

Superior Court of New Jersey, Appellate Division  
Docket A-001315-24T2

ANDERSON RODRIGUES GUERINI

V

VIN-RICK BUILDERS, LLC. AMBIANCE GENERAL BUILDING, LLC  
A/K/A AMBIANCE GENERAL CONTRACTORS;  
PARK POINT CONDO ASSOCIATION;  
HUTCHGROVE ENTERPRISES (APPELLANT),  
JOHN DOE #1-10; ABC CORP #1-10

VIN-RICK BUILDERS, LLC

V

WARRENVILLE PLUMBING; PARK POINT CONDO ASSOCIATION  
AND HUTCHGROVE ENTERPRISES

RUTGERS CASUALTY INSURANCE COMPANY

V

ANDERSON RODRIGUES GUERINI; VIN-RICK BUILDERS, LLC;  
AMBIANCE GENERAL BUILDING, LLC. D/B/A AMBIANCE GENERAL  
CONTRACTORS, LLC; PARK POINT CONDO ASSOCIATION;  
HUTCHGROVE ENTERPRISES, LLC;  
WARRENVILLE PLUMBING & CO., LLC

On appeal from a final judgment entered in the Superior Court of New Jersey,  
Law Division, Essex County, ESX-L-6427-18, A. Scoca, J.S.C. and a jury

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**BRIEF OF APPELLANT, HUTCHGROVE ENTERPRISES**

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Hegge & Confusione, LLC  
P.O. Box 366, Mullica Hill, NJ 08062-0366  
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)  
Of Counsel and on the Brief

**BRIEF FILED ON MAY 14, 2025**

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## Procedural History<sup>1</sup>

This case arises from injuries the plaintiff sustained at a construction site for a condominium renovation project. Warrenville Plumbing employed the plaintiff, who had been engaged in physically demanding work, including carrying heavy fixtures, such as bathtubs, up open stairways at the worksite. The worksite was in an advanced state of renovation, with various hazards present, including debris and open internal stairways. The incident occurred on January 17, 2018, when the plaintiff fell while carrying a heavy bathtub up an open interior staircase. A1-3, A20, A815 (the plaintiff injured his back, requiring a C5-6 anterior cervical discectomy and fusion and a 2-level lumbar discectomy and fusion at L4-S1, A280).

The plaintiff's primary claim was against his employer, Warrenville Plumbing, under New Jersey's Workers' Compensation Act. A1-3, A20, A815; A685.

The plaintiff filed this lawsuit seeking additional recovery against Vin-Rick Builders, the alleged general contractor of the project. A1-3, A20 A815.

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<sup>1</sup> References to transcripts are as follows:

1T	10/16/24 (trial)
2T	10/17/24 (trial)
3T	10/21/24 (trial)
4T	10/22/24 (trial)
5T	10/23/24 (trial)
6T	10/24/24 (trial)
7T	5/24/24 (motion)

However, Vin-Rick denied responsibility and filed a Third-Party Complaint, alleging that it was not the general contractor and that Hutch Grove Enterprises was liable instead. A41. The Plaintiff, in turn, filed a Second Amended Complaint, maintaining Vin-Rick as a defendant while also alleging that Hutch Grove was responsible for his injuries because it “was a general contractor and/or controlling employer and/or creating employer and responsible for all construction work being performed on said site and/or responsible for maintaining a safe workplace at the said site.” A46.

Following discovery, Vin-Rick and Hutch Grove each moved for summary judgment, alleging that the other was the general contractor under New Jersey law and responsible for the plaintiff’s safety at the work site where he was injured. A276. The trial court denied summary judgment on all fronts and directed the issues (along with the plaintiff’s claims generally) to proceed to trial. A769, A772; 7T.

The case was tried before a jury. At its conclusion, the jury found that Vin-Rick was not liable to the plaintiff, while Hutch Grove was found 95% liable. A836. The court entered final judgment for the plaintiff against Hutch Grove in the amount of \$1,877,303.33 plus prejudgment interest under R. 4:42-11(b) in the amount of \$280,433.23. A837.

Hutch Grove now appeals the trial court’s order denying summary judgment and the December 31, 2024 judgment. A838.

### **Statement of Facts**

The plaintiff had been performing plumbing work for Warrenville at the site for about three months before the accident. He carried 40-pound bathtubs on top of his head up open stairways. "The stairs he had to take the bathtub up had the handrails removed at the time of the accident. Mr. Guerini fell when he lost his balance and was unable to brace himself with handrails. The handrails had been removed for several weeks prior to the accident." A285. In his Second Amended Complaint, the plaintiff alleged that both Vin-Rick and Hutch Grove were "responsible for all construction work being performed" at the worksite. A45.

### **Vin-Rick's Summary Judgment Submission**

Vin-Rick said it was only a subcontractor for the general contractor, Hutch Grove. A702. "Warrenville Plumbing was a subcontractor hired and paid for by Defendants Stephen Hutchinson in his capacity as owner of Hutchgrove Enterprises to install plumbing and associated hardware such as toilets and tubs inside Park Point," A94. Moreover, "Regardless of which entity hired Vin-Rick, Peter Vincent of Vin-Rick only transacted with Stephen Hutchinson to do a job at the project, which includes insulation, drywall, and framing, i.e., limited to structural work (Depo of Hutchinson, 87:23)." A698.

Vin-Rick said it was not responsible for the plaintiff's safety at the work site, foisting it on the plaintiff and his employer, and Hutch Grove. "Plaintiff testified in

his deposition that his supervisor during the Park Point plumbing project was Warrenville Plumbing foreman Ziggy. Hoare Cert. Exh. K, 8:19-23.” A94; A698-99. “Plaintiff was injured while carrying a bathtub up the stairs inside 304 Paterson Plank, a building which does not have an elevator (A140, Deposition of Plaintiff Guerini, 24:12); and Plaintiff’s injury was sustained fully within the scope of Plaintiff’s work duties, i.e. taking the bathtubs upstairs for installing inside the seven condo units (A140, Deposition of Plaintiff Guerini, 17:21).” A698-700. Vin-Rick also said, “Without an elevator in the building, taking the bathtubs up the stairs became an unavoidable part of carrying out Plaintiff’s duties as directed by HutchGrove, thus HutchGrove had the responsibility to ensure safety of any passageways necessary for the completion of its job.” This was regardless of whether the site of the plaintiff’s injury was in a “common area” that Hutch Grove did not own, Vin-Rick argued. A699-700. Vin-Rick stated in its summary judgment submission,

9. Plaintiff confirmed that Mr. Hutchinson was present at the Park Point site “... three times a week ...” along with “... a couple of guys that work with demolition and two electricians that worked for Steven [Hutchinson] as well ...”. Hoare Cert. Exh. K, 16:23-17:1.

10. Plaintiff testified that Hutchinson “... used to direct us what we were supposed to do, and we kind of knew what we had to do. And then he used to come once in a while to check, to see whether the job was good or not ...”. Id. at 16:16-17:7.

11. According to Plaintiff Stephen Hutchinson did not hold safety meetings on the Park Point project. Id. at 16:11-13.

12. Plaintiff testified that Hutchinson paid the workers and visited the job site three times a week. Id. at 23:20-24.

13. When asked who the general contractor of the Park Point project was when he worked there, Plaintiff testified that Steven [Hutchinson] was responsible for the job. Id. at 29:18-21.

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16. When asked whose responsibility it was to keep the stairways safe on the project, Plaintiff regarded Stephen Hutchinson as the one responsible. Id. at 37:11-19; 74:19-75:1.

17. Plaintiff distinguished Steven [Hutchinson] as the general contractor in charge of the overall Park Point project from Ziggy who was the Warrenville Plumbing foreman Id. at 74:19-75:1.

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20. Vin-Rick's involvement in the Park Point project was limited strictly to installing support beams (known as LVLs) into the building. Id. at 31:3-11. [A94-96]

### **Hutch Grove's Summary Judgment Submission**

Hutch Grove denied responsibility for ensuring the plaintiff's safety at the worksite. Hutch Grove did not even own the common area where the plaintiff was working. "Park Point Condo Association was the owner of the common stairways at the site and therefore responsible to keep the stairways safe as was the General Contractor, Vin-Rick Builders." A651. Hutch Grove only owned "seven condo units" in the building, not its common areas where the accident occurred. A699.

Vin-Rick was the project's general contractor. "Warrenville Plumbing was hired as a subcontractor by Vin-Rick Builders who was the general contractor for Park Point Condo Association," which owned the area where the renovations were

being performed. A650. "Vin-Rick Builders was hired by Park Point Condo Association as the General Contractor for the site." A652. "Mr. Hutchinson and Hutchgrove Enterprises were not responsible for paying Vin-Rick Builders. Park Point Condo Association hired Vin-Rick as the General Contractor and was the owner of the property and was responsible for any payment due Vin-Rick Builders." A652.

Hutch Grove did not hire Warrenville Plumbing to perform work within the common areas. Stephen Hutchinson of Hutch Grove hired Warrenville Plumbing to perform work inside the 7 condominium units that Hutch Grove owned and was authorized to direct work within. "This work was separate and apart from the work that Warrenville Plumbing did for Park Point Condo Association as a subcontractor for Vin-Rick Builders" in the common areas, which Hutch Grove did not own and was thus not even authorized to direct work therein." A650. Hutch Grove affirmed in its Statement of Material Facts,

2. The work was being done for the defendant, Park Point Condo Association. Park Point Condo Association hired Vin Rick Builders to be the General Contractor for the work and hire all the subcontractors necessary to do the work. Park Point Condo Association owned the common area where the accident occurred and was the only entity that had the authority to hire Vin-Rick Builders to do the work on site.

3. There was a contract to do the work between Vin Rick Builders and Park Point Condo Association. All payments were made to Vin Rick Builders by Park Point Condo Association. Vin Rick Builders hired the subcontractors.

4. Hutchgrove Enterprises was the owner of 7 Condo Units at Park Point Condo Association. Hutchgrove Enterprises never hired any of the subcontractors or Vin Rick Builders to do the construction work. Hutchgrove Enterprises never supervised any work on the site or held itself out as the General Contractor for the work being done. Hutchgrove lacked the legal authority to do so.

5. Hutchgrove Enterprises hired Warrenville Plumbing & Co. LLC to do plumbing work on the 7 units it owned. That work had nothing to do with the work Park Point Condo Association hired Vin Rick Builders to do. Hutchgrove Enterprises was only legally responsible for work done inside of its units. (See exhibit 1) This contract clearly states the work to be performed by Warrenville Plumbing was for the owner of the units, Hutchgrove Enterprises and not Park Point Condo Association.

"6. Hutchgrove Enterprises paid for the permits required from the City of Union. This was for work done on the 7 units it owned and had nothing to do with the work being done by Vin-Rick Builders for the Park Point Condo Association. Paying for the permits for the units they owned did not make Hutchgrove Enterprises the General Contractor. (See exhibit 2)

7. Stephen Hutchinson was the President of Hutchgrove Enterprises. All of his actions had to do with the work being done on the 7 units owned by Hutchgrove Enterprises. At all times he represented himself as the President of Hutchgrove Enterprises which owned 7 of the Park Point Condo units.

8. The Agreement he signed with the City of Union was for work being done on the 7 units owned by Hutchgrove Enterprises. The Agreement clearly states that he was the President of Hutchgrove Enterprises and acted in that capacity for the benefit of the 7 units Hutchgrove enterprises owned.

9. Vin Rick Builders paid for the permits from the City of Union to do the work on the site. See the 12 invoices (exhibit 3) from the City of Union given to Vin Rick Builders in their capacity as General Contractor for the site. These receipts clearly show that Vin Rick Builders were the General Contractors for the construction work being done on the site where the accident occurred.

10. There is no documentation or evidence that Hutchgrove Enterprises hired any contractor to do work on the site of the accident. There is no proof that Hutchgrove Enterprises paid any of the workers or contractors to do work on property that was owned by Park Point Condo Association. There are no contracts, nothing. Park Point Condo Association owned the common area outside of each condominium and was solely responsible for the care and maintenance of those areas on the property.

11. Hutchgrove Enterprises performed no work on the site and was not a part of any contract or agreement for any work performed at the site. Hutchgrove Enterprises had no responsibility at all for any work done at the location that caused the plaintiff's injury.

12. The Agreement Stephen Hutchinson signed with the City of Union as the President of Hutchgrove Enterprises was for work on the 7 units Hutchgrove Enterprises owned at Park Point Condominium. It had nothing to do with the work Vin-Rick Builders was hired to do as the General Contractor by Park Point Condo Association. (See Exhibit 4). The document does not in any way indicate that Hutchgrove Enterprises was a contractor or General Contractor at all." A654-56

Stephen Hutchinson, Hutch Grove's President, affirmed (A679),

2. I never was the General Contractor for the work being done at the accident site. I did not hire the General Contractor, the subcontractors or any of the workers that worked on the site that were hired by Park Point Condo Association.

3. Hutchgrove Enterprises owned 7 units and had a contract with Warrenville Plumbers to do work inside of the 7 units. Hutchgrove Enterprises had nothing to do with the work Park Point Condo Assoc. hired them to do at the accident site. A review of the agreement between Hutchgrove Enterprises and Warrenville Plumbing clearly shows that the work they were to do was only on the 7 units owned by Hutchgrove Enterprises. There is nothing in that Agreement about Park Point Condo Association or work outside of the 7 units. (exhibit 1)

4. The Agreement I signed with Union City was signed as the President of Hutchgrove Enterprises and for work that was being done on the 7 units owned by Hutchgrove Enterprises. Hutchgrove

Enterprises paid for the permits required by the City of Union for work done on the 7 units owned by Hutchgrove Enterprises. (exhibit 4)

5. Vin-Rick Builders as the General Contractor obtained the permits from the City of Union for the work done for Park Point Condo Association at the site. This proves that Vin-Rick Builders was the General Contractor for the site. (exhibit 3)

6. Hutchgrove Enterprises does not own a contractor's license and has never done work as a General Contractor or contractor of any sort and has never represented itself as a General Contractor. I have never represented myself as a General contractor and do not have a General Contractor's license.

7. I never directed any workers at how to do their job or paid contractors or workers for the work being done for Park Point Condo Association." A679

Rion Blagrove, Park Point Condo Association's President, also submitted a Certification on summary judgment (A678), affirming,

2. Park Point Condo Association hired Vin-Rick Builders to be the General Contractor for the work done at the site. As the General Contractor Vin-Rick Builders hired all the subcontractors to do the work and was responsible for all the conditions that existed at the work site at the time of the accident.

3. The accident location was and is owned by Park Point Condo Association. Each condo unit owner is responsible for the interior of their unit but all property outside of their units is owned by Park Point Condo Association and only Park Point Condo Association has the legal right to hire and authorize work to be done on property owned by the Condo Association.

4. Hutchgrove Enterprises owned 7 Condo Units at Park Point Condo Association. Hutchgrove Enterprises was not the General Contractor and had nothing to do with the work done on the site, the hiring of the General Contractor or subcontractor or making payment. This was all handled by Park Point Condo Association." A678

### **The Plaintiff's Summary Judgment Submission**

The plaintiff affirmed “that his supervisor during the Park Point plumbing project was Warrenville Plumbing foreman Ziggy.” A281.

The plaintiff said that Vin-Rick was the general contractor. “Hutch Grove contracted with Vin-Rick General Contractors to serve as general contractor” for the project. A285. “Peter Vincent and Vin-Rick dealt with the subcontractors on the job site.” A280-81. The plaintiff contested Vin-Rick’s claim that its involvement in the project was limited to installing support beams for the building: “Vin-Rick’s scope of work was much more substantial and included supervising the subcontractors to ensure they worked safely.” A282. “ Vin-Rick appears as the contractor on the construction permits produced in this case and Mr. Hutchinson testified that Vin-Rick dealt with Union City,” the plaintiff noted. A283.

The plaintiff noted the testimony of Stephen Hutchinson, Hutch Grove’s President, that he met with the general contractor, Peter Vincent/Vin-Rick, “countless times” at the job site. A286. Hutchinson testified,

Q. ... When you went to the site during Warrenville Plumbing's active construction work, did you know a Warrenville representative there by any name?

A. No, I never visited any of those subs. For the most part it's just coming to the building, meeting with Pete if he needs us to do anything or if he had any questions about the finished product, you know, but other than that I didn't meet with the subs. Those are technical stuff. ...

Q. Okay. Well, did you meet with Ziggy anywhere other than inside the condominium worksite?

A. Again, like I said, most of the issues, any concerns I met with the GC. \*\*\*

Q. And when you met with Peter, where would you meet him, at his office, inside the condominium? It's not a trick question.

A. We've met inside, inside the building. We've met for lunch. We've met at other sites. He wanted to do work for us. Yeah, we met quite often, Pete.

Q. Okay. And I'm asking you to estimate the number of times that you met him. Is it more than one?

A. Oh, yes. It's countless. [A466, August 24, 2022 Hutchinson Deposition Transcript, 72-79]

Hutchinson affirmed “the scope of Peter Vincent's work ... at Park Point Condo” after February of 2017:

A. Peter came on the project and performed the project as our GC. His scope was first to repair the structural work as it states and then next to repair the building. Up until paint is ready, basically he repaired, he repaired the structural. He did the framing. He did the insulation. He did the windows. He did the drywall. So up until he placed the drywall up, you know, the nonpermit job, painting and stuff, he did not do, but up until the drywall and all of that the construction, the hardcore construction, Pete and his contractors did. [A466, Exhibit H, 79:23 to 82:20]

Q. Okay. Now, did you have a written contract with Mr. Vincent and his company spelling out the scope of his general contracting duties with respect to the Park Point Condominium Association?

A. Yes, Peter and I, Pete wrote the contract. We signed it. The scope of the duties was to first conduct the structural, once passed to then conduct all of what I stated earlier as far as the job which includes insulation, drywall, framing, windows, all of that.

\*\*\*

Q. Okay. And when you would come to the job site and saw Peter or his representative, you would talk with them about the project and its progress; is that correct?

A. No, just Peter.

Q. Okay. And he was there every time you were?

A. No, his rep was there. When his rep was there I'll observe and whatever, but I don't discuss any issues or business with subordinates. That's just my, the way I operate. ...

Q. Did Vin-Rick perform any roof framing at the Park Point project?

A. Vin-Rick performed, they framed out the ceiling, the roof. They framed out the entire structure to support the building. That was the first task of the job. ...

Q. All right. And when Vin-Rick completed its structural work, the handrails on the steps to the second, third, fourth floor, you know, and so on were in place; is that correct?

A. I don't know. When you say the structural work, as long as Pete and them was in that building from 2019 and when I'm there when I visited, I've never seen any, any missing stair rails, because again those are just one of those things people like myself would know, hey, you have to have some type of handrail. [A466, Exhibit H, 82:25 to 83:19; 87:19 to 88:9; 98:11-19; 99:3-22; 150:19-24; 175:11-21]

The plaintiff said, "Vin-Rick employed 6-15 workers/foremen for the Project and Mr. Hutchinson would talk to Peter Vincent about any issues and 'everything went through Peter.'" Mr. Hutchinson explained in his deposition his involvement with the work site: "I'm an owner. We own seven of these apartments. Everyone who ever met me knows I am a partner in this building, so there would never ever be any

way anyone could ever construe me as a manager of anything. That's the first issue. The second issue is this. We visited the site as you can tell. In that I'm wearing ski pants with some thick overalls, hardly construction. I came in and likewise looking at the scope of what the guys were doing. Those are visits to keep them honest, to make sure when the owner is there there is no toying around. So you have to have the owner present at times randomly or else these guys will not, you know, the GC will not be on the guys. The guys will not be on the subs. So, yeah, I found that. Yeah, we visited sites not three times a day or three times a week, but we visited at least once a week.”

Mr. Hutchinson confirmed that Vin-Rick obtained construction permits from Union City and regularly dealt with the city for the Project. A466. “Yes. He applied for the permits, all of that, yes... So the city was quite diligent and Pete and them as far as closing off areas the public didn't belong, not the public meaning anyone in the building, so yeah. Again, only because we had to navigate -- put it this way. We've tried to hire contractors like in the past before Gideon that wouldn't come into Union City because they know how tough Union City is.” A466 (90-92, 173). Hutchinson testified,

Q... When the condo association hired Vin-Rick to be the general contractor on the project, was it the condo association's expectation that Vin-Rick would be supervising the work done by subcontractors who worked on the job site?

A. That is correct. They were to supervise the entire site.

Q. And was it the condo association's expectation when they hired Vin-Rick to be a general contractor that they would supervise the employees who were working on the construction site who worked for subcontractors to make sure that their work was being done in a way that complied with architectural plans and specifications?

A. Yes.

Q. And was it the condo association's expectation when they hired Vin-Rick to work on the site that Vin-Rick would be overseeing the work that was being performed by employees of subcontractors and making sure that those employees worked in a way that was compliant with legal requirements related to safety?

A. Yes, that is correct... [A466, at 101:25 to 102:25; 103:9-22; 128:2-18; 187:10 to 188:8; 203:15-23; 206:23 to 207:3]

Regarding the stairways where Warrenville Plumbing was performing its work, Vin-Rick had previously installed temporary rails. Hutchinson testified,

Q. Okay. So you're saying that there were handrails in place at Park Point Condominium Association, the condo construction site, while Warrenville workers were present?

A. I don't know about Warrenville workers, but I know Pete always emphasized that -- at one time Pete and them had to readjust the steps which required, because if you look on the plans the steps had to be adjusted to fit the floor to meet code, so that's when, even when he did that he had temporary handrails installed.

Q. Who are you referring to?

A. Pete.

Q. Oh.

A. Right. One time I visited the site I'm like what is this handrail. He was readjusting the steps, so he had to put wooden handrails. I have never seen this site without handrails.

Q. On the interior stairs?

A. It's either metal or he would have the temporary wooden handrails, yes. Yes, sir.

Q. Because stairways have to have handrails; is that correct?

A. That is correct. That's grounds to shut a site. And part of the reason why I say this, the site was, Pete and them were doing something early on that the city shut it down for a day and called the owner, called the association, called Pete in. So this building was near condemned when we bought it, so there is certain things and we agreed that the city can randomly come in at any times. They would not have this building go forward like that without handrails, at least the temporary. ...

Q. You didn't see Vin-Rick remove handrails for any part of its work; is that correct?

A. No. Their work encompassed, if you see the sides of the building, framing up. They did have to shore up the steps, right. The latter stages was to shore up the steps which means if they had to remove the steps, if they did and this is part of the correction, if you look in the plans that they had to correct the steps so the landing can be equal, corrected in place, and when I saw him do that he had temporary handrails up, but that was temporary going all the way up.

Q. Right.

A. Yeah.

Q. So if Vin-Rick needed to temporarily remove the original handrails to perform some kind of structural work inside the building, they always replaced it with a temporary wood frame handrail until the original handrails could be put back?

A. All I could speak of is the conversation I had with Pete and when I was there. When I visited the site, when Pete needed to show me the progress of the work, I never seen the building without handrails. There was only one time like I said when Pete was adjusting the site, I don't recall the time, when he was adjusting the steps where there was temporary handrail put up as they adjusted each step. A466 (114:6 to 115:13; 176:12 to 177:14)

Plaintiff's own liability expert, Cheryl Scanlon-Zinner, CSP (A322), said that Vin-Rick's did not meet the standard of care for safety supervision on the Project. Ms. Scanlon-Zinner noted that a general contractor can never completely absolve itself of job site safety responsibilities on a job site under OSHA, and it shares safety responsibilities with other contractors on the job site. A322, at 6-11. Ms. Scanlon-Zinner opined that Vin-Rick violated several OSHA regulations regarding stairway safety and implementing a safety plan for the Project. A322, at 11. "She further opined that Vin-Rick had the responsibility to plan, monitor and ensure construction site safety and failed in this endeavor by implementing no safety protocols whatsoever." A322, at 12-13; A282-97.

### **The Trial Court's Summary Judgment Decision**

The court denied Hutch Grove's motion, stating, "There's enough here in this record, including communications to the municipality, and communications on the job site that satisfy me that a finding could indeed be made by a fact finder that Hutch Grove was the general contractor. So, the motion will be denied." 7T17

Regarding ownership of the common area where the plaintiff was injured, the court said there was "an open question" of whether Park Point Condo Association and Hutch Grove Enterprises were "alter egos of one another, may be one in the same. Both of them appear to be comprised of Steven Hutchinson, Reon Blagrove and Velma Garner." 7T15-17. "[T]here exists a possibility that the liability could

be shared or that one of them who purports not to be the general contractor, could be the general contractor,” the court said. 17T15-17 (this followed from what Vin-Rick had claimed in its submission (A686): “Park Point Condo Association and HutchGrove Enterprises are one and the same, as both entities consist of Stephen Hutchinson, Rion Blagrove, and Velma Garnham (Depo of Hutchinson, 29:2) as decision makers.”)

The court further said that “Seven of the ten units at the building were owned by Hutchinson through Hutch Grove, and that owner would’ve had majority control over the condo association by virtue of owning that large a number of units. That also prevents – presents, rather, a question for which, I think the Court has to acknowledge exists in the inference given that ownership status and control, although not outcome dispositive, certainly breaks in favor of the non- moving party, the opposing party in this case, Vin Rick.” 7T16.

### **The Evidence at Trial**

The testimony followed the summary judgment proofs. The project involved renovating a ten-unit condominium building that had been damaged by water and was being completely gutted and rebuilt (3T:34). Metal guardrails were present on stairways at the work site until around Christmas, three to four weeks before the accident, when they were removed, it appeared, by other workers at the site. They remained absent when the accident occurred. 1T:48.

The plaintiff, a plumber's helper without a license, worked under the supervision of Ziggy from Warrenville Plumbing, who the plaintiff claimed relayed instructions based on Stephen Hutchinson's directives (2T:18, 2T:66). The plaintiff's work required carrying heavy materials, such as bathtubs, up the stairwells (2T: 31; 2T:90). On the day of his fall, the plaintiff had already moved two bathtubs that morning and was ascending a second flight of stairs. He was carrying a bathtub weighing approximately 40 pounds up a staircase when he stepped on or into something—possibly debris or a defect—and fell from the upper stair level to the lower level near the landing. (1T: 21-22).

The plaintiff charged that the accident occurred due to the absence of safety rails and the lack of coordination among subcontractors to ensure safety. (1T: 21-40). He stated that no one managed the subcontractors, enforced cleanup, or oversaw site safety. He claimed he was required to perform plumbing work while standing on piles of discarded materials and navigating stairs without handrails, all without the supervision of anyone competent in construction safety (1T:20-21). The plaintiff's expert witness stated that the site was inadequately managed from a safety perspective and that proper safety oversight—including inspection, hazard identification, and enforcement of protective measures—was not implemented. 1T:40.

## **Vin-Rick's Role**

Vin-Rick was hired by Hutchinson as the general contractor (5T:45). An engineer facilitated the hiring of Vin-Rick Builders, indicating that Vin-Rick was brought in as part of a structured plan involving multiple professionals. For Hutch Grove, Stephen Hutchinson was the primary point of communication with Vin-Rick.

As stated in its summary judgment submissions, Hutch Grove denied acting as a general contractor for any part of the project, with Hutchinson noting that they lacked the expertise to handle the structural complexities, which is why Vin-Rick was brought in to begin with. The renovation project involved refurbishing the entire condominium complex, which consisted of ten units, only seven owned by Hutch Grove, along with the common areas that Hutch Grove also did not own. 5T:114-115; 138-39.

Vin-Rick was hired as the general contractor to manage the renovation project, with Stephen Hutchinson as the primary liaison. The extensive work required professional oversight, which Vin-Rick provided while Hutch Grove Enterprises focused on financing and ensuring compliance with city requirements. (5T:114-115, 138-139) Vin-Rick was responsible for supervising the work site as the general contractor. He ordered most on-site inspections, indicating significant control over the inspection process. Vin-Rick was present during inspections, except for a specific city-conducted street pressure test, suggesting consistent involvement in

oversight activities. The construction site was secured with locked access, and only a few individuals, including Vin-Rick, had keys, ensuring controlled entry and highlighting their role in managing day-to-day operations. 5T:115.

Vin-Rick was responsible for overseeing the work of subcontractors and ensuring compliance with plans, specifications, and safety requirements, Mr. Hutchinson testified. Vin-Rick was to conduct periodic inspections of the job site to identify and correct hazards, which highlighted their supervisory role. The work involved technical inspections by City inspectors across various disciplines, including structural, plumbing, and electrical, requiring knowledgeable contractors to address technical issues. 5T:114-115; 139.

### **Hutch Grove's Level of Control and Involvement in Warrenville's Plumbing Work**

Mr. Hutchinson reiterated that he was not involved in supervising the work site; he did not act in a supervisory capacity or give instructions to workers. 5T:111-115. Mr. Hutchinson was present for some inspections but did not order them; the contractors primarily ordered the inspections, mostly Vin-Rick. Hutchinson had access to the site, but Vin-Rick also had keys and was responsible for granting access to others. 5T:111-115.

Hutchinson's involvement was primarily administrative, such as writing letters for required permits, rather than providing direct oversight of construction activities—Hutchinson had no expertise in that. (5T:130-131). He was responsible

for overseeing the financial aspects of the project, including financial management, securing loans, and ensuring compliance with city requirements. (5T:54-56). Hutchinson worked behind the scenes, with his name appearing on architectural plans and requests for permits. (4T:5-6; 49).

Hutch Grove did not oversee the workers or their safety. 3T:35-36. Hutchinson was not involved in the technical aspects of the work, such as plumbing or electrical installations, which the subcontractors managed. 3T:35-36.

Hutchinson was not involved in the day-to-day construction activities, particularly in how work tasks were carried out. 5T:54-55. Hutchinson was present at the site two to three times a week, where he would inspect the work and give orders to ensure the work was being completed as paid for. Hutchinson never communicated with the plaintiff (in part because of their language barrier). 2T:22, 75. Hutch Grove's denial of acting as a general contractor was consistent with the testimony of Vin-Rick's expert witness, Mr. Sagendorf, who described a general contractor as having "boots on the ground" — actively present and managing daily operations, which includes responsibilities such as safety, subcontractor coordination, budgeting, compliance, and quality oversight. 4T:48–50.

### **The Closing Arguments (5T163)**

The plaintiff's counsel said the worksite where the plaintiff was injured was not "being managed because people were standing on garbage instead of ladders to

do plumbing,” and pictures “taken before the date of the accident” showed the plaintiff “walking up and down stairs that don’t have rails.” “So if you see a picture of Guerini walking down the stairs, that picture is taken prior to this accident and those stairs and those pictures didn’t have rails, at least on the floor that he walked. Mr. Guerini’s testimony is, my estimate is they took those railings off prior to (indiscernible) for the holidays and they’re been off until my accident,” plaintiff’s counsel told the jury. 5T171.

Regarding the plaintiff’s employer, Warrenville Plumbing, counsel said that the plaintiff’s “boss, Ziggy ... seemed like a nice enough guy but don’t forget, he lets his employees stand on garbage to do plumbing work. You know, they don’t get paid to pick up debris and materials from other contractors and in construction, time is money.” 5T173. Plaintiff’s counsel argued,

Okay, you put out a bid, you say I’m going to do X, Y, Z for a certain amount. The factor that can change about all that is time. If you get the job done faster, you go on to the next job you build and do that. So time is money and construction projects have contractors who do different things but all under that same pressure.

We’re here to do our work and we’re here to do it as fast as we can because that’s how we make money and so you have to be mindful that the construction projects have different folks doing different things and it can interfere with what other folks do and that’s exactly what happened here. You had a contractor who had to take down guardrails and you had my client go upstairs and he fell as a result of it. 5T173

Nonetheless, the plaintiff’s counsel argued that Hutch Grove was liable for the plaintiff’s fall, either as the general contractor or as the owner of the worksite,

along with Vin-Rick as the general contractor, if the jury so found. 5T173-75. Noting the testimony of expert witness Scanlon, counsel said, “if Vin-Rick wasn’t on the job site and this place wasn’t getting managed, safety wasn’t getting managed, then Hutch Grove is on the hook anyway as an owner because they don’t have anywhere -- if you conclude that Hutch Grove is not acting as a G.C. and they were only an owner, they were an investor, they still have a basic responsibility to make sure the G.C. that they hire is implementing some kind of safety plan.” 5T178. “But if you believe Hutch Grove was an owner on a site where the G.C. wasn’t doing its job, then Hutch Grove is still in this case and then Vin-Rick is too.” 5T179.

Vin-Rick argued that Hutch Grove was the general contractor and that Vin-Rick was not liable for the plaintiff’s fall: “Mr. Hutchinson was trying to behave like a general contractor without any of the experience, especially in a complex job like this.” 5T192. “So Warrenville starts working its plumbing work in September. When they go into the building, the handrails are all there. You don’t see a guy named Peter or a company named Vin-Rick and then someone takes over the rails ten months later and Mr. Hutchinson falls -- sorry, Mr. Guerini falls. Even Cheryl says that if Vin-Rick was not on-site prior to the date of the accident, Vin-Rick certainly is not responsible for the accident.” 5T197-99.

Hutch Grove’s counsel highlighted that the plaintiff was injured in a common area owned by the Park Point Condominium Association, not Hutch Grove. 5T208.

Nor did Hutch Grove act as the general contractor. Stephen Hutchinson, as Hutch Grove's president, "went there to make certain that the money that was being paid for work that was being done properly, that's all that the pictures show... You've heard testimony that there were other tradespeople. They're not here saying that Stephen or Hutch Grove acted in that capacity." 5T209. Nothing showed that Hutch Grove was responsible for safety where the plumbing work was being performed within the common area, with Mr. Hutchinson affirming "that every time he was there, the railings were there... Stephen says that he has no idea when they came down. He did not remove them ... the general contractor, which was Vin-Rick Builders, was responsible for the safety on the site," 5T213.

Hutch Grove's counsel argued, "how could a person that's not a plumber tell a plumber -- how could you tell him to do, how could he do it? ... And Stephen says to you, you heard that, no, I never told him that because I didn't possess that expertise and that's not what I was on-site to do." 5T214. "Stephen also indicates that he had nothing to do with or no knowledge of how the railings were taken down. It was not on his instruction and again, he relied on the general contractor who was Vin-Rick Builders, to maintain all of that. And Vin-Rick Builders were paid to do a job and that's what they expected to do and I would ask you to take all of that into consideration and find your verdict in favor of Hutch Grove Enterprises." 5T217.

## The jury's verdict

The jury determined Vin-Rick was not functioning as the general contractor when the plaintiff was injured. 6T64. The jury concluded that Hutch Grove negligently failed to implement a safety program on the project, which significantly contributed to the plaintiff's injuries. Furthermore, the jury found that Hutch Grove was also negligent in its safety management as a general contractor, which added to the unsafe conditions at the site 6T:64-65.

## ARGUMENT

### **THE COURT SHOULD VACATE THE JUDGMENT ENTERED AGAINST HUTCH GROVE ENTERPRISES BECAUSE HUTCH GROVE DID NOT OWE A DUTY TO PROVIDE A REASONABLY SAFE WORKPLACE TO THE PLAINTIFF UNDER GOVERNING NEW JERSEY LAW (A769, A771)**

For two reasons.

First, Hutch Grove does not own the common area where the contractor, Warrenville Plumbing, performed the work. Therefore, Hutch Grove cannot be held liable as a property owner.

Second, regardless of whether Hutch Grove could be characterized as the “general contractor” at the work site, it did not have a duty to guard the plaintiff against open and obvious hazards that were created by how plaintiff or his employer decided to carry out particular work tasks—here, carrying 40-pound bathtubs atop one's head up an open stairway without assistance, which the plaintiff had been

doing for the three months he worked as Warrenville's unlicensed plumbing assistant and had already done twice on the morning he finally tripped and fell.

No evidence showed that Hutch Grove controlled the "manner or means" by which the plaintiff or any Warrenville employee performed this or any other task the employer deemed necessary to complete the work it had been hired to perform. This was determined by Warrenville's onsite foreman and owner, Ziggy, or the plaintiff himself, who carried out the tasks his foreman gave him.

No evidence showed that Hutch Grove was even *aware* that the plaintiff was performing tasks in such an obviously dangerous manner, let alone that Hutch Grove directed this. Visiting a work site three times a week to check on the progress of the contractor's work does not make that party responsible for injuries suffered by the contractor's employee due to the dangerous way the employee or his employer has chosen to carry out a particular task. The massive two-million-dollar-plus judgment entered against Hutch Grove goes far beyond the narrow bounds of liability for a property owner or general contractor under New Jersey law and is fundamentally unfair, warranting vacation of the judgment here.

**I. THE TRIAL COURT ERRED IN DENYING SUMMARY JUDGMENT FOR HUTCH GROVE ON THE ISSUE OF DUTY<sup>2</sup> (A769, A771)**

Whether Hutch Grove owed a duty to assure the plaintiff's safety was a question of law for the trial court that this Court reviews *de novo* on appeal. Anderson v. Sammy Redd & Assocs., 278 N.J. Super. 50, 56 (App. Div. 1994).

**a. Hutch Grove does not own the common area where Warrenville Plumbing performed the contract work.**

Park Point Condo Association owns the common area of the building where Warrenville performed the work, and the plaintiff was injured. A651, A689. Therefore, Hutch Grove cannot be held liable to the plaintiff as a property owner.

The fact that Hutch Grove owns 7 of the 10 individual condominium units (A699) did not make Hutch Grove the owner of the common area. Park Point owns the common areas. Unit owners are not responsible for common areas in a condominium building. This responsibility lies exclusively with the Association, Lechler v. 303 Sunset Ave. Condo. Ass'n, Inc., 452 N.J. Super. 574 (App. Div.

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<sup>2</sup> To prevail on a negligence claim, the plaintiff must first prove that the defendant owed a duty of care. Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013). Whether a duty is owed is a question of law to be decided by the judge. Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 572 (1996). The imposition of a duty depends on several factors, including: (1) “the relationship of the parties”; (2) “the nature of the attendant risk”; (3) “the opportunity and ability to exercise care”; and (4) “the public interest in the proposed solution.” Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). “Ultimately, ... the question of whether a duty exists is one of fairness and public policy.” Hopkins, supra, 132 N.J. 439.

2017). In negligence actions, such as those involving injuries on common elements, the condominium association is the proper party to defend the action, not individual unit owners, who have no personal liability for such injuries. Luchejko v. City of Hoboken, 207 N.J. 191 (2011).

In denying summary judgment for Hutch Grove, the trial court stated there was “an open question” of whether Park Point Condo Association and Hutch Grove were “alter egos of one another, maybe one in the same. Both of them appear to be comprised of Steven Hutchinson, Reon Blagrove and Velma Garner.” 7T15-17. “[T]here exists a possibility that the liability could be shared or that one of them who purports not to be the general contractor, could be the general contractor,” the court said. 17T15-17. No evidence was submitted on summary judgment or at the ensuing trial that permits such a determination, FDASmart, Inc. v. Dishman Pharm. & Chemicals Ltd., 448 N.J. Super. 195 (App. Div. 2016), Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160 (App. Div. 2006) (noting doctrine of piercing the corporate veil permits a court to disregard the separate legal existence of a corporation when it is used to perpetrate fraud, injustice, or circumvent the law. The party making this claim must prove (1) that another entity or individual dominated the corporation, and (2) that adhering to the fiction of separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law).

- b. Even if Hutch Grove could be considered a “property owner” or the “general contractor” at the work site, Hutch Grove did not owe a duty to safeguard the plaintiff or any Warrenville employee from an open and obvious danger created by the way the plaintiff chose to carry out a task that Warrenville assigned him, and no evidence showed that Hutch Grove was even *aware* that the plaintiff was performing tasks in such an obviously dangerous manner, let alone that it directed the plaintiff to perform tasks in such a dangerous way.**

The trial court committed an error of law because it based Hutch Grove’s duty of care solely on whether a jury could determine it was the property owner or the general contractor. New Jersey law provides a much narrower ground for liability, which the plaintiff’s proofs did not show existed against Hutch Grove.

Neither a landowner nor a general contractor has a duty “to protect an employee of an independent contractor from the very hazard created by doing the contract work”—here, the way in which the plaintiff decided to carry 40-pound bathtubs and other heavy fixtures atop his head by himself without assistance, Dawson v. Bunker Hill Plaza Associates, 289 N.J. Super. 309, 317 (App. Div. 1996); Kane v. Hartz Mountain Indus., Inc., 278 N.J. Super. 129, 140 (App. Div. 1994), aff’d, 143 N.J. 141 (1996). An owner or general contractor has no duty to guard an employee of a third-party contractor from open and obvious dangers that are caused by how the employee or his employer chooses to perform a particular task. Sanna v. Nat’l Sponge Co., 209 N.J. Super. 60, 67 (App. Div. 1986); Pfenninger v. Hunterdon Cent. Reg’l High Sch., 338 N.J. Super. 572 (App. Div. 1999), aff’d as modified and remanded, 167 N.J. 230 (2001); Dawson, supra, 289 N.J. Super. 318; Izzo v. Linpro

Co., 278 N.J. Super. 550, 553 (App. Div. 1995); Conceicao v. Grubb & Ellis, A-5719-17T1, 2019 WL 2591310, at \*2 (N.J. Super. Ct. App. Div. June 25, 2019); Muhammad v. New Jersey Transit, 176 N.J. 185, 198–99 (2003); Majestic Realty Associates, Inc. v. Toti Contracting Co., 30 N.J. 425, 430–31 (1959); Wolczak v. Nat'l Elec. Products Corp., 66 N.J. Super. 64, 71 (App. Div. 1961). A general contractor “may assume that the independent contractor and her employees are sufficiently skilled to recognize the dangers associated with their task and adjust their methods accordingly to ensure their own safety.” Accardi v. Enviro-Pak Sys. Co., 317 N.J. Super. 457, 463 (App. Div.), certif. denied, 158 N.J. 685 (1999); Muhammad, supra, 176 N.J. 199.

The only way the landowner or general contractor can be liable is where it retains control over *how* the subcontractor's employee performs its work tasks—which the facts do not establish against Hutch Grove, or where the landowner or general contractor knowingly engages an incompetent subcontractor or the contracted work is inherently dangerous, neither of which is at issue in this case). Muhammad, supra, 176 N.J. 198; Majestic Realty Associates, Inc., supra, 30 N.J. 431; Tarabokia v. Structure Tone, 429 N.J. Super. 103, 112–13 (App. Div. 2012).

**1. Carrying a 40-pound bathtub on one's head without assistance while walking up an open stairway leading to floors feet below posed an open and obvious danger that Hutch Grove did not have a duty to guard against.**

The plaintiff acknowledged that Warrentville, his employer, not Hutch Grove, required him to perform physically demanding work, including carrying heavy fixtures such as 40-pound bathtubs up the stairways at the worksite. The worksite was in an advanced state of renovation, with various hazards present, including debris and open stairways. A1-3, A20, A815. The plaintiff had been doing this for the entire three months he worked for Warrentville at the site; the four weeks leading up to the accident while the metal guardrails were missing (they'd been removed sometime around Christmas or New Year by an unknown person or company).

The plaintiff knew the risk of falling as a result of performing this work task. The danger was obvious. Indeed, the plaintiff had already moved two bathtubs up the stairways the very morning he stepped on or into something and finally fell. (1T: 21-22; "Mr. Guerini fell when he lost his balance and was unable to brace himself with handrails. The handrails had been removed for several weeks prior to the accident," Plaintiff's Statement of Material Facts, A285).

Hutch Grove did not have a duty to guard against this open and obvious hazard created by how the plaintiff or his direct supervisor at the site, Ziggy, chose to carry out particular tasks that Warrentville deemed necessary to complete the contract work. Gibilterra v. Rosemawr Homes, 19 N.J. 166, 170 (1955); Valdez-Martinez v.

Parksite, Inc., A-0250-22, 2025 WL 635757, at \*4 (N.J. Super. Ct. App. Div. Feb. 27, 2025) (“as the warehouse owner, Seagis is not responsible for the harm that occurs to an employee of an independent contractor because of the very work the employee was hired to perform. ... Miles [the injured plaintiff’s employer] was well aware of the roof’s hazardous condition, and thus was in the best position ‘to recognize the degree of danger involved and to adjust their methods of work accordingly’”); Tarabokia v. Structure Tone, 429 N.J. Super. 103 (App. Div. 2012) (general contractor not liable to electrical subcontractor's employee for injury caused by use of subcontractor's power tool without proper safety gloves; general contractor exerted no control over the use of the tool).

Any duty to guard against the open and obvious danger was with the plaintiff himself, who had been performing these tasks in this way for three months, and with his employer, Warrenville, and its owner and on-site foreman, Ziggy. This was not some unknown or unexpected danger that the plaintiff suddenly encountered and did not know about, and that the general contractor or property owner knew or should have known about, such as an existing handrail that gave way, a collapsing ceiling, a suddenly falling wall or fixture, a live electrical wire or junction, etc.

**2. No evidence showed that Hutch Grove retained control over the manner and means by which the plaintiff or any Warrenville employee should perform the tasks needed to complete their work.**

No evidence showed that Hutch Grove even *knew* the plaintiff or any Warrenville employee was carrying out tasks in such an obviously dangerous way—let alone that Hutch Grove directed the plaintiff to do this. It is the independent contractor, here Warrenville, which, “in carrying on an independent business, contracts to do a piece of work according to his own methods without being subject to the control of the employer as to the means by which the result is to be accomplished.” Bahrle v. Exxon Corp., 145 N.J. 144, 157 (1996); Wilson v. Kelleher Motor Freight Lines, 12 N.J. 261, 264 (1953). No evidence showed that Hutch Grove retained control over how the plaintiff or any Warrenville employee should perform tasks that Warrenville assigned him to perform at the site. Muhammad, *supra*, 176 N.J. 198; Majestic Realty Associates, Inc., *supra*.

Hutch Grove is not liable for the same reasons the court found in Tarabokia, *supra*, 429 N.J. Super. 118, where the court held that the general contractor had no duty of care to the subcontractor’s injured employee because the subcontractor “dictated the work plaintiff was to perform at the job site and the tool to use. H & B not only supplied plaintiff with that tool, but also arranged his training on it and directed him to use it with an extension pole instead of a ladder or other elevating device. Defendant, on the other hand, had no control over the choice of equipment

selected by H & B, nor did defendant involve itself in the means or methods by which H & B's employees, including plaintiff, performed their work.” Likewise, in Gibilterra, supra, 19 N.J. 170, the landowner owed no duty of care to the plaintiff because “[n]othing in the record supports [the] plaintiff’s contention that [the landowner] participated in, actively interfered with, or exercised control of the manner and method by which the work of digging the trench was done.” See also Gage v. Coll. of New Jersey, A-3787-17T1, 2019 WL 1312850, at \*1–2 (N.J. Super. Ct. App. Div. Mar. 22, 2019) (property owner not liable because though its project engineer was consistently on site the injured plaintiff’s employer directed the manner in which the plaintiff was to carry out his assigned work; proofs did not show that landowner retained control over manner and means by which work was to be done); Sanna, supra, 209 N.J. Super. 67 (noting law looks at “degree to which the landowner participated in, actively interfered with, or exercised control over the manner and method of the work being performed at the time of the injury”).

**3. General supervisory oversight of the contractor's work results does not equate to control over how the contractor’s employees should carry out the work.**

The plaintiff relied on the fact that Stephen Hutchinson of Hutch Grove visited the work site thrice weekly. The plaintiff said that Hutchinson “used to direct us what we were supposed to do” while at the same time stating, “we kind of knew what we had to do.” The plaintiff did not testify that Mr. Hutchinson told the plaintiff

or any Warrenville employee how to perform particular work tasks. The plaintiff characterized Mr. Hutchinson's role as being "in charge" of the overall Park Point project while stating "that his supervisor during the Park Point plumbing project was Warrenville Plumbing foreman Ziggy." A281; 2T:18, 2T:66. The plaintiff said that Mr. Hutchison "used to come once in a while to check, to see whether the job was good or not," A281; 2T:18, 2T:66.

This is not sufficient to foist a duty upon Hutch Grove either. A landowner's general supervisory control of the outcomes of the independent contractor's work does not equate to control over "the manner and means" of performing the work for liability purposes, Marion v. Pub. Serv. Elec. & Gas Co., 72 N.J. Super. 146, 152 (App. Div. 1962). A general contractor's presumptive immunity, "[is not] disturbed by the exercise of merely such general superintendence as is necessary to insure that the subcontractor performs his agreement [,]" Muhammad, supra, 176 N.J. 199 (quoting Wolczak, supra, 66 N.J. Super. 71); Tarabokia, supra, 429 N.J. Super. 113; Pfenninger v. Hunterdon Cent. Reg'l High Sch., 167 N.J. 230 (2001) (a landowner's on-site presence and general supervision to ensure compliance with design specifications do not equate to participation or interference that would impose liability, emphasizing that the landowner's ability to direct the order in which the work was to be performed relates to the result to be accomplished, not the means of achieving it).

**4. The plaintiff's reliance on OSHA violations cannot establish a duty of care for Hutch Grove.**

No evidence established that Hutch Grove was responsible for complying with OSHA regulations at the work site in the common area in the first place—property it did not even own. No evidence showed that OSHA violations were issued to Hutch Grove. Moreover, “non-compliance with [OSHA] standards does not alone create a viable cause of action, nor does it necessarily place a tort duty of care on the general contractor.” Costa v. Gaccione, 408 N.J.Super.362 (App. Div. 2009). “Violations of OSHA are to be considered with other fairness factors in determining the existence of a duty and the duty's scope.” As the Appellate Division said in Tarabokia, supra, 429 N.J. Super. at 120, “assuring compliance with OSHA regulations simply does not amount to the kind of control over the subcontractor's work sufficient to implicate any duty on [the] defendant's part to protect [the subcontractor]'s employees.”<sup>3</sup>

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<sup>3</sup> The only concrete evidence about OSHA was the plaintiff's surprise testimony that he had undergone ten hours of OSHA training so for a prior construction project, testifying,

Q Now, before this accident happened in January of 2018, did Warren -- Warrenville Plumbing provide you with any OSHA safety training? Did they send you out to learn OSHA rules about plumbing work?

A Not the on their part, but I did have OSHA training. Cold matters to plumbers.

Q When did you have OSHA training, sir?

A I think it was in 2016.

- c. **The trial court failed to evaluate the factors that New Jersey law requires to determine whether a duty of care exists, and evaluating the factors here shows that it is unfair to impose a duty of care upon Hutch Grove under the circumstances of this case.**

The relationship of the parties: The only written contract in the record is between Hutch Grove and Warrenville Plumbing and it's not for work in the common area where the plaintiff was hurt; rather, it's a separate agreement for Warrenville to perform work on the seven units Hutch Grove owns, not for work in the common area that Park Point Condo Association owns. A657.

Moreover, even considering the Hutch Grove-Warrenville contract for the work in the seven condo units, nothing in the agreement says that Hutch Grove or Mr. Hutchison has any duty to supervise or ensure workplace safety for the work that Warrenville would be performing. This is a significant factor weighing against imposing a duty on the property owner or general contractor for injuries to the subcontractor's employee, cf. Tarabokia, supra, 429 N.J. Super. 119 ("the contractual arrangement between defendant and the developer assigned to defendant the overall responsibility for enforcing safety rules on the job. To that end, defendant, among other things, issued an SSMP that clarified the allocation of

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Q And -- and that was not provided by Warrenville? Who was it provided by?

A In -- in order to obtain the contract, we had -- we did the OSHA training. (Indiscernible) Nantena project in Newark.. It was the ten hour OSHA training, not the 30 hours. 1T65-66

worker safety responsibility and put all on-site subcontractors on notice that the ‘maintenance of safe operations and the elimination of unsafe practices and conditions remains the responsibility of [defendant's] subcontractors.’ The SSMP further stated that defendant does not ‘direct, control or supervise the actual performance” of subcontractor work and that the information in the SSMP is to assist subcontractors in safety compliance. Thus, each subcontractor was required to designate its own safety officer to make weekly inspections and “assum[e] responsibility for complying with all applicable standards, regulations, rules or guidelines.’ In other words, according to the SSMP, each subcontractor was responsible for its own safety equipment and the safety of its employees.”)

The nature of the attendant risk: This was an open and obvious risk that was created by the way the plaintiff or his employer chose to carry out this particular work task, and this risk existed certainly for the four weeks that the plaintiff carried the 40 pound bathtubs and other heavy fixtures atop his head without assistance and while the metal guardrails had been removed.

The opportunity and ability to exercise care: This was on the plaintiff or his direct supervisor, Ziggy, either or both of whom decided not simply to carry heavy materials on an open stairway but for the plaintiff to do so alone without any assistance or safety measures to guard against falling. The plaintiff, or his foreman Ziggy, was in a much better position to exercise greater care and avoid the

unnecessary danger created by how the plaintiff and Ziggy chose to carry out this task—not Hutch Grove who the record did not even establish was aware this was happening.

The public interest: The injuries that the plaintiff suffered are undeniably tragic; everyone wishes the accident had never occurred. However, workers' compensation provides the mechanism for recovery by injured employees. Historically, third-party liability has been limited to very narrow situations. It is not in the public interest to broaden the basis for liability in this case against a small company founded by two middle-class individuals.

**General foreseeability is insufficient to impose a duty of care on a property owner or general contractor.** The specific risk of harm must be foreseeable. Here, the risk of harm was not merely falling from an open stairway; it was the much greater risk posed by a plumbing assistant carrying 40-pound bathtubs and other heavy fixtures atop his head, up a stairway that had its metal guardrails removed, without any help from another employee or measures of any kind against falling to the floors many feet below (essentially guaranteeing a serious injury). No evidence showed that Hutch Grove knew the plaintiff was doing that. The plaintiff could not even confirm when the guardrails, which had been on the stairways for the entire project, had been removed:

Q Before you took the break, you know, for -- for the holidays and for the new year, were the guardrails absent at that time before you broke for the holiday?

A I don't remember. 1T81.

Mr. Hutchinson affirmed that the guardrails were on the stairways for the entire project and did not know they had been removed at any point:

Q Now, just I'm looking for a little bit of clarification. You indicated that when you were on-site during September and I think we went through the date of the accident, you never saw missing guardrails on the stairs; is that true?

A Never have.

Q Do you know how frequently you were on the job site between just before -- well, we'll say December 23 through January 18, 2018?

A We try to be there at least once a week.

Q So you believe you were there the week prior to the accident and you saw guardrails on all the stairs?

A Yes, I did.

Q What were the guardrails made of?

A The guardrails are metal, raw iron.

Q So they were something other than wooden guardrails that were placed --

A I've never seen any wooden guardrails.

Q Okay, you never saw any wooden guardrails on any of the steps?  
Nothing permanent, nothing temporary, no. 5T139-40

The evidence did not establish who removed the guardrails either. Plaintiff's counsel said during summation, "Another contractor presumably had to remove guardrails for some purpose, nobody really knows why but nobody put them back." 5T171. Vin-Rick's expert (Sagendorf) said, "Based on the testimony and research that I've done I believe that the railings were in place and they were removed later in December of that year, for whatever reason by whoever. I don't know who removed them. But it was not -- they were there when Vin-Rick was there." 4T59.

Moreover, however foreseeable the risk was to Hutch Grove, "not all foreseeable risks give rise to duties," Dunphy v. Gregor, 136 N.J. 99, 108 (1994). "The determination of [the existence of] a duty" also "involves identifying, weighing, and balancing several factors," which are "the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution" (Alloway v. Bradlees, Inc., 157 N.J. 221, 230 (1999)), all of which weigh against imposing a duty on Hutch Grove in this case as argued above.

Caselaw supports the conclusion that the trial court erred in imposing a duty of care on Hutch Grove under New Jersey law. When a duty is found to be owed by a general contractor or landowner, it is because the general contractor or landowner

contractually agreed to be responsible for safety at the worksite for the subcontractor's employees or controlled and directed how the subcontractor's employees should carry out tasks. Neither of these critical facts is present against Hutch Grove in this case.

For instance, in Alloway v. Bradlees, Inc., 157 N.J. 221, 225 (1999), a truck driver employed by an excavating subcontractor was injured while attempting to unload stone at the work site due to a defective mechanical component of the dump truck. The general contractor was liable because it had involved itself in the manner and means by which the subcontractor's employee was to carry out the task. The driver had previously experienced problems with the truck's lifting mechanism, and the day before the accident, the general contractor's superintendent used a piece of steel to manually move a lever to make the mechanism work. The next day, the driver attempted to manually engage the mechanism as the superintendent had done the day before and this injured her. Alloway, supra, 157 N.J. 221.

In finding that the general contractor had a duty to ensure the driver's safety regarding that task, the Court stated that the risk of injury was "clearly foreseeable," inasmuch as there was "actual knowledge" on the part of at least three of the general contractor's employees, including two supervisors, that the truck's lifting mechanism was defective. Alloway, supra, 157 N.J. 221. It was reasonably foreseeable that this defective component presented a danger to a person who would attempt to correct

the defect by manually engaging the mechanism, as the supervisor had done in helping the driver carry out the task the day before. No such evidence was presented in the plaintiff's case against Hutch Grove in this case.

The Alloway Court found a duty also because there was “a substantial and close relationship between the parties that could and did implicate workplace safety concerns,” noting that the principal of the subcontractor was also one of the general contractor's employees, and any breakdown of delivery equipment would delay the paving contractor's work. Alloway, supra, 157 N.J. 221. There “was a clear connection between [the driver's] performance on behalf of [the subcontractor] and [the general contractor's] own contractual interests.” Alloway, supra, 157 N.J. 221. This relationship gave the general contractor “both the opportunity and capacity ... to exercise authority and control over the equipment of [the subcontractor] if safety concerns were implicated.” Indeed, the general contractor's president acknowledged that his supervisors could dismiss the subcontractor's trucks from the site if they encountered any problems, including concerns that they could not be operated without posing danger to any employees in the area. Control was further reflected by the general contractor's attempt to repair the very truck that caused the injury the day before the accident, the Court said. Nothing in this case demonstrates that Hutch Grove exercised any such control over Warrenville's employees.

The facts upon which the Supreme Court found a duty of care in Carvalho, supra, 143 N.J. 565, are also missing from the plaintiff's claim against Hutch Grove here. In Carvalho, the defendant's project engineer was required to provide an on-site inspector to supervise the materials used and the pace of the work being performed. The engineer had actual knowledge of the dangerous condition (a trench collapsing) because he had learned that other trenches had collapsed in the days prior. The engineer, who was on site and could have addressed the problem, did not take adequate safety measures to mitigate the risks of injury or death to workers on the site, and the workers were unaware of the hazard themselves. Carvalho, supra, 143 N.J. 565. The engineer's inspector visited the site every day, monitored the exact trench that collapsed and killed the worker, and was present at the scene of the fatal occurrence. Carvalho, supra, 143 N.J. 565. Again, the plaintiff did not establish such facts against Hutch Grove in this case, nor did the plaintiff establish any contractual agreement whereby Hutch Grove was deemed responsible for safety conditions where Warrenville's employees were performing their plumbing work, another factor that the Carvalho Court said showed that it was fair to impose a duty of care there, Carvalho, supra, 143 N.J. 565 (noting parties' contractual relationship contemplated "active participation and involvement by the engineer in the construction work at the site. The engineer's supervisory responsibility necessarily entailed the observation of existing conditions and the actual performance of the

work undertaken by the workers at the site ... and thus directly implicated safety concerns on the defendant via its engineer”). All of this further shows that the trial court erred in imposing a duty of care on Hutch Grove in this case, see also Rivera v. PNL Jersey Properties, LLC, A-2266-17T4, 2019 WL 1324378, at \*3 (N.J. Super. Ct. App. Div. Mar. 25, 2019) (ruling roofing contractor owed a duty of care to the employee of a roofing subcontractor because “MSR assumed the duty to ensure OSHA and other safety standards were followed” and “the other factors addressed in Alloway also favor imposing upon MSR a duty of care owing to plaintiff. The risk of a fall through the roof was foreseeable. Here, defendant MSR had knowledge of plywood sheets covering holes in the roof. MSR's Vice President, Kirk Hollis, admitted he inspected the roof before bidding on the project and observed the holes in the roof his company needed to replace. Defendant had actual knowledge of the dangerous condition after discovering the holes during its inspection of the roof. The parties do not dispute defendant's knowledge. Further, defendant had promised the building owner that it would exercise supervision over all of the roofing work and provide all required safety equipment.... Guiliano worked closely with MSR on numerous prior projects....Plaintiff's risk did not arise out of the methods and means of removing old roofing material. Plaintiff was not injured by a tool provided by his employer.”)

The Appellate Division recognized these crucial distinctions in Tarabokia, supra, 429 N.J. Super. 114–19, ruling there that the general contractor also owed no duty to the subcontractor's injured employee. Unlike in Alloway, supra, 157 N.J. 221, the general contractor was not involved with how the injury occurred or the subcontractor's work was being performed. The agreement in Tarabokia placed on subcontractors “the responsibility for ensuring the safety of their own workers.”

“As to the foreseeability of the risk of harm,” the Appellate Division said, “there is no proof that defendant knew plaintiff was using the DX351 tool, much less handling it improperly and over a prolonged period of time...” That same reasoning applies to Hutch Grove in this case. While falling from open stairways is foreseeable, no evidence showed that Hutch Grove even knew that any Warrenville employee was carrying 40-pound bathtubs and other heavy fixtures up open stairways without assistance or safeguards, and while the metal guardrails that had been in place were removed (no less). No evidence showed that Hutch Grove controlled or directed the plaintiff to carry out this task in that way, or controlled or directed how any Warrenville employee should carry out tasks at the site. It was Warrenville Plumbing's owner and onsite foreman, Ziggy, who told his workers what needed to be done to accomplish the work they'd been contracted to perform in the common area, cf. Nanguelu v. Rodriguez, A-3379-12T4, 2014 WL 1796635, at \*1 (N.J. Super. Ct. App. Div. May 7, 2014) (no duty because “Neither defendant

supervised plaintiffs' on-the-job performance, provided them with tools or equipment, or had any knowledge of either the construction or design of the scaffold” which collapsed and hurt the plaintiff). This was an open and obvious risk created not by Hutch Grove but by how the plaintiff or his foreman chose to carry out a particular task. Imposing a duty of care on Hutch Grove and saddling it with a \$2 million judgment lacks the ”abiding sense of basic fairness under the circumstances” of this case, warranting relief here on appeal.

**II. THE JURY’S VERDICT CANNOT BE SUSTAINED UNDER NEW JERSEY LAW (A836).**

The trial court instructed the jury that the plaintiff had the burden to prove the following against Hutch Grove:

- one, that Defendant, Hutchgrove Enterprises, in its role as a developer, negligently ensured to make sure a safety program was implemented on the construction project at Paterson Plank Road and that this was a substantial factor in causing the January 17, 2018 accident and Mr. Guerini’s injuries;
- two, that Defendant, Hutchgrove Enterprises, was acting as a general contractor and negligently managed safety at the construction site at the Paterson Plank Road project on January 17, 2018, the date of the accident, and this negligence was a substantial factor in causing the accident and Mr. Guerini’s injuries. [6T26]

The verdict sheet, as noted by the court, set forth as follows:

Number four, did Hutchgrove Enterprises negligently fail to make sure a safety program was being implemented on the 304 Paterson Plank Road project? Yes, no and your vote. If yes, proceed to question five. If no, proceed to question six.

Question five, was Defendant Hutchgrove Enterprises' failure to make sure a safety program was implemented on the 304 Paterson Plank Road project a substantial cause and a substantial factor in causing Mr. Rodrigues Guerini's injuries and damages? Yes, no and the vote.

Number six, was Defendant Hutchgrove Enterprises negligent in its management of the safety as a general contractor on the 304 Paterson Plank Road project? Yes, no and vote. If yes, you go to question seven. If no, you go to question eight.

Seven, was Defendant Hutchgrove Enterprises' negligent management of safety on the 304 Paterson Plank Road project a substantial factor in causing Mr. Rodrigues Guerini's injuries and damages? Yes, no and vote. [6T44-45]

The jury returned its verdict against Hutch Grove as follows:

THE COURT: ... question four. Did Hutchgrove Enterprises negligently fail to make sure a safety program was being implemented on the 304 Paterson Plank Road project?

JURY FOREPERSON: Yes, seven-zero.

THE COURT: Okay. If yes, proceed to five. Was Defendant Hutchgrove Enterprises' failure to make sure a safety program was implemented on the 304 Paterson Plank Road project a substantial cause and a substantial factor in bringing -- in causing Mr. Rodrigues - - Mr. Guerini's injuries?

JURY FOREPERSON: Yes, seven-zero.

THE COURT: Okay. Let me see something. Was Defendant -- if yes, five. Okay. Was Defendant Hutchgrove Enterprises negligent in its management of safety as a general contractor on the 304 Paterson Plank Road project?

JURY FOREPERSON: Yes, seven-zero.

THE COURT: Okay -- okay. If yes, go to seven. Was Defendant Hutchgrove Enterprises' negligent management of safety on the 304 Paterson Plank Road project a substantial factor in causing Mr. Rodrigues Guerini's injuries and damages?

JURY FOREPERSON: Yes, seven-zero. 6T63-65

Several legal errors show why this verdict cannot stand.

First, Hutch Grove did not owe a duty to the plaintiff for the reasons argued above; without a duty, the plaintiff's claim failed.

Second, the court's instructions and verdict sheet incorrectly instructed the jury on the governing law and failed to define important terms for the jury. Although Hutch Grove's counsel did not object to the instructions, the Court should grant relief on the grounds of plain error, R. 2:10-2, because the jury instructions were of such a nature as to have been clearly capable of producing an unjust result. Gately v. Hamilton Mem'l Home, Inc., 442 N.J. Super. 542 (App. Div. 2015); State v. Macchia, 253 N.J. 232 (2023).

The instructions informed the jury that (1) Hutch Grove had a duty as a developer to implement a safety program, and (2) Hutch Grove had a duty if the jury found it was the "general contractor." That misstates New Jersey law as discussed above. The plaintiff must prove that the developer retained or exercised control over how subcontractor employees performed their tasks; then a duty arises. Simply

acting “as a general contractor” also does not automatically impose a duty of care to subcontractor employees, nor was “general contractor” defined for the jury.

The jury was not instructed about or asked to determine other facts needed to impose a duty of care on Hutch Grove either. The jury was not asked to decide whether the hazard was an open and obvious one associated with the performance of the work that Warrenville was contracted to perform. The jury was not charged with or asked to determine the degree to which Hutch Grove “participated in, actively interfered with, or exercised control over the manner and method of the work being performed at the time of the injury.” These are essential requirements for imposing liability on a “developer” or “general contractor.” Failure to charge the jury on these critical aspects of New Jersey law and ensure that the jury made the necessary findings to impose liability on Hutch Grove is a clear error that, we submit, requires vacating the massive judgment or granting a new trial.

### **Conclusion**

The Court should vacate the judgment against Hutch Grove and dismiss the plaintiff’s claims against Hutch Grove with prejudice or at least remand for a new trial because of the charging errors discussed under Point 2.

Respectfully submitted,

/s/ Michael Confusione

Counsel for Appellant,

Dated: May 14, 2025

**Superior Court of New Jersey**  
**Appellate Division**

Docket No. A-001315-24T2

ANDERSON RODRIGUES	:	CONSOLIDATED CIVIL ACTION
GUERINI,	:	
	:	
<i>Plaintiff,</i>	:	ON APPEAL FROM A
	:	FINAL JUDGMENT OF THE
vs.	:	SUPERIOR COURT
VIN-RICK BUILDERS, LLC;	:	OF NEW JERSEY,
AMBIANCE GENERAL	:	LAW DIVISION,
BUILDING, LLC A/K/A	:	ESSEX COUNTY
AMBIANCE GENERAL	:	
CONTRACTORS; PARK POINT	:	Case No: ESX-L-6427-18
CONDO ASSOCIATION;	:	
HUTCHGROVE ENTERPRISES	:	Sat Below:
(APPELLANT), JOHN DOE #1-10;	:	
ABC CORP. #1-10,	:	HON. A. SCOCA, J.S.C..
	:	
<i>Defendants.</i>	:	
VIN-RICK BUILDERS, LLC,	:	
	:	
<i>Third-Party Plaintiff,</i>	:	
	:	
vs.	:	
WARRENVILLE PLUMBING;	:	
PARK POINT CONDO	:	
ASSOCIATION AND	:	
HUTCHGROVE ENTERPRISES,	:	
	:	
<i>Third-Party Defendants</i>	:	

*(For Continuation of Caption See Inside Cover)*

**BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT**  
**ANDERSON RODRIGUES GUERINI**

GINARTE GONZALEZ & WINOGRAD, LLP.  
*Attorneys for Plaintiff-Respondent*  
*Anderson Rodrigues Guerini*  
400 Market Street  
Newark, New Jersey. 07105  
(973) 854-8400  
rciampaglio@ginartelaw.com  
jratkowitz@ginartelaw.com

*On the Brief:*  
ROBERT J. CIAMPAGLIO, ESQ.  
ID# 121322015  
JOHN J. RATKOWITZ, ESQ.  
ID# 052591995

Date Submitted: July 17, 2025



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## **Procedural History<sup>1</sup>**

Plaintiff-respondent adopts defendant-appellant Hutch Grove Enterprises' stated procedural history but adds the following important points. First, the single legal argument advanced by Hutch Grove Enterprises in its motion for summary judgment decided by the Court on May 24, 2024 was that there was no dispute of fact that it was not acting as a general contractor on the Patterson Plank construction project. Pa1-4.

## **Counterstatement of Facts**

This matter arises out of a January 17, 2018 workplace accident that occurred at a construction job site located at 304 Paterson Plank Road, Union City, New Jersey 07807 (hereinafter the "job site"). A304. On that date, plaintiff Mr. Guerini was in the course of his employment with Warrenville Plumbing & Co. LLC (hereinafter "Warrenville") moving a 40-lb plastic bathtub to the second floor when he lost his balance and fell down the staircase through an area where guardrails had been removed and to the ground below. A304. As a result

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<sup>1</sup> References to transcripts are as follows:

- 1T 10/16/24 (trial)
- 2T 10/17/24 (trial)
- 3T 10/21/24 (trial)
- 4T 10/22/24 (trial)
- 5T 10/23/24 (trial)
- 6T 10/24/24 (trial)
- 7T 5/24/24 (motion)

of the fall, Mr. Guerini sustained serious spinal injuries requiring 2-level lumbar spinal fusion surgery that impeded his ability to return to construction work. A304, 319-321. Plaintiff filed both a workers' compensation claim and a third-party lawsuit against entities he believed were responsible for ensuring the job site was safe to work at. A1.

Construction permits pulled for the renovation work performed at the subject job site identified Park Point Condo Association (hereinafter "PPC") as the owner in fee of the property. A338-389. The permits describe an entire interior renovation and do not delineate between whether work was performed in the individual units or the common areas. A338-389. A Warrenville proposal for \$30,600.00 worth of plumbing services was produced in discovery. A658. That proposal was for a job named, "7 UNITS – Hutchgrove Enterprises LLC/Park Point Condominium Association Inc." and it was submitted to Stephen Hutchinson. A658.

Defendant-respondent Vin-Rick Builders (hereinafter "VR") produced an April 28, 2017 letter from the entity addressed to the job site which stated in pertinent part:

"It clear that you are trying to be a General contractor without the necessary credentials.... While we have no objection to you keeping control over scheduling, and related cost, the proper sequencing of construction activities is paramount... By not providing necessary direction, you are holding yourself up."

A259.

Also produced in discovery was a \$23,303 December 15, 2017 check issued by Hutchgrove Enterprises LLC (hereinafter “HG”) directly to the City of Union City for “304 P.P. Road 10 units.” A660. Furthermore, a December 15, 2017 notarized statement handwritten by Mr. Hutchinson was produced. A677. In that statement, entitled “304 Paterson Plank Rd Union City, NJ 07087,” Mr. Hutchinson provides assurances that certainly would allow a trier of fact to conclude that HG/Mr. Hutchinson was operating as the general contractor, or at least had significant control over how the construction was occurring at the job site:

I, Stephen Hutchinson, President of Hutchgrove Enterprise at 304 Paterson Plank Road, Union City, NJ 07087, affirm that **I will not close** up any wall until plan drawings of the sprinkler system...I also state that **I will not do anything** to violate this agreement or else the building department will stop the project. I understand **I am now only getting** a partial permit for electrical and plumbing...**I will obtain** all necessary permits for sprinkler system. (Emphasis supplied).

Mr. Guerini stated in his deposition that “Steven” (Hutchinson) would go to the job site 3 times a week and direct and inspect the work, but that he wasn’t present on the date of the accident. A153, 156-157, 192, 13:6-16, 16:16 to 17:13, 52:5-10. Steve would pay Warrenville workers on time for the work and talk to Warrenville’s foreman on the job site regularly. A163-164, 23:20 to 24:1. Mr. Geurini believed that Steve was the person most in charge on the job site

responsible for ensuring the stairways were clear during the workday and the general contractor. A169, 177, 214-215, 29:18-21, 37:11-19; 74:19 to 75:12. Steven used the subject staircase after the guardrails had been removed. 215, 75:13-15.

Mr. Hutchinson was deposed twice in this case. During his first deposition, he first denied that PPC even exists as an entity but then stated that it does exist. A402, 12:8-23. He stated that HG still owns all seven of the condominium units at the job site but denied that he was the president of HG (despite his signed and notarized statement to the city). A402-405, 410, 12:24 to 13:5; 20:4-12. Mr. Hutchinson admitted he had authority to sign checks on behalf of HG. A406-407, 16:20 to 17:7. He has no OSHA safety training. A415-416, 25:2 to 26:10. Mr. Hutchinson admitted that he served as a board member of PPC after the purchase of the building and the president of HG. A436, 46:5-13, A535:135:14-24. HG purchased the condominium units. A446-447, 56:17 to 57:3.

During his second deposition, Mr. Hutchinson stated he would go to the active job site at least once a week. A471, 71:4-15. Mr. Hutchinson contended that HG entered into a contract with Vin-Rick (none was produced). A487-488, 87:19 to 88:3. Mr. Hutchinson denied that a picture taken on the job site depicting a neon orange sticker with the words, "Hutchgrove Enterprises LLC" and "permit" in fact constituted a permit. A505-507, 105:24 to 107:23. Mr.

Hutchinson stated that PPC and not HG was the permit holder for the project. A527-528: 127:7 to 128:18.

Steven Richert, friend and construction colleague of the deceased Peter Vincent who operated VR, stated that Mr. Vincent would call him and complain that Mr. Hutchinson was not following construction protocol on the job site. A235, 239, 12:8-25, 28:5-12, 29:3-8. Mr. Richert stated that Mr. Hutchinson was operating as the general contractor and was doing a poor job in that capacity. A240, 32:2 to 33:3.

Mr. Guerini confirmed at trial that Mr. Hutchinson supervised his work 1-2 times a week, Mr. Hutchinson would directly hand checks to Mr. Guerini for work performed and Mr. Hutchinson would tell either Mr. Guerini's boss or foreman how he wanted the plumbing work done while consulting building blueprints and those instructions would be relayed to Warrenville workers. 1T, 67:14 to 68:7, 79:7-21; 2T, 18:13 to 20:4; 21:4 to 22:5; 22:23 to 23:17; 25:25 to 26:8; 28:17 to 29:10; 29:18-21; 76:6-15; 78:20-25; 81:17 to 82:1. Ziggy, the owner of Warrenville, testified that he was paid directly by Mr. Hutchinson for the work performed at the job site. 5T, 84:23 to 85:4.

Mr. Hutchinson would use the staircase without guardrails several times prior to the accident. 1T, 81:1-10. Mr. Guerini also confirmed that the bathtub he was carrying at the time of the accident was 30-35 pounds, and that he carried

it up the stairs because there was no other means of accessing where the tub had to be installed. 1T,72:16 to 73:25. He was never told to not work in the area he fell. 1T, 78:5 to 79:6. Mr. Guerini further recalled that the stair guardrails were removed some time before the holidays. 2T, 31:10-15.

Steven Richert testified at trial that VR's work on the job site was limited to the installation of support beams at the subject job site. 4T, 13:19 to 14:20. Mr. Richert further testified that VR was not acting as the general contractor and that HG/Mr. Hutchinson was acting as the general contractor for the job site. 4T, 16:18-20; 17:22 to 18:15. Mr. Richert also recalled helping Peter Vincent of VR author the letter to HG advising that it did not know what it was doing acting as the general contractor and demanding outstanding monies for work already performed to allow VT to walk away from the job site. 4T, 19:8 to 22:2.

Plaintiff's liability expert, Cheryl Scanlon-Zinner, CSP, testified at trial that the accepted standard of care for a general contractor with regards to construction site safety is not limited to OSHA standards, but also encompasses safety literature published by industry safety authorities. 3T, 42:15 to 53:4. Ms. Scanlon-Zinner reviewed the photographic evidence and interviewed the plaintiff and concluded that the fact that the staircase guardrails were down for a considerable amount of time strongly supported the conclusion that regular and frequent safety inspections were not performed by the general contractor

and that there was not an OSHA-competent person managing the job site for safety. 3T, 65:4-16; 72:18-25. Ms. Scanlon-Zinner even admitted that a passive property owner, one who is completely hands off, still has the safety obligation to ensure the general contractor has a site safety plan to starting construction (Thus, even if you completely discount the testimony of Mr. Guerini and Mr. Richert, as well as the documentary evidence demonstrating Mr. Hutchinson was active in managing the project, a jury could still conclude HG violated the standard of care because there is no evidence that HG investigated whether VR had a site safety plan). 3T, 69:2 to 70:17.

VR's liability expert, Robert Sagendorf, also testified that a general contractor's job site duties include overall job site safety compliance with respect to subcontractor workers. 4T, 44:3-19. He also testified that a project owner would inherit those safety duties if they chose to elect to manage the job site as a general contractor. 4T, 45:8 to 46:5; 48:19 to 49:8. He reviewed the April 2017 letter from VR to HG and concluded that VR never came back to the job site after the letter was sent, and concluded that VR could not have been responsible for the removal of the guardrails as that occurred in December 2017. 4T, 52:2 to 53:3; 65:1-7.

Rion Blagrove, a HG member, was unable to explain why HG could not produce documents demonstrating that HG hired VR to serve as the general

contractor, that HG paid VR for general contractor services, that VR was cutting checks to the subcontractors on HG's behalf or that HG directly paid other contractors. 5T, 62:24 to 63:23; 65:15 to 66:11. Mr. Blagrove could not provide a competent explanation as to why Mr. Hutchinson had to make construction affirmations to the city building department in writing and not VR. 5T, 89:10-24; 90:21 to 91:12.

Mr. Hutchinson believes that the architectural plans for the entire building were procured by both PPC and HG, not just HG. 5T, 144:10 to 145:6. Mr. Hutchinson also did not have a good explanation as to why, during the course of 4 years of litigation, HG was unable to provide any objective documentary evidence that demonstrates HG hired VR as the general contractor. 5T, 151:5 to 153:3.

## **LEGAL ARGUMENT**

### **POINT I**

#### **HUTCH GROVE ENTERPRISES DID NOT RAISE MOST OF THE LEGAL ARGUMENTS IT IS MAKING BEFORE THE TRIAL COURT .**

It is a well established principle that our appellate courts will not consider questions not properly presented to the trial court when an opportunity for such presentation was available, unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest. Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959);

Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); Berardo v. City of Jersey City, 476 N.J. Super. 341, 354 (App. Div. 2023).

Defendant HG's legal argument advanced in its motion for summary judgment decided by the Court on May 24, 2024, was that there was no dispute of fact that it was not acting as a general contractor on the Patterson Plank construction project. Pa1-4. HG did not argue that it owed no duty of care to the plaintiff. HG did not argue that it could not be held responsible for the plaintiff's accident because it occurred in a common area of the property. HG did not argue in its motion for summary judgment that the hazard at issue in this case was an open and obvious condition, it did not argue it had no notice of a dangerous condition, that it did not retain control over the means and methods on the construction site or that OSHA it was not responsible for OSHA compliance. The only legal argument HG set forth in its cross-motion for summary judgment was that there was no dispute that it was not acting as a general contractor. Pa1-4. It never argued in its application that the trial court needed to perform an Alloway/Hopkins analysis on its application. The

HG did not file a motion for directed verdict at the close of plaintiff's case or at the end of trial, nor did it move for judgment notwithstanding the verdict (JNOV) post-trial. HG is not arguing on this application that the trial court had

no jurisdiction to decide this case or that the issues in this matter present matters of great public interest. Reynolds Offset Co. v. Summer, supra.

Since none of the aforementioned issues were raised below, these issues cannot be raised by HG at this time.

## POINT II

**HUTCH GROVE NEVER MOVED FOR A NEW TRIAL ON THE BASIS THAT THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE AND SO PURSUANT TO R. 2:10-1. THAT ARGUMENT IS NOT COGNIZABLE. PRODUCED IN DISCOVERY AND DURING THE TRIAL GAVE AMPLE REASONS FOR A TRIER OF FACT TO CONCLUDE THAT HUTCH GROVE WAS THE GENERAL CONTRACTOR FOR THE ENTIRE BUILDING RENOVATION.**

Pursuant to R. 2:10-1, “the issue of whether a jury verdict was against the weight of the evidence shall not be cognizable on appeal unless a motion for a new trial on that ground was made in the trial court.” HG never filed a motion for a new trial and so the Appellate Division can and should refuse to hear this application.

After considering the competent evidence, the jury in this matter found that HG, and not VR, operated as the general contractor for the job site. Plaintiff-respondent contends that the following evidence permitted the jury to come to that reasonable conclusion: 1) the limited documentary evidence produced in this case, namely, HG issuing checks for the payment of the permits, the written affirmation Mr. Hutchinson was required to present to the city building

department and the April 2017 VR letter stating that HG was in over its head acting as the general contractor; 2) the lack of documentary evidence, including a construction contract, produced by any party which would suggest that VR was hired as the general contractor; 3) the lack of competent explanation from either Mr. Blagrove or Mr. Hutchinson as to why such documentation was not produced; and 4) the testimony of Mr. Guerini, Mr. Richert and Ziggy from Warrenville points to HG and Mr. Hutchinson acting as the general contractor. The jury was free to give more weight to those pieces of evidence rather than the self-serving testimony of Mr. Blagrove and Mr. Hutchinson that the deceased defendant was in fact the general contractor.

HG has failed to demonstrate that placing more weight upon the 4 aforementioned categories by the jury to determine the identity of the general contractor was “clearly erroneous” and warranting a reversal. Sipko v. Koger, Inc., 251 N.J. 162, 179 (2022) (“[W]e must not disturb a factual finding of the trial court “unless it is clearly erroneous or shows an abuse of discretion.”); Matter of D.L.B., 468 N.J. Super. 397, 416 (App. Div. 2021) (“We are generally bound by trial court findings ‘when supported by adequate, substantial, credible evidence.’” (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)); Carrino v. Novotny, 78 N.J. 355, 360 (1979) (“As we have recently held in another context, a jury verdict, from the weight of evidence standpoint, is impregnable unless so

distorted and wrong, in the objective and articulated view of a judge, as to manifest with utmost certainty a plain miscarriage of justice.” (citing Baxter v. Fairmont Food Co., 74 N.J. 588 (1977)).

### POINT III

**AS THE GENERAL CONTRACTOR (AND ACTIVE LANDOWNER), HUTCH GROVE WAS RESPONSIBLE FOR OVERALL JOB SITE SAFETY SUPERVISION AND ENFORCEMENT WHICH INCLUDED ESTABLISHING A SAFETY PLAN AND PERFORMING REGULAR AND FREQUENT INSPECTIONS OF THE JOB SITE.**

**A. Initially, the duty of a general contractor was premised on principles of landowner liability and master-servant relationships.**

HG has taken for the first time in the litigation (in addition to the “means and methods” argument that was rejected by the jury based on competent evidence) the positions that a general contractor’s responsibility for subcontractor safety on its own job site is more limited, that the hazard was “open and obvious” and thus no duty extended to plaintiff and that HG did not have constructive or actual notice of the hazardous condition.

“[A]ppellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available ‘unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.’ ”

Berardo v. City of Jersey City, 476 N.J. Super. 341, 354 (App. Div. 2023) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959), certif, den. 31 N.J. 554 (1960)).

Notwithstanding and before addressing these additional issues which were not raised at the trial level, plaintiff-respondent is inclined to address the “means and methods” argument contained in Point I, subsection (b) 1 & 2 of the appellant’s papers. In nearly every motion for summary judgment filed in construction site accidents by defendant landowners and general contractors Wolczak v. Nat'l Elec. Products Corp., 66 N.J. Super. 64, 70 (App. Div. 1961) is cited for the proposition that the defendant owed no duty of care to protect workers from dangerous conditions on a construction site because the landowner\general contractor did not control the work performed by subcontractors. At the outset, it must be noted that Wolczak is a case that was decided fifty-eight years ago. This was ten years before the establishment of the Occupational Safety and Health Administration in 1971. Thankfully for workers, much has changed since Wolczak was decided, in both the way safety is managed on construction sites and the way the courts have construed the responsibilities of general contractors.

The duty of care of a general contractor announced in Wolczak was based on principles of landowner liability and had nothing to do with the function performed by the different actors working on a construction sites:

The liability of a general contractor to employees of subcontractors performing construction or other work on the premises is founded in part on the assumption that the owner has placed the general contractor in physical control of the job site; by virtue of this control, the general

contractor is burdened with a duty similar to that owed by the landowner to business invitees, to exercise reasonable care to maintain the premises in a reasonably safe condition. Wolczak, at 70.

According to the Appellate Division in Wolczak, a general contractor might broaden the scope of duty owed to employees of subcontractors if it got involved in the construction activities of subcontractors on its jobsites by either supervising “or active participation in the manner of work of the subcontractor.” Ibid. The reasoning of the Appellate Division was, “that a sufficient degree of detailed superintendence over the latter's employees as to invoke a legal relationship analogous to that of master-servant.” Thus, under Wolczak (with a couple of rare exceptions), a general contractor on a construction site could stick its head in the sand and avoid responsibility for an injury to an employee working on a construction site.

Absent control over the job location or direction of the manner in which the delegated tasks are carried out, the general contractor is not liable for injuries to employees of the subcontractor resulting from either the condition to the premises or the manner in which the work is performed. Nor is his immunity disturbed by the exercise of merely such general superintendence as is necessary to insure that the subcontractor performs his agreement. Wolczak, at 71.

**B. New Jersey adopted the Construction Safety Act and subsequently New Jersey Courts expanded the duty of care owed by general contractors, holding that was appropriate for juries to consider a statutory standard of conduct when assessing the duty of care of a general contractor on a construction site.**

Grounding the duty of care of general contractors in principles of landowner liability and master servant relationships was poor public policy because it encouraged a *laissez-faire* approach to safety on the jobsite and left decisions about safety precautions to subcontractors who (a) had every incentive to cut corners because they were hired through a competitive bidding process and (b) were frequently immune from suit due to the Workers' Compensation bar of N.J.S.A. 34:15-8. Luckily, a year after Wolczak was decided, the New Jersey Legislature adopted the Construction Safety Act, which sought to protect workers from injuries. As explained by Judge Pressler in Bortz v. Rammel, 151 N.J. Super. 312 (App. Div. 1977):

In 1962, the year following the restrictive decision in Wolczak, the Legislature adopted the Construction Safety Act, N.J.S.A. 34:5-166 et seq., expressly designed to protect the health and safety of all construction employees as well as the public in general by requiring all construction employers to comply with all safety rules and regulations promulgated under the act. N.J.S.A. 34:5-168. Such rules and regulations were consequently promulgated under the statutory grant of authority by the Commissioner of Labor and Industry and codified as the Construction Safety Code, N.J.A.C. 12:180-1.1 et seq. Bortz v. Rammel, *supra*, at 319.

Judge Pressler specifically observed that the Appellate Division's prior holding in Wolczak, "as having been substantially qualified" by the

Construction Safety Code. In particular, Judge Pressler observed that the Construction Safety Code made general contractors responsible for the safety of subcontractors under N.J.A.C. 12:180-3.15.1:

Where one contractor is selected to execute the work of the project, he shall assure compliance with the requirements of this Chapter from his employees as well as all subcontractors.

Bortz v. Rammel, *supra*, at 319.

Similarly, Judge Pressler noted that regulations issued pursuant to the Construction Safety Act put the onus on every person occupying a supervisory role on a construction site to make sure workers on the site were not exposed to safety hazards:

All places where employees are suffered or permitted to perform work of any kind in construction work or demolition work shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of employees and the general public.

Employers, owners, contractors, subcontractors, superintendents or foremen in charge, and other persons obligated by law shall not direct, or permit an employee to work under conditions which are not in compliance with this Chapter or which are prohibited by this Chapter. Bortz v. Rammel, *supra*, at 319-320 (citing N.J.A.C. 12:180-3.1 and N.J.A.C. 12:180-3.2).

Finally, *apropos* to the current argument before the Appellate Division, Judge Pressler specifically called into question the viability of the Court's previous holding in Wolczak regarding the duty of care owned by general contractors on construction sites:

We are satisfied that the Construction Safety Act and the Construction Safety Code promulgated thereunder have, therefore, a substantial impact on the continued viability of our quoted holding in Wolczak, supra. It is first well settled in this jurisdiction that proof of deviation from a statutory standard of conduct, while not conclusive on the issue of negligence in a civil action, is nevertheless a relevant circumstance to be considered by the trier of fact in assessing tort liability.

Bortz v. Rammel, supra, at 319.

**C. The United States Department of Labor, through the Occupational Safety and Health Administration took over the regulation and enforcement of construction site safety in New Jersey and then the Appellate Division again affirmed that OSHA regulations shape and define the duty of care owed by general contractors on construction sites.**

Eventually, the federal government established the Occupational Safety and Health Administration and began regulating safety on construction sites. When that happened, New Jersey ceded authority to regulate and enforce safety on construction sites to the United States Department of Labor. This was explained by the Appellate Division's opinion in Meder v. Resorts Intern. Hotel, Inc., 240 N.J. Super. 470, 475-476 (App. Div. 1989):

But as of April 1, 1975, the then Commissioner of Labor and Industry announced the withdrawal of the New Jersey State Plan for Occupational Safety and Health, whereupon jurisdiction was vested with the United States Department of Labor for the regulation of occupational safety and health under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq. See 7 N.J.R. 231 (May 8, 1975). As a result, the Construction Safety Code promulgated under the Construction Safety Act, N.J.S.A. 34:5-166 et seq. was repealed. 10 N.J.R. 258 (June 8, 1978). The Construction Safety Act itself, however, remained in effect.

(emphasis added)

The Appellate Division in Meder noted that OSHA regulations mimicked many of the requirements of New Jersey's prior Construction Safety Code related to providing people with a safe workplace. Additionally, the Appellate Division quoted at length OSHA regulations related to the responsibilities of general contractors and subcontractors working on construction sites:

Under 29 C.F.R. § 1926.50(j) the term “employer” means “contractor or subcontractor.” That a prime or general contractor bears responsibility for all OSHA violations on the job is made clear by 29 C.F.R. § 1926.16:

(a) The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually.... In no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.

(b) By contracting for full performance of a contract ..., the prime contractor assumes all obligations proscribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.

(c) To the extent that a subcontractor of any tier agrees to perform any part of the contract, he also assumes responsibility for complying with the standards in this part with respect to that part. Thus, the prime contractor assumes the entire responsibility under the contract and the subcontractor assumes the responsibility with respect to his portion of the work. With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.

Meder v. Resorts Intern. Hotel, Inc., *supra*, at 476 (emphasis added).

Notably, the trial judge in Meder reasoned that the Wolczak decision was again controlling since the regulations enacted pursuant to the Construction

Safety Code were abrogated when New Jersey ceded authority for the regulation of construction site safety management to the Occupational Safety and Health Administration. Meder v. Resorts Intern. Hotel, Inc., *supra*, at 476. The Appellate Division characterized this aspect of the trial court’s analysis “flawed” and pointed out that under OSHA regulations general contractors and subcontractors may not allow men working on a construction site “to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health of safety.” *Id.* at 476. (Citing 29 C.F.R. 1916.20(a)). Owners who take on general contracting responsibilities are to be evaluated under the standards applicable to the role they assume. Costa v. Gaccione, 408 N.J.Super. 362 (App. Div. 2009).

**D. OSHA regulations place a duty on general and prime contractors to monitor and control safety on a construction site and these regulations have influenced how New Jersey Courts view the duty of care owed by general contractors.**

That general contractors owe a duty of care to employees of subcontractors on construction sites under statutory and decisional law is not reasonably debatable. Congress enacted the Occupational Safety and Health Act (the OSH Act), 29 U.S.C.A. § 651 to § 678, to “assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C.A. § 651(b); See Gonzalez v. Ideal Tile Importing Co., Inc., 371 N.J. Super. 349, 359 (App. Div. 2004). In

pursuing those goals, Congress authorized the Secretary of Labor to promulgate health and safety standards for workplaces, 29 U.S.C.A. § 655, and established the Occupational Safety and Health Administration (OSHA) to enforce those standards through inspections and investigations, 29 U.S.C.A. § 657. The OSHA Act requires employers to comply with specific standards and also imposes a general duty on employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” 29 U.S.C.A. § 654(a); Gonzalez, supra at 359-60. Violators of specific OSHA standards or OSHA's general duty to provide a safe workplace face civil monetary penalties, as well as criminal sanctions, 29 U.S.C.A. § 666. Gonzalez, supra.

29 C.F.R. 1920.16 Rules of Construction discusses several concepts that stand for the proposition that prime contractors have a shared responsibility for managing safety on a construction site that cannot be contracted away:

- (a) The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually. Thus, for example, the prime contractor and his subcontractors may wish to make an express agreement that the prime contractor or one of the subcontractors will provide all required first-aid or toilet facilities, thus relieving the subcontractors from the actual, but not any legal, responsibility (or, as the case may be, relieving the other subcontractors from this responsibility). In no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.

- (b) By contracting for full performance of a contract subject to section 107 of the Act, the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.
- (c) To the extent that a subcontractor of any tier agrees to perform any part of the contract, he also assumes responsibility for complying with the standards in this part with respect to that part. Thus, the prime contractor assumes the entire responsibility under the contract and the subcontractor assumes responsibility with respect to his portion of the work. With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.
- (d) Where joint responsibility exists, both the prime contractor and his subcontractor or subcontractors, regardless of tier, shall be considered subject to the enforcement provisions of the Act.

The Supreme Court of New Jersey cited to 29 C.F.R. 1926.16 to discuss how general contractors share responsibility for safety on construction sites in Alloway v. Bradlees, Inc., 157 N.J. 221, 238 (1999), observing that under OSHA regulations, prime or general contractors can be deemed responsible for subcontractors' violation of OSHA safety standards:

As a prime contractor, Pat Pavers may be liable for any of its subcontractor's violations of OSHA regulations as well as its own by the terms of 29 C.F.R. § 1926.16. That regulation states that “[b]y contracting for full performance of a contract ... the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.” 29 C.F.R. § 1926.16(b). It further provides that “[w]ith respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.” 29 C.F.R. 1926.16(c). It also states: “In no case shall the prime contractor be relieved

of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.” 29 C.F.R. § 1926.16(a).

OSHA impose a duty on the general contractor to ensure the protection of all of the workers on a construction project, irrespective of the identity and status of their various and several employers, by requiring, either by agreement or by operation of law, the designation of a single repository of the responsibility for the safety. The obligation of general and prime contractors to share safety management responsibilities for all workers on construction sites has been repeatedly recognized by New Jersey Courts. Alloway, supra, 157 N.J. at 238; Bortz v. Rammel, 151 N.J. Super. 312, 321 (App. Div. 1977), cert. den. 75 N.J. 539. Meder v. Resorts International, 240 N.J. Super. 470, 473-77 (App. Div. 1989), cert. den. 121 N.J. 608; Kane v. Hartz Mountain Indus., Inc., 278 N.J. Super. 129, 142-143 (App. Div. 1994), aff'd, 143 N.J. 141 (1996). Dawson v. Bunker Hill Plaza Assocs., 289 N.J. Super. 309, 321 (App. Div. 1996); Izzo v. Linpro Co., 278 N.J. Super. 550, 555 (App. Div. 1995)

Indeed, the law recognizes the realities of construction sites and that it is the general contractor that has the power and position to enforce workplace safety rules and to generally foster an environment where workplace safety and the wellbeing of the workers on the job are given high priority. While certainly everyone on a construction site should adhere to the OSHA safety regulations, the law recognizes that the workers at the bottom of the hierarchy are powerless

to take any real enforcement role and will in fact often be pressured to work in unsafe conditions without complaint, or risk losing their job. Crumb v. Black & Decker, 204 N.J. Super. 521, 527 (App. Div. 1985) (“He either worked at his assigned task or was subject to discipline or being labeled as a troublemaker.”), citing, Suter v. San Angelo Foundry & Mach. Co., 81 N.J. 150, 167 (1979); see also Green v. Sterling Extruder Corporation, 95 N.J. 263 (1984) (comparative negligence may be disregarded in a workplace safety negligence case); Bexiga v. Havir Mfg. Corp., 60 N.J. 402 (1972); Cavanaugh v. Skil Corporation, 331 N.J. Super. 134, 185 (App. Div. 1999) (workers on construction sites often have no real choice about working under known unsafe conditions).

#### POINT IV

**IN NEW JERSEY, PRECEDENTIAL DECISIONS UNEQUIVOCALLY HOLD THAT FACTS ESTABLISHING A VIOLATION OF AN OSHA SAFETY REGULATION IS ALONE EVIDENCE OF NEGLIGENCE SUFFICIENT TO WITHSTAND A MOTION FOR SUMMARY JUDGMENT.**

**A. New Jersey Courts have repeatedly recognized OSHA regulations are highly relevant when assessing the scope of duty owed by a general contractor.**

In Alloway v. Bradlees, Inc., 157 N.J. 221 (1999) the New Jersey Supreme Court held that when attempting to determine whether a contractor on a construction site was responsible for an accident “the applicability of federal safety regulations, specifically OSHA regulations, is highly relevant.” Id. at

233-234. The holding of Alloway does not stand alone. Other precedential decisions binding on this Court have indicated that OSHA regulations are relevant to assessing the scope of the duty owed by a general contractor on a construction site. Fernandes v. DAR Dev. Corp., 222 N.J. 390, 406 (2015); Costantino v. Ventriglia, 324 N.J. Super. 437, 442 (App. Div. 1999); Kane v. Hartz Mountain Indus., Inc., 278 N.J. Super. 129, 141 (App. Div. 1994), aff'd, 143 N.J. 141 (1996); Smith v. Kris-Bal Realty, Inc., 242 N.J. Super. 346, 352, (App. Div.1990); Meder v. Resorts Int'l Hotel, Inc., 240 N.J. Super. 470, 476 (App. Div. 1989); Sanna v. National Sponge Co., 209 N.J. Super. 60, 69 (App.Div.1986).

Notably, New Jersey Model Civil Jury Charge 5.10(G) provides guidance to trial courts about how to incorporate evidence of OSHA regulatory standards into jury charges.

**B. Facts demonstrating that general or prime contractors on a construction site can be held responsible for OSHA violations are sufficient to withstand a motion for summary judgment.**

The New Jersey Supreme Court has specifically held that it is appropriate to consider 29 C.F.R. 1926.16 when considering whether a general or prime contractor can be held responsible for safety violations committed by subcontractors. Alloway v. Bradlees, Inc., 157 N.J. 221, 238 (1999).

Significantly, the Supreme Court of New Jersey has concluded that facts suggesting that a supervising contractor can be deemed responsible for a subcontractor's safety violations under 29 C.F.R. 1926.16 itself is sufficient to withstand a motion for summary judgment as a matter of law:

In addition, the record further discloses evidence that could support a finding sufficient to apply OSHA regulations to Pat Pavers and determine that there were regulatory violations chargeable to defendant. **Facts that demonstrate an OSHA violation constitute evidence of negligence that is sufficient to overcome a motion for summary judgment.**

Alloway v. Bradlees, Inc., 157 N.J. 221, 240–41 (1999)(emphasis added). Once again, on this point the Alloway decision does not stand alone. Multiple precedential decisions binding on this Court have held facts demonstrating a violation of OSHA constitutes sufficient evidence of negligence to overcome a motion for summary judgment:

A finding of an OSHA violation does not ipso facto constitute a basis for assigning negligence as a matter of law. Id. at 814; See Restatement (Second) of Torts, § 288C (1965). However, the existence of a particular OSHA regulation as applied to the facts of this case is sufficient to defeat a grant of summary judgment in favor of defendants.

Izzo v. Linpro Co., 278 N.J. Super. 550, 556 (App. Div. 1995).

Since a jury could properly find that Meder's death was proximately caused by Resorts' negligent failure to assure compliance with OSHA regulations, the dismissal of plaintiff's complaint must be reversed.

Meder v. Resorts Int'l Hotel, Inc., 240 N.J. Super. 470, 477 (App. Div. 1989).

Plaintiff's expert Ms. Scanlon-Zinner identified in her report through her interview with Mr. Guerini that the subject staircase was without guardrails for at least several weeks prior to the fall. She reviewed the deposition testimony which made it apparent that no entity did anything to plan, monitor and ensure that this work was done safely and in compliance with OSHA and **other accepted safety standards**. She highlighted that the mere fact that the staircase was improperly guarded for weeks demonstrated that the general contractor did not engage in safety management, perform regular and frequent safety inspections and did not employ a competent safety person, and thus violating 29 CFR 1926.20(b)(1-2), 29 CFR 1926.21(b)(2), 29 CFR 1926.32(f) and 29 CFR 1926.1052(c)(1).

The trial court, in denying the cross motions for summary judgment on May 24, 2024, did not have to reach the issue of whether competent evidence existed as to whether the defendants' (in)actions violated the standard of care because: 1) VR's papers were procedurally deficient; and 2) there existed issues of material fact as to HG's role at and control over the job site. VR refiled its summary judgment motion which was again denied and accompanied by a Statement of Reasons where again the court noted that issues of material fact existed as to the roles and responsibilities of both defendants on the job site

precluded judgment. Thus, it cannot be stated that summary judgment was inappropriately denied by the trial court at that time.

**C. The case law relied on by the defendants to define the duty of care owed by a general or prime contractor is either inapplicable or outdated.**

The case law cited by the defendants is either (a) not applicable to evaluating the conduct of a general or prime contractor or (b) outdated. As previously indicated, Wolczak v. Nat'l Elec. Products Corp., 66 N.J. Super. 64, 71 (App. Div. 1961) was decided before the OSH Act and binding precedent in New Jersey has since held that that decision's holding is no longer viable when evaluating the conduct of a general or prime contractor on a construction site. Similarly, Terranella v Union Bldg, and Construction Co., 3 N.J. 443 (1950) was decided 70 years ago and also concerned landowner principles. Nevertheless, Wolczak is still viable when assessing the conduct of passive landowners on a construction site. The fact that owners of property (who are not subject to regulation by the Occupational Safety and Health Administration) are no longer to be judged by the standards that apply to general contractors on construction sites was initially discussed by the Appellate Division in Dawson v. Bunker Hill Plaza Associates, 289 N.J. Super. 309, 321 (App. Div. 1996) cert denied, 146 N.J. 569 (1996). Dawson was cited with approval by the Court in Alloway v. Bradlees, Inc., supra 157 N.J. at 238.

The defendant's reliance upon the Gibilterra, Muhammad, Mavrikidis, Accardi, and Majestic Realty Assocs. cases are misplaced because the record is abound with evidence that demonstrates HG and Mr. Hutchinson was involved in every aspect of construction and was the *de facto* general contractor. See generally, plaintiff-respondent's counterstatement of material facts. HG procured the construction permits, gave direction to Warrenville's owner and foreman who relayed those instructions to subcontractor workers, was present and used the staircase without guardrails, affirmed to the city that HG would refrain from engaging in certain activities at the job site, directly engaged and paid the subcontractors and was told by the co-defendant months before the accident that HG was in over its head acting as the general contractor and that VR wished to pull out of the dangerous job site. The defendants in those matters were clearly passive owners of the property who engaged a general contractor to run the job site. The precise issue of HG's role on the job site was disputed at length at trial and the jury chose to accept proofs supporting HG as the general contractor as true.

The case against HG is more akin to facts in Costa v. Gaccione, 408 N.J. Super. 362 (App. Div. 2009). In Costa, the plaintiff was injured while climbing a makeshift scaffolding at a residential construction job site. Plaintiff filed a lawsuit against several defendants, including Salvatore Gaccione, who was a

part owner of the subject house and acted as the developer. Mr. Gaccione procured building permits as an “owner in fee,” listing another defendant (who settled prior to the decision) as the contractor. Discovery revealed the following which warranted viewing Mr. Gaccione as the de facto general contractor and reversal of summary judgment granted in his favor:

Gaccione allegedly performed many of the general contractor functions; he hired various subcontractors and an architect, scheduled their work, and purchased building materials which the contractors requested. Gaccione frequented the job site, oversaw the work and performed some managerial tasks; however, he maintains that he did “not retain control over the means or methods of work ... or [ ] work-site safety,” but rather relied on the contractors' “professional experience” to perform the work correctly and safely. Still, the principal of defendant Copeland testified that Gaccione was the general contractor at the site... Although Gaccione may not have taken direct control at the job site, he did visit the site daily and oversaw operations. He purchased materials requested by builders and actively discussed the building plans with the workers that he hired. As such, he performed many of the duties of a general contractor.

Id. at 366, 375; see also Gibilterra v. Rosemawr Homes, 19 N.J. 166, 170 (1955) (Suggesting that liability may attach to the landowner if the plaintiff had proofs that the landowner participated and had some degree of control over the job site.)

Essentially all of those factors are seen in HG/Mr. Hutchinson’s job site conduct. There is evidence that: 1) HG directly hired and paid the subcontractors; 2) the architectural plans were addressed to HG and not the condo association; 3) HG procured the construction permits; 4) Mr. Hutchinson would go over the plans with Warrentville’s owner and foreman on the job site

and direct how the work should be done; 5) HG scheduled the work and purchased the materials; 6) Mr. Hutchinson frequented the job site weekly; and 7) every other non-HG fact witness produced in this case, including non-party witnesses Mr. Richert and Ziggy of Warrenville, identified HG as the general contractor. It is clear that HG was the *de facto* (if not outright) general contractor on the job site and thus both the denial of summary judgment and determination by the jury were proper.

**D. Tarabokia v. Structure Tone, 429 N.J. Super. 103 (App. Div. 2012) and misguided unpublished decisions advocating a “means and methods” analysis to immunize general contractors exercising willful neglect on construction sites cannot reasonably be taken to overrule the precedential decisions outlining the duty of care of general contractors in New Jersey.**

In Tarabokia v. Structure Tone, 429 N.J. Super. 103 (App. Div. 2012) the plaintiff was assigned the task of setting concrete anchors with a Hilti gun. Id. at 107. The gun uses a gunpowder charge to drive anchors into either concrete or steel, and it recoiled when forced as the anchor strikes the hard surface. Ibid. Plaintiff's foreman instructed him to use an extension pole so he could reach the area where he had to set the anchors. Ibid. The plaintiff received training from Hilti in the proper use of the gun. Id. at 108. After using the Hilti gun for more than a month without the proper anti-vibration gloves, plaintiff developed neuropathy from compression due to a repetitive stress caused by using the gun. Id. Plaintiff's experts opined that Defendant General Contractor, Structure Tone,

was negligent for failing to provide Plaintiff with personal protective equipment and indicated Plaintiff's injuries would have been avoided if he had been wearing anti-vibration gloves and he were not using the extension pole with the gun and holding it over his head. Id. at 111.

Notably, the defendant general contractor did not argue that it owed no duty of care to the plaintiff in Tarabokia. Quite the contrary, Structure Tone actively managed safety on the jobsite. Structure Tone employed Mike Pebley as the project's Site Safety Manager, and his job was to "initiate, maintain and supervise all safety precautions and programs" in connection with work done on the site. Id. at 108. Mr. Pebley prepared a Site Specific Safety Management Plan for the project for the use of all subcontractors working on the jobsite. Ibid. Structure Tone's Site Specific Safety Plan's goal was "to provide for the systematic identification, evaluation and prevention or control of... that may arise from foreseeable conditions" on the project. Id. at 108. Structure Tone's project management team required subcontractors to engage in safety activities. Subcontractors were required to have safety meetings and were required to name competent people who would be answerable for safety infractions. Id. at 110.

The Appellate Division in Tarabokia actually evaluated whether the general contractor's duty of care extended to preventing the plaintiff's repetitive stress injury by weighing the factors utilized by the Supreme Court in Alloway.

Tarabokia, supra at 113-116. The Appellate Division concluded that Structure Tone's duty of care did not extend to preventing the plaintiff's injury because the risk of not reasonably foreseeable:

As to the foreseeability of the risk of harm, there is no proof that defendant knew plaintiff was using the DX351 tool, much less handling it improperly and over a prolonged period of time. Nor had defendant any reason to know of the possible medical consequences of such use, namely that it may result in a repetitive motion injury. Unlike Alloway and Carvalho, where the dangerousness of the condition, although not inherent in the work performed, was nonetheless immediate and clearly visible, here the actual risk of harm concerned a latent injury not readily apparent that developed gradually from the repeated use of the tool over an extended time period. Plaintiff emphasizes that defendant performed daily safety inspections of the work site, but the risk here was not immediately obvious and did not involve an unsafe or hazardous physical condition on the premises. Nor did defendant affirmatively contribute to create the harm complained of, as did the general contractor in Alloway. Under these circumstances, then, we conclude the risk of harm was neither reasonably nor objectively foreseeable.

Id. at 177-118.

Tarabokia does not stand for the proposition that a general contractor owes no duty of care to employees of subcontractors on construction sites when it wilfully ignore safety responsibilities. Such a position is contrary to established precedence and decades of decisions. The holding of the Appellate Division in Tarabokia was that the duty of care of the general contractor did not extend to preventing the repetitive stress injury of the plaintiff in that case because it was not reasonably foreseeable. Contrary to the facts of Tarabokia, the hazard in this case was conspicuous: the stairs were without guardrails for weeks and that

condition was actually seen by HG's representative when he was on the job site. A153, 13:6-16, 16:16 to 17:13, 52:5-10, 75:13-15, A471, 71:4-15, 1T, 81:1-10, 2T, 31:10-15.

Since HG was found by a competent jury to be the general contractor, the means and methods argument advanced by the defendant is misplaced. As discussed in the preceding sections, the passage of the New Jersey Construction Safety Act and then OSHA safety regulations expanded the duty of care owed by general and prime contractors.

The appellant also relies upon unpublished, non-precedential opinions which should not be controlling for the Appellate Division. Of note, Valdez-Martinez v. Parksite, Inc., A-0250-22, 2025 WL 635757 (N.J. Super. Ct. App. Div. Feb. 27, 2025) involves another of the undersigned's clients and is presently before the New Jersey Supreme Court and thus unresolved. In Valdez-Martinez, plaintiff was performing roofing subcontractor services and fell through an unmarked and hidden skylight at a warehouse 40-feet to floor below. The defendants in that matter are the warehouse owners and the property management company that brought the plaintiff's employer to the job site. In contrast to the instant matter, that opinion stated that there was no evidence that the property owner did not supervise subcontractors at its property and did not maintain a physical presence with employees at the warehouse. Similarly, the

opinion stated that the property manager was not obligated by the warehouse defendant to monitor the subcontractors. Again, there is plenty of evidence that HG controlled what occurred on the job site and did not supervise and enforce job site safety because it was completely incompetent in that capacity.

If this court were to hold that a general or a prime contractor owed no duty of care to provide employees of subcontractors a safe workplace simply because a general or prime contractor refused to exercise any control over a subcontractor on a worksite, such a holding would redefine the responsibilities of prime\general\controlling contractors in a way that is entirely inconsistent with how OSHA regulates these companies. Conflict preemption occurs where “compliance with both federal and state regulations is a physical impossibility,” or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Gonzalez v. Ideal Tile Importing Co., 184 N.J. 415, 421 (2005).

Adopting a means and methods defense in tort actions against prime and general contractors and allowing such contractors to avoid responsibility for providing safe workplaces simply because they failed to do anything to manage the work of subcontractors would stand as an obstacle to the execution and purposes of Congress in enacting the OSH Act and empowering the

Occupational Safety and Health Administration to promote safety on construction sites.

### POINT V

#### **UNDER THE ALLOWAY FACTORS, THE DEFENDANT OWED PLAINTIFF A DUTY OF CARE & THERE EXISTS EVIDENCE THAT DEFENDANT BREACHED THIS DUTY.**

In Alloway v. Bradlees, Inc., 157 N.J. 221 (1999), the New Jersey Supreme Court held that when determining whether a general contractor owed a duty of care to employees of a subcontractor working on a construction site, courts should employ general negligence principles. Id. at 223. The Court indicated that the first question to ask to determine whether a duty of care exists is “the foreseeability of the risk of injury.” Id. at 223 In addition to the foreseeability of the injury, the Supreme Court held that courts should examine “the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution.” Ibid.

Here, it is clearly foreseeable that when subcontractor employees utilize a staircase without guardrails for several weeks while carrying items to be installed and the general housekeeping of the job site remains cluttered, an injury can occur. Moreover, foreseeability is even more evident in this case since Mr. Hutchinson (a) was present when Warrenville workers used the unprotected

staircase and in fact he used the staircase in that condition (which establishes notice); (b) there were zero measures employed by any entity at the job site; and (c) no one on the job site with supervisory authority was competent in safety knowledge. The nature of the attendant risk also supports finding a duty of care on behalf of Fields for the same reason. Indeed, the nature of the risk is evidenced by the serious and catastrophic injuries sustained by the Plaintiff. Moreover, by its very nature, working at an unprotected staircase without guardrails for weeks is a potentially deadly hazard.

Both the relationship between the parties and the opportunity to exercise care and take corrective action warrant a finding of a duty of care by HG. First, there clearly was an opportunity for HG to exercise care and take corrective action in this case. The facts demonstrate HG was hands-on with the complete renovation of its purchased property at all levels and Mr. Hutchinson spent 3 days a week going over the activity at the job site. The limited objective documentary evidence suggests that HG directly hired subcontractors and the testimony further indicates that Mr. Hutchinson was providing directions to subcontractor workers on how to perform the work. It is clear from the non-HG testimony and documents that Mr. Hutchinson was the person most-in-charge at the job site and had the power to correct unsafe subcontractor work if he only had the requisite training to operate as a general contractor.

Finally, it is in the public interest for the Court to find that HG owed the plaintiff a duty of care in this case. The “public policy of this State ... favors the general contractor as the ‘single repository of the responsibility for the safety of all employees of a job.’ ” Dawson v. Bunker Hill Plaza Assocs., 289 N.J. Super. 309, 321 (App. Div. 1996) (quoting Kane, supra 278 N.J. Super. at 141).

HG was the general contractor on the job site and thus the summary judgment denial by the trial court and verdict by the jury should not be disturbed. HG was operating as a general contractor in order to cut renovation costs (The trial transcript and Mr. Hutchinson’s deposition transcripts should make it apparent that HG expected to receive insurance proceeds for the water damage that precipitated the need for renovation and was surprised when that money was absconded with).

## POINT VI

**THE ISSUE OF WHETHER THE HAZARD WAS “OPEN AND OBVIOUS” WAS NEVER BROUGHT FORTH IN HUTCH GROVE’S SUMMARY JUDGMENT SUBMISSIONS OR AT TRIAL. EVEN IF THE ISSUE WAS TIMELY BROUGHT FORTH, THE HAZARD PLAINTIFF ASSERTED CAUSED HIM TO FALL A GREAT DISTANCE WAS THE REMOVAL OF METAL GUARDRAILS AT THE STAIRS BY AN UNKNOWN ENTITY AND THE GENERAL CONTRACTOR’S ALLOWANCE OF THAT DANGEROUS CONDITION TO PERSIST FOR WEEKS PRIOR TO THE ACCIDENT.**

As noted earlier, the “open and obvious” hazard defense was never explored (or even mentioned) prior to filing this appeal and thus should be

disregarded by the Appellate Division. The appellant does not even cite any case law that explores the boundaries of what constitutes “open and obvious.” Even if the defense had been explored during discovery and timely brought forth by HG’s counsel at the time of trial, that question was for the jury. Bagnana v. Wolfinger, 385 N.J. Super. 1, 4 (App. Div. 2006) (“Because we conclude a reasonable jury could find defendants knew or should have known that their trampoline posed an unreasonable risk of danger to plaintiff, that the risk was not obvious, that plaintiff was unaware of the danger, and that defendants failed to either disclose or remove the danger, we reverse.”) Implicit in the jury’s apportionment of only 5% liability as to Mr. Guerini is the understanding that he had no choice but to continue working in dangerous conditions without protest. Such is the grim reality of laborers who live paycheck to paycheck.

An employee is required to perform his or her assigned tasks in a manner which is reasonably safe under all of the circumstances associated with the task. The relevant inquiry in gauging the level of an employee’s responsibility for his or her injuries is whether he or she failed to use the care of a reasonably prudent person under all of the circumstances, either in continuing to work in the face of a known risk or in the manner in which he or she proceeded in the face of that known risk.

Fernandes v. Dar Development Corp., 222 N.J. 390 (2015).

“[A] man or woman who must work to live is not necessarily negligent when he or she proceeds with an assigned task after learning of a hazard.” Id. at 412. When judging the conduct of the plaintiff, consideration must be taken into

“the demands of employment, and the reality of the power imbalance between employer and employee” when determining whether the workers “acted prudently in continuing to perform his or her assigned task in the face of a known risk.” Ibid.

The subject property did not have an elevator of any kind and the only feasible way to get the bathtubs to higher levels was via the subject staircase. Thus, Mr. Guerini was presented with the unenviable choice of traversing the unguarded stairs carrying the tub or going without wages to support himself and his family. It would smack of injustice to punish plaintiff for obeying work directives with no safer alternatives. The safety issue was not the act of carrying a plastic tub weighing a maximum of 40 pounds, but rather the failure of the general contractor to protect the staircase in case of a worker losing their balance.

## POINT VII

**HUTCHGROVE’S DISTINCTION BETWEEN INDIVIDUAL UNITS AND COMMON AREAS IGNORES THE FACTS THAT: 1) THE COMMON AREAS HAD TO BE ACCESSED BY ITS SUBCONTRACTORS IN ORDER TO PERFORM THE RENOVATION; AND 2) THE PROJECT WAS A COMPLETE RENOVATION OF THE PREMISES**

HG implores the Appellate Division to create an artificial distinction between the common areas and individual units on the premise that two distinct entities (run by the same 3 people) own separate parts of the building. This

theory ignores the simple fact that HG and Warrenville's work required use of the staircase and HG's demolition subcontractor had previously altered the safety conditions of that common area by removing the guardrails. That theory also ignores the fact that HG had gutted the entire building and was performing a complete renovation of the premises to remedied extensive water damage. It even had to ensure the structural integrity of the building, hence bringing VR to the job site. HG was renovating the entire structure and employed a subcontractor who removed the guardrails. Thus, it had control over the common areas.

### **POINT VIII**

#### **THE VERDICT SHEET AND JURY INSTRUCTIONS WERE NOT DEFICIENT AND NO OBJECTION WAS RAISED BY ANY PARTY AS TO THEIR CONTENTS BEFORE PRESENTATION TO THE JURY**

As a last salvo, HG argues it was prejudiced by the trial court's instructions and verdict sheet which purported to confuse the jury. A review of the Day 6 trial transcript reveals that these worries only arose after the verdict was rendered. HG cherry picks the verdict sheet in order to obfuscate the issue. The verdict sheet first asked if VR was the general contractor at the time the guardrails were removed (which was answered "no" 7-0). The verdict sheet then asked if HG failed to make sure a safety program was in place (As the Court may recall, the uncontested expert opinion of Ms. Scanlon-Zinner still required

a completely passive property owner (of which HG was not) to ensure the plan was put in place by a general contractor. The jury returned a unanimous vote in the affirmative on that issue.) and asked if HG was negligent as a general contractor (Which also was a 7-0 in the affirmative.) Thus, the jury found HG to be in breach of two standards of care regardless of how HG holds itself out to be. There is nothing confusing about the wording of the verdict sheet and the strength of the votes and absence of the jury's need for clarifying instructions supports that contention.

When there is no objection as to the charge at the time of trial, the standard of review is "plain error" and "clearly capable of producing an unjust result." State v. Munafo, 222 N.J. 480, 488 (2015). The verdict sheet and jury instructions do not rise to that high threshold. HG's conduct and status was viewed by the jury in two manners: 1) through the eyes of Mr. Hutchinson as a passive owner; and 2) through the objective evidence and testimony of every other witness as a general contractor. The jury found the appellant's conduct in breach of the requisite standard of care in both respects. It is hard to imagine how that is injustice.

**CONCLUSION**

For the above-stated reasons, the appeal should be denied on all fronts.

Respectfully submitted,  
GINARTE GONZALEZ & WINOGRAD, LLP  
Attorneys for Plaintiff-Respondent

*/s/ John Ratkowitz*

By: \_\_\_\_\_  
JOHN RATKOWITZ, ESQ.

Date: July 17, 2025





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**PRELIMINARY STATEMENT**

Defendant-Appellee Vin-Rick Builders seeks to have this Court affirm a proper legal ruling by the motion judge and the jury's unanimous verdict in favor of the Plaintiff below. The lower Court denied the Appellant's dispositive motion due to the myriad of genuine issues of material fact which precluded summary judgment. With respect to the jury's determination (1) that the Appellant was in fact the general contractor for the construction project as of the day of the accident and (2) returning a unanimous verdict in favor of the Plaintiff and against the Appellant, the Appellant offers no new evidence on appeal to disturb the jury's verdict.

In addition, Defendant-Appellant failed to preserve any of the objections that it now raises for the first time in the instant appeal. Defendant-Appellant waived its right to post trial relief when it failed to assert motions for directed verdict at any point during the trial. Appellant chose not to submit a trial brief or proposed jury instructions prior to trial. Appellant voiced no objection to the composition of the jury panel or the trial court's jury charge. Appellant voiced very few timely objections to the testimony or the evidence during the trial that were not cured by consent of the parties. Appellant made few if any objections to any of the testimony during the trial. Appellant voiced no objection to the Court's proposed instructions to the jury. Appellant's counsel

requested no additional jury charges or clarifications be given to the jury that were denied by the trial judge.

Appellant fails to meet its burden on appeal to convince this Court that reversible error occurred. The issues and proposed answers to same herein are set forth below:

1. Whether the Motion Court erred when it denied Appellant's motion for summary judgment when it determined that there were multiple factual issues requiring determination by a jury. Proposed answer: NO.
2. Whether the jury's factual determination that Appellant was acting as the general contractor on the project as of the day of the accident was supported by adequate evidence at trial. Proposed answer: YES.
3. Whether Appellant waived appellate review of any challenge to the jury's verdict by choosing not to (1) move for a directed verdict or judgment at trial, (2) object to the jury charge or verdict form, and (3) preserving timely objections to the evidence. Proposed answer: YES.

## **PROCEDURAL HISTORY**<sup>1</sup>

On September 11, 2014, Plaintiff Anderson Guerini filed a personal injury Complaint arising out of a construction accident that occurred on January 17, 2018 with jury trial demand. (A1)

On September 25, 2023, Appellee Vin-Rick Builders filed a Motion for Summary Judgment (with administratively permitted refile). (A88, A773) On October 25, 2023, Appellant filed a cross Motion for Summary judgment with administratively permitted Opposition to Vin-Rick Builders's refiling of Motion for Summary Judgment. (A647, A807) By May 25, 2024 and September 24, 2024, all Motions for Summary Judgment were denied following oral argument. (A769, A771, A815)

Trial took place before the Hon. Annette Scoca, J.S.C. and a jury on October 16, 17, 21, 22, 23, and 24, 2024. On October 24, 2024, the jury deliberated and returned a verdict for Plaintiff in the amount of \$1.8 million and the Court entered judgment on December 31, 2024. (A836)

On January 10, 2025, Defendant Appellant Hutch Grove filed a Notice of Appeal. (A838).

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<sup>1</sup> "8T" refers to the Transcript of Zbigniew Baran's bene esse testimony dated July 18, 2024.

## COUNTERSTATEMENT OF FACTS

On January 17, 2018, Plaintiff Anderson Guerini was injured when he fell down several interior stairs while carrying a bathtub inside a building where he was working (A1; 2T, 36:3-12, 37:9-15, 37:24-38:3). The interior of the 5 story condo building was undergoing a complete renovation to repair a catastrophic interior water damage (5T, 56:8-13, 71:14-19). There were temporary wooden handrails attached to the interior stairs when Plaintiff began working on the project but all the handrails were removed over the 2017 Christmas holiday (2T, 26:13-20). The renovation included installation of new bathroom fixtures inside 7 condo units (2T, 20:12-22). The project was owned by Appellant Hutchgrove Enterprises, LLC. (“Hutchgrove”) which was owned by Steven Hutchinson (“Hutchinson”) (5T, 96:16-18, 153:17-20, 155:13-14).

Prior to the incident, multiple sub-contractors had worked inside the condo building during various phases of the construction (2T, 82:9-11). Hutchinson hired all the previous sub-contractors that had worked at the project (including Vin-Rick Builders and Plaintiff’s employer, Warrenville Plumbing) (5T, 45:21-23; 8T, 46:9-11). Hutchinson alone retained complete control over site operations including progress, design alterations, coordination of the trades, scheduling of building inspections, permitting by the township, and code compliance (8T, 11:10-19; 2T, 18:13-19, 23:5-9).

Trial testimony established that Steven Hutchinson was the owner of Hutchgrove Enterprises (“Hutchgrove”) (5T, 96:16-18, 153:17-20, 155:13-14). Plaintiff testified at trial that he believed that Mr. Hutchinson was the general contractor of the project because he alone supervised the plumbing work (2T, 28:22-29:5, 81:17-25). Hutchinson paid the plumbing contractors with a Hutchgrove corporate check (2T, 26:4-8, 71:1-5).

Plaintiff did not recognize the name of Peter Vincent, owner of Appellee Vin-Rick Builders (2T, 28:7-10). Plaintiff identified Hutchinson in several color photographs and in the courtroom during the trial as the sole supervisor of the project prior to Plaintiff’s accident (2T, 19:8-9, 28:22-29:5). Plaintiff testified that during the four (4) months preceding the accident, Hutchinson (who he knew by his first name of “Steve”) visited the job site three (3) times weekly to check on progress and direct the plumbing work (2T, 73:15-74:24, 81:17-25). Plaintiff also denied knowing anyone by the name of Peter Vincent, the owner of Vin-Rick Builders (2T, 28:7-10) as being present at any time during the four (4) months prior to the day of the accident (2T, 28:14-16). Plaintiff also testified that Hutchinson personally paid the Plaintiff and another Warrenville plumber on a weekly basis (2T, 28:7-10) using a business check drawn on Hutchgrove’s corporate checking account (A659); (2T, 26:1-8).

During the trial, documentary exhibits were authenticated and admitted into evidence without objection which supported the jury's verdict that Hutchgrove was acting as the general contractor of the entire construction project as of the day of the accident. Warrenville's owner, Zibgniew Baran ("Ziggy"), testified by pre-recorded video that Hutchinson signed the Warrenville plumbing proposal (8T, 46:9-11) and paid Warrenville for the plumbing materials, appliances, and labor for the project (8T, 19:5-19). Mr. Baran also testified that he would meet several times a week with Hutchinson at the jobsite (8T, 23:9-12) to discuss the progress, scheduling, and design alterations of the plumbing installation (8T, 40:21-41:1). Baran and Plaintiff both authenticated progress photographs depicting Hutchinson's presence inside the condo project talking to Baran and Plaintiff and reviewing blueprints prior to the accident (8T, 8:5, 10:8, 14:25, 19:23, 22:2, 22:10, 23:15, 27:12, 32:24). Plaintiff testified that Mr. Hutchinson paid Plaintiff and his Warrenville co-worker ("Junior") by means of a HutchGrove Enterprises business check (marked as D-4) (A140, 13:14-17, 29:11-17; 2T, 25:3-26:8). Plaintiff and his employer Zbigniew Baran both testified at trial that Mr. Hutchinson was regularly inside the building directing the plumbing work (8T, 11:10-19; 2T, 18:13-19, 23:5-9).

Mr. Baran authenticated the Warrenville Plumbing contract with HutchGrove Enterprises which was signed by Hutchinson (8T, 8:24-9:16). Hutchinson signed the plumbing contract and paid for the work (8T, 9:16, 19:5-19). Mr. Baran testified that he and Mr. Hutchinson met regularly and reviewed building plans for the building that bore the HutchGrove name (8T, 11:20-12:13). Hutchgrove paid for the building permits with a corporate check for \$23,000 (A269).

Trial testimony and documentary evidence supported the jury's verdict that Appellee Vin-Rick Builders was no longer working at the project prior to the accident and was not acting as the general contractor on the project. Steven Richert, Peter Vincent's former business associate, authenticated an April 28, 2017 letter to Hutchinson that Richert transcribed at the request of Mr. Vincent. (A258). The letter stated that Hutchinson and Hutchgrove were acting as the general contractor on the project at the time that Plaintiff was injured.

The owner of Warrenville Plumbing, Zbigniew Baran, testified at the trial via videotaped recording. Baran's testimony established the following facts supporting the jury's unanimous factual determination that Hutchgrove (and not Vin-Rick Builders) was the de facto general contractor at the time that

the handrails on the interior stairs were removed immediately prior to the

Plaintiff's accident:

- Hutchinson on behalf of Hutchgrove signed the Warrenville Plumbing contract for the project (8T, 8:17-9:16 and A260).
- Hutchinson had no prior construction experience but he showed Baran where the plumbing fixtures were to be installed in the condos (8T, 11:7-22).
- Only Hutchinson was present with Baran during the initial walk thru of the building in prep for the plumbing work (8T, 11:23-12:4).
- Baran submitted the plumbing permit to the Union City Building Department and Hutchinson paid for the permit (8T, 17:17-21).
- Hutchinson was the only person who had the keys to the building and would let Baran's workers into the building (8T, 13:1-6).
- Baran had 45 years experience in construction and he knows the definitions of a project manager and general contractor which are substantially the same (8T, 16:15-17:8).
- Hutchinson never told Baran that he had a general contractor. Baran considered Hutchinson to be the general contractor of the project (8T, 17:1-18).
- Baran never met anyone named "Peter Vincent" or "Vin-Rick Builders" in connection with the Park Point Condo project (8T, 18:18-19:4).
- Baran was on site 1-3 times a week. Hutchinson was also present inside the condo building 50% of the time that Baran was present (8T, 22:19-23:12).
- Baran authenticated a color photo of himself, Hutchinson, and Plaintiff discussing the plumbing layout and design changes with Hutchinson inside the condo building (8T, 23:15-24:3).

The jury's unanimous liability verdict in favor of the Plaintiff and against Hutchgrove and Judgment dated January 4, 2025 are supported by substantial evidence and must be affirmed.

## LEGAL ARGUMENT

### POINT I

#### **THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR SUMMARY JUDGMENT MUST BE AFFIRMED BECAUSE OF THE PREVAILING LAW AND SUBSTANTIAL ISSUES OF MATERIAL FACT AS TO APPELLANT'S ROLE AS THE DE FACTO GENERAL CONTRACTOR ON THE PROJECT.**

Appellant, project owner Hutchgrove's Motion for Summary Judgment was properly denied by the trial court because genuine issues of material fact existed regarding Appellant's role as a de facto general contractor and his duty to ensure worksite safety on the Hutchgrove condo renovation project. The Appellate Division's decision in Costa v. Gaccione, 408 N.J. Super. 362 (App. Div. 2009), which remains good law, is directly applicable and supports the denial of summary judgment under the facts presented in this case.

Pursuant to Rule 4:46-2, Summary Judgment should only be granted where there are no issues of material facts. The party opposing the Motion for Summary Judgment should not be denied a trial, unless the moving party sustains the burden of showing clearly the absence of a material fact. Judson v. People's Bank & Trust Company of Westfield, 17 N.J. 67, 74 (1954).

The Supreme Court in Brill v. The Guardian Life Insurance Company of America, 142 N.J. 530 (1985), modified the standard set forth in Judson supra as follows:

Under the new standard, a determination whether there exists a genuine issue of material fact that precludes Summary Judgment, requires the Motion Judge to consider whether the competent evidential material presented, when viewed in the light most favorable to the non-moving party is sufficient to permit the a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party... The import of our holding is that when the evidence is so one-sided that one party must prevail as a matter of law... the trial court should not hesitate to grant Summary Judgment. *Id.* at 54.

The lower court properly denied Appellant's motion for summary judgment because there was ample evidence from which a reasonable jury could conclude that Appellant was acting as a general contractor on the construction project where the Plaintiff was injured from 2017 to 2019 and therefore responsible for job site safety. As such, Appellant had the responsibility for providing Plaintiff a safe place to work in 2018 when he was injured. Any suggestion that Appellee Vin-Rick Builders was the general contractor was contradicted by deposition testimony by Plaintiff Guerini and Steven Richert. The opinion report authored by Plaintiff's OSHA expert, Cheryl Scanlon also underscored the significant issues of material fact which needed to be resolved by the jury and not by motion for summary judgment. It

should also be noted that the lower court also denied Appellee Vin-Rick's Motion for Summary Judgment on similar grounds.

Steven Hutchinson was the President of Park Point Condo Association and the owner of Hutchgrove Enterprises, LLC. The Plaintiff's accident occurred as he ascended a common area stairway which provided the only access to the upper floors of the building. Hutchinson hired the Plaintiff's employer, Warrenville Plumbing ("Warrenville"), by signing a single page Plumbing Proposal (A260). According to the proposal, Hutchinson paid Warrenville in full for all labor and materials for the refurbishment of the bathrooms and kitchens in each of the condominiums. In addition to the ownership in interest in both Hutchgrove and Park Point, Hutchinson also owned several condo units.

Evidence was introduced at trial without any objection that:

- Hutchinson on behalf of Hutchgrove hired MBA Architects to design the blueprints and construction specifications for the Paterson Plank Road Condo Renovation Project; (A262; marked as D-5 during trial; Expert witness: 4T, 46:10; Fact witness: 5T, 144:4-16; Evidence housekeeping: 6T, 11:22);
- Hutchinson on behalf of Hutchgrove wrote a \$23K business check to Union City Building Department for all the building permits; (A271; marked as D-4 during trial; Expert witness: 4T, 49:9; Fact witness: 5T, 122:18-123:11; Evidence housekeeping: 6T, 12:8);
- Hutchinson as owner of Hutchgrove hand wrote a memo of understanding to Union City Building Department promising to correct building code violations for the project and promising not to commit and

more code violations; (A269; marked as D-7 during trial, Expert witness: 4T, 53:10; Fact witness: 4T; 53:10; 5T, 60:16, 130:11);

- Hutchinson paid Plaintiff and Warrenville coworker Junior for their labor on the project with a Hutchgrove Enterprise business check; (2T, 71:1-72:5);
- Hutchinson was present on the job site 3 times a week to discuss the project and review blueprints with Ziggy Baran, owner of Warrenville; (8T, 22:19-23:12);
- Warrenville owner Baran never saw or interacted with anyone other than Hutchinson for the four (4) months that Warrenville was on the job prior to the date of Plaintiff's accident; (8T, 18:1-17).

Summary judgment is appropriate only when the moving party demonstrates that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1996). The lower court considering Appellant's motion for summary judgment was required to view the evidence in a light most favorable to the non-moving parties and draw all inferences in their favor and against the Appellant.

In Costa v. Gaccione, 408 N.J. Super. 362 (App. Div.2009), the Appellate Division held that a property owner who assumes the role of general contractor may owe a duty of care to workers on the job site. 408 N.J. Super at 372. The court identified several material facts that would support a factual determination that the Appellant acted as the general contractor on the project:

- Obtaining building permits and identifying himself as the person responsible for the work;
- Hiring an architect and various subcontractors;
- Purchasing building materials;
- Scheduling subcontractor's work;
- Frequently visiting the job site and overseeing operations; and
- Discussing building plans with the subcontract workers.

Id. at 373-74,

Applying the Costa factors to the Appellant's motion for summary judgment in this case, the lower court noted that the record contained sufficient evidence that Hutchgrove may have engaged in a similar level of significant control sufficient to give rise to Appellant's responsibility for worker safety on the condominium project in this case. The lower court noted that Appellant's extensive involvement with the project distinguished the case from a situation where property owners have minimal engagement with the construction activities (7T, 15:10-17:17; A771).

The Court's denial of Appellant's Motion for Summary Judgment was supported by substantial evidence that Hutchgrove was acting as the *de facto* general contractor as identified by the Appellate Division in the case of Costa. Steven Hutchinson's conduct on the project mirror those enumerated in Costa,

where the court denied summary judgment based on genuine issues of material fact regarding Appellant's role and responsibility for workplace safety. As in Costa, the lower court properly ruled that a jury trial was necessary to determine the central issue of liability in the case below: whether or not the Appellant acted as *de facto* general contractor and breached its duty to ensure workplace safety (A749-768).

Appellant also asserts that even if Hutchgrove was a de factor general contractor, OSHA regulations do not create a private right of action against Hutchgrove. OSHA regulations and violations thereof are relevant in determining the nature and extent of the duty of care owed to the Plaintiff by Appellant. Alloway v. Bradlees, Inc., 157 N.J. 221, 236 (1999). In Costa, the court considered OSHA violations as part of the analysis in assessing the defendant's duty. 408 N.J.Super. at 372-373. In this case, any OSHA violations on the worksite further support the argument that Appellant had a duty to ensure worker safety and may have breached that duty.

## **POINT II**

**THE JUDGMENT MUST BE AFFIRMED BECAUSE THERE WAS SUBSTANTIAL CREDIBLE EVIDENCE TO SUPPORT THE JURY'S DETERMINATION THAT APPELLANT ASSUMED THE ROLE OF GENERAL CONTRACTOR.**

In New Jersey, the standard for appellate review of a jury's factual findings is clear: "[a]" jury verdict is entitled to considerable deference and

will not be overturned if it is supported by adequate, substantial, and credible evidence.” Risko v. Thompson Muller Auto. Grp, Inc., 206 N.J. 506, 521 (2011); Dolson v. Anastasia, 55 N.J. 2, 5 (1969). Appellate courts are not to second-guess jury determinations where evidence could reasonably support their findings.

The standard for ordering a new trial is whether the verdict “clearly and convincingly appears to be the product of mistake, partiality, prejudice or passion.” Risko supra. Here, Appellant points to no evidentiary error, no improper jury charge, and no procedural irregularity committed during the trial. The Appellant’s failure to object at any critical stage in the jury trial forfeits any claim of judicial error. Boryszewski v. Burke, 380 N.J. Super. 361, 375 (App. Div. 2005).

Here, the jury was properly charged and rendered a verdict supported by the record: that the Appellant owner exercised sufficient control over the construction site to be deemed the general contractor, with the attendant duties of safety and supervision. That determination is factual and rooted in the trial evidence. It is not the role of the appellate court to reweigh that evidence. See Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

The jury’s verdict was based on factual determinations: (1) Appellant and not Vin-Rick Builders was the de facto general contractor on the project,

(2) Appellant breached its duty of care owed to the Plaintiff, and (3)

Appellant's conduct was the cause of Plaintiff's injuries and damages. There was ample evidence entered into the record without objection to support the jury's verdict in all respects.

- Steven Hutchinson was the owner of Hutchgrove Enterprises, LLC, which owned the majority of the condo units at Park Point Condominiums on Paterson Plank Rd., Union City, N.J. (5T, 45:4-5, 96:16-18, 153:17-20, 155:13-14);
- Steven Hutchinson was the president of the Park Point Condo Association (5T, 64:11-13);
- Hutchgrove hired and paid for the architect to draw up the plans for the renovation of the Park Point Condominium building (5T, 83:22-84:4);
- Hutchgrove paid Union City Building Department for the building permits (A271; marked as D-4 during trial; 5T, 122:18-123:11);
- Hutchgrove hired and paid Warrenville Plumbing to install plumbing fixtures in all the condominium units (A260; 8T, 19:5-19, 46:9-11);
- Warrenville Plumbing owner Zbigniew Baran testified that Hutchinson held the keys to unlock access to the building (8T, 13:1-6);
- Hutchinson directed the Warrenville Plumbing work on the project (2T, 28:22-29:5, 81:17-25);
- Hutchinson paid Warrenville's plumbers including Plaintiff using a Hutchgrove Enterprises, LLC business check (A659) (2T, 26:1-8, 71:1-5).
- Hutchinson authored an affidavit to Union City Building Department promising to submit fire suppression plans and to correct permit deficiencies. He also promised not to seal up sheetrock walls until

proper construction inspections were conducted (A269; marked as D-7 during trial);

- Fact witness Steven Richert authenticated an April 28, 2017 letter to Steven Hutchinson dictated by the late Peter Vincent (owner of Vin-rick Builders); (A258; marked as D-6 during trial, 4T, 19:16).
- Vincent's letter states that Hutchinson was acting as the general contractor on the project but that he didn't know what he was doing (A258, A231 Richert depo 32:10-13);
- As of April of 2017, Vincent's work on the project had been completed but Hutchinson had refused to pay Vincent for his completed work (A231 Richert depo 32:10-13, 40:4-8);

There is ample evidence in the trial record to support the jury's factual determination that Appellant was the general contractor for the condo project at the time that the handrails were removed from the interior stairs shortly before the Plaintiff's accident. The jury considered but rejected the Appellant's theory that Appellee Vin-Rick was the general contractor. The Plaintiff, Warrenville Plumbing's owner Baran, and Steven Richert all testified that Steven Hutchinson was controlling the scheduling of the construction tasks and directing the plumbing work at the time of Plaintiff's injury. Pursuant to the Costa case, a violation of OSHA regulations on a construction work site establishes a breach of the general contractor's duty of care. The jury's verdict that Appellant was negligent and that the negligence of Appellant was a legal cause of Plaintiff's accident and damages is supported by the evidence and must be affirmed.

**POINT III:**

**APPELLANT WAIVED APPELLATE REVIEW BY FAILING TO PRESERVE OBJECTIONS OR MOTIONS AT TRIAL.**

An appellate court will not consider arguments that were not raised before the trial court unless they concern jurisdiction or manifest injustice.

See *Neider v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973). Here, the Appellant Hutchgrove:

- Did not submit proposed jury charges or a verdict sheet at trial;
- Did not object to the introduction of any testimony or documentary evidence on the central issue of Hutchgrove's role as the general contractor of the project;
- Failed to move for a directed verdict or judgment under R. 4:40-1 or R. 4:40-2 at any time during the trial;
- Approved the trial court's charge to the jury without voicing any objection.

Appellant's failure to move for judgment at the close of plaintiff's case or at the close of all the evidence is dispositive. Under R. 4:40-2, a motion for judgment notwithstanding the verdict may only be made if the party has first moved for judgment as a matter of law during the trial. Appellant's failure to preserve any objections on the record or move for a directed verdict now precludes any post-trial motion or JNOV or, by extension, any appellate review of that claim. See *Chadha v. Township of Edison*, 175 N.J. Super.

438,442 (App. Div. 1980); Pressler & Verniero, Current N.J. Court Rules, Comment R. 4:40-2 (2025).

### CONCLUSION

For the reasons stated above, the trial court's denial of Appellant's motion for summary judgment was free from legal error and supported by the numerous genuine issues of material fact present in the case noted by the lower court. The jury's factual determination that Appellant was acting as the general contractor on the project at the time of the accident was supported by ample evidence in the record and free from legal error. Appellant chose not to preserve any of the issues now raised for the first time on appeal.

Accordingly, the lower court's judgment dated January 4, 2025 should be affirmed in its entirety.

Dated: July 17, 2025

Respectfully submitted,

*/s/ Christopher J. Hoare*

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CHRISTOPHER J. HOARE  
CAPEHART & SCATCHARD, P.A.  
*Attorneys for Defendant Respondent*  
*Vin Rick Builders, LLC*  
8000 Midlantic Drive, Suite 300S  
P.O. Box 5016  
Mount Laurel, New Jersey. 08054  
(856) 234-6800

Superior Court of New Jersey, Appellate Division  
Docket A-001315-24T2

ANDERSON RODRIGUES GUERINI

V

VIN-RICK BUILDERS, LLC; AMBIANCE GENERAL BUILDING, LLC  
A/K/A AMBIANCE GENERAL CONTRACTORS;  
PARK POINT CONDO ASSOCIATION;  
HUTCHGROVE ENTERPRISES (APPELLANT),  
JOHN DOE #1-10; ABC CORP #1-10

VIN-RICK BUILDERS, LLC

V

WARRENVILLE PLUMBING; PARK POINT CONDO ASSOCIATION  
AND HUTCHGROVE ENTERPRISES

RUTGERS CASUALTY INSURANCE COMPANY

V

ANDERSON RODRIGUES GUERINI; VIN-RICK BUILDERS, LLC; AMBIANCE  
GENERAL BUILDING, LLC. D/B/A AMBIANCE GENERAL CONTRACTORS,  
LLC; PARK POINT CONDO ASSOCIATION; HUTCHGROVE ENTERPRISES,  
LLC;  
WARRENVILLE PLUMBING & CO., LLC

On appeal from a final judgment entered in the Superior Court of New Jersey, Law  
Division, Essex County, ESX-L-6427-18, A. Scoca, J.S.C. and a jury

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REPLY BRIEF OF APPELLANT, HUTCHGROVE ENTERPRISES

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Hegge & Confusione, LLC  
P.O. Box 366, Mullica Hill, NJ 08062-0366  
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)  
Of Counsel and on the Brief

BRIEF FILED ON AUGUST 25, 2025

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## ARGUMENT

### **THE COURT SHOULD VACATE THE JUDGMENT ENTERED AGAINST HUTCH GROVE ENTERPRISES (A769, A771)**

New Jersey law did not impose a duty of care on Hutch Grove to the plaintiff under the facts of this case.<sup>1</sup>

#### **Summary Judgment**

There were only two possible grounds for imposing a duty of care.

Property Ownership: This did not exist because the undisputed evidence showed that Park Point Condo Association, not Hutch Grove, owned the common area where the plaintiff was working when he was injured (A678). No evidence

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<sup>1</sup> The duty of care question is not waived, as the plaintiff argues. This was the plaintiff's burden to establish. Duty of care is the threshold element to prove a negligence claim. It is not a "defense," as plaintiff suggests.

Moreover, duty of care was the underlying legal issue of the parties' arguments and the judge's decision on summary judgment. 6T:64-65. Whether the danger was open and obvious or whether Hutch Grove "retained control over the means and methods on the construction site" are part of the duty analysis that New Jersey law instructs courts to undertake (though the judge in this case did not do so, which is part of the reversible error committed below).

Hutch Grove did not move for a directed verdict at trial, but the court had already denied summary judgment and said (erroneously, we submit) that a duty of care could be found. A party is not required to move for dismissal on a ground that the court has already rejected.

The Court should review the duty of care issue as sufficiently raised or, at least, on plain error review, R. 2:10-2, because imposing a duty of care and then entering a \$2 million judgment against Hutch Grove (which neither owned the property on which the plaintiff was hurt nor directed or controlled how Warrenville Plumbing's employees should carry out their work) is an error that has a clear capacity to bring about an unjust result in this case, Hindle v. Morrison Steel Co., 92 N.J. Super. 75 (App. Div. 1966). The plaintiff himself recognizes the importance of the issue, stating in his Brief, "it is in the public interest for the Court to find that HG owed the plaintiff a duty of care in this case. The 'public policy of this State ... favors the general contractor as the 'single repository of the responsibility for the safety of all employees of a job.'"

supported the trial court's "alter ego" speculation (and the plaintiff did not pursue that claim at trial anyway). New Jersey law holds that the condo association, which owns the common area, not the owner of a private residence within the condo building (here, Hutch Grove), has the responsibility to maintain and care for the common area—which is where the stairway was located in this case, Qian v. Toll Bros. Inc., 223 N.J. 124, 135–37 (2015) (condominium association, not individual unit owners, have duty to maintain common elements); Lechler v. 303 Sunset Ave. Condo. Ass'n, Inc., 452 N.J. Super. 574, 579–80 (App. Div. 2017) ("It is well-established that common elements of a condominium are the responsibility of the condominium association and not individual unit owners.").

General Contractor: This fails because simply being a general contractor (which Hutch Grove hotly disputed in the first place, though the jury later found) does not impose a duty of care to employees of a subcontractor. The presumption is just the opposite: the subcontractor is deemed to know how to carry out its own work and is responsible for the safety of its employees carrying out the work. Only when the general contractor so inserts itself into the subcontractor's work that the general contractor directs or controls the manner in which the subcontractor's employees should carry out their work does the general contractor create a duty of care for itself to the subcontractor's employees. That critical evidence is missing in this case – nothing shows that Mr. Hutchinson told the plaintiff or any Warrenville

employees how to move Warrenville's equipment or materials around the work site, how many workers to use for particular tasks, etc.

Further showing that Hutch Grove did not owe a duty of care to the plaintiff under the circumstances of this case is the open and obvious nature of the risk that the plaintiff himself created by deciding to carry atop his head 40-pound bathtubs up flights of unguarded stairways, by himself. No evidence shows that Mr. Hutchinson was even aware that the plaintiff was doing this, let alone that he directed it. The plaintiff admitted that his own boss, Ziggy, was not even aware, A160.

The plaintiff's evidence did not even show that Hutch Grove was acting as a general contractor dealing with a "subcontractor" hired to perform work in the common area of the building. The only contract in evidence is a "Proposal" that Warrenville entered into with Stephen Hutchinson, and this was for work that Warrenville agreed to perform in the seven private condo units that Hutch Grove owned, not for work in the common area that Park Point Condo Association owned. The plaintiff's proofs did not show that the work he was performing in the common area when he was hurt was even part of the work that Warrenville contracted to perform in the seven private units. Hutch Grove did not own the common area. This further undercuts the lower court's duty of care imposition.

The Opposition Brief suggests that the plaintiff was "pressured" to carry the bathtub by himself for however many weeks he'd been doing so, stating in its Brief,

“While certainly everyone on a construction site should adhere to the OSHA safety regulations, the law recognizes that the workers at the bottom of the hierarchy are powerless to take any real enforcement role and will in fact often be pressured to work in unsafe conditions without complaint, or risk losing their job.” No evidence whatsoever showed this. The plaintiff decided to move the bathtub in the way he did on his own. Neither Mr. Hutchinson nor even boss “Ziggy” was aware of this.

The plaintiff argues that OSHA has changed “the way the courts have construed the responsibilities of general contractors” (Opp. Brief at 13). It has not changed the determination under New Jersey law of whether it’s fair to impose a duty of care upon a general contractor to a subcontractor’s employees, *e.g.*, Ruiz v. Bourke, A-0783-23, 2025 WL 955839, at \*6 (N.J. Super. Ct. App. Div. Mar. 31, 2025). Alloway, 157 N.J. at 26, is the governing law and holds that OSHA regulations, construction safety codes, and the like can inform the duty of care determination, but even “the violation of OSHA regulations without more does not constitute the basis for an independent or direct tort remedy.” Federal law also confirms that state tort law governs the duty of care determination, 29 U.S.C.A. § 653(b)(4) (“[n]othing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of

employees arising out of, or in the course of, employment.”). Bortz v. Rammel, 151 N.J. Super. 312 (App. Div. 1977), which plaintiff says holds that the “Construction Safety Code made general contractors responsible for the safety of subcontractors under N.J.A.C. 12:180-3.15.1,” does not reflect the governing law.

Acknowledging the fairness assessment that must be applied to the duty of care question, the plaintiff argues that it is fair to impose a duty of care on Hutch Grove to Warrenville’s employee in this case because “1) HG directly hired and paid the subcontractors; 2) the architectural plans were addressed to HG and not the condo association; 3) HG procured the construction permits; 4) Mr. Hutchinson would go over the plans with Warrenville’s owner and foreman on the job site and direct how the work should be done; 5) HG scheduled the work and purchased the materials; 6) Mr. Hutchinson frequented the job site weekly; and 7) every other non-HG fact witness produced in this case, including non-party witnesses Mr. Richert and Ziggy of Warrenville, identified HG as the general contractor.”

Factor 1 is false – the plaintiff did not prove that Hutch Grove hired and paid Warrenville to perform work in the common area; the only contract in evidence is for work in the seven private condo units that Hutch Grove owned, not for work in the common area that Hutch Grove did not own.

Factor 2 -- securing architectural plans is not a fact that New Jersey law says is relevant to imposing a duty of care on a general contractor.

Factor 3 - Hutch Grove did not secure work permits for Warrenville; Ziggy testified that he prepared the information needed for the work permits.

Factor 6 – Visting the job site does not create a duty of care on a general contractor to a contractor’s employee.

Factor 7 – Being labeled the general contractor (which is all the jury ultimately found) is not enough to create a duty of care.

Factors 4 and 5 are most relevant to the duty assessment, but these do not show that it was fair to impose a duty of care on Hutch Grove. Plaintiff’s “Factor 4” is false; no evidence showed that Mr. Hutchinson “direct[ed] how the work should be done” (as the plaintiff’s own testimony showed, discussed below). Factor 5 -- no evidence showed that Mr. Hutchinson purchased materials for Warrenville. The only scheduling of work was regarding the completion of the contracted work – not a direction or control over how Warrenville’s workers should carry out their work.<sup>2</sup>

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<sup>2</sup> Vin-Rick relies upon the same insufficient facts for its duty of care argument (Brief at 11-12), noting, “Hutchinson on behalf of Hutchgrove hired MBA Architects to design the blueprints and construction specifications for the Paterson Plank Road Condo Renovation Project;” “Hutchinson on behalf of Hutchgrove wrote a \$23K business check to Union City Building Department for all the building permits; Hutchinson as owner of Hutchgrove hand wrote a memo of understanding to Union City Building Department promising to correct building code violations for the project and promising not to commit and more code violations;” “Hutchinson paid Plaintiff and Warrenville coworker Junior for their labor on the project with a Hutchgrove Enterprise business check;” “Hutchinson was present on the job site 3 times a week to discuss the project and review blueprints with Ziggy Baran, owner of Warrenville;” “Warrenville owner Baran never saw or interacted with anyone

The plaintiff's expert cites OSHA violations, but the only OSHA violation that is relevant to how the plaintiff was hurt is 29 CFR 1926.1052(c)(1) (A333), which says, "Stairways having four or more risers or rising more than 30 inches, whichever is less, shall be equipped with: ( i) At least one handrail; and ( ii) One stair rail system along each unprotected side or edge." 3T57. This factor does not outweigh the other Alloway factors (as discussed in Appellant's Brief at page 37 forward).

### **The Plaintiff's Negligence Claim at Trial**

Plaintiff presented the same evidence at trial; his negligence claim thus failed on the same duty of care element.

The Court should disregard the "facts" that Respondents cite in their briefs that were not established by any evidence. For instance, Vin-Rick states, "Hutchinson directed the Warrenville Plumbing work on the project," citing 2T28:22-29:5 and 2T81:17-25. These citations do not show that Mr. Hutchinson instructed the plaintiff or anyone else how to perform their tasks. They show that Mr. Hutchinson was on-site from time to time during the work week to monitor the progress and quality of the work Warrenville was performing. 2T28. Plaintiff said,

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other than Hutchinson for the four (4) months that Warrenville was on the job prior to the date of Plaintiff's accident."

Q If Steve noticed something about the work that you and Junior were doing, would he tell Ziggy about that so it could be corrected? A Yes. 2T29

2T81 shows the plaintiff similarly testifying, “He would look at the job (indiscernible), if he didn’t like the way it looked he would say, ‘Oh, correct it here and there. Move it from here or there.’ He would give the instructions to me and to Junior and we would do what he asked when everybody was out.” 2T81. A general contractor supervising the proper completion of work does not constitute control or direction of how the subcontractor should carry out its work.

The plaintiff’s own testimony shows this critical evidence is not present in this case. Plaintiff repeatedly testified that Mr. Hutchinson did not give him instructions on how to carry out any work tasks. The plaintiff denied this despite Vin-Rick’s counsel continually trying to put these words in the plaintiff’s mouth:

Q Now you testified yesterday that -- today you testified that at some point in time Mr. Hutchinson instruct -- gave you direction with regard to plumbing. Do you remember that testimony earlier today, yes or no? A No.

Q Do you remember -- so you testified earlier today, sir, that at some point that he instructed you to do something with plumbing. Do you remember testifying today? A No... He did not say anything to me. He would say to Junior or Ziggy.

Q ... My question is, do you recall about an hour or two ago testifying that Mr. Hutchinson, Steve Hutchinson, gave you instructions with regard to plumbing at a site? Do you remember answering that question? A No.

The plaintiff said Mr. Hutchinson was “in charge when he was there” and “would give instructions to everyone on the site,” but clarified, “Well, regarding plumbing, it was Ziggy, and **we know what to do. We know what to do.**” 1T83 (emphasis added). The plaintiff testified that Mr. Hutchinson was “aware of the conditions of” the project (1T71), but no testimony linked these “conditions” to how the plaintiff or any Warrenville employee should carry out work tasks.

The plaintiff did not even show that Mr. Hutchinson was aware of what the plaintiff was doing. Plaintiff testified: Q Now the day of the accident, I’ll represent to you January 17th, 2018, was a Wednesday. Do you remember going -- being in the building that Wednesday before you fell? A Yes.

Q And did Steve tell you that the tubs had to be installed because of an upcoming building inspection for the plumbing before the day you were working?

A I don’t remember. 1T38

Q Mr. Guierini, the week of the accident, didn’t Stephen direct you and Junior to bring the tubs up the stairs that day? \*\*\* [quoting prior deposition testimony] “Did Stephen ... did he direct you to do work that would involve bringing the tubs up the stairs?” Answer ... “Actually, we just have the job and we have to leave it

ready. By that time we needed to get it done and we knew there was an inspection coming up and usually the inspections come from the last floors down. So we wanted to get everything done upstairs. So **we just know it has to be done and it has to be done. That's it. I mean, he doesn't directly exactly -- he doesn't direct exactly how to do it.**" [emphasis added] ... **He doesn't have to give me instruction -- instructions about my work. I have to where it's execute directly and deliver correctly.** 1T38-40 (emphasis added)

The plaintiff said that Mr. Hutchinson "supervised the work, but I don't know. I was just minding my own work." 1T67-68. The plaintiff did not even speak English, which further belies any claim he was "directed" on anything. The plaintiff said that "when Mr. Hutchinson was at the site and he ... talked to other people [plaintiff] didn't know what he was saying[.]"<sup>3</sup>

The only other witness who could speak to whether Hutch Grove controlled or directed how Warrenville workers should carry out their tasks was Warrenville's owner and on-site supervisor, Ziggy. However, Ziggy confirmed what the plaintiff said: Mr. Hutchinson did not give such directions. In fact, when asked about carrying heavy bathtubs, Ziggy said he could carry them himself, but admitted, "If you have help, basically two people should carry it." (8T29).

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<sup>3</sup> The plaintiff testified that another Warrenville employee, "Junior," would translate some of what Warrenville boss, Ziggy, was relaying to his workers, but Ziggy himself, in his testimony, said that Junior was not at the work site at all. 8T.

### **The Defective Jury Instructions**

Even assuming, *arguendo*, that the trial court acted appropriately in sending the plaintiff's negligence claim against Hutch Grove to trial, the court erred by not instructing the jury to determine whether the factors informing the duty of care determination were present in this case – i.e., whether Hutch Grove controlled or directed the manner in which Warrenville's employees should carry out their work, whether the hazard the plaintiff encountered was open and obvious, and whether the plaintiff created the danger himself by deciding, on his own and without anyone's knowledge, to carry 40-pound bathtubs atop his head up flights of unguarded stairways within the common area (as argued in Appellant's Brief discussing the defective jury charge). These were at least factual issues that the judge should have instructed the jury to determine at trial. If the jury returned answers that Hutch Grove did not direct or control how the work should be carried out, or that the plaintiff created the danger himself, or it was an open and obvious one, this should have rendered a verdict for the defendant for lack of duty of care.

### **The Additional Unfair Prejudice Caused to Hutch Grove at Trial**

Park Point owned the common area, so it had the duty to care for the stairway within it. Park Point was a named defendant. Yet, Park Point was not even present at the trial. The trial court seemingly permitted Park Point to simply be dropped as a defendant, *cf.* R. 4:37-1(b) (a plaintiff must move to have a defendant dismissed

once a responsive pleading has been filed; dismissal without prejudice requires leave of the court and may include terms the court deems appropriate; court must evaluate whether dismissal causes prejudice to a defendant or disrupts the fair administration of justice in the case, e.g., Shulas v. Estabrook, 385 N.J. Super. 91 (App. Div. 2006), reversing trial judge's grant of voluntary dismissal days before trial and stressing that such dismissals require careful scrutiny of prejudicial impact on defendants).

This left only Hutch Grove and Vin-Rick at trial. Vin-Rick was only alleged to be the general contractor, not to have owned anything. This enabled the plaintiff to continually suggest to the jury that Hutch Grove "owned" the property, was the "owner," or had "ownership" of the construction project. This was despite the undisputed evidence that Park Point owned the common area where the stairway was located, and despite New Jersey law placing the legal duty on the owner of the common area, not a private unit owner (*Qian, supra*; N.J.S.A. 46:8B-14(a) (condominium association has non-delegable duty to maintain, repair, and control the common elements); Siddons v. Cook, 382 N.J. Super. 1 (App. Div. 2005) (association, not unit owners, bears responsibility for common area hazards)).

The plaintiff's expert witness, who was the primary (if not sole) evidence on which the plaintiff premised its charge that Hutch Grove was negligent, framed the question for the jury as whether Vin-Rick was acting as the general contractor at the time the plaintiff was hurt. If Vin-Rick was, it was responsible for safety

management and liable to the plaintiff for his injury. If it was not, however, then Hutch Grove was automatically responsible as the owner of the construction project: “A general contractor is hired by an owner of a construction project to get the construction work done,” Scanlon said, while noting that Hutch Grove hired Vin-Rick. “Hutchgrove Enterprises through Steven Hutchinson ... was the construction project owner of the site. That’s not disputed. He said he was the owner. So, he’s definitely the construction project owner.” 3T39. Scanlon told the jury that if Vin-Rick was acting as the general contractor at the time the plaintiff was hurt, then Vin-Rick was liable. If Vin-Rick was not acting as the general manager, then this left only Hutch Grove, whom the plaintiff’s expert said was responsible based on ownership. “The construction project owner, the way that it usually works is they contract to a general contractor to perform the work. If there’s no general contractor performing work, somebody must be performing work. Because the functions of a general contractor are always done by someone.” 3T39. Scanlon told the jury that Mr. Hutchinson “was the owner of the project.” 3T41, and that if Vin-Rick was “not acting as a general contractor” then Hutch Grove breached accepted standards as an “owner” (3T63). The plaintiff’s counsel reinforced this in his summation:

There’s one caveat to that and that was from my expert, Ms. Scanlon. She says, **if Vin-Rick wasn’t on the job site and this place wasn’t getting managed, safety wasn’t getting managed, then Hutch Grove is on the hook anyway as an owner** because they don’t have anywhere -- **if you conclude that Hutch Grove is not acting as a G.C. and they were only an owner, they were an investor, they still have a basic**

**responsibility to make sure the G.C. that they hire is implementing some kind of safety plan. ... if you believe Hutch Grove was an owner on a site where the G.C. wasn't doing its job, then Hutch Grove is still in this case and then Vin-Rick is too. (emphasis added)**

This entire argument was false. No evidence showed that Hutch Grove owned anything other than the seven condo units within the building. No evidence showed that Hutch Grove or Stephen Hutchinson “was the construction project owner” for this work that Warrenville was performing in the common area where the plaintiff was working when he was hurt. As noted, the only contract in evidence is one Mr. Hutchinson signed for work that Warrenville agreed to perform within the seven private units, not in the common area that Hutch Grove did not even own. Yet the plaintiff was able to argue to the jury that Hutch Grove owed a duty of care on the basis of “ownership.” This caused substantial unfair prejudice to Hutch Grove and was a direct result of the trial court’s failure to grant summary judgment on the duty of care element in the first place – or at least preclude the plaintiff from making any assertion of “ownership” at trial.<sup>4</sup>

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<sup>4</sup> Undersigned counsel notes that somehow trial counsel represented both Hutchgrove and Park Point despite their obviously conflicting interests, and without an informed waiver as ethically required. This conflict of interest likely led to counsel’s failure to object to Park Point’s absence at the trial, and failure to assert a crossclaim against Park Point on Hutch Grove’s behalf, N.J.S.A. 2A:15-5.2; N.J. Rules Prof’l Conduct R. 1.7, Matter of Petition for Review of Opinion 552 of Advisory Comm. on Prof’l Ethics, 102 N.J. 194, 200 (1986).

## **The Plaintiff’s Expert Improperly Relied on Hearsay to Establish the Claimed “No General Contractor” Timeline**

Finally, the opinion of the plaintiff’s expert that Vin-Rick was not acting as the general contractor when the plaintiff was injured was premised on an unsigned letter purportedly from Vin-Rick (A259) that was plainly inadmissible hearsay. Vin-Rick stressed this hearsay in arguing that Hutch Grove, not Vin-Rick, was acting as the general contractor at the site when the plaintiff was hurt. This hearsay caused substantial unfair prejudice to Hutch Grove and shows additional grounds for relief at least on plain error review, James v. Ruiz, 440 N.J. Super. 45, 63 (App. Div. 2015), State v. Townsend, 186 N.J. 473, 494–96 (2006) (expert may not act as conduit for inadmissible hearsay).

### **Conclusion**

The Court should vacate the judgment against Hutch Grove and dismiss the plaintiff’s claims against Hutch Grove with prejudice, or at least remand for a new trial because of cumulative error, including the fundamental jury charge errors.

Respectfully submitted,

/s/ Michael Confusione  
Counsel for Appellant

Dated: August 25, 2025