GEORGE NTIM, **Plaintiff,** **v.** **CUBESMART MANAGEMENT, LLC,** **Defendant.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO.: A-003274-24** **ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: UNION COUNTY** **DOCKET NO. UNN-L-954-25** **Civil Action** **Sat Below:** **Hon. John G. Hudak, J.S.C.** **(Submitted: August 8, 2025)**

AMENDED BRIEF ON BEHALF OF PLAINTIFF-APPELLANT GEORGE NTIM

NAGEL RICE, LLP
BRUCE H. NAGEL- 025931977
103 Eisenhower Parkway
Roseland, NJ 07068
973-618-0400
Email: bnagel@nagelrice.com
Attorneys For Plaintiff-Appellant,
George Ntim

TABLE OF CONTENTS

Pages

TABLE OF JUGMENTS, ORDERS, AND RULINGS BEING APPEALED

	Document Name	Date	Appendix Page Number or Location
1	Order granting Defendant's motion to compel arbitration	May 9, 2025	Pa102
2	Statement of reasons	May 9, 2025	Pa104

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Other Authorities

INDEX TO PLAINTIFF'S APPENDIX

PRELIMINARY STATEMENT

Since 2018, Plaintiff-Appellant George Ntim ("Plaintiff") has rented a storage space from Defendant-Respondent CubeSmart Management, LLC ("Defendant") to store among other items, sports memorabilia of significant value to be sold at auction through his charity, the African Development Foundation. From October 2018 to December 2023, without a written agreement, Defendant's practice was to verbally re-negotiate Plaintiff's thirteen (13) month rental lease term directly with Plaintiff prior to the expiration of the current lease term. Consistent with this arrangement, in October 2023, Plaintiff attempted to communicate with Defendant to re-negotiate and extend the lease term that ended in December, 2023. Despite Plaintiff's efforts and requests to obtain the contact information of the individual responsible for the renegotiation, multiple representatives of Defendant were unhelpful in assisting Plaintiff.

Thereafter, one (1) month after the previous lease term expired, on or about January 31, 2024, for the first time, Plaintiff received a proposed New Jersey Self-Storage Rental Agreement from Defendant with an effective date of March 1, 2024. The proposed agreement contained, among other terms, an arbitration provision, subjecting any disputes regarding the lease to mandatory arbitration. Immediately after receiving the proposed agreement, Plaintiff again contacted Defendant's representatives to negotiate the new lease terms. In fact, from early February to

March 29, 2024, Plaintiff communicated with Defendant's representatives on at least six (6) occasions, each time, pleading with Defendant to connect him with someone to renegotiate his lease terms. Finally, on April 1, 2024, Defendant's Divisional Vice President presented Plaintiff with a "take it or leave it" offer. Before Plaintiff could accept or reject Defendant's offer, eight (8) days later, Plaintiff received a voicemail from Defendant's Senior Vice President, that the contents of his unit were sold.

It is undisputed that no agreement existed as of the date the contents were seized and sold. With no agreement, there was no consent to enter the unit. While the extremely valuable collection was worth hundreds of thousands of dollars, Defendant sent Plaintiff a check for $3,670.70 and never accounted for any facts relating to the "sale" of the valuables of Plaintiff's collection. Without any further information as to the whereabouts of his belongings, Plaintiff filed an Order to Show Cause and Verified Complaint seeking not only the details of the location of his belongings, but also for damages caused by their loss. Defendant filed a cross-motion to compel arbitration and stay the matter, citing to the unsigned agreement, which was granted by the trial court on May 9, 2025. In its written opinion, despite Plaintiff's failure to execute the proposed agreement, the trial court found the agreement to be valid and enforceable, including the arbitration clause contained therein. Additionally, in reaching its conclusion the trial court refused to consider Plaintiff and Defendant's actions in continuing to negotiate the new lease terms, including discussions which spanned months after the proposed agreement was sent to Plaintiff. In addition, the trial court ruled without holding a hearing regarding the circumstances surrounding the lease renewal.

The trial court's rulings were flaw for three reasons. First, as it is undisputed that Plaintiff never signed Defendant's proposed agreement and there is no evidence of explicit assent as required by the Supreme Court's holding in Leodori v. CIGNA Corp., the trial court's finding that Defendant's proposed agreement and arbitration provision were valid was in error. Second, in failing to consider evidence of Plaintiff and Defendant's continued negotiations regarding the essential terms of the agreement, which would have provided the Court with critical information as to whether the parties ever reached an enforceable agreement, the trial court misapplied the parol evidence rule. Alternatively, even if, *arguendo*, this Court finds that these two arguments are without merit, the trial court still erred because it failed to hold the required plenary hearing in order to take testimony and make factual determinations regarding numerous, material factual disputes.

For all the foregoing reasons, the decision of the trial court should be reversed, and this Court should remand this action to the trial court with instructions to lift the stay, remove the matter from arbitration and proceed in the trial court or, alternatively, to hold a plenary hearing before deciding the issue of whether the parties reached a valid and enforceable agreement.

PROCEDURAL HISTORY

Plaintiff filed his Order to Show Cause and Verified Complaint in Union County Superior Court, Law Division on or about March 10, 2025. (Pa001). On or about March 14, 2025, the Hon. Mark P. Ciarrocca, P.J.Cv. ("Judge Ciarrocca") entered Plaintiff's Order to Show Cause. (Pa020). On April 9, 2025, Defendant filed a cross-motion to compel arbitration and stay the matter. (Pa025). In addition, Defendant opposed Plaintiff's Order to Show Cause on April 16, 2025. (Pa048). On April 17, 2025, Plaintiff opposed Defendant's cross-motion. (Pa099). On April 18, 2025, Plaintiff withdrew his Order to Show Cause only, but not Plaintiff's Verified Complaint. (Pa101). Defendant filed a reply to Plaintiff's opposition on May 5, 2025.

On May 9, 2025, Defendant's cross-motion was heard by Hon. John Hudak, J.S.C. ("Judge Hudak") (Pa102). In a written opinion, Judge Hudak found the arbitration clause in the Agreement to be valid and enforceable and that Plaintiff's claims fall within the arbitration provision, see (Pa104), and entered an order granting Defendant's cross-motion to stay the case and compel arbitration. (Pa102).

On or about June 18, 2025, Plaintiff filed the instant appeal. (Pa113).

STATEMENT OF FACTS

A. Plaintiff Rents A Storage Unit From Defendant

On October 18, 2018, Plaintiff began renting a 10x15x12 storage space for among other items, sports memorabilia of significant value to be sold at auction through his charity, the African Development Foundation, at Defendant's location at 1004 U.S. Highway 1 in Rahway, New Jersey. (Pa001). Plaintiff's storage space included many autographed professional and college sports memorabilia items, including, for example, baseballs, bats, gloves, football helmets, basketballs, boxing gloves, footballs and tennis rackets. (Pa002). In addition to these items, the space also included other valuable items including New York Yankees and Mets jackets, a professional bull rider's jacket, 2,000 old time records, 100 gift bags from Turn 2 Foundation, 100 baseball books, 50 youth baseball bats, 20 baseball gloves, 10 hand and travel bags, 6 long winter coats, and 6 cases of little league baseballs. (Pa002).

On October 18, 2018, Plaintiff made payment to Defendant in the amount of $2,507.70, representing payment for a thirteen (13) month rental term, which included one (1) free month. (Pa002). Thereafter, Plaintiff continued with the practice of renewing the rental lease for a period of thirteen (13) months and making payment prior to the start of the lease term. (Pa002). Each time, Plaintiff would negotiate the new lease term with someone from Defendant's corporate office, typically a District Manager, as Defendant's employees in the Rahway location advised they were unable to negotiate lease terms. (Pa002). Specifically, for example, Plaintiff made payment of $1,840.95 on May 6, 2020, and $2,484.00 on May 11, 2021 to Defendant. (Pa002). When Plaintiff's lease term was ending in 2022, Plaintiff began negotiating with Defendant's District Manager/Marketing Operations Support Manager, Jill Messmer regarding a renewal of the lease, which ultimately led to an agreement for a new lease term of fifteen (15) months, with three (3) months free. (Pa003). On September 24, 2022, Plaintiff made payment of $2,484.00 to Defendant, representing payment for the lease renewal ending in December 2023. (Pa003).

B. Plaintiff's Negotiations With Defendant To Extend His Lease From <u>January 2024 Forward</u>

Prior to Plaintiff's lease term ending in December 2023, Plaintiff reached out to Jill Messmer in an attempt to negotiate a new lease, but Plaintiff's calls were not returned. (Pa003). On October 14, 2023, Plaintiff spoke to Defendant's Rahway supervisor Delores and staff member Don, requesting contact information for Jill Messmer, to renegotiate his new lease term. (Pa003). On October 20, 2023, Plaintiff received a phone call from District Manager Julio Melendez, but due to Mr. Melendez's prior history of lack of transparency and dishonesty in his dealings with Plaintiff, Plaintiff requested contact information for Mr. Melendez's supervisor, to discuss the new lease term. (Pa003). On the same day, Plaintiff received an email from Mr. Melendez's supervisor, Stephanie Burdo to discuss negotiating the new lease term. However, after Plaintiff responded to Ms. Burdo, he did not receive any further response. (Pa003). On November 28, 2023 and January 13, 2024, Plaintiff received a call from Delores and Don, wherein Plaintiff advised that he was still waiting for a return call from Ms. Burdo. (Pa004).

On or about January 31, 2024, Plaintiff received a New Jersey Self-Storage Rental Agreement from Defendant with an effective date of March 1, 2024[1]. (Pa004). A little more than a week later, Plaintiff placed two (2) phone calls to Defendant's corporate office and spoke with a representative named Akua. (Pa004). Plaintiff expressed his dissatisfaction with the lack of response from Mr. Melendez or Ms. Burdo regarding his request to speak about the new lease term. (Pa004). Akua advised Plaintiff that she communicated his concerns to Justin Brewer, Defendant's Divisional Vice President. (Pa004). On February 14, 2024, Plaintiff exchanged text messages with Mr. Brewer to schedule a time to speak about the new lease term. (Pa004). On the following day, Plaintiff spoke to Mr. Brewer, who was rude and unprofessional and for the first time presented Plaintiff with a "take it or leave it" offer, advising Plaintiff that if he did not remit payment in the amount of $394.00 per month for the next four (4) months (nearly double his prior rates), he would sell the contents of Plaintiff's storage space. (Pa004).

[1]This was the first time Plaintiff received such an agreement from Defendant.

On February 21, 2024, Plaintiff contacted Delores and Don and provided them with an update on his attempted negotiations with Mr. Brewer. (Pa005). On March 22, 2024, Plaintiff again contacted Defendant's corporate office and spoke with Akua, who advised she could not assist him in negotiating the new lease term. (Pa005). After receiving no response from Mr. Brewer or anyone else at Defendant's office, on March 29, 2024, Plaintiff sent an email to Defendant's President and Chief Executive Officer, Christopher Marr to express his displeasure with the lack of communication during the negotiation process and again, requested the contact information for Defendant's employee to discuss the lease term renewal. (Pa005). Specifically, Plaintiff's email stated, in relevant part:

> Historically, I pay my bill annually and do not visit the facility, as the Unit is solely used to store some high-level or valuable memorabilia items, which we auction at our annual events. Unfortunately**, I have been trying to discuss and settle my outstanding bill but have not been able to settle it** because your managers were not responsive because of the ongoing turnover.
>
> In fact, I tried to work with Stephanie and when I emailed her and did not hear back, I finally learn that she had been transferred and Justin is now the new manager in charge of the area and Julio. Undoubtedly, **I have been calling your corporate office several times trying to reach someone who can help in bringing my account up to date.**
>
> In any event, **I will be grateful if you can assist me with someone who can truly assist me to bring the account up to date or an accord**, so I can move my belongings back to the Extra Space.

(Pa005, Pa006)(emphasis added).

In response, on April 1, 2024, Plaintiff received a call from Mr. Brewer who advised Plaintiff that his newest "take it or leave it" offer was to pay $394.00 per month for the prior months and a rate of $199.00 going forward. (Pa006). Eight (8) days later, on April 9, 2024, Plaintiff received a voicemail from Defendant's Senior Vice President, Joe Fitzgerald, whereafter, Plaintiff returned Mr. Fitzgerald's call where he advised Plaintiff, for the first time, that the contents of his unit had been sold. (Pa006). Plaintiff received a check dated April 30, 2024, in the amount of $3,670.70. (Pa006). Thereafter, until the institution of this action, Plaintiff did not receive any further information from Defendant about the whereabouts of the contents of his storage unit, including the details of the sale and/or auction, nor did Defendant return any of Plaintiff's items to him. (Pa006).

C. The Trial Court Grants Defendant's Cross-Motion To Stay The Case And Compels Arbitration, Erroneously Ruling That The Unsigned Agreement Sent To Plaintiff Was Valid And Enforceable

On March 10, 2025, after it became clear that Defendant would not provide Plaintiff with information regarding the whereabouts of the contents of his storage unit, Plaintiff filed his Order to Show Cause and Verified Complaint. (Pa001). In opposition to Plaintiff's application, on April 9, 2025, Defendant filed a cross-motion to compel arbitration and stay the matter. (Pa025). On May 9, 2025, in a written opinion, Judge Hudak found the arbitration clause in the proposed agreement to be valid and enforceable and that Plaintiff's claims fall within the arbitration provision. (Pa104). On the same day, the trial court entered an order granting Defendant's cross-motion to stay the case and compelling arbitration. (Pa102).

Specifically, while it is undisputed that Plaintiff did not sign the proposed agreement, see (Pa109), the trial court erroneously concluded that "Plaintiff never needed to sign the Agreement as a prerequisite to its effectiveness." (Pa109). In so holding, the trial court found support in the self-serving language contained in Defendant's proposed agreement that "Plaintiff's signature was for record keeping purposes only," for "purely administrative purposes" and that "even if Defendant **never received Plaintiff's signature**, the Agreement will govern the use of the storage unit on and after the effective date." (Pa109) (emphasis added). In addition, the trial court refused to consider this important evidence and erroneously concluded that:

> Plaintiff's outside communications with Defendant's representatives constitutes parol evidence that this Court is not obliged to consider as the Notice and the Agreement is clear and ambiguously stated.

(Pa110). However, as set forth at length herein, the decision of the trial court is highly flawed for multiple reasons.

First, as it is undisputed that Plaintiff never signed Defendant's proposed agreement and there is no evidence of explicit assent under the Supreme Court's holding in Leodori v. CIGNA Corp., the trial court erred in finding that Defendant's proposed agreement and the arbitration provision contained therein are valid.

Second, the trial court misapplied the parol evidence rule, and in turn, failed to consider evidence of Plaintiff's continued negotiations on the terms of the agreement which would have provided the Court with essential information on the issue of whether the parties ever reached an enforceable agreement.

Third, even if, *arguendo*, this Court finds the foregoing two arguments without merit, the trial court still erred because it failed to hold the required plenary hearing in order to take testimony and make factual determinations regarding the numerous, material factual disputes, and provide detailed findings of fact.

LEGAL ARGUMENT

I. STANDARDS GOVERNING THIS APPEAL

The standard governing the right to appeal is set forth in R. 2:2-3(a)(1), which provides that "appeals may be taken to the Appellate Division as of right [] from final judgments of the Superior Court trial divisions." Since "orders compelling or denying arbitration are deemed final and appealable as of right as of the date entered," Plaintiff satisfies this standard. GMAC v. Pittella, 205 N.J. 572, 587 (2011).

"[W]hen determining the enforceability of contracts, including arbitration agreements," the Court will "apply a de novo standard." Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019). As "[t]he enforceability of arbitration provisions is a question of law…it is one to which [] need not give deference to the analysis by the trial court." Id. Additionally, "when the judge's determinations are made on a written record, **they are not accorded the usual deference given when made following an evidentiary hearing, where the judge has the opportunity to develop a "feel of the case" and determine the credibility of witnesses.**" Stein v. Nostrum Labs., Inc., No. A-1759-13T1, 2014 WL 5312535, at *7 (App. Div. Oct. 20, 2014) (emphasis added) (Pa130). See also, e.g., In re Estate of Halbig, No. A-3736-06T2, 2008 WL 2572591, at *2 (App. Div. June 30, 2008) (Pa121) ("when a court makes findings of fact based on documentary evidence alone, no special deference is warranted").

II. THE TRIAL COURT ERRED IN FINDING AN ENFORCEABLE ARBITRATION AGREEMENT THAT WAS NEVER SIGNED NOR AGREED TO BY PLAINTIFF (Raised Below: Pa109).

While arbitration has been favored in this State, the Court's power to compel arbitration is limited and "[i]f the court finds that there is no enforceable agreement, it may not…order the parties to arbitrate." N.J.S.A. §2A:23B-7(c). While obvious, "an arbitration agreement is valid only if the parties intended to arbitrate because parties are not required 'to arbitrate when they have not agreed to do so.'" Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 317 (2019). This is because "Arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." Lederman v. Prudential Life Ins. Co. of Am., 385 N.J. Super. 324, 344

(App. Div. 2006). In other words, unless the parties have entered into an enforceable contract that contains an agreement to submit to arbitration, such an arbitration cannot be compelled.

Under our State's defined contract-law principles, a valid and enforceable agreement requires: (1) consideration; (2) a meeting of the minds; and (3) unambiguous consent. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442-45 (2014). A meeting of the minds, i.e., mutual assent, requires the parties to have both: (1) reasonable notice of the agreement, and (2) "an understanding of the terms to which they have agreed." Atalese, supra, 219 N.J. at 442; Hoffman v. Supplements Togo Mgmt., LLC, 419 N.J. Super. 596, 607 (App. Div. 2011). Thus, it is axiomatic that an agreement "is not enforceable unless the [parties] ha[ve] reasonable notice of its existence." Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J. Super. 483, 498 (2021), citing Hoffman, supra, 419 N.J. Super. at 609. A party does not have a reasonable notice of an agreement where the agreement is "proffered unfairly[ ] or ... design[ed] to conceal or de-emphasize its provisions" through the application's "style[,] ... mode of presentation, or the placement of the [agreement]." Skuse v. Pfizer, Inc., 244 N.J. 30, 55 (2020), citing Caspi v. Microsoft Network, L.L.C., 323 N.J. Super. 118, 125 (App. Div. 1999).

More importantly, when an agreement contains a waiver, there are specific requirements that must be met as "[w]aiver is the voluntary and intentional relinquishment of a known right." Knorr v. Smeal, 178 N.J. 169, 177 (2003). "For any waiver-of-rights provision to be effective, the party who gives up rights must 'have full knowledge of his legal rights and intent to surrender those rights.'" Skuse, supra, 244 N.J. at 48, quoting Knorr, supra, 178 at 177. Our jurisprudence has stressed that when a contract contains a waiver of rights—whether in an arbitration or other clause—the waiver "must be clearly and unmistakably established." Atalese, supra, 219 N.J. at 444, quoting Garfinkel v. Morristown Obstetrics & Gynecology Assocs., 168 N.J. 124, 132 (2001).

The Supreme Court's holding in Leodori v. CIGNA Corp. is directly on point. In Leodori, an employer provided an employee with an agreement that required all "employment related legal claims" be submitted to "final and binding neutral third party arbitration." Leodori v. CIGNA Corp., 175 N.J. 293, 298 (2003). The agreement contained a signature line for the employee which was never signed. Id. Thereafter, the employee filed a wrongful termination claim against the employer in Superior Court, which was dismissed by the trial court pursuant to the arbitration provision. Id. at 299. After the Appellate Division reversed the dismissal, the Supreme Court was asked to determine whether the employee clearly agreed to arbitration. Id. at 302. Specifically, the question was "whether an employee's implied agreement to waive statutory rights is sufficient in these circumstances or whether some explicit, affirmative expression of agreement is needed." Id. at 303.

The Court held that "a valid waiver results only from an **explicit, affirmative agreement** that **unmistakably** reflects the employee's assent." Id. (emphasis added).

In reaching that conclusion, the Court considered the employer's argument that the employee's "receipt of the handbook and his continued employment at the company constituted an implied but enforceable agreement to abide by the arbitration policy." Id. Relevant to the case at bar, the Court applied contract principles that "[w]hen one party, however, presents a contract for signature to another party, the omission of that other party's signature is a significant factor in determining whether the two parties mutually have reached an agreement." Id. at 305. With that bedrock principle in mind, the Court held "[w]ithout plaintiff's signature on the Agreement…we cannot enforce the arbitration provision unless we find some other explicit indication that the employee intended to abide by that provision." Id.

Finding no other evidence of assent, the Court ruled that "an arbitration provision cannot be enforced against an employee who does not sign it or otherwise explicitly indicate his or her agreement to it." Id. at 306. To meet the requirements of an enforceable contract, "[i]ncluded in those requirements is the assent of the party against whom enforcement is sought, as customarily indicated by that party's signature." Id. Importantly, regarding a potential defense to the lack of signature, the Court further held:

> Our contract law does not permit defendant to contemplate or require plaintiff's signature on an agreement and then successfully to assert that the omission of that signature is irrelevant to the agreement's validity.

Id. In sum, "[a]lthough not strictly required, a party's signature to an agreement is the customary and perhaps surest indication of assent." Id. at 306-307. Thus, the Court concluded that "[a]bsent plaintiff's signature here, we cannot enforce the waiver provision unless we find some other unmistakable indication that the employee affirmatively had agreed to arbitrate his claims." Id. at 307.

Despite all the foregoing, the trial court erred when it concluded that the unsigned agreement and the arbitration provision contained therein were valid and enforceable. (Pa109). Specifically, while it is undisputed that Plaintiff did not sign the proposed agreement, see (Pa109), the trial court erroneously concluded that "Plaintiff never needed to sign the Agreement as a prerequisite to its effectiveness." (Pa109). In so holding, the trial court found support in the self-serving language contained in Defendant's proposed agreement that "Plaintiff's signature was for record keeping purposes only," for "purely administrative purposes" and that "even if Defendant **never received Plaintiff's signature**, the Agreement will govern the use of the storage unit on and after the effective date." (Pa109) (emphasis added). The trial court's ruling completely contradicts the principles set forth in Leodori, that "a party's signature to an agreement is the customary and perhaps surest indication of assent" and "a valid waiver results only from an **explicit, affirmative agreement** that **unmistakenly** reflects the [party's] assent." Leodori, supra, 175 N.J. at 303, 306-07. (emphasis added).

As it is undisputed that Plaintiff never signed Defendant's proposed agreement and there is no evidence of explicit assent under Leodori, the trial court erred in finding that Defendant's proposed agreement and the arbitration provision contained therein were valid. For these reasons, the decision of the trial court should be reversed, and this Court should remand to the trial court with instructions to lift the stay, remove the matter from arbitration and proceed in the trial court.

III. THE TRIAL COURT ERRED BY HOLDING THE ARBITRATION AGREEMENT WAS ENFORCEABLE WHILE NOT CONSIDERING EVIDENCE OF PLAINTIFF'S CONTINUED EFFORTS TO NEGOTIATE THE TERMS OF THE AGREEMENT WITH DEFENDANT (Raised Below: Pa110).

Even if this Court decides, *arguendo*, that on its face, Defendant's proposed agreement is a valid and enforceable contract, the trial court also erred by failing to consider the additional evidence in the record that demonstrates not only that Plaintiff did not assent to the proposed agreement, but that Plaintiff continued to negotiate the terms of the agreement with Defendant's representatives, evidencing a clear unwillingness to submit to its terms, including arbitration. The trial court's refusal to consider this important evidence was in error. Specifically, the Court erroneously concluded that:

> Plaintiff's outside communications with Defendant's representatives constitutes parol evidence that this Court is not obliged to consider as the Notice and the Agreement is clear and ambiguously stated.

(Pa110). In so concluding, the trial court misinterpreted the parol evidence rule which only "prohibits the introduction of evidence that tends to alter an integrated written document." Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 268 (2006). In other words, the parol evidence rule only applies when there is a written agreement between the parties in the first instance and one of the parties seeks to redefine written terms with outside information.

Specifically, the parol evidence rule applies "only to prevent the substantive alteration of contractual terms **agreed upon by the parties** and expressed in an integration of their bargain…" Garden State Plaza Corp. v. S. S. Kresge Co., 78 N.J. Super. 485, 496 (App. Div. 1963)(emphasis added). In other words, "the parol evidence rule does not even come into play until it is first determined what the true agreement of the parties is—I.e., what they meant by what they wrote down." Id. Therefore, evidence as to "whether or not the minds of the parties met and resulted in a contract… [is] admissible." Hudson Cnty. Store Fixture Mfg. Co. v. Gutmann, 127 A. 575, 576 (N.J. Sup. Ct.), aff'd sub nom. Hudson Cnty. Store Fixture Mfg. Co. v. Guttman, 102 N.J.L. 218 (1925). This is because "[w]ritings do not prove themselves; ordinarily, if there is dispute, there **must be testimony** that there was a signature or other manifestation of assent." Restatement (Second) of Contracts § 214 (1981)(emphasis added). Thus, "[t]he preliminary determination is made in accordance with **all relevant evidence**, including the circumstances in which the writing was made or adopted." Id. (emphasis added).

As there is a clear disagreement about whether the parties entered into an agreement, the trial court was obligated to consider Plaintiff and Defendant's actions both leading up to and after the proposed agreement was sent to Plaintiff. Had the Court considered this evidence, it would have been clear that all of Plaintiff's actions before and after receiving the document demonstrate he did **not** assent to the terms of the agreement. For example, from February 9, 2024 to April 9, 2024, Plaintiff had multiple phone and email discussions with Defendant's representatives where he continued to attempt to negotiate the terms of a new lease. (Pa004, Pa005, Pa006). At no time did Plaintiff indicate his intention to agree to the terms of the proposed document, and in fact, his actions demonstrated that he did not assent to the proposed terms. Critically, Defendant's own representatives continued to negotiate different terms from those in the document, even as late as April 1, 2024. (Pa006).

As the Court failed to consider this evidence on the issue of whether the parties ever reached an enforceable agreement, the trial court misapplied the parol evidence rule and in turn, erred in finding that Defendant's proposed agreement and the arbitration provision contained therein were valid. Thus, the trial court's decision should be reversed.

IV. THE TRIAL COURT ERRED BY FAILING TO HOLD AN EVIDENTIARY HEARING TO DECIDE HOTLY DISPUTED ISSUES OF MATERIAL FACT REGARDING THE AGREEMENT (Not Raised Below).

In addition to all the foregoing, even if this Court decides, *arguendo*, that despite the lack of Plaintiff's assent to arbitration and in spite of Plaintiff's continued negotiations, the arbitration provision is valid, the trial court's ruling is still erroneous because it failed to hold an evidentiary hearing to decide hotly disputed issues of material fact. For the reasons set forth below, the decision of the trial court should be reversed, and this Court should remand this case back to the trial court with instructions that the trial court conduct the required plenary hearing.

The Revised Act sets forth the procedure to be followed when one party to a contract claims that another party to the contract has failed to follow an arbitration agreement, and provides as follows:

> a. On filing a summary action with the court by a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement: … (2) if the refusing party opposes the summary action, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
>
> ...
>
> e. If a proceeding involving a claim referable to arbitration pursuant to an alleged agreement to arbitrate is pending in court, an application pursuant to

> this section shall be made in that court. Otherwise, an application pursuant to this section may be made in any court as provided in section 27 of this act [N.J.S.A. 2A:23B-27 ("Venue")].

N.J.S.A. §2A:23B-7(a)(2) and (e) (footnote omitted). Additionally, the Revised Act provides that:

> Except as otherwise provided in section 28 of this act [N.J.S.A. 2A:23B-28 ("Appeal")], an application for judicial relief pursuant to this act **shall be made upon commencement of a summary action with the court and heard in the manner provided for in such matters by the applicable court rules.**

N.J.S.A. §2A:23B-5(a) (footnote omitted) (emphasis added).

"This statutory language," in turn, "**requires a trial court to proceed under the procedures prescribed in Rule 4:67**." Courier News v. Hunterdon Cty. Prosecutor's Office, 358 N.J. Super. 373, 378 (App. Div. 2003) (emphasis added) (interpreting similar language in a separate New Jersey statute providing that "*Any such proceeding shall proceed in a summary or expedited manner*" (emphasis in original)).

Summary actions, in turn, are governed by R. 4:67-1. "Proceedings instituted under [R. 4:67-1(a)] are commenced by the filing of an order to show cause supported by a verified complaint. R. 4:67–2(a)." Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 365 (App. Div. 2010). "The court thereafter conducts an initial hearing and, if "satisfied with the sufficiency of the application, [it] shall order the defendant to show cause why final judgment should not be rendered for the relief sought.'"" Id., citing R. 4:67-2(a). Thereafter:

> The court shall try the action on the return day, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon.

R. 4:67-5. However, as the rule further explains:

> **If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment.**

Id. (emphasis and paragraph breaks added). Accordingly, "[w]here a party objects to a summary proceeding, **or there is a genuine issue as to a material fact, the court must hear evidence as to those matters that are contested and only then render a final judgment.**" Cheek v. NJ Cure Ins. Co., No. A-2629-07T2, 2009 WL 529228, at *2 (App. Div. Mar. 4, 2009) (emphasis added) (Pa132). See also Stein, 2014 WL 5312535, at *7 (citations omitted)(Pa143) (""[I]n a variety of contexts, courts have opined on the impermissibility of deciding contested issues of fact on the basis of conflicting affidavits or certifications alone." … In particular, where the papers filed raise issues of fact or require credibility determinations, relief cannot be granted or denied absent a plenary hearing").

Needless to say, there are numerous hotly disputed issues of material fact that required a hearing in order to be determined. By way of example, the foregoing include whether Plaintiff ever read the proposed agreement or understood its terms of the agreement, including the arbitration provision. Additionally, there are questions as to why Defendant continued to negotiate terms with Plaintiff well after they sent him the agreement they seek to rely on. As these issues are in dispute and are unsettled, a plenary hearing is proper.

CONCLUSION

For all the foregoing reasons, the trial court's May 9, 2025 Order should be reversed, and this Court should remand to the trial court with orders to lift the stay, remove the matter from arbitration, and proceed in the trial court or, alternatively, to hold a plenary hearing before deciding the issue of enforceability of the arbitration provision.

Respectfully submitted,

Bruce H. Nagel

BRUCE H. NAGEL

Dated: August 8, 2025

GEORGE NTIM, **Plaintiff-Appellant,** **v.** **CUBESMART MANAGEMENT, LLC** **Defendant-Appellee.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO.: A-003274-24** **ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: UNION COUNTY** **DOCKET NO. UNN-L-954-25** **Civil Action** **Sat Below:** **Hon. John G. Hudak, J.S.C.** **(Submitted: October 8, 2025)**

BRIEF IN OPPOSITION TO APPELLANT'S AMENDED BRIEF

KERLEY WALSH MATERA & CINQUEMANI, P.C.
GARY N. SMITH, ESQ. – 023132004
200 Sheffield Street, Suite 208
Mountainside, New Jersey 07092
Email: gsmith@kerleywalsh.com
Attorneys for Defendant-Appellee,
CubeSmart Management, LLC

TABLE OF CONTENTS

Table of Authorities

Cases **Page**

Statutes & Rules

Other Sources

PRELIMINARY STATEMENT

Appellant George Ntim ("Appellant" or "Ntim") appeals the trial court's Order compelling the parties to arbitrate this matter. But the trial court—following long standing Supreme Court precedent— correctly concluded that the Restated Lease agreement between Ntim and Appellee CubeSmart Management, LLC ("Appellee" or "CubeSmart") requires the parties resolve their disputes through arbitration and that the parties waived their rights to litigate their disputes. The trial court's decision was legally sound and supported by a clear and undisputed factual record.

Appellant received the Restated Lease Agreement on January 31, 2024 (the "Restated Lease"), which included a bold, capitalized arbitration clause and a waiver of the right to a jury trial. The agreement explicitly stated that it would govern Appellant's tenancy of his rental unit as of March 1, 2024, even if CubeSmart did not receive Appellant's signature. The Restated Lease clearly stated that, if Appellant disagreed with the terms of the agreement, he could terminate the tenancy and vacate the storage unit by writing and delivering a termination notice. Appellant did not reject the Restated Lease, vacate the unit, or opt out. Instead, he continued to store items in the unit. His actions constituted contractual assent under New Jersey law.

Appellant's arguments on appeal misstate the law governing arbitration and contract formation. New Jersey courts recognize that assent may be manifested through conduct, and that arbitration clauses in consumer contracts are enforceable when presented in plain language with reasonable notice. Appellant further argues that the trial court improperly ignored parol evidence. But the Restated Lease was clear and unambiguous. If Appellant disagreed with the terms of the Restated Lease, his options were clearly delineated: terminate and vacate. He did not, nor did he pay the arrearage. Appellant's inaction was in line with the notice provisions in the Restated Lease, and the trial court properly held that it was inappropriate to consider evidence outside the four corners of the agreement. The trial court properly held that the Restated Lease governed Appellant's tenancy of the unit and that his claims fell within the scope of the arbitration clause.

Furthermore, Appellant's argument that the trial court erred by failing to hold an evidentiary hearing was not raised below and is therefore procedurally barred on appeal. Appellate review is limited to issues properly preserved in the trial court, and no plain error or public interest exception applies here. Nevertheless, the request for an evidentiary hearing is governed by the Uniform Arbitration Act—which is not applicable in this case. Moreover, it required that Appellant commence this case as a summary action, which he did not do. The request for a hearing is unfounded, and the Court should ignore it.

Respectfully, the Court should affirm the trial court's decision to compel arbitration.

STATEMENT OF FACTS

Despite Appellant's attempts to muddy the waters, the facts of this case are uncomplicated. Appellant rented a storage unit from CubeSmart. Over time, his lease extended. When his 2022-2023 lease term expired, he refused to make any additional payments. CubeSmart sent Appellant a Restated Lease, which included a clear arbitration clause and stated that it would govern his tenancy unless Appellant terminated the lease in writing before the effective date. Appellant did not terminate the lease, continued to negotiate terms, and left his belongings in the unit. He never brought his account up to date. Therefore, CubeSmart lawfully sold the contents of the unit after proper notice and publication, and it remitted the surplus proceeds to Appellant. Appellant's obfuscation of these facts with a narrative of his attempts to negotiate the terms does not negate, alter or deny these truths.

On or about August 10, 2017, Appellant began renting storage space number 1212 at the CubeSmart facility located at 1004 U.S. Highway 1, Rahway, New Jersey (the "Store"). Pa0033. Appellant's billing history demonstrates that he made his first rental payment on August 10, 2017. Pa0071. He renewed his lease yearly, and his 2022-2023 lease expired on October 9, 2023. Pa0049. Appellant concedes that when his 2022-2023 lease term expired, he did not make any additional payments, nor did he vacate the unit. Pa0003-0005.

On January 31, 2024, CubeSmart sent the Restated Lease to Appellant via First Class Mail and USPS Ground Advantage. Pa0033, 0041, 0047. The Restated Lease self-executed thirty (30) days after the January 31, 2024 Notice Date; *i.e.* on March 1, 2024. Pa0037. The cover page of the Restated Lease states that:

> [U]pon payment of any and all past due balance(s), you have the right to vacate your Cube and terminate your tenancy at any time before the Effective Date if you do not agree to the terms of the self-storage lease agreement. Your termination notice must be in writing and delivered to the Facility Address above. If we do not receive your termination notice before the Effective Date, the terms of the enclosed self-storage lease agreement will govern your use of the Cube . . . We are requesting your signature for our files; however, the enclosed restated self-storage lease agreement will govern your use of the Cube on and after the Effective Date even we do not receive your signature.

Pa0037. Appellant did not terminate his lease within thirty (30) days of January 31, 2024. Pa0034. Thus, the trial court correctly held that the Restated Lease governed the rental relationship between Ntim and CubeSmart.

The first page of the Restated Lease states in bold: "**PLEASE NOTE THAT PARAGRAPHS 20 AND 21 OF THIS AGREEMENT CONTAIN IMPORTANT PROVISIONS THAT REQUIRE YOU TO RESOLVE ANY DISPUTE WITH OPERATOR THROUGH BINDING ARBITRATION ON AN INDIVIDUAL BASIS AND WAIVE YOUR RIGHT TO HAVE ANY DISPUTE WITH OPERATOR DECIDED BY A COURT.**" Pa0038 (emphasis in original). To provide even more notice, paragraph twelve of the Restated

Agreement—again in bold—provides notice of the parties' waiver of their rights to a trial by jury: "12. **WAIVER OF TRIAL BY JURY AND ONE YEAR STATUTE OF LIMITATIONS. OPERATOR AND CUSTOMER EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION.**" Pa0044.

The Restated Lease contains a Binding Arbitration clause which explicitly requires the parties to resolve any disputes through binding arbitration. Pa0045. Neither Appellant nor CubeSmart have the right to litigate any claim in Court or to have the claim decided by a judge or jury. *Id.*

> **BINDING ARBITRATION:** In the event of a dispute arising under or relating to this Agreement, such dispute will be finally and exclusively resolved by binding arbitration. **NEITHER CUSTOMER NOR OPERATOR PARTIES SHALL HAVE THE RIGHT TO LITIGATE ANY CLAIM IN COURT OR TO HAVE THE CLAIM DECIDED BY A JUDGE OR JURY. DISCOVERY RIGHTS, SUCH AS EACH PARTY'S RIGHT TO THE EXCHANGE OF PREHEARING INFORMATION OR PREHEARING TAKING OF SWORN TESTIMONY, MAY ALSO BE LIMITED IN ARBITRATION.** All disputes will be resolved before a single neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) and, where appropriate, the AAA's Consumer Arbitration Rules, both of which are available at the AAA website www.adr.org. Arbitration shall be commenced by making written demand on the other party by certified

> mail. The demanding party must provide the other party with a demand for arbitration that includes a statement of the basis for the dispute, the names and addresses of the parties involved, and the amount of monetary damages involved and/or any other remedy sought. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in Camden, New Jersey. The parties may litigate in court to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The Federal Arbitration Act and federal arbitration law apply to this agreement. Each party shall bear its own costs and fees, including but not limited to witness and attorneys' fees, involved in the arbitration, with the exception of the arbitrator's fees and expenses which shall be shared and borne equally by the Operator and Customer. If the Customer demonstrates an inability to pay their one-half share of the arbitration costs, then the Operator agrees to pay the full share of such costs, which expressly excludes witnesses and attorney fees or other costs incurred by the Customer for their own benefit.

Pa0045 (emphasis in original).

Appellant assented to the terms of the Restated Lease by continuing to store his items in the unit and by not providing a termination notice. Pa0034. The Restated Lease was ratified on March 1, 2024, and Appellant—through his actions—accepted the terms. Thus, the Restated Lease Agreement governed the rental relationship between CubeSmart and Appellant. Pa0034.

Appellant did not pay his rent following the expiration of his 2022-2023 lease term, nor did he vacate the unit. Pa0049. On November 13, 2023, CubeSmart served a Notice of Unpaid Rent, advising Appellant of a balance of $646.30 and telling him that his contents would be sold if the account was not paid. Pa0049, Pa0052-54. CubeSmart sent a second notice of unpaid rent to Appellant on January 24, 2024, advising him that his account was past due, and that his items will be sold if he did not make payment in full of $1,250.30. Pa0050, Pa0074-76. CubeSmart duly advertised the sale of the contents on February 27, 2024 and March 5, 2025. Pa0078-81. The contents were then sold at auction on March 20, 2025 for $5,415. Pa0084. Appellant received a check for $3,670.70 representing the excess after reimbursement of back rent, costs and fees. Pa0006.

Simply put, Appellant assented to the terms of the Restated Lease, including the arbitration clause. Any dispute that Appellant has regarding his tenancy must be adjudicated pursuant to the terms of the Restated Lease through arbitration.

ARGUMENT

I. Standard of Review

Under New Jersey law, courts apply a *de novo* standard of review when evaluating the enforceability of arbitration agreements. *See Skuse v. Pfizer, Inc.*, 244 N.J. 30, 46 (2020), *Goffe v. Foulke Mgmt. Corp.*, 238 N.J. 191, 207 (2019). The appellate court need not defer to the interpretive analysis of the trial court—unless the appellate court finds the reasoning persuasive. *Kernahan v. Home Warranty Adm'r of Fla., Inc.*, 236 N.J. 301, 316 (2019). Although Appellant argues that an evidentiary hearing was necessary, where, as here, "the terms of a contract are clear and unambiguous there is no room for interpretation or construction and we must enforce those terms as written." *Levison v. Weintraub*, 215 N.J. Super. 273, 276 (App. Div. 1987) (citing *Kampf v. Franklin Life Ins. Co.,* 33 N.J. 36, 43 (1960); *see also E. Brunswick Sewage Auth. v. E. Mill Assocs. Inc.*, 365 N.J. Super. 120, 125 (App. Div. 2004).

The Restated Lease was valid, unambiguous, and accepted through Appellant's conduct. The trial court's decision to compel arbitration was legally sound the Court should affirm.

II. **The Trial Court Properly Enforced the Arbitration Agreement.**

Appellant's argument that the arbitration clause is unenforceable due to a lack of a signature is legally incorrect and factually unsupported. The Restated Lease was validly formed, clearly communicated, and accepted through Appellant's conduct. The trial court's decision to compel arbitration should be affirmed.

The trial court reviewed the Restated Lease, which included a bold, capitalized arbitration clause and a clear waiver of the right to a jury trial. The agreement was sent to Appellant on January 31, 2024, with an effective date of March 1, 2024, and explicitly stated that it would govern the tenancy even if CubeSmart did not receive

Appellant's signature. Appellant did not reject the agreement or vacate the unit. Instead, he continued to store items and engaged in discussions about payment and lease terms. These facts were undisputed and support the trial court's conclusion that Appellant assented to the agreement through conduct.

A. The Trial Court's Decision to Compel Arbitration Was Legally Sound and Supported by the Record.

The law in New Jersey favors the enforcement of arbitration agreements. *See Garfinkel v. Morristown Obstetrics & Gynecology Assocs.*, 168 N.J. 124, 131 (2001) (holding that courts favor arbitration as a means of resolving disputes), *Marchak v. Claridge Commons, Inc.*, 134 N.J. 275, 281 (1993), *Barcon Assocs., Inc. v. Tri-Cnty. Asphalt Corp.*, 86 N.J. 179, 186 (1981), *Alamo Rent A Car, Inc. v. Galarza*, 306 N.J. Super. 384, 389 (App. Div. 1997), *Yale Material Handling Corp. v. White Storage & Retrieval Sys., Inc.*, 240 N.J. Super. 370, 375 (App. Div. 1990). The Federal Arbitration Act ("FAA") and the New Jersey Arbitration Act codify policies that require courts to enforce arbitration agreements according to their terms. *See Atalese v. U.S. Legal Servs. Grp. L.P.*, 219 N.J. 430, 440 (2014); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 131 (2011). "An agreement to arbitrate should be read liberally in favor of arbitration." *Marchak*, 134 N.J. at 282, *Angrisani v. Fin. Tech. Ventures, L.P.,* 402 N.J. Super. 138, 149, 952 (App. Div. 2008).

"An agreement to arbitrate generally will be valid under state law unless it violates public policy." *Hojnowski v. Vans State Park*, 187 N.J. 323, 342- 43 (2006).

"[C]ourts operate under a 'presumption of arbitrability in the sense that an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *Epix Holdings Corp. v. Marsh & McLennan Cos., Inc.*, 410 N.J. Super. 453, 471-72 (App. Div. 2009) (quoting *Caldwell v. KFC Corp.,* 958 F. Supp. 962, 973 (D.N.J. 1997) (citing *AT&T Techs. v. Commc'ns. Workers,* 475 U.S. 643, 650 (1986) (internal citation omitted)); *see also Alfano v. BDO Seidman, LLP*, 393 N.J. Super. 560, 576 (App. Div. 2007) (holding that where there is a broad arbitration provision, "doubts concerning the scope of arbitrable issues must be resolved in favor of arbitration, over litigation.").

The FAA mandates that arbitration agreements be treated like any other contract and enforced unless invalidated by generally applicable contract defenses. "[A]n agreement to arbitrate should be read liberally in favor of arbitration." *Marchak*, 134 N.J. at 282. Courts may not impose more burdensome requirements on arbitration clauses than on other contractual provisions. *See Leodori v. CIGNA Corp.*, 175 N.J. 293, 302 (2003). When evaluating a motion to compel arbitration, courts ask: (1) whether the parties entered into a valid agreement to arbitrate (*see Mitsubishi Motors v. Solar Chrysler-Plymouth*, 473 U.S. 614, 626 (1985) (internal quotations and citations omitted), *accord Martindale v. Sandvik*, 173 N.J. 76, 86

(2002), and (2) whether the dispute falls within the scope of the agreement. *Martindale*, 173 N.J. at 92. Here, both questions are answered affirmatively.

The Restated Lease was validly formed and clearly communicated to Appellant. Appellant's claims for breach of bailment and negligence arise directly from the lease relationship for his storage unit and fall within the scope of the arbitration clause. Appellant argues that the arbitration clause in the Restated Lease Agreement is unenforceable because he did not sign the agreement. This position is contrary to well-established New Jersey law, which recognizes that contractual assent may be manifested through conduct, not solely through a signature.

Analyzing the Restated Lease under ordinary state-law principles governing the formation of contracts, confirms that the trial court correctly held that it was enforceable. *See Atalese*, 219 N.J. at 442 (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). The trial court rightly determined that, under New Jersey law, Appellant assented to the terms of the Restated Lease by continuing his tenancy. *See Skuse*, 244 N.J. at 38-39.

1. Appellant Had Clear Notice and Opportunity to Reject the Restated Lease: He Assented to the Terms.

The Restated Lease Agreement included a bold, capitalized notice on the cover page and within the agreement itself, stating that disputes would be resolved by binding arbitration and that the parties waived their right to a jury trial. The agreement also provided Appellant with the opportunity to terminate the lease before the effective date if he did not agree to the terms. Appellant did not exercise this option.

New Jersey courts uphold arbitration clauses in consumer contracts when they are presented in "plain language that is understandable to the reasonable consumer," that by agreeing to arbitrate, a consumer is giving up a right to sue. *Atalese*, 219 N.J. at 444; *see also Martindale*, 173 N.J. at 81-82, 89; *Griffin v. Burlington Volkswagen, Inc.*, 411 N.J. Super. 515, 518 (App. Div. 2010) (upholding an arbitration clause stating that "by agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available dispute resolution processes, such as a court action or administrative proceeding, to settle their disputes."). The Restated Lease meets this standard. The trial court correctly found that the arbitration clause was enforceable; it was in plain English, capitalized, and certain terms were bolded for emphasis. Pa0111-0112.

In *Skuse*, the New Jersey Supreme Court upheld an arbitration agreement where the employee did not sign the document but continued employment after receiving notice of the arbitration policy. 244 N.J. at 50 (citing *Martindale*, 173 N.J. at 88-89), *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 436 (1992), *Jaworski v. Ernst & Young US, LLP*, 441 N.J. Super. 464, 474-75 (App. Div. 2015)). The Court emphasized that the agreement was enforceable because it unambiguously explained that continued employment would constitute assent. *Id.* The Court held that that arbitration clause was enforceable because "[t]he Agreement stated, in bold font, that the employee's acknowledgement of the Agreement was not required for that Agreement to be enforced, and that the employee would be 'deemed to have consented to, ratified and accepted this Agreement' by accepting or continuing employment with Pfizer after the effective date." *Id.*

The Restated Lease sent to Appellant on January 31, 2024, clearly stated that the lease would become effective March 1, 2024, and would govern the tenancy even if CubeSmart did not receive Appellant's signature. The language of the Restated Lease mirrors that in *Skuse*.

> Thank you for your continued patronage. It is a pleasure serving you as a customer. In an effort to continue serving you and all of our customers we must, from time to time, restate our self-storage lease agreements to maintain current records. **You are receiving this Notice because your Cube will automatically be subject to the enclosed self-storage lease agreement thirty (30) days after the date of this Notice ("DATE"). (March 1, 2024).**
>
> Please be advised that, upon payment of any and all past due balance(s), you have the right to vacate your Cube and terminate your tenancy at any time before the Effective Date if you do not agree to the terms of the self-storage lease agreement. Your termination notice must be in writing and delivered to the Facility Address above. If we do not receive your termination notice before the Effective Date, the terms of the enclosed self-storage lease agreement will govern your use of the Cube.
>
> We have enclosed two (2) copies of the restated self-storage lease agreement together with a self-addressed, stamped envelope. Please sign the enclosed self-storage

> lease agreements where indicated and return one (1) original self-storage lease agreement to us in the enclosed envelope. We are requesting your signature for our files; however, the enclosed restated self-storage lease agreement will govern your use of the Cube on and after the Effective Date even if we do not receive your signature.

Pa0037 (emphasis in original).

It is undisputed that Appellant received the Restated Lease. *See* Pa0004, Appellant Brief at p. 7. Appellant did not terminate the lease, vacate the unit, or reject the agreement, despite the clear and precise instructions regarding how to do so. Instead, he continued to store items. This conduct constitutes assent under New Jersey law. Appellant's claims must be resolved in arbitration.

B. Appellant's Reliance on *Leodori* Is Misplaced

Appellant cites *Leodori* to argue that a signature is required for an arbitration agreement to be enforceable. However, the facts here parallel those in *Skuse*, not *Leodori*. In *Leodori*, the employer required each employee to sign a specific form to express his or her intent to agree to the employer's arbitration policy. *Leodori*, 175 N.J. at 303-07. *Leodori* involved an employee handbook and a separate arbitration agreement; the employee only acknowledged receipt of the handbook with a signature and did not sign off on the arbitration agreement. *Id.* The handbook did not include any details regarding the arbitration policy—but it only stated that any claims other than worker's compensation or unemployment compensation claims would be subject to arbitration. *Id.* at 297-98. The plaintiff signed the "acknowledgment" form but declined to sign the "Receipt and Agreement" form; on the latter, "[t]he signature line in [the] plaintiff's copy was left blank." *Id.* at 298. The Court held that "because the plaintiff did not sign the 'Receipt and Agreement' form, he did not assent to arbitration." *Id.* at 305. The two documents were not sufficiently intwined. *Id.* at 306-08. The Court in *Leodori* specifically held that although "a party's signature to an agreement is the customary and perhaps surest indication of assent[,]" it is "*not strictly required.*" *Id.* at 306-07 (emphasis added).

The *Leodori* Court stated that if the acknowledgement form included a more detailed arbitration provision contained in the handbook, rather than merely stating that he received it, the executed acknowledgement would have sufficed to assent to the waiver. *Id.* at 307. The employer needed to simply revise the acknowledgement language to state that the employee received and agreed to the arbitration policy. *Id.* Having two separate agreements—an acknowledgement of receipt and an agreement to the terms of the arbitration—was fatal to the employer's claim that the employee agreed to arbitrate.

Rather, the facts here are akin to those *Skuse*, a case decided seventeen years after *Leodori*. In *Skuse*, as here, the plaintiff's signature was no required to assent to the agreement. "No writing—paper or digital—was designated by the employer to be the employee's expression of assent, let alone refused by Skuse. Instead, the prescribed form of assent here was the employee's decision to remain employed after the effective date of the arbitration policy." *Skuse*, 244 N.J. at 59. The employer's documents in *Leodori* required the employee's "signature as a concrete manifestation of assent" to the arbitration provision. *Id.* (quoting *Jaworski*, 441 N.J. Super. at 474).

Here, like in *Skuze* and *Jaworski*, the plaintiff assented to the Restated Lease and its arbitration clause. The terms of the Restated Lease were clear and unambiguous: "the enclosed restated self-storage lease agreement will govern your use of the Cube on and after the Effective Date even if we do not receive your signature." Pa0037. Plaintiff's signature was for record keeping purposes only. *Id.* The process for termination was also laid out explicitly: "Your termination notice must be in writing and delivered to the Facility Address above. If we do not receive your termination notice before the Effective Date, the terms of the enclosed self-storage lease agreement will govern your use of the Cube." *Id.* Exactly as in *Skuse*, Appellant assented to the Restated Lease "in accordance with [CubeSmart's] designated method of expressing assent[.]" 244 N.J. at 60. Appellant continued to use the unit, just as the plaintiff in *Skuse* continued her employment.

The *Skuse* Court further held that the agreement had clear and unmistakable terms advising the plaintiff that "she assented to arbitration by remaining employed at Pfizer for sixty days, which she assented to via her continued employment. *Id.*

Here, the Restated Lease, acknowledged as received by Appellant, had a clear notice of its terms. It included a bolded explanation of the arbitration clause. It provided specific termination instructions with an opt-out mechanism (*i.e.* termination before March 1, 2024). It specifically stated that "If we do not receive your termination notice before the Effective Date, the terms of the enclosed self-storage lease agreement will govern your use of the Cube." Pa0037. Appellant continued his possession and use of the unit—a clear manifestation of assent to the Restated Lease. *Skuse*, 244 N.J. at 60, *Jaworski*, 441 N.J. Super. at 474. Respectfully, the Court should affirm the trial court's decision.

III. The Restated Lease was Clear and Unambiguous; The Trial Court Properly Disregarded Parol Evidence.

Appellant argues that the trial court erred by refusing to consider his communications with CubeSmart representatives as evidence of non-assent. However, this argument misinterprets the scope and application of the parol evidence rule and ignores the clear language and structure of the Restated Lease. The trial court correctly held that because the Restated Lease is clear and unambiguous, there was no need to consider parol evidence. Pa0110. If contractual terms are clear, "[courts] must enforce the contract as written." *Graziano v. Grant*, 326 N.J. Super. 328, 342 (App. Div. 1999). The Court should interpret the Restated Lease "in accord with justice and common sense." *Krosnowski v. Krosnowski*, 22 N.J. 376, 387 (1956)).

"[I]f the contract into which the parties have entered is clear, then it must be enforced" as written." *In re County of Atlantic*, 230 N.J. 237, 255 (2017) (quoting *Maglies v. Estate of Guy*, 193 N.J. 108, 143 (2007) (citations omitted), *see also Schor v. FMS Fin. Corp.*, 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting *Kampf*, 33 N.J. at 43) (holding that "where the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written."). "When presented with an unambiguous contract, the court should not look outside the 'four corners' of the contract to determine the parties' intent, and parol evidence should not be used to alter the plain meaning of the contract." *Namerow v. PediatriCare Assocs.*, 461 N.J. Super. 133, 140 (Ch. Div. 2018). It is only when the terms of a contract are ambiguous, should courts "consider the parties' practical construction of the contract as evidence of their intention and as controlling weight in determining a contract's interpretation." *Barila v. Bd. of Educ. of Cliffside Park*, 241 N.J. 595, 616 (2020) (quoting *In re County of Atlantic*, 230 N.J. at 255).

Appellant concedes that the parol evidence argument assumes that the Restated Lease is valid and enforceable. *See* Appellant's Brief at 17. But rather than arguing that the trial court should have used parol evidence to *interpret* the Restated Lease, he argues that the trial court should have used parol evidence to *invalidate* the Restated Lease. But the parol evidence rule prohibits the use of extrinsic evidence to alter or contradict the terms of a fully integrated written agreement. *Conway v.*

287 Corp. Ctr. Assocs., 187 N.J. 259, 268 (2006), *Atl. N. Airlines, Inc. v. Schwimmer*, 12 N.J. 293, 302 (1953) (citations omitted). In *Schwimmer*, the Supreme Court explained that "the admission of evidence of extrinsic facts is not for the purpose of changing the writing, but to secure light by which to measure its actual significance. Such evidence is adducible only for the purpose of interpreting the writing—not for the purpose of modifying or enlarging or curtailing its terms, but to aid in determining the meaning of what has been said." 12 N.J. at 301-02.

Once the intent of the parties is determined, the parol evidence rule prohibits the use of extrinsic evidence. *Conway*, 187 N.J. at 270 (citing *Schwimmer*, 12 N.J. at 304, *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging*, 69 Cal. 2d 33, 69 Cal. Rptr. 561 (1968)). "The court has no right 'to rewrite the contract merely because one might conclude that it might well have been functionally desirable to draft it differently.'" *Karl's Sales & Serv., Inc. v. Gimbel Bros.*, 249 N.J. Super. 487, 493 (App. Div. 1991) (quoting *Levison*, 215 N.J. Super. at 276). A court "may not rewrite a contract or grant a better deal than that for which the party expressly bargained." *Solondz v. Kornmehl*, 317 N.J. Super. 16, 21 (App. Div. 1998) (citing *Hartford Fire Ins. Co. v. Riefolo Constr. Co.*, 161 N.J. Super. 99, 114 (App. Div. 1978), *aff'd,* 81 N.J. 514 (1980)). It "must enforce the contract which the parties themselves have made." *Id.* at 22 (citing *Kampf*, 33 N.J. at 43).

Here, the Restated Lease Agreement is crystal clear and completely unambiguous—it was also accompanied by a bold, capitalized notice explaining its terms and effective date. The record is clear, Appellant's communications after receiving the agreement do not alter the fact that he:

- Received the Restated Lease on January 31, 2024,
- Was informed that the lease would govern the tenancy unless he terminated it in writing before March 1, 2024,
- Did not terminate the lease or vacate the unit, and
- Continued to store items in the unit.

Appellant does not even assert that there is ambiguity in the Restated Lease, nor does he point to a section or clause that is unclear. His argument, guised in a request for parol evidence, is not that the Restated Lease is indecipherable, but rather that he did not assent to the terms. There is no need for parol evidence, and the Court should affirm.

The facts demonstrate conduct-based assent, which is recognized under New Jersey law. *See Skuse*, 244 N.J. at 60-61. As previously argued, the Supreme Court in *Skuse* upheld the agreement and arbitration agreement where the employee did not sign the document but continued employment. Appellant concedes that he received the Restated Lease. Pa0004. He admits that CubeSmart presented him with a "take it or leave it" offer. *Id.* He continued to use the storage unit and did not reject the agreement in writing. He took it. The contract terms are uncomplicated. Appellant's admissions confirm that he understood them. His actions confirm that he accepted them. There was a meeting of the minds; thus, there was no need for the trial court to look to parol evidence. Respectfully, this Court should do the same.

IV. The Trial Court Properly Decided the Case on the Record; Appellant Did Not Preserve the Argument, The Uniform Arbitration Act Does Not Apply, and Appellant Never Requested an Evidentiary Hearing, Nor is One Needed.

The trial court correctly ruled that the Restated Lease governed Appellant's use of the storage unit. Appellant received the Restated Lease and accepted—despite having clear and unambiguous instructions on how to terminate, he did not do so, and he continued to store his items in the unit. The Uniform Arbitration Act, N.J.S.A. § 2A:23B-7 et seq. does not apply. There was no need for the trial court to hold an evidentiary hearing, and importantly, Appellant never requested one.

A. Appellant Did Not Request a Hearing Before the Trial Court.

The Court should not entertain arguments that were not raised before the trial court. "It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." *Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (citation and internal quotation marks omitted); *see also N.J. Dept. of Envir. Prot. v. Huber*, 213 N.J. 338, 372 (2013) ("[o]rdinarily, an issue may not be raised on appeal if not raised in the proceedings below" (citing *N.J. Div. of Youth and Family Servs. v. M.C. III*, 201 N.J. 328, 339 (2010)), *State v. Arthur*, 184 N.J. 307, 327 (2005) ("[a]n appellate court ordinarily will not consider issues that were not presented to the trial court"), *Johnson v. Roselle EZ Quick LLC*, 226 N.J. 370, 396 (2016) (declining to address an issue not raised before the trial court that was not an issue of sufficient public concern). "The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves." *State v. Robinson*, 200 N.J. 1, 19 (2009). "[A]n appellate court should stay its hand and forego grappling with an untimely raised issue." *Id.* at 21.

In *Solondz*, the plaintiff requested that the Appellate Division remand the case to the trial court "to resolve supposed factual issues concerning the negotiation" of terms of a contract rider. 317 N.J. Super. at 22. The Court denied the request and held that "the object of an appeal is not to retry the case but to correct errors properly noted below." *Id.* (citing *Abel v. Elizabeth Bd. of Works*, 63 N.J. Super. 500, 510 (App. Div. 1960)). The Court held that "[a]ppellate courts rightly decline to consider questions or issues not presented to the trial court when an opportunity to do so was available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." *Id.* (citing *Nieder*, 62 N.J. at 234;

Skripek v. Bergamo, 200 N.J. Super. 620, 629 (App. Div. 1985), *certif. denied*, 102 N.J. 303 (1985).

The Court should do the same here. Appellant had ample opportunity to request an evidentiary hearing before the trial court. He failed to do so. Nor does he argue now why this Court should consider new arguments on appeal. The trial court had an ample record to make its decision—replete with all evidence of communications between the parties, the agreement, certifications by the parties, billing history, and notices. Pa0001-0084. Appellant's Verified Complaint included his timeline of events, with references to communications and emails. Pa0001-0011. CubeSmart's certifications provided the trial court with all the evidence in opposition. Pa0033-0084. Appellant did not request an evidentiary hearing because all the evidence was before the trial court. There was no need for one. There is nothing out of the ordinary here, nor does this simple contractual dispute "concern matters of great public interest." Appellant does not even argue so. Respectfully, the Court should decline to consider this new argument.

B. An Evidentiary Hearing is not Warranted.

Even if the Court does consider Appellant's argument for an evidentiary hearing, it should deny the request. Besides the fact that Appellant had ample opportunity to request such a hearing and failed to do so, there is no need to remand for a hearing. The Uniform Arbitration Act does not apply.

Appellant commenced this action via the filing of Complaint and Order to Show Cause. Pa0001-00024. The Complaint requested a mandatory injunction, monetary damages and an accounting for alleged violations of N.J.S.A. § 2A:44-187 et. seq. Pa0001-0011. It did not state that action would proceed in a summary manner. *Id.* Similarly, the Order to Show Cause requested an injunction and accounting. Pa0013-0019. It was also not commenced as a summary action. *Id.* The trial court's signed Order to Show Cause did not indicate or otherwise state that the case was to proceed as a summary proceeding under *R.* 4:67-1. Pa0020-0024. Appellee moved to compel arbitration and stay the matter. Pa0025-0026. It did not request to proceed in summary fashion. *Id.* Therefore, neither Appellant nor Appellee commenced a summary action.

Rule 4:67—titled Summary Actions—is designed "to accomplish the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment while at the same time giving the defendant an opportunity to be heard at the time plaintiff makes his application on the question of whether or not summary disposition is appropriate." *Grabowski v. Twp. of Montclair*, 221 N.J. 536, 550 (2015) (citing Pressler & Verniero, *Current N.J. Court Rules*, comment 1 on R. 4:67-1 (2015)). Appellant states that summary actions under *R.* 4:67-1 "are commenced by the filing of an order to show cause supported by a verified complaint[.]" *See* Appellant's Brief at 21 (citing *Tractenberg v. Twp. of W. Orange*, 416 N.J. Super. 354, 365 (App. Div. 2010). However, such an Order to Show Cause must be brought in a summary manner. *R.* 4:67(2)(a). It also requires the language of the "order [to] be so framed as to notify the defendant fully of the terms of the *judgment* sought[.]" *R.* 4:67-2(a) (emphasis added).

Summary disposition is only appropriate "when the parties understand and consent to a summary disposition of their disputes." *Waste Mgmt. of N.J. v. Union Cnty. Utilities Auth.*, 399 N.J. Super. 508, 518-19 (App. Div. 2008). It "is permitted by agreement of the court and the parties, evinced by 'a clear and unambiguous statement from the judge and the unequivocal consent of the parties to a final resolution[.]'" *Grabowski*, 221 N.J. at 550 (quoting *Waste Mgmt. of N.J., Inc.*, 399 N.J. Super. at 518-19). "Those procedural requirements serve important objectives: to permit the presentation of a factual record and legal arguments to the court, and to ensure that the parties anticipate and address the standard for summary disposition before the court decides whether to grant that relief." *Id.* Thus, *R.* 4:67-1(b) requires that a party file a motion to proceed in a summary manner. *Id.* Alternatively, consistent with the case law, both parties may consent to summary disposition. *See Grabowski*, 221 N.J. at 547, 550. Neither happened here.

The Complaint, Order to Show Cause and the Motion to Compel Arbitration were not commenced in summary fashion. Moreover, the Order to Show Cause requested an order, not a judgment. Pa0020-0024. As did the motion. Pa0025-0026.

Upon deciding the motion to compel arbitration, the trial court did not dispose of the case; rather it stayed it. Pa0102. It never issued a judgment. Pa0102. Simply put, this action never triggered *Rule* 4:67-1.

But we never reach the question of *R.* 4:67-1(b) because the Uniform Arbitration Act was never implicated. The Uniform Arbitration Act states:

> **a.** On filing a summary action with the court by a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
> **(1)** if the refusing party does not appear or does not oppose the summary action, the court shall order the parties to arbitrate; and
> **(2)** if the refusing party opposes the summary action, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
> **b.** On filing a summary action with the court by a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

N.J.S.A. § 2A:23B-7(a)-(b). A plain reading of the statute leads to only one conclusion—the Uniform Arbitration Act does not apply.

This matter was not commenced with the filing of a summary action, and there is no claim "showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement[.]" *Id.* For a scenario under the Uniform Arbitration Act to govern, either (1) Appellee would have had to start a summary action for arbitration under the Restated Lease because Appellant refused to arbitrate, which did not happen here; or (2) Appellant would have had to start a summary action because Appellee initiated or threatened to initiate an arbitration without an agreement to arbitrate. N.J.S.A. § 2A:23B-7(a)-(b). That did not happen either. Because neither occurred, the Uniform Arbitration Act does not apply.[1] Appellant also cites to N.J.S.A. § 2A:23B-5(a). He even emphasizes the requirement that an application under the Uniform Arbitration Act "**shall be made upon commencement of a summary action[.]**" *Id.* (emphasis added). Clearly, without the commencement of a summary action, the Uniform Arbitration Act does not apply, and there is no need for a hearing under *R.* 4:67-1.

Appellant cites to two unpublished Appellate Division—*Cheek v. NJ Cure Ins. Co.*, No. A-2629-07T2, 2009 WL 5292228 (App. Div. March 4, 2009) (Pa0132) and *Pashman Stein, P.C. v. Lomans*, No. A-1759-13T1, 2014 WL 531253 (App. Div. October 20, 2014) (Pa0126)—cases which further illustrate that this case does not conform to *R.* 4:67-1. In *Cheek*, the plaintiff "filed a summary action, pursuant to *Rule* 4:67–1, by way of verified complaint and order to show cause" against the defendant to compel payment of personal injury protection benefits under *N.J.S.A.* 39:6A–4. *Cheek*, No. A-2629-07T2, 2009 WL 5292228 at *1 (Pa0118). The Court properly noted that "in order for the case to be disposed of in summary fashion as

[1] Appellant also references N.J.S.A. § 2A:23B-(e). However, that directs a party to N.J.S.A. § 2A:23B-27 regarding venue and, again, requires the commencement of a summary action to a proper venue. That did not happen here.

permitted by the rule, all parties must agree to implementation of the process, or the affidavits submitted must show 'palpably that there is no genuine issue as to any material fact;' otherwise, the court cannot "render final judgment thereon." *Id.* at *2 (quoting *R.* 4:67–5) (Pa0119). The Court went onto say that "if a party objects to a summary proceeding, or there is a genuine issue as to a material fact, the court must hear evidence as to those matters that are contested and only then render a final judgment. *Ibid.* The plaintiff in *Cheek* properly commenced a summary action and the Appellate Division rightly remanded the case for an evidentiary hearing. Here, the case was not commenced by summary action, no parties consented to disposition via summary action, and *R.* 4:67 was never mentioned. It does not apply.

In *Pashman Stein*, a case related to payment of attorney's fees under *In re State Grand Jury Investigation,* 200 N.J. 481 (2009). *Pashman Stein*, No. A-1759-13T1, 2014 WL 531253 at *5 (Pa0129)Again, the plaintiff commenced the action by Order to Show Cause in a summary action. *Id.* In fact, "[a]fter defendant noted that plaintiff might not have standing to litigate the issue on a summary basis, plaintiff added Lomans as a party plaintiff in its amended verified complaint." *Id.* at *5 (Pa0128). The parties did not request, nor did the trial court conduct, an evidentiary hearing regarding the factual contentions in the summary action. *Id.* The Court held that a "hearing was required to resolve the factual issues underlying each party's request for relief, and because a hearing was not conducted," the case was remanded for "further proceedings, which may include a single trial or evidentiary hearing on all of the issues raised by the parties." *Id.* at *8 (Pa0131). Again, unlike here, the case was properly commenced under *R.* 4:67.

Appellant did not preserve the argument, the Uniform Arbitration Act does not apply, and Appellant did not commence the action as a summary action. Respectfully, the Court should disregard Appellant's request to remand this case for an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests that the Court affirm the trial court's Order in its entirety.

Respectfully submitted,

Gary N. Smith

Dated: October 8, 2025

GEORGE NTIM, **Plaintiff,** **v.** **CUBESMART MANAGEMENT, LLC,** **Defendant.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO.: A-003274-24** **ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: UNION COUNTY** **DOCKET NO. UNN-L-954-25** **Civil Action** **Sat Below:** **Hon. John G. Hudak, J.S.C.** **(Submitted: October 22, 2025)**

REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT GEORGE NTIM

NAGEL RICE, LLP
BRUCE H. NAGEL- 025931977
103 Eisenhower Parkway
Roseland, NJ 07068
973-618-0400
Email: bnagel@nagelrice.com
Attorneys For Plaintiff-Appellant,
George Ntim

TABLE OF CONTENTS

Pages

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

LEGAL ARGUMENT

I. THE FACTS TO ESTABLISH ASSENT IN *SKUSE* ARE DISTINGUISHABLE TO THE CASE AT BAR.

Much of Respondent's opposition focuses on the Supreme Court's holding in Skuse v. Pfizer, Inc. to argue that the proposed unsigned agreement is enforceable because Appellant's "conduct constitutes assent under New Jersey law." (Db14). However, Respondent's attempt to extend Skuse to this case should be rejected as factually distinguishable where the Plaintiff in Skuse was found to undertake multiple actions of assent, while Appellant's actions do not demonstrate **any** level of assent. In Skuse, the plaintiff's employer notified her of a new arbitration policy agreement that would become a condition of her employment if she continued to work for the company for sixty (60) days after receiving the new agreement. Skuse v. Pfizer, Inc., 244 N.J. 30, 36 (2020). The employee then took several affirmative acts, by opening e-mails linking the new agreement, completing a "training module" on arbitration and then clicking that she "acknowledge[d]" her obligation to assent to the agreement as a condition of her continued employment. Id. Thereafter, the employee filed a wrongful termination claim against the employer, who moved to dismiss the complaint and compel arbitration. Id. at 42.

In upholding the agreement, the Skuse Court made clear that the employee's signature on the agreement was not a condition of assent as "[n]o form intended to confirm the employee's assent was left unsigned" and "[n]o writing -- paper or digital -- was designated by the employer to be the employee's expression of assent…" Id. at 59. Importantly, however, the Court noted that the employer's request for an acknowledgment constituted assent, in part because of "other expressions of assent that immediately preceded that request." Id. at 37. More specifically, the employers' "message was underscored by [] additional communications" setting forth the arbitration provision, including an e-mail, a FAQs page, and training slides. Id. at 51. In essence, prior to, and at the time the employee was required to click her acknowledgment of the agreement, she "was reminded yet again" that she was acknowledging that she was bound by the new provision. Id. at 61. Thus, as there was no signature field and multiple acts of assent in Skuse, Respondent's reliance on that holding is unfounded.

Specifically, here, the proposed agreement sent to Appellant did include a signature line with the notation:

> Customer and Operator, intending to be legally bound, **sign** this Agreement as of the Effective Date.

(Pa46)(emphasis added). It is undisputed that Appellant did not sign the document. (Pa46). Thus, there is no evidence that Plaintiff explicitly assented to the terms contained in the document and "intend[ed] to be legally bound" by it, including the arbitration provision. (Pa46). To the contrary, unlike the employee in Skuse, Appellant's communications with Respondent did not "remind" him of his agreement to be bound but instead demonstrated the opposite. Specifically, Appellant continued to negotiate the new lease terms through phone calls, text messages and emails with Respondent's representatives after receiving the proposed agreement, from February 9, 2024, to April 1, 2024. (Pa4, Pa5, Pa6). For example, during this period, although the prepared agreement contained a monthly rental fee of $235.00, Appellant was separately offered monthly rates of $394.00 and $199.00. (Pa4, Pa5, Pa6). Clearly, unlike the Skuse plaintiff who was continually reminded of her requirement to be bound by the terms of the arbitration provision, Appellant was **never** reminded, but instead, kept negotiating the very terms Respondent seeks to enforce, rendering Skuse inapplicable.

Instead, as set forth in Appellant's brief, the Supreme Court's holding in Leodori v. CIGNA Corp. is more directly on point where, like the agreement here, the agreement in Leodori contained a signature line that was never signed. Leodori v. CIGNA Corp., 175 N.J. 293, 298 (2003). As Appellant's mere receipt of the proposed agreement, without "some other explicit indication that [he] intended to abide by that provision," is insufficient, Respondent's proposed agreement simply cannot be enforced. Id. To the contrary, Appellant did not demonstrate an explicit or implicit intention to be bound by the proposed agreement, but instead, continued to negotiate the lease terms with Respondent, having never come to a meeting of the minds regarding the terms of a new agreement, most notably, the monthly rental price. Thus, as both Leodori and Skuse require further evidence of assent, beyond mere receipt of an agreement, the omission of Appellant's signature, which **would** be evidence of assent, is fatal to Respondent's arguments.

II. AS ASSENT IS NOT ESTABLISHED, THE COURT SHOULD HAVE CONSIDERED ONGOING NEGOTIATIONS IN INVALIDATING THE AGREEMENT.

Respondent's opposition misstates the parol evidence rule and the trial court's failure to consider the additional evidence in the record that demonstrated Appellant's continued negotiation of terms with Defendant's representatives. Specifically, Respondent's argument is fundamentally flawed where the basis of Respondent's position is that "[o]nce the intent of the parties is determined, the parol evidence rule prohibits the use of extrinsic evidence." (Db19). This position highlights the trial court's error by presupposing the agreement was ever formed, when the intent of the parties was **not** determined or considered. To the contrary, the parol evidence rule only "prohibits the introduction of evidence that tends to alter an **integrated written document**." Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 268 (2006)(emphasis added); see also Garden State Plaza Corp. v. S. S. Kresge Co., 78 N.J. Super. 485, 496 (App. Div. 1963)(rule applies "only to prevent the substantive alteration of contractual terms **agreed upon by the parties** and expressed in an integration of their bargain…" (emphasis added).

The basic dispute in the trial court was whether the parties entered into an agreement. In other words, the intent of the parties on whether to enter into the agreement was not established. As a result, the trial court was required to consider the facts presented by all parties prior to Appellant's receipt of the proposed agreement and thereafter. The facts clearly demonstrate that Appellant did not sign the agreement or provide unmistakable assent in any way. Further, an objective viewing of Appellant's post-receipt communications can only lead to the conclusion that neither he nor Respondent felt bound by the terms of the proposed agreement. For example, in addition to Appellant, Respondent's representatives continued to discuss different terms, even as late as April 1, 2024, offering a monthly rate that differed from the proposed agreement. (Pa006).

Respondent's opposition offers nothing to contradict the fact that the trial court improperly failed to first consider this evidence on the issue of whether the parties ever intended to reach an enforceable agreement. The trial court's misapplication of the parol evidence rule was in error.

III. APPELLANT'S REQUEST FOR AN EVIDENTIARY HEARING IS PROPER WHERE DISPUTED ISSUES OF MATERIAL FACT REMAIN.

A. THE EVIDENTIARY HEARING REQUEST CAN BE PROPERLY RAISED ON APPEAL.

Respondent's final argument is that the Court should not consider Appellant's alternate request for an evidentiary hearing as such a request was not raised below to the trial court. (Db21) Specifically, Respondent asks the Court to disregard Appellant's request "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973), quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959), certif. den. 31 N.J. 554 (1960). However, Respondent's position is overly restrictive where a Court "may consider a plaintiff's contentions on appeal, even though not specifically argued before the trial or motion judge, as long as the issue on appeal is generally the same issue presented before the trial court." Regan v. City of New Brunswick, 305 N.J. Super. 342, 355 (App. Div. 1997), abrogated by Dzwonar v. McDevitt, 177 N.J. 451 (2003). Notably, if the "general tenor of the [] argument remains the same," there is "no procedural bar to [the Court's] consideration of [the] argument." State v. Gruber, 362 N.J. Super. 519, 530 (App. Div. 2003); see also Docteroff v. Barra Corp. of Am., 282 N.J. Super. 230, 237 (App. Div. 1995)(court "will consider the same issues as presented to [them], regardless of whether plaintiffs' principal theory has changed"). Here, Appellant's request for an evidentiary hearing to address disputed factual issues is the same argument Appellant raised below when imploring the trial court to consider ongoing negotiations between himself and Respondent's representatives, which would have been more fully explored at a hearing.

Even if Appellant did not raise issue of these disputed facts below, Respondent admits that the Court may consider Appellant's request if the issue pertains to **either** "the jurisdiction of the trial court or concern matters of great public interest." (Db21, Db22) Appellant's request for an evidentiary hearing satisfies both criteria. First, Respondent's motion to compel Arbitration which forms the basis for this appeal, sought to divest the trial court's jurisdiction, instead seeking to have the matter resolved in an Arbitration proceeding. (Pa025) Second, protecting the public from unscrupulous tactics of businesses, such as Respondent, who seeks to bind a consumer to an agreement without his signature or other clear manifestation of assent to its terms is of great public interest. See e.g. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442–43 (2014)("because arbitration involves a waiver of the right to pursue a case in a judicial forum, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent") (internal citations omitted). Thus, even if not raised below, Appellant's arguments go to both jurisdiction and great public interest.

For these reasons, Appellant's request for an evidentiary hearing is an issue that is proper for appeal.

B. AS MATERIAL FACTS REMAIN IN DISPUTE, AN EVIDENTIARY HEARING IS WARRANTED.

In addition to arguing that Appellant failed to request an evidentiary hearing below, Respondent further argues that even if Appellant **had** requested a hearing, such a hearing request should have been denied because the Uniform Arbitration Act ("Act") does not apply, and Appellant did not institute a summary action. (Db23, Db24). First, in seeking to deny the application of the Act, Respondent ignores the plain language of the statute that the "act governs **all** agreements to arbitrate made on or after January 1, 2003…" N.J.S.A. §2A:23B-3. Thus, as the proposed agreement is subject to the Act, Respondent's request to compel arbitration is subject to its section entitled "Application to compel or stay arbitration." See N.J.S.A. §2A:23B-7. That section sets forth the required procedure to compel arbitration of this action:

> a. On filing a summary action with the court by a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement: … (2) if the refusing party opposes the summary action, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

N.J.S.A. §2A:23B-7(a)(2). More importantly, relevant to Respondent's argument regarding a summary action, the Act requires the matter be "**heard in the manner provided for in such matters by the applicable court rules**." N.J.S.A. §2A:23B-5(a) (footnote omitted) (emphasis added).

Thus, in addition to the unsupported argument that the Act itself does not apply, Respondent's argument that Appellant somehow neglected to file the necessary summary action also fails where "[t]his statutory language," in the Act, "**requires a trial court to proceed under the procedures prescribed in Rule 4:67**." Courier News v. Hunterdon Cty. Prosecutor's Office, 358 N.J. Super. 373, 378 (App. Div. 2003) (emphasis added). Here, although **Respondent** failed to request the necessary summary action in its motion to compel arbitration, Appellant properly instituted these proceedings in accordance with the summary action procedural requirements of R. 4:67-1(a) by filing an order to show cause and a verified complaint. Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 365 (App. Div. 2010). The trial court then properly signed an order directing Respondent to "show cause why final judgment should not be rendered for the relief sought." Id., citing R. 4:67-2(a). Here, as the pleadings demonstrated "a genuine issue as to a material fact," our Court Rules mandate that "the court **shall** hear the evidence as to those matters which may be genuinely in issue and render final judgment." R. 4:67-5 (emphasis added).

As set forth in Appellant's brief, the record is replete with many disputed issues of material fact that required a hearing before the proposed agreement can be held enforceable and arbitration compelled. As these issues remain in dispute and are unsettled, should the Court deny Appellant's appeal, a plenary hearing is proper on remand.

CONCLUSION

For all the foregoing reasons, and the reasons set forth in Appellant's original brief, the trial court's May 9, 2025 Order should be reversed, and this Court should remand to the trial court with orders to lift the stay, remove the matter from arbitration, and proceed in the trial court or, alternatively, to hold a plenary hearing before deciding the issue of enforceability of the arbitration provision.

Respectfully submitted,

Bruce H. Nagel

BRUCE H. NAGEL

Dated: October 22, 2025