

Superior Court of New Jersey
Appellate Division
Docket No. A-002720-23

BARBARA J. WALDEN,

PLAINTIFF- APPELLANT,

v.

CIVIL ACTION

JOHN WALDEN, TERRY WALDEN
COMPTON, AND PRINCIPAL LIFE
INSURANCE COMPANY,

DEFENDANT-RESPONDENTS

On appeal from a final judgment
entered in the Superior Court
of New Jersey, Chancery Division,
Burlington County, C-114-22
Hon. Paula T. Dow, P.J.Ch.

BRIEF AND APPENDIX (A1-163) OF APPELLANT

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Procedural History¹

This case arises from a dispute over the right to monthly annuity payments under a contract issued by Defendant Principal Life Insurance Company to Nathaniel Walden, who passed away on May 25, 2022 at the age of 70. Plaintiff, Barbara Walden, was Nathaniel's wife. She filed this lawsuit against (1) the issuer of the contract, Principal Life, and (2) Nathaniel's brother and sister, John Walden and Terry Walden Compton, who claim they became entitled, under the contract, to the annuity payments upon Nathaniel's passing. Asserting claims for reformation, mistake, unjust enrichment, equitable estoppel, and failure of consideration, plaintiff asked the chancery court to modify the annuity contract or provide to her an equitable remedy, so that the monthly payments are payable to Barbara as her husband intended (with the modification retroactive to the date of Nathaniel's passing). A1. Defendants John and Terry denied plaintiff's claims and insisted that they are entitled to the monthly payments as the identified beneficiaries of the annuity contract. A64.

The dispute proceeded to a bench trial before Chancery Judge Dow on October 11 and 12, 2023, following which Judge Dow entered a February 23, 2024

¹ References to transcripts are as follows:

1T 10/11/23 (trial)
2T 10/12/23 (trial)

judgment in favor of defendants, rejecting plaintiff's claims for legal and equitable relief. A120. Plaintiff moved for reconsideration, but the court denied the motion by Order entered April 19, 2024. A146. Plaintiff now appeals. A153.

Statement of Facts

Barbara and Nate Walden were happily married for more than 40 years. Barbara was a mathematics teacher for 41 years, retiring in 2013. Nate worked for chemical company Rohm and Hass, retiring in 2015. A124-133; 1T56-69.

Barbara and Nate earned about the same amount of money, \$70,000, each year. They combined their earnings and assets as a married couple and shared their lives together. A124-133; 1T56-69, 70-71.

When they retired, Nate and Barbara discussed their financial needs going forward. Barbara had acquired a pension (through her employment) and social security benefits. Nate had social security benefits and a 401(k) account. A124-133; 1T56-69.

After discussing together, Barbara and Nate took some of the money from Nate's 401(k) account -- \$475,000 -- and used this money to purchase the annuity now at issue in this case. This was a joint decision by the couple, though Nate was the spouse who actually purchased the annuity contract. 1T91-93. Principal Life issued the contract in 2015, funded with the \$475,000 single premium payment. A124-133; 1T56-69.

Principal Life paid the monthly benefits to Nate and Barbara from 2015 until Nate's unexpected passing on May 25, 2022, at which point Principal Life began paying the monthly benefits to defendants (Nate's siblings). As Barbara affirmed to the chancery judge below, she understood that the annuity would provide her and her husband the guaranteed monthly payments for the specified 20 year period or until they were both deceased. 1T76-78, 79-80. The couple was relying on the payments to fund their retirement (as noted above), having used a sizeable chunk of their marital assets (the \$475,000) to purchase the annuity contract. Without her husband by her side, and now without the monthly benefits from the annuity, Barbara has disposable income of only about "1,000" or so "to live on" in her retirement. A124-133.

The Annuity Contract

The contract is a single premium immediate annuity issued by Principal Life. A15. The amount paid for the single premium was \$475,000. The monthly income payment is \$2,307.70. The annuity has a start date of May 1, 2015 and a guaranteed period of 20 years. A15.

The front page of the contract reads, "Your Annuity Contract 9235081" "Nathaniel L Walden." Page 2 provides in part,

This contract is a legal contract between You, as Owner, and Us, Principal Life Insurance Company, a stock and member of Principal Financial Group®. Your contract is issued based on the

information You give Us and payment of the Single Premium as shown on the Data Page.

We will pay You or Your Designated Payee the Annuity Income Payment beginning on the Annuity Start Date and at the Annuity Income Frequency shown on the Data Page. The terms of this contract start on the Contract Date and will stay in force until We have paid all of the benefits of this contract so long as You satisfy the requirements as outlined in Your contract.

On its “Data Page,” the contract identifies Nathaniel L. Walden as the “Annuitant,” and Barbara J. Walden as the “Joint Annuitant,” along with each spouse’s date of birth and gender. In its definition section, the contract provides (among other terms),

“ANNUITANT means the natural person, including the Joint Annuitant, if any, on whose life the amount and duration of the Annuity Income Payment is based. The Annuitant is named on the Data Page and may not be changed. The Annuitant may or may not be the Owner. There can be only one Annuitant and only one Joint Annuitant.”

“JOINT ANNUITANT means the natural person named as the Joint Annuitant, if any, on whose life, together with the Annuitant’s life, the Annuity Payment is based. The Joint Annuitant is named on the Data Page and may not be changed. There can be only one Joint Annuitant.”

DESIGNATED PAYEE means the person to receive income payments.

OWNER means the person, including any Joint Owner, who owns an individual interest in this contract. The Owner may not be changed.

REMAINING GUARANTEED BENEFIT means the benefit, if any, to be paid after the death of the Annuitant(s) and as described in the Annuity Income Option on the Data Page.

YOU, YOUR means the Owner(s) of this contract.

The contract provides as follows with regard to “DEATH OF OWNER:”

At Your death, ownership of this contract will pass to the person(s) living on the date of Your death in the following order:

1. Surviving Owner, if any
2. Beneficiary(ies)
3. Estate of the last Owner to die.

The contract provides as follows for “DEATH OF ANNUITANT(S):”

Upon the death of all Annuitants, the Remaining Guaranteed Benefit, if any, will be paid to the person(s) living on the date of death in the following order:

1. Owner(s)
2. Beneficiary(ies)
3. Estate of the last Owner to die.

The Remaining Guaranteed Benefit, if any, is described in the Annuity Income Option shown on the Data Page.

The contract contains an “ANNUITY INCOME OPTION:”

JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD: We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive.

If either Annuitant, but not both, dies before the end of the Guaranteed Period, the Annuity Income Payment only continues until the end of the Guaranteed Period. After the end of the Guaranteed Period, We will begin paying the Survivor Income Payment, at the

Annuity Income Frequency. The Survivor Income Payment is the Survivor Income Percentage multiplied by the Annuity Income Payment. The Survivor Income Payment will end with the payment just before the last remaining Annuitant's death.

The contract provides, “The entire contract includes this document, any endorsements, riders, and the Data Page. Neither You nor We may change the Annuity Income Option or any of the other terms on the Data Page except to correct for a misstatement of age or gender as described below. You retain the right to change Designated Payee or to change the beneficiary under this contract.”

A22.

The contract contains a section entitled “BENEFICIARY,” providing,

Except as otherwise provided in the death of annuitant section of this contract, the beneficiary(ies) named and recorded at Our office will receive the Remaining Guaranteed Benefit, if any. You can change beneficiary designation as provided below. If the Remaining Guaranteed Benefit becomes payable to a designated beneficiary, and that beneficiary has not survived the Owner, We will pay the Remaining Guaranteed Benefit to any surviving beneficiary(ies) according to the percentages You designated. If no beneficiary(ies) survives the Owner(s), the Remaining Guaranteed Benefit will be paid to the of the last Owner to die unless otherwise specified.

The contract itself does not identify any beneficiaries. Defendants’ names are typed in as “Beneficiaries” on one page of an “Investor Profile Questionnaire” that Principal Life claims Nathaniel signed on the last page (A32); Nathaniel’s signature does not appear on the beneficiary designation page itself, only on the last page of the Questionnaire. A36. Defendants’ names are also typed in on a

separate “Beneficiary Supplement” that Principal produced in discovery; Nate’s signature does not appear on the Beneficiary Supplement anywhere; “Signature of Owner” is blank (A37).

The Investor Profile Questionnaire has a section entitled “4. Investor Profile” (A33), instructing, “If there is a Joint Owner, then include the combined information for both owners,” followed by a number of questions asking about the number of dependents, source of funds for the annuity, estimated net worth, and other financial information. A33-34. Among other responses on the form,

- “Why are you purchasing this annuity? = “Provide current retirement income”
- Estimated net worth = “Greater than \$500,000”
- Estimated “liquid net worth” = \$950,000
- Total investment in annuities as percentage of liquid net worth = 50%
- Monthly income from all sources, including income from this annuity = \$5,000

“Do you wish to provide for your heirs in the event of premature death? (Please note if you do not select a guarantee period or cash refund option your heirs will receive nothing after the death of the annuitant(s)” = “Yes, I/we have purchased an income option with a guarantee period or cash refund.” A33-34.

The Testimony and Evidence Presented at Trial

Principal Life’s position is that the monthly annuity payments passed automatically to the two defendant beneficiaries upon Nate’s death. A111.

Principal Life, per its Regulatory Consultant Angela Essick,² says that the annuitant and joint annuitant are “the persons on whose lives the amount and duration of the annuity income is based” but “[t]he annuitant does not have any contractual rights. Therefore, in order for ownership to pass to the joint annuitant, the joint annuitant must be named as the primary beneficiary.” Since “Barbara Walden was neither the joint owner or designated beneficiary,” the right to receive the annuity payments passed to the defendant siblings upon Nate’s death, Ms. Essick states. A111. Principal Life does not confirm beneficiary, Essick testified:

Q Okay, thank you. Can you describe the usual process and time frame within which Principal Life verifies beneficiary designations after the annuity’s been established?

A The beneficiary designation, that is made at the time the contracts are being where the application is completed. That was then handled between Nathaniel Walden and the Fidelity representative. [2T25]

Robert Lancaster, a wealth planner and vice president at Fidelity Investments, is the agent who sold the annuity contract. He claimed not to recall the transaction with Nathaniel but said he generally explains such a contract to the customer. 1T148-49; A132.

² As the chancery court noted in its findings of fact (A136), “There was no testimonial evidence that Angela Essick worked with Nate during the formation and execution of the Annuity.” Ms. Essick opined in her emails and testified only about her opinion, as Principal Life’s Regulatory Consultant, on how the annuity contract operate in general, not with regard to this annuity contract specifically.

Lancaster testified that beneficiaries are those who will receive the annuity payments if something happens to the annuitant. 1T154-57. But Lancaster then testified,

Q Is the annuitant and the beneficiary interchangeable, typically?

A I'm not sure.

Q Is -- well, is an annuitant automatically a beneficiary?

A No.

Q Okay. And is -- do you typically explain this to clients when they purchase an annuity of this sort?

A I'm a little confused about what you're asking me what part - can you rephrase that? I'm sorry.

Q Yes. Do you typically explain to a client who is purchasing an annuity of this sort the difference between an annuitant and a beneficiary?

A Yes.

Q So, is -- is there a part of your process that verifies understanding of this once you've explained it?

A I would say, generally, yes. [1T154-55]

Lancaster said, "I would explain to them that the payments are based on the annuitant. The beneficiaries are the ones who actually -- that comes into play or come into play, depending on the type of annuity contract, when an -- and when an annuitant passes away." 1T156. With regard to ownership, Lancaster said,

Q Sir, isn't it -- isn't it true there could be tax implications if an IRA owner converted those monies to an annuity into the name of a different owner?

A Yes. [1T158]

In her testimony, Barbara said that she did not review the annuity contract once she and Nate decided to purchase it (Nate handled the finances for them, Barbara noted). Barbara affirmed that she and her husband needed the annuity payments and their other marital assets for their retirement. During their discussion about whether to purchase an annuity, Barbara was concerned that the annuity would not be sufficient to support their retirement, but Nate assured her that it was. 1T66-69. Barbara understood that the monthly income payment of \$2,307.70 would continue until both she and Nate passed away, or until the 20 year maximum term expired in 2030. 1T68-69. Barbara and Nate did not discuss any beneficiary designations, but Barbara assumed that it would go to John and Terry, Nate's siblings, but only *after* both she and her husband passed away, not when Barbara was still living.

Barbara stressed that her husband intended for his wife and partner, Barbara, to continue receiving the monthly annuity payments in the event of his unexpected death (which then occurred at only age 70); this is what the couple both intended, Barbara stressed. Barbara understood that this is what the annuity contract provided, noting her identification of a "Joint Annuitant" in the contract. 1T97-99.

Barbara testified that “it went without saying” that she and her husband would each be the other’s beneficiary. 1T162-65. Babara explained that she and Nate built their entire lives together, as a devoted, married couple. “We put our life’s money together, as a married couple, for 40 years. Nate was of sound mind in that he would not take his retirement -- and he had that checked off -- and give it to his siblings.” 1T167.

Significantly, the record showed that Nate *did* leave another asset – a Fidelity account worth around \$40,000 – to his siblings. Barbara was fully aware of this and made sure that this account was transferred to Nate’s siblings per his expressed intent and wishes. But Nate never intended to give to his siblings what he and his wife had paid so dearly for – “He gave what he said from Fidelity. He would not give Fidelity Investment, as well as an entire pension to his siblings!” Barbara stressed below. 1T167.

Barbara confirmed her request “to get the monthly payments that we paid for together for 40 years. No one else put a penny in it. I do understand that upon both of our passing, it would make sense to have beneficiaries that -- so, it would not go to the State.” 1T171. Barbara testified that her husband “would not have wanted” his siblings to obtain the annuity payments before his own wife. 1T95. Barbara and Nate purchased the annuity as a couple, with their joint marital assets, in order provide them a monthly stipend that would last for 20 years, or until they

had both passed -- not to stop when only one of them passed. 1T98-99. This was reflected in part in the Investor Profile Questionnaire, on which Nate checked "provide current retirement income" for the retired couple.

The defendant siblings, for their part, acknowledged that they were not aware of the annuity contract prior to their brother's passing and had no involvement in the decision to purchase the annuity – or any discussions with Nate about it. A59, A64-69. John said that he had a close relationship with his brother and borrowed money from him from time to time, but they never discussed any inheritance that Nate might provide upon his death. 2T36-37. John could provide only his "opinion" about whether his brother "intended" for his siblings "to be the beneficiary of the annuity" (2T38). Sister Terry never asked her brother, Nate, for money. Nate would jokingly tell Terry that he would leave her something when he died, but Terry affirmed that Nate never said anything about leaving her an annuity or any similar inheritance. 1T36-37. Terry found out about the annuity only after her brother passed away (1T47), and does not know why her brother would leave the annuity to his siblings over his surviving wife, 1T50-51, 1T82-83. Though the record showed that their brother had left his siblings the \$40,000 Fidelity account, which Barbara made sure was transferred to them per her husband's wishes, defendants insisted entitlement to the substantial annuity payments as well.

The Chancery Judge's Decision

In rejecting plaintiff's claims for relief and entering judgment for the defendants, Judge Dow made several findings of fact (A124-133) including the following:

8. Barbara and Nate discussed pulling some of the monies from Nate's 401(k) and purchasing an annuity to help them during their retirement years."

11. The cost of the Annuity was funded by Nate's 401(k) account in the amount of \$475,000.00.

23. Barbara did not review the Annuity agreement before Nate purchased it.

24. Barbara understood the Annuity was going to be a monthly payment in addition to her pension, her social security and Nate's social security. Barbara testified she and Nate pooled their monies to live on during retirement.

25. Barbara did not believe the amount of the Annuity contemplated by Nate was enough to support their lifestyle. Barbara testified that when she questioned Nate about the amount, Nate's response was "[w]ell Barbara, you know, we put our money together and I know you, we don't need -- that's enough, that's enough".

26. Barbara believed the Annuity's monthly payments were to continue while she and Nate were alive, or until the Annuity term ended. If both she and Nate died before the Annuity term ended, Barbara understood the Annuity payments would go to John and Terry as beneficiaries.

27. Barbara and Nate did not discuss the beneficiary designations of the Annuity. At trial, Barbara was asked if there were specific discussions about the designations and Barbara testified, "It goes without saying".

28. Barbara testified she did not understand the tax implications if Nate listed another owner on the Annuity.

29. Plaintiff and Nate's combined monthly retirement income was approximately \$8,000.00 including \$2,307.70 from the Annuity payment.

30. Barbara and Nate received the Annuity payments for approximately seven (7) years from 2015 until Nate's death in 2022.

31. On May 25, 2022, Nate died from cancer at the age of seventy (70).

32. The Annuity payments stopped after Barbara notified Principal Life of Nate's death.

33. Barbara was told by Principal Life that she was not named joint owner of the Annuity.

34. Barbara was told by Principal Life that Nate was the sole owner of the Annuity and that, upon Nate's death, the monthly payments would now go to John and Terry as beneficiaries.

35. After Nate's death, Barbara's monthly income was reduced to approximately \$6,000.00. After paying bills, Barbara has approximately \$1,000.00 disposable income each month, not including food costs. [A124-27]

As the parties' acknowledged, Nate did leave a separate Fidelity account to his defendant siblings that had a value of nearly \$40,000 (A129). The court found in this regard,

58. Barbara testified Nate intentionally left a Fidelity account to John and Terry upon Nate's death.

59. Barbara testified it was Nate's intent to give the Fidelity account to his siblings as "change".

60. A copy of a one-page statement from Fidelity with an account value of \$39,165.60 was admitted into evidence, without objection, as P-10. The Fidelity account is labeled "Fidelity Rollover IRA Nathaniel L. Walden".

61. Barbara testified she gave the monies in the Fidelity account to John and Terry in accordance with Nate's wishes to give his siblings "some change" [A129-30]

Chancery Judge Dow noted the agent's testimony as follows:

83. Robert Lancaster testified the beneficiaries are those who would receive the annuity payment if something happens to the annuitant.

84. On cross examination, Robert Lancaster testified there could be tax implications if an IRA owner converted monies to an annuity into the name of a different owner." [A133]

Judge Dow further noted (A139), "Robert Lancaster continued after a request from Plaintiff's counsel to repeat what was said:"

A. So, I would explain to them that the payments are based on the annuitant. The beneficiaries are the ones who actually – that comes into play or come into play, depending on the type of annuity contract, when an – and when an annuitant passes away.

Q. Okay. And do you – is it – do you verify that understanding of that at any point in the process?

A. I – I don't remember for this one. [A139]

The court denied both legal and equitable relief to plaintiff nonetheless. The court denied "reformation" of the annuity contract on grounds of either unilateral or mutual mistake. Unilateral mistake was not proven, the court said, because there was no evidence that defendants had engaged in fraudulent or unconscionable conduct. A133. Plaintiff had not demonstrated that Nate made a mistake coupled with fraud or unconscionable conduct by the issuer of the annuity contract (Principal Life) either. A134-37. The court said,

Plaintiff alleges Nate intended the Annuity payments to continue for the entirety of the guaranteed period provided either remained alive during the term. However, Plaintiff failed to demonstrate, by clear and convincing evidence, that was Nate's intention when he signed the Annuity agreement. Plaintiff did not demonstrate why Barbara was not listed as the joint owner of the Annuity. Robert Lancaster testified there could be tax consequences if a different owner is listed when monies from an IRA are used to purchase an annuity. However, the question was asked in general terms and not specifically directed to the instant case.

Whether tax consequences was a reason Nate did not list Barbara as a joint owner is not known. What is known is that Nate checked the box in the Profile that the Annuity was to provide current retirement income. However, in the same Profile, Nate checked the box indicating the Annuity was also to provide an income option for heirs in the event of premature death. By listing John and Terry as primary beneficiaries, Nate intended his siblings to receive the Annuity. What Plaintiff failed to demonstrate is whether, at the time the Annuity was purchased, Nate misunderstood the monthly payments would stop after his death and pass to John and Terry. [A140]

"The court must ascertain, under a heightened standard of clear and convincing evidence, there was a misunderstanding of an essential fact at the time the Annuity was executed. Since Robert Lancaster cannot recall the details of such a meeting, the court cannot establish Nate's understanding of the Annuity's terms."

A139. Judge Dow continued,

Barbara testified she did not discuss with Nate the terms of the Annuity other than "it goes without saying" who the beneficiaries should be in the event both she and Nate died. The court found Barbara to be a highly credible witness. It is clear based on her testimony that Barbara and Nate had a loving relationship spanning over four decades. The court can infer Barbara's statement "It goes without saying" reflected a silent mode of communication between two people who have been together for many years. However, as

noted throughout this writing, the court must rely on documentary or testimonial evidence to glean what Nate intended at the time the Annuity was purchased.

Although it was Barbara's understanding that both she and Nate intended John and Terry to receive the Annuity payments after they die, the court must analyze what Nate's understanding of the Annuity's terms to be to warrant reformation based on mutual mistake. As the court in *Crescent Ring Co. v. Travelers' Indem. Co.* stated, 102 N.J.L. at 92, "[i]gnorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations; that he who signs and accepts a written contract in absence or fraud or other wrongful act on the part of the other contracting party is conclusively presumed to know its contents and assent to them" [A140-41]

The court said, "Even if the court found Nate intended Barbara to receive the Annuity payments after his death, the court cannot excuse Nate's lack of diligence to ensure such a result was to happen. Nate had the ability to review the Annuity terms and change the beneficiary designation by providing written notice to Prudential Life, but Nate did not do so. Absent clear and convincing evidence of fraud or wrongful acts on the part of Principal Life, the court must hold each party to their contractual obligations. Therefore, the court DENIES Plaintiff's request to reform the Annuity based on the equitable doctrine of mutual mistake." A141.

The court denied unjust enrichment on the grounds that plaintiff did not produce sufficient evidence that she had conferred any benefit upon defendants that would justify restitution.

Plaintiff alleges in the verified complaint that Nate did not intend for John and Terry to receive the Annuity payments after

Nate's death and permitting such a result unjustly enriches them to Barbara's detriment. Plaintiff, however, is not a party with John or Terry under an implied contract theory. Plaintiff did not perform any service to the defendants with an expectation Plaintiff was to be compensated.

Even if the court was to infer Nate had an implied contract with John and Terry, there was no testimony that either defendant induced or persuaded Nate to name them as beneficiary to the Annuity. Terry testified she and Nate joked that Nate would leave her some "change" after his death. John testified he did not know he was named a beneficiary until John and Terry met with Barbara at her house to discuss the Annuity and the disclaimer. Neither John nor Terry had an expectation to receive monies from Nate or acted in a manner which would make the receipt of such a benefit inequitable. Therefore, the court DENIES Plaintiff's request to amend the Annuity designation on the grounds of unjust enrichment. [A142]

The court denied equitable estoppel on the grounds that plaintiff did not provide sufficient evidence to show that defendants engaged in any conduct that induced plaintiff's reliance (the court dismissed plaintiff's claim of "failure of consideration" by way of a directed verdict at trial). A142-44.

In denying plaintiffs' subsequent motion for reconsideration, the court acknowledged agent Lancaster's testimony "when he was asked about how he generally explains the difference between an annuitant and a beneficiary," with Lancaster testifying, "I would explain to them that the payments are based on the annuitant. The beneficiaries are the ones that actually – that comes into pay or come into play, depending on the type of annuity contract, when an – and when an annuitant passes away." A148. Judge Dow noted, "Plaintiff avers Lancaster's

testimony demonstrated his understanding that the Annuity proceeds do not pass to John and Terry until Barbara, a joint annuitant, passes away.” A148. Judge Dow ruled, however, “the question posed to Lancaster regarding the difference between an annuitant and a beneficiary was framed in general terms. Lancaster’s testimony, that the amount given to a beneficiary is dependent upon the life of an annuitant, is not a misunderstanding but characterizes the terms set forth under the Annuity.” A150-51 After quoting the contract’s provisions for annuitant, joint annuitant, and annuity income option, Judge Dow said,

Nate was the sole Owner of the Annuity. Nate and Barbara were listed as Annuitant and Joint Annuitant, respectively. Based on the Annuity’s terms, Nate would have continued to receive the Annuity’s monthly payments as long as both Nate and Barbara were living. Upon Nate’s death, the Annuity payments went to the beneficiaries, John and Terry. John and Terry, as beneficiaries, receive the full monthly amount upon the first annuitant’s death (here, Nate) for the remainder of the policy’s twenty-year term (“Guaranteed Period”). After the Guaranteed Period ends, the beneficiaries’ monthly payment is reduced by 50% (“Survivor Income Payment”). Upon the second annuitant’s death (here, Barbara), the payments to the beneficiaries will end.

Plaintiff maintains Lancaster testified the payments to the beneficiaries are tied to an annuitant’s death as opposed to an owner’s. The court disagrees with Plaintiff’s interpretation of Lancaster’s testimony. Lancaster did not say the beneficiaries’ right of ownership of the Annuity is based on the death of an annuitant. Rather, Lancaster testified the beneficiaries’ payment amounts are based upon when an annuitant passes away. Those amounts are reflected in the Annuity Income Option on the Annuity’s Data Page and as described above. [A150-51]

ARGUMENT

The Chancery Judge misapplied New Jersey law in entering judgment for defendants following the bench trial below (A120-145, A146)

For final determinations made by a judge in a non-jury case, the Appellate Division reviews whether the factual findings and legal conclusions of the trial judge are “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]” Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011); In re Tr. Created By Agreement Dated December 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008); Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483–84 (1974). Legal determinations are reviewed *de novo*. Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995) (“A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference”); D'Agostino v. Maldonado, 216 N.J. 168, 182–83 (2013).

The Court’s “standard of review on a motion for reconsideration is deferential.” Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022). Reconsideration is appropriate only in “those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did

not consider, or failed to appreciate the significance of probative, competent evidence” Triffin v. SHS Grp., LLC, 466 N.J. Super. 460, 466 (App. Div. 2021) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)). “[T]he magnitude of the error cited must be a game-changer.” Ibid. (quoting Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010)); Castano v. Augustine, 475 N.J. Super. 71, 78 (App. Div. 2023).

I. The Chancery court erred by failing to enforce the annuity contract in accordance with the intent of the contracting parties (A120-145, A146)

The first question that the chancery court should have addressed, but did not address, is what the intent of the contracting parties was in executing the annuity contract. A court’s goal in construing a written contract is to ascertain the “intention of the parties to the contract as revealed by the language used, taken as an entirety ... the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain.” Cruz-Mendez v. ISU/Ins. Servs. of San Francisco, 156 N.J. 556, 570–71 (1999).

A court looks, first, at the language of the contract itself to determine whether the language is plain and unambiguous – subject to only one reasonable interpretation. Jacobs v. Great Pac. Century Corp., 104 N.J. 580 (1986); Casriel v. King, 2 N.J. 45 (1949). Importantly, the court’s construction of the contract should “accord with justice and common sense.” Krosnowski v. Krosnowski, 22 N.J. 376,

387 (1956). The contract must be read as a whole, without artificial emphasis on one section with a disregard for others. Literalism must give way to context.

Schenck v. HJI Associates, 295 N.J. Super. 445, 452–53 (App. Div. 1996). A court “must not focus on an isolated phrase but should read the contract as a whole as well as considering the surrounding circumstances.” Wheatly v. Sook Suh, 217 N.J. Super. 233, 239 (App. Div. 1987); Borough of Princeton v. Bd. of Chosen Freeholders of Cnty. of Mercer, 333 N.J. Super. 310, 325 (App. Div. 2000), aff’d and remanded, 169 N.J. 135 (2001).

A contract is considered plain and unambiguous where it is reasonably susceptible to only one interpretation. If the court concludes this is the case, then the court must enforce the contract per the ordinary meaning that the plain and unambiguous language sets forth. Evidence beyond the contract is not permitted to be considered in ascertaining the intention of the contracting parties; the plain and unambiguous contractual language controls. C.L. v. Div. of Med. Assistance & Health Servs., 473 N.J. Super. 591 (App. Div. 2022).

If the court concludes that the contract, or the particular provisions in question, is reasonably susceptible to more than one interpretation, however, then the contract is considered ambiguous, and the court can consider extrinsic evidence to help ascertain the intention of the parties to the contract – with the ultimate goal to enforce the intention, Barr v. Barr, 418 N.J. Super. 18 (App. Div. 2011).

The construction of a contract “is a matter of law for the court subject to *de novo* review” on appeal, Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998). Here, Judge Dow committed reversible error, warranting relief on appeal, by failing to perform this fundamental assessment and, instead, simply adopting automatically Principal Life’s position that the contract plainly and unambiguously provides for the beneficiaries to begin receiving the annuity benefits upon Nate’s death. As we set forth below, the contract does not plainly and unambiguously say this – it is confusing and contradictory at best and, therefore, not plain and unambiguous in this regard. And all of the evidence of intent presented at the chancery trial shows that it was never the intent of Nathaniel and Barbara that Nate’s siblings should receive the annuity benefits while Nate or Barbara was still living. The undisputed evidence and Judge Dow’s own findings establish that it was intended for the annuity payments -- purchased with a large part of the couple’s joint marital assets - to continue going to the couple until both Nate and Barbara passed away; only then would Nate’s siblings begin receiving the remaining benefits of the contract. Judge Dow committed a fundamental reversible error by failing to enforce the, at best, ambiguous annuity contract in accordance with the undisputed intention of the contracting parties.

- a. **The contract is *not* plain and unambiguous as to whether Barbara or the defendant siblings acquired the right to receive the benefit payments upon Nate’s death.**

Principal Life says that the “Owner” of the contract is the person who is paid the monthly benefits and that only Nathaniel was the Owner of this contract. But it is a reasonable interpretation that Barbara is an Owner of the contract, too.

Nathaniel was an Owner because the front page of the contract provides, “**Your** Annuity Contract 9235081” and identifies, “**Nathaniel L Walden.**” Page 2 provides, “This contract is a legal contract between **You, as Owner**, and Us, Principal Life Insurance Company, a stock and member of Principal Financial Group®.” (emphasis added). The contract provides, “YOU, YOUR means the Owner(s) of this contract.” Nathaniel was thus an Owner of the contract and fell within the “you, your” references as well.

But Barbara also reasonably falls within the definition of Owner, because the definition section of the contract provides, “OWNER means the person, including any Joint Owner, who owns an individual interest in this contract.” A person can have a beneficial interest in a contract even if they are not a named party, *e.g.*, Horney v. Mason, 184 Va. 253 (1945), such as when a contract is intended, in whole or in part, to benefit the individual. Interest may also mean a financial or pecuniary interest – which in this case would encompass Barbara since the annuity contract was purchased with a large part of the recently retired couple’s

joint marital assets, *e.g.*, Yonkers Bus v. Maltbie, 23 N.Y.S.2d 87 (Sup. Ct. 1940), aff'd, 260 A.D. 893 (N.Y. App. Div. 1940). The undisputed evidence shows that Nate and Barbara had been married for about forty years, and had both recently retired after earning around the same amount of annual income. They discussed and decided together whether to purchase an annuity to help fund their retirement. The \$475,000 premium paid to purchase the Principal Life annuity contract came from Nate's 401(k) but consisted of joint marital assets under established New Jersey law (Thieme v. Aucoin-Thieme, 227 N.J. 269, 284 (2016)). The Investor Profile Questionnaire indicates that the purpose of the annuity was to provide retirement income. Barbara is named as "Joint Annuitant" on the contract's Data Page and, therefore, is considered an Annuitant the same as Nate. It is reasonable to conclude, therefore, that Barbara is also an "Owner" of this annuity contract because she too "owns an individual interest in" it for the reasons cited above. Since the contract provides that Principal Life "will pay You," and defines You" as the "Owner," Barbara has a contractual right to receive the annuity payments just as Nate had, a reasonable construction of the contract permits.

New Jersey law governing marital assets supports this construction further. In New Jersey, the concept of "ownership by the entirety" or "tenancy by the entirety" is recognized, which refers to the property (real or personal) owned by a husband and wife whereby each member has an ownership interest in the whole

property which is indivisible. This means that if one spouse buys property, the other spouse is also considered an owner as well. This aligns with the broader legal principle that all property acquired during the marriage is considered community property except for property acquired by a spouse by gift, descent, or devise (Mey v. Mey, 149 N.J. Super. 188 (App. Div. 1977), aff'd, 79 N.J. 121 (1979); Pratt v. Douglas, 38 N.J. Eq. 516 (1884)).

The record of this case shows that the \$475,000 taken from Nate's 401(k) emanated from earnings during the parties' forty-plus year marriage and, therefore, were marital assets that Barbara owned equally. Based on these same principles, if one spouse purchases something during the marriage – here Nate's purchase of the annuity contract, the other spouse is considered to have an ownership interest in it as well – a principal particularly applicable where, as here, the funds used are marital assets from a recently retired couple married for decades. These legal principles further support a reasonable construction that Barbara is also an "Owner" of the Principal Life annuity contract because Barbara, as well as her husband Nate, "owns an individual interest in this contract" purchased with joint marital funds of the long-married couple.

This construction of the annuity contract as including Barbara within the definition of "Owner" is consistent with the "DEATH OF OWNER" provision of the contract as well, providing, "At Your death, ownership of this contract will

pass to the person(s) living on the date of Your death in the following order: 1.

Surviving Owner, if any...” It is reasonable to conclude that this provision has not yet been triggered, because Barbara falls within “Your” as argued above, or, alternatively, because Barbara is the “Surviving Owner” to whom ownership of the annuity contract passed upon Nate’s death.

This construction is consistent with the “DEATH OF ANNUITANT(S)” provision as well: “Upon the death of all Annuitants, the Remaining Guaranteed Benefit, if any, will be paid to the person(s) living on the date of death in the following order: 1. Owner(s);] 2. Beneficiary(ies);] 3. Estate of the last Owner to die.” Since Barbara is also the Annuitant, this provision has not yet been triggered.

This construction is consistent with the “ANNUITY INCOME OPTION” provision of the contract as well, providing for “JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD: We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive.” Since one Annuitant (Nate) died before the end of the Guaranteed Period (which the Data Page specifies is 20 years, A18), the Annuity Income Payment continues until the end of the Guaranteed Period. It is reasonable to interpret this provision as providing that Annuitant Barbara continues to receive the Annuity Income Payment following Nate’s death and until Barbara, the other Annuitant under the contract, passes away.

It is also reasonable to interpret the contract as providing that Barbara is Nate's "Designated Payee" and, on this alternative ground, also has a right to receive the annuity benefits. The definition section of the contract provides that "DESIGNATED PAYEE means the person to receive income payments," which is consistent with the "We will pay" provision. No "Designated Payee" is identified in the contract. But the Data Page identifies Nathaniel as the "Annuitant" and Barbara as the "Joint Annuitant," which by definition means that Barbara is also an Annuitant. Principal Life paid the monthly benefits to Nathaniel during his lifetime. It is reasonable to interpret the contract as providing that Barbara, Nate's wife of forty years and identified as the Joint Annuitant on the contract's Data Page, is the Designated Payee "to receive income payments" if Nate passes away.

Nothing in the contract plainly and unambiguously says that the defendant siblings acquired the right to receive the annuity benefits upon Nate's passing but while Barbara is still alive. The "BENEFICIARY" provision of the contract does not plainly and unambiguously state this:

Except as otherwise provided in the death of annuitant section of this contract, the beneficiary(ies) named and recorded at Our office will receive the Remaining Guaranteed Benefit, if any. You can change beneficiary designation as provided below. If the Remaining Guaranteed Benefit becomes payable to a designated beneficiary, and that beneficiary has not survived the Owner, We will pay the Remaining Guaranteed Benefit to any surviving beneficiary(ies) according to the percentages You designated. If no beneficiary(ies) survives the Owner(s), the Remaining Guaranteed Benefit will be paid to the of the last Owner to die unless otherwise specified.

The referenced “REMAINING GUARANTEED BENEFIT” “means the benefit, if any, to be paid after the death of the Annuitant(s) and as described in the Annuity Income Option on the Data Page.” Here, the death of “the Annuitant(s)” has not yet occurred, because only one of the Annuitants has died (it is not disputed that Barbara, at the very least, is an Annuitant under the contract). It is reasonable to construe the Beneficiary and Remaining Guaranteed Benefit provisions as meaning, therefore, that beneficiaries have a right to receive benefits only upon the death of both Annuitants, which has not yet occurred. This supports a reasonable interpretation of the contract as providing that Barbara, the identified Joint Annuitant and spouse, has the right to continue receiving the monthly benefits until she too passes away. Only then will the beneficiaries acquire a right to receive the Remaining Guaranteed Benefit per the “BENEFICIARY” provision. This is consistent with the “DEATH OF ANNUITANT(S)” provision referenced in the “BENEFICIARY” provision (“Except as otherwise provided in the death of annuitant section of this contract”), since the “DEATH OF ANNUITANT(S)” provision states that the Remaining Guaranteed Benefit will be paid only “Upon the death of all Annuitants,” which has not yet occurred yet in this case.

All of this shows that the Principal Life annuity contract is not plain and unambiguous with regard to whether Barbara or the defendant siblings acquire the right to receive the annuity benefits upon Nathaniel’s passing.

- b. The Court should enforce the annuity contract in accordance with the overwhelming evidence showing what Nate and Barbara intended in purchasing the contract.**

Since the contract is ambiguous about whether Barbara or the defendant siblings acquired the right to receive the contractual benefits upon Nathaniel's passing, extrinsic evidence can be considered in determining the intent of the contracting parties. And all of the evidence presented at the chancery trial shows that the intent was never for Nate's siblings to be receiving the contractual payments while Nate or Barbara remained living. Judge Dow's own findings of fact (A124-133) establish this,

8. Barbara and Nate discussed pulling some of the monies from Nate's 401(k) and purchasing an annuity to help them during their retirement years."

11. The cost of the Annuity was funded by Nate's 401(k) account in the amount of \$475,000.00.

23. Barbara did not review the Annuity agreement before Nate purchased it.

24. Barbara understood the Annuity was going to be a monthly payment in addition to her pension, her social security and Nate's social security. Barbara testified she and Nate pooled their monies to live on during retirement.

25. Barbara did not believe the amount of the Annuity contemplated by Nate was enough to support their lifestyle. Barbara testified that when she questioned Nate about the amount, Nate's response was "[w]ell Barbara, you know, we put our money together and I know you, we don't need -- that's enough, that's enough".

26. Barbara believed the Annuity's monthly payments were to continue while she and Nate were alive, or until the Annuity term

ended. If both she and Nate died before the Annuity term ended, Barbara understood the Annuity payments would go to John and Terry as beneficiaries.

27. Barbara and Nate did not discuss the beneficiary designations of the Annuity. At trial, Barbara was asked if there were specific discussions about the designations and Barbara testified, “It goes without saying”. [A124-27]

The undisputed testimony supports Judge Dow’s findings. As detailed in the Statement of Facts (incorporated by reference),

- The Annuitant and Joint Annuitant are listed as the married couple, Nate and Barbara;
- Nate and Barbara discussed as a couple whether to purchase an annuity, then decided jointly to purchase the Principal Life contract.
- The single premium paid to purchase the annuity - \$475,000 – was funded by Nate’s 401(k), but this was marital assets of this long-married couple. This \$475,000 single premium payment was as much Barbara’s money as it was Nate’s under the New Jersey law of marital assets.
- The Investor Profile Questionnaire that Nate signed on the last page indicates that the purpose of the annuity was to provide current retirement income – and both he and his wife had just recently retired and had discussed how the annuity payments would help fund their retirement income. Barbara affirmed her and her husband’s

understanding of what the annuity contract that they jointly purchased would provide – i.e., that the monthly payments would continue until both she and Nate passed away, or until the annuity term of 20 years expired in 2030 (at which point the contract provided reduced benefits).

- The Investor Profile Questionnaire has a section entitled “4. Investor Profile” (A33), instructing, “If there is a Joint Owner, then include the combined information for both owners,” followed by a number of questions asking about the number of dependents, source of funds for the annuity, estimated net worth, and other financial information. A33-34. “Why are you purchasing this annuity?” was answered, “Provide current retirement income” (A33-34). “Do you wish to provide for your heirs in the event of premature death?” was answered “Yes, I/we have purchased an income option with a guarantee period or cash refund” (A33-34), which references the Annuity Income Option on the Data Page of the contract providing for “JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD” – again supporting the conclusion that the benefits of this annuity contract were intended to remain with this married couple as long as at least one of them was alive.

The only countervailing evidence of any sort is the typewritten names of defendants on one page of the Investor Profile Questionnaire, but this (1) is not part of the contract itself (per the “entire contract” provision cited above), and (2) is not signed or acknowledged by Nathaniel in any manner – the record does not even show whether Nathaniel inserted the names or the agent Lancaster did, and – significantly – whether the names were inserted into the correct part (for instance, whether they were meant as “Contingent” not “Primary” Beneficiaries). Defendants’ names are also typed in on the “Beneficiary Supplement” that Principal produced in discovery but Nate’s signature does not appear on the Beneficiary Supplement anywhere; “Signature of Owner” is blank (A37).

The testimony from the defendant siblings supports the intention that Barbara set forth in her testimony and that Judge Dow’s findings of fact set forth - - i.e., that Nate never intended for his siblings to receive the contractual benefits while his wife and partner of forty plus years was alive. Brother John affirmed that he and Nate never discussed any inheritance of money. Nate would jokingly tell sister Terry that he would leave her something upon his death, which Nate did with regard to the \$40,000 Fidelity Account -- but Nate never said or suggested he would be leaving her this substantial annuity that was purchased with so much of the retired couple’s hard earned money. That Nate left the \$40,000 Fidelity

account to his siblings is substantial evidence showing that there was no intent to leave the substantial annuity contract benefits to the siblings as well.

The agent Lancaster's testimony (though he conveniently claimed not to recall meeting with Mr. Walden) shows how confusing this annuity contract was even for the agent, and thus supports further Barbara's position that the ambiguous contract should be enforced in accordance with the undisputed evidence of what was intended. Lancaster testified,

Q Is the annuitant and the beneficiary interchangeable, typically?

A I'm not sure.

Q Is -- well, is an annuitant automatically a beneficiary?

A No.

Q Okay. And is -- do you typically explain this to clients when they purchase an annuity of this sort?

A I'm a little confused about what you're asking me what part - - can you rephrase that? I'm sorry.

Q Yes. Do you typically explain to a client who is purchasing an annuity of this sort the difference between an annuitant and a beneficiary?

A Yes.

Q So, is -- is there a part of your process that verifies understanding of this once you've explained it?

A I would say, generally, yes. [1T154-55]

Lancaster said, “I would explain to them that the payments are based on the annuitant. The beneficiaries are the ones who actually -- that comes into play or come into play, depending on the type of annuity contract, when an -- and when an annuitant passes away.” 1T156.

Judge Dow erred by failing to enforce the contract in accordance with the intention of the primary contracting party (Principal Life, as the issuer, had no intention with regard to whether Barbara or the siblings were meant to receive the benefits should Nathaniel pass away). Judge Dow said, “By listing John and Terry as primary beneficiaries, Nate intended his siblings to receive the Annuity.” But nothing showed that Nate “listed” his siblings at all, let alone with intent that his siblings should receive the annuity benefits while either he or his wife was still alive. The record does not show whether Nate or the agent Lancaster (who conveniently could not recall anything) typed the defendants’ names into the form – or whether the names were placed into the correct section of the Questionnaire at all. Even if Nate intended to identify his siblings as the primary beneficiaries on the Questionnaire, this does not show that Nate understood and intended for his siblings to receive the annuity payments while his wife remained living as Judge Dow erroneously states in her decision.

Again, the only evidence presented at trial of what Nate intended came from Barbara, who Judge Dow found “highly credible.” Barbara affirmed that she and

her husband discussed whether to purchase an annuity before deciding to purchase the Principal Life one. Barbara was concerned that the annuity would not be sufficient to support their retirement, but Nate assured her that it was – as Judge Dow noted, “Well Barbara, you know, we put our money together and I know you, we don’t need -- that’s enough, that’s enough.” A124-27; 1T66-69. Barbara understood that the monthly income payment of \$2,307.70 would continue until both she and Nate passed away, or until the 20 year maximum term expired in 2030. This is what they intended in purchasing the annuity contract. 1T68-69. Barbara and Nate did not discuss any beneficiary designations, but Barbara assumed that it would go to John and Terry *after* both she and her husband were deceased, not while one of them was still alive. Barbara stressed that her husband did not intend for the annuity payments to go to this siblings, not his surviving wife, upon his death. Barbara understood that this is what the contract provided, noting her identification as “Joint Annuitant” on the contract. 1T97-99.

Barbara testified that “it went without saying” that she and her husband would each be the other’s beneficiary. 1T162-65. She and Nate built their entire lives together, as a devoted couple. “We put our life’s money together, as a married couple, for 40 years. Nate was of sound mind in that he would not take his retirement -- and he had that checked off -- and give it to his siblings. He gave what he said from Fidelity. He would not give Fidelity Investment, as well as an

entire pension to his siblings!” 1T167. Barbara confirmed her request “to get the monthly payments that we paid for together for 40 years. No one else put a penny in it. I do understand that upon both of our passing, it would make sense to have beneficiaries that -- so, it would not go to the State.” 1T171.

Nate did leave something for his siblings – the \$40,000 Fidelity account, and Barbara made sure to effectuate this gift per her husband’s wishes and intent. But nothing even suggested that Nate intended to also leave his siblings the far more substantial annuity contract that was paid for with so much of the couple’s hard earned and jointly owned marital assets. As Barbara testified, her husband “would not have wanted” his siblings to obtain the annuity payments before his own wife. 1T95. Barbara and Nate purchased the annuity as a couple, with their joint marital assets, in order provide them a monthly stipend that would last for 20 years, or until they had both passed -- not to stop when only one of them had passed. 1T98-99.

All of this evidence, which is not disputed by any other evidence presented at the chancery trial and which is set forth in Judge Dow’s own findings of fact, establishes that the intent in purchasing the annuity contract was that the benefits would continue to be received by the couple as long as one of them remained living – not go to Nathaniel’s siblings while his wife was still alive and still

needing to fund her retirement. Judge Dow erred by failing to enforce the annuity contract in accordance with this undisputed evidence of intent.

Enforcing the annuity contract as we contend it should be enforce is consistent with the State Division of Banking and Insurance (DOBI) regulations on annuities. N.J.A.C. 11:4-40.3 provides that no annuity contract in New Jersey “shall contain provisions which are unjust, unfair, inequitable, misleading or contrary to law or to the public policy of this State.” C.L., supra, 473 N.J. Super. 601. Principal Life’s position on how this annuity contract reads is unjust, unfair, inequitable, and misleading -- and contrary to law or public policy of this State with regard to the joint ownership of marital assets – here, with regard to the ownership rights of a married couple who purchase an annuity contract with their joint marital assets.

The construction that Principal Life and defendants insist upon in this case is contradicted, also, by a multitude of bulletins and other information about annuities, all of which state than an annuitant, which Barbara indisputably is under the contract in question, is the person entitled to receive the benefit payments, and that annuity benefits for joint and survivor annuities go to the second annuitant upon the first annuitant’s death.

The Internal Revenue Service’s bulletin on annuities (A158) provides, “An

annuity is a contract that requires regular payments for more than one full year to the person entitled to receive the payments (annuitant).” (emphasis added).

Among the “Common Types of Annuities,” “Fixed period annuities - pay a fixed amount to an annuitant at regular intervals for a definite length of time.” (emphasis added). While “Single life annuities - pay a fixed amount at regular intervals during an annuitant's life, ending on his or her death,” “Joint and survivor annuities” – which the annuity contract in this case says that it is (see A18, “JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD: We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive”), “pay a fixed amount to the first annuitant at regular intervals for his or her life. After he or she dies, a second annuitant receives a fixed amount at regular intervals. This amount, paid for the life of the second annuitant, may be the same or different from the amount paid to the first annuitant.”

Western and Southern Financial Group’s website likewise states, “Joint annuitants can be named in annuity contracts, often chosen by married couples for shared income. Joint and survivor annuities provide income for both spouses, continuing payments to the surviving joint annuitant.” A162.

The Smart Asset website states, “A joint annuitant is a person who, alongside the primary annuitant, stands to receive benefits from an annuity contract throughout their lifetime. They’re often the spouses or partners of the primary annuitant, but can also be anyone else named in the contract. Upon the primary annuitant’s death, the joint annuitant becomes eligible to receive annuity payments, ensuring a predictable income flow.” A160.

Forbes’ website states, “An annuitant is the person who receives income payments from an annuity contract.” “How Does a Joint and Survivor Annuity Work? A joint and survivor annuity provides income payments for the rest of the life of the primary annuitant. If the primary annuitant dies before the secondary annuitant, the survivor receives income payments that are either identical to or smaller than what the primary annuitant received. If the secondary annuitant dies before the primary annuitant, no survivor benefits are paid after the primary annuitant’s death.” A161.

Principal Life’s annuity contract here provides, “JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD” provision, providing, “We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive”; the contract does not say it is a “single life” annuity, for example, cf. A163, Yahoo Finance website

(“The obvious advantage of choosing a joint and survivor annuity over a single-life annuity is the ability to make sure payments continue after one annuitant passes away. Say you’re the primary breadwinner, for example. If something happens to you, your spouse could keep receiving annuity payments which could help them fill in some of the financial gap caused by the loss of your income. Remember, these payouts are good for life so they’d always be able to count on that source of income. A single-life annuity, on the other hand, would be paid to you only. Once you pass away, the payments from the annuity would cease. Without regular annuity payments to count on, you might have to find another way to provide for your spouse financially, such as a death benefit from a life insurance policy or having them inherit your IRA or other investment accounts.”)

Principal Life says that Barbara should have been named as the primary beneficiary in order for her to receive the contractual benefits upon her husband’s death. But some sources indicate that a beneficiary cannot be the same person as the annuitant, *e.g.*, *A161* (“Beneficiaries are the third named party to an annuity contract. Whereas the annuity owner and the annuitant may be the same person, a beneficiary is a separate person or entity.”)

All these findings by the chancery court and the evidence presented at trial show that the chancery court erred by not enforcing the, at best, ambiguous contract in accordance with the intent of the primary contracting party, warranting relief to plaintiff in order to provide to her the contractual benefits that were intended to be provided by the annuity contract upon its purchase.

II. Even if plaintiff has no legal right to receive the benefits of the annuity contract, the Chancery court erred by failing to apply an equitable remedy to afford relief to her.

All of the findings of the chancery court and supporting evidence highlighted above shows that the court at least erred in failing to provide an equitable remedy for plaintiff. The record shows that relief was warranted on ground of unjust enrichment or, alternatively, unilateral mistake. Phelps Dodge Copper Prod. Corp. v. United Elec., Radio & Mach. Workers of Am., 138 N.J. Eq. 3, 10 (Ch.), aff'd sub nom. Westinghouse Elec. Corp. v. United Elec. Radio & Mach. Workers of Am., Loc. No. 410, 139 N.J. Eq. 97 (1946) (“If the courts of common law do not afford an adequate remedy to an injured person, he can demand relief in Chancery.”)

Judge Dow denied relief on grounds of unjust enrichment because, the court said, plaintiff did not provide sufficient evidence that she had conferred any benefit upon defendants that would justify restitution. Judge Dow reasoned,

Plaintiff alleges in the verified complaint that Nate did not intend for John and Terry to receive the Annuity payments after

Nate's death and permitting such a result unjustly enriches them to Barbara's detriment. Plaintiff, however, is not a party with John or Terry under an implied contract theory. Plaintiff did not perform any service to the defendants with an expectation Plaintiff was to be compensated.

Even if the court was to infer Nate had an implied contract with John and Terry, there was no testimony that either defendant induced or persuaded Nate to name them as beneficiary to the Annuity. Terry testified she and Nate joked that Nate would leave her some "change" after his death. John testified he did not know he was named a beneficiary until John and Terry met with Barbara at her house to discuss the Annuity and the disclaimer. Neither John nor Terry had an expectation to receive monies from Nate or acted in a manner which would make the receipt of such a benefit inequitable. Therefore, the court DENIES Plaintiff's request to amend the Annuity designation on the grounds of unjust enrichment. [A142]

Judge Dow erred in failing to grant relief on this ground. Unjust enrichment applies where defendants "received a benefit" and "retention of that benefit without payment would be unjust." VRG Corp. v. GKN Realty Corp., 135 N.J. 539 (1994). That is precisely what Judge Dow's findings and the undisputed evidence shows. Unjust enrichment has occurred because (1) there has been an adverse impact upon plaintiff, the surviving wife in dire need of the monthly retirement payments; (2) the impact would be unfair if no remedy is provided to plaintiff by the chancery court; and (3) Barbara's own joint marital assets were used to purchase the annuity contract that, now, is providing the substantial

monthly payments to defendants instead.³ The remedy for unjust enrichment, such as imposition of a constructive trust, is thus warranted and should have been provided by the chancery court below, cf. Carr v. Carr, 120 N.J. 336 (1990) (“[w]hen property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee”); D'Ippolito v. Castoro, 51 N.J. 584, 588 (1968) (constructive trust should “be impressed in any case where to fail to do so will result in an unjust enrichment”); Hill v. Warner, Berman & Spitz, P.A., 197 N.J. Super. 152 (App. Div. 1984).

Judge Dow also erred in failing to reform the contract, alternatively, on ground of unilateral mistake (assuming that Principal Life’s construction of the contract is correct in the first place, which we argue it is not as set forth above). Mistake is when a person, under some erroneous conviction of law or fact, does some act which, but for the erroneous conviction, he would not have done. Conduit & Found. Corp. v. Atl. City, 2 N.J. Super. 433, 440 (Ch. Div. 1949); Ctr. 48 Ltd. P'ship v. May Dep't Stores Co., 355 N.J. Super. 390, 412 (App. Div. 2002). As noted above, all of the testimony shows that Nate intended for the annuity

³ Judge Dow denied unjust enrichment in part on the ground that the annuity was “funded by” Nathaniel. This is incorrect, because the \$475,000 used to purchase the contract were marital assets under established New Jersey law (as discussed above).

benefits to continue to be received by him and his wife while at least one of them was still living; his siblings were intended to receive the benefits only after both Nate and Barbara had passed. The testimony of the siblings themselves does not provide any evidence of a contrary intent, nor do any documents. Brother John affirmed that he and Nate never discussed any inheritance of money. Nate would jokingly tell sister Terry that he would leave her something upon his death, which Nate did with regard to the \$40,000 Fidelity Account; but Nate never said or suggested he would be leaving such a substantial annuity to her, Terry affirmed.

Judge Dow did not sensibly apply the doctrine of unilateral mistake to the particulars of this case. Judge Dow said that reformation because of unilateral mistake was not shown because there is no evidence that defendants had engaged in fraudulent or unconscionable conduct. A133. Plaintiff did not demonstrate that Nate made a mistake coupled with fraud or unconscionable conduct by the issuer of the annuity contract either (Principal Life), Judge Dow said. A134-37. These are not required showings in this case before a court of equity. The issue in this case is whether there was a unilateral mistake by one of the contracting parties – *i.e.*, Nate (putting aside Barbara for the moment), or Principal Life. Principal Life has no position on what was intended in terms of whether Barbara or the siblings were to acquire the right to receive the annuity benefits should Nate pass away first. And all of the evidence other than the Questionnaire shows that this is

exactly what Nate (and Barbara) intended. If this is not what the annuity contract actually provides for (as Principal Life says), this evidence falls squarely within the doctrine of unilateral mistake warranting relief to the impacted party by a court of equity. Judge Dow erred in failing to implement this remedy below.

Judge Dow stated, “ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations; that he who signs and accepts a written contract in absence or fraud or other wrongful act on the part of the other contracting party is conclusively presumed to know its contents and assent to them” (A140-41). This statement does not apply in any sensible way to this case. The principle that Judge Dow cited applies where a contracting party seeks to escape his obligations owed to the other contracting party on the ground that the first contracting party did not understand his obligations correctly. That is not the case here.

Judge Dow likewise said, “Even if the court found Nate intended Barbara to receive the Annuity payments after his death, the court cannot excuse Nate’s lack of diligence to ensure such a result was to happen. Nate had the ability to review the Annuity terms and change the beneficiary designation by providing written notice to Prudential Life, but Nate did not do so. Absent clear and convincing evidence of fraud or wrongful acts on the part of Principal Life, the court must hold each party to their contractual obligations. Therefore, the court DENIES

Plaintiff's request to reform the Annuity based on the equitable doctrine of mutual mistake." A141. There is no demonstrated "fault" by Nathaniel as Judge Dow suggests. Judge Dow's statement that "Nate had the ability to review the Annuity terms and change the beneficiary designation by providing written notice to Prudential Life, but Nate did not do so," likewise disregards that Nate, as almost all the evidence showed, did not know that any such designation meant that his wife would be bypassed from receiving the benefits in case of his death (thus why would Nate have made the change). As stressed above, even the agent Lancaster was confused as to the various roles and rights of the owner, annuitant, and beneficiary under the annuity contract in question.

The evidence and facts that Judge Dow found are plain. This recently retired couple, forty plus years married, took a large part of their existing retirement assets and bought an annuity contract in order to provide them with consistent monthly payments while either one of them was alive, or at least for 20 years. Nate is the named Annuitant; Barbara the named Joint Annuitant. The contract provides "JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD" so that Principal Life "will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive." Judge Dow said that Barbara's testimony was "highly credible." A140. As Barbara affirmed again and again, the couple intended for the

annuity benefits to continue being paid to them as long as one of them was alive; when they were both deceased, the benefits would go to Nate's siblings – but not while either Nate or Barbara was still alive.

Even if Nate made a mistake in buying an annuity contract that did not effectuate what he and his wife intended, it is not equitable to stick his lifelong spouse and partner – whose joint marital assets were used to purchase the annuity - with the mistake. Judge Dow failed to apply equity in ruling that the court could not “excuse” Nate’s “lack of diligence” (which the record did not demonstrate in the first place). A court of equity is supposed to afford justice for the parties in the particular circumstances of the case before the court. As our courts have consistently stressed, equity “will not suffer a wrong without a remedy.” Crane v. Bielski, 15 N.J. 342, 349 (1954); In re Mossavi, 334 N.J. Super. 112, 121 (Ch. Div. 2000). A chancery court's equitable jurisdiction to provide a remedy “provides as much flexibility as is warranted by the circumstances.” “Equitable remedies are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety in application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.” Matejek v. Watson, 449 N.J. Super. 179, 183 (App. Div. 2017), citing Sears Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 411

(1938). Even if Barbara does not have a *legal* right to receive the annuity payments following her husband's passing, the chancery court committed reversible error in failing to afford her with *equitable* relief by way of unjust enrichment and imposition of a constructive trust, or reformation of the contract based on unilateral mistake.

CONCLUSION

The Court should vacate the chancery court's judgment for defendants and Order as follows:

- As argued under Point I, order the chancery court to enter judgment for Plaintiff against Defendant Principal Life (1) directing the monthly annuity payments to be made to Plaintiff going forward, and (2) ordering Principal Life to pay to Plaintiff the total amount of annuity payments that have accumulated since Nate's passing on May 25, 2022;
- In the alternative, as argued under Point II, order Principal Life to direct all monthly annuity payments to Plaintiff going forward, and enter judgment for Plaintiff against Defendants Walden and Walden

Compton for the total amount of annuity payments received by these defendants from Principal Life.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant,
Barbara Walden

Dated: August 1, 2024

Superior Court of New Jersey
Appellate Division
Docket No. A-002720-23

BARBARA J. WALDEN,

PLAINTIFF- APPELLANT,

V.

CIVIL ACTION

JOHN WALDEN, TERRY WALDEN
COMPTON, AND PRINCIPAL LIFE
INSURANCE COMPANY,

DEFENDANT-RESPONDENTS

On appeal from a final
judgment entered in the
Superior Court
of New Jersey, Chancery
Division, Burlington
County, C-114-22 Hon.
Paula T. Dow, P.J.Ch.

BRIEF OF THE RESPONDENTS'

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Walden

BRIEF FILED ON OCTOBER 4, 2024
(Amended and re-filed)

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Brief Introduction

The Defendants, John Walden ("Walden") and Terry Walden Compton ("Compton") ("the Defendants"), submit this Brief in Opposition to the Appeal of the Plaintiff, Barbara J. Walden ("the Plaintiff"), from the Order of the Chancery Court dated February 23, 2024; and April 19, 2024. For the reasons set forth below, the Plaintiff's Motion should be denied.

Procedural History

On September 23, 2022, the Plaintiff filed a six-count verified complaint against the Defendants and Principal Life Insurance Company ("Principal"), requesting that an Annuity purchased by late husband, Nathaniel Walden ("the Decedent"), have its proceeds designated to her under the following equitable theories: (I) Reformation; (II) Unilateral Mistake; (III) Mutual Mistake; (IV) Unjust Enrichment; (V) Equitable Estoppel; and (VI) Failure of Consideration (A123, ¶1).

The Defendants filed, pro se, an Answer to the Verified Complaint on October 27, 2022 (*Id.* at ¶2). The undersigned counsel filed a Notice of Appearance on behalf of the Defendants on March 7, 2023 (*Id.*).

Principal filed an Answer to the Verified Complaint on January 6, 2023 (*Id.* at ¶3).

The Plaintiff filed a motion for summary judgment on June 9, 2023. The court denied the Motion on August 21, 2023 (*Id.* at ¶4).

Trial was conducted on October 11-12, 2023 (*Id.* at ¶5).

At trial, counsel for Principal took no position regarding who is to receive the payments from the Annuity (*Id.* at ¶6).

On October 12, 2023, the Defendants filed a Motion for a Directed Verdict under R. 4:40-1 as to Counts III, IV, V, and VI (*Id.* at ¶7).

On October 19, 2023, the Court granted in part and denied in part the Defendants' Motion (*Id.* at ¶8). It granted a directed verdict specific to the Plaintiff's claims of Mutual Mistake (Count III) and Failure of Consideration (Count VI) as to the Defendants (A123-24, ¶8). The Court denied directed verdict specific to the Plaintiff's claims of Unjust Enrichment (Count IV) and Equitable Estoppel (Count V) as to the Defendants (A124, ¶8).

On October 12, 2023, the Court ordered Counsel to file written Findings of Fact and Conclusions of Law and a proposed form of order (*Id.* at ¶9).

On November 13, 2023, Counsel for the Plaintiff and counsel for the Defendants filed post-trial submissions (*Id.*). Principal and the Defendants filed post-trial submissions; Principal did not file post-trial submissions (*Id.*).

On February 23, 2024, the Chancery Court issued its Final Judgment (A120), and Findings of Fact and Conclusions of Law (A122).

On May 14, 2024, the Plaintiff filed an Amended Notice of Appeal (A153).

Statement of Facts

As found by the Chancery Court, the relevant facts undergirding this Appeal are as follows:

The Plaintiff and Decedent, Nathaniel Wilson ("the Decedent") married on May 22, 1982, and had no children (124, ¶2).

The Defendants are the Decedent's brother and sister (A128, ¶39).

Upon his retirement, the Decedent had a 401(k) account with his former employer (A124, ¶7).

On March 20, 2015, the Decedent purchased an annuity from Principal Life ("the Annuity") (*Id.* at ¶10). The Annuity was funded by the 401(k) account in the amount of \$475,000 (*Id.* at ¶11). The Annuity was a product issued by Principal Life ("Principal"), a third-party insurance company (*Id.* at ¶12).

On March 16, 2015, the Decedent signed a Fixed Immediate Annuity Request Form reading "Investor Profile Questionnaire" ("Profile") (*Id.* at ¶13). The Profile listed the Decedent as contract owner, and no joint owner (*Id.* at ¶¶15-16).

The Profile had a Beneficiary section - Primary and Contingent (*Id.* at ¶17). It listed the Defendants as Primary Beneficiary (*Id.* at ¶18). No Contingent Beneficiary was listed (*Id.* at ¶19). The Decedent signed the Profile as Contract Owner;

the section labeled "Signature of joint owner, if applicable" was blank (A126, ¶21).

The Plaintiff believed that the Annuity's monthly payments were to continue while she and the Decedent were alive or until the Annuity term ended (A127, *Id.* at ¶26). The two did not discuss the beneficiary designations of the Annuity (*Id.* at ¶27). She testified, "It goes without saying" regarding designations (*Id.*).

The Plaintiff did not understand the tax implications if the Decedent listed another owner on the Annuity (*Id.* at ¶28). She and the Decedent received the Annuity payments for approximately seven (7) years, from 2015 until the Decedent's death in 2022 (A127, ¶30).

On May 25, 2022, the Decedent died from cancer at the age of seventy (70) (*Id.* at ¶31). The Annuity payments stopped after the Plaintiff notified Principal of the Decedent's death (*Id.* at ¶32). She was told that she was not named as a Joint Owner (*Id.* at ¶33). As such, the monthly payments would go to the Defendants as beneficiaries (A128, ¶34).

The Plaintiff testified that the Defendants agreed at a meeting with her to sign disclaimers so that she could continue receiving the Annuity payments (A129, ¶¶53-55); however, they did not sign them (*Id.* at ¶56). She testified that the Decedent intentionally left a Fidelity Investments ("Fidelity") account to the Defendants (*Id.* at ¶58).

Robert Lancaster ("Lancaster"), a wealth planner and vice president at Fidelity (A130, ¶63), sold the Annuity to the Decedent (*Id.* at ¶64). He testified the Annuity is one where the owner of the Policy gives money to an insurance company who, in turn, will guarantee payment for life (*Id.* at ¶66). The payments were based on the lives of the annuitants (*Id.*). It was to pay for 20 years from May 1, 2015 (*Id.* at ¶67).

Page 1 of the Annuity states "Your Annuity Contract 9235081. Nathaniel L. Walden" (*Id.* at ¶68). Page 2 states, "This contract is a legal contract between You, as Owner, and Us, ..." (*Id.* at ¶69).

The Annuity lists the Decedent as Annuitant and the Plaintiff as Joint Annuitant (A131, ¶70). An "Annuitant" is defined as the natural person, including the Joint Annuitant, if any, on whose life the amount and duration of the Annuity income is based. The Annuitant is named on the Data Page and may not be changed. The Annuitant may or may not be the Owner. There can only be one Annuitant and only one Joint Annuitant. (*Id.* at ¶71).

The Annuity defines "Joint Annuitant" as:

the natural person named as the Joint Annuitant, if any, on whose life, together with the Annuitant's life, the Annuity Income Payment is based. The Joint Annuitant is named on the Data Page and may not be changed. There may only be one Joint Annuitant.

(*Id.* at ¶72).

The Annuity defines "Owner" as a person, including Joint Owner, who owns an undivided interest in the contract (*Id.* at

¶73). The Annuity does not identify the names of the beneficiary (*Id.* at ¶74).

The "Death Provisions" of the Annuity provide that, at the Owner's death, ownership of the contract will pass to (a) Surviving Owner, if any; (b) beneficiaries; (c) estate of the last Owner to die (*Id.* at ¶75).

Upon the death of Annuitants, the remaining benefit, if any, goes to (a) Surviving Owner; (b) beneficiaries; estate of last Owner to die (*Id.* at ¶76).

The "Annuity Income Option states:

JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD: We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive.

If either Annuitant, but not both, dies before the end of the Guaranteed Period, the Annuity Income Payment only continues until the end of the Guaranteed Period. After the end of the Guaranteed Period, We will begin paying the Survivor Income Payment, at the Annuity Income Frequency. The **Survivor Income Payment** is the Survivor Income Percentage multiplied by the Annuity Income Payment. The Survivor Income Payment will end with the payment just before the last remaining Annuitant's death.

(A132, ¶77).

The paragraph reading "Change of Beneficiary states that a change in Beneficiary may be made by sending Principal notice (*Id.* at ¶78). "The Contract" provision specified that the Owner retained "the right to change the Designated Payee or to change the beneficiary under this contract" (*Id.* at ¶79).

No changes were made to the beneficiary designation after the Decedent signed the Annuity agreement in 2015 (*Id.* at ¶80).

Lancaster did not recall selling the Annuity to the Decedent (*Id.* at ¶81); and testified that he normally explains the role of the owner, annuitant or annuitants, and beneficiaries to a potential customer (*Id.* at ¶82).

Lancaster testified that beneficiaries are those who would receive the annuity payment if something happened to the annuitant (A133, ¶83). He also testified that there would be tax implications if an IRA owner converted money to an annuity into the name of a different owner (*Id.* at ¶84).

According to RIS Annuity Services Regulatory Consultant Angela Essick ("Essick"), the Plaintiff "was neither the joint owner or the designated beneficiary" (A111).

Essick testified that Principal does not confirm or ensure the beneficiary designations in an annuity contract are accurate or up to date (*Id.* at ¶86).

The Plaintiff did not brief or argue before the Chancery Court that the Annuity belonged to her because it was funded with monies that would be deemed marital property. As a result, the Chancery Court did not consider the issue.

Argument

I. The Chancery Court Properly Applied New Jersey Law In Entering Judgment for the Defendants Following the Bench Trial Below.

The Plaintiff argues that the Chancery Court should have addressed, but did not, “the intent of the contracting parties [] in executing the annuity contract” (Plaintiff’s Brief, p. 21). This, she claims, the court failed to do, instead “adopting automatically Principal Life’s position that the contract plainly and unambiguously provides for the beneficiaries to begin receiving the annuity benefits upon Nate’s death” (*Id.* at p. 23). She claims that the very clear contract was and is ambiguous. As described, this argument is erroneous.

However, the general rule in New Jersey is that an insured is bound by the terms of a policy that he had the opportunity to read; and that reformation will be denied if he was negligent in failing to apprise himself of the contents.” *Crescent Ring Co. v. Travelers’ Indem. Co.*, 102 N.J.L. 85 (E. & A. 1926).

The Plaintiff argues that the Chancery Court committed reversible error by adopting Principal Life’s position that the contract “plainly and unambiguously provides for the beneficiaries to begin receiving the annuity benefits upon Nate’s death” (Appellant’s Brief, p. 23). She claims that “the contract” “is confusing and contradictory at best” (*Id.*).

The error in the Plaintiff's argument is that she determines—contrary to the Chancery Court—that the Annuity contract is “ambiguous” in some way. But the alleged ambiguity is merely her attempt to pick it apart the straightforward contract to question whether the Decedent intended something other than what appears.

a. The Contract Is Plain and Unambiguous As to Whether the Plaintiff of the Defendants Acquired the Right to Receive the Benefit Payments Upon the Decedent's Death.

The Plaintiff argues that “it is a reasonable interpretation that Barbara is an Owner of the contract, too” (Appellate Brief, p. 24). But this argument is belied by the contract itself. “Annuitant” is defined as a person who “may or may not be the Owner” (A131, ¶71). In contrast, an “Owner” is the person “who owns an undivided interest in this contract” (*Id.* at ¶73). Furthermore, the Plaintiff is not listed as a “Joint Owner”; while the “Beneficiaries” are the Defendants (A128, ¶18).

However, the Plaintiff correctly notes that the front page of the Contract provides that the Decedent is the Owner. The Plaintiff errs, however, when she contends that she “reasonably falls within the definition of Owner, because the definition section of the contract provides” that “Owner” refers to joint or beneficial owners. It is evident that the Plaintiff defines her “ownership” as spawning from her alleged “beneficial interest . . . even” though she was “not a named party” (Brief on Appeal at p. 24).

In support of this assertion, the Plaintiff has not one case citation, save a 1945 decision from Virginia (*Id.* at p. 24) (*citing, Horney v. Mason*, 184 Va. 253 (1945)). She also cites to an aged case (1940) from New York to support her argument that she would be considered a joint or beneficial owner “since the annuity contract was purchased with a large part of the recently retired couple’s joint marital assets” (*Id.* at p. 24) (*citing, Yonkers Bus v. Maltbie*, 23 N.Y.S. 87 (Sup. Ct. 1940)). But *Yonkers Bus*, *surpra*, deals not with joint marital assets. Instead, the issue was what interest an infant had in property held in trust in her mother’s name.

Neither of these cases support the contention that the Plaintiff is or was meant to be a partial or beneficial “Owner” of the Annuity. Fatally, here, because the Plaintiff was not designated as an “Owner,” she did not fall within the order of payouts: Surviving owner (which she was not); beneficiaries; estate of last owner to die (A131, ¶¶75-76). Because the Decedent failed to list the Plaintiff as a joint Owner, the analysis ends there and she does not receive the benefits under the Annuity after the Decedent’s passing.

While the Plaintiff clings to the claim that the annuity was to pay her after the Decedent’s death, the actual “Death Provisions” “Death of Owner” provides:

At Your death, ownership of this contract will pass to the person(s) living on the date of Your Death in the following order:

1. Surviving Owner, if any
2. Beneficiaries
3. Estate of the last Owner to die.

(A131, ¶75).

The Chancery Court disagreed with the Plaintiff that "the evidence produced by Plaintiff is so clear and direct to warrant reformation based on unilateral mistake" (A137, p. 16). It was unknown what the Decedent discussed when he purchased the Annuity (*Id.*).

The availability of reformation as a remedy is "largely dependent upon a finding of mutual mistake." *Stephenson v. Spiegle*, 429 N.J. Super. 378, 384-385 (App. Div. 2013); *Beachcomber Coins Inc. v. Boskett*, 166 N.J. Super. 442, 446 (App. Div. 1979). "For a court to grant reformation, there must be 'clear and convincing proof' that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be." *Cent, State Bank v. Hudik-Ross Co.*, 164 N.J. Super. 317, 323, 396 A.2d 347 (App. Div. 1978).

The doctrine of mutual mistake applies when a "both parties were laboring under the same misapprehension as to [a] particular, essential fact." *Beachcomber Coins, Inc. v. Boskett*, 166 N.J. Super. 442 446 (App.Div.1979) (emphasis supplied).

The presence of a mutual mistake means that there has been no meeting of the minds sufficient to warrant that the parties be bound thereby, neither plaintiff nor defendants should be bound by that to which no properly-informed party could have agreed. *Marino v. Marino*, 200 N.J. 315, 344, 981 A.2d 855 (2009).

Mutual mistake cannot be found between one party and a neutral third party but must be between the disputing parties themselves. See, *Stephenson v. Spiegle*, 429 N.J. Super. 378, 383 (App. Div. 2013) (judge could not apply reformation on the grounds of a mutual mistake to reform the pay on death beneficiary designations on decedent's a bank account because the alleged mistake was between decedent and a neutral third-party bank).

In the instant case, even if the beneficiary designation was a mistake, it was not a mutual one: Principal Life is a "neutral" third party. Similar to *Stephenson*, the alleged mistake took place while the Decedent was opening the Annuity, during the elections of his pay-on-death beneficiaries. Principal Life Insurance Company had and has no interest in the named beneficiaries. The Parties played no part in opening the annuity.

New Jersey employs a 4-prong test to determine if a party should be relieved of his good faith unilateral mistake, offering the remedy of rescission if all parts are satisfied. N.J.S.A. 2A:81-2 imposes a clear and convincing burden of proof on those making a claim against a representative of an estate where that

claim is supported by "oral testimony of a promise, statement or act."

New Jersey uses the doctrine of probable intent to permit the "reformation of a will in light of a testator's probable intent by searching out the probable meaning intended by the words and phrases in the will." *In re Estate of Flood*, 417 N.J. Super. 378, 381 (App. Div. 2010).

The court allows for the doctrine of probable intent to be used outside of the will context when there are extraordinary circumstances present. *Stephenson v. Spiegle*, 429 N.J. Super. 378 (App. Div. 2013). The decedent in *Stephenson* wished to leave his estate in trust for the benefit of specific family members but named his attorney as the pay-on-death beneficiary. The court found this inconceivable as the decedent and attorney held no special relationship. The court recognized that the decedent's intention was to create a trust for his family members, and this mistake created a windfall for his attorney. Here, the Decedent left annuity benefits to his younger siblings, not an attorney or some other professional with whom there was no special relationship. Nor was he forced to change any of his plans like the decedent in *Stephenson*.

b. The Chancery Court Properly Refused to Enforce the Annuity Contract in the Manner that the Plaintiff Demanded.

The Plaintiff argues that "Lancaster's testimony . . . shows how confusing this annuity contract was even for the agent," (Brief on Appeal, p. 34). However, the testimony cited reflects that the "confusion" lay with the questions posed by Plaintiff's Counsel. Stated Lancaster, "I'm a little confused about what you're asking me" (*Id.*). He then confirmed that part of his process is to explain to a client purchasing an annuity what the difference is between an annuitant and a beneficiary (*Id.* at p. 34).

The Plaintiff also contends that the \$475,000 premium paid to purchase the Annuity came from Nate's 401(k), "but consisted of joint marital assets under established New Jersey law" (*Id.* at p. 24).

Unfortunately for the Plaintiff, her testimony concerned what she "understood" and what she believed that she and the Decedent "intended" (Brief on Appeal, p. 36). Furthermore, the Plaintiff "assumed that it would go to" the Defendants "after both she and her husband were deceased, not while one of them was still alive" (*Id.*). She was unable to testify to what the Decedent "intend[ed] for" (*Id.* at p. 36); and what she "understood" "the contract provided" is of no moment (*Id.*). Nor is or was it relevant that she "understand[s] that upon both of our passing, it would make

sense to have beneficiaries that - so, it would not go to the State" (*Id.* at p. 37). The Defendant was and is not available to testify that he "would not have wanted" his siblings to obtain the annuity payments before his own wife" (*Id.*).

This "evidence" (the Plaintiff's subjective understanding) fails to establish "that the intent in purchasing the annuity contract was that the benefits would continue to be received by the couple as long as one of them remained living" (*Id.* at p. 37) for the very basic fact that the Annuity contract itself is clear.

The Plaintiff's call to N.J.A.C. 11:4-40.3 (*Id.* at p. 37) is unavailing. This regulatory scheme is not intended for use as a figurative sword in a civil action. Likewise, her attack on this Annuity as somehow being contrary to the Internal Revenue Code (*Id.* at pp. 38-39) fails along the same vein. Furthermore, the Plaintiff is reaching for sources far outside of the four corners of what is a very clear contract (*Id.* at pp. 39-40), looking to, e.g., Forbes' website (*Id.* at p. 40). The Plaintiff even admits the dubiousness of her argument when she writes that "some sources indicate that a beneficiary cannot be the same person as the annuitant" (*Id.* at p. 41).

The Plaintiff contends that the 401(k) proceeds were marital assets that she owned equally with Nate (*Id.* at p. 26). This, she claims, is in accord with the "Death of Owner" provision, stating that, upon the owner's death, "ownership of this contract will

pass to the persons living on the date of your death in the following owner: 1. Surviving owner, if any” (*Id.* at p. 27). She argues it “reasonable to conclude that this provision has not yet been triggered” because she is either the owner or surviving owner (*Id.* at p. 27).

The Plaintiff, resting on the argument that she is a co-owner, also argues that “Death of Annuitants” as a paragraph supports her position because remaining benefits are to be paid to an (a) owner; (b) beneficiary; or (c) estate of last owner to die (*Id.*). The problem for her, however, is that this presumes as fact that she is either an actual or beneficial owner. This is precisely the question that the Chancery Court answered in the negative.

Further building on her claim that she was an owner, the Plaintiff contends that the “Annuity Income Option” and “Joint and Reducing (First Death) Survivor Life Income With Guaranteed Period” (Plaintiff’s Brief, p. 27) provisions support her benefit. Those provisions call for payments under the Annuity as long as both Annuitants are alive (*Id.*). She finds it “reasonable to interpret this provision as providing that Annuitant Barbara continues to receive” payments following Nate’s death and until she passes away (*Id.*). Again, since she was not a joint owner of the Annuity, this provision does not support her position.

c. The Annuity Contract Is Unambiguous as to Whether the Plaintiff or Defendants Acquired the Right to Receive the Benefit Payments Upon the Decedent's Death.

For all of the reasons set forth above, the Plaintiff's argument about the ambiguousness of the Annuity fails. In its decision, the Chancery Court determined that reformation of a contract based on unilateral mistake is to be granted only when the "mistake on the part of one party is accompanied by fraud or other unconscionable conduct of the other party" (A135, p. 14).

The Chancery Court properly noted that the Plaintiff's Complaint "did not allege" that "John or Terry induced" the Decedent "to purchase the Annuity or to name them as beneficiaries" (A136, p. 15). In fact, testimony demonstrated that neither of the Defendants had knowledge of the Annuity until after the Decedent's death (*Id.*). As such, the Defendants could not possibly have engaged in conduct deeming reformation appropriate (*Id.*).

The Chancery Court properly determined that there was no ambiguity in the subject Annuity contract.

d. The Chancery Court Properly Refused to Enforce the Annuity Contract as the Plaintiff Requested.

Reformation is a remedy that is "largely dependent upon a finding of mutual mistake." New Jersey courts have consistently held that reformation can only be granted if a mutual mistake is

proven by clear and convincing evidence. *In re Trust of Nelson*, 454, N.J. Super. 151, 160 184 A.3d. 526 (App. Div. 2018) (relying on *Pivnick v. Beck*, 165 N.J. 670, 671, 762 A.2d 653 (2000) (noting "preponderance of evidence to resolve ambiguity in donative instruments; clear and convincing evidence to reform such instruments"). Lancaster testified for Principal. He did not recall selling the Annuity to the Decedent but identified his as the signature on the Annuity as Fidelity representative. The Plaintiff elected not to examine him.

Since Lancaster could not recall selling the Annuity to the Decedent, the Chancery Court could not determine what was said to induce the Decedent to purchase the particular annuity (A138, p. 17). The Plaintiff herself admitted that she and the Decedent discussed no specifics of the Annuity other than to claim it "goes without saying" who the beneficiaries would be. "As a result," the Chancery Court rightly determined, the Plaintiff failed to prove that there was a mistake on the part of the Decedent, and fraud or other unconscionable conduct by Principal Life" (*Id.*).

Surprisingly, the Plaintiff suggests intentionality behind Lancaster's "conveniently" not recalling whether the Decedent or the agent typed the Defendants' names onto the form (Appellate Brief, p. 35). Hence, the Plaintiff asks the Court to reach the conclusion—for which there is no evidence—that Lancaster typed the Defendants' names into the form improperly (since the Plaintiff

herself does not know who typed them in); but that, even if properly typed, evidence must be presented to demonstrate that the Decedent “understood and intended for his siblings to receive the annuity payments while his wife remained living” (*Id.* at p. 35). In other words, the Plaintiff seeks to place the burden of persuasion on the Defendants to substantiate what is clearly written in black-and-white, evading the burden of proof that rests on her shoulders.

The Plaintiff incorrectly claims that she “reasonably falls within the definition of Owner” since it means “any Joint Owner” (Appellate Brief, p. 24). She asks that the Court decide that, because she and the Decedent were married for around 40 years and both recently retired, discussed purchasing an annuity, and the \$475,000.00 premium paid to purchase the Principal Life annuity contract came from the Decedent’s 401(k) that “consisted of joint marital assets” (*Id.*). She also notes that she was named as “Joint Annuitant,” deeming it “reasonable to conclude” that she was an “Owner” (*Id.*).

As the Chancery Court properly concluded, the Plaintiff could not demonstrate the Decedent’s intention when he signed the Annuity agreement (A140, p. 19). She also did not demonstrate why she was not listed as the joint owner of the Annuity (*Id.*). It was unknown whether the fact that there are different tax consequences if a different owner is listed “was a reason” that

the Decedent "did not list" the Plaintiff as a joint owner (*Id.*). All that was known is that the Decedent "checked the box in the Profile that the Annuity was to provide current retirement income" (*Id.*). However, he also checked the box indicating that the Annuity was to provide an income option for heirs in the event of premature death (*Id.*). Since he listed the Defendants as beneficiaries, the Decedent intended his siblings to receive the Annuity (*Id.*). The Plaintiff could not demonstrate whether, at the time of the Annuity purchase, the Decedent misunderstood that the monthly payments would stop after his death and pass to the Defendants (*Id.*).

II. The Chancery Court Properly Refused to Apply an Equitable Remedy to the Plaintiff.

Reformation is an equitable remedy derived from the maxim that equity looks to substance rather than form. *Toth v. Vasquez*, 8 N.J. Super. 289, 293 (App. Div. 1950). A contract such as the Annuity is an instrument subject to reformation as long as the appropriate grounds for such relief are met. The New Jersey Supreme Court has held that a person must show the existence of a contract between the parties and the presence of a mistake, accident, or fraud when the contract was performed to prevail on a reformation claim. *Dunkin' Donuts of America, Inc. v. Middletown Donut Corp.*, 100 N.J. 166, 183 (1985).

A contract will not be reformed, however, because a person claims that such enforcement is "oppressive, improvident, or unprofitable, or because it produces hardship." *Id.* at 184. The mistake must be of so great a consequence that to enforce the contract as actually made would be unconscionable; the matter as to which the mistake was made must relate to the material feature of the contract; the mistake must have occurred notwithstanding the exercise of reasonable care by the party making the mistake; and it must be able to get relief by way of rescission without serious prejudice to the other party, except for loss of his bargain. *Hamel v. Allstate Ins. Co.* supra, 233 N.J. Super. at 507, 559 A.2d 455 (quoting *Conduit & Foundation Corp. v. City of Atlantic City*, 2 N.J. Super. 433, 440, 64 A.2d 382 (Ch.Div.1949)).

"The doctrine of Unjust Enrichment rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another." *Goldsmith v. Camden Cnty. Surrogate's Off.*, 408 N.J. Super. 376, 382, 975 A.2d 495 (App. Div. 2009) (quoting *Assocs. Com. Corp. v. Wallia*, 211 N.J. Super. 231, 243 (App. Div. 1986.))

"To establish unjust enrichment, the plaintiff must show that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the retention of that benefit without payment would be unjust."

Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 317, 162 A.3d 306 (App. Div. 2017).

"Recovery under unjust enrichment requires a determination that the defendant has benefitted from plaintiff's performance." *Woodlands Cmty. Ass'n v. Mitchell*, 450 N.J. Super. 310, 318, 162 A.3d 306 (App. Div. 2017).

In order to sufficiently establish unjust enrichment as a basis for quasi-contractual liability, "a plaintiff must show both that defendant received a benefit and that retention of the benefit would be unjust." *VRG Corp. v. GKN Realty Corp.*, 135 N.J. 539, 554, 641 A.2d 519, 526 (1994).

Further, such unfair enrichment can only be substantiated if "plaintiff expected remuneration from the defendant, or if the true facts were known to plaintiff, he would have expected remuneration from defendant, at the time the benefit was conferred." *Callano v. Oakwood Park Homes Corp.*, 91 N.J. Super. 105, 109, 219 A.2d 332, 334-35 (App. Div. 1966).

Here, the Plaintiff had no expectation of or right to remuneration as defined above from any of the three named Defendants. To succeed on Unjust Enrichment, the Plaintiff needs to show that the Defendants benefited as a result of her performance. They did not. Nor did they deprive the Plaintiff of her property. The Plaintiff did not pay for the Annuity; and, even if she did, the Defendants have received nothing thus far.

The Chancery Court properly held that the Plaintiff bore the burden of proving that the Annuity should have been reformed rather than enforced in its original form: She requested that it be reformed to change the beneficiary designation from John and Terry to her in accord with the Decedent's intent (A134, p. 13).

A court can grant reformation only upon clear and convincing proof that the contract in its reformed state is "one that the contracting parties understood and meant it to be." *St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden*, 88 N.J. 571, 581-81 (1982). The standard is more than a balancing of probabilities but:

evidence that produces in your mind a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear convictions of the truth of the precise facts in issue. *Bhagat v. Bhagat*, 217 N.J. 22, 44-45 (2014).

The Chancery Court determined that reformation "is not the legal wrong underlying the claims" that the Plaintiff "alleged to have suffered, "but the remedy" (A135, p. 14). As a result, the Chancery Court appropriately denied Count I of the Complaint since the requested relief was based on the causes of action set forth in Counts II-VI (*Id.*).

While the Chancery Court found the Plaintiff "highly credible," and it "clear" that she and the Decedent "had a loving relationship" (A140, p. 19), it "must" nevertheless "rely on

documentary or testimonial evidence to glean what" the Decedent intended at the time the Annuity was purchased (A141, p. 20).

The Plaintiff focuses - as she did throughout - on what her understanding was of what she and the Decedent intended, when the focus really had to be on what the Decedent intended (*Id.*). Even in the event that the Decedent made a mistake on the Annuity, his negligence would not negate what he signed (*Id.*) (*citing, Crescent Ring Co. v. Travelers' Indem. Co.*, 102 N.J.L. 92). In fact, the Decedent was required to exercise diligence to ensure that his intentions—if in fact as the Plaintiff presented—were effectuated. Furthermore, the Decedent had the ability to review the Annuity terms and change the beneficiary designation by providing written notice to Prudential Life, but he did not do so (A141, p. 20). In fact, the first page of the Annuity document reads, in bold print, *inter alia*: "It is important to us that you are satisfied with the contract. If you are not satisfied, you may return your contract to either your marketer or our office within 10 days of its receipt" (A16).

With regard to equitable remedies, the Chancery Court properly held that the Plaintiff was "not a party with John or Terry under an implied contract theory"; and "did not perform any service to the defendants with an expectation Plaintiff was to be compensated" (A142, p. 21). In the unlikely event that the Court inferred that the Decedent had an implied contract with the

Defendants, there was no evidence that either Defendant induced or persuaded the Decedent to name them as beneficiary to the Annuity (*Id.*). In fact, neither Defendant had an expectation of receiving money from the Decedent or acted in a manner which made receipt of the money inequitable (*Id.*).

With regard to Equitable Estoppel, the Plaintiff argues that the Defendants believed that the Decedent intended the Annuity to provide retirement income to her and the Decedent during their lifetime; and that they agreed to sign a disclaimer designating the Plaintiff as beneficiary of the Annuity. Thereafter, the Defendants refused to sign a disclaimer once they learned of its value.

But the Chancery Court properly noted that the Plaintiff mischaracterized the doctrine of equitable estoppel: She did not demonstrate that the Defendant acted or changed the designations under the Annuity to her detriment based on the Defendants' conduct (A143, p. 22). The Defendants did not know of the Annuity until his death (*Id.*). The change of position in the Defendants allegedly refusing to sign the disclaimer "is immaterial to the actions Nate took when purchasing the Annuity" (A143-44, pp. 22-23).

Lastly with regard to the consideration claim, the Chancery Court granted the Defendants a directed verdict as to such point (A144, p. 23).

Equitable Estoppel is designed to "prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his or her detriment," and it is "invoked in the interests of justice, morality and common fairness." *Matter of Borough of Englewood Cliffs* 473 N.J. Super. 189, 202, 279 A.3d 463 (App. Div. 2022).

To establish estoppel, plaintiff must prove, as previously stated, that defendant "engaged in conduct, either intentionally or under circumstances that induced reliance, and that plaintiffs acted or changed their position to their detriment." *Knorr v. Smeal*, 175 N.J. 431, 815 A.2d 478, 2003 N.J. LEXIS 107 (2003).

Further, the full weight of proving equitable estoppel "is on the party invoking the doctrine." *Capitalplus Equity, LLC v. Prismatic Dev. Corp.*, Civ. No. 07-321, 2008 U.S. Dist. LEXIS 54054, 2008 WL 2783339, at *3 (D.N.J. July 16, 2008) (Walls. J.). The plaintiff must demonstrate the presence of the elements of equitable estoppel: "(1) a knowing misrepresentation by another party; (2) which it reasonably relied upon; (3) to its detriment." *Messa v. Omaha Prop. & Cas. Ins. Co.*, 122 F. Supp. 2d 523, 532 (D.N.J. 2000); *O'Malley v. Dep't of Energy*, 109 N.J. 309, 317, 537 A.2d 647 (1987).

Here, similar to Unjust Enrichment, the Plaintiff would have to prove she suffered a detriment by relying on some sort of performance or action of the defendants to recover based on

Equitable Estoppel. But, by her own admission, neither Defendant knew they were named beneficiaries of this annuity until after Nathaniel's passing. The Defendants played no role in opening the Annuity and could not have made themselves beneficiaries. Whether the Defendants agreed to sign waivers at some point or not, the Annuity was never set up with Plaintiff relying upon them signing the disclaimer so she could receive the benefits.

III. The Plaintiff Failed to Preserve Any Argument as to the Annuity Being Funded With, or Otherwise Constituting, Marital Property.

The crux of the Plaintiff's Appeal now centers around her argument that the Annuity was funded by money earned during the Parties' marriage, and thus constitutes marital property. This is a novel argument, raised for the first time on appeal, by counsel that did not handle the trial and post-trial briefings. As a result, the Chancery Court had no reason or opportunity to address the issue. The Plaintiff's post-trial briefing actually argued that the IRS prohibits a spouse from naming a different beneficiary on an annuity if that annuity is funded with 401k money that is considered marital property. Notably, however, no citation is provided.

Because it is not preserved, the "marital property" argument should not be considered. In the event that it is, however, it has no bearing on the very basic facts of this case: That the Annuity Contract is unambiguous on its face, and that there is no

admissible evidence that the Decedent made any mistake of fact in its execution—nor, indeed, is there any reason why equity commands reformation thereof.

Conclusion

For the reasons set forth above, the Plaintiff's Appeal should be denied and the Decision of the Chancery Court affirmed.

Respectfully submitted,

Betner Gray Law Office


Chandra Betner-Gray, Esq

Superior Court of New Jersey
Appellate Division
Docket No. A-002720-23

BARBARA J. WALDEN,

PLAINTIFF- APPELLANT,

v.

CIVIL ACTION

JOHN WALDEN, TERRY WALDEN
COMPTON, AND PRINCIPAL LIFE
INSURANCE COMPANY,

DEFENDANT-RESPONDENTS

On appeal from a final judgment
entered in the Superior Court
of New Jersey, Chancery Division,
Burlington County, C-114-22
Hon. Paula T. Dow, P.J.Ch.

REPLY BRIEF

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BRIEF FILED ON OCTOBER 21, 2024

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ARGUMENT

It is notable that the issuer of the annuity contract, Principal Life, has not taken any position in Mrs. Walden's appeal to this Court. This other contracting party (other than Mr. Walden) has not disputed appellant's construction of the annuity contract, or disputed appellant's argument regarding what the evidence showed the parties to the annuity contract intended. As we argue in Point I of Appellant's Brief, the chancery court erred by failing to construe the annuity contract per the only evidence of the contracting parties' intent introduced at trial – which indisputably showed that Mr. Walden, with his co-partner and wife Mrs. Walden, intended for the contract to provide the annuity payments while at least one of them was living – not to provide the annuity payments of this \$475,000 retirement purchase to Mr. Walden's siblings. Not one iota of evidence – not any testimony or a single piece of paper or electronic communication – even suggests that this was the intent of Mr. Walden or his co-partner wife.

Respondents cannot cite to any such evidence. The only argument upon which they rely for this windfall they claim to deserve (at Mrs. Walden's expense) is their contention that the annuity contract is plain and unambiguous in providing these siblings the legal right to receive the annuity payments. But the contract is not plain and unambiguous. As detailed in the Appellant's Brief at pages 24-29,

Mrs. Walden reasonably falls within the definition of Owner, because the definition section of the contract provides, “OWNER means the person, including any Joint Owner, who owns an individual interest in this contract.” A person can have a beneficial interest in a contract even if they are not a named party, e.g., Horney v. Mason, 184 Va. 253 (1945), such as when a contract is intended, in whole or in part, to benefit the individual. Interest may also mean a financial or pecuniary interest – which in this case would encompass Barbara since the annuity contract was purchased with a large part of the recently retired couple’s joint marital assets, e.g., Yonkers Bus v. Maltbie, 23 N.Y.S.2d 87 (Sup. Ct. 1940), aff’d, 260 A.D. 893 (N.Y. App. Div. 1940). The Investor Profile Questionnaire indicates that the purpose of the annuity was to provide retirement income. Barbara is named as “Joint Annuitant” on the contract’s Data Page and, therefore, is considered an Annuitant the same as Nate. It is reasonable to conclude, therefore, that Barbara is also an “Owner” of this annuity contract because she too “owns an individual interest in” it for the reasons cited above. Since the contract provides that Principal Life “will pay You,” and defines “You” as the “Owner,” Barbara has a contractual right to receive the annuity payments just as Nate had, a reasonable construction of the contract permits.

The annuity was purchased with \$475,000 of marital assets – further showing that Mrs. Walden was also an owner of the annuity contract under governing New Jersey law (Appellant’s Brief at 26).¹

Concluding that Mrs. Walden is an owner is consistent with the “DEATH OF OWNER” provision of the contract, providing, “At Your death, ownership of this contract will”... “pass to the person(s) living on the date of Your death in the following order: 1. Surviving Owner, if any...” It is reasonable to conclude that this provision has not yet been triggered, because Barbara falls within “Your” as argued above, or, alternatively, because Barbara is the “Surviving Owner” to whom ownership of the annuity contract passed upon Nate’s death.

It is consistent with the “DEATH OF ANNUITANT(S)” provision: “Upon the death of all Annuitants, the Remaining Guaranteed Benefit, if any, will be paid to the person(s) living on the date of death in the following order: 1. Owner(s)[;] 2. Beneficiary(ies[;] 3. Estate of the last Owner to die.” Since Barbara is also the Annuitant, this provision has not yet been triggered.

¹ Respondents complain that this argument was not raised in the chancery court. But whether these were marital assets or not is shown indisputably by the record evidence and the governing law of this State cited in Appellant’s Brief. In any event, this Court is empowered to address trial errors even where not raised below if they are of such a nature as to have been clearly capable of producing an unjust result or where the interest of justice warrants it (Chirino v. Proud 2 Haul, Inc., 458 N.J. Super. 308 (App. Div. 2017), aff’d, 237 N.J. 440 (2019)).

It is consistent with the “ANNUITY INCOME OPTION” provision of the contract, providing for “JOINT AND REDUCING (FIRST DEATH) SURVIVOR LIFE INCOME WITH GUARANTEED PERIOD: We will pay the Annuity Income Payment, at the Annuity Income Frequency, as long as both Annuitants are alive.” Since one Annuitant (Nate) died before the end of the Guaranteed Period (which the Data Page specifies is 20 years, A18), the Annuity Income Payment continues until the end of the Guaranteed Period. It is reasonable to interpret this provision as providing that Annuitant Barbara continues to receive the Annuity Income Payment following Nate’s death and until Barbara, the other Annuitant under the contract, passes away.

Alternatively, it is reasonable to interpret the contract as providing that Barbara is Nate’s “Designated Payee” and, on this alternative ground, also has a right to receive the annuity benefits. The definition section of the contract provides that “DESIGNATED PAYEE means the person to receive income payments,” which is consistent with the “We will pay” provision. No “Designated Payee” is identified in the contract. But the Data Page identifies Nathaniel as the “Annuitant” and Barbara as the “Joint Annuitant,” which by definition means that Barbara is also an Annuitant. Principal Life paid the monthly benefits to Nathaniel during his lifetime. It is reasonable to interpret the contract as providing that Barbara, Nate’s wife of

forty years and identified as the Joint Annuitant on the contract's Data Page, is the Designated Payee "to receive income payments" if Nate passes away.

Likewise, nothing in the contract plainly and unambiguously says that the defendant siblings acquired the right to receive the annuity benefits upon Nate's passing but while Barbara is still alive. The "BENEFICIARY" provision of the contract does not plainly and unambiguously state this:

Except as otherwise provided in the death of annuitant section of this contract, the beneficiary(ies) named and recorded at Our office will receive the Remaining Guaranteed Benefit, if any. You can change beneficiary designation as provided below. If the Remaining Guaranteed Benefit becomes payable to a designated beneficiary, and that beneficiary has not survived the Owner, We will pay the Remaining Guaranteed Benefit to any surviving beneficiary(ies) according to the percentages You designated. If no beneficiary(ies) survives the Owner(s), the Remaining Guaranteed Benefit will be paid to the of the last Owner to die unless otherwise specified.

The referenced "REMAINING GUARANTEED BENEFIT" "means the benefit, if any, to be paid after the death of the Annuitant(s) and as described in the Annuity Income Option on the Data Page." Here, the death of "the Annuitant(s)" has not yet occurred, because only one of the Annuitants has died (it is not disputed that Barbara, at the very least, is an Annuitant under the contract). It is reasonable to construe the Beneficiary and Remaining Guaranteed Benefit provisions as meaning, therefore, that beneficiaries have a right to receive benefits only upon the death of both Annuitants, which has not yet occurred. This supports a reasonable interpretation of the contract as providing that Barbara, the identified Joint Annuitant

and spouse, has the right to continue receiving the monthly benefits until she too passes away. Only then will the beneficiaries acquire a right to receive the Remaining Guaranteed Benefit per the “BENEFICIARY” provision. This is consistent with the ”DEATH OF ANNUITANT(S)” provision referenced in the “BENEFICIARY” provision (“Except as otherwise provided in the death of annuitant section of this contract”), since the “DEATH OF ANNUITANT(S)” provision states that the Remaining Guaranteed Benefit will be paid only “Upon the death of all Annuitants,” which has not yet occurred yet in this case. All of this shows that the Principal Life annuity contract is not plain and unambiguous with regard to whether Barbara or the defendant siblings acquire the right to receive the annuity benefits upon Nathaniel’s passing.

In sum, the contract does not plainly and unambiguously provide that the defendant siblings, not Mrs. Walden, acquired the legal right to receive the annuity payments upon Mr. Walden’s death. The contract is ambiguous because it is subject to more than one reasonable interpretation in that regard for all the reasons summarized above and in Appellant’s Brief – none of which the other contracting party, Principal Life, disputes before this Court. Intent of the parties gauged by the extrinsic evidence thus governs – all of which shows that the intent was never to bypass the still-living Mrs. Walden and provide the annuity payments to Mr. Walden’s siblings.

Respondents say that the chancery court applied the correct New Jersey law. It did not. Yes, an insured (or here the purchaser of an annuity) is bound by the terms of the contract, but only where's its unambiguous – subject to only one reasonable interpretation. Not so in this case as argued above and in Appellant's Brief.

Respondents engage in linguistic gymnastics to attempt to show that the annuity is plain and unambiguous on whether Mrs. Walden or the defendant siblings acquire the legal right to receive the annuity payments, *see* Respondents' Brief at 6. But respondents do not counter any of the arguments set forth in Appellant's Brief showing that a reasonable construction is also to conclude that Mrs. Walden acquires the right to receive the annuity payments upon her husband's death, and that the named beneficiary siblings only acquire rights upon the passing of both Mr. and Mrs. Walden. Even the selling agent, Lancaster, was confused about how the right to payments worked, admitting he was "not sure" whether an annuitant and beneficiary were "interchangeable" under the contract (Appellant's Brief at 34).

Respondents say there is no evidence of Mr. Walden intended. But there is evidence. His wife, Barbara, affirmed what she and her husband intended in discussing then deciding together to purchase the annuity with their retirement funds. This evidence was not disputed, moreover, in any manner. Respondents' claim that

it is “unknown” what Mr. Walden intended in terms of the manner of annuity payments completely disregards Mrs. Walden’s undisputed testimony in that regard.

At the very least, the chancery court erred in failing to afford equitable relief to Mrs. Walden based on the facts that the chancery court itself found and the undisputed evidence showed. Respondents say that reformation must be based on “mutual mistake.” But this case does not present the usual scenario where one contracting party seeks relief from the contract that the other contracting party opposes. Here, the only real contracting party was Mr. Walden, the purchaser of the annuity. The only evidence of what he intended came from Mrs. Walden, and this evidence was not countered by any other evidence. Principal Life was the other contracting party, but this entity cannot and has not spoken about what a particular purchaser intended regarding the receipt of the annuity payments. The agent, Lancaster, did not offer any testimony about what Mr. Walden intended either (claiming not to recall the transaction – which likely means that he indeed misadvised Mr. Walden about how to complete the application and did not want to take accountability for this mistake in the proceeding below).

Caselaw that respondents cite only supports (by analogy at least) our argument that the chancery court should have granted at least equitable relief, see Stephenson v. Spiegle, 429 N.J. Super. 378 (App. Div. 2013) (cited in Respondents’ Brief at 8-

9) (reforming instrument to comport with probable intent of maker to leave estate for benefit of family, not for the benefit of attorney).

Regarding unjust enrichment, how does this doctrine not apply to the facts of this case? This case is the essence of unjust enrichment – sending annuity payments to siblings instead of the surviving wife and life partner whose marital funds were used to buy the annuity for their retirement in the first place. Unjust enrichment applies where defendants “received a benefit” and “retention of that benefit without payment would be unjust.” VRG Corp. v. GKN Realty Corp., 135 N.J. 539 (1994). That’s what Judge Dow’s own findings show. As Respondents themselves note at page 14 of their Brief, “The doctrine of Unjust Enrichment rests on the equitable principle **that a person shall not be allowed to enrich himself unjustly at the expense of another**” (*citing* Boldsmith v. Goldsmith v. Camden Cnty. Surrogate's Office, 408 N.J. Super. 376, 382 (App. Div. 2009), *quoting* Associates Commercial Corp. v. Wallia, 211 N.J. Super. 231, 243 (App. Div. 1986)). Or as Respondents say at page 15 of their Brief, “Recovery under unjust enrichment requires a determination **that the defendant has benefitted from plaintiff’s performance**” (*citing* Woodlands Cmty. Ass'n, Inc. v. Mitchell, 450 N.J. Super. 310, 318 (App. Div. 2017)). That is precisely this case, because the defendants have been enriched at the expense of Mrs. Walden, and the defendants have benefitted, unintentionally,

from the “performance” of Mr. and Mrs. Walden in buying the annuity with \$475,000 of their retirement funds.

Respondents also echo the chancery judge’s statement that a party’s “negligence” cannot undo a written contract. That principle makes sense when the party who was negligent seeks to lay the consequences of the negligence upon the other side. But this case has nothing to do with that. This case is about what the purchaser of the Principal Life annuity intended when he bought it with a large chunk of his and wife’s retirement funds. If there was any “negligence” involved this case, it was the agent who filled out the forms and told the customer to sign -- not the layperson purchaser. In the context of this case, what sense does it make, in a court of equity no less, to saddle an agent’s negligence around the neck of the surviving wife whose own retirement funds were used to buy the promised future payments in the first place?

CONCLUSION

The Court should vacate the chancery court's judgment for defendants and Order as follows:

- As argued under Point I of Appellant's Brief, direct the chancery court to enter judgment for Plaintiff against Defendant Principal Life (1) directing the monthly annuity payments to be made to Plaintiff going forward, and (2) ordering Principal Life to pay to Plaintiff the total amount of annuity payments that have accumulated since Nate's passing on May 25, 2022;
- In the alternative, as argued under Point II, order Principal Life to direct all monthly annuity payments to Plaintiff going forward, and enter judgment for Plaintiff against Defendants Walden and Walden Compton for the total amount of annuity payments received by these defendants from Principal Life.

Respectfully submitted,

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Dated: October 16, 2024