		Superior Court of New Jersey
10 MILLPOND DRIVE, LCC,	*	APPELLATE DIVISION
	*	DOCKET NO. A-003233-23T4
	*	
	*	DOCKET NO. BELOW: SSX-L-491-19
Plaintiff-Respondent,	*	
	*	ON APPEAL FROM:
	*	SUPERIOR COURT OF NEW JERSEY—
v.	*	LAW DIVISION, SUSSEX COUNTY
	*	
SCOTT BEGRAFT AND LAMSON AIRTUBES, LLC	*	
	*	SAT BELOW:
	*	Hon. Noah Franzblau, JSC
Defendant-Appellant.	*	
	*	

DEFENDANT-APPELLANT'S *AMENDED* APPEAL BRIEF

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PROCEDURAL HISTORY

Plaintiff-Respondent, 10 Millpond Drive, LLC filed a Complaint in the Superior Court of New Jersey, Law Division, Sussex County against the Defendant-Appellant on or about October 11, 2019 (Da-58). Defendant-Appellant filed an Answer and Counterclaim on or about February 10, 2020 (Da-111). Plaintiff filed an Answer to the Counterclaim on or about March 16, 2020 (Da-116).

A jury trial took place in the Superior Court of New Jersey, Sussex County before the Hon. David Weaver, J.S.C. on April 4, 2022 (1T)[1] and April 5, 2022 (2T)[2]. The trial Court found in favor of the Plaintiff and entered an Order of Disposition on April 6, 2022 (Da-122).

A Motion for a New Trial was filed by the Defendant-Appellant on or about April 11, 2022 (Da-123) and was denied on the record on May 26, 2022 (3T)[3]. An Order Denying said Motion was entered on that date (Da-126), as well as an Order of Judgment (Da-127).

An Amended Notice of Appeal followed, filed on July 22, 2022 (Da-129) resulted in an Opinion by this Court on September 21, 2023 remanding the matter back to the trial Court for the purpose of trying the Counterclaim (Da-1).

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[1] 1T - Transcript of Trial 4/4/22;
[2] 2T - Transcript of Trial 4/5/22; and
[3] 3T - Transcript of Decision on Motion 5/26/22.

The trial Court scheduled the matter for trial and, as is set forth below, dismissed the case without the trial taking place (Da-37 and Da-39). This appeal followed (Da-32).

STATEMENT OF FACTS

On December 15, 2022, the Appellant was arrested and as a result of a detention hearing, was detained in the Morris County Jail. On December 7, 2023, the Defendant pled guilty to a second-degree marijuana charge. The earliest eligibility date was determined by the Department of Corrections to be April 30, 2024 (Da-24). However, both the sentencing Judge, Judge Hanna, and the Assistant Prosecutor both believed that the Defendant would be paroled before March 11, 2024. That did not happen.

On March 11, 2024 (4T)[4], a date that had been agreed upon by all parties including the Civil Assignment Judge, the matter came before the Court below. On that date, the Defendant was incarcerated in State Prison, and there was a mix-up with getting him to the Court on that date. On that date, counsel for the Defendant-Counterclaimant indicated to the Court that he believed that Scott Begraft would be transported to the Morris County Courthouse (4T; 5:19). What counsel overlooked was the fact that the transport fee had to be paid in advance. The first four pages of the transcript reveals that counsel for the Appellant was frank with the Court to

[4] 4T - Transcript of Conference on 3/11/24.

admit that he never realized that the cost of conveying the Defendant to the Courthouse had to be paid in advance.

What caused the problem is that when the Defendant was sentenced by Judge Hanna in Sussex County, everyone believed that the Appellant would be released from custody by March 11th. When Judge Hanna sentenced the Defendant, everyone expected that the Defendant would be released and consequently that date was agreed to with the Civil Assignment Judge in Morristown. The date was March 11th.

However, things changed. The Appellant was incarcerated, the trial Judge actually arranged for this matter to be tried in a criminal Court so that during any recesses during the trial the Appellant would be placed in a holding cell.

When it was realized that the Appellant would not be released by March 11th, the Civil Assignment Judge, Judge Ramsay, was contacted, but she refused to accommodate the fact that everyone was wrong about March 11th, and counsel for the Appellant was wrong about how the Appellant was to get to the Courthouse. This case has a history. The matter was actually tried before a jury in April of 2022 (1T and 2T). The Defendant-Counterclaimant admitted he owed to the Plaintiff certain rents, but in connection with his Counterclaim, he testified that the landlord had breached the lease, entered the premises, and removed all of his functioning equipment for his business. The value was $104,000. The trial Judge determined

that the Appellant did not have standing to sue and ruled against the Appellant on the Counterclaim.

An appeal was taken (Da-129). This Court reversed and remanded the matter for trial (Da-1). While the matter was pending in this Court, the Counterclaimant-Appellant was selling marijuana. As a result, he was arrested which resulted in him being confined to the Morris County Jail while the criminal charges were pending; and then, incarcerated in State Prison (da-24). As indicated above, the sentencing Judge believed that he would be released by March 11th, and counsel for the Appellant went to the assignment Judge and agreed on that date.

As indicated above, when it became evident that he would not be released, the Civil Assignment Judge was again contacted (Da-29), but she refused to assign a date to accommodate the Appellant's release.

There is no question that counsel for the Appellant misread the trial Judge's emails concerning what had to be done to accommodate the Court and produce the Appellant from State Prison.

Counsel kept the Court informed (Da-27, Da-29, Da-30), but the Court would not budge. Consequently, on March 11th, counsel for the Plaintiff and counsel for the Appellant both appeared in Morristown, where it was stated:

> I know he had to pay, but I thought -- I thought you just send him a check afterwards. I didn't know you had to pay upfront; (4T; 4:10).

There is the heart of the problem, but both the civil Assignment Judge and the trial Judge refused to forgive counsel's mistake. Further, counsel stated to the trial Court:

> I was hoping he was here. As I said, I didn't see your letter. I certainly could have paid it, but my impression that it was paid after the transport. But obviously, that is not how it goes (4T; 5:20).

Then, the Court stated:

> So, I guess, again Mr. Daggett, the adjournment will not be granted -- it has been denied. So, it's <u>form over substance</u> really. We could pick the jury, we can do our openings, and I could look to you to call your first witness who won't be here, at which case the Court would dismiss your case, or you can save the time, and I guess do whatever you want to do at this junction, but the matter is not going to be adjourned (4T; 5:24).

Then, counsel stated:

> Okay, I just think that based upon my mistake, we are not seeing that letter, I think it makes more sense to start tomorrow (4T; 6:10).

The Court responded:

> It couldn't even start tomorrow because my understanding is that it needs at least maybe it is either 48 or 72 in advance that require monies (4T; 6:11).

Then, Counsel stated:

> Your Honor, why waste the time picking a jury if you are going to call the first witness and he is not here, and you are going to dismiss, you probably should do that now (4T; 6:15).

The Court did not disagree. Counsel sets forth what took place in the criminal Court:

> Both Judge Hanna and the Prosecutor when Scott plead guilty, everybody believed he would be out in plenty of time to be here. Something happened in the prison system, and he is not here, and I will say it again: IT IS MY FAULT (4T; 13:21).

The trial Court revealed that he was not aware of sentencing procedures, when it stated:

> Should the Court wait until March or April of 2027 or beyond? (4T; 14:8).

The Court was talking about the maximum period of incarceration, and did not take into consideration that the Appellant was to be released in a short time, and actually he was.

As the letters to the civil Assignment Judge and the trial Judge indicate, we were talking about a short period of time. Unfortunately, the trial Court thought the Appellant would be released in 2027, when in fact as the letters indicate (Da-29), it was only days.

As indicated above, this case was already tried and should have been concluded in the dates of this trial. If only the trial Court had not made a mistake and precluded the Plaintiff from having the standing to bring the Counterclaim, the matter would have been resolved years prior to March 11, 2024.

Of great importance in connection with this appeal is the fact that the trial Judge believed that the Appellant was to be incarcerated until 2027 (Da-24).

LEGAL ARGUMENT
POINT I
The Principles of Fairness Should Guide the Court's Review of this Matter (Da-1).

The Judiciary strives to follow a policy in favor of generally deciding contested matters on their merits rather than based on procedural deficiencies; State v. Lawrence, 445 N.J. Super. 270, 275-276 (App. Div. 2016). The Court stated in Lawrence:

> A trial Judge is authorized to dismiss that "enforcement of procedural rules must always be exercised with an eye to secure a just determination and maintain fairness in administration of cases; not solely to secure a completed disposition (*quoting R. 1:1-2A*).

That is because cases should be won or lost on their merits and not because litigants have failed to comply precisely with particular Court schedules unless such non-compliance was purposeful and no lesser remedy was available, Irani v. Kmart Corp., 281 N.J. Super. 383, 387 (App. Div. 1995) (*quoting* Connors v. Sexton Studios, Inc., 270 N.J. Super. 390, 395 (App. Div. 1994)). "This is especially true where there has been no showing of prejudice on the part of the opposition;" Lawrence, 445 N.J. Super. 276 (*quoting* Mayfield v. Cmty of Med. Associates PA, 335 N.J. Super. 198, 207 (App. Div. 2000)).

In this case, Counsel tried a number of times to bring the Court up to date on the Appellant's status in prison (Da-29). The criminal trial Judge was mistaken. That mistake was communicated to the Civil Assignment Judge, and a date was set based upon what everybody believed, which turned out to be incorrect.

This case has a history. The original trial Judge was mistaken. On appeal, this Court remanded the case back for trial, but circumstances had changed (Da-1). Mistake is the word most operative in connection with this case. The original trial Judge made a mistake (Da-122). The Judge assigned to the Appellant's criminal case, Judge Hanna, was mistaken as to the date of Appellant's release. Counsel and the Civil Assignment Judge were mistaken as to the March 11th date. Even the trial Judge was not familiar with parole guidelines and believed that the Defendant would be incarcerated until 2027 (Da-24). That did not happen, but it influenced the Court's decision.

Clearly, the Civil Assignment Judge was concerned about the age of the case, but as indicated above, this case was tried, and the trial Judge made a mistake, hence when it came back from the Appellate Division, this case was old, but the Appellant's status had changed.

CONCLUSION

For the reasons set forth herein, it is clear that the Court below erred and this Court should find in favor of the Defendant-Appellant.

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Attorney for the Defendant-Appellant
George T. Daggett
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Date Amended: 11/15/24

10 MILLPOND DRIVE, LLC, Plaintiff / Respondent vs. LAMSON AIRTUBES, LLC; SCOTT BEGRAFT. Defendants/Appellants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003233-23T4 CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SUSSEX COUNTY DOCKET NO. BELOW: SSX-L-491-19 SAT BELOW: HON. NOAH FRANZBLAU, J.S.C.

PLAINTIFF/RESPONDENT'S BRIEF IN OPPOSITION TO DEFENDANT/APPELLANT'S APPEAL

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PRELIMINARY STATEMENT

Defendant-appellant Scott Begraft's ("Defendant") appeal should be dismissed because he fails to articulate any cognizable basis to overturn the trial court's denial of his motion for reconsideration. Defendant asked the trial court to reconsider its denial of his request to reinstate his counterclaim after the trial court dismissed it for his failure to appear at the peremptory trial. Notwithstanding his prior agreement to that peremptory trial date, Defendant sought to have the trial adjourned on numerous occasions, only to have each one denied. Despite those denials, Defendant *still* failed to appear at trial due to his failure to follow the trial court's unambiguous and repeated instruction that he must pay the prisoner transportation fee, as the court arranged with Bayside State Prison to have Defendant transported to the Morris County Courthouse and housed at the Morris County Correctional Facility ("MCCF") during the pendency of his trial.

Unfortunately, considering Defendant's numerous failed adjournment requests and the court's repeated instruction that the prisoner transportation fee must be paid in advance, defense counsel's sole excuse in support of Defendant's appeal - that he did not know about that requirement - strains credulity. In fact, as the trial judge wrote, it "defies credulity."

While preparing for trial while incarcerated may not have been easy, it was not impossible. The trial court made accommodations to Defendant and his counsel,

including, but not limited to, arranging for his transport to Morris County and his temporary housing at MCCF during the pendency of the trial, to assist Defendant in the process. After being afforded the opportunity to prosecute his claims against plaintiff-appellant, 10 Millpond Drive, LLC ("Plaintiff"), on a date he selected, Defendant squandered that opportunity, and the court appropriately dismissed his counterclaim. The trial court properly denied his attempt to reinstate his claims due to the lack of any legal basis for the reinstatement and because the facts betrayed his proffered excuse. The trial court correctly denied reconsideration of that decision as Defendant again lacked any legal basis for same and the facts continued to betray his argument. Respectfully, Defendant's appeal should meet the same fate for the same reasons.

For all of the foregoing and following reasons, Defendant's appeal should be denied.

PROCEDURAL HISTORY

For purposes of the instant appeal only, Plaintiff relies upon the Procedural History as articulated in Defendant's moving papers, except to state that the jury trial on April 4, 2022 and April 5, 2022 occurred before the Hon. Robert J. Brennan, J.S.C., and not the Hon. David Weaver, J.S.C., as stated in Defendant's papers. Brf. at p. 1.

COUNTERSTATEMENT OF FACTS

As a preliminary matter, in response to certain allegations articulated in Defendant's Statement of Facts, Plaintiff does not agree and has no way of confirming what Judge Hanna or the Assistant Prosecutor "believed" with respect to Defendant's parole date because Defendant failed to proffer any evidence in support of the statement that "both the sentencing Judge, Judge Hanna, and the Assistant Prosecutor both believed that the Defendant would be paroled before March 11, 2024." Brf. at p. 2; see also Brf. at p. 4. Likewise, Plaintiff does not agree and has no way of confirming that "everyone believed" Defendant would be released prior to March 11th. Brf. at p. 3.

Plaintiff offers the following Counterstatement of Facts to supplement the timeline of the various communications between the parties and the trial court.

As noted in the trial court's Order and Statement of Reasons dated April 26, 2024 (Da42), the trial court held a pretrial conference on February 7, 2024 where the Hon. Noah Franzblau, J.S.C., advised both parties that the court would be issuing an Order to Produce to State Prison to arrange for Defendant's prisoner transport for the trial and, if Defendant should fail to appear at trial, same would be deemed a "voluntary failure to appear by Defendant" and his counterclaims would be dismissed." Da42.

Thereafter, the trial court filed two separate letters to eCourts advising defense counsel of Defendant's responsibility to pay the prisoner transportation fee. On February 16, 2024, the trial court filed a letter to eCourts advising all of the parties that the Court will be issuing an Order to Bayside State Prison arranging for Defendant to be transported to Morris County for the trial, provided that, because this is a civil litigation, Defendant would be required to pay the transportation costs. See Pa1. The trial court even arranged for Defendant to be housed at MCCF during the pendency of the trial at no cost to Defendant. Ibid. The trial court filed the referenced Order to Produce shortly thereafter.

On February 23, 2024, defense counsel filed one of his several adjournment requests wherein he referred to the trial court's Order to Produce, noting that he believed the Order to Produce to be "fraudulent" because it included Defendant's criminal case caption. See Pa3-4. The Court subsequently reissued the revised Order to Produce shortly thereafter.

Judge Franzblau filed the second letter to eCourts on February 27, 2024, stating that the trial court would not adjourn the trial based upon defense counsel's representation without proof that Defendant would be released on parole in the coming months as the trial court noted Defendant's maximum release date was April 10, 2027. See Pa6. In that same letter, Judge Franzblau again repeated that the court arranged for Defendant to be transported to Morris County for his trial on March

11th if he timely paid the required transportation costs and expressly referred defense counsel to the court's earlier letter from February 16th:

> At your request, the Order to Produce has been modified to reflect the caption of the civil matter and the court has confirmed with Bayside State Prison that it will be honored, **subject to your client's timely payment of the required transportation cost (See February 16, 2024 correspondence)**. As previously noted, it will be up to you to arrange for your client to be properly attired for his civil trial.
>
> [Ibid. (emphasis added).]

From January to March 2024 in response to docket entries and in accordance with general case management, Defendant filed the following submissions to eCourts:

1. Letter dated February 7, 2024 with Defendant's Statement of the Case in advance of the pre-trial conference scheduled for later that morning (Da27);

2. Letter dated February 19, 2024 requesting adjournment of the trial date (Pa8);

3. Defendant's request to charge dated February 20, 2024 (Pa9);

4. Letter dated February 22, 2024 wherein defense counsel requests an adjournment due to alleged prejudice due to law enforcement in the courtroom, his alleged inability to meet with Defendant and the possibility of Defendant appearing in prison garb (Pa3);

5. Letter dated February 25, 2024 requesting late start to any trial due to defense counsel's religious observances (Pa10);

6. Letter dated February 25, 2024 discussing Plaintiff's motion in limine and reiterating his adjournment request (Pa11);

7. Letter dated February 26, 2024 repeating defense counsel's request to have the trial begin later in the morning to accommodate defense counsel's religious observances (Pa12);

8. Letter dated February 26, 2024 advising Defendant will be eligible for parole on April 16th and requesting an adjournment (Pa13);

9. Letter dated February 27, 2024 requesting an adjournment of the trial because defense counsel again alleges he does not have access to his client at Bayside, but providing no proof of same (Pa14);

10. Letter dated March 1, 2024 requesting an adjournment because Defendant may be forced to appear in prison garb and may be guarded by law enforcement while in the courtroom (Pa15);

11. Letter dated March 4, 2024 acknowledging Judge Ramsay's denial of his adjournment requests (Pa17);

12. Defendant's late opposition dated March 4, 2024 to Plaintiff's motion in limine (Pa18);

13. Letter dated March 7, 2024 again requesting an adjournment because his client will be forced to appear in prison garb and repeating his claim that he has been unable to meet with his client [submitted after Judge Ramsay denied his adjournment requests on the record on March 6, 2024] (Pa20);

14. Letter dated March 8, 2024 requesting another adjournment and advising for the first time that due to the failure of an unnamed third party, defense counsel has been unable to contact his client to prepare for trial [submitted after Judge Ramsay denied his adjournment requests on the record on March 6, 2024] (Pa22);

15. Letter dated March 8, 2024 admitting that he was able to speak with his client but asks for an adjournment because his client alleges he will be relegated to maximum security status for leaving Bayside State Prison to attend trial on March 11th [submitted after Judge Ramsay denied his adjournment requests on the record on March 6, 2024] (Pa24); and

16. Defendant's Requests to Charge (Pa25).

LEGAL ARGUMENT

POINT I

THE STANDARD OF REVIEW

Defendant appeals the trial court's June 7, 2024 denying his motion for reconsideration of the court's April 26, 2024 Order denying his motion to reinstate. While Defendant's brief fails to mention a standard of review, the applicable standard of review of a motion for reconsideration pursuant to R. 4:49-2 is abuse of discretion. See Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2025). The abuse of discretion standard is sometimes stated in terms of a "clearly erroneous" concept where the trial court will not be reversed unless its decision was clearly erroneous. See, e.g., State v. Simon, 161 N.J. 416, 444 (1999) (trial court decision "will be reversed on appeal only if there was an abuse of discretion which renders the lower court's decision clearly erroneous"); Graham v. Gielchinsky, 126 N.J. 361, 363 (1991) (where the Court affirmed, "we are satisfied that the trial court's exercise of discretion was not so clearly erroneous as to have had the capacity to bring about an unjust result").

The Order denying Defendant's motion for reconsideration should be affirmed because the Defendant has failed to establish that the trial court abused its discretion.

POINT II

THE APPELLATE DIVISION SHOULD AFFIRM THE TRIAL COURT'S ORDER BECAUSE DEFENDANT FAILED TO ARTICULATE ANY COGNIZABLE BASIS FOR RECONSIDERATION.

The trial court properly denied Defendant's motion for reconsideration because it failed to address the critical deficiencies from its earlier motion to reinstate.[1] Reconsideration is a matter "within the sound discretion of the Court, to be exercised in the interest of justice." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); see also Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Reconsideration should be used for those cases which "fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Pitney

[1] In the trial court, Defendant couched his motion as a motion for reconsideration, but he relied upon R. 4:50-1 for his argument, which is the rule for requesting to vacate a prior judgment or final order. Therefore, Defendant could not satisfy the standard for a motion for reconsideration because he failed to reference R. 4:49-2 and the proper test. The trial court specifically noted these procedural deficiencies in its Order and Statement of Reasons dated June 7, 2024. Da37-38.

Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (quoting D'Atria, supra, at 401).

Defendant's motion was properly denied because, despite not referencing the applicable court rule, legal standard or following the procedural requirements, Defendant provided no availing substantive basis for reconsideration of the trial court's Order. Defendant could not point to any "palpably incorrect or irrational basis" for the Order denying his motion to reinstate his case, nor did Defendant articulate what evidence the trial court failed to consider or appreciate. Just like the trial court noted in the Order and Statement of Reasons dated April 26, 2024 (the "April 2024 Order"), "Defendant's motion fails to state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred."[2] Da47. Rather, defense counsel's sole excuse for Defendant's failure to appear at trial on March 11th was that "[he] made a mistake in somehow not seeing that the transport had to be paid in advance." Brf. at p. 2. Respectfully, mistake of defense counsel is not one of the recognized bases for reconsideration.

Furthermore, after a letter-writing campaign of more than a half-dozen letters to the trial court raising several reasons for adjourning the peremptory trial date that

[2] Defendant's motion also failed to include a copy of the judgment or final order sought to be reconsidered. R. 4:49-2.

defense counsel himself selected, defense counsel's claim that he overlooked the requirement to pay the prisoner transportation fee strains credulity. As noted in the April 2024 Order (Da42), the trial court held a pretrial conference on February 7, 2024 where Judge Franzblau advised both parties that the court would be issuing an Order to Produce to State Prison to arrange for Defendant's prisoner transport for the trial and, if Defendant should fail to appear at trial, same would be deemed a "voluntary failure to appear by Defendant" and his counterclaims would be dismissed." Da42. Defense counsel was therefore put on notice of the forthcoming Order to Produce and the consequences for failing to comply with that Order.

Thereafter, the trial court filed two separate letters to eCourts advising defense counsel of Defendant's responsibility to pay the prisoner transportation costs. On February 16, 2024, the trial court filed a letter to eCourts advising all of the parties that the Court will be issuing an Order to Bayside State Prison arranging for Defendant to be transported to Morris County for the trial, provided that, because this is a civil litigation, Defendant would be required to pay the transportation costs. See Pa1-2. The trial court even arranged for Defendant to be housed at MCCF during the pendency of the trial at no cost to Defendant. Ibid. The trial court filed the referenced Order to Produce shortly thereafter. The trial court made the necessary arrangements for trial to proceed on March 11, 2024.

On February 23, 2024, defense counsel filed one of his several adjournment requests wherein he referred to the trial court's Order to Produce, noting that he believed the Order to Produce to be "fraudulent" because it included Defendant's criminal case caption. See Pa3. The Court subsequently reissued the revised Order to Produce shortly thereafter. Defense counsel's response to Judge Franzblau's February 16th letter signifies that he read it.

Furthermore, Judge Franzblau filed another letter to eCourts on February 27, 2024, stating that the trial court would not adjourn the trial based upon defense counsel's representation without proof that Defendant would be released on parole in the coming months as the trial court noted Defendant's maximum release date was April 10, 2027. See Pa6. In that same letter, Judge Franzblau again repeated that the court arranged for Defendant to be transported to Morris County for his trial on March 11th provided that he timely paid the required transportation costs and expressly referred defense counsel to the court's earlier letter:

> At your request, the Order to Produce has been modified to reflect the caption of the civil matter and the court has confirmed with Bayside State Prison that it will be honored, **subject to your client's timely payment of the required transportation cost (See February 16, 2024 correspondence)**. As previously noted, it will be up to you to arrange for your client to be properly attired for his civil trial.
>
> [Ibid. (emphasis added).]

Therefore, even if defense counsel did not read Judge Franzblau's earlier letter dated February 16, 2024 – and defense counsel's February 23rd letter indicates that he did indeed read it – Judge Franzblau's February 27, 2024 letter reiterated the contents of the February 16th letter and referred defense counsel back to that letter.

Moreover, defense counsel's many electronic filings from January to March 2024 in response to docket entries and in accordance with general case management also demonstrate his awareness of documents filed to eCourts and, at the very least, implies he read them. See Da27, Pa1 to 26; see also Da43 (the trial court noting the 5 adjournment requests defense counsel submitted between February 19, 2024 and March 5, 2024, and the 3 additional adjournment requests after that date). Even after Judge Ramsay scheduled a hearing on March 6, 2024 to discuss defense counsel's adjournment requests before denying them on the record in an extensive legal decision, defense counsel submitted *three more* adjournment requests to the court.[3]

Therefore, defense counsel's claim that he failed to read Judge Franzblau's letters from February 16th and February 27th strains credulity. Defense counsel, like

[3] Although the undersigned has not obtained a copy of the transcript, at the hearing on March 6th, it is the undersigned's recollection that after Judge Ramsay read Her Honor's opinion into the record, defense counsel added that the trial would not be able to proceed on March 11th because defense counsel represented he was going to be on trial in two different criminal matters. In response, Her Honor advised all counsel that Her Honor had consulted with both of the judges in defense counsel's criminal matters and confirmed that defense counsel's criminal matters were not proceeding on March 11th and defense counsel would be available to proceed with Defendant's trial on March 11th.

all members of the bar, used eCourts as a means for communicating with the court and all counsel, and the procedural facts here unfortunately suggest the failure to pay the prisoner transportation fee so that the trial would not proceed was intentional, a reasonable conclusion the trial court referenced in the April 2024 Order: "[w]hat is clear from this record is that Defendant's counsel made numerous attempts to adjourn the trial, and when the court denied his request, Defendant failed to pay the transportation fee required for his attendance at the March 11, 2024 trial." Da47.

> Pursuant to the November 27, 2023 trial Order and R. 1:2-4, this Court dismissed Defendant's counterclaims due to his failure to appear for trial. Defendant's failure to appear at trial was not due to an exigent or unforeseeable circumstance. Rather, Defendant was confined in prison and had no other obligations. Defendant and/or his counsel failed to independently arrange transportation for trial and, after court personnel expended time and resources to confirm the process for Defendant's transport and issued an Order to Produce, Defendant failed to follow this court's instruction to pay the required transportation fee. **That Defendant and his counsel were not attuned to this issue defies credulity**.
>
> [Da45 (emphasis added).]

At the pre-trial conference on February 7, 2024, the trial court explained in no uncertain terms that the court would arrange for Defendant to be transferred to Morris County for the trial and advised the parties that if Defendant failed to appear for trial on March 11th for whatever reason, his case would be dismissed. Da42.

Defendant failed to appear on March 11th despite this express warning, and the Court appropriately dismissed his Counterclaim pursuant to Rule 1:2-4. Pa26.

Defense counsel also appears to argue that Judge Franzblau did not understand criminal sentencing procedures, and the court consequently failed to take defense counsel's word for it that Defendant would be released imminently and would be available to proceed with trial. Brf. at p. 6. That attempt also fails because Defendant failed to provide any proof in support of his assertion as to Defendant's imminent availability. As the trial court noted in its Order and Statement of Reasons dated June 7, 2024 (the "June 2024 Order"), while defense counsel attempted to argue that Defendant's release from prison is a "changed circumstance," the trial court summarily dismissed that contention because defense counsel's subsequent letter dated June 6, 2024 "indicates that [Defendant's] availability for trial is again uncertain due to Defendant's transfer to a different halfway house." Da38. "Now, three months after the peremptory trial date, agreed to by Defendant, Defendant remains unavailable for trial due to his personal circumstances. This again highlights that all these issues could have been avoided had Defendant met his obligations (specifically defined by the court) related to transport for March 11, 2024 trial." Ibid. Defendant's motion for reconsideration failed in this regard for the same reason his motion to reinstate failed, which is why the trial court "relie[d] on the

statement of reasons in support of the April 26, 2024 order" in its decision to deny his motion for reconsideration. Ibid.

Setting aside defense counsel's purported failure to read the trial court's communications, Defendant's motion was properly denied as Defendant lacked any legal basis for his application. While preparing for trial with a client in jail may have been difficult, it was not impossible and defense counsel had several months between remand from the Appellate Division in October 2023 until the trial date on March 11, 2024 to meet with his client to prepare for trial. The trial court arranged to have Defendant transported for his trial provided Defendant paid the transportation cost. Defendant had the opportunity to present his case for trial at the peremptory date on March 11, 2024 – a date that Defendant himself agreed to. Due to no fault of Plaintiff or the trial court, the trial did not proceed because Defendant failed to appear. Defendant's appeal lacks any basis in law, his excuse is betrayed by the facts and his appeal should be denied.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the trial court's Order dated June 7, 2024 be upheld and Defendant's appeal be denied.

Respectfully submitted,
SCHENCK, PRICE, SMITH & KING, LLP

Dated: January 21, 2025

By: /s/Thomas N. Gamarello, Esq.
Thomas N. Gamarello, Esq.
Attorneys for Plaintiff-Respondent,
10 MILLPOND DRIVE, LLC

		Superior Court of New Jersey
10 MILLPOND DRIVE, LCC,	*	APPELLATE DIVISION
	*	DOCKET NO. A-003233-23T4
	*	
	*	DOCKET NO. BELOW: SSX-L-491-19
Plaintiff-Respondent,	*	
	*	ON APPEAL FROM:
	*	SUPERIOR COURT OF NEW JERSEY—
v.	*	LAW DIVISION, SUSSEX COUNTY
	*	
SCOTT BEGRAFT AND LAMSON AIRTUBES, LLC	*	
	*	SAT BELOW:
	*	Hon. Noah Franzblau, JSC
Defendant-Appellant.	*	
	*	

DEFENDANT-APPELLANT'S **AMENDED** REPLY BRIEF

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Amended Reply Brief Submitted: 2/4/25

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RESPONSE TO RESPONDENT'S APPEAL BRIEF

First of all, Appellant notes that there is no claim that Plaintiff was in any way prejudiced.

What is lost here is the fact that the trial Judge was reversed by the Appellate Division and while that appeal was pending, the Appellant pled guilty and was incarcerated. What caused the problems in this case was that everyone, including the sentencing Judge, thought that Scott Begraft would be out in time for the prescribed Jury trial. Unfortunately, he wasn't.

The rest is reflected in the filing on behalf of Scott Begraft. The Court had arranged for this Defendant to be tried by a Jury actually in prison garb.

Because there was a miscalculation by counsel and the criminal trial Court as to the release date, and then, the date that was based upon the criminal trial Judge, it became a difficult case to put together. Counsel for the Defendant made a mistake in not realizing that the monies were not paid up front for the transport. Justice, based upon the facts of this case requires that the matter be remanded for trial. As indicated, there was miscalculation in the very beginning. A date was given which could not be met. Then, the trial Court, instead of waiting for the few days that would produce the Defendant's release, the Court set up a *quasi*-criminal courtroom for a civil case to be tried. But most of all in this case, the Plaintiff is not prejudiced and if it wasn't for a miscalculation by the criminal trial Judge, and a mistake by the civil trial Judge,

which required a reversal, this case would have been tried a long time ago and we wouldn't have had to turn a courtroom into a jail cell.

There's no question it was a mistake by counsel that produced a result, not an unfair result because the Plaintiff claims no injury.

A number of mistakes were made in this case. The trial Judge in the actual trial was reversed by the Appellate Division. The Judge assigned to the Appellant's criminal trial thought he would be released in time for the designated trial in the Civil Division. That Judge was mistaken. Then, Plaintiff's counsel made a mistake and the case was dismissed by a Judge who had set up a Civil Court room as a jail cell for Plaintiff who was the victim of a number of mistakes. The Appellate Division Opinion referred to above is attached hereto.

ARGUMENT AS TO R. 1:7-5

R. 1:7-5 is captioned, "Trial Errors." It states, "Any error or omission which does not prejudice a substantial right shall be disregarded by the trial Court before, during and after trial.

As I have stated in my prior Reply, the Plaintiff in this case does not claim any prejudice as a result of the mistake that was made in this case. Clearly, it was a mistake and qualifies for R. 1:7-5.

CONCLUSION

For the reasons set forth herein, it is clear that the Court below erred and this Court should find in favor of the Defendant-Appellant and remand the matter for trial in a Civil courtroom, and not a Civil-Criminal courtroom.

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Date Amended Brief Filed: 2/4/25