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D & M Steel Corporation

D & M STEEL CORPORATION,

Plaintiff,

v.

TAMARA MARTINEZ-OLIVEIRA a/k/a TAMARA MARTINEZ a/k/a TAMARA OLIVEIRA, TD BANK, N.A., MARC A. ROSENKRANTZ, SHECHNER LIFSON CORPORATION, VIREN MANIAR AND VIREN MANIAR CPA, LLC, JOHN DOES 1-10, JANE DOES 1-10 AND ABC ENTITES 1-10,

Defendants.

-and-

Shechner lifson corporation and Marc A. Rosenkrantz,

Third-Party Plaintiffs,

v.

VIREN MANIAR and VIREN MANIAR CPA, LLC,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002025-24T1

Civil Action

On Appeal from a Final Judgment of the Superior Court of New Jersey,
Law Division, Essex County
ESX-L-4929-20

SAT BELOW:
Hon. Joshua D. Sanders, J.S.C.

BRIEF OF PLAINTIFF-APPELLANT D & M STEEL CORPORATION IN SUPPORT OF APPEAL

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STATEMENT OF ITEMS SUBMITTED TO COURT IN SUMMARY ACTION PURSUANT TO R. 2:6-1(a)(1)

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PRELIMINARY STATEMENT

This appeal arises out of the theft of in excess of $1.7 Million from Plaintiff-Appellant D&M Steel Corporation ("D&M") by its bookkeeper, Defendant-Respondent Tamara Martinez ("Martinez") over a period of approximately five years from January 2014 through March of 2019. Having obtained a default judgment against Martinez and settled with all other parties, the claims of D&M at issues on this Appeal are limited to D&M's claims against its long-time accountant, Defendants/Third-Party Defendants Viren Maniar and Viren Maniar CPA, LLC (the "Maniar Defendants").

In this regard, as demonstrated below and to the Trial Court, in the course of performing their accounting functions for D&M, the Maniar Defendants had both contractual and professional obligations to alert D&M to the existence of fraud that might be occurring in connection with the financial affairs of D&M. Nonetheless, despite the existence of clear genuine issues of material fact as to (1) the terms of the one-sided engagement letters drafted by the Maniar Defendants rely to excuse not recognizing the existence of a massive $1.7 Million fraud going on right under their nose in performing their contractual and professional obligations to D&M, (2) application of the discovery rule to the claimed contractual modification of the statutory six-year statute of limitations for purposes of when D&M's cause of action against the Maniar Defendants accrued, (3) whether the Maniar Defendants

can even rely on any such claimed shortening of the applicable statute of limitations where it was incumbent upon the Maniar Defendants to "know or should have known" of the existence of the fraud in the performance of their contractual and professional obligations to D&M and (4) the ability of professionals such as the Maniar Defendants to, in effect, blame and hold their clients responsible for their own failure to do that for which they were retained to do, the Trial Court granted summary judgment based upon the purported contractual reduction of the statutory statute of limitations even though, contractually, that period had not yet expired. Accordingly, ruling of the Trial Court granting summary judgment to the Maniar Defendants should be reversed on appeal and the matter remanded to the Trial Court for disposition on the merits.

PROCEDURAL HISTORY

D&M commenced this action on July 22, 2020 against Martinez, TD Bank, N.A. (the bank at which D&M maintained the account our of which Martinez made her thefts) ("TD Bank") and its insurance broker Marc A. Rosenkrantz and his company Schechner Lifson (the "Schechner Defendants") (Appendix Vol. I Pa1-Pa 28).[1] The Schechner Defendants timely filed an Answer, Separate Defenses, etc., on September 18, 2020 (Appendix Vol. I Pa29-Pa41). After some motion practice

[1] As set forth below, under the terms of the agreements between D&M and the Maniar Defendants, D&M was precluded from instituting suit against them until completion of alternative dispute resolution proceedings. *See* Point II, *infra*.

and denial of a motion for leave to file and interlocutory appeal, TD Bank filed an Answer and Affirmative Defenses to D&M's Complaint (Appendix Vol. I Pa42-Pa56). On November 15, 2021, the Schechner Defendants filed a Third-Party Complaint against the Maniar Defendants asserting claims for contribution and indemnification (Appendix Vol. I Pa57-Pa60). After some motion practice, the Maniar Defendants filed their Answer to the Third-Party Complaint of the Schechner Defendants on March 3, 2022 (Appendix Vol. I Pa61-Pa70). On April 28, 2022, the Schechner Defendnats filed an Affidavit of Merit in connection with their claims against the Maniar Defendants (Appendix Vol. I Pa71-Pa72). The matter then proceeded to Mediation before the Honorable Peter F. Bariso, Jr., J.S.C. (retired) which Mediation took place on October 14, 2023. (Appendix Vol. I Pa77). After conclusion of the Mediation before Judge Bariso, D&M filed a Motion to file an Amended Complaint to assert direct claims against the Maniar Defendnats and to adjust and extend discovery (Appendix Vol. I Pa73-Pa79). By Order dated January 26, 2024, the Trial Court granted D&M's Motion (Appendix Vol. I Pa80-Pa81) and D&M thereafter timely filed its Amended Complaint and Jury Demand on February 2, 2024 (Appendix Vol. I Pa83-Pa113). D&M and TD Bank thereafter settled the claims between them and the matter was dismissed as to TD Bank on February 6, 2024 (Appendix Vol. I Pa114-Pa115). The Maniar Defendants then filed their Answer to D&M's Amended Complaint on

February 13, 2024 (Appendix Vol. I Pa116-Pa133). On February 16, 2024, the Maniar Parties thereafter filed a motion for summary judgment as to the direct claims asserted against them by D&M (Appendix Vol. I & II Pa134-Pa318) which was opposed by both D&M and the Schechner Parties (Appendix Vol. II Pa319-Pa352 and Pa355). By Opinion filed on May 16, 2024, the Trial Court dismissed the direct claims of D&M but leaving the crossclaims of the Schechner Defendants active (Appendix Vol. II Pa353-Pa369). D&M and the Schechner Defendants thereafter settled the claims between them and the matter was dismissed as to Schechner Defendants on January 14, 2025 (Appendix Vol. II Pa370-Pa371) and Final Judgment By Default was entered against Martinez on January 26, 2025 (Appendix Vol. II Pa372-Pa373). On March 8, 2025, a Stipulation of Dismissal of the crossclaims between the Schechner Defendants and the Maniar Defendants was entered (Appendix Vol. II Pa374-Pa375) and on March 12, 2025, D&M filed its initial Notice of Appeal (Appendix Vol. II Pa379-Pa383). Thereafter, on April 25, 2025, the Trial Court entered and Order giving effect to the rulings in its May 16, 2024 Opinion (Appendix Vol. II Pa376-Pa378) and D&M thereafter filed its Amended Notice of Appeal on May 8, 2025 (Appendix Vol. II Pa385-Pa391).[2]

[2] There are one transcripts from the Trial Court proceedings pertinent to this Appeal;: (1) Transcript of Motion Hearing for Summary Judgment on April 18, 2024 designated 1T.

STATEMENT OF FACTS

The facts underlying the Trial Court's summary judgment ruling on appeal are essentially undisputed. Specifically, there is no dispute that the Maniar Defendants were retained by D&M to perform accounting services for D&M including, but not limited to, preparation of financial statements and tax returns for D&M for tax years ending December 31, 2013, 2014, 2015, 2016 and 2017. There is also no dispute that, during the time period from January 2014 through March of 2019, Defendant Martinez stole in excess of $1.7 Million from D&M through the issuance of checks payable to cash or herself drawn on the business checking account of D&M as follows:

2014: $147,895.50

2015: $223,804.34

2016: $250,221.45

2017: $472,918.28

2018: $575,369.41

2019: $112,519.73

TOTAL: $1,782,728,71.

See January 22, 2021 Certification of Judith Ducate of D&M previously filed with the Court (Appendix Vol. II Pa324-Pa352) (hereinafter the "Ducate Certification").

What is in dispute are is the scope of the obligations of the Maniar Defendants under the terms of the agreements drafted by them into which they entered with D&M which contain the following provisions with respect to the obligations of the Maniar Defendants with respect to the above-referenced tax years:

(1) August 14, 2014 Engagement Letter (signed 8/6/2014) for Tax Year 2013

> Page 1: "I will compile . . . the balance sheet of D&M . . . as of December 31, 2013, and the related statements of operations … in accordance with Statements for Accounting and Review Services issued by the American Institute of Certified Public Accountants."
> Page 2: "My responsibility is to conduct the compilation in accordance with Statements on Standard for Accounting and Review Services issued by the American Institute of Certified Public Accountants."
>
> **Page 2: "I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential."**
>
> **Pages 3-4: "I will inform you of any material errors that come to my attention and any fraud that come to my attention. I will also inform you of any other illegal acts that come to my attention, unless they are clearly inconsequential."**
>
> **Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.**

(emphasis added).

(2) September 3. 2015 Engagement Letter (signed 9/8/2015) for Tax Year 2014

Page 1: "I will compile . . . the balance sheet of D&M . . . as of December 31, 2014, and the related statements of operations … in accordance with Statements for Accounting and Review Services issued by the Americna Institute of Certified Public Accountants."

Page 2: "My responsibility is to conduct the compilation in accordance with Statements on Standard for Accounting and Review Services issued by the American Institute of Certified Public Accountants."

Page 2: "I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential."

Pages 3-4: "I will inform you of any material errors that come to my attention and any fraud that come to my attention. I will also inform you of any other illegal acts that come to my attention, unless they are clearly inconsequential."

Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.

(emphasis added).

(3) October 10. 2016 Engagement Letter (signed 10/13/2016) for Tax Year 2015

Page 1: "I will prepare the financial statements of D&M . . .which will comprise teh balance sheet as of December 31, 2015, … I will conduct my compilation engagement in accordance with Statements on Standards for Accounting and Review Services (SSARS 21) Promulgated by thye Accounting and Review Services Committed of the American Institute of Certified Public Accountants (AICPA) and will comply with the AICPA Code of Professional Conduct, Including the ethical principles o integrity, objectivity, professional competence and due care"

Page 3: "**I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential."**

> Pages 4: **"I will inform you of any material errors that come to my attention and any fraud that come to my attention. I will also inform you of any other illegal acts that come to my attention, unless they are clearly inconsequential."**
>
> Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.

(emphasis added)..

(4) January 7, 2019 Engagement Letter (signed 6/03/2019) for Tax Year 2016

> Page 2: "I will inform you of any material errors, fraud or other illegal acts that come to my attention."

(emphasis added).

See Agreements attached as Exhibit E to the February 16, 2024 Certification of Counsel submitted in support of the Maniar Defendants' Motion for summary judgment (Appendix Vol. II Pa280-Pa307 and specifically at Pa281-Pa284, Pa288-Pa291, Pa296, Pa298-Pa299 and Pa304).[3]

There is also no dispute that at no time since the retention of the Maniar Defendants in 2014 to the present did the Maniar Defendants ever (1) inform D&M of any material errors, fraud or other illegal acts or (2) communicate to D&M any

[3] As pointed out to the Trial Court below, while we had no issue as to counsel certifying to pleadings and unpublished opinions, it is not proper for counsel to certify as to the "controlling agreements" between D&M and the Maniar Defendants which are subject to interpretation as to their scope and terms and are not necessarily "all there is" as to communications which may "control" in this matter as to the duties and obligations between D&M and the Maniar Defendants.

significant deficiencies or material weaknesses in the design or operation of internal controls at D&M. In fact, they have never done so.

STANDARD OF REVIEW

THE STANDARD OF REVIEW IS *DE NOVO* WITH ALL INFERENCES TO BE VIEWED IN A LIGHT MOST FAVORABLE TO PLAINTIFF/APPELLANT D&M (Pa71-Pa369 and Briefs Submitted Below)

The matter was disposed of below by way of Summary Judgment. Accordingly, in reviewing the Opinion and Order here, this Court is to apply the same standard as the Trial Court and the legal conclusions of the Trial Court are to be reviewed *de novo*, without any special deference. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 *N.J.* 366, 378 (1995).

Applied here, the matter was disposed of by way of summary judgment at the trial level and governed by *Rule* 4:46-2(c), which states, in relevant part, that summary judgment shall **only** be entered if the evidence demonstrates:

> That there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

Brill v. Guardian Life Ins. Co. of Am., supra, 142 N.J. 520 at 539-40. In ruling on a summary judgment motion, the motion judge must examine the factual record

"[w]ithout assessing credibility, weighing the evidence, or determining its truth," **and must view the facts "in light most favorable to the non-moving party**…" *DeWees v. RCN Corporation*, 380 *N.J. Super.* 511, 522-23 (App. Div. 2005) (quoting *Brill*, at 540) (emphasis added).

Applied here, it must be accepted as true that the Maniar Defendants breached their contractual and professional obligations to D&M in failing to advise D&M of weaknesses in its internal controls with respect to preventing fraud, detect the ongoing fraud and massive thefts over a period of years and promptly report same to D&M. In fact, the only real issue on this Appeal is the ability of the Maniar Defendants to rely upon a contractual provision drafted by them which decreases the limitations period for bringing suit against them which, as demonstrated below, is ambiguous and, by its express terms, was not even triggered until the conclusion of Mediation proceedings in October 2024 such that it has no application here at all. Simply put, viewed in the light most favorable to D&M, summary judgment should not have been granted and the decision of the Trial Court should be reversed.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO D&M'S BREACH OF CONTRACT, MALPRACTICE AND BREACH OF FIDUCIARY DUTY CLAIMS

(Pa71-Pa369 and Briefs Submitted Below)

As demonstrated below, the record is clear that there were and are, at a minimum, genuine issues of material fact as to (1) the contractual obligations of the Maniar Defendants, (2) the scope of those obligations contractually and professionally and (3) the Maniar Defendants' breach of those obligations. Accordingly, the Trial Court erred in granting the Maniar Defendants motion for summary judgment.

A. Twelfth Count: Breach of Contract

There is no dispute that the Maniar Defendant entered into agreements to perform accounting services for D&M. As set forth above, the written agreements upon which the Maniar Defendants drafted and upon which they relied below specifically state as follows:

(1) August 14, 2014 Engagement Letter (signed 8/6/2014) for Tax Year 2013

> Page 1: "I will compile . . . the balance sheet of D&M . . . as of December 31, 2013, and the related statements of operations … in accordance with Statements for Accounting and Review Services issued by the American Institute of Certified Public Accountants."

Page 2: "My responsibility is to conduct the compilation in accordance with Statements on Standard for Accounting and Review Services issued by the American Institute of Certified Public Accountants."

Page 2: "I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential."

Pages 3-4: "I will inform you of any material errors that come to my attention and any fraud that come to my attention. I will also inform you of any other illegal acts that come to my attention, unless they are clearly inconsequential."

Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.

(2) September 3. 2015 Engagement Letter (signed 9/8/2015) for Tax Year 2014

Page 1: "I will compile . . . the balance sheet of D&M . . . as of December 31, 2014, and the related statements of operations … in accordance with Statements for Accounting and Review Services issued by the Americna Institute of Certified Public Accountants."

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Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.

(3) October 10. 2016 Engagement Letter (signed 10/13/2016) for Tax Year 2015

Page 1: "I will prepare the financial statements of D&M . . .which will comprise teh balance sheet as of December 31, 2015, … I will conduct my compilation engagement in accordance with Statements on Standards for Accounting and Review Services (SSARS 21) Promulgated by thye Accounting and Review Services Committed of the American Institute of Certified Public Accountants (AICPA) and will comply with the AICPA Code of Professional Conduct, Including the ethical principles o integrity, objectivity, professional competence and due care"

Page 3: "**I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential."**

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Page 4: "[D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the design or operation of internal control], I will communicate them to you.

(4) January 7, 2019 Engagement Letter (signed 6/03/2019) for Tax Year 2016

Page 2: "I will inform you of any material errors, fraud or other illegal acts that come to my attention."

See Agreements attached as Exhibit E to the February 16, 2024 Certification of Counsel submitted in support of the Maniar Defendants' Motion for summary

judgment (Appendix Vol. II, Pa280-Pa307 and specifically at Pa281-Pa284, Pa288-Pa291, Pa296, Pa298-Pa299 and Pa304) (emphasis added).

There is also no dispute that at no time since the retention of the Maniar Defendants in 2014 to the present did the Maniar Defendants ever (1) inform D&M of any material errors, fraud or other illegal acts or (2) communicate to D&M any significant deficiencies or material weaknesses in the design or operation of internal controls at D&M. In fact, they have not done so to date.

Accordingly, without limitation, there were genuine issues of material fact below with respect to (1) the applicable professional standards that governed the engagement which will require expert testimony, (2) whether the Maniar Defendants complied with those obligations, again requiring expert testimony, (3) whether, in performing their obligations to D&M, the Maniar Defendants knew or should have known of the underlying frauds and illegal acts (rhetorically, how did they account for in excess of $1.7 Million which was stolen), (4) whether the theft of in excess of $1.7 Millon was "clearly inconsequential" and (5) whether, as alleged in the Amended Complaint, day to day Comptroller functions of D&M going from a family member to a non-family member was a "significant deficienc[y] or material weaknesses in the design or operation of internal control[s]" at D&M that should have been communicated to D&M as expressly set

forth in the agreements in light of the enhanced financial risks associated with potential employee theft as a result of such a change.

Botom line, the Maniar Defendants cannot be permitted to "cherry-pick" favorable clauses from the agreements upon which they relied below while ignoring express obligations which they failed to fulfill in those same agreements.

B. Thirteenth Count: Accountant Malpractice

The agreements upon which the Maniar Defendants rely contain multiple references to various professional standards applicable to the engagement at issue here which necessarily required expert testimony to explain and set forth how the conduct of the Maniar Defendants complied with the applicable standards or did not comply with same. Moreover, it necessarily requires expert testimony to evaluate whether or not, under the circumstances, an accountant similarly situated as the Maniar Defendants were to D&M here, should have uncovered the fraud and illegal conduct of Martinez in stealing in excess of $1.7 Million and when. In short, there were and are genuine issues of material fact and discovery on these issues was just beginning.

C. Fourteenth Count: Breach of Fiduciary Duty

The entire argument of the Maniar Defendants on this Count was based upon the argument that insofar as there are no viable breach of contract claims nor malpractice claims, this Count also fails. As demonstrated above, there were and

are genuine issues of material fact as to both the breach of contract and malpractice claims. Accordingly, the motion of the Maniar Defendants on this Count should have been denied as well.

POINT II

THE PURPORTED ONE YEAR LIMITATION PERIOD IN THE AGREEMENTS BETWEEN THE MANIAR DEFENDANTS AND D&M DOES NOT BAR D&M'S CLAIMS AGAINST THE MANIAR DEFENDANTS (Pa71-Pa369 and Briefs Submitted Below)

In their submissions below, the Maniar Defendants sought – an succeeded – in escaping liability based upon a provision in the agreements they drafted which purports to limit the time period within which D&M could commence litigation arising out of the engagement. As demonstrated below, under the facts here, the limitation period had not even run and would otherwise be barred as unreasonable and against public policy in any event.

A. The Purported Contractual Limitation Period Had Not Run

The express terms and totality of the agreements on this provision demonstrate that the Amended Complaint whereby D&M asserted direct claims against the Maniar Defendants was timely under the express terms of the agreements: Specifically, there are two paragraphs which are intertwined which, read in totality, expressly provide as follows:

> You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning,

> performance or enforcement of this engagement or any prior engagement that1have performed for you, will, **prior to resorting to litigation, be submitted to mediation and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement.** Any mediation initiated as a result of this engagement shall be administered within the county of Middlesex, New Jersey, by Mediation Organization mutually agreed upon, according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to New Jersey law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.
>
> Any litigation arising out of this engagement, except actions-by us to enforce payment of my professional invoices, must be asserted within one year from the date any such cause of action accrues, or within three years from the completion of the engagement, whichever is earlier, notwithstanding any statutory provision to the contrary

See Agreements attached as Exhibit E to the February 16, 2024 Certification of Counsel submitted in support of the Maniar Defendants' Motion for summary judgment (Appendix Vol. II Pa280-Pa307 and specifically at Pa286-Pa293, Pa301, Pa306 and Pa 311) (emphasis added).

Reading these provisions together, prior to D&M institution of **any** litigation against the Maniar Defendants, D&M and the Maniar Defendants were to engage in mediation proceedings. In this regard, D&M and the Maniar Defendants voluntarily participated in mediation proceedings before the Honorable Peter F. Bariso, Jr., J.S.C. (Retired) on October 14, 2024. These mediation proceedings were unsuccessful and, as a result of the posture of the Maniar Defendants at the

mediation proceedings, on October 18, 2023, D&M sought leave to assert direct claims against the Maniar Defendants in this matter which motion was granted by Order of the Court dated January 26, 2024 (Appendix Vol. I Pa73-Pa82). Accordingly, under the express terms of the agreements drafted by the Maniar Defendants and upon which they relied below, prior to D&M even commencing a direct suit against the Maniar Defendants, D&M and the Maniar Defendants were to engage in mediation proceedings which did not occur until October 14, 2023 such that the cause of action of D&M against the Maniar Defendants did not contractually "accrue" until the conclusion of the mediation on October 14, 2023.

Moreover, putting the contractual "accrual date" aside, the same as with attorneys and other professionals, the time period as to when a cause of action accrues against an accountant is subject to the discovery rule. *See Grunwald v. Bronkesh,* 131 N.J. 483 (1993) (the discovery rule applies in attorney malpractice actions). Accordingly, to the extent the contractual accrual date does not apply, the entirety of this aspect of the Maniar Defendants' motion hinges upon a factual determination based upon all of the attendant circumstances as to when D&M knew or reasonably should have known that the Maniar Defendants breached some professional standard of care in rendering services to D&M. If, under the totality of the circumstances, D&M cannot be charged with knowing or reasonably should knowing of professional malpractice on the part of the Maniar Defendants prior to

filing its Complaint on July 22, 2020 -- or if there is a genuine issue of material fact as to what D&M knew or should have known in this regard and when -- then the Maniar Defendants' Motion on this point must be denied on this basis also..

Similar to the reasons for which a professional cannot claim contributory negligence as a mitigating factor against a client for the simple fact the services for which the professional is retained is precisely the reason for the retention of the professional in the first place (see *Aden v. Fortsh*, 169 N.J. 64, 69-70 (2001) (comparative negligence defense is unavailable to a professional who asserts that the client failed to detect the professional's own negligence as it is the professional, not the client, who is the expert and the client is entitled to rely on the professional's expertise in faithfully performing the very job he or she was hired to do), it is not reasonable to conclude by way of summary judgment when a person retaining a professional knew or should have known that the professional may have committed malpractice precisely because they do not have the requisite knowledge to evaluate the conduct and, in the case of accountants, the conduct at issue may, as here, be a something that was part of the retention. To hold otherwise imparts to the client professional knowledge superior to or at least on par to the professional retained to protect the client from the very danger they were retained, in part, to prevent.

As the New Jersey Supreme Court specifically recognized in the context of attorney malpractice in *Grunwald, supra*, 131 N.J. 483, "[e]ven after an adverse ruling a litigant may reasonably not associate the injury with an attorney's [negligence]". *Id.* at 498. In expanding upon this circumstance, the Grunwald Court held as follows:

> Although litigants are not noted for an ability dispassionately to appraise both sides of their own lawsuits, nevertheless under some circumstances a litigant may conclude that the underlying case was lost on the merits; then, after seeking independent legal counsel regarding an appeal of the underlying claim, that litigant may become persuaded that the attorney's negligence actually caused the loss. Consequently, we reject the general assumption in *Mant, supra*, 189 N.J.Super. at 374, 460 A.2d 172, that, at the latest, a litigant should become aware of an attorney's fault when the trial court renders its decision in the underlying action.
>
> Moreover, an allegedly-negligent attorney's continuous representation on the appeal of the underlying claim may prevent a litigant from becoming aware of the key element of fault. *See Aykan, supra*, 238 N.J.Super. at 392, 569 A.2d 905 (holding that continuing course of negligent representation postpones accrual of cause of action until that representation is terminated unless plaintiff earlier discovers injury or fraudulent concealment); *see also Siegel v. Kranis*, 29 A.D.2d 477, 288 N.Y.S.2d 831 (1968) (applying continuous-representation rule as adaptation of continuous-treatment rule); *Wilson v. Econom*, 56 Misc.2d 272, 288 N.Y.S.2d 381 (Sup.Ct.1968) (same).

Grunwald, supra, 131 N.J. at 498 (emphasis added).

Applying this rationale here, even though D&M became aware of the thefts in late March 2019, it does not automatically follow that D&M would immediately equate that with the presence of accountant malpractice which, of necessity, would

require assessment by a professional accountant. In that regard, it was not until the filing of an Affidavit of Merit on April 28, 2022 by Defendants/Third-Party Plaintiffs Schechner Lifson Corporation and Marc A. Rosenkrantz The "Schechner Parties") that it can fairly be said that D&M was on notice of potential malpractice on the part of the Maniar Defendants. Accordingly, **because the direct claims of D&M against the Maniar Defendants relate back to the filing of the original Complaint in this matter** (*see Pressler & Verniero*, Current N.J. Court Rules, Comment R. 4:9-3 (GANN) at ¶3 and *Lawlor v. Cloverleaf Memorial Park, Inc*., 56 N.J. 326, 339-345 (1970) and other cases collected therein), the one year contractual limitation cannot operate to bar D&M,s direct claims for this reason also. In fact, D&M's unawareness of potential claims against the Maniar Defendants is evidenced by the fact that, as late as October 2019, D&M was still using them for accounting services. *See* Exhibit E to the February 16, 2024 Certification of Counsel submitted in support of the Maniar Defendants' Motion (Appendix Vol. II Pa280-Pa313).

B. The Purported Contractual Limitation Period Is Unenforceable

While agreements reducing applicable statutes of limitations can be enforceable, they must be reasonable and may not violate public policy. *Eagle Fire Prot. Corp. v. First Indem. of Am. Ins. Co*., 145 N.J. 345. 354-356 (1996). Factors bearing upon the issues of reasonableness and public policy include, but

are not limited to, fundamental fairness, whether the limitation was conspicuously displayed and whether it was reasonably communicated. *Mirra v. Holland America Line*, 331 N.J. Super. 86, 91-92 (App. Div. 2000). Applied here, the clause at issue was not conspicuously displayed (it consists of 4 lines in a 7-page single spaced letter) and there is no clarity as to how it would be applied – especially in relation to the requirement of mediation prior to instituting litigation. Moreover, as applied to the professional services at issue, on its face, the clause would appear to violate public policy by imposing upon the client a duty to quickly uncover professional malpractice related to the very services for which the professional was retained and upon which the client was entitled to rely in being done properly. *See Aden v. Fortsh*, *supra*, 169 N.J. at 69-70 (client is entitled to rely on the professional's expertise in faithfully performing the very job he or she was hired to do). In short, the clause as the Maniar Defendants and the Trial Court have applied here requires a client to, in essence, retain another professional to evaluate the work of the first professional almost simultaneously to comply with the purported one-year limitations period which, as a practical matter, would require the client to engage a series of professionals *ad infinitum* to keep an eye on each other. At least as to professionals, a one-year limitation period is unreasonable and against public policy.

CONCLUSION

For the foregoing reasons, the Trial Court erred as a matter of law in granting summary judgment in favor of the Maniar Defendants such that its decision must be reversed and the matter remanded for further proceedings.

Respectfully submitted,

CUTOLO BARROS LLC
Attorneys for Plaintiff D & M Steel Corporation

By: **S/*Gregg S. Sodini***
GREGG S. SODINI

Dated: September 12, 2025

D & M STEEL CORPORATION,

Plaintiff,

vs.

TAMARA MARTINEZ-OLIVEIRA a/k/a TAMARA MARTINEZ a/k/a TAMARA OLIVEIRA, TD BANK, N.A., MARC A. ROSENKRANTZ, SCHECHNER LIFSON CORPORATION, VIREN MANIAR AND VIREN MANIAR CPA, LLC, JOHN DOES 1-10, JANE DOES 1-10 AND ABC ENTITIES 1-10,

Defendants,

and

SCHECHNER LIFSON CORPORATION AND MARC A. ROSENKRANTZ,

Third-Party Plaintiffs,

vs.

VIREN MANIAR AND VIREN MANIAR CPA, LLC,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

DOCKET NO.: A-002025-24T1

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ESSEX COUNTY

DOCKET NO. BELOW: ESX-L-4929-20

SAT BELOW: HON. JOSHUA D. SANDERS, J.S.C.

AMENDED BRIEF ON BEHALF OF RESPONDENTS VIREN MANIAR AND VIREN MANIAR CPA, LLC IN OPPOSITION TO APPELLANTS D & M STEEL, LLC'S APPEAL

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PRELIMINARY STATEMENT

After almost four years of discovery in this matter, Appellant D & M Steel Corporation (hereinafter, "D & M") asserted, for the first time, direct claims against Respondents Viren Maniar and Viren Maniar CPA, LLC (hereinafter, "Maniar"). In its Amended Complaint, which was filed on February 2, 2024, D & M asserted causes of action for breach of contract, accounting malpractice, and breach of fiduciary duty against Maniar. On February 13, 2024, Maniar filed its Answer to D & M's Amended Complaint.

According to D & M, its direct claims against Maniar were founded upon Maniar's failure to: (1) advise D & M with respect to appropriate internal controls for D & M in connection with the business operations of D & M, in light of the change in responsibility for the day-to-day Comptroller functions of D & M being transferred from a family member to a non-family member, Tamara Martinez-Oliveira ("Martinez"), and the financial risks associated with same, including, but not limited to, the enhanced risk of potential employee theft; (2) detect the ongoing thefts of Martinez from January 2014 through March 2019; (3) identify anomalies indicative of potential theft; and (4) advise D & M of anomalies indicative of potential theft.

However, pursuant to the controlling agreements between D & M and Maniar, which memorialize the narrow scope of Maniar's retention as a tax preparer for D & M at all relevant times, Maniar was not required to advise D & M with respect to its internal controls, detect thefts, identify anomalies indicative of potential theft, or advise D & M of anomalies indicative of potential theft. In fact, the applicable agreements specifically exclude these functions from Maniar's scope of performance and include explicit disclaimers of any responsibility by Maniar to "disclose errors, fraud, or other illegal acts that may exist."

Further, and importantly, the agreements encompass agreed-upon maximum deadlines for asserting any cause of action arising from the engagement: either one year from the accrual of the cause of action, or three years from the completion of the engagement, whichever is earlier. Despite these terms, D & M waited from March 2019, when it discovered the subject fraud, until February 2, 2024 – almost five years after D & M discovered the pertinent fraud, and almost four years after the inception of this litigation - to assert direct claims against Maniar.

For the foregoing reasons, on May 16, 2024, having heard the arguments of counsel and considered the papers submitted, the trial Court appropriately

dismissed D & M's claims with prejudice as against Maniar. D & M subsequently sought this Appeal.

As will be demonstrated herein, contrary to the arguments set forth by D & M in support of its Appeal, the trial Court's decision, rendered by the Honorable Joshua D. Sanders, J.S.C., is well-reasoned and supported by all applicable facts and controlling authorities.

For the reasons set forth in this Brief, Maniar respectfully submits that the trial Court's decision should be affirmed and D & M's Appeal should be denied.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

I. The Allegations and Pertinent Facts

According to D & M, Martinez was hired in or about October 2013 to take over its day-to-day Comptroller functions from Judith Ducate, the mother of D & M's President. See Pa1-Pa28[1]. Beginning approximately two months later, and spanning the period between January 9, 2014 and March 2019, Martinez allegedly generated checks drawn on D & M's accounts, forged the signature of the authorized signatory, and made them payable to herself or "cash". See Ibid.

[1] Pursuant to the Appellate Division's requirements and September 9, 2025 Notice of Deficiency, the page numbers and/or ranges utilized in this brief for all referenced documents that are found in D & M's Appendix correspond to the page numbers and/or ranges set forth in D & M's Appendix.

With the assistance of employees of TD Bank, N.A. (hereinafter "TD Bank"), Martinez allegedly stole over $1.782 Million from D & M. See Ibid.

Throughout the period of the alleged theft by Martinez, Maniar was engaged by D & M to serve as its tax preparer, for the narrow purpose of preparing compiled financial statements and tax returns for D & M. See Pa280-Pa313. The terms of the engagement between D & M and Maniar were memorialized by retainer agreements freely entered into and executed by and between Maniar and Marc Ducate of D & M. See Ibid.

In memorializing the narrow scope of Maniar's retention, the controlling agreements between Maniar and D & M included at all relevant times specific provisions providing that D & M is responsible "for the preparation and fair presentation of the financial statements" and that Maniar's retention by D & M was for the specific purpose of compiling "the balance sheet" and "the related statements of operations and retained earnings for the [relevant] year . . ." See Ibid.

The agreements further provide that the "objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements." Ibid.

The controlling agreements also include, in at least two separate paragraphs in each agreement, explicit disclaimers of any responsibility by Maniar to "disclose errors, fraud, or other illegal acts that may exist." Ibid.

Further, the agreements between Maniar and D & M specifically place upon D & M the responsibility for the "design and implementation of programs and controls to prevent and detect fraud, and for informing [Maniar] about all known or suspected fraud affecting the Company . . ." Ibid.

Moreover, the relevant agreements require D & M to inform Maniar of its knowledge of any allegations of fraud or suspected fraud. See Ibid.

The agreements do not require Maniar to advise D & M with respect to its internal controls, detect thefts, identify anomalies indicative of potential theft, or advise D & M of anomalies indicative of potential theft. See Ibid.

The agreements further provide that "[a]ny litigation arising out of this engagement, except actions by [Maniar] to enforce payment of [Maniar's] professional invoices must be asserted within one year from the date any such cause of action accrues, or within three years from the completion of the engagement, whichever is earlier, notwithstanding any statutory provision to the contrary." Ibid.

Finally, the agreements provide that they are "contractual in nature and include all of the relevant terms that will govern the engagement" and that the

terms of the agreement "supersede any prior oral or written representations or commitments by or between the parties." Ibid.

According to D & M, Maniar breached contractual obligations it owed to D & M and otherwise failed to abide by applicable standards of accounting practice by failing to: (1) advise D & M with respect to appropriate internal controls for D & M in connection with the business operations of D & M, in light of the change in responsibility for the day-to-day Comptroller functions of D & M being transferred from a family member to a non-family member, and the financial risks associated with same, including, but not limited to, the enhanced risk of potential employee theft; (2) detect the ongoing thefts of Martinez from January 2014 through March 2019; (3) identify anomalies indicative of potential theft; and (4) advise D & M of anomalies indicative of potential theft. See, e.g., Pa226-Pa259.

II. The Claims

On July 22, 2020, D & M filed the underlying action against Martinez, TD Bank, N.A. (hereinafter "TD Bank"), Shechner Lifson Corporation and Marc A. Rosenkrantz (hereinafter "Third-Party Plaintiffs"), and fictitious defendants. See Pa1. D & M's Complaint asserted claims of fraud, unjust enrichment, conversion, breach of contract, aiding and abetting fraud and conversion, negligent supervision/respondeat superior, broker malpractice, breach of

fiduciary duty, and civil RICO against the aforementioned parties. See Pa1-Pa28.

D & M's claims as against Third-Party Plaintiffs stemmed from Third-Party Plaintiffs' alleged failure to advise D & M to obtain or alter the insurance coverages for D & M to account for the enhanced risk of potential employee theft as a result of day-to-day Comptroller functions of D & M being transferred from a family member to a non-family member. See Ibid.

On November 15, 2021, Third-Party Plaintiffs filed a Third-Party Complaint as against Maniar, seeking contribution from and judgment against Maniar pursuant to the Joint Tortfeasor's Contribution Law and the Comparative Negligence Act, as well as common law indemnification. See Pa197-Pa225. Third-Party Plaintiffs asserted in their Third-Party Complaint that the Maniar Defendants were at all relevant times the accountant(s) for D & M. See Ibid.

Almost four years from the date of this matter's inception, and following substantial discovery therein, on February 2, 2024, D & M filed an Amended Complaint to assert direct claims against Maniar. See Pa226-Pa259. D & M asserts in its Amended Complaint three counts against Maniar: one for breach of contract, one for accountant malpractice, and one for breach of fiduciary duty. See Ibid.

III. Relevant Procedural History

On February 16, 2024, Maniar filed a Motion for Partial Summary Judgment as to the direct claims asserted against Maniar by D & M. Thereafter, on March 19, 2024, D & M filed Opposition to Maniar's Motion for Partial Summary Judgment. On March 22, 2024, Maniar filed a Reply to D & M's Opposition. On May 16, 2024, having considered the arguments of counsel and the papers submitted, and for good cause shown, the Honorable Joshua D. Sanders, J.S.C. granted Maniar's Motion for Partial Summary Judgment. See Pa353-Pa369. Subsequently, on April 25, 2025, the Court entered an Order memorializing its Opinion. See Pa376-Pa378. D & M's Appeal arises from these decisions.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT APPROPRIATELY DISMISSED D & M'S CLAIMS AGAINST MANIAR BECAUSE THESE CLAIMS ARE UNTIMELY PURSUANT TO THE APPLICABLE AGREEMENTS.

While the trial Court generally concurred with D & M in the position that genuine issues of material fact existed with respect to D & M's claims against Maniar, the crux of D & M's appeal, and the basis for the trial Court's dismissal of D & M's claims against Maniar, is the trial Court's finding that D & M's

claims against Maniar are entirely untimely in light of the controlling agreements governing the professional relationship between Maniar and D & M.

Pursuant to each of the controlling agreements, "[a]ny litigation arising out of this engagement, except actions by [Maniar] to enforce payment of [Maniar's] professional invoices, must be asserted within one year from the date any such cause of action accrues, or within three years from the completion of the engagement, whichever is earlier, notwithstanding any statutory provision to the contrary." See Pa280-Pa313.

According to D & M's pleadings, D & M discovered Martinez's fraud in March 2019. See Pa1-Pa4. Further, D & M instituted this litigation on July 22, 2020. See Pa1.[2]

Pursuant to the terms of the agreements as recounted above, D & M had until March 2020, which was one year from the latest date at which the relevant cause of action may be found to have accrued, to bring direct claims against Maniar arising from Martinez's fraud. This is especially true as March 2020 was earlier than the expiration of three years from Maniar's completion of its engagement by D & M. Because D & M failed to assert any direct claim against

[2] Of note is that the 2016 and 2017 engagements were only for the preparation of tax returns, which preparations ultimately took place long after D & M's discovery of Martinez's fraud – the 2016 and 2017 tax returns were prepared on October 24, 2019 and March 17, 2020, respectively.

Maniar arising from the relevant fraud until almost five years after it discovered the pertinent fraud, and almost four years after its inception of this litigation, D & M's direct claims against Maniar are patently out of time under the terms of the applicable agreements and were therefore properly dismissed by the trial Court herein.

On appeal, D & M reiterates the arguments it proffered at the trial level – namely, that the contractual limitation period had not run and that the limitation is unenforceable. Maniar thoroughly and painstakingly refuted these contentions in responding to D & M's arguments, and does so again herein for the benefit of this honorable Court.

Initially, D & M's reading of the applicable terms of the agreement as they pertain to the accrual of any potential cause of action against Maniar is as contorted as its reading of the contractual provisions discussed above, and in any case moot as will be set forth in detail below. Specifically, as D & M admits, the agreement provides that "[a]ny litigation arising out of this engagement, except actions by [Maniar] to enforce payment of [Maniar's] professional invoices, must be asserted within one year from the date any such cause of action accrues, or within three years from the completion of the engagement, whichever is earlier, notwithstanding any statutory provision to the contrary." See Pa280-Pa313.

As noted above, D & M discovered the fraud in March 2019, and commenced this litigation in July 2020. All throughout that time, and until amending its pleadings to assert direct claims against Maniar, D & M was well aware of the fraud that had occurred, Maniar's retention as its tax preparer, the services Maniar provided to it in that capacity, and the terms of the agreements controlling Maniar's retention. Nevertheless, D & M waited until almost five years after it discovered the pertinent fraud, and almost four years after instituting this litigation, and, conveniently, after an unsuccessful mediation in the case, to bring direct claims against Maniar based on alleged facts which have been at the very heart of this litigation or about which D & M cannot reasonably be found to have not known, at least throughout the period of the litigation.

Indeed, D & M cannot argue that Maniar's purported failure to discover and advise it of Martinez's fraud, and thereby to abide by the terms of the agreements between Maniar and D & M, is the basis for its direct claims against Maniar while simultaneously arguing that it should not be held to the accrual terms of the agreement because it somehow did not know of a basis on which to assert those direct claims against Maniar until it sought leave to file its amended Complaint. To attempt to persuade the Court to overturn the trial Court's ruling by arguing both inconsistent propositions, as D & M does, is therefore contradictory and patently unavailing to D & M.

D & M all but admits the absurdity of its line of reasoning by arguing, both unsuccessfully before the trial Court and now again on appeal, that "it was not until the filing of an Affidavit of Merit on April 28, 2022 by Defendants/Third-Party Plaintiffs . . . that it can fairly be said that D & M was on notice of potential malpractice on the part of the Maniar Defendants." Even if D & M's argument here is taken as valid, this would, pursuant to the controlling terms of the agreement, require D & M to have asserted its direct claims against Maniar on or before, at the latest, April 28, 2023, as the trial Court explicitly observed. See Pa353-Pa369. Nevertheless, D & M sought leave to assert direct claims against Maniar on October 18, 2023, and filed its Amended Complaint on February 2, 2024, both of which dates falling well after the April 28, 2023 deadline that would have applied if D & M's own argument is accepted as controlling.

Thus, D & M's failure to bring a claim against Maniar in a timely fashion under the terms of the agreements, and even within the framework of its own arguments, warranted the dismissal of D & M's claims in this action as against Maniar, as granted by the trial Court herein.

As to the remainder of D & M's arguments regarding the enforceability and validity of the agreements, these amount to nothing more than red herring propositions intended to distract from the central, controlling point at issue on

appeal. Indeed, the fact that D & M's claims against Maniar are non-viable, unsubstantiated, and precluded by the terms of the controlling agreements, is unchanged by its impertinent discussion of the antecedent mediation requirement set forth in the applicable agreements between Maniar and D & M – which does not change the fact that D & M failed to bring its claims against Maniar within the permitted period set forth in the agreements – or the scope of other parties' obligations to D & M, or even D & M's nonsensical qualm with the contractual terms applicable to the period within which D & M is required to assert a claim against Maniar – terms to which D & M assented by executing the relevant agreements. All of these contentions are nothing more than distractions conjured by D & M in the hope of distracting the trial Court as well as this honorable Court from the operative and unavoidable fact that D & M (1) retained Maniar for a particular purpose and not for general accounting services, (2) knowingly and voluntarily entered into a written agreement with Maniar that clearly and unambiguously memorializes the particular agreed-upon scope of Maniar's retention, includes explicit exclusions of any responsibility by Maniar to actively identify theft or fraud, and binds its signatories to its exclusive terms, and (3) then attempted to extort Maniar for additional monies in this matter by asserting baseless claims against him in light of a failed mediation session.

Although the trial Court found reason to align with D & M on its arguments that genuine issues of material fact might still have existed at the time of Maniar's Motion for Partial Summary Judgment, it could not find any grounds to do so with respect to D & M's position that the controlling agreements are somehow unenforceable, or that the limitation period therein had not run at the time D & M asserted its claims against Maniar, or that D & M could somehow be found to have abided by their terms in first asserting claims against Maniar almost five years after it discovered the pertinent fraud, and almost four years after its inception of this litigation.

In light of all of the foregoing, the trial Court correctly determined, "after evaluating the evidence in this record in the light most favorable to the non-moving party, here the plaintiff, that summary judgement is appropriate as the plaintiff failed to commence the action against Maniar until after the contracted, permitted time to do so even after the application of the discovery rule." See Pa353-Pa369.

Thus, the trial Court appropriately dismissed D & M's claims against Maniar as untimely.

POINT II

ADDITIONALLY, THE TRIAL COURT APPROPRIATELY DISMISSED D & M'S CLAIMS AGAINST MANIAR BECAUSE ALTHOUGH IT FOUND THAT D & M MAY HAVE A VIABLE BREACH OF CONTRACT CLAIM AGAINST MANIAR, IT CORRECTLY CONCLUDED THAT D & M'S CLAIMS AGAINST MANIAR WERE UNTIMELY.

Beyond its discussion of the timeliness component of the trial Court's decision, D & M re-asserts on appeal its arguments that there exist genuine issues of material fact with respect to its breach of contract claim against Maniar.

To prove a breach of contract claim, a plaintiff must prove first, that "[t]he parties entered into a contract containing certain terms"; second, that "plaintiff[s] did what the contract required [them] to do"; third, that "defendant did not do what the contract required the defendant to do[,]" defined as a "breach of the contract"; and fourth, that "defendant's breach, or failure to do what the contract required, caused a loss to the plaintiff[s]." Model Jury Charge (Civil), § 4.10A "The Contract Claim—Generally" (May 1998); see also Coyle v. Englander's, 199 N.J. Super. 212, 223 (App. Div. 1985) (identifying essential elements for breach of contract claim as "a valid contract, defective performance by the defendant, and resulting damages"). All four elements must be proven in order to show a breach of contract. See Ibid. Importantly, Courts will not rewrite

contracts to favor a party, for the purpose of giving a party a better bargain. See Lucier v. Williams, 366 N.J. Super. 485, 491 (App. Div. 2004) (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36 (1960)).

While the trial Court concluded that there were potential genuine issues of material fact regarding whether Maniar breached the contract between Maniar and D & M with respect to the work Maniar performed for D & M thereunder, such that its dismissal of D & M's claims against Maniar did not rest upon a finding that no such genuine issues of material fact existed, but rather that D & M's claims against Maniar were untimely, D & M's reassertion of its arguments on appeal necessitates Maniar's response.

In this matter, D & M and Maniar entered into valid and enforceable contracts to effectuate the retention of Maniar by D & M in the narrow scope of tax preparer for D & M. See Pa280-Pa313. D & M references these agreements in its Amended Complaint in support of its direct causes of action against Maniar by alleging that Maniar breached its "contractual . . . obligations" to D & M. See Pa226-Pa259. However, D & M cannot demonstrate that Maniar failed to carry out its obligations under the controlling agreements such that D & M's breach of contract claims against Maniar might be found viable.

D & M's claims against Maniar, whether those sounding in breach of contract or otherwise, arise from D & M's allegations that Maniar failed to: (1)

advise D & M with respect to appropriate internal controls for D & M in connection with the business operations of D & M, in light of the change in responsibility for the day-to-day Comptroller functions of D & M being transferred from a family member to a non-family member, and the financial risks associated with same, including, but not limited to, the enhanced risk of potential employee theft; (2) detect the ongoing thefts of Martinez from January 2014 through March 2019; (3) identify anomalies indicative of potential theft; and (4) advise D & M of anomalies indicative of potential theft. See Pa226-Pa259. However, none of these allegations successfully accords merit to D & M's claims insofar as the controlling agreements do not require Maniar to act so as to advise D & M regarding its internal controls, detect or identify anomalies or thefts, or advise D & M regarding anomalies or thefts. See Pa280-Pa313. Indeed, under the controlling agreements, Maniar did not assume the obligations that D & M alleges Maniar breached, and in fact the applicable contracts specifically excluded those obligations from Maniar's scope of performance. See Ibid.

First, D & M alleges that Maniar breached the applicable contracts and the controlling standard of practice by failing to advise D & M regarding its internal controls in light of the change in responsibility for the day-to-day Comptroller functions of D & M being transferred from a family member to a

non-family member, and the financial risks associated with same, including, but not limited to, the enhanced risk of potential employee theft. However, the controlling agreements specifically place upon D & M, not Maniar, the responsibility for the "design and implementation of programs and controls to prevent and detect fraud, and for informing [Maniar] about all known or suspected fraud affecting the Company . . ." See Pa280-Pa313. Nowhere in the applicable agreements is Maniar required to advise D & M regarding its internal controls or as to risks of potential employee theft. See Ibid. Thus, Maniar was not required to advise D & M regarding its internal controls, and D & M has no basis to assert a claim against Maniar because Maniar did not advise it as such.

Second, D & M alleges that Maniar failed to detect the ongoing thefts of Martinez from January 2014 through March 2019, failed to identify anomalies indicative of potential theft, and failed to advise D & M of anomalies indicative of potential theft. See Pa226-Pa259. However, the controlling agreements between Maniar and D & M contain, in at least two separate paragraphs in each contract, specific and explicit disclaimers of any responsibility by Maniar to "disclose errors, fraud, or other illegal acts that may exist." See Pa280-Pa313. Further, the agreements specifically place upon D & M the responsibility for the "design and implementation of programs and controls to prevent and detect fraud, and for informing [Maniar] about all known or suspected fraud affecting

the Company. . .” See Ibid. The agreements also require D & M to inform Maniar of its knowledge of any allegations of fraud or suspected fraud, see Ibid., and do not require Maniar to advise D & M with respect to its internal controls, detect thefts, identify anomalies indicative of potential theft, or advise D & M of anomalies indicative of potential theft. See Ibid. Thus, Maniar was not required, either by the terms of the applicable agreements or by the applicable standard of practice, to either identify or detect Martinez’s theft or advise D & M regarding anomalies indicative of same.

The controlling agreements are clear in that D & M retained Maniar at all relevant times for the specific and narrow purpose of preparing compiled financial statements and tax returns for D & M. See Ibid. In memorializing the narrow scope of Maniar’s retention, the controlling agreements between Maniar and D & M included at all relevant times specific provisions providing that D & M is responsible “for the preparation and fair presentation of the financial statements” and that Maniar’s retention by D & M was for the specific purpose of compiling “the balance sheet” and “the related statements of operations and retained earnings for the [relevant] year . . .” See Ibid. The agreements further provide that the “objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material

modifications that should be made to the financial statements." See Ibid. The agreements also confirm that they are "contractual in nature and include all of the relevant terms that will govern the engagement" and that the terms of the agreement "supersede any prior oral or written representations or commitments by or between the parties." See Ibid.

In its contentions, whether in opposing Maniar's underlying Motion for Partial Summary Judgment or in its appeal herein, D & M makes great moment of selected language in the controlling agreements. In doing so, however, D & M weaponizes that language, which it expansively and unreasonably reinterprets, to lend fabricated substance to its position that the agreements imposed upon Maniar a scope of responsibility towards D & M that extends far beyond any reasonable reading of either the agreements in their entirety or even the very portions thereof which they manipulatively cite.

Namely, D & M cites language in the agreement as follows:

> I will inform you of any material errors that come to our attention and any fraud or other illegal acts that come to our attention, unless they are clearly inconsequential.
>
> I will inform you of any material errors that come to my attention and any fraud that come to my attention. I will also inform you of any other illegal acts that come to my attention, unless they are clearly inconsequential.
>
> [D]uring the procedures, if I become aware of such reportable conditions [significant deficiencies or material weaknesses in the

> design or operation of internal control], I will communicate them to you.
>
> See Pa280-Pa313.

Seeing that the agreements are entirely devoid of the imposition of any positive obligation upon Maniar that would substantiate D & M's claims against Maniar, D & M is left no choice but to present language from those agreements that appears on its face to substantiate its position that Maniar owed D & M a contractual duty to uncover theft, fraud, and potential embezzlement, but which rather only serves to bolster Maniar's position that he did not owe such a duty to D & M under the terms of the applicable agreements. Rather, when these provisions are taken according to their plain meaning and in their proper context, they are found to complement the numerous disclaimers clearly set forth in the applicable agreements by emphasizing that Maniar's only positive obligation vis-à-vis the discovery of theft, fraud, and similar illegalities only arises if and when such illegalities are brought to his attention, or are uncovered by him during the ordinary course of his provision of the clearly delimited services for which D & M retained him.

For this reason, the agreements provide that: (1) D & M, rather than Maniar, is responsible "for the preparation and fair presentation of the financial statements," (2) Maniar's retention by D & M was for the specific purpose of compiling "the balance sheet" and "the related statements of operations and

retained earnings for the [relevant] year . . .," (3) the objective of Maniar's retention is "to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements" (emphasis added); (4) D & M, and not Maniar, is responsible for the "design and implementation of programs and controls to prevent and detect fraud, and for informing [Maniar] about all known or suspected fraud affecting the Company . . .," (5) D & M is required to inform Maniar of its knowledge of any allegations of fraud or suspected fraud; (6) Maniar is not required to advise D & M with respect to its internal controls; and (7) Maniar is not required to detect thefts, identify anomalies indicative of potential theft, or advise D & M of anomalies indicative of potential theft (which disclaimers of responsibility are set forth at various points throughout the applicable agreements). See Pa280-Pa313.

In light of these unambiguous terms, and according to the plain meaning of the contractual provisions quoted by D & M, those quoted provisions all clearly and repeatedly stipulate that Maniar would advise D & M of issues "that come to [his] attention" and of which he "become[s] aware" during the ordinary course of his provision of the relevant services. The reliance of D & M on the quoted sections of the agreements therefore only strengthens Maniar's position

that he was not retained to perform general accounting services for D & M, which services may arguably have required him to actively investigate for such illegalities, but was instead engaged as a tax preparer for the limited and specific role of preparing already compiled financial statements and tax returns for D & M.

Contrary to D & M's interpretation and use of the selections it sets forth in support of its untenable position, and in light of the plain formulation of the terms of the agreement, it would be a fallacy of false equivalency, and wholly inconsistent with the clear terms of the agreement, to equate Maniar's tacit obligation to notify D & M if, and only if, he becomes, or is made, aware of fraud or theft through the ordinary course of his services with a positive obligation to actively search for and investigate the potential existence of same.

To allege that Maniar can somehow be found to have breached his contractual obligations to D & M because in his limited role as a tax preparer, and given the terms of the agreements, he did not identify, or notify D & M regarding, Martinez's theft is therefore to fail to recognize the prerequisite triggering mechanism clearly delineated in the applicable agreements requiring that Maniar first become aware of the theft or fraud or receive notification regarding same not due to his own active investigation, but either by becoming aware of same passively during the ordinary course of his provision of the

relevant services or being made aware of same by someone else, before he can be found to have an obligation to report to D & M the existence of such concerns. This is, once again, evident in light of the number of separate and repetitive disclaimers contained in the applicable agreements, which all explicitly exclude from Maniar's scope of services the responsibility of identifying and investigating for the existence of fraud, theft, embezzlement, and other such crimes. In light of the explicitly pled bases of D & M's claims against Maniar, the unambiguous terms of the controlling agreements render those claims against Maniar baseless and unsupportable by any purported future discovery.

As set forth above, it is well established that courts will not rewrite contracts to favor a party, for the purpose of giving a party a better bargain. See Lucier, supra, 366 N.J. Super. at 491. The controlling agreements between D & M and Maniar were freely entered into as between D & M and Maniar and are all executed by Maniar and Marc Ducate on behalf of D & M. See Pa280-Pa313. Thus, D & M freely and knowingly agreed to the terms of the agreements, including those discussed above. D & M therefore does not have any claim against Maniar for breach of the applicable contracts based upon the allegations it sets forth in its Amended Complaint as against Maniar, and in fact seeks, by way of its direct claims, to hold Maniar responsible for the non-performance of obligations and duties that are specifically excluded from and in no way can be

found to have been undertaken by Maniar pursuant to the controlling agreements between D & M and Maniar. No additional discovery in this matter could possibly change these facts insofar as no such discovery could have altered the unambiguous and controlling terms of these agreements. D & M's direct claims as against Maniar were therefore baseless, and Maniar was entitled to the requested partial summary judgment as to those claims.

POINT III

ADDITIONALLY, THE TRIAL COURT APPROPRIATELY DISMISSED D & M'S ATTORNEY MALPRACTICE AND BREACH OF FIDUCIARY DUTY CLAIMS AGAINST MANIAR.

D & M's claims for accounting malpractice and breach of fiduciary duty are duplicative of its claim for breach of contract. See Couri v. Gardner, 173 N.J. 328, 340 (2002) ("[i]t is not the label placed on the action that is pivotal but the nature of the legal inquiry"). For the reasons set forth above, D & M's claims for accounting malpractice and breach of fiduciary duty are therefore also precluded by the terms of the applicable agreements.

While the trial Court correctly dismissed D & M's claims against Maniar because of their untimely nature, those claims could also have been dismissed for the reasons delineated at length herein. In any event, therefore, D & M's

claims against Maniar were baseless, futile, and properly dismissed by the trial Court.

POINT IV

ALTERNATIVELY, D & M'S BREACH OF CONTRACT AND BREACH OF FIDUCIARY DUTY CLAIMS AGAINST MANIAR ARE SUBSUMED WITHIN D & M'S ACCOUNTING MALPRACTICE CLAIM, WHICH IS LIKEWISE BASELESS AND UNTIMELY AND WAS PROPERLY DISMISSED BY THE TRIAL COURT.

While the trial Court's dismissal of D & M's claims against Maniar rested upon the Court's finding that those claims were untimely, and not that they were improper or subsumed within D & M's accounting malpractice claim, D & M re-asserts its arguments as to those claims, necessitating Maniar's response herein.

To succeed on claims for accounting malpractice, a plaintiff must show that the defendant accountant owed him a duty, breached the applicable standard of care, and that the breach was a proximate cause of the plaintiff's damages. See Daunno v. Crincoli, 2007 N.J. Super. Unpub. LEXIS 814 (App. Div. 2007) [Vm1-Vm4].

Initially, Maniar did not breach the standard of care in its performance of accounting services for D & M. Maniar provided competent professional

services to D & M throughout the duration of its retention by D & M and abided at all times both within the scope of the controlling agreements with D & M and within the applicable professional standards of practice.

Maniar was specifically retained for the narrow purpose of preparing compiled financial statements and tax returns for D & M. See Pa280-Pa313. The controlling agreements include at all relevant times specific provisions providing that D & M is responsible "for the preparation and fair presentation of the financial statements" and that Maniar's retention by D & M was for the specific purpose of compiling "the balance sheet" and "the related statements of operations and retained earnings for the [relevant] year . . ." See Ibid. The agreements also provide that the "objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements." See Ibid.

As set forth above, the controlling agreements also include disclaimers of any responsibility by Maniar to "disclose errors, fraud, or other illegal acts that may exist." See Ibid. Further, the agreements specifically place upon D & M the responsibility for the "design and implementation of programs and controls to

prevent and detect fraud, and for informing [Maniar] about all known or suspected fraud affecting the Company . . .” See Ibid.

Moreover, the relevant agreements require D & M to inform Maniar of its knowledge of any allegations of fraud or suspected fraud. See Ibid. They do not require Maniar to counsel D & M with respect to its internal controls, detect thefts, identify anomalies indicative of potential theft, or advise D & M of anomalies indicative of potential theft. See Ibid.

Because Maniar was neither contractually nor professionally required to investigate for fraud, and given the narrow scope of Maniar’s retention by D & M for the specific purpose of compiling prepared financial statements and preparing tax returns, Maniar cannot be found to have breached any duty to D & M.

Further, even if Maniar did breach any duty or the applicable agreements to D & M, which is not the case, it remains beyond dispute that D & M alleged damages, if demonstrable, are in fact proximately caused not by Maniar’s silence as to the theft or the absence of advice by Maniar to D & M regarding its policies or about anomalies indicating theft, but rather by Martinez’s actual fraudulent scheme in tandem with Defendants/Third-Party Plaintiffs Marc A. Rosenkrantz and Schechner Lifson Corporation’s failure to properly advise D & M regarding insurance coverages available to D & M to protect it against

known risks arising from the transfer of its Comptroller functions from a family member to a non-family member. Indeed, it was the duty of D & M's insurance broker to advise D & M regarding necessary insurance coverages, which coverages, if enacted, would have protected D & M from its alleged losses.

In light of the foregoing, D & M's accounting malpractice claim, along with D & M's other claims against Maniar, which are subsumed within that malpractice claim, is not viable as against Maniar. Hence, while the trial Court rested its dismissal of D & M's claims against Maniar, including the accounting malpractice claim, upon the basis of their incontrovertible untimeliness, and although it posited that genuine issues of material fact exist with respect to those claims, including the malpractice claim, which would, in the absence of their untimeliness, have rendered them viable, Maniar respectfully submits that the trial Court's dismissal of the accounting malpractice claim and the other claims against it was appropriate, and would have been equally justified by the reasons set forth above herein.

For these additional reasons, the trial Court appropriately dismissed D & M's claims.

CONCLUSION

Despite the acceptance of its allegations as true and the grant of all legitimate inferences of fact, D & M cannot be found to have brought its claims against Maniar in a timely fashion, pursuant to the terms of the controlling agreements. Indeed, even accepting as true its own admission that it discovered Maniar's potential malpractice on April 28, 2022, as the trial Court did, D & M's deadline for asserting a claim against Maniar pursuant to the governing agreements would have been April 28, 2023. Nevertheless, D & M first sought leave to assert direct claims against Maniar on October 18, 2023, and filed its Amended Complaint on February 2, 2024.

For these reasons, as fully set forth before the trial Court and again as appropriate herein, Maniar respectfully submits that the trial Court appropriately dismissed D & M's claims against Maniar as untimely, pursuant to R. 4:46-2(c).

The trial Court's decision should therefore be sustained.

Respectfully submitted,

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s/s/ Meredith Kaplan Stoma
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Dated: September 23, 2025

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D & M STEEL CORPORATION,

Plaintiff,

v.

TAMARA MARTINEZ-OLIVEIRA a/k/a TAMARA MARTINEZ a/k/a TAMARA OLIVEIRA, TD BANK, N.A., MARC A. ROSENKRANTZ, SHECHNER LIFSON CORPORATION, VIREN MANIAR AND VIREN MANIAR CPA, LLC, JOHN DOES 1-10, JANE DOES 1-10 AND ABC ENTITES 1-10,

Defendants.

-and-

Shechner lifson corporation and Marc A. Rosenkrantz,

Third-Party Plaintiffs,
v.

VIREN MANIAR and VIREN MANIAR CPA, LLC,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002025-24T1

Civil Action

On Appeal from a Final Judgment of the Superior Court of New Jersey,
Law Division, Essex County
ESX-L-4929-20

SAT BELOW:
Hon. Joshua D. Sanders, J.S.C.

REPLY BRIEF OF PLAINTIFF-APPELLANT D & M STEEL CORPORATION IN FURTHER SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

In their Brief in Opposition to the Appeal Brief of Plaintiff-Appellant D&M Steel Corporation ("D&M"), Defendants/Third-Party Defendants/Respondents Viren Maniar and Viren Maniar CPA, LLC (the "Maniar Defendants") devote the bulk of their arguments to the notion that the Maniar Defendants did not breach any contractual, professional and/or fiduciary obligations to D&M. These arguments miss the mark.

Specifically, the Trial Court went into great detail in explaining that there were indeed genuine issues of material fact precluding summary judgment in favor of the Maniar Defendants specifically concluding in no uncertain terms as follows:

> Based on the plain language of the engagement letters between the defendants and the plaintiff and evaluating the facts in the light most favorable to the nonmoving party, the court finds that a finder of fact could discern that the defendants [the Maniar Defendants] could have breached the terms of the contract, committed professional malpractice, and breached their fiduciary duty sufficient to survive summary judgment.

See Trial Court Opinion Pa356 though Pa365, in particular at Pa363. These detailed determinations by the Trial Court are not on appeal and there has been no cross-appeal asserting that the Trial Court was in error as to its determinations in this regard.

Rather, the **only** issue on appeal is the determination by the Trial Court that D&M was untimely in asserting direct claims against the Maniar

Defendants as set forth in pages 13 through 16 of the Trial Court's Opinion, Pa365 through Pa368. Specifically, did the Trial Court err in (1) applying the discovery rule to the claimed contractual modification of the statutory six-year statute of limitations for purposes of when D&M's causes of action against the Maniar Defendants accrued, (2) enforcing this ambiguous shortening of the applicable statute of limitations drafted by the Maniar Defendants where it was incumbent upon the Maniar Defendants to "know or should have known" of the existence of the fraud in the performance of their contractual, professional and fiduciary obligations to D&M -- in practical effect to blame and hold D&M responsible for the failure of the Maniar Defendants to do that for which they were retained and (3) interpreting and enforcing against D&M an ambiguous time limitation set forth in the one-sided engagement letters drafted by the Maniar Defendants which, by its express terms, had not even begun to run in order to excuse the Maniar Defendants in failing to recognize the existence of a massive $1.7 Million fraud going on right under their nose over a period of years.

As demonstrated in the Appeal Brief of D&M and below, under the undisputed facts and procedural history of this matter, D&M was not untimely in asserting its direct claims against the Maniar Defendants based upon a limitations period drafted by the Maniar Defendants which is at best

ambiguous as applied to the undisputed facts here and, by its express terms, was not even triggered until the conclusion of Mediation proceedings in October 2024 such that it has no application here at all. Simply put, viewed in the light most favorable to D&M, summary judgment should not have been granted, the decision of the Trial Court should be reversed and the matter remanded for further proceedings.

LEGAL ARGUMENT

THE PURPORTED ONE YEAR LIMITATION PERIOD IN THE AGREEMENTS BETWEEN THE MANIAR DEFENDANTS AND D&M DOES NOT BAR D&M'S CLAIMS AGAINST THE MANIAR DEFENDANTS (Pa71-Pa369 and Briefs Submitted Below)

We will not repeat all of the arguments set forth in the Appeal Brief of D&M. Rather, for purposes of this Reply Brief we will focus upon (1) the indisputable fact that the contractual limitations period upon which both the Maniar Defendants and the Trial Court relied below, by its express terms, had not even begun to run and (2) that, as applied by the Trial Court, the limitations period is unenforceable as against public policy.

A. The Purported Contractual Limitation Period Had Not Run

The express terms and totality of the agreements on this provision demonstrate that the Amended Complaint whereby D&M asserted direct claims against the Maniar Defendants was timely under the express terms of the

agreements: Specifically, there are two paragraphs which are intertwined which, when read in totality, expressly provide as follows:

> You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning, performance or enforcement of this engagement or any prior engagement that1have performed for you, will, **prior to resorting to litigation, be submitted to mediation and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement.** Any mediation initiated as a result of this engagement shall be administered within the county of Middlesex, New Jersey, by Mediation Organization mutually agreed upon, according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to New Jersey law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.
>
> Any litigation arising out of this engagement, except actions-by us to enforce payment of my professional invoices, must be asserted within one year from the date any such cause of action accrues, or within three years from the completion of the engagement, whichever is earlier, notwithstanding any statutory provision to the contrary

See Agreements attached as Exhibit E to the February 16, 2024 Certification of Counsel submitted in support of the Maniar Defendants' Motion for summary judgment (Appendix Vol. II Pa280-Pa307 and specifically at Pa286-Pa293, Pa301, Pa306 and Pa 311) (emphasis added).

Reading these provisions together, prior to D&M instituting **any** litigation against the Maniar Defendants, D&M and the Maniar Defendants were to engage in mediation proceedings. In this regard, D&M and the Maniar Defendants did not

participate in **any** mediation until voluntarily participating in mediation proceedings before the Honorable Peter F. Bariso, Jr., J.S.C. (Retired) on October 14, 2023. These mediation proceedings were unsuccessful and, as a result of the posture taken by the Maniar Defendants at the mediation proceedings, on October 18, 2023, D&M sought leave to assert direct claims against the Maniar Defendants in this matter which motion was granted by Order of the Court dated January 26, 2024 (Appendix Vol. I Pa73-Pa82).

Accordingly, under the express terms of the agreements drafted by the Maniar Defendants and upon which they and the Trial Court relied below, prior to D&M even commencing a direct suit against the Maniar Defendants, D&M and the Maniar Defendants were required to engage in mediation proceedings. It is undisputed that no mediation proceedings took place until October 14, 2023 such that the contractual limitation period did not even begin to run until the conclusion of the mediation on October 14, 2023.[1]

B. The Purported Contractual Limitation Period Is Unenforceable As Against Public Policy

While agreements reducing applicable statutes of limitations can be enforceable, they must be reasonable and may not violate public policy. *Eagle*

[1] At a minimum, the language of the limitations period at issue here is, at a minimum, ambiguous as to how it is to be applied here such that it should be construed against the position of Maniar Defendants as the drafters.

Fire Prot. Corp. v. First Indem. of Am. Ins. Co., 145 N.J. 345. 354-356 (1996). Factors bearing upon the issues of reasonableness and public policy include, but are not limited to, fundamental fairness, whether the limitation was conspicuously displayed and whether it was reasonably communicated. *Mirra v. Holland America Line*, 331 N.J. Super. 86, 91-92 (App. Div. 2000).

Applied here, the clause at issue was not conspicuously displayed (it consists of 4 lines in a 7-page single spaced letter) and there is no clarity as to how it would be applied -- especially in relation to the requirement of mediation prior to even instituting litigation.[2] Moreover, as applied to the professional services at issue, on its face, the clause would appear to violate public policy by imposing upon the client a duty to quickly uncover professional malpractice related to the very services for which the professional was retained and upon which the client was entitled to rely in being done properly. *See Aden v. Fortsh*, *supra*, 169 N.J. at 69-70 (client is entitled to rely on the professional's expertise in faithfully performing the very job he or she was hired to do). In short, the clause as the Maniar Defendants and the Trial Court have applied here requires a client to, in essence, retain another professional to evaluate the work of the first professional almost simultaneously to comply with the purported one-year limitations period which, as

[2] Again, any ambiguity in the language of the limitations period at issue here and how it is to be applied here should be construed against the drafters, i.e., the Maniar Defendants.

a practical matter, would require the client to engage a series of professionals *ad infinitum* to keep an eye on each other.

Similar to the reasons for which a professional cannot claim contributory negligence as a mitigating factor against a client for the simple fact the services for which the professional is retained is precisely the reason for the retention of the professional in the first place (see *Aden v. Fortsh*, 169 N.J. 64, 69-70 (2001) (comparative negligence defense is unavailable to a professional who asserts that the client failed to detect the professional's own negligence as it is the professional, not the client, who is the expert and the client is entitled to rely on the professional's expertise in faithfully performing the very job he or she was hired to do), it is not reasonable to enforce a limitations period that effectively shifts the professional obligations for which the professional was retained (here to discover and report fraud) to the client by requiring the client to know or should know that the professional may have committed malpractice precisely because they failed to do what they were retained to do. To hold otherwise imparts to the client professional knowledge superior to or at least on par to the professional retained to protect the client from the very danger they were retained, in part, to prevent. In sum, at least as to professionals, a one-year limitation period to discover and sue for professional malpractice is unreasonable and against public policy.

CONCLUSION

For the foregoing reasons, the Trial Court erred as a matter of law in granting summary judgment in favor of the Maniar Defendants such that its decision must be reversed and the matter remanded for further proceedings.

Respectfully submitted,

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By: **S/*Gregg S. Sodini***
GREGG S. SODINI

Dated: October 9, 2025