SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Christopher Quigley Individually and as a shareholder of Safe Harbor Financial, Inc. *Plaintiff/Appellant*, v. Ronald Lesicki, Douglas Schwarzwaelder, Safe Harbor Financial, Inc., Brian Fleischer, Esquire Fleischer, Fleischer, & Suglia, P.C. *Defendants/Respondents*.	: : : : : : : : : : : : : : :	CIVIL ACTION DOCKET NO.: A-003838-23 On Appeal from Orders of the Superior Court, Law Division, Camden County, entered on May 24, 2024; Docket No: CAM-L-749-24 Sat Below: Hon. Michael J. Kassel, J.S.C.

PLAINTIFF/APPELLANT, CHRISTOPHER QUIGLEY INDIVIDUALLY AND AS A SHAREHOLDER OF SAFE HARBOR FINANCIAL INC.'S BRIEF ON APPEAL

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES ..... v - vii

TABLE OF JUDGMENTS, ORDERS, AND RULINGS ON APPEAL ..viii - ix

I. PRELIMINARY STATEMENT.....1

II. PROCEDURAL HISTORY 3

A. Douglas Schwarzwaelder v. Christopher M. Quigley, Safety Harbor Distribution, LLC and Safe Harbor Financial, Inc., Docket No. CAM-L-002691-18 (The Schwarzwaelder Lawsuit) (Pa100a)……..……..3

B. Douglas Schwarzwaelder, Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution LLC v. Christopher M. Quigley Case No. 190200968 (The Philadelphia Action) (Pa217a)……..….4

C. Christopher Quigley v. Douglas Schwarzwaelder et al., Docket No. CAM-L-000749-24 (Pa276a)……..5

III. STATEMENT OF THE FACTS 6

A. Relationship of the Parties.....7

1. Lesicki and Schwarzwaelder Purchase Stake in SH Distribution 7

2. Lesicki, Schwarzwaelder, Fleischer, and FFS' Fraudulent Inducement of Quigley.....8

B. The Loan Agreements.....9

C. March 5, 2018 SH Financial Stock Purchase Agreement.....10

D. Quigley's Repeated Inquiries Regarding Distributions of SH Financial 10

E. Schwarzwaelder's Camden County, NJ Lawsuit Against

Quigley.....11

F. Schwarzwaelder and Lesicki's Philadelphia, PA Lawsuit Against Quigley.....11

IV. LEGAL ARGUMENT.....12

1. The Trial Court Misapplied The Entire Controversy Doctrine (Pa356a - Pa358a).....12

A. Scope of the Entire Controversy Doctrine (Pa356a - Pa358a).....13

1. The Entire Controversy Doctrine is an Equitable Doctrine (Pa356a - Pa358a).....14

B. The Trial Court Did Not Properly Apply the Entire Controversy Doctrine as to the SHF Defendants (Pa356a).....16

1. Quigley's Claims Arise out of Different Transactional Facts and/or Events Than Those Alleged in the Schwarzwaelder Lawsuit (Pa356a).....18

2. Quigley's Claims as to the SHF Defendants Were Unknown and/or Unaccrued at the Time of the May 24, 2019 Order (Pa356a).....20

C. The Trial Court Did Not Properly Apply the Entire Controversy Doctrine as to the FFS Defendants.....25

1. Quigley's Claims Arise out of Different Transactional Facts and/or Event Than Those Alleged in the Schwarzwaelder Lawsuit and Philadelphia Action (Pa358a).....25

2. Quigley's Claims as to the FFS Defendants Were Unknown and/or Unaccrued at the Time of the May 24, 2019 Order (Pa358a).....26

D. The Trial Court Erred In Dismissing Quigley's Claims Against Ronald Lesicki, Douglas Schwarzwaelder, And Safe Harbor Financial, Inc. With Prejudice (Pa356a).....27

2. THE TRIAL COURT MISAPPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL (Pa371a).....28

A. Scope of the Doctrine of Collateral Estoppel (Pa356a - Pa358a).....28

1. The Trial Court Misapplied The Doctrine Of Collateral Estoppel Against Douglas Schwarzwaelder, Ronald Lesicki, Safe Harbor Financial, Inc., Brian Flesicher, Esquire And Fleischer, Fleischer & Suglia, P.C. (Pa356a - Pa358a).....30

V. CONCLUSION.....33

TABLE OF AUTHORITIES

Page(s)

Cases

Adelman v. BSI Fin. Servs., Inc.,
179 A.3d 431 (App. Div. 2018) 8

Allesandra v. Gross,
453 A.2d 904 (App. Div. 1982) 29

Allstate N.J. Ins. Co. v. Cherry Hill Pain and Rehab. Inst.,
389 N.J. Super. 130 (App. Div. 2006) 14

Ayers v. Jackson,
525 A.2d 287 (N.J. 1987) 3

Bank Leumi USA v. Kloss,
233 A.3d 536 (N.J. 2020) 15

Bernardsville Quarry v. Bernardsville,
929 F.2d 927 (3d Cir. 1991) 7

Cafferata v. Peyser,
597 A.2d 1101 (App. Div. 1991) 21, 23

Codgell v. Hospital Center,
116 N.J. 7 (1989) 15

Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C.,
203 A.3d 133 (N.J. 2019) 20, 24, 26

Ditrolio v. Antiles,
662 A.2d 494 (N.J. 1995) 13, 18, 19, 26

In re Estate of Dawson,
641 A.2d 1026 (N.J. 1994) 28

Fisher v. Yates,
270 N.J. Super. 458 (App. Div. 1994) 13, 20

Fornarotto v. American Waterworks Co., Inc.,
144 F.3d 276 (3d Cir. 1998) 15

Galik v. Clara Maass Med. Ctr.,
771 A.2d 1141 (N.J. 2001) 14

Gelber v. Zito P'ship,
688 A.2d 1044 (N.J. 1997) 15, 16

Hobart Bros. Co. v. Nat'l Union Fire Ins. Co.,
806 A.2d 810 (App. Div. 2002) 19

Holmin v. TRW, Inc.,
330 N.J. Super. 30 (App. Div. 2000) 21

K-Land Corp. No. 28 v. Landis Sewerage Auth.,
173 N.J. 59 (2002) 14, 22, 23

Kimmins Abatement Corp. v. Conestoga-Rovers & Assocs., Inc.,
601 A.2d 256 (N.J. Super. Ct. 1991) 25

Lynch v. Scheininger,
714 A.2d 970 (App. Div. 1998) 29

Manhattan Woods Golf Club, Inc. v. Arai,
312 N.J. Super. 573 (App. Div. 1998) 13

Mauro v. Raymark Indus., Inc.,
561 A.2d 257 (N.J. 1989) 23

Mortgagelinq Corp. v. Commonwealth Land Title Insurance Co.,
142 N.J 336 (1995) 13, 27

Morton Intern., Inc. v. Gen. Accident Ins. Co. of Am.,
629 A.2d 895 (App. Div. 1991) 28

In re Mullarkey,
536 F.3d 215 (3d Cir. 2008) 21, 22

N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ.,
654 F.2d 868 (3d Cir. 1981) 29, 31, 32

Olds v. Donnelly,
696 A.2d 633 (N.J. 1997) 21, 22

Security Ben. Life Ins. Co. v. TFS Ins. Agency, Inc.,
279 N.J. Super. 419 (App. Div. 1995) 12

Velasquez v. Franz,
589 A.2d 143 (N.J. 1991) 29

Zaromb v. Borucka,
398 A.2d 1308 (App. Div. 1979) 20, 23, 24

Other Authorities

Rule 4:6-1 5

Rule 4:9-1 6

Rule 4:30A 13, 14

TABLE OF JUDGMENTS, ORDERS, AND RULINGS ON APPEAL

1. **The Trial Court's May 24, 2024 Order. (Pa356a).**

ORDER

THIS MATTER having been brought before the Court on Motion of Nicola Suglia, Esquire, attorney for the Defendants Ronald Lesicki, Douglas Schwarzwaelder and Safe Harbor Financial, Inc. (the "SHF Parties"), for an Order Dismissing Plaintiff's Complaint pursuant to R. 4:6-2(e), and for good cause shown;

IT IS on this 24th day of May, 2024,

ORDERED that the Complaint and Amended Complaint of Plaintiff, Christopher Quigley individually and as a shareholder of Safe Harbor Financial, Inc. shall be and is hereby dismissed in its entirety with prejudice as to the SHF Parties; and

IT IS FURTHER ORDERED that a copy of this Order shall be deemed served upon all counsel upon being uploaded on eCourts.

/s/: Michael J. Kassel, J.S.C.

2. The Trial Court's May 24, 2024 Order. (Pa358a).

ORDER

THIS MATTER having come before the Court on application of Marshall Dennehey, attorneys for defendants Brian Fleischer and Fleischer, Fleischer, & Suglia, P.C., in the presence of Timoney Knox, LLP, attorneys for Plaintiff Christopher Quigley, Individually and as a shareholder of Safe Harbor Financial, Inc., and the Court having reviewed the moving papers, heard the arguments of counsel, and good cause having been shown;

IT IS On THIS 24TH DAY OF MAY, 2024, **ORDERED** that the Complaint and Amended Complaint of the plaintiff Christopher Quigley, Individually and as a shareholder of Safe Harbor Financial, Inc. against Defendants Brian Fleischer and Fleischer, Fleischer, & Suglia, P.C. be and is hereby dismissed pursuant to R. 4:6-2(e); and

IT IS FURTHER ORDERED that a copy of the within order shall be served upon all counsel via eCourts.

/s/: Michael J. Kassel, J.S.C.

I. PRELIMINARY STATEMENT

This action arises out of an elaborate scheme spanning several years, involving several companies, and several legal jurisdictions, masterminded by Ronald Lesicki ("Lesicki") and Douglas Schwarzwaelder ("Schwarzwaelder") – who abused their majority control over Safe Harbor Financial, Inc. ("SH Financial") (collectively, Schwarzwaelder, Lesicki, and SH Financial shall be referred to as the SHF Defendants") to "freeze out" Chistopher Quigley ("Quigley"), forced Quigley to default on certain loan agreements, and abused the court system with the ultimate goal of seizing control of Quigley's 48.184% share of SH Financial.

In late 2017, Quigley, Lesicki, and Schwarzwaelder planned to go into business together by "blending" Quigley's business, Safe Harbor Distribution, LLC ("SH Distribution") with SH Financial. Originally, Quigley and a financier, Rennie Rodriguez ("Rodriguez") intended to purchase 50% of SH Financial. However, on or about October 31, 2017 Schwarzwaelder, a minority shareholder of SH Financial decided to retain a portion of SH Financial, retaining 1.852%, while Lesicki retained his 50%, making Quigley a minority shareholder with only 48.184% of SH Financial upon finalization of the deal.

Over the next nearly two (2) years, Lesicki and Schwarzwaelder, with their combined 51.852% of SH Financial, went on to abuse their dominant power and control of SH Financial, "freeze out" Quigley, intentionally withhold distributions,

and abuse the court system to seize control of Quigley's shares of SH Financial. On or about July 20, 2018 Schwarzwaelder filed a lawsuit against Quigley in the Superior Court of New Jersey – Camden County at docket number Schwarzwaelder v. Quigley (CAM-L-2691-18) ("Schwarzwaelder Lawsuit"). Fleischer, Fleischer, & Suglia, P.C. ("FFS") and Brian Fleischer, Esquire ("Fleischer") represented Schwarzwaelder in the Schwarzwaelder Lawsuit. On May 24, 2019 the Superior Court of Camden County granted a Motion for Summary Judgment filed by Schwarzwaelder and entered an Order transferring all stocks/shares owned by Quigley in SH Financial to Schwarzwaelder.

Continuing their scheme, on February 12, 2019, Schwarzwaelder and Lesicki, individually and derivatively on behalf of SH Distribution, filed a lawsuit against Quigley in the Philadelphia Court of Common Pleas caption Schwarzwaelder et al. v. Quigley, Case No. 190200968, generally alleging that Quigley misappropriated funds from SH Distribution ("Philadelphia Action"). Over the course of the next two (2) years, Schwarzwaelder and Lesicki attempted to seize control of SH Distribution through the Philadelphia Court of Common Pleas, based on knowingly and intentionally false legal pleadings. Again, the SHF Defendants were represented by Fleischer and FFS in the Philadelphia Action.

Importantly, the Schwarzwaelder Lawsuit addresses the narrow issue regarding Quigley's alleged breach of contract and default on loan agreements in

2018. For the duration of the Schwarzwaelder Lawsuit Quigley did not know, and could not have known, the full extent of Defendants' scheme, plan, and fraud. During the pendency of the Schwarzwaelder Lawsuit, Quigley's damages were unknown and unaccrued. Quigley's damages were continuing throughout the pendency of the Schwarzwaelder Lawsuit, including but not limited to, the intentional withholding of distributions and/or dividends by the SHF Defendants and Respondents' scheme and plan to "freeze out" Quigley of his SH Financial shares.

II. PROCEDURAL HISTORY

Quigley's claims were dismissed based upon New Jersey's entire controversy doctrine and collateral estoppel, and therefore this procedural history details this instant matter, the Schwarzwaelder Lawsuit, and the Philadelphia Action.

A. Douglas Schwarzwaelder v. Christopher M. Quigley, Safety Harbor Distribution, LLC and Safe Harbor Financial, Inc., Docket No. CAM-L-002691-18 (The Schwarzwaelder Lawsuit)

On July 20, 2018, Douglas Schwarzwaelder filed an action in the Superior Court of New Jersey Camden County under Docket No. CAM-L-002691-18 in the matter of Douglas Schwarzwaelder v. Christopher M. Quigley, Safety Harbor Distribution, LLC and Safe Harbor Financial, Inc. (the "Schwarzwaelder Lawsuit").

Fleischer and FFS represented Schwarzwaelder in the Schwarzwaelder Lawsuit. The complaint in the Schwarzwaelder Lawsuit alleges that Quigley failed

to make required payments on a loan and Consulting and Commission Agreement issued by Schwarzwaelder. (Pa55a).

On April 16, 2019 Schwarzwaelder filed a Motion for Partial Summary Judgment against Quigley. (Pa247a). On May 24, 2019, the Honorable Thomas T. Booth, Jr., J.S.C. entered an Order for partial summary judgment in favor of plaintiff Douglas Schwarzwaelder in the Schwarzwaelder Lawsuit. (Pa164a). The Order transferred "all stocks/shares owned by Defendant Christopher Quigley in Safe Harbor Financial, Inc…to [Schwarzwaelder]…" (Pa164a).

B. Douglas Schwarzwaelder, Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution LLC v. Christopher M. Quigley Case No. 23050536 (The Philadelphia Action)

On February 12, 2019 plaintiffs in the Philadelphia Action filed an action in the Court of Common Pleas of Philadelphia County, Pennsylvania, Case No. 23050536 in the matter of Douglas Schwarzwaelder, Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution LLC v. Christopher M. Quigley (the "Philadelphia Action"). (Pa217a – 227a). In the Philadelphia Complaint, Schwarzwaelder and Lesicki intentionally and fraudulently misstated their ownerships stakes in SH Distribution. (Pa217a – 227a).

On February 26, 2020 the plaintiffs in the Philadelphia Action filed a Motion for Entry of Default Judgment and on December 22, 2020 the Honorable Judge Nina Padilla entered an Order granting plaintiffs' Motion for Entry of Default Judgment

against Quigley and in favor of Schwarzwaelder and Lesicki individually and derivatively on behalf of SH Distribution in the amount of $135,000, enjoining Quigley from disbursing, redirecting, or withdrawing any money from SH Distribution, among other relief. (Pa228a – 230a)

On May 1, 2023 Quigley filed a Motion to Disqualify Counsel, Brian Fleischer, Esquire and Fleischer, Fleischer, & Suglia P.C. (Pa199a). On February 20, 2024 the Honorable Judge Nina Padilla entered an Order denying Quigley's Motion to Disqualify Counsel. (Pa229a).

C. Christopher Quigley v. Douglas Schwarzwaelder et al., Docket No. CAM-L-000749-24

On or about March 8, 2024, Plaintiff, Christopher Quigley filed a Civil Action Complaint ("Complaint") against the SHF Defendants, Fleischer, and FFS (Fleischer and FFS will collectively be referred to as the "FFS Defendants") in the matter Christopher Quigley v. Douglas Schwarzwaelder et al., Docket No. CAM-L-000749-24 ("New Jersey Action") (1a – 36a). On or about April 17, 2024 the FFS Defendants filed a Motion to Dismiss the Complaint pursuant to Rule 4:6-1, the entire controversy doctrine and collateral estoppel. (Pa167a – Pa251a). On or about April 22, 2024 the SHF Defendants filed a Motion to Dismiss the Complaint pursuant to Rule 4:6-1, as a violation of the entire controversy doctrine and collateral estoppel. (Pa252a – 268a). On May 1, 2024 Quigley filed a Motion for Leave to

Amend Complaint pursuant to Rule 4:9-1. (Pa269a). On May 2, 2024, Quigley filed an Amended Complaint ("Amended Complaint") (Pa276a).

On May 24, 2019, the trial court granted Quigley's Motion for Leave to Amend the Complaint, making the Amended Complaint the operative pleading.[1] (Pa355a). On May 24, 2019, the trial court granted the SHF Defendants' Motion to Dismiss the Amended Complaint, *with prejudice*. (Pa356a – 357a). Similarly, on May 24, 2019, the trial court granted FFS Defendants' Motion to Dismiss the Amended Complaint, *without prejudice*. (Pa358a). This appeal followed.

III. STATEMENT OF THE FACTS

It is undisputed that Christopher Quigley is the founder and majority owner of SH Distribution. SH Distribution is a Pennsylvania limited liability company organized and existing under the law of the Commonwealth of Pennsylvania with an address of 825 Galer Road, Newtown Square, PA 19073. Similarly, the Parties agree that Quigley founded SH Distribution on or about November 2, 2017 and owned 100% of SH Distribution upon its founding.

It is also undisputed that Lesicki is the founder and majority owner of SH Financial, owning 50% of SH Financial. Schwarzwaelder is a minority owner and

[1] "You're absolutely right, under 4:9-1 you have the absolute right before they file responsive pleadings to amend… as I recall it, there was nothing that changed the disposition, or the way at least I viewed it, in regard to both Collateral Estoppel and Entire Controversy Doctrine in the amended complaint. So for purposes of the records, your amended complaint is good. It's in there. It's filed. It's accepted. It's part of the record."

investor of SH Financial, owning 1.852% of SH Financial. (Pa85a). Together, Schwarzwaelder and Lesicki dominated control of SH Financial, owning a majority share of 51.852%. (Pa85a).

A. Relationship of the Parties

In autumn of 2017, Quigley and Lesicki discussed "blending" their businesses, SH Distribution and SH Financial, respectively, and operating them in a collaborative manner. At the time, Quigley owned 100% of SH Distribution.

1. Lesicki and Schwarzwaelder Purchase Stake in SH Distribution

In or around September of 2017, Lesicki agreed to purchase 20% of SH Distribution for approximately $40,000.00, upon SH Distribution's incorporation. Similarly, it is alleged that in or around January of 2018 Schwarzwaelder purchased 5% of SH Distribution for $12,500. Similarly, at the time, Lesicki owned fifty-percent (50%) of SH Financial, and twelve investors, Schwarzwaelder being one of them, owned the remaining fifty-percent (50%) of SH Financial.

In conjunction with the goal of "blending" business, in November of 2017, Defendant and non-party Rennie Rodriguez sought to purchase a 48.148% share – or approximately twenty-four percent (24%) each – in SHF. In doing so, they would buy out all owners other than Lesicki and Schwarzwaelder. (Pa39a – 43a).

Rodriguez allegedly secured the financing to purchase 48.184% through unlawful, fraudulent, or otherwise unauthorized means.[2] In or around January of 2018, Defendants took steps to remove Rodriguez from SH Financial. Defendants suggested that Quigley purchase Rodriguez's share of the 48.184% of SH Financial.

2. Lesicki, Schwarzwaelder, Fleischer, and FFS' Fraudulent Inducement of Quigley

Lesicki and Schwarzwaelder knew that Quigley did not have the financial means to finance the purchase of Rodriguez's share of the 48.184% of SH Financial. However, Schwarzwaelder, with the aid, coordination, and advice of his legal counsel, Fleischer, and Fleischer's law firm, FFS, offered to loan Quigley two hundred thousand dollars ($200,000.00) to purchase Rodriguez's approximately 24% share of the 48.184% of SH Financial (the "Loan"). (Pa44a – 47a).

Quigley alleges that he made it clear to Lesicki and Schwarzwaelder that he could not afford to make payments on the Loan without the promised, assured, and advertised dividends and/or distributions from SH Financial. In reliance upon Lesicki and Schwarzwaelder's assurances, Quigley "bought out" Rennie Rodriguez, and acquired a total of 48.184% shar of SH Financial on March 5, 2018. (85a – 99a).

[2] This is the subject of another, ongoing lawsuit, CEBV, LLC as assignee of Ameris Bank v. ABC Holdco Inc. et al., Superior Court of New Jersey - Gloucester County – Law Division, Docket No. GLO-L-000856-22.

B. The Loan Agreements

At the direction of Schwarzwaelder, Fleischer and FFS prepared five (5) documents. Fleischer presented Quigley with five (5) documents to sign in exchange for the Loan, namely a 1). Promissory Note (Pa44a); 2). Pledge Agreement (Pa48a); 3). Consulting and Commission Agreement (Pa55a); 4). Unconditional Guaranty and Suretyship Agreement (Pa65a); 5). a Security Agreement (collectively "Loan Agreements"). (Pa72a).

Quigley believed that Fleischer and FFS represented him and his interests throughout the purchase of Rodriguez's shares of SH Financial. Lesicki and Schwarzwaelder, with the aid, advice, counsel, and planning of Fleischer and FFS, intentionally induced Quigley to execute the Loan Agreements, knowing that Quigley could not possibly abide by their terms, without distributing money. The ultimate goal of this scheme was to seize control of Quigley's ownership interest in SH Financial and SH Distribution.

C. March 5, 2018 SH Financial Stock Purchase Agreement

After receiving the loan from Schwarzwaelder, Quigley executed a Stock Purchase Agreement to purchase Rodriguez's shares of SH Financial on March 5, 2018, ("Stock Purchase Agreement"). (Pa44a).

D. Quigley's Repeated Inquiries Regarding Distributions of SH Financial

Following the execution of the Stock Purchase Agreement, Quigley alleges that he repeatedly asked Lesicki for his guaranteed distributions. (Pa291a). Further, from March 5, 2018 onward, Lesicki refused or otherwise rejected, Quigley's repeated requests to view SH Financial's financial statements.

However, despite guaranteeing to Quigley that SH Financial paid dividends to shareholders quarterly, and sometimes more frequently, Quigley alleges that SH Financial never paid Quigley a dividend and the SHF Defendants ignored repeated communications from Quigley regarding the status of same. (Pa291a). Because SH Financial never paid distributions to Quigley, which Lesicki and Schwarzwaelder repeatedly assured were guaranteed, Quigley became unable to perform obligations set forth in the Loan Agreements.

E. Schwarzwaelder's Camden County, NJ Lawsuit Against Quigley

On or about July 20, 2018 Schwarzwaelder filed a lawsuit against Quigley in the Superior Court of New Jersey – Camden County ("Schwarzwaelder Lawsuit"). (Pa100a). Fleischer and FFS represented Schwarzwaelder in the Schwarzwaelder lawsuit. (Pa100a).

The Complaint in the Schwarzwaelder Lawsuit alleges that Quigley failed to make required payments on the Loan. (Pa100a). The Complaint in the

Schwarzwaelder Lawsuit further alleges that Quigley failed to make required payments on the Consulting and Commission Agreement. (Pa100a).

On or about May 24, 2019 the Superior Court of New Jersey, Camden County granted Schwarzwaelder's Motion for Summary Judgment. (Pa164a – 165a).

The Order transferred "all stocks/shares owned by Defendant Christopher Quigley in Safe Harbor Financial, Inc…to [Schwarzwaelder] pursuant to the Pledge Agreement…" (Pa164a – 165a). In essence, Lesicki and Schwarzwaelder seized control of Quigley's stake in SH Financial and attempted to seize total control of SH Distribution. Lesicki and Schwarzwaelder did so by inducing and persuading Quigley to sign the Loan Agreements, without any intention of providing distributions to Quigley, then "froze out" Quigley to force Quigley to default on the Loan Agreements.

Schwarzwaelder and Lesicki, individually and in their capacity as shareholders of SH Financial, conspired, coordinated, and planned this takeover with Fleischer, and FFS.

F. Schwarzwaelder and Lesicki's Philadelphia, PA Lawsuit Against Quigley

Continuing their scheme, on February 12, 2019, Schwarzwaelder and Lesicki, individually and derivatively on behalf of SH Distribution, filed a lawsuit against Quigley generally alleging that Quigley misappropriated funds from SH Distribution ("Philadelphia Action"). (Pa217a – 227a). In the Philadelphia Complaint,

Schwarzwaelder and Lesicki intentionally and fraudulently misstated their ownerships stakes in SH Distribution.

On or about August 20, 2020 the Philadelphia Court of Common Pleas entered a default judgment against Quigley. (Pa228a). On or about December 18, 2020, the Philadelphia Court of Common Pleas entered judgment against Quigley and in favor of Schwarzwaelder and Lesicki individually and derivatively on behalf of SH Distribution in the amount of $135,000, enjoining Quigley from disbursing, redirecting, or withdrawing any money from SH Distribution, among other relief. (Pa229a – 230a).

On May 1, 2023, Quigley filed a Petition to Open and/or Strike the Default Judgment. (Pa396a). Similarly, on May 1, 2023, Quigley filed a Motion to Disqualify Fleischer and FFS as counsel. (Pa199a). On February 20, 2024, the Court in the Philadelphia Action under Case No. 190200968 entered an Order denying Quigley's Motion for Disqualification. (Pa251a).

IV. LEGAL ARGUMENT

1. The Trial Court Misapplied The Entire Controversy Doctrine

New Jersey's entire controversy doctrine is a New Jersey specific claim preclusion rule that is similar to, but distinguishable from, the common law principle of *res judicata.* Security Ben. Life Ins. Co. v. TFS Ins. Agency, Inc., 279 N.J. Super. 419, 424 (App. Div. 1995). "No other jurisdiction has adopted so strict a rule on

claims joinder." Mortgagelinq Corp. v. Commonwealth Land Title Insurance Co., 142 N.J 336, 50 (1995) (internal citations omitted). New Jersey Civil Practice Rule 4:30A provides that "[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required" by the doctrine.

A. Scope of the Entire Controversy Doctrine

In determining whether successive claims constitute one controversy for purposes of the doctrine, "the central consideration is whether the claims . . . arise from related facts or the same transaction or series of transactions." Ditrolio v. Antiles, 662 A.2d 494 (N.J. 1995). "[I]t is the factual circumstances giving rise to the controversy itself, rather than a commonality of claims, issues or parties, that triggers the requirement of joinder to create a cohesive and complete litigation." Manhattan Woods Golf Club, Inc. v. Arai, 312 N.J. Super. 573, 577 (App. Div. 1998).

Notably, the entire controversy doctrine does not serve as a bar to any claims "that were unknown, or had not arisen or accrued at the time of the original action." Fisher v. Yates, 270 N.J. Super. 458, 469-470 (App. Div. 1994).

Although the Entire Controversy Doctrine is designed to encourage comprehensive and conclusive litigation determinations, the New Jersey Supreme Court still recognizes a "strong preference for adjudication on the merits rather than

final disposition for procedural reasons." Galik v. Clara Maass Med. Ctr., 771 A.2d 1141 (N.J. 2001).

1. The Entire Controversy Doctrine is an Equitable Doctrine

New Jersey Civil Practice Rule 4:30A provides that "[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required" by the doctrine.

Although the entire controversy doctrine imposes harsh repercussions on litigants, the Appellate Division and Supreme Court's interpretation and application of the doctrine is based upon judicial fairness. See K-Land Corp. No. 28 v. Landis Sewerage Auth., 173 N.J. 59 (2002)). "[T]he equitable nature of the doctrine bars its application where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives, namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency." K-Land Corp. No. 28 at 74 (2002) (*quoting* Pressler, Current N.J. Court Rules, comment 1 on R. 4:30A (2002)).

"[E]quitable considerations remain to 'ease the path upon which the doctrinal bar [of the entire controversy doctrine] travels.'" Allstate N.J. Ins. Co. v. Cherry Hill Pain and Rehab. Inst., 389 N.J. Super. 130, 139 (App. Div. 2006) (*quoting* Hillsborough Twp. Bd. of Educ. v. Faridy Thorne Frayta, P.C., 321 N.J. Super. 275, 284 (App. Div. 1999)), *cert. denied,* 190 N.J. 254 (2007)).

The entire controversy doctrine applies to successive suits with related claims and "embodies the notion that the adjudication of a *legal controversy* should occur in one litigation in only one court." Codgell v. Hospital Center, 116 N.J. 7 (1989) (emphasis supplied). The inherent difficulty lies in defining "the parameters of 'a legal controversy' or 'one litigation' with the precision suggested by the doctrine." Fornarotto v. American Waterworks Co., Inc., 144 F.3d 276, 279-80 (3d Cir. 1998).

But most importantly, in the court's application, the entire controversy doctrine requires the court to consider fairness to the parties, as the "polestar," or the most important factor of the application of the rule is judicial fairness. Bank Leumi USA v. Kloss, 233 A.3d 536 (N.J. 2020). "In considering fairness to the party [under the entire controversy doctrine] a court *must* consider whether the claimant has 'had a fair and reasonable opportunity to have fully litigated that claim in the original action.'" Gelber v. Zito P'ship, 688 A.2d 1044 (N.J. 1997) (emphasis added).

In its application, the entire controversy doctrine requires the court to consider fairness to the parties, at the center of the application of the rule is judicial fairness. Bank Leumi USA v. Kloss, 233 A.3d 536 (N.J. 2020). "In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant has 'had a fair and reasonable opportunity to have fully litigated that claim in the original action.'" Gelber v. Zito P'ship, 688 A.2d 1044 (N.J. 1997).

The New Jersey Supreme Court in Gelber reasoned that "[a] dispute with a contractor, for example, over the color of a kitchen cabinet ought not result in the dismissal of a suit against an architect alleging mislocation of a structure." Gelber at 568. The Gelber Court went on to state, "[d]ismissal is only appropriate when the claims in the action against the architect are derived from facts also forming the basis for the suit against the contractor." Id. at 568. The Gelber Court refused to dismiss the claims against the architect, stating that "[w]e cannot agree that an arbitration with a contractor over instances of faulty construction always requires dismissal of a homeowner's suit that alleges major design deficiencies against an architect." Id. at 568. "Dismissal is only appropriate when the claims in the action against the architect are derived from facts also forming the basis for the suit against the contractor." Id.

Applied here, a simple breach of contract matter and/or a simple case regarding alleged non-payment pursuant to a loan agreement (the Philadelphia Action and Schwarzwaelder Lawsuit) should not preclude Quigley from pursuing claims regarding a far reaching, extensive, and concealed fraud and RICO conspiracy conducted over the course of several years, spanning several states.

B. The Trial Court Did Not Properly Apply the Entire Controversy Doctrine as to the SHF Defendants

The Schwarzwaelder Lawsuit and this instant action are not part of the same legal controversy. This instant action is related to the significant harm sustained by

Quigley as a result of Respondents' fraud, conspiracy, and abuse of the court system. Fundamentally, the Entire Controversy Doctrine precludes a Plaintiff from litigating in a subsequent proceeding any claims that were litigated or could have been plead and litigated in the prior action that are related to or arise out of the same transaction or event. Bernardsville Quarry v. Bernardsville, 929 F.2d 927 (3d Cir. 1991).

Here, Quigley's claims tangentially involve facts alleged in the Schwarzwaelder Complaint; but in no way do his claims arise out of the same transaction.

The legal controversy in the Schwarzwaelder lawsuit is a mere breach of contract action. (Pa100a-163a). Similarly, the legal controversy in the Philadelphia action is a mere breach of contract action. (Pa217a – 227a). Here, the legal controversy is a broad, expansive, and calculated conspiracy based on Respondents' intentional fraud that the hid from Quigley, and multiple courts. (Pa276aa – 314a).

Quigley's harm was unknown and more importantly, unaccrued during the pendency of the Schwarzwaelder Lawsuit, because the SHF Defendants concealed the nature and extent of the conduct alleged in the Amended Complaint. Quigley only discovered the extent of Respondents' fraud and conspiracy *after* the May 24, 2019 Order in the Schwarzwaelder Lawsuit. Significantly, Quigley's harm had not yet accrued in the Schwarzwaelder Lawsuit until the court entered judgment against Quigley and in favor of Schwarzwaelder on May 24, 2019. (Pa164a – 165a).

Therefore, the legal question presented is whether the fact that a prior breach of contract claim, involving only Schwarzwaelder and SH Financial in the Schwarzwaelder Lawsuit should render a case and any prior litigation "one controversy" for purposes of New Jersey's claim preclusion statute? Even more, should it be rendered "one controversy" where the underlying causes of action are based on different events, occurred over the course of several years, and involve different parties?

The answer is no, both because the claims in the Schwarzwaelder Lawsuit and Philadelphia Action arise out of different transactional facts, and because Quigley's claims in this instant litigation were unknown and/or unaccrued at the time of the prior lawsuits. (Pa100a – 163a; Pa217a – 2227a; Pa276a – 314a). Here, the trial court misapplied the entire controversy doctrine as to the Lesicki, Schwarzwaelder, and SH Financial.

1. Quigley's Claims Arise out of Different Transactional Facts and/or Events Than Those Alleged in the Schwarzwaelder Lawsuit

In determining whether successive claims constitute one controversy for purposes of the doctrine, "the central consideration is whether the claims . . . arise from related facts or the same transaction or series of transactions." Ditrolio v. Antiles, 662 A.2d 494 (N.J. 1995). Significantly, Lesicki, Fleischer, and FFS are not parties to the Schwarzwaelder Lawsuit. (Pa100a – 163a).

The mandatory party joinder under the Entire Controversy Doctrine has been eliminated, and preclusion of a successive action against a person not a party to the first action has been abrogated except in special situations involving both inexcusable conduct and substantial prejudice to the non-party. Hobart Bros. Co. v. Nat'l Union Fire Ins. Co., 806 A.2d 810 (App. Div. 2002).

Here, those factors are not present and not alleged by Defendants. Therefore, with respect to Lesicki, Fleischer, and FFS, at a minimum, the trial court erred.

With respect to Schwarzwaelder, the essential consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts. Ditrolio at 504. Here, Quigley's claims do not arise from a single controversy, but a pattern, scheme, and plan designed by the Defendants over many months, which was *not* at issue in the Schwarzwaelder Lawsuit.

The Schwarzwaelder Lawsuit alleges a mere breach of contract for Quigley's alleged failure to make required loan payments. (Pa100a – 163a). However, the Amended Complaint sets forth an expansive, calculated, conspiracy spanning several years across several states. (Pa276a – 314a).

Therefore, Lesicki, the party invoking the Entire Controversy Doctrine who was not a party in the Schwarzwaelder Lawsuit, has the burden of establishing both inexcusable conduct and substantial prejudice. Id. At the trial court, Lesicki did not set forth any inexcusable conduct or prejudice.

The trial court is required to weigh the factors of inexcusable conduct and substantial prejudice in deciding whether fairness requires that a party be precluded from presenting its claim. Here, the trial court did not properly weigh these factors. (Pa356a – 357a).[3]

2. Quigley's Claims as to the SHF Defendants Were Unknown and/or Unaccrued at the Time of the May 24, 2019 Order

The trial court likewise misapplied the entire controversy doctrine because Quigley's claims were unknown and/or unaccrued at the time of the May 24, 2019 Order. See Fisher v. Yates, 270 N.J. Super. 458, 469-470 (App. Div. 1994).

The Entire Controversy Doctrine does not apply to bar claims that are unknown or unaccrued at the time of the original action. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 203 A.3d 133 (N.J. 2019); Zaromb v. Borucka, 398 A.2d 1308 (App. Div. 1979) (concluding that slander claim was discovered too late in pending controversy, and therefore not barred by Entire Controversy Doctrine in successive suit).

[3] At the May 24, 2024 Oral Argument on the Motions to Dismiss the trial court stated: "It may be very black and white. Either the Entire Controversy Doctrine applies or it doesn't. Either Collateral Estoppel applies or it doesn't. And whether or not the subsequent lawsuit is filed the day after the summary judgment order or five years, 364 days is legally irrelevant. But to be perfectly transparent, I have to tell you in deciding equitably what the result should be in the case, that has factored into my analysis…If it's inappropriate, it's inappropriate. I could be right for the wrong reasons, or wrong for the right reasons. Right. Or perhaps right for the right reasons. You know. But I do want to be transparent about it." (T43-21 – T44-11).

The knowledge of the existence of a cause of action which will invoke the entire controversy doctrine is the same as the knowledge which will trigger the running of the statute of limitations in those cases to which the discovery rule of deferred accrual is applicable. Cafferata v. Peyser, 597 A.2d 1101 (App. Div. 1991).

However, where an initial lawsuit itself gives rise to a claim for fraud or breach of duty, the entire controversy doctrine is inapplicable to the claims arising out of that lawsuit. In re Mullarkey, 536 F.3d 215, 229 (3d Cir. 2008) (refusing to apply entire controversy doctrine to bar RICO claim arising from alleged fraud perpetrated through prior Bankruptcy Court action); see also Olds v. Donnelly, 696 A.2d 633 (N.J. 1997) (holding that entire controversy doctrine does not compel assertion of legal malpractice action in underlying action giving rise to claim because not yet accrued).

In Olds v. Donnelly the New Jersey Supreme Court reversed prior precedent and held that the entire controversy doctrine does not bar subsequent legal malpractice actions after the underlying litigation in which the legal malpractice occurred has concluded. Olds, 150 N.J. at 435-38. The court stated that "mere knowledge" does not cause a legal malpractice claim to accrue. Id. at 437. Rather, a tort claim accrues when damages have resulted. Id.; See Holmin v. TRW, Inc., 330 N.J. Super. 30, 36 (App. Div. 2000) ("[A]ctual damages are an element of the cause of action for fraud or deceit. Until a plaintiff has suffered 'damages,' therefore, he

cannot maintain a suit for damages based on fraud since his cause of action has not yet accrued.").

Here, Quigley did not suffer damages as a result of Defendants' fraud and breach of fiduciary duty at the time of the filing of the Schwarzwaelder Lawsuit, nor can damages be fully assessed until final judgment is entered. Therefore, under the framework set forth in Olds, Quigley's claims should not have been barred from proceeding.

Similarly, in Mullarkey, the Third Circuit refused to apply the entire controversy doctrine to bar claims in a second lawsuit between the same parties because "the prior proceeding itself was the alleged *vehicle* of the defendant's misconduct." Mullarkey, 536 F.3d at 229 (emphasis supplied). Here, as alleged in the Amended Complaint, the Schwarzwaelder Lawsuit was the *vehicle* in which Defendants defrauded Quigley, causing him substantial harm. (Pa276a – 314a).

Regardless of whether Quigley was aware of any *possible* claims against Respondents during the pendency of the Schwarzwaelder Lawsuit, the claims in this action had not been accrued for purposes of the entire controversy doctrine, and therefore cannot be precluded by the same. See K-Land Corp. v, Landis Sewerage Authority, 173 N.J. 59, 75 (2002) (reversing application of entire controversy doctrine where at the time of filing of first action for declaratory judgment, claims for reimbursement had been somewhat "premature"). The Court in K-Land went on

to state "[o]ur interest in mandatory claim joinder should not be viewed as encouraging or requiring the filing of premature or unaccrued claims." K-Land Corp. 173 N.J. at 75.

Assuming, *arguendo*, Quigley's harm *did* accrue during the pendency of the Schwarzwaelder Lawsuit, Quigley did not have a reasonable and fair opportunity to litigate the claims. See Cafferata v. Peyser, 597 A.2d 1101 (App. Div. 1991) (the earlier action must have afforded a fair and reasonable opportunity to litigate the claim in order for the doctrine to apply). It is well settled that the Entire Controversy Doctrine does not bar transactionally related claims of which a party was unaware during the pendency of the prior litigation. Mauro v. Raymark Indus., Inc., 561 A.2d 257 (N.J. 1989); Ayers v. Jackson, 525 A.2d 287 (N.J. 1987); Zaromb v. Borucka, 398 A.2d 1308 (App. Div. 1979) (concluding that slander claim was discovered too late in pending controversy, and therefore not barred by Entire Controversy Doctrine in successive suit).

The knowledge of the existence of a cause of action which will invoke the entire controversy doctrine is the same as the knowledge which will trigger the running of the statute of limitations in those cases to which the discovery rule of deferred accrual is applicable. Cafferata v. Peyser, 597 A.2d 1101 (N.J. Super. App. Div. 1991).

Here, Quigley's claims did not accrue during the pendency of the Schwarzwaelder Lawsuit. However, even if certain claims *did* accrue before the action ended, then the court must determine whether Quigley would have had a fair and reasonable opportunity at that point to assert and litigate that claim. The question whether the forum provides a fair and reasonable opportunity to litigate the claims warrants a case-specific inquiry. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 203 A.3d 133 (N.J. 2019).

Applied to this specific case, Quigley did not, and could not have known the extent of the fraud, conspiracy, and related acts of the Defendants during the pendency of the Schwarzwaelder Lawsuit. See e.g. Zaromb v. Borucka, 398 A.2d 1308 (App. Div. 1979) (concluding that slander claim was discovered too late in pending controversy, and therefore not barred by Entire Controversy Doctrine in successive suit). Even more, Quigley's harm did not ripen until May 24, 2019, the date that the Court entered the Order transferring Quigley's shares of SHF to Schwarzwaelder.

Significantly, the trial court erred by failing to consider that Amended Complaint alleges a pattern of conspiratorial conduct committed by the Defendants to "freeze out" Quigley, by withholding dividends and distributions, despite repeated inquiries as to the status of the assured distributions. (Pa276a – 314a). Quigley alleges that Lesicki and Schwarzwaelder, on behalf of SHF, intentionally withheld

distributions and/or dividends, forcing Quigley to default on the loans. (Pa291a – 292a at ¶¶ 118-134). It is further alleged that the distributions and/or dividends were owed to Quigley from his initial purchase of the shares of SHF, up until May 24, 2019, the date that the Court granted Schwarzwaelder's Motion for Summary Judgment, seizing Quigley's shares of SHF. (Pa291a – 294a). The SHF Defendants' intentional withholding of distributions and/or dividends harmed Quigley, and continued to harm Quigley through the duration of his ownership of SHF. However, the harm did not ripen until Quigley's shares were transferred to Schwarzwaelder after May 24, 2019. Therefore, the trial court misapplied the entire controversy doctrine because Quigley's claims were unknown and/or unaccrued at the time of the May 24, 2019 Order.

C. The Trial Court Did Not Properly Apply the Entire Controversy Doctrine as to the FFS Defendants

1. Quigley's Claims Arise out of Different Transactional Facts and/or Event Than Those Alleged in the Schwarzwaelder Lawsuit and Philadelphia Action

It is well established law that "[w]hile the entire controversy doctrine is extremely broad neither our Supreme Court nor the Appellate Division has ever extended the doctrine to bar a second lawsuit against a defendant who was not a party to a first lawsuit in another State." Kimmins Abatement Corp. v. Conestoga-Rovers & Assocs., Inc., 601 A.2d 256 (N.J. Super. Ct. 1991).

Here, Fleischer and FFS were not parties to the Philadelphia Action. Instead, the FFS Defendants attempt to conflate two (2) lawsuits, in two (2) different states, involving different parties, to preclude Quigley from litigating claims in this action, which are themselves separate and distinct from allegations contained in said lawsuits.

The trial court committed an error of law by granting the FFS Defendants' Motion to Dismiss pursuant to the entire controversy doctrine based on the Motion to Disqualify the FFS Defendants as counsel in the Philadelphia Action. The New Jersey Action and the Philadelphia Action do not involve *identical* issues, nor do they involve the same "bundle of rights." Ditrolio, 142 N.J. at 268. Therefore, the Philadelphia Action has nothing to do with disposing of any party's rights or liabilities in the New Jersey Action.

2. Quigley's Claims as to the FFS Defendants Were Unknown and/or Unaccrued at the Time of the May 24, 2019 Order

The Entire Controversy Doctrine does not apply to bar claims that are unknown or unaccrued at the time of the original action. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 203 A.3d 133 (N.J. 2019).

Even more, the FFS Defendants were not parties to the Philadelphia Action and Quigley has never raised *any* claims against them. However, astoundingly, the trial court held that the Philadelphia Action, which involved separate and distinct

parties, claims, and issues, barred Quigley from bring claims against the FFS Defendants in the New Jersey Action. (Pa358a).

Importantly, the FFS Defendants were not parties to the Schwarzwaelder Lawsuit. In fact, the FFS Defendants were legal counsel for Schwarzwaelder and SH Financial in the Schwarzwaelder Lawsuit. Accordingly, Quigley did not know, and could not have known, the existence, extent, and nature of the conspiracy as alleged in the Amended Complaint. Again, astoundingly, the trial court held that the Schwarzwaelder Lawsuit, which involved separate and distinct parties, claims, and issues, barred Quigley from bring claims against the FFS Defendants in the New Jersey Action.

D. The Trial Court Erred In Dismissing Quigley's Claims Against Ronald Lesicki, Douglas Schwarzwaelder, And Safe Harbor Financial, Inc. With Prejudice

Although New Jersey Supreme Court precedent holds that dismissals under the entire controversy doctrine must be without prejudice to the plaintiff, see, Mortgageling Corp. v. Commonwealth Land Title Ins. Co., 142 N.J. 336, 347 (1995), the trial court's dismissal was "with prejudice." (Pa356a-357a).

Here, the trial court committed an error of law by dismissing Quigley's Amended Complaint against Schwarzwaelder, Lesicki, and SH Financial pursuant to the entire controversy doctrine and collateral estoppel, *with prejudice*.

2. THE TRIAL COURT MISAPPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL

A. Scope of the Doctrine of Collateral Estoppel

For collateral estoppel to apply, a party must establish that: (1) the issue to be precluded is identical to the issue previously decided; (2) the issue was actually litigated in the prior suit and the party had a full and fair opportunity to litigate it; (3) there was a final judgment on the merits in the prior action; (4) the determination of the issue sought to be precluded was essential to the prior judgment; and (5) the party against whom preclusion is asserted was a party to or in privity with a party to the earlier proceeding. In re Estate of Dawson, 641 A.2d 1026 (N.J. 1994). Even more, the doctrine of collateral estoppel has its roots in equity, even if all five elements are met, collateral estoppel may still be denied if applying the doctrine would be unfair. Id.

"Collateral estoppel, or issue preclusion, is part of the wider law of res judicata which prohibits re-litigation of any issue actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." Morton Intern., Inc. v. Gen. Accident Ins. Co. of Am., 629 A.2d 895 (App. Div. 1991). Essential to the theory of Collateral Estoppel is the notion that the earlier decision is reliable, an underlying confidence the result was substantially correct. Adelman v. BSI Fin. Servs., Inc., 179 A.3d 431 (App. Div. 2018).

For the doctrine of collateral estoppel to apply, the issue must be *identical* to the one previously presented, the prior action must have been a judgment on the merits, and the party against whom the doctrine is asserted must be the same, or in privity with, a prior party. Allesandra v. Gross, 453 A.2d 904 (App. Div. 1982) (emphasis added). Moreover, collateral estoppel applies only to facts that were directly in issue and necessary to support the prior judgment. *Ibid.* *Lynch v. Scheininger*, 714 A.2d 970 (App. Div. 1998).

The application of the collateral estoppel doctrine is not automatic, and should not be applied "if there are sufficient countervailing interests." Velasquez v. Franz, 589 A.2d 143, 153 (N.J. 1991) (quoting In re Coruzzi, 472 A.2d 546 (1984)). Importantly, this doctrine precludes relitigating only of questions "distinctly put in issue" and "directly determined" adversely to the party against which the estoppel is asserted. N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ., 654 F.2d 868, 876 (3d Cir. 1981) (quoting City of Plainfield v. Public Serv. Gas and Elec., 412 A.2d 759, 765-66 (N.J. 1980)).

1. The Trial Court Misapplied The Doctrine Of Collateral Estoppel Against Douglas Schwarzwaelder, Ronald Lesicki, Safe Harbor Financial, Inc., Brian Flesicher, Esquire And Fleischer, Fleischer & Suglia, P.C.

Remarkably, the FFS Defendants maintain, and the trial court seemingly ruled, that the court's Order denying Quigley's Motion to Disqualify the FFS Defendants as counsel in the Philadelphia Action precludes Quigley from bringing *any* claims against the FFS Defendants in this instant action. (Pa251a; Pa199a – 216a).

First, the Philadelphia Action, and the filings therein, does not deal with the *identical* issue as set forth in this matter. In fact, Fleischer and FFS are not even parties to the Philadelphia Action. (Pa217a – 227a; Pa276a – 314a). Even more importantly, the Philadelphia Action is not related, in any way, to the claims of conspiracy, fraud, and RICO alleged in the Amended Complaint in this matter. (Pa217a – 227a; 276a – 314a). The FFS Defendants have continually argued that because the trial court in the Philadelphia Action denied Quigleys Motion to Disqualify the FFS Defendants as counsel in February of 2024, after Quigley filed it in May of 2023, that Quigley is now precluded from bringing *any* claims against the FFS Defendants in this instant action. (Pa167a – 196a).

From a fundamental perspective, the issues in the Motion to Disqualify Counsel[4], in the Philadelphia Action and the allegations set forth in Quigley's Amended Complaint are *not* identical, and are not even remotely related to the allegations set forth in the Amended Complaint. Therefore should not have been barred by the Doctrine of Collateral Estoppel.

The doctrine of collateral estoppel only precludes relitigating of questions "distinctly put in issue" and "directly determined" adversely to the party against which the estoppel is asserted. N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ., 654 F.2d 868, 876 (3d Cir. 1981) (quoting City of Plainfield v. Public Serv. Gas and Elec., 412 A.2d 759, 765-66 (N.J. 1980)).

Here, the trial court seemingly ruled that Quigley's claims against the FFS Defendants are barred because the issue of whether Fleischer acted as legal counsel for Quigley during the Philadelphia Action has been determined in the Philadelphia Action. (251a). Quigley never filed a lawsuit against the FFS Defendants in Pennsylvania. However, the FFS Defendants continually assert that Quigley's Motion to Disqualify Fleischer in the Philadelphia Action precludes Quigley from filing *any* claims against the FFS Defendants in this instant suit. (Pa167a – 199a).

[4] Quigley filed the Motion to Disqualify Counsel in the Philadelphia Action on May 1, 2023. The Philadelphia Court of Common Pleas entered an Order denying the Motion to Disqualify on February 20, 2024.

The trial court has precluded Quigley from filing claim claims against the FFS Defendants in this instant matter because the Philadelphia Court of Common Pleas has ruled on a narrow issue regarding legal representation in a case in which they were not parties, involving completely separate and distinct legal issues, in a different jurisdiction. (Pa251a; Pa167a – 199a).

Similarly, as to the SHF Defendants, no issue in the Philadelphia Action or the Schwarzwaelder Lawsuit has been "directly determined" adversely to the parties against which the estoppel is asserted. N.J.-Phila Presbytery of the Bible Presbyterian Church v. N.J. State Be. Of Higher Educ., 654 F.2d 868, 876 (3d Cir. 1981).

Here, the SHF Defendants have continually asserted that Quigley's claims are *only* related to the enforcement of the Loan Agreements. However, Quigley's Amended Complaint clearly alleges a pattern, scheme, and conspiracy entered into and furthered by all Defendants to defraud Quigley by intentionally withholding distributions and/or dividends to force a default on the Loan Agreements, then abuse the Court system to seize control of Quigley's shares of SH Financial. While Quigley maintains that the Loan Agreements are unenforceable, Quigley's Amended Complaint clearly alleges a much larger, more encompassing scheme that has not been litigated, and is therefore not barred by the Doctrine of Collateral Estoppel.

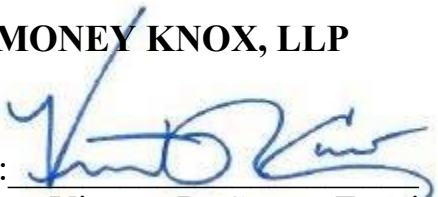
Here, the trial court committed an error of law by misapplying the doctrine of collateral estoppel.

V. CONCLUSION

Respectfully, the trial court erred in granting the Motions to Dismiss and the Orders must be reversed. On reversal, Quigley requests that this Honorable Court deny Respondents' Motions to Dismiss and instruct Respondents to file an Answer to Quigley's Amended Complaint.

Respectfully submitted,

TIMONEY KNOX, LLP

By: 

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Counsel for Appellant,
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Date: December 3, 2024

Christopher Quigley, individually and as a shareholder of Safe Harbor Financial, Inc.	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiff/Appellant,	:	CIVIL ACTION
v.	:	DOCKET NO.: A-3838-23
Ronald Lesicki; Douglas Schwarzwaelder; Safe Harbor Financial, Inc.; Brian Fleischer, Esquire; and Fleischer, Fleischer & Suglia, P.C.	:	On appeal from the May 24, 2024 Orders of the Superior Court of New Jersey, Camden County, Law Division, Docket No.: CAM-L-749-24
Defendants/Respondents.	:	Hon. Michael J. Kassel, J.S.C. sat below

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BRIEF OF DEFENDANTS/RESPONDENTS RONALD LESICKI, DOUGLAS SCHWARZWAELDER, AND SAFE HARBOR FINANCIAL, INC.

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Date of Submission to the Court: December 31, 2024

TABLE OF CONTENTS

Table of Contents i

Table of Judgments, Orders and Rulings on Appeal ii

Table of Citations ii

Procedural History 1

Counterstatement of Facts 2

Legal Argument 10

A. The trial court correctly found that Plaintiff's Complaint and Amended Complaint are precluded by the entire controversy doctrine. (Trial Court Order Pa356) 10

B. The trial court correctly found that Plaintiff's Complaint and Amended Complaint are precluded by collateral estoppel. (Trial Court Order Pa356) 19

Conclusion 22

TABLE OF JUDGMENTS, ORDERS, AND RULINGS ON APPEAL

May 24, 2024 Order . . . . . Pbviii

TABLE OF CITATIONS

Cases

Ajamian v. Schlanger,
14 N.J. 483 (1954), *cert. denied*, 348 U.S. 835 (1954) 11

Archbrook Laguna, LLC v. Marsh, 414 N.J. Super. 97 (App. Div. 2010) . . 12

Bendar v. Rosen, 247 N.J. Super. 219 (App. Div. 1991) 11

Brennan v. Orban, 145 N.J. 282 (1996) 12

Brown v. Brown, 208 N.J. Super. 372 (App. Div. 1986) 11

Busch v. Biggs, 264 N.J. Super. 385 (App. Div. 1993) 11

Circle Chevrolet Co. v. Giordano, Halleran & Ciesla,
142 N.J. 280 (1995) 11

Cogdell v. Hospital Center, 116 N.J. 7 (1989) 10-11

DiTrolio v. Antiles, 142 N.J. 253 (1995) 10-12

Gelber v. Zito P'ship, 147 N.J. 561 (1997) 14

Hennessey v. Winslow Twp., 183 N.J. 593 (2005) 20-21

In re Estate of Dawson, 136 N.J. 1 (1994) 20

Massari v. Einsiedler, 6 N.J. 303 (1951) 11

Mystic Isle Development Corp. v. Perskie Nehmad, 142 N.J. 310 (1995) . . . 10-12

Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) 20-21

Oltremare v. ESR Custom Rugs, Inc.,
330 N.J. Super. 310 (App. Div. 2000) 16-17

O'Neill v. Vreeland, 6 N.J. 158 (1951) 11

State v. Jones, 4 N.J. 374 (1950) 11

Vision Mortg. Corp. v. Patricia J. Chiapperini, Inc.,
307 N.J. Super. 48 (App. Div. 1998), *aff'd* 156 N.J. 580 (1999) 12

Wm. Blanchard Co. v. Beach Concrete Co., Inc.,
150 N.J. Super. 277 (App. Div.), *certif. denied*, 75 N.J. 528 (1977) . . 16-17

Rules of Court and Rules of Evidence

Rule 4:30A 10

N.J. Const., art. VI, § 3, P4 10

I. Procedural History

On March 8, 2024, Plaintiff/Appellant Christopher Quigley, Individually and as Shareholder of Safe Harbor Financial, Inc. ("Plaintiff" or "Quigley") initiated the underlying matter by filing a Complaint against Defendants/Respondents Ronald Lesicki ("Lesicki"), Douglas Schwarzwaelder ("Schwarzwaelder"), Safe Harbor Financial, Inc. ("SHF"), Brian Fleischer, Esquire ("Fleischer"), and Fleischer, Fleischer & Suglia, P.C ("FFS") in the Superior Court of New Jersey, Camden County, Law Division. Pa1. However, Plaintiff was previously involved in two other lawsuits in New Jersey and Pennsylvania related to substantially the same parties and issues as those raised in the underlying action and in which Plaintiff was required to raise any and all claims and defenses related thereto. Pa100-165. In light of the same, on April 17, 2024, Defendants/Respondents Fleischer and FFS (collectively, the "Fleischer Parties") filed a Motion to Dismiss Plaintiff's Complaint pursuant to R. 4:6-2(e), noting that Plaintiff's Complaint was barred by the entire controversy doctrine and res judicata. Pa167. On April 22, 2024, Defendants/Respondents Lesicki, Schwarzwaelder, and SHF (collectively, the "SHF Parties") also filed a Motion to Dismiss the Complaint on the same grounds. Pa255. On May 2, 2024, Plaintiff filed an Amended Complaint with nearly the same claims and again centered around the same issues which were litigated in the previous New Jersey and Pennsylvania actions. Pa269-314.

On May 24, 2024, following oral argument on both motions, the Honorable Michael J. Kassel, J.S.C. entered Orders granting the Fleischer Parties' and the SHF Parties' respective Motions to Dismiss and dismissing Plaintiff's Complaint and Amended Complaint in their entirety against all Defendants with prejudice. Pa356-359. On July 9, 2024, Plaintiff filed a Notice of Appeal with the Law Division and on August 7, 2024 Plaintiff filed the same with the Appellate Division. Pa359. Plaintiff's appeals of both May 24th Orders are docketed under the above-captioned docket number.

II. Counterstatement of Facts

Defendant Lesicki co-founded SHF in or around 1987 and has been an owner and officer of SHF since that time, with other individuals at times holding minority ownership interests in SHF over the years. Pa258. Specifically as it relates to this matter, in 2017 Defendant Schwarzwaelder owned a 1.852% interest in SHF and, in late 2017, Rennie Rodriguez ("Rodriguez") acquired a 48.148% interest in SHF. Lesicki owned the remaining 50% interest in SHF. Pa258-259. In or around this time, Plaintiff Quigley expressed interest in investing in and becoming a shareholder of SHF by purchasing Rodriguez's 48.148% interest. Pa3; Pa259. In light of the fact that Quigley did not have the cash to purchase these shares, at Quigley's request, on or about March 9, 2018 Schwarzwaelder entered into a loan with Quigley for the sum of $200,000.00 to finance Quigley's purchase

of the 48.148% interest held by Rodriguez (the "Loan") which was memorialized in a Promissory Note (the "Note") and Stock Purchase Agreement. Pa44; Pa85; Pa259. Quigley admits signing and entering into the Note and Stock Purchase Agreement. Pa9-10a; Pa259.

In connection with and as an additional inducement for the Loan, Quigley and an entity owned primarily by Quigley, Safe Harbor Distribution, LLC ("SHD"), entered into a Security Agreement with Schwarzwaelder. Pa72; Pa259. Furthermore, also as an additional inducement for the Loan, Quigley and SHD entered into an Unconditional Guaranty, Suretyship and Indemnification Agreement (the "Guaranty") with Schwarzwaelder, pursuant to which Quigley and SHD unconditionally guaranteed compliance with the obligations under the Note including timely payment under the Note. Pa65; Pa259. Finally, as additional inducement for the Note, Quigley executed a Pledge Agreement pledging, as security for payment under the Note, the shares in SHF which he was acquiring from Rodriguez. Pa48; Pa259. The Note, Guaranty, Security Agreement, and Pledge Agreement all contain provisions identical, or nearly identical, to the below, in capital and/or bolded typeset:

> FLEISCHER, FLEISCHER & SUGLIA, P.C. and BRIAN M. FLEISCHER, ESQUIRE, represent DOUGLAS SCHWARZWAELDER. The parties hereto, hereby **acknowledge and agree that Brian M. Fleischer, Esquire, and Fleischer, Fleischer & Suglia are counsel to DOUGLAS SCHWARZWAELDER**

> **and that they were advised by Brian M. Fleischer, that they should seek the advice of their own attorney or another attorney prior to, and in connection with, the execution of any and all agreements** relating to DOUGLAS SCHWARZWAELDER or the Corporation and any other related matters.

Pa44; Pa48; Pa65; Pa72; Pa85; Pa259-260 (emphasis added).

Notwithstanding his obligations under the Note, Quigley defaulted under the Note and related documents and admits to his default thereunder. Pa15; Pa260. Pursuant to the Pledge Agreement, in the event of default, Schwarzwaelder "may transfer or cause to be transferred any of the Pledged Securities into his own or a nominee's name." Pa48; Pa260. In light of the same and in light of Quigley's default, on July 20, 2018 Schwarzwaelder filed a lawsuit against Quigley in the Superior Court of New Jersey, Camden County, Law Division, in a case captioned *Douglas Schwarzwaelder v. Christopher M. Quigley, Safe Harbor Distribution, LLC and Safe Harbor Financial, Inc.*, Docket Number CAM-L-002691-18 (the "First NJ Lawsuit"), setting forth claims related to Quigley's default under the Note and related documents and seeking transfer of the Pledged Securities in accordance with the terms of the Pledge Agreement. Pa100; Pa260. SHF was made a party to the First NJ Lawsuit to direct and effectuate the transfer of Quigley's shares in SHF to Schwarzwaelder pursuant to the Pledge Agreement. Pa100; Pa260.

Quigley and SHD filed an Answer in the First NJ Lawsuit on January 15, 2019. Pa260. Quigley and SHD's Answer did not set forth any Affirmative Defenses, and neither Quigley nor SHD filed any Counterclaim or Crossclaim in the First NJ Lawsuit. Pa261. On April 16, 2019, Schwarzwaelder filed a Motion for Partial Summary Judgment in the First NJ Lawsuit based upon Quigley's default under the Note, requesting the transfer of all of Quigley's shares in SHF to Schwarzwaelder pursuant to the Pledge Agreement. Pa261. Neither Quigley nor SHD filed any opposition to the Motion for Summary Judgment and, on May 24, 2019, the Honorable Thomas T. Booth, Jr., J.S.C. entered an Order granting Schwarzwaelder's Motion and transferring all of Quigley's SHF shares to Schwarzwaelder. Pa164; Pa261.

During the pendency of the First NJ Lawsuit, Schwarzwaelder and Lesicki filed a separate action on February 12, 2019 in the Court of Common Pleas of Philadelphia County, Pennsylvania captioned *Douglas Schwarzwaelder and Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution, LLC v. Christopher M. Quigley*, Case Number 190200968 (the "PA Lawsuit"). Pa217. The PA Lawsuit was unrelated to the claims at issue in the First NJ Lawsuit and asserted individual and shareholder derivative claims for fraud and embezzlement against Quigley in connection with Schwarzwaelder and Lesicki's acquisition of shares in SHD. Pa217. Default was entered against Quigley in the

PA Lawsuit on August 25, 2020 and, following a proof hearing, the Pennsylvania court entered final judgment in favor of Schwarzwaelder and Lesicki and against Quigley in the amount of $135,500.00 on December 18, 2020. Pa229.

Quigley subsequently filed a Petition to Strike or Open the Default Judgment as well as a Motion to Disqualify the Fleischer Parties as counsel for Schwarzwaelder and Lesicki in the PA Lawsuit, both of which were denied. Pa200; Pa239; Pa251. Quigley premised both of these applications in part on allegations that the Fleischer Parties had previously represented Quigley in connection with his acquisition of shares in SHF. Pa200. As set forth above, the Note and related documents – which Quigley signed – make clear that the Fleischer Parties did not represent Quigley, and substantial documentation and emails produced in response to Quigley's applications further evidenced the fact that Quigley had separate counsel. These applications contained further falsities and entirely baseless claims of fraud which Quigley both could not prove and failed to timely raise during the pendency of the PA Lawsuit. Pa200; Pa239; Pa251. On December 13, 2023, Quigley filed an appeal of the November 14, 2023 Order denying his Petition to Strike or Open Judgment in the PA Lawsuit which is currently awaiting a decision by the Superior Court of Pennsylvania following oral argument on October 23, 2024.

On March 8, 2024, Quigley initiated the matter underlying this appeal (the "Second NJ Lawsuit") in the Superior Court of New Jersey, Camden County, Law Division, nearly five years after entry of the summary judgment order in the First NJ Lawsuit and more than three years after entry of default judgment in the PA Lawsuit. Pa1. Notwithstanding the fact that Quigley was a defendant in the First NJ Lawsuit and the PA Lawsuit, both of which addressed claims directly related to those set forth in the instant matter, Quigley filed the Second NJ Lawsuit asserting baseless allegations that Schwarzwaelder and Lesicki made misrepresentations to induce him to purchase shares in SHF and enter into the Loan. These allegations are wholly untrue and disingenuous and the SHF Defendants vehemently deny any such claims but, even to the extent Quigley desired to assert such claims, they were required to have been raised in the First NJ Lawsuit pursuant to the entire controversy doctrine, and Quigley would have been required to join Lesicki and any other purported defendants into the First NJ Lawsuit at that time, which Quigley failed to do. Furthermore, given that the claims asserted by Quigley in the Second NJ Lawsuit were adjudicated in the First NJ Lawsuit and the PA Lawsuit, such claims are further barred by collateral estoppel.

Quigley subsequently filed an Amended Complaint in connection with the Second NJ Lawsuit which removed two counts from the original Complaint: conversion, pled as to Defendant Schwarzwaelder only, and breach of the implied

covenant of good faith and fair dealing, as to the SHF Parties. Pa269; Pa276. However, as with the original Complaint, the Amended Complaint likewise centers around Quigley's allegations in connection with his acquisition of shares of SHF – the acquisition which was the subject of the First NJ Lawsuit and which was adjudicated therein – and, therefore, the Amended Complaint is similarly subject to preclusion.

The Amended Complaint also adds allegations for the first time regarding the PA Lawsuit. Pa293-294. Quigley references the PA Lawsuit in support of his argument that the Defendants herein "masterminded" an "elaborate scheme spanning several years, involving several companies, and several legal jurisdictions" wherein Defendants "abused the court system to seize control" of Quigley's shares of SHF. Pa276. The Amended Complaint further alleges that after Schwarzwaelder and Lesicki initiated the PA Lawsuit, they "would attempt to seize control of SH Distribution through the Philadelphia Court of Common Pleas, based on knowingly and intentionally making false filings." Pa278.

As noted above, in the PA Lawsuit and following a proof hearing, the Philadelphia Court of Common Pleas entered judgment in favor of Schwarzwaelder and Lesicki and against Quigley, finding Quigley liable for fraud and embezzlement as a result of his misappropriation and misuse of funds belonging to SHD. Pa229. In light of the same, as with Quigley's claims in this

matter relating to his acquisition of SHF shares, any claims he is now attempting to make related to the SHF Parties' involvement with SHD or any claims which were at issue in the PA Lawsuit are similarly precluded by the entire controversy doctrine and/or collateral estoppel as any such claims have already been adjudicated in the PA Lawsuit. The very fact that Quigley references these previous litigations as purported evidence of the SHF Parties' scheme further demonstrates that Quigley knew of and was required to assert these claims and defenses *in those litigations* rather than in a separate, subsequent case as he is attempting to do here.

In light of the same, the Fleischer Parties and the SHF Parties each filed Motions to Dismiss in the underlying matter which were granted on May 24, 2024, and Quigley's Complaint and Amended Complaint were dismissed with prejudice as to all Defendants herein. Pa356; Pa358. On July 9, 2024, Quigley filed a Notice of Appeal with the Law Division and on August 7, 2024 Quigley filed the same with the Appellate Division. Pa359. As set forth herein, the trial court did not err in granting the Motions to Dismiss, and the SHF Parties respectfully request that this Honorable Court sustain the trial court's order in connection therewith.

III. Legal Argument

A. The trial court correctly found that Plaintiff's Complaint and Amended Complaint are precluded by the entire controversy doctrine. (Trial Court Order Pa356).

New Jersey Rule of Court 4:30A states: "Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine…" "The fundamental principle behind the inclusion policy of the entire controversy doctrine is that 'the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in the litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy." Mystic Isle Development Corp. v. Perskie Nehmad, 142 N.J. 310, 322 (1995) (quoting Cogdell v. Hospital Center, 116 N.J. 7, 15 (1989)). "The doctrine is a reflection of the constitutional unification of the state courts and the comprehensive jurisdiction vested in the Superior Court established under our Constitution, which recognized the value in resolving related claims in one adjudication so that 'all matters in controversy between parties may be completely determined.'" Id. at 322 (quoting *N.J. Const.*, art. VI, § 3, P4).

"The objectives behind the doctrine are threefold: (1) to encourage the comprehensive and conclusive determination of a legal controversy; (2) to achieve party fairness, including both parties before the court as well as prospective parties;

and (3) to promote judicial economy and efficiency by avoiding fragmented, multiple and duplicative litigation." Id. (citing DiTrolio v. Antiles, 142 N.J. 253, 267 (1995); Cogdell, supra, 116 N.J. at 22-24). "The doctrine has evolved over time through the common law. The entire controversy doctrine requires a court to adjudicate both equitable and legal issues arising from one underlying transaction." Mystic Isle, 142 N.J. at 322 (citing O'Neill v. Vreeland, 6 N.J. 158, 168-69 (1951); State v. Jones, 4 N.J. 374, 383 (1950)). Subsequently, "the doctrine was broadened to include the joinder of defenses. The doctrine was further extended to include all affirmative claims that a party might have against another party, including counterclaims and cross-claims … as well as all parties with a material interest in the controversy, i.e., those who can affect or be affected by the judicial outcome of the controversy." Id. at 322-323 (citing, respectively, Massari v. Einsiedler, 6 N.J. 303, 312-13 (1951); Ajamian v. Schlanger, 14 N.J. 483, 487-89 (1954), *cert. denied*, 348 U.S. 835 (1954); Cogdell, supra, 116 N.J. at 23, 26; R. 4:30A. "It applies to constituent claims that arise during the pendency of the first action that were known to the litigant." Id. at 323 (citing Circle Chevrolet Co. v. Giordano, Halleran & Ciesla, 142 N.J. 280, 290-291 (1995); Brown v. Brown, 208 N.J. Super. 372, 382 (App. Div. 1986); Busch v. Biggs, 264 N.J. Super. 385, 398-99 (App. Div. 1993); Bendar v. Rosen, 247 N.J. Super. 219, 237 (App. Div. 1991)).

"In essence, it is the factual circumstances giving rise to the controversy itself, rather than a commonality of claims, issues or parties, that triggers the requirement of joinder to create a cohesive and complete litigation." Id. (citing DiTrolio, supra, 142 N.J. at 272). Stated simply, the doctrine emphasizes that "all claims arising from a particular transaction should be joined in a single action." Archbrook Laguna, LLC v. Marsh, 414 N.J. Super. 97, 105 (App. Div. 2010) (citing Brennan v. Orban, 145 N.J. 282, 290 (1996)). This mandate encompasses not only matters actually litigated but also other aspects of a controversy that might have been litigated and thereby decided in an earlier action. Vision Mortg. Corp. v. Patricia J. Chiapperini, Inc., 307 N.J. Super. 48, 52 (App. Div. 1998), *aff'd* 156 N.J. 580 (1999).

In the instant matter, Quigley's Complaint and Amended Complaint relate entirely to purported conduct and allegations surrounding Quigley's acquisition of shares of SHF. Pa1; Pa276. This acquisition, and the Loan, Note, and other documents memorializing the same, were precisely what was at issue in the First NJ Lawsuit pursuant to which Schwarzwaelder sued for, and obtained, the return of Quigley's SHF shares as a result of Quigley's default. Pa100. Therefore, the Second NJ Lawsuit involves the same controversy at issue in the First NJ Lawsuit, whereby Quigley was required under the entire controversy doctrine to assert any and all claims regarding the SHF share acquisition and his default under the Note

in the First NJ Lawsuit. Similarly, to the extent Quigley contends or contended to have any such claims against Lesicki or any other parties related to the share acquisition and default, the entire controversy doctrine mandates that Quigley join them and assert any alleged claims in the First NJ Lawsuit.

There is no question that the subject matter of this case is the same as and/or within the scope of the controversy at issue in the First NJ Lawsuit and both matters involve the same factual circumstances and background. In fact, the Complaint and Amended Complaint in this matter outline each of the loan documents entered into between the parties, all of which were also attached to and at issue in the First NJ Lawsuit. Further, the allegations contained in the Second NJ Lawsuit relate entirely to the communications surrounding the Loan and Note and their enforceability. Pa1; Pa276. The only "difference" is that Quigley has now attempted to magnify the extent of these communications and documents, alleging that the same are part of a more extensive scheme by Defendants, while still premising these allegations on the same matter and controversy at issue in the First NJ Lawsuit and the PA Lawsuit. While the SHF Parties certainly do not concede that any of these allegations have merit, the same were required to have been asserted as part of Quigley's responsive pleading in and defenses to the prior lawsuits given that these allegations are directly related and responsive to the exact matters at issue therein.

Quigley argues in his Appellant Brief that "a simple breach of contract matter and/or a simple case regarding alleged non-payment pursuant to a loan agreement … should not preclude Quigley from pursuing claims regarding a far reaching, extensive, and concealed fraud and RICO conspiracy conducted over the course of several years, spanning several states." Pb16. In making this argument, Quigley attempts to draw comparisons to Gelber v. Zito P'ship, 147 N.J. 561 (1997) which analyzed a second case alleging "major design deficiencies against an architect" following a separate arbitration proceeding against a contractor. Id. at 568. Specifically, Quigley tries to suggest that the New Jersey Supreme Court's finding that "[a] dispute with a contractor, for example, over the color of a kitchen cabinet ought not result in the dismissal of a suit against an architect alleging mislocation of a structure" is identical to the situation in the instant matter. Id.; Pb16.

Setting aside the fact that Quigley has never set forth any evidence of any kind whatsoever to support his frivolous allegations that the Defendants herein committed a "far reaching extensive fraud and RICO conspiracy", these baseless claims are *directly* related to the matters at issue in the previous litigations, particularly the First NJ Lawsuit and, by Quigley's own admissions, he was aware of all such claims during the pendency of the prior actions. Pa1; Pa276. Importantly, in Gelber, the Court noted that "[d]ismissal

is only appropriate when the claims in the action against the architect are derived from facts also forming the basis for the suit against the contractor." Id. In the instant matter, despite Quigley's attempt to compare the First NJ Lawsuit to a dispute over kitchen cabinet colors, the Second NJ Lawsuit is derived from the precise set of facts at issue in the First NJ Lawsuit, which Quigley failed to raise therein.

Quigley also alleges that he did not sustain harm – purportedly the harm set forth in his Complaint and Amended Complaint in this matter – until May 24, 2019 when this Court granted Schwarzwaelder's Motion for Summary Judgment in the First NJ Lawsuit. He further states that during the pendency of the First NJ Lawsuit, he did not know the "nature and extent of the conduct alleged in the Amended Complaint." Pb17. However, Quigley acknowledges that, at a minimum he knew *some* extent of what he is now alleging to be a fraudulent scheme, a characterization which the SHF Parties expressly deny.

In fact, Quigley's Complaint and Amended Complaint are rife with allegations about his purported knowledge and communications during and shortly after the time of the Stock Purchase Agreement and related loan, stating: "Following the execution of the Stock Purchase Agreement, Quigley repeatedly questioned, asked, and/or otherwise inquired Defendants about the status, expected timeline, and amount of SH Financial dividends and/or distributions, which

Quigley was promised and assured." Pa14, ¶105; Pa291, ¶118. The Complaint continues: "Defendants purposely withheld and/or failed to make required distributions to Quigley so that he would default on the Loan." Pa14, ¶108; Pa291, ¶122. These allegations relate to communications and conduct which Quigley himself claims to have occurred in or around March 2018 when the loan documents were signed and shortly thereafter when Quigley defaulted on the loan. Importantly, however, Schwarzwaelder did not initiate the First NJ Lawsuit until July 20, 2018 and judgment was not entered until May 24, 2019. In light of the same, based on Quigley's own timeline, admissions, and allegations, his claims relate to information and communications he possessed before the First NJ Lawsuit was even initiated.

Quigley further suggests that his claims could not have accrued until the time that judgment was entered in the First NJ Lawsuit which is when he contends the harm was actually sustained. Stated differently, Quigley seems to be suggesting that his own failure to act in raising claims and/or defenses in the First NJ Lawsuit, thereby resulting in judgment, insulates him from the entire controversy doctrine and collateral estoppel. However, this is precisely what the entire controversy seeks to avoid: "The doctrine is intended to be applied to prevent a party from voluntarily electing to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding

thereafter. It thereby prevents 'the evil of . . . piecemeal litigation of fragments of a single controversy.'" Oltremare v. ESR Custom Rugs, Inc., 330 N.J. Super. 310, 315 (App. Div. 2000) (quoting Wm. Blanchard Co. v. Beach Concrete Co., Inc., 150 N.J. Super. 277, 292-93 (App. Div.), *certif. denied*, 75 N.J. 528 (1977)).

The crux of the First NJ Lawsuit was Quigley's default under the Loan and Stock Purchase Agreement under which he acquired shares of SHF. The crux of the Second NJ Lawsuit – the underlying matter – is that Defendants purportedly made misrepresentations to Quigley during negotiations on the Loan and Stock Purchase Agreement, causing him to default. Thus, Quigley's Complaint and Amended Complaint in this matter stem *directly* from the central claim at issue in the First NJ Lawsuit, and Quigley was, by his own admissions, aware of nearly all of the allegations contained in his new pleadings prior to and during the First NJ Lawsuit. In fact, Quigley's allegations relate to conversations he himself claims to have had with the Defendants in this matter and it is therefore impossible for him not to have been aware of any claims or information at that time. Pa15, ¶¶113-120; Pa292, ¶¶127-134. The only new allegations which Quigley sets forth in this action relate to what Quigley is now referring to as an ongoing scheme by Defendants – including their counsel – to manipulate the New Jersey and Pennsylvania courts in such a way as to take control of Quigley's shares in SHF. Pa15, ¶113; Pa276-277, ¶¶1-12. Setting aside the brazen frivolity of these entirely unsupported claims, this

alleged "scheme" is still directly related to, and stems from, the claims and transaction which were the subject of the First NJ Lawsuit and the PA Lawsuit.

Quigley does not set forth any explanation for his failure to raise *any* of these allegations by way of defense, counterclaim, crossclaim, or third party complaint in the First NJ Lawsuit, or in the PA Lawsuit. Further, as set forth above, Quigley has not presented any new evidence, knowledge, or information which arose or of which he became aware after the prior litigations were adjudicated which would prevent preclusion under the entire controversy doctrine. Notwithstanding, Quigley argues that the dismissals in this matter should not have been with prejudice. During oral argument on the Motions to Dismiss, the trial judge asked Quigley's counsel on several occasions to set forth even one example of new conduct or information of which he became aware after the conclusion of the First NJ Lawsuit in May 2019. T7:17-23; 12:12-16; 13:22-14:3. Quigley did not provide a single example, and instead repeatedly noted that the extent and size of the scheme was the "new" information although, even on the issue of extent, Quigley made only general and vague allegations. T12:2-7; 13:14-18; 14:4-7.

At the conclusion of oral argument, the trial judge addressed this lack of "new information" after May 2019, advising Quigley's counsel as follows:

> if you get something from your client that looks like he got information that materially changes my disposition, file a timely motion for reconsideration. I will either have you back on Zoom or have you back in here, or decide it

> on the papers. It has to be very fact specific. I'll tell you what is not going to work. What's not going to work is it wasn't until March 2024 that it struck me like a lightening bolt that gees, they had conspired to get rid of me. That's not going to work. If, instead, it's an email he got from one of the defendants in July 2019, July 2020 that said something that he didn't know before that really changes, at least my view as to whether or not he should've counterclaimed against those individuals back in 2019, I'll take a second look at it.

T49:23-50-13. As such, the trial court gave Quigley a final opportunity to amend or request reconsideration or otherwise present *anything* whatsoever to get around the entire controversy doctrine or establish that any facts arose after the First NJ Lawsuit. Notwithstanding, Quigley did not file a reconsideration motion and has not presented anything to indicate, in any way, that his claims were unknown or otherwise could not have been raised during the prior litigations. As such, Quigley's Complaint and Amended Complaint were properly dismissed under the entire controversy doctrine.

B. The trial court correctly found that Plaintiff's Complaint and Amended Complaint are precluded by collateral estoppel. (Trial Court Order Pa356).

During oral argument, the trial court addressed the fact – as raised in the Motions to Dismiss – that even if dismissal was not appropriate under the entire controversy doctrine, Quigley's claims would also be precluded by collateral estoppel. T10:23-11:3; 18:19-19:3; 45:11-15. Importantly, the trial court in the First NJ Lawsuit already determined, and rendered summary judgment on, the

enforceability of the Loan and Note and the transfer of Quigley's SHF shares to Schwarzwaelder following his default. In light of the same, Quigley cannot relitigate the issue of his default and liability under the Note and/or the validity of the Note and related documents. Similarly, the Philadelphia Court of Common Pleas rendered judgment against Quigley related to his fraud and embezzlement in connection with SHD and, therefore, Quigley cannot relitigate claims related thereto.

It is well settled that for the doctrine of collateral estoppel to apply and preclude relitigation of a claim, a party must establish the following elements:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) (quoting In re Estate of Dawson, 136 N.J. 1, 20-21 (1994)). The doctrine of collateral estoppel and other similar issue preclusion doctrines "serve important policy goals… Our decisions have enumerated the benefits flowing from such doctrines, such as 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and

uncertainty; and basic fairness.'" Id. at 522 (quoting Hennessey v. Winslow Twp., 183 N.J. 593, 599-600 (2005)).

Quigley suggests in his Appellant Brief that the trial court only found collateral estoppel to apply as a result of the Pennsylvania court's order denying Quigley's Motion to Disqualify Counsel in the PA Lawsuit. This was not at all the basis of the trial court's ruling or findings on collateral estoppel. To the contrary, the trial judge repeatedly cited to the summary judgment order and disposition by Judge Booth in the First NJ Lawsuit. T7:17-23; 11:4-10; 13:2-13; 18:19-19:3. Specifically, the trial judge in this matter noted that the trial judge in the First NJ Lawsuit rendered an adjudication that the Note was enforceable and that Quigley had defaulted under the Note and, therefore, it cannot also be true that the Note is invalid and/or fraudulent as Quigley now tries to allege in this matter. T7:17-23; 11:4-10; 13:2-13; 18:19-19:3. Stated differently, this issue was already litigated and adjudicated and Quigley cannot now seek a different outcome in a different and separate litigation. Although Quigley again tries to contend that the Amended Complaint is different because it "clearly alleges a pattern, scheme, and conspiracy entered into and furthered by all Defendants to defraud Quigley", this argument still comes back to the claims and issues already litigated in the First NJ Lawsuit and the PA Lawsuit. Therefore, the trial court did not err in finding that Quigley's Complaint and Amended Complaint are further precluded by collateral estoppel.

IV. Conclusion

In light of the foregoing, Defendants/Respondents Ronald Lesicki, Douglas Schwarzwaelder, and Safe Harbor Financial, Inc. respectfully request that this Honorable Court affirm the May 24, 2024 judgment order entered by the trial court.

Respectfully submitted,

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CHRISTOPHER QUIGLEY INDIVIDUALLY AND AS A SHAREHOLDER OF SAFE HARBOR FINANCIAL, INC. Plaintiff-Appellant, vs. RONALD LESICKI, DOUGLAS SCHWARZWAELDER, SAFE HARBOR FINANCIAL, INC., BRIAN FLEISCHER, ESQUIRE, AND FLEISCHER, FLEISCHER & SUGLIA, P.C. Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-003838-23 On appeal from the Superior court of New Jersey, Law Division, Camden County, Docket No: CAM-L-749-24 Sat Below: Honorable Michael J. Kassel, J.S.C. Date Submitted: January 6, 2025

BRIEF OF DEFENDANTS-RESPONDENTS BRIAN FLEISCHER, ESQUIRE AND FLEISCHER, FLEISCHER & SUGLIA, P.C.

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 1

STATEMENT OF FACTS 4

ARGUMENT 13

I. SINCE THE ENTIRE CONTROVERSY DOCTRINE APPLIED, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED (PA358) 13

II. SINCE THE TRIAL COURT CORRECTLY APPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED (PA358).....26

CONCLUSION 30

TABLE OF AUTHORITIES

Page

Cases

Adelman v. BSI Fin. Servs., Inc., 453 N.J. Super. 31, 39 (App. Div. 2018)....20

Ayers v. Jackson, 525 A. 2d 287 (N.J. 1987).....22

Brown v. Brown, 208 N.J. Super. 372 (App. Div. 1986).....25

Cafferata v. Peyser, 597 A. 2d 1101 (App. Div. 1991) 16

Culver v. Insurance Co. of North America, 115 N.J. 451, 470 (1989) 28

DiIorio v. Structural Stone, 368 N.J. Super. 134 (App. Div. 2004).....25

DiTrolio v. Antiles, 662 A. 2d 494, 502 (N.J. 1995).....20

In Re Est. of Dawson, 136 N.J. 1, 20-21 (1994) 27, 28

In Re Liquidation of Integrity Ins. Co., 214 N.J. 51, 66 (2013) 27

Interchange State Bank v. Veglia, 268 N.J. Super. 164 (App. Div. 1995), certif. den., 144 N.J. 377 (1996).....25

Kean Fed'n of Teachers v. Morell, 233 N.J. 566, 583 (2018) 27

Lopez v. Swyer, 62 N.J. 267 (1973) 22

Mauro v. Raymark, 116 N.J. 126 (1989) 21

Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310 (1995) 15, 17

Mystic Isle Dev. Corp. v. Perskie & Nehmad, 662 A. 2d 523 (N.J. 1995) 20

N.J. Div. of Youth & Fam. Servs. v. R.D., 207 N.J. 88, 114 (2011) 27

Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006).....27, 28, 29

Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000) .27

Zaromb v. Borucka, 166 N.J. Super. 22 (App. Div. 1979) 17, 18, 21

Other Authorities

Restatement (Second) of Judgments, §27 (Am. Law. Inst. 1982).....28

Rules

R. 4:5-1 .....2, 24, 25, 26

R. 4:5-1(b).....23, 25

R. 4:6-2(e).....1, 4

R. 4:28 23

R. 4:29-1(b).....23

TABLE OF JUDGMENTS, ORDERS AND RULINGS

The Trial Court's Order of May 24, 2024 ……..Pa718a

The Trial Court's May 24, 2024 Order……Pa720a

PRELIMINARY STATEMENT

This Respondent's Brief is being filed on behalf of Defendants-Respondents, Brian Fleischer, Esquire and Fleischer, Fleischer & Suglia, P.C.

In the below action, on April 17, 2024, defendants Brian Fleischer and Fleischer, Fleischer & Suglia, P.C., filed a motion to dismiss plaintiff's Complaint pursuant to R. 4:6-2(e). In the same, Fleischer properly argued that Plaintiff's Complaint was barred by the Entire Controversy Doctrine and the Doctrine of Collateral Estoppel.

On May 24, 2024, Orders were properly entered by the Honorable Michael J. Kassel, J.S.C. dismissing the Complaint of plaintiff Christopher Quigley, Individually and as Shareholder of Safe Harbor Financial, Inc. against all defendants.

For the reasons expressed below, it is respectfully submitted that this Court affirm the trial court's May 24, 2024 Order granting Defendants-Respondents, Brian Fleischer, Esquire and Fleischer, Fleischer & Suglia, P.C.'s Motion to Dismiss.

PROCEDURAL HISTORY

On March 8, 2024, the plaintiff, Christopher Quigley, individually and as shareholder of Safe Harbor Financial, Inc. (hereinafter "Quigley"), filed a complaint in the Superior Court of New Jersey, Law Division, Camden

County, under Docket No: CAM-L-749-24, in the matter of Christopher Quigley, individually and as shareholder of Safe Harbor Financial, Inc. v. Ronald Lesicki; Douglas Schwarzwaelder; Safe Harbor Financial, Inc.; Brian Fleischer, Esquire; and Fleischer, Fleischer & Suglia, P.C. (Pa1).

The complaint contained a R. 4:5-1 certification which referred to the matters of Douglas Schwarzwaelder, et al. v. Christopher Quigley, Pa. Phila. Co., No. 190200968, as well as the matter of Douglas Schwarzwaelder v. Christopher Quigley et al., N.J. Camden Co., No. L-2691-18. (Pa35).

An action was filed in the Court of Common Pleas of Philadelphia County, Pa., Commerce Program, Case No. 190200968, Control No. 23050536, on February 12, 2019, in the matter of Douglas Schwarzwaelder and Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution, LLC v. Christopher M. Quigley (the "Common Pleas action"). (Pa217).

Also, an action was filed in the Superior Court of New Jersey, Camden County, under Docket No: CAM-L-2691-18, on July 20, 2018, in the matter of Douglas Schwarzwaelder v. Christopher M. Quigley; Safe Harbor Distribution, LLC; and Safe Harbor Financial, Inc. ("first Camden County lawsuit"). (Pa100).

On April 16, 2019, in the first Camden County lawsuit, plaintiff Schwarzwaelder filed a motion for partial summary judgment against Christopher Quigley and on May 24, 2019, the Honorable Thomas T. Booth, Jr., J.S.C. entered an order for partial summary judgment in favor of plaintiff Schwarzwaelder in the first Camden County lawsuit. (Pa164).

The order for partial summary judgment, entered on May 24, 2019, provided:

> **ORDER AND ADJUDGED** that Plaintiff's Motion for Partial Summary Judgment is hereby **GRANTED** and that it is hereby **ORDERED** that any and all stocks/shares owned by Defendant Christopher Quigley in Safe Harbor Financial, Inc. are hereby transferred to plaintiff pursuant to the Pledge Agreement and in exchange for said transfer and any and all debts/monies owed by Defendant Christopher Quigley to Plaintiff pursuant to the Promissory Note between them dated March 9, 2018 is hereby satisfied in full.

(Pa164).

In the Common Pleas action, in the matter of Douglas Schwarzwaelder and Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution, LLC v. Christopher M. Quigley, No. 190200968, defendant Quigley filed a motion to disqualify Mr. Flesicher and his firm from representing plaintiff on May 1, 2023. (Pa200).

On June 5, 2023, Mr. Fleischer and his firm filed a brief on behalf of plaintiffs, in opposition to Quigley's motion to disqualify and on February 20,

2024, the court in the Common Pleas action, under Case No. 190200968, entered an order denying Quigley's motion for disqualification. (Pa251). Quigley did not appeal that order.

In the present matter in Camden County, under CAM-L-749-24, defendants Brian Fleischer, Esquire and Fleischer, Fleischer & Suglia, P.C. filed their motion to dismiss the plaintiff's complaint pursuant to R. 4:6-2(e) on April 17, 2024. (Pa255).

The matter came on for oral argument before Judge Kassel on May 24, 2024.

On May 24, 2024, Judge Kassel entered an order granting the Fleischer defendants' motion to dismiss the complaint pursuant to R. 4:6-2(e). (Pa356).

Also, on May 24, 2024, Judge Kassel entered the order granting the motion of the SHF defendants to dismiss pursuant to R. 4:6-2(e). (Pa356).

Plaintiff's appeal was filed on August 7, 2024, under A-003838-23. (Pa359).

STATEMENT OF FACTS

In late 2017, Douglas Schwarzwaelder ("Schwarzwaelder") owned a one and eight hundred fifty-two thousandths percent (1.852%) interest in Safe Harbor Financial, Inc. ("SHF"). In late 2017, Rennie Rodriguez owned a forty-eight and one hundred and forty-eight thousandths percent (48.148%) interest

in SHF. In late 2017, Ronald Lesicki was the remaining shareholder in SHF, with a fifty percent (50%) interest in the same. (Pa85).

Christopher Quigley ("Quigley"), wanted to invest in and become a shareholder of SHF by purchasing the shares held by Rennie Rodriguez, but needed a loan to purchase Rennie Rodriguez's shares in SHF. At the request of Quigley, Schwarzwaelder loaned Quigley the sum of two hundred thousand dollars ($200,000.00) on or about March 9, 2018, in order for Quigley to purchase the forty-eight and one hundred and forty-eight thousandths percent (48.148%) interest in SHF held by Rennie Rodriguez (the "loan"). The loan was made and evidenced by a promissory note (the "note") in the principal amount of $200,000.00. (Pa44).

On March 9, 2018, Quigley purchased the SHF shares from Rennie Rodriguez, and the purchase price was $200,000.00. This was evidenced by a stock purchase agreement attached to plaintiff's complaint. (Pa85). Quigley admits to signing/entering into the note. (Pa9-Pa10).

In connection with and as an additional inducement for the loan, Quigley and Safe Harbor Distribution ("SHD") entered into a security agreement with Schwarzwaelder. (Pa72).

In connection with and as an additional inducement for the loan, Quigley and SHD entered into an unconditional guaranty, suretyship and

indemnification agreement (the "guaranty"), pursuant to which Quigley and SHD unconditionally guaranteed, *inter alia*, compliance with the obligations under the note, including, but not limited to, timely payment under the note. (Pa65).

In connection with and as an additional inducement for the note, Quigley executed a pledge agreement (the "pledge agreement"), pledging, as security for payment under the note, his shares in SHF which he acquired from Rennie Rodriguez. (Pa48).

The note, guaranty, security agreement, and pledge agreement all contain a paragraph which states (or similarly states) in all capital letters and in bold type:

> FLEISCHER, FLEISCHER & SUGLIA, P.C. and BRIAN M. FLEISCHER, ESQUIRE, represent DOUGLAS SCHWARZWAELDER. ***The parties hereto, hereby acknowledge and agree that Brian M. Fleischer, Esquire, and Fleischer, Fleischer & Suglia are counsel to DOUGLAS SCHWARZWAELDER and that they were advised by Brian M. Fleischer, that they should seek the advice of their own attorney or another attorney prior to, and in connection with, the execution of any and all agreements*** relating to DOUGLAS SCHWARZWAELDER or the Corporation and any other related matters.

Quigley admits to entering into the stock pledge agreement. (Pa10). Pursuant to the pledge agreement, in the event of default, Schwarzwaelder "may transfer or cause to be transferred any of the pledged securities into his

own or a nominee's name." (Pa50). Notwithstanding his obligations under the note, Quigley admits he defaulted under the note. (Pa10).

On or about July 20, 2018, Schwarzwaelder filed the lawsuit against Quigley in the Superior Court of New Jersey, Camden County, Docket No: L-2691-18 (the "first Camden County lawsuit"), alleging, among other things, Quigley's default under the promissory note. (Pa100).

SHF was made a party to the first Camden County lawsuit to direct and effectuate the transfer of Quigley's shares in SHF to plaintiff pursuant to the pledge agreement. (Pa103).

Quigley and SHD filed an answer in the first Camden County lawsuit on or about January 15, 2019, which did not set forth any affirmative defenses.

On April 16, 2019, Schwarzwaelder filed a motion for partial summary judgment in the first Camden County lawsuit, based upon Quigley's default under the promissory note, and seeking the transfer of all of Quigley's shares in the SHF pursuant to the pledge agreement. (Pa247).

On or about May 24, 2019, the Honorable Thomas T. Booth, Jr., J.S.C. entered an order granting Schwarzwaelder's motion for summary judgment, and transferring all of Quigley's SHF shares to Schwarzwaelder (the "order"). (Pa164).

Almost five (5) years after entry of the order, Quigley filed the complaint in this matter (the "second Camden County lawsuit"), asserting claims regarding his entering into the promissory note and pledge agreement. (Pa1). In the second Camden County lawsuit, Quigley made allegations that Schwarzwaelder and Lesicki made misrepresentations to him in order to induce him to purchase shares in SHF, and enter into the loan. (Pa1). However, those allegations could have, should have, and must have been raised in the first Camden County lawsuit, which he failed to do.

In addition, Quigley was required to join Ron Lesicki in the first lawsuit to assert such claims against him, which he also failed to do. More importantly, Quigley was required to file a third-party complaint against the attorneys, Brian Fleischer, Esq. and Fleischer, Fleischer & Suglia, P.C. He failed to do that as well.

In the motions to dismiss, which were heard by Judge Kassel, the court, pursuant to defendants' motion, took judicial notice of the pleadings, orders, motions, and briefs in the matter of Douglas Schwarzwaelder, Ronald Lesicki, individually and derivatively on behalf of Safe Harbor Distribution, LLC v. Christopher Quigley, in the Court of Common Pleas of Philadelphia County, P.A., Commerce Program, Case No. 1902200968, Control No. 23050536, and in the matter of Douglas Schwarzwaelder v. Christopher Quigley, Safe Harbor

Distribution, LLC, and Safe Harbor Financial, Inc., in the Superior Court of New Jersey, Law Division, Camden County, under Docket No: CAM-L-2691-18. (Pa358).

In his motion to disqualify, in the Common Pleas action, Quigley argued that the firm of Fleischer, Fleischer & Suglia had an imputed conflict of interest. (Pa200).

In response, Mr. Fleischer and his firm stated unequivocally that they never represented Quigley, and never billed Quigley for any legal services. In addition, Mr. Fleischer and the firm never rendered any legal services to Quigley, and Mr. Fleischer and his firm never received any payment from Quigley. In fact, Quigley had been represented by at least two other attorneys in the relevant time periods in that case, communicated with the plaintiff's counsel through a third attorney, and was in the process of retaining a fourth attorney prior to entering default judgment in the Common Pleas case.

In July of 2018, Quigley defaulted on the March 2018 loan, after which Fleischer and Quigley's attorney, Mr. Kent, emailed and spoke by phone regarding the default in an effort to reach a settlement. Also, Quigley separately emailed Lesicki, and copied Mr. Kent, stating "[y]our counsel committed four days ago to sending an email to Tom Kent addressing some of these issues …" It was clear that Quigley was always aware, and had

confirmed in writing, that Mr. Fleischer represented Schwarzwaelder, and that Quigley was represented by Mr. Kent.

After settlement talks were unsuccessful, Schwarzwaelder filed the complaint in the Superior Court of New Jersey, Law Division, Camden County, under Docket No: L-2691-18 (the "New Jersey action"). (Pa100). In that case, Fleischer and his firm represented Schwarzwaelder. (Pa100).

Quigley filed a *pro se* answer, and then retained new counsel, Kenneth Shuster, to represent him in settlement negotiations with Schwarzwaelder in the New Jersey case. Quigley also contacted Schwarzwaelder directly, prior to Quigley advising of his representation by Mr. Shuster, and Mr. Fleischer emailed Quigley in response to Quigley's attempted communications with Schwarzwaelder. Mr. Fleischer advised Quigley to direct any communications regarding a resolution of the New Jersey action to him, unless Quigley had an attorney. In response, Quigley asked Fleischer to forward him the proposed agreement, and "cc my personal counsel Kenneth Shuster who is copied on this email."

When the parties were unable to reach a settlement, Schwarzwaelder filed a motion for summary judgment. That motion was granted on May 24, 2019. (Pa164). Regarding Schwarzwaelder's motion for summary judgment in the first Camden County lawsuit, Quigley acknowledged that he was not

represented by Mr. Fleischer, and also stated that another attorney was being retained.

During the course of the litigation, Quigley was in contact with the court, advising that he was in the process of retaining counsel, and never alleged that Mr. Fleischer and his firm represented him. In addition, during that period of time, Quigley had not moved to disqualify the Fleischer firm. It was clear that the Fleischer firm never represented Quigley at any time in connection with Schwarzwaelder, with SHD, SHF, or any other capacity. Rather, Quigley had been represented by attorneys Thomas Kent, Kenneth Shuster, and then, through attorney Walter Weir, at other times.

When Quigley attempted to contact Mr. Fleischer directly, Mr. Fleischer contacted Kent, and advised, "your client Chris called me and left me a message. I didn't think it would be appropriate for me to call him back without your consent. Let me know if you want me to return his call."

In the motion for disqualification, Quigley cited to an unrelated case in Camden County, under L-3014-14 (the "Modell matter). (Pa200). However, in that case, it was not disputed that Mr. Fleischer previously represented Modell in a transaction subsequent to the agreement underlying the Modell matter. However, in the Common Pleas case, it was made clear that neither Mr. Fleischer nor his firm ever represented Quigley in any capacity whatsoever.

All Quigley provided, in his motion for disqualification, were bald allegations without any evidence or documentation. (Pa200). Also, Quigley failed to disclose that he was represented by other attorneys in connection with the matter, and that those attorneys corresponded with Mr. Fleischer. (Pa200). Quigley did not cite the documents which contained the language that Fleischer did not represent him.

In the first Camden County lawsuit, Quigley never filed a third-party complaint against Mr. Fleischer, the firm of Fleischer, Fleischer & Suglia, P.C. or Ron Lesicki. (Pa100). Quigley did file an answer in the first Camden County lawsuit, but did not assert any affirmative defenses.

The court, in the first Camden County lawsuit, under L-2691-18, entered the order for partial summary judgment, providing that any and all stocks/shares owned by Quigley in Safe Harbor Financial, Inc. were transferred to Schwarzwaelder pursuant to the pledge agreement and in exchange for said transfer of any and all debts/monies owed by Quigley to Schwarzwaelder pursuant to the note between them of March 9, 2018 is satisfied in full. (Pa164).

ARGUMENT

I. SINCE THE ENTIRE CONTROVERSY DOCTRINE APPLIED, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED (PA358)

Quigley argues that although he was a party to the underlying Schwarzwaelder litigation in Camden County, the entire controversy doctrine does not apply. A review of the pleadings in the Schwarzwaelder litigation demonstrated that Schwarzwaelder filed his complaint on July 20, 2018. (Pa100). Defendant Quigley filed his answer on January 15, 2019. That answer did not contain any separate defenses or counterclaims, and did not contain a third-party complaint against Brian Fleischer, Esquire or the firm of Fleischer, Fleischer & Suglia, P.C.

The doctrine clearly applies to any claims that were litigated or could have been pled and litigated in the prior action, and that are related to or arise out of the same transaction or event. Here, the plaintiff's claims clearly should have been litigated in the Schwarzwaelder litigation in Camden County, as the claims were clearly related to the same transaction or event which was the subject of Quigley's present complaint. Quigley tries to avoid the entire controversy doctrine by arguing that his claims only "tangentially" involve facts alleged in the Schwarzwaelder complaint. Quigley argues that his claim

does not arise out of the same transaction. The court should reject that argument based on the pleadings.

The transaction involved the loan of $200,000 to Quigley so that he could purchase the stock of Safe Harbor Financial, Inc. ("SHF"). Quigley has alleged that he was promised by Schwarzwaelder and Lesicki that he would be receiving a distribution, out of which he could pay for the stock. He knew, shortly after obtaining the stock, that he was not receiving that distribution. In addition, Quigley alleged in his complaint, at paragraph 105 (Pa14), that he followed-up in connection with his failure to get that distribution. So, the defense to Schwarzwaelder's complaint, which was not raised as a separate defense in a counterclaim, was that he was promised a distribution, and did not receive it.

Likewise, the counterclaim, which was not filed in the Schwarzwaelder action, was not filed, notwithstanding the fact that Schwarzwaelder knew he was not getting a distribution, which he alleged was promised to him. So, that was a breach of contract counterclaim he could have and should have filed in the Schwarzwaelder action. In addition, based upon the allegations in the present complaint (Pa1), it was necessary for Quigley to have filed a third-party complaint against Brian Fleischer and the firm of Fleischer, Fleischer &

Suglia, P.C. in the Schwarzwaelder litigation because these claims clearly arose out of the transaction in question.

Quigley argues that the claims were not known, and had not accrued until the court in the Schwarzwaelder litigation entered the order of May 24, 2019. (Pa164). The court should reject that argument. Quigley clearly knew, based upon the complaint he filed in this case, that under the transaction he was to receive, based upon the alleged promises made by Schwarzwaelder and Lesicki, distributions from which he could pay for the stock. In fact, Quigley did not even need any discovery for that before filing separate defenses, a counterclaim, and a third-party complaint. He knew all of that, and he also knew that he was not getting the distribution as pled in paragraph 105 of the present complaint. (Pa14).

Quigley's claim arose prior to the filing of the Schwarzwaelder complaint since he knew he was not getting distributions, and followed-up when he did not receive those distributions. He cannot now argue that the only learned of his claim at the time the court entered the order on May 24, 2019 in the Schwarzwaelder litigation. (Pa164). It was clear that the present litigation derives from the same factual circumstances which gave rise to the Schwarzwaelder litigation in Camden County. See, Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310 (1995).

Plaintiff argues that he did not have a fair and reasonable opportunity to litigate these claims. His reliance on Cafferata v. Peyser, 597 A. 2d 1101 (App. Div. 1991) is misplaced. Here, he knew he was not getting (and he did not get) the distributions, and followed-up as alleged in the complaint. So, it is clear that the claims were known, and had accrued.

Plaintiff now argues that he did not have a fair and reasonable opportunity to litigate. However, he did not take any discovery, and did not take any depositions. He had a defense to allege, and he did not. He had a counterclaim to file, and he did not do that. Also, he had a third-party complaint to file, and he failed to do that as well. In Cafferata, the court held that the doctrine does not bar transactionally related claims of which a party was unaware. Clearly, Quigley was aware of the issue regarding the distributions, and the fact that he was not getting them. He did not conduct discovery for them.

The claim accrued prior to the Schwarzwaelder lawsuit, based upon the allegations of this complaint. Quigley argues that even if they did accrue before the action ended, the court must determine whether he had a fair and reasonable opportunity to assert and litigate that claim. However, all that was needed was a counterclaim and a third-party complaint. The Schwarzwaelder litigation provided him the forum in which to do so.

Plaintiff's reliance on Zaromb v. Borucka, 166 N.J. Super. 22 (App. Div. 1979) is also misplaced. First, Zaromb was decided by the Appellate Division on January 31, 1979, approximately 16 years before the Supreme Court decided Mystic Isle.

In Zaromb, the plaintiff filed a complaint in Essex County for damages in the first count for slander, and in the second count for slanderous and malicious interference with business relation. Defendant Borucka filed an answer and a cross-complaint seeking damages for false and malicious prosecution. In July of 1997, both the complaint and the cross-complaint were dismissed with prejudice on the grounds of *res judicata*.

Discovery revealed that the parties were research scientists who entered into a contract on December 6, 1973. On February 5, 1975, Borucka filed a complaint in the Superior Court, naming Zaromb and several corporations as defendants. In the complaint, she sought damages for alleged breach of contract, the return of personal property, and damages for alleged libel and slander, the appointment of a receiver, and other relief. Zaromb filed an answer to that complaint, and a counterclaim alleging 12 counts claiming damages for tortious interference with contractual relations and for breach of contract. No count of the counterclaim alleged slander or libel.

The complaint and counterclaim in Zaromb were founded on allegations extending from the date of the contract, December 6, 1973, to January 30, 1975. The case was assigned a peremptory trial date of April 5, 1976. Ten days prior to trial, by motion, defendants sought leave to file a supplemental counterclaim seeking damages for slander, based on newly discovered evidence. That motion was denied because trial was imminent.

Trial commenced, and terminated in a mistrial. Zaromb moved for leave to file a supplemental counterclaim. The motion was denied due to lack of sufficient time for discovery prior to the peremptory trial scheduled re-trial date. The trial judge indicated that Zaromb would have an opportunity, by the institution of a separate suit, to have the subject of the proposed supplemental counterclaim adjudicated. Borucka did not do that.

The trial took six weeks, resulting in appeals, which were not perfected, and which were dismissed. Then, the Essex County suit was filed. On the day the case was scheduled for trial, the trial judge examined the pleadings, heard argument, and held that, based on prior proceedings, the entire matter was raised and adjudicated. Therefore, the complaint and counterclaim were dismissed.

The Appellate Division held that the second count of the complaint, which sought damages for alleged malicious interference with plaintiff's

business relationship was the same cause of action asserted in the prior lawsuit. Therefore, dismissal of that count, on *res judicata* grounds, was proper, and was affirmed by the Appellate Division.

The Appellate Division held that dismissal of the first count on *res judicata* grounds was error because the pleadings were barren of any reference to a cause of action for slander or libel. The Appellate Division determined whether Zaromb's claim for slander was among the "bundle of rights" arising from the series of transactions litigated in the prior suit and, if so, whether Zaromb was aware of its existence. Zaromb argued that he first learned of the slander in March of 1976, and that is why he filed the motion for leave to add the cause of action to his pending lawsuit.

The Appellate Division concluded that Zaromb's asserted claims for slander were not encompassed within the bundle of rights and liabilities adjudicated in the prior suit, and that Zaromb was not aware of its existence until it was too late to include it in the pending controversy. Therefore, the court there found that the claim was not barred under *res judicata* or the entire controversy doctrine.

However, it has been held that "adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in the litigation should at the very least present in that proceeding all

of their claims and defenses that are related to the underlying controversy." Adelman v. BSI Fin. Servs., Inc., 453 N.J. Super. 31, 39 (App. Div. 2018).

Also, the entire controversy doctrine does not even require commonality of legal issues. The determinative consideration is whether distinct claims are aspects of a larger controversy because they arise from interrelated facts. See, e.g., DiTrolio v. Antiles, 662 A. 2d 494 (N.J. 1995); see also, Mystic Isle Dev. Corp. v. Perskie & Nehmad, 662 A. 2d 523 (N.J. 1995).

Here, all of these claims arise from interrelated facts arising from the same transaction. See, DiTrolio, 662 A. 2d at 502. Any claims that Quigley had were known by him at the time of the prior Camden County action. These were known claims, and had accrued. Accordingly, the entire controversy doctrine bars plaintiff's claims against the Fleischer defendants in this case.

Also, based on the allegations in this complaint, and the fact that Quigley admits that he answered the prior action in Camden County, the claims require application of the doctrine. First, this was a Law Division case that was filed, and Quigley had an opportunity to file an answer, assert separate defenses, and assert a counterclaim and third-party complaint. That would have been his defense to the claims asserted by Schwarzwaelder, i.e., that he was promised a distribution which he could pay for the stock, and

never got it. He followed-up to no avail. That would have been a defense to the complaint filed by then plaintiff Schwarzwaelder.

Plaintiff had every right and opportunity to propound Interrogatories, and to take depositions of Schwarzwaelder and Lesicki in the prior Camden County action. He did not avail himself of that right. Therefore, this court should reject Quigley's argument that he could not have known the extent of fraud or conspiracy, or related acts during the pendency of the Schwarzwaelder litigation. Zaromb does not support his argument in this case. Plaintiff had the opportunity, but simply did not avail himself of the same.

Also, plaintiff's reliance on Mauro v. Raymark, 116 N.J. 126 (1989) is also misplaced. In that decision from 1989, the court adopted the statute of limitations and the single controversy doctrine to toxic-tort cases. There, the court afforded toxic-tort claims the right to receive compensation for any provable diminution of bodily health, accommodating damages claimed as attributable to the present injury, and deferring compensation for disease not yet occurred, and not yet reasonably probable to occur. The court's decision in Mauro is distinguishable on its facts, and bears no relationship to the issues in this case.

Plaintiff also relies on Ayers v. Jackson, 525 A. 2d 287 (N.J. 1987). The court evaluated, in Ayers, the enhanced risk doctrine in claims for medical surveillance. None of those claims are present in this case.

The Ayers court noted that the statute of limitations can be procedural obstacles in mass exposure litigation. The court reviewed the New Jersey discovery rule under Lopez v. Swyer, 62 N.J. 267 (1973), which has absolutely no application to the present action. There, the court simply held that the single controversy doctrine and the statute of limitations do not preclude a timely-filed cause of action for damages prompted by the future "discovery" of a disease or injury related to the tortious conduct at issue. The court simply held in that case that the single controversy doctrine cannot be applied to a toxic-tort claim filed when disease is manifested years after the exposure, merely because the same plaintiff sued previously to recover for property damage or other injuries. There, the rule did not apply to the second cause of action because it could not have been joined with the earlier claims. That is not the case here. Accordingly, this court should reject plaintiff's arguments, and affirm the trial court's order of dismissal.

In this case, the failure of plaintiff to join the Fleischer parties as third-party defendants was inexcusable, and has resulted in prejudice to the

Fleischer parties. Accordingly, the present successive action was precluded, and the trial court's order should be affirmed.

Also, plaintiff failed to comply with the disclosure requirement under R. 4:5-1(b). The rule requires a certification to name non-parties who should be joined under any of the R. 4:28 rules, as well as non-parties subject to the joinder under R. 4:29-1(b). R. 4:29-1(b) defines those persons as those who may be liable to any party in the action "on the basis of the same transactional facts." In addition, R. 4:5-1(b) also authorizes a court to require notice of the pending action to be given to any such person to enable them to seek to intervene, and to compel joinder as provided for by R. 4:29-1(b) under the limited circumstances therein. In this case, Quigley filed an answer, however, he did not file it with a R. 4:5-1(b) certification advising the court that Mr. Fleischer and his firm were non-parties who should be joined or may be joined in a third-party complaint.

Accordingly, as noted in the comments to the rule, a court may dismiss a successive action against an unnamed transactionally interested person if the failure to name that person was inexcusable, and that person's ability to defend the successive action is substantially prejudiced by not having been named. That is the situation here. Based upon Quigley's failure to file a third-party complaint against Mr. Fleischer, and failing to file a R. 4:5-1(b) certification,

the successive action was properly barred by the trial court. The prejudice arises from the fact that because Mr. Fleischer and his firm were not named as third-party defendants in the initial Camden County action, they did not have the opportunity to make a record, and moved to dismiss, and/or moved for summary judgment. That motion would have been based upon the doctrine of collateral estoppel, based upon the decision of the Common Pleas action.

So, if there is ever a case where the entire controversy doctrine applied, it is this one. Here, we have a situation where the failure of Quigley to file the third-party complaint against Mr. Fleischer and his firm was "inexcusable". Also, the Quigley defendants' ability to defend this new action in Camden County was prejudiced by Mr. Fleischer not having been named in a third-party complaint in the first Camden County case. That is so because the new Camden County action would never have been filed, and the opportunity to do so would have been foreclosed, with the court granting either a motion to dismiss in the first Camden County case, or a motion for summary judgment in the first Camden County case. Now, the Fleischer parties are put in a position where Mr. Fleischer and his firm are incurring fees and costs to defend this successive action, which never should have been filed in the first place.

Also, if Quigley had filed the R. 4:5-1 certification, the court could have, under the rule, reserved the right to bring a suit against Mr. Fleischer and his

firm on a future date. See, DiIorio v. Structural Stone, 368 N.J. Super. 134 (App. Div. 2004); Interchange State Bank v. Veglia, 268 N.J. Super. 164 (App. Div. 1995), certif. den., 144 N.J. 377 (1996); Brown v. Brown, 208 N.J. Super. 372 (App. Div. 1986).

In this matter, Quigley, pursuant to the findings of the trial court, had knowledge of Mr. Fleischer and his firm, and their involvement, early on. So, there is absolutely no excuse for Quigley not to have filed the R. 4:5-1 certification and, likewise, no excuse for Quigley not filing a third-party complaint. Here, we have a clear violation of R. 4:5-1.

The trial court correctly observed that Schwarzwaelder sued Quigley in Camden County on July 20, 2018. Judge Booth entered the order for summary judgment on May 24, 2019 for the transfer of the shares. Judge Kassel observed, during argument, that Judge Booth would never have ruled that way if Quigley had filed a counterclaim, or set forth separate defenses in his answer criticizing Schwarzwaelder, Lesicki, and Mr. Fleischer.[1] So, this case cried out for application of the entire controversy doctrine and mandatory joinder.

Also, the violation of R. 4:5-1(b) occurred here as well. Such certification, filed even without a third-party complaint by Quigley, would

[1] At the time of argument before Judge Kassel, plaintiff's counsel conceded that the party joinder rule required joinder.

have been served on Mr. Fleischer and Fleischer, Fleischer & Suglia. So, they would have been given notice so that Mr. Fleischer could have intervened, and compelled joinder.

Mr. Fleischer was certainly an unnamed transactionally interested person, and should have been noted in a R. 4:5-1 certification by Quigley. Quigley's failure to name Mr. Fleischer is inexcusable because Mr. Fleischer was not involved in the first Camden County case as a defendant/third-party defendant. Because of that, and because Quigley did not file a R. 4:5-1 certification naming or referring to Mr. Fleischer, and did not set forth separate defenses referring or naming Mr. Fleischer, Mr. Fleischer and his firm were faced with incurring fees and costs in the second Camden County case.

Also, it should be noted that this is not a case where the attorney-client privilege would somehow be interfered with if there was joinder by way of a third-party complaint in the first Camden County case.

II. SINCE THE TRIAL COURT CORRECTLY APPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED (PA358)

"As a general principle, '[c]ollateral estoppel is that branch of … *res judicata* which bars re-litigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.'" In Re Liquidation of Integrity Ins. Co., 214 N.J. 51, 66

(2013)(quoting, N.J. Div. of Youth & Fam. Servs. v. R.D., 207 N.J. 88, 114 (2011)). The application of collateral estoppel is a question of law, Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000), and questions of law are reviewed *de novo*. Kean Fed'n of Teachers v. Morell, 233 N.J. 566, 583 (2018).

It is well settled that, for collateral estoppel to foreclose the re-litigation of an issue:

> The party asserting the bar must show that: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
>
> [Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006)(quoting, In Re Est. of Dawson, 136 N.J. 1, 20-21 (1994))]

All of these requirements were met in this case. First, the issue of damages were the same. Second, the matters were actually litigated in the Court of Common Pleas in Philadelphia, as well as in the Superior Court, Law Division, in Camden County.

Next, there was a final judgment on the merits in the Schwarzwaelder litigation in Camden County. Also, the decision was crucial in the

Schwarzwaelder action in Camden County, under Docket No: CAM-L-2691-18, and was essential in that case.

Finally, plaintiff was a party in the Schwarzwaelder case, and is the plaintiff in the present action. Thus, the party against whom the doctrine was asserted was a party to the earlier proceeding and, therefore, the fifth factor for collateral estoppel was satisfied. Olivieri, 186 N.J. at 521; Est. of Dawson, 136 N.J. at 20-21.

Mr. Quigley was a party in the Common Pleas lawsuit, and he was also a party in the first Camden County lawsuit which was filed. The determination of the Common Pleas Court is conclusive. See, Culver v. Insurance Co. of North America, 115 N.J. 451, 470 (1989)(quoting, Restatement (Second) of Judgments, §27 (Am. Law. Inst. 1982)).

The issue of whether Mr. Fleischer and his firm ever represented Quigley was squarely before the court in the Common Pleas action. The Common Pleas Court denied Quigley's motion for disqualification, which was briefed there. So, Quigley was foreclosed from moving forward with the complaint under the doctrine of collateral estoppel. See, Olivieri, supra.

While plaintiff argues that the doctrine does not apply because all of the elements of collateral estoppel were not met, the doctrine applies not only to

issues raised in prior actions, but also the facts that were in dispute as well. See, Olivieri.

In the present complaint, plaintiff alleges that he had this "belief" that there was an attorney-client relationship. However, that allegation was made in the Common Pleas action in connection with the motion to disqualify Mr. Fleischer and his firm. (Pa200). Mr. Quigley lost that motion, and the court denied his motion for disqualification. Therefore, the allegations in this case regarding his "belief" of an attorney-client relationship were already made in the Common Pleas action, and rejected by that court, resulting in the order denying Quigley's motion for disqualification. Accordingly, plaintiff was barred from joining Mr. Flesicher and his firm in this case based upon his "belief".

The Common Pleas action makes it clear that Quigley was aware, at all times, that Mr. Fleischer did not represent him. In addition, Quigley was represented by three or four separate attorneys throughout the transaction and issues. Accordingly, the doctrine of collateral estoppel barred this action as a result of the decision of the court in the Common Pleas action.

Also, the decision of the court in the Common Pleas action on the motion to disqualify bars Quigley from bringing this action against Mr. Fleischer and his firm. (Pa200). All of this was before the Common Pleas

Court, which rejected the arguments which it denied the motion to disqualify. Also, Quigley did not appeal the decision of the Common Pleas Court. That is fatal to his argument in this case.

Quigley filed a motion supported by a certification and brief. After he lost, Quigley did not appeal the decision of the Common Pleas Court. So, Quigley cannot argue that he did not have a full and fair opportunity to litigate the issues in the Common Pleas case.

Quigley filed a pleading in the Common Pleas Court by filing a complaint. The motion to disqualify was aimed at disqualifying counsel for defendants within that action. (Pa200). Quigley cannot avoid what his counsel argued in the Common Pleas action by claiming that the doctrine does not apply. Quigley was seeking affirmative relief by filing that motion in the Common Pleas case.

Accordingly, this Court should reject plaintiff's argument that he is not bound by the doctrine of collateral estoppel.

CONCLUSION

For the reasons expressed above, it is respectfully submitted that this Court affirm the trial court's May 24, 2024 Order granting Defendants-Respondents, Brian Fleischer, Esquire and Fleischer, Fleischer & Suglia, P.C.'s Motion to Dismiss.

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BY: */s/ John L. Slimm*
JOHN L. SLIMM

Dated: January 6, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Christopher Quigley Individually and as a shareholder of Safe Harbor Financial, Inc.	:	CIVIL ACTION
Plaintiff/Appellant, v.	:	DOCKET NO.: A-003838-23
Ronald Lesicki, Douglas Schwarzwaelder, Safe Harbor Financial, Inc., Brian Fleischer, Esquire Fleischer, Fleischer, & Suglia, P.C.	:	On Appeal from Orders of the Superior Court, Law Division, Camden County, entered on May 24, 2024; Docket No: CAM-L-749-24
Defendants/Respondents.	:	Sat Below: Hon. Michael J. Kassel, J.S.C.

REPLY BRIEF ON APPEAL OF PLAINTIFF/APPELLANT, CHRISTOPHER QUIGLEY INDIVIDUALLY AND AS A SHAREHOLDER OF SAFE HARBOR FINANCIAL INC.

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. PRELIMINARY STATEMENT IN REPLY 1

II. LEGAL ARGUMENT IN REPLY 2

1. The Trial Court Misapplied The Entire Controversy Doctrine (Pa356 - Pa358) 2
2. The Trial Court Misapplied The Doctrine Of Collateral Estoppel (Pa396 - Pa398) 6
3. The Fleischer Defendants Cite To Documents Outside The Appellate Record 7
4. The Trial Court Erred By Dismissing The Amended Complaint Against The SHF Defendants With Prejudice …….. 10

III. CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases

Allesandra v. Gross,
453 A.2d 904 (App. Div. 1982) 7, 8

Cafferata v. Peyser,
597 A.2d 1101 (App. Div. 1991) 2

Cipala v. Lincoln Tech. Inst.,
843 A.2d 1069 (N.J. 2004) 9

City of Plainfield v. Public Serv. Gas and Elec.,
412 A.2d 759 (N.J. 1980) 7

In re Estate of Dawson,
641 A.2d 1026 (N.J. 1994) 7

Fisher v. Yates,
270 N.J. Super. 458 (App. Div. 1994) 2

Holmin v. TRW, Inc.,
330 N.J. Super. 30 (App. Div. 2000) 3, 4

K-Land Corp. v, Landis Sewerage Authority,
173 N.J. 59 (2002) 5, 6

Lynch v. Rubacky,
424 A.2d 1169 (N.J. 1981) 2

Lynch v. Scheininger,
714 A.2d 970 (App. Div. 1998) 7

In re Mullarkey,
536 F.3d 215 (3d Cir. 2008) 3

Mystic Isle Dev. Corp. v. Perskie & Nehmad,
662 A.2d 523 (N.J. 1995) 3

N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ.,
654 F.2d 868 (3d Cir. 1981) 7

Riemer v. St. Clare's Riverside Med. Ctr.,
691 A.2d 1384 (N.J. Super. Ct. App. Div. 1997) 2, 3

Other Authorities

N.J. Rule of Court 2:5-4.....9

I. PRELIMINARY STATEMENT IN REPLY

As alleged in Quigley's Amended Complaint, this action arises out of an elaborate scheme spanning several years, involving several companies, and several legal jurisdictions, masterminded by Defendants, led by Lesicki and Schwarzwaelder – who abused their majority control over SH Financial to "freeze out" Quigley, forced him to default on certain loan agreements, and abused the court system to seize control of Quigley's 48.184% share of Safe Harbor Financial, Inc. ("SH Financial"). (Pa276).

The facts alleged in Quigley's Amended Complaint involve a complex web of deceit and fraud perpetuated by Defendants and intentionally hidden from Quigley. (Pa276). The relief requested in Quigley's Amended Complaint relates solely to his ownership stake in SH Financial. As alleged in the Amended Complaint, and supported throughout the Appellate Record, Quigley incorporated and was majority shareholder Safe Harbor Distribution, LLC ("SH Distribution"), another similarly named company. (Pa277). SH Financial became the subject of a lawsuit in Camden County in 2018, referred to as "The Schwarzwaelder Lawsuit." (Pa100). Quigley's company, SH Distribution was the subject of a separate and distinct lawsuit in the Philadelphia Court of Common Pleas referred to as the "Philadelphia Action."

The Schwarzwaelder Lawsuit and the Philadelphia Action are separate and distinct matters in separate legal jurisdictions, involving different parties, different claims, and different subject matter. However, Defendants' Reply Briefs continually attempt to combine this instant matter into those matters in an attempt to preclude Quigley from pursuing claims against Defendants for fraud, RICO, and related causes of action.

II. LEGAL ARGUMENT IN REPLY

1. The Trial Court Misapplied The Entire Controversy Doctrine

It is well settled, the entire controversy doctrine does not serve as a bar to any claims "that were unknown, or had not arisen or accrued at the time of the original action." Fisher v. Yates, 270 N.J. Super. 458, 469-470 (App. Div. 1994); see also Cafferata v. Peyser, 597 A.2d 1101 (App. Div. 1991) ("it is well settled that [the entire controversy doctrine] does not bar *transactionally related* claims of which a party was unaware during the pendency of the prior litigation") (emphasis added). The knowledge of the existence of a cause of action which will invoke the entire controversy doctrine is the same as the knowledge which will trigger the running of the statute of limitations in those cases to which the discovery rule of deferred accrual is applicable. Riemer v. St. Clare's Riverside Med. Ctr., 691 A.2d 1384 (N.J. Super. Ct. App. Div. 1997).

The discovery rule postpones the commencement of a cause of action until a plaintiff knows, or should have known, of facts which establish that an injury has occurred and that fault for that injury can be attributed to another. Lynch v. Rubacky, 424 A.2d 1169 (N.J. 1981); Mystic Isle Dev. Corp. v. Perskie & Nehmad, 662 A.2d 523 (N.J. 1995) (the Court held that a claim accrues for the purposes of the entire controversy doctrine when: "(1) the claimant suffers an injury or damage; and (2) the claimant knows or should know that its injury is attributable to professional negligence").

Where an initial lawsuit itself gives rise to a claim for fraud or breach of duty, the entire controversy doctrine is inapplicable to the claims arising out of that lawsuit. In re Mullarkey, 536 F.3d 215, 229 (3d Cir. 2008) (refusing to apply entire controversy doctrine to bar RICO claim arising from alleged fraud perpetrated through prior Bankruptcy Court action). See Holmin v. TRW, Inc., 330 N.J. Super. 30, 36 (App. Div. 2000) ("[A]ctual damages are an element of the cause of action for fraud or deceit. Until a plaintiff has suffered 'damages,' therefore, he cannot maintain a suit for damages based on fraud since his cause of action has not yet accrued.").

Specifically, in Holmin, the Court analyzed the knowledge component to determine when the statute of limitations began, the same analysis used in determining knowledge as it relates to the Entire Controversy Doctrine. See also

Riemer v. St. Clare's Riverside Med. Ctr., 691 A.2d 1384 (N.J. Super. Ct. App. Div. 1997). In Holmin the trial court granted a Motion to Dismiss pursuant to 4:6-2(e), and the Appellate Court reversed and remanded the matter. The Court in Holmin stated that the cause of action alleged there (fraud) accrued only when plaintiff was damaged by the actual termination of his employment; and that, accordingly, the six-year period began to run on plaintiff's last day of work, even though plaintiff knew of his impending termination thirteen (13) days prior. Since the complaint was filed within six years of the termination date (although more than six years after plaintiff was told he was to be terminated), the Appellate Court reversed the dismissal of the complaint. Holmin v. TRW, Inc., 330 N.J. Super. 30, 36 (App. Div. 2000).

Here, it is alleged in Quigley's Amended Complaint that the SHF Defendants intentionally withheld required distributions to force Quigley into defaulting on the Loan Agreements. The Defendants argue that Quigley realized he was not receiving distributions during the pendency of the Schwarzwaelder Lawsuit and was therefore required to bring all claims related thereto in defense of, or in a counterclaim to the Schwarzwaelder Lawsuit. (FFSb14 – FFSb16; SHFb9).

However, this analysis is flawed and incorrect. As argued in front of the trial court, raising a claim for failure to make required distributions, or fraud claims related to withholding distributions to Quigley, would not have been ripe at the time of the Schwarzwaelder Lawsuit. (T20-6 – T20-17). Just as in Holmin, the fraud

accrued only when Quigley was damaged by the actual seizure of his shares of SH Financial.

Quigley's harm was unknown and more importantly, unaccrued during the pendency of the Schwarzwaelder Lawsuit, partly because the SHF Defendants had intentionally *concealed* the nature and extent of the conduct alleged in the Amended Complaint. Quigley only discovered the extent of Respondents' fraud and conspiracy *after* the May 24, 2019 Order in the Schwarzwaelder Lawsuit, when the harm had been realized. Significantly, Quigley's harm had not yet accrued in the Schwarzwaelder Lawsuit until the court entered judgment against Quigley and in favor of Schwarzwaelder on May 24, 2019.[1] (Pa164a – 165a).

Regardless of whether Quigley was aware of any *possible* claims against Respondents during the pendency of the Schwarzwaelder Lawsuit, the claims in this action had not been accrued for purposes of the entire controversy doctrine and therefore cannot be precluded by the same. See K-Land Corp. v, Landis Sewerage Authority, 173 N.J. 59, 75 (2002) (reversing application of entire controversy doctrine where at the time of filing of first action for declaratory judgment, claims for reimbursement had been somewhat "premature"). The Court in K-Land went on

[1] The trial court seemed to indicate that even though Quigley filed his claims within the statute of limitations, the amount of time that Quigley waited to file the claims impacted the trial court's decision to dismiss the Amended Complaint. T9:22-25, T10:1-6, T36:25, T3:1-16.

to state "[o]ur interest in mandatory claim joinder should not be viewed as encouraging or requiring the filing of premature or unaccrued claims." K-Land Corp. 173 N.J. at 75.

The SHF Defendants' intentional withholding of distributions and/or dividends harmed Quigley and continued to harm Quigley through the duration of his ownership of SHF. However, the harm did not ripen until Quigley's shares were transferred to Schwarzwaelder after May 24, 2019. Therefore, the trial court misapplied the entire controversy doctrine because Quigley's claims were unknown and/or unaccrued at the time of the May 24, 2019 Order. This matter should not have been decided at the pleadings stage and requires discovery to be taken.

It is alleged that the Defendants committed fraud against Quigley, concealing their scheme from him to ensure the SHF Defendants were able to seize control of SH Financial at a severely discounted price. Quigley did not know that Defendants plotted, planned, and schemed against him during the pendency of the Schwarzwaelder Lawsuit. This Court must reverse the trial court's order and remand this matter back to the trial court to conduct discovery, so this matter is determined on the merits.

2. THE TRIAL COURT MISAPPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL

For collateral estoppel to apply, a party must establish that: (1) the issue to be precluded is identical to the issue previously decided; (2) the issue was actually

litigated in the prior suit and the party had a full and fair opportunity to litigate it; (3) there was a final judgment on the merits in the prior action; (4) the determination of the issue sought to be precluded was essential to the prior judgment; and (5) the party against whom preclusion is asserted was a party to or in privity with a party to the earlier proceeding. In re Estate of Dawson, 641 A.2d 1026 (N.J. 1994).

For the doctrine of collateral estoppel to apply, the issue must be *identical* to the one previously presented, the prior action must have been a judgment on the merits, and the party against whom the doctrine is asserted must be the same, or in privity with, a prior party. Allesandra v. Gross, 453 A.2d 904 (App. Div. 1982) (emphasis added). Moreover, collateral estoppel applies only to facts that were directly in issue and necessary to support the prior judgment. Lynch v. Scheininger, 714 A.2d 970 (App. Div. 1998).

Importantly, this doctrine precludes relitigating only of questions "distinctly put in issue" and "directly determined" adversely to the party against which the estoppel is asserted. N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ., 654 F.2d 868, 876 (3d Cir. 1981) (quoting City of Plainfield v. Public Serv. Gas and Elec., 412 A.2d 759, 765-66 (N.J. 1980)).

Here, both the SHF Defendants and FFS Defendants broadly examine the Philadelphia Matter and Schwarzwaelder Lawsuit, attempting to conflate the facts, claims, and parties in those matters to preclude Quigley from bringing the claims set

forth in his Amended Complaint. Neither brief cites to any specific document contained in the Appellate Record to support their positions. Instead, both briefs broadly lump in general facts, and even allegations, from the Philadelphia Action and Schwarzwaelder Lawsuit, many of which are outside the Appellate Record.

The issues determined in the Philadelphia Action and Schwarzwaelder lawsuit are not *identical*, which is required to preclude Quigley from bringing claims in this instant matter. See Allesandra v. Gross, 453 A.2d 904 (App. Div. 1982). Even more, the trial court did not determine which claims, if any, are precluded by the doctrine of collateral estoppel. Instead, the trial court entered a sweeping order granting the Motions to Dismiss, dismissing the Amended Complaint in its entirety (Pa 356-Pa358).

Quigley's Amended Complaint alleges twelve (12) causes of action, yet the trial court, and all Defendants, failed to analyze each claim and determine the viability of the claims. (Pa276-308). For instance, the trial court did not analyze Count V - Unjust Enrichment, nor the breach of fiduciary duty claims, Counts VII-X. These claims required a specific analysis to determine whether the issues raised in these claims are identical, or have been directly determined, as is required under the doctrine of collateral estoppel.

Here, the trial court committed an error of law by misapplying the doctrine of collateral estoppel and entering sweeping orders granting the Defendants' Motions to Dismiss the Amended Complaint in its entirety.

3. THE FLEISCHER DEFENDANTS CITE TO RECORDS OUTSIDE OF THE APPELLATE RECORD

N.J. Rule of Court 2:5-4 states, "[t]he record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court." Rule 2:5-4. Appellate courts will not ordinarily consider evidentiary material that is not in the record below. Cipala v. Lincoln Tech. Inst., 843 A.2d 1069 (N.J. 2004). Where an issue was not litigated and is not in the record, the Court must not consider it on appeal. Id.

Here, the Fleischer Defendants did not submit an Appendix to accompany their Response Brief, and therefore the appellate record consists only of the records submitted in the Appendices submitted by Quigley and those in the trial court record pursuant to Rule 2:5-4. Instead, it appears rely on the Fleischer Defendants' Motion to Dismiss, which requested the trial court take judicial notice of all pleadings and motions filed in the Philadelphia Action and Schwarzwaelder Lawsuit. However, none of the Defendants attached the pleadings, motions, exhibits, or other filings in the Philadelphia action to the trial court filings.

Astoundingly, the Fleischer Defendants took great liberties in their Response Brief, spending nearly three (3) full pages purportedly quoting emails and citing to Motions outside of the Appellate Record. FFSb9 – FFSb11. The Fleischer Defendants purportedly quote emails that have not been authenticated by any witness, rife with hearsay, and ask this Honorable Court to consider those alleged communications in determining this appeal.

Even more, the trial court only held argument on the Motions to Dismiss, rather than conducting a hearing requiring the testimony of witnesses and introduction of admissible evidence. This matter must be remanded to the trial court for further proceedings. Quigley is entitled to discovery, or in the alternative, a hearing on the issues.

4. THE TRIAL COURT ERRED BY DISMISSING THE AMENDED COMPLAINT AGAINST THE SHF DEFENDANTS WITH PREJUDICE

The SHF Defendants erroneously argue that because Quigley did not file a Motion for Reconsideration producing evidence of the alleged fraud, scheme, and conspiracy of the Defendants, the Amended Complaint has been properly dismissed *with prejudice*. SHFb18-19. However, this is precisely the reason why the trial court's ruling is premature. Here, Quigley has not been afforded the opportunity to conduct discovery to substantiate his claims, claims that have been intentionally hidden and concealed from Quigley. The SHF Defendants cite to no legal authority

to bolster their position. This Court must reverse the trial court's order, granting the SH Financial Defendants' Motion to Dismiss *with prejudice*.

III. CONCLUSION

Respectfully, the trial court erred in granting the Motions to Dismiss and the Orders must be reversed. On reversal, Quigley requests that this Honorable Court deny Respondents' Motions to Dismiss and instruct Respondents to file an Answer to Quigley's Amended Complaint.

Respectfully submitted,

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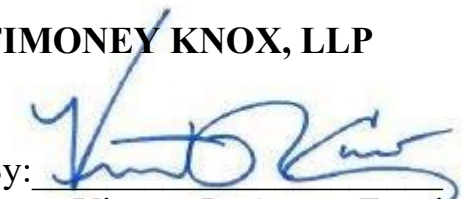
By: 

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