RONALD HOROWITZ ESQ.
9 Lakeside Drive, Palm Coast, FL 32137
732-757-5110 (c)
ronhorowitzesq@gmail.com
Attorney ID 010251983

Sept. 11,2024

Superior Court of New Jersey-Appellate Division
Hughes Justice Complex
25 Market St
Trenton, NJ

BARBARA H. FLEISHER AND MICHAEL GINN, CUST, EDEN GINN UNIF TRAN MIN ACT PA V. ROSE E. COLON A/K/A ROSE COLON; KIM-AHN NGUYEN; STATE OF NEW JERSEY AND RONALD HOROWITZ, DEFENDANT/APPELLANT Docket # A-3363-24
Sat Below: Hon. Kathleen Sheedy, Law Div., Monmouth County

Dear Sir or Madam:

Kindly accept this Amended Appellant's Letter Brief & the accompanying Appendix.

TABLE OF CONTENTS

TABLE OF JUDGMENTS & ORDERS……1
PRELIMINARY STATEMENT……2
PROCEDURAL HISTORY……..……. ……3
STATEMENT OF FACTS ……6
LEGAL ARGUMENT …… ……..…8
Point I----The Lower Court Erred By Not Awarding Fees From The Fund In Court, By Holding That Plaintiffs Did Not Engage In Frivolous Litigation & By Disqualifying Appellant From Receiving Sanctions As A Pro Se Litigant (Da-221-244)…….....9
Point II---The Lower Court Erred By Not Awarding Compounded Interest To Satisfy Appellant's Judgment Nearly Twenty Years Old (Da 182-192)……..18
CONCLUSION…… 20

TABLE OF JUDGMENTS & ORDERS

ORDER FOR FINAL FORECLOSURE JUDGMENT ENTERED 4-3-08 … Da 27-29
ORDER ENTERED 1-21-2022…… Da 46
APPELLATE DIVISION ORDER ENTERED 2-4-22…… Da 47
APPELLATE DIVISION OPINION DECIDED 11-9-22…… Da 57-67
CONSENT ORDER ENTERED 11-28-22…… Da 68-69

ORDER ENTERED 9-22-23…… Da 76-77
ORDER TO TURNOVER ENTERED 3-4-24……..… .. Da 155-165
ORDER FOR TURNOVER OF FUNDS ENTERED 3-4-24…… Da 166-174
ORDER TO PAY COUNSEL FEES ENTERED 4-1-24…… Da 194-202
ORDER ENTERED 4-29-24……..… Da 209-217
ORDER AMENDING 4-29-24 ORDER ENTERED 5-31-24…… Da 218-219

PRELIMINARY STATEMENT

This appeal seeks to reverse unjust orders entered after summary judgment was entered for Appellant. One denied the application for attorney's fees. The Law Division erroneously found that plaintiffs & their counsel did not engage in frivolous litigation by attempting to invalidate Appellant's judgment or subordinate it to their previously merged & discharged mortgage. However, the record abundantly shows that when such judgment was to be paid ,in 2022, from the sale proceeds of the subject property, this Court had held that the judgment lien had not been extinguished or invalidated. The record also showed that, at that time, plaintiffs no longer had a mortgage as it had merged into their 2008 foreclosure judgment & 2016 Deed in lieu of Foreclosure ("DIL"). Moreover, Plaintiffs had executed & recorded, in 2016, a Discharge of their mortgage. Plaintiffs surreptitiously concealed this Discharge from all courts below & even this Court during the 2022 appeal—the fourth of five appeals for plaintiffs in this case.

Below Plaintiffs did not cite any authority whatsoever to overcome these undisputed facts & long-standing legal principles or even to make a good faith argument for an extension of the law. What plaintiffs did instead was to seek the sympathy of the court by asserting that they elected not to proceed with a sheriff sale but instead accepted

a Deed in lieu of Foreclosure. Then the private sale of the property did not yield a payoff of the amount due under the foreclosure judgment. In other words, plaintiffs unsuccessfully sought to punish an innocent judgment creditor for plaintiffs' own business decisions.

The primary basis of the judge denying fees was that Appellant was pro se. Nevertheless, there is no reported decision denying statutory fees to a pro se who prevails over frivolous litigation. To deny fees will send the wrong message that a party &/or his counsel can litigate, in utter bad faith, without consequence. There should have been some consequence imposed below, which could have included the imposition of compounding the interest due to satisfy Appellant's 2005 judgment.

In this later regard, another order that should be reversed is the denial of compounded interest. Had it been granted it would have produced a recovery of about $10,000 more than simple interest did. This still would have been substantially less than the approximate $40,000 in time Appellant spent litigating this case, of which amount neither the court nor plaintiffs challenged. However, the court did not express a reason or rationale or a correct one in its decision denying compounded interest.

PROCEDURAL HISTORY

In 2007 plaintiffs filed a foreclosure suit against a commercial property in Marlboro owned by Rose Colon ("Colon). In 2008 plaintiffs amended their complaint joining Appellant, who had obtained a judgment against Colon in 2005. (Da 22-26) Prior to the foreclosure suit Colon had obtained a Chapter 7 bankruptcy discharge of personal

obligations.

In 2013 plaintiffs applied for a final foreclosure judgment & submitted a proposed form of judgment stating therein the validity of Appellant's judgment lien that would be paid out of surplus monies generated from a sheriff sale. The proposed judgment was entered in the form submitted. (Da 27-29)

In 2021 plaintiffs moved to extinguish the judgment lien on the basis that their acceptance, in 2016, of a DIL, was on the belief that their foreclosure judgment had invalidated the judgment lien. (Da 39-45) The motion was granted. (Da 46)

Appellant appealed & moved for a stay of plaintiffs' intended sale of the property. Judge Fisher granted the motion by ordering an accelerated appeal. (Da 47)

After briefing oral argument was held. Plaintiffs informed this Court & Appellant, for the first time, that the property had been sold. Plaintiffs contended that even if there was a reversal, the judgment would not be paid due to an anti-merger clause in their mortgage or DIL, which subordinated the judgment to the unpaid purported mortgage. This Court, in a written opinion, did reverse & remand holding that the judgment lien was not invalidated by either the foreclosure judgment or DIL. This Court also held that because the sale was not part of the record the case would be remanded to determine whether the sale affected the payment of the judgment.(Da57-67)

During the remand proceeding, plaintiffs were served with document requests &

a deposition notice. Although certain requested documents were produced, the parties could not agree on a place for the deposition. Appellant moved to compel the deposition & to transfer the case to the Law Division. The motion was granted.(Da76-77)

Pursuant to the status conference held by the then assigned Law Division Judge English, both parties, in 1/24, filed dispositive motions. Appellant's motion sought summary judgment & an order turning over the sales proceeds deposited with the court's trust unit pursuant to a Consent Order. Plaintiffs' motion sought a turn-over of the same deposited funds. (Da 111-154)

After briefing, reassigned Judge Sheedy held oral argument. The judge reserved decision. In 2 orders, accompanied by Statements of Reasons, Appellant's summary judgment & turn-over motion were granted, except that compounded interest & costs were not granted as requested. Plaintiffs' motion was denied. (Da 155-174)

Appellant moved for fees & costs. The motion also sought to correct the prior order on the grounds that the awarded simple interest was not calculated on the correct full amount of the judgment. (Da 175-188) The motion was opposed. (Da 189-193) In an order, accompanied by a Statement of Reasons, the motion was denied. (Da 194-202) Appellant moved for reconsideration. (Da 203-208) The motion was granted by order entered 4-29-24, as to correcting the simple interest calculation & awarding costs, but denied as to fees. (Da 209-217)

The court's own prepared order of 4-29-24 was not accepted by the Superior Court Trust Unit for purposes of withdrawing & paying the funds as ordered. An

amended order was pre-approved by the Trust Unit. On 5-31-24 the final order, as to all parties & issues, was entered by the court. (Da 218-219) This appeal timely followed. (Da 220-227)

STATEMENT OF FACTS

Appellant has been a member of the NJ Bar, in good standing, since 1983. He practiced law in NJ for 35 years. For 23 of those years Appellant was certified as a Civil Trial Attorney. For the last 10 years of practicing, he was general counsel for a national freight transportation company and its affiliates. From 2014 until Appellant's retirement in 2018, his office was in Florida where Appellant currently resides. (Da 185)

In 2004, Rose Colon borrowed $350,000 from the plaintiffs. The loan was secured by a Mortgage & Security Agreement on her Marlboro business property. It charged **16%** interest per annum. It did not contain an anti-merger clause. (Da 1-17)

Plaintiff Fleisher was a Pennsylvania real estate investor & Plaintiff Ginn was a Pennsylvania dentist. Their business plan formed groups of investors to make loans. It is unknown how much, if anything, the plaintiffs lent to Colon with their own funds. (Da 87-109- pages 22,23,24,54)

Colon's business failed. Colon & her partner litigated over the business. Colon engaged Appellant for representation. Colon was unable to pay all of her legal expenses. As a result of a denial of a motion to withdraw, Appellant was required to continue his representation through the trial. After conclusion of the case, Appellant obtained a judgment against Ms Colon. (Da 18-19) As of the docketing of the

judgment, on 10-18-05, the sum owed was $26,655.42 plus interest of $1,132.23 & costs of $302.24. (Da 20-21)

On 4-21-16 plaintiffs executed a Satisfaction wherein they certified that they have received payment of the full amount due on the Mortgage secured upon the premises --- the Colon property. This Satisfaction further provided that upon its recording the said Mortgage is forever discharged. On 7-22-16 the Satisfaction was recorded. Ex F The recorded Satisfaction, on its face, was sent to Leslie Fleisher, who was plaintiff Fleisher's daughter & a Pennsylvania attorney. (Da 30)

On 7-1-16 Ms Colon executed a DIF, dated 4-21-16, to plaintiffs in exchange for $1. The DIF, recorded 7-22-16, provided that plaintiffs' mortgage (already merged & discharged) will not merge into the DIF. It further provided that no such merger will occur until plaintiffs execute & record an instrument affecting such merger. Plaintiffs' execution & recording of the Satisfaction specifically facilitated the merger. (Da 31-33)

The 2016 Satisfaction & DIF, on their faces, were prepared & recorded by Leslie Fleisher. She did so without regard as to whether there were or were not liens of record . (Da 87-109, pg 48) Ms Fleisher had also been admitted to the New Jersey Bar. In 2003 she became a judge in Philadelphia.. She then resigned from practicing law in NJ. In 2010 she was forced to resign from the bench. She did resume representing her mother in her investment business. (Id. at pgs -11,12,13,17)

During the pendency of this case both plaintiffs died. Leslie Fleisher is the executrix & beneficiary of her mother's estate. (Id. at pgs 17,18; Da 34)

In connection with plaintiffs' April, 2021 contract to sell the property, the Buyer's title insurer issued a report, in May,2021, requiring that judgments of record be satisfied. **The report further indicated the absence of any mortgages of record. (Da 35-38)**

As a condition to close title & to convey clear & unencumbered title, on 3-29-22 plaintiffs & the title insurer signed an Escrow & Indemnity Agreement requiring that $60,000 be escrowed from the proceeds of the sale of the property to pay Appellant's judgment. (Da 54-536)

Unpaid income & real estate taxes & water/sewer charges, of about $28,000, were deducted from the Seller. The $60,000 escrow was also deducted. About $113,00 was paid to the Seller. (Da 48-50)

At the Fleisher deposition of 11-23 the 2016 Mortgage Discharge was not disclosed. It was thereafter discovered from an online search of the county clerk web site. On 12-5-23 plaintiffs were served with a Rule 1:4-8 Safe Harbor Notice. (Da 110) Plaintiffs did not comply with the demand therein.

. As of 2-28-24 the total amount due on the judgment, inclusive of compounded interest & costs, was in the sum of **$55,242.59. (Da 20-21)** In July,2024 Appellant received the Trust Unit's check of about $47,000.

LEGAL ARGUMENT

Standards of Review: On this appeal there are several: This Court reviews rulings of law & issues regarding & the interpretation of rules de novo. Meehan v

Antonellis**,** 226 N.J. 216,230 (2016).; Occhifinto v Olivo Constr. Co,Llc**,** 221 N. J. 443,453 (2015). A trial court's interpretation of the law & the consequences that flow from established facts are not entitled to any special deference. Rowe v Bell & Gossett Co.**,** 239 N. J. 531, 552 (2019).

Further, if a judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation & it becomes an arbitrary act, not subject to the usual deference. Then the appellate court adjudicates the controversy in light of the applicable law in order to avoid a manifest denial of justice**.**. Summit Plaza Assoc. v. Kolta**,** 462 N.J. Super. 401, 409 (App. Div. 2020): State v. Steele, 92 N.J. Super. 498, 07 (App. Div. 1966).

In the specific context of a motion for frivolous lawsuit sanctions, this Court reviews a trial judge's decision under an abuse of discretion standard. See, McDaniel v. Man Wai Lee, 419 N.J. Super. 482,498 (App. Div. 2011). This Court will reverse the decision if not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, olr amounts to a or amounts to a clear error in judgment. Id.; See also, Masone v. Levine, 382 N.J. Super. 181,193 (App Div. 2005).

POINT I: The Lower Court Erred By Not Awarding Fees From The Fund In Court, By Not Finding That Plaintiffs Engaged In Frivolous Litigation & By Disqualifying Appellant From Receiving Sanctions As A Pro Se Litigant (Da 221-229; 236-244)

There were 2 independent basis to award fees below.

Fund in Court: R. 4:42-9(a) (2) allows the payment of fees & costs out of a "fund in

court". Porreca v. City of Millville, 419 N. J. Super. 212, 224-25 (App.Div. 2011). A fund is in court when it is within the jurisdictional authority of the court to deal with it. Fidelity Union Trust Co. v. Berenbaum, 91 N.J. Super. 551 (App. Div. 1966), certif. denied, 48 N.J. 138(1966). The award of attorney's fees is limited to "reasonable" fees. In re Trust of Brown, 213 N.J. Super. 489 (Law Div. 1986).

Here, since plaintiffs refused to pay the judgment from the sale proceeds, they were unable to convey clear & insurable title. Due to the condition of the title insurer, it agreed to insure clear title provided there was a $60,000 escrow from the sale proceeds. (Da 54-56) Once Appellant learned of the sale & escrow,at the 2022 oral argument, before this Court, a consent order was executed & signed by Judge Quinn directing that escrow be deposited with the court pending further court order. (Da 68-69) The escrowed funds were shortly thereafter deposited with the Superior Court. Hence, the trial court obtained jurisdiction to determine distributions from the fund in the court. As such, counsel fees are payable from the fund in the Superior Court.

The court, in denying fees, relied upon the case cited by Appellant, Porrecca, supra. This Court held there that entitlement to fees under this rule depends on whether other persons benefited from the litigation. The court mistakenly held that Appellant was only serving his own interest in litigating where only he benefited.

To the contrary, a good number of others, unrelated to Appellant, benefited from the escrow & court deposit. The plaintiffs, the buyer, the realtors, the federal & state governments, the municipality, the title insurer, the attorneys etc. But for the escrow of

$60,000 to satisfy Appellant's judgment there would not have been a closing. Without the closing, plaintiffs would not have received sales proceeds, the buyer would not have received title, the governments would not have received unpaid taxes, the town would not have received unpaid charges, the title insurer would not have received the premium & the attorneys would not have received their fees.

It was only due to plaintiffs' unjustified, baseless & vexatious refusal to permit payment of the judgment from the sale proceeds that directly caused the creation of the escrow & subsequent court deposit. This further directly led to the closing & the payment of all other obligations owed to others. Consequently, this action, either directly or indirectly benefited others, besides Appellant, sufficient to entitle Appellant to fees from the fund in court.

Appellant recognizes that the limitation of fees payable would be the balance of the fund in court plus accrued interest. It would still be substantially less than the value of the hours spent on this case, but it would be considerably more than the erroneous result reached below.

Frivolous Litigation: Under N.J.S.A. 2A:15-59.1 or R.1:4-8 these sanctions deter that conduct & compensate victims. See Toll Bros. Inc. v. Twp. of West Windsor, 190 N.J. 61,67 (2007). Under this statute, litigation is frivolous when used or continued, in bad faith, solely for the purpose of harassment, delay or malicious injury or where the party knew or should have known that the claim or defense was without any reasonable basis in law or equity & could not be supported by a good faith argument for an

extension, modification or reversal of existing law.

Bad faith is where there is an admitted absence of legal support for the position but the litigation is continued. Port-O-San Corp. v. Teamsters Local Union No.863, 363 N.J.Super. 432,439 (App. Div. 2003). Frivolous is when no rational argument can be advanced, when not supported by any credible evidence, when a reasonable person could not have expected its success, or when it is completely untenable. Belfer v. Merling, 322 N.J. Super. 124,144 (App. Div 1999), certif. denied, 162 N.J. 196 (1999).

Even if the action was not frivolous when filed, it can become frivolous based upon the evidence produced during the pendency of the litigation. DeBrango v. Summit Bancorp, 328 N. J. Super. 219, 227-28 (App. Div. 2000).

In denying the motion, the court, surprisingly, did not find that actions of plaintiffs or counsel defrauded any court . Rather, the court found that they "pursued the matter to its fullest ability". The court was so very wrong. It created a new standard that if a case is pursued to ones fullest ability it does not matter if the arguments are irrational or unsupported by the evidence or the law. That has never been the standard.

Plaintiffs & their counsel acted in bad faith as they admitted they did not have legal support for their meritless positions. The admissions were made to Judge Quinn, to the Appellate Division, at the Fleisher deposition & in certifications, & to Judge Sheedy. In none of their filings with those courts did plaintiffs ever cite a statute, a case or rule that supported their baseless position. Nevertheless, plaintiffs continued this litigation without regard to whether they were acting in very bad faith.

Plaintiffs' bad faith has also been shown by the lengthy delay they caused. Had they disclosed the Satisfaction to the Chancery Division, in 2021, their irrational motion to extinguish would surely been denied. As a result of the concealment, there was an appeal & remand covering 3 years. Had plaintiffs disclosed the Satisfaction to the Appellate Division, in 2022, most certainly there still would have been a reversal but without this remand of another 2 years. Disclosure of material facts is not discretionary but obligatory. Indeed RPC 3.3 Candor Toward the Tribunal prohibits the failure to disclose to the tribunal a material fact whose omission will mislead the tribunal. Both of plaintiffs' attorneys violated this very important rule.

Purportedly feigning ignorance of the recorded Satisfaction is disingenuous, if not, further evidence of concealment. It has been a public record since its 2016 recording or for the last 8 years. Second, the Safe Harbor Notice, received more than 3 months before the 1-24 dispositive motions, referenced Appellant's discovery of the recorded Satisfaction. Not only did plaintiffs not request a copy, but thereafter they filed a turnover motion & again concealed the recorded discharge.

Executrix & Pennsylvania attorney,Leslie Fleisher is also very culpable. She has NEVER denied receiving the recorded Satisfaction from the County Clerk in 2016. She has NEVER denied that she gave it to her counsel or at least told him about it. Her plan was obvious. Keeping the Satisfaction concealed would give more weight to the meritless argument that a DIL has the same consequence upon a junior lienor as a Sheriff Deed. Fortunately her plan did not work, but caused Appellant great time & expense.

Plaintiffs & their counsel engaged in frivolous litigation by failing to advance any rational argument. Noteworthy is that before the Law Division they abandoned their "anti- merger clause" argument previously advanced to this Court, in 2022. Instead,plaintiffs, for the very first time in 17 years, argued the invalidity of the judgment lien. Even though plaintiffs conceded their lack of standing & a time bar, Appellant was forced to brief how the doctrines of judicial estoppel, collateral estoppel, entire controversy doctrine, laches & the bankruptcy code all barred the plaintiffs' belated & meritless argument. (Da 118-154)

Not surprisingly, plaintiffs abandoned the challenge of the judgment lien validity at oral argument. The court did not even address that in its Statements of Reasons. Nevertheless, Appellant was forced to expend an inordinate amount of time addressing the frivolous argument.

With a combined legal experience of over 40 years, including in the practice areas of real estate & foreclosure, plaintiffs & their attorney ignored the discharged mortgage, the DIL & the private sale. Yet without any authority, plaintiffs argued priority to the fund over a judgment lien that the Appellate Division had held was still valid against the foreclosure judgment DIL. No reasonable person could have expected these arguments to prevail. Stated another way, Plaintiffs' arguments were unreasonable & designed, in part, to compensate for their decision to forego a Sheriff sale---their decision only. Their litigation was pure & simple frivolous.

The lower court insulated plaintiffs' misconduct by relying on Segal v. Lynch, 211 N.J. 230 (2012). However, that case is not dispositive herein.

In Segal, a matrimonial dispute involved a grievance against a parent coordinator who was an attorney. She sought fees for her defense. She was awarded fees, under Discovery Rule 4:23-1(c), payable by the grievant. Justice Hoens, writing for the Court, noted the conflict among Appellate Division decisions on the question whether a pro se attorney can collect fees. Id. at 262. The Court then disallowed the fees **but only in the circumstances of that appeal.** Id. at 264 In other words the opinion specifically declined to address the circumstances present in the noted conflicting Appellate Division decisions or those present in this case---a fund in court & frivolous litigation.

In the specific context of frivolous litigation, the majority of jurisdictions addressing the issue have held that a pro se attorney defendant can be awarded fees as part of a sanction for efforts in defending against a frivolous complaint. See, McCarthy v. Taylor, 155 NE 3d 359 (Ill. 2019); Burke v. Elkin, 51 NE 3d 1287 (Ind. Ct. App. 2016); Stiles v. Kearney, 168 Wash. App. 250, 277 P.3d 9 (2012); Keaty v. Raspanti, 866 So. 23D 1045 (La. App. Cir. 2004); Friedman v. Backman, 453 So. 2D 938(Fla. Dist. Ct. App. 1984).

The most recent case, McCarthy, supra, has similarities to the case at bar. There, an Ill. Supreme Court Rule imposes sanctions of attorney fees to compensate defending against a frivolous claim. New Jersey has the equivalent Rule 1:4-8 which affords the same remedy. There, the parties were experienced licensed attorneys. Here, we have the

plaintiff executrix/attorney, plaintiffs' counsel & the Appellant attorney, whom in the aggregate have over 80 years of experience. There, the lower court dismissed the tort claim based on res judicata. Here, plaintiffs' claim to the fund in court was dismissed on long-standing state law doctrines. If necessary, the court would have likewise dismissed the claim on other doctrines raised in the motions. The lower court there then entered sanctions for about $10,000 in the face of a request for about $12,000.

On appeal, the Ill. Supreme Court upheld the sanction on 3 grounds. The first was that Rule 137 prevents abuse of the judicial process by penalizing claimants who bring vexatious & harassing actions. Id. at 393 & 396. The second was that Rule 137 does not preclude a sanction award for a pro se attorney defendant. Id. at 394. The third was that the majority view nationally is that a pro se defendant attorney can recover frivolous litigation sanctions. Id. at 396-97

McCarthy is consistent with this Court's decisions in Port-O-San Corp. v. Teamsters Local Union, 363 N.J. Super. 431 (App. Div. 2003) & Brach, Eiler,P.C. v. Ezekwo, 345 N.J. Super. 1,17(App. Div 2001). In Port, this Court held that Rule 1:4-8 does not prohibit an award of attorneys' fees to attorneys appearing pro se. Id. at 441 n.

However, 3 years later, in Alpert, et al v. Quinn, 410 N.J. Super. 510 (App. Div. 2009) , certif. denied, 203 N.J. 93 (2010) a different panel held that a pro se counsel cannot recover fees for frivolous litigation because Rule 1:4-8 permits reimbursement of fees & expenses incurred & not a loss of income. Id. at 545 . The panel significantly noted that its holding was "directed solely to the language of Rule 1:4-8(d)(2)" & did

not deal with "the award of fees otherwise authorized by contract, rule or statute." Id. at 546 n.8.

Alpert is not the current or final state of the law for compensating a pro se victim of frivolous litigation. Within a span of 9 years there are now 3 Appellate Division decisions addressing the issue squarely. The last disagrees with the earlier 2. Since the Supreme Court has yet to address the precise issue, this Court can & should follow the earlier decisions. Otherwise, the devious & litigious plaintiffs & their counsel will not be sanctioned for clear frivolous litigation, if not defrauding the Chancery, Appellate & Law Divisions into ruling that their mortgage should still be paid ahead of the judgment lien despite the uncontroverted facts & law that their mortgage merged into their foreclosure judgment & that was also voided by their DIL & Satisfaction recordings. As a result, plaintiffs' utter bad faith & dishonesty, in pursuing this litigation over the last 3 years, caused an enormous amount of time defending against an intended injustice.

Furthermore, Alpert expressly did not preclude the award of fees authorized by rule or statute. There is no reported appellate opinion disallowing fees to a pro se attorney under either Rule 4:42-9 (a)(2)--Fund in Court-- or N.J.S.A. 2A:15-59.1.--Frivolous Litigation. Neither requires that the prevailing party had to incur or pay fees in order to be awarded fees. Neither excludes pro se attorneys as eligible for a fee award. Thus, independent from Rule 1:4-8, which provides a safe harbor for offending attorneys, parties, such as the plaintiffs herein, including the apparent master-mind of this frivolous litigation, the plaintiff executrix, who demonstrated lack of candor to 3

courts, proferred materially inconsistent & incredible testimony, & disrespected the discovery process, can & should be held individually liable, or at least, liable as the personal estate representative.

The lower court was restrained from condemning plaintiffs & their counsel. Thus, in lieu of awarding fees to a pro se, Rule 1:4-8 (d) (1) authorizes a court to order the payment of a penalty into court. While Appellant will not be compensated in a literal sense with a penalty paid into court, Appellant , the Bar & the Bench will benefit because appropriate justice was done so as to deter these plaintiffs, their counsel & others from bringing & maintaining baseless litigation.

POINT II: THE Lower Court Erred By Not Awarding Compounded Interest To Satisfy Appellant's Judgment Nearly Twenty Years Old (Da 182-201)

Rule 4:42-11(a) prescribes that an order to pay money bears simple interest. However, this same rule allows a judge to depart from this rule. A reported decision has done so.

In Twp. of West Windsor v. Princeton, 345 N.J. Super. 472 (App. Div. 2001), the Appellate Division affirmed the Law Division which found that the prime rate represented the interest rate that best indemnified the judgment creditor for the loss of use of the compensation. The prevailing commercial rates were found to be more fair & reasonable during the 8 year litigation than the rule rate.

The federal courts as well as a number jurisdictions in Texas, Michigan,, Kentucky, Colorado, & Delaware award post-judgment interest compounded. See, 28

U.S.C. 1961; Tex. Sec. 304.006; MCL 600.6013; Ky. Sec. 360.040; C.R.S. 5-12-102; & ReCor Medical, Inc. v. Warnking, C.A. No.7387-VCN (Del. Ch. Jan.30,2015)

Here, Appellant has waited for over 20 years to be paid for his legal services. For the first 12 of those years, Appellant was a disinterested party in the cross-fire of the seemingly endless litigation, in the Chancery & Appellate Divisions, between the 2 mortgagors, plaintiffs & Colon's partner. Then, after plaintiffs lost to the partner, they decide to forgo their rights under their foreclosure judgment in 2016 & accept a DIL instead. However, Appellant was unaware of plaintiffs' strategy until 5 years later in 2021. Then, for the next 3 years, plaintiffs continued their litigation tactics by attempting to realize all of the equity (or what plaintiffs misrepresented as "surplus") in the subject property to themselves under totally baseless & abhorrent theories.

As can be seen from the competing interest calculation charts, for at least half of the years since entry of the judgment, the simple rule rate has been considerably lower than the prime interest rule rate. Plaintiffs' now discharged mortgage charged interest at 16%, which was quadruple the then prime rate. While Appellant is not seeking to exploit or capitalize on his judgment, allowing compounded interest on a virtual 20 year judgment would be most fair & reasonable to compensate on the extended loss of the use of the funds through no fault of his whatsoever. Furthermore, the difference between the 2 calculations is about $10,000, which can easily be satisfied from the court deposit.

Notwithstanding the above authority & the facts & circumstances herein, the lower court disregarded these. Instead the court relied upon statutes purportedly

requiring simple interest on **tax liens,** in denying compounded interest. Not only is a municipality's right to charge interest on unpaid real estate taxes vastly different from a judgment creditor's right to have interest accrue on the unpaid judgment, but none of the tax lien statutes, cited by the court in its 3-4-24 Statement of Reasons, expressly prohibit compounded interest. In fact, none even mention simple interest.

Accordingly, compounded interest should have been allowed below because it is permitted by law & it was just & equitable to do so given Appellant's lengthy 2 decade wait for payment. Such delay was caused, in primary part, by plaintiffs' inaction from 2008 to 2016 & from 2016 to 2021 or inexplicably for 13 years. Adding plaintiffs' utter bad faith, in this case, for the next 3 years, yields 16 years of delaying payment to a junior lienor, who until 2016, who was subordinate to plaintiffs on property of inconsequential value, according to plaintiffs.

CONCLUSION

Based on the foregoing arguments, it is requested that the orders denying the motions for fees & compounded interest be reversed & remanded to compute awards for counsel fees & compounded interest.

Respectfully submitted,

Ronald Horowitz

Ronald Horowitz, Esq.

Barbara H. Fleisher and Michael Ginn, Cust: Eden Ginn, Unif Tran. Min Act PA, **Plaintiff/Respondent,** **Vs.** **Rose E. Colon A/K/A Rose Colon; Kim-Ahn Nguyen; and State of New Jersey,** **Defendants/Appellant.**	**SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION** **DOCKET NO.: A-003363-23T2** **CIVIL ACTION** **ON APPEAL FROM SUPERIOR COURT, CHANCERY DIVISION, MONMOUTH COUNTY** **DOCKET BELOW: L-003298-23** **HONORABLE KATHLEEN A. SHEEDY, J.S.C.** **DATE SUBMITTED TO COURT: OCTOBER 21, 2024 (AMENDED OCTOBER 23, 2024)**

BRIEF
FOR
PLAINTIFF/RESPONDENT BARBARA H. FLEISHER

EISENBERG, GOLD & AGRAWAL P.C.
ATTORNEYS FOR PLAINTIFF/RESPONDENT
BY: ANDREW L. UNTERLACK, ESQUIRE
ATTORNEY ID (002912003)
1040 NORTH KINGS HIGHWAY, SUITE 200
CHERRY HILL, N.J. 08034
aunterlack@egalawfirm.com

TABLE OF CONTENTS

Table of Contents i

Table of Citation of Cases, Statutes, and Rules iii

Counter-Statement of Procedural History 1

Counter-Statement of Facts.....12

Legal Argument.....16

I. **THIS APPEAL COMMENCED BY APPELLANT IS UNTIMELY PURSUNT TO R. 2:4-1, AS MORE THAN 45 DAYS ELAPSED FROM THE UNDERLYING ORDER DATED APRIL 29, 2024 WHICH DENIED APPELLANT'S REQUESTED LEGAL FEES** 16

II. **THE DECISIONS OF THE TRIAL COURT WERE SUPPORTED BY COMPETENT, RELEVANT AND CREDIBLE EVIDENCE AND SHOULD NOT BE OVERTURNED** 18

III. **THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT APPELLANT WAS NOT ENTITLED TO AN AWARD OF LEGAL FEES FROM THE FUND IN COURT, AS APPELLANT WAS A PRO SE LITIGANT ACTING SOLELY ON HIS OWN BEHALF.** 23

IV. **THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT PLAINTIFF/RESPONDENT DID NOT ENGAGE IN FRIVOLOUS LITIGATION AND OTHERWISE FOUND NO BASIS TO AWARD SANCTIONS IN THE FORM OF LEGAL FEES TO A PRO SE LITIGANT**..... 26

V. THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT APPELLANT WAS NOT ENTITLED TO AN AWARD OF COMPOUNDING INTEREST..... 32

Conclusion.....34

Table of Citations of Cases

Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn,
410 N.J. Super 510 (App.Div. 2009) **30**

Asaadi v. Meltzer, 280 N.J. Super. 73 (Law.Div. 1994) **30**

Casino Reinvestment Development Authority v. Hauck,
317 N.J. Super. 584(App.Div.1999) **19**

Fagliarone v. Township of No. Bergen,
78 N.J. Super. 154 (App.Div. 1963) certif. denied, 40 N.J. 221 (1963) **19**

Gruber & Colabella, P.A. v. Erickson, 345 N.J.Super 248 (Law.Div. 2011)..... **30**

Henderson v. Camden County Municipal Utilities Authority,
176 N.J. 554 (2003) **24**

Henn v. Heath, 101 N.J.Eq. 347, 349 (Ch.Ct. 1927) **29-30**

Jersey City Redevelopment Agency v. Clean-O-Mat Corp.,
289 N.J. Super. 381(App.Div.1996) certif. denied, 147 N.J. 262 (1996) **19**

Maggio v. Pruzansky, 22 N.J. Super. 567 (App. Div. 1988)..... **19, 26**

Meshinsky v. Nichols Yacht Sales, Inc. 110 N.J. 464, 476 (1988) **18**

New Jersey Tpk. Auth. v. Sisselman,
106 N.J.Super. 358 (App.Div. 1969) certif. denied, 54 N.J. 565(1969) **19**

Nieder v. Royal Indem. Ins. Co., 62 N.J. 229 (1977) **25**

Porreca v. City of Millville, 419 N.J.Super 212 (App Div. 2011)..... **11, 22-25**

Rova Farms Resort v. Investors Ins. Co., 56 N.J. 474 (1974) **18-19, 26**

Segal v. Lynch, 211 N.J. 230 (2012) **10, 21, 29-31**

Tabaac v. City of Atlantic City,
174 N.J.Super 519 (Law Div. 1980)..... **24**

Township of West Windsor v. Nierenberg, 345 N.J.Super 472 ..... **18-19, 34**

Weiss v. I. Zapinsky, 65 N.J. Super. 351 (App.Div. 1961) **19**

Statutes and Regulations

N.J.S.A. 2A:15-59.1 ..... **16-17, 21-22, 26, 29**

N.J.S.A. 54:4-67(a) **20, 33**

N.J.S.A. 54:5-58 ..... **20, 33**

N.J.S.A. 54:5-60 ..... **20, 33**

R. 1:4-8 (Frivolous Litigation)..... **16-17, 21-22, 26-29, 31**

R. 1:5-2 (Manner of Service) **28-29**

R. 2:4-1 (Time: From Judgments, Orders, Decisions, Actions and From Rules) .....

..... **16-17**

R. 2:4-4 (Extension of Time for Appeal and Review)..... **17**

R. 2:10-2 (Notice of Trial Errors) **18**

R. 4:42-9(a)(2) (Attorney's Fees) **11, 16-17, 21-24, 26**

R. 4:42-11 (Interest; Rate on Judgments) **32, 34**

COUNTER-STATEMENT OF PROCEDURAL HISTORY

Rose Colon ("Colon") was the previous owner of 421 Highway 79, Marlboro, New Jersey 07751 ("Property") against which Plaintiff held a mortgage ("Plaintiff Mortgage"). In August 2003, Kim-Anh Nguyen ("Nguyen") filed a Chancery action in the Superior Court, Docket Number C-340-03 ("Nguyen Chancery Action") against Colon, which gave rise to a second mortgage on the Property ("Nguyen Mortgage"). Nguyen also recorded a Notice of Lis Pendens affecting the Property. Pursuant to a Court Order in the Nguyen Chancery Action, on June 10, 2005, Nguyen entered judgment in the amount of $120,000.00 ("Judgement") against Colon and against the Property. Said Judgment remained open and placed a cloud on Plaintiff's title. Due to the passage of time, the underlying rulings in this matter are unavailable to Plaintiff-Respondent. Colon commenced bankruptcy proceedings in the District of New Jersey on October 14, 2005, receiving a Discharge which severed any *in personam* liability as to the Judgment.

On February 1, 2007, Plaintiff filed a Complaint in Foreclosure and asserted that they held a mortgage on the Property and had priority over any other encumbrance to title, including Nguyen's interest. On May 24, 2007, Nguyen filed a Contesting Answer and Counterclaim asserting priority over Plaintiff's Mortgage. In light of Colon's bankruptcy Discharge, on August 1,

2007, Colon filed a Motion to Cancel and Discharge Judgment pursuant to N.J.S.A. 2A:16-49.1, which was granted without opposition. By Order dated September 7, 2007, Nguyen's Judgment against Colon was cancelled and discharged of record and the Clerk of Monmouth County was directed to cancel and discharge the Judgment on the record (which the Clerk failed to take action pursuant to such Order).

As a result of the September 7, 2007 Order in the Nguyen Chancery Action, on November 16, 2007, Plaintiff filed a motion for summary judgment in this case to strike Nguyen's Contesting Answer and dismiss her Counterclaim. After oral argument and supplemental briefing, the Court granted Plaintiff's motion for summary judgment, and on February 21, 2008, entered an Order striking Nguyen's Answer and dismissing her Counterclaim. Pursuant to an Amended Complaint in foreclosure, as granted by the Court, Plaintiff added defendant Ronald W. Horowitz, Esquire's ("Horowitz") as a party defendant. Plaintiff served Horowitz with a copy of the Complaint on February 21, 2008, pursuant to Certified Mail acknowledged by him. Horowitz filed a Non-Contesting Answer to the foreclosure Complaint on or about June 30, 2008. On September 29, 2010, the lower Court entered final judgment in foreclosure rendering the matter ripe for appeal. Thereafter, on January 10, 2011, Nguyen filed a Notice of Appeal and the matter was subsequently argued before the

Appellate Division. On February 6, 2012, the Appellate Division remanded the case to the lower Court for further proceedings and trial, and Plaintiff and Nguyen engaged in extensive discovery and motion practice. On April 3, 2013, following a bench trial in this matter before the Honorable Patricia Del Bueno Cleary, P.J.Ch., an Order for Final Foreclosure Judgment was entered fixing the amount of the Nguyen Mortgage at $92,000.00 without interest and granting Nguyen priority over Plaintiff's Mortgage to that amount.

On May 8, 2013, Nguyen filed an appeal of the April 3, 2013, Judgment and Order for Final Foreclosure Judgment with the Appellate Division. On May 20, 2014, the Appellate Division affirmed the Trial Court decision in this foreclosure and determined that the Nguyen Mortgage had priority over Plaintiff's foreclosure judgment in the amount of $92,000.

On June 27, 2013, Nguyen filed a foreclosure action captioned Kim Ahn Nguyen v. Rose E. Colon, Barbara H. Fleisher and Michael Ginn Cust Eden Ginn Unif Tran. Min. Act PA, Ronald Horowitz, and the State of New Jersey (Mercer County Public Defender) before the Superior Court of New Jersey, Monmouth County, Chancery Division, Docket Number F-022540-13 ("Nguyen Foreclosure Action") seeking to foreclose the Nguyen Mortgage in the alleged principal amount of $120,000.00 and to recover attorney's fees and interest. During the pendency of the Nguyen Foreclosure Action, Nguyen and the

underlying title insurance carrier entered into an agreement to resolve the claims of Nguyen. Thereafter, the Honorable David F. Bauman, P.J.C. entered an Order, dated September 26, 2014, permitting the deposit into court of $92,000.00 in satisfaction of Nguyen's claimed mortgage interest in the Property and thereby dismissing Nguyen's Foreclosure Action. On February 6, 2015, the Court entered an Order directing the Superior Trust Fund to release payment of the $92,000.00 to Nguyen. Despite such payment to Nguyen, including additional funds contributed by the insurance carrier, Nguyen failed to satisfy the underlying Judgment. Such Judgment remained as a cloud on title, and Nguyen refused to satisfy such lien, necessitating subsequent actions.

Horowitz is and was Colon's counsel in her dispute with Nguyen. The Court denied Horowitz's Motion to Be Relieved as Counsel, and a balance remained due and owing at the end of the underlying litigation. Horowitz thereafter sued his former client, and on October 18, 2005, judgment was entered against Colon and in favor of Horowitz in the amount of $27,787.65 in Docket Number L-2849-05, Judgment Number J-278687-05 ("Horowitz Judgment").

The April 3, 2013 Order, entered by the lower Court, and upheld by the Appellate Court, specifically states Horowitz is "absolutely debarred and foreclosed of and from all equity of redemption of, in and to said mortgage premises described in the complaint and amended complaint when sold as

aforesaid by virtue of this Judgment."

On June 21, 2016, Plaintiff accepted a Deed in Lieu of Foreclosure ("DIL") from Colon. **(Da 31-33).** Plaintiff accepted possession of the Property subsequent to the recording of the DIL and remained in absolute and undisturbed possession of the Property. Plaintiff, in good faith, and in reliance upon the aforesaid Orders, believed that she had acquired by the DIL, absolute and perfect title in fee simple to the Property, free and clear of all encumbrances including the Nguyen Judgment and Horowitz Judgment. Plaintiff continued in possession and expended large sums of money to pay all the taxes and assessments which had been levied against the Property, none of which were repaid to the Plaintiff by Nguyen, Horowitz, or any other party.

Based on the foregoing, and primarily as a result of Nguyen's refusal to satisfy her Judgment which remained a cloud on title, on September 22, 2021, Plaintiff filed a Motion requesting that the Court enter an Order declaring Nguyen's and Horowitz's rights, title, interest, use or claim in the Property were divested by virtue of this foreclosure action or other legal basis; foreclosing and barring Defendants, Nguyen and Horowitz, of all equity of redemption in and to said Property; and declaring the Nguyen Judgment and Horowitz Judgment discharged and cancelled as to the Property. Horowitz filed a Cross-Motion to vacate the lower Court's April 3, 2013 Order, claiming service was defective

and that the order had a "clerical error." On January 21, 2022, upon consideration of the submissions and after oral argument, the lower Court granted Plaintiff's Motion to Divest and denied Appellant's Motion to Vacate for reasons set forth on the record. **(Da 46).**

On January 21, 2022, Appellant initiated an appeal of the January 21, 2022 Order with the Appellate Division. In conjunction with said appeal, Appellant filed a Motion for Stay which was granted upon expedited hearing on February 4, 2022. The issued Order provided for an accelerated briefing schedule to avoid undue prejudice of the stay of the underlying lower Court Order. Despite contentions of Appellant, the issued Order did not provide for any stay or other restriction upon sale of the Property.

The Property remained under a pending Agreement of Sale, with the Buyer pushing for closure of said transaction. Subsequent to commencement of the appeal and prior to issuance of the opinion of the Appellate Division, the Property was sold for $200,000.00 to a disinterested third party purchaser, with sufficient funds escrowed by the title company to satisfy the then existing Horowitz Judgment. **(Da 48-50).**

On November 9, 2022, the Appellate Division vacated in part, affirmed in part, and remanded to the lower Court for further proceedings. **(Da 57-67).**

At the demand of Appellant, and pursuant to an applicable Consent Order, the funds held by the title company were deposited to the Superior Court. **(Da 68-69).**

During the remand proceedings, Appellant served discovery demands upon Respondent, including document requests and a deposition notice. Respondent complied with such document requests to the extent responsive documents could be located among Decedent's files and possessions. As the parties could not agree on the necessity, date, time, and location for a deposition, such issue was subsequently determined by Judge Joseph Quinn, J.S.C. on September 22, 2023. **(Da 70-75 and Da 76-77).**

The deposition of Leslie Fleisher, Executrix of the Estate of Barbara H. Fleisher, by Appellant, occurred on November 30, 2023. Said deposition ran for approximately 2 ½ hours and was comprised of overly aggressive and antagonistic interrogation and hostile exchanges between Appellant and deponent. While Appellant remained civility to Respondent's counsel, Appellant made it clear that this matter would be continued regardless of adjudication in these remand proceedings until either Respondent submitted to his demands or every last nickel of funds was exhausted. **(Pa 1-104, and more specifically Pa 26-28).**

Pursuant to directions received in a Case Management Conference with then assigned Judge English, the parties were instructed to file competing dispositive motions seeking the $60,000.00 on deposit with the Superior Court. Said Motions were filed by Appellant and Respondent, and the matter was subsequently re-assigned to the Hon. Kathleen A. Sheedy, J.S.C. for adjudication. **(Da 111-154).**

In the initial adjudication, on March 4, 2024, Judge Sheedy granted in part Appellant's Motion, finding that Appellant's junior interest in the Property entitled Appellant to surplus funds being held by the Court. However, the Court took issue with the amount sought by Appellant, as Appellant utilized a calculation of compound interest rather than simple interest as permitted by the Rules of Court (citing N.J.S.A. §§54:4-67(a), 54:5-58, and 54:5-60). The Court held that the correct calculation of interest was presented by Respondent, based upon simple interest. The Court awarded Appellant the amount of $43,475.92, plus continuing per diem interest at $4.01 thereafter. Applying identical reasoning, the Court denied Respondent's Motion. **(Da 155-174).**

Respondent accepted the adjudication as set forth by the Orders of Judge Sheedy, and did not seek reconsideration in any manner. Moreover, Respondent prepared and provided a Consent Order to Appellant to facilitate an expedient effectuation of the relief awarded by the March 4, 2024 Orders. Appellant

rejected such offered Consent Order, as Appellant was adamant as to entitlement to the amount awarded plus compounding interest, attorney's fees and costs. In summary, Appellant demanded all (or substantially all) of the deposited funds in order to fully and finally resolve this matter.

Following the adjudication in favor of Appellant and setting the amount to be turned over to Appellant from the funds on deposit, Appellant subsequently filed on or about March 12, 2024, a Motion to modify the calculation of post-judgment interest, award attorney fees and costs, and direct the Superior Court to release all amounts awarded. **(Da 175-193).** Said Motion was not a Motion for Reconsideration, and did not contend or contain any argument that the Court made an error in application of the Rules or should consider additional facts.

In an Order dated April 1, 2024, Judge Sheedy denied Appellant's demanded relief in its entirety. **(Da 194-202).** As to modification of post-judgment interest, the Court was not persuaded to further listen to debate or address the matter. The Court held that said motion was not a Motion to Reconsider, but rather a motion merely seeking to relitigate an issue which had already been presented before the Court and of which the Court had already entered a decision. The Court denied the existence of any clerical mistake in relation to interest calculation. As to seeking attorney's fees, the Court denied Appellant's request. The Court concluded that Appellant is a pro se litigant in

this matter, and accordingly, is not entitled to any award of attorney's fees or costs. The Court noted that Appellant is no longer licensed to practice in the State of New Jersey and this matter concerns a former New Jersey attorney making efforts to collect his own outstanding debt. The Court further noted that even if Appellant were still pursuing the matter under his capacity as an attorney registered to practice law within the State of New Jersey, the Court's conclusion would still yield the same result. The Court explained its reasoning by reliance upon Segal v. Lynch, which also covered alleged frivolous litigation. The Court considered Appellant's request for sanctions, but subsequently did not find that Respondent or Respondent's Counsel engaged in activity that would constitute defrauding of any Court or warrant imposition of sanctions. In conclusion, the Court denied Appellant's demand for the entirety of the $60,000.00 held on deposit by the Superior Court and directed Appellant to file an appropriate motion seeking the turnover of funds previously awarded.

Following said denial, Appellant subsequently filed on or about April 10, 2024, a Motion to modify the underlying Horowitz Judgment amount and again sought counsel fees (albeit this time as an award from a fund in court) and costs. **(Da 203-208).** In support of this relief, Appellant produced additional information gleaned from Superior Court records setting forth a higher Horowitz Judgment amount but conceded that it would be simple interest accruing

thereon.

In an Order dated April 29, 2024, Judge Sheedy granted Appellant's motion in part. **(Da 209-217).** The Order granted Appellant costs incurred in the amount of $1,300.00 and increased the amount awarded on the Horowitz Judgment in favor of Appellant to $47,532.50 plus continuing per diem interest at $4.23 thereafter. However, said Order once again held that Appellant would receive no attorney's fees in connection with this litigation. In the Rider thereto, the Court provided the basis for its conclusions. More specifically, the Court incorporated the language of its prior April 1, 2024 Order denying the award of any counsel fees. However, as Appellant now argued entitlement to counsel fees related to a fund in court, the Court considered R. 4:42-9(a)(2) and the two-step process outlined in Porreca v. City of Millville. After analysis, the Court held that it was abundantly clear that Appellant was only serving his own interest in litigating this matter, and accordingly, no such attorney's fees are warranted. The Court, in its discretion, denied Appellant's request for attorney fees.

While a subsequent Order dated May 31, 2024 was entered to facilitate the release of funds on deposit by the Superior Court, said order cannot be considered the Final Order in this matter, as it relates to the timeliness of this appeal. **(Da 218-219).** The true Orders that Appellant is really appealing in this matter are the Orders dated April 1, 2024 and April 29, 2024 – which denied

awarding of compounding interest and denied attorney's fees, whether based on funds in court or frivolous litigation. **(Da 194-202 and Da 209-217).** Pursuant to R. 2:4-1, Appellant had 45 days to appeal such Orders (more specifically, May 16, 2024 or June 13, 2024). Appellant commenced this appeal on July 1, 2024, and accordingly, this appeal should be deemed untimely. **(Da 220-227).**

Moreover, in July 2024, Appellant allegedly received approximately $47,000.00 of the funds on deposit with the Superior Court, pursuant to these underlying Orders. Despite Appellant's refusal to accept these underlying Orders, Appellant nevertheless took the funds awarded therein. Considering such actions, Appellant should be precluded from proceeding with this subsequent appeal.

COUNTER-STATEMENT OF FACTS

Without setting forth an exhaustive counter-statement of facts, Respondent will merely respond to Appellant's statement of "facts" and make admissions or denials, as warranted.

While the prior legal career history is not truly relevant, it is admitted that Appellant was a long-term member of the New Jersey bar. It appears that Appellant retired from practice in New Jersey immediately prior to a disciplinary proceeding ruled in Appellant's favor (but which considered his retired-status). For all relevant periods of the underlying motion practice,

subsequent appeal resulting in remand, and then remand proceedings, Appellant remained in retirement status. At some point during these later proceedings, Appellant "unretired" and is allegedly again a practicing member of the New Jersey bar.

As previously discussed, the deposition of Leslie Fleisher, Executrix of the Estate of Barbara H. Fleisher, occurred on November 30, 2023. Said deposition ran for approximately 2 ½ hours and was comprised of overly aggressive and antagonistic interrogation and hostile exchanges between Appellant and deponent. While Appellant remained civility to Respondent's counsel, Appellant made it clear that this matter would be continued regardless of adjudication in these remand proceedings until either Respondent submitted to his demands or every last nickel of funds was exhausted. **(Pa 1-104, and more specifically Pa 26-28).** While Appellant seeks to admit various statements made by the Executrix, it is clearly evident from the deposition transcript that the Appellant could not conduct such proceeding in a professional manner and such overly aggressive and antagonistic interrogation resulted only in hostile exchanges, in which deponent failed to provide clear, concise, and responsive answers of any relevant information. This deposition turned into a collateral attack on deponent, her personal and professional history, including her record as a sitting Judge in the Commonwealth of Pennsylvania, and details of the

Estate above and beyond relevant subjects related to the Horowitz Judgment. The entirety of the deposition transcript is included within Respondent's exhibits, as excerpts alone do not provide adequate coverage of the incivility.

It is admitted that Plaintiff accepted a Deed-in-Lieu of Foreclosure ("DIL"). It is admitted that said DIL was prepared by Executrix, in her capacity as counsel to Plaintiff for that limited purpose. It is admitted that Executrix had no other role related to the underling litigation (until after her mother's death when she became Executrix). It is admitted that Plaintiff subsequently executed a Satisfaction Piece. Although such Satisfaction Piece contained a note to return the filed document to her legal office, Executrix does not recall preparing such document, receiving such document once filed, or locating such documents within her records or that of the Plaintiff.

It is admitted that the Nguyen Judgment and Horowitz Judgment were discovered as part of the title searches performed by the intended purchaser of the Property. Prior to that occurrence, Executrix was unaware of the remaining clouds upon title to the Property represented by the Nguyen Judgment and Horowitz Judgment. As Nguyen refused to vacate or mark the Nguyen Judgment satisfied, the underlying action to strike the Nguyen Judgment was necessary. While in hindsight it would have been prudent and cost-effective to settle with Appellant for a reduced amount upon the Horowitz Judgment, such resolution

was not pursued to conclusion and the subsequent actions unfolded as set forth in the procedural history.

Upon an adjudication in favor of Appellant in the remand proceedings, Respondent accepted Judge Sheedy's determination and did not pursue a Motion for Reconsideration or appeal. Instead, Respondent offered Appellant a Consent Order to expedite the awarded relief. Such proposal was rejected, unless Respondent agreed to terms above and beyond that awarded by the Court.

Appellant successfully obtained the funds awarded by Judge Sheedy, pursuant to the same Orders that Appellant now seeks to appeal.

Appellant attempted to issue a "Safe Harbor" notice. As Appellant failed to comply with R. 1:5-2 and demanded amounts above and beyond entitlement, the alleged "Safe Harbor" communication was defective on its face.

The purported "final order" alleged by Appellant was entered May 31, 2024. Said Order merely related to the release of the funds on deposit with the Superior Court and had absolutely nothing to do with the issues of compounding post-judgment interest or the award of attorney's fees. Appellant commenced this appeal on July 1, 2024 ("Filing Date"). As the Filing Date was greater than forty-five (45) days from either the April 1, 2024 or the April 29, 2024 underlying Orders, this appeal is untimely pursuant to R. 2:4-1.

ARGUMENT

I. THE APPEAL COMMENCED BY APPELLANT WAS UNTIMELY FILED PURSUNT TO R. 2:4-1, AS MORE THAN 45 DAYS ELAPSED FROM THE UNDERLYING ORDERS DATED APRIL 1, 2024 AND APRIL 29, 2024, WHICH DENIED APPELLANT'S REQUEST FOR COMPOUNDING INTEREST AND/OR AWARDING OF LEGAL FEES.

R. 2:4-1(a)provides, in pertinent part, that except as set forth in subparagraphs (1) and (2), appeals from final judgments of courts, final judgments or orders of judges sitting as statutory agents … shall be filed within 45 days of their entry.

The Order dated April 1, 2024 denied Appellant's request for an award of attorney's fees, whether under R. 4:42-9(a)(2) for a fund in court or under N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation. The Order dated April 1, 2024 also denied Appellant's request for compounding post-judgment interest. While Appellant's sought reconsideration of the denial of attorney's fees, Appellant waived arguments as to compounding post-judgment interest as such issue was not contained in Appellant's subsequent Motion for Reconsideration. Accordingly, this issue of compounding post-judgment interest became "final" with the April 1, 2024 Order.

The Order dated April 29, 2024 granted Appellant additional sums as part of the modified Horowitz Judgment, including certain costs incurred. Appellant did not seek reconsideration of compounding post-judgment interest and appears

to have accepted the Court's ruling as to the applicability of simple interest. Appellant did seek reconsideration of the Court's prior denial of attorney's fees under R. 4:42-9(a)(2) for a fund in court. Appellant did not seek reconsideration of the Court's denial of attorney's fees under N.J.S.A. 2A:15-59.1 and R. 1:4-8 for alleged frivolous litigation and appears to have accepted the Court's ruling on that issue. Accordingly, this issue related to the awarding of attorney's fees became "final" with the April 29, 2024 Order.

The purported "final order" alleged by Appellant was entered May 31, 2024. Said Order merely related to the release of the funds on deposit with the Superior Court and had absolutely nothing to do with the issues of compounding post-judgment interest or the award of attorney's fees.

Appellant commenced this appeal on July 1, 2024 ("Filing Date"). As the Filing Date was greater than forty-five (45) days from either the April 1, 2024 or the April 29, 2024 underlying Orders, this appeal is untimely pursuant to R. 2:4-1. Moreover, Appellant did not seek an extension of time under R. 2:4-4. It is Respondent's contention that no good cause exists for granting of an extension at this juncture. Accordingly, it is Respondent's position that this appeal should be denied as untimely.

II. THE DECISIONS OF THE TRIAL COURT WERE SUPPORTED BY COMPETENT, RELEVANT AND CREDIBLE EVIDENCE AND SHOULD NOT BE OVERTURNED.

The decisions of the trial court were supported by competent, relevant and credible evidence and should not be overturned. The standard of appellate review is set forth in R. 2:10-2, which provides:

> An error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interest of justice, notice plain error not brought to the attention of the trial or appellate court.

As the court stated in Rova Farms Resort v. Investors Ins. Co., 56 N.J. 474 (1974):

> It has been otherwise stated that our appellate function is a limited one: we do not disturb the factual findings and legal conclusions of the trial court unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonable credible evidence as to offend the interests of justice. Id., 483-484.

"Given our limited scope of appellate review and deference to the fact-finding role of the trial court, we cannot substitute our review of the record for that of the Law Division." Township of West Windsor v. Nierenberg, 345 N.J.Super 472, citing Meshinsky v. Nichols Yacht Sales, Inc. 110 N.J. 464, 476(1988); Rova Farms Resort v. Investors Ins. Co., 65 N.J. at 483-84(1974). Moreover, "[t]here was sufficient basis in the record to support the trial court's

findings and conclusions." Township of West Windsor v. Nierenberg, 345 N.J.Super 472, citing Rova Farms Resort v. Investors Ins. Co., 65 N.J. at 484; see also New Jersey Tpk. Auth. v. Sisselman, 106 N.J.Super. 358, 370(App.Div. 1969), certif. denied, 54 N.J. 565(1969); Fagliarone v. Township of No. Bergen, 78 N.J. Super. 154, 155 (App.Div.1963), certif. denied, 40 N.J. 221 (1963); Weiss v. I. Zapinsky, 65 N.J. Super. 351, 357 (App.Div. 1961). As the Appellate Division observed, "[a]lthough we might have reached a different result in this case, we find no abuse of discretion. We cannot fairly say that the judge's decision under the particular circumstances of this case was clearly a mistaken one requiring our intervention and correction. Township of West Windsor v. Nierenberg, 345 N.J.Super 472, citing Casino Reinvestment Development Authority v. Hauck, 317 N.J. Super. 584, 595 (App.Div.1999); Jersey City Redevelopment Agency v. Clean-O-Mat Corp., 289 N.J. Super. 381, 401(App.Div.1996); certif. denied, 147 N.J. 262 (1996).

The court in Rova Farms further noted, "[f]indings by the trial judge are considered binding on appeal when supported by adequate substantial and credible evidence", Ibid. Deference to the trial court should be accorded unless its determination is so wide of the mark as to be clearly mistaken. Maggio v. Pruzansky, 22 N.J. Super. 567, 577 (App. Div. 1988).

In the remand proceedings, Appellant vigorously argued his entitlement for compounding post-judgment interest. After consideration of such demand, by Order dated March 4, 2024, Judge Sheedy concluded that "interest on tax liens is simple interest and not compound interest" relying on N.J.S.A. §§ 54:4-67(a), 54:5-58, and 54:5-60. **(Da 155-165).** Thereafter, Appellant filed a subsequent motion (not a motion for reconsideration) renewing argument as to modification of the simple interest awarded. Once again, by Order dated April 1, 2024, Judge Sheedy considered and denied Appellant's demand for compounding interest. Judge Sheedy concluded that "the Court is not persuaded to further listen to debate or address the matter. The instant Motion filed by Appellant is not a Motion for Reconsideration, but rather a Motion merely seeking to relitigate an issue which had already been presented before the Court and of which, the Court had already entered a decision. The Court came to that determination utilizing the evidence presented before it at that time, and rendered its decision based upon that information." **(Da 194-202).** This issue of compounding interest was not thereafter contained in Appellant's subsequent Motion for Reconsideration and should be consider as waived and/or abandoned by Appellant. It is abundantly clear that the lower Court considered Appellant's application and provided a basis for its denial of such request (and Appellant subsequently abandoned this issue until reviving it as part of the present appeal).

In the remand proceedings, Appellant vigorously argued his entitlement for an award of attorney's fees, whether under R. 4:42-9(a)(2) for a fund in court or under N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation. After consideration of such demand, by Order dated April 1, 2024, Judge Sheedy denied such request. **(Da 194-202).** The lower Court set forth the legal standard related to R. 1:4-8 for frivolous litigation. Judge Sheedy concluded that "the simple fact of the matter is that Appellant is a pro se litigant in this matter and accordingly, is not entitled to any award of attorney's fees or costs (although Judge Sheedy subsequently awarded costs incurred by later Order). **(Da 200).** Judge Sheedy continued that "Appellant is no longer licensed to practice in the state of New Jersey and this matter concerns a former New Jersey attorney making efforts to collect his own outstanding debt." **(Da 200).** The Court found that the status of Appellant as a retired or practicing New Jersey attorney would yield the same result. **(Da 200).** In reaching this determination, Judge Sheedy relied upon Segal v. Lynch and other precedent cases. Moreover, Judge Sheedy considered R. 1:4-8 as discussed in Segal v. Lynch, holding that it "specifically permits only the reimbursement of attorney's fees and expenses incurred by a party. It does not permit the reimbursement of a party's loss of income in dealing with frivolous litigation." **(Da 201).** While Judge Sheedy considered the allegations brought against Respondent and Respondent's Counsel by

Appellant, Judge Sheedy ultimately held that "this Court does not find that the actions carried out by Respondent or Respondent's Counsel have engaged in activity which would constitute 'defrauding' of any Court or warrant such impositions of Sanctions. Rather, the Court finds that Respondent and Respondent's Counsel pursued the matter to its fullest ability, and while the result may not have been decided in their favor, no actions carried out should subject them to such penalties." **(Da 201).** This determination was within the sound discretion of the trial Court, and after consideration of the respective arguments and underlying facts, Judge Sheedy did not elect to entertain the notion of any claims for frivolous litigation. As such, this determination as to frivolous litigation should not be disturbed upon appellate review.

In Appellant's Motion for Reconsideration, Appellant vigorously argued his entitlement for an award of attorney's fees, under R. 4:42-9(a)(2) for a fund in court (as Judge Sheedy focused her prior denial on N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation). After reconsideration of such demand, by Order dated April 29, 2024, Judge Sheedy relying upon Porreca v. City of Millville, recognized that "the applicable standard of the equitable 'fund in court' exception is whether plaintiff 'is doing more than advancing his own interests' and whether other persons have benefited from plaintiff's litigation rendering it 'unfair to saddle the full cost' of advancing the suit on plaintiff."

Judge Sheedy concluded that "the Court finds it abundantly clear that Appellant was only serving his own interest in litigating this matter and accordingly, no such attorney's fees are warranted." **(Da 216).** After analysis of Appellant's renewed demand for attorney's fees, the lower Court, "in its discretion, denies Appellant's request for attorney's fees" pursuant to R. 4:42-9(a)(2). As R. 4:42-9(a)(2) clearly states that such determination is "in its discretion" and the Court considered and denied such request, this should not be disturbed upon appellate review.

III. THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT APPELLANT WAS NOT ENTITLED TO AN AWARD OF LEGAL FEES FROM THE FUND IN COURT, AS APPELLANT WAS A PRO SE LITIGANT ACTING SOLELY ON HIS OWN BEHALF.

As contended hereinabove, Appellant sought attorney's fees pursuant to R. 4:42-9(a)(2) for a fund in court. In pertinent part, R. 4:42-9(a)(2) provides:

> Out of a fund in court. The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury. A fiduciary may make payments on account of fees for legal services rendered out of a fund entrusted to the fiduciary for administration, subject to approval and allowance or to disallowance by the court upon settlement of the account.

"It is well established that under the American Rule, litigants generally are responsible for their own counsel fees unless otherwise authorized by statute, court rule or a contract." Porreca v. City of Millville, 419 N.J.Super 212, 224

(App Div. 2011). As in Porreca, Appellant seeks an award of counsel fees under R. 4:42-9(a)(2, which permits a court, *in its discretion*, to award attorney's fees from a fund in court. By way of illustration, "a Court has approved an award of counsel fees from a fund in court to taxpayer plaintiffs whose suit resulted in an indirect benefit to all Atlantic City taxpayers." Porreca v. City of Millville, 419 N.J.Super at 226 (referencing Tabaac v. City of Atlantic City, 174 N.J.Super 519, 537-38 (Law Div. 1980).

The Court in Porreca established a two step-process to determine the applicability of the "fund in court" rule. "First, the court must determine as a matter of law whether plaintiff is entitled to seek an attorney fee award under the fund in court exception as articulated in Henderson v. Camden County Municipal Utilities Authority, 176 N.J. 554 (2003). If the court determines plaintiff has met the threshold it then has the 'discretion' to award the amount, if any, it concludes is a reasonable fee under the totality of the facts of the case. Porreca v. City of Millville, 419 N.J.Super at 228. The Court in Porreca observed that the "critical question in considering plaintiff's entitlement to request attorney's fees under this Rule is whether a fund in court was created as a result of his litigation." Porreca v. City of Millville, 419 N.J.Super at 228. The Court concluded that "the applicable standard of the equitable 'fund in court' exception is whether plaintiff 'is doing more than advancing his own

interests' and whether other persons have benefited from plaintiff's litigation rendering it 'unfair to saddle the full cost' of advancing the suit on plaintiff." Porreca v. City of Millville, 419 N.J.Super at 228.

In his brief, Appellant, for the first time contends that his actions were not merely to benefit himself but were advancing the interests of third parties related to a real estate transaction. More specifically, Appellant identifies the plaintiffs, the buyer, the realtors, the federal and state governments, the municipality, the title insurer and the attorneys, as third parties that benefitted from his actions. In fact, to the extent that these third parties received any funds related to this transaction, it was because of the actual sale of the Property and not related to the actions of Appellant whatsoever. Appellant's recent representation is self-serving at best, as said third parties were paid regardless of the actions taken by Appellant. The Court has held "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 (1977). Accordingly, the over-reaching connection to third parties allegedly benefitting from the actions of Appellant should not be considered, as Appellant never raised such contentions in arguments below.

R. 4:42-9(a)(2) permits a court, *in its discretion*, to award attorney's fees from a fund in court. As previously set forth, the court in Rova Farms noted that "[f]indings by the trial judge are considered binding on appeal when supported by adequate substantial and credible evidence", Ibid. Deference to the trial court should be accorded unless its determination is so wide of the mark as to be clearly mistaken. Maggio v. Pruzansky, 22 N.J. Super. 567, 577 (App. Div. 1988). As the lower Court clearly considered these arguments of Appellant in seeking an award of attorney's fees pursuant to R. 4:42-9(a)(2) and rejected such relief with legal basis for said denial, this determination should not be disturbed upon appellate review.

IV. THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT PLAINTIFF/RESPONDENT DID NOT ENGAGE IN FRIVOLOUS LITIGATION AND OTHERWISE FOUND NO BASIS TO AWARD SANCTIONS IN THE FORM OF LEGAL FEES TO A PRO SE LITIGANT.

As contended hereinabove, Appellant sought attorney's fees pursuant to N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation. In pertinent part, R. 1:4-8(a) provides:

> By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: **(1)** the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by

> a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; **(3)** the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and **(4)** the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

Moreover, in pertinent part, R. 1:4-8(b) provides:

> An application for sanctions under this rule shall be by motion made separately from other applications and shall describe the specific conduct alleged to have violated this rule. No such motion shall be filed unless it includes a certification that the applicant **served written notice and demand pursuant to R. 1:5-2** to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand.

As set forth hereinabove, R. 1:4-8(b) mandates service of a written notice and demand pursuant to R. 1:5-2. In pertinent part, R. 1:5-2 provides:

> Service upon an attorney of papers referred to in R. 1:5-1 shall be made by mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ,

> or, if the office is closed or the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such papers shall be made as provided in R. 4:4-4 or by registered or certified mail, return receipt requested, and simultaneously by ordinary mail to the party's last known address.

By admission, Appellant merely sent a communication via email to Respondent's counsel. **(Da 110).** Such communication was not in compliance with R. 1:5-2. Moreover, such communication allegedly pursuant to R. 1:4-8, made demand upon Respondent to forego any claim to the $60,000.00 of funds on deposit with the Superior Court and not limited to the extent of Appellant's outstanding Horowitz Judgment. Such demand was over-reaching and accordingly was rejected. Appellant refused to limit demand to the face amount of the Horowitz Judgment and interest accrued thereon. As Appellant failed to comply with R. 1:5-2 and demanded amounts above and beyond entitlement, the alleged "Safe Harbor" communication was defective on its face.

In the remand proceedings, Appellant vigorously argued his entitlement for an award of attorney's fees, whether under N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation. After consideration of such demand, by Order dated April 1, 2024, Judge Sheedy denied such request. **(Da 194-202).** The lower Court set forth the legal standard related to R. 1:4-8 for frivolous litigation. Judge Sheedy concluded that "the simple fact of the matter is that Appellant is a pro se litigant in this matter and accordingly, is not entitled to any award of

attorney's fees or costs (although Judge Sheedy subsequently awarded costs incurred by later Order). **(Da 200).** Judge Sheedy continued that "Appellant is no longer licensed to practice in the state of New Jersey and this matter concerns a former New Jersey attorney making efforts to collect his own outstanding debt." **(Da 200).** The Court found that the status of Appellant as a retired or practicing New Jersey attorney would yield the same result. **(Da 200).** In reaching this determination, Judge Sheedy relied upon Segal v. Lynch, 211 N.J. 230 (2012) and other precedent cases. Moreover, Judge Sheedy considered R. 1:4-8 as discussed in Segal v. Lynch, holding that it "specifically permits only the reimbursement of attorney's fees and expenses incurred by a party. It does not permit the reimbursement of a party's loss of income in dealing with frivolous litigation." **(Da 201).**

Further analysis of Segal v. Lynch support Respondent's position. The Appellate Division found that "[w]e perceive in this record no basis on which to conclude that attorneys who represent themselves are entitled to be paid for their time when all other litigants who choose to represent themselves would be denied such compensation." Segal v. Lynch, 211 N.J.at 260. While the Appellate Division acknowledge that "historically courts allowed attorneys to be awarded fees when appearing pro se" it countered that "our courts long ago recognized that 'there is a conflict of authority as to whether an attorney

conducting a case in his own behalf is entitled to taxed fees therefor as costs." Segal v. Lynch, 211 N.J. 260, citing to Henn v. Heath, 101 N.J.Eq. 347, 349 (Ch.Ct. 1927).

The Appellate Division in Segal v. Lynch further recognized that "Courts concluding that fees may not be awarded to an attorney acting pro se have identified the policy rationales that support their conclusion. In the context of the frivolous litigation statute, one court cited concerns that 'the attorney appearing pro se and requesting a fee is taking advantage of a remedy designed to offset the burden of obtaining such representation, especially for the poor." Segal v. Lynch, 211 N.J. 261, citing Asaadi v. Meltzer, 280 N.J. Super. at 73 (Law.Div. 1994). Moreover, to allow pro se attorneys the ability to seek fee awards "would in effect create two separate classes of pro se litigants – those who are attorneys and those who are not – and grant different rights and remedies to each. Such a result, the court reasoned, would undermine the public confidence in the judicial system." Segal v. Lynch, 211 N.J. 261, quoting Gruber & Colabella, P.A. v. Erickson, 345 N.J.Super 248 (Law.Div. 2011).

Mirroring the analysis of Segal v. Lynch, in the earlier case of Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super 510 (App.Div. 2009), the Appellate Division held that "counsel proceeding pro se cannot recover attorney's fees for frivolous litigation because R. 1:4-8 specifically

permits only the reimbursement of attorneys' fee and expenses incurred by a party. It does not permit the reimbursement of a party's loss of income in dealing with frivolous litigation." Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. at 545. Accordingly, the Appellate Division held that "an attorney appearing pro se is not entitled to fees unless they are actually incurred as opposed to imputed." While the Appellate panel noted that "its holding was directed solely to the language of Rule 1:4-8(d)(2) and did not deal with the award of fees otherwise authorized by contract, rule, or statute," such distinction would not make a difference in this matter as Respondent has defended both basis of relief for attorney's fees as set forth by Appellant. See, Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. at 546.

While Judge Sheedy considered the allegations brought against Respondent and Respondent's Counsel by Appellant, Judge Sheedy ultimately held that "this Court does not find that the actions carried out by Respondent or Respondent's Counsel have engaged in activity which would constitute 'defrauding' of any Court or warrant such impositions of Sanctions. Rather, the Court finds that Respondent and Respondent's Counsel pursued the matter to its fullest ability, and while the result may not have been decided in their favor, no actions carried out should subject them to such penalties." **(Da 201).** This

determination was within the sound discretion of the trial Court, and after consideration of the respective arguments and underlying facts, Judge Sheedy did not elect to entertain the notion of any claims for frivolous litigation. As such, this determination as to frivolous litigation should not be disturbed upon appellate review.

V. THE COURT BELOW CONSIDERED AND PROPERLY RULED THAT APPELLANT WAS NOT ENTITLED TO AN AWARD OF COMPOUNDING INTEREST.

As contended hereinabove, Appellant sought application of compounding post-judgment interest upon the Horowitz Judgment. In pertinent part, R. 4:42-11(a) provides:

> Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest ...

As contended hereinabove, at the lower Court Appellant vigorously argued his entitlement for compounding post-judgment interest. After consideration of such demand, by Order dated March 4, 2024, Judge Sheedy concluded that "interest on tax liens is simple interest and no compound interest" relying on N.J.S.A. §§ 54:4-67(a), 54:5-58, and 54:5-60. **(Da 155-165).** Thereafter, Appellant filed a subsequent motion (not a motion for reconsideration) renewing argument as to modification of the simple interest awarded. Once again, by Order dated April 1, 2024, Judge Sheedy considered

and denied Appellant's demand for compounding interest. Judge Sheedy concluded that "the Court is not persuaded to further listen to debate or address the matter. The instant Motion filed by Appellant is not a Motion for Reconsideration, but rather a Motion merely seeking to relitigate an issue which had already been presented before the Court and of which, the Court had already entered a decision. The Court came to that determination utilizing the evidence presented before it at that time, and rendered its decision based upon that information." **(Da 194-202).**

This issue of compounding interest was not thereafter contained in Appellant's subsequent Motion for Reconsideration and should be consider as waived and/or abandoned by Appellant. It is abundantly clear that the lower Court considered Appellant's application and provided a basis for its denial of such request (and Appellant subsequently abandoned this issue until reviving it as part of the present appeal).

While Appellant has contended that R. 4:42-11 "allows a judge to depart from this rule," there is nothing in the Rule that provides such authority or discretion. Appellant now asks the Appellate Division to rely on a singular outlier case to support deviation from R. 4:42-11 and impose compounding post-judgment interest. The case cited by Appellant, Township of West Windsor v. Nierenberg, 345 N.J.Super 472, is distinguishable from the present matter.

While this matter relates to mere post-judgment interest accruing on a law division judgment obtained by a former New Jersey attorney against his former client, Nierenberg was a condemnation award seeking to establish reasonable value for the taking of property.

Alternatively, Appellant asks the Appellate Division to adopt positions set forth in ancillary jurisdictions of Texas, Michigan, Kentucky, Colorado, and/or Delaware to impose post-judgment compounding interest, as Appellant could find no other basis for such contention.

As the lower Court clearly considered Appellant's arguments for awarding compounding post-judgment interest and rejected such relief with legal basis for said denial, this determination should not be disturbed upon appellate review.

CONCLUSION

Based on the foregoing, the Court's denial of Appellant's demand for compounding post-judgment interest was proper. Moreover, the Court's denial of an award of attorney's fees, whether under R. 4:42-9(a)(2) for a fund in court or under N.J.S.A. 2A:15-59.1 and R. 1:4-8 for frivolous litigation, was proper. As each of these determinations was in the discretion of the trial judge, such determinations should not be disturbed upon appellate review. Therefore, Plaintiff/Respondent respectfully requests that the underlying opinions and Orders of Hon. Kathleen A. Sheedy be affirmed.

Respectfully submitted,

EISENBERG, GOLD & AGRAWAL, P.C.

By: _____
Andrew L. Unterlack, Esquire
Attorney for Plaintiff-Respondent

Dated: October 23, 2024

RONALD HOROWITZ
Attorney at Law
9 Lakeside Drive, Palm Coast, FL 32137
732-757-5110 (c)
ronhorowitzesq@gmail.com
Attorney Id 010251983

SUPERIOR COURT OF NEW JERSEY-APPELLATE DIVISION
Hughes Justice Complex
Trenton, NJ November 7,2024

Re: **BARBARA FLEISHER & MICHAEL GINN, CUST.: EDEN GINN, UNIF TRAN. MIN ACT PA , PLAINTIFFS/RESPONDENTS v. ROSE E COLON A/KA ROSE COLON;KIM_AHN NGUYEN: STATE OF NEW JERSEY: & RONALD HOROWITZ, DEFENDANT/APPELLANT**
Docket# A-3363
Sat Below:
Hon. Joseph Quinn, Ch. Div., Monmouth Cty F-3115-07
& Hon. Kathleen Sheedy, Law Div. Monmouth Cty L-3298-23
Sat on prior appeal: Hons Mary Whipple, Morris Smith & Joseph Marczyk
Docket # A-1523-21

Dear Sir or Madam:

On behalf of the undersigned Defendant/Appellant, kindly accept this Amended Reply Letter Brief.

TABLE OF CONTENTS

PRELIMINARY STATEMENT……2
REPLY TO PLAINTIFFS' COUNTER-STATEMENT OF FACTS……..5
LEGAL ARGUMENT
POINT 1: THE APPEAL WAS TIMELY FILED WITHIN 45 DAYS OF THE FINAL JUDGMENT……....6
POINT II: COUNSEL FEES FROM A FUND IN COURT WAS RAISED & DECIDED BELOW INCORRECTLY & A PRO SE LITIGANT'S ACTION BENEFICIAL TO OTHERS ENTITLES HIM TO THOSE FEES……..…..8
POINT III: PLAINTIFFS' MOTION FOR A TURN-OVER & THEIR OPPOSITION TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT WERE FRIVOLOUS ENTITLING THE PRO SE APPELLANT TO FEES……10
POINT IV: COMPOUNDED INTEREST ON THE LONG-OVERDUE JUDGMENT SHOULD HAVE BEEN AWARDED…….12

CONCLUSION……14

PRELIMINARY STATEMENT

Instead of addressing the sole issues, on this appeal, in their Counter-Statements of Procedural History & Facts, Plaintiffs assert, in 3 pages, the immaterial procedural history of another unrelated case Plaintiffs ultimately lost to the paramount mortgagee of the subject property, after 3 appeals to this Court. They also unfairly & inaccurately criticize Appellant. These assertions are without references to the record because their appendix did not contain such. It is obvious that Plaintiffs have attempted to divert attention from the issues on this appeal, namely, the propriety of awarding compounded interest on Appellant's judgment ("judgment"), whether Plaintiffs engaged in frivolous litigation & the propriety of awarding fees from the fund in court or from Plaintiffs &/ or their counsel. Plaintiffs do not assert meritorious arguments supporting any such rulings below. They merely rely on the erroneous decisions from the Law Division.

Furthermore, the record below, for this appeal, did not contain pleadings from Plaintiffs' case with the superior mortgagee. If Plaintiffs really believed that they were relevant, on this remand, Plaintiffs could have easily obtained them the Superior Court Clerk, just like Appellant obtained his actual 2005 judgment from the Clerk. As the record shows, Plaintiffs vindictively argued below that the total amount of the judgment was several thousands less based on their illogical reading of the abstract. Plaintiffs lost that argument also, but not after more needless time & expense.

Plaintiffs' prior & unsuccessful case could never have had any impact whatsoever on this case. No matter what, the judgment was subordinate to the 2 mortgages. When the prior mortgage prevailed over plaintiffs, & was paid, the

judgment was subordinate only to Plaintiffs. However, when Plaintiffs elected not to pursue their remedy of a sheriff sale for **3 years** & instead recorded a Deed in Lieu of Foreclosure ("DIL") & Mortgage Satisfaction, the judgment was no longer subordinate to any mortgage.

The undisputed record below is that after another 5 years passed, & starting in 2021, & for the next 3 years, Plaintiffs fought every step of the way in an unsuccessful effort to prevent payment of the long-over-due judgment. Their vexatious was based on greed, & furthered by deceit, concealment & the absence of any factual or legal support.

To underscore Plaintiffs' persistent misconduct in this case, Plaintiffs did raise below & now again in their brief, Appellant's unwillingness to enter into a Consent Order to turn-over to Appellant certain funds in court. Ironically, Plaintiffs were unwilling to release certain funds that the lower court subsequently awarded to Appellant (ie. greater judgment & interest amounts & costs of suit) & those which it did not that are the subject of this appeal. Apparently, Plaintiffs believed that the "settlement offers" to resolve this case were appropriately brought before the lower court. However, when Plaintiffs, in 2021, sought to invalidate the judgment, Appellant asserted in his opposition that Plaintiffs' counsel contacted Appellant looking to resolve the judgment. After an offer & counter-offer failed to resolve the matter, Plaintiffs filed their ultimately unsuccessful motion. In reply, Plaintiffs took great exception to Appellant's non-specific disclosure of the settlement discussions.

The above demonstrates again how Plaintiffs play "fast & loose". Previously in their foreclosure suit herein, Plaintiffs formally acknowledged the validity of the judgment lien, both in their Amended Complaint & proposed Foreclosure Judgment, which was entered by the court. However, in their opposition to Appellant's summary judgment motion, they argued, for the 1st time, in 17 years, that the judgment lien was invalid. So baseless & so vindictive was the argument that the lower court did

not address it in its several decisions & the Plaintiffs saw fit not to address it their brief herein. Again, much time & expense were incurred in responding to Plaintiffs' vexatious tactics.

In this latter regard, Plaintiffs did see fit to attach to their appendix only the transcript of the court ordered deposition of Leslie Fleisher Esq. The relevant portions of the transcript were annexed to the Appellant's summary judgment motion & Appendix herein. Plaintiffs annexed the entire transcript to their opposition to the motion. There was no utility in showing either court how Ms Fleisher's testimony was arrogant, abusive, non-responsive &, most disturbing, profane. Such was not relevant to any issue on this appeal, & hopefully it did not influence the court below.

In 2016 Ms Fleisher, admittedly prepared & recorded the DIL even though she was admittedly no longer a member of the New Jersey Bar. Along with her counsel they concealed the Mortgage Satisfaction, recorded at the same time in 2016, from Judges Quinn & Sheedy, as well from this Court, on the first appeal herein. It was not until after the Fleisher deposition that Appellant discovered it. But her subsequent explanation essentially was that she forgot about it & could not find the recorded document to produce it when responding to the Notice of Deposition, which contained a notice to produce documents connected to the DIL.

Ms Fleisher had a considerable time to cooperate & comply given her refusal to appear & the unfortunate delay in obtaining an order compelling her appearancre occasioned by Juge Quinn's medical leave of absence. As a matter of public record, Ms Fleisher resigned from the Pennsylvania bench & the New Jersey Bar while multiple complaints of judicial misconduct, including hostility towards appearing attorneys, were pending. Appellant received a dose of such hostility at the Fleisher deposition.

REPLY TO PLAINTIFFS' COUNTER-STATEMENT OF FACTs

Like much of Plaintiffs' Procedural History, their Statement of Facts is devoid of references to the record.

As with the procedural history, this section of the brief must be a recitation of the pertinent facts supported by references to the record. R. 2:6-2(a)(4) and (5). Walters v. YMCA, 437 N.J. Super. 111, 120-122 (App. Div. 2014). References must be contained in either the appendix or transcript. Matters not in the record below cannot be discussed unless properly invoked judicial notice or upon court ordered supplementation of the record. See, Middle Dep't Agency v. Home Ins. Co., 154 N.J. Super. 49,56 (App. Div. 1977), certif. denied, 76 N.J. 234 (1978).

The consequence of this violation can & should be herein suppression of Plaintiffs' brief. See Cherry Hill Dodge, Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282, 283 (App. Div. 1984). Alternatively, R. 2:9-9 authorizes the imposition of costs or attorney's fees or another penalty for failure to properly defend an appeal.

Moreover, to embellish, overstate or misstate the procedural or factual record below should invite this court to question all else that Plaintiffs have stated, including their very questionable good faith.

Blatant examples of Plaintiffs' violation & bad faith are seen at pages 12 & 13 of their brief. Their reference to Appellant's retirement immediately prior to his successful disciplinary proceeding was not only **not** in the record below but is utterly misleading.

As another matter of public record, the New Jersey Supreme Court, 3 years after his 2018 retirement, exonerated Appellant from any & all alleged misconduct. That ruling stemmed from the DRB's decision, shortly before, not to invoke reciprocal discipline based on a Florida Consent Judgment of minor misconduct. The small claims case involved $149 but the claim was approxiamated to be a mere $350

more.

Worse yet , Plaintiffs' brief utterly misstates the record, without references to the record, by asserting that Ms Fleisher's only involvement in this matter, prior to her mother's 2020 death, was preparation of the DIL. It was much more by preparing, recording &/or receiving the Mortgage Discharge at the same time she admittedly prepared & recorded the DIL. Her name is conspicuously shown on the very 1st pages of both instruments. Da30 & 31

Additionally, & incredibly, Plaintiffs feign ignorance of the judgment, until a 2021 title search, again without any reference to the record. The uncontroverted record clearly shows that in 2008 plaintiffs filed an amended complaint, joining Appellant as a defendant by alleging his judgment lien attached to the mortgaged property. In 2013 Plaintiffs prepared a proposed Final Foreclosure Judgment asserting that the judgment lien would be paid from the surplus at a sheriff sale & such was entered by the court. Da 22-29. Just 3 years later, the DIL was prepared based on the legal effect from the very same Final Foreclosure Judgment. Thus, to assert, like Plaintiffs have, is nothing less an insult to everyone's intelligence, not to mention another blatant violation of appellate principles.

LEGAL ARGUMENT

I. THE APPEAL WAS TIMELY FILED WITHIN 45 DAYS OF THE FINAL JUDGMENT

Plaintiffs' argument is untimely as it should have been brought by motion to dismiss the appeal shortly after the filing of the appeal more than 3 months ago. A respondent has an obligation to make a timely dismissal motion where the appeal is defective. See McGowan v. Barry, 210 N.J. Super. 469,472 n.2 (App. Div. 1986), criticizing respondent for failing to make a timely motion to dismiss. Nevertheless,

plaintiffs's argument is without merit as the Notice of Appeal was filed within 45 days of the entry of the final order dealing with the most important issue on the remand—the turn-over of the fund in court.

It is fundamental that only a final order or judgment may be appealed as of right. R. 2:2-3. It is also fundamental that a final judgment or order is the last decision from a court that resolves all issues in dispute & settles the parties' rights with respect to those issues. A final judgment leaves nothing to be decided.

At issue below was which party was entitled to the turn-over of the fund in court & the correct turn-over order. Since Appellant prevailed on his summary judgment motion, what still needed to be decided below was the correct judgment amount, the correct interest computation, costs of this suit & counsel fees. All of these issues were not completely decided until the 5-31-24 Order.

A final order, under R. 4:49-2, is one that marks the conclusion of a particular stage in litigation. It signifies the end of a particular phase of a case, allowing for an appeal as of right. By contrast, an interlocutory order, is issued during litigation but does not bring a particular phase to a final close. Id. They are "subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." Id. They are interim decisions made to facilitate the ongoing legal process & can be revisited as the case develops.

All orders from the Law Division were prepared by the court, even though it mistakenly set forth Appellant's name etc on the top. The 3-4-24 Order To Turnover granting Appellant summary judgment (Da 155) & the 3-4-24 Order For Turnover of Funds denying plaintiffs' turn-over motion (Da166) did not provide for a turn-over of funds to Appellant (even though in-artfully drafted), the correct judgment amount & interest calculation, & costs even though raised in the motions. Similarly, the 4-1-24 Order (Da 194), also prepared by the court, did not contain the correct judgment amount & did not address costs or fees from the fund in court (or in the annexed

Statement of Reasons) even though they were raised in Appellant's motion. That order did not even provide for a turn-over of funds, thus far awarded to Appellant.

The 4-29-24 Order (Da 209), again prepared by the court, provided for the modified & correct judgment amount & corresponding additional interest & awarded costs. Even though the judge finally addressed fees from the fund in court, the court's own prepared order did not properly provide for the turn-over of funds to Appellant that would authorize the Trust Unit to make disbursement. As such, the 4-29-24 Order was rejected by the Trust Unit as being non-- compliant with Rule 4:57-2 for making a withdrawal of moneys.

Appellant then prepared a proposed corrected or amended order that was endorsed by the Trust Unit as acceptable, to which plaintiffs consent was required & provide. It was entered on 5-31-24.(Da218-219) Hence, the final issue to end the litigation below did not conclude until the 5-31-24 Order. The Notice of Appeal was timely filed within 45 days of that date.

Taking plaintiffs' logic to its illogical conclusion, the time to appeal would have started to run before a vast amount of issues, ancillary & necessary, were decided, namely the correct amount of the turn- over & the correct form of the turnover order.

II. COUNSEL FEES FROM A FUND IN COURT WAS RAISED & DECIDED BELOW INCORRECTLY & A PRO SE LITIGANT'S ACTION BENEFICIAL TO OTHERS ENTITLES HIM TO THOSE FEES.

Plaintiffs assert that the lower court, in addressing Appellant's application, held that Appellant's action only benefited himself & not others. Both Plaintiffs & the court are wrong.

It is unconverted that but for the judgment lien there would have been no

Escrow Agreement between Plaintiffs, their Buyer & the Title Insurance Company. It is also uncontroverted that Plaintiffs concealed its existence & the resulting title closing from this Court & Appellant until this Court extracted it from Plaintiffs' counsel at oral argument of the last appeal. Once disclosed, the court, on remand, promptly ordered the escrow amount be deposited with the Superior Court Trust Unit. The Title insurer promptly complied. Thus, but for this action & Appellant's prosecution thereof, there would have been no fund in court.

Furthermore, there can be no question that this action benefited others. In the record is the Escrow Agreement & Settlement Statement. Da 48-50 & 54-56 From these it can be easily ascertained that the escrow pre-conditioned & facilitated the closing as plaintiffs would not agree to pay off the judgment from closing proceeds & the title insurer would not insure title for the buyer without a plaintiffs' indemnification & a $60,000 escrow. Without insuring title, the Buyer could not receive marketable title, thereby exposing plaintiffs to breach of contract for failing to deliver marketable title.

Thus, factually,the closing, achieved by the escrow, benefited plaintiffs as they received about $113,000 from the closing proceeds; benefited the buyer as it received marketable title to the property purchased; benefited the Title Insurer as it received about $2,000 in fees for its report & policy from the sale proceeds; benefited counsel for both parties as they received their fees of about $2500 from the sale proceeds & benefited the municipality of about $13,000 for real estate taxes & water charges.(Da 49)

All of these undisputed facts were in the record before the court below. By clear error & abuse of discretion, these factors were either improperly ignored or deemed insufficient or inconsequential. However, the court mistakenly did not so state but clearly the Appellant demonstrated below that those other than Appellant had their interests advanced by this action.

Moreover, Appellant is not changing the legal basis for a counsel fee award. The basis has remained the same. All Appellant has done is factually refute the basis for the lower court's 4-29-24 decision regarding those benefiting from the fund in court.

Furthermore, plaintiffs' opposition to the motion for fees from the fund in court did not argue about third parties benefitting from the fund in court. Da 192

To the extent there is a question whether Appellant can now make his factual argument there is ample authority permitting such.

Appellate courts decline to consider questions or issues not properly presented to the trial court when an opportunity is available. Nieder v. Royal Indemnity Ins. Co., 62 N.J. 229,234 (1973). There, the pro se plaintiff had submitted factual data to the high court after argument & some of that material had never been submitted to the trial court or the Appellate Division. Nonetheless, the Supreme Court remanded to the trial court on all issues. Therefore, issues not presented below can be considered on appeal & on a remand.

III. PLAINTIFFS' MOTION FOR A TURN-OVER & THEIR OPPOSITION TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT WERE FRIVOLOUS ENTITLING THE PRO SE APPELLANT TO FEES

Plaintiffs' challenge of the effectiveness of the Safe Harbor Notice, required under 1:4-8, as a prerequisite for an aggrieved party to obtain sanctions, is just another instance of plaintiffs' vexatious & baseless litigation for several reasons.

First, plaintiffs conspicuously conceal that they never raised this legal issue below, in any manner whatsoever, during any portion of the remand, particularly in opposition to the motion for frivolous litigation fees. Da 192 Consequently, the lower court did not address this issue in its decision denying frivolous litigation fees.

In Point II of their brief, plaintiffs erroneously contend that this Court should affirm the lower court's decision to deny fees from the fund in court because Appellant allegedly did not raise below that third parties benefited from this action. Yet plaintiffs undisputedly are now seeking to improperly raise an issue for the first time. This is none other than plaintiffs again playing "fast & loose".

Moreover, plaintiffs' reliance on R. 1:5-2 is grossly misplaced. That rule requires mail service of papers referred to in R. 1:5-1, which are orders, judgments, pleadings, motions, briefs, appendices, & petitions. A R.1:4-8 notice is not included within this rule. Furthermore, plaintiffs also fail to disclose to this court that plaintiffs responded to Appellant's notice, by **email**, stating that a demand for the entire escrow was improper & demanded that the notice be amended to the amount of the judgment. Plaintiffs did **not** object to the mode of service of the notice. Plaintiffs' email was not in the record below naturally because plaintiffs did **not** raise the issue below. Consequently, plaintiffs' email was not included in Appellant's or plaintiffs' appendices.

With regard to whether a pro se party can receive fees, plaintiffs do not & cannot controvert any of the arguments set forth in Appellant's brief. All plaintiffs assert is repeating of the lower court's decision.

As to whether plaintiffs' litigation tactics were frivolous, again plaintiffs do not & cannot controvert any of the bad faith continuously exhibited below, as set forth in Appellant's brief. All it does again is merely recite the trial court's holding. With a straight face, plaintiffs are unable to contend that its pursuit of the entire fund in court, to the complete exclusion of a totally innocent judgment creditor, had merit factually or legally. It most certainly did not. Thus, this Court should not permit such frivolous litigation to go unsanctioned & waste judicial resources & Appellant's time simply because Appellant was pro se & simply because plaintiffs & their counsel, in the words of the judge, "pursued the matter to its fullest ability". It will send the

wrong message that there will be no retribution of litigants or their counsel engaging in frivolous litigation against pro se parties.

IV. COMPOUNDED INTEREST ON THE LONG OVERDUE JUDGMENT WAS MOST APPROPRIATE

Plaintiffs argue, without any legal authority whatsoever, that because compounded interest was not raised in the Appellant's motion for reconsideration it was abandoned or waived for this appeal. Nothing could be further from reality, which is that such motion was not required to preserve the issue on appeal.

Plaintiffs disingenuously attempt to distance this case from this Court's decision in Twp of West Windsor v. Nirenberg, 345 N.J. Super. 472 (App. Div. 2002). It is still very good law as there are no Supreme Court or Appellate Division cases over-turning, modifying or disagreeing with the opinion. Plaintiffs try to distinguish by pointing to the differences in the claim underlying that judgment & the claim underlying the judgment herein. It makes no difference. The rationale of Nirenberg was the loss of use of money for an inordinate amount of time. Like there, Appellant lost the use of his money for nearly 20 years through no fault of his own.

Until 2013, Appellant had a lien junior to Plaintiffs' mortgage. From 2013 to 2016 plaintiffs did not exercise their right to cause a sheriff sale. Instead for the next 6 years plaintiffs no longer had a superior mortgage but only a DIL. However, not until 2021 did plaintiffs disclose their DIL. Had they been transparent & candid, Appellant could have initiated an execution sale then subject to only municipal liens. Obviously, for reasons known only to plaintiffs, they did not want to lose the property to Appellant or a successful bidder. Their plan was to obtain an order extinguishing the judgment. While initially successful, & before oral argument on the subsequent appeal, plaintiffs sold the property without informing Appellant or, more importantly, this Court, despite Judge Fisher favoring plaintiffs with an

accelerated appeal as opposed to enjoining the sale on Appellant's emergent application. Consequently, Appellant lost another 2 years of the use of his money because plaintiffs would not consent to paying the judgment from the sale proceeds before or after this Court held that the judgment lien remained valid.

Instead plaintiffs stalled the inevitable with one frivolous argument & tactic after the other-----unsuccessfully refusing to appear for the 2023 deposition conveniently located for both parties; not ever producing or disclosing the Mortgage Satisfaction; unsuccessfully opposing the 2023 transfer motion on the grounds that foreclosure law allegedly applied, despite that plaintiffs' mortgage was discharged of record & received a DIL in 2016: unsuccessfully opposing the summary judgment motion & moving for a turn-over without any legal authority or factual support; & unsuccessfully opposing the motion to correct the amount of the judgment, both in principle & interest.

All in all, plaintiffs' actions, inactions, tactics, frivolous litigation & violations of the Rules of Professional Conduct caused an unreasonable delay of 11 years from their 2016 Foreclosure Judgment until Appellant realized any payment on his 2005 judgment this year. Hence, the particular & peculiar circumstances of this case most amply warrant an award of compounded interest. The judge below simply abused her discretion.

There is another compelling reason for reversal. Should this Court hold that Appellant is disqualified as a pro se litigant to obtain fees as a sanction, or does not meet the fund in court requirement to obtain fees, then clearly an award of compounded interest will yield some remuneration for Appellant, even though time spent pre & post summary judgment will equate to over $40,000. The amount of fees sought prior to this appeal was about $36,000. It has never been challenged by plaintiffs. It was never questioned by the lower court.

CONCLUSION

Based on the foregoing & in Appellant's Brief, it is respectfully requested that the orders below denying counsel fees & compounded interest be reversed & remanded to fix the amounts due thereon & be payable from the fund in court held by the Trust Unit, plaintiffs, plaintiffs counsel &/or from the judgment lien.

Respectfully submitted,

Ronald Horowitz

Ronald Horowitz