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*Pro Se Plaintiff-Appellant*

**JOHN WILLIAM MYERS,**

**Plaintiff-Appellant,**

**vs.**

**WRONKO LOEWEN BENUCCI**

**Defendants-Respondents.**

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-002507-24**

**CIVIL ACTION**

**ON APPEAL FROM FINAL ORDERS  
OF THE SUPERIOR COURT,  
LAW DIVISION, SOMERSET COUNTY  
DATED MARCH 12, 2025**

Sat Below: Hon. Robert A. Ballard, Jr., P.J.Cv.  
Trial Court Docket No.: SOM-L-1145-24

**LEGAL BRIEF**

**FOR APPELLANT JOHN WILLIAM MYERS**

On the Brief:  
John W. Myers  
Pro Se Plaintiff

Dated: 6/12/2025

**RECEIVED  
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SUPERIOR COURT  
OF NEW JERSEY**

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*Pursuant to Rule 2:6-1, excerpts from the briefs are included to demonstrate specific issues were raised below; and parts of the record which are non-essential to the proper consideration and irrelevant for the purposes of this appeal have been omitted and are identified in the Table of Appendix by an asterisk.*

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### **PROCEDURAL HISTORY**

Plaintiff filed a Complaint in the Superior Court of New Jersey, Somerset County, Law Division on August 24, 2024, alleging ten counts stemming from Defendant's legal representation in municipal and civil court (Pa1). On November 1, 2024, Defendant moved to dismiss the complaint for failure to state a claim (Pa324).

On November 26, 2024, Plaintiff filed opposition to Defendant's motion and submitted Plaintiff's First Amended Complaint (Pa326). Subsequently, on December 6, 2024, Plaintiff submitted an Affidavit of Merit (Pa472).

On January 14, 2025, Plaintiff wrote a letter to the Court requesting adjournment and informed the Court of his intent to formally move to adjourn/stay the matter until the underlying cases have been resolved (Pa475). On January 27, 2025, Plaintiff filed motion to Adjourn/Stay until underlying docket and related cases are fully resolved (Pa476).

On February 14, 2025, the Court heard oral argument on both motions (1T).<sup>1</sup> By two separate Orders entered on March 12, 2025, the Court granted Defendant's motion to dismiss (Pa483) and denied Plaintiff's motion to stay as "moot" (Pa484).

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<sup>1</sup> 1T refers to the transcript from February 14, 2025, hearing on Defendant's motion to dismiss for failure to state a claim and Plaintiff's motion to stay.

### **STATEMENT OF FACTS**

The pending motion was based upon Rule 4:6-2(e) which is a failure to state a claim upon which relief can be granted (Pa485). Defendant contends that Plaintiff failed to sufficiently plead any facts in support of his causes of action and the crux of Defendants' argument is that Plaintiff failed to plead proximate cause (Pa486, 1T5). Defendant also argues that Plaintiff's claims are both premature and barred by the statute of limitations (Pa504, 1T6).

Plaintiff contends that his 132-page first amended complaint and supporting documents are sufficient for the Court to deny Plaintiff's motion based upon the principles established in Printing Mart (Pa459). Plaintiff argues that the pleadings allege specific facts and timelines which support all the elements for each cause of action (1T6-8, Pa459-70). Plaintiff asserts that his complaint was timely filed and provides specific reasons why the accrual date should be tolled (Pa388, Pa470). Plaintiff further asserts that this matter should be adjourned/stayed until the underlying action assigned to Docket No. SOM-L-1520-16 and related cases assigned to Docket No. SOM-L-1318-22 and Docket No. SOM-L-1444-22 are adjudicated to finality which is consistent with New Jersey legal precedent (Pa475-82).

## **LEGAL ARGUMENT**

### **I. MISAPPLICATION OF LEGAL STANDARD UNDER RULE 4:6-2(e) (Raised Below: 1T:6-8, Pa458-59, Pa508)**

Under Rule 4:6-2(e), Courts must assume all facts in the complaint are true and give the Plaintiff the benefit of all reasonable inferences. In this case, the court misapplied this standard by selectively addressing facts and ignoring key allegations in the pleadings including Plaintiff's certification, exhibits, and Affidavit of Merit. This oversight led to an unjust dismissal of the complaint.

The trial court's failure to consider the entire record demonstrates a breach of the liberal pleading standards. Instead of fairly evaluating the complaint in its entirety, the court dismissed it based on an incomplete analysis. For instance, the trial court's statement of reasons focused disproportionately on defendant's summary, devoting 14 pages compared to 5 pages for Plaintiff's arguments, which reflects a lack of balanced judgment.

New Jersey precedent, specifically Printing Mart-Morristown v. Sharp Electronics, 116 N.J. 739 (1989), emphasizes that courts should only dismiss a case if no conceivable facts could support relief. The trial court failed to adhere to this principle, neglecting to afford Plaintiff all reasonable inferences and dismissing the complaint without allowing discovery. This deprived the Plaintiff of the opportunity to substantiate his claims further.

The trial court's errors include ignoring Plaintiff's detailed allegations and supporting exhibits, which were integral to the complaint. Dismissal occurred despite unresolved factual disputes that warranted discovery. The lower court also failed to properly analyze the legal sufficiency of the claims under the standard for a motion to dismiss, thereby contradicting binding precedent. In conclusion, the trial court's dismissal of the complaint was an error arising from its failure to apply the correct legal standard and fully consider the Plaintiff's allegations and evidence. This oversight denied the Plaintiff a fair opportunity to present his case. Therefore, the dismissal order should be reversed, and Plaintiff's claims should proceed to discovery to ensure a fair and complete evaluation of all issues.

**II.A. THE PROPOSED AMENDED COMPLAINT SUFFICIENTLY PLEADS EACH CAUSE OF ACTION AND CURES ANY DEFECTS, THUS THE DEFENDANT'S MOTION TO DISMISS IS MOOT (Raised Below: 1T:6-8, Pa459, Pa495)**

Plaintiff's complaint and First Amended Complaint (FAC) contain specific, well-pleaded facts that, if accepted as true, would establish a prima facie case. The trial court's decision was erroneous due to flaws in the statement of reasons. Specifically, the trial court made erroneous findings of fact by ignoring the complete factual record. The trial court's findings were

unsubstantiated because they contradict the allegations and credible evidence in the pleadings.

The trial court's decision centers around lack of proximate cause and damage suffered. Contrary to the Court's findings, the complaint sufficiently pleads and explains how the Plaintiff suffered injuries and damage as a proximate cause of the Defendant's alleged breaches. The complaint provides detailed allegations of harm, including financial losses, emotional distress, and other damages, which are directly tied to the Defendant's actions or inactions.

Below are key points illustrating how the complaint connects the alleged breaches to the Plaintiff's injuries.

**\*\*Financial Damages\*\***

- Plaintiff paid the Defendant \$46,654.88 for legal services that were not adequately performed, resulting in wasted expenses. (Pa381: ¶173)
- Additional legal expenses of \$11,250 were incurred to hire another attorney to address issues caused by the defendants' negligence. (Pa381: ¶174)
- Plaintiff was ordered to reimburse the Association \$14,816.42 in attorney fees and expenses, which he attributes to the Defendants' failure to provide competent representation. (Pa381: ¶175-176)

- Plaintiff alleges that he missed out on significant raises, bonuses, and career advancement opportunities due to the emotional and financial toll of the litigation. (Pa383: ¶184)

**\*\*Emotional Distress\*\***

- Plaintiff alleges that the Defendants' action exacerbated his anxiety, PTSD, and depression, which required extensive treatment, therapy, and medication. (Pa382: ¶180-183)

- Plaintiff describes how the Defendants' conduct caused him to experience severe emotional distress, including suicidal thoughts, inability to concentrate at work, and disruption to his family life. (Pa447: ¶414-415)

**\*\*Lost Opportunities\*\***

- Plaintiff claims he was unable to complete professional exams required for career advancement due to the stress and time demands of the litigation. (Pa406: ¶279; Pa447: ¶415)

- Plaintiff alleges that Defendants' failure to obtain discovery, depose witnesses, and present evidence resulted in dismissal of his counterclaims and the inability to advance his legal arguments. (Pa404: ¶272-288)

**\*\*Prolonged Legal Uncertainty\*\***

- Plaintiff asserts that the Defendants' failure to act competently left him in "legal limbo," with unresolved claims and outstanding Temporary Restraining Order (TRO) that has restricted his ability to enjoy his property and Association membership rights since 2016. (Pa405: ¶275, Pa455: ¶455)
- Plaintiff alleges that the Defendant's withdrawal as counsel shortly before trial caused significant delays, increased costs, and left him unprepared to defend himself. (Pa446: ¶408, Pa447: ¶412)

**\*\*Specific Examples of Proximate Cause\*\***

- Plaintiff alleges that the Defendants' failure to obtain discovery, depose witnesses, and present his video evidence directly resulted in the dismissal of his counterclaims and the inability to vacate the TRO. (Pa404: ¶272-275)
- Defendants' failure to file timely motions and appeals allegedly caused the Plaintiff to lose the opportunity to advance his claims, including breach of contract, malicious prosecution, and improper elections. (Pa409: ¶288)
- Plaintiff claims that the Defendants' negligent handling of discovery deadlines and failure to file requests for admissions led to adverse rulings and increased litigation costs. (Pa408: ¶284-285)

**\*\*Harm from Defendants' Withdrawal\*\***

- Plaintiff alleges that the Defendants' withdrawal as counsel less than three weeks before trial caused him to incur additional legal expenses, left him unprepared for trial, and resulted in adverse rulings. (Pa446: ¶408-409)
- Plaintiff claims that the Defendants' disparaging statements to the Court after withdrawal damaged his reputation and prejudiced the Court against him, leading to unfavorable outcomes. (Pa437: ¶393)

**\*\*Casual Connection\*\***

- The complaint repeatedly asserts that the damages and injuries suffered by the Plaintiff would not have occurred but for the Defendants' breaches of duty, negligence, and misconduct. (Pa406: ¶278, Pa408: ¶286, Pa¶447: 412)

The complaint provides a detailed narrative of how the Defendants' alleged breaches of duty, negligence, and misconduct directly caused the Plaintiff's financial losses, emotional distress, and other damages. The allegations are specific, well-documented, and sufficiently connect the Defendants' actions to the Plaintiff's injuries. In addition, Plaintiff's certification (Pa89) alleges facts showing how the Defendant's breach of duty from the standard of care was the proximate cause of the Plaintiff's alleged damages. Specifically, Plaintiff's Certification alleges the following:



1. Failure to Obtain Discovery and Evidence: The Defendant failed to gather evidence, depose key witnesses, and file requests for admissions, which impacted Plaintiff's ability to defend and pursue his claims effectively.
2. Filing Motions Without Consent or Adequate Preparation: The Defendant filed motion for reconsideration without Plaintiff's consent and without transcripts, which Plaintiff alleges undermined his case and wasted resources.
3. Failure to File an Appeal: Defendant refused to file an appeal, which the Plaintiff argues was critical to preserving his claims.
4. Neglect of Key Evidence. The Defendant failed to introduce critical evidence, such as the Association's management contract and video evidence, which the Plaintiff argues would have changed the outcome of the case.
5. Abandonment of Client: The Defendant withdrew as counsel without ensuring the Plaintiff was adequately prepared to proceed, leaving him in a vulnerable legal position.
6. Emotional and Financial Harm. The Plaintiff alleges that the Defendant's actions exacerbated his anxiety, PTSD, and cognitive disorders, leading to costly medical treatments, career setbacks, and loss of income. Additionally, the Plaintiff incurred significant legal expenses and was ordered to reimburse

the Association for attorney fees, which he attributes to the Defendant's negligence.

In summary, the pleadings explicitly connect Defendant's negligence to Plaintiff's damage, arguing that the Defendant's failures directly caused or contributed to the financial and emotional harm suffered by the Plaintiff.

**II.B. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR LEGAL MALPRACTICE (Raised Below: 1T:6-8, Pa459, Pa510)**

The Plaintiff alleges that the defendant committed legal malpractice by breaching his duty of care, which caused significant harm to the plaintiff. The complaint provides specific facts supporting a valid claim for legal malpractice under New Jersey law, which requires proof of three elements: (1) the existence of an attorney-client relationship creating a duty of care, (2) breach of that duty, and (3) proximate causation of damages.

Myers entered a written contract with Defendant on December 12, 2016, for legal representation in a civil matter (Docket No. SOM-L-1520-16). The contract explicitly established an attorney-client relationship. Myers also entered into two oral contracts with WLB for representation in municipal court matters, further establishing the attorney-client relationship.

The complaint alleges numerous breaches of duty:

- **Failure to Investigate and Present Evidence:** Benucci did not introduce critical video evidence that disproves the allegations in the underlying municipal and civil cases. This evidence was central to Myers' defense and counterclaims.

- **Failure to Conduct Discovery:** Benucci did not file motions to compel discovery, schedule depositions, or subpoena witnesses, despite having ample time during the extended discovery period (which ended on May 15, 2018).

Judge Ballard opined in his August 3, 2018 Statement of Reasons that Benucci specifically failed to avail himself of discovery tools.

- **Filing Motions Without Consent:** Benucci filed a motion for reconsideration on October 25, 2018, without Myers' knowledge or consent. The motion was poorly drafted, omitted key arguments, and was ultimately denied as untimely.

- **Failure to Keep Myers Informed:** Benucci did not adequately communicate critical deadlines, legal strategies, or the status of the case, leaving Myers unable to make informed decisions.

- **Abandonment of Client:** less than three weeks before trial (January 14, 2019), Benucci filed a motion to withdraw, leaving Myers without representation. Benucci failed to provide reasonable notice, turn over the complete case file, or advise Myers on upcoming deadlines and statute of limitations.

The complaint alleges that Defendant's negligence directly caused:

- Negative Legal Outcomes: Myers' counterclaims were dismissed, and the temporary restraining order (TRO) against Myers remains in effect, severely restricting his rights as a member of the condominium association.
- Financial Losses: Myers incurred significant legal fees (\$46,654.88) and additional costs for hiring legal defense and defending contempt motions.
- Emotional Distress: Myers was diagnosed with severe anxiety, PTSD, and depression, which were exacerbated by Benucci's conduct.
- Lost Opportunities: Myers missed career advancement opportunities due to the prolonged litigation and emotional distress caused by Benucci's conduct.

The allegations in Plaintiff's complaint clearly establish that Benucci's negligence was a substantial factor in causing harm, satisfying the legal standard in Gilbert v. Stewart, 247 N.J. 421, 255 A.3d 1101 (N.J. 2021), which outlines the elements of legal malpractice.

Benucci's failure to expedite litigation, conduct discovery, file timely motions, and present evidence negatively impacted Plaintiff's case. This is evident in Judge Ballard's Statement of Reasons dated August 3, 2018. In addition, Benucci's withdrawal as counsel caused material adverse effects on Myers' interests. Benucci failed to provide reasonable notice, turn over the complete case file, or advise Myers on critical deadlines.

The pleadings demonstrate causation as Plaintiff alleges that Benucci's negligence created a "procedural swamp" that left Myers unable to preserve his claims, refile timely, or resolve the case efficiently. The TRO remains in effect, and Myers continues to suffer financial loss and emotional harm.

In summary, Plaintiff's complaint provides detailed factual allegations that establish the existence of an attorney-client relationship, the defendant's breach of duty, and proximate causation of damages. These facts support a valid claim for legal malpractice under Count 1.

**III. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR BREACH OF CONTRACT (Raised Below: 1T:6-8, Pa464, Pa496, Pa512)**

The Plaintiff alleges that the defendant breached multiple contracts—one written and two oral. The complaint provides specific facts supporting a valid claim for breach of contract under New Jersey law, which requires proof of (1) the existence of a valid contract, (2) breach of the contract by the defendant, and (3) damages suffered by the plaintiff as a result of the breach.

On December 12, 2016, Myers entered into a written agreement with Wronko Loewen Benucci (WLB) for legal representation in a civil matter (Docket No. SOM-L-1520-16). The contract outlined the obligations of both

parties, including provisions for fee disputes, termination of representation, and specifically the incapacitation/unavailability of Marco M. Benucci.

- Oral Contract #1: On November 17, 2016, Myers entered into an oral agreement with WLB attorney Kevin Hewitt, Jr., for representation in Municipal Court Trial #3 for a flat fee of \$1,000.
- Oral Contract #2: On April 24, 2017, Myers entered into a second oral agreement with Marco M. Benucci for representation in Municipal Court Trial #3 for a flat fee of \$2,750, specifically to ensure Benucci's personal representation at trial instead of Hewitt.

The complaint alleges breaches of the written and oral contracts:

- Failure to Comply with Fee Dispute Clause: Myers disputed legal fees on October 25, 2018, and December 18, 2018, but Benucci did not advise Plaintiff of his right to pursue fee arbitration as required under the "Fee Dispute/Arbitration" clause. Instead, Benucci filed a motion to withdraw as counsel, citing unpaid fees, without resolving the dispute through arbitration.
- Failure to Comply with Termination Clause: Benucci did not provide Plaintiff with written notice or comply with the 10-day lapse period before withdrawal. Without reasonable notice, Plaintiff was unable to oppose the motion on January 25, 2019, and lacked sufficient time to find substitute counsel.

- Failure to Comply with Incapacitation/Unavailability Clause: The contract stipulated that if Benucci became unavailable, his partners at WLB (Wronko or Loewen) would represent Plaintiff. Instead, Myers was represented by junior attorney Kevin Hewitt, Jr., during critical proceedings, including depositions and the Summary Judgment hearing on July 20, 2018, contrary to the contract.
- Failure to Fulfill Oral Contract #1: Myers paid \$1,000 for representation in Muni Trial #3, but Benucci coerced Myers into accepting a plea agreement with civil reservation instead of proceeding with a full trial as agreed.
- Failure to Fulfill Oral Contract #2: Myers paid \$2,750 for Benucci's personal representation at Muni Court Trial #3, but Benucci did not try the case and pressured Myers into accepting a plea agreement. Benucci also failed to obtain promised discovery, including phone and email records of the property manager, which were critical to Myers' defense and claims in the civil matter.

The complaint alleges that Myers suffered significant damage and mental injuries as a direct result of Benucci's breaches, including:

- Financial Losses: Myers paid WLB \$46,654.88 for legal services, including fees for motions and actions that were unauthorized or poorly executed. Myers incurred additional legal expenses of \$11,250 for new counsel to address issues arising from Benucci's withdrawal, additional court costs, \$1,380.60 for

hearing transcripts needed to vacate the TRO, \$14,816.42 in damages for contempt charges, and suffered loss of income due to the prolonged litigation.

- Emotional Distress: Myers experienced severe anxiety, PTSD, and depression, exacerbated by Benucci's failure to fulfill contractual obligations.
- Lost Opportunities: Myers missed professional exams, promotions, and career advancement opportunities due to the prolonged litigation and emotional distress caused by Benucci's breaches.
- Legal Consequences: Myers was left without representation less than three weeks before trial, resulting in adverse legal outcomes and damages including the continuation of a Temporary Restraining Order that has restricted Myers' rights since 2016, which would not have occurred, but for Benucci's breaches.

Plaintiff disputes defendant's argument that the breach of contract claim is duplicative of the legal malpractice claim, asserting that the breaches of contractual provisions are independent of the malpractice allegations.

In summary, the plaintiff's complaint provides detailed factual allegations demonstrating that Benucci breached the terms of the written and oral contracts, causing significant financial harm, emotional distress, and legal setbacks, which supports a valid claim for breach of contract under Count 2.



**IV. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (Raised Below: 1T:6-8, Pa464, Pa496, Pa512)**

The complaint alleges that the defendant breached the implied covenant of good faith and fair dealing inherent in their written and oral contracts.

Under New Jersey law, every contract includes an implied covenant requiring each party to act in good faith and deal fairly with the other in performing or enforcing the terms of the contract. To establish a breach of this covenant, a plaintiff must demonstrate: (1) the existence of a contract; (2) bad faith conduct by the defendant that deprived the plaintiff of reasonable expectations under the contract; and (3) damages resulting from the defendant's actions.

Myers entered into a written contract with WLB on December 12, 2016, for legal representation in a civil matter (Docket No. SOM-L-1520-16). The contract outlined the obligations of both parties, including provisions for fee disputes, termination of representation, and incapacitation/unavailability of the attorney. Myers also entered into two oral contracts with WLB: one on November 17, 2016, for representation in Municipal Court Trial #3 for a flat fee of \$1,000, and another on April 24, 2017, for a flat fee of \$2,750, specifically to ensure Benucci's personal representation in Muni Court.

The complaint alleges bad faith by Benucci that deprived Myers of his reasonable expectations under the contracts, including:

- Failure to Keep Myers Informed: Benucci withheld critical information about the status of the case, deadlines, discovery timelines, and hearing dates.

Benucci did not notify Myers of the time of the 1/25/2019 hearing, leaving Myers unable to oppose and without adequate time to find substitute counsel.

- Misrepresentation of Contract Terms: Benucci falsely asserted that Myers' fee arbitration filing was "improper and improvident." There was no official letter demanding payment, contrary to the contract terms which explicitly allowed Myers to pursue fee arbitration for billing disputes.

- Failure to Order Transcripts: Benucci promised transcripts to support his motion for reconsideration or an interlocutory appeal but failed to order them, depriving Myers of the ability to make informed decisions about his case.

- Coercion to Accept Plea Agreement: On May 12, 2017, Benucci pressured Myers to accept a plea agreement with civil reservation in Municipal Court Trial #3, promising to obtain discovery, including phone and email records of the property manager, during the civil litigation. Benucci failed to fulfill this promise, leaving Myers without critical evidence to support his claims.

- Abandonment of Client: Less than three weeks before trial (January 14, 2019), Benucci filed a motion to withdraw, citing unpaid fees, despite knowing that withdrawal would have a material adverse effect on Myers' interests.

Benucci offered to withdraw the motion if Myers paid the outstanding bill and an additional \$2,500 as a trial retainer, demonstrating bad faith and prioritization of financial gain.

- Failure to Expedite Litigation: Benucci failed to conduct adequate discovery, schedule depositions, or file motions to compel, despite having ample time during the extended discovery period. Judge Ballard's Statement of Reasons dated August 3, 2018, clearly states that Benucci failed to avail himself of discovery tools which resulted in the dismissal of Myers' counterclaims.

- Failure to Turn Over Case Files: After withdrawing as counsel, Benucci failed to provide Myers with a complete copy of his case file or inform him how to access eCourts, leaving Myers unable to preserve his claims or refile timely.

The complaint alleges that Benucci's bad faith conduct caused significant harm to Myers, including:

- Financial Losses: Myers paid WLB \$46,654.88 for legal services but received substandard representation. Plaintiff also incurred additional legal expenses of

\$11,250 for defending contempt motions that arose due to Benucci's negligence and Myers incurred financial penalties as a direct result.

- Emotional Distress: Myers experienced severe anxiety, PTSD, and depression, exacerbated by Benucci's failure to fulfill contractual obligations and abandonment of representation.

- Lost Opportunities: Myers missed professional exams, promotions, and career advancement opportunities due to the prolonged litigation and emotional distress caused by Benucci's conduct.

- Legal Consequences: Myers was left without representation less than three weeks before trial, resulting in adverse legal outcomes, including the continuation of temporary restraint order in effect since 2016.

Plaintiff cites the legal standard in Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396 (1997), which outlines the elements of a breach of the covenant of good faith and fair dealing. Plaintiff asserts that the complaint demonstrates Benucci's bad faith conduct deprived Myers of his reasonable expectations under the contract, satisfying the legal standard.

- Evasion of Contract Terms: Benucci's deliberate misinterpretation of fee arbitration, termination, and unavailability clauses to his advantage, demonstrates that Benucci prioritized his financial gain over Myers' interests.

•Failure to Protect Client Interests: Plaintiff argues that Benucci's withdrawal as counsel violated the implied contract and caused material adverse effects on Myers' interests. Benucci failed to provide reasonable notice, turn over the complete case file, or advise Myers on critical deadlines.

In summary, Plaintiff's complaint provides detailed factual allegations demonstrating that Benucci acted in bad faith, evaded the spirit of the contract, and deprived Myers of his reasonable expectations under the contract. These facts support a valid claim for breach of the covenant under Count 3.

**V. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR BREACH OF FIDUCIARY DUTY (Raised Below: 1T:6-8, Pa465, Pa497, Pa513)**

The Plaintiff alleges that WLB breached their fiduciary duty during and after their legal representation. Under New Jersey law, fiduciary duty requires an attorney to act in the best interests of their client, maintain loyalty, and protect the client's interests. Myers' complaint provides specific facts supporting a valid claim for breach of fiduciary duty, including actions that occurred during Benucci's representation and after his withdrawal as counsel.

Myers entered into multiple contracts with WLB, establishing an attorney-client relationship and creating fiduciary obligations. These contracts included a written agreement dated December 12, 2016, and oral agreements

for representation in municipal court matters. The complaint alleges numerous breaches of fiduciary duty including:

- Partial Motion to Dismiss: On March 31, 2017, Benucci filed a motion seeking dismissal of only two out of three counts in the civil complaint, leaving the “non-physical” assault count and Temporary Restraining Order (TRO) intact. This partial motion was not in Myers’ best interest, as the entire complaint could have been dismissed based on the lack of evidence and Myers’ video evidence proving the allegations were false.
- Coercion to Accept Plea Agreement: On May 12, 2017, Benucci pressured Myers to accept a plea agreement with civil reservation in Municipal Court Trial #3, despite Myers’ desire to proceed with a full trial to prove his innocence and gather evidence for the civil matter. Benucci promised to obtain discovery, including phone and email records of the property manager, but he did not honor this word.
- Failure to Expedite Litigation: Benucci failed to conduct adequate discovery, schedule depositions, or file motions to compel, despite having ample time during the extended discovery period. Judge Ballard’s August 3, 2018, order noted that Benucci failed to avail himself of discovery tools, resulting in the dismissal of Myers’ counterclaims.

- Withdrawal Before Trial:** Less than three weeks before trial (January 14, 2019), Benucci filed a motion to withdraw, citing unpaid fees. This left Myers without representation and without adequate time to find new counsel, causing material adverse effects on Myers' interests and mental health.
- Failure to Notify of Hearing:** Benucci failed to properly inform Myers of the January 25, 2019, hearing on his motion to withdraw, leaving Myers unable to oppose the motion, and without adequate time to find substitute counsel.
- Failure to Turn Over Case Files:** After withdrawal, Benucci failed to provide Myers with a complete copy of his case file, leaving Myers unable to preserve his claims or refile timely which exacerbated his severe anxiety and PTSD.
- Damaging Statements to the Court:** In his certification supporting the motion to withdraw and subsequent letter to Judge Miller dated January 31, 2019, Benucci disclosed confidential and damaging information about Myers, including allegations his client was "antagonistic, belligerent, and uncooperative." These statements were unnecessary, defamatory, and prejudicial- especially considering the pending TRO and assault claim.
- Neglect of Post-Withdrawal Duties:** Benucci failed to notify the court to remove himself as attorney of record after being relieved as counsel. As a result, Myers did not receive critical court notices and was left in legal limbo.

- Failure to Advise: Benucci did not explain the relevant statute of limitations or advise Myers how to preserve his claims after withdrawal.

The complaint alleges that Benucci's breaches caused significant financial harm and mental injuries to Myers, including:

- Financial Losses: Myers paid WLB \$46,654.88 for legal services and received substandard representation. Myers incurred additional legal expenses of \$11,250 for hiring defense against contempt motions and incurred damages from contempt charges that arose due to Benucci's negligence.
- Emotional Distress: Myers experienced severe anxiety, PTSD, and depression, exacerbated by Benucci's failure to fulfill fiduciary duties.
- Lost Opportunities: Myers missed career advancement opportunities due to the prolonged litigation and emotional distress caused by Benucci's conduct.
- Legal Consequences: Myers was left without representation less than three weeks before trial, resulting in adverse legal outcomes, including the continuation of a TRO that has restricted Myers' rights since 2016.

Plaintiff supports his breach of fiduciary duty claim by citing In re Propecia; Motions to Withdraw as Counsel (2017), which outlines an attorney's fiduciary duty to protect the client's interests during withdrawal.



Benucci failed to provide Myers with reasonable notice, turn over the complete case file, or advise Myers on critical deadlines.

- Duty of Loyalty: Benucci breached his duty of loyalty by prioritizing his financial gain over Myers' interests, revealing confidential information to the court, and abandoning Myers.

- Post-Withdrawal Obligations: Defendant's fiduciary duty extends to former clients and Benucci did not inform Plaintiff how to access eCourts or provide his client with a complete copy of his case file.

In summary, Plaintiff's complaint provides detailed factual allegations demonstrating that Benucci breached his fiduciary duty by failing to act in Myers' best interests, abandoning him before trial, revealing confidential information during and after legal representation terminated, and neglecting post-withdrawal obligations. These breaches caused significant harm to Myers, supporting a valid claim for breach of fiduciary duty under Count 4.

**VI. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS  
WHICH SUPPORT A VALID CLAIM FOR I.I.E.D.  
(Raised Below: 1T:6-8, Pa466, Pa497, Pa514)**

The complaint alleges Defendant caused severe emotional distress during and after their attorney-client relationship. Under New Jersey law, a claim for intentional infliction of emotional distress requires demonstrating:

(1) intentional or reckless conduct, (2) extreme and outrageous behavior, (3) causation of emotional distress, and (4) distress so severe no reasonable person could endure it.

The complaint contains allegations of intentional or reckless conduct: (a) Withdrawal: Less than three weeks before trial on January 14, 2019, Benucci filed to withdraw and acknowledged the potential harm in an email dated December 20, 2018; (b) Pressure over Fees: Benucci pressured Myers regarding fees with threats of withdrawal and blocked communication; (c) Statements to the Court: After withdrawing as counsel, Benucci wrote a letter to the court on January 31, 2019, describing Plaintiff negatively; (d) Response to Suicidal Thoughts: In 2017, Plaintiff disclosed suicidal ideation due to litigation stress and Benucci responded dismissively.

The complaint contains allegations of Defendant's extreme and outrageous conduct: (a) Notification of Hearing: Defendant did not notify Plaintiff of a hearing on January 25, 2019, leaving Plaintiff unable to contest the withdrawal; (b) Disclosure of Information: Benucci disclosed false information to the court to shed Plaintiff in negative light.

The complaint demonstrates proximate cause of emotional distress: (a) Plaintiff's anxiety, PTSD, and depression, diagnosed in 2017, were

exacerbated by Benucci's actions, leading to further emotional harm; (b) Plaintiff experienced professional setbacks, strained family relationships, medical leave, and required outpatient treatment for anxiety and PTSD.

The complaint alleges severe emotional distress, and Plaintiff continues to experience significant mental health issues, requiring ongoing therapy, affecting his ability to work and enjoy life. In summary, Benucci's actions caused Myers' emotional distress, supporting a valid claim under Count 5.

**VII. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR N.I.E.D. (Raised Below: 1T:6-8, Pa466, Pa497, Pa516)**

The complaint alleges Defendant negligently inflicted emotional distress through actions and omissions during and after his legal representation. Under New Jersey law, a claim for negligent infliction of emotional distress requires the plaintiff to demonstrate: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach created a foreseeable risk of harm; (4) the plaintiff suffered severe emotional distress; and (5) the defendant's actions were the proximate cause of the plaintiff's distress.

Myers entered into multiple contracts with Wronko Loewen Benucci (WLB), establishing an attorney-client relationship and creating a duty of care.

This duty required Benucci to act as a reasonably competent attorney, protect Myers' interests, and avoid actions that could foreseeably harm Myers.

The complaint outlines several breaches of duty by Benucci, including:

- (a) Failure to Expedite Litigation: Despite ample time, Benucci neglected essential steps such as conducting discovery, scheduling depositions, or filing motions to compel, leading to Myers' counterclaims being dismissed.
- (b) Abandonment of Client: Less than three weeks before trial (1/14/2019), Benucci filed to withdraw, citing unpaid fees. This left Myers without representation at a critical juncture.
- (c) Failure to Notify: Benucci did not inform Myers of the hearing time on his motion to withdraw on 1/25/2019, preventing Myers from contesting it.
- (d) Failure to Turn Over Files: After withdrawal, Benucci failed to provide complete case file, hindering Myers ability to preserve claims or refile timely.

The actions of Benucci created a clear and foreseeable risk of harm:

- (a) Mental Health: Benucci was aware that Myers suffered from severe anxiety and PTSD and Benucci's action exacerbated Myers' mental health symptoms.
- (b) Impact of Withdrawal: By withdrawing representation shortly before trial, Benucci left Myers vulnerable to adverse legal and emotional consequences.

Myers experienced extreme distress due to Benucci negligence:

(a) Suicidal Thoughts: Myers experienced suicidal ideation due to the stress of the litigation and Benucci's conduct. He disclosed these thoughts to Benucci, who responded dismissively, saying, "Go right ahead."

(b) Long-Term Psychological Impact: Myers suffers from severe mental health issues, requiring ongoing therapy that affects his ability to work and live fully.

The Plaintiff's emotional distress was directly linked to Benucci's negligent conduct: (a) Exacerbation of Mental Health Conditions: Benucci's actions worsened Myers' mental health, leading to psychological harm. (b) Legal Ramifications: The lack of representation and missing files compounded Myers' distress by leaving him unable to pursue his legal options effectively.

In summary, the complaint provides detailed evidence demonstrating that Benucci's negligence created a foreseeable risk of harm, caused severe emotional distress, and resulted in damages that a reasonable person would find intolerable. These facts support a valid claim for negligent infliction of emotional distress under Count 6.

**VIII. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR NEGLIGENCE (Raised Below: 1T:6-8, Pa466, Pa517)**

The Plaintiff alleges that Benucci committed negligence by failing to act as a reasonable attorney would under similar circumstances. To establish a

claim for negligence under New Jersey law, a plaintiff must demonstrate: (1) the defendant owed a duty of care; (2) the defendant breached that duty; (3) the breach caused harm; and (4) the plaintiff suffered damages as a result.

The attorney-client relationship obligated Benucci to act competently in handling Myers' legal matters. The complaint alleges multiple breaches:

- Failure to Back Up Client Files: Benucci admitted in a letter to Judge Miller dated June 11, 2018, that he lost crucial work product saved on a flash drive, demonstrating negligence in failing to back up and store client files securely.
- Failure to Expedite Litigation: Benucci did not conduct adequate discovery, schedule depositions, file requests for admissions, introduce evidence, or file motions to compel, leading to the dismissal of Myers' counterclaims as Judge Ballard opined in his Statement of Reasons dated August 3, 2018.
- Missed Deadlines: Benucci failed to file motions to compel discovery, which Judge Ballard stated he would have granted if filed before discovery end date.
- Failure to Notify of Hearing: Benucci did not inform Myers of the time of the January 25, 2019, hearing on his motion to withdraw as counsel, leaving Myers unable to oppose, resulting in the uncontested approval of the motion.

- Failure to Turn Over Case Files: After withdrawal, Benucci did not provide Myers with a complete copy of his case file which significantly hindered Plaintiff's ability to understand, preserve his claims or refiling timely.

The complaint alleges and demonstrates causation:

- Delays and Additional Costs: Benucci's negligence led to litigation delays and extra billing hours due to lost work.
- Negative Legal Outcomes: Myers' counterclaims were dismissed, and he could not preserve or refile claims due to Benucci's incompetence.
- Exacerbation of Emotional Distress: Myers' anxiety, PTSD, and depression worsened due to Benucci's failures and abandonment.

As a direct result, Plaintiff suffered damages and sustained injuries:

- Financial Losses: Myers incurred significant legal expenses, including additional court fees, transcript cost, and other litigation-related expenses.
- Emotional Distress: Myers suffered severe emotional distress, requiring ongoing therapy and treatment, as a direct result of Benucci's negligence.
- Lost Opportunities: Myers missed career advancement opportunities and received negative performance reviews due to his inability to concentrate and focus on his job while dealing with the consequences of Benucci's negligence.

In summary, The plaintiff's complaint outlines Benucci's negligent conduct, the harm caused to Myers, and the resultant financial and emotional damage, supporting a valid claim for negligence under Count 7.

**IX. THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, AND BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING COUNTS ARE NOT REDUNDANT OF THE LEGAL MALPRACTICE CLAIM  
(Raised Below: 1T:6-8, Pa466, Pa497)**

Plaintiff's complaint outlines how the claims for legal malpractice are not duplicative of other counts by emphasizing the distinct legal bases and elements of each claim. Specifically, the complaint shows that the legal malpractice claim is rooted in professional negligence and the failure to meet the standard of care required of attorneys, while the other counts address separate duties and breaches that are independent of professional negligence.

Regarding the Breach of Contract, Plaintiff asserts this count is independent of legal malpractice because it focuses on Defendant's failure to honor the contract. These breaches are contractual in nature and do not require evaluation of professional standards, making them distinct from legal malpractice. Examples include:

- Failure to comply with the "Fee Dispute/Arbitration" clause
- Failure to comply with the "Termination of Representation" clause



- Failure to comply with the "Incapacitation and Unavailability" clause

Regarding Breach of the Covenant, Plaintiff asserts that this claim is independent because it addresses Defendant's bad faith actions that deprived Plaintiff of the benefits of the contract. This claim focuses on Defendant's intent and bad faith conduct, which is separate from professional negligence. Examples include:

- Deliberately misleading Plaintiff: Defendant failed to disclose critical information about the case, such as the expiration of the discovery end date.
- Evading contractual obligations: Defendant conjured up a non-existent dispute over billing and failed to act in good faith during the fee arbitration process.

Regarding Breach of Fiduciary Duty, Plaintiff argues that this count is broader in scope than legal malpractice because it extends to both current and former clients. These actions involve intentional misconduct and breaches of loyalty, which are distinct from professional negligence. Examples include:

- Post-withdrawal misconduct: Plaintiff alleges that Defendant breached his fiduciary duty by writing a damaging letter to the court after withdrawing as counsel, which negatively impacted Plaintiff's case.

- Failure to protect Plaintiff's interests: Defendant did not turn over the complete case file, advise client how to access eCourts, or advise Plaintiff on upcoming deadlines after withdrawing as counsel.

Regarding Negligence, Plaintiff argues that this count is independent because it addresses Defendant's failure to act as a reasonable person under the circumstances, rather than as an attorney. This claim focuses on general negligence rather than violations of professional standards, making it distinct from legal malpractice. For example:

- Failure to back up client files: Plaintiff alleges that Defendant lost work product stored on a flash drive, resulting in delays and additional billing hours.

In summary, each count addresses different duties and breaches. Legal malpractice focuses on professional negligence and failure to meet the standard of care required of attorneys; whereas the other counts address contractual obligations, bad faith conduct, fiduciary duties, and general negligence, which are independent of Benucci's professional standards. By highlighting these distinctions, Plaintiff demonstrates that these claims are not duplicative and should be treated as separate causes of action.

**X. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR NEGLIGENT MISREPRESENTATION**  
**(Raised Below: 1T:6-8, Pa468, Pa498, Pa517)**

The complaint alleges that the defendant made numerous false representations during his legal representation, which Myers relied upon to his detriment. Under New Jersey law, a claim for negligent misrepresentation requires the plaintiff to demonstrate: (1) the defendant made a false statement; (2) the defendant failed to exercise reasonable care in making the statement; (3) the plaintiff reasonably relied on the statement; and (4) the plaintiff suffered damages as a result of the reliance.

The complaint identifies several false statements, including:

- Promise to Obtain Discovery: On May 12, 2017, Benucci promised Myers that he would obtain discovery, including phone and email records from the property manager, if Myers accepted a plea agreement with civil reservation in Municipal Court Trial #3. Benucci failed to fulfill this promise, did not obtain the records, and did not file motions to compel discovery.
- Misrepresentation of Deadlines: Benucci failed to disclose that the discovery end date had expired, misleading Myers about the status of his case and the availability of discovery tools.
- Misrepresentation of Legal Strategy: Benucci advised Myers to accept a plea deal in municipal court, claiming it was in Myers' best interest to address the

matter in civil court. However, Benucci did not follow through on obtaining evidence or advancing Myers' case in civil court.

The allegations demonstrate failure to exercise reasonable care:

- Negligence in Handling Discovery: Benucci failed to act with reasonable care in managing discovery, including missing deadlines to file motions to compel and failing to schedule depositions.
- Failure to Keep Client Informed: Benucci did not adequately inform Myers about critical deadlines, the status of discovery, or the implications of his legal strategy, which demonstrates a lack of reasonable care.

Myers reasonably relied on Benucci's promises and representations, including the assurance that discovery would be obtained and that accepting a plea deal with civil reservation was the best course of action. Myers trusted Benucci's expertise and followed his advice, believing it would lead to a favorable resolution of his legal matters.

The complaint demonstrates that Plaintiff suffered damages as a direct result of his reliance of Benucci's statements including:

- Financial Losses: Myers incurred significant legal expenses, including fees paid to Benucci, additional legal defense costs, additional court filing fees, and

damages from contempt charges which would have never occurred, but for Benucci's negligent misrepresentation.

- Emotional Distress: Myers suffered severe emotional distress, including anxiety and PTSD, exacerbated by Benucci's failure to fulfill his promises.
- Lost Opportunities: Myers missed career advancement opportunities due to his inability to concentrate and focus on his job while dealing with the prolonged consequences of Benucci's negligent misrepresentation.

Notwithstanding the fact that a heightened pleading standard does not apply, Plaintiff's complaint complies with the requirements of Rule 4:5-8(a) to the extent practicable. In summary, the complaint provides detailed factual allegations demonstrating that Benucci made false statements, failed to exercise reasonable care, and caused Myers to suffer financial and mental injuries because of his reliance on these misrepresentations. These facts support a valid claim for negligent misrepresentation under Count 8.

**XI. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS WHICH SUPPORT A VALID CLAIM FOR PROMISSORY ESTOPPEL (Raised Below: 1T:6-8, Pa468, Pa498, Pa518)**

The pleadings allege that Defendant made specific promises during their legal representation which Plaintiff relied upon to his detriment. Under New

Jersey law, promissory estoppel requires a clear promise, expectation of reliance, reasonable reliance, and resulting detriment.

On May 12, 2017, Benucci promised to obtain discovery if Myers accepted a plea but failed to do so. On July 17, 2017, he assured Myers of continued support but later filed a withdrawal motion on December 27, 2018. On August 24, 2018, Benucci pledged to order transcripts for reconsideration or appeal, yet did not follow through. Myers relied on these promises, suffered financial losses, emotional distress, and legal consequences as a result. These facts support a claim for promissory estoppel under Count 9.

**XII. PLAINTIFF'S COMPLAINT CONTAINS SPECIFIC FACTS  
WHICH SUPPORT A VALID CLAIM FOR FRAUDULENT  
MISREPRESENTATION  
(Raised Below: 1T:6-8, Pa469, Pa498, Pa519)**

The Plaintiff alleges that attorney Marco M. Benucci made material and false representations during the course of his legal representation, which Myers relied upon to his detriment. Under New Jersey law, a claim for fraudulent misrepresentation requires the plaintiff to demonstrate: (1) the defendant made a false representation of a material fact; (2) the defendant knew the representation was false or made it with reckless disregard for its truth; (3) the defendant intended the plaintiff to rely on the representation; (4)

the plaintiff reasonably relied on the representation; and (5) the plaintiff suffered damages as a result of the reliance.

The complaint identifies several specific instances of fraudulent misrepresentation by Benucci, including, but not limited to:

- Promise to Obtain Discovery:** On May 12, 2017, Benucci promised Myers that he would obtain discovery, including phone and email records from the property manager, if Myers accepted a plea agreement with civil reservation in Municipal Court Trial #3. Benucci failed to fulfill this promise, did not obtain the records, and did not file motions to compel discovery.
- Misrepresentation of Deadlines:** Benucci failed to disclose that the discovery end date had expired, misleading Myers about the status of his case and the availability of discovery tools.
- Misrepresentation of Legal Strategy:** Benucci advised Myers to accept a plea deal in municipal court, claiming it was in Myers' best interest to address the matter in civil court. However, Benucci did not follow through on obtaining evidence or advancing Plaintiff's case in civil court.

Benucci knew or should have known that his representations were false. For example, he was aware that the discovery end date had expired and that he

had not taken the necessary steps to obtain the promised evidence. Despite this, he continued to assure Myers that discovery would be obtained.

Benucci made these representations with the intent of inducing Myers to continue paying for legal services. Benucci assured Myers that accepting the plea deal with civil reservation would allow him to pursue his claims in civil court. Benucci did not take the necessary steps to advance defend or advance Plaintiff's claims, and knowingly induced Myers into paying additional fees.

Myers reasonably relied on Benucci's representations, trusting his expertise as an attorney. Myers accepted the plea agreement in Municipal Court Trial #3 based on Benucci's assurance that discovery would be obtained and that addressing the matter in civil court was the best course of action.

The Plaintiff suffered damages because of his reliance including:

- Financial Losses: Myers incurred significant legal expenses, including excessive fees paid to Benucci, additional legal fees, and contempt damages.
- Emotional Distress: Myers suffered severe emotional distress, including anxiety and PTSD, exacerbated by Benucci's failure to fulfill his promises.
- Lost Opportunities: Myers missed career advancement opportunities and received negative performance reviews due to his inability to concentrate and focus on his job because of Benucci's fraudulent misrepresentation.



Plaintiff argues Benucci's actions constituted "continuous fraudulent inducement," as each billing invoice effectively represented a separate agreement requiring client consent. Benucci's misrepresentations were material and directly influenced Myers' decisions, including accepting the plea agreement and continuing to pay for legal services.

Benucci failed to zealously pursue discovery, as evidenced by Judge Ballard's August 3, 2018 Statement of Reasons which ruled that Benucci's motion to compel discovery was denied as "out of time." This proves that Benucci knowingly failed to act in Myers' best interest while continuing to make false promises.

The complaint demonstrates Benucci's failure to disclose critical information, such as the expiration of the discovery end date, which deprived Myers of the ability to make informed decisions about his case. This omission was reasonably certain to mislead Myers and cause harm.

In summary, Plaintiff's complaint provides detailed factual allegations demonstrating that Benucci made material and false representations, knew or recklessly disregarded their falsity, intended Myers to rely on them, and caused financial and emotional damage because of his reliance. These facts support a valid claim for fraudulent misrepresentation under Count 10.

**XIII. PLAINTIFF'S CLAIMS ARE NOT TIME-BARRED  
(Raised Below: 1T:12, Pa470, Pa499, Pa520)**

Plaintiff argues his claims are not time barred because the statute of limitations is 6 years based upon N.J.S.A. 2A:14-1. He filed his complaint on August 8, 2024. Defendant contends that Plaintiff should have discovered the facts of his legal malpractice claim soon after the Defendant's representation ended on January 25, 2019. However, even if stricter timelines are applied, the statute of limitations would not expire until after January 25, 2025, or six years after Judge Ballard granted Benucci's motion to withdraw. This demonstrates that Plaintiff's claims were timely filed.

In Grunwald v. Bronkesh (1993), the Supreme Court of New Jersey ruled that the statute of limitations for legal-malpractice claims starts when the client suffers actual damage and discovers or through reasonable diligence should discover that the damage is attributable to the attorney's negligence.

In the present case, the facts are disputed regarding the accrual date. However, the court must assess this motion by accepting all factual allegations in the complaint as true. The Plaintiff also outlined reasons in his complaint explaining why the statute of limitations should be tolled; and based on these allegations, it would result in an unjust decision if the Plaintiff's claims are barred at this stage of the litigation without further fact-finding.

As stated in the complaint (Pa388), the statute of limitations should be tolled due to severe mental conditions, the discovery rule, and special circumstances related to Covid-19. Plaintiff was specifically diagnosed and treated for severe anxiety, PTSD and cognitive disorders which are directly linked to the underlying litigation and worsened by Benucci's conduct. These medical conditions persist, and Plaintiff is still being treated. These conditions impeded Plaintiff's ability to act and therefore justify tolling the accrual date.

The Discovery Rule is also applicable because Plaintiff was not provided with his case file or informed how to access eCourts when Defendant withdrew counsel. To this very point, Defendant did not provide Plaintiff with a copy of the Motion for Reconsideration which Benucci filed on October 24, 2018, until April 4, 2019. This was over two (2) months after Benucci's motion to withdraw was granted and over five (5) months after the motion was filed! This unethical behavior by Benucci more than justifies extending the statute of limitations because it delayed Plaintiff's ability to discover the wrongdoing.

Covid-19 also caused significant disruption to Plaintiff and warrants tolling the statute of limitations because Plaintiff's family lacked adequate support for "in-person" therapists for his special needs family which added

additional stress and further hindered Plaintiff's ability to review legal documents necessary to discover the damage caused by Benucci's negligence.

In addition, the lower court overlooked that the statute of limitations should be extended due to the continual pattern of tortious conduct against Plaintiff. Pursuant to Wreden v. Township of Lafayette, 436 N.J. Super.117 (App. Div. 2014) (quoting Wilson v. Wal-Mart Stores, Inc., 158 N.J. 263, 272 (1999)), the accrual period does not commence until the wrongful action ceases. The "continuing tort doctrine" applies because the resulting damage and injuries did not stop on January 25, 2019. Myers incurred damages after the relationship ended and continues to suffer financial damages and emotional injuries due to Defendant's negligence because of on-going litigation.

**XIV. MISAPPLICATION OF LEGAL STANDARD AND BINDING PRECEDENTS GOVERNING MOTION FOR STAY  
(Raised Below: 1T:9, Pa479-82, Pa504, Pa507, Pa509, Pa521)**

The Plaintiff contends that Docket Nos. SOM-L-1520-16 (interlocutory), SOM-L-1318-22 (to be appealed), and SOM-L-1444-22 (pending appeal) are not final, and that the current matter should be stayed until these cases reach finality. In support of his motion for stay, Plaintiff references Olds v. Donnelly, 291 N.J. Super. 222, 677 A.2d 238 (App. Div. 1996), and argues that the complaint alleges real, non-speculative financial damages and injuries

that are actionable because they are known and quantifiable. In addition, Plaintiff maintains he continues to suffer mental injuries due to the prolonged litigation and continues to incur financial damages stemming from the underlying and related cases which are unresolved.

Following the principles established in Olds v. Donnelly (1997) and Grunwald v. Bronkesh, 131 N.J. 483 (1993), Plaintiff argues that final adjudication of the underlying and related cases is essential for establishing the complete factual basis for the legal malpractice and other claims against Defendant. Because there are multiple parties potentially liable for damages, staying the action is a prudent measure to avoid concurrent piecemeal litigation, ensuring that all relevant facts and issues are fully developed before proceeding. In other words, Plaintiff's motion for stay is a procedural request to ensure judicial efficiency and fairness. The final resolution of the underlying Stoneley case and Miscellaneous Cases will provide clarity on the extent of the alleged malpractice and its impact on the Plaintiff's claims.

The Court in Olds (1997) emphasized the importance of ensuring that all related matters are adjudicated to finality before proceeding with subsequent actions. This principle is relevant here because the outcome of the

underlying action and related cases may have a significant impact on the current case.

The lower court completely ignored Plaintiff's stay application and rendered it moot without proper consideration. Judge Ballard did not consider the legal standard for motion for stay which is based upon the same as a motion for injunctive relief and Plaintiff has demonstrated irreversible harm by granting the dismissal. In this case, the court below rejected Plaintiff's tolling arguments. Therefore, given the passage of time, dismissal without prejudice equates to dismissal with prejudice which results in irreversible harm.

Plaintiff has also demonstrated a reasonable probability of winning the underlying case given that the Appellate Division recently ruled the matter interlocutory and the fact that Judge Ballard applied the wrong legal standard for motion for reconsideration, notwithstanding the fact that Plaintiff has video evidence which proves the underlying case against him was frivolous. Lastly, there is no potential harm to the Defendant from granting Plaintiff's motion for stay. Defendant has not raised any arguments to the contrary (and cannot). Therefore, balancing the hardships justifies granting the stay.

In summary, staying the case is consistent with the principles established in Grunwald (1993) as it ensures the claims are fully ripe, avoids inconsistent positions, provides quantifiable damages, and upholds equity and fairness.

**XV. THE TRIAL COURT ABUSED ITS DISCRETION  
(Not Raised Below)**

Granting Defendant's motion to dismiss denies Plaintiff a fair chance to present his case, warranting reversal of the dismissal. The trial court made significant legal errors and erroneous findings that clearly lead to an unjust outcome, according to Rule 2:10-2. Furthermore, Judge Ballard's handling of underlying and related cases, despite apparent bias and conflict of interest, suggests an inability to objectively evaluate Plaintiff's claims.

Judge Ballard's recent decision in the underlying case assigned to Docket No. SOM-L-1520-16 indicates an extreme bias against Plaintiff. For example, Judge Ballard ignored the Appellate Court's Order under Docket No. A-004125-23 dated October 18, 2024, which ruled that the underlying case is "interlocutory." Judge Ballard denied Plaintiff's motion for reconsideration on November 8, 2024, and wrote on the Order "Out of time for filing a Motion for Reconsideration." Judge Ballard also denied Plaintiff's motion to vacate the temporary restraining order on February 3, 2025, and stated on the Order

“Denied. No basis to vacate the Order and the Motion is untimely.” These two Orders demonstrate prejudice and violate Plaintiff’s right to due process.

A judge’s impartiality is a core requirement in the judicial process, and it is crucial that the judge’s actions and decisions are free from bias or the appearance of bias. Plaintiff alleges judicial bias in both the underlying case (which is not final) and the legal malpractice case stemming from it. Judge Ballard’s continued involvement also raises ethical considerations and erodes public trust in the judiciary. By ruling Plaintiff’s motion for reconsideration as “out of time,” Judge Ballard violated the Appellate Court’s Order filed on October 18, 2024 (Docket A-004125-23) which ruled that the underlying case is interlocutory. Judge Ballard’s decision undermines the authority of the Appellate Court and violates his duty to uphold the law.

In summary, Judge Ballard violated the ethical standards requiring judges to uphold the law and respect the authority of the Appellate Court. Disregarding the Appellate Court’s Order also violates the principle of due process, which requires parties an opportunity for a full and fair hearing. Based upon the above, Plaintiff requests that the Appellate Court reverse and remand matter to a different venue outside Somerset County.



### **CONCLUSION**

Under the de novo standard, the Appellate Division gives no deference to the trial court's decisions. This standard applies to contract interpretations (see Kieffer v. Best Buy, 205 N.J. 213, 222-23 (2011)) and motions to dismiss (see Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019); Baskin v. P.C. Richard & Son (2021)).

According to the Supreme Court of New Jersey in Printing Mart v. Sharp Electronics, 116 N.J. 739, 746 (1989), under Rule 4:6-2(e), a complaint must be scrutinized thoroughly to see if a cause of action can be discerned, particularly with further discovery. Every reasonable inference is given to the plaintiff, and motions are granted only rarely and without prejudice. A complaint should not be dismissed if a cause of action can be suggested by the facts or articulated through an amendment.

### **RELIEF REQUESTED**

Plaintiff asks this court to reverse the trial court's decision and issue an order denying Defendant's motion, granting Plaintiff's motion for stay; and remanding the matter back to the trial court for further proceedings after the underlying and miscellaneous cases have been adjudicated to finality. In

addition, Plaintiff requests extraordinary relief to change the venue because the trial court's abuse of discretion reflects a continuous bias against Plaintiff.

Respectfully Submitted,

/s/ John W. Myers  
John William Myers

Dated: June 12, 2025

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

JOHN WILLIAM MYERS,

*Plaintiff/Appellant,*

v.

WRONKO LOEWEN BENUCCI

*Defendant/Respondent.*

**DOCKET NO.:** A-002507-24

**CIVIL ACTION**

**ON APPEAL FROM:**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY  
DOCKET NO. SOM-L-1145-24

**SAT BELOW:**

Hon. Robert A. Ballard, Jr., P.J. Cv.

**DATE SUBMITTED:** 10/30/2025

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**BRIEF FOR DEFENDANT/RESPONDENT WRONKO LOEWEN I/S/H/A  
WRONKO LOEWEN BENUCCI IN OPPOSITION TO APPEAL**

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## **PRELIMINARY STATEMENT**

Defendant/Respondent, Wronko Loewen i/s/h/a Wronko Loewen Benucci (hereinafter “Respondent”), respectfully submits this brief in opposition to the appeal of Plaintiff/Appellant John William Myers (“Appellant”), seeking to vacate the March 12, 2025 Order of the trial court granting Respondent’s motion to dismiss Appellant’s Complaint without prejudice, pursuant to R. 4:6-2(e). Respondent further submits this brief in opposition to Appellant’s appeal, seeking to vacate the March 12, 2025 Order of the trial court denying Appellant’s motion to stay the action pending the outcome of Appellant’s other allegedly “related” actions.

The trial court’s March 12, 2025 orders and decision dismissing Appellant’s claims against Respondent without prejudice and denying Appellant’s request for a stay as moot should be affirmed, as they were the correct and appropriate dispositions of Appellant’s unfounded and baseless claims against Respondent.

This case has a long, tortured history of vengeful, retaliatory, harassing, and frivolous lawsuits stemming from disputes between Appellant and his Condominium Association, its Board members, attorneys, and management company. After failing to succeed on any of his previous claims, Appellant now seeks to hold Respondent liable related to its limited representation of him in a civil matter in which claims for intentional interference with contractual relations, assault, and harassment were

asserted related to Appellant's disruption of a Board meeting, trespassing, and resisting arrest.

The trial court appropriately disposed of Appellant's claims. Aside from the fact that Appellant's own allegations, documents, and court filings in the underlying matter completely disprove his utterly baseless allegations, the matter remained ongoing long after the Respondent ceased representing Appellant, and as such, its actions cannot be deemed the cause of any of Appellant's unspecified damages. Simply put, Appellant's years of frivolous litigations against anybody and everybody that he believes has wronged him must end.

Respondent respectfully requests that this court affirm the trial court orders dismissing Appellant's claims and denying his motion seeking a stay.

### **RELEVANT PROCEDURAL HISTORY<sup>1</sup>**

This action was initially commenced by Appellant with the filing of his Summons and Complaint on or about August 24, 2024. (Pa1). Appellant's Complaint set forth the following claims against Respondent: (1) Legal Malpractice; (2) Breach of Contract; (3) Breach of Covenant of Good Faith and Fair Dealing; (4) Breach of Fiduciary Duty; (5) Intentional Infliction of Emotional Distress; (6)

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<sup>1</sup> Pb: Appellant's brief.

Pa: Appellant's appendix.

1T: transcript of February 14, 2025 motion hearing regarding Respondent's motion to dismiss and Appellant's motion to stay.

Negligent Infliction of Emotional Distress; (7) Negligence; (8) Negligent Misrepresentation; (9) Promissory Estoppel; and (10) Fraud. (Pa1-88).

In response, Respondent filed a pre-answer Motion to Dismiss Appellant's Complaint pursuant to R. 4:6-2(e) on November 1, 2024. (Pa324). Appellant filed opposition on November 26, 2024. (Pa458-71). Along with his brief in opposition, Appellant filed a proposed amended complaint ("Amended Complaint"). (Pa326-457). Respondent filed its reply brief on January 13, 2025 addressing Appellant's attempt to rectify his pleading deficiencies by filing a proposed Amended Complaint.

Thereafter, on January 27, 2025, Appellant filed a motion to stay the action until several other "related" actions were adjudicated to finality. (Pa476-80). Respondent filed opposition on February 6, 2025. Appellant filed his reply brief on February 10, 2025. (Pa481-82).

The trial court heard oral argument on both motions on February 14, 2025. (1T). Following oral argument, Respondent's motion to dismiss the complaint was granted in its entirety without prejudice (Pa483) and Appellant's motion to stay was denied as moot (Pa484). The trial court issued a thorough and well-reasoned 37-page statement in support of its decisions dated March 12, 2025. (Pa485-521). The present appeal followed.

## **COUNTERSTATEMENT OF FACTS**

Appellant's Complaint is premised on his laundry list of alleged grievances regarding the representation he was provided by Marco Benucci, Esq. ("Attorney Benucci"), formerly of Respondent, which Appellant alleges amount to legal malpractice. Appellant alleges that WL "undertook to provide legal services" for him on or about November 17, 2016 in connection with various Bernards Township Municipal Summonses. (Pa2, ¶3). Appellant formally retained Respondent to represent him in connection with Bruce Stonely, et al. v. John William Meyers, Docket Nr. SOM-L-1520-16 (the "Underlying Action") on December 12, 2016. (Pa3, ¶4, see also Pa135-37).

Appellant's allegations are exclusively premised on the Respondent's representation in the Underlying Action. Appellant alleges that over the span of approximately a two years, from December 12, 2016 until January 25, 2019, Attorney Benucci "failed to keep me informed, failed to obtain my consent before making significant decisions, failed to adequately prepare, failed to depose key witnesses, failed to gather the evidence he promised, failed to introduce my evidence, failed to follow my instructions, overlooked key facts and legal arguments, made fatal mistakes in drafting legal documents, procrastinating and missed deadlines, misrepresented facts, abandoned me as his client within weeks of a

looming trial, and failed to take appropriate action to preserve my claims by allowing the statute of limitations to expire.” (Pa7, ¶22).

Underlying Action- SOM-L-1520-16

Appellant and his wife own a condo unit located at 16 Woodward Lane, Basking Ridge, New Jersey 07920. (Pa58, ¶185). Appellant’s alleged grievances that led to the Underlying Action date back to his interactions with Board Members of the Association, Taylor Management Company (“Taylor”) and various other parties dating back to 2013. (Pa58-9, ¶¶186-189). Following multiple altercations with property manager Terri Reddell, Board Member Bruce Stoneley and Board President Hilary Carmen, Stoneley and Redell filed “private citizen” complaints against Appellant alleging harassment on or about January 28, 2016. Thereafter, on December 2, 2016, Stoneley, Reddell, Carmen, Nannette Carriere, Valerie Whyte, Society at Bernards 1 Condominium Association, and Taylor commenced the Underlying Action against Appellant by way of a Complaint and Order to Show Cause with Restraints, ultimately under Docket Nr. SOM-L-1520-16. (Pa303-16). The Underlying Action asserted claims for intentional interference with contractual relations, assault, and harassment. (*Id.*) The plaintiffs alleged that Appellant, *inter alia*, disrupted an Annual Board Meeting resulting in his arrest and being charged with several violations. (*Id.*) As a result, they sought restraints precluding Appellant from contacting or engaging with any Board members or employees of Taylor. (*Id.*)

The Order to Show Cause with Restraints was granted on December 5, 2016, and Appellant was restricted from engaging in any contact or communication with anyone at the Association, Board Members, or employees of Taylor. See SOM-L-1520-16, LCV20181731741. The restraints against Appellant were affirmed and extended twice on December 16, 2016 and February 6, 2017.

In response to the Complaint, Respondent filed an Answer with Counterclaims on Appellant's behalf for breach of fiduciary duty, demand for an accounting, breach of contract, defamation, negligent misrepresentation, violations of the NJ Condominium Act, breach of the covenant of good faith and fair dealings, appointment of a property manager, and estoppel on January 20, 2017. See SOM-L-1520-16, LCV20181732837. Respondent then filed a First Amended Answer, Counterclaims, and Third-Party Complaint on February 13, 2018, which included third-party claims against the Board, Sandra Schaffer, Kathleen Crossan, and Zhempeng Zhao. See SOM-L-1520-16, LCV2018275498. In his Complaint, Appellant alleged that Attorney Benucci refused his specific demands to include claims against Association Counsel Griffin & Alexander and Officer Sweeney. (Pa7-8, ¶ 24, see also Pa64 ¶213). However, Appellant filed a separate action against Griffin & Alexander, which was appropriately dismissed by motion, discussed further below.

Contrary to Appellant's allegations, during ongoing discovery in the Underlying Action, Attorney Benucci was required to seek Court intervention a number of times to compel plaintiffs to provide discovery responses, including motions to compel, a motion to dismiss the complaint for failure to conduct discovery, and a follow-up correspondence seeking a Case Management Conference. See e.g. SOM-L-1520-16, LCV20187264 and LCV2018586821.

The Counterclaim and Third-Party Defendants moved for summary judgment dismissal of all counterclaims and third-party claims on May 18, 2018. The motion was originally returnable on June 22, 2018. However, due to a surgical procedure, Attorney Benucci requested a one cycle adjournment of the motion, which was granted. (Pa8, ¶25). In his Complaint, Appellant alleged that Attorney Benucci's request for an adjournment, which did not in any way prejudice him, somehow implied that Attorney Benucci was negligent and did not perform his alleged duties to Appellant with the level of expediency that he requested. (Pa8-10, ¶¶25-30).

Attorney Benucci filed opposition and a cross-motion for summary judgment to dismiss plaintiffs' claims. (Pa8, ¶26). The motion and cross-motion were fully briefed and argued before Judge Robert A. Ballard, Jr. on July 20, 2018. Again, in his Complaint, Appellant attempted to allege that because another attorney from Respondent appeared for the oral argument, this somehow amounted to malpractice. (Pa7-8, ¶24, see also Pa10, ¶¶31-33).

Judge Ballard issued a 76-page decision and statement of reasons on August 3, 2018 dismissing Appellant's counterclaims and third-party claims for breach of fiduciary duty, demand for accounting as premature, defamation, negligent misrepresentation, and fraudulent concealment without prejudice. (Pa11-12, ¶¶35-36, see also Pa139-217). Additionally, Judge Ballard dismissed with prejudice Appellant's claim for breach of contract, breach of the covenant of good faith and fair dealings and claim for Violation of the NJ Condo Act as it related to the Association's failure to provide for ADR and advised that Appellant and the Association had the ability to proceed to ADR. (Id.) Lastly, Judge Ballard dismissed Appellant's claims for estoppel, malicious prosecution, improper elections and conspiracy with prejudice. (Id.) With respect to Appellant's cross-motion for summary judgment, Judge Ballard dismissed all of plaintiffs' claims except for the assault claim. (Id.)

Clearly, Appellant was unhappy with Judge Ballard's decisions, alleging that they were "erroneous for numerous reasons," yet he decided to take it out on his attorney. (Pa12, ¶¶37). Although Attorney Benucci discussed the pros and cons of seeking either reconsideration or filing an appeal and advised Appellant that both are "rarely granted," Attorney Benucci abided by his client's request and filed a Motion Seeking Reconsideration of the August 3, 2018 Orders. (Pa15, ¶¶50-51). Attorney Benucci further explained to Appellant that: (1) the Underlying plaintiffs'



claims for intentional interference and harassment had been dismissed with prejudice leaving only the assault claim, (2) Appellant's counterclaims for breach of contract, violation of the NJ Condo Act and breach of the covenant of good faith and fair dealings were dismissed with prejudice as Appellant had a right to proceed to ADR, and (3) the motion for reconsideration would focus on germane arguments and arguments that had a higher chance of reversal on reconsideration. (Pa16, ¶53). Attorney Benucci again reiterated to Appellant that these motions were unlikely to be granted. (Pa17, ¶55).

On November 19, 2018, plaintiffs in the Underlying Action filed another Order to Show Cause to Hold Appellant in Contempt of Court for his violation of the previous Court Orders precluding him from engaging in any contact with plaintiffs. See SOM-L-1520-16, LCV20182010185. It is apparent from Appellant's communications to Attorney Benucci that he had no intention of assisting Attorney Benucci in responding to the OTSC. (Pa22-23, ¶¶75, 78, 79).

In another thorough statement of reasons dated December 19, 2018, Judge Ballard reviewed his findings and decisions on the motions and found that there was no good cause shown as to why he should reconsider them. (Pa224-61). He confirmed that plaintiffs' claim for assault was the only triable cause of action. (Id.) Additionally, he confirmed that three of Appellant's counterclaims were subject to ADR and several of Appellant's claims were dismissed without prejudice, meaning

he was free to re-plead with more specific factual allegations. (*Id.*) Again, unhappy with Judge Ballard's findings, Appellant alleged in his Complaint that the Court made clerical mistakes, abused its discretion, and/or otherwise made erroneous decisions. (Pa30, ¶107). Appellant then alleged that Attorney Benucci was somehow negligent in failing to contest or appeal this Court Order, even though he moved to withdraw as counsel by December 27, 2018, a mere six days later.

*Respondent's Withdrawal as Legal Counsel*

By October 2018, the professional relationship between Appellant and Attorney Benucci had soured and Attorney Benucci advised Appellant that he would be seeking to withdraw Respondent as counsel unless Appellant became current on his outstanding invoices for legal work performed to date. (Pa19-20, ¶63). Over the course of several months, Appellant and Attorney Benucci engaged in communications on how to address the irreparable breakdown of their attorney-client relationship, to no avail. (Pa20-27, ¶¶64-96). However, it cannot be disputed that Appellant failed to make payments on outstanding legal invoices and did not heed the advice of Attorney Benucci.

Therefore, Attorney Benucci moved for Respondent to be relieved as counsel on December 27, 2018, stating that the attorney-client relationship was irreparably compromised and that Respondent could not continue to represent Appellant. (Pa262-72). Additionally, the motion was based, among other things, on Appellant's

increasingly odd behavior, coupled with his belligerent, antagonistic, and threatening attitude towards Attorney Benucci. (Pa48-49). Appellant was properly placed on notice of the motion.

While the motion was pending, Appellant continued to engage in improper behavior towards Attorney Benucci, including calling, emailing, and texting at inappropriate times. (Pa37, ¶¶128-129). Additionally, Appellant continued to demand that Attorney Benucci perform extensive legal work on his behalf while admitting that there were outstanding legal invoices and confirming that he was refusing to pay for Respondent's legal services. (Pa41-42, ¶145). Lastly, Appellant continued to demand that Attorney Benucci coordinate the ADR with the Association, although he this was outside of the scope of Respondent's representation set forth in the retainer agreement.

During the pendency of the motion, Attorney Benucci continued to represent Appellant, including appearing for a telephonic Case Management Conference before Judge Miller on January 10, 2019 (Pa39, ¶136) and an in-person conference before Judge Miller on January 14, 2019. (Pa39, ¶137). As a result of the January 14, 2019 conference, Judge Miller entered an Order wherein he dismissed Appellant's remaining cause of action for assault and remanded all claims to ADR. See SOM-L-1520-16, LCV2019138109. Again, notwithstanding the fact that Appellant had not retained Respondent to represent him in any ADR proceedings,

which was confirmed to Appellant in writing (Pa43, ¶146), he continued to demand that Attorney Benucci schedule same. (Pa41-43, ¶145).

Respondent's motion to be relieved as counsel was granted, unopposed, on January 25, 2019. Again, unsatisfied with the Court's decision, Appellant continued to engage in his aggressive and harassing behaviors by untimely writing to the Court and "objecting" to Respondent's withdrawal as counsel. (Pa45-46, ¶155). The Court declined to reconsider or reverse its decision granting the motion.

*Status of Underlying Action Following Respondent's Withdrawal as Counsel*

Upon review of the docket, it appears that the Association and Appellant attended a mediation hearing pursuant to the Court Order remanding all claims to ADR, but the matter was not settled because Appellant's settlement demand was "not within the parameters upon which the association board has the authorization, or right, to do without membership approval." See SOM-L-1520-16, LCV2019565634.

Thereafter, on October 27, 2020, plaintiffs filed another Motion to Enforce Litigants' Rights for Appellant's violation of the restraints still in effect pursuant to the December 5, 2016 Order. See SOM-L-1520-16, LCV20201926310. Appellant filed opposition to the motion, *pro se*, on November 10, 2020. See SOM-L-1520-16, LCV20202030731. Thereafter, on November 20, 2020, Attorney Chris P. Corbitt of Corbitt Law Firm filed a notice of appearance on behalf of Appellant. See SOM-L-

1520-16, LCV20202116392. The motion was partially granted on November 20, 2020. After a plenary hearing, the Court granted plaintiffs' motion and ordered Appellant to pay attorneys' fees for his violation of the restraints.

Thereafter, on July 10, 2024, almost three years after the last activity on the docket, Appellant, appearing *pro se*, filed yet another motion seeking reconsideration of all prior Court Orders and decisions. On August 16, 2024, Judge Ballard again denied Appellant's motion in its entirety. See SOM-L-1520-16, LCV20242028097. In response, Appellant filed yet another motion seeking reconsideration, in which he attempted for a third time to get the Court to reconsider and reverse its prior decisions. However, consistent with its prior decision, the Court denied Appellant's motion on November 8, 2024. LCV20242920608.

Relentless, Appellant filed a Motion to Vacate the Temporary Restraining Order on December 2, 2024. The motion was fully briefed and argued before Judge Ballard. In an Order dated February 3, 2025, Judge Ballard denied the motion. LCV2025258031. As a result, Appellant requested a Case Management Conference before Judge Ballard to discuss the status of the TRO. As of the date of the filing of this brief, no such conference seems to have been scheduled or conducted.

### Alleged Damages

In his Complaint and proposed Amended Complaint, Appellant claims that his alleged damages include legal fees incurred during Respondent's representation,

legal fees incurred during representation from new counsel Chris Corbitt,<sup>2</sup> fees owed back to the Association,<sup>3</sup> and additional costs incurred. (Pa55-58, ¶¶173-184). Additionally, Appellant alleges that he was denied promotions and job opportunities because he was unsuccessful in completing certain exams and was unable to focus and concentrate on his job due to the emotional distress inflicted upon him by the Association, and somehow exacerbated by Respondent's representation. (Pa56, ¶177). Further, Appellant alleges that he suffers from anxiety and PTSD that were somehow exacerbated by Respondent's representation. (Pa56-57, ¶180).

#### Other Related Actions

Appellant claims that he had to proceed *pro se* to bring additional, separate actions against the Association and its agents, which included new allegations and causes of action following Respondent's withdrawal as counsel. (Pa59, ¶191). Appellant filed a new action against the Association, Taylor, Griffin & Alexander, and Stark & Stark on November 5, 2022 under Docket Nr. SOM-L-1318-22. (Pa59-

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<sup>2</sup> Appellant baselessly concludes that his attorney fees to Attorney Corbitt were additional expenses incurred because of Attorney Benucci's failure to provide "the minimum duty of care." (Pa55, ¶174). However, a review of the Underlying Docket makes clear that Attorney Corbitt represented Appellant during a limited period of time and responded only to the Motion to Enforce Litigants Rights, resulting from Appellant's own conduct in clear violation of the restraining order. Therefore, Appellant's argument that these legal fees resulted from Attorney Benucci's conduct fails as a matter of law.

<sup>3</sup> Allegations related to these fees fail for the same reason as those related to fees incurred from Mr. Corbitt's representation.

60, ¶192). Contrary to Appellant’s allegations, the trial court dismissed Appellant’s claims against the Association and Taylor pursuant to a motion to dismiss in an Order dated January 20, 2023. Docket Nr. SOM-L-1318-22, LCV2023318638, In the Order, Judge Ballard specifically held that “Appellant is barred from bringing any subsequent litigation arising out of the same facts and circumstances set forth in this as well as the various other Law Division and Chancery Court Complaints cited in the moving papers.” Similarly, the Court dismissed Appellant’s claims against Griffin & Alexander pursuant to a motion to dismiss in an Order dated May 19, 2023. Docket Nr. SOM-L-1318-22, LCV20231587419. Judge Ballard held that Griffin & Alexander had no duty to Appellant because they did not have an attorney-client relationship. Lastly, the trial court dismissed Appellant’s claims against Stark & Stark pursuant to a motion to dismiss in an Order dated May 9, 2025. Docket Nr. SOM-L-1318-22, LCV20251358599. These orders dismissing Appellant’s claims against the Association, Taylor Management, Griffin & Alexander, and Stark & Stark are currently up on appeal.

Additionally, Appellant alleges that Attorney Benucci failed to review complicated insurance policies provided by the Association that purportedly defined Appellant as an “Additional Insured.” (Pa14, ¶¶46). However, this issue was separately litigated by Appellant in an action under Docket Nr. SOM-L-1444-22, wherein Appellant filed a declaratory judgement action against Greater New York

Insurance Company (“GNY”) and New Jersey Manufacturers Insurance Company (“NJM”) requesting coverage and indemnification as an “additional insured.” GNY and NJM moved to dismiss that complaint, and upon granting the motions, the Court found that Appellant was not deemed an “insured” under either policy and was therefore not entitled to defense and indemnification under those policies. Appellant’s motion for reconsideration was denied, and the Appellate Division affirmed the trial court orders on August 11, 2025, holding that the claims in the Underlying Lawsuit were not covered under the personal-liability insurance policy issued by NJM,<sup>4</sup> and NJM therefore did not have a duty to provide coverage or a defense to Appellant.

### **STANDARD OF REVIEW**

The Appellate Court uses a de novo standard when reviewing an order dismissing a complaint for failure to state a claim. State ex rel. Campagna v. Post Integrations, Inc., 451 N.J. Super. 276, 279 (App. Div. 2017). “When reviewing a motion to dismiss under R. 4:6-2(e), we assume that the allegations in the pleadings are true and afford the pleader all reasonable inferences.” Sparroween, LLC. v. Township of West Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017). “Where, however, it is clear that the complaint states no basis for relief and that discovery

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The appellate court held that Appellant did not properly seek an appeal of the trial court’s ruling as it pertained to GNY; therefore, their decision was limited to NJM only.



would not provide one, dismissal of the complaint is appropriate.” Id. (quoting J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super 375, 397 (App. Div. 2010)).

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE TRIAL COURT DID NOT MISAPPLY THE LEGAL STANDARD FOR A PRE-ANSWER MOTION TO DISMISS PURSUANT TO R. 4:6-2(e)**

Appellant’s first argues that the trial court misapplied the standard on a pre-answer motion to dismiss by “selectively addressing facts and ignoring key allegations in the pleadings,” resulting in an unjust dismissal of the complaint. (Pb13). However, aside from these bare conclusions, Appellant fails to point to a scintilla of evidence to substantiate these accusations.

The trial court undertook a lengthy and thorough review of the pleadings, certification, supporting documents, and supporting briefs before concluding that Appellant’s Complaint failed to state claims upon which relief could be granted. Appellant argues that the trial court applied a “lack of balanced judgment” simply because the statement of reasons devoted 14 pages to the Respondent’s arguments compared to 5 pages to the Appellant’s arguments. This, by itself, is inconsequential and does not support for Appellant’s alleged contention that the trial court was somehow biased towards Respondent. The trial court properly set forth the standard necessary to succeed on a pre-answer motion to dismiss pursuant to R. 4:6-2(e) and

appropriately applied that standard to its review of Appellant's various claims against Respondent.

Separately, Appellant improperly argues that his Complaint should have survived a R. 4:6-2(e) motion to allow him to conduct discovery to "substantiate his claims further." (Pb13). "[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." AC Ocean Walk, LLC v. Am. Guarantee Liab. Ins. Co., 256 N.J. 294, 311 (2024) (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman, & Stahl, P.C., 237 N.J. 91, 108 (2019)). It is well settled that a court can dismiss a complaint if it fails to state any claims upon which relief can be granted and if discovery would not give rise to any such claims. Herein, the trial court appropriately determined that Appellant's claims could not be substantiated by any discovery and were appropriately dismissed without prejudice.

## POINT II

### **THE PROPOSED AMENDED COMPLAINT DID NOT CURE ANY OF THE PLEADING DEFICIENCIES AND WAS PROPERLY DISMISSED**

Appellant's proposed Amended Complaint failed to cure any of the pleading deficiencies in the Complaint and the trial court properly dismissed the Complaint without prejudice.

Appellant alleges that his proposed Amended Complaint addressed the arguments raised in the Respondent's motion to dismiss, including lack of proximate

causation and damages. Appellant simply concludes that he has established a causal connection, and that his Amended Complaint “renders the matter moot.” However, the Amended Complaint largely mirrors the Complaint and does nothing to rectify his defective claims, which still fail to state viable causes of action against the Respondent as a matter of law. The specifics of proximate causation and damages, as they relate to each cause of action, will be further discussed below.

As Appellant’s Amended Complaint failed to correct the pleading deficiencies, it was appropriately dismissed by the trial court.

### **POINT III**

#### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S CLAIM FOR LEGAL MALPRACTICE**

The trial court appropriately dismissed Appellant’s claim for legal malpractice, as he did not satisfy the proximate cause element necessary to plead same. (Pa511). The trial court concluded that, accepting all of the allegations in Appellant’s Complaint as true, he failed to suggest a cause of action for legal malpractice and therefore, the trial court dismissed Appellant’s claim without prejudice. (Pa511-12).

Under New Jersey law, to prevail against the Respondent on his legal malpractice claim, Appellant has the burden of proving: (1) the existence of an attorney-client relationship creating a duty of care upon the attorney; (2) that each of the errors or omissions claimed constitutes a breach of the requisite standard of

care; (3) that counsel's alleged negligence was the proximate cause of each loss claimed; and (4) that the plaintiff sustained actual damage as a consequence of the acts or omissions alleged. See Conklin v. Hannoeh Weisman, 145 N.J. 395 (1996); McGrogan v. Till, 167 N.J. 414 (2001); Jerista v. Murray, 185 N.J. 175 (2005).

Proximate cause is defined as being "any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." Conklin v. Hannoeh Weisman, *supra*, at 418 (quoting Fernandez v. Baruch, 96 N.J. Super. 125, 140 (App. Div. 1967) (internal citations omitted)). An attorney is only liable for a client's loss if that loss is proximately caused by the attorney's legal malpractice. Conklin, *supra*; see also, 2175 Lemoine Ave. Corp. v. Finco, Inc., 272 N.J. Super. 478, 487 (App. Div. 1994). Moreover, "the client bears the burden of showing...what injuries were suffered as a proximate consequence of the attorney's breach of duty. The burden is not satisfied by mere conjecture, surmise or suspicion." Cortez v. Gindhart, 435 N.J. Super. 589, 603-604 (App. Div. 2014).

Appellant's Complaint and proposed Amended Complaint establish that an attorney-client relationship existed between Appellant and the Respondent. Respondent began representing Appellant on or about November 17, 2016. (Pa2, ¶¶3-4). Respondent, by way of Attorney Benucci, was attorney of record in the

Underlying Matter up until January 2019, at which time the trial court granted its motion to withdraw as counsel. (Pa62, ¶203).

The trial court appropriately found that Appellant failed to plead any allegations as to “how any purported deviation from the standard of care caused him any damages.” (Pa511). In his Complaint, Appellant provided a list of examples of what Respondent purportedly failed to do, without any allegations as to how any purported deviation from the standard of care caused him any damages. In his appeal, Appellant again sets forth a list of alleged breaches of duty by Attorney Benucci but fails to plead any allegations as to how any of these alleged breaches proximately caused any damages. (Pb20-21).

Rather, Appellant framed his legal malpractice claim as a series of alleged violations of the Rules of Professional Conduct (“RPC”). However, it is well settled that “standing alone, a violation of the RPCs does not create a cause of action for damages in favor of a person allegedly aggrieved by that violation.” Meisels v. Fox Rothschild LLP, 240 N.J. 286, 299 (2020); see also Sommers v. McKinney, 287 N.J. Super. 1, 13 (App. Div. 1996) (“[v]iolation of the rules of professional conduct do[es] not per se give rise to a cause of action in tort.”).

Appellant alleged that Respondent violated RPC 1.2(a), by generally failing to follow his “specific instructions;” violated RPC 1.4 by purportedly failing to keep him “reasonable [sic] informed about” deadlines or “promptly comply” with his

requests; violated RPC 1.5 because Respondent's "fees were not reasonable;" violated RPC 1.6 by purportedly revealing unspecified information to Judge Miller without his consent; violated RPC 1.14 and 1.16(b) by moving to withdraw because the relationship became "unmanageable;" violated RPC 2.1 for unspecified reasons; violated RPC 3.2 by purportedly failing to immediately file an interlocutory appeal; violated RPC 3.3 by omitting unspecified "material facts" from a motion for reconsideration; violated RPC 3.5 for unspecified reasons; violated RPC 5.1 by failing to make "reasonable efforts to ensure" its work product complies with the RPC; and violated RPC 8.4 for unspecified reasons. Appellant then concludes that the Respondent deviated from the standard of care, and as a "direct result," breached its duty and "Plaintiff suffered significant damages." However, as correctly held by the trial court, this recitation of alleged RPC violations is insufficient to properly plead proximate causation.

Nowhere in the 88-page Complaint or accompanying 46-page Certification does Appellant allege any facts or articulate how Respondent's alleged deviation from the standard of care or breach of duty was the proximate cause of any of his alleged damages, which are essential elements of a claim for legal malpractice. Appellant's Complaint is riddled with bare conclusions and allegations that Attorney Benucci's actions and conduct somehow led to his alleged damages. Not surprisingly, Appellant failed to mention in his Complaint and/or Amended

Complaint that most of the alleged conduct that he claims led to his damages were litigated to conclusion and were dismissed on motion.

For example, Appellant alleged that Attorney Benucci failed to listen to his requests and suggestions when it came to the preparation of the opposition and cross-motion for summary judgment in the Underlying Action, which led to the dismissal of his claims and ultimately caused his alleged damages. However, many of Appellant's counterclaims were remanded to ADR, which Appellant attended with the Association. A review of the docket reveals that a resolution was not reached at the mediation due to Appellant's unreasonable settlement demands. As a result, no action or inaction on the part of Respondent could have proximately caused any damages with respect to those claims. Additionally, several of Appellant's counterclaims were dismissed without prejudice, which Appellant had the right and opportunity to replead. In fact, after Respondent's motion to withdraw as counsel was granted, Appellant retained new counsel who had the opportunity to re-plead Appellant's claims with more specificity. However, Appellant and his new counsel chose not to. Lastly, Attorney Benucci obtained dismissal of two of the three claims in the Underlying Action. The third claim was remanded to ADR, which, again, Appellant attended *pro se*. Appellant did not and cannot plead that Respondent or Attorney Benucci's alleged breach of their duty of care proximately caused any of his alleged damages, as Appellant continued to litigate those claims after Respondent

ceased representing him. Fraser v. Bovino, 317 N.J. Super. 23 (App. Div. 1998). Since Appellant and his subsequent counsel had ample time and opportunity to complete the task for which the Respondent is being sued, Appellant cannot plead the proximate causation element of his claim.

Separately, Appellant, *pro se*, filed a subsequent motion seeking reconsideration presumably including all arguments he claims were originally missed by Attorney Benucci in his motion for reconsideration. Appellant's motion for reconsideration was again denied following another thorough review by the Court. Appellant's allegations that Attorney Benucci somehow caused him damages by failing to argue every nonsensical argument he demanded in the motion for reconsideration do not establish proximate causation, as Appellant subsequently made all of those arguments and the Court came to the same exact conclusion.

Similarly, Appellant alleged that Attorney Benucci's alleged failure to bring claims against Griffin & Alexander and review the Association's insurance policies to determine whether Appellant was an "insured" and initiate an action against them caused him damages. However, these allegations fail for the same reason. With respect to Griffin & Alexander, Appellant brought his own *pro se* action against them, which was dismissed with prejudice because Griffin & Alexander did not owe him a duty of care. Additionally, with respect to the insurance issues, Appellant commenced his own declaratory judgment action against the insurance companies,



and his complaint was dismissed because the Court found that Appellant was in-fact NOT deemed an “insured” under either policy. This was affirmed by this appellate court as to NJM. As Appellant’s allegations were fully litigated and dismissed, Respondent cannot have been the proximate cause of any damages to Appellant because he did not bring those (unsuccessful) actions on his behalf.

Appellant also argues on appeal that Attorney “Benucci’s negligence created a “procedural swamp” that left Myers unable to preserve his claims, refile timely, or resolve the case efficiently.” (Pb23). However, this argument is both unfounded and baseless, as Appellant continued to litigate some of the issues in the Underlying Action for years, both *pro se* and with the assistance of counsel, without success.

As Appellant failed to set forth any factual allegations that any alleged breach of duty by Respondent or Attorney Benucci proximately caused any of his alleged damages, the trial court appropriately dismissed his legal malpractice claim. Such findings should be affirmed.

#### **POINT IV**

#### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S CLAIM FOR BREACH OF CONTRACT**

The trial court appropriately dismissed Appellant’s breach of contract claim, as the “Complaint fails to set forth any allegations as to how the alleged breaches caused Plaintiff’s damages.” (Pa512).

It is fundamental that in order to establish a claim for breach of contract, the plaintiff must prove that (1) the parties entered into a contract containing certain terms, (2) the plaintiff did what the contract required the plaintiff to do, (3) the defendant did not do what the contract required the defendant to do (breach of contract) and (4) the defendant's breach, or failure to do what the contract required, caused a loss to plaintiff. See, e.g., Murphy v. Implicito, 392 N.J. Super. 245, 265 (App. Div. 2007).

In his appeal, Appellant raises, for the first time, certain alleged breaches of the parties' written retainer agreement dated December 12, 2016, including alleged breaches of the contract's provisions related to (1) fee disputes, (2) termination of representation, and (3) the incapacitation/unavailability of Attorney Benucci. (Pb23-24). As to the fee dispute, Appellant alleges that Respondent failed to properly advise him of his right to pursue fee arbitration and, instead, filed a motion to withdraw as counsel citing unpaid fees as the basis. (Pb24). However, this unsupported conclusory allegation is directly refuted by Attorney Benucci's certification in support of the motion to withdraw as counsel and the significant communications leading to the motion. Similarly, as to item 2, Appellant now attempts to argue that Respondent violated the retainer agreement by failing to provide him with at least ten days' notice of its intention to withdraw (Pb24), which is again directly refuted by the motion itself. In support of the motion, Attorney Benucci cited an irreparable

breakdown of the attorney-client relationship as the cause of the withdrawal. Additionally, Attorney Benucci provided proof of service of the motion on Appellant, who chose not to oppose it until after it was decided by the trial court.

As to the alleged violation of the “incapacity/unavailability of Attorney Benucci” provision of the retainer agreement, Appellant argues on appeal that Attorney Benucci had a junior attorney from Respondent handle “critical proceedings, including depositions and the Summary Judgment hearing on July 20, 2018, contrary to the contract.” (Pb25). However, absent from Appellant’s argument, and his pleadings, are any factual allegations to show how any of these alleged “breaches” of any contractual obligations proximately caused any damages to Appellant. None of Appellant’s allegations demonstrate any breach of contract by Respondent or articulate any damages purportedly sustained by Appellant because of Respondent’s alleged breach.

Appellant’s remaining claims refer to two “oral” contracts. As to “oral contract #1,” Appellant refers to his purported agreement with Kevin P. Hewitt, Jr. of Respondent on November 17, 2016 related to representation as to two complaints in Municipal Court. Aside from the fact that this “oral contract” was entered into more than six years prior to the filing of the Complaint and is therefore untimely, Appellant set forth no allegations as to how Respondent breached this alleged “oral” contract, which was necessary to sustain his breach of contract claim. Likewise,

allegations as to “oral contract #2,” regarding Attorney Benucci’s purported oral agreement to represent him at trial in Municipal Court in place of Mr. Hewitt, cannot sustain a breach of contract claim.

Notwithstanding, Appellant’s claims are duplicative of his legal malpractice claims and were properly dismissed as such. Appellant maintains in the present appeal that he “disputes” that the breach of contract claim is duplicative of the legal malpractice claim because it is “independent of the malpractice allegations.” (Pb26). However, Appellant’s unsupported and self-serving belief does not warrant a reversal of the dismissal of his breach of contract claim. Appellant’s allegations, which continue for almost eight pages, mirror those in his legal malpractice claim and rest solely on Respondent’s performance of professional services. The breach of contract claim is therefore duplicative of the legal malpractice claim, warranting dismissal. See Levinson v. D’Alfonso & Stein, 320 N.J. Super 312 (App. Div. 1999). It is evident that the breach of contract claim, which references Respondent’s purported breach of duty and details events throughout its representation, is nothing more than a legal malpractice claim titled as a breach of contract claim. Dismissal was proper and should be affirmed.

## POINT V

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S CLAIM FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

The trial court properly dismissed Appellant’s claim for breach of the covenant of good faith and fair dealing based on Appellant’s failure to “set forth allegations establishing [Respondent] acted in bad faith with the intent to deprive Plaintiff of his reasonable expectations under the contract and that he sustained an injury or loss as a result.” (Pa513).

To establish a breach of the covenant of good faith and fair dealing, a party must plead and prove: (1) the existence of a contract; (2) that the defendant, although acting consistent with the contract’s terms, acted in bad faith with the intent to deprive the plaintiff of his or her reasonable expectations under the contract; and (3) the plaintiff sustained injury or loss as a result of such action. See, e.g., Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396 (1997).

In support of his argument on appeal, Appellant relies on the same alleged breaches of contract, i.e. (1) issues with fee dispute, (2) termination of representation, and (3) incapacitation/unavailability of Attorney Benucci. (Pb27). Just as these conclusory allegations did not amount to a breach of contract, they likewise do not amount to a breach of the covenant of good faith and fair dealing.

Here, Appellant alleges the Respondent acted to “sabotage” his “rights to receive the benefits of their contract.” (Pa80, ¶283). The basis for this allegation is

that another attorney at Respondent appeared at a hearing in place of Attorney Benucci. This, in and of itself, is insufficient to plead a claim for a breach of the covenant of good faith and fair dealing. Appellant alleges that Attorney Benucci sent another attorney to argue his cross-motion for summary judgment and then concludes that he breached his duty to Appellant. First and foremost, there is no allegation that the other attorney was somehow negligent in how he framed his oral argument or that he somehow misstated the positions in the motion papers. Secondly, there is no allegation that this other attorney's presence at the oral argument was the basis for the Court's decision to remand or dismiss certain counterclaims. In fact, it is evident from the Court's 76-page statement of reasons that Judge Ballard took a significant amount of time to review all the papers and prepare a reasoned and insightful decision. The common practice of a firm's attorney covering an appearance for a colleague, as was done here, does not amount to malpractice.

Additionally, Appellant has failed to plead any factual allegations to show that Respondent acted in bad faith to sabotage his rights to receive the benefits of their contract. Appellant failed to set forth how any of Respondent's actions purportedly rose to the level of bad faith. Instead, he concedes that Attorney Benucci succeeded in getting two of the claims asserted against him dismissed, with the remaining claim remanded to ADR. Essentially, Appellant contends that because Respondent successfully moved to withdraw as counsel, as was its right, Respondent somehow

acted in bad faith. However, withdrawing as counsel is not abandonment, nor is it bad faith. Under this theory, no attorney could ever seek to withdraw as counsel for any reason simply because a client engaged a law firm to represent him. Such a theory is absurd and has no basis in law. As set forth above, Attorney Benucci detailed the multiple reasons in support of withdrawal, and, upon notice to Appellant, the motion, which was unopposed, was granted. Attorney Benucci held off on filing Respondent's motion to withdraw as counsel for months while attempting to reconcile his professional relationship with Appellant, which is abundantly clear in Appellant's own Complaint. Despite this, Appellant now tries to twist these facts in an attempt to allege that Attorney Benucci's actions were somehow taken in bad faith to deprive him of his rights under the retainer agreement.

Finally, Appellant's allegations related to the provision of legal services are duplicative of his legal malpractice claims, properly warranting dismissal. See Cortez v. Gindhart, 435 N.J. Super. 589, 603-604 (App. Div. 2014). As such, Appellant's claim for breach of the covenant of good faith and fair dealing was appropriately dismissed by the trial court and such decision should be affirmed.

## **POINT VI**

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR BREACH OF FIDUCIARY DUTY**

The trial court appropriately dismissed Appellant's claim for breach of fiduciary duty because it contained "conclusory allegations which does nothing more

than restate the language of a fiduciary duty cause of action with no factual support.” (Pa514).

To establish a claim for breach of fiduciary duty, plaintiff must show that: “(1) the defendant had a duty to the plaintiff; (2) the duty was breached; (3) injury to the plaintiff occurred as a result of the breach; and (4) the defendant caused that injury.” Namerow v. PediatriCare Associates, LLC, 461 N.J. Super. 133, 146 (Super. Ct. 2018). Moreover, a claim for breach of fiduciary duty as against a lawyer requires an intentional misconduct as a fiduciary, e.g., dishonesty, self-dealing, breach of the duty of loyalty owed to a client, beyond the breach of duty of care supporting a legal malpractice claim and proximately causing harm (i.e., actual damages). See Packard-Bamberger & Co., Inc., v. Collier, 771 A.2d 1194 (D.N.J. 2001). “[C]onclusory allegations which parrot the language” of the cause of action, consisting of “mere generalizations devoid of specified factual support,” are insufficient under R. 4:5-8(a). Miller v. Bank of Am. Home Loan Servicing, LP, 439 N.J. Super. 540, 552 (App. Div. 2015).

In support of his appeal, Appellant contends, without any legal support, that “Under New Jersey law, fiduciary duty requires an attorney to act in the best interest of their client, maintain loyalty, and protect the client’s interests.” (Pb31). Appellant then dedicates the next two pages of his brief setting forth a list of Respondent’s alleged breaches of its fiduciary duties, including, “coercing” him to accept a plea



with respect to the municipal court matters, failing to expedite litigation, withdrawing as counsel before trial, failing to properly notify him of certain statutes of limitations or advising him how to properly access eCourts after he withdrew as counsel. (Pb32-34). Appellant further claims that Attorney Benucci breached his fiduciary duty by failing to act in his best interest, abandoning him before trial, revealing confidential information during and after legal representation terminated, and neglecting post-withdrawal obligations. (Pb35).

However, Appellant again does nothing more than recite the elements of a breach of fiduciary duty claim, without any factual allegations to support any of them, and concludes that he is entitled to relief. This is grossly insufficient to maintain a claim, and dismissal was appropriate. In his Complaint and proposed Amended Complaint, Appellant merely stated a legal conclusion that was patently insufficient as a matter of law. The Complaint failed to set forth any factual allegations to demonstrate that Respondent or Attorney Benucci engaged in any intentional misconduct such as dishonestly, self-dealing, etc.

In addition, the breach of fiduciary duty claim was fatally defective because the Complaint was devoid of any allegations of proximately caused damages, i.e., that Appellant “would have prevailed, or would have won materially more” but for the supposed (non-existent) breach of fiduciary duty. Similar to Appellant’s legal malpractice claim, he has failed to show how any alleged breach of fiduciary duty

proximately led to any of his alleged damages. Appellant has failed to plead how his underlying action would have resulted in a different outcome but for the supposed breach of fiduciary duty.

Appellant failed to plead any facts to show that he would have prevailed in the Underlying Litigation had Attorney Benucci been forced to remain his counsel in the matter. For the foregoing reasons, this court should affirm the trial court's dismissal with prejudice of Appellant's breach of fiduciary duty claim.

## **POINT VII**

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

The trial court properly found that Appellant did not establish any extreme or outrageous conduct on the part of Respondent or that any such conduct went "beyond all possible bounds of decency." (Pa515).

In order to state a claim for intentional infliction of emotional distress, Appellant "must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe. Initially, Appellant must prove that Respondent acted intentionally or recklessly. For an intentional act to result in liability, the defendant must intend both to do the act and to produce emotional distress." Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15 (App. Div. 2001), citing Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355 (1988). Furthermore, Appellant must demonstrate that Respondent's conduct is "so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”

Id. The defendant’s actions also “must have been the proximate cause of the plaintiff’s emotional distress” and the emotional distress “must be so severe that no reasonable man could be expected to endure it.” Id. In order to establish this element, the plaintiff must show “a severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so.” Taylor v. Metzger, 152 N.J. 490, 515 (1998).

The trial court appropriately found that Appellant’s Complaint allegations fell woefully short of pleading a claim for intentional infliction of emotional distress. Instead, Appellant simply concludes that Respondent “acted intentionally or recklessly in representing” him, Respondent’s conduct was “extreme and outrageous;” that the emotional distress was “so severe;” and that it was caused when Respondent purportedly filed motions without his consent and withdrew as counsel. (Pa82, ¶¶ 291-294). These allegations, even if true, fall far short of the level of extreme conduct needed to sustain such a claim. Simply using the words “extreme” or “outrageous” does not make it so. Appellant’s bare allegations in the Complaint fall woefully short of pleading the necessary factual allegations to sustain such a claim.

Appellant has also failed to allege any facts to rise to the level of “severe” emotional distress to sustain his claim. On appeal, Appellant claims that Attorney Benucci made damaging comments about Appellant in support of his motion to withdraw as counsel as well as in his correspondence in response to Appellant’s untimely “opposition” to the Court Order granting the motion. However, Attorney Benucci was simply complying with the necessary requirements in support of the motion by providing support for why/how the parties’ relationship has been irreparably harmed and that he could no longer provide sufficient legal representation. Separately, Appellant alleges that Attorney Benucci’s statements were damaging and detrimental to his case, without showing that any statements were so extreme and outrageous.

Additionally, Appellant has failed to allege any facts to show that Respondent’s alleged intentional actions proximately caused emotional distress that is so severe that no reasonable man could bear it. Appellant alleges that he has always suffered from anxiety and PTSD and baselessly alleges that his conditions were somehow exacerbated by Attorney Benucci’s actions and his mental health deteriorated as a result. These bare conclusions fail to demonstrate that Respondent’s actions proximately caused any of the alleged emotional distress or that the emotional distress was severe and pervasive.

Therefore, Appellant's claim for intentional infliction of emotional distress was properly dismissed as a matter of law, and the trial court's decision should be affirmed.

### POINT VIII

#### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

The trial court appropriately dismissed Appellant's negligent infliction of emotional distress claim for simply reciting the elements of the claim. (Pa516). The claim "requires a plaintiff to show that the defendant had a duty, the defendant owed the duty toward the plaintiff, and that the defendant breached that duty, proximately causing the plaintiff's injury of genuine and substantial emotional distress. Whether the defendant has a duty of care to the plaintiff depends on whether it was foreseeable that the plaintiff would be seriously, mentally distressed." Lascurain v. City of Newark, 349 N.J. Super. 251 (App. Div. 2002). "[L]iability should depend on the defendant's foreseeing fright or shock severe enough to cause substantial injury in a person normally constituted." Caputzel v. The Lindsay Co., 48 N.J. 69, 76 (1966). "Unless a plaintiff's alleged distress is truly genuine and substantial, the tort of negligent infliction should not be broadened to permit recovery of damages." Decker v. Princeton Packet, Inc., 116 N.J. 418 (1989).

Here, the trial court correctly held that Appellant simply stating that Respondent owed him a duty and breached it was insufficient to set forth the claim.

(Pa516). Appellant has failed to allege the severe emotional distress necessary to sustain his claim. Appellant claims that Attorney Benucci had a duty to act as a reasonably competent attorney, protect his interests, and avoid actions that could foreseeably harm him. (Pb38). On appeal, Appellant recites the same alleged conduct attributable to Attorney Benucci, i.e. his alleged failure to expedite discovery, Attorney Benucci's alleged "abandonment" by withdrawing as counsel, and failure to turn over his file, but this cannot sustain his claim. (Id.)

Appellant has not presented any factual allegations to sustain this claim. Instead, the Complaint lays out a pattern of Appellant's aggressive, disturbing, and volatile behaviors, while Attorney Benucci took all reasonable efforts to communicate with Appellant, keep him informed, respond to his repetitive questions and requests, and maintain his composure while Appellant was sending him abrasive and downright rude and threatening emails and text messages. Appellant's claim was appropriately dismissed by the trial court, and the dismissal should be affirmed.

## **POINT IX**

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR NEGLIGENCE**

The trial court appropriately dismissed Appellant's claim for negligence, as the Complaint failed to allege any facts to sufficiently plead that Respondent owed him a duty to act as a reasonable person, that Respondent breached its alleged duty, and that any breach proximately caused Appellant's alleged damages. (Pa517). To

state a claim for negligence, a plaintiff must allege a duty of care, breach, causation, and damages. See Jersey Cent. Power & Light Co. v. Melcar Utility Co., 212 N.J. 576, 594 (2013).

On appeal, Appellant claims that Attorney Benucci committed negligence by failing to act as a reasonable attorney would under similar circumstances. (Pb39). Appellant's negligence claim is based upon the same alleged actions of Attorney Benucci that he claims amounted to breaches of the duty of care. However, these conclusory allegations are insufficient to plead a claim for negligence.

Further, similar to Appellant's shortcomings in his legal malpractice claim, his Complaint fails to allege any facts to show that any breach of duty on the part of the Respondent or Attorney Benucci proximately caused any of Appellant's alleged damages. As such, Appellant's negligence claim was properly dismissed, and the dismissal should be affirmed by this court.

#### **POINT X**

#### **APPELLANT'S BREACH OF CONTRACT, BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING, BREACH OF FIDUCIARY DUTY AND NEGLIGENCE COUNTS ARE REDUNDANT OF THE LEGAL MALPRACTICE CLAIM**

Appellant's breach of contract (Count Two), breach of covenant of good faith and fair dealing (Count Three), breach of fiduciary duty (Count Four), and negligence (Count Seven) claims are redundant of the legal malpractice claim

(Count One), as those claims all amount to a claim alleging the negligent provision of legal services.

When the “essential factual allegations upon which [a plaintiff's claim] rests” are that the defendants' performance of the professional work for which the plaintiff retained them fell short of the skill that an average member of the defendants' profession ordinarily possesses, and of the care that an average member ordinarily exhibits in similar circumstances, the claim is one for professional malpractice, even if the plaintiff denominates it as a claim for breach of contract. Charles A. Manganaro Consulting Engineers, Inc. v. Carneys Point Twp. Sewerage Auth., 344 N.J. Super 343, 349 (App. Div. 2001).

Although Appellant attempts to argue that each claim is premised on “separate duties and breaches that are independent of professional negligence” (Pb42), the claims ultimately rely on the same facts and legal theories based on Respondent’s legal representation. Irrespective of how Appellant attempts to couch the claims, they are redundant and should be dismissed for this reason alone. See, e.g., Cortez, 435 N.J. Super at 597 and 607 (affirming trial court’s treatment of allegations as “essentially a legal malpractice claim” where plaintiff included claims alleging improper billing, breach of fiduciary duty, breach of contract and breach of good faith and fair dealing).



Since these four claims are, at their core, based on the premise that Respondent and Attorney Benucci failed to perform their duties to Appellant at the level of a reasonable attorney in their position, the claims sound in professional negligence/malpractice and are therefore duplicative. As a result, the claims were also properly dismissed as duplicative.

## **POINT XI**

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR NEGLIGENT MISREPRESENTATION**

The trial court properly dismissed Appellant's negligent misrepresentation claim as "there are no facts alleged demonstrating negligent misrepresentation on the part of [Respondent]." (Pa518).

"To prove a claim for negligent misrepresentation under New Jersey law, the plaintiff must prove (1) the defendant negligently made an incorrect statement; (2) the plaintiff justifiably relied on the defendant's statement; and (3) the plaintiff was injured as a consequence of relying upon that statement." Carroll v. Cellco P'ship, 313 N.J. Super. 488 502-03 (App. Div. 1998). Moreover, pursuant to R. 4:5-8(a), an allegation of misrepresentation requires that, "particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable."

Again, as with his other claims, Appellant has done nothing more than recite the elements of a claim for negligent misrepresentation and concludes that he is entitled to relief. Appellant alleges that "Defendants made numerous representations

during the legal matter, which were relied upon by Plaintiff,” and that “Defendants’ representations were false.” (Pa84, ¶¶308-09). Appellant also alleges that Respondent knew at the time that the representations were false and/or recklessly made the statements without knowledge of their truth. (*Id.*, ¶310). Finally, Appellant alleges that he suffered significant damages as a direct proximate cause of Defendant’s conduct. (*Id.*, ¶ 311). This recitation of the elements of the claim is insufficient to plead a cause of action for negligent misrepresentation.

Appellant’s brief does nothing to rectify his pleading deficiencies, as he again fails to identify what incorrect statements were purportedly made by Respondent, that he justifiably relied on said unidentified statements, or what injuries he purportedly sustained as a result. Appellant recycles the same list of grievances relied upon for his other claims to argue that he was injured from alleged false promises made by Attorney Benucci. However, Appellant’s ultimate dissatisfaction with the outcome of this action does not create a viable cause of action. For those reasons, the trial court appropriately dismissed Appellant’s negligent misrepresentation claim and such dismissal should be affirmed.

## **POINT XII**

### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S CLAIM FOR PROMISSORY ESTOPPEL**

The trial court appropriately dismissed Appellant’s promissory estoppel claim because “simply alleging that he suffered a definite and substantial detriment

without alleging facts demonstrating this prevents Plaintiff from maintaining a claim for promissory estoppel.” (Pa519).

In order to state a claim for promissory estoppel, the Appellant must set forth “(1) a clear and definite promise by the promisor; (2) the promise must be made with the expectation that the promise will rely thereon; (3) the promisee must in fact reasonably rely on the promise; and (4) detriment of a definite and substantial nature must be incurred in reliance on the promise.” Pop’s Cone, Inc. v. Resorts Intern. Hotel, Inc., 307 N.J. Super. 461 (App. Div. 1998).

Here, Appellant alleged that purported promises were made to him during the course of Respondent’s representation related to the provision of legal services – obtain phone and email records from the property manager and order transcripts for a motion for reconsideration – form the basis of his promissory estoppel claim. Appellant alleges that on May 12, 2017, Respondent made a clear and definite promise that it would obtain discovery, including phone and email records from Reddell, if Appellant accepted the municipal court prosecutor’s plea with civil reservation. (Pa85, ¶313). Appellant also alleges that Respondent expected that this promise would be relied upon. (Id., ¶314). Moreover, Appellant alleges that Attorney Benucci further assured him that it was in his best interest to accept a plea with civil reservation instead of deal with the matter in civil court. (Id.) As to the third element, Appellant alleges he reasonably relied on the promise and would have never

accepted a plea with civil reservation if it was not for Attorney Benucci's promise to obtain relevant discovery. (*Id.*, ¶315). Appellant then concludes that his reliance and Attorney Benucci's failure to honor his promise caused Appellant to suffer a definite and substantial detriment. (*Id.*, ¶316).

As the trial court correctly determined, simply relaying the elements of a promissory estoppel claim is insufficient to properly plead same. Appellant simply concludes that he suffered definite and substantial detriment resulting from the alleged promises. Appellant has failed to allege any of the necessary reliance damages to maintain a promissory estoppel claim. As such, Appellant's claim was properly dismissed.

### **POINT XIII**

#### **THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIM FOR FRAUD**

The trial court properly dismissed Appellant's fraud claim, as his Complaint "contains no factual allegations that Defendant knowingly made false statements or that Defendant intended to mislead Plaintiff." (Pa520).

In order to state a claim for fraud, a plaintiff must demonstrate: "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge as to whether it is true or false; (4) with the intention of misleading another party into relying on it; (5) justifiable reliance on the misrepresentation; and

(6) the resulting injury was proximately caused by the reliance.” Richie and Pat Bonvie Stables, Inc. v. Irving, 350 N.J. Super. 579 (App. Div. 2002).

Here, Appellant reiterates simply the alleged May 12, 2017 promise by Attorney Benucci to obtain discovery. (Pa86-87, ¶322). Appellant also alleges that Attorney Benucci concealed and/or failed to disclose the material fact that the discovery end date had expired. (Id.) Appellant avers that Attorney Benucci had a duty to keep him informed of the status of the legal matter, which he failed to do. (Id.) Additionally, Appellant alleges that Attorney Benucci’s misrepresentation was knowingly false. (Id.) Appellant contends he was likely to have taken a different action had he known the representation was false. (Id.) Appellant then concludes that he “suffered damages including out of pocket damages, benefit of the bargain damages, lost profits, lost opportunities, [and] nominal damages” and that he seeks to recover losses for breach of contract. Id. (Pa86-87, ¶324).

Absent from Appellant’s Complaint are any factual allegations that Respondent knowingly made false statements or intended to mislead him; rather there is nothing more than a conclusion that an unidentified “misrepresentation” was “knowingly false.” Additionally, Appellant provided no factual support for his claim that Attorney Benucci falsely and knowingly failed to advise him of the expiration of the discovery period. In fact, prior to making a motion for summary judgment, the underlying plaintiffs made a motion seeking a further extension of the discovery

period. However, once the motion for summary judgment and the cross-motion were filed and ruled upon, the Court denied the motion to extend, finding that sufficient discovery had been conducted to arrive at its findings. Lastly, Appellant alleges that Respondent made the promise to obtain discovery to “induce” him to enter into a contract with Respondent, presumably the retainer agreement, which was entered into months earlier on December 12, 2016. It is simply impossible that Appellant could have relied upon a “misrepresentation” made in May of 2017 to enter into a contract with Respondent in December of 2016.

As Appellant failed to set forth factual allegations that Respondent made false statements or intended to mislead him, the fraud claim was properly dismissed, and such finding should be affirmed.

#### POINT XIV

**THE TRIAL COURT PROPERLY FOUND THAT APPELLANT  
FAILED TO SHOW WHY THE APPLICABLE STATUTES  
OF LIMITATIONS SHOULD BE TOLLED**

The trial court appropriately held that Appellant’s tolling allegations in his Complaint were unsupported by the facts alleged. (Pa521). While Appellant’s claims were dismissed on substantive grounds by the trial court for failure to state a cause of action, the trial court could have also dismissed several of Appellant’s claims on procedural grounds as time-barred pursuant to the applicable statutes of limitations.

Appellant's negligence-based claims, including negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress are all subject to a two-year statute of limitations. The allegations forming the basis of these claims relate to discovery and motions that were allegedly not obtained and/or filed during the representation, which Appellant was clearly aware of, as evidenced by the allegations in his Complaint.

While Appellant alleges in his Complaint and on appeal that the statute of limitations should be tolled for numerous reasons, such as his "mental conditions," the COVID-19 toll, and the discovery rule, none of these can salvage his untimely claims. Appellant's negligence-based claims expired almost four years ago. Appellant does not specify when he purportedly "discovered" the alleged negligence in his Complaint; he merely states he was "unaware at the time." This is not sufficient to toll the statute of limitations for years.

As the underlying motion and decision did not address any of Appellant's claims that are subject to a six-year statute of limitations, Respondent will not address them herein. Appellant's argument seeking to toll the statute of limitations on any of these claims is misplaced and irrelevant to this appeal.

**POINT XV**

**THE TRIAL COURT PROPERLY DENIED APPELLANT'S  
MOTION TO STAY AS MOOT**

The trial court did not abuse its discretion in finding that Appellant's motion for a stay of the action pending the outcome of the litigation of three "related" actions: SOM-L-1520-16, SOM-L-1318-22, and SOM-L-1444-22, was moot, given that the trial court determined that Appellant failed to state a claim upon which relief can be granted in all of these actions.

Notwithstanding, Appellant has failed to meet the standard required for a stay as elaborated by the trial court. "A stay application should be granted only when: 1) such relief is necessary to prevent irreparable harm; 2) the applicant presents a settled underlying claim and makes a showing of reasonable probability of success on the merits; and 3) a balancing of the relative hardships of the parties favors granting injunctive relief because 'greater harm would occur if a stay is not granted than if it were.'" Garden State Equal. v. Dow, 433 N.J. Super. 347, 350 (Super. Ct. 2013). (quoting McNeil v. Legislative Apportionment Comm'n of N.J., 176 N.J. 484, 486 (2003)). (Pa26). Appellant argues that the stay is required to "avoid concurrent piecemeal litigation" and "ensure judicial efficiency and fairness." (Pb55). However, this is insufficient to both sustain a stay of the action and obtain a reversal of the trial court's decision.



## POINT XVI

### **APPELLANT HAS FAILED TO SATISFY THE PLAIN ERROR STANDARD**

Appellant has failed to meet the plain error standard because he failed to show that the trial court made an error or that any such error was clearly capable of producing an unjust result.

R. 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result." Thus, the plain error standard requires a determination of: "(1) whether there was error; and (2) whether that error was 'clearly capable of producing an unjust result,' R. 2:10-2. "The mere possibility of an unjust result is not enough." State v. Funderburg, 225 N.J. 66, 79 (2016). "Relief under the plain error rule, R. 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'" Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert, 23 N.J. 429, 435 (1957)).

Appellant claims that the trial court "made significant legal errors and erroneous findings that clearly lead to an unjust outcome." (Pb57). However, in support of this contention, Appellant cites several instances of alleged errors, biases, and impartiality of the trial judge related only to the Underlying Action, and not the present action on appeal. Appellant then attempts to baselessly conclude that any

errors in the Underlying Action are clearly deemed errors in the present action, which is simply not the case.

Appellant has failed to demonstrate that the trial court made any errors in its findings in this present action, let alone that any such errors were clearly capable of producing an unjust result. For that reason, Appellant's requested relief should be denied in its entirety.

### **CONCLUSION**

For the foregoing reasons, Defendant/Respondent, Wronko Loewen i/s/h/a Wronko Loewen Benucci, respectfully requests that this Appellate Court affirm the trial court's Orders and decisions in granting the Motion to Dismiss the Appellant's Complaint without prejudice pursuant to R. 4:6-2(e) and denying Appellant's motion to stay.

Dated: October 30, 2025

Respectfully Submitted,

**RIVKIN RADLER LLP**

*Counsel for Defendant/Respondent*

*Wronko Loewen*

By: /s/ Deborah M. Isaacson

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