
Superior Court of New Jersey
Appellate Division

Docket No. A-001050-24

SAKER ASSOCIATES LIMITED	:	CIVIL ACTION
and BUILDING 45 LLC,	:	
	:	
<i>Plaintiffs-Respondents,</i>	:	ON APPEAL FROM THE
vs.	:	FINAL ORDER OF THE
	:	SUPERIOR COURT OF
JANICO, INC.,	:	NEW JERSEY, LAW DIVISION,
	:	MONMOUTH COUNTY
<i>Defendant-Appellant,</i>	:	
- and -	:	
	:	
SAUL SIEGMAN,	:	DOCKET NO.: MON- DC-2771-24
	:	
<i>Defendant.</i>	:	
vs.	:	Sat Below:
	:	
INDUSTRIAL COURTS, LLC,	:	HON. GREGORY L. ACQUAVIVA,
	:	J.S.C.
<i>Third-Party Plaintiff,</i>	:	
vs.	:	
	:	
SAKER ASSOCIATES LIMITED	:	
and BUILDING 45 LLC,	:	
	:	
<i>Third-Party Defendants.</i>	:	

**BRIEF ON BEHALF OF DEFENDANT-APPELLANT
JANICO, INC.**

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Date Submitted: April 23, 2025

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PRELIMINARY STATEMENT

In this appeal Defendant/Appellant Janico Inc. (hereinafter as “Janico”) appeals from a November 7, 2024 Judgment of Hon. Gregory L. Acquaviva, J.S.C. (hereinafter as “Judge Acquaviva”) in the amount of \$14,238.21 to Plaintiff/ Respondents Saker Associates Limited and Building 45 LLC (hereinafter collectively as the “Plaintiffs”). Said Judgment is hereinafter referred to as the “Subject Judgment”.

The Plaintiffs had sold the property located at 88 Industrial Way in Howell Township (hereinafter as the “Subject Property”) to Industrial Court LLC (hereinafter referred to as “Industrial Court”) on or about October 23, 2015. Industrial Court rented the Subject Property to Janico. Janico and Industrial Court are both owned by the same individual, Saul Seigman (“Seigman”).

The Plaintiffs had, pursuant to a Developer’s Agreement with the Township of Howell (hereinafter as the “Municipality”), been responsible to pay for certain common expenses until such time as there is a “final acceptance” of the development, by donation of the road associated with the development to the Municipality. Despite never donating the road to the

Municipality, at some point, the Plaintiffs decided to start passing along those expenses to the owners of the development, and invoiced them for same.

Initially, Janico paid these invoices. Eventually, though, Janico objected to making continued payments, leading to the instant lawsuit. At a bench trial on November 7, 2024 Judge Acquaviva ruled that 1) Janico was liable for the aforesaid expenses, despite the fact that they did not own the property; 2) there was a contract between the Plaintiffs and Janico, as a result of Janico making the initial payments; and 3) if there was no contract, Janico was liable to the Plaintiffs on a theory of quantum meruit.

Janico submits that the trial court erred in at least three manners. First, Judge Acquaviva erred in improperly piercing the corporate veil, and holding Janico liable for what was, if anything, Industrial Court's liability. Second, Janico submits that there is, as a matter of law, no contract between the Plaintiffs and Janico because, *inter alia*, there was no consideration to the purported contract. Finally, Janico submits that the Court erred in finding that quantum meruit applied to the instant matter. Accordingly, the Subject Judgment should be reversed and judgment should be entered for Janico.

PROCEDURAL HISTORY

The Plaintiffs filed their complaint on or about March 8, 2024. Da11. Said complaint contained allegations against Janico, as well as Siegman, individually. Da11. The complaints against Siegman, individually were later dismissed. 1T86-87. An answer was filed by Janico and Seigman on or about March 21, 2024. Da16. An amended answer with a third party complaint was filed by Janico on June 26, 2024. Da17.

The amended answer included a third party complaint, by which Industrial Court, as the owner of the Subject Property, brought suit against the Plaintiffs for the funds previously paid for them for the aforesaid expenses. Da19. Despite Industrial Court being litigants to in this action, Plaintiffs did not name Industrial Court as a Defendant. Da11 and 1T54.

A bench trial was held before Judge Acquaviva on November 7, 2024. See generally 1T. Judge Acquaviva entered the Subject Judgment that Janico was liable to the Plaintiffs in the amount of \$14,238.21. Da1. He based this judgment, *inter alia*, on the conclusion that 1) Janico was liable for the aforesaid expenses, despite the fact that they did not own the property; (1T95, 1T99) 2) there was a contract between the Plaintiffs and Janico, as a result of Janico making the initial payments (1T97); and 3) if there was no contract,

Janico was liable to the Plaintiffs on a theory of quantum meruit. 1T101. Of note, Judge Acquaviva further ruled that from this point forward, Janico was only liable to pay the Plaintiffs for the fire suppression system, as a result of a subsequent change to the agreement. 1T100.

STATEMENT OF FACTS

On or about July 28, 1988, the Plaintiffs¹ entered into a Developer's Agreement with the Municipality (hereinafter as the "Developer's Agreement"). Da31. The Developer's Agreement provided, at ¶4, that the Plaintiffs were supposed to complete its responsibilities under said agreement within two years. Da33. Said Agreement provided, at ¶8, that the Plaintiffs "shall maintain and repair all roads within the subdivision" and "provide and pay for all street lighting and water hydrant service" and must "provide and pay for all snow plowing." Da34. This requirement is in place until "final acceptance", which is defined as "the date upon which any sidewalks, curbing, streets and street lighting are accepted by the Township and the final maintenance guarantees are posted with the Township." (Said expenses

¹ There was no testimony as to the distinction between the two Plaintiff entities. In colloquy to the Court, Plaintiff's counsel represented that "the plaintiff is Saker Associates Limited, Building 45, LLC. The actual name of the owner of the property is Building 45, LLC. They were originally trading as Saker Associates when they got the subdivision approval like 40 years ago, okay?" 1T4-5

hereinafter collectively referred to as the “Maintenance Expenses”). Da34-Da35. It is undisputed that such donation of the roadway never occurred. 1T42.

On or about October 23, 2015, the Plaintiffs sold the Subject Property to Industrial Court. Da26. Industrial Court rents the space to Janico. Da56. Both Industrial Court and Janico are owned by Seigman. Da56. At some point, the Plaintiffs decided to start charging the Maintenance Expenses to the building owners in the development. 1T42-43.

Seigman initially paid the invoices they were given by the Plaintiffs. 1T61. Eventually, though, Seigman began objecting to paying said fees. 1T62. Eventually, the Plaintiffs filed the instant lawsuit, seeking to compel Janico to pay the Maintenance Expenses. Da11.

LEGAL ARGUMENT

In reviewing a decision made at a bench trial, the Appellate Division “do[es] not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.” Mountain Hill, LLC v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (internal citation omitted). However, the reviewing court reviews de novo the Trial Court’s interpretations

of law See e.g. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

POINT I

The Court erred, in failing to apply the test for piercing the corporate veil, in finding Janico liable for expenses that would, if anything, be the responsibility of Industrial Court (Da1).

As set forth *supra*, Janico does not own the Subject Property. Instead, the property is owned by Industrial Court. Da26. Janico is a tenant, who rents the Subject Premises from Industrial Court. Da56. This fact was not, at any point, contested at trial.

The fact that Industrial Court was the owner of the Subject Property was not a surprise, concealed by Janico to be an ambush defense at trial. In the Second Amended Answer, Janico pled, in their Thirteenth Separate Defense that “The Plaintiff[‘s] claim, if any, would be against the owner of the property, not Janico, Inc, who is a mere tenant.” Da19. The Second Amended Answer then continues to bring a third party claim by Industrial Court against the Plaintiffs, making Industrial Court a party to this action, for the funds that were previously paid by Industrial Court on this matter. This Third Party Complaint starts, at paragraph 1, that “The Third Party Plaintiff, Industrial Court, LLC... is the owner of [the Subject Property]” Da20.

Despite this, the Plaintiffs did not amend their complaint to allege claims against Industrial Court. Indeed, at trial, Janico's counsel moved to dismiss any claims against Industrial Court. 1T53-54. The Court dismissed any such claims against Industrial Court, without objection from Plaintiffs' counsel, with Plaintiffs' counsel specifically noting that "I didn't name them, Judge." 1T54. For whatever tactical reasons, Plaintiffs made a specific, deliberate decision to NOT name Industrial Court, the owner of the property, and to name only Janico, the tenant.

To be sure, both Janico and Industrial Court are owned by the same individual, Saul Seigman. Da56. This identity of membership, seemingly on its own, was the basis for Judge Acquaviva piercing the corporate veil, and finding Janico liable for what would be, if anything, the responsibility of Industrial Court. "There was... some level of a meeting of minds whereby **entities represented by Mr. Siegman, and whether it's International or Janico,** agreed to pay these common area assessment charges[.]" 1T95 (emphasis added). "I did think it was noticeable that Mr. Siegman kept talking about I throughout, and he's not being sued here, but it was clear to me that **there's an overlapping of him as a human being with his business, International, and with his business, Janico,** and there's some level of overlapping." 1T99.

At no point, does Judge Acquaviva make any determination that Janico directly owed anything to the Plaintiffs. Instead, Judge Acquaviva simply said it does not matter what entity allegedly owed the money, as long as there was “overlap” between Janico and Industrial Court. Solely by dint of their shared identity of membership, they were all liable for the alleged indebtedness.

This is simply not the state of the law. “A corporation is an entity separate from its shareholders.” Lyon v. Barrett, 89 N.J. 294, 300 (1982). Indeed, the “primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise.” State, Dept. of Environmental Protection v. Ventron Corp., 94 N.J. 473, 500 (1983). Even a parent company will not be liable for the debts of their wholly owned subsidiary. Muller v. Seaboard Commercial Corp., 5 N.J. 28, 34 (1950). Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. Lyon v. Barrett, 89 N.J. at 300.

To pierce the corporate veil, there is a far more exacting and detailed inquiry. This includes factors such as “whether the subsidiary was grossly undercapitalized, the day-to-day involvement of the parent’s directors, officers and personnel, and whether the subsidiary fails to observe corporate formalities, pays no dividends, is insolvent, lacks corporate records, or is merely a facade.” Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160,

199–200 (App. Div. 2006). None of this was discussed at all at trial, let alone found to be present by the Judge, upon competent evidence.

Moreover, this is not even a question of parent/subsidiary liability, but of sister corporation liability. Simple piercing of the corporate veil, if it were appropriate, which it is not, would result in liability for Seigman personally, not for every corporation that he owns, such as Janico. Yet the claims against Seigman were dismissed. 1T86-87. There is no evidence to support piercing the corporate veil at all, but even assuming *arguendo* there were, it would **still** not result in the Subject Judgment against Janico being appropriate.

Accordingly, the Subject Judgment must be reversed, and judgment should be entered for the Defendant.

POINT II

The Court erred in finding that there was an enforceable contract between Janico and the Plaintiff (Da1).

Even if we were dealing with the proper party of Industrial Court, the Court erred in finding that there was an enforceable contract at all with the Plaintiffs. The sole evidence relied upon by the Court in finding the existence of a contract is a course of conduct, in the Plaintiffs asking for money for the Maintenance Expenses, and Seigman initially paying them.

6 He'd walk over, drive over, go to Mr.

7 Siegman. Here, you owe me this. Mr. Siegman, so naive

8 and young and happy that he owns property, yeah, I'll
9 pay it, writes a check from Janico. That is a pattern
10 and a practice and a course of contract -- conduct
11 which in my mind creates a contract.

1T97. Importantly, there was no finding by Judge Acquaviva that these charges were bargained for and a part of the agreement at the time of the sale of the property by Plaintiff to Industrial Court. The Court explicitly referred to the fact that, while the sale documents do not contemplate any shifting of responsibility for the Maintenance Expenses, a later agreement to pay them (by course of conduct) could have been formed. 1T83. Indeed, Judge Acquaviva explicitly found that if Seigman had not started to pay on the Maintenance Expenses when initially charged after he purchased the property, “we’re at a different situation.” 1T97. He further emphasized that “I do find – I don’t think there’s any disagreement about this... regardless of what the developer’s agreement said, even though Janico [and] Mr. Siegman **didn’t have to pay**, they agreed to pay. That’s a new contract.” 1T95-96 (emphasis added). It is clear that the Court found the course of conduct of paying the initial Maintenance Expenses created a contract to continue paying them.

This is consistent with the trial testimony, as Louis Saker (hereinafter referred to as “Saker”) himself, as owner of the Plaintiffs, agreed that he “asked the building owners to accept responsibility” for these expenses. He did not

contest that he “had no authority to do that.” 1T42-43. Rather, the Court relied wholly on the “course of conduct” in “creat[ing] a contract”.

There are multiple issues with this ruling. Firstly, the Plaintiffs already had a duty to pay the Maintenance Expenses, in accordance with the Developer’s Agreement with the Municipality. Therefore, this purported “contract” lacked any new consideration. Secondly, a course of conduct cannot create a contract, only establish the parameters of an existing contract.

a. There was no consideration on which a contract could form (Da1).

Pursuant to Paragraph 7 of the Developer’s Agreement between the Plaintiffs and the Municipality, the Plaintiffs “shall maintain and repair all roads within the subdivision” and “provide and pay for all street lighting and water hydrant service” and must “provide and pay for all snow plowing.” Da34. This requirement is in place until “final acceptance”, which is defined as “the date upon which any sidewalks, curbing, streets and street lighting are accepted by the Township and the final maintenance guarantees are posted with the Township.” Da34-Da35.

Accordingly, until such time as the roadway is donated to the Municipality, as required by the Developer’s Agreement, the aforesaid expenses remain the responsibility of the Plaintiffs, as the Developer. It is undisputed that such donation of the roadway never occurred. 1T42. Until such time as that

donation occurs, the Plaintiffs, as the developer, remains liable for such expenses.

This is simply a textbook case of the pre-existing duty rule. Dating back at least 200 years, to the seminal 1809 King's Bench common law case of Stilk v. Myrick, 170 Eng. Rep. 1168 (1809), it has been recognized that consideration on a contract cannot be something that a party already had a legal duty to do. This continues to be among the most basic rules of contractual formation to this date. "Consideration cannot be a promise to perform a pre-existing duty." Segal v. Lynch, 211 N.J. 230 (citing to Cnty. of Morris v. Fauver, 153 N.J. 80, 100 (1998) and Williston on Contracts § 7:37 (4th ed. 2008)).

The Plaintiffs have a legal duty to the Municipality to, *inter alia*, maintain the road, provide and pay for street lighting, water hydrant services and snow plowing. Accordingly, the performance those duties cannot constitute consideration for the purported contract formed through a course of conduct. This scenario is analogous to a township retaining a contractor to plow snow, and that company does, in fact, plow snow on the road in accordance with that contract. The snow plow company then demands that the homeowners along the roads that they plow ALSO pay them for the same service. Even if those homeowners would sign a written contract providing that they would pay the snow plow company, that contract is void, as there is no consideration thereon.

That is exactly the circumstance in this matter. The Plaintiff have a duty to provide these services to the municipality. Despite this, they claim, with no other consideration than them providing these services, that the adjacent homeowners must also pay them for these services. This is contrary to hundreds of years of established contract law.

This is not some contractual technicality. The reason these expenses are being incurred, on the whole, is **because** the Plaintiffs have failed to donate the road to the Municipality, as they were required to do under the Developer's Agreement. Once the road is donated, the Municipality will be liable for many of these expenses, and they will be paid for by taxes. The reason that these are not being paid by taxes is because of the Plaintiffs' failure to donate the road to the Municipality, as required. Therefore, the failure to donate the road, in addition to the making the Plaintiffs liable to pay these expenses, is also the reason these expenses need to be paid by anyone. Therefore, in addition to being legally accurate, morally as well, this deficiency should preclude the Plaintiffs from requiring Janico (or Industrial Court) from being responsible to pay these fees.

b. A contract cannot be established by a course of conduct (Da1).

As set forth *supra*, the Court found that there was a contract based on a "course of conduct" between the parties.

6 He'd walk over, drive over, go to Mr.
7 Siegman. Here, you owe me this. Mr. Siegman, so naive
8 and young and happy that he owns property, yeah, I'll
9 pay it, writes a check from Janico. That is a pattern
10 and a practice and a course of contract -- conduct
11 which in my mind creates a contract.

1T97. This finding of the existence of a contract based on a course of conduct is without authority in New Jersey law. A course of conduct can provide parole evidence for the parameters of a contract, but it cannot, by itself, create a contract.

While this is not a UCC transaction, the UCC definitions give lie to this improper usage of “course of conduct” to establish the existence of a contract.

a. A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection

b. A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

N.J.S.A. §12A:1-303. This creates two different categories of how past conduct can be used by the Courts. The first, a “course of performance” means that when parties have an existing “agreement” that involves multiple occasions of performance, the manner in which those occasions have been performed in the past may be used as evidence for the intention of the contract. The second category is a “course of dealing”, in which there are multiple transactions between two parties **that are not governed by a contract**. In those circumstances, what the parties have done in the past can be used to “interpret” what was intended. This means that it the course of dealing may only be used to "give particular meaning to and supplement or qualify terms of an agreement." Pomerantz Paper Corp. v. New Community Corp., 207 N.J. 344, 366 (citing N.J.S.A. 12A:1-205(3)). It does not mean that a contract can be created, whole cloth, by virtue of past conduct.

Here, the Plaintiffs are not seeking merely to interpret a single contractless transaction, in light of what previously performed. They are seeking to have Janico remain liable for these expenses, indefinitely into the future. This, in essence, would mean that every case of contractless “course of dealing” creates an indefinite contract for the parties involved to continue their dealing for all times.

To return to the analogy above involving a snow plow company, this would be analogous to a snow plow company coming by and clearing snow (without clearing it with the homeowner first) then invoicing the homeowner for it afterwards. For the first several times this is done, the homeowner pays the invoice. After a while, the homeowner tells the snow plow company that they will not pay. Yet the plow company insists that they will keep plowing and the homeowner must continue to pay them.

In sum, the Court's finding of the existence of a contract between Janico and the Plaintiffs based on a course of conduct is in error and must be reversed.

Point III

The Court erred in finding that quantum meruit applies to the instant matter (Da1).

The Court found, in the alternative, that Janico was liable to the Plaintiffs based on quantum meruit. See 1T101-102. This, once again, is erroneous.

A claim of quantum meruit requires a showing that

- 1) That plaintiff conferred a benefit on defendant.
- 2) That plaintiff conferred said benefit with a reasonable expectation that defendant would pay for it [and]

3) That the benefit was conferred under circumstances that should have put defendant on notice that plaintiff expected to be paid.

New Jersey Model Jury Charge, §4.11 (citing Weichert Co. Realtors v. Ryan, 128 N.J. 427 (1991)). We can agree that there was some level of benefit conferred upon the defendant, satisfying the first prong. But, regarding the remaining elements, there is no competent evidence that the benefit was conferred with the reasonable expectation that the Defendant would pay for it, nor that the Defendant was on notice that the Plaintiff expected to be paid.

When confronted with the fact that, under the Developer's Agreement, Plaintiffs were required to pay the Maintenance Expenses, Saker testified that he "asked the building owners to accept responsibility and payment". 1T42.

Defendant's counsel clarified asking

23 Q So, you took it upon yourself to try and
24 collect this money (indiscernible) from other people;
25 is that right?

1 A Yes.

2 Q But you have no authority to do that. You
3 just decided to do it and try and spread your
4 obligation to other people, right?

5 A I was asking because the benefit to the building
6 owners.

1T42-43. In other words, the Saker was fully aware that he had a responsibility to perform and pay for these services, up until the dedication of the road. Despite this he “took it upon himself” to “ask” the owners to pay for what was his legal responsibility to pay. While he had no authority to ask them to pay for it, he asked because they received some benefit.

As set forth *supra*, though, the simple conferral of a benefit is not sufficient to establish a claim in quantum meruit. Rather, the benefit must be conferred with the “reasonable expectation that defendant would pay for it.” That was not the case here. The Plaintiffs were legally responsible to pay for these expenses. Saker “took it upon himself” to “ask” the building owners to pay him back these expenses, despite the fact that he “no authority to do that”. Under these circumstances, a reasonable person would not “expect” the defendant to pay for it. Moreover, the reason that these expenses had to be borne by anyone other than the taxpayers of the Municipality was, in substantial part, because the Plaintiffs continue to fail to donate the road to the Municipality. Under these circumstances, there is simply no way in which the expectation to be paid back is “reasonable.”

For all of the same reasons, the benefit was not “conferred under circumstances that should have put defendant on notice that plaintiff expected to be paid.” The Plaintiffs had an independent legal duty to undertake these

expenses. These expenses are, in substantial part, of the sort that routinely are covered by taxes, and would be covered by taxes in this case, if the Plaintiffs dedicated the roadway. There is no reason that a reasonable defendant would be on notice that the Plaintiff (reasonably) expects to be paid.

CONCLUSION

For all of the foregoing reasons, the Appellate Division should reverse the Subject Judgment and enter judgment in favor of Janico.

/s/ Jonathan L. Leitman
Jonathan L. Leitman, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: MON-DC-2771-24

SAKER ASSOCIATES LIMITED
AND BUILDING 45, LLC

CIVIL ACTION

Plaintiffs-Respondents,

ON APPEAL FROM THE FINAL ORDER
OF THE SUPERIOR COURT OF
NEW JERSEY, LAW DIVISION
MONMOUTH COUNTY

v.

Sat Below:

JANICO, INC. AND SAUL SIEGMAN

HON. GREGORY L. ACQUAVIVA
J.S.C.

Defendants-Appellants,

BRIEF FOR PLAINTIFF
RESPONDENT SAKER ASSOCIATES LIMITED
AND BUILDING 45, LLC

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PRELIMINARY STATEMENT

Saul Seigman is the principal owner of defendant/appellant, Janico. He is also the principal owner of Industrial Court LLC. Mr. Seigman introduced himself to the plaintiff's/respondent's principal, Louis Saker, and always dealt with Mr. Saker as the principal of the defendant/appellant Janico. T16

The property which is the subject of this appeal is one of four lots created by a subdivision which was perfected in 1988 by the filing of a subdivision. map Da 22

The preliminary statement in Defendant/Appellant's brief contains a fundamental flaw where the second paragraph stated, without reference to the record, that plaintiffs/respondents sold the property in question to Industrial Court LLC on October 23, 2015. In fact, the record reveals that Industrial Court LLC purchased the property from 88 Vanderveer Road LLC, a subsequent owner who had purchased the property from Plaintiff/Respondent many years ago. Da 26

The contract which was enforced by the Trial Court in the instant matter was entered into at the time of the original sale of the property in question by the plaintiff/respondent. The testimony of the plaintiff's/respondent's witness established the terms of the contract which was enforced by the Trial Court. T99,

T100. The terms of that contract are shown by the notation on the filed map which created the property in question. Da23

The Trial Court properly found that a contract existed and that the consideration which supported the contract was the services provided to the defendant/appellant by the plaintiff/respondent. T 96-17 The Trial Court also properly found that defendant/appellant, Janico, was responsible for the items charged because its principal, Saul Seligman, throughout his dealings with the plaintiff/respondent and in fact during the trial, clearly led the plaintiff/respondent to understand that plaintiff/respondent was always dealing with Janico and continued to act as if Janico was the owner of the subject property. T22 Finally, quantum meruit clearly applies to this situation because Janico, either as apparent owner or a tenant, is, and continues to be, the beneficiary of the services provided by the plaintiff/respondent. T99, T100

There are at least three reasons why the decision of the Trial Court should be affirmed by this Court 1) Janico's owner, Saul Seigman, throughout his dealings with the plaintiff always held himself out to be the owner of the property as Janico; 2) there was a contract between the parties either as a result of the contract entered into between the plaintiff and defendant's predecessor in title or by an agreement being entered into by Seigman, as owner of Janico, with plaintiff; and 3) quantum meruit applies to this situation.

PROCEDURAL HISTORY

(We agree with Defendants Procedural History)

The Plaintiffs filed their complaint on or about March 8, 2024. Da11. Said complaint contained allegations against Janico, as well as Siegman, individually. Da11. The complaints against Siegman, individually were later dismissed. 1T86-87. An answer was filed by Janico and Seigman on or about March 21, 2024. Da16. An amended answer with a third party complaint was filed by Janico on June 26, 2024. Da17. The amended answer included a third party complaint, by which Industrial Court, as the owner of the Subject Property, brought suit against the Plaintiffs for the funds previously paid for them for the aforesaid expenses. Da19. Despite Industrial Court being litigants to in this action, Plaintiffs did not name Industrial Court as a Defendant. Da11 and 1T54. A bench trial was held before Judge Acquaviva on November 7, 2024. See generally 1T. Judge Acquaviva entered the Subject Judgment that Janico was liable to the Plaintiffs in the amount of \$14,238.21. Da1. He based this judgment, inter alia, on the conclusion that 1) Janico was liable for the aforesaid expenses, despite the fact that they did not own the property; (1T95, 1T99) 2) there was a contract between the Plaintiffs and Janico, as a result of Janico making the initial payments (1T97); and 3) if there was no contract, 3 FILED, Clerk of the Appellate Division, April 23, 2025, A-001050-24 Janico was liable to the Plaintiffs on a theory of quantum meruit. 1T101. Of

note, Judge Acquaviva further ruled that from this point forward, Janico was only liable to pay the Plaintiffs for the fire suppression system, as a result of a subsequent change to the agreement. 1T100.

STATEMENT OF FACTS

Ownership and Representation: Saul Seigman, the principal owner of Janico and Industrial Court LLC, consistently represented himself as Janico's principal in interactions with the plaintiff, thereby leading the plaintiff to believe that Janico owned the property. 1T66, 1T68

Property Ownership History: The property in question, created by a 1988 subdivision, was sold by the plaintiff to 88 Vanderveer Road LLC and subsequently to Industrial Court LLC, contrary to the appellant's misstatement that it was directly sold to Industrial Court LLC. 1T67, 1T68

Contract Enforcement: The trial court enforced a contract originating from the original sale by the plaintiff, evidenced by map notations and testimony, which obligates subsequent owners or occupants to honor the agreement. 1T96

Janico's Liability Basis: Janico is liable because Saul Siegman exclusively acted as Janico's representative without adhering to corporate formalities or disclosing

other ownership, thereby making Janico the apparent owner and beneficiary of the plaintiff's services. 1T95

Payment History and Dispute Timing: Janico initially paid all service bills without objection; it only questioned ownership and refused payment after litigation commenced, indicating acknowledgment of the contract and services. 1T95

Quantum Meruit Application: The plaintiff conferred a benefit on Janico by providing necessary services with the reasonable expectation of payment, supported by Janico's prior payments and notice of expected compensation. 1T101, 1T102

POINT 1

THE FACTS JUSTIFY THE COURT'S FINDING THAT JANICO IS RESPONSIBLE FOR THE COST OF THE SERVICES PROVIDED BY THE PLAINTIFF

Throughout the trial the defendant/appellant never disputed that Mr. Seigman in all of his interactions with the plaintiff/respondent never advised that plaintiff's/respondent's representative that he represented anyone other than Janico,

Inc. The plaintiff/respondent originally named Mr. Seigman as a defendant/appellant because, as Seigman testified throughout the trial, Mr. Seigman continued to treat the property as his. T 57-3, T 58-10

It is respectfully submitted that the testimony of both the plaintiff's representative and defendant's representative demonstrate that, except for the fact that Mr. Seigman did advise plaintiff that he was acting on behalf of Janico, Mr. Seigman could have been held personally liable for the claim of the plaintiff. T68

Despite appellant's argument to the contrary (see page 7 of appellant's brief) the identity of ownership was not, on its own the basis of finding Janico liable. The evidence demonstrates that the only entity which ever had dealings with the plaintiff was Janico. As far as his dealing with the plaintiff, Mr. Seigman never advised plaintiff that he was acting on behalf of any entity other than Janico and never observed corporate formalities. T16, T68

As stated by our Supreme Court in *Mueller v. Seaboard Commercial Corp.*, 5 N.J. 28 at 34-35 "We are well aware of the numerous cases which have decided that the mere stock ownership of one corporation in another corporation is insufficient to render the former liable for the torts of the later (citations omitted), but where the affairs of the later corporation are so organized and conducted as to make it a mere instrumentality of the former the corporate entity will be

disregarded where, as was recently said by this court (citation omitted) the corporate form is used as a shield behind which is sought to be done by those who control it...”.

It is respectfully submitted that the facts in the case at bar justify imposition of the responsibility for the services rendered to Janico.

POINT II

THERE IS AN ENFORCABLE CONTRACT BETWEEN PLAINTIFF AND DEFENDANT

The facts demonstrate that plaintiff/respondent entered into an agreement with the original owner of the subject property and that the burden of said contract was passed on to each subsequent owner. T11, T12, T17, T20, T22

The facts demonstrate that Mr. Seigman never advised plaintiff/respondent that Janico was not the owner of the property and he did, and has continued to, operate the property as Janico. T61

In fact, for the initial years of its relationship with the plaintiff/respondent, defendant/appellant paid all bills issued to defendant/appellant, Janico and did not raise any objection. T 61

Only in recent years did the defendant/appellant attempt to take advantage of the fact that it was the undisclosed owner of the property. In addition, only after the instant litigation was filed did the defendant/appellant raise the issue of the true ownership of the property. T64, T65

POINT III

QUANTUM MERUIT APPLIES

Plaintiff/respondent agrees with defendant/appellant that the issue of quantum meruit applies to the situation at bar and the factors set forth in Weichert Co. Realtors v. Ryan 128 N.J. 427 (1991) govern for the reasons below:

The plaintiff/respondent clearly conferred a benefit on the defendant/appellant either as owner of or tenant occupying the property in question by supplying all of the services needed by respondents to operate its' business. T15

The plaintiff/respondent had the reasonable expectation that defendant/appellant would pay for the services as evidenced by the fact that appellant paid all bills for the first several years defendant/appellant occupied the property. T61-lines 19 to 21

The benefit was conferred under circumstances that put defendant/appellant on notice that plaintiff/respondent expected to be paid. Despite what defendant/appellate argues in his brief, defendant/appellant was put on notice that plaintiff/respondent expected to be paid. T61 This is evidenced by the fact that bills were sent to and paid by defendant/appellant for the first several years of their relationship. T61

CONCLUSION

Even if this Court does not totally agree with the reasons expressed by the Trial Court, the result is clearly justified by the facts. See *Serrano v. Serrano*, 367 N.J. Super. 450, 452 (App. Div. 2004), rev'd. 183 N.J. 508, 874 A.2d 1058 (2005).

For the foregoing reasons it is respectfully submitted that the decision of the Trial Court should be affirmed.

Respectfully submitted,

Vincent E. Halleran Jr.

Attorney for Plaintiff/Respondent

Dated: August 5, 2025

Superior Court of New Jersey
Appellate Division

Docket No. A-001050-24

SAKER ASSOCIATES LIMITED	:	CIVIL ACTION
and BUILDING 45 LLC,	:	
	:	
<i>Plaintiffs-Respondents,</i>	:	ON APPEAL FROM THE
vs.	:	FINAL ORDER OF THE
	:	SUPERIOR COURT OF
JANICO, INC.,	:	NEW JERSEY, LAW DIVISION,
	:	MONMOUTH COUNTY
<i>Defendant-Appellant,</i>	:	
- and -	:	
	:	
SAUL SIEGMAN,	:	DOCKET NO.: MON- DC-2771-24
	:	
<i>Defendant.</i>	:	
vs.	:	Sat Below:
	:	
INDUSTRIAL COURTS, LLC,	:	HON. GREGORY L. ACQUAVIVA,
	:	J.S.C.
<i>Third-Party Plaintiff,</i>	:	
vs.	:	
	:	
SAKER ASSOCIATES LIMITED	:	
and BUILDING 45 LLC,	:	
	:	
<i>Third-Party Defendants.</i>	:	

**REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT
JANICO, INC.**

On the Brief:

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PRELIMINARY STATEMENT

In its opposition, Plaintiff Respondent Saker Associates Limited and Building 45, LLC (hereinafter as the “Plaintiff”) presents what can only be described as a token opposition to the instant appeal. Defendant Appellant Janico, Inc. (hereinafter as the “Defendant”) submits that the Plaintiff has wholly failed to meaningfully rebut the arguments presented in the Defendant’s Brief.

PROCEDURAL HISTORY

Defendant adopts the procedural history set forth in its merits brief.

STATEMENT OF FACTS

Defendant adopts the Statement of Facts set forth in its merits brief, with the sole exception being accepting the correction of the Plaintiff that the Subject Property was not purchased by the Defendant directly from the Plaintiff, but from 88 Vanderveer Road LLC, who had purchased the property from Plaintiff years earlier. Da26.

LEGAL ARGUMENT

POINT I

**THE PLAINTIFF CORRECTLY POINTS OUT THAT DEFENDANT
ERRED IN RECIPTING THE HISTORY OF THE SUBJECT
PROPERTY, BUT SAID ERROR ONLY STRENGTHENS THE MERITS
OF DEFENDANT’S APPEAL (Da1)**

The Plaintiff points out that Defendant erroneously stated that Industrial Court LLC purchased the Subject Property from the Plaintiff. In fact, as set forth by the Plaintiff, Industrial Court LLC purchased the property from 88 Vanderveer Road LLC, who had purchased the property from Plaintiff years earlier. Da26. The Plaintiff characterize this as a “fundamental flaw”.¹ The Plaintiff, though, wholly fails to analyze the implications of this error, or explain why it would be adverse to Defendant’s position, let alone a fundamental flaw.

In fact, this correction of the history of the property is wholly supportive of the Defendant’s position. The Defendant argues, in the Defendant’s Brief, that the Court erred in finding there was an enforceable contract between the Plaintiff and Defendant (or even between the Plaintiff and Industrial Court, the actual purchaser of the Subject Property). The lack of an enforceable contract was based, *inter alia*, upon the lack of consideration in the alleged contract (which the court found based on a course of contract). The Plaintiff bases the

¹ Plaintiff’s Brief, page 1.

lack of consideration primarily on the pre-existing duty rule- that the “consideration” that the Defendant was offering the Plaintiff was something they already had a legal responsibility to perform. This remains true. On top of this, however, we can now add that there was no privity of contract between the Plaintiff and Defendant² on which such consideration could have attached. If Industrial Court had purchased the property directly from the Defendant, perhaps it could have been argued that the payments at issue were made a part of that contract (albeit this would nonetheless violate the preexisting duty rule). This was not what Judge Aquavina found.³ 1T83. But such an argument could have been made. Now, though, this correction of fact has explained why such a finding would have been impossible. Instead, it is **solely** through a court of conduct that the alleged contract was formed, and this is not viable, as set forth in the Defendant’s Brief.

² Or Industrial Court.

³ As referenced in the Defendant’s Brief, page 10.

POINT II

THE PLAINTIFF HAS FAILED TO SHOW THAT PIERCING THE CORPORATE VEIL IS SUPPORTED ON THE RECORD (Da1)

The Plaintiff’s Brief makes no meaningful attempt to applying the standard of piercing the corporate view to the facts on the record, and show that piercing the corporate veil is appropriate. Instead, the Plaintiff cites to various points in the record in which they assert such “facts” as that “Mr. Siegman continued to treat the property as his” or that “Mr. Siegman never advised plaintiff that he was acting on behalf of any other entity[.]”⁴. But the Plaintiff wholly fails to apply these alleged facts to the standard for piercing the corporate veil.

The only assertion that could in any way implicate piercing the corporate veil is the bizarrely combined claim that “Mr. Siegman never advised Plaintiff that he was acting on behalf of any entity other than Janico and never observed corporate formalities.”⁵ This sentence includes two clauses, the first is largely irrelevant, and the later is wholly conclusory. This sentence contains two citation, to T16 and T68. Neither of these citations in any way support the claim that any entity at issue “never observed corporate formalities.”

⁴ Defendant’s Brief, page 6.

⁵ Id.

The former citation, to T16, is to direct examination of the Plaintiff, who would have no knowledge of the level of corporate formalities observed by Siegman, Janico or Industrial Court. Instead, the Plaintiff is citing to a portion of the transcripts in which the Plaintiff states that he only was aware of Janico, in his dealings with Siegman. This has nothing to do with whether corporate formalities were followed.

The citation to T68 appears to be pointing to the following exchange:

Q Okay. Are you aware that the subdivision with your property that you purchased -- by the way, who purchased it? You -- you said you purchased it, but you've told me several times you did this and you did that. Who purchased the property that we're talking about today?

A I did.

Q Who -- you did? Okay. But the deed doesn't say your name.

A Oh, I'm sorry. Industrial Court, LLC.

Q My point is you always talk about you, no matter who you're talking about.

A I'm sorry.

Q You are Industrial Court. You are Janico. You are every -- you're it.

A Industrial Court is a property owner . Janico is an operating business that rents space from Industrial Court.

Q And they're both you?

A I happen to own both, yeah.

At best, it could be said from this exchange that Mr. Siegman has a tendency to colloquially refer to things done by his corporate entities as things that “he” did. Once again, this has nothing to do with whether “formalities” are observed. How something is colloquially referred to is the exact opposite of a “formality”, by its very definition.

Even if there were evidence of disregard of the corporate formalities, that is not sufficient to show entitlement to piercing the corporate veil. “Veil piercing is an equitable remedy whereby the protections of corporate formation are lost and the parent corporation may be found liable for the actions of the subsidiary.”

Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006). Here, there is no parent/subsidiary relationship, but sister corporations with joint identity of ownership. The Plaintiff has wholly failed to cite to any authority that, even if there were any corporate formalities not observed, this form of liability is viable. Moreover, to show entitlement to piercing the corporate veil, the party must show that “adherence to the fiction of separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law”. Id. at 200. Here, the Plaintiffs were told that they were suing the wrong entity, but decided not to pursue any claim against the

appropriate party. That is hardly a fraud or injustice that would justify extraordinary equitable remedies.

POINT III

THE PLAINTIFF HAS FAILED TO SHOW THAT THERE WAS ANY ENFORCEABLE CONTRACT BETWEEN THE PLAINTIFF AND DEFENDANT (Da1)

The Plaintiff's makes, at best, a half hearted attempt to show that there was sufficient evidence to show an enforceable contract. The Plaintiff spends a total of five sentences on this point. Those five sentences contain no legal citation. Four of those sentences are dedicated to the assertion that Siegman had never disclosed that Janico was not the proper party. This point may have marginally related to piercing the corporate veil, but is wholly irrelevant to the legal question of whether there could be found to be a legally enforceable contract.

The Defendant's assertion that the court erred in finding an enforceable contract, included two sub-headings: The first is that there was no consideration, and the second is that a contract cannot be formed by course of conduct.⁶ Neither of these points were even obliquely referenced in the Plaintiff's Brief.

⁶ Defendant's Brief, pages 11 and 13.

The entirety of the substantive opposition on this point is a single sentence, containing no legal citations. To wit, “the facts demonstrate that plaintiff... entered into an agreement with the original owner of the subject property and that the burden of said contract was passed on to each subsequent owner.”⁷ The Plaintiff provides no legal theory by which a “verbal agreement” (T17, line 6) with one purchaser would then somehow become binding for all eternity on all subsequent purchasers.

Clearly, this is fundamentally unfair. A party cannot be bound by a verbal agreement made by someone else that they were never even advised of. A party who purchases real estate cannot AFTER THE PURCHASE then be told “by the way, you and all subsequent purchasers have to give the developer of the property money in perpetuity”. There is simply no mechanism by which an oral agreement between two parties can then become binding in perpetuity, including against purchasers in good faith who were never advised of such handshake agreements.

POINT IV
**QUANTUM MERUIT CANNOT BE APPLIED TO THE INSTANT
MATTER (Da1)**

As set forth in the Defendant’s brief, quantum meruit cannot be applied when the Plaintiff had a preexisting legal duty to perform the acts he was

⁷ Respondent’s Brief, page 3.

undertaking. Giving this undisputed fact, it cannot be reasonable for the Plaintiff to have expected to be reimbursed. The Defendant's brief wholly ignores this argument. Instead, he claims that it was reasonable for the Plaintiff to expect to be reimbursed, because the Plaintiff initially paid when invoiced. This is hardly evidence of the reasonableness of the request for payment by a developer who was already under a legal obligation to perform the acts invoiced for. Siegman testified that he had never previously owned a building, and was unaware of what was normal and customary. Eventually, he was advised that this arrangement was unusual, leading him to consult counsel and stop paying these charges. T61-62.

The Plaintiff's position, essentially, is that if you take advantage of someone, you are entitled to continue taking advantage of them indefinitely. Moreover, the Plaintiff fails to explain how it continues to be reasonable for him to continue to expect to be reimbursed, without a contract, when the party he is "enriching" is insisting he will not pay for any work done.

/s/ Jonathan L. Leitman
Jonathan L. Leitman