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**PRADEEP KHANNA and ASHMEE
KHANNA,**

Plaintiffs-Respondents,

v.

**SANDEEP KALRA and GLOBAL
PROPERTIES & HOLDINGS LLC,**

Defendants-Appellants,

– and –

**SANDEEP KALRA, in his individual
capacity and on behalf of GLOBAL
PROPERTIES & HOLDINGS LLC,**

Third-Party Plaintiff-
Appellant,

v.

**SUCHITA PERTI, RAJEEV PERTI,
GLOBAL CONSUMER PRODUCTS
t/a OVERDRIVE LIGHTING, JOHN
DOES 1-10 and XYZ CORP. 1-10,**

Third-Party Defendants-
Respondents.

**SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION**

Docket No. A-001293-24

Civil Action

On Appeal From:

Superior Court of New Jersey, Law
Division, Essex County

ESX-L-006624-19

Sat Below:

Hon. Jeffrey B. Beacham, J.S.C.

Hon. Russell J. Passamano, J.S.C.

Attorney of Record and on the Brief:

Justin A. Jacobs, Esq. (006152010)

Submitted:

March 17, 2025

BRIEF OF DEFENDANT/APPELLANT, SANDEEP KALRA

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INTRODUCTION

This case involves three business partners: (1) defendant/appellant, Sandeep Kalra (“Kalra”); (2) plaintiff/respondent, Pradeep Khanna (“Khanna”); and (3) non-party, Micky Mehta (“Mehta”). Together, they owned multiple businesses. As CFO of Global Clothing Network Inc. (“Clothing”), Khanna misappropriated over \$4.2 million between November 2006 and March 2007. Without his partners’ knowledge, Khanna transferred the money into a personal Indian bank account that he jointly owned with his father-in-law. Khanna concealed the theft by using a series of cashier’s checks and fragmented transactions.

Under New Jersey law, corporate officers – especially in closely held businesses – owe a heightened fiduciary duty of the utmost good faith and loyalty. Where an officer engages in self-dealing, the burden shifts to the officer to prove the fairness of their conduct. Here, the trial court failed to apply the proper standard to Kalra’s claim that Khanna had breached his fiduciary duty by transferring over \$4.2 million to his personal bank account (the “Transfers Claim”).

Before trial, Judge Beacham denied Kalra’s motion for summary judgment on the Transfers Claim. However, Judge Beacham’s finding – that Khanna had made the transfers without Kalra’s knowledge – should have

resulted in summary judgment for Kalra. At the summary judgment stage, the only dispute was whether Kalra was aware of the transfers. Judge Beacham expressly found that Kalra was not aware of the transfers and, thus, summary judgment should have been awarded to Kalra.

Judge Passamano also committed two critical legal errors in dismissing Kalra's Transfers Claim after trial. First, Judge Passamano erred by concluding that Khanna did not owe his partners a heightened fiduciary duty. Second, Judge Passamano erred by finding that Khanna's actions were shielded by the business judgment rule even though the protections of that rule do not apply where the officer has engaged in self-dealing.

The trial record, when reviewed under the proper standard, is insufficient to support a finding that Khanna sustained his burden of proving that his misappropriation of over \$4.2 million was fair to Clothing. At trial, Khanna alleged that the reason he directed the transfers was because they were repayments of alleged advances of money from his family to Clothing. However, the evidence at trial – including Clothing's financial statements, the unimpeached testimony of independent witnesses, and Khanna's own prior inconsistent statements – established that no advances of Khanna's family's money had ever taken place. Because Khanna failed to put forth evidence that could satisfy his heavy burden of establishing that the transfers were fair to

Clothing, judgment should have been entered in favor of Kalra on the Transfers Claim.

Judge Passamano also erred by dismissing Kalra's claim that Khanna had improperly usurped a business opportunity (the "Usurped Opportunity Claim"). Khanna secretly obtained a 50% interest in Global Consumer Products ("Products"), a warehouse tenant of one of the partnership businesses. Khanna obtained the opportunity by giving Products free rent and funding Products with Clothing's money. Under New Jersey law, when a partner uses partnership assets for personal gain, any property acquired with the partnership assets belongs to the partnership. Judge Passamano's dismissal of Kalra's Usurped Opportunity Claim was incorrect because it was based entirely upon a finding that Products was not in a related industry. Judge Passamano failed to consider clear evidence that Khanna had used partnership assets to obtain the opportunity, which was sufficient to prove Kalra's claim.

Finally, as set forth in greater detail below, Judge Passamano committed other errors. He improperly calculated damages as to money that Khanna owed Kalra in connection with Indian real estate investments. Judge Passamano also erred in dismissing Kalra's claims against third-party defendants, Rajeev Perti, Suchita Perti, and Global Consumer Products (the "Third-Party Defendants").

PROCEDURAL HISTORY¹

On September 10, 2019, Khanna filed a complaint against Kalra (which was amended on December 15, 2020). (Da1; Da121). On November 13, 2019, Kalra filed a counterclaim and third-party complaint (which was amended on January 26, 2022). (Da9; Da152).²

On October 7, 2022, Khanna filed a motion for partial summary judgment seeking the dismissal of the Transfers Claim on the basis that the claim was purportedly barred by the statute of limitations. (Da167). In the alternative, Khanna requested a Lopez hearing on the issue of whether Kalra knew, or should have known, about the Transfers when they took place. (Id.). On October 25, 2022, Kalra cross moved for partial summary judgment on his

¹ Pursuant to R. 2:6-8, the transcript designations are as follows:

1T - March 2, 2023	9T - September 18, 2023	17T – October 24, 2023
2T - September 5, 2023	10T - September 19, 2023	18T – October 25, 2023
3T - September 6, 2023	11T - September 20, 2023	19T – October 26, 2023
4T - September 7, 2023	12T - September 21, 2023	20T – October 30, 2023
5T - September 11, 2023	13T - September 26, 2023 (Vol. 1)	21T – November 1, 2023
6T – September 12, 2023	14T - September 26, 2023 (Vol. 2)	22T – November 2, 2023
7T - September 13, 2023	15T - September 28, 2023	23T – May 1, 20224
8T - September 14, 2023	16T – October 23, 2023	24T – July 2, 2024

² Additionally, on May 26, 2021, the trial court granted a consent order amending all applicable claims to add Clothing as a defendant and amending allegations against individuals to also be against such individuals in their official capacities as officers, directors and/or shareholders of Clothing. (Da149).

Transfers Claim. (Da398). On March 2, 2023, Judge Beacham denied Khanna's motion for partial summary judgment, denied Khanna's request for a Lopez hearing, and denied Kalra's motion for partial summary judgment. (Da2033-Da2037; 1T). On August 4, 2023, Judge Beacham denied Khanna's motion for reconsideration. (Da2040).

Starting on September 5, 2023, Judge Passamano presided over a 23-day bench trial that concluded on July 2, 2024 (with the parties submitting comprehensive proposed findings of fact and conclusions of law on August 13, 2024). On December 9, 2024, Judge Passamano entered a decision that, among other things, dismissed Kalra's Transfers Claim, Usurped Opportunity Claim, and claims against third-party defendants. (Da2384-Da2418). Judge Passamano's decision also awarded damages to Kalra in the amount of 29,700,000 rupees on his claim involving India real estate. (Da2418.)

On January 8, 2025, Kalra filed a notice of appeal challenging: (1) the dismissal of Kalra's motion for partial summary judgment; and (2) Judge Passamano's decision following the bench trial. (Da2419).

STATEMENT OF FACTS

1. Background

Kalra, Khanna and, non-party, Mehta, had a deep friendship and were business colleagues for decades. (15T28:18-28:25; Da1508-Da1509 at ¶1). In 1997, Mehta and Kalra started a wholesale clothing company (Clothing).

(Da1489 at ¶1). Because Mehta and Kalra lacked experience with managing the finances of a business, they asked Khanna to join them as a partner (with each of them owning 1/3 of the company and Khanna owning his interest through his wife, Ashmee Khanna (“A. Khanna”)). (3T81:19-82:05; 7T103:01-103:18; 7T107:05-108:11; 15T24:08-24:14; Da2058 at ¶¶9-13). Mehta and Kalra trusted Khanna to manage the financial affairs of Clothing because: (1) they had “worked with him before” at a company called “NADW”; (2) they considered him to be a “knowledgeable and honest person”; and (3) they knew he was an accountant in India, had been an owner of an accounting firm in India, and had passed the CPA exam in the United States. (7T115:14-15:21; 7T117:13-118:13; 15T27:15-28:25; Da1492 at ¶13; Da2058 at ¶¶9-13).

When Clothing was founded, Mehta’s role was to oversee all aspects of the men’s and boy’s clothing division. (7T111:05-111:09; 15T25:08-25:14). Kalra’s role was to oversee all aspects of the women’s clothing division. (7T111:05-111:09; 15T25:08-25:14).

Khanna held (and still holds) the title *and role* of Chief Financial Officer for Clothing. (Da1492 at ¶13; Da2058 at ¶16). Khanna described his role as follows: “I am an accountant and handled all financial aspects of Clothing.” (Da473 at ¶6). Khanna oversaw the financial books of Clothing, was “responsible for recording what happened from a financial perspective with the

company,” and was “responsible for maintaining records with respect to the company’s liabilities.” (Da2358-Da23589 at 340:20-341:08; 16T51:01-51:05).

Mehta and Kalra³ trusted Khanna and did not oversee Khanna’s work with respect to the financials of Clothing. (7T115:03-115:13; 15T27:01-27:20). Mehta described the level of oversight of the work that Khanna performed for Clothing as “Negligible. Zero.” (Id.)⁴

From its inception, Clothing experienced significant success. According to Clothing’s financial statements, by 2002, Clothing spent \$2,925,723 on officer’s salaries (\$2,034,000), distributions to stockholders (\$617,139), and contributions to the profit-sharing plan (\$274,584). (Da2259; Da2264). By 2004, Clothing spent \$4,693,574 on officer’s salaries (\$4,140,000), distributions to stockholders (\$381,098), and contributions to the profit-sharing plan (\$172,476). (Da2277; Da2282)

³ Kalra also trusted Khanna to manage his personal finances and taxes. Kalra delegated control over his bank and brokerage accounts to Khanna. (13T31:12-37:18). From 2004-2016, Khanna traded stocks in Kalra’s personal accounts on Kalra’s behalf. (20T112:14-114:23; Da2164 (Kalra’s accountant communicated directly with Khanna with respect to Kalra’s tax returns); Da2167 (Khanna informed Kalra that he had funded Kalra’s IRA contribution from Kalra’s brokerage account)).

⁴ In fact, Judge Passamano refused to let Mehta testify as to the finances of Clothing in response to an objection by Khanna’s counsel because Mehta “had no oversight of the finances” – which were handled exclusively by Khanna. (15T48:12-48:18).

In 2005, the three partners formed another company – Global Properties & Holdings LLC (“Properties”) – that bought a commercial warehouse in Clifton, New Jersey (the “Warehouse”). (Da473 at ¶¶3 and 5). They each owned a 1/3 interest in the company. (Id.). Khanna oversaw the financial aspects of Properties and managed the Warehouse. (Da2059 at ¶18). Clothing operated its business out of the Warehouse owned by Properties and paid Properties rent to lease the space. (Da2059 at ¶4; Da2145).

2. Khanna Engaged In Self-Dealing As The CFO Of Clothing

Unbeknownst to Mehta and Kalra, in a five-month period, from November 2006 to March 2007, Khanna transferred over \$4.2 million (the “Transfers”) from Clothing’s bank account in the United States to an HSBC Account in India, which Khanna operated and jointly owned with his father-in-law, Prem Perti (the “HSBC India Account”). (Da2059 at ¶¶47-159).

The HSBC India Account included a Foreign Currency Non-Resident Account (“FCNR”) – which is similar to a certificate of deposit (“CD”) in which funds are deposited for a specific amount of time (in this case, a year) and the deposits earn a set interest rate until they reach maturity. Each of the Transfers was assigned an FCNR number as listed in the following table:

Date of Deposit	Amount	FCNR Number	Principal plus Interest Earned
11/1/2006	\$20,000.00	251	\$21,110.40
11/3/2006	\$125,954.50	252	\$132,908.07
11/9/2006	\$131,820.13	253	\$139,138.78
11/14/2006	\$103,861.75	254	\$109,595.65
11/14/2006	\$114,206.40	255	\$120,511.39
11/14/2006	\$137,793.60	256	\$145,400.77
11/16/2006	\$23,173.64	258	\$24,456.63
11/16/2006	\$422,049.50	257, 259	\$445,415.96
11/21/2006	\$170,352.00	260	\$179,756.62
11/21/2006	\$44,309.84	261	\$46,756.05
11/21/2006	\$7,524.00	262	\$7,939.38
11/21/2006	\$35,686.88	263	\$37,657.05
11/27/2006	\$74,994.13	264	\$79,134.33
11/30/2006	\$124,994.08	265	\$131,914.25
11/29/2006	\$68,006.03	266	\$71,781.72
11/29/2006	\$69,022.09	267	\$72,854.20
12/8/2006	\$73,584.00	270	\$77,569.24
12/8/2006	\$206,035.20	271	\$217,193.86
12/8/2006	\$140,817.60	272	\$148,444.14
12/8/2006	\$40,622.40	273	\$42,822.47
12/12/2006	\$245,548.80	275	\$258,847.48
11/30/2006	\$122,619.20	276	\$129,408.63
11/30/2006	\$230,075.70	277	\$242,813.61
1/16/2007	\$39,528.00	278	\$41,706.11
1/23/2007	\$34,557.00	279	\$36,461.19
3/13/2007	\$131,086.20	280	\$137,842.64
3/13/2007	\$131,086.20	281	\$137,842.64
3/15/2007	\$167,311.20	282	\$175,959.01
3/20/2007	\$371,233.80	283, 284	\$390,367.94
3/22/2007	\$145,769.40	285	\$153,303.78
3/22/2007	\$145,769.40	286	\$153,303.78
3/23/2007	\$248,068.80	287, 288	\$260,854.76
3/29/2007	\$109,834.20	289	\$115,511.20
TOTAL	\$4,257,295.67		\$4,486,583.73

(Da2093-Da2094; Da2059 at ¶¶47-159).⁵

Khanna concealed the nature and scope of the Transfers by deviating from Clothing's ordinary business practices. Clothing's bookkeeper, Raghu Mariyappa ("Mariyappa"), testified that Clothing used wire transfers to make payments and that he was not aware of a single instance in which cashier's checks were ever used in Clothing's business. (22T15:06-15:24). When Khanna directed the Transfers, he used cashier's checks, which concealed the recipient of the funds from being identified on Clothing's bank account statements. (Dca420-Dca430).

Khanna also curiously broke up the Transfers into many smaller transactions. (Da2093-Da2094; Da2059 at ¶¶47-159). For example, on November 13, 2006, Khanna obtained three separate cashier's checks in the following amounts: \$103,861.75, \$114,206.40, and \$137,793.60. (Dca418). Two days later, on November 15, 2006, Khanna obtained another *six* separate

⁵ At trial, the only deposits that Khanna disputed as having come from Clothing's bank account were those assigned FCNR numbers 251, 252, 264, 265, 278 and 279. However, at trial, Khanna did not introduce any evidence showing that those transfers came from an account other than Clothing's account. Instead, the evidence at trial strongly supported a finding that all of the Transfers into the HSBC India Account came from Clothing's account. Such evidence included: (1) Khanna's admissions that the HSBC India Account was set up to receive transfers from Clothing; and (2) a consistent pattern of money being transferred from Clothing's bank account to the HSBC India Account. (Da181 at ¶12; Da2360 at 345:01-345:06; Da2059 at ¶¶47-159).

cashier's checks in the following amounts: \$23,173.64, \$422,049.60, \$35,686.88, \$7,524.00, \$44,309.84, and \$170,352.00. (Dca419-Dca422). During the three-day period from November 13, 2006, to November 15, 2006, Khanna withdrew over a million dollars from Clothing's bank account, and broke down the Transfers into *nine* smaller transactions, to conceal the Transfers. At trial, Khanna did not provide any contrary explanation.

There was no dispute at trial that Khanna had directed the Transfers. (Da2059 at ¶¶47-159). The key dispute was whether: (1) the Transfers were repayments of funds Khanna's family had advanced to Clothing, with all business participants aware of the alleged advances and Transfers (as Khanna asserted); or (2) the Transfers were a covert act of self-dealing by Khanna with no such family advances ever having been made (as Kalra alleged).

In support of his position, Khanna did not identify any financial records of Clothing that listed any advances of Khanna's family's money. Instead, the financial records of Clothing proved the opposite – that no such advances had ever taken place. (Da1926; Da1945; Da2248-Da2338). Clothing's financial statements meticulously identified all of Clothing's lenders such as: Century Business Credit Corporation, Morgan Stanley Dean Witter, and Fleet National Bank. (*Id.*). The financial statements also identified all related party transactions (including loans from shareholders). (*Id.*). Notwithstanding the

foregoing, there was no mention of any advances of Khanna's family's money in Clothing's financial statements or any other financial record maintained by Clothing. (Id.).

At trial, Khanna did not call any other witnesses to corroborate his story. Notably, Khanna chose not to call as witnesses on this topic R. Perti or A. Khanna even though it was their side of the family that purportedly advanced millions of dollars to Clothing. In contrast, to the lack of corroborating witnesses offered by Khanna, six people that Khanna identified as having knowledge of the alleged advances – namely, Kalra, Mehta, Mariyappa and three suppliers – all testified that they were unaware of any advances of Khanna's family's money. (9T86:05-86:13; 15T37:23-50:17; 22T16:14-17:15; 23T14:01-16:08; 23T93:12-94:23; 23T129:25-132:01).

Khanna's uncorroborated trial testimony was also inconsistent with his own prior statements, which ranged from intentionally concealing relevant information relating to the Transfers to directly contradicting Khanna's claim that the Transfers were repayments of advances. Prior to this case, and unbeknownst to Kalra at the time, Khanna was the subject of an IRS investigation that involved the Transfers. (Dca410-Dca413). During the investigation, Khanna and his wife, A. Khanna, refused to answer, on Fifth Amendment grounds, any questions about the Transfers – including why the

HSBC India Account was opened and the source of the money that was transferred into the account. (Dca497-Dca498 at 28:16-29:23; Dca594a-Dca595ca at 32:24-33:17). They also refused to provide documents to the IRS verifying the origin of all funds deposited into the HSBC India Account (including highly relevant HSBC India Account statements that were in Khanna's possession). (Dca410-Dca411). Khanna's invocation of the Fifth Amendment, and refusal to produce relevant documents, raises a strong inference of wrongdoing with respect to the Transfers.

The only instance in which Khanna provided any information to the IRS with respect to the Transfers was in a "Reply" pleading filed in the United States Tax Court. (Da989 at ¶(qq)). In that pleading, Khanna replied to an allegation that he had fraudulently failed to report taxable income in 2006 and 2007 – which, according to the IRS, consisted of the funds that had been transferred to the HSBC India Account. (Id.). Khanna claimed that the money that had been transferred into the HSBC India Account was "from previously taxed funds in 2006-2007 and did not result in an accretion of Petitioner(s) wealth." (Id.). Khanna's statement to the Tax Court is inconsistent with Khanna's testimony in this case because, if the 2006-2007 Transfers were repayments of advances (as alleged by Khanna at trial), they would not have been taxed in 2006 and 2007.

Khanna also concealed information about the Transfers during discovery in this case. For example, on the first day of his deposition, when Khanna was asked whether the Transfers had come from Clothing's bank account, he feigned ignorance and claimed that he could only confirm that 3 of the 33 Transfers were from Clothing's account. (Da2347-Da2349).⁶ Even though Khanna knew that the rest of the Transfers had come from Clothing's bank account, he refused to confirm as much until he was later confronted with direct evidence proving that the other Transfers had come from Clothing's bank account.⁷ (Da2351 at 221:03-221:10).

3. Khanna Used Partnership Assets To Obtain An Undisclosed Business Interest

In September 2006, third-party defendants, Suchita Perti ("S. Perti") and Rajeev Perti ("R. Perti"), formed a company called Global Consumer Products ("Products"). (Da2084 at ¶184). R. Perti was Khanna's brother-in-law and R. Perti's wife, S. Perti, was a full-time employee of Clothing. (Da2084 at ¶185).

⁶ To the extent that deposition testimony is referenced in Defendant's Appellate Brief, such testimony was also "read" into the record at trial. (Da2345-Da2382).

⁷ The trial record also contained countless additional examples of Khanna concealing information relating to the Transfers during discovery. For example, Khanna filed a motion to quash when Kalra sought documents relating to any IRS investigations, audits, or inquiries of Khanna. In support of the motion to quash, Khanna certified to the trial court that the IRS investigation related "solely" to Khanna and was of a personal nature. (Da2191-Da2192). This was not true (as the investigation involved the Transfers from *Clothing's* bank account).

In 2007, Khanna brought in Products as a subtenant of the Warehouse owned by Properties. (9T20:20-21:19; 15T56:13-57:02; 18T114:07-114:13). From 2007 to 2008, Products did not pay any rent, utilities, equipment, or anything else, for the space it occupied at the Warehouse. (18T114:07-114:17; Da2145).

On or about January 1, 2008 (during a time when Products was not paying any rent for its use of the Warehouse space), Khanna purchased a 50% interest in Products for \$25,000. (Da2085 at ¶188). Khanna admitted that R. Perti had offered Khanna the 50% interest in Products in exchange for \$25,000 **and** Khanna's commitment to infuse more money into Products. (Da2085 at ¶189; Da2376 at 80:03-80:15).

Khanna did not tell his partners, Mehta or Kalra, that he had obtained a 50% interest in Products. (9T21:20-22:12). Mehta testified that he had no communications with Khanna about his ownership interest in Products and that he had "no idea" that Khanna owned 50% of the company. (15T57:08-59:04). In fact, Khanna's own wife, A. Khanna (who was a 1/3 owner of Clothing) was not aware that Khanna had purchased a 50% interest in Products. (Da2382 at 97:06-97:19). The financial statements of Clothing never mentioned Khanna's ownership interest in Products. (Da2329 at n4 (identifying all "related party transactions" including Clothing's lease with Properties but failing to identify Products' sublease of space from Clothing)).

As for the money that Khanna had agreed to infuse into Products, discovery in this case revealed that the money was the same money that Khanna had surreptitiously taken from Clothing through the Transfers. (10T26:03-28:17). Specifically, in December 2007, Khanna transferred \$467,816.78 from the HSBC India Account to the United States bank account of R. Perti. (Da2074-Da2076 at ¶¶100, 103, 106, 115, and 118). In March 2008, Khanna transferred another \$566,326.95 from the HSBC India Account to the United States bank account of R. Perti. (Da2078-Da2079 at ¶¶144 and 147). With respect to the above transfers, Khanna (rather than his father-in-law) directed that the money be transferred to R. Perti. (Dca437).

In sum, during the four-month period from December 2007 to March 2008, Khanna transferred \$1,034,143.73 from the HSBC India Account to the United States bank account of R. Perti. The bank statements that were introduced into evidence at trial indisputably traced the money that had been transferred to R. Perti as having originally come from Clothing's bank account (and Khanna admitted as much in response to Requests for Admissions). See (Da2074-Da2079 at ¶¶100, 103, 106, 115, 118, and 142-147).

Mehta and Kalra were not aware of the above-noted transfers to R. Perti and only learned about them during this litigation. (10T26:03-28:17; 15T60:08-60:11; 15T67:03-67:19; 15T69:09-71:22). When asked, at trial,

what his reaction was to learning that Clothing's money had been transferred to R. Perti's bank account, Mehta responded that: "There's no reason. I can't think of any reason why the money would be transferred." (15T71:15-72:05).

The trial record also showed that, at the same time R. Perti received the above-noted transfers from the HSBC India Account, he infused significant amounts of money into Products. Indeed, during a five-month period from January 2008 to May 2008, the Pertis loaned Products over \$400,000. (Da2095). Notably, neither R. Perti nor Khanna refuted Kalra's claim that the money that R. Perti had received from the HSBC India Account (which originally came from Clothing's bank account) was infused into Products in satisfaction of Khanna's promise. (Da2379 at 245:06-245:09). Instead, R. Perti claimed that he did not know the reason he received the money from the HSBC India Account, and he did not know if that money (or part of that money) was infused into Products. (Da2378-Da2379 at 244:02-245:09). Khanna admitted that, although he did not know for sure whether the money that R. Perti loaned to Products was the same money that R. Perti had received from the HSBC India Account, Khanna opined that: it "could very well be [the same money]." (Da2372-Da2374 at 692:14-692:18 and 696:14-697:11).

Khanna earned the following amounts from his interest in Products (which was obtained by using partnership assets):

Category	Amount	Evidence
K-1 Income	\$1,150,432	(Da2437)
W-2 Income	\$796,881.54	(Da2437)
IRA/401K Contrib.	\$116,970	(Da2437)
Interest	\$92,676.56	(Da2437)
Retained Earnings Payout	\$1,275,731.00	(Da2146-DA2418)
Pension Plan	\$380,000	19T42:02-42:23
Total	\$3,812,691.10	

At trial, Khanna did not dispute the above-listed amounts. (19T34:03-45:02).

4. Khanna Owed Kalra Amounts From India Real Estate Investments

In or around 2005, Kalra and Khanna orally agreed to invest together in real estate properties in India and that Khanna would manage the investments. (Da2086 at ¶193). With respect to two of the properties – one referred to as “Kundli” and one referred to as “Ecotech” – the agreement was that they would both equally invest money in the properties and, when the properties were sold, they would “get back the money [they each] put in, and then [they would] equally split any profit” from the sale. (Da2086 at ¶194). Kundli was owned by the holding company Big Apple Apparel Pvt. Ltd. (“Big Apple”). (Da2086 at ¶195). Ecotech was owned by the holding company Global Garments Pvt. Ltd. (“Global Garments”). (Da2086 at ¶196).

At trial, the evidence showed that 32,410,418 rupees of Kalra’s funds were used by Khanna in connection with Big Apple and Global Garments. Specifically, Kalra gave signed blank checks to Khanna to be used to fund the Indian real estate investments. (Da2086 at ¶198). In connection with the Big Apple and Global Garments investments, Khanna withdrew the following amounts from Kalra’s bank account from July 2009 to October 2014 (and failed to keep and maintain proper accounting of the use of such withdrawals):

HSBC	July 6, 2009	Rs. 3,600,000
HSBC	July 30, 2009	Rs. 2,500,000
HSBC	August 18, 2009	Rs. 350,000
HSBC	October 5, 2009	Rs. 7,500,000
HSBC	April 12, 2010	Rs. 2,500,000
HSBC	June 5, 2010	Rs. 2,500,000
HSBC	July 23, 2010	Rs. 1,000,000
HSBC	November 25, 2010	Rs. 2,500,000
HDFC	September 2, 2014	Rs. 7,460,418
HDFC	October 9, 2014	Rs. 2,500,000
	Total	Rs. 32,410,418

(Dca835-Dca847 (highlighting transfers to “Khanna P”); 10T39:02-42:09; Da2087 at ¶199; Da2365 at 375:20-376:24).⁸

Global Garments (the company that owned Ecotech) was sold on or about March 20, 2017. (Da2098 at ¶211). In connection with the Global Garments sale, Khanna was fully repaid for all of the loans that were made to

⁸ Notably, this was in addition to \$100,000 that Khanna had directed Kalra to transfer to Khanna’s personal HSBC account in India in 2005. (8T15:11-16:11; 21T112:19-112:21.

the company (including the money that had come from Kalra's account). (Da2096-2137). Pursuant to the agreement between Kalra and Khanna, following the sale of Big Apple and Global Garments, Khanna had an obligation to repay Kalra for all of the money that had been used in connection with the Kundli and Ecotech properties. (Da2086 at ¶¶193-194; Da1545 at ¶7). Because (as described above) at least 32,410,418 rupees of Kalra's money was used in connection with the Kundli and Ecotech properties, Khanna was obligated to repay that money to Kalra when the properties were sold.

In addition to being repaid for all of the loans that were made to the company, Khanna also received net profits in connection with the sale of Global Garments – half of which should have been paid to Kalra. (21T113:02-113:09). Khanna owned 50% of the shares of Global Garments. (Da2086 at ¶194). As explained by Khanna at trial, the other 50% of Global Garments was owned by R. Perti (as a proxy for Kalra). (21T18:07-27:07). When Global Garments was sold on March 20, 2017, in addition to the repayment of the funds invested in the company (as discussed above), Khanna and R. Perti also each received 14,236,225 rupees (which is 16,150,000 rupees less 1,913,775 rupees in TDS taxes) for their interests in the company and they paid a brokerage fee of 759,000 rupees. (Da2090 at ¶¶217-219; Da2121-Da2122; 21T118:03-118:17). Instead of transferring to Kalra the money R. Perti

received, R. Perti transferred the money to Khanna, who never remitted the money to Kalra. (21T119:19-119:25).

On March 20, 2017, the date of the sale of Global Garments, Kalra should have been paid the dollar equivalent of 13,856,725 rupees (which is 14,236,225 rupees less 379,500 rupees (half of the brokerage fee)). The parties stipulated to the conversion rate on March 20, 2017, of 65.3454 rupees to 1 US dollar. (Da2050 at ¶D(ii)). Based on the foregoing, the evidence presented at trial demonstrated that Kalra was owed at least the following:

Category of Money	In Rupees	Conversion Rate	In US Dollars
Initial Investment			\$100,000.00
Withdrawals From Kalra's Accounts	32,410,418 rupees	65.3454 rupees to \$1	\$495,986.22
Net Profits From Sale	13,856,725 rupees	65.3454 rupees to \$1	\$212,053.56
		Total	\$808,039.78

Khanna has claimed that the money owed to Kalra should be paid in rupees rather than dollars. However, Khanna testified in his deposition that Kalra is owed “hundreds of thousands of *dollars*.” (Da2365-Da2367 at 376:03-376:22, 378:09-378:11 (emphasis added), 467:19-467:23 (noting that to calculate the amount made on the investment, one would need to “add up the numbers and . . . convert rupees to dollars”). Khanna also testified during his deposition that, with respect to the payment of the Big Apple proceeds – which

were to be treated the same as the Global Garments proceeds – Kalra “wanted funds in U.S. dollars.” (Da2368 at 524:16-524:22).

LEGAL ANALYSIS

Point I: Judge Beacham Erred As A Matter Of Law By Denying Kalra’s Motion For Partial Summary Judgment After Rejecting Khanna’s Statute Of Limitations Defense (Da2033-Da2037; 1T12:01-12:15; 1T15:01-16:08)

An appellate court reviews a summary judgment decision by the same standard that governed the motion judge’s determination. RSI Bank v. Providence Mut. Fire. Ins. Co., 234 N.J. 459, 472 (2018). “To defeat a motion for summary judgment, the opponent must ‘come forward with evidence that creates a genuine issue of material fact.’” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 32 (App. Div. 2012)). “[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion.” Puder v. Buechel, 183 N.J. 428, 440-41 (2005). An appellate court may evaluate and reverse the denial of a summary judgment motion even after a bench trial has taken place. See, e.g., Chiofalo v. State, 238 N.J. 527, 545 (2019).

Here, Judge Beacham’s denial of Kalra’s motion for partial summary judgment as to the Transfers claims should be reversed and judgment should be entered in favor of Kalra. At the summary judgment stage, there was no dispute that Khanna directed the Transfers of Clothing’s money into his

personal account. (Da1513 at ¶16). Instead, the central dispute among the parties was whether Kalra knew about the Transfers (which took place in 2006-2007). (Id.). Khanna’s position was that the Transfers were to pay back his family for prior advances made on behalf of Clothing and that everyone (including Kalra and Mehta) knew about the Transfers. (Da1526-Da1527 at ¶¶71-73). If, as Khanna suggested, Kalra knew about the Transfers when they were made, this would support Khanna’s defense that Kalra’s claim was barred by the statute of limitations.

However, in his oral decision, Judge Beacham found that Khanna did not come forward with evidence that Kalra knew about the Transfers. (1T12:07-12:15). Judge Beacham held that:

The Court’s decision in this case is that Kalra was unaware of any alleged fraudulent transactions. So Kalra’s counterclaim is not barred by the statute of limitations. And furthermore, there is not sufficient evidence in this case for the Court to conduct a Lopez Hearing because the Plaintiff has not met the threshold for a Lopez Hearing. So [Khanna’s summary judgment] motion on the statute of limitations is denied in all respects.

(Id.). Judge Beacham also noted that Khanna did “not have any supporting documents” for his allegation that the Transfers were to reimburse his family

for money purportedly advanced on behalf of Clothing. (1T16:02-16:03).⁹ Because Khanna’s entire defense hinged on his allegation that Kalra knew about the Transfers when they took place, Judge Beacham’s conclusion that Kalra did not know about the Transfers undermined Khanna’s entire defense and should have resulted in the grant of summary judgment in favor of Kalra.

Point II: Judge Passamano’s Finding That Khanna Did Not Owe His Partners Fiduciary Duties Should Be Reversed (Da2389, Da2393)

Following the bench trial, Judge Passamano dismissed Kalra’s claim that Khanna breached his fiduciary duties by, among other things, directing the Transfers. (Da2389, Da2393). In support, Judge Passamano held that, as a matter of law, despite being Clothing’s CFO, Khanna *did not* owe his partners, or Clothing, “a heightened, or particular, fiduciary responsibility.” (*Id.*). Judge Passamano did not cite to any controlling caselaw or other authority to support his conclusion. (*Id.*). The dismissal of Kalra’s claim should be reversed because it is based on an incorrect legal conclusion (that is owed no deference on appeal). Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J.

⁹ The summary judgment record fully supported Judge Beacham’s conclusion, including Khanna’s deposition transcript in which he testified as follows: “Q. You have no documentation to support your assertion that the transfers of Clothing’s Banco Popular account for 2006, into your father-in-law and your account in India ending in 3482, were to reimburse your father-in-law for loans that he made to Clothing’s suppliers, correct, as you know now? I’m correct? A. Yes. . . . Q. Do you have any documentation today . . . that supports that assertion? A. No.” (Da929-Da930 at 224:02-224:09 and 226:06-226:09).

366, 378 (1995) (a trial judge’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference).

It is well settled that corporate officers owe a fiduciary duty to the corporation and its shareholders and owe them the utmost fidelity. Casey v. Brennan, 344 N.J. Super. 83, 108 (App. Div. 2001), aff’d, 173 N.J. 177 (2002); Maul v. Kirkman, 270 N.J. Super. 596, 617 (App. Div. 1994); Stewart v. Harris Structural Steel Co., 198 N.J. Super. 255, 271 (App. Div. 1984) (“at least in their dealings with the corporation and its assets, officers and directors are quasi-trustees”) (internal citation omitted).

The fiduciary duty is heightened in the case of a close corporation such as Clothing. See 68th St. Apts., Inc. v. Lauricella, 142 N.J. Super. 546, 558-60, aff’d 150 N.J. Super. 47 (1977) (noting that “stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners [or joint adventurers] owe to one another”). Officers in a close corporation must discharge their responsibilities with the “utmost good faith and loyalty” and “may not act out of avarice, expediency *or self-interest* in derogation of their duty of loyalty to the other stockholders and to the corporation.” Id. (emphasis added); see also Fortugno v. Hudson Manure Co., 51 N.J. Super. 482, 499 (App. Div. 1958) (“Co-

partners must deal with each other with trust, confidence and good faith; there can be no secret advantages or benefits.”). New Jersey courts have often quoted the following holding of then Chief Judge Cardozo of the New York Court of Appeals made in Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928):

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm’s length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

Id.; see also Friedman Siegelbaum, LLP v. Pribish, No. A-3027-07T1, 2009 N.J. Super. Unpub. LEXIS 610, at *21 (App. Div. Apr. 7, 2009) (explaining that when a partner is in charge of managing partnership accounts, the partner is “held to a very strict and high obligation to that partnership”).

Here, the trial record established (and Judge Passamano recognized) that Kalra, Khanna, and Mehta acted as “partners” and “the different partners [had] responsibility for different functions,” which “comported with the skills that each brought to the venture.” (Da2389). As Judge Passamano found, Khanna assumed the responsibilities of CFO of Clothing because his “skill-set and

experience warranted him addressing the financial issues.” (Id.). Indeed, the record indisputably established that:

- Khanna was a chartered accountant in India, he was a partner (and an owner) in the Indian accounting firm of Ghosh Khanna, he passed his CPA exam in the United States, and he was a member of the American Institute of Certified Public Accounts (Da2058 at ¶¶9-13);
- By his own admission, “from 1990 onwards, [Khanna] worked as a financial officer or accountant for companies in the United States” (6T61:21-61:24);
- Khanna was the Controller (1989-1991) and CFO (1992-1995) for NADW before he worked for Clothing (Da2213);
- Khanna was the CFO of Clothing and was admittedly responsible for all of the financial aspects of Clothing (Da473 at ¶6; Da1492 at ¶13; Da2058 at ¶16); and
- Mehta and Kalra trusted Khanna to handle the financial aspects of Clothing without any oversight (7T115:03-115:13; 15T27:01-27:20).

Pursuant to controlling New Jersey law, Khanna, as CFO of Clothing, had a heightened fiduciary duty to his partners to discharge his responsibilities in conformity with a strict good faith standard and to avoid actions that were self-interested. See 68th St. Apts., 142 N.J. Super. at 558-60. This is especially true because Khanna had substantial accounting and financial management experience, and his partners trusted him to handle all financial aspects of Clothing. Judge Passamano’s dismissal of Kalra’s breach of fiduciary duties

claims should be reversed on appeal because the decision was clearly based on an incorrect legal standard that Khanna did not owe any heightened fiduciary duties to his partners. See, e.g., Silverstein v. Last, 156 N.J. Super. 145, 148 (App. Div. 1978) (the Appellate Division reversed the dismissal of the plaintiff's breach of fiduciary duty claims after a fifteen-day bench trial because the trial court did not assess the defendant's conduct under the correct fiduciary duty standard).

Point III: Judge Passamano's Finding That Khanna's Conduct Was Protected By The Business Judgment Rule Should Be Reversed (Da2394-Da2395)

In support of his dismissal of Kalra's claim that Khanna had breached his fiduciary duties, Judge Passamano found that Khanna's actions – which including directing the Transfers – were protected by the business judgment rule. (Da2394-Da2395). Judge Passamano's dismissal of Kalra's claim should be reversed because Judge Passamano erred in his application of the business judgment rule. Walid v. Yolanda for Irene Couture, 425 N.J. Super. 171, 179 (App. Div. 2012) (“Our review of a trial judge's legal conclusions is *de novo*.”). As set forth in greater detail below, because the trial record established that the Transfers constituted self-dealing, Judge Passamano was required to (but did not) shift a “heavy” burden to Khanna to prove that the Transfers were fair to Clothing.

Under New Jersey law, the business judgment rule generally protects the decisions of a director or officer of a corporation because the courts deliberately avoid second-guessing private business decisions. However, where an officer of a company has engaged in self-dealing, the burden of proof shifts to the defendant officer to show that the transactions were fair to the corporation. In re PSE&G S'holder Litig., 173 N.J. 258, 277 (2002); Maul v. Kirkman, 270 N.J. Super. 596, 614 (App. Div. 1994).

As explained in Berkowitz v. Power/Mate Corp., 135 N.J. Super. 36, 49 (Ch. Div. 1975):

[C]orporate officers and directors who engage in self-dealing transactions have a heavy burden of showing that they have not violated their fiduciary obligations to the minority stockholders. At a minimum their conduct is subject to a searching inquiry to determine whether it conforms to accepted concepts of fairness and equity.

To determine whether the business judgment rule applies, courts ask: (1) whether the action was fraudulent, self-dealing or unconscionable; and (2) if so, whether the officer/director sustained his “heavy burden” of demonstrating by *clear and convincing evidence*¹⁰ that the transaction was fair to the

¹⁰ The clear and convincing proof standard is a heightened burden that requires evidence to be so clear, direct, weighty, and convincing that it produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. See Bhagat v. Bhagat, 217 N.J. 22, 46 (2014). The

corporation. See id.; Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 165 (2011); Daloisio v. Peninsula Land Co., 43 N.J. Super. 79, 94 (App. Div. 1956) (“Instances of directors’ self-dealing are always subject to the closest scrutiny by the court.”); Masholie v. River Edge Estates, 129 N.J. Eq. 228, 231 (Ch. 1941) (noting that when self-dealing is involved, “[t]he law demands, and will permit, the closest scrutiny of such transactions; and the burden of proof is upon the corporate officer or director to show that such transactions were not inimical to the interests of the corporation or its stockholders.”).

A transaction is considered “self-dealing” when it benefits the interests of the officer (and does not equally benefit the other shareholders). See In re PSE&G S’holder Litig., 173 N.J. at 289-90; accord Black’s Law Dictionary (11th ed. 2019) (defining “self-dealing” as “[p]articipation in a transaction that benefits oneself instead of another who is owed a fiduciary duty”); Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 200 (App. Div. 2012) (“The classic example that implicates the duty of loyalty is when a fiduciary either appears on both sides of a transaction or receives a personal benefit not shared by all shareholders.”) (applying Delaware law). It is axiomatic that where an officer

standard is often used when the circumstances suggest that the party subjected to the standard is likely to be in possession of the relevant evidence – such as when an officer of a corporation has engaged in self-dealing and is in the best position to provide evidence relating to whether his actions were fair to the corporation. See In re Polk, 90 N.J. 550, 568-69 (1982).

transfers corporate money into his own bank account such conduct amounts to “self-dealing” because he is on both sides of the transaction and receives a personal benefit not shared by the other shareholders. Masholie, 129 N.J. Eq. at 231-32 (noting that an officer had engaged in self-dealing when he transferred corporate funds into the bank account of his wife, which funds were then traced to a corporation controlled by the defendant officer).

New Jersey courts routinely hold officers and directors accountable for self-dealing unless such officers/directors can meet their heavy burden of proving, by clear and convincing evidence, that their actions were fair to the corporation. In Daloisio v. Peninsula Land Co., 43 N.J. Super. 79, 93-94 (App. Div. 1956), the Appellate Division upheld the ruling of the trial court that the defendant directors had breached their fiduciary duties by diverting ownership of a property to themselves. The Court held that, because the directors’ actions were self-interested, their actions were not entitled to a presumption that they were made “in good faith and in the exercise of an honest judgment.” Id. The Court then subjected the directors’ self-interested actions to close scrutiny and found that the directors were unable to meet their heightened burden of demonstrating that their actions were fair to the company. See id.; see also Masholie, 129 N.J. Eq. at 231 (finding the defendant officer liable for self-dealing because the officer did not meet his burden of proving the fairness to

the corporation with respect to his transfer of corporate funds for personal use); Parker v. Parker, No. UNN-C-108-13, 2016 N.J. Super. Unpub. LEXIS 2720, *39 (Ch. Div. Dec. 22, 2016) (finding the defendant director liable for breach of his fiduciary duties because his conduct amounted to bad faith and he was unable to meet his burden of demonstrating that his actions were fair to the corporation).

Here, the undisputed evidence at trial demonstrated that Khanna, as CFO of Clothing, engaged in self-dealing. Indeed, he personally directed dozens of Transfers, in excess of \$4.2 million dollars, from Clothing's bank account to his personal bank account in India. Pursuant to controlling New Jersey law, after Kalra made the above showing that Khanna had engaged in self-dealing, Judge Passamano should have shifted a "heavy" burden to Khanna to demonstrate, by clear and convincing evidence, that the Transfers were fair to Clothing. See Seidman, 205 N.J. at 165.¹¹

¹¹ Judge Passamano recognized this standard at a prior stage of the trial. Specifically, Judge Passamano noted, in denying Kalra's motion for a directed verdict to dismiss separate fiduciary duty claims raised against Kalra, that there is a "rebuttable presumption and burden shift to the Defendant to show the intrinsic fairness of the transaction in question upon the showing of some self-dealing or some other disabling factors." 7T89:05-89:13. Despite recognizing the proper standard in connection with the denial of Kalra's motion for a directed verdict, Judge Passamano ignored this standard in rendering his decision dismissing Kalra's fiduciary duties claims against Khanna.

Judge Passamano's decision was based on an incorrect legal standard because he never shifted the burden to Khanna, never subjected the Transfers to the closest scrutiny, and never made a finding that Khanna proved (by clear and convincing evidence) that the Transfers were "fair" to Clothing. As such, the dismissal of Kalra's breach of fiduciary duty claim should be reversed.

Point IV: Judgment Should Be Entered In Favor Of Kalra On The Transfers Claim Because The Evidence At Trial Was Insufficient To Meet Khanna's Heavy Burden Of Proving That The Transfers Were Fair To Clothing (Da2394-Da2395)

Where a trial court's conclusions of law and evaluations of fact pursuant to such conclusions are "so wide of the mark that a mistake must have been made," the appellate court is permitted to appraise the record as if deciding the matter at inception and make its own findings and conclusions. See Walid, 425 N.J. Super. at 179 (citing Pioneer Nat'l Title Ins. Co. v. Lucas, 155 N.J. Super. 332, 338 (App. Div. 1978)).

Here, as set forth in Points II and III above, Judge Passamano's dismissal of Kalra's breach of fiduciary duty claim was made in error. Accordingly, this Court is permitted to review the trial record *de novo* and make factual findings under the correct legal standard. See Daloisio, 43 N.J. Super. at 94.

Applying the legal principles discussed in Points II and III above, a review of the trial record reveals that the evidence presented by Khanna at trial

did not satisfy Khanna’s “heavy” burden of demonstrating that the Transfers were fair to Clothing. Khanna’s defense centered on his allegation that the Transfers were the repayment of millions of dollars that his family had allegedly advanced to Clothing and that Kalra, Mehta, and Mariyappa purportedly knew about the alleged advances and the Transfers. However, the evidence at trial was woefully insufficient for Khanna to prove, by clear and convincing evidence, that his family’s money was ever advanced to Clothing.

First, the financial statements of Clothing are dispositive evidence that contradicts Khanna’s defense. The financial statements identify Clothing’s lenders (by name and amount loaned to Clothing) and all related party transactions (including shareholders loans). (Da1926; Da1945; Da2248-Da2338). If Khanna’s advances claim were true, the advances would have appeared in the financial statements. The absence of corroborating financial documents proves that no such advances ever took place. See N.J.R.E. 803(c)(7) (the absence of an entry in records of regularly conducted activity may be offered to prove the nonoccurrence or nonexistence of the matter).

Second, at trial, every single person that Khanna identified as having knowledge of the alleged advances of his family’s money – including Kalra, Mehta, Mariyappa and the three suppliers – directly refuted Khanna’s testimony. (9T86:05-86:13; 15T37:23-50:17; 22T16:14-17:15; 23T14:01-

16:08; 23T93:12-94:23; 23T129:25-132:01). For example, Mariyappa, who was responsible for keeping track of Clothing's accounts payable, testified that: (1) he was unaware of any instance in which Clothing borrowed money from any entity or person other than a bank; (2) he was unaware of any instance in which Prem Perti, Khanna's father-in-law, loaned money to Clothing or advanced money to factories on Clothing's behalf; and (3) he was unaware of any instance in which Khanna's family in India loaned money to Clothing or advanced money to factories on Clothing's behalf. (22T16:14-17:15).

Similarly, Mehta, the third partner in Clothing, testified as follows:

Q. What instances if any did Clothing use money from Pradeep Khanna's father-in-law in connection with the Clothing business?

A. None.

Q. Okay. Are you aware of any instances in which Clothing used money from Khanna's family to finance Clothing's business when Clothing was getting started?

A. No.

(15T38:04-38:12). Mehta also testified that if millions of dollars of Khanna's family's money had been used in connection with Clothing's business that he would have known about it. (15T41:06-41:08; 15T44:08-44:16; 15T48:19-50:17).

In his decision, Judge Passamano grouped together all of the “non-party witnesses” and made the following one-sentence conclusion as to their testimony: “The court did not find the testimony of the non-party witnesses to be credible or of any particular value to the court in making its findings.” (Da2390). Judge Passamano did not provide any reason for his conclusion that the non-party witnesses lacked credibility in contravention of the requirements of Rule 1:7-4. See also Anderson v. Bessemer City, 470 U.S. 564, 575-76 (1985) (holding that a trial judge may not “insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness”).

More importantly, however, Judge Passamano failed to address the fact that *Khanna* had specifically identified each of the non-party witnesses as a person with knowledge of the alleged advances of Khanna’s family’s money. (17T34:17-35:20; 17T38:09-38:19; 17T41:06-41:12; Da2206 at ¶16). For example, Khanna testified that Mariyappa purportedly maintained statements of the use of Khanna’s family’s money. (17T34:17-35:20; 17T38:09-38:19; 17T41:06-41:12). Khanna also certified under penalty of perjury that Mehta was aware of the advances. (Da2206 at ¶16). The unequivocal testimony of Mariyappa and Mehta that they were *not* aware of any advances of Khanna’s family’s money

was critical evidence that directly refuted Khanna’s position.¹² Their testimony was especially significant in contrast to the absence of a single witness who corroborated Khanna’s story at trial.

Where, as here, the trial judge gave absolutely no reasoning for why all non-party witnesses may have lacked credibility, and the testimony given by the witnesses was corroborated by other evidence at trial, the appellate court may disregard the trial court’s credibility findings. See Pioneer Nat’l Title Ins. Co. v. Lucas, 155 N.J. Super. at 338 (reversing the trial court’s findings because “the judge did not properly evaluate significant evidence” and conducting a *de novo* review of witness credibility on appeal). Here, a review of the trial record reveals that the non-party witnesses gave consistent and truthful testimony that they were unaware of the alleged advances and Khanna was unable to identify any evidence at trial that undermined their testimony.

¹² Judge Passamano’s conclusion with respect to the credibility of the non-party witnesses was also inconsistent with the objective evidence in the record. Notably, Khanna did not question the credibility of Mariyappa or Mehta. The facts introduced at trial established that neither witness had any bias in favor of Kalra. At the time of the trial, Mariyappa still worked for Khanna’s co-defendant (and alleged co-conspirator), R. Perti – which suggests that any bias Mariyappa may have had would have been in favor of Khanna and R. Perti (not Kalra). (22T20:07-20:10). As to Mehta, he previously shared a lawyer with Khanna and Khanna described Mehta’s relationship with Kalra prior to the lawsuit as “toxic.” (3T138:01-138:11; 5T128:24-128:25). Simply put, there was no basis to conclude that either witness testified untruthfully and Judge Passamano did not make any specific findings that could support such a conclusion.

Third, the trial record included unrefuted evidence that Khanna took steps to conceal the Transfers – which undermined his claim that the Transfers were proper and done with everyone’s knowledge. Indeed, Khanna used cashier’s checks and broke up the transfers into over 30 smaller transactions over a five-month period to conceal his theft. (Dca420-Dca430; Da2093-Da2094; Da2059 at ¶¶47-159). See also N.J.S.A. § 2C:21-25 (which discusses the practice of engaging in a series of currency transactions to conceal the total amount of money transacted); see also United States v. Majors, 196 F.3d 1206, 1213 n.18 (11th Cir. 1999) (“[e]vidence that may be considered when determining whether a transaction was designed to conceal includes, among others, . . . unusual secrecy surrounding the transaction; structuring the transaction in a way to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; [and] a series of unusual financial moves cumulating in the transaction”). At trial, Khanna failed to explain why he used cashier’s checks – including nine checks over a three-day period – to make the Transfers. Khanna also failed to refute the allegation that his unusual behavior was designed to conceal the Transfers.

Fourth, at trial, Khanna did not offer the testimony of a single corroborating witness or identify a single document that expressly mentioned

any advance of his family's money. Instead, Khanna's defense was based entirely on his own self-serving testimony. Judge Passamano placed great emphasis on Khanna's "straight-forward manner" of testifying in finding Khanna to be credible. (Da2389). However, Judge Passamano ignored Khanna's prior inconsistent statements and all of the other evidence that contradicted Khanna's testimony (such as Clothing's financial statements). (Da2389). See Mastro v. Grimado, No. A-1433-11T4, 2013 N.J. Super. Unpub. LEXIS 2204, at *35 (App. Div. Sep. 5, 2013) (reversing a credibility finding that had been based on good eye contact, calmly answering questions, and a candid demeanor, because the finding ignored the witness' inconsistent testimony, financial records that contradicted his testimony, and his destruction of relevant evidence).

Specifically, Judge Passamano overlooked Khanna's prior statements regarding the Transfers made to the IRS and United States Tax Court. (Dca410-Dca411; Dca497-Dca498 at 28:16-29:23; Dca594a-Dca595ca at 32:24-33:17; Da989 at ¶(qq)). Indeed, Khanna and his wife, A. Khanna, refused to answer any questions (or provide any documents) relating to the Transfers on Fifth Amendment grounds. (Id.). Khanna also stated in a United States Tax Court pleading that the funds he transferred from Clothing's bank account to the HSBC India Account in 2006-2007, were "from previously

taxed funds in 2006-2007 and did not result in an accretion of Petitioner(s) wealth.” (Da989 at ¶(qq)). Khanna’s statement is inconsistent with his later claim at trial that the Transfers were the repayment of advances because repayments would not have been subject to taxation.

Judge Passamano also ignored Khanna’s deposition testimony (which was “read” into the record) in which Khanna feigned ignorance and only confirmed that 3 of 33 Transfers had come from Clothing’s bank account (even though Khanna knew that the other Transfers had also come from Clothing’s bank account). (Da2347-Da2349). Khanna eventually acknowledged that the other Transfers had come from Clothing’s bank account, but only after he was confronted with direct evidence. (Da2351 at 221:03-221:16). Khanna’s initial evasiveness when questioned about the Transfers undermined the position that he took at trial that everyone (including Kalra and Mehta) knew that he had transferred over \$4.2 million dollars from Clothing’s bank account to his HSBC India Account. Indeed, if everyone knew about the Transfers, why did Khanna refuse to confirm on the first day of his deposition that there were more than 3 transfers of Clothing’s funds to Khanna’s HSBC India Account?

A review of Khanna’s trial testimony, in light of his prior evasive and inconsistent statements, reveals that it was insufficient to meet his “heavy” burden of demonstrating, by clear and convincing evidence, that the Transfers

were fair to Clothing. Instead, the overwhelming evidence in the trial record, including Clothing's financial records and the testimony of all non-party witnesses, refuted Khanna's position that the Transfers were repayments of advances. As such, judgment should be entered in favor of Kalra on his fiduciary duties claim that Khanna improperly transferred over \$4.2 million dollars from Clothing's bank account to his own personal bank account.

Point V: Judge Passamano's Decision Should Be Reversed Because He Applied The Wrong Standard In Evaluating Kalra's Usurped Opportunity Claim (Da2396-Da2398)

At trial, Kalra alleged that Khanna had improperly usurped the Products business opportunity based on two independent legal theories – namely: (1) the opportunity was of the type that should have been offered to the partnership; and (2) the investment was developed through the use of the partnership's assets. In his decision, Judge Passamano dismissed the Usurped Opportunity Claim based on a finding that “the business operations of Products was distinct from that of Clothing” and, thus, there “was nothing in the business engaged in by Products that would in any way be essential to Clothing's business.” (Da2396-Da2398). Judge Passamano's decision was in error because he failed to address Kalra's second independent legal argument that Khanna had used

partnership assets to obtain the Products opportunity.¹³ See John R. MacKay, II & Jeffrey M. Shapiro, *New Jersey Corporations and Other Business Entities*, 3rd Ed § 12.06 (Matthew Bender & Co., 2024) (“If a business opportunity that is not functionally related to the business of the corporation is presented to an officer or director in an individual capacity, there is little doubt that that person may exploit the opportunity and not share it with the other participants in the corporation, ***provided the exploitation is accomplished without the use of corporate assets*** and on the person’s own time.”) (emphasis added).

Pursuant to controlling New Jersey law, a partnership (or corporation) is entitled to the profits derived from an opportunity that one partner (or officer/director) exploits on his own ***when the assets of the company are used*** to obtain a benefit for one of the partners (or officers/directors). See Fortugno v. Hudson Manure Co., 51 N.J. Super. 482, 497 (App. Div. 1958) (noting that

¹³ Notably, although he did not evaluate Kalra’s argument in his decision, during trial, Judge Passamano expressed an understanding that Kalra was alleging an independent legal theory that Khanna had usurped a business opportunity because the investment was developed by using partnership assets. In response to an objection as to Kalra’s testimony, Judge Passamano stated: “Mr. Kalra understands and is advancing the notion that the opportunity was intertwined with the use of Property’s assets . . . [and that] it is an opportunity that shouldn’t be held back from the person with the other interest in those assets that are being used.” (12T182:19-183:24; 184:10-184:24).

“when partnership funds are used to purchase property . . . the property so acquired is presumed to be partnership property”).

In the context of a corporation, it is a well-established principle that:

A director or officer of a corporation cannot use corporate assets to acquire, finance or develop his own individual business project or venture and insist that either the venture or the profits thereof are his own property. When such diversion or misappropriation of corporate assets is established, the aggrieved principal may elect either to recover the diverted assets or enforce a constructive trust with respect to the venture and its resulting profits.

Solimine v. Hollander, 128 N.J. Eq. 228, 252 (1940); accord In re Trim-Lean, 4 B.R. at 246 (stating that “a director’s use of corporate funds to finance a business opportunity for his own benefit is prohibited” and that any property purchased with corporate funds is to be held in trust for the benefit of the corporation).

Here, Khanna admitted that Products began to occupy the Warehouse in 2007, and that he did not charge Products rent until 2009. (18T114:07-114:13; Da2145). During the same time frame, Khanna was offered a 50% interest in Products. (Da2085 at ¶188). As such, the trial record established that Khanna used partnership assets (in the form of rent free warehouse occupancy) to help Products’ business at the same time he acquired an individual interest in Products.

Additionally, Khanna admitted that he was offered his interest in Products in exchange for a nominal amount (namely, \$25,000) and a commitment to infuse additional money into Products. (Da2085 at ¶189). R. Perti testified about the agreement as follows:

Q. How did it come to pass. What happened that -- what were the events that gave rise to Mr. Khanna wanting or you are asking him to become a partner [in Products]?

A. It is not a very big event. The business was expanding, I needed financial help, and that is how I brought Mr. Khanna in.

Q. So you brought him in for financial help?

A. Yes.

Q. What do you mean by “financial help”?

A. To infuse cash in business for expansion.

(Da2376 at 80:03-80:23).

At trial, the evidence demonstrated that Khanna used Clothing’s money to meet his commitment to infuse money into Products. Specifically, Khanna admitted that he transferred over \$1 million of Clothing’s money to R. Perti within the same four-month time frame that he obtained a 50% interest in Products. (Da2074-Da2079 at ¶¶100, 103, 106, 115, 118, 144, and 147). During the time that R. Perti received the above-noted funds from Khanna, R. Perti loaned Products over \$400,000. (Da2095). As such, the evidence at trial

– which proved that: (1) Products needed financial help; (2) R. Perti offered Khanna a 50% interest in Products in exchange for the infusion of cash; (3) Khanna gave R. Perti over \$1 million that had originally come from Clothing’s bank account; and (4) at that same time, R. Perti loaned over \$400,000 to Products – was sufficient to trace the money from Clothing’s bank account to Products.

The trial record did not contain any facts or evidence to dispute the showing that Clothing’s money was infused into Products. At trial, R. Perti never denied that the money that was given to him by Khanna was infused into Products. (22T44:07-70:15). R. Perti’s silence on this issue is tantamount to an admission. See Maul, 270 N.J. Super. at 609-10 (drawing an adverse inference against a defendant who sat through a trial in which he was accused of misconduct and chose not to testify in his defense and noting that, because the accusations of misconduct were made against the defendant officer, “who better than” the officer to explain his conduct). Indeed, if R. Perti believed that the money from Khanna was not used in connection with Product’s business, who better than R. Perti to have explained that to the Court.

The trial record also included Khanna’s deposition testimony in which he was asked whether the money R. Perti had loaned to Products was the same money that R. Perti had received from Khanna, to which Khanna replied

that it “very well could be [the same money].” (Da2372-Da2374 at 692:14-692:18 and 696:14-697:11). As such, a review of the trial record makes clear that there was no evidence that disputed the tracing of Clothing’s money as being infused into Products.¹⁴

Ultimately, the dismissal of Kalra’s Usurped Opportunity Claim should be reversed because Judge Passamano committed clear error when he completely ignored Kalra’s argument that Khanna usurped a business opportunity *through the use of partnership assets*. See, e.g., Rolnick v. Rolnick, 290 N.J. Super. 35, 41-42 (App. Div. 1996) (reversing and remanding a case following a bench trial because the trial court had failed to make sufficient findings of fact and conclusions of law with respect to specific issues it was required to address). Additionally, judgment should be entered for Kalra on his Usurped Opportunity Claim because the trial record indisputably established that, in exchange for a 50% interest in Products,

¹⁴ Even if Khanna had attempted to dispute the tracing of Clothing’s money into Products (which he did not), Khanna would have had the burden of showing where Clothing’s money ended up instead. Indeed, as CFO of Clothing, Khanna had an obligation to account to his partners for how the money that Khanna transferred from Clothing’s bank account to his own personal bank account was ultimately used. See Stewart, 198 N.J. Super. at 271 (“at least in their dealings with the corporation and its assets, officers and directors are quasi-trustees”); Masholie, 129 N.J. Eq. at 231-32 (“Where corporate funds have been traced into the hands of [officers of the company, the officers] have the burden of accounting therefor.”).

Khanna gave Products the use of Warehouse space without charging rent and infused Clothing's money into Products.

Point VI: Judge Passamano's Calculation Of Damages For Kalra's India Real Estate Claim Should Be Reversed (Da2412-Da2416)

In his decision, Judge Passamano's analysis with respect to Kalra's India Real Estate claims centered on whether there was a joint venture and contained no analysis with respect to the amount of damages associated with two jointly owned properties – namely, Global Garments and Big Apple. (Da2412-Da2416). Instead, Judge Passamano concluded, without any substantiation or discussion, that: “Kalra is entitled to have the monies (29,700,000 INR), which are being held in Indian Rupees, by Khanna.” (Da2415). Judge Passamano did not explain how he arrived at the 29,700,000 INR figure and the trial record contradicts his damages finding. (Id.).

Under New Jersey law, a trial court is required to clearly state his factual findings and correlate them with relevant legal conclusions. See Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (reversing a trial court's damages award because the trial court did not set forth how he arrived at the amount of the damages); Chambon v. Chambon, 238 N.J. Super. 225, 231 (App. Div. 1990) (reversing the award of alimony and equitable distribution because the trial court failed to make comprehensive factual findings to support its decision).

Here, Judge Passamano did not address, or make any factual findings with respect to, the following issues:

- (1) the amount owed by Khanna for Kalra's investments in Big Apple and Global Garments (as demonstrated by Kalra's bank account statements, which showed transfers directly to Khanna) (Dca835-Dca847);
- (2) the amount owed by Khanna to Kalra for the sale of Global Garments (as demonstrated by the sale documents and testimony) (Da2090 at ¶¶217-219; Da2121-Da2122; 21T118:03-118:17);
- (3) the fact that Kalra should be paid in dollars from the date of the sale (based on the parties' agreement) (Da2365-Da2366 at 376:03-376:22, 378:09-378:11; and
- (4) the interest that is owed to Kalra from the date of the sale, see Rule 4:42-11(b); County of Essex v. First Union Nat. Bank, 186 N.J. 46, 61 (2006) (permitting the award of prejudgment interest on a contract claim when the defendant has had the use of the amount in question).

Pursuant to controlling New Jersey law, because Judge Passamano completely ignored these issues, his finding that Kalra was only owed 29,700,000 INR was clear error and should be reversed. Instead, based on the facts described above (Db18-21), the trial record established that Kalra is owed \$808,039.78 (plus interest from March 20, 2017).

Point VII: Judge Passamano's Dismissal Of The Claims Against Third-Party Defendants Should Be Reversed (Da2416)

In his decision, Judge Passamano dismissed Kalra's aiding and abetting claims against the Third-Party Defendants because "the court did not find that

Khanna had committed the torts that Kalra asserts were aided and abetted by the third-party defendants.” (Da2416). For the reasons set forth in Points V-VI above, this Court should reverse the dismissal of the third-party claims because Judge Passamano erred in his ruling that Khanna had not committed the underlying torts that are the subject of such claims.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court: (1) reverse the dismissal of Kalra’s breach of fiduciary duties claim with respect to the Transfers and award judgment in favor of Kalra on that claim; (2) reverse the dismissal of Kalra’s Usurped Opportunity Claim and award judgment in favor of Kalra on that claim; (3) reverse the trial court’s calculation of damages for Kalra’s India Real Estate Claim; and (4) reverse the dismissal of Kalra’s claims against the Third-Party Defendants.

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Dated: March 17, 2025

PRADEEP KHANNA & ASHMEE
KHANNA,

Plaintiffs-Respondents,

– versus –

SANDEEP KALRA, GLOBAL
PROPERTIES & HOLDINGS LLC,
Defendants-Appellants,

– and –

SANDEEP KALRA, in his individual
capacity and on behalf of GLOBAL
PROPERTIES & HOLDINGS LLC,

Third Party Plaintiff-Appellant,

– versus –

SUCHITA PERTI, RAJEEV PERTI,
GLOBAL CONSUMER PRODUCTS t/a
OVERDRIVE LIGHTING, JOHN
DOES 1-10 and XYZ CORP., 1-10,
Third Party Defendants-
Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-001293-24

Civil Action

On Appeal From:

Superior Court of New Jersey
Law Division, Essex County
ESX-L-006624-19

Sat Below:

Hon. Jeffrey B. Beacham, J.S.C.
Hon. Russel J. Passamano, J.S.C.

Submitted: May 14, 2025

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PRELIMINARY STATEMENT

This case was fundamentally a partnership dispute between Pradeep Khanna and Sandeep Kalra. The third partner, Michael “Micky” Mehta, was fortunate enough not to be embroiled in the ensuing litigation. The three partners owned a multi-million dollar clothing wholesale business (Global Consumer Products, often referred to as “GCNI” or “Clothing”), and later purchased a warehouse through a single purpose limited liability company, referred to herein as “Properties.” Khanna and Kalra both invested in real estate in India held in separate individual names in all but two instances. In the latter instances, the real estate was owned by corporations of which Khanna and his brother-in-law, Rajeev Perti, were the shareholders. Rajeev acted solely as a stakeholder for Kalra, as he did not invest or receive profits (or receive any compensation whatsoever).

After many successful years, Clothing’s business declined. Kalra grew bitter and his relationship with Mehta, and later Khanna, deteriorated. Kalra threatened litigation in India over the real estate investments and eventually made unreasonable additional demands after signing a contract entitled “Memorandum of Understanding” which required his divestment from Clothing and Mehta’s from Properties according to stated terms. Although

Mehta sold his interest in Properties to his two partners, Kalra escalated his demands and remained a shareholder of Clothing as he caused its demise.

When the warehouse was sold, Kalra refused to allow the proceeds from the warehouse's sale to be distributed. This action followed, and due to Kalra's appeal, most of the funds are still held in escrow.

Through Kalra's malicious bitterness, he and his attorneys reimagined his relationship with Khanna, characterizing Khanna as a domineering swindler and himself as unsophisticated and too trusting. By counting one side of the ledger, Kalra accused Khanna of stealing millions from Clothing and himself, personally, to benefit himself, Rajeev, and Global Consumer Products Inc. ("Products"), owned by Rajeev, and at one time with Khanna.

After weeks of trial testimony and the review of thousands of pages of discovery documents that contradicted Kalra's narrative, the experienced trial judge concluded that Kalra was a liar. Kalra had attempted to take advantage of a more than 25-year time span of events with the alleged torts occurring well outside the statute of limitations period, the death of two key witnesses over a decade ago who would have corroborated Khanna's explanation, as well as the fact only Kalra had access to documents that would have immediately exculpated Khanna. Kalra's failure first to even acknowledge his Bank of Barada account, and then when confronted with proof of the account, his claim

to have forgotten all about it and denying any account records existed were unbelievable, especially when other documents were produced by Khanna showing Kalra's use of the account far more recently.

The testimony of Kalra's co-workers and the documentary evidence showed beyond a doubt that Kalra was shrewd and meticulous. Thus, his attempt to pretend ignorance of financial dealings while running a multi-million dollar company where he was intimately involved in the overseas financial transactions, was clearly recognized for what it was by the trial court. On the other hand, Khanna has acted with candor throughout all of his dealings with Kalra, even through the trial, and Judge Passamano recognized it.

For the facts and law set forth below, this Court should reject affirm Judge Beacham's denial of partial summary judgment and affirm Judge Passamano's December 9, 2024 judgment.

STATEMENT OF PROCEDURAL HISTORY

On September 10, 2019, Pradeep Khanna commenced this litigation by complaint against Sandeep Kalra, Global Properties & Holdings LLC, and Bruce R. Rosenberg, Esq., as stakeholder. Da1. Kalra responded to the Complaint on November 13, 2019 with an "Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint" against Pradeep Khanna, Suchita Perti, Rajeev Perti, Global Consumer Products t/a Overdrive Lighting as well

as fictitious defendants. Da9. Mr. Rosenberg was dismissed as a party when an order was entered to move the proceeds of the sale of the GPH warehouse from Mr. Rosenberg's trust account to an interest-bearing account.

Khanna and the named third party defendants served their own answers and affirmative defenses on March 26, 2020 (Da 108) and March 11, 2020 (Da95), respectively. Pradeep Khanna's wife, Ashmee Khanna, successfully moved to intervene as a plaintiff, and then Pradeep and Ashmee Khanna filed an amended complaint on December 15, 2020. Da121. Kalra responded to the amended complaint on January 19, 2021 (Da136). On January 26, 2022, Kalra filed a Second Amended Counterclaim (Da152), which was answered on February 15, 2022 (Da161). Discovery ended on January 31, 2022; however, numerous depositions were conducted and documents exchanged thereafter.

On October 7, 2022, Khanna filed a motion for partial summary judgment on the grounds that Kalra's "Transfer Claims" set forth in his Second Amended Counterclaim were barred by the statute of limitations (Da167). On October 25, 2022, Kalra cross-moved for partial summary judgment on, *inter alia*, his Transfer Claims. The Honorable Jeffrey B. Beacham, J.S.C. denied both motions on March 2, 2023 (Da2033-Da2037; 1T). Khanna filed a motion for reconsideration, which Judge Beacham denied on August 4, 2023 (Da2040).

Beginning September 5, 2023, the Honorable Russel J. Passamano, J.S.C., presided over a 23-day bench trial, with the last day of testimony being July 2, 2024. Pursuant to the trial court, the parties submitted proposed findings of fact and conclusions of law on August 13, 2024. On December 9, 2024, Judge Passamano entered an order that, *inter alia*, dismissed Kalra's Transfers Claim, Usurped Opportunity Claim, and claims against the third-party defendants (Da2417-2418). Judge Passamano supported his order with a 33-page written opinion (2384-2416).

Kalra filed a Notice of Appeal on January 8, 2025 seeking the reversal of Judge Beacham's denial of Kalra's motion for partial summary judgment and the reversal of Judge Passamano's order dismissing Kalra's Transfers Claim, Usurped Opportunity Claim, and related claims against the third-party defendants.

STATEMENT OF FACTS

In 1989, Pradeep Khanna¹ emigrated to from India to work for a clothing wholesaler in Los Angeles, called Protest, which was a subsidiary of North American Design Workshop ("NADW"). 3T66:19-67:20.² Khanna passed the

¹ Pradeep Khanna may be referred to herein as either Pradeep or Khanna. To avoid confusion, his wife, Ashmee Khanna, may be referred to as simply "Ashmee."

² See Db iii for Table of Transcripts.

exam to be a chartered accountant in India but practiced only briefly. 3T66:1-21. Khanna also passed the CPA exam while he lived in Los Angeles but was never licensed or otherwise worked as an accountant in the U.S. 3T70:21-71:4. He never prepared tax returns except for one or two years of his own personal returns. 19T92:11-16; 3T73:5-74:8.

It was in Los Angeles that Khanna met Michael Mehta who headed NADW's new brand, Protest, working in sales and merchandising. 3T68:8-12; 7T87:7-10. In 1990, Khanna moved to New York where he met Kalra who worked at NADW's New York office. 3T68:23-69:6. Khanna's function at NADW was to report to the owners on the levels of expenses, inventory, shipments, and sales while also communicating with the factors to ensure receivables were assigned. However, Khanna never prepared tax returns or financial statements. 3T73:5-74:8.

At NADW, Kalra worked in the shipping department until Mehta helped Kalra get promoted to having responsibilities in "sourcing." 3T69:11-21 & 71:19-20. Sourcing involved identifying factories and suppliers that could produce the goods ordered by the wholesaler's customers. 3T71:21-72:13 & 10T54:18-25 (sourcing was "the back end").

Michael Mehta and Kalra left protest in 1994 to join a new, competing company called Resist. 3T76:1-77:9. Mehta was in charge of the company,

answerable only to the owner, while Kalra handled the women's division.

7T101:14-20. Khanna did not join them. 7T101:21-23. Instead, he remained at Protest until 1995 and then owned and operated a business that distributed CD-ROM games and multimedia until about 1997. 3T81:1-7.

After leaving Resist, Mehta and Kalra formed Global Clothing Network Inc. ("GCNI" or "Clothing") in California through Mehta's accountant in July 1997. 3T89:8-14. 3T82:17-22. Mehta and Kalra were veterans of the clothing wholesale business, but their new venture could not succeed without funds. 3T82:23-84:13. Some limited letters of credit were obtained for Clothing's purchases from Nepal. 19T105:17-22; 3T82:23-83:11. Letters of credit could sometimes be obtained from factors after invoices were issued to Clothing's customers. 6T87:12-88:22. This was not enough for Clothing to achieve success, but partnering with their friend, Khanna, provided a solution as he knew finances and would make his family's money available to support the purchase of inventory and import expenses. 3T77:20-80:7; 3T82:23-84:13; 3T88:2-23; 3T90:19-91:19.

In September 1997, Mehta and Kalra asked him to join Clothing. 3T77:20-78:6. Although Khanna was first offered a 20% interest, it was agreed that Mehta, Kalra, and Khanna would have equal ownership. 3T82:2-5. However, Khanna's interest was held in the name of his wife, Ashmee Khanna,

even though she had no function at Clothing. 3T114:13-25; 2057a at #8. The availability of funds from Khanna's family enabled Clothing to create receivables and assets in the U.S., helping Clothing to be approved for asset-based lines of credit from factors. 6T83:10-86:16.

Clothing's initial capital consisted of \$300,000 from equal contributions of the partners; however, these funds were quickly exhausted. 3T99:21-100:25. As Mehta and Kalra essentially took Resist's business with them when they quit and formed Clothing, about \$224,000 of the initial capital was used to settle a lawsuit by Resist for misappropriation of business opportunity and employees. 10T57:24-60:8; 10T69:12-23; *see* 19T105:11-14 (misappropriation took place before Khanna had joined Clothing); *compare* 10T58:22-59:22 & 14T30:16-31:18 (Kalra denies knowledge that there was a lawsuit or whether Clothing had a lawyer but later recalls settling the case by paying \$224,000 in four installments). Thus, even more so, Clothing needed money from Khanna's family.

Operation of Clothing During the Initial Years

(Lack of corporate formalities and use of Khanna's family money³)

³ Throughout the case below and herein, the term "family money" was used to refer to the money advanced on behalf of Clothing primarily by Ashmee Khanna's late father, Prem Nath Perti, as well as her late brother Sanjeev Perti in India. *See* 3T79:3-80:7; 19T110:3-11.

The three partners⁴ (Mehta, Kalra, and Khanna) operated their clothing business as many small businesses operated – informally. Although they spoke about business regularly, the partners did not observe corporate formalities, such as passing resolutions, except when required by a bank. 3T106:12-108:10; 15T90:7-91:11; & 19T98:4-16. Clothing’s bylaws consisted of the pre-printed form included with stock certificates in a corporate kit obtained by Mehta’s accountant. 3T89:11-90:16; 3T108:11-20; 11T21:13-19 & 19T45:3-16 (Kalra testified he did not recall ever reading the bylaws and Khanna testified he never read them); 19T94:3-20 (bylaws came pre-printed in corporate binder from Mehta’s accountant). Rather than have formal board meetings, the partners had discussions over the phone or informal personal meetings without minutes being taken. 3T144:10-1416; T9222-94:9; 15T90:23-25 & 91:8-11.

Although the three partners had titles, it was only for the purposes of having a designation when dealing with outsiders, such as banks. For example, Khanna used the title “Chief Financial Officer” even though he had no training or education as to the function or obligations of a chief financial officer. 19T95:5-10. Mehta used the title “President” while Kalra used “Senior Vice

⁴ For ease of reference, Mehta, Khanna, and Kalra are referred to together as the “three partners” because Khanna was technically not a shareholder in Clothing but it is undisputed he was considered an owner for all purposes except when his wife, Ashmee, was actually needed to sign a bank document.

President.” *See e.g.* Pa5-10 & 20T98:24-99:8.

Banks were reluctant to offer capital to Clothing before it became established. 3T88:11-23. Factories and suppliers were not comfortable issuing credit or even placing goods in production to a startup, so Clothing was required to advance 40%-50% of the purchase price of materials and product as collateral to the factories in Asia such as USF, Nanda Brothers/Sopan Overseas, Fabrika International, and Ample Exports in India as well as a Hong Kong supplier called Vegas Ltd. 6T90:19-91:18; 19T106:24-108:15; 19T117:1-118:8. Lacking funds in the U.S., the three partners had to rely on Khanna’s family money being advanced to the factories and held as collateral⁵ during the “initial years” of 1997 to about 2004. 3T90:19-91:19; 3T101:7-21; 19T107:10-108:15; 19T108:25-115:2.

Such practices were not required of NADW in its purchases because it was a well-known company and had its own factories overseas to produce inventory. 7T98:11-20; 7T:17-21; 15T21:7-22:8; 15T79:24-80:10. Likewise, the principals of Resist, Gopal Swamy (of U.S.F.), and A.S. Nanda (of Sopan

⁵ Throughout the trial and within Clothing’s business, the words “advances” and “collateral” are used interchangeably when referring to the money sent to factories and suppliers prior to the goods being shipped. 19T119:3-16; 6T93:24-94:4 (defining “collateral”); *see also* 19T117:1-118:8 for additional context.

Overseas/Nanda Brothers), owned factories that produced the inventory and provided credit. 15T21:2-24; 10T55:7-56:4; 15T21:2-24; 15T81:11-19.

In 1998, Khanna, with the help of Mehta and Kalra, prepared a business plan to approach factors and banks for financing. Although the projections were premised on having advances of family money, the plan did not reference factory credit or family money. 3T83:19-84:13; 3T87:18-88:23; 3T90:19-91:19; Da2211-2244.

The use of family money was never shown in discrete line items on Clothing's books because it was never actually received in the company's bank account or entered the United States. 6T103:16:-25; 6T109:7-111:23. Instead, the family money used was simply recorded as a payable or liability of Clothing and grouped in with the accounts payable on the financial statements. 6T110:12-22, 6T111:2-112:17. Said financial statements were prepared by the independent accounting firm of RBSM LLP (formerly MLZ Partners LLP) until 2013 when Pradeep Gupta, CPA, took over the responsibility. 20T42:1-10; *see e.g.* Da1929 & Da1948. Khanna and the bookkeeper would provide information to the accountants, but RBSM and bank auditors would review the company records onsite no less than on a yearly basis. 16T32:14-33:10; 20T41:6-42:17; 21T28:8-30:12.

Although Khanna was "the finance guy," Kalra, dealing with sourcing,

determined what moneys should be paid to factories and kept records of same, even after 2004 when Khanna's family money was no longer necessary. 17T13:21-14:3; *see also* PKH-311 at Pa190, Pa199-201, Pa206 *et seq.* (Emails where Kalra (often referred to as "Sandy") is involved in payment, quota, and shipping issues). Kalra kept track of the advances and managed actual cash provided by Khanna's family. 6T90:1-91:18, 6T103:23-104:15; 6T108:4-10; 19T108:25-110:115; *see also* 6T94:5-98:23 (Khanna explains the process of ordering inventory as well as how and when it is paid for); *see also* 15T82:10-84:5 (The Indian factories, which were the first that Clothing dealt with, produced primarily women's clothing and Kalra was in charge of sourcing women's products, even though there was some overlap in responsibilities).

In addition to the purchase of finished products, family money was used to purchase fabric and quotas. 19T114:8-22; *see* Pa1. During the initial years until about 2005 when the system was gradually phased out, there were government-imposed limits on the quantity of certain goods being exported to the U.S. called quotas. While in some cases the quotas were supplied by the overseas vendor, often Clothing would have to source the goods from the supplier but buy quotas from a broker. 7T19:1-20:1; 24T210:19-211:4; 24T213:10-214:10; *see* Pa225-232. Kalra handled negotiating prices and

quotas with vendors. *Id.* (Kalra and vendors, including Vienn Ho of Vegas Ltd., discuss transferring quotas and the prices).⁶

Kalra managed the family money employed by Clothing and kept track of it, but he did not handle actual cash when it was used. 19T117:1-118:8. When actual cash was sometimes needed to purchase quotas in India, Kalra would request that Sanjeev Perti (Khanna's brother-in-law in India) send it to a supplier or quota broker. 19T117:1-17. Otherwise, Kalra held family money in his Indian Bank of Baroda account and paid suppliers out of it. 7T21:9-16; 19T140:1-141:12; 21T80:12-16 (testimony refers to PKAL-24 at Pa1).

Kalra was meticulous in his record keeping and was good with numbers. 6T115:17-22; 15T94:25-95:17;⁷ 15T102:19-103:4 (Mehta recalls Kalra having good records and being "very detailed" and "very meticulous"); 22T26:6-11 (Bookkeeper recalls Kalra "knew exactly about everything"); 22T26:16-22; 12T107:5-108:14; (Kalra still had his check book from when he first immigrated to the U.S. and was pursuing a purported debt from 1997 in Pa42).

⁶ At Pa228 in a November 16, 2007 email, longtime vendor, Vienn Ho of Vegas Ltd., mentions a "quota supplier" and the transfer of the quotas for a cost. Note that Kalra (as "Sandy") is involved in the discussion, but Khanna is only occasionally included in the email chain.

⁷ In this passage, the transcript erroneously says "Khanna" when Mehta's testimony was about Kalra, as can be ascertained by the redirect examination by Kalra beginning at 15T102:10.

Mehta, on the other hand, was known to be disorganized and was not involved in the finances with respect to sourcing and factory credit. 15T93:14-95:15. Kalra kept track of the family money by handwritten notes and marked up statements. 6T103:23-104:09; 6T106:5-108:10; 17T38:6-40:23; *see also* Pa2 (part of PKH-233 introduced and described at 6T106:16-23 by its Bate number 9406).

The amount of family money deployed was at times categorized in a template that Khanna prepared and Kalra filled in. *See* Pa1 (trial exhibit “PKAL-24”, Bates stamped Kalra 7631); 7T9:5-6, 7T9:24-10:17; 7T11:19-17:14 (Khanna identifying PKAL-24 and the line items, including those reflected on financial statements); and 7T17:25-22:5 (how family money was recorded); 7T22:9-23:5 (Kalra regularly prepared a document in the format of PKAL-24); 19T129:18-140:20 (Khanna explains PKAL-24). The only example of this template available after more than twenty years is the document introduced as PKAL-24.

The accuracy of PKAL-24 was verified at trial by comparing it to Clothing’s 2000 financial statement. For example, the dividend distributions on the financial statement are listed as \$381,757 while PKAL-24 contains line items of Mi 151, Pk 115, and Sk 115⁸ under the heading “Dist.” indicating distributions

⁸ The only logical explanation to this shorthand is that “Mi” stood for Michael

to the three partners totalling \$382,000. *See* Pa117 (2000 financial statement). Second, “Note 8” of the statement indicates that contributions to Clothing’s profit sharing plan totalled \$102,173 while the fourth item from the bottom of PKAL-24 (under “PAYABL”) says “Prof. Sharing 2000” was “102 [thousand].” Pa1 & Pa119. Additionally, the last item on PKAL-24, “Capital Act” matches the financial statement as both documents show \$300,000 for shareholders’ capital. Pa116 (“Stockholders’ Equity”); *see also* 7T14:11-15:11 (Khanna explains the portion of PKAL-24 that would be on the financial statement).

The chart on PKAL-24 also set forth the amounts of family money employed in the form of advances to various factories and suppliers (e.g. VEND ADV, PURCH ADV – USF, FABRIC), money advanced for quotas, as well as family money in the custody of Kalra and apportioned for Mehta’s sourcing activities. Pa1 (Kalra’s handwriting of initials SK and MM next to rows “A”, “B”, and “C”); 19T132:11-138:21; 19T140:1-20 (Khanna’s explanation of items on PKAL-24; Khanna notes at 19T140:7-16 that the money marked “MM” was actually controlled and tracked by Kalra although

Mehta, “Pk” for Pradeep Khanna, and “Sk” for Sandeep Kalra. Kalra’s claim that “HK” stood for Khanna’s (fictitious) bank account in Hong Kong has no support in the record, as there is no evidence Khanna ever had such an account, or any mention of such until Kalra’s trial testimony. *Compare* 9T93:1-94:10 & 20T8:16-10:9. Additionally, from Kalra’s handwritten calculation at the bottom of PKAL-24, it becomes clear that the numbers on the template stand for thousands of dollars.

certain factories were Mehta's responsibility); 21T141:15-154:2 (PKAL-24 described in detail and compared with 2000 financial statement). At trial, Kalra was unable to provide any logical reason that PKAL-24 was not what Khanna said it was. *See* 9T91:5-94:10 (Kalra direct) 11T103:2-9, 11T104:14-109:24 (Kalra cross).

Kalra's notes on PK 9406⁹ consist primarily of amounts of money next to dates from November 20, 1998 to September 17, 2001 in two columns, with the amounts totalling \$148,507 in the left column and \$833,500 in the right column. Pa2; 6T106:16-108:10. The amount in the notes pertaining to the year 2001 was \$703,500 (\$672,500 in the right column, \$31,000 in the left) while the amount pertaining to 2000 and prior was \$341,157 (180,157 in the left, \$161,000 in the right). Pa2.

Kalra, being unwilling to concede at trial that he managed Khanna's family money, falsely claimed that the left column of PK 9406 was a tally of cash distributions that he personally received from Clothing in envelopes and that the right column consisted of noncash distributions from Clothing sent to his Bank of Baroda account. 9T95:17-96:25 & 9T99:2-18. Kalra incredulously

⁹ As the document containing Kalra's notes appended as "Pa2" is frequently referred to by Khanna by its Bates number "PK 9406" or the exhibit as a whole (Pa2-4) at trial by the Exhibit "PKH-233", this convention is continued herein to better reference the transcripts.

claimed that Khanna asked him to tally the cash distributions and bank transfers to Kalra's Bank of Baroda account, which Kalra erroneously claimed only Khanna had access to. 11T23:22-24:7; Da1621 (and Kalra Dep. Vol 3 at 54:22-55:7); 11T88:5-13; 11T89:20-90:8; 11T93:7-19; 8T31; 9T99:3-100:7 & 9T102:18-103:3; 9T132:10-133:2; *see also* Pa22 (#3) & Pa24 (#1) where Kalra does not mention his Bank of Baroda account; 8T31:18-32:17.

Clearly, Kalra lied about the amounts listed on PK 9406 being distributions from Clothing because the 2000 and 2001 financial statements reflected distributions of only \$381,757 and \$150,000, respectively, as to all three shareholders. 6T106:7-107:12; Pa122 & Pa127 (showing even if officers' salaries are included as "distributions, it would be too little to account for Kalra's numbers). Furthermore, Kalra's tax returns from 2000 did not reflect the large distributions Kalra claims he received. Pca1-19 & 11T79:4-80:12; *see also* 15T88:14-90:6 (Mehta did not receive envelopes of cash or anywhere near the amount of distributions Kalra claimed to have received).

Due to the lapse of over twenty years from the use of family money to the time of trial and the more than ten years between the family money being repaid and this litigation, as well as the deaths of Prem and Sanjeev Perti about

ten years prior to Kalra's counterclaim on the transfers,¹⁰ Khanna was only able to locate a couple of examples of Kalra's notes on said money – PKAL-24 (Kalra 7631) and PK 9406 – and Kalra refused to produce his records.

6T106:5-107:12; 7T9:5-23:5; Pa1-4. There is no dispute that Kalra prepared the notes on PKH-233 with his own hand and that his handwriting is on PKAL-24 as well. 6T106:6-7 & 106:16-107:1; 11T:80-81:5; 7T10:15-17.

Contrary to Kalra's assertions, Clothing did not achieve success immediately. He grossly exaggerated the margins on their products. 7T129:1-18; 11T40:19-49:17 (Kalra was confident in his recollection of the margins but apparently had no recollection of the sales numbers); *but see* Pa19 (Margin listed as 27.26%); Pa14 (29.4% margins in 1999); Pa12-13 (projections of gross margins from 21% to 29.2%, gross profits 15.9% to 24.6%, and income before taxes from 6.1% to 11.2%); *see* Pa112, 114, 118, 121, 123 (Financial Statements years 1998-2001 showing gross profits ranging from 17.4% to 20.23%, and net income ranging from 0.68% to 2.71%). Additionally, his testimony about factors was inaccurate.

Factors ensured Clothing was paid for its sales, but they did not directly help in the acquisition of the inventory or materials. 19T118:19-119:2 &

¹⁰ Sanjeev Perti died in 2011 (19T110:12-13) while Prem died in 2012 (19T110:14-15).

122:11-123:7. The money from the factor was not made available to Clothing until after the goods were shipped from Clothing's warehouse and invoiced to its customers, so factors could not have been used to pay for quotas either.

14T45:15-46:3; 24T207:2-6; Pa288-89 (quota/export licenses issued 9/3/03) & Pa283 (shipping date of 9/9/03, import date of 9/19/03); *see* Pa419-420 (Figure 2)¹¹. Family money generally financed the goods being produced in the factory and shipped to the warehouse. 6T86:6-16. It was not until 2001 that Clothing's history with the factor enabled it to open a small line of credit with Fleet National Bank where the credit availability of the factor acted as collateral. 6T98:24-99:25. 6T100:12-14 & 101:11-103:15.

Repayment of Family Money

After Clothing reached a stable financial position, it came time to pay back Khanna's family. The vast majority of the money was repaid between November 1, 2006 and March 22, 2007 to Prem Perti's HSBC account ending 3482, of which Khanna was a signatory (the "Joint HSBC Account"). 20T29:20-30:14; 22T73:21-74:1; Da2066-2079 (RFA 49-152). No interest was ever charged on the family money, and the repayment did not affect the

¹¹ Due to the volume of documents and numerous cross references necessary to understand the Exhibit PKH-357, we created Figure 2, which is a chart of the dates of orders, invoices, payments, quotas, and entry of goods for the transactions within trial exhibit PKH-357.

profitability of the company, the capital contributions of the partners, or retained earnings. 6T110:24-111:1; 20T36:8-11; 22T76:1-77:4.

Related to reimbursing the family money was the recovery of the collateral held by Clothing's suppliers, which was a difficult process that was never fully completed. 20T34:13-37:15. For example, residual amounts from the advances were owed by Vienn Ho's company, Vegas Ltd. 20T84:22 & 20T85:12-87:11; *see* Pa198; 20T88:18-92:16 & Pa63-Pa69 (Kalra emailing Ho about returning Khanna's money). At trial, Khanna presented evidence of Vegas returning approximately 5,919,194 INR¹² or \$133,330 in cash collateral from Vegas to Kalra between August 16, 2006 and March 5, 2008. Dca16, Dca21, Dca42, Dca53; 23T149:21-156:5; *see* Figure 1, below, which summarizes the relevant transactions involving Kalra's HSBC account (PKH-212/Dca14 *et seq.*; related testimony at 23T149:18-156:5).¹³

¹² Indian Rupees

¹³ It appears that on November 27, 2006 the deposit was in U.S. dollars as an exchange rate of 44.395 is listed in the transaction details (Dca21). No exchange rate is listed for the August 16 deposits (Dca16), but it is unlikely that the exchange rate changed too drastically in eleven days. The exchange rate is 39.4618 on September 25, 2007 (Dca42).

FIGURE 1 (ref. PKH-212 introduced at 11T34:16 and 23T149:21)

Date	Details	Deposit Amount (INR)	Exchange rate (appx)	Amount USD	Appndx Page ("Dca")
8/16/2006	Vegas Ltd	1,256,973.83	46.16	27,230.00	Dca16
8/16/2006	Vegas Ltd	1,204,811.50	46.16	26,100.00	Dca16
	Vegas Ltd, USD				
11/27/2006	60,000	2,663,700.00	44.395	60,000.00	Dca21
	Vegas Ltd, USD				
9/25/2007	10,000	394,618.00	39.4618	10,000.00	Dca42
	Vegas Ltd, USD				
3/5/2008	10,000	399,091.00	39.9091	10,000.00	Dca53
		5,919,194.33		\$133,330.00	

Although Clothing's books and financial statements did not have specific references to money owed to Prem or Sanjeev Perti, they reflected the family money owed and when it was repaid. 22T74:2-74:16; Pa137-168 (GCNI Financial Statements 2005-2006). From 2000 to the end of 2005, when family money was used but not reimbursed, the accounts payable steadily increased each year from \$1,278,891 to \$3,789,985. *See* financial statement balance sheets within Pa110-137. In 2006, when most of the family money was repaid, the accounts payable were reduced drastically – from \$3,789,985 to \$560,183, a total of \$3,229,802, demonstrating how the family money was treated on Clothing's financial records. Pa137 & Pa158; 22T75:3-76:25).

Clothing's 2007 financial statement reflected the repayment of family money, albeit, in a less obvious way. Although Clothing's outstanding

payables appear to have increased by \$727,174 in 2007, this apparent contradiction was explained by a more thorough review. Pa155. At year end, 2007, \$1,351,859 in inventory was in transit, and according to the accounting methods of RBSM, this amount was added to the accounts payable. 22T78:8-15; *see also* 22T77:5-78:8 for an explanation of contingent liabilities. This was \$1,220,601 more than what was in transit at the end of 2006, making the accounts payable artificially inflated. Pa160.

The drastic reduction in accounts payable was not possible without the payments toward the balance of family money owed. According to the financial statements for 2005 through 2007, there was a \$0.00 outstanding balance on notes payable. Pa162 & Pa145 (both at Note 7). Although Kalra noted an increase in contingent liabilities between 2006 and 2007 for letters of credit, this was not a reflection of money being taken out of the company. 22T77:22-78:7; *compare* Note 13 at Pa163 & Pa146.

In the context of Clothing's financial statements, contingent liabilities were generally letters of credit issued by the bank and future lease payments. 22T77:16-20. They were not current liabilities or existing liabilities, but future liabilities. 22T77:20-21. Thus, they were not designated as payables or reflected as such on the financial statements, as opposed to the goods in transit, which were. 22T77:22-79:4.

Thus, contrary to Kalra's accusations, Khanna's transfers from Clothing to the Joint HSBC account did not constitute theft or conversion. It would have been impossible for Khanna to steal millions of dollars from Clothing without it being noticed by the independent accountants, the bank auditors, Kalra, or Raghuram Mariyappa (the bookkeeper who reconciled Clothing's bank statements). *See* 22T8:24-10:4; 22T24:12-26:22; 22T28:8-30:4. Furthermore, the money paid back to Khanna's family did not affect the profitability of the company, the capital contributions of the partners, or retained earnings. 22T76:1-77:4.

The trial court properly found that Mehta's lack of knowledge about the use of family money did not prove Kalra's claims of conversion. Da2390, Da2400. Mehta was not involved in the finances of Clothing and the events transpired a very long time ago. *See* 15T25:4-27:6 & 15T68:4-17. Furthermore, contrary to Kalra's testimony that the concept of advancing money to factories as collateral was a "fiction" invented by Khanna, Mehta acknowledged the existence of the practice. 15T75:16-76:5, 15T77:16-78:19; 7T124:11-125:1. On cross examination, when presented with an email he sent to Clothing's accountant, Mehta conceded he had to advance monies as collateral to at least two factories in 2016 after Clothing's Citibank line of credit was cancelled. Pa418; 15T78:5-19; 4T7:7-8:3 (re: Citibank). Thus, the

necessity of credit lines after the initial years (when family money was used) undermines Kalra's testimony that factories provided all the free credit Clothing ever needed without any collateral. *See* 4T7:7-8:9; 5T96:9-14; Pa28-30 (line of credit's importance is discussed but Kalra refuses to guaranty it in 2016); 15T34:6-19 (Mehta says factory credit gave a "leg up" until Clothing was able to get bank credit).

On rebuttal, Kalra presented Rakesh Mehra of Ample Exports, Sushil Barman of Fabrika Internationale, and Vienn Ho of Vegas Ltd. as an attempt to discredit Khanna's testimony about the use of family money. These rebuttal witnesses were representatives of three among many of the suppliers of Clothing's inventory. 5T24:9-26:1; 4T28:1-25; Pa17-19 (listing various suppliers other than Ample, Fabrika, and Vegas); 23T15:3-16:4 (Mehra), 23T93:2-94:19 (Barman), 23T128:21-129:1 (Ho). They testified that not only did Clothing not need to pay prior to receiving the goods, but that Clothing never had to pay for quotas, contrary to Khanna's testimony. 23T11:22-13:14, 23T16:9-17, 23T89:8-90:914, 23T97:14-21, 23T93:2-11, 23T126:23-23T127:5-128:20. However, all three witnesses testified that their respective companies had either closed or left the clothing industry more than a decade

¹⁴ Barman also says he doesn't recall exactly how factories got quotas based on past performance (23T89:8-12).

prior to trial, and claimed as a result, they had no documents related to any transactions with Clothing from the period of 1997 through 2008. 23T8:2-7, 18:18-19:3, 48:7-50:11 & 64:15-18, Pa245 (Mehra); 23T85:21-25 & 96:17-97:13 (Barman); 23T121:8-122:6 & 138:9-140:15 (Ho); *see also* Pa246-47 (document request that Khanna's counsel provided to Kalra's counsel that the rebuttal witnesses certified to have reviewed and to which they had no responsive documents).

The trial court found Kalra's rebuttal witnesses not to be credible. Da2390, Da2399. On surrebuttal, Khanna presented newly found documents pertaining to a customs audit by U.S. Customs and Border Protection (CBP) in late 2004 into 2005. *See e.g.* Pa257 and other "Quota Statements" within Pa248-371. As the CBP audit related to imports from China, the documents contained purchase orders, export licenses/visas (quotas), invoices for the products, and "Quota Statements" for various transactions involving Vegas. *See e.g.* Pa295-306; *see* 24T 39:12-41:24. The Quota Statements indicated that Clothing paid for the quotas directly and this should have been known to Vienn Ho because the document bore her signature. PKH-357 (e.g. at Pa297); 24T39:18-21; 24T27:15-28:24 (Khanna identifies "export license," also known as a visa, as a quota document with example at Pa384); 24T35:24-36:17, 38:5-44:25, 48:18-49:17 (identifying quotas, statements, and who was paid); *see*

Figure 2 (Pa419-20); 24T24T207:2-6. Thus, contrary to Ms. Ho’s testimony, when dealing with Vegas out of Hong Kong Clothing often purchased quotas on the open market from brokers about a week to a month before shipment. 24T210:19-211:4; Khanna Cert. 6 & 8; *see* Da173 ¶¶17 & 19, Da180 ¶¶7-8, 19:1- 21:1 Da247-48 (at 352:8-353:7).

Khanna’s surrebuttal testimony, on the other hand, was supported by the documentary evidence. The Quota Statements listed the exporters, which corresponded to the actual quota documents (the export licenses/visas) as well as the manufacturers. 24T50:17-24; PKH-357, e.g. at Pa297 (Quota Statement showing exporters toward bottom) & Pa299-300 (showing exporters, Cumberland Garment Fty Ltd and Noble Grad Ltd, and manufacturer Hoi Fai Garment Factory, on export licenses).¹⁵ Vegas was not listed on the export licenses, either as exporter, manufacturer, or consignee. Pa250-371 (see pages listed in third column of Figure 2, e.g. at Pa259-60).

Khanna’s testimony that Kalra negotiated the prices of quotas and was involved in the procurement of same was supported by emails he had with Ho and quota brokers. Pa207-14 (note at Pa214 Kalra is advised about the circumstances of when a quota “you [Kalra/GCNI] bought” can be transferred

¹⁵ About eight transactions were included among the CBP audit documents and they consistently show quotas purchased from exporters without mention of Vegas.

to another factory). It is also clear from a 2008 email from Vienn Ho to Kalra that Clothing was responsible for payment for quotas where she advises Kalra as follows “I am still facing the outstanding GCNI issue, yes like you said it is not done and not finish yet, there's outstanding on the quota, debit notes and some bulk payment.” *See* Pa70. If the price of quotas was always included in the invoiced price to Clothing, there would not be such an email indicating money was owed by Clothing on the quota.

The CBP audit documents also disproved Kalra’s testimony that Clothing would not have to pay for goods until thirty to sixty days after they were received in the warehouse. 7T122:2-18 & 7T127:15-128:25; DA-2 (showing payments made shortly before or shortly after shipment from Hong Kong); *see also* Figure 2. The audit documents showed that in 2003 and 2004, after Clothing had established itself and family money was generally not needed, Clothing often paid in advance of receipt of goods or even the final invoice from Vegas. 24T45:1-47:19 (Khanna explains payments were sometimes made in advance, but this is a separate issue from the use of family money and factory credit); *See* Figure 2 & *e.g.* Pa254 (estimated arrival date in Seattle was September 19 while payment made September 11), Pa309-10 (payment date of May 7, goods’ entry date of May 15), Pa355-56 (goods paid for January 12 and arrive January 19), Pa357-58 (payment January 12, entry

January 19). In only two instances was full payment made more than one week after the goods entered the U.S. In the one instance where the last payment on an order was made more than 30 days after entry, Vegas had been paid most of the money in advance of receiving the actual invoice. *See Figure 2 & Pa392.*

Ho also attempted to support Kalra's false explanation of the deposits in his HSBC account from Vegas. *See Da1625 (Kalra Dep. Vol. 3 72:1-73:6 where deposits are a "mystery" to him). When asked if she sent money to Kalra's account, she said "Yeah, just one time." 23T149:18-20.¹⁶ When confronted with Kalra's bank statements (Dca14 *et seq.*/PKH-212 in transcript) showing multiple transactions, she invented a story that she sent money to Kalra's account because Khanna owed Vegas money. 23T149:21-156:12; *see also Figure 1, supra.* The absurdity of Vegas making payments to Kalra because Khanna was indebted to Vegas certainly justified a disbelief of Ms. Ho's testimony.*

¹⁶ The "one time" Vienn Ho was referring to at 22T155:1-5 was an attempted explanation of transactions between a factory affiliated with Vegas and Kalra's personal Fleet Bank account that Kalra was questioned about at in his deposition and at trial. Kalra denied the transaction had anything to do with Clothing. 11T73:9-74:2; Dca111 (ref. PKH-234/PK 9409 at trial). *See also* Kalra Dep. Vol. 2 181:2-183:8. Here Kalra says he loaned money to Vienn, personally, contradicting Vienn's testimony that she was paid this money because she could not get a hold of Khanna to pay a bill. *See* 22T130:23-131:3 & 135:17-136:6.

Khanna's IRS Issues

Throughout this litigation, Khanna had a pending petition against the IRS while defending a counterclaim for allegedly unpaid income taxes related the family money reimbursed by Clothing. D-381, D-8, D-11 (Tax Court pleadings). Contrary to Kalra's innuendo, the IRS's allegations of fraud pertained to the supposed nonpayment of taxes on income, not that Khanna fraudulently transferred money from Clothing. D-8.

Khanna's dispute with the IRS can be traced back to June 21, 2010, when Prem Perti received a letter from the Department of Justice indicating that the department believed he had an interest in an unreported foreign financial account. Da370; Da175-176. After Khanna read the letter, he notified his partners that it appeared from the letter that the Joint HSBC Account in India had been reported to the IRS. He urged them to immediately report their foreign accounts by filing an IRS form known as an FBAR by the June 30 deadline. 15T73:7-20 & 91:12-92:6; 11T150:20-153:1;¹⁷ Dca211.¹⁸

¹⁷ Although Kalra's testimony of the conversation he had with Khanna in June 2010 contained falsehoods and mischaracterizations (see section on credibility, below), even Kalra admits he was aware of Khanna's father-in-law being scrutinized by the IRS as early as June 2010 and that Khanna's belief was that the scrutiny was triggered by substantial payments from Clothing's account to the Perti/Khanna Joint HSBC Account in India.

¹⁸ Kalra reported his HSBC account in his FBAR and OVDI filings, but did not disclose his Bank of Baroda account. 10T143:1-15; Dca211-12; 10T143:1-15; 11T125:1-126:16; 11T135:7-136:12; 13T45:22-46:8.

Furthermore, Khanna and Pradeep Gupta advised Mehta and Kalra to participate in the Offshore Voluntary Disclosure Initiative (“OVDI”) where they can report their foreign bank accounts and pay a reduced penalty for past noncompliance. 15T92:4-22; 11T128:25-133:10. Khanna was unable to take advantage of OVDI because the DOJ letter implicated the Joint HSBC Account. 19T142:7-17

In 2016 Khanna received subpoenas and Information Document Requests (“IDR”) from the IRS. Khanna retained Agostino and Associates (“Agostino”). Dca647. When Clothing’s Banco Popular was subpoenaed by the IRS, Khanna advised his partners that Clothing should hire its own tax attorney as a precaution. Da2151; 16T67:3-11; Pa25. Kalra, seeking to distance himself from Khanna’s IRS problems, refused to meet with him or allow Clothing to retain counsel only to later accuse Khanna of trying to hide what he attempted to discuss with his partners. Pa26; *see* 11T148:12-150:18.

In response to the IDR, Agostino objected on Khanna’s behalf to the production of various documents, but ultimately produced thousands of pages of documents. Dca631, Dca636-640 (see footnotes therein), Dca645 (note bates numbers referenced therein). One of the several objections was that Khanna had no obligation under the Fifth Amendment and *U.S. v. Greenfield*, 831 F.3d 106 (2d Cir. 2016) to provide documents prior to October 13, 2011

(five years prior to his first response). Dca631. Khanna and his wife also, on the advice of counsel, invoked their Fifth Amendment right to remain silent when deposed by the IRS. Dca475 & Dca498 and Dca567 & Dca595.

As there was no nexus between Khanna's IRS issues and Kalra's disputes with Khanna (or any IRS interest in Clothing, itself), there is no logical explanation for why Kalra was so insistent on the production of all documents related to the "IRS investigation" except that Kalra knew that those documents would show that millions of dollars were transferred from Clothing to reimburse the family money advanced during Clothing's initial years. Kalra seized the opportunity of Khanna's IRS problems to pretend he just "discovered" that millions of dollars were transferred from Clothing to the Joint HSBC Account in order to concoct a bogus claim against Khanna while attempting an end run around the obvious statute of limitations bar.

The Warehouse

In 2005, the three partners purchased a warehouse condominium for their clothing business known as 120 Brighton Road, Unit 3, Clifton, NJ 07012 (the "Warehouse") through the single-purpose entity of which they each owned one third, Global Properties & Holdings LLC ("GPH" or "Properties"). 8T9:23-10:23 (Kalra did not think of Properties as a distinct entity from Clothing), 3T109:9-112:10; 20T28:1-5. The Warehouse was about 22,700 to

23,000 square feet, including the 2,000 square feet of office space. 3T123:14-124:2. In 2019, the Warehouse was sold for \$3,200,000; however, Kalra refused to allow the distribution of the proceeds (which were escrowed), necessitating this litigation by Khanna.¹⁹ Da4-5, Da13-14.

The MOU

Clothing's business declined and the relationship between Kalra and Mehta began to deteriorate in 2014 and 2015. 3T138:1-11; 3T139:15-141:16, 7T39:11-20; 6T25:10-11, 8T56:6-24. In June or July of 2015, Citibank placed a hold on Clothing's operating account and canceled the line of credit that was critical to its operations. 3T6:24-8:3; Pa41; 4T7:7-89. At this point, Kalra Kalra grew bitter and spiteful, and no longer wanted to be a part of Clothing. 8T64:24- 67:5 & 68:3-73:13 (Kalra evidences resentment); 21T16:9-12 (old issues that were nonissues were brought up); Pa27, Pa62; 3T124:8-13; 3T142:1-7.

After much negotiation and multiple drafts, the partners entered into a memorandum of understanding (the "MOU") whereby Khanna and Kalra would purchase Mehta's interest in Properties and Mehta and Khanna would purchase Kalra's interest in Clothing. Da1760-1762 (signed MOU); 4T10:20-

¹⁹ When the Warehouse was sold, Mehta was no longer a member of Properties. The background of this change in ownership is recounted herein in the subsection on the "MOU".

24:8; 4T37:1-38:4; see also Pa42-59. Mehta and Khanna signed the MOU on February 25, 2016. Kalra signed in late March or early April 2016 after he received a promissory note and check of \$15,000 from Mehta (related to Kalra's personal loan to Mehta in 2011).²⁰ 4T56:24-57:13; 6T117:1-119:13; 6T130:8-131:10 (Kalra signed in April); Pa60 (Kalra still requesting changes evening of day other partners signed); Pa31-37 (Khanna and Mehta discuss getting Kalra to sign the MOU after February 25). Kalra was satisfied the MOU protected his interests and an addendum was added at his request. 4T59:18-22 & Pa61; 12T58:15; Da1653-1655.

Although Kalra's compensation for divesting himself of his interest in Clothing was provided for in the MOU by a formula, Kalra conditioned his relinquishment of his ownership upon ever increasing demands while simultaneously refusing to carry out his duties as an owner. Da1653-54 at (b), (d)-(g)); 4T27:4-20, 4T29:12-30:15, 4T24:13-25:8, 4T87:15-88:9. 4T24:9-12; 4T135:22-136:17; 12T80:11-12 & 81:21-83:14. Kalra never signed any version of a Share Surrender Agreement to complete his obligations under the MOU, therefore breaching the contract with his partners. 8T122:7-8; Da2400-2402.

²⁰ Kalra claimed he signed the MOU contemporaneously with Mehta and Khanna, but as the emails demonstrate, this was clearly not the case.

According to Clothing's interim financial statement, Clothing had a value of \$1,104,379 as of January 31, 2016. 4T144:20-145:14. However, due to Kalra's failure to either relinquish his shares according to the MOU or guarantee the line of credit, Clothing was prevented from continuing its operations, with no alternative but to liquidate the inventory the best it could. 4T136:11-17. As Clothing had donated and written off its remaining inventory with the consent of all partners by the end of trial, Clothing's only asset was \$97,060.32 in the bank. 20T104:1-107:10. Of this, Khanna agreed to release \$87,060.32 to Kalra in partial payment of his \$200,000 loan to the corporation. \$10,000 was left in trust to cover outstanding invoices to the accountant, Pradeep Gupta, and for the dissolution of the corporation. Pa412-417. Since Khanna did not present any expert testimony as to damages, the trial court ruled that he could not establish damages due to Kalra's breach of the MOU. Da2406.

Global Consumer Products' use of the Warehouse

Global Consumer Products Inc. ("Products") was a seller of lighting products formed in September 2006 by Rajeev and Suchita Perti with the stock being held in Rajeev's name. 22T45:16-46:3; Da2084 at 184. Khanna held a 50% interest in Products from 2008 through 2016. Da2085, Da2146.

As Rajeev and Kalra were good friends whose families socialized, Kalra had no problem with Rajeev operating out of the unused warehouse space. 22T48:15-49:16; 20T54:16-55:9. Mehta had thought nothing about Khanna wanting to help out his brother law, because that is what families do in their Indian culture. 15T57:8-59:25, 15T97:10-16.

Additionally, allowing Products to use the Warehouse provided a practical solution to the underutilized space. 20T54:16-55:1. As the Warehouse was “like an open box” where everybody had access to everything, the storage and office areas would have to be divided and separate entrances installed if the Warehouse were to be leased in part to an unknown party. 22T45:2-15. Additionally, permits and approvals would be necessary. Thus, leasing the unused space to someone other than Products was economically untenable. 21T10:7-13:9; 21T55:13-56:10. Products was a trusted entity that once a profitable enterprise would provide rental income without the expenses of fitting up the Warehouse for a typical tenant or paying a broker. 21T12:24-13:9; 22T44:20-45:15.

For the first year and half, Products hardly had any sales. Rajeev used about 70 to 100 square feet of the office space for Products, with only a few shelves for inventory, and progressed to using about 5-10% of the warehouse space, so none of the three partners asked that it pay rent. 20T53:1-54:9,

20T60:22-61:12; 22T46:19-47:9. As Products grew, it paid increasing amounts of rent to either Clothing or Products. From 2009 to 2013 Products paid \$1,500 per month. Pa15; 18T120:8-16,²¹ 123:25-124:9, 125:15-18; *see also* 18T121:18-23 (all three partners decided how much rent to charge). From 2014 until the Warehouse was sold in August 2019, Products paid \$6,000 per month. Pa15. *See* 20T73:10-78:1.²² This was far more than Clothing paid for those years, as Clothing only paid the condominium association fees and taxes, if anything. Pa15.

The most space that Products used at its peak was between 20% and one third of the Warehouse. 10T25:7-16 (Kalra did not know how much space Products used but inaccurately cites Rajeev's prior testimony²³); 19T27:15-28:14 (Khanna acknowledges that there was testimony that up to one third of the Warehouse was used by Products, but he estimated that they only used 20% or 25% at peak). No one ever objected to the amount of rent paid by Products until Kalra began complaining in 2017 after he acquired a 50% interest in Properties and was supposed to relinquish his interest in Clothing.

²¹ Within 18T (October 25, 2023), Mr. Edell's name is incorrectly transcribed as "Appel."

²² Khanna's testimony as to the rents paid includes references to Products' tax returns in Exhibits D-103, D-105, D-106, D-154. Said exhibits are not reproduced as these numbers are no longer in dispute.

²³ Rajeev Perti testified in his deposition (Da1024-5 at 272:25-274:3) that the most space Products ever used was 30% but the amount fluctuated.

21T7:15-8:5; 21T16:2-12; *see* 12T124:19-127:15 & 12T142:15-144:7 (Kalra says he never bothered to find out how much rent was being paid); 12T146:22-148:22 (Kalra says he never knew how much space Products used because it was not his responsibility to know); *see* 15T in general (Mehta never testifies about the rent being unfair).

Khanna and Kalra's Indian real estate investments

In 2005, Khanna and Kalra decided to invest in real estate in India.²⁴ Da2086 (RFA 193). There were two classes of property that they invested in, residential and industrial. With respect to the residential real estate, Khanna and Kalra would each purchase a similar unit in the same development and own their respective units individually. 8T51:7-19. Kalra had characterized the residential properties of the properties as belonging to a joint venture notwithstanding they were owned by either Kalra or Khanna, individually. 8T47:4-20. Kalra also alleged that he had no involvement with the purported joint venture's operations and that Khanna converted Kalra's funds.²⁵ At trial, Khanna provided an accounting of Kalra's invested funds and also

²⁴ The parties generally used the Indian convention of referring to quantities of Indian Rupees ("INR") in "lakhs" or "lacs" and "crores." One lakh/lac equals 100,000 INR while a crore is 10,000,000 INR or 100 lakhs. *See* 12T12:2-5.

²⁵ Kalra had alleged he had no control over his HSBC account; yet it was demonstrated he had many communications with the bank and conducted numerous transactions not involving Khanna. Pa84-85; *see e.g.* Da429 (82-83); Da1561 at 24:2-5; Da1569 at 54:8-55:19; 10T118:5-121:14; Pa78; Pa93-107.

demonstrated that Kalra was actively involved in his individually owned investments. 22T:91:17-94:16. 22T95:6-101:24; 12T6:4-9, 12T7:16-20, 12T24:17-35:19. The trial court found there was no joint venture, and that Khanna had not converted any of Kalra's invested funds but accounted for same. Da2412-15. This ruling is not being appealed.

The two industrial properties were purchased through Indian corporations, each owning one property. Big Apple Pvt. Ltd. ("Big Apple") owned a property referred to as "Kundli." Da2086 (RFA 194-195). Global Garments Pvt. Ltd. ("Global Garments") owned the other, which was known as "Ecotech." Da2086 (RFA194-196). Due to the complexity of becoming a corporate officer in India, Kalra's interests in Big Apple and Global Garments were held by Khanna's brother-in-law, Rajeev Perti, as his nominee, so that Khanna and Rajeev were the two legal owners of said corporations required by Indian law. 22T53:1-14 & 54:1-20. Rajeev received no compensation for acting as a stand-in or facilitating any transactions on Kalra's behalf. 21T25:23-27:3, 22T54:21-55:12.

Khanna and Rajeev sold their shares in Big Apple on or about September 23, 2015 and their shares in Global Garments on or about March 20, 2017. Da2088. Although Khanna received the proceeds of the sale of his shares of both corporations, Kalra received only partial payment due to Kalra's multiple,

unfounded threats against Khanna. 21T127:17-130:1. Khanna had agreed to pay Kalra the remaining proceeds of the sale of the Indian corporations, less taxes owed, in Indian Rupees because that was the currency used in the transactions; however, Kalra made escalating demands and refused to sign a release. 21T123:9-124:6, 21T159:23-160:13. The funds, in Rupees, are being held to this day in Khanna's personal account in India. 21T159:23-160:5.

The trial court ruled that the 29,700,000 INR are to be paid to Kalra. Da2416. This amount was calculated based on Khanna's reconciliation of the money paid and received by Kalra as well as the money exchanged between Khanna and Kalra for all real estate. *See* Pa16 (accounting from April 2005 to October 19, 2014 marked as "PKAL-31"); 19T89:11-90:9, 22T82:23-88:2, 22T1015-14. Since the invested funds and sales proceeds from multiple transactions as well as payment of U.S. and Indian taxes, Khanna calculated that 29,700,000 INR (2.97 crore) was the combined, net amount owed to Kalra on his investments. 19T79:11-22, 19T81:7-17, 19T84:4-11, 19T87:19. 19T89:11-90:9.

Khanna accepts the court's ruling as it conforms to what he previously agreed to pay. 22T82:25-83:6²⁶ Kalra has also appealed that the money is to be paid in Rupees without interest. Db 48.

²⁶ The word "carush" at 22T83:6 is a mistranscription of "crores."

LEGAL ARGUMENT

POINT I – KALRA’S MOTION FOR PARTIAL SUMMARY WAS PROPERLY DENIED BECAUSE KHANNA PRESENTED EVIDENCE OF GENUINE DISPUTES OF MATERIAL FACT (1T16:2-8)

A. Standard of Review

“The court's grant or denial of summary judgment is reviewed *de novo*, subject to the *Rule* 4:46-2 standard that governs a trial court's ruling on a summary judgment motion.” *Schwartz v. Menas*, 251 N.J. 556, 570 (2022). Under *R.* 4:46–2, the court must determine whether there exists “a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 523 (1995), holding modified by *Schneider v. Simonini*, 163 N.J. 336 (2000) for reasons inapplicable here.

With respect to Kalra’s motion for partial summary judgment (Kalra’s “PSJ motion”), his moving papers must be “closely scrutinized” and Khanna’s “opposing papers indulgently treated.” *Shanley & Fisher, P.C. v. Sisselman*, 215 N.J. Super. 200, 211 (App. Div. 1987) citing *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67, 74–75 (1954) and *Brenner and Co. v. Perl*,

72 N.J.Super. 160, 166 (App.Div.1962). “In the context of a summary judgment motion, the judge does not weigh the evidence, or resolve credibility disputes. These functions are uniquely and exclusively performed by a jury.” *Conrad v. Michelle & John, Inc.*, 394 N.J. Super. 1, 13 (App. Div. 2007) citing *Parks v. Rogers*, 176 N.J. 491, 502 (2003); *Brill, supra*, 142 N.J. at 540. The standard is the same whether the fact finder is a judge or jury. *See In re Perrone's Est.*, 5 N.J. 514, 521–22 (1950). Thus, a disbelief of Khanna’s certifications and deposition testimony at the summary judgment stage would improperly abrogate the factfinder’s role at trial who has “the power to accept or reject in whole or in part, a witness’s testimony...” *Conrad, supra*, at 13 citing *State v. Scelfo*, 58 N.J.Super. 472, 478 (App.Div.1959), *cert. denied*, 31 N.J. 555 (1960).

“In short, summary judgment should be denied unless the right thereto appears so clearly as to leave no room for controversy.” *Shanley, supra*, at 212; *see id.* at 211 (“If there is the slightest doubt as to the existence of material issue of fact, the motion should be denied”). As the PSJ motion papers demonstrate, the parties vehemently disputed the facts with certifications and supporting documents, so the record was fraught with controversy. *See e.g.* Da1518-1546.

B. The purportedly undisputed material facts set forth in Kalra’s PSJ Motion were contradicted by Khanna’s certifications and supporting documents; therefore, the denial of Kalra’s motion for partial summary judgment should be upheld.

Although Judge Beacham’s decision apparently overlooked the documents Khanna had attached as exhibits and explained as supporting the nature of the transfers, he correctly found that the question of the propriety of the transfers was a question for the factfinder based on Khanna’s testimony:

“Even though P. Khanna does not have any supporting documents, P. Khanna has given his reason for the fraudulent transaction and the Court finds that it is a jury question that the jury has to decide whether or not P. Khanna has a valid response to his reasons for the alleged fraudulent transactions.” [1T16:2-8].

Khanna’s statement of undisputed material facts in support of his own motion for partial summary judgment filed October 7, 2022 as well as his opposition to Kalra’s motion cite testimony and documents that contradicted Kalra’s narrative that the transfers from Clothing to the Joint HSBC Account constituted theft or conversion, belying his argument that there was no material factual dispute. *See* Da170-178 (particularly 21-24, 37-40), Da185 at 11(d), Da277; Da1523-1525 ¶¶60-64. In Khanna’s reply certification in support of his own PSJ motion, he explained how Clothing’s financial statements, submitted therewith, reflected the use and repayment of family money. Da1920-1924 (Khanna Cert. ¶¶3-6, 16).

Contrary to Kalra’s arguments, an appellate court should not disregard Khanna’s certifications as merely conclusory and self-serving. As his certifications opposing Kalra’s PSJ motion were consistent with his deposition testimony and any apparent contradiction was plausibly explained, they cannot be considered “sham affidavits.” *See* Da1920-21; *Shelcusky v. Garjulio*, 172 N.J. 185, 193–94 & 201-202 (2002). “Courts should not reject alleged sham affidavits where the contradiction is reasonably explained, where an affidavit does not contradict patently and sharply the earlier deposition testimony, or where confusion or lack of clarity existed at the time of the deposition questioning and the affidavit reasonably clarifies the affiant's earlier statement.” *Id.* Here, Kalra cannot allege that Khanna “changed his story” and invented convenient facts only to defeat summary judgment.

Despite reaching the correct conclusion, the opinion contained language indicating that it made a factual finding where Khanna’s certification conflicted with Kalra’s. 1T12:7-9 (“The Court’s decision in this case is that Kalra was unaware of any fraudulent transactions”). By relying on this finding, Kalra is adopting the erroneous argument that the motion judge’s factual finding should be binding on appeal, contrary to all of the case law cited above. Db23. Fortunately, the trial court reached the correct conclusion despite engaging in fact finding when presented with conflicting evidence. *Gilhooley*

v. County of Union, 164 N.J. 533, 545 (2000) (“It was not the court's function to weigh the evidence and determine the outcome but only to decide if a material dispute of fact existed.”); *see* Da1512 ¶12-13, Da174-175 ¶27-32, Da 181 ¶13 (as to Khanna’s contention that Kalra was aware of the transfers); *see also State v. McLaughlin*, 205 N.J. 185, 195 (2011) (“An order will be affirmed on appeal if it is correct, even if we do not adopt the specific reasoning of the trial judge”).

Khanna’s identification of inconsistencies and implausible statements in Kalra’s motion rightly indicated that Kalra’s narrative should not have been allowed to go untested. *See CPC Int’l, Inc. v. Hartford Acc. & Indem. Co.*, 316 N.J. Super. 351, 374-375 (App. Div. 1998). As “[a] case may present credibility issues requiring resolution by a trier of fact even though a party's allegations are uncontradicted,” *Id.* at 375 quoting *D’Amato by McPherson v. D’Amato*, 305 N.J. Super. 109, 115 (App.Div.1997). For example, Kalra alleged that his handwritten notes produced as PK 9406 reflected distributions from Clothing even though the financial statements show that the total distributions to all three partners was far less than what Kalra claimed he personally received. *Compare* Da227, Da402 ¶12, and Da1924 ¶16. Additionally, Kalra’s dubious excuses of forgetting about and not having any records for his bank account that Khanna said was used to manage the family

money cast further doubt that any court should accept his testimony without submission to a trier of fact. *See* Da177 (Kalra forgot about account that he used to send at least a million dollars), Da1922-24, Da2001-02, Da1582 (106:11-22).

C. As summary judgment motions are to be reviewed *de novo*, the Appellate Court should find that Kalra should not have been granted summary judgment on his “Transfer Claims” because they were barred by the statute of limitations.

If this Court is inclined to overturn Judge Beacham’s denial of Kalra’s motion for partial summary judgment, it should still affirm the lower court’s order because the statute of limitations barred Kalra’s “Transfer Claims.” The last of the transactions that Kalra alleged to have constituted fraud or conversion took place almost fifteen years before the Second Amended Counterclaim was filed and more than twelve years before Khanna initiated the case at bar; therefore, there is no question they were beyond the six-year statute of limitations of N.J.S.A. § 2A:14-1(a). *See Balliet v. Fennell*, 368 N.J. Super. 15, 19-21 (App. Div. 2004) (whether a cause of action is barred by the statute of limitations is a question of law). Thus, Kalra had the burden to prove his right to the equitable relief provided by the discovery rule. *Lopez v. Swyer*, 62 N.J. 267, 276 (1973); *see Catena v. Raytheon Co.*, 447 N.J. Super. 43, 53 (App. Div. 2016).

Unfortunately, the motion judge misapplied *Lopez* by requiring Khanna to meet a “threshold” to have a hearing to demonstrate the discovery rule was inapplicable. 1T12:10-15; *see Lopez, supra* at 276 (“The burden of proof will rest upon the party claiming the indulgence of the rule”). Under *Lopez*, it was Kalra, who invoked the discovery rule, not Khanna, who was required to meet such a threshold. *J.P. v. Smith*, 444 N.J. Super. 507, 528 (App. Div. 2016). Furthermore, Kalra was not necessarily entitled to a *Lopez* hearing, but instead could have had his claim rejected on the motion papers after consideration of the equities. *See id.*; *see Savage v. Old Bridge-Sayreville Med. Grp., P.A.*, 260 N.J. Super. 417, 424-25 (App. Div. 1992), *aff’d*, 134 N.J. 241 (1993)

The motion judge also failed to consider all relevant facts and circumstances, including such determinative factors as “the nature of the alleged injury, the availability of witnesses and written evidence, the length of time that has elapsed since the alleged wrongdoing, whether the delay has been to any extent deliberate or intentional, whether the delay may be said to have peculiarly or unusually prejudiced the defendant.” *Lopez, supra*, at 276. Since 1997, when the family money was first advanced, and since 2007 when it was repaid, witnesses’ memories have faded, witnesses have died, and records have been destroyed; thus Khanna was severely prejudiced by the passage of time.

The vendors Kalra called on rebuttal all testified that they had long ceased doing business and no longer had any relevant records. Kalra also had foreclosed the possibility of any contemporaneous records being available by not producing any statements from his Bank of Baroda account. Even if Kalra's forgetfulness could be believed, those bank records were unavailable. On the other hand, those who could have supported Khanna's testimony, Prem and Sanjeev Perti, were about ten years dead before Kalra brought his Transfers Claim.²⁷ Thus, even if Kalra could justify the delay in bringing his claim, the equities militated against its allowance. *See Savage, supra*, at 424-25 (the court may refuse to apply the discovery rule when the passage of time causes material prejudice); *see also Abboud v. Viscomi*, 111 N.J. 56, 63 (1988).

"It is not every belated discovery that will justify an application of the rule lifting the bar of the limitations statute[,]” and Kalra's claimed “discovery” of the transfers from his own company nearly fifteen years after the fact certainly was not one. *Lopez, supra* at 275. If Kalra's testimony about Khanna incurring the scrutiny of the IRS by taking million dollars out of

²⁷ Kalra claims that Rajeev could have testified for Khanna, but there was little reason Rajeev would have any knowledge of his family money being that he was at sea in the merchant marines during the time in question. *See Da1277* at 11:1-8 & 12:19-21; *Da1290* at 66:10-25.

Clothing and then putting it back could have been believed,²⁸ certainly Kalra did not act with reasonable diligence by not reviewing any of his own company's financial records for over a decade. *See Martinez v. Cooper Hosp.-Univ. Med. Ctr.*, 163 N.J. 45, 52 (2000) citing *Baird v. American Med. Optics*, 155 N.J. 54, 72 (1998) (The Court must consider "whether the facts presented would alert a reasonable person exercising ordinary diligence that he or she was injured due to the fault of another"). Kalra being a competent businessman, known for his attention to detail, simply could not have been unaware of millions of dollars being transferred from his company if such moneys were in fact taken illegitimately.

POINT II – KALRA'S ARGUMENTS THAT THE TRIAL COURT ERRED IN DISMISSING HIS "TRANSFERS CLAIMS" IGNORE THE FACT THAT HIS CREDIBILITY AS WELL AS THAT OF HIS WITNESSES WERE FOUND TO BE UNTRUTHFUL UPON CROSS EXAMINATION (Da2400)

Judge Passamano properly found that "[i]n many respects, the issues that were before the court turned on credibility." Da2388. "Because a trial court hears the case, sees and observes the witnesses, and hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses." *Cesare v. Cesare*, 154 N.J. 394, 412 (1998) (internal quotes omitted). The Appellate Division is "not permitted to weigh the evidence,

²⁸ *See also* Da175-176 (¶31-33), Da262 where Kalra's prior attorney seemed to be aware of transfers between Clothing and Khanna's family members.

assess the credibility of witnesses, or make conclusions about the evidence.” *State v. Locurto*, 157 N.J. 463, 472 (1999). Instead, it is restricted to the test of “whether the findings made by the trial court could reasonably have been reached on sufficient credible evidence present in the record.” *Id.* (internal quotes and citations omitted). For this reason, the trial court’s factual findings and legal conclusions should not be disturbed unless the reviewing court finds them “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]” *Seidman v. Clifton Sav. Bank, S.L.A.*, 205 N.J. 150, 181–82 (2011); *In re Johnson Trust*, 194 N.J. 276, 284 (2008); *Rova Farms Resort, Inc. v. Investors Ins. Co.*, 65 N.J. 474, 484 (1974).

“Deference [to factual findings] is especially appropriate when the evidence is [as Judge Passamano noted below] largely testimonial and involves questions of credibility.” *Sipko v. Koger, Inc.*, 214 N.J. 364, 376 (2013) quoting *Cesare, supra*, at 412 (further internal quotes omitted). Having observed approximately twelve days of Khanna’s testimony and explanation of exhibits, the court found him to be credible. The court noted that “[Khanna] answered questions in a straight-forward manner both on direct and cross-examination. The court did not find any indication that he was attempting to

mislead the court.” Da2389. Conversely, Kalra’s testimony over the course of six days, was not found to be credible. Da2393.

Based on the weeks of testimony heard as well as numerous documents considered by the court, there was more than substantial evidence in support of the trial judge’s conclusion that Kalra failed to prove that the transfer of funds from Clothing to the Joint HSBC Account constituted theft or conversion. Rather, there was ample, credible testimony and documentary evidence to support the finding that Khanna’s family advanced money on behalf of Clothing and Kalra kept track of it. *See e.g.* 6T103:13-115:24; Pa1-2; *see also Sipko, supra*, at 376. The independently audited financial records of Clothing reflected the transfers of money from Clothing’s account to the Joint HSBC Account. 22T8:24-10:4; 22T24:12-26:22; 22T28:8-30:4. The financial statements showed that the transfers Kalra claimed were fraudulent were actually paying down Clothing’s debts that accrued when family money was advanced on Clothing’s behalf. *See* 22T73:25-79:15; *see also* 6T111:2-113:15.

By all accounts Kalra was an astute and meticulous international businessman. 15T94:25-96:1²⁹ & 22T26:2-22. He was very knowledgeable about the financial aspects of Clothing despite his incredible testimony that he

²⁹ The transcription incorrectly refers to Kalra as Khanna, which is clear from when Kalra’s attorney refers to this testimony on redirect at 15T102:19-103:1.

did not learn that financial statements were even prepared for Clothing until the litigation started.³⁰ Testimony and documentary evidence showed that Kalra reviewed the weekly reports, had access to Clothing’s financial records, and frequently discussed the business with his partners. *See e.g.* 6T146:3-20 & 10T86:16-92:16. Furthermore, Clothing’s bookkeeper, Mariyappa, reconciled the bank accounts. 22T24:19-28:22.³¹ Thus, it was impossible for \$3.6 million dollars to have been stolen over only five months without Kalra, the bookkeeper, or accountants noticing. *See* 16T31:16-33:10 & 22T28:16-29:24 (on financial statements being audited). The trial court thus reached the only logical conclusion – that Khanna did not steal the money.

Kalra’s “Transfer Claim” was also dismissed because his testimony was not found to be credible. The trial court took note that Kalra’s “body language and demeanor when testifying to [issues concerning breach of fiduciary duty] changed from that at other parties of his testimony – the testimony seemed more to be an attempt to have the court accept a particular narrative rather than

³⁰ *See* 7T117:1-22: Q: “Did there come a time when you learned that financial statements were prepared for the company?” A: “No” (*id.* 117:6-8). Kalra also says he would not have understood a financial statement if one were given to him.

³¹ Contrary to Kalra’s assertions, the fact Mariyappa did not remember cashier’s checks ever being used in Clothing’s business is of no import. Mariyappa’s testimony demonstrated a faulty memory for detail. *See* 22T21:22-22:25 & 22T23:22-24:2.

providing the court with complete and accurate information.” Da2393. The court further observed that Kalra was not credible in asserting he was unaware of extensive transfers of monies or of the use of Clothing’s warehouse when “if there was one certainty established at trial, [the partners] were serious and competent” and “were engaged.” Da2400.

The trial court also had more than substantial evidence to conclude that Kalra’s rebuttal witnesses, Mehra, Barman, and Ho were not credible. All three witnesses testified in a virtually identical manner, but Ho was directly contradicted by the only available documents relating to transactions prior to 2008, the CPB audit documents. *See* Pb 25-28, *supra*.

As to the other two witnesses, the passage of time ensured that no contradicting documents existed. 23T8:2-15, 23T18:18-19:3, 23T48:7-50:11 & 23T64:15-18, Pa245 (Rakesh Mehra); 23T85:21-25 & 96:17-97:13 (Sushil Barman); 23T121:8-122:6 & 138:9-140:15 (Vienn Ho); see also Pa246-47 (document request that Khanna’s counsel provided to Kalra’s counsel that the rebuttal witnesses certified to have reviewed and to which they had no responsive documents). Furthermore, these witnesses were old friends of Kalra living on other continents who would sign anything Kalra asked them to. 23T39:15-41:22, 23T50:3-51:1, 23T87:14-21, 23T77:19-80:22, 23T107:18-

109:13 & 23T142:6-144:3. Thus, it was clear to the court that the rebuttal testimony was orchestrated by Kalra and properly rejected.

Kalra's own credibility was eviscerated at trial due to the extensive evidence of his attempt to conceal the existence of his Bank of Baroda account from which family money was disbursed to suppliers and subsequent denial of knowledge of the account. Millions of dollars passed through the Bank of Baroda account, yet he claimed he had simply forgotten the account existed because he never had access to it. Pa72-77, Pa93; *See* Kalra Dep. Vol. 2103:11-104:17, 105:16-107:9; Kalra Dep. Vol. 53:18-55:7 (Kalra says he "had no communications or access or anything to do anything [sic] with Bank of Baroda"); 10T106:1-111:10 (where Kalra denies letters from him to Bank of Baroda that were unsigned (Pa72-77) were genuine).

The trial court's disbelief of Kalra's lack of memory was supported when evidence was presented that Kalra directed over \$800,000 to be transferred from that account in just the three years of 2007 to 2009. Pa72-77; PKH-310 at Pa93; 11T126:4-14; 12T116:17-117:20. Kalra's continued insistence that he knew nothing about Bank of Baroda even when presented with a letter bearing his signature to Bank of Baroda directing transfers to his own HSBC account was, rightly so, found implausible. 10T99:3-111:10; Pa93

Kalra's credibility was further undermined by Indian real estate records introduced at trial. In addition to feigning ignorance of his own bank account, Kalra claimed he did not participate at all in his investments in Indian real estate. Nevertheless, records proved that Kalra attended a closing and paid for at least one property³² with his Bank of Baroda account. 10T140:21-141:1; 11T28:20-32:17; Pa242-244 (copies of checks drawn on his Bank of Baroda account with document signed by the bank manager and Kalra attesting to his home address in New Jersey and Bank of Baroda account number); Da2001-02 (purchase documents referencing payment by Kalra from his Bank of Baroda account).

Such forgetfulness was especially incredible considering that he claimed to remember that PK 9406 reflected over \$800,000 in distributions he received into his Bank of Baroda account between December 2000 and September 2001.

“Appellate courts should defer to trial courts' credibility findings that are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” *State v. Locurto*, 157 N.J. 463, 474 (1999) citing *State v. Jamerson*, 153 N.J. 318, 341 (1998); *Dolson v. Anastasia*, 55 N.J. 2 (1969);

³² Kalra's claims related to this property as well as all others owned in his own name, were dismissed by the trial court but are not part of this appeal. Da2414-2415.

State v. Johnson, 42 N.J. 146, 161 (1964). Having observed twenty days of testimony, the trial judge certainly gained a perspective of the witnesses and “feel for the case” that cannot be gleaned from the cold record. Thus, even if this Court finds that ‘it might have reached a different conclusion were it the trial tribunal’ or because ‘the trial court decided all evidence or inference conflicts in favor of one side’ in a close case,” it should be extremely hesitant to disturb the lower court’s factual findings. *State v. Bard*, 445 N.J. Super. 145, 154 (App. Div. 2016) quoting *State v. Elders*, 192 N.J. 224, 244 (2007).

POINT III – THE TRIAL COURT APPLIED THE CORRECT STANDARD IN EVALUATING KALRA’S “USURPED OPPORTUNITY” BECAUSE KALRA FAILED TO PROVE THAT KHANNA USED PARTNERSHIP ASSETS WITHOUT ADEQUATE CONSIDERATION TO FUND GLOBAL CONSUMER PRODUCTS (DA2397 & 2407-2409)

Kalra’s arguments that the dismissal of his “Usurped Opportunity” should be reversed are based on the false premise that Khanna had used “partnership assets to obtain the Products opportunity” by not charging rent and funding Products with money he converted from Clothing. Db 41-44. As set forth above, Kalra failed to prove that Khanna converted any funds from Clothing; therefore, the trial court opinion clearly addressed this argument. Da2389-90, Da2393-95, Da2416. The court also noted that Products, even when it shared employees with Clothing, paid its employees from its own funds. Da2396; 20T61:15-63:17; 22T32:4-15.

The supposed “free rent” to Products was *de minimis* and insufficient to sustain a claim for usurped business opportunity. The court found that Clothing never used the entire warehouse and for all but for a very short period when it used minimal space, Products paid rent to either Clothing or Properties. Da2407; see 3T124:3-7; 20T53:1-55:9; 21T14:7-16:12. The partners were all aware that Products did not pay any rent in 2007 and 2008, using at most, 5%-10% of the space. 21T15:2-16:5; 22T47:10-17; see Da2408-09; 9T14:23-15:19 (Kalra admits he saw Products’ boxes in the warehouse in 2007-2008). There was also extensive testimony that subdividing the warehouse was economically unfeasible and no efforts were made to find another tenant. Having consented, tacitly or explicitly, to Products using a small amount of space for free prior to it paying more rent than the primary tenant, Kalra cannot demand more than a decade later that Products disgorge its profits to him.

Clearly none of the partners intended that providing a short period of free rent was consideration for an ownership interest in Products. *See Fortugno v. Hudson Manure Co.*, 51 N.J. Super. 482, 497 (App. Div. 1958) (in considering what is partnership property, courts consider the intent of the parties and what motivated the partners so far as the property in question is concerned). Mehta had no issue with Khanna having an interest in another

business that used the warehouse. 15T57:8-59:25. He had his own business interests in India of which Khanna and Kalra shared no part and did not feel obligated to offer his own opportunities to his partners, nor did he expect Khanna and Kalra to share theirs. 15T98:7-22; 3T119:12-25. Similarly, Kalra had a convenience store business called “Wengerz” that he never offered Khanna or Mehta the opportunity to invest in. 3T118:5-119:25.

Although Products initially paid no rent, Kalra personally benefited greatly from not only the rents it paid for over ten years, but from Products’ loan to Clothing that allowed the partners to be released as guarantors of the Citibank loan.³³ 4T23:1-24:8.

POINT IV – THE AMOUNT AWARDED TO KALRA WITH RESPECT TO THE INDIAN REAL ESTATE INVESTMENTS SHOULD BE AFFIRMED (Da2412-Da2416)

A. The amount awarded to Kalra with respect to his Indian real estate investments should be affirmed because the trial court’s calculation was based on the records and testimony by Khanna while Kalra was unable to demonstrate he was owed more.

Contrary to Kalra’s insinuations that it was Khanna’s responsibility to prove he owed only 2.97 crore, Kalra was the party bearing the burden of proof as to the amount he was owed. *Tierney v. Hotz*, 141 N.J. Eq. 114, 120 (1947) (in action for accounting, complainant bears burden of proof); *Morrison*

³³ The release of Kalra as a guarantor of the Citibank loan was a prerequisite to effectuating the MOU. 4T23:1-24:8

v. Heller, 183 F.2d 38, 39 (3d Cir. 1950). Without credible testimony or other evidence as to the amount owed, the trial court properly declined to reject Khanna's calculations.

At trial, Kalra offered no testimony or other proof that Khanna's calculation of what he was owed from his Indian real estate investments was inaccurate. Instead, he only testified about the proceeds from the final transaction where he and Khanna pooled their money. 10T49:2-21 (Kalra's testimony). This amount was not to be considered in a vacuum. *See* 19T79:11-90:17 (Khanna explained how his admission of the amount "received" from the sale of Global Garments did not equate to the amount owed to Kalra).

Upon appeal, Kalra presents only one side of the ledger – the debits from his HSBC account. As Khanna explained at trial, these debits cannot be analyzed without considering all of the transactions between Kalra and Khanna as well as moneys Khanna paid on Kalra's behalf. Khanna, in the exhibit marked PKAL-31, provided both sides of the ledger showing where Kalra received money from Khanna, thereby offsetting the debits set forth in Kalra's brief. *Compare* Pa16 (PKAL-31; note columns marked "Paid to Sandy" and "Received from Sandy.") with Dca62 & Dca64-65 (corresponding bank statement). Said exhibit shows that Kalra's appellate brief seeks repayment of his \$100,000 "Initial Investment" even though Khanna's calculations already

accounted for its repayment.³⁴ Kalra further failed to account for income taxes paid for the year of the sale. *See* 22T82:23-83:14, 19T82:23-83:18. Thus, this Court should deny Kalra’s attempt to recalculate the amount he should receive on his Indian real estate investments.

B. The decision not to award pre-judgment interest to Kalra was a proper exercise of the trial court’s discretion.

Kalra did not prevail in any of his claims alleging torts because the evidence failed to show Khanna breached any fiduciary duty or converted funds. Da2415. For this reason, *R.* 4:42-11 governing the award of prejudgment interest in torts is inapplicable. Instead, the award of prejudgment interest or lack thereof was based on equitable principles and within the sound discretion of the trial court. *Cnty. of Essex v. First Union Nat. Bank*, 186 N.J. 46, 61 (2006).

The premise allowing the award of prejudgment interest in contract cases is that the unsuccessful party has had the use of the funds in question, and the prevailing party has not. *Rova Farms, supra*, 65 N.J. at 506. This, however, does not end the inquiry. The allowance of prejudgment interest “simply recognizes that until the judgment is entered and paid, the defendant

³⁴ *Compare* Db 21 and first line item of PKAL-31 listing April 05 Wire from Sandy BOA 100K (noted as 4,300,000 INR received). Kalra also has repeatedly omitted the 4,100,000 INR paid to him between November 4, 2018 and January 29, 2009. Da1530-31 ¶87-88.

has had the use of money rightfully the plaintiff's." *Belmont Condo. Ass'n, Inc. v. Geibel*, 432 N.J. Super. 52, 92 (App. Div. 2013).

Unless there is a "manifest denial of justice, an appellate court should not interfere" with the trial court's decision as to the award of prejudgment interest. *Litton Indus., Inc. v. IMO Indus., Inc.*, 200 N.J. 372, 390 (2009) (internal citations omitted); see Pressler, *Current N.J. Court Rules*, comment 3.1 on R. 4:42–11 (2022) ("The court's exercise of discretion both as to whether to award prejudgment interest in non-tort cases and if awarded, the rate thereof, is subject to the abuse of discretion standard and will, therefore be sustained upon appeal unless it constitutes a manifest denial of justice") and cases cited therein. "Interest does not run on liquidated claims as a matter of course, 'but in accordance with principles of equity.'" *Bak-A-Lum Corp. of Am. v. Alcoa Bldg. Products, Inc.*, 69 N.J. 123, 131 (1976) quoting *Deerhurst Estates v. Meadow Homes, Inc.*, 64 N.J. Super. 134, 155 (App. Div. 1960), cert. den. 34 N.J. 66 (1961). When a claimant acts inequitably throughout the course of dealing between the litigants, equity precludes allowance of interest to the claimant, even if successful on one of its claims. *Bak-A-Lum, supra*, at 126 & 131.

The trial court's denial of prejudgment interest to Kalra does not represent "a manifest denial of justice" as Kalra's numerous claims of breach

of fiduciary duty, fraud, and conversion were all exposed as lies. He has also failed to put forth any facts that would support how the equities favor him. Conversely, Khanna at all times candidly admitted what he owed Kalra and was willing to pay as soon as Kalra withdrew his false accusations. 21T132:2-10, 21T160:6-161:9.

The equities further favor the denial of prejudgment interest because Kalra had breached the MOU by failing to relinquish his interest in Clothing. Rather than argue he did not breach the MOU, Kalra argued that the MOU was nonbinding. The trial court rejected Kalra's argument but ultimately ruled that damages could not be awarded to Khanna because no expert testimony was presented. Da2400-2403, Da2406. It certainly would have been inequitable for Kalra to receive prejudgment interest on money held aside for him (rather than being used by Khanna) while Khanna was unable to recover anything due to Kalra's breach of the MOU and malicious conduct.

C. All transactions related to Kalra's investments in India were made in Rupees; therefore, the trial court's decision to order the award be paid in Rupees was proper.

All transactions were conducted in Rupees except that Kalra received \$69,000 as an accommodation from Products after the sale of Big Apple. *See* 21T123:9-124:6; 22T58:5-59:3; *see also* Da2368 at 523:8-525:1. Kalra's retention of an attorney in India with respect to his real estate investments

indicates it was always his understanding that his investments had a greater nexus to India and involved Rupees. *See* 12T19:6-20:25 & 21T159:19-161:9 (references to Indian attorneys handling real estate dispute). It was only after years had gone by that Kalra found it would be more beneficial to receive the money at the 2017 exchange rate in dollars.

The deposition testimony cited by Kalra as supporting the notion that Kalra was to be paid in dollars only reflects how the questions were framed. Db21. It was Kalra's counsel, not Khanna, that spoke in terms of dollars. *See* Da2365-Da2367 at 376:03-376:22, 378:09-378:11. The only time Khanna mentioned dollars was when recounting his explanation to Mehta why Big Apple would not have been a good investment for him. Da2367 at 467:1-25

As the money owed to Kalra has always been in India (and is still there to this day) and would have been paid immediately if Kalra withdrew his baseless accusations, Kalra's claim is for Rupees. *See William McCrindle & Son, Ltd. v. Durant*, 611 F.2d 89, 92 (5th Cir. 1980). Moreover, the fact that Khanna has held the money in Rupees evinces that he has not had the benefit of the money in dollars; therefore, the equities of allowing Kalra the windfall of currency fluctuations should be rejected by this Court. *See Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 932 F. Supp. 2d 153, 163 (D.D.C.

2013), aff'd, 603 Fed. Appx. 1 (D.C. Cir. 2015) (court considered the equities of converting currency).

POINT V – THE TRIAL COURT’S OPINION CONFORMED TO *RULE* 1:7-4; HOWEVER, IF THIS COURT SHOULD FIND THE OPINION BELOW INADEQUATELY STATED ITS REASONS AS TO ANY ISSUE, THE CASE SHOULD BE REMANDED FOR THE LIMITED PURPOSE OF ADJUDICATING THOSE CLAIMS WITH ADEQUATE REASONS BASED ON THE EXISTING RECORD (not raised below)

In bench trials, *Rule* 1:7-4 requires the court find the facts and state its conclusions of law in a written or oral opinion or memorandum decision. *Id.* Judge Passamano’s opinion provided a thorough analysis of all salient issues raised at trial. With Khanna and Kalra, themselves testifying over a course of eighteen days, the court rightly indicated that adjudicating the claims was largely informed by credibility. Since findings of credibility often rest on intangibles of demeanor, behavior, and common experience, they need only be stated generally, as opposed to being articulated in detail. *Locurto, supra*, 157 N.J. at 472-74. As Judge Passamano articulated the reasons he found Khanna credible, but not Kalra, there was sufficient basis for the court to reach its conclusion, especially since Khanna’s testimony was consistent with the documentary evidence.

If the specific reasons for the denial of prejudgment interest to Kalra appeared unclear, this Court should consider the opinion as a whole.

Throughout the opinion, Kalra's dishonesty and inequitable actions were contrasted with Khanna's straightforward and credible manner. As set forth herein, the equities militated against Kalra receiving prejudgment interest on money Khanna set aside and was willing to hand over as soon as Kalra ceased his baseless accusations and eventual, extremely expensive and time-consuming lawsuit.

However, should this Court find the lower court's opinion did not satisfy R. 1:7-4 as to any issue, it would be proper to remand the case for the limited purpose of adjudicating the specific issues that were not adequately explained. *N.A.R., Inc. v. E. Outdoor Furnishings*, 480 N.J. Super. 553, 565 (App. Div. 2025). This would not involve reversing the decision but instead allow the trial court to better articulate its reasons and allow additional briefing in the trial court's discretion. *See id.*; *see also Hughes v. Eisner*, 8 N.J. 228, 229 (1951) (appeals are taken from judgments, not opinions).

CONCLUSION

Based on the facts and legal analysis set forth above, this Court should affirm the denial of Kalra's motion for partial summary judgment and affirm the trial court's December 9, 2025 order.

Respectfully Submitted,
SCHUMANN HANLON MARGULIES, LLC


By: Joseph Elmo Cauda, Jr.

PRADEEP KHANNA & ASHMEE KHANNA,
Plaintiffs-Respondents,

– versus –

SANDEEP KALRA, GLOBAL PROPERTIES &
HOLDINGS LLC,
Defendants-Appellants,

– and –

SANDEEP KALRA, in his individual capacity and on
behalf of GLOBAL PROPERTIES & HOLDINGS
LLC,

Third Party Plaintiff-Appellant,

v.

SUCHITA PERTI, RAJEEV PERTI, GLOBAL
CONSUMER PRODUCTS t/a OVERDRIVE
LIGHTING, JOHN DOES 1-10 and XYZ CORP., 1-
10,

Third Party Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-001293-24

Civil Action

On Appeal From:

Superior Court of New Jersey
Law Division, Essex County
ESX-L-006624-19

Sat Below:

Hon. Jeffrey B. Beacham, J.S.C.
Hon. Russel J. Passamano, J.S.C.

Submitted: May 14, 2025

THIRD-PARTY DEFENDANTS' BRIEF

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Suchita Perti, Rajeev Perti,
Global Consumer Products t/a Overdrive Lighting,
John Does 1-10 and XYZ Corp 1-10

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TABLE OF TRANSCRIPTS AND REFERENCES

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TABLE OF JUDGMENTS, ORDERS AND RULINGS APPEALED

Oral Decision (March 2, 2023) 1T

Order Denying Defendant’s Cross-Motion For Partial
Summary Judgment (March 2, 2023) Da2035

Written Opinion (December 9, 2024) Da2384

Order (December 9, 2024) Da2417

TABLE OF AUTHORITIES

J&J Snack Foods, Corp. v Earthgrains Co, 220 F. Supp. 2d 358,
374 (DNJ 2002). p29

Valle v North Jersey Automobile Club, 141 N.J. Super. 568, 359 A.2d
504 (App Div 1976) p30

Guth v. Loft, 23 Del. Ch. 255, 5 A.2d 503 (Sup. Ct. 1939) p31

Solimine v. Hollander, 128 N.J. Eq. 228 (Ch. 1940) p32

State v Locurto, 157 NJ 463, 470-71 (1999) p37

Rova Farmers Resort, Inc v Investors Ins. Co., 65 NJ 474,
483-84 (1974) p37

Gillman v Bally Mfg. Corp., 286 NJ Super 523 528 (App Div 1996) p37

Morning Ledger v Sports and Expo., 423 NJ Super 140, 174-175
(App Div 2011) p38

PRELIMINARY STATEMENT

The factual testimony of Sandeep Kalra on cross-examination contradicted the claims that he made in his Third Party Complaint. The cross-examination of Kalra also revealed his utter lack of credibility on the single biggest issue of the case – the Bank of Baroda issue. As is detailed below, Kalra remembered minute details of unrelated events that occurred in 1997, but he claims that not only did he not remember that more than \$900,000 passed through the Bank of Baroda account ten years later--between 2007 and 2009, but he claims that he completely forgot that the Bank of Baroda account itself existed. It just so happens that the bank account that Kalra happened to forget was the key to Pradeep Khanna’s defense against the major issue in Kalra’s case – whether the transactions that passed through the Bank of Baroda account proved that Pradeep Khanna’s family made advances to Global Clothing Network, Inc. (“Clothing”) when Clothing first started doing business. (Pradeep Khanna 7T:21), Proof of the advances would destroy Kalra’s claim that Pradeep Kalra wrongfully took funds from Clothing rather than pay his family back for the advances. It was only after Pradeep Khanna was able to locate a document from the account that contained Kalra’s signature that Kalra suddenly “remembered” that it existed.

PROCEDURAL HISTORY

On September 10, 2019, Pradeep Khanna commenced this litigation by complaint against Sandeep Kalra, Global Properties & Holdings LLC, and Bruce R. Rosenberg, Esq., as stakeholder. Da1. Kalra responded to the Complaint on November 13, 2019 with an “Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint” against Suchita Perti, Rajeev Perti, Global Consumer Products t/a Overdrive Lighting as well as fictitious defendants. Da9. Mr. Rosenberg was dismissed as a party when an order was entered allowing the parties to move the proceeds of the sale of the GPH warehouse from Mr. Rosenberg’s trust account to an interest-bearing account.

Khanna and the named third party defendants served their own answers and affirmative defenses on March 26, 2020 (Da 108) and March 11, 2020 (Da95), respectively. Pradeep Khanna’s wife, Ashmee Khanna, successfully moved to intervene as a plaintiff, and then Pradeep and Ashmee Khanna filed an amended complaint on December 15, 2020. Da121. Kalra responded to the amended complaint on January 19, 2021 (Da136). On January 26, 2022, Kalra filed a Second Amended Counterclaim (Da152), which was Answered on February 15, 2022 (Da161). Discovery ended on January 31, 2022; however, numerous depositions were conducted and documents exchanged thereafter.

On October 7, 2022, Khanna filed a motion for partial summary judgment on the grounds that Kalra’s “Transfer Claims” set forth in his Second Amended

Counterclaim were barred by the statute of limitations (Da167). On October 25, 2022, Kalra cross-moved for partial summary judgment on, *inter alia*, his Transfer Claims. The Honorable Jeffrey B. Beacham, J.S.C. denied both motions on March 2, 2023 (Da2033-Da2037; 1T). Khanna filed a motion for reconsideration, which Judge Beacham denied on August 4, 2023 (Da2040).

Beginning September 5, 2023, the Honorable Russel J. Passamano, J.S.C., presided over a 23-day bench trial, with the last day of testimony being July 2, 2024. Pursuant to the trial court, the parties submitted proposed findings of fact and conclusions of law on August 13, 2024. On December 9, 2024, Judge Passamano entered an order that, *inter alia*, dismissed Kalra's Transfers Claim, Usurped Opportunity Claim, and claims against the third-party defendants (Da2417-2418). Judge Passamano supported his order with a 33-page written opinion (2384-2416).

Kalra filed a Notice of Appeal on January 8, 2025 seeking the reversal of Judge Beacham's denial of Kalra's motion for partial summary judgment and the reversal of Judge Passamano's order dismissing Kalra's Transfers Claim, Usurped Opportunity Claim, and related claims against the third-party defendants.

STATEMENT OF FACTS

a. Kalra’s Testimony Defeats His Claims Concerning The Bank of Baroda Issue

The records from the Bank of Baroda are key to the principal issue in the case: whether the Khanna family advanced funds to pay for inventory at the outset of the clothing business started by Global Clothing Network, Inc. (“Clothing”) in 1997. If so, that would explain the funds withdrawn by Pradeep Khanna from the Clothing account in repayment of these advances. Kalra maintains that the funds were improperly taken.

When Clothing was formed, Kalra was responsible for sourcing garments from around the world. He needed funds to pay for them since factories were uncomfortable with issuing credit or placing goods in production for the startup, so Clothing was required to advance 40%-50% of the purchase price of materials and product to the factories in India. 6T90:19-91:18; 19T106:24- 108:15; 19T117:1-118:8.

Lacking funds in the U.S., the three partners had to rely on Khanna’s family money¹ being advanced to the factories and held as collateral during the “initial years” of 1997 to about 2004. 3T90:19-91:19; 3T101:7-21; 19T107:10-108:15; 19T108:25-115:2. Throughout the trial and within GCNI’s business, the words “advances” and “collateral” are used interchangeably when referring to the money sent to factories and suppliers prior to the goods being shipped.

19T119:3-16; 6T93:24-94:4 (defining “collateral”); *see also* 19T117:1-118:8 for additional context.

Kalra used a Bank of Baroda account to receive and distribute the funds. Pa72 shows that between September 6, 2007 and August 28, 2009, a total of \$965,959.04 passed through the account. These were substantial transactions.

When first asked in Khanna’s interrogatories to disclose all bank accounts from which he funded his Indian real estate investments, Kalra omitted listing his Bank of Baroda account. It was only after Pradeep Khanna was able to locate and produce a signed letter from Kalra to the Bank of Baroda that Kalra was compelled to acknowledge its existence (Pa78, p. 16 of exhibit – PK11224). Pa72 shows that a total of \$969,959,04 had passed through the account in a series of transactions between 2007 and 2009, This was a substantial account that Kalra claims that he had forgotten about. As Kalra’s testimony on cross demonstrates, he has an acute recollection of the details of minor transactions that occurred as far back as 1997, but he forgot the very existence of this major account that was highly active 10 years later for at least a 2 year period. Kalra remembers the minute details of the room but not the elephant in the room. The denial is simply not credible, particularly since this is the critical account in the case. Acknowledging the Bank of Baroda account would demolish Kalra’s claim.

Kalra admitted that he had acute recollection of other 25 year old events:

Re: Pa2 – Handwritten Notes

Kalra Cross

12T-SK: p113-114

Q And you testified earlier , these are two columns and dollar amounts with no headings; correct? There's no description.

A. Correct.

Q. So, if you didn't know what it meant it would mean nothing to you until you have an explanation...

A Yeah”.

Q. you testified as to ...the significance of the various columns.

A. Correct.

Q. You have a clear...as you sit here now, a clear recollection of that?

A. Correct

“Q ... starting in 1998...

A That -- that's the first date on here; yes.

Q Which is what, 25 years ago. Can you recall

that clearly? A '98? Yes, I recall”

12T-SK p115 - 116

Q. you testified... that you remember back in the very beginning from 1997 and the first few years how Clothing was doing financially. Do you have a clear recollection of that? Is that a fair comment?

A. Was doing very well, yes.

Q. Okay. And do you remember in 2003 you formed Subway. Do you have a

clear recollection of that?

A. Correct

Q. And in 2005 you invested with Mr. Khanna in India; is that correct?...

A. Yes the joint venture, yes...

Q. Do year have a clear recollection?...

*A. Our verbal agreement. Yes, **I have a very clear understanding.***

The Bank of Baroda account was a different story.

12T-SK p116-118

*Q. Okay. Okay. Now, you had a **Bank of Baroda account**, is that fair?*

A. Correct.

Q. Okay. And if you can turn to Pa72.

A. Yes.

Q. And if you scroll through, there are a number of Bank of Baroda transactions between 2007 and 2009. Do you see that?...

I took the liberty of making an excel sheet and adding up the numbers – the dollars in your accounts...September 6, 2007, and August 28, 2009. So that's two years. There were bebt accounts, debt transactions toally \$846,209.61. ...¹

...this is of your money in Bank of Baroda; is that correct?

A. Okay.

Q. Is that a lot of money to you, 800,000?

¹ The correct figure is \$965,959.04 (Pa72).

A. It was then and it is today....

Q. Is this a lawsuit that---that you find is very important to you? This lawsuit.

A. Yes...

Q. Now, you remember all these things that happened back in—25 years ago. The Bank of Barod had 800 some odd thousand of your money that we know about. And you don't claim you forgot details of the bank of Baroda, you forgot – you claim you forgot it existed; is that correct?...

A. I said I forgot about the Bank of Baroda account.

Q. You forgot you had a bank of Baroda account.

A. Exactly”

b. Kalra's Testimony Defeats His Counterclaims and Third-Party Claims

During cross examination Mr. Kalra testified that he understood that his pleadings constitute a representation to the Court that in good faith he believes each of the statements contained in his pleading to be true.

**Kalra Cross
12T-SK p120**

BY MR. MARGULIES:

Q You filed a counter claim in this case in which you had 200 some odd paragraphs of various claims. Do you recall that?

A No, I think there were more than 200. Q I said 200 plus.

A Okay....

12T-SK p121

Q -- do you understand that you are representing to the Court that you are -- that you are making a representation to the Court that you believe each of those statements to be true in good faith?

A That is correct.

The cross examination of Sandeep Kalra shows that Kalra was dishonest when he said he issued his pleadings in “good faith.” Kalra’s own testimony shows that not only did he have no factual basis to support his claims, but he knew that there was no factual basis. The following colloquy appears on questioning Kalra about his claims made against Third Party Defendants.

i. Not Know Rents Paid

CCL 76 (D-3)

Khanna has never provided full information and documentation regarding the rents actually paid by Overdrive for the sublease and other perquisites that Clothing and/or Properties provided Overdrive

Kalra Cross
12T-SK p123

Q Okay. And if you go to paragraph 76, it's on page 23 of that document....

Q Well, can you read it out loud for the record? Just the first sentence.

12T-SK p124

A “Kalra has never provided full information and documentation regarding the rents actually paid by Overdrive for the sublease and other prerequisites that Clothing and/or Properties provided Overdrive despite multiple demands during the years before the present action.”

Q Okay. Who -- who would be able to tell you what rent Clothing -- or rather Products had paid?

A Only Mr. Khanna and Mr. Perti. The deal was between those two.

Q How about

Suchita? A I don't

know.

Q Had you ever asked her?

12T-SK p125

A Why should I? Where was the need for me to --

Had you from time to time asked her for information on Clothing? A

All the time.

Q And had she ever not given you what you wanted?

A No, never.

12T-SK p126

Q But you knew she was associated with Products?

A I knew she was associated with Products as an owner, as an employee, I did not know. I didn't ask....

Q You -- you couldn't say, "Hey, Suchi, can you get me -- show me the checks that Products had paid?"

A None of my business. Wasn't my responsibility.

12T-SK p127

Q All right. Good. How about Mr. Gup -- Gupta, Ravee Gupta². He's the accountant; right?

A Correct.

Q Did you ever ask him?

A This is exactly what I'm saying. No, I didn't ask him.

12T-SK p134

² This is a mistranscription of "Pradeep Gupta," the accountant

THE COURT: ... We all have

TPD-8? MR. APPEL: Yes, Your

Honor.

12T-SK p135

-- Kalra 1784.

Q Who's it from?

A It's from Ravee Gupta

Q Who's it to?

A To Sandeep Kalra....

Q What's the date?

A Monday, January 22nd, 2018

Q Could you read the first paragraph please?

12T-SK p136

A. "Sandy, attached explanation of your questions on 2016 GPI income and expenses. The relevant pages of the tax return are also inclosed...."

Q Okay. Good. Now, let's go to the next email from Sandy Kalra to Ravee Gupta, Tuesday, January 6th, 2018. Do you see that one right below it?

A Yes.

Q Could you read that first paragraph?

A "For your understanding, in preparing the tax return which company

paid the fees and utilities related to Global Properties and which company paid rent and how much. The 2016 tax return shows net income -- sorry, net rental income of 11,788. And net income of 12,998.18 on the balance sheet I received. That is impossible if rent receipt is 72,000 for the balance sheet I received... I'm trying to understand who's paying what on the property that I own 50 percent

12T-SK p138

Q Sir, my question is, isn't the basis of your objection to the information that the gross number and the net number is different? Isn't that the basis of your objection?

A Yeah, that's what it says there. I'm trying to --

Q Okay.

A -- get a clarification.

12T-SK p141 – 143d.

MR. CAUDA. But for identification

you're referring to the tax return for 2013; correct?

MR. APPEL: Yeah.

MR. CAUDA: That's Pca30...

Q Go to page 378.

A Yes, I have it, Mr. Appel.

Q If you scroll down, do you see where it says

gross rents? it says gross -- if you scroll down maybe a quarter of the way -- A Yeah. I see, gross rents.

Q And what's the number under A?

A It says 72,000.

Q Is that hard to understand to figure out?

A No, it's not very hard. If I had the returns, it wouldn't be hard.

Q Oh, if you had asked -- in other words, if you had asked for the tax returns you could have gotten and seen it; is that correct?

A I -- I could have asked the tax return from Mr. Khanna, I didn't have to go to Mr. Gupta. Mr. Khanna never said I'm not going to give you a tax return.

Q But if Mr. Khanna said no, you were prevented from going to Mr. Gupta --

A No...

Q Oh, so he gave you the tax returns?

12T-SK p144

A I never asked for it and he never gave it. So --

Q Okay. In other words, you could have gotten the information, you just didn't ask for it.

A It wasn't my responsibility,...

Instead of making “multiple (unsuccessful) demands” of Khanna for tax returns as Kalra alleges in the counterclaim, he admitted that he actually made no demands. Additionally, Kalra was forced to acknowledge that he was extensively involved in discussing and reviewing the rent paid by Products (TPD-8) and that the accountant Pradeep Gupta was providing information to him. This counterclaim is defeated by Kalra’s own admissions.

ii. Not Know Space Occupied

CCL 82

Kalra lost significant moneys as a result of this sublease arrangement. Kalra **does not know how much space was utilized** by Overdrive during its occupancy nor its financial ability to pay rent nor the bases of the allegations of the Complaint about same.

Kalra Cross

12T-SK p145

MR. APPEL: The counter claim again.

So it’s THE COURT: It was D-3.

Q... Paragraph 82?

Q Can you read the second sentence in that paragraph?

A “Kalra does not know how much space was utilized by Overdrive during his occupancy.”

Q All right...

Q Now you used the term Overdrive there. Clothing is Overdrive and Products is Overdrive; right?

A Correct.

12T-SK p146-7

A No, I -- I remember I did not know what space they occupied, so. Q And you didn't -- but you didn't follow through to check it out. A It wasn't my responsibility....

Q I'm asking you, did you make any effort to find out how much space was used?

A No, I did not....

Q And you had access to all parts of the warehouse? A I own the warehouse, I was a partner.

Q Sure. And including the storage area; right? A Sorry?

Q Including -- you can enter the storage area where the boxes were kept; right?

A Yes.

12T-SK p149

Q And if you walked out -- tell me how long it would have take you -- let's say

hypothetically there are ten shelves, three of the shelves are full of Product's goods and other shelves are full of Clothing's goods. How long would it have taken you to go out there and figure out how much space was occupied by Products?

A Not my responsibility.

Kalra complains that he did not know how much space Products occupied but on cross was compelled to admit that he made no effort to find out. Once again, the facts as acknowledged by Kalra himself defeat his own claim.

iii. Paid Below Market Rent

CCL 3

Kalra also brings Counterclaims against Khanna arising out of his **breach of fiduciary duties** and non-disclosure of a conflict of interest and fraud arising out of the fact that. **Khanna brought Overdrive in as a subtenant at below market rents...**

Perti Direct
22T-RP p47

Q Okay. At any time prior to 2016, did he ever raise any question about rent?

A Never to me....

22T-RP p48

Q Did he ever challenge you being a tenant there? A No, we were always

congenial.

Q Did he ever complain that you hadn't signed formal lease?

A No, we never talked about it....

Q What was your relationship with Mr. Kalra during this time? A He was a good friend.

Q A good friend?

A Yes.

Q Did you and your family socialize with him? A Yes, many times.

Q Give me some examples of what you did with him?

22T-RP p49

A You know, on the Diwali, it's one of the big functions in Indian tradition. There used to be a get together in the warehouse with all the partners and the Global Clothing's employees used to come over there and we used to all be together.

Christmas parties were there. All -- any bigger family (indiscernible) like I had my daughter's sweet 16, I had my daughter's graduation party at my place. And then Mr. Kalra used to have some get-togethers at his place, we used to go there.

Q So you had an open, easy

communication? A Yes....

22T-RP p51

Q If I haven't asked you, when was the first time Mr. Kalra started talking about (indiscernible) about rent?

A He never complained to me.

Kalra Cross
12T-SK p151

Q Paragraph three, page eight. Read the first sentence if you would.

A Yeah, "Kalra also brings counter claim against Khanna, arising out of his breach of fiduciary duties and nondisclosure of conflict of interest, and fraud arising out of the fact that Khanna brought Overdrive in as a subtenant at below market rents without disclosing that he had an interest in overdrive...."

Q All right. Let's break this down. You say they pay below market rents; right? In the third line.

A Yes....

Q Okay. Now, what's the measure of rent commercial space? It's cost per square foot; right? That's how you measure what you pay for space?

A Yes.

12T-SK p152

*Q. Right? So you need to know the cost and you need to know the square foot; right? Square feet.
Right? In order to figure out what you paid per square foot.*

A That's correct.

Q Okay. Now, you just said you didn't know the cost and you didn't know the square feet. So if you don't know the cost, and you don't know the square feet, please explain to me how you in good faith can make an allegation that they paid sub market rents?

A I'll tell you how.

Q Explain that.

A We have the appraisal reports from Pyramid Associates in 2016, January.

Kalra's answer begs the question. There can be no comparison of rents even if the Pyramid Appraisal did constitute a basis for comparison for the very simple reason that Kalra claims not to know the price per square foot that the tenant Global Consumer Products ('Products') actually paid. For that reason, there would be nothing to compare to the price per square foot shown in the Pyramid Appraisal (assuming it would be a valid basis for comparison). The

Pyramid Appraisal would be meaningless. Further, Kalra offered no testimony, expert or otherwise, to explain why or how the Pyramid Appraisal would be a valid basis for comparison. Kalra has produced literally nothing to support his position because he knew it could not be supported. Once again, his pleading had no basis in fact.

iv. Not Search For New Tenant

Kalra extensively complains throughout his counterclaim and third party complaint (par. 68 to 74, 76, 80 to 87, 94 to 102) about Pradeep Khanna bringing Products in as a tenant (although he acknowledges that Products did pay \$580,000 in rent). When offered an opportunity to find a new tenant if he was actually unhappy with Products as a tenant, Kalra conceded that he made no effort to find a substitute tenant.

Kalra Cross

12T-SK p166

Q Did you make any effort to bring a tenant into the warehouse?

A Not my responsibility.

12T-SK p167

Q You got -- sir, for -- sir, Products paid over \$400,000 in rent. Am I correct? Over 400,000 in rent while they were there?

A No, they paid \$580,000 (indiscernible) in rent.

12T-SK p169

Q At any time did you make an effort to bring a tenant in? Yes or no.

A No.

12T-SK p170

Q Sir, -- sir, they said David Calper -- you remember in writing that we can pull it up, he told Mr. Rabner, your lawyer, --

A Yes.

Q -- "Hey, if you're unhappy, go find a tenant. We'll evacuate and let you buy the tenant. You remember him saying that?"

A Yes.

Q Did you do anything about that to get a tenant? Yes or no.

A I asked -- no.

If things were as bad as Kalra claims, he would have at least made some effort to find a new tenant. Instead he happily collected the \$580,000 in rent from Products. Kalra's failure to try to find a new tenant confirms that he had no legitimate complaint against Products as a tenant.

Rajeev Perti explained why it would not be practical to find a client who was not personally known and trusted by the principals of this undivided warehouse.

Perti Direct
22T-RP 5

Q Okay, okay and did this relationship play any role in Products becoming a tenant of the warehouse that Clothing is also located?...

THE WITNESS: In fact, it was like a family. Pradeep and him and his partners were very close. They were known acquaintances to me. I knew Mr. Kalra, I knew Mr. Meta and they were very close. So when the concept came of me opening a company with my wife and setting up a business, I was welcomed in the warehouse.

22T-RP p45

Q The warehouse has been described as an open warehouse where everything is together?

A Yes...

Q And everybody has access to everything in the warehouse?

A Yes, it was like an open box.

Q Would you have any issue going to a different warehouse that was open and other people would have access to your products?

A Yes because there would be security concerns...

v. Use of Overdrive as Trademark

CCL 30

S. Perti caused Global Consumer Products to register the trade name “Overdrive Lighting” in 2009, despite the fact that “Overdrive” was already registered as a trade name for Clothing. By this action Overdrive used and capitalized upon the value of the trade name “Overdrive” that Clothing had created.

Perti Direct

22T-RP

p45-46

Q When did you form Products...

A It was September of 2006, the Products was formed.

Q And when did you decided to use the name Overdrive as a Trademark?

A At the inception...

A No, Overdrive was the trade name. The company’s name was Global Consumer Products....

Q Did Mr. Kalra know you were using that name? A Yes.

Q Did he have any question or

objection? A No.

Kalra Cross 12T-SK p154

Now, let's talk about the Overdrive, the trademark. Overdrive you recognize was a -- for Products it was a registered trademark with the patent trademark commission; correct?

A Overdrive as far as I know was the district trademark of Global Clothing Network Inc.

Q And do you know if it was a registered trademark for Products also?

A I found out later that they relisted this in 2009.

Q At the time -- okay. You found out later -- you found out after the lawsuit started?

A No...

Q In paragraph 30 of the counterclaim. Let's go down to that...

12T-SK p155

A Okay. "S. Perti caused Global Consumer Products to relist trade name Overdrive Lightning in 2009. Despite the fact that Overdrive was already registered as

trade name for Clothing. By this action Overdrive used and capitalized upon the value of the trade name Overdrive that Clothing had created.”

Q All right. Now Overdrive is a registered trademark of Products. It's -- you understand that there can be different categories of registration of trademarks?

A Yes, I do...

Q Sir, did you know at the time you filed the counterclaim --

A Yes.

Q -- that there were different categories in which you could register trademarks?...

12T-SK p156

A Yes, I knew there were different categories

12T-SK p157

A Products is lighting -- some kind -- LED lights, I think.

12T-SK p158

Q What's the business of Clothing?

A Clothing....

Q No, are you concerned that consumers will confuse a light -- sell themselves a lightbulb with selling themselves

clothing?

A Absolutely.

A Products is lighting -- some kind -- LED lights, I think.

12T-SK p160

A. We have garments in the stores hanging with Overdrive label. They are not in boxes, they are on hangers. You have boxes of bulbs with Overdrive. My buyer goes to see what I have shipped to their stores and then he sees Overdrive, which he went to look for, and then in the same store she sees Overdrive bulbs with the same logo, the same name, same address. She's going to go back to her corporate office, "Overdrive went into lighting business."

Q Oh, I think -- which stores are you talking about?

A I so not know. I'm just -- you are asking -- I do not know what store this would -- ...

Q But you don't have any concrete specific people you're talking about.

A I do not know what their customer base is.

12T-SK p161

Q You have no specific transactions;

correct?...

A No, I have no transactions.

Sandeep Kalra was a multimillionaire businessman who operated in two countries, the United States and India. He had the resources successfully to navigate the two very different legal systems. Yet he claims to be ignorant of basic trademark law that any sophisticated layman in business would know.

A quick search of “Overdrive” in the official US Patent and Trademark website produces 2,067 results including active and abandoned trademarks. Restricting the search to “live” and “registered” trademarks yields 592 results. Among them is the one held by Products.

Kalra did admit that at some point before filing his counterclaims he found out the trademark was registered. To circumvent the legal effect of the trademark, he made the convoluted argument that because the garments sold by Clothing and the lightbulbs sold by Products came out of the same warehouse, customers would somehow confuse them.

12T-SK p158

Q No, are you concerned that consumers will confuse a light -- sell themselves

a lightbulb with selling themselves clothing?

A Absolutely.

When asked if he could identify a single issue of actual confusion by a customer, he could not. This claim as with the others is nonsensical. It is yet another clear example of Kalra's fundamental dishonesty and lack of credibility.

In reality, not only does a registered trademark allow a company to use the mark, but if there is a likelihood of confusion, it gives the company owning the trademark exclusive rights to use the mark in the category in which it is registered. The point is made in J&J Snack Foods, Corp. v Earthgrains Co, 220 F. Supp. 2d 358, 374 (DNJ 2002).

To establish a claim of trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), or federal unfair competition under 43(a) of the Lanham Act, 15 U.S.C. 1125(a), a plaintiff must show that (1) it owns the mark; (2) its mark is valid and legally protectable; and (3) the Defendant's use of the mark to identify its goods or services is likely to create confusion concerning the origin of those goods or services.

vi. Diversion of Corporate Opportunity

CCL3

...The counterclaims seek damages for lost rents, diversion of corporate opportunity and violation of the Operating Agreement. They also seek assessment of the value of Khanna's interest in Overdrive to be held in trust pursuant to New Jersey statutory requirements.

Kalra Cross

12T-SK p179

Q Okay. Okay. Let's talk about corporate opportunity.... first of all, **do you have ex -- any experience in the light bulb**

industry? A No, I don't.

Q You know light bulb

customers? *A* No, I don't.

12T-SK p180

Q -- you cannot have brought any knowledge to the Products business, could you?

A Mr. Appel, no I could not have.

The corporate opportunity doctrine is discussed in Valle v North Jersey Automobile Club, 141 N.J. Super. 568, 359 A.2d 504 (App Div 1976):

The corporate opportunity concept is one aspect of the general rule that a fiduciary's loyalties may not be divided. 3 Fletcher, op. cit., § 861.1 at 208. In Guth v. Loft, 23 Del. Ch. 255, 5 A.2d 503 (Sup. Ct. 1939), the corporate opportunity doctrine was summarized as follows:
*[I]f there is presented to a corporate officer or director **a business opportunity** which the corporation is financially able to undertake, **is, from its nature, in the line of the corporation's business** and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of his corporation, the law will not permit him to seize the opportunity for himself. And, if, in such circumstances, the interests of the corporation are betrayed, the corporation may elect to claim all of the benefits of the transaction for itself, and the law will impress a trust in favor of the corporation upon the property, interests and profits so acquired. * * * [23 Del. Ch. at 272, 5 A.2d at 511] (Emphasis added)*

An essential element of corporate opportunity is that the opportunity be “in the line of the corporation’s business.” In Valle, the director of an insurance agency purchased another insurance agency for his personal account. The failure to offer that insurance agency to his present insurance agency was found to be a breach of the fiduciary duty of the director involved.

Valle cites the seminal Delaware case of Guth v. Loft, 23 Del. Ch. 255, 5 A.2d 503 (Sup. Ct. 1939). In Guth, the question was

whether Guth, the president of Loft, “a corporation engaged in the manufacturing and selling of candies, syrups, beverages and foodstuffs...”, usurped Loft’s business opportunity by using Loft’s resources to purchase and operate Pepsi-Cola Company, which in turn sold its product to Loft. See Guth, supra., at 258. This was despite the fact that “[Loft] had the equipment and the personnel to carry on syrup making operations, and was engaged in manufacturing fountain syrups to supply its own extensive needs.” Id. “The manufacture of syrups was one of Loft’s not unimportant activities.” Id. at 279.

The Guth analysis was adopted in New Jersey by Solimine v. Hollander, 128 N.J. Eq. 228 (Ch. 1940). See id. at 246. The Appellate Division adopted Guth and Solimine in Valle N. Jersey Auto. Club, 141 N.J. Super. 568, 574 (App. Div. 1976), aff’d as modified, 74 N.J. 109 (1977).

According to Solimine at 128 N.J. Eq. 246–47:

It is clear from an analysis of the two opinions in the Loft case, as well as of the numerous authorities cited therein, that

a finding of 'corporate opportunity' will be denied:

- (a) wherever the fundamental fact of good faith is determined in favor of the director or officer charged with usurping the corporate opportunity, or*
- (b) where the company is unable to avail itself of the opportunity, or*
- (c) where availing itself of the opportunity is not essential to the company's business, or*
- (d) where the accused fiduciary does not exploit the opportunity by the employment of his company's resources, or*
- (e) where by embracing the opportunity personally the director or officer is not brought into direct competition with his company and its business.*

All five of the above exclusionary factors are present; however, the facts are uncontroverted with respect to at least four of the factors, any which of them is fatal to Kalra's usurpation claim. Products sells specialized light bulbs and fixtures. Without Rajeev, who is not a director, shareholder, or employee of Clothing or Properties, neither Properties nor Clothing would be able to avail itself of the business of Products. There is simply nothing in the record that would indicate that Properties, Clothing, or Kalra ever had a desire to enter the lighting business until Kalra filed his Counterclaim and Third-Party Complaint. Kalra has not demonstrated any reason why he or any company he had an interest in would have a desire to enter the lighting business other than his realization in the course of this litigation that it can be

lucrative. He has, in fact, acknowledged that he knows nothing about the lighting business. Once again, Kalra's overreach makes clear that his claims are not made in good faith.

vii. CCL 302

Aiding And Abetting Conversion as to India matters

In addition, without authorization, Khanna, R. Perti and/or S. Perti profited from the sale of real estate in India as more fully detailed herein, and failed to turn over Defendant Kalra's rightful share and thus exercised dominion and control over the funds in a manner inconsistent with Defendant Kalra's rights.

Perti Direct

22T-RP p51

You were involved in the purchase of two properties in India in which Mr. Kalra had an interest; right?

A Yes.

Q Are you familiar with something known as a D.I.N.?

Q Is that an Indian abbreviation?

A Yes, it is the director's information number, that's what they call it.

Q And what does that mean or do in India?

A The directors in any company over there have to have a DIN number.

22T-RP p53

Q Okay. How did you become involved in the properties that were ultimately owned by Mr. Khanna and Mr. Kalra?

A Okay. Mr. Khanna and Mr. Kalra, they wanted to do investments in India. And at that time, they had a really close relationship amongst themselves and they knew me very well, as well. I was already there in India and I had a DIN number myself. And Mr. Khanna had it. They wanted to form some companies. Mr. Kalra and Mr. Meta, they applied for DIN numbers and that was denied. So they requested me, can you -- can you do us a favor? And that's what I did, that's how I got involved in the properties...

Q Do you ever exercise a power of attorney? A Not that I recall.

22T-RP p54

Q And you were there because you had a DIN and Mr. Kalra didn't?

A Yes.

22T-RP p55

Q And there came a time -- oh, in doing this in becoming a director, did you ever ask Mr. Kalra for any compensation for doing this?

A No.

Q Why did you do it?

A It was a favor to friends and family.

22T-RP p56

Q Did these companies purchase properties? A Yes.

Q And ultimately, were those properties sold? A Yes.

Q So what happened to the proceeds of the sale with regard to Mr. Kalra's interest?

A The one property, as per the directions of Mr. Khanna, I think the checks were written out and the second property I think is still settled between the two but the share which came in my name, I already gave to Mr. Khanna.

MR. APPEL: Let's go to third-party defendant 7

22T-RP p58

Q All right. If you look at the first page, you see a check 2473 by Global Consumer Products?

A Yes.

Q That's your company; correct?

A Yes.

Q That's Mr. Kalra with 34,500. How did that check come to be written and why?

A Mr. Khanna told me to make payment of two checks to Mr. Kalra.

Q And there's a second one, is it for the equal amount? A Yes.

Q And what was the source of the funds

Q The sale of one of the properties? A Yes.

Q Why did you write a Consumer Products check

22T-RP p59

rather than just give him funds from India?

A Because I believe Mr. Khanna told me Mr. Kalra wanted it in U.S. dollars.

Q Did you receive any benefit for writing this check? You, personally?

A No.

Q Did you receive any benefit doing any of this work?

A No.

Q Were there any funds that came into your account that did not go out of the account, as -- in order of fashion directly by Mr. Khanna?

A No, whatever came, I transferred to Mr. Khanna, from the proceeds of the sale of the two properties.

Q Did Mr. Kalra ever complaint about your activity on his behalf with regards to the Indian investments?

A Never. It used to be a very friendly affair...

Q Okay. Did you or Products receive any kind of benefit in any way from the services you rendered at the -- on behalf of Mr. Kalra with regards to the Indian properties?

22T-RP p60

A No.

Rajeev Perti's voluntary help to someone he considered a friend at no benefit to himself gives truth to the adage "No good deed goes unpunished." Kalra has presented nothing to establish any impropriety on the part of Perti. All funds that passed through Perti's hands have been fully accounted for. There was no factual basis to support Kalra's claim against Perti with respect to the India properties. This is another abusive claim by Kalra.

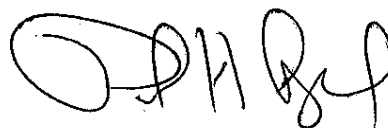
LEGAL ARGUMENT

Findings of fact and issues of credibility must be deferred to the court below if supported by sufficient credible evidence in the record. See: State v Locurto, 157 NJ 463, 470-71 (1999); Rova Farmers Resort, Inc v Investors Ins. Co., 65 NJ 474, 483-84 (1974). Additionally, the numerous rulings made during the litigation process, if they are within the trial court's discretionary authority, are measured against the standard of "mistaken exercise" or "abuse of discretion." Thus, an appellate court must defer to the trial courts exercise of discretion unless the trial judge pursued a manifestly unjust course, Gillman v Bally Mfg. Corp, 286 NJ Super 523 528 (App Div 1996), and the mistaken exercise prejudices the substantial rights of a party. Morning Ledger v Sports and Expo., 423 NJ Super 140, 174-175 (App Div 2011). In the case at bar, Sandeep Kalra's own admissions constitute overwhelming evidence that he lacks all credibility. The decision below finding that Kalra's testimony was not credible should be affirmed.

CONCLUSION

For the reasons stated above, the decision denying Sandeep Kalra's counterclaims and third party claims should be affirmed.

Respectfully submitted

A handwritten signature in black ink, appearing to read "PH Appel". The signature is stylized with a large initial "P" and "H" and a cursive "Appel".

Paul H Appel

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PRADEEP KHANNA and ASHMEE
KHANNA,

Plaintiffs-Respondents,

v.

SANDEEP KALRA and GLOBAL
PROPERTIES & HOLDINGS LLC,

Defendants-Appellants,

– and –

SANDEEP KALRA, in his individual
capacity and on behalf of GLOBAL
PROPERTIES & HOLDINGS LLC,

Third-Party Plaintiff-
Appellant,

v.

SUCHITA PERTI, RAJEEV PERTI,
GLOBAL CONSUMER PRODUCTS
t/a OVERDRIVE LIGHTING, JOHN
DOES 1-10 and XYZ CORP. 1-10,

Third-Party Defendants-
Respondents.

SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION

Docket No. A-001293-24

Civil Action

On Appeal From:

Superior Court of New Jersey, Law
Division, Essex County

ESX-L-006624-19

Sat Below:

Hon. Jeffrey B. Beacham, J.S.C.

Hon. Russell J. Passamano, J.S.C.

Attorney of Record and on the Brief:

Justin A. Jacobs, Esq. (006152010)

Submitted:

July 28, 2025

REPLY BRIEF OF DEFENDANT/APPELLANT, SANDEEP KALRA

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PRELIMINARY STATEMENT

The 105 pages of briefing submitted by plaintiff, Pradeep Khanna (“Khanna”), and third-party defendants, Rajeev Perti and Sushita Perti (“Third-Party Defendants”) (collectively, “Respondents”) fail to address the key legal issues raised on appeal – namely, whether the trial court misapplied the legal standards relating to fiduciary duties, the business judgment rule, and a usurped business opportunity. Rather than defend the trial court’s legal errors (which they cannot), Respondents seek to distract this Court with irrelevant facts and mischaracterizations. They also rely on exaggerated credibility findings (most of which rested on nothing more than witness body language) and conspicuously ignore that every independent witness Khanna claimed would corroborate his story testified squarely against him. Nor can Respondents refute that Judge Passamano overlooked Khanna’s admitted lack of personal knowledge and inconsistent testimony on key issues. This Reply Brief is submitted to underscore the trial court’s legal errors, and the resulting unsupported factual conclusions, which should be reversed on appeal.

LEGAL ARGUMENT

Point I: Judge Beacham Erred As A Matter Of Law By Denying Kalra’s Motion For Summary Judgment

At the summary judgment stage, there was no dispute that, in 2006-2007, Khanna had transferred millions of dollars of Clothing’s money into his personal

HSBC India Account – and, thus, Kalra met his burden of establishing that Khanna had engaged in transactions that were considered self-dealing. (Da2066-2080 at ¶¶47-159). As explained in greater detail on pages 28-32 of Kalra’s initial brief, where a fiduciary has engaged in self-dealing, a “heavy” burden shifts to the fiduciary to prove, by clear and convincing evidence, that the conduct was fair to the company. In the context of a summary judgment motion, judgment should be entered against the fiduciary unless the fiduciary presents sufficient evidence that could satisfy his “heavy” burden of proof. See also Globe Motor Co. v. Igdalev, 225 N.J. 469, 479-81 (2016) (“The motion court must analyze the record in light of the substantive standard and burden of proof that a factfinder would apply in the event that the case were tried.”).

Khanna’s sole argument in opposition to Kalra’s motion for summary judgment was that the statute of limitations barred Kalra’s claims. Specifically, Khanna claimed Kalra (along with Mehta and Mariyappa) knew about the Transfers¹ because they were the purported repayment of money that Khanna’s family had allegedly advanced to Clothing. In his appellate brief, Khanna conceded that his statute of limitations defense hinged on a showing that Kalra knew about the Transfers and claimed that Judge Beacham “overlooked” evidence that Kalra knew about the Transfers. (Pb42-48). Not only did the summary judgment record fully

¹ Capitalized terms retain the meanings as used in Kalra’s initial appellate brief.

support Judge Beacham’s finding that Kalra did not know about the Transfers, it also did not contain clear and convincing evidence that the Transfers were fair to Clothing – which should have resulted in judgment being granted in favor of Kalra.

First, Khanna’s allegations with respect to the use of his family’s money in Clothing’s business – which were based on his own deposition testimony and certifications – were inadmissible because Khanna admittedly lacked any personal knowledge of the use of his family’s money. During his deposition, when Khanna was asked to describe the process by which the alleged advances of “family money” were made, he testified that: “I don’t really know how the money went” and “I’m not the one who made the transfers.” (Da244 at 338:23-340:01; Da181 at ¶11). With respect to the alleged use of his family’s money, Khanna testified at his deposition that he did not know the dates of any of the advances, the specific amounts that were advanced, the number of advances that purportedly took place, or the source of the money (namely, whether the money was his father-in-law’s, his brother-in-law’s, or his own). (Da232 at 226:12-227:05). In his Statement of Material Facts and summary judgment certifications, Khanna alleged that Kalra, Mehta, Prem Perti and Sanjeev Perti were involved in the purported use of Khanna’s family’s money. (Da169-183; Da1544-1546; Da1920-Da1924). Notably, Khanna did not once allege that he had any personal involvement with, or knowledge of, any advances. (Id.). Khanna also admitted that he had no documents that identified the use of his family’s money.

(Da182 at ¶15; Da231 at 221:23-227:12 (Q. Do you have any documentation to support these allegations [regarding advances of your family’s money], sir, yes or no? A. Not as of now, no.); 1T16:03-16:03 (Judge Beachman finding that Khanna “does not have any supporting documents”)).

Because Khanna did not allege any facts that could establish that he was personally involved in the purported advances of his family’s money (and, instead, he claimed that he was not involved), Khanna was not competent to provide testimony on this topic. See N.J.R.E. 602 (generally precluding the testimony of a witness to a matter unless the witness has personal knowledge of the matter in question); see also Neno v. Clinton, 167 N.J. 573, 584-85 (2001) (“A person who has no knowledge of a fact except what another has told him does not, of course, satisfy the present requirement of knowledge from observation.”) (quoting McCormick on Evidence § 10 (5th ed. 1999). New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 332 (App. Div. 2014) (“Affidavits in which the affiant fails to . . . explain the source of his personal knowledge of the facts to which he attests . . . should be rejected.”)).

The only witnesses that Khanna identified as having knowledge of the alleged advances of Khanna’s family’s money were: Kalra, Mariyappa and Mehta. The summary judgment record contained deposition transcripts from all three witnesses in which they testified that no such advances had taken place and that they were not

aware of the Transfers into Khanna's HSBC India Account. (Da648 at 95:22-98:21; Da1208-1209 at 28:01-32:01). As such, the summary judgment record fully supported Judge Beacham's finding that Khanna had not put forth competent evidence that Kalra knew about the Transfers. Summary judgment should have been entered in favor of Kalra because there was not clear and convincing evidence to meet Khanna's heavy burden of establishing that the Transfers were fair to Clothing.

In his brief, Khanna argues that, even if Kalra did not know about the Transfers, Kalra should have known about them had he acted "with reasonable diligence" by reviewing Clothing's financial records. (Pb48). However, even if Kalra had reviewed the financial records of Clothing (which he did not), such records did not identify the Transfers. Indeed, Clothing's financial statements make absolutely no reference to the approximately \$4 million dollars that was transferred to Khanna's HSBC India Account despite extensive notes detailing creditors, related party transactions, and accounts payable. (Da1926-1980; Da2284-2319). Because Khanna used cashier's checks to hide his theft, Clothing's bank statements also did not identify that he had transferred money to his own HSBC India Account. (Dca420-430; Dca445-466). As such, the summary judgment record established that, even if Kalra had been more astute and scrutinized the financial records of Clothing (instead of trusting Khanna to handle this aspect of the business), Kalra could not have reasonably discovered Khanna's misconduct. See Silverstein v. Last, 156 N.J. Super.

145, 153-54 (App. Div. 1978) (finding that a plaintiff did not acquiesce to the misconduct of his managing co-adventurer because the misconduct was not discernable from the financial records available to the plaintiff); Walid v. Yolanda for Irene Couture, 425 N.J. Super. 171 (App. Div. 2012) (the Appellate Division reversed the dismissal of a fraud claim following a bench trial because the business records “concealed the fraud” and, thus, the plaintiff could not have reasonably discovered that the misrepresentations were false).

Finally, Khanna also offered no equitable basis to avoid the application of the discovery rule. Khanna claimed that the passage of time caused the destruction of records, but Khanna possessed all of Clothing’s financial records, including financial statements dating back to the early years of the company, which did not identify any advances of his family’s money. (Da1926-1944). Moreover, the witnesses that Khanna claimed had knowledge of the advances of his family’s money and the Transfers – including, Mehta, Mariyappa, and Kalra – all gave deposition testimony or certifications: (1) denying that there were any advances of Khanna’s family’s money; and (2) denying that they were aware of the Transfers into Khanna’s HSBC India Account. (Da584 at 42:06-42:23; Da1208-1209 at 28:23-29:14 and 31:19-32:01; Da401-402 at ¶¶ 6-11).

In contrast, the equities weighed strongly in favor of applying the discovery rule. The summary judgment record established that Khanna hid the Transfers from

his partners (and Clothing's bookkeeper) by using cashier's checks and fragmented transactions. The discovery rule was applicable in this instance because New Jersey law does not allow the perpetrator of fraud to benefit from concealing his misconduct. Catena v. Raytheon Co., 447 N.J. Super. 43, 61 (App. Div. 2016).

Based on the foregoing, summary judgment should have been entered in favor of Kalra on the Transfers Claim.

Point II: Respondents Do Not Contest That Judge Passamano Erred In Finding That Khanna Did Not Owe His Partners Fiduciary Duties

Notably absent from Respondents' briefs is any discussion relating to Judge Passamano's incorrect finding that Khanna, as the CFO of Clothing in both title and role, did not owe his partners fiduciary duties. This issue was raised in Point II of Kalra's initial brief and completely ignored by Respondents. Under New Jersey law, it is well settled that where, as here, a respondent has failed to address a point raised in the appellant's brief, any opposition to that point is deemed waived. See, e.g., State v. Lefante, 14 N.J. 584, 590 (1954) ("All the arguments on which the respondent relies in upholding his judgment below must be presented to this court or be deemed to be waived."); Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) ("An issue not briefed on appeal is deemed waived.").

For the reasons set forth in Kalra's brief, the trial record established that Khanna, as CFO and a partner of Clothing (who was trusted with handling all

financial aspects of Clothing), had a heightened fiduciary duty of loyalty and care.² (Db25-28). The fiduciary duties owed by Khanna to his partners unquestionably prohibited him from engaging in self-dealing of any type. Judge Passamano’s reliance on informal corporate governance to excuse those duties was contrary to controlling New Jersey law. See 68th St. Apts., Inc. v. Lauricella, 142 N.J. Super. 546, 555 (Law Div. 1976), aff’d, 150 N.J. Super. 47 (App. Div. 1977).

When Judge Passamano incorrectly held that Khanna did not owe his partners “a heightened, or particular, fiduciary responsibility,” it was the type of fundamental legal error that has been found to “infect all subsequent findings of a trial court.” See Silverstein, 156 N.J. Super. at 151-52. In Silverstein, the plaintiff (Silverstein) brought claims against a coadventurer (Last) for breach of fiduciary duties arising from Last’s management of a joint venture. See id. Over a 15-day bench trial, Silverstein established that he had delegated management of the joint venture to Last due to their personal relationship and Last’s relevant experience. See id. at 149.

² In his brief, Khanna attempts to minimize his role as CFO by claiming that: “Khanna used the title of ‘Chief Financial Officer’ even though he had no training or education as the function or obligations of a chief financial officer.” (Pb9). However, the trial record – including Khanna’s own admissions that he was “the finance guy” for Clothing and obtained his CPA license – conclusively proved that Khanna was responsible for all financial aspects of Clothing. (Db26-27). Khanna’s own biography, which he included in Clothing’s business plan, stated that, prior to joining Clothing, he served as the CFO for another company for three years (from 1992-1995). (Da2213). As such, there is no basis to conclude that Khanna was unaware of his responsibilities as a CFO.

Silverstein claimed that Last had engaged in various types of self-dealing – including the receipt of undisclosed profits in connection with the joint venture. See id. at 151-52. At the conclusion of the trial, the trial judge dismissed Silverstein’s claims without recognizing that Last owed Silverstein fiduciary duties or evaluating the claims under the applicable fiduciary standard. See id. at 148-53. The trial court stated its conclusion as follows:

I am satisfied from all of the evidence before me and so find that Last and [the management company owned by Last] did not use or misuse funds from the corporate general account for the personal benefit of Last. Furthermore, there is no convincing evidence of mismanagement or waste on the part of defendants.

See id. at 153 (also finding that Silverstein acquiesced in the managerial fiscal practices for which he complained because he had access to financial documents).

The Appellate Division reversed the trial court’s decision, holding that the central error lay in the trial judge’s failure to recognize that Last owed Silverstein fiduciary obligations and, thus, failed to assess Last’s specific conduct under the required fiduciary standard. See id. at 153-54. The Appellate Division found that Silverstein had presented prima facie evidence that Last had engaged in self-dealing, and that “the trial judge’s denial of relief to plaintiff despite these proofs proceeded from a misconception of the nature of the joint adventurer relationship [and the fiduciary duties owed to Silverstein] which was so fundamental as to infect all its

subsequent findings and to render them, in the appellate context, unreliable and unsustainable.” See id. at 151-52.³

Here, just as in Silverstein, Judge Passamano failed to recognize the fiduciary duties owed by Khanna to his partners. (Da2389; Da2393). Judge Passamano also failed to assess the specific claims of self-dealing (including the Transfers) under the requisite fiduciary standard. (Da2393-Da2395). Instead, Judge Passamano generally concluded that because all three of the partners “were involved in the business” of Clothing (albeit in different roles), “the partners knew and were aware of the manner in which operations were conducted.”⁴ (Id.)

Judge Passamano did not make any findings that Khanna had established by clear and convincing evidence: (1) that Khanna’s family had advanced money to Clothing; or (2) that the Transfers were the repayment of money that Khanna’s

³ The Appellate Division also held that the trial court erred in finding that Silverstein had acquiesced to the alleged misconduct because Silverstein was permitted to delegate financial management to Last (without any oversight) and Last’s misconduct was not otherwise discernable from a review of the relevant financial records. See id. at 153-54.

⁴ Although Judge Passamano found that Kalra and Mehta were involved in Clothing’s business and generally understood its operations, he also recognized that Khanna was responsible for the financial aspects of the business due to his “skill-set and expertise” and that “every specific act [of Khanna] may not have been approved” by the other partners. (Da2389; Da2393-Da2395). These findings fall far short of establishing that Khanna fulfilled his fiduciary duties when he, among other things, transferred millions of dollars from Clothing’s bank account to his personal bank account in India.

family had advanced to Clothing. (Da2384-Da2416). Nor did Judge Passamano identify any specific credible evidence that could support such a finding. (Id.) Judge Passamano's failure to evaluate Kalra's breach of fiduciary duties claims under the requisite standard clearly infected his subsequent factual findings, rendering them, in the appellate context, unreliable and unsustainable. See Silverstein, 156 N.J. Super. at 151-52. Accordingly, Judge Passamano's legal error in finding that Khanna did not owe his partners any heightened fiduciary duties requires the reversal of the judgment dismissing Kalra's claims for breach of fiduciary duties.

Point III: Respondents Do Not Contest That Judge Passamano Erred In His Application Of The Business Judgment Rule

Instead of defending Judge Passamano's application of the business judgment rule (which they could not), Respondents completely ignored this issue (which was raised in Point III of Kalra's brief). (Db28-33). Respondents' silence is deemed a waiver. See, e.g., Lefante, 14 N.J. at 590; Sklodowsky, 417 N.J. Super. at 657.

Because the trial record included uncontested evidence that Khanna had transferred millions of dollars of Clothing's money into Khanna's HSBC India Account (which amounted to self-dealing), the burden should have shifted to Khanna to demonstrate by clear and convincing evidence that the Transfers were fair to Clothing. (Db28-33). Instead of applying this standard (and shifting the burden of proof to Khanna), Judge Passamano shielded the Transfers from close scrutiny by improperly immunizing them under a misapplication of the business judgment rule.

(Id.).⁵ Judge Passamano’s legal error (which Respondents conceded through silence on appeal), requires reversal of the dismissal of Kalra’s fiduciary duty claims.

Point IV: The Trial Record Cannot Support A Finding That Khanna Met His “Heavy Burden” Of Demonstrating That The Transfers Were Fair To Clothing

Where, as here, the trial court’s conclusions of law and evaluations of fact pursuant to such conclusions are “wide of the mark,” the Appellate Division is permitted to conduct a *de novo* review of the trial record. See *Walid*, 425 N.J. Super. 179. A *de novo* review of the trial record reveals that the evidence was insufficient for Khanna to prove, by clear and convincing evidence, that his surreptitious Transfers (of over \$4.2 million to a personal bank account) were fair to Clothing.

A. All of the independent witnesses, who Khanna claimed had relevant knowledge, corroborated Kalra’s testimony and refuted Khanna’s testimony

In their appellate briefs, Respondents focused on overstated descriptions of Judge Passamano’s credibility determinations, which went far beyond Judge Passamano’s actual findings.⁶ Judge Passamano’s credibility findings were based

⁵ Khanna mimicked this error in his appellate brief and misstated the respective burdens of the parties by claiming that “Kalra failed to prove that the [Transfers] constituted theft or conversion.” (Pb50). Because the Transfers involved self-dealing, it was Khanna’s burden to prove that the Transfers were fair to Clothing.

⁶ For example, Khanna claimed that the trial court found that “Khanna did not steal the money” in connection with the Transfers. (Pb51). Khanna also stated that the trial court found Kalra’s testimony regarding Bank of Baroda “implausible.” (Pb53).

almost entirely on the “body language” of Khanna and Kalra and completely ignored the testimony of the witnesses who had been identified by Khanna as having knowledge that would corroborate Khanna’s story.

Mariyappa was Clothing’s bookkeeper who was responsible for keeping track of Clothing’s accounts payable. (22T16:14-17:15). According to Khanna’s testimony, Mariyappa purportedly maintained written statements of the use of Khanna’s family’s money and had personal knowledge of the alleged advances. (17T34:17-35:20). As such, Mariyappa’s testimony was critical to evaluate whether Khanna’s story was corroborated by a person specifically identified by Khanna as having relevant knowledge. At trial, Mariyappa unequivocally testified that there were no advances of Khanna’s family’s money and that he was unaware of the Transfers to Khanna’s HSBC India Account, which directly undermined Khanna’s testimony.⁷ (22T16:14-17:15; 22T40:19-40:24) (Mariyappa testified that he would have been “surprised” to discover that there were dozens of Transfers from Clothing to Khanna’s HSBC India Account over

Khanna did not identify where in the trial court’s decision these findings were made, and a review of the decision reveals no such findings.

⁷ Khanna never challenged the truthfulness of Mariyappa’s testimony or alleged that Mariyappa had any bias towards Kalra. In fact, any bias that Mariyappa could have had would have been in favor of Khanna because, at the time of his testimony, Mariyappa still worked for Third-Party Defendant, R. Perti, who is Khanna’s brother-in-law. (22T20:07-20:10).

a five month period).⁸ Given the importance of Mariyappa's testimony, it is inconceivable that Judge Passamano's decision did not mention Mariyappa's testimony once (as if it did not happen).

Similarly, Judge Passamano erred by failing to evaluate how Mehta's testimony corroborated Kalra's testimony and eviscerated Khanna's testimony. Both prior to and during trial, Khanna repeatedly stated that Mehta, the third partner of Clothing, was aware of the alleged advances of Khanna's family's money as well as the Transfers. (Da181 at ¶13 (Khanna certified that he directed the Transfers "[w]ith the knowledge and consent of Kalra and Mehta"); Da2206 at ¶16 (Khanna claimed that Mehta directly received money from Khanna's family to give to factories)). At trial, when Mehta was questioned directly on these topics, he testified that there were no instances in which Khanna's family's money was used in connection with Clothing's business and that he was unaware of the Transfers to Khanna's HSBC India Account. (15T48:03-48:08) (when asked whether Khanna's certification, which stated that the Transfers were made

⁸ Khanna claims in his brief that the financial records of Clothing were subject to regular audit by Clothing's accountants, including RBSM. (Pb11, 51). However, there was no evidence presented at trial reflecting that any such audits had been performed. RBSM's cover letter clearly states that no audit was performed and, instead, the "information included in these financial statements is the representation of the management of [Clothing]." (Da1948).

with Mehta's knowledge and consent, was true, Mehta replied: "No") (15T48:03-48:08).

Mehta also testified that he was not aware of any reasons that would justify the transfer of Clothing's money to the HSBC India Account. (15T46:05-46:09). Contrary to Khanna's testimony, Mehta testified that he first learned about the Transfers during his deposition and, upon learning that millions of dollars had been transferred to Khanna's personal account, Mehta was in "shock" and "disbelief" that Khanna had stolen millions from Clothing. (15T96:10-97:01). Mehta's testimony – which went unchallenged by Khanna as to truthfulness at trial – was completely ignored by Judge Passamano.

In his appellate brief, Khanna attempted to downplay the significance of Mehta's testimony on the basis that "Mehta was not involved in the finances of Clothing," and, thus, presumably would not have been aware of advances of Khanna's family money. (Pb23). This argument is inconsistent with Khanna's own prior testimony, sworn certifications, and the position Khanna took at the beginning of the trial in which he claimed that Mehta was aware of the advances because he directly received the money and advanced it to vendors. (Da181a at ¶13; Da2206 at ¶16; 2T94:16-94:16 (Khanna's attorney claiming that "Mickey [Mehta] had been advanced some money also"). Khanna cannot have it both ways. He cannot: (1) prior to, and at the beginning of the trial, claim that Mehta

knew about, and directly participated in, the alleged use of Khanna's family money; and (2) then, after Mehta testified to the contrary, later claim that Mehta was never in a position to know about the advances of family money. This is especially true because Mehta testified that he was "dealing with factories one-on-one directly" and "would've known" if Khanna's family had advanced millions of dollars to the factories. (15T49:11-50:08).

Judge Passamano's ruling indisputably overlooked how the testimony of these independent witnesses corroborated Kalra's testimony (and directly contradicted Khanna's testimony). As such, Judge Passamano's conclusion that Khanna was credible and Kalra was not (which was based on demeanor) clearly ignored critical evidence that should have been taken into consideration. See Pioneer Nat'l Title Ins. Co. v. Lucas, 155 N.J. Super. 332, 338 (App. Div. 1978).

B. Khanna's testimony was not based on personal knowledge and was inconsistent with his prior statements

Judge Passamano's decision as to Khanna's credibility on the issue of the alleged advances of his family's money was also in error because it failed to take into consideration Khanna's admissions that he did not participate in the purported advances and, thus, lacked personal knowledge to give such testimony. At trial, when he was asked whether he was personally involved in the advances of his family's money to any factories, Khanna replied: "I was not personally involved." (21T82:22-82:25; 21T88:09-88:12 (Khanna admitted that

he had “no personal involvement” with the purported advances)). Khanna’s appellate brief also alleged that Kalra (and not Khanna) “kept track of the advances and managed actual cash provided by Khanna’s family.” (Pb12.)

The trial record included many admissions by Khanna that he did not know the dates, amounts, or number of advances – or whose money (his father-in-law, brother-in-law or his own money) was used for the advances. (21T82:22-86:02; Da2352 at 225:21-226:19). Without any alleged personal knowledge of the purported advances of his family’s money, Khanna’s testimony on this topic should have been disregarded.⁹ See N.J.R.E. 602; Neno, 167 N.J. at 584-85.

Khanna’s testimony was also inconsistent with his prior statements. Khanna pled the Fifth Amendment when questioned about the Transfers. (Dca497-Dca498 at 28:16-29:23; Dca594a-Dca595ca at 32:24-33:17). He also told the IRS that he had paid taxes on the money involved in the Transfers, which was inconsistent with his position that the Transfers were the repayment of advances (for which no taxes would need to be paid). (Da989 at ¶(qq)).

Khanna also concealed material information regarding the Transfers during discovery in this case. In response to interrogatories, Khanna refused to identify each of the Transfers, explain the reason for the Transfers, or disclose

⁹ This argument was ignored in Judge Passamano’s decision even though it was raised during trial and in the proposed findings of fact and conclusions of law.

that he and R. Perti were the ultimate recipients of the Transfers. (Da1088-Da1092). During his deposition in this case, before the extent of the Transfers was revealed, Khanna would only confirm that 3 of 33 Transfers had come from Clothing's bank account (when he knew that all of them had come from Clothing's bank account). (Da2347-Da2349).¹⁰

Because Khanna's self-serving testimony regarding the alleged advances was not based on personal knowledge and his testimony regarding the Transfers was contradicted by Khanna's own prior inconsistent statements,¹¹ his testimony fell woefully short of meeting his burden of demonstrating by clear and convincing evidence that the Transfers were fair to Clothing. Parker v. Poole, 440 N.J. Super. 7, 22 (App. Div. 2015) (noting that prior inconsistent statements clearly impact the credibility of a witness).

¹⁰ It took substantial time and effort to confirm that all of the Transfers had come from Clothing's account because Khanna was less than forthcoming in his discovery responses and because he had used cashier's checks to conceal his misconduct. Notably, at trial, Khanna never provided an alternative explanation for using cashier's checks instead of wires (which was the method by which Clothing made all other payments) other than to conceal the Transfers.

¹¹ Khanna's inconsistent testimony was not limited to this topic. For example, in connection with an important issue in this case involving the date an MOU was signed (which is not subject to this appeal), Khanna gave many inconsistent statements. He stated at trial that it was signed on April 2, 2016, but he had previously certified under oath and represented on multiple occasions that it had been signed on February 24, 2016. (5T82:02-92:04). Judge Passamano's decision did not take into consideration the blatant inconsistencies in Khanna's testimony and, instead, found him to be credible based on his "straight-forward manner."

C. Khanna’s explanation for the alleged need for his family’s money was inconsistent with the testimony and documents in the record

The trial record did not support Khanna’s claim that the reason Clothing needed advances of his family’s money from 1997-2004 was because Clothing allegedly did not have access to capital or credit during that time. Khanna claimed that “during the first several years of the enterprise (1997 to 2004), Clothing did not have sufficient capital or credit lines to efficiently operate or grow” and that Khanna’s family in India needed to advance millions of dollars to suppliers of Clothing on Clothing’s behalf. (Da181 at ¶9).

Khanna’s allegations were refuted by Kalra and Mehta who dealt directly with the factories daily and testified that Clothing had more than sufficient access to factory credit, credit lines, and the use of a factor such that Khanna’s family’s money was not needed in Clothing’s early years. (15T34:06-36:14; 7T122:02-122:18). Factory credit allowed Clothing to make purchases from factories without advancing money to the factories (and, instead, paying the factory after the goods were received). (15T19:21-22:07; 7T122:02-122:18). Mehta testified that “it was against our principle [as a] company to advance money to manufacturers . . . we would never advance.”¹² (15T52:02-52:14).

¹² There was no proof introduced at trial that corroborated Khanna’s claim that Clothing needed to advance money to factories at the time of purchase. In his appellate brief, Khanna claimed that this practice was confirmed by Mehta, but Mehta testified that Clothing (and Khanna specifically) had a policy of *not*

Kalra and Mehta both testified that factory credit was “critical” to the early success of Clothing and was offered to Clothing because of Kalra and Mehta’s past relationships with the factories. (Id.). The only witnesses to testify at trial who owned factories that did business with Clothing (and who were identified by Khanna as having received advances of Khanna’s family money) – namely, Rakesh Mehra (of Ample Export) and Sushil Barman (of Fabrika International) – stated that they did not require payments from Clothing until 60 days after the goods were received by Clothing. (23T12:14-13:20; 92:09-93:11).

Clothing’s financial statements also proved that, during the relevant time, Clothing had access to a significant amount of credit and would not have needed to borrow millions of dollars from Khanna’s family. The financial statements show that, in 1998 (within the first year of the business), Clothing had access to a credit facility through Century Business Credit Corporation in the amount of \$1,122,521 – which grew to \$2,751,751 by July 31, 1999. (Da2296; Da2313). Additionally, in 2001, Clothing had a line of credit with Fleet National Bank in

advancing money to factories and that Mehta could only remember one instance in which it happened. In that instance, which took place in 2016, Clothing’s business was being shut down, Clothing did not have a line of credit, and it no longer had factory connections that would allow it to receive factory credit. (15T75:16-78:19). In his appellate brief, Khanna also claimed that his sur-rebuttal testimony established that advances had occurred, but when Khanna was cross-examined about those alleged advances, he confirmed that none of the so-called “advances” required payment at the time of purchase and none of the “advances” required the payment of any of his family’s money. (24T110:1:114:02).

the amount of \$2,500,000 – of which it was only using a balance of \$501,000. (Da1937). In fact, from 2002-2004, which was the same time that Khanna claims his family’s money was needed, Clothing had enough excess cash to pay officer salaries of over \$8 million.¹³ (Da2264; Da2282).

Based on the foregoing, the evidence introduced at trial, which was not fully considered or discussed by Judge Passamano in his decision, was insufficient for Khanna to prove that Clothing needed to borrow millions of dollars from Khanna’s family to fund Clothing’s operations from 1997-2004.¹⁴

D. Clothing’s financial statements did not identify any advances of Khanna’s family’s money

Khanna has admitted that the financial statements of Clothing did not include any reference to his “family money.” (19T110:16-110:25 (“it doesn’t show up as family money in the books of Clothing”); 19T128:04-128:10 (Khanna responding “No” to the question of whether the financial statements reflect that Clothing received advances from Prem Perti); 6T111:02-111:13

¹³ Clothing’s profit margins of 27.26% (Pa19) and 29.4% (Pa12-13) support the finding that Clothing was making significant profits in its early years – which corroborates the testimony of Kalra and Mehta.

¹⁴ Khanna’s false statements regarding the Transfers did not stop at trial. On appeal, he claimed that the Transfers “did not affect the . . . capital contributions of the partners” (Pb19-20; 23); however, the trial record showed that Khanna requested the infusion of \$500,000 from Kalra starting in November 2007 – just seven months after Khanna completed the Transfers. (9T103:12-103:16; 104:14-105:22; 17T108:03-108:20).

(“they didn’t show up in the books of Clothing”). Even though all of Clothing’s lenders – such as: Century Business Credit Corporation, Morgan Stanley Dean Witter, and Fleet National Bank – are individually identified in Clothing’s financial statements, the detailed notes with respect to liabilities and related party transactions do not contain a single mention of Prem Perti or Khanna’s “family money.” (Da2284-Da2318; Da1927-Da1980).

At trial, Khanna claimed that even though the financial statements do not show any advances of Khanna’s family’s money, the advances were included as part of the accounts payable figure. Khanna’s argument, however, was refuted by the testimony of Mariyappa. At trial, Khanna testified that Mariyappa was responsible for maintaining the records with respect to Clothing’s accounts payable and that Mariyappa would provide the information to the accountant for the preparation of the financial statements. (3T149:22-150:09; 19T130:25-131:06). As such, Mariyappa had first-hand, personal knowledge of all of Clothing’s payables and the information used to calculate the accounts payable figure included in Clothing’s financial statements. (Id.; 22T8:24-10:06). When asked directly about this issue, Mariyappa testified that he was not aware of any instance in which Clothing’s accounts payable included an amount advanced by Prem Perti or Khanna’s family. (22T17:01-17:15).

The financial statements themselves are also inconsistent with Khanna's claim that the accounts payable figure included advances of his family's money. Indeed, according to Khanna, as of March 31, 2001, Khanna's family had advanced \$2,572,000 for use in Clothing's business. (Pb15.) However, as of December 31, 2000, accounts payable for Clothing was \$1,278,891 (which was \$1,293,109 less than the amount of "family money" that Khanna claimed was being used by Clothing at that time). (Da1930). Moreover, in 2007, Khanna transferred \$1,524,244.20 from Clothing's bank account to Khanna's HSBC India Account (which he claims was reimbursement for prior advances). (Db9). However, according to Clothing's financial statements, as of December 31, 2006, Clothing's accounts payable was only \$560,183 (which is nearly a million dollars less than the amount Khanna claimed had been advanced by his family and unreimbursed at that time). (Da1949). As such, and as Mariyappa testified, Clothing's accounts payable did not include any advances of family money.

Based on the foregoing, Khanna was unable to meet his heavy burden of proving that the Transfers were fair to Clothing – especially given that Khanna's manufactured claim that the advances were included in accounts payable was refuted by Mariyappa and inconsistent with the financial statements.

E. Khanna's arguments as to the purported reasons why Kalra's testimony should not be credited were all debunked at trial

In his appellate brief, Khanna attempted to impugn the credibility of Kalra, but his arguments went far beyond Judge Passamano's holding. Judge Passamano never found that Kalra's testimony was inconsistent with any specific testimony of any independent witnesses or any documentary evidence. Further, Judge Passamano never specifically found that Kalra testified untruthfully when he – consistent with the testimony of Mariyappa and Mehta – testified that the advances of Khanna's family money never took place. Judge Passamano merely found that Kalra's demeanor made him seem less credible than Khanna.

In his brief, Khanna raised issues that purportedly undermined Kalra's credibility – including issues related to Bank of Baroda, PKAL-24 and PKH-233. Judge Passamano did not mention these issues in his decision, likely because they were debunked at trial for the reasons set forth below.

1. Bank of Baroda

According to Khanna, Kalra's Bank of Baroda account was used to receive Khanna's family's money, which was then used to make advances on behalf of Clothing. Because there is no evidence in the record to support this allegation, Khanna has instead argued that Kalra's failure to identify the since closed account in response to an interrogatory on a different topic, somehow proves

that the account was used to receive Khanna's family money.¹⁵ Khanna also claims that Judge Passamano found Kalra's testimony as to Kalra's Bank of Baroda account "implausible" – which he did not (as Bank of Baroda is not mentioned once in Judge Passamano's decision). (Pb53). Khanna's exaggeration of the facts and leaps of logic render his Bank of Baroda argument untenable.

When the so-called Bank of Baroda issue – which Third-Party Defendants inexplicably called "the single biggest issue of the case" – is examined under scrutiny, it is obvious that it does not corroborate Khanna's position. Indeed, Khanna managed Kalra's Bank of Baroda account and, thus, there would have been no reason to hide the existence of the account from Khanna. Indeed, Khanna's management of the account was confirmed by his production of letters (and *draft letters*) from Kalra to Bank of Baroda (which Khanna had possessed

¹⁵ Specifically, during discovery, Khanna asked Kalra to identify all accounts that were used in connection with his Indian real estate investments and to identify all of the underlying transactions. Kalra's answer, which is only excerpted in Khanna's appendix, was three pages long and listed six specific bank accounts (but neglected to identify his Bank of Baroda account, which he had forgotten about). (Pa24; Dca808-Dca816). Kalra also stated in his answer that many of the transactions from his account to fund the India real estate investments had been directed by others such as Khanna and R. Perti and that his answer was based on a review of the bank statements that were available at that time and noted that the relevant records were requested of Khanna and not provided in discovery. (*Id.*). When Kalra was later asked whether he omitted a Bank of Baroda account from his interrogatory answer, he immediately acknowledged his inadvertent oversight and never denied owning a Bank of Baroda account. (Da386-Da387).

for nearly two decades). (Pa72-79 (which have Khanna's bates stamp "PK" at the bottom)).¹⁶ Why else would Khanna have had these documents in his possession if he was not managing the account?

Additionally, the bank records for the Bank of Baroda account are inconsistent with Khanna's claim that the account was being used to distribute Khanna's family's cash (from India) to factories. First, the money in Kalra's Bank of Baroda account was in US dollars. (Pa72-79). That is inconsistent with Khanna's explanation that the account held his family's money from India because the money would have been held in rupees (and not US dollars) if it came from an account within India. Second, the money in Kalra's Bank of Baroda account was held in foreign currency non-resident CDs – which are less liquid than cash, usually have one year terms, and would not have been suitable for receiving and distributing cash. Third, when the CDs matured, the funds were

¹⁶ It was not disputed at trial that Kalra trusted Khanna to manage Kalra's personal finances and personal tax returns. In fact, Kalra's bank statements and brokerage account statements were sent directly to Khanna and Kalra delegated complete control over those accounts to Khanna. (20T112:14-114:23 (Khanna describing how he traded stocks in Kalra's personal bank accounts on Kalra's behalf from 2004-2016); 13T31:12-37:18 (Kalra describing how Khanna managed all aspects of his personal finances); Da2164-Da2166 (in which accountant, Pradeep Gupta, communicates directly with Khanna with respect to Kalra's tax returns); Da2167 (in which Khanna informs Kalra that he funded Kalra's IRA contribution from his brokerage account)).

transferred to Kalra's personal HSBC account in India (and not factories) – which further undermines Khanna's allegations.

As such, there is no evidence in the trial record that could corroborate Khanna's red-herring story that Kalra's Bank of Baroda account was used to distribute advances of Khanna's family's money to Clothing's factories.¹⁷

2. PKAL-24

Khanna claimed that PKAL-24 was created by Kalra to track the use of Khanna's family's money. In contrast, Kalra testified that Khanna created the document to identify how much money Clothing had made as of March 31, 2001. The evidence at trial did not support Khanna's story.

As an initial matter, Khanna's statements regarding the origin of the document were inconsistent. Before trial, Khanna certified: "Kalra created the chart on Kalra 7631 [PKAL-24]." (Da2205 at ¶14). At trial, when Khanna was initially asked who prepared the "worksheet," he testified: "Initially, I prepared it, then I gave a template to Mr. Kalra. So whenever he wanted to update, he would update it." (7T10:05-10:14 (also testifying that Kalra put in the

¹⁷ Khanna's claims in his appellate brief were also inconsistent with respect to whether Kalra allegedly managed cash provided by Khanna's family. Indeed, on page 12 of Khanna's brief, Khanna alleged that: "Kalra kept track of the advances and managed actual cash provided by Khanna's family." However, on page 13, he alleged that: "Kalra managed the family money employed by Clothing and kept track of it, *but he did not handle actual cash when it was used.*" Inconsistencies of this type permeated Khanna's pre-trial statements and trial testimony.

numbers)). Later – after Kalra testified that he did not own or use a computer in 2001, and, thus, could not have created or updated the document – Khanna *changed his testimony* and admitted that he had created the document. (9T90:08-90:24; 19T132:11-133:16). A review of the header of the document also confirmed that Kalra did not create it, as Khanna had previously claimed, because the document was *faxed to* Kalra. (Da2210).

The content of PKAL-24 also undermined Khanna’s narrative. The document does not reference Khanna’s family. Khanna claimed at trial that seven categories on the document (from “Fabric” through “A”) represented advances from his family. However, he previously testified that such advances were listed under “accounts payable” on the company’s financial statements. These positions are irreconcilable. The sum of the seven categories Khanna identified totals \$2,572,000, and PKAL-24 also lists accounts payable of \$936,000. If both figures reflected family money – as Khanna suggested in different contexts – the total liability would be \$3,508,000. But the financial statement dated December 31, 2000 (just three months earlier) lists accounts payable at only \$1,278,891. (Da1930).

Kalra’s explanation – that Khanna created the chart to inform Kalra how much money Clothing had made – is both internally consistent and supported by the document itself. The chart reflects a financial snapshot, listing liabilities

totaling \$1.388 million and assets totaling \$7.42 million, yielding a net of \$6.032 million. (Da2210). Kalra testified that after discussing the figures with Khanna, he wrote “5.84” and “As of March 31, 2001” at the bottom to reflect a further adjustment for warehouse expenses and taxes of \$186,000. (Da2210). This explanation directly aligns with the content and structure of the document.

Based on the foregoing, both the source and the substance of PKAL-24 support Kalra’s position that it was a financial summary prepared by Khanna to assess Clothing’s performance, and not a record of how Khanna’s family’s money was used (as claimed by Khanna without any support).

3. PKH-233

Khanna claimed at trial that PKH-233, which included handwritten notes from Kalra, was an example of Kalra recording the use of Khanna’s family’s money. A review of the document reveals that it makes no mention of any family money (nor does it identify any factories that allegedly received any advances of Khanna’s family’s money). (Da2245). Instead, the document contains two lists of dates and amounts of money that Kalra has consistently testified represented amounts that he was given by Clothing in cash disbursements and distributions.¹⁸ (9T90:08-99:18).

¹⁸ In fact, the cash disbursements, which were listed in the left-hand column of PKH-233, indicate that Kalra received \$124,507 through March 31, 2001, which is

Additionally, Khanna’s repeated admissions during discovery that he had no documents that evidenced the alleged advances of his family’s money – which admissions were made *after* he produced PKH-233 – undermine any later claim that PKH-233 identified such advances. *Khanna* produced PKH-233 on February 12, 2022, and described the document on an index as “Kalra handwritten notes.” (Da2344). This means that, at or around that date, Khanna found this document among his records and reviewed it. Notably, he did not claim at that time that it was a list of any alleged advances.

Twelve days later, on February 24, 2022, Khanna testified at his deposition that he did not have any documents that supported his claim that his family had advanced money to Clothing and that he did not know the dates or amounts of any advances. (Da2351 at 223:11-224:09, 225:21-226:19). Two months after that, at the continuation of his deposition, Khanna confirmed that he did not know when any advances took place, he did not know the amount of any advances, and he did not have “any documents that evidence the advances.” (Da2356 at 332:22-333:05). At the summary judgment stage, Khanna certified that all of the records with respect to use of his family’s money were “either lost . . . or [Kalra] simply refused to produce them in discovery.” (Da182 at ¶15).

consistent with the category “SK” under “Dr” (or distributions) listed on PKAL-24. (Da2245; Da2210).

Also, at trial, when Khanna was asked if he knew the dates and amounts of any advances of his family's money, he replied: "No." (21T83:03-83:19 (also stating: "Right now I don't have the proof"))).

Khanna's admissions that he did not know the dates and amounts of any advances, and did not have any supporting documents, fatally undermined his trial testimony that PKH-233 identified the alleged advances. If, as Khanna claimed at trial, PKH-233 contained a list of dates and amounts of specific advances of his family's money, Khanna would have said so when he was repeatedly asked for this information. He failed to do so because he knew that PKH-233 had nothing to do with alleged advances of his family's money (which did not happen).

Based on the foregoing, Khanna's arguments with respect to PKH-233 – similar to his claims with respect to Bank of Baroda and PKAL-24 – lack corroboration and are merely intended to distract from the indisputable evidence that Khanna surreptitiously took millions from Clothing.

Point V: Judge Passamano Applied The Wrong Standard In Evaluating Kalra's Usurped Opportunity Claim

Respondents failed to rebut Kalra's argument that Judge Passamano reversibly erred by dismissing Kalra's usurped opportunity claim without considering whether Khanna used partnership assets to obtain his interest in Products. See Rolnick v. Rolnick, 290 N.J. Super. 35, 41-42 (App. Div. 1996).

The evidence at trial indisputably established that, at the time Khanna acquired an interest in Products: (1) he used partnership assets (in the form of rent-free warehouse occupancy) to help Products' business; and (2) he transferred over \$1 million of Clothing's money to R. Perti (which was then infused into Products). (Db43-45). As to the free rent, Respondents do not deny that Products received this benefit from Clothing. Khanna has claimed that it was "de minimis"; however, there is no de minimis exception to the prohibition on using partnership assets for a personal venture, and two years of free rent is not de minimis. Solimine v. Hollander, 128 N.J. Eq. 228, 252-53 (1940).

Respondents also did not deny that \$1 million was transferred from Clothing to Products. Perti, the only person who could have denied the link, remained silent at trial – an omission warranting an adverse inference. (TPDb30-33). See Maul v. Kirkman, 270 N.J. Super. 596, 609-10 (App. Div. 1994). Khanna argued that the transfer of over \$1 million was proper because Judge Passamano found, in connection with separate claims, that "Kalra failed to prove that Khanna converted any funds from Clothing." (Pb55.) As discussed above, however, Judge Passamano committed numerous errors in finding that Khanna did not breach his fiduciary duties. In this context, where Clothing's funds were indisputably traced to Products, the burden was on Respondents to prove, by clear and convincing evidence, that Clothing's money was not diverted to

Products – which burden they did not satisfy. See Solimine v. Hollander, 128 N.J. Eq. at 305.

Point VI: Judge Passamano’s Calculation Of Damages For Kalra’s India Real Estate Claim Should Be Reversed

In his appellate brief, Khanna conceded that Judge Passamano’s decision to award Kalra 29,700,000 rupees did not set forth an analysis with respect to the damages owed to Kalra in connection with the two jointly owned properties – namely, Global Garments and Big Apple. (Da2412-Da2416). Without such an analysis, the damages award cannot be properly reviewed on appeal. Curtis v. Finneran, 83 N.J. 563, 569-70 (1980). The proper calculations, which were fully supported at trial are set forth in Kalra’s brief. (Db18-21, 47-48).

Even if Judge Passamano had accepted Khanna’s damages argument (which was unsupported), Khanna claimed that Kalra was entitled to receive at least 34,138,075 rupees as follows:

Investments (based on Khanna’s PKAL-31)	20,281,350 rupees	65.3454 rupees to \$1	\$310,371.50
Net Profits From Sale	13,856,725 rupees	65.3454 rupees to \$1	\$212,053.56
Total	34,138,075 rupees	65.3454 rupees to \$1	\$522,425.06

(19T79:23-81:12 (Khanna testified that PKAL-31 identifies Kalra’s “share of investment, which is “one component” of what Kalra is owed); 21T113:02-118:20 (Khanna testified that Kalra was also owed one-half of the net profits

from the sale of Global Garments); Da2090 at ¶¶217-219; Da2121-Da2122).¹⁹ As such, Judge Passamano’s failure to provide any reasoning to support his damages award (which was also inconsistent with Khanna’s admissions with respect to damages) requires the reversal of the damages award.

Additionally, for the reasons set forth in greater detail in Kalra’s initial brief, the award should be in dollars and should include interest. (Db47-48). Khanna’s argument that prejudgment interest should not be awarded ignores the fact that Khanna cannot keep the interest he earned on Kalra’s money for over eight years. See, e.g., Silverstein, 156 N.J. Super. at 158 (finding that, with respect to money that was withheld pending the resolution of a dispute between the parties, the party withholding the money was required to pay interest from the time of the withholding to the time of payment).

Point VII: Judge Passamano’s Dismissal Of The Claims Against Third-Party Defendants Should Be Reversed

For the reasons set forth in Kalra’s initial brief (Db48-49), this Court should reverse the dismissal of the third-party claims because Judge Passamano erred

¹⁹ Although Khanna claimed in response to Request for Admissions that “US taxes” were also paid out of the “net proceeds,” there was no evidence presented at trial that R. Perti paid any United States taxes on the amounts he received on Kalra’s behalf in connection with the Global Garments sale.

in his ruling that Khanna had not committed the underlying torts that are the subject of such claims.²⁰

CONCLUSION

For the foregoing reasons, and the reasons set forth in Kalra's initial brief, it is respectfully requested that this Court: (1) reverse the dismissal of Kalra's breach of fiduciary duties claim with respect to the Transfers and award judgment in favor of Kalra on that claim; (2) reverse the dismissal of Kalra's Usurped Opportunity Claim and award judgment in favor of Kalra on that claim; (3) reverse the trial court's calculation of damages for Kalra's India Real Estate Claim; and (4) reverse the dismissal of Kalra's claims against the Third-Party Defendants.

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Dated: July 28, 2025

²⁰ As a final matter, the brief submitted by Third-Party Defendants contains many irrelevant arguments regarding issues that were not raised on appeal. Additionally, the citations to Kalra's trial testimony do not, as Third-Party Defendants suggest, show inconsistencies with respect to Kalra's testimony.