FILED, Clerk of the Appellate Division, February 12, 2025, **A-000659-24**, AMENDED

WILLIAM RIKER and ANNA RIKER,	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiffs/Appellants,	:	APP.DIV.DOCKET NO.: A-000659-24
vs.	:	**CIVIL ACTION**
KING PENNA and KINGMAKER STRATEGIES, LLC,	:	
Defendants/Respondents.	:	SAT BELOW: HON. Rosemary E. Ramsay, P.J.Cv.
	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY Docket No.: MRS-L-1132-22
	:	Date of Re-Submission to Court: 02/12/2025

BRIEF IN SUPPORT OF PLAINTIFFS/APPELLANTS' APPEAL

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PRELIMINARY STATEMENT

In this suit on a promissory note, the Defendants proffered two equally vacuous defenses: first, as to both Defendants, was the spurious claim that repayment was contingent on some third-party paying the Defendants for alleged services rendered (Hirsh Singh – an individual the Defendants third-partied in this case but failed to pursue, there being no incentive to do so now that only the sole-member LLC has liability). The trial court rejected this argument. Nothing in the note suggested in any way, shape or form that King Penna or his LLC (judgment-proof as a practical matter) was relieved of liability to William and Anna Riker if Singh did not pay him. The trial court, therefore, entered judgment against the LLC (Pa79) and that judgment understandably has not been appealed.

Equally clear, however, was, and is, King Penna's second defense as to personal liability: the unambiguous phrase in the note he drafted - "Kingmaker Strategies, LLC, <u>and King Penna</u> agree to pay back the note of $70,000 plus interest…" (Pa3) (emphasis added) - did not mean what it obviously says. Why? Because under the signature line set up for "Kingmaker Strategies LLC" as well as "King Penna managing member" King Penna signed it only once. Therefore, despite the note being between "(#1) Kingmaker Strategies LLC, (#2) King Penna managing member, and

(#3) William and Anna Riker" it was clear, so the individual Defendant argued, that only the LLC was liable on the Note.

In response to this argument, the trial court sua sponte introduced the concept of there being some type of "ambiguity" in the note (1T23)[1] and that Plaintiffs had not addressed this so-called "ambiguity" and dismissed the Complaint against the individual Defendant with prejudice. (Pa80).

PROCEDURAL HISTORY

On July 1, 2022, the Plaintiffs filed a Complaint against the Defendants King Penna and Kingmaker Strategies, LLC. (Pa 1).

On September 19, 2022, the Defendants filed an Answer with a Third-Party Complaint against Hirsh Singh. (Pa5).

On May 12, 2023, the Plaintiffs filed a motion for summary judgment (Pa10) supported by a Statement of Material Facts (Pa12) which included the deposition testimony of King Penna as Ex.A (Pa15)and the Certification of Anna Riker (Pa20).

On May 20, 2023, the Defendants filed an opposition and a cross motion (Pa22) supported by a response to the Statement of Material Facts and Counterstatement of Material Facts (Pa24), the Certification of Philip Guarino (Pa33) and brief (Pa66) (the brief being included to demonstrate

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there was no argument on the behalf of the Defendants that the subject note dated June 16, 2020 was ambiguous).

On June 5, 2023, the Plaintiffs filed a reply brief (not included) and the Supplemental Certification of Anna Riker (Pa78).

On August 29, 2024 (a year and three months after the original filing) the Court entered an Order entering judgment against the LLC defendant, Kingmaker Strategies, LLC (Pa79 – Order not under appeal) and dismissing the claim against the individual Defendant with prejudice (Pa80) (which Order is on appeal).

On September 18, 2024, the Plaintiffs filed a motion for reconsideration (Pa81) supported by the Certification of William Riker and Anna Riker. (Pa83).

On October 7, 2024 the individual Defendant opposed the motion for reconsideration, supported by his Certifications. (Pa85 and Pa91).

On October 10, 2024, the Plaintiffs filed a reply. (Not included).

On October 11, 2024, the Court denied the motion for reconsideration. (Pa94). (The second Order on appeal).

On November 5, 2024, the Notice of Appeal was filed (Pa95).

On December 2, 2024 the Certification of Transcript Delivery was filed (Pa100).

On June 1, 2023, an Arbitration Award was entered in favor of Plaintiffs. (Pa101).

STATEMENT OF MATERIAL FACTS

On or about June 16, 2020, the Plaintiffs entered into a note with both King Penna individually and his LLC, the other defendant, Kingmaker Strategies, LLC whereby plaintiffs agreed to lend the defendants the sum $70,000 for a timeframe of 65 days. (Pa3). The individual Defendant himself drafted the note. (Pa84 – Riker Cert.,¶8).

The note is explicit that both Kingmaker Strategies, LLC as well as King Penna individually were liable – providing: "Kingmaker Strategies, LLC, <u>and King Penna</u> agree to pay back the note of $70,000 plus interest…" and it is signed by King Penna on behalf of the LLC and himself. (Pa3). (emphasis added).

Repayment was to occur no later than August 20, 2020. (Pa3).

The defendants agreed to repay the Note of $70,000 plus interest at a flat fee of 10%, equal to $7,000 for a total of $77,000 on or before August 20, 2020. (Pa3).

Defendants failed to remit timely payment and, on or about September 3, 2020 a note extension was executed by the parties providing that the note was extended for 45 days from September 3rd to October 12th, 2020 with

repayment to be made on or before October 12th, 2020. (Pa4). Plaintiffs acknowledge this extension only identified the LLC as being liable for the additional $3,000 interest, because of simple inadvertence. (Pa83–Riker Cert.,¶10).

Defendants agreed to pay plaintiffs an additional $3,000 in interest for the extension, bringing the total amount due to $80,000, at least from the LLC.

Defendants have continued to fail to make any payment. The LLC has obviously not satisfied the judgment. The chances of it ever doing so are infinitesimally small.

LEGAL ARGUMENT

POINT I

JUST AS SURE AS LIABILITY ON THE NOTE WAS NOT CONTINGENT ON PAYMENT TO THE DEFENDANTS BY SOME THIRD PARTY, BOTH "KINGMAKER STRATEGIES LLC", "AND" "KING PENNA" AGREED TO PAY BACK THE NOTE. (1T21-26)[2].

The Court is presented with the most basic breach of contract claims – offer, acceptance, consideration and breach entitling the plaintiffs to a straight judgment under breach of contract for $77,000 against the individual Defendant.

The New Jersey Supreme Court has recently observed:

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> To prevail on a claim of breach of contract, [o]ur law imposes on a plaintiff the burden to prove four elements: first, that "the parties entered into a contract containing certain terms"; second, that "plaintiffs did what the contract required them to do", third, that "defendants did not do what the contract required them to do," defined as a "breach of the contract"; and fourth, that "defendants' breach, or failure to do what the contract required, caused a loss to the plaintiffs".[Globe Motor Co. v. Igdalev, 225 N.J.469, 482 (2016)(alterations omitted)(quoting Model Jury Charges (Civil), 4.10A "The Contract Claim – Generally (approved May 1998)).]

Goldfarb v. Solimine, 245 N.J. 326, 338-39 (2021).

A Court should enforce a contract as written, unless there is an ambiguity. If a contract is unambiguous, it must generally be enforced as written. (Shank v. HJI Assocs., 295 N.J. Super 445, 450 App.Div. 1996). Also, a Court is not to re-write a contract to make it better than the one the parties themselves saw fit to enter themselves. (Marini v. Ireland, 56 N.J. 130 (1970) and courts are not to make better contracts for parties, but only enforce the contracts the parties have made. (Kampf v. Franklin Life Ins.Co., 33 N.J. 36, 43 (1960)).

Based on the facts and law, the plaintiffs are entitled to judgment against the individual Defendant for $77,000. (The Plaintiffs are not inclined to try this matter over any ambiguity relating to the extension and the "extra" $3,000 that the LLC has been adjudicated liable for). By the way, that

extension in no way colors the intent of the original note which unambiguously made both Defendants liable.

In terms of ambiguity, the Defendant did not even raise this issue in its opposition, arguing only that the promissory note was clear in that King Penna did not sign the document individually and that only the LLC was a party to the note. On this basis, the Defendant sought summary judgment. (Pa75). The trial court introduced the concept of ambiguity which leads to Point II below.

POINT II

TO THE EXTENT THERE WAS ANY AMBIGUITY, WHICH THERE WAS NOT, THE MATTER SHOULD HAVE BEEN SET DOWN FOR TRIAL. (Pa94)(ALSO RAISED VIA THE MOTION FOR RECONSIDERATION.

At 1T23[3], the trial court seemed to buy in to the argument that the absence of a separate signature line was some type of unambiguous demonstration that only the LLC would be liable. The court then indicated that if there was any ambiguity, the Plaintiffs had not presented parol evidence in this regard. Respectfully, that was not Plaintiffs' burden at that stage. Nevertheless, a motion for reconsideration was filed with additional evidence from the Plaintiffs expressing that it was absolutely their intent that King Penna would be personally liable, as the loan was otherwise unsecured.

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(Pa83-84). In this regard, the Plaintiffs' motion for reconsideration was much more than a "simple disagreement" with the court's decision (Pa94) but a valid basis for the court to at least set the matter for a trial on the alleged ambiguity issue.

And, having found an ambiguity (a finding with which Plaintiffs disagree) the Court should have construed any such ambiguity against the Defendant.

In Kotkin v. Aronson, 175 N.J. 453, 455, (2003), the Supreme Court reiterated long-standing contract principles:

> A straightforward reading of the contract persuades us that the presence of radon gas is a basis for termination in these circumstances. Sellers did not qualify the radon clause. Consistent with established case law, we cannot make for sellers a better or more sensible contract than the one they made for themselves. Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960). Even if we detected some ambiguity in the agreement, we would construe it against its preparer, in this case sellers. See In re Miller's Estate, 90 *N.J.* 210, 221 (1982) (observing that "[w]here an ambiguity appears in a written agreement, the writing is to be strictly construed against the draftsman"). (emphasis added).

And, even if construing the "ambiguity" against King Penna does not result in judgment against him personally in favor of the Plaintiffs, the individual defendant was not entitled to summary judgment.

In Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514 (App. Div. 2009), a case cited by the trial court, the Appellate Division explained:

> Certain principles guide our analysis. The interpretation of a contract is ordinarily a legal question for the court and may be decided on summary judgment unless "there is uncertainty, ambiguity or the need for parol evidence in aid of interpretation...." Great Atl. & Pac. Tea Co. v. Checchio, 335 *N.J.Super.* 495, 502 (App.Div.2000). "The interpretation of the terms of a contract are decided by the court as a matter of law unless the meaning is both unclear and dependent on conflicting testimony." Bosshard v. Hackensack Univ. Med. Ctr., 345 *N.J.Super.* 78 (App.Div.2001).

Celanese, 404 N.J.Super. at 528.

The trial court specifically found that the Note was ambiguous citing the LLC's letterhead and the fact King Penna only signed the document one time, even though it identifies both "Kingmaker Strategies, LLC" and "King Penna Managing Member". Having found this ambiguity, the case should have been sent to trial.

The Celanese Court continued:

> The trial court found this agreement ambiguous not only with respect to the meaning of the phrase "emanating from" but also with respect to the structure of Article 4.5(a)(1) and 4.5(b). It turned to the deposition testimony and documents produced during discovery to resolve the perceived ambiguities. We agree with plaintiff that the trial court was incorrect in doing so. If the agreement was ambiguous, as the trial court twice concluded it was, then the trial court should not have attempted to resolve the ambiguity from a dry, paper record. Celanese was entitled to

> probe and challenge the credibility of the Authority witnesses in the presence of the factfinder.
> The order under review is reversed, and the matter is remanded for further proceedings.

Celanese, 404 N.J.Super at 530-531. (emphasis added).

Plaintiffs understand the concept that if the note was drafted by an attorney, rather than the individual Defendant himself, there ideally would have been two signature lines. But, King Penna signed the note on behalf of both the LLC and himself. While he references himself as "managing member", this is a person, and there would be no need to reference both entities if King Penna was not personally liable. Regardless, the unambiguous language of the agreement itself controls.

Again, once the trial court sua sponte found an ambiguity, it was incumbent upon the Court to deny both motions in regard to the personal liability of King Penna and set the matter for trial. See, e.g., Great Atl. & Pac.Tea v. Checchio, 335 N.J.Super 495, 498 (App.Div.2000)(See "Cross-motions for summary judgment do not preclude the existence of fact issues."; that case also noting at pg. 502 that the "interpretation of an agreement may present a factual issue if the meaning is uncertain or ambiguous enough to warrant consideration of parol evidence". (R.4:46-2, comment 5, Contract Interpretation).

While the Arbitration Award entered by Edmund Lynch (admitted 1969, a Certified Civil Trial Attorney, and eminently qualified) is neither binding nor persuasive, it is noteworthy that Plaintiffs and their attorney can read the note to mean what it says – the LLC and King Penna are liable – and have the arbitrator agree within half an hour or so (Pa101); then the trial court can have this motion pending for well over a year, read the same language, and side with the Defendant's strained interpretation, without even affording the Plaintiffs a chance at trial. And, now we see what the Appellate Division thinks.

POINT III

THE APPELLATE COURT APPLIES THE SAME STANDARD AS THAT WHICH GOVERNED THE TRIAL COURT IN DETERMINING WHETHER TO GRANT OR DENY SUMMARY JUDGMENT, AND THE PLAINTIFFS WERE ENTITLED TO SAME AGAINST THE INDIVIDUAL DEFENDANT; RECONSIDERATION MOTION WAS IMPROPERLY DENIED FOR THE SAME REASONS. (Setting forth Appellate Review Standard; Relevant Standard set forth in briefing below).

The Appellate Division owes no deference to the trial court and decides summary judgment in the same fashion and under the same standard as the trial court. Kopin v. Orange Prods., Inc., 297 N.J.Super 353, 366 (App.Div.) certif. den.149 N.J. 409 (1997).

In Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995), the Supreme Court adopted the summary judgment standard

articulated by the United States Supreme Court in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) and Gold Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) and followed by the majority of state courts. The Court held:

> Consistent with this national trend, we hold that under Rule 4:46-2, when deciding summary judgment motions trial courts are required to engage in the same type of evaluation, analysis or sifting of evidential materials as required by Rule in light of the burden of persuasion that applies if the matter goes to trial.

(Id. at 539-540.)

The Court emphasized that in order to survive a motion for summary judgment, the non-moving party must come forward with evidence which creates a "genuine" issue of material fact. It stated:

> By its plain language, Rule 4:46 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a "genuine issue as to any material fact challenged." That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute…In other words, where the party opposing summary judgment points only to disputed issues of fact that are "of an insubstantial nature," the proper disposition is summary judgment.

(Id. at 529.)

In order to survive summary judgment, the non-moving party must raise a factual issue which may lead a rational factfinder to reach a verdict in its favor. The analysis should focus on whether the evidence submitted, along

with legitimate inferences, could sustain a judgment in favor of the non-moving party. The Brill Court explained:

> Under this new standard, a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party…The import of our holding is that when the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment.

(Id. at 540, (citations omitted).)

The thrust of the Brill decision is to "encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541. A litigant cannot defeat summary judgment by raising disputed issues which are insubstantial. Where the non-moving party has failed to raise a genuine issue of material fact, the court should not hesitate to grant summary judgment.

CONCLUSION

For the foregoing reasons, the Orders entered in favor of the Defendant should be reversed and liability imposed on the individual Defendant; in the alternative, the matter should be remanded for trial on the merits as to the alleged "ambiguity" raised by the trial court.

Respectfully Submitted,

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DATED: February 12, 2025

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-000659-24

WILLIAM RIKER and ANNA RIKER

Plaintiff-Appellant,

v.
DIVISION

KING PENNA

Defendants-Respondents.

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW

MORRIS COUNTY
Docket No.: MRS-L-1132-22

Honorable Rosemary E. Ramsay, P.J Cv
Sat below

BRIEF IN RESPONSE TO PLAINTIFFS/APPELLANTS' APPEAL

King Penna,

Pro Se Defendant,

139 River Rd.

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PRELIMINARY STATEMENT

This appeal is a transparent attempt by Plaintiffs to relitigate claims that the trial court has already rejected—twice—on their merits. Plaintiffs' portrayal of this matter as one involving "clear individual liability" disregards both the well-established legal protections afforded to LLC members and the trial court's comprehensive analysis of the contract language and evidentiary record.

The trial court correctly held that the loan documents do not impose personal liability on King Penna, in the absence of clear, explicit guarantee language—as required by New Jersey law. Equally, the court rejected Plaintiffs' theory of conditional repayment, finding no evidence that repayment was contingent on the performance of any third party.

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Most tellingly, when Plaintiffs moved for reconsideration, the Honorable Judge Rosemary E. Ramsay denied the motion, finding that Plaintiffs "simply disagree with this court's decision"—a disagreement that falls far short of the legal standard for reconsideration—and noting that the interests of justice did not warrant relief.

This Court should affirm the trial court's well-reasoned and legally sound decisions.

PROCEDURAL HISTORY

August 29, 2024: After full briefing and oral argument, the Honorable Rosemary E. Ramsay, P.J.Cv., granted summary judgment and dismissed with prejudice all individual claims against King Penna. The Court stated its reasoning on the record that day.

September 18, 2024: Plaintiffs filed a motion for reconsideration.

October 7, 2024: King Penna filed opposition to the reconsideration motion.

October 11, 2024: Judge Ramsay denied the motion for reconsideration, expressly finding:

"Plaintiff simply disagrees with this court's decision on the motion. That is not a basis for reconsideration. Nor have Plaintiffs

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established that the interests of justice warrant reconsideration."

November 5, 2024: Plaintiffs filed the present appeal.

This procedural history confirms that Plaintiffs were afforded a full and fair opportunity to present their arguments at the trial level, including a second opportunity through reconsideration. The trial court considered, evaluated, and rejected Plaintiffs' claims at every stage.

COUNTERSTATEMENT TO PLAINTIFFS' "MATERIAL FACTS"

Defendants respectfully dispute Plaintiffs' characterization of the material facts and offer the following clarifications:

1. Individual vs. Corporate Liability: The loan documents do not create personal liability for King Penna. References to "King Penna" appear solely in his capacity as managing member of the LLC—not as an individual guarantor.

2. Signature Capacity: King Penna executed the loan documents on behalf of Kingmaker Strategies, LLC, in a representative—not individual—capacity. The absence of any explicit personal guarantee language confirms this reading.

3. Commercial Context: The loan funded campaign-related business services, not a personal loan. All parties understood and

treated the transaction as commercial in nature.

4. No Personal Guarantee Language: The documents contain no language stating that "King Penna, individually and personally" guarantees repayment, as required under New Jersey law to impose personal liability.

5. LLC Judgment Accepted: Plaintiffs accepted a judgment against Kingmaker Strategies, LLC without appeal. This confirms that they received the benefit of their bargain from the business entity they intended to bind.

These facts are supported by the record and refute Plaintiffs' attempt to recast this corporate transaction as one involving personal liability.

ARGUMENTS

POINT I

THE TRIAL COURT CORRECTLY FOUND NO INDIVIDUAL LIABILITY EXISTS UNDER THE LOAN DOCUMENTS

A. New Jersey Law Prohibits Individual Liability Absent Explicit Guarantee Language

New Jersey law unambiguously protects LLC members from personal liability unless such liability is expressly assumed. Under N.J.S.A. 42:2C-30, the debts of an LLC remain the obligations of the entity—not its members—unless an individual explicitly agrees to

be bound.

The New Jersey Supreme Court has repeatedly affirmed this principle. In Saltiel v. GSI Consultants, Inc. 170 N.J. 297, the Court held that personal liability does not arise in contract actions absent a distinct, legally imposed duty. In Zeiger v. Wilf 333 N.J. Super. 258, , the Appellate Division reinforced that ambiguous references to individual members are insufficient to override the LLC's protective shield. Similarly, in *State v. Ehrman*, the court declined to pierce the veil or impose liability based on an individual's close involvement with the LLC, absent tortious conduct or fraud.

Here, the loan documents contain no explicit language—such as "King Penna, individually and personally guarantees payment"—that would establish personal liability. Plaintiffs' reliance on references to "King Penna" within a business context is legally insufficient under controlling precedent.

B. LLC Limited Liability Protections Cannot Be Circumvented by Ambiguity

The statutory protections provided under N.J.S.A. 42:2C-26 and related provisions create a clear, default rule: an LLC's debts are not the debts of its members. Courts have consistently rejected efforts to erode this protection through implication or ambiguous drafting.

In Premier Physician Network, LLC v. Maro , 468 N.J. Super. 182, the court held that binding obligations affecting LLC members require unanimous consent. Similarly, in Kuhn v. Tumminelli 366 N.J. Super. 431, the court applied agency principles to hold that actions taken on behalf of an LLC bind the entity—not the individual.

Here, there is no evidence of any personal guarantee, no operating agreement altering default protections, and no fraud or misconduct that would justify veil-piercing. Plaintiffs' argument—resting solely on ambiguous language—is precisely what the LLC statute prohibits. Allowing such a claim would upend the predictability and purpose of LLC protections.

Accordingly, the trial court properly found that the documents did not impose personal liability, and its ruling should be affirmed.

POINT II
PLAINTIFFS FAILED TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT REGARDING INDIVIDUAL LIABILITY

A. Summary Judgment Was Properly Granted

Summary judgment is appropriate when, after reviewing the record in the light most favorable to the non-moving party, no genuine issue of material fact exists. As established in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995),

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speculation and unsupported assertions cannot defeat a properly supported motion.

Plaintiffs failed to meet this standard. They relied on ambiguous references to King Penna and post-litigation certifications that do not reflect the parties' original intent at the time of contracting. The record contains no direct or credible evidence of an agreement by King Penna to assume personal liability. In fact, all objective indicators—the absence of a personal guarantee, the commercial nature of the transaction, and the LLC's central role—confirm that the obligation belonged solely to Kingmaker Strategies, LLC.

B. The Trial Court Correctly Resolved Ambiguity Against Personal Liability

New Jersey courts consistently apply a presumption against personal liability where a party signs on behalf of a business entity. In Triffin v. Ameripay, LLC, 368 N.J. Super. 587, the court applied N.J.S.A. 12A:3-402 to clarify that where a signature is ambiguous, courts must determine whether it was intended to bind the individual or the entity—and should avoid personal liability unless explicitly stated.

In Kuhn *supra* the court held that a member's signature, even if informal, can bind the LLC through agency principles without creating personal liability. Likewise, in Kotkin v. Aronson,175 N.J.

453, 455 (2003) the New Jersey Supreme Court emphasized that any ambiguity must be construed against the party that drafted or accepted the agreement—in this case, the Plaintiffs.

Unlike cases where personal liability was imposed—such as Fidelity Union Bank v. United Plastics Corp 218 N.J. Super. 381, where the individual clearly endorsed a note personally—the facts here reflect only a corporate obligation. The commercial context, the representative capacity in which King Penna signed, and the absence of explicit personal guarantee language leave no basis to infer individual liability.

While Wood Press, Inc. v. Eisen, 157 N.J. Super. 57, established that parol evidence may be admissible to determine signature intent when litigation involves immediate parties, such evidence must support the party seeking to introduce it. The business context and commercial nature of the transaction in this case support corporate binding, not individual liability.

Moreover, in Vliet v. Simanton, 63 N.J.L. 458, even when parol evidence was allowed, the court required "adequate proof" to overcome presumptions. Plaintiffs have provided no such proof

Accordingly, the trial court properly applied established interpretive principles and correctly granted summary judgment in

favor of King Penna.

POINT III
THE TRIAL COURT'S DENIAL OF RECONSIDERATION CONFIRMS THE CORRECTNESS OF ITS ORIGINAL DECISION

A. The Standard for Reconsideration Is Stringent and Strictly Applied

Under Rule 4:49-2 of the New Jersey Court Rules, a motion for reconsideration must demonstrate that the court's decision was either based on a palpably incorrect or irrational legal basis, or that it failed to consider significant, probative evidence. As the New Jersey Supreme Court held in Kornbleuth v. Westover, 241 N.J. 289, reconsideration is not a second bite at the apple—it is reserved for correcting clear errors or omissions.

In Guido v. Duane Morris LLP, 202 N.J. 79, the Court reaffirmed that dissatisfaction with a result is not a ground for relief. Reconsideration is not a tool to reargue matters already heard or to present new evidence that was available but not raised earlier.

Here, the trial court properly denied Plaintiffs' motion, finding they "simply disagree with this court's decision"—a finding that squarely meets the standard described in *Guido*. The court further concluded that Plaintiffs failed to show that "the interests of justice

warrant reconsideration." This finding confirms that the court reviewed the motion thoroughly and found no basis for disturbing its original ruling.

B. Plaintiffs Improperly Attempted to Re-argue Rejected Theories

New Jersey courts have consistently rejected the misuse of reconsideration as a vehicle to repackage arguments. In Capital Financial Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, and Cummings v. Bahr, 295 N.J. Super. 374, the Appellate Division made clear that reconsideration is not appropriate where the movant merely reasserts positions previously considered and rejected.

That is precisely what occurred here. Plaintiffs offered no new facts or legal authority. Instead, they repeated arguments already briefed and decided—namely, their interpretation of the loan documents, assertions of personal liability, and speculative inferences unsupported by evidence.

The trial court, exercising sound discretion, declined to revisit those claims. Its decision to deny reconsideration:

1. Confirms the legal and factual soundness of the original judgment;
2. Reinforces the doctrine of finality in litigation;

3. Demonstrates a careful, multi-stage review process that respected Plaintiffs' right to be heard.

Accordingly, the denial of reconsideration supports affirming the trial court's dismissal of all individual claims against King Penna.

POINTIV
RES JUDICATA BARS RELITIGATION OF FINALLY DETERMINED ISSUES

A. All Elements of Res Judicata Are Satisfied

New Jersey's doctrine of res judicata—also known as claim preclusion—prevents parties from relitigating matters that have already been fully and fairly resolved. As the Supreme Court reaffirmed in Wadeer v. New Jersey Manufacturers Insurance Co., 220 N.J. 591, res judicata promotes finality, conserves judicial resources, and protects litigants from redundant litigation.

Each of the required elements is satisfied here:

1. **Final judgment on the merits**: The trial court dismissed the individual claims against King Penna with prejudice, which constitutes a final adjudication on the merits. See Rippon v. Smigel, 449 N.J. Super. 344.
2. **Same parties**: The parties in this appeal are identical to those in the trial court proceedings. See Walker v. Choudhary, 425 N.J. Super. 135.

3. **Same transaction or occurrence**: The claims arise from the same loan agreements and transactional events as those litigated in the trial court. The theory of recovery, the material facts, and the evidence required are substantially identical. See Culver v. Insurance Co. of North America, 115 N.J. 451.
4. **Full and fair opportunity to litigate**: Plaintiffs received not only full briefing and oral argument on summary judgment, but also a second opportunity through reconsideration. Their arguments were thoroughly heard—and definitively rejected—at both stages.

B. Res Judicata Encompasses Both Litigated and Litigable Claims

New Jersey's res judicata doctrine extends beyond claims actually litigated to encompass all claims that could have been raised in the earlier action. See Wadeer, supra. The principle is reinforced by New Jersey's unique "entire controversy doctrine," which demands the assertion of all related claims in a single proceeding.

Here, Plaintiffs not only litigated their individual liability theory, but had every opportunity to present additional arguments, evidence, or alternative legal theories. They chose instead to repackage the same theory in this appeal—an approach barred by established doctrine.

The public interest in judicial efficiency, the need for finality, and the protection of litigants from endless relitigation all strongly support preclusion. Judge Ramsay's rulings—both the original dismissal and the denial of reconsideration—establish a comprehensive and final resolution of the claims now on appeal.

Accordingly, res judicata independently bars this appeal and provides yet another basis for affirming the trial court's decision.

CONCLUSION

The trial court's dismissal of the individual claims against King Penna should be affirmed for multiple, independently sufficient reasons.

First, the loan documents contain no explicit personal guarantee language—an essential prerequisite under New Jersey law for imposing individual liability on an LLC member. The record confirms that King Penna signed solely in his representative capacity on behalf of Kingmaker Strategies, LLC.

Second, Plaintiffs failed to establish a genuine issue of material fact sufficient to survive summary judgment. Their assertions rely on ambiguous references and post-hoc litigation statements—not competent evidence of a personal obligation.

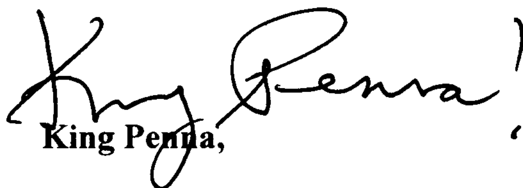
Third, the trial court's denial of reconsideration underscores the

legal and factual correctness of the original ruling. Judge Ramsay appropriately found that Plaintiffs' motion raised no new arguments and failed to meet the standard for extraordinary relief.

Fourth, the doctrine of res judicata bars Plaintiffs' attempt to rehash claims that have already been fully litigated and definitively resolved. The trial court's careful adjudication—across both the original motion and the reconsideration phase—confirms that Plaintiffs had their full day in court.

To reverse would jeopardize the foundational protections of New Jersey's LLC laws and undercut the principles of finality that ensure judicial efficiency. The judgment below should be affirmed in its entirety.

RESPECTFULLY SUBMITTED,



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July 2, 2025

Via eCourts
Superior Court of New Jersey Appellate Division
Attn: Yamina Crosland, Case Manager
P.O. Box 006
25 Market Street
Richard J. Hughes Justice Complex
Trenton, NJ 08625-0006

Re: William Riker and Anna Riker, Plaintiffs/Appellants, vs. King Penna and Kingmaker Strategies, LLC, Defendants/Respondents
Appellate No.: A-000659-24
Sat Below: Hon. Rosemary E. Ramsay, P.J.Cv.
Trial Court Docket No. MRS-L-1132-22
Date of Submission to Court: 07/03/2025
Our File No.: 5257.001

Dear Ms. Crosland:

Please accept this letter brief in lieu of a formal brief pursuant to Rule 2:6-2(b) on behalf of the Plaintiffs/Appellants William Riker and Anna Riker in reply to Defendant King Penna's Respondent's brief. His points will be addressed in order.

Point I

Here, the individual defendant (the LLC defendant did not appeal the Order entering judgment against it, which is not worth the paper it is written on) argues that the

Limited Liability Act protects members from personal liability. There is nothing ambiguous, however, about the very first paragraph of the short and simple three-paragraph note that paragraph reads (with the numbering added): "This note is between 1) Kingmaker Strategies LLC, 2) King Penna managing member, and 3) William and Anna Riker. (Pa 3). "King Penna managing member" is a separate and distinct "entity" from his LLC. That entity is King Penna!

The second paragraph is poorly worded but, in context, obviously refers to William and Anna Riker lending money to "Kingmaker Strategies LLC (and) King Penna the sum of $70,000". (The "and" added). If the loan was only to the LLC, there was no reason at all to refer to "King Penna" here. And, here, there is no reference to him as "managing member".

The third paragraph does not forget the word "and" and states explicitly: "Kingmaker Strategies LLC, and King Penna agree to pay back the note of $70,000".

Then, King Penna signs the note under both "Kingmaker Strategies LLC" as well as "King Penna managing member".

This is a clear undertaking of personal liability. There is no ambiguity.

This is basic contract law: "Interpretation and construction of a contract is a matter of law for the court subject to de novo review." Fastenberg v. Prudential Ins. Co. of A., 309 N.J. Super. 415, 420 (App.Div.1998). "Accordingly, we pay no special deference to

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the trial court's interpretation and look at the contract with fresh eyes." Kieffer v Best Buy, 205 N.J. 213, 223 (2011). A court's task is not to "torture the language of [a contract] to create ambiguity." Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App.Div.2002) (alteration in original and emphasis added) (quoting Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App.Div.1997)). Rather, courts look to the plain terms of the contract and declare the meaning of what is already written, not what, in hindsight, may have been written. See Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001) (explaining a court's task is not to rewrite a contract for the parties better than or different from the one they wrote for themselves).

Here, the trial court tortured the clear terms of the note to, sua sponte, create an ambiguity – otherwise, there is no way to interpret: "Kingmaker Strategies LLC, and King Penna agree to pay back the note of $70,000" as ambiguous.

The Defendant's references to the LLC Act (N.J.S.A. 42:2C-30, and -26 - not clear why -26 was cited as it addresses the filing of annual reports) simply do not change the calculus.

Point II

Here, the Defendant refers to the summary judgment standard and the "ambiguity" that the trial court injected, sua sponte, and then ruled against the Plaintiffs without

allowing for a plenary hearing. Reference is made to the Plaintiffs' original brief at Point II (Pb 7-11).

And now, for the first time, the *pro se* Defendant attempts to claim that the Plaintiffs were the scriveners. (Db 11). This is false. (See Pa 83, Plaintiffs' Certification, ¶s 4 and 8).

Ironically, however, Defendant discusses the trial court having resolved an ambiguity on the motion, which is just what the court was not supposed to do on the motion, as discussed in the Plaintiffs' Appellate Brief. And again, Defendant's reference to the UCC at Db 10 (N.J.S.A. 12A:3-402) has no bearing on this analysis.

Point III

Here, this *pro se* party makes a *pro se* argument that the trial court's denial of the reconsideration somehow restricts the Appellate Division's review of the summary judgment and reconsideration decisions. Leaving aside the trial court's rubberstamp denial of this particular motion for reconsideration, which addressed an "ambiguity" issue the court introduced sua sponte and dealt with erroneously, nothing the court below did substantively restricts this Court's review in any way.

Point IV

Here, the *pro se* Defendant makes another *pro se* argument. Res judicata has no bearing here. The Appellate Division's review is de novo. Townsend v. Pierre, 221 N.J. 36, 59 (2015).

CONCLUSION

For the foregoing reasons, and those set forth in the original appellate brief, the trial court's Orders should be reversed or modified.

Respectfully submitted,

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For the Firm

MDM/lc
cc: King Penna (via regular U.S. Postal Delivery and eMail)
William and Anna Riker (via email)