

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

BOONTON MOSQUE & ISLAMIC
LEARNING CENTER INC.

Plaintiff,

v.

AMERICAN MUSLIM
ASSOCIATION INC.; JOHN DOES
1-10 (Fictitious Individuals); and
ABC CORPS 1-10 (Fictitious
Entities)

Defendants,

AMERICAN MUSLIM
ASSOCIATION INC.

Third Party Plaintiff,

v.

MOHAMMAD ISLAM,
MOHAMMAD REHMAN, SHAFI
ULLAH, EJAZ KHAN AND SHARIF
AMANAT,

Third Party Defendants.

APPEAL NO. A-000585-23

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO: MRS-L-1567-22

SAT BELOW:

Hon. Stephan Hansbury, J.S.C.

**DEFENDANT/THIRD-PARTY PLAINTIFF
APPELLANT'S BRIEF**

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PRELIMINARY STATEMENT

Appellant American Muslim Association (“AMA”) appeals the Trial Court’s erroneous holding that AMA did not suffer any damages as a result of the respondents’, AMA’s former directors Mohammad Islam, Mohammad Rehman, Shafi Ullah, and Ejaz Khan (collectively, the “**Third Party Defendants**” or “**TPDs**”) being found to have egregiously breached their fiduciary duties to AMA. (5T 10: 6-7). The Court reached this conclusion based on an erroneous application of law to the uncontroverted evidence of the monetary damages suffered by AMA.

At the center of this action is a mosque which AMA had owned as tenants in common with a congregant, Dr. Sharif Amanat. As the TPDs admittedly knew, AMA had long sought to acquire full title to the mosque which had served as the heart of its community for several years. In 2018, Dr. Amanat was in poor health and sought to sell his fifty (50%) percent interest (the “**Share**”) in the mosque. AMA’s trustees had entered negotiations to acquire Dr. Amanat’s Share for his asking price of \$250,000.00. Unbeknownst AMA, the TPDs surreptitiously approached Dr. Amanat to buy the Share for the same amount of \$250,000.00 on behalf of a new entity that they formed Boonton Mosque and Islamic Learning Center (“**BMILC**”).

While they continued to hold their fiduciary positions as Trustees of

AMA, the TPDs undertook a series of actions to wrestle control over the mosque from AMA including forming BMILC, secretly purchasing the Share from Dr. Amanat for the same price that AMA had negotiated (\$250,000), and firing AMA's Imam. All of TPDs' actions were done without the knowledge or authorization of AMA.

Only **after** BMILC had acquired title to the Share did the TPDs, while still being trustees of AMA, announce to AMA and the congregation that they had purchased the Share and demanded that BMILC participate in the control of the mosque. The TPDs sought to control the prayer conducted in the mosque by creating an untenable situation and by disrupting the prayer conducted by AMA. When the TPDs' efforts to control the mosque failed, they had BMILC file the within litigation to remove AMA from the mosque's prayer space. To summarize, the TPDs selfishly sought to control the entire mosque and to tear apart the very fabric of the AMA community to which they were obligated to protect as AMA's fiduciaries.

The damage that the TPDs caused to AMA's community was immeasurable. As a result of the within litigation, AMA was prevented from conducting services in its sacred prayer space every other week. During those weeks when it was not allowed in the sanctuary, daily prayers had to take place in other rooms in the building. Funerals also could not be held in the sanctuary.

Those AMA congregants that were unfortunate to pass in an “off week” had to have their burial ceremony in a makeshift spot or in another location. Marriages also could not take place in the sanctuary during “off weeks”.

After two years, it was clear that AMA and BMILC could not co-exist in the mosque. As a result, the Court ordered the partition sale of the property. While the sale of the Share was open to the general public, only AMA and BMILC were interested in acquiring the property. The sale was completed following a series of competing bids submitted by AMA and BMILC. AMA finally purchased the elusive Share from BMILC for \$1,500,050.55 (“**Purchase Price**”). Had the TPDs not breached their fiduciary obligations to AMA, AMA would have purchased the same Share for only Two Hundred Fifty Thousand Dollars. Therefore, AMA was forced to pay \$1,250,050.55 more than it would have had to pay as a **direct result** of TPDs breach of fiduciary duties. This overpayment represents the damages sought by AMA herein.

While the Court held that the TPDs breached their fiduciary obligations to AMA, it erroneously held that AMA, a not-for-profit entity, was not damaged because the purchase of the Share was funded by a donation. The Court further held that any AMA’s actions to protect the mosque taken after being damaged somehow negated AMA’s damages and absolved the TPDs from liability. These erroneous conclusions by the Trial Court below are under appeal herein.

STATEMENT OF PROCEDURAL HISTORY

This is an appeal of the decision rendered in AMA's action seeking (1) damages from Appellant's directors resulting from their respective breaches of their fiduciary duties to AMA, and (2) contribution from BMILC for one-half of the cost of capital improvements made to the property that had been jointly owned by AMA and BMILC.

BMILC commenced this litigation on January 14, 2020, by filing a Complaint and order to show cause in the Superior Court, Chancery Division seeking joint control of the mosque, for an accounting and for partition. (Da23) AMA filed its Answer and asserted a Counterclaim against BMILC for accounting and for partition. (Da55). In addition, on February 27, 2020, AMA filed a Third-Party Complaint against the TPDs for their breach of fiduciary duty. (Da55).

By Order dated July 13, 2020, the Court ordered the parties to alternate weeks using the prayer sanctuary. That Order was amended on October 4, 2021, to address issues that arose between the parties. (Da108)

On November 16, 2021, the Court ordered the parties to commence the process of petitioning the property located at 606 Birch Street, Boonton, New Jersey ("**Property**") by sale of same. (Da116). By Order entered on March 25, 2022, the Court ordered the appointment of a broker for the sale of the Property.

(Da121). By Order entered May 25, 2022, the Court set forth the procedures for the sale of the Property. (Da131). Based on the bids made by BMILC and AMA, the Court-appointed broker listed the Property for \$1,100,000. This price included both AMA's and BMILC's shares of the Property. While the sale was open to the public, AMA and BMILC were the only parties who sought to buy the mosque Property.

AMA and BMILC submitted a series of bids and counterbids that increased the total proposed purchase price to Two Million Dollars (\$2,000,000.00) or One Million Dollars (\$1,000,000.00) for each of the two half interests. Given the prolonged back and forth bidding, the Chancery Division ordered the parties to simultaneously submit last and final sealed bids. AMA prevailed with a bid of \$1,500,050.55 for BMILC's Share in the mosque Property.

With the partition action complete, the Chancery Division transferred this matter to the Law Division on September 1, 2022, for the adjudication of the remaining causes of action. (Da133). The parties filed trial briefs and trial was scheduled before the Honorable Stephan Hansbury, J.S.C. which commenced on July 24, 2023.

On the day of trial, BMILC withdrew its remaining claims against AMA. The trial proceeded over four days: July 24, 25 and 27, 2023 and August 21,

2023. On August 24, 2023, Judge Hansbury rendered an oral decision and entered an Order holding that despite the TPDs having violated their fiduciary obligations to AMA, AMA was not damaged because a benefactor had paid the purchase price on AMA's behalf. Judge Hansbury further ordered BMILC to pay one-half of the total cost of capital improvements and one-half of the building's expenses from the date BMILC became co-owner until the date of sale to AMA.

Both AMA and BMILC filed motions to reconsider, each of which was heard by Judge Hansbury on October 6, 2023. Judge Hansbury denied AMA's request to reconsider his denial of damages to AMA based on the grounds that the transfer by AMA of its Property to another New Jersey mosque somehow constituted "corporate waste". Judge Hansbury did, however, modify his ruling against BMILC by requiring BMILC to only pay one-half of the building expenses during its ownership. BMILC was no longer required to pay AMA for one-half of the cost of capital improvements.

This appeal was filed on October 27, 2023.

STATEMENT OF THE ISSUES PRESENTED

1. Did the Trial Court err when it held that AMA was not damaged by the TPD's breach of the fiduciary duty of loyalty they owed AMA and which caused AMA to pay \$1,500,050.55 for Property that AMA could have otherwise

purchased for \$250,000?

2. Did the Trial Court err by finding that AMA did not incur any damages by transferring the Property to another Muslim charitable organization after purchasing BMILC's Share?

3. Did the Trial Court err when it refused to hold BMILC responsible for one-half of the cost of capital improvements made by AMA to the Property, even though those capital improvements made to the sanctuary which is at the very heart of this case and a reason why BMILC was able to sell the Share it purchased for \$250,000 to AMA for \$1,500,050.55?

STATEMENT OF FACTS

A. THE PARTIES.

1. AMERICAN MUSLIM ASSOCIATION.

AMA is a New Jersey nonprofit religious corporation established On July 7, 2010 to serve a long-standing Muslim congregation that met for daily and weekly religious services and prayers at the Property. (Da063). AMA's congregation consists of approximately 100 families. (Da063).

Third-Party Defendants Mohammad Islam, Mohammad Rehman, Shafi Ullah, and Ejaz Khan (collectively "TPDs") were all directors of AMA from the time AMA was founded until they were removed for their positions on September 1, 2019 as a result of their breaches of duty to AMA which are at issue herein. (Da194).

2. BOONTON MOSQUE AND ISLAMIC LEARNING CENTER.

BMILC is a New Jersey religious organization founded and managed by TPD Muhammad Islam and TPD Ejaz Khan. (Da. 50). TPD Shafi Ullah has acted as BMILC's agent and taken acts on BMILC's behalf such as signing the irrevocable assignment of claims (Da 48), filing the within action against AMA (Da 40), and filing several certifications in this action on behalf of BMILC as BMILC's "agent".

On May 29, 2019, BMILC was formed by the TPDs using funds contributed by the TPDs, including TPD Ejaz Khan and TPD Muhammad Rehman. Said funds were used to purchase BMILC's Share of the Property. (3T129: 19 - 3T130: 3).

3. THIRD-PARTY DEFENDANTS.

Each TPD was an initial director of AMA and remained on the Board at all relevant times herein. (Da 063). Pursuant to New Jersey law, each TPD owed AMA fiduciary duty of loyalty. (Da 067). Each TPD breached his fiduciary duty to AMA. (5T10: 6-7).

B. THE PROPERTY.

The Property is located at 606 Birch Street in Boonton, New Jersey. In 2010, AMA received a tenant-in-common ownership in the Property as a charitable donation from Dr. Feroz Patka. (Da063). At the time AMA acquired its ownership interest in the Property, the remaining ownership was held by Dr.

Sharif Amanat (the “Share”). (Da063). Because the Share was owned by Dr. Amanat, AMA was unable to obtain a property tax exemption from the Town of Boonton (“Boonton”) and carried the sole burden of paying the annual taxes of approximately \$16,000.

C. THE TIMELINE OF THE BREACH.

In 2018, Dr. Amanat became ill and sought to sell his Share in the Property instead of donating it to AMA. AMA commenced negotiations with Dr. Amanat in August 2018 to purchase his Share. Dr. Amanat made a demand in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for his Share. (1T 25:13-23). In furtherance of its desire to purchase the Share, AMA orders a Title Report in August 2018 which indicates that a lien existed on the Property. (Da145) (1T 26:1-13).

While AMA was addressing the issue with the lien, the TPDs began secret negotiations with Dr. Amanat in November 2018. (2T 184:7-18). For the next nine (9) months, the TPDs act in direct contravention to their fiduciary duties as directors of AMA:

- | | |
|---------------|--|
| November 2018 | TPDs secretly meet with Dr. Amanat. (3T 38:20 to 44:23). |
| May 1, 2019 | TPD Ullah signs an agreement on behalf of the TPDs with Dr. Amanat to purchase the Share for the same amount offered to AMA of \$250,000. (3T 47:17-19). |
| May 29, 2019 | BMILC is formed by the TPDs without AMA’s |

knowledge. (1T 35:20-23).

July 10, 2019 BMILC purchases Dr. Amanat Share for \$250,000.00. (Da209) (3T 25:24 to 26:6).

July 15, 2019 TPD Rehman terminates AMA's Imam without AMA's authorization or knowledge. (2T 110:8-13).

August 2019 TPD Islam finally informs AMA of BMILC and its purchase of the Share. (1T 34:8 to 35:1-16).

September 1, 2019 AMA terminates the four (4) TPDs as Trustees. (Da194).

September 7, 2019 AMA reinstates the Imam. (Da196)

D. PARTITION OF THE PROPERTY.

After BMILC disclosed its purchase of the Share in August 2019, AMA was forced to co-exist with BMILC. By all accounts, the two entities had irreconcilable differences and could not co-exist in the same Property. Within five (5) months, BMILC filed this litigation on January 14, 2020 seeking partition. (Da23). Reference is made to the Statement of Procedural History above for a detailed recitation of these proceedings.

During the course of this litigation, the Court set forth the procedures for the sale of the Property in an Order dated May 25, 2022. (Da131). While the sale was open to the public, AMA and BMILC were the only parties who sought to buy the mosque Property and submitted several competing bids. The Chancery Division then ordered the parties to submit last and final sealed bids.

AMA prevailed with a final bid in the amount of \$1,500,050.55 for BMILC's Share in the mosque Property. (Da202).

E. AMA'S DAMAGES.

The damage that the TPDs caused to AMA's community was immeasurable. As a result of the within litigation, AMA was prevented from conducting services in its sacred prayer space every other week. During those weeks when it was not allowed in the sanctuary, daily prayers had to take place in other rooms in the building. Funerals also could not be held in the sanctuary. Those AMA congregants that were unfortunate to pass in an "off week" would have to have their burial ceremony in a makeshift spot or in another location. Marriages also could not take place in the sanctuary during "off weeks". Because of the TPDs' actions, the situation was untenable.

Notwithstanding the irreparable harm to AMA's community, AMA suffered monetary damages. AMA had the opportunity to purchase the Share from Dr. Amanat for \$250,000, the same amount that BMILC paid for the Share. But for the TPDs breach of fiduciary duty to AMA, AMA would have paid only \$250,000. Instead, AMA was forced to pay \$1,500,050.55 for this same Share as a direct result of the TPDs breach of fiduciary duties to AMA. Accordingly, AMA incurred damages in the amount of One Million Two Hundred Fifty Thousand Fifty Dollars and Fifty-Five Cents (\$1,250,050.55) which is the

premium that AMA was forced to pay for the Share.

Description	Amount
Blind Bid: Amount AMA actually paid via the partition action	\$1,500,055.50
Amount that AMA could have purchased the Share but for the TPD's breach of fiduciary duty	(\$250,000.00)
AMA's Damages	\$1,250,055.50

LEGAL ARGUMENT

STANDARD OF REVIEW

Although AMA respects the Trial Court's factual findings, it disagrees with the Court's legal determination that AMA did not suffer damages caused by the TPDs' breach of their fiduciary duty. On appeal, the Court is asked to make a "de novo" review of the Trial Court's legal determination of the "appropriate measure of damages". See Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

POINT I

THE TRIAL COURT ERRED WHEN IT DETERMINED THAT AMA SUFFERED NO DAMAGES RESULTING FROM TPDS' BREACH OF THEIR FIDUCIARY DUTY (RAISED BELOW 5T9:21-25 OR 5T9:21 TO 5T10:6). 1T 12:22 TO 1T 14:7; 1T 79:7-16; 1T 81:12-23; 1T 83:1 – 1T 84:11; 1T 132:113- 1T 135:9; 1T 145:6- 1T 146:2;

A. AMA HAS SATISFIED ITS REQUIREMENT TO PROVE TPDS HAD A DUTY WHICH THEY BREACHED (RAISED BELOW 5T 11:24-25)

A breach of fiduciary duty is a theory in tort. See In re Estate of Lash, 169

N.J. 20, 27 (2001) The Estate of Lash Court further stated that “[t]he essence of a fiduciary relationship is that one party places trust and confidence in another who is in a dominant or superior position. A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship.” Id.

A “fiduciary is **liable for harm** resulting from a breach of the duties imposed by the existence of such a relationship.” McKelvey v. Pierce, 173 N.J. 26, 57 (2002) (emphasis supplied). “[O]ne standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.” In re Niles Trust, 176 N.J. 282, 295 (2003) (quoting Restatement (Second) of Torts § 874).

To establish a claim for breach of fiduciary duty, the plaintiff must demonstrate that the: (a) defendants owed the plaintiff a duty of care, (b) defendants breached that duty of care, (c) plaintiff was injured by defendants' breach of the duty of care, and (d) the defendants caused the injury to the plaintiff. Namerow v. Pediatricare Assocs., LLC, 461 N.J. Super. 133, 146 (Ch. Div. 2018). Two of these elements of the cause of action were already satisfied by the Trial Court’s finding that the TPDs had an affirmative duty of loyalty to AMA and that they breached said duty. The trial Court further accepted the fact that “AMA outbid BMILC and the purchase price is \$1,500,055.50. That’s the

basis between the \$250,000 paid a few years earlier and this amount, that's the basis of the claim for the plaintiff breach of...fiduciary duty." (5T 9: 19-24).

The remaining two elements of the breach of fiduciary duty cause of action are on appeal herein. These are the Trial Court's refusal to acknowledge AMA was (1) damaged by TPDs' breach and (2) that the TPDs' breach of their fiduciary duty to AMA was the proximate cause of said damage. "Although the plaintiff must make both showings [of causation and damages] by a preponderance of the evidence, plaintiff-friendly principles come into play and through these principles, and the proven breach of duty operates as a solvent to loosen the normally stringent requirements of causation and damages." Metro Storage Int'l LLC v. Harron, 275 A.3d 810, 822 (Del. Ch. 2022).

B. AMA'S EXCESS PAYMENT OF \$1,250,050.55 WAS DUE ENTIRELY TO TPDs BREACH OF THEIR FIDUCIARY DUTY. (RAISED BELOW 4T 27:8 TO 31:7)

A proven breach of fiduciary duty causes the remedial aperture to widen to encompass remedies other than the standard legal solution of compensatory damages. Metro Storage, 275 A.3d at 822. A plaintiff must also prove by a preponderance of the evidence that a sufficient causal linkage exists between the breach of duty and the remedy sought to make the remedy an apt means of addressing the breach. Id., at 822. Here, AMA not only satisfied the plaintiff-friendly standard, it also met the more "stringent requirements" necessary to

show that its damages were proximately caused by TPDs' breach of fiduciary duty.

It is undisputed in this action that the TPDs, while directors of AMA, formed BMILC for the express purpose of purchasing the Share without AMA's knowledge or authorization (itself a breach of their duty of loyalty to AMA). The TPDs further violated their fiduciary obligations to AMA on multiple occasions: by (1) facilitating BMILC's purchase of the Share for \$250,000 instead of pursuing the opportunity on AMA's behalf; (2) failing to transfer the Share to AMA for \$250,000; (3) aiding BMILC's commencement and prosecution of the action underlying this appeal; and, (4) ultimately forcing AMA to expend to pay One Million Two Hundred Fifty Thousand Fifty Dollars and Fifty-Five Cents (\$1,250,050.55) more than it would have had to pay but for the TPDs' actions. This expenditure was necessary to avoid losing either the Share or, as a result of the partition action, the Property to an organization hostile to AMA and its congregation.

Following a month of AMA and BMILC exchanging competitive bids raising the purchase price by ever increasing bids, the Court ordered a closed-bid auction to bring the matter to a conclusion. As the mosque is the very heart of AMA's existence, losing the Property would have caused AMA and its congregation irreparable damage. Thus, AMA was forced to submit a high bid

in order to keep the Property. It could not have done so without the generous donation made by Mr. Chaudhary. AMA ultimately succeeded at the auction and purchased BMILC's interest at a price \$1,250,050.55 higher than AMA would have had to pay if the TPDs had not violated their fiduciary obligations.

C. AMA HAS SATISFIED ITS REQUIREMENT TO PROVE THE TPDs' BREACH WAS THE PROXIMATE CAUSE OF AMA'S DAMAGES (RAISED BELOW 4T 27:8 TO 31:7)

The measure of monetary damages herein is very simple to quantify. Under the direction and control of the TPDs, BMILC purchased the Share in July 2019 for \$250,000. Pursuant to a court-ordered sealed-bid auction, AMA purchased the Share for \$1,500,050.55. AMA's damages were the difference between the two prices.

The TPDs could have redeemed themselves and remedied their breaches by having BMILC transfer its Share to AMA for the same price that it paid for the Share.¹ Instead, the TPDs chose not to transfer the Share and chose to disrupt AMA's religious observances for the next two (2) years.

The Trial Court accepted the premises that "AMA outbid BMILC and the purchase price is \$1,500,055.50. That's the basis between the \$250,000 paid a few years earlier and this amount, that's the basis of the claim for the plaintiff

¹ In its initial Counterclaim, AMA demanded the transfer of the Share for \$250,000 the same price TPDs (through BMILC) paid for it.

breach of...fiduciary duty.” (5T9: 19-24). The Trial Court moreover confirmed “[t]here was no attempt by BMILC to transfer title to AMA which would have resulted in one entity owning the mosque not two.” (5T9: 12-14) The Trial Court further acknowledged that TPDs’ motivations as being “... in the interest of a subsequent mosque in order to obtain more influence and more control over the operations of the mosque.” (5T10: 11-13). As such, the TPDs’ failure to transfer the Share for \$250,000 was the **direct proximate cause** of AMA having to pay the Purchase Price instead of only \$250,000 to purchase the Share.

Courts recognize rescissory damages for an adjudicated breach of the duty of loyalty in cases involving self-dealing or where a fiduciary puts personal interests ahead of the interests of its beneficiary. Where a disloyal fiduciary wrongfully deprives its beneficiary of property, the rescissory damages measure seeks (i) to restore the plaintiff-beneficiary to the position it could have been in had the plaintiff or a faithful fiduciary exercised control over the property in the interim and (ii) to force the defendant to disgorge profits that the defendant may have achieved through the wrongful retention of the plaintiff's property. In re Orchard Enters., Inc. S'holder Litig., 88 A.3d 1, 38 (Del. Ch. 2014). Here, TPDs deprived AMA of the Share, which they purchased for \$250,000 using BMILC. TPDs could have sold or transferred the Share to AMA for what they paid for it, but instead they orchestrated events such that AMA had to spend \$1,500,050.55.

As such, damages in the amount of \$1,250,050.55 shall restore AMA to the position it “could have been in” if AMA or a faithful fiduciary had purchased the Share instead.

D. AMA’S DAMAGES WERE QUANTIFIED WHEN IT PAID THE PURCHASE PRICE AT THE CLOSING. (RAISED BELOW 4T 46:22 TO 47:24).

While AMA suffered immeasurable damages during the two (2) years that AMA and BMILC shared the Property as BMILC disrupted AMA’s peaceful practice of its religious observances, AMA’s monetary damages could not be quantified until AMA purchased the Share at the closing on July 7, 2022. As with most real estate transactions, the purchase of the Property was funded by an outside source on behalf of the buyer. In this transaction, the Purchase Price was donated by Waseem Chaudhary and remitted on behalf of AMA to the closing agent instead of routing it through AMA’s bank account.

The Trial Court initially held that AMA did not suffer damages on the grounds that AMA’s bank statements did not show the deposit of the donation by the congregant. While AMA’s bank statements did not reflect the donation, the Trial Court erroneously overlooked that the Closing Statement reflected this amount being paid **on behalf of** AMA. Furthermore, the Trial Court overlooked under law, a donation may be made **on behalf of** the charitable organization and does not need to be directly deposited into the charitable organization’s bank account. Pursuant to 26 U.S.C. §170(c)(2)(B), a charitable contribution is a

donation or gift to, or for the use of, a qualified organization. See 26 U.S.C. §170(c)(2)(B) (“the term “charitable contribution” means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious...purposes.”

It is undisputed that Mr. Chaudhary directly paid the Purchase Price on behalf of AMA to the closing agent instead of routing it through AMA’s bank account. The donation was made by way of transferring funds to the title company acting as the escrow agent for the closing². The Closing Statement clearly shows that it was AMA, not Mr. Chaudhary, making payment to BMILC. (Da 199). The Internal Revenue Code therefore considers said payment of the Purchase Price as a donation from Mr. Chaudhary to AMA. As such, it was **AMA’s funds**, not Mr. Chaudhary’s funds, that were used to pay the Purchase Price.

E. AMA’S TRANSFER OF THE PROPERTY TO AKBAR MOSQUE DOES NOT VACATE AMA’S DAMAGES. (RAISED BELOW 4T 48:2 TO 49:10)

On reconsideration, the Trial Court finally acknowledged that the funding of the Purchase Price by Mr. Chaudhary was a donation to AMA. However, the Trial Court reaffirmed that AMA was not damaged because AMA had

² Banks routinely transfer funds used to purchase a residential home directly to a title company or attorney trust account rather than the borrower’s account. This failure to route the funds through the borrower’s bank account does not mean the bank has purchased the home instead of the borrower.

transferred the Property to Akbar.

First and foremost, the Property transfer occurred **after** AMA suffered the damages inflicted by the TPDs. Moreover, any actions taken by AMA after incurring those damages should not mitigate, much less extinguish, those damages. The TPDs should not be absolved of liability simply because AMA chose to take certain actions to protect itself from any further interference by the TPDs, BMILC or anyone else.

AMA has never been accused of corporate waste or breach of fiduciary duty by its congregants or directors. In fact, the congregation has been most pleased with AMA's success in securing the Share.

Moreover, the propriety of AMA's actions taken by its directors was **never** an issue before the Trial Court. In its holding that the subsequent transfer to Akbar was somehow improper, the Trial Court in essence shifted the burden to AMA to defend its actions when no individual or entity with the requisite standing to assert a claim of corporate waste has ever done so. In fact, the record at trial does not factually support any claim that the transfer constituted corporate waste.

Claims of corporate waste are always to be derivative claims. Stranseburgh v. Straubmuller, 146 N.J. 527, 551 (1996). As such, any action to redress corporate waste referenced by the Trial Court in this action would have

to be commenced **on behalf of, and for the benefit of, AMA**. Accordingly, a claim of alleged corporate waste such as that raised by the Trial Court should not be made to the detriment of AMA as occurred herein.

By refusing to award any damages to AMA, much less those undisputedly suffered, the Trial Court ignored the law on corporate waste and damages. By conflating AMA's purchase of the Share and subsequent transfer of the Property to Akbar, the Trial Court erroneously held that AMA did not suffer damages when in fact AMA suffered significant damages at the moment the Closing of title to BMILC's Share occurred. Any actions taken by AMA **after** that Closing would be subject to the law on corporate waste which can be brought by the directors or congregants on AMA's behalf.

Notably, no such action has been filed against AMA's directors to date. Moreover, such an action would fail because AMA's transfer of the Property to Akbar was to protect the Property and the mosque from any further damage by the TPDs, BMILC or any other party. Having been through the almost three years of angst and litigation caused by BMILC, AMA did not want to incur any further disruption or interference with its existential purpose of providing for its congregation.

If the Trial Court did not understand why the AMA board undertook certain actions, then it should have held a plenary hearing to determine the facts

prior to adjudicating on an incomplete record. Instead, the Trial Court inexplicably held that AMA's directors either lacked sufficient agency to know what was best for AMA and its congregation, or somehow colluded with Mr. Chaudhary to transfer the Property to Akbar Mosque. As no AMA director or congregant has ever raised such a concern in the two years since AMA transferred title for the Property to Akbar Mosque, those with legal standing to challenge any personal interest in the transfer clearly do not believe the transfer was adverse to AMA's interests.

Finally, the timing of AMA's transfer of the Property has no relation to the damages AMA suffered from TPDs' breach. AMA's damages were quantified the moment that AMA paid the Purchase Price to BMILC. Anything AMA did with the Property after that moment was to avoid future damages as opposed to somehow mitigate those damages that had been inflicted by the TPDs' actions. Whether the subsequent transfer occurred an hour, a week, a month, a year, or five years from the date of Closing makes no difference. Would there be no damages if AMA had merged with Akbar Mosque? Would AMA have suffered no damages if it had sold the Property for more than the Purchase Price? The answer for each is "no". To hold otherwise would only reward the TDPs and absolve them for their egregious breach of fiduciary duty. Such a result should not be countenanced and the Court's decision in this regard

should be reversed.

F. THE TRIAL COURT ERRONEOUSLY ASCRIBED QUESTIONABLE MOTIVATIONS TO MR. CHAUDHARY'S DONATION. (RAISED BELOW 5T 10:4 TO 11:10)

The Trial Court was troubled by Mr. Chaudhary's lawful and proper donation of the Purchase Price to AMA and speculated that his donation was a *de facto* purchase of the Property using AMA as a convenient straw-man purchaser. Contrary to such baseless speculation, had Mr. Chaudhary desired the Property for himself or Akbar Mosque, he could have easily submitted his own offer for the Property when it had been listed for sale by Order of the Chancery Court. (Da 131). After all, the Property was offered for sale to the public. Mr. Chaudhary did not need an intermediary to purchase the Property. In fact, Mr. Chaudhary could have participated in the closed-bid process independent of AMA (which could not afford to participate in the auction without Mr. Chaudhary's generous support) and AMA would have had no recourse against him.

The Trial Court also repeatedly conflated Mr. Chaudhary and Akbar Mosque as alter-egos, as if Akbar Mosque had no separate legal existence from him which it does. (5T12: 3-12). Furthermore, the record clearly indicates that Mr. Chaudhary had assisted AMA in its efforts to purchase the Share as early as August 2018 from Dr. Amanat. This was long before the TPDs began their

surreptitious efforts to purchase the Share or to form BMILC. As Mr. Chaudhary testified, his efforts were solely for the benefit of AMA and not for any personal gain.

What most vexed the Trial Court was why Mr. Chaudhary would donate such a large amount to a religious institution without any quid-pro-quo, stating “[h]e testified that he would put up any amount of money which was necessary to obtain the mosque for the AMA. This in itself raises more questions than I am satisfied were answered.” (5T11: 4-7). While asserting there was no factual basis to understand Mr. Chaudhary’s motivation in donating such a large sum to AMA as he had done with many other causes as set forth in the record, the Trial Court decided not to award any damages to AMA.

What is troubling is how the Trial Court reached this conclusion despite acknowledging the TPDs’ bad-faith actions, stating “[t]here was no attempt by BMILC to transfer title to AMA which would have resulted in one entity owning the mosque not two,” (5T9: 12-14), and “[t]hey acted in the interest of a subsequent mosque in order to obtain more influence and more control over the operations of the mosque.” (5T10: 11-13). Plainly put, the TPDs used BMILC to purchase the Share so they could extort “more influence and more control” away from AMA’s other directors. Despite being of the same faith and hitherto in the same congregation as AMA’s other directors, TPDs wanted to force AMA

and its congregation to their way of practicing the faith.

Although BMILC is also a Muslim mosque, the TPDs used the Share to attack AMA's ability to provide religious services to AMA's congregation as the action underlying this appeal was commenced by BMILC filing an order to show cause to exclude AMA's congregation from unfettered use of its sacred prayer space. (Da 033). Compounding insult to injury, BMILC did so by individuals who continued to assert they were directors of both BMILC and AMA. (Da 050). It was therefore reasonable for AMA to believe itself under attack by BMILC and its former directors and seek assistance such as that provided by Mr. Chaudhary. It is also eminently reasonable to believe Mr. Chaudhary, who has undertaken many charitable efforts to support the Muslim community, would step forward and do what was needed to assist AMA in protecting the mosque in which he prayed.

Most Christian cathedrals, Jewish synagogues, Hindu temples, and Muslim Mosques were built using funds from generous benefactors who desired to practice their religion by building such edifices for the use of their fellow Christians, Jews, Hindus, or Muslims. If a donor felt one of their houses of worship was under attack, they too would naturally be willing to "put up any amount of money" necessary to remove the threat and none would fault them for doing otherwise. That Mr. Chaudhary donated such a large sum to AMA is a

testament to his regard for the organization, an acknowledgement of the danger it was in, and that such a donation was necessary to assist AMA and its congregation.

Contrary to the Trial Court's inexplicable concern, Mr. Chaudhary received no personal benefit for his donation other than the satisfaction of doing what he felt was best for his fellow Muslims. As a donation, that money was the Property of AMA. If AMA were successful in recovering any damages from TPDs or BMILC, Mr. Chaudhary also testified that he has no expectation of the money being returned nor does he want the money returned. (2T 14: 1-7). The donation was a gift to AMA.

To date, AMA and its congregation manage their own affairs at the Property, hold daily and weekly prayers, congregate for weddings and funerals, and function exactly as they did prior to TPDs' actions with one notable exception: Akbar Mosque immediately filed for, and received, a property tax exemption from Boonton Township, ensuring that AMA's annual budget was instantly \$16,000 richer.

POINT II

THE TRIAL COURT ERRED WHEN IT HELD THAT BMILC WAS NOT RESPONSIBLE FOR ONE HALF OF THE CAPITAL IMPROVEMENTS MADE TO THE PROPERTY. (RAISED BELOW 6T 55:7-12 AND 4T 26:12 TO 27:1 AND 4T 64:20 TO 65:8)

This case was commenced by BMILC seeking an accounting from AMA through an Assignment of Claims from Sharif Amanat. (Da 048). That Assignment transferred Amanat’s claims for “rents, profits, benefits, damages, to the subject premises from November 21, 2010 to July 15, 2019 in favor of the Assignee herein, Boonton Mosque and Islamic Learning Center, Inc.” Id. (emphasis added.) Pursuant to N.J.S.A. 2A:25-1, the “person sued in any such action shall be allowed not only all set-offs, discounts and defenses against the assignee, but also all set-offs, discounts and defenses he had against the assignor or his representatives before notice of such assignment was given to him. See N.J.S.A. 2A:25-1.

Here, Dr. Amanat was the assignor, BMILC the assignee, and AMA the “person sued,” as BMILC sought an accounting from AMA in place of Amanat. (Da 137). AMA counterclaimed against BMILC’s suit for an accounting by demanding contribution for the necessary repairs and capital improvements made by AMA that preserved the common property, a claim it would have otherwise made solely against Amanat had he not assigned his rights to BMILC.

(Da 048). As Amanat transferred his share of 606 Birch Street to BMILC surreptitiously, AMA was precluded from demanding contribution from Amanat at the time of transfer.

As the Court set forth in NCP Litig. Trust v. KPMG LLP, 187 N.J. 353, 366 (2004) BMILC had imputed knowledge from the TPDs as to the amounts AMA was owed by Dr. Amanat:

The imputation doctrine is derived from common law rules of agency relating to the legal relationship among principals, agents, and third parties. Pursuant to those common law rules, a principal is deemed to know facts that are known to its agent. See Restatement (Third) of Agency § 5.03, which states "...notice of a fact that an agent knows or has reason to know is imputed to the principal if knowledge of that fact is material to the agent's duties to the principal." Courts have used interchangeable terms to express this legal rule with some describing the principal as "imputed" with the agent's knowledge, Hercules Powder Co. v. Nieratko, 113 N.J.L. 195 (Ch.Ct.1934), and others stating that the principal has "constructive knowledge," Hollingsworth v. Lederer, 125 N.J. Eq. 193, 206 (E. & A.1939) (per curiam), or "constructive notice," Matter of Integrity Ins. Co., 240 N.J. Super. 480 at 506, of the agent's knowledge.

As argued *supra*, BMILC was formed, funded, and managed by TPDs, each of whom was a director of AMA in 2016 when the congregation fundraised and spent more than \$120,000.00 to make necessary capital improvements to the Property. (Da 198). TPDs moreover acknowledged their donations to and

involvement in said improvements. (2T94: 16-25). As such, TPDs' knowledge of these capital improvements without any contribution from Dr. Amanat is imputable to BMILC because they are its founders and directors. As such, BMILC cannot be a good-faith purchaser for value with no knowledge of the capital improvements made to the Property by AMA's congregation.

A co-tenant who has paid operating and maintenance expenses of the property is entitled to an accounting for a pro-rata share from the other co-tenants, regardless of who is in possession. Esteves v. Esteves, 341 N.J. Super. 197, 201-02, 775 A.2d 163 (App. Div. 2001). Operating and maintenance expenses include, but are not limited to, charges such as taxes, mortgage, interest, and necessary repairs essential to the maintenance of the capital value of the property. Baird v. Moore, 50 N.J. Super. 156, 169 (App. Div. 1958) (emphasis added). "[O]n principle, the mere fact of possession by the cotenant making advances for the benefit of the common estate should not preclude reimbursement by contribution from the cotenants sharing in the benefits by the preservation of the common property." Id. at 165-66.

In the instant case, AMA was not "in possession" of 606 Birch Street because it continued the operations of 606 Birch Street in the same manner as Dr. Amanat had maintained the Property prior to AMA's incorporation. The trial record establishes that 606 Birch has been used as a mosque since at least

1988, when Amanat and Bajwa became co-owners of the Property. (Da 177). As such, neither Amanat nor Bajwa was “in possession” of the Property because it was used as a religious center from the beginning. Alternatively, both Amanat and Bajwa were “in possession” of 606 Birch Street because both used the Property for its intended purpose: as a mosque for the Boonton Muslim community. This status quo was maintained when AMA replaced Bajwa as co-owner of 606 Birch Street, with both co-owners having full and uninterrupted use of the Property as a mosque for the Boonton Muslim community.

CONCLUSION

The trial Court’s August 24, 2023 Opinion and Order following the four-day bench trial, its October 6, 2023 denial of Appellant’s motion for reconsideration, and its October 6, 2023 grant of Respondent BMILC’s motion for reconsideration should be reversed. Alternatively, these Orders should be remanded so the record can be expanded, and the Appellant given an opportunity to provide evidence of AMA’s reasons to transfer its Property.

Respectfully submitted,
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Dated: May 7, 2024.

<p>BOONTON MOSQUE & ISLAMIC LEARNING CENTER INC. Plaintiff,</p> <p>v.</p> <p>AMERICAN MUSLIM ASSOCIATION INC.; JOHN DOES 1-10 (Fictitious Individuals); and ABC CORPS 1-10 (Fictitious Entities) Defendants,</p> <p>AMERICAN MUSLIM ASSOCIATION INC. Third Party Plaintiff,</p> <p>v.</p> <p>MOHAMMAD ISLAM, MOHAMMAD REHMAN, SHAFI ULLAH, EJAZ KHAN AND SHARIF AMANAT, Third Party Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NO. A-000585-23</p> <p>CIVIL ACTION</p> <p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: MORRIS COUNTY DOCKET NO.: MRS-L-1567-22 TRANSFERRED DOCKET NO.: MRS-C-5-20</p> <p>SAT BELOW:</p> <p>HON. STEPHAN C. HANSBURY, J.S.C. Ret. t/a on Recall</p>
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PLAINTIFF AND THIRD-PARTY DEFENDANTS' / RESPONDENTS' BRIEF IN OPPOSITION TO DEFENDANT / APPELLANT'S APPEAL

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PRELIMINARY STATEMENT

“Sunlight is said to be the best of disinfectants, electric light the most efficient policeman.” Justice Louis D. Brandeis. When viewed under any light, the facts in this case establish that American Muslim Association’s (“AMA”) appeal appears to be an apparent effort to rewrite history and create an alternative set of facts upon which to argue. AMA creates an imaginative tale with no factual basis in the record and asserts irrelevant legal argument in an effort to support its motion for reconsideration for damages despite its own admission that AMA did not pay any amount, whatsoever, to acquire BMILC’s share of the property. AMA’s brief is replete with misrepresentations of the trial court’s stated reasons and holdings yet absent any citation to the record where these can be found.

By conflating fantasy with facts, AMA’s brief weaves a false narrative designed to persuade this court that the trial court erred in its finding that AMA suffered no damages by alleging that the trial court reached that decision through “erroneous conclusions” and holdings, none of which appears in the record below. The facts in this case refute AMA’s unsupported fabrications asserted in its brief and instead, fully support the trial court’s finding that AMA failed to meet its burden to establish damages by a preponderance of the evidence.

AMA’s appeal fails to present any basis in fact or law for this court’s review or consideration and AMA’s legal arguments mistakenly rely upon legally

insignificant Delaware shareholder derivative case law that contain facts so distinguishable, that even if the cases were relevant, and they are not relevant, the cases are inapposite.

AMS's "Statement of the Issues Presented" is nothing more than inaccurate conclusory statements that misrepresent the trial court's findings and holdings and are unsupported in the record below. There is only one issue AMA should have presented in this appeal: whether the trial court's decision is wholly unsupported by the facts in the record that a denial of justice occurred.

AMA's statement of facts in support of its alleged damages, the essence of its appeal, fails to include any citation to the record, as required, and should be rejected.

Only the October 6, 2023 Orders for reconsideration are properly before this court based on AMA's notice of appeal, which only identifies the October 6, 2023 Orders as being appealed. AMA's brief, however, asserts, for the first time, that the Orders on appeal include the August 24, 2023 Order of Judgment, which is not properly before this court. Third-party Defendants and BMILC, however, include opposition to AMA's arguments to appeal the Order of Judgment, as well, should this court consider same.

PROCEDURAL HISTORY

On January 14, 2020, Plaintiff, Boonton Mosque & Islamic Learning Center, Inc. (hereinafter “BMILC”) filed an order to show cause with verified complaint to compel American Muslim Associates Inc. (hereinafter “AMA”) to abide by the prayer agreement between the parties to share the main prayer space equally, for the imposition of a disinterested director to oversee the scheduling of prayer services, for partition of the property, and for an accounting from AMA of rents, profits and benefits of the jointly owned property. (Da023).¹ On July 7, 2020, The Honorable Maritza Berdote Byrne, P.J.Ch., entered an Order granting a preliminary injunction directing the parties to rotate use of the Prayer Space on a weekly basis. (Pa005). Despite vigorous motion practice, the parties were unable to reach common ground and on March 25, 2022, Judge Berdote Byrne entered an Order naming a court-appointed realtor for the marketing and sale of the property. (Da121). On May 25, 2022, the Honorable Frank J. DeAngelis, J.S.C. entered an Order directing the parties to execute the listing agreement and place the property on the market for sale. (Da131). On September 1, 2022, Judge DeAngelis entered an Order transferring the remaining disputes for carrying costs of the property to the Law Division. (Da133).

¹ Pursuant to R. 2:6-8 the documents in AMA’s Appendix are referred to as Da001 – Da322, the documents in BMILC’s Appendix are referred to as Pa001– Pa019.

On March 3, 2023, Third-party Defendants filed a motion for summary judgment to dismiss Count I of AMA's Third-party Complaint against the third-party defendants for breach of fiduciary duty. (Pa007) On March 21, 2023, AMA filed a cross motion for summary judgment on Count I. (Pa010). On May 5, 2023 the Honorable Stephan C. Hansbury, J.S.C., denied both motions. (Pa012; Pa014).

A bench trial was held before Judge Hansbury on July 24, 25, 27, and August 21, 2023. On August 24, 2023, Judge Hansbury entered an Order of Judgment dismissing all claims against third-party defendants and entering judgment in favor of AMA against BMILC in the amounts of \$33,925.61 for its share of operating expenses and \$60,398.00 for half of the building improvements made on the property by AMA in 2016. (Da007). On September 13, 2023, AMA filed a motion to reconsider the August 24, 2023 Order of Judgment dismissing all claims against the third-party defendants. (Pa016). On September 28, 2023, BMILC filed opposition and a cross motion for reconsideration of the Judgment entered against BMILC for \$60,398.00 in renovation expenses. (Pa018). On October 6, 2023, after oral argument, Judge Hansbury entered an Order denying AMA's motion for reconsideration and an Order granting BMILC's motion, vacating the \$60,398.00 judgment for renovation expenses. (6T;² Da003; Da001). This appeal followed.

²Transcripts are cited as follows: 1T – July 24, 2023 Trial; 2T – July 25, 2023 Trial; 3T – July 27, 2023 Trial; 4T August 21, 2023 Trial; 5T – August 24, 2023 Trial; 6T October 6, 2023 Motion Hearing.

COUNTERSTATEMENT OF FACTS

In 2019, BMILC purchased the real property owned by Sharif Amanat. (Da042). BMILC became an equal co-tenant in common with AMA. (Da045). When AMA refused to allow BMILC equal use of the property, specifically the prayer space, BMILC sought the court's intervention by filing of an Order to Show Cause with verified complaint on January 14, 2020. (Da023). The court granted BMILC's request for a preliminary injunction and entered an Order requiring the parties to rotate the use of the prayer space on a weekly schedule. (Pa005; Da108).

On June 8, 2021, the Honorable Maritza Berdote Byrne, P.J.Ch. entered an Order denying AMA's motion for summary judgment against BMILC and Third-party Defendants alleging they had usurped AMA's corporate opportunity by purchasing Amanat's share of the property. (Da098).

After the two congregations were unable to reach common ground, on May 25, 2022, the court ordered a sale of the property with instructions to be followed by AMA and BMILC for the bid submission process to purchase each other's share and that "the highest offer will be the buyer." (Da131). AMA voluntarily submitted several bids to purchase BMILC's share of the property and increased each bid. (4T45-5). AMA's final bid of \$1,500,055.50 was the highest bid. (Da213). The court's rotating schedule Order remained in effect until June 28, 2022,

when BMILC's share of the property was purchased by and transferred to AMA. (Da213).

AMA did not pay any amount of money for BMILC's share of the property. (3T165:2; 3T166-10; 3T166-19). The transfer of BMILC's share to AMA was funded by a personal donation from Waseem Chaudhary, a member and President of Akbar mosque. (2T16-10; 2T34-22; 2T40-2). Mr. Chaudhary's donation was specifically donated to fund AMA's purchase of BMILC's share of the property and Mr. Chaudhary agreed to donate whatever amount AMA needed to secure the highest bid and own the entire property. (2T62-4; 4T47-19). Mr. Chaudhary's donation was never deposited into AMA's bank account and his donation was never in the possession of AMA. (Da317 – Da320; 3T166-22). On June 28, 2022, after BMILC's share of the property was transferred to AMA, AMA transferred the entire property to Akbar mosque for \$10.00. (Da217).

The trial court found that the third-party defendants, Mohammad Islam, Mohammad Rehman, Shafi Ullah, and Ejaz Khan, breached their fiduciary duty to AMA. (5T10-6). The trial court determined AMA had failed to establish damages under a preponderance of the evidence standard. (5T11-11). In holding that AMA failed to establish damages, the trial court relied upon the absence of any evidence to show that the donation by Mr. Chaudhry was ever deposited into AMA's bank account or that it was ever expended from AMA's bank account. (5T11-21). Based

upon the absence of any bank records to show that the donation was ever in AMA's bank account, the trial court did not accept that Mr. Chaudhry's donation was ever transferred directly to AMA. (5T12-3).

On August 24, 2023, the trial court did not enter judgment in favor of AMA on its claim for breach of fiduciary duty because AMA failed to meet its burden to establish any damages and entered judgment in favor of Third-party Defendants, dismissing all claims against them. (5T12-20; Da007). The trial court entered a judgment of \$33,925.61 in AMA's favor for BMILC's share of building expenses. (5T13-4; Da007). The trial court entered a judgment of \$60,398.00 in favor of AMA for half the cost of renovations performed in 2016 against BMILC. (5T8-1; Da007; Da198).

On October 6, 2023, the trial court denied AMA's motion for reconsideration on the basis that AMA failed to establish damages by the preponderance of the evidence. (Da003; 6T30-6). On October 6, 2023, the trial court granted BMILC's cross motion for reconsideration and vacated the judgment of \$60,398.00 for half the cost of building renovations, based on the court's error that the renovations which actually occurred in 2016, before BMILC was formed, were performed during the period between 2019 – 2022, when BMILC was a co-owner of the property. (Da001; 6T55-7).

LEGAL ARGUMENT

I. STANDARD OF REVIEW

A. The Standard Of Review For A Motion For Reconsideration Is Abuse of Discretion [Issue Not Raised Below]

The Appellate Division reviews a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under Rule 4:49-2 for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022); Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015).

“The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information.” Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

There is no evidence to show the trial court abused its discretion by denying AMA’s motion for reconsideration, and the decision should be affirmed.

B. A Deferential Standard Of Review Applies To An Order of Judgment In A Non-jury Trial [Issue Not Raised Below]

“Our courts have held that the findings on which [a non-jury trial judgment] is based should not be disturbed unless ‘* * * they are so wholly insupportable as to

result in a denial of justice,’ and that the appellate court should exercise its original fact-finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter.” Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 483-84 (1974) (citation omitted).

“Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence. It has otherwise been stated that ‘our appellate function is a limited one: we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.” Id. at 484.

In an appeal from a non-jury trial, appellate courts “give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions.” Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). “Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.’” C.R. v. M.T., 248 N.J. 428, 440 (2021) (internal citation omitted).

Here, the trial court’s findings and legal conclusions should not be disturbed because they are wholly supported by the facts in the record.

C. AMA’S Standard Of Review Is Improper And Inapplicable [Issue Raised in Appellate Brief Db12]

The first sentence of AMA’s legal argument should end its appeal before it begins. AMA’s statement that it “respects the Trial Court’s factual findings” and “disagrees with the Court’s legal determination that AMA did not suffer damages caused by the TPD’s breach” (Db12) is inconsistent with the appropriate standard of review for an Order of Judgment articulated by our Supreme Court that “we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice” and equally inconsistent with the abuse of discretion standard of review for a motion for reconsideration set forth in R. 4:49-2.” Rova Farms, 65 N.J. at 484.

While it is well settled that in any New Jersey case, a “trial court’s interpretation of the law and the consequences that flow from established facts are not entitled to any special deference,” AMA has failed to identify or cite to any alleged misinterpretation of law by the trial court to which this court should apply the de novo review requested. State v. Pomianik, 221 N.J. 66, 80 (2015) (*quoting Manalapan Realty v. Manalapan Tp. Comm.*, 140 N.J. 366, 378 (1995)). AMA asks this court “to make a ‘de novo’ review of the Trial Court’s legal determination of the ‘appropriate measure of damages’” yet fails to specifically identify or cite to any such legal error made by the trial court deserving of this court’s de novo review.

Rather, AMA misrepresents the trial court's determinations and holdings, absent any citation to the record below.

For example, despite the following assertions in AMA's brief, the trial court did not hold or find:

- that the third-party defendants “‘*egregiously*’ breached their fiduciary duties to AMA” (Db1) (emphasis added);
- “that AMA . . . was not damaged because the purchase of the Share was funded by a donation” (Db3);
- that “AMA’s actions [to transfer the property to Akbar Mosque]...somehow negated AMA’s damages and absolved the TPDs from liability” (Db3);
- “that Judge Hansbury denied AMA’s request to reconsider his denial of damages to AMA based on the grounds that the transfer by AMA of its Property to another New Jersey mosque somehow constituted ‘corporate waste’”³ (Db6);
- that “the TPDs breach [] they owed AMA “cause[d] AMA to pay \$1,500,050.55 for Property that AMA could have otherwise purchased for \$250,000” (Db6-7);
- “that AMA did not incur any damages by transferring the Property to another Muslim charitable organization after purchasing BMILC’s Share” (Db7);
- that the “capital improvements made to the sanctuary . . . [was] a reason why BMILC was able to sell the Share it purchased for \$250,000 to AMA for \$1,500,050.55” (Db7);

³ While at the same time alleging that “the trial court ignored the law on corporate waste and damages.” (Db21)

- or “that AMA’s directors either lacked sufficient agency to know what was best for AMA and its congregation, or somehow colluded with Mr. Chaudhary to transfer the Property to Akbar Mosque.” (Db22).

Accordingly, AMA’s request for this court’s de novo review of the above fantastic and untrue purported determinations by the trial court should be rejected outright.

II. THE AUGUST 24, 2023 ORDER OF JUDGMENT IS NOT PROPERLY BEFORE THIS COURT AND THE COURT SHOULD DECLINE TO CONSIDER AMA’S ARGUMENTS [ISSUE NOT RAISED BELOW]

In civil actions, Rule 2:5-1(f)(2)(ii) requires an appellant to designate, in the notice of appeal, the judgment, decision, action or rule appealed from. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1 on R. 2:5-1 (2022). Generally, “earlier orders . . . not included in [appellants'] notice of appeal . . . are not within the scope of [the] appeal.” 30 River Ct. E. Urb. Renewal Co. v. Capogrosso, 383 N.J. Super. 470, 473-74 (App. Div. 2006). “The appellant should explicitly designate all judgments, orders[,] and issues on appeal in order to assure preservation of their rights on appeal.” Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 461 n.1 (App. Div. 2002) (*citing* R. 2:5-1(f)).

“Indeed, the commentary to Rule 2:5-1 provides that ‘if the notice designates only the order entered on a motion for reconsideration, it is only that proceeding and

not the order that generated the reconsideration motion that may be reviewed.” Pressler & Verniero, Current N.J. Court Rules, cmt. 6.1 on R. 2:5-1(e)(1) (2020) (collecting cases). Kornbleuth v. Westover, 241 N.J. 289, 299 (2020). Notwithstanding the Court’s strict citation to R. 2:5-1, the Court disregarded it and chose instead, to follow the Appellate Division’s willingness to ‘generously’ address the issues not designated in the notice of appeal, for no other reason than because plaintiffs “provided the complete transcripts.” Ibid.

Unlike the Kornbleuth Court, this court has no *generous* decision below to follow that addressed AMA’s complete disregard for the Rules of Court. See Ibid. Here, AMA provided the transcripts *only after* it had already filed its brief and *only after* this court directed it to do so in its April 23, 2024 deficiency notice.

“No attorney should assume that despite his failure to comply with the rules, the Court will allow the case to proceed.” Zaccardi v. Becker, 88 N.J. 245, 255 (1982). “[N]o court can simply consider the situation that a party has [been] put into and then ignore the case law and the court rules and everything else. Courts are called upon to make difficult decisions like this every day, and a trial court sitting at law is not a court in equity.” Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 231 (App. Div. 2020).

This court should not ignore AMA’s failure to comply with the Court Rules and allow AMA’s appeal of the August 24, 2023 Order of Judgment to proceed just

because AMA provided the trial transcripts. Zaccardi, 88 N.J. at 255. AMA only provided them as an afterthought because the court directed it to do so and then only included citations to them in its revised brief. AMA's complete disregard for the Rules of Court should not be rewarded by consideration of AMA's arguments related to the trial court's Order of Judgment. See Ibid. BMILC and Third-party defendants include legal arguments in opposition to an appeal of the Order of Judgment, should this court determine to consider same as part of AMA's appeal.

III. DISMISSAL OF AMA'S CLAIMS AGAINST THE THIRD-PARTY DEFENDANTS SHOULD BE AFFIRMED BECAUSE AMA FAILED TO ESTABLISH DAMAGES [Issue Raised Below 5T12-20; 6T30-3]

A. AMA'S Failure Is Fatal To Its Claim [Issue Raised Below 5T12-20; 6T30-3]

It is well settled New Jersey law that to establish a prima facie case of negligence a plaintiff must prove, "(1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." E.S. for G.S. v. Brunswick Inv. Ltd. P'ship, 469 N.J. Super. 279, 298 (App. Div. 2021). "Actual damages . . . are real and substantial as opposed to speculative." Cortez v. Gindhart, 435 N.J. Super. 589, 603 (App. Div. 2014). It is well-settled that "[t]he law abhors damages based on mere speculation." Caldwell v. Haynes, 136 N.J. 422, 442 (1994).

AMA's failure to meet its burden to establish the essential element of damages at trial remains a fatal and incurable flaw in its negligence claim against Third-party

defendants. Based on the facts presented at trial, the trial court properly decided that judgment could not be entered in favor of AMA for its claim against the third-party defendants for breach of fiduciary duty and the decision should be affirmed. (5T12:18). Moreover, AMA's appeal fails to present any statement of fact in the record below to show that AMA suffered any actual damages for this court to consider, as required under R. 2:6-2(5). (Db011-012, E). Instead, AMA's brief asserts *imaginary* damages, based on mere speculation, which are legally insufficient. (Db011-012, E); see Caldwell, 136 N.J. at 442.

The true facts, however, are simple, straightforward, and fully support the trial court's judgment to dismiss AMA's claims because AMA failed to establish damages: AMA and Sharif Amanat never entered into an agreement for AMA to purchase Amanat's portion of the property. (2T29-23 – 2T30-1). Sharif Amanat did not choose to sell his property to AMA; he sold it to BMILC. (Da210). AMA wanted to purchase BMILC's share of the property and increased each bid it submitted. (3T166-2; 4T45-5). Waseem Chaudhary agreed to donate whatever amount AMA needed to purchase BMILC's share. (2T62-13). Waseem Chaudhary's donation was for the sole purpose of funding AMA's purchase of BMILC's share of the property, whatever that purchase price was. (2T62-13; 3T166-11; 3T170-11; 4T47-19). AMA's purchase of BMILC's share was funded completely by a personal donation from Waseem Chaudhary. (2T16-10; 2T34-22; 2T40-2). AMA paid nothing for

BMILC's share of the property. (3T165-4; Da317 – Da320). Waseem Chaudhary did not give the donation to AMA. (3T166-22). The money was never in AMA's possession. (Db18; Da317 – Da320).

The alternative 'facts' created in AMA's brief, however, are confusing, convoluted, and unsupported by the record below. AMA's \$1.5M bid on BMILC's share of the property does not establish damages, even though it is \$1.25M more than what BMILC paid for the property. (Db13-14). The trial court's acknowledgment of the \$1.25M difference between those amounts and recognition that the difference is the basis for AMA's claim, does not establish damages. (Db13-14). The \$1.25M difference between those amounts is not an "excess payment" of \$1.25M and does not establish damages. (Db14). AMA's claim that Third-party Defendants "ultimately forc[ed] AMA to expend to pay [] \$1,250,050.55 more than it would have had to pay but for the TPD's actions" is completely false and does not establish damages. (Db15). By AMA's own admission, it voluntarily bid to purchase BMILC's share of the property (3T166-2; 4T45-5) and did not pay any money for the property. (3T165:2; 3T166-10; 3T166-19).

In addition to the absence of any factual basis in support of its appeal, AMA's brief lacks any legal basis under New Jersey law in support of its appeal. Instead, AMA cites only to Delaware shareholder derivative case law and the section of the Internal Revenue Code that defines charitable contributions, which are irrelevant to

this court's review of the trial court's determination that AMA failed to establish damages.

AMA's mistaken reliance on Delaware case law in support of its argument that the trial court should have applied something called "plaintiff-friendly principles," not found in any New Jersey case law, to find that AMA is entitled to "rescissory damages," notwithstanding AMA's failure to establish any damages by a preponderance of the evidence, is illogical and contrary to New Jersey case law. See Caldwell v. Haynes, 136 N.J. at 442; E.S. for G.S., 469 N.J. Super. at 298. Unlike Delaware *regulatory* law, which is often cited outside of the state, Delaware *case* law has no binding relevance in New Jersey and AMA's arguments should be rejected. Moreover, the facts in the Delaware cases cited in AMA's brief are so distinguishable from the facts here that even if those decisions *were* relevant to this case, and they are not, the decisions are inapplicable. See, e.g., Metro Storage Int'l LLC v. Harron, 275 A.3d 810, 822 (Del. Ch. 2022) (where plaintiff companies filed suit against defendant President alleging violations of the Stored Communications Act, 18 U.S.C. § 2701, and an international operating agreement, for stealing employer's confidential documents and providing them to a competitor for whom defendant was secretly providing similar consulting services for personal financial gain.); In re Orchard Enters., Inc. S'holder Litig., 88 A.3d 1, 38 (Del. Ch. 2014) (a

shareholder derivative suit alleging that defendant directors breached their duties by disclosing a liquidation value methodology at the time of merger.)

AMA's appeal, like its case, fails to prove the essential element of damages and fails to establish a prima facie case against third-party defendants. Accordingly, under the laws of New Jersey, the trial court's decision was proper and should be affirmed.

IV. THE TRIAL COURT'S DENIAL OF AMA'S MOTION FOR RECONSIDERATION SHOULD BE AFFIRMED BECAUSE AMA FAILED TO MEET ITS BURDEN UNDER R. 4:49-2 [Issue Raised Below 6T24-13; 6T30-6]

A. AMA Failed To Show That The Trial Court's Decision Was Palpably Incorrect or Irrational [Issue Raised Below 6T24-13]

"Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (internal citation omitted); see also Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021).

This case is not one of those cases and was correctly decided. Here, AMA's motion failed to meet its burden under R. 4:49-2. AMA failed to state a controlling decision the trial court overlooked or as to which it has erred, and further failed to present any evidence that the judge failed to appreciate or to consider. Ibid. Neither

AMA's motion nor its appeal presents any new evidence for the court to consider that would establish damages. The trial court's denial of AMA's motion for reconsideration was well reasoned, supported by the facts in the record, and should be affirmed. (6T30-6; 5T12-21).

“Although the ordinary 'abuse of discretion' standard defies precise definition, it arises when a decision is ‘made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.’ An abuse of discretion also arises when ‘the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment.’” Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015) (internal citations omitted).

Here, the trial court considered all the relevant facts and precedent case law to deny AMA's motion for its failure to show that its decision was palpably incorrect or irrational, as required. R. 4:49-2. The trial court did not abuse its discretion and the Order denying AMA's motion for reconsideration should be affirmed. Branch v. Cream-O-Land Dairy, 244 N.J. at 582; Moraes, 439 N.J. Super. at 378.

B. BMILC's Cross Motion For Reconsideration Was Properly Granted Under R. 4:49-2 And Should Be Affirmed [Issue Raised Below 6T32-6]

“A motion for reconsideration . . . is a matter left to the trial court's sound discretion.’ Here, the trial court expressed doubt regarding its initial ruling and

determined in the exercise of its discretion, on reviewing the facts before it, that reconsideration [] was warranted.” Lee v. Brown, 232 N.J. 114, 126 (2018) (internal citation omitted).

Here, like the trial court in Lee, in its review of the judgment entered in favor of AMA for renovation costs in the amount of \$60,398.00, it acknowledged the misunderstanding that the renovations occurred during the “period of time from 2019 to 2022,” when BMILC was a co-owner of the building with AMA, and that the renovations actually occurred in 2016, prior to BMILC’s existence. (5T8-1; Da007). BMILC’s cross motion for reconsideration was properly granted based on the court’s acknowledgment of its error in the date of the renovations, at a time before BMILC bought the property. (6T55-13); see Pressler & Verniero, cmt. 2 on R. 4:49-2; Cummings v. Bahr, 295 N.J. Super. at 384. The trial court properly determined that the assignment of claim entered into evidence was not a sufficient basis to hold BMILC liable for any renovation costs performed three years before its property ownership and that BMILC had no notice that as the buyer of the property it would be obligated to pay for repairs and costs that occurred prior to its ownership, let alone its very existence. (6T55-8; Da048).

V. **THE TRIAL COURT’S JUDGMENT DISMISSING ALL CLAIMS AGAINST THIRD-PARTY DEFENDANTS SHOULD BE AFFIRMED BECAUSE IT WAS SUPPORTED BY ADEQUATE, SUBSTANTIAL AND CREDIBLE EVIDENCE** [Issue Raised Below 5T11-11; 5T12-3; 5T12-18]

A. **Deference Is Appropriate Here Because The Trial Court’s Judgment Was Based Largely On Testimony of Witnesses Whose Credibility Was In Question** [Issue Raised Below 5T13-9]

“Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility.” Cesare v. Cesare, 154 N.J. 394, 412 (1998).

As the Cesare Court found, when the trial court’s decision is based on the testimony of witnesses whose credibility the court questions, as is the case here, deference is especially appropriate. Ibid.; see 5T13-9 (“ . . .the credibility of some of the witnesses is in real dispute. . .”). Notwithstanding these credibility concerns, the trial court’s judgment dismissing all claims against third-party defendants because AMA failed to establish damages is nonetheless “supported by sufficient, credible evidence in the record” and should not be disturbed. See Rova Farms Resort, 65 N.J. at 483-84; State v. Ernst & Young, L.L.P., 386 N.J. Super. 600, 616 (App. Div. 2006) (internal citations omitted).


CONCLUSION

For the above reasons, Plaintiff, Boonton Mosque & Islamic Learning Center Inc., and Third-party Defendants, Mohammad Islam, Mohammad Rehman, Shafi

Ullah, and Ejaz Khan, respectfully request that this court affirm the trial court decisions below and deny American Muslim Association Inc.'s appeal in its entirety.

Respectfully submitted,
Schenck, Price, Smith & King, LLP

Dated: June 6, 2024

By: 

Catherine Popso O'Hern
Attorneys for Respondents