effect of Judge Reek's instruction regarding submission for in camera review, the trial court relied on the April 1, 2019-Order to find that the crime-fraud exception was met because "the Calzaretto Parties were likely aware of the Patels' attempts to secret their assets and evade judgment enforcement. Even if they were not aware (which is what they claim) plausible arguments can be made that they should have been aware or perhaps they were unwitting pawns in a scheme." (Ba1455; but see 1T43:13-22.) The trial judge also relied upon Judge Miller's 2019 Order finding "the subject documents were not protected by the attorney-client privilege because the documents were

disclosed to third parties." (Ba1455.) The trial court, however, did not make any findings as to publication to third-parties of the twenty-six documents at issue. (Ba1454-55.)

The trial court justified a sanction because "Block either knew, or should have known that the requested documents [created in 2023 and 2024] were not protected by the attorney-client privilege based on Judge Miller's Order" that was entered in 2019. (Ba1455.) The trial court then denied the motion for submission of the documents *in camera* because the attorney-client privilege does not apply as to Calzaretto. (Ba1456.) The trial court also denied Mr. Block's request for a stay finding a lack of the applicable standard stating "Block has failed to identify any irreparable harm that would result from the disclosure of the redacted documents." (Ba1456.)

Heard at the same time as the application to hold him in contempt regarding the documents demanded by subpoena, Mr. Block filed a motion on the Patels' behalf to have the judgment mark satisfied based on an expert opinion that he obtained. (Ba426, Ba1070, Ba1434.) In opposition, the Receiver alleged the motion was frivolous, but he did not cross-move for sanctions. (Ba1325.) The trial court denied the motion finding, "[t]his Court has ruled on the arguments made in this Motion multiple times and determined that the relief sought must be denied, as has the Appellate Division," even though the

Appellate Division only denied a motion seeking leave to appeal and has not decided the merits of this issue. (Ba1468; Ba1587.)

The trial court further noted under the frivolous pleading rule, "the adverse party may seek sanctions by filing a motion." (Ba1469) (emphasis added) (citing R. 1:4-8(a)). The trial court further noted the requirement of a safe harbor notice and that "[a] party may only file a motion for sanctions if twenty-eight days have passed since service of this 'safe harbor' notice." (Ba1469.) The trial court added that the Rules require a frivolous pleading motion to "include a certification that the movant served the required notice upon the individual who filed the paper objected to." (Ba1469-70.) And the trial court explained that any sanction imposed under the Rule "shall be limited to a sum sufficient to deter repetition of such conduct." (Ba1470.) The trial court concluded by stating "both this Court and the Appellate Division have ruled on the arguments made in this Motion multiple times and determined that the relief sought must be denied." (Ba1470; but see Ba1587.)

Mr. Block timely moved for reconsideration of the contempt order and the finding that the motion to mark the judgment as satisfied or unenforceable was frivolous. (Ba1476.) The next day, the Receiver submitted an affidavit of services, which was missing any of the requirements identified by the trial court for a frivolous pleading motion. (Ba1479; cf. Ba1469-70 with Ba1479-84.) The

Receiver provided entirely redacted invoices providing Mr. Block with no way to meaningfully decipher what work was actually related to the limited basis upon which fees were to be awarded – "in connection with the Motion." (Ba1487-1515; Ba1440)(emphasis added).

The trial court entered a wholesale fee award without providing any analysis of R.P.C. 1.5 or otherwise making any reduction to the amount sought by the Receiver. (Ba1516.) In fact, the award was $3,082.50 higher than the Receiver's affidavit of services. (Ba1516, Ba1486.) Moreover, although Mr. Block opposed the fee application, the trial court entered it as a "consent order" – without any consent provided by Mr. Block. (Ba1516.)

The trial court imposed sanctions against Mr. Block for filing what the trial court called a frivolous motion. (Ba1516.) But the Receiver did not move for sanctions on Mr. Block's filing of the Patels' motion to mark the judgment satisfied. Even still, the trial court's Order provided for sanctions two grounds: (1) Mr. Block's request for the trial court to review the documents *in camera* and for filing entered an Order providing for sanctions for both the conduct related to Mr. Block's requests that the trial court review the documents in camera before they are produced and (2) filing the motion to mark the judgment satisfied. (Ba1516.)

At the time that the $44,590 sanction was imposed, Mr. Block had already produced the subpoenaed documents within the three-day window set by the trial court. Moreover, at the time this excessive sanction was imposed, the Receiver had not moved for frivolous sanctions regarding the motion to mark the judgment satisfied. The Order setting the fees was entered while Mr. Block's motion for reconsideration was pending unheard; the trial court adjourned the motion, and then denied it without prejudice after the Defendants filed for bankruptcy. (Ba1523, 1579.)

Although only the Receiver was awarded sanctions, Plaintiff's counsel sought a Writ of Execution on the Lakahnis' behalf against Mr. Block on December 6, 2024. (Ba1516; Ba1528.) Mr. Block filed a formal objection to which the trial court set the matter down for a hearing, which has yet to be heard. (Ba1532-35.) Plaintiff's counsel then filed a levy on Mr. Block's bank account on January 22, 2025. (Ba1588.) In response, Mr. Block moved to quash the levy that has yet to be heard. (Ba1591.)

Mr. Block timely appealed the four Orders: September 12, 2024 Order holding him in contempt; September 12, 2024 Order denying his motion seeking to submit the documents at issue for an in camera review; October 18, 2024 Order sanctioning him $44,490 in fees and $100 in costs; and November 22,

2024 Order denying his motion for reconsideration without prejudice. (Ba1537, Ba1565, Ba1439, Ba1473, Ba1516, Ba1579.)

This brief now follows in support of the appeal to reverse and vacate the four orders at issue.

STANDARD OF REVIEW

This Court reviews an award for fees under R. 1:4-8 for an abuse of discretion. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005); see also Kolczycki v. City of E. Orange, 317 N.J. Super. 505, 512 (App. Div. 1999) (explaining that the "standard of review of a trial court's exercise of discretion pursuant to R. 4:23-2(b)" is an abuse of discretion standard). "In considering an award of counsel fees," however, the trial court "must comply with R. 1:7-(4)(a) and clearly set forth the reasons for the exercise of discretion." Scullion v. State Farm Ins. Co., 345 N.J. Super. 431, 439 (App. Div. 2001) (citing Brewster v. Keystone Ins. Co., 238 N.J. Super. 580, 587 (App. Div. 1990)). A trial court's decision is wide of the mark when it bases the decision on either incorrect facts or incorrect law. This Court "must reverse if [it] find[s] the trial judge clearly abused his or her discretion, such as when the stated 'findings were mistaken[,] or that the determination could not reasonably have been reached on sufficient credible evidence present in the record[,]' or where the judge 'failed to consider all of the controlling legal principles.'" Slutsky v. Slutsky, 451 N.J. Super. 332, 356 (App. Div. 2017)(quoting Gonzalez–Posse v. Ricciardulli, 410 N.J. Super.

340, 354 (App. Div. 2009); see also Wadlow v. Wadlow, 200 N.J. Super. 372, 382 (App. Div. 1985) (reversal is required when the results could not "reasonably have been reached by the trial judge on the evidence, or whether it is clearly unfair or unjustly distorted by a misconception of the law or findings of fact that are contrary to the evidence." (quoting Perkins v. Perkins, 159 N.J. Super. 243, 247 (App. Div. 1978))).

Here, the trial court exercised its discretion based upon incorrect facts where the judge applied a finding of waiver of privilege made in 2019 to documents that were not even created until 2023 and 2024. (Ba1455.) The trial court committed another abuse of discretion in refusing to review any document *in camera* despite Supreme Court precedent requiring such review and the former judge's stating she would review the documents *in camera*. (Ba1456); see Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003)(explaining trial court's duty to review each document for privilege and to make findings as to each document). The trial court further committed an abuse of discretion by awarding $44,590 in fees and costs when the Receiver failed to abide by the procedure set forth in R. 1:4-8, the trial court's award exceeded the amount sought by the Receiver, and the trial court provided zero analysis of R.P.C. 1.5 or a basis for its decision to increase the amount sought by the

Receiver. (Ba1479-1515, Ba1516.) As a result, the only just remedy is to vacate the fee sanction and reverse the trial court.

LEGAL ARGUMENT

POINT ONE

The Trial Court Abused Its Discretion in Entering the Excessive Sanction Against Mr. Block. (Ba1439-1472.)

Under R. 2:10-4, the party is entitled to a de novo review of the entry of contempt. Before a non-party can be held in contempt, however, the party should be afforded due process. See Amoresano v. Laufas, 171 N.J. 532 (2002); Matter of Duane Morris & Heckscher, LLP, 315 N.J. Super. 304 (App. Div. 1998). The trial court imposed the findings without any hearing on the merits as to whether Mr. Block commenced the motion for a protective order or the motion to mark the judgment satisfied for purpose of harassment, delay, or malicious injury. The trial court incorrectly construed the facts to imply bad faith when Mr. Block acted diligently in an attempt to balance competing interests owed to his clients and the court. The timeline shows:

- Six days after appearing for the Patels at a case management conference, on February 6, 2024, the Receiver subpoenaed Mr. Block for a deposition and seeking documents that Mr. Block believed were privileged. The subpoena stated that the documents should not be produced until the deposition (Ba97.)

- Mr. Block alerted the Receiver that he was on vacation through February 26, 2024. (Ba114; Ba76 at ¶ 11.)
- Twenty-nine days after Mr. Block first appeared in this litigation, on March 6, 2024, the Receiver moved before the trial court to "Direct that Mr. Block shall be jointly and severally liable with the Patels for payment of the Receiver's attorneys fees in connection with the Motion." (Ba77.)
- During this time, Mr. Block sought legal counsel to review the matter to determine if the documents should be produced given confidentiality concerns pursuant to R.P.C. 1.6 and the attorney-client privilege. (Ba120 at ¶ 4.)
- Mr. Block cross-moved to quash the subpoena. (Ba117.)
- On May 19, 2024, the trial court denied the cross-motion, but stated that the documents produced could be redacted due to privilege concerns and notes that the documents could be submitted for *in camera* review. (Ba175, Ba172.)
- On June 3, 2024, Mr. Block's attorney produced the documents along with a privilege log. (Ba196-382.)
- On June 6, 2024, the Receiver objected, but does not seek *in camera* review; instead he gave Mr. Block's counsel four days to provide

the documents withheld pursuant to the privilege log; nor did the Receiver reference R. 1:4-8 in this letter. (Ba401-03.)

- On June 19, 2024, Mr. Block filed two motions: 1) seeking leave to provide the unredacted and withheld documents *in camera* to be reviewed; and 2) seeking a protective order so that the unredacted and withheld documents would not be produced; simultaneously, the Receiver files a motion to sanction Mr. Block for failing to provide the withheld documents pursuant to the Receiver's objections contained in his June 6, 2024 letter. (Ba176-412.)
- On September 12, 2024, a different judge denied the request for *in camera* review, denied the protective order, and granted the Receiver's motion to hold Mr. Block in contempt and awards fees. (Ba1455-56.)
- On September 30, 2024, Mr. Block filed a motion for reconsideration. (Ba1475.)
- On October 1, 2024, the Receiver submitted an Affidavit of Services based upon redacted invoices for the period from February 2024 to September 2024. (Ba1479.)

- On October 16, 2024, the trial court entered an Order awarding the Receiver more fees than requested in the amount of $44,490 and $100 in costs. (Ba1516.)
- Mr. Block promptly appealed. (Ba1535.)

This timeline shows that Mr. Block did not act willfully in failing to provide the documents. Nor was his delay excessive to subject him to a $44,590 sanction. As a result, the trial court abused its discretion in entering the sanction order.

1. The Trial Court Violated Mr. Block's Due Process Rights in Holding Him in Contempt without a Hearing. (Ba1439-40.)

The trial court abused its discretion in holding Mr. Block in contempt because Mr. Block was not given a hearing before assessment of a $44,590 sanction award. (Ba1516.) The trial court erred in entering a finding of contempt because R. 1:10-2, *et seq.*, outlines a procedure to protect persons accused of wrongdoing before a finding of contempt. The trial court erred in failing to follow that procedure, and therefore, the orders must be vacated.

Unless the judge witnessed the contempt in open court, our Rules require that the proceedings be "on notice" to the person against whom contempt is sought. R. 1:10-2(a). The matter may be prosecuted "on behalf of the court only by the Attorney General, the County Prosecutor of the county, or where the court

for good cause designates an attorney, then by the attorney so designated." R. 1:10-2(b).

When the court is punishing a party's failure to comply with an Order, the Supreme Court has explained that once there is compliance with the Order, "the need for coercion ceases." N.J. Dept. of Health v. Roselle, 34 N.J. 331, 338 (1961). At that point, the party is limited to "damages to compensate for interim loss of the benefit of the order which was dishonored." Id. (citing United States v. United Mine Workers, 330 U.S. 258 (1947); Lamb v. Cramer, 285 U.S. 217, 221 (1932); Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448 (1932); Nat'l Drying Mach. Co. v. Ackoff, 245 F.2d 192 (3d Cir. 1957); Ashby v. Ashby, 62 N.J.Eq. 618 (Ch. 1901); City of Scranton v. People's Coal Co., 117 A. 673 (Sup.Ct.1922); cf. Mantell v. International Plastic Harmonica Corp., 138 N.J. Eq. 562, 578 (Ch.1946), mod. 141 N.J. Eq. 379, 394-95 (E. & A.1947)).

The Court explained that a contempt initiated by a Court is criminal contempt while a proceeding for supplemental relief by a litigant, constitutes civil contempt. Id. at 342. Importantly, "[a] litigant should not be permitted to invoke the criminal process as a thumbscrew to achieve a private result." Id. at 343. Procedurally, "a prosecution for contempt may not be instituted upon the mere notice of motion by a litigant to the alleged offender." Id.

To prevent confusion as to the relief sought, clear notice should be given whether the remedy sought is to be "whether the respondent is directed to show cause (1) why he should not be adjudged guilty of and punished for contempt, or (2) why the moving litigant should not receive supplemental relief because of an alleged violation of an order." Id. at 343. The Court explained the importance of this notice, the importance of holding a hearing, and even the importance of adjourning if the respondent did not have adequate notice of the relief sought. Id. at 344. The Court further found that when the order at issue is not sufficiently finite to put a party on notice as to the conduct to be ordered, the civil penalty cannot stand. Id. at 347.

In so holding, the Court reversed a penalty imposed where a party failed to comply with a Department of Health injunction to cease air pollution. Id. at 336. The defendants, who operated a refuse dump, had fires that broke out of unknown origin on their property. Id. The trial court found a lack of willful disobedience with the injunction order, but the Appellate Division reversed and remanded for further proceedings with a finding of contempt. Id. But the Supreme Court vacated because the injunction was not of definitive character to permit a finding of contempt. Id. at 347.

Applying the Roselle matter to the case at bar, because Judge Reek specifically anticipated and invited the submission of documents to be reviewed,

Mr. Block should not have been held in contempt for following the Court's procedure set by Court Rule for submission of documents to be reviewed in camera. (1T43:13-22); see R. 1:38-11(b).

Unlike a contempt under R. 1:10-2, under R. 1:10-3, a party may seek relief as a litigant to compel enforcement of an Order. Under this Rule, "a proceeding to afford a litigant supplemental relief from an adverse party's failure to obey a court's order is civil, though historically it was referred to as a civil contempt proceeding." E. Brunswick Bd. of Educ. v. E. Brunswick Educ. Ass'n, 235 N.J. Super. 417, 420 (App. Div. 1989) (citing N.J. Dept. of Health v. Roselle, 34 N.J. 331, 336-38 (1961)).

A sanction to compel compliance with an Order is statutorily limited to $50 per day. Id. at 420 (citing N.J.S.A. 2A:10-5). This Court has explained, "The object of a civil proceeding to afford supplemental relief to a litigant, R. 1:10–5,[4] is to enforce a court's order." Id. at 420. A trial court will abuse its discretion if it selects a penalty that is unrelated to damages without consideration of "the offending party's ability to pay and the sanction's impact on that party in light of its income, status and objectives, as well as the sanction's impact on innocent

[4] Former R. 1:10-5 was redesignated as R. 1:10-3 on July 13, 1994 to be effective on September 1, 1994. Therefore, although this Court discussed R. 1:10-5, it is referring to what is now codified as R. 1:10-3. See Note to R. 1:10-3, Pressler & Veniero, Current N.J. Court Rules (Gann 2025 ed.)

third parties." Id. at 422-23. Here, the trial court made no such considerations: it did not establish the Receiver's damages, which will be discussed further *infra*. Nor did it consider any impact of the $44,590 sanction on Mr. Block's ability to pay, the ability of his continuing to practice law in light of such an excessive sanction, and the impact on third parties, such as the Patels. And at the time of the sanction, Mr. Block had already complied with the Order, so there was no reason to enter a punitive penalty to compel his performance – he had performed.

In East Brunswick Board, 235 N.J. at 424, matter, the court remanded for the trial court to resolve the damages issue in light of the instruction of the factors to consider: the Board's damages incurred, the sanctioned parties' ability to pay, and the impact on the sanctioned parties and third parties. Likewise here, the trial court's sanction Order cannot stand because the trial court gave no consideration of the reasonableness of the Receiver's fees, the impact that the excessive fee petition would have on Mr. Block or his law practice, and the impact of the Order on third-parties, like the Patels. (Ba1516.)

2. The Trial Court Erred in Assessing Fees Because Mr. Block Acted in Good Faith in Asking the Court to Review the Documents for Privilege. (Ba1440-57; Ba1516-17.)

Mr. Block submitted his request for *in camera* review in good faith basing his withholding upon his clients' interest in the privilege, legal advice that he sought from outside counsel, and the trial court's statement on the record

regarding review of any documents for privilege. (Ba120 at ¶ 4, 1T43:13-22.) Although this Court need not review whether the documents are privileged because they have now been produced, whether Mr. Block withheld them while simultaneously moving for a protective order, is a factor as to whether the sanction order should have been entered. Because Mr. Block acted in good faith, the sanction order was inappropriate. Dziubek v. Schumann, 275 N.J. Super. 428, 440 (App. Div. 1994) (explaining that "even where the inherent power to award attorney fees as a sanction against an attorney has been found to exist, the imposition of such a sanction is generally not imposed under this power without a finding generally that the attorney's conduct constituted or was tantamount to bad faith"). The subpoena at issue here authorized Mr. Block to withhold privileged documents by producing a privilege log, which Mr. Block provided on June 3, 2024; it further instructed Mr. Block to hold the documents until a deposition. (Ba97; Ba101.)

It appears from the record, that the trial court was equating prior findings of bad faith of the Patels and their prior counsel on Mr. Block who had only appeared in the action days before the Receiver served the subpoena upon him. (Ba1455-56.) Mr. Block should not be sanctioned for misconduct by others but only by what Mr. Block did in this action. See Lakhani v. Patel, 479 N.J. Super.

291, 299 (App. Div. 2024)(noting this Receiver has inappropriately focused on the Patels' alleged misdeeds as to other non-parties in this matter).

The trial court found because of a 2019 determination that a crime-fraud exception waived privilege for communications between Mr. Calzaretto and the Patels at that time, that it meant future communications were waived as well under that exception. (Ba1455-56.) But neither the Receiver nor the trial court provided any case law for the proposition that the 2019 finding constituted a wholesale waiver of privilege. In fact, that proposition conflicts with this Court's holding in Halbach v. Boyman, 369 N.J. Super. 323, 330 (App. Div.): "Orders declaring a wholesale waiver of the attorney-client privilege should not be entered." But this is exactly what the trial court did when it not only refused to review the documents *in camera* but then sanctioned Mr. Block for asking for an *in camera* review that was specifically contemplated by the prior trial judge. (Ba1455-56; see 1T43:13-22.)

As Mr. Block argued below, by including Mr. Calzaretto— who was also offering legal advice to the Patels—on the communications with the Patels does not constitute a waiver of the privilege. See Laporta v. Gloucester Cnty. Bd. of Chosen Freeholders, 340 N.J. Super. 254, 262 (App. Div. 2001) (explaining "[c]ommunications between counsel for a party and an individual representative of a party with a common interest are also protected"); see also O'Boyle v.

Borough of Longport, 218 N.J. 168, 198 (2014) (noting that "[c]ommon purpose extends to sharing of trial preparation efforts between attorneys against a common adversary" and "[t]he attorneys need not be involved in the same litigated matter or anticipated matter"); see also Coyle v. Estate of Simon, 247 N.J. Super. 277, 281–82 (App. Div. 1991) (holding "privilege that protects confidential communications between attorney and client from disclosure is broad enough to shield such communications when made to or shared with the attorney's agent.")

In addition, this Court must review each document to determine whether they were made in furtherance of a crime or fraud before the privilege is pierced. Nat'l Util. Serv., Inc. v. Sunshine Biscuits, Inc., 301 N.J. Super. 610, 616 (App. Div. 1997). Because the communications are not in furtherance of any crime or fraud, the attorney-client and attorney work-product privileges should not be pierced. See Payton v. New Jersey Tpk. Auth., 148 N.J. 524, 552 (1997) (explaining court must review each individual document *in camera* to determine whether privilege applies); United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 563 (App. Div. 1984) (explaining trial court must carefully review documents to determine whether they are privileged); see also Halbach v. Boyman, 369 N.J. Super. 323, 330, 884 (App. Div. 2004) (noting "[o]rders declaring a wholesale waiver of the attorney-client privilege should not be entered").

A determination of whether a document or redaction falls under the protection of a privilege "cannot be made in a vacuum." United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 563 (App. Div. 1984). "Instead, the documents must be carefully reviewed to determine their nature and content" through "an *in camera* inspection of the documents by the trial judge." Id. Indeed, our courts have held that "*in camera* review of claimed confidential material is an approved and essential step when a privilege is invoked." Ocean Spray Cranberries, Inc. v. Holt Cargo Sys., Inc., 345 N.J. Super. 515, 521 (Law. Div. 2000). Without an *in camera* review of the documents claimed to be confidential, "application of the claimed privilege is unsettled." Id.

The trial court had a duty to undergo an analysis of each document to determine whether the three elements of the exception are present. Nat'l Util. Serv., Inc. v. Sunshine Biscuits, Inc., 301 N.J. Super. 610, 616 (App. Div. 1997). The New Jersey Supreme Court has held the elements for the exception are:

> [i]n deciding whether the "crime or fraud" exception applies, the relevant factor to consider is whether the client consulted with the attorney in order (1) to aid the client "in the commission of any crime"; (2) to enable the client "to avoid any criminal investigation or proceeding pending at the time the advice was given"; or (3) to assist the client to "avoid lawful process in any proceeding pending at the time the advice was given." Undoubtedly, it can be often a close question whether "the legal service was sought or obtained to aid the client in the planning or perpetration of a crime or a tort."

In re Nackson, 114 N.J. 527, 535 (1989) (internal citations omitted).

The Appellate Division has reversed a trial court's application of the crime-fraud exception when the document at issue did not meet the three elements for the exception. Nat'l Util. Serv., Inc., 301 N.J. Super. at 616. The Appellate Division reversed the trial court that had found it was "fraudulent for defendant to affirmatively defend the contract action by asserting there was no contract with NUS after in-house counsel had previously indicated in a memorandum that defendant did enter into a contract with plaintiff." Id. at 616. The Appellate Division explained, "In other words, the judge found that by arguing in its defense that Sunshine did not enter a contract with NUS it "lied" to the court, and that evidence of the lie is contained in the Barbieri memorandum." Id. at 617. The Appellate Division reversed because the party seeking to pierce the privilege bears the burden, and the litigation counsel's strategy appeared to be made in good faith, even though it disagreed with the in house counsel's position. Id. at 618.

Even if the crime-fraud exception applies, it "does not extend to all communications made in the course of the attorney-client relationship, but rather is limited to those communications and documents in furtherance of the contemplated or ongoing criminal or fraudulent conduct." In re Grand Jury Subpoena, 419 F.3d 329, 343 (5th Cir.2005). While there must be a "purposeful

nexus" between the crime or fraud and the attorney-client communication, In re Grand Jury Subpoenas Duces Tecum, 798 F.2d 32, 34 (2d Cir.1986), it is sufficient that the attorney-client communication be "'reasonably relate[d] to the crime or fraud.'" In re Grand Jury Subpoena, 419 F.3d at 346 (quoting In re Int'l Sys. & Controls Corp. Sec. Litig., 693 F.2d 1235, 1243 (5th Cir.1982)).

"If production is ordered, the court shall specify the factual basis for the crime or fraud that the documents or communications are deemed to have furthered...." In re Richard Roe, Inc., 68 F.3d 38, 41 (2d Cir. 1995). In Roe, the Second Circuit reversed the district court finding it was not enough that the evidence had "the real potential of being relevant evidence of activity in furtherance of a crime;" instead, "the exception applies only when the court determines that the client communication or the attorney work product in question was *itself* in furtherance of the crime or fraud." Id. at 40 (emphasis in original) (citing In re Grand Jury Subpoenas Duces Tecum, 798 F.3d 32, 34 (2d Cir. 1986). In Roe, the Second Circuit remanded so that "each document" could be furthered as to whether any document "were in furtherance of a crime or fraud." Id. at 41. It was only those documents that were to be released.

The trial court noted that because Mr. Calzaretto produced documents previously, it constituted a complete waiver as to future communications. (Ba1455-56.) But again, no case was cited for that proposition, and the

proposition contravened the requirement in Sunshine Biscuit and Seacoast requiring an *in camera* review of each document. (Ba1455-56.) Instead, as counsel argued below, only the client can waive the privilege. Mr. Calzaretto could not waive privilege by responding to a prior subpoena, because the Patels, and not Mr. Calzaretto, hold the privilege. See State v. Toscano, 13 N.J. 418, 424 (1953) ("Since the protection of the privileged communication is not for the lawyer but for the client…waiver thereof rests with the client.") The Patels have not waived privilege, and therefore, Mr. Block acted within the Rules of Professional Conduct to withhold the documents until a court determined based on an *in camera* review that the documents were not subject to privilege. (Ba120, ¶ 5.)

Mr. Block was between an ethical rock and a hard place – if he complied with the subpoena without a trial court reviewing the twenty-six documents, he would be liable for breaching the duties owed to his clients, the Patels; but by asking the trial court to conduct an *in camera* review subject to Supreme Court precedent, including Seacoast, then he was sanctioned nearly $45,000. This is an unjust result given the ethical dilemma.

Mr. Block had a good-faith basis for asking the trial court to review the documents for privilege in camera. Brugaletta v. Garcia, 234 N.J. 225, 245 (2018). The Patels, not Mr. Block, held the privilege, and therefore, Mr. Block

ethically needed the trial court's decision before he could produce documents that he believed were privileged. Hedden v. Kean Univ., 434 N.J. Super. 1, 10 (App. Div. 2013). Mr. Block did not willfully disobey any order, but asked the Court to review whether the documents were privileged. The trial court found, "Per Judge Miller's April 1, 2019 Order, attorney-client privilege as to Calzaretto is waived under the crime-fraud exception." (Ba1455.) But the documents at issue were not created until 2023 and 2024, and the case law indicates that each document is to be reviewed for privilege even if there is a claim that the crime-fraud exception applies. Nat'l Util. Serv., Inc. v. Sunshine Biscuits, Inc., 301 N.J. Super. 610, 616 (App. Div. 1997).

Here, under the case law of this state, the proper course for the Receiver was to move for an *in camera* review of the documents in the privilege log for this court to make a determination as to each document whether the privilege exists as even contemplated by Judge Reek's Order. (Ba175.) And that is true even where there are claims that a privilege was waived. Payton v. New Jersey Tpk. Auth., 148 N.J. 524, 554 (1997) (explaining that "the trial court should conduct an *in camera* review of the materials at issue to determine if the privilege applies to specific documents, and, if so, whether those documents are so tenuously related to the affirmative defense that waiver is overcome despite the assertion of that defense.")

Furthermore, Mr. Block's conduct in withholding the documents pursuant to a privilege log was under the advice of independent counsel. (Ba120 at ¶¶4-5.) As a result, the Court has held that such action might preclude a finding that the party acted in bad faith. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 563 (1993). Mr. Block acted with care to balance complying with the subpoena and his professional obligations owed to the Patels. (Ba120 at ¶¶ 4-5, Ba179 at ¶¶1-4); State ex rel. S.G., 175 N.J. 132, 138 (2003) ("One of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients.") (quoting Matter of Opinion No. 653 of Advisory Comm. on Prof'l Ethics, 132 N.J. 124, 129 (1993)). Because of this conduct, he has demonstrated that he acted in good faith sufficient to avoid entry of a sanction against him.

3. The Trial Court Erred in Finding Mr. Block Filed a Frivolous Motion Regarding the Request to Mark the Judgment Satisfied Because the Receiver Did Not Comply with R. 1:4-8. (Ba1460-72.)

The Receiver disregarded the twenty-eight-day safe harbor provision. On its face, the Receiver's June 6, 2024 letter gave Mr. Block's counsel four days to cure alleged defects with the document production in order to avoid sanctions, or by June 10, 2024. (Ba400.) A week later, the Receiver moved for sanctions on June 19, 2024. (Ba413.) Rule 1:4-8 gives a safe harbor of 28 days, which would mean the Receiver prematurely filed the motion for sanctions by three weeks out of the four permitted by Court Rule. See Toll Bros. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007).

The Rule states:

> (1)Contents of Motion, Certification. An application for sanctions under this rule shall be by motion made separately from other applications and shall describe the specific conduct alleged to have violated this rule. No such motion shall be filed unless it includes a certification that the applicant served written notice and demand pursuant to R. 1:5-2 to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand. If, however, the subject of the application for sanctions is a motion whose return date precedes the expiration of the 28-day period, the demand shall give the movant the option of either consenting to an adjournment of the return date or waiving the balance of the 28-day period then remaining. A movant who does not request an adjournment of the return date as provided herein shall be deemed to have elected the waiver. The certification shall also certify that the paper objected to has not been withdrawn or corrected within the appropriate time period provided herein following service of the written notice and demand.
>
> No motion shall be filed if the paper objected to has been withdrawn or corrected within 28 days of service of the notice and demand or within such other time period as provided herein.
>
> [R. 1:4-8.]

Here, the Receiver's motion for fees on the subpoenaed documents on its face, in addition to being filed without the requisite safe harbor, further failed to provide the notices required by the Rule for the safe harbor. (Ba400, Ba413.) "An attorneys' fees sanction pursuant to R. 1:4–8 'is not warranted where the plaintiff has a reasonable good faith belief in the merit of [its] action.'" DeBrango v. Summit Bancorp, 328 N.J. Super. 219, 227 (App.Div.2000) (alteration in original) (quoting J.W. v. L.R., 325 N.J. Super. 543, 548 (App.Div.1999)). Because Mr. Block acted in good faith, the sanction was improper.

A party is only entitled to sanctions for a frivolous pleading when the claim was "commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury," or if "[t]he nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." Toll Bros. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007) (quoting N.J.S.A. 2A:15–59.1(b)). The timing of the safe harbor notice provision may affect the quantum of fees awarded. Id. at 72-73.

In considering the motion to mark the judgment satisfied, the trial court outlined the procedure under R. 1:4-8. (Ba1470.) But the Receiver had not

moved for sanctions for Mr. Block filing the motion to mark the judgment as satisfied. Accordingly, under the procedure set by Court Rule and as acknowledged by the trial court, any award for fees or costs relating to opposing the motion to mark the judgment satisfied was entered without legal authority.

4. **The Trial Court Erred in Finding the Motion to Mark the Judgment Satisfied Was Frivolous Because Mr. Block Acted in Good Faith. (Ba1460-72.)**

Moreover, Mr. Block did not act in a frivolous manner in seeking to deem the judgment marked satisfied. Even if the trial court had previously considered the motion, new evidence was produced that rendered the matter ripe for reconsideration. See Lawson v. Dewar, 468 N.J. Super. 128, 137 (App. Div. 2021)(explaining reconsideration may be sought in the interests of justice prior to final judgment).

Mr. Block acted in good faith as he only filed the action upon receipt of an expert report from Myron Weinstein, a mortgage expert. (Ba427-28, Ba1071, Ba1321, Ba1434.) Three separate reports from Mr. Weinstein that demonstrates the good faith basis for filing the motion. (Ba1071, Ba1321, Ba1434.) "Where a party has [a] reasonable and good faith belief in the merit of the cause, attorney's fees will not be awarded." United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 389–90 (App. Div. 2009) (citations omitted). Mr. Block did not act in bad faith as he sought an expert as to determine whether the judgment should have been marked satisfied. The Frivolous Pleading Statute is to be narrowly

construed, because "in a democratic society, citizens should have ready access to all branches of government, including the judiciary." McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561–62 (1993).

Here, the trial court's finding that the motion to mark the judgment as satisfied was frivolous was limited to the following: "This Court has ruled on the arguments made in this Motion multiple times and determined that the relief sought must be denied, as has the Appellate Division." (Ba1468.) Yet the judgment has never been the subject to a merits' appeal because the matter remains interlocutory, and the motion seeking leave to appeal was denied. (Ba17-19, Ba27, Ba354; Ba1587) The Appellate Division has never considered the merits of whether the judgment should be marked satisfied contrary to the trial court's finding. (Cf. Ba1587 with Ba1470.)

In denying the prior motion, a different trial judge stated, "The Patel Defendants still have the right to seek redress for their alleged damages in the litigation, whether by way of setoff or otherwise." (Ba354; Ba39.) Furthermore, before Mr. Block's filing of the motion, Defendants had not obtained an expert report to support their position, and so these prior applications cannot take away Mr. Block's good-faith basis for filing the new motion in this interlocutory matter. See Lawson v. Dewar, 468 N.J. Super. 128, 137 (App. Div. 2021)(holding interest of justice standard applies prior to final judgment). Here, because issues

remain unresolved in the trial court, the matter is interlocutory and the interests of justice standard applies. Id.

Moreover, Mr. Block in good faith acted on the trial court's prior statements that the Patels could raise further defenses, including setoff, as the interlocutory matter proceeded. (Ba32-33, Ba39.) Block thus believed that with service of a new expert report, the trial court would consider the merits of whether the judgment can be deemed satisfied.

The trial court abused its discretion in finding fees should be imposed against Mr. Block regarding both the subpoenaed documents and the motion to mark the judgment satisfied. The trial court overlooked this Court's admonishment that in considering these applications, the trial court must be "mindful of the fact that 'the right of access to the court should not be unduly infringed upon, honest and creative advocacy should not be discouraged, and the salutary policy of litigant's bearing, in the main, their own litigation costs, should not be abandoned.'" Graziano v. Grant, 326 N.J. Super. 328, 348 (App. Div. 1999) (quoting Iannone v. McHale, 245 N.J. Super. 17, 28 (App.Div.1990)). Here, Mr. Block had an obligation to his client that the attorney-client privilege be maintained unless there is a ruling by the Court otherwise. See N.J.S.A. 2A:84A-20. The trial court completely overlooked and minimized this concern while further overlooking that each document is supposed to be reviewed in

camera before release. Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003)(explaining "trial court must examine each document individually, and explain as to each document deemed privileged why it has so ruled")(citing Payton v. New Jersey Tpk. Auth., 148 N.J. 524, 550 (1997)).

To then find Mr. Block acted in bad faith ignores that he owed an obligation to his clients to which he asked the trial court for assistance to balance these competing interests. (Ba120 at ¶¶ 4-5, Ba179 at ¶¶1-4.) Moreover, upon receipt of the expert report that had never been submitted before, Mr. Block acted in good faith to present the motion to the court. ((Ba426, Ba1070, Ba1434.) Under Graziano, the trial court erred in imposing sanctions against Mr. Block who did not act in bad faith.

Including sanctions regarding the motion to mark the judgment satisfied was also inappropriate because the Receiver did not follow the R. 1:4-8 procedure. The Receiver never filed a motion under R. 1:4-8 seeking the sanctions for filing an allegedly frivolous motion to deem the judgment satisfied. As a result, entering a sanction for filing that motion was improper.

POINT TWO

The Trial Court Erred in Assessing $44,490 in Fees Against Mr. Block Given the Trial Court Did Not Analyze R.P.C. 1.5. (Ba1516.)

The trial court abused its discretion by entering unreasonable attorney's fees. Statutorily, the court may only award "reasonable litigation costs and

reasonable attorney fees." DeBrango v. Summit Bancorp, 328 N.J. Super. 219, 229 (App. Div. 2000)(citing N.J.S.A. 2A:15–59.1a(1)(emphasis added in orig.). The trial court further erred because a party opposing the fee application is entitled to discovery, and here, Mr. Block argued without unredacted invoices he could not address the reasonableness of the fees sought. See S.N. Golden Ests., Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 91 (App. Div. 1998) (holding party entitled to discovery on fee application).

"The amount of attorney fees usually rests within the discretion of the trial judge, but the reasons for the exercising of that discretion should be clearly stated." Khoudary v. Salem Cnty. Bd. of Soc. Servs., 281 N.J. Super. 571, 578 (App. Div. 1995). Here, the trial court's decision is devoid of any analysis of the R.P.C. 1.5(a) factors, and Mr. Block was not given a hearing or any opportunity for discovery before imposition of the hefty $44,590 contempt award was entered. Accordingly, this Court should vacate the sanction Order.

The trial court erred in not following the procedures for entering a contempt award as it did not engage in any analysis or findings of fact of the R.P.C. 1.5 factors. The Receiver did not demonstrate the reasonableness of its fees as required. R. 1:4-8; R. 4:42-9; R.P.C. 1.5. Here, the trial court summarily entered the Order for fees without any findings of fact or application of the required factors. (Ba1516.) There was no analysis of the R.P.C. 1.5(a) factors as

required by Court Rule. Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 311 (App. Div. 2010) (quoting R. 4:42-9(b)). Because the trial court abused its discretion when it failed to apply the factors, the trial court's decision is wide of the mark, and must be reversed. See S.N. Golden Ests., Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 91 (App. Div. 1998)(explaining "conclusionary statements regarding the legal services performed by Golden's counsel in the underlying action . . . does not provide an adequate foundation for appellate review").

RPC 1.5(a) lists eight factors for the trial court to consider before entering an award of fees and costs, including:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
> (8) whether the fee is fixed or contingent.

In a prior appeal out of this same action involving a different non-party, this Court affirmed because the trial court went through each of the factors and

analyzed the bills with regard to those factors. Brix Hosp. v. Patel, No. A-0196-21, 2023 WL 4196033 (App. Div. June 27, 2023). But here, the trial court erred as a matter of law in summarily entering the sanction order requiring Mr. Block to pay $44,490 in fees and $100 in costs. (Ba1516-17.) Even the Receiver's application sought less than the amount the trial court ordered. (Ba1486.)

In the Receiver's Affidavit of Services, he argues for the R.P.C. 1.5 factors, but the wholesale redactions preclude Mr. Block's meaningful objection that the services rendered were unnecessary to the limited basis upon which fees purported were granted – the withholding of documents and motion to enforce the subpoena. (Ba1487-1515.)

Here, at best, the earliest time that fees could have been sought would be twenty-eight days from the Receiver's June 6, 2024 deficiency letter, which according to the invoices would mean the first entry was July 8, 2024. (Ba401.) Notably that letter does not reference R. 1:4-8. (Id.) Adding just the amounts that the Receiver indicated were related from July 7, 2024 onward, and reserving Mr. Block's objection that without reviewing the unredacted invoices he cannot be assured these entries were related to the limited basis for a sanction, then the most that could have been assessed against Mr. Block was $10,867.50. (Ba1486-1515.) Thus, the sanction that was entered was four times greater than the redacted proofs demonstrated.

If this Court applies the factors rather than remanding, the award was excessive and an abuse of discretion. First, as the Receiver even concedes, there was no novelty or difficulty in the questions at issue. (Ba1482 at ¶ 14.) The Receiver stated that the matter "involved difficulty due to Mr. Block's refusal to comply with the Block Subpoena and the Court's prior rulings, and Mr. Block's decision to wait until after the Court denied the Motion to Quash to improperly assert privilege claims." (Id.) This statement is completely false as Mr. Block raised the privilege claims in the initial cross-motion to quash the subpoena. (Ba120 at ¶ 5; 1T43:13-22.) Moreover, Mr. Block was complying with the trial court's initial ruling regarding further litigation over the specific assertions of privilege. (1T43:13-22.) There was no difficulty involved in these motions. In fact, much of the Receiver's argument was reliance upon prior Orders without even addressing the case law cited by Mr. Block's counsel, so there was no difficulty involved.

The second factor also does not favor entry of a large award because based on the time spent on this matter, the Receiver had ample time to devote to other clients. The Receiver further provided no basis for whether the rates conformed to those in the locality aside from the self-serving certification. (Ba1483 at ¶ 16.)

Fourth, Mr. Block cannot address the time involved as actually being related to the limited basis for the sanction due to the redactions. Further, the fifth factor does not favor a fee award, because there was no time limit that required the Receiver to act sooner than the safe harbor period set by Court Rule 1:4-8.

Mr. Block has no evidence of the sixth or seventh factors. Finally, the eighth factor only applies in that the Receiver is paid by the hour. That said, Mr. Block should still be entitled to review the redactions in order to meaningfully address whether the time expended was related to the basis for the sanction.

Based upon the above, even if this Court affirms that a sanction was appropriate, it should still limit the award to less than $10,867.50, which is the only time submitted for the period after the expiration of the safe harbor time period.

CONCLUSION

This Court should vacate the Orders imposing sanctions on Mr. Block. Mr. Block did not intentionally withhold any document. He sought the trial court's review of whether the documents were privileged so that he did not breach duties owed to his current clients, the Patels. He complied within the three days within which he was ordered to produce the documents, but the trial court sanctioned him ordering him to pay for the Receiver's time that was incurred nearly as soon as the subpoena was served.

The trial court entered the Orders without affording him due process or a finding that Mr. Block engaged in bad faith sufficient to justify a fee award. The trial court further erred because amount of the fees was excessive and based on redacted entries without analyzing the R.P.C. 1.5 factors as required by Court Rule. The procedural prerequisite for fees under the Court Rule did not take place in terms of notices and proper motions. Moreover, without the details of work performed, Mr. Block could not argue which entries were related to the Receiver's actions related to either the subpoenaed documents or the motion to mark the judgment satisfied. This is especially true when the Receiver submitted invoices going back to February 2024 when its motion for fees indicated that its letter was not sent until a few days before it filed the motion on June 19, 2024, and by Court Rule, the safe harbor extended until July 8, 2024. Thus, the trial court erred in awarding fees based on an Affidavit of Services that included time entries from February 2024 through September 2024.

Accordingly, this Court should reverse the Orders entering sanction against Mr. Block.

Respectfully submitted,
LOMURRO, MUNSON, LLC
Attorneys for Non-Party-Appellant,
Dennis E. Block, Esq.

By: _____
CHRISTINA VASSILIOU HARVEY

Dated: February 12, 2025

NARENDRA LAKHANI, SONALI MODY, and DARSHAN LAKHANI,

Plaintiffs,

v.

ANIL PATEL, MANISH PATEL, RAJNI PATEL, JAYESH PATEL, NORTHSTAR HOTEL GROUP, INC., NORTHSTAR MANAGEMENT, INC., NORTHSTAR KENILWORTH, LLC, NORTHSTAR LAUREL, LLC, NORTHSTAR TECHNOLOGIES, LLC, AMSTAR HOSPITALITY, LLC, ABC CORPORATIONS 1-10 and JOHN DOES 1-100, NORTHSTAR HOLDING, LP, HARIT KAPADIA, CPA, ASHWIN PANDYA, CPA, PANDYA, KAPADIA & ASSOCIATES, CPA, PA,

Defendants,

v.

BRIX RESOURCES, INC., *et al.*,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-577-24

On appeal from the Superior Court of New Jersey, Law Division, Somerset County

DOCKET NOS. IN COURT BELOW:
SOM-L-386-11
SOM-L-758-11

CIVIL ACTION

Sat Below: Honorable Robert A. Ballard, P.J.Cv.

Date Submitted: March 14, 2025

BRIEF OF JONATHAN I. RABINOWITZ, RECEIVER IN AID OF EXECUTION, IN OPPOSITION TO APPEAL

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Order Denying Patels' Motion for Reconsideration (Ba1579-81). No table of authorities entries found.

PRELIMINARY STATEMENT

Respondent Jonathan I. Rabinowitz, the court-appointed Receiver in Aid of Execution of a certain judgment entered in favor of Lakhani Associates ("Lakhani") and against Anil Patel and Manish Patel (collectively, the "Patels"), submits this Brief in in opposition to the appeal filed by Appellant Dennis E. Block ("Block"), the Patels' counsel.

Block appeals from a Superior Court Order Granting Motion to Enforce Subpoena, Finding Dennis Block, Esq. in Contempt, and Imposing Sanctions on Block, which resulted from the Patels' failure to respond to a subpoena issued by the Receiver; an Order Denying Block's Motion for a Protective Order; an Order Granting Sanctions Fee Award in favor of the Receiver; and an Order Denying a Motion for Reconsideration.

For the reasons set forth herein, the Superior Court, in finding Block in contempt and imposing sanctions, did not abuse its discretion. Accordingly, the Receiver respectfully requests that this Court affirm the Superior Court's Orders.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

The Patels' Extensive Efforts to Defraud Lakhani.

In 2012, Lakhani acquired a judgment in the amount of $9,747,461.90 against the Patels. (Ba1370). Despite extensive efforts over the course of several years, Lakhani was unable to locate assets of funds with which the judgment could be satisfied. (Ibid.).

Thus, on September 2, 2016, the Superior Court notified the parties that based on the Patels' recurring attempts to frustrate judgment collection, a receiver would be appointed for the purpose of aiding Lakhani's collection efforts. (Ibid.). On November 7, 2016, the court entered an Order appointing the Receiver as a "Receiver in Aid of Collection" pursuant to N.J.S.A. 2A:17-66. (Ibid.; see also Ba166-68).

In its Order, the Superior Court noted that this matter presented circumstances "where Judgment debtors use limited liability companies to hide their assets and evade lawful process and collection," and hence, concluded that in light of "the Patels' apparent unwillingness to voluntarily submit to a candid disclosure of their finances[,] . . . substantial authority needs to be delegated to the Receiver." (Ba1370). Thus, in its Order, the court accorded the Receiver broad powers to investigate the Patels' assets and financial affairs and collect their assets. (Ibid.).

[1] The Statement of Facts and Procedural History have been combined because they are intertwined.

Also, the court ordered "the [Patels] and their Agents [to] fully and promptly cooperate with the Receiver in connection with the Receiver's duties." (Ibid.).

On May 3, 2018, the court entered an Order finding that the Receiver had established a *prima facie* case that the Patels were secreting substantial assets and repeatedly in contempt of its Orders. (Ba1370-71). More specifically, the court found that the Receiver had demonstrated a *prima facie* case that (i) the Patels were transferring legal ownership interests in numerous businesses to family members and friends in order to avoid disclosing the holdings on their sworn statements of assets and income tax returns, and yet still maintaining control over and receiving benefits from the businesses; (ii) the Patels were using a shell company to pay for their personal expenditures and make unlawful transfers to family and friends; (iii) the Patels unlawfully transferred millions of dollars from the sale and refinancing of other assets to family members and friends in order to place the proceeds beyond the reach of the Patels' creditors; and (iv) the Patels were making numerous unlawful transfers – disguised as salary payments – to family members through other limited liability companies under the Patels' control. (Ibid.; see also 1T7-9 to 9-17 (describing background)).

The Superior Court Grants C&B's Motion to Withdraw Based on Their Involvement in the Patels' Fraudulent Scheme.

John A. Calzaretto, Esq. ("Calzaretto") and his law firm Calzaretto & Bernstein, LLC ("C&B" and, together with Mr. Calzaretto, the "Calzaretto Parties") initially represented the Patels in this action. (Ba1334).

In 2018, the Receiver issued a subpoena to C&B for financial and corporate documents relating to the Patels' concealment scheme. (Ba1339). The Calzaretto Parties filed a motion to quash, arguing, *inter alia*, that any such documents were subject to the attorney-client privilege. (Ibid.). The Receiver opposed the Calzaretto Parties' motion based upon C&B's repeated false statements to the Court on the Patels' behalf and its involvement in the Patels' attempts to evade judgment collection and frustrate Lakhani's efforts to obtain critical discovery from third parties. (Ba1337).

On June 29, 2018, Calzaretto filed with the court a letter stating that "an appearance of conflict has arisen due to this Court's May 29, 2018 decision which included the Receiver's offering of allegations made against C&B [that C&B was inappropriately attempting to use the attorney-client privilege to protect documents in order to impede the Receiver's efforts]" and "due to the attempted use of the crime fraud exception to pierce the attorney client and work product privileges," and that, as result, "the numerous parties being represented by C&B have been asked to seek

and retain new leading counsel." (Ba1334-35). He characterized the conflict as "un-waivable." (Ba1335).

On November 5, 2018, the court entered an Order and Opinion granting C&B's motion to withdraw as counsel for the Patels and other defendants in the action. (Ba1332-33). The court found that "as a result of circumstances that have developed in this litigation [referring to facts indicating C&B's involvement in the Patels' fraudulent scheme to secret assets], a palpable conflict of interest has arisen for Mr. Calzaretto and his firm to continue with their representation of parties in this matter," subject to certain conditions requiring C&B to preserve information relating to the matter. (Ba1340).

Following C&B's withdrawal, the Patels retained several successive law firms, including ultimately Block, to represent them in this action. (Ba76 ¶ 6; 1T9-24 to 10-2).

The Superior Court Rules that the Patels Waived the Attorney-Client Privilege Based on (i) Disclosure to Third Parties and (ii) the Crime-Fraud Exception.

On February 4, 2019, based on his findings regarding the Calzaretto Parties' role in the Patels' scheme, the Receiver served a subpoena on TD Bank for the bank records of Calzaretto and C&B. (Ba1365). The Calzaretto Parties moved to quash the subpoena on the basis, among others, that the documents were protected by attorney-client privilege. (Ba1366-67).

On April 1, 2019, the Superior Court entered an Order and Opinion rejecting the Calzaretto Parties' arguments and denying their motion to quash. (Ba1362-96).

In reaching this determination, the court held that the Patels, by disclosing litigation strategy and other privileged information to multiple third parties, including a bank, two accounting firms, and another non-party, had waived the attorney-client privilege. (Ba1380-83).

Also, the court held that the Receiver had satisfied the standard for applying the "crime-fraud" exception to attorney-client privilege because the Receiver made a prima facie showing that the Patels were engaged in secreting assets and fraudulent transfers. (Ba1383-85). And in addressing the Calzaretto Parties in particular, the court held further that, whether wittingly or unwittingly, they had engaged in actions that aided and facilitated the Patels' concealment scheme based on the following findings: (i) the Calzaretto Parties were likely aware of the Patels' attempts to secret their assets and evade judgment enforcement; (ii) the Calzaretto Parties were involved in transactions "at the heart of" the Patels' attempts to evade judgment collection; (iii) the Calzaretto Parties may been involved in what appeared to be false, inaccurate, or incomplete statements made in aid of the Patels' secreting of assets; and (iv) C&B may have actively frustrated Lakhani's efforts to obtain critical discovery from third parties. (Ba1386-90). For these additional reasons, the court held, the attorney-client privilege does not apply. (Ba1383; Ba1390). In fact, the court expressly held that "the Calzaretto Parties should not be permitted to hide

behind the attorney-client privilege in order to facilitate the Patels' secreting of assets." (Ba1385).

Calzaretto and Block Make Contradictory Statements About the Patels' Renewed Retention of the Calzaretto Parties.

Since their withdrawal as the Patels' counsel in November 2018, the Calzaretto Parties have repeatedly and consistently asserted, including in briefs and signed certifications to courts, a Special Master appointed by the Superior Court, and the Office of Attorney Ethics (the "OAE"), as recently as 2024, that they no longer represent the Patels.[2] (Ba365) (Calzaretto Parties' pleading dated June 19, 2024) ("The Respondent Receiver's Preliminary Statement fails to address the fact that Calzaretto & Bernstein LLC, (hereinafter "C&B") and John Calzaretto, Esq., ("JC"), collectively, ("Calzaretto") are non-parties to this matter, have never been parties to this matter and at the time of this present action, had not represented the Patels since November of 2018."); (Ba1398-1400) (June 16, 2023 letter to Special Master Ashrafi) ("The Calzaretto Parties no longer are serving as the Patels' counsel and have not served as the Patels' counsel since November of 2018."); (Ba1401-03)

[2] Incidentally, in or about July 2021, Calzaretto participated in the production of a YouTube video accusing Judge Miller of "financial corruption" and taking bribes from the Lakhani parties. The Superior Court found Calzaretto and the Patels in contempt for their participation in the video; and the OAE filed a complaint against Calzaretto based on his participation in the video. (Ba1342-61). Incredibly, the video remains available online and it has been viewed more than 15,000 times. (https://www.youtube.com/watch?v=a_O6CHJJJrM).

(July 21, 2023 Transcript of Oral Argument before Judge Ballard) ("So I don't believe that, you know, Calzaretto & Bernstein, or myself personally, should have to be forced to remit Special Discovery Master fees when it's not our ball game, it's not our litigation, it's not our – it's not our game here and, um – and we should be involved or placed into litigation, and having to pay the cost of litigation, when we have no interest in the outcome and no interest in the litigation itself."); (Ba1404-06) (September 22, 2023 letter to Special Master Ashrafi) ("The Receiver now seeks the Movants' [i.e., C&B and Calzaretto] private banking information for periods during YE2022 to the present, four years since from the Movants November 2018 withdraw [sic] as attorneys for Anil Patel and Manish Patel. The facts and circumstances before Judge Miller then and as presently exist are substantially different as is the fact that there has been the expiration of nearly four years since my office's withdrawal as attorneys for Anil Patel and Manish Patel."); (Ba1407) (July 21, 2022 letter to OAE) ("I am not a party to the matter described by Mr. Mauriello and have not represented any party to that matter since November of 2018, nearly four years ago."); (Ba1408-13) (May 13, 2024 Verified Answer to OAE) ("Mr. Calzaretto ceased to be an attorney in the matter in 2018."); (see also Ba402) (noting that Calzaretto had asserted in a Certification dated March 29, 2023 that "[C&B] has not provided legal services to the Patels since November of 2018"; and in response to December 21, 2022 subpoena issued by the Receiver seeking all communications between Calzaretto and the Patels since the termination of his

representation, Calzaretto neither claimed any attorney-client privilege not produced a privilege log).

Nevertheless, despite these statements, and despite the court's previous finding of a "palpable conflict of interest," Calzaretto and Block both represented to the court that, apparently as early as 2023, the Patels had again retained the Calzaretto Parties to serve as their counsel. (Ba180) (Block Certification dated June 19, 2024) ¶ 8 ("It bears noting that that Mr. Calzaretto is co-counsel in this matter . . . ."); (Ba187) (Calzaretto Certification dated June 19, 2024) ¶¶ 4-5 ("Although I withdrew as counsel in this matter, at least since May 16, 2023, I have served as personal counsel to Anil Patel and Manish Patel. Because I have served as their personal attorney, Dennis E. Block, Esq., the Patels' attorney in this matter, has consulted me for advice regarding this litigation."); (see also Ba197-200) (showing that in 2023 and 2024, Block and the Patels exchanged with the Calzaretto Parties communications regarding "strategy" and related issues in this action).

Also, a retainer agreement, executed in January 2024, shows that the Patels retained the Calzaretto Parties to serve as their co-counsel, along with Block, in this action. (Ba1430-33). And on June 19, 2024, C&B filed a Notice of Appearance on behalf of the Patels. (Ba189).

On September 4, 2024, however, the Superior Court denied the Patels' Motion to reinstate Calzaretto as their counsel based on the court's previous finding that Calzaretto's representation of the Patels created a "palpable conflict of interest."

(3T50-22 to 51-12). The court noted that the earlier ruling "has never been challenged" and that "[i]t remains true to this day." (3T51-16 to 17; see also Ba418 ¶ 9 (noting that court denied Calzaretto's attempt at reinstatement as the Patels' counsel)).

The Superior Court Orders Block to Produce Documents.

On February 6, 2024, the Superior Court conducted a status conference, at which Block appeared and asserted that he had been retained as counsel for the Patels. (Ba75 ¶ 2; Ba416 ¶ 2).

On February 12, 2024, pursuant to his authority under the November 7, 2016 appointment order, and seeking information on the source of any payments by the Patels or a third party to Block, the Receiver issued an information subpoena to the Patels and served it on Block. (Ba1370; Ba75 ¶ 3l; 1T9-17 to 11-3, 15-25 to 18-12 (explaining basis for subpoena)).

On the same date, the Receiver issued to Block a separate subpoena seeking documents relating to the sources of payments made to Block for representation of the Patels, including his retainer agreement; any agreements between Block and third parties that provide for payment of Block's fees for such representation; invoices issued by Block to the Patels; and records of payments received by Block for representation of the Patels (the "Subpoena"). (Ba75 ¶ 5; Ba326-33; Ba416 ¶ 3). The Subpoena was substantially similar to subpoenas previously issued by the Receiver to the Patels' other lawyers; each of these subpoenas were also subject to

a motion to quash and nevertheless upheld by the court. (Ba76 ¶ 6; Ba416 ¶ 4; 1T9-24 to 11-6, 35-12 to 37-19; 2T5-6 to 14).

Both the Patels and Block failed to respond to the respective subpoenas. (Ba77 ¶ 14). Thus, on March 6, 2024, the Receiver filed a Motion for Order Enforcing Subpoenas. (Ba71-116).

On March 14, 2024, the Receiver sent to Block's counsel a copy of the April 1, 2019 Order and Opinion in which the Superior Court held that the Patels had waived the attorney-client privilege; and that the crime-fraud exception barred application of the privilege. (Ba1426).

On April 4, 2024, weeks after the deadline for responding to the Subpoena, Block filed a "Cross-Motion to Quash Subpoena Issued to Dennis Block, Esq. and for Fees and Costs." (Ba117-18). Block argued that "the subpoena seeks information protected by the attorney-client and work-product privileges." (Ba120 ¶ 6). Block failed to include a privilege log with his Cross-Motion, however. (Ba117-20). Also, he invoked the attorney-client privilege only as to communication between the Patels and himself; he did not allege that communications between the Patels and the Calzaretto Parties were privileged. (Ba1428).

At a hearing on April 26, 2024, the Superior Court granted the Receiver's Motion and denied Block's Cross-Motion. (1T41-4 to 44-8). After noting "those Orders having previously compelled the production of documents between an

attorney representing the Patels . . . for the purpose of identifying sources of funding or sources of income by the Patels," (1T41-19 to 24), the court held that Block's counsel could "redact that which she feels should be redacted," subject to a review by the Receiver "as to whether or not there's a belief that there's information underneath those redactions or those blackouts that shouldn't be blacked out," as to which, "of course, he can move before the Court for an in camera review which I'm happy to do if necessary." (1T43-13 to 22).

On April 29, 2024, the Superior Court entered an Order denying Block's Motion for order quashing the Subpoena. (Ba172-73).

On May 14, 2024, the court entered an Order Granting Motion to Enforce Subpoenas and Denying Cross-Motion of Dennis Block, Esq. to Quash. (Ba174-75). The court ordered Block to produce documents in response to the Subpoena within 20 days of the date of entry of the Order; ordered that the Receiver shall have the right to seek *in camera* review of any redactions made by Block; ordered that such relief was without prejudice to the Receiver's right to seek sanctions; and denied Block's Cross-Motion. (Ibid.; Ba417 ¶ 6).

Block did not appeal from either the April 29, 2024 Order or the May 14, 2024 Order.

The Receiver Moves to Enforce Subpoena and Impose Sanctions; Block Moves for Protective Order.

On June 3, 2024, Block finally produced documents, some with redactions, along with a privilege log in which Block claimed that certain emails exchanged with the Calzaretto Parties during 2023 and 2024 were protected under the attorney-client privilege or the work product doctrine. (Ba196-399; Ba417 ¶ 7). The descriptions in the log reveal that the subject matter of the emails pertained to this action. (Ba197-200) (referring to communications regarding "strategy" and related issues in this action).

On June 6, 2024, the Receiver sent to Block a letter in which he noted (i) that all correspondence with Calzaretto must be produced based on the court's earlier findings that the Patels had waived the attorney-client privilege and that the crime-fraud exception prevented application of the privilege; (ii) that the court's previous finding that a "palpable conflict of interest" prevented Calzaretto from serving again as the Patels' counsel, and thus, the attorney-client privilege could not protect communications made between the Patels and the Calzaretto Parties since their withdrawal in November 2018, including communications made years later in 2023 and 2024; (iii) that Calzaretto had made representations to the court and the OAE that he no longer represented the Patels, and (iv) that the document production contained other deficiencies. (Ba401-03; Ba418-19 ¶¶ 9-10).

Accordingly, the Receiver demanded that Block cure the deficiencies by June 10, 2024, or he would seek relief, including sanctions, from the court. (Ba403).

On June 19, 2024, the Receiver filed a Motion for Order Enforcing Subpoena, Finding Dennis E. Block, Esq. in Contempt, and Imposing Sanctions on Block. (Ba413). The Receiver sought entry of an order (i) determining that Block had failed to fully comply with the Subpoena and deeming him in contempt as a result; (ii) compelling Block to comply with the Subpoena; and (iii) imposing sanctions, including attorney's fees. (Ba414; Ba420). In support, the Receiver cited the grounds in his June 6, 2024 letter to Block. (Ba419 ¶ 9). The Receiver noted that the Patels had waived the attorney-client privilege on the additional basis of Calzaretto's previous production of documents without invocation of the privilege. (Ibid.).

On June 19, 2024, Block filed a Motion for a Protective Order; and a Motion to Classify a Record as Confidential to Permit *In Camera* Review. (Ba176-77, Ba409-12). Calzaretto filed in support of the Motion a Certification in which he claimed that he had been serving as the Patels' "personal counsel" since "at least since May 16, 2023," and thus, that the attorney-client privilege protects the communications sought by the Receiver. (Ba187 ¶ 8).

On June 27, 2024, the Receiver filed (i) opposition to Block's Motions; (ii) a Cross-Motion for Sanctions and for Fraud on the Court; and (iii) papers in further

support of the Receiver's Motion Finding Dennis E. Block, Esq. in Contempt. (Ba1323-1424).

The Superior Court Grants the Receiver's Motions to Enforce Subpoena and Impose Sanctions; and Denies Block's Motions.

On September 12, 2024, the Superior Court entered an Order Granting Motion to Enforce Subpoena, Finding Dennis Block, Esq. in Contempt, and Imposing Sanctions on Block. (Ba1439-40). In the Order, the court held Block in contempt and held that sanctions must be imposed on Block; that Block was required to produce all documents requested in the Subpoena; and that Block must pay the Receiver's attorney's fees and costs in connection with the Receiver's Motion to Enforce Subpoena. (Ibid.).

On the same date, the court entered an Order Denying Block's Motion for a Protective Order; an Order Denying Block's Motion to Classify a Record as Confidential to Permit *In Camera* Review; and an Order Denying Cross-Motion for Sanctions for Fraud on the Court. (Ba1458-59; Ba1471-72; Ba1473-74)).

The court attached a Statement of Reasons to each of the Orders. (Ba1441-57). In addressing the Receiver's Motion for Order Enforcing Subpoena, Finding Dennis E. Block, Esq. in Contempt, and Imposing Sanctions on Block, the court noted that under the April 1, 2019 Order and Opinion, the court had previously held that the attorney-client privilege as to Calzaretto was waived under the crime-fraud exception based on its findings that the Patels had been secreting assets and engaging

in fraudulent transfers; that the Calzaretto Parties were likely aware of the Patels' attempts to secret their assets and evade judgment enforcement; and that even if the Calzaretto Parties were not aware, it could be plausibly argued that they should have been aware, or that they were unwilling pawns in a scheme. (Ba1455). The court further noted that in the April 1, 2019 Order and Opinion, the court had previously determined that the Patels, by disclosing documents to third parties, waived the attorney-client privilege. (Ibid.). Finally, the court found, by virtue of the April 1, 2019 Order and Opinion, Block either knew or he should have known that the requested documents were not protected by the attorney-client privilege. (Ibid.). Accordingly, the court ruled, Block, in failing to comply with the Subpoena, had violated the Receiver's rights, and thus, he was in contempt. (Ibid.).

In denying Block's Motions, the court found that an *in camera* review of the documents was unnecessary because the attorney-client privilege does not apply as to Calzaretto. (Ba1456).

The Superior Court Enters Sanctions Award Against Block.

On October 1, 2024, pursuant to the Superior Court's September 12, 2024 Order Granting Motion to Enforce Subpoena, Finding Dennis Block, Esq. in Contempt, and Imposing Sanctions on Block, and citing the factors set forth in RPC 1.5(a), the Receiver filed a Certification of Services seeking an aggregate allowance of $44,590, consisting of fees in the amount of $44,490 and reimbursement of expenses in the amount of $100, which were incurred by the Receiver in prosecuting

his Motions and defending Block's Motions relating to the Subpoena.[3] (Ba1479-1515).

On October 18, 2024, the Superior Court entered an Order Granting Sanctions Fee Award, pursuant to which the court awarded in favor of the Receiver and against Block the amount of $44,590, consisting of $44,490 in fees and $100 in costs. (Ba1516-17).

Block Appeals from the Superior Court's Orders.

On October 28, 2024, Block filed a Notice of Appeal from "the Order finding Dennis E. Block, Esq. in contempt and imposing sanctions and 3 Orders stemming

[3] In his Combined Statement of Facts and Procedural History, Block alleges that "the Receiver submitted an affidavit of services, which was missing any of the requirements identified by the trial court for frivolous pleading motion." (Bb10). In support, however, he cites the Superior Court's decision regarding the Patel's "Motion to Satisfy Judgment," ibid. (citing Ba1469-70), which has nothing to do with the Orders pertaining to the Subpoena. Also, in moving for sanctions with respect to the document production issues, the Receiver moved for a finding of contempt; he did not move under Rule 1:4-8, which addresses frivolous litigation. (Ba413).

from that decision: motion denying protective order, Order granting sanctions fee award, and denial of stay in trial court."[4] (Ba1535-49).

On November 22, 2024, Block filed an Amended Notice of Appeal "to include additional order dated November 22, 2024 denying motion for reconsideration."[5] (Ba1565).

[4] Block does not address the "denial of stay" in his Brief. An issue not briefed is deemed waived. See, e.g., Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014) (declining to address issue in light of appellant's failure to argue or brief issue). Hence, Block has has waived the stay issue.

[5] On June 19, 2024, the Patels filed a "Motion to Order the Judgment Satisfied or Unenforceable." (Ba426-28). On September 12, 2024, the Superior Court denied the Motion. (Ba1460-70). On September 30, 2024, the Patels filed a Motion for Reconsideration from the September 12, 2024 Order. (Ba1475-78). On November 22, 2024, the Superior Court entered an Order Denying the Patels' Motion for Reconsideration. (Ba1579-81). It is the November 22, 2024 Order to which Block refers in his Amended Notice of Appeal. Block addresses issues relating to these Motions and Orders in Point One, subparts (3) and (4), of his Brief. BB31-37. Because the Receiver took no position on the Motions or Orders before the Superior Court below, the Receiver does not address them in this Brief. The Receiver understands that Lakhani's counsel will address the November 22, 2024 Order in a separate filing.

LEGAL ARGUMENT

POINT I

THE SUPERIOR COURT, IN ORDERING SANCTIONS AGAINST BLOCK, DID NOT ABUSE ITS DISCRETION.

In arguing that the Superior Court abused its discretion when it entered an "excessive sanction," Block contends that (i) the Superior Court violated Mr. Block's due process rights when it held him in contempt without a hearing; and (ii) the Superior Court erred in assessing fees against Block because he acted in good faith when he asked the court to review documents for privilege.[6] (Bb51-31).

Block acknowledges that this Court must review the Superior Court's decision to impose sanctions for an abuse of discretion. Bb13. As set forth below, Block's arguments lacks merit, and thus, the Superior Court, in ordering sanctions against Block, did not abuse its discretion.

1. The Superior Court, in Holding Block in Contempt, Did Not Violate Block's Due Process Rights.

Block argues that a "non-party" must be afforded due process before it can be held in contempt, and here, "[t]he trial court imposed the findings without any hearing on the merits." (Bb15). In support, Block cites Rule 1:10-2 and the Roselle

[6] Block argues further that the Superior Court erred in finding that (i) Block filed a frivolous motion regarding the request to "mark the judgment satisfied"; and (ii) the "Motion to Mark the Judgment Satisfied" was frivolous. (Bb31-37). As set forth above, the Receiver took no position on these issues below, and hence, he does not address them in this Brief.

decision. (Bb 18-20) (citing New Jersey Dep't of Health v. Roselle, 34 N.J. 331, 338 (1961)). Based on the decision, he submits, he should not have been held in contempt for following the court's "procedure" for in camera review of documents in the May 14, 2024 Order. (Bb21) (citing Ba174-75). Also, he maintains that a sanction to compel compliance is statutorily limited to only $50 per day. (Bb21) (citing N.J.S.A. 2A:10-5). Finally, he contends that the Superior Court's sanction order cannot stand because "the trial court gave no consideration of the reasonableness of the Receiver's fees, the impact that the excessive fee petition would have on Mr. Block or his law practice, and the impact on third-parties, like the Patels." (Bb21-22) (citing East Brunswick Board of Educ. v. E. Brunswick Educ. Ass'n, 235 N.J. Super. 417, 420 (App. Div. 1989)).

Block's arguments fail for several reasons. First, a proceeding to enforce litigants' rights under Rule 1:10-3 is "essentially a civil proceeding to coerce the defendant into compliance with the court's order for the benefit of the private litigant[.]" Pasqua v. Council, 186 N.J. 127, 140 (2006) (quoting Essex County Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div.), certif. denied, 68 N.J. 161 (1975)). In contrast, "[a] criminal contempt proceeding under Rule 1:10-2" is "'essentially criminal' in nature and is instituted for the purpose of punishing a defendant who fails to comply with a court order." Ibid. (quoting Essex County Welfare Bd., 133 N.J. Super. at 195).

Here, the Superior Court conducted a civil, rather than criminal, proceeding. (Ba1439-40, 1455). And Block himself acknowledges that a litigant can seek relief under Rule 1:10-3. (Bb19, 21). Thus, Rule 1:10-2 is not applicable here. Also, the Receiver sought relief on notice to Block pursuant to three separate motions: a Motion for Order Enforcing Subpoenas; a Motion for Order Enforcing Subpoena, Finding Dennis E. Block, Esq. in Contempt, and Imposing Sanctions on Block; and a Cross-Motion for Sanctions and for Fraud on the Court. (Ba71-116; Ba413; Ba1323-1424). Block does not allege that he did not receive adequate notice of the Motions. And the Superior Court conducted three separate hearings on the Motions and related issues. (1T; 2T; 3T). In sum, it strains credulity to suggest that Block did not receive sufficient due process here.

Second, in its May 14, 2024 Order Granting Motion to Enforce Subpoenas and Denying Cross-Motion of Dennis Block, Esq. to Quash, the Superior Court ordered Block to produce documents in response to the Subpoena within 20 days of the date of entry of the Order; ordered that the Receiver shall have the right to seek *in camera* review of any redactions made by Block; ordered that such relief was without prejudice to the Receiver's right to seek sanctions; and denied Block's Cross-Motion. (Ba174-75; Ba417 ¶ 6; see also 1T43-13 to 22 (holding that Block's counsel could "redact that which she feels should be redacted," subject to a review by the Receiver "as to whether or not there's a belief that there's information underneath those redactions or those blackouts that shouldn't be blacked out," as to

which, "of course, he can move before the Court for an in camera review which I'm happy to do if necessary")).

Based on the express terms of the Order, from which Block did not appeal, Block was required to produce documents, without any exceptions. And while Block could make redactions in the documents, only the Receiver could seek court review, and only as to any redactions. Hence, contrary to Block's interpretation, the court did not implement a procedure for "submission of documents." In the event, Block withheld documents from the Receiver; and sought review of the documents, and not any redactions. Thus, Block failed to comply with the procedure set forth in the Order. What's more, as set forth in Point I(2) below, Block should have known that the documents could not possibly be privileged. Thus, based on Block's own failure to comply with the May 14, 2024 Order, and the lack of a good faith basis for withholding documents, and because the Order contemplated the imposition of sanctions, the Superior Court properly found that sanctions were appropriate.

It follows that the Roselle decision is easily distinguishable. In that case, the Court held that an injunctive order to "cease violating" the New Jersey Air Pollution Code which, in turn, directed that "[n]o person shall cause, suffer, allow or permit open burning of refuse," was too broad. Roselle, 34 N.J. at 350-51. Here, in contrast, the Superior Court's Orders were clear. In fact, Block does not even allege that any of the Orders was broad or ambiguous.

Third, under N.J.S.A. 2A:10-5, any person who shall be adjudged in contempt of the Superior Court by reason of his disobedience to a judgment, order, or process of the court, shall, where the contempt is primarily civil in nature and before he or she is discharged, pay to the clerk of the court, for every such contempt, a sum not exceeding $50 as a fine, to be imposed by the court, together with the costs incurred. "N.J.S.A. 2A:10-5 is not intended as a limit on the possible punishment imposed for either 'civil' or 'criminal' contempt." In re Kaminsky, 2012 N.J. Super. Unpub. LEXIS 539, at *16 n.9 (Ch. Div. Mar. 12, 2012). "The designated fine, rather, is merely a maximum amount which the court can require the contemnor to reimburse the court, essentially for having to hold a 'civil' contempt proceeding . . . ." Ibid. Thus, "the statute should not be construed as a limitation on available compliance sanctions." East Brunswick, 235 N.J. Super. at 422. Therefore, here, N.J.S.A. 2A:10-5 did not prevent the Superior Court from imposing damages in the form of attorney's fees and expenses against Block. Indeed, Block acknowledges that a court can impose damages in connection with enforcement of an order. (Bb19, 21).

Finally, East Brunswick is distinguishable from the present case. In that case, this Court reversed a trial court order that arbitrarily imposed a $10,000 daily monetary sanction amount, without consideration of the offending party's ability to pay and the sanction's impact on the party in light of its income, status, and objectives, and the sanction's impact on innocent third parties. East Brunswick, 235

N.J. Super. at 422-23. At the same time, the court remanded for resolution of a separate damages claim. Id. at 423-24.

Meanwhile, here, the Superior Court allowed an award of attorney's fees and costs, not a monetary sanction. (Ba1439-40). Hence, the Superior Court need not have considered Block's ability to pay or the impact of the sanction on Block of third parties. And even if such factors were somehow relevant, Block cites nothing in the record indicating that he raised or submitted evidence on these issues below. In fact, even now, he fails to allege that they would have any impact. Also, as to the reasonableness of the fees, the Superior Court, in awarding fees and expenses in the amount sought by the Receiver, considered the Certification of Services submitted by the Receiver. (Ba1479-1515).

Accordingly, for all of these reasons, the Superior Court did not violate Block's due process rights when it held him in contempt.

2. Block Did Not Act in Good Faith, and Thus, the Superior Court, in Imposing Sanctions, Did Not Abuse Its Discretion.

Block argues that he requested *in camera* review in good faith because the Superior Court had previously indicated that *in camera* review could be sought; the Subpoena authorized Block to withhold documents; the Superior Court sanctioned Block for the misconduct of others; the Superior Court's previous finding regarding waiver of the attorney-client privilege did not apply to future communications; Calzaretto was offering "legal advice" to the Patels, and hence, his involvement in

the communications at issue did not waive the privilege; the crime-fraud exception does not apply here; the Superior Court did not review each document for privilege; and Block sought legal advice from counsel. (Bb14, 22-31). Thus, Block maintains, Block acted "with care to balance complying with the subpoena and his professional obligations owed to the Patels." (Bb31).

This argument fails for a host of reasons. First, as set forth in Point I(1) above, the May 14, 2024 Order authorized the Receiver, not Block, to seek *in camera* review, and only as to redactions, not documents. (Ba174-75). Hence, in seeking review of documents, he violated the terms of the Order. Also, as set forth below, Block should have known that the documents at issue were not privileged. Hence, as the Superior Court properly found, he did not act in good faith.

Second, in its May 14, 2024 Order, the Superior Court ordered Block to produce documents. (Ba174-75). Hence, the language of the Subpoena was no longer relevant.

Third, as the Superior Court properly found in its September 12, 2024 decision, by virtue of the earlier April 1, 2019 Order and Opinion, in which the court ruled that the Patels had waived the attorney-client privilege based on disclosure to third parties and the crime-fraud exception, and in which the court found that the Calzaretto Parties had engaged in actions that aided and facilitated the Patels' concealment scheme, (Ba1362-96), Block either knew or should have known that the communications at issue, to which the Calzaretto Parties were a party, (Ba197-

200), could not possibly be privileged. (Ba1455). In fact, at the first hearing on the Receiver's Motion for Order Enforcing Subpoenas, Block's counsel admitted that she had reviewed the docket, and hence, she and Block were on notice of the April 1, 2019 Order. (1T28-20 to 29-1).

At any rate, even assuming that Block somehow didn't know of the earlier ruling, he still failed to respond to the Subpoena until months after the deadline, and after the Receiver was forced to file a motion. Thus, regardless of Block's actual knowledge, sanctions were still appropriate.

Fourth, in its April 1, 2019 Order and Opinion, the Superior Court rejected the Calzaretto Parties' argument that the attorney-client privilege protected documents sought by the Receiver. (Ba1362-96). The court noted not only that the Patels had waived the privilege through disclosure to third parties, but also that the crime-fraud exception prevented application of the privilege, and also that the Calzaretto Parties in particular had engaged in actions that aided and facilitated the Patels' concealment scheme. (Ba1380-90). In fact, the court expressly held that "the Calzaretto Parties should not be permitted to hide behind the attorney-client privilege in order to facilitate the Patels' secreting of assets." (Ba1385).

The court further noted that once a party waives the privilege, it waives all communications regarding that subject matter. (Ba1381) (citing Weingarten v. Weingarten, 234 N.J. Super. 318, 326 (App. Div. 1989)).

More recently, in response to the Subpoena, Block withheld emails to which the Calzaretto Parties were a party. (Ba197-200). Citing the April 1, 2019 Order and Opinion, the Superior Court properly rejected Block's renewed claim of privilege. (Ba1455). The Superior Court noted that the court had previously found a waiver of the attorney-client privilege based on both disclosure and the crime-fraud exception. (Ibid.). And in reference to the crime-fraud exception in particular, the court noted the earlier findings that the Patels had been secreting assets and engaging in fraudulent transfers; and that the Calzaretto Parties were likely aware, or they should have been aware, of the Patels' attempts to secret their assets and evade judgment enforcement. (Ibid.). Thus, the Superior Court properly held that based on these earlier findings, Block either knew or he should have known that the requested documents, which involved Calzaretto and "strategy" with respect to the Subpoena and related topics, were not protected by the attorney-client privilege. (Ibid.). And here, Block cites no authority indicating that the earlier ruling should not or cannot apply to subsequent documents, especially those involving the same person or entity (the Calzaretto Parties) and subject matter (the Patels' efforts to evade the Receiver's collection efforts).

Fifth, as the Superior Court noted, a party waives the attorney-client privilege when it reveals privileged information to a third party. (Ba1381) (citing O'Boyle v. Borough of Longport, 218 N.J. 168, 186 (2014)). Also, "[t]here is no privilege as to

communications made to an attorney after his employment has terminated." Fox v. Forty-Four Cigar Co., 90 N.J.L. 483, 489 (1917).

Here, in 2018, the Calzaretto Parties moved to withdraw as the Patels' counsel based on what they themselves characterized as an "un-waivable" conflict. (Ba1334-35). The court granted the motion based on the Calzaretto Parties' "palpable conflict of interest." (Ba1340). Despite this ruling, the Patels more recently sought reinstate the Calzaretto Parties as their counsel. (Ba180, 187, 189, 1430-33). In September 2024, however, the Superior Court denied the Patels' Motion to reinstate Calzaretto as their counsel based on the court's previous finding of a "palpable conflict of interest." (3T50-22 to 51-12.) The court noted that the earlier ruling "has never been challenged" and that "[i]t remains true to this day." (3T51-16 to 17). Thus, even assuming that the Superior Court's early 2019 regarding waiver of the privilege does not apply here, the Calzaretto Parties are no longer counsel to the Patels, and in fact they have not been since 2018, and they were a party to the emails sought by the Receiver pursuant to the Subpoena, (Ba197-200). Hence, the disclosure of the emails to the Calzaretto Parties resulted in waiver of the attorney-client privilege with respect to the emails.

Moreover, as set forth above, insofar as Block alleges that the Patels have retained the Calzaretto Parties as their "personal counsel," outside of this matter, repeated statements by the Calzaretto Parties to the contrary belie the allegation.

(Ba365; Ba1398-1400; Ba1401-03; Ba1404-06; Ba1407; Ba1408-13; see also Ba402).

Thus, again, because the Calzaretto Parties are no longer counsel to the Patels, and they have not been for years, disclosure of the emails at issue to the Calzaretto Parties resulted in a waiver of the attorney-client privilege.[7]

Sixth, as the Superior Court observed, under New Jersey law, the attorney-client privilege does not extend to "a communication in the course of legal service sought or obtained in aid of a crime of a fraud." (Ba1383 (quoting N.J.S.A. 2A:84A-20(b)). The Supreme Court expansively interprets the term "fraud" in this context. (Ibid. (citing Fellerman v. Bradley, 99 N.J. 493, 503-04 (1985)). Under this principle, known as the crime-fraud exception to the attorney-client privilege, a client cannot consult a lawyer for advice to aid in the perpetration of a fraud on the court. (Ba1384) (citing Fellerman, 99 N.J. at 503). Block acknowledges that to trigger the exception, the attorney-client communication need only be "reasonably related to the crime or fraud." (Bb28) (quoting In re Grand Jury Subpoena, 419 F.3d 329, 346 (5th Cir. 2005)).

[7] In addition, even assuming that the Patels have somehow not waived the privilege, whether back on April 1, 2019 when the Superior Court issued its ruling to that effect, (Ba1380-90), or more recently when the Patels and Block included the Calzaretto Parties on their emails, (Ba197-200), the Receiver, pursuant to the broad authority accorded him upon his appointment, holds the right to waive the privilege. (Ba1386 n.12).

Applying this law, the Superior Court previously found that the Patels, with the aid of the Calzaretto Parties, were engaged in secreting assets and fraudulent transfers, and thus, found the attorney-client privilege inapplicable. (Ba1383-90). More recently, in addressing the Receiver's Motion for Order Enforcing Subpoena, the court, citing these findings, found that Block either knew or he should have known that the requested documents were not protected by the attorney-client privilege. (Ba1455). A review of the log relating to the requested documents reveals that, again, not only were the Calzaretto Parties a party to the documents, but that the parties discussed "strategy" and similar issues relating to the Subpoena and this matter. Given the Superior Court's earlier findings on the crime-fraud exception, including the Calzaretto Parties' involvement in the Patels' scheme, it stands to reason that these more recent documents should not enjoy protection under the privilege. If anything, the earlier ruling constitutes law of the case by which the Superior Court is bound.

Further, the National Util. and Richard Roe decisions cited by Block on the issue, (Bb27-28), are not apposite here. In National Util., the court declined to apply the crime-fraud exception to a document merely because it embodied advice inconsistent with a legal theory later developed by litigation counsel. National Util. Serv., Inc. v. Sunshine Biscuits, Inc., 301 N.J. Super. 610, 613 (App. Div. 1997). Here, in contrast, the Superior Court made express findings of a fraudulent scheme. (Ba1383-90). And in Richard Roe, while the court adopted a restricted interpretation

of the crime-fraud exception, it is contrary to the Supreme Court's expansive view, under which the exception applies "even if the attorney is unaware of the client's criminal or fraudulent intent," and which does not limit the exception to "conventional notions of tortious frauds." Compare United States v. Richard Roe, Inc. (In re Richard Roe, Inc.), 68 F.3d 38, 40 (2d Cir. 1995), with Fellerman, 99 N.J. at 503.

Seventh, as set forth above, the Superior Court had already previously found that the Patels had waived the attorney-client privilege, and thus, there was no reason for the court, in subsequently addressing the Subpoena, to conduct an *in camera* review of the documents sought by the Receiver. (Ba1456). It is for this reason that the case law cited by Block on this issue is not relevant to this case. (Bb25, 28-29, 37). For instance, in Seacoast, the court noted that in reviewing documents *in camera*, a court must examine each document individually and "explain as to *each* document deemed privileged why it has so ruled." Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003). Here, however, the Superior Court found in camera review unnecessary; and it did not find any documents privileged. As for National Util., nothing in that decision requires a court to conduct *in camera* review of documents, let alone individual inspection of each document in such a review. National Util., 301 N.J. Super. 610.

Finally, Block cites no law to support his argument that his retention of counsel somehow by itself absolves him of bad faith.

Accordingly, for all of the reasons cited above, the Superior Court did not abuse its discretion when it imposed sanctions on Block.

POINT II

THE SUPERIOR COURT, IN ASSESSING FEES AND EXPENSES AGAINST BLOCK, DID NOT ABUSE ITS DISCRETION.

Block argues that the Superior Court, in awarding the Receiver attorney's fees, abused its discretion because the Superior Court failed to comply with the procedure set forth in Rule 1:4-8; Block was given neither a hearing nor an opportunity for discovery with respect to the fees; "the earliest time that fees could have been sought would be twenty-eight days from the Receiver's June 6, 2024 deficiency letter, which according to the invoices would mean the first entry was July 8, 2024"; the Receiver, in submitting redacted invoices without leave of court, violated Rule 1:38-11(b), and without unredacted invoices, Block cannot be assured that the fees at issue related only "the limited basis for a sanction"; the Superior Court did not apply the R.P.C. 1.5(a) factors governing fee allowance; and the award was excessive. (Bb2, 14, 37-41).

Block acknowledges that this Court must review the Superior Court's decision to award fees and expenses for an abuse of discretion. (Bb13; see also Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 25 (2004)). For the following reasons, Block's position is unavailing, and thus, the Superior Court, in awarding fees and expenses, did not abuse its discretion.

First, the Receiver did not move for sanctions under Rule 1:4-8, which addresses frivolous litigation; instead, he moved for a finding of contempt. (Ba413). Thus, the requirements of Rule 1:4-8 are not applicable here. Additionally, a trial court has inherent authority, independent of Rule 1:4-8, to award attorney's fees for unreasonable litigation conduct. Triffin v. Automatic Data Processing Inc., 394 N.J. Super. 237, 251 (App. Div. 2007) ("Separate and distinct from court rules and statutes, courts possess an inherent power to sanction an individual for committing a fraud on the court.").

Second, the Superior Court addressed the propriety of sanctions at the July 24, 2024 hearing. (2T). And Block fails to cite any authority indicating that a hearing on the fees award was required. As for discovery, nothing precluded Block from seeking more information on the Receiver's fees; and nothing in the record indicates that Block served any discovery on or made any requests of the Receiver.

Third, Block fails to explain his rationale for limiting the Receiver's award to only those fees incurred on and after July 8, 2024, when it was his failure to respond to the Subpoena, which was issued early six months earlier on February 12, 2024, (Ba326-33), that precipitated the need for need for motion practice and the resulting fees.

Fourth, Rule 1:38-11 governs sealing of court records. Here, the Receiver did not file documents under seal. Hence, Rule 1:38-11 is not applicable here. As for Block's concern about the extent of the fees sought, the Receiver explained in detail

and under penalty of perjury that the services for which payment was sought related to enforcement of the Subpoena. (Ba1481 ¶ 10).

Fifth, an appellate court can affirm an order or judgment for reasons other than those expressed by the trial court. See, e.g., Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). Thus, here, even if the Superior Court did not address the RPC 1.5(a) factors in its decision, the Receiver exhaustively addressed them in his Certification of Services, and this Court can affirm the Superior Court's Order Granting Sanctions Fee Award for the reasons set forth in the Certification. (Ba1482-84 ¶¶ 14-21).

Needless to say, Block's analysis of the RPC 1.5(a) factors is flawed on the following grounds among others: (1) the extensive motion practice delineated above demonstrates the time and labor required; and given his lack of success on the Motions, Block cannot claim that the questions, involving issues such as contempt and privileges, are not difficult, or that they don't involve skill; (2) Block likewise cannot deny that the numerous Motions and hearings required to enforce the Subpoena, over the course of approximately six months, prevented the Receiver and his firm from other employment; (3) the rates were consistent with the fee rates fixed by the Superior Court in connection with the appointment of the Receiver; and a brief review of Exhibit A to the Receiver's Certification of Services, which shows the hours spent and the fees charged, reveals that the Receiver and his firm did not charge exorbitant rates; on the contrary, they are lower than those charged by other

lawyers in the area, (Ba1487-1515); (4) the Certification addresses the amount involved and the result obtained: enforcement of the Subpoena, (Ba1479-84); (5) as set forth above, the extensive motion practice required significant work in a limited period of time; (6) the Receiver was appointed in 2016, almost 10 years ago, and he has worked tirelessly in the face of the Patels' efforts to evade the judgment; (7) the experience, reputation, and ability of the Receiver's firm, and the Receiver in particular, is unquestioned, not even by Block; and (8) the Receiver's fees were fixed, not contingent.

Finally, under New Jersey law, an attorney is permitted to recover the "reasonable" value of services rendered. Cohen v. Radio Elecs. Officers Union, 146 N.J. 140, 163 (1996). The fair value of the lawyer's services is usually the same as the hourly fee for the number of hours worked. Ibid. (quoting RESTATEMENT OF THE LAW GOVERNING LAWYERS § 44 52 cmt. b). Thus, a retainer agreement serves as the basis for determining the reasonable value of the lawyer's services. Id. at 163. A lawyer satisfies "a *prima facie* test of fairness and reasonableness" by way of a submission of the parties' agreement and the fees charged. Gruhin & Gruhin, P.A. v. Brown, 338 N.J. Super. 276, 281 (App. Div. 2001). Thereafter, a client may rebut that *prima facie* showing to challenge the bill rendered as unreasonable. Ibid. (citing Cohen, 146 N.J. at 156).

Here, the Receiver issued invoices for its legal services by the hour and in accordance with agreed-upon rates. (Ba1487-1515). Thus, the Receiver satisfied

the *prima facie* test of fairness and reasonableness. At the same time, Block, having produced no evidence in opposition, failed to rebut the reasonableness of the Receiver's fees. It follows that the Superior Court properly found that the fees were reasonable.

Accordingly, the Superior Court did not abuse its discretion when it assessed fees and expenses against Block.

CONCLUSION

Based upon the foregoing, the Receiver respectfully requests that this Court affirm the Superior Court's Orders.

RABINOWITZ, LUBETKIN & TULLY, LLC
Attorneys for Respondent-Receiver

By: /s/ Jonathan I. Rabinowitz
JONATHAN I. RABINOWITZ

DATED: March 14, 2025

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March 18, 2025

By eCourts

Superior Court of New Jersey, Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625-0970

Re: Narendra Lakhani, Sonali Mody, and Darshan Lakhani
v.
Anil Patel, Manish Patel, Rajni Patel, Northstar Management, Inc., Northstar Kenilworth, LLC, Northstar Laurel, LLC, Northstar Technologies, LLC, AM Star Hospitality, LLC

Superior Court of New Jersey, Law Division
Somerset County
Court Below Docket Nos.: SOM-L-386-11 and SOM-L-758-11 (Consolidated)
Sat Below: Honorable Robert A. Ballard P.J.Cv.

Appellate Docket No.: A-577-24

Dear Judges:

On behalf of the Respondents Lakhani Associates, LLC and Narendra Lakhani, Sonali Mody and Darshan Lakhani (the "Lakhanis" and, together with Lakhani Associates, the "Lakhani Parties") please accept this letter, in lieu of a more formal submission under R. 2:6-2(b), joining in the opposition brief filed by the Court-appointed Receiver, Jonathan I. Rabinowitz, Esq. (the "Receiver") and in

opposition to the Brief filed by Non-Party Appellant Dennis E. Block, Esq. ("Appellant").

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I. Joinder in Receiver's Table of Orders

The Lakhani Parties hereby join in the Receiver's Table of Orders located at Rbvi.[1]

II. Joinder in Receiver's Statement of Facts and Procedural History

The Lakhani Parties hereby join in the Receiver's Statement of Facts and Procedural History located at Rb2-18.

[1] For purposes of this Appeal, and because the Receiver is a non-party, the Lakhani Parties use "Rb" as the prefix for references to the Receiver's Brief.

III. The November 22, 2024 Order is Interlocutory and Improper and the Appeal of that Order Should be Denied Given this Court's Prior Orders

With respect to the Appellant's Brief and Amended Notice of Appeal from the Orders entered by the Honorable Robert A. Ballard, Jr., P.J.Civ. on September 12, 2024, October 18, 2024 and October 25, 2024 (collectively, the "Subpoena Sanctions Orders"), the Lakhani Parties join in the Receiver's opposition papers in their entirety, including but not limited to the Preliminary Statement located at Rb1, the Legal Argument located at Rb19-36, the Statement of Citations located at Rbiii-iv, and the Conclusion located at Rb36.

IV. Joinder in Receiver's Preliminary Statement, Legal Argument and Statement of Citations and Conclusion

With respect to the Appellant's Brief and Amended Notice of Appeal from the Order entered by the Honorable Robert A. Ballard, Jr., P.J.Civ. on November 22, 2024, the Lakhani Parties respectfully submit that that Order is unrelated to the Subpoena Sanctions Orders – it is a separate Order denying Appellant's Motion for Reconsideration seeking reversal of Appellant's filing of a "Motion to Order" that Judge Ballard determined was frivolous and that fees should be awarded under *R.* 1:4-8. As an initial matter, the November 22, 2024 Order is interlocutory because, before Judge Ballard could enter an Order awarding attorneys' fees against Appellant in connection with that frivolous motion, both of Appellant's clients, Anil

Patel and Manish Patel, filed Notices of Bankruptcy Case and the trial court stayed further proceedings. (Ba1523-27). Thus, without a final Order awarding attorneys' fees in connection with the frivolous Motion to Order, the November 22, 2024 Order is interlocutory, not final.

Additionally, Appellant incorrectly conflates the Subpoenas Sanctions Orders in his Brief with the frivolous Motion to Order and Judge Ballard's denial of the Motion for Reconsideration seeking to reverse his determination that the Motion to Order was frivolous. Specifically, at page 36 of Appellant's Brief, Appellant incorrectly suggests that "[t]he trial court abused its discretion in finding fees should be imposed against Mr. Block regarding both the subpoenaed documents and the motion to mark the judgment satisfied." (Bb at 36).[2] Moreover, the Receiver had nothing to do with the trial court's determination that fees should be awarded against Mr. Block for the Motion to Order – the Lakhani Parties (not the Receiver) sought that determination and, again, there still has been no "final" Order awarding fees to the Lakhani Parties against Appellant.

[2] Since Appellant used "B" as the prefix for his Appendix, the Lakahni Parties have used "B" as the prefix for Appellant's Brief because Appellant is a non-party and for purposes of consistency.

Lastly, it should be noted that this Court has already denied Appellant's original Motion to Mark and collateral attacks from Appellant's clients' cohorts seeking to avoid the Final Judgment that is the subject of the frivolous Motion to Order. Indeed, this Court previously made clear that:

> By letter dated May 1, 2014, more than a year after the conclusion of the Foreclosure Action, the Patels disputed they owed any amount of the final judgments in either action. The Patels then filed a series of motions, which the trial court referred to as "repetitive" attempts "to frustrate collection efforts," which the court, in turn, accelerated. These efforts included post-judgment motions to stay collection efforts, and a motion for a fair-market value hearing in October 2016, four years after uncontested final judgments were entered.
>
> There is no evidence in this record that the Patels attempted to vacate the final judgments pursuant to Rule 4:50.
>
> On June 29, 2017, the Patels sought leave to appeal for the first time. **The Appellate Division summarily denied the motion for leave, foreclosing the Patels' ability to challenge either of the final judgments.**

(A-0196-21 at 8-9) (emphasis added). Accordingly, if this Court is inclined to entertain Appellant's improper appeal of the interlocutory November 22, 2024 Order under the Amended Notice of Appeal, the appeal of that particular Order should be denied for the reasons already expressed by this Court.

V. Conclusion

For the foregoing reasons and for the reasons set forth in the Receiver's Brief, the Lakhani Parties respectfully submit that the Appeal should be denied in its entirety.

Respectfully,

s/ Robert W. Mauriello, Jr.

Robert W. Mauriello, Jr.

cc: All Counsel of Record (by eCourts)

NARENDRA LAKHANI, SONALI MODY and DARSHAN LAKHANI

Plaintiffs,

vs.

ANIL PATEL, MANISH PATEL, RAJNI PATEL, JAYESH PATEL, NORTHSTAR HOTEL GROUP, INC., NORTHSTAR MANAGEMENT, INC., NORTHSTAR KENILWORTH, LLC, NORTHSTAR LAUREL, LLC, NORTHSTAR TECHNOLOGIES, LLC, AMSTAR HOSPITALITY, LLC, ABC CORPORATIONS 1-10 AND JOHN DOES 1-100, NORTHSTAR HOLDING, LP, HARIT KAPADIA, CPA, ASHWIN PANDYA, CPA, PANDYA, KAPADIA & ASSOCIATES, CPA, PA,

Defendants,

BRIX RESOURCES, INC., BRIX HOSPITALITY, LLC, BRIX KENNILWORTH, LLC and BRIX LAUREL, LLC,

Third-Party Defendants.

Superior Court of New Jersey
APPELLATE DIVISION

Docket No. A-577-24

On Appeal from Final Collateral Judgment of the Superior Court of New Jersey, Law Division, Somerset County
Docket Nos. Below: SOM-L-386-11
SOM-L-758-11

Civil Action

Sat Below: Hon. Robert A. Ballard, Jr., P.J.Cv.

REPLY BRIEF IN SUPPORT OF APPEAL

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Dated submitted: March 28, 2025

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REPLY STATEMENT OF FACTS

This Court should reject the Receiver's logical fallacy of guilt by association. The first nine pages of Receiver's brief have nothing to do with Mr. Block's representation of the Patels or the reasons why Mr. Block was sanctioned $44,590, which is the subject of the appeal. The Receiver incorrectly argues that the Order on appeal "resulted from the Patels' failure to respond to a subpoena issued by the Receiver." (Rb1.[1]) But the Order on appeal is solely related to whether Mr. Block complied with a subpoena that the Receiver immediately sought when Mr. Block appeared as the Patels' attorney. (Ba97, Rb10.) The Receiver makes a guilt by association argument stating, "The Patels' Extensive Efforts to Defraud Lakhani." (Rb2.) But Mr. Block should not be sanctioned for the Patels' prior conduct when at the time the subpoena was served, he had been the Patels' attorney for a month. (Ba1429.)

The Receiver admits he issued the subpoena to Mr. Block on the same day that he appeared in the matter on the Patels' behalf. (Rb10.) The Receiver's brief only describes a fraction of the documents requested overlooking that he demanded privileged communications among John Calzaretto, Esq. and the Patels. (Ba333 at Request 8.) Given Mr. Block was retained in January 2024, the

[1] Non-Party Appellant Dennis E. Block has used the same abbreviations from his opening brief; the term "Rb" refers to the Receiver's Brief in Opposition to the Appeal; the term "Bra" refers to Non-Party Appellant Dennis E. Block's Reply Appendix.

Receiver's argument that the subpoena was "similar" to others that had been upheld by the court cannot eliminate any rights that Mr. Block had to move to quash the subpoena. (Rb10-11.)

The Receiver misrepresents that Mr. Block's response was overdue when stating Mr. Block's motion was filed "weeks after the deadline for responding to the Subpoena." (Rb11.) As Mr. Block argued on the first motion to quash, the Receiver's subpoena was for a deposition, and the subpoena stated, "the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition." (Ba327.) Mr. Block had advised the Receiver that he was on vacation through February 26, 2024, which was the return for the deposition, and thus, he was not available and could not comply. (Ba114; Ba76 at ¶ 11.) Moreover, Mr. Block's counsel then became involved and made known that additional time was needed to review Mr. Block's concern with his ethical obligations and obligation to comply with the subpoena. (Bra1-2.)

Without any basis, the Receiver claims Mr. Block "did not allege that communications between the Patels and the Calzaretto Parties were privileged." (Rb11)(citing Ba1428). Mr. Block's privilege log clearly listed the communications with Calzaretto and thus, demonstrate he did argue those communications were privileged. (Ba194.)

Importantly, the Receiver acknowledges that the trial court understood there would be redactions and that the trial court would be "happy" to review them. (Rb12)(quoting 1T43:13-22.) The Receiver further notes Mr. Block was given twenty days from May 14, 2024 to provide the documents, and that Mr. Block did, in fact, provide the documents with redactions and with a privilege log. (Rb12-13.) In light of these admissions, the Receiver's own factual statement shows why the trial court abused its discretion in entering an excessive sanction when Mr. Block had to protect his clients' rights.

The Receiver acknowledges that upon receipt of the documents on June 6, 2024, that the Receiver objected to the withholding of communications among the Patels and co-counsel Calzaretto and demanded their production within four days. (Rb13-14.) The Receiver acknowledges arguing that "the Patels had waived the attorney-client privilege on the additional basis of Calzaretto's previous production of documents without invocation of privilege." (Rb14 (citing Ba418 ¶ 9.) But the Receiver never provided any proof for this claim, and as Mr. Block's counsel argued as a matter of law every document must be reviewed for privilege. The Receiver further acknowledges that its argument as to waiver of privilege relates to determinations that occurred with regard to Calzaretto in 2019, which was four years before the creation of documents at

issue here. (Rb13-14.) A court's finding as to waiver in 2019 cannot apply to a different set of documents, created under different circumstances.

The Receiver further concedes the improper logic used by the trial court by noting the trial court's basis for finding Mr. Block in contempt was its rejection that the Calzaretto communications were privileged based on the trial court's April 1, 2019 Order – which was entered four years before the documents at issue were created. (Rb15-16)(citing Ba1455.) The Receiver further acknowledges that "[i]n denying Block's Motions, the court found that an *in camera* review of the documents was unnecessary because the attorney-client privilege does not apply as to Calzaretto." (Rb16)(citing Ba1456.) As explained in the Legal Argument, each of these bases were erroneous such that the $44,590 sanction constituted an abuse of discretion.

LEGAL ARGUMENT

POINT ONE

The Trial Court Abused Its Discretion in Sanctioning Mr. Block $44,590. (Ba1516.)

The Receiver cites as authority for the $44,590 sanction, Rule 1:10-3. (Rb20.) But that Rule states, "The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under the rule." Mr. Block is not a party. The Receiver cites no case justifying a $44,590 sanction for a non-party's delay in producing documents under a claim of privilege made in good faith. In fact, the Receiver fails to provide a citation

for his claim: "it strains credulity to suggest that Block did not receive sufficient due process here." (Rb21.)

The Receiver argues that his motion sought fees and costs for contempt, not frivolous pleading. (Rb17, n. 3.) Thus, the trial court's authority for imposition of an attorney fee was limited to R. 1:10-3, which would mean as a matter of law, Mr. Block was only liable for attorney's fees for willfully disobeying a court order. See Schochet v. Schochet, 435 N.J. Super. 542, 549 (App. Div. 2014)(explaining a party's willful violation is a condition precedent to a fee award under R. 1:10-3). Given the Receiver's recitation of the facts, Mr. Block's conduct could not be willful as 1) the initial trial judge advised that parties that she would be "happy" to review the documents for privilege; 2) Mr. Block provided the redacted documents and privilege log within twenty days of the court Order. (Rb12-13.)

The Receiver further argues that the plain language of the Order granted him the unilateral right to seek court review of redactions. (Rb22.) Given Mr. Block made a motion seeking to submit the unredacted documents for the trial court's review that was denied, and the Receiver failed to ask for a review, the Receiver's argument demonstrates bad faith; if only he could seek review and he failed to ask for such review, then to borrow the Receiver's own language, it

strains credulity that the Receiver would be entitled to $44,590 fee award when he did not comply with the procedure that the court set in place. (Rb22.)

It is ironic that the Receiver argues that Department of Health v. Roselle, 34 N.J. 331, 350 (1961) is distinguishable from the case at bar, because there, the Court found the injunction was ambiguous where, here, the Receiver's recitation of the facts shows the ambiguity in the Order at issue. (Cf. Rb11-12 with Rb22.) At oral argument, Mr. Block's counsel stated she would be producing redacted documents, and the Receiver acknowledged he would accept redacted documents. (1T44:17-20; 1T22:18-23:7.[2]) The trial court invited such conduct. (1T43:13-22.) While the Order may have given the Receiver the right to seek review of the redactions, it did not state that Mr. Block would be held in contempt of Court if he redacted and withheld documents based on his assertion of privilege. (Ba172-75.)

The Receiver provides no authority for his argument that "the Superior Court need not have considered Block's ability to pay or the impact of the sanction on Block of (sic) third parties." (Rb24.) Given the lack of any authority for this statement, this Court should reject it and rely upon its own precedent in

[2] The manner in which the Receiver clarified the documents sought by the subpoena at oral argument is misleading given he acknowledged there could be redactions and that his main issue was "sources of funds." The privilege log makes clear the withheld documents were not "sources and uses of funds." (1T22:18-23:7; Ba194.)

E. Brunswick Bd. of Educ. v. E. Brunswick Educ. Ass'n, 235 N.J. Super. 417, 422 (App. Div. 1989), where it was explained that a "monetary sanction . . . must be fashioned in an amount sufficient to sting and force compliance, but must not be so excessive as to constitute ruinous punishment." Here, at the time of the sanction order, Mr. Block had fully complied with production of the documents. (Bra14.) The trial court failed to consider this fact when it sanctioned $44,590 Mr. Block without even considering his response to the Receiver's affidavit of services. (Cf. Ba1516-17 with Bra3.)

The Receiver argues that Mr. Block did not allege insufficient notice prior to imposing the sanction, when this is exactly what Mr. Block alleged – he could not be sanctioned for filing a motion to ask for the trial court to review documents for privilege. (Cf. Rb21 with 2T20:19-21:10.) There was a lack of notice that if Mr. Block followed the trial court's April 2024 instruction on the record to review the documents that it would cause him to be sanctioned $44,590. Thus, the only argument that "strains credulity" is the Receiver's attempt to justify his position; public policy prevents entry of a $44,590 sanction against an attorney for attempting to balance his clients' interests in privilege with a court order when the attorney asked the trial court to review the documents at issue *in camera*. (Ba409.)

The Receiver would like this Court to review the decisions in a vacuum devoid of our Court Rules. (Db22.) Without any citation, the Receiver states: "contrary to Block's interpretation, the court did not implement a procedure for 'submission of documents.'" (Db22.) Not only does this statement ignore the trial court's April statements from the bench (1T43:13-22) but it overlooks R. 4:10-3. Mr. Block followed the trial court's instructions and the Court Rules. But then a different judge sanctioned him for doing so. (Cf. 1T43:13-22 with Ba1455-56.) This Court should find the sanction constitutes an abuse of discretion, because a non-party should not have to fear a draconian sanction nearly as high as a judicial law clerk's salary[3] for listening to the prior judge.

The Receiver argues that Mr. Block did not act in good faith because a 2019 trial court order found that the crime-fraud exception applied to certain communications of Mr. Calzaretto and the Patels. (Rb25.) However, the Receiver fails to address the trial court's error in ignoring precedent requiring the trial court to review each document. Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003). Without any support, the Receiver argues this Court's instruction to review "each document individually" did not need to occur because "the Superior Court found in camera review unnecessary; and it

[3] This Court can take judicial notice that the annual salary of a judicial law clerk ranges between $45,000 and $65,000. N.J.R.E. 202(b).

did not find any documents privileged." (Rb31.) The Receiver fails to explain how the trial court could ignore binding precedent from this Court requiring review of each document for privilege. Seacoast, 358 N.J. Super. at 542. By the Receiver admitting that the review was unnecessary, the Receiver is conceding that the trial court abused its discretion in failing to abide by this Court's binding precedent requiring in camera review. See Slutsky v. Slutsky, 451 N.J. Super. 332, 356 (App. Div. 2017) (reversing when legal standard is overlooked).

The Receiver cites to an Appellate Division ruling to argue that Mr. Block was on notice that the privilege did not apply and thus, he was acting at his own peril. (Rb26.) But the case on which the Receiver relies does not hold that once there is a waiver on one subject, it will forever waive all future communications even when the communication is with a new attorney on a different subject. See Weingarten v. Weingarten, 234 N.J. Super. 318, 329 (App. Div. 1989) (explaining "the trial court will have to continue careful supervision over the information sought by the husband"). In Weingarten, the Appellate Court explained the waiver only extended to "the same subject matter." Id. at 326. The Appellate Division noted that "communications which bear on the particular subject matter in dispute may be disclosed, but unrelated communications need not be disclosed." Id. at 328-29 (citing United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 567, n. 3 (App.Div.1984)).

In fact, even under the Receiver's recitation of the law, the trial court should have reviewed the documents *in camera* because "once a party waives the privilege, it waives all communications regarding that subject matter." (Rb26)(citing Ba1381)(citing Weingarten, 234 N.J. Super. at 326). Thus, here, where the trial court admitted that it did not review *any* documents to determine whether the subject matter waived in 2019 was the same as the documents created four years later, it constituted an abuse of discretion. See Slutsky, 451 N.J. Super. at 356 (requiring reversal "when findings of fact that are contrary to the evidence")(quoting Perkins v. Perkins, 159 N.J. Super. 243, 247 (App. Div. 1978))). Without analyzing any document for privilege, the trial court abused its discretion in holding a blanket waiver without analyzing whether the communications had the same subject matter.

The Receiver's argument as to Calzaretto's withdrawal as counsel in the matter in 2018 as somehow waiving privilege also must be disregarded. (Rb28.) The Receiver cites no law that holds privilege can be maintained only when the attorney is one of record. Moreover, the Receiver's argument misses the point of Mr. Block's concern. Under New Jersey law, "[t]he privilege shall be claimed by the lawyer unless otherwise instructed by the client or his representative." N.J.S.A. 2A:84A-20. This means until the trial court reviewed the documents *in camera*, Mr. Block had an ethical obligation to withhold the documents on the

Patels' behalf. Due to the statute, Mr. Block asked the trial court to review the documents; he was not acting contumaciously – he was seeking permission to otherwise violate an ethical duty. Counsel told the trial court of this concern, and that she had the documents ready to be submitted to the court. (2T20:19-21:10.) With these facts, the trial court abused its discretion in awarding a $44,590 sanction against Mr. Block who sought legal counsel and acted at his counsel's direction regarding the documents. He then promptly produced them within three days of being ordered to do so. (Bra14.)

What is most significant is that there was no harm to the Receiver while Mr. Block owed obligations to his clients, the Patels, to maintain their confidences. Mr. Block did not have the authority to waive the privilege – only the Patels could, and they did not. N.J.S.A. 2A:84A-20 & Ba120, ¶ 5. In order to avoid an ethical issue with his clients, Mr. Block needed the trial court to review the documents and determine that the documents were not privileged.

The Receiver admits that "to trigger" the crime-fraud exception, the communication must be "reasonably related to the crime or fraud.'" (Rb29.) But the trial court did not look at the documents to determine whether they had anything to do with a crime or fraud. (Ba1455-56.) Without having done so, even under the Receiver's recitation of the law, the trial court abused its discretion because there was no review to determine if the communications were made in

furtherance of a crime or fraud. See DiFiore v. Pezic, 254 N.J. 212, 228 (2023) (holding court not entitled to deferential abuse of discretion standard when it is "based on a mistaken understanding of the applicable law")(quoting State in Int. of A.B., 219 N.J. 542, 554 (2014) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011)).

The Receiver states Rule 1:38-11 "is not applicable" even though the Receiver certified under penalty of perjury, "to preserve the privilege the Receiver is submitting unredacted billing records to chambers only, and is filing redacted billing records on the case docket." (Cf. Rb33 to Ba1481, n. 1)(emphasis added). But nothing gave the Receiver the right to have an ex parte communication with the Court. R.P.C. 3.5. There was simply no basis to deny Mr. Block the opportunity to contest whether each and every entry was limited to the Receiver's pursuant of the documents. (Ba1485-1515.) In fact, this Court has an impossible task of reviewing the invoices given the Receiver has not provided unredacted copies so this Court's record is incomplete. R. 2:5-4 ("[t]he record on appeal shall consist of all papers on file in the court). Thus, this Court has to review whether the trial court complied with R.P.C. 1.5 factors without any application of those factors by the trial court and without the actual time entries at issue. (Ba1485-1517.)

On the one hand, the Receiver argues that Mr. Block's legal analysis as to privilege was obviously wrong (which Mr. Block disputes), but then in justifying its fee under the R.P.C. 1.5 factors, the Receiver changes his position arguing, "Block cannot claim that the questions, involving issues such as contempt and privileges, are not difficult, or that they don't involve skill." (Cf. Rb26 to Rb34.) Either the issues were, in fact, difficult, and thus, Mr. Block's conduct was justified, or the Receiver's time did not justify the $44,590 he self-servingly claimed was expended because the matters were not complicated. (Ba1481.) It cannot be both ways because to the extent the issue was complex, then Mr. Block was justified in his legal position because he had a good faith basis to assert privilege given the complexities; or if it was not complex, then it should not have taken the Receiver 95 hours. (Ba1486.)

The Receiver also argues that there were "numerous motions and hearings over the course of six months." (Rb34.), but the Receiver is disingenuous. There were two sets of motions and one fee application. (Ba172-75; Ba1439-57; Ba1516-17.) While six months passed, the Receiver overlooks some of the time involved Mr. Block's seeking counsel, compiling the documents, and time for the trial court, itself, to issue decisions.[4]

[4] Two months elapsed between oral argument on the motion and decision. (Cf. 2T to 3T.) Neither this Court nor Mr. Block can adequately address which time

The Receiver further argues that Mr. Block could have engaged in discovery as to the Receiver's bill, but Mr. Block objected to the redactions, and the Receiver refused to produce unredacted bills. (Bra14.) For the Receiver to make this argument is further evidence of gamesmanship.

The Receiver argues, "the Receiver was appointed in 2016, almost 10 years ago, and he has worked tirelessly in the face of the Patels' efforts to evade the judgment," but this factor does not apply to Mr. Block from whom the Receiver admitted seeking documents via subpoena on the same day he appeared in the matter. (Rb35; Rb10.) The trial court's authority to enter fees was limited to Mr. Block's willful violation of a court order, but he timely served the documents. (Bra14); see Triffin v. Auto. Data Processing, Inc., 394 N.J. Super. 237, 251 (App. Div. 2007)(party is entitled to fees due to fraud).

POINT TWO

The Trial Court Abused Its Discretion in Entering Frivolous Pleading Sanctions. (Ba1469-70.)

A trial court abuses its discretion when its decision is based on an incorrect legal basis. Slutsky, 451 N.J. Super. at 351. Given the Receiver concedes he did not move under R. 1:4-8, the trial court's decision cannot stand where the trial

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entries are limited to enforcement of the subpoena versus the other varied issues that were the subject of litigation in this matter during those six months. Nor can a determination be made as to whether any of the entries were duplicative particularly when both Mr. Harmon and Mr. Rabinowitz billed substantial amounts of time to enforce an allegedly "substantially similar" subpoena to others the Receiver served in this matter. (Rb10; Ba1488-1515.)

court awarded fees based on this Rule. (Cf. Ba1469-70 and Rb17, Rb19.) The Receiver acknowledges that he moved to hold Mr. Block in contempt and not for filing frivolous litigation. (Rb17, n.3.) If this is true, then the sanction is limited to $50 and payable to the Court not the Receiver. N.J.S.A. 2A:10-5. The Receiver concedes that the purpose to a contempt proceeding is the failure to comply with a Court Order, but at the time of the sanction Order, the Receiver received the documents, and thus, there was no basis for the $44,590 sanction. (Bra14.)

CONCLUSION

The $44,590 sanction order should be vacated. Mr. Block balanced his clients' interests with his obligations; he did not act willfully. He sought legal counsel to make sure he was right; he relied on that attorney's advice; he relied on the trial judge stating she would review the documents *in camera*. Within three days after being told by a different judge that the documents were not privileged, he produced them. On this record, the $44,590 sanction cannot stand.

Respectfully submitted,

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