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| 1150 PATERSON PLANK, LLC,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>RAJ PATEL A/K/A RAJESHUKUMAR M. PATEL, PARUL PATEL, AND ALEX PROPERTY MANAGEMENT, LLC,<br><br>Defendants/Respondents.<br><br>v.<br><br>RAJEEV DESAI, MUBARAK I. KATHIYA, ZEENAT K. CHOWDHURY, ALKESH S. PATEL, TAIYAB ALI ZAIDI, PRAKASH N. PATEL, SANJAY THUMMAR, AND JOHN DOES 1-10,<br><br>Third-Party Defendants. | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br>DOCKET NO: A-002246-24<br><br>Civil Action<br><br>On Appeal From<br><br>SUPERIOR COURT OF NEW JERSEY<br>PASSAIC COUNTY: LAW DIVISION<br>DOCKET NO: PAS-L-2015-21<br><br>Sat Below<br><br>HON. VICKI A. CITRINO, J.S.C. |

# BRIEF OF APPELLANT/PLAINTIFF, 1150 PATERSON PLANK, LLC

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# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Court Cases:**

# TABLE OF JUDGMENTS, ORDERS AND RULINGS

# TABLE OF APPENDIX

[1] Pa121 is illegible, but Appellant does not possess a clearer copy

*This is being provided pursuant to Rule 2:6-1(a)(2) as the material is pertinent to the issues raised before the trial court and therefore, is germane to the appeal.*

## PRELIMINARY STATEMENT

This case concerns a fraudulent scheme, whereby an unsuspecting party (i.e. Appellant) invested substantial monies for an interest in an entity (i.e. Respondent, Alex Property Management, LLC or "APM"), which entity was to develop realty and then equally divide the profits for its sale. The investor never received the return of its investment, profit from the eventual unauthorized sale of the property, or any other money. Appellant was at least the second investor to be duped by the **same** party, with regard to the **same** realty.

Specifically, Plaintiff/Appellant, 1150 Paterson Plank, LLC ("Appellant"), and Respondents, Parul Patel ("Parul") and APM agreed that Appellant would equally own APM with Parul. Pa358-364. In furtherance of the parties' agreement, Appellant invested $615,000. PPL was to receive 50% of the profits realized from the development and sale of the realty by APM. Rather than develop the properties, instead, the properties were eventually sold for $1,800,000, and ALL of the proceeds thereof, were retained by Defendant, Raj Patel a/k/a Rajeshkumar M. Patel ("Raj"), Parul, and APM[1]. Pa369-370.

It was subsequently learned that Defendants previously retained an additional $960,000 from another investor in connection with the alleged

[1] Raj and Respondents shall be referred to herein as "Defendants." Parul and APM shall be referenced together as "Respondents."

development and sale of the same properties. Pa362. Likewise, Defendants never paid the other investor or Appellant any monies. Pa1009-1102. Thus, Defendants received, at least, a total of $3,375,000 with regard to APM's development and sale of the same properties (i.e. $960,000 from prior investors; $615,000 from Appellant; and $1,800,000 from the ultimate purchaser). Defendants paid a total of $2,300,000 to purchase the properties (Pa1015-1016), resulting in profit of $1,075,000 (i.e. monies received of $3,375,000 less APM's costs to purchase the property of $2,300,000).

As explained in further detail below, central to this appeal is the parties' Settlement Agreement dated December 5, 2020, that predated this suit. Pa225-226. Under this agreement, Raj agreed to pay $540,000 to Appellant in accordance with a schedule, and Respondents were supposedly released from liability. Appellant's sole recourse in the event of a payment default was limited to Raj. Id.

Respondents aver that this settlement agreement absolutely and unconditionally releases them, of all liability, based on the purported release. Appellant asserts that the alleged release cannot relieve Respondents of liability, *inter alia*, since there was no consideration provided by Respondents, since the settlement monies required to be paid under the settlement agreement were substantially unpaid.

## PROCEDURAL HISTORY

The Complaint in this case was originally filed in June, 2021. Pa365. In response, Defendants filed respective motions to dismiss. By Order/Decision of the Honorable Vicki A. Citrino, J.S.C., entered on January 28, 2022 (Pa667-686), the Court granted Defendants' respective Motions to Dismiss Appellant's original Complaint filed on June 21, 2021, in part. Appellant filed an Amended Complaint on February 15, 2022, in accordance with the January 28, 2022 Order/Decision. Pa384-412. On March 28, 2022, Respondents filed a Counterclaim and Third-Party Complaint. Pa452-510. On March 28, 2022, Raj filed an Answer with Counterclaim. Pa413-451.

On July 19, 2024, Respondents filed a Motion for Summary Judgment (Pa15-16), which was granted by Order entered on September 11, 2024 ("September 2024 Order") (Pa1-7, 1T). PPL's Cross-Motion for Summary Judgment and to Bar Testimony (Pa350-353) was denied. Pa1-7. Appellant filed a Motion for Reconsideration of the September 2024 Order on September 27, 2024. Pa1231-1232. This Motion was denied by Order entered on December 6, 2024 ("December 2024 Order"). Pa8-14.

A second Order entered on December 6, 2024 dismissed Respondents' Counterclaims. Pa1477-1483. By Consent Order entered on February 19, 2025, a money judgment was entered as against Raj only in favor of Appellant in the

amount of $410,000. Pa1484-1485. By Stipulation dated February 3, 2025, Raj's Counterclaims were dismissed with prejudice. Pa1486-1487. Appellant appeals from both the September 2024 Order and the December 2024 Order (together "Orders")[2].

The following depositions were held: Alkesh Patel, June 21, 2023 (Pa55-64); Taiyab Ali Zaidi, February 27, 2023 (Pa65-74); Sanjay Thummar, March 8, 2023 (Pa78-86); Raj, May 25, 2023 (Pa733-815); Parul, June 8, 2023 (Pa816-833); Lawrence Chodor, December 15, 2023 (Pa837-891); and Alex Patel, March 14, 2023 (Pa892-975).

## STATEMENT OF FACTS

### THE PROPERTIES

By deed dated November 16, 2005, Varsang Realty, LLC ("Varsang") purchased the Secaucus, New Jersey properties located at 1150 Paterson Plank Road ("1150 Plank Rd") and 115 Cedar Lane ("115 Cedar") for the total amount of $1,350,000. Pa511-515. These properties were thereafter transferred by Varsang to APM for $10.00 by deed dated June 1, 2017. Pa516-520. 1155 Cedar Lane, Secaucus, New Jersey ("1155 Cedar") was purchased by Varsang by deed dated November 16, 2005 for $950,000. Pa521-524. This property was transferred by

[2] The transcript from the oral argument held on September 11, 2024 with regard to the Respondents' Motion for Summary Judgment and Appellant's Cross-Motion is referenced herein and labeled 1T1 through 1T17.

Varsang to APM for $1.00 by deed dated January 24, 2019. Pa367, 525-527. Parul is listed on the transfer documents as the sole member of Varsang[3]. Thus, the Patel Properties were purchased by Defendants for the total amount of $2,300,000.

## THE PARTIES' MEETINGS

In or about April, 2018, Taiyab Ali Zaidi ("Ali") and Alkesh S. Patel ("Alkesh"), members of PPL, initially met with Raj about the rental/development of real estate. Pa356, 367. At such time, Raj explained that he was a major real estate developer in Secaucus, New Jersey, and he and/or a related entity owned the Patel Properties. Pa356-357, 367-369, 387-388. Raj represented that all necessary government approvals had already been obtained for the construction of 27 residential units on the Patel Properties, and with more investors, an additional nine (9) units, for a total of 36 units, could be built, resulting in a greater profit. Pa367.

Raj explained that with his "connections" and "professionals" that he already retained (i.e. lawyers, plumbers, architects, engineers, etc.) he could obtain the necessary approvals for the construction of 36 units within a few months, with construction to be completed shortly thereafter. Pa367-368. Raj provided a detailed ledger with drawings, estimated costs, and other information, showing anticipated net profit of $3,800,000. Pa355, 368, 527-540.

[3] 1150 Plank Rd, 115 Cedar, and 1155 Cedar shall be referred to herein as "Patel Properties."

In or about October 2018, the same three (3) persons met once again, and agreed that PPL would invest a total of $1,250,000 for a 50% interest in APM. Id. Accordingly, PPL made payments of $215,000 (check dated October 25, 2018), $380,000 (check dated August 7, 2018) and $20,000 (check dated August 7, 2018), each made payable to Raj. Id. In total, PPL paid $615,000.00 ("Investment Checks"). Id., Pa357-358, 368, 390, 542, 544, 546.

## DEFENDANTS' FIRST ATTEMPT TO UNLAWFULLY SELL

It was subsequently learned that Raj listed the Patel Properties for sale without PPL's knowledge, consent, or approval within a few months. Pa358, 368-369, 390-391. After numerous attempts to meet with Raj (Raj was intentionally avoiding PPL), the parties finally met in or about December 2018, at which time, PPL objected to the sale of the Patel Properties, as it was against the parties' agreement and Raj's representations. Id. Raj agreed and stated that he would withdraw the Patel Properties from all listings. Pa359, 369. At his deposition, Raj admitted that he listed the Patel Properties for sale in December, 2018, absent PPL's knowledge or consent. Pa382, 746.

On February 18, 2019, the parties executed a Membership Interest Purchase Agreement ("MIPA"), confirming and clarifying the parties' agreement. Pa359, 369. The MIPA provided that PPL would pay the total amount of $1,250,000 to Parul, in exchange for a fifty percent (50%) interest in APM. Pa46-51, 369. $615,000 was to

be paid upon signing (which monies has already been paid by the Investment Checks), and the additional amount of $635,000, was to be paid when all necessary approvals for the Patel Properties would be issued. MIPA Art. 2.4. Pa360, 369. This was clarified in Article 8.1 of the MIPA, which provides that the balance of $635,000 would be paid upon approvals for the construction of 32 units, or when the construction of 24 or 27 units begins. MIPA Art. 8.1. Pa49-50. The MIPA was signed by Alkesh and Ali on behalf of PPL, as Co-Managing Members of PPL and individually, and Parul, individually and as APM's sole member. Pa51, 369, 360, 392.

The MIPA provided an estimated date of February 28, 2019 for the initial submission of development plans to the New Jersey Sports and Exposition Authority ("NJSEA"), which entity oversaw such projects in Secaucus, with final building approval for 32 units on December 31, 2019. MIPA, Art. 7. Pa49, 360, 392-393.

The MIPA also states that:

> In the event the Company either (a) determines it will be unable to obtain all final (non-appealable) governmental approvals for the 32 unit Project; or (b) the Company determines to abandon the Project; or (c) the company does not secure variance approvals for 32 units then in consideration for the aggregate of moneys advanced by Plank for its membership interest and for the moneys advanced to the Company for the Project, Alex Property Management LLC will begin the development process to construct 24 2-Bedroom or 27 1&2 Bedroom units in reasonable time (approx.. 180 days from the approval) or sell the approved project/properties with agreement with partners or sell the properties with agreement with partners. MIPA Art. 8.2.

Pa50, 359.

## SUCCESSFUL UNLAWFUL SALE

By letter dated December 19, 2019, NJSEA only sent to Defendants, but not provided by Defendants to PPL, Defendants' submissions were rejected, with a number of issues outlined. Pa213-218, 370. Not only did Defendants fail to disclose this letter to PPL, but they did not take any action in response thereto, to address the issues raised. Pa370.

At about the same time, Raj and Respondents signed a Purchase and Sale Agreement for the sale of the Patel Properties for $1.8 million. Pa370, 561-567. The contract is dated December 16, 2019 in the right-hand corner of every page, which is three (3) days prior to the NJSEA December 19, 2019 letter. Pa561-567.

The buyer was Secaucus Properties, LLC ("SPL"), with Ronald Weaver signed as managing member. Pa 370. Mr. Weaver and APM previously negotiated a Purchase and Sale Agreement in 2018 (just prior to the parties' initial meeting), for the sale of the Patel Properties, that apparently was never signed. Pa370, 587-604.

In or about August, 2020, Appellant learned that in April, 2020, Raj sold the Patel Properties for $1,800,000 to SPL, absent PPL's knowledge or consent. Pa185, 369-371, 395. Defendants did not take any steps to determine the value of the Patel Properties before selling. Id.

While Raj asserts that he was forced to sell the Patel Properties for financial reasons, for a price that he admits was well below its fair market value, he failed to show that he or APM was in any financial or other distress. Pa370-371.

> Q. In December of 2019, who did you talk to get an opinion as to the value?
>
> A: We didn't do any appraisal or anything...

Pursuant to expert opinion and certified appraisal of Robert D. Clifford, in January, 2020 the Properties had a fair market value of $2,475,000. Pa234-303.

## RAJ FAILS TO DISCLOSE THE SALE

On January 9, 2020, Alkesh asked Raj as to the status of the development. Raj responded that he received comments [from NJSEA] and "currently, Eng [Engineer] and Architech [Architect] working on it." Pa131, 147, 360, 371. Ali texted Raj on February 11, 2020, requesting a meeting. Pa163. By text dated February, 2020, Raj stated **"I am waiting for NJSEA meeting dates so we all can go."** *(Emphasis supplied).* Pa149, 360, 371, 608.

Over the summer of 2020, there were numerous attempts made by PPL to meet with Raj, to confront him with the unauthorized sale, after the sale was learned. Id. By text dated September 3, 2020, Ali asked for a meeting. Raj responded that he could not meet for at least one (1) to two (2) months. Pa144. On November 15, 2020, in response to a request for an update on the project from PPL, Raj texted "Everything is ok on our end. No worries." Pa169, 361, 371, 610. Unfortunately, Raj

came up with a variety of excuses not to meet, including traveling to an upcoming election (Pa170-177, 395-396), until the parties finally met. Pa395.

## SETTLEMENT AGREEMENT

The parties met and signed an agreement dated December 5, 2020 ("SA") (Pa224-235, 361-362, 372), which provided, *inter alia*, as follows:

A) It was acknowledged that APM and PPL executed the MIPA and in accordance therewith, PPL paid Raj, the amount of $615,000;

B) PPL provided Raj and APM and APM's "members" with a purported general release;

C) Raj was to pay PPL the amount of $540,000, in the following five (5) installments:

$150,000 on or before November 30, 2020;
$100,000 on or before December 31, 2020;
$100,000 on or before January 31, 2021;
$95,000 on or before February 28, 2021;
$95,000 on or before March 31, 2021; and

D) In the event of a default of any of the installments, PPL would be permitted to seek relief against Raj for the "missing payments and nobody else." SA ¶ 1 (Pa178, 225, 361-362).

The first installment payment of $150,000, due on or before November 30, 2020, was made by Raj on or about December 5, 2020. Pa362, 370, 396. No other payments were made, despite repeated demands. Id.

The SA was not signed by Parul or APM, nor was Parul even mentioned therein. Pa224-225, 362, 373, 397. Implicit in the SA and PPL's understanding that

the release provided by PPL in favor of Raj and APM (and to the extent that it could include Parul, although PPL did not intend to include Parul in the release), was in consideration of PPL being made whole (i.e. receiving all monies owed), otherwise PPL would never have signed the SA. Id.

The parties' intention was to resolve all issues in the SA. Id. In exchange for the payment of $540,000, PPL would release Parul, APM, and Raj from all liability in connection with the development. Id. Until such time as the full consideration of $540,000 was received, PPL never intended to release anyone. Id. It simply would not be fair otherwise and certainly, was not PPL's intention. Id. Indeed, it was represented to PPL that Parul was a member and owner of APM and therefore, it would not have made sense for PPL to release either Parul or APM without being paid the full amount of $540,000. Id.

## PRIOR INVESTOR

After this suit was filed, PPL learned that another unsuspecting investor, Lalji Bhimji Sanghani ("Sanghani") invested $800,000 (Pa363, 1112-1113), and $160,000 (Pa1114-1116), for a total of $960,000, to purchase an interest in 1150 Paterson and 115 Cedar, respectively. Thus, Raj and Respondents received a total of $3,375,000 (i.e. $1,800,000 from the April, 2020 sale, $615,000 from PPL, and $960,000 from Sanghani). Defendants paid $2,300,000 for the Properties, resulting in net profit of $1,375,000.

Parenthetically, Sanghani sued Defendants the Superior Court of New Jersey, Hudson County, bearing Docket Number HUD-L-4558-20. Pa1009-1094. That suit was dismissed due to the lapse of the statute of limitations. Pa1103-1105.

## DEFENDANTS' FRAUDULENT CONDUCT IS FURTHER CONFIRMED BY THEIR EVASIVE AND CONTRADICTORY DEPOSITION TESTIMONY AND DOCUMENTARY EVIDENCE

Parul refused to answer basic questions at her deposition, including those related to her employment as a Pharmacist at Quick Drugs.

Q: And how long have you been at Quick Drugs?

A: I don't recall at this time.

Q: Has it been at least five years?

A: I don't recall at this time.

Q: Has it been at least a year?

A: I don't recall at this time.

Q: Has it been at least a month?

A: I don't recall at this time…

Q: Ma'am, ma'am, today is June 8, 2023…so in May of 2023, were you working at Quick Drugs?

A: I don't recall at this time.

Q: You don't know where you were a month ago working?

A: I don't recall at this time.

Q: Were you working there a week ago?

A: I don't recall at this time.

Q: Were you working there yesterday?

A: I don't recall at this time. Pa819.

Incredibly, even though she identified 253 Grace Avenue, Secaucus, New Jersey as her home address, she had no idea who lived there. Pa825. Parul did not recall whether she ever owned or was involved in real estate, had ever been an owner of a company, or whether she ever worked with Raj in real estate. Id. Parul's testimony makes it clear that her inclusion as sole member of APM, and being a signator of all the real estate transfer documents, contracts, checks, and other papers was a ruse and sham. Contrary to Defendants' misrepresentations, it was Raj all along who was behind APM and the alleged planned development of the Patel Properties. These events, which cannot be refuted, further support PPL's claims, including fraud, conspiracy, breach of fiduciary duty, and piercing the corporate veil of APM in Appellant's Amended Complaint. The following excerpts from Parul's deposition confirm same (Pa375):

Q: Do you own any real estate in your name?

A: I don't recall at this time.

Q: Have you ever owned any real estate in your name?

A: I don't recall at this time.

Q: Have you ever been an owner of a company…?

A: I don't recall at this time.

Q: …do you work with him [Raj] in real estate development?

A: I don't recall at this time.

Q: …in the past, do you recall whether or not you worked with your husband on real estate development?

A: I don't recall at this time. Pa821.

Parul was entirely unfamiliar with this lawsuit (Pa375).

Q: Do you know anything about this lawsuit?

A: …I don't recall at this time. Id.

Q: But is today the first time you're looking at it [Complaint]?

A: Yes. Id.

She was also shown **her** Answer and Third-Party Complaint. Once again, she said that she had never seen either and was unfamiliar the document. Pa376.

Q: So ma'am, have you ever seen this document [Answer and Third-Party Complaint]?

A: No

Q: Is today, right now, the first time you are seeing it?

A: That's right.

Q: Do you know what it is?

A: No, I don't know. Pa822.

Further, Parul had never been to the Patel Properties, and was unaware:

- what properties were involved in this lawsuit;
- what was located on the Patel Properties;
- who comprised the PPL members;
- whether she had ever provided any services on behalf of APM;
- whether she was involved in the development of real estate on behalf of APM;
- whether PPL ever transferred monies to Raj;
- whether she or APM ever received monies from PPL;
- whether there was a written agreement between the parties providing PPL with an interest in APM;
- whether APM was owned by Raj;
- whether she ever provided any services on behalf of APM;
- whether PPL ever transferred monies to Raj; and
- whether she received any monies from PPL. Pa376, 821-823.

Parul was totally unfamiliar with the MIPA and SA. This further supports and highlights that the alleged release set forth in the Settlement Agreement should be disregarded, as it is part of this sham transaction. Pa377.

> **Q: Did there come a time when there was a written agreement whereby my clients were to obtain some ownership interest in this LLC, Alex Property Management LLC?**
>
> **A: I don't recall at this time.** *(Emphasis Supplied)* (Pa1955).

All checks for this project were written by Raj and/or Parul. Raj signed many of the legal documents and contracts, as "owner." Pa620-639.

When shown the MIPA, she candidly stated that she had never seen it before, and did not know what it was. Pa378, 823. Likewise, when she was shown the Sale Agreement of January, 2020 (in connection with the ultimate sale of the Patel Properties) she did not know what was being sold and said that she had never seen

the document, even though her signature appeared thereon. Pa378, 824. Even when she was shown the Investment Checks, she did not know what they were, or if monies were actually received by APM. Pa825.

> Q: Have you ever seen the document [MIPA] in front of you ma'am?
>
> A: No I don't know.
>
> Q: Do you know what it is?
>
> A: I don't know.
>
> Q: Was there any money paid by my client to anyone for their interest in Alex Property Management, LLC?
>
> A: I don't recall at this time... I don't know anything about anything. Because I rely on my husband with my lawyer, so go ask them. Pa378-379, 825.

Raj was equally evasive at his deposition. Pa379. He did not recall whether:

- there were any other lawsuits involving any of his companies;
- his construction license had ever been suspended or revoked or was still in effect or renewed. Pa735-736; and
- he had developed any property with Parul or if she was employed. Pa737.

When shown a list of LLC's, that he listed on his resumé, he did not recall if he was ever a member of any of the entities. Pa379, 738. He did not recall if Parul ever developed real estate, and in fact, did not even know how long they had been married. Pa739. All he was able to say is that he married before Alex was born, but was unaware of Alex's current age. Pa739.

Q: Do you know how old your son is…?

A: I don't recall at this time. Pa739.

Raj confirmed that Varsang sold 1150 Paterson Plank to APM, but does not know who owned Varsang at the time, or if there was any money exchanged, even though Parul was listed as Varsang's sole member, and transferred the Patel Properties, which were all in the name of Varsang, for no consideration, at all, to APM. Pa379, 741.

Raj could not confirm as to whether APM ever: had a bank account in its name; held corporate meetings; or had minutes of any meetings. Pa380, 747. He could not explain why the Investment Checks were all made payable to **himself** – not Parul - even though the MIPA stated that Parul was the sole member and owner of APM. Raj stated that he used some of the $615,000 invested by Appellant to pay off a mortgage on 115 Cedar, but did not know what he did with the balance of the money. Pa748.

Raj stated that he did not even recognize Parul's signature and did not know if she signed the MIPA. Pa380.

Q: Did she [Parul] sign that [MIPA]?

A: I don't recall at this time.

Q: What about…where it says "Parul Patel sole member?" Did she sign that?

A: I don't recall at this time.

Q: Do you recognize her signature?

A: I don't recall at this time. Pa380-381, 753.

Raj admitted that he was supposed to, but failed, to pay $540,000 to Appellant under the SA. Pa381, 777. He admits that demands were made upon him for payments, and in fact, he told APM that he would have two checks for $100,000 (representing the second installment), which he never paid. Id. Incredibly, he claims that he does not owe the money because a lawsuit was filed. Id.

Q: Do you believe you owe any money to the Plaintiff?

A: Right now no.

Q: Why

A: Because they filed a lawsuit. Pa381, 777.

Finally, he was forced to admit that he owes $390,000.

Q: Is it your position that you individually owe that $390,000 or don't owe it?

A: According to the settlement [SA], yes. Pa382-382, 779.

As noted above, Defendants' motions to dismiss the original complaint were denied by the January 28, 2022 Order (Pa666-686) , which Order specifically rejected Defendants' argument that the release in the SA barred recovery against Parul and APM. The Order specifically stated:

> It is clear to this Court that the potential exists that Plaintiff has lost the benefit of his bargain as it relates to the settlement agreement. While the agreement would be enforceable, the Plaintiff has lost the benefit of the essential element, namely the reimbursement of funds, as the defendant responsible for providing the ample consideration to support the release of the third-party beneficiary did not do so…At this juncture, Plaintiff's claims cannot be dismissed as a result of the Settlement Agreement because it can possibly be determined that same is void because Plaintiff did not receive the benefit of its bargain, which removes the consideration for the third-party benefit. As such, the contract should be void. There remains a possibility that both APM and Parul lose the shield afforded by the Settlement Agreement. Moreover, if the Settlement Agreement is void, the provision that "the only remedy available is from Raj" does not exist. *(Emphasis Supplied)*

In the case at hand, the Court erred and accordingly, the Orders must be reversed, *inter alia*, for the following reasons:

1) The purported release in the SA was part of Defendants' fraudulent scheme;

2) Raj's failure to pay $390,000 of the $540,000 (which is approximately 63%) set forth in the SA, is a material breach of the SA, thereby voiding it and any purported release contained therein;

3) Parul and APM provided no consideration for their purported release in the SA;

4) $540,000 was not actually paid, as the Court found;

5) The above issues should have been decided by the trier of fact - not summarily decided on papers;

6) The purported release in the SA lacks requisite specificity, does not specifically list Parul, and is not signed by Parul; and

7) Appellant's claims must be adjudicated at trial – not summarily dismissed.

# LEGAL ARGUMENTS

## POINT I

## DEFENDANTS MATERIALLY BREACHED THE SA AND THEREFORE THE PURPORTED RELEASE CONTAINED THEREIN IS UNENFORCEABLE

**(Raised Below: Pa4, 6, 11, 12, 14, 361-363, 371-372, 397-398, 410-411, 1489-1490, T7, T8)**

The material breach of a contract excuses performance by the other party. Chance v. McCann, 405 N.J. Super. 547, 565-66 (App. Div. 2009). A breach is material when it goes to "the essence of the contract." Neptune Research & Dev. Inc. v. Teknics Indus. Sys. Inc., 235 N.J. Super.522, 532 (App. Div., 1989). See Ingrassia Const. Co., Inc. v. Vernon Twp. Bd. of Educ., 345 N.J. Super. 130, 136-37 (App. Div. 2001) (if one fails to satisfy "essential obligations under the contract, he may be considered to have committed a material breach"). Upon a material breach, the contract is terminated. Ross Sys. V. Linden Dari-Delite, Inc., 35 N.J. 329, 341 (1961).

In Medivox Prod., Inc. v. Hoffman LaRoche, Inc., 107 N.J. Super. 47, 58-59 (Law Div. 1969), it was found:

> Where a contract calls for a series of acts over a long term, a material breach may arise upon a single occurrence or consistent recurrences which tend to "defeat the purpose of the contract." [citation omitted]. In applying the test of materiality to such contracts, a court should evaluate the ratio quantitatively which the breach bears to the contract as a whole.

In accord, Magnet Res. Inc. v. Summit MRI Inc., 318 N.J. Super. 275, 285-86 (App. Div. 1988), citing *Restatement (Second) of Contracts* § 237 (1981). The injured party must be put it in the position as if performance was rendered. Pickett v. Lloyd's, 131 N.J. 457 (1993).

The Restatement Second of Contracts provides five criteria for determining whether a breach is material:

(a) the extent to which the injured party will be deprived of the benefit reasonably expected;
(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances; and
(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

*Restatement (Second) of Contracts* § 241 (1981).

In Kitchen King Inc. v. Scisco, 2013 W.L. 5729816 (App. Div. 2013), the parties' settlement agreement required defendant to pay money and plaintiff to provide material and labor. Defendant made the payment, but plaintiff did not provide all of the required material and labor, as required. The Court found that plaintiff's failure was a material breach of the settlement agreement and therefore, defendants were entitled to damages. See also Stamato & Co. v. Borough of Lodi, 4 N.J. 14 (1950) and Nolan v. Lee Ho, 120 N.J. 465 (1990), both holding that a non-

breaching party is relieved of obligations under an agreement when there is a material breach of the agreement by the other party.

In Goldman South Brunswick Partners v. Stern, 265 N.J. Super. 489 (App. Div., 1993), the Appellate Division held that a provision in a mortgage for the release of units from the lien, was unenforceable after the purchaser's default on the payment of the mortgage. It was noted that if the release was allowed, the Plaintiff would have no recourse. The lower Court's statement (which was quoted by the Appellate Division as the correct recitation of the law), as follows:

> I have one side who has not breached and another side who has. I mean, that may be an oversimplification, but that is the true fact here, and who has not breached is going to be damaged, and he who has breached is going to walk away with a certain amount of the properties free and clear. That just doesn't make any sense to me. Id at 496.

The Court in Goldman noted with approval, the holding in Romano v. Washington Twp. Assocs., 184 N.J. Super. 320 (App. Div., 1982), in which a corporation purchased land, made a down-payment, and executed a mortgage for the balance of the monies owed. The corporation was unable to develop the property, and defaulted on the mortgage payments. The Appellate Division reversed the lower Court, which had exempted a portion of the premises from the foreclosure judgment, based upon release in the mortgage. Otherwise, the plaintiff therein, who was not at fault, would have no remedy.

In Rational Contracting, Inc. v. Discovery Properties 78, LLC, 2012 W.L. 611853 (App. Div., 2012) (Pa1009-1045), the Appellate Division held that when $50,000 of $110,000 was not paid, the parties' contract was materially breached.

In the case at hand, at the heart of the SA was PPL's receipt of the total amount of $540,000. Allowing Defendants to escape from their obligations of the MIPA, when $390,000 still remains due, is contrary to the intention and spirit of the SA and MIPA and constitutes material breach thereof.

Further, applying the factors listed in the Restatement of Contracts above, mandates a finding that the SA is unenforceable. PPL would be deprived of substantial benefits, PPL will never be made whole, Defendants will not suffer any forfeiture, and Defendants have not acted in good faith. As a result, the purported release is void, and PPL should be permitted to enforce its rights under the MIPA against all parties.

Lastly, PPL does not have a legal remedy precluding recission of the settlement agreement. PPL's only real hope of collecting any money is a money judgment against Parul and APM. Raj may be judgment-proof, which is likely why the SA only provides for recourse against him.

## POINT II

## THE SA IS UNENFORCEABLE SINCE THERE WAS NO CONSIDERATION FOR THE ALLEGED RELEASE

**(Raised Below: Pa4, 6, 11, 12, 373-374, 397-398, 411-412, T12)**

A settlement agreement is governed by principles of contract law. Brundage v. Estate of Carambio, 195 N.J. at 601 (citing Thompson v. City of Atl. City, 190 N.J. Super. 359, 379 (2017). "An agreement to settle a lawsuit is a contract, which like all contracts, may be freely entered into and which a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts"). Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div., 1974).

No contract, including a release or settlement agreement, is enforceable absent consideration—both sides must "get something" out of the exchange. Friedman v. Tappan Development Corp., 22 N.J. 523, 533, (1956) and 1 A. Corbin, *Contracts* § 110 (1963 ed.). Consideration is a necessary element for a valid contract. Atalese v. US Legal Services Group, 219 N.J. 430 (2014).

In the case at bar, Respondents seek to benefit by a release, when neither provided any consideration. As noted by Judge Citrino in her January 28, 2022 Order and Decision, without receiving the full $540,000 settlement money, Appellant lost the benefit of the bargain, which necessarily removes the consideration that Appellant was to receive.

## POINT III

## THE ALLEGED RELEASE CANNOT BE ENFORCED SINCE IT IS AMBIGUOUS

**(Raised Below: Pa4, 372-373, 410-412)**

The polestar of contract construction is to discover "the intention of the parties to the contract as indicated by the language used, taken as an entirety." Conway v. 287 Corp. Ctr. Assoc., 187 N.J. 259, 269 (2006) (quoting Atl. N. Airlines v. Schwimmer, 12 N.J. 293, 301 (1953). To ascertain the intention of the parties, and to determine if an ambiguity exists, a court may, if necessary, consider extrinsic evidence offered to support conflicting interpretations. Id. at 270.

Releases are narrowly construed as to avoid injustice and forfeiture of claims. Three Rivers Motors Co. v. Ford Motor Co., 522 F. 885, 895-96 (3d Cir. 1975).

Further, releases only apply with respect of claims by those parties actually or intended to be encompassed thereby. Sweeney v. Sweeney, 405 N.J. Super. 586 (App. Div. 2009). As noted in Univ. of Mass. Mem. Med. Ctr., Inc. v. Christodoulou, 180 N.J. 334 (2004), citing 15A *C.J.S. Compromise & Settlement*, § 43 (2002):

> A valid compromise agreement binds the parties to it and those in privity with them or claiming under them with notice, but it is not binding on persons not parties to the settlement or in privity with a party.

The SA lacks specificity, clarity, purpose, and meaning. In particular:

A) It purports to release "any matter, cause, or thing directly or indirectly arising out of the events, occurrences, or actions detailed, alleged, specified, set forth or inferred." This general phrase does not clearly state exactly what is being released, as it is indefinite and ambiguous;

B) It states that APM and its members are being released, but no where is Parul listed as a releasee or even referenced at all. As such, Parul cannot be released from individual wrongdoing as it is not stated. Listing "APM's Members" is insufficient, as the members of an LLC cannot be assumed, nor has it been shown that PPL was aware of their identities. Indeed, LLC members can and do often change. The failure to include APM as a signatory to the agreement is also fatal. Certainly, no evidence exists that APM or Parul were to be released;

C) Only Raj signed and thus, it is unenforceable against Parul, who is not expressly or an inferred third-party beneficiary. See Rieder Communities, Inc. v. N. Brunswick T.P., 227 N.J. Super. 214, 222 (App. Div. 1988) (A third party beneficiary can only enforce rights if it is established that such person was specifically included to benefit by the contracting parties). An incidental beneficiary of a contract cannot enforce rights under a contract. Broadway Maintenance Corp. v. Rutgers State Univ., 90 N.J. 253 (1982). In fact, Article 5 of the SA states: "Nothing contained in this Agreement express or implied, is intended to or shall be construed to confer upon any third party, any rights or remedies under or by virtue of this Agreement, other than as set forth herein;"

D) The language in Article 2 supposedly limiting PPL's remedies "against Patel [Raj] for the missing payments" is equally ambiguous. First, it references payments under paragraph 4, which section does not reference or require any payment. Second, it references a "default in payment" – not a breach of the SA. At minimum, the Court must review evidence and hear the testimony to even consider enforcing this agreement. It is plausible that this provision means that a default in the payment of an installment provides PPL with the right to proceed as against Raj – but that Raj's failure to cure, still allows PPL to seek relief against all parties; and

E) Neither Parul nor Alex signed the SA and therefore, any release in their favor lacks consideration, as they are not required to do anything.

In Deblon v. Beaton, 103 N.J. Super. 345 (Law Div. 1968), plaintiff signed a release in favor of Allstate Insurance Company ("Allstate") as to all claims without prejudice as to Plaintiff's rights against excess insurer, Jersey Insurance Company ("Jersey"). Jersey argued that as the wording of the release specifically released the insureds, there could be no reservation of rights against it and releasing the insured and Allstate waived Plaintiff's rights as against Jersey. Id.

The Court noted that at first glance, the release appeared to release all parties. A reading of the entire instrument, however, clearly revealed an intention to release the insureds only to the extent of their personal assets and the Allstate coverage, while retaining claims against Jersey. Id. at 349. Accordingly, the Court held that the claims against Jersey could be maintained by reading the document as a whole, and in fact, noted that the parties' intention was "crystal clear with a question only raised because of the clumsiness of the language employed in the instrument." Id.

In the case at hand, the SA's purported release contains many ambiguities, indefinite terms, questions, genuine issues, inconsistencies, and confusion as to the identity of the parties, that necessarily make it impossible to enforce. The MIPA was only signed by Parul, individually and on behalf of APM, while the SA was only signed by Raj, a non-member of APM. Most important, Parul and APM did not

provide any consideration in the SA, and thus, cannot benefit by any release. Thus, the release is unenforceable.

## POINT IV

## THE ISSUE OF WHETHER THE SA IS ENFORCEABLE IS FOR THE TRIER OF FACT

**(Raised Below: Pa11, 1492, 1500-1501, 1504)**

The decision of whether a material breach existed is one for the trier of fact, not on a motion. Lo Re v. Tel–Air Communications, Inc., 200 N.J.Super. 59, 72–73 (App.Div.1985); De Ponte v. Mutual Contracting Co., 18 N.J.Super. 142, 146 (App.Div.1952); and E.I Dupont De Nemours Powder Co. v. United Zinc & Chemical Co., 85 N.J.L. 416, 418 (Sup. Ct., 1914).

See Thomas Co., Inc. v. Tamburro Bros. Const. Co., Inc., 2010 W.L. 3720390 (App. Div., 2010) (in deciding whether a material breach of a settlement agreement existed, "the judge should have held an evidentiary hearing rather than deciding the factual issues on the basis of conflicting certifications" citing Rule 4:46-3(b)). In accord, First General Construction Corp. v. Westhampton Courts Condo Association, 2016 W.L. 1368906 (App. Div., 2016).

In the case at bar, PPL's claims were improperly summarily denied, absent a full hearing.

## POINT V

## THE SA SHOULD HAVE BEEN RESCINDED SINCE IT WAS OBTAINED BY FRAUD

**(Raised Below: Pa6, 7, 9, 372-373, 395-398, T5, T6, T9, T10, T11)** When a settlement is obtained by fraud, the injured party may seek rescission," based upon either legal or equitable fraud. Nolan, at 472. In accord, Jewish Center of Sussex Cty. v. Whale, 86 N.J. 619, 624 (1981). "[L]egal fraud consists of a material representation of a presently existing or past fact, made with knowledge of its falsity and with the intention that the other party rely thereon, resulting in reliance by that party to his detriment." Jewish Center at 624. Equitable fraud consists of "(1) a material misrepresentation of a presently existing or past fact; (2) the maker's intent that the other party rely on it; and (3) detrimental reliance by the other party." Liebling v. Garden State Indem., 337 N.J.Super. 447, 453 (App. Div.), *certif. denied,* 169 N.J. 606 (2001) (citing Jewish Center at 624).

Unlike legal fraud, "a party seeking rescission based on equitable fraud need not prove 'knowledge of the falsity and an intention to obtain an undue advantage therefrom.' Id. (quoting Jewish Center at 624-25). The party claiming equitable fraud, however, must prove the required elements by clear and convincing evidence. Stochastic Decisions, Inc. v. DiDomenico, 236 N.J.Super. 388, 395 (App. Div.,1989), *certif. denied,* 121 N.J. 607 (1990).

In the case at bar, the SA was executed as part of Defendants' fraud. Thus, it should be rescinded.

## POINT VI

## THE COURT ERRED IN FINDING THAT $540,000 WAS ACTUALLY PAID

**(Raised Below: Pa6, 1502-1503)**

On the last page of the September 2024 Order, it was noted by the Court that the exchange of $540,000 from Raj to PPL served as sufficient consideration to deem the covenant not to sue and the SA enforceable as against all parties involved. Pa6. It is undisputed that this payment was never made and therefore, the Decision and Order must be reversed on this error alone.

## POINT VII

## DEFENDANTS FAILED TO SHOW ENTITLEMENT TO SUMMARY JUDGMENT

**(Raised Below: Pa5, 6, 365-382)**

The standard for Summary Judgment is set forth in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541-42 (1995), is as follows:

> whether the competent evidential material presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

The court must view the facts in favor of the party opposing the motion and all doubts are to be resolved against the movant. Ruvolo v. American Casualty Co., 39 N.J. 490, 491 (1963). The movant bears the burden "to exclude any reasonable doubt as to the existence of any genuine issue of material fact" with respect to the claims being asserted. United Advertising Corp. v. Borough of Metuchen, 35 N.J. 193, 196, (1961).

Rule 4:46-2 requires the denial of a motion for summary judgment motion when there is a genuine issue as to any material fact. Brill at 529. However, when the party opposing the motion merely presents "facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious," then summary judgment should be granted. Judson v. Peoples Bank and

Trust Co., 17 N.J. 67, 75(1954). When "evidence is so one-sided that one party must prevail as a matter of law ... the trial court should not hesitate to grant summary judgment." Brill, 142 N.J. at 540.

In this case, there were countless issues of material facts that should have absolutely precluded granting summary judgment, including:

A) Enforceability of the SA and purported release;

B) Defendants' fraudulent conduct and unclean hands; and

C) Defendants' unjust enrichment.

## POINT VIII

## THE REQUISITE ELEMENTS FOR FRAUD WERE PROPERLY PLED

**(Raised Below: Pa7, 11, 367, 372-390, 396-398)**

Common-law fraud is shown by the following: 1) material misrepresentation of a presently existing or past fact; 2) knowledge or belief of its falsity; 3) an intention that another person rely upon it; 4) reasonable reliance thereon by the other person; and 5) resulting damages. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 172-3 (2005).

In the case at bar, PPL has specifically and adequately explained the details of the fraud with the necessary specificity. PPL agreed to invest in APM, based upon Defendants' representations that they allegedly had all approvals to build 27 units, they had all professionals (i.e. attorneys, plumbers, architects, engineers, etc.) in place, approvals, necessary funding, sufficient knowledge and experience in construction and development, and construction was ready to begin. Specific statements are identified, as well as the particular dates, places and statements. Defendants' statements and representations were false.

## POINT IX

## PPL HAS DEMONSTRATED SUFFICIENT FACTS TO PIERCE APM'S CORPORATE VEIL

**(Raised Below: Pa7, 397, 407-408)**

Piercing of the corporate veil is intended to prevent a corporation from being used to "defeat the ends of justice, to perpetuate fraud, to accomplish a crime, or otherwise to evade the law," State DEP v. Ventron Corp., 94 N.J. 473, 500 (1983). Once corporate veil has been pierced, Courts can impose corporate liability upon the individual. Id. It is an equitable means to remedy "the fundamental unfairness that will result from a failure to disregard the corporate form." Trs. of the Nat'l Elevator Indus. Pension Health Benefit Educ. Funds v. Lutyk, 332 F.3d 188, 193 (3d Cir. 2003).

The issue of piercing a corporate veil is typically submitted to the fact-finder. Verni v. Harry M. Stevens, Inc., 387 N.J. Super. 160 (App. Div. 2006). Moreover, the Appellate Division explained the liability of corporate officers as follows:

> A director or officer of a corporation does not incur personal liability for its torts merely by reason of his or her official character, but a director or officer who commits a tort or directs the tortuous act to be done, or participates or cooperates therein is liable to the third persons injured thereby, even though liability may also attach to the corporation for the tort. Charles Bloom and Co. v. Echo Jewelers, 279 N.J. Super. 372, 381 (App. Div. 1951).

In the case at hand, PPL has adequately alleged a legal basis to pierce APM's corporate veil. Defendant used APM to perpetrate fraud upon PPL and others. All of the unrefuted evidence clearly shows that APM had no corporate existence. Not only were there no meetings or minutes of any meetings (Pa747), but it did not maintain a bank account (Pa747), and in fact, did not receive any money in this case. Pa745-749. The $615,000 transferred to APM was all received by Raj and in fact, the monies that were realized from the sale in April, 2020 all went to Raj's individual bank account. Pa764. All of the checks for expenses were written on personal accounts, not APM's bank account. Parul was listed as a Managing Member, even though she did not even realize that she was, and performed absolutely no functions for this entity.

Moreover, the fraud perpetrated upon PPL involved other parties concerning the same land at issue herein, such as Sanghani.

## POINT X

## PPL HAS PROVEN BREACH OF CONTRACT

**(Raised Below: Pa4, 394-395, 367-369, T13)**

The Complaint adequately alleges the requisite for breach of contract claim against Defendants. Defendants were to develop the Patel Properties and sell them for a profit. Instead, Defendants sold same, absent PPL's knowledge or consent, and retained all profits.

It is sufficient for PPL to allege: A) the existence of a contract (which even Defendants admit exists); B) PPL's compliance with the contract (PPL paid the monies required to be paid under the contract and otherwise fulfilled all of its obligations thereunder) and Defendants' breach of the contract. In any event, PPL paid $615,000 and received nothing in return. As such, PPL averred a cognizable claim for breach of contract.

PPL still has privity of contract with Parul and APM as PPL's rights and Defendants' obligations under the MIPA still exist, as detailed above, and not deemed replaced or vacated by the SA.

## POINT XI

## PPL HAS PROVEN UNJUST ENRICHMENT

**(Raised Below: Pa7, 373, 392-393, 399-400, 1495)**

PPL is entitled to allege causes of action in the alternative as explained above. Therefore, if a contract claim does not exist, then unjust claim is set forth and exists and can be pursued by PPL. To prove unjust enrichment, one must show that the other party received a benefit and that the retention of that benefit would be unjust. VRG Corp. v. JKN Realty Corp., 135 N.J. 539, 554 (1994).

In the case at hand, PPL paid substantial monies to Defendants. Rather than receive what they bargained for in the transaction, PPL instead received almost no monies, which of course in turn, means that PPL did not receive the full value of the bargain. The Complaint specifically avers that benefits were conferred upon all Defendants by PPL. The defective SA does not diminish such claim.

## POINT XII

## PPL HAS PROVEN BREACH OF FIDUCIARY DUTY

**(Raised Below: Pa394-395, 408-409, 1496)**

A majority shareholder owes minority shareholders a fiduciary duty to act fairly. Casey v. Brennan, 344 N.J. Super. 83, 107-08 (App. Div. 2001) and Dermody v. Sticco, 191 N.J. Super. 192, 196 (Ch. Div. 1983). See Berkowitz v. Power/Mate Corp. 135 N.J. Super. 36, 45 (Ch. Div. 1975) (co-equal shareholders in a closely held corporation owe each other a fiduciary duty similar to that of a partnership). It is also provided in N.J.S.A. § 42:2G-39(a) that a member owes the duty of loyalty and care other members which include:

> (1) to account the company and to hold as trustee for it any property, profit, or benefit derived by the member:
>
> (a) in the conduct or winding up of the company's activities;
>
> (b) from a use by the member of the company's property; or
>
> (c) from the appropriation of a company opportunity.

These claims were properly plead and proven herein. As co-owners and co-members of APM, Defendants and particularly, Parul had a confidential relationship with PPL. Defendants' misleading and fraudulent conduct necessary breached that duty.

## POINT XIII

## PPL HAS PROVEN BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING CONCERNING THE MIPA AND SETTLEMENT AGREEMENT

**(Raised Below: Pa401-402, 1497)**

As detailed above, Defendants did not act in good faith with regard to the MIPA or SA and the claims averred are cognizable. Said duty is implied in every contract. Sons of Thunder, Inc. v. Borden, Inc., 148 NJ 396, 420 (1997). Defendants' breach of the covenant of good faith and fair dealing should have been adjudicated – not summarily dismissed.

## POINT XIV

## CONSPIRACY HAS BEEN PROVEN

**(Raised Below: Pa7, 11, 362-363, 374-383, 390-391, 396-397, 401, 1498, T9, T10)**

For a civil conspiracy to exist, there must be a combination of two (2) or more persons acting in concert to commit an unlawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against the other party. See Morgan v. Union County Board of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993), Cert. denied 135 N.J. 468 (1994).

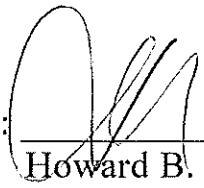
Contrary to the Defendants' claims, the facts underlying the civil conspiracy have been properly set forth. In particular, the Defendants have been soliciting and receiving substantial investments from Plaintiff and others, under the false promise that Defendants would develop and sell the Patel Properties. This conspiracy was intended to and actually did lead Plaintiff to purchase the properties and to suffer damages. PPL has meritorious claims against all parties and in turn, civil conspiracy has been properly plead.

## CONCLUSION

For the reasons set forth above, the Orders must be reversed.

Leopold Law, L.L.C.
*Attorneys for Plaintiff/Appellant*

Dated: July 14, 2025

By: 
Howard B. Leopold, Esq.

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| 1150 PATERSON PLANK, LLC<br><br>Plaintiff,<br><br>-vs-<br><br>RAJ PATEL a/k/a RAJESHKUMAR M. PATEL, PARUL PATEL, and ALEX PROPERTY MANAGEMENT LLC,<br><br>Defendants,<br><br>-vs-<br><br>RAJEEV DESAI, MUBARAK I. KATHIYA, ZEENAT K. CHOWDHURY, ALKESH S. PATEL, TAIYAB ALI ZAIDI, PRAKASH N. PATEL, SANJAY THUMMAR and JOHN DOES 1-10,<br><br>Third Party Defendants. | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br>DOCKET NO.: A-002246-24<br><br>ON APPEAL FROM:<br><br>SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: PASSAIC COUNTY<br>DOCKET NO. PAS-L-2015-21<br><br>SAT BELOW: HON. VICKI A. CITRINO, J.S.C. |

# BRIEF OF DEFENDANTS/RESPONDENTS PARUL PATEL AND ALEX PROPERTY MANAGEMENT LLC

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# TABLE OF CONTENTS

## Table of Authorities

**Cases** **Page(s)**

**Other**

## PRELIMINARY STATEMENT

In this appeal, Plaintiff, 1150 Paterson Plank Road, LLC ("Plaintiff"), seeks to challenge the summary judgment and reconsideration Orders dismissing its claims against Defendants, Alex Property Management LLC ("APM") and Parul Patel ("Defendant Parul") (collectively, the "APM Defendants"), based upon the existence of an enforceable settlement agreement that included a release of all claims against the APM Defendants.

Plaintiff entered into an agreement with APM concerning a proposed multi-unit residential development project. Shortly thereafter, Plaintiff breached the agreement by refusing and failing to pay expenses and development costs as required under the contract. As a result of Plaintiff's defaults and breaches, APM was forced to sell the subject properties, incurring significant losses. Following negotiations, the parties entered into a binding settlement agreement (the "Settlement Agreement"), which Plaintiff later sought to unwind in the underlying action.

Under the Settlement Agreement, Defendant Raj Patel ("Defendant Raj") expressly agreed to make the settlement payments under an installment plan set forth in the Settlement Agreement, and provided a personal guaranty for those payments. In exchange for Defendant Raj's promise to pay and guaranty, Plaintiff executed broad releases in favor of each of the APM Defendants.

The trial court enforced the Settlement Agreement and granted the APM

Defendants' motion for summary judgment, dismissing all of Plaintiff's claims against them. Plaintiff now appeals from that Order (and the subsequent Order denying its reconsideration motion) raising essentially the same issues and arguments that were already presented to, and rejected by, the trial court twice.

The trial court's Orders should be affirmed because: (1) Plaintiff fails to address or acknowledge the actual rationale of the trial court and disregards the applicable standards of appellate review; (2) the Settlement Agreement cannot be set aside, as no fraudulent or coercive conduct is alleged or shown in connection with the negotiations leading to the Settlement Agreement; (3) "material breach" is the incorrect analytical framework for assessing the enforceability of a settlement agreement that calls for future installment payments by one party; (4) the Settlement Agreement is not unenforceable due to ambiguity or under any alternative theory advanced by Plaintiff; and (5) Plaintiff's remaining arguments are unrelated to the narrow issues presently on appeal.

Accordingly, the trial court's Orders: (1) granting the APM Defendants' motion for summary judgment; and (2) denying Plaintiff's motion for reconsideration, should be affirmed in their entirety, and this appeal should be dismissed.

## STATEMENT OF FACTS

### A. The Parties

APM is a limited liability company doing business in the State of New Jersey. Defendant Parul and Defendant Raj are the members of APM. (Pa0031-0034). As of April 2018, APM was the owner of two parcels of property located at 1150 Paterson Plank Road (Block 149, Lot 8), and 115 Cedar Lane (Block 154, Lot 1) in Secaucus, New Jersey. (Pa41). In or about January 2019, a third, adjacent parcel located at 1155 Cedar Lane (Block 149, Lot 7), was transferred to APM. Ibid. All three parcels are collectively referred to as "the Subject Properties." Defendant Raj is the husband of Defendant Parul, and the parties mutually designated him to serve as the project manager with respect to the intended development of the Subject Properties. (Pa0047).

Plaintiff is a New Jersey limited liability company whose members include Taiyab Zaidi ("Zaidi"), Rajeev Desai ("Desai"), Mubarak Kathiya ("Kathiya"), Zeenat Chowdhury ("Chowdhury"), Alkesh Patel ("Alkesh"), Prakash N. Patel ("Prakash") and Sanjay Thummar ("Thummar") (collectively "Third Party Defendants"). (Pa0052-0054).

### B. The Intended Development Project

In April 2018, Zaidi approached APM and expressed interest in leasing the

building located at 1150 Paterson Plank Road. (Pa0068). After discussions, Zaidi expressed a desire to instead assist in developing the Subject Properties. (Pa 60; Pa70). Zaidi advised that he would form a group to collectively invest fifty percent (50%) into the development project. Ibid. In August 2018, Zaidi formed 1150 Paterson Plank, LLC for this purpose. (Pa0058; Pa0075-0077). The initial members were Zaidi, Desai, Kathiya, Chowdhury, A. Patel, and P. Patel. Ibid. It is understood that Thummar subsequently invested in the project through a separate entity known as 1150 Pat Plan LLC, which he controlled but which was owned by Bhumika Thummar and Ignasha Joshi. (Pa0082; Pa0088 to Pa0090). This was undertaken to avoid having to report this ownership interest to JP Morgan, who is Thummar's employer. (Pa0081).

After negotiations, on or around February 18, 2019, the parties came to an agreement on the specific terms in a memorialized and written Membership Interest Purchase Agreement ("MIPA"). (Pa0045-Pa0051). Under the MIPA, Plaintiff was granted the right to purchase a 50% interest in APM for $1,250,000.00. Ibid. Prior to the formal memorialization of the parties' agreement, Plaintiff had provided $615,000.00 as partial payment for Plaintiff's intended purchase of a fifty percent (50%) interest in APM, as confirmed in the MIPA. Ibid. The $615,000 previously paid was credited towards Plaintiff's $1,250,000 obligation under the MIPA. Ibid. Thus, upon execution of the MIPA, 1150 Paterson Plank LLC was recognized as

having obtained a twenty-four-point six percent (24.6%) ownership interest in APM, subject to the additional terms and conditions reflected therein. Ibid.

Specifically, the MIPA provides that: (1) Plaintiff would be responsible for fifty percent (50%) of the soft costs related to the intended development; (2) Plaintiff would be responsible for fifty percent (50%) of the operating expenses for the Subject Properties[1]; and (3) at the signing of the MIPA, Plaintiff was required to reimburse APM the sum of $16,708 i.e. half of the accrued expenses to date. (Pa0048-0049).[2] Plaintiff never paid the $16,708, as required by the MIPA. (Pa 0061).

Rather, in March 2019, Plaintiff sought to unilaterally amend the MIPA, and continued its breaches and refusal to pay its share of expenses unless the amendments were accepted by APM. (Pa0091-Pa0092). APM did not consent to the proposed amendments and Plaintiff remained in default of the MIPA due to the ongoing refusal to pay its share of the development costs and operating expenses. (Pa0093-Pa0101).

### C. Plaintiff's Breaches of the MIPA

[1] The MIPA defines "Soft Costs" as including but not being limited to "costs incurred for the purpose of pursuing development approvals and design of the Project, such as filing fees, engineering and architect fees, traffic studies, environmental impact costs, legal fees, etc." (Pa0048)

[2] The MIPA defines "Operating Expenses" as including but not being limited to "real estate taxes, utility charges, insurance costs, snow removal costs, grounds maintenance costs, etc." (Pa0049).

Between August 2018 and February 2019, APM and Defendant Raj had already taken numerous steps to further the proposed development, including but not limited to: (1) obtaining a property survey; (2) retaining professionals to complete site plans and zoning analyses; (3) preparing a variety of preliminary development drawings; (4) retaining a law firm and communicating with NJDOT to potentially purchase NJDOT land located near the Subject Properties; (5) retaining a planner for the project; (6) obtaining a traffic study related to the project; (7) obtaining drone footage to be used in connection with a public hearing and for marketing purposes; (8) met with the Director of Land Use Management and the Chief engineer of the New Jersey Sports and Exposition Authority ("NJSEA"); (9) met with the Town of Secaucus to obtain feedback; (10) discussed construction financing with lenders; and (11) obtained a term sheet for construction financing from a lender. (Pa0042-Pa0043). In connection with these tasks, APM incurred a minimum of $33,416.00 in expenses. Despite expressly contracting in the MIPA to remit fifty percent (50%) of this total to APM—i.e. $16,708—Plaintiff never provided its share of these expenses. (Pa0071).

In total, during the period of its agreement with Plaintiff regarding the Subject Properties, APM incurred and paid approximately $184,385.31 in expenses related to the development and maintenance of the Subject Properties. (Pa0042). The APM Defendants constantly demanded payment from Plaintiff for its proportional share

of the soft and operating costs that were owed under the MIPA. (Pa102; Pa0113-0121). Plaintiff failed to remit to APM any of its agreed upon fifty percent (50%) share of the $184,385.31 in expenses and costs incurred in owning the Subject Properties and furthering their development. (Pa0071).

**D. The Sale of the Property**

Due to Plaintiff's ongoing breaches of the MIPA, the APM Defendants had been forced to incur the entire cost of the retained professionals to prepare formal drawings and testimony to be submitted to the NJSEA for zoning review. Ibid. In April 2019, APM formally submitted its development plans and application to the NJSEA and provided copies to Plaintiff. (Pa0193-Pa0196). APM made a further demand for payment of Plaintiff's 50% share of the expenses, but Plaintiff did not remit payment and remained in breach. (Pa0115). In June 2019, the NJSEA issued a site suitability report finding that the Authority favored a residential development at the Subject Properties. (Pa0197-Pa0203). The APM Defendants shared the report with Plaintiff. (Pa0083). After sharing the report, the APM Defendants continued to request that Plaintiff pay its share of the expenses, but Plaintiff did not and remained in breach of the MIPA. Ibid.

In December 2019, the NJSEA completed its review of the submissions and provided APM with the opportunity to comment and respond. (Pa0204-Pa0209). The APM Defendants shared the NJSEA response with Plaintiff. (Pa0210-Pa0217).

At about the same time, APM was approached by a third party seeking to purchase the Subject Properties. (Pa0221).

In January 2020, the parties engaged in discussions and meetings regarding Plaintiff's ongoing refusal to pay its share of development expenses. (Pa0222-Pa0223; Pa0084). After enduring a 22-month period where Plaintiff failed to contribute towards the ongoing development and operating expenses, APM notified Plaintiff that it no longer had the ability to proceed with the project unless the default was promptly cured. (Pa0042-Pa0043). In response, Plaintiff refused to cure its breaches and directed APM to respond to NJSEA's comments, through various professionals, at its own cost and expense. Ibid. As a result, APM entered into an agreement with a third-party to sell the Subject Properties for $1,800,000. (Pa0586-Pa0604). The sale closed in or about March 20, 2020. Ibid.

**E. The Settlement Agreement**

Following the sale of the Subject Properties, the parties engaged in settlement negotiations related to any and all claims among and between the parties arising from the sale of the property and the termination of the development project. (Pa0043; Pa0061; Pa00167). Plaintiff consulted with counsel in connection with the settlement negotiations. (Pa0064). A meeting occurred in November 2020 where the parties discussed the resolution of all claims between the parties. (Pa0062-Pa0063). The meeting was attended by Zaidi, Alkesh, Desai, Thummar, Defendant

Raj and Alex Patel. Ibid. Plaintiff's representatives were aware that the Subject Properties were sold prior to the November 2020 settlement meeting and Raj discussed and explained why APM sold the Subject Properties during that meeting. (Pa0062-Pa0064; Pa0085). There is no allegation or contention that Defendant Raj or the APM Defendants hid any information from the Plaintiff or its individual members at the time of the November 2020 settlement meeting.

Defendant Raj offered to pay Plaintiff back its initial investment, but he sought a credit for Plaintiff's share of unpaid expenses that had been incurred. (Pa0062-Pa0064). Plaintiff, through its representatives in attendance at the meeting, accepted this proposal and it was agreed that Defendant Raj would pay Plaintiff $540,000 (with the $615,000 initial investment being reduced by a portion of the owed expenses). (Pa0078-Pa0086). The parties also agreed that Defendant Raj's payment would be made pursuant to a payment schedule and Plaintiff agreed to (1) release any and all claims against the APM Defendants, (2) deem the MIPA null and void, and (3) limit the recourse for any alleged breach of the Settlement Agreement solely to Defendant Raj. (Pa0072-Pa0073). The parties exchanged drafts of the written settlement agreements. (Pa0023-Pa0032). Counsel for Plaintiff reviewed the settlement documents before they were executed. (Pa0064). The above terms were then memorialized in a written Settlement Agreement and Mutual Release dated and executed on December 5, 2020 ("Settlement Agreement"), and Plaintiff accepted the

initial payment of $150,000 under that Settlement Agreement. (Pa0224-0226). The Settlement Agreement was between Defendant Raj, individually, and Plaintiff. Ibid. The Settlement Agreement includes the notarized signatures of Alkesh on behalf of Plaintiff and Defendant Raj, in an individual capacity. Ibid.

It is not disputed that Plaintiff and its members conferred with counsel as to the terms of the Settlement Agreement before it was executed. Thummar, who is member of 1150 Paterson Plank, testified at his deposition:

> Q Did Alkesh have -- have authority to act on behalf of the LLC?
> A Alkesh has.
>
> Q And did he -- did he consult with an attorney in connection with the settlement agreement?
>
> A I think he did at some point of time eventually, yes.
>
> Q And do you know who that attorney was?
>
> A ***I think Richard Kilstein.***

[(Pa0086)(emphasis supplied)]

> Q I understand. I'm just [focusing] on page one. So at that point in time you had a draft settlement agreement that it looks like Alex or someone else had prepared. Right?
>
> A. Yes.
>
> Q. And then on December 4th you sent a revised form of that document to Raj with some revisions. Right?
>
> A. Yes, but this is not that.

> Q. I understand that. I'm going to Page 184 get to that. I'm just [focusing] on page one in the e-mail. The revisions that you made to whatever document you're talking about, you made those revisions yourself, or did you have someone -- an attorney or someone else make those revisions?
>
> ***A. It was reviewed by my friend, Kilstein.***

[(Pa0064)(emphasis supplied)]

The Settlement Agreement provides that "[Defendant Raj] shall pay [Plaintiff] the amount of Five Hundred and Forty Thousand ($540,000) Dollars." (Pa0224-Pa0226). "Any rights or liabilities contained in the [MIPA] are null and void." (Pa0226). The Settlement Agreement further provides that Defendant Raj's payments were to be made as follows: $150,000 upon signing; $100,000 on or before December 31, 2020; $100,000 on or before January 31, 2021; $95,000 on or before February 28, 2021; and $95,000 on or before March 31, 2021. Ibid. All payments were to be made without interest. Ibid. The APM Defendants were not obligated to make any payments under the Settlement Agreement. Ibid.

In relevant part, the Settlement Agreement states:

> [Plaintiff] hereby covenants not to sue and fully finally and irrevocably releases, acquits and forever discharges, [Defendant Raj], and ***APM and any of APM's members*** and their heirs, administrators, executors, successors and/or assigns, from and with respect to any and all demands, actions, causes of actions liabilities, obligations, damages, suits, controversies, executions, leases, expenses, liens and claims of any and every kind and nature whatsoever at law, in equity or otherwise, know or unknown, suspected or unsuspected, disclosed or undisclosed, past or present, foreseen or unforeseen, including all claims and losses

> which [Plaintiff] has or had against [Defendant Raj] and/or ***APM and any of APM's members*** by reason of any matter, cause or thing directly or indirectly arising out of the events, occurrences or actions detailed alleged, specified set forth or inferred. [(Pa0225)(emphasis supplied)].

The Settlement Agreement also provides "[s]hould there be default in payment of any installment as set forth in Paragraph 4 below [Plaintiff's] sole remedy shall be against [Defendant Raj] for the missing payments(s) and nobody else." (Pa0226) The Settlement Agreement further provides that it "is not intended or construed to confer upon any third party any rights or remedies under or by reason of this [Settlement Agreement] ***other than as set forth herein***." (Pa0226).

Plaintiff acknowledges that Defendant Raj made one payment of $150,000 on December 5, 2020. (Pa0384-0412)

## PROCEDURAL HISTORY

### A. Initial Complaint

On June 21, 2021, Plaintiff filed a Twelve Count Complaint against Defendant Raj and the APM Defendants. (Da001-Da0014). The initial Complaint asserted putative causes of action for Breach of Contract (First Count); Book Account (Second Count); Unjust Enrichment (Third Count); Recklessness (Fourth Count); Breach of Implied Covenant of Good Faith and Fair Dealing (Fifth Count); Civil Conspiracy (Sixth Count); Punitive Damages (Seventh Count); Tortious

Interference With Prospective Economic Benefit (Eighth Count); Fraudulent Inducement (Ninth Count); Piercing the Corporate Veil (Tenth Count); Negligence (Eleventh Count); and Breach of Fiduciary Duty (Twelfth Count). Ibid.

**B. Motion to Dismiss Decision**

After motions to dismiss were filed, on January 28, 2022, the trial court entered an order dismissing the Plaintiff's Recklessness claim with prejudice; the Fraud claim without prejudice; and the Tortious Interference claim as to APM only. (Pa1429-Pa1449). In a written decision dated January 28, 2022, the trial court specifically found that the release in favor of APM included in the Settlement Agreement is valid and binding. Ibid. The trial court stated: "[t]he Release as to [the APM Defendants] shows that there was an intention between the parties to release those parties from civil liability from Plaintiff in a broad sense—the purpose of a general release." (Pa1438). However, the trial court allowed discovery to proceed as to the question of whether Defendant Raj's alleged breach of the Settlement Agreement could operate as a total or material breach which could render the Settlement Agreement "void." (Pa1441).

**C. Amended Complaint**

On February 15, 2022, Plaintiff filed the First Amended Complaint which asserted claims for: Breach of Contract (First Count); Book Account (Second Count); Unjust Enrichment (Third Count); Breach of Implied Covenant of Good

Faith and Fair Dealing, against the APM Defendants only, (Fourth Count); Breach of Implied Covenant of Good Faith and Fair Dealing, against the Defendant Raj only, (Fifth Count); Civil Conspiracy (Sixth Count); Punitive Damages (Seventh Count); Tortious Interference With Prospective Economic Benefit, against Defendant Raj and Defendant Parul only, (Eighth Count); Fraudulent Inducement, against Defendant Raj and Defendant Parul only, (Ninth Count); Piercing the Corporate Veil, against APM only, (Tenth Count); Negligence (Eleventh Count); and Breach of Fiduciary Duty (Twelfth Count). (Pa0384-Pa0412)

### D. The APM Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment

On July 24, 2024, the APM Defendants moved for summary judgment with respect to the claims asserted by Plaintiff, due to the existence of the Settlement Agreement and Plaintiff's release of the specific claims asserted in the underlying action. (Pa0015-Pa0018). On August 5, 2024, Plaintiff filed an opposition and a cross-motion for summary judgment. (Pa0350-Pa0351). Notably, in the cross-motion, Plaintiff only sought entry of summary judgment as to its alleged affirmative claims against the APM Defendants and no such motion for summary judgment was filed as to Plaintiff's then pending clams against Defendant Raj. On August 6, 2024, the APM Defendants objected to the cross-motion for summary judgment, as it was not filed within the timelines required by R. 4:46-1 due to then current trial date of September 1, 2024. (Da0016).

### E. The Trial Court's Order Granting APM Defendant's Motion for Summary Judgment and Denying Plaintiff's Cross-Motion

On September 11, 2024, the trial court entered an Order granting the APM Defendant's motion for summary judgment and an Order denying Plaintiff's cross-motion for summary judgment. (Pa1450-Pa1465). Initially, the trial court accurately set forth the summary judgment standard referencing Rule 4:46-2(c) and Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). (Pa1463). Next, the trial court, noting the strong public policy for the preference of enforcing settlement agreements, found that the Settlement Agreement was enforceable and granted the APM Defendants' motion for summary judgment. Ibid. The trial court correctly observed that "the Plaintiff is making allegations of misdeeds in connection with the MIPA and not the voluntary and fully enforceable settlement agreement. Under the settlement agreement, Plaintiffs agreed to a covenant not to sue and fully released and discharged Parul, APM, and any of APM's members with the sole remedy for default of payments being against Raj Patel and no one else." (Pa1464).

The trial court entered a separate Order on the same date denying Plaintiff's cross-motion for summary judgment. (Pa1450-1457). This Order also annexed the same statement of reasons, which confirmed that Plaintiff's claims against the APM Defendants had been released. Ibid. In this regard, the trial court concluded that it "reviewed Plaintiff's arguments regarding tort-based claims not being barred under the Economic Loss Doctrine ("ELD"), unjust enrichment, fraudulently investing

money with no return, and demonstrating sufficient facts to pierce APM's corporate veil and finds these claims were all released when the parties executed the settlement agreement." (Pa1457).

### F. Order Denying the Plaintiff's Motion for Reconsideration

On September 27, 2024, Plaintiff filed a motion for reconsideration. (Pa1231-Pa1232). On October 31, 2024, the APM Defendants filed an opposition and cross-motion to dismiss their own hypothetically and/or alternatively pled claims against Plaintiff and its individual members, without prejudice, as Plaintiff refused to consent to such relief at the time. (Da0018).

On December 6, 2024, the trial court entered an Order summarily denying Plaintiff's motion for reconsideration. (Pa1477-Pa1483). The trial court initially observed that Plaintiff for the first time alleged that a Complaint was filed by unrelated parties who claimed to have previously invested millions with Defendants for the development of the same properties, including the Subject Properties, and that such claims were dismissed in Hudson County. (Pa1479). After oral argument was scheduled and then cancelled by the trial court, the resulting decision noted that despite the normal standards of Rule 1:6-2(d), "substantive motions may be denied without oral argument if the motion on its face does not meet the applicable test for relief and that shortcoming is given as the reason for the denial." (Pa1483). The Court denied the request for oral argument on the motion for reconsideration "as no

new evidence was submitted that was non-discoverable prior to the original motion." (Pa1483)(internal citations omitted).

On December 6, 2024, the trial court also entered a separate Order granting the APM Defendants' cross-motion to dismiss its hypothetically pled crossclaims and third-party claims without prejudice. (Da019-Da025).

### G. Plaintiff's Subsequent Recovery of a Consent Judgment Against Defendant Raj

On February 19, 2025, a so-ordered stipulation dated February 3, 2025, between Defendant Raj Patel and Plaintiff was entered whereby Defendant Raj Patel dismissed his remaining counterclaims against Plaintiff, with prejudice. (Da027). The stipulation also noted that the remaining parties consented to the removal of the matter from the active trial list. Ibid. On February 19, 2025, the trial court also entered a Consent Judgment (dated February 3, 2025, by the parties) in favor of Plaintiff and against Defendant Raj. (Da028). Under the terms of the Consent judgment, a money judgment in favor of Plaintiff and against Defendant Raj was entered in the amount of $410,000.00, inclusive of $20,000 in pre-judgment interest. Ibid.

### H. Plaintiff's Present Appeal

On March 28, 2025, Plaintiff filed a Notice of Appeal stating that Plaintiff was appealing: (1) the trial court's September 11, 2024 Order granting the APM Defendant's summary judgment motion, and (2) the trial court's December 6, 2024

Order denying reconsideration of the September 11, 2024 Order. Notably, Plaintiff does not appeal the separate Order of September 11, 2024, which denied its cross-motion for affirmative summary judgment or the subsequent motion for reconsideration as to its cross-motion.

## LEGAL ARGUMENT

## POINT I

## PLAINTIFF ENTIRELY FAILS TO ADDRESS THE APPLICABLE APPELLATE STANDARDS OF REVIEW

Plaintiff's appeal should be summarily denied as it never endeavors to address the applicable standards of review upon which its appeal is ostensibly based. Here, Plaintiff appeals from Orders granting summary judgment in favor of the APM Defendants and denying Plaintiff's subsequent reconsideration motion as to that issue. As set forth herein, in addition to never addressing or considering the proper appellate standards, Plaintiff fails to address the trial court's stated basis for the entry of such Orders in the first place. Instead, Plaintiff's appeal includes a mishmash of repeated arguments, and arguments generally unrelated to the narrow issues actually on appeal.

### A. Applicable Appellate Standard of Review

In New Jersey, appellate courts review the trial court's grant or denial of a motion for summary judgment *de novo*, applying the same standard used by the trial

court. Samolyk v. Berthe, 251 N.J. 73 (2022); Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). The appellate courts will consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

The New Jersey Appellate Division will generally review a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under Rule 4:49-2 for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022); Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2025).

### B. References to Irrelevant Deposition Testimony

The centerpiece of Plaintiff's purported "Statement of Facts" is nothing more than an eight-page mélange of bullet-point snippets (often uncited to the appendix)

and partial quotations from deposition testimony or written discovery, apparently strung together in an effort to cast Defendants Parul and Raj as evasive. Yet throughout the pendency of this action, Plaintiff never once sought judicial intervention by way of a discovery motion to address these supposed deficiencies. More puzzling still, Defendant Raj is not even a party to this appeal, and Plaintiff has already secured a judgment against him. Defendant Raj's deposition testimony and discovery responses have no discernible nexus to the enforceability of the Settlement Agreement that is the sole subject of this appeal. In short, none of the accusations leveled in that section bear the slightest relevance as to whether the Settlement Agreement is enforceable. Accordingly, the Court should disregard the entirety of this improper and extraneous section.

## POINT II

## THE TRIAL COURT DID NOT ERR IN FINDING THAT THE SETTLEMENT AGREEMENT WAS BINDING AND ENFORCEABLE

### A. Standard for Enforceability of Settlement Agreements

As noted herein, Plaintiff continues to incorrectly contend that the standard for setting aside a settlement agreement in New Jersey merely requires one party to establish the "material breach" of the adverse party. Plaintiff raised the identical arguments below and the trial court reasoned as follows:

> It is true that a settlement stipulation should not be enforced "where there appears to have been an absence of mutuality of

> accord between the parties or their attorneys in some substantial particulars, or the stipulated agreement is incomplete in some of its material and essential terms." Kupper v. Barger, 33 N.J. Super. 491, 494 (App. Div. 1955). However, "it is not necessary for a writing to contain every possible contractual provision to cover every contingency in order to qualify as a completed binding agreement. . . . . [A] contract is no less a contract because some preferable clauses may be omitted either deliberately or by neglect. So long as the basic essentials are sufficiently definite, any gaps left by the parties should not frustrate their intention to be bound. Such is the just and fair result." Berg Agency v. Sleepworld-Willingboro, Inc., 136 N.J. Super. 369, 376-77 (App. Div. 1975).

The trial court then correctly reasoned "[h]ere, the Plaintiff is making allegations of misdeeds in connection with the MIPA and not the voluntary and fully enforceable settlement agreement." (Pa0006). On appeal, Plaintiff does not appear to contend that the trial court's analysis was in error or even respond to the trial court's decision as to the correct standard for enforcement of settlements.

New Jersey law is clear that rescission of a contract, particularly a settlement agreement, is an extraordinary remedy that is only available under specific and narrow circumstances. The New Jersey Supreme Court in Brundage v. Estate of Carambio, 195 N.J. 575 (2008), and the Appellate Division in Kaur v. Assured Lending Corp., 405 N.J. Super. 468 (App. Div. 2009), identified the guiding principles for when rescission of a settlement agreement is permissible and warranted.

Under New Jersey law, the party seeking rescission must establish that a

settlement agreement was achieved through fraud, coercion, undue pressure, or other unseemly conduct, or one party lacked the competence to voluntarily consent. As stated in Brundage, "[i]f a settlement agreement is achieved through coercion, deception, fraud, undue pressure, or unseemly conduct, or if one party was not competent to voluntarily consent thereto, the settlement agreement must be set aside." Brundage, supra, 195 N.J. at 600-601 (citing Peskin v. Peskin, 271 N.J. Super. 261, 276 (App. Div. 1994)). In declining to vacate a settlement that the adverse party claimed was obtained, in part, through an attorney's alleged lack of candor to the tribunal under R.P.C. 3.3(a), the court reasoned: "[w]e must also recognize that parties enter into settlements for many reasons. Courts routinely enforce those settlements even in the face of changed minds or changes in the law that would otherwise govern the substance of the matter. Absent a demonstration that a settlement was procured by fraud or some similarly compelling reason, courts have long been reluctant to set a settlement aside." Brundage, supra, 195 N.J. at 600-601.

On appeal, Plaintiff has not ever alleged that the settlement at issue was achieved through coercion, deception, fraud, undue pressure, unseemly conduct, or lack of competency to consent. And nothing in the record below suggests that the Settlement Agreement was obtained through misdeeds. Rather, Plaintiff was represented by counsel in connection with the negotiation and review of the

Settlement Agreement, drafts were exchanged, and the Settlement Agreement was voluntarily entered into by the parties. The record below shows that Plaintiff was fully informed and consented to the terms of the Settlement Agreement. Plaintiff even accepted payment of $150,000 under the Settlement Agreement. There is no allegation or evidence of fraud, coercion, undue pressure, or incompetence in connection with the drafting or execution of the Settlement Agreement that would justify rescission under New Jersey law.

It should also be emphasized that Courts will specifically consider the intent of the parties as reflected in the written settlement agreement as to whether rescission and the reinitiation of litigation or claims was intended by the parties. In Kaur, supra, the Appellate Division considered the fact that the default provision of the parties' written settlement agreement ***did not*** call for rescission in upholding the parties' settlement agreement and foreclosing the plaintiff's ability to restore the case to the trial list. Kaur, supra, 205 N.J. Super at 476-477. The Kaur Court reasoned:

> The circumstances here reveal a settlement that incorporated within its terms a series of installment payments with dates certain. Payments were made and accepted consistent with the terms of the agreement until the default. The only mention of remedy is contained first in Paragraph IV, providing for enforcement (and phrased as "may") and Paragraph XI (phrased as "opportunity"). In both instances, enforcement was not mandated but left to plaintiffs' choice as to when to enforce. In no instance did the agreement identify any other remedy other than the entry of judgment for the outstanding balances. Nothing in the agreement speaks to or suggests that rescission, return of monies and trial was a remedy available to plaintiffs.

[(Ibid.)]

In overturning the trial court's order granting rescission of the settlement agreement, the Appellate Division in Kaur noted that courts should not "rewrite contracts in order to provide a better bargain than contained in [the parties] writing." Kaur, supra, 405 N.J. Super. at 477 (citing Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 464 (App. Div. 2008) and Christafano v. N.J. Mfrs. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003)).

The Settlement Agreement at issue includes a specific default term which states: "[s]hould there be default in payment of any installment as set forth in Paragraph 4 below [Plaintiff's] sole remedy shall be against [Defendant Raj] for the missing payment(s) and nobody else." (Pa0226). Just as in Kaur, where the specific default provision of the Settlement Agreement does not call for or otherwise allow the extraordinary remedy of rescission in the event of breach, here too, the specific default provision of the Settlement Agreement did not call for or otherwise allow the extraordinary remedy of rescission in the event of default in payment.

Finally, "a party is not entitled to rescind [a contract] without returning or tendering the consideration or benefits received." Medivox Prods., Inc. v. Hoffmann-LaRoche, Inc., 107 N.J. Super. 47, 76 (Law Div. 1969) (citing MacFadden v. MacFadden, 49 N.J. Super. 356 (App. Div. 1958). Here, Plaintiff is not precluded from (and did) enforce the Settlement Agreement and seek to collect

the due payments directly from Defendant Raj, which provides an obvious and adequate remedy at law, which also represents the negotiated default provision within the Settlement Agreement. To date, Plaintiff has not (and does not propose to) return the $150,000 payment that was paid by Defendant Raj under the Settlement Agreement, and it appears that Plaintiff now has entered into further settlement with Defendant Raj, including a Consent Judgment in the amount of $410,000 against Defendant Raj.

Plaintiff has failed to establish that the trial court committed reversible error in failing to set aside the valid and enforceable Settlement Agreement.

### B. "Material Breach" Is the Incorrect Analytical Framework and Has Not Been Established (Response to Plaintiff's Point I)

#### 1. Material Breach is the Incorrect Analytical Framework

Plaintiff argues without support that a claimed material breach of a settlement agreement renders an otherwise valid and enforceable settlement agreement null and void. Stated simply, the alleged material breach inquiry is not the proper analytical framework for determining if a settlement agreement is enforceable under New Jersey law. Each case cited by Plaintiff addressing the concept of a material breach excusing the other party's performance occurs in the context of a bilateral agreement where each party promises to perform specific actions or obligations for the other and/or an agreement where one party promises future non-monetary performance. Plaintiff has not identified any support – nor does any exist – for the confused notion

that the claimed breach of a settlement agreement which called for installment payments, renders the prior releases and remedies included within the settlement agreement null and void, and further permits the non-breaching party to re-initiate any previously considered claims or litigation against all parties. The reason no such authority for this proposition exists is that the efforts to set aside such a settlement agreement are addressed under the framework of a claim for rescission, which requires evidence of fraud, coercion, undue pressure, or incompetence in connection with the drafting or execution of the settlement agreement.

Therefore, contrary to the very basis underlying Plaintiff's claims in the underlying action, Defendant Raj's alleged default of the payments under the Settlement Agreement does not relieve the parties of the mutual release vis-à-vis the APM Defendants. The New Jersey Appellate Division, in In re Est. of Balk, 445 N.J. Super. 395, 401 (App. Div. 2016), specifically found that a party's non-payment of funds due under an installment contract does not render the contract repudiated or void. Ibid. In the context of a statute of limitations dispute, the breaching party argued that the missed first installment payment represented a material or total breach of the contract. Id. at 400. The Appellate Division disagreed noting "we find that a missed payment is insufficient to constitute a total breach of an installment contract or agreement unless accompanied by anticipatory repudiation indicating a failure to perform future obligations specified in the contract." Id. at 401. Further,

the court specifically found that a missed installment payment does not constitute a repudiation or total breach of the agreement unless accompanied by an independent anticipatory repudiation. Ibid. Here, no such anticipatory repudiation by Defendant Raj is even alleged nor is there any allegation in the record below that such anticipatory repudiation ever occurred. Even assuming *arguendo* that there was anticipatory repudiation (and there was not), the Settlement Agreement contains an exclusive remedy for this exact scenario in the form of the default provision, which limits recovery to Defendant Raj. Not enforcing that agreed-upon remedy would render that negotiated provision meaningless. Courts cannot interpret contracts in a way where provisions are left meaningless or otherwise rewrite contractual provisions for the benefit of one party. Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 464 (App. Div. 2008); Christafano v. N.J. Mfrs. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003). That is why a court's inquiry into the remedies afforded for a breach of a Settlement Agreement starts by searching within the four corners of the Settlement Agreement.

In Kaur, the Defendant entered into a settlement agreement containing an installment plan, paid the first installment under the agreement, but thereafter failed to pay the subsequent installments. Kaur, supra, 405 N.J. Super. at 477-78. There, the Appellate Division overturned the trial court's decision to rescind the settlement agreement, in part, because the default provision of the settlement agreement did not

allow for rescission in the event of breach and because allowing the remedy of recession would effectively be rewriting the settlement agreement to one party's benefit. Ibid.

Plaintiff seeks to rely upon Chance v. McCann, which clarifies in the context of a bilateral contract, that the material breach of a contract by one party can excuse ***further performance*** by the other party. 405 N.J. Super. 547, 565–66, (App. Div. 2009). Here, the settlement agreement is not a bilateral contract which calls for further performance by each party. Plaintiff has already provided the releases at issue and does not have any additional obligation of future performance under the Settlement Agreement. This statement of law directly clarifies that rescission, and not material breach, is the applicable analytical framework in this matter.

The Appellate Division's holding in Magnet Res., Inc. v. Summit MRI, Inc., 318 N.J. Super. 275, 285 (App. Div. 1998) confirms that the material breach analysis is limited to the breach of a bilateral contract that calls for specific, future, non-monetary performance by both parties. There, the Appellate Division reasoned: "[i]t is black letter contract law that a material breach by either party to a bilateral contract excuses the other party from rendering any ***further*** contractual performance." Id. at 285 (citing Nolan v. Lee Ho, 120 N.J. 465, 472 (1990)(emphasis supplied)).

Plaintiff's appellate brief confirms Kitchen King, Inc. v. Scisco, 2013 WL 5729816, at *1 (App. Div. 2013) only addressed the issue of whether a contractor

materially breached a settlement by ***failing to provide labor and materials***, rendering it a bilateral contract distinguishable from the present matter. Contrary to Plaintiff's representations, Rational Contracting, Inc. v. Discovery Properties 78, LLC, 2012 WL 611853, at *7 (App. Div. 2012), does not address settlement agreements nor the material breach thereof in any capacity.

Plaintiff's reference to Goldman South Brunswick Partners v. Stern, 265 N.J. Super. 489 (App. Div. 1993) in the context of this appeal is puzzling. In Goldman, the Appellate Division held that a defaulting mortgagor should not be permitted to inflict further harm on a non-defaulting mortgagee through the release of a lien securing the parties' mortgage agreement. This case occurred in the context of a mortgage foreclosure action and it did not address negotiated settlements or the *release* of claims in any manner. To the contrary, it addressed the release of liens on real property, rendering it entirely inapplicable to the present appeal. Further, the viability of Goldman was subsequently called into question by the Appellate Division. See Simonson v. Z Cranbury Associates, 302 N.J. Super. 179, 183 (App. Div. 1996).

In sum, Plaintiff has not identified any support, nor does any exist, for the erroneous conclusion that the claimed non-payment of an installment payment of a settlement agreement is considered a material breach sufficient to unwind the entire settlement agreement and allow litigation and claims to resume against all previously

released parties. As set forth supra, such a settlement agreement can only be rescinded based upon evidence of fraud, coercion, undue pressure, or lack of competence in connection with the drafting or execution of the settlement agreement itself. Plaintiff had the remedy of proceeding against Defendant Raj alleging breach, it did so, and has now obtained a Consent Judgment with respect to that claim, but Plaintiff is not permitted to, in parallel, rescind the entire Settlement Agreement to proceed against all released parties absent a showing of fraud or deceit in connection with the achieving of the actual settlement agreement.

**2. No Material Breach Has been Established**

Even if the determination of a material breach was the proper framework for determining the enforceability of settlement agreements (and it is not), no material breach can be established in this instance. By the Settlement Agreement's own terms, a missed installment payment cannot be a material breach of the contract rendering it "void," as the Settlement Agreement provides for default terms in that event. Luma Enterprises, L.L.C. v. Hunter Homes & Remodeling, L.L.C., No. A-6094-11T3, 2013 WL 3284130, at *4-5 (App. Div. 2013) (stating that contract's default terms guide what constitutes material breach).

Here, the Settlement Agreement contemplates the possibility of a default and provides a contractually agreed upon course of action for it. Specifically, the Settlement Agreement provides that "[s]hould there be a default in payment of any

installment … [Plaintiff]'s sole remedy shall be against [Defendant Raj] for the missing payment(s) and nobody else." Specifically, the Settlement Agreement does not designate a missed payment as a material breach, or otherwise state that missing a settlement payment renders the rest of the Settlement Agreement null and void. Rather, the Settlement Agreement plainly states that, in the event of a default, Plaintiff's sole recourse shall be to seek recovery against Defendant Raj for the missing payment(s). In other words, the contract itself provides an exclusive remedy for default, and that remedy does not define such a default as a material breach. As the Settlement Agreement included a specific default provision, not enforcing that provision as drafted would be, at best, rendering the remedy negotiated by the parties and included in the agreement meaningless, and at worst, providing the Plaintiff with a better bargain then the one they contracted for. Both are expressly prohibited under New Jersey law.

## POINT III

## PLAINTIFF'S ADDITIONAL ARGUMENTS TO AS TO THE CLAIMED UNENFORCEABILITY OF THE SETTLEMENT AGREEMENT ARE MERITLESS

In addition to failing to identify the proper standard for considering the enforcement of settlement agreements, Plaintiff has included a number of further arguments or theories as to why the Settlement Agreement should have been set aside by the trial court. These arguments are largely undeveloped and do not

meaningfully address the trial court's actual decisions being appealed or the applicable standard of review. As set forth in greater detail below, Plaintiff's supplemental arguments for setting aside the Settlement Agreement are legally and factually unsound and Plaintiff has failed to identify that the trial court's decisions and orders being appealed were in error.

### A. The Settlement Agreement is Not Unenforceable due to the Lack of Consideration (Response to Plaintiff's Point Heading II)

On appeal, Plaintiff confusingly contends, without citation to the record or any relevant authority, that there was no consideration for the release benefiting the APM Defendants contained within the Settlement Agreement. Plaintiff first raised this argument in its motion for reconsideration and failed to raise it in its initial opposition.

Here, the trial court properly recognized that Defendant Raj's payment of $150,000 and promise to pay an additional $390,000, were sufficient consideration for the releases at issue. As noted herein, the failure to make an installment payment in a settlement agreement does not negate consideration or render the agreement unenforceable. See Pascarella v. Bruck, 190 N.J. Super. 118, 125-26 (App. Div. 1983). As set forth supra, settlement agreements are enforceable unless there is evidence of fraud, mutual mistake, or other compelling circumstances. Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974). Further, Courts will not

ordinarily inquire into the adequacy or inadequacy of the consideration underlying a settlement fairly and deliberately made. DeCaro v. DeCaro, 13 N.J. 36, 43 (1953).

Further, there is nothing untoward or improper with respect to a settlement agreement affording an enforceable and intended benefit to third parties. Morris v. Riverview Condominiums, Inc., 304 N.J. Super. 322, 325 (App. Div. 1997); Borough of Brooklawn v. Brooklawn Housing Corp., 124 N.J.L. 73, 76-77 (E. & A. 1940). The trial court did not commit reversible error in finding that sufficient consideration existed within the Settlement Agreement.

### B. The Settlement Agreement is Not Unenforceable Due to Claimed Ambiguity (Response to Plaintiff's Point Heading III)

On appeal, Plaintiff argues that the Settlement Agreement was unenforceable due to claimed ambiguity or lack of clarity. Plaintiff does not address the trial court's specific ruling and once again argues without merit or explanation that the Settlement Agreement and/or the releases contained therein are unenforceable due to the lack of specificity, clarity, purpose or meaning.

Plaintiff's arguments are not supported by any applicable authority and this specific argument was addressed by the trial court in deciding the pre-answer motions to dismiss pursuant to Rule 4:6-2(f), which rulings are not presently being appealed by Plaintiff. In opposition to the APM Defendants' pre-answer motion to dismiss, Plaintiff argued that the Settlement Agreement "lacks specificity, clarity, purpose, and meaning for a number of reasons, which, in Plaintiff's view, renders

same void." (Pa1437). The trial court did not find such arguments compelling, reasoning:

> [t]he contract is specific; Plaintiff provided a general release in exchange for the release of APM and the consideration in the form of reimbursement of funds from Raj Patel. It is not clear from Plaintiff's arguments how the exchange of promises or consideration required was not achieved here. As a third-party beneficiary, APM was not required to provide consideration on behalf of itself. Instead, the release of APM and the repayment from Raj Patel; his personal guaranty on the repayment of the funds was the consideration. Therefore, the release is valid as to APM and Parul Patel for any lawsuit arising directly or indirectly out of this transaction.
> [(Pa1437-Pa1438)].

In the present appeal, Plaintiff relies upon Three Rivers Motor Co. v. Ford Motor Co., 522 F.2d 855, 895-96 (3d Cir. 1975) for the sweeping proposition that "releases are narrowly construed as to avoid injustice and forfeiture of claims." The issues with this claimed statement of law are significant and numerous. First, in Three Rivers Motor Co., the Third Circuit applied Pennsylvania law to consider whether a release barred an antitrust claim by a former franchisee brought against the franchisor, alleging illegal price-fixing. Second, nothing in the cited part of the decision (or anywhere else in the decision) stands for the perplexing proposition that releases must be narrowly construed to be enforceable. Ibid. Third, the Third Circuit ultimately held that the release at issue *was valid* and enforceable and overturned the District Court's decision that the antitrust claim was barred. Id. at 897. Fourth, New Jersey has a contrary public policy (as compared to Plaintiff's misstatement of the

Third Circuit's interpretation of Pennsylvania law) of enforcing settlements "wherever possible", which was referenced and relied upon by the trial court in this matter. Dep't of Pub. Advocate, Div. of Rate Counsel v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523, 528 (App. Div. 1985); see also Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App.Div.), certif. den. 35 N.J. 61 (1961).

Plaintiff argues the Settlement Agreement (or the included releases) are unenforceable as lacking in clarity or purpose. Plaintiff relies upon Deblon v. Beaton, 103 N.J. 345 (Law Div. 1968) to support this argument. Deblon provides no support for Plaintiff's misguided proposition as to the enforceability of specific releases, as there the trial court only reasoned that "the public interest points toward resolution of the competing interests to permit plaintiff to settle claims against the assets of two of the three exposed entities without releasing the third." Id. at 351. Nothing in the Deblon decision remotely supports Plaintiff's confused argument that any settlement agreement can be set aside as lacking in "specificity, clarity, purpose, and meaning."

### C. The Trier of Fact Does not Determine Whether a Release is Enforceable (Response to Plaintiff's Point Heading IV)

On reconsideration, Plaintiff argued for the first time that the issue of whether a material breach occurred should be made by the trier of fact. This argument is premised upon the continued misapplication of the standard for determining the enforceability of settlement agreements in New Jersey.

Plaintiff seeks to rely upon Thomas Co. v. Tamburro Bros. Const. Co., 2010 WL 3720390, at *3 (App. Div. 2010). This case is inapplicable as the settlement agreement in that matter called for additional non-monetary *performance* by the contractor at issue and the Appellate Division remanded for further proceedings to determine whether said contractors' performance or lack thereof constituted a material breach. Thomas does not address the alleged breach of a settlement agreement calling for installment payments by one party, with specific default terms, and does nothing to suggest that the material breach framework, as opposed to the proper rescission analysis, should apply in this instance.

Where the terms of the agreement are clear and unambiguous, courts must enforce those terms as written and there is no reason or basis for this issue to be submitted to a jury or a bench trial. City of Orange Twp. v. Empire Mortg. Servs., Inc., 341 N.J. Super. 216, 224 (App. Div. 2001). New Jersey has a significant and oft-repeated public policy of enforcing settlement agreements, see Dep't of Pub. Advocate, supra, 206 N.J. Super. at 538, and the mere suggestion that the trier of fact must decide whether each settlement agreement and release is binding is directly contrary to this consideration. If every subsequently disappointed settling litigant were able to reopen their cases and the trier of fact were forced to determine ultimate enforceability, then settlements, releases and covenants not to sue would have no meaning. The trial court properly enforced the unambiguous Settlement Agreement

and declined submitting this issue to trial, which does not constitute reversible error in any manner.

### D. The Settlement Agreement was not Procured through Fraud (Response to Plaintiff's Point Heading V)

On appeal, Plaintiff, renewing an argument that was raised for the first time on reconsideration, argues that the Settlement Agreement should be rescinded due to fraud. Plaintiff engages in no specific analysis but generally avers "the Settlement Agreement was executed as part of Defendant's fraud." The trial court's underlying decisions properly recognized that "the Plaintiff is making allegations of misdeeds in connection with the MIPA and not the voluntary and fully enforceable settlement agreement." (Pa0006). Plaintiff still does not specifically allege, and no facts in the record support the notion, that the Settlement Agreement was procured through fraud or other misdeeds.

Here, Plaintiff sought to unwind a valid and binding Settlement Agreement by highlighting prior alleged acts under the MIPA, which is an entirely separate agreement, because there is no evidence of fraud or untoward conduct in connection with the negotiation, drafting and execution of the Settlement Agreement at issue in this case. The record below is clear that there is no allegation or evidence of fraud or untoward conduct *in connection with the negotiation, drafting and execution of the Settlement Agreement*. Further, the Settlement Agreement expressly rendered the MIPA null and void.

Plaintiff's managers and/or representatives acknowledge that they were aware of the sale of the Property in August 2020, and well in advance of the November 2020 meeting that precipitated the Settlement Agreement. (Pa0063, Pa0085, Pa0371). Plaintiff readily admits that the Settlement Agreement was reviewed by its independent counsel in advance of execution and that drafts were exchanged by the parties prior to execution. (Pa1106-Pa1108; Pa0361-Pa0363). Based upon these clear admissions, Plaintiff was unable to establish below that the Settlement Agreement was procured through fraud, coercion, undue pressure, unseemly conduct or lack of capacity to consent. As such, the Settlement Agreement, including the releases and the default provision included therein, are simply not subject to rescission due to fraud. As such, Plaintiff has failed to establish that the trial court committed reversible error. The trial court correctly observed that the allegations of (disputed) fraudulent conducted related to the parties' mutual dispute under the MIPA and not the parties' subsequent Settlement Agreement.

## POINT IV

## THE ADDITIONAL ARGUMENTS RAISED BY PLAINTIFF ARE MERITLESS AND NOT RELATED TO THE ISSUES ON APPEAL

Finally, Plaintiff has labeled a number of entirely undeveloped partial arguments as separate point headings, which are either directly contradicted by the

record below or are entirely unrelated to the limited issues presently being appealed by Plaintiff. It is submitted that the assigned appellate panel should deem the following partial arguments "without sufficient merit to warrant discussion in a written opinion" pursuant to Rule 2:11-3(e).

### A. The Trial Court Did Not Find that Actual Payment Was Made (Response to Plaintiff's Point Heading VI)

Plaintiff erroneously contends that the trial court's September 11, 2024 decision states that $540,000 was actually paid by Defendant Raj. This is a blatant mischaracterization of the Decision as the trial court clearly understood that the promise to pay $540,000 ($150,000 of which was paid at the time of the settlement) was sufficient consideration to deem the Settlement Agreement and the covenant not to sue binding and enforceable. Further, the trial court's December 6, 2024 decision, which is also being appealed by Plaintiff, directly states and acknowledges that only the $150,000 initial payment was made by Defendant Raj. (Pa0011). Plaintiff's attempted mischaracterization of the decisions at issue does not suggest reversible error in any manner.

### B. The Summary Judgment Standard Was Properly Applied by the Trial Court (Response to Plaintiff's Point Heading VII)

In Point VII, Plaintiff repeats the applicable summary judgment standard, citing Brill v. Guardian Life Ins. Co. of Am., 142 NJ. 520, 541-42 (1995) and Rule 4:46-2, which were both cited in the trial court's decisions at issue. Without any

factual analysis or citation to the record, Plaintiff avers "there were countless issues[sic] of material facts[sic]" that should have precluded the entry of summary judgment. Plaintiff then includes three bullet points stating "(A) Enforceability of the SA and purported release; (B) Defendants' fraudulent conduct and unclean hands; and (C) Defendants' unjust enrichment." It is submitted that no legal arguments or factual statements are set forth in this point and that any potential arguments raised therein are repetitive and incomplete.

### C. Plaintiff's Arguments Restating its Own Pleadings and/or Proofs are Not Germane to the Limited Issues in this Appeal (Response to Plaintiff's Point Headings: VIII, IX, X, XI, XII, XIII and XIV)

Plaintiff has included a series of Points partially restating the elements of certain causes of action or theories that it had asserted in this matter and then alleges that said causes of action or theories were properly "plead" or "proven." Specifically, Plaintiff alleges: (1) that the elements of fraud were "specifically and adequately explained" (Count VIII); (2) that a claim for piercing the corporate veil was "adequately alleged" (Count IX); (3) that the Complaint "adequately alleges" a cause of action Breach of Contract (Count X); (4) that the Complaint "specifically avers" the elements of a cause of action for Unjust Enrichment (Count XI); (5) that a cause of action for Breach of Fiduciary Duty "was properly plead and proven" (Count XII); (6) that its Breach of the Duty of Good Faith and Fair dealing "should have been

adjudicated – not summarily dismissed" (Count XIII); and (7) the claim for Civil Conspiracy has been "properly plead." (Count IV)

As noted above, the only Orders being appealed at present are: (1) the Order Granting the APM Defendant's motion for summary judgment, and (2) the Order denying Plaintiff's motion for reconsideration of the grant of Summary Judgment in the APM Defendants' favor. The accompanying separate Orders related to Plaintiff's putative cross-motion for summary judgment are expressly not being appealed and are not identified in Plaintiff's Notice of Appeal or CIS in any manner. It is a core tenet of appellate practice that appellate review is confined to the judgments or orders designated in the notice of appeal. Kornbleuth v. Westover, 241 N.J. 289, 299 (App. Div. 2020).

Finally, the limited issue presently on appeal has absolutely nothing to do with whether Plaintiff's claims and theories were properly plead or proven. The lone issue currently on appeal is whether the trial court erred in enforcing the Settlement Agreement and release of all claims against the APM Defendants. Stated differently, Plaintiff's causes of action were not dismissed because they were plead insufficiently, they were dismissed due to the release in favor of the APM Defendants included within the enforceable Settlement Agreement. Based upon the foregoing, the incomplete and confused arguments concerning the alleged sufficiency of Plaintiff's own pleadings are entirely irrelevant to this appeal and should be deemed

"without sufficient merit to warrant discussion in a written opinion" pursuant to Rule 2:11-3(e).

## CONCLUSION

Based upon the foregoing, Defendants, Alex Property Management and Parul Patel submit that the Appellate Division should dismiss the appeal of Plaintiff, 1150 Paterson Plank Road LLC and affirm the Law Division's Orders.

Respectfully submitted,
CLARK GULDIN, ATTORNEYS AT LAW

By: _____
JONATHAN T. GULDIN
Member of the Firm

DATED: September 29, 2025

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|---|---|
| 1150 PATERSON PLANK, LLC,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>RAJ PATEL A/K/A RAJESHUKUMAR M. PATEL, PARUL PATEL, AND ALEX PROPERTY MANAGEMENT, LLC,<br><br>Defendants/Respondents.<br><br>v.<br><br>RAJEEV DESAI, MUBARAK I. KATHIYA, ZEENAT K. CHOWDHURY, ALKESH S. PATEL, TAIYAB ALI ZAIDI, PRAKASH N. PATEL, SANJAY THUMMAR, AND JOHN DOES 1-10,<br><br>Third-Party Defendants. | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br>DOCKET NO: A-002246-24<br><br>Civil Action<br><br>On Appeal From<br><br>SUPERIOR COURT OF NEW JERSEY<br>PASSAIC COUNTY: LAW DIVISION<br>DOCKET NO: PAS-L-2015-21<br><br>Sat Below<br><br>HON. VICKI A. CITRINO, J.S.C. |

# AMENDED REPLY BRIEF OF APPELLANT/PLAINTIFF, 1150 PATERSON PLANK, LLC

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# TABLE OF CONTENTS



# TABLE OF AUTHORITIES

**Court Cases:**

# TABLE OF SUPPLEMENTAL APPENDIX

## PRELIMINARY STATEMENT

Respondents, Alex Property Management LLC ("APM") and Parul Patel ("Parul") (together "APM Defendants") reference countless unsupported facts in their appellate brief, to detract from their blatant unlawful conduct. The numerous documents, pleadings and extensive deposition testimony of Defendants clearly show that the APM Defendants and Defendant, Rajeshkumar Patel a/k/a Raj Patel ("Raj") concocted a fraudulent scheme, whereby innocent victims, such as Plaintiff, 1150 Paterson Plank, LLC ("Plaintiff") (and other persons/entities) were solicited and enticed to invest substantial monies to allegedly develop properties in Secaucus, New Jersey. Defendants ("Defendants" references the APM Defendants and Raj) never had any intention of developing any properties, sharing any profits or returning any monies to anyone. Rather, Defendants successfully managed to retain Plaintiff's monies, sell the properties, and keep all of the sales proceeds.

Parul is, and has been, a pharmacist. Pa1951. She has no experience in real estate, yet her name was included on all deeds and contracts. It was Raj, her husband, all along, who was behind APM and the alleged planned development of the properties. The obvious goal was to keep all assets in Parul's name, so that Raj's creditors would never be able to collect any money that they transferred for the

development. Indeed, that is why the Settlement Agreement provided for recourse against only Raj – and not Parul.

Incredibly, when Plaintiff made inquiries at the beginning of 2020 as to the status of the development, Raj did not honestly answer and explain that the properties had already been sold, but rather, sent multiple text messages, stating and representing that the development application process was proceeding without issue.

Specifically, in January 2020, after the contract to sell the properties was signed for the unauthorized sale of the properties (Pa576-601), Raj advised Plaintiff by text that he received comments [from NJSEA] and "currently, Eng [Engineer] and Architech [Architect] working on it." Pa131, 147, 360, 371. At his deposition, Raj could not deny this text. Pa790. In February, 2020, Raj stated **"I am waiting for NJSEA meeting dates so we all can go."** *(Emphasis supplied).* Pa149, 360, 371, 608. On November 15, 2020 (six months after the sale of the properties), in response to Plaintiff's request for an update on the project, Raj texted "Everything is ok on our end. No worries." Pa169, 361, 371, 610.

After Plaintiff uncovered Defendants' fraudulent scheme, the parties entered into a Settlement Agreement, which provided, *inter alia*, that Defendants would pay a total of $540,000.00 to Plaintiff in accordance with an installment plan. Pa234-235. After the first payment of $150,000.00 was made, no other

payments were made, resulting in a balance of $390,000.00 due and owing. Pa375, 386, 410.

The APM Defendants claim that they were released of all liability in the Settlement Agreement, leaving Plaintiff with the sole recourse to enforce its rights only against Raj even though the APM Defendants provided NO consideration for such purported release. This supposed release is in furtherance of Defendants' scheme.

Contrary to the APM Defendants' claims, Plaintiff's Amended Complaint avers that the Settlement Agreement was part of Defendants' scheme. Specifically, it alleged that "with regard to the Settlement Agreement, there were numerous material representations of fact made by Defendants." (Fourteenth Count, paragraph 2) Pa424. In this Count, it was explicitly stated that Defendants perpetrated a fraud, in that the Settlement Agreement lacks consideration, in the Settlement Agreement purportedly released the APM Defendants, absent any consideration.

The APM Defendants claim that Plaintiff breached the parties' agreement by refusing and failing to pay expenses and development costs.

First, the APM Defendants never provided evidence of these alleged expenses, and many of the documents that were produced, list expenses that were unrelated to the project. Pa385-386. Indeed, a bill from a law firm, Chasen,

Lamparello, Mallon & Cappuzzo, dated October 18, 2018, includes an $1,800.00 consultation fee for Raj in connection with his dealings with Plaintiff, which expense entirely should only be paid by Defendants. Pa676-677.

Further, APM did not sell the subject property because of any financial distress. It did not perform any appraisal or get any opinion as to the value of the property before the sale. Pa385 and 785. In addition, the expenses that Plaintiff was supposedly required to pay are far less than the $615,000.00 that Plaintiff paid two (2) years earlier.

It is also uncontroverted that the APM Defendants took no steps in response to the December 19, 2019 letter they received from the New Jersey Sports and Exposition Authority (Pa213-218), in which Defendants' development application was denied with a list of items to correct for reconsideration.

Lastly, Raj does not even know what he did with the $1,800,000.00 that he received from the sale.

> Q: Mr. Patel, the monies that came from the sale of the property – where did the money go?
>
> A: I don't recall. Raj Dep. Tran. 169:120-122. Pa79.

Thus, the issue of whether Plaintiff paid the expenses is irrelevant as to why Defendants sold the properties.

## LEGAL ARGUMENTS

## POINT I

## THE APPELLATE COURT MUST REVERSE THE GRANTING OF SUMMARY JUDGMENT IN FAVOR OF THE APM DEFENDANTS, AS THE TRIER OF FACTS MUST DECIDE THE ISSUES AT A PLENARY HEARING

**(Raised Below: Pa11, 1489, 1494, 1500-1501, 1504)**

The APM Defendants argue, *inter alia*, in its brief, that Plaintiff included an eight page "mélange" of irrelevant information. This characterization is incorrect and highlights the need, requirement, and policy of having such issues decided at a plenary hearing – not just a review of documents. The APM Defendants actually aver that Raj's credibility is irrelevant, when he was the central figure in this scheme. It is certainly relevant for this Court to review the totality of the circumstances and the facts to determine whether any genuine issue or dispute exists. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

Reviewing the documentary evidence and Defendants' deposition testimony clearly indicates that this case should have been adjudicated at a full trial, and not summarily on paper. Indeed, it is hornbook law that many of the issues in this case, such as whether a material breach of the Settlement Agreement existed and the existence of consideration, are for the trier of fact at a hearing, not on a motion. Lo Re v. Tel–Air Communications, Inc., 200 N.J. Super. 59, 72–73 (App.Div.1985) and

De Ponte v. Mutual Contracting Co., 18 N.J. Super. 142, 146 (App.Div.1952). The requirement of issues being decided by the trier of fact is rooted in the strong policy of affording litigants their day in Court, and allowing for a determination of credibility.

This requirement of having the trier of fact decide this case was explicitly raised before the lower court both on the initial summary judgment motion (Pa. 1489-1490) and motion for reconsideration (Pa.1492-1494).

## POINT II

## THE SETTLEMENT AGREEMENT MUST BE SET ASIDE DUE TO LACK OF CONSIDERATION, FRAUD, MATERIAL BREACH, AND AMBIGUITY

**(Raised Below: Pa4, 6, 11, 12, 14, 361-363, 371-372, 397-398, 410-411, 1489-1490, T7, T8, T12)**

### A. LACK OF CONSIDERATION

"[A] settlement agreement is governed by principles of contract law." Thompson v. City of Atlantic City, 190 N.J. 359, 379 (2007). Consideration is central to any contract; that is, a contract must be supported by valuable consideration to be enforceable. Borbely v. Nationwide Mut. Ins. Co., 547 F.Supp. 959, 980 (D.N.J., 1981) and Continental Bank of Pa. v. Barclay Riding Acad., 93 N.J. 153, 170, 459 *A.*2d 1163 (1983).

Consideration is a bargained-for exchange of promises or performance and may consist of an "act, a forbearance, or the creation, modification, or destruction of a legal relation." Fregara v. Jet Aviation Business Jets, 764 F.Supp. 940, 948 (D.N.J.1991) and Shebar v. Sanyo Business Systems Corp., 111 N.J. 276, 289, 544 A.2d 377 (1988) (citing *Restatement (Second) of Contracts* § 71 (1981)). For a contract to be valid, the requirement of consideration mandates that "both sides must get something out of the exchange." Continental Bank at 170 (citing Friedman v. Tappan Development Corp., 22 N.J. 523, 533 (1956).

Consideration can be either a benefit to the promisor or a detriment to the promisee. Continental Bank at 170 (citing Novack v. Cities Serv. Oil Co., 149 N.J. Super. 542, 549 (Law Div., 1977), *aff'd,* 159 N.J. Super. 400, (App. Div.), *certif. denied,* 78 N.J. 396 (1978); and Bernetich, Hatzell & Pascu, LLC v. Med. Records Online, Inc., 445 N.J. Super. 173, 183 (App. Div., 2016).

The court must determine the parties' intent, as expressed in the contract. Onderdonk v. Presbyterian Homes of N.J., 85 N.J. 171, 183–84 (1981) and Celanese Ltd. v. Essex Cty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div., 2009). In determining the parties' intent, the court must read the contract as a whole, in "accord with justice and common sense." Cumberland Cty. Improvement Auth. v. GSP Recycling Co., 358 N.J. Super. 484, 497 (App. Div.) (quoting Krosnowski v. Krosnowski, 22 N.J. 376, 387 (1956)), *certif. denied,* 177 N.J. 222 (2003).

Therefore, "in ruling on a summary judgment motion that involves the interpretation of a contract, a court must necessarily determine whether there is any genuine issue of material fact regarding the parties' intention." Celanese Ltd. v. Essex County Imprv. Auth., 404 N.J. Super. 514, 528 (App. Div., 2009). See also Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (on a motion for summary judgment involving a breach of contract, the parties' intent is a legal question, which is germane).

In Scherer v. Kamelhair, 665 So.2d 1147 (District Court of Appeal of Florida, 4th District, 1996), the Appellate Court reversed the lower Court and found there are issues of material fact concerning the lack of consideration for the subject release.

In the case at hand, it is beyond dispute that the APM Defendants transferred no consideration in exchange for the alleged release set forth in the Settlement Agreement. There was absolutely no money or other consideration of any value transferred by said parties to Plaintiff, and there was no detriment to the APM Defendants. Rather, the Settlement Agreement (which was not even signed by either of the APM Defendants), provided the APM Defendants with a valuable benefit. Due to the obvious and irrefutable lack of consideration, the purported release in the Settlement Agreement in favor of the APM Defendants, should be rescinded and/or found to be ineffectual for lack of consideration. See First Nat. Bank of Princeton v. Northrup, 21 N.J. Super. 71 (Ch. Div., 1952), in which it was held that a release was ineffective due to failure of consideration.

The issue of consideration was extensively raised below, both in the initial summary judgment motion and motion for reconsideration (Pa1516-1547). As explained in the Certification dated July 26, 2024 of Alkesh Patel in connection with the initial motion for summary judgment:

> Implicit in the Settlement Agreement and my understanding (as my co-members) was that the release provided by PPL in favor of Raj and APM (and to the extent that it could include Parul, although we did not intend at all to include Parul in the release), was in consideration of PPL

> being made whole (i.e. receiving all monies owed)…The intention of the Settlement Agreement was to resolve all issues together. In exchange for the payment of $540,000, PPL would release Parul, APM, and Raj from all liability in connection with the development. **Until such time as the full consideration of $540,000 was received, PPL never intended to release anyone. It simply would not be fair otherwise and certainly, was not our intention**. Indeed, it was represented to us that Parul was a member and owner of APM and therefore, it would not have made sense for us to release either Parul or APM without being paid the full amount of $540,000. Pa387. (Emphasis Supplied).

This issue was specifically raised in Plaintiff's brief in connection with the initial motion for summary judgment, as follows:

> Neither Parul nor Alex signed the Settlement Agreement and therefore, any release in their favor lacks consideration, as they are not required to do anything. Pa1526.

During oral argument held on September 11, 2024 in connection with the initial motion for summary judgment, Plaintiff's contention that the Settlement Agreement lacked consideration was raised several times, as follows:

> There was no consideration. T10:22.
>
> How do we release Parul without getting anything in exchange? There is no consideration there. T12:4-6.
>
> The big picture is my client paid $615,000.00 and the person who has the money, supposedly Parul, is now supposed to walk scot free. That's not fair. That's not what this agreement was supposed to be. As you can see by my client's Certification – I think it was in paragraphs 28 and 29 – he said that wasn't the intention. He never would have let her [Parul]out. We want all the money paid. T12:19-13:2.

> It was not the intention of – of my clients – when they signed the Settlement Agreement, and again it – it's letting someone [Parul] out without any consideration when there is a material breach. T15:12-15.

In the Court's September 11, 2024 Decision/Order, the lower Court recognized that the issue of consideration was in fact raised below by Plaintiff in connection with the initial summary judgment motion. The Court considered but rejected the argument and specifically noted on page 4, as follows:

> Plaintiff further argues the agreement [Settlement Agreement] was only signed by Raj, not Parul, nor Alex, and thus ***lacks consideration to be enforceable against them***. (Emphasis Supplied). Pa4.

Indeed, in its September 11, 2024 Decision/Order in granting summary judgment in favor of the APM Defendants, the Court found, *inter alia*, as follows:

> The exchange of $540,000.00 from Raj to Plaintiffs served as ***sufficient consideration*** to deem the covenant not to sue and the Settlement Agreement enforceable ***as against all parties involved***. (Emphasis Supplied). Pa6.

This issue of consideration was also raised in Plaintiff's brief in connection with its motion for reconsideration, as follows:

> Parul and APM did not provide <u>any</u> consideration for their alleged release from liability. Pa1518.
>
> Consideration is a necessary element for a valid contract. Pa1522.
>
> Parul and Raj have been transferring properties between themselves for no consideration. Pa1519.

> Parul and APM provided no consideration for their release. Pa1521.
>
> There was a complete absence of consideration. Pa1524.
>
> The Settlement Agreement was a product and result of, and in furtherance of, a fraudulent scheme; there was clearly a material breach of the agreement; there no consideration for a release contained in such agreement. Pa1520.
>
> As there was no consideration, the release is ineffective. Pa1522.

In its December 6, 2024 Decision/Order denying reconsideration, the lower Court once again recognized the Plaintiff's argument concerning lack of consideration, as follows:

> It is further argued that Parul and APM provided no consideration for their release upholding the releases, and the matter should be decided at trial. Pa11.

Further, the issue of lack of consideration was specifically set forth in several places in Plaintiff's Amended Complaint, as follows:

> Implicit in the Settlement Agreement was that the release provided by Plaintiff in favor of Raj and APM, was in consideration of Plaintiff being made whole (i.e. receiving all monies owed). Pa410.
>
> The Settlement Agreement is unenforceable and void ab initio as it…lacks consideration, as Plaintiff did not receive what it was supposed to receive. Pa411.
>
> The Settlement Agreement lacks consideration. Pa424.

## B. MATERIAL BREACH

**(Raised Below: Pa4, 6, 11, 12, 14, 361-363, 371-372, 397-398, 410-411, 1489-1490, T7, T8)**

It is well-settled that agreements resolving litigation are governed by the general principles of contract law. Thompson v. City of Atl. City, 190 N.J. 359, 379 (2007). As any agreement, a substantial breach of a settlement agreement is grounds to set it aside.

As set forth in Nolan v. Lee Ho, 120 N.J. 465 (1990), where there is a breach of a material term of a settlement agreement, the non-breaching party is relieved of its obligations under the agreement, citing Stamato & Co. v. Borough of Lodi, 4 N.J. 14 (1950). See also Pacheco v. Bonano, 2006 W.L. 2033587 (App. Div., 2006), noting that a settlement agreement may be rescinded in the event of a material breach. Also in accord, Crown Bank v. Hotel Investors, LLC, 2022 W.L. 2111550 (App. Div., 2022).

The case of Goldman South Brunswick Partners v. Stern, 265 N.J. Super. 489 (App. Div., 1993), while discounted by Defendants, is exactly on point. The fact that a mortgage foreclosure was at issue, is irrelevant. The case concisely and correctly holds that releases are improper when there had been a default on the mortgage.

In Rational Contracting Inc. v. Discovery Property 78 LLC, 2012 W.L. 6111853 (App. Div., 2012) (also discounted by the APM Defendants), settlement

agreements were not involved, however, it clearly held that the failure to pay $50,000.00 of $110,000.00 pursuant to a contract, was a material breach.

The APM Defendants cite to the following cases, whose holding do not support their contentions:

A) Kaur v. Assured Lending Corp., 405 N.J. Super. 468 (App. Div., 2009), it was found that a material breach of a settlement agreement does not necessarily require rescission, even if it is a material breach. In Kaur, there was a provision dealing with a breach of payment, and specifically provided that, in such case, any monies owed should be included in an application before the Court for a judgment. Indeed, in Kaur, the Court noted that in the event of any fraud of misdeed, rescission would be appropriate. Kaur at 474.

In the case at hand, no specific remedy is provided. Rather, the Settlement Agreement merely states that Plaintiff's "sole remedy shall be against Patel [Raj] for the missing payments." Pa681. In addition, fraud is present in this case;

B) In Re Estate of Balk, 445 N.J.Super. 395 (App. Div., 2016), which solely deals with whether the statute of limitations on installment contracts is the same for each payment. It has no application to the case at hand, where there was clearly a material breach of the agreement and there is no statute of limitations issue;

C) Pascarella v. Bruck, 190 N.J. Super. 118 (App. Div., 1983), at issue was whether there was a material breach of the Settlement Agreement, by failing to pay

the balance of the installment payments. In Pascarella, the issue was not whether payments were made, but rather, whether the consideration agreed upon with legal counsel, was sufficient;

D) County of Morris v. Riverview Condominiums Inc., 304 N.J. Super. 322 (App. Div., 1997), which involved the request by a County for determination that its intended use for property superseded a prior judgment. The judgment had been based upon a settlement reached between the parties. The Appellate Division actually affirmed the lower Court's finding that the judgment did not have to be followed; and

E) Borough of Brooklawn v. Brooklawn Housing Corp., 124 N.J.L. 73 (C&A, 1949), the Court actually held that the third party had no rights under the underlying agreement.

The APM Defendants make much ado in their papers about claiming that rescission is not relevant to the Settlement Agreement – only to bilateral agreements.

In case at hand, the Settlement Agreement is a bilateral contract. Each party was to perform thereunder. Summer v. Fabregas, 52 N.J. Super. 399 (App. Div., 1958). Raj was obligated to make payments and Plaintiff was to release all parties upon payment of ALL settlement monies.

Further, even if the Settlement Agreement is deemed to be a unilateral, as opposed to a bilateral contract, such agreements are still subject to rescission in the

event of a material breach. The only difference is that in a bilateral contract, the aggrieved party is discharged from further performance.

## C. FRAUD

**(Raised Below: Pa6, 7, 9, 372-373, 396-398, T5, T6, T9, T10, T11)**

As conceded by the APM Defendants, fraud is a valid basis upon which to invalidate a settlement agreement, or any other contract.

In the case at hand, Defendants devised a scheme, designed to entrap Plaintiff and others into investing substantial monies under the guise of developing real estate in Secaucus, New Jersey. While the APM Defendants' only defense appears to be Plaintiff's alleged failure to pay expenses, the irrefutable reality is that soon after receiving $615,000.00 from Plaintiff, the APM Defendants attempted to sell the properties. When this plan was uncovered, Raj agreed to take the properties off the market, only to sign a contract for the sale of the properties in December, 2019, and sell the properties in April, 2020.

Perhaps most damning, are the texts that were sent in 2020 by Raj to Plaintiff (see above), in which not only did Raj fail to disclose the impending and then eventual sale of the properties, but led Plaintiff to reasonably believe that the Defendants were still in the process of submitting necessary paperwork for the approval of the development. Neither in Defendants' deposition testimonies, or in the APM Defendants' appellate brief, were these texts ever explained, as there can be no other explanation, other than the fraudulent scheme.

## D. AMBIGUITY

**(Raised Below: Pa4, 372-373, 410-412)**

As set forth in Plaintiff's initial appellate brief, several provisions of the Settlement Agreement are ambiguous, thus mandating that it be rescinded. See Spiotta v. Milkon, 70 N.J. Super. 344 (Ch. Div., 1961), in which it was held that a claim existed to rescind an agreement, where the language was ambiguous.

## CONCLUSION

For the reasons set forth above, the Orders must be reversed.

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*Attorneys for Plaintiff/Appellant*

Dated: October 14, 2025

By: _____
Howard B. Leopold, Esq.