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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. F-4497-23

JOSEPH LAZARUS and RENAH LAZARUS,

Plaintiffs,

v.

HABIB TAWIL and LILLY TAWIL, husband and wife, MEIR HILLEL; COLUMBIA CAPITAL CO., CHARLES TAWIL a/k/a CHARLES C. TAWIL,

Defendants.

OPINION

Decided June 30, 2025.

Kennedy Lillis Schmidt & English (John T. Lillis, Jr., Esq., and Nathan T. Williams, Esq., appearing), attorneys for defendant Meir Hillel.

Giordano, Halleran & Ciesla (Matthew N. Fiorvanti, Esq., appearing), attorneys for defendant Lily Tawil.

Law Office of Eric S. Landau (Eric S. Landau, Esq., appearing), attorneys for defendant Habib Tawil.

No other appearances.

FISHER, P.J.A.D. (t/a, retired on recall).

What happens when a husband hoodwinks his wife into signing a note and mortgage on their home? Who will be made to suffer, the wife or the mortgagee? Although that question hasn't been considered by our appellate courts in quite a while, this court of equity is guided and remains governed by Lesser v. Strubbe, 67 N.J. Super. 537, 545 (App. Div. 1961), aff'd o.b., 39 N.J. 90 (1963), where it was held that – absent the mortgagee's participation in or knowledge of the fraud – the innocent spouse must bear the loss. Consequently, the court finds, among other things, that although the wife here may not have been aware of what she was signing because her husband obtained her signature through obfuscation, she remains bound by the note and mortgage because the mortgagee wasn't involved in or knew anything about the husband's fraud.

I

The history of this foreclosure action need only be briefly outlined. In April 2023, plaintiffs Joseph and Renah Lazarus commenced this action to foreclose on a mortgage they hold on a residence owned by defendants Habib

and Lily Tawil on Brighton Avenue in Deal; they alleged the Tawils defaulted on their promise to repay a $1,450,000 loan secured by that mortgage. Plaintiffs joined defendant Meir Hillel because he too holds a mortgage on the property. To protect his interest in this collateral, Meir filed a crossclaim against Habib and Lily[1] to foreclose on his mortgage.

In earlier proceedings, the court entered summary judgment in favor of plaintiffs Lazarus not only on their right to foreclose but also on their claim that their mortgage takes priority over Meir's. The court also then held as well that Habib and Lily had no defense to Meir's right to foreclose on his mortgage. With those dispositions on May 24, 2024, the matter was referred to the Office of Foreclosure.

Final judgment was entered on September 18, 2024. Two months later, through new counsel,[2] Lily moved for relief from that part of the judgment that

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[1] The court refers to these parties by their first names not as a matter of disrespect but because they were mainly referred to that way during the trial and to further avoid the confusion of two of them sharing the same surname. And, to preserve certain aspects of the parties' privacy, the court has not provided the house number of the Brighton Avenue property or revealed Lily's email address that also plays a role here.

[2] Prior to November 2024, Eric S. Landau, Esq., appeared for both Habib and Lily in this action. He also appeared for both in an earlier later-dismissed action they brought against Joseph and Renah Lazarus in Ocean County (Hillel-45). Attorney Landau now only represents Habib. The consequence of Lily having appeared in this matter through counsel long before she asserted the issues at hand will be discussed later in this opinion.

entered relief against her in Meir's favor; she did not challenge that part of the judgment that favored plaintiffs Lazarus. Lily claimed, in essence, that although she physically signed the note and mortgage on which Meir seeks foreclosure, she did not know what she was signing. This court, on November 22, 2024, vacated the judgment as it applied to Lily but without making any factual determination about either side's contentions,[3] instead concluding that an evidentiary hearing was necessary – borrowing Howard Baker's Watergate phrase – to ascertain what Lily knew and when she knew it. Beyond the fraud-based claim, Lily also argues there was no consideration for her execution of the note and mortgage.[4]

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[3] As then said in the written reasons for entry of the November 22, 2024 order, the court's ruling was "very limited; it simply allows for further litigation without adopting or intimating any view about the truth or falsity of any of Lily's factual allegations or the sufficiency of any of her legal contentions." In short, Meir's foreclosure claim, Lily's defenses, and all relevant peripheral issues, have been considered on a blank slate.

[4] The parts of the final judgment that favored plaintiffs Lazarus remained untouched by the order entered on Lily's motion. Because of the reopening of Meir's claim against Lily, in recent prior proceedings plaintiffs Lazarus complained their right to proceed on their part of the judgment should not be deterred by the Lily-Meir sideshow. The problem for plaintiffs Lazarus, of course, was the fact that the vacating of Meir's judgment against Lily deprived the September 19, 2024 judgment of its finality and, thus, militated against enforcement because the lack of finality likewise precluded an appeal as of right. The court determined that these circumstances presented legitimate grounds for certifying plaintiffs' judgment against Habib and Lily as final under Rule 4:42-2(a). Such a certified judgment was entered on January 27, 2025; it has been appealed. Lazarus v. Tawil, Docket No. A-2038-24. Meanwhile, because Meir

To resolve Meir's foreclosure claim against Lily, and Lily's claim that Meir's note and mortgage against her should be invalidated or that the court should otherwise bar its enforcement, the court conducted a non-jury trial on June 9, 10, 11, and 12, 2025. During those four days, the court heard the testimony of the three parties to this dispute – Lily, Habib, and Meir – and the testimony of two attorneys, Mark Heinze, Esq., and John T. Lillis, Jr., Esq., as well as a Kennedy Lillis Schmidt & English paralegal who caused to be served on Lily various notices and pleadings. Based on the credible evidence adduced at that time, the court makes the following findings.

II

To put its findings in context, the court notes the following undisputed general circumstances that brought us to this point. Prior to the commencement of this foreclosure action by plaintiffs Lazarus, Habib filed a Law Division action against Meir (Tawil v. Hillel) in which Habib claimed he was not obligated on a 2013 note (Hillel-1) and mortgage (Hillel-2) held by Meir on the Brighton Avenue property. Lily was not a party to the note, but she was a party to the mortgage; despite that, Lily was not joined as a party in Tawil v. Hillel.

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and Lily were able to expedite the discovery needed for the trial just conducted, the court found it equitable to briefly delay, by orders entered on March 14 and May 19, 2025, the rights of plaintiffs Lazarus to proceed to a sheriff's sale on the Brighton Avenue property.

That matter was tried to a jury, which determined that Habib owed Meir nothing and that the mortgage should be discharged.

A judgment was entered on April 11, 2022 (Hillel-38), which conformed to the verdict; the Law Division judge, however, left open whether the discharge of the mortgage could be ordered by him or whether it required an order from the chancery judge. Before that last open question could be answered, Meir filed a notice of appeal (Lily-6).[5] A CASP[6] conference with retired Appellate Division Judge Joseph Yannotti prompted the parties to later meet in Heinze's Hackensack office that was attended by Habib, Meir, and their attorneys, Lillis and Heinze; their intention was to try to settle not only Tawil v. Hillel but other disputes as well.

Their lengthy February 9, 2023 Hackensack meeting, which lasted well into the night, produced a settlement agreement referred to at trial as "the Salad" (Hillel-7), because of its many ingredients. The sticking point for today's purposes is that the only individuals present in Hackensack on February 9 during the formation and creation of the Salad and other agreements and instruments – including the reinstating of the note and mortgage on which the jury found nothing was owed – were Meir and Habib, and their attorneys, Lillis and Heinze.

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[5] Tawil v. Hillel, Docket No. A-2912-23.

[6] CASP refers to the Appellate Division's civil appeal settlement program.

The Salad, and the other documents then crafted, called for Lily's consent as well, but she was not present. Before the Hackensack meeting broke up around midnight, Meir and Habib executed the Salad, as well as the note and mortgage on which Meir seeks foreclosure, and other agreements; their signatures were witnessed by their attorneys. There remained only for Lily to sign to fully close the loop.

The court finds – indeed, it appears undisputed – that Lily was not involved in the negotiations leading up to the Hackensack meeting. And there is no evidence to suggest Lily was consulted by anyone, even her husband, during the February 9 meeting or whether, for that matter, she even knew about the meeting. Once the documents were signed in Hackensack by everyone but Lily, attorney Heinze suggested to the attendees that Lily come to his office the next day to sign off, but Habib said he would take the documents home to Deal, obtain Lily's signatures, and return the fully signed documents the following week. This understanding was confirmed in Heinze's February 10, 12:48 a.m., email that appended the executed agreements and stated: "These are in escrow pending Habib's return of these documents signed by Lily" (Lily-8).

III

The facts and circumstances described in Section II above are largely if not entirely undisputed. The uncertainty about what happened after the February

9 Hackensack meeting is what prompted the need for a detailed exploration that occurred during the recent trial.

There are, however, other undisputed facts. For example, there is no dispute that Habib reported back on February 13, 2023, to advise he had obtained Lily's signature. He agreed to bring the signed documents to Meir and attorney Lillis, and he did so. They (Meir, Habib, and attorney Lillis) met at a diner in lower Manhattan, and Habib handed them over. No one thought more about it, and there is no dispute that the parties almost immediately began performing what the Salad and other documents required of them.

It's what happened between the February 9 Hackensack meeting and the February 13 delivery of the signed documents in Manhattan that claims the center of attention. Even at that, it is also undisputed that Lily physically signed the note and mortgage on which Meir seeks to foreclose (Hillel-5 and Hillel-6), as well as the Salad, and the other Hackensack documents, on February 13, 2023.[7] What was disputed concerns whether Lily knew what she was signing or

[7] The only document Lily does not concede she executed was that entitled "Shtar Iska" (Hillel-39; Lily-9), a device to avoid the impact of religious principles on the charging of interest on a loan. See, e.g., Arnav Indus. Inc. Profit Sharing Plan & Trust v. 3449-3461 Hamilton Ft, LLC, 579 N.Y.S. 2d 382, 383 (App. Div. 1992). This one-page document stated that "Jewish Religious Law strictly prohibits the paying or receiving of interest on loans made between Jews" but contains the parties' additional agreement that part of the debt would be characterized in a different way to avoid that religious concern. In any event,

whether she was tricked, hoodwinked, defrauded or conned into signing them. The parties' dispute about that central issue poses some separate questions.

A

First, Meir – through the testimony of attorney Lillis – claims that it was understood at the Hackensack meeting, despite Lily's absence, that Habib's attorney, Mark Heinze, Esq., was also then acting as Lily's attorney. Attorney Heinze, however, testified he did not represent Lily at that or any other time.

On the other hand, attorney Lillis testified that, although Heinze may not have said one way or the other, he assumed from the circumstances that Heinze was then representing Lily. Even though the court finds both these attorneys to be highly credible witnesses, the court must answer that factual dispute in Lily's favor and conclude that attorney Heinze did not then, or at any other time, represent Lily. To be sure, there were signs that would have led an experienced attorney like Lillis to reasonably assume Heinze was representing Lily. Some of the agreements clearly involved Lily's rights and imposed burdens on her – such as Meir's reinstated mortgage on the Brighton Avenue property and the addition of Lily as a borrower on the reinstated note even though she wasn't a borrower on the original note – and various provisions describing how a default under any

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the court does not credit Lily's uncertainties about her execution of the Shtar Iska. The court finds she did in fact sign it, as well as the other documents.

of the agreements should be announced to a defaulting party could all have easily made a careful and discerning attorney like Lillis think attorney Heinze represented Lily.

But, at the same time, Lily was not a party to Tawil v. Hillel or the then pending appeal that prompted the Hackensack meeting; she also wasn't present on other occasions not long before the Hackensack meeting that took place in East Orange, New Brunswick, and Manhattan, when Habib and Meir discussed a resolution of their disputes. When attorney Heinze substituted in for Habib's former attorney for purposes of post-judgment trial court motions and the appeal in Tawil v. Hillel, his appearance would have only suggested his representation of Habib since – again – Lily was not a party to that suit or the appeal. So, there is nothing about Heinze's involvement up to and including the Hackensack meeting that would suggest his representation of Lily. And while the involvement of Lily's rights in the Salad and the other agreements executed by Meir and Habib in Hackensack on February 9 might suggest Heinze's representation of Lily, the court is satisfied by attorney Heinze's credible testimony that he did not then, or ever thereafter, represent Lily. Attorney Lillis may have reasonably assumed otherwise but whether that assumption resulted from long experience about how attorneys normally act in such situations or whether he expected, through menschkeit or otherwise, that attorney Heinze

would have told him he wasn't representing Lily if that was the case, the bottom line is that attorney Lillis's assumption, while entirely understandable and reasonable, was mistaken.[8]

So, when Habib returned to Deal from Hackensack the night of February 9 (or early morning hours of February 10), he and Meir had reached certain agreements, but Lily was not yet on board.[9]

B

Turning to the critical issue of how Lily's signatures got on the Hackensack documents, the court must start with what happened at a TD Bank branch in West Long Branch late in the morning of February 13, 2023. Only three individuals were then present: Habib, Lily, and a notary public.

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[8] The court likewise finds attorney Heinze mistaken when he testified he told attorney Lillis he did not represent Lily. The court finds that didn't occur.

[9] This entire sub-issue is actually a red herring decided only out of a desire to be complete. Even if the court were to find attorney Heinze was Lily's representative when all but Lily met in Hackensack, the fact that everyone believed it necessary for Lily to execute the documents demonstrates that attorney Heinze had not been empowered by Lily to bind her to the Hackensack documents. See Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 475-76 (App. Div. 1997) (recognizing a "general rule" that "unless an attorney is specifically authorized by the client to settle a case, the consent of the client is necessary"); see also Burnett v. County of Gloucester, 415 N.J. Super. 506, 513 (App. Div. 2010); City of Jersey City v. Roosevelt Stadium Marina, Inc., 210 N.J. Super. 315, 327 (App. Div. 1986).

There, a bank clerk, who was also a licensed notary, witnessed Lily's execution of the documents; the notary signed as well, in the customary manner, embossing his signature and the signature page with his notary stamp and thereby denoting to anyone who might look at any of these documents that they had been signed by Lily. The notary testified about his customary practices and confirmed that he notarized Lily's signature on the documents at a deposition admitted into evidence (Hillel-44). The notary didn't remember the events. But, based on the exhibits shown to him, including his logbook (Hillel-43), he testified that his practice was not to explain what was being signed; he merely confirmed through Lily's presentation of identification that she was the individual who signed (Hillel-44 at pages 14-20). Indeed, despite some hesitancy or resistance on Lily's part at times during her trial testimony to directly answer questions along these lines, it seems that ultimately she acknowledged that she signed them all, with the possible exception of the Shtar Iska, and – to the extent there is a dispute about her execution of the Shtar Iska – the court finds that Lily signed that too. See n.7.

But there's more to be considered, namely the precise handling and what Lily knew when she executed the documents. Both Habib and Lily testified that the documents were presented to her in a way that barred perusal or at least barred perusal without some proactive step on Lily's part.

Habib testified he moved the signature pages to the top of each of the multi-page documents, thereby hampering Lily's ability to see the other pages. Lily's testimony about the documents' content being concealed went even further; she testified that portions of the signature pages were handled or presented in a way that prevented her from seeing much more than the line where she was to sign. Although the court has doubts about the credibility of both Habib and Lily in many respects – they certainly were motivated to fabricate considering the matter at stake, they both exhibited great hostility toward Meir that further motivated them to tailor their versions in a way designed to defeat his claim, their deposition testimony was in places inconsistent with their trial testimony, see n.10, and they were either incapable or simply refused without coaxing to answer many questions directly or responsively – the court finds that Habib's version is worthy of more credit than Lily's and is certainly far more logical.

For reasons that follow, it is clear to the court that Habib did not want to reveal to Lily what it was she was signing, and he handled the documents in a way that would prevent her from seeing much while still avoiding suspicion. That is, the idea that he would have further attempted to conceal material on the same page as the signature page would have undoubtedly set off alarms for Lily regardless of the extent to which she may have trusted her husband. It would

take quite a leap of faith for someone not to begin asking questions or expressing doubts if someone, even a spouse, plunked down a sheet of paper, covering some part of the top and some part of the bottom, with a request that she "sign here." The court is certain, from the testimony offered by both Habib and Lily, that Lily would have done more than just sign had that occurred. So, the court finds some truth in the content of Lily's testimony about February 13 but not her claim that she saw only the signature line of each document. Instead, the court finds – pun intended – that she had a tendency to gild the lily on her fraud claim against Habib and seeks to prove too much. It was fraudulent enough for Habib to obtain her signatures without showing her the entire document or explaining its contents. But she gilded the lily and put into doubt all her testimony when she testified at trial that she only thought she was at TD Bank in West Long Branch for the purpose of opening a bank account. That assertion was inconsistent with her deposition testimony[10] and is, in a word, unbelievable.

Despite misgivings about what both Habib and Lily swore to about the February 13th trip to TD Bank, the court is convinced that Lily only saw or only

[10] While at trial Lily asserted that she thought she was opening a bank account on February 13, she told a different story when deposed. When asked at her deposition what Habib said to her in advance of the signing, she said "[n]othing of any importance," but that she "believed [she] was signing off on the lawsuit that had already occurred. It was finished, just to close it out." See Lily Dep. at 13. The only lawsuit she could have been referring to was Tawil v. Hillel.

focused on the signature page of each document.[11] Lily felt compelled – perhaps coming from an inherent tendency to exaggerate or perhaps coming from her hostility toward Meir and her angst over the situation[12] – to expand from the logical to the illogical when asking the court to believe she was there to open a bank account. To be clear, the court finds Habib – who also caused the court to doubt his credibility in many respects – was more likely telling the truth when

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[11] Even at that, accepting either of their versions does not come easily except for the fact that it had, for this trier of fact, a certain ring of truth to it. That is, as stated above, the court rejects Lily's version that everything but her signature line was concealed and finds more likely Habib's version that only the signature page was presented to Lily for his signature. Habib's version is problematic for the version Lily provided because even the signature pages on some of the Hackensack documents should have alerted Lily to look more closely. For instance, she signed the credit line mortgage agreement (Hillel-6) on the same page where appears, at the top of the page, in bold print, the words "modification of mortgage" and, thus, rather clearly revealed the document to be something unrelated to opening a bank account. The line of credit promissory note modification (Hillel-5) called for Lily to sign on the same page as Meir; wouldn't she have asked why Meir signed a document that she needed to sign to open a bank account? All this explains Lily's motivation for providing a version that all words on the signature pages were concealed, but the court finds that particular version to be preposterous and pure fiction. The court finds Lily's version to be false for all the reasons given herein but also because the court cannot assume any self-respecting notary would have witnessed the execution of the documents when, if Lily is to be believed, Habib was doing a sleight-of-hand trick to keep her from reading anything on the sheet of paper except the signature line.

[12] If the content and tenor of her testimony was not enough to reveal the extent to which she was disturbed by the circumstances – it certainly was for this court – the text messages Lily sent to Meir in and around all these events (Hillel-12) will further reveal to anyone interested what the court means.

he testified that he made available for Lily's eyes at the time of signing only the signature pages[13] of each of the documents.[14]

Of course, that was not the only opportunity for Lily's perusal of the documents or for a discussion with Habib about the agreements reached in Hackensack. As noted earlier, the Hackensack meeting ended late at night. Habib could have shown Lily the agreements or told her about the deal he struck with Meir any time over that weekend, before they arrived at a nearby TD Bank branch, where Lily signed the documents, sometime late in the morning of Monday, February 13.

Having weighed the testimony of Habib and Lily, the court concludes that Habib did tell Lily the general nature of the papers she was being asked to sign – that those documents confirmed his settlement with Meir. That would explain

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[13] This is supported by the fact that every page of the Hackensack documents was initialed by Habib and Meir, but not Lily.

[14] The court is also supported in finding false Lily's claim that she thought she was only opening a bank account by her execution of the Shtar Iska (Hillel-39), a single-page document. Its content was visible to her when she signed. That means that on the page where she signed she could also see – indeed, it would be hard not to see because some of it is in bold type – the document's opening line: "We, **HABIB TAWIL and LILY TAWIL**, have received from **MEIR HILLEL** ("Lender"), the sum of $3,875,232.03, repayable in as much as thirty (30) months" that was followed in the next line with the address of her Deal home, also in bold print. Considering the visibility of some of this information, the version told by Lily at her deposition – that Habib said the documents to be signed were to confirm a settlement – is more believable than what Lily said in her trial testimony.

how Lily could have possibly signed the Shtar Iska without being alerted to the nature of all these documents. And this is further confirmed by the following question and answer at Habib's deposition:

> Q. . . . So why don't you give me your version of what happened on [February] 13th?
>
> A. So on the 13th, I told my wife "I settled with Meir. I want you to sign these papers," and I took her to TD Bank and she signed them.
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> [Habib Dep. at 106-07 (emphasis added).]

It is also clear that even if the court were to accept Habib's newer version at trial that he said nothing to Lily about the Hackensack settlement, the result would be the same since even at his deposition he testified that he did not show her the "settlement papers." Id. at 107. The court finds that to be true: that Habib told Lily they were settlement papers[15] but didn't give Lily an opportunity to examine them, and he did not explain their content. She apparently trusted her husband and signed without questioning him about their content.[16]

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[15] At his deposition Habib iterated further that he told Lily "before [they] drove to TD Bank . . . that 'I settled with Meir. Sign these documents. There's no more fighting.'" Habib Dep. at 111.

[16] Habib also testified at his deposition:

> Q. Did she ask any questions about the documents or the terms of the settlement?
>
> A. No.

The court finds it likely that Habib thought – perhaps exalting hope over reason – that he would be able to honor the agreement he struck with Meir and timely pay the discounted $1,200,000,[17] and if he did, Lily would be none the wiser about what she had signed. Habib knew that Lily knew that he had won at the trial level in Tawil v. Habib,[18] so to tell her – after this hard won and costly victory – that he had agreed (and that she was being asked to agree as well) to re-encumber their Deal home with the reinstated note and mortgage would have

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> Q. . . . Did you explain to Lily that she was a party to these documents?
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> A. No.
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> Q. . . . And did she ask to review the documents when you told her about the settlement, let's say?
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> A. No.
>
> [Habib Dep. at 111.]

[17] The agreement (Hillel-4) that settled Tawil v. Hillel called for the discontinuance of the trial court action, dismissal of Meir's appeal, reinstatement of the mortgage on Brighton Avenue, acknowledgement by Habib and Lily of their indebtedness to Meir in the amount of $3,875,232.03, and a stipulation that Habib and Lily's payment of $1,200,000 by August 31, 2023 would fully satisfy the indebtedness (Hillel-5).

[18] Tawil v. Hillel was tried virtually, and Lily was able to, and did in fact, watch much of the trial, including the jury's rendering of its verdict.

caused endless grief and further trouble for their already strained relationship.[19] In essence, the court finds that Habib likely thought it would better keep the peace at home if he did not tell Lily exactly that to which they were agreeing. The court finds from the testimony and the inferences drawn from all these circumstances that that is what occurred: Lily signed, she knew she was signing papers relating to a settlement of Habib's and Meir's disputes, but she didn't ask about or examine what it is she signed.

C

Because Lily was not represented by attorney Heinze or anyone else at the time, and because she had no communications with anyone about the Salad, and the other agreements, before signing on February 13, the court concludes that Lily did not know what she was signing and that her unknowing execution of the documents was brought about by the fraud or obfuscations of her own husband. Indeed, she seems to concede it was her own husband's active trickery that led to her affixing her signatures on the Hackensack documents.[20]

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[19] Their testimony clearly established this fact, and Lily concedes it in her summation. See Lily Br. at 11 (acknowledging that at the time she executed the Hackensack documents she and Habib "were under significant marital strain and financial distress").

[20] Lily argues in her summation that the evidence clearly and convincingly demonstrated "that Lily was tricked into signing her name on [the] document[s]" now relied on by Meir in seeking foreclosure, Lily Br. at 1, and that "Habib took advantage of his marital relationship with Lily and their financial vulnerability

IV

Determining that Habib's fraudulent actions caused Lily to execute the note and mortgage poses the question mentioned at this opinion's outset: Should Lily or Meir suffer the consequence of that fraud? This brings to mind one of the less frequently cited equitable maxims: "he who trusts most loses most." See Pomeroy, Equity Jurisprudence (5th ed. 1941), vol. 2, § 363.

In his opinion for the Appellate Division in Lesser, then Judge (later Justice) Sullivan answered the pivotal question presented here in this way: "[t]he fraud of a husband inducing his wife to execute a mortgage will not invalidate it as against the mortgagee unless the mortgagee in some way participated in or knew of the fraud." 67 N.J. Super. at 545. This principle has been adopted in other states, see Smith v. Commercial Bank of Jasper, 81 So. 154, 155 (Fla. 1919); Hale v. Hale, 53 S.W.2d 554, 555 (Ky. 1932); Sommerfeld v. Griffith, 216 N.W. 311, 313 (Minn. 1927); Pirtle v. Pirtle, 60 S.W.2d 172, 175 (Tenn. 1933); Bumgardner v. Corey, 21 S.E.2d 360, 264 (W. Va. 1942), and followed in other slightly distinguishable circumstances in this State as well, see Family First Fed. Sav. Bank v. Devincentis, 284 N.J. Super. 503, 509-10 (App. Div. 1995); Great Falls Bank v. Pardo, 263 N.J. Super. 388, 395 (Ch. Div. 1993).

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to deceive Lily into signing the [n]ote and [m]ortgage so that he could resolve his outstanding business dealings with Habib," id. at 11.

And no binding authority has been cited or suggested that would suggest a contrary result here. Though not explained further in Judge Sullivan's succinct opinion, Lesser's holding undoubtedly springs from the well-settled equitable concept noted by Professor Pomeroy above, and phrased more fully by Justice Holmes in this way: "[a]s between two innocent persons one of whom must suffer the consequence of a breach of trust the one who made it possible by his act of confidence must bear the loss." Eliason v. Wilborn, 281 U.S. 457, 462 (1930). See also Stone v. Limouze, 111 N.J. Eq. 421, 423 (E. & A. 1932); Monsanto Emp. Fed. Credit Union v. Harbison, 209 N.J. Super. 539, 542 (App. Div. 1986); Edw. D. Lord, Inc. v. Municipal Util. Auth., 128 N.J. Super. 43, 47-48 (Law Div. 1974); Moore v. Riddle, 82 N.J. Eq. 197, 201 (Ch. 1913); Halsted v. Colvin, 51 N.J. Eq. 387, 396 (Ch. 1893); Denton v. Cole, 30 N.J. Eq. 244, 249 (Ch. 1878).

In one way, this applicable principle renders irrelevant the court's finding about whether Lily actually knew what she was signing. That she signed without asking or insisting on reading or understanding the document, or without pausing to seek legal counsel before committing herself, caused the current predicament she would have this court visit upon Meir. About that there can be no doubt. In these circumstances, regardless of whether Habib defrauded Lily or whether it was just Lily's negligence, carelessness, or inattention that caused

her signature to be placed on the documents, Meir was entitled to assume – and the court will discuss this in greater depth shortly – that when, on February 13, 2023, Habib brought to Meir and his attorney the Hackensack documents bearing Lily's signatures, that Lily was in accord and willing to be bound. That is what her notarized signatures would connote to anyone not present when the documents were signed. See, e.g., Skuse v. Pfizer, Inc., 244 N.J. 30, 54 (2020). That Lily didn't stop and pose questions of her husband, or that she did not investigate further before signing, created the circumstances of which she now complains. That puts Lily precisely in the position referred to in the cases cited above. She trusted most. Absent Meir's knowledge or involvement in Habib's fraud, Lily must lose most.

If this seems harsh, look at it from Meir's standpoint. He and Habib had their differences not only about Tawil v. Hillel, which was then on appeal, but other matters as well. As the uncontradicted evidence reveals, Meir and Habib met on other occasions in different locales: an office on Broad Street in Manhattan and a courthouse in New Brunswick, and they reached a general understanding at an office in East Orange that was reduced to writing (Hillel-3). As part of the process, and to put flesh on the bones of their bullet-pointed East Orange term sheet, Habib and Meir agreed to meet at attorney Heinze's office in Hackensack and to resolve as many of their other disputes as possible. They

both sat down with their attorneys and through various sessions during one long day and night – some huddles with counsel, some without – they managed to hash out a broad settlement: the so-called Salad.

Attorney Heinze compiled their many agreements and stipulations into the Hackensack documents and, at attorney Lillis's suggestion, all four sat in Heinze's office with the electronic documents on a screen and scrolled through them paragraph by paragraph, making changes where appropriate. Once satisfied with the end products, all those present signed off: Habib and Meir as parties, and attorneys Heinze and Lillis as witnesses to Habib's and Meir's execution of the agreements. They all left Hackensack thinking all the matters addressed in their documents had been put to bed, with the only remaining step being Lily's consent.

From Meir's standpoint that last step was undoubtedly critical. The security he bargained for in case of a default was the Brighton Avenue mortgage. Without Lily's consent to the mortgage, Meir's ability to foreclose or to obtain any meaningful redress if a default occurred would become complicated to the point of impracticality. See Newman v. Chase, 70 N.J. 254, 262 (1976); Jiminez v. Jimenez, 454 N.J. Super. 432, 436-38 (App. Div. 2018). So, Meir's interest in Lily's consent was highly important to him. It makes no sense to the point of implausibility that Meir would do all that was done – painstakingly engage in a

lengthy meeting that produced the documents in question, exchange promises, and almost immediately begin performing those promises – if his ability to go after the collateral underlying the entire transaction would be questioned and stymied by further costly litigation in which the parties are now engaged.

As noted earlier, there were many reasons why Meir and his attorney would have rightfully assumed Lily was on board before she even signed. There was reason to believe Heinze was her attorney – even though, as held above, that assumption was not accurate – and there was no reason to assume that in obtaining Lily's signature on the documents, Habib would hide from her the truth of what was agreed. The court is utterly convinced by the testimony of Habib and Meir, and the testimony of attorneys Heinze and Lillis, that the parties negotiated in good faith in reaching their Hackensack agreements. Meir and his attorney had a right to assume that Habib would act properly and above board in obtaining his wife's consent.[21] And if there was any problem with Lily's

[21] Indeed, the documents themselves declare the parties were acting in good faith in the formation of and in fulfilling the promises contained in the documents. See, e.g., Hillel-5, ¶ 17. And, of course, even if not so expressed, such an understanding was imposed by operation of law, our courts having determined that "every contract in New Jersey contains an implied covenant of good faith and fair dealing." Sons of Thunder v. Borden, Inc., 148 N.J. 396, 420 (1997). That covenant applies in a variety of circumstances, including a party's "bad faith performance of an agreement." Seidenberg v. Summit Bank, 348 N.J. Super. 243, 257 (App. Div. 2002); see also Comprehensive Neurosurgical, P.C. v. Valley Hosp., 257 N.J. 33, 74 (2024). Habib breached this covenant.

consent to the agreements, they had a right to assume that Habib would say so. Stated another way, Habib's affirmative representation that he would obtain Lily's consent to the agreements was, in fact, a critical part of their overall agreement, and Habib was obligated to seek Lily's consent in good faith and in fair dealing. If he failed to obtain it, or if he had obtained her signatures but not really her consent, Habib was bound to advise Meir of that fact. He didn't. Just as he defrauded Lily, Habib defrauded Meir.

This was no minor matter. The importance of Lily's consent was indisputably understood. Heinze impressed this on all when he emailed near the end of or shortly after the meeting – his email (Lily-8) was sent on February 10 at 12:48 a.m. – that the agreements were in escrow until Lily signed off. Her involvement was not an irrelevant afterthought. Without her participation, Meir's ability to foreclose on the Brighton Avenue property would become close to illusory. It would at least generate additional litigation and that was the last thing the parties wanted; the whole purpose of meeting in Hackensack was to bring to an end the costs of litigation and the incurring of any more legal fees, about which both parties had already felt considerable pain, as revealed by their testimony.

Therefore, to put the equitable principles quoted earlier in context and into action, while it may seem from one angle that Lily has been victimized, from

another angle Meir was victimized too. He thought he bought his peace and obtained the certainty and security he bargained for when he and Habib concluded their negotiations late the evening of February 9, only to find that he too was defrauded by Habib's failure to obtain Lily's knowing and voluntarily consent to the arrangement. And, unlike Lily, who seeks to benefit from the fraud perpetrated on her by dodging the right to foreclose that he bargained for,[22] Meir has been prejudiced by the fact that he has performed under the Salad and other agreements, not the least of which was the termination of his appeal in Tawil v. Hillel.

To summarize, Habib promised to obtain Lily's consent to the Hackensack documents. He in fact had Lily sign the documents. She signed without asking questions. No one twisted her arm. She didn't look under the hood. That she mistakenly trusted her husband about what she was signing cannot deprive Meir of his negotiated bargain – which, it bears repeating, he has performed – unless he was somehow complicit or aware of Habib's abuse of Lily's trust in him.

[22] It is indeed unusual when a defrauded party actually benefits from a fraud. So far, the mere assertion of Lily's fraud claim has enabled both she and Habib to stave off the consequences of foreclosure, even the efforts of plaintiffs Lazarus to schedule a sheriff's sale on their final judgment of foreclosure.

V

In turning to the last aspect of Lesser's holding, the court finds no evidence – credible or otherwise – to suggest Meir either knew of or participated in Habib's wrongful actions.

Meir had absolutely no discussions with Lily between February 9 (the night he and Habib signed the Hackensack documents) and February 13 (the morning Lily signed). Meir did not attend Lily's execution of the documents at TD Bank in West Long Branch on February 13.[23] Meir had no involvement in Habib's securing of Lily's signature on the documents and, once Habib brought the fully-signed documents to he and attorney Lillis in Manhattan on February 13, Meir had no reason to question, and didn't question, what may have transpired between Habib and Lily before she signed. Indeed, if he knew of Habib's fraud, why would Meir thereafter perform under the Salad and other

[23] In her non-verified crossclaim, Lily alleged "recall[ing] that her husband and [Meir] took her to TD Bank" on February 13, that her husband and Meir placed "a few pages of documents" in front of her to sign, that they didn't show her the complete documents, and that they didn't explain what the documents meant (Hillel-47, ¶s 25-29 (emphasis added)). Soon after filing that pleading, her attorney wrote to the court on November 20, 2024, acknowledging that Lily's allegation that Meir was involved in her execution of the documents "was in error," and she filed an amended answer and crossclaim that removed the inclusion of Meir in those particular paragraphs of her prior pleading (Hillel-49).

agreements? Why would he do what he promised to do if he wasn't getting in return what he bargained for?

Nor, for that matter, although there is no great relevance to it, has the court been presented with any evidence to suggest that Meir had a reason to question whether Lily had been a willing participant in the transactions embodied in the Hackensack documents. To be sure, the court's attention has been directed to a host of text messages between Lily and Meir in which she grievously complained about a lack of money and the distress she and Habib were experiencing (see, e.g., Hillel-12 at page 8), but those messages were all sent months after the events of February 9-13, 2013, and nothing was said in those messages to suggest Lily wasn't aware of the settlement or its many terms. Indeed, on two occasions Meir responded to Lily's emotionally-charged text messages with attorney Heinze's contact information. Why would someone alleged to be knowledgeable of or interested in continuing Habib's concealment give the defrauded party information that would let the cat out of the bag? Why, if he was actively concealing the Hackensack compact, would Meir respond to a text from Lily in July 2023 – in which she complained about the situation she and Habib were in – with: "this was all done in February you have the paperwork" (Hillel-12, page 14).

And to repeat, by the time of these text messages, Meir had begun performing those things he promised to do by way of the Salad and the other agreements. For example, within days of Habib bringing the fully-signed documents to Meir and attorney Lillis on February 13, 2023, stipulations of dismissal were filed in both the trial court and the Appellate Division in Tawil v. Habib. Other significant steps on other matters were taken as well. There is simply a dearth of evidence that would suggest or from which the court could draw an inference that Meir should have understood that something was amiss with Lily's execution of the Hackensack documents.

In addition, whatever inference Lily would have this court tease out from the less than clear text messages months after the Hackensack compact – inferences the court declines to draw – are quite irrelevant. The court must consider whether Meir knew either before, during or immediately after, that Habib hoodwinked Lily into executing the document. There is simply a complete absence of evidence that Meir ever possessed such knowledge or even had an inkling that Habib might have done something like that. All three of the main players testified. While Habib and Lily might view Meir as public enemy number one, as demonstrated by the numerous slings and arrows they hurled at him in their trial testimony, neither of them ever testified that Meir knew that Habib had fooled Lily into signing the Hackensack agreements. Lily may have

had communications by text with Meir months later, but there's nothing in those texts to suggest what she alleged when seeking relief from the September 2024 foreclosure judgment. Habib testified at length, but he never once said that he told Meir that he had conned Lily into signing the agreements.

In adhering to the binding precedent of Lesser, the court concludes that the loss must fall on Lily because Meir neither participated in Habib's fraud nor was knowledgeable of it. Even if not bound by Lesser, the court finds nothing inequitable or unfair about the result that must follow from those facts.

VI

For the sake of completeness, the court considers another argument, not so much about the merits of the issues just discussed, but about whether Lily was dilatory in presenting her claim about being tricked by her husband into signing the Hackensack documents.

These arguments initially fall into two categories: (a) whether Lily's failure to raise her contentions through prior counsel must now bar her claim for relief, and (b) whether, regardless of the dispute about her alleged appearance in this case through prior counsel, Lily should have asserted her allegations about being tricked into signing much earlier than when she filed her Rule 4:50 motion. The court finds that Lily had enough information to begin to uncover things long before she moved for relief under Rule 4:50-1, but, notwithstanding

that circumstance and Rule 4:50-2's time bar, the court has determined that: (c) it is jurisprudentially sounder to rule on the merits of Lily's claims than preclude them because of her delay.

A

It is self-evident that, from the outset of this action, Eric S. Landau, Esq., appeared not only for Habib but for Lily as well. He filed a responsive pleading to the claims of Lazarus and Meir, opposed summary judgment motions, and otherwise appeared at all critical proceedings on behalf of both Habib and Lily. The court can and does take judicial notice of those facts because they are demonstrated by the court's file and the pleadings contained therein. See N.J.R.E. 201(b)(4). All this would suggest that – by not timely asserting it even though she appeared through counsel from the outset of this case – Lily waived any claim that her execution of the Hackensack documents was obtained by fraud, trickery or her own negligence.[24]

[24] Contrary to her current counsel's arguments, the court did not – by vacating the judgment as it applied to Lily – already reject that possibility. As noted earlier, see n.3, the court ruled on nothing of substance in vacating the judgment against Lily; the court instead held that all potential arguments in support of or against Lily's contentions would be open for exploration at trial.

Nevertheless, despite attorney Landau's appearance for Lily from the beginning (and even before this case was commenced was plaintiffs Lazarus[25]) and despite his failure to timely raise her current alleged defenses to Meir's claim, the court is satisfied from the testimony of Habib and Lily, and the scope of attorney Landau's retainer agreement (Habib-7), to which only Habib was identified as the client and only Habib signed, that Landau did not represent Lily. Stated another way: Lily never authorized attorney Landau to act on her behalf even though he, in fact, purported to act on her behalf.

Lily credibly testified she did not retain attorney Landau and, in fact, had never seen or met him until trial. Clearly, attorney Landau, through either sloppiness or a mistaken assumption that if he represented the husband he also represented the wife, did not represent Lily and was not authorized to make any statement or file any pleading on her behalf. His failure to bring these issues

[25] Attorney Landau also filed a complaint on behalf of both Habib and Lily in the Law Division in Ocean County against Joseph and Renah Lazarus (Hillel-45), a month before plaintiffs Lazarus commenced this action. The complaint then filed by attorney Landau claimed that Habib and Lily "were forced to bring [that action] against Hillel" (Hillel-45, ¶ 29), ostensibly because of the so-called Hackensack agreements that lie at the heart of this action. That suit was later dismissed.

before the court sooner should not form the basis for a finding that Lily waived the claim she now asserts.[26]

B

The second issue concerns whether Lily's own delay – putting aside attorney Landau's mistaken filings on her behalf – should bar her claim of fraud.

As painstakingly demonstrated during the hearing, the Salad and other agreements contain provisions that direct how notice is to be given to a defaulting party. The line of credit promissory note modification in question states that, on an alleged default, notice to Lily was to be sent to her AOL email address, which was specifically provided in the document, see Hillel-5, ¶ 16, and which Lily confirmed in her trial testimony to be hers. The court heard testimony and received exhibits that demonstrate such a notice was sent to Lily's designated email address by Meir's attorneys on April 28, 2023. See Hillel-17.[27]

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[26] That finding leads to the court's reservation of an evidentiary disagreement that arose during the trial. While the court could and has taken judicial notice of the pleadings attorney Landau filed on Lily's behalf in this action, the court finds that the content of those pleadings is not admissible under N.J.R.E. 803(b)(4) because Lily did not authorize attorney Landau to make any of those statements on her behalf.

[27] While the court has found that Heinze was not Lily's attorney, it must be acknowledged that it is somewhat incongruous that in response to the notice of default, attorney Heinze emailed Meir's attorneys on August 28, 2023 (Hillel-18) to state that "We are exercising the extension under the settlement agreement" (emphasis added). It poses the question that if he only represented Habib, why the pronoun "we"? The court concludes that despite what "we"

Lily testified at her deposition that she checked this AOL email account on a daily basis, see Lily Dep. at 35 ("[o]nce a day"),[28] so it is both fair and reasonable to charge her with knowledge in April 2023 – notwithstanding the fraud that she claimed occurred on February 13, 2023 – of the claims that she asserted for the first time in November 2024. The notice of a default sent to her email account on April 28, 2023 – more than eighteen months before her fraud claim was first asserted – constituted more than fair warning to her that, if she was not sure what happened on February 13, 2023, it was time to wake up. It is certainly appropriate for the court to view her silence from April 28, 2023, to November 14, 2024, the date she filed her motion[29] under Rule 4:50-1, as unreasonable within the meaning of Rule 4:50-2.[30]

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might suggest, and despite in some of the documents notice was to be given to Habib and Lily by sending it to Heinze, the court adheres to the finding that Heinze only represented Habib, and that these other statements are similar to Landau's mistaken assumption that because he represented one, he was also authorized to speak for the other marital partner.

[28] Lily testified inconsistently at trial, claiming then that she rarely checked her email. The court rejects this as her convenient way of avoiding the consequences of the information she received by email. In short, the court believes Lily's deposition testimony, not her contrary trial testimony.

[29] Actually, Lily cross-moved. After entry of final judgment, Meir moved to amend the judgment, to which Lily cross-moved for relief under Rule 4:50-1.

[30] When based on Rule 4:50-1(c)'s fraud category, Rule 4:50-2 imposes a one-year deadline. But Rule 4:50-2's main thrust is its requirement that such a motion, regardless of the category invoked, must be filed within "a reasonable

To be sure, as has been recognized, "[w]illful blindness is not a defense" to an action to enforce contractual terms. James v. State Farm Ins. Co., 457 N.J. Super. 576, 587 (App. Div. 2019); see also Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340, 346 (App. Div. 1994). All the signs – the text messages from Meir to Lily in July 2023 advising her, in response to her complaints, that "this was all done in February you have the paperwork" (Hillel-12, page 14), those messages that same month in which Meir referred Lily to attorney Heinze (id., page 8), those in October 2023 in which she said she "s[aw] foreclosure" (id., page 18), those in February 2024 in which she urged Meir that they "settle and all go on with whatever time we have left on this earth I am suffering so badly" (id., page 21), those in May 2024 in which she expressed her awareness of attorney Landau's involvement (id., page 26), to which Meir again provided attorney Heinze's contact information (ibid.), and the emailing of papers to her in April 2024 at the start of this lawsuit (Hillel-17), among other things – all reveal that Lily was aware of much and, to the extent she was in the dark about the extent of her involvement, the signs pointed to her need to more fully inform herself about what was going on.

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time" that might, under some circumstances, be less than one year. See, e.g., Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 296 (App. Div. 2021); Orner v. Liu, 419 N.J. Super. 431, 436-37 (App. Div. 2011).

C

Despite the court's authority and discretion to bar Lily's current contentions because of her eighteen-month delay in asserting them, the court has bent over backwards to allow her an evidentiary hearing on the merits because, in the final analysis, and as mentioned in the earlier decision, "equity abhors a forfeiture." Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 182 (1985). In weighing the equities – Lily's willful blindness, silence and overall delay, on the one hand, and the foreclosure of a residential mortgage, on the other – the court concluded then, and concludes now, that despite a compelling case for refusing to hear Lily's contentions when she was silent for so long despite the diligence required by both Rule 4:50-2 and other equitable principles, see Besson v. Eveland, 26 N.J. Eq. 468, 472 (Ch. 1875) (observing that "[h]e who is silent when conscience requires him to speak will not be permitted to speak when conscience requires him to be silent"); see also In re Estate of Shinn, 394 N.J. Super. 55, 70 (App. Div. 2007); Wohlegmuth v. 560 Ocean Club, 302 N.J. Super. 306, 314 (1997), equity and the overarching goal of the governing court rules suggest it is better that courts rule on the merits of a dispute rather than the grounds provided by Lily's delay, see Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 356 (2001) (recognizing the "strong preference for adjudication on the merits rather than final disposition for procedural

reasons"); see also Midland Funding LLC v. Albern, 433 N.J. Super. 494, 499 (App. Div. 2013); Tumarkin v. Friedman, 17 N.J. Super. 20, 27 (App. Div. 1951).

VII

At the trial's conclusion, the court directed the parties to first provide their written summations on the aspects of the case already discussed in the sections above, recognizing that Lily also had alternative arguments – assuming the court's findings about the formation of the Hackensack documents bound her to the note and mortgage – like her claim that she received no consideration for the note and mortgage on the Brighton Avenue property. As to this lack-of-consideration argument, the court determined that a ruling on that issue ought to abide disposition of the other issues. Now that the court has ruled on those other issues, it's time to turn to Lily's lack-of-consideration argument.

Lily has similarly claimed that there was no mutual assent for the Hackensack agreements, that the agreements were a product of a mistake that should free her from their consequences, and that the agreements are unconscionable. Although both sides have briefed the mutual assent, mistake, and unconscionability issues, the court chooses to consider and rule on those other issues when the court rules on the lack-of-consideration argument. The parties may either provide further briefing on those other issues when they brief

the lack-of-consideration argument or they may rely on what they have already provided.

VIII

To summarize, there being no evidence of Meir's involvement in, knowledge of, or even suspicion about Habib's fraudulent actions – indeed, it having been shown that Meir was also a victim of the same fraud – Meir remains entitled to pursue foreclosure on the Brighton Avenue property against Lily absent what the court may find on Lily's other alleged defenses.

The court further finds that the elements needed to pursue foreclosure have been established. Except for the issues outlined in Section VII above, Meir has established that the mortgage is valid, that the note and mortgage establish the indebtedness, that the mortgagors are in default, and that the note and mortgage permit Meir to resort to the property to redress the mortgagors' default. See Investors Bank v. Torres, 457 N.J. Super. 53, 65 (App. Div. 2018), aff'd., 243 N.J. 25 (2020); Thorpe v. Floremoore, 20 N.J. Super. 34, 38 (App. Div. 1952); Great Falls, 263 N.J. Super. at 394.

* * *

The court will rule on the other issues referred to in Section VII once fully submitted. Lily is directed to provide her written summation about those other

issues by July 7, 2025. Meir may respond no later than July 11, 2025, and any reply from Lily must be submitted by July 15, 2025.

SO ADJUDGED AND ORDERED.