MICHAEL WISEBERG, ESQ,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Respondent/Plaintiff,	DOCKET NO.: A-000754-22
vs.	On Appeal From: Below, Docket No. BER-DC-679-19
SUSAN CHANA LASK,	Bergen County Court: Law Division Special Civil Part
Appellant/Defendant.	Sat. Below: Hon. Joseph G. Monaghan, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF APPELLANT/DEFENDANT SUSAN CHANA LASK

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PRELIMINARY STATEMENT

In this appeal, the issue is a purely legal one, namely pertaining to the court's subject matter jurisdiction. *Santiago v. N.Y. & N.J. Port Auth*., 429 N.J. Super. 150, 156, 57 A.3d 54 (App. Div. 2012).

The case involves Rule 1:20A-6, known as the Pre-Action Notice, that regulates both attorney and court conduct, as listed in New Jersey's Rules of Court under "Chapter II. Conduct of Lawyer, Judges and Court Personnel" and subsection 1:20 under "Discipline of Members of the Bar". The rule was established for the utmost importance of insuring that lawyers conduct themselves ethically with respect to their billing and fees by providing clients with notice of their right to fee arbitration before a lawsuit for fees can be filed. The rule also imposes responsibilities on the court by directing it to dismiss any complaint that does not comply with Rule 1:20A-6's mandatory Pre-Action Notice requirements, which the complaint must clearly state that 30-days have elapsed since service of the Pre-Action Notice, made by both certified and regular mail.

In this case, the Plaintiff, a New Jersey attorney, filed a complaint violating R. 1:20A-6's Pre-Action Notice mandates. The lower court dismissed the complaint and on October 2, 2019 ordered that the case was dismissed and would not reinstate it because the plaintiff never served the mandatory Pre-Action Notice before filing the complaint. Thus, the court lacked subject matter jurisdiction when

it was filed. Personal jurisdiction was also lacking as the complaint was never served on the defendant.

Two years after that dismissal, the court reinstated that void complaint and simultaneously issued a judgment on it despite lacking subject matter and personal jurisdiction. The court's September 23, 2022 decision, on the record, states numerous times that the appellate court may disagree with it but it believes that (a) dismissing a complaint for lack of jurisdiction is the same as an order for a stay and (b) reinstating a dismissed complaint complies with Rule 1:20A-3's mandate that a separate action must be filed to obtain judgment. Both beliefs of the lower court are in error, and contrary to the law. Moreover, the lower court failed to address its lack of subject matter jurisdiction and erroneously claimed personal jurisdiction exists simply if a person knows that a lawsuit was filed but never served. As this brief shows, the law does is completely contrary to that decision.

The issue on appeal is whether a court can reinstate a complaint dismissed for violating R 1:20A-6 when it lacked subject matter jurisdiction, and by doing so the court reinstated a void complaint to issue a void judgment upon. The appellate court can plainly see that the resurrected complaint is still void for lack of subject matter jurisdiction as it omits any allegation that Pre-Action Notice was served, because it was not. As subject matter jurisdiction can be raised anytime, even on

appeal, and as it was raised to the lower court but ignored, then on that issue alone reversal of the reinstatement and vacating the judgment is proper.

PROCEDURAL HISTORY

The proceedings involve an attorney fee complaint (Da-1) dismissed on October 2, 2019 because it lacked subject matter jurisdiction under R. 1:20A-6 as the plaintiff failed to serve Pre-Action Notice and the order denied reinstatement. Da-5 Over two years later, on March 22, 2022, the plaintiff filed to reinstate the dismissed complaint using a false certification of service addressed to an attorney who never appeared and an address plaintiff did not reside at (Da-7). The defendant filed a letter brief opposition that the court lacked subject matter and personal jurisdiction and only a new complaint under R 4:67 could be filed and the plaintiff filed a reply brief. On May 31, 2022, the court filed an order reinstating the complaint with a money judgment attached. Da-11. On June 20, 2022, the defendant filed for reconsideration. Da-15. After opposition and reply briefs were filed, oral argument occurred on September 23, 2022 (see transcript on file). That same day the lower court denied reconsideration. Da-16. On November 7, 2022, a timely notice of appeal was filed, as shown on the appellate docket.

STATEMENT OF FACTS

On January 14, 2019, the plaintiff, a New Jersey attorney, filed a complaint for fees that omitted a statement that a bill was mailed to the defendant and omitted

compliance with Rule 1:20A-6. 1a. The complaint made a bald statement at paragraph 7 that there was an invoice and at paragraph 11 admitted that the plaintiff's purported mailings on November 16, 2019 of a Pre-Action Notice were returned by the post office. Thus, never served. The plaintiff next misrepresents at paragraph 12 that there was service when that is impossible as in the same filing he admits the mailings were returned. The lower court's docket shows that the complaint was never served within sixty-days of filing it, which would have been March 14, 2019.

The docket also shows proof of service was never filed. Instead, on April 23, 2019 the clerk entered "Proof of Service" on the docket, then uploaded an unidentified and unsigned page with a purported United States Postal Service logo at top stating only that there was a delivery in "New York NY 10001" on April 1, 2019, with no identification of what was delivered or who received it. 4a. That page has a scribbled symbol on it as "Signature of Recipient", without an address of the recipient or proof of where that mailing was made other than a New York City zip code of 10001. Using that unidentified document, the plaintiff immediately filed for a default judgment on May 7, 2019 and again on May 31, 2019 he filed a certification under penalty of perjury misrepresenting that he served defendant at a New York law office and he misrepresents that an attorney appeared for her in the underlying case. Defendant was never served and at no

time did any attorney or the defendant file a Notice of General Appearance on the docket. At all times the defendant defended herself against the unlawful filings of the plaintiff by making a special appearance solely to object to jurisdiction because she was never served and the court lacked subject matter jurisdiction because the plaintiff violated R 1:2-A-6 by failing to serve the Pre-Action Notice before filing the complaint.

After the court dismissed the complaint on August 27, 2019 because it lacked subject matter jurisdiction as the Pre-Action Notice was not served before filing the complaint, the plaintiff filed for reconsideration that was denied by an October 2, 2019 Order**.** 5a. The Rider to that Order makes clear that the complaint was dismissed and would not be reinstated because the plaintiff never served the defendant with the R. 1:20A-6 notice before filing the complaint. *Id.*

Over two and a half years later, on March 21, 2022 the plaintiff filed another motion to reinstate the dismissed complaint. 7a. It gave no basis for reinstatement and attached a false certification of service listing an address where Defendant did not live and named an attorney who never appeared in the case. On April 6, 2019, the defendant filed an opposition by special appearance to object to reinstatement and she notified the court that it issued two unlawful judgments against her based on the plaintiff's previous false filings. On April 6, 2019, the plaintiff filed a reply arguing that plaintiff never addressed jurisdiction raised in

defendant's opposition papers, but instead accused unrelated lawyers of providing addresses for the defendant, accusing the defendant of "moving at her whim" and misrepresented that he "produced copies of the certified mail return receipts" as his proof the complaint was served. Plaintiff never produced a return receipt for mail service of a complaint, and the only document uploaded was on April 23, 2019 by the clerk, not the plaintiff, which is not a proof of service.

On May 31, 2022, the court filed an order reinstating and simultaneously issuing a judgment against the defendant for $4,600.00 by claiming that since she availed herself of the Fee Arbitration process then "defendant is subject to the court rule allowing the reduction of the Arbitration Determination to a judgment." 11a. The court further stated that if a person happens to know a lawsuit is filed then that is personal service. It misstated the facts by claiming the complaint "was dismissed pending the arbitration" when in fact the October 2, 2019 decision makes clear the complaint was dismissed because R 1:20A-6's mandatory pre-requisite to serve Pre-Action Notice before filing the complaint was violated.__ Finally, that order for the first time cites cases such as *Schneider* that the court misconstrued. The record is also clear that only after the complaint was dismissed on October 2, 2019, then the defendant on her own filed for fee arbitration

unrelated to any case, as no case existed once the court dismissed the unlawful complaint.[1]

On June 20, 2022, Defendant filed a motion for reconsideration of that reinstatement order, arguing that the May 31, 2022 decision overlooked the law and improperly cites *O'Connor v. Altus*, 67 N.J. 106,126 (1975) and *Schneider v. E. Orange*, 196 N.J. Super. 587 (App. Div. 1984) for the proposition that defendant had notice of the case (a) by virtue of her complaining there was no jurisdiction and (b) because she filed for arbitration. 15a. The plaintiff filed a reply that did not respond to those arguments**.**

A September 22, 2022 oral argument was held and the court made a decision on the record that day. The defendant argued that under *Saffer* and a recent appellate case of *Hunnell* that reinstatement was improper when subject matter and personal jurisdiction did not exist and only a new complaint under R 4:67 could be filed so the defendant can raise her defenses and counterclaims and stay a judgment. T 13-15:16-14.[2] The defendant testified that she did not discover the defendant's fraudulent billing until at the fee arbitration, and under *Hunnell* and *Saffer* she is allowed to make her counterclaim for legal malpractice and obtain a

[1] Although the October 2, 2019 Order claims a R 1:20A-6 letter was served in court on August 27, 2019, the day the case was dismissed and eight months after the complaint was filed, it is untrue the R 1:20A-6 letter was served. Hence why the court does not recite the contents of any such letter in its order.

[2] "T" stands for the 9/23/22 transcript.

stay of any judgment. T 15-17. The court admitted several times that the complaint was dismissed, not stayed. T 25-26:25-2; 37:1-3. It claimed that dismissing a case is the same as a stay. T 42:8-10. The court held that reinstating a dismissed complaint is the same as a Rule 4:67 filing, and said that although the appellate court may disagree that is what the court thinks. T 43-44. It also held that if a defendant knows a lawsuit is filed then that is service. T 41-20.

On September 23, 2022, the court issued an order denying reconsideration by erroneously stating that the defendant did not present "new arguments that were not previously available" when it issued its May 27, 2022 order. 16a**.** That is incorrect because the defendant's reconsideration motion argued the court's reliance on cases in its decision was palpably incorrect and stated at oral argument that the cases relied upon in the court's May 27, 2022 order did not support personal jurisdiction. T 20:9-23, T 21-22:18-8. At no time did the court address its lack of subject matter jurisdiction or the relevant law.

LEGAL ARGUMENT

POINT I (5a,11a,16a)

A Court Can Not Reinstate a Complaint That It Dismissed Because Plaintiff Violated R 1:20-A6's Pre-Action Notice as It is Void *Ab Initio* and Deprived the Court of Subject Matter Jurisdiction. Thus, Any Judgment on That Complaint is Also Void.

Subject matter jurisdiction involves "a threshold determination as to whether [a court] is legally authorized to decide the question presented." *Gilbert v.*

Gladden, 87 N.J. 275, 280–81, 432 A.2d 1351 (1981). When a court lacks subject matter jurisdiction, its authority to consider the case is "wholly and immediately foreclosed." *Gilbert*, at 281, 432 A.2d 1351 (quoting *Baker v. Carr*, 369 U.S. 186, 198, 82 S.Ct. 691, 699, 7 L.Ed.2d 663, 674 (1962)). The principle is well established that a court cannot hear a case as to which it lacks subject matter jurisdiction even if all parties thereto desire an adjudication on the merits. *State v. Osborn*, 32 N.J. 117, 122 (1960); *Abbott v. Beth Israel Cemetery Ass'n of Woodbridge*, 13 N.J. 528, 537 (1953); *Peterson v. Falzarano*, 6 N.J. 447, 454 (1951).

The law is clear that Rule 1:20A "Pre-Action Notice" is jurisdictional, and directs that "[n]o lawsuit to recover a fee may be filed until the expiration of the [thirty] day period herein giving Pre-Action Notice to a client . . . . Pre-action Notice shall be given in writing, which shall be sent by certified mail and regular mail to the last known address of the client . . . and which shall contain the name, address and telephone number of the current secretary of the Fee Committee in a district where the lawyer maintains an office…The attorney's complaint shall allege the giving of the notice required by this rule **or it shall be dismissed**." Rule 1:20A-6 (emphasis added). Our Supreme Court holds this rule inviolate by directing that before an attorney can file suit for a fee the

attorney must provide Pre-Action Notice. *Saffer v. Willoughby*, 143 N.J. 256 (1996).[3]

On October 2, 2019 the lower court properly dismissed the fatally defective and jurisdictionally void complaint and refused to reinstate it by finding it violated R. 1:20-A6's mandatory service of Pre-Action Notice before filing a complaint, yet over two years later the same court reinstated that prohibited complaint and claimed the 2019 dismissal was just a stay. That is incorrect. A dismissal is a dismissal, and R 1:20A-6 mandates only a dismissal, not a stay, because its prerequisite of the Pre-Action Notice must be met before a complaint can be filed. Without the pre-action notice stated in the complaint the clerk of the court in fact had no basis to issue a docket number as the filing of the complaint was prohibited as a matter of law. *Chalom v. Benesh*, 234 N.J. Super. 248, 258–59 (Law. Div. 1989). Nevertheless, the docket number issued here does not overcome the fact that the complaint was void *ab initio*, and any judgment thereon is void.

[3] Plaintiff also violated N.J.S.A. 2A:13-6 as in addition to the Pre-Action Notice, N.J.S.A. 2A:13-6 mandates that an action for fees cannot be commenced unless the attorney first sends by certified mail, return receipt requested, and regular mail a full accounting of its bill to the client's residence. *Merkling v. Merkling*, 30 N.J. Super. 272, 104 A.2d 79, 1954 N.J. Super. LEXIS 645 (Ch.Div. 1954).

This court in *Crusader Servicing Corp. v. Demarzino*, A-2930-04T2, 2006 WL 280519 (N.J. Super. Ct. App. Div. Feb. 7, 2006) held that that a complaint filed in violation of the law is invalid and so is any judgment thereon "because the complaint upon which [it was] based was void and could not effectively initiate judicial action and confer subject matter jurisdiction on the [court] at the time it was filed." *Crusader*, at *6. As *Crusader* holds, complaints cannot be filed in derogation of court rules, especially by trained attorneys. In *African Am. Data & Research Inst. , LLC v. Hitchner, A-1592-20*, 2023 WL 3014833 (N.J. Super. Ct. App. Div. Apr. 20, 2023), the appellate court upheld dismissal of an unverified complaint because the plaintiff failed to follow OPRA Rule 4:67-2(a)'s pre-requisite that mandated the filing of a verified complaint and held that rule violation rendered the unverified complaint a nullity and insufficient to invoke the court's subject matter jurisdiction. *Id.*

Following this principle of a void *ab initio* complaint are a line of cases under Rule 1:20A-6. In *Nieschmidt Law Office v. Leamann*, 399 N.J. Super. 125, (App. Div. 2008), this court found that despite the client's intent not to engage in fee arbitration, the "plaintiff's failure to give the requisite timely pre-trial notice under the rule prohibited the initiation of this litigation." at 127. Thus, like the case at bar, whether or not the defendant chose fee arbitration on her own, the law mandates the attorney to serve the Pre-Action Notice and wiat

30-days before filing a complaint. That never happened here. In *Wiss & Bouregy, P.C. v. Bisceglie*, No. A-3228-15T3, 2017 N.J. Super. Unpub. LEXIS 619 (App. Div. Mar. 13, 2017), the appellate court held that a complaint is prohibited "if an attorney fails to comply with Rule 1:20A-6" and "to rule otherwise would undermine the. integrity of the fee arbitration system the Court established in Rule 1:20A-6."

In a recent case this year regarding R 1:20A-6, the appellate court in *Grabowski v. Baskay*, A-2785-21, 2023 WL 3862761 (N.J. Super. Ct. App. Div. June 7, 2023) explained Rule 1:20A-6's important purpose that:

"[i]f an attorney were to prosecute an action in violation of [Rule] 1:20A-6 either because the attorney did not advise his or her clients of the arbitration remedy or because he or she did not allege the giving of notice, the attorney would be unilaterally taking advantage of the very class which [Rule] 1:20A-6 seeks to protect. This perversion would rob clients of the right to be advised of the arbitration remedy and would deprive them of learning their attorney has alleged that the proper notice was given. Any relaxation here would foster potential abuses in the future and drain the rule of its salutary purposes.

Chalom, 234 N.J. Super. at 258-59"

Grabowski held that the trial court is "obligated to dismiss" a complaint when an attorney fails to give Pre-Action Notice and such failure is inexcusable. at *6,*7. Importantly, *Grabowski*, at *7, held that amending the prohibited complaint would be futile because the attorney never gave the mandatory notice before filing the complaint as mandated, so an attorney can never assert in an

amended complaint that notice was given before filing as that is impossible, and being unable to do that makes the complaint void *ab initio*. In the case at bar, Plaintiff did not even attempt to move to amend the complaint because, as *Grabowski* found, that would be impossible. Indeed, the docket number assigned to that complaint is for a complaint that could never have been filed. Rather, Plaintiff went right to reinstating a void complaint that was dismissed years before for lack of subject matter jurisdiction.

The law is clear that when a matter is reinstated then "the action reverts to the status of the complaint as it existed at the time the dismissal was entered." *Mason v. Nabisco Brands, Inc*., 233 N.J. Super. 263 (App. Div. 1989); *Miller v. Estate of Kahn*, 140 N.J. Super. 177, 182 (App.Div.1976). Moreover, Rule 1:13-7(b) addresses actions filed in the Special Civil Part and clearly envisions the restoration of the original complaint (and only after the summons and complaint are served which such service also never happened here and is addressed herein below).

Considering the law, there was never subject matter jurisdiction for the lower court the day the complaint was filed. It was dismissed for lack of subject matter jurisdiction and resurrecting it by reinstatement only resurrected the same void complaint that the court found it lacked subject matter jurisdiction over.

The law is also clear that the lower court was without jurisdiction over the defendant and without authority to enter a judgment affecting the defendant's rights or property, and that the money judgment on the void complaint must be vacated. *Jameson v. Great Atl. & Pac. Tea Co*., 363 N.J. Super. 419, 425 (App. Div. 2003); *City of Passaic v. Shennett,* 390 N.J. Super. 475, 915 A.2d 1092, 2007 N.J. Super. LEXIS 44 (App.Div. 2007).

The May 27 and September 23, 2022 orders must be reversed, any judgment issued in that case must be vacated and the case dismissed with prejudice.

POINT II (5a,11a,16a)

Plaintiff Sought Reinstatement of a Void Complaint in Violation of Rule 1:20A-3(e) That Directs a New Complaint Must Be Filed, And the Lower Court Allowing Reinstatement Undermined Defendant's Due Process Rights to File her Defenses, Counterclaims and for a Stay.

Rule 1:20A-3(e) directs that after 30-days from any fee arbitration determination an attorney can enforce it by either: (a) filing for judgment in a pending action that was stayed or (b) filing a summary action under Rule 4:67 for judgment. As there was no stay of an action because the complaint was dismissed in 2019 for violating R 1:20A-6, then the only way Plaintiff could have sought enforcement of an arbitration determination was by filing a new complaint under R. 4:67. Plaintiff refused to file a complaint to prevent Defendant from filing her defenses and counter-claims that she could assert against Plaintiff. The lower court's refusal to enforce R. 4:67 further

undermined Defendant's due process rights to be heard by preventing her defenses, counterclaims and to stay the fee arbitration decision pending her counterclaims. Defendant's rights are made clear in *Hunnell v. McKeon*, A-0127-20, 2022 WL 3268382 (N.J. Super. Ct. App. Div. Aug. 11, 2022). There attorney Hunnell obtained a fee arbitration decision in her favor then filed a verified complaint pursuant to Rule 4:67-1(a) seeking judgment of the fee arbitration award against the client. The client filed an answer, affirmative defenses and a counterclaim alleging legal malpractice based on fraudulent billing. This court in *Hunnell* found that legal malpractice cannot be raised before a fee arbitration committee as it lacks jurisdiction to hear that issue (citing *Saffer v. Willoughby*, 143 N.J. 256, 266 (1996)). Furthermore, this court held in *Hunnell, at* *7, that the *Saffer* court announced that "[i]f the substantial basis for a malpractice claim is discovered after a Fee Committee has awarded a fee, a client may seek a stay of the award from the Superior Court either before or after the award has been confirmed," applying the discovery rule. 143 N.J. at 268." Indeed, here the defendant argued at the September, 2022 oral argument that she never knew of the plaintiff's malpractice and false billing until at the fee arbitration hearing when he submitted bills there for the first time. T 15-17.

By the lower court ignoring all of the rules and reinstating a void complaint rather than directing Plaintiff to follow Rule 4:67-1, it prejudiced Defendant's

rights to be heard in the appropriate forum and to seek a stay she had a right to under the law. It does not matter whether the stay or her counterclaims would have been successful, nor can this court or anyone predict if they would have been. The problem is that defendant's due process rights to present her claims were foreclosed by the lower court without a basis in law or fact and without any jurisdiction to do so in the first place.

POINT III (5a,11a,16a)

In Addition to Lacking Subject Matter Jurisdiction, The Court Lacked Personal Jurisdiction As Defendant Was Never Served and Only Appeared by Special Appearance to Successfully Dismiss the Unlawful Complaint And Vacate Default Judgments Plaintiff Obtained Unlawfully.

Rule 6:2-3 governs service of process for lawsuits in the Special Service Part. *Murphy v. 113 E. Cedar*, No. A-2430-22, 2023 N.J. Super. Unpub. LEXIS 1282 (App. Div. July 24, 2023). Plaintiff chose to serve under subsection (a) that directs service may be made by the clerk by certified, return receipt, and ordinary mail pursuant to R 6:2-3(d). Subsection (d) directs that mail service is "to be served in this State, or if substituted service of process is to be made within this State." The mail service must be within 12-days of the complaint receiving a docket number.

At no time did the clerk mail anything to an address in the state of New Jersey. Rather, the plaintiff provided a number of false addresses in New Jersey for the defendant, and when those were returned by the post-office he

then provided the clerk with a New York City address in violation of Rule 6:2-3 requiring in-state mailings. That address was an out of state office building, not defendant's residence nor her place of business or employment. For the sake of argument, even if service was on a business it still must be in this state and "…at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed. R. 6:2-3(d)(4). Thus, if service was properly done, which it was not, there still was no proof the mailing instructed "to addressee only", and it is an indisputable fact that the "signature", a scribbled symbol, on the unidentified document uploaded April 23, 2019 was not the defendant's, nor was that uploaded document a certified return receipt or proof of service of anything.

The record is clear that there is a substantial deviation from the tenor of the service of process rules that violates the law. *Sobel v. Long Island Entm't Prods., Inc.,* 329 N.J. Super. 285, 293, 747 A.2d 796 (App. Div. 2000). The defendant testified at oral argument that she had to review the docket online as a guest every now and then because the plaintiff previously made false filings of judgment against her, so she had to watch for future false filings.

That the defendant learned of the suit by circuitous means does not excuse non-compliance with the rules of service. *Epos, Inc. v. Pantelopoulos*, No. A-2365-08T1, 2009 N.J. Super. Unpub. LEXIS 2922 (App. Div. Dec. 1, 2009); *Days Inn Worldwide, Inc. v. Buja Investments, Inc*., Civ. No. 11-355, 2012 U.S. Dist. LEXIS 7011, 2012 WL 194397, at *3 (D.N.J. Jan. 20, 2012) (finding that defendant's letter to plaintiff's counsel and copied to the court did not waive service under Rule 4:4-6 even though he acknowledges that he had received the "lawsuit file"). Yet the lower court improperly holds that it is sufficient that whenever someone files a lawsuit and a defendant somehow knows about it then that is service of process. Also, Rule 6:2-3(e) mandates a general appearance filing to create jurisdiction. That too was never filed. Defendant always objected under the condition of a special appearance objecting to this court's jurisdiction. Her letters and objections to jurisdiction do not constitute an appearance under Rules 4:4-6 or 6:2-3(e). *Epos*, supra.

"The requirements of the rules with respect to service of process go to the jurisdiction of the court and must be strictly complied with. Any defects . . . are fatal and leave the court without jurisdiction and its judgment void." *Driscoll v. Burlington-Bristol Bridge Co*., 8 N.J. 433, 493, 86 A.2d 201, cert. denied, 344 U.S. 838, 73 S. Ct. 25, 97 L. Ed. 652 (1952).

Considering that every aspect of the rules of service were violated by plaintiff who knows the rules as a New Jersey attorney, then there is no excuse for his violations at the expense of the defendant. As the summons and complaint was never served then the court had no jurisdiction over the defendant and the judgment must be vacated. Moreover, it is an injustice for the court to reinstate a void complaint and issue a judgment against the defendant without permitting her to answer or defend against it.

Point IV

The Lower Court's Letter filed on this Docket is Inaccurate, Erroneous and Shows Reinstatement Was Improper and that R 4:67 Was Ignored

After this appeal was filed, on January 3, 2023 the lower court filed a letter on this docket that is factually inaccurate and never addresses its lack of subject matter jurisdiction prohibiting it from reinstating a complaint dismissed on that basis. It actually shows that R 4:67 should have been used rather than the May 27, 2022 reinstatement, but the court claims, with no legal or factual support, that it ignored R 4:67 as the proper procedure and decided to reinstate a void complaint because it wanted to avoid evasion of service- a completely untenable position in violation of fairness and the law.

That letter also claims proof of service was filed as a letter from USPS stating that an item was delivered to "New York NY 10001", but that is untrue. In fact, the court does not identify that USPS letter, and improperly attributes an

address on the summons as the delivery address when the USPS letter does not state that summons address at all. The court letter further states its October 2, 2019 order dismissed the case to allow it to go to arbitration. However, the case was dismissed because R 1:20A-6 mandated dismissal for lack of jurisdiction, not dismissal to allow arbitration. It also misstates that the defendant provided her residence address to the court when that never happened. It erroneously attributes the defendant of "availing herself of the court's assistance for three (3) years." On the contrary, she was forced to make special appearances to prevent the ongoing injustice of the plaintiff's unlawful filings that even the court's letter details multiple unlawful judgments entered against her that she had to have the unlawful judgments vacated. Then the court filing states that "all of the defendant's rights were preserved" but that too is not true as she never was given the opportunity to file an answer, counterclaim and affirmative defenses because once the case was dismissed in 2019 the matter was over, and when the court resurrected the void complaint in 2022 it refused her to defend against that void complaint by an answer and counterclaims.

Most troubling is its wholly unsupported and inappropriate conclusion that a R 4:67-1 filing should not be allowed because defendant would evade service. It is improper for the court to make that prejudicial and unwarranted accusation to avoid its duties of enforcing R 1:20A-3 that directs a Rule 4:67-1 filing.

Moreover, there is no evasion of service in a civil case as the law provides substituted service upon a plaintiff requesting such with proof that a plaintiff tried reasonable attempts and cannot serve a defendant. That did not happen in this case because the plaintiff did not want the defendant to have notice of his filings. Moreso, the court's letter contradicts itself as it spends six pages confirming how the defendant appeared for every court appearance (by special appearance), notified the court when the plaintiff made improper filings and the defendant appeared for every notice of the court. That is not evasion. Thus, while the lower court goes through all of that, conspicuously it never addresses in its letter that subject matter jurisdiction never existed when the complaint was filed or when the court issued its May 27, 2022 order reinstating a void complaint. That void complaint is now before this appellate court.

CONCLUSION

For all of the above reasons, the Defendant respectfully requests this court to (a) reverse the May 27 and September 23, 2022 Orders reinstating the void complaint, (b) vacate any Judgment based on that void complaint and (c) directing that the lower court has no jurisdiction to issue a judgment, hear motions or take any action under that complaint.

Dated: September 28, 2023

/s/ John T. Bazzurro
_____
John T. Bazzurro, Esq.

MICHAEL WISEBERG, ESQ., *Plaintiff/Respondent*, *- against -* SUSAN CHANA LASK, ESQ., *Defendant/Appellant*.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-754-22 *Civil Action* On appeal from BER-DC-679-19 Bergen County Law Division, Special Civil Part Sat Below: Hon. Joseph G. Monaghan, J.S.C.

PLAINTIFF/RESPONDENT'S SECOND AMENDED BRIEF AND APPENDIX

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PRELIMINARY STATEMENT

The Order of September 23rd, 2022, denying Defendant's motion for reconsideration, the only Order subject of this appeal, was properly denied pursuant to *R*. 4:49-2 because Defendant failed to present any new information or facts, did not show how the court erred, nor did she argue that precedent was overlooked by the court. [Da17] The lower court correctly ruled that "a motion for reconsideration is not warranted where the apparent purpose of the motion is to express disagreement with the Court's initial decision." [Ibid.] Defendant failed to demonstrate that the court (1) based its decision on a palpably incorrect basis or (2) did not consider or failed to appreciate the significance of probative, competent evidence. Defendant did not appeal the underlying Order of May 27th, 2022, that entered final judgment against Defendant in the amount of $4,600.00.

The Special Civil Part of the Superior Court of New Jersey clearly maintained subject matter jurisdiction over the collection of attorney fees awarded in fee arbitration and confirmed on appeal by the Disciplinary Review Board of the Supreme Court of New Jersey. Both parties subject of this appeal are attorneys – Plaintiff is admitted and practices in the State of New Jersey and Defendant Susan Lask, Esq. practices in New York, but is **not** licensed to practice here. Defendant Lask retained Plaintiff pursuant to a written Retainer Agreement in which she set forth her address (289 Gorge Road, #73, Cliffside Park, New Jersey 07010) and

insisted as a term of the Agreement that all communications be exclusively by email. The attorney/client relationship quickly broke down, and because Defendant Lask refused to pay for the legal services provided, Plaintiff mailed a Pre-Action Notice, pursuant to Rule 1:20A-6, by certified and regular mail to Ms. Lask **at the last known address she provided in the Retainer Agreement** just weeks earlier. Plaintiff also emailed Defendant Lask a copy of the Notice to the same email address set forth in the Agreement.

Plaintiff fully complied with Rule 1:20A-6 – the notices were mailed by certified and regular mail to Defendant's **last known address** – and the Notice sent by regular mail was returned marked "**Refused**." This is the **very same address** that Defendant provided to Judge Monaghan when she appeared to declare her intent to file a fee arbitration, which resulted in the underlying case being stayed until that process was completed. It is also the **very same address** used by the Secretary of the Fee Arbitration Committee to mail their determination to Defendant Lask. The summons and complaint were likewise mailed by the trial court to Defendant at her last known address, the very same postal box address she provided; Defendant was indeed finally served by mail at her law office in New York City – the green card was returned with a signature on it, and the regular mail was never returned. Defendant Lask was obviously served with process as her attorney, Jamie Goldman, Esq., appeared in trial court on her behalf three days after Plaintiff filed a request to

enter default judgment, advising Judge Monaghan of her intent to file an answer or move to dismiss, neither of which ever occurred. Defendant Lask shortly thereafter appeared on her own behalf after the filing of a Substitution of Attorney. There can be no question the trial court not only had subject matter jurisdiction, but the court also had personal jurisdiction over Defendant Lask. The Pre-Action Notice was effectively served on Defendant Lask, despite her efforts to evade service. Defendant Lask proceeded through arbitration while the underlying complaint remained dismissed without prejudice, awaiting the outcome of that arbitration process. Once the arbitration was fully utilized by Defendant Lask, Plaintiff moved to reinstate the complaint and the trial court properly entered judgment in the amount of $4,600.00 against the Defendant Lask. Respectfully, this Court should now affirm the denial of Defendant's motion for reconsideration.

COUNTERSTATEMENT OF FACTS

Plaintiff was retained by Defendant to perform legal services for her, which were performed, and an invoice for those services was sent to the Defendant by email, the **exclusive** method of communication permitted by the Defendant, as she expressly mandated in the Retainer Agreement. [Da2 at ¶7]. Plaintiff also stated in the Complaint that after the Defendant indicated she would not pay his invoice, "[o]n November 16, 2018, pursuant to *R*. 1:20A-6, Plaintiff provided a Pre-action Notice and another copy of the invoice to the defendant, simultaneously by certified and

regular mail, to the Cliffside Park address **she furnished eight days earlier**." [Id. at ¶9; emphasis added] Plaintiff also sent an email to the Defendant providing the same Pre-action Notice concerning fee arbitration – Defendant has never denied receiving any emails that were sent to her from Plaintiff. [Id. at ¶10] Nor could she since that was her modus operandi.

The Pre-action Notice was addressed to Defendant and mailed by certified and regular mail to "289 Gorge Road, #73, in Cliffside Park, New Jersey 07010," the same address Defendant provided, which is not only set forth in the signed Retainer Agreement, *but is the very same address she used in trial court filings she made in the trial court and again to the Fee Arbitration Committee*. As it turns out, the street address provided by the defendant is actually a Post Office box. The Notice sent by regular mail was returned by the post office, but with "**Refused**" handwritten on the front of the envelope. [Id. at ¶11; Pa1] Plaintiff further alleged that "[m]ore than 30 days have passed since the Pre-action Notice was served on the defendant, and upon information and belief, the defendant has not availed herself of the opportunity to have this matter resolved through fee arbitration." [Id. at ¶12] Plaintiff thereafter filed a complaint on January 14th, 2019, for contractual damages in the amount of $4,600.00 arising out of his limited representation of the defendant. [Da1 at ¶3]

PROCEDURAL CONTEXT

Defendant was attempted to be served with the summons and complaint pursuant to Rule 6:2-3(d) via regular and certified mail (return receipt requested) on January 15th, 2019, addressed to 289 Gorge Road, #73, Cliffside Park, New Jersey 07010, the same address provided by the Defendant less than a month earlier in the Retainer Agreement and which Defendant listed as her address in multiple **future** trial court filings. The summons and complaint, however, were returned to the trial court and marked as unserved on January 31st, 2019. [Pa3; Trans. ID: SCP2019259427] Defendant was re-served via regular and certified mail (return receipt requested) on February 1st, 2019. The address to which this summons was sent was 6 Horizon Road, #1706, Fort Lee, New Jersey 07024. [Id.; Trans. ID: SCP2019266960] The summons and complaint were once again returned to the sender, marked as unserved on March 12th, 2019. [Id.; Trans. ID: SCP2019588555]

A third attempt to serve Defendant was made at her New York law office via regular and certified mail (return receipt requested) on March 12th, 2019. The Summons and complaint were **successfully** re-served at 244 Fifth Avenue, #2369, New York 10001. [Id.; Trans. ID: SCP2019589618] Proof of Service on the defendant was recorded on April 23rd, 2019, stating "records indicate that this item was delivered on 04/01/2019 at 02:04 p.m. in NEW YORK, NY 10001." [Id.; Trans.

ID: SCP2019938538] Process served by regular mail to the New York address was never returned by the post office.

On May 7th, 2019, Plaintiff filed a request to enter default judgment. [Id.; Trans. ID: SCP20191059872] Three days later on May 10th, 2019, Jamie Goldman, Esq. wrote a letter to Judge Monaghan on behalf of the Defendant in which she requested time to file an answer or motion; Defendant never filed an answer and never moved to dismiss the complaint. On May 31st, 2019, Plaintiff filed a motion to enter default judgment against Defendant in the amount of $4,600.00 plus costs and prejudgment interest of $35.40. [Id.; Trans. ID: SCP20191262633] On August 27th, 2019, the same day Defendant appeared in court to represent herself pro se, the Court denied Plaintiff's motion to enter judgment stating, "Plaintiff did not attach the *R*. 1:20A-6 letter to plaintiff's complaint. Plaintiff served defendant in Court with plaintiffs *R*. 1:20A-6 letter. Defendant acknowledged receipt of said letter on the record and averred she will be requesting arbitration." That same day, August 27th, 2019, Plaintiff filed a motion to reconsider the Court's order of the same date denying Plaintiff's motion to enter default judgment because the letter was not required to be attached. [Id.; Trans. ID: SCP20192000595] On September 17th, 2019, Defendant filed a cross motion for dismissal and an objection to Plaintiff's motion for reconsideration. [Id.; Trans. ID: SCP20192193275]

Oral argument was held on October 2nd, 2019, and Defendant and Plaintiff personally appeared in trial court where she was handed an envelope in open court by Plaintiff containing another copy of the same Pre-action Notice and invoice sent originally to her at the address on Gorge Road (the **same** address, coincidentally, that the Fee Arbitration Committee used to correspond with Defendant). [Da6; "personal service in court was made on August 27, 2019"] Additionally, Defendant provided her residential address on the record per *R*. 1:4-1(b) before Judge Monaghan as "**289 Gorge Road, #73, Cliffside Park, New Jersey 07010**" -- the very same address set forth in the Retainer Agreement and where the Pre-Action Notice was mailed. The very same address where the summons and complaint were initially sent by the trial court. And the very same address that appears on the envelope sent to Defendant by regular mail that was marked in handwriting as being "*Refused*." Plaintiff's motion for reconsideration was denied by the Court without prejudice to permit Defendant to proceed with Fee Arbitration. [Da6] Defendant filed her request for fee arbitration, as amended, and the parties became fully engaged in the arbitration process.

On August 6th, 2021, the District Fee Arbitration Committee determined that the client/attorney, Defendant SUSAN CHANA LASK, Esq., must pay Plaintiff the sum of $4,600.00 within 30 days. [Da9] The letter enclosing the Committee's Determination was sent to Defendant at her address at 289 Gorge Road, Unit #73, in

Cliffside Park (her post office box). Defendant must have received the Committee's Determination because she timely appealed that decision. The appeal was fully briefed and argued. On February 18th, 2022, the Disciplinary Review Board (the "DRB") affirmed the Committee's determination and dismissed Defendant's appeal. [Id. at ¶4]

On February 22nd, 2022, Plaintiff filed a motion to reinstate his complaint against Defendant to enter final judgment pursuant to *R*. 1:20A-3(e), believing the days between the date of the award and the day the determination was appealed with the DRB counted towards the 30 days. [Pa4; Trans. ID: SCP2022454038] On March 8th, 2022, the Court denied plaintiff's motion stating, "the motion is premature. Notice of the Appeal determination is dated February 18, 2022. Per *R*. 1:20A-3(e) defendant has 30 days to pay before the case is either reinstated or a summary action [may be] brought pursuant to Rule 4:67." [Id.; Trans. ID: SCP2022582635]. *See also* T19:1- 6 (the "Complaint was dismissed, among other reasons in the past, because it was premature . . . And because your appellate rights, through the fee arb, had not been completed. The first time I was unaware there was actually an appeal pending.")

On March 21st, 2022, now certain that more than 30 days had now, Plaintiff filed a third motion to reinstate his complaint. [Id. at Trans. ID: SCP2022713575] On April 6th, 2022, Defendant filed an objection to Plaintiff's motion, filed four

letters with Judge Monaghan, and also improperly filed a letter with the Honorable Bonnie J. Mizdol, A.J.S.C. [Da12; T19:16-18] On May 26th, 2022, Defendant filed an additional brief in opposition to Plaintiff's motion. [Pa5; Trans. ID: SCP20221347812] Oral Argument was held on May 27th, 2022, and the Court granted Plaintiff's motion to reinstate the case and enter judgment. [Id.; Trans. ID: SCP20221364697] Although the Order is dated, May 27th, 2022, it was uploaded into e-Courts on May 31st, 2022. On June 21st, 2022, Plaintiff filed a motion to enforce litigant's rights and the motion was resolved on September 23rd, 2022, by Order stating, "$4,600.00 held in escrow by Helmer, Conley, & Kassleman PA shall remain in escrow and shall not be released until further order of this court pursuant to a motion to release funds on notice to all parties. All other rights reserved to all parties." [Id.; Trans. ID: SCP20222467474]

A day earlier, on June 20th, 2022, *pro se* Defendant filed a motion for reconsideration of the Court's Order of May 27th, 2022, that reinstated the Complaint and entered judgment against Defendant in the sum of $4,600.00. [Id.; Trans. ID: SCP20221554876] Defendant alleged that the trial court did not have jurisdiction over Defendant because Plaintiff failed to properly serve her. Plaintiff opposed Defendant's motion. [Id.; Trans. ID: SCP20221806454] Oral Argument was held on September 23rd, 2022. [Id.; Trans. ID: SCP20222466068] Defendant's motion for reconsideration was denied in part (concerning the reinstatement and judgment) and

adjourned in part. The Order noted, "the part of the motion requesting certain filings be removed under paragraphs 1-5 above is neither granted nor denied and will be rescheduled for oral argument in 2 weeks." The Rider attached to the Order outlined the reasoning for the Court's denial of Defendant's motion to reconsider. [Id.; Trans. ID: SCP20222466050]

Trial Court Judge Monaghan noted that *R*. 6:2-3(a) provides that "Service of all process outside this State may be made in accordance with *R*. 4:4-4 and *R*. 4:4-5. After the filing of a complaint and receipt of a docket number, service may be made by mail pursuant to either *R*. 4:4- 4(c) by plaintiff or, pursuant to *R*. 6:2-3(d), by the clerk, without the payment of mileage fees." Judge Monaghan commented about serving papers on Defendant Lask, that "I know there were papers in the past that you filed that did not have an address. You have objected to giving an address. But the court rule requires an address." [T26:10-13] The summons and complaint were sent to the address provided by the Defendant, which turned out to be a post office box that Defendant Lask would open and close whenever convenient for her. The same post office box that she provided to the trial court. The same address used by the Bergen County Fee Arbitration. On May 10th, 2019, "Jamie Goldman, representing Miss Lask entered -- sent a letter into the Court. It was asking the Court not to enter a default judgment against her." [T32:2-5] The trial court found that "where it says out-of-State for 4:4-4 and 4:4-5 when we read them in *para materia*,

which allows service by certified mail by the Clerk to an out-of-State defendant on a Special Civil Part case." [T33:13-17] Significantly, on August 27th, 2019, there was a Substitution of Attorney filed by Defendant Lask to represent herself in the underlying lawsuit. [T34:10-15; Pa3]

Defendant Lask argued that "He should have gone and done the rule, the summary judgment procedure, and we wouldn't even be here. I have been saying that since March, April, May. All he had to do is just do it. Why we're here constantly doesn't make sense." [T38:1-5] Whether the defendant is or has been on notice of the Complaint, and if so, whether the defendant has had a fair and reasonable opportunity to be heard, were the trial court's primary concerns regarding fundamental notice of the summons and complaint.

His Honor denied the Defendant's motion for reconsideration, and reasoned as follows:

> The defendant availed herself of a fee arbitration process [at defendant's request to the court]. Having availed herself of that process, which I have no authority to review, and having gone through the appellate process, a determination was made through that process that the plaintiff, Mr. Wiseberg, is entitled to $4,600.00. Ms. Lask makes numerous arguments regarding jurisdiction and lack of service. [...] Ultimately, I respectfully disagree with Ms. Lask's argument. [...] The purpose of service is to put someone on notice that a complaint against them has been filed and to give them a fair opportunity to be heard. [...] The defendant appeared in New Jersey court, prior to the

> pandemic, in person. At that point in time, having been aware of the complaint and arguing that she had not in fact received the 1:20A-6 letter, although the complaint itself in paragraph nine says that it was served. [...] She had the opportunity to be heard at fee arbitration, did not prevail, had the right and opportunity to appeal that decision and did so. [Pa11]

The trial court further found:

> Ms. Lask appeared before this Court and opted to go to fee arbitration she was fully aware of a complaint to collect an outstanding legal fee, and the purpose of service [...] is to put someone on notice of the nature of a complaint filed against them. As of the date in which Ms. Lask opted to avail herself of the fee arb[itration], she was fully aware of the complaint of the nature of the allegations, and again opted to address the matter by way of fee arbitration. [Ibid.]

The trial court entered judgment consistent with the fee arbitration decision, as confirmed by the DRB. Defendant **never** raised or argued application of Rule 4:67 until she filed her motion for reconsideration subject of this appeal. Defendant **never** appealed the Order of May 27th, 2022. Defendant failed to present any new facts or information to support reconsideration of the judgment entered on May 27th, 2022. [Da17-18]

On October 7th, 2022, the court denied the remaining part of defendant's motion (raised for the first time), concerning removal of documents from the docket. [Pa6; Trans. ID: SCP20222606873] On November 7th, 2022, Defendant filed her

Notice of Appeal, challenging only the Order of September 23rd, 2022; she did not appeal the underlying Order of May 27th, 2022, nor did she request the transcript of the oral argument that took place before Judge Monaghan.

LEGAL ARGUMENT

POINT 1. DEFENDANT'S MOTION FOR RECONSIDERATION WAS PROPERLY DENIED BY THE TRIAL COURT BECAUSE DEFENDANT FAILED TO SET FORTH WITH ANY SPECIFICITY THE BASIS ON WHICH THE MOTION WAS MADE, AND FAILED TO DEMONSTRATE THAT THE DECISION WAS PALPABLY INCORRECT, IRRATIONAL, OR BASED ON A FAILURE TO CONSIDER OR APPRECIATE COMPETENT EVIDENCE (Da17)

The appropriate standard of review of a trial court's denial of a motion for reconsideration is an abuse of discretion standard. Marinelli v. Mitts & Merrill, 303 N.J. Super. 61, 77 (App. Div. 1997) (citing Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996)). Reconsideration lies within the sound discretion of the trial court, to be exercised in the interest of justice. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Our court rules permit reconsideration of a trial court's decision only if the aggrieved party "states[s] with specificity the basis on which [the motion for reconsideration] 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." Kornbleuth v. Westover, 241 N.J. 289, 301 (2020). The magnitude of the

error cited "must be a game-changer for reconsideration to be appropriate. Said another way, a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." Palombi, *supra*, 414 N.J. Super. at 289.

Courts should only grant reconsideration when 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. Guido v. Duane Morris LLP, 202 N.J. 79, 87-88 (2010). Motions for reconsideration should be granted "only under very narrow circumstances." Ibid. Defendant Lask was required to show that the court's reinstatement of the complaint was palpably incorrect, irrational, or based on a failure to consider or appreciate competent evidence. D'Atria, *supra*, 242 N.J. Super. at 401. Reconsideration was properly denied on September 23rd, 2022, as reflected in the Order subject of this Appeal because Defendant Lask simply repeated the same arguments she made before.[1] Defendant Lask "offered no new evidence, citations, or explanation with any tendency to show that the court's decision . . . was palpably

[1] Defendant Lask only appealed the Order of September 23rd, 2022, that denied her motion for reconsideration, and not the underlying Order of May 27, 2022. Even so, she failed to discuss or even perform a rudimentary legal analysis concerning *R.* 4:49-2 in her supporting Brief.

incorrect or irrational, or that the court failed to appreciate the significance of probative, competent evidence." Kornbleuth, *supra*, 241 N.J. at 308.

Rule 4:49-2 does not provide an opportunity for the proverbial second bite of the apple. Nor does it permit reconsideration based on facts or arguments that could have been raised in opposition to the original motion but were not. Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). Reconsideration is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion – which is precisely what Defendant Lask attempted to do here. Palombi, *supra*, 414 N.J. Super. at 288. Defendant Lask failed to explicitly identify the grounds for the motion to fit within that "narrow corridor" in which reconsideration is appropriate: "The motion 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." Ibid. The lower court did not overlook anything in law or fact that would require or support a modification of the Order. Defendant's argument for reconsideration simply does not fall within the narrow corridor in which reconsideration is appropriate. Appellate courts "will not disturb a trial judge's reconsideration decision 'unless it represents a clear abuse of discretion.'" Kornbleuth, *supra*, 241 N.J. at 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "An abuse of discretion 'arises when a decision is

made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 302 (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

Defendant Lask failed to provide any meaningful support for the specificity required under Rule 4:49. Palombi, *supra*, 414 N.J. Super. at 288. Defendant Lask failed to establish that Judge Monaghan's denial of reconsideration "represents a clear abuse of discretion." Kornbleuth, *supra*, 241 N.J. at 301. Moreover, the record is bereft of any evidence that the trial judge abused his discretion in denying reconsideration. Judge Monaghan considered the motion, opposition and reply and correctly applied the pertinent court rule and case law. Therefore, Defendant Lask failed to establish the trial judge abused his discretion in denying reconsideration, and the trial court's ruling must be affirmed.

POINT 2. DEFENDANT LASK WAS PROPERLY SERVED WITH THE PRE- ACTION NOTICE PURSUANT TO R. 1:20A-6 BY EMAIL, THE EXCLUSIVE MODE OF COMMUNICATION SHE INSISTED UPON, AND BY CERTIFIED AND REGULAR MAIL TO THE LAST KNOWN ADDRESS SHE PROVIDED JUST WEEKS EARLIER, AND THE VERY SAME ADDRESS SHE PROVIDED TO THE COURT MONTHS LATER, AND FINALLY, THE SAME ADDRESS USED BY THE SECRETARY OF THE FEE ARBITRATION COMMITTEE TO SEND THE FEE AWARD DETERMINATION TO DEFENDANT LASK (Da5, Da11, Da16)

The Rules provide that before an attorney can file suit against a client to recover a fee, the attorney must notify the client of the availability of fee arbitration. "The policy underlying the fee arbitration system is the promotion of public confidence in the bar and the judicial system." Saffer v. Willoughby, 143 N.J. 256, 263 (1996). The purpose of the Rule is to give clients who might be responsible to pay legal fees the ability for a short window of time to request the alternate dispute procedure of arbitration before being subjected to litigation. Kamaratos v. Palias, 360 N.J. Super. 76, 86 (App. Div. 2003). The Rule provides a mechanism for the resolution of fee disputes between attorneys and their clients. In re LiVolsi, 85 N.J. 576, 581 (1981). A "fair fee arbitration system will do much to assure the public of the fairness of the judicial system as a whole, and thereby increase the public confidence that is so necessary for that system to operate effectively." Id. at 604. A Fee Committee has jurisdiction only "to arbitrate fee disputes between clients and attorneys." *R*. 1:20A-2(a). The rules specifically provide that the "fee committee

shall not have jurisdiction to decide . . . claims for monetary damages resulting from legal malpractice, although a fee committee may consider the quality of services rendered in assessing the reasonableness of the fee pursuant to RPC 1.5." Saffer, *supra*, 143 N.J. at 265-66.

Rule 1:20A-6 provides in relevant part that "No lawsuit to recover a fee may be filed until the expiration of the 30 day period herein giving Pre-action Notice to a client . . . . Pre-action Notice shall be given in writing, which shall be sent by certified mail and regular mail to the last known address of the client, ..." After the expiration of the notice period, the attorney may file a lawsuit, and the "attorney's complaint shall allege the giving of the notice required by this rule or it shall be dismissed." Rule 1:20A-6 (emphasis added). Subject-matter jurisdiction merely involves a threshold determination as to whether the trial court was legally authorized to decide the question presented. Only if the answer to this question is in the negative, consideration of the cause is "wholly and immediately foreclosed." Gilbert v. Gladden, 87 N.J. 275, 280-81 (1981). It refers to "the power of a court to hear and determine cases of the class to which the proceeding in question belongs." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411 (App. Div. 1997) (quoting State v. Osborn, 32 N.J. 117, 122 (1960)). The principle is well established that a court cannot hear a case as to which it lacks subject matter jurisdiction even if all the parties desire an adjudication on the merits. Osborn, *supra*,

32 N.J. at 122; Abbott v. Beth Israel Cemetery Ass'n of Woodbridge, 13 N.J. 528, 537 (1953); Peterson v. Falzarano, 6 N.J. 447, 454 (1951). Objection to jurisdiction of the court over the subject matter is effective whenever made. Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55, 65-66 (1978).

Plaintiff mailed the Pre-Action Notice to Defendant's last known address (less than 30 days' since it was provided by Defendant Lask) as set forth in the Retainer Agreement, by regular and certified mail, **and also by email to the same address specified by Defendant Lask and the only method used by the parties to communicate**. This was the same last known address that was also provided to the trial court on August 27th, 2019, and the very same address that was used by the Bergen County Fee Arbitration Secretary when mailing the Committee's fee award determination. Plaintiff referred to this mailing in the complaint fully complying with Rule 1:20A- 6. The notice sent to Defendant by regular mail was affirmatively refused and returned with the postal marking "Refused" written on the envelope. New Jersey cases have long recognized a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed. SSI Med. Servs. v. HHS, Div. of Med. Assistance & Health Servs., 146 N.J. 614, 621 (1996). There is no question that Defendant Lask evaded service of the Pre-Action Notice but indeed nevertheless received the Notice by email at the email she insisted the parties use exclusively to communicate in writing. Her refusal to accept the regular

mailing of the Notice should not inure to her benefit. Defendant Lask **never** disputed receipt of the notice by email, and **never** submitted a Certification claiming she never received the notice emailed to the same address she insisted Plaintiff use to communicate in writing with her.

In support of her argument, Defendant Lask looked to the Order of October 2nd, 2019, in which the lower court did not reinstate the complaint but instead let the case remain dismissed without prejudice so the Defendant Lask could proceed with fee arbitration. (Da6) "As a general rule, a dismissal on the merits is with prejudice while a dismissal based on the court's procedural inability to consider a case is without prejudice." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 415-16 (1991). Defendant Lask argued that the lower court "refused to reinstate [the complaint] by finding it violated *R*. 1:20A-6's mandatory service of Pre-Action Notice before filing a complaint, ..." [Db10] Contrary to that statement, the trial court found instead that the notice was mailed to Defendant Lask at the post office box address she provided to Plaintiff, but the "court is unable to determine [sic] the defendant refused the mail. . . .In this case, the court has reason to believe service of the Rule 1:20A-6 was not effected – at least not until the personal service in court was made on August 27, 2019." (Da6) The trial court also noted expressly in its Rider that "**Plaintiff shall continue to serve legal papers at the P.O. Box that was addressed on the record on August 27, 2019**." Ibid. (emphasis added).

The Defendant Lask next argues that the complaint was void *ab initio* and the $4,600.00 judgment is void. (Db10) In support of that argument, Defendant Lask relies solely on a number of unpublished opinions, including Crusader Servicing Corp. v. Demarzino, A-2930-04T2, 2006 WL 280519 (N.J. Super. Ct. App. Div. Feb. 7, 2006), African Am. Data & Research Inst., LLC v. Hitchner, A-1592-20, 2023 WL 3014833 (N.J. Super. Ct. App. Div. Apr. 20, 2023), Wiss & Bouregy, P.C. v. Bisceglie, No. A-3228-15T3, 2017 N.J. Super. Unpub. LEXIS 619 (App. Div. Mar. 13, 2017), and Grabowski v. Baskay, A-2785-21, 2023 WL 3862761 (N.J. Super. Ct. App. Div. June 7, 2023). (Db11-13) Rule 1:36-3 clearly mandates that "No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel." (Emphasis added.) Neither of these cases has been provided by appellate counsel for Defendant Lask, nor has a certification been submitted stating that there are no known contrary unpublished opinions. Because Defendant Lask failed to comply with Rule 1:36, these unpublished opinions must be wholly disregarded.

In the only published opinion to support her position, Nieschmidt v. Leamann, 399 N.J. Super. 125 (App. Div. 2008), the Court distinguished that case from Chalom v. Benesh, 234 N.J. Super. 248 (Law Div. 1989), to wit, "defendant here did not delay in seeking its remedy to dismiss the complaint by failing to respond until

the plaintiff attempted to levy on a default judgment. The judge correctly noted that it was plaintiff instead who delayed in filing its complaint until the statute of limitations made it impossible to give Pre-Action Notice within the period of time mandated by the rule. Moreover, plaintiff's purported notice was not sent to the client's last known address. The interiors business, not the individual, was plaintiff's client. The rule required plaintiff to send the notice to the Pennington address." Id. at 130. In Chalom, "the defendants were estopped from claiming that the plaintiffs' pleadings were defective as a basis for vacating the default judgment because they never intended to pursue arbitration," responding to the lawsuit only after a request for entry of default judgment. Id. at 129. Defendant Lask took no action until Plaintiff's request for default judgment. Defendant Lask further argues that "the law mandates the attorney to serve the Pre-Action Notice and wiat [sic] 30-days [sic] before filing a complaint. That never happened here." (Db11-12)

Plaintiff waited more than 30 days before filing the complaint. He served the Pre-Action Notice by email, regular mail, and certified mail on November 16th, 2018. Suit was filed on January 14th, 2019, more than 30 days after giving the Rule 1:20A-6 Notice, and the complaint recited the fact that service of the Pre-Action Notice was made by regular and certified mail, as well as by email. Defendant Lask received actual notice of her right to fee arbitration, and without any doubt whatsoever was handed such notice in court during oral argument on August 27th, 2019. The ensuing

judgment was thus properly entered by the trial court after permitting Defendant Lask to proceed through arbitration and once completed, including the appeal, reinstated the complaint upon Plaintiff's motion. The lower court always had subject matter jurisdiction over this matter, and Pre-Action Notice was properly effectuated on Defendant Lask.

POINT 3. THE COMPLAINT FILED ON JANUARY 14TH, 2019, AND SUBSEQUENTLY DULY SERVED ON DEFENDANT LASK, WAS PROPERLY REINSTATED AFTER DISMISSAL WITHOUT PREJUDICE ONCE DEFENDANT LASK COMPLETED THE ARBITRATION PROCESS AS CONTEMPLATED BY THE ORDER OF OCTOBER 2ND, 2019 (Da5, Da11, Da16)

Rule 1:20A-3(e) provides, in relevant part, that if a lawsuit for collection of an attorney's fee is pending when the client makes a written request for arbitration under Rule 1:20 A-3(a), and the lawsuit is stayed "pending a determination by the Fee Committee, the amount of the fee or refund as so determined may be entered as a judgment in the action unless the full balance due is paid within 30 days of receipt of the arbitration determination. If no such action is pending, the attorney or client **may**, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee or refund as determined by the Fee Committee." (Emphasis added.) At the time Defendant Lask filed for fee arbitration, the underlying lawsuit

filed in January 2019 was stayed until Defendant Lask went through the arbitration process, and upon completion of that process, Plaintiff moved for reinstatement.

In particular, on October 2nd, 2019, the trial court denied Plaintiff's motion to reinstate the complaint and instead the case "remains dismissed without prejudice. **The case will proceed through Arbitration**." (Da6)(emphasis added). In that same Order, the court instructed Plaintiff to "continue to serve legal papers at the P.O. Box that was addressed on the record on August 27, 2019," the same address where the Pre-Action Notice was sent, the same address where the summons and complaint were sent, and the very same address used by the Bergen County Arbitration Committee to deliver their determination. After Defendant Lask completed the arbitration process that resulted in confirmation of the $4,600.00 fee award, Plaintiff moved to reinstate the complaint as contemplated by the court by the Order of October 2nd, 2019, and enter judgment in that amount as provided by Rule 1:20A-3(e). That Rule further provides that "the amount of the fee . . . as so determined may be entered as a judgment in the action unless the full balance due is paid within 30 days of receipt of the arbitration determination. Rule 1:20A-3(e).

In support of her argument that Plaintiff sought reinstatement of a void complaint, Defendant Lask once again relies upon unpublished opinions without first complying with *R*. 1:36- 3, citing to the case of Hunnell v. McKeon, A0127-20, 2022 WL 3268382 (N.J. Super. Ct. App. Div. Aug. 11, 2022). Defendant Lask did

not provide a copy of this opinion, nor did counsel certify that no known contrary unpublished opinions exist, and the opinion must therefore be disregarded. Defendant Lask also argues that she "never knew of the plaintiff's malpractice and false billing **until at the fee arbitration hearing when he submitted bills for the first time**." (Db15) (Emphasis added.) However, Defendant Lask, while citing to and relying on Saffer, *supra*, never requested an adjournment or stay of the arbitration proceedings.

As held by the Saffer Court, however, "[w]hen during the pendency of a fee arbitration and after the thirty-day period for withdrawal has elapsed, a client discovers a substantial malpractice claim against the former lawyer, we direct the Fee Committee, pursuant to Rule 1:1-2, to relax Rule 1:20A-3(b)(1) to permit the client to have a new thirty-day window of opportunity to withdraw the request for arbitration. The window of opportunity commences the day the client discovers the substantial malpractice claim within the meaning of Grunwald v. Bronkesh, [citation omitted]. Rule 1:20A-3(b)(1) will not be relaxed, however, if the basis for a substantial malpractice claim is known to the client before the thirty-day withdrawal period expires." Defendant Lask never sought to withdraw the request for arbitration. Saffer, *supra*, 143 N.J. at 268.

POINT 4. THE SUMMONS AND COMPLAINT WAS SERVED ON DEFENDANT LASK AT HER NEW YORK OFFICE, AND DUE PROCESS WAS FULLY SATISFIED, NOTWITHSTANDING HER APPEARANCE PRO SE BY THE SUBSTITUTION OF ATTORNEY FILED WITH THE COURT ON AUGUST 27TH, 2019 (Da4, Da11, Da16)

Rule 6:2-3(d)(1) provides that the summons and complaint will be served by certified and regular mail. Service is considered effective if the regular mail is not returned and the certified mail has either been claimed or is returned with a marking to indicate that service at the given address was good service. Where initial service by mail is not unsuccessful, the plaintiff or the attorney may request reservice by mail or by court officer personally pursuant to *R*. 4:4-4. See Rule 6:2-3(d)(2). However, if the certified mail is returned marked "unclaimed" or "**refused**," service is considered effective provided the regular mailing has not been returned. Ibid. Finally, if the regular mail is not returned, that raises a presumption of proper service. *R*. 6:2-3(d)(1) and (4).

In support of her argument that the trial court lacked personal jurisdiction in this case, Defendant Lask yet again relies on numerous unpublished opinions, including Murphy v. 113 E. Cedar, No. A-2430-22, 2023 N.J. Super. Unpub. LEXIS 1282 (App. Div. July 24, 2023) (Db16), Epos, Inc. v. Pantelopoulos, No. A-2365-08T1, 2009 N.J. Super. Unpub. LEXIS 2922 (App. Div. Dec. 1, 2009) (Db18); and Days Inn Worldwide, Inc. v. Buja Investments, Inc., Civ. No. 11-355, 2012 U.S.

Dist. LEXIS 7011, 2012 WL 194397, at *3 (D.N.J. Jan. 20, 2012) (Db18), wholly disregarding the directive of Rule 1:36-3. Defendant Lask failed to provide a copy of these three additional unpublished opinions, and never certified that there were no known contrary unpublished opinions.

Service of the summons and complaint was likewise attempted at the same street address provided by Defendant Lask. Contrary to Defendant Lask's misstatement, without having submitted a single certification in the underlying matter in this appeal, that at "no time did the clerk mail anything to an address in the state of New Jersey. Rather, the plaintiff provided a number of false addresses in New Jersey for the defendant, ..." (Db16) On the contrary, the clerk first sent process to Defendant Lask's Post Office Box address because that was the only street address provided by Defendant Lask to Plaintiff. [Pa1; Trans. ID: SCP2019112348]

Eventually service was effectuated by sending the summons and complaint by regular and certified mail to Defendant Lask's law office in New York City at 244 Fifth Avenue, #2369 in New York, NY 10001 – the green card was returned with a signature, the regular mail was never returned, and service was therefore presumptively effective. Defendant Lask, however, claimed that the New York City address is not "her place of business" but that is simply not correct – that address is the confirmed address for her law office at that time, and is the same address on her filing with the underlying court. (Da15) On June 20th, 2022, Defendant Lask filed a

motion for reconsideration of the Order of May 31st, 2022 granting judgment to Plaintiff. (Da15) Defendant Lask set forth as her address, "244 Fifth Avenue, #2369, New York, NY 10001," the very same address where the summons and complaint were successfully served. (Da15)

Defendant Lask also argues, without any support, that service was not properly done and that the "signature" "on the unidentified document uploaded April 23, 2019 was not the defendant's, . . ." Defendant Lask **never** submitted a certification in the underlying matter objecting to the "signature" on the certified mail return card. Defendant Lask also states, without having previously filed a certification in support, that she learned of the underlying action "because the plaintiff previously made false filings of judgment against her, so she had to watch for future false filings." (Db17) Defendant Lask did not state that she learned of the potential litigation from the Pre-Action Notice that was emailed to her before the post office box was temporarily closed. Finally, on August 27th, 2019, Defendant Lask filed a Substitution of Attorney, appearing *pro se*, **leaving no doubt that service of process was complete and personal jurisdiction voluntarily waived**. [Pa16]

When a defendant in a lawsuit elects to go forward without counsel after having been given an opportunity to obtain an attorney, our legal system must proceed on the assumption that the unrepresented defendant is competent to protect

her own legal interests and to make binding litigation decisions, including decisions as to potential legal and factual defenses. "It is well settled that a personal judgment may be rendered against one who is neither served with process in the state nor domiciled in nor a citizen of the state if he consents to jurisdiction over him." Battle v. General Cellulose Co., 23 N.J. 538, 546 (1957). A general appearance may arise by implication from a defendant seeking, taking or agreeing to take some step or proceeding in the cause beneficial to herself or detrimental to the plaintiff, other than one to contest the jurisdiction only, and by doing so has thus waived *in personam* jurisdiction. Field v. Field, 31 N.J. Super. 139, 148 (App. Div. 1954). "And it may be noted as the prevailing rule in the majority of jurisdictions that an objection that the court is without jurisdiction of the subject matter constitutes a general appearance." Id. at 148-49. The only conclusion that can be drawn under these circumstances is that Defendant Lask undertook to deal with the merits of the underlying litigation and in some measure with the jurisdiction over the subject matter thereof, not to mention having filed a Substitution of Attorney, and that in doing so she submitted herself voluntarily to the jurisdiction of the court. Id. at 150. Defendant Lask was properly served with the summons and complaint by the clerk of the court and waived any challenge to *in personam* jurisdiction when attorney Lask appeared by Substitution of Attorney to argue subject matter jurisdiction on her own behalf and to request leave to proceed with arbitration.

POINT 5. THE LOWER COURT'S LETTER FILING IS ACCURATE AND PROPERLY DECIDED THE ISSUE OF REINSTATEMENT OF THE COMPLAINT AFTER DEFENDANT LASK COMPLETED THE ARBITRATION PROCESS, AS WELL AS ENTRY OF JUDGMENT AGAINST DEFENDANT LASK (Pa8)

Judge Monaghan's legal analysis and statement of the facts and procedural context are accurate, well-reasoned, and were based upon His Honor's feel for the case and consideration of the arguments made. Judge Monaghan's decision is sound and should be affirmed based upon these circumstances.

CONCLUSION

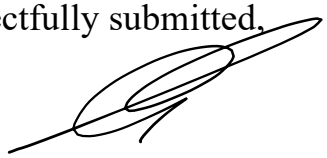
Defendant Lask retained the Plaintiff to perform legal services and specified that all written communications between attorney and client, who is also a New York attorney, must be by email, and set forth her street address as 289 Gorge Road, #73, Cliffside Park, New Jersey 07010, which turned out to be a post office box. That same address was provided to the trial court by Defendant Lask. And that very same address was the one used by the Secretary of the Bergen County Fee Arbitration Committee to mail out the Committee's fee arbitration award to Defendant Lask.

Plaintiff mailed the Pre-Action Notice to that address, less than two weeks after Defendant Lask provided the address to him, and also forwarded the notice to her by email. Defendant Lask also maintained a law office in New York City where the summons and complaint were sent by regular and certified mail after service was returned when sent to the post office box address. The green card was returned with a signature that was never disputed by competent evidence by Defendant Lask.

Defendant Lask entered her appearance in August 2019 upon the filing of a Substitution of Attorney. Defendant Lask never filed a motion to dismiss the complaint for lack of jurisdiction. There is no doubt that the trial court had *in personam* jurisdiction over Defendant Lask. Likewise, Defendant Lask pursued fee arbitration while the underlying lawsuit remained dismissed without prejudice pending the outcome of that arbitration process. Rule 1:20A-3 permits Plaintiff to

reinstate the complaint and enter judgment against Defendant Lask. Judge Monaghan's cogent decision should be affirmed.

Respectfully submitted,



Michael Wiseberg, Esq.
Plaintiff/Respondent Appearing pro se

MICHAEL WISEBERG, ESQ,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Respondent/Plaintiff,	DOCKET NO.: A-000754-22
vs.	On Appeal From: Below, Docket No. BER-DC-679-19
SUSAN CHANA LASK,	Bergen County Court: Law Division Special Civil Part
Appellant/Defendant.	Sat. Below: Hon. Joseph G. Monaghan, J.S.C.

REPLY BRIEF ON BEHALF OF APPELLANT/DEFENDANT SUSAN CHANA LASK

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June 20, 2024

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PRELIMINARY STATEMENT

Defendant submits this reply brief to Plaintiff's opposition brief that resorts to misrepresentations and deflections which prove it is bereft of any opposition to Defendant's opening brief. In short, the Special Civil Part resurrected a complaint it dismissed three years prior for lacking jurisdiction that was still lacking when it was reinstated. That court did so solely because it wanted to enforce a fee arbitration decision it had no jurisdiction over. Its decision even questions whether it could have done what it did because R 1:20-A-3(e) directs Plaintiff to file a R 4:67 plenary action in the Law Division to enforce an arbitration decision-not reinstate a void complaint. Plaintiff refused to file under R 4:67 because he wanted to prevent Defendant from filing an answer, counterclaims and affirmative defenses regarding Plaintiff's legal malpractice and frauds discovered at the fee arbitration hearing. The Special Civil Court further erroneously made decisions in that case it lacked jurisdiction over, to the point of taking money in escrow pending this appeal. All of that violates the three principles or general rules from the *Saffer* case: (1) the negligent attorney is precluded from recovering his attorney fee and the total amount of the malpractice claim recovery goes to the plaintiff. (2) ordinarily, an attorney may not collect attorney fees for services negligently performed, and (3) "in addition, a negligent attorney is responsible for legal expenses and attorney fees incurred by a former client in prosecuting the legal

malpractice action." *DiStefano v. Greenstone*, 357 N.J. Super. 352,357 (App. Div. 2003). Furthermore, *Saffer v Willoughby* directs a trial court to stay an arbitration award when malpractice is raised because the "fee awarded is often tightly intertwined with the legal malpractice, posting of a bond or cash as a condition of the stay should not ordinarily be required." *Saffer*, at 260. The transcript in this appellate record shows Defendant informing of the legal malpractice discovered at the fee arbitration hearing and arguing *Saffer* and the *Hunnel* case (see opening brief), but the lower court ignored the law, told Defendant to file a separate legal malpractice action which is contrary to *Saffer*, *Hunnel*, and the entire controversy doctrine, then ordered Defendant to escrow the money pending appeal.

The May and October, 2022 Orders in the trial court must be vacated and all orders and other directions made after the trial court dismissed the case in August 2019 that say anything other than the case was dismissed must be vacated, and the case must be dismissed as there is no subject matter or personal jurisdiction.

LEGAL ARGUMENT[1]

POINT I
Denial of Reconsideration Was Palpably Improper.

Initially, we address Plaintiff's brief, pages 1, 12 and 14 FN 1, which misrepresents that the only order on appeal is a September 23, 2022 denial of

[1] The appendix attached hereto is Defendant's counsel's certification of all unpublished cases in Defendant's opening brief.

reconsideration. On the contrary, Defendant's Case Information Statement ("CIS") and Notice of Appeal make clear that she challenged both the September, 2022 and May 31, 2022 orders, [2] and the May 31 order is attached to the November 7, 2022 CIS. Due to technical e-filing issues, the May Order was not listed on the notice of appeal, so an Amended Notice of Appeal was timely filed November 25, 2022, pursuant to the case manager's request on the docket, stating the "CIS lists 9/23/22 which encompasses the 5/31/22 Order, also being added to this amendment. All 3 orders of 5/31,9/27 and 10/7/22 were filed with the original CIS." Both CIS Statement of Facts also cite the May 31 Order as integral to the September, 2022 reconsideration order. The May, 2022 Order is also filed in Defendant's October 17, 2023 Appendix. **Da-28**. Assuming arguendo that it was not listed, it was attached to the first Notice of Appeal, cited in the CIS as integral to the September, 2022 Order and the September Order confirms it is integral by denying reconsideration "For the reasons set forth in the court's order dated May 27, 2022." **Da- 59.** *Tara Enters. v. Daribar Management Corp.*, 369 N.J. Super. 45, 60, 848 A.2d 27 (App. Div. 2004); *Potomac Aviation, LLC v. Port Auth.*, 413 N.J. Super. 212, 222, 994 A.2d 536 (App. Div. 2010) (appeal of order is considered if "the basis for the motion judge's ruling on the [original] and reconsideration motions

[2] The May, 2022 Order is dated May 27 but was filed by the court on May 31, which is the date Defendant uses in her CIS and filings.

was the same.") As well, "in the interests of justice," even an order not specifically listed on the CIS may be considered on appeal. *Innes v. Marzano-Lesnevich*, 435 N.J. Super. 198, 211 n.6, 87 A.3d 775 (App. Div. 2014). Plaintiff's denial of the order appealed is concerning when the documentary evidence demonstrably proves it is listed on appeal. Moreover, Plaintiff's brief, Point 1, page 14, proves it was on appeal by arguing the May and September, 2022 Orders were the same basis by stating Defendant "simply repeated the same arguments she made before," then his brief argues the May Order in his Points 2-5.

Now that Plaintiff's distortion of the appealed order is corrected, next is his Point 1 that simply reiterates the standard of review for reconsideration motions then baldly concludes at page 16 that Defendant "failed to establish" the trial court abused its discretion by denying reconsideration, without any facts to support that conclusion. Plaintiff omits facts because Defendant's opening brief, Point I, makes clear that the trial court could not reinstate a dismissed complaint it never had subject matter jurisdiction over because the requisite Pre-Action Notice was never served *before* filing it - making it void *ab initio*. Furthermore, as Defendant's opening brief informs, the law mandates that the clerk should not issue a docket number if the complaint violates R 1:20A-6. The only thing the trial court did in May, 2022, three years after its 2019 dismissal, was reinstate the same void complaint with a prohibited docket number, then issued a May 27, 2022 judgment

on that without jurisdiction - making that judgment void. The court's lack of both subject matter and personal jurisdiction was argued in Defendant's reconsideration motion (**Da-33-41**) and opening brief Statement of Facts and Point I. Thus, the trial court's denial of reconsideration was an abuse of discretion by ignoring its own 2019 dismissal order for lack of subject matter jurisdiction then three years later claiming it "stayed" the complaint that it clearly dismissed.

Furthermore, R 1:20A-6 mandates "dismissal" when violated, not a stay. Hence why the trial court issued several orders from August 27 to October 2, 2019 affirming dismissal, and solidifying in its October 2, 2019 Order that "The docket is corrected by removing "default" and listing this case as dismissed." In fact, the public docket since 2019 always showed the case was dismissed, not stayed. Dismissal was the only result as Plaintiff cannot be rewarded for obtaining the 2019 default judgment against Defendant knowing he violated the clear mandates of R 1:20A-6, and forcing litigation for that too to be vacated. In direct contravention to those facts and the law, the trial court's 2022 decisions three years later conflate a "stay" that did not exist with a Rule 4:67 summary proceeding that was required for Plaintiff to enforce his arbitration award. R 4:67 requires a separate plenary action in the Law Division, where Defendant could have raised her answer, counterclaims, and affirmative defenses. *see* Plaintiff's Opening Brief pp 7-19. Hence, *Saffer v Willoughby* directs the trial court to stay an arbitration

award when malpractice is raised (as Defendant raised in her arguments, see 9/23/22 Transcript in this record) and because the "fee awarded is often tightly intertwined with the legal malpractice, posting of a bond or cash as a condition of the stay should not ordinarily be required" *Saffer*, at 260. Yet the trial court demanded Defendant escrow the fee arbitration money when she raised the legal malpractice, and told her to file her own separate action as Defendant's Opening Brief explains.

Simultaneous to the trial court reinstating a void complaint rather than enforcing R 4:67, it conceded its error of reinstating a void complaint by stating the case was dismissed not stayed, and the appellate court may disagree with what it did. T 25-26:25-2; 37:1-3, 43-44. Plaintiff ignores all of these facts and law in his Point 1, and simply repeats clear errors of the trial court making decisions without jurisdiction. However, the law is clear that without jurisdiction, any equitable and legal decisions of the court are moot and unenforceable and this appellate court can dismiss the complaint and vacate all orders and statements after it was dismissed in 2019. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 154, 29 S. Ct. 42, 53 L. Ed. 126 (dismissed on appeal for lack of subject matter jurisdiction when neither party had raised the issue); *Country of Luxembourg ex rel. Ribeiro v. Canderas*, 338 N.J. Super. 192, 202, 768 A.2d 283 (Ch.Div.2000) (judgment vacated due to lack of personal jurisdiction over the defendant). When a court lacks subject

matter jurisdiction, its authority to consider the case is "wholly and immediately foreclosed." *Gilbert v. Gladden*, 87 N.J. 275, 280-81, 432 A.2d 1351 (1981) quoting *Baker v. Carr*, 369 U.S. 186, 198, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Any statements or decisions made after the August 27, 2019 dismissal are improper and raising them here is another improper deflection by Plaintiff. Thus, the dismissed complaint should not have been reinstated, decisions on it should not have been made, an escrow should not have been ordered and R 4:67 should have been enforced.

Accordingly, the trial court's decision was "palpably incorrect or irrational" and the court did not consider, or failed to appreciate the significance of probative, competent evidence of its own orders in 2019 dismissing the complaint because it lacked jurisdiction, then three years later claimed the dismissal was a stay when it was not. *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401, 576 A.2d 957 (1990).

Point II

The Trial Court Dismissed the Complaint Because R 1:20A-6 Service Never Occurred. Plaintiff Can Not Refute That Decision as he Failed to File a Cross-Appeal.

Plaintiff's Point 2 is a nullity. His brief, page 18, states R 1:20A-6 mandates service of the Pre-Action Notice by certified and regular mail, yet the complaint he filed in 2019 admits it was never served and was returned to him for using a wrong address. **Da-2a ¶11.** In fact, the trial court's 2019 decisions found there was no

service so it dismissed the complaint. Plaintiff cannot appear here and now argue that decision is wrong when he never filed an appeal of that decision. Nevertheless, no Pre-Action Notice service occurred as the 2019 court orders, including the October 19, 2019 Order found that "service was not effected" and the complaint was dismissed. **Da-6a**. Plaintiff's excuses of using various addresses, none of which were Defendant's residence, and using email as service do not comport with R 1:20A-6's jurisdictional mandates and his excuses do not vitiate the 2019 orders finding R 1:20A-6 service never occurred.

It is objectionable that Plaintiff falsely accuses that "Defendant Lask evaded service" when it was Plaintiff who deliberately used false addresses to insure she did not receive notice of whatever he purportedly sent or filed. In fact, once he received notice from the post office that he was using wrong addresses then he could have simply looked up Defendant's residence on the internet, which at the time was listed there. As well, he could have applied for substituted service with the court after his alleged mailings were returned. In fact, his complaint admits he mailed to a post office box in Cliffside Park, not a residence as mandated by law. Yet knowing there was no notice to Defendant, he then filed and obtained three default judgments against her-all of which the court later vacated when Defendant proved Plaintiff's false filings. This speaks for itself as to Plaintiff's gamesmanship and abusing the process to leverage a judgment against Defendant.

Plaintiff next resorts to insisting R 1:20A-6 notice by email is proper by misrepresenting that Defendant never disputed his purported email notice. First, R 1:20A-6 does not permit email service. Next, the record is rife with Defendant's affidavits stating Plaintiff never sent anything to her, by email or otherwise. After a hearing and review of the evidence, in 2019 the court found he violated R 1:20A-6 and dismissed Plaintiff's complaint. Plaintiff next states the court claimed "personal service" of the pre-action notice occurred after the case was dismissed on August 27, 2019 (**Da-6**), it directed Plaintiff to serve Defendant in the future to an address that was not hers (and that Plaintiff's filings here admit was not her residence) and he claims the court directed arbitration to proceed. First, all of those statements are irrelevant and prohibited as Plaintiff informs they were all made after the trial court dismissed the case for lack of subject matter jurisdiction. As detailed above, a court cannot make directions or judgments when it lacks jurisdiction. *Louisville & Nashville R. Co. v. Mottley*, supra; *Country of Luxembourg ex rel. Ribeiro v. Canderas*, supra; *Gilbert v. Gladden*, supra; *Baker v. Carr*, supra. There also was no proof of personal service in the court nor did Defendant acknowledge receipt of a Pre-Action letter after the case was dismissed.

Next, Plaintiff repeats the trial court's erroneous statement that R 4:4-4 and 4:4-5 read together give the special civil part authority to serve a complaint by an out of state mailing. There is no law stating that, and those rules do not state that. R

4:4-4 mandates personal service in this state, or substituted service only if ordered based on an affidavit supporting that or mail service only if defendant answers the complaint, all of which never happened. R 4:4-5 applies only to in rem or matrimonial actions and requires a specific affidavit from a plaintiff, again all of which never happened here and is inapplicable. Thus, there was never personal service and an unidentified USPS card with a scribble on it from an out of state address that was not Plaintiff's signature nor her physical office does not create jurisdiction.

Point III

The Numerous Misrepresentations of Fact and Law Make Plaintiff's Brief Incredible

In addition to the many misrepresentations of fact and law by Plaintiff, as shown herein above, there are more misrepresentations that make his brief incredible. Plaintiff misrepresents that Defendant never filed a motion to dismiss. Of course, she filed that as the record shows her cross-motion to dismiss was filed August 20, 2019, was heard August 27 and based on that the complaint was dismissed August 27, 2019 and dismissal was confirmed again October 2, 2019 after Plaintiff wrongfully demanded reinstatement when he admitted he never served the R 1:20A-6 Pre-Action Notice. He continues his misrepresentations by stating on October 2, 2019 the parties "personally appeared" in court where he "again" handed an envelope to Defendant. That is yet another patent deception by

Plaintiff. That date was a phone appearance where nothing was handed to her. He further misrepresents at his brief page 7 that Defendant provided a Gorge Road address as her residential address without any proof of that because that too is false. In fact, Plaintiff's brief and his 2019 complaint admit the Gorge Road address was a PO Box place, not a residence-and in fact was a PO Box that did not belong to Plaintiff after she terminated Plaintiff. Again, if he wanted her residential address he could have simply found it on the internet at the time or filed for substituted service. But he purposely refused to follow the law as his intention was to insure she did not have notice of his filings and to wear her down with his three falsely obtained judgments against her. He next misrepresents at his brief page 8 that Defendant received a fee arbitration letter at the Gorge Road address, when he knows that is false as he conceals from this court that Defendant had counsel Joseph B. Fiorenzo of Sills, Cummis & Gross, PC. Mr. Fiorenzo appeared for the entire fee arbitration process, and he received all mail and notices for Defendant and responded to the fee committee. Next, Defendant misrepresents an appeal of the fee arbitration was "fully briefed and argued." There was no "argument" and the appeal is irrelevant to this matter.

Defendant also misrepresents that an August 27, 2019 substitution was filed to claim Defendant appeared in the case (see Pa16). Disturbingly, Plaintiff purposely omits numerous pages that were attached to that filing which states it "incorporates

by reference in their entirety the attached Certifications of Susan Chana Lask and Honorable Jeffrey Arlen Spinner, both made a part of the record supporting this substitution." Those attachments showed that Defendant objected to personal jurisdiction and that the trial court inappropriately demanded that Defendant file a "substitution" when no prior appearance by Defendant or any counsel was filed for the exact reason that Defendant objected to jurisdiction. The attorney Jamie Goldman listed on that "substitution" never filed an appearance as well. In fact, Plaintiff admits that by his June 3, 2019 letter stating she "has yet to enter a formal appearance in this case (court docket SCP20191274559). Thus, the substitution filed at the demand of the court the day the case was dismissed was not only a special appearance that Plaintiff deliberately omits its attachments proving that, but it also was void as there was nothing to substitute from.

Finally, Plaintiff misrepresents at his brief page 25 that Defendant never sought to withdraw from the fee arbitration within the initial 30-day withdrawal period upon learning of Plaintiff's legal malpractice. This misrepresentation is made in direct contravention to the fact that Defendant's opening brief, page 7, that makes clear Plaintiff's malpractice and frauds were discovered long after the 3-day initial period as they were discovered the day of the fee arbitration appearance when Defendant for the first time produced documents he fabricated for that hearing. Thus, the proper procedure was for her to wait for the fee arbitration decision, and

if negative then file her counterclaims and affirmative defenses once Plaintiff filed the requisite R 4:67 plenary action. However, Plaintiff insured that Defendant could not raise her answer, counterclaims and defenses by manipulating the process in refusing to file a R 4:67 action. Instead, he filed for reinstatement of a dismissed and void complaint where Defendant was prevented from filing an answer, counterclaims and affirmative defenses in the first place as that complaint was dismissed three years before.

Thus, Plaintiff did everything to interfere with Defendant's due process rights as he manipulated the system, starting with refusing to follow R 1:26-A Pre-Action Notice and ending with refusing to follow it again by filing a R 4:67 action to enforce arbitration where Defendant could have answered. All of this caused the case to be dismissed before an answer, counterclaims and defenses could be filed, then to Defendant's detriment the court reinstated the void complaint to prevent Defendant from answering in any way and held her to a fee arbitration decision that only a R 4:67 filing could enforce.

Point IV
The 2019 Complaint Was Never Served and the Trial Court Lacked Personal Jurisdiction to Reinstate It.

Plaintiff's entire Point 4 is another nullity. He claims he served Defendant by mail to a New York address in 2019 that he states was her office, then he patently misrepresents at his brief page 28 that "Defendant Lask never submitted a

certification in the underlying matter objecting to the "signature" on the certified mail return card." On the contrary, every certification filed by Defendant specifically objects to the signature, including she objected to it before the court in Plaintiff's presence "It's some document that's not even verified. It just says UPS or USPS on it on the top. And that's not my signature." T 24:1-3. Further, he misrepresents that was Defendant's law office in New York City where he claims he mailed the complaint when in fact her physical law office was in Nassau County New York at the time. Next, his conclusion that Defendant participated in the case is refuted by every filing where she certifies she appeared limited to objecting to jurisdiction. She was forced to have attorneys and herself watch the docket at times because Plaintiff filed things without serving her and she had to get that vacated. He cannot claim that her watching the docket to protect her rights from his wrongdoing is participation. His next false claim that a substitution was filed is refuted as discussed above-namely, there was no substitution and that documents was filed the day the complaint was dismissed in 2019 because the court insisted she file it. It is also false that she requested leave to proceed with arbitration. That never happened, nor is there a basis to seek "leave" when the plain language of Rule 1:20A-6 makes clear that it is the client who has the right to initiate fee arbitration proceedings conducted under Rule 1:20A. Stated differently, "[w]hether

or not a fee dispute will be arbitrated" pursuant to Rule 1:20A "is a matter within the exclusive control of the client" - leave is not required.

As to his Point 5. Plaintiff baldly states the trial court's letter is accurate when it clearly is not, as Defendant's opening brief proves. Additionally, the letter is so inaccurate it has dates wrong and lists an attorney Lora Glick as counsel when she was never counsel in the underlying matter and never filed such an appearance. The letter even tries to bootstrap an after the fact fee arbitration completely unrelated to the dismissed complaint as after dismissal Defendant filed it on her own. That letter actually states the trial court is uncertain of the orders it made.

CONCLUSION

Defendant respectfully requests this court to (a) reverse the May 27 and September 23, 2022 Orders reinstating the void complaint, (b) vacate any Judgment based on that void complaint and (c) directing that the lower court has no jurisdiction to issue a judgment, hear motions or take any action under that complaint.

Dated: June 20, 2024

/s/ John T. Bazzurro
John T. Bazzurro, Esq.