(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

JEFFREY ROSENTHAL, D.D.S.

and JEFFREY ROSENTHAL,

D.D.S., P.A.,

Plaintiffs-Appellants,

v.

BERNARD R. ROSENBLATT, D.D.S.

BERNARD ROSENBLATT, DMD, LLC,

MARLBORO PROFESSIONAL COMMONS,

L.L.C., GERARD IACOVANO, C.P.A.,

DOMINICK LOBIFARO, C.P.A., and

LLI ADVISORY GROUP,

Defendants-Respondents.

October 24, 2014

Submitted June 3, 2014 – Decided

Before Judges Fisher, Espinosa and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. C-156-12.

Gallagher Harnett & Lagalante, LLP, attorneys for appellants (Brian K. Gallagher, on the briefs).

Giordano, Halleran & Ciesla, attorneys for respondents Bernard R. Rosenblatt, D.D.S., Bernard Rosenblatt, DMD, LLC and Marlboro Professional Commons, LLC (Robert J. Feinberg, of counsel and on the brief; Matthew N. Fiorovanti, on the brief).

Margolis Edelstein, attorneys for respondents Gerard Iacovano, C.P.A., Dominick Lobifaro, C.P.A. and LLI Advisory Group (Paul A. Carbon, of counsel and on the brief; Jonathan P. Holtz and Carla M. Silva, on the brief).

The opinion of the court was delivered by

ESPINOSA, J.A.D.

In this appeal, we review the enforceability of provisions in documents related to the sale of a dental practice that called for "any dispute" to be submitted to mediation and arbitration. We conclude that the provisions are unenforceable because they failed to clearly and unambiguously inform the signatories that they were giving up the right to pursue their claims in court. Further, the lack of clarity and inconsistencies in the integrated documents preclude a finding that the agreement to mediate and arbitrate was the product of mutual assent. Therefore, we reverse the trial court's orders that dismissed the complaint against all defendants and compelled plaintiff to institute arbitration/mediation proceedings.

We discern the following facts from the complaint, the third-party complaint and the agreements entered into by plaintiff and defendants.

In June 2011, plaintiff Jeffrey Rosenthal, D.D.S. (Rosenthal) executed a Finders Agreement with GDS Risk Management, LLC (GDS), in which GDS agreed to attempt to locate a practice or patient list for Rosenthal to purchase and provide him with "Practice information." Thereafter, Rosenthal and defendant Bernard R. Rosenblatt, D.M.D. (Rosenblatt), began negotiations for Rosenthal's purchase of Rosenblatt's dental practice, defendant Bernard Rosenblatt, D.M.D., L.L.C. (Rosenblatt, L.L.C.) The terms were agreed upon in September 2011, and, in February 2012, the transaction closed.

The parties executed an asset purchase agreement (APA), and additional ancillary agreements which the complaint alleged were required "to effectuate fully the purchase and sale of the Practice," and which included a restrictive covenant agreement (RCA), in which Rosenblatt agreed not to compete with plaintiff in the practice of dentistry in the same area for a period of three years; an independent contractor agreement (ICA), in which Rosenblatt agreed to associate with the new practice, plaintiff Jeffrey Rosenthal, D.D.S., P.A. (the P.A.), as an independent contractor; and an office lease agreement (OLA) between plaintiff as tenant and defendant Marlboro Professional Commons (MPC) as landlord.[1] Both the OLA and the ICA are

identified in the APA as agreements that must be completed in order for the practice and assets to be conveyed.

According to the complaint, after the APA and ancillary agreements were executed, Rosenthal became aware that the practice he bought was in poor financial health and that Dr. Rosenblatt's relationships with his patients and staff members were in similarly poor condition. Plaintiff alleges a number of other misdeeds committed by Rosenblatt, Rosenblatt, L.L.C. and MPC (the Rosenblatt defendants), including MPC's overstatement of the leased office space's square footage, Rosenblatt's theft of dental supplies, and Rosenblatt's falsification of patient records in order to claim payments that would otherwise be credited to Rosenthal's new practice.

Plaintiff also brought suit against Gerard Iacovano, C.P.A., Dominick Lobifaro, C.P.A., and LLI Advisory Group (collectively, the "CPA defendants"), based on their alleged misrepresentation of the value and condition of Dr. Rosenblatt's practice. In the complaint, plaintiff demanded both equitable and monetary relief, including punitive damages, and alleged the following:

> Count I: fraudulent inducement against the Rosenblatt and CPA defendants;
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> Count II: equitable fraud against the Rosenblatt and CPA defendants;
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> Count III: common law fraud against the Rosenblatt and CPA defendants;
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> Count IV: aiding and abetting fraud against the CPA defendants;

Count V: conspiracy against the Rosenblatt and CPA defendants;

Count VI: unjust enrichment against Rosenblatt and Rosenblatt LLC;

Count VII: conversion against Rosenblatt and Rosenblatt LLC;

Count VIII: breach of contract (asset purchase agreement) against Rosenblatt and Rosenblatt LLC;

Count IX: breach of contract (independent contractor agreement) against Rosenblatt and Rosenblatt LLC;

Count X: breach of contract (restrictive covenant agreement) against Rosenblatt and Rosenblatt LLC;

Count XI: breach of contract (office lease agreement) against the Rosenblatt defendants;

Count XII: negligent misrepresentation against the Rosenblatt and CPA defendants.

The CPA defendants filed an answer and "third-party complaint" on behalf of themselves and GDS (n/k/a LLI Dental Solutions)[2] against plaintiff and fictitious parties.

The Rosenblatt defendants filed a motion to dismiss with prejudice, compel meditation/arbitration, and stay litigation pending the outcome of meditation/arbitration. The CPA defendants and GDS filed a cross-motion to dismiss plaintiff's claims or in the alternative to stay all claims pending the outcome of mediation and arbitration. Plaintiff opposed the motions.

The trial court granted the motions to dismiss without prejudice, compelling arbitration of the claims against the Rosenblatt defendants, and staying the claims against the CPA defendants. In a written statement of reasons on one of the orders, the court noted that both the APA and the ICA contained language in which the parties agreed that "all disputes" between them should be mediated and arbitrated. The court also noted the parties' contemporaneous execution of the RCA but mistakenly stated that the RCA only provides for court-based relief in the form of specific performance. The court concluded,

> On balance, the court finds that the original parties agreed to use mediation/arbitration as a forum and that is the proper venue for the original dispute to be resolved. The restrictive covenant is specifically referenced in the APA -- and flows therefrom. In fact, the [restrictive covenant] is valued as an asset in the [APA]
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> . . . .
>
> The claims brought by [plaintiff] vs. the other [defendants] not part of the arbitration agmt. [sic] are severed and dismissed w/out prejudice. They may be reinstated by motion w/in 30 days of the completion of the arbitration procedure referenced herein. All

> claims of [plaintiff] are preserved if the litigation is reinstated.

In this appeal, plaintiff argues that the trial court: failed to enforce the arbitration clause as written by erroneously compelling arbitration; erred in granting the CPA defendants' motion to dismiss; and erred in allowing GDS to join the action as a third-party plaintiff.

I

An order that compels arbitration is a final order for purposes of appeal and rests upon a legal determination that we review de novo. Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013). The "interpretation of an arbitration clause is a matter of contractual construction that this court should address de novo." Coast Auto. Grp., Ltd. v. Withum Smith & Brown, 413 N.J. Super. 363, 369 (App. Div. 2010).

Both the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1-16 and the New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -32, promote federal and state policies favoring arbitration as a means of resolving disputes by establishing the validity of arbitration provisions. See 9 U.S.C.A. § 2; N.J.S.A. 2A:23B-6. Section 2 of the FAA states such provisions "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." The United States Supreme Court cites this provision as reflecting the “fundamental principle that arbitration is a matter of contract.” AT&T Mobility LLC v. Concepcion, 563 U.S. ____, ____, 131 S. Ct. 1740, 1742, 179 L. Ed.2d 742, 751 (2011) (quoting Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 67, 130 S. Ct. 2772, 2776, 177 L. Ed.2d 403, 410 (2010)). N.J.S.A. 2A:24-1 similarly provides that arbitration agreements shall be valid save for "such grounds as exist at law or in equity for the revocation of a contract."

Due to the preemptive effect of the FAA, an agreement to arbitrate may not be invalidated on public policy grounds, for unconscionability or "by defenses that apply only to arbitration or that

derive their meaning from the fact that an agreement to arbitrate is at issue." AT&T Mobility, supra, 563 U.S. at ____, 131 S. Ct. at 1746, 177 L. Ed. 2d at 748; see also NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 428 (App. Div.), certif. granted, 209 N.J. 96 (2011), and appeal dismissed, 213 N.J. 47 (2013). However, "state courts remain free to decline to enforce an arbitration provision by invoking traditional legal doctrines governing the formation of a contract and its interpretation." Ibid.

A threshold issue in determining the enforceability of an agreement to arbitrate is that the contractual provision "must be the product of mutual assent, as determined under customary principles of contract law." Atalese v. U.S. Legal Servs. Grp., ___ N.J. ___, ___ (2014) (slip op. at 11) (quoting NAACP, supra, 421 N.J. Super. at 424). See also Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 479, 109 S. Ct. 1248, 1256, 103 L. Ed.2d 488, 500 (1989) ("[c]ontract formation is based on the consent of the parties, and we have emphasized that '[a]rbitration under the [FAA] is a matter of consent'"). "By its very nature, an agreement to arbitrate involves a waiver of a party's right to have [his or] her claims and defenses litigated in court." NAACP, supra, 421 N.J. Super. at 425. For there to be mutual assent to a waiver of the right to litigate in court, the parties must have "full knowledge" of the right to seek relief in court and "inten[d] to surrender those rights." See Atalese, supra, slip op. at 12-14 and cases cited therein; Knorr v. Smeal, 178 N.J. 169, 177 (2003).

In Atalese, our Supreme Court emphasized:

> [W]hen a contract contains a waiver of rights -- whether in an arbitration or other clause -- the waiver "must be clearly and unmistakably established." Thus, a "clause depriving a citizen of access to the courts should clearly state its purpose." We have repeatedly stated that "[t]he point is to assure that the parties know that in electing arbitration as the exclusive remedy,

> they are waiving their time-honored right to sue."
>
> [Id., slip op. at 14-15 (quoting Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001)).]

The Court found that the arbitration clause under review in Atalese failed to meet this standard for the following reasons:

> Nowhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights. The contract states that either party may submit any dispute to "binding arbitration," that "[t]he parties shall agree on a single arbitrator to resolve the dispute," and that the arbitrator's decision "shall be final and may be entered into judgment in any court of competent jurisdiction." The provision does not explain what arbitration is, nor does it indicate how arbitration is different from a proceeding in a court of law. Nor is it written in plain language that would be clear and understandable to the average consumer that she is waiving statutory rights. The clause here has none of the language our courts have found satisfactory in upholding arbitration provisions -- clear and unambiguous language that the plaintiff is waiving her right to sue or go to court to secure relief. We do not suggest that the arbitration clause has to identify the specific constitutional or statutory right guaranteeing a citizen access to the courts that is waived by agreeing to arbitration. But the clause, at least in some general and sufficiently broad way, must explain that the

> plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute.
>
> [Id., slip op. at 18-19.]

Equating the degree of clarity required to that necessary to effect a waiver of any other constitutional or statutory right, the Court found the absence of language that "clearly and unambiguously signal[ed] to plaintiff that she was surrendering her right to pursue her statutory claims in court" was a "deficiency [that] renders the arbitration agreement unenforceable." Id., slip op. at 20. See also Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001) (stating absent such clear and unmistakable language, there can be no consensual understanding, and "neither party is entitled to force the other to arbitrate their dispute.")

Moreover, when a transaction is documented in several agreements, arbitration provisions that conflict or are inconsistent with each other may create ambiguity that will preclude enforceability. NAACP, supra, 421 N.J. Super. at 438; Rockel v. Cherry Hill Dodge, 368 N.J. Super. 577, 581 (App. Div.), certif. denied, 181 N.J. 545 (2004). In NAACP, supra, we found the arbitration provisions contained in three separate documents might be sufficient to communicate "a generalized sense that a post-sale dispute would be handled through some kind of arbitration" but failed to "plainly convey -- with precision and consistency -- what the exact terms and conditions of that arbitration process would be." 421 N.J. Super. at 431. We noted the documents: do not clearly and consistently express the nature and locale of the arbitration forum itself, ibid.; do not make clear the time limit in which arbitration must be initiated, id. at 432; and have "murky and conflicting" provisions describing the costs of the arbitration and who is to bear them. Ibid. We concluded that "the cumulative effect of the many inconsistencies

and unclear passages in the arbitration terms within the" documents rendered them "unenforceable for lack of mutual assent." Id. at 438.

II

Guided by these principles, we turn to the agreements here and recite in full the pertinent provisions in each regarding arbitration and mediation.

As set forth in an integration clause, the APA embodies "the entire agreement and understanding among the parties" and includes the RCA, ICA and OLA. The arbitration clause contained in Paragraph 29 of the APA[3] reads as follows:

> DISPUTE RESOLUTION: It is the intention of the parties to bring all disputes between them to an early, efficient and final resolution. Therefore, it is hereby agreed that all disputes, claims and controversies between the parties hereto, whether individual, joint in class, in nature, or otherwise, shall be exclusively resolved as provided herein through mediation and arbitration.
>
> A. Any dispute between the parties as it relates to the terms of the Asset Purchase Agreement or the behavior or practice of the parties as their rights or privileges may be affected in the future, shall be submitted to mediation, in accordance with the rules of the American Arbitration Association or other such professional dispute resolution body mutually acceptable to the parties.
>
> B. Any dispute not otherwise satisfactorily resolved through mediation within thirty (30) days

from the commencement thereof may be submitted at the request of either party, to binding arbitration pursuant to the rules of the American Arbitration Association (or such professional dispute resolution body mutually acceptable to the parties) through an arbitrator in New Jersey that has been mutually agreed to by both parties.

(i) Statutes of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in any action brought by a party hereto shall be applicable in arbitration proceeding hereunder, and the parties agree that the commencement of binding arbitration proceedings hereunder shall be deemed the commencement of an action for purposes of such doctrines, whether raised in court or arbitration.

(ii) The parties shall have a minimum of 4 months prior to the start of arbitration proceedings in which to serve interrogatories and document requests upon the other party, during which time the parties can take a maximum of one deposition per party. This discovery shall be conducted pursuant to the rules of civil procedure in the state in which such Arbitration takes place.

(iii) Arbitration shall be conducted by a single arbitrator with experience in the area of the dispute with the power to award monetary and/or non-monetary relief, but not punitive damages.

(iv) The decision by the arbitrator shall be final and binding upon the parties and/or their heirs, successors and assigns; judgment upon the award rendered may be entered in any court for confirmation of the award and the entry of a judgment or for any other relief with respect to the award as provided by law.

C. During mediation and arbitration proceedings, the parties shall continue performance of the Asset Purchase Agreement unless doing so would unnecessarily increase damages. The parties agree to adhere to all covenants (as described herein) until such time as the arbitration process has been completed and the arbitrator has determined each party's post-arbitration obligations and responsibilities as they relate to such warranties and covenants.

D. The fees and costs of mediation shall be divided equally between the parties. The fees and costs of arbitration, including without limitation, arbitration fees, facility usage fees, and court reporter fees, actually incurred shall be divided equally between the parties. Each party shall be responsible for payment of its own attorneys and account's fees and witness expenses.

E. The requirement of arbitration shall not prohibit a party from seeking injunctive relief from a court of competent jurisdiction immediately following an alleged breach of this Asset Purchase Agreement by the other party.

[(Emphasis added).]

Thus, the arbitration provision relied upon here fails to include the language our Supreme Court has deemed crucial to an effective waiver of the right to litigate in court. There is no clear and unambiguous language that plaintiff is giving up his right to bring his claims in court or have a jury resolve the dispute. See Atalese, supra, slip op. at 18-19. And, despite the parties' stated agreement that "all disputes . . . shall be exclusively resolved . . . through mediation and arbitration," the arbitration clause allows for certain issues to be raised in court, explicitly exempting actions for injunctive relief following a breach of the APA. Therefore, in addition to its failure to provide the signatories with the information necessary to a knowing waiver of rights, the provision leaves a measure of uncertainty as to what is to be "exclusively resolved" through alternate dispute resolution. This confusion is exacerbated by the language in the ancillary documents.

Under the RCA, Rosenblatt agreed not to compete with plaintiff in the practice of dentistry in the same area for a period of three years. The RCA makes no reference to the use of mediation or arbitration of any disputes arising from the transaction or the terms of the RCA itself. To the contrary, it contains language regarding enforceability of the time and area covered by the covenant that clearly implicates judicial proceedings:

> D. If a court should hold that the Restricted Period and/or the Restricted Area is unenforceable, then to the extent permitted by law the court may prescribe a duration for the Restricted Period and/or a radius or area for the Restricted Area that is reasonable and the parties agree to accept such determination subject to their rights of appeal. Nothing herein stated shall be construed as prohibiting purchase from pursuing any other equitable remedy or remedies available for

such breach or threatened breach, including recovery of damages from Covenantor or injunctive relief.

[(Emphasis added).]

The RCA also contains the following paragraph entitled "SPECIFIC PERFORMANCE":

> Any breach of the warranties and covenants contained herein shall be subject to specific performance by temporary as well as permanent injunction or other equitable remedies by a court of competent jurisdiction. The obtaining of any such injunction shall not prevent the obtaining party from also seeking and obtaining any damages incurred as a result of such breach, either prior to or after obtaining such injunction. If any court of competent jurisdiction determines that either party has breached any of the foregoing covenants, then that party shall pay all reasonable costs of enforcement of the foregoing covenants, then that party shall pay all reasonable costs of enforcement of the foregoing covenants including, but not limited to, court costs and reasonable attorneys' fees, including such costs and fees through any appeals.

[(Emphasis added).]

The second ancillary agreement is the ICA, in which Rosenblatt agreed to associate with Rosenthal's newly purchased dental practice as an independent contractor. The ICA contains a section entitled "Legal Remedies," which is identical to the "DISPUTE RESOLUTION" section in the APA and states that any dispute "as it relates to the terms of this Agreement . . . shall be

submitted to" the mediation/arbitration process described. Despite this, the ICA also contains language that appears to acknowledge that the P.A. retained the right to seek equitable relief and "an adjudication" on its effort to enforce the provisions of the ICA.

Section 9 of the ICA identifies certain restrictive covenants. A subparagraph entitled "Remedies" contains the parties' agreement that the restrictions contained in this section are fair and, specifically, Rosenblatt's agreement that, in addition to any other remedies available to Rosenthal, D.D.S., P.A.,

> The P.A.:
>
> (i) shall be entitled to specific performance, injunction, and other equitable relief to secure the enforcement of such provisions
>
> (ii) shall not be required to post bond in connection with seeking any such equitable remedies, and
>
> (iii) shall be entitled to receive reimbursement from the Contractor for all attorneys' fees and expenses incurred by the P.A. in enforcing such provisions, if it is the prevailing party in any such adjudication.
>
> [(Emphasis added).]

To add to the confusion created by these conflicting provisions in a single document, the ICA contains a provision that expressly states it is merged with the APA and, states, "In the event of a discrepancy between the two documents, the terms of the Asset Purchase Agreement shall prevail."

Although the Dispute Resolution provision provides that equitable doctrines will apply in arbitration proceedings, and also provides that both monetary and non-monetary damages are available, it does not provide that the parties may obtain injunctive relief through the arbitration process. In fact, the provision explicitly states that the agreement to pursue alternate dispute resolution "shall not prohibit a party from seeking injunctive relief from a court of competent jurisdiction immediately following an alleged breach of this Asset Purchase Agreement by the other party." No time limit is placed upon the time in which a party may seek such injunctive relief in court.

The third ancillary agreement was the OLA between plaintiff as tenant and MPC as landlord. Article 23 of the OLA, entitled "ARBITRATION," states the following:

> In any case where this Lease provides for the settlement of a dispute by arbitration, the same shall be settled in Monmouth County, New Jersey by arbitration under the auspices of the American Arbitration Association. The rules of the American Arbitration Association from time to time in effect shall apply (to the extent appropriate). Any award shall be enforceable by proper proceedings in any court having jurisdiction. The arbitrators, regardless how appointed, may determine how the expenses of the arbitration, including reasonable attorneys' fees, and disbursements of the successful party, shall be borne as between Landlord and Tenant.
>
> [(Emphasis added).]

Notwithstanding the introductory clause, no provision of the OLA "provide[s] for the settlement of a dispute by arbitration." Although we need hardly note yet another inconsistency,

the manner in which costs and fees shall be allocated is different in this provision than in the Dispute Resolution provision.

In sum, the Dispute Resolution provision relied upon here suffers from a fatal flaw in failing to clearly and unambiguously inform the signatories that they were giving up their right to pursue their claims in court. This alone is sufficient to render the agreement unenforceable for lack of mutual assent to waive such rights. See Atalese, supra, slip op. at 20; Garfinkel, supra, 168 N.J. at 132. But, the uncertainty as to what, if any, claims could still be pursued in court was further muddied by the lack of clarity and inconsistencies in the ancillary documents that were integrated into the APA. See NAACP, supra, 421 N.J. Super. at 438; Rockel, supra, 368 N.J. Super. at 581. We therefore conclude that the Dispute Resolution provision that purports to compel the mediation and arbitration of the disputes here is unenforceable.

As a result, the orders dismissing the complaints without prejudice and compelling mediation and arbitration of plaintiff's claims against the Rosenblatt defendants are reversed. In light of this decision, we need not address plaintiff's argument that the trial court erred in dismissing the claims against the CPA defendants.

III

Plaintiff also argues the trial court erred in permitting GDS to join the litigation as a third-party plaintiff. Plaintiff asserted no claims against GDS in its complaint. GDS did not file a motion to intervene in this action. The way that GDS was introduced into the action was by an answer and third-party complaint filed by the CPA defendants, which included GDS as a third-party plaintiff and asserted claims exclusively against plaintiff.

Third party practice is governed by Rule 4:8-1, which provides in pertinent part:

> [A] defendant, as third-party plaintiff, may file and serve a

> summons and third-party complaint . . . upon a person not a party to the action who is or may be liable to defendant for all or part of the plaintiff's claim against defendant and may also assert any claim which defendant has against the third-party defendant involving a common question of law or fact arising out of the same transaction . . . as the plaintiff's claim.
>
> [(Emphasis added).]

Under this rule, the CPA defendants could have filed a third-party complaint on their behalf against a person or entity not already a party to the action but clearly, the rule does not authorize the naming of an additional party to assert claims against the plaintiff. And, further, any claims the CPA defendants may have had against plaintiff were required to be brought as a counterclaim pursuant to Rule 4:7-1.

Plaintiff has not identified any motion made to strike the third-party complaint or any order by the trial court that explicitly permitted GDS to proceed as a third-party plaintiff. The CPA defendants assert that this issue was not presented to the trial court and plaintiff has not presented proof to the contrary.

It is a well-settled principle that our "appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 483 (2012) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)(internal quotation omitted)). We therefore decline to address this argument.

Reversed and remanded. We do not retain jurisdiction.

[1] Rosenblatt is the sole member of the MPC limited liability company.

2 The CPA defendants represent that GDS is owned by defendants Iacovano, who signed the Finders Agreement on behalf of GDS, and Lobifaro. Iacovano and Lobifaro were also shareholders of defendant LLI Advisory Group, an accounting firm.

3 Paragraph 18 of the APA contains the parties' acknowledgment that "each have been represented by independent legal counsel in this transaction, and/or have been advised to use their own independent legal counsel." There is no other representation in the APA that the document was prepared or reviewed by legal counsel. None of the other ancillary documents state whether legal counsel prepared or reviewed the documents.
