NAGEL RICE, LLP, **Plaintiff/Appellant,** **v.** **STARKEY, KELLY, KENNEALLY, CUNNINGHHAM & TURNBACH,** **Defendants/Respondents.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO. A-001081-24** **On Appeal from the Superior Court of New Jersey Chancery Division, Ocean County Docket No.: OCN-C-139-24** **Sat Below: Hon. Francis R. Hodgson, Jr., A.J.S.C.** **Submitted: April 10, 2025**

AMENDED BRIEF ON BEHALF OF PLAINTIFF/APPELLANT NAGEL RICE, LLP

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[i] Omitted pursuant to R. 2:6-1(a)(2).

[ii] Transcript was part of the record below and is included because it is from a different matter and not subject to R. 2:6-1(a)(1)(I).
[iii] Omitted pursuant to R. 2:6-1(a)(2).
[iv] Transcript was part of the record below and is included because it is from a different matter and not subject to R. 2:6-1(a)(1)(I).

[v] Omitted pursuant to R. 2:6-1(a)(2).
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[vii] Page Ja125 is purposely omitted from the Joint Appendix.
[viii] Transcript was part of the record below and is included because it is from a different matter and not subject to R. 2:6-1(a)(1)(I).

[ix] Omitted pursuant to R. 2:6-1(a)(2).

[x] Pages Ja239 – Ja243 are purposely omitted from the Joint Appendix.

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Name	**Date**	**Description**
1T	November 8, 2024	Transcript of oral argument and ruling granting motion of Defendant to dismiss the Complaint with prejudice

PRELIMINARY STATEMENT

On March 10, 2021, the trial court entered an order allowing Plaintiff's former client – Benjamin Ringel – to utilize certain escrowed funds on a month-to-month basis for certain limited purposes. One of those explicit purposes was for Ringel to pay down the large amount of attorney's fees he owed – and still owes – to the Nagel Firm so that the latter would continue to represent him. The Order provides that the disbursement of the funds would be done by the escrow agent, the Starkey Firm. Following entry of the Order, the Nagel Firm entered into an agreement with the Starkey Firm (with Ringel's permission) that the monthly escrow funds would be used exclusively to pay the Nagel Firm's attorney's fees. While the Starkey Firm initially complied with the agreement, it subsequently breached it by using the escrowed funds for purposes other than paying the Nagel Firm's attorney's fees. The Nagel Firm then sued the Starkey Firm for breach of the parties' agreement.

The trial court dismissed Plaintiff's pleading with prejudice, finding that the Nagel Firm failed to allege the existence of a contract and that the agreement, if it existed, conflicts with the March 10, 2021, Order. Both of these rulings are erroneous. The trial court's first ruling is a single, conclusory line which simply ignores both Plaintiff's allegations and the emails which contain the parties' agreement. The second ruling, also conclusory, provides absolutely no analysis explaining how the agreement conflicts with the plain language of the March 10, 2021, Order. It also ignores the fact that in one of the emails, the Starkey Firm explicitly admits that the agreement is consistent with the Order.

For all the foregoing reasons, the ruling of the trial court should be reversed.

PROCEDURAL HISTORY

On April 7, 2023, Plaintiff-Appellant Nagel Rice, LLP ("Plaintiff" or the "Nagel Firm") filed this action in Essex County, Nagel Rice, LLP v. Starkey, Kelly, Kenneally, Cunningham & Turnbach, ESX-L-2359-23 ("the Essex Action"). (Ja109).[1] On April 20, 2023, Defendant-Appellee Starkey, Kelly, Kenneally, Cunningham & Turnbach ("Defendant" or the "Starkey Firm") filed a certification in JDWC, et al. v. Ringel, et al., OCN-C-101-20 (the JDWC Action") to inform the Hon. Francis R. Hodgson, Jr., J.S.C., of the filing of the Essex Action and to argue that the matter should not be heard in Essex County. (Ja120, ¶ 25). On April 28, 2023, a hearing was held where Judge Hodgson ruled on various matters in the JDWC Action and other actions but did not directly rule on the propriety of filing this matter in Essex County. (Ja144 at 34:14 – 22; Ja149).

[1] "Ja__" refers to the parties' Joint Appendix.

On May 5, 2023, Plaintiff filed an Amended Complaint and Jury Demand in the Essex Action. (Ja152). On June 7, 2023, Defendant filed a motion to dismiss the Amended Complaint. On March 26, 2024, the Hon. Richard T. Sules, J.S.C., issued an Order dismissing the Amended Complaint without Prejudice. (Ja168). In his Statement of Reasons, Judge Sules ruled that "Nagel's claims in this action must be brought before Judge Hodgson in the consolidated Chancery action." (Ja174).

On August 6, 2024, Plaintiff filed a Complaint and Jury Demand for this action in Ocean County as part of the JDWC Action. (Ja14). On September 17, 2024, Defendant filed a motion to dismiss, or, in the alternative, to stay the action. (Ja8). On November 8, 2024, Judge Hodgson heard oral argument and read his ruling into the record, dismissing the Amended Complaint with prejudice. (1T at 25:24 – 26:4).[2] On the same date, Judge Hodgson entered an Order recording his ruling. (Ja1).

On December 17, 2024, Plaintiff timely filed its Notice of Appeal. (Ja3).

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[2] "1T" refers to the November 8, 2024, transcript of the oral argument on the Starkey Firm's motion to dismiss and oral decision of the Hon. Francis R. Hodgson, Jr., J.S.C.

STATEMENT OF FACTS

A. Factual Background

This action finds its genesis in the Nagel Firm's representation of Benjamin Ringel ("Ringel") and a number of associated entities in various matters. (Ja16, ¶ 4). Plaintiff represented Ringel in contentious chancery actions brought by his sister – Ringel v. Ringel, Docket Nos. OCN-C-152-16 and OCN-C-127-15 (collectively, the "Ringel Actions") – where she alleges, *inter alia*, looting of various real estate partnerships. Nagel Rice settled a portion of the dispute, and the remaining issues went to arbitration before Ret. Judge Robert Contillo. The Nagel Firm performed a significant amount of legal work for Ringel. Ringel owed Plaintiff substantial, unpaid legal fees. (Ja16, ¶ 4). As a result, the Nagel Firm advised Ringel that it would no longer represent him. (Ja17, ¶ 5).

In order to pay Plaintiff's legal fees and continue to retain them as counsel, Ringel agreed to pay Plaintiff out of an escrow account established in the JDWC Action. (Ja16, ¶ 4). Based on that agreement, the Nagel Firm continued representing Ringel, but is still, currently owed significant legal fees and expenses. (Ja18, ¶ 9).

Ringel was represented by Defendant in the JDWC Action. (Ja16, ¶ 4; Ja27, ¶ 1). Ringel, who had many judgment creditors, was entitled to approximately $30,000.00 in distributions per month from certain real estate. (Ja16, ¶ 4). Defendant established an escrow account for Ringel which received one-half of these distributions, in the amount of approximately $15,000.00 per month. (Ibid.). Defendant also agreed to act as escrow agent for the monies that Ringel received. (Ja). (Ibid.). This escrow account was originally designated by the court to pay for legal fees for the Nagel Firm and others, the tuition of Ringel's children, and for his children's medical expenses. (Ja16, ¶ 4; Ja30, ¶ 3). That changed when Ringel promised all of those funds to the Nagel Firm and Defendant, as escrow agent, confirmed that all those monies would be paid to the Nagel Firm.

In order to resolve their dispute regarding Mr. Ringel's failure to pay substantial legal fees, the Nagel Firm and Ringel "agreed that [the Nagel Firm] would receive **the entire escrow payment [of approximately $15,000.00]** that [Ringel] was entitled to receive on a monthly basis." (Ja17, ¶ 5, emphasis added). Defendant, as escrow agent, also agreed to pay the Nagel Firm the entire escrow amount on a monthly basis. (Ibid.). Ringel's agreement with the Nagel Firm to pay the entire $15,000.00 each month to Plaintiff for his outstanding legal fees was consistent with a court order entered in the JDWC Action regarding the use of these funds, which provided that:

> The Starkey Firm will release the [escrow] funds to the educational institution(s) for payment of outstanding

> tuition **<u>or directly to Ringel's legal representative Nagel Rice, LLP… for payment of legal fees.</u>** Ringel retains the right to request the release of additional funds from the JDWC Escrow… for future bona fide educational expenses… **or additional outstanding legal fees…**

(Ja30, ¶ 3, emphasis added).

Importantly, Nagel Rice confirmed with both Ringel and Defendant that Defendant would pay Nagel Rice the entire monthly escrow, and Defendant confirmed on a number of occasions that no monies would be paid to others from the escrow account. (Ja17, ¶ 5). As specifically described in the Complaint, these confirmations are set forth in emails between the Nagel Firm, Ringel, and/or Defendant. (<u>Ibid.</u>). By email dated September 15, 2021, Ringel directed Defendant to send "the <u>entire</u> monthly escrow payment to [the Nagel Firm]." (Ja, emphasis added). (<u>Ibid.</u>). More specifically, Ringel emailed Kevin Starkey – a partner of Defendant – stating that:

> **<u>Each month</u> you receive a check for $15,000 please send the amount received to Nagel Rice as payment for legal fees <u>going forward.</u>**

(Ja233, emphasis added). Copied on the email are Bruce H. Nagel, Esq. ("Nagel") and Robert H. Solomon, Esq. ("Solomon"), attorneys of Nagel Rice. (<u>Ibid.</u>). Mr. Starkey replies to this email from later the same day, stating:

> **Yes ok.** I will need **<u>a monthly invoice</u>** from Bruce [Nagel] because I have to keep documentation under the Court Order that the expenditure is for legal fees or

> for your children's tuition and healthcare. I don't need a detailed bill, just something **each month** I can have for my file.

(Ja232, emphasis added) Once again, Nagel and Solomon were copied on the email. (Ibid.). As a result, Ringel conceded that the legal fees were owed and that the Nagel Firm was entitled to the escrow monies.

After Ringel agreed to have the monthly escrowed amount of approximately $15,000.00 used exclusively to pay Nagel Rice's legal fees, on or about October 28, 2021, Defendant paid Nagel Rice $30,000.00, representing the escrow payments for two months. (Ja17, ¶ 6). On November 2, 2021, after receipt of these monies, Solomon emailed Starkey and again confirmed that the Nagel Firm is to receive the full amount escrowed each month, stating:

> As you know, Ben [Ringel] has agreed that Nagel Rice **is to get the full amount of all monthly payments. On a going forward basis,** please send us a check for **the full amount of the payments you receive.**

(Ja235, emphasis added). Ringel was copied on this email. (Ibid.). On or about January 3, 2022, Defendant paid the Nagel Firm $14,700.00 from the escrow account, representing one month's payment. (Ja17, ¶ 6).

After the January 3, 2022, payment, the monthly payments from Defendant ceased. (Ja17, ¶ 8). The Nagel Firm repeatedly contacted Defendant and inquired why the monthly payments ceased, but its emails and calls were not returned. (Ibid.). The Nagel Firm then found out that Defendant paid Ringel and another attorney monies from the escrow account, all in violation of Defendant's agreement to only pay Nagel Rice the full monthly amount in the escrow account. (Ja18, ¶ 9).

Thereafter, the Nagel Firm appeared before the Hon. Francis R. Hodgson, Jr., J.S.C. on a number of occasions arguing that the monies held in the escrow account should be paid to the Nagel Firm. On Marh 3, 2023, the court entered an Order making the Nagel Firm escrow agent in place of Defendant. (Ja27, ¶ 4). The court established a procedure for the disbursement of any escrow funds and on July 7, 2023, the court entered an order freezing disbursements of any funds until further order of the court. (Ja237).

B. The Nagel Firm Files The Essex Action Against The Starkey Firm

On April 7, 2023, the Nagel Firm instituted the Essex Action, (Ja109), and on May 5, 2023, filed an amended complaint and jury demand. (Ja152). Plaintiff alleged that it was damaged by Defendant as a result of Defendant turning over the escrow monies to others, in violation of its agreement to pay the full amount of the escrow account to Nagel Rice each month. (Ja153-55, ¶¶ 3-9).

On June 7, 2023, Defendant filed a motion to dismiss arguing that the case should be heard in the Ringel Actions in Ocean County. On March 26, 2024, the Hon. Richard T. Sules, J.S.C., issued an Order dismissing the Amended Complaint without prejudice. (Ja168). In his Statement of Reasons, Judge Sules ruled that "Nagel's claims in this action must be brought before Judge Hodgson in the consolidated Chancery action." (Ja174).

C. The Nagel Firm Files The Instant Action In Ocean County And The Trial Court Erroneously Dismisses The Instant Action With Prejudice

Pursuant to the ruling of Judge Sules, on August 6, 2024, the Nagel Firm filed a Complaint and Jury Demand in Ocean County as part of the JDWC Action. (Ja14). The trial court reassigned the case to a new docket number in the Chancery Division – Docket No. OCN-C-139-24.

On September 17, 2024, Defendant filed a motion to dismiss, or, in the alternative, to stay the action. (Ja8). On November 8, 2024, Judge Hodgson heard oral argument and read his ruling into the record, dismissing the Amended Complaint with prejudice. (1T at 25:24 – 26:4). See also (Ja1). Judge Hodgson's ruling is erroneous for two reasons.

First, Judge Hodgson ruled in conclusory fashion that "plaintiff has not pled sufficient facts for the Court to find that there was any agreement between the [P]laintiff and the [D]efendant law firm." (1T at 25:4 – 7).[3] This, however, is contrary to the emails clearly setting forth an agreement to pay the complete

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[3] If there was a pleading deficiency – and there was not – leave to amend should have been granted.

$15,000.00 of the escrow funds to the Nagel Firm – something which the trial court simply ignored.

Second, Judge Hodgson ruled:

> [A]ny agreement or the agreement that is purported to have been reached [between the Nagel Firm and the Starkey Firm] conflicts with the – the Court's order [of March 10, 2021] and… you can't change a Court's order unless you come back before the Court and ask that it be changed. You can't do it by agreement between the parties[.]

(1T at 25:8 – 15, paragraph break omitted). This conclusory ruling, however, directly conflicts with the plain language of the trial court's March 10, 2021, Order which explicitly provides that the funds at issue may be disbursed by the Starkey Firm for a few limited purposes – including paying the legal fees of the Nagel Firm. (Ja30, ¶ 3). As with its first ruling, the trial court provides absolutely no analysis to support its second ruling, which is equally erroneous.

LEGAL ARGUMENT

I. STANDARD GOVERNING APPEAL

An appellate court reviews a motion to dismiss de novo. Sashihara v. Nobel Learning Cmtys., Inc., 461 N.J. Super. 195, 200 (App. Div. 2019). Additionally, "[w]here the issues involve contract interpretation and the application of case law to the facts of the case, the appellate court's standard of review is de novo." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cantone

Resch., Inc., 427 N.J. Super. 45, 57 (App. Div. 2012), cert. den., 212 N.J. 460 (2012).

II. STANDARD GOVERNING MOTIONS TO DISMISS

R. 4:5-2 provides that "a pleading which sets forth a claim for relief… shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief." Motions to dismiss for failure to state a claim pursuant to R. 4:6-2(e) are disfavored, and "should be granted in only the rarest of instances," following a "meticulous and indulgent examination" of the allegations. Printing-Mart Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989). See also Epstein v. Cherry Parke Condo. Ass'n, Inc., No. A-2003-15T2, 2017 WL 835410, at *3 (App. Div. Mar. 3, 2017) (Ja290), citing Smith v. SBC Communications, Inc., 178 N.J. 265, 282 (2004) ("A motion to dismiss "should be granted only in rare instances and ordinarily without prejudice""). Thus, if simply ""the fundament of a cause of action may be gleaned"" from the pleading, then it cannot be dismissed for failure to state a claim. NCP Litig. Trust v. KPMG LLP, 187 N.J. 353, 365 (2006) (citation omitted). To that end, it is the duty of the trial court to "search the complaint "in depth and with liberality."" Lieberman v. Port Authority of N.Y. and N.J., 132 N.J. 76, 79 (1993) (citation omitted). Accordingly, the motion must be denied if a ""generous reading"" as much as ""suggests a cause of action."" Smith, 178 N.J.

at 282 (citation omitted). "A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment." Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987).

For purposes of a R. 4:6-2(e) motion, the court must "accept as true the facts alleged in the complaint, and credit all reasonable inferences therefrom." Malik v. Ruttenburg, 389 N.J. Super. 489, 494 (App. Div. 2008). See also Piscitelli v. Classic Residence by Hyatt, 408 N.J. Super. 83, 103 (App. Div. 2009) (citation omitted) (trial court must review the complaint "with a generous and hospitable approach"). Additionally, on such a motion, ""the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim,"" and therefore "[t]he court may not consider anything other than whether the complaint states a cognizable cause of action." Rieder, 221 N.J. Super. at 552 (citation omitted).

III. THE TRIAL COURT ERRED BY RULING THAT THE NAGEL FIRM FAILED TO ADEQUATELY ALLEGE AN AGREEMENT WITH THE STARKEY FIRM
(Raised below: 1T at 25:4 – 7; Ja1)

The trial court erred by holding in its one-line, conclusory ruling that Plaintiff failed to adequately allege a contract with the Starkey Firm whereby the full $15,000.00 in the escrow fund would be transferred solely to the Nagel Firm on a month-to-month basis. This was clearly pled in the Complaint. See

(Ja17, ¶ 5) ("[Starkey] agreed to pay [the Nagel Firm] the entire escrow on a monthly basis"); (Ja18, ¶ 10) (the Nagel Firm "has been damaged by [the Starkey Firm's] payment of escrow monies to others, all in violation of their agreements").

"A contract has long been defined as "[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law" and a "writing that sets forth such an agreement." State v. Bernardi, 456 N.J. Super. 176, 189 (App. Div. 2018), appeal den., 236 N.J. 472 (2019) (quotation omitted). Here, Plaintiff clearly pled that "the Starkey Firm] agreed to pay [the Nagel firm] the entire escrow on a monthly basis" and "[b]ased upon that agreement, [the Nagel Firm continued representing [Ringel]." (Ja17, ¶¶ 5, 7). See also (Ja18, ¶¶ 9-10) ("[the Starkey Firm] paid the client and another attorney from this escrow account, all in violation of the agreement to only pay [the Nagel Firm] the entire monthly amounts" … and the Nagel Firm "has been damaged by [the Starkey Firm's]… violation of their agreement").

What's more, the Starkey Firm confirmed the agreement multiple times and complied with the agreement for a short time. As already noted, in the September 15, 2021, email, Ringel directed the Starkey Firm to pay the entire monthly escrow payment to the Nagel Firm, (Ja231), and Starkey agreed, replying that the Starkey Firm would comply on a month-to-month basis. (Ibid.).

The agreement was again confirmed in the email of November 2, 2021. See (Ja234). And after entering the agreement, the Starkey firm initially complied with its obligation, having paid approximately $45,000.00 to the Nagel Firm from the escrow fund. (Ja17, ¶ 6).

All of the foregoing demonstrates the existence of an agreement and it is notable that the trial court does not discuss any of these alleged facts.

IV. THE TRIAL COURT ERRED BY RULING THAT THE AGREEMENT BETWEEN THE NAGEL FIRM AND THE STARKEY FIRM WAS CONTRARY TO ITS PRIOR ORDER (Raised below: 1T at 25:8 – 23; Ja1)

The trial court also erred by ruling that the agreement between the Nagel Firm and the Starkey Firm conflicts with the Order of March 10, 2021.

Orders are interpreted according to their "plain language." See, e.g., Rodriguez v. Singleton, No. A-3661-21, 2023 WL 7105162, at *2 (App. Div. Oct. 27, 2023) (Ja303); In re Gall, No. A-5735-07T2, 2010 WL 335444, at *8 (App. Div. Feb. 1, 2010) (Ja299). Here, the March 10, 2021, Order clearly states:

> The Starkey Firm will release the [escrow] funds to the educational institution(s) for payment of outstanding tuition **or directly to Ringel's legal representative Nagel Rice, LLP… for payment of legal fees…** Ringel retains the right to request the release of additional funds from the JDWC Escrow… for future bona fide educational expenses… **or additional outstanding legal fees…**

(Ja30, ¶ 3, emphasis added). There is nothing in the plain language of this Order which prohibits Ringel or the Starkey Firm – as escrow agent – from agreeing how to disburse the escrow funds so long it is for one of the few enumerated purposes set forth therein – including the payment of the Nagel Firm's legal fees. (Ibid.). Nor does the trial court venture to explain how the agreement between the Nagel Firm and the Starkey Firm allegedly "conflicts" with or "change[s]" the plain language of this Order. (1T at 25:10 – 11).

Moreover, Defendant has already explicitly admitted that the agreement is consistent with the March 10, 2021, Order and acted pursuant to that admission. In his email confirming the agreement, Starkey clearly states that he will require monthly invoices **to comply with the March 10, 2021, Order:**

> Yes ok. I will need a monthly invoice from Bruce [Nagel] because I have to keep documentation **under the Court Order** that the expenditure is for legal fees or for your children's tuition and healthcare. I don't need a detailed bill, just something each month I can have for my file.

(Ja232, emphasis added). In other words, the Starkey Firm has already conceded that the agreement is consistent with the March 10, 2021, Order and is acting pursuant to its requirement for "legal fees upon receipt of documentation verifying the fees." (Ibid.). Defendant should therefore be estopped from arguing that the agreement is inconsistent with the March 10, 2021, Order when it previously accepted the exact opposite position. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 385 (App. Div. 1996).

CONCLUSION

For all the foregoing reasons, the decision of the trial court dismissing Plaintiff's pleading with prejudice should be reversed.

Respectfully submitted,

Bruce H. Nagel

BRUCE H. NAGEL

Dated: April 10, 2025

NAGEL RICE, LLP **Plaintiff-Appellant,** **v.** **STARKEY, KELLY KENNEALLY, CUNNINGHAM & TURNBACH** **Defendant/Respondent.**	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION: DOCKET NO. A-001081-24

MEMORANDUM OF LAW IN OPPOSITION TO APPEAL

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PRELIMINARY STATEMENT

On appeal and in its Complaint, Plaintiff-Appellant, Nagel Rice ("Plaintiff"), alleges in conclusory manner that there was an "agreement" between it and defendant-respondent, Starkey, Kelly, Kenneally, Cunningham & Turnbach (the "Starkey Firm"), regarding the disbursement of escrow funds from an escrow account established by order of the Honorable Francis R. Hodgson, Jr., A.J.S.C. for their mutual client, Benjamin Ringel. In reality, Plaintiff's Complaint is devoid of any facts establishing that the Starkey Firm had an agreement with Plaintiff or had any legal duty running to Plaintiff other than to act in accordance with the Chancery Court's order establishing the terms of the escrow account. Dispositively, the Complaint does not allege that the Starkey Firm breached that duty.

Plaintiff's position that the Court's Order establishing the Starkey Firm's duties could be modified by the agreement of Mr. Ringel and Plaintiff is without merit. This Court set the terms of the escrow account and the Starkey Firm's duties. Pursuant to this Court's order, the Starkey Firm was required to abide by Mr. Ringel's instructions regarding the disbursement of the funds regardless of the representations Mr. Ringel allegedly made to Plaintiff or the Starkey Firm's knowledge of the alleged representations. In short, Plaintiff does not plead facts establishing a contract between Plaintiff and the Starkey Firm or allege that the Starkey Firm breached its duty under the terms of the Escrow order. Accordingly, Plaintiff's Complaint was properly dismissed with prejudice and the Chancery Court's decision should be affirmed.

PROCEDURAL HISTORY

On April 7, 2023, Plaintiff filed a single count Complaint against the Starkey Firm in the Superior Court of New Jersey, Law Division, Essex County, bearing Docket Number ESX-2359-23 (the " Essex Action"). (Ja109). On May 5, 2023, Plaintiff filed an Amended Complaint. (Ja153). The only amendment to the Complaint was the addition of a "Demand for a Jury Trial." (Compare Ja109 with Ja153).

On June 7, 2023, Starkey Firm filed a Motion to Dismiss the Amended Complaint. The Trial Court granted Starkey Firm's Motion to Dismiss without prejudice by Order dated March 26, 2024, and issued a Statement of Reasons. (Ja168).

On August 6, 2024, Plaintiff filed a Complaint with Jury Demand against the Starkey Firm in the Superior Court of New Jersey, Chancery Division, Ocean County, under Docket No. OCN-C-101-20, which was subsequently assigned Docket No. OCN-C-139-24. (Ja14). On September 17, 2024, the Starkey Firm filed a Motion to Dismiss the Complaint or in the alternative to stay the action. (Ja 8). On November 8, 2024, Judge Hodgson heard oral argument and read his decision into the record, dismissing the Complaint with prejudice. (Ja7). Judge Hodgson also entered an Order dismissing the Complaint on that date. (Ja1).

On December 17, 2024, Plaintiff filed its Notice of Appeal. (Ja3).

STATEMENT OF FACTS

A. The Ocean County Chancery Action

In July 2020, an entity known as JDWC, LLC filed an action in Ocean County Chancery Court, captioned as *JDWC, LLC v. Benjamin Ringel, et al*., OCN-C-101-20 (the "JDWC Action"). The Starkey Firm was counsel to Benjamin Ringel in the JDWC action until March 3, 2023. (Ja25). For purposes of context, the JDWC Action was essentially a collection action, filed by JDWC, to pursue the collection of a judgment entered in a 2013 lawsuit against Mr. Ringel, Docket No. OCN-C-209-13 (the "2013 Chancery Action"). Judge Hodgson presided over the 2013 Chancery Action since his appointment to the Chancery Court and presided over the JDWC Action since its inception.

Mr. Ringel is also a defendant in two other lawsuits filed in Ocean County Chancery Court by his sister, Chana Ringel, pertaining to a dispute over the rights and ownership of several commercial properties, Docket Nos. OCN-C-152-16 and OCN-C-127-15 (the "Chana Ringel Actions"), also assigned to Judge Hodgson. Plaintiff served as counsel to Mr. Ringel in the Chana Ringel Actions and in a related arbitration proceeding (the "Ringel Arbitration"). Retired Judge Robert Contillo is the arbitrator in the Ringel Arbitration. (Ja038).

On March 10, 2021, Judge Hodgson entered an "Order Modifying Restraints" in the JDWC Action (the "Escrow Order"). (Ja29). The Escrow Order addressed and resolved several motions between the parties that concerned the disposition of rent revenue from the commercial properties owned by Mr. Ringel or his affiliated entities. The Escrow Order provides, in pertinent part:

(a) The rent monies are to be split 50/50 between JDWC and Ringel;

(b) Defendant was appointed as the Escrow Agent to receive and disburse the Ringel funds;

(c) The Starkey Firm was authorized to release the funds **upon the request of Ringel** "to the educational institutions for payment of outstanding tuition [for Ringel's children] or directly to Ringel's legal representatives Nagel Rice, LLP, Sills Cummis & Gross PC and the Starkey Firm for payment of legal fees upon receipt of documentation verifying the fees or tuition due[.]"

(Ja30, ¶ 3).

The Starkey Firm thereafter received the Escrow Funds into its attorney trust account on a monthly basis and followed the direction of Mr. Ringel for disposition of the funds in accordance with the purposes set forth in the Escrow Order. (Ja121,

¶ 32). A total of $441,000 was received into the Escrow Fund from March 2021 to April 2023. (*Id.*). Plaintiff received $284,700 of those funds in payment of its legal fees, as authorized and directed by Mr. Ringel. (*Id.*).

B. The First Hearing on Plaintiff's Claims: November 18, 2022

Dissatisfied with the amount of fees paid to it, Plaintiff filed an application on October 25, 2022, in the JDWC Action to claim the entire escrow payment on a monthly basis. (Ja34). Plaintiff's application also opposed a motion to authorize payment from escrow of arbitration fees due from Mr. Ringel to Judge Contillo. (*Id.*).

At the hearing on the motion held on November 18, 2022, Plaintiff argued:

> So, if you cut off the flow of the escrow, in effect, my firm is once again harmed. There is no priority that Judge Contillo has over my firm that's owed way north of $300,000 at this point. And I've been working, really, under -- in effect, under a direct order from Judge Contillo that I must work, in effect, for free and not getting paid. And neither Judge Contillo nor anybody on this screen has the right to say that the deal that I made way over a year ago should be undercut. I have a right to that money. My firm does.

(Ja46, Tr. 23:7-17).

As Kevin Starkey explained at the hearing:

> I don't think I have the authority to do that given the Court order that Your Honor issued that said my obligations are limited to what's in that order, which I understand to be the purposes for distribution are limited. It was generally attorneys fees [sic], I think medical care for his children and tuition for his children. I know Mr. Nagel has been paid out of the escrow fund. My firm sent him payment. It was a while ago. I think it totaled roughly $300,000.

> **The second part of that Court order was that Mr. Ringel authorize it. Mr. Ringel has not authorized me to make distributions to Mr. Nagel's firm, which is why I have not**. So I just wanted to clarify that. With that, I'm sort of in this neutral position, and I also look for Your Honor's guidance on where we go from here.

(Ja43, Tr. 16:5-24) (emphasis added).

Judge Hodgson rendered an oral ruling as follows:

> Under the circumstances, the equities – the parties will understand their rights and be able to proceed accordingly once the decisions are made in this matter. Now, the only thing that will remain will be collections. The parties understood what they were getting into when they got into this case, when they set their bills when they -- particularly, given the fact that I believe Mr. Ringel, in addressing Mr. Nagel's position that he's entitled to the fees, when he came into this case, I think he was the fifth lawyer or fourth lawyer. I believe there were also allegations that these -- that there – potentially that there was outstanding bills. Under the circumstances, he came in with his eyes wide open. I don't think that he [Plaintiff] deserves to take priority over the arbitrator whose decision is pending, which is the key to resolving all of the rest of the case in this hard fought case.

(Ja51, Tr. 32:20-33:12).

Judge Hodgson entered a written Order on November 18, 2022, memorializing his ruling, and directed the Starkey Firm to pay the fees due to Judge Contillo. (Ja56). **The Order did not authorize any payment to Plaintiff**.

C. The Second Hearing on Plaintiff's Claims: March 3, 2023

In February 2023, counsel for Chana Ringel requested that the Starkey Firm, as Escrow Agent, pay Judge Contillo additional fees of $10,000 for his work as arbitrator. Plaintiff objected and again claimed an entitlement to all of the escrow funds: "To the extent anyone seeks to take those funds they are interfering with our right to the funds and may be liable for tortious interference." (Ja62). When counsel reminded Plaintiff that Judge Hodgson had already rejected his argument and issued an Order that gave Judge Contillo's fees precedence, Plaintiff stated: "The very application to use our firm's money to pay the arbitrators fees was interference. The ruling is irrelevant." (Ja61).

Counsel for Chana Ringel filed a motion in the JDWC Action to authorize the payment of fees to Judge Contillo. (Ja70). Plaintiff again opposed the motion and demanded payment of all of the escrow funds. (*Id.*). Mr. Ringel filed a Certification on March 2, 2023, with the Court, opposing Plaintiff's claims, stating: "Mr. Nagel claims we have an agreement. We do not. I have paid Mr. Nagel over $600,000. I will continue to pay him for the work he does." (Ja66). The Starkey Firm filed a cross-motion to be relieved as counsel and to be discharged as Escrow Agent (Ja96).

At the hearing on March 3, 2023, Plaintiff again pressed the same argument:

> MR. NAGEL: Well, Judge, I'm certainly cognizant of Your Honor's last ruling which permitted the escrow fund to be used to pay Judge Contillo. Let me at the outset say that we, with due respect to Your Honor, fully disagree with that ruling.
>
> * * *
>
> I'm asking Your Honor to reconsider that. Because the Court doesn't have the power, in my view, to nullify and invalidate a valid agreement that I have with my client and Mr. Starkey without a hearing; can't do it.

> * * *
>
> Maybe somehow you wear the black robes, you have the ability to get -- to nullify somebody else's deal. I don't know. I don't think it's fair, quite frankly. And I'm the one telling you now that it shouldn't be allowed. So I'm asking Your Honor not to allow the money that's earmarked to my firm to be disbursed to Judge Contillo.

(Ja73-74, Tr. 5:23-6:2; Ja74,Tr. 7:10-13; Ja75,Tr. 9:3-9).

Judge Hodgson noted that Plaintiff had not timely appealed or moved for reconsideration of the November 13th Order and again denied Plaintiff's claim to be paid fees from escrow:

> THE COURT: Well, we'll talk about that in a moment. We're still talking about paying Judge Contillo. So I don't hear any other real opposition to paying Judge Contillo. I'm going to -- for the reasons that I indicated I guess in November, I'm going to order that my order be enforced. So I'm going to sign the order provided by Mr. Fiorovanti. I'll just incorporate everything I found initially and apply it here and order that it -- that Mr. Starkey pay that amount. So he'll have a Court order that requires that.

(Ja78, Tr.14:1-9).

Judge Hodgson's March 3, 2023 Order memorialized his ruling and relieved the Starkey Firm as counsel and escrow agent "after the disbursement to Judge Contillo." (Ja27, ¶ 2). Judge Hodgson also designated Bruce Nagel, Esq., to serve as the Escrow Agent after the Starkey Firm was discharged, "subject to the same conditions." (*Id*., ¶ 4).

D. The Third Hearing on Plaintiff's Claims: April 28, 2023

On March 29, 2023, Plaintiff filed a motion with the Court to request a modification to the March 3, 2023 Order, contending that it was wrongfully denied a payment of its alleged fees due from escrow: "[w]hen our firm agreed to handle the escrow, one of the reasons was to protect the wrongful disbursements of the escrow of the funds paid each month for the benefit of Mr. Ringel. This cessation of the payments harms our firm which was promised those funds by Mr. Ringel in payment of substantial legal fee." (Ja84; Ja87, ¶¶ 3-4). Counsel for Chana Ringel filed a cross-motion, asking the Court to reconsider and modify its March 3rd Order to remove Plaintiff as escrow." (Ja89).

While Plaintiff's motion in the JDWC Action was pending but before a hearing, Plaintiff filed an action in the Superior Court of New Jersey, Essex County Law Division against the Starkey Law Firm. (Ja110). Plaintiff's complaint alleged that Plaintiff "has been damaged by payment of escrow monies to others, all in violation of their agreement and obligation to do so." (Ja112, ¶ 9). By filing of a certification, the Starkey Firm advised Judge Hodgson of the Essex County Action. (Ja116).

On April 27, 2023, Plaintiff filed a letter to the Court, where it reiterated its claim of entitlement to the entirety of the funds in the escrow account based on its self-serving legal conclusion that the September 15, 2021 email exchange between

Plaintiff and Mr. Ringel, acknowledged by the Starkey Firm, created a binding agreement between Plaintiff and the Starkey Firm. (Ja123). Plaintiff relied on the same legal conclusion in the Amended Complaint, namely that Plaintiff's purported agreement with Mr. Ringel altered the terms and conditions of the Starkey Firm's duties as escrow agent. (*Id.*) Plaintiff further claimed that "Starkey knew that Mr. Ringel agreed and then breached this agreement by not disbursing this money to our firm." (*Id.*) In short, in the Essex County Action, Plaintiff sought to invalidate Judge Hodgson's rulings in the JDWC Action through manipulation of the judicial process.

At the April 28, 2023 hearing, Judge Hodgson directly addressed the filing of the Essex County Action and his concerns to Plaintiff for a response:

> THE COURT: I'm addressing Mr. Campbell's argument right now. He said that if I leave it here, we're going to be litigating in every county throughout the State, one thing after another and it's not going to be able to be maintained by this Court. And what he points to is this Essex lawsuit. And what you've indicated is that if there's any dispute between the funds and how they're distributed, come back to this court in a motion and I'll handle it, it sounds pretty easy. But yet, we have this Essex lawsuit that essentially is challenging the way money is spent. I'm just wondering what -- why file in Essex? Why not just file a motion here, as you've suggested that you might do if there's an issue?

(Ja133, Tr. 13:5-19).

Plaintiff did not respond directly to Judge Hodgson's questions, or to the Court's proposed procedure to have the issues decided by motion in the Ocean County Chancery Action, but stated that his claim is for the violation of an escrow obligation, and that he has "a right to bring that in a Law Division or a jury action.

And I have a right to bring it where my firm is, right here [in Essex County]." (Ja134, Tr.14:8-10).

Judge Hodgson again pointed out to Plaintiff the problems with the filing of the lawsuit in Essex County:

> THE COURT: Isn't the heart of that case whether the mechanics of the March 10, 2021, order were complied with? I mean, it's the -- ultimately, what you're going to have to do in that case is say, Judge in Essex, we're asking you to interpret the Ocean County Judge's order and determine that it was a violation of the fiduciary, and by the way, the orders that the Judge issued in Ocean County are wrong and we're going to want you to rule on that. I mean, it seems to me that the very thing that Mr. Campbell is saying is going to happen has happened.

(*Id.*, Tr. 14:11-21).

Plaintiff again failed to respond directly to Judge Hodgson's concerns, but asserted: "Judge, I'm not – respectfully, Judge, I'm not obligated to stay in Your Honor's courtroom on a breach of fiduciary duties on a breach of escrow affecting an Essex County firm…. I have a right to file this action here [in Essex County]. And I have a right to get a fair shot, in my view, of a damage claim." (*Id.*, Tr. 14:22-15:6).

Judge Hodgson reiterated his concerns: "This case will be in litigation throughout the State, and it's going to drag this case into slow motion to determine the issues that remain in this matter." (Ja134, Tr. 15:14-17). After hearing arguments from all counsel, Judge Hodgson determined that he would continue to oversee and decide all challenges or claims about payments from the escrow account. At the conclusion of the hearing, Judge Hodgson stated that he would "include a provision in my order that would indicate that I would retain all jurisdiction for any challenges or claims as to the disposition of the funds." (Ja139, Tr. 24:2-4).

In accordance with his oral ruling, Judge Hodgson entered a written Order on the same day, which states in relevant part:

> 3. The provisions of this Court's March 10, 2021 Order will remain in full force and effect.
>
> * * *
>
> 6. This Court will retain jurisdiction for deciding all disputes as to the proper disposition of funds from the escrow account.

(Ja151, ¶¶ 3, 6).

E. Plaintiff's Amendment to the Complaint in the Essex County Action

Only one week after Judge Hodgson issued his Order that all disputes as to the escrow fund were to be brought in his Court, Plaintiff doubled down on its defiance, and filed an Amended Complaint on May 5, 2023. (Ja152). The sole modification from the original complaint was the addition of a jury demand in the Amended Complaint. (Compare Ja109 with Ja153).

F. The Fourth Hearing on Plaintiff's Claims: June 23, 2023

In a certification filed on May 9, 2023 in the JDWC Action, Plaintiff made the exact same claims asserted in the Amended Complaint and that had been asserted three times in the Ocean County Chancery Action, namely that the Plaintiff had violated Judge Hodgson's Orders by paying other creditors out of the Escrow Fund and by not dedicating all of the funds to Nagel's fees. (Ja159). Despite Judge Hodgson's three prior denials, Plaintiff again requested that "all the monies in the escrow account be released to Nagel Rice for payment of legal fees." (Ja162, ¶ 12).

Plaintiff further alleged that the Starkey Firm breached its purported obligations to Plaintiff by releasing funds from escrow for educational expenses, for medical expenses and to attorneys for Mr. Ringel. (Ja161, ¶ 9). The same self-serving legal conclusion made in the Amended Complaint and the Complaint that is the subject of this appeal. (Ja155 , ¶7).

G. Motion to Dismiss the Essex County Action

On June 7, 2023, the Starkey Firm filed a Motion to Dismiss the Amended Complaint. (Ja167). Plaintiff opposed the Motion to Dismiss the Amended Complaint. (*Id*.). The Starkey Firm filed a Reply Brief on July 17, 2023. (*Id*.). The Trial Court granted the Starkey Firm's Motion to Dismiss without prejudice by Order dated March 26, 2024 and issued a Statement of Reasons. (Ja169).

On April 11, 2024, Plaintiff filed a Notice of Appeal of the Trial Court's dismissal of the Amended Complaint with a Case Information Statement. (Ja178), On April 25, 2024, the Starkey Firm filed its Case Information Statement. (*Id*.). By email dated May 6, 2024, the Appellate Division directed Plaintiff to file a motion for leave to appeal within ten (10) days. (*Id*.).

On May 13, 2024, Plaintiff filed its Motion for Leave to Appeal. (*Id.*). The Starkey Firm filed its opposition on May 23, 2024. (*Id.*). By Order dated June 13, 2024, the Appellate Division denied the Motion for Leave to Appeal and dismissed Plaintiff's appeal. (Ja180).

H. The Ocean County Chancery Action

On or about August 6, 2024, Plaintiff filed a Complaint against the Starkey Firm in the Superior Court of New Jersey, Chancery Division, Ocean County, under Docket No. OCN-C-101-20, which was subsequently assigned Docket No.: OCN-C-139-24. (Ja14). On September 17, 2024, the Starkey Firm filed a Motion to Dismiss or, in the Alternative, to Stay the Action. (Ja11). On November 8, 2024, Judge Hodgson heard oral argument and read his decision into the record, dismissing the Complaint with prejudice. (IT). Judge Hodgson also entered an Order dismissing the Complaint on that date. (Ja1).

LEGAL ARGUMENT

I. STANDARD OF REVIEW ON APPEAL

The Appellate Court reviews *de novo* the trial court's decision on a motion to dismiss under *Rule* 4:6-2(e). *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.*, 237 N.J. 91, 108 (2019).

II. STANDARD ON MOTION TO DISMISS

Pursuant to *Rule* 4:6-2(e), a party is entitled to move to dismiss all or part of a complaint if that pleading "fail[s] to state a claim upon which relief can be granted." When faced with such a motion, the Court is required to "examin[e] the legal sufficiency of the facts alleged on the face of the complaint," *Printing Mart–Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746 (1989) and dismiss the challenged claims if they "fail[] to articulate a legal basis entitling [the] plaintiff to relief." *Milford Mill 128, LLC v. Borough of Milford*, 400 N.J. Super. 96,109 (App. Div. 2008) (quoting *Sickles v. Cabot Corp.*, 379 N.J. Super. 100, 106 (App. Div. 2005)).

A motion to dismiss "should be granted if even a generous reading of the allegations does not reveal a legal basis for recovery." *Edwards v. Prudential Prop. & Cas. Co.*, 357 N.J. Super. 196, 202 (App. Div. 2003), *certif. denied*, 176 N.J. 278 (2003). New Jersey is a "'fact' rather than a 'notice' pleading jurisdiction," meaning that "a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." *Nostrame v. Santiago*, 420 N.J. Super. 427, 436 (App. Div. 2011), *aff'd in part and modified in part*, 213 N.J. 109 (2011). The "essential facts supporting plaintiff's cause of action must be presented in order for the claim to survive." *Scheidt v. DRS Technologies, Inc.*, 424 N.J. Super. 188, 193 (App. Div. 2012).

However, "[a] plaintiff must plead the facts and give some detail of the cause of action." *Printing Mart-Morristown*, 116 N.J. at 768. "Courts considering motions to dismiss have long stressed that while they must accept all well-pleaded facts as true, they need not credit a complaint's bald assertions or legal conclusions." *In re Burlington Coat Factory Securities Litig.*, 114 F.3d 1410, 1429 (3rd Cir. 1997); see also *Jones v. Intelli-Check, Inc.*, 274 F.Supp.2d 615, 625 (D.N.J. 2003) ("Legal conclusions draped in the guise of factual allegations do not benefit from the presumption of truthfulness."); *Glass v. Suburban Restoration Co., Inc.*, 317 N.J. Super. 574, 582 (App. Div. 1998) ("[R]eciting mere conclusions without facts and reliance on subsequent discovery do not justify a lawsuit.").

III. THE TRIAL COURT CORRECTLY DISMISSED PLAINTIFF'S COMPLAINT WITH PREJUDICE.

The Chancery Court correctly held that the Complaint fails to state a claim against the Starkey Firm, requiring dismissal under *R*. 4:6-2(e). Plaintiff's claim against the Starkey Firm fails as a matter of law because it is premised on an erroneous and self-serving legal conclusion that the terms and conditions of the Starkey Firm's duties as escrow agent pursuant to the Escrow Order were modified by Plaintiff's purported agreement with Mr. Ringel that all future payments into the escrow account would be paid to Plaintiff. Unsurprisingly, Plaintiff provides no legal citation for this position. "Legal conclusions draped in the guise of factual allegations do not benefit from the presumption of truthfulness.'" *Jones v. Intelli-Check, Inc.*, 274 F.Supp.2d 615, 625 (D.N.J. 2003); see also *In re Burlington Coat Factory Securities Litig.*, 114 F.3d 1410, 1429 (3rd Cir. 1997)("Courts considering motions to dismiss have long stressed that while they must accept all well-pleaded facts as true, they need not credit a complaint's bald assertions or legal conclusions.").

Plaintiff's equally self-serving legal conclusion that the Starkey Firm entered into an agreement with Plaintiff to pay all future escrow funds to Plaintiff also fails as a matter of law. Plaintiff does not and cannot allege the elements of a contract between it and the Starkey Firm and therefore fails to state a claim for breach of contract.

A. The Chancery Court Correctly Held that the Escrow Order Could Not Be Modified by the Parties' Agreement.

The Escrow Order expressly states that "Ringel retains the right to request the release of additional funds from the JDWC Escrow in an amount up to 50% of the JDWC Escrow for future bona fide educational expenses incurred by the beneficiaries of the Trust or additional outstanding legal fees with the remaining 50% to be simultaneously disbursed to JDWC…." (Ja30, ¶ 3). The Escrow Order required the Starkey Firm to disburse the escrow funds **in accordance with Mr. Ringel's direction**. (*Id.*) Accordingly, to state a claim, Plaintiff must allege that the Starkey Firm disbursed funds to entities not identified in and/or for a purpose not permitted by the Escrow Order. Plaintiff did not and cannot make these allegations in support of its breach of fiduciary duty claim against the Starkey Firm. Nor can Plaintiff allege that any order of the Chancery Court required the Starkey Firm to pay all the proceeds of the escrow account to Plaintiff. On the contrary, the Chancery Court repeatedly rejected Plaintiff's applications for such an order. Importantly, Plaintiff's Complaint does not allege that the Starkey Firm's conduct violated the Escrow Order or any order entered by this Court regarding the escrow account. As such, the Complaint fails to allege facts establishing the elements of a claim of breach of fiduciary duty.

As a threshold matter, the Starkey Law Firm was a court-appointed escrow agent whose duties were subject to the edicts of the Court's order appointing it as escrow agent and the Court's subsequent directives. This is not the case where the Starkey Law Firm agreed to act as a fiduciary for Plaintiff and Mr. Ringel. Plaintiff wrongly contends that it can bring a breach of fiduciary duty claim against the Starkey Firm despite the fact that the Chancery Court repeatedly held that Plaintiff was not entitled to receive priority payment of the escrow funds. Importantly, the Chancery Court made these decisions with knowledge of Mr. Ringel's alleged agreement to give Plaintiff priority over other creditors.

Assuming, *arguendo*, Plaintiff had an agreement with Mr. Ringel for payment of the monthly amount deposited in the escrow account, the alleged agreement could not alter the Starkey Firm's duties pursuant to the Chancery Court's Escrow Order, *i.e.*, that Mr. Ringel had sole discretion regarding the disbursement of the escrow funds to educational institutions for payment of outstanding tuition for Mr. Ringel's children or to Mr. Ringel's legal representatives for payment of legal fees upon receipt of documentation verifying the fees or tuition due. (Ja30, ¶ 3). Pursuant to the Escrow Order, the Starkey Firm was required to abide by Mr. Ringel's instructions regarding the disbursement of the escrow funds, regardless of the representations Mr. Ringel allegedly made to Plaintiff regarding future payment. (*Id.*).

Plaintiff's claim of breach of fiduciary duty against the Starkey Firm also fails because the Chancery Court expressly held that Plaintiff is not entitled to receive priority with respect to the subject escrow account. (Ja57, Ja70 and Ja149). Plaintiff's attempt to have a jury overrule the Chancery Court's prior decisions should not be countenanced. Relatedly, Plaintiff's position that it was entitled to more than it received is inconsistent with the Chancery Court's consistent and well-reasoned rulings.

Moreover, if Plaintiff wanted to alter the terms of the Starkey Firm's duties as an escrow agent Plaintiff and Mr. Ringel could have submitted a Consent Order, or Plaintiff could have filed a motion seeking modification of the Escrow Order to provide that all monies paid into the escrow account were to be paid to Plaintiff starting on a date certain, but neither of these things happened during the Starkey Firm's pendency as Escrow Agent. Indeed, on more than one occasion Nagel Rice appeared before Judge Hodgson, arguing that the monies held in the escrow account should be paid to Nagel Rice, and each time the Court rejected this claim. Indeed, after Plaintiff was made escrow agent, it specifically sought this relief and it was denied. (Ja151).

As Judge Hodgson held, "you can't change a Court's Order unless you come back before the Court and ask it to be changed." (IT 25:11-13). The terms of the Escrow Order were not revised during the pendency of the Starkey Firm's tenure as Escrow Agent. Accordingly, the Starkey Firm's Court ordered directives with respect to the release of the escrow funds were governed exclusively by the Escrow Order, *i.e.*, the Starkey Firm disbursed the escrow funds in accordance with Mr. Ringel's instructions as proscribed by the terms of the Escrow Order. (Ja30, ¶3).

Significantly, Plaintiff does not allege that the Starkey Firm refused to follow Mr. Ringel's directives to pay Plaintiff, nor can it do so. Nor does Plaintiff allege that the Starkey Firm breached any other provision of the Escrow Order. As such, Plaintiff does not allege that the Starkey Firm's action violated or were otherwise inconsistent with the Escrow Order and, therefore, there was no viable allegation of a breach of duty by the Starkey Firm.

Accordingly, Plaintiff failed to state a claim that the Starkey Firm breached its duty as escrow agent and the decision below should be affirmed.

B. The Chancery Court Correctly Held that There Was No Agreement Between Plaintiff and the Starkey Firm Regarding Priority Payments from the Escrow Account

The fact that Plaintiff's Complaint seeks damages from the Starkey Firm does not cure Plaintiff's failure to state a claim. Plaintiff has not alleged the elements of a cause of action for breach of contract against the Starkey Firm. Accordingly, Plaintiff fails to state a claim upon which relief can be granted.

Plaintiff contends that it had an agreement with Mr. Ringel based on the September 15, 2021, email exchange and then concludes that the Starkey Firm's acknowledgement of the communication in the email somehow created an agreement and a duty running for the Starkey Firm to Plaintiff. (Ja231). However, in its Complaint, Plaintiff alleges no facts establishing that the Starkey Firm had any legal duty running to Plaintiff other than to act in accordance with the Chancery Court's order establishing the terms of the escrow account. Despite the fact that Starkey Firm had no legal right to enter into any agreement regarding the disbursement of the escrow funds that belonged to Mr. Ringel and were subject to the proscriptions of the Escrow Order, Plaintiff alleges that there was an "agreement" between Plaintiff and the Starkey Firm regarding the payment of the escrow funds to Plaintiff. Plaintiff's purported "factual" allegation is nothing more than a legal conclusion.

In short, Plaintiff's "allegation" that there was an "agreement" between Plaintiff and the Starkey Firm does not withstand scrutiny. As the Supreme Court explained in *Goldfarb v. Solimine*, 245 N.J. 326 (N.J. 2021):

> Bedrock case law instructs that "[a] contract is an agreement resulting in obligation enforceable at law." *Borough of West Caldwell v. Borough of Caldwell*, 26 N.J. 9, 24, 138 A.2d 402 (1958). "[T]he basic features of a contract" are "**offer**, **acceptance**, **consideration**, and performance by both parties." *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419, 439, 70 A.3d 544 (2013). "A contract arises from **offer** and **acceptance** and must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435, 608 A.2d 280 (1992) (quoting *Caldwell*, 26 N.J. at 24-25, 138 A.2d 402).

Id. at 339.

To establish a breach of contract claim, a plaintiff must allege that:

(1) the parties entered into a valid contract;

(2) the defendant failed to perform its obligations under the contract; and

(3) the plaintiff sustained damages as a result.

See Murphy v. Implicito, 392 N.J. Super. 245, 265 (App. Div. 2007); see also *Townsend v. Pierre*, 221 N.J. 36, 51 (2015) (holding a plaintiff in a tort action must demonstrate the existence of a duty, a breach of that duty, proximate causation and damages flowing from the breach).

Here, Plaintiff did not provide a copy of the alleged "agreement" as an exhibit to the Complaint. Rather, Plaintiff posits that Mr. Ringel's instruction to Mr. Starkey in a September 15, 2021, email to pay to Plaintiff the $15,000 paid into escrow on a monthly basis going forward, and Mr. Starkey's acknowledgement of the email constitutes an "agreement" between Plaintiff and the Starkey Firm. (Ja231). While the September 15, 2021, email exchange may be evidence of an agreement between Mr. Ringel and Plaintiff, it does not and cannot establish a contract between the Starkey Firm and Plaintiff. What offer is made by Plaintiff to the Starkey Firm and what consideration does the Starkey Firm receive? The irrefutable answer to both questions is none. The September 15 email exchange does not establish an offer, acceptance or consideration as between Plaintiff and the Starkey Firm. This is fatal to Plaintiff's breach of contract claim, masquerading as a breach of fiduciary duty claim.

For these reasons, the Starkey Firm respectfully requests that the Chancery Court's decision be affirmed.

IV. THE TRIAL COURT DID NOT ERR BY HOLDING THAT THE STARKEY FIRM AGREEING TO GIVE PLAINTIFF PRIORITY OVER MR. RINGEL'S OTHER CREDITORS WOULD VIOLATE THE ESCROW ORDER.

Plaintiff contends that it reached an agreement with the Starkey Firm that all future escrow funds paid into the Escrow Account would be paid by the Starkey Firm to Plaintiff. While Plaintiff is correct that the Escrow Order permitted the Starkey Firm to disburse funds to Plaintiff for payment of their fees, it does not authorize the Starkey Firm to enter into an agreement with Plaintiff to disburse all escrow funds to Plaintiff without Mr. Ringel's express authorization.

As established *supra*, the Starkey Firm had no authority to enter such an agreement because the Escrow Order limited the Starkey Firm's disbursement of funds **to the discretion and direction of Mr. Ringel**, subject to the limitations of the Court's Escrow Order. (Ja30, ¶ 3). In any given month, if Mr. Ringel did not instruct the Starkey Firm to disburse funds to Plaintiff, then the Starkey Firm was not permitted to do so by the Escrow Order. It is for this reason that the Chancery Court held that the purported agreement between Plaintiff and the Starkey Firm conflicted with the Escrow Order. Plaintiff's argument that the plain language of the Escrow Order permits the Starkey Firm to enter into an agreement with Plaintiff regarding future payments from the Escrow Account is superficial and spurious.

Similarly, Plaintiff's self-serving contention that Starkey Firm's acknowledgment of Mr. Ringel's September 15, 2021 email is an explicit admission "that the agreement is consistent with the March 10, 2021 Order" is specious. Mr. Starkey's acknowledgement in the September 15 email exchange established only that Plaintiff is one of the entities permitted to receive payment from the escrow funds. His request for documentation to facilitate payment when payment was authorized by Mr. Ringel is simply that and nothing more.

For the foregoing reasons, the Chancery Court correctly held that an agreement between Plaintiff and the Starkey Firm would be contrary to the Escrow Order. Accordingly, the Chancery Court's decision should be affirmed.

CONCLUSION

For all of the foregoing reasons, the Starkey Firm respectfully requests that this Court deny Appeal and affirm the Chancery Court's dismissal of Plaintiff's Complaint with prejudice.

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Attorneys for Defendant/Respondent
Starkey, Kelly, Kenneally, Cunningham
& Turnbach

Dated: June 11, 2025 By: *[/s/ Aileen F. Droughton]*
Aileen F. Droughton, Esq.

FILED, Clerk of the Appellate Division, July 21, 2025, **A-001081-24**

NAGEL RICE, LLP, **Plaintiff/Appellant,** **v.** **STARKEY, KELLY, KENNEALLY, CUNNINGHHAM & TURNBACH,** **Defendants/Respondents.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO. A-001081-24** **On Appeal from the Superior Court of New Jersey Chancery Division, Ocean County Docket No.: OCN-C-139-24** **Sat Below: Hon. Francis R. Hodgson, Jr., A.J.S.C.** **Submitted: July 21, 2025**

REPLY BRIEF ON BEHALF OF PLAINTIFF/APPELLANT NAGEL RICE, LLP

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TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED

	Document Name	**Date**	**Appendix Page Number**
1	Order dismissing Complaint with prejudice	November 8, 2024	Ja1
2	Oral decision granting motion to dismiss the Complaint with prejudice	November 8, 2024	1T at 26:2 – 4

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Defendant-Appellee Starkey, Kelly, Kenneally, Cunningham & Turnbach ("Defendant" or the "Starkey Firm") has failed to provide any support for the trial court's erroneous and conclusory rulings and has also failed to respond to the arguments made by Plaintiff-Appellant Nagel Rice, LLP ("Plaintiff" or the "Nagel Firm") in its moving brief. As set forth below, Defendant has no response to the fact that the documents it submitted to support its motion to dismiss clearly demonstrate that the parties entered into an agreement – with the approval of their joint client, Benjamin Ringel – setting forth that all escrowed funds would be disbursed solely to the Nagel Firm going forward. Not only did the Starkey Firm agree to this, but they explicitly stated to Plaintiff that it would not disburse any funds "without your consent." The Nagel Firm relied on that agreement, which the Starkey Firm breached by disbursing over $100,000.00 to other individuals and entities. Defendant provides no reason to affirm the trial court's single line, conclusory ruling that Plaintiff failed to allege its breach of contract claim.

Defendant also provides no support to the trial court's other conclusory ruling, that the parties' agreement is contrary to the court's March 10, 2021 Order (the "Escrow Order"). The Starkey Firm has no response to the fact that the trial court's ruling finds no basis in the plain language of the Escrow Order.

And while it attempts to provide a reasoning for the trial court's ruling, this is found nowhere in the ruling of the trial court itself. Nor does Defendant address the fact that it has already admitted that the Escrow Order is consistent with the parties' agreement.

For all the foregoing reasons, the ruling of the trial court should be reversed.

LEGAL ARGUMENT

I. DEFENDANT HAS FAILED TO DEMONSTRATE THAT THE TRIAL COURT DID NOT ERR BY RULING THAT PLAINTIFF'S COMPLAINT FAILS TO ALLEGE A CAUSE OF ACTION (Raised below: 1T at 25:4 – 7; Ja1)

As set forth in Plaintiff's moving papers, the allegations of its Complaint adequately allege an agreement between the Nagel Firm and the Starkey Firm, and this conclusion is confirmed in writing by the numerous documents outside the pleadings which the Starkey Firm relied upon to support its motion to dismiss. See Plaintiff's April 10, 2025 amended brief ("Pb") at 6-8, 12-14. For example, Ringel emailed Kevin Starkey – a partner of Defendant – stating that:

> Each month you receive a check for $15,000 please send the amount received to Nagel Rice as payment for legal fees going forward.

(Ja233). Mr. Starkey then replied to this email, confirming the agreement:

> **Yes ok.** I will need **a monthly invoice** from Bruce [Nagel] because I have to keep documentation under

> the Court Order that the expenditure is for legal fees or for your children's tuition and healthcare. I don't need a detailed bill, just something **each month** I can have for my file.

(Ja232, emphasis added). This agreement was confirmed again in a subsequent email from Robert Solomon – a partner of Plaintiff – stating:

> As you know, Ben [Ringel] has agreed that Nagel Rice is to get the full amount of all monthly payments. On a going forward basis, please send us a check for the full amount of the payments you receive.

(Ja235). Pursuant to the agreement, Defendant then sent Plaintiff approximately $45,000.00 from the escrowed funds to pay for Mr. Ringel's outstanding legal bills. (Ja17, ¶ 6).

Even after the monthly payments ceased, Mr. Starkey reiterated multiple times to the Nagel Firm that he would abide by the agreement and not disburse the escrowed funds to anyone else without first obtaining Plaintiff's consent:

- In his email of June 3, 2022, Mr. Starkey wrote: "I already stated that I would not be making any disbursements from the escrow until this is resolved." (Ja273).
- In his email of June 13, 2022, Mr. Starkey wrote: "I confirmed before, and I will confirm again now, that I will not [be] disbursing any funds from the escrow held by my firm until either an agreement is reached between you and [Mr. Ringel] or a court order directs me." (Ja274).

- In his email of June 22, 2022, Mr. Starkey wrote: "Yes I confirm, again, that I have not disbursed any monies. I'm not sure how many times I need to confirm this." (Ja276).
- In his email of August 24, 2022, Mr. Starkey wrote: "I stand by my previous statements. I will not disburse any moneys from escrow unless I receive direction from [Mr. Ringel] **with your consent**, or a court order directing me to." (Ja 279, emphasis added).

Yet, despite all of Mr. Starkey's assurances, he made tens of thousands of dollars-worth of payments to multiple entities – ***without*** **the Nagel Firm's consent** or a court order – after confirming multiple times that he would not disburse the escrow monies to others:

Date	**Amount of Payment**	**Recipient of Payment**
September 14, 2022	$18,000.00	John Hopkins University
September 14, 2022	$12,600.00	Rambam Mesivta Maimonides High School
September 14, 2022	$14,000.00	Yeshivah Netiv Aryeh
September 14, 2022	$6,000.00	Yeshiva Ner Israel
November 8, 2022	$6,000.00	Park Slope Dental Arts
November 8, 2022	$8,780.00	John Hopkins University
November 8, 2022	$7,000.00	Yeshivah Netiv Aryeh
December 5, 2022	$6,000.00	Ohel Avraham Student Services
December 13, 2022	$4,700.00	Edward (Efraim) Ringel
December 19, 2022	$7,500.00	The Starkey Firm
January 9, 2023	$7,00.00	Byrnes O'Hern & Heugle LLC
March 9, 2023	$10,000.00	Ferro Labell & Weiss
	Total: $106,980.00	

See (Ja285).

Notably, the Starkey Firm does not address any of the foregoing or the fact that an agreement is clearly laid out in writing. The most Defendant is able to muster is that "Plaintiff's purported "factual" allegation is nothing more than a legal conclusion." See Defendant's June 11, 2025 opposition brief ("Db") at 22. This, however, does not address the actual facts alleged by Plaintiff or the facts contained in the documents which support those allegations. It therefore comes as no surprise that Defendant never even addresses the fact that the trial court's single line, conclusory ruling that Plaintiff failed to allege an agreement simply ignores the Complaint's allegations or the support they receive in the documents. See Pb9.

Instead of addressing whether the allegations set forth a cause of action – the only thing at issue on a motion to dismiss – Defendant makes a number of legal arguments. For example, Defendant argues that Plaintiff fails to allege an agreement because the "Starkey Firm had no legal right to enter into any agreement regarding the disbursement of the escrow funds." Db22. Not only is this completely irrelevant to the determination whether the Complaint sets forth a cause of action, but Defendant provides no explanation or support for this conclusory argument.

Defendant's argument that there can be no agreement because they received no consideration is also misplaced. By agreeing to provide the monthly escrowed funds of $15,000.00 only to Plaintiff, Defendant continued to receive full payment as escrow agent while having its work significantly reduced. Defendant no longer had to send the funds to various people or perform any of the work which attends that responsibility. This constitutes valid consideration because:

> It has been long accepted that the value given or received as consideration need not be monetary or substantial: Consideration is, in effect, the price bargained for and paid for a promise. **A very slight advantage to one party, or a trifling inconvenience to the other, is a sufficient consideration to support a contract** when made by a person of good capacity, who is not at the time under the influence of any fraud, imposition or mistake. Whatever consideration a promisor assents to as the price of his promise is legally sufficient consideration.

Oscar v. Simeonidis, 352 N.J. Super. 476, 485, (App. Div. 2002), quoting Joseph Lande & Son v. Wellsco Realty, 131 N.J.L. 191, 198 (E. & A. 1943) (emphasis added). See also, e.g., Antkowiak v. TaxMasters, 455 F. App'x 156, 162 n. 9 (3d Cir. 2011) (only "more than a mere "peppercorn"" is necessary as consideration). Thus, "[c]ourts [] do not inquire into the adequacy of consideration in determining whether to enforce a contract." Seaview Orthopaedics ex rel. Fleming v. Nat'l Healthcare Res., Inc., 366 N.J. Super. 501, 508–09 (App. Div. 2004).

Alternatively, as Plaintiff alleged, the consideration could be the fact that "[b]ased upon the agreement, [the Nagel Firm] continued representing [Mr. Ringel]" despite the fact that he "owed significant legal fees and expenses" to the Nagel Firm. (Ja17 at ¶ 7). It made sense for the Starkey Firm to contract for this benefit since "[t]he parties represented the same client" – that is, Mr. Ringel. (Ja16 at ¶ 4). Such consideration is perfectly valid, as "one may enter into a binding contract for the benefit of a third party… [and] [a]s long as a contract is bargained for by the promisee, it is immaterial that the benefit of the exchange runs to a designated third party beneficiary." Cont'l Bank of Pennsylvania v. Barclay Riding Acad., Inc., 93 N.J. 153, 171 (1983).

Defendant's argument that the parties' agreement is somehow based on modifying the terms of the Escrow Order is also completely without basis. See Db16-17. Nowhere does Plaintiff make this argument, nor does Defendant state where Plaintiff allegedly makes it. Nor can it, as Plaintiff has consistently argued that the parties' agreement is completely consistent with the terms of the Escrow Order. See Pb14-16. Moreover, as explained below, Defendant has failed to explain how the agreement is actually inconsistent with the Escrow Order.

Finally, Defendant also argues multiple times that "Plaintiff's claim for breach of fiduciary duty against the Starkey Firm also fails." Db19. See also Id. at 18 ("Plaintiff did not and cannot make these allegations in support of its breach of fiduciary duty claim against the Starkey Firm … Plaintiff wrongly contends that it can bring a breach of fiduciary duty claim against the Starkey Firm…"). This is no more than an attempt to distort Plaintiff's allegations so that Defendant can then argue that "the Chancery Court repeatedly held that Plaintiff was not entitled to receive priority payment of the escrow funds." Db18-19. In reality, Plaintiff never asserted a claim for breach of fiduciary duty. Rather, the Complaint sets forth an action for breach of contract, clearly alleging that the Starkey Firm acted "in violation of the agreement to only pay [the Nagel Firm] the entire monthly amounts." (Ja18 at ¶ 9). See also, e.g., (Ja17 at ¶ 5) ("[The Starkey Firm] agreed to pay [the Nagel Firm] the entire escrow on a monthly basis and confirmed on a number of occasions that no monies would be paid from the escrow account without approval of [the Nagel Firm]"); (Ja18 at ¶ 10) (The Nagel Firm was damaged by the Starkey Firm's "payment of escrow monies to others, all in violation of their agreement"). Indeed, Defendant admits that Plaintiff has actually alleged a breach of contract claim – and that it is distorting that claim – by unsuccessfully arguing in conclusory fashion that "Plaintiff's breach of contract claim [is] masquerading as a breach of fiduciary duty claim." Db23.

II. DEFENDANT HAS FAILED TO DEMONSTRATE THAT THE TRIAL COURT DID NOT ERR BY RULING THAT THE AGREEMENT WAS CONTRARY TO ITS PRIOR ORDER <u>(Raised below: 1T at 25:8 – 23; Ja1)</u>

Plaintiff set forth in its moving brief why the parties' agreement in no way is contrary to the trial court's March 10, 2021 Order. <u>See</u> Pb14-16. Plaintiff further set forth how the trial court's conclusory ruling never actually explains how the agreement and the Escrow Order are actually contradictory, never addresses the actual language of the Escrow Order, and does no more than simply say that they are contrary to one another. <u>See</u> <u>Id.</u> at 10. The Order states:

> The Starkey Firm will release the [escrow] funds to the educational institution(s) for payment of outstanding tuition **<u>or directly to Ringel's legal representative Nagel Rice, LLP… for payment of legal fees…</u>** Ringel retains the right to request the release of additional funds from the JDWC Escrow… for future bona fide educational expenses… **or additional outstanding legal fees…**

(Ja30, ¶ 3, emphasis added). There is nothing in the plain language of this Order which prohibits Ringel or the Starkey Firm – as escrow agent – from agreeing how to disburse the escrow funds so long it is for one of the few enumerated purposes set forth therein – including the payment of the Nagel Firm's legal fees.

Once again, Defendant has failed to address the operative issue. While Defendant repeatedly argues that the agreement modifies the trial court's Order, it never explains how this is so or examines the actual language of the Escrow Order itself. See, e.g., Rodriguez v. Singleton, No. A-3661-21, 2023 WL 7105162, at *2 (App. Div. Oct. 27, 2023) (Ja303) (Orders are interpreted according to their "plain language"); In re Gall, No. A-5735-07T2, 2010 WL 335444, at *8 (App. Div. Feb. 1, 2010) (Ja299) (same). For example, Defendant states in conclusory fashion that the idea that "the plain language of the Escrow Order permits the Starkey Firm to enter into an agreement with Plaintiff regarding future payments from the Escrow Account is superficial and spurious." Db24. However, Defendant never explains why this is so, or how this is supported by the actual language of the Escrow Order. It therefore once again comes as no surprise that Defendant never ventures to explain how the trial court's conclusory ruling that the agreement "conflicts" or change[s]" the Escrow Order has absolutely no basis in the language of the order itself. (1T at 25:8 – 15).

Defendant does no more than state in conclusory fashion that the trial court found a conflict between the agreement and the Escrow Order because "[i]n any given month, if Mr. Ringel did not instruct the Starkey Firm to disburse funds to Plaintiff, then the Starkey Firm was not permitted to do so by the Escrow Order." Db24. This is erroneous for two reasons. First, the trial court's conclusory ruling never says this, nor does Defendant identify where it allegedly did so rule. Second, the possibility of any such contradiction was eliminated because – as Plaintiff alleged and is supported by the documents – Mr. Ringel had already ordered the Starkey Firm that "**[e]ach month… going forward**" it must disburse the escrow funds to the Nagel Firm. (Ja233, emphasis added). Indeed, Defendant admits that in such a situation there is no contradiction, stating that the Escrow Order "does not authorize the Starkey Firm to enter into an agreement with Plaintiff to disburse all escrow funds to Plaintiff **without Mr. Ringel's express authorization.**" Db24 (emphasis added). Defendant simply ignores that here, Mr. Ringel did provide his express authorization. See supra § I; Pb6-8.

What's more, Defendant has completely failed to address the fact that it has **already explicitly admitted that the agreement is consistent with the March 10, 2021 Order and acted pursuant to that admission.** In his email confirming the agreement, Mr. Starkey clearly states that he will require monthly invoices **to comply with the March 10, 2021 Order:**

> Yes ok. I will need a monthly invoice from Bruce [Nagel] because I have to keep documentation **under the Court Order** that the expenditure is for legal fees or for your children's tuition and healthcare. I don't need a detailed bill, just something each month I can have for my file.

(Ja232, emphasis added). In other words, the Starkey Firm has already conceded that the agreement is consistent with the March 10, 2021 Order and is acting pursuant to its requirement for "legal fees upon receipt of documentation verifying the fees." (Id.).

Defendant's argument that these emails only establish that Plaintiff "is *one of* the entities permitted to receive payment from the escrow funds" does not support the trial court's erroneous ruling. Db25 (emphasis added). First, this is, at most, a disputed issue of material fact which must be decided by a jury – not the trial court. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). And, for purposes of a motion to dismiss, the court must "accept as true the facts alleged in the complaint, and credit all reasonable inferences therefrom." Malik v. Ruttenburg, 398 N.J. Super. 489, 494 (App. Div. 2008). Second, Defendant's argument is contrary to the plain language of the multiple emails establishing that the Nagel Firm is to receive all escrow disbursements moving forward. Lastly, Defendant's argument flies in the face of Mr. Starkey's email to Bruce Nagel – one of Plaintiff's attorneys – confirming that he "will not disburse any moneys from escrow unless [he] receive[s] direction from [Mr. Ringel] **with your consent**." (Ja 279, emphasis added).[1]

[1] Finally, Defendant's ad hominem attacks against Plaintiff should be disregarded by this Court. See, e.g., Db10 ("Plaintiff sought to invalidate" court's rulings "through manipulation of the judicial process"); id. at 12 ("Plaintiff doubled down on its defiance"). Not only are such improper, but they have absolutely nothing to do with the operative issues of the instant appeal.

CONCLUSION

For all the foregoing reasons, the decision of the trial court dismissing Plaintiff's complaint with prejudice should be reversed.

Respectfully submitted,

Bruce H. Nagel

BRUCE H. NAGEL

Dated: July 21, 2025