Superior Court of New Jersey – Appellate Division
Letter Brief
Appellate Division Docket Number: A-003427-23T2

ERIC P. LEBOEUF, ESQUIRE
BAR ID 022482005
LEBOEUF LAW, LLC
830-B Radio Road
Little Egg Harbor, New Jersey 08087
(609) 369-7515
ERIC@EPLLAWFIRM.COM
Attorney for Appellant/Plaintiff, Daniel J. and Yaxy Sysol

DANIEL J. SYSOL and YAXY SYSOL	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	
Plaintiff	:	
	:	DOCKET: A-003427-23
v.	:	
	:	CIVIL ACTION
WILLIAM G. SANCHEZ	:	
	:	
Defendant	:	LETTER BRIEF ON BEHALF
	:	OF APPELLANT/PLAINTIFF
	:	DANIEL J SYSOL and YAXY
	:	SYSOL

Case Type:	Civil
County:	Ocean County
Trial Court Docket:	OCN-L-2892-23
Trial Court Judge:	Hon. James Den Uyl, J.S.C.

Dear Judges:

Pursuant to R. 2:6-2(b), it is respectfully requested that the court accept this letter brief in support of Appellants appeal in this matter.

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LIST OF PARTIES

Party Name	Appellate Party	Trial Court Party	Trial Court Status
Daniel J. Sysol	Appellant	Plaintiff	Participated Below
Yaxy Sysol	Appellant	Plaintiff	Participated Below
William G. Sanchez	Respondent	Defendant	Participated Below

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Proceeding Type	Date	Transcript Number
Oral Argument on Defendant's Motion	5/28/24	T1

TABLE OF PROCEDURAL HISTORY

Date	Event/Proceeding	Filed By	Result	Appendix Page
12/20/23	Complaint Filed	Plaintiff	Filed	PA1-PA9
3/13/24	Motion to Dismiss	Defendant	Filed	PA10-PA46
6/24/24	Order	Court	Filed	PA93

PRELIMINARY STATEMENT

On or about August 17, 2015, Plaintiffs retained Defendant to represent them in a residential real estate closing concerning real property located at 2318 Vermont Avenue, Toms River, New Jersey. During the course of the representation, Plaintiffs repeatedly informed Defendant that a one (1) story framed building/shed on the property was constructed in the back yard of the property without a permit. Defendant failed to memorialize and adequately communicate this information to the Buyers' attorney during the attorney review process. Closing of title occurred on or about November 25, 2015. On or about December 8, 2017, Plaintiffs were served with a complaint under OCN-C-257-17 from the contract buyers alleging various counts of fraud and breach of contract regarding the sale of the real property and the failure to disclose the lack of permits for the one (1) story framed building/shed on the property.

Plaintiffs were not represented by the Defendant in that Chancery action but obtained different counsel. During the pendency of that matter, Plaintiff's counsel communicated with the Defendant and his insurance carrier. The insurance carrier informed Plaintiffs counsel that no action for legal malpractice could be filed until the Plaintiffs suffered real damages. Ultimately, that Chancery Division matter

was litigated for several years throughout the COVID-19 pandemic which resulted in numerous extensions of time. The case ultimately settled during a bench trial where the Plaintiffs incurred monetary damages on or about March 3, 2023. Thereafter, Plaintiffs attempted to obtain counsel for a legal malpractice claim against the Defendant but were unable to do so which resulted in the Plaintiffs filing a Complaint, pro se, for legal malpractice against the Defendant.

In response to the filed complaint, Defendant's insurance carrier obtained counsel who filed a Motion to Dismiss the Complaint as a first pleading based on arguments concerning the Entire Controversy Doctrine and the Statute of Limitations. Plaintiffs opposed that motion which was ultimately heard on May 28, 2024. The court entered its order on June 24, 2024, dismissing the Plaintiff's complaint with prejudice issuing a written order. This appeal follows as the court's order was in error given the arguments of the Plaintiff within the confines and procedures of a Motion to Dismiss as a first pleading.

STATEMENT OF FACTS

On or about August 17, 2015, Plaintiffs retained Defendant to represent them in a residential real estate closing concerning real property located at 2318 Vermont Avenue, Toms River, New Jersey. (PA2) During the course of the representation, Plaintiffs informed Defendant that a one (1) story framed building/shed on the property was constructed in the back yard of the property without a permit. (PA49) Defendant failed to memorialize and adequately communicate this information to the Buyers' attorney during the attorney review process. (PA50) Closing of title occurred on or about November 25, 2015. (PA95) On or about December 8, 2017, Plaintiffs were served with a complaint under OCN-C-257-17 from the contract buyers alleging various counts of fraud and breach of contract regarding the sale of the real property and the failure to disclose the lack of permits for the one (1) story framed building/shed on the property. (PA50)

During the pendency of that matter, Plaintiff's counsel routinely communicated with the Defendant and his insurance carrier. (PA 50) The insurance carrier informed Plaintiff's counsel that no action for legal malpractice could be filed until the Plaintiffs suffered real damages. (PA51) Ultimately, that Chancery Division matter was litigated for several years throughout the COVID-19

pandemic which resulted in numerous extensions of time and was ultimately settled during a bench trial where the Plaintiffs incurred monetary damages on or about March 3, 2023. (PA 45) Plaintiffs then filed a Complaint, pro se, for legal malpractice against the Defendant. (PA1)

In response to the filed complaint, Defendant's insurance carrier obtained counsel who filed a Motion to Dismiss the Complaint as a first pleading based on arguments concerning the Entire Controversy Doctrine and the Statute of Limitations. (PA 10) Plaintiffs opposed that motion. (PA47) On May 28, 2024, the trial court held oral argument. (T1) The court entered its order on June 24, 2024 dismissing the Plaintiff's complaint with prejudice[1] (PA93).

[1] The motions also included Defendant's motion to dismiss based on Plaintiff Daniel Sysol filing the complaint on behalf of himself and his wife while not an attorney. Plaintiff opposed that motion by filing a motion to amend the pleadings, which Defendant opposed. The court determined the matter was moot given that it dismissed the complaint with prejudice. The motions and arguments concerning this point are not part of this appeal.

LEGAL ARGUMENT
POINT 1
THE TRIAL COURT ERRED IN DISMISSING THE PLAINTIFF'S COMPLAINT WITH PREJUDICE IN FAVOR OF THE DEFENDANT'S MOTION TO DISMISS AS A FIRST PLEADING BECAUSE THE COMPLAINT SET FORTH PALPABLY SUFFICIENT ALLEGATIONS TO SUPPORT A CLAIM

When considering an application for dismissal for failure to state a claim, a court is required to "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Major v. Maguire, 224 N.J. 1, 26 (2016) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). "Rule 4:6-2(e) permits a court to dismiss a complaint for "failure to state a claim upon which relief can be granted[.]" In reviewing a motion to dismiss under this Rule, the trial court "must accept as true the facts alleged in the complaint, and credit all reasonable inferences of fact therefrom, to ascertain whether there is a claim upon which relief can be granted." Malik v. Ruttenberg, 398 N.J.Super. 489, 494 (App. Div. 2008) (citing Donato v. Moldow, 374 N.J.Super. 475, 483 (App. Div. 2005))."

A complaint should be dismissed for failure to state a claim pursuant to Rule 4:6-2(e) only if 'the factual allegations are palpably insufficient to support a claim

upon which relief can be granted.'" Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010) (quoting Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). If a generous reading of the allegations does not reveal a legal basis for recovery, the motion to dismiss should be granted. Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003).

"At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint," and the plaintiff is "entitled to every reasonable inference of fact." Printing Mart-Morristown, 116 N.J. at 746, 563 A.2d 31. Accordingly, review of a complaint's factual allegations must be "undertaken with a generous and hospitable approach." Ibid.

The court's dismissal of the Plaintiff's complaint with prejudice was in error. The trial court determined that the damages of Plaintiff's began when they had to actually hire another attorney. However, as argued by Plaintiff in the trial court motion hearing, the insurance representative for Defendant advised that Plaintiff could not file a malpractice action until actual damages were suffered, meaning that the insurance carrier did not determine the hiring of an attorney to be actual damages, and as Plaintiff argued, they were instead when a judgment was entered and/or damages were suffered. Given the arguments of Plaintiff, the court should have determined that the actions of the Defendant equitably tolled the statute of

limitations, not as a final determination, but in the context of a Motion to Dismiss where the inferences referenced above must fall in favor of the Plaintiff.

The court failed to "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Major v. Maguire, 224 N.J. 1, 26 (2016). At the very least, the Plaintiff should have been afforded the opportunity to amend the complaint following a potential dismissal without prejudice. Instead, the court dismissed the complaint with prejudice based upon the Defendant's motion before the filing of an Answer or any discovery.

POINT 2
THE TRIAL COURT ERRED IN DISMISSING THE PLAINTIFF'S COMPLAINT PURSUANT TO THE STATUTE OF LIMITATIONS AS THE STATUTE WAS EQUITABLY TOLLED

Legal malpractice claims are subject to a six-year statute of limitations. N.J.S.A. 2A:14-1; McGrogan v. Till, 167 N.J. 414, 419 (2001). "Ordinarily, a cause of action 'accrues when an attorney's breach of professional duty proximately causes a plaintiff's damages.'" Vastano v. Algeier, 178 N.J. 230, 236 (2003) (quoting Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993)). However, our Supreme Court has adopted the "discovery rule," which will "postpone the accrual of a cause of action when a plaintiff does not and cannot know the facts that constitute an actionable claim." Grunwald, supra, 131 N.J. at 492. The purpose of this rule is to

avoid "the unfairness of an inflexible application of the statute of limitations." Vastano, supra, 178 N.J. at 236.

Under the discovery rule, "the statute of limitations does not commence until 'the client suffers actual damage and discovers, or through the use of reasonable diligence should discover, the facts essential to the malpractice claim.'" Ibid. (quoting Grunwald, supra, 131 N.J. at 494). "[A] professional malpractice claim accrues when: (1) the claimant suffers an injury or damages; and (2) the claimant knows or should know that its injury is attributable to the professional negligent advice." Vision Mortg. Corp. v. Patricia J. Chiapperini, Inc., 156 N.J. 580, 586 (1999) (quoting Circle Chevrolet Co. v. Giordano, Hallernan & Ciesla, 142 N.J. 280, 296 (1995)). With respect to damages, "[m]ere knowledge of an attorney negligence does not cause a legal malpractice claim to accrue. The client must sustain actual damage." Olds v. Donnelly, 150 N.J. 424, 437 (1997). "Actual damages are those that are real and substantial as opposed to speculative." Grunwald, supra, 131 N.J. at 495 (noting "damage" is used "interchangeably with 'injury'").

The trial court determined that the damages of Plaintiff's began when they had to actually hire another attorney. However, the insurance representative for Defendant advised that they could not file a malpractice action until actual damages were suffered. These actions equitably tolled the statute of limitations.

Equitable tolling is "reserved for limited occasions," including: "(1) [if] the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." F.H.U. v. A.C.U., 427 N.J. Super. 354, 379 (App. Div.) (quoting Kocian v. Getty Ref. & Mktg. Co., 707 F.2d 748, 753 (3d Cir. 1983)), certif. denied, 212 N.J. 198 (2012). Plaintiff argues that they were actively misled by the insurance carrier concerning the time in which to file a claim in this matter. Given that the complaint was dismissed with prejudice prior to any discovery taking place, Plaintiff was not permitted the time and discovery necessary in order to show that the insurance carrier advised a claim could not be filed during the pendency of the Chancery action which Defendant relied on in its motion to dismiss. Plaintiff further argues that they were prevented from asserting their rights by the insurance carrier's actions. If proven, the Statute of Limitations could and should have been equitably tolled and the complaint should not have been dismissed. It should be finally noted that the underlying Chancery matter was delayed significantly as a result of the COVID-19 pandemic which caused significant delays throughout the civil court system.

POINT 3
THE TRIAL COURT ERRED IN DISMISSING THE PLAINTIFF'S COMPLAINT PURSUANT TO THE ENTIRE CONTROVERY DOCTRINE AS THE FORUM DID NOT PROVIDE A FAIR AND REASONABLE OPPORTUNITY TO PROSECUTE THE PLAINTIFF'S CLAIMS

The above arguments pertain to the Entire Controversy arguments of Defendant as well. Had discovery been allowed in this matter, the record would have shown that the insurance carrier was kept informed of the underlying Chancery matter that Plaintiff was defending and actually took active part in potential settlement discussions while simultaneously advising that a malpractice claim could not be filed until Plaintiff suffered actual damages.

The entire controversy doctrine is constrained by principles of equity. It "does not apply to unknown or unaccrued claims." Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 610, 110 A.3d 19 (2015) (quoting DiTrolio v. Antiles, 142 N.J. 253, 273-74, 662 A.2d 494 (1995)). Consequently, a client whose malpractice claim was not asserted in an attorney's collection action may avoid preclusion of that claim by proving that he or she did not know, and should not reasonably have known, of the existence of the claim during the pendency of the collection action. See Mauro v. Raymark Indus., Inc., 116 N.J. 126, 135-36, 561 A.2d 257 (1989) (citing Ayers v. Township of Jackson, 106 N.J. 557, 583, 525 A.2d 287 (1987)); Cafferata v. Peyser, 251 N.J. Super. 256, 260-61, 597 A.2d 1101 (App. Div. 1991).

Moreover, even if the malpractice claim accrued before or during the earlier action, the client may avoid the entire controversy doctrine by demonstrating that the prior forum did not afford "a fair and reasonable opportunity to have fully

litigated" the malpractice claim. Gelber v. Zito P'ship, 147 N.J. 561, 565, 688 A.2d 1044 (1997) (quoting Cafferata, 251 N.J. Super. at 261, 597 A.2d 1101).

Plaintiff argues that the Chancery action did not grant them the ability to have a fair and reasonable opportunity to fully litigate the malpractice claim given that the argument in prosecution of that claim could have been detrimental to the argument defending the Chancery claim. The dismissal with prejudice did not give the Plaintiff the opportunity to show this evidence and make this argument as a result of discovery. The complaint was sufficient to allow the matter to proceed however the dismissal with prejudice was entered. If the complaint was reviewed with the liberality necessary, the motion would have been denied and the Plaintiff would have been permitted to conduct the discovery necessary to attempt to prove the allegations of these equitable arguments.

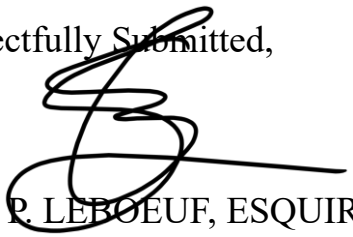
CONCLUSION

The court was in error granting the Defendant's motion to dismiss with prejudice. The court failed to search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, and failed to give the Plaintiff the opportunity to amend if necessary by dismissing the complaint with prejudice. The Plaintiff was not required to prove the exceptions to the Statute of Limitations and/or Entire Controversy Doctrine referenced above in these initial pleadings in defense of

Defendant's motion. If the court determined that the initial complaint was inadequate to state a cause of action regarding the exceptions to these doctrines, then the proper action would have been a dismissal without prejudice to allow the Plaintiff to amend the pleadings to more fully set forth the allegations. By dismissing the Complaint with prejudice, the court did not allow the Plaintiff the opportunity to obtain the necessary discovery to prove that the exceptions to these doctrines may or should apply in this case.

The Plaintiff prays for an order of this court vacating the dismissal with prejudice.

Respectfully Submitted,



ERIC P. LEBOEUF, ESQUIRE
Attorney for Appellant/Plaintiff
On the Brief

DANIEL J. SYSOL & YAXY SYSOL,

Plaintiff / Appellant,

v.

WILLIAM G. SANCHEZ,

Respondent

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

DOCKET NO.: A-003427-23T2

Civil Action

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT, LAW DIVISION, OCEAN COUNTY
DOCKET NO.: OCN-L-2892-23

DATED: MARCH 24, 2025

SAT BELOW

HONORABLE JAMES DEN UYL, J.S.C.

BRIEF ON BEHALF OF RESPONDENT, WILLIAM G. SANCHEZ

MORRISON MAHONEY LLP
Waterview Plaza
2001 U.S. Highway 46, Suite 200
Parsippany, NJ 07054
ntortora@morrisonmahoney.com
Phone: 973-257-3526
Fax: 973-257-3527
Attorneys for Respondent, William G. Sanchez

On the Brief: Neil A. Tortora - 017312005

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STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

This matter stems from a December 20, 2023 Complaint filed by the Plaintiffs/Appellant against Defendant/Appellee, William Sanchez, Esq. ("Sanchez" or "Appellee") as a result of a residential real estate contract of August 17, 2015.

Appellee was retained by the Plaintiffs/Appellant for a residential sale and closing of a property located at 2318 Vermont Avenue Toms, River, New Jersey. Plaintiffs/Appellants filed Complaint alleges breach of contract, legal malpractice and severe emotional and traumatic distress as a result of the August 17, 2015 contract. The Complaint alleges "the [Appellee] did breach his contract as the Plaintiff/Appellant hired attorney for the closing of the Plaintiff/Appellant property located at 2318 Vermont Avenue Toms, River, New Jersey. This breach of contract by the Appellee caused damages and injury to the Plaintiff/Appellant." The breach of contract occurred on August 17, 2015.

Plaintiffs/Appellants allege that the buyers of the property located at 2318 Vermont Avenue were unhappy after the property closed on November 25, 2015. Id. The buyers of the property, Israel and Nesia Lichtenstein ("Lichensteins") retained Harvey York, Esq., who drafted a letter to Defendant/Appellee dated February 23,

[1] The Procedural History and Statement of Facts are combined as the history of the underlying matter which gave rise to the instant Complaint are procedural in nature. The below Statement of Facts and Procedural History are intertwined.

2017 advising of a claim / lawsuit from the real estate transaction of August 17, 2015. (Pa 26A)

On March 6, 2017, the Defendant/Appellee advised the Plaintiffs/Appellants (and counsel for the Lichtensteins) that the Plaintiffs/Appellants should retain separate counsel for the claim brought by the Lichensteins. (Pa 29A). On March 9, 2017, the Plaintiffs/Appellants emailed the Defendant/Appellee and advised that they retained new counsel, Peter Seems, Esq. (Pa 31A). On March 21, 2017, the Defendant/Appellee sent his entire file to new counsel for the Plaintiffs (Peter Seems, Esq). (Pa 34). On April 11, 2017, counsel for the Lichenstein's once again contacted the Defendant/Appellee for a status of the matter. On April 17, 2017, the Defendant/Appellee advised counsel for the Lichenstein's that the Plaintiffs/Appellants were now represented by Peter Seems, Esq. (Pa 39A).

As a result, on December 8, 2017, the Plaintiffs/Appellants were sued by the Lichtensteins (the buyers of the property), alleging fraudulent misrepresentation, legal fraud, equitable fraud, breach of contract and fraud in the inducement. This was filed under Docket Number OCN-C-257-17 ("Chancery Matter"). On March 12, 2018, new counsel for the Plaintiffs, Gregory Heizer, Esq., during the pendency of the Chancery Matter advised the Appellee of a claim and advised the Appellee to place his insurance carrier on notice of a claim. (Pa 41A). On June 28, 2018, Gregory Heizer, Esq. once again wrote to the Defendant/Appellee advising of a "Complaint

grounded in malpractice" and that he would "amend my Answer [in the Chancery Matter] to include an affirmative claim against you [William Sanchez, Esq] for legal malpractice. (Pa 43A). The Chancery Matter settled on March 3, 2023. (Pa 45A).

Despite six years of litigation, Plaintiffs/Appellants never impleaded the Defendant/Appellee into the Chancery Matter. Plaintiffs/Appellants were aware of the potential action against the Defendant/Appellee:

1. On August 15, 2015;
2. On March 6, 2017 when the Defendant/Appellee advised Plaintiff/Appellant to retain new counsel; and
3. During the entire pendency of the Chancery Matter.

For some unknown reason Plaintiffs/Appellants never sought to implead the Defendant/Appellee into the Chancery Matter.

Given the fact that the Defendant/Appellee was required to be joined into the Chancery Matter as a potential responsible party and that the statute of limitations began to run per the Plaintiffs/Appellants' Complaint on August 17, 2015 and at the latest March 6, 2017, Defendant/Appellee filed a Motion to Dismiss in Lieu of an Answer on March 13, 2024.

On June 24, 2024, the Honorable James Den Uyl, J.S.C., sitting below, issued an Order on Opinion Dismissing Plaintiffs/Appellants' Complaint with Prejudice. (Pa 94A). Plaintiffs/Appellants therein filed this Appeal.

LEGAL ARGUMENT

POINT I

APPELLANTS WERE REQUIRED TO JOIN WILLIAM SANCHEZ, ESQ. INTO THE CHANCERY MATTER

New Jersey Rule of Court 4:28-1 provides the rule for Joinder of Persons Needed for Just Adjudication:

> (a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.
>
> (b) Disposition by Court if Joinder Not Feasible. If a person should be joined pursuant to R. 4:28-1(a) but cannot be served with process, the court shall determine whether it is appropriate for the action to proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be

> adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Here, Appellants were required to join the Appellee into the Chancery Matter per Rule 4:28-1 (a). In Metz Family v Twp of Freehold, 32 NJ. TAX 69 (2020) the Court made a decision rooted in the probative value of the information that the parties resisting joinder could provide:

> The Court agrees with the Township that the Director and the County Board can and should be joined as parties under R. 4:28-1(a). These governmental entities concede that they approve the assessor's initial application to perform an annual reassessment, allegedly monitor the assessor's progress, and the Director allegedly verifies the finalized assessment for "credit" on his Table of Equalized Valuations. Indeed, the ARR sets out the Director's and County Board's roles in terms of review and approval of a Form AFR-A. See N.J.A.C. 18:12A-1.14(i)(2)-(4). Having provided such approval, allegedly monitored the assessor's actions,10 and having apparently verified the assessment as qualifying on the Director's list for implementation of a Revaluation/Reassessment, it is these entities who should explain and defend their process and explain why there is no average ratio for these assessments (i.e., the ratio is at 100%). This is not the burden of the Township or its assessor.
>
> After claiming to be the gatekeepers of the assessor's actions, the entities nonetheless ask the Township to fathom their process, methodology, checks, counter-checks in connection with an assessor's proposed and finalized annual reassessment, where that reassessment is the basis for the alleged non-application of the Director's average ratio. How is the Township to know any facts in this regard? How is the Township to know how and when the alleged checks are done by either or both governmental entities in determining that the reassessment qualifies to

> be tabulated under the annual "Approved Revaluations and Reassessments" list? This is especially where the Director's regulation, N.J.A.C. 18:12A-1.14(g), authorizing the "credit" does not reference nor mention, an annual reassessment.11 That the consequence of more than 50% line item changes is the same for a district-wide or complete reassessment and an annual reassessment as asserted by the governmental entities, is not controlling. It is not the end result that matters, but the verification process leading to that end result which is being sought here. Only the County Board and the Director can provide such information. Metz Family Ltd. P'ship v. Twp. of Freehold, 32 N.J. Tax 69, 78–79 (2020).

Not only is Rule 4:28-1(a) applicable but the entire controversy doctrine mandates that the Defendant should have been impleaded into the Chancery Matter. "We thus conclude that the entire controversy doctrine appropriately encompasses the mandatory joinder of parties. Accordingly, we now hold that to the extent possible courts must determine an entire controversy in a single judicial proceeding and that such a determination necessarily embraces not only joinder of related claims between the parties but also joinder of all persons who have a material interest in the controversy." Cogdell by Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 26 (1989).

Appellee had a material interest in the controversy when the Chancery Matter was ongoing. Appellant cannot pick and choose when they litigate. The Chancery Matter was litigated for six years while Plaintiffs/Appellants knew of the claims against Appellee.

A. THE ENTIRE CONTROVERSY DOCTRINE ("ECD") REQUIRES ALL CLAIMS TO BE RAISED IN ONE SUIT

> Concerning the ECD, the trial court concluded the "doctrine requires ... joinder in an action of ... legal and equitable claims related to a single, underlining transaction.... exactly what we have here." To allow such "piecemeal litigation .... would be ... unduly prejudicial" to HDOX, "to go through another litigation over the same debt with the same exact parties, with the exact same witness against them that testified" in the first trial. In addition, a second trial here would result in "a waste of judicial resources."
>
> The ECD is codified in Rule 4:30A and requires all parties to an action to raise all transactionally-related claims in that action. R. 4:30A; see also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:30A (2018). "Underlying the [ECD] are the twin goals of ensuring fairness to parties and achieving economy of judicial resources." Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co., 207 N.J. 428, 443 (2011). The Supreme Court has articulated the goals of the doctrine to include "the needs of economy and the avoidance of waste, efficiency and the reduction of delay, fairness to parties, and the need for complete and final disposition through the avoidance of 'piecemeal decisions.' " Ibid. (quoting Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989), superseded by statute on other grounds as stated in Ricketti v. Barry, 775 F.3d 611, 613–14 (3d Cir. 2015)).

Aragon Partners LP v. HDOX Bioinformatics, Inc., A-2937-15T2, 2018 WL 1370661, at 6.

The Comments following Rule 4:28–1 clarify that the joinder of interested parties "is not only appropriate, but essential to the continuance of the action, and to redefine those conditions in terms of pragmatic considerations, rather than in terms of such theoretical concepts as indispensable parties." See Rule 4:28–1. "Whether a party is indispensable, depends upon the circumstances of the particular case. As a

general proposition, it seems accurate to say that a party is not truly indispensable, unless he has an interest inevitably involved in the subject matter before the court, and a judgment cannot justly be made between the litigants without either adjudicating or necessarily affecting the absentees interest." Accord Brotherhood v Tinton, Falls, 468 N. J. Super. 214. (App. Div. 2021). In fact, indispensability is usually determined from the point of view of the absent party. La-Mar Gate, Inc. v Spitz, 252 N. J. Super. 303 (App. Div. 1991). In fact, where a breach of contract claim is asserted and attorney malpractice is argued in the case (like here), that matter should be brought to the appropriate court. See Sklodowsky v. Lushis, 417 N. J. Super. 648. (App. Div. 2011).

Unlike Sklodowsky, here, the Plaintiffs/Appellants should have brought the Appellee into the Chancery Matter. In Sklodowsky, the Court opined that the malpractice case did not have to be litigated in the underlying lawsuit because it would have resulted in "divergence of their respective interests in that lawsuit." Id. at 656. However, in Sklodowsky, the attorney who allegedly committed malpractice had a "continuing professional relationship" with the client. Id. Here, there was no such relationship during the Chancery Matter as the Plaintiffs/Appellants had other counsel and knew of a potential claim against Appellee. Impleading the Appellee into the Chancery Matter would not have created diverging interests or prejudice to

either party. Id. at 655. In fact, "fewer judicial resources would be expended in resolving the disputes." Id. At 656.

As such, the Plaintiffs/Appellants failure to name Appellee in the Chancery Matter was error. As expressed by Judge Den Uyl in the Trial Court decision, the Plaintiffs/Appellants did not join the Defendant/Appellee in the Chancery Matter. Plaintiffs/Appellants' failure to do so was error as Defendant/Appellee had a material interest in the Chancery Matter.

POINT II

THE STATUTE OF LIMITATIONS EXPIRED ON PLAINTIFFS/APPELLANTS' CLAIMS

The rule for when a legal malpractice claim can start the clock on the statute of limitations is when the client discovers the facts essential to the malpractice claim – this is known as the discovery rule. "The Court in Grunwald held that the discovery rule applies to determine when the statute of limitations runs in a legal malpractice case." Pellettieri, Rabstein & Altman v. Protopapas, 383 N.J. Super. 142, 152 (App. Div. 2006).

Here, Plaintiffs/Appellants' Complaint alleges "bad advice" in August 2015. (Pa 1). We know that the statute of limitations is 6 years from the discovery of essential facts. N.J.S.A. 2D:14-1. The statute of limitations began to run in August 2015 under the alleged "bad advice" provided as per Plaintiffs/Appellants' Complaint. (Pa 1). Further at the latest, the statute of limitations began to run on March 6, 2017 when Defendant advised Plaintiffs to retain new counsel. (Pa 29A)

In Vastano v. Algeier, 178 N.J. 230 (2003), the Supreme Court discussed the discovery Rule and cited Grunwald:

> *N.J.S.A.* 2A:14–1 requires that a legal malpractice action commence within six years from the accrual of the cause of action. *Grunwald, supra,* 131 *N.J.* at 499, 621 *A.*2d 459; *McGrogan v. Till,* 167 *N.J.* 414, 419, 424–26, 771 *A.*2d 1187 (2001); *Olds v. Donnelly,* 150 *N.J.* 424,

> 440, 696 *A.*2d 633 (1997). Ordinarily, a cause of action "accrues when an attorney's breach of professional duty proximately causes a plaintiff's damages." *Grunwald, supra,* 131 *N.J.* at 492, 621 *A.*2d 459. We have recognized, however, the unfairness of an inflexible application of the statute of limitations when a client would not reasonably be aware of "the underlying factual basis for a cause of action" to file a timely complaint.
>
> *Id.* at 492–93, 621 *A.*2d 459. To guard against that inequity, we have applied the discovery rule in those cases in which the injury or wrong is not readily ascertainable through means of reasonable diligence. *Id.* at 492–94, 621 *A.*2d 459; S*ee also Olds, supra,* 150 *N.J.* at 436–37, 696 *A.*2d 633. We understand that in some circumstances a client may not be able to detect the essential facts of a malpractice claim with ease or speed because of the complexity of the issues or proceedings, or because of the special nature of the attorney-client relationship. *Grunwald, supra,* 131 *N.J.* at 493–94, 621 *A.*2d 459. Accordingly, the statute of limitations does not commence until "the client suffers actual damage and discovers, or through the use of reasonable diligence should discover, the facts essential to the malpractice claim." *Id.* at 494, 621 *A.*2d 459.

Vastano v. Algeier, 178 N.J. 230, 236 (2003). The Supreme Court of New Jersey then applied Grunwald, stating "we must determine when plaintiffs had reason to know of Algeier's discovery derelictions." Id. at 237. The Court discussed that it understood even in Grunwald that an attorney that keeps critical information from the plaintiff frustrates their ability to discover facts pertinent to malpractice. Id. at 241. The Vastano Court noted that in Grunwald, the plaintiff did not have "an inability readily to detect the necessary facts." Id. The Vastano Court further noted that the size or complexity of a file can prevent discovery. Id. However, the accrual date noted in Vastano and Grunwald "is set in motion when the essential facts of the

malpractice claim are reasonably discoverable." Id. at 242. The Court concluded that when the plaintiffs took their file in Vastano that they possessed all the information necessary to reveal malpractice without resort to the interpretive assistance of an expert. Id.

Here, Plaintiffs/Appellants knew of potential bad advice in August 2015. (Pa 1). Further, on March 6, 2017, Plaintiffs/Appellants were advised to retain new counsel consistent with Vastano. (Plaintiffs/Appellants possessed all the information necessary to reveal malpractice). (Pa 29A). As such, the claim for malpractice, at the latest occurred when Plaintiffs/Appellants had new counsel and their file was transferred by Appellee to new counsel on March 21, 2017. See Vastano, (statute began to run when plaintiffs had their file and all information to reveal a malpractice claim.) (Pa 31-32). Six years after March 21, 2017 is March 21, 2023 which is nine months before Plaintiffs/Appellants' Complaint.

Here, Judge Den Uyl at the trial level correctly found that:

> Here, Plaintiff's cause of action against Mr. Sanchez accrued in March 2017. Their lawsuit was filed in December 2023 more than six years thereafter, Plaintiff's "actual damages" was having to hire an attorney in March 2017 to defend a claim arising out of the sale of their real estate in 2015. The "actual damages" were not, as plaintiff asserts, the money paid in settlement of the claim in March 2023 during the trial in chancery. There is no genuine issue of material fact that plaintiffs discovered or should have discovered the facts essential to the malpractice claim, at

> the latest, when Mr. Sanchez turned over his real estate file to Mr. Seems in 2017. (Pa 98-99).

Plaintiffs/Appellants argue that the statute of limitations should be equitably tolled pursuant to F.H.U. v. A.C.U, 427 N.J. Super. 354 (App. Div. 2012). However, Appellants arguments are completely without merit or support. Appellant argues that "the insurance representative for defendant advised that they could not file a malpractice claim until actual damages were suffered." (Pa 50A-51A). However, Appellants argument is self-serving hearsay without any proofs.

Equitable tolling is "reserved for limited occasions" such as defendant 1) actively mislead the plaintiff, 2) in some extraordinary way was prevented from asserting his rights or 3) if plaintiff timely asserted his rights but in the wrong forum. F.H.U. v. A.C.U., 427 N.J. Super 354, 379 (App. Div. 2012). Appellant asserts that they were "actively misled" by the insurance carrier and the statute should be tolled. (Pa 50-51). Appellants' argument fails to consider, even if true with no proofs, that the Appellee did not "actively [mislead] the plaintiff." F.H.U. 427 N.J. Super at 379. Further, equitable tolling considerations are instructive, "they apply to statutes of limitations periods that, if not tolled, cut off a litigant's ability to seek relief under a particular statute." Id. See Villalobos v. Fava, 342 NJ Super. 38, (App. Div. 2001). "Equitable tolling affords relief from inflexible, harsh, or unfair application of a statute of limitations." Cert. denied 170 NJ. 210 (2001). Here, there is nothing harsh or inflexible. Further, there is no active misleading on the part of the Appellee.

Assuming, if true, that Appellee's carrier, Allianz, advised the Appellant's attorney, Mr. Heizler, "that Allianz could not continue with a malpractice insurance claim until Mr. Sysol sustained damages from a lawsuit", Appellant's argument falls silent as Appellant was represents by counsel at the time. Why would Appellant listen to an insurance company and not his own attorney?

For these clear reasons, equitable tolling does not apply, and the Trial Court's decision must be upheld.

CONCLUSION

For the foregoing reason, the decision of Judge Den Uyl at the Trial level must be upheld and affirmed.

Respectfully submitted,

Dated: March 24, 2025

By: */s/ Neil A. Tortora*
Neil A. Tortora