

<p>JMH ESTATES, LLC, Plaintiff(s)-Respondent, v. MARCUS JETER, Defendant(s), RAS INVESTMENT GROUP, LLC Defendant(s)-Appellant.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-855-24 <u>CIVIL ACTION</u> On appeal from: SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY DOCKET NO. C-39-21 Sat below: Jodi Lee Alper, P.J.Ch.</p>
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**BRIEF ON BEHALF OF DEFENDANT-APPELLANT,
RAS INVESTMENT GROUP, LLC**

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Date submitted: **July 9, 2025**

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PRELIMINARY STATEMENT

RAS Investment Group assigned its interest as a buyer in a real estate contract to Plaintiff in exchange for \$11,500.00, the amount of which Plaintiff placed in escrow. After the seller failed to close, Plaintiff brought an action for specific performance but inexplicably failed to seriously, diligently, or reasonably pursue it. Much later, Plaintiff moved for specific performance but inexplicably failed to request power of attorney to effectuate it given the seller's consistent refusal to close. Fifteen months after the action commenced, Plaintiff moved for such power of attorney. But by that point, the damage was done: a judgment entered against the seller in another matter, which clouded title to the property and resulted in its sale by the county sheriff.

On cross-motions to release the deposit, in light of Plaintiff's failure to diligently and responsibly pursue remedies that would have accomplished specific performance and steered the transaction to closing, the trial court rolled its eyes, failed to engage any legal analysis as to the issues we raised, and entered orders in Plaintiff's favor. Due to these illegal and unfair orders, and to obtain equity and compliance with the assignment agreement, RAS Investment Group appeals.

RELEVANT PROCEDURAL HISTORY

On March 8, 2021, Plaintiff filed a complaint in the Chancery Division for specific performance of a contract as assigned to purchase the condominium unit located at 60 Parkway Drive, Unit 1M, East Orange, New Jersey (“Property”). (Da20).

On July 20, 2021, after Defendant Marcus Jeter (“Jeter”) had been in default for nearly two months, Plaintiff moved for final judgment. (Da23-32; Da40-42). RAS Investment Group cross-moved, consenting to Plaintiff’s motion provided that the Assignment Agreement between it and Plaintiff was also specifically performed. (Da33-39). On December 7, 2021, the trial court, inter alia, granted specific performance of the Assignment Agreement. (Da43-46).

On December 10, 2021, the trial court, inter alia, vacated the order of December 7, 2021. (Da47-50). The trial court provided no explanation why it did so or revoked specific performance of the Assignment Agreement. (Da47-50). Further, specific performance of the Assignment Agreement was granted on RAS Investment Group’s unopposed cross-motion; by vacating such provision, the cross-motion remained un-adjudicated rendering the order of December 10, 2021, interlocutory. (Da47-50; Da124).

On May 5, 2022, Plaintiff moved to appoint its attorney as power of attorney over Jeter to execute closing documents. (Da51-56). On June 10, 2022, the trial court granted said motion. (Da57-58).

On September 23, 2020, a separate suit was filed against Jeter under docket number ESX-L-6335-20. (Da59-67). On December 2, 2021, final judgment was entered against Jeter in said matter in the amount of \$522,117.49. (Da70-71). Said judgment was docketed on December 13, 2021, clouding title to the Property. (Da70-71). The Property was sold to the plaintiff in that matter in a sheriff sale. (Da72-78).

On October 23, 2023, Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Essex County, under docket number L-6906-23 against Rajeh A. Saadeh (“Saadeh”), the escrow agent for The Law Office of Rajeh A. Saadeh, L.L.C., to release the \$11,500.00 deposit to Plaintiff. (Da79-85). On November 27, 2023, Saadeh moved in said matter to dismiss the complaint. (Da86-91; Da95). Plaintiff opposed and argued in part: “There is no action pending in the Chancery Division as that matter was concluded on December 10, 2021, when the [c]ourt entered that [P]laintiff was entitled to specific performance by default of the [Property].” (Da92-94). On March 13, 2024, Saadeh's motion was denied without prejudice. (Da96).

On June 1, 2024, said matter was dismissed for lack of prosecution. (Da97). On September 13, 2024, Plaintiff moved in said matter to reinstate the complaint and

enter default against Saadeh. (Da98-101). Saadeh received no notice of said motion. (Da125). On October 11, 2024, the trial court in said matter granted Plaintiff's motion. (Da102). Saadeh received no notice of said order or the entry of default. (Da125).

On September 16, 2024, Plaintiff moved in the Chancery matter to compel RAS Investment Group to return the \$11,500.00 deposit to Plaintiff. (Da103-117; Da128-130). RAS Investment Group cross-moved to: (1) deny Plaintiff's motion in its entirety; (2) vacate the order of December 10, 2021, insofar as it vacates the grant of specific performance of the Assignment Agreement in the order of December 7, 2021; (3) grant specific performance of the Assignment Agreement nunc pro tunc to December 7, 2021; and (4) release the \$11,500.00 held in escrow to RAS Investment Group. (Da118-127).

On November 22, 2024, the trial court heard oral argument. (T)¹. After argument, the trial court granted Plaintiff's motion and denied RAS Investment Group's cross-motion. (T). In its oral decision, the trial court conducted no analysis of the actual facts or timeline of events and cursorily and incorrectly concluded:

It is undisputed that the contract could not be fulfilled, the contract for the purchase of the East Orange property, because the seller Marcus Jeter had a judgment against him that was filed against the property and, in fact, foreclosed upon and so the property became unavailable for sale.

¹ T = Transcript of Motion Hearing dated November 22, 2024

The [c]ourt finds that there is no question that the Plaintiff JMH Estates, LLC did not receive good title to this property. There is no question that this closing did not take place and there is no question that the Plaintiff JMH Estates, LLC is entitled to its deposit back. The defendant argues that the plaintiff should have acted more quickly, should have acted by way of Order to Show Cause, and makes numerous speculative arguments about what would have happened if certain actions were taken by the plaintiff. The Court does not find any merit to those arguments and finds that there is no question that the deposit must be returned and will enter an order accordingly granting the motion filed by JMH Estates, LLC.

[T20:8 to 21:2.]

On the same day, the trial court entered two orders reflecting its decision.

(Da1-3). RAS Investment Group appeals both. (Da132-142).

STATEMENT OF FACTS

On July 30, 2020, Jeter entered into a contract (“Contract”) to sell the Property to NJ RE Investments LLC. (Da4-10). On September 9, 2020, NJ RE Investments LLC assigned its interest in the Contract to RAS Investment Group in exchange for \$10,000.00. (Da11-13). Thereafter and on the same date, RAS Investment Group assigned its interest in the Contract to Plaintiff in exchange for \$11,500.00. (Da14-19). In connection with said assignment, Plaintiff deposited \$11,500.00 into escrow. (Da124; Da131).

LEGAL ARGUMENT

I. THE DEPOSIT MUST BE RELEASED TO RAS INVESTMENT GROUP. (Da1-3).

A. SPECIFIC PERFORMANCE OF THE ASSIGNMENT AGREEMENT MUST BE GRANTED AS OF DECEMBER 7, 2021. (Da1-3).

Law

To establish a right to specific performance, a party:

must demonstrate that the contract in question is valid and enforceable at law, that the terms of the contract are “expressed in such fashion that the court can determine, with reasonable certainty, the duties of each party and the conditions under which performance is due,” and that an order compelling performance of the contract will not be “harsh or oppressive.”

[Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 598-99 (App. Div. 2005) (internal citations omitted).]

“[T]he right to specific performance turns not only on whether [a party] has demonstrated a right to legal relief but also whether the performance of the contract represents an equitable result.” Id. at 599. The court must therefore:

“appraise the respective conduct and situation of the parties,” . . . the clarity of the agreement itself notwithstanding that it may be legally enforceable, . . . and the impact of an order compelling performance, that is, whether such an order is harsh or oppressive to the defendant, . . . or whether a denial of specific performance leaves plaintiff with an adequate remedy.

[Marioni, 374 N.J. Super. at 600 (internal citations omitted).]

“[A]s a consequence of the remedy’s equitable underpinnings, the party seeking specific performance ‘must stand in conscientious relation to his adversary; his conduct in the matter must have been fair, just and equitable, not sharp or aiming at unfair advantage.’” Ibid. (quoting Stehr v. Sawyer, 40 N.J. Super. 352, 357 (1963)). “This weighing of equitable considerations must represent, in each case, a conscious attempt on the part of the court of equity to render complete justice to both parties regarding their contractual relationship.” Ibid. The court must “direct performance of such a contract because, when there is no excuse for the failure to perform, equity regards and treats as done what, in good conscience, ought to be done. Id. at 600-01 (citing Goodell v. Monroe, 87 N.J. Eq. 328, 335 (E. & A. 1917)).

Application

There is no dispute that the Assignment Agreement is valid, clear, and enforceable, and it imposes upon Plaintiff a contractual obligation to pursue closing under the Contract assigned to it for the benefit of RAS Investment Group. Although specific performance cannot presently be effectuated due to Plaintiff’s inexcusable delays, see points I(B) & (C), *infra*, RAS Investment Group sought specific performance at the time when it could be effectuated and when granting it would be neither harsh nor oppressive. Plaintiff did not oppose said request, and the trial court granted it on December 7, 2021.

But three days later, and for no articulated or apparent reason, the trial court revoked said relief sua sponte. Said revocation was erroneous and grounded in no law or fact. Accordingly, the order of December 10, 2021, revoking the grant of specific performance of the Assignment Agreement on December 7, 2021, must be reversed, and the order granting specific performance of the Assignment Agreement must be reinstated as of the date it was initially granted: December 7, 2021.

B. PLAINTIFF BREACHED ITS FIDUCIARY DUTY TO RAS INVESTMENT GROUP. (Da1-3).

Law

To establish a breach of fiduciary duty, the court must determine: 1) a fiduciary duty existed between the parties; 2) the fiduciary breached that duty; and 3) damages resulted from the breach. See F.G. v. MacDonell, 150 N.J. 550, 563-64 (1997). “A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship.” Id. at 563 (citing Restatement (Second) of Torts s.874 cmt. a (1979); In re. Stroming’s Will, 12 N.J. Super. 217, 224 (App. Div.), certif. denied, 8 N.J. 219 (1951)). A fiduciary is liable for harm resulting from a breach of the duties imposed by the existence of a fiduciary relationship. Ibid. (citing Restatement (Second) of Torts s.874 (1979); McKelvey v. Pierce, 173 N.J. 26, 57 (2002)).

A fiduciary duty arises when “either one of the parties, in entering [a] transaction, expressly reposes a trust and confidence in the other or because of the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence is necessarily implied.” See United Jersey Bank v. Kensey, 306 N.J. Super. 540, 551 (App. Div. 1997) (citing Berman v. Gurwicz, 189 N.J. Super. 89, 93 (Ch. Div. 1981)). “Where a principal-agent relationship exists . . . the agent as a fiduciary [is] required to exercise good faith in his relationship with his principal.” Hirsch v. Schwartz, 87 N.J. Super. 382, 389 (App. Div. 1965). One who breaches a fiduciary duty, including the duties of good faith and loyalty, including ignoring the duty to act for the purpose of the beneficiary, is liable for damages proximately caused by the breach of fiduciary duty. See Societa Operaia Di Mutuo Soccorso Villalba v. Di Maria, 40 N.J. Super. 344, 348 (Ch. Div. 1956); see also Ready v. National State Bank of Newark, 117 N.J.L. 554, 559 (E. & A. 1937).

Application

Before entering into the Assignment Agreement, RAS Investment Group was the buyer in the Contract. Per the Assignment Agreement, Plaintiff became the buyer in the Contract. When Plaintiff became the buyer in the Contract while the \$11,500.00 due to RAS Investment Group remained in escrow, RAS Investment Group became reliant upon Plaintiff to diligently pursue closing, including by

seeking specific performance, so RAS Investment Group could realize the \$11,500.00 anticipated. Thus, the Assignment Agreement created a fiduciary relationship between Plaintiff and RAS Investment Group such that Plaintiff had a duty to RAS Investment Group to diligently pursue closing, including by seeking specific performance.

The monetary judgment against Jeter was docketed on December 13, 2021, at which point the Contract as assigned could not close. Plaintiff and the trial court simplistically and erroneously believe that is the beginning and end of all legal analyses applicable to this matter. Under the facts and circumstances of this case, that is neither the beginning nor end of the analysis of whether Plaintiff breached its fiduciary duty to RAS Investment Group or the implied covenant of good faith and fair dealing in the Assignment Agreement. See point I(C), *supra*. This is particularly so when the remedy for such a breach is monetary damages, which in this matter is the \$11,500.00 in escrow that RAS Investment Group expected to receive.

Per the Assignment Agreement with RAS Investment Group, Plaintiff became the buyer in the Contract as of September 9, 2020. It was imminently apparent that Jeter was not going to comply with the Contract and convey Plaintiff title to the Property; he had gone radio silent and has not participated in the trial court action at all. Yet, it took Plaintiff six months to file the specific performance action against Jeter. In a real estate context in which it could be deliberately damaged or liens –

like a judgment or association dues – can cloud title, preclude closing, and result in a sheriff sale, such a delay is unreasonable. Plaintiff failed to explain why it waited half a year to file its Complaint for specific performance. The trial court did not consider this delay either. But under the law, such a delay constitutes a breach of Plaintiff's fiduciary duty to RAS Investment Group.

Worse, even after Plaintiff filed its Complaint for specific performance, it failed to expeditiously pursue it. Plaintiff filed its Complaint without also filing a R. 4:67 order to show cause and accompanying motion for summary disposition, a routine step to pursue closing per a written, clear, undisputed contract. If Plaintiff would have filed such applications simultaneously with or shortly after filing its Complaint for specific performance, instead of over four months after its already-belated Complaint was filed, then Plaintiff would have promptly obtained specific performance. The trial court's dismissive, evidence-free belief that specific performance may not have resulted from such applications is belied by the trial court's ultimate grant of such relief to Plaintiff, albeit on December 7, 2021, due to Plaintiff's delayed request for such relief. Based on these facts and the timeline of events, Plaintiff's delay in seeking the specific performance the trial court ultimately granted prevented specific performance from being effectuated. That is a breach of Plaintiff's fiduciary duty to RAS Investment Group.

Most dispositively, despite filing its Complaint for specific performance, Plaintiff failed to record a notice of lis pendens respecting said matter, a routine and statutorily permitted step in specific performance actions regarding real estate. See N.J.S.A. 2A:15-7(a). If Plaintiff would have recorded a notice of lis pendens respecting the specific performance action, the result of said action would have taken priority over the judgment that later entered against Jeter such that closing could have taken place and granted Plaintiff clear title to the Property. Ibid. Because Plaintiff failed to record a notice of lis pendens respecting the specific performance case, the judgment that later entered against Jeter became a lien on the Property that took priority over the results of the specific performance matter, precluding specific performance and closing. See N.J.S.A. 2A:15-8. Plaintiff's failure to record a notice of lis pendens respecting the specific performance matter precluded closing and RAS Investment Group's realization of the \$11,500.00 expected. Therefore, Plaintiff's failure to record a notice of lis pendens constitutes a breach of Plaintiff's fiduciary duty to RAS Investment Group.

In the trial court matter, Plaintiff demonstrated a penchant for not diligently and responsibly pursuing specific performance – including by taking the simple step of recording a notice of lis pendens. If Plaintiff had seriously pursued specific performance, it would have salvaged the transaction and enabled Plaintiff to close and obtain title to the Property so that RAS Investment Group could receive the

\$11,500.00 due to it. Plaintiff provided no bona fide reason why this uncontested action seeking specific performance took so long to pursue and conclude, and said delay exacerbated Plaintiff's inexcusable failure to record a notice of lis pendens.

If Plaintiff had recorded a notice of lis pendens but pursued specific performance as slowly as it did, RAS Investment Group would have received the \$11,500.00 due to it. If Plaintiff had diligently pursued specific performance even without recording a notice of lis pendens, RAS Investment Group would have received the \$11,500.00 due to it. Plaintiff's failures to record a notice of lis pendens and pursue specific performance constitutes breaches of its fiduciary duty to RAS Investment Group. As a result of said breaches, RAS Investment Group suffered damages in the amount of \$11,500.00, which is the amount held in escrow. Accordingly, the orders of November 22, 2024, must be reversed, and the \$11,500.00 being held in escrow must be released to RAS Investment Group.

C. PLAINTIFF BREACHED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IN THE ASSIGNMENT AGREEMENT. (Da1-3).

Law

“[A]n implied covenant of good faith and fair dealing” is inherent in “every contract in New Jersey.” Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997); see also Restatement (Second) of Contracts s.205 (Am. Law Inst. 1981) (“Every contract imposes upon each party a duty of good faith and fair dealing in its

performance and its enforcement”). The implied covenant signifies that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” Sons of Thunder, Inc., 148 N.J. at 420 (quoting Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 130 (1965)). A party breaches the implied covenant when it exercises its contractual functions “arbitrarily, unreasonably, or capriciously” and with an “improper motive.” Wilson v. Amerada Hess Corp., 168 N.J. 236, 251 (2001).

Application

See point I(B), *supra*.

The Assignment Agreement between Plaintiff and RAS Investment Group is a contract. Said contract contains terms that are not expressly within the contract’s text, but implied, including covenants “of good faith and fair dealing in its performance and its enforcement.” Restatement (Second) of Contracts s.205 (Am. Law Inst. 1981). Upon entering into the Assignment Agreement, Plaintiff was obligated to comply with these covenants for the benefit of RAS Investment Group. Because of these implied covenants and RAS Investment Group’s dependence on Plaintiff to comply with them by diligently steering the transaction to closing, Plaintiff was implicitly required to pursue specific performance of the Contract so RAS Investment Group could realize the \$11,500.00 anticipated.

For similar reasons as Plaintiff's breach of its fiduciary duty to RAS Investment Group, see point I(B), *supra*, Plaintiff failed to comply with its implied covenants in the Assignment Agreement. Plaintiff's failure to file its specific performance action much sooner than six months after entering into the Assignment Agreement breached the implied, contractual covenant of good faith and fair dealing owing to RAS Investment Group. Plaintiff's failure to bring a prompt application to actually obtain specific performance by way of R. 4:67 order to show cause and motion for summary disposition breached the implied covenant of good faith and fair dealing owing to RAS Investment Group per the Assignment Agreement. And most inexcusably, Plaintiff's failure to record a notice of lis pendens respecting the specific performance action breached the implied covenant of good faith and fair dealing owing to RAS Investment Group.

Plaintiff's failures to record a notice of lis pendens and pursue specific performance constitutes breaches of the implied covenants of good faith and fair dealing it owed to RAS Investment Group under the Assignment Agreement. As a result of said breaches, RAS Investment Group suffered damages in the amount of \$11,500.00, which is the amount held in escrow. Accordingly, the orders of November 22, 2024, must be reversed, and the \$11,500.00 being held in escrow must be released to RAS Investment Group.

II. PLAINTIFF IS ESTOPPED FROM OBTAINING A REFUND OF THE DEPOSIT. (Da1-3).

Law

“The purpose of the judicial estoppel doctrine is to protect ‘the integrity of the judicial process.’” Kimball Int’l, Inc. v. Northfield Metal Prod., 334 N.J. Super. 596, 606 (App. Div. 2000) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 387 (App. Div. 1996)). “A threat to the integrity of the judicial system to invoke the judicial estoppel doctrine only arises when a party advocates a position contrary to a position it successfully asserted in the same or prior proceeding.” Kimball Int’l, Inc., 334 N.J. Super. at 606 (citing Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 620 (App. Div. 1990)).

“[T]o be estopped [a party must] have convinced the court to accept its position in the earlier litigation.” Kimball Int’l, Inc., 334 N.J. Super. at 606-07 (citation omitted). Courts are instructed to invoke the doctrine of judicial estoppel “when a party’s inconsistent behavior will otherwise result in a miscarriage of justice.” State v. Jenkins, 178 N.J. 347, 359 (2004). The doctrine “is designed to prevent litigants from playing fast and loose with the courts.” Cummings, 295 N.J. Super. at 387 (citation omitted).

Application

In its opposition filed on December 28, 2023, to Saadeh’s motion to dismiss the Law Division action, Plaintiff stated:

Plaintiff maintains that as a result of [Jeter losing title] to the property, the contract between plaintiff and Jeter for the sale of the subject property became null and void by operation of law.² That is the reason that plaintiff sought the return of the \$11,500 from defendant, for which defendant refuses to return, necessitating the within action.

Plaintiff maintains that the entire controversy action, which requires that all claims, that can be brought, be brought at the same time,³ has no application herein. Plaintiff could not possibly have brought this action, i.e. the return of the security deposit, with the action for specific performance against Jeter at the same time due to the fact the within action did not come to fruition until Pinnock became the owner of the subject property on September 27, 2023 making the contract between plaintiff and Jeter null and void.

As such, defendant's motion for dismissal based on the entire controversy doctrine must be denied.

Moreover, defendant's motion for dismissal is erroneous due to the fact that this Court has the inherent power to transfer this matter to the Chancery Division rather than order dismissal of the matter. However, plaintiff would argue that there is no action pending in the Chancery Division as that matter was concluded on December 10, 2021, when the Court entered that plaintiff was entitled to specific performance by default of the subject property. This matter is against the holder of the security deposit that seeks money damages. This matter is appropriately placed in this Court. There is no reason for a transfer or dismissal at this time.

[Emphasis and footnotes added.]

² No authority was provided in support of this claim.

³ Although irrelevant to the applications before the trial court and this appeal, Plaintiff's recitation of the Entire Controversy Doctrine was not accurate.

Plaintiff both tacitly and explicitly argued in contravention to its position in the Law Division matter that the Chancery action – the specific performance case – concluded on December 10, 2021, and that the relief Plaintiff sought in the Law Division could not be brought in the Chancery action. Plaintiff itself even moved in the Chancery matter on May 5, 2022, after it previously indicated it could not do so because, according to Plaintiff, it was “closed.” Notwithstanding, Plaintiff pursued relief in the Law Division based on said positions as well. Plaintiff’s arguments and actions estop it from making contrary arguments or obtaining inconsistent relief in the Chancery action, particularly those granted in the orders of November 22, 2024, being appealed.

Plaintiff’s quoted position in the Law Division matter was contrary to its explicit and tacit positions that the Chancery case was over. Nevertheless, Plaintiff moved to usurp the deposit while simultaneously seeking the same relief in the Law Division in which Plaintiff made arguments contrary to the ones it made in the Chancery Division. Accordingly, Plaintiff should have been estopped from obtaining relief in the Chancery Division that was awarded to it in the orders of November 22, 2024. The trial court altogether failed to analyze this issue and arbitrarily entered the two orders being appealed resulting from Plaintiff taking two inconsistent positions in two different cases. For these reasons, the orders of November 22, 2024, must be reversed.

CONCLUSION

Plaintiff's repeated and compounding failures to diligently pursue specific performance resulted in inequitable and illegal orders denying RAS Investment Group its expected fruits of its Assignment Agreement. The trial court wholly failed to consider the facts, law, or any of RAS Investment Group's arguments and denied it relief without any legal analysis. To correct the trial court's various errors in accordance with the law:

- the order of December 10, 2021, revoking the grant of specific performance of the Assignment Agreement on December 7, 2021, must be reversed;
- the order of December 7, 2021, granting specific performance of the Assignment Agreement must be reinstated as of said date;
- the orders of November 22, 2024, must be reversed because:
 - Plaintiff breached its fiduciary duty to RAS Investment Group;
 - Plaintiff breached the implied covenant of good faith and fair dealing under the Assignment Agreement; and
 - Plaintiff is estopped from obtaining the relief the trial court granted in the Chancery action it when it articulated inconsistent positions in the Law Division action; and

- the \$11,500.00 being held in escrow must be released to RAS Investment Group.

Respectfully submitted,
THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C.
Attorneys for **Defendant-Appellant**



Stilianos M. Cambilis

Superior Court of New Jersey - Appellate Division

Letter Brief

Appellate Division Docket Number: A-000855-24

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October 17, 2025

Letter Brief on behalf of Respondent JMH Estates, LLC

JMH Estates, LLC

Plaintiff-Respondent

v.

Marus Jeter

Defendant

v.

RAS Investment Group, LLC

Defendant-Appellant

Case Type: Civil

County/Agency: Essex

Trial Court Number: C-39-21

Trial Court Judge: Jodi Lee Alper, J.S.C.

Dear Honorable Judge:

Pursuant to R. 2:6-2(b) please accept this letter brief of Respondent, JMH Estates, LLC, (hereinafter “Respondent”) opposition to Defendant, RAS Investment’s appeal of the trial court’s order compelling defendant to return Respondent’s initial deposit of \$11,500.00.

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 POINT I 4

**THE TRIAL COURT WAS CORRECT IN ORDERING
DEFENDANT
TO RETURN THE DEPOSIT IN THE AMOUNT OF \$11,500**

CONCLUSION 5

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PRELIMINARY STATEMENT

This matter involves a failed real estate transaction in which neither party herein was at fault. The issue in this matter is should the parties be returned to their original position has the transaction not been entered into. The trial court answered that question in the affirmative and restored the parties to their original position by having defendant return the \$11,500 deposit.

This Court should uphold the trial court's decision and accompanying order.

PROCEDURAL HISTORY

On September 9, 2020, Defendant and respondent entered into an assignment of real estate contract for the purchase of a condominium owned by Jeter. (4a). On or about March 21, 2021, respondent filed a complaint for specific performance against Jeter. (20a). Respondent moved for default after Jeter failed to respond to the complaint. (23a) On December 2, 2021, judgement was entered against Jeter in the civil action in excess of \$500,000.00 (70a). This clouded title to the property. On December 10, 2021 final judgment was entered against Jeter in favor of Respondent. (47a) On June 10, 2022, the undersigned was granted power of attorney to assist in the transfer of title. (57a). On July 25, 2022, Judge Lynott granted plaintiff in the civil action to sell the property. (106a) On September 27, 2023, plaintiff in the civil action obtained title to the property that was the subject of the real estate transaction. (72a). Since the property was no longer available for purchase, respondent requested the return of the deposit from defendant, which defendant failed to respond. Defendant filed a motion which the Judge Lee Alper granted by order dated November 22, 2024

This appeal follows.

STATEMENT OF FACTS

Respondent desired to purchase a condominium located in East Orange, New Jersey. The seller of the condominium was Marus Jeter, (hereinafter “Jeter”). (4a) In order for Plaintiff to become the purchaser of the property, an assignment of the real estate contract was accomplished by defendant to respondent on September 9, 2000 to respondent. (14a)¹ As a part of that assignment, defendant was entrusted with plaintiff’s initial deposit of \$11,500.00.

Jeter refused to sell the property under the terms of the contract, Respondent commenced an action the Superior Court of Essex County, Chancery Division for specific performance for the sale of the property. (20a) Respondent was granted specific performance by default pursuant to the order of the Court dated December 10, 2021. (47a). The undersigned was granting power of attorney on June 10, 2022 in order to effectuate transfer of title due to Jeter’s lack of cooperation.

Unbeknownst to defendant and respondent, Jeter, was a defendant in another action entitled Pinnock v. Bogies, et al., which was pending in the Essex County Superior Court under docket No. ESX-L-6335-20. (Da59) Plaintiff, Pinnock, obtained a judgment against Jeter in that action in the amount of \$522,117.49 on December 2, 2021 (70a). As a result of that judgment which clouded title to the property, Pinnock further received an order to sell Jeter’s property that was the subject of the real estate contract between plaintiff and Jeter in order to attempt to satisfy the judgment. (Exhibit 72a).

¹ Respondent maintains that this contract governs the rights between the parties. On September 27, 2023, Pinnock became titleholder to Jeter’s property (72a)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT WAS CORRECT IN ORDERING DEFENDANT TO RETURN THE DEPOSIT IN THE AMOUNT OF \$11,500

Respondent maintains that the trial court was eminently correct in ordering to defendant to return respondent's deposit of \$11,500 for the purchase of the Jeter condominium.

The matter is governed by the contract between the parties. In interpreting a contract, we look at the language used by the parties and construe that language consistent with its plain meaning, considering the overall purpose of and meaning of the contract. In re County of Atlantic, 230 N.J.237, 254 (2017); JPC Merger Sub, LLC, 474 N.J.Super.145 (App. Div. 2022). Because the plain language of the contract is the cornerstone of the interpretive inquiry "when the intent of the parties is plain and the language is clear and unambiguous a court must enforce the agreement as written unless doing so would lead to an unjust result. Id. at 161. Here the contract of assignment dated September 9, 2020 controls and as the trial court properly held.

With respect to paragraph 4 of the contract, it states: At settlement of the contract [the sale of the property] in question, Assignee shall have good and marketable title to the property.

Here, respondent did not achieve good and marketable title, for two reasons; On December 2, 2021, plaintiff in the civil matter against Jeter clouded title before plaintiff was able to obtain final judgment on December 10, 2021 and second, Judge Lynott ordered the sale of the property which plaintiff in the civil matter purchased on September 27, 2023.

Paragraph 9 states: “The only contingency with respect to this agreement is if Assignee cannot be provided with good and marketable title to the property.

Here, the contingency was not met as Judge Lynott granted a judgment in excess of \$500,000 in favor of plaintiff and against Jeter. This clouded title to the property.

Paragraph “Assignee’s acceptance of the Deed shall be deemed full performance of this Agreement by Assignor and shall constitute a full and complete discharge and satisfaction for every obligation of the Assignor. The essential term to the agreement not met; i.e., that respondent would obtain the deed to the property, was not met.

There is absolutely no law or fact that would permit this Court to give defendant a windfall in keeping respondent’s deposit of \$11,500 when it was Jeter as the seller of the property that frustrated the transaction.

CONCLUSION

The trial court's order compelling defendant to return the deposit to respondent must be upheld.

Respectfully submitted,

BRIAN M. DRATCH

<p>JMH ESTATES, LLC, Plaintiff(s)-Respondent, v. MARCUS JETER, Defendant(s), RAS INVESTMENT GROUP, LLC Defendant(s)-Appellant.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-855-24 <u>CIVIL ACTION</u> On appeal from: SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY DOCKET NO. C-39-21 Sat below: Jodi Lee Alper, P.J.Ch.</p>
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**REPLY BRIEF ON BEHALF OF
DEFENDANT-APPELLANT,
RAS INVESTMENT GROUP, LLC**

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Date submitted: **December 1, 2025**

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PRELIMINARY STATEMENT

Plaintiff ignores well-settled law and undisputed facts trying to sanitize the trial court's illegal order. Like the trial court, Plaintiff refuses to engage with the facts, which reveal that Plaintiff failed to seriously, diligently, or reasonably pursue specific performance in a manner that would have steered the transaction to closing and granted Plaintiff the marketable title it ostensibly sought. After waiting fifteen months from filing the Chancery action to actually move for specific performance, Plaintiff further failed to request power of attorney to effectuate it in light of the seller's unwavering refusal to close. Perhaps most irresponsibly, Plaintiff failed to record a notice of lis pendens, which would have enabled Plaintiff to obtain good and marketable title notwithstanding the judgment execution sale.

The facts confirm Plaintiff did not receive good and marketable title due to its own irresponsibility and lack of diligence to seek such title, and it had a duty to Defendant to seek such title. Plaintiff does not even dispute the law; it just deliberately ignores the undisputed facts. The trial court made the same mistake, requiring reversal of the resulting order.

RELEVANT PROCEDURAL HISTORY

See Db2-5.

STATEMENT OF RELEVANT FACTS

See Db5.

LEGAL ARGUMENT

I. THE DEPOSIT MUST BE RELEASED TO RAS INVESTMENT GROUP. (Da1-3).

A. SPECIFIC PERFORMANCE OF THE ASSIGNMENT AGREEMENT MUST BE GRANTED AS OF DECEMBER 7, 2021. (Da1-3).

Law

See Db6-7.

Application

Plaintiff does not dispute that the Assignment Agreement is valid, clear, enforceable, and obligates Plaintiff to pursue closing under the Contract assigned to it for Appellant's benefit. Due to Plaintiff's inexcusable and unexplained delays and failure to take basic steps to ensure such relief could be granted, see points I(B) & (C), *infra*, specific performance cannot be granted. Appellant sought specific performance when it could be effectuated and would be neither harsh nor oppressive. Plaintiff did not oppose said request, and the trial court granted it on December 7, 2021.

But three days later, for no articulated or apparent reason, and without basis in law or fact, the trial court erroneously revoked said relief sua sponte. Accordingly, the order of December 10, 2021, revoking the grant of specific performance of the Assignment Agreement on December 7, 2021, must be reversed, and the order

granting specific performance of the Assignment Agreement must be reinstated as of December 7, 2021, the date it was initially granted.

B. PLAINTIFF BREACHED ITS FIDUCIARY DUTY TO RAS INVESTMENT GROUP. (Da1-3).

Law

See Db8-9.

Application

Before entering into the Assignment Agreement, Appellant was the buyer in the Contract. Per the Assignment Agreement, Plaintiff became the buyer in the Contract. When Plaintiff became the buyer in the Contract while the \$11,500.00 due to Appellant remained in escrow, Appellant became reliant upon Plaintiff to diligently pursue closing, including by seeking specific performance, so Appellant could realize the \$11,500.00 it anticipated. Thus, the Assignment Agreement created a fiduciary relationship between Plaintiff and Appellant such that Plaintiff had a duty to Appellant to diligently pursue closing, including by seeking specific performance.

The monetary judgment against Jeter was docketed on December 13, 2021, at which point the Contract as assigned could not close. Plaintiff and the trial court simplistically and erroneously believe that is the beginning and end of the matter. Under the facts and circumstances of this case, that is neither the beginning nor end of the analysis of whether Plaintiff breached a) its fiduciary duty to Appellant or b) the implied covenant of good faith and fair dealing in the Assignment Agreement.

See point I(C), *infra*. This is particularly so when the remedy for such a breach is monetary damages, which in this matter is the \$11,500.00 in escrow that Appellant expected to receive.

Per the Assignment Agreement with Appellant, Plaintiff became the buyer in the Contract as of September 9, 2020. It was imminently apparent that Jeter was not going to comply with the Contract and convey Plaintiff title to the Property; he had gone radio silent and has not participated in the trial court action at all. Yet, it took Plaintiff six months to file the specific performance action against Jeter. In a real estate context in which it could be deliberately damaged or liens – like a judgment or association dues – can cloud title, preclude closing, and result in a sheriff sale, such a delay is unreasonable. Plaintiff failed to explain why it waited half a year to file its Complaint for specific performance. The trial court did not consider this delay either. But under the law, such a delay constitutes a breach of Plaintiff's fiduciary duty to Appellant.

Worse, even after Plaintiff filed its Complaint for specific performance, it failed to expeditiously pursue it. Plaintiff filed its Complaint without also filing a R. 4:67 order to show cause and accompanying motion for summary disposition, a routine step to pursue closing per a written, clear, undisputed contract. If Plaintiff would have filed such applications simultaneously with or shortly after filing its Complaint for specific performance, instead of over four months after its already-

belated Complaint was filed, then Plaintiff would have promptly obtained specific performance. The trial court's dismissive, evidence-free belief that specific performance may not have resulted from such applications is belied by the trial court's ultimate grant of such relief to Plaintiff, albeit on December 7, 2021, due to Plaintiff's delayed request for such relief. Based on these facts and the timeline of events, Plaintiff's delay in seeking the specific performance the trial court ultimately granted prevented specific performance from being effectuated. That is a breach of Plaintiff's fiduciary duty to Appellant.

Most dispositively, despite filing its Complaint for specific performance, Plaintiff failed to record a notice of lis pendens respecting said matter, a routine and statutorily permitted step in specific performance actions regarding real estate. See N.J.S.A. 2A:15-7(a). If Plaintiff would have recorded a notice of lis pendens respecting the specific performance action, the result of said action would have taken priority over the judgment that later entered against Jeter such that closing could have taken place and granted Plaintiff clear title to the Property. Ibid. Because Plaintiff failed to record a notice of lis pendens respecting the specific performance case, the judgment that later entered against Jeter became a lien on the Property that took priority over the results of the specific performance matter, precluding specific performance and closing. See N.J.S.A. 2A:15-8. Plaintiff's failure to record a notice of lis pendens respecting the specific performance matter precluded closing and

Appellant's realization of the \$11,500.00 expected. Therefore, Plaintiff's failure to record a notice of lis pendens constitutes a breach of Plaintiff's fiduciary duty to Appellant.

Per the facts, Plaintiff did not diligently and responsibly pursue specific performance – including by taking the simple step of recording a notice of lis pendens. If Plaintiff seriously pursued specific performance, it would have enabled Plaintiff to close and obtain title to the Property so Appellant could receive the \$11,500.00 due to it. Plaintiff provided no bona fide reason why it took so long to pursue the uncontested specific performance action, and said delay exacerbated Plaintiff's inexcusable failure to record a notice of lis pendens. Crucially, Plaintiff attempts to excuse its irresponsibility ex post facto on paragraphs 4 and 9 of the Assignment Agreement, which are irrelevant to our breach of fiduciary duty claim; had Plaintiff pursued specific performance diligently and responsibly, it would have acquired good and marketable title to the Property, and Appellant would have received the \$11,500.00 in escrow. Plaintiff's failure to diligently and responsibly pursue specific performance precluded Plaintiff from obtaining title to the property and Appellant from receiving the \$11,500.00 in escrow. That is undisputed, and both Plaintiff and the trial court ignore it.

If Plaintiff had recorded a notice of lis pendens but pursued specific performance as slowly as it did, Appellant would have received the \$11,500.00 due

to it. If Plaintiff had diligently pursued specific performance even without recording a notice of lis pendens, Appellant would have received the \$11,500.00 due to it. Plaintiff's failures to record a notice of lis pendens and pursue specific performance constitutes breaches of its fiduciary duty to Appellant. As a result of said breaches, Appellant suffered damages in the amount of \$11,500.00, which is the amount held in escrow. Plaintiff does not oppose or even address these arguments, and for good reason: there is no bona fide response to them. Accordingly, the orders of November 22, 2024, must be reversed, and the \$11,500.00 being held in escrow must be released to Appellant.

C. PLAINTIFF BREACHED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IN THE ASSIGNMENT AGREEMENT. (Da1-3).

Law

See Db13-14.

Application

See point I(B), *supra*.

The Assignment Agreement between Plaintiff and Appellant is a contract. Said contract contains terms that are not expressly within the contract's text, but are implied, including covenants "of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts s.205 (Am. Law Inst. 1981). Upon entering into the Assignment Agreement, Plaintiff was obligated to comply

with these implied covenants for the benefit of Appellant. Because of these implied covenants and Appellant's dependence on Plaintiff to comply with them by diligently steering the transaction to closing, Plaintiff was implicitly required to pursue specific performance of the Contract so Appellant could realize the \$11,500.00 anticipated.

For similar reasons as Plaintiff's breach of its fiduciary duty to Appellant, see point I(B), *supra*, Plaintiff failed to comply with its implied covenants in the Assignment Agreement. Plaintiff's failure to file its specific performance action much sooner than six months after entering into the Assignment Agreement constitutes Plaintiff's breach of the implied, contractual covenant of good faith and fair dealing it owed to Appellant. Plaintiff's failure to bring a prompt application to actually obtain specific performance by way of a R. 4:67 order to show cause and motion for summary disposition breached the implied covenant of good faith and fair dealing Plaintiff owed to Appellant per the Assignment Agreement. And most inexcusably, Plaintiff's failure to record a notice of lis pendens respecting the specific performance action breached the implied covenant of good faith and fair dealing owing to Appellant.

Plaintiff attempts to distract from its irresponsibility by citing to the Assignment Agreement's explicit text, which is irrelevant and does not impact its

implicit covenants, which are the basis of Appellant's breach of good faith and fair dealing claim against Plaintiff.

If Plaintiff had recorded a notice of lis pendens but pursued specific performance as slowly as it did, Appellant would have received the \$11,500.00 due to it. If Plaintiff had diligently pursued specific performance even without recording a notice of lis pendens, Appellant would have received the \$11,500.00 due to it. Plaintiff's failures to record a notice of lis pendens and pursue specific performance constitutes breaches of its implied covenants of good faith and fair dealing to Appellant under the Assignment Agreement. As a result of said breaches, Appellant suffered damages in the amount of \$11,500.00, which is the amount held in escrow. Plaintiff does not oppose or even address these arguments, and for good reason: there is no bona fide response to them. Accordingly, the orders of November 22, 2024, must be reversed, and the \$11,500.00 being held in escrow must be released to Appellant.

II. PLAINTIFF IS ESTOPPED FROM OBTAINING A REFUND OF THE DEPOSIT. (Da1-3).

Law

See Db16.

Application

In its opposition filed on December 28, 2023, to Saadeh's motion to dismiss the Law Division action, Plaintiff stated:

Plaintiff maintains that as a result of [Jeter losing title] to the property, the contract between plaintiff and Jeter for the sale of the subject property became null and void by operation of law.¹ That is the reason that plaintiff sought the return of the \$11,500 from defendant, for which defendant refuses to return, necessitating the within action.

Plaintiff maintains that the entire controversy action, which requires that all claims, that can be brought, be brought at the same time,² has no application herein. Plaintiff could not possibly have brought this action, i.e. the return of the security deposit, with the action for specific performance against Jeter at the same time due to the fact the within action did not come to fruition until Pinnock became the owner of the subject property on September 27, 2023 making the contract between plaintiff and Jeter null and void.

As such, defendant's motion for dismissal based on the entire controversy doctrine must be denied.

Moreover, defendant's motion for dismissal is erroneous due to the fact that this Court has the inherent power to transfer this matter to the Chancery Division rather than order dismissal of the matter. However, plaintiff would argue that there is no action pending in the Chancery Division as that matter was concluded on December 10, 2021, when the Court entered that plaintiff was entitled to specific performance by default of the subject property. This matter is against the holder of the security deposit that seeks money damages. This matter is appropriately placed in this Court. There is no reason for a transfer or dismissal at this time.

[Emphasis and footnotes added.]

¹ No authority was provided in support of this claim.

² Although irrelevant to the applications before the trial court and this appeal, Plaintiff's recitation of the Entire Controversy Doctrine was not accurate.

Plaintiff tacitly and explicitly argued against its position in the Law Division matter that the Chancery action – the specific performance case in which orders were entered that are the subject of this appeal – concluded on December 10, 2021, and that the relief Plaintiff sought in the Law Division could not be brought in the Chancery action. Plaintiff even moved in the Chancery matter on May 5, 2022, after previously telling the Law Division it could not do so. Notwithstanding, Plaintiff pursued relief in the Law Division based on said positions as well. Plaintiff's arguments and actions estop it from making contrary arguments or obtaining inconsistent relief in the Chancery action, particularly those granted in the orders of November 22, 2024, being appealed.

Plaintiff's quoted position in the Law Division matter was contrary to its explicit and tacit positions that the Chancery case was over. Nevertheless, Plaintiff moved to usurp the deposit while simultaneously seeking the same relief in the Law Division in which Plaintiff made arguments contrary to the ones it made in the Chancery Division. Accordingly, Plaintiff should have been estopped from obtaining relief in the Chancery Division that was awarded to it in the orders of November 22, 2024. The trial court altogether failed to analyze this issue and arbitrarily entered the two orders being appealed resulting from Plaintiff taking two inconsistent positions in two different cases. Notably, and in line with its modus operandi, Plaintiff does not oppose or even address this argument because it does

not have a counterargument. Based on the bona fide arguments made under the facts and law, the orders of November 22, 2024, must be reversed.

CONCLUSION

Plaintiff's repeated and compounding failures to diligently pursue specific performance resulted in inequitable and illegal orders denying Appellant its expected benefit from its Assignment Agreement. The trial court failed to consider the facts, law, or any of Appellant's arguments and denied it relief without any legal analysis.

To correct the trial court's various errors under the law:

- the order of December 10, 2021, revoking the grant of specific performance of the Assignment Agreement on December 7, 2021, must be reversed;
- the order of December 7, 2021, granting specific performance of the Assignment Agreement must be reinstated as of said date;
- the orders of November 22, 2024, must be reversed because:
 - Plaintiff breached its fiduciary duty to Appellant;
 - Plaintiff breached the implied covenant of good faith and fair dealing under the Assignment Agreement; and
 - Plaintiff is estopped from obtaining the relief the trial court granted in the Chancery action it when it articulated inconsistent positions in the Law Division action; and

- the \$11,500.00 being held in escrow must be released to Appellant.

Respectfully submitted,

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Attorneys for **Defendant-Appellant**



Stilianos M. Cambilis