SUPERIOR COURT OF NEW JERSEY

JONATHAN CHRISTODORO, individually and on behalf of Attessa Properties, LLC,

Plaintiff-Appellee,

v.

FRANK ZISA, PETER ZISA and ATTESSA PROPERTIES, LLC, as nominal defendant,

Defendant-Appellant.

APPELLATE DIVISION
DOCKET NO. A-003271-23

Civil Action

ON APPEAL FROM THE FEBRUARY ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, BERGEN COUNTY

Docket No.: BER-C-229-19; BER-C-243-18

Sat Below:

Hon. Edward A. Jerejian, P.J.Ch.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT FRANK ZISA

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PRELIMINARY STATEMENT

The trial court made numerous errors in its post-trial February 2024 Orders (defined infra), each of which warrants vacating and remanding the February 2024 Orders.

First, the trial court acted in contravention of Rule 1:7-4(a) by failing to make sufficient findings of fact, documented in a written decision, to support the February 2024 Orders. This is a threshold issue, as such failure renders it impossible for the Appellate Court to determine and apply the appropriate standard of review. Instead of providing the parties, or this Court, with a clear factual and legal basis for its decisions, the trial court relied on atmospherics and its personal impressions of the parties, none of which is a sufficient ground to satisfy Rule 1:7-4(a). Thus, the Orders need to be vacated and the motions remanded to the trial court for sufficient findings to be made.

Second, even if what the trial court included could be considered as sufficient findings of fact and law, the trial court's "findings" in the February 2024 Orders are not supported by sufficient credible evidence in the record. For example, the trial court's finding that SFA Strasser (defined infra) had confirmed and represented that Defendant Frank Zisa ("Defendant") did not object to the valuation of his interest, when Defendant had explicitly and repeatedly objected to the valuation both before and during the argument on the

motion, is not only unsupported by the record, but flatly contradicted by it. During the course of the argument that forms the basis for the February 2024 Orders, Zisa's counsel objected no fewer than three (3) times to the valuation and numerous times before. It is thus baffling as to why the Buyout Order (defined infra) states otherwise.

Furthermore, the trial court's rulings of law regarding the interpretation and application of its prior orders are incorrect. The trial court erred in granting the Buyout Motion in contravention of its own, previous orders (the July 28 Order and the Final Order) (defined infra) in numerous ways, including: (1) deeming Plaintiff Jonathan Christodoro ("Plaintiff" or "Christodoro") the effective purchaser of Attessa (defined infra), despite his failure to pay the carrying costs and management fees required by the trial court's Final Order; (2) failing to recognize Defendant as the purchaser after Christodoro failed to make the required payments, when Defendant did elect to purchase and provided payment towards the carrying costs and management fees; (3) failing to update the valuations of Attessa's properties (the "Properties"), when the plain language and spirit of the previous orders mandated it; and (4) allowing SFA Strasser to unilaterally direct the income generated by the Properties, and apply it only to satisfy the fees and expenses that were Christodoro's responsibility, if he were the purchaser, instead of for the benefit of both owners. Such decisions

are subject to *de novo* review, and a review of the applicable orders and facts clearly demonstrates that the trial court did not correctly apply its own prior orders when granting the Buyout Order. The Buyout Order should thus be vacated and remanded.

Finally, the trial court erred in denying Zisa's motion to relieve SFA Strasser from his role as SFA, as the credible, competent evidence in the record demonstrated that SFA Strasser was not performing his responsibilities, and that his dismissal was not only warranted but necessary to ensure a neutral party was acting on behalf of the court in enforcing its orders. During his service, SFA Strasser failed to advance the interests of both parties and Attessa. He failed to file tax returns for years, improperly called for a capital call when Plaintiff, if he was the proper purchaser, should have been paying all costs and liabilities, and misapplied income generated by Attessa's properties, among other issues. Instead of weighing the evidence and the arguments put forth by Zisa in his motion, the trial court relied on its previously formed view of Zisa for his discovery conduct, an issue entirely unrelated to the SFA continuing in his role. For these reasons, the Strasser Order (defined infra) should be reversed.

For all the reasons set forth above and elaborated upon below, the February 2024 Orders should be vacated, and this matter remanded to the trial court.

PROCEDURAL HISTORY[1]

Plaintiff commenced this action on September 11, 2018, by filing a Complaint alleging Defendant had mismanaged the parties' jointly owned entity, Attessa Properties, LLC ("Attessa"), misappropriated Attessa funds, and breached his fiduciary duties. Da1. Defendant and Attessa filed a Counterclaim on November 1, 2018, alleging Plaintiff had violated his contractual, statutory, and fiduciary duties to Attessa and its members by failing to contribute necessary capital to Attessa. Da19.

On December 6, 2019, Plaintiff filed an Amended Verified Complaint in which he recharacterized his claims as both individual and derivative on behalf of Attessa. Da37. Defendant filed a Verified Answer and Counterclaim on February 3, 2020. Da75. Following a bench trial before the Hon. Edward A. Jerejian, P.J.Ch. and post-trial briefing in this action, the Court entered an order on July 28, 2022, granting Plaintiff the first option to purchase Defendant's interest in Attessa ("July 28 Order"). Da138. Among other things, the July 28 Order provided that if the parties could not agree on a buyout or division of properties based on current valuations within ninety (90) days after updated appraisals were obtained, the court would appoint a realtor, have the properties

[1] References to transcripts of the trial court's oral decisions are defined as follows: July 27, 2022 (1T), August 23, 2023 (2T), and February 15, 2024 (3T).

sold, and the proceeds divided 60% to Christodoro and 40% to Zisa. Da139. Notably, Plaintiff, the party who had in great part prevailed on his complaint, moved for reconsideration of the July 28 Order. Da140. Defendant Zisa necessarily opposed the motion and cross-moved for reconsideration. Da142. In June 2023, after the time period for a buyout under the July 28 Order had long expired, Defendant moved to enforce and modify the July 28 Order to have Attessa's properties distributed in part (40% to each party, leaving the disputed 20% within the court's control), and Plaintiff cross-moved to enforce the buyout provision of the July 28 Order and for an award of attorneys' fees. Da144, Da146.

The trial court entered its Final Order ("Final Order") on August 24, 2023. Da148. The Final Order denied both reconsideration motions, denied Defendant's motion to enforce and modify the July 28 Order, and granted Plaintiff's cross-motion to enforce the buyout provision of the July 28 Order in spite of the fact that the time frames contemplated by the July 28 Order (i.e., 90 days after the appraisals were received to accomplish a buyout or divide the properties), had not been complied with. The Final Order provided as follows with respect to the buyout procedures:

> Plaintiff will be permitted to exercise the option to buy out Defendant's interest ***in accordance with paragraph 1 of the July 2[8], 2022***, order within ten (10) days of the date of this order. If Plaintiff does not exercise the

> option to buy out the Defendant's interest within ten (10) days, then Defendant may then exercise the option to buy out Plaintiff's interests in accordance with Paragraph 1 of the July 2[8], 2022, Order within ten (10) days. If the option to exercise the buyout is made by either party, then the SFA shall calculate the distribution of proceeds pursuant to Paragraph 4 of this Order. ***If either party exercises the option to buy out the other, then as of the date of this order, they shall be responsible for any further management fees and carrying costs of the properties and shall bear the costs and expenses of transferring title to the property and refinancing the loans***.
>
> [Da149 (emphasis added).]

Additionally, the earlier July 28 Order, which is incorporated by reference in the Final Order, provides in pertinent part:

> ***The original Harris appraisals should be updated to reflect current valuations and all liens shall be re-calculated as to the date of the judgment***. Plaintiff shall receive $1,198,220.00 off the top of the net (value minus liens) of the remaining properties. Any remaining fees and costs owed to court appointed professionals shall be paid and also be deducted off the top of the net. The remaining net shall be divided sixty percent (60%) to Plaintiff and forty percent (40%) to Defendant (the difference being compensatory damages). Plaintiff may buy out the interest of Defendant. If Plaintiff chooses not to buy out Defendant, then Defendant may buy out Plaintiff's interest. If there is not a buyout, then Attessa Properties, LLC shall be dissolved, and the parties shall use the net updated valuation to divide the properties and transfer ownership to new entities controlled by the respective parties. ***If the parties cannot agree on a buyout or division of properties based on current valuations within ninety (90) days after the updated appraisals, the court will appoint a realtor, have the properties sold, and***

> ***the proceeds divided sixty percent (60%) to Plaintiff and forty percent (40%) to Defendant*** after professional fees and customary closing costs are paid, unless the time is enlarged by either good cause shown or by consent of the parties.
>
> [Da138-Da139 (emphasis added).]

Plaintiff expressed his intent to exercise his buyout option on August 25, 2023. Da151. On September 1, 2023, Zisa filed a letter with the trial court requesting clarification of several provisions of the Final Order relating to the buyout procedures and the $1,198,220 payment to Plaintiff, among other issues. Da152.

Despite the trial court's Final Order requiring the party exercising the option to be responsible for management fees and carrying costs of the properties as of the date of the order, Final Order, ¶¶ 5 & 6, Da149-Da150, Christodoro did not pay those fees and costs within the mandated time period, or even within a reasonable time after that time period had expired. Thus, by letter dated September 6, 2023, Zisa, within his 10-day period, sent a certified check for management fees and carrying costs. Da155. Over Zisa's objection and position that Christodoro had forfeited his purchase option by not paying management fees and carrying costs, William I. Strasser, Esq. (the "SFA" or "SFA Strasser"), the Court-Appointed Special Fiscal Agent for Attessa, returned Zisa's check and stated he intended to seek funds from Christodoro only when

Attessa funds were depleted after application of rents, a condition that was not present in any Court orders. Da162. On September 26, 2023, SFA Strasser sent a letter to the parties setting forth calculations of the amount Christodoro needed to pay to Zisa for the buyout of Zisa's interest in Attessa. Da165. SFA Strasser's calculations did not account for the fact that an entity Zisa partly owned was continuing to make mortgage payments and his calculations held the mortgage balance static in calculating Zisa's equity. Da167. The SFA did not obtain updated property appraisals, which were required by the July 28 Order and incorporated by reference into the Final Order. Id.

After the trial court declined to address the issues raised in Zisa's September 1 letter, Zisa filed an additional letter on October 6, 2023 reiterating his request for clarification of the Final Order and requesting entry of an Amended Final Order. Da167. On October 10, 2023, the trial court's clerk advised the parties via email that the trial court did not intend to amend the Final Order. Da173. That same day, Zisa filed his notice of appeal of the Final Order and related orders (Docket No. A-000410-23T4).

On November 27, 2023, the SFA made a "capital call" to the two current Attessa members requesting $43,446.17 from each member and called for payment of that amount in five days. Da175. Zisa responded by objecting to the capital call, including by pointing out that the SFA's calculations of amounts

owed by Attessa and the parties were inaccurate and that Christodoro as purchaser was responsible for all costs beyond August 24, 2023, and asking for additional information. Da191. On December 7, 2023, SFA Strasser sent a letter to the parties, stating that his firm was in the process of drafting a Membership Interest Purchase and Sale Agreement as well as other ancillary documents and expected to have those documents "available for Mr. Christodoro's review on Monday, December 11, 2023." Da295.

On December 6, 2023 and December 8, 2023, respectively, SFA Strasser filed motions seeking (i) approval to sell an Attessa property, 60 Poplar Avenue (the "Poplar Motion"), and (ii) to effectuate the buyout under the Final Order, in spite of the fact that the court-ordered deadline to do so had long since passed (the "Buyout Motion"). Da193, Da297. Zisa opposed those motions and filed a cross-motion to remove SFA Strasser as Attessa's special fiscal agent ("Cross-Motion"), including based on his improper application of the Court's Final Order despite its clear language and his position that it did not require Zisa to be removed from the mortgages before transfer of his ownership interests. Da311.

Following briefing and argument on February 15, 2024, the trial court entered orders on February 16, 2024 granting the SFA's Buyout Motion (the "Buyout Order") and denying Zisa's Cross-Motion (the "Strasser Order," and

collectively with the Buyout Order, the "February 2024 Orders"). Da320, Da329. The Court made clear that Zisa had to be removed from the mortgages at the closing of the buyout. 3T12:17-13:4; 48:20-49:6. The Buyout Order also noted the following: "If there is a lack of cooperation by either party with regard to executing any documents, then the Special Fiscal Agent should bring the lack of cooperation to the attention of the Court and Counsel and request leave to assume the role of limited Power-of-Attorney." Da323. That same date, Christodoro advised the SFA and Zisa of his "intent to proceed with the buyout in the near future." Da332. The trial court and Appellate Division denied Defendant's motions for a stay of the Final Order and the Buyout Order on April 22, 2024, and May 20, 2024, respectively. Da333, Da335. Defendant filed his notice of appeal of the February 2024 Orders on June 24, 2024, and amended notice of appeal on July 3, 2024. Da337, Da342.

STATEMENT OF FACTS

Defendant incorporates by reference the procedural history set forth above and relies upon his Appendix, with relevant certifications and orders attached thereto, for a full recitation of the facts applicable to this appeal, which is focused on the post-trial February 2024 Orders.

For the reasons set forth below, Defendant respectfully requests this Court vacate the February 2024 Orders and remand this matter to the trial court.

LEGAL ARGUMENT

I. LEGAL STANDARD

In determining whether a ruling, action or inaction by the lower court or agency constituted error, the appellate court applies a standard of review that gives the appropriate deference, if any, to the lower court's decision. Interpretations of law are reviewed *de novo*. See Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. 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."); Satsky v. Satsky, No. A-1138-21, 2023 WL 2657399, at *3 (N.J. Super. Ct. App. Div. Mar. 28, 2023) ("We owe no deference to the trial court on interpretations of law and legal conclusions are reviewed de novo.")[2].

Appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J.

[2] Pursuant to Rules 2:6-1(a)(1)(H) and 1:36-3, a copy of this unpublished decision is included in Defendant's appendix. See Da347. Defendant is not aware of any contrary unpublished opinions.

412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

II. THE TRIAL COURT'S FAILURE TO MAKE SUFFICIENT FINDINGS OF FACT DOCUMENTED IN A WRITTEN DECISION MANDATES VACATUR OF THE FEBRUARY ORDERS (Da320, Da329)

The trial court acted in contravention of Rule 1:7-4(a) by failing to make sufficient findings of fact to support the February 2024 Orders. This is a threshold issue—the Appellate Court cannot adequately determine the standard of review or apply same without the necessary factual and legal basis being present. The absence of the analysis that led the trial court to its conclusion makes appellate review impossible and requires this Court to vacate the unsubstantiated February 2024 Orders and remand the matter for the trial court to comply with the rule. See Paonessa Colon & Rectal Surgery, P.C. v. Cernero Children's Tr., No. A-5030-15T1, 2017 WL 4078852, at *1 (N.J. Super. Ct. App. Div. Sept. 15, 2017) (holding that lack of Rule 1:7-4(a)-compliant motion

order made Appellate Court "constrained to vacate it")[3]; See also Johniken v. Beebe, No. A-0700-21, 2022 WL 17258825, at *1 (N.J. Super. Ct. App. Div. Nov. 29, 2022) ("Because the court did not issue findings of fact and conclusions of law to support the [motion to dismiss] decision, we vacate and remand pursuant to Rule 1:7-4(a).").[4]

A judge has a duty to make findings of fact and conclusions of law "on every motion decided by a written order that is appealable as of right." R. 1:7-4(a); see also Donfield v. Donfield, No. A-5764-09T1, 2011 WL 488649, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2011)[5]. "Failure to perform that duty constitutes a disservice to the litigants, the attorneys and the appellate court." Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (citation and internal quotation marks omitted). Moreover, "[n]aked conclusions do not satisfy the purpose of *R.* 1:7-4." Id. at 570. "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Salch v. Salch, 240 N.J.Super. 441, 443, 573 A.2d 520 (App. Div. 1990). "The absence of adequate findings . . . necessitates a reversal . . . ." Heinl v. Heinl, 287 N.J.Super. 337, 347 (App. Div. 1996) (citation omitted).

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[3] See supra note 2. See also Da351.

[4] See supra note 2. See also Da352.

[5] See supra note 2. See also Da355.

In Donfield, the Appellate Division was faced with a situation where on a motion regarding the granting of attorney's fees, the trial court issued a bare-bones written order, without the fact-finding required by Rule 1:7-4(a). The Appellate Division found that:

> These are simply not sufficient fact-findings under the rule. This is because the judge did not find facts identifying the discrete acts of each party on which he based his conclusion that both acted in bad faith. Without such a finding, we cannot review the record to determine whether the finding of bad faith is supported by substantial evidence in the record.
>
> [Id. at *2.]

The Appellate Division thus remanded with the instruction that the trial court "review the record as it exists at this time, without further submissions from either party, and to provide this court with more specific findings of fact in order to further appellate review." Id.

Here, the Appellate Division is also faced with insufficient fact-finding pursuant to Rule 1:7-4(a). The February 2024 Orders were meant to resolve the following motions: (1) the SFA's motion for an order approving the transfer of Zisa's membership interest in Attessa for consideration, *i.e.*, the Buyout Motion; and (2) Zisa's cross-motion for an order relieving the SFA of his duties for Attessa, *i.e.*, the Strasser Motion. Da297, Da311.

As a preliminary matter, the February 2024 Orders in and of themselves are entirely bare of any factual review or legal analysis and the trial court did not issue a written decision. The basis for the February 2024 Orders is the February 15, 2024 transcript of the motion arguments and oral decision, but that also does not include the required factual findings to support the orders. The trial court had two substantial motions in front of it, one to move ahead with the buyout despite Christodoro's noncompliance with the material conditions of the trial court's prior orders and Zisa's compliance with same (see infra Section IV.A) and grant the SFA the power to sign on a party's behalf, and the other to relieve the SFA of his post. One would expect a decision granting such requested relief to be replete with a legal and factual basis "sufficient to enable the reviewing court 'to evaluate what elements the judge considered . . . to determine legal error.'" State ex rel. H.M., No. A-3079-10T4, 2012 WL 2308457, at *5 (N.J. Super. Ct. App. Div. June 19, 2012)[6]. However, that is not the case here. Instead of delving into the applicable legal standards for each motion, or providing the factual bases for its decisions, the trial court instead stated as follows for each motion:

[6] See supra note 2. See also Da357.

(i) The Buyout Motion:

In response to the Buyout Motion, including the extraordinary relief sought by the SFA to grant him a limited power of attorney on behalf of competent, non-incapacitated adults to sign documents on their behalf, the trial court simply referred to its original July 28, 2022 and August 24, 2023 Orders, stating that:

> [M]y decision was Mr. Christodoro would have the first opportunity and after the appraisals were redone and I am going to live by that. **So I am going to grant that application and approve the transfer of Mr. Zisa's membership interest in Attessa for consideration received and consideration given.**
> …
> Also, that the Court finds that in order to effectuate the transfer of that interest, that all transfer documents, the special fiscal agent being necessary and appropriate, executing any and all membership, certificates, effectuate the transfer and update all the corporate records, so special fiscal agent will take on that role.
> …
> If Mr. Christodoro or Mr. Zisa fails to do so to execute any documents that the special fiscal agent deems necessary and appropriate to effectuate the transfer of the interest to Mr. Christodoro, **then it will be granted limited power of attorney on behalf of either to sign necessary documents.**
>
> [See 3T44:13-46:2 (emphasis added).]

The trial court does not cite to any law or statute in support of this decision, nor does it cite to any specific factual support outside of the fact that it had made a previous decision which gave Christodoro the opportunity to buy

out Zisa's interest in Attessa (a decision that the trial court ultimately was unwilling to properly enforce (see infra Section IV)). It is unclear as to why, exactly, the trial court's order allowing Christodoro the opportunity to buyout Zisa's interest in Attessa lends itself as support for allowing the SFA to implement a blunt force transfer of assets, especially in the face of material disputes as to who the true purchaser is and should be (see infra Section IV.A).

In no way do these few paragraphs "identify[] the discrete acts of each party on which [the trial court judge] based his conclusion." Donfield, 2011 WL 488649, at *2. No clear reasons or legal principles are given or cited to explain why the trial court: (i) was allowing SFA Strasser to proceed with Christodoro as the purchaser of Attessa instead of Zisa, when Christodoro had failed to make the payments required and Zisa had (see infra Section IV.A); (ii) refused to order updated valuations, even though such valuations were required by its Final Order in incorporating the July 28 Order, thereby allowing SFA Strasser to rely on outdated, incomplete valuations that did not address updated mortgage payments, escrow accounts, or tax implications; (iii) was allowing SFA Strasser to apply the income generated by the Properties only to the management fees and carrying costs for which Christodoro was responsible, despite Zisa continuing to be a member and thereby using his interest in the entity for

Christodoro's benefit; and (iv) found it necessary to consider imbuing the SFA with a limited power of attorney.

Indeed, it is completely unclear from the trial court's oral decision why, exactly, the trial court granted that motion, and what basis it relied upon for same, other than the fact that it wanted to. Such a decision is certainly not in compliance with the level of specificity required by Rule 1:7-4.

(ii) The Strasser Motion

In denying Zisa's motion to replace the SFA, including in light of claims that the SFA seemed biased towards Defendant, the trial court did not raise a single factual or legal basis for its denial. Instead, the trial court summarily stated as follows:

> I know it's easy to throw the bias word around with the SFA. Perhaps he feels that the Court was biased, as well, in its ruling or whatever. But this – this case has a lot of water under the proverbial bridge. Everybody knows it.
>
> Ms. Klein, you put forth this notion that your client's been aboveboard and everything he has done is pristine and he has done all the right things. **All you have to do if you to microcosm, go back and read Judge Cantillo's findings just on discovery issues to see** – I made it clear – **I never understood, and even after hearing this case even more so when I looked back, why M[r]. Zisa was proceeding with this case early on the way it did with** – I don't want to revisit all of that, but once again, and when this goes on appeal, and certainly my brethren in the Appellate Division, I know they do an amazing job with all the work that they have

> coming their way. This record, this transcript, you know, is going to take a long time to sort out on appeal.
>
> […]
>
> There was the way the plaintiff's position was, Mr. Zisa not only once he receives anything, he would have been paying substantial monies. Then maybe you can make an argument about that, but instead the Court after a lengthy trial renders decision, in this case orally, and entered a judgment. You can't have every single thing in a playbook. Some things to me are pretty clear, but if they need clarification, they need clarification. It doesn't mean somebody is biased.
>
> **I mean, I commend Mr. Strasser.** I don't – you know, he stepped into this case early on. I didn't want to revisit some of the things that fell upon him in this case.
>
> But, in the midst of it all, here we are in a – again, I think he did a very – **it was a very difficult job. And again, I think he has done an excellent job, so I am going to deny that application.** If any case needed a special fiscal agent, it's this one.
>
> [See 3T37:12-39:11 (emphases added).]

While the trial court states that the SFA did an "excellent job," it does not provide any factual support for that conclusion. In fact, the only basis for this decision appears to be that the trial court remains unhappy with Defendant's earlier discovery behavior, and that the SFA had a "very difficult job." No other legal or factual basis is given for this decision. Essentially, the trial court failed to state for the record what factual findings were relevant to his legal conclusions in denying Zisa's motion to remove the SFA, and instead focused almost solely on atmospherics. Such a decision is decidedly insufficient. It is clear that like the

trial court in Edelglass, the trial court here, "without specifically indicating its credibility assessment of the parties' testimony or the significance of any testimony and exhibits, merely made conclusory statements[.]" Edelglass v. Pogorzhelsky, No. A-0418-18T3, 2020 WL 1845536, at *3 (N.J. Super. Ct. App. Div. Apr. 13, 2020)[7]. Such statements do not satisfy the standard under Rule 1:7–4(a) as a matter of law, and the Strasser Order should be vacated.

Without sufficient fact-finding and/or conclusions of law, it is impossible for this Appellate Court to determine or apply the appropriate standard of review required on the appeal of these orders. For this reason, the Court should vacate the February 2024 Orders and remand the matter to the trial court for orders and decisions that are in compliance with Rule 1:7-4. See Paonessa Colon & Rectal Surgery, P.C. v. Cernero Children's Tr., No. A-5030-15T1, 2017 WL 4078852; see also Johniken v. Beebe, No. A-0700-21, 2022 WL 17258825.

[7] See supra note 2. See also Da362.

III. EVEN IF THE FEBRUARY 2024 ORDERS AND ORAL DECISION COULD BE VIEWED AS CONTAINING SUFFICIENT FINDINGS OF FACT AND LAW, THEY MUST BE VACATED AND REMANDED AS THESE "FINDINGS" ARE NOT SUPPORTED BY CREDIBLE EVIDENCE ON THE RECORD (Da320, Da329)

A. THE TRIAL COURT ERRED IN FINDING THE SPECIAL FISCAL AGENT HAD CONFIRMED DEFENDANT HAD NOT OBJECTED TO THE VALUATION OF HIS INTEREST (Da321)

In the event this Court finds that the February 2024 Orders and oral decision do contain sufficient findings of fact and law, the Buyout Order must still be vacated and remanded, as it is not supported by credible evidence in the record. Specifically, the trial court's finding that the SFA "has confirmed and represented to the Court that he has not received any objection from Plaintiff or Defendant to the Special Fiscal Agent's calculation set forth in the correspondence dated September 26, 2023 . . . that the value of Frank Zisa's interest in Attessa Properties LLC totals $1,403,624.96," (Da321), is not only unsupported by any evidence in the record, but actually flatly contradicted by the evidence in the record, and therefore, the Buyout Order must be vacated and remanded. (In fact, while Attessa's properties were appraised, neither Attessa nor Zisa's interest therein was ever valued by a valuation expert.)

As a preliminary matter, the Buyout Order does not state where or when the SFA made such a confirmation and/or representation. Prior to the hearing,

as the SFA knew, Defendant specifically objected to the valuation. See e.g., Da168 (Defendant's October 6, 2023 letter arguing that the SFA failed to correctly update the equity "in that he has not used detailed figures from the lenders and has used undefined mortgage statements" and "has not called for updated appraisals or valuation"). Moreover, at no point during the February 15, 2024 hearing does the SFA state that Zisa had not objected or did not object to the $1,403,624.96 valuation of his interest, nor could he have. Indeed, a significant portion of the February 15, 2024 hearing comprised Zisa's counsel arguing that the "valuations must be updated." 3T21:19-22 ("I do want to try to convince your Honor that those valuations must be updated"); see also 3T15:18-21("In the July 28, 2022 order it makes clear that … the valuation[,] that it should be updated . . . ."); 3T32:23-33:2 ("[I]t's clear from your Honor's written words in your order, both the current order and the prior order, that the appraisals need to be updated and the value needs to be updated. It's patently unfair to not have that additional value go to whoever is the seller."). Furthermore, nothing in SFA Strasser's submissions supports such a finding. Da299.

As such, the trial court's "finding" set forth in the Buyout Order that the SFA confirmed and represented that Defendant did not object to the $1,403,624.96 valuation of his interest is patently incorrect and clearly not supported by credible evidence in the record. Because the trial court seemingly

relied on this non-existent confirmation and representation as a basis for its Buyout Order authorizing the SFA to effectuate the transfer of Defendant's membership interest, the Court should vacate the Order and remand the motion to the trial court.

B. THE TRIAL COURT ERRED IN FAILING TO REMOVE STRASSER AS SPECIAL FISCAL AGENT AND ATTORNEY FOR ATTESSA, INCLUDING BECAUSE HE HAD NOT PROPERLY APPLIED ORDERS, HAD NOT FILED TAX RETURNS, AND HAD NOT PROTECTED THE INTERESTS OF ZISA AS AN ATTESSA MEMBER (Da329)

The trial court erred in denying Zisa's motion to remove Strasser as SFA, as this decision was not based on adequate, substantial, credible evidence, but was instead seemingly made in the face of evidence to the contrary. See State v. K.W., 214 N.J. 499, 507 (2013) ("[w]e defer to the trial court's factual findings 'so long as those findings are supported by sufficient credible evidence in the record"). For the reasons set forth below, this Court should vacate the Strasser Order and remand this issue back to the trial court.

In denying Zisa's motion, the trial court completely ignored the fact that SFA Strasser was not performing the role as required and not acting in the best interest of Attessa or either of the parties. SFA Strasser had failed to abide by the terms of the Final Order, failed at that time to prepare Attessa's tax returns for the years of 2017 through 2019 and, as acknowledged by the trial court,

failed to file any tax returns for that period or later years, failed to provide Zisa with his requested information regarding expenses, and improperly issued an incorrect capital call. See 3T20:7-21:8; 41:10. See also Da167.

The trial court erred in failing to even consider any of these reasons for removing Strasser as SFA. Instead of reviewing the evidence on the record to determine whether or not an SFA was still necessary and whether SFA Strasser had acted appropriately given the facts at hand, the trial court simply "commend[ed]" Strasser on such a "difficult job," a determination that is irrelevant as to whether SFA Strasser is still necessary or effective. 3T39:2-8. For these reasons, the trial court erred in denying Zisa's motion to remove Strasser as SFA, and this Court should vacate the trial court's order and remand the motion to the trial court.

IV. EVEN IF THE FEBRUARY 2024 ORDERS COULD BE FOUND TO CONTAIN SUFFICIENT FINDINGS OF FACT AND LAW, THEY MUST STILL BE VACATED AND REMANDED AS THE APPLICATIONS OF LAW ARE INCORRECT (Da320, Da329)

A. THE TRIAL COURT ERRED IN GRANTING THE BUYOUT MOTION IN CONTRAVENTION OF ITS PREVIOUS ORDERS (THE JULY 28 ORDER AND THE FINAL ORDER) (Da320)

The trial court committed reversible error by granting the Buyout Motion in contravention of the plain language of its own, previous orders. See Haffert

v. Bell Tower Condo. Ass'n, No. A-0013-21, 2023 WL 5747439, at *7 (N.J. Super. Ct. App. Div. Sept. 6, 2023) (finding that the "trial court nonetheless failed to honor and give effect to the plain language of . . . its own order" and, therefore, vacating and remanding appealed-from orders).[8] The trial court's interpretation of and compliance with its prior orders is a ruling of law, and therefore these decisions should be reviewed *de novo*, without any special deference applied. See State v. Troisi, 471 N.J. Super. 158, 164 (App. Div. 2022) ("The trial court's legal rulings, however, are considered de novo.").

The Buyout Order directly contravenes the trial court's July 28 Order and Final Order by: (i) determining Christodoro was the purchaser despite his failure to pay management fees and carrying costs; (ii) failing to order updated appraisals of the properties owned by Attessa or obtaining a valuation of Attessa and the interests of Defendant and Plaintiff therein; and (iii) deducting $43,446.17 as a "capital call" from the consideration to be paid to Zisa for his membership interest in Attessa. For the reasons further explained below, the trial court's Orders should be vacated, and this issue should be remanded.

1. The Trial Court Erred in Finding That Christodoro—Not Zisa—Timely Exercised His Buyout Option and Not Requiring Christodoro to Pay the

[8] See supra note 2. See also Da365.

Carrying Costs as of the Date of the Final Order (Da320)

The trial court erred in granting SFA Strasser's Buyout Motion[9] in contravention of its own prior orders.

First, the trial court failed to abide by its Final Order in determining that Christodoro had timely exercised his option to buy out Zisa's interest in Attessa, and not requiring Christodoro to pay the carrying costs of the properties as of the date of the Final Order. The Final Order provides that "if either party exercises the option to buy out the other, then **as of the date of this order**, they shall be responsible [for] any further management fees and carrying costs of the properties and shall bear the costs and expenses of transferring title to the property and refinancing the loans"—in other words, every expense payable after August 24, 2023. Da149-Da150 (emphasis added). Christodoro expressed his intent to exercise his buyout option on August 25, 2023. Da151. Therefore, as per the Final Order, Christodoro became responsible for the management fees and carrying costs of the properties, such as the mortgage payments, as of August 24, 2023. However, Christodoro failed to tender payment for the

[9] The trial court further erred in granting SFA Strasser's Buyout Motion on the separate grounds that it compelled a buyout in contravention of N.J.S.A. 42:2C-48b. The issue that the buyout fails to comply with the governing statute is the subject of a pending appeal before this Court. See Dkt. A-000410-23.

management fees and carrying costs within the designated 10-day period to exercise his option, which expired on September 3, 2023. Since the Final Order required both notification of the intent to exercise **and** payment of carrying costs to effectively exercise the buyout option, by failing to tender payment for the management fees and carrying costs by September 3, 2023, Christodoro failed to comply with the Final Order, and therefore waived his right to purchase. Accordingly, the trial court erred by finding that Christodoro had timely exercised his buyout option.

Second, the trial court erred in failing to recognize Defendant as the proper buyer of Attessa once Christodoro failed to pay the management fees and carrying costs within the 10-day period under the Final Order. Since Christodoro's ability to exercise his buyout option expired on September 3, 2023, Zisa was entitled to exercise his buyout option on or before September 13, 2023 (ten days after Christodoro's buyout option expired).

Indeed, by letter dated September 6, 2023, Zisa not only indicated his intent to exercise his buyout right within his 10-day period, but provided a substantial check in the amount of $25,000 payable to Attessa to cover carrying costs for the initial period. Da155. Zisa was ready, willing, and able to take on all expenses, management fees, and carrying costs as of that date. That letter further indicated that this payment was a first installment, and acknowledged responsibility for all

expenses of Attessa, meaning the entity would not incur additional direct expenses going forward. As laid out below, it is clear that while Christodoro failed to effectively exercise his buyout option, Zisa did:

Party	Time to Exercise Buyout Deadline	Time to Pay Carrying Costs Deadline	Actual Date Party Gave Notice of Intent to Exercise Buyout Rights	Actual Date Party Paid Carrying Costs	Date Party Became Actual Purchaser of Attessa
Christodoro	September 3, 2023	September 3, 2023	August 25, 2023	Never	Never
Zisa	September 13, 2023	September 13, 2023	September 6, 2023	September 6, 2023	September 6, 2023

It is undisputed that Christodoro failed to pay the carrying costs within the 10-day period of his time to exercise his option, and thus his buyout option never became effectively exercised. It is also undisputed that Zisa, on the other hand, both informed the necessary parties of his intent to exercise his option **and** tendered payment towards the management fees and carrying costs, in recognition that as the proper purchaser of Attessa, he was now immediately responsible for same. It therefore stands to reason that, as per the plain language of the Final Order, Zisa became the effective rightful purchaser of Attessa.

For example, in Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., a commercial tenant was obliged to exercise an option for a long-term

lease by both giving notice and tendering a fixed sum of money to the landlord by a specified date. 182 N.J. 210, 214 (2005). The tenant timely notified the landlord of its intent to exercise the option nineteen months in advance of the contractual deadline but failed to make the up-front payment necessary to perfect the option. Id. The landlord's agents, through a series of written and verbal evasions, delayed responding to the persistent requests of the tenant to close the deal. Id. When the deadline for exercising the option passed, the landlord, for the first time, pointed out the deficiency to the tenant, and told the tenant that the option was "null and void." Id. The tenant unsuccessfully brought suit to enforce the option. Id. The Appellate Division affirmed the trial court's denial of relief to the tenant, stating that the tenant had no legal recourse in light of its failure to abide by the strict terms for executing the option. Id. The Supreme Court, while recognizing that options are strictly enforced, reversed and found that landlord breached the implied covenant of good faith and fair dealing by engaging in delay tactics that lulled the tenant into believing that it had properly exercised the option. Id. at 230-31.

Unlike in Brunswick, Defendant here immediately objected to Plaintiff's failure to comply with the terms of the option. Da152, Da155. SFA Strasser, however, failed to strictly enforce the option and recognize Defendant's right to exercise the option if Plaintiff failed to do so. Da162. Instead, SFA Strasser took the position that Christodoro's buyout was effective, even without payment of the

management fees and carrying costs (it was not), as SFA Strasser had unilaterally decided to use Attessa funds to cover carrying costs and management fees, which is contrary to the Final Order and equity. Da162 (See also Section III.B). In failing to abide by its own order, the trial court erred in granting Strasser's Buyout Motion, as it was incorrectly premised on the grounds that Christodoro was the purchaser of Attessa, not Zisa. For these reasons, this Court should vacate and remand the Buyout Order.

2. The Trial Court Erred in Failing to Update the Fair Market Value of the Properties Owned by Attessa (Da320, Da329; 3T47:18-48:3)

In its July 28 Order, the trial court explicitly required that the buyout price would be premised on updated appraisals of the Properties, in clear recognition of the fact that it would be inequitable to the seller for the buyout price to be premised on an outdated valuation. Da138. Therefore, when several years passed between that July 28 Order and the actual buyout, the trial court incorporated by reference into the Final Order its requirement to update the appraisals. Da149. The trial court, however, then failed to require the appraisals updated and instead granted SFA Strasser's Buyout Motion, which was premised on outdated valuations.

The Final Order stated that Christodoro would be permitted to exercise the option to buy out Zisa's interest in accordance with paragraph 1 of the earlier

July 28 Order. Da149. The July 28 Order specifically required the Harris appraisals of the Properties to be updated to reflect current valuations and required that the liens be recalculated in calculating the buyout price. Da138. The trial court also stated on the record that SFA Strasser should preliminarily calculate the net equity in the entity within 30 days of the exercise of the buyout option, with the clear implication that such "preliminary" calculations would be updated as appropriate. 2T119:3-6.

Therefore, since Christodoro gave notice of his exercise of the option on August 25, 2023, SFA Strasser was required to: (1) obtain updated valuations; and (2) update the net equity as the date of the Final Order, August 24, 2023. However, SFA Strasser failed to update the valuations and his Buyout Motion was premised on outdated valuations of the Properties. The Trial Court therefore erred by granting the Buyout Order, as it was incorrectly premised on appraisals that had been stale for over two years (and which did not value the entity or the party's interest therein).

Significantly, due to the SFA's failure to comply with the Final Order, and the trial court's erroneous overlooking of same, Zisa was prejudiced with regard to his interest in Attessa. In particular, Christodoro received a windfall by having the benefit of Attessa paying down the mortgages for a year and lowering the amount he had to satisfy to take Zisa off the mortgages, while the

purchase price to be paid to Zisa remained static at asset valuations set in 2022 and with mortgage balances updated only as of August 24, 2023. 3T32:22-34:3.

It is against the principles of both common sense and equity, as well as the plain language of its own Orders, that the trial court allowed SFA Strasser to premise the buyout values in the Buyout Motion on information that was over two years old while Zisa continued to be a member of the entity and his interest used to pay entity expenses, such as the mortgages and taxes. For these reasons, the trial court's Buyout Order should be vacated and remanded.

3. The Trial Court Erred in Deducting $43,446.17 From the Consideration to Be Paid to Zisa for His Membership Interest in Attessa Since That Amount Was Not Properly Calculated or in Compliance With Its Own Order (Da320; 3T13:5-11)

The Final Order explicitly states that "If either party exercises the option to buy out the other, then as of the date of this order, they shall be responsible for any further management fees and carrying costs of the properties . . . ." Da149-Da150. It is undisputed that as of August 24, 2023 (the date of the Final Order), Christodoro, if he wished to exercise his buyout option, would then also have to be responsible for paying the carrying costs and management fees. Nothing in the Final Order states that Christodoro should be given some kind of

"discount" in this obligation by applying any revenue generated by the Properties to the management fees and carrying costs.

However, SFA Strasser did just that. Instead of applying the revenue generated by the Properties first to any Attessa outstanding balance that was due and owing as of August 24, 2023, SFA Strasser inexplicably decided that the fees incurred before August 24, 2023 should be solely the responsibility of the parties (50/50 between Christodoro and Zisa), and should not be satisfied by the income generated by the Properties. Da175. And he further decided that Attessa's income could, however, be used to defray Plaintiff's obligation to pay all management fees and carrying costs, despite the Final Order's language to the contrary, stating: "it is [SFA Strasser's] position that all expenses incurred after August 24, 2023, **which are not covered by the rental income** are the sole responsibility of Mr. Christodoro . . . ." Da175 (emphasis added).

SFA Strasser does not explain why the rental income should only be applied to carrying costs and management fees after August 24, 2023, but not before. Indeed, such application is inequitable since Zisa continued to be a member of the entity. His membership did not cease as of the date of the Final Order. So Attessa income should have been used to meet outstanding expenses. The SFA's application of Attessa income goes against both the spirit and the word of the Final Order, which specifically contemplated the *purchaser* being

responsible for exactly those costs, as a natural consequence of buying out the other party's interest. For this reason, the income generated by the Properties should have first been applied to any fees and costs incurred prior to August 24, 2023, and the trial court should not have deducted Zisa's portion of those fees and costs from his buyout amount without first applying that income. Such a decision is in clear contravention of this trial court's prior orders, and, as such, vacatur and remand is warranted.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests this Court reverse the trial court's February 2024 Orders and remand the matter for a new hearing on those motions.

COLE SCHOTZ P.C.
Attorneys for Defendant-Appellant, Frank Zisa

By: */s/ Wendy F. Klein*
Wendy F. Klein

DATED: October 9, 2024

JONATHAN CHRISTODORO, individually and on behalf of Attessa Properties, LLC, Plaintiff-Respondent, v. FRANK ZISA, PETER ZISA, and ATTESSA PROPERTIES, LLC, LLC, as a nominal defendant, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CIVIL ACTION On appeal from Orders of the Chancery Division dated February 16, 2024 A-0003271-23 BER-C-229-19 SAT BELOW: HON. EDWARD A. JEREJIAN, P.J.CH.

BRIEF OF PLAINTIFF-RESPONDENT JONATHAN CHRISTODORO

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PRELIMINARY STATEMENT

Plaintiff-Respondent, Jonathan Christodoro, and Defendant-Appellant, Frank Zisa, were co-owners of a real estate entity known as Attessa Properties, LLC. Following a full-blown trial for control of Attessa, by Order of July 28, 2022 the Trial Court established the parties' respective ownership interests in Attessa and, more importantly, the Court awarded Mr. Christodoro the right to buy out Mr. Zisa's remaining interests in Attessa. Mr. Zisa challenged the result at the trial level by way of a convoluted reconsideration process. On August 24, 2023, the Trial Court entered a Final Order which, essentially, denied all of Mr. Zisa's efforts to forestall Mr. Christodoro's execution of the judgment which had been entered a year earlier.

Not to be deterred, even though Mr. Zisa's attempts at reconsideration were resoundly rejected, he continued in his efforts to try to block the court-ordered buyout of his interest in Attessa. In the face of Mr. Zisa's recalcitrance, and in an effort to facilitate the buyout, the court-appointed Special Fiscal Agent ("SFA") who had been running Attessa during the litigation obtained an Order on February 16, 2024 directing the buyout to proceed pursuant to the calculations previously prepared by the SFA. At the same time, Mr. Zisa's last-ditch effort to try to derail the buyout by sacking the SFA was flatly denied as reflected in the entry of a companion order on February 16, 2024.

In a separate--and fully briefed--appellate proceeding under Docket No. A-410-23 ("the Companion Appeal"), Mr. Zisa sought to challenge the underlying orders of July 28, 2022 and August 24, 2023 which reduced Mr. Zisa's ownership interest in Attessa and which allowed Mr. Christodoro to buy out the remainder of Mr. Zisa's interest in Attessa. In this follow-up appeal, Mr. Zisa seeks to challenge the entry of two companion post-judgment orders of February 16, 2024 in which the Trial Court, for all intents and purposes, told Mr. Zisa "enough is enough" and paved the way for Mr. Christodoro to consummate the buyout which it had ordered in July 2022.

Suffice it to say, just as Mr. Zisa's efforts to challenge the underlying substantive rulings--including his dissociation from Attessa--in the companion appeal are doomed to failure, equally futile are Mr. Zisa's vain last-ditch efforts in this appeal to challenge and unwind the actual consummation of his previously-ordered dissociation from Attessa.

STATEMENT OF FACTUAL AND PROCEDURAL HISTORY[1]

A. The Formation of Attessa

In 2011, Mr. Christodoro and Mr. Zisa formed a business relationship for the purpose of acquiring real estate in Northern New Jersey. (Da105). Initially the parties operated informally as a de facto partnership. (Da107). During this period, the parties purchased twelve properties (primarily multi-family residential units) each of which was owned in a joint tenancy by the parties. (Da106; Pa1).

To insulate themselves from undue risk and liability, the parties formed Attessa Properties LLC on or about August 31, 2015 pursuant to the terms of an Operating Agreement. (Da107; Pa2-9). In conjunction with the formation of Attessa, the parties transferred all twelve of the properties to Attessa such that the parties, in effect, traded their direct interest in the individual properties for an ownership interest in shares of Attessa. (Pa1).

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[1] Given that that factual history and the procedural history are integrally intertwined in this appeal, for purposes of this brief these two sections have been combined. And, as noted above in the Preliminary Statement, in this appeal Mr. Zisa challenges the entry of two post-judgment orders entered by the Trial Court on February 16, 2024. As also noted above, the Companion Appeal, which is fully briefed, challenges the Trial Court's substantive rulings on July 28, 2022 and August 24, 2023. Rather than rehash all of the details of the trial (which is the bailiwick of the Companion Appeal) in this Statement of Factual and Procedural History, Mr. Christodoro summarizes the trial history of this matter (Sub-Sections A through D) and focuses on the post-judgment period which brought rise to this particular appeal (Sub-Section E).

In addition to the twelve transferred properties, another seven properties were purchased by Attessa in the following years.[2] (Pa1).

B. Pleadings & Discovery

On September 11, 2018, Mr. Christodoro filed a verified complaint and order to show cause under Docket No. C-243-18 alleging mismanagement and defalcation by Mr. Zisa and seeking to enjoin him from taking certain actions related to Attessa and the Properties. (Da1-18). Mr. Christodoro also alleged claims against Mr. Zisa's father. (Ibid.). On November 1, 2018, Mr. Zisa filed counterclaims against Mr. Christodoro. (Da19-36). Based on these claims, the Court appointed its own forensic accountant, Stephen Chait, CPA.

From the very onset, this case was plagued by Mr. Zisa's recalcitrance and his refusal to cooperate in discovery--all the while continuing to run Attessa in less than a transparent manner. On May 14, 2019, in a pivotal decision, the Trial Court entered an Order appointing William I. Strasser, Esq., as independent counsel for Attessa. (Pa10-13).

Given that this matter had become bogged down due to Mr. Zisa's ongoing refusal to comply with the discovery requests of the court-appointed forensic accountant, and in light of the impending one-year anniversary of this matter, on

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[2] The nineteen properties acquired by, or transferred to, Attessa are collectively referred to herein as the "Properties."

August 16, 2019, with the consent of the parties, the Trial Court entered a trio of orders designed to "reset" this case, including an order dismissing the matter without prejudice and providing that Mr. Christodoro would promptly file a new complaint, and also providing that "all prior rulings and orders shall remain in full force and effect." (Pa14-15). On August 26, 2019, the "new" verified complaint was filed under Docket No. C-229-19. (Pa16-46).

On November 5, 2019, Mr. Strasser, in his capacity as court-appointed counsel for Attessa, filed a motion with a supporting certification seeking to be appointed as the SFA for Attessa--citing ongoing efforts by Mr. Zisa to undermine him in his role as the court-appointed attorney. (Pa47-66). Concerned about the ongoing viability of Attessa with Mr. Zisa as its putative leader, on November 14, 2019, Mr. Christodoro filed an order to show cause seeking, inter alia, to remove Mr. Zisa as managing member of Attessa. (Pa67-69). On November 22, 2019, the Trial Court entered two orders: (1) appointing Mr. Strasser as SFA for Attessa (Pa70-72); and (2) removing Mr. Zisa as managing member of Attessa. (Pa73-74).[3]

[3] Mr. Zisa had also launched an independent attack on Mr. Strasser by filing a complaint alleging legal malpractice. (Pa75-77). Needless to say, this ill-conceived malpractice complaint was withdrawn shortly after Mr. Zisa was deposed as Attessa's Managing Member.

On December 6, 2019, Mr. Christodoro filed a Second Amended Verified Complaint (with the appropriate leave of court) under Docket No. C-229-19 (Da37-76)--this was the operative pleading on which the matter was ultimately tried.

The trial commenced on October 12, 2021, and the Trial Court heard testimony over the course of twenty-one separate trial days over the next three months into early January of 2022. The parties submitted respective comprehensive Proposed Findings of Fact and Conclusions of Law on April 18, 2022.

*C. **Trial Judgment***

On July 27, 2022, the Trial Court rendered its oral decision on the record in the presence of the parties. (1T). On July 28, 2022, the Trial Court entered an Order memorializing its oral rulings in favor of Mr. Christodoro as to several of his causes of action and dismissing the entirety of Mr. Zisa's counterclaim. (Da138-139). In its post-trial Order, the Court crafted a multi-faceted remedy, all contained in decretal paragraph 1:

- First, the court-appointed SFA was to oversee the collection of updated appraisals and to update all liens on the Properties as of the date of the judgment so as to provide a calculation of Attessa's current equity.
- Second, the SFA was to: (1) deduct from this amount a $1,198,220 "off the top" payment to Mr. Christodoro to repay him for his trapped capital; (2) calculate the total amount of outstanding "fees and costs" owed to all court-appointed professionals; and (3) deduct the total "fees and costs" from the remaining equity. This would generate the "net" equity figure, which would be allocated 60% to Mr. Christodoro and 40% to Mr. Zisa.

- Third, the SFA would supervise the "buyout and/or division" as follows:

    1) Mr. Christodoro would be permitted the right to buy out Mr. Zisa's remaining interest in Attessa by paying Mr. Zisa the amount calculated as to his 40% interest based upon the preceding calculations (which would also include an offset for attorney's fees, costs of suit and interest);

    2) If Mr. Christodoro decided not to exercise his right of first refusal, then Mr. Zisa had a secondary option to buy out Mr. Christodoro by paying Mr. Christodoro the amount calculated as his 60% interest based upon the preceding calculations; and

    3) If neither party exercised the buyout, a realtor would be appointed to liquidate the portfolio and then the SFA would divide what remained after liquidation on a 60%-40% basis in favor of Mr. Christodoro.

In other words, Mr. Christodoro was entitled to buy out Mr. Zisa's interests in Attessa--valued as of the date of the Court's Judgment rendered in late July of 2022.

D. The Reconsideration Period

On August 17, 2022, Mr. Christodoro filed a concise, seventeen-page motion for reconsideration in which he urged the Trial Court to reconsider the virtually unchallenged determination by his forensic accounting expert that Mr. Zisa's interest in Attessa had been wiped out, or in the alternative, that the Court at least reduce the buyout amount based on the unrebutted calculations proffered by Mr. Christodoro's forensic expert as to the "excess" distributions Mr. Zisa took for himself but which were not charged to him by the Trial Court. (Da140-141). The timely adjudication of that reconsideration motion was thwarted because Mr. Zisa, after terminating his

relationship with the attorneys who tried the case on his behalf, retained new counsel who requested a several-month extension to file a response to Mr. Christodoro's straightforward reconsideration motion.

Meanwhile, in accordance with the Trial Court's July 28, 2022 Order, the SFA obtained the updated appraisals of the Properties and circulated that information to the parties on November 21, 2022. (Pa78-80).

On December 20, 2022, Mr. Zisa filed his "opposition and cross-motion for reconsideration." (Da142-143).[4] Mr. Christodoro objected to the submission of Mr. Zisa's so-called reconsideration motion and filed an order to show cause to strike it, or at least the portions of it which had never been produced in discovery and/or introduced at trial. The Trial Court entered the order to show cause on March 2, 2023 (Pa162-163), but after briefing and oral argument on March 24, 2023, the Trial Court denied Mr. Christodoro's request without prejudice and directed him to file an opposition to the motion for reconsideration. (Pa164).

During the pendency of the reconsideration motions, and in an effort to "keep the ball rolling" with regard to the implementation of the Trial Court's buyout ruling, on February 15, 2023, counsel for Mr. Christodoro wrote to the SFA confirming that

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[4] Mr. Zisa's reconsideration motion was a thousand-page tome, including a seventy-five-page certification (Pa81-156) accompanied by eighty-three exhibits (which, for the sake of brevity in this appeal, have been omitted, but can be found in the appendices of the Companion Appeal)--many of which had never even been produced during the three-year discovery period, let alone never introduced at trial.

Mr. Christodoro did, in fact, intend to exercise his right to buy out Mr. Zisa's remaining interest in Attessa. (Pa157-158). On February 22, 2023, the SFA circulated his letter with the preliminary buyout calculations--which, of course, took into account the updated appraisals of the Properties and the updated mortgage paydowns. (Pa159-161).

Subsequently, on June 6, 2023 (while reconsideration was still pending), rather than seeking to stay the Trial Court's July 28, 2022 Order--indeed, quite to the contrary--Mr. Zisa actually filed a motion seeking to "modify" the Trial Court's Order to his benefit (i.e., to declare that he could buy out Mr. Christodoro's interest) and to enforce--albeit in substantially modified form--the July 28, 2022 Order. (Da144-145).[5]

Finally, on August 23, 2023, the Trial Court heard arguments on the parties' respective cross-motions for reconsideration as well as the parties' respective cross-motions to enforce the buyout provisions of the Trial Court's July 28, 2022 Order. As memorialized in the August 24, 2023 Final Order (Da148-150), the respective

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[5] Mr. Zisa's motion to enforce the July 28, 2022 Order actually went so far as to entirely rewrite the Trial Court's ruling by insisting that there should be equal forty percent distributions of Attessa's assets to each party and that the remaining twenty percent should be retained by Attessa--and that a much-depleted version of Attessa would continue to be run by the SFA pending disposition of the ownership of that small piece of the entity. In an attempt to stop Mr. Zisa's nonsense once and for all, on June 30, 2023, Mr. Christodoro filed a countervailing cross-motion to enforce the Trial Court's July 28, 2022 Order as written by the Court. (Pa165-166).

motions for reconsideration were denied, as was Mr. Zisa's motion to modify and enforce the Trial Court's July 28, 2022 Order. On the other hand, Mr. Christodoro's cross-motion to enforce the July 28, 2022 Order was granted--thereby finally paving the way for Mr. Christodoro to proceed with the buyout of Mr. Zisa's interest in Attessa. (Ibid.).

Specifically, the August 24, 2023 Final Order stated that "Plaintiff will be permitted to exercise the option to buy out Defendant's interest in accordance with Paragraph 1 of the July [28], 2022, order within ten (10) days of this order." (Da149). If Mr. Christodoro failed to exercise the option within the ten-day period, then Mr. Zisa would have the same option. Ibid. Separate and apart from this option process, the August 24, 2023 Final Order also stated:

> **If either party exercises the option to buy out the other,** then as of the date of this order, they **shall be responsible for any further management fees and carrying costs of the of the properties** and shall bear the costs and expenses of transferring title to the property and refinancing the loans.
>
> [(Da149-150) (emphasis added).]

E. Post-Judgment Buyout Proceedings[6]

Following the entry of the August 24, 2023 Final Order, Mr. Zisa did not

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[6] As noted above, the July 28, 2022 Order and the August 24, 2023 Final Order are the subject of the Companion Appeal. It is the post-judgment proceedings following the entry of the Final Order on August 24, 2023 through the entry of the February 16, 2024 Orders (and the resultant buyout) on which this appeal is focused.

immediately seek a stay and Mr. Christodoro, in reliance on that fact, immediately began to undertake the time, energy, and expense of moving forward with the buyout of Mr. Zisa's interest in Attessa and by letter of August 25, 2023, the day after the entry of the Final Order, Mr. Christodoro reiterated his intent to exercise his right to buy out Mr. Zisa's interest in Attessa. (Da151).[7]

Unfortunately, Mr. Zisa then embarked upon a concerted effort to block the buyout. For example, on September 1, 2023, Mr. Zisa made the first in a series of "informal" requests to "clarify" the Trial Court's July 28, 2022 Order and its August 24, 2023 Final Order. (Da152-154). Furthermore, on September 6, 2023, Mr. Zisa's counsel sent a letter to the court-appointed property manager. (Da155-161). This letter contended--albeit incorrectly--that Mr. Christodoro had an affirmative obligation to advance funds for future carrying costs related to the Properties, and then, riffing on that incorrect contention, asserted that Mr. Christodoro had already defaulted. Counsel's letter to the property manager claimed that, in light of this so-called default,

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[7] As will be discussed below, much of Mr. Zisa's appeal in this matter is based on the claim that Mr. Christodoro did not timely consummate the actual buyout within ten days of the Final Order (Db. at 26-27)--however, that order only requires the notice of the exercise of the buyout to be communicated within ten days. The actual buyout--including the obligation to remove Mr. Zisa from the mortgages on all of the Properties--was clearly going to take more than ten days. Indeed, as subsequently pointed out by the SFA (Pa186), the timing of the buyout was tied to the filing of the Attessa tax returns--which did not happen until well after the entry of the February 16, 2024 Orders from which Mr. Zisa appeals. Indeed, the closing took place within a matter of days after the filing of the tax returns.

Mr. Zisa was exercising "**his** option . . . to buy out Plaintiff's interests," and the letter enclosed a $25,000 check from Mr. Zisa "as preliminary consideration for the carrying costs for the Attessa portfolio properties." (Ibid.) (emphasis added).

By letter of September 11, 2023, the SFA returned the $25,000 check. (Da162-164). The SFA explained, in accordance with the Court's ruling, that those carrying costs which had accrued before the effective date of Mr. Christodoro's buyout option would be paid out of Attessa's funds. (Da162). Furthermore, the SFA explained that he would be "monitoring all expenses going forward, as same will be applicable and chargeable to Mr. Christodoro as of the date of the exercise of the option pursuant to the terms of the Court's Order." (Ibid.).

Moreover, by letter of September 13, 2023, counsel for Mr. Christodoro wrote to the Court with a point-by-point refutation of the September 1st "clarification" letter submitted on behalf of Mr. Zisa. (Pa167-179).[8]

In recognition of Mr. Christodoro's exercise of the buyout option, and with an eye towards consummating the buyout, by letter of September 26, 2023 to all parties, the SFA issued revised buyout calculations, taking into account the Trial Court's August 24, 2023 Final Order. (Da165-166).

On October 6, 2023, Mr. Zisa belatedly responded to the SFA's September 11,

[8] This responding letter on behalf of Mr. Christodoro was omitted from Mr. Zisa's appendix in support of this appeal.

2023 letter and insisted that the SFA "cease and desist" from paying any carrying costs out of Attessa's funds and also directed the SFA to "recalculate the buyout amounts with **Mr. Zisa** as the purchaser." (Da171-172) (emphasis added).[9] Simultaneously on October 6, 2023, Mr. Zisa doubled down on his efforts to sidetrack the proceedings by way of a second "informal" request to "clarify" the Trial Court's July 28, 2022 Order and the August 24, 2023 Final Order. (Da167-169). Again, on October 6, 2023, counsel for Mr. Christodoro responded with another point-by-point refutation of Mr. Zisa's second attempt to modify to the July 28, 2022 Order and the August 24, 2023 Final Order without filing a motion. (Pa183-186).[10]

By e-mail of October 10, 2023, the Trial Court, in an effort to staunch the flow of nuisance correspondence from Mr. Zisa, indicated categorically that it was not going to amend and the August 24, 2023 Final Order, "which speaks for itself." (Da173-174).

On November 27, 2023, the SFA issued a letter to Mr. Zisa and Mr. Christodoro announcing a capital call to satisfy obligations that had accrued prior to the August 24, 2023 Final Order--which was, by definition, the time period prior to Mr.

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[9] And even more absurdly, included with this September 11th letter, counsel for Mr. Zisa again included the $25,000 "expense check" to the SFA--insisting that Mr. Zisa was the rightful buyer. Needless to say, on October 13, 2024 the check was returned again. (Pa187-188).

[10] Again, Mr. Zisa omits this response from his appellate appendix.

Christodoro's exercise of his buyout option. (Da175-190). In total, the SFA explained that due to the shortfall of funds in Attessa's coffers almost $87,000 had accrued in unpaid professional fees, and that the capital call was splitting this obligation fifty-fifty between Mr. Zisa and Mr. Christodoro. (Da175-176).[11] Furthermore, the SFA explained that "in the event that either party seeks a stay, additional significant capital will be required to continue the operations of Attessa Properties, LLC." (Da176).[12] In his November 27th capital call letter, the SFA also included a list of the anticipated repairs and renovations--both immediate and longer term-- in excess of $220,000 that were necessary to maintain the Properties, but did not include any of those expenses on the capital call. (Ibid.).[13] Nonetheless, Mr. Zisa objected to the capital call in his typical obstructionist fashion. (Da191).

On December 6, 2023, faced with an Attessa "cash crunch," the SFA filed a motion seeking leave of the Trial Court to "list 60 Poplar Avenue . . . for sale and to

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[11] Each party's share of the capital call was $43,446.17.

[12] Suffice it to say, the point being made by the SFA was that, in the event that Mr. Zisa was able to obtain a stay of the Final Order of August 24, 2023, that stay would negate--at least temporarily--the obligation for Mr. Christodoro to be solely responsible for the carrying costs of Attessa for the post-August 24, 2023 period. Indeed, it is likely that, in recognition of the fact that a stay would render Mr. Zisa responsible for half of the mounting Attessa expenses beyond the August 24, 2023 cut-off date, Mr. Zisa elected to eschew seeking a stay at that juncture.

[13] Indeed, as will be noted below, even though almost all of these expenses had been accrued prior to the August 24, 2023 cut-off date, Mr. Zisa was never held accountable for them.

utilize the proceeds of the sale to fund the ongoing cost of operating Attessa Properties, LLC and to provide operating capital for the company." (Da193-294). The SFA also asked for explicit permission of the Trial Court to make payments to his firm and to other professionals, including the Court-appointed property manager (for property management services provided) and the Court-appointed accountant (for "the preparation of tax returns for Attessa Properties, LLC for the fiscal years 2020, 2021, and 2022"). (Da255-257).

On December 7, 2023, the SFA circulated a letter to Mr. Zisa and Mr. Christodoro memorializing "that Mr. Christodoro has confirmed to this Firm his intention to finalize his purchase of Attessa Properties, LLC in accordance with the Court's August 24, 2023, Order and as confirmed in Mr. Cohn's August 25, 2023, correspondence to [the SFA]." (Da295). The SFA informed Mr. Zisa and Mr. Christodoro that "the buy-out price for Mr. Christodoro is $1,403,624.96, subject to certain adjustments including unmet capital calls." (Ibid.). Furthermore, the SFA expressly noted that "Mr. Christodoro has advised [the SFA] that he currently has the funds necessary to close this transfer and that he is ready, willing, and able to proceed to closing." (Ibid.). Finally, the SFA indicated in his December 7th letter that he expected to have the "Membership Interest Purchase and Sale Agreement as well as other ancillary documents . . . available for Mr. Christodoro's review on Monday December 11, 2023." (Ibid.).

Mr. Christodoro, not wanting to see another Attessa property sold to finance the ongoing litigation, immediately wired to the SFA all of the buyout funds in excess of $1.4 million on December 8, 2023 and, in recognition of this fact, on that same day the SFA filed a follow-up motion seeking approval of the Trial Court for "the transfer of [Mr. Zisa's] membership interest in Attessa Properties LLC, for consideration received, to [Mr. Christodoro] for consideration paid." (Da297-310). In the motion papers in support of the SFA's efforts to consummate the closing, the SFA memorialized that "On December 8, 2023, Mr. Christodoro wired $1,447,071.13 to this firm's attorney trust account." (Da300). That $1,447,071.13, the SFA explained, was comprised of the following:

- $1,403,624.96 to be paid to Mr. Zisa from Mr. Christodoro for the sale of his membership interest in Attessa (from which $43,446.17 was to be deducted as Mr. Zisa's half of the November 27, 2023 capital call, leaving $1,360,178.79 to be distributed to Mr. Zisa); and
- Mr. Christodoro's share of the capital call in the amount of $43,446.17 to be applied to the pre-August 24, 2023 expenses of Attessa.

Accordingly, the net buyout amount to be received by Mr. Zisa would be $1,360,178.79 (i.e., $1,403,624.96 minus $43,446.17). (Da301; Da307), and the liquid buyout funds to pay Mr. Zisa for his remaining interest in Attessa were now in the possession of the SFA.

On December 28, 2023, Mr. Zisa filed a cross-motion, asking the Trial Court to terminate Mr. Strasser as the SFA for Attessa. (Da311-319). Mr. Zisa claimed that

the SFA--despite the SFA's efforts to try to keep Attessa going in the face of a cash shortage--had mismanaged the Properties. (Da313-314).

On February 15, 2024, the trio of motions were argued before the Trial Court. (3T.)[14] At argument, the SFA made it clear that he was also seeking guidance from the Trial Court on whether it was necessary to update the appraisals for the Properties for a second time. (3T10:19-11:11). The Trial Court recognized that the SFA had already conducted the updated appraisals in the fall of 2022 following the entry of the July 28, 2022 Order, and in light of all of the extensive reconsideration practice wrought by Mr. Zisa, the Trial Court expressly rejected the idea of a third round of appraisals:

> It took a substantial amount of time and I think what's throwing things off, and certainly it's -- it's not unusual as we have had extensive motion practice, **including the reconsideration application that basically took a year**, so, you know, it's -- it is like drawing a new line in the sand. We can reappraise it now and have another six months or whatever. So I never ordered a third appraisal or whatever, but I am always willing to hear from the parties.
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> [(3T13:15-24) (emphasis added).]

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[14] The undersigned Firm--having been relieved by Mr. Christodoro in October of 2023 in an effort to stem the flow of legal expenses--was "back in" as counsel for Mr. Christodoro by the date of the oral argument on these motions. To be sure, much to the chagrin of Mr. Christodoro, it was apparent that Mr. Zisa's ongoing shenanigans necessitated that Mr. Christodoro re-engage counsel to consummate that which should have been a straightforward buyout process given that the funds had been tendered to the SFA.

At oral argument on February 15, effectively conceding that there would not be a third round of appraisals, counsel for Mr. Zisa shifted focus and asserted:

> [A]ny appraisal, they don't have to be redone, but that they would have to be updated to the date of the final order. I mean, that is the only thing that is consistent with both a purchase of an interest in an entity like this and your Honor's order where it's clear that you said that the purchaser would be responsible for all carrying costs and management fees going forward.

(3T14:19-15:1). Counsel for Mr. Zisa also argued that "it should be all expenses after that, all outstanding expenses, including the ones pre the final order because a purchaser takes the entity with the assets and the liabilities." (3T19:20-24). And, totally pushing the point, counsel for Mr. Zisa insisted that Mr. Christodoro had defaulted on his right to proceed with the buyout and that "he has lost that right to be the purchaser and that Mr. Zisa should be the purchaser and he would comply with all obligations that he would be responsible for as the purchaser." (3T21:14-18).

Furthermore, turning the attack from Mr. Christodoro to the SFA, counsel for Mr. Zisa claimed that "there have been some failings with regard to the [SFA], and . . . [i]t seems at any every turn the [SFA] has made interpretations of your Honor's order that disfavor Mr. Zisa and favor Mr. Christodoro"; then counsel for Mr. Zisa did not attempt to mince her words when she stated that there "certainly appears to be a bias" which warranted terminating the SFA--and, perhaps, replacing him with an alternate SFA. (3T20:7-14; 3T22:7-14).

In response, counsel for Mr. Christodoro pointed out that the July 28, 2022

Order does not contain any requirement that he **pre-pay** Attessa's carrying costs as a condition of the buyout, and that as a show of Mr. Christodoro's intent and ability to proceed with the buyout he had deposited the full buyout amount in excess of $1.4 million with the SFA **and** his share of the capital call. (3T25:15-22). Counsel for Mr. Christodoro also pointed out that the Properties had been reappraised as required by the July 28, 2022 Order, and that Mr. Zisa's gamesmanship with the reconsideration motion caused the yearlong delay in between the July 28, 2022 Order and the August 24, 2023 Final Order. (3T26:14-27:11).

The Trial Court questioned the SFA, and asked him "in your application . . . you have determined **the value as of the second appraisal** . . . was $1,403,624.96 in terms of Frank Zisa's interest and the expenses that you are seeking to be deducted from that, the $43,446.17, which is 50 percent of the expenses for the net of $1,360,178.79." (3T32:13-19) (emphasis added). The SFA confirmed the Trial Court's understanding of the "buyout math." (3T32:20).[15]

In its oral decision on February 15, 2024, the Trial Court made several findings of fact. (3T37:4-52:18). For instance, with regard to Mr. Zisa's motion to relieve the SFA based on "bias," the Trial Court rejected this argument wholesale:

> I know it's easy to throw the bias word around with the SFA. Perhaps he feels that the Court was biased, as well, in its ruling

[15] And contrary to Mr. Zisa's criticisms of the Trial Court in this appeal, earlier in the oral argument, the Trial Court made it very clear that it understood the concept of how to allocate rents against Attessa's ongoing expenses. (3T13:6-11).

> or whatever. But this -- this case has a lot of water under the proverbial bridge. Everybody knows it.
>
> Ms. Klein, you put forth this notion that your client's been aboveboard and everything he has done is pristine and he has done all the right things. All you have to do if you to microcosm, go back and read Judge Cantillo's findings just on discovery issues to see -- I made it clear -- I never understood, and even after hearing this case even more so when I looked back, why [Mr.] Zisa was proceeding with this case early on the way it did . . .
>
> . . . .
>
> I mean, I commend Mr. Strasser. I don't -- you know, he stepped into this case early on. I didn't want to revisit some of the things that fell upon him in this case.
>
> But, in the midst of it all, here we are in a -- again, I think he did a very -- it was a very difficult job. And again, I think he has done an excellent job, so I am going to deny that application. If any case needed a [SFA], it's this one.
>
> . . . .
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> I certainly can't find that he was biased. I understand there was settlement discussion. This case cried out for settlement years ago. Judge [Doyne] tried, Mr. Strasser I know tried, I tried, and nothing. So we are left with what we are left with.
>
> [(3T37:12-39:22).]

With regard to the appraisals, the Trial Court recognized that they had been updated as ordered and the Court specifically explained why it was not going to order a third round of appraisals, notwithstanding Mr. Zisa's protestations to the contrary:

> [T]he [July] 28th order, it says, "The original appraisal should be updated to reflect the current valuation and all liens shall be recalculated as to the date of the judgment."

> This judgment. Not some judgment that didn't exist yet. How do you make a final judgment a year ago? You've been filing nunc pro tunc. We have more motions now. What if it does get stayed on appeal? Are you going to do more appraisals three years from now? I mean, at some point it is what it is.
>
> We appraised these properties. Maybe the values went down. They seem to be peeking around '22 and then we had the inflation thing. Who knows? I would like to hear the argument like if you reappraised and it actually went down.
>
> So the bottom line is I ordered in July and it took time to do it . . .
>
> It took time to do those appraisals, but now we have all of that and finally on August 24, 2023 we were -- the second order was entered. So I know now the argument is, well, that's really the final order.
>
> So what you were saying in July really we should superimpose to this order, but that is not how I see it.
>
> [(3T40:9-25; 3T43:1-7).]

Later in its decision, making clear reference to its interpretation of its own previously-entered orders, and reiterating its express rejection of the concept of undertaking a third-round of appraisals, the Trial Court unequivocally stated:

> I think with this we are finally where he exercised the option, he buys it at the price of the appraisals. To say we are going to stop now and update all these appraisals and maybe comes out less, maybe comes out more, then it is unfair that it's now getting less because all this time went by. **The arguments will never end**. We can't keep drawing new lines in the sand. **The judgment that I was referring to is obviously the judgment that was entered on July 28, 2022 in terms of redoing the appraisals**. We can redo them over and over again, but it is what it is.
>
> [(3T47:18-48:3) (emphasis added).]

And, in express rejection of Mr. Zisa's absurd contention that Mr. Christodoro had waived (or defaulted on) his buyout right, the Trial Court succinctly found that: "I said Mr. Christodoro would get the first bite at the apple. In the scheme of things I am satisfied that he exercised his options. I am certainly not finding that he didn't." (3T43:8-11).

Accordingly, the Trial Court granted the application by the SFA to "approve the transfer of Mr. Zisa's membership interest in Attessa for consideration received and consideration given" but found that it "would be counterproductive to order the sale of a property." (3T44:15-20).[16] The Trial Court also found that "Mr. Strasser has determined the value of $1,403,624.96, which is consistent with the updated appraisals." (3T45:1-3). The Trial Court also agreed that "up until the date, which I guess would be the August 24, 2023 date, it took a lot of time to get there from the trial judgment, and therefore, other expenses were [incurred] and until Mr. Zisa's share of $43,443.17 should be adjusted from that amount." (3T46:9-14).

The Trial Court finished by stating that "the transfer, in essence, will proceed like any other closing, the liens, the mortgages, any personal guarantees and so on and so forth . . . [e]verything should pass and Mr. Zisa will be off the hook on any further liabilities after that date." (3T48:25-49:6). Finally, and quite notably, the Trial Court-

[16] In this respect, and in light of the imminent buyout, the Trial Court, in effect, tabled as moot the SFA's motion to sell a property.

-presaging the future--noted that, in the event that:

> Mr. Zisa doesn't feel he should sign a document or doesn't want to sign a document or doesn't want do what would be needed to be done to effectuate the closing, if we reach that point before Mr. Strasser starts signing for him or for Mr. Christodoro if it works the other way, I think I should hear about it and we should have a brief conference first and hear what the problem is, because it may be something perfectly legitimate that maybe wasn't in the cards.
>
> [(3T50:15-24).]

On February 16, 2024, the Trial Court entered a trio of orders memorializing its rulings on the three separate motions as articulated at oral argument the day before. (Da321-330).

The First Order granted the SFA's motion to transfer Mr. Zisa's membership interest in Attessa to Mr. Christodoro. (Da321-324) (the "First Order" or the "Buyout Order"). The Buyout Order stated that Mr. Christodoro had timely exercised his buyout option, that the value of Mr. Zisa's interest in Attessa was $1,403,624.96, that Mr. Zisa had not objected to the SFA's mathematical computation of the $1,403,624.96 buyout value,[17] and that the SFA was permitted to deduct from this buyout price the balance of $43,446.17 to satisfy Mr. Zisa's share of the Attessa expense obligations for the pre-August 24, 2023 Attessa expenses for which the SFA

[17] This finding as to the unchallenged soundness of the SFA's math is distinct from Mr. Zisa's insistence that the buyout value should have been based on a new round of appraisals.

had issued a capital call. (Ibid.). Furthermore, the Buyout Order included a handwritten notation by the Trial Court which stated that, consistent with its admonition during oral argument: "If there is a lack of cooperation by either party with regard to executing any documents, then the [SFA] should bring the lack of cooperation to the attention of the [Trial Court] and Counsel and request leave to assume the role of limited Power-of-Attorney." (Da323).[18]

The Second Order denied (as effectively moot) the SFA's motion to sell the property located at 60 Poplar Avenue. (Da325-328) (the "Second Order").[19] And the Third Order denied Mr. Zisa's motion to relieve the SFA from his position as it related to Attessa "for reasons stated on the record." (Da329-330) (the "Third Order").

On February 16, 2024, counsel for Mr. Christodoro wrote a letter to the SFA, informing him that: "Mr. Christodoro has already commenced the process to remove Mr. Zisa's liability on the debt on the underlying Attessa properties and he is hoping

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[18] In a rhetorical "slight of hand," Mr. Zisa contends that the concept that the SFA would be imbued with the limited power of attorney to sign closing documents should either party prove recalcitrant somehow constitutes extraordinary relief. (Db. at 16). In point of fact, given that the buyout calculations had been expressly endorsed by the Trial Court, there was nothing out of the ordinary in permitting the SFA to sign off on the closing of the buyout. Otherwise, a recalcitrant party could hold up the buyout indefinitely--in effect creating a de facto stay. And then, in a rhetorical tour de force, Mr. Zisa characterizes the unremarkable bestowal of the buyout right upon Mr. Christodoro as some sort of "blunt force" transfer of assets. (Db. at 17). Despite these rhetorical flourishes, Mr. Zisa has the temerity to accuse the Trial Court of engaging in rhetorical "atmospherics." (Id. at 19).

[19] The Second Order was not appealed.

to be able to close within a matter of days." (Da331). Furthermore, Mr. Christodoro's counsel advised the SFA that if Mr. Christodoro was able to "effectuate the elimination of Mr. Zisa's liability on all of the mortgages without the need for Attessa's tax returns" he would be willing to "assume the responsibility of completing Attessa's tax returns once he has assumed total ownership of the entity." (Ibid.). Mr. Zisa was put on notice of Mr. Christodoro's anticipated timeline for the closing and was advised of Mr. Christodoro's expectation that "in accordance with Judge Jerejian's directives, Mr. Zisa will timely cooperate in this regard." (Da332).

On March 6, 2024, having exhausted all other delay tactics, Mr. Zisa filed a motion with the Trial Court seeking a stay of the August 24, 2023 Final Order and the February 16, 2024 Buyout Order pending the outcome of the Companion Appeal of the July 28, 2022 Order and the August 24, 2023 Final Order and requesting a waiver of the supersedeas bond. (Pa191-192). Mr. Christodoro opposed this motion and, on April 22, 2024, the Trial Court denied Mr. Zisa's motion for a stay. (Pa193-229; Da333-334).[20]

On April 16, 2024, Mr. Zisa filed a motion for a stay in the Appellate Division,

[20] However, the Trial Court did issue a temporary stay for "ten days to allow [Mr. Zisa] the opportunity to file an application to stay in the Appellate Division." (Da334).

which was opposed by Mr. Christodoro on April 17, 2024. (Da335-336).[21] The Appellate Division denied this motion on May 20, 2024. (Ibid.).

On June 24, 2024, Mr. Zisa filed the instant appeal as to the February 16, 2024 Orders entered by the Trial Court. (Da337-341).[22]

LEGAL ARGUMENT

Mr. Zisa's appeal of the entry of the February 16th orders is based on the following alternative arguments: First, Mr. Zisa contends that the Trial Court did not make sufficient factual findings. Secondly, he maintains that the factual findings of the Trial Court are not supported by the record. And, as a third alternative--given the patent sufficiency of the Trial Court's findings--Mr. Zisa asserts that the Trial Court applied the wrong law to its findings. As will be shown, this panoply of layered appellate arguments must fail in all respects and the February 16, 2024 Orders should be affirmed.

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[21] The SFA filed a letter on April 17, 2024 which advised that he was not taking a position on the motion, but advised the Appellate Division that "Attessa does not have and will not generate sufficient capital to fund Attessa's ongoing operations." (Pa230-231).

[22] On July 3, 2024, Mr. Zisa filed an amended Notice of Appeal. (Da342-346).

POINT I

THE TRIAL COURT MADE SUFFICIENT FACTUAL FINDINGS AND THE FEBRUARY ORDERS SHOULD BE AFFIRMED

(Not Raised Below)[23]

In an echo of his arguments in the appeal pending under Docket No. A-410-23, Mr. Zisa's primary complaint in this appeal is his contention that the Trial Court purportedly failed to make sufficient findings of fact to support the orders entered on February 16, 2024 and that, on this basis alone, the matter should be remanded back to the Trial Court. However, a reading of the February 15, 2024 argument and decision transcript demonstrates a record which is more than sufficient to support the Trial Court's entry of the February 16, 2024 Orders at issue.

Rule 1:7-4(a) requires a judge presiding over a bench trial to issue a decision either orally or in writing which "find[s] the facts and state[s] its conclusions of law . . . ." However, trial judges have wide discretion in how to accomplish this task. In re Trust Created by Agreement Dated Dec. 20, 1961, by & between Johnson & Hoffman, Lienhard & Perry, 399 N.J. Super. 237, 253

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[23] Mr. Zisa claims that this point was raised below, but it was not. See, e.g., Jacobs v. Jersey Cent. Power & Light Co., 452 N.J. Super. 494, 502 (App. Div. 2017) ("if an issue was not raised below by a party's trial counsel, relief is not warranted unless that party demonstrates plain error by showing on appeal the error was 'clearly capable of producing an unjust result.'") (citations omitted).

(App. Div. 2006); Homann v. Torchinsky, 296 N.J. Super. 326, 340 (App. Div.), certif. denied, 149 N.J. 141 (1997).

The purpose of the rule is to make sure that the trial court makes its own determination of the matter. In re Trust, 399 N.J. Super. at 254 (citation omitted). In other words, any decision of a trial court which informs the parties of the rationale underlying its decision, and which allows an appellate court the opportunity to review that rationale, fully satisfies the scope of the rule. See Monte v. Monte, 212 N.J. Super. 557, 564-65 (App. Div. 1986).

The cases cited by Mr. Zisa are distinguishable. Specifically, in Paonessa Colon & Rectal Surgery v. Cernero Children's Trust & JMC Management Group, the trial court denied a motion for reconsideration and ordered fees and costs in favor of the prevailing party "without any explanation whatsoever." 2017 N.J. Super. Unpub. LEXIS 2291, at *2 (App. Div. Sep. 15, 2017). Similarly, in Johniken v. Beebe, the trial court reserved its decision, and then entered an order without issuing any written or oral findings whatsoever. 2022 N.J. Super. Unpub. LEXIS 2355, at *3 (App. Div. Nov. 29, 2022). Likewise, in Curtis v. Finneran, the court entered a judgment without providing **any** written or oral findings of fact. 83 N.J. 563, 565 (1980). And in Heinl v. Heinl, a case in which the court awarded permanent alimony, but "the reasons for not awarding, or even considering, rehabilitative alimony were totally absent in the

judge's opinion." 287 N.J. Super. 337, 346 (App. Div. 1996).[24]

Here, as memorialized in the fifteen-page portion of the transcript of the February 15, 2024 oral argument in which the Trial Court rendered its decision, and unlike the courts in all of the above-cited cases, the Trial Court made ample findings on each issue with which it was presented. (3T37:4-52:18). Notwithstanding Mr. Zisa's assertions to the contrary, the Trial Court arrived at a carefully thought-out decision based on the entirety of the matter before it--including, of course, the Court's first-hand knowledge gleaned by presiding over the lengthy trial and the subsequent reconsideration proceedings which preceded the instant post-judgment motion practice.[25] See In re Trust, 399 N.J. Super. at 254; see also Concerned Citizens of Princeton, Inc. v. Mayor & Council of Borough of Princeton, 370 N.J. Super. 429, 450 (App. Div. 2004) (recognizing

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[24] Likewise, in Salch v. Salch, 240 N.J. Super 441 (App. Div. 1990) and Donfield v. Donfield, 2011 N.J. Super. Unpub. LEXIS 324, at *3 (App. Div. Feb. 14, 2011), the issues involved the respective courts' denial of a request for attorneys' fees and costs without any reference to the specifically-prescribed factors which courts must consider by rule and by statute. In each instance of the cases cited above, the remedy was a remand to specifically flesh out the record.

[25] In his appellate argument, Mr. Zisa attempts to minimize this critically important "institutional knowledge" as mere "atmospherics." However, in rejecting Mr. Zisa's baseless bias claims against the SFA, there is nothing "atmospheric" about the Trial Court's taking into account all of Mr. Zisa's preceding shenanigans--and the Trial Court's direct interactions with the SFA throughout his tenure in this case--by way of contextual background for assessing Mr. Zisa's current claims.

that the judge had "summarized the facts underlying her decision to grant summary judgment in favor of defendant, and fully analyzed the context of those facts pertinent to the legal issues presented" and therefore satisfied the requirements of Rule 1:7-4(a)).

Accordingly, there is no basis to upset the Trial Court's rulings or to waste more time in remanding this matter back to the Trial Court.

POINT II

THE FEBRUARY 16, 2024 ORDERS ARE SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE IN THE RECORD

(Raised Below at 3T; Da311-318)

This Court's review of Mr. Zisa's contention on appeal that the record was purportedly bereft of any credible evidence to support the Trial Court's rulings with regard to the entry of the trio of orders on February 16, 2024 should be undertaken against the backdrop that: "The scope of an appellate court's review of a Trial Court's fact-finding is a limited one. Trial court findings are ordinarily not disturbed unless they are so wholly unsupportable as to result in a denial of justice, and are upheld wherever they are supported by adequate, substantial and credible evidence." Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475 (1988) (internal citations and quotations omitted).

A. The Trial Court Properly Found that Defendant Had Not Objected to the Mathematical Computation of His Interest in Attessa.

Mr. Zisa argues that it was error for the Trial Court to find that he had not objected to the SFA's mathematical computation of his interest in Attessa. Specifically, Mr. Zisa argues that he did in fact object to the valuation of his interest because he had maintained that the SFA was required--for a second time--to update the appraisals done on the Properties.

First, and foremost, objecting to the appraisals as outdated is not the same as objecting to the mathematics of the calculation itself (i.e., the calculation in which the SFA determined that forty-percent of the net equity of Attessa was $1,403,624.96--less the capital call of $43,446.17, rendering a buyout to be paid to Mr. Zisa in the amount of $1,360,178.79). Suffice it to say, aside from insisting on new appraisals (which, it is acknowledged, he did repeatedly), Mr. Zisa points to **nothing** in the record that demonstrates any objection to the actual methodology of the calculation performed by the SFA--nor can Mr. Zisa, because he never made such an objection.

To be clear, with regard to Mr. Zisa's claim that the buyout valuation should have relied upon a third-round of appraisals, this issue was expressly considered--and rejected--by the Trial Court. Mr. Zisa acknowledges as much in his brief when he details the many demands made by his trial counsel for updated valuations. (Db. at 22). During oral argument on February 15, 2024, the Trial Court acknowledged

that the appraisals had been updated in August of 2022, and the Court unequivocally rejected the contention that the appraisals needed to be updated **for a second time**:

> **We appraised these properties**. Maybe the values went down. They seem to be peeking around '22 and then we had the inflation thing. Who knows? I would like to hear the argument like if you reappraised and it actually went down.
>
> So the bottom line is I ordered in July and it took time to do it . . .
>
> **It took time to do those appraisals, but now we have all of that** and finally on August 24, 2023 we were -- the second order was entered. So I know now the argument is, well, that's really the final order.
>
> So what you were saying in July really **we should superimpose to this order, but that is not how I see it**.
>
> [(3T40:19-25; 3T43:1-7) (emphasis added).]

Later, the Trial Court restated this understanding and its clear interpretation of its own orders:

> I think with this we are finally where he exercised the option, he buys it at the price of the appraisals. To say we are going to stop now and update all these appraisals and maybe comes out less, maybe comes out more, then it is unfair that it's now getting less because all this time went by. **The arguments will never end**. We can't keep drawing new lines in the sand. **The judgment that I was referring to is obviously the judgment that was entered on July 28, 2022 in terms of redoing the appraisals**. We can redo them over and over again, but it is what it is.
>
> [(3T47:18-48:3) (emphasis added).]

Second, to the extent that Mr. Zisa now contends that the valuation of his interest in Attessa was incorrect because it was not supported by a "valuation

expert," the very first time that Mr. Zisa raised this particular argument was in a letter to the Trial Court dated September 1, 2023--well after the trial and all of the reconsideration litigation, and even after the entry of the Final Order on August 24, 2023. Throughout the entire trial, every discussion of the value of Attessa was focused solely on the value of its real estate portfolio. The parties underwent more than three years of discovery, which included extensive expert discovery on the issue of valuation. Moreover, during the entirety of the three months of trial, at no time was there any mention--not even by Mr. Zisa's own expert--of valuing Attessa other than by its real estate portfolio. This seemingly off-hand comment made by Mr. Zisa in his brief (Db. at 21) is nothing more than the latest disingenuous and after-the-fact attempt to relitigate this entire case. It should be disregarded entirely.

Lastly, even if there could be attributed any error with regard to the entry of the Buyout Order *vis-à-vis* Mr. Zisa's objection, whether as to the mathematical calculation or as to the methodology, any purported error (though, to be clear, Mr. Christodoro maintains there was no error), is clearly harmless. In particular, as far back as the entry of the July 28, 2022 Order after trial, and then again in explaining the entry of the August 24, 2023 Final Order --and yet again in the disposition of the motions on February 15, 2024--the Trial Court has been keenly aware of the issue of the quantification of Mr. Zisa's buyout and the Trial Court's decision in expressly rejecting Mr. Zisa's bid to have another round of appraisals was based on adequate,

substantial, and credible evidence, namely the Trial Court's interpretation of its own order and its extensive knowledge of the history of the case.

B. The Trial Court Did Not Err in Refusing to Remove the Court-Appointed Special Fiscal Agent.

Mr. Zisa next argues that there is no credible evidence in the record to support the rejection of his attempt to remove Mr. Strasser from his appointed position as the SFA. This is nothing more than sour grapes.

Indeed, Mr. Zisa's motion to terminate the SFA must be viewed against the backdrop that Mr. Zisa has a history of attacks against the SFA--including filing a pro se malpractice claim against the SFA during the midst of the litigation in 2019 (Pa75-77). The Trial Court, keenly aware of this history, commented at oral argument on February 15, 2024 as to its direct understanding of how "complicated and contentious" this case had been--due in large measure to Mr. Zisa's conduct. In an effort to bolster his baseless argument to dump the SFA, Mr. Zisa asserts that the Trial Court failed to consider the necessity of the SFA, and whether the SFA's continued involvement was necessary at that point in the litigation.[26] Furthermore, Mr. Zisa claims that because the SFA did not file tax returns for Attessa for the years 2017 through 2019 that, in and of itself,

[26] Indeed, the SFA continued to be necessary, and he was crucial in successfully effectuating the process of the buyout of Mr. Zisa's interest in Attessa.

should have warranted the immediate removal of the SFA.[27]

However, notwithstanding Mr. Zisa's assertions to the contrary, it is clear that the Trial Court considered the entirety of the SFA's involvement in this matter in reaching that which was an easy decision to deny Mr. Zisa's unfounded attempt to depose the SFA--especially on the eve of the consummation of the buyout:

> I know it's easy to throw the bias word around with the SFA. Perhaps he feels that the Court was biased, as well, in its ruling or whatever. But this -- this case has a lot of water under the proverbial bridge. Everybody knows it.
>
> Ms. Klein, you put forth this notion that your client's been aboveboard and everything he has done is pristine and he has done all the right things. All you have to do . . . go back and read Judge [Contillo's] findings just on discovery issues to see -- I made it clear -- I never understood, and even after hearing this case even more so when I looked back, why Ms. Zisa was proceeding with this case early on the way it did with -- I don't want to revisit all of that . . .
>
> . . . .
>
> It doesn't mean somebody is biased. I mean, I commend Mr. Strasser. I don't -- you know, he stepped into this case early on. I didn't want to revisit some of the things that fell upon him in this case.
>
> But, in the midst of it all, here we are in a -- again, I think he

---

[27] What Mr. Zisa fails to mention is that the SFA's inability to file tax returns stemmed largely from Mr. Zisa's malfeasance with regard to the total lack of transparency as to his management of Attessa and there was insufficient documentation as to the income and as to the expense deductions that Mr. Zisa wanted to claim such that Mr. Christodoro had serious concerns about signing off as to any such draft tax returns.

> did a very -- it was a very difficult job. And again, I think he has done an excellent job, so I am going to deny that application. If any case needed a [SFA], it's this one.
>
> If I approved the sale and it goes through, then once everything is done, then perhaps there is no further need, even with an appeal pending. If the matter is stayed, then of course we are going to need somebody. I don't even know how that is going to work out.
>
> I certainly can't find that he was biased.
>
> [(3T37:12-39:18)].

Again, the Trial Court clearly considered the record here--in which the Trial Court point to Mr. Zisa's "concerns" as to the SFA and categorically rejected them as baseless.[28]

Moreover, the record in this matter, especially with regard to the Court's assessment of Mr. Zisa's attacks against a court-ordered professional, certainly consists of more than just the February 15, 2024 transcript. The record also includes the Court's post-trial findings on July 27, 2022 with regard to Mr. Zisa's behavior, in addition to the discovery shenanigans already acknowledged in his brief on appeal, including:

- The fact that the Trial Court had long been puzzled by Mr. Zisa's behavior: "So, again, let me say this, I never understood from day one why Mr. Zisa conducted himself in this case the way he did." (1T17:12 to 14).

---

[28] In all reality, the attempted removal of the SFA--and the attendant delays in installing a replacement SFA--was just another attempt by Mr. Zisa to throw up a roadblock to the imminent buyout of his interest in Attessa.

- The fact that the Trial Court pointed out that the court-appointed forensic accountant was "demonized and brutalized, in my opinion treated with disrespect" by Mr. Zisa. (1T17:25 to 26:1).
- The Trial Court's finding that, at one point, the SFA was sued by Mr. Zisa. (1T18:2 to 3).
- And the finding that there was "no doubt" that Mr. Zisa's behavior "was obstructionist." (1T18:24 to 25).

Accordingly, the Trial Court's denial of Mr. Zisa's motion to terminate the SFA was based on adequate, substantial, and credible evidence, including the Trial Court's intimate and extensive knowledge of the history of the case.

POINT III

THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN GRANTING THE FEBRUARY 16, 2024 BUYOUT ORDER

(Raised Below at 3T; Da311-318)

In an alternative argument which concedes that the record supports the Trial Court's findings, Mr. Zisa then goes on to claim that the Trial Court erred, as a matter of law, in granting the February 16, 2024 Buyout Order.[29] Mr. Zisa's argument in this regard is premised on a tortured interpretation of the July 28,

[29] Mr. Zisa complains that the Buyout Order was also entered in error because it violated N.J.S.A. 42:2C-48(b). But this section of the RULLCA, which involves the dissolution of an LLC, does not prohibit a court from entering a buyout order. To the contrary, this section actually provides for flexibility in the remedies permitted to the court, stating that "the court may order or a party may seek a remedy other than dissolution, including, but not limited to, the appointment of a custodian or one or more provisional managers." Furthermore, a buyout is expressly permitted by a companion provision of the RULLCA, N.J.S.A. 42:2C-47(c).

2022 Order and the August 24, 2023 Final Order.

On a de novo review involving a claim of an error of law (including a claim involving the interpretation of a trial court's order), the reviewing court is constrained to consideration of the facts as established in the record. See EnviroFinance Grp., LLC v. Envtl. Barrier Co., LLC, 440 N.J. Super. 325, 339 (App. Div. 2015) (". . . we accord no special deference to a trial judge's interpretation of the law and legal consequences that flow from established facts[.]"). The best evidence of the proper interpretation of the orders at issue here (especially in a complicated matter which involves testimony and extensive fact finding) is the interpretation pronounced by the author of those orders--the Trial Court. See Cuevas v. Chrysler Corp., 2011 N.J. Super. Unpub. LEXIS 1492, at *13 (App. Div. June 10, 2011) (Pa232-236) ("Finally, we defer to the trial judge's interpretation of his own order."); see also In re Lazy Days' RV Ctr. Inc., 724 F.3d 418, 423 (3d Cir. 2013) ("The Bankruptcy Court . . . was well suited to provide the best interpretation of its own order[.]")

Based on the foregoing, and as more fully set forth herein, it is clear that the Trial Court did not err as a matter of law when it entered the February 16, 2024 Buyout Order.

A. The Trial Court Did Not Err in Upholding Its Decision that Mr. Christodoro Was the Presumptive Purchaser of Mr. Zisa's Rights in Attessa

Mr. Zisa advances the notion that Mr. Christodoro, once he exercised his buyout option, was required as a matter of law (i.e., pursuant to the Trial Court's own order) to prepay in advance an undetermined amount of carrying costs. Mr. Zisa further maintains that because Mr. Christodoro failed to pre-pay this undisclosed amount of money, Mr. Zisa's unilateral payment of $25,000 to the SFA "for Attessa expenses" meant that he had somehow usurped Mr. Christodoro's place as the purchaser. Unfortunately for Mr. Zisa, this theory flies in the face of both logic and the plain language of the orders entered on July 28, 2022 and August 24, 2023, and this Court should reject out of hand Mr. Zisa's contention that he assumed the mantle as the rightful purchaser of Attessa.

The July 28, 2022 Order entered by the Trial Court stated simply that "Plaintiff may buy out the interest of Defendant. If Plaintiff chooses not to buy out Defendant, then Defendant may buy out Plaintiff's interest." (Da139). This Order makes no mention of any preconditions placed on Mr. Christodoro's right of first refusal or circumstances that would trigger a potential forfeiture of the buyout right.

More than a year later, the August 24, 2023 Final Order, entered in conjunction with the disposition of the cross-motions for reconsideration (and

the cross-motions for enforcement), reiterated the Trial Court's ruling that Mr. Christodoro had the right of first refusal:

> Plaintiff will be permitted to exercise the option to buy out Defendant's interest in accordance with paragraph I of the July 22, 2022, order within ten (10) days of the date of this order. If Plaintiff does not exercise the option to buy out the Defendant's interest within ten (10) days, then Defendant may then exercise the option to buy out Plaintiff's interests in accordance with Paragraph I of the July 27, 2022, Order within ten (10) days.

(Da149). Then, two sentences later, the August 24, 2023 Final Order further stated that

> If either party exercises the option to buy out the other, then as of the date of this order, they **shall be responsible of any further management fees and carrying costs of the properties** and shall bear the costs and expenses of transferring title to the property and refinancing the loans.
>
> [(Da149-50) (emphasis added).][30]

The Final Order, while slightly more detailed that it predecessor, did not impose any preconditions on Mr. Christodoro's right of first refusal or circumstances that would trigger a potential forfeiture of that right as insisted by Mr. Zisa. A clear reading of either order's plain language shows that neither order--as Mr. Zisa's contention would require were his argument to succeed--

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[30] Lest there be any question as to the Trial Court's sanguinity with the wording of the August 24, 2023 Final Order, on October 10, 2023, the Trial Court sent an email unequivocally stating that "The Court would like to make clear that it has no intention of amending [the August 28, 2023] Final Order, which speaks for itself." (Da173).

conditions Mr. Christodoro's purchase right on the **pre-payment** of the future carrying costs. It simply requires Mr. Christodoro to be responsible for those costs going forward.

In keeping with the Final Order, Mr. Christodoro formally exercised his buyout right on August 25, 2023, and thus became responsible for all carrying costs and management fees which were incurred after that date. When Mr. Zisa complained that Mr. Christodoro had not provided any advance funds to the SFA to cover future carrying costs (Da155) (". . . we have not been notified that he has complied with his other obligations in the Order, specifically the funding of any carrying costs, even in a basic preliminary amount . . ."), and in fact attempted to provide a check for those funds, the SFA assured Mr. Zisa that the SFA was:

> [M]onitoring all expenses going forward, as same will be applicable and chargeable to Mr. Christodoro as of the date of the exercise of the option pursuant to the terms of the Court's Order. It was also discussed that I will be advising Mr. Christodoro of a cash infusion, if necessary, to the LLC in the event that the rents do not cover the ongoing expenses.
>
> [(Da162).]

The SFA also returned Mr. Zisa's check to him as unnecessary "based on the fact that the carrying costs issue is being addressed, and as of this date, no funds have been required for the carrying costs as same are being reviewed and

calculated pursuant to the discussions which took place at the September 6 meeting." (Da162-63). However, Mr. Zisa continued to insist that he, not Mr. Christodoro, was the rightful purchaser--this time accusing the SFA of flouting the August 24, 2023 Order. (Da167) ("Mr. Christodoro has not provided any funds to the entity and Mr. Strasser as [SFA] has allowed him to do so in contravention of the Final Order."). To be clear, aside from the fact that there was no such obligation to prepay Attessa's expenses, Mr. Zisa has not (and cannot) point to any support in the record which supports his contention that Mr. Christodoro was ever unwilling to fund the future (i.e., post-August 24, 2023) carrying costs of Attessa.

Then, taking another tack, Mr. Zisa characterizes Mr. Christodoro's right of first refusal an "option," and he attempts to analogize it to the case of Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Associates, 182 N.J. 210 (2005). To be sure, if Mr. Zisa's fanciful reading of the August 28, 2023 Final Order were accurate, the analogy to Brunswick Hills might be instructive. In that case, "a commercial tenant was obliged to exercise an option for a long-term lease by **both giving notice and tendering a fixed sum of money** to the landlord by a specified date." Id. at 214 (emphasis added). Specifically, the option contract contained explicit requirements that the "plaintiff both . . . notify defendant of its intention and to pay $150,000" by a

date certain. Id. at 216. When the plaintiff failed to make the payment by the contractual deadline, the defendant declared that the option had not been properly exercised. Id. at 220. The trial court, the Appellate Division, and finally the Supreme Court, all agreed that the contract clearly contained two conditions: (1) exercise of the option, **and** (2) payment of a set sum by a fixed deadline. Id. at 221-23.

Here, there was no fixed sum due from Mr. Christodoro, nor did the carrying costs have to be paid by a date certain. All that was ordered was that the purchaser (Mr. Christodoro) bear future responsibility for all carrying costs, which was clearly understood by both the SFA and Mr. Christodoro. As such, the Trial Court correctly ruled that Mr. Christodoro had timely exercised his right of first refusal to purchase Mr. Zisa's interest in Attessa, and by logical extension, that he did not forfeit that right because of any so-called "inaction" related to the pre-payment of the carrying costs.

B. The Trial Court Did Not Err in Rejecting Mr. Zisa's Request for a Second Round of Updated Appraisals

Mr. Zisa next challenges the Trial Court's ruling which denied his request for a second round of updated appraisals of the Properties--which, contends Mr. Zisa, were also required as a matter of law under the Trial Court's orders.

Mr. Zisa claims that the Trial Court's usage of the term "preliminary calculations" during his colloquy at oral argument on August 23, 2023 must

mean that a second set of updated appraisals was required. However, despite Mr. Zisa's claim that the plain language of the Final Order supports his theory, notably absent from the resulting August 24, 2023 Final Order is any requirement that the SFA, having already conducted updated appraisals in the Fall of 2022, was in any way legally-bound to conduct a second set of updated appraisals.

Instead, the plain language of the August 24, 2023 Final Order referenced paragraph 1 of the July 28, 2022 Order. The plain language of this paragraph stated clearly that "Judgment is entered on behalf of Plaintiff" and that "[t]he original Harris appraisals should be updated to reflect current valuations and all liens shall be re-calculated as to the date of the judgment." That judgment was dated July 28, 2022. In keeping with this requirement, the appraisals were updated between August and November of 2022--therefore expressly reflecting the values as of the date of the Judgment in question.

Mr. Zisa claims that the yearlong delay between the entry of the July 28, 2022 Order and the August 24, 2023 Final Order bestows upon Mr. Christodoro a windfall--but this is not accurate. No matter how much Mr. Christodoro had to pay to remove Mr. Zisa from the mortgages upon the closing following the entry of the August 24, 2023 Final Order, the determination of Mr. Zisa's value in his remaining forty percent interest in Attessa for purposes of the buyout was

expressly based on the appraisal values and the corresponding mortgage values relating to the entry of the judgment--the point in time when Mr. Zisa forfeited his right to ownership in Attessa.[31]

To be sure, the only reason that there was any delay between the entry of the July 28, 2022 Order and the August 24, 2023 Final Order is because of Mr. Zisa's tactics in conjunction with the reconsideration process. Mr. Zisa attempts to shift the blame for this delay by pointing out that Mr. Christodoro filed first for reconsideration of the trial decision. (Db5). But it must be emphasized that on August 17, 2022 (i.e. within 20 days of the issuance of the July 28, 2022 Order), Mr. Christodoro filed a concise, seventeen-page motion for reconsideration in which he merely asked the Trial Court to reconsider the virtually unchallenged determination by his forensic expert that Mr. Zisa's interest in Attessa had been wiped out, or in the alternative, that the Trial Court at least reduce the buyout amount based on the expert's unrebutted calculations as to the "excess" distributions Mr. Zisa took for himself but which were not charged to him by the Trial Court. (Da140).

The disposition of Mr. Christodoro's entirely unremarkable reconsideration

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[31] Mr. Zisa incorrectly states that the mortgage balances were updated in August of 2023. As clearly stated in the letter issued by the SFA on February 22, 2023, the mortgage balances used were as of August of 2022. More importantly, there is nothing unfair about Mr. Christodoro receiving the full benefit of the equity increase as a result of the mortgage pay-down on the Attessa Properties following the date of the judgment and Mr. Zisa's attendant dissociation.

motion should have delayed the ultimate disposition of the matter by no more than one motion cycle, but Mr. Zisa, yet again, engaged in gamesmanship and improper litigation tactics. Namely, after terminating his relationship with the attorneys who tried the case on his behalf, Mr. Zisa retained new counsel, who requested a **several-month extension** to file a response to Mr. Christodoro's straightforward reconsideration motion.

On December 18, 2022--four months after Mr. Christodoro filed his reconsideration motion--Mr. Zisa filed his so-called "opposition and cross-motion for reconsideration." (Da142-143). However, instead of responding to Mr. Christodoro's motion and perhaps raising a few discrete issues of his own for reconsideration based upon the evidence presented at trial and the legal theories and conclusions advanced in Mr. Zisa's proposed conclusions of law, new counsel for Mr. Zisa filed a thousand-page tome (including a seventy-five-page certification accompanied by eighty-three exhibits--many of which had never even been produced in discovery, let alone never introduced at trial) purporting to be a "reconsideration" motion but which was, in fact, Mr. Zisa's attempt to relitigate many aspects of this case. (Pa81-156).

Mr. Zisa should not now be allowed to benefit from those tactics by claiming that the yearlong delay in the buyout process--of which Mr. Zisa was the sole author--somehow created an unfair windfall to Mr. Christodoro. See

Capparelli v. Lopatin, 459 N.J. Super. 584, 611-12 (App. Div. 2019) ("The equitable doctrine of unclean hands grants discretion to a trial court to refuse relief to one who is a wrongdoer with respect to the subject matter of the suit, and requires that [a] suitor in equity must come into court with clean hands and . . . keep them clean after his entry and throughout the proceedings.") (internal citations and quotations omitted; alterations in original).

The Trial Court expressly acknowledged that the parties had conducted the re-appraisals contemplated in the July 28, 2022 Order, and that:

> It took a substantial amount of time and I think what's throwing things off, and certainly it's -- it's not unusual as we have had extensive motion practice, **including the reconsideration application that basically took a year**, so, you know, it's -- it is like drawing a new line in the sand. We can reappraise it now and have another six months or whatever. So I never ordered a third appraisal or whatever, but I am always willing to hear from the parties.

(3T13:15-24) (emphasis added). Furthermore, as previously stated, the Trial Court stated unequivocally its crystal clear understanding of its own orders:

> I think with this we are finally where he exercised the option, he buys it at the price of the appraisals. To say we are going to stop now and update all these appraisals and maybe comes out less, maybe comes out more, then it is unfair that it's now getting less because all this time went by. **The arguments will never end**. We can't keep drawing new lines in the sand. **The judgment that I was referring to is obviously the judgment that was entered on July 28, 2022 in terms of redoing the appraisals**. We can redo them over and over again, but it is what it is.

[(3T47:18-48:3) (emphasis added).]

As such, the Trial Court correctly denied Mr. Zisa's argument that the SFA should have conducted a second re-appraisal of the Properties.

C. The Trial Court Did Not Err in Deducting the $43,446.17 Share of Mr. Zisa's Capital Call from His Buyout Payment

Finally, Mr. Zisa complains that the Trial Court improperly deducted $43,446.17, representing Mr. Zisa's responsibility for his share of the outstanding expenses of Attessa Properties--but only those expenses which had been incurred prior to August 25, 2023.

As previously noted, the August 24, 2023 Final Order stated that:

> If either party exercises the option to buy out the other, then as of the date of this order, they **shall be responsible of any further management fees and carrying costs of the properties** and shall bear the costs and expenses of transferring title to the property and refinancing the loans.

(Da149-50) (emphasis added). Since Mr. Christodoro formally exercised his buyout right on August 25, 2023 and, as properly recognized by the SFA, Mr. Christodoro became solely responsible for all of the carrying costs and management fees which were incurred by Attessa after that date. Logically, this means that any carrying costs and management fees incurred prior to that date remained joint expenses.

On November 27, 2023, the SFA issued a capital call to Mr. Christodoro and Mr. Zisa for the total amount of $86,892.34. The SFA made clear that this

amount represented "liabilities of Attessa Properties LLC [which] existed as of August 24, 2023" and that they were to be "split equally between the parties." (Da175). At oral argument on February 15, 2024, the SFA made a representation to the Trial Court that "Mr. Christodoro did on--the date was in December, he deposited the sum, the total sum of $1,449,769 which included his option, exercised right and his $43,446 for the capital call. Mr. Zisa did not deposit any funds to the [SFA]." (3T31:15-19).

Mr. Zisa advances the argument to this Court that, because these obligations remained outstanding after Mr. Christodoro exercised his buyout right, they became his sole responsibility. Not only does this argument fly in the face of the plain language of the August 24, 2023 Final Order, which made Mr. Christodoro solely responsible for "**further** management fees and carrying costs," but it also entirely ignores the "equitable truth," that the totality of the expenses which were the subject of the capital call were solely attributable to Mr. Zisa's ongoing unreasonable actions.

In sum, there is no merit to Mr. Zisa's claims on appeal that the "forced" payment of his obligation towards half of the Attessa expenses up to August 24, 2023 represents a windfall to Mr. Christodoro. Indeed, considering all of the equities, as noted by the SFA, it appears that Mr. Christodoro will be solely responsible for more than $220,000 in renovations and expenses related to the

Properties--expenses made necessary in large measure due to Mr. Zisa's failure to undertake these repairs when he was running Attessa. Even though these renovations and repairs deal with deteriorating conditions during the time period Mr. Zisa still had an affiliation with, and responsibility for, Attessa, Mr. Zisa has not been charged with any proportional contribution in this regard.

It would seem, therefore, that as a matter of equity it is Mr. Zisa who has reaped the windfall by escaping financial responsibility for which he is undoubtedly accountable. Again, as noted in the Companion Appeal, Mr. Christodoro is prepared to move on at this juncture rather than continue to seek in this legal quagmire money to which he is entitled from Mr. Zisa.

CONCLUSION

For the foregoing reasons, Mr. Christodoro requests that this Court affirm, in their entirety, the February 16, 2024 Orders entered by the Trial Court.

Respectfully submitted,

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/s/ Joshua P. Cohn
Joshua P. Cohn

Dated: January 2, 2025

SUPERIOR COURT OF NEW JERSEY

JONATHAN CHRISTODORO, individually and on behalf of Attessa Properties, LLC,

Plaintiff-Appellee,

v.

FRANK ZISA, PETER ZISA and ATTESSA PROPERTIES, LLC, as nominal defendant,

Defendant-Appellant.

APPELLATE DIVISION
DOCKET NO. A-003271-23

Civil Action

ON APPEAL FROM THE FEBRUARY ORDER OF THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, BERGEN COUNTY

Docket No.: BER-C-229-19; BER-C-243-18

Sat Below:

Hon. Edward A. Jerejian, P.J.Ch.

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT FRANK ZISA

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Other Authorities

PRELIMINARY STATEMENT

Christodoro[1] has failed to adequately refute that the trial court made numerous errors in its post-trial Buyout Order,[2] each of which warrants vacating and remanding the Buyout Order. First, Christodoro was unable to demonstrate the trial court's Buyout Order complied with Rule 1:7-4(a). Instead of pointing to specific excerpts of the transcript that he contends comprise the requisite findings, Christodoro offers a blanket cite to a 15-page section of the transcript of the decision, and then spends much of his argument attempting (and failing) to distinguish the case law Zisa cited in his appellate brief. But the case law cited by both parties is clear – when the trial court fails to offer sufficient findings of fact and legal analysis to support its orders, as the trial court did here, such orders must be vacated and remanded.

Second, even if the Buyout Order complied with Rule 1:7-4(a), Christodoro has failed to sufficiently demonstrate the Buyout Order is supported by credible evidence in the record. Instead of acknowledging the reality that the Buyout Order explicitly states SFA Strasser had confirmed and represented that Zisa did not object to the valuation of his interest, when no such confirmation and/or representation had or could have happened, Christodoro creates a strawman argument Zisa never made,

[1] All capitalized terms have the same definition as they do in Zisa's moving brief.

[2] Zisa has withdrawn the portion of his appeal regarding the trial court's order refusing to remove the SFA, *i.e.*, the Strasser Order. Da320. The Buyout Order is therefore the only subject of this Appeal.

claiming Zisa disputed SFA Strasser's "calculation" but not his "methodology," and that such distinction renders the Buyout Order supported by record evidence. Such an argument is disconnected from Zisa's appeal and meant to obfuscate the fact that Christodoro has no basis to oppose Zisa's actual argument.

Third, Christodoro has failed to substantively refute that the trial court's rulings regarding the interpretation and application of its prior orders are incorrect. Christodoro baselessly and incorrectly states the Final Order: (i) did not impose any requisite financial condition to the exercise of his option; (ii) did not require updated appraisals of Zisa's interest in Attessa; and (iii) allowed the trial court to deduct $43,446.17 from Zisa's share of Attessa, when the plain text of the Final Order demonstrates otherwise.

Christodoro has failed to overcome Zisa's arguments that the Buyout Order must be vacated and this matter remanded to the trial court.

LEGAL ARGUMENT

I. CHRISTODORO FAILS TO SHOW THE TRIAL COURT MADE SUFFICIENT FINDINGS OF FACT

Christodoro has failed to refute the fact that the trial court's decision is devoid of the sufficient findings of fact required by Rule 1:7-4(a).[3] It is telling that in his

[3] To the extent Christodoro argues that this argument should not be considered on appeal because it was not raised below, such an argument is patently absurd. It is axiomatic that whether the trial court's decision provided sufficient findings of fact is raised at the appellate level, not at the trial court level.

opposition, Christodoro fails to cite to any specific portions of the transcript that allegedly contain these "sufficient findings of fact." Instead, Christodoro conclusorily states that "as memorialized in the fifteen-page portion of the transcript of the February 15, 2024 oral argument in which the Trial Court rendered its decision . . . , the Trial Court made ample findings on each issue with which it was presented," and gives a general cite to pages 37 through 52 of the transcript. Pb29.

A review of those fifteen pages only bolsters Zisa's argument. Nowhere in the transcript are the requisite legal standards set forth or an analysis of the facts pursuant to those standards found. See R. 1:7-4(a) (A judge has a duty to make findings of fact and conclusions of law "on every motion decided by a written order that is appealable as of right.") Indeed, Christodoro has failed to substantively dispute that the trial court did not cite to: (i) any law or statute in support of its decision regarding the Buyout Motion, or (ii) any specific factual support outside of its citation to its previous decision, presumably because no such legal holdings or factual analysis exist. 3T44:8-46:2. This failure is a concession by Christodoro that the trial court's orders are deficient pursuant to R. 1:7-4(a), and that vacatur and remand are thus required.

Instead of engaging with this reality, Christodoro instead attempts (and fails) to distinguish the cases cited by Zisa in his moving brief. First, Christodoro states that "in Paonessa Colon & Rectal Surgery v. Cernero Children's Trust & JMC

Management Group, [2017 WL 4078852, at *1 (N.J. Super. Ct. App. Div. Sept. 15, 2017)] the trial court denied a motion for reconsideration and ordered fees and costs in favor of the prevailing party 'without any explanation whatsoever.'" Pb28. Christodoro fails to explain how Paonessa is distinguishable here. This is exactly the case here – the trial court issued its decision "without any explanation whatsoever." Indeed, in granting the Buyout Motion, the trial court stated, "[M]y decision was Mr. Christodoro would have the first opportunity and after the appraisals were redone and I am going to live by that." See 3T44:13-18 (emphasis added). There is no explanation of the trial court's decision present here or anywhere else in the transcript or order – instead, the trial court makes the conclusory statement that it is "going to live by [its previous decision and] . . . grant that application" without "any explanation whatsoever." Id.; Paonessa, 2017 WL 4078852, at *1. As such, Paonessa is both applicable and instructive, and this Court too should vacate the Buyout Order.

Second, Christodoro attempts to "distinguish" Johniken v. Beebe, 2022 WL 17258825, at *1 (N.J. Super. Ct. App. Div. Nov. 29, 2022), from the instant action on the basis that in Johniken, "the trial court reserved its decision, and then entered an order without issuing any written or oral findings whatsoever." Pb28. This is inaccurate. While the trial court in Johniken reserved its decision on the motion, at the trial the judge communicated the basis of the subject order, conclusorily stating, "I'm denying the motion to dismiss the complaint based on the reliance [on] the time

of the essence clause by the seller. And my reason is that I believe that the behavior and conduct of the parties, especially of the seller at this point, indicated to me that time really wasn't of the essence." Johniken, 2022 WL 17258825, at *2. In reviewing this statement, the appellate court found that the trial judge had failed to explain the rationale behind the decision, and thus, being "[u]nsure of the legal and factual basis for the order, and in order to facilitate a meaningful review, [the appellate court is] constrained to vacate the September 3, 2021 final judgment and remand . . . ." Id. The trial judge's decision in Johniken is strikingly similar to the conclusory decision in this action. 3T44:13-46:2. Indeed, like the trial judge in Johniken, the trial court here conclusorily stated: "[M]y decision was Mr. Christodoro would have the first opportunity and after the appraisals were redone and I am going to live by that." Id. The trial court failed to provide the reasoning, either legal or factual, behind its decision. Thus, Christodoro's attempt to distinguish Johniken from the action at hand fails.

Third, Christodoro makes the throwaway argument that Curtis v. Finenran is distinguishable, because in Curtis, "the court entered a judgment without providing **any** written or oral findings of fact." Pb28 (emphasis added). This is incorrect. In Curtis, the Court held, in reference to Rule 1:7-4, that the "[t]he problem on appellate review in this case is that the trial judge did not set forth **how** he estimated the projected earnings of the decedent." Curtis v. Finneran, 83 N.J. 563, 570 (1980)

(emphasis added). At no point did the Court state that the issue on review was the absence of "any written or oral findings of fact" – rather, like here, the issue was that the trial court failed to provide its rationale for its findings, factual, legal, or otherwise, and thus the Court was unable to appropriately review the trial court's decision.

Finally, Christodoro cites to Heinl v Heinl, Salch v. Salch, and Donfield v. Donfield, claiming that in all three of those cases, the issue pursuant to Rule 1:7-4(a) was the lack of specifically prescribed factors regarding alimony and/or attorney's fees. This distinction is insignificant – in all three of these cases, the trial court failed to provide its factual or legal basis for its orders, which thus mandated the appellate court to vacate the subject orders and remand to the trial court. The case law cited by Zisa is thus both applicable and determinative.

Furthermore, the case law cited by Christodoro in his opposition supports Zisa's position, not Christodoro's. Christodoro cites to Concerned Citizens of Princeton, Inc. v. Mayor & Council of Borough of Princeton in support of his argument that the trial court here fulfilled Rule 1:7-4(a). But Concerned Citizens is entirely inapposite because the trial court there issued a 72-page written decision that properly summarized the facts and legal issues at hand. 370 N.J. Super. 429, 450 (App. Div. 2004). There is no such detailed and lengthy written decision here — instead, there is a transcript containing a deficient oral decision and no written

decision whatsoever. Concerned Citizen thus supports Zisa's position that the trial court's decision here, which is devoid of both factual and legal support, is in contravention of Rule 1:7-4(a) and must be vacated and remanded.

I. CHRISTODORO HAS FAILED TO SUFFICIENTLY DISPUTE THAT EVEN IF THE BUYOUT ORDER COMPLIED WITH R. 1:7-4(A), THE "FINDINGS" CONTAINED THEREIN ARE UNSUPPORTED

A. PLAINTIFF'S ARGUMENT THAT DEFENDANT FAILED TO OBJECT TO THE VALUATION OF HIS INTEREST IS MERITLESS

Rather than face the reality that the trial court erred in finding the SFA "has confirmed and represented to the Court that he has not received any objection from Plaintiff or Defendant to the Special Fiscal Agent's calculation" (Da321), Christodoro instead constructs a strawman argument and spends three pages of his brief opposing an argument Zisa did not make.

The Buyout Order states SFA Strasser "**has confirmed and represented to the Court** that he has not received any objection from Plaintiff or Defendant to the Special Fiscal Agent's calculation[.]" Da322. Christodoro does not dispute, however, that, in fact, SFA Strasser never confirmed and represented to the Court that he did not receive any objection from Plaintiff or Defendant regarding his September 26, 2023 calculation, nor could he have. Instead, Christodoro inexplicably argues that while Zisa objected to the appraisals as outdated and therefore inaccurate, Zisa did not object to the methodology of the calculation

performed by the SFA. Such an argument is meaningless. The trial court did not find SFA Strasser confirmed Zisa did not object to the "methodology" of his calculation—rather, the trial court found SFA Strasser confirmed Zisa did not object to the calculation, full stop. Christodoro cannot retroactively adjust the wording of the order to support his argument.

Furthermore, to the extent Christodoro claims: (i) Zisa's contention that the buyout valuation should be updated was rejected by the trial court; and (ii) Zisa is demanding a "valuation expert," a post-trial issue, such claims are irrelevant to this appeal. The issue here is simple – is the trial court's finding that SFA Strasser "**confirmed and represented to the Court** that he has not received any objection from Plaintiff or Defendant to the Special Fiscal Agent's calculation" (Da322) (emphasis added) supported by credible evidence in the record? The answer here is also simple – no, it is not. As pointed out by Zisa, and conceded by Christodoro through his silence, there is zero evidence in the record that SFA Strasser made or could have made this confirmation and representation to the trial court.

Finally, it is misleading for Christodoro to try and claim that any error regarding the Buyout Order "whether as to the mathematical calculation or as to the methodology . . . is clearly harmless." Pb33. Once again, Christodoro is opposing an argument Zisa never made. The issue here is not whether the trial court properly accepted the valuation of Zisa's interest and rejected Zisa's objections to same – the

issue is whether the trial court's finding that SFA Strasser confirmed and represented to the trial court that Zisa did not object to his calculation is supported by credible evidence, and it is not. Such an error is not harmless because the trial court apparently relied on this representation regarding the absence of opposition in coming to its Buyout Order decision. Thus, the fact that the Buyout Order is incorrect in this respect and that objection did exist compels this Court to vacate the Buyout Order and remand the motion to the trial court.

B. ZISA HAS WITHDRAWN HIS APPEAL REGARDING THE STRASSER ORDER

SFA Strasser was discharged in an order entered on November 4, 2024. See M-001276-24, Pa121. Zisa subsequently agreed to withdraw that portion of his appeal regarding the Strasser Order. Db23-24. As such, this issue is mooted.

II. CHRISTODORO HAS FAILED TO SUFFICIENTLY DISPUTE THAT EVEN IF THE BUYOUT ORDER COMPLIED WITH R. 1:7-4(A), THE APPLICATION OF LAW IS INCORRECT

A. CHRISTODORO FAILS TO REFUTE THAT HE DID NOT EXERCISE HIS BUYOUT RIGHT

Christodoro has failed to demonstrate he exercised his option to purchase Attessa in conjunction with the Final Order. The language of the Final Order is clear, and states that each party, beginning with Plaintiff, shall be permitted to buy out the other party's interest "within ten (10) days of the date of this order." Da149-50. The Final Order then states that, "If either party exercises the option to buy out the other,

then **as of the date of this order,** they shall be responsible [for] any further management fees and carrying costs of the properties and shall bear the costs and expenses of transferring title to the property and refinancing the loans." Id. (emphasis added). It is inaccurate for Christodoro to claim the Final Order "did not impose any preconditions on Mr. Christodoro's right of first refusal or circumstances that would trigger a potential forfeiture of that right . . . ." Pb40. The plain reading of the Final Order demonstrates that for a party to properly exercise his option, that party must ***also*** provide payment for all "management fees and carrying costs of the properties" arising from the date of the Final Order onwards[4] – the two conditions travel together. Da149-50. By failing to tender payment for the management fees and carrying costs by September 3, 2023, Christodoro failed to comply with the Final Order, and therefore waived his option to purchase.

To circumvent this reality, Christodoro offers several meaningless arguments, including that: (i) the SFA accepted Christodoro's deficient exercise of his option (Pb41-42); and (ii) Christodoro was never "unwilling" to fund the carrying costs and management fees. (Pb42). Both of those arguments fail. Christodoro's reliance on the SFA's response to his delayed payment is unavailing – the SFA is not the arbiter

[4] Indeed, Christodoro's failure to pay the carrying costs as of the Final Order date resulted in Zisa contributing to the paydown of the mortgages on the Properties after the Court had determined he would no longer have an interest in those Properties.

of his compliance with the Final Order, and such a determination is left to the courts, not financial professionals. It is also irrelevant whether Christodoro was never "unwilling to fund the future . . . carrying costs of Attessa" (Pb42) – what matters is that Christodoro did not provide those funds within the court-ordered time period. Accordingly, the trial court erred in entering the Buyout Order which inherently found Christodoro had timely exercised his buyout option.

Christodoro then proceeds to mischaracterize what was provided to him by the Final Order. The Final Order provides Christodoro with an "**option**" to buy out Attessa – the plain language of the Final Order states that "Plaintiff will be permitted to exercise the **option** to buy out Defendant's interest[.]" Da149. It is not, as Christodoro states, a "right of first refusal." Pb42. Christodoro is attempting to mischaracterize his option in an attempt to escape the ambit of Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 214 (2005). Such a ploy fails. Like here, the subject provision in Brunswick gave the plaintiff an option to exercise, coupled with a financial requirement by the option deadline. As conceded by Christodoro, the Appellate Division and Supreme Court all agreed that the exercise of the option needed to be coupled with the financial payment, and that the plaintiff's failure to tender payment in that case caused the option to lapse. Id. This is directly analogous to the case here, where Christodoro was obligated to both: (i) provide notice that he was exercising his option; **and** (ii) tender funds for

management fees and carrying costs. It is irrelevant that the provision in Brunswick called for a fixed sum for payment – what matters is that there was a financial obligation attached to the exercise of the option, and one could not be complied with without the other. Christodoro's attempts to distinguish Brighton thus fail entirely.

The trial court failed to abide by its own Final Order in allowing Christodoro to be the purchaser of Attessa in the Buyout Order, rather than Zisa, who properly complied with the Final Order. Upon Christodoro's failure to exercise his option within the requisite time period, Zisa notified Christodoro that he intended to exercise his option **and** provided a substantial certified check in the amount of $25,000 payable to Attessa to begin covering carrying costs for the initial period. Da155. It is clear Christodoro only fulfilled one of the necessary elements of his option pursuant to the Final Order (thus causing his attempted exercise of his option to fail), while Zisa fulfilled both. Christodoro has not demonstrated otherwise. For these reasons, this Court should vacate and remand the Buyout Order.

B. THE FINAL ORDER REQUIRED UPDATED APPRAISALS OF ZISA'S INTEREST

Christodoro's argument that the Final Order does not require updated appraisals of value flies in the face of common sense and equity. The July 28 Order, which was incorporated by reference in the Final Order (and which served as the basis of the Buyout Order), required updated valuations to fairly effectuate any buyout. Da138. Christodoro's argument seems to turn on his claim that the

appraisals were updated as of "the point in time when Mr. Zisa forfeited his right to ownership in Attessa" (Pb45), i.e., July 28, 2022. However, that is inaccurate. As of August 24, 2023, Zisa still owned 50% of Attessa and had the possibility to own the entirety of Attessa. Da148-50. It therefore makes no sense for Christodoro to claim that Zisa "forfeited" his right to ownership over a year before, nor does it then make sense for any valuations to be based on that nonexistent "forfeit."[5]

Christodoro then inexplicably spends several pages criticizing Zisa for being the cause of the "delay" between the July 28, 2022 Order and August 24, 2023 Order Final Order. Such an argument is unavailing. Zisa, as a party and litigant in this action, was entitled to avail himself of all his legal rights and remedies, including moving for reconsideration. Indeed, Christodoro is the party who first moved for reconsideration – Zisa cross-moved in response. To the extent this caused any "delay," such delay is shared. Da140-43. Moreover, Zisa's motion practice has no bearing on whether Zisa is entitled to updated valuations, and Christodoro's inclusion of this point is nothing more than an attempt to prejudice Zisa that should not be countenanced.

[5] Indeed, the August 24, 2023 Order specifically contemplates Christodoro and Zisa are jointly liable for all of Attessa's management costs and fees incurred before August 24, 2023 to account for the reality that up until that date, both are owners of Attessa (Da150) – it is thus inaccurate for Christodoro to claim Zisa "forfeited" his right to ownership any time before then.

It is inaccurate for Christodoro to state Zisa is somehow attempting to "benefit" from this delay, nor has Christodoro been able to point to any reason why such delay should be seen as an example of "unclean hands," (Pb46), which should deprive Zisa from obtaining a fair and accurate value of his interest. Indeed, it is Christodoro who is behaving inequitably in attempting to deprive Zisa of the true value of his interest as of the date that he actually ceased to hold such interest.

It is inequitable, as well as against the plain language of its own Orders, that the trial court allowed SFA Strasser to premise the buyout values in the Buyout Order on information that was over two years old while Zisa continued to be a member of the entity and his interest was used to pay entity expenses. The trial court's Buyout Order should therefore be vacated and remanded.

C. CHRISTODORO HAS FAILED TO DEMONSTRATE THE TRIAL COURT'S DECISION TO DEDUCT $43,446.17 COMPLIED WITH ITS FINAL ORDER

Finally, Christodoro once again mischaracterizes Zisa's argument and mounts opposition to a strawman rather than addressing the actual arguments at hand. There is no dispute Christodoro was required to be solely responsible for all of Attessa's management fees and carrying costs incurred after August 24, 2023. The question here is whether the SFA should have applied the revenue generated by the Properties to any outstanding balance that was due and owing as of August 24, 2023, and whether he was then entitled to apply the revenues to fees and costs incurred ***after***

August 24, 2023. It is of no matter whether Zisa funded the capital call – the issue here is why SFA Strasser issued a capital call at all, instead of first applying the revenues generated by the Properties to Attessa's outstanding costs and fees.[6] Christodoro has offered no reason as to why or how this is equitable or correct in light of the Final Order, and thus has failed to dispute that the income generated by the Properties should first have been applied to any outstanding fees and costs incurred prior to August 24, 2023, as opposed to being used solely to defray Christodoro's obligations. Such a decision is in clear contravention of this trial court's prior orders, and, as such, vacatur and remand is warranted.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests this Court vacate the trial court's Buyout Order and remand the matter for a new hearing.

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By: */s/ Wendy F. Klein*
Wendy F. Klein

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[6] It is inaccurate for Christodoro to make the baseless claim that the "expenses which were the subject of the capital call were solely attributable to Mr. Zisa [ ]." Pb49. The capital call related to management fees and carrying costs that were Attessa's expenses and due as a matter of course – there is no factual support demonstrating standard renovation and repair costs were Zisa's fault.