
Superior Court of New Jersey
APPELLATE DIVISION

VILLAS AT MANVILLE LLC,

Plaintiff-Appellant,
v.

BROOKS TOWNHOUSES LLC,

Defendant-Appellee,

DOCKET NO. A-001414-24

Civil Action

On Appeal From:
Superior Court of New Jersey
General Equity
Somerset County

Docket No. SOM-C-12036-22

Sat Below:
Hon. Haeukyoung Suh, P.J.Ch.

BRIEF OF PLAINTIFF-APPELLANT

Date Submitted: April 14, 2025

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PRELIMINARY STATEMENT

Plaintiff-Appellant Villas at Manville LLC (“Villas”) appeals the trial court’s December 20, 2024 Order (the “December Order”) granting Defendant Brooks Townhouses LLC’s (“Brooks”) motion to enforce settlement which enforced a settlement agreement between the Parties, found Plaintiff-Appellant in breach of the settlement agreement, found Section 2(i) of the settlement agreement null and void, awarded Plaintiff-Appellant’s escrow deposit of \$50,000.00 to the Defendant, and required Plaintiff-Appellant to discharge the *lis pendens* that had been recorded against Defendant’s property.

The December Order should be vacated and Defendant’s motion to enforce settlement should be denied because the trial judge committed reversible error 1) by denying Plaintiff’s request for a one-motion cycle adjournment of Defendant’s motion and not considering Plaintiff’s objection to Defendant’s motion; 2) by disposing of the Parties’ breach of contract claims by way of a motion to enforce settlement and providing the relief sought by Defendant on a motion to enforce settlement. In the alternative, the December Order should be vacated and Defendant’s motion to enforce settlement should be accordingly scheduled to be heard pursuant to the civil motion calendar whereby Plaintiff-Appellant will have the opportunity to have its opposition considered by the trial court and Defendant’s motion will be decided on its merits.

Notably, Defendant's motion to enforce settlement arises out of a settlement agreement entered into by the Parties on or around February 15, 2024 (the "Settlement Agreement") with a stipulation of settlement being filed with the trial court on February 20, 2024. Defendant's motion to enforce settlement was filed approximately ten months later on December 4, 2024, with a return date of December 20, 2024.

PROCEDURAL HISTORY

On September 12, 2022, Plaintiff-Appellant brought suit against the Defendant asserting claims for 1) breach of contract; 2) breach of the implied covenant of good faith and fair dealing; and 3) common law fraud all arising out of a purchase and sale agreement entered into by the Parties whereby Plaintiff-Appellant would purchase from Defendant real property identified as Lot 1.03, Block 42.01 on the Tax Map of the Borough of Manville, Somerset County, New Jersey (the "Property"). (Pa43, Plaintiff's Complaint). On November 14, 2022, Defendant filed its Answer to Plaintiff's Complaint. (Pa166, Defendant's Answer to Complaint). After approximately one and a half years of litigation, the Parties entered into the Settlement Agreement and a stipulation of settlement was filed with the trial court on February 20, 2024. (Pa34, Settlement Agreement; Pa154, Trial Court Case Jacket).

On December 4, 2024, Defendant filed a motion to enforce settlement

containing Exhibits A – I, which was made returnable December 20, 2024. (Pa50, Defendant’s Motion to Enforce Settlement). On December 19, 2024, Plaintiff-Appellant filed an adjournment request with the trial court requesting a one-cycle adjournment and informing the trial court that the undersigned counsel had been attempting to contact Plaintiff-Appellant for weeks, even prior to the filing of Defendant’s motion, and had not been able to successfully communicate with Plaintiff-Appellant until that same afternoon on December 19, and explaining why Defendant was not entitled to the relief sought. (Pa10, Plaintiff Adjournment Request). At approximately 3:05 P.M. on December 19, 2024, the trial court denied Plaintiff’s adjournment request by way of email. (Pa11, Adjournment Denial).

On December 19, 2024, after receiving the trial court’s email denying Plaintiff’s adjournment request, Plaintiff filed untimely opposition to Defendant’s motion to enforce settlement, containing two certifications and three exhibits. (Pa12 – Pa33). On December 20, 2024, the trial court issued the December Order which granted Defendant’s motion to enforce settlement as “unopposed” and contained a written statement of reasons. (Pa1 – Pa9, December Order). On January 16, 2025, Plaintiff-Appellant filed its notice of appeal, appealing the December Order. (Pa173, Notice of Appeal).

STATEMENT OF FACTS

1. On or around September 28, 2021, Plaintiff-Appellant and Defendant-Appellee entered and executed an agreement (the “PSA”) for the sale and purchase of real property identified as Block 42.01, Lot 1.03 on the tax map of the Borough of Manville, Somerset County, New Jersey (the “Property”). (Pa19, Purchase and Sale Agreement).

2. After executing the PSA, Plaintiff-Appellant paid over to Defendant’s legal counsel the sum of \$50,000.00 to be held in escrow and applied to the purchase price at closing (the “Deposit”). (Pa19).

3. On September 12, 2022, Plaintiff-Appellant brought suit against Defendant-Appellee asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and common law fraud. (Pa43, Plaintiff’s Complaint).

4. On November 14, 2022, Defendant filed its Answer to Plaintiff’s Complaint. (Pa166, Defendant’s Answer to Complaint).

5. The events that gave rise to Plaintiff’s suit was the fact that Defendant refused to deliver marketable title to the Property in accordance with the PSA, specifically by refusing to fulfill the terms of a 2004 settlement agreement and Order of the Superior Court of New Jersey (affirmed by the Appellate Division in Docket No. A-3381-05) that required Defendant to pay the sum of

\$62,500.00 (the “Manville Judgment”) to the Borough of Manville and/or the State of New Jersey. (Pa43, Plaintiff’s Complaint; Pa140, Manville Judgment).

6. Notwithstanding the terms of the Manville Judgment, Defendant breached the Manville Judgment by refusing to make the required payments to the Borough of Manville, and instead brought suit against the Borough of Manville in 2021 under Docket No. SOM-L-1219-21 to seek to have the Manville Judgment nullified. Shortly after bring this suit, the Parties entered into a stipulation of dismissal whereby Defendant’s complaint was dismissed with prejudice due to its entirely frivolous nature. (Pa148, Stipulation of Dismissal).

7. It is against this backdrop that Plaintiff-Appellant’s suit was brought against Defendant for Defendant’s continued refusal to fulfill its obligations under the Manville Judgment which the PSA required to be fulfilled. (Pa43, Plaintiff’s Complaint).

8. On February 15, 2024, after Defendant forced Plaintiff-Appellant to go through almost two years of litigation, the Parties entered into a settlement agreement (the “Settlement Agreement”) which provided, *inter alia*, reinstatement of the PSA, an extension of the due diligence period, and a requirement that Defendant pay to the New Jersey Council On Affordable

Housing the entirety of the Manville Judgment prior to or on the closing date for the Property. (Pa34, Settlement Agreement).

9. Notably, Section 5.3 of the PSA established as a contingency to Plaintiff's requirement to close on the Property that on the closing date, the Property be "properly zoned to allow for the construction of 10 (ten) three-bedroom townhouses (including affordable units) as set forth in the Resolution adopted by the Planning Board on April 6, 2010" (the "Approval"). (Pa23, Purchase and Sale Agreement).

10. After executing the Settlement Agreement, Plaintiff-Appellant's employees and land use attorney began contacting Borough of Manville officials to determine whether the Approval that Defendant had received for development of ten three-bedroom townhouses was still valid and in effect. (Pa16 – Pa18; Pa32 – Pa33).

11. Borough of Manville officials were delayed in responding to Plaintiff-Appellant's employees and land use attorney as most of the Borough's officials are temporary employees and volunteers, including members of the Planning Board, the Planning Board's attorney, and the Borough's counsel. (Pa16 – Pa18; Pa32 – Pa33).

12. Between June and September 2024, Plaintiff-Appellant's land use attorney and employees had several communications with Borough officials,

the Borough's attorney, and Borough's Planning Board attorney. The Borough initially communicated that the Approval may still be valid and could be grandfathered into new regulations that affected the Property. (Pa16 – Pa18; Pa32 – Pa33; Pa149).

13. During the due diligence period, Defendant-Appellee's counsel was informed of the fact that Plaintiff-Appellant was coordinating with the Borough of Manville to determine whether the Approval was still valid and was informed of the possibility that the approval was no longer valid and would not be grandfathered into the new regulations affecting the Property. The Parties were therefore negotiating an extension of the due diligence period during this time as Plaintiff-Appellant was still interested in the Property if the Approval was still valid. (Pa149 – Pa152, Approval Emails).

14. At the end of September 2024, counsel for Plaintiff-Appellant and counsel for Defendant-Appellee were negotiating an extension of the due diligence period via emails. Beginning at this time, counsel for Plaintiff-Appellant lost contact with Plaintiff-Appellant's authorized representative, Chandra Mandalapu and informed Defendant's counsel that he was not receiving responses from Plaintiff-Appellant. (Pa153, September 19 Email).

15. On October 25, 2024, Defendant-Appellee sent a notice to Plaintiff-Appellant's counsel claiming that Plaintiff-Appellant was in breach of

the PSA because 1)Plaintiff-Appellant was required to close within thirty days of the expiration of the extended due diligence period and 2) because Plaintiff-Appellant had failed to pay an additional deposit of \$100,000.00. (Pa135 – Pa138, Exhibit I of Defendant’s Motion).

16. On December 4, 2024, Defendant-Appellee filed its motion to enforce settlement seeking an order from the trial court for turnover and forfeiture of Plaintiff-Appellant’s \$50,000.00 deposit paid pursuant to the PSA, seeking nullification of Section 2(i) of the Settlement Agreement, and a discharge of the *lis pendens*, filed against the Property. (Pa50).

17. Plaintiff-Appellant’s counsel was not able to get in touch with Plaintiff-Appellant until December 19, 2024, when Plaintiff-Appellant confirmed with its legal counsel that the Borough was taking the formal position that the existing Approval was no longer valid under new stormwater requirements and that the Approval would not be grandfathered into the old regulations that applied to the Property because not enough work had been performed on the Property in order to be grandfathered in. As a result, Defendant could not convey title to the Property in accordance with Section 5.3 of the PSA. (Pa10 – Pa15; Pa16 – Pa18).

18. On December 19, 2024, after speaking with Plaintiff-Appellant’s representative Chandra Mandalapu, Plaintiff-Appellant’s counsel immediately

filed an adjournment request with the trial court requesting a one-cycle adjournment of Defendant's motion to enforce settlement and explaining to the trial court that Plaintiff-Appellant counsel had lost touch with Plaintiff-Appellant for several months and that Defendant-Appellee was not entitled to the relief sought as it was in breach of the PSA. (Pa10).

19. On December 19, 2024, the trial court denied Plaintiff-Appellant's adjournment request via email. (Pa11).

20. On December 19, 2024, Plaintiff-Appellant filed an untimely objection to Defendant's motion to enforce settlement arguing that 1) Plaintiff-Appellant had not breached the Settlement Agreement or the PSA; 2) Defendant-Appellee was in fact in breach of Section 5.3 of the PSA as it could not perform its obligation to deliver title to the Property with the Approval; 3) that the Settlement Agreement does not provide for an award of liquidated damages or forfeit of Plaintiff-Appellant's Deposit in the event of a breach; 4) Plaintiff-Appellant did not pay the second \$100,000.00 deposit due under the Settlement Agreement (the "Second Deposit") because Defendant-Appellee could no longer perform its contractual obligations, specifically delivering title to the Property with the Approval, and therefore Plaintiff-Appellant had a right to withhold further performance of its contractual obligations; 5) Defendant-Appellee was in breach of its contractual obligations and therefore was not

entitled to any relief on equitable grounds; 6) Defendant-Appellee's request for relief was not authorized by the Settlement Agreement and could not be granted by way of motion to enforce settlement/litigant's rights, but rather is required to file separate suit alleging breach of the PSA; and 7) the Court should have granted Plaintiff-Appellant's request for an adjournment as applicable Court Rules and precedent required court deadlines to yield to fundamental fairness and that a trial court was required to engage in rule relaxation when necessary in order to secure a just determination. (Pa12 – Pa18).

21. At 10:22 A.M. on December 20, 2024, the Court issued the December Order granting Defendant's motion to enforce settlement. (Pa157, December Order Email).

22. Plaintiff's appeal followed. (Pa173, Notice of Appeal).

LEGAL ARGUMENT

POINT I

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY DENYING PLAINTIFF'S REQUEST FOR AN ADJOURNMENT OF DEFENDANT'S MOTION AND NOT CONSIDERING PLAINTIFF'S OPPOSITION

(Raised Below: Pa12 – Pa18)

The trial court committed reversible error when it denied Plaintiff's request for a one-motion cycle adjournment of Defendant's motion to enforce and when it refused to consider Plaintiff's late opposition, instead disposing of Defendant's motion to enforce settlement as "unopposed." (Pa1 – Pa9). It is Plaintiff-Appellant's position that this error was "raised below" for purposes of R. 2:10-2, and therefore the standard of review applicable to the trial court's refusal to grant Plaintiff's adjournment request or consider its late opposition to Defendant's motion is whether an abuse of discretion occurred.

Notably, "an abuse of discretion 'arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue."

Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)"When examining a trial court's exercise of discretionary authority," the appellate court "will 'reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

Here, there was no rational explanation for the trial court to deny Plaintiff-Appellant's request for an adjournment of Defendant's motion, and when considering the totality of the circumstances, the trial court's decision "departed from established policies." First, it was Plaintiff-Appellant's first and only request for an adjournment of Defendant's motion. (Pa154, Trial Court Case Jacket). Had Plaintiff-Appellant made numerous requests for an adjournment, or had it been derelict in meeting previous court deadlines, the trial court would have been within its discretion to deny the adjournment request.

Second, at the time Defendant had filed its motion to enforce settlement, the litigation had reached a point of finality, that is, the case was no longer being "actively litigated" since the parties had filed a stipulation of settlement ten months earlier. (Pa154, Trial Court Case Jacket). To state it differently,

had Plaintiff-Appellant disappeared and lost communication with its legal counsel in the middle of an active litigation with pending motions and/or upcoming deadlines, it would be at greater fault for failing to oppose Defendant's motion timely. However, that is not what occurred here, and Plaintiff-Appellant's counsel explained to the Court in its adjournment request that Plaintiff-Appellant's counsel had lost communication with Plaintiff-Appellant *months before Defendant filed its motion*. (Pa10).

Defendant's counsel *knew* that Plaintiff-Appellant's counsel had lost touch with Plaintiff-Appellant prior to filing its motion. (Pa153, September 19 Email). Therefore, it can be inferred that Defendant sought to take advantage of the situation and capitalize on the breakdown of communication between Plaintiff-Appellant and its counsel, knowing it would be harder for Plaintiff-Appellant to properly oppose Defendant's motion under the status quo. Defendant thereby moved before the trial court *while knowing it was in breach of the PSA*, seeking to essentially usurp Plaintiff-Appellant's Deposit.

Third, the relief sought by Defendant in its motion was *extremely* prejudicial to Plaintiff, which was a release and an award of Plaintiff's Deposit (\$50,000.00) to Defendant as liquidated damages, nullification of a Section 2(i) of the Settlement Agreement *which awarded Defendant an additional \$33,533.20*, and discharge of Plaintiff's *lis pendens*. (Pa1 – Pa9). Given the

substantial consequences and harm that Plaintiff would suffer if the relief sought by Defendant was granted, the trial court should have granted Plaintiff an opportunity to oppose Defendant's motion and dispose of the motion on its merits.

Notably, this State's precedent has firmly established that "in appropriate circumstances" court deadlines "must yield to fundamental fairness." Zadigan v. Cole, 369 N.J. Super. 123, 134-35 (Law Div. 2004)(citing Tucci v. Tropicana Casino and Resort, Inc., 364 N.J. Super. 48 (App. Div. 2003)). Court rules that establish deadlines were not "designed to do away with substantial justice on the merits or to preclude rule relaxation when necessary to 'secure a just determination.'" Tucci v. Tropicana Casino and Resort, Inc., 364 N.J. Super. 48, 53 (App. Div. 2003).

Here, the prejudice and consequences suffered by Plaintiff-Appellant far exceeded any of the prejudice and consequences faced by the parties in Tucci, Zadigan, and their progeny. The relief sought in Defendant's motion, a judgment and *immediate payment of the judgment in full* by way of forfeiture of Plaintiff's \$50,000.00 Deposit *and* voiding of a portion of the contract that amounted to an *additional award to Defendant in the amount of \$33,533.20*, was akin to the relief a party would obtain after having successfully litigated a civil case from inception through trial. By filing a single motion during a time

when the litigation had reached a level of finality, Defendant obtained relief that in other circumstances would have required Defendant to make numerous applications and Plaintiff would have been provided with numerous due process safeguards.

To illustrate the prejudice that Plaintiff suffered as a result of the trial court's refusal to consider its opposition or grant an adjournment, Plaintiff provides the following hypothetical: If Plaintiff was a defendant in a case which had outright failed to appear and otherwise answer a summons and complaint, and a default judgment had been entered against Plaintiff, Plaintiff would be entitled to vacate the default judgment even if such an application was brought one year later, assuming that Plaintiff had a meritorious defense and excusable neglect. R. 4:50-2. Yet here, after having appeared and litigated a matter for almost two years, and then having settled the matter ten months prior, and an adjournment request having been filed prior to the return date, Plaintiff is denied any opportunity to have Defendant's motion decided on the merits, notwithstanding the draconian outcome that would result.

Such draconian outcomes have been consistently rejected by our courts. In Salazar v. MKGC Design, the plaintiff argued that the trial court imposed a draconian sanction when it barred plaintiff from proving damages on the basis of a discovery violation. Salazar v. MKGC Design, 458 N.J. Super. 551, 556 -

57 (App. Div. 2019). In reversing the trial court, the Salazar Court stated that “[i]n our judicial system, ‘justice is the polestar and our procedures must ever be moulded [sic] and applied with that in mind.’ Id. at 557 (quoting New Jersey Highway Auth. v. Renner, 18 N.J. 485, 495 (1955)). It further stated, “[t]here is absolute need to remember that the primary mission of the judiciary is to see justice done in individual cases. *Any other goal, no matter how lofty, is secondary.*” Id. (quoting Santos v. Estate of Santos, 217 N.J. Super. 411, 416 (App. Div. 1986)). “In that vein, the Court Rules ‘shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.’ R. 1:1-2(a). For that reason, ‘[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.’” Id. at 558.

Plaintiff-Appellant’s appeal is the epitome of a set of circumstances that require rule relaxation in order to obtain a just result. Here, it is undisputed that Defendant *is in breach of the PSA* as Defendant no longer has the Approval as required by Section 5.3 of the PSA. (Pa23). Since Defendant could no longer perform its contractual obligations, specifically delivering title to the Property with the Approval, Plaintiff had no duty to continue to perform its contractual obligations, specifically paying any further deposits to

Defendant or closing on the Property, as applicable case law permits Plaintiff to withhold performance. See Magnet Resources, Inc. v. Summit MRI, Inc., 318 N.J. Super. 275, 288 – 289 (App. Div. 1998) (stating “an obligee . . . who believes, for whatever reason, that the obligor will not or cannot perform without a breach, is always free to act on that belief by withholding his own performance.”).

Furthermore, the only reason the Approval expired in the first place is because *Defendant refused to fulfill its obligations under the Manville Judgment and the PSA* and therefore forced Plaintiff to undergo a lengthy litigation for no reason whatsoever, until Defendant finally agreed to do what it was already required to do. (Pa43, Pa140). This has become Defendant’s modus operandi – Defendant either initiates frivolous and bad faith litigation against parties or forces a party to bring suit against it whenever Defendant does not want to do something it is obligated to do. (Pa148). The trial court’s December Order rewards the Defendant for its consistent bad faith and repeated breaches of contract with an award of \$83,553.20. The injustice inflicted upon Plaintiff-Appellant pales the injustices presented in Santos, Salazar, Tucci, and Zadigan.

Additionally, the following circumstances must be noted by Plaintiff-Appellant with regards to the trial court’s refusal to grant Plaintiff-Appellant’s

adjournment. As previously stated, Plaintiff-Appellant had filed its adjournment request with the trial court in the early afternoon of December 19, 2024. (Pa10). At 10:22 A.M. on December 20, 2024, the trial court issued the December Order, which contained a statement of reasons seven pages in length. (Pa157, December Order Email). Given the time it would have taken the trial court to draft and prepare the statement of reasons, it is clear that at the time Plaintiff-Appellant filed its adjournment request, the trial court had already prepared the statement of reasons. Plaintiff-Appellant submits that this reality played a central role and was the primary motivating factor behind the trial court's refusal to grant Plaintiff-Appellant's adjournment request. That is, if the trial court were to grant Plaintiff-Appellant's adjournment request, and if the assertions made by Plaintiff-Appellant in its adjournment request and opposition were true, then the time spent by the trial court on the statement of reasons would have been fruitless and futile. While it is Plaintiff-Appellant's last intention to waste precious judicial resources, securing a just result is the primary mission of the judiciary and "any other goal, no matter how lofty, is secondary." Salazar, 458 N.J. Super. at 557.

Lastly, even if the Court were to consider that the alleged error was not raised below, Plaintiff-Appellant is entitled to relief under the plain error standard. When a party does not object to an alleged error or otherwise

properly preserve an issue for appeal, it may nonetheless be considered by the appellate court if it meets the plain error standard of R. 2:10-2. See State v. Singh, 245 N.J. 1, 13 (2021); State v. Gore, 205 N.J. 363, 383 (2011). Notably, “[t]he mere possibility of an unjust result is not enough” to meet the plain error standard. State v. Funderburg, 225 N.J. 66, 79 (2016). “Under the plain error review, a [party] must establish three things: 1) there was error; 2) the error was clear or obvious; and 3) the error affected substantial rights. In other words, the error must have affected the outcome.” State v. Banks, 313 N.J. Super. 55, 63-64 (App. Div. 1998). Moreover, R. 2:10-2 provides that “the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court.” Therefore, our courts have concluded that “where upon the total scene it is manifest that justice requires consideration an issue central to a correct resolution of the controversy and the lateness of the hour is not itself a source of countervailing prejudice.” Ctr. for Molecular Med. & Immunology v. Township of Belleville, 357 N.J. Super. 41, 48 (App. Div. 2003).

Here, Plaintiff-Appellant has established that there was error committed by the trial court, for the aforementioned reasons. Moreover, the error made by the trial court was clear or obvious, as it is well-settled law that cases are to be disposed of on their merits and that rule relaxation is warranted when the

interest of justice requires it. The trial court's error also affected substantial rights of Plaintiff-Appellant as the trial court awarded Defendant more than \$83,000.00 while Defendant had absolutely no right to such an award, was in material breach of its contractual obligations, and had engaged in frivolous and bad faith litigation against Plaintiff-Appellant, the Borough of Manville, and the State of New Jersey, without providing Plaintiff-Appellant with an opportunity to properly oppose Defendant's motion.

For the aforementioned reasons, the trial court's December Order must be vacated in its entirety and this matter remanded for further proceedings.

POINT II

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY DISPOSING OF THE PARTIES' BREACH OF CONTRACT CLAIMS BY WAY OF A MOTION TO ENFORCE SETTLEMENT AND PROVIDING THE RELIEF SOUGHT BY DEFENDANT ON A MOTION TO ENFORCE SETTLEMENT

(Raised Below: Pa12 – Pa18)

Even if the trial court acted within its discretion when denying Plaintiff's adjournment request and deciding Defendant's motion to enforce settlement not on its merits, the trial judge committed reversible error by disposing of Defendant's (and Plaintiff's) breach of contract claims by way of a motion to enforce settlement and by awarding Defendant Plaintiff-

Appellant’s \$50,000.00 Deposit as liquidated damages, nullification of Section 2(i) of the Settlement Agreement, and discharge of the *lis pendens* as relief. Notably, “review of a motion to enforce settlement is *de novo* and considers whether the ‘available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge . . . to resolve the disputed factual issues in favor of the non-moving party.’” Gold Tree Spa, Inc. v. PD Nail Corp., 475 N.J. Super. 240, 245 (App. Div. 2023) (quoting Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997)).

Therefore, under *de novo* review, a “trial court’s interpretation of the law and the consequences that flow from established facts are not entitled to any special deference.” Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, LP v. Twn. Comm. Of Manalapan, 140 N.J. 366, 378 (1995)). Moreover, “if the trial judge misconceives the applicable law or misapplies it ... the exercise of legal discretion lacks a foundation and becomes an arbitrary act.” Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020) (quoting Alves v. Rosenberg, 400 N.J. Super. 553, 563 (App. Div. 2008) (internal quotations omitted)).

Furthermore, a motion to enforce settlement is a motion that seeks to enforce a settlement agreement that is in dispute. See Amatuzzo v. Kozmiuk,

305 N.J. Super. 469 (App. Div. 1997); Gold Tree Spa, Inc. v. PD Nail Corp., 475 N.J. Super. 240 (App. Div. 2023); Feigenbaum v. Mw Props., Docket No. A-4198-18T4 (App. Div. December 16, 2020). Notably,

On a disputed motion to enforce as settlement, as on a motion for summary judgment, a hearing is to be held to establish the facts unless the available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge, as a rational factfinder, to resolve the disputed factual issues in favor of the non-moving party.

[Amatuzzo, 305 N.J. Super. at 474-75.]

Here, there was never a dispute as to the validity of the Settlement Agreement. Plaintiff-Appellant concedes that the Settlement is valid and binding upon both parties, but rather disputes whether Plaintiff-Appellant breached the Settlement Agreement. Furthermore, the relief sought by the Defendant *was not even based on the terms of the Settlement Agreement*, but rather the PSA. Article II of the PSA stated, “[e]xcept as set forth in Article XI of this Agreement, the Initial Deposit and Second Payment become non-refundable upon completion of the Due Diligence Period.” (Pa21). The terms of the Settlement Agreement did not provide any right to Defendant to recover the Deposit as liquidated damages in the event of a breach of the Settlement Agreement, nor did it provide nullification of Section 2(i) of the Settlement Agreement in the event of a breach, nor discharge of the *lis pendens*. (Pa34,

Settlement Agreement). Therefore, the relief sought by Defendant in its motion to enforce settlement is not relief that is available on a motion to enforce settlement. The trial court had no authority to make dispositive findings of fact and conclusions of law with regards to substantive breach of contract claims arising out of the PSA by way of a motion to enforce settlement and it committed reversible error by doing so.

To further illustrate the trial court's failure to review any of the competent evidence on Defendant's motion, the trial court further erred and provided relief that Defendant was not entitled to in the December Order by directing the escrow agent holding the Deposit, Jeffrey Lehrer, Esq., to immediately release the Deposit to Defendant in violation of the PSA. (Pa2). This constituted error because Article II of the PSA explicitly states that, "If such party delivers to Escrow Agent written objections to such payment before the proposed payment date, Escrow Agent shall continue to hold such amount [the Deposit] until otherwise directed by written instructions by all parties or *upon receipt of a final, non-appealable judgment* of a court of competent jurisdiction." (Pa21). Here, Plaintiff had sent written notice to the Escrow Agent Jeffrey Lehrer, Esq., at the beginning of this litigation instructing him to not release the Deposit, which was held by Mr. Lehrer throughout the entirety of this litigation. Additionally, the December Order was in fact appealable and

therefore the trial court should not have instructed Mr. Lehrer to release the Deposit “within 14 days”, but rather, in accordance with the PSA, to release the Deposit to Defendant in the event that a timely appeal was not filed.

Not only is Defendant’s motion to enforce settlement not the appropriate application to obtain the relief sought, but Defendant was also not in the position to file a motion to enforce litigant’s rights, as a motion to enforce litigant’s rights is the appropriate vehicle to enforce a court’s prior order, and “[t]he scope of relief in a motion in aid of litigants’ rights is limited to remediation of the violation of a court order.” Abbot v. Burke, 206 N.J. 332, 359, 371 (2011). As a result, the appropriate mechanism for Defendant to obtain the relief sought in its motion to enforce settlement would be to file separate suit for breach of contract, or at the very least, file a motion for summary judgment. Therefore, the trial court committed reversible error when it awarded Defendant the highly prejudicial and substantial monetary and injunctive relief sought by Defendant in its motion.

Moreover, even assuming that the trial court was within its authority to award the relief sought by Defendant on a motion to enforce settlement, the trial court failed to apply the proper standard of review to Defendant’s motion and failed to conduct a hearing where facts would be established, competent would be evidence presented, and the weight of the evidence would be

weighed most favorably to the non-moving party, as required by Amatuzzo.
Amatuzzo, 305 N.J. Super. at 474-475.

In its statement of reasons, the trial court failed to mention the applicable standard of review and failed to apply it, merely stating, “the beginning point of this analysis is the strong public policy in this state in favor of settlements . . . our case law is clear that an agreement to settle a lawsuit is a contract which . . . should honor and enforce as it does other contracts.” (Pa8). The trial court then summarily concluded that Plaintiff-Appellant was in breach for failing to pay the second deposit by July 26, 2024, and has “forfeited [the Deposit] because of its breach.” (Pa8).

Lastly, if the Court were to consider the aforementioned issues not appropriately raised below since Plaintiff-Appellant’s opposition was untimely, Plaintiff-Appellant is still entitled to relief under the plain error standard. Here, the trial court committed error by awarding the litany of prejudicial and substantial relief provided in the December Order by way of a motion to enforce settlement while failing to apply the applicable standard of review and failing to hold a hearing. Moreover, the trial court’s error was “clear or obvious” as the standard of review on a motion to enforce settlement is well-settled and it was apparent from the plain terms of the Settlement Agreement that the relief sought by Defendant was outside its scope. The trial

court's error affected Plaintiff-Appellant's substantial rights as it paid over to Defendant, a party in breach and operating in bad faith, \$83,000.00 of Plaintiff-Appellant's funds.

CONCLUSION

For the reasons set forth above, Plaintiff-Appellant Villas at Manville LLC respectfully requests that the Court vacate the December Order in its entirety and remand for further proceedings.

Respectfully submitted,

/s/Tareef Chamaa, Esq.
Tareef Chamaa, Esq.
Attorney for Plaintiff-Appellant

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

VILLAS AT MANVILLE,

Plaintiff-Appellant,

v.

BROOKS TOWNHOUSES
LLC,

Defendant-Appellee,

DOCKET NO. A-001414-24

Civil Action

On Appeal From:
Superior Court of New Jersey
General Equity
Somerset County

Docket No. SOM-C-12036-22

*Sat Below:
Hon. Haeukeyoung Suh, P.J. Ch.*

**BRIEF OF DEFENDANT-RESPONDENT
BROOKS TOWNHOUSES LLC**

Date Submitted: June 11, 2025

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PRELIMINARY STATEMENT

The Parties entered into a Purchase and Sale Agreement (“the PSA”) whereby Plaintiff agreed to buy and Defendant agreed to sell the real property identified as Lot 1.03, Block 4201 on the Tax Map of the Borough of Manville, County of Somerset, State of New Jersey (“the Property”). A dispute subsequently arose concerning the Parties’ respective performance under the PSA, namely Plaintiff’s obligation to pay deposits and close and Defendant’s obligation to provide clear title and certain approvals. After litigating the matter for 17 months, the Parties, via extensive negotiations between counsel, executed a Settlement Agreement and Mutual Release (“the Settlement Agreement”) and filed a Stipulation of Settlement on February 20, 2024.

The Settlement Agreement, which expressly incorporates the unmodified terms of the PSA, removes all representations from the PSA regarding the Property’s suitability or approval for development, provides Plaintiff with an extended due diligence period of 90 days to determine whether the Property can be developed for Defendant’s intended purposes, and requires that Plaintiff either terminate the PSA during the extended due diligence period or pay an additional \$100,000 deposit within five days and close within 30 days. The Settlement Agreement further provides that if the Plaintiff fails to do so, Plaintiffs’ initial \$50,000 deposit becomes non-refundable and Plaintiff will not be reimbursed for certain sitework.

Pursuant to the Settlement Agreement, Defendant provided Plaintiff with access to the Property and all requested information, and Plaintiff commenced its due diligence. Prior to expiration of the 90 day extended due diligence period, the Parties agreed to further extend the due diligence period by 60 days through July 21, 2024. Plaintiff failed to terminate the PSA or request another extension prior to July 21, 2024.

Plaintiff subsequently proposed to further extend the due diligence period by 45 days and pay two additional deposits totaling \$150,000. Defendants agreed, counsel subsequently negotiated and agreed upon an addendum, and Plaintiff's counsel advised that the addendum was with Plaintiff for its signature. Despite Defendant's numerous inquiries, Plaintiff never executed the addendum or paid the agreed upon deposits. Rather, Plaintiff's counsel advised that he inexplicably lost contact with his client. On October 25, 2024, after attempting to resolve Plaintiff's breach for four months, Defendant issued Plaintiff a Notice of Breach providing Plaintiff with one final opportunity to cure the breach and reinstate the Settlement Agreement subject to certain conditions. Defendant did not respond.

Plaintiff moved to enforce settlement on December 4, 2024. Plaintiff did so pursuant to the filed Stipulation of Settlement which provides that, "[i]n the event of a breach of the Settlement Agreement and Mutual Release, the nonbreaching party may move before this court for an order enforcing the terms of the settlement

agreement.” Plaintiff failed to oppose or otherwise respond to the Motion until the eve of the Motion return date and only did so after the trial court denied its adjournment request.

Procedurally, the trial court properly denied Plaintiff’s adjournment request and granted the Motion as unopposed. Plaintiff’s unexplained four-month disappearance through the eve of the return date is the very breach and dilatory tactic that necessitated the Motion in the first place. To allow Plaintiff to disappear, ignore multiple correspondence, and entirely disregard the Court Rules without any explanation or justification would only serve to reward Plaintiff for its misconduct.

Substantively, the Settlement Agreement removes all representations regarding the Property’s approvals and suitability for development in exchange for providing Plaintiff with an extended due diligence period to independently confirm whether the Property could be developed for Plaintiff’s purposes. The assertion that Defendant was in breach of the Settlement Agreement because Defendant could not convey the Property with certain approvals ignores the express terms of the Settlement Agreement. Accordingly, the trial court properly granted Defendant’s Motion to Enforce Settlement and the instant appeal should be dismissed.

PROCEDURAL HISTORY

Plaintiff commenced this action with the filing of its Complaint on September 12, 2022. (Pa43, Plaintiff’s Complaint). The Complaint asserts claims for: (1) breach

of contract; (2) breach of the covenant of good faith and fair dealing; and (3) common law fraud arising out of a purchase and sale agreement whereby Plaintiff agreed to purchase from Defendant the real property identified as Lot 1.03, Block 4201 on the Tax Map of the Borough of Manville, County of Somerset, State of New Jersey (“the Property”). (Pa43, Plaintiff’s Complaint). Defendant filed its Answer on November 14, 2022. (Pa166, Defendant’s Answer to Complaint). Defendant, with leave of Court, filed Counterclaims for: (1) breach of contract; and (2) breach of the covenant of good faith and fair dealing on October 17, 2023. (Da1, Defendant’s Counterclaims). The Parties subsequently executed a Settlement Agreement and Mutual Release and filed a Stipulation of Settlement with the trial court on February 20, 2024. (Pa34, Settlement Agreement; Pa154, Trial Court Case Jacket; Da16, Stipulation of Settlement).

Defendant filed the subject Motion to Enforce Settlement (“the Motion”) on December 4, 2024 after Defendant became non-responsive during the agreed upon extended due diligence period, failed to pay additional deposits, and ignored Defendant’s Notice of Breach. (Pa50, Defendant’s Motion to Enforce Settlement with Exhibits). The Motion was made returnable on December 20, 2024, with opposition required to be filed by December 12, 2024. (Pa 154, Trial Court Case Jacket). Defendant failed to oppose or otherwise respond to the Motion by December 12, 2024. (Pa 154, Trial Court Case Jacket).

Plaintiff filed an adjournment request on December 19, 2024 at 12:42 p.m. (Pa10, Plaintiff's Adjournment Request). Plaintiff based the adjournment request upon Plaintiff's admitted disappearance "[f]or the past couple months" and unexplained reappearance the afternoon before the Motion return date. (Pa10, Plaintiff's Adjournment Request). The trial court denied Plaintiff's adjournment request on December 19, 2024 at 3:05 pm. Plaintiff filed untimely opposition on December 19, 2024 at 4:04 pm. (Pa12, Plaintiff's Opposition). Defendant objected to Defendant's untimely opposition on December 19, 2024 at 4:33 pm. (Da13, Defendant's Objection). The trial court partially granted the Motion and issued a corresponding Statement of Reasons Pursuant to R. 1:7-4 on December 20, 2024. (Pa1-Pa9, Order and Statement of Reasons). Plaintiff filed its Notice of Appeal on January 16, 2025. (Pa173, Notice of Appeal).

COUNTERSTATEMENT OF FACTS

1. On or about September 28, 2021, the Parties executed a Purchase and Sale Agreement (the "PSA") whereby Plaintiff agreed to purchase and Defendant agreed to sell the real property identified as Lot 1.03, Block 42.01 on the Tax Map of the Borough of Manville, County of Somerset, State of New Jersey (the "Property"). (Pa19, Purchase and Sale Agreement).

2. Following execution of the PSA and Plaintiff's payment of the initial \$50,000 deposit, a dispute arose between the Parties regarding the terms of the PSA,

the Parties' duties thereunder, and certain representations attributed to Defendant. (Pa43, Plaintiff's Complaint; Pa101, Email with Copy of Check).

3. On September 12, 2022, Plaintiff commenced this action with the filing of its Complaint. (Pa43, Complaint).

4. On September 19, 2022, Plaintiff recorded a *lis pendens* against the Property in the Office of the Somerset County Clerk, under Transaction Number 2022039416, Book 7470, Page 935 ("the Lis Pendens"). (Pa87, Lis Pendens).

5. Following the exchange of discovery, the Parties engaged in settlement discussions culminating in the Parties' execution of a Settlement Agreement and Mutual Release dated February 15, 2024 (the "Settlement Agreement"). (Pa34, Settlement Agreement).

6. On February 20, 2024, the Parties filed a Stipulation of Settlement. The Stipulation of Settlement expressly states:

In the event of a breach of the Settlement Agreement and Mutual Release, the nonbreaching party may move before this court for an order enforcing the terms of the settlement agreement.

(Da16, Stipulation of Settlement).

7. Plaintiff failed to discharge the Lis Pendens notwithstanding the Parties' execution of the Settlement Agreement and filing of the Stipulation of Settlement. (Da18, Discharge of Lis Pendens).

8. Section 2(a) of the Settlement Agreement provides:

2. Consideration. In full and final settlement of any and all claims that could be asserted by any party against the other, whether known or unknown, from the beginning of time through the execution of this Agreement, the Parties agree as follows:

- a. The Parties agree that the PSA, including the \$800,000 purchase price, is hereby reinstated in full force and effect and its terms are amended to be in accordance with the terms stated in this Agreement. In the event that there is any conflict between the terms of this Agreement and the PSA, including an[y] amendments thereto, the terms of this Agreement shall supersede and control.

(Pa34, Settlement Agreement).

9. To that end, the PSA provides, in pertinent part:

- a. The purchase price is \$800,000 (Pa20, PSA);
- b. Plaintiff was required to pay an initial deposit of \$50,000 (“the Initial Deposit”) within three (3) business days of the full and complete execution of the PSA (Pa20, PSA);
- c. The Initial Deposit was to be held in trust by Defendant’s prior attorney, Jeffrey Lehrer, Esq., of DiFrancesco Bateman (Pa21, PSA);
- d. Plaintiff had a sixty (60) day due diligence period, subject to one thirty (30) day extension, to inspect the property, determine if it was suitable for Plaintiff’s proposed development, and terminate the PSA if desired (Pa22-Pa23, PSA); and
- e. “If Buyer [Plaintiff] does not terminate this Agreement [the PSA] prior to the expiration of the Due Diligence Period, Buyer [Plaintiff] is obligated to perform under all the terms and conditions of this Agreement [the PSA] and the Initial Deposit and Second Payment shall become non-refundable and shall be applied towards the Purchase Price at Closing.” (Pa22, PSA).

10 . In addition to reinstating the PSA, the Settlement Agreement provided Plaintiff with an Extended Due Diligence Period of ninety (90) days during which Plaintiff could “conduct an investigation of the Property”. (Pa35, Settlement Agreement at Section 2(d)).

11 . Section 2(f) of the Settlement Agreement also provides that:

Plaintiff, at its sole discretion, may terminate the PSA during the Extended Due Diligence Period if Plaintiff discovers any negative environmental conditions present at the Property or discovers that the Property has any detrimental flood determination and/or has been designated as within a flood zone or flood hazard area or is affected by the provisions of the Coastal Wetlands Act, N.J.S.A. 13:9A-1, et seq. or the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, et seq.; if Plaintiff fails to obtain any approval from any municipality, governmental entity, or regulatory body that Plaintiff deems to be necessary in order to develop the Property in accordance with Plaintiff’s desires; or discovers any other condition that Plaintiff determines negatively affects the Property and/or development of the Property for Plaintiff’s intended purpose. If Plaintiff terminates the PSA pursuant to this paragraph, any and all deposit monies paid by Plaintiff shall be returned to Plaintiff within five (5) business days. Plaintiff may only terminate the PSA during the Extended Due diligence for the reasons set forth in Section 2(f), unless provided otherwise by this Agreement.

* * *

Plaintiff shall rely solely upon its due diligence in determining whether to proceed with the purchase of the Property. Plaintiff shall obtain any and all desired documents and records set forth in Section 4.1(a)(i)-(vi) directly from the pertinent governmental or nongovernmental entities.

(Pa35-Pa36, Settlement Agreement Section 2(f))(emphasis supplied).

12 . Section 2(i) of the Settlement Agreement provides that:

If Plaintiff terminates the PSA pursuant to Paragraph 2(f) of this Agreement or pursuant to any other right that Plaintiff may have under this Agreement or the PSA or terminates the PSA by reason of Defendant failing to perform its obligations under this Agreement or the PSA, Defendant shall pay to Plaintiff the amount of \$33,533.20 (the “Reimbursement Payment”) which constitutes reimbursement of Plaintiff’s expenses for \$15,033.20 paid to PSEG for installation of utilities at the Property and \$18,500.00 for the installation of curbs at the Property. Defendant shall pay the Reimbursement Payment within twelve calendar months of Defendant’s receipt of Plaintiff’s notice of termination of the PSA. In the event of such termination, the Reimbursement Payment shall be reduced by the cost to repair any defects within the curbs, sidewalks, and other improvements installed by Plaintiff, its affiliates, and/or contractors on the Property.

(Pa36, Settlement Agreement Section 2(i))(emphasis supplied).

13. Section 2(j) of the Settlement Agreement provides that:

The expiration, limitation, or changes of any approvals, permits, certificates, and/or licenses, changes in any environmental/flood designations, the number of buildable units, value of the Property, or any other characteristics of the Property, physical, legal, title, or otherwise, that Plaintiff considers negative and contrary to its intended use shall not constitute a breach of the PSA or this Agreement.

(Pa36, Settlement Agreement Section 2(j))(emphasis supplied).

14. Section 5 of the Settlement Agreement provides that:

Representations: Defendant’s representations are made to the best of Defendant’s knowledge and do not survive closing. The parties expressly recognize and agree that Plaintiff is being afforded with the Extended Due Diligence Period under this Agreement for purposes of determining whether the specified characteristics of the Property are consistent with Plaintiff’s intended purpose. Any representations in the PSA as to the zoning and/or approvals for

the Property are deleted and Plaintiff shall rely solely upon its due diligence in determining whether to close.

(Pa37, Settlement Agreement Section 5)(emphasis supplied).

15. Section 2(d) of the Settlement Agreement provides that, “[t]here shall be no extensions of the Extended Due Diligence Period unless agreed to otherwise by the Parties.” (Pa35, Settlement Agreement at Section 2(d)).

16. Section 2(h) of the Settlement Agreement provides that, “Plaintiff shall pay an additional deposit of \$100,000.00 within five (5) days of expiration of the Extended Due Diligence Period to be held in escrow by Defendant’s attorney in an IOLTA trust account.” (Pa36, Settlement Agreement Section 2(h)).

17. Section 2(e) of the Settlement Agreement provides that, “[t]he Closing Date on the Property stated in the PSA shall be amended to occur within thirty (30) days of the conclusion of the Extended Due Diligence Period” (Pa35, Settlement Agreement at Section 2(e)).

18. Pursuant to Section 2(d) of the Settlement Agreement and as confirmed by counsel for Plaintiff, the Extended Due Diligence Period commenced on February 22, 2024 and ran through May 22, 2024. (Pa103-Pa106, February 21-22, 2024 Email Chain; Pa35, Settlement Agreement at Section 2(d)).

19. On May 20, 2024, Plaintiff requested a sixty (60) day extension of the Extended Due Diligence Period. In doing so, Plaintiff explained that additional time

was needed to obtain approvals on the property. (Pa107-Pa111, May 20-24, 2024 Email Chain).

20. Defendant agreed to extend the Extended Due Diligence Period by an additional sixty (60) days as requested by Plaintiff, thereby extending the Extended Due Diligence Period through July 21, 2024 (“the Second Extended Due Diligence Period”). (Pa107-Pa111, May 20-24, 2024 Email Chain).

21. On July 19, 2024, Defendant requested an update on the status of Plaintiff’s due diligence in light of the upcoming expiration of the Second Extended Due Diligence Period. (Pa112-Pa114, July 19-26, 2024 Email Chain).

22. In response, Plaintiff advised that Plaintiff’s effort to confirm approvals was ongoing and that Plaintiff would provide additional information as soon as possible. (Pa112-Pa114, July 19-26, 2024 Email Chain).

23. On July 21, 2024, the Second Extended Due Diligence Period expired. (Pa107-Pa111, May 20-24, 2024 Email Chain).

24. Plaintiff did not terminate the PSA prior to the expiration of the Second Extended Due Diligence Period. (Pa61, Certification of Mark A. Speed, Esq. (“Speed Cert.”) at ¶22).

25. On July 26, 2024, defense counsel emailed Plaintiff’s counsel stating, “[t]he second due diligence extension expired last Sunday, August [sic] 21st and the

second deposit is due within five days thereafter. Please advise as soon as possible.”
(Pa107-Pa111, May 20-24, 2024 Email Chain).

26. On August 1, 2024, after receiving several emails and documents regarding Plaintiff’s due diligence, defense counsel received an email from Plaintiff’s counsel stating:

Hi Mark – can you send me your wire instructions for payment of the deposit.

Also, to update you, we are still waiting for Manville to confirm a date for a meeting with them. The attorney for the board has not responded to our requests yet for final confirmation regarding grandfathering but did say that it is not one person’s decision but rather will require multiple town officials to agree and grandfather it in. We are working on getting a date to meet with all of them still, since they are all part time it’s been difficult as they have not given us a date despite multiple requests.

Is your client open to another short extension of DD, like 45 days, and we will pay the deposit required (\$100k) upon addendum execution plus another \$50k within 30 days of addendum execution?

(Pa133-Pa134, July 29-September 19, 2024 Email Chain).

27. On August 8, 2024, defense counsel emailed Plaintiff’s counsel advising that Defendant was amendable to Plaintiff’s request to further extend due diligence by an additional 45 days subject to certain conditions. (Pa131, July 29-September 19, 2024 Email Chain).

28. Counsel subsequently exchanged multiple drafts of an addendum setting forth the terms of the proposed third due diligence extension, culminating

with the parties' agreement upon a final draft on September 2, 2024 ("the Final Draft"). (Pa122-Pa130, July 29-September 19, 2024 Email Chain).

29. On September 3, 2024, Plaintiff's counsel advised that he would forward the Final Draft for Plaintiff's signature. (Pa122, July 29-September 19, 2024 Email Chain).

30. On September 6, September 11, and September 16, 2024, defense counsel emailed Plaintiff's counsel requesting the status of Plaintiff's signed addendum. (Pa118-Pa122, July 29-September 19, 2024 Email Chain).

31. On September 16, 2024, defense counsel received an email from Plaintiff's counsel stating, "[a]ctively working on it." (Pa117-Pa118, July 29-September 19, 2024 Email Chain).

32. On September 19, 2024, defense counsel again emailed Plaintiff's counsel requesting the status of Plaintiff's signed addendum. Defense counsel therein wrote, "[m]y client has been very patient, but I do not expect that will continue without the deposits and demonstrable progress." (Pa116-Pa117, July 29-September 19, 2024 Email Chain).

33. On September 19, 2024, Plaintiff's counsel responded via email stating, "Mark I just called your office. I am still working on getting the addendum signed. I don't know what the issue is from my client's end." (Pa116, July 29-September 19, 2024 Email Chain).

34. On September 23, 2024, defense counsel spoke with Plaintiff's counsel via telephone. Defense counsel advised Plaintiff's counsel that Plaintiff was in breach of both the Settlement Agreement and PSA, and that Defendant could not wait any longer. In response, Plaintiff's counsel advised that he was unable to reach Plaintiff and that he had no further update. (Pa 63-Pa64, Speed Cert. at ¶36).

35. Defense counsel received no further communications from Plaintiff's counsel following their conversation on September 23, 2024. (Pa64, Speed Cert. at ¶37).

36. On October 25, 2024, defense counsel sent a Notice of Breach ("the Notice") to Plaintiff's counsel via email and UPS Overnight. The Notice detailed the pertinent provisions of the Settlement Agreement and PSA, and Plaintiff's breach thereof. The Notice provided Plaintiff with fourteen (14) days to reinstate the Settlement Agreement and PSA subject to certain enumerated conditions. Lastly, the Notice requested that Plaintiff's counsel advise how Plaintiff intended to proceed and to confirm that Plaintiff authorized Mr. Lehrer to release the Initial Deposit to my firm. (Pa135-Pa139, Notice of Breach with Attachments).

37. Plaintiff's counsel did not respond to the Notice. (Pa64, Speed Cert. at ¶39).

38. On November 8, 2024, defense counsel called Plaintiff's counsel regarding the Notice and Plaintiff's failure to respond to same. There was no answer

and defense counsel left a voicemail requesting that Plaintiff's counsel return the call as soon as possible. (Pa64, Speed Cert. at ¶40).

39. Plaintiff's counsel did not return defense counsel's call or otherwise respond to the voicemail. (Pa65, Speed Cert. at ¶41).

40. On December 4, 2024, after unsuccessfully attempting to salvage the settlement and obtain Plaintiff's cooperation, Defendant filed the subject Motion to Enforce Settlement, Release Deposit, and Discharge Lis Pendens (the "Motion"). (Pa50-Pa139, the Motion with Exhibits and Supporting Papers).

41. As of the filing of the Motion, Defendant's prior counsel continued to hold the initial \$50,000 deposit in his attorney trust account. (Pa100-Pa102, Email with Copy of Check)

42. On December 5, 2024, the trial court issued an eCourts notice advising that the Motion was returnable on December 20, 2024. (Pa156, Trial Court Case Jacket).

43. Pursuant to R. 1:6-3(a), Plaintiff's opposition was required to be filed eight days before the return date, or by Thursday, December 12, 2024.

44. Plaintiff failed to oppose or otherwise respond to the Motion by December 12, 2024. (Pa156, Trial Court Case Jacket).

45. On December 19, 2024 at 12:42 pm, Plaintiff filed an adjournment request. Plaintiff based the adjournment request upon Defendant's admitted

disappearance “[f]or the past couple months” and unexplained reappearance the afternoon before the Motion return date. (Pa10, Plaintiff’s Adjournment Request; Pa156, Trial Court Case Jacket).

46. On December 19, 2024 at 3:05 pm, the trial court denied Plaintiff’s adjournment request. In doing so, the trial court did not grant Plaintiff leave to file untimely opposition. (Pa11, Denial of Adjournment Request).

47. On December 19, 2024 at 4:04 pm, Plaintiff filed untimely opposition to the Motion without leave of the trial court. (Pa12-Pa18, Plaintiff’s Opposition).

48. Plaintiff’s untimely opposition included the certification of Plaintiff’s self-described “authorized representative”, Chandra Mandalapu, who admitted the he “was unresponsive to [his] legal counsel for some time.” Defendants opposition did not provide any explanation for Defendant’s extended disappearance. (Pa12-Pa18, Plaintiff’s Opposition).

49. On December 19, 2024 at 4:33 pm, Defendant objected to Defendant’s untimely opposition filed without leave of the trial court. (Da13, Defendant’s Objection).

50. On December 20, 2024, the trial Court partially granted the Motion, ordering that: (1) Plaintiff be deemed in breach of the Settlement Agreement; (2) Section 2(i) of the Settlement Agreement and the Reimbursement Payment provided for therein are null and void; (3) Plaintiff’s initial deposit of \$50,000 is non-

refundable and forfeited to Defendant; (4) Defendant's prior counsel shall release the \$50,000 deposit to defense counsel within fourteen (14) days; (5) Defendant shall have no further obligations under the Settlement Agreement and PSA and may market and sell the Property to another buyer; and (6) Plaintiff shall discharge the Lis Pendens against the Property within fourteen (14) days. (Pa1-Pa9, December 20, 2024 Order and Statement of Reasons).

51 . On December 24, 2024, Defendant's prior counsel released the \$50,000 deposit to defense counsel. The deposit continues to be held in defense counsel's attorney trust account. (Da21, Check).

52 . On January 10, 2025, Plaintiff discharged the Lis Pendens that remained on the Property. (Da18, Discharge of Lis Pendens).

53 . On January 16, 2025, Plaintiff filed its Notice of Appeal. (Pa173-Pa176, Notice of Appeal).

54 . On January 30, 2025, Defendant sent Plaintiff a Notice of Frivolous Litigation pursuant to R. 1:4-8 detailing that the trial court's order adhered to the terms of the Settlement Agreement, that the Notice of Appeal was frivolous, and demanding that it be withdrawn by Plaintiff within 28 days. (Da22, Frivolous Action Letter).

55 . On January 31, 2025, Defendant sent Plaintiff a supplemental Notice of Frivolous Litigation pursuant to R. 1:4-8 detailing that the Stipulation of Dismissal

expressly provides that all violations of the Settlement Agreement are to be addressed via Motion to Enforce Settlement. (Da28, Supplemental Frivolous Action Letter).

56. As of the filing of Respondent's Brief, Plaintiff has not withdrawn the appeal.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY DENIED PLAINTIFF'S REQUEST FOR AN ADJOURNMENT AND REFUSED TO CONSIDER DEFENDANT'S UNTIMELY OPPOSITION FILED WITHOUT LEAVE OF COURT

The trial court correctly denied Plaintiff's unsupported, last-minute adjournment request and refused to consider Plaintiff's untimely opposition filed without leave of court at 4:04 pm the afternoon before oral argument. It is well-established that the granting or denial of an adjournment request or leave to file untimely opposition is at the discretion of the trial judge. Kosmowski v. Atl. City Med. Ctr., 175 N.J. 568, 575 (2003). "The trial court's decision to grant or deny an adjournment is reviewed under an abuse of discretion standard." State ex. Rel. Com'r of Transp. v. Shalom Money St., LLC, 432 N.J. Super. 1, 7 (App. Div. 2013)(citing State v. D'Orsi, 113 N.J. Super. 527, 532 (App. Div.), certif. denied, 58

N.J. 335 (1971)). “Absent an abuse of discretion, denial of a request for an adjournment does not constitute reversible error.” D’Orsi, 13 N.J. Super. at 532.

“[A]n abuse of discretion will only ‘arise[] when a decision is ‘made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.’” Matter of Fernandez, 468 N.J. Super. 377, 391 (App. Div. 2021)(quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). “Calendars must be controlled by the court, not unilaterally by [counsel], if civil cases are to be processed in an orderly and expeditious manner.” Vargas v. Camilo, 354 N.J. Super. 422, 431(App. Div. 2002). Moreover, where the circumstances indicate that a parties’ failure to timely oppose a motion results from the complaining parties’ misconduct, the Appellate Division should not disturb the trial court’s decision to treat the motion as unopposed. Alevras v. Cavanagh, 2016 N.J. Super. Unpub. LEXIS 1819, *5-6 (App. Div. Aug. 2 2016).

However, where, as here, an issue is not properly raised before the trial court, the Appellate Division reviews under the plain error standard. State v. Tierney, 356 N.J. Super. 468, 477 (App. Div. 2003). Under the plain error standard, the Appellate Division “will disregard the alleged error unless it is ‘clearly capable of producing an unjust result.’” See id. (quoting R. 2:10-2)). Stated otherwise, “[u]nder that standard, defendant has the burden of proving that the error was clear and obvious and that it affected his substantial rights.” State v. Morton, 155 N.J. 383, 421 (1998).

Here, Plaintiff submitted its adjournment request the afternoon before the Motion return date which had been noticed fourteen (14) days prior. (Pa10, Adjournment Request; Pa156, Trial Court Case Jacket). Plaintiff's sole justification for requesting an adjournment at the proverbial eleventh hours was that:

For the past couple months, even prior to the filing of Defendant's motion, I [Plaintiff's counsel] have been attempting to contact my client regarding this matter. I have been unable to get in touch with my client and discuss the issues that exist in this transaction until this afternoon.

(Pa10, Adjournment Request).

Plaintiff provided no explanation for its months' long disappearance and failure to not only respond to Defendant's repeated inquiries, but timely oppose Defendant's duly noticed Motion or request an adjournment with reasonable notice. (Pa10, Adjournment Request). Rather, Plaintiff unapologetically reappeared at the last minute and demanded that the trial court disrupt long-scheduled proceedings because Plaintiff suddenly regained interest in the matter. (Pa10, Adjournment Request).

While Plaintiff asserts that the trial court's denial of its adjournment request was plain error, or alternately had "no rational basis" and "departed from established policies" because this was Plaintiff's first adjournment request, Plaintiff provides no legal support for this argument. Plaintiff's argument ignores that the very Motion Plaintiff sought to adjourn was necessitated by Plaintiff's complete disregard of mutually agreed upon deadlines and four-month disappearance during which

Plaintiff maintained the Lis Pendens on the Property. (Da18, Discharge of Lis Pendens). Defendant gave Plaintiff every opportunity to cure the breach and amicably resolve the situation but was met with silence. The trial court clearly did not commit plain error in denying Plaintiff's adjournment request and refusing to consider Plaintiff's untimely opposition filed without leave of court. In the alternative, the trial court, at the very least, had a rational basis for doing so and did not depart from established policies in refusing to reward Plaintiff's dilatory tactics.

Likewise, Plaintiff's argument that the trial court somehow erred because the matter was not being "actively litigated" is both without legal support and irrelevant. The Parties executed a Settlement Agreement after 17 months of litigation. (Pa34-Pa4, Settlement Agreement; Pa43-Pa49, Plaintiff's Complaint). The Settlement Agreement required Plaintiff to complete its due diligence and terminate the PSA within the Extended Due Diligence Period if Plaintiff, in its sole discretion, chose to do so. (Pa35-Pa36, Settlement Agreement at Section 2(f)). Plaintiff ignored multiple deadlines, strung Defendant along with promises of a signed addendum and additional deposits, maintained the Lis Pendens on the Property, and disappeared for four months. (Pa115-Pa134, July 29-September 19, 2024 Email Chain; Da18, Discharge of Lis Pendens). Plaintiff's disappearance and misconduct clouded title, prevented Defendant from moving forward with other buyers, forced Defendant to indefinitely incur the carrying costs of the Property, and left Defendant with no

choice but to seek relief from the trial court. As such, the record demonstrates that rather than the opportunistic attempt to obtain an undeserved windfall that Plaintiff portrays, Defendant's Motion was a measure of last resort after Defendant's extended efforts to obtain Plaintiff's cooperation had failed.

Plaintiff asserts that the trial court's denial of the requested adjournment and leave to file untimely opposition constitutes plain error or, in the alternative, an abuse of discretion, because "the relief sought by Defendant in its motion was extremely prejudicial to Plaintiff[.]" (Pb13). In doing so, Plaintiff quotes the Appellate Division in Salazar v. MKGC Design as stating:

the Court Rules "shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." R. 1:1-2(a). For that reason, "[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice."

458 N.J. Super. 551, 558 (App. Div. 2019)(quoting R. 1:1-2(a)).

Plaintiff further quotes Salazar as stating that "[i]n our judicial system, 'justice is the polestar and our procedures must ever be moulded [sic] and applied with that in mind.'" See id. (quoting New Jersey Highway Auth. v. Renner, 18 N.J. 485, 495 (1955)). Plaintiff's reliance on such lofty ideals is misplaced.

It is Plaintiff who unilaterally forced Defendant into an unsustainable position by breaching the Settlement Agreement and disappearing for four months while the Property remained subject to the Lis Pendens. Defendant nonetheless provided

Plaintiff with multiple opportunities to cure the breach over a period of months. Plaintiff either ignored each request or led Defendant on with promises of a signed addendum and additional deposits. Plaintiff did so only to disappear without explanation. Thus, while Defendant agrees that the Court Rules “shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay,” it is respectfully submitted that to allow Plaintiff to abdicate its responsibilities under the Settlement Agreement for four months, ignore multiple correspondence and the Notice of Breach, fail to timely respond to the Motion, and then reappear without explanation the afternoon before the return date, obtain an adjournment, or file untimely opposition would defeat the very goals that the Appellate Division extolled in Salazar.

Moreover, Plaintiff suffered absolutely no prejudice by the trial court’s refusal to adjourn the Motion and consider Plaintiff’s untimely opposition submitted without leave of court. Plaintiff is a sophisticated real estate developer who entered into the Settlement Agreement with the assistance of counsel. The Settlement Agreement expressly removes all representations regarding the Property’s approvals and suitability for development from the PSA and requires that Plaintiff, in its sole discretion, complete due diligence and determine whether to close upon the sale within the Extended Due Diligence Period. (Pa35-Pa37, Settlement Agreement at Section 2(d), 2(f), 2(i), 2(j) and 5). That Plaintiff failed to terminate the PSA as

provided for in the Settlement Agreement and became nonresponsive such that Defendant was contractually entitled to the relief granted by the trial court does not constitute prejudice or a draconian result. Rather, the trial court's order represents nothing more than the required outcome mutually agreed to under the Settlement Agreement and PSA.

Lastly, even if the trial court erred in denying the requested adjournment and refusing to consider Plaintiff's untimely opposition, which it did not, same constitutes harmless error as it "is [not] capable of producing an unjust result." Boland v. Dolan, 140 N.J. 174, 189 (1995). As detailed in Point II, *infra*, even when Plaintiff's untimely opposition is considered, the trial court properly granted Defendant's Motion to Enforce Settlement pursuant to New Jersey law, the Settlement Agreement, and the undisputed facts of the matter.

Accordingly, the trial court did not commit plain error or, in the alternative, abuse its discretion in denying Plaintiff's adjournment request and refusing to consider Plaintiff's untimely opposition.

POINT II

THE TRIAL COURT CORRECTLY GRANTED DEFENDANT'S MOTION TO ENFORCE SETTLEMENT

Plaintiff asserts that the trial court committed reversible error in granting Defendant's request for relief upon a Motion to Enforce Settlement. In doing so,

Plaintiff asserts that: (1) Defendant was required to file a new lawsuit or move for summary judgment to enforce the terms of the Settlement Agreement; and (2) Defendant was the party in breach and therefore could not move to enforce the Settlement Agreement. Both arguments are without merit.

First, our Supreme Court has extolled that the “settlement of litigation ranks high in our public policy.” Nolan v. Lee Ho, 120 N.J. 465, 472 (1992). To that end, it is well established that “[a]n agreement to settle a lawsuit is a contract, which like all contracts, may be freely entered into and which a court, absent a demonstration of ‘fraud or other compelling circumstances,’ should honor and enforce as it does other contracts.” Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008)(quoting Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div.), certif. denied, 137 N.J. 165 (1994)). Where the terms and conditions of a settlement agreement are clear and unambiguous, the non-breaching party is entitled to enforcement. Schor v. FMS Financial Corp., 357 N.J. Super. 185, 191-92 (App. Div. 2002).

To that end, the trial court is empowered to enforce a settlement agreement when “the available competent evidence, considered in the light most favorable to the non-moving party, is insufficient to permit the judge as a rational fact finder, to resolve the disputed factual issues in favor of the non-moving party.” Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997). The Appellate Division’s review of a trial court order enforcing settlement is subject to *de novo* review. Gold

Tree Spa, Inc. v. PD Nail Corp., 475 N.J. Super. 240, 245 (App. Div. 2023). However, where, as here, an issue is not properly raised before the trial court, the Appellate Division reviews under the plain error standard. See Tierney, supra, 356 N.J. Super. at 477.

Moreover, “[t]he entire controversy doctrine has been a cornerstone of New Jersey’s jurisprudence for many years.” Hobart Bros. Co. v. National Union Fire Ins. Co., 354 N.J. Super. 229, 240 (App. Div. 2002). “The doctrine requires a litigant to present ‘all aspects of a controversy in one legal proceeding.’” See id. (quoting The Malaker Corp. Stockholders Prot. Comm. v. First Jersey Nat’l Bank, 163 N.J. Super. 463, 496 (App. Div. 1978)). The doctrine is “intended to be applied to prevent a party from voluntarily electing to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding thereafter.” Oltremare v. ESR Custom Rugs, Inc., 330 N.J. Super. 310, 315 (App. Div. 2000).

Here, the Parties do not dispute that they entered into the binding and enforceable Settlement Agreement on or about February 15, 2024. (Db5). Plaintiff does not assert that the Settlement Agreement resulted from “fraud or other compelling circumstances.” See Brundage, 195 N.J. at 601. It therefore cannot be disputed that the trial court had the authority to enforce the Settlement Agreement via the Motion. See Brundage, 195 N.J. at 601.

It likewise cannot be disputed that Plaintiff's breach of the Settlement Agreement constitutes "a related component of the controversy" and Defendant was required to seek enforcement of the Settlement Agreement within the underlying action. See Hobart, 354 N.J. Super. at 240; see also Oltremare, 330 N.J. Super. at 315. Moreover, the Stipulation of Settlement jointly signed and filed by the Parties on February 20, 2024 specifically provides that:

In the event of a breach of the Settlement Agreement and Mutual Release, the nonbreaching party may move before this court for an order enforcing the terms of the settlement agreement.

(Da16 Stipulation of Settlement).

Not only was the trial court empowered to enforce the Settlement Agreement and Defendant required to seek enforcement within the underlying litigation pursuant to the Entire Controversy Doctrine, the Parties expressly agreed that in the event of a breach of the Settlement Agreement, the nonbreaching party could seek to enforce the Settlement Agreement via motion to enforce.

As Plaintiff's untimely opposition was not properly before the Court, Plaintiff's argument that the trial court erred in granting Defendant the requested relief is subject to the plain error standard. Clearly, the trial court did not commit plain error by enforcing the Settlement Agreement via Defendant's Motion to Enforce Settlement where Defendant's breach is a "related component of the controversy" and the Parties specifically agreed that in the event of a breach, the

nonbreaching party “may move before this court for an order enforcing the terms of the settlement agreement.” See Oltremare, 330 N.J. Super. at 315; see also Da16, Stipulation of Settlement. Moreover, even if Plaintiff’s opposition was properly before the trial court, the trial court did not commit reversible error because the entire controversy doctrine required Defendant to seek the requested relief in the same action and the Parties agreed that such relief would be sought by way of Motion to Enforce Settlement. See Oltremare, 330 N.J. Super. at 315; see also Da16, Stipulation of Settlement.

Second, the trial court did not commit plain error when enforcing the clear and unambiguous terms of the Settlement Agreement. See Tierney, 356 N.J. Super. at 477. Moreover, even to the extent that the arguments contained in Plaintiff’s untimely opposition are deemed to have been properly raised below, “the available competent evidence, considered in the light most favorable to the non-moving party, is insufficient to permit the judge as a rational fact finder, to resolve the disputed factual issues in favor of the non-moving party.” Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997).

The Settlement Agreement, mutually signed and acknowledged by the Parties, waives the Parties’ claims against one-another, “from the beginning of time through the execution of [the Settlement Agreement],” and reinstates the PSA as “amended to be in accordance with the terms [of the Settlement Agreement].” (Pa34,

Settlement Agreement). The Settlement Agreement provides Plaintiff with an addition 90 days of due diligence where Plaintiff could “conduct an investigation of the Property” and “at its sole discretion, [] terminate the PSA during the Extended Due Diligence Period” if, among other things, “Plaintiff fails to obtain any approval from any municipality, governmental entity, or regulatory body that Plaintiff deems to be necessary in order to develop the Property in accordance with Plaintiff’s desires.” (Pa35-Pa36, Settlement Agreement at Section 2(f)). To that end, the Settlement Agreement expressly provides:

Representations: Defendant’s representations are made to the best of Defendant’s knowledge and do not survive closing. The parties expressly recognize and agree that Plaintiff is being afforded with the Extended Due Diligence Period under this Agreement for purposes of determining whether the specified characteristics of the Property are consistent with Plaintiff’s intended purpose. Any representations in the PSA as to the zoning and/or approvals for the Property are deleted and Plaintiff shall rely solely upon its due diligence in determining whether to close.

(Pa37, Settlement Agreement Section 5)(emphasis supplied).

Accordingly, the Settlement Agreement removes any obligation under the PSA that Defendant convey the Property with approvals for ten three-bedroom townhouses in exchange for providing Plaintiff with the 90-day Extended Due Diligence Period, during which Plaintiff was required to determine if it could obtain the requisite approvals, and the ability to terminate the PSA at its sole discretion. (Pa35-Pa36, Settlement Agreement at Section 2(f)).

To that end, the PSA, as modified and incorporated into the Settlement Agreement, provides that Plaintiff's initial \$50,000 deposit becomes nonrefundable if Plaintiff fails to terminate the PSA prior to expiration of the due diligence period. (Pa22, PSA at Section 4.1). The Settlement Agreement likewise provides that "Plaintiff shall pay an additional deposit of \$100,000 within five (5) days of the expiration of the Extended Due Diligence Period" and that closing upon the Property shall occur within thirty (30) days thereof." (Pa35-Pa36, Sections 2(e) and 2(h)). The Settlement Agreement further provides that if Plaintiff terminates the PSA pursuant to any right under the PSA or Settlement Agreement, that Defendant will reimburse Plaintiff for site work totaling \$33,533.20 (the "Reimbursement Payment"). (Pa36, Settlement Agreement at Section 2(i)).

It is undisputed, and the record clearly establishes, that Plaintiff failed to terminate the Settlement Agreement and PSA or otherwise request an additional extension of due diligence prior to the expiration of the Second Extended Due Diligence Period on July 21, 2024. (Pa113-Pa114, July 16-26, 2024 Emails; Pa115-Pa134, July 29-September 19, 2024 Emails; Pa136-Pa139, Notice of Breach). It is undisputed that Plaintiff failed to terminate the Settlement Agreement and PSA, much less pursuant to any term or right under the Settlement Agreement or PSA.

It is undisputed and established by the record that the Plaintiff first requested a Third Extended Due Diligence Period after the expiration of the Second Extended

Due Diligence Period, that Plaintiff failed to execute the agreed upon addendum, that Plaintiff failed to pay any additional deposits, that Plaintiff inexplicably disappeared and became non-responsive to its attorney from September through December 19, 2024, that Plaintiff failed to respond to Defendant's Notice of Breach which provided Plaintiff a final opportunity to cure pursuant to certain conditions, that Plaintiff ignored Defendant's Motion to Enforce Settlement for fifteen (15) days, and that Plaintiff abruptly reappeared without explanation on the eve of the December 20, 2024 return date. (Pa115-Pa134, July 29-September 19, 2024 Emails; Pa136-Pa139, Notice of Breach; Pa154-Pa156, Trial Court Case Docket). It is further undisputed that during Plaintiff's absence, the Property remained subject to the Lis Pendens, that Defendant was prevented from selling the Property to other buyers, and that Defendant was forced to indefinitely absorb the carrying costs for the Property while Plaintiff actively ignored Defendant's good faith overtures. (Da18, Discharge of Lis Pendens).

Additionally, the trial court did not err in ordering that the initial \$50,000 deposit be released to defense counsel's trust account within 14 days of the Order. The Settlement Agreement specifically authorized the transfer of the initial deposit from prior defense counsel to current defense counsel's trust account upon execution of the Settlement Agreement in February, 2024. (Pa37, Settlement Agreement at Section 4). In ordering the release, the trial court simply effectuated the transfer that

should have taken place almost a year prior. Moreover, even to the extent that the ordered release of the initial deposit within 14 days was premature, which it was not, same constitutes harmless error as it “is [not] capable of producing an unjust result.” Boland, *supra*, 140 N.J. at 189. The initial deposit remains in defense counsel’s attorney trust account pending this appeal.

Lastly, Plaintiff’s argument that the trial court granted relief outside the scope of a Motion to Enforce Litigant’s Rights is misplaced. Defendant did not file a Motion to Enforce Litigant’s Rights arising out of a prior order. Rather, Defendant filed a Motion to Enforce Settlement pursuant to the Settlement Agreement and mutually executed Stipulation of Settlement. As set forth, *supra*, the trial court properly enforced the Settlement Agreement pursuant to the terms thereof. Amatuzzo, 305 N.J. Super. at 474-75.

Accordingly, the trial court did not commit plain error as Plaintiff has failed to prove that the court committed any error, much less by clear and convincing evidence, or that Plaintiff has suffered an unjust result. Moreover, even to the extent that Plaintiff’s opposition is deemed properly raised below, the available competent evidence, considered in the light most favorable to Plaintiff as the nonmoving party was and remains insufficient for the trial court to resolve the question of Plaintiff’s breach in Plaintiff’s favor. Contrary to Plaintiff’s assertions, the trial court properly granted Defendant’s Motion to Enforce Settlement in accordance with New Jersey

law, the agreed upon terms of the Settlement Agreement, and the well-documented facts of the matter.

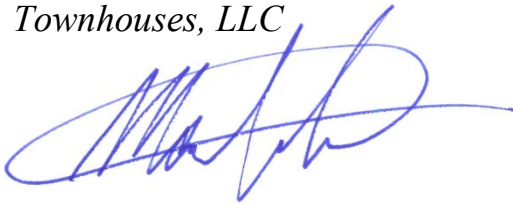
CONCLUSION

Based on each of the forgoing reasons, Defendant respectfully submits that this Court affirm the trial court's order enforcing the Settlement Agreement and dismiss the instant appeal.

Respectfully submitted,

LAMBARIELLO, SMITH & SPEED, LLC
*Attorneys for Defendant-Respondent Brooks
Townhouses, LLC*

By:



Mark A. Speed, Esq.

Date: June 11, 2025



New Jersey Superior Court
Appellate Division
P.O. Box 006
Trenton, NJ 08625

July 15, 2025

**Re: Plaintiff-Appellant’s Reply Letter Brief: Villas at Manville LLC v.
Brooks Townhouses LLC, Docket No. A-001414-24**

Dear Judges,

Please accept this letter brief in lieu of a more formal brief submitted in
reply to Defendant’s opposition brief.

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PROCEDURAL HISTORY

On September 12, 2022, Plaintiff-Appellant brought suit against the Defendant asserting claims for 1) breach of contract; 2) breach of the implied covenant of good faith and fair dealing; and 3) common law fraud all arising out of a purchase and sale agreement entered into by the Parties whereby Plaintiff-Appellant would purchase from Defendant real property identified as Lot 1.03, Block 42.01 on the Tax Map of the Borough of Manville, Somerset County, New Jersey (the “Property”). (Pa43, Plaintiff’s Complaint). On November 14, 2022, Defendant filed its Answer to Plaintiff’s Complaint. (Pa166, Defendant’s Answer to Complaint). After approximately one and a half years of litigation, the Parties entered into the Settlement Agreement and a stipulation of settlement was filed with the trial court on February 20, 2024. (Pa34, Settlement Agreement; Pa154, Trial Court Case Jacket).

On December 4, 2024, Defendant filed a motion to enforce settlement containing Exhibits A – I, which was made returnable December 20, 2024. (Pa50, Defendant’s Motion to Enforce Settlement). On December 19, 2024, Plaintiff-Appellant filed an adjournment request with the trial court requesting a one-cycle adjournment and informing the trial court that the undersigned counsel had been attempting to contact Plaintiff-Appellant for weeks, even prior to the filing of Defendant’s motion, and had not been able to successfully

communicate with Plaintiff-Appellant until that same afternoon on December 19, and explaining why Defendant was not entitled to the relief sought. (Pa10, Plaintiff Adjournment Request). At approximately 3:05 P.M. on December 19, 2024, the trial court denied Plaintiff's adjournment request by way of email. (Pa11, Adjournment Denial).

On December 19, 2024, after receiving the trial court's email denying Plaintiff's adjournment request, Plaintiff filed untimely opposition to Defendant's motion to enforce settlement, containing two certifications and three exhibits. (Pa12 – Pa33). On December 20, 2024, the trial court issued the December Order which granted Defendant's motion to enforce settlement as "unopposed" and contained a written statement of reasons. (Pa1 – Pa9, December Order). On January 16, 2025, Plaintiff-Appellant filed its notice of appeal, appealing the December Order. (Pa173, Notice of Appeal). On April 28, 2025, Plaintiff-Appellant filed its brief and appendix in this matter. On June 11, 2025, Defendant-Respondent filed its opposition brief and appendix in this matter. Plaintiff-Appellant now submits this letter brief in reply to Defendant's opposition brief.

STATEMENT OF FACTS

1. On or around September 28, 2021, Plaintiff-Appellant and Defendant-Appellee entered and executed an agreement (the “PSA”) for the sale and purchase of real property identified as Block 42.01, Lot 1.03 on the tax map of the Borough of Manville, Somerset County, New Jersey (the “Property”). (Pa19, Purchase and Sale Agreement).

2. After executing the PSA, Plaintiff-Appellant paid over to Defendant’s legal counsel the sum of \$50,000.00 to be held in escrow and applied to the purchase price at closing (the “Deposit”). (Pa19).

3. On September 12, 2022, Plaintiff-Appellant brought suit against Defendant-Appellee asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and common law fraud. (Pa43, Plaintiff’s Complaint).

4. On November 14, 2022, Defendant filed its Answer to Plaintiff’s Complaint. (Pa166, Defendant’s Answer to Complaint).

5. The events that gave rise to Plaintiff’s suit was the fact that Defendant refused to deliver marketable title to the Property in accordance with the PSA, specifically by refusing to fulfill the terms of a 2004 settlement agreement and Order of the Superior Court of New Jersey (affirmed by the Appellate Division in Docket No. A-3381-05) that required Defendant to pay the sum of

\$62,500.00 (the “Manville Judgment”) to the Borough of Manville and/or the State of New Jersey. (Pa43, Plaintiff’s Complaint; Pa140, Manville Judgment).

6. Notwithstanding the terms of the Manville Judgment, Defendant breached the Manville Judgment by refusing to make the required payments to the Borough of Manville, and instead brought suit against the Borough of Manville in 2021 under Docket No. SOM-L-1219-21 to seek to have the Manville Judgment nullified. Shortly after bring this suit, the Parties entered into a stipulation of dismissal whereby Defendant’s complaint was dismissed with prejudice due to its entirely frivolous nature. (Pa148, Stipulation of Dismissal).

7. It is against this backdrop that Plaintiff-Appellant’s suit was brought against Defendant for Defendant’s continued refusal to fulfill its obligations under the Manville Judgment which the PSA required to be fulfilled. (Pa43, Plaintiff’s Complaint).

8. On February 15, 2024, after Defendant forced Plaintiff-Appellant to go through almost two years of litigation, the Parties entered into a settlement agreement (the “Settlement Agreement”) which provided, *inter alia*, reinstatement of the PSA, an extension of the due diligence period, and a requirement that Defendant pay to the New Jersey Council On Affordable

Housing the entirety of the Manville Judgment prior to or on the closing date for the Property. (Pa34, Settlement Agreement).

9. Notably, Section 5.3 of the PSA established as a contingency to Plaintiff's requirement to close on the Property that on the closing date, the Property be "properly zoned to allow for the construction of 10 (ten) three-bedroom townhouses (including affordable units) as set forth in the Resolution adopted by the Planning Board on April 6, 2010" (the "Approval"). (Pa23, Purchase and Sale Agreement).

10. After executing the Settlement Agreement, Plaintiff-Appellant's employees and land use attorney began contacting Borough of Manville officials to determine whether the Approval that Defendant had received for development of ten three-bedroom townhouses was still valid and in effect. (Pa16 – Pa18; Pa32 – Pa33).

11. Borough of Manville officials were delayed in responding to Plaintiff-Appellant's employees and land use attorney as most of the Borough's officials are temporary employees and volunteers, including members of the Planning Board, the Planning Board's attorney, and the Borough's counsel. (Pa16 – Pa18; Pa32 – Pa33).

12. Between June and September 2024, Plaintiff-Appellant's land use attorney and employees had several communications with Borough officials,

the Borough's attorney, and Borough's Planning Board attorney. The Borough initially communicated that the Approval may still be valid and could be grandfathered into new regulations that affected the Property. (Pa16 – Pa18; Pa32 – Pa33; Pa149).

13. During the due diligence period, Defendant-Appellee's counsel was informed of the fact that Plaintiff-Appellant was coordinating with the Borough of Manville to determine whether the Approval was still valid and was informed of the possibility that the approval was no longer valid and would not be grandfathered into the new regulations affecting the Property. The Parties were therefore negotiating an extension of the due diligence period during this time as Plaintiff-Appellant was still interested in the Property if the Approval was still valid. (Pa149 – Pa152, Approval Emails).

14. At the end of September 2024, counsel for Plaintiff-Appellant and counsel for Defendant-Appellee were negotiating an extension of the due diligence period via emails. Beginning at this time, counsel for Plaintiff-Appellant lost contact with Plaintiff-Appellant's authorized representative, Chandra Mandalapu and informed Defendant's counsel that he was not receiving responses from Plaintiff-Appellant. (Pa153, September 19 Email).

15. On October 25, 2024, Defendant-Appellee sent a notice to Plaintiff-Appellant's counsel claiming that Plaintiff-Appellant was in breach of

the PSA because 1)Plaintiff-Appellant was required to close within thirty days of the expiration of the extended due diligence period and 2) because Plaintiff-Appellant had failed to pay an additional deposit of \$100,000.00. (Pa135 – Pa138, Exhibit I of Defendant’s Motion).

16. On December 4, 2024, Defendant-Appellee filed its motion to enforce settlement seeking an order from the trial court for turnover and forfeiture of Plaintiff-Appellant’s \$50,000.00 deposit paid pursuant to the PSA, seeking nullification of Section 2(i) of the Settlement Agreement, and a discharge of the *lis pendens*, filed against the Property. (Pa50).

17. Plaintiff-Appellant’s counsel was not able to get in touch with Plaintiff-Appellant until December 19, 2024, when Plaintiff-Appellant confirmed with its legal counsel that the Borough was taking the formal position that the existing Approval was no longer valid under new stormwater requirements and that the Approval would not be grandfathered into the old regulations that applied to the Property because not enough work had been performed on the Property in order to be grandfathered in. As a result, Defendant could not convey title to the Property in accordance with Section 5.3 of the PSA. (Pa10 – Pa15; Pa16 – Pa18).

18. On December 19, 2024, after speaking with Plaintiff-Appellant’s representative Chandra Mandalapu, Plaintiff-Appellant’s counsel immediately

filed an adjournment request with the trial court requesting a one-cycle adjournment of Defendant's motion to enforce settlement and explaining to the trial court that Plaintiff-Appellant counsel had lost touch with Plaintiff-Appellant for several months and that Defendant-Appellee was not entitled to the relief sought as it was in breach of the PSA. (Pa10).

19. On December 19, 2024, the trial court denied Plaintiff-Appellant's adjournment request via email. (Pa11).

20. On December 19, 2024, Plaintiff-Appellant filed an untimely objection to Defendant's motion to enforce settlement arguing that 1) Plaintiff-Appellant had not breached the Settlement Agreement or the PSA; 2) Defendant-Appellee was in fact in breach of Section 5.3 of the PSA as it could not perform its obligation to deliver title to the Property with the Approval; 3) that the Settlement Agreement does not provide for an award of liquidated damages or forfeit of Plaintiff-Appellant's Deposit in the event of a breach; 4) Plaintiff-Appellant did not pay the second \$100,000.00 deposit due under the Settlement Agreement (the "Second Deposit") because Defendant-Appellee could no longer perform its contractual obligations, specifically delivering title to the Property with the Approval, and therefore Plaintiff-Appellant had a right to withhold further performance of its contractual obligations; 5) Defendant-Appellee was in breach of its contractual obligations and therefore was not

entitled to any relief on equitable grounds; 6) Defendant-Appellee's request for relief was not authorized by the Settlement Agreement and could not be granted by way of motion to enforce settlement/litigant's rights, but rather is required to file separate suit alleging breach of the PSA; and 7) the Court should have granted Plaintiff-Appellant's request for an adjournment as applicable Court Rules and precedent required court deadlines to yield to fundamental fairness and that a trial court was required to engage in rule relaxation when necessary in order to secure a just determination. (Pa12 – Pa18).

21. At 10:22 A.M. on December 20, 2024, the Court issued the December Order granting Defendant's motion to enforce settlement. (Pa157, December Order Email).

22. Plaintiff's appeal followed. (Pa173, Notice of Appeal).

LEGAL ARGUMENT

POINT I

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY DENYING PLAINTIFF'S REQUEST FOR AN ADJOURNMENT OF DEFENDANT'S MOTION AND NOT CONSIDERING PLAINTIFF'S OPPOSITION

(Raised Below: Pa12 – Pa18)

Defendant-Respondent argues that “the trial court corrected denied plaintiff’s adjournment request” and correctly “refused to consider defendant’s untimely opposition” because the trial court’s decisions did not amount to an abuse of discretion and/or did not constitute plain error. (Def.’s Br. 19). In support of its argument that the trial court’s decision did not amount to an abuse of discretion, Defendant states “an abuse of discretion will only arise when a decision is made without a rational explanation” and “where the circumstances indicate that a parties’ failure to timely oppose a motion results from the complaining parties’ misconduct, the Appellate Division should not disturb the trial court’s decision to treat the motion as unopposed.” (Def.’s Br. 19) (citing Alevras v. Cavanagh, 2016 N.J. Super. Unpub. LEXIS 1819, *5-6 (App. Div. Aug. 2, 2016)). First, as Plaintiff-Appellant explained in its initial brief, the trial court did not have any rationale explanation for denying Plaintiff a one-time adjournment of the pending motion or allowing Plaintiff

leave to file untimely opposition. The trial court denied Plaintiff's requests merely because it had already prepared a written decision disposing of Defendant's motion. That is not a rationale explanation for denying Plaintiff relief under the circumstances that were presented to the trial court, specifically that *Defendant was in breach of the Settlement Agreement* and Plaintiff's counsel had lost contact with the Plaintiff for some time after the litigation had reached a point of finality.

Second, Plaintiff's failure to timely oppose Defendant's motion was not as a result of any misconduct by Plaintiff and therefore the trial court's decision cannot be upheld under the Alevras decision cited by the Defendant. The breakdown of communication between attorney and client after a litigation has reached a point of finality is not "misconduct." Furthermore, as soon as Plaintiff's counsel was able to get in touch with Plaintiff, Plaintiff's counsel immediately filed with the trial court a request for an adjournment of Defendant's motion, explaining the circumstances, specifically the breakdown in communication and the fact that Defendant was in breach of the Settlement Agreement and was taking the opportunity to file their motion during a period where it knew that Plaintiff's counsel had lost contact with Plaintiff.

Lastly, the trial court's decision cannot be upheld even under the plain error standard argued by Defendant. Defendant argues that under the plain

error standard, “the Appellate Division will disregard the alleged error unless it is clearly capable of producing an unjust result.” (Def.’s Br. 19) (quoting State v. Tierney, 356 N.J. Super. 468, 477 (App. Div. 2003); R. 2:10-2). There is no greater injustice in a civil proceeding than an award of monetary damages to a party that is not entitled to such. Given the great injustice that would occur to the Plaintiff in the event that the relief sought by Defendant was granted, the trial court should have given Plaintiff the opportunity to file opposition and the trial court should have disposed of Defendant’s motion on the merits.

Notably, *nowhere in Defendant’s opposition brief does Defendant argue that it is not in breach of the Settlement Agreement*, i.e., that the Defendant can deliver title to the Property with the Approval as required under the Purchase and Sale Agreement. Defendant argues, however, that the award of \$50,000.00 to Defendant while it is in clear and indisputable breach of the Purchase and Sale Agreement is not a windfall, but rather “a measure of last resort after Defendant’s extended efforts to obtain Plaintiff’s cooperation had failed.” (Def.’s Br. 22). Defendant’s words are utterly meaningless and pretextual. Defendant did not have *any right* to seek the relief it sought from the trial court under the facts and circumstances of this case – Plaintiff was not in breach of any of its contractual obligations given the fact that Defendant *could not deliver title to the Property anymore*. The fact that Defendant could no longer deliver title with

the Approval means that Plaintiff no longer had a duty to perform under the Purchase and Sale Agreement, i.e., pay additional deposits or close on the Property. The argument that Defendant is actually submitting to this Court is a party that is in breach of a binding contract should have the ability to apply for substantial monetary relief that it is absolutely not entitled to if the breaching party doesn't timely receive responses to its communications. That isn't a right that the Defendant has, either at law or pursuant to any agreement between Plaintiff and Defendant. For the foregoing reasons, Plaintiff-Appellant respectfully requests that the Court vacate the December Order in its entirety and remand for further proceedings.

POINT II

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY DISPOSING OF THE PARTIES' BREACH OF CONTRACT CLAIMS BY WAY OF A MOTION TO ENFORCE SETTLEMENT AND PROVIDING THE RELIEF SOUGHT BY DEFENDANT ON A MOTION TO ENFORCE SETTLEMENT

(Raised Below: Pa12 – Pa18)

Defendant argues that the trial court did not err when it granted Defendant's motion to enforce settlement, arguing that the "Settlement Agreement removes any obligation under the PSA that Defendant convey the Property with approvals for ten-bedroom townhouses in exchange for

providing Plaintiff with the 90-day Extended Due Diligence Period.” (Def.’s Br. 29). Defendant’s argument is absolutely without merit. Section 5 of the Settlement Agreement under the heading “Representations” states, inter alia, “Any *representations* in the PSA as to the zoning and/or approvals for the Property are deleted and Plaintiff shall rely solely upon its due diligence in determining whether to close.” (Pa35-Pa36, Settlement Agreement at Section 5). The Approval, however, is not a representation made under the PSA. Rather, it is *a condition precedent to closing*. Article V of the PSA states

Conditions Precedent. Buyer’s obligation to close is subject to satisfaction, as of the Closing Date, of each of the conditions described below In the event the conditions below have not been satisfied to Buyer’s satisfaction, the Buyer shall have the right to terminate this Agreement by notifying Seller in writing. In such event, the Escrow Agent shall return the Deposit to Buyer subject to the parameters set forth in Article II Zoning. As of the Closing Date, the Property shall be properly zoned to allow for the construction of 10 (ten) three-bedroom townhouses as set forth in the Resolution adopted by the Planning Board on April 6, 2010”

(Pa19, Article V, 5.3 of PSA) (emphasis added).

The above terms were not “representations” made under the PSA – they are conditions that must be fulfilled by Defendant and in existence with respect to the Property before Plaintiff has an obligation to close on the Property. The plain language of Article V, 5.3 states that the provision is not a representation

being made by the Seller. Furthermore, Article V, 5.3 is separate from Article V, 5.1 which states “Correctness of Representations and Warranties. The representations of Seller shall be true on and as of the Closing Date.” If the requirement under Article V, 5.3 was merely a representation, it would not have been a separate and distinct provision from Article V, 5.1. Moreover, had Article V, 5.3 been merely a representation, it would have been included in Article X of the PSA which were Seller’s representations to Buyer. Instead, the terms of Article V, 5.3 were provided as a separate provision and condition to Closing that must be fulfilled regardless of any representations being made by the Defendant under the PSA. Article V, 5.3 is the heart of the entire agreement between Plaintiff and Defendant and the sole consideration for the purchase price. Without the Approval, Defendant has nothing but empty land that is not worth a fraction of the purchase price under the PSA.

Defendant then argues that it is undisputed that “Plaintiff failed to terminate the Settlement Agreement and PSA or otherwise request an additional extension of due diligence” (Def.’s Br. 30). Defendant’s argument is misplaced – Plaintiff was under *no obligation* to terminate the PSA or Settlement Agreement within a specific period of time. As previously cited, Article V of the PSA states, “Buyer’s obligation to close is subject to satisfaction, as of the Closing Date, of each of the conditions described below .

. . In the event the conditions below have not been satisfied to Buyer's satisfaction, the Buyer shall have the right to terminate this Agreement by notifying Seller in writing. In such event, the Escrow Agent shall return the Deposit to Buyer subject to the parameters set forth in Article II. (Pa19, Article V PSA). Article V clearly states that Plaintiff has no obligation to close if any of the conditions described in Article V are not met as of the Closing Date. Second, Article V does not set forth a specific period during which Plaintiff must provide notice of termination. Therefore, if Plaintiff has no obligation to close on the Property, no obligation to terminate the PSA within a specific period of time, and no obligation to pay additional deposits once it has confirmed that Defendant cannot perform its contractual obligation of delivering the Property with the Approval, then Defendant cannot seek relief against the Plaintiff for not closing on the Property, paying any additional deposits, or terminating the PSA, as Plaintiff had no contractual duty to do so.

Defendant's conduct throughout this transaction becomes even more egregious when it is understood that the reason that the Approval was lost was because Defendant refused to pay the Manville Judgment at Closing as required by previous Court Order and Settlement, necessitating this litigation brought by Plaintiff. After losing the Approval, Plaintiff spent a significant amount of its own time and money attempting to lobby the Borough of

Manville to allow the Approval to be “grandfathered” in. This was only to Defendant’s benefit as the Property is essentially worthless without the Approval. Notwithstanding the fact that Defendant caused the Approval to be lost, notwithstanding the fact that Defendant was in breach of the PSA, notwithstanding the fact that Plaintiff was spending its own time and money to Defendant’s benefit, Defendant filed its frivolous motion to enforce settlement and sought recovery of Plaintiff’s \$50,000.00 deposit and forfeiture of the \$33,533.20 Plaintiff spent on improvements on the Property.

Plaintiff pleads that the Court not permit the grave injustice that has been inflicted upon the Plaintiff to stand, that the Court vacate the December Order in its entirety and remand for further proceedings.

CONCLUSION

For the reasons set forth above, Plaintiff-Appellant Villas at Manville LLC respectfully requests that the Court vacate the December Order in its entirety and remand for further proceedings.

Respectfully submitted,

/s/Tareef Chamaa, Esq.
Tareef Chamaa, Esq.
Attorney for Plaintiff-Appellant