SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
DOCKET NO. A-002137-23

IN THE MATTER OF THE ESTATE OF HELEN HAUKE Deceased IN THE MATTER OF THE ESTATE OF RUDOLPH HAUKE Deceased	On Appeal From Verified Complaint and Order to Show Cause before The Superior Court of New Jersey, Chancery Division, Probate Part, Monmouth County Docket No: MON-P-383-23 Surrogate Number: # 229433 Appellate Docket: A-002137-23 Sat below: Hon. David F Bauman, P.J. Ch.

BRIEF ON BEHALF OF APPELLANT, PAUL R HAUKE

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ON THE BRIEF: Paul R Hauke, pro se

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FEBRUARY 9, 2024 ORDER ENTERED BY HON. DAVID F BAUMAN, P.J. CH.
(249a - 255a)

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TRANSCRIPT OF DECISION DATED FEBRUARY 9, 2024 (1T1: 1 – 15, 263a)

INTERMEDIATE DECISIONS .....NONE

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Note: Original Verified Complaint (1a) and OTSC (12a) involved two issues. 1.) The distribution of pharmaceutical settlement; and 2.) The vacating of Consent Judgement of January 7, 2016 as per R 4:50-1 (f). Issue one (1) was withdrawn by Paul Hauke and was noted as such by The Hon. David F Bauman (1T 5;15 – 20, 267a)(1T 8; 15-18, 270a). It is not part of this Appeal.

PRELIMINARY STATEMENT

This current matter (A-002137-23) is an Appeal of the Order and Statement of Reasons, (249a – 255a) of the Hon. David F Bauman denying vacating the Consent Judgement and Stipulation of Settlement , dated January 7, 2016 (201a) as per R 4:50-1 (f) and thus not allowing an accounting of Estate Funds not previously accounted for and not allowing discovery for the non accounted for Estate funds and denying a complete and accurate final accounting of the Estates.

Original Verified Complaint (1a) and OTSC (12a) involved two issues. 1.) The distribution of pharmaceutical settlement; and 2.) The vacating of Consent Judgement of January 7, 2016 as per R 4:50-1 (f).

Issue one (1) was withdrawn by Paul Hauke and was noted as such by The Hon. David F Bauman (1T 5;15 – 20, 267a)(1T 8; 15-18, 270a). It is not part of this Appeal.

PROCEDURAL HISTORY

Plaintiff, Paul Hauke, referred to as "beneficiary 4' is son of Rudolph and Helen Hauke.

Gregory Hauke , Thomas Hauke, and Richard Hauke are also sons

(Note: Transcript 1T, dated February 9, 2024, exhibits 263a – 277a)

of Rudolph and Helen Hauke, referred to as "beneficiaries 1 – 3".

Rudolph Hauke died on October 10, 2011 testate.

Helen Hauke died on March 27, 2012 testate.

Thomas and Gregory Hauke after being removed as executors of the Estates and Trusts of Helen and Rudolph Hauke on July 21, 2014 (Exhibit 29a) for violating the rights of Paul Hauke, by not providing Estate "accountings", they continued to delay and not provide "accountings" of the Estates and Trust, as per letter from John Hoyle, Esq. to Honorable Judge Cleary on August 16, 2016 (Exhibit 59a).

The accounting firm of MEB&G confirmed same with letter to Mr. John Hoyle, dated July 11, 2016. (Exhibit 61a) particularly Paragraph numbers 7 and 8 and attachments.

These requests for information were not supplied to Mr. John Hoyle , or anyone else, by Thomas or Gregory Hauke.

They were never included in any "accountings" and as such they were not part of "exceptions" filed by Mr. Paul Hauke's Attorney , at the time, Mr. Joel Davis dated June 27, 2017 (Exhibit 66a) or the Honorable Judge Gummer's written Judgment approving formal accounting of Estates and Trusts, dated May 23, 2018 (Exhibit 81a)

As per Thomas Hauke's certification dated July 21, 2020 (Exhibit 89a) particularly paragraph seven (7) , that even after Thomas Hauke, Gregory Hauke and Richard Hauke were paid $17,000.00 each from

money (total $51,000) secretly diverted from the Estate to slush accounts run by Thomas Hauke on or about July , 2013 (61a) for disputed life insurance proceeds paid to Paul Hauke , that on January 7, 2016 as per Consent Judgement and Stipulation of Settlement (202a – 203a) they again got paid for the same reimbursement and did not divulge . They collected twice .

Further proof of scams by Thomas Hauke is that in the "accountings" he provided a ledger of billing to the Estates on a bogus agreement between himself and Gregory Hauke and Richard Hauke , not Paul Hauke, that his sham business Piper Financial Solutions Inc. should get paid $7,500.00 per month for doing nothing (Exhibit 96a). The Honorable Judge Gummer disallowed all these charges in her Judgment approving formal accountings (Exhibit 81a)

The Honorable Judge Gummer in her oral opinion on the record clearly found Thomas Hauke to be extremely not credible in the matter in regard to Piper Financial Solutions Inc. See transcript of May 23, 2018 (Exhibit 105a) , particularly pages 45, line 17 to page 58, line 15 .

The lack of credibility of Thomas Hauke , as found by the honorable Judge Gummer extends to all activities and transactions of Thomas Hauke and each one of his Piper Financial Solutions Inc. (PNC acct. ending in #5827 or Liberty Tax Pro Education Corp (PNC acct ending in # 0986)

The Honorable Judge Gummer in her judgement approving formal accountings of the Estates and Trusts of Rudolph Hauke and Helen Hauke surcharged Thomas Hauke $160,819.86 and Gregory Hauke $157,533.47 and Richard Hauke $333.75 (83a). With no "accounting" done for the double payment of life insurance proceeds to Thomas Hauke, Gregory Hauke and Richard Hauke.

The "Anna" (Exhibit 63a) that delivered the $19,500 to pay to $17,000.00 to Richard and $2,500.00 to Gregory on 1/25/13 was Anna Antohin of Liberty Business Solutions Inc. , a company of Thomas Hauke .(See Exhibit 144a).

Thomas Hauke, Gregory Hauke and Richard Hauke have not disputed that they were paid twice for life insurance proceeds of Helen Hauke's disputed Life Insurance policies with Paul Hauke as sole beneficiary.

They do not dispute that they were paid $17,000 each (total $51,000) in cash under the table on or about July , 2013 and then paid a second time $16,250.00 each (total $48,750) again for same Life Insurance proceeds as per Consent Judgement and Stipulation of Settlement of January 7, 2016, without divulging prior payment on or about July, 2013.

Paul Hauke did not find out about the $51,000.00 payment until mid 2023.(1T 13: 2 – 4, 275a)

STATEMENT OF MATERIAL FACTS

Again , Thomas Hauke, Gregory Hauke and Richard have not disputed that they were paid twice for life insurance proceeds of Helen Hauke disputed Life Insurance policies with Paul Hauke as sole beneficiary.

They do not dispute that they were paid $17,000 each (total $51,000) in cash under the table on or about July , 2013 (61a) and then paid a second time $16,250.00 each (total $48,750) (14a, 89a) again for same disputed Life Insurance proceeds as per Consent Judgement and Stipulation of Settlement of January 7, 2016, without divulging prior payment on or about July, 2013.(61a)

What defenses they have relied upon and the ones which the Court has considered and ruled on are the subject of this Appeal.

The defendants have argued that Paul Hauke's Verified Complaint fails to state a claim (160a) as per R 4:6-2 (e) and the Court has the discretion to convert R 4:6-2 (e) motion into a motion for summary judgment when the facts beyond the pleadings are relied upon, and limited testimony is required to be taken.

The Honorable Judge Bauman wrote (254a) in his "statement of reasons" that a "summary treatment is appropriate in actions which do not seek unliquidated money damages and where 'it is likely that the matter may be completely disposed of in a summary manner.' A summary action can be granted if 'affidavits show palpably that there is no genuine issue as to

any material fact. , the court may try the action on the pleadings and affidavits , and render final judgment thereon..' " Rule 4:67-1 – 4:67-6.

Hon. Judge Bauman also wrote (254a) "The Court can dismiss a pleading if it fails to state a claim upon which relief can be granted Rule 4:6-2 (e)."

"Motions to dismiss should be granted in the rarest of instances. *Banco Popular N. Am v Gandi,* 184 N.J. 161, 165 (2005) (quoting *Printing – Mart Morristown v Sharp Elecs Corp,* 116 N.J. 739, 746 (1989). A trial court should access the non moving party's complaint:

> in depth and with liberality to ascertain whether the fundamental of a cause of action may be gleaned from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of litigation [a] [c]ourt [should not be] concerned with the ability of plaintiff's to prove the allegation contained in the complaint...[P]laintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforementioned principles should be one that is at once painstaking and undertaken with a generous and hospitable approach."

Id. If the complaint states no basis for relief and discovery would not provide one, dismissal is the appropriate remedy. Pressler, *Current N.J. Court Rules* , comment 4.1 on R 4:6-2(2005)

Here in this matter it is clear that the Honorable Judge Bauman

did not conduct a hearing and try the action on the pleadings and affidavits , and render final judgment thereon..' " Rule 4:67-1 – 4:67-6.

Here it is clear that the Honorable Judge Bauman did not access the non moving party's complaint:

> in depth and with liberality to ascertain whether the fundamental of a cause of action may be gleaned from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of litigation [a] [c]ourt [should not be] concerned with the ability of plaintiff's to prove the allegation contained in the complaint...[P]plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforementioned principles should be one that is at once painstaking and undertaken with a generous and hospitable approach."

Here, the complaint did state a basis for relief and necessary discovery , and dismissal was not the appropriate remedy.

Motions to dismiss should be granted in the rarest of instances, and in this matter it was in error for the Honorable Judge Bauman to dismiss.

In the Honorable Judge Bauman's "statement of reasons" (255a) in the "discussion" paragraph he writes "for the sake of argument, that a fundament of a cause of action can be gleaned from Plaintiff's Verified Complaint , Plaintiff's requested relief to vacate Consent Judgement here is

barred by *res judicata* and *laches*. Because:

1.) "Formal accountings were done..." **Fact**: no formal accounting was done for the $17,000.00 each (total $51,000.) that Thomas Hauke, Gregory Hauke and Richard Hauke paid themselves under the table in cash on or about January , 2013. (61a) and;

2.) "Plaintiff filed exceptions..." **Fact** No exceptions to the $51,000.00 (61a) under the table payment to Thomas Hauke, Gregory Hauke and Richard Hauke because the monies were not in the formal accounting and ;

3.) "Trial was held..." **Fact:** Trial was held on or about May10, 2018 (1T 6;7-8, 108a) with the Honorable Katie Gummer. Fact: being that no formal accounting was done for above referenced $51,000.00 (61a) as it was not in the exceptions and not part of the trial and;

4.) "A judgement was issued..." **Fact:** Honorable Katie Gummer issued Judgment on May 23, 2018 (81a) but it did not include above referenced $51,000.00 (61a) for reasons above and;

5.) "The judgement went up on appeal..." **Fact**: The appeal dealt with should Thomas Hauke and Gregory Hauke be personally responsible for surcharges to them in the amount of Thomas Hauke $160,819.86 and Gregory Hauke $157,533.47. (83a) The Appellate Court upheld the personal responsibility of the surcharges. The surcharges did not address the above $51,000.00 (61a) for the reasons above and;

6.) **Fact:** Appellate Court upheld Judgment. (see # 5 above) and;

7.) Defendants assert that Refunding bonds and Releases were signed by Plaintiff and Defendants , final estate taxes were done , and the estate accounts were closed . **Fact**: There has

been no certifications and no testimony as to these assertions. Even if true, the Estate(s) can be opened as needed here to account for the $51,000.00 and:

8.) The issues underlying Plaintiff's contention have been fully litigated. **Fact:** Considering the above they have not been "fully litigated" and;

9.) The consent judgment is eight years old and Plaintiff is not seeking to vacate on the grounds of any recent factual developments. **Fact**: Paul Hauke only became aware of the fact that the $51,000.00 (61a) was never accounted for in mid 2023 when he was doing research for the pharmaceutical settlement . (1T 13: 2 – 4, 275a)

The above nine (9) issues listed as "statement of reasons" (255a) were not part of the Verified Complaint and OTSC hearing on Feb. 9, 2024. (1T 1 – 15, 263a – 277a) The Honorable Judge Bauman has failed to conduct a hearing on same, yet he rules to dismiss Plaintiff's papers

Plaintiffs argue in their response papers that "res judicata provides that a matter that has been adjudicated by a competent court may not be pursued further by the same parties." *Valasquez v Franz,* 123 N.J. 498, 505. (163a, paragraph 2) However, the **Facts** show that the $51,000.00 (61a) has never been adjudicated and not subject to "res judicata."

Paul Hauke argued this in his papers (6a – 7a) and at the hearing on Feb. 9, 2024 (1T 9:7 – 25, T 10: 1, 271 a & 272 a)

Paul Hauke: My argument today and has always been

that the $51,000.00 was never accounted for. Never accounted for.

Court: Because Mr. Laracca is saying—That's fine. But Mr. Laracca is saying , well, you should have raised that issue before the consent judgment was entered into. And you didn't.

Paul Hauke: Because.

Court: And you should have done it and you didn't.

Paul Hauke: Because Mr. Laracca's clients never came forward and said that they had gotten the money under the table.

When we went '16 , I made the deal with them. I gave them $48,750.00 to reimburse them for what they claim is a share of a disputed life insurance proceeds – 75 percent of the proceeds. Unknown to anybody was that they received $51,000 in cash under the table on or about January , 2013. (61a) That didn'tcome up until years later.

The Court further confirms Mr. Laracca's position as follows: (1T 7: 8 – 18, 269a)

Court: …Mr. Laracca's position is, you know, that principles of res judicata should bar this application because if it wasn't actually litigated prior to the time the consent judgment was entered it should have been. Isn't that you

argument Mr. Laracca?

Marco Laracca: It is your honor.

That position of defendants is an impossibility because they never supplied "accountings" and the $51,000.00 (61a) improperly paid to themselves was never divulged.

It was questioned by Estate accountants in letter to Mr. John Hoyle, Esq on July 11, 2016.(61a) . It was never accounted for.

I, Paul Hauke, only found about the unaccounted for $51,000.00 in mid 2023 (1T 13, 2 – 4, 275a).

The doctrine of Res Judicata does not operate to bar Paul Hauke's Complaint in this matter, as it has not been adjudicated by a competent court and may be pursued by Paul Hauke.

The accounting for the $17,000.00 paid improperly to each Thomas , Gergory and Richard Hauke (total $51,000) has not been done and as part of Paul Hauke's complaint he is requesting the accounting as to same be done and further discovery be allowed.

As a result it will be clear that the $48,500.00 deducted from Paul Hauke's Estate(s) distribution ($16,250.00 each to Thomas , Gregory and Richard Hauke – total $48,750.00) was a duplicate payment subject to review as per *R 4:50-1 (f)* and the vacating of the Consent Judgment of January 7, 2016 to achieve a "fair and just result." *Housing Authority of*

Morristown v Little, et at 286 (quoting *Hodgson v Applegate*, 31 N.J. 29, 41 (1959))

Plaintiffs argue in their response papers (163a) that the doctrine of "laches" provides that a legal right or claim will not be enforced or allowed in court if there is a long delay…in asserting a right or claim.

As per the case *In Re Estate of Francesco* Racamato (2010 W.L. A-2202-09 T3), App Div. 2010 , it is clear that Paul Hauke' complaint is timely filed as there is no "statute of limitations" for requesting an accounting for the $17,000.00 paid to each Thomas Hauke, Gregory Hauke and Richard Hauke , for a total of $51,000.00. Paul Hauke received no money. There has never been an accounting done for this money.

With Paul Hauke's complaint seeking to have an accounting and with no statute of limitations , Ms. Laracca's challenge because of Laches fails.

In accordance with Rule 4:87-1 , which permits any interested party to file a complaint to settle the estate's account. That rule…does not contain a time limitation upon filing. See also 7 New Jersey Practice, Wills & Administration 1452 , at 558 (Alfred C. Clapp & Dorothy G Black) ((rev. 3d ed. 1984) (noting the absence of "any statute limit[ing] the

time within which the court may compel an account); and id. At 1125, at 390 (stating that an action by a beneficiary against an executor to recover property or enforce performance of the executor's duties is not barred by any statute of limitations). *In Re Estate of Francesco* Racamato (2010 W.L. A-2202-09 T3), App Div. 2010

The burden of proving laches is on the party asserting the defense. *Enfield v FWL , Inc.* 256 N.J. Super. 502, 520 (Ch. Div. 1991) aff'd 256 N.J. Super . 466 (App Div.) certify. denied , 130 N.J. 9 (1992).

The doctrine of laches operates as an "affirmative defense that precludes relief when there is an 'inexplainable and inexcusable delay' in exercising a right , which results in prejudice to another party.' *Fox v Millman,* 210 N.J. 401, 417 (2013) (quoting *Cnty. Of Morris v Fauver,* 153 N.J. 80, 105 (1998)

The core equitable concern in applying laches is whether a party has been harmed by the delay. [*Knorr v Smeal,* 178 N.J. 169, 180-181 (2003) (internal quotation marks and citations omitted) .] Ms. Laracca does not offer any evidence of harm or prejudice . The facts show that Paul Hauke has been harmed and prejudiced.

The doctrine of laches does not operate to bar Paul Hauke's complaint in this matter.

Paul Hauke has an "explainable and excusable delay in exercising his right."

He only became aware of the undisclosed and unaccounted payment of $17,000. each (total $51,000) (61a) Thomas Hauke, Gregory Hauke, and Richard Hauke in mid 2023.(1T 13: 2 – 4, 275 a) *Fox v Millman,* 210 N.J. 401

"Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in proper forum and the prejudiced party acted in good faith believing that the right had been abandoned. *Knorrr, supra,* 178 N.J. at 181, 836 A.2d 794. Here Paul Hauke did not have "sufficient opportunity to assert the right" and here defendants are not "the prejudiced party," Paul Hauke is. But if defendants were the "prejudiced party" in this matter it is clear that they have not and do not "act in good faith…"

Laches… remains an equitable doctrine , utilized to achieve fairness. *Fox v Millman,* 210 N.J. 401. In this matter , utilizing Laches does not "achieve fairness" to Paul Hauke.

LEGAL ARGUMENT

POINT ONE

IT WAS IMPROPER FOR THE HONORABLE JUDGE BAUMAN TO RULE IN FAVOR OF DEFENDANT'S R 4:6-2 (e) MOTION AND CONVERT ACTION INTO A SUMMARY ACTION AND DISMISS (254a)

As Judge Bauman wrote in his "statement of reasons" (254a) that a "summary treatment is appropriate in actions which do not seek unliquidated damages and where "it is likely that the matter may be completely disposed of in a summary manner." A summary action can be granted if "affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits , an render final judgment thereon.." Rule 4:67-1 – 4:67-6.

Honorable Judge Bauman also wrote (254a) "The court can dismiss a pleading if it fails to state a claim upon which relief can be granted Rule 4:6-2 (e).

In this matter, as Paul Hauke has written and shown , there are numerous "genuine issues as to any material fact" that forbid the Honorable Judge Bauman wrongly rendered "final judgment thereon." The court did not try the action on the pleadings and affidavits."

Unlike a summary judgment motion, a motion to dismiss for failure to state a claim pursuant to *R 4:6-2 (e)* is based on the pleadings themselves. See *Rider v State Dept. of Transportation,* 221 N.J. Super. 547 (App. Div. 1987) . The Court has the discretion to convert a *R 4:6-2 (e)* motion into a motion for summary judgment when facts beyond the pleadings are

relied upon and limited testimony is required to be taken. See, e.g. , *Wang v Allstate Ins. Co.*, 125 N.J. 2,9 (1991).

As noted by the Supreme Court of New Jersey in *Printing Mart v Sharp Electronics* , 116 N.J. 739, 746 (1989), on a motion brought pursuant to *R 4:6-2 (e)* the complaint must be searched in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken. Every reasonable inference is therefore accorded the Plaintiff and the motion granted only in rare instances and without prejudice.

Here , in this instant matter, Judge Bauman did not search the complaint "in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken." In this instant matter "further discovery" is an absolute need.

The papers filed by Ms. Laracca to dismiss the complaint of Paul Hauke as a motion to dismiss the complaint under New Jersey Court *Rule 4:6-2 (e)* , not a motion for summary judgment , because discovery has not been conducted. With a motion to dismiss as per *R 4:6-2 (e)* , the Court must assume for purposes of the motion, that everything that is alleged in the complaint is true, that every inference that can be drawn in favor of the non moving party must be drawn in favor of the non moving

party. If a motion to dismiss is granted under *R 4:6-2 (e)* it would be granted without prejudice to the Plaintiff's right to file an amended complaint to correct any deficiency that the Court identifies. .

Moreover, a complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by amendment to the complaint. A motion to amend a complaint is governed by New Jersey Court *Rule 4:9-1.* The law provides in *Kernan v One Washington Park,* 154 N.J. 437 that amendments to complaints or answers should be freely granted in the interest of justice.

Accordingly, Paul Hauke Verified Complaint is not subject to dismissal subject to *R 4:6-2 (e)*

POINT TWO

RES JUDICATA NOT APPLICABLE TO PAUL HAUKE'S VERIFIED COMPLAINT (253a, 1T 7: 8 – 13, 269a, 253a, 255a, 1T 14: 11 – 14, 276a)

The Honorable Judge Bauman has ruled incorrectly that Res Judicata applies to Paul Hauke's Complaint and has dismissed the Complaint accordingly.

Plaintiffs argue in their response papers that "res judicata provides that a matter that has been adjudicated by a competent court may not be pursued further by the same parties." *Valasquez v*

Franz, 123 N.J. 498, 505. (163a, paragraph 2) However, the **Facts** show that the $51,000.00 (61a) has never been adjudicated and not subject to "res judicata."

Paul Hauke argued this in his papers (6a – 7a) and at the hearing on Feb. 9, 2024 (1T 9:7 – 25, 1T 10: 1, 271 a & 272 a)

> Paul Hauke: My argument today and has always been that the $51,000.00 was never accounted for. Never accounted for.
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> Court: Because Mr. Laracca is saying—That's fine. But Mr. Laracca is saying , well, you should have raised that issue before the consent judgment was entered into. And you didn't.
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> Paul Hauke: Because.
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> Court: And you should have done it and you didn't.
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The Court further confirms Mr. Laracca's position as follows:

(T 7: 8 – 18, 269a)

> Court: …Mr. Laracca's position is, you know, that principles of res judicata should bar this application because if it wasn't actually litigated prior to the time the consent judgment was entered it should have been. Isn't that you argument Mr. Laracca?
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> Marco Laracca: It is your honor.

That position of defendants is an impossibility because they never supplied "accountings" and the $51,000.00 (61a) improperly paid to themselves was never divulged.

It was questioned by Estate accountants in letter to Mr. John Hoyle, Esq on July 11, 2016.(61a) . It was never accounted for.

I, Paul Hauke, only found about the unaccounted for $51,000.00 in mid 2023 (1T 13, 2 – 4, 275a).

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The accounting for the $17,000.00 paid improperly to each Thomas , Gergory and Richard Hauke (total $51,000) has not been done and as part of Paul Hauke's complaint he is requesting the accounting as to same be done and further discovery be allowed.

POINT THREE

LACHES NOT APPLICABLE TO PAUL HAUKE'S VERIFIED COMPLAINT (163a, 253a, 255a, 1T12: 16 – 25, 274a, 1T 13: 1, 275a, 1T 14: 11 – 14, 276a)

Plaintiffs argue in their response papers (163a) that the doctrine of "laches" provides that a legal right or claim will not be enforced or allowed in court if there is a long delay…in asserting a right or claim.

As per the case *In Re Estate of Francesco* Racamato (2010 W.L. A-2202-09 T3), App Div. 2010 , it is clear that Paul Hauke' complaint is timely filed as there is no "statute of limitations" for requesting an accounting for the $17,000.00 paid to each Thomas Hauke, Gregory Hauke and Richard Hauke , for a total of $51,000.00. Paul Hauke received no money. There has never been an accounting done for this money.

With Paul Hauke's complaint seeking to have an accounting and with no statute of limitations , Ms. Laracca's challenge because of Laches fails.

In accordance with Rule 4:87-1 , which permits any interested party to file a complaint to settle the estate's account. That rule…does not contain a time limitation upon filing. See also 7 New Jersey Practice, Wills &

Administration 1452 , at 558 (Alfred C. Clapp & Dorothy G Black) ((rev. 3d ed. 1984) (noting the absence of "any statute limit[ing] the time within which the court may compel an account); and id. At 1125, at 390 (stating that an action by a beneficiary against an executor to recover property or enforce performance of the executor's duties is not barred by any statute of limitations). *In Re Estate of Francesco* Racamato (2010 W.L. A-2202-09 T3), App Div. 2010

The burden of proving laches is on the party asserting the defense. *Enfield v FWL , Inc.* 256 N.J. Super. 502, 520 (Ch. Div. 1991) aff'd 256 N.J. Super . 466 (App Div.) certify. denied , 130 N.J. 9 (1992).

The doctrine of laches operates as an "affirmative defense that precludes relief when there is an 'inexplainable and inexcusable delay' in exercising a right , which results in prejudice to another party.' *Fox v Millman,* 210 N.J. 401, 417 (2013) (quoting *Cnty. Of Morris v Fauver,* 153 N.J. 80, 105 (1998)

The core equitable concern in applying laches is whether a party has been harmed by the delay. [*Knorr v Smeal,* 178 N.J. 169, 180-181 (2003) (internal quotation marks and citations omitted) .] Ms. Laracca does not offer any evidence of harm or prejudice . The facts show that Paul Hauke has been harmed and prejudiced.

The doctrine of laches does not operate to bar Paul Hauke's complaint in this

matter.

Paul Hauke has an "explainable and excusable delay in exercising his right." He only became aware of the undisclosed and unaccounted payment of $17,000. each (total $51,000) (61a) Thomas Hauke, Gregory Hauke, and Richard Hauke in mid 2023.(1T 13: 2 – 4, 275 a*)* *Fox v Millman,* 210 N.J. 401

"Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in proper forum and the prejudiced party acted in good faith believing that the right had been abandoned. *Knorrr, supra,* 178 N.J. at 181, 836 A.2d 794. Here Paul Hauke did not have "sufficient opportunity to assert the right" and here defendants are not "the prejudiced party," Paul Hauke is. But if defendants were the "prejudiced party" in this matter it is clear that they have not and do not "act in good faith…"

Laches… remains an equitable doctrine , utilized to achieve fairness. *Fox v Millman*, 210 N.J. 401. In this matter , utilizing Laches does not "achieve fairness" to Paul Hauke.

POINT FOUR

PAUL HAUKE'S REQUEST TO VACATE THE CONSENT JUDGMENT OF JANUARY 7, 2016 AS TO THE $48,750 DUPLICATE PAYMENT AS PER R 4:50-1 (f) SHOULD HAVE BEEN GRANTED. (252a,254a,255a, 1T 5: 10 – 14, 267a)

The accounting for the $17,000.00 paid improperly to each Thomas , Gergory and Richard Hauke (total $51,000) has not been done and as part of Paul Hauke's complaint he is requesting the accounting as to same be done and further discovery be allowed.

As a result it will be clear that the $48,500.00 deducted from Paul Hauke's Estate(s) distribution ($16,250.00 each to Thomas , Gregory and Richard Hauke – total $48,750.00) was a duplicate payment subject to review as per *R 4:50-1 (f)* and the vacating of the Consent Judgment of January 7, 2016 to achieve a "fair and just result." *Housing Authority of Morristown v Little, et at* 286 (quoting *Hodgson v Applegate,* 31 N.J. 29, 41 (1959))

POINT FIVE

THE HONORABLE JUDGE BAUMAN FAILED TO STATE THE FACTS AND MAKE CONCLUSIONS OF LAW AS REQUIRED PER RULE 1:7-4 (249A -255a, 1T 1: 1 – 15, 263a – 277a)

In the Honorable Judge Bauman's "statement of reasons" (255a) in the "discussion" paragraph he writes "for the sake of argument, that a fundament of a cause of action can be gleaned from Plaintiff's Verified Complaint , Plaintiff's requested relief to vacate Consent Judgement here is barred by *res judicata* and *laches.* Because:

1.) "Formal accountings were done…" **Fact**: no formal accounting

was done for the $17,000.00 each (total $51,000.) that Thomas Hauke, Gregory Hauke and Richard Hauke paid themselves under the table in cash on or about January , 2013. (61a) and;

2.) "Plaintiff filed exceptions..." **Fact** No exceptions to the $51,000.00 (61a) under the table payment to Thomas Hauke, Gregory Hauke and Richard Hauke because the monies were not in the formal accounting and ;

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3.) "Trial was held..." **Fact:** Trial was held on or about May10, 2018 (1T 6;7-8, 108a) with the Honorable Katie Gummer. Fact: being that no formal accounting was done for above referenced $51,000.00 (61a) as it was not in the exceptions and not part of the trial and;

4.) "A judgement was issued..." **Fact:** Honorable Katie Gummer issued Judgment on May 23, 2018 (81a) but it did not include above referenced $51,000.00 (61a) for reasons above and;

5.) "The judgement went up on appeal..." **Fact**: The appeal dealt with should Thomas Hauke and Gregory Hauke be personally responsible for surcharges to them in the amount of Thomas Hauke $160,819.86 and Gregory Hauke $157,533.47. (83a) The Appellate Court upheld the personal responsibility of the surcharges. The surcharges did not address the above $51,000.00 (61a) for the reasons above and;

6.) **Fact:** Appellate Court upheld Judgment. (see # 5 above) and;

7.) Defendants assert that Refunding bonds and Releases were signed by Plaintiff and Defendants , final estate taxes were done , and the estate accounts were closed . **Fact**: There has been no certifications and no testimony as to these assertions. Even if true, the Estate(s) can be opened as needed here to account for the $51,000.00 and:

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8.) The issues underlying Plaintiff's contention have been fully litigated. **Fact:** Considering the above they have not been "fully litigated" and;

9.) The consent judgment is eight years old and Plaintiff is not seeking to vacate on the grounds of any recent factual developments. **Fact**: Paul Hauke only became aware of the fact that the $51,000.00 (61a) was never accounted for

in mid 2023 when he was doing research for the pharmaceutical settlement . (1T 13: 2 – 4, 275a)

The above nine (9) issues listed as "statement of reasons" (255a) were not part of the Verified Complaint and OTSC hearing on Feb. 9, 2024. (1T 1 – 15, 263a – 277a) The Honorable Judge Bauman has failed to conduct a hearing on same, yet he rules to dismiss Plaintiff's papers .

CONCLUSION

As this court has recognized , "there can be no doubt of the power of the Appellate tribunals of this state to review the fact determinations of a trial Court in all cases heard without a jury and to make new or amended findings." *State v Johnson*, 2 N.J. 146, 158,199 A.2d 809 (1964) . Here, the trial court erroneously abused his discretion as argued above. The court's rulings must therefore be reversed and original jurisdiction exercised as per R 2:10-5 and award Paul Hauke $48,750.00 , the return of Life Insurance proceeds paid twice to defendants , and improperly deducted from Paul' s Estate distribution. And/or in the

alternative remand for the Estate to be re-opened, an administrator be appointed by the court , discovery be held for facts in dispute, and an accounting be done for the $51,000.00 Life Insurance proceeds paid twice to defendants, at a loss to Paul . Here Paul is the "prejudiced party" and the above resolve will "achieve fairness"

The defendants in this matter have not and do not "act in good faith."

Respectfully submitted.

Dated: July 1, 2024

BY: _____
Paul Hauke, pro se Appellant

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
DOCKET NO.: A-002137-23

IN THE MATTER OF THE ESTATE OF RUDOLPH HAUKE, DECEASED and IN THE MATTER OF THE ESTATE OF HELEN HAUKE, DECEASED	On Appeal From dismissal of Verified Complaint and Order to Show Cause before the Superior Court Of New Jersey, Chancery Division, Probate Part, Monmouth County Docket No.:MON-P-383-23 Appellate Docket: A-002137-23 Surrogate Number: 229433 Sat Below: Hon. David F. Bauman, P.J.Ch.

BRIEF ON BEHALF OF RESPONDENTS, THOMAS HAUKE, GREGORY HAUKE, AND RICHARD HAUKE

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FEBRUARY 9, 2024, ORDER ENTERED BY HON. DAVID F. BAUMAN, P.J.CH. 249A-255A

TRIAL COURT'S FINDINGS OF FACT AND CONCL. OF LAW

TRANSCRIPT OF DECISION DATED FEBRUARY 9, 2024, TD, 263A

INTERMEDIATE DECISIONS NONE

PRELIMINARY STATEMENT

The current matter, involving the estates and trusts of Rudolph B. Hauke and Helen P. Hauke, H/W and parents of all parties to this appeal (Docket A-002137-23), is an appeal taken by *pro se* Appellant, Paul Hauke ("Paul"), of the February 9, 2024 Order and Statement of Reasons of the Honorable David F. Bauman, P.J. Ch. granting Respondents', Thomas Hauke, Gregory Hauke, and Richard Hauke ("Respondents") Motion to Dismiss Paul's Verified Complaint and Order to Show Cause ("VC&OSC") filed on October 13, 2023 (Judge Bauman)(Ab 249a-255a).

Appellant's VC&OSC involved two issues, the first of which, he later withdrew. The **one** issue remaining on appeal is this: Should a 2016 Consent Judgment drafted by Appellant's attorney and signed by he and Paul, be vacated 9 years later without any basis in law or fact, the terms of which mirrored a Court Order, the subject of which has been fully litigated? The answer to this issue, as the Court below properly found, is no. Judge Bauman dismissed Paul's Complaint for failure to state a claim upon which relief may be granted, finding that this issue was conclusively informed by the doctrines of *res judicata*, laches, and prior Court Order. *See* Ab 249a-255a; Ab 263a. In addition to failing to show abuse of discretion, Paul's appeal has absolutely no basis in law or fact and these doctrines bar Paul from vacating a 9-year-old

Consent Judgment, the subject of which, as set forth below, has been raised before and has been thoroughly litigated. Now, 9 years later, Paul seeks to vacate this Consent Judgment in bad faith without any basis, the terms of which followed a Court Order Ordering Paul to return their mother's life insurance proceeds that he wrongfully converted in violation of prior Court Order. To clarify, the Court found that Paul wrongfully converted their mother's life insurance proceeds in violation of Court Order and then Ordered Paul to return those wrongfully converted life insurance proceeds to the Estate. Mirroring the terms of this Court Order, Paul signed a Consent Judgment (drafted by his attorney) on January 7, 2016 agreeing to return to the Estate the life insurance proceeds that he wrongfully converted. It is this January 7, 2016 Consent Judgment that Paul, 9 years later, now seeks to vacate.

In an attempt to cloud the sole issue, Appellant's brief/appendix is all smoke and mirrors containing unfounded accusations, lots of irrelevant facts, and completely irrelevant documents spanning the 10+ years of litigation between the brothers Hauke; in fact, the vast majority of the papers Paul included in his Appendix are completely irrelevant to the issue at bar here. What Paul's papers do fail to do, as highlighted by the Court's Statement of Reasons, is set forth any recent factual developments that would support vacating a 2016 *Consent* Judgment after an unreasonable 9-year unexplained delay, a CONSENT

Judgment drafted by Paul's own attorney, the terms of which Paul agreed to and a document to which both he and his attorney signed. Ab 249a-255a; 267a-268a, T5:22-6:2. Nor do Paul's papers fail to show how Judge Bauman's Order and Statement of Reasons in support thereof was an abuse of discretion.

Here, Paul woefully fails to meet his burden of proof that the trial court's decision dismissing his VC&OSC was made "without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" To the contrary, the trial court denied Paul's request to vacate a nearly NINE-year-old *Consent* Judgment as a result of the factual basis presented, *res judicata* and laches. As the Court below properly ruled, this matter has been fully and finally litigated and the estates distributed and closed several years ago. Ab 249a-255a; Ab 263a. Paul presents no basis for the unreasonable 9-year delay in seeking to vacate this *Consent* Judgment, which he and his attorney both signed, and he fails to show that the Court abused its discretion when it dismissed Paul's VC&OSC. Putting all that aside, the document Paul presents as his "smoking gun" nine years later, Ab 63a, has already been raised and determined by the estate accountant and estate administrator to be irrelevant to the joint estates.

PROCEDURAL HISTORY

Briefly, by way of background as to the only issue on appeal, parents Rudolph and Helen Hauke were survived by four sons: Thomas, Gregory, Richard, and Paul. Both parents named sons Thomas and Gregory, as Co-Executors of their respective Wills and Co-Trustees of their respective Trusts. There had been previous litigation concerning the joint Estates between Paul and the other three brothers Hauke for many, many years, even before their mother's death in 2012, over 12 years ago.

Before their mother's death, the Co-Executors were forced to file an action against Paul seeking restraints to prevent Paul from exercising undue influence over their mother as a result of Paul individually obtaining assets of the Estate and fraudulently changing the beneficiaries on their mother, Helen's, life insurance policies from the four Hauke sons to Paul as the irrevocable sole beneficiary. *See* Order dated June 12, 2012, Ab 197a-200a, wherein Judge Patricia DelBueno Cleary, J.S.C. Ordered Paul to return to the estate or be subject to arrest, the $65,000 in life insurance proceeds he received and cashed in violation of Court Order. Judge Cleary ruled that each brother (including Paul) was entitled to 25% of the $65,000, or $16,250.00 each. Id.; Ab 197a-200a. Each brother was paid $16,250.00 by Mr. Hoyle, representing their share of their mother's life insurance policy.

Paul was allowed to keep $16,250.00 (his 25% share to which he was entitled) and Ordered to return $48,750.00 that he wrongfully converted, to the estate. Ab 197a-200a. Paul's then counsel, Joel A. Davies, Esq. advised the Court that Paul had already spent all of the money. In lieu of promised jailing, the Court ordered the $48,750.00 to be paid back to the estate out of Paul's distributive share, which eventually happened when Mr. Hoyle distributed the estates. Id.; *see also* Consent Order dated January 7, 2016, Ab 14a, wherein Paul agreed to return the improperly converted insurance proceeds to the estate ($65,000 divided by 4 beneficiaries = $16,250 x 3 = $48,700 which Paul was Ordered to return to the estate). This Consent Order that Paul signed almost 9 years ago he now seeks to vacate and is the subject of his current Appeal. Id.; Ab 14a.

On October 13, 2023, Paul Hauke filed a Verified Complaint and Order to Show Cause[1] seeking two things: 1) to keep 100% of the settlement proceeds from a wrongful death suit Paul filed in secret[2] on behalf of the

[1] Paul Hauke improperly designated himself "Plaintiff" in his Verified Complaint and OSC as well as in his appellate brief. Rather, Paul Hauke is the personal representative who, unbeknownst to the other 3 beneficiaries and the Court-appointed Estate Administrator, C.T.A., John G. Hoyle, III, Esq., filed an action in secret on behalf of the parties' father, Rudolph Hauke's estate, which resulted in a settlement that Paul sought to keep 100% for himself; Paul ultimately dismissed that portion of his Complaint and this issue is not part of the subject Appeal.

[2] Neither the Court appointed Administrator, C.T.A., nor Thomas, Gregory, or Richard Hauke were aware of the secret filing until Mr. Hoyle received a communication from Adam Cook, Esq., a Texas lawyer advising of the wrongful death settlement. Mr. Cook advised that Paul claimed to be the sole beneficiary and that he became aware of the existence of the other three beneficiaries when he contacted the Monmouth County Surrogate's Office. Mr. Hoyle advised Respondents via email dated September 30, 2022 of the action filed by Paul to which Mr. Hoyle was previously similarly unaware.

four Hauke brothers' deceased father; and 2) to vacate the 9-year-old January 7, 2016 Consent Judgment. *See* Ab 1a; Ab 12a; Ab 14a. This matter is an Appeal of the February 9, 2024 Order and Statement of Reasons of the Honorable David F. Bauman, P.J. Ch. granting Respondents' Motion to Dismiss Paul Hauke's Verified Complaint and Order to Show Cause. *See* Ab 249a; 263a. Respondents filed a motion for summary disposition of the Appeal, which was denied on November 25, 2024. As a result, Respondents submit the within Respondents' brief in opposition to Paul's Appeal.

STATEMENT OF MATERIAL FACTS

Nearly nine (9) years later, Paul seeks to vacate this 2016 Consent Order in bad faith without **any** basis in law or fact, the terms of which mirrored a Court Order Ordering him to return the stolen life insurance proceeds in the amount of $48,750. Ab 197a-200a; Ab 14a. Even if Paul had a basis in law or fact to seek to vacate the Consent Judgment (which he does not), as the Court below found, the doctrine of *res judicata* bars relitigation of this issue. *See* Ab 249a; 271a, T9:1-4. In addition, Paul sat on his hands for nine years, and, as the Court below also found, the doctrine of *laches* prevents him from seeking any relief now. Id.; Ab 249a; Ab 271a, T9:2-17. Without explaining how or why it took him 9 years to do so, Paul claims that he only discovered Appendix document 63a, his purported "smoking gun" which he

claims he found in 2023 and shows that Respondents were paid twice. This is just plain false. Respondents vehemently deny any sort of "slush fund" double payment. *See* Affidavits of Thomas Hauke, Gregory Hauke, Richard Hauke, Anthony T. Colasanti, and Anna Antohin (Exhibits A, B, C, D, and E) which accompanied Respondents' motion brief, each directly refuting Paul's accusations as set forth in his appellate brief; Ab 61.

Paul's filing is, once again, frivolous, as have been his many, many other filings, and filed in bad faith, with the intent to leverage getting his three brothers to give him 100% of the wrongful death settlement proceeds, which they refused to do. *See* Ab 273a, T11:1-20.

Shamelessly, as he did years back, Paul again makes the outlandish baseless accusation of some sort of "slush fund payments" and, again, alleges, without a shred of real proof, that his brothers collected the life insurance proceeds sum twice. Paul further claims that he only discovered Appendix document 63a in 2023 and that Respondents have never disputed that they were paid twice. **Nothing could be further from the truth**. All three Respondents have adamantly denied receiving payment twice. Respondents' former attorney, Mr. Anthony T. Colasanti, certified that Paul and his attorney raised this very allegation years ago during the litigation. Anna Antohin, Thomas Hauke's business partner, denies knowledge of or

participation in any such "slush fund payment". As Paul raised this contention in his appellate brief, Respondents submitted Affidavits directly refuting his false contentions in support of their motion for summary disposition. *See* Affidavits of Thomas Hauke, Gregory Hauke, Richard Hauke, Anthony T. Colasanti, and Anna Antohin, Exhibits A, B, C, D, and E respectively, submitted in support of Respondents' motion for summary disposition, vehemently denying receipt of or direct or indirect participation in any such double payment.

Paul's alleged "smoking gun" piece of paper (Ab 63a) that he tries to hang his hat on now was raised years ago between then-attorney Anthony T. Colasanti, Esq., Paul's then-counsel, Joel Davies, the Estates accountant, Sherry Mackin, and John G. Hoyle, III, Esq., the Court appointed estate administrator; Ab 63a was raised by Paul's counsel and then by the accountant, investigated, and dismissed as irrelevant to the joint estates back then. *See* Affidavit of Anthony T. Colasanti, attached to Respondents' motion for summary disposition as Exhibits D; *see also* Ab 270a, T7:14-8:6. Paul includes in his Appendix, 61a-62a, paragraphs 7 and 8, a letter dated July 11, 2016 from the accounting firm for the estates to the Court Appointed Estate Administrator, John G. Hoyle, III, Esq., **specifically asking for clarification as to Ab 63a**, Paul's alleged "smoking gun" proof

of double payment. Paul's counsel raised this document (Ab 63a) as part of the litigation back in 2016. *See* Ab 61a-62a. Accountant, Sherry Mackin, inquired about this document to the Court-appointed estate administrator, John G. Hoyle, III, Esq. Paul Hauke admitted at oral argument below that the accountant back then "picked it up". *See* Ab 270a, T7:14-8:6 . This document was determined to be of no relevance to the joint estates. **There is absolutely nothing new here, no newly discovered evidence of anything whatsoever, nor any sufficient explanation for the 9-year unreasonable delay**. Without providing any detail as to *when*, *where, why,* or *how*, Paul says in his brief on page 9 that he "only became aware" of 63a (which, in addition, is completely irrelevant to the estates and proves nothing) in 2023. How did he "become aware"? How is this newly discovered evidence that Paul could not have discovered during the 2016 litigation? Paul never answered the Court's inquiry at oral argument into this. Ab 263a. Paul's Appeal is fraught with unnecessary detail and irrelevant documents, yet he is completely silent on how his so-called evidence is newly discovered and why he couldn't have discovered it throughout the 9-year period of time. In short, nothing can be further from the truth as may be gleaned by the 2016 letter to the joint estates administrator discussing this very document, a letter Paul included in his own Appendix, Ab 61a-62a.

For the sake of argument, let's just say Paul sufficiently proves how Ab 63a is newly discovered evidence that could not have been discovered in 2016 (which it clearly isn't), this document was raised back then and dismissed as irrelevant to the joint estates and *res judicata* prevents re-litigation now. In short, Paul's Appeal is frivolous and the court's decision below should be affirmed. Respondents maintain wholeheartedly that Paul filed it as leverage to get them to give him 100% of the wrongful death settlement. The Court below properly dismissed Paul's Complaint for failure to state a claim as prior Court Order, *res judicata*, and laches dictate the proper dismissal of Paul's Complaint and OSC.

LEGAL ARGUMENT

POINT ONE

PAUL HAUKE FAILS TO SHOW THAT THE TRIAL COURT ABUSED ITS DISCRETION, AND THUS, THE COURT'S ORDER SUPPORTED BY ITS STATEMENT OF REASONS SHOULD BE AFFIRMED FOR THIS REASON ALONE.

Trial judges are afforded wide discretion in deciding many of the issues that arise in civil and criminal cases. Appellate courts review those decisions for an abuse of discretion. "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021)(*quoting* State v. R.Y., 242 N.J. 48, 65 (2020)).

"[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." State v. R.Y., 242 N.J. 48, 65 (2020) (*quoting* Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (*quoting* Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

Has Paul shown that the trial court's decision dismissing his Complaint and Order to Show Cause which sought to vacate a 9-year-old *Consent* Judgment so "manifestly unjust" and so erroneous that no reasonable analysis could have produced it? Absolutely not. Judge Bauman's Order, supported by its Statement of Reasons for that Order, was not made without a rational explanation, did not inexplicably depart from established policies, nor did it rest on an impermissible basis. There are "good reasons" for the appellate court to defer to the trial court's ruling.

As Paul fails to show, and in fact does not even argue, that Judge Bauman's ruling was "manifestly unjust under the circumstances," Respondents argue that the trial court's February 9th Order granting

Respondents' Motion to Dismiss Paul Hauke's Verified Complaint and OSC dated October 13, 2023 should be upheld as to the sole issue on appeal - **Did the trial court abuse its discretion when it dismissed Paul Hauke's Complaint and OSC which sought to vacate a nearly 9-year-old 2013 *Consent* Judgment drafted by Appellant's attorney and signed by Appellant and his attorney, without any basis in law or fact, the terms of which mirrored a Court Order, the subject of which has been fully and finally litigated for over ten years?**.

In short, Respondents submit that for the reasons set forth herein, Paul fails to meet his burden of proof on Appeal, and for this reason alone, the Court's ruling below should be affirmed.

POINT TWO

AS THE COURT BELOW PROPERLY FOUND, THE DOCTRINE OF *RES JUDICATA* BARS RELITIGATION OF THE SOLE ISSUE ON APPEAL AS IT HAS BEEN FULLY AND FINALLY LITIGATED.

In addition to Ab 63a having been raised and determined by the accounting firm for the Estates and the court-appointed Estates administrator, John G. Hoyle, III, Esq. to have no factual or legal relevance to this matter, the doctrine of *res judicata* provides that a matter that has been adjudicated by a competent court may not be pursued further by the same parties. Velasquez v. Franz, 123 N.J. 498, 505 (1991)("The doctrine of

res judicata 'provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding."). The doctrine of *laches* provides that a legal right or claim will not be enforced or allowed in court if there is a long delay, i.e., nine years, in asserting a right or claim.

The issue of the Court-ordered return of Helen Hauke's life insurance proceeds, as well as document Ab 63a, has been fully and finally determined on the merits and cannot be relitigated by Paul almost 9 years after the fact and long after the estates were distributed and closed. As this issue has been thoroughly litigated, together with an almost 9-year unexplained unreasonable lapse before seeking to vacate a Judgment he consented to and signed, *res judicata* and *laches*, dictate that the Court's dismissal of the Complaint below be upheld. *See* Ab 249a-255a; Ab 263a.

Respondents would like to highlight - as the Court below did in its Statement of Reasons in support of its ruling - these joint estates have been litigated for over 10 years. Id.; Ab 249a; Ab 255a. Formal Accountings were done; Paul Hauke filed Exceptions to them on or about June 27, 2017 (Ab 66a); a trial on the Formal Accountings was held. Ab 255a. A Judgment Approving Formal Accountings of Estates and Trusts was entered on May

23, 2018. *See* Ab 81a. It went up on appeal. Ab 255a. The Appellate Division ruled. Ab 255a. The Estates were fully and finally litigated, were distributed almost three years ago, and are now closed. *See* Ab 39a-40a; Ab 255a. The bond has been discharged. Ab 255a. Refunding Bonds and Releases were signed by all Beneficiaries, including Paul Hauke. Ab 39a-40a; 255a. Final Estate Taxes have been done. The Estate bank accounts are closed. Ab 255a. As the Court below properly ruled, the doctrines of *res judicata* and laches bar relitigating this issue here some 9 years later, and thus, its Order should be affirmed. *See* Ab 255a; 263a.

POINT THREE

THE COURT'S RULING BELOW, BASED IN PART ON THE EQUITABLE DEFENSE OF *LACHES*, SHOULD BE AFFIRMED AS NINE YEARS IS AN UNREASONABLE DELAY.

Assuming arguendo that 63a was proof of something untoward (**which it is not, *see* Point IV**), and *assuming arguendo* that this issue had not been fully and finally litigated (**which it has, *see* Point II**), and *assuming arguendo* that Paul has a basis in law or fact to seek to vacate the nearly 9-year-old Consent Judgment (**which he does not, *see* Point IV**), and assuming Paul meets his burden of proof on Appeal (**which he does not, *see* Point I**), Paul sat on his hands for 9 years, and the doctrine of *laches (in addition to the doctrine of res judicata and no factual basis)* prevents him

from reopening a closed Estate and seeking any relief now, nearly 9 years later. Ab 274a; T12:16-13:1 *See* Fox v. Millman, 210 N.J. 401, 418 (2012). "The doctrine of laches applies when there is neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done." Id.; *see also* Zilberberg v. Bd. Of Trs., Tchrs.' Pension & Annuity Fund, 468 N.J. Super. 504, 513 (App. Div. 2001)("[L]aches is the failure to assert a right within a reasonable time resulting in prejudice to the opposing side…The key factors are length of delay, reasons for delay, and change of position by either party during the delay. Lavin v. Bd. of Education of Hackensack, 90 N.J. 145, 151 (1982) is analogous to the case at bar. In Lavin, the NJ Appellate Division affirmed the trial court, finding that the court did not abuse its discretion in denying plaintiff's motion based on the doctrine of laches where the case had been dismissed for nearly *six* years; the court found the delay to be "unexplained" and the prejudice to be "palpable". Similarly, Paul's delay in bringing this action *nine* years later is unreasonable, completely unexplained, and the prejudice to the Respondents is palpable as the Estates have been fully litigated, distributed, and closed. The Court below properly held that it was not going to vacate the 2016 Consent Judgment under R. 4:50-1f, finding that "[I]t is barred by res judicata and I also find would be barred by the

doctrine of laches." Ab 276a; T14:11-14. Paul's filing is, once again, frivolous and done in bad faith, with the intent to try and leverage his brothers to give him more of the wrongful death settlement proceeds than he was entitled to. It has no basis in law or fact. Respondents respectfully submit that the appellate court should affirm the court's ruling below.

POINT FOUR

IN ADDITION TO THE FACT THAT HE FAILS TO MEET HIS BURDEN OF PROOF ON APPEAL AND THAT *RES JUDICATA* AND *LACHES* BAR THE RELIEF SOUGHT VIA HIS COMPLAINT, PAUL'S ALREADY RAISED PURPORTED "SMOKING GUN" (Ab 63a) HAS BEEN INVESTIGATED AND DETERMINED TO BE FACTUALLY IRRELEVANT TO THE ESTATES.

Adding to the fact that Paul fails to meet his burden of proof as to the standard on appeal as set forth above, coupled with the fact that there is no *newly discovered* evidence here warranting consideration to vacate a 9-year-old Consent Judgment entered in 2016, coupled with the fact that *res judicata* bars relitigation of this issue, coupled with the fact that laches bars Paul's unreasonable 9-year delay, the document speaks for itself and, *even if* newly discovered, was already raised and determined to be irrelevant to the joint Estates by both counsel, the joint Estates' accountant and the court-appointed Estate representative. Ab 63a is proof of absolutely nothing and the purported basis for Paul's appeal falls flat.

Ab 63a, Appellant's alleged "smoking gun" - the check from Liberty

TaxPro Education Corp. to Tom Hauke and handwritten notes - has absolutely nothing to do with any double payment of life insurance proceeds. In fact, Ab 63a has absolutely nothing to do with the joint Estates at all. Affidavits A, B, C, D, and E accompanying Respondents' motion for summary disposition completely debunk Paul's theory. Liberty TaxPro Education Corp. (one of 5 businesses owned by Thomas Hauke) has nothing to do with the estates; Liberty TaxPro Education Corp. **never** billed the Estates for anything nor did Liberty TaxPro receive any reimbursements from the Estates for any bills or expenses. Motion for Summary Disposition Exhibit A. Piper Financial Solutions, Inc. ("Piper") was the sole operating company that performed work for the Estates and invoiced the Estates for work performed. *See* Ab 96a. Piper is the only company that rendered all accounting, bookkeeping, and administrative services; Piper is the only company that billed for those services and received payment for those services. Motion Exhibit A; Ab 96a. In sum, the check from Liberty TaxPro Education Corp. to Thomas Hauke (Ab 63a) with handwritten notes that Paul argues is evidence of some double payment has absolutely nothing to do with the Estates; Liberty TaxPro Education Corp. has absolutely nothing at all to do with the Estates of Rudolph and Helen Hauke. In addition to being completely irrelevant, this very allegation concerning this document

was raised by Paul Hauke's counsel, investigated by the accounting firm for the Estates, and the court-appointed Estates administrator, John G. Hoyle, III, Esq. and dismissed as irrelevant in 2016 during the litigation. Motion Exhibit D; Motion Exhibits A, B, C, and E. Paul Hauke filed no exception to the formal Accountings in this regard. Motion Exhibit D. It went nowhere then because it is evidence of absolutely nothing. And it is still evidence of absolutely nothing now. As may be gleaned, Paul's intimations that this document is *newly discovered* is just plain not true. Even if it was, which we conclusively show it was not, it is completely irrelevant to this issue on appeal and proves nothing.

In short, Paul Hauke's counsel made this very same unfounded allegation that Beneficiaries 1-3 were paid the same figure twice back in 2016. Motion Exhibit D; Motion Exhibits A, B, and C. No Exception was filed by Paul Hauke in 2017. The document was determined by Ms. Mackin and Mr. Hoyle to be irrelevant to the joint Estates. Accordingly, Respondents respectfully submit that the appellate court affirm the ruling below. This is yet *another* shameless, desperate attempt for money, and Paul Hauke is attempting to throw whatever he can at the wall to see if he can get some dollars to stick and should not be countenanced by this court either.

CONCLUSION

In sum, 1) Paul fails to meet his burden of proof that the trial court abused its discretion when it refused to vacate a 9-year-old CONSENT Judgment that Paul's own attorney drafted and Paul himself signed mirroring the terms of a prior Court Order; 2) The trial court properly ruled that the doctrine of *res judicata* bars relitigation of an issue already raised in litigation; 3) Paul sat on his hands for 9 years without any reasonable excuse proffered and thus the trial court properly ruled that the equitable defense of laches bars litigating this issue 9 years later; 4) Putting the above-cited three reasons for affirming aside, Ab 63a has been raised in the prior litigation and determined to be irrelevant to the joint estates. Even without 1-3, it is proof of absolutely nothing. In conclusion, for the reasons set forth herein, Respondents respectfully request that the Appellate Court affirm the trial court's ruling below.

Very truly yours,

BIO & LARACCA

s/ *Kristen Laracca*
KRISTEN LARACCA
Attorney(s) for Respondents

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
DOCKET NO. A-002137-23

IN THE MATTER OF THE ESTATE OF HELEN HAUKE Deceased	On Appeal From Verified Complaint and Order to Show Cause before The Superior Court of New Jersey, Chancery Division, Probate Part, Monmouth County
IN THE MATTER OF THE ESTATE OF RUDOLPH HAUKE Deceased	Docket No: MON-P-383-23 Surrogate Number: # 229433
	Appellate Docket: A-002137-23
	Sat below: Hon. David F Bauman, P.J. Ch.

REPLY BRIEF ON BEHALF OF APPELLANT PAUL R HAUKE IN REPLY AND OPOSITION TO RESPONDENTS' BRIEF

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ON THE BRIEF: Paul R Hauke, pro se
Revised January 8, 2025

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PRELIMINARY STATEMENT

Paul Hauke's appeal should be granted as this matter has not 'been fully and finally litigated." Paul Hauke has testified why there was a delay in filing this action. The consent order ,a subject of this litigation, was signed by Paul Hauke and his then Attorney Mr. Joel Davies , Esq. on January 7, 2016 (Exhibit 14a) without any knowledge that the Respondent's had previously secretly paid themselves $51,00.00 ($17,000.00 each) on or about January 25, 2013 and January 31, 2013 (Exhibit 63 a) from Estate funds for Life Insurance paid to Paul Hauke from his mother and then in the consent order had Paul Hauke agree to pay them $48,500.00 for re-imbursement twice for the very same Life Insurance policies of their mother. This $51,000.00 in "slush fund" money has never been accounted for and needs to be accounted for and the consent order clearly had a carve out for future accountings (Exhibit 15 a – 16 a). Paul Hauke only became aware of this in mid 2023. (1T 13: 2 – 4)

Paul Hauke's complaint was timely filed and not subject to a laches defense or a res judicata defense (see my original Appellate Brief filed on July 1, 2024 Pages 5 - 22) and the relief requested should have been granted by the lower court and now by the appellate court. .

Exhibits 61 a to 65 a , referred to by Respondents as a "smoking gun " is

truly that. It has not been "determined by the estate accountant and estate administrator to be irrelevant to the joint estates" as alleged by Respondents.

Respondent's have submitted numerous late and improper Cetifications that are not made on personal knowledge and do not set forth facts that are admissible in evidence. The certifications are at best inadmissible hearsay, once or more removed.

There is in the Respondents' papers of Nov. 5, 2024 a late and inadmissible certification from Anna Antohin where she says in the "smoking gun" (exhibit 63 a the $10,000.00 was a loan from her to Thomas Hauke. There is not one fact to support such a false and misleading statement. Additionally, Exhibit 63 a was submitted by Thomas Hauke ,removed co-executor , and clearly shows Estate "slush fund" money being distributed to Respondents' in the amount of $17,000.00 each (Total $51,000.00). Which includes the $10,000.00. Even if the $10,000.00 was a" loan" why pay it to Gregory and Richard? Thomas Hauke has never said the $10,000.00 was a loan from Ms. Antohin. The credibility is lacking.

The issues on Appeal clearly require further briefing or a full record.

Respondents' have failed to address Paul Hauke's appeal of July 1, 2024 points number one (Page 14), point four (page 22), and point five (page 23).

PROCEDURAL HISTORY

Respondents' have filed numerous motions and briefs in support of their "motion for summary disposition and in opposition to appeal." Their motion was "denied" by the Appellate Court on Nov. 25, 2024.

The Appellate Court found "The summary disposition procedure is reserved for appeals whose ultimate outcome is so clear as to not require further briefs or a full record for decisions." GE Cap. Mortg. Servs., Inc. v N.J. Title Ins. Co, 333 N.J. Super. 1, 5, (App Div. 2000); see also R: 2:8-3(b) (Such motion shall demonstrate that the issues on appeal do not require further briefs or full record."). This case does not meet the summary disposition criteria

For prior procedural history I will refer to my Appeal Brief and Appendix of July 1, 2024, pages 1 - 4.

STATEMENT OF MATERIAL FACTS

The issues on Appeal here , with solid basis in law and fact , are that this current matter (A-002137-23) is an Appeal of the Order and Statement of Reasons, (249a – 255a) of the Hon. David F Bauman denying vacating the Consent Judgement and Stipulation of Settlement , dated January 7, 2016 (201a) as per *R 4:50-1 (f)* and not allowing an accounting of Estate Funds not previously

accounted for and not allowing discovery for the non accounted for Estate funds and denying a complete and accurate final accounting of the Estates.

Paul Hauke in his filings does meet his burden of proof that the trial courts decision dismissing his complaint and OSC was made "without a rational explanation, inexplicitly departed from established policies, or rested on an impermissible basis." State v Chavies, 247 N.J. 245, 257 (2021) (quoting State v R.Y. , 242 N.J. 48, 65 (2020).

In this instant matter there are many material facts in dispute and at issue. There is further need for additional briefing or a full record as to the issues on appeal.

The courts exercise of discretionary authority in this matter was "manifestly unjust" under the circumstances, Newark Morning Ledger Co. v N.J. Sports & Exposition Auth. , 423 N.J. Super. 140, 174 (App. Div, 2011) (quoting Union Cnty. Improvement Auth v Artaki LLC., 393 N.J. Super. 141, 149 App. Div 2007) and Paul Hauke's Appeal should be granted.

Paul Hauke's appeal should be granted as this matter has not "been fully and finally litigated."

The issues on Appeal clearly require further briefing or a full record. This Appeal is not ripe for summary disposition as per R 2:8-1 and R 2:8-3 (b). The ultimate outcome is not so clear so as not to require full perfection and

hearing for decision.

Appellant has adequately addressed why Res Judicata is not applicable to Paul Hauke's Verified Complaint. See Point Two Paul Hauke Appeal. of July 1, 2024 (PAGE 17) , and see Appellant brief of 10-28-24 page 7.

Appellant has adequately addressed why Laches is not applicable to Paul Hauke's Verified Complaint. See Point Three to Paul Hauke Appeal. Of July 1, 2024 (PAGE 20) and see Appellant brief of 10-28-24 page 10. With Paul Hauke's complaint seeking to have an accounting and with no statute of limitations , equity demands Ms. Laracca's challenge because of Laches fails.

Respondents papers are dependent on improper certifications. All references by Respondents to all Certifications in their motion of October 4, 2024 and their briefs of October 21, 2024 and Nov. 5, 2024 and Dec. 9, 2024 should be ignored as they address issues being raised for the first time in their Appellate papers contrary to *N.J Rule 2:5-4 (a)* . See also Appellant brief of 10-28-24 page 7.

Certifications of Thomas Hauke (Exhibit A) Gregory Hauke (Exhibit B) Richard Hauke (Exhibit C) and Anthony Colasanti (Exhibit D) are not filed as per New Jersey Court Rules and must not be considered by the Appellate Court. Additionally, certification of Anna Antohin attached to Respondents' brief of November 5, 2024, need also to be not considered.

Ms.Laracca ,Esq. has not moved for permission to supplement her record on appeal(*R 2:5-5(b) , R. 2:10-5, N.J.R.E 202 (b)),* and has annexed to her brief material that was not in evidence below. In violation of court rules and is subject to being stricken and sanctions against Ms. Laracca, Esq. Townsend v Pierre, 221 N.J. 36, 5 n.2 (2015) ; N.J. Div. of Youth & Fam.Servs.

v M.M. 189 N.J. 261 , 278 (2007). See *Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2022).*

They should have been filed in the lower court as per *N.J. Ct. R. 1:6-6* where they would have subject to "cross examination or hear the matter wholly or partly on oral testimony or depositions."

However, even at that time they would have been , as they are now, deficient as per *R. 1:6-6* as they are not made on personal knowledge , setting forth facts which are admissible in evidence to which the affiant is competent to testify and which have annexed thereto certified copies of all papers or parts to thereof referred to [in the affidavit]. There are no annexed certified copies nor were there any authentications of documents as required by *N.J.R.E. 901*. Sellers v Schonfeld 270 N.J. Super. 424 (1993).

The certifications were at best inadmissible hearsay, once or more removed. One who has no knowledge of a fact except for what he has read or for what another has told him cannot provide evidence to support a favorable disposition.

The only certifications submitted and considered in the lower court were from Thomas Hauke (172 a), Gregory Hauke (166a) , and Richard Hauke (169a), noted as exhibits in Respondents' motion brief of December 4, 2023 (156 a). It must be noted that they only addressed the pharmaceutical claim . It must also be noted that Richard Hauke distanced himself from the Estate litigation by assigning his "interest in the Estate ... to Thomas and Gegory Hauke." See Richard Hauke lower court certification (170 a). That date was February 7, 2020. See signed

agreement (Exhibit 1AA) of brief of Appellant dated 10-28-24. This agreement solidifies my position by raising the question why would Richard Hauke assign his inheritance to Thomas and Gregory Hauke for less than half of what his final distribution would have been and why pay Gregory Hauke $10,000.00 ? Answer, because it allows for money already paid "under the table. Further necessitating the need for this Estate to be re-opened, an administrator C.T.A. be appointed and further discovery be conducted.

This was a million dollar plus Estate so why would Richard settle for a net $55,000.00?

There are not any and have not been any certifications from Mr. John Hoyle, Esq., Mr. Joel Davies, Esq., and Ms. Sherry Lynn Mackin C.P.A. even though Respondents have improperly repeatedly made reference to them to make their argument. All to be ignored as per the above.

There was a certification submitted by Mr. John Hoyle Esq. addressing only the pharmaceutical settlement, which was settled. The Honorable Judge Bauman acknowledged this and agreed it was a "moot point" (ex. 270 a, T1:8,9 – 19). There have been no certifications that the $51,000.00 had been accounted for and absolutely no certifications that "the issue was raised back then and dismissed as irrelevant to the joint estates…" as claimed by Ms. Laracca, Esq.

Contrary to claims made by Ms. Laracca Esq. , Respondents' "have never disputed that they were paid twice."

Necessitating the need for this Estate to be re-opened, an administrator C.T.A. be appointed and further discovery be conducted and the $51,000.00 be accounted for.

LEGAL ARBUMENT

POINT ONE

PAUL HAUKE HAS SHOWN THAT THE TRIAL COURT ABUSED ITS DISCRETION (249 a – 255 a, 201 a)

The issues on Appeal here , with solid basis in law and fact , are that this current matter (A-002137-23) is an Appeal of the Order and Statement of Reasons, (249a – 255a) of the Hon. David F Bauman denying vacating the Consent Judgement and Stipulation of Settlement , dated January 7, 2016 (201a) as per *R 4:50-1 (f)* and not allowing an accounting of Estate Funds not previously accounted for and not allowing discovery for the non accounted for Estate funds and denying a complete and accurate final accounting of the Estates.

In this instant matter there are many material facts in dispute and at issue. There is further need for additional briefing or a full record as to the issues on appeal.

Paul Hauke in his filings does meet his burden of proof that the trial courts decision dismissing his complaint and OSC was made "without a rational explanation, inexplicitly departed from established policies, or rested on an impermissible basis." The courts exercise of discretionary authority in this matter was "manifestly unjust" under the circumstances, Newark Morning Ledger Co. v N.J. Sports & Exposition Auth. , 423 N.J. Super. 140, 174 (App. Div, 2011) (quoting Union Cnty. Improvement Auth v Artaki LLC., 393 N.J.

Super. 141, 149 App. Div 2007) and Paul Hauke's Appeal should be granted.

The court has abused it's discretion as it's "decision is made without a rational explanation inexplicably departed from established policies, or rested on an impermissible basis." State v Chavies, 247 N.J. 245, 257 (2021) (quoting State v R.Y., 242 N.J. 48, 65 (2020).

Ms. Laracca's statement that the Consent Judgment and Stipulation of Settlement of January 7, 2016 "the subject of which has been fully and finally litigated" is absolutely false and misleading.

The Consent Judgment and Stipulation of Settlement , dated January 7, 2016 (201a) allows for an accounting of Estate Funds not previously accounted for and allowing discovery for the non accounted for Estate funds. A complete and accurate final accounting of the Estates was not done as all agreed.

POINT TWO

RES JUDICATA NOT APPLICABLE TO PAUL HAUKE'S VERITFIED COMPLAINT

This matter has been adequately addressed in my original Appellate Brief filed on July 1, 2023. (Pages 17 - 19)

POINT THREE

LACHES NOT APPLICABLE TO PAUL HAUKE'S VERIFIED COMPLAINT

This matter has been adequately addressed in my original Appellate Brief

filed on July 1, 2023. (Pages 20 - 22)

POINT FOUR

PAUL'S PURPORTED SMOKING GUN (ex 63a) HAS NOT BEEN INVESTIGATED AND DETERMINED TO BE FACTUALLY IRRELEVANT TO THE ESTATES

(29 a, 59 a, 61 a, 61 a – 65 a, 66 a, 81 a, 89 a, 114 a, 115 a, 116 a, 144 a – 155 a, 163 a, 249 a – 255 a, 279 a)

Thomas Hauke has never claimed that the "$10,000.00 from Anna" on Exhibit 63 a "was a personal loan ... to Thomas Hauke " from Anna Antohin . Any such claim and/or defense is bogus.

Respondents' Thomas Hauke, Gregory Hauke and Richard Hauke have never denied or presented a defense that :

a.) They did not together or individually receive in 2013 $51,000.00 cash "slush fund" payment or $17,000.00 each from estates; and
b.) The funds were a double collection for payment to them from from Paul Hauke to resolve issue of life Insurance proceeds paid to Paul from his mother; and
c.) Paul Hauke paid to them $48,500.00 , $16.500.00 each in 2016 as per consent order without them divulging already receiving the $51,000.00, $17,000.00 each in 2013; and

The final accounting for the "Slush fund" $51,000.00 was never completed and needs to be done. I only became aware of that in mid 2023.

Respondents' disbarred (2018) Attorney Mr. Anthony Colasanti, Mr. John Hoyle Esq. the Court appointed Estate Administrator, my attorney at the time Mr. Joel Davies, Esq. did not participate in an

examination of "slush fund" payments of $51,000.00 made to Respondents' Thomas Hauke, Gregory Hauke and Richard Hauke and as a result the $51,000.00 was never accounted for.

The $51,000.00 "slush fund" payment was absolutely Estate funds and the Estate funds were submitted by Thomas Hauke to be as part of the Estate formal accounting (exhibits 61a - 65 a). but it never made it into the final accounting and now needs to be accounted for.

Liberty Tax Pro Education Corp. at PNC Bank in Pennsylvania was definitely used to funnel "slush fund" money from the Estates to Respondents'. It was submitted by Thomas Hauke (exhibit 63a) as such. It is relevant to the joint estates.

Thomas Hauke and Gregory as co-trustees and co executors closed Estate and Trust Accounts of Joint Estates and moved all money to cash and/or bogus accounts set up by Thomas Hauke in violation of joint estate documents and wishes of Helen and Rydolph Hauke as well as existing laws.

Thomas Hauke was found by Hon. Judge Gummer, in her decision of May 23, 2018 to "not to be credible," during accounting hearing of May 10, 2018. The Hon. Judge Gummer found he was "often at times I thought evasive. He demonstrated anger at times. He blamed others frequently. He faulted Mr. Hoyle , he faulted the accountant, he effectively blamed them for not having documents". (1T 18; 5 – 17) (Exhibit 114a)

Bottom line Thomas Hauke could not account for "what money was put in

and what money was taken out..." (1T 20; 9 - 25, 21; 1-6) (Exhibit 115a)

The Hon. Judge Gummer noted "...in terms of, especially his testimony regarding some financial issues , there were times when it seemed to me that perhaps another person could establish what he was saying " (T1 21; 8 - 11) (Exhibit 115a)

"But , apparently he indicated that two other people did the work of the estate on behalf of Piper. He testified that those two other people were employed by other companies affiliated with Mr. Thomas Hauke, one of whom is still employed by an entity affiliated with Mr. Thomas Hauke". (T1 21; 21 – 25, 22; 1) (Exhibit 115 a & 116 a) Nevertheless that individual was never called as a witness to explain or support Mr. Thomas Hauke's testimony as to how Piper was used, how money was funneled through Piper.

All of that really rested on the credibility of Mr., Thomas Hauke, ... I found him not to be a credible witness." (1T 22; 2 - 8) (Exhibit 116 a)

That other person "still employed by an entity affiliated with Mr. Thomas Hauke" is Anna Antohin. (Exhibits 144 a - 155 a) The same Anna Antohin who submitted the improper certification dated Nov. 5, 2024 and not filed by N.J. Court Rules and provided in Respondents' Reply Brief In Support of Respondents' Motion For Summary Disposition on Nov. 5, 2024. Ms. Anthohin's certification Is contrary to Thomas Hauke's testimony and findings of Hon. Judge Gummer.

There are not any and have not been any certifications from Mr. John Hoyle,

Esq., Mr. Joel Davies, Esq., and Ms. Sherry Lynn Mackin C.P.A. even though Respondents have improperly repeatedly made reference to them to make their argument. All to be ignored as per the above.

There was a certification submitted by Mr. John Hoyle Esq. addressing only the pharmaceutical settlement, which was settled. The Honorable Judge Bauman acknowledged this and agreed it was a "moot point" (ex. 270 a, T1:8,9 – 19).

There have been no certifications that the $51,000.00 had been accounted for and absolutely no certifications that "the issue was raised back then and dismissed as irrelevant to the joint estates..." as claimed by Ms' Laracca, Esq.

Contrary to claims made by Ms. Laracca Esq. , Respondents' "have never disputed that they were paid twice." Necessitating the need for this Estate to be re-opened, an administrator C.T.A. be appointed and further discovery be conducted and the $51,000.00 be accounted for.

Thomas and Gregory Hauke after being removed as executors of the Estates and Trusts of Helen and Rudolph Hauke on July 21, 2014 (Exhibit 29a) for violating the rights of Paul Hauke, by not providing Estate "accountings", they continued to delay and not provide "accountings" of the Estates and Trust, as per letter from John Hoyle, Esq. to Honorable Judge Cleary on August 16, 2016 (Exhibit 59a).

The accounting firm of MEB&G confirmed same with letter to Mr. John Hoyle, dated July 11, 2016. (Exhibit 61a) particularly Paragraph numbers 7 and 8 and attachments.

These requests for information were not supplied to Mr. John Hoyle , or anyone else, by Thomas or Gregory Hauke.

They were never included in any "accountings" and as such they were not part of "exceptions" filed by Mr. Paul Hauke's Attorney , at the time, Mr. Joel Davis dated June 27, 2017 (Exhibit 66a) or the Honorable Judge Gummer's written Judgment approving formal accounting of Estates and Trusts, dated May 23, 2018 (Exhibit 81a)

As per Thomas Hauke's certification dated July 21, 2020 (Exhibit 89a) particularly paragraph seven (7) , that even after Thomas Hauke, Gregory Hauke and Richard Hauke were paid $17,000.00 each from money (total $51,000) secretly diverted from the Estate to slush accounts run by Thomas Hauke on or about July , 2013 (61a) for disputed life insurance proceeds paid to Paul Hauke , that on January 7, 2016 as per Consent Judgement and Stipulation of Settlement (202a – 203a) they again got paid for the same reimbursement and did not divulge . They collected twice .

RESPONDENTS' HAVE FAILED TO RESPOND TO APPELLANT'S BRIEF POINTS ONE , POINT FOUR, AND POINT FIVE:

POINT ONE – IT WAS IMPROPER FOR THE HONORABLE JUDGE BAUMAN TO RULE IN FAVOR OF DEFENDANT'S R 4:6-2 (e) MOTION AND CONVERT ACTION INTO A SUMMARY ACION AND DISMISS (254a) (Appeal page 14)

POINT FOUR - PAUL HAUKE'S REQUEST TO VACATE THE CONSENT JUDGMENT OF JANUARY 7, 2016 AS TO THE $48,750 DUPLICATE PAYMENT AS PER R 4:50-1 (f) SHOULD HAVE BEEN GRANTED. (252a,254a,255a,1T 5: 10 – 14,267a)(Appeal page 22)

POINT FIVE - THE HONORABLE JUDGE BAUMAN FAILED TO STATE THE FACTS AND MAKE CONCLUSIONS OF LAW AS REQUUIRED PER RULE 1:7-4 (249A -255a, 1T 1: 1 – 15, 263a – 277a)(Appeal page 23)

CONCLUSION

As this court has recognized , "there can be no doubt of the power of the Appellate tribunals of this state to review the fact determinations of a trial Court in all cases heard without a jury and to make new or amended indings." *State v Johnson*, 2 N.J. 146, 158,199 A.2d 809 (1964) . Here, the trial court erroneously abused his discretion as argued above.

The court's rulings must therefore be reversed and original jurisdiction exercised as per R 2:10-5 and award Paul Hauke $48,750.00 , the return of Life Insurance proceeds paid twice to defendants , and improperly deducted from Paul' s Estate distribution. And/or in the alternative remand for the Estate to be re-opened, an administrator be appointed by the court , discovery be held for facts in dispute, and an accounting be done for the $51,000.00 Life Insurance proceeds paid twice to defendants, at a loss to Paul . Here Paul is the "prejudiced party" and the above resolve will "achieve fairness"

The defendants in this matter have not and do not "act in good faith."

Respectfully submitted.

Dated: January 8, 2025

BY: Paul Hauke, pro se Appellant