Superior Court of New Jersey – Appellate Division

Letter Brief

Appellate Division Docket Number: A-000345-23

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04/19/2024

Letter Brief on behalf of: Vincent Roggio

Vincent Roggio	Plaintiff
VS	
McElroy, Deutsch, Mulvaney & Carpenter, LLP, Louis A. Modugno, Esq., Anthony Z. Emmanouil, Eugenia K. Emmanouil, & John Does 1-10	Defendant

Case Type: Civil

County/Agency: Monmouth

Trial Court/Agency Docket No: MON-L-0400-10

Trial Court Judge/Agency Name: Hon. Mara Zazzali-Hogan, J.S.C.

Dear Judges,

Pursuant to R. 2:6-2 (b), please accept this letter brief in support of my appeal in this matter.

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Party Name	**Appellate Party Designation**	**Trial Court/ Agency Party Role**	**Trial Court/Agency Party Statue**
Vincent Roggio	Appellant	Plaintiff	Participated below
McElroy, Deutch, Mulvaney & Carpenter LLP	Respondent	Defendant	Participated below
Louis A. Modugno Esq.	Respondent	Defendant	Participated below

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PRELIMINARY STATEMENT

On January 11, 2006, Zachary Emmanouil Esq., Roggio's former counsel, and his parents Anthony and Eugenia Emmanouil criminaly conspired with a court clerk and a police detective to illegally seize a copy of Roggio's FBI History Report (FHR). In order to achieve the seizure, a false police report and a false statement to the FBI database was necessary. The sole purpose of this seizure was to defame Roggio in a civil contract dispute filed by the Emmanouils on March 7, 2006 in the District Court for the District of New Jersey.

On January 20, 2010, counsel for the Appellant timely filed a complaint and demand for jury trial Docket No. L-0400-10 in the Monmouth County Law Division charging the Defendants with defamation, false light and privacy violations. None of these state violations had any relationship to federal law.

The Defendants immediately removed the case to federal court, despite the fact that Roggio, MDMC and its lawyers were residents of New Jersey. The federal district court relied on alleged *fraudulent joinder* to maintain jurisdiction over the case in federal court. This is so despite the fact that the Honorable Freda L. Wolfson U.S.D.J. struck the Emmanouil complaint in its entirety, which contained the defamtory material on October 11, 2006, making the Emmanouil March 7, 2006, complaint a nullity. In addition, Judge Wolfson continued to enforce the prior sealing Order by Magistrate Judge Hughes. Judge Wolfson, in

the Court's Order gave the Emmanouil's twenty (20) days to file an amended complaint (operative complaint), which removed all of the defamatory statements. On November 6, 2006, McElroy, Deutsch, Mulvaney & Carpenter (MDMC) filed their amended complaint on behalf of Anthony and Eugenia Emmanouil which complied with the Court's order to remove the defamatory content. Subsequently however in the late summer of 2006, a republication of the defamatory content, a further embellished version, was published on the internet. The content was published on a fictitious website that surreptitiously mimicked the true website of Roggio's granite manufacutering corporation, Gibraltar Granite (www.gibraltargranite.com); the fictitious website was titled 'www.gibraltar-granite.com,' altered simply by adding a hyphen (-), between Gibraltar and Granite to maximize its impact. Roggio's FHR was subsequently found by a federal Magistrate Judge in New Jersey to be false and inaccurate, and violated a unamious decision the United States Supreme Court, which made such a publication a unwarranted violation of personal privacy. On December 20, 2009, MDMC republished the embellished version of Roggio's alleged criminal history on PACER without fact checking the authenticity of the content and neglecting to recognize that the majority of the content, contained in the Emmanouil Complaint had been expunged and ordered physically destroyed by a Pennslyvania Court thirty-five (35) years earlier.

PROCEDURAL HISTORY

The Appellants on September 6, 2022 filed a motion to reinstate the case based on the federal court's lack of subject-matter jurisdiction in removing this case to federal court. The trial court relied on events that occurred prior to the federal court's Findings of Fact and Conclusions of Law on November 19, 2023.

TABLE OF PROCEDURAL HISTORY

Date	Event/ Proceeding	Filed By	Result	Appendix Page Number/ Transcript
09.06.2022	Motion to Reinstate Case	Plaintiff	Filed	Pa8
09.19.2022	Motion to Seal	Plaintiff	Denied	Pa37
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06.22.2023	Motion for Reconsideration	Plaintiff	Denied	Pa108
08.15.2023	Order – Denying Motion for Reconsideration	Court	Filed	Pa7

STATEMENT OF FACTS

The Court's February 3, 2023, denial was based on events that occurred before the Findings of Fact and Conclusions of Law by the District Court for the District of Massachusetts. The Pisano Opinion of April 30, 2014, declined to address either Judge Saylor's or Judge Waldor's Findings of Facts. (Pa263).

As of January 11, 2006, two officers of the court conspired to seize a highly protected government document through a fraud upon the court including a false police report and a false statement to the FBI, a federal offense pursuant to 18 U.S.C. 1001. (Pa165). Without a warrant this was a violation of Roggio's rights under the New Jersey State Constitution, Article 1 ¶ 7 and his Fourteenth Amendment Due Process Right to notice and an opportunity to be heard before the document was unlawfully seized by law enforcement. The third parties to the criminal conspiracy were Zachary Emmanouil Esq. (Roggio's former counsel) and his parents Eugenia and Anthony Emmanouil (MDMC clients). (Pa276). On March 7, 2006, the three Emmanouils filed a complaint against Roggio in the United States District Court for the District of New Jersey. (Pa271). The last paragraph in that complaint contained the identical alleged criminal history of Roggio, unlawfully seized on January 11, 2006 (Pa165). Sometime in the late summer or early fall of 2006 an embellished version of the alleged criminal history report was published on the internet in the name of

Gibraltar-Granite Inc. (Pa303). On October 11, 2006, the Honorable Freda L. Wolfson struck the Emmanouil complaint in its entirety and maintained the sealing Order of Magistrate Judge Hughes. (Pa271). Judge Wolfson gave the Emmanouils twenty days to file an amended complaint. (ie: operative complaint) MDMC filed the amended complaint removing all of the alleged criminal violations contained in the original March 7, 2006, Emmanouil complaint. (Pa271). Despite both the striking and the sealing of the March 7, 2006, complaint on January 20, 2009, MDMC, without fact checking the authenticity of the report, published the embellished report on PACER on January 20, 2009. Multiple charges contained in MDMC's republishing on PACER had been expunged and ordered destroyed by the Honorable William Hart Rufe on December 19, 1975 (Pa303).

On January 20, 2010, Roggio filed a complaint in this Court. (Pa145) Roggio's original complaint seeks no such federal remedy. It only alleges state common law causes of action, and it neither refers to nor alludes to a federal law with which defendants have failed to comply.

> Joinder is fraudulent if "there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgment." *Id.* (quoting *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 32 (3d Cir. 1985))

The Pisano Opinion on April 14, 2010 states: (Pa130)

> The publication occurred in response to a motion to disqualify MDMC as counsel for the Emmanouils that was filed by Roggio in the District Court Action, and MDMC was authorized by law to publish said criminal history because the information was not subject to a sealing order at the time of its publication. Further, MDMC submitted Roggio's criminal history to illustrate that it did not receive information from the Emmanouils' son that was protected by the attorney-client privilege. By producing the rap sheet, MDMC established that it had obtained the information from a filing made earlier in the District Court Action by Roggio's counsel. Finally, the rap sheet had "some connection or logical relation to the action" because it supported MDMC's contention that it had not received privileged information from the Emmanouils' son.

The Honorable Freda L. Wolfson U.S.D.J., on October 11, 2006, struck the March 7, 2006 Emmanouil complaint in its entirety and acknowledged the previous sealing order by Magistrate Judge Hughes was still in effect. (Pa271) As such, the Pisano Court was without subject-matter jurisdiction to remove this case to federal court because the "rap-sheet" was a nullity.

The trial court errored in its finding that Judge Pisano had subject-matter jurisdiction on April 14, 2010. (Pa7)

On Novermber 19, 2013, the Honorable F. Dennis Saylor IV, United States District Judge for the District of Masschusetts found the following facts and conclusions of law. (Pa165)

> ¶4. Roggio has been arrested on multiple occasions, for multiple offenses, going back to 1973. (Tr. I: 35-40; Ex. 1). The state jurisdictions involved included Florida, among others. (See Tr. I: 120-¶21; Ex. 38). None of those charges, other than the 1987 mail fraud conviction, resulted in a criminal conviction. (Tr. I: 35-40; Ex. 1).
> ¶7. Edward Bacener is a resident of Masschusetts. (See Tr. II: 76-77).

At all relevant times, Bacener was working as a court officer at the Gardner District Court and part-time as a security guard at the Hanndford's supermarket in Gardner. (Tr. 11: 76-78).

¶8. There is no evidence that either Grasmuck or Bacener has ever met or spoken to Roggio, or had any direct dealings with him of any kind. (See Tr. II: 65, 70-71, 82).

¶13. The FBI computer systems create a record every time a law enforcement official conducts a search of the index. (See id. ¶¶ 12,14).

¶14. At some point on January 11, 2006, Grasmuck recevied a telephone call from Bacener at the Gardner Police Departement. (Tr. II: 81; Ex. 12.1). That call was made to a telephone line that was normally recorded. (Ex. 12.1)

¶15. In the telephone call, Bacener asked Grasmuck if he could run a criminal history for him on an out-of-state individual. (Id.) Grasmuck told Bacener to hold on and switched the call to an unrecorded telephone line. (Id.).

¶16. At 7:48 a.m. on January 11, 2006, Grasmuck asked Heather Newton, a dispatcher working at the Gardner Police Department, to run a criminal record for Vincent Roggio. (Ex. 7 at *35).

¶17. In the Gardner police log, Newton recorded that Roggio was a suspect in a shoplifting at Hannaford's supermarket. (Id.)

¶18. Although there is no direct eveidence, it is a reasonable inference that Grasmuck told Newton that Roggio was a shoplifting suspect. (See id.; Tr. II: 60).

¶19. Bacener was working at the Gardner District Court on the morning of January 11, 2006. (Tr.II: 48-49). He was not working at the Hannaford supermarket that day. (Tr.II: 82).

¶20. Grasmuck and Bacener both testified that before 2009, they had never met or heard of Roggio. (Tr: II: 70-71, 82). Grasmuck also tetified he could not remember a time where he had begun a shoplifting investigation by running a suspect's criminal record. (Tr. II: 40).

¶21. Roggio testified that he has never been to the Hannaford supermarket in Gardner. (Tr. I: 77)

¶22. The Hannaford supermarket in Gardner has no record of a suspected shoplifting incident involving Roggio. (Ex. 8).

¶23. Although there is no direct evidence, it is resonable inference that Newton accessed the FBI index, and prepared a compilation of Roggio's criminal record, in response to Grasmuck's request. (See Tr. II 41-42; Ex. 7 at *35).

¶24. According to the evidence, Grasmuck had no reason to access the information other than to provide it to Bacener. (See Tr. II 61).

¶25. It is a reasonable inference that Grasmuck received that criminal record complilation and provided it to Bacener in response to his request.

¶26. Grasmuck was deposed during Roggio's lawsuit against the FBI. (Tr. II: 66; Ex. 14). **When asked whether he had accessed or disseminated Roggio's criminal record, he refused to answer based on his Fifth Amendment right against self-incrimination**. (Ex. 14 at *28-29). He did so on the advice of the City of Gardner's counsel. (Tr. II: 67-68, 72-73). Grasmuck was not individually represented by counsel at the deposition. (Tr. II: 72).

¶28. On January 11, 2006, Emmanouil e-mailed a draft statement of facts for a civil complaint against Roggio to Pasqual. (Ex. 9). The e-mail contained two attachments: a summary of claims and a statement of facts. (Id.).

¶30. On March 7, 2006, Emmanouil filed the complaint with the United States District Court for the District of New Jersey. (Ex. 2). **Paragrpah 254 of that complaint included a listing of Roggio's alleged criminal history.** (Ex. 2 ¶ 254).

¶35. Second, the nature and formatting of the criminal record information set forth in Paragraph 256 of the Emmanoouil complaint suggest that it was based from information maintained in the FBI Index. (Ex. 4 ¶¶ 10-11). As described below, there were only two such inquiries in the period from 2004 to 2006, one by the Customs Service in Florida in 2004 and one in Gardner. (Id. ¶¶ 12-15).

¶36. The information set forth in Paragraph 254 of the Emmanouil complaint is generally non-public, other than (1) the federal conviction in 1987 and (2) certain information from the state of Florida. (See Exs. 1,2 ¶ 254; Fla. Stat. § 943.053).

G. The Gibraltar-Granite Website

¶38. Sometime in October or November 2006, Roggio's wife discovered a website called Gibraltar-Granite.com (Tr. II: 22). The website contained a printout of Roggio's alleged criminal history. (Ex. 3). The website also included information on other legal actions against Roggio, his driver's license, and his home address. (Id.)

¶39. There is no evidence as to who created the website. It was not created by Roggio or Roggio's business, which was Gibraltar Granite, Inc. (without a hyphen). (See id.)

¶41. The nature and formatting of the criminal record information on the

website suggest that the information was based on information maintained in the FBI index. (See Exs. 3.4 ¶¶ 10-11).

H. The New Jersey Action Against the FBI

¶42. In 2008, Roggio filed a lawsuit against the FBI in the United States District Court for the District of New Jersey, alleging that the FBI had unlawfully disseminated his criminal record. (Tr. 1: 57-60).

¶43. Based on the formatting of Roggio's criminal record, the FBI concludede that if it was derived from an unaurthorized disclosure of information obtained from the Index, the access to the Index must have occurred between 2004 and 2006. (Ex. 4 ¶¶ 10-11).

¶44. In the course of discovery in the FBI litigation, the FBI determined and disclosed to Roggio that his FBI criminal record had been accessed twice between 2004 and 2006 – once in 2004 by the United States Customs Service in Florida and once on January 11, 2006, by the Gardner Police Department. (Id. ¶¶ 12-15).

LEGAL ARGUMENT
POINT 1

WHETHER THE COURTS SEALING AND STRIKING OF A COMPLAINT IN ITS ENTIRETY RENDERS ITS CONTENTS A NULLITY

Raised below (Pa271; The trial Court declined to address the issues)

On October 11, 2006 the Honorable Freda L. Wolfson United States District Judge for the District of New Jersey wrote in an Opinion in pertinent part:

> This matter comes before the Court upon Defendants Vincent Victor Roggio, Callie Lasch Roggio, Noved Real Estate Corp., Gibraltar Stone Corporation, and Gibraltar Granite & Marble, Corp.'s ("Defendants") motion to strike Plaintiffs Anthony Z. Emmanouil, Eugenia K. Emmanouil, West Belt Auto Supply, Inc., and Zachary A. Emmanouil, Esq.'s (Plaintiffs") Complaint. The Court has jurisdiction over this matter pursuant to 28 U.S.C. 1332. The Court, having considered the parties' submissions, and for the reasons set forth below, will grant Defendants' motion to strike Plaintiffs' Complaint. (Emphasis Added) id at 12.

Defendants allege that the Complaint must be stricken pursuant to Fed. R. Civ. P. 12 (f). Rule 12 (f) of the Federal Rules of Civil Procedure ("Rule 12(f)') states, in pertinent part, that "the court may order stricken from any pleading... any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f)." *River Road Dev. Corp. v. Carlson Corp.* 1990 WL 69085 at *2 (E.D.Pa. 1990).

Judge Bongiovanni found that there was an attorney-client relationship between Plaintiff Zachary Emmanouil, Esq. and Defendant Vincent Roggio, and that confidential information obtained by Plaintiff Zachary Emmanouil could have been disclosed to Plaintiffs' attorney Mr. Pasqual and the law firm of Scarinci and Hollenbeck. See Opinion at 12-13. Defendants have also recently written to this Court requesting an immediate decision on their motion to strike "because the pendency of the Complaint, which Judge Bongiovanni has now recognized was prepared by plaintiffs' prior counsel **with the benefit of improperly obtained privileged communications**, is significantly disrupting defendants' business relationships. See Letter from Donald E. Taylor to the Honorable Freda L. Wolfson (September 27, 2006). Because of Judge Bongiovanni's finding that confidential information may have been disclosed to the attorney who prepared Plaintiffs' Complaint, the Court orders **Plaintiffs' Complaint stricken in its entirety**. Since the Complaint is ordered stricken based on the possibility of disclosure of confidential information, the Court need not reach a finding on whether Plaintiffs' Complaint does in fact contain scandalous allegations and/or privileged information.

In Footnote 2 the Court wrote:

The Court does not find that the pendency of the Complaint is significantly disrupting Defendants' business relationships since the **Complaint has remained sealed by order of Judge Hughes**.

III. CONCLUSION

For the reasons set forth above, the Court strikes Plaintiffs' Complaint in its entirety. **Plaintiffs are given leave to file an Amended Complaint within twenty days of the date of retaining counsel, but no later than November 8, 2006. (Emphasis Supplied)**

On November 6, 2006, McElroy, Deutsch, Mulvaney & Carpenter

(MDMC) filed an Amended Complaint. MDMC recognized in its operative and controlling amended complaint that the FBI History Report (FHR) was immaterial to the matter before the court, scandalous, improperly, and excessively impugned Roggio's moral character and removed all of this information from its amended complaint filed November 6, 2006.

Despite these undeniable facts, on December 20, 2009, MDMC republishes on PACER not just the content of the Emmanouil original complaint which contained the FHR filed on March 7, 2006 in *Emmanouil v. Roggio* Case No. 3:06-cv-1068, 2006 WL 2927621, at *2 (D.N.J. Oct. 11, 2006) in the District Court for the District of New Jersey, but published an embellished version stating that Roggio was arrested for drugs in Pennsylvania, which was actually a charge that Roggio failed to report $1,200 in state income tax for which he was acquitted by a Pennsylvania jury. The charge for writing a bad check in Ocala, Florida was nolle prossed by the State of Florida, for lack of intent. [actual innocence] (The trial court refused to seal the embellished version of the Emmanouil complaint, which is now a part of the public domain)

Indeed, this Court affirmed Judge Bongiovanni's finding that confidential information may have been disclosed to the attorney who prepared Plaintiffs' Complaint, the Court orders Plaintiffs' Complaint stricken in its entirety." *Emmanouil v. Roggio*, No. 3:06-cv-1068, 2006 WL 2927621, at *2 (D.N.J. Oct.

11, 2006) *Id* at 7.

MDMC cannot provide the Court with any evidence that Magistrate Judge Hughes' Order sealing Plaintiff's complaint, before October 11, 2006, was ever 'unsealed'.

In *Skudegaard v. Farrell* 578 F. Supp 1209, 1221 (D.N.J. 1984) the Court wrote:

> I start with the proposition the [m]otions to strike alleged redundant, immaterial, impertinent, or scandalous matter are not favored. Matter will not be stricken from a pleading unless **it is clear that it can have no possible bearing upon the subject matter of the litigation.**" *2A Moore's Federal Practice* ¶ 12.21 at p. 2429 (1983) (footnotes omitted).

Despite these facts, Roggio's FHR had no relationship to a contract dispute to decide the true ownership of West Belt Auto Supply, in Houston, Texas. Judge Wolfson striking of the Emmanouil's complaint in its entirety made clear that there was no possible bearing on the subject-matter of the litigation.

POINT 2

WHETHER THE UNLAWFUL SEIZURE OF THE APPELLANTS GOVERNMENTAL PRIVATE PAPERS THAT WERE FALSE AND INACCRUATE GAINED THROUGH THE COMMISSION OF TWO FELONIES VIOLATED THE NEW JERSEY STATE CONSTITUTION ARTICLE 1 ¶ 7 TO THE FOURTEENTH AMENDMENT

Raised below (Pa165; The trial Court declined to address the issue)

So as of January 11, 2006, two officers of the court criminally conspired to seize a highly protected government document through false statements to the police and the FBI. Under 18 U.S.C. 1001 (making a knowing false statement to a government agency is punishable by up to five years in prison). The unlawful conduct by the clerk and the police detective was a violation of Article 1 ¶ 7 of the Search and Seizure Clause of the New Jersey State Constitution. All of this, illegal conduct took place **without a warrant**. The sole purpose of the criminal conspiracy, which included Zachary Emmanouil Esq. (Roggio's former counsel) and his parents Eugena and Anthony Emmanouil (MDMC Clients) was to publish false and inaccurate criminal compilations contained in a highly protected government document.

This incredulous unlawful conduct was intended to defame Roggio in order to win a civil lawsuit. *Emmanouil v. Roggio* Case No. 3:06-cv-1068, 2006 WL 2927621, at *2 (D.N.J. Oct. 11, 2006) Like many crimes, the perpetrators got caught by their zeal to defame Roggio and in the process, ignored the protections in place that revealed their misconduct. The co-conspirators (Clerk of Court, Police Detective, Roggio's former counsel), on January 11, 2006, were unaware that multiple charges in the FBI History Report (FHR) had been expunged and physically destroyed by the Honorable

William Hart Rufe, Court of Common Pleas, in Bucks County, Pennsylvania 35 years earlier on December 19, 1975. As a result of the Emmanouil's actions in 2006, Roggio obtained a letter, from the Buck's County Clerk, certifying that Roggio had no criminal violations from the years 1960 to 2006. The only indication on that report is the acquittal of Roggio in the state court tax matter. This reveals that the only source for the multiple publications by the Emmanouils and their MDMC lawyers was the unlawful seizure that occurred on January 11, 2006, in Gardner, Massachusetts. Also, Roggio was deprived of his due process right to notice and an opportunity to be heard before his private papers were unlawfully seized, by law enforcement and Roggio's former counsel. This was a substantive violation of due process.

POINT 3

WHETHER THE PUBLISHING BY THE DEFENDANTS OF INFORMATION SEIZED THROUGH A VIOLATION OF THE SEARCH AND SEIZURE CLAUSE WITHOUT A WARRANT REGARDING FALSE CRIMINAL CONDUCT WAS DEFAMATORY PER SE

Raised below (Pa145; The trial Court declined to address the issue)

One of the republications was by the Honorable Joel A. Pisano U.S.D.J. on April 14, 2010, refusing to remand the case back to the trial court based on Fraudulent Joinder. Joinder is fraudulent "'where there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or

no real intention in good faith to prosecute the action against the defendants or seek a joint judgement.'" (citing *Boyer v. Snap- On Tools Corp.*, 913 F.2d 108, 111 (3d Cir.1990), cert. denied, 498 U.S. 1085, 111 S.Ct. 959, 112 L.Ed.2d 1046 (1991) (quoting *Abels v. State Farm Fire & Casualty Co.*, 770. F.2d 26, at 32 (3d Cir. 1985)).

Roggio's filing a lawsuit against MDMC and its lawyer, Louis Modugno for republishing the false and inaccurate FHR when that content was sealed and stricken in 2006 was not fraudulent. The removal itself by MDMC was fraudulent.

But, "[i]f there is even a possibility that a state court would find that the complaint states a cause of action against any one of the resident defendants, the federal court must find that joinder was proper and remand the case to state court.' *Boyer*, 913 F.2d at 111 (quoting *Coker v. Amooco Oil Co.*, 709 F.2d 1433, 1440-41 (11th Cir. 1983)). Judge Pisano found that "MDMC was authorized by law to publish said criminal history because the information **was not subject to a sealing order at the time of its publication"** *id* at 7. The criminal history report was stricken and sealed in 2006, by Judge Wolfson and remains sealed and stricken to this day. (Emphasis Supplied)

Furthermore, we recently have held that "where there are colorable claims or defenses asserted against or by diverse and non-diverse parties were

fraudulently joined based on its view of the merits of those claims or defenses." *Boyer*, 913 F.2d at 113 (citing *Chesapeake & O. RY. Co. v. Cockrell*, 232 U.S. 146 34 S.Ct. 278, 58 L.Ed 544 (1914))

In the instant case, both MDMC, its lawyers and Roggio were all residents of New Jersey and the Emmanouil complaint had been sealed and stricken since 2006 stripping the District Court for the District of New Jersey of both subject-matter and personal jurisdiction over the defamatory statements republished by MDMC.

In *Abels*, 770 F.2d 26,29, the Court stated:

> We are mindful of a number of general principles that should guide the exercise of the federal courts' removal jurisdiction. Because lack of jurisdiction would make any decree in the case void and the continuation of the litigation in federal court futile, the removal statute should be strictly construed, and all doubts should be resolved in favor of remand. Citing 14 C. *Wright, A. Miller & E. Cooper, Federal Practice and Procedure* 3642, at 149 (2d ed. 1985).

All of these authorities were contained in Roggio's counsel motion to remand the case back to the state court.

Judge Wolfson striking the Emmanouil complaint on October 11, 2006, made the publication of Roggio's FHR a nullity. Also Judge Wolfson's Order enforcing Magistrate Hughes' Sealing Order, which the Pisano Court felt wasn't in place at that time, is clear error.

The Pisano Court wrote:

> The publication occurred in response to a motion to disqualify MDMC as counsel for the Emmanouils that was filed by Roggio in the District Court Action, and MDMC was authorized by law to publish said criminal history because the information was not subject to a sealing at the time of its publication. **Further, MDMC submitted Roggio's criminal history to illustrate that it did not receive information from the Emmanouils' son that was protected by the attorney-client privilege.** By producing the rap sheet, MDMC established that it had obtained the information from a filing made earlier in the District Court Action by Roggio's counsel. *Id.* 7

The only source for the publication and republication or Roggio's alleged criminal history report was the criminal conspiracy which occurred on January 11, 2006 all by officers of the court and Zachary's parents, Anthony and Eugenia Emmanouil (MDMC Clients).

POINT 4

WHETHER THE APPELLANT IS ENTITLED TO AN AUTOMATIC SUPPRESSION HEARING UNDER THE LAW OF THE NEW JERSEY SUPREME COURT

Raised below (Pa108; The trial Court declined to address the issue)

The New Jersey Appellate Division in *State v. Caronna* 469 N.J. Super 462, 490 (2021) is quite instructive. The Court wrote:

> The exclusionary rule not only deters constitutional violations, but also provides an **"indispensable mechanism for vindicating the constitutional right to be free from unreasonable searches."** *Carter*, 247 N.J. at 530, 255 A.3d 1139 (quoting *Novembrino*, 105 N.J. at 157-58, 519 A.2d 820). Indeed, Justice Lee Soloman explained that "[w]ith some exception, in the fifty-four years since this Court first addressed the exclusionary rule in *State v. Valentin,* 36 N.J. 41, 174 A.2d 737 [] (1961), our courts have resisted the federal trend towards erosion of **the**

> **exclusionary rule which "uphold[s] judicial integrity" by informing the public that "our courts will not provide a forum for evidence procured by unconstitutional means." *State v. Williams*, 192 N.J. 1, 14, 926 A.2d 340 (2007). The suppression of evidence "sends the strongest possible** message that constitutional misconduct will not be tolerated and therefore is intended to encourage fidelity to the law." Ibid. We do not apply the rule indiscriminately. *State v. Hamlett*, 449 N.J. Super. 159, 177, 155 A.3d 1038 (App. Div. 2017) (explaining the New Jersey courts apply the exclusionary rule "**only** to evidence obtained in violation of the exclusionary rule "only to evidence obtained in violation of a defendant's constitutional right"). "Suppression of evidence ... has always been our last resort, not our first impulse." *State v. Presley*, 436 N.J. Super 440, 459, 94 A.3d 921 (app. Div. 2014) (quoting *State v. Gioe,* 401 N.J. Super. 331, 339.950 A.2d 930 (App. Div. 2008)) **We apply the exclusionary rule when the benefits of deterrence outweigh its substantial costs. *Gioe*, 401 N.J. Super at 339 950 A.2d 930.**

In the instant case, there were no societal substantial costs because the crimes that led to the violation of the Fourth Amendment were only committed by a police detective, a court clerk and Zachary Emmanouil, Roggio's former counsel, not Roggio.

The *Caronnna* Court refers to this type of conduct on behalf of law enforcement, as FLAGRANT id at 500.

The following authorities make it clear that the violations of the Fourth Amendment are not limited to criminal cases, *Skinner v. Railway Labor Executive Assn.*, 489 US. 02, 613-614 (1989); *United States v. Padilla*, 508 U.S. 77 (1993); *Florida v. Jardines*, 569 U.S. I (2013); *Ontario v. Quon* , 560 U.S. 746, 755 (2010).

The New Jersey Supreme Court has recognized that **an accused has automatic standing to seek suppression of evidence seized in violation of New Jersey Constitution Article** 1 ¶ 7 see *State v. Brown* 216 N.J. 508, 528 (2014). As of the date of this filing, both the state and federal courts have refused to provide Roggio his automatic standing to seek suppression of evidence seized, in violation of the Fourth Amendment and the New Jersey Constitution Article 1 ¶ 7.

The Supreme Court in *United States Department of Justice etal Petitioners v. Reporters Committee for Freedom of the Press* 489 US 749 (1989) held unamiously that when the subject of a rap sheet is a private citizen and the information is in the Government's control as a compilation, rather than what the government is up to, the privacy interest in maintaining the rap sheets "practical obscurity" is always at its apex while the FOIA based interest in disclosure is at its nadir. The Court went to find that the publication of a rap sheet **was an unwarranted invasion of personal privacy. (Emphasis Added)**

The Honorable Cathy L. Waldor, on July 2, 2012, found the following facts and conclusions of law.

Findings of Fact

1. The information sought to be sealed by Plaintiffs concerns sensitive information contained in a confidential FBI history report, which includes inaccurate and false information, and is not contained in

a publicly available document and was not discussed on the record in open court or the public information cannot be separated from the sealable materials.

2. Plaintiff has established a legitimate private interest in sealing the information in the FBI history report, because it is sensitive, confidential information which would cause Plaintiff serious injury if released.

3. Plaintiff would clearly suffer injury to his business relationships, to his financial status and credit, and to his reputation in the community.

Conclusions of Law

4. The privacy interest of an individual is particularly powerful when the information he is seeking to protect is a compilation of government records. *United States Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 780 (1989). In addition, any expunged records are subject to protection by N.J.S.A. 2C:52-30, which prohibits unlawful publication of same.

Judge Waldor's Findings of Fact have never been overruled. It is beyond dispute that MDMC on December 20, 2009, published on PACER multiple false and defamatory statements that were defamatory per se.

CONCLUSION

The Court must remand this case back to the trial court to address both the issues of suppression and the sealing and striking of the Emmanouil complaint, which it has declined to do.

Respectfully submitted,

Vincent Roggio, pro se

Certificate of Service

This is to certify that true and correct copies (2) of the foregoing has been sent via Priority Mail on this date of April 9, 2024 to McElroy, Deutsch, Mulvaney & Carpenter LLP, 1300 Mount Kemble Avenue P.O Box 2075 Morristown, NJ 07962-2075 with attention to William Fissell O'Connor Jr.

Vincent Roggio

VINCENT ROGGIO, Plaintiff-Appellant, vs. McELROY DEUTSCH MULVANEY & CARPENTER, LLP, LOUIS A. MODUGNO, ESQ., ANTHONY Z. EMMANOUIL, EUGENIA K. EMMANOUIL, and JOHN DOES 1 - 10, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-345-23(T2) Civil Action On Appeal From: Superior Court of New Jersey Law Division: Monmouth County Docket No. MON-L-400-10 Sat Below: Hon. Mara Zazzali-Hogan, J.S.C.

BRIEF AND APPENDIX OF DEFENDANTS-RESPONDENTS McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP, and LOUIS A. MODUGNO, ESQ.

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Pa	Plaintiff-Appellant's appendix
Db	Defendant-Respondent's brief
Da	Defendant-Respondent's appendix
T	Transcript of February 3, 2023, Argument on Plaintiff's Motions to Reinstate and for Summary Judgment

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PRELIMINARY STATEMENT

In January of 2010, Plaintiff-Appellant Vincent Roggio ("Plaintiff") filed a Complaint (the "Complaint") in the Superior Court of New Jersey, Law Division, Monmouth County ("Monmouth County"), against certain defendants, including McElroy Deutsch Mulveney & Carpenter, LLP ("MDMC"), and Louis A. Modugno, Esq. ("Modugno"), at the time a partner at MDMC. In the Complaint, Plaintiff claimed damages stemming from defendants' allegedly improper publication of documents concerning Plaintiff's criminal record, including charges that had allegedly been expunged. Defendants removed the case to federal court in February of 2010, and in April of 2010, the federal court denied Plaintiff's motion to remand to Monmouth County and dismissed Plaintiff's Complaint with prejudice. The Third Circuit affirmed the order denying Plaintiff's motion to remand and dismissing the Complaint with prejudice in 2011.

Beginning in September 2022, and culminating with a motion for reconsideration filed by Plaintiff on June 22, 2023, Plaintiff filed a series of motions in Monmouth County, in a failed attempt to reinstate the Complaint in Monmouth County. The trial court denied Plaintiff's motion to reinstate because it had no jurisdiction over the Complaint once it had been removed to federal court. On August 15, 2023, the trial court entered an Order (the "August 15th

Order") denying Plaintiff's motion for reconsideration – which is the subject of Plaintiff's appeal – on two grounds: 1) because the motion was filed beyond the twenty-day period provided in R. 4:49-2; and 2) because Plaintiff failed to address how the trial court's decision that it did not have jurisdiction over the matter was reached on a palpably irrational basis. Plaintiff has appealed only from the August 15th Order. The issue presented by Plaintiff's appeal is simple and straight forward – did the trial court abuse its discretion in denying Plaintiff's motion for reconsideration? Instead of addressing this discrete issue, Plaintiff clouds the record by filling his appeal brief and appendix with pleadings and briefs filed in other federal court cases, and he even includes unrelated pleadings and transcripts in a foreclosure case, none of which are relevant to the denial of his motion for reconsideration, and none of which are properly part of the record in this case.

Preliminarily, Plaintiff's appeal does not address the fact that the trial court denied his motion for reconsideration because it was untimely. His appeal should be denied for that reason alone. In addition, Plaintiff failed to demonstrate that the trial court abused its discretion when it denied his motion for reconsideration for lack of jurisdiction. Simply stated, Plaintiff has not, and cannot, demonstrate that the trial court had jurisdiction to restore a Complaint that had been validly removed to and dismissed by the federal court in 2010.

For these reasons, Defendants respectfully submit that Plaintiff's appeal should be dismissed.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

The limited issue before the Court on this appeal is whether the trial court abused its discretion when it denied Plaintiff's motion for reconsideration. Despite Plaintiff's attempt to muddle the record by including pleadings and briefs submitted in numerous federal court cases filed both by and against Plaintiff in New Jersey and Massachusetts, as well as a 2006 foreclosure case filed by Washington Mutual Bank against Plaintiff in the Superior Court of New Jersey, the facts relevant to this appeal are simple and straightforward, and largely parallel the Procedural History of this case.

On or about January 20, 2010, Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. MON-L-400-10 (the "Complaint") against Defendant-Respondents MDMC, Modugno, and Anthony Z. Emmanouil, and Eugenia K. Emmanouil ("the Emmanouil Defendants")(collectively "Defendants"). The Complaint asserted causes of action for defamation and violations of Plaintiff's right to privacy based on allegations that Defendants published information regarding Plaintiff's criminal

[1] Because they are closely related, the Procedural History and Statement of Facts relevant to Plaintiff's Appeal are combined to avoid repetition and for the Court's convenience.

record, including information that had allegedly been expunged from Plaintiff's criminal record, on the public docket of another case pending in federal court, captioned *Anthony Z. Emmanouil, et al., v. Vincent Victor Roggio, et al.*, Civil Action No. 06-1068 (FLW)(DEA). (Pa 146 – 150).

On February 17, 2010, Defendants removed the Complaint to the United States District Court for the District of New Jersey (Civil Action No. 10-777 (JAP)(DEA). (Da 1). On February 19, 2010, Defendants moved to dismiss the Complaint in federal court. (Da 11). On February 22, 2010, Plaintiff moved to remand the case back to Monmouth County. (Da 13). On April 14, 2010, the Hon. Joel Pisano, U.S.D.J., denied Plaintiff's motion to remand, finding that Plaintiff fraudulently joined MDMC and Modugno as defendants solely to defeat diversity jurisdiction. Judge Pisano also granted Defendants' motion to dismiss the Complaint with prejudice as to MDMC and Modugno because any statements made regarding Plaintiff's criminal history were protected by the absolute litigation privilege. He dismissed the claims against the Emmanouil Defendants based on the applicable statute of limitations. (Pa 81 - 88).

Plaintiff appealed this decision to the United States Court of Appeals for the Third Circuit. By Judgment dated February 28, 2011, the Third Circuit affirmed Judge Pisano's Order denying Plaintiff's motion to remand and granting Defendant's motion to dismiss the Complaint. (Pa 90). Plaintiff did

not file a Petition for Certiorari with the United States Supreme Court. (T9- 7 - 9.)

On September 23, 2013 – eighteen months after the Third Circuit affirmed Judge Pisano – Plaintiff filed a motion in federal court to void Judge Pisano's order dismissing the Complaint. (Da 15). On December 2, 2013, Plaintiff filed another motion in District Court requesting that the Court take judicial notice of an order entered in yet another case filed by Plaintiff in the United States District Court for the District of Massachusetts, captioned *Vincent Victor Roggio v. William J. Grasmuck, et al.*, Civil Action No. 10-40076-FDS. (Da 37).

On April 30, 2014, Judge Pisano denied Plaintiff's Motions to Vacate and to Take Judicial Notice, finding that Plaintiff's Motion to Vacate the Judgement was a clear attempt to relitigate matters already decided by Judge Pisano and affirmed by the Third Circuit. (Pa 93 - 99).

Eight years later, on September 6, 2022, Plaintiff moved to reinstate his Complaint in Monmouth County. (Pa 8 -36). Plaintiff's motion to reinstate was filed over *twelve years* after the Federal District Court dismissed Plaintiff's Complaint, over *eleven years* after the Third Circuit affirmed the dismissal, and over *ten years* after the Federal District Court denied Plaintiff's motion to vacate the order dismissing his complaint. On September 19, 2022, Plaintiff filed a motion to seal a document filed by *Plaintiff* himself on eCourts in support of his

motion to reinstate, that referred to Plaintiff's expunged criminal convictions. (Pa 37 - 57). On December 5, 2022, Plaintiff filed what he called a motion for summary judgment, asking the trial court to order a jury trial on the Complaint that had been dismissed in Federal Court in 2010. (Pa 76 – 78).

On February 3, 2023, following oral argument, the trial court entered an order denying Plaintiff's motions to reinstate, seal, and for summary judgment, after determining that it had no jurisdiction over the matter. (Pa 4, Da 53). On February 24, 2023, Plaintiff filed a motion seeking entry of an "order for the court to file a final appealable order based on the issues contained in Plaintiff's 450 Motion filed on September 6, 2023". (Da 47, Pa 100 - 107). On March 29, 2023, the trial court entered an order denying this motion, noting that the orders were all final appealable orders pursuant to R. 2:2-3. (the "March 29th Order") (Pa 5).

On April 24, 2023, Plaintiff filed a motion to vacate the March 29th Order, based upon the trial court's alleged failure to address fraud upon the court. The motion also asked the court to "provide a hearing for Roggio's automatic standing to seek suppression of evidence in violation of the New Jersey Constitution" (Da 49). By Order dated May 25, 2023 (the "May 25th Order"), the trial court denied Plaintiff's motion to vacate the March 29th Order, finding that Plaintiff was essentially seeking reconsideration of the Court's prior orders,

and that Plaintiff did not meet the standard for reconsideration under Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996). (Pa 6).

Twenty-eight days later, on June 22, 2023, Plaintiff filed a motion for reconsideration "of the Court's May 25 denial of the April 24, 2023, Motion to Vacate". Plaintiff's filing did not include a notice of motion. (Pa 108 – 126). The trial court denied Plaintiff's motion for reconsideration on August 15, 2023 (the August 15th Order") (Pa 7, Da52). Instead of demonstrating how the trial court had jurisdiction to overturn an order of dismissal in federal court, Plaintiff's motion for reconsideration argued how decisions rendered by Federal District Court Judges Wolfson, Brown and Pisano, in other cases pending in federal court, as well as decisions in unrelated foreclosure actions filed in New Jersey Superior Court, were wrong.

The trial court denied Plaintiff's motion for reconsideration on both procedural and substantive grounds and set forth the basis for its decision in its Statement of Reasons, which Plaintiff did not include in his appendix. Procedurally, the trial court denied Plaintiff's motion because it was filed out of time, beyond the twenty-day period in R. 4:49-2. Substantively, the trial court found that Plaintiff failed to meet his burden under R. 4:49-2. As noted by the trial court, "[e]ven evaluating plaintiff's motion on the merits, however, Roggio does not address how this Court has jurisdiction over the matter he is attempting

to reinstate, how that decision was reached on a palpably irrational basis or introduce any new evidence that the Court did not have when deciding the previous motions." (Da 55).

Plaintiff filed a Notice of Appeal on September 28, 2023, and an Amended Notice of Appeal on October 30, 2023. (Da 56 and Da 59). Plaintiff's Amended Notice of Appeal (Da 59), as well as his Case Information Statement (Pa 308) confirm that he is only appealing from the Court's August 15th Order.

STANDARD OF REVIEW

Plaintiff has appealed the trial court's August 15, 2023, Order denying his motion for reconsideration. The Appellate Division reviews a trial judge's decision to grant or deny a motion for reconsideration under R. 4:49-2 for abuse of discretion. *Branch v. Cream-O-Land Dairy*, 244 N.J. 567, 582; *Kornbleuth v. Westover*, 241 N.J. 289, 235 (2020); *Hoover v. Wetzler*, 472 N.J. Super. 230, 235 (App. Div. 2022). "[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." *Pitney Bowes Bank v. ABC Caging*, 440 N.J. Super. 378, 382 (App. Div. 2015). A motion for reconsideration under R. 4:49-2 "is addressed to the judge's sound discretion." *Hinton v. Meyers*, 416 N.J. Super. 141, 148 (App. Div. 2010).

LEGAL ARGUMENT

I. PLAINTIFF'S APPEAL MUST BE DISMISSED BECAUSE HE FAILED TO DEMONSTRATE THAT THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED HIS MOTION FOR RECONSIDERATION.

A. The Trial Court's Denial of Plaintiff's Motion for Reconsideration Was Proper and Not an Abuse of Discretion.

The decision to deny a motion for reconsideration falls "within the sound discretion of the [trial court], to be exercised in the interest of justice." *In re Belleville Educ. Ass'n*, 455 N.J. Super. 387, 405 (App. Div. 2018) (quoting *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996)). Reconsideration should be employed only "for those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." *Cummings*, 295 N.J. Super. at 384 (quoting *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). "Reconsideration cannot be used to expand the record and reargue a motion. Reconsideration is only to point out 'the matters or controlling decisions which [a party] believes the court has overlooked or as to which it has erred.'" *Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi*, 398 N.J. Super. 299, 310 (App. Div. 2008) (quoting R. 4:49-2).

The Appellate Division reviews a trial court's decision to grant or deny a motion for reconsideration under the abuse of discretion standard. *See Cummings*, 295 N.J. Super. at 389. An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" *U.S. Bank Nat'l Ass'n v. Guillaume*, 209 N.J. 449, 467-68, (2012) (quoting *Iliadis v. Wal-Mart Stores, Inc.*, 191 N.J. 88, 123 (2007)).

Plaintiff's motion for reconsideration did not fall within the narrow corridor identified in *Cummings*. The trial court denied Plaintiff's motion for reconsideration as both untimely, and because it lacked jurisdiction after the Complaint was removed to federal court. As discussed below, Plaintiff has failed to demonstrate that the trial court abused its discretion in denying his motion for reconsideration seeking to reinstate a complaint that had been removed to federal court in 2010. Accordingly, Plaintiff's appeal should be denied.

B. Plaintiff's Failure to Address How the Trial Court Abused its Discretion in Denying His Motion for Reconsideration Operates as a Waiver of that Issue.

Plaintiff's Amended Notice of Appeal clarifies that he is appealing only from the trial court's August 15, 2023, order denying his motion for reconsideration. (Da 59). Only the orders designated in the notice of appeal are

subject to the appeal process and review. *W.H. Industries, Inc. v. Fundicao Balancins, Ltda*, 397 N.J. Super 455, 458 (App. Div. 2008). To the extent that Plaintiff's appeal brief addresses issues ruled on by the trial court in motions other than the motion for reconsideration filed on June 22, 2023, they are not subject to this appeal. Plaintiff's burden on this appeal, therefore, is to demonstrate that the trial court abused its discretion when it denied his June 22, 2023, motion for reconsideration, and he has failed to do so.

While it is difficult to decipher the arguments Plaintiff makes in support of his appeal, there is no doubt that Plaintiff's appeal brief does not once cite R. 4:49-2, the operative court rule which sets forth both the time within which Plaintiff had to file his motion for reconsideration (20 days) and Plaintiff's burden on the Motion. R. 4:49-2 requires that a motion for reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any." A review of Plaintiff's Appeal Brief also discloses that he does not mention the words "abuse of discretion" once, much less address how the trial court abused its discretion in denying his motion for reconsideration. By failing to address how the trial court abused its

discretion in denying his motion for reconsideration, Plaintiff has also waived that argument. *W.H. Industries, Inc.,* 397 N.J. Super. at 459. For that reason alone, Plaintiff's appeal should be dismissed.

C. The Trial Court Did Not Abuse its Discretion in Denying Plaintiff's Motion for Reconsideration as Untimely.

The trial court denied Plaintiff's motion for reconsideration because it was untimely. As noted in its Statement of Reasons, the trial court held that "[a]s a threshold matter, plaintiff's motion is procedurally deficient because he did not file this motion for reconsideration within twenty (20) days of the order that he is seeking reconsideration of." (Da 55.) While the trial court also considered and denied Plaintiff's motion for reconsideration on the merits, there was no need for it to do so – filing outside the twenty-day window was reason enough to deny the motion. R. 4:49-2 requires that "a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than 20 days after service of the judgment or order upon all parties." R. 1:3-4(c), which provides in relevant part that "[n]either the parties nor the court may . . . enlarge the time specified by . . . R. 4:49-2", abrogates a trial court's authority to expand this twenty-day deadline. Accordingly, a trial court does not have legal authority to enlarge the time restrictions of R. 4:49-2.

Plaintiff filed his motion for reconsideration on June 22, 2023 (Pa 108) – twenty-eight days after the May 25th Order, and unquestionably beyond the

twenty-day period set forth in R. 4:49-2. Plaintiff's motion for reconsideration was, therefore, time-barred, and was properly denied by the trial court on that ground alone.

Even if the trial court had wanted to extend the twenty-day period, it was precluded from doing so by R. 1:3-4(c). The trial court would have unquestionably abused its discretion had it extended the deadline contrary to R. 1:3-4(c). *See*, *Hayes v. Turnersville Chrysler Jeep,* 453 N.J. Super. 309, 313 (App. Div. 2018) (holding that the trial court erred in reviewing and ultimately deciding defendant's facially untimely motion for reconsideration.) *See also, Customers Bank v. Reitnour Inv. Props., LP*, 453 N.J. Super. 338, 351 - 52 (App. Div. 2018)(Chancery Division properly denied motion to amend foreclosure judgment filed more than twenty days after its entry as untimely.) Accordingly, because Plaintiff's motion for reconsideration was untimely, the trial court did not abuse its discretion when it denied Plaintiff's motion on this ground.

D. The Trial Court Did Not Abuse its Discretion in Denying Plaintiff's Motion for Reconsideration Because It Lacked Jurisdiction After the Complaint was Removed to Federal Court.

Plaintiff's unsuccessful motion to reinstate the complaint, filed in September, 2022, twelve years after his Complaint was first dismissed in federal court, as well as his unsuccessful motion for reconsideration, were nothing more than unsuccessful attempts to back-door an appeal of the federal court's

dismissal of his Complaint long after the time to petition the United States Supreme Court for certiorari had lapsed.

28 U.S.C. § 1446(d) provides that "[p]romptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and ***the State shall proceed no further unless and until the case is remanded***." (Emphasis added). Defendants removed the Complaint to federal court on February 17, 2010. (Da 1). Judge Pisano denied Plaintiff's motion to remand on April 14, 2010. (Pa 131). Judge Pisano's decision denying the motion to remand was affirmed by the Third Circuit on February 28, 2011. (Pa 90). Plaintiff did not appeal to the United States Supreme Court.

The trial court denied Plaintiff's motion to reinstate the complaint because it no longer had jurisdiction over the matter once Plaintiff's motion to remand was denied. The basis for its decision was clear and unequivocal:

> Plaintiff's present motion in effect seeks to vacate the District Court's 2010 dismissal order and is improper for the reasons already stated in the opinion by the District Court . . . .

(T8- 20 – 24.)

> The motion to remand was denied by Judge Pisano. And it went up on appeal to the Third Circuit, who affirmed Judge Pisano's decision. If Mr. Roggio disagreed with any decision in the Federal Courts he would have been required to appeal to the Third Circuit,

> which he did. And then petition the United States Supreme Court for cert. If he didn't appeal that issue within the required time that issue is waived. Therefore, Roggio's motion to reinstate and Roggio's motion for summary judgment, which is really a motion to reinstate, are both denied with prejudice. In short, the Court does not have jurisdiction over these matters.

(T15- 19 – T16-7.)

> I cannot make any substantive decisions regarding the underlying allegations of this case because they have already been litigated and appealed in a different forum which deprives this Court of jurisdiction.

(T17- 12 – 16.)

Plaintiff's burden on his motion for reconsideration of this decision was plain and simple – to state the matters or controlling decisions which Plaintiff believes the trial court overlooked or as to which it erred when it found that it did not have jurisdiction once the Complaint was removed to federal court. In this appeal, Plaintiff's burden was equally clear – to show how the trial court abused its discretion when it denied his motion for reconsideration. Neither Plaintiff's motion for reconsideration, nor his brief in support of his Appeal, address this critical issue. Instead of arguing how the *trial court* erred in *this case*, Plaintiff's briefs are largely dedicated to arguing how Judge Pisano was wrong when he denied Plaintiff's motions in federal court.

Pursuant to 28 U.S.C. § 1446(d), jurisdiction was removed from the trial court once the Complaint was removed to Federal Court. *Jatczyszyn v. Marcal*

Paper Mills, Inc., 422 N.J. Super. 123, 134 (App. Div. 2011). Since the Complaint was never remanded back to Monmouth County, the trial court had no jurisdiction to consider Plaintiff's motions. The trial court's initial denial of Plaintiff's motion to reinstate was proper, and it did not abuse its discretion in denying Plaintiff's motion for reconsideration.

CONCLUSION

For each of the foregoing reasons, Defendants McElroy, Deutsch, Mulvaney & Carpenter LLP, and Louis A. Modugno, Esq., respectfully submit that Plaintiff's appeal from the trial court's order denying his motion for reconsideration should be denied in its entirety.

McElroy, Deutsch, Mulvaney & Carpenter, LLP
Attorneys for Defendants/Respondents, McElroy, Deutsch, Mulvaney & Carpenter, LLP, and Louis A. Modugno, Esq.

By:/s/ *William F. O'Connor, Jr.*
Richard J. Williams, Jr.

Dated: May 30, 2024

Superior Court of New Jersey – Appellate Division

Reply Brief

Appellate Division Docket Number: A-000345-23

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06/27/2024

Reply Brief on behalf of: Vincent Roggio

Vincent Roggio — Plaintiff

VS

McElroy, Deutsch, Mulvaney & Carpenter, LLP, Louis A. Modugno, Esq.,

Anthony Z. Emmanouil, Eugenia K. Emmanouil, & John Does 1-10 — Defendant

Case Type: Civil

County/Agency: Monmouth

Trial Court/Agency Docket No: MON-L-0400-10

Trial Court Judge/Agency Name: Hon. Mara Zazzali-Hogan, J.S.C.

Dear Judges,

Pursuant to R. 2:6-2 (b), please accept this reply brief in support of my appeal in this matter.

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LIST OF PARTIES

Party Name	**Appellate Party Designation**	**Trial Court/ Agency Party Role**	**Trial Court/Agency Party Statue**
Vincent Roggio	Appellant	Plaintiff	Participated below
McElroy, Deutch, Mulvaney & Carpenter LLP	Respondent	Defendant	Participated below
Louis A. Modugno Esq.	Respondent	Defendant	Participated below

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Oral Decision	02/03/2023	1T

PRELIMINARY STATEMENT

The entire thrust of MDMC's response is based exclusively on whether the trial court "abused its discretion in denying the Plaintiff's Motion for Reconsideration as untimely" and, as MDMC argues simultaneously, because it lacked jurisdiction after the complaint was removed to federal court by MDMC. MDMC does not dispute that the trial court never addressed any of the issues before it on the merits. MDMC conveniently avoids the uncontested facts and settled law in this case, that proves that MDMC's violation of Roggio's Forth Amendment Rights and Due Process Rights resulted in a fraud upon the court. Both the trial court and MDMC completely ignore the Plaintiff's Motion for Summary Judgement Pursuant to 4:46 filed December 5, 2022, which also addressed this fraud upon the court and is not a motion for reconsideration.

While the RPCs may not support a cause of action, the acts by MDMC in this case clearly violate the framework of Rule 3.3 which resulted in a knowing fraud upon the court (*infra* 11). Judicial discretion does not support violations of law. No litigant, including counsel, is permitted to publish legally protected and confidential information that is prohibited from being disseminated by law.

LEGAL ARGUMENT

MDMC does not dispute that Defendant Zachary Emmanouil, Esq., Roggio's prior counsel, deliberately conspired with two other officers of the

court to unlawfully breach the data repository of the Federal Bureau of Investigation ("FBI") on January 11, 2006. (**Pa 165** *id* 33-36) The purpose was to aid the Emmanouil defendants in a wholly unrelated contract dispute case by defaming Roggio through the public dissemination of decades old, irrelevant, and false records maintained in the highly protected FBI Confidential History Report ("CHR"). The confidential data was then initially published in the contract complaint filed by Zachary Emmanouil and his parents Eugenia and Anthony Emmanouil on March 7, 2006, in the United States District Court for the District of New Jersey in *Emmanouil v. Roggio* 06-1068 (FLW) which was sealed and stricken on October 11, 2006. (**Pa 271** *id* **4**).

The Emmanouils were aided by the knowingly complicit Gardner Police Detective and Court Clerk who used false statements in a police report and to the FBI to unlawfully access the FBI Index in violation of 18 U.S.C. 1001. (**Pa 165** *id* 4 ¶¶16-18) This criminal conspiracy violated the Fourth Amendment to the Constitution. It also violated Roggio's Due Process Rights under the Fifth and Fourteenth Amendment to the United States Constitution to **notice and a hearing** *before* Roggio's highly protected private papers were seized. These are two of three core essential elements of Due Process. Without these crimes, committed by three officers of the court on January 11, 2006, Defendant MDMC and its Emmanouil clients could never have published the CHR in their March

7, 2006 Complaint, on a website in the fall of 2006, and on PACER on December 20, 2009. But for these illegal acts, this issue would not be before this Court.

In *United States Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 780 (1989) the *unanimous* Supreme Court of the United States found that *any* publication of a CHR is an unwarranted violation of personal privacy even if the report were accurate. Surely, counsel at MDMC was aware of this authority when deciding to publish Roggio's CHR on PACER on December 20, 2009. MDMC never answered or responded to the Summary Judgement Motion **(Pa 58)** which was not a motion for reconsideration and ignored by the trial court.

The record here makes abundantly clear that MDMC knowingly, flagrantly, and repeatedly acted in defiance of the law in this case. The trial court's refusal to address these uncontested facts and evidence in this record concerning such defiance of the law is not discretionary. Judicial discretion refers to a judge's power to make a decision based on an individualized evaluation – but as *guided by the principles of law*. Violations of law are not permitted, nor may they be excused by discretion when plain error is present.

MDMC was aware that its publication on PACER was not just defamatory p*er se* but a fraud upon the court. Before its filing, MDMC could have easily determined the veracity of the content by looking at the records. The issues in

Pennsylvania had been Ordered by the Court to be "expunged and physically destroyed" thirty-five years earlier by the Honorable William Hart Rufe, on December 19, 1975, (**Pa 145** *id* at 3). MDMC knew or should have known that no charges existed. Yet its zeal to prejudice the court and prevail in the lawsuit was much greater than its oath to its professional responsibilities and the law.

MDMC also repeatedly failed to alert the federal or state court that on October 11, 2006, the Federal Court for the District of New Jersey struck the Emmanouil Complaint filed March 7, 2006 in its entirety (**Pa 271** *id* 4). The same Opinion also recognized that the Magistrate's May 30, 2006, Order to Seal was still in force. (**Pa 271** *id* 4 FN 2) The record is clear that MDMC has knowingly elected to ignore the law and Orders by the Court:

1. By removing the case from state to federal court on the unprovable basis of *fraudulent joinder* on February 17, 2010, and without alerting the state court or the federal court that the Emmanouil Complaint had been sealed and stricken (**Pa 130** *id* at 6,7);
2. By failing to alert the Court that the Emmanouil Complaint had been sealed and stricken (**Pa 130** *id* at 6,7) in its Motion to Dismiss filed February 19, 2010;
3. By deliberately failing to acknowledge the sealing and striking orders to mislead through each of its submissions to the federal court.

Indeed, for the trial court to ignore all the above uncontested facts in this record is an abuse of discretion.

THE HISTORY OF OPPOSING COUNSEL'S COMPLETE DISREGARD FOR THE LAW IN THIS CASE IS WELL DOCUMENTED

On October 11, 2006, the Honorable Freda L. Wolfson, U.S.D.J struck the Emmanouil Complaint "in its entirety," (*Emmanouil v. Roggio* 06-cv-1068-FLW *id* at 7) writing (**Pa 58** *id 3*):

> Moreover, the Court finds the disqualification of Plaintiff's previous counsel for violations of the attorney-client privilege and Judge Hughes' Order sealing Plaintiffs' Complaint particularly relevant. **On two separate occasions, magistrate judges have found Zachary to completely disregard the sanctity of the attorney-client privilege in furtherance of his or his parents' litigation.** Indeed, this Court affirmed Judge Bongiovanni's finding that **confidential information** may have been **disclosed** to the attorney who prepared Plaintiffs' Complaint, the Court orders Plaintiff's **Complaint stricken in its entirety**. (Emp. added)

The Court subsequently disqualified Zachary and his original counsel, but permitted the Emmanouil parents to continue with new counsel. The Court and Roggio, however, remained unaware of the criminal conspiracy that had been committed by Zachary and the two other officers of the court in Massachussets on January 11, 2006 to unlawfully breach the FBI database and disseminate the confidential content. MDMC and the new Emmanouil lawyer Louis Modugno, Esq., well knew this case history the amended complaint (the Operative Complaint) was filed **(Pa 276)** on November 6, 2006.

THE FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE SAYLOR OPINION DEMONSTRATES THE MALICIOUS VIOLATION OF DUE PROCESS AND THE FOURTH AMENDMENT

The initial publication of the unlawfully obtained CHR first occurred in the Emmanouil Complaint filing on March 7, 2006 (**Pa 271** *id 2*). After being

sealed and stricken, the CHR was published on the internet in the fall of 2006 (**Pa 165** *id* 7 ¶¶ 38). Roggio immediately sought to demonstrate to the court that, but for one conviction in 1987, the published information contained highly confidential and non-public data and including content that was false, incorrect, and expunged in the 1970s. (**Pa 303**) MDMC then *re-published* the knowingly private, sealed, stricken, and legally protected data on December 20, 2009 on PACER (**Pa 145** *id* 3 ¶13*)*. MDMC claimed that they were required to publish the information to show that it did not obtain the information from Zachary or his parents but from the Internet. (**Pa 130** *id 7* ¶1) Roggio was then compelled to establish the source of the content published by MDMC and was aided in that effort by the Honorable Jose J. Linares U.S.D.J.

Here, MDMC asks the courts to ignore two additional prior findings, these issued in the matter of *Roggio et al v. FBI* Civ. Action 08-38991 (JLL) (Doc. 29 at 6.) by the Honorable Jose L. Linares U.S.D.J. filed July 8, 2009 ("Linares Opinion") and the another by the Honorable Cathy L. Waldor U.S.M.J. on July 2, 2012 ("Waldor Opinion"). In addressing the harm caused by the public dissemination of confidential information maintained by the FBI, the Linares Opinion found as follows (**Pa 8** *id* 18):

> If an originating law enforcement entity no longer had the records containing some of the information posted and the FBI maintains comprehensive criminal history records, **it is reasonable to infer that such sensitive information came from the FBI**. ... **In court**

> **proceedings related to the prior incident relied on by Plaintiffs, the presiding judge stated that one of Mr. Roggio's loans was called "[b]ecause of the information given by the FBI."** (See id., Ex. I.) Therefore, the facts alleged assert that prior FBI disclosures had a negative financial impact on Mr. Roggio; **a reasonable inference is that a casual** nexus exists between the alleged harm here and any alleged disclosure of his rap sheet to his financial institutions and business associates. (Emphasis Added)

In objection to the Linares Opinion, the FBI claimed that the "pull" of the highly confidential and legally protected information could have come from "any" one of countless law enforcement agencies across the country. To resolve that issue, Judge Linares ordered the FBI to simply identify the party or parties that disseminated the information from its database.

In response, the FBI revealed that the information originated in Gardner, Massachusetts, a town Roggio had never visited and had no connection. (**Pa 165** *id* 5 ¶ 22) The circumstances of this were uncovered through an investigation and adjudicated in the matter of *Vincent Roggio v. William J. Grasmuck and Edward Bacener*, Civ. Action No.10-40076-FDS. In an Opinion issued on November 19, 2013, the Honorable F. Dennis Saylor, U.S.D.J. for the District of Massachusetts, made the following pertinent Findings of Fact and Conclusions of Law and established the source the unlawful breach of the FBI data repository and seizure of the CHR (**Pa 165**).

Below is the transcribed telephone conversation between the two officers of the court and provides the origination of the request to breach the FBI data repository in real time (**Pa 8 Exhibit D**):

> "Hey, can you do an N-C-C-I for me without printing it? Write everything down? Grasmuck responded, "Ah –." Bacener continued, "An out-of-stater." Grasmuck continued, "Hold on, let me check – hold on, I want to put you to another phone. Hey, what's the private phone?" A female voice responded with, "Extension 3-2-8."

Judge Saylor's relevant Findings of Fact and Conclusions of Law highlight make perfectly clear that Roggio's private papers were unlawfully seized by three officers of the court and provided to Roggio's prior counsel in violation of the Fourth Amendment and Due Process Clause. (**Pa165** ¶ 14,16,17,20,22,24-26,33-35,39-41, Conclusions of Law 29-31, 39)

The Court also found that **"None of those charges [contained in the CHR], other than the 1987 mail fraud conviction, resulted in a criminal conviction." (Tr.I:35-40; Ex. 1)**. (**Pa 165** *id* 3 ¶4) All three of these publications of the CHR cited crimes which allegedly occurred in 1973 and 1975. The charges in 1973 were Ordered to be "expunged and physically destroyed" by the Honorable William Hart Rufe of the Court of Common Pleas of Buck's County Pennsylvania on December 19, 1975. (**Pa 145** ¶10) The only other charges were charges that Roggio failed to pay $1200 (twelve hundred dollars) in Pennsylvania state income tax, and for which Roggio was acquitted. A review

of the Buck's County Criminal Record dated November 29, 2006, found no criminal record and only identifies the acquittal. **(Pa 303)**.

The Saylor decision leaves no doubt that the publications by the Emmanouils and MDMC on PACER was derived from the same source: the judicially admitted breach of the FBI data repository by two officers of the court on January 11, 2006, in Gardner, Massachusetts. **(Pa 165)** The content was transmitted on the same day to Emmanouil and published in the Emmanouil Complaint filed March 7, 2006. **(Pa 165** *id* 6 ¶ 32-36**)** Once that Complaint was sealed by two federal Magistrates and stricken by the Court, there was no basis for MDMC to further publish the FBI data or fail to file under seal. The prejudice created by these acts is significant.

MDMC'S CONDUCT WAS A KNOWING FRAUD UPON THE COURT

On January 20, 2010, Roggio filed a complaint against MDMC, Louis A. Modugno Esq., Anthony Z. & Eugenia K. Emmanouil and John Does 1-10 in state court, Case Civ. Action L-0400-10. **(Pa 145)** Rather than respond to the complaint, MDMC immediately filed a Motion to Remove to Federal Court on February 17, 2010, followed by a Motion to Dismiss on February 19, 2010.

On April 14, 2010, the Honorable Joel A. Pisano, U.S.D.J., filed an Opinion in *Vincent Roggio v. McElroy, Deutsch, Mulvaney & Carpenter, LLP Louis A. Modugno, Esq.; Anthony Z., Emmanouil; Eugenia K., Emmanouil; and John*

Does 1-10, Civ. Action No. 10-777 **(Pa 130).** The Pisano Court found that Roggio had "fraudulently joined" MDMC and Louis Modugno in the state action because "there was no reasonable basis in fact or colorable ground supporting the claim against those two defendants or no real intention in good faith to prosecute the action against the defendant or seek a joint judgment." **(Pa 130** *Id* at 4). This finding completely ignores the uncontested fact that MDMC and Modugno republished Roggio's CHR on December 20, 2009, on PACER despite the fact that Judge Wolfson struck the Emmanouil Complaint in its entirety on October 11, 2006. **(Pa 271)** This included any of the alleged criminal offenses charged in the March 7, 2006, Complaint in the United States District Court for the District of New Jersey. Roggio had every intention in good faith to prosecute MDMC and Modugno for defamation, privacy and false light. All of those charges are exclusive to the state action.

When Judge Wolfson struck the Emmanouil Complaint in its entirety on October 11, 2006 **(Pa 271** *id* at 2**)** the court also recognized the Sealing Order issued by Magistrate John J. Hughes on May 30, 2006, was still in force. **(Pa 271** *id* at 4 FN 2**)** Judge Hughes ordered that the Emmanouil Complaint be sealed pending the Court's determination of the motion to strike. **(Pa 127)** Here and again, MDMC, in its response, does not and cannot dispute that both Judge Wolfson's Order to Strike and Magistrate Hughes Order to Seal are *legally in*

force to this day. Despite knowing the existence of these two court orders, MDMC failed to notice the court in either its Motion to Remove **(Pa 130)** to Federal Court or its Motion to Dismiss **(Pa 130)**, or in any other correspondence or legal filings by the law firm. Under R.P.C. 3.3 – Candor Toward the Tribunal states the following:

> **(a)** A lawyer shall **not** knowingly:... **(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; (5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.** (Emphasis Added)

The sealing and striking orders were not protected by privilege or prohibited by law.

No litigant, including learned counsel, is permitted to publish legally protected and confidential information that is prohibited from being disseminated by law. MDMC knew that the information was highly contested, under seal, and stricken **(Pa 271).** Judge Pisano wrote in his April 14, 2010, Opinion: **(Pa 130** *id* at 6,7**)**

> The publication occurred in response to a motion to disqualify MDMC as counsel for the Emmanouils that was filed by Roggio in the District Court Action, and **MDMC was authorized by law to publish said criminal history because the information was not subject to a sealing order at the time of its publication**. Further, MDMC submitted Roggio's criminal history to illustrate that **it did not receive information from the Emmanouils' son** that was protected by the attorney-client privilege. By

> producing the [history], **MDMC established that it had obtained the information from a filing made earlier in the District Court Action by Roggio's counsel**. Finally, the rap sheet, had "some connection or logical relation to the action" because it supported MDMC's contention that it had not received privileged information from the Emmanouils' son. (Emp. Added)

The Court's outright reliance that the information was not subject to a sealing order at the time of its publication is a fraud upon the court when it is undeniable that the CHR was sealed and stricken as of October 11, 2006. Furthermore, it was Zachary's unlawful seizure of the CHR on January 11, 2006, being the sole source of the publication resulting in an unprecedented violation of privilege by Roggio's prior counsel and an unprecedented violation of Due Process when the CHR was seized without notice, a hearing or a **warrant**. It's hard to imagine a greater violation of Roggio's right under the New Jersey Supreme Court Article 1 ¶ 7 to have his private papers seized without a warrant.

It is well-settled that RPCs cannot form the basis of a cause of action, however, a fraud upon the court can be raised at any time of the proceedings. The essential elements of fraud upon the court are:

> (1) an intentional fraud; (2) by an officer of the courts; (3) which is directed to the court itself and (4) in fact deceived the court. *Herring v. U.S.*, 424 F.3d 384 (3d. Cir. 2005)

Here, the Findings of Fact and Law as determined by the Saylor Court fully establish that an intentional crime was committed by officers of the court to disseminate confidential FBI data. A fraud on the court was further

perpetrated by MDMC through omission and deception which misled the court in reaching its findings that no sealing order was in place when MDMC published on PACER on December 20, 2009. The leading case before the Third Circuit regarding fraud upon the court is *Herring v. U.S.* The *Herring* Court relied further on two cases: *Pumphrey v. Thompson Tool Company* 62 F.3d 1128,1130 (9th Cir. 1995) "one species of fraud upon the court occurs when an officer of the court perpetrates fraud affecting the ability of the court or jury to impartially judge a case". The *Pumphrey* Court stated that "fraud on the court focuses not so much in terms of whether the alleged fraud prejudiced the opposing party but more in terms of whether the alleged fraud harms the integrity of the judicial process" citing (Hazel-Atlas, 322 U.S. at 26464S.Ct.t 1010) *see also*; *Weese v. Schuckman* 98F.d 542,553 (10th Cir. 1996) "noting that fraud on the court should embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court."

In *Kingsdorf v. Kingsdorf*, 351 N.J. Super. 144, 797 A.2d 206 (App. Div. 2002), a divorce case, the Court found that both the Plaintiff and his attorney concealed the fact that one of the parties had passed away without knowledge of the court, resulting in a fraud upon the court.

Here, there were multiple crimes committed by *officers of the court*, not

Roggio, to unlawfully seize the CHR for no purpose other than to defame Roggio in the Emmanouil Complaint, in the public realm, and to prejudice the courts.

THIS CASE WARRANTS APPLICATION OF THE EXCLUSIONARY RULE

The unlawful breach of the FBI database is a judicially admitted and uncontested fact in this record. The confidential content was obtained and disseminated through an unauthorized, unlawful, and unreasonable search. Roggio respectfully submits that the Exclusionary Rule applies. New Jersey Appellate Division in *State v. Caronna,* 469 N.J. Super 462, 490 (2021) is quite instructive as to the reasons and import of the exclusionary rule, stating as follows:

> The **exclusionary rule** not only **deters constitutional violations**, but also provides an "**indispensable mechanism for vindicating the constitutional right to be free from unreasonable searches.**" *Carter*, 247 N.J. at 530, 255 A.3d 1139 (quoting *Novembrino*, 105 N.J. at 157-58, 519 A.2d 820)... our courts have resisted the federal trend towards erosion of **the exclusionary rule which "uphold[s] judicial integrity" by informing the public that "our courts will not provide a forum for evidence procured by unconstitutional means." *State v. Williams*, 192 N.J. 1, 14, 926 A.2d 340 (2007). The suppression of evidence** "sends the strongest possible message that constitutional **misconduct will not be tolerated and therefore is intended to encourage fidelity to the law."** Ibid. We do not apply the rule indiscriminately. *State v. Hamlett*, 449 N.J. Super. 159, 177, 155 A.3d 1038 (App. Div. 2017) (explaining the New Jersey courts apply the exclusionary rule "only to evidence obtained in violation of the exclusionary rule "only to **evidence obtained in violation of a defendant's constitutional right**"). "Suppression of evidence ... has always been our last resort, not our first impulse." *State v. Presley*, 436 N.J. Super 440, 459, 94 A.3d 921 (app. Div. 2014) (quoting *State v. Gioe,* 401 N.J. Super. 331, 339.950 A.2d 930 (App. Div. 2008)) **We apply the**

exclusionary rule when the benefits of deterrence outweigh its substantial costs. *Gioe*, 401 N.J. Super, 339 950A.2d 930. (Emph. Added)

The Court may not provide a forum for a confidential and legally protected document procured through a judicially admitted crime committed by officers of the court to be published MDMC's knowing and flagrant misconduct was an act of deception by officers of the court and a fraud on the court. MDMC was ordered by Judge Wolfson, on October 11, 2006, to remove all of the criminal accusations prior to filing its amended complaint, which in fact MDMC did. For MDMC to resurrect those charges four years after the Sealing and Striking Order, to remove the case to federal court, resulted in violation of Roggio's privacy, holding Roggio in a false light and defamation per se.

There is no statute of limitations for a Fourth Amendment violation. The uncontested facts as set forth in this matter require the application of the exclusionary rule to this case.

CONCLUSION

For the reasons stated above, the Court should remand this case back to the trial court to a different judge.

Respectfully Submitted,

Vincent Roggio

Vincent Roggio, *pro se*

June 27, 2024