SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

PARKE BANK, Plaintiff, VOORHEES DINER CORPORATION, MARK KLEIN AND NICK DELLAPORTAS, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-000889-23 ON APPEAL FROM LAW DIVISION DOCKET NO. CAM-L-715-20 ON APPEAL FROM; AN ORDER OF THE SUPERIOR COURT, LAW DIVISION, ENTERED ON NOVEMBER 17, 2023, DENYING THE MOTION FOR RECONSIDERATION OF THE OCTOBER 6, 2023 ORDER DISCHARGING RECEIVER AND THE OCTOBER 6, 2023 ORDER DENYING MOTION TO INTERVENE AND DISCHARGING THE RECEIVER SAT BELOW: HON. ANTHONY M. PUGLIESE, J.S.C.

BRIEF ON BEHALF OF APPELLANTS, LUCILLE LOPEZ AND ROBERT P. LOPEZ, JR.

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PRELIMINARY STATEMENT

Appellants, the Lopezes, are personal injury claimants in a related matter. On July 23, 2021, Ms. Lopez was injured in a parking lot outside of the Voorhees Diner. This was followed by an August 2, 2021 preservation letter from counsel/ putting the diner and Landlord on notice/further notice.

As is usual, the Lopezes sought to proceed any tenant and Landlord or landowner. Those named in the lawsuit instituted July 21, 2023 include Mori Restaurant, LLC et. al. (Landlord/landowner), and Voorhees Diner Corporation ("VDC") (Tenant). The suit also named Mark Klein ("Klein") and Nick Dellaportas ("Dellaportas") as principals, including in that VDC's charter has been revoked.

However, the "tenancy" of "VDC" and/or VDC itself was impacted by events. A lender of VDC, Parke Bank (the "Bank"), sued VDC as well as Klein and Dellaportas as guarantors for alleged default. In that action, the Bank succeeded in having Alan I. Gould, Esq. ("Gould"/"Receiver") appointed Statutory Receiver of VDC, Klein and Dellaportas. Afterwards, on October 22, 2021, the diner was purportedly "taken over". There was no judgment of possession.

The Bank also succeeded in having Gould named Special Master to conduct a foreclosure sale of property of VDC, which resulted in a "sale" on January 18, 2022, including relative to the "leasehold interest" of VDC. The sale was to 320 Route 73, LLC, an "entity" of the Bank. Gould claims the Bank, through 320 Route 73, has owned the assets of VDC since. He acknowledges that there are issues around the sale, including who owns the building.

He claims he has been paid $300/hour by the Bank and that he was or became an employee of 320 Route 73. 320 Route 73 purports and/or has purported to be in possession. Mori initiated an eviction action against 320 Route 73 and Gould as Receiver in early 2022, which is ongoing. Gould has stated he has/had been operating the diner with and/or for the Bank and/or 320 Route 73.

The Lopezes named 320 Route 73 in their lawsuit, including due to the foregoing, which has created a number of issues, concerns and questions. Just one issue is that of successor liability.

Although VDC has been on notice of Ms. Lopez's injury as set forth above, Gould as Receiver did not take required action to ascertain, identify and notice creditors such as the Lopezes. The record reflects no attempt or effort to preserve and/or locate evidence, including video.

The record reflects that Gould did not provide inventories and accountings to the Court as required. The record reflects that in addition to him acting as Special Master while Receiver, that the sale he conducted engendered confusion and litigation.

The record reflects that Gould acted in concert with and/or for the Bank and/or 320 Route 73, LLC, in ways inconsistent and contrary to his appointed role as Receiver. It was the Bank and Gould who elected to seek and accept the appointment of Gould as Receiver, and actions should have been taken accordingly.

The Trial Court erroneously excused and discharged the Receiver and denied the Lopezes their motion to intervene. This Court that had supervisory authority did not require the Receiver to account for or take steps relative to the Lopezes of notice, preservation of evidence, claims, record keeping and record production, accounting for assets, liabilities, etc. of VDC and/or accounting for and/or clarifying confusion and uncertainty created relative to VDC and the lease as those existed on July 23, 2021 versus after. The Court erroneously determined that granting the Receiver relief and denying the Lopezes relief would not be or could not be of consequence to them.

PROCEDURAL HISTORY

On February 20, 2020, Plaintiff, Parke Bank ("Bank") instituted an action against Defendants, Voorhees Diner Corporation ("VDC"), Mark Klein ("Klein") and Nick Dellaportas ("Dellaportas") (collectively "Defendants"), for breach of a Commercial Mortgage Note ("Note") and associated Guaranties wherein the Bank sought accelerated damages in the sum of $1,185,285.34 plus attorney's fees and costs (the "Law Division Action"). Ca169. On March 26, 2020, the Bank filed a Motion to Enforce Litigant's Rights where it sought the appointment of a statutory receiver to secure its rights pursuant to N.J.S.A. 14A:14-2 given VDC's alleged insolvency and the Bank's claim for a sum certain. Ca178. By Order Appointing Trustee dated March 27, 2020, the Bank's Motion was granted however, "in light of the COVID-19 closures [the Court] will not name a receiver until after the closure of restaurants, bars and diners in New Jersey is lifted and until the Plaintiff provides the Court with the names of at least two receivers with the requisite skill to act as receiver of the diner business." Ca185. On July 21, 2020, Final Judgment by Default was entered against the Defendants, in favor of the Bank, in the sum of $1,282,580.66, inclusive of counsel fees and costs. Ca187.[1]

[1] Two months later, on September 16, 2020, the Bank instituted foreclosure proceedings, separate from the Law Division Action, pertaining to

In a letter dated March 4, 2021, approximately one (1) year after the entry of the Order Appointing Trustee, counsel for the Bank transmitted information to the Court on three (3) proposed receivers. On April 7, 2021, in response to counsel's provision of three (3) proposed receivers, the Clerk of the Superior Court circulated a notice requesting the submission of an Order with the March 4, 2021 letter. On or about June 24, 2021, the Bank filed a Motion to Appoint a Fiscal Agent, which was denied on July 23, 2021. Ca241, 247.

On July 23, 2021, Appellant Lucille Lopez sustained injury in the parking lot at the Voorhees Diner after dining there, as would later be alleged in her personal injury lawsuit initiated July 21, 2023.

On or about September 2, 2021, the Bank filed a subsequent Motion seeking to appoint Alan I. Gould, Esq. as a statutory receiver on the basis that VDC owed the Bank more than $1,185,285.34 and that despite its continued operation of the restaurant, the revenue generated was insufficient to pay its creditors or pay its monthly rent.

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the Leasehold Mortgage in a separate action against the Defendants, *et als*, filed under Docket No. CAM-F-8194-20 (the "Foreclosure Action"). Ca222.

By Order dated September 24, 2021, Alan I. Gould, Esq. was appointed as statutory receiver (hereinafter "Gould" or "Receiver") and was Ordered to "take all necessary steps to take control over the business, liquor license and personal assets of Defendants, Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas." The Order further provided that "the Receiver shall be paid from the proceeds collected in the amount of 15% which shall be assessed as an additional cost of the Judgment." Ca22. The Order describes the application to appoint "a Statutory Receiver, pursuant to N.J.S.A. 14:14-2", but makes no specific mention of a bond. [2]

On March 30, 2022, Mori Restaurant LLC ("Mori"), now Appellant in the related Docket No. A-000850-23, filed a Notice of Motion to Intervene, for Leave to Sue the Statutory Receiver, *nunc pro tunc*, Compel an Accounting and Payment of Rent pursuant to Statutory Priorities. Ca277. The Bank and

[2] On September 27, 2021, three days after the Order appointing Gould in the Law Division Action, Final Judgment in Foreclosure in the Foreclosure Action was entered. Ca 251. On November 4, 2021, Gould, on the Bank's application, was appointed Special Master to conduct the associated foreclosure sale, including on the grounds that a Sheriff could not conduct a single sale in that the property encompassed two counties. Ca 145.

On January 18, 2022, the purported sale of the leasehold interest and/or what was purportedly being sold took place, with the purchaser for $100 (One Hundred Dollars) being 320 Route 73 LLC, a purported wholly owned subsidiary of and/or entity of the Bank.

the Receiver opposed the Motion. The Receiver's April 11, 2022 letter response in opposition refers to his appointment as Special Master in the Foreclosure Action and a "sale of the property", in apparent reference to the January 18, 2022 sale. The Receiver's response states "I will continue to serve as Receiver until such time as the sale has been approved and the deed has been executed and sent for recording."[3]

On April 29, 2022, the Court denied Mori's motion. Ca305.[4] The next month, May 27, 2022, was ultimately the above-referenced "approval" date the Receiver indicated above that he was awaiting in the Foreclosure Action. Specifically, the Court in the Foreclosure Action on May 27, 2022 granted Gould the relief he sought as Special Master by confirming the sale and relieving him of his duties as Special Master. Regarding reference to when "the deed has been executed", execution was ultimately June 8, 2022 according to the subject Deed, recorded June 30, 2022 and August 2, 2022, in

[3] This statement that the Receiver "will continue to serve … until" was a unilateral statement versus anything the Receiver as to which the Receiver sought permission.

[4] On May 27, 2022, the sale was confirmed by the Court and Gould was relieved of his duties as Special Master. Ca150. This occurred over opposition by Mori claiming various irregularities, including what precisely was the property being or to be sold. Ca299.

Camden and Burlington Counties, respectively.

The Receiver, having stated on April 11, 2022 that he would serve until the deed was sent for recording, made no application to the Court in the Law Division Action until June 8, 2023 of the next year, when he filed a Motion to be Discharged. At that time, he noticed Defendants in the Law Division Action, the Bank and its counsel, and Mori counsel. Ca16. He stated in his Certification that he believed he fulfilled his responsibilities in connection with his appointment and thus, sought to be discharged. Ca21. He stated, in apparent reference to the foregoing January 18, 2022, sale (with "transfer"), that "upon the sale and transfer of the assets under the control of the Receiver, it became obvious that the Receiver had no duties other than as an employee of the Bank's subsidiary." Ca21.

On July 13, 2023, Mori opposed the Receiver's Motion and alleged violations of Statute and Rule governing statutory receiverships.

On July 21, 2023, Lucille Lopez and Robert P. Lopez, Jr. (the "Lopezes"), Appellants here in this A-000889-23 filed by them, and Respondents in A-000850-23, filed by Mori, filed a personal injury lawsuit against, *inter alia*, VDC, Klein, Dellaportas, Mori and 320 Route 73, LLC, which was captioned Lopez v. Mori Condominium Association, et. al., CAM-

L-2098-23. Ca413, 431.

On July 25, 2023, the Lopezes filed in the Law Division Action a Motion to Intervene. Ca342. The Certification addressed the pending motion filed by the Receiver, and explained that the Lopezes, "as creditors with personal injury claims, have an interest in these proceedings." Ca345.

On July 27, 2023, the Lopezes also filed in the Law Division Action a Cross-Motion to Intervene and Deny Receiver Relief. Ca346. The Motion explained that counsel wrote to Defendant VDC shortly after the incident, by correspondence dated August 2, 2021, which preceded the Receiver's appointment the next month, on September 24, 2021. The Motion explains that counsel, in connection with the filing of the personal injury action which had just taken place, just became aware of the Law Division Action as well as other actions and activities. The Motion explains that no notice from the Receiver was received. Ca350.

Also on July 27, 2023, the Receiver filed a Reply Brief regarding his application to be discharged. Ca139. On July 28, 2023, the Bank filed a Brief in support of the Receiver's Motion wherein it alleged that the Bank paid for the Receiver, invested money into the operation of the diner which continued to operate at a loss wherein no funds were generated from the operation of the

restaurant for payment to the Bank. In support of these claims, the Bank produced what it described as accountings, but titled profit and loss statements. Ca152, 165.

On October 6, 2023, the Court entertained oral argument on the Motion to be Relieved as Receiver, as well as the Lopezes' Motion/Cross-Motion to Intervene and Deny Receiver Relief. At oral argument, the Court denied the Lopezes' Motion(s) and granted the Receiver the discharge he sought, over opposition of the Lopezes and Mori.

The Court reasoned and/or rationalized that there was not and/or that the Court did not see any impact upon the Lopezes or any impact of consequence.

> THE COURT: …
> You filed your claim. The only pocket of money that might have to answer and actually pay your client is if there was a policy of insurance that was in play – that was present at the time that would cover for the injury that your client sustained and if that exists, that contract of insurance, it can't go away.
> …
> you can proceed against the limits of the policy, but no more because there is nothing else left.
> …you're not being estopped from going after anything beyond the policy limit, but go ahead and find something. 1T25[5]

The following colloquy also took place:

> THE COURT: … What I believe you're attempting to do is hold Mr. Gould personally responsible for any excess verdict above a

[5] 1T refers to 10/6/23 transcript on Receiver Discharge/Intervention.

policy limit.
MR. REUTER: No. Can I explain what I'm attempting to do?
THE COURT: No. Well –
MR. REUTER: I'm trying to protect – I'm trying – I'm not trying to make Mr. Gould's life difficult.

I'm trying to protect my clients and the claims. What happens here –
THE COURT: You've done it.
MR REUTER: I --
THE COURT: You've done it. You've done it.
The claim is made against the proper people in a litigation. You have preserved your rights in that other docket number.
…

Everybody has been notified and you're making a record now that you sought to do everything you could to intervene in this case, to make everybody aware that you had a claim back in [July] of 2021.

But to utilize that as a methodology to prevent Mr. Gould from being discharged is of no consequence relative to your case.

If you have insurance that can satisfy any claim that your client may be able to prove, fine. Done.

If there an excess verdict, I'm not going to have Mr. Gould stand responsible for that because he was not the receiver at the point in time when your client as injured and that's my ruling.

It can't be any more clear, Mr. Reuter. You've made your point. That's the Court's ruling. I'm hearing nothing further on it. Thank you. 1T28-30.

THE COURT: …it is -- it does not fall on deaf ears that there are some statutory requirements in this regard, but the point is this is an entity without assets... Mr. Gould has filed the paperwork. The bank has filed the paperwork. He filed it with the court. Formalities to follow the statute would have to be paid by someone. There is no money left to do it. It becomes an impossibility.

The court is not paying for it. Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it.

If the creditors want it and the creditors want to hire

> somebody -- they certainly don't. Otherwise, I would have entertained it happening. So the motion is denied and I am discharging Mr. Gould as the receiver. If you don't like it, take it up. 1T30-31.

On October 30, 2023, the Lopezes filed a Motion for Reconsideration of the October 6, 2023 Orders. Mori joined in the application.

The Motion Certification observed that the relief the Receiver requested was granted notwithstanding the violations and/or non-compliance demonstrated. Ca404. The Motion raised that the motions were decided as they were even though the Statute at N.J.S.A. 14A:14-18 addresses procedural rights of aggrieved persons. Ca405. The Motion raised that one of the Orders entered states there were no objections, when in fact there was vigorous objection. Ca405. The Motion questioned any underpinnings or support for the Order, prepared by the Receiver and granted by the Court exactly as proposed, stating that the Receiver "has acted in the best interest of this matter and has otherwise fulfilled his fiduciary duties as Receiver." Ca405. The Motion raised that the Receiver had provided no explanation "with regard to any actions taken relative to the August 2, 2021 preservation letter, including requested video." Ca406. The Certification further raised that while the Order appointing the Receiver purported to appoint him not only as to VDC, but to Klein and Dellaportas, that nothing about this was addressed relative to these

individuals. Ca407-08. The Certification expressed that "The Receiver's application and the resulting outcome to date has invited and created confusion and uncertainty through no fault of parties such as the Lopezes, whose rights and position must be properly weighed and taken into account." Ca408. The Motion Certification raised other issues, including particulars regarding Statutory and Rule violations. Ca404-09.

On November 17, 2023, the Court denied the Motion without oral argument and/or a written statement of reasons. Ca1. The Court placed the following on the record:

> I know the complaints that Mr. Sobel had contending that the Court did not follow the statute, that the receiver is not entitled to discharge, but what was telling was for all the work that both sides, both the Lopez[e]s and Mori, were seeking Mr. Gould to perform relative to his position as a receiver before he would be discharged, neither of them were in a position willing to compensate him for that, and that is telling in the case to the Court, and that is part of the basis. But I reincorporate all my findings from the October 6th hearing and my decision thereon and I deny the motion for reconsideration. They presented no new evidence, no new legal arguments, and that's why I did not give it argument. 2T5-11[6]

The foregoing was set forth by the Court despite there being issues that could not have been raised previously, such as issues with the contents of the

[6] 2T refers to the 11/16/23 transcript from the Reconsideration Motion.

Order(s) that were entered, and things brought up by the Court at oral argument.

On November 20, 2023, Mori filed its appeal, docketed A-000850-23. Ca4. On December 1, 2023, the Lopezes filed the instant appeal.

STATEMENT OF FACTS

On June 10, 2013, Mori Properties LLC purportedly entered into a Commercial Lease Agreement (the "Lease") dated April 19, 2013 with VDC and Klein affecting premises located at 320 Route 73, Voorhees, New Jersey. Pursuant to the Lease, VDC was to operate a 24-hour casual diner or restaurant. Ca30. On November 28, 2014, Mori Properties LLC purported to convey certain fee title interest to Mori, together with an assignment of the Lease. Ca102, 105.

On May 20, 2014, VDC purportedly borrowed $1,000,000.00 from the Bank pursuant to the Note, with Dellaportas and Klein executing associated Guaranty of Payment and Completion Agreements. VDC executed a Leasehold Mortgage (the "Leasehold Mortgage"). On March 16, 2015, VDC entered into a Commercial Modification Note for an additional $400,000.00 from the Bank, which was further guaranteed by Dellaportas and Klein and further secured by a Leasehold Mortgage Modification. Ca205-220.

In December 2019, the foregoing Defendants allegedly defaulted on their payment obligations. The Bank accelerated the obligations and instituted the Law Division Action on February 20, 2020. Ca169. The Bank instituted the Foreclosure Action on September 16, 2020. Ca222.

On July 23, 2021, Appellant Lucille Lopez sustained injury in the parking lot at the Voorhees Diner after dining there, as would later be alleged in her personal injury lawsuit initiated July 21, 2023. Ca413, 431.

By letter dated August 2, 2021, counsel for the Lopezes notified/further notified, inter alia, VDC of the incident. Ca349, 404. The letter also was a preservation letter, which requested video. Ca406. As detailed in the Lopezes' Certification in Support of their Cross-Motion, counsel for the Lopezes was contacted via voicemail by Klein on August 7, 2021, and counsel for the Lopezes attempted to go through who was understood to be counsel for VDC, avoiding direct communication with Klein. Ca349. As the Certification further details, such counsel's office was contacted, evidence of which included August 10, 2021 correspondence confirming that that counsel's office directed Mr. Klein to not contact counsel directly and that the liability carrier was being notified. Ca350. The Certification further details lack of subsequent communication from the VDC counsel or a carrier. Ca350.

The next month, on September 24, 2021, Gould was appointed Receiver after entry of Default Judgment in the Law Division Action. According to the Order, prepared by the Bank, the Receiver was to take control over the Defendants' (VDC, Klein and Dellaportas) business, liquor license and assets. Ca22.

The only allowance in the Order for compensation to the Receiver was that he "shall be paid from the proceeds collected in the amount of 15%..." Ca22. The record reflects that Gould decided on his own to compensate himself differently, via an interested third-party creditor, and interpreting "proceeds collected", as follows:

> … I never received any fees or other remuneration from the funds of the diner, but was paid by Parke Bank on an hourly basis, $300 an hour below my normally hourly rate having practiced for fifty seven (57) years in New Jersey as an attorney.
>
> The Order appointing me included that I would be paid fifteen (15%) percent from the proceeds collected of the operation. I did not feel this was a fair way to pay the receiver since fifteen (15%) p[er]cent would be a large amount of money to be paid over. The bank did assume the responsibility of payment of my fee. Ca141.

He also described himself as an "employee of the bank's entity, 320 Route 73, LLC." Ca21. He has stated that "The bank has, through it[]s entity, 320 Route 73, LLC, owned the assets of the Voorhees Diner Corporation since January 18, 2022." Ca142. Gould also describes someone working with/for him as his

"manager" who "offered to work with me with no pay". Ca140. Gould did not make application or otherwise seek permission from the Court (only seeking discharge by application) for any of these compensation arrangements contrary to the Order and/or relative to his role as Statutory Receiver with its accompanying statutory/fiduciary duties.[7]

On September 27, 2021, Final Judgment in Foreclosure was entered in the Foreclosure Action. Ca251.

Although there was no Judgment of Possession, etc., the next month, on October 22, 2021, according to the Receiver's own assertions to the Court, the diner was taken over pursuant to actions of Gould, the Bank and counsel for the Bank. The Receiver referred to "all of the people that are necessary for the take over of the restaurant." Ca19. Gould indicates that management was immediately relieved, and that Klein arrived, and was escorted from the diner with the assistance of the police, who had he apparently contacted ahead of

[7] Mori has asserted in this matter that Gould was being represented by the Bank's counsel based upon eCourts information/filings. Gould has stated that at no point has he retained an attorney to represent him. Ca141. He stated "My relationship with Saldutti Law Group was that we were in agreement with certain issues and in order to reduce the costs, we filed jointly and we were successful as we moved forward." Ca141. Gould does not elaborate on what he means by "we were successful", including relative to his position as appointed Statutory Receiver.

time. Ca19.

Based on Gould's own certifications and representations, he did nothing or has not provided anything suggesting that he made any efforts with someone as integral to VDC as Klein to interact with him, interview him, obtain information from him, etc. To the contrary, possibly the first and only time that the Receiver interacted with Klein was on October 22, 2021, for the purpose of essentially kicking him out. Ca19.

Regarding the Lopezes, the record and the Receiver's own representations and responses reflect lack of effort or any affirmative steps by him towards learning of or about the Lopezes and the claims. His July 28, 2023 letter to the Court, written close to two years after he was appointed, would express "no knowledge of any personal injury action until I received the letters of [counsel] who apparently filed suit…," which does not specifically address any knowledge of the Lopezes pre-suit, despite the communications from counsel for the Lopezes after the incident occurred. Ca352.

On November 4, 2021, shortly after the "take over" of the diner, the Receiver, on the Bank's application, was appointed Special Master to conduct the associated foreclosure sale, including on the grounds that one Sheriff could not conduct a single sale based on the assertion that the property subject to sale

encompassed two counties. Ca145.

Thus, the Bank (and Gould through the Bank) simultaneously sought and obtained appointments of Gould as Statutory Receiver and Special Master. Under the Statute, title would vest in the Receiver at the time of the appointment, which was September 24, 2021. By November 4, 2021, when Gould was appointed Special Master in the Foreclosure Action, he held title of VDC and in addition, the diner had been "taken over", on October 22, 2021.

Gould on the one hand was the Receiver entrusted with dealing with the property of the corporation, including entering into potential transactions that might be considered beneficial regarding the purposes of the Statute. On the other hand, he was the Special Master ordered to sell property of the corporation only in the manner permitted by the Foreclosure Action.

On January 18, 2022, the purported sale of the leasehold interest and/or what was purportedly being sold took place, with the purchaser for $100 (One Hundred Dollars) being 320 Route 73 LLC, a purported wholly owned subsidiary of and/or entity of the Bank. Ca142. On May 27, 2022, the sale was confirmed by the Court and Gould was relieved of his duties as Special Master. Ca150. This occurred over opposition by Mori claiming various irregularities, including what precisely was the property being or to be sold.

Ca308.

To the extent that a Special Master appointed to sell property that is the subject of a Foreclosure Action might have ministerial or routine aspects, the particulars of the Foreclosure Action and the sale reflects that there were issues.

The Leasehold Mortgage and Security Agreement purported to grant a security interest in both real estate in the form of a "leasehold interest" (and containing a definition of "Ground Lease"), and also an "independent and separate" security interest in "personal property."

Gould claimed that the "Foreclosure Documents included in the mortgage language that the mortgage covered buildings and anything to be constructed on the property." Ca20. Apparently, due to the foregoing, he stated: "The landlord was considered to own the land only." Ca20. He states that "The question is still being considered by the Court in another action is whether the building was part of the sale after the Sheriff's Sale produced a deed by me as Receiver to transfer whatever the Receiver's interest would be in the building and that deed was recorded in the Camden County Clerk's Office and the Burlington County Clerk's Office." Ca142. He stated that "I transferred the assets by Bill of Sale and a deed which included whatever interest that I had in

the building…". Ca20. The Receiver does not appear to discuss at any point the provisions of the Lease relative to the interest of the tenant, regardless of what might be stated in the Leasehold Mortgage and Security Agreement.

The deed itself that was recorded contains language such as "whatever interest" in the "land". The Bill of Sale contains a general description of "leasehold interest", which largely tracks the leasehold interest/Ground Lease description from the Leasehold Mortgage and Security Agreement, but there does not appear any language that appears to be specific to the "personal property" described in the foregoing Bill of Sale and/or deed. The Bill of Sale does not contain any asset/inventory schedules, etc.

The Receiver at no time executed and filed a bond with the Clerk of the Court. He did not within 30 days following the date of his appointment give notice to all creditors, by mail, publication or otherwise, to present their claims in writing. He retained an accountant and compensated professionals without seeking Court approval, on notice to all creditors. According to the docket in a separate matter involving Mori and the Receiver, CAM-L-1135-22, the Receiver was represented by the Saldutti Law Group, who was representing the Bank in the Law Division Action. The Receiver failed to submit to the Court an inventory of VDC's assets, periodic accountings and/or a Final

Accounting.

Mori has maintained that the Receiver, as of or about the October 22, 2021 date above, assumed the Lease with Mori and became bound by its terms, including regarding payment of rent. Mori maintains that the Receiver acknowledged in writing that rent monies were due Mori, while only making sporadic payments to Mori totaling $30,750.00. The Receiver decided the "liquor license was not necessary" given the cost of the liquor liability insurance. Ca141. He did not arrange for merchant credit card services prior to taking possession of the diner which was as a result being operated on a cash only basis.

The Receiver filed its motion to be discharged in the Law Division Action on June 8, 2023. Ca16. This was the first and only application/request for anything the Receiver made in the Law Division Action since his appointment in September 2021. Among other things, the timing of his filing was challenged.

In response, the Receiver appears to suggest that a discharge application would have been appropriate on or about January 18, 2022. He asserted that the assets of VDC had been sold "in bulk" on that date. Ca142. In blaming Mori for the year and a half in between, he asserted that counsel for Mori "did

not take any action for a year and a half to the point when I am making my request for discharge which would be nunc pro tunc January 18, 2022, technically." He does not explain, for example, if this was the reason, he did not seek assistance of the Court.

He asserts that the diner, per monthly reports, was a "negative operation", such that rent could not be paid. Ca140, 142. He appears to indicate that he did not reject the lease because "That would have le[]d to additional litigation and costs to the estate or the bank which was not necessary." Ca142. He further states that he "attempted to talk with [Landlord counsel] to some understanding concerning the rent but was unable to do so." Ca142. Regarding why he did not cease operations, he stated that "I have found it harmful to close a business as the Receiver when the owner[][i]s attempt to sell it's interest in the property, even if losing money." Ca142.

The Receiver asserted that "The landlord did nothing to stop my operation." Ca142. However, inter alia, the Landlord, on February 10, 2022, initiated a Landlord/Tenant action against the Receiver and against 320 Route 73, LLC for possession. Such relief would quite clearly stop such "operation." In addition, on March 30, 2022, the Landlord had moved to sue the Receiver (including seeking permission to proceed with an eviction action), compel an

accounting and compel payment of rent pursuant to statutory priorities, but this relief was denied. Ca299, 305.

On July 21, 2023, after the Receiver filed for discharge, and while the Receiver's discharge application was pending, the Lopezes filed their personal injury lawsuit. They filed their motion and cross motion opposing the Receiver's discharge in the Law Division Action on July 25, 2023 and July 27, 2023.

By orders dated October 6, 2023, the Receiver was discharged and the motion of the Lopezes to intervene was denied. Ca2, 3A. 320 Route 73 LLC purports to continue in possession of the diner, despite Mori's efforts to pursue a judgment of possession.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN DISCHARGING THE STATUTORY RECEIVER AND DENYING THE MOTION TO INTERVENE DESPITE THE NON-COMPLIANCE OF THE RECEIVER WITH THE STATUTE GOVERNING RECEIVERSHIPS. (1T30-31 and 2T5)

The Court erred in discharging the Receiver despite his failure to comply with the New Jersey Statute governing receiverships. N.J.S.A. 14A:14-1 to 14A:14-27 The Statute governs receiverships for insolvent corporations, with various provisions governing the Receiver and the Court, and providing an

overall scheme. A receivership action may be brought, *inter alia*, by a creditor whose claim is for a sum certain and where the corporation is insolvent and/or its business is being conducted at a great loss and greatly prejudicial to the interests of its creditors. The Court has the power to remove or appoint receivers.

A statutory receiver's duties begin immediately upon entry of the Order appointing the receiver and the receiver is vested with title to the corporation's assets that relates back to the date the application to appoint the receiver is filed. Wilzig v. Sisselman, 209 N.J. Super. 25 (App. Div. 1986). N.J.S.A. 14A:14-4. Subject to the Court's general supervision and the Order of appointment, or as otherwise provided by the Statute, title to all property of the corporation is vested in the receive. The receiver has the power to institute and defend actions by or on behalf of the corporation, to sell, assign or dispose of the corporation's property and to continue the corporation's business including entering into contracts, etc. N.J.S.A. 14A:14-5. As an officer of the Court, the receiver has control and authority over property for the benefit of the parties in interest and is held to a standard of ordinary care. Rielly v. P. Rielly & Son, 101 N.J. Eq. 432, 436 (Ch. 1927). A receiver must deal as faithfully with the corporation's assets as would be done for oneself and must act in the best

interests of all creditors. A receiver incurs unauthorized expenses at his or her peril, and will be held to strict accountability of all acts and omissions. Accurate and regular accounts of receipts and expenditures must be kept. Hershey v. Stone & Hershey, 10 N.J. Misc. 967 (Ch. 1932).

On October 6, 2023, the Court filed an Order, entered on October 10, 2023, providing that Gould satisfied his obligations as receiver and discharging him, despite numerous statutory violations, as well as non-adherence to Court Rules. Ca22.

The Trial Court erred in discharging the Receiver and denying the motion to intervene despite the following statutory violations:

(a) N.J.S.A. 14A:14-2(4) - Executing and Filing of Bond

Pursuant to N.J.S.A. 14A:14-2(4), "every receiver shall, before assuming his duties, execute and file a bond..." Gould failed to execute and file a bond in the office of the Clerk of the Court at any time. The Court, which entered the Bank's proposed Order without modification, did not require or insist upon this at any time.[8] Rather, the Receiver was simply discharged by the Court and

[8] The Statute requires that a party seeking appointment of a receiver do so by "receivership action", and that the Court proceed in "a summary manner or otherwise" (with "otherwise" apparently or arguably referring to something more versus less rigorous). N.J.S.A. 14A:14-2. However, the Bank sought such relief instead by filing a motion including an Attorney Certification within the existing Law Division Action, which motion was noticed only to the

the motion to intervene denied, even as the Court was aware of a pending action against the Receiver instituted by Mori, and presumably one of the reasons, if not the reason, that Gould was accompanied at the oral argument by counsel. In addition, the Court made suppositions regarding potential claims by the Lopezes as to Gould, yet proceeded as it did nonetheless. Further, the Court proceeded as it did notwithstanding absence of a bond, and with Mori having previously argued to the Court in its prior motion to intervene that there should be ability and/or opportunity for a party to commence an action against a Receiver prior to discharge.

In that setting of oral argument, the Court stated that Gould was being discharged, even though the Statute provides that "Any person aggrieved by the proceedings or determination of the receiver in the discharge of his duties shall be entitled to a review of the receiver's action in a summary manner in

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only other parties in that action – VDC, Klein and Dellaportas, who did not oppose the motion. The foregoing calls into question whether there was even the required "receivership action" in the first instance. Further, although the Statute explicitly only applies to "corporations", as defined in the Statute, and although Klein and Dellaportas are not "corporations", the Bank sought in its motion and proposed Order a Receivership over these individuals, and the Court entered the proposed form of Order so providing. While the Statute does allow a Court to impose conditions, restrictions, etc. on officers and the like, it does not provide for appointment of a Receiver as to such persons. As such, the moving papers, including the proposed Order, and the entry of the same Order, given all of the foregoing, raise various further concerns.

the Superior Court." N.J.S.A. 14A:14-18.

(b) N.J.S.A. 14A:14-15 - Notice to Creditors

The Trial Court abused its discretion by discharging the Receiver despite his failure to notify creditors of his appointment and about submiting claims. N.J.S.A. 14A:14-15 requires that within 30 days of appointment, a statutory receiver must give notice to creditors to present their claims in writing. Such notice must be mailed to all creditors, and published in a newspaper of general circulation. The receiver must file an Affidavit with the Court attesting to compliance with the Statute. A creditor of an insolvent corporation aggrieved by the lack of notice is entitled to file suit on the receiver's bond for damages. Borden v. Wolf Silk Co., 108 N.J. Eq. 399 (Ch. 1931).

Here, the Receiver admittedly failed to comply with the notice requirements set forth in N.J.S.A. 14A:14-15. He did not mail notices. nor did he provide notice by newspaper publication to VDC's creditors. Rather, "the people who were involved were notified," whom he did not identify. 1T21-20. Nor did he file an Affidavit with the Court setting forth who was notified and by what means. One can only assume that he was referring to the parties to this litigation that included the Bank and the Defendants.

> THE COURT: What notifications did you make in this case?
> MR. GOULD: I did not make notifications. I did not -- the people who

were involved were notified.
THE COURT: Right. You didn't do a publication to the world --
MR. GOULD: No.
THE COURT: -- but to the extent that you had no creditors that were making applications to you for payment -
MR. GOULD: Right.
THE COURT: -- was there anyone that sought payment from you as the receiver on behalf of that entity that you were the receiver for, that they said that that entity owed them money? Anybody who you didn't address?
MR. GOULD: Not one, no.

1T21-20 - 1T22-11.

Without providing notice to creditors for submission of their claims in writing, the Receiver could not and did not properly administer the receivership estate. The Receiver at best has incomplete information as to who VDC owed monies and obligations and/or the amount and basis for any claims. Gould alleges that he did not know of any creditors other than the Division of Taxation, owed in excess of $100,000, and the Bank. Ca141. According to him, he was unaware of Mori, the landlord, even though Mori was named as a creditor in support of the Bank's application seeking Gould's appointment. Gould, who made the decision to "remove" Klein from the premises, when Gould might have interviewed him and otherwise obtained information and assistance, alleged that he was unaware of the Lopezes.

(c) N.J.S.A. 14A:14-19 - Discontinuance of Receivership

The Statute provides that the receivership action may be discontinued "at any time when it is established that cause for the action no longer exists". N.J.S.A. 14A:14-19. The Court has supervisory power over a receiver and can direct the receiver to discontinue engaging in certain conduct. *See, e.g.,* Fleming v. Fleming Hotel Co., 70 N.J. Eq. 509 (Ch. 1905) (Where a hotel corporation in the hands of a receiver was hopelessly insolvent, and during the delay necessary to properly advertise and dispose of it as a going concern it was run by the receiver at a loss, it was not proper for the Court to continue the business.) The circumstances of the within matter demonstrate why the Statute and the Rule contemplate and require interaction with and by the Court, as well as with involved parties, including creditors such as the Lopezes and Mori. They further demonstrate the reason for the benchmark set forth in N.J.S.A. 14A:14-19. A Statutory Receivership, which comes with substantial and in fact enormous power and latitude, also requires, including for those precise reasons, the "reigning in", limited scope and supervision that are part of the Statute and Rules. A Receiver and the party or interest who sought his appointment cannot simply take the Receivership "badge" and run, and then simply "report" back to the Court when they believe it is convenient. This

would only turn the Statute and Rule into a sword in the hands of one for the benefit of one, which would be the exact opposite of the tools of order they were intended to be, for the benefit of all and of Judicial administration.

The Statute's phrase is "cause for the action", which on the one hand is sufficiently flexible, but on the other hand must mean something. This is something which can be established and agreed upon or at least ruled upon with sufficient interaction and involvement of the Court and interested parties.

Here, it appears that the Receiver and the Bank endeavored to determine for themselves how the phrase would be interpreted and employed. In support of his application for discharge, the Receiver stated that "upon the sale and transfer of the assets under the control of the Receiver, it became obvious that the Receiver had no duties other than as an employee of the Bank's subsidiary." Ca21.

One concern about the foregoing of course is why the Receiver's duties included being "an employee of the Bank's subsidiary [i.e., 320 Route 73, LLC]" in the first instance, and why this was not of apparent concern to anyone other than Mori and the Lopezes. This clearly conflicts with the Receiver's duties and requirements.

Another issue is that the "sale and transfer of assets" being referred to is

presumably a reference to the January 2022 foreclosure sale approximately a year and a half before the Receiver made his application for discharge, although according to the Receiver, he was awaiting confirmation of the sale and recording of instruments, etc. However, even then, if that was the benchmark apparently unilaterally determined by the Receiver and/or the Bank and/or 320 Route 73, LLC, the Receiver does not explain why he only applied for discharge in June 2023.

Another question is whether the "sale and transfer of assets" through foreclosure, ultimately for $100, was the "cause for the action" or under what circumstances, etc. It was also the case according to the Receiver that the diner was always being operated at a loss. In March 2022, the Receiver stated that "the income wasn't there." Ca136. Operation of the diner continued, with the Receiver also stating: "I have found that it is harmful to close a business as the Receiver when the owner [i]s attempting to sell it's interest in the property, even if losing money." Ca142. Further, it is unclear who exactly the Receiver may be referring to as "the owner" in the foregoing statement, considering the sale in January 2022 in which 320 Route 73, LLC was the successful $100 bidder, and given that the Receiver refers to himself as an employee for that entity. Indications are that it refers to 320 Route 73, LLC rather than VDC (or

Klein or Dellaportas) for whom he was appointed Receiver. The Receiver in the foregoing does not appear to be addressing his actions and/or inactions relative to VDC or its creditors other than the Bank (and 320 Route 73, LLC). He does not do so even as he is indicating business being operated at a loss.

The foregoing shows that the interests and/or perceived interests of, inter alia, the Bank and/or 320 Route 73, LLC were carried out as if that was the main or sole goal or requirement, with "cause for the action no longer exist[ing" and when the Receiver might notify the Court of the same being determined by those parties and the Receiver. Further, once the Court was so notified, these actions were essentially approved of rather than questioned by the Court, and the Receiver was discharged just the same.

(d) N.J.S.A. 14A:14-20 - Allowances to Receiver and Others

The Trial Court abused its discretion by granting the Receiver a discharge despite his noncompliance with this Statute, as well as the Order Appointing Receiver. Pursuant to N.J.S.A. 14A:14-20, the Court shall allow reasonable compensation to the receiver for his services, as well as reasonable compensation to others such as accountants appointed by the Court in connection with the receivership action. A receiver's expenses in employing professionals unauthorized by the Court are incurred at the receiver's peril.

Hershey v. Stone & Hershey, 10 N.J. Misc. 967 (Ch. 1932).

The Court's September 24, 2021 Order appointing Gould provided that the "Receiver shall be paid from the proceeds collected in the amount of 15% which shall be assessed as an additional cost of the Judgment." Ca22. However, the Receiver amended his payment terms without seeking leave of Court to do so. The Receiver acknowledged the terms of this appointment however, he "did not feel that was a fair way to pay the Receiver since fifteen (15%) percent would be a large amount of money to be paid over. The bank did assume the responsibility of payment of [the Receiver's] fee." The Bank paid the Receiver at the rate of $300.00 per hour. Ca141. In other words, Gould unilaterally decided that the Court's Order was excessive and arranged to be paid by the Bank at $300.00 per hour without Court approval of this new fee arrangement. "I never received any fees or other reimbursement from the funds of the diner, but was paid by Parke Bank on an hourly basis." Ca141. By his own words, the Receiver remained under the Bank's employment even after he sold VDC's leasehold interest or whatever interest was actually sold. Ca21.

The Receiver also retained an accountant and paid for same without the Court's appointment and approval of the compensation as reasonable. Ca20.

Even if the Receiver's retention of the accountant was done on an emergent basis as alleged, the Receiver should have sought Court approval as soon as practically possible. None was sought.

Mori has asserted in this matter that Gould was being represented by the Bank's counsel based upon eCourts information/filings. Gould has stated that at no point has he retained an attorney to represent him. Ca141. He stated "My relationship with Saldutti Law Group was that we were in agreement with certain issues and in order to reduce the costs, we filed jointly and we were successful as we moved forward." Ca141. Gould does not elaborate on what he means by "we were successful", including relative to his position as appointed Statutory Receiver.

Notwithstanding the foregoing, the Bank submitted profit and loss statements to the Trial Court which it prepared and which show that monies were paid to professionals with no explanation. Ca159, 328. For example, $16,785.92 in professional fees were paid by the Receiver from the diner's proceeds during the period of January 2022 to November 2022. Ca340. Questions such as identity, terms, services rendered and for whom are not addressed.

Among other things, the Trial Court abused its discretion by discharging

the Receiver and denying the motion to intervene without scrutinizing or sufficiently scrutinizing all of the foregoing issues.

II. THE TRIAL COURT ERRED IN DISCHARGING THE STATUTORY RECEIVER AND DENYING THE MOTION TO INTERVENE DESPITE THE NON-COMPLIANCE OF THE RECEIVER WITH THE RULES OF COURT GOVERNING RECEIVERSHIPS. (1T30-31 and 2T5)

The Court erred in discharging the Receiver despite his failure to comply with the Rules of Court governing receiverships set forth in Rule 4:53. The Trial Court abused its discretion by discharging the Receiver and denying the motion to intervene despite the following violations of the Rules of Court:

(a) Rule 4:53-3 - Employment of Attorney or Accountant

Similar to the Statute, Court Rule 4:53-3 provides for the need for Court approval prior to a receiver's employment of an attorney or accountant. The Rule provides that an Order authorizing employment will not be entered until after a hearing based on the receiver's sworn affidavit setting forth facts to support the need thereof. Notice of the application must be provided to all creditors.

The Receiver did not make any application to the Court for approval, although he retained "the services of an accountant, Mark Roszkowski, CPA, to file necessary returns and reports in connection with the operation of the

Voorhees Diner." Ca20. Although disputed by the Receiver, Docket No. CAM-L-1135-22 reflects that he was represented by the Saldutti Law Group for a period of time. Ca123.

The Court erred in discharging the Receiver despite and without scrutinizing or further scrutinizing the foregoing.

(b) Court Rule 4:53-7

(i) 4:53-7(a) - Filing of Inventory and Periodic Accountings

Rule 4:53-7(a) requires that every receiver in a liquidation appointed by the Court shall, within three (3) months after appointment, file with the Clerk of the Superior Court a just and true inventory, under oath, of the whole estate committed to the his/her care, and of the manner in which the funds under his/her care, belonging to the estate, are invested, stating the income of the estate, and the debts contracted and expenditures made on account thereof. It further requires that the receiver file with the Clerk on each April 1 and October 1 thereafter, so long as any part of the estate, or of the income or proceeds thereof, remains to be accounted for, file with the Clerk of the Superior Court an account, under oath, of the amount remaining or invested, and of the manner in which the same is invested. R. 4:53-7(a).

The Receiver did not comply with these requirements. The Receiver did not file with the Clerk a "just and true" inventory, under oath, of VDC's entire estate committed to his care within three (3) months of his appointment. This inventory is essential in determining the nature and extent of VDC's assets which came into his possession upon his appointment. For instance, the Receiver undoubtedly took possession of VDC's bank accounts, credit card receivables, food, beverage and bar inventory, equipment, fixtures, personalty, etc. However, he failed to account and valuate same. These assets could have resulted in payment to VDC's creditors.

In addition, the Receiver did not file periodic accountings with the Clerk of the Superior Court. Such accountings are essential and provide accountability as to what monies were taken in versus what monies were paid out by the Receiver and to whom. This need is only heightened in this case where the Receiver is alleging that the diner has never generated profits and is thus operating at a loss with no monies available for payment to creditors.

In support of his application for discharge, the Receiver does not contend that accountings were filed with the Court and/or provided to VDC's creditors such as Mori. He states that "monthly reports were sent to me by the accountant and were also sent to the main creditor, Parke Bank." Ca140. He

states that these monthly reports were available to Mori's counsel "if he requests them to be sent to him." Ca142. In other words, the Receiver is placing the onus on the creditors to request the accountings. That is not what the Rule of Court requires. The Receiver was tasked with filing periodic accountings with the Clerk on April 1 and October 1 of each year. He failed to do so.

(ii) 4:53-7(b) - Audit by Clerk

Rule 4:53-7(b) provides judicial oversight over the Receiver. The Deputy Clerk of the Superior Court is tasked with auditing the accountings filed by the Receiver unless the Court appoints a countersignatory to perform the audit. Here, the Receiver did not file the required accountings and thus, they could not be audited by the Deputy Clerk. As a result, there was no oversight over the Receiver and he was able to operate VDC's business at a loss for two (2) years at Mori's expense. The Court has supervisory power over the Receiver and should have ordered him to file the required accountings at the risk of sanctions.

(iii) 4:53-7(c) - Order Approving Account

After an Order approving a receiver's accounting is entered by the Court, the Court must make a finding that continuation of the receivership is

necessary and shall continue for a fixed period of time. Again, since no accountings were submitted by the Receiver, the Court could not provide this essential oversight and the receivership continued for two (2) years while the diner was operated at a loss, apparently for the perceived purpose of enabling the Bank's subsidiary/entity, 320 Route 73, LLC, to pursue a sale or other transaction.

The Rule further requires that the Court must approve the receiver's final accounting before the receiver can be discharged. Here, the Court entered the October 6, 2023 Order discharging the Receiver despite the fact that a Final Accounting was never provided by Gould because "a final accounting would be very expensive." Ca142. A Final Accounting is essential to provide all interested parties (i.e. creditors) with the opportunity to confirm that all assets, and debts, were administered correctly during the receivership. A Final Accounting provides transparency as to what fees/commissions were paid to the Receiver, how the earnings generated by the diner were disposed of, what creditors/vendors were paid, etc. It potentially could result in payments being clawed back if the payments made by the Receiver were improper. Creditors such as Mori or the Lopezes should not be required to take the Receiver on his representation that he *believes* he has fulfilled his

obligations in connection with his appointment. A receivership can only be terminated by Court Order after approval of the Final Accounting. R. 4:53-7(d).

The Trial Court abused its discretion by discharging the Receiver despite his failure to submit a Final Accounting. The Trial Court found that this requirement was somehow premised on the financial wherewithal of the receivership estate. The Court placed the burden on VDC's creditors to pay for same. In other words, if the creditors wanted a Final Accounting, they should paid for it.

> it is -- it does not fall on deaf ears that there are some statutory requirements in this regard, but the point is this is an entity without assets... Mr. Gould has filed the paperwork. The bank has filed the paperwork. He filed it with the court. Formalities to follow the statute would have to be paid by someone. There is no money left to do it. It becomes an impossibility. The court is not paying for it. Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it. If the creditors want it and the creditors want to hire somebody -- they certainly don't. Otherwise, I would have entertained it happening. So the motion is denied and I am discharging Mr. Gould as the receiver. If you don't like it, take it up. 1T30-31.
>
> I know the complaints that Mr. Sobel had contending that the Court did not follow the statute, that the receiver is not entitled to discharge, but what was telling was for all the work that both sides, both the Lopezs and Mori, were seeking Mr. Gould to perform relative to his position

> as a receiver before he would be discharged, neither of them were in a position willing to compensate him for that, and that is telling in the case to the Court, and that is part of the basis. But I reincorporate all my findings from the October 6th hearing and my decision thereon and I deny the motion for reconsideration. They presented no new evidence, no new legal arguments, and that's why I did not give it argument. 2T5-11.

The Trial Court's logic is flawed. Initially, it must be noted that VDC's creditors are not in the position to prepare the Final Accounting. They are not in possession of the information necessary to complete the Final Accounting. This information is in the hands of the Receiver and the Bank. Secondly, the Bank funded the operation of the diner given the negative status of its operation. This included payment of the Receiver's hourly compensation and other administration expenses. The Bank allegedly provided the capital for the diner's operation for its own perceived benefit - to keep the diner open. Assertions that a Final Accounting cannot be accomplished or should not be required appear contradictory and to fly in the face of actions such as the foregoing.

Lastly, the Trial Court erroneously found that the Receiver and Bank filed "paperwork" with the Court. 1T30. The Receiver did not submit any accountings in connection with his Motion for Discharge. As conceded by the Receiver's attorney, John L. Slimm, Esq., "a detailed certification was filed by

Mr. Gould in connection with the application to be discharged, and Your Honor has that and that is a detailed certification." 1T19. It was the Bank that provided Profit and Loss statements for the months of October 2021 to June 2023. No statements were produced for the months of July 2023 through the date of the Receiver's discharge on October 6, 2023. Moreover, the monthly statements provided do not constitute a Final Accounting and do not provide the requisite detail necessary for a creditor to approve the receipt and disbursement of monies.

On the one hand, the Receiver and/or the Bank claim that things are being done for which they should somehow receive credit or praise, including allegedly going into their pockets and/or discounting what they might allegedly be able to receive or claim (such as the Receiver stating that 15% of proceeds would be essentially "too much" and stating that someone is allegedly doing substantial work for the Receivership for no compensation whatsoever). On the other hand, there are cries of "poor" and "no money" and "who is going to pay for that".

The Receiver's counsel, John L. Slimm, Esq., conceded that a Final Accounting was not done as evidenced by the following: "The bank accountings are great. They did everything at every step of the way, available

to everyone on a monthly basis. What more could you want? PNLs – everything is in there." 1T19-10. The claim that the Receiver "doesn't have the money to do that or hire somebody to do it" does not excuse this obligation and is contradictory. 1T19-17. The Receiver had the funds to retain Mark Roszkowski, CPA without Court approval upon his appointment to file the "necessary returns and reports in connection with the operation of the Voorhees Diner." Ca20. However, the means or ability to file a Final Accounting is now allegedly not doable. The Receiver has offered no explanation as to why Mr. Roszkowski could not perform the Final Accounting. Mr. Roszkowski was already retained by the Receiver and the Receiver was paying professional fees through June 2023 as evidenced by the Profit and Loss Statement produced by the Bank for that month. Ca340.

The Trial Court's discharge of the Receiver in contravention of the Rules of Court was an abuse of discretion.

CONCLUSION

For the foregoing reasons, the Trial Court abused its discretion by discharging the Receiver and denying the motion to intervene despite his violations by the Receiver of New Jersey Statutes and Rules of Court which were enacted as safeguards to protect interested parties such as the Lopezes

and Mori, thereby requiring reversal of the Orders and remand to the Trial Court.

Respectfully submitted,

NASH LAW FIRM, LLC

By: __/s/ Alan A. Reuter_____
ALAN A. REUTER, ESQUIRE

Dated: April 29, 2024

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PARKE BANK Plaintiff, vs. VOORHEES DINER CORPORATION, MARK KLEIN AND NICK DELLAPORTAS Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-000889-23 On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No: CAM-L-715-20 Sat Below: Honorable Anthony M. Pugliese, J.S.C. Date Submitted: May 20, 2024

BRIEF OF RESPONDENT ALAN I. GOULD, STATUTORY RECEIVER, IN RESPONSE TO APPEAL OF APPELLANTS, LUCILLE LOPEZ AND ROBERT P. LOPEZ, JR.

On the brief:
John L. Slimm, Esquire – NJ Attorney ID: 263721970

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PROCEDURAL HISTORY

On February 20, 2020, Parke Bank ("Parke") filed a Complaint against Voorhees Diner Corp. ("Voorhees Diner") and two personal guarantors, alleging default on a $1.4M commercial loan. (Ca170).

On February 26, 2020, Parke applied for a receiver as to Voorhees Diner. (Ca178). On March 27, 2020, the superior court granted the bank's motion, and directed that the receiver would not be effective until the Covid-19 closure of restaurants was lifted. (Ca185).

On July 21, 2020, Parke obtained a Default judgment against Voorhees Diner for approximately $1.2M. (Ca187).

On September 16, 2020, Parke filed the Foreclosure complaint seeking the foreclosure upon the Leasehold mortgage in Parke Bank v. Voorhees Diner, et al., Docket No. F-8194-20 ("the foreclosure matter"). (Ca222).

On September 24, 2021, the court appointed Alan I. Gould, Esq. as receiver. (Ca22).

On September 24, 2021, the Honorable Anthony M. Pugliese, J.S.C. entered an order in the matter of Parke Bank v. Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas, under Docket No. CAM-L-715-20, appointing Alan I. Gould, Esq. as receiver. (Ca22). The order of September 24, 2021 did not require the receiver to post a bond. (Ca22). Mr. Gould was

appointed on September 24, 2021 as statutory receiver to take control over the business, liquor license, and personal assets of defendants Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas. (Ca22).

On September 27, 2021, the chancery division entered an order for final judgment against Voorhees Diner.

On November 4, 2021, an order was entered in the action under F-8194-20, appointing Alan I. Gould as special master to sell the property at 320 Route 73, LLC in Voorhees, New Jersey. (Ca145). Mr. Gould was appointed special master to conduct the foreclosure of sale pursuant to N.J.S.A. 2A:50-64(3)(c). (See order, Ca145).

On January 18, 2022, the special master held a foreclosure sale, at which time the foreclosed property was sold to 320 Route 73, LLC for $100.00. (Ca150).

Mr. Gould sold the assets of the Voorhees Diner at a public sale on January 18, 2022, which was conducted by Mr. Gould as special master having been appointed by the chancery division by order of the Honorable Nan M. Famular, P.J.Ch. of November 4, 2021 (Ca145), appointing Alan I. Gould to hold the foreclosure sale in place of the sheriffs of Camden County and Burlington County since the property is located on the borderline of the two Counties.

Mr. Gould advertised, as the special master, and conducted the sale on January 18, 2022. Mr. Gould filed a motion for confirmation of the sale, which was not considered until May 22 due to the unsuccessful attempts by counsel for Mori who opposed the approval of the sale. Ultimately, the sale was confirmed by order of the Honorable Nan S. Famular, P.J.Ch. under Chancery Div. Docket No. F-8194-20, dated May 27, 2022. (Ca150). The deed transferring any interest that Mr. Gould had as receiver was recorded in the Camden County clerk's Office on June 30, 2022, and in the Burlington County clerk's Office on August 2, 2022. (Ca102). Also, a bill of sale was given to the purchaser for all of the assets in possession of the receiver.

Parke Bank purchased the assets through an entity, 320 Route 73, LLC, and requested that Mr. Gould remain under the bank's employ to continue to operate the diner.

On February 10, 2022, an eviction complaint was filed against the receiver in the matter of Mori Restaurant LLC v. Alan I. Gould, Esq., court-Appointed receiver, et al., Docket No. CAM-L-1135-22. ("the Eviction Complaint"). (Ca263).

Voorhees Diner defaulted on the Parke Bank loan by failing to make payments as promised. On February 20, 2020, Parke Bank instituted a Complaint against Voorhees Diner and its guarantors, and obtained a Judgment

in its favor in the amount of $1,185,285.34. The foreclosure complaint against the building on the real property was also commenced against Voorhees Diner, and a default judgment was awarded in Parke Bank's favor. (Ca187).

On March 17, 2022, Mori filed an amended eviction complaint. (Ca271).

On March 30, 2022, Mori moved to intervene in the law division matter, to sue the statutory receiver, and to compel an accounting and payment of rent. (Ca277). Although the motion to intervene was filed, the motion omitted any proposed pleading or claims against the receiver. (Ca277).

Mori's motion to intervene alleged non-payment of rent, the receiver's inability to accept credit card payments, and the non-payment of insurance related to the sale of alcohol. (Ca277).

On April 6, 2022, Mr. Gould, as special master, filed his motion for confirmation of the special master sale in the foreclosure matter. (Ca259).

On April 11, 2022, Mori objected to the special master's motion, and cross-moved to intervene. (Ca288).

On April 25, 2022, Mori filed a reply brief in support of the motion to intervene in the law division matter. That reply brief acknowledged Mori's receipt of the receiver's accountings through February of 2022.

On April 28, 2022, the trial court denied Mori's motion to intervene in the law division matter. (Ca299). Accordingly, the law division entered an order denying Mori's application to intervene. (Ca305).

The final judgment was entered by default, in the matter under CAM-L-715-20, on July 21, 2020, in the sum of $1,271,155.83, plus attorneys' fees and costs in the amount of $11,424.83, for a total of $1,282.580.66 in favor of plaintiff Parke Bank and against defendants Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas. (Ca251).

Then, on May 27, 2022, the chancery division denied Mori's cross-motion to intervene in the foreclosure matter, and granted the special master's motion to approve the foreclosure sale. (Ca114). The record demonstrated that Mori acknowledge the communication with the receiver, and was aware of the foreclosure prior to the special master sale. (Ca114). The chancery division held that the special master sale was proper, and Mori waited too late to raise any objection. (Ca114).

Also, as part of discovery in the consolidated Parke v. Mori Restaurant, Docket No. CAM-L-551-22, and eviction matters, Parke Bank produced the accountings relating to the restaurant's operation from October 2021 through November 2022. (Ca150). In the eviction matter, Mori never sought to amend the Complaint to add additional claims against the receiver. In the eviction

matter, which was filed over 20 months ago, Mori never sought to amend to include claims against the receiver. Any claims should have been asserted at that time. Significantly, Mori was in possession of the receiver's accountings through the special master's sale, and never took any action related to the accountings.

On May 27, 2022, the Honorable Sherry L. Schweitzer, J.S.C., in the matter of Parke Bank and 320 Route 73, LLC v. Mori Restaurant, Inc., et al., in the superior court of New Jersey, Civil Part, Docket No: CAM-L-00551-22, found that Mr. Gould's services were appropriate, and there were no issues regarding his services. (Ca308 at p.34, lines 1-7). Judge Schweitzer denied Mori's application for intervention. (Ca308 at p.34, lines 14-17).

The receiver, Alan I. Gould, Esq., filed a motion to be discharged as receiver. (Ca13). The motion was supported by a certification of Mr. Gould. (Ca13). On April 29, 2022, Judge Pugliese entered an order, under CAM-L-715-20, denying Mori Restaurant LLC's motion to intervene. (Ca305). On October 26, 2023, Judge Pugliese entered an order discharging Mr. Gould as receiver. (Ca2).

On July 28, 2023, James Talarico, the vice president of Parke Bank, submitted a certification to the court in the matter of Parke Bank v. Voorhees

Diner Corporation, et al., under Docket No. CAM-L-715-20, in support of the receiver's motion to terminate the receivership.

On November 17, 2023, Judge Pugliese entered an order denying the motions for reconsideration of the Lopezes and Mori. (Ca1).

On November 20, 2023, Mori Restaurant LLC filed a notice of appeal from the orders of November 17, 2023, denying the motion for reconsideration of the November 6, 2023 order discharging the receiver. (Ca4).

On November 24, 2023, the appellants, Lucille Lopez and Robert P. Lopez, Jr., filed a Notice of Appeal of the orders entered by the trial court under CAM-L-715-20, of November 17, 2023 and October 10, 2023. On April 10, 2024, the appellate division issued a Scheduling order, under which the brief of the Lopez appellants was due by April 22, 2024. On April 29, 2024, the Lopez appellants filed a notice of motion to file their brief as within time. On April 29, 2024, the appellants, Lucille Lopez and Robert P. Lopez, Jr., filed their brief and appendix.

STATEMENT OF FACTS

On June 8, 2023, Alan I. Gould, Esq. filed a motion to be discharged as receiver. (Ca16). The motion was properly supported by the certification of Mr. Gould. (Ca18). As noted in Mr. Gould's certification, he was appointed as receiver for the Voorhees Diner Corporation, Mark Klein, and Nick

Dellaportas by order of Judge Pugliese of September 24, 2021. (Ca18). The order required Mr. Gould to take "all necessary steps to take control over the business, liquor license, and personal assets of defendants Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas." (Ca19).

Following receipt of the appointment order, Mr. Gould made arrangements to take possession of the diner, which required some time to coordinate all of the people that were necessary for the takeover of the restaurant. (Ca19). In that respect, Mr. Gould had to contact a locksmith; the Voorhees Police; James Talarico, VP of Parke Bank; and the attorneys for Parke Bank, Mr. Saldutti and Mr. Schaeffer. Parke Bank applied for Mr. Gould's appointment in the foreclosure matter handled by Mr. Saldutti and Mr. Schaeffer. (Ca19).

After notification to the police, Mr. Gould met all of the persons, including James Talarico, at the diner, on October 22, 2021, when he took possession of the property, and requested all of the management present to leave the premises. (Ca19). Mr. Klein did come into the property, at which time Mr. Gould asked him to leave, which he did with the assistance of the police. (Ca19).

Thereafter, with the assistance of Mr. Konides, a hotel and restaurant operator, Mr. Gould set up procedures for the operation of the diner, and had

an account established at Parke Bank for credit cards to be processed through a merchant account in his name at Parke Bank. (Ca19).

Thereafter, cash sales were deposited into the Crest Savings Bank receiver account and Parke Bank receiver account since October 20, 2022. (Ca19). Mr. Gould set up the operating account at Crest Savings Bank so that all checks could be made through that account with monies to be transferred from Parke Bank to Crest Savings Bank. (Ca19). All cash sales were made and deposited at Crest Savings Bank as well. (Ca19).

In addition, Mr. Gould retained the services of an accountant, Mark Roszkowski, CPA, to file the necessary returns and reports in connection with the operation of the diner on an emergent basis. (Ca20).

Mr. Gould explained in his certification that the diner operates in a building that sits on a condominium property owned by the owner of a hotel directly behind the diner/restaurant facility. That is one of three condominium units. The hotel directly behind the restaurant/diner is the main property, and to the south of the diner are commercial buildings utilized for physician/ medical purposes. (Ca20). The bank requested the court to appoint Mr. Gould as receiver to help them protect any assets of the diner. (Ca20).

Mr. Gould further explained in his certification, that while his receivership continued, on November 4, 2021 he was appointed by the court as

special master to sell the property in place of the sheriff, since that was during the period of the Covid restrictions when the sheriffs were unable to sell the properties in Camden County. (Ca20). Accordingly, Mr. Gould accepted that appointment, advertised the sale, sent notice to the proper persons, posted a notice on the property, and held a sheriff's sale of the property on January 18, 2021. (Ca20). The only bidder was Parke Bank through their entity, 320 Route 73, LLC. (Ca20).

The foreclosure documents included, in the mortgage language, that the mortgage covered buildings and anything to be constructed on the property. The landlord was considered to own the land only. (Ca20). Mr. Gould explained that he transferred the assets by a bill of sale and a deed, which included whatever interest he had in the building because of its location on the condominium property, which was owned by the hotel entity. The deed was then recorded in Camden County and Burlington County. (Ca20).

Mr. Gould further set forth in his certification that he continued to operate the diner with the help of Nick Konides and James Talarico representing the present owner of the Voorhees Diner property, and also with the help of Robert Saldutti and Brian Schaffer, counsel for the bank. (Ca21).

Mr. Gould explained in his certification that he made numerous attempts to contact counsel for the landlord and the owner of the land upon which the

diner sits. However, there was no resolution at the time of his certification in support of the motion since there was no agreement to have a discussion about anything concerning the operation or the land. (Ca21). Mr. Gould explained in his certification that upon the sale and transfer of the assets under the control of the receiver, it was obvious that the receiver had no duties other than as an employee of the bank's entity, 320 Route 73, LLC. Mr. Gould believed that he fulfilled his responsibilities in connection with his appointment as receiver. (Ca21).

Upon the filing of the motion to be discharged, opposition was filed by plaintiffs Robert Lopez, Jr. and Lucille Lopez arising out of a slip and fall accident at the diner before Mr. Gould was even appointed. Mr. Gould filed a reply with Judge Pugliese on July 28, 2023. (Ca139). At that point, Mr. Sobel, on behalf of the Mori parties, filed an opposition to the motion to be discharged.

With respect to the personal injury action, Mr. Gould explained that he operated the diner after being appointed from October 23, 2021 until May 27, 2022. He sold the assets at the public sale on January 18, 2022 as special master. After the sale was approved on May 27, 2022, Voorhees Diner Corporation had no ownership of any of the assets of the diner, which were

transferred by bill of sale and by deed with respect to the actual diner building. That sale was confirmed by Judge Famular on May 27, 2022. (Ca140).

Mr. Gould had no knowledge of the personal injury action until he received letters from Alan Reuter, who had apparently filed suit in the matter of Lopez v. Mori Condominium Association, et al., under Docket No. CAM-L-2098-23. At the time of the alleged accident, Mr. Gould had no interest as receiver of the property. So, there would be no purpose for an intervention in the receivership by the Lopez personal injury plaintiffs. The owner of the diner assets at the time of the incident was 320 Route 73, LLC, and the defendant Mori as for the real estate parcel.

Mr. Gould provided Judge Pugliese with a letter brief on July 27, 2023. In the same, Mr. Gould explained to Judge Pugliese that once he took control he found many problems at the diner. (Ca140). The handling of the funds at the diner were not done properly, and the company was on COD for deliveries of everything. (Ca140). One problem was the failure to show that there was proper salary deductions being made or taxes paid. So, on an emergent basis, he had to hire an accountant so that proper reports and returns would be filed, particularly concerning the sales tax and payroll. (Ca140). In addition, Mr. Gould explained to Judge Pugliese that monthly reports were sent to Mr. Gould by the accountant, and were also sent to the main creditor, Parke Bank.

(Ca140). Mr. Gould also retained a payroll company, and placed proper insurance on the assets of the property, including workers' compensation. (Ca140).

It was obvious to Mr. Gould that the business was not operating at a profit, so the creditors could not get paid. The landlord, Mori, was one of the creditors that negotiated a lease agreement with the principals of the corporation prior to Mr. Gould's appointment. Mr. Gould sold the assets of the diner at a public sale on January 18, 2022, pursuant to his appointment as special master under the order of Judge Famular of November 4, 2021 appointing Mr. Gould to hold the foreclosure sale in place of the sheriffs, since the property was located on the borderline of two counties. (Ca140). Mr. Gould properly advertised as special master, and conducted the sale on January 18, 2022. (Ca140). Mr. Gould filed the motion for confirmation of the sale, which was not considered until May 2022 due to the unsuccessful attempts by Mr. Sobel, who opposed the approval of the sale. (Ca140). Ultimately, the sale was confirmed by Judge Famular in the action under F-8194-20 on May 27, 2022. (Ca140).

Also, the deed transferring any interest that Mr. Gould had as receiver to 320 Route 73, LLC was recorded in the clerk's Offices on June 30, 2022 and August 2, 2022. Parke Bank purchased the assets through the entity 320 Route

73, LLC, and requested that Mr. Gould remain under the bank's employ to continue to operate the diner.

As noted in his letter brief, Mr. Gould was paid by Parke Bank on an hourly basis, $300.00 an hour, which was below his normal hourly rates. (Ca141). Also, the order appointing Mr. Gould indicated that he would be paid 15% from the proceeds collected from the operation. Mr. Gould did not feel that was a fair way to pay the receiver since 15% would be a large amount of money to be paid over. So the bank assumed the responsibility of payment of Mr. Gould's fee. (Ca141).

Mr. Gould never retained an attorney to represent him. His relationship with the Saldutti Law Group was that they were in agreement with certain issues and, in order to reduce the cost, they filed jointly, and were successful as they moved forward. (Ca141).

Mr. Gould explained to Judge Pugliese in his letter brief that the order appointing him did not require a bond. (Ca141). In addition, Mr. Gould explained that he did not distribute funds to any creditor from the operation proceeds of the diner. He did not know of any creditors other than the Division of Taxation, which was owed in excess of $128,000.00. Mr. Gould did contact the Division of Taxation, and Parke Bank and the landlord were aware of the activities of Mr. Gould as receiver. (Ca141). Mr. Gould was in contact with

Mr. Sobel until it was clear that the landlord would not communicate with him, the president of Parke Bank, or the attorneys for Parke Bank. (Ca142). Mr. Gould confirmed in his letter brief that Mori did not take any action for a year and a half, to the point where Mr. Gould was making his request for discharge, which would be *nunc pro tunc* January 18, 2022. (Ca142).

Also, Mr. Gould explained in his letter brief, that the order required him to take over the liquor license. Mr. Gould contacted an insurance agent to determine the cost of liquor liability coverage, which was a necessity. Mr. Gould was informed that it was approximately $12,000.00, which he did not have. (Ca141). He relayed that to Mr. Sobel asking that Mr. Sobel's client permit Mr. Gould to be added as an additional insured on the policy that Mori had covering the liquor license. However, the principal of the ownership refused to allow Mr. Gould to be added as an additional insured. (Ca141). Mr. Gould then decided that the liquor license was not necessary. (Ca141).

Mr. Gould explained in his letter brief that there was nothing he could have done to have funds available for payment of rent, which he did not negotiate. The monthly reports showed a negative operation. (Ca142). Mori's counsel argued that Mr. Gould could have notified the landlord that he was not accepting the lease. However, Mr. Gould, in his judgment, noted that would have led to additional litigation and costs, which was not necessary. Mr. Gould

stated in his letter brief that he attempted to speak with Mr. Sobel to reach an understanding concerning the rent; however, he was unable to do so. (Ca142).

In addition, as noted in the letter brief, Mr. Sobel thought that Mr. Gould should have closed the diner, and stopped operating, because of the negative status of the operation. Mr. Gould indicated that, based upon his experience, it is harmful to close a business as a receiver when the owners are attempting to sell its interests in the property, even if losing money. The bank had, through its entity, 320 Route 73, LLC, owned the assets of Voorhees Diner Corporation since January 18, 2022. (Ca142).

Mr. Gould pointed out in his letter brief that the landlord did nothing to stop its operation. He was required by the fire inspector to correct violations on the property prior to his appointment. The fire company came to the site on numerous occasions while issues were being resolved. In addition, some of the assets had to be replaced or repaired, including cost of food. (Ca142).

Also, Mr. Gould noted in his letter brief that the landlord was well aware of the assets of the operation, including real estate, which were all sold in bulk during the sheriff's sale. Nothing stopped the creditor from seeking information during that period of time, but nothing was done for a year and a half, after the sale of the property. (Ca142). Rather, Mr. Gould noted that the landlord sat on his hands for a year and a half, and did not make any effort to

raise issues during that period of time. (Ca142). Mr. Gould explained that the arguments being made by Mori would not give any positive result for the landlord, since there were no funds available in the receiver's account. (Ca142).

In addition, Mr. Gould explained that a final accounting would be very expensive. He also pointed out that monthly reports were available to Mori's counsel if counsel requested them to be sent to him, in addition to those that Mr. Sobel had already received.

In addition, Mr. Gould noted that a final accounting would be very expensive. He also pointed out that monthly reports were available to Mr. Sobel if he requested them to be sent to him, in addition to those that Mr. Sobel had already received.

Accordingly, Mr. Gould again requested that the court grant the order to be discharged.

On October 6, 2023, the Honorable Anthony M. Pugliese, J.S.C. heard argument in the matter of Parke Bank v. Voorhees Diner Corporation, Mark Klein, and Nick Dellaportas, under CAM-L-715-20, in connection with the motion of the receiver, Alan I. Gould, to be discharged, as well as a motion to intervene filed by the Lopez personal injury plaintiffs and Mori. (1T:18-25; and 8:1). Judge Pugliese set forth the procedural history, noting that, on

February 20, 2021, plaintiff Parke Bank filed a claim against defendant Voorhees Diner and the guarantors on the $1.4M loan. (1T:9:2-5). Judge Pugliese noted that on March 27, 2020, the court granted an application for appointment of a receiver. (1T:9:13-25 and 10:1-2).

The court noted that on July 21, 2020, Parke Bank obtained a Judgment for $1.2M. (1T:10:13-14). Then, on September 16, 2020, Parke Bank filed the foreclosure action, under Docket No. F-8194-20. (1T:10:15-16).

Judge Pugliese noted that on June 24, 2021, an application was filed by Parke Bank for a receiver. The court observed that, by that point, the "world is beginning to breath." (1T:11:18-22) Judge Pugliese appointed Mr. Gould.

On September 27, 2021, the chancery division, under Docket No. F-8194-20, entered the final judgment of Foreclosure. (1T:12:11-14).

On November 4, 2021, Mr. Gould was appointed as special master to sell the foreclosed property because he was in the best position to do so. (1T:12:15-17). Judge Pugliese noted that having Mr. Gould, you would not need to have another person "… in there reinventing the wheel, you know, Mr. Gould knows what's going on and the like, and he has experience, nonetheless, in this type of thing." (1T:12:18-23).

The foreclosure sale was conducted on January 18, 2022, and the successful buyer was 320 Route 73, LLC. (1T:12:24-25 and 13:1).

On May 27, 2022, Judge Pugliese was informed that the chancery judge denied Mori's motion to intervene in the foreclosure matter, and granted the motion of Mr. Gould, as special master, to approve the sale. (1T:16:4-7).

Judge Pugliese noted that Mr. Gould moved to be discharged because there was no further purpose for him to be receiver. Judge Pugliese ruled that he was obligated to grant the motion because Mr. Gould served no further purpose. (1T:16:11-19).

During the argument, counsel for Mori referred to accountings. (1T:18:18-25). However, Mr. Gould made the point that, with respect to an accounting, who would pay for it? Mr. Gould did not have to pay for the same. (1T:19:7-9). In addition, Parke Bank had accountings which were available to everyone on a monthly basis. These were P&Ls. (1T:19:10-13). Parke Bank had statements done in-house because Mr. Gould did not have the money to do the same, or hire someone to do it. (1T:19:14-17). The point was that Parke Bank had the data for everyone's use, which could have been viewed by Mori. Under the circumstances, there was nothing left for Mr. Gould to do. (1T:19:18-22).

Mr. Gould explained, at the time of the argument, that those who were involved were notified. (1T:21:22-25). The court stated, "… but to the extent that you had no creditors that were making applications to you for payment …

was there anyone that sought payment from you as the receiver on behalf of that entity that you were the receiver for, that they said that that entity owed them money? Anybody who you didn't address?" Mr. Gould responded, "Not one, no." So, Judge Pugliese stated, "The old beating a stone scenario." (1T:22:1-13).

With respect to the motion to intervene, filed by the personal injury claimants, the record showed that the injury took place in July of 2021. That was three months before Mr. Gould was appointed! (1T:23:2-19).

Also, there was insurance to respond to the personal injury case. (1T:24:3-6). The court noted that Mr. Gould was not appointed as receiver until September of 2021. (1T:24:13-18). The court pointed out that there was a policy of insurance in effect at the time of the mishap to cover the claim if it existed. (1T:25:1-7). The court pointed out that Mr. Gould was not responsible. Of course, Mr. Gould was not even appointed at the time of the accident. (1T:25:24-25 and 26:1-2). Accordingly, Judge Pugliese denied the motion of the Lopez personal injury plaintiffs to intervene. (1T:26:2-19).

The court rejected the personal injury plaintiffs' objection to the discharge of Mr. Gould. (1T:28:7-19 and 29:6-24). The court pointed out that Mr. Gould could never be responsible for an excess verdict because he was not the receiver at the time of the mishap. (1T:29:20-24 and 30:1-6).

Also, the court made the point that when Mr. Gould was appointed the entity did not have assets. As a receiver, Mr. Gould did not become a guarantor. (1T:30:7-11). Mr. Gould attempted, in the most trying of times, in the best way he possibly could, to have something left for the creditors, and to administer the diner pursuant to the bank's request to gain some funds for them based on their Judgment. As noted by the court, "what business didn't get hurt during this period of time." (1T:30:12-17).

Judge Pugliese stated, "I mean, you know, really? He gets appointed coming out of an unprecedented historical business shut down due to some kind of flu bug. Are we kidding each other? Mr. Gould has filed the paperwork. The bank has filed the paperwork.[1] He filed it with the court. Formalities to follow the statute would have to be paid by someone. There is no money to do it. It becomes an impossibility. The court is not paying for it. Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it. If the creditors want it and the creditors want to hire somebody -- they certainly don't. Otherwise, I would have entertained it happening. So the motion is denied and I am discharging Mr. Gould as the receiver." (1T:30:15-25 and 31:1-10).

[1] See certification of Alan I. Gould, Esq. in support of motion to be discharged. (Ca18).

At the time of the hearing to discharge the receiver, Judge Pugliese stated:

> It is – it does not fall on deaf ears that there are some statutory requirements in this regard, but the point is, this is an entity without assets … Mr. Gould has filed the paperwork. The bank has filed the paperwork. He filed it with the court. Formalities to file the statute would have to be paid by someone. There is no money left to do it. It becomes an impossibility. The court is not paying for it. Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it. If the creditors want it and the creditors want to hire somebody – they certainly do not. Otherwise, I would have entertained it happening. So the motion is denied and I am discharging Mr. Gould as receiver. If you do not like it, take it up. 1T30-31.
>
> I know the complaints that Mr. Sobel had contending that the court did not follow the statute, that the receiver is not entitled to discharge, but what was telling, was for all of the work that both sides, both the Lopezes and Mori, were seeking Mr. Gould to perform relative to his position as receiver before he would be discharged, neither of them are in a position willing to compensate him for that, and that is telling in the case before the court, and that is part of the basis. But I reincorporate all of my findings from the October 6th hearing and my decision thereon and I deny the motion for reconsideration. They presented no new evidence, no new legal arguments, and that is why I did not give it argument. 2T5-11.

In the matter of Parke Bank and 320 Route 73, LLC v. Mori Restaurant, Inc., et al., in the superior court of New Jersey, Civil Part, Docket No: CAM-L-00551-22, Judge Schweitzer denied Mori's application for intervention.

(Ca308 at p.34, lines 14-17). Judge Schweitzer pointed out that Mori waited, "far too long", and that "your clients created a situation to try and void a valid sale so I am denying your application in its entirety. I am granting Mr. Gould's in its entirety."

Also, at the time of the hearing before Judge Schweitzer, the court stated:

> I've got to tell you a little emotional in writing things in briefs to this court that are not becoming of us are very, very, very, different things. And I will just make this general statement: if you are going to say it, you better be able to back it up. But do not say it in my courtroom. Keep your emotions out of it. Put a poison pen down. Likewise, everyone else here, it is not my first day doing this. I have been a lawyer, I was a lawyer a long time. I have been on the bench quite some time. I do not like reading disparaging comments. I do not know Mr. Gould.
>
> Mr. Sobel I have never met you before. So take these comments for what they are so you understand how I -- my courtroom, I don't like shots fired at other lawyers unless you can prove it. So keep the emotions out of the papers. Stick to the facts. That is really all I am interested in …

(Ca308 at p.10, lines 9-21 and 25; and p.11, lines 1-5).

On October 30, 2023, Lucille Lopez and Robert Lopez (the personal injury claimants) filed a motion for reconsideration of the order of October 6, 2023 discharging Mr. Gould, which was entered on October 10, 2023, as well as the order of October 6, 2023, entered October 10, 2023, denying the

motion/cross-motion of the Lopezes to intervene and/or to deny the motion of the receiver to be discharged. (Ca1). Judge Pugliese denied the motion for reconsideration on November 17, 2023. (Ca1).

ARGUMENT

I. SINCE THE TRIAL COURT DID NOT ERR IN DISCHARGING THE STATUTORY RECEIVER, AND SINCE THE TRIAL COURT DID NOT ERR IN DENYING THE MOTION OF LUCILLE LOPEZ AND ROBERT P. LOPEZ, JR. TO INTERVENE, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED (1T30-31 AND 1T24-31 AND 2T5)

The appellants, Lucille Lopez and Robert P. Lopez, Jr., argue that the trial court erred in discharging the receiver, and in denying their motion to intervene. The appellants argue that the trial court erred in entering the order of October 10, 2023 discharging the receiver despite statutory violations. (Ca22).

(a). N.J.S.A. 14A:14-2(4) - Filing a bond

Appellants make the meritless argument that somehow a receiver's bond would have responded to their misguided claims against Mr. Gould, the statutory receiver. In any event, the appellants would have to prove that Mr. Gould violated some standard. Two judges in Camden County approved his actions. It would be the burden of the Lopezes and Mori, at the time of the

hearing before Judge Pugliese, to establish fault on behalf of the receiver. The Lopezes, like Mori, failed to do so.

Likewise, it was the Lopezes' burden to establish fault on behalf of the receiver at the time of the hearings before Judge Pugliese. The Lopezes (and Mori) failed to establish fault on the part of the receiver. Therefore, any receiver's bond would not have responded in any event, even if it were required under the order, which it was not. In this case, three judges (Judges Famular, Pugliese, and Schweitzer) found no wrongdoing. Judge Famular approved the receiver's sale of the property. (Ca308).

This is not a case where Mr. Gould, as receiver, failed to perform his duties according to a court ruling. Rather, Judge Famular approved Mr. Gould's services as the special master to sell the property, and Judge Pugliese, in his decision granting the motion to be discharged, and in denying the motion for reconsideration, approved the receiver's services. This was not a case of defalcation. This was not a case where the receiver absconded with funds, or acted outside of the scope of his court-appointed duties. This was not a case of embezzlement by the receiver. Mr. Gould, as receiver, took actions to protect the interests of Parke Bank, which were appropriate according to three judges in Camden County. So, any bond, even if it were required, could not have responded.

In addition, neither Judge Famular nor Judge Pugliese required a receiver bond for the appointment. As it turned out, Mr. Gould performed his services as receiver expertly. In this case, Mr. Gould took all appropriate actions so that he could fulfill his duties and obligations under the order. See, N.J.S.A. 14A:14-5.

Also, this was not a case where Mr. Gould charged fees pursuant to the order, which would have been exorbitant. Rather, his fees were paid by Parke Bank, and were not paid by or contributed to by Mori or the Lopezes. As noted by the court in Sears Roebuck & Co. v. Camp, 124 N.J. Eq. 403 (E&A 1938):

> Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties." Pom. Eq. Jur. §109 [at 411].

Here, Judge Pugliese understood the nature of the receivership, which Mr. Gould expertly handled during trying circumstances. The trial court could see, and made it clear in its decision, that Mr. Gould's receivership clearly "fit the changing circumstances" of his appointment. This was a complex situation in the midst of the pandemic. Accordingly, the decision of the trial court was well reasoned, and should be affirmed.

In addition, as appears from the transcript, and the certification of Mr. Gould, the appellants were not adversely affected in any way by the so-called statutory violations. The record demonstrated to Judge Pugliese that, when Mr. Gould was appointed, there were financial issues, and the diner was paying in cash, making it very difficult to operate the diner. Of course, if the diner was operating at a profit, Mr. Gould would not have been appointed. The appellants must recognize that Mr. Gould did have the power to take possession of the property and the corporation, and to institute and defend actions on behalf of the corporation, including sale, assignment, disposal, etc.

The receiver takes possession of property, and is held to a standard of ordinary care. Mr. Gould did take over possession of the assets, and attempted to maintain the operation during the period of time in question. (Ca18). The sale was ordered and approved by Judge Famular. (Ca18). Also, Judge Pugliese found, at the time of the hearing, that Mr. Gould took possession at the time that Covid-19 was ending, and people were still wearing masks into restaurants and/or still not comfortable being around other people.

Mr. Gould was appointed to sell the assets in place of the sheriff at a sheriff's sale on the foreclosure proceeding. The order was entered for the sale, and the order was entered approving the sale. (Ca308). Accordingly, any arguments advanced by appellants referring or related to the filing of a bond

make no sense in view of the fact that the receiver complied with the trial court's orders.

(b). N.J.S.A. 14A:14-15 – Notice to Creditors

The appellants argue that the trial court abused its discretion by discharging the receiver because Mr. Gould failed to comply with notice requirements under N.J.S.A. 14A:14-15. However, the trial court carefully examined the issue, and that is clear from the transcript. The appellants' argument that Mr. Gould failed to comply with notice requirements under the statute is wrong. For example:

> The court: What notifications did you make in this case?
>
> Mr. Gould: I did not make notifications. I did not – the people who were involved were notified.
>
> The court: Right. You did not do a publication to the world –
>
> Mr. Gould: No.
>
> The court: -- but to the extent that you had no creditors that were making applications to you for payment –
>
> Mr. Gould: Right.
>
> The court: -- Was there anyone that sought payment from you as receiver on behalf of that entity that you were the receiver for, that they said that that entity owed them money? Anybody who you did not address?

Mr. Gould: Not one, no.

1T21-20 – 1T22-11.

As noted above, Mr. Gould did not have a notice of any creditors other than the landlord and the bank. In any event, as noted by Mr. Gould, not one creditor contacted him with a claim.

As noted by Parke Bank, nothing which the receiver did adversely affected Mori. It must be remembered that the landlord/owner received a property that was worth $1.4M more than when the original tenant leased it as Voorhees Diner Corporation.

(c). N.J.S.A. 14A:14-19 – Discontinuance of receivership

The appellants argue that Mr. Gould failed to move to discontinue receivership once he became aware that the cause for the action no longer existed. However, Mr. Gould did properly submit a certification in support of the application for discharge. (Ca18). In his certification, Mr. Gould certified that, "Upon the sale and transfer of the assets, under the control of the receiver, it became obvious that the receiver had no duties other than as an employee of the bank's subsidiary." Accordingly, the appellants' argument should be rejected.

It must be kept in mind that Mori objected to the sale. That objection was the subject of a motion hearing before Judge Famular. On November 4,

2021, Mr. Gould was appointed as special master to sell the foreclosed property because he was in the best position to do so. (1T:2:15-17). The foreclosure sale was conducted on January 18, 2022, and the successful buyer was 320 Route 73, LLC. (1T:12:24-25 and 13:1). Mr. Gould could not have moved to be discharged before the issues referring or related to the sale of property were heard and decided by Judge Famular. Therefore, it could not have been before May, which would have been the very earliest. Accordingly, the argument advanced by the appellants lacks merit, and should be rejected by the appellate division.

(d). N.J.S.A. 14A:14-20 – Allowances to receiver and Others

The appellants are arguing that Judge Pugliese abused his discretion by granting the order for discharge despite non-compliance with N.J.S.A. 14A:14-20. That statute provides that the court shall allow reasonable compensation to the receiver for his services.

In the order of appointment of September 25, 2021, appointing Mr. Gould as receiver, the order provided that the "receiver shall be paid from the proceeds collected in the amount of 15% which shall be addressed as an additional cost of the judgment." (Ca22). Mori argues that Mr. Gould amended his payment charge without seeking leave of court to do so. However, as noted in Mr. Gould's certification in support of the motion to be discharged, he

would not accept such an exorbitant amount of money as provided in the order. Mr. Gould, rather, agreed to accept $300.00 per hour, which was not paid by the corporation. Rather, it was paid by Parke Bank outside of the operating corporation to allow Mr. Gould to continue operating without the expense of 15% of gross. Now, Mori seeks to penalize Mr. Gould for taking less than what was required under the order appointing him. The court should reject that argument, and affirm the trial court's order discharging Mr. Gould as receiver.

II. THE ORDER OF THE TRIAL COURT DISCHARGING THE STATUTORY RECEIVER SHOULD BE AFFIRMED, AND THE ORDER DENYING THE LOPEZ APPELLANTS MOTION TO INERVENE SHOULD BE AFFIRMED

The appellants argue that Mr. Gould paid administrative expenses out of the owner's proceeds. The certification in support of the motion to be discharged, confirms that Mr. Gould paid for wages, utilities, professional fees to the accountant, insurance, and food so that he could operate the diner. Mr. Gould only paid those vendors that would be able to keep the diner open, and insure the property in case there was a fire or some other issue that could happen, including a slip and fall, and the wages of employees, which had to be paid or else there would be no employees to operate the diner.

It has been held that "quasi-judicial officials acting within the scope of their official duties are absolutely immune." Delbridge v. Schaeffer, 238 N.J.

Super. 323, 340 (Law Div. 1989), aff'd sub. nomine, A.D. v. Franco, 297 N.J. Super. 1 (App. Div. 1993), certif. denied, 135 N.J. 467, cert. denied. sub nomine, Delbridge v. Franco, 513 U.S. 832 (1994).

Clearly, Mr. Gould, as a court-appointed statutory receiver was acting in a "quasi-judicial" capacity performing his duties as required by court order.

In this case, the appellants seek relief against Mr. Gould in a personal capacity. Of course, such relief cannot be afforded in any event.

Mr. Gould is the beneficiary of quasi-judicial immunity. He was duly appointed by Judge Pugliese pursuant to an order of September 24, 2021. In addition, this is not a case where Mr. Gould was paid by the appellants. His fees were paid by and through the bank. In any event, the quasi-judicial immunity in this case is warranted because Mr. Gould was acting in all relevant aspects "at the court's request." See, Russell v. Richardson, 905 F. 3d 239, 247 (3d. Cir. 2018). In this case, the appellants simply disagree with the outcome of Mr. Gould's court-ordained actions. See, e.g., Trinh v. Fineman, 9 F. 4th 235 (3d. Cir. 2021), cert. denied (March 2, 2022) (the court held that court-appointed receivers are entitled to absolute, quasi-judicial immunity from suit when they act within the authority of the court).

Accordingly, since Mori and the personal injury plaintiffs (the Lopezes) failed to come forward with proofs to avoid immunity, the order of the Trial

Count granting the motion to discharge, as well as the order denying reconsideration, should be affirmed.

Likewise, the order of Judge Pugliese denying the Lopez appellants' motion to intervene should be affirmed. As noted by Judge Pugliese, the motion to intervene was inappropriate. Accordingly, the order of October 6, 2023, entered October 10, 2023, denying the Lopezes' motion to intervene should be affirmed. (Ca1).

The Lopez appellants do not cite any authority for their argument that the trial court erred in denying their motion to intervene. First, the trial court noted, at the time of the motion hearing on October 6, 2023, that the accident occurred on July 21, 2021, which was three months before Mr. Gould took over. (1T:23:10-19). At the time of the hearing on October 6, 2023, counsel for the Lopezes stated that there were two insurers for the diner in the personal injury action. (1T:24:1-7). So, there was a policy of insurance in place for the diner to cover an injury. (1T:25:1-7).

Also, the trial court noted that Mr. Gould would not be responsible for any excess verdict in connection with the accident since Mr. Gould was not the receiver at the time of the accident. (1T:25:24-25 and 26:1-3). The trial court recognized that Mr. Gould was not even the receiver until after the accident occurred. (1T:26:6-9). Mr. Gould could never have put a policy in place before

the court appointed him as statutory receiver. (1T:26:14-19). The trial court denied the Lopezes' motion to intervene. (1T:28:7-10). This was nothing more than a back door attempt by the Lopezes to find a way to make Mr. Gould responsible for an excess verdict. Judge Pugliese saw through that back door argument, and stated, "If there is an excess verdict, I'm not going to have Mr. Gould stand responsible for that because he was not the receiver at the point in time when your client was injured and that's my ruling." (1T:29:25 and 30:1-3).

Accordingly, the trial court saw through the argument, properly denied the motion to intervene, and also properly granted the motion to be discharged. Then, the trial court stated:

> Mr. Gould, in the most trying of times, attempted in the best way he possibly could to have something left for the creditors, to administer this diner pursuant to the plaintiff's request to gain some funds for them based on their judgment and -- what business didn't get hurt during this period of time. I mean, you know, really? He gets appointed coming out of an unprecedented historical business shutdown due to some kind of flu bug. Are we kidding each other? Mr. Gould has filed the paperwork. The bank has filed the paperwork. He filed it with the court. Formalities to follow the statute would have to be paid by someone. There is no money left to do it. It becomes an impossibility. The court is not paying for it. Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it. If the creditors want it and the creditors want to hire somebody -- they certainly don't. Otherwise, I would have entertained it

> happening. So the motion is denied and I am discharging Mr. Gould as the receiver.
>
> (1T:30:13-25 and 31:1-9).

(a). R. 4:53-3 – Employment of Attorney or Accountant

The appellants argue that the rule provides for court approval prior to the receiver's employment of an attorney or accountant. The appellants also argue that the trial court granted the order for discharge, despite non-compliance with N.J.S.A. 14A:14-20.

In the order of appointment of September 25, 2021, appointing Mr. Gould as receiver, the order provided that the "receiver shall be paid from the proceeds collected in the amount of 15% which shall be addressed as an additional cost of the judgment." (Ca22). The appellants argue that Mr. Gould amended his payment charge without seeking leave of court to do so. However, as noted in Mr. Gould's certification in support of the motion to be discharged, he would not accept such an exorbitant amount of money as provided in the order. Mr. Gould, rather, agreed to accept $300.00 per hour, which was not paid by the corporation. Rather, it was paid by Parke Bank outside of the operating corporation to allow Mr. Gould to continue operating without the expense of 15% of gross. Now, the appellants seek to penalize Mr. Gould for taking less than what was required under the order appointing him.

The court must reject that argument, and affirm the trial court's order discharging Mr. Gould as receiver.

Also, the appellants argue that Mr. Gould should not have retained the accountant, Mark Roszkowski, CPA, without an order of the court to file the necessary returns and reports in connection with the operation of the diner. (Ca20). This was an emergent situation when Mr. Gould took over the operation of the diner. Mr. Gould retained the services of an accountant, on an emergent basis, to file the necessary returns and reports in connection with the operation of the diner on an emergent basis. (Ca20). The trial court rejected the arguments of Mori and the Lopezes. The trial court found that neither Mori nor the Lopezes were willing to compensate Mr. Gould, and that was telling. (2T:5:10-25).

In addition, the appellants have argued that the receiver did not file an application with notice to creditors seeking leave to retain professionals. However, there was no accounting, and an accounting could not have been obtained unless it was paid for. As noted by Judge Pugliese, there were monthly accountings, but a final accounting could not be obtained unless someone wanted to pay for it.

Accordingly, the appellate division should reject appellants' argument, and affirm the trial court's order.

(b). R. 4:53-7

(i) R. 4:53-7(a) – Filing of Inventory and Periodic Accountings

The appellants complain that the receiver failed to file an inventory, and failed to file periodic accountings. All of that was reviewed by Judge Pugliese at the time of the motion hearing.

As noted by Justice Wachenfeld in Schierstead v. City of Brigantine, 29 N.J. 220 (1959):

> Statutes are to be read sensibly rather than literally and the controlling legislative intent is to be presumed as "consonant to reason and good discretion." See, Morris Canal and Banking Co. v. Central Railroad Co., 16 N.J. Eq. 419, 428 (Ch. 1863); In Re Merrill, 88 N.J. Eq. 261, 273 (Prerog. Ct. 1917); May v. Board of Com'rs of Town of Nutley, 111 N.J.L. 166, 167 (Sup. Ct. 1933); Lloyd v. Vermeulen, 22 N.J. 200, 205 (1956). Cf. In Re Norrell's Estate, 139 N.J. Eq. 550, 553 (E&A 1947); Borough of Paramus v. Block, 1527, Lots 1-2, Assessed to Ridgewood Park Estates, 42 N.J. Super. 369, 375 (App. Div. 1956). In the Lloyd case, this court referred to Judge Learned Hand's well-known remark that "there is no surer way to misread any document than to read it literally." Guiseppi v. Walling, 144 F.2d 608, 624, 155 ALR761. 2 Cir. 1944 (affirmed sub nom Gemsco, Inc. v.Walling, 324 U.S. 244, 65 S. Ct. 605, 89 L.Ed. 921 (1945)). In the Merrill case, the court noted that where a literal reading of the statute leads to absurd consequences "the court must restrain the words" and seek the true legislative intent …"

29 N.J. at 230-231.

Under the circumstances, Judge Pugliese followed the Supreme court's decision in Schierstead. Based on the circumstances in question, Covid, etc., and the work performed by Mr. Gould, the court read the statute sensibly, and properly granted Mr. Gould's motion to be discharged. The literal interpretation advanced by Mori and the Lopezes would have led to an absurd result. Accordingly, this court should affirm the orders of the trial court.

(ii) R. 4:53-7(b) – Audit by clerk

The appellants argue that R. 4:53-7(b) provides judicial oversight, and that the clerk of the superior court is tasked with auditing the accountings filed by the receiver. However, here, as noted by the appellants, there was no accounting because there were no funds to pay for it. That was noted by Judge Pugliese. The speculative argument made by the appellants is that there was no oversight over Mr. Gould as receiver, and he operated the business at a loss for two years at Mori's expense.

As note by Mr. Gould in his certification in support of the motion to be discharged, the assistance of Mr. Konides, a hotel and restaurant operator, Mr. Gould set up procedures for the operation of the diner, and had an account established at Parke Bank for credit cards to be processed through a merchant account in his name at Parke Bank. (Ca19).

Thereafter, cash sales were deposited into the Crest Savings Bank receiver account and Parke Bank receiver account since October 20, 2022. (Ca19). Mr. Gould set up the operating account at Crest Savings Bank so that all checks could be made through that account with monies to be transferred from Parke Bank to Crest Savings Bank. (Ca19). All cash sales were made and deposited at Crest Savings Bank as well. (Ca19).

In addition, Mr. Gould retained the services of an accountant, Mark Roszkowski, CPA, to file the necessary returns and reports in connection with the operation of the diner on an emergent basis. (Ca20).

Mr. Gould explained in his certification that the diner operates in a building that sits on a condominium property owned by the owner of a hotel directly behind the diner/restaurant facility. That is one of three condominium units. The hotel directly behind the restaurant/diner is the main property, and to the south of the diner are commercial buildings utilized for physician/ medical purposes. (Ca20). The bank requested the court to appoint Mr. Gould as receiver to help them protect any assets of the diner. (Ca20).

Mr. Gould further explained in his certification, that while his receivership continued, on November 4, 2021 he was appointed by the court as special master to sell the property in place of the sheriff, since that was during the period of the Covid restrictions when the sheriffs were unable to sell the

properties in Camden County. (Ca20). Accordingly, Mr. Gould accepted that appointment, advertised the sale, sent notice to the proper persons, posted a notice on the property, and held a sheriff's sale of the property on January 18, 2021. (Ca20). The only bidder was Parke Bank through their entity, 320 Route 73, LLC. (Ca20).

The foreclosure documents included, in the mortgage language, that the mortgage covered buildings and anything to be constructed on the property. The landlord was considered to own the land only. (Ca20). Mr. Gould explained that he transferred the assets by a bill of sale and a deed, which included whatever interest he had in the building because of its location on the condominium property, which was owned by the hotel entity. The deed was then recorded in Camden County and Burlington County. (Ca20).

Mr. Gould further set forth in his certification that he continued to operate the diner with the help of Nick Konides and James Talarico representing the present owner of the Voorhees Diner property, and also with the help of Robert Saldutti and Brian Schaffer, counsel for the bank. (Ca21).

Mr. Gould explained in his certification that he made numerous attempts to contact counsel for the landlord and the owner of the land upon which the diner sits. However, there was no resolution at the time of his certification in support of the motion since there was no agreement to have a discussion about

anything concerning the operation or the land. (Ca21). Mr. Gould explained in his certification that upon the sale and transfer of the assets under the control of the receiver, it was obvious that the receiver had no duties other than as an employee of the bank's entity, 320 Route 73, LLC. Mr. Gould believed that he fulfilled his responsibilities in connection with his appointment as receiver. (Ca21).

Upon the filing of the motion to be discharged, opposition was filed by Robert Lopez, Jr. and Lucille Lopez arising out of a slip and fall accident at the diner before Mr. Gould was even appointed. Mr. Gould filed a reply with Judge Pugliese on July 28, 2023. (Ca139). At that point, Mr. Sobel, on behalf of the Mori parties, filed an opposition to the motion to be discharged.

With respect to the personal injury action, Mr. Gould explained that he operated the diner after being appointed from October 23, 2021 until May 27, 2022. He sold the assets at the public sale on January 18, 2022 as special master. After the sale was approved on May 27, 2022, Voorhees Diner Corporation had no ownership of any of the assets of the diner, which were transferred by bill of sale and by deed with respect to the actual diner building. That sale was confirmed by Judge Famular on May 27, 2022. (Ca140).

Mr. Gould had no knowledge of the personal injury action until he received letters from Alan Reuter, who had apparently filed suit in the matter

of Lopez v. Mori Condominium Association, et al., under Docket No. CAM-L-2098-23. At the time of the alleged accident, Mr. Gould had no interest as receiver of the property. So, there would be no purpose for an intervention in the receivership by the Lopez personal injury plaintiffs. The owner of the diner assets at the time of the incident was 320 Route 73, LLC, and the defendant Mori as for the real estate parcel.

Mr. Gould provided Judge Pugliese with a letter brief on July 27, 2023. In the same, Mr. Gould explained to Judge Pugliese that once he took control he found many problems at the diner. (Ca140). The handling of the funds at the diner were not done properly, and the company was on cod for deliveries of everything. (Ca140). One problem was the failure to show that there was proper salary deductions being made or taxes paid. So, on an emergent basis, he had to hire an accountant so that proper reports and returns would be filed, particularly concerning the sales tax and payroll. (Ca140). In addition, Mr. Gould explained to Judge Pugliese that monthly reports were sent to Mr. Gould by the accountant, and were also sent to the main creditor, Parke Bank. (Ca140). Mr. Gould also retained a payroll company, and placed proper insurance on the assets of the property, including workers' compensation. (Ca140).

It was obvious to Mr. Gould that the business was not operating at a profit, so the creditors could not get paid. The landlord, Mori, was one of the creditors that negotiated a lease agreement with the principals of the corporation prior to Mr. Gould's appointment. Mr. Gould sold the assets of the diner at a public sale on January 18, 2022, pursuant to his appointment as special master under the order of Judge Famular of November 4, 2021 appointing Mr. Gould to hold the foreclosure sale in place of the sheriffs, since the property was located on the borderline of two counties. (Ca140). Mr. Gould properly advertised as special master, and conducted the sale on January 18, 2022. (Ca140). Mr. Gould filed the motion for confirmation of the sale, which was not considered until May 2022 due to the unsuccessful attempts by Mr. Sobel, who opposed the approval of the sale. (Ca140). Ultimately, the sale was confirmed by Judge Famular in the action under F-8194-20 on May 27, 2022. (Ca140).

Also, the deed transferring any interest that Mr. Gould had as receiver to 320 Route 73, LLC was recorded in the clerk's Offices on June 30, 2022 and August 2, 2022. Parke Bank purchased the assets through the entity 320 Route 73, LLC, and requested that Mr. Gould remain under the bank's employ to continue to operate the diner.

As noted in his letter brief, Mr. Gould was paid by Parke Bank on an hourly basis, $300.00 an hour, which was below his normal hourly rates. (Ca141). Also, the order appointing Mr. Gould indicated that he would be paid 15% from the proceeds collected from the operation. Mr. Gould did not feel that was a fair way to pay the receiver since 15% would be a large amount of money to be paid over. So the bank assumed the responsibility of payment of Mr. Gould's fee. (Ca141).

Mr. Gould never retained an attorney to represent him. His relationship with the Saldutti Law Group was that they were in agreement with certain issues and, in order to reduce the cost, they filed jointly, and were successful as they moved forward. (Ca141).

Mr. Gould explained to Judge Pugliese in his letter brief that the order appointing him did not require a bond. (Ca141). In addition, Mr. Gould explained that he did not distribute funds to any creditor from the operation proceeds of the diner. He did not know of any creditors other than the Division of Taxation, which was owed in excess of $128,000.00. Mr. Gould did contact the Division of Taxation, and Parke Bank and the landlord were aware of the activities of Mr. Gould as receiver. (Ca141). Mr. Gould was in contact with Mr. Sobel until it was clear that the landlord would not communicate with him, the president of Parke Bank, or the attorneys for Parke Bank. (Ca142). Mr.

Gould confirmed in his letter brief that Mori did not take any action for a year and a half, to the point where Mr. Gould was making his request for discharge, which would be *nunc pro tunc* January 18, 2022. (Ca142).

Also, Mr. Gould explained in his letter brief, that the order required him to take over the liquor license. Mr. Gould contacted an insurance agent to determine the cost of liquor liability coverage, which was a necessity. Mr. Gould was informed that it was approximately $12,000.00, which he did not have. (Ca141). He relayed that to Mr. Sobel asking that Mr. Sobel's client permit Mr. Gould to be added as an additional insured on the policy that Mori had covering the liquor license. However, the principal of the ownership refused to allow Mr. Gould to be added as an additional insured. (Ca141). Mr. Gould then decided that the liquor license was not necessary. (Ca141).

Mr. Gould explained in his letter brief that there was nothing he could have done to have funds available for payment of rent, which he did not negotiate. The monthly reports showed a negative operation. (Ca142). Mori's counsel argued that Mr. Gould could have notified the landlord that he was not accepting the lease. However, Mr. Gould, in his judgment, noted that would have led to additional litigation and costs, which was not necessary. Mr. Gould stated in his letter brief that he attempted to speak with Mr. Sobel to reach an understanding concerning the rent; however, he was unable to do so. (Ca142).

In addition, as noted in the letter brief, Mr. Sobel thought that Mr. Gould should have closed the diner, and stopped operating, because of the negative status of the operation. Mr. Gould indicated that, based upon his experience, it is harmful to close a business as a receiver when the owners are attempting to sell its interests in the property, even if losing money. The bank had, through its entity, 320 Route 73, LLC, owned the assets of Voorhees Diner Corporation since January 18, 2022. (Ca142).

Mr. Gould pointed out in his letter brief that the landlord did nothing to stop its operation. He was required by the fire inspector to correct violations on the property prior to his appointment. The fire company came to the site on numerous occasions while issues were being resolved. In addition, some of the assets had to be replaced or repaired, including cost of food. (Ca142).

Also, Mr. Gould noted in his letter brief that the landlord was well aware of the assets of the operation, including real estate, which were all sold in bulk during the sheriff's sale. Nothing stopped the creditor from seeking information during that period of time, but nothing was done for a year and a half, after the sale of the property. (Ca142). Rather, Mr. Gould noted that the landlord sat on his hands for a year and a half, and did not make any effort to raise issues during that period of time. (Ca142). Mr. Gould explained that the arguments being made by Mori would not give any positive result for the

landlord, since there were no funds available in the receiver's account. (Ca142).

In addition, Mr. Gould explained that a final accounting would be very expensive. He also pointed out that monthly reports were available to Mori's counsel if counsel requested them to be sent to him, in addition to those that Mr. Sobel had already received.

In addition, Mr. Gould noted that a final accounting would be very expensive. He also pointed out that monthly reports were available to Mr. Sobel if he requested them to be sent to him, in addition to those that Mr. Sobel had already received.

(iii) R. 4:53-7(c) – order Approving Account

Here, the appellants argue that after an order approving a receiver's accounting is entered by the court, the court must make a finding that continuation of the receivership is necessary, and shall continue for a fixed period of time. The appellants argue that no accountings were submitted, and so there was no oversight for two years while the diner was operating at a loss. The appellants make the argument that the court must approve the receiver's final accounting before there can be a discharge. However, that issue was argued, and the trial court rejected the arguments of Mori and the Lopezes.

The record revealed that there were no funds to pay for a final accounting. These are very expensive. (Ca142). The argument of the appellants is that a final accounting is necessary. However, as properly noted by Judge Pugliese, and as set forth in Mr. Gould's certification (Ca142), although there are certain statutory requirements, this was an entity without assets. (1T:30:6-11). The trial court found that:

> Mr. Gould, in the most trying of times, attempted in the best way he possibly could to have something left for the creditors, to administer this diner pursuant to the plaintiff's request to gain some funds for them based on their judgment and -- what business didn't get hurt during this period of time … Formalities to follow the statute would have to be paid by someone. There is no money left to do it. It becomes an impossibility. The court is not paying for it Mr. Gould is not obligated to pay for it. The bank is not obligated to pay for it.
>
> (1T:30:12-25 and 31:1-7 and 2T:5:10-24).

Accordingly, there was no abuse of discretion by Judge Pugliese by entering the order discharging the statutory receiver simply because a final accounting was not filed.

III. SINCE THE APPELLANTS FAILED TO MEET THE STANDARD FOR RECONSIDERATION UNDER R. 4:49-2, THE TRIAL COURT'S ORDER SHOULD BE AFFIRMED

Neither the Lopezes nor Mori ever met the standard for reconsideration under R. 4:49-2. The application for reconsideration filed by the Lopezes, and joined in by Mori, was nothing more than "old wine in new bottles."[2]

The order denying the motion for reconsideration following the order discharging the receiver does not provide the appellants with the opportunity to raise new legal issues that were not presented to the court in the underlying motion. See, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Rather, motions for reconsideration under R. 4:49-2 are reserved for "cases which fall into that narrow corridor" where the prior decision was "based upon a palpably incorrect or irrational basis," where the court failed to consider or appreciate probative, competent evidence," or where "a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application[.]" D'Atria v. D'Atria, 242, N.J. Super. 392, 401 (Ch. Div. 1990).

This was not a case where Judge Pugliese abused his discretion and issued a decision without a rational explanation, or issued a decision which

[2] Borrowed from "Old Wine in New Bottles" (December 27, 2019) by Milton Friedman, The Economic Journal, 101 (Jun. 1991), 33-40.

rested on an impermissible basis. See, e.g., Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002). Judge Pugliese made particular findings at the time of the arguments, and the motion for reconsideration was properly denied.

CONCLUSION

For the reasons expressed above the orders of the trial court discharging Alan I. Gould, Esq. as receiver, denying the motions for intervention, and denying the motions for reconsideration should be affirmed.

MARSHALL DENNEHEY, P.C.
Attorneys for Respondent, Alan I. Gould, statutory receiver

/s/ John L. Slimm
BY:_____
JOHN L. SLIMM

Dated: May 20, 2024

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

PARKE BANK, *Plaintiff,* v. VOORHEES DINER CORPORATION, MARK KLEIN, AND NICK DELLAPORTAS *Defendants.*	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-000889-23 ON APPEAL FROM LAW DIVISION DOCKET NO. CAM-L-715

BRIEF OF RESPONDENT PARKE BANK

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Respondent Parke Bank (the "Bank"), through undersigned counsel, submits the following brief in response to the brief filed on behalf of Appellants Lucille Lopez and Robert P. Lopez, Jr. (together, the "Lopezes").

PROCEDURAL HISTORY

This matter concerns the Voorhees Diner, a diner business formerly owned and operated by Voorhees Diner Corporation ("VDC"). VDC leased space for the diner from Mori Restaurant, LLC ("Mori") pursuant to a written lease agreement (the "Lease"). Ca30. Separately, VDC entered into a loan transaction with the Bank, secured by its leasehold interest and the personal guaranties of Mark Klein and Nick Dellaportas, to complete certain renovation work at the diner (the "Loan"). Ca171.

On February 20, 2020, the Bank filed a Complaint against VDC and the two guarantors, after VDC had defaulted on its loan obligations. Ca170.

On February 26, 2020, the Bank applied for a receiver as to VDC. Ca178. The Court granted the Bank's motion but directed that a receiver would not be appointed until after the government mandated COVID-19 closures of restaurants had lifted. Ca185.

On July 21, 2020, the Bank obtained a default judgment against VDC and the guarantors. Ca187. The Bank subsequently filed a foreclosure complaint seeking to foreclose upon its Leasehold Mortgage. Ca222.

On September 24, 2021, the Court appointed Alan I. Gould, Esq. as receiver to take control of VDC and its assets. Ca22. In addition, on November 4, 2021, an order was entered in the foreclosure action appointing Mr. Gould as a special master to sell the diner and other foreclosed property. Ca145.

On January 18, 2022, Mr. Gould conducted a sale, and the foreclosed property was sold to 320 Route 73, LLC ("Route 73"), a Bank subsidiary. Ca150.

On March 30, 2022, Mori moved to intervene in this matter to sue Mr. Gould and to compel an accounting and payment of rent. Ca277. Mori subsequently filed a cross-motion to intervene in the foreclosure matter and opposed confirmation of the same. Ca288.

On April 28, 2022, the trial court denied Mori's motion to intervene in this matter. Ca299. Mori's cross motion to intervene in the foreclosure matter was also denied. Ca114. The sale was confirmed by written order in the foreclosure action. Ca150.

More than a year passed. Then, on June 8, 2023, Mr. Gould filed a motion to be discharged as the receiver. Ca13. On July 27, 2023, the Lopezes filed their Cross-Motion to Intervene and Deny Receiver Relief. Ca346. The trial court held oral argument on October 6, 2023. *See* Notes of Testimony from October 6, 2023 Hearing (hereinafter cited as "N.T."). That same day, the trial court entered orders granting the motion to discharge, discharging Mr. Gould as the receiver (the

"Discharge Order"), and denying the Lopezes' Motion to Intervene (the "Intervention Order"). Ca2-3A.

On November 17, 2023, the trial court entered an order denying a motion to reconsider the Discharge Order (the "Reconsideration Order"). Ca1.

STATEMENT OF FACTS

On May 20, 2014, Mori entered into the Lease with VDC. Ca30. Among other provisions, the Lease required VDC to obtain a construction loan to fund the renovation of Mori's building and to acquire diner fixtures. *Id.* Pursuant to the loan transaction, VDC granted the Bank a security interest in the improvements and a mortgage on its leasehold interest. Ca205.

VDC subsequently defaulted on its loan obligations and the Bank obtained a default judgment in the amount of $1,271,155.83 against VDC, Mark Klein, and Nick Dellaportas. Ca187.

Once the COVID-19 restrictions were lifted, the trial court appointed Mr. Gould as the statutory receiver and tasked him with taking "all necessary steps to take control over the business, liquor license, and personal assets of [VDC], Mark Klein, and Nick Dellaportas." Ca22.

Mr. Gould made arrangements to take possession of the diner from the defendants. *See* Ca139. Once Mr. Gould had taken possession of the business, he attempted to set VDC's affairs in order. *See id.*

However, despite his efforts, the diner was never profitable. *See* Ca328-340. It lost money each month and there was no money for a final accounting. *Id.*

ARGUMENT

A. The Appeal Should Be Dismissed Because the Lopezes are not Creditors and Lack Standing

The Lopezes are not parties to the underlying action. They have no claims against the plaintiff nor any of the defendants. Instead, the Lopezes present themselves as "creditors" of VDC by virtue of an alleged personal injury claim which occurred on July 23, 2021, long before the receiver was appointed and before Route 73 was in existence. *See* Lopezes' Brief at 1. The Lopezes assert that simply because they have filed a separate lawsuit against Mori, VDC, Mark Klein, Nick Dellaportas, and Route 73 (but not the receiver or the Bank), they are "creditors" and have standing to bring this appeal.

However, the Lopezes are incorrect, and they have not complied with the required statutory procedure to become "creditors" in this instance and are precluded from bringing claims. Pursuant to N.J. Stat. § 14A:14-15, a creditor is **required** to present written proof of its claim, under oath, to the receiver. Once the claim is submitted, the receiver may request records and proofs related to the claim and "shall pass upon, and allow or disallow such claims, and shall notify the creditors of his determination." N.J. Stat. § 14A:14-16. It is only a "creditor who presents his claim to a receiver pursuant to this chapter and whose claim is

disallowed in whole or in part by the receiver" who is entitled to a trial by jury on any issue. N.J. Stat. § 14A:14-17. In fact, "[a]ny creditor who does not file his claim…**shall be forever barred from suing on such claim or otherwise realizing upon or enforcing it**…" N.J. Stat. § 14A:14-15(2) (emphasis added).

Here, the Lopezes knew or should have known about the receivership. If the Lopezes were injured in July 2021 they had **years** to file their claim. They failed to do so. In fact, there is no evidence in the record to suggest that the Lopezes ever contacted the receiver or otherwise presented their claim pursuant to the statute.

Thus, the Lopezes are not "creditors" under the law and, even if they were, the Lopezes would be barred from presenting their claim because they have failed to follow statutory procedure. *See* N.J. Stat. § 14A:14-15(2). There is no proof of a claim against the receiver in the record. Therefore, the Lopezes lack standing, and the appeal should be dismissed. *N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp.*, 453 N.J. Super. 272, 291, 181 A.3d 257, 268 (Super. Ct. App. Div. 2018) ("A lack of standing precludes a court from entertaining any of the substantive issues for determination.").

While the Lopezes do assert that they sent VDC a "preservation letter" regarding their personal injury claim (before a receiver was appointed), this does not satisfy the statute. *See* Ca406. *See also* Lopezes' Brief at 9. The Lopezes were required to present their claim—in writing—to Mr. Gould, not to VDC.

Moreover, the contents of the notice of claim was required to be something more than a demand to preserve evidence. The lack of any written proof of the Lopezes' claim is dispositive and bars the Lopezes from attempting to enforce it through this appeal.

B. The Appeal Should Be Dismissed Because the Lopezes Are Litigating Their Claim In Another Action

Even assuming *arguendo* that the Lopezes are creditors (which they are not) or that they could intervene in this action (which they cannot), the appeal should still be dismissed because the Lopezes already have claims pending in another action. This appeal is nothing more than a waste of judicial resources and should be dismissed pursuant to the entire controversy doctrine.

The entire controversy doctrine "embodies the principle that the **adjudication of a legal controversy should occur in one litigation in only one court**; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy." *Wadeer v. N.J. Mfrs. Ins. Co.*, 220 N.J. 591, 605, 110 A.3d 19, 27 (2015) (emphasis added). The doctrine has three purposes: "(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of

delay." *Bank Leumi USA v. Kloss*, 243 N.J. 218, 227, 233 A.3d 536, 541 (2020) (quoting *DiTrolio v. Antiles*, 142 N.J. 253, 267, 662 A.2d 494 (1995)).

Here, the Lopezes' end-goal of this appeal is to vacate the Discharge Order so that they can (attempt to) intervene in the case and assert their personal injury claim against the receiver (despite the fact that their claim arose before the receiver took possession of the property).

However, the Lopezes already have a pending claim against VDC (the entity in receivership) in *Lopez v. Mori Condominium Association, et al.*, Docket No. CAM-L-2098-23. Ca431. While they have no basis to do so, the Lopezes also have named Route 73 (the entity which purchased the leasehold interest at foreclosure sale) as a defendant. If the Lopezes somehow have a claim against Mr. Gould as an individual, they can move to amend their existing complaint to add him as defendant.

It would be an absolute waste of judicial resources to litigate the Lopezes' claims in parallel in this action—especially since this action is already post-judgment and completely resolved. Not only would it constitute judicial waste, but the parallel proceedings would lead to inconsistent decisions and unnecessary delays. Thus, this appeal should be dismissed.

C. The Lopezes have Failed to Provide Evidence that the Court Abused Its Discretion or Erred

Ultimately, the discharge of the receiver was up to the discretion of the trial court. N.J. Stat. § 14A:14-2 (3) ("The court may proceed in a summary manner or otherwise. It shall have power to appoint and remove one or more receivers of the corporation from time to time…The court shall have such further powers as shall be appropriate for the fulfillment of the purposes of this chapter.").

Here, the evidence submitted to the trial court was that the Voorhees Diner was insolvent, never produced any funds, and lacked any ability to pay its creditors. *See* Ca.152-153. This was corroborated by financial statements provided to the Court and to Mori. *See* Ca130. The receiver also represented that all creditors had been notified that there were no funds available. N.T.22:6-13 ("The Court: --was there anyone that sought payment from you as the receiver on behalf of that entity that you were the receiver for, that they said that that entity owed them money? Anybody who you didn't address? Mr. Gould: Not one, no. The Court: The old beating a stone scenario.").

The Lopezes' Brief asks this Court to exalt form over substance and presents a laundry list of alleged technical violations of various statutes. However, even if those arguments are meritorious (which they are not), they do not constitute an abuse of discretion. An abuse of discretion "is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon

consideration of irrelevant or inappropriate factors, or amounts to a clear error of judgment." *In re Estate of Ehrlich*, 427 N.J. Super. 64, 76, 47 A.3d 12, 19 (Super. Ct. App. Div. 2012). The trial court considered all the purported technical violations of the statute raised by the Lopezes at the October 6, 2023 hearing (and then in the Lopezes' motion for reconsideration) and found that the receiver had fulfilled the substance of his duties and should be discharged. Further, the judge applied his discretion and found that it would be inequitable to punish Mr. Gould for serving as a receiver when he had complied with the substance of his statutory duties. *See Applestein v. United Bd. & Carton Corp.*, 60 N.J. Super. 333, 348, 159 A.2d 146, 154 (Super. Ct. Ch. Div. 1960) ("It is a fundamental maxim of equity that equity looks to the substance rather than the form.").

The Lopezes do not articulate any "clear error of judgment," rather they simply repeat the same arguments that they made to the trial court. These arguments were correctly dismissed by the trial court in its discretion and the Lopezes present no reason for this Court to disturb that ruling.

CONCLUSION

Against the foregoing, the appeal should be dismissed, and the Discharge Order and Intervention Order should be affirmed.

Respectfully submitted,

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