AKOS SULE, Plaintiff-Appellant, v. CODIROLI FAMILY ENTERPRISES, L.P. and JOHN DOE CORPORATION 1-3 (a fictitious name, Defendants-Respondents.	ON APPEAL FROM: THE SUPERIOR COURT OF NEW JRSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-C-118-22 SAT BELOW: HONORABLE LISA M. ADUBATO, J.S.C. APPELLATE DIVISION DOCKET NO. A-001949-23

BRIEF AND APPENDIX ON BEHALF OF PLAINTIFF/APPELLANT

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PRELIMINARY STATEMENT

Plaintiff, Akos Sule, (hereinafter "Plaintiff") is the current owner of commercial property located at 267 Fairfield Avenue, West Caldwell, New Jersey, designated as Block 1401, Lot 4 on the Tax Map of West Caldwell (hereinafter "Property" or "Lot 4"). Plaintiff purchased the Property for $1,250,000 on June 26, 1991 from Graco, Inc., Plaintiff's predecessor-in-interest, and the conveyance deed was recorded on the same date in the Essex County Register's Office (hereinafter "1991 Deed"). The legal description contained in the 1991 Deed describes Lot 4 as being comprised of Tract I and Tract II, which coincides with a March 11, 1991 survey prepared by Richard F. Smith, Jr. (hereinafter "Smith Survey").

On July 30, 1999, James and Joan Codiroli (hereinafter "the Codirolis") purchased the adjacent property, located at 1 Fairfield Crescent, West Caldwell, New Jersey, designated as Block 1401, Lot 3 (hereinafter "Lot 3"), for $1,900,000. On December 22, 2000, the Codirolis transferred Lot 3 to Defendant, Codiroli Family Enterprises, L.P. (hereinafter "Defendant"). As shown by the lack of consideration in the deed of conveyance, the transfer from the Codirolis to the Defendant was not an arm's length transaction.

This matter arises over a dispute between the Plaintiff and Defendant regarding ownership of the irregularly shaped portion of the Property described as Tract II in the 1991 Deed (hereinafter, the "Strip"). The Strip is approximately

6,262.80 square feet, approximately ten (10) feet wide at its widest point, and is located along the shared lot line between Lot 4 and the adjacent Lot 3. The Strip contains a grassy section and an area with curbing and a portion of parking spaces. Although the Strip is described in the 1991 Deed as part of the Property, it is currently used by Defendant for parking. Since taking ownership of the Property in 1991, including the Strip, Plaintiff has allowed the owners of the adjacent Lot 3 to use a portion of the Strip for parking. Further, Plaintiff has paid landscapers to maintain the entirety of the Strip.

The core issue in this case revolves around the chain of title of the Strip. Although both chains of title for Lot 4 and Lot 3 contain a legal description of the Strip (essentially describing the disputed area as part of each of the aforementioned lots), the first description of the Strip mysteriously appears in a 1971 deed transferring Lot 3 to one of the Defendant's predecessors-in-interest. The 1971 deed for Lot 3 fails to describe how the grantor therein purportedly obtained ownership of the Strip, whereas the chain of title for the Property has consistently described the Strip as far back as December 15, 1933.

Against the weight of Plaintiff's evidence of consistent recorded title to the Strip, the trial court the evidence and testimony presented, the trial court improperly imputed actual and inquiry notice of issues relating to ownership of the Strip to Plaintiff at the time Plaintiff purchased Lot 4 in 1991. Relying on Plaintiff's

purported notice obligations at the time of purchase, the trial court erroneously concluded that the Defendant was entitled to equitable ownership of the Strip and ownership under the theory of adverse possession, and required the Plaintiff to complete transfer of ownership of the Strip to the Defendant.

PROCEDURAL HISTORY

As mentioned above, Plaintiff purchased the Property on June 26, 1991. The Defendant is the owner of the adjacent Lot 3, and has owned Lot 3 since December 22, 2000. On or about July 7, 2022, Plaintiff filed a Verified Complaint to Quiet Title against the Defendant, which related to ownership of the Strip (approximately 6,262.80 square feet). Pa0018. On September 26, 2022, Defendant filed an Answer with Affirmative Defenses and Counterclaim. Pa0028. Defendant's Counterclaims alleged ownership of the Strip by adverse possession and prescriptive easement, among other things.

The Honorable Lisa M. Adubato, J.S.C. conducted a three-day bench trial on this matter in September 2023, and delivered her decision orally and on the record on December 20, 2023.[1] Judge Adubato erroneously concluded that Plaintiff had not established rightful ownership of the Strip, and that the Defendant was entitled to ownership of the Strip through adverse possession.

[1] Transcripts referenced are as follows: 1T=September 5, 2023 Trial; 2T= September 6, 2023 Trial; 3T=September 7, 2023 Trial; 4T= December 20, 2023 Decision.

On January 16, 2024, Judge Adubato executed an Order which effectuated her December 20, 2023 decision. Pa0012. Thereafter, on January 22, 2024, Judge Adubato executed a revised Order to correct a typographical error on the January 16, 2024 Order. Pa0015. On March 1, 2024, Plaintiff filed a Notice of Appeal with the Superior Court – Appellate Division, challenging the Order entered on January 16, 2024. Pa0001.

STATEMENT OF FACTS

On or about June 26, 1991, Plaintiff purchased the Property from Graco, Inc. for $1,250,000. Pa0065. Prior to his purchase of the Property, Plaintiff obtained the 1991 Survey prepared by Richard F. Smith, Jr. Pa0070. The Smith Survey was consistent with the legal description of the Property contained in the 1991 Deed, which included the Strip as part of "Tract II". Pa0065. The Plaintiff also obtained a title insurance policy for the Property. Pa0071.

By deed, dated July 30, 1999, James and Joan Codiroli purchased the adjacent Lot 3 from PCI-WEDECO Environmental Technologies, Inc. for $1,900,000. By deed, dated December 22, 2000, the Codirolis conveyed the adjacent Lot 3 to the Defendant for no consideration. Pa0077.

This matter arises out of a dispute related to the ownership of the aforementioned Strip, which is approximately 6,262.80 square feet and ten feet wide at its widest point. Pa0070. A portion of the Strip is currently used by the Defendant

as a parking area for Lot 3, and the remaining portion of the Strip is an open, grassy area.

During the three-day bench trial that was conducted before the Honorable Lisa M. Abudato, J.S.C. on September 5, 2024, September 6, 2024, and September 7, 2024, Plaintiff put forth the expert testimony of John Cannito (hereinafter "Cannito"), an attorney at law in the State of New Jersey, and a licensed title insurance producer and title insurance instructor. Cannito testified regarding the documents recorded in Plaintiff's chain of title, and was able to trace the Strip throughout Plaintiff's chain of title to December 15, 1933, thereby establishing Plaintiff's ownership of the Strip. During cross-examination, Cannito recognized that the Strip "mysteriously" shows up in the chain of title for Defendant's Lot 3 in 1971. 1T110:6-21.

Defendant's witnesses included: (i) Janet Toner, as representative of the Defendant's entity, a limited partnership; (ii) the Plaintiff; and (iii) Plaintiff's expert, William Slover (hereinafter "Slover"). The trial court found that Slover often agreed with Cannito. 4T12:22-23. However, Slover erroneously focused on what Plaintiff's 1991 closing documents showed, and how that information should have required Plaintiff to do more research regarding the ownership of the Strip prior to his purchase of the property, rather than providing sufficient evidence to satisfy the Defendant's burden of proof as it relates to the criteria for establishing adverse

possession. Moreover, Defendant's testimony included an analysis and assumptions related to an unrecorded 1967 subdivision map. Pa0086. Unrecorded documents are beyond the scope of responsibility imparted by the Recording Act. In addition, both experts eventually testified that the unrecorded 1967 subdivision map was beyond the scope of documents title agents typically locate and review.

On December 20, 2023, the trial court rendered its decision orally. The trial court found Plaintiff's expert to be "knowledgeable in his stated field," but "entrenched." 4T9:7-9. However, during a portion of cross-examination of Cannito by Defendant's attorney, Cannito was asked whether the Smith Survey created an obligation for Plaintiff to inquire further about ownership of the Strip. Cannito responded "I can't say." 1T106:10-13. In fact, Defendant's attorney asked multiple question of Cannito that were designed to impose an obligation on the Plaintiff which was presented by Defendant's attorney. In its opinion, the court was displeased with Cannito's refusal to answer: "This witness' inability or refusal to consider the very crux of the issue before the Court impacted his credibility and the weight given by the court to his testimony and his conclusions." 4T10:5-8.

The court found Janet Toner's testimony to be credible, and her demeanor to be "appropriate" and "not overly passionate." 4T11:3-9. The court described the Plaintiff as follows: "The Court noted that at times Sule was getting rather agitated. He was adamant in his position that this was his property and he just wanted to get

his point out. Sometimes even if that meant his answers were not necessarily responsive to the question." 4T11:18-23. The court gave significant weight to the testimony provided by Defendant's expert, which included testimony regarding the 1967 unrecorded subdivision, despite its lack of reliability under the Recording Act. 4T14:24-25.

The trial court ultimately concluded that Plaintiff had actual and inquiry notice that there was a potential title problem with the Strip at the time that he purchased the Property. The trial court imputed a post-hoc obligation to the Plaintiff to pursue additional information regarding the Strip prior to purchasing his property: "…The Court finds that an application of the facts to the law establishes that plaintiff should have made a reasonable and diligent inquiry as to existing claims or rights of the defendant to the strip." 4T19:3-7. The trial court then "finds that even if plaintiff is the holder of legal title, it would be inequitable for him to retain and enjoy the beneficial interest as against the interest of the defendant who is equitably entitled to that enjoyment." 4T19:21-20:1. Further, the trial court finds that Defendant is entitled to ownership of the Strip by adverse possession. 4T21:7-13. The trial court awarded title to the Strip to the Defendant. 4T23:9-11.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT MADE AN INCORRECT FINDING OF FACT AND THEREAFTER MISAPPLIED THE APPLICABLE LAW TO JUSTIFY ITS DECISION (Raised Below: 4T4).

This matter arises from a dispute of between two adjacent property owners regarding rightful ownership of a small piece of land located along the shared lot line. It concerns two main legal considerations regarding property ownership: (1) rightful ownership of real property based on recorded deeds of conveyance, consistent with the New Jersey Recording Act, currently embodied in N.J.S.A. 46:26A-1, et seq., and (2) the removal of rightful property ownership through the legal principles of adverse possession.

A reviewing court will defer to a trial court's factual findings when those findings are "supported by adequate, substantial and credible evidence." Zaman v. Felton, 219 N.J. 199, 215 (2014), quoting Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002). However, on appeal, the court will apply de novo review to the "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

In this case, the court below incorrectly concluded that the dispute at issue in this matter centers around a purported 1967 subdivision, which was partly designed

to transfer the Strip from the Plaintiff's predecessor in title to the Defendant's predecessor in title. 4T4:16-25. The trial court erroneously relied on an unrecorded subdivision map, coupled with a 1971 series of deeds that were only recorded in Defendant's chain of title (with no corresponding changes to the legal description in Plaintiff's chain of title for the Property), to determine that the original parties to that subdivision had perfected the subdivision and successfully transferred the Strip to Defendant's predecessor in title. The trial court then relied on principles of notice to justify ignoring the security that the Recording Act provides to purchasers of real property, including Plaintiff. Plaintiff's chain of title for the Property consistently reflected the inclusion of the Strip in the legal description, and the 1971 deed for Lot 3 lacked proper recitation of the purported subdivision transferring the Strip from the Property to Lot 3.

Further, the trial court did not impose the proper burden of proof on Defendant regarding its adverse possession claims related to its purported ownership of the Strip.

POINT II

THE TRIAL COURT ERRONEOUSLY DISREGARDED THE PRINCIPLES OF RACE NOTICE REQUIRED BY THE NEW JERSEY RECORDING STATUTE, N.J.S.A. 46:26A-12 (Raised Below: 4T5).

At trial, Plaintiff demonstrated that the metes and bounds descriptions contained in the deeds within the Property's chain of title consistently included a

description of the Strip. Although the Strip somehow also showed up in Defendant's chain of title for Lot 3 in 1971, the trial court acknowledged:

> It is undisputed that there is no a [sic] recorded deed indicating how the strip arrived in the chain of title of defendant. Both parties agree that there is an absence of the file deed transferring the strip to any party in defendant's predecessor chain – titled.

4T5:1-12. Accordingly, Plaintiff established ownership of the Strip at trial, and the Defendant failed to satisfy its burden of proof regarding its adverse possession claims to the contrary.

A. The Trial Court's decision does not support and maintain the integrity of the recording system (Raised Below: 1T42; 1T61).

The New Jersey Recording Act, currently embodied as N.J.S.A. 46:26A-1, et seq., makes New Jersey a race notice jurisdiction. The Recording Act seeks to compel the recording of documents affecting title to real property so that purchasers can confidently rely on record title. "It is a clear mandate that the recording purchaser be given every consideration permitted by the law, including all favorable presumptions of law and fact." Jones, The New Jersey Recording Act – A Study of its Policy, 12 Rutgers L. Rev. 328, 329-330 (1957). Absent an unusual equity consideration, the New Jersey Supreme Court has encouraged all New Jersey judges to make decisions "that will best support and maintain the integrity of the recording system." Palmarg Realty Co. v. Rehac, 80 N.J. 446, 453 (1979). Consistent with

the Recording Act, the testimony and evidence presented to the trial court demonstrated that Plaintiff owned the Strip.

Defendant stipulated at trial that documents recorded between 1933 and 1966 in Plaintiff's chain of title contained a description of the Strip. 1T15:24-16:15; Pa0053. Plaintiff put forth color-coded maps which showed how the Strip was conveyed thereafter in recorded documents in Plaintiff's chain of title. Pa0044. Plaintiff's expert testified that he had compared the color-coded maps to the metes and bounds descriptions within the deeds to verify that the maps were correct. 1T19:4-18; Pa0044. Plaintiff's expert testified that the Strip was transferred from Lee Harness as trustee in dissolution of Graco Sales Company to Graco Inc., and that Graco, Inc. thereafter transferred the Property to the Plaintiff. 1T39:13-25; 40:1-5; Pa0084; Pa0065. Plaintiff's expert also testified that the Plaintiff owned the Strip as of 1991. 1T40:19-23; Pa0065. Therefore, the evidence showed that the Strip was always within Plaintiff's chain of title. 1T42:14-16; Pa0044.

Nevertheless, in a deed dated December 16, 1971, the Strip "mysteriously" first appeared in the chain of title for Defendant's property. 1T57:3-10; 1T60:4-6; Pa0091. This 1971 deed conveys property from the Malangas to an entity called Fair Crest Inc. 1T56:18-24; Pa0091. However, there was no evidence in the prior chain of title that the Malangas had received title to the Strip. 1T61:11-23. A grantor only has the right to convey land which he or she owns. See e.g., Poniatowski v.

Camac, 3 N.J. Misc. 755, 756 (1925). The appearance of the Strip in the chain of title for Lot 3 after 1971 was therefore invalid.

Defendant also proffered a deed within Plaintiff's chain of title for the Property, which was dated December 31, 1971 and recorded in 1974. This deed did not contain a description of the Strip. Plaintiff's expert explained that this deed did not put the public on notice that the Strip was not part of Lot 4, but instead, put the public on notice that Graco Sales had not conveyed the Strip to Graco. 1T66:12-17. Focusing on the same 1971 deed, which had been marked as Exhibit J-23 at trial, Defendant's expert agreed with the Plaintiff's explanation of that deed:

> Q. Thank you, Mr. Slover. It was suggested by Plaintiff's expert yesterday that the J-23 might have excluded the strip from Greco, but didn't necessarily recognize the transfer to the owner of Lot 3. In reading these dimensions, can you address that point?
>
> A. Well, as you phrased it to me, I think I agree with the – with the Plaintiff's expert. The fact that – that the strip is excluded from this description does not in and of itself mean that the strip no longer was owned by Greco.
>
> Q. Does the – does the deed recognize or imply anything about the dimensions of Lot 3? Because I'm – I'm most interested in the – I guess the end of the second or third course where it mentions the – Lot 3, the – the—
>
> A. Well, the – the end of the third course in J-23 is the same point that exists in the earlier deeds in the chain of both Lot 3 and Lot 4. It is only when the –when you are at that point, at the end of course three, it is only then that J-23 then defines courses that exclude the strip.
>
> Q. Okay.

A. So, it would be – and if the strip is -- when the strip is excluded from Lot 4, since it's so narrow, it's zero at one end and ten feet at the other, and I think at its widest point it's only sixteen or something like that, and it's I don't know 400 feet long, 450 feet long. The – logical inference is that the strip that now has been not conveyed would most likely be part of Lot 3 because it couldn't be alone. Or the other possibility is that that Greco had some reason to convey it to itself, so its subsidiary or its parent, I forget which way it ran, but has some reason to convey to itself Lot 4 without the strip.

Q. Okay. The next deed that we've seen in this case in the chain of title for Lot 4 is the document we're calling J-24. And have you seen this deed? Can you read it okay or shall I blow up the top –

A. It it's the one I think it is –

Q. Let me – let me – let me blow it up so you – we don't – okay. So, this is J-24.

A. Right.

Q. Have you seen this document before?

A. I have.

Q. Okay. And what is this document?

A. This is a deed from the trustee – excuse me – the trustee and dissolution of Greco Sales Company, Inc. and Greco, Inc. So, this is the same – well, the trustee is the successor in interest to the prior grantor of J-23 to the same grantee – as J-23. So, now according to this deed the – strip now has been conveyed back to – looking only at the deed, taking the deed at face value, the strip has now been reunited, so to speak, with Lot 4.

2T71:16-73:19.

Clearly, Plaintiff established that the Strip was owned by his predecessors in title prior to his purchase of the Property.

B. The Trial Court Improperly Relied on an Unrecorded Subdivision Map and the Hypotheticals Presented by Defendant's Expert to Justify Its Decision that It Would Be Inequitable to Allow the Plaintiff to Retain Ownership of the Strip (Raised Below: 4T14).

The trial court improperly placed a significant amount of weight on the evidence presented by the Defendant regarding the purported 1967 subdivision to determine that the Plaintiff was not entitled to ownership of the Strip. Defendant's expert opined at length regarding the Plaintiff's obligation to do extensive research of the ownership of the Strip prior to his purchase of the Property, regardless of standard title searcher's practices, and provided detached from reality hypothetical conclusions to what Plaintiff might have discovered if he had performed those inquiries prior to his purchase of the Property. Ironically, in its decision, the trial court stated: "Silver [sic] seemed very objective in his explanation of the inquiry notice and his conclusion that based on all of this subjective evidence one could not just make assumptions without a further explanation of all relevant facts." 4T13:15-19. The court added:

> For example, with respect to the subdivision and the lack of any recordings to memorialize the transfer of the – portions of the properties, Silver presented a very objective and reasonable explanation grounded in recorded deeds, and reflected in the conduct of the parties, to reach the conclusion that the most reasonable explanation is that the parties treated the subdivision as a done deal

> and that the defendants has equitable title to the strip in his – conclusion.

4T14:1-10. The court further stated: "Overall, the Court has given significant weight to Silver's testimony." 4T14:24-25. While it is within the trial court's discretion to evaluate witnesses and determine the creditworthiness of their testimony, the trial court's final decision is flawed by the conclusions it reached: (1) that the parties to the purported 1967 subdivision thereafter properly perfected the subdivision; (2) that the Plaintiff would have been able to make this discovery had he performed the inquiries suggested by Defendant's expert; and (3) that the inquiries suggested by Defendant's expert were reasonable. These conclusions are contrary to the recorded documents presented at trial, the testimony presented, and applicable law.

In Parlmarg Realty Co. v. Rehac, 80 N.J. 446 (1979), the Court considered an action to quiet title among parties whose properties derived from a common grantor, the Asbury Company. By deed dated February 12, 1913, the Asbury Company conveyed to Appleby Estates land which included all of the property at issue in the case. That deed was recorded on February 18, 1913. On February 15, 1913, the Asbury Company conveyed the land claimed by the defendants to Robert E. Taylor. Taylor did not record that deed until April 25, 1913. Plaintiffs claimed through the Appleby Estates chain of title, whereas defendants claimed through the Taylor chain of title.

In 1966, the plaintiffs' predecessor in title took ownership of the property in the Appleby Chain, and did not have record notice of the Taylor deed. The Palmarg court stated:

> Although the New Jersey Recording Act appears to say that a subsequent purchaser will *always* be deemed to have notice of, and be bound by, a prior recorded deed touching the same property, this is not in fact the case. The statutes have been consistently interpreted to mean that the subsequent purchaser will be bound only by those instruments which can be discovered by "reasonable" search of the particular chain of title.
>
> Palmarg, at 456.

The Palmarg court quoted from Glorieux v. Lightpipe, 88 N.J.L. 199 (E. & A. 1915):

> A purchaser may well be held bound to examine or neglect at his peril, the record of the conveyances under which he claims, but it would impose an intolerable burden to compel him to examine all conveyances made by every one in his chain of title.

Palmarg, at 456, quoting Glorieux, at 203.

Defendant's expert opined, and the trial court ultimately concluded, that at the time Plaintiff purchased his Property, Plaintiff was on notice that there was a potential problem with Plaintiff's title to the Strip. The trial court found that the Plaintiff was on actual notice at the time he purchased Lot 4 due to three facts: (1) the 1991 Survey prepared by Richard F. Smith; (2) Defendant's use of the strip, or at least a portion of the Strip, as a parking area; and (3) the "as of" deed with a 19 year discrepancy between the date of preparation and the date of recording.

4T17:14-21. Similarly, the trial court found that the evidence put the Plaintiff on inquiry notice, requiring that the Plaintiff make a reasonable and diligent inquiry regarding Defendant's ownership claims to the Strip. 4T19:3-7.

Plaintiff is not a natural-born American citizen. English is not his first language. 2T14:4-5. Plaintiff testified that, at the time of closing, he questioned why his property line went through Defendant's parking lot, and was told "…well it does, and nevertheless that is the property line." 2T15:25-16:2. Plaintiff stated that although he knew that he had purchased title insurance, he did not realize at the time of closing that the Strip, designated as Tract II in his deed, was not covered by his title insurance. 2T16:3-14. Defendant called Plaintiff as a witness at trial. Defense counsel showed Plaintiff a document prepared by Casey & Keller, dated 1978 but stamped "Received August 26, 1985." The parties marked this trial exhibit as "J-2," and Joint Exhibit List identifies it as the "1978 site plan." During the trial, however, counsel for the Defendant referred to this document as a "survey." Defense counsel presented the document to the Plaintiff without any foundation, and described it as "a survey that was prepared by Casey and Keller in 1978." 2T21:9-13. Thereafter, Plaintiff stated that the Defendant and title insurance company had told him that they did not have a survey. Plaintiff was obviously upset because he thought they had lied to him. This understandable frustration and concern obviously factored into the

trial court's impression that "at times Sule was getting rather agitated." 4T11:19-19.

Since the trial court determined that Plaintiff had notice, either actual or inquiry, of a potential title problem with the Strip, the relevant issue becomes whether Plaintiff would have discovered that he could not properly claim ownership of the Strip had he more thoroughly investigated the title issue prior to his purchase of the Property. However, the trial exhibits and the testimony disprove that conclusion.

The proposed subdivision map, dated June 22, 1967, indicates that the Strip would be "subtracted from Lot 1 and added to Lot 1A." Pa0086. This document also indicates that another small portion of property, referred to during the trial as the "Bump," would be added to Lot 1. Lot 1 on this document is Plaintiff's Lot 4, and Lot 1-A is Defendant's Lot 3. Clearly, the parties to the proposed subdivision intended to swap the Bump and Strip properties. Further, the proposed subdivision map indicates the existing width of Lot 1 was 380.33', whereas a width of 370.33' was proposed. The document shows the width of the Strip as 10'. Valente & Sullivan, Inc. prepared the document. This document was not recorded. Pa0086. The proposed subdivision was for Gray Company, Inc., even though no such entity appears in the chain of title for Plaintiff or Defendant's property. Pa0086.

The Strip first appears in Defendant's chain of title in 1971, among a series of deeds for Lots 1A, 1B, 1D, 1E and 1F. The consideration for the transfer was $1.00, indicating that it was not an arm's length transaction. The deeds do not contain any recitation of how the Malangas acquired the Strip or the purpose of the deeds. Pa0091. By deeds dated January 19, 1972, the properties are conveyed back to the original grantors, the Malangas. Pa0098. The assumption made by Defendant's expert, and ultimately the trial court, is that these deeds effectuated the transfer of property detailed in the unrecorded subdivision documents.

However, the Strip was placed back in the chain of title for Plaintiff's property in a deed dated May 24, 1972. Although the trial court focuses on this deed as a fact which placed Plaintiff on inquiry notice because this deed was not recorded until February 15, 1990, Defendant's expert did not find that circumstance to be unusual:

> Q. Okay. And what is this document?
>
> A. This is a deed from the trustee – excuse me – the trustee and dissolution of Greco Sales Company, Inc. and Greco, Inc. So, this is the same – well, the trustee is the successor in interest to the prior grantor of J-23 to the same grantee – as J-23. So, now according to this deed the – the strip now has been conveyed back to – looking only at the deed, taking the deed at face value, the strip has now been reunited, so to speak, with Lot 4.
>
> Q. Okay. The deeds [sic] says made as of May 12th, 1972. Do you see that?
>
> A. I do.
>
> Q. What's the – what does that mean as –

> A. Yeah, well – that can mean a lot of things. I mean it's – it's not all that unusual to see a deed is – is – is said to be of a certain date, and then the signature of the grantor or in this case – the representative of the grantor, the individual signing you know is – is many years later. The signature is acknowledged as of 1989, I believe. So, that the date of the deed.
>
> And what – in the title insurance business this would normally be – independent of anything else would normally be considered, well this is not an arm's length transaction. The other one wasn't an arm's length transaction. Maybe they're just trying to correct a mistake and their lawyer has advised them that they intended to convey the strip back in 1972, and so the – you know for internal purposes – who knows; right? That some might – some mistake was made earlier and now they're trying to correct it.

2T73:10-74:16.

Moreover, the 1967 proposed subdivision intended an exchange of the Strip and Bump properties. However, the Plaintiff purchased the Bump in 1994 from Louis Malanga, a predecessor in the chain of title for Defendant's property and a Grantor in the 1971 deeds which the trial court assumed had effectuated the 1967 transfer. Pa0105. Finally, while the survey prepared by Robert M. Siluk on behalf of Defendant's Grantors does not depict any encroachments, it also shows the width of Plaintiff's property as 390.46'. While this width exceeds the existing width of Plaintiff's property according to the 1967 subdivision map, it must certainly include the Strip in its calculation. Pa0107.

In addition, both experts testified that the unrecorded subdivision maps, marked as Exhibit J-40 at trial, would not have been located during a typical title

search. On Re-cross examination, the expert which the trial court preferred, Mr. Slover, testified as follows:

> Q. Okay. And is your understanding that a buyer takes subject to current land ordinances whether or not the buyer bothered to find out what affect they had on their use of the property?
>
> A. Could you – I'm sorry. Could you repeat it, please?
> Q. A buyer –
>
> A. Yeah.
>
> Q. --takes subject to current land ordinances, whether or not the buyer, in this case, either the Cordirolis or the subsequent company, bothered to find out what affect they had on the use of the property?
>
> A. Yes, I agree with that.
>
> Q. Public record is available to a reasonable title – title insurer, correct?
>
> A. Yes.
>
> Q. P – J—J-40 was not part of the public record, was it?
>
> A. J-40 was not part of the land records that are typically searched by title companies. Title companies and title agencies rarely seek out ordinances for particular rulings. Not never but rarely.

3T66:6-67:2.

Similarly, Plaintiff's expert testified that the Strip was definitively in the Plaintiff's chain of title, that there was no history of the Strip in the Defendant's chain of title prior to 1971, and that it would be unusual for a title company to have located the subdivision maps contained in J-40:

Q. Was there any discrepancy between Rubek to Malanga and then the 1971 deed in which Malanga transferred the strip – strip?

A. The Brubeck to Malanga deed did not include the strip.

Q. Based on your years in the business of referring title, do you have an opinion as to what a possible outcome would have been when the title insurance company did that?
A. My experience is that the title company would not have insured the strip.

Q. When Mr. Slover discussed inquiry notice, and he claimed that inquiry notice was mandatory here, do you agree with that opinion?

A. That it was mandatory, no.

Q. Why not?

A. Because lot four had established a clear chain of title.

Q. How do we know that?

A. Okay. We know that based on the examination of the deeds in the chain of title.

Q. And Mr. Slover indicated specifically that there are no records of deed showing that the strip was ever conveyed out of plaintiff's chain, do you recall hearing that?

A. Yes, I do.

Q. What does that say to you with respect to J-40, which was the proposed subdivision?

A. I don't know that it says anything specifically to me about J-40. J-40 would not be something that would have been found in the course of a normal title search. And in fact, it would not have been found anywhere in the land records even in some kind of expanded title search.

> Q. Do you have an opinion, based on your review, of J-40 and the subsequent deeds in plaintiff's chain of title as to whether or not the proposed transfer in J-40 ever actually took place?
>
> A. From what I can see, there's no evidence that the proposed transfer ever took place.

3T73:7-74:21.

In Sonderman v. Remington Const. Co., 127 N.J. 96 (1991), the Court considered whether Sonderman, a bona fide purchaser at a foreclosure sale, was entitled to quiet title against the original property owner who had no notice of the foreclosure action, had obtained an order vacating the tax foreclosure judgment, but had failed to property record the vacation order prior to purchase of the property. The Court first declared its commitment to supporting and maintaining the recording system, quoting Palmarg Realty Co. v. Rehac., 80 N.J. 446 (1979). The Court then noted that "the integrity of record title can bend to accommodate compelling equities." Sonderman, at 108. The Court found that "the case presents an exceptional set of facts" which included a municipal ordinance that provided the sole remedy to a purchaser at tax foreclosure sale in the event of defects in title and the ability to return the parties to their prior positions. Based on those circumstances, the Court found that the equitable result was to deny Sonderman's quiet title action. Nevertheless, the Court added: "For the future, however, we affirm our commitment to the proposition that 'a purchaser should be charged with such notice from the records as can be ascertained by a reasonable search of those records***.'"

Sonderman, at 109, quoting Donald B. Jones, "The New Jersey Recording Act – A Study of Its Policy," 12 Rutgers L. Rev. 328, 335 (1957).

The trial court's reliance on Sonderman to justify its decision is misplaced. 4T15:6-16:9. The Sonderman court not only recognized the "exceptional set of facts" presented, but also a distinctly provided remedy through an ordinance, which would allow the parties to be returned to their positions prior to the improper foreclosure sale. In comparison, no such remedy exists here.

Plaintiff purchased his property with the Strip. The Strip was throughout his chain of title. In comparison, the Strip suddenly appears in Defendant's chain of title in 1971, without any recitation of how the Strip was conveyed. This 1971 deed appears to be a "wild deed." A wild deed is a deed signed and recorded by a grantor who knows that he does not have title to the property described but signs and records the deed, anyway. Hyland v. Kirkman, 204 N.J. Super. 345, 357-358 (Ch. Div. 1985). Wild deeds cannot legally convey title to land. Id., at 367.

The trial court questioned whether the 1971 deed was a "wild deed," but was then led astray by Defendant's expert's response that Plaintiff should have performed additional investigation of the ownership due to the encroachment of the existing parking lot shown on the Smith survey. 2T172:10-175:7. The expert's response belies the testimony he later provided under cross-examination on the third

day of the trial: the 1967 subdivision documents are not part of the land records typically searched by title companies.

Imputing inquiry notice to the Plaintiff at the time he purchased the property is a smoke screen. Purchasers "will be bound only by those instruments which can be discovered by a 'reasonable' search of the particular chain of title." Palmarg, at 456. As stated by the trial court, "A purchaser who is placed on inquiry is chargeable with notice of such facts as might be ascertained by a reasonable inquiry." 4T18:15-17. Both experts testified how unlikely it would have been for a title company to locate the 1967 subdivision documents encapsulated as exhibit J-40 at the time Plaintiff purchased his property. Regardless, the cumulative trial exhibits reveal what types of documents were available through an "ends of the earth" search, and those documents do not demonstrate proper conveyance of the Strip to Defendant's chain of title. Based on the testimony provided by both experts, clearly location of the 1967 subdivision documents was unlikely and, even with those documents, Plaintiff was entitled to the security and protections afforded by the Recording Act, and the trial court should have concluded that the Plaintiff is the rightful owner of the Strip.

C. The Trial Court Placed Undue Emphasis on the Exclusion of the Strip from Plaintiff's Title Insurance Policy (Raised Below: 3T32; 4T6).

The trial court chose to impute actual and inquiry notice to the Plaintiff at the time he purchased his property in 1991 due to several factors. One of those factors

was the exclusion of the Strip property from his title insurance coverage. 4T6:13-15. However, title insurance coverage is a business decision. Testimony provided during the trial illuminates how the title insurance carriers for the Plaintiff and Defendant made different decisions regarding insuring the Strip. Moreover, because Defendant's title insurance included the Strip, the defense was funded by Defendant's insurance carrier. 3T31-3.

Defendant's expert opined that Defendant's title insurance company made a different type of business decision than Plaintiff's carrier did because Defendant's carrier chose to insure the Strip, even though title to the Strip only goes back 30 years in Defendant's chain. 3T32:2-4. Defendant's expert said that Defendant was on inquiry notice, too, due to that history, although the risk was transferred to Defendant's title insurer. 3T32:6-8. Defendant's expert then added:

> The title insurer simply through laziness, negligence, error, business decision that they weren't going to search back beyond 30 years, as I talked about yesterday, they insured the strip in lot three, but the fact that – that defendant has title insurance that insured their title to the strip does not mean that they're right, so to speak.
>
> The equities, in my opinion, that I've talked about, they still have to be weighted. The only difference is that the – that the defendant, to the extent this is relevant, the defendant did what was commercially reasonable. They went out – they went out and hired a title – they obtained title insurance because nobody is – no amateur is qualified to go down in the record room and sling books, as they say.

3T32:9-23.

On re-cross examination, the Defendant's expert provided additional testimony regarding the choices made by Defendant's title insurer:

Q. If they had gone beyond 1971 backwards in time –

A. Right.

Q. --they would have found that there was no basis in –

A. Absolutely.

Q. Just let me finish my question – they would have found that there was no basis for the Malangas to convey the strip, correct?

A. No, no, no basis of record.

Q. No basis of record.

A. Correct, absolutely.

Q. And so, a possibility could have been that they didn't go back beyond 20 years because they made a business decision that was going back was far enough.

A. Yes, absolutely.

Q. And based on the fact that they didn't go back far enough to see that there was an issue with respect to record title, they issued a policy, correct?

A. Yes.

Q. And it's entirely possible that had they gone back, they might have said we're not insuring the strip.

A. That's entirely possible.

3T56:9-57:9.

Plaintiff's expert also testified that a title insurance company's decision to issue insurance is a "business decision." He testified that, based on his experience, if Defendant's insurer had gone back to the Brubeck to Malanga deed and seen that the Strip was not included in that deed, "the title company would not have insured the strip." 3T73:16-17.

Based on the testimony provided, either title insurer might have excluded the Strip from coverage. Both parties acknowledge that there is no recorded deed indicating how the Strip entered Defendant's chain of title. Plaintiff demonstrated his history of ownership, and the trial court should have respected the public policy of the Recording Act and found that Plaintiff was entitled to ownership of the Strip.

D. Defendant's Expert Inappropriately Spoke to Defendant's Attorney During a Break in Testimony (Raised Below: 3T59; 4T14).

New Jersey Court Rule 4:14-3(f) prohibits a deponent from communicating with his counsel once he has been sworn for testimony except with regard to a claim of privilege, a right to confidentiality or a limitation pursuant to court order. Defendant's expert spoke to his counsel during a break in his testimony. Although the trial court was aware of this inappropriate interaction, the court incorrectly determined that it did not have any bearing on the court's assessment of the witness's credibility. 4T14:11-23.

Plaintiff's counsel questioned Defendant's expert about his interaction with counsel during the break in testimony:

Q. Did you discuss any of your testimony from yesterday with Mr. Webber in between the break from yesterday to today?

MR. WEBBER: Objection, Your Honor, attorney client privilege.

THE COURT: Well, the fact that there was a discussion is – whether or not there was a discussion is not privileged.

MR. WEBBER: Okay.

THE COURT: It's an allowable question.

THE WITNESS: Could you repeat the question?

BY MR. RUDOLPH:
Q. Did you discuss your testimony yesterday on the stand with Mr. Webber after you left the courthouse and before you returned here today?

A. Yes.

Q. Did you discuss the specifics of what you testified about?

MR. RUDOLPH: I'm not going to ask, Judge, what the – what the actual discussion, the words and what was exchanged was.

BY MR. RUDOLPH:
Q. I just simply want to know, did you discuss the contents of your testimony?

MR. WEBBER: Just for the record, Your Honor, same objection.

THE COURT: Yeah, overruled on that.

THE WITNESS: Yes, I did.

BY MR. RUDOLPH:

Q. Were you given any documents between yesterday and today?

A. No.

3T59:7-60:13.

Considering that the trial court gave significant weight to Defendant's expert's testimony, the trial court should have recognized that this interaction was inappropriate, and thus should have diminished her perception of Defendant's credibility.

POINT III

THE TRIAL COURT FAILED TO PROPERLY APPLY THE FACTORS REQUIRED FOR ADVERSE POSSESSION WHEN IT AWARDED OWNERSHIP OF THE STRIP TO THE DEFENDANT (Not Raised Below).

Any entry and possession of property owned by another which is (1) exclusive, (2) continuous, (3) uninterrupted, (4) visible, (5) notorious, even though under the mistaken claim of title, and (5) for the required period of time will support a claim for adverse possession. Manillo v. Gorski, 54 N.J. 378, 386-387 (1969). Although the trial court properly identified the required factors for an adverse possession claim, the court engaged in a faulty analysis of those factors based on the facts presented. Moreover, the trial court failed to place the burden of proof for adverse possession on the Defendant and require a preponderance standard for that proof. Patton v. North Jersey Dist. Water Supply Com., 93 N.J. 180, 187 (1983).

A. Defendant's use of the Strip was not exclusive

(Raised Below: 2T19; 2T21.

Defendant's existing parking area encroaches on a portion of the Strip. The remaining area of the Strip is grass. Plaintiff testified that neither he nor his tenants use the parking lot. However, Plaintiff maintains the grass area in the Strip. 2T19:5-11. Plaintiff's testimony also makes clear that he always envisioned that Defendant's use of the parking lot area was a reasonable concession that he allowed the Defendant. When questioned about the parking lot area, he made it clear that he would act if the Defendant attempted any changes to the parking lot:

> Q. Okay. And certainly you've never been – you've never participated in that? In any – any repairs or maintenance to the parking lot in the strip?
>
> A. If they started to repair something I would tell them that it is my property. But they did not start any repairs on the parking lot.
>
> Q. In strip?
>
> A. Yes, in the strip.

2T21:3-10. Based on the foregoing, Defendant's use of the Strip has not been exclusive.

In Leonard v. Pantich, 2020 N.J. Super. Unpub. Lexis 1644 (App. Div. 2020), the court considered a quiet title action regarding the boundary line between two

adjacent property owners. The plaintiff had owned and resided at her property since September 2006. When she purchased her property, she obtained a survey and title insurance policy. The survey identified an iron pipe as the marker for her western property line. The survey also showed a small encroachment by defendant's wire mesh fence. The plaintiff obtained a $600 financial settlement from her title company for the wire mesh fence encroachment. The Leonard plaintiff maintained the area of property which surrounded the white post. Leonard, at 2.

The Leonard defendant had lived in the adjacent property since 1980, and purchased the property on February 20, 1981, thirty-seven years prior to the litigation. In 2010, plaintiff mailed a letter with her survey to the defendant, asking defendant to remove his fence because it was over the property line. The Leonard defendant responded by disagreeing with the survey information and stating that the real boundary line is at the location of the white post near the hedges. In 2015, defendant replenished his stone driveway, up to six inches from the white post, in an area that plaintiff perceived to be her property. The Leonard defendant also replaced the wire mesh fence with a chain link fence. Thereafter, plaintiff sought to install her own fence and obtained a new survey, which showed a six inch encroachment in the rear corner. The Leonard defendant claimed that he owned that property and also denied that he had extended the width of his stone driveway. Leonard, at 3.

The Leonard plaintiff filed an action to quiet title in November 2018, and testified that, based on the two surveys, she believed that defendant's fence and now-existing driveway constituted encroachments on her property. On cross-examination, she answered questions regarding a Facebook post where she told people to look for the white post as the marker for her property line. The Leonard plaintiff's son testified that he mowed the lawn along defendant's fence for approximately ten (10) years and that defendant never asked him not to do it. He also testified that once defendant replenished his driveway, he began mowing over stones in the same area that he had previously mowed without problems.

In comparison, defendant put forth the testimony of a contractor who had replenished the driveway stones and stated that he had not extended or widened the driveway when he replaced the stones. The Leonard defendant contended that his continuous use of the property and plaintiff's actions confirmed his right to use the property. He stated that his new chain link fence was in the same location as the prior wire mesh fence that had been in that location since the 1950's. He stated that he always thought that the hedges were the boundary of the property prior to 2010 because his previous neighbor never complained to him about his use of that property. The Leonard defendant also testified that he would suffer a great hardship if he lost the disputed portion of the driveway because he needs to be able to provide access to oil trucks and fire trucks in case of an emergency.

The Leonard trial court awarded the disputed property to the plaintiff because the property was specifically described in the metes and bounds description included in the plaintiff's initial survey. The Appellate Division affirmed and explained:

> Here, defendant failed to establish that any use of the disputed property was "adverse or hostile" and "under a claim of right," rather than "indulgent and permissive in character." [quoting Yellen v. Kassin, 416 N.J. Super. 113, 120-121 (App. Div. 2010).] In this regard, plaintiff and her son mowed the lawn for a decade in the area which defendant claims he owns and he never asked either person to stop or leave his property. Further, he said nothing when plaintiff removed the original hedges along the disputed area in 2008, nor did he pay for the removal.

Leonard, at 13-14.

Similarly, Defendant's use of the Strip was not exclusive. Plaintiff testified that he paid landscapers to maintain the grass area.

B. Defendant did not prove actual possession of the Strip property for thirty years (Raised Below: 1T141; 1T164).

The court below glazed over the criteria for adverse possession to establish that Defendant should own the Strip. For example, the court re-packaged its conclusions regarding actual and inquiry notice, discussed previously, as findings that the Defendant simultaneously proved the third and fourth elements of adverse possession. 4T21:24-22:7. Similarly, the trial court stated: "The evidence demonstrates by a preponderance of the evidence that for 30 years defendants – at least 30 years, defendants possession of the strip was continuous, and interrupted, actual and exclusive, open and notorious and actual and hostile." 4T21:7-12.

Contrary to the trial court's statement, the evidence presented did not show that Defendant had been in possession of the Strip for 30 years.

Janet Toner, a limited partner of Defendant limited partnership, testified at trial. Ms. Toner stated that her parents personally purchased the property in 1999. Her parents conveyed the property to the current Defendant limited partnership in 2000. 1T141:4-9. N.J.S.A. 2A:14-30 requires thirty years of actual possession of the property to qualify for adverse possession ownership. However, the Defendant and Defendant's predecessor in title parents have only owned their property for twenty-five years. During cross-examination, Ms. Toner was asked if she had "any discussions with anybody about who owned or used The Strip" prior to her parents' buying Lot 3. Ms. Toner replied: "I had never heard of The Strip until Mr. Sule said that our parking lot was on his property." 1T164:6-10. As the burden was on the Defendant to prove the elements of adverse possession, Defendant needed to provide testimony regarding the use of the Strip for the 5 years prior to their purchase of the Property. Defendant did not provide this proof.

Plaintiff maintained that Defendant was using the Strip with his permission. Amongst other things, Plaintiff testified that he spoke to Janet Toner in 2021 and told her that they could use the Strip property. 2T31:8-32:5. Defendant's predecessor in interest could have also been using the Strip with Plaintiff's permission. Defendant did not elicit any testimony regarding the conditions

surrounding the use of the Strip by the prior owners. Accordingly, Defendant did not satisfy its burden of proof for adverse possession.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the Trial Court's January 16, 2024 Order (as revised on January 22, 2024) and grant the relief sought in Plaintiff's Verified Complaint to Quiet Title against the Defendant.

Respectfully submitted,

Robert F. Simon

Dated: August 7, 2024

AKOS SULE Plaintiff-Appellant v. CODIROLI FAMILY ENTERPRISES, L.P. AND JOHN DOES CORPORATION, 1-3 (fictitiously named), Defendant-Respondents	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001949-23 Civil Action On Appeal from Superior Court of New Jersey, Chancery Division, Essex County Sat Below: Hon. Lisa M. Adubato, J.S.C.

BRIEF OF DEFENDANT/RESPONDENTS CODIROLI FAMILY ENTERPRISES, L.P.

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PRELIMINARY STATEMENT

This case involves a dispute over a strip of land (the "Strip") along the boundary between property owned by Plaintiff/Appellant Akos Sule ("Sule") and Defendant/Respondent Codiroli Family Enterprises, L.P. ("Codiroli") in the Township of West Caldwell. The Strip has been used by Codiroli and its predecessors as a parking area for well over 30 years. At the heart of the dispute is a 1967 subdivision and land swap made by the parties' predecessors-in-title, which was approved by the Township of West Caldwell, but never recorded, and which both parties agree manifested an intent to transfer the Strip to the lot now owned by Codiroli. Even though the subdivision was never recorded, both parties and their predecessors have acted as if the subdivision had occurred since it was approved more than 50 years ago. Notwithstanding that behavior, the Strip now appears in both parties' chains of title.

Sule rests his claim to the Strip on his rights pursuant to the New Jersey Recording Statute, N.J.S.A. 46:26A-1 to -12 (the "Act"). But Sule took title to his property in 1991 on notice that there was a possible cloud on the title to the Strip. A 1991 survey commissioned in connection with Sule's purchase of his property clearly showed the Strip as a disputed area. Sule admitted that before he purchased the property, he was aware that Codiroli was using the Strip for parking. And Sule's title insurer also refused to insure the Strip. That clear indicia of a cloud on

the title to Sule's property placed Sule on notice of Codiroli's claim to the Strip, which obligated Sule to inquire further about who actually owned the Strip when he purchased the property and today negates Sule's reliance on the Act. An evaluation of the evidence led the trial court to conclude not only that Sule was on notice of Codiroli's claim, but also that it was Codiroli, and not Sule, who had a superior equitable claim to the Strip. Moreover, the uncontroverted evidence is that Codiroli has used and occupied the Strip for more than 30 years, and, having met all of the elements for an adverse possession claim, should be awarded title by adverse possession.

The trial court's decision below examined those issues thoroughly, and sided with Codiroli. Sule now asks this Court to substitute its judgment for that of the trial court. His effort fails.

PROCEDURAL HISTORY

Sule initiated this matter by filing a Complaint on July 7, 2022, seeking to quiet title and for compensation for the use of the Strip since 1991. Pa18. Codiroli answered and counterclaimed by way of a pleading on September 26, 2022, asserting claims for adverse possession, prescriptive easement, and seeking a declaratory judgment awarding the Strip to Codiroli. Pa28. Sule filed an Amended Complaint on May 30, 2023, which added a claim for a declaratory

judgment. Da1. Codiroli, in turn, filed an Amended Answer and Counterclaim, adding counts asserting ownership of the Strip by color of title, equitable conversion, and constructive trust. Da17.

The court below conducted a three-day trial from September 5 through 7, 2023. Judge Adubato read the Court's decision into the record on December 20, 2023, and entered a final Order on January 16, 2024 (and amended that Order on January 24, 2024). 4Tr.[1]; Pa12; Pa15. The Order granted Codiroli's request for a declaratory judgment that it owned the Strip and, in addition, awarded Codiroli the Strip by way of adverse possession.

FACTS

Codiroli owns Tax Lot 3, Block 1041 ("Lot 3"), and Sule owns Tax Lot 4, Block 1041 ("Lot 4"), both in the Township of West Caldwell. Pa77; Pa65. The history and evolution of those two lots were the focus of the litigation.

I. Lot 3 and Lot 4 Title History Prior to 1967

The history of the respective properties at issue is slightly involved but important to trace. Albert and Adele Hrubec (the "Hrubecs"), husband and wife, once owned most of the land that today comprise the two properties. By deed

[1] The trial transcripts are herein identified as "1Tr." (Sep. 5, 2023); "2Tr." (Sep. 6, 2023); "3Tr." (Sep. 7, 2023); and "4Tr." (Dec. 20, 2023).

dated August 15, 1956, and recorded on August 16, 1956 in deed book 3429, page 161, the Hrubecs, conveyed land including what is now Lot 3 to Louis Malanga, Alfred Malanga and George D. Malanga (collectively, "Malanga"). Da51. The description of the land conveyed in the 1956 Hrubec-to-Malanga deed did not include the Strip.

By deed dated April 6, 1966, and recorded on the same day in deed book 4160, page 55, the Hrubecs conveyed the greater part of what is now Lot 4, including the majority of the Strip, to Graco Sales Company, Inc. ("Graco Sales"). Da55. By deed dated March 26, 1966, and recorded on April 7, 1966 in deed book 4160, page 187, Anthony and Rosalind Pio Costa, husband and wife, conveyed the rest of what is now Lot 4, including the rest of the Strip, to Graco Sales. Da58. The stage was then set for the key development in this controversy.

II. The 1967 Subdivision

In 1967, Graco Sales apparently arranged with its neighbor, by this time Mal-Bros. Contracting Co. ("Mal Bros."), Malanga's successor-in-title, to subdivide its Lot 4 to create the Strip and deed it to Mal Bros. Pa86. Meanwhile, Mal Bros. would deed to Graco Sales a roughly equal-sized parcel of land adjacent to Lot 4, which the parties in this matter took to calling the "Bump." Id. No documentation of that transaction has been located other than a June 26, 1967, map

of what were at that time designated as Lots 1 and 2H of Block 84 (the "1967 Subdivision").[2] Id. The planning board and the Mayor of West Caldwell signed and approved that proposed subdivision. Id.

Tellingly, the signed and approved 1967 Subdivision identifies the land corresponding to the Strip as land "to be subtracted from Lot 1 [now part of Lot 4] and added to Lot 1-A [now Lot 3]" and as land "to be subtracted from Lot 2H [the rest of Lot 4] and added to Lot 1-A [now Lot 3]." Id. The document also indicates that the parcel known as the Bump was "to be added to Lot 1 [now Lot 4]." Id. The signed and approved 1967 Subdivision therefore evinces the unequivocal intent of Graco Sales, predecessor-in-title to Sule as to Lot 4, and Mal Bros., predecessor-in-title to Codiroli, to exchange the two parcels, the Strip in exchange for the Bump. Even Sule's expert acknowledged that the purpose of the 1967 Subdivision was for Lot 4 to "spin off" the Strip, and acquire the Bump. 1Tr. at 136:1-5. Sule acknowledges as much in his appellate brief. Pb at 18.

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[2] The former Lot 1 designated on the 1967 Subdivision corresponds to the land conveyed to Graco Sales in the 1966 Hrubec-to-Graco Sales Deed. The former Lot 2H designated on the 1967 Subdivision corresponds to the land conveyed to Graco Sales in the 1966 Pio Costa-to-Graco Sales Deed. The 1967 Subdivision shows former Lot 1-A lying adjacent to Lots 1 and 2H to the northwest. Former Lot 1-A corresponds to Lot 3 today. Former Lots 1 and 2H now comprise Lot 4. The signed and approved 1967 Subdivision drawing identifies an area corresponding to the disputed Strip along the boundary between current Lot 3 and Lot 4 (then, between Lots 1 and 2H owned by Graco and Lot 1-A owned by Mal-Bros).

III. Lot 3 and Lot 4 Title History After the 1967 Subdivision

What happened immediately after the 1967 Subdivision only confirms the intent of the neighbors at the time. There is no record evidence of Graco Sales having recorded the approved subdivision. However, both Graco Sales and Mal Bros. acted immediately as if Graco Sales had succeeded in creating the Strip and transferring it to Mal Bros.

Immediately subsequent transfers of Lot 3 and Lot 4 reflect and effect the intent expressed in the signed and approved 1967 Subdivision, to transfer the Strip to Lot 3 and the Bump to Lot 4. A deed dated December 16, 1971, and recorded on December 22, 1971, in deed book 4395 ("1971 Lot 3 Deed"), transfers Lot 3, and includes the Strip in the seven-course metes-and-bounds description of the property. Da34. That same deed excludes the Bump, evidencing the belief by Lot 3's owners that the land swap described by the 1967 Subdivision had taken place. Consistent with that 1971 Lot 3 Deed, by deed dated December 31, 1971, and recorded on May 3, 1974, in deed book 4474, page 145 ("1971 Lot 4 Deed"), Graco Sales conveyed the current Lot 4, without the Strip and with the Bump, to Graco, Inc. Pa81; 2Tr. at 58:19 – 59:21; 61:8-20.[3]

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[3] Curiously, and again consistent with what appears to have been negligent recording or recordkeeping on the part of Sule's predecessors-in-interest, the Bump fell out of the Lot 4 chain of title for a time, until Sule paid $1000 to Codiroli's predecessor-in-interest for another transfer of the Bump by way of a

A. Lot 3's Chain of Title Since 1971 Contains the Strip

From then until the present day, Lot 3's chain of title expresses the clear understanding – and reality on the ground – that the Strip belongs to Lot 3. As many as ten separate deeds to Lot 3 over the next 50 years all include a metes-and-bounds description that includes the Strip. 1Tr. at 111:5-10; Pa98; Da41; Da44; Da46; Da62; Da63; Da48; Da70; Da73; Pa77. There is no factual dispute over the Strip's appearance in Lot 3's chain of title since the 1967 Subdivision gained approval.

B. The Strip Disappears from Lot 4's Chain of Title in 1971, Only to Reappear Retroactively

In contrast, after the 1971 Graco Deed, the chain of title to Lot 4 became mysterious, self-serving, and even a bit fraudulent. A deed conveying Lot 4 was made "as of" May 12, 1972, and includes the Strip in a conveyance of Lot 4 from the trustee in dissolution of Graco Sales to Graco, Inc. ("May 1972 Graco Deed"). Da75. Notwithstanding the date of the May 1972 Graco Deed, Graco Inc. did not record the instrument until 1990. Id. That meant that, as Sule's expert admitted, between 1974 and 1990, the only recorded deeds reflecting ownership of the Strip were in the chain of title for Lot 3. 1Tr. at 91:7-12. Upon questioning from the

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"housekeeping deed," as Codiroli's expert described it, in 1995. 2Tr. at 126:2 – 127:10; Pa105.

Court, Sule's expert admitted that the May 1972 Graco Deed was a "corrective deed." Id. at 128:2-6.

In the interim, Graco Inc. sought to subdivide Lot 4 twice in the 1980s. First, in 1985, Graco Inc. submitted an application that did not count the Strip as its own, recognizing that it belonged to Lot 3. Da25, 27. Graco, Inc. received feedback from West Caldwell that the size of one of the proposed subdivided lots was about 3000 feet short of the necessary size to subdivide without a variance. Da28. In 1987, Graco Inc. apparently withdrew that application in favor of a similar subdivision application. Da29. In preparing the 1987 application, however, Graco, Inc. addressed West Caldwell's objection by reversing itself on the issue of who owns the Strip, this time claiming it so as to avoid the need for a variance on the requisite lot size. Da30. Nevertheless, West Caldwell denied Graco Inc.'s 1987 application for a different reason: the plan did not provide for enough parking on the subdivided lots. Da31.

Perhaps informed by that experience, however, and just as it was marketing Lot 4 for eventual sale to Sule, Graco Inc. had the May 1972 Graco Deed signed and certified on December 20, 1989. Pa84. Graco Inc. then recorded the May 1972 Graco Deed on February 15, 1990, in deed book 5113, page 626. Id. The May 1972 Graco Deed is said to be effective "as of" a date after the Dec. 1971 Graco Deed was made, which had already conveyed Lot 4, without the Strip, out of

Graco Sales into Graco, Inc. Id. The 1971 Lot 4 Deed (recorded in 1974) conveying Lot 4 without the Strip to Graco, Inc., had been of record for more than 16 years before the May 1972 Graco Deed purporting to include the Strip in Lot 4 was recorded. Pa81. All the while, of course, the various owners of Lot 3 had been buying, selling, and occupying Lot 3 with the reasonable, and correct, belief that the Strip belonged to them, without any claim to the contrary publicly on record by Lot 4's owners. 16 months after Graco Inc. recorded the May 1972 Graco Deed, Sule acquired Lot 4 from Graco, Inc., by deed dated June 26, 1991, and recorded on June 27, 1991 in deed book 5172, page 896. Pa65.

IV. Plaintiff's Knowledge of Possible Defect in Title Related to the Strip

Unlike Codiroli and its predecessors, Sule was well aware of the disputed nature of the Strip when he purchased Lot 4 from Graco, Inc. Sule's Deed even conveyed Lot 4 in the unusual manner of describing separate "Tracts" in the Deed. Id. Sule's Deed identifies "Tract I" of the property being conveyed as the same property conveyed in the 1971 Lot 4 Deed (which excluded the Strip). Id. Sule's Deed also conveys land described as "Tract II," which is a description of the Strip. Id.

Sophisticated parties recognized the dubious nature of Sule's claim to the Strip. Chicago Title Insurance Company issued a policy to Sule upon his purchase

of Lot 4. Pa71. The policy insures Tract I, but specifically excludes Tract II from coverage. Pa76. Moreover, surveyor Richard F. Smith, Jr. prepared a survey of Lot 4, dated March 11, 1991, for the benefit of Sule before Sule purchased Lot 4 in June 1991 (the "Smith Survey"). Da50. The Smith Survey shaded the Strip and indicated that the Strip contains a "paved parking area in use by tax Lot 3." Id. According to Sule's expert, the Smith Survey showed a deed overlap between Lot 3 and Lot 4. Id.; 3Tr. 76:1-11. Sule acknowledged the Smith Survey as one that his attorney had requested from Mr. Smith, and that he had reviewed it before he purchased Lot 4. 2Tr. at 8:12-22.

Sule confirmed the Smith Survey's findings with his own eyes. Sule testified that before he purchased the property, he was aware that Codiroli's predecessor-in-title was using part of the Strip as a parking lot. 2Tr. at 14:23 – 15:5. Mr. Sule also testified that the parking lot on the Strip has not changed since he purchased Lot 4. Id. at 17:15 – 18:2. In fact, it was Sule's understanding that the parking lot on the Strip had been in place since as far back as 1967. Id. at 23:17-23. Sule further admitted that Lot 3's owners have had exclusive use of the parking lot since his purchase in 1991 – neither Sule nor any of his employees or guests have parked on the Strip. Id. at 18:3-16.

Not only did Codiroli occupy the Strip by using it as a parking lot, but Codiroli and its predecessors also maintained the Strip. For example, from time to

time, Codiroli's maintenance personnel cut the grass in the Strip. 1Tr. at 151:13-17. Codiroli also maintained the parking lot on the Strip, including paving and seal-coating. Da24. Codiroli's principal also testified that the Strip was essential to Codiroli to comply with municipal zoning laws, including providing the minimum number of parking spaces and having minimum side setbacks for Lot 4. 1Tr. at 143:4 – 150:13. In contrast, Sule has never maintained the parking lot included in the Strip, and testified that he did not use the Strip for any purpose. 2Tr. at 19:17 – 20:21; 24:22 – 25:17.

THE DECISION BELOW

The trial court issued its decision on December 20, 2023, and it was a resounding vindication for each of Codiroli's core positions. The court began its decision noting the 1967 subdivision and its intent: the transfer of the Strip to Lot 3. 4Tr. at 4:16-25. After briefly summarizing how the parties came to own the properties today, the court found, "an important question that the Court must answer is whether plaintiff took title to this property in 1991 on notice that there was a cloud on the title to the strip." Id. at 6:3-6.

In determining whether Sule had notice of the cloud on Lot 4's title to the Strip, the court presented its findings and observations about the witnesses who testified at trial. As for Sule's expert, the court considered him "entrenched,

meaning that he limited his conclusions solely to the record [chain] of title as it related to plaintiff's claims to the strip. This witness made no allowance for application for any other legal or equitable theory, including how the concept of notice might impact his conclusions." Id. at 9:9-19. Sule's expert's entrenched position affected the court's view of the power of his testimony: "This witness' inability or refusal to consider the very crux of the issue before the court impacted his credibility and the weight given by the court to his testimony and his conclusions." Id. at 10:5-8.

The court found Sule to be "agitated," "adamant," and non-responsive, and ultimately found that he was unable to present competent evidence that he had given permission for Codiroli and its predecessors to use the Strip for parking. Id. at 11:18 – 12:8. In contrast, the court found Codiroli's principal, Janet Toner, "credible," and that she had established the requisite setbacks and zoning requirements for Codiroli to use Lot 3, which would be violated were Lot 3 to lose the Strip. Id. at 10:9 – 11:9.

Most importantly, the court found Codiroli's expert competent, credible, and persuasive. The court found that the expert "was generally helpful to the Court in that he outlined the applicable law in a very methodical and understandable way." Id. at 12:13-15. In stark contrast to Sule's expert, the court found that Codiroli's expert "was not at all entrenched in his positions and he made allowances for

factual variables. Importantly, he explained his conclusions in light of the evidence presented and often agreed with the plaintiff's expert." Id. at 12:18-23. The court continued: "he was not adamant in his conclusions, but gave reasonable answers which certainly impacted his credibility in a positive way." Id. at 12:24 – 13:2. On the issue of the 1967 Subdivision, the Court found Codiroli's expert's explanation of what had transpired "very objective and reasonable, grounded in recorded deeds, and reflected in the conduct of the parties." Id. at 14:1-10. The court noted, but brushed aside as irrelevant in the light of the balance of his testimony, the fact that Codiroli's expert had discussed his testimony with counsel on an overnight break in the trial. Id. at 14:11-23.

Based on those factual findings and observations, the court came to the legal conclusion that notwithstanding the high priority New Jersey law places on the system of recording deeds and other instruments evidencing an interest in real property, the equities at stake weighed in favor of Codiroli. The court acknowledged Sonderman v. Remington Construction Company, 127 N.J. 96, 108 (1992), noting that while recorded deeds usually control in a dispute over title to property, unusual or compelling equities can overcome the law's presumption in favor of recorded title as the determinant of ownership. Id. at 15:6 – 16:6. The court found such equities here.

> [I]it may be said that plaintiff, in fact, possessed actual notice based on the survey highlighting the uncertainty regarding the strip, the fact

> that plaintiff was well aware of the use by defendant -- the strip, or at least part of it, as a parking area, and the as of deed with it's [sic] 19 year discrepancy between alleged date of preparation versus the recording date.
> [Id. at 17:14-21.]

The court concluded that Sule was on at least inquiry notice that Lot 3 had a claim to the Strip, and therefore had been obliged to make a reasonable and diligent inquiry into its ownership. Id. at 19:3-7. Because Sule failed to make such an inquiry, the court charged him with what such an inquiry would have revealed, which were facts sufficient to establish Lot 3's equitable claim to the property. Id. at 19:11-16. That equitable claim was, in the Court's opinion, superior to Lot 4's, and the court therefore recognized Codiroli's equitable entitlement to the Strip. Id. at 19:18 – 20:9.

The court did not stop at that conclusion, however. It continued on, finding that Codiroli also had met the criteria to show that it had obtained the Strip by adverse possession, pursuant to N.J.S.A. 2A:14-30. Id. at 20:10-15. "The evidence demonstrates by a preponderance of the evidence that for 30 years defendants -- at least 30 years, defendants [sic] possession of the strip was continuous and interrupted, actual and exclusive, open and notorious and actual and hostile." Id. at 21:7-11. The court based that conclusion on many of the same facts as had established Codiroli's equitable entitlement to the Strip. Id. at 21:22 - 23:8. The court also rejected Sule's defenses to the adverse possession claim,

finding that Sule did not persuasively challenge the length of time Lot 3's owners had used the Strip, and failed to present competent evidence that he had given permission for the use of the Strip. Id. at 20:14-21.

ARGUMENT

I. Standard of Review

Appellate courts apply a limited and deferential standard of review to the findings of a court after a bench trial. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011); D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). As one court put it, "We are not to review the record from the point of view of how we would have decided the matter if we were the court of first instance." Sebring Assocs. v. Coyle, 347 N.J. Super. 414, 424 (App. Div. 2002). "Factual findings premised upon evidence admitted in a bench trial 'are binding on appeal when supported by adequate, substantial, credible evidence.'" Potomac Ins. Co. of Ill by OneBeacon Ins. Co. v. Pa. Mfrs.' Ass'n Ins. Co., 215 N.J. 409, 421 (2013) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). That deference is merited especially when it comes to credibility determinations "because the trial judge '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.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J.

at 412). Appellate courts will reverse trial courts on their assessment of witnesses and facts only to ensure there is not a denial of justice. Id.

A trial court's evidentiary decisions also receive a deferential standard of review. Appellate courts disturb those only if there is a showing that the trial court "palpably abused its discretion." Verdicchio v. Ricca, 179 N.J. 1, 34 (2004). That deference is especially given when it comes to the evaluation of expert testimony. "It [i]s within the trial court's wide discretion to accept or reject an expert's testimony, either in whole or in part." Sipko v. Koger, Inc., 251 N.J. 162, 188 (2022). Appellate courts review de novo a "trial court's interpretation of the law and the legal consequences that flow from established facts." D'Agostino, 216 N.J. at 182-83. Based on those standards, each of Sule's arguments on appeal fail.

II. The Trial Court Properly Weighed the Evidence and Applied the Law

Sule's substantive arguments on appeal are somewhat jumbled and overlapping. The crux of the dispute between the parties is essentially this: Sule argues that his record title to the Strip prevails over all; Codiroli argues that a panoply of facts put Sule on notice that his record title was invalid, and that Codiroli had a superior equitable claim to the Strip. After evaluating the documentary evidence and listening to the testimony of fact and expert witnesses, the trial court sided with Codiroli.

Sule gives the impression of simply requesting a do-over from this Court, suggesting this Court override or reject the trial court's weighing of the evidence and credibility assessments. Sule's objections to the decision below include:

- The trial court erroneously relied upon the 1967 Subdivision (Pb9);
- The trial court improperly weighed the expert testimony (Pb14, 20-25);
- The trial court improperly weighed the documentary evidence (Pb16, 25-28);
- The trial court made incorrect credibility assessments of the witnesses, especially Sule (Pb17); and
- The trial court improperly weighed the factors finding that Codiroli had obtained title to the Strip through adverse possession (Pb30-36).[4]

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[4] Sule includes a throw-away reference to communication between Codiroli's counsel and Codiroli's expert on an overnight break in the trial as a violation of R. 4:14-3(f). The argument is both desperate and misplaced. R. 4:14-3(f) governs only communications during same-day breaks in depositions. "Since the rule speaks only to 'while the deposition is being taken,' it clearly does not address consultation during overnight, lunch, and other breaks." PRESSLER & VERNIERO, Current N.J. Court Rules, Comment 4:14-3, (GANN). Further interpretation of the Rule is limited, but one court at least acknowledged that consultations with witnesses overnight are permissible. In re PSE & G Shareholder Litigation, 320 N.J. Super. 112, 117, (Ch. Div. 1998). And the guidance of both of those authorities applies only to depositions, not trials, and then only with fact witnesses. Given the policy behind the rule, overnight consultation with an expert witness during trial and in preparation for a redirect examination is even more permissible. In any event, the record is devoid of any evidence that such consultation affected the outcome of the case, and the trial court

Ultimately, Sule argues that, contrary to the substantial documentary evidence and powerful expert testimony offered by Codiroli, Sule had no notice of Codiroli's claim to the Strip and his record title to the Strip prevails. Pb10-28. All of those arguments fail because, as he did at trial, Sule adheres narrowly to the only subset of facts that favors him: the metes and bounds description of the Strip appears in the chain of title to Lot 4 (and its predecessor lots) since at least 1933, and the same description only first appears in the chain of title to Lot 3 in 1971. Pb11-12. Because the Strip appears in Lot 4's chain of title longer, Sule asked the trial court, and now this Court, to ignore the significant weight of the balance of the relevant facts to find that his record title prevails over any rival legal theory or claim. Sule's view simply is inconsistent with New Jersey property law.

As the trial court pointed out, Sule missed, and continues to miss, the essence of this case. Though recorded title to property often is dispositive of the issue of ownership, as the New Jersey Supreme Court has held, as Codiroli's expert opined, and as the trial court recognized, sometimes facts exist that render record title subordinate to the reality of the circumstances. Palmarg Realty Co. v. Rehac, 80 N.J. 446, 453 (1979). "As important as is the confidence of title searchers, purchasers, and others who rely on recorded instruments, the integrity of record title in rare cases can bend to accommodate compelling equities."

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found that the consultation did not affect her assessment of Codiroli's expert's credibility. 4Tr. at 14:11-23.

Sonderman, 127 N.J. at 108. The record is clear that the trial court correctly identified the relevant facts at issue, and properly applied the law.

A. Notice and the Act

The Act makes "notice" a linchpin of New Jersey's recording regime. See, e.g., N.J.S.A. 46:26A-12(b) ("A claim under a recorded document affecting the title to real property shall not be subject to the effect of a document that was later recorded or was not recorded unless the claimant was on notice of the later recorded or unrecorded document. our courts have focused considerable time on elucidating the meaning of that term."). In short, if a party is on notice of a later recorded or unrecorded claim, that party takes its interest subject to the claim of which the party had notice.

There are three ways a party can be on notice of property interests under the Act: record, actual, or constructive/inquiry. A party is charged with having record notice of an interest by another party if that interest appears in a reasonable search of a property's chain of title. Island Venture Assocs. v. NJ DEP; 179 N.J. 485, 493 (2004). "Actual notice arises when the purchaser has actual knowledge or information that a claim is outstanding against the property he or she proposes to acquire." Roche v. Ocean Beach and Bay Club, 2019 WL 5544036 (App. Div.

Oct. 28, 2019) (citing 14 Powell on Real Property § 82.02(1)(d)(iv) (Michael Allan Wolf ed. 2019)).

Judge Pressler explained the concept of another kind of notice, what Judge Pressler called "constructive notice," and what other courts have called "inquiry notice." "In the context of the race notice statute, constructive notice arises from the obligation of a claimant of a property interest to make reasonable and diligent inquiry as to existing claims or rights in and to real estate." Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 108 (App. Div. 1990) (citing Scult v. Bergen Valley Builders, Inc., 76 N.J. Super. 124, 135 (Ch. Div. 1962), aff'd 82 N.J. Super. 378 (App. Div. 1964)).

> Accordingly . . . the claimant will be charged with knowledge of whatever such an inquiry would uncover where facts are brought to his attention, "sufficient to apprise him of the existence of an outstanding title or claim, or the surrounding circumstances are suspicious and the party purposefully or knowingly avoids further inquiry."
> [Id. (emphasis in original).]

Other courts have used the label "inquiry notice" to identify the same concept.

> It is well recognized that a record which affords record notice of the transfer therein made may contain a statement or recital which does not of itself give either record notice or actual notice but which does place on inquiry one who is affected by the record . . . . A purchaser who is placed on inquiry is chargeable with notice of such facts as might be ascertained by a reasonable inquiry.
> [Garden of Memories v. Forest Lawn Mem'l Park Ass'n, 109 N.J. Super. 523, 534-35 (App. Div. 1970) (citations omitted).]

See also Pearson v. DMH 2 Ltd. Liab. Co., 449 N.J. Super. 30, 50 (Ch. Div. 2016) ("a party may be charged with inquiry notice where there are facts or circumstances indicating some outside claim that would prompt a reasonable purchaser to investigate further." (citing Friendship Manor, 244 N.J. Super. at 108)).

B. Sule Had Actual and Inquiry Notice of Codiroli's Claim to the Strip

Here, the trial court correctly found that Sule was on actual and inquiry notice of Codiroli's claim to the Strip. As the Court observed, Sule had knowledge of the following: (a) Codiroli's predecessors were using the Strip as a parking lot when Sule bought the property in 1991; (b) Sule obtained the Smith Survey before purchasing Lot 4, which showed the disputed area with notations referring to the various deeds that included the Strip in both lots (an investigation into which would have revealed the 1971 Lot 3 Deed); (c) Sule was issued a title insurance policy that expressly did not cover the Strip; and d) Sule was aware that the unusual May 1972 Graco Deed did not appear of record until immediately preceding the sale to him in 1991. 4Tr. at 17:14-21; 19:3-7.

That knowledge put Sule on actual and inquiry notice that his claim to the Strip was tenuous, and obliged him to make further inquiry as to Lot 3's claim to the Strip. Had Sule made that inquiry, Sule would have discovered more facts that

would have shed greater doubt on Lot 4's ownership of the Strip, and bolstered Lot 3's ownership claim: the 1967 Subdivision, the 1971 Lot 3 Deed with its inclusion of the Strip, the many Lot 3 deeds over decades that claim ownership of the Strip, and even the fact that, as late as 1985, Sule's predecessor-in-interest, Graco, Inc., had admitted in a subdivision application that Lot 4 did not own the Strip.

In short, when Sule bought Lot 4, he knew, or should have known, that Codiroli had a strong claim to ownership of the Strip, and Sule was obliged to inquire further into the matter. Sule did not, and he cannot today rely on his record title to excuse or blot out facts that are inconsistent with his theory of ownership. The trial court charged Sule with notice of Lot 3's claim and refused to reward him for his failure to make a reasonable inquiry into that claim. That is not, as Sule argues, ignoring the law; it is enforcing it. The trial court did not undermine the Act any more than our Supreme Court and Judge Pressler did in recognizing and explaining the same rule of law. Island Venture Assocs.; 179 N.J. at 493; Friendship Manor, 244 N.J. Super. at 108.

With Sule's record title called into question, the trial court properly assessed which party had equitable title to the Strip. "Equity regards and treats as done what in good conscience ought to be done." Martindell v. Fiduciary Counsel, 133 N.J. Eq. 408, 413 (1943). Our courts consider that to be a "cardinal principle" of equity, and closely relate it "to the maxim that equity regards the substance and

intent rather than the form; and it has been termed the foundation of all distinctively equitable property rights, estates and interests." Id. at 414. In the realm of real property, our courts have created the legal fictions of "equitable ownership" or "equitable conversion," which both rest "on the principle that, as between parties to a contract, equity regards things as done that were agreed to be done." Jock v. Zoning Bd. of Adjustment of Twp. of Wall, 184 N.J. 562, 587-88 (2005).

Because of the weight of the evidence presented by Codiroli – the 1967 Subdivision, the many deeds over five decades in Lot 3's chain of title, the absence of the Strip in Lot 4's chain of title for years, the public representation of non-ownership of the Strip by Sule's predecessors in 1985, the active use of and need for the Strip by Codiroli, the uselessness of the Strip to Sule – the trial court rightly awarded the Strip to Codiroli based on equitable considerations. Recall that only in the late 1980s, after a couple of failed or aborted attempts to subdivide Lot 4, and with the property about to be marketed, did Graco, Inc. retrospectively, and quite suspiciously, record the May 1972 Graco Deed that re-attached the Strip to Lot 4. Pa84. If that maneuver had been condoned by the Court, it would have resulted in a patently inequitable outcome: taking back from Lot 3 ownership of the Strip that Lot 3's owners had enjoyed and relied upon for more 50 years.

C. The Trial Court's Evaluation of Testimony and Documentary Evidence was Sound

Sule's complaint that the trial court misjudged the credibility of witnesses and the relevance of the 1967 Subdivision and other documentary evidence fails under the deferential standard this Court will apply to a trial court's findings of fact. Potomac Ins. Co., 215 N.J. at 421. The court's findings were all supported by adequate, substantial, and credible evidence.

For example, Sule contends that even if he had been on notice to explore evidence outside Lot 4's chain of title, his examiner would not have found the 1967 Subdivision. Pb21-22. But that precise issue was a point of contention between the parties' experts, with Codiroli's expert opining that it would have been reasonable for Sule to perform a search that would have found the 1967 Subdivision by way of a records request. 2Tr. at 174:21-23. And as the trial court made clear, and as even Sule admits, the trial court favored Codiroli's expert's opinion.[5] 4Tr. at 14:1-10; Pb21. That evaluation of the experts' competing claims

[5] Similarly, this Court must defer to the trial court's negative impression of Sule's testimony, especially because Sule makes an argument that his supposed language deficit explains his agitated demeanor on the stand. Pb17-18. Gnall, 222 N.J. at 428. The trial court observed Sule, was aware of his language skills, evaluated his demeanor, and made its assessment.

is due great deference by this Court, and there is no reason to reject it.[6] Sipko, 251 N.J. at 188.

In the same vein, Sule argues that the trial court too heavily weighed Sule's failure to obtain title insurance. Pb25. Although Codiroli's expert opined that the failure to obtain title insurance on the Strip contributed to putting Sule on notice that there was a defect in his title to that piece of land, 2Tr. at 102:15 – 104:18, the trial court did not focus on that issue, mentioning it in passing only twice. 4Tr. at 6:13-15; 13:3-13. Regardless, the trial court was entitled to accord whatever reasonable weight it chose to that fact, and Sule utterly fails to show that the court below abused its discretion on that point.

D. Codiroli Obtained the Strip Through Adverse Possession

The trial court also properly awarded Codiroli the Strip under the doctrine of adverse possession. "Generally to acquire title by adverse possession, the possession must be actual and exclusive, adverse and hostile, visible or notorious, and continued and uninterrupted." Patton v. N. Jersey Water Supply Comm'n, 93 N.J. 180, 185 (1983). A possessor's "hostility" does not need to be knowing; it is enough that a party actually enters and possesses the disputed property, even if it is

[6] It should be noted that there is substantial legal support for the trial court to have awarded equitable title to Codiroli based on the 1967 Subdivision. See Aldrich v. Schwartz, 258 N.J. Super. 300 (App. Div. 1992) (recognizing and enforcing unrecorded restriction on use of property).

mistaken about its ownership of the land. Mannillo v. Gorski, 54 N.J. 378, 386-87 (1969). A party must so possess a property for more than 30 years. N.J.S.A. 2A:14-30. Changes in ownership do not reset the adverse possession clock. "When ownership during the statutory period involves more than one adverse possessor, each owner who acquires title must satisfy all the elements of adverse possession." Stump v. Whibco, 314 N.J. Super. 560, 568 (App. Div. 1998). Codiroli meets all of those criteria.

First, Sule admits that the possession of the Strip by Codiroli and its predecessors in interest has been continuous since at least 1991, when Sule purchased Lot 4. 2Tr. at 17:12-20. That is not disputed, and indeed, as evidenced by a 1985 site plan prepared by Sule's predecessor-in-title, the uncontroverted evidence shows that Codiroli's predecessors used the Strip for parking as early as 1978. Da27. Sule admits that Codiroli's possession has been uninterrupted, and that Codiroli uses the Strip for parking to this day. 2Tr. at 18:3-6. Sule was aware of Codiroli's open and hostile possession since he purchased the property. Id. And Sule failed to act in the statutory period, bringing this suit only in 2022.

Because of the uncontroverted documentary evidence and the admissions by Sule himself, the trial court rejected Sule's argument that Codiroli had not used the Strip for the statutorily required period of time. 4Tr. at 20:14-21. The court also found that Sule had failed to present competent evidence that he had given

permission for the use of the Strip. Id. Those factual findings, as with all of the trial court's factual findings, are owed deference by this Court. Sule can do nothing to show that those findings are not founded on anything but adequate, substantial, and credible evidence.

CONCLUSION

For the foregoing reasons, Codiroli respectfully requests that this Court deny Sule's appeal.

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By: */s/ James K. Webber*
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Dated: September 23, 2024

AKOS SULE, Plaintiff-Appellant, v. CODIROLI FAMILY ENTERPRISES, L.P. and JOHN DOE CORPORATION 1-3 (a fictitious name, Defendants-Respondents.	ON APPEAL FROM: THE SUPERIOR COURT OF NEW JRSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-C-118-22 SAT BELOW: HONORABLE LISA M. ADUBATO, J.S.C. APPELLATE DIVISION DOCKET NO. A-001949-23

REPLY BRIEF ON BEHALF OF PLAINTIFF/APPELLANT

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PRELIMINARY STATEMENT

This matter is brought before this Court due to the trial court's improper decision to award ownership of certain real property, referred to throughout this matter as the "Strip," to the Defendant, despite Plaintiff's uncontroverted proofs that the Strip was contained in his conveyance deed and consistently within his chain of title. Instead of following the New Jersey Recording Act, N.J.S.A. 46:26A-1, et seq., the trial court based its decision on information gleaned from an unrecorded and unperfected subdivision maps (the "1966-1969 Unrecorded Subdivision Maps"). Relying on this unconfirmed and unratified document, the trial court inappropriately imputed Plaintiff with actual and inquiry notice of the contents of the 1966-1969 Unrecorded Subdivision Maps as they pertain to his claim to title to the Strip. The trial court reached this decision despite testimony provided by both parties' experts that the 1966-1969 Unrecorded Subdivision Maps were never contained in the chain of title to Plaintiff's Property, and Plaintiff would be unlikely to discover the unrecorded subdivision maps in any reasonable title search of the Plaintiff's or Defendant's properties. Moreover, the evidence presented to the trial court showed that, even if there was knowledge (which there was not) of the 1966-1969 Unrecorded Subdivision Maps, neither Plaintiff's nor Defendant's expert could explain how the Strip magically appeared in 1971 in the chain of title to Defendant's

Property, especially given that the Strip continuously has been part of the chain of title to Plaintiff's Property.

Further, the trial court committed reversable error by failing to properly place the burden of proof on the Defendant to demonstrate all the elements of adverse possession, and for failure of the Defendant to meet its burden of proof, including that the Defendant's use of the Strip had been adverse or hostile, notorious, and continuous for thirty (30) years.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT MISAPPLIED THE LAW ENTITLING THIS COURT TO APPLY DE NOVO REVIEW OF THE TRIAL COURT'S DECISION.

Contrary to the accusations contained in the Defendant/Respondent's Brief, the Plaintiff is not requesting any flippant "do over." Db17; See Pb36. Rather, this Court should exercise de novo review of the trial court's decision because the trial court misinterpreted the law and then misapplied the law to the facts presented. Yellen v. Kassin, 416 N.J. Super. 113, 119 (App. Div. 2010). As stated in Plaintiff's Brief, the trial court's erroneous legal decision stems from its conclusion that the issue regarding title to the "Strip" could be resolved by Defendant's documentary evidence of the 1966-1969 Unrecorded Subdivision Maps coupled with a series of deeds that were recorded briefly thereafter. Pb8-9. By focusing so heavily on the significance of that draft, unrecorded subdivision and theoretical explanations of its significance offered by Defendant's expert, the trial court ignored the Recording Act's directives and policies. Pb10-14. Further, due to the trial court's failure to properly apply the equitable principles of actual and inquiry notice on the Plaintiff at the time he purchased the property, it failed to reach the next step of the required analysis: to review the evidence and determine whether, if Plaintiff had performed the inquiry, he would have discovered that he was not entitled to ownership of the Strip. In fact, the evidence presented revealed that, had Plaintiff performed the

inquiry, Plaintiff would have discovered that (1) he was in fact entitled to ownership of the Strip; and (2) the predecessors-in-interest to Plaintiff's Property and Defendant's Property never perfected the 1966-1969 Unrecorded Subdivision Map. Accordingly, this Court should engage in a de novo review of this matter and reverse the trial court's decision.

Without question, the trial court relied on the 1966-1969 Unrecorded Subdivision Maps to reach its decision. The court's opinion begins: "The dispute centers in large part around a 1967 sub division plaintiff's predecessors and [sic] interest sought and obtained from the township of West Caldwell which was never recorded." 4T4:16-19. From the outset, the trial court relied on an unrecorded document to determine ownership of the Strip, contrary to the public policies behind the New Jersey Recording Act, N.J.S.A. 45:26A-1, et seq. See Palamarg Realty Co. v. Rehac., 80 N.J. 446 (1979). Regarding the issue of actual and inquiry notice, none of the recorded deeds to Plaintiff's Property reference the 1966-1969 Unrecorded Subdivision Maps. The title experts on behalf of Plaintiff and Defendant each testified that it would be unusual for someone performing a title search to locate these unrecorded subdivision maps. Plaintiff's expert, Mr. Cannito, stated that the 1966-1969 Unrecorded Subdivision Maps would not have been found during a normal title search and "would not have been found anywhere in the land records even in some kind of expanded title search." 3T748-15. Defendant's expert, Mr.

Slover, testified that the 1966-1969 Unrecorded Subdivision Maps are "not part of the land records that are typically searched by title companies." 3T66:24-25. Although produced by the Defendant, Mr. Slover also testified that Defendant did not find the 1966-1969 Unrecorded Subdivision Maps on its own initiative. 2T177:4-8. In short, Defendant's expert told the trial court that the 1966-1969 Unrecorded Subdivision Maps would not typically be found by a title company and was not found by the Defendant. The trial court therefore relied on a document that the Plaintiff would not have found, even if the Plaintiff had engaged in the type of inquiry required of a party under equity principles of actual or inquiry notice, which the trial court describes as "a standard fo[r] reasonableness." 4T18:23-24. The trial court committed reversible error by relying on the 1966-1969 Unrecorded Subdivision Maps and failing to explain how the Strip mysteriously appeared in 1971 in the chain of title to Defendant's Property.

Similarly, no proofs were presented by Defendant to the trial court that The Graco Co., Inc., the "applicant" noted on the 1967 Draft Subdivision Map, ever perfected, or attempted to perfect, any subdivision of the Strip as set forth in the 1966-1969 Unrecorded Subdivision Maps (Graco Sales Company, Inc. (hereinafter "Graco Sales") is Plaintiff's predecessor-in-title). As of 1966, Graco Sales owned the entirety of the Strip. Db4. There is no recorded document evidencing a legal transfer of title to the Strip into Defendant's chain of title nor any reference to any

approved subdivision of the Strip in any recitation of any recorded deed in Defendant's chain of title. The lynchpin of Defendant's claim to ownership of the Strip, and the trial court's decision, is the presumed perfection of the 1966-1969 Unrecorded Subdivision Maps. Critically, no such proof was ever presented to the trial court – since none of these subdivision maps were in fact ever perfected or recorded. Pursuant to N.J.S.A. 40:55-1.17 (the predecessor to the Municipal Land Use Law, and in effect prior to 1975), an approved subdivision plan expired 90 days from the date of such approval unless within that 90 day period was recorded with the County Recording Officer. The 1966-1969 Unrecorded Subdivision Maps, relied on by the trial court, had all expired by operation of law since none were recorded with the Essex County Recording Officer.

Similarly, no recorded deed exists which transfers the Strip from the chain of title to Plaintiff's Property into the chain of title for Defendant's Property. 5T5:3-6. A 1987 subdivision application by Graco, Inc., produced by Defendant, in fact demonstrates that Graco, Inc. maintained ownership of the Strip and believed that it owned the Strip as of that year. Da30.

The 1966-1969 Unrecorded Subdivision Maps identify three properties: Lot 1, Lot 1-A, and Lot 2-H. They identify Graco Sales as the owner of Lot 1 and Lot 2-H, and Mal-Bros. Contracting Co., Defendant's predecessor-in-title, as the owner of Lot 1-A. Pa86. Although the 1966-1969 Unrecorded Subdivision Maps

contemplate a property swap between Graco Sales and Mal-Bros. Contracting Co., whereby the Strip would be added to Lot 1-A owned by Mal-Bros. Contracting Co. and a portion of land contained within Lot 1-A (located near the intersection of Fairfield Crescent and Fairfield Avenue, and referred to as the "Bump") would be added to Lot 1, no recorded deed or recorded plat exists which evidences contemporaneous transfers of either of these properties into the other's chain of title. 5T5:3-6. The 1967 Unrecorded Subdivision Map also indicates that one (1) acre will be added to Lot 1 and deducted from Lot 2H. Pa88. This, too, did not occur. Plaintiff's expert, Mr. Cannito, testified that when Graco Sales conveyed property to "Union" (formally Local 68 Engineers Union Foundation Fund Holding Corp.) in 1971, the property conveyed did not coincide with the changes indicated on the 1967 Unrecorded Subdivision Map. 1T116:14-24. That same year (December 16, 1971), the Strip somehow first appeared in Defendant's chain of title in a deed from Defendant's predecessor-in-title (Malanga) to Faircrest, Inc. for consideration of only $1.00. Pa91. Only one month later, Faircrest, Inc. transfers properties including the Strip to Louis, Alfred and George Malanga for $800,000. Pa98. Curiously, these deeds do not contain any recitals of the property history of the Strip.

The best evidence that the Bump and Strip were never "swapped" comes from Plaintiff's purchase of the Bump from the Malanga family (the same family involved in the alleged "swap" shown on the 1966-1969 Unrecorded Subdivision Maps!) on

August 30, 1995. Pa105. Accordingly, the trial court was incorrect to conclude that the Plaintiff's and Defendant's predecessors-in-title effectuated a quid pro quo exchange of the Strip and the Bump based on the 1966-1969 Unrecorded Subdivision Maps, or that such erroneous assumption of the "swap" could have possibly legitimized the sudden appearance of the Strip in Defendant's chain of title.

POINT II

THE TRIAL COURT ERRONEOUSLY AWARDED OWNERSHIP OF THE STRIP TO DEFENDANT BY ADVERSE POSSESSION.

To acquire property through adverse possession, the party claiming title bears the burden of proving that its use of the property has been (1) adverse or hostile, (2) visible, (3) open and notorious and (4) continuous for thirty (30) years unless the property is woodlands. Yellen v. Kassin, 416 N.J. Super. 113, 119-120 (App. Div. 2010). The proponent of ownership by adverse possession must establish all of these elements by a preponderance of the evidence. Patton v. N. Jersey Dist. Water Supply Comm'n, 93 N.J. 180, 187 (1983). As the trial court failed to properly place the burden of proof on the Defendant to demonstrate all of the elements of adverse possession, which in turn were not demonstrated by Defendant, the lower court's decision should be reversed.

As quoted in Defendant's brief, "When ownership during the statutory period involves more than one adverse possessor, each owner who acquires title must satisfy all elements of adverse possession." Stump v. Whibco, 314 N.J. Super. 560, 568 (App. Div. 1988). Db26. The court stated that while a party claiming ownership by adverse possession can satisfy the thirty-year requirement by "tacking" the periods of adverse use by its predecessors-in-title, tacking was permitted provided the predecessors' uses satisfy all of the elements for adverse possession. Id., at 567 (Emphasis Supplied).

James and Jean Codiroli, principals of Defendant, purchased Lot 3 on July 30, 1999. Da73. Plaintiff filed his Complaint on or about July 7, 2022, twenty-three years later. While Defendant seeks to tack on the period of use of its predecessors-in-title to satisfy the thirty-year requirement, Defendant did not put forth any testimony or evidence from, or as to, those predecessors-in-title. Instead, Defendant improperly relied on incomplete testimony provided by the Plaintiff to attempt to demonstrate that Defendant's predecessors had satisfied the elements of adverse possession. Db26. Defendant cites to Plaintiff's testimony at 2T17:12-20. Plaintiff testified that from the time that he purchased the property, the owners of occupants of Lot 3 had been using the strip with his permission. This testimony does not remotely satisfy the Defendant's burden of proving that its predecessor in title's use of the Strip was adverse, hostile, visible, open and notorious for a consecutive thirty year period. Defendant did not introduce competent, let alone any, evidence to satisfy this burden. The trial court's determination as to adverse possession must be reversed.

In Mulford v. Abbot, 42 N.J. Super. 509 (App. Div. 1956), the court considered adverse possession claims by a property owner regarding a strip of land covered by a paved sidewalk. In 1923, the Mulford plaintiff's parents owned property adjacent to the property owned by McCall, defendant's predecessor in title. At that time, a dirt and pebble walkway existed between the two properties.

Plaintiff's father sought to pave the walk with cement. Realizing that the pavement would encroach on McCall's property, plaintiff's father sought McCall's consent, as the pavement would benefit McCall, too. McCall refused and threatened to tear up the pavement if it were installed. Regardless, plaintiff's father paved the area, and began using it in 1923. However, no claim of title to the property was made until 1947 or 1948, and in 1955, the defendants sought to install a fence which would overlap the sidewalk. Plaintiff filed an action for adverse possession. Id., at 512.

The court denied plaintiff's claims. The court stated: "If a use of a way at its inception was permissive, the mere continuance of such use, for the statutory period, will not ripen into a hostile right." Id., citing De Luca v. Melin, 103 N.J.L. 140 (E. & A. 1926). The court then reasoned:

> A property owner might well suffer or permit his adjoining neighbor to encroach upon his land without a claim of title, yet refuse to allow it if such claim was intended. There might be resistance and opposition to one situation and not the other. Hence, it was not shown that the plaintiff's predecessor in title paved the walk with the intent to claim title against the defendants. Accordingly, the judgment is affirmed.

Id., at 513.

In the case herein, there was no evidence presented to the trial court that Defendant's predecessors in title even intended "to claim title against" the Strip.

Rather than require Defendant to carry its burden and prove that it was entitled to tack its predecessors-in-title's adverse use of the Strip onto its own use, the trial

court incorrectly imposed Plaintiff's date of purchase of the property as the commencement of thirty (30) year period. 4T11:13-17. In that regard, the trial court improperly applied the law, and its decision should be reversed.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the Trial Court's January 16, 2024 Order (as revised on January 22, 2024) and grant the relief sought in Plaintiff's Verified Complaint to Quiet Title against the Defendant.

Respectfully submitted,

Robert F. Simon

Dated: October 17, 2024