FILED, Clerk of the Appellate Division, April 03, 2025, **A-001604-24**, **AMENDED**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-001604-24-T2

CRIMKAV CORPORATION T/A THE BLAU & BERG COMPANY,

Plaintiff/Respondent,

-vs-

GETTY INDUSTRIES LLC AND ALMA REALTY CO.,

Defendants/Appellants.

On Appeal from:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:ESSEX COUNTY
DOCKET NO. ESX-L-009380-19

Sat Below:
Hon. Cynthia D. Santomauro, J.S.C.

Civil Action

REVISED BRIEF OF DEFENDANTS/APPELLANTS, GETTY INDUSTRIES LLC AND ALMA REALTY CO., IN SUPPORT OF APPEAL (SUBMITTED MARCH 24, 2025)

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#2005003v1

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PRELIMINARY STATEMENT

Defendants, Getty Industries, LLC ("Getty") and Alma Realty Corp. ("Alma") (collectively "Defendants"), respectfully request that this Court reverse that part of the Trial Court's December 20, 2024 Final Order and Judgement: (1) awarding real estate commissions to Plaintiff, Crimkav Corporation t/a The Blau & Berg Company ("Plaintiff" or "Blau"), based on a lease which the tenant abandoned eight months into a seven-year Lease, for a portion of the commercial building which never became a part of the "Demised Premises" referred to in the subject Lease; and (2) allowing pre-judgment interest to accrue even after Defendants deposited nearly $1 million into an escrow account pursuant to a Court Order, from the mid-litigation sale of the property which was the subject of the Commission Agreement.

Plaintiff and Defendants entered into an "Exclusive Right to Lease And/Or Sell Agreement" on October 19, 2018 (the "Commission Agreement"), which gave Plaintiff the opportunity to earn a commission if it obtained a lease for a portion of the premises owned by Getty at 297 Getty Avenue, Paterson, New Jersey. The Commission Agreement expired on December 31, 2018, but allowed Plaintiff to earn a commission, under disputed terms, if a potential tenant it had identified to Defendants during the term or within ten days thereafter, executed a lease for property in the building.

Nol ease was executed during the term of the Commission Agreement. Yet Plaintiff purportedly introduced an entity, GTI New Jersey LLC ("GTI"), to Defendants, during the "safe harbor" period. Defendants and GTI executed a seven-year Lease on January 15, 2019, which addressed two distinct units: (1) Unit "D", an 88,000 square foot portion of the building, which immediately became the "Demised Premises" on execution of the Lease; and (2) Unit "A", an 80,000 square foot unit, occupied by another tenant on January 15, 2019, and for which Landlord was to exert commercially reasonable efforts to deliver to GTI, when it would then become a part of the "Demised Premises". Landlord ***never*** delivered Unit "A" to Tenant, because the then-existing tenant refused to vacate, and because on July 10, 2020, Defendants and GTI executed a Lease Modification, which drastically changed the portion of space to be delivered to GTI under the Lease. Unit "A" ***never*** became part of the Demised Premises.

While Defendants respectfully maintain that the Trial Court erred in awarding any commission to Plaintiff, with their appeal, they argue that the Trial Court erred with regard to Unit "A" by awarding Plaintiff a commission for that space, despite the fact that under the express terms of the Lease, Unit "A" did not become a portion of the Demised Premises unless delivered, and under the terms of the Commission Agreement, it was not a part of the Lease when the Lease "commenced".

The Trial Court also erred in awarding pre-judgment interest from the date of execution of the Lease through entry of its December 20, 2024 Final Judgment and Order. While this litigation was pending, Plaintiff obtained an Order from the Trial Court requiring Defendants to escrow a portion of the proceeds of the sale of the 297 Getty Avenue property as pre-judgment security. Because GTI breached the Lease and vacated the Demised Premises (which is the subject of a multi-million-dollar award against GTI and its parent company, which has not yet been rendered into a final judgment), Defendants did not realize the vast majority of the anticipated rent, and the escrowed funds came from funds at closing of the sale of the property. Defendants never had use of those funds, so the Trial Court should not have penalized them by allowing pre-judgment interest to continue to accrue following funding of the escrow.

Finally, Defendants alternatively seek reversal of the full commission award. Plaintiff was not entitled to any commission because it was not the efficient procuring cause of the lease with GTI, and fraudulently attempted an end-run around its failure to identify GTI during the lease term. Accordingly, as set forth more fully within, Defendants respectfully request that this Court reverse the Trial Court's award of commissions for Unit "A" of the Getty Property, the post-escrow accrual of pre-judgment interest, and the award of commissions in their entirety.

STATEMENT OF FACTS

Defendants maintain that the following facts were proven at trial:

A. Initial Contacts Between Plaintiff And Defendants

Scott Geller ("Geller"), on behalf of Plaintiff, contacted George Valiotis ("George"), a Vice-President of Alma, at some point in mid-2018, to explore "learning about exit strategies for assets" in Alma's portfolio. Da2; 1T104:11-105:15 (Geller).[1] This initial contact led to discussions about Plaintiff's ability to find a tenant for 297 Getty Avenue, Paterson, New Jersey ("297 Getty"), a commercial property in Paterson which Getty owned. Da1-2. At the time, "[r]oughly 85,000 square feet in the corner of Thomas Street and Getty" was available for lease. 6T78:18-25 (George Valiotis).

George had never worked with Geller, but had previously worked with another Blau broker, Brian DiPinto ("DiPinto"). 6T85:15-21 (George Valiotis); 3T95:5-8 (Scott Savastano "Savastano"). Blau proposed an agreement pursuant to which it would serve as a broker for a portion of leasable space at 297 Getty. 6T74:20-75:14 (George Valiotis).

---

[1] Pursuant to Rule 2:6-8, trial transcripts are cited follows, with the witness's name in parenthesis: 1T: June 6, 2023; 2T: June 7, 2023 (Vol. I and Vol. II); 3T: June 12, 2023 (Vol. I and Vol. 2) 4T: June 15, 2023; 5T: July 5, 2023; 6T: July 6, 2023; 7T: July 7, 2023; 8T: August 10, 2023; 9T: October 17, 2024 (Post-trial hearing on the form of Judgment and Defendants' motion for partial reconsideration).

B. The Commission Agreement

Plaintiff and Defendants negotiated and executed the Commission Agreement after Plaintiff sent Defendants a form contract. Defendants demonstrated at trial that they did not agree to certain critical terms which Plaintiff proposed, which form the basis of Defendants' appeal. Defendants did not intend on paying commissions for "Additional Space" in any lease for 297 Getty, as proven by testimony at trial.

1. Blau Proposes Its Own Form Of Agreement

Blau asked George to execute its standard form commission agreement, the "Exclusive Right to Lease and/or Sell Agreement" (the "Commission Agreement"). Da7; 3T12:17-23 (Savastano). All parties agreed, however, that Efstathios Valiotis ("Steve") was the ***only*** individual who had authority to execute the Commission Agreement on behalf of Defendants. 3T95:24-96:6; 10:20-11 (Savastano); 7T110:18-25 (Steve Valiotis); Da3. This was consistent with Blau's policy that the majority owner of the LLC holding the asset should sign the agreement, and Blau was not satisfied until it had Steve's signature on the Commission Agreement. 2T41:21-42:10 (Geller).

2. Provisions For Earning A Commission

Section 1(a) of the Commission Agreement provided for payment of a commission to Blau if the property was "leased during the Term" of the Agreement.

Da3, § 1(a). Blau could not earn a commission under Section 1(a) unless and until a lease was fully executed and the term commenced. Ibid. The "Term" of the Commission Agreement ran from October 19, 2018 to December 31, 2018. Ibid. Da3; 7T75:19-76:3 (George Valiotis); 2T45:4-46:17 (Geller). This Term was intended to be a "very short term one" which "was more like a trial period" because Geller was a new broker. 6T75:4-21 (George Valiotis).

Section 5 of the Commission Agreement provided another opportunity to Blau to earn a commission following expiration of the Term:

> The undersigned OWNER agrees that a commission shall be due BLAU at the rates provided herein if BLAU, the undersigned, or any other person, broker . . . enters into a LEASE …within Six (6) Months after the expiration of the Term if said transaction is consummated with a person, entity, firm, corporation or their respective nominees to whom this property was submitted or introduced by BLAU, or any other broker, agent, firm . . . during the Term, ***and*** if the name of said person or entity has been disclosed to the ***undersigned in writing*** during the Term ***or*** within Ten (10) days after the expiration of the Term.
>
> [Da4, § 5 (emphasis added).]

3. Blau Was Not Entitled To A Commission For "Additional Space"

Section 1(b) of Blau's proposed form agreement, Da7, contained the following language:

> b. Whether or not any Tenant referenced above, its successors, assigns, their respective nominees or others

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> continue in occupancy beyond the original term stipulated in any lease, the undersigned agrees to pay BLAU a commission of 5% (five percent) of the total aggregate amount of rent, including any security deposit collected as rent, ***for any options, renewals, extensions, expansions, the taking of additional space or otherwise at this property or any other property of OWNER***, OWNER'S affiliates, or the affiliates or others of any principal of OWNER. Such commission shall be deemed earned and payable at the time any agreement is entered into for any such options, renewals, extensions, expansions, the taking of additional space or otherwise.
>
> [Da7 (emphasis added).]

Steve instructed George to cross out several terms from Blau's form contract, signifying Defendants' rejection of those terms. 6T80:12-82:17 (George Valiotis). Steve specifically instructed George:

> to cross out certain sections like in B where it mentions renewals and additional space. And all these other – I also wrote in this section here where it has exclusiveness for 80,000 square feet. Essentially I handwrote all the modifications my father wanted me to make on this agreement and he initialed them.
>
> [6T80:14-20 (George Valiotis).]

Steve directed these cross-outs as his policy, based on his thirty years of broker experience in New Jersey and forty years in New York. 7T112:13-113:23 (Steve Valiotis). Blau accepted those rejections to the form agreement. 7T111:4-114:25 (Steve Valiotis); Da3-5. Accordingly, the executed version of Section 1(b)

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provided the following:

> b. Whether or not any Tenant referenced above, its successors, assigns, their respective nominees or others continue in occupancy beyond the original term stipulated in any lease, the undersigned agrees to pay BLAU a commission of 5% (five percent) of the total aggregate amount of rent~~, including any security deposit collected as rent, for any options, renewals, extensions, expansions, the taking of additional space or otherwise at this property or any other property of OWNER, OWNER'S affiliates, or the affiliates or others of any principal of OWNER. Such commission shall be deemed earned and payable at the time any agreement is entered into for any such options, renewals, extensions, expansions, the taking of additional space or otherwise~~.
>
> [Da4; 7T112:7-17 (Steve); 5T82:13-113:9 (George) (cross outs added for demonstrative purposes).]

Scott Geller confirmed that Section 1(b) memorialized the parties' intent to exclude "***additional space***" from any commissions:

> Q: The question was, you knew, based upon the fact that the language was crossed out included that there was no commission for the taking of additional space at this property. That you were not entitled to a commission on the taking of additional space; isn't that true?
>
> A: As referenced in this paragraph, yes.
>
> [2T55:9-56:16 (Geller).]

Section 1(c) of the Commission Agreement allowed a commission as to "other property" of the owner being leased during the Term, but does not apply to

the "property" at issue. 2T57:19-59:3 (Geller). Section 1(c) specifically provided:

> c. A commission equal to 5% percent [sic] of the total aggregate rental shall be due BLAU as stated by the undersigned OWNER in the event any ***other*** property of OWNER, OWNER's affiliates or the affiliates or others of any principal of OWNER is leased during the Term, arising out of the introduction of the Tenant to OWNER by BLAU or any other broker, agent, third party or others during the Term in connection with leasing the subject property.
>
> [Da3 (emphasis added).]

The phrase "taking of additional space" is specific and ***only*** appears in the language which Steve deleted from Blau's template. The "other property" language, referring to different properties that 297 Getty Avenue, appears in the Section 1(b) cross-out, Section 1(c), and Section 2(c) of the form agreement. Da7; 2T233:21-235:1 (Geller).

4. The Exclusive Was For A Specific Portion Of The Leased Premises, Not For The Entire Building

The Commission Agreement identified certain features of the property, including the street address and block and lot numbers. P3, § 3. Section 3 of the Agreement, describing "size", contained a hand-written notation, made at Steve's direction, which he intended to be an identification of the space available for rent. 7T114:19-115:3 (Steve); 6T83:20-84:12 (George). Thus, the "exclusive" portion of the Commission Agreement was delineated as: "***exclusive*** is for ***80,000*** sf vacant

space and mezz space on corner of Thomas St. & Getty Ave. Da3, § 3 (emphasis added).

Geller understood this reference to "cover some portion of the corner of the building located along Getty and Thomas." 2T79:6-10 (Geller). Additionally, Steve crossed out the portion of Section 3 indicating "+/- 118,452 SF Warehouse Space 1 [sic]". Da3, § 3; 2T61:20-23 (Geller).

The Commission Agreement expressly limited the exclusive ***solely*** to the portion along the corner of Thomas and Getty. Da3; 6T78:18-25 (George) (roughly "85,000 feet on the corner of Thomas and Getty were available"). Therefore, Blau only had an exclusive pursuant to the terms of the Exclusive Agreement, *i.e.* the "80,000 square feet on the corner of Thomas and Getty". Ibid.

5. Deletion Of The Form's Automatic Renewal Provision

Consistent with their policy regarding renewals, Defendants deleted a portion of proposed Section 9 of Blau's form Commission Agreement, which would have provided for automatic renewal. Compare Da3 (executed version) with Da7 (form). Getty deleted the renewal provision, because it did not want "anything extended without our consent." 6T84:16-85:1 (George). Blau accepted this deletion and did not attempt to persuade Defendants to agree to a renewal option. 2T70:11-17; 2T73:11-15 (Geller). The Commission Agreement did not provide for commissions

for renewals of any lease executed during the term. Da3.

Section 12 of the Commission Agreement provided that "[t]his Agreement contains the entire understanding of the parties and may not be changed, rescinded, or modified orally, but only by written instrument" and that the agreement would be governed by the laws of New Jersey. Da4, § 12.

C. Blau's Unapproved Marketing Brochure Incorrectly Identifies Space For Lease

Blau prepared a marketing brochure, which identified the "exclusive" space as being available for lease in June 2019. P4. The brochure indicated that the "Total Building" consisted of approximately 699,000 square feet of space. Da9. The Marketing Brochure (which Plaintiff never provided to Defendants), however, was riddled with errors. Geller testified that Blau knew that only Unit "A" on the Marketing Brochure (88,000 square feet) was available as of the date of the Exclusive Agreement, and that Unit B, consisting of 80,000 square feet, was not occupied and, according to the Brochure, not available until June 2019. 2T51:18-52:21 (Geller). Defendants were ***not*** provided with the Marketing Brochure in advance Plaintiff marketing the property. 7T116:20-25 (Steve Valiotis); 6T87:6-16 (George Valiotis); 7T16-51:7 (George); Da9 (the brochure). At the time of the Marketing Brochure, only 88,000 square feet was available, referred to in the Brochure as Unit "A", with a reference to Warehouse Unit B 80,000 on the opposite

side of the building being available June 2019. Da9. The 80,000 square foot space, or Unit B on the Brochure (the portion denominated as "exclusive" in the Commission Agreement), was occupied at the time by Supreme Leather. Da9; 6T87:25-88:25 (George Valiotis); 2T82:1-15 (Geller) (identifying Units A and B). Blau knew that the entire building was ***not*** available for lease during the three-month Term and knew that only Unit "A", consisting of 88,000 square feet, was available. Geller testified:

> Q: And you knew that all of this 700,000 square foot building was not available for lease in that three-month period; correct?
>
> A: That is an accurate statement.
>
> [2T50:112-15 (Geller).]

In addition to listing Units A and B, the Marketing Brochure listed other "upcoming available vacant space": Unit C (25,090 square feet); Unit F (4,667 square feet); Unit G (25,090 square feet); and an auxiliary building (15,000 square feet). Da9; 1T154:2-16 (Geller).

Neither Steve Valiotis nor George Valiotis was shown the Brochure while Blau attempted to market the property, and neither was given the opportunity to review the Brochure. 7T116:20-25 (Steve Valiotis); 6T87:6-16 (George Valiotis); 7T16-51:7 (George Valiotis).

D. No Lease Had Beeen Executed By December 31, 2018 Expiration Of The Commission Agreement

The Commission Agreement expired on December 31, 2018. Da3. ***No*** lease had been executed or agreed upon that would have been subject to the Commission Agreement by December 31, 2018.

E. Michael Powell Of The City Of Paterson Brought The Tenant To The Landlord

In December 2018, GTI New Jersey, LLC ("GTI") was engaged in the process of finding a space to locate its cannabis operations in Paterson, New Jersey. 4T10:9-10:10; 10:25-11:12; 14:8-17 (Devra Karlebach, CEO of GTI's New Jersey Entity, "Karlebach"). Karlebach testified that she was looking for property for GTI's operations with her broker, Colliers, and that she personally looked on the LoopNet website, in addition to reaching out to Michael Powell ("Powell"), the Director of Economic Development for the City of Paterson, "to ask if he knew of any available properties that we could lease . . .". 4T19:18-20:1 (Karlebach).

Karlebach testified that she located the property at 297 Getty and expressed interest in the available space there to Powell, as well as to the Mayor of Paterson. 4T14:8-17 (Karlebach). In his role as Director of Economic Development for the City of Paterson, Powell identified space that GTI could occupy, including two storage warehouses in Paterson that could be raised and built to suit, which was not

GTI's preference due to its impact on GTI's licensing timeframe. 4T37:23-38:10 (Karlebach).

Ruben Gomez, property manager for the Getty Property, who began his employment with Getty on January 2, 2019, had previously worked for the City of Paterson for seven years in the role filled by Powell, and during his time with the City reported directly to the mayor. 7T243:22-25 (Gomez). GTI visited the site for an inspection on January 2, 2019. Powell and Gomez texted about bringing GTI to the Getty property and Gomez transitioned his role in his former position to Powell. 8T17:13-19:11 (Gomez). Karlebach met with the Mayor and Powell after January 1, 2019. 4T14:8-25 (Karlebach).

Blau did not procure GTI; instead, GTI's broker, Colliers, contacted Savastano regarding the availability of 297 Getty. 3T90:22-24 (Savastano). Colliers requested a tour for GTI of 297 Getty on December 21, 2018 and December 28, 2018, but the two brokers at Blau were unable to accommodate this request, despite Geller being aware of the expiring agreement. Following Powell's connecting GTI to the property, Colliers sought access to tour the building on the afternoon of December 21, 2018. However, despite the looming expiration of the Commission Agreement, neither Geller nor Savastano were available for that tour due to a holiday party. Da24.

The day after the Blau holiday party, Geller left for vacation in England and Savastano was to be the point of contact on the matter. 1T175:9-176:16 (Geller); Da24; 3T46:1-9 (Savastano). On December 28, 2018, Wayne Kasbar ("Kasbar"), a broker with Colliers, sought access to the building on December 31, 2018. 1T178:17-178:4 (Geller). Despite Kasbar's request, and despite three other representatives available in the event an opportunity arose during his vacation, 2T124:7-19 (Geller), Colliers was not able to gain access to tour the building on that date. 1T181:3-7 (Geller); Da29.

While Blau did not press for an earlier inspection, GTI acted with haste as it sought execution of a lease to meet compliance issues with its application to the State of New Jersey for cannabis production. Blau understood that GTI had a short timeline to procure a lease. Da39; 1T189:22-190:8 (Geller).

Ultimately, GTI toured the Getty Property on January 2, 2019. 5T15:14-20 (Kasbar). Michael Powell brought GTI to Steve Valiotis' attention on January 2, 2019, by asking to set up a meeting with Defendants on January 3, 2019. 7T6:15-7:7 (George); 7T130:20-25 (Steve). Kasbar testified that he "facilitated" the January 3, 2019 meeting. 5T142:20-146:3. Powell, Devra Karlebach, GTI's attorney Paul P. Josephson, Esq., Steve Valiotis, Ruben Gomez, George Valiotis, and Suketu Shah of Colliers (GTI's broker) attended the January 3, 2019 meeting, during which they

discussed the terms of a potential lease. 4T27:4-8 (Karlebach).

F. Only 88,000 Square Feet Of Space Was Available at the Time GTI and Getty Executed The Lease

As noted above, Blau's Marketing Brochure indicated that the premises had 88,000 square feet available (mislabeled as Unit "A"), and another 80,000 square feet was "anticipated" to be available in June 2019. Da9. Karlebach testified that before the execution of the Lease, she knew that only 88,000 space was available, and that GTI was trying to secure additional square footage, but that there was a delay in obtaining continuous space; she was able to inspect only the 88,000 square foot space, but was ***not*** able to see the 80,000 square foot space on her site visit January 2, 2019 as she believes that space was occupied by a tenant, Supreme Leather. 4T70:13-71:24 (Karlebach); 2T43:24-44:10 (Geller) (indicating that the space was coming up for lease but was occupied by a distributor of leather goods).

Suketu Shah, a realtor for Colliers, testified that at the January 2, 2019 inspection, which he attended, a representative of Blau told him that the 88,000 square foot space was available. 5T44:12-45:4. In fact, the parties discussed the potential of GTI taking the 80,000 square foot space on the corner of Thomas and Getty. 6T95:16-19 (George Valiotis). They also discussed the possibility of "additional space" becoming available. 6T95:20-96:2 (George).

GTI never took occupancy of the Supreme Leather space. 7T271:18-20

(Gomez); 6T105:12-19; 106:11-20 (George Valiotis). Karlebach confirmed that the space was ***not*** delivered. 4T80:15-18 (Karlebach).

G. GTI Executed A Lease Following Expiration Of The Agreement

On January 15, 2019, GTI and Getty executed a Lease Agreement, pursuant to which GTI leased 88,000 square feet of the "Demised Premises" defined in Section 1 of the Lease. Da115, § 1, Schedule A. Section 1 of the Lease listed the "Demised Premises" as follows:

> Landlord hereby leases to Tenant and Tenant hereby leases from landlord approximately 88,000 square feet of warehouse space a/k/a Unit "D", substantially as shown on the Floor Plan annexed hereto as Schedule A ("Demised Premises"), in the building known as 297 Getty Avenue, Paterson, New Jersey (hereinafter referred to as the "Building").
>
> [Da115 (Lease, § 1).]

The "Demised Premises" was the space that was available at 297 Getty at the time of the execution of the Lease. 7T135:10-14 (Steve)

The Lease contemplated GTI's potential taking of "Additional Space" at 297 Getty. Section 67(A) of the Lease identified an additional 80,000 square feet of adjacent space, a/k/a Unit "A", known as the "Additional Space", which GTI would take as follows:

> Landlord shall use commercially reasonable efforts to deliver exclusive possession of 80,000 square feet of

> adjacent space a/k/a Unit A (the "Additional Space") in the Building, in the same condition required in Section 2 above, by July 1, 2019. ***Upon such delivery, the Demised Premises shall then encompass*** approximately 168,000 square feet, substantially as shown on the Additional Space Floor Plan annexed hereto as Schedule "A." Except as expressly stated herein, the parties' rights and obligations with respect to the Additional Space shall be governed by this Lease.
>
> [Da173, § 67(A) (emphasis added).]

Thus, Section 67(A) of the Lease defines Unit "A" as a separate, distinct unit which was not part of the "Demised Premises" under Section 1 of the Lease and would not become part of the "Demised Premises" unless and until it was delivered to Tenant. Da115 (§ 1); Da173 (§ 167(A); 2T128:5-15 (Geller).

GTI did not initially lease the 80,000 square feet described in the Commission Agreement as the "Exclusive". While initially interested in that portion of 297 Getty, GTI could ***not*** lease that space because the door in that unit was too close to a school, which was a concern for GTI because it was a cannabis business and proximity would affect its licensure. 4T37:9-20 (Devra Karlebach); Da27 (Dec. 26, 2018 email). In addition, at the time, it was occupied by another tenant, Supreme Leather. Accordingly, it "swapped" the 80,000 square foot space at the corner of Thomas Street and Getty Avenue, for the adjacent 88,000 square foot unit immediately to the west, which compromised the Demised Premises under Section 1 of the Lease.

8T118:3-13 (Gomez).

Again, GTI ***never*** took occupancy of the 80,000 square foot portion. 4T80:15-18 (Karlebach); 6T105:12-19, 106:11-20 (George Valiotis).; 7T271:18-20 (Gomez).

H. Blau's Backdated Letter Attempts To Comply With Commission Agreement

Section Five of the Commission Agreement provided that for Blau to earn a commission if a qualifying lease was executed within six months of the expiration of the Commission Agreement, the name of those entities introduced to the property had to be submitted in writing during the Term or within ten days of the expiration of the term, or by January 10, 2019. Da4. Accordingly, Blau sent a letter to Alma dated January 10, 2019 (the "Attempted Protection Letter"), which attempted to identify those purported entities which Blau introduced during the Term of the Commission Agreement. 2T153:12-16 (Geller); 3T59:5-10 (Savastano); Da98; Da101. Blau sent the Attempted Protection Letter pursuant to that requirement in Paragraph 5 of the Commission Agreement, 2T160:2-8 (Geller), a provision Blau's agreement of which it was aware. 3T157:11-13 (Savastano). Plaintiff did not postmark the Attempted Protection Letter, however, until January 15, 2019, and George did not receive it until January 18, 2019. 3T164:8-18 (Savastano); 6T114:8-21 (George Valiotis); Da100 (postmarked envelope). Accordingly, the letter was ***not*** timely.

Savastano drafted the letter, and "placed it in the outbox" for it to be postmarked and mailed, or stamped and mailed, and conceded that Plaintiff did ***not*** mail the letter until January 15, 2023, the date of the postmark. 3T162:15-23; 164:8-166:1 (Savastano); Da98. Although Geller claimed that this "was a standard tail letter that is sent at the end of an engagement to cover any potential future commission", he admitted that the post-dated letter was sent fifteen days after the expiration of the Commission Agreement and on the same date the Lease was signed. 2T161:17-162:6; 10:23-11:5 (Geller); 3T168:22-1692 (Savastano).

The post-dating of the Attempted Protection Letter reveals Blau's belated, fraudulent scramble to meet the express terms of the Commission Agreement. 3T 160:11-22 (Savastano) (responding to questioning as to sending the letter despite purportedly not being necessary). Additional correspondence and documents demonstrate the attempt to wrap up details ***after*** the Commission Agreement expired: Colliers and Blau signed a co-broker's agreement on January 18, 2019 (even though it was incorrectly dated January 14, 2018). Da112; 3T167:2-21 (Savastano). Savastano also wrote to Geroge Valiotis on January 15, 2019, separate from the Attempted Protection Letter, claiming to provide "material evidencing our agency relationship with Alma Realty, Colliers, and GTI . . .". Da114; 3T169:3-15 (Savastano).

Thus, Plaintiff realized that it had ***not*** complied with its obligation under the Commission Agreement to notify Alma properly as to their alleged entitlement to a commission (even though they did not procure the tenant which executed the Lease), and acted only once Getty and Alma executed the Lease by backdating the Attempted Protection Letter, five days after the safe harbor expired, and sending a second letter (also on January 15, 2019, fifteen days after the Commission Agreement expired).

I. GTI And Getty Agree To A Lease Modification As A Result Of GTI's Changing Needs

While GTI initially sought to lease approximately 150,000 square feet, the initial Lease defined the "Demised Premises" as ***only*** being 88,000 square feet, with 80,000 square feet contemplated as potential "Additional Space". Da173, § 67(A). The "Additional Space" did not become part of the Demised Premises because Getty never delivered the 80,000 square feet of contemplated Additional Space under the Lease. 4T80:15-18 (Devra Karlebach).

Two months after executing the Lease, GTI sought to change the Additional Space referred to in Section 67(A) of the Lease. 7T271:232-272:1 (Gomez) (discussions began in March 2019); 8T76:15-18 (Gomez). GTI's need to take different space was based on its own changed plans. This change in plans, to use a different portion of 297 Getty, was GTI's decision. 8T106:9-13 (Gomez).

On July 10, 2019, GTI and Getty executed a Lease Modification, which, among other things, modified Section 67(A) of the Lease as follows:

> (A) Landlord shall deliver to Tenant exclusive possession of 121,331 square feet of ***additional space*** a/k/a Unit "B" (the "***Additional Space***") in the Building, containing approximately 95,808 square feet of warehouse space, 5,187 square feet of loading space, and 20,0061 [sic] square feet of office space, in the same condition required in Section 2 above, by July 15, 2019 ("Additional Space Delivery Deadline"). ***Upon such delivery*** [of the Additional Space], the ***demised premises*** shall then encompass approximately 209,331 square feet, substantially issuant of the revised floor plan as Exhibit A. Except as expressly stated herein, the parties' rights and obligation with respect to the additional space shall be governed by the lease in all respects.
>
> [Da202-203, § 2(b) (emphasis added).]

The Lease Modification involved GTI ceding its conditional interest in nearly all of the potential "Additional Space" referred to in Section 67(A) of the Lease, and replacing that interest with different "Additional Space" in the building occupied by another tenant, Evolution. To accommodate GTI, Evolution had to be removed from the portion of 297 Getty (directly "north" of the initial 88,000 square foot space), and into the 80,000 square foot space referred to in Section 67(A) of the Lease, initially occupied by Supreme Leather. No modification could occur, however, because Defendants could ***not*** deliver the Additional Space according to GTI's timetable. 8T79:15-81:20 (Gomez). Getty did not deliver the Lease Modification's

Additional Space by the Additional Space Delivery Deadline. 4T106:21-24 (Devra Karlebach).

Evolution did ***not*** vacate the premises which GTI sought. 8T124:4-16 (Gomez). Getty could not deliver the Lease Modification's Additional Space because: (1) Getty had to negotiate with the owner of Evolution, who lived in California and was experiencing medical issues at the time; 8T121:13-23; (2) delivery was dependent on significant work to be done to obtain a Certificate of Occupancy for the new space that Evolution was being moved into, which was not issued until September 13, 2019. 7T282:8-12 (Gomez); 8T122:15-123:5 (Gomez); D37; (3) Getty had to expend substantial efforts to move Evolution, from one end of the building to another (8T284:13-18 (Gomez); and (4) Getty had to obtain the surrender of the Evolution space. See 8T122:15-123:5; 7T282:8-12; 8T120:12-121:2, 7T284:13-18 (Gomez); Da207 (Certificate of Occupancy).

Getty had incentives to do everything it could to deliver the Additional Space. Defendants wanted to lease to GTI as much space as it could. 7T208:13-209:4 (Gomez). Getty wanted to collect rent on the Additional Space. 7T238:8-12 (Steve Valiotis); ("the sooner [it] turned over the space, the sooner [Getty received] rent." 7T272:10-13 (Gomez)).

Plaintiff did not proffer any written evidence or oral testimony to even

remotely suggest that there was an intentional "delay" in executing the Lease Modification to wait until ten days after expiration of the six-month provision in Section 5 of the Commission Agreement, or that such execution date had ***anything*** to do with ***any*** attempt by Defendants to execute a Lease Modification after the six-month period had expired. Plaintiff did not offer ***any*** evidence to demonstrate that the timing of the execution of the Lease Modification had anything to do with Defendants trying to avoid the six-month commission provision.

Despite having nothing to do with the Lease Modification, and despite the Lease Modification having been executed outside of the term of the Commission Agreement and the six-month extension, Savastano wrongfully indicated that Blau sought commissions on the separate 121,331 square feet of space, "because it wasn't a new lease." 3T82:21-8:1 (Savastano).

J. Getty Could Not Deliver The Additional Space Under The Lease Or Lease Modification, And GTI Abandoned The Premises

In connection with the "Additional Space" identified in the Lease Modification, Getty spent months trying to move its time occupant, Evolution, out to accommodate the Lease Modification. 7T141:2-9 (Steve). Getty tried to supply the space, created a modification and a new space for Evolution, offered Evolution money to vacate, forgave rent, and tried offering other reduced rent to Evolution. Ultimately, Getty lost a million dollars in rent in trying to move Evolution out of

space GTI wanted. 7T210:15-211:8 (Steve).

Getty worked to deliver the 121,000 square feet of Additional Space. Despite its best efforts, however, by the time Defendants could make the Additional Space available to GTI, GTI had abandoned the premises. 7T225:21-227:15 (Steve Valiotis). The delays were not a surprise: when GTI asked for the Lease Modification space, it knew of and expected the timing issues with relocating Evolution. 7T228:6-7 (Steve Valiotis).

Ruben Gomez, the property manager for 297 Getty, was the person with the most knowledge in the Alma Realty organization as to the Getty property and the space available in that property upon his employment with Alma on January 2, 2019. 7T149:10-150:9 (Steve). Gomez testified that the Lease Modification space (the "Evolution Space"), was available for access in August and for actual delivery on September 19, 2019, but GTI did ***not*** take the Additional Space because it had "abandoned" the Demised Premises by the time the Lease Modification's Additional Space became available. 7T281:19-287:25 (Gomez). Thus, despite their best efforts, Defendants ***never*** delivered the Additional Space contemplated in the Lease Modification. 7T225:2-227:1 (Steve) ("I tried my best effort, and I could not deliver it. I did not lie to them.").

Plaintiff failed to proffer ***any*** testimony to the contrary. Kasbar, GTI's broker,

testified that he did not have knowledge of delivery as he was not involved in the Lease Modification. 5T105:16-19 (Kasbar); 5T177:24-178:11 (Kasbar had no knowledge of the delivery issue). Karlebach did not believe it was delivered. 4T83:17-22 (Karlebach). Savastano testified he did not know whether the Additional Space referenced in the Lease Modification was ever delivered and was not involved in the Lease Modification. 3T186:25-187:11 (Savastano).

As set forth above, delivery was dependent on significant work to be done to obtain a Certificate of Occupancy for the new space that Evolution was being moved into by Evolution. 7T282:8-12 (Gomez). By August, Getty was done assisting Evolution, everything had been removed from the Evolution space, and Getty was waiting for just the Certificate of Occupancy for the space. 7T284:13-18 (Gomez).

K. Blau Issued Invoices For The Wrong Space, At The Wrong Time, And Without Claiming Interest

Even though GTI ***never*** occupied the 80,000 square foot Additional Space, Blau issued an invoice claiming a commission on that space on May 24, 2019. That Additional Space had been marketed as being unavailable until June 2019. Da200; 2T165:2-7; 3T1332:12-21 (Savastano). The invoice, dated five months after the Lease, did not seek interest. 3T132:12-133:13 (Savastano). Blau sent the invoice despite Blau not even knowing if the 80,000 square foot space was delivered. Geller testified that it was occupied at the time of the Commission Agreement. 2T52:18-21

(Geller). When he left Blau, he did not know whether that space was delivered or became part of the Demised Premises. 2T172:2-11 (Geller, testifying that he "couldn't speak to" whether the space "became available"). Savastano also testified that he did not know if it was delivered. 3T118:14-16 (Savastano).

Further, neither Kasbar nor Shah from Colliers (GTI's broker) knew whether the 80,000 square foot additional space was delivered. 5T164:9-165:8 (Kasbar); 5T63:9-64:4 (Shah). On October 1, 2019, more than four months after it filed the Complaint in this matter, Blau issued an invoice for the 88,000 square foot unit, nine and half months after the Lease and, again, did not seek interest. D209; 3T133:20-134:6 (Savastano). Blau also generated invoices in different amounts as due and owing, one for $330,414, Da184, and another alleging a commission of $341,763.76. D19.

Prior to remitting the invoices, Blau met with Steve twice in an attempt to assert a commission: Savastano and DiPinto met Steve on January 14, 2019, Da114, 3T64:10-65:21, 67:18-68:1, and Geller met with Steve in February 2019 after Geller specifically requested a meeting. 2T17:7-19:23 (Geller). Blau did not send any other invoices, including for the Lease Modification space, to Defendants. 6T117:1-118:9 (George Valiotis).

Despite Blau and Colliers ***not*** being involved in the Lease Modification,

despite not sending any invoices for the Lease Modification space, and despite the Lease Modification being executed seven months after expiration of the Commission agreement, Blau demanded commissions on the 88,000 square feet (for $330,414.14) and additional commission on the 121,332 leased under the Lease Modification for $455,562.25. 3T85:5-9 (Savastano); Da184 (Blau's calculation of commissions at trial). As set forth above, however, the Lease Modification negotiations occurred months after expiration of the Commission Agreement, and Getty and GTI negotiated on their own. 4T102:1-25 (Karlebach).

Blau sought an award of compound pre-judgment interest on the alleged commission related to the 88,000 square feet space and on the alleged commission due on the 121,331 square feet Additional Space. Astoundingly, Blau contended that it was entitled to an award of monthly compound interest, based on the previous unpaid monthly balance of principal and interest. 3T191:13-196:7 (Savastano). The compounding almost doubles the original commission sought. 3T197:10-13 (Savastano). The Commission Agreement did not provide for compounding of interest. See Da3, § 1(a).

Blau also asserted commissions on space that was never delivered or occupied by the tenant at issue where the tenant abandoned the premises in August of 2019, only a few months into the term of the Lease. 8T97:8-19 (Gomez).

L. Getty Escrowed Proceeds Of The Sale Of 297 Getty As Required By Court Order

During this litigation, Getty closed on the sale of 297 Getty Avenue on March 8, 2023, and escrowed the $986,545.65 required by Court's April 1, 2022 Order in the Lum, Drasco & Positan LLC Attorney Trust Account. Da302.

M. The Trial Court's Opinion

The Trial Court correctly decided that Plaintiff ***not*** earn a commission for the "Lease Modification" space because, because that space was "additional space" expressly excluded from the Commission Agreement, and the Lease Modification space never became a part of the "Demised Premises". For the same reason, the 80,000 square foot Unit "A" space initially considered in the January 15, 2019 Lease was also "additional space" under the lease which Defendants ***never*** delivered to GTI and which ***never*** became a part of the Demised Premises. Accordingly, the Trial Court erred in awarding Plaintiff a commission for the Unit "A" space.

RELEVANT PROCEDURAL HISTORY

Plaintiff filed its Complaint in the Superior Court of New Jersey, Chancery Division, General Equity Part in this matter, under Docket No. ESX-C-126-19, on June 7, 2019. Da211. Defendants filed their Answer on August 13, 2019. Da229.

On June 13, 2022, the Trial Court entered Orders dismissing Plaintiff's Motion and Defendants' Cross-Motion for Summary Judgment. Da328 (Plaintiff's Motion); Da331 (Defendants' Cross-Motion).

The Trial Court conducted a bench trial on June 6, 7, 12, 15, 2023, July 5, 6, and 7, 2023, and August 10, 2023. Following the submission of post-trial submissions and replies, the Trial Court conducted oral argument on Defendants' Motion for Partial Reconsideration on October 17, 2024. The Trial Court issued written Findings of Fact and Conclusions of Law on August 7, 2024. Da248. The Trial Court issued a written Statement of Reasons on December 11, 2024, which addressed post-judgment applications. Da297. The Trial Court issued an Order for Final Judgment dated December 20, 2024. Da300.

Defendants timely filed their Notice of Appeal on February 3, 2025. Da324.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD APPLY A *DE NOVO* STANDARD OF REVIEW AND REVERSE THE TRIAL COURT'S AWARD OF COMMISSIONS (STANDARD OF REVIEW NOT ADDRESSED BELOW)

The Trial Court conducted a lengthy bench trial in this matter, hearing testimony from five witnesses in Plaintiff's case and three in Defendants' case. In issuing a lengthy written Opinion, the Trial Court generally determined the correct facts. Yet the Trial Court erred in applying those facts to the law, especially in instances where the issue was a mixed question of fact and law. Therefore, the Court should defer to the trial court's factual findings, but apply a *de novo* standard of review to the legal conclusions derived from these facts. See, e.g. Rova Farms Resort v. Investors Inc. Co., 65 N.J. 474, 483-484 (1974) (the trial court's fact-finding should remain undisturbed "when supported by adequate substantial and credible evidence").

Accordingly, applying this standard of review, and as set forth herein, this Court should reverse that portion of the December 20, 2024 Final Judgment and Order awarding commissions to Plaintiff for the Unit "A" portion of the building, which never became a part of the Demised Premises, and terminate the accrual of pre-judgment interest as of the date of the funding of a Court-ordered escrow.

POINT II

THE TRIAL COURT ERRED BY AWARDING A COMMISSION FOR A SPACE WHICH WAS NEVER PART OF THE DEMISED PREMISES (DA278-279)

While Defendants dispute the Trial Court's award of any commissions to Plaintiff, nevertheless the Trial Court specifically erred in awarding Plaintiff a commission for 80,000 square feet of space described in Article 68(A) of the Lease, denominated as Unit "A", which Defendants were tasked with delivering to GTI by July 1, 2019. Unit "A", however, ***never*** became a part of the Demised Premises. Accordingly, this Court should reverse that part of the Judgment awarding Plaintiff a commission for Unit "A", and vacate Paragraph 3 of the Judgment, in the amount of $292,483.87, along with all pre-judgment interest calculated from that amount. Da301.

The Trial Court held that "Section 1.a. [of the Commission Agreement] provides that a commission shall be 'due when leases are signed by both parties (Owner and Tenant) and payable in full when the lease term commences.'" Da273. Yet the Trial Court improperly disregarded the undisputed fact that Landlord ***never*** delivered the Unit "A" space, so that the Unit "A" space never became part of the Demised Premises.

At trial, no one disputed that upon execution of the Lease, the Demised

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Premises contained the 88,000 square feet memorialized in Section 1 of the Lease. Da115. Section 1 expressly defined the "Demised Premises" as the space which "Landlord hereby leases to Tenant and Tenant hereby Leases from Landlord approximately 88,000 square feet of warehouse space a/k/a Unit 'D', substantially as shown on the Floor Plan annexed hereto as Schedule 'A' ('Demised Premises')" in the building. Ibid. The Lease expressly ***did not*** include Unit "A" in its definition of "Demised Premises".

Rather, Section 67 of the Lease expressly referred to Unit "A" as part of the ***potential*** "Additional Space" which the Landlord was obligated to ***attempt*** to deliver to Tenant. Section 67(A) specifically required the following:

> 67. (A) Landlord shall use commercially reasonable efforts to deliver exclusive possession of 80,000 square feet of adjacent space a/k/a Unit A (the "Additional Space") in the Building, in the same condition required in Section 2 above, by July 1, 2019. ***Upon such delivery***, the Demised Premises ***shall then encompass*** approximately 168,000 square feet, substantially as shown on the Additional Space Flor Plan annexed hereto as Schedule "A". Except as expressly stated herein, the parties' rights and obligations with respect to the Additional Space shall be governed by this Lease in all respects.
>
> [Da173 (§ 67(A) (emphasis added).]

Additionally, Section 67(B) provided that "[t]he Term for the ***Additional Space shall commence on the date that Landlord delivers the additional Space*** to Tenant in conditioned [sic] required above (the 'Additional Space Term

Commencement Date'". Ibid. (emphasis added).

In other words, the Unit "A" space was conditional, requiring several steps to occur before Unit "A" could become a part of the Demised Premises. The Trial Court's Opinion, however, blurred the Lease's distinction between the Demised Premises and the Additional Space. Thus, citing Section 67(A), the Trial Court improperly held that the 80,000 square feet "was leased to GTI but possession of the space, referred to as Unit 'A,', was to be delivered to GTI by July 1, 2019, making the total size of the Demised Premises approximately 168,000 square feet." Da267. Similarly, in discussing the July 10, 2019 Lease Modification and how that affected the premises, the Trial Court referred to the Original Lease as having "leased premises [which] were to consist of 88,000 square feet in Unit 'D' and 80,000 square feet in Unit 'A'." Da280. The Trial Court's analysis of the Lease Modification clearly applied to the 80,000 square foot Unit "A" in the initial Lease, which Defendants never delivered to GTI, and which never became a part of the Demised Premises.

In awarding Plaintiff a commission for the Unit "A" space, the Trial Court improperly focused on what the Court found to be the parties' subjective intent in entering into the Lease. That is, the Trial Court improperly interpreted the Commission Agreement through parol evidence, without specifically analyzing the

language of the contract or finding that it was ambiguous. The Trial Court found that "GTI and other witnesses made clear in numerous emails and in testimony at trial that GTI required at least 150,000 square feet of space for its operations or it would not sign a lease. The January 15, 2019 Lease, which provided for 168,000 square feet, would satisfy that requirement." Da279.

The Trial Court erred, however, in crediting such testimony without analyzing the express terms of the Lease, or any finding that the Lease was ambiguous. A contract is ambiguous if it is subject to two reasonable interpretations. Schor v. FMS Financial Corporation, 357 N.J. Super. 185, 191 (App. Div. 2002) (citation omitted). If a contract is determined to be ambiguous, parol evidence may be utilized to interpret the contract. Chubb Custom Insurance Co. v. Prudential Insurance Company of America, 195 N.J. 231, 238 (2008); Schor, supra, 357 N.J. Super. at 192. Along those lines, however, "[t]he admission of evidence of extrinsic facts is not for the purpose of changing the writing, but to secure light by which to measure its actual significance". Atlantic Northern Airlines, Inc. v. Schwimmer, 127 N.J. 293, 301 (1953). Nevertheless, the contract must still be interpreted in line with the general purpose of the agreement. Tessmar v. Grosner, 23 N.J. 193, 201 (1957).

The Trial Court did not find that the Lease was ambiguous in any way. Nevertheless, the Trial Court expressly relied on the purported intent of the parties

to make a legal conclusion as to the effect of clear, unambiguous contract terms. The Lease expressly states that Unit "A" does not become a part of the Demised Premises until Landlord delivered exclusive possession of Unit "A". The trial evidence, unrebutted by any witness and supported by the testimony of both Ruben Gomez of Alma and Devra Karlebach of GTI, was that Landlord never delivered Unit "A" to GTI, because GTI's needs changed based on its own whims (and not because Defendants did anything to interfere with delivery of Unit "A" to GTI).

In awarding a commission for the 80,000 square foot space which was never delivered to GTI nor became a part of the Leased Premises, the Trial Court overlooked the express language at the time the Lease was executed. Again, Section 1(a) of the Commission Agreement provided that a commission "shall be due when leases are signed by both parties (Owner and Tenant) and payable in full when the lease term commences." Da3. At the time of execution of the Lease, January 15, 2019, a commission would ***only*** have become due on property which Tenant actually leased. In other words, because Unit "A" was expressly ***not*** a part of the Demised Premises upon execution of the Lease, in that Landlord had to use "commercially reasonable efforts to deliver exclusive possession" of Unit "A". Thus, where was no commission "due" on Unit "A" at execution of the Lease.

Finally, since Plaintiff's putative right to a commission stems directly from

the Commission Agreement, it bears noting that the only term that was negotiated at any length was the striking of "additional space" from the Commission Agreement. Da3; Da7. Thus, to the extent that the Unit "A" space was "additional space", it was not contemplated by the parties to the Commission Agreement as being subject to a commission, unless it became part of the Demised Premises.

Accordingly, this Court should reverse that part of the Judgment awarding a commission to Plaintiff for the Unit "A" space, and reduce the Judgment by $292,483.37, as well as the pre-judgment interest which accrued based on that award.

POINT III

THE TRIAL COURT ERRED IN AWARDING PRE-JUDGMENT INTEREST AFTER THE FUNDING OF THE ESCROW REQUIRED BY THE COURT'S APRIL 1, 2022 ORDER (DA301; DA303)

The Trial Court erred in awarding pre-judgment interest from the filing of the Complaint through the entry of its December 20, 2024 Final Judgment and Order. Rather, pre-judgment interest should have stopped accruing on March 23, 2023, the date on which Defendants placed the sum of $986,545.65 into their attorney's escrow account pursuant to the Court's April 1, 2022 Order (entered over Defendants' objection). Defendants never had use of those funds, so the Court erred by awarding pre-judgment interest from the date of the funding of the escrow.

During discovery, Plaintiff improperly filed a *lis pendens* against the 297 Getty property, in violation of N.J.S.A. 2A:15-6. Da315. After Defendants objected to the filing, Da318, Plaintiff discharged the *lis pendens*. Da323. Yet Plaintiff proceeded with the filing of a Lien Claim, which Defendants sought to discharge by way of Order to Show Cause, entered on March 22, 2022. Da321. Plaintiff based the amount of its claim on commissions it claimed on the 88,000 and 80,000 square foot spaces, plus estimated attorney's fees.

Following oral argument on the Order to Show Cause, the Trial Court entered an Order on April 1, 2022 which, among other things, required Defendants to place the sum of $986,545.65 in escrow with their attorney until either entry of final, non-appealable judgment, or further Order of the Court, once Defendants' sale of the property closed. Da308. That sale closed on March 23, 2023, the date on which Defendants placed $986,545.65 into Defendants' attorney's escrow account.

Over Defendants' objection, the Trial Court awarded interest on the 88,000 square foot space from January 16, 2019, and from July 2, 2019 on the 80,000 square foot space, through the date of payment. Da295. Defendants then filed a timely Notice of Motion for Reconsideration and Amendment of the Court's August 7, 2024 Opinion on Damages as to Pre-Judgment Interest. Da305, specifically with regard to the award of interest following the funding of the escrow. The Trial Court

denied the motion, awarding pre-judgment interest through entry of the December 20, 2024 Final Judgment and Order, rather than through March 23, 2023. Da300 (¶¶ 5-6).

The Trial Court erred in allowing pre-judgment interest to run on the escrowed funds, by finding, without analysis, that "because the money was . . . placed in escrow does not alleviate or it does not militate against an award of interest on money that . . . Blau was entitled to and did not have. And it's lost earnings on that money." 9T45:11-15. That holding, however, vitiates the reasoning for an award of pre-judgment interest, in that the escrowed funds were funds which Defendants ***never*** possessed.

Here, Defendants seek amendment of the Trial Court's findings such that the Court's ruling on interest comported with the Court's conclusions of law. The Court ruled that interest on the two commissions owed should be calculated from the due dates of those commissions (January 16, 2019 as to the 88,000 square feet and from July 2, 2019 on the 80,000), "through date of payment". Da295. However, calculation of interest through "date of payment" conflicts with the law adopted by the Trial Court at Section VI of the Opinion, Da291.

In North Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 574-575 (1999), the Supreme Court held: "The equitable purpose of prejudgment interest is

to compensate a party for lost earnings on a sum of money to which it was entitled, ***but which has been retained by another.***" (citing Sulcov v. 2100 Linwood Owners, Inc., 303 N.J. Super. 13, 398 (App. Div. 1997)). Thus, the North Bergen Rex Transportation Court cited Judges Pressler's and Verniero's comment regarding pre-judgment interest, noting that "prejudgment interest is not a penalty but rather its allowance simply recognized that until the judgment is entered and paid, ***the defendant has had the use of the money rightfully the plaintiff's***". Pressler & Verniero, Current N.J. Court Rules, Comment R. 4:42-11 (emphasis added).

Additionally, as Judges Pressler and Verniero note, pre-judgment interest may be awarded it is "***not*** a penalty but is rather a payment for ***the use of money***." Id., Comment 2.2.1 to Rule 4:42-11 (emphasis added). This principle comports with the equitable considerations that must be applied in assessing pre-judgment interest in non-tort actions. See, e.g. Deerhurst Estates v. Meadow Homes, Inc., 64 N.J. Super. 134, 155 (App. Div. 1960), certif. den., 34 N.J. 66 (1961); Pressler & Verniero, Current N.J. Court Rules, Comment 3.1, Rule 4:42-11.

At trial, Plaintiff did not adduce any testimony to show that Defendants improperly "used" or retained the funds which the Court ultimately ordered to be escrowed.[2] Defendants received minimal payment of rent following execution of the

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[2] In fact, GTI's failure to pay rent for the vast majority of the seven-year lease was

Lease. The Trial Court, however, simply allowed a pre-judgment attachment to funds which Getty received more than four years after execution of the Commission Agreement at issue here. Thus, the award of pre-judgment interest to Plaintiff for any period after the escrow funding was doubly punitive to Getty.

By extension of these principles, prejudgment interest on that portion of damages escrowed can ***only*** accrue through the date of escrow, not through payment of the judgment. In North Bergen, supra, the Court effectively stayed the imposition of pre-judgment interest on a contract under the "special circumstances" present in that matter, in which "a thirteen-month judicial delay that was not caused by the parties or their attorneys." Id. at 575. Similarly, this matter presented special circumstances because Defendants never had possession or use of the funds that went into escrow. Thus, the Trial Court abused its discretion in awarding pre-judgment interest on the escrowed funds following escrow.

Based on the foregoing, Defendants respectfully request that this Court reverse the Trial Court's finding that allowed pre-judgment interest to run from the

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the subject of the related matter Getty Industries, LLC v. GTI New Jersey, LLC, in the Superior Court of New Jersey, Law Division, Passaic County, Docket No. PAS-L-003422-19. On July 25, 2024, the Court issued Findings of Fact and Conclusions of Law, awarding damages for unpaid rent through March 3, 2023 (the date of the sale of the property), in the amount of $7,306,653.38, plus other damages. Defendants' fee application in that matter remains pending as of the date of this submission.

FILED, Clerk of the Appellate Division, April 03, 2025, **A-001604-24**, **AMENDED**

date of execution of the Lease through entry of the Court's Final Judgment and Order and terminate the accrual of interest on the escrowed funds as of March 3, 2023.

POINT IV

THIS COURT SHOULD REMAND THIS MATTER FOR A REDUCTION IN ATTORNEY'S FEES BASED ON THE IMPROPER AWARD OF A COMMISSION FOR UNIT "A" (DA294-295)

The Trial Court awarded attorney's fees to Plaintiff based upon Section 10 of the Commission Agreement, which required Defendants to "reimburse Plaintiff for all expenses and fees (including reasonable attorneys' fees) arising out of BLAU enforcing the provisions of this Agreement." Da294 (quoting Da4).

Plaintiff, however, sought commissions for three separate units: (1) Unit "D", containing 88,000 square feet; (2) Unit "A", containing the 80,000 square feet which never became part of the Demised Premises; and (3) the Lease Modification space. At trial, the Trial Court awarded commissions for the first two units, but not for the last unit. The Trial Court awarded Plaintiff's full fee request.

As Defendants argue above, Point II, Plaintiff did not earn a commission for the Unit "A" space. Assuming this Court agrees with Defendants, it would be patently unfair to Defendant to have to reimburse Plaintiff's attorney's fees in full when, at that point, Plaintiff would only have been successful in pursuing one out of three commissions. See North Bergen Rex Transport, supra, 158 N.J. at 570-574

(citing, *inter alia*, Singer v. State, 95 N.J. 487, 500 (1983) (in a fee-shifting analysis, the Court may reduce a fee award proportionately if time spent on the entire litigation was not reasonable in relation "to the actual relief obtained"). If this Court reverses the commission award in its entirety, then Plaintiff will not be entitled to any fee award.

Accordingly, Defendants respectfully request that this Court remand this matter for a reduction or voiding of the fee award to Plaintiff.

POINT V

THE TRIAL COURT ERRED IN AWARDING A COMMISSION TO PLAINTIFF FOR THE UNIT "D" SPACE (DA274-278)

As set forth above, and at trial, Plaintiff was not entitled to a commission for any of the Demised Premises. Again, there was no dispute that Plaintiff did not procure a lease for any part of 297 Getty during the term of the Commission Agreement. Rather, the Trial Court awarded Plaintiff commissions for a lease that was executed five days after the "safe harbor" provision in the Agreement, and for which Plaintiff fraudulently provided notice.

Section 5 of the Commission Agreement afforded Blau a "safe harbor" period during which it could claim a commission if a lease was executed with an entity "to whom this property was submitted or introduced by BLAU or any other entity"

within six months of the expiration date of December 31, 2018. Da3. Section 5, however, ***required*** that Blau disclose the name of that entity to the "undersigned in writing;" ***and*** that written disclosure had to happen either during the term ***or*** within ten days after the expiration of the term, December 31, 2018. Ibid.

Plaintiff, however, did not identify GTI as a potential tenant within ten days of expiration, because it fraudulently backdated the Attempted Protection Letter to January 10, 2019, but did not mail it until January 15, 2019. Da98-100. Defendants did not receive the letter until January 18, 2019, three days after execution of the Lease. This was ineffective notice under the Commission Agreement, because Blau was aware of the pending expiration and the Attempted Protection Letter was its standard letter. See, e.g. America's Dream Homes, Inc. v. Ins. Co. of America, 300 N.J. Super. 543, 549 (App. Div. 1997) (summary judgment reversed where manual plainly indicated that premiums for insurance policy were only effective on receipt where insured was a sophisticated party). Therefore, Blau failed to provide sufficient notice under Section 5 of its own form of agreement.

The Trial Court cited numerous instances of purported contacts between GTI and its representatives at Colliers, and Blau immediately before and after the December 31, 2018 expiration of the Commission Agreement. The Court found that Colliers:

> reached out to Scott Geller [of Blau] on the same that same day, Friday, December 21, 2018, to discuss the available space in the Property and to determine whether the owner would be interested in leasing space to a cannabis business. Geller responded to Kasbar that he would speak to his client and get back to Kasbar, and that he believed that his client would be interested in leasing space to ***GTI.***"
>
> [Da258 (emphasis added).]

Yet that email exchange, admitted into evidence, did ***not*** directly refer to GTI (only to "the recently approved cannabis company for Patterson [sic].") Da25. While a later communication from Colliers to Blau on December 28, 2018 did refer to "GTI" as a client of Colliers, Da29, nevertheless Blau did not procure the tenant.

A. Blau Is Not Entitled To Equitable Relief To Alter The Notice Provisions Of Section 5 Because It Was Not Vigilant

The Trial Court erred by essentially applying equitable relief to alter the terms of the Commission Agreement to render untimely notice as compliant simply because Plaintiff might claim a hardship. Dunkin' Donuts of America, Inc. v. Middletown Donut Corp., 100 N.J. 166, 183-184 (1985) (equitable relief is not available merely because enforcement of the contract would cause hardship to one of the parties); Brick Plaza v. Humble Oil & Refining Co., 218 N.J. Super. 101, 103-05 (App. Div. 1987) (refusing to apply equitable principles despite financial hardship, where failure by tenant to exercise an option claiming an "honest mistake" arising from relying on an incorrect draft of Lease; court found the failure to act amounted to

"positive neglect" (quoting Moro v. Pulone, 140 N.J. Eq. 25, 30 (Ch.1947)). Equitable relief cannot be available here, particularly where Savastano's sending of the letter implies its very necessity, and because he admitted that Plaintiff failed to be vigilant. "'Equity does not aid one whose indifference was the sole cause of the injury of which he now complains.'" Id. at 105 (quoting Moro, supra, 140 N.J. Eq. at 30).

Finally, equitable relief is not available to a party which acts with unclean hands. Blau's claim is based significantly on a fraudulently backdated Attempted Protection Letter. The testimony of all involved, including the letter-writer, Savastano, makes it clear the letter was postmarked the day the Lease was executed. One who seeks equity must do equity. Faustin v. Lewis, 85 N.J. 507, 511 (1981) (equitable relief should not be granted "to one who is a wrongdoer with respect to the subject matter in suit"); American Dream at Marlboro, L.L.C., supra, 209 N.J. at 170-71 (2012) (where the circumstances complained of "are of plaintiff's own making", those circumstances should have been considered in determining the merits of application for equitable relief).

Plaintiff mailed the Attempted Protection Letter five days after its deadline. Plaintiff may not rely on the fraudulently back-dated, post-expiration Attempted Protection Letter to avoid its own failure to comply with the ten-day notice

requirement and reliance on the letter yields unclean hands, preventing the application of the equitable doctrine of substantial compliance. See, e.g., A. Hollander & Son, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 246 (1949).

Thus, Blau is not entitled to equitable relief to claim substantial compliance with Section 5 of the Commission Agreement.

B. Plaintiff Was Not The Efficient Procuring Cause Of The Lease

As a matter of law, Blau is not entitled to the application of the doctrine of efficient procuring cause to further extend the notice provision. That doctrine is barred where an already negotiated extension period allowed for commissions whether Blau procured the tenant or not. Leadership Real Estate, Inc. v. Harper, 271 N.J. Super. 152, 171 (Law Div. 1993). Section 5 of the Commission Agreement gave Blau a negotiated six-month extension, even where the broker was not the efficient procuring cause (as it allowed the commission on an introduction made in writing during the term by Blau "or any other broker, agent, firm, corporation"). Thus, it ***provided much broader rights to earn a commission*** on sales after an expiration of an agreement then in the absence of such a clause, which bars application of the doctrine, absent bad faith or collusion to avoid the commission, because it would provide another extension. Leadership v. Harper, 271 N.J. Super. at 181 (emphasis added); Cornerstone Realty v. Joseph & Toni Ritchie, 2019 N.J. Super. LEXIS 6070,

* 18 (Law Div. May 22, 2019) (citing Leadership Real Estate, Inc., supra, 271 N.J. Super. at 179) ("the express provision for liability within the time limit implies its exclusion thereafter").

Even if the doctrine applied, Blau did not prove at trial that ***any*** of its brokers "***caused his or her customer to negotiate*** with the seller". Leadership Real Estate, Inc., supra, 271 N.J. Super. at 171 (citations omitted) (emphasis added). Rather, as Defendants forcefully testified, Michael Powell of the City of Paterson caused the "contact" between Getty and GTI and, moreover, was the cause of the negotiations that resulted in the Lease as confirmed by Karlebach.

Therefore, Blau did not prove that Defendants breached Section 5 of the Agreement because Blau failed to meet Section 5's requirements, equitable principles may not be applied to either expand the time of notice or to render substantial compliance with the Commission Agreement's express terms given it already contained broad rights as to Blau.

Accordingly, this Court should reverse the December 20, 2024 Final Judgment and Order in its entirety.

CONCLUSION

For the foregoing reasons, Defendants, Getty Industries LLC and Alma Realty Corp., respectfully request that this Court reverse the Trial Court's December 20, 2024 Final Judgment and Order, vacate the award of $292,483.87 for commissions for Unit "A" as described in the subject Lease, vacate the award of pre-judgment interest which accrued based on the Unit "A" commission, stop the accrual of pre-judgment interest as of March 23, 2023; and remand for a reduction in attorneys' fees awarded. In the alternative, the Court should reverse the December 20, 2024 Final Judgment and Order in its entirety; and remand for entry of Judgment as set forth herein.

Respectfully submitted,

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By: /s *Dennis J. Drasco*
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A Member of the Firm

Dated: March 24, 2025

FILED, Clerk of the Appellate Division, May 19, 2025, **A-001604-24**

CRIMKAV CORPORATION t/a THE BLAU & BERG COMPANY, Plaintiff/Respondent, v. GETTY INDUSTRIES LLC and ALMA REALTY CORP., Defendants/Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001604-24-T2 On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION; ESSEX COUNTY Docket No. Below: ESX-L-009380-19 Sat Below: Hon. Cynthia D. Santomauro, J.S.C. Civil Action

BRIEF OF PLAINTIFF/RESPONDENT CRIMKAV CORPORATION t/a THE BLAU & BERG COMPANY

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PRELIMINARY STATEMENT

Plaintiff/Respondent Crimkav Corporation t/a The Blau & Berg Company, referred to herein as "Blau," commenced this action in 2019 to recover a commission it earned in January of that year from Defendants/Appellants Getty Industries LLC ("Getty") and Alma Realty Corp. ("Alma") (collectively "Defendants"). Blau has been waiting unconscionably over six (6) years to collect the commission it earned pursuant to an Exclusive Right to Lease and/or Sell Agreement ("Exclusive Agreement"), and a January 15, 2019 lease of space in a commercial warehouse located on Getty Avenue in Paterson, New Jersey that was owned by Getty and being managed by Alma ("the Property").

After eight days of trial in the summer of 2023, and after considering the testimony of as many witnesses and a substantial amount of written evidence, the Trial Court correctly ruled that Blau had proved its case and earned its commission along with contractual interest and attorneys' fees. Defendants on the other hand have continuously failed to honor their contractual obligation to Blau resulting in additional delays in Blau recovering what it has been owed since January 2019.

The Exclusive Agreement is clear and unequivocal - it provides for the payment of a five (5%) percent commission if: (1) a tenant is introduced to the Property during the term that ended on December 31, 2018; and (2) if a lease is entered into with that tenant during the term or within six months thereafter. That is

exactly what happened as was confirmed by the Trial Court in its written opinion. Therefore, the commission became due when the lease was signed, and the term commenced, both of which occurred on January 15, 2019.

GTI New Jersey, LLC ("GTI") was introduced to the Property during the month of December 2018, before the term of the Exclusive Agreement had expired, and signed a lease with Getty on January 15, 2019. The lease term commenced the same day. Therefore, Blau earned its commission on January 15, 2019. However, despite repeated representations by Defendants' representative, George Valiotis, confirming that Blau had earned and would be paid a commission, his father and Defendants' principal, Efstathios ("Steve") Valiotis, unsuccessfully sought to negotiate or demand a reduction in the amount of the commission.

In the brief submitted in support of their appeal, Defendants acknowledge that "the Trial Court generally determined the correct facts," and suggest that this Court "should defer to the [T]rial [C]ourt's factual findings." Db31 Blau agrees. The Trial Court not only correctly determined the facts, but it also correctly applied the law to those facts when enforcing the terms of the Exclusive Agreement. The Trial Court entered the Final Judgment and Order which awarded Blau: 1) the commission earned; 2) pre-judgment interest on the commission; and 3) the attorneys' fees and costs incurred by Blau in connection with prosecuting this claim as expressly provided for in the Exclusive Agreement.

STATEMENT OF FACTS

As Defendants have conceded that the Trial Court "generally determined the correct facts," and that this Court "should defer to the [T]rial [C]ourt's factual findings" (Db31), Blau adopts the Trial Court's findings as set forth in the August 7, 2024 Opinion, and sets forth the relevant facts with citations to the Trial Court's Opinion where applicable and to the factual record created during the trial.

A. The Parties

Blau is a real estate brokerage company that has been in business for approximately fifty years. Da249; 1T156:6-10 (Geller) Getty was the owner of the industrial warehouse property located at 219-297 Getty Avenue in Paterson, New Jersey ("the Property"). Da249; 7T103:12-13 (S.Valiotis) Alma is a real estate management company that at one time managed the Property for Getty. Da249; 6T70:8 to 71:1-5 (G.Valiotis); 7T103:4-5 (S.Valiotis)

B. The Property

As the Trial Court found, the Property consists of an approximately seventeen-acre lot containing a commercial/industrial warehouse building with approximately 790,000 square feet of space. Da9; Da250; 6T76:9-11 (G.Valiotis)

C. Blau's Introduction to Alma/Getty and the Getty Avenue Property

Scott Geller ("Geller") is a New Jersey licensed real estate broker who has been licensed since October 2016. Da250; 1T100:9-12 (Geller) Beginning in July 2018, Geller reached out to Alma to inquire about properties and providing

brokerage services. Da250; 1T104:18-20 (Geller) He was connected to George Valiotis who identified himself as Vice President of Development and Leasing of Alma's office and industrial properties in New Jersey. Da250; 1T104:23 to 105:1 (Geller) Defendants have acknowledged that George Valiotis is a Vice-President of Alma. Db4 The Trial Court found that "the evidence was clear that George Valiotis was or is an officer of Alma." Da251 He is also the son of Efstathios ("Steve") Valiotis, the president of Alma who had a controlling interest in Getty. Id.

After the brief introduction in July 2018, George Valiotis asked Geller to follow up with him in September after Labor Day. Da251; 1T105 to 106:4 (Geller) As requested, in September 2018 Geller followed up with George Valiotis and they discussed the Property, including space that was immediately available for lease, upcoming available space for lease, and the brokerage services that Blau could provide to locate tenants for the Property. Da251; 1T106:12 to 107:3 (Geller)

George Valiotis then invited Geller to visit the Property, meet with the property manager, and learn about the existing tenants. Da251; 1T106:14-22 (Geller) Thereafter, Geller along with Scott Savastano, another Blau salesman. coordinated with the manager to visit the Property. Da251; 1T108:22 to 109:15 (Geller)

After their visit to the Property, Geller and Savastano followed up with Alma in a conference call with George Valiotis (Da251; 1T111:20 to 112:9 (Geller)) and both Geller and George Valiotis exchanged emails in which George Valiotis

delivered the plans for the Property. Da1; Da251 The discussions and exchange of emails led to Blau providing George Valiotis with a proposed Exclusive Agreement. Da3; Da251-252

Although George had identified himself as an authorized agent of Getty (1T116:9-13 (Geller)), and the Exclusive Agreement had originally been prepared for George's signature, Blau subsequently requested that George's father, Steve Valiotis, as the majority owner of Getty (and Alma), sign the Exclusive Agreement. (Da17)

Steve Valiotis has a controlling interest in Getty (Da251; 7T103:14-16 (S.Valiotis)), and at the time was away in Greece. 3T12:10-11 (Savastano) Therefore, it was not until October 19, 2018 that he signed the Exclusive Agreement on behalf of both Getty and Alma after he directed George to make certain handwritten revisions to the document. Da252; 6T79:8 to 80:20 (G.Valiotis) George testified – "My father instructed me to cross out certain sections" and "I handwrote all the modifications my father wanted me to make." 6T80:14-20 He also revised the effective date of the Agreement to October 19, 2018, and returned the signed Agreement to Blau. Da3; 1T127:8-22 (Geller)

D. The Exclusive Agreement

Pursuant to the Exclusive Agreement, from October 19, 2018 to December 31, 2018 (the "Term"), Blau had the exclusive, non-cancelable and sole right to lease

the Property or to sell the Property at the price, and upon the terms set forth in the Exclusive Agreement, or for any other price or terms that Defendants may or shall agree to accept. Da3

Section 1.a. of the Exclusive Agreement provides that Defendants agreed to pay Blau a commission equal to five (5%) percent of the total aggregate rental in the event a portion of the Property or any portion thereof is leased during the term of the Exclusive Agreement through Blau or through any other broker, agent, third party, or others. Id. The commission shall be due when leases are signed by both parties (Owner and Tenant) and payable in full when the lease term commences. Id. All past due accounts will be charged 1½% per month until paid, and Blau does not guarantee a tenant's performance under a lease. Id.

Section 1.c. of the Exclusive Agreement provides that a commission equal to five (5%) percent of the total aggregate rental shall be due in the event any other property of Defendants, their affiliates or the affiliates or others of any principal of Defendants is leased during the Term, arising out of the introduction of the Tenant to Defendants by Blau or any other broker, agent, third party or others during the Term in connection with leasing the portion of the Property. Id.

Section 3 of the Exclusive Agreement identifies the "Subject Property" as 219-297 Getty Avenue Paterson, NJ 07503, Lot 2, Block 1830.00/1, and a size of +/- 750,000 square feet. Defendants revised the Agreement to add "exclusive is for

80,000 sf vacant space on corner of Thomas St & Getty Ave. and mezz[anine] space." The lease terms were set as "$7.50 Gross + Utilities." Id.

Geller testified that the revisions indicated that Blau "exclusively has the right to market and lease 80,000 square feet of vacant space in addition to being able to lease any other square footage as referenced in the line above within the 750,000 square feet on the lot and block notated on the paragraph above." 1T139:16-21 (Geller) Savastano also understood that the entire building was available to be leased. 3T249:12 to 250:16 (Savastano) Therefore, if Blau leased any portion of space other than 80,000 square feet, and a lease was signed, it was understood that Blau would earn a commission of five (5%) percent. 1T140:1-8 (Geller)

Section 5 of the Exclusive Agreement provides that Defendants agreed that a commission shall be due at the rates provided therein if Blau, or any other person, broker, agent, firm, corporation or third party enters into a lease and/or sale or an agreement to lease and/or sell the Property, or any portion thereof, or any other property of Defendants, their affiliates, or the affiliates of any principal or others of Defendants within six (6) months after the expiration of the Term if the transaction is consummated with a person, entity, firm, corporation or their respective nominees to whom the Property was submitted or introduced by Blau, or any other broker, agent, firm, corporation or third party during the Term; and if the name of said person

or entity has been disclosed in writing during the Term or within ten (10) days after the expiration of the Term. Da4

Section 6 of the Exclusive Agreement provides that Defendants agreed to refer to Blau all inquiries regarding selling, leasing of the Property from other real estate brokers or prospective buyers, tenants, attorneys and other third parties, so that they may be handled in a professional manner in the best interests of Defendants, and all negotiations shall be conducted solely by Blau or under Blau's direction subject to Defendants' review and final approval. Id.

Section 10 of the Exclusive Agreement provides that in the event Defendants are in default under the provisions of the Agreement, they shall reimburse Blau for all expenses and fees, including reasonable attorneys' fees, arising out of Blau enforcing the provisions of the Agreement. Id.

Despite the revisions made to the Exclusive Agreement by Defendants, eliminating any renewals or extensions, the document continued to represent the size of the "Subject Property" as having +/- 750,000 square feet, and refers to "any other property of OWNER" as being subject to the Exclusive Agreement and the payment of a commission. Da3-4 (sections 1.c. and 5) The Exclusive Agreement also continued to provide that interest would be charged at 1½% per month (Da3), and that Blau would be entitled to recover attorneys' fees and costs to enforce the Agreement. Da4

E. Blau's Efforts to Market and Lease the Property

Upon the execution of the Exclusive Agreement, Blau undertook significant efforts to market the Property and locate prospective tenants. Da255 Those efforts included preparing a marketing brochure containing photographs and various information regarding the available space in the Property. Id.; Da9 The brochure identified a "+/- 287,750 SF Industrial Opportunity," a total building space of "+/- 699,000 SF," and "+/- 80,000 SF" that was to become available June 20, 2019. Da9 George Valiotis had provided Blau with the site plan that was included with the brochure. Da255; 1T155:10-15 (Geller) Geller prepared the brochure while working with George Valiotis. Da255; 3T110:1-5 (Savastano) George Valiotis directed Blau to market all the available space, including the 80,000 square feet of occupied space that was coming available in June 2019 (1T184:24 to 185:2 (Geller)), and to include the space in the marketing materials. Da255-256; 2T52:15-17 (Geller) Blau was aware that there was a tenant in the space, but understood that the tenant would be vacating, and the space would then be available for lease. Da256; 3T114:9-13 (Savastano)

Blau posted the marketing brochure on the commercial real estate site CoStar. Da256; 1T153:6-7 (Geller) "[A]s per George Valiotis, CoStar was the first place that we posted the marketing materials because he wanted to review it and approve it before it was shared with the marketplace." 2T122:6-12 (Geller) "He reviewed

it, said it's good to go and we started our marketing campaign." Id. CoStar is a national professional subscription-based database and provider of information, analytics and marketing services to the commercial property industry. Da256; 1T117:16 (Geller)

Geller and Savastano were at the Property on at least twenty occasions in connection with potential tenants and purchasers. Da256; 3T6:15 to 7:15 (Savastano) During the month of November, Blau was active in showing the Property and generating Letters of Intent for leasable space for different portions of the overall square footage of the building (Da256; 1T157:6-9 (Geller)) and obtained an offer to purchase the Property that Defendants rejected. 2T193:16-25 (Geller) George Valiotis instructed Blau to "lease up as much of the building as possible." Da257; 2T194:8-15 (Geller) (emphasis added).

By early December, George Valiotis was so confident that the Property would be leased to one or more tenants that he demanded Blau pay him "kickbacks" consisting of 1% on any commissions earned by Blau. Da257; Da20; Da21 He also offered to extend the term of the Exclusive Agreement and acknowledged that it had "grown to over 300,000 [square feet] of potential deals." Da21; Da257 He further acknowledged that he had "brought the listing to the relationship;" the "building is over 1 million [square feet] and all turning over as you know;" and "[t]here is a lot of money to be made here." Da22; Da257 However, because Blau determined that

the requests for a "kickback" were illegal and violated its policies, the requests were ignored. Da257; 1T166:11-12; 2T212:17-21 (Geller); 3T38:9 to 39:14 (Savastano)

F. The Introduction of Green Thumb Industries to the Property

Green Thumb Industries, a multi-state cannabis operator, obtained a license to cultivate, process and sell cannabis products in the City of Paterson area. Da257; 4T11:13 to 14:14 (Karlebach) GTI is a wholly owned subsidiary of Green Thumb Industries. 4T11:10-12 (Karlebach) On or about December 18, 2018, the State of New Jersey awarded GTI the license to proceed with locating and building out a property to conduct its operations (4T13:3-15 (Karlebach)), and was given thirty (30) days to find a location in Paterson. Da257-258; 4T16:1-3;19:21-22 (Karlebach) Devra Karlebach was the CEO of GTI from December 2018 to June 2021. 4T10:9-24 (Karlebach)

Colliers is a commercial real estate brokerage firm dealing with the sales and lease of commercial properties, including retail, industrial and offices. 5T7:14-16 (Shah) GTI had engaged Colliers to assist it in locating properties to conduct its operations in Paterson. Da257-258; 4T12:7-8 (Karlebach) In December 2018 Karlebach and Colliers, became aware via LoopNet (associated with CoStar), that the Property was being offered for lease with Blau as the broker. Da238 ¶9; Da258; 4T13:14 (Karlebach) Karlebach testified that the marketing brochure prepared by

Blau, identified at trial as P4 (Da9), was or was similar to the information that she had seen for the Property on LoopNet/CoStar. Da258; 4T68:2-3 (Karlebach).

In a December 21, 2018 email she sent to Colliers at 7:59 a.m., Karlebach identified the listing for the Property on the LoopNet website, and she asked Suketu Shah ("Shah"), a Colliers salesman, to determine how much space was available. Da23; Da258; 5T9:6-7 (Shah) Karlebach testified that she was "hopeful" that 200,000 square feet would be available. Da258; 4T93:19-20 (Karlebach) During the course of their research into available commercial properties in Paterson, Karlebach and Colliers both determined that the Property had space available for lease and was being listed by Blau. Da238, ¶10; Da258; 5T9:10-11 (Shah) Shah also became aware that Blau was the owner's broker from CoStar/LoopNet. Da258; 5T56:3-6 (Shah)

Since the Property was identified as a potential location for GTI to develop a cannabis cultivation and processing facility, on Friday, December 21, 2018, at the request of Karlebach, Wayne Kasbar ("Kasbar") of Colliers and Shah's boss, reached out to Geller to discuss the available space in the Property and determine whether the owner would be interested in leasing space to a cannabis business. Da25; Da238, ¶11; Da258 Geller responded to Kasbar that he would speak to his client and get back to Kasbar, and that he believed that his client would be interested in leasing space to GTI. Da25; Da258

Kasbar further informed Geller that GTI would be meeting with the Mayor of Paterson, and he inquired as to whether the Property could be made available for an inspection. Da24; Da258-259 Immediately after his call with Kasbar, Geller contacted George Valiotis by text message to advise Valiotis that a cannabis operator was interested in leasing 150,000 square feet of space in the Property. Da111; Da259 In a subsequent telephone conversation with George Valiotis that very same morning, Geller confirmed the information that he had received from Kasbar regarding the opportunity to lease space in the Property to a cannabis business, and in response George Valiotis confirmed that the landlord was interested in the lease, that such use was acceptable, and stated "as we've previously discussed, my father is interested in having a cannabis company as a tenant in a building in Paterson." Da259; 1T174:17-19 (Geller) Per George Valiotis' directive, Blau decided to move forward with discussions for a lease with GTI and to arrange for and secure a property tour. Da259; 2T220:10-12 (Geller)

At the same time that Karlebach had located the Property on LoopNet and was working with Colliers, she was also reaching out to the Economic Development Director for the City of Paterson, Michael Powell, regarding available properties. Da259; 4T19:22-25 (Karlebach) On or about December 21, 2018, Karlebach met with Mayor Andre Sayegh and Powell. Da238, ¶12; Da259 At that meeting, Karlebach discussed GTI's plans to operate a cannabis business in the City of

Paterson, including the possibility of leasing space in the Property. Id. Karlebach, who the Trial Court found to be "a credible witness" (Da259), also testified that she had already identified the Property through Colliers before she had her meeting with Powell. Id.; 4T62:11-15 (Karlebach)

Shortly after the meeting with Mayor Sayegh and Karlebach, Powell contacted a representative of Alma (also in December 2018) to determine whether the owner of the Property would be interested in leasing space to operate a marijuana cultivation business and to advise Alma that the City would like the owner to lease space to GTI. Da238, ¶13; Da259 After contacting a representative of Alma, Powell confirmed to Karlebach that the owner was interested in leasing space to GTI; however, the owner's decision maker, who Karlebach later learned was Steve Valiotis, was away in Greece and would not be returning until January 3, 2019, preventing a meeting until then. Da238, ¶14; Da259

The Trial Court found that it was undisputed that Steve Valiotis was away in Greece most of the month of December. Da260; see also 7T4:6-9 (G.Valiotis) His son George testified that he did not have authority to meet with GTI without his father. 7T6:12-14 (G.Valiotis) The Trial Court also found that "it is equally clear that George Valiotis and Steve Valiotis were aware of GTI and its interest in the Property during December 2018". Da260

Despite the Trial Court's characterization of Geller's testimony as being credible, and as confirmed by Karlebach and further confirmed in an email from George Valiotis, George Valiotis testified that it was Powell who had communicated to Steve Valiotis regarding GTI's interest in leasing the Property, but Steve was in Greece during that period of time. Da260; 6T91:11-14 (G.Valiotis) George testified that GTI came to Defendants through Powell. 6T94:7-8 (G.Valiotis) However, during his testimony in another trial in which Getty was suing GTI for breach of its lease, Steve Valiotis admitted that he had received a call "some time in December 2018" regarding a meeting with GTI. Da260; 7T179:23 to 180:4 (S.Valiotis) The Trial Court found that "the fact of Defendants' knowledge of the interest of GTI in December [from whomever it came from] is clear and beyond dispute." Da260

At or about the same time that he was meeting with Karlebach, Powell was also communicating with Ruben Gomez, his predecessor as the City of Paterson's Director of Economic Development, and they spoke about the Property. Da261; 8T12:25 to 13:11 (Gomez) Although Steve Valiotis was in Greece at the time, Gomez testified that he had been in contact with him by telephone during the last couple of weeks of December 2018. Da261; 7T302:22-24 (Gomez) According to the Trial Court, this is "further indisputable evidence that [D]efendants became aware of GTI during the term of the Exclusive Agreement." Da261

On December 24 and 26, 2018, Karlebach confirmed in emails that she had heard back from Director Powell who had advised her that Steve Valiotis was in Greece until January 3rd, but that Steve Valiotis was inclined to lease space in the Getty Avenue Property to GTI. Da27; Da261 She testified - "All I remember was that the deal was okay to go through with a cannabis operator." 4T21:7-8 (Karlebach) However, because Steve Valiotis was the decision maker, no deal could get done without his approval. 3T51:13-24 (Savastano) Karlebach was aware that Steve Valiotis was Defendants' decision maker with regard to the Property. Da261; 4T51:8-10;64:10-18 (Karlebach)

Through the end of December, Colliers and GTI continued to gather information regarding the Property, in particular regarding the Property's proximity to a school, and backup options if the Property did not comply with the distance requirements. Da27; Da261 Kasbar testified that all the information Colliers had obtained for the Property was directly from Blau. Da261; 5T73:13-18 (Kasbar) On Friday, December 28, 2018, at GTI's request, Collier's broker Kasbar reached out to Geller to request access to the Property the following week to conduct an inspection. Da29; Da261-262

G. The January 2, 2019 Inspection of the Property

Colliers coordinated with Blau to obtain access to the Property. 5T43:3 (Shah) Although efforts were made to have the Property available for inspection on

December 31, 2018, GTI could not make it that day and so the inspection was scheduled for January 2, 2019. Da262; 3T71:9-17 (Savastano) On a conference call with George Valiotis that took place sixty minutes before GTI's inspection, Geller and Savastano discussed proposed lease terms, including their suggestion to charge GTI $12.50 per square foot, triple net, with a minimum ten-year primary term with extensions. Da262; 1T143:13-22 (Geller)

Shortly afterwards, GTI representatives, accompanied by Blau representatives Geller and Savastano, and by Collier's agent Shah, inspected the Property. Da238, ¶¶15-16; Da262; 1T181:11-24 (Geller) The inspection lasted hours. Da262; 3T129:14-15 (Savastano) At the inspection, Karlebach determined the Property would be appropriate for GTI to conduct its operations. Da262; 4T25:4-10 (Karlebach) Although Colliers had initially indicated that GTI was seeking to lease a minimum of 150,000 square feet, based upon discussions that took place during the inspection, it became apparent that the total space to be leased would be in excess of 200,000 square feet. Da262; 2T25:17-23 (Geller) During the inspection, Karlebach asked about the possibility of GTI taking over the entire building (5T86:10-11 (Kasbar)), and Shah told Savastano that GTI "really want[s] to take the whole building." Da262; 3T213:4-6 (Savastano)

After the inspection, Colliers asked Blau, and Blau provided Colliers with a site plan and floor plans for the Property and, in an email dated January 2, 2019,

Blau described the space that was currently available for lease and other space that would become available in the future. Da37; Da262; 1T183:10-15 (Geller)

H. The January 3, 2019 Meeting at Alma's Office

After the inspection, Karlebach reached out to Alma to arrange for a January 3, 2019 meeting with the owner to discuss terms of a proposed lease (Da238, ¶17), and she notified Shah of the meeting to request that he attend. 5T19:3-6 (Shah) Notably, Blau was not invited to attend or made aware of the January 3 meeting. Da263; 3T122:7-16 (Savastano)

The meeting took place on January 3, 2019 at Alma's headquarters in Long Island City, New York. Da238, ¶17 In attendance at the January 3, 2019 meeting, in addition to Karlebach, were Steve Valiotis and his son George as representatives of the owner/manager of the Property, Director Powell from the City of Paterson, and Suketu Shah of Colliers. Da238,¶18; Da263 Gomez, by then a new first week Alma employee having just left Patterson, was also in attendance (6T92:16-23 (G.Valiotis)) having been invited to attend by Steve Valiotis. 7T250:8-9 (Gomez)

Blau had not only not been invited to the meeting, but was unaware of the meeting until George Valiotis and Colliers contacted it afterwards. Da263 Geller and Savastano were in Blau's office that morning waiting for a Letter of Intent to be delivered by Colliers, and it was not until later that day that they received a text from George Valiotis that a meeting had taken place and that a deal had been made.

1T190:12-18; 2T145:21-23 (Geller) Shah and Kasbar from Colliers were both surprised that Blau was not at, nor had it been invited, to the meeting. 5T19:7-9; 22:12-14 (Shah)

The next day, January 4, 2019, Kasbar sent an email to Blau summarizing what had transpired at the meeting and relating the terms that were reached to make sure that Blau was aware of what had transpired. Da39 He confirmed that Steve Valiotis and Karlebach reached a tentative agreement on the financial terms of a proposed lease, which terms were to be subject to a written lease agreement. Da39; see also Da238, ¶19 At the conclusion of the meeting, George Valiotis confirmed that the brokers involved in the transaction would be paid a commission. Da238,¶19; 5T20:18-23 (Shah) George Valiotis approached Shah and said "Hey, great deal. Thanks for bringing this client in, and don't worry, we take care of our brokers." Da263; 5T20:18-23; 30:12-13 (Shah) At the meeting, Karlebach made it clear that the owner, Getty, would have to pay the brokers' commissions, as GTI does not pay brokers, and that GTI would not execute any lease without having the brokers' fee issue resolved. Da263-264; 4T26:8-17; 27:19-24; 31:16-25 (Karlebach)

The Trial Court found that the testimony of Kasbar of Colliers "was clear that Colliers and Blau had been negotiating the terms for a potential lease with GTI during the month of December, during which time the Exclusive Listing was in effect, and that those negotiations resulted in a 'meeting of the minds' and was the

reason for the meeting that took place between GTI and [Defendants] on January 3, 2019." Da264; see also 5T159:11-16 (Kasbar)

Moreover, the Trial Court noted that despite the obligation in Section 6 of the Exclusive Agreement to refer all inquiries regarding leasing the Property to Blau so that Blau could assist in closing a deal, Defendants did not do so. Da264; 3T26:10 to 27:4 (Savastano); Da3 ("OWNER agrees to refer to BLAU all inquiries regarding the selling, leasing or other of the property from other real estate brokers or prospective buyers, tenants, attorneys and other parties"). By not inviting Blau to attend the January 3rd meeting with GTI, Defendants had ignored their contractual obligation to Blau.

Information regarding the lease with GTI and the payment of a commission was confirmed when, immediately after the January 3rd meeting, George Valiotis sent a text message to Geller in which he wrote "Deal is done. Work with the broker on commission split. Let's discuss pay [out] terms with owners in Blau & Berg." Da190; Da264 In that same text message, George Valiotis also acknowledged that the size of the leased space "will be roughly 220,000 sf." Id. At the trial, he further acknowledged that he was "interested in leasing a lot of space to GTI" at that time. 6T181:14-16 (G.Valiotis)

Blau had not been made aware that the meeting was taking place, and it was after the meeting that Ruben Gomez, who was a Paterson official until December

30, but employed by Alma as of January 2, 2019, sent Blau's Jason Crimmins a text message stating "Happy new year. I am working with your guy Scott Geller in [P]aterson" thus acknowledging his awareness that Blau was the broker that participated in procuring the lease with GTI. Da264-265; 8T31:14-19 (Gomez)

Having received the text message from George Valiotis that the "[d]eal is done," Blau was led to believe that the proposed lease would be plus or minus 220,000 square feet. Da265; 1T188:2-5 (Geller) George Valiotis acknowledged that 220,000 square feet could be made available to GTI. 7T98:2-6 (G.Valiotis)

In the January 4, 2019 email that Collier's Kasbar sent to Blau's Geller and Savastano, he acknowledged having received the leasing plan for the Property and summarized what had transpired during the meeting that took place at the Alma offices the day before. Da39; Da265 Kasbar confirmed the attendees (Karlebach, Steve Valiotis, George Valiotis, Director Powell and Shah on behalf of Colliers); and that it was GTI's intent to occupy the entire Property over the period of the primary term of the lease term in tranches; and further that the next steps were to involve the attorneys with the goal of having a lease prepared which would be executed by no later than January 15, 2019. Da39 Moreover, and most significantly, George Valiotis had confirmed that Alma would pay the brokers. Id.

I. The Preparation and Exchange of a Draft Lease Agreement

On January 7, 2019, Anthony Novella, Esq., as counsel for Defendants, provided GTI with an initial draft of a lease agreement, which was subsequently negotiated over the next several days. Da40; Da238, ¶21; Da265 Blau anticipated that, as required by Section 6 of the Exclusive Agreement (Da3), it would be involved in the negotiation of the agreement. 1T194:9-20 (Geller); Da3 ("All negotiations shall be conducted solely by BLAU or under BLAU'S direction subject to OWNER'S review and approval."))

Consistent with the Exclusive Agreement, on January 9, 2019, George Valiotis provided Geller with the draft lease agreement. Da40 As the senior leader of the Blau team, Savastano took the lead in reviewing the lease. 2T6:21-22 (Geller) Upon completing his review of the draft lease, Savastano sent an email to George Valiotis providing his comments including a suggestion that the lease should refer to Blau as the broker. Da97; Da265

Contemporaneous with the preparation of a draft lease, George Valiotis had instructed Blau to work with GTI's broker, i.e., Colliers, to craft and memorialize a co-broker agreement, which was completed by January 14, 2019. Da265; 1T199:2-7 (Geller) Therefore, upon receiving the draft lease from George Valiotis, Blau had been given no reason to believe that Defendants would fail to honor the Exclusive Agreement and pay it a commission. 2T9:10-11 (Geller) In fact, by sending Blau a

copy of the draft lease, and previously making the Property available for inspection by GTI and Colliers, Defendants had acknowledged GTI's prior introduction to the Property and Blau's continuing agency relationship through the execution of a lease. 3T57:5-9 (Savastano)

The Trial Court found these facts, regarding the introduction to and the inspection of the Property, and the delivery of the draft lease, as "unassailable evidence" that in January 2019 Defendants had acknowledged Blau's continuing agency relationship. Da265-266

J. The Broker Protection Letter and Blau's Efforts to Resolve Payment of its Commission

By January 9, 2019, by virtue of a draft lease having already been exchanged between Defendants and Blau, it was clear to the parties that GTI intended to lease space as a tenant at the Property. 2T9:18-24 (Geller) On January 10, 2019 Blau prepared and arranged to deliver to George Valiotis a letter containing a list with the names of all those corporations, firms, persons, entities or others that the Property was submitted to and that had expressed an interest in the possibility of purchasing and/or leasing space at the Property. Da101; Da268 Savastano placed the letter in the company's outbox to be stamped and mailed. 3T162:15-23 (Savastano)

Despite the ongoing negotiation of a lease, the list included "Green Thumb Industries, LLC, GTI New Jersey, LLC represented by Mr. Wayne Kasbar of Colliers International." Da101 According to Geller, the letter is standard practice at

the conclusion of an engagement to memorialize any potential future commissions that may become due based upon engagements, conversations, introductions, tours, LOI's and other writings that describe a tenant-landlord expectation. 2T10:23 to 11:4 (Geller) "The purpose of the letter is to notify the landlord of any entities and individuals that were interested and introduced to the property and if the successful lease was committed within the period of six months after the expiration of the [Exclusive Agreement] a commission shall be due to Blau and Berg . . . from Alma." 2T150:21 to 151:10 (Geller) However, neither Geller nor Savastano believed that the letter was required with regard to the GTI lease, as notice had already been provided and acknowledged by Defendants as demonstrated by the exchange of emails and a draft lease. 2T228:1-9 (Geller); 3T160:15-18 (Savastano) Because Defendants were already aware of GTI's prospective tenancy and with whom they were already in the process of negotiating a lease, GTI's inclusion on the list of contacts was "gratuitous." 3T161:2-5 (Savastano)

In fact, Defendants were aware of GTI as a prospective tenant by virtue of the several contacts that took place in December 2018, and certainly by January 2, 2019 when GTI toured the Property with Defendants' employees letting them in, and then again on January 3, 2019, when they met with representatives of GTI at Alma's offices, and later confirmed such awareness in writing when their attorney circulated a draft lease on January 7, 2019 identifying GTI as the prospective tenant. Thus,

Blau's January 10, 2019 letter was irrelevant and not required to earn a commission for the GTI lease, but nonetheless was sent to provide Defendants with notice of all the other prospective tenants and purchasers that Blau had introduced to the Property. 3T163:3-8 (Savastano)

On January 14, 2018, Blau and Colliers executed a Real Estate Brokerage Commission Agreement in which they acknowledged that they would each receive a commission of 2 ½% of the Net Rent when the lease between Getty and GTI was fully executed. Da112 The same day, Blau met with Steve and George Valiotis at Alma's offices in Long Island City, New York. Da114 The following day, January 15, 2019, Blau sent a letter to Valiotis confirming their attendance at the meeting and providing documents he requested to show evidence of the agency relationships that exist between Blau, Alma, Colliers and Getty. Id.

K. Getty's Lease with GTI

On January 15, 2019, Getty executed an Agreement of Lease with GTI ("the Lease"). Da115 The Lease includes terms for the lease of approximately 88,000 square feet in the Property, referred to as Unit "D," for a term commencing upon the "execution and delivery" of the Lease. Pursuant to Article 67(A) of the Lease, approximately 80,000 square feet of adjacent space in the Property, referred to as Unit "A," was to be delivered to GTI by July 1, 2019, making the total size of the Demised Premises approximately 168,000 square feet. Id.

In Article 51 of the Lease, GTI acknowledged that it had worked with Colliers in connection with the Lease and that Getty, as the Landlord, agreed to pay its broker ("to the extent it had one"), and pay GTI's broker the commission(s) owed pursuant to separate agreements between the brokers and the Landlord. Id.

As Defendants' decision maker, Steve Valiotis signed the Lease, as he had the Exclusive Agreement (Da3; Da115), and he testified that he was able to deliver the 80,000 square feet of space to GTI. 7T138:12-14 (S.Valiotis) Gomez testified that GTI had access to all the space referenced in the Lease in January (8T67:20 (Gomez)), and he further testified that GTI had moved into the entirety of the space by mid-February. 8T85:23 to 86:6 (Gomez)

L. Commissions that Became Due upon the Signing and Commencement of the Lease

Pursuant to the Exclusive Agreement, commissions became due upon the signing and commencement of the Lease. Da3 The Lease was signed and commenced on January 15, 2019. Da115 Thus, the commissions that became due, based upon a total of 168,000 square feet of space that was the subject of the Lease are calculated as follows:

- The total aggregate rental for the space consisting of 88,000 square feet that was immediately available was $6,837,275. At five (5%) percent, the commission that became due for the 88,000 square feet is $341,863.76.

- The total aggregate rental for the space consisting of 80,000 square feet that was to be made available by July 1st was $5,849,678. At five (5%)

percent, the commission that became due for the 80,000 square feet is $292,483.87.

Thus, the total amount of the commission that became due upon the signing and commencement of the Lease, which occurred on January 15, 2019, is $634,347.63. Da295

M. Blau's and Colliers' Efforts to Recover the Commissions

Before January 15, 2019, Defendants never notified Blau that Blau was not entitled to receive any commission on the Lease. 1T158:16-20 (Geller); 3T36:20-25 (Savastano) To the contrary, on January 17, 2019, George Valiotis sent a revealing text to Savastano in which he acknowledged Blau's role in procuring the Lease with GTI, stating, "I instructed my father to pay a commission to both Colliers and Blau Berg," "[y]ou're both nice guys and did a lot of work to lease the building," and "[w]e landed a whale and you played your part." Da193; Da268 At trial, George credibly testified that he had in fact spoken to his father and instructed him to pay Blau a commission. 6T122:17-25; 123:8-10 (G.Valiotis)

In response to email he received from Savastano in which Savastano stated that Geller and he had reached out a number of times to discuss the commission, George Valiotis sent an email to Savastano, Geller and Brian DiPinto (another Blau agent) on January 18, 2019 stating that Alma will be sending them a letter that will address their concerns, and that he believed that "both parties will be pleased with the outcome." Da194; Da268 During the next several days, Geller and Savastano

attempted to reach out to George Valiotis to request clarification about what he meant in his last message. 2T15:12-17 (Geller)

In a letter dated January 24, 2019, Anthony Novella, Esq., as counsel for Steve Valiotis and Alma, notified Blau's counsel that his clients' position was that the Exclusive Agreement was not enforceable and that, because Blau had not timely provided the January 10, 2019 letter containing the list of prospective tenants, his clients would not be paying any commission for the Lease. Da195; Da268-269 In his letter, Mr. Novella also stated that "Officials from the City of Paterson, not Blau brought [GTI] to Owner on or about December 21, 2018." Da196 (emphasis added) Therefore, as the Trial Court found, Novella had admitted the fact that GTI's introduction to the Property had occurred during the Term of the Exclusive Agreement that did not end until December 31, 2018. Da269

From January 15, 2019 through the first week of February 2019, Colliers also attempted to contact Alma and its attorney, Mr. Novella, to discuss the commissions owed for the Lease, and received no response. As a result, on February 7, 2019, Kasbar delivered an email to Novella, outlining the history of Colliers' involvement in procuring GTI as a tenant, including its interactions with Blau as the listing broker for the Property. Da198; Da269 In that email he confirmed that in December 2018 Colliers had become aware of the Property via CoStar, and that Blau was identified as the broker. Id. Kasbar summarized those events occurring subsequent to his

initial inquiries including the site inspection on January 2, 2019, the meeting at Alma's offices the following day, and the Lease that identified Colliers as GTI's broker in the transaction. Id. Inexcusably, Kasbar never received a response to his email. 5T110:18 to 111:6 (Kasbar)

At the earlier meeting with Steve Valiotis on January 14, 2019, Savastano and DiPinto had a similar experience and outcome. Da266-267; 3T65:4-10 (Savastano) Steve Valiotis told them "if you think I'm paying you 5 percent on this type of money, you boys are crazy. . . you know, 3 percent, that's all that you're entitled to. Take it or else you'll never see the money. Try suing me and see how long it will take, and brokers never make more than 150 Grand a year[,] so you guys have no right to have this kind of money." Da267; 3T66:11-21 (Savastano)

In mid-February 2019, Blau's Geller also personally met with Steve Valiotis at Alma's Long Island City offices. 2T17:12-20 (Geller) Geller took the opportunity to introduce himself, discuss the commission that had been earned on the Lease, and presented three options for satisfying payment of the commission. Da269; 2T19:5-23 (Geller) Valiotis responded by putting his arm up, refusing to look at the options, and stating that brokers only make $150,000 to $200,000 per year, and that the amount of the commission was an "insane amount," and that he would never pay it. 2T20:3-20 (Geller) He then told Geller that Blau could sue him, and he would "just let the lawyers figure it out." Id.

The Trial Court found that Steve Valiotis, "a witness who was not credible in many aspects of his testimony," never denied that he had told anyone from Blau that all they were entitled was $150,000 per year, but only that he could not recall what he had said, and he admitted that maybe he had said it to them. Da269; see also 7T231:4-11;233:19-24 (S.Valiotis)

Neither Blau nor Colliers has received any payment for the commission earned in connection with their involvement in procuring GTI as a tenant for the Property. Da269; 2T224:10-13 (Geller); 3T93:1-3 (Savastano); 5T35:21-23 (Shah) Steve Valiotis testified at trial that he has not paid any broker's fees, but acknowledged that he was obligated to pay GTI's broker. Da269-270; 7T220:2-24 (S.Valiotis)

N. The Lease Modification

In connection with the cannabis license that it had obtained from the State of New Jersey, GTI knew that it would require at least 150,000 square feet of space for its operations and therefore the Lease, which provided for 168,000 square feet, would satisfy that requirement. 5T193:15-25 (Kasbar) But Karlebach testified that GTI needed 150,000 to 200,000 square feet of total space. 4T44:7-8 (Karlebach) Therefore, during the months of February thru May, GTI communicated and negotiated with Defendants regarding modifying the space so as to make more space available for its cannabis operations. 3T229:16-24 (Savastano) Gomez testified that

the discussion of a modification to the Lease first came up in March, and maybe before then. 7T271:21-23 (Gomez) Karlebach started to press him in March for a modification of the Lease. 8T76:11-14 (Gomez) Steve Valiotis testified that he was aware in February, March, April, May and June that GTI wanted additional space and that he wanted to lease as much of the space as he could because GTI was a public company. Da270; 7T207:23 to 208:2; 208:20-22 (S.Valiotis)

Modifying and making more contiguous space available for GTI would require relocating certain existing tenants, which is commonplace for landlords, and relocating tenants to get a new tenant in certain space is done all the time. 2T207:7-9 (Geller); 3T115:3-9 (Savastano) As Kasbar testified, space is "fungible." 5T193:19-20;205:6-7 (Kasbar) In connection with the Exclusive Agreement, there was +/- 750,000 square feet available to be leased (3T206:13-14 (Savastano)), and George Valiotis had stated in an earlier email that the building had over one million square feet that was all turning over. Da22

Getty and GTI subsequently executed a Lease Modification that among other things modified and increased the total size of the space being provided to GTI at the Property. Da202 Getty was required to deliver to GTI exclusive possession of 121,331 square feet by July 15, 2019; GTI was to surrender a portion of the space referred to as Unit "D" containing approximately 53,899 square feet; and the total size of the Demised Premises shall then encompass approximately 209,331 square

feet. Da202 Blau was not made aware of the Lease Modification until after it was signed. 2T87:15-18 (Geller)

O. The Getty v. GTI Litigation

Several months later, in October 2019, Getty filed an action against GTI in the Superior Court of New Jersey, Passaic County, entitled Getty Industries, LLC v. GTI New Jersey, LLC, et al., Docket No. PAS-L-3422-19, alleging that GTI stopped paying rent and abandoned the Property. Da270 In that action, Steve Valiotis provided answers to GTI's Interrogatories stating the following admissions:

> A. GTI initially leased approximately 88,000 square feet with an additional 80,000 square feet anticipated for a seven year term commencing January 15, 2019 through December 31, 2025.
>
> B. On July 10, 2019, the parties entered into a Lease Modification in which GTI increased the size of its leasehold, to approximately 209,331 square feet.
>
> C. Getty has sustained damages that total over $18,000,000, and those damages include over $14,000,000 for rent due under the Lease and Lease Modification, and $773,817.63 for commissions to brokers.

(Da271)(emphasis added)

RELEVANT PROCEDURAL HISTORY

Blau commenced this action in June 2019 to recover its commission, alleging breach of contract and breach of the implied covenant of good faith and fair dealing, and asserting various equitable claims for relief. Da211 Defendants filed their answer on August 13, 2019. Da229 In response to the planned sale of the Property,

the Trial Court entered an Order on April 1, 2022, requiring Getty to escrow the sum of $986,545.65 from the proceeds of the sale so as to cover all or a portion of a possible judgment in favor of Blau. Da308

The Trial Court conducted trial on June 6, 7, 12, 25, 2023, July 5, 6 and 7, 2023, and August 10, 2023. On August 7, 2024, the Trial Court issued the Opinion containing its findings and conclusions. Da248 On October 17, 2024 the Trial Court heard oral argument on Defendants' Motion for Reconsideration, and on December 11, 2024 issued a written Statement of Reasons. Da297 Thereafter, on December 20, 2024 the Trial Court entered a Final Judgment and Order. Da300

The Final Judgment and Order provides in relevant part the following:

1. Final Judgment is entered in favor of Plaintiff and against Defendants, jointly and severally, for the commissions due for 168,000 square feet of space set forth in the January 15, 2019 Agreement of Lease between Getty and Green Thumb Industries as described more fully in the Court's Opinion.

2. In connection with the approximately 88,000 square feet space referenced in the Agreement of Lease as Unit D, the commission due Plaintiff totals $341,863.76.

3. In connection with the approximately 80,000 square feet space referenced in the Agreement of Lease as Unit A, the commission due Plaintiff totals $292,483.87.

4. The total amount of the commissions due Plaintiff, is $634,347.63.

5. The per-diem prejudgment interest rate for the 88,000 square foot space, referenced in the Agreement of Lease as Unit D, is $168.59. Therefore, the interest accruing from January 15, 2019 through December 13, 2024, a period of 2,159 days, totals $363,985.81.

6. The per-diem prejudgment interest rate for the 80,000 square foot space, referenced in the Agreement of Lease as Unit A, is $144.24. The interest accruing from July 10, 2019 through December 13, 2024, a period of 1,983 days, totals $286,027.92.

7. The total prejudgment interest awarded to Plaintiff is $650,013.73.

8. The total amount of attorneys' fees and costs awarded to Plaintiff for those services provided in this matter through 2023 totals $446,556.00, and the total amount of attorneys' fees and costs awarded to Plaintiff for those fees and costs provided through August 20, 2024 total $13,960.00 as set forth in Plaintiff's Certification of Legal Services. Thus, the total amount of attorneys' fees and costs awarded to Plaintiff is $460,516.00.

9. Final Judgment is awarded to Plaintiff and against Defendants, jointly and severally, for the commissions, pre-judgment interest through December 13, 2024, and attorneys' fees and costs in the total amount of $1,744,877.36.

10. Post-judgment interest will accrue from the date of entry of this Final Order and Judgment at the rate set forth in and calculated by Rule 4:42-11(a).

[Da300]

Defendants filed a Notice of Appeal on February 3, 2025. Da324

LEGAL ARGUMENT

POINT I

THE STANDARD OF REVIEW

In reviewing an appeal from a non-jury trial, our appellate courts will "review a 'trial court's determinations, premised on the testimony of witnesses and written evidence at a bench trial, in accordance with a deferential standard.'" Nelson v. Elizabeth Bd. Of Educ., 466 N.J. Super. 325, 336 (App. Div. 2021) (quoting D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). Ordinarily, "[t]he scope of

review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). Factual findings "are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Id. The reviewing court will "defer to the trial court's credibility determinations, because it '"hears the case, sees and observes the witnesses, and hears them testify," affording it "a better perspective than a reviewing court in evaluating the veracity of a witness."'" City Council of Orange Twp. v. Edwards, 455 N.J. Super. 261, 272 (App. Div. 2018) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). It will "'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interest of justice.'" Allstate Inc. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017) (quoting Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015)).

Over the course of eight days of trial, the Trial Court heard the testimony of eight witnesses, five of whom testified on behalf of Blau, and three who testified on behalf of Defendants. Significantly, the Trial Court found Blau's witnesses to be extremely credible, and found the testimony of Defendants' principal, Steve

Valiotis, to be incredible. Additionally, the Trial Court considered over forty documents that were moved into evidence. The Court then correctly ruled that Blau was entitled to its remedies under the Exclusive Agreement, including all the commissions it earned associated with the GTI lease along with an award of prejudgment interest, and attorneys' fees.

POINT II

THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANTS BREACHED THE EXCLUSIVE AGREEMENT AND A COMMISSION WAS DUE FOR BOTH THE 88,000 SQUARE FOOT SPACE AND THE 80,000 SQUARE FOOT SPACE CONTEMPLATED BY THE LEASE.

To establish a breach of contract claim, a moving party should show four elements: (1) the parties entered into a contract with specific terms; (2) the moving party acted in accordance with the contract; (3) the non-moving party failed to act ("breached") accordingly; and (4) the breach resulted in damages to the moving party. Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016).

Also, it is axiomatic that "[t]he law [] protects a man's interest in reasonable expectations of economic advantage," Harris v. Perl, 41 N.J. 455, 462 (1964), and "protects a person in the pursuit of his livelihood." Cushman & Wakefield of New Jersey, Inc. v. Alexander Summer Co., 295 N.J. Super. 173, 181 (App. Div. 1996) (quoting Harris v. Perl, 41 N.J. at 461). "(T]he right to pursue the real estate brokerage business is one of the property rights or interests which the law protects

against unlawful interference." Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185 (App. Div. 1978).

It has long been the law in New Jersey that a real estate broker is entitled to a commission upon procuring a customer that is ready, willing, and able to enter into a contract to purchase or lease a property on terms that are acceptable to the owner or the landlord. Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, 543 (1967); Louis Ross Associates, Inc. v. Interstate Holding Corp., 249 N.J. Super. 436, 438-39 (App. Div. 1991).

Section 3 of the Exclusive Agreement identified the "Subject Property" as 219-297 Getty Avenue and a size of +/- 750,000 square feet. The Trial Court found that "[a]lthough Colliers had initially indicated that GTI was seeking to lease a minimum of 150,000 square feet, it was discussed that the total square footage to be leased by GTI would be in excess of 200,000 square feet." Da262 After the meeting on January 3, 2019, George Valiotis had acknowledged not only that the "[d]eal is done" and the brokers should work together on the commission split, but also that the size of the leased space "will be roughly 220,000 sf." Da264 GTI's broker, Colliers, also noted that it was GTI's intent to occupy the entire Property. Da265

On January 15, 2019, Getty executed the Lease with GTI. Da267 The Lease provides for the lease of approximately 88,000 square feet (referred to as Unit "D") for a term commencing upon the execution and delivery of the Lease. Id. Pursuant

to Article 67(A) of the Lease, approximately 80,000 of space was also being leased to GTI, but possession of the space (referred to as Unit "A") was to be delivered by July 1, 2019, making the total size of the Demised Premises approximately 168,000 square feet. Da267.

Discussions regarding a modification to the Lease began in March 2019, and Steve Valiotis testified that he was aware, as early as February, that GTI wanted to lease more space in the Property. Da270. Therefore, Getty and GTI executed the Lease Modification that, among other things, increased the total size of the space being leased from 168,000 square feet to 209,331 square feet. Id. As part of the Modification, GTI was to surrender a portion of the space referred to as Unit "D," containing approximately 53,899 square feet, and the total size of the Demised Premises then became 209,331 square feet. Id.

In their brief, Defendants argue that the Trial Court should not have awarded a commission for space that was not delivered to GTI. However, the Trial Court found that there was no dispute that GTI needed a minimum of 150,000 square feet, and that the Lease would not have been entered if only 88,000 square feet was made available. Da278 In fact, Karlebach "clearly testified" that GTI required 150,000 to 200,000 square feet of total space, even before executing the Lease. Da279. George Valiotis "confirmed quite clearly" that he anticipated GTI needing "300,000 square feet," and he was hopeful GTI would take even more space. However,

Defendants "failed to provide all of the Section 67A (Phase II) space they specified in the Lease, and ultimately altered the space they did provide because they did not or could not remove tenants already in those spaces." Da278

The Trial Court determined that the Lease, as signed and commenced on January 15, 2019, was for a total of 168,000 square feet, and although a tenant was already in possession of a portion of the 80,000 square foot portion to be delivered later, the commission became "due" upon signing the Lease for all of the space that was the subject of the Lease. Da279 'The fact that [Defendants] later could not or did not deliver the 80,000 square feet of space [which in part resulted in the Lease Modification] is of no moment. Therefore, a commission is due for the entire 168,000 square foot of space set forth in the January 15, 2019 Lease." Id.

In considering what commissions were due, the Trial Court also considered the Answers to Interrogatories given by Steve Valiotis in Getty's lawsuit against GTI in which he acknowledged (a) that GTI had initially leased 88,000 square feet, with an additional 80,000 square feet, for a seven-year term commencing January 15, 2019; (b) that Getty and GTI entered into the Lease Modification in which the size of the Demised Premises was increased to approximately 209,331 square feet; and (c) that Getty had sustained damages that included "$733,817.63 for commissions to brokers." Da271 (emphasis added)

After considering all the evidence, the Trial Court correctly concluded that Defendants had breached the explicit terms of the Exclusive Agreement as well as the implied covenant of good faith and fair dealing. Every contract in New Jersey contains an implied covenant of good faith and fair dealing. Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420, (1997). The implied covenant applies to "both the performance and enforcement of the contract." Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 224, (2005). Under the "implied covenant . . . 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.' " Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 130 (1965) (quoting 5 Williston on Contracts § 670, at 159-60 (3d ed. 1961)). "Good faith" imports "standards of decency, fairness or reasonableness," and "requires a party to refrain from destroying or injuring the right of the other party to receive its contractual benefits." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 109-10 (2007) (internal citations and quotation marks omitted).

There was no doubt that various contacts and introductions to the Property were made in December 2018, prior to the expiration of the term of the Exclusive Agreement, and that the Lease was signed on January 15, 2019, well within the six-month period in which Blau was protected. Moreover, Blau's entitlement to a commission was repeatedly confirmed by George Valiotis, in his texts and emails.

Da284 The Trial Court found "[i]t is clear that only after the Lease was ready to be signed and [D]efendants realized the size of the commission that anyone at [Defendants] questioned its/their obligation to pay Blau a commission." Id.

The Trial Court also found that much of the testimony given by Steve Valiotis was not credible, but the testimony given by the Blau witnesses, referring to the meetings with Steve Valiotis wherein he stated that brokers make too much money, and decided that all Blau was entitled to receive was $100,000 to $150,000, was credible. Therefore, the Trial Court determined that the evidence conclusively demonstrated that "Steve Valiotis was acting in bad faith by refusing to pay the amount he had agreed in writing to pay as set forth in the Exclusive Agreement." Da284-285 The Trial Court also concluded that Defendants' conduct before, as compared to immediately after the Lease deal was made, was dispositive of the fact that their "defenses are pretextual" and demonstrated "undoubtedly the lack of good faith and fair dealing with which [D]efendants acted in this matter." Da285

Although in the litigation with GTI Steve Valiotis had calculated the commissions at $733,817.63, the Trial Court calculated the commissions using five (5%) percent of the gross rent, as follows:

- For Unit D, consisting of approximately 88,000 square feet, $341,863.76.
- For Unit A, consisting of approximately 80,000 square feet, $292,483.87.

Da295 Thus, the total amount of the commissions due Blau, as calculated by the Trial Court, is $634,347.63, and because the calculation is consistent with the terms of the Exclusive Agreement, the amount of the commissions as set forth in the Final Judgment and Order should be affirmed.

POINT III

THE TRIAL COURT CORRECTLY AWARDED BLAU THE PRE-JUDGMENT INTEREST AS REQUIRED BY THE EXCLUSIVE AGREEMENT.

Section 1.a. of the Exclusive Agreement provides that "[a]ll past due accounts will be charged 1½% per month until paid." Thus, once it had determined that Blau was entitled to the commissions it had earned when the Lease was signed and the Term commenced on January 15, 2019, the Trial Court correctly ruled that "Blau is entitled to receive pre-judgment contractual interest by reason of the Exclusive Agreement." Da291 In addition to enforcing the unambiguous contractual terms of the Exclusive Agreement, the Trial Court also referred to the equitable purpose of awarding pre-judgment interest which is "to compensate a party for lost earnings on a sum of money to which it was entitled, but which has been retained by another." Sulcov v. 2100 Linwood Owners, Inc., 303 N.J. Super. 13, 39 (App. Div. 1997).

The Exclusive Agreement provides clearly and unequivocally in Section 1.a. for the payment of interest until a past due commission is paid. Payment of the commission was due Blau when the Lease was signed and commenced. Absolutely

no payments have been made to date over six years later, and Blau had to commence this litigation to recover the commission that should have paid to Blau at the time the Lease was signed. The Trial Court correctly awarded interest in accordance with the Exclusive Agreement.

In their appeal, Defendants argue that the Trial Court erred by awarding pre-judgment interest after the funding of the escrow required by the April 1, 2022 Order because Defendants did not have use of those funds after that date. Therefore, they argue that Blau's right to contractual interest terminated as of that date. However, Defendants ignore not only that the Exclusive Agreement explicitly permits interest to be charged for as long as the commission remains unpaid, but they also fail to recognize the equitable purpose of awarding interest as discussed in Sulcov, which is to compensate a wronged party, in this case Blau, and not Defendants, for the lost earnings on the commission that Blau earned in January 2019.

The fact that Defendants have not had use of the money, which only came about because Getty sold the Property for over $60 million and was required to escrow a portion of the proceeds to satisfy payment of the commission, is of no moment. Blau earned the commission in January 2019, and it is as a result of Defendants' breach of the Exclusive Agreement and bad faith conduct that Blau has been wronged by being deprived of the use of the commission it earned. The Trial Court properly rejected Defendants' argument that pre-judgment interest stopped

accruing once it created the escrow, and correctly determined to award interest through the date of the Final Judgment and Order. Therefore, the award of interest as calculated by the Trial Court through the date of the Final Judgment and Order should be affirmed.

POINT IV

THE COURT CORRECTLY AWARDED ATTORNEYS' FEES AND EXPENSES AS REQUIRED BY THE EXCLUSIVE AGREEMENT.

The Trial Court referred to Section 10 of the Exclusive Agreement providing that Defendants shall "reimburse [Blau] for all expenses and fees (including reasonable attorneys' fees arising out of [Blau] enforcing provisions of this Agreement" (Da294), and correctly included in the Final Judgment an award of attorneys' fees and costs. Da300 While New Jersey disfavors the shifting of attorneys' fees, N. Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999), "a prevailing party is entitled to recover those fees if they are expressly provided for by statute, court rule, or contract." Packard–Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 440 (2001). "[F]ee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Id. (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)) In this case, the Exclusive Agreement specifically provides for the recovery of attorneys' fees and there was no abuse of discretion in the Trial Court's award.

"The threshold issue in determining whether an attorneys' fee award is reasonable is whether the party seeking the fee prevailed in the litigation." N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 570 (1999) (citing Singer v. State, 95 N.J. 487, 494, cert. denied, 469 U.S. 832, 105 S.Ct. 121, 83 L. Ed.2d 64 (1984)). It cannot be disputed that Blau prevailed in the litigation.

Despite Blau having prevailed, Defendants are requesting this matter be remanded to the Trial Court for a reduction in the attorneys' fees awarded based on the award of a commission for Unit "A," which they claim as a result of the Modification Agreement never became a part of the Demised Premises, and because Blau had argued that it was entitled to a commission for the larger space, i.e., over 209,000 square feet, referred to in the Modification Agreement. This position is in contravention to their position taken in the GTI case wherein they sought to recover from GTI the rent for the larger space.

Defendants' request is also premised on the argument that the Trial Court's award of a commission was in error. However, as set forth above, the Trial Court correctly concluded that Blau earned commissions on both the 88,000 square feet and the 80,000 square feet as set forth in the Lease, regardless of whether Defendants delivered all the contemplated space, and that Defendants breached the Exclusive Agreement, as well as the covenant of good faith and fair dealing implied in the Agreement. Indeed, Defendants unsuccessfully attempted to deprive Blau the

commission earned on the Lease with GTI and thereafter never acknowledged that Blau was entitled to any commissions pursuant to the Exclusive Agreement. Instead, they argued that because they had not timely received the Broker Protection Letter, Blau was not entitled to any commission. Therefore, despite Blau's claim that it was entitled to additional commission for the larger space as described in the Modification Agreement, and because Defendants refused to acknowledge Blau's right to recover any commissions and acted in bad faith, the Trial Court's award of attorneys' fees was entirely justified and should be affirmed without any reduction in the total amount of the award.

POINT V

THE TRIAL COURT CORRECTLY RULED THAT BLAU EARNED A COMMISSION FOR THE GTI LEASE REGARDLESS OF WHETHER DEFENDANTS EVER RECEIVED A BROKER PROTECTION LETTER

During the trial, and again on their appeal, Defendants argue that because there was evidence that the broker protection letter was not mailed until January 15, 2019, and they did not receive it until January 18, 2019, Blau failed to comply with a requirement that a written notice of GTI's introduction to the Property be given within ten days after the expiration of the Term of the Exclusive Agreement. Therefore, they argue such alleged failure to timely give a notice and satisfy the

"safe harbor" precluded Blau from recovering any commission in connection with the Lease.

The Trial Court soundly rejected Defendants' argument by referring to the clear language of Section 5 of the Exclusive Agreement which states that if the name of the lessee is disclosed in writing during the Term or within ten days after the Term by Blau or by a third party, Blau is entitled to receive a commission. Da274. The Trial Court determined that there is simply no requirement that the introduction to the Property be by Blau or that the disclosure of the proposed lessee come from Blau. Id.

The Trial Court stated "[i]t is clear that GTI was disclosed to [Defendants] before the Term expired and/or within ten days after the expiration of the Term both in person and in writing." Da275. "[T]he written disclosure can be provided by anyone, not necessarily Blau, and can be provided in any written form, whether letter, email, or text." The Trial Court found that there was "more than ample evidence that [D]efendants' agents, George Valiotis and Steve Valiotis, knew of GTI's interest in leasing space at the Getty Avenue Property and approved same during the Term of the Exclusive Agreement." Da276

Moreover, as the Trial Court found, Defendants "indisputably were aware of GTI as a prospective tenant by virtue of several contacts in December 2018, and certainly by January 2, 2019 when GTI toured the Property with [Defendants']

employees letting them in, and then again on January 3, 2019, when they met with representatives of GTI at Alma's offices, and later confirmed such awareness in writing when their attorney circulated a draft lease on January 7, 2019 identifying GTI as a prospective tenant." Da277 The draft lease identified GTI as the prospective tenant. Defendants also prevented a meeting from taking place with GTI prior to December 31, 2018 because Steve Valiotis was in Greece until January 3, 2019. Thus, the Trial Court correctly found that Blau's January 10, 2019 "Broker Protection Letter" was irrelevant and not a prerequisite to earning a commission on the GTI lease as they already had knowledge of same. Da276-277 Indeed, the Letter would only have been an issue in connection with any other potential tenants or purchasers that Blau identified in the Letter.

Given these findings, the Trial Court correctly ruled that "[D]efendants' argument that their failure to receive the Broker Protection Letter within 10 days after the expiration of the Term of the Exclusive Agreement precludes a commission to Blau is without merit." Da277 Therefore, the Trial Court found that Blau was entitled to its commission and Defendants' arguments to the contrary based on the delivery of the Broker Protection Letter should again be rejected.

Similarly, although not raised below, Defendants' argument on appeal that Blau was not the "efficient procuring cause" of the lease with GTI, should also be rejected. At page 48 of their brief, Defendants now argue that "Blau did not prove

at trial that ***any*** of its brokers '***caused his or her customer to negotiate*** with the seller'". Db48 (emphasis in original) Rather, they argue, it was Michael Powell, on behalf of the City of Paterson, who caused the "contact" between Getty and GTI, and was the cause of the negotiations that resulted in the Lease; ignoring Blau's and Collier's efforts entirely. Once again, Defendants have ignored the express language set forth in the Exclusive Agreement that provides for Blau receiving a commission, no matter who makes the introduction to the Property, as long as the introduction was made prior to the expiration of the Term, in this case prior to December 31, 2018.

The trial testimony and written evidence demonstrated that: (1) GTI's introduction to the Property was made in December 2018 before the expiration of the Term on December 31, 2018; (2) Defendants were made aware of the introduction either before the expiration of the Term or within ten days afterwards; and (3) the Lease was signed and commenced on January 15, well within six months after the expiration of the Term. Therefore, Blau had satisfied all the conditions for earning a commission. And for these and all the other reasons given by the Trial Court in its Opinion, this Court should affirm the Final Judgment and Order in its entirety.

CONCLUSION

For all the foregoing reasons, plaintiff/respondent Crimkav Corporation t/a The Blau & Berg Company requests the Court affirm the Trial Court's December 20, 2024 Final Judgment and Order in its entirety, dismiss Defendants' appeal and remand this matter to the Trial Court for a further award of the attorneys' fees and costs incurred by Blau in responding to the appeal.

Respectfully submitted,

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff/Respondent

By:
LUKE J. KEALY

Dated: May 19, 2025

FILED, Clerk of the Appellate Division, June 16, 2025, **A-001604-24**

	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001604-24-T2
CRIMKAV CORPORATION T/A THE BLAU & BERG COMPANY, Plaintiff/Respondent, -vs- GETTY INDUSTRIES LLC AND ALMA REALTY CO., Defendants/Appellants.	On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-009380-19 Sat Below: Hon. Cynthia D. Santomauro, J.S.C. Civil Action

REPLY BRIEF OF DEFENDANTS/APPELLANTS, GETTY INDUSTRIES, LLC AND ALMA REALTY CO., IN FURTHER SUPPORT OF APPEAL (SUBMITTED JUNE 16, 2025)

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PRELIMINARY STATEMENT

Defendants, Getty Industries LLC and Alma Realty Co. ("Defendants"), respectfully maintain that the Trial Court erred in awarding Plaintiff, Crimkav Corporation t/a The Blau & Berg Company ("Plaintiff"), a real estate commission, pursuant to a Commission Agreement, arising from Unit "A" of Defendants' commercial building, and a Lease which did not expressly include Unit "A" in its definition of "Demised Premises". Through no fault of their own, Defendants never delivered Unit "A" to Plaintiff. Thus, as a matter of law, the Trial Court erred in awarding a commission for Unit "A".

Plaintiff's opposition does not address the substance of Defendants' argument as to the Unit "A" space. Instead, Plaintiff asks this Court to review the various conflicting and ultimately irrelevant trial testimony concerning the amount of space Tenant wanted to lease, and the Landlord wanted to offer, which ranged from 150,000 square feet to the entirety of the 799,000 square foot building. Regardless of any statement any individual made before execution of the Lease, the Trial Court should only have considered the actual executed Lease in conjunction with the Commission Agreement. Under the Lease, the <u>only</u> portion subject to a commission (if any) was the portion actually delivered to the Tenant—the 88,000 square foot Unit "D", which the parties unambiguously agreed comprised the "Demised

Premises".

Again, the Trial Court erred by awarding a commission for the Unit "A" space because under the clear language of the Lease, as well as the undisputed facts demonstrated at trial, Landlord never delivered possession of the Unit "A" space, so it never became a part of the Demised Premises. Defendants did not withhold Unit "A"; rather, at the Tenant's insistence, Defendants negotiated a Lease Modification which provided Tenant with a separate, larger portion of the building which also never became a part of the Demised Premises because Tenant abandoned the Lease. Tenant never took possession of any portion of the building other than the Unit "D"'s 88,000 square foot space. Plaintiff's commission should be limited to that space alone.

In addition, the clear and uncontroverted testimony at trial was that Plaintiff was not entitled to a commission for "Additional Space". The entire section of the Lease addressing Unit "A" was, in fact, described as "Additional Space." Therefore, the Trial Court erred in awarding a commission for Unit "A". Plaintiff's opposition, however, does not address this issue. Rather, Plaintiff focuses its argument primarily on: (1) tangentially relevant, uncontested facts; and (2) the Trial Court's findings as to the credibility of Defendants' witnesses. Plaintiff has entirely abandoned its claim to commissions for the Lease Modification space, which also was never delivered to the Tenant (as the trial court noted) so it never became part of the Demised Premises.

The exact same logic applies to the Unit "A" space.

Plaintiff also does not offer any legal defense to Defendants' argument that the Trial Court should have terminated the accrual of pre-judgment interest once Defendants funded the escrow from the proceeds of sale of the subject property. Defendants never possessed those funds, yet the Trial Court effectively and improperly sanctioned Defendants, in violation of the principles justifying pre-judgment interest.

Moreover, because Plaintiff is not entitled to commissions for Unit "A", this Court, if it does not reverse the Trial Court's judgment in its entirety, should remand for a reduction in the amount of attorney's fees awarded in pursuit of Plaintiff's claims to a commission for Unit "A". Plaintiff does not dispute that the Trial Court could perform such an analysis; rather, it simply claims entitlement to a commission.

Accordingly, as set forth in Defendants' initial appellate brief, and more fully herein, if Plaintiff is entitled to any commission (which Defendants dispute), Plaintiff is not entitled to a commission for the Unit "A" space, pre-judgment interest following the funding of the escrow, and/or attorney's fees for its claims to the commission for Unit "A". Thus, if this Court does not reverse the Trial Court in its entirety, it should remand to the Trial Court to modify the judgment at issue so that Plaintiff would only be entitled to a commission for the Unit "D" space, and pre- and post-judgment interest and attorney's fees should be reduced accordingly.

REPLY STATEMENT OF FACTS

Defendants maintain that Plaintiff misstates the following facts in its Brief.

Plaintiff's representatives' understanding of the "exclusive" nature of the Commission Agreement is beside the point. Pb7. As Defendants argued in their opening appellate brief, just as the Trial Court improperly focused on the subjective intent of the parties' discussion of the amount of space to lease when the Lease was unambiguous as to the composition of the Demised Premises, any focus on the subjective impression of Plaintiff's self-interested witnesses as to what comprised the "exclusive" portion of the Commission Agreement is similarly misplaced.

Plaintiff mistakenly conflates the revisions to the Commission Agreement which Defendants made as to removing commissions for extensions and renewals,[1] with the fact that the Commission Agreement accurately described the 297 Getty Avenue property as "having +/- 750,000 square feet" of leasable space. Pb8.

Finally, as set forth within, because the Commission Agreement and Lease are unambiguous, it is of no moment that GTI needed a minimum of 150,000 square feet, or that GTI's representative asked about the possibility of leasing the entire building. Pb17.

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[1] Plaintiff does not appeal from the Trial Court's correct finding that Plaintiff was not entitled to commissions for extensions and renewals, or for the Lease Modification.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN AWARDING A COMMISSION FOR THE UNIT "A" SPACE BECAUSE IT DID NOT FOLLOW THE LEASE WHICH GENERATED DEFENDANTS' PURPORTED OBLIGATION TO PAY A COMMISSION

Defendants' appeal does not challenge the general principle that a real estate broker may pursue a breach of contract claim against a client for alleged breach of a commission agreement. Cf. Pb36. Nor do Defendants contest the notion "that a real estate broker is entitled to a commission upon procuring a customer that is ready, willing, and able to enter into a contract to purchase or lease a property on terms that are acceptable to the owner or the landlord." Pb 37 (citations omitted). With their appeal, Defendants simply challenge the Trial Court's erroneous legal determination to award a commission for space that was not a part of the Demised Premises upon execution of the subject Lease, was never delivered to the Tenant, and never became a part of the Demised Premises, through no fault of Defendants.

Plaintiff's primary opposition to Defendants' appeal centers around discussions concerning the Lease Modification, discussions for which Plaintiff contends began in March 2019. Pb38. Plaintiff also contends that the parties did not dispute that GTI needed 150,000 square feet, and that "the Lease would not have

been entered if only 88,000 square feet was made available." Ibid. (citing Da278 (p. 31 of the Trial Court's Opinion)). Plaintiff then cites to testimony from Devra Karlebach, CEO of GTI, and George Valiotis, as to GTI's "anticipated" range of space, between 150,000 and 300,000 square feet. Ibid. In sum, Plaintiff points to and relies heavily upon evidence from GTI's initial conversations with GTI's broker that GTI allegedly wanted to lease far more than the initial Unit "D" space.

Whether GTI needed or intended to lease 150,000 square feet, or one million square feet, however, misses the mark. As the Supreme Court has held in the context of a dispute over interpretation of an insurance policy, "[i]n assessing the meaning of provisions in an insurance contract, courts first look to the plain meaning of the language at issue." Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines, 229 N.J. 196, 207 (2017); see also Fitzpatrick v. Oradell Animal Hosp., 2022 N.J. Super. Unpub. LEXIS 2021, *10 (App. Div. Nov. 1, 2022) ("The starting point regarding insurance contract interpretation is the plain meaning of the contractual language. If the contractual language is clear, 'that is the end of the inquiry.'" (citing Oxford Realty Grp., supra)).

Here, the Trial Court did not find that either the Commission Agreement or the Lease were ambiguous. Thus, the Trial Court did not need to consider the parties' stated intent prior to execution of the Lease as to the amount of space GTI intended to lease (which, in any event, varied wildly from one communication to the next).

Rather, the "starting point", and only point, for the Trial Court should have been the actual Lease itself.

The Commission Agreement afforded Plaintiff a commission if a Lease was executed during the term of the Commission Agreement or within six months thereafter if Plaintiff or, allegedly, a third party identified the tenant to Defendants in writing within ten days of the expiration of the term. Da4, § 5. Setting aside without waiving the argument that Plaintiff is not entitled to any commission in this matter, the Commission Agreement allowed a five percent commission to Plaintiff based on the "total aggregate rental" of the subject lease. Da3, § 1(a).

During the negotiation of the Commission Agreement, Defendants emphatically rejected Plaintiff's demand to pay a commission on any "Additional Space". Compare Da3, § 1(b) ("additional space" language deleted) with Da7 (Plaintiff's form commission agreement, which demanded a commission for "additional space"); 2T55:9-56:16 (Scott Geller confirming that Blau was not entitled to a commission for Additional Space).

Thus, the Trial Court correctly held:

> The striking by defendants of that language in Section 1.b. makes clear that (and as testified to by George Valiotis and Steve Valiotis) the defendants were refusing to pay any commissions for options, renewals, extensions, or expansions, ***or taking of additional space at the Property*.** Blau never objected to the removal of this language, nor could its representatives adequately explain the affect or

> meaning of the cross-out.
>
> [Da281 (emphasis added).]

Accordingly, the Trial Court properly held that Plaintiff was not entitled to a commission for any "Additional Space".

Turning to the Lease, the Trial Court analyzed separately whether Plaintiff was entitled to a commission for the 88,000 square foot Unit "D" space, Da274; the 80,000 square foot Unit "A" space, Da278; and the Lease Modification space, Da279. Yet the Trial Court did not analyze what space was actually leased, *i.e.* the Demised Premises, instead concluding that the Lease merely called for 168,000 square feet of space, which "would satisfy" GTI's cannabis licensing requirement. Da279.

The Commission Agreement, however, can only be read together with, and a commission can only be calculated by, the actual Lease. Again, Section 1 of the Lease, in plain language, defined the "Demised Premises" as "approximately 88,000 square feet of warehouse space a/k/a Unit 'D', . . . in the building known as 297 Getty Avenue, Paterson, New Jersey (hereinafter referred to as the 'Building')." Da115. The Term of the Lease began "upon execution and delivery of this Agreement and Landlord's delivery to Tenant of exclusive possession of the Demised Premises . . ." Id. § 2.

Section 67 of the Lease, "Additional Space", addresses Unit "A", for which

the Trial Court improperly awarded a commission to Plaintiff. Section 67 first required:

> (A) Landlord shall use commercially reasonable efforts to deliver exclusive possession of 80,000 square feet of adjacent space a/k/a Unit A (the "Additional Space") in the Building in the same condition required in Section 2 above, by July 1, 2019. ***Upon such delivery***, the Demised Premises shall then encompass approximately 168,000 square feet, ...
>
> [Da173, Lease § 67(A) (emphasis added).]

Further, the Lease provided that the Term "for the Additional Space shall commence on the date that Landlord delivers the Additional Space to Tenant in conditioned [sic] required above (the 'Additional Space Term Commencement Date') . . ." Da173, Lease § 67(B). Tenant's obligation to pay rent for the Additional Space did not trigger until the third month anniversary of the Additional Space Term Commencement Date. Da174, Lease § 67(D).

Landlord never delivered possession of the Additional Space to Tenant, despite Landlord's best efforts. The Trial Court acknowledged that discussions concerning what eventually became the July 10, 2019 Lease Modification began in or around February or March 2019. Da270; 4T80:15-18 (Testimony of Devra Karlebach). The Lease Modification, for which the Trial Court correctly held (and Plaintiff does not contest) Plaintiff was <u>not</u> entitled to a commission, "modified and increased the size of the space being provided to GTI in the Getty Avenue Property

from 168,000 square feet to 209,331 square feet." Da270.

Plaintiff recites that Section 67 of the Lease had a July 1, 2019 deadline for delivery of the Additional Space. Pb38 (citing Da267). Yet Plaintiff does not address any of the foregoing arguments in its opposition brief. For two reasons, however, the Trial Court erred by awarding a commission for the Unit "A" space. First, under the plain, unambiguous language of the Lease, Unit "A" was not a part of the Lease, and never became a part of the Lease, so its square footage could not be calculated as part of the "total aggregate rental". Second, and relatedly, under the plain, unambiguous language of the Lease, Unit "A" was "Additional Space". Since the parties agreed unequivocally that Plaintiff was not entitled to a commission on "Additional Space," the Trial Court erred by awarding a commission for Unit "A". Therefore, this Court should reverse the Trial Court's award of a commission for Unit "A" and void any attendant pre- and post-judgment interest that accrues based on that award.

POINT II

PLAINTIFF MISCONSTRUES DEFENDANTS' ARGUMENT CONCERNING THE AWARD OF PRE-JUDGMENT INTEREST

Defendants ask this Court to reverse that part of the Trial Court's December 20, 2024 Final Order and Judgment which effectively denied Defendants' motion for reconsideration concerning the termination of the accrual of pre-judgment

interest upon deposit of the escrow pursuant to the Trial Court's April 1, 2022 Order. Da308. The Trial Court should have terminated that accrual upon deposit of the escrow funds because Defendants never received their anticipated benefit (millions of dollars in unrealized rent which are now subject of a judgment against the former tenant) from Plaintiff's alleged work.

Plaintiff does not cite any case law to support its assertion that Defendants' lack of possession of the escrow funds is "of no moment". Pb43. Plaintiff does not contest Defendants' citation to North Bergen Rex Transp. V. Trailer Leasing Co., 158 N.J. 561, 574-575 (1999), as well as Judge Pressler's and Judge Verniero's comments to Rule 4:42-11 (see Db39-40), which note the propriety of an equitable award of pre-judgment interest when the defendant had use of funds rightfully belonging to the plaintiff. Again, pre-judgment interest is "***not*** a penalty but is rather a payment for the use of money." Pressler & Verniero, Current N.J. Court Rules, Comment R. 4:42-11, Comment 2.2.1.

Again, the funds which Defendants placed in escrow were taken directly from the proceeds of the sale of the Getty Property, which occurred during litigation. In other words, Defendants never had possession, much less use, of the funds which funded the escrow. Defendants did not improperly retain funds because they did not have those funds. Thus, this matter meets the "special circumstances" test militating against the award of pre-judgment interest set forth in North Bergen, supra.

Moreover, Defendants do not ask this Court to terminate the accrual of pre-judgment interest in its entirety (unless the Court reverses the Trial Court's commission awards in full). The escrow funds properly function as security for Plaintiff, akin to a deposit of those funds into Court. Therefore, it is unfair to Defendants to add further pre-judgment interest on top of the funds that are securing Plaintiff, absent full or partial reversal of the Trial Court's Final Judgment.

Accordingly, Defendants respectfully request that this Court reverse that part of the Trial Court's December 20, 2024 Final Judgment and Order which allows pre-judgment interest to accrue on the judgment after March 8, 2023, the date of the funding of the escrow.

POINT III

DEFENDANTS PROPERLY REQUEST A REDUCTION IN PLAINTIFF'S ATTORNEYS' FEES BECAUSE PLAINTIFF SHOULD NOT BE COMPENSATED FOR UNSUCCESSFUL WORK

In addition to asking this Court to reverse all of the Trial Court's commission awards, Defendants ask this Court to reverse the Trial Court's award of a commission for Unit "A" because Unit "A" was "Additional Space" and not a part of the Demised Premises upon execution of the Lease (and not the Lease Modification, cf. Pb45). Plaintiff bases its claim to attorney's fees based on the Commission Agreement, which allows Plaintiff attorney's fees "arising out of

BLAU enforcing the provisions of the [Commission] Agreement." Da4. Thus, if this Court reverses the award of a commission for Unit "A", then Plaintiff would not have been successful in enforcing that part of the Commission Agreement and would not be entitled to reimbursement of those fees.

The Trial Court heard a significant amount of testimony concerning Unit "A", which is separate and apart from the claim to Unit "D" commissions. Thus, on a remand, the Trial Court should determine the reasonableness of the total fees Plaintiff incurred in pursuit of the three separate commissions when it should only have, at most, prevailed on one commission, for Unit "D". See N. Bergen Rex Transport, supra, 158 N.J. at 573 (reversing a fee award based on the comparison of the damages amount sought by a party and the damages actually awarded to that party).

Accordingly, should the Court reverse the Trial Court's award of a commission for Unit "A", it should remand this matter to the Trial Court for an appropriate reduction in the attorney's fees awarded to Plaintiff.

POINT IV

PLAINTIFF IS NOT ENTITLED TO ANY COMMISSION FOR THE GTI LEASE

Defendants rely on their initial appellate brief to demonstrate that Plaintiff, which fraudulently backdated its notice to Defendants as to its showing of the

property to Plaintiff. If nothing else, the award to Plaintiff is a windfall, allowing it to rely on the work of the Tenant, the Tenant's political connections, and the Tenant's broker, to obtain a commission. Plaintiff adduced no documentary evidence at trial, other than the fraudulently backdated letter, to memorialize the vast majority of the potential tenants it claims to have brought to the property during the Term of the Commission Agreement.

Accordingly, this Court should reverse the December 20, 2024 Final Judgment and Order in its entirety.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in their initial appellate brief, Defendants, Getty Industries, LLC and Alma Realty Corp., respectfully request that this Court reverse the Trial Court's December 20, 2024 Final judgment and Order, vacate the award of $282,483.87 for commissions for Unit "A" as described in the subject Lease, vacate the award of pre-judgment interest which accrued based on the Unit "A" commission, stop the accrual of pre-judgment interest as of March 23, 2023, and remand for a reduction in attorney's fees award. In the alternative, the Court should reverse the December 20, 2024 Final Judgment and Order in its entirety, and remand for entry of Judgment as set forth herein and in Defendants' initial appellate brief.

Respectfully submitted,

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By: */s Dennis J. Drasco*
DENNIS J. DRASCO
A Member of the Firm

Dated: June 16, 2025

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