Superior Court of New Jersey
Appellate Division
Docket No. A-1778-22

ABRAHAM KOROTKI,

PLAINTIFF-RESPONDENT,
CROSS-APPELLANT,

V. CIVIL ACTION

SALEENA KOROTKI,

DEFENDANT-APPELLANT,
CROSS-RESPONDENT.

On appeal from a final order entered
in the Superior Court of New Jersey,
Chancery Division, Family Part,
Atlantic County, FM-01-510-15
Hon. Stanley L. Bergman, Jr., J.S.C.

BRIEF OF APPELLANT, SALEENA KOROTKI

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Procedural History

This appeal arises from wife Saleena Korotki's contention that the Final Judgment of Divorce, entered against her by default on March 18, 2015, was the product of misrepresentations that her ex-husband and his lawyer made to the judge who entered it and an unfair process overall, and was substantively inequitable to her, warranting relief under Rule 4:50 and a fresh determination of the equitable distribution and alimony issues between the parties.

The Rule 4:50 issue arose after an August 2017 domestic violence incident in which Mr. Korotki ejected Mrs. Korotki from their home. A257. On August 23, Mr. Korotki filed a motion to enforce his rights under the Final Judgment of Divorce; Mrs. Korotki cross-moved under R. 4:50 to set aside the Judgment and the marital settlement agreements it effectuated. A57.

Judge Bergman heard testimony on the issues over several days then, on July 22, 2022, denied relief to defendant, ruling that the judgment and incorporated agreements were both procedurally and substantively equitable. A227. Defendant (and plaintiff in part) moved for reconsideration, but Judge Bergman denied reconsideration by September 8, 2022 Order. A437. Both parties now appeal. A584, A589.

Statement of Facts

The parties met in 2002-2003, while defendant was working as a casino dealer and plaintiff was a well-known high roller.

Plaintiff was 58 years old. He was an attorney[1] and real estate developer in addition to his professional poker playing, and a multi-millionaire (stating he had a net worth of about $30 million when the parties married in 2004, 17T28:8-11).

Defendant was 32 years old. She immigrated from Vietnam when she was 11 and learned to speak English as she moved through school in Pennsylvania. She had been working in the casino industry since 1992.

Though separated in age by many years and half a world, the pair quickly fell in love. Defendant left her job and moved to Maryland to live with plaintiff in his home. They lived a lavish lifestyle and were constant companions, formally marrying on September 7, 2004 and working together in all aspects of their lives.

The couple's partnership included various real estate and business ventures that plaintiff was pursuing – one of which was a major project called the Reserves, in Delaware. Mr. Korotki handled all legal issues and development plans for the project, while Mrs. Korotki did the office work and physically cared for the properties.

[1] In or around 1988, plaintiff was suspended from practicing law in Maryland for allegedly forcing firefighter clients to sign Powers of Attorney that increased plaintiff's contingency interest in their claims to 75 percent. 17T14:4-16:25.

The parties also executed reciprocal wills, and Mrs. Korotki executed a durable power of attorney naming her husband as her attorney in fact. Some assets that Mr. Korotki held before the parties' marriage were transferred to Mrs. Korotki, or to holding companies (such as STL Development Corporation and ST2K) which were in Mrs. Korotki's name (Judge Bergman so noted: "The court finds the transfer of assets to defendant, STL and ST2K as part of the asset protection plan made these assets part of the marital estate," Op43). This included property at 32619 Bella Via Court, Ocean View, Delaware; Lot 6 in Ocean View, Delaware; 105 lots from the Reserves development; property at 115 South Avolyn Avenue, Ventnor City; and about five to eight million dollars in cash. A427.

By 2012, however, things took a downturn. The Reserves was failing. Mr. Korotki individually, and The Reserves, filed for Chapter 11 bankruptcy in December 2012, which the bankruptcy judge converted to Chapter 7 in July 2013 (after finding Mr. Korotki not credible; the assigned bankruptcy trustee initiated fraudulent transfer charges in the case, A241).

The events leading to the 2015 Judgment of Divorce

Mr. Korotki, the far more sophisticated and older spouse, had always taken the lead on legal, financial, and business issues for the couple. In 2008, Mr. Korotki retained two law firms (Offit Kurman, P.A. and Schwartz & Schwartz), to create an asset protection plan and estate documents for the couple. As noted above, the

parties executed reciprocal wills; Mr. Korotki and his lawyers created holding companies designating Mrs. Korotki as their owner; and Mrs. Korotki had executed powers of attorney naming Abraham as her attorney in fact.

That only increased during the bankruptcy crisis. Around the time of the Chapter 7 conversion, the law firm of Cooper Levenson was retained, via a July 19, 2013 Retainer Agreement, to provide "financial advice." A17. Cooper Levenson prepared various documents that Mr. Korotki asked Mrs. Korotki to sign – stressing that they were needed for the bankruptcy case and the couple's financial welfare.[2]

Two of these documents that Cooper Levenson prepared were a "Mid-Marriage Agreement," which the parties signed on December 5, 2013 with an accompanying Power of Attorney, and a "Matrimonial Settlement Agreement" that the parties signed 43 days later, on January 17, 2014. CA1, CA14.

No divorce action was filed, however. The bankruptcy litigation continued through 2014 before a global settlement was reached on November 20, 2014, from which Mr. Korotki received all of the 4.6 million dollars in settlement assets. A262.

[2] Whether Cooper Levenson represented the couple or Mr. Korotki only was hotly disputed in the Rule 4:50 hearing. Judge Bergman ruled that the firm represented only Mr. Korotki at all times, never Mrs. Korotki, despite Cooper Levenson's Retainer Agreement having been addressed to and signed by both spouses (A17), and substantial payments of Cooper Levenson's fees made by Mrs. Korotki from her accounts.

Two months later, on January 13, 2015, Cooper Levenson, the firm that had been providing "financial advice" during the parties' marriage, filed a Complaint for Divorce on Mr. Korotki's behalf, against Mrs. Korotki. Two days before the Complaint was even filed, Cooper Levenson had already secured from Mrs. Korotki a "Waiver" of her "right to file an Answer to the Complaint" – prepared by Cooper Levenson and notarized by one of its paralegals. A11 . On February 20, one month after the divorce lawsuit began, Cooper Levenson filed on Mr. Korotki's behalf a "Request to Enter Default Judgment" against Mrs. Korotki. A13.

A "hearing for final judgment of divorce" was held before Judge Jeffrey Light the next month, on March 18. 25T. Attorney Klein of Cooper Levenson appeared for the plaintiff, Mr. Korotki. Neither Mrs. Korotki nor any attorney on her behalf appeared at the default judgment hearing. Attorney Klein asked Judge Light to enter the proposed Final Judgment of Divorce giving effect to the Mid-Marriage and Matrimonial Settlement Agreements presented to the court:

THE COURT: I've got Korotki versus Korotki, FM-510-15.

Mr. Klein, your appearance please.

MR. KLEIN: Thank you, sir. Good morning, Your Honor. On behalf of the plaintiff Abraham Korotki, Richard Klein of the law firm of Cooper Levenson.

Your Honor, I have a fully executed property settlement agreement in this matter. Would you want that marked P-1?

THE COURT: Yes.

MR. KLEIN: May I?

THE COURT: Yeah.

MR. KLEIN: How are you?

THE COURT: Good. How are you feeling, better?

MR. KLEIN: Better, finally.

THE COURT: You want this P-1?

MR. KLEIN: P-1. Thank you.

THE COURT: Mr. Korotki, I've marked what appears to be a settlement agreement between you and your wife as Exhibit P-1. Mr. Klein will have a series of questions for you about the agreement. My determination today is simply whether you and your wife have entered into an agreement that resolves all the issues, whether you think it's fair, and some related issues. I'm not trying your case. I'm not taking evidence on the merits of your agreement. So whether you think this is fair is something -- I leave that strictly to you. I'm not making that decision today. You understand that?

THE PLAINTIFF: Yes, sir.

THE COURT: All right, Mr. Klein, we'll proceed on the agreement first, please. [25T3-4]

Attorney Klein reviewed the agreement with plaintiff. 25T4-5. Plaintiff said he understood the agreement would resolve all "remaining issues outstanding" between him and his wife, and that he was waiving further proceedings. 25T5-6. Plaintiff affirmed various provisions in the agreement, including a "mutual waiver of support." 25T7-8. Plaintiff said he was satisfied that the agreement was fair and equitable. 25T9. Attorney Klein told Judge Light that plaintiff had nothing further. 25T9-10. Judge Light then referenced the defendant for the first time:

THE COURT: Mr. Klein, did Ms. Korotki have the benefit of counsel?

MR. KLEIN: Ms. Korotki waived counsel, Your Honor. And she did execute and the Court should have the affidavit of service and the waiver of the right to answer.

THE COURT: I'm just --

MR. KLEIN: Yes.

THE COURT: I mean, sometimes in these cases, even though there's a default, the person has an attorney advise them.

MR. KLEIN: Well, if you would like I certainly would ask a couple extra questions.

THE COURT: You can.

MR. KLEIN: Okay.

BY MR. KLEIN:

Q Sir, your wife waived her right to counsel, is that correct?

A She had someone look at the --

Q I was going to get to that.

A Okay.

Q She waived her right to counsel who entered an appearance. Is that correct?

A Correct.

Q All right. And based upon advice by you and other individuals in her realm, in her world, and frankly on my advice, she had the agreement completely reviewed by an individual, an attorney-at-law of her own choosing. Is that correct?

A Yes.

Q Who never entered an appearance on her behalf, correct?

A Correct.

Q All right. And you're satisfied, and you have had many conversations with your wife as well since that time, that she's also entered into this freely, voluntarily and willingly, correct?

A Yes.

Q Okay.

MR. KLEIN: Nothing further, Judge.

Judge Light immediately ruled as follows:

THE COURT: Thank you, Mr. Klein. I've heard the testimony of the plaintiff. I find the plaintiff to be credible. I find that the parties have entered into an agreement that resolves all the issues in the divorce. They've done so voluntarily without coercion or duress. The plaintiff believes the agreement is reasonably fair and equitable under all the circumstances. He's satisfied with the services of counsel. And he will be able to maintain a lifestyle reasonably comparable to that which he did during the marriage. In addition, I note that the defendant, while not being represented by counsel of record, did have an attorney review the agreement on her behalf. So for those reasons I will accept the agreement and incorporate that into the final judgment. [25T10-11]

After establishing the legal ground for divorce, Judge Light stated,

> THE COURT: The matter -- this is the matter of Abraham Paul Korotki versus Saleena Korotki. I find the parties were married on September 7, 2004 in a civil ceremony in Juneau, Alaska. There are no children born of the marriage. All property and support issues have been resolved in the settlement agreement previously marked as P-1 and testified to by the plaintiff. This was the second marriage of each party, their prior marriages ending in divorces before this marriage took place, and there are no prior proceedings with regard to this marriage.
>
> I find the jurisdictional requirements have been met, the plaintiff residing in the state of New Jersey for at least one year preceding the filing of the complaint. The venue requirements have been met, the plaintiff residing in Atlantic County when this case of action arose.
>
> I find there's jurisdiction over the defendant who signed an acknowledgment of service of the summons of complaint and a waiver of her right to answer, and signed the settlement agreement as well.

> I find that plaintiff has proved a cause of action for divorce based on the grounds of irreconcilable differences lasting at least six months with no reasonable prospect of reconciliation, and I will enter judgment dissolving the marriage on that basis. [25T14-15]

Attorney Klein then handed his prepared final judgment of divorce to Judge Light (25T15), which the court entered that same day. The Judgment notes that Cooper Levenson represented plaintiff, with defendant noted as "*pro se*." The Judgment provides that the January 17, 2014 Matrimonial Settlement Agreement resolved all issues "which would have otherwise been decided by this Court with each party having been advised of his or her right to be represented by independent counsel of their own choosing…" The Judgment again notes, "The Court having found that each party entered into such agreement freely and voluntarily and finding the agreement to be fair and equitable under all of the circumstances. It is understood that the Court heard no testimony with respect to the terms of the Matrimonial Settlement Agreement and made no findings with respect thereto, other than to specifically find that the parties entered into it freely and voluntarily and believe it to be fair and equitable under the circumstances…" A15.

The Parties' Contentions on the Rule 4:50 Motion before Judge Bergman

Plaintiff maintained that the marital settlement agreements culminating in the Final Judgment of Divorce were understood and agreed to fully by defendant and that there was no basis to disturb them or grant defendant relief from them.

Defendant – now armed with legal counsel of her own -- said that the process leading to the March 18, 2015 judgment, and the substantive result, were improper and unfair to her as the dependent spouse. Abraham was an attorney and real estate developer who'd made millions of dollars in various ventures; Saleena was a high school educated immigrant. Abraham understood the complicated legal and financial issues the couple faced – particularly during the bankruptcy; Saleena followed what her husband told her they needed to do on such matters – "go sign paperwork for the business." Mrs. Korotki affirmed below (A84):

> A couple months after the Chapter 11 was converted to the Chapter 7, Abraham told me I needed to sign some documents to protect us in the bankruptcy. I was not permitted to review the documents and was not told what they were. I was told Richard C. Klein, an attorney at Cooper Levenson prepared the documents and knowing that we hired them to help with the bankruptcy conversion I didn't know to question what the documents were. I knew nothing of the bankruptcy process or any of the legal aspects of Reserves, STL, or ST2K, and left all of that to my husband, who was an attorney, and the team of attorneys we hired throughout the process. In December of 2013 I was presented with two signature pages to execute. During the malpractice litigation in 2016 I learned those documents were the Mid-Marriage Agreement (Exhibit "A") and an Irrevocable Power of Attorney (Exhibit "C").

When Mrs. Korotki was presented with the Matrimonial Settlement Agreement 43 days later, Abraham assured her this was only an agreement "on paper" -- "43 days after I executed the last page of the Mid -Marriage Agreement and Irrevocable Power of Attorney, Abraham advised that he needed to divorce me on paper to protect me. He told me this was the advice of the attorneys and I would

be best protected if we were no longer married. I did not understand this but I accepted his advice. Abraham advised me that this was a divorce 'on the paper' only." A64. Mrs. Korotki stressed that, indeed, nothing in the couple's lives changed moving forward, as Mr. Korotki had said:

> It is important for the Court to understand, Abraham and I were not having marital problems, continued as his dutiful wife, taking care of him, emotionally, physically and all other ways. Once again I was presented with a page to sign. I was not given the opportunity to read the documents as they were not provided. I was not offered the right to my own attorney, I was told Mr. Klein prepared them and since he was our attorney, I trusted they were correct and protected my interest. *** After we were "divorced", Abraham and I continued to live together from 2014 through July 30, 2017. We did not sleep in separate bedrooms, we continued to carry ourselves as a married couple. We traveled together, slept together and I continued to care for him as the subservient wife I had always been. We remained in our property at 115 S Avolyn Avenue, Ventnor City, New Jersey, then moved to 7 Primose Circle, Egg Harbor Township, New Jersey in August 2016. [A64]
>
> When Abraham approached me about getting "a divorce on paper," that was the only time a divorce was mentioned in our ten (10) year marriage. I honestly did not think anything of the request. He was not telling me to move out of our homes, he did not want me to stop being the dutiful wife I had been for the past ten (10) years, I was not told to stop working at our marital businesses, and in no way, was our "divorce on paper" anything like what happens when people normally get divorced. In our case, nothing changed at all, except I was told to sign papers, which I complied with on January 17, 2014 and then we continued going about our lives as a married couple the same way we always had. [A85]

Only in August 2017 did the couple's union actually begin to come apart and Saleena began to understand the true effect of the documents she had signed. During proceedings in a legal malpractice case that Abraham had filed, Saleena heard

testimony about the Mid-Marriage Agreement, the "global settlement agreement" from the bankruptcy, and related matters. She asked Abraham what these documents really meant. He became angry. Shortly afterward, Abraham wanted to go to Harrah's Cherokee Casino Resort in North Carolina to play poker; Saleena refused to go with him. This culminated in a heated argument and domestic violence incident after which Saleena left the home. With assistance from family and friends[3] and eventually lawyers, she searched and found the documents her husband and his lawyers had her sign and began to understand this was not just a divorce "on paper"; these were filed court documents that had left her with little assets or rights from her marriage. Mrs. Korotki explained to Judge Bergman (A65),

> These documents were clearly favorable to Abraham and allowed him to maintain all assets we had acquired during the 10 years of marriage and 12 years of our relationship. Through the malpractice lawsuit filed I learned the real reason Abraham divorced me "on paper" as he advised me. I learned during his deposition in March 2016 that Abraham had settled the bankruptcy matter and received in excess of $4,000,000.00 for our assets. He had hid that from me. In Abraham's possession and I am sure the attorneys involved in the bankruptcy case, there is a written settlement agreement which sets out what Abraham was to receive. I am sure if compelled by the Court, that document will provide much information in which to determine if Abraham acted in good faith when demanding I sign documents without the benefit of or review of an independent attorney charged with the duty of protecting my interests.

[3] One such friend was Denise Roehl, who testified below that she helped Saleena understand the various agreements she had been told to sign.

Mr. Korotki admitted to Judge Bergman during the hearing below that he retained everything from the bankruptcy resolution – about 4.6 million dollars, while Mrs. Korotki received for her share of the marital assets a $200,000 lump sum payment, a Mercedes Benz, and payment of about $25,000 in attorney's fees from an unrelated criminal matter -- with no alimony. Mrs. Korotki's counsel argued that relief was warranted because of the unfair process and inequitable result orchestrated by the far more sophisticated and monied husband -- with help from a law firm who'd been providing "financial advice" during the parties' marriage. The complete absence of Case Information Statements or financial disclosures, with no identification and valuation of marital and separate assets, further supported relief in the high asset divorce case, defendant contended.

Judge Bergman's decision denying Rule 4:50 relief

Judge Bergman said that defendant's application was untimely because she "knew of the divorce complaint in January 2015 and knew there was a final hearing on March 10, 2015" yet did not file her motion within one year (until filing her cross-motion for Rule 4:50 relief on October 27, 2017). A247-248. Judge Bergman said that three years, eleven months from the Mid-Marriage Agreement, three years, ten months from the Matrimonial Settlement Agreement, and two years, seven months from entry of the Final Judgment of Divorce, was not a reasonable time. A266.

Judge Bergman ruled that defendant "has failed to prove by clear and convincing evidence that plaintiff committed fraud upon her under these circumstances" as well. A247. With regard to Final Judgment of Divorce that had been entered, Judge Bergman said that he must review unfairness in the formation of the underlying contracts, and excessively disproportionate terms (A249, citing a civil case, Sitogum Holdings, Inc. v. Ropes, 352 N.J. Super. 555, 564 (Ch. Div. 2002)). Judge Bergman said there was no "procedural unconscionability" because,

- Mrs. Korotki signed the agreements which the Final Judgment of Divorce then effected;
- Mrs. Korotki waived her right to counsel in the agreements she signed;
- Mrs. Korotki "was not so controlled by plaintiff to completely vitiate her free will to review documents which were presented to her for signature including those surrounding the settlement agreements and other legal documents which she signed" (A251)
- Mrs. Korotki "not only signed the MMA and PSA, but the court also finds that she signed an acknowledgment of service for the Summons and Complaint for Divorce which was requesting the incorporation of said documents. She signed a certified mailing card for the letter providing her notice of the divorce hearing" (A251)

Judge Bergman credited the testimony of attorney Sarah Weinstock, who affirmed that she did not review the marital agreements with Mrs. Korotki or represent her with regard to marital issues (with Judge Bergman finding that attorney Weinstock did not "represent [Mrs. Korotki] in a review of the PSA or other documents challenged," A252). But Judge Bergman said "with reasonable diligence" Mrs. Korotki "could have requested Ms. Weinstock to review the agreement or could have requested a referral from her to an attorney who had specialized knowledge of matrimonial law and could review it for her. She also, with reasonable diligence, could have contacted an attorney to review the PSA directly." A251-252 (Judge Bergman disregarded Mrs. Korotki's testimony that she understood Cooper Levenson to be representing both spouses' interests).

With regard to Cooper Levenson's charged conflict of interest, Judge Bergman acknowledged that the firm's July 19, 2013 Retainer Agreement to provide "financial advice" was directed to and signed by both husband and wife, but said "that the preponderance of the evidence shows that an attorney-client relationship was not established between defendant and Mr. Browndorf." A253. "The court finds Mr. Browndorf's testimony to be credible. He admitted that the written retainer agreement in evidence was drafted and executed in error due to its inclusion of defendant. His testimony that he never had any conversations or contact with

defendant as to the financial issues or as part of the bankruptcy and that she signed a retainer agreement with Mr. Saccullo are found to be credible." A253.

Judge Bergman acknowledged that the Final Judgment of Divorce had incorporated a "Mid-Marriage Agreement" that New Jersey courts (Pacelli v. Pacelli, 319 N.J. Super. 185 (App. Div. 1999)) find inherently coercive and generally unenforceable, but said that the Mid-Marriage Agreement in this case "was incorporated into" the Matrimonial Settlement Agreement executed 43 days later, and the documents provided "that the parties understood the income and assets of the other party, their right to independent legal counsel and that the terms of the MMA were 'fair, just and reasonable.'" A265. Judge Bergman said the "incorporation of the terms of the MMA under those circumstances did not hold the same coercive effect as were found in *Pacelli*," (Id.) "Additionally," Judge Bergman noted, both agreements "were executed shortly after it was divulged that [Mrs. Korotki] was engaged in an extra-marital affair which tempers any argument that either party had no reasonable belief that the agreements were not intended to define the terms which would terminate the marriage." A265-266.

With regard to the substantive fairness of the divorce judgment, Judge Bergman admitted "that defendant certainly did not obtain the amount of equitable distribution nor support which one would likely obtain in the vast majority of matters in which there are similar facts," but said it was not "so one-sided as to shock the

court's conscience" and warrant Rule 4:50 relief. A257. "[A]lthough the PSA was not optimal to defendant," its terms "as to distribution of assets was not so highly disproportionate to defendant's detriment considering the totality of the factual circumstances surrounding the marriage." The Property (Matrimonial) Settlement Agreement was "clear and unambiguous," A264. "At paragraph 9 of the PSA there was a mutual waiver of alimony by the parties, paragraph 13 provided defendant the 2010 Mercedes Benz E550 valued at $55K, paragraph 15 included a waiver by defendant of any bankruptcy proceeds, paragraph 21 provided defendant with a $200K payment for equitable distribution and defendant's mother the amount of $57,000, paragraph 16 incorporated the MMA terms into the PSA including the cessation of any control defendant had over STL and ST2K set forth in paragraph 6 of the MMA and an indemnification by plaintiff for defendant's criminal defense fees, paragraph 17 distributed all other tangible personal property to the parties which was in their possession." A264-265. "The court finds that that the PSA awarded defendant assets with a minimum value of $280,000 not considering the value of defendant's jewelry collection and other personal items including multiple designer handbags." A266-267.[4] Defendant "retained substantial personal property

[4] "Plaintiff's testimony was that defendant's jewelry alone purchased during the marriage approached $1,000,000 in value," but Judge Bergman said, "[t]he court finds plaintiff did not provide any expert testimony or any other significant proofs as to the value for these items." A266.

purchased during the marriage, i.e., interspousal gifts from plaintiff, which the court finds had significant value." A270.

> The court finds when determining an equitable distribution of these assets that it must consider that the substantial majority of the parties' wealth at the time of divorce was based on plaintiff's acquisition of assets prior to the marriage. The court finds the transfers made as part of the asset protection plan were not intended to be gifts to plaintiff, but even if they were, the court's analysis would remain the same. Similarly, the deed for 115 S. Avolyn Avenue, Ventnor from plaintiff to defendant in November of 2008 also corresponds with the asset protection plan and was acquired by a 1031 exchange through plaintiff which exchanged property in the Reserves, which the court has already found was prior to the marriage. The court's prior findings as to the tracing of the parties' assets back to the pre-marital acquisition by plaintiff is a substantial factor which makes the distribution of assets to defendant in the PSA to be fair and reasonable when evaluating whether the PSA and/ or MSA is unconscionable. Under these circumstances, the court cannot find that defendant has met her burden by a preponderance of the evidence that the PSA was patently unfair in that no reasonable person not acting under compulsion or out of necessity would accept its terms. [A271]

With regard to the waiver of alimony, Judge Bergman acknowledged that Mrs. Korotki likely would have been entitled to limited duration alimony of some amount. A272. But Mrs. Korotki "was capable of earning an income and had prior experience in the casino gaming industry" while Mr. Korotki was near retirement. A275. Mrs. Korotki had been "out of the employment market since at least 2004" but "had the requisite skills in 2014-2015 to earn at least $30-$40,000 as a casino employee." A277. And Mr. Korotki had provided "de facto" support while the parties' continued living together until August 2017. "The court finds the plaintiff's

income in the four years preceding the PSA was not significantly greater than defendant's earning capacity at that time." A277.

Finally, Judge Bergman noted Mrs. Korotki's "extra marital affair" and her "concern" about being able to reunify with her husband in "determining whether she should agree to the terms of the MSA, PSA and Final Judgment" as a factor showing she was not entitled to Rule 4:50 relief. A278. "Although the court certainly understands that fault is typically not a substantial factor when determining that person's rights to equitable distribution and spousal support, the court finds defendant's state of mind was such that she considered the ramifications of the affair and her planned reunification efforts as part of the reasons for executing the PSA. The court finds this fact scenario did not provide sufficient facts which would require the vacation of the PSA or Final Judgment of Divorce. Despite these factors the court finds that her guilt and reunification plans do not overcome that she voluntarily and knowingly entered into the PSA and also knowingly waived her right to counsel concerning such. The court finds these choices were consciously made by defendant with the intent and hope that she would convince plaintiff to reunify and potentially remarry in the future. The court finds her choice to do this was done freely and voluntarily. The court finds defendant accepted the risks involved that the reunification process would not be successful after the execution of the PSA and after the entry of the Final Judgment of Divorce." A278-279.

ARGUMENT

The family court abused its discretion in denying Rule 4:50 relief to defendant (A227, A437)

Even accepting Judge Bergman's findings of fact, those facts, coupled with the court filings and transcript from the two month divorce litigation, show there was fundamental unfairness to Mrs. Korotki in the process leading to the Final Judgment of Divorce and its substantive result. Judge Bergman committed reversible error because he failed to apply the correct governing legal principles to determine whether Mrs. Korotki was entitled to relief from this judgment predicated on default – in a divorce case where New Jersey courts have always stressed default judgments should be avoided. Mrs. Korotki respectfully asks the Court to reverse Judge Bergman's orders denying relief to her, vacate the equitable distribution and alimony provisions of the Final Judgment of Divorce previously entered, and remand this matter for a fresh determination of the equitable distribution and alimony issues between the parties.

A. Unfairness in the Process

The court filings and transcript from the two-month express train between Complaint and Final Judgment show all the hallmarks of a complete lack of fairness toward the less monied spouse:

- Cooper Levenson – the same firm that was providing "financial advice" since July 2013 while the couple was married and navigating

the bankruptcy crisis, prepared the Complaint for Divorce for the husband against the wife. A1, A17.

- Two days before the Complaint was even filed, Cooper Levenson had Mrs. Korotki sign a "Waiver" of her "right to file an Answer to the Complaint filed by the Plaintiff" – notarized by a Cooper Levenson paralegal, and filed with the court by Cooper Levenson attorney Klein a mere eight days after the Complaint was filed. A11.
- One month after that – without any Case Information Statements having been filed (19T49:12-17), Cooper Levenson filed on Mr. Korotki's behalf a "Request to Enter Default Judgment" against Mrs. Korotki for her "failure to plead or otherwise defend," attaching the "waiver" that Attorney Klein had obtained from her two days before the lawsuit even began. A13. [5]

[5] In moving for default judgment, plaintiff did not present a Notice of Proposed Final Judgment per R. 5:5-10. Though the Rule provides that the Notice is not required where a "written property settlement agreement has been executed," Judge Light did nothing to ensure that the agreements Mr. Korotki and his lawyer were asking the court to effect were, in fact, "executed" voluntarily and knowingly by Mrs. Korotki (as discussed further below). Nor did the agreements presented to the court set forth the information that a Notice of Proposed Final Judgment would have provided the court – such as "a statement of the value of each asset and the amount of each debt sought to be distributed and a proposal for distribution" – which is particularly important for a high-value asset case like this one, cf. Clementi v. Clementi, 434 N.J. Super. 529, 534 (Ch. Div. 2013) ("In a default proceeding, the court generally still must receive additional information and evidence from the participating plaintiff, such as, at the very least, a case information statement so the court may learn more

When the default judgment hearing arrived and Judge Light asked about Mrs. Korotki, Mr. Korotki and his attorney (Mr. Klein) lied -- telling Judge Light that Mrs. Korotki "had the agreement completely reviewed by an individual, an attorney-at-law of her own choosing" who simply "never entered an appearance on her behalf" in the case. 25T10. That was a lie.

Judge Bergman found that was a lie in his Rule 4:50 decision below. Mr. Korotki claimed (in opposing Rule 4:50 relief) that Sarah Weinstock was this attorney who'd represented Mrs. Korotki with regard to the Mid-Marriage Agreement and reviewed the agreements with her (19T38:18-41:25; 21T117:11-25; 15T72:18-73:22). But Ms. Weinstock told Judge Bergman in her testimony below that she did none of that. She practiced "very little" family law, in fact, and never represented Mrs. Korotki in connection with the Mid-Marriage Agreement, Powers of Attorney, or any other such issues (representing Mrs. Korotki only on an unrelated, non-matrimonial matter). 23T42:5-44:25. Judge Bergman credited this testimony and said, "the Court finds that Ms. Weinstock did not represent her in a review of the PSA or other documents challenged." A252.

The transcript of the default judgment hearing confirms, moreover, that Judge Light premised his entry of the Final Judgment at least in part on this lie.

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about the financial circumstances of the parties in striving to render a fair and equitable judgment").

Immediately after the representation by Mr. Korotki and his lawyer, Judge Light announced, "I find that the parties have entered into an agreement that resolves all the issues in the divorce. They've done so voluntarily without coercion or duress" (25T11). And Judge Light's Final Judgment of Divorce entered that day provides, "The Court having found that each party entered into such agreement freely and voluntarily" A16. There was no evidence that supported that judicial finding other than the lie of "independent counsel" (which was not *credible* evidence by definition). Mrs. Korotki did not appear at any point in the case; no attorney appeared on her behalf. Mrs. Korotki's only participation in the case was her signature on the "waiver" that attorney Klein extracted from her two days before plaintiff's Complaint was even filed (Mrs. Korotki affirmed in her testimony to Judge Bergman that she did not even know that Mr. Korotki had obtained a divorce judgment from a court in March of 2015, since they continued to live together as husband and wife for the next 18 months, until August 2017).

That lie that Mr. Korotki and his lawyer told the family judge who entered Final Judgment of Divorce shows that Rule 4:50 relief is warranted to the affected spouse, see Rule 4:50-1(c) (judgment may be vacated if obtained by "fraud . . . , misrepresentation, or other misconduct of an adverse party").[6] The following defects

[6] Mr. Korotki implicitly acknowledges that he and his lawyer lied to Judge Light at the March 18 default judgment hearing. In claiming to Judge Bergman that Mrs. Korotki fully understood the Matrimonial Settlement Agreement she signed in

only show further why the entire process leading to the Final Judgment, orchestrated by the far more experienced and sophisticated spouse with the help of the Cooper Levenson firm, was so improper and unfair to Mrs. Korotki.

The Mid-Marriage Agreement

The judgment that Judge Light entered incorporated the "Mid-Marriage Agreement" that was made part of the Matrimonial Settlement Agreement. But New Jersey law provides that mid-marriage agreements are "inherently coercive" and generally unenforceable. Pacelli, supra, 319 N.J. Super. 191. Such agreements are supposed to be carefully reviewed by a family court because they are "pregnant with the opportunity for one party to use the threat of dissolution 'to bargain themselves into positions of advantage.'" Pacelli, supra, 319 N.J. Super. 185; Steele v. Steele, 467 N.J. Super. 414, 436 (App. Div. 2021), cert. denied, 258 A.3d 348 (N.J. 2021). "[A]t the very least, they must be closely scrutinized and carefully evaluated" before given effect, Pacelli, supra, 319 N.J. Super. 185.

Judge Light did not apply any scrutiny to the Mid-Mariage Agreement he was asked to effectuate. In Pacelli, supra, 319 N.J. Super. 185, the court refused to enforce a "mid-nuptial" agreement, criticizing the husband's "creative accounting"

January 2014, for example, (15T72:18-73:22), Mr. Korotki testified that he and Mrs. Korotki sat in a conference room at Cooper Levinson and reviewed the agreement together "page by page." 16T45:24-46:15. This was plainly not "independent counsel" of Mrs. Korotki's own choosing.

of the value of assets at the time the parties entered into the agreement, and stressing the great potential for coercion inherent in such agreements which, if enforced, allow one party to use the threat of dissolution of marriage to "bargain themselves into a position of advantage." Those same concerns were present in this case. In the document itself, Mr. Korotki used a threat of "$15 million dollars of claims" and "certain criminal claims against Saleena which may be brought by third parties which also carry with it the potential of substantial civil liability as well." CA3. Judge Bergman acknowledged that the Mid-Marriage Agreement was brought about by the affair Mrs. Korotki had – leading further to the concerns of coercion and unfairness that Pacelli noted and which Judge Light did nothing to guard against in simply rubber stamping the agreements he was being asked to enter against the defaulted Mrs. Korotki, see also ABIGAIL WEIDEL, Plaintiff-Respondent/ Cross-Appellant, v. RICHARD A. WEIDEL, JR., Defendant-Appellant/ Cross-Respondent., A-3240-19, 2021 WL 5365655, at *7 (N.J. Super. Ct. App. Div. Nov. 18, 2021) ("regardless of how the amendment is styled, it bears the hallmarks of an unenforceable mid-marriage agreement. Plaintiff was not represented by independent counsel and there was no credible dispute that there was no full financial disclosure").

The Final Judgment of Divorce that Judge Light entered said the agreement being effectuated was "fair and equitable under all the circumstances," but there

was no sufficient credible evidence presented to Judge Light that supported this finding. A16. The Mid-Marriage Agreement was a part of the agreement and itself was viewed as inherently coercive and generally unenforceable under New Jersey law. The only evidence about fairness or equity came from the brief testimony of Mr. Korotki – who lied about the "independent counsel" his wife had to begin with. There was not sufficient credible evidence before the family court to support such an important finding in a high value divorce case premised on default against the obviously less monied spouse.

Judge Light took no other steps to make findings of fact and conclusions of law required by New Jersey law -- to ensure that Mr. Korotki was legally entitled to the relief he was requesting be entered on default judgment against his absent wife. Rule 1:7-4(a) provides, "The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment." Rule 1:7-4 does not exempt a court from making the findings where a party is in default – to the contrary, they're even more vital for a default judgment in a divorce case (as discussed further below). Gnall v. Gnall, 222 N.J. 414, 428 (2015); Curtis v. Finneran, 83 N.J. 563, 569 (1980). The court is required to "state clearly its factual findings and correlate them with the

relevant legal conclusions." Curtis, supra, 83 N.J. 570; Clementi, supra, 434 N.J. Super. 532 (even after entry of default, movant "still has an ongoing obligation to persuade the court, by a preponderance of the evidence, that the proposal for equitable distribution is fair and equitable under the specific facts of the case."). N.J.S.A. 2A:34-23.1 provides sixteen factors that the family judge "shall consider" in fixing an equitable distribution award. Judge Light did none of this. There were no financial disclosures; there was no Case Information Statement even by the appearing plaintiff. Judge Light did not identify marital or separate assets, or value assets in the marital estate.

Cooper Levenson's actions

Much of the hearing before Judge Bergman revolved around whether Cooper Levenson's representation of Mr. Korotki in the divorce case was a conflict of interest under ethics rules -- whether the firm had previously represented both parties when it was retained to provide "financial advice" in January 2013. We submit that the answer does not matter. Actual conflict or not, the actions that Cooper Levenson took reek of unfairness to the less-monied spouse and illustrate a divorce process that our courts should not condone. Even accepting Judge Bergman's finding that Cooper Levenson only represented Mr. Korotki, the firm

- began representing Mr. Korotki in July 2013 when he was married to Mrs. Korotki, during their close partnership together, and during the

bankruptcy crisis, rendering it nearly impossible for Cooper Levenson to provide "financial advice" solely to Mr. Korotki that did not impact the interests and rights of Mrs. Korotki and triggering Conflict of Interest Rule 1.7 (providing lawyer shall not represent a client if the representation involves a concurrent conflict of interest; "A concurrent conflict of interest exists if … (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, **or a third person**") (emphasis added)

- prepared the "Mid-Marriage Agreement" that New Jersey courts view as inherently coercive and unenforceable, Pacelli v. Pacelli, 319 N.J. Super. 185, 191 (App. Div. 1999); Steele v. Steele, 467 N.J. Super. 414, 436 (App. Div. 2021), cert. denied, 258 A.3d 348 (N.J. 2021);
- prepared and had Mrs. Korotki execute a "waiver" of her right to contest plaintiff's Complaint for Divorce two days before the lawsuit even began;
- lied or at least helped perpetrate the lie that Mr. Korotki told Judge Light -- that Mrs. Korotki had "independent counsel" who reviewed the agreements with her and simply decided not to enter a formal appearance in the divorce case on her behalf.

Attorney Klein also helped Mr. Korotki perpetrate the lie to Judge Light that Mrs. Korotki had her own independent counsel who reviewed the divorce agreements with her but simply did not enter an appearance in the case:

Q Sir, your wife waived her right to counsel, is that correct?

A She had someone look at the --

Q I was going to get to that.

A Okay.

Q She waived her right to counsel who entered an appearance. Is that correct?

A Correct.

Q All right. And based upon advice by you and other individuals in her realm, in her world, and frankly on my advice, she had the agreement completely reviewed by an individual, an attorney-at-law of her own choosing. Is that correct?

A Yes.

Q Who never entered an appearance on her behalf, correct?

A Correct.

Q All right. And you're satisfied, and you have had many conversations with your wife as well since that time, that she's also entered into this freely, voluntarily and willingly, correct?

A Yes.

Q Okay.

MR. KLEIN: Nothing further, Judge.

And Judge Light relied on that lie that counsel helped perpetrate: "THE COURT: Thank you, Mr. Klein. I've heard the testimony of the plaintiff. I find the plaintiff to be credible. I find that the parties have entered into an agreement that resolves all the issues in the divorce. They've done so voluntarily without coercion or duress. *** I note that the defendant, while not being represented by counsel of record, did have an attorney review the agreement on her behalf. So for those reasons I will accept the agreement and incorporate that into the final judgment." 25T10-11. That's not a fair and equitable process in a divorce case no matter the technical application of the conflict of interest rules.

Judge Bergman's finding that Cooper Levenson did not infringe conflict of interest rules is erroneous in any event. Even accepting Judge Bergman's finding that Cooper Levenson represented only Mr. Korotki in the July 2013 engagement, the firm's provision of financial advice plainly impacted both spouses in the marriage. Later representing the husband against the wife implicated RPC 1.7 as noted above, prohibiting representation if there exists "a significant risk that the representation," here of Mr. Korotki, "will be materially limited by the lawyer's responsibilities to … a third person…"

Judge Bergman's finding that Cooper Levenson represented only Mr. Korotki at all times is not supported by the required adequate, substantial, credible evidence

needed to be sustained on appeal, Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974). Judge Bergman's finding disregarded that attorney Browndorf's July 19, 2013 Retainer Agreement was addressed to both spouses, and was signed by both spouses, and that Cooper Levenson's invoices were addressed to the couple jointly, and that most of Cooper Levenson's invoices were paid by Mrs. Korotki. Judge Bergman's finding disregarded that Mrs. Korotki wired Cooper Levenson the initial retainer to retain them in the first place, and also disregarded that she paid their monthly fees. 1T45:16. Judge Bergman's finding disregarded that Mrs. Korotki testified she believed that Mr. Browndorf was her attorney during that time. 1T91:17-20. As Mrs. Korotki summarized in her Certification filed in support of her motion for reconsideration (A294), "The probative evidence before the Court was that I signed a retainer agreement with Cooper Levenson (D 57), I received invoices from Cooper Levenson (D 58), I paid Cooper Levenson $203,333.61 from my Hudson City Bank Account in 2013 (D-179), I paid Cooper Levenson $8,538.44 from my Cache Visa credit card in 2015 (D 172), and Cooper Levenson referenced me as their Client in a November 2014 invoice (P 15)." Even Mr. Browndorf acknowledged in his testimony before Judge Bergman that because of what he claimed was a "clerical error" in the Retainer Agreement, he might indeed have been representing Mrs. Korotki. 12T32-33:9. Though claiming a clerical error, moreover, Browndorf never sent Mrs. Korotki any communication that he was not

representing her in the "financial advice" engagement, or that her being named in the Cooper Levenson retainer agreement was a "clerical error." 12T34:20-35:1; 12T45:20-46:7. Cooper Levenson retained and did not return to Mrs. Korotki the payments in excess of $210,000 that Mrs. Korotki made to them on account of their legal bills, addressed to both spouses. 12T34:20-35:1; 12T45:20-46:7.

Finally, Judge Bergman's ruling flies in the face of Mr. Korotki's own statements. In the legal malpractice case that Mr. Korotki filed against several former lawyers in federal court, Mr. Korotki affirmed that Cooper Levenson represented both he and his wife jointly during the 2013-2014 time frame, in providing "financial advice" to them; the couple entered the Retainer Agreement with Cooper Levenson in July 2013 together. 21T107:21-108:2. "[D]uring the preparation and execution of the Matrimonial Settlement Agreement, the Mid-Marriage Agreement, and the Irrevocable Power of Attorney of December 5, 2013, and November 11, 2014, [Cooper Levenson] acted as legal counsel to both Plaintiff and Saleena in violation of law and the New Jersey Rules of Professional Conduct," Mr. Korotki represented in his malpractice lawsuit, he acknowledged in the Rule 4:50 hearings below. 21T109:24-110:6; 21T109:24-110:7. These representations to the federal court should have precluded, per the doctrine of judicial estoppel, Mr. Korotki from claiming a contrary fact in the Rule 4:50 proceeding before Judge Bergman below, Newell v. Hudson, 376 N.J. Super. 29, 38 (App. Div. 2005);

Tamburelli Properties Ass'n v. Borough of Cresskill, 308 N.J. Super. 326, 335 (App. Div. 1998); Kimball Int'l, Inc. v. Northfield Metal Products, 334 N.J. Super. 596, 608 (App. Div. 2000); Stretch v. Watson, 6 N.J. Super. 456 (Ch. Div. 1949), aff'd in part, rev'd in part, 5 N.J. 268 (1950) (all noting doctrine of judicial estoppel precluding a party from playing "fast and loose with the courts" in order "to protect the integrity of the judicial process").

Judge Bergman's conclusion that Cooper Levenson represented only Mr. Korotki at all times and did nothing improper in its prosecution of the divorce against Mrs. Korotki flies in the face of all that record evidence and governing law, warranting reversal here on appeal.

The bankruptcy problem

Whether or not the automatic stay provision of federal bankruptcy law was technically violated,[7] the shenanigans by Mr. Korotki and his lawyers in the bankruptcy case is just one more factor showing that the process leading to the judgment of divorce in this case was miles away from the aboveboard one that New Jersey courts require – particularly for a divorce obtained by default by the more powerful, wealthy, and experienced spouse.

[7] The filing of a bankruptcy petition acts as a stay of the "commencement or continuation" of a judicial proceeding against the debtor, 11 U.S.C.A. § 362(a); this includes equitable distribution in divorce, Clark v. Pomponio, 397 N.J. Super. 630 (App. Div. 2008); Frankel v. Frankel, 274 N.J. Super. 585, 590–91 (App. Div. 1994).

The Final Judgment of Divorce was entered after the bankruptcy case ended, but the underlying agreements that the family court entered via its judgment -- the Matrimonial and incorporated Mid-Marriage agreement -- were signed in the middle of the bankruptcy case. Judge Light made no findings of fact or conclusions of law on the equitable distribution or alimony issues the agreements purported to resolve. Judge Light simply entered a judgment giving effect to them.

Judge Bergman noted in his decision below that Mr. Korotki and his lawyers deliberately withheld these agreements from the knowledge of the bankruptcy trustee. The assets referenced in the agreements were supposed to be under the exclusive jurisdiction of the trustee. The Mid-Marriage Agreement, executed on December 5, 2013, and the Matrimonial Settlement Agreement executed 43 days later, could certainly be viewed as an act by Mr. Korotki to obtain possession of property of the bankruptcy estate and to exercise control over property of the estate in violation of the Bankruptcy Code, cf. 11 U.S.C.A. § 362(a)(3) (noting stay applicable to "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"). The agreements also purported to waive Mrs. Korotki's rights under federal bankruptcy law and give to her husband an irrevocable Power of Attorney, *see* Para. 6 of Mid-Marriage Agreement ("It is hereby agreed by and between the parties that Saleena (Wife) shall execute an Irrevocable Power of Attorney which shall allow Abraham (Husband) to

take any and all steps necessary to transfer the ownership of personal and or real property inclusive of any real estate lots previously transferred to Wife, any interest in any and all entities inclusive of STL Development, LLC and ST2K, LLC as Husband in his sole discretion chooses including but not limiting the transferring of them to Husband, third party, a lender, Bankruptcy Trustee, and/or investor, or co-venturer or otherwise") CA5; para. 15 of Matrimonial Settlement Agreement ("Wife hereby waives all right, title, claim or interest to any bank accounts, or assets related to said Bankruptcy in accordance with the Irrevocable Power of Attorney previously executed by her on December 5, 2013") CA20; para. 16 of the Matrimonial Settlement Agreement ("Wife waives any and all claims with regard to any asset which may be subject to the Bankruptcy proceeding. Thus, Husband may retain same free or any claim, right, title, or interest by Wife either with regard to said entities or proceeds therefrom"). CA20. Whether or not these actions technically violated the federal bankruptcy law, they further show that the process culminating in the Final Judgment of Divorce entered in this case was fundamentally unfair to the affected, absent spouse and incompatible with what New Jersey law requires for divorce resolution in our courts.

B. Unfairness in the Result

The slender amount of marital assets that Mrs. Korotki received, with zero alimony, couples with the abject lack of fairness in the process to show that Rule 4:50 relief was warranted below, we submit.

Judge Bergman said that the value of the marital estate was about $4.6 million. A262. Even accepting that figure (which Mrs. Korotki vehemently disputed[8]), Mr. Korotki retained almost all of it. Mr. Korotki affirmed to Judge Bergman that he kept all of the money from the bankruptcy settlement – approximately $4.6 million, and he received $2.5 million returned to him as part of a separation agreement.

[8] Mrs. Korotki charged that the $4.6 million figure did not include vast other assets the parties had, including properties at 32619 Bella Via Court, with an estimated value of $500,000 (A320), and 115 S. Avolyn Avenue, with an estimated value of $3 million dollars (A323). STL Development – which Mr. Korotki took via the agreements – also owned 32621 Bella Via Court, with an estimated value of $500,000 and which sold for $470,000 on March 22, 2015 (D414). The parties' personal bank accounts, vehicles, and personal property was also retained in addition to the proceeds from the bankruptcy estate and the above referenced assets. Mrs. Korotki affirmed below, "Abraham and my personal bank accounts, money market accounts, vehicles, and personal property was also retained in addition to the proceeds from the Bankruptcy estate and the above referenced assets. The facts of the matter are the Bankruptcy estate were not the only assets Abraham and I had. On the contrary, other than the lots of land in the Reserves, we retained everything else which was due in large part to Abraham's testimony in the Bankruptcy that the assets transferred to me, were in fact mine. Despite Abraham's reliance on that position, in the matrimonial matter, he divested me from everything. The probative and competent evidence before the Court shows that Abraham received everything from the Bankruptcy, as he and I both testified to, and he retained all of the assets which were not subject to the Bankruptcy as well." A296.

20T104:8-18l; 4T37:1-10; 18T18:1-3.[9] Mr. Korotki testified that the Mid-Marriage Agreement and Power of Attorney, which the divorce judgment effectuated, transferred the interests of STL and ST2K solely to him. 19T74:8-11.

Conversely, Mrs. Korotki received a $200,000 lump sum payment for her share of equitable distribution, a Mercedes Benz, payment of attorney's fees in the amount of $25,000, and a $57,000 payment to her mother – nowhere near the millions that her husband received – and zero alimony to boot. As Judge Bergman himself noted, "the court finds that defendant certainly did not obtain the amount of equitable distribution nor support which one would likely obtain in the vast majority of matters in which there are similar facts."

Combined with the lack of fairness in the process, the substantive result in this high value divorce case further shows that Rule 4:50 relief was warranted for Mrs. Korotki below. Judge Bergman said, "The court finds the transfer of assets to defendant, STL and ST2K as part of the asset protection plan [which the couple executed in 2008] made these assets part of the marital estate" – yet all of these assets were transferred back to Mr. Korotki in the divorce agreements, see Reconsideration Opinion at A434. ("Plaintiff was awarded all the STL and ST2K assets as part of the bankruptcy GSA and in the PSA.") The parties' marital residence at 32619 Bella

[9] Abraham clarified that she did not return the cash to him as a result of the divorce but as a result of a separation agreement. (20T104:1-4). The amount of this was $2.5 million. (20T104:5-7)

Via Court, Ocean View, Delaware (16T22:6-20) was retained by Mr. Korotki (20T96:14-19); Mrs. Korotki was provided only "temporary residence" there. Mr. Korotki also retained the 32621 Bella Via Court property and received all of the proceeds of its sale. 23T21:25-22:3.

Added to this was the absence of any alimony to the obviously less monied wife, who Judge Bergman noted has not worked "since at least 2004," was capable of earning maybe $30,000 - $40,000 as a casino employee (A277), and who Judge Bergman acknowledged probably would have been entitled to at least limited duration alimony.[10]

The end result? Mrs. Korotki is in tremendous debt; Mr. Korotki still has millions. 1T123:3-20. Mrs. Korotki affirmed in her testimony that she owes a lot of people a lot of money (1T123:19-24), attorneys, family, and friends (1T124:1-2). She owes her friend Mabel Louie approximately $30,000. She owes Michael Saltzburg $200,000; Cynthia $6,000; Vince $5,000; Bruce Le, her brother, $30,000; her parents $20,000 to $30,000. 1T124:20-126:4. Mrs. Korotki is "maxed out" on her credit cards. She owes Bank of America $50,000; US Bank Visa $20,000, and Bank of America Mastercard $5,000. 1T124:3-4; 1T126:15-25. All of this record

[10] Judge Bergman said "defendant did receive support from plaintiff on a de facto basis for the two- and one-half years" the parties continued living together in their home after the Final Judgment of Divorce was entered. That was not support for a separated spouse qualifying as *pendente lite* relief, and did not remedy the substantive inequity of the denial of even limited duration alimony.

evidence shows the substantive unfairness of the equitable distribution and alimony provisions effectuated by the divorce judgment, see, e.g., D.M.C. v. K.H.G., 471 N.J. Super. 10, 30 (App. Div. 2022) (noting equitable distribution is "designed to advance the policy of promoting equity and fair dealing between divorcing spouses") (citing Barr v. Barr, 418 N.J. Super. 18, 45 (App. Div. 2011)).

C. Judge Bergman's Errors

Judge Bergman failed to recognize that the final judgment of divorce was premised on default - with Mr. Korotki and his attorney having filed a "Request to Enter Default Judgment" against the absent wife, and Judge Light noting during March 18 default judgment hearing that Mrs. Korotki was in "default." 25T9:20-25. Judge Bergman failed to apply governing law providing that "the opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Morales v. Santiago, 217 N.J. Super. 496, 501 (App. Div. 1987) (quoting Marder v. Realty Const. Co., 84 N.J. Super. 313, 319 (App. Div. 1964), aff'd, 43 N.J. 508 (1964)). Judge Bergman applied an opposite presumption in fact, stating at page 15 of his decision, "Our courts have repeatedly stated that matrimonial settlement agreements should not be unnecessarily or lightly disturbed." "[A party seeking to set aside a settlement agreement has the burden of proving extraordinary circumstances

sufficient to vitiate the agreement," Judge Bergman said (Op 15, A243).[11] Judge Bergman erred by failing to apply the far more liberal standard for granting relief from a default judgment. Applying the more liberal standard further shows that relief should be granted to Mrs. Korotki in this case.

Judge Berman failed to apply New Jersey law protecting against default judgments, in particular, in divorce cases – particularly in a case like this one prosecuted by the far more powerful and sophisticated spouse against his absent wife. Our courts have consistently stressed that divorce cases in particular must be guarded from resolution by default whenever doubt exists as to the fairness of the procedure or the merits of the resulting judgment. "[D]ivorce actions are *sui generis*, Feickert v. Feickert, 98 N.J. Eq. 444, 448 (Ch. 1926), and the courts will generally be solicitous in protecting the interests of the respective parties." Curry v. Curry, 108 N.J. Super. 527, 529 (App. Div. 1970). Quoting Vice-Chancellor Lewis' pronouncements in Grant v. Grant, 84 N.J. Eq. 81, 83–84 (Ch. 1914), this Court stressed in Curry:

> Since a judgment by default is not favored in divorce suits, the courts are especially inclined to interpose by opening or setting aside such a judgment and giving defendant a day in court so that the merits

[11] The caselaw that Judge Bergman cited in support of his standards were civil lawsuits that do not apply to an application seeking relief from a default judgment obtained in a divorce case in family court. Jennings v. Reed, 381 N.J. Super. 217, 227 (App. Div. 2005) was a lawsuit over a driveway easement. Quagliato v. Bodner, 115 N.J. Super. 133, 138 (App. Div. 1971) was an auto accident case.

> of his defence may be passed upon, under such terms and conditions as to the payment of costs and alimony as to the court may seem proper.
>
> It has been said that the rule that a default will not be opened to permit a defence to be interposed which is not meritorious is not vigorously applied in divorce suits.
>
> I think it is the universal practice to open a default in a divorce case, not only when a defence comes out in the evidence, but if, after the evidence is taken, the defendant desires to be heard. In my judgment a defendant who comes forward and says he desires to defend a case for divorce should be given an opportunity to do so at any moment before the chancellor's signature is actually affixed to the final decree. The only limitation I can think of would be an apparent lack of good faith on the part of the applicant, which would be the case if it clearly appeared he did not intend to answer even after obtaining the right to do so; his attempt being merely for delay prompted by ulterior motive.

Curry has been cited favorably for this principle ever since, Drobnjak v. Drobnjak, A-1285-17T2, 2019 WL 1779514, at *3 (N.J. Super. Ct. App. Div. Apr. 23, 2019) (citing Curry and noting "great liberality" of affording relief for default judgment "is especially so in family actions, because 'a judgment by default is not favored in divorce suits'"); Mora v. Mora, A-1330-15T2, 2017 WL 1021956, at *3 (N.J. Super. Ct. App. Div. Mar. 16, 2017) (same); Speer v. Speer, A-3400-04T5, 2005 WL 3672012, at *3 (N.J. Super. Ct. App. Div. Jan. 18, 2006) ("'courts will generally be solicitous in protecting the interests of the respective parties' in divorce proceedings").

Where this Court has approved of a default judgment entered in a divorce case, the Court did so because the process was fair and the substantive result equitable – neither of which is shown by the Korotkis' case here.

In Drobnjak, supra, 2019 WL 1779514, for instance, this Court denied the defendant's appeal from the denial of his motion to vacate a default judgment in a divorce case in part because the judgment of divorce that the family court had entered, though by default, was a balanced resolution of the proceeding – not a rubber stamping of what one party demanded against the absent spouse. And the judge who entered the divorce judgment made the required findings of fact and conclusions of law. As the Appellate Division noted in Drobnjak, supra, 2019 WL 1779514, "[r]egarding equitable distribution, the trial judge made extensive findings regarding each of the statutory factors set forth in N.J.S.A. 2A:34-23.1. The judge listened to testimony and determined that '[p]laintiff testified credibly and ... her proofs supported her testimony.'" Drobnjak, supra, 2019 WL 1779514; see also Mora, 2017 WL 1021956 (affirming divorce judgment, though on default, where detailed findings of fact and law made by judge following hearing).

In Guglielmo v. Guglielmo, 253 N.J. Super. 531 (App. Div. 1992), conversely, the court refused to condone a marital settlement agreement that was unconscionable in failing to protect the wife's interests due to overreaching by the dominant husband. In defending the paltry amount of equitable distribution that Mrs. Korotki received in this case, Judge Bergman said that Mrs. Korotki received other monies during the marriage. "The court finds that a preponderance of the credible evidence shows that plaintiff by way of interspousal gifts provided

defendant with substantial assets which she retained after the divorce." A271. But there was no disclosure and identification of the assets in and outside the marital estate during the summary January – March proceeding. It was improper for Judge Bergman to evaluate the fairness of the equitable distribution on the basis of the motion record – which did not substitute for the disclosures and discovery rights that New Jersey law provides *before* equitable distribution and alimony is determined.

Judge Bergman also erred in denying Rule 4:50 relief because of the affair Judge Bergman believed Mrs. Korotki had without her husband's consent (A278) (which Mrs. Korotki testified was at her husband's directive). Judge Bergman said the affair led to the Mid-Marriage Agreement. Mr. Korotki testified to this - that the Mid-Marriage Agreement was drafted to reflect the current state of the marriage in light of Mrs. Korotki's affair as well as the Chapter 11 Bankruptcy proceeding ongoing at the time. 15T67:23-68:16. Mr. Korotki said the Mid-Marriage Agreement was created "in the heat of what Saleena did" (19T26:16-22), providing Mr. Korotki with an Irrevocable Power of Attorney over his wife (7T6:4-13; 19T29:21-25).

The legal problem with this is that the marital fault that Judge Bergman believed existed did not mean that the process leading to the divorce, or the resulting equitable distribution or alimony, was fair and sustainable under New Jersey law. Mid-marriage agreements are considered inherently coercive to begin with – Mr.

Korotki's testimony that this one arose from the affair only illustrates that recognized legal problem. Marital fault is completely excluded by New Jersey law as a consideration in an award of equitable distribution of marital property. Chalmers v. Chalmers, 65 N.J. 186, 193 (1974); Calbi v. Calbi, 396 N.J. Super. 532, 539 (App. Div. 2007). And marital fault "is irrelevant" to the determination of alimony as well except where "the fault has affected the parties' economic life" and where "the fault so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice" (Mani v. Mani, 183 N.J. 70, 72 (2005)), neither of which is present in this case. Mrs. Korotki's extra-marital engagement, which Judge Bergman believed occurred without her husband's permission, may explain why the Mid-Marriage and Matrimonial Settlement Agreements came about, but they do not show that the process and result, premised on default, are fair and equitable as required by New Jersey law.

D. Relief should not be denied to Mrs. Korotki on grounds of time

The parties were legally divorced when the Final Judgment of Divorce was entered in March 2015. But Judge Bergman acknowledged they continued living together until August 2017. Whether it was because the divorce was only "on paper" as Mr. Korotki allegedly told his wife, or because they still loved each other and hoped to reconcile, they were not truly separated for all that time. Neither spouse took steps to enforce any aspect of the divorce judgment. The parties' union only

broke down in August 2017 after the domestic violence incident. As Judge Bergman found in his decision,

> Unfortunately, the court finds the events that occurred in August 2017 with defendant filing a complaint against plaintiff under the Prevention of Domestic Violence Act which resulted in a domestic violence TRO being issued against plaintiff seemed to put an end to any reunification. The court is unable to make findings as to what occurred that night as both parties presented viable factual assertions as to what happened. Neither has proven their version of the story by a preponderance of the evidence. The bottom line is that this event caused the final separation of the parties, a separation that occurred two years and eight months after the PSA was executed and two years and eight months after the Final Judgment of Divorce was entered. [A257]

That same month, Mr. Korotki filed his motion to enforce litigant's rights against Mrs. Korotki. Mrs. Korotki filed her cross-motion for Rule 4:50 relief in response two months later. A239.

Given the unfairness in both the process and result of the divorce judgment entered on default against the less monied spouse, Rule 4:50 relief should be afforded to Mrs. Korotki, at least under subsection (f) of the Rule, required to be brought only within a "reasonable time" and "determined based upon the totality of the circumstances," Romero v. Gold Star Distribution, LLC, 468 N.J. Super. 274, 296 (App. Div. 2021). As Mrs. Korotki affirmed, "While the Court correctly found that Abraham and I did not separate until August of 2017, the Court failed to appreciate same when determining the reasonableness of my request to vacate the divorce documents, or the witness testimony regarding what actions I took

immediately after Abraham and I actually separated. Upon my actual separation with Abraham, within two (2) months I filed the Motion to Vacate the divorce documents." A301.

A court considering Rule 4:50 relief has discretion to consider the circumstances of the particular case in deciding whether the party filed her motion within a reasonable time. Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011); New Jersey Div. of Child Prot. & Permanency v. A.L., 462 N.J. Super. 127, 136 n.5 (App. Div. 2020); Romero, supra, 468 N.J. Super. 296. Relief is more liberally granted, moreover, when the application is to vacate a judgment obtained by default – particularly in a divorce case (as cited above). Marder v. Realty Const. Co., 84 N.J. Super. 313, 318 (App. Div. 1964), aff'd, 43 N.J. 508 (1964).

Our Supreme Court in State v. Womack, 145 N.J. 576, 586 (1996) said that the boundaries of the relief that can be afforded under subsection (f) are "as expansive as the need to achieve equity and justice." Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); see Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 289 (1994) ("[T]he Rule is designed to provide relief from judgments in situations in which, were it not applied, a grave injustice would occur.")

A family court is a court of equity, moreover, sitting in the Superior Court's Chancery Division. It has inherent power to see that justice is done in the case presented to it. The "very foundation of equitable jurisprudence" is "that equity 'will

not suffer a wrong without a remedy'" and that a chancery court will enter its orders to achieve "a just and equitable result" on the particular case before it. Crane v. Bielski, 15 N.J. 342, 349 (1954); cf. Penn Fed. Sav. & Loan Ass'n of Philadelphia v. Joyce, 75 N.J. Super. 275, 278 (App. Div. 1962) ("Quite independent of statute or rule of court, Chancery has inherent power to set aside a sale or to order redemption 'when there is an independent ground for equitable relief, such as fraud, accident, surprise, irregularity in the sale, and the like'"); Karel v. Davis, 122 N.J. Eq. 526, 528 (1937) ("In these circumstances, it was entirely proper for the Chancellor, in the exercise of the power inherent in courts of equitable jurisdiction to control their own process, to relieve the mortgagee of such obligation as the sale imposed, and to direct a resale of the mortgaged lands").

All of these principles show that Judge Bergman abused his discretion in denying relief to Mrs. Korotki in the court below, including his ruling that Mrs. Korotki's "application based on procedural unconscionability was not filed within a reasonable period of time." (A257). Judge Bergman erred by failing to apply the "reasonable time" provision of R. 4:50-2 with regard to the "totality of the circumstances of this case" – measured from August 2017, when Mrs. Korotki was the subject of domestic violence and ejected from her home by plaintiff, and in light of the timing of Mr. Korotki's own motion to enforce litigant's right filed that same month (August 2017) – which was the first time either party acknowledged the Final

Judgment of Divorce previously filed in this case and then challenged by Mrs. Korotki in her Rule 4:50 motion, cf. Romero v. Gold Star Distribution, LLC, 468 N.J. Super. 274, 297 (App. Div. 2021) (measuring "reasonable time" from when movant "learned of" the facts or evidence upon which motion is based).

In short, if the Court concludes, as we urge, that both the process and result of the Final Judgment of Divorce is unfair and inequitable to Mrs. Korotki, relief should not be denied to her on the ground that she waited too long to file for it. The lie that Mr. Korotki and his lawyer told the family judge who entered the divorce judgment, the complete absence of required findings of fact and conclusions of law, the enforcement of a "Mid-Marriage Agreement" that New Jersey law provides is inherently coercive and generally unenforceable, coupled with the inequitable distribution and complete denial of alimony to the plainly less monied spouse, warrant that equity intervene on the affected spouse's behalf and provide her with a fair opportunity to litigate the equitable distribution and alimony issues. Due process and fundamental fairness require an aboveboard process that any ordinary observer would view as fair to both sides – especially critical in a high value divorce case involving two very unequal spouses like this case.

CONCLUSION

For all these reasons, the Court should reverse Judge Bergman's July 22 and September 8 Orders denying Rule 4:50 relief to Mrs. Korotki, vacate the equitable distribution and alimony provisions contained in the Final Judgment of Divorce previously entered in this case, and remand for a fresh determination of those issues with all of the financial disclosures, discovery rights, and judicial findings of fact and law that New Jersey law requires.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant,
Saleena Korotki

Dated: October 11, 2023

ABRAHAM KOROTKI Plaintiff/Respondent/Cross-Appellant, v. SALEENA KOROTKI Defendant/Appellant/Cross-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001778-22 Atlantic County Trial Court Docket No. ATL-FM-01-510-15 Sat Below: Hon. Stanley L. Bergman, Jr.

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S APPEAL AND IN SUPPORT OF PLAINTIFF'S CROSS-APPEAL

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Dated: November 21, 2023

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PRELIMINARY STATEMENT

On July 22, 2022, in a detailed and comprehensive 62-page written Opinion, the trial court correctly denied Defendant Saleena Thu Le's f/k/a Saleena Korotki's ("Saleena" or "Defendant") motion to set aside her March 18, 2015 divorce from Plaintiff Abraham Korotki ("Abe" or "Plaintiff") and related agreements. In so doing, the trial court found Saleena was not credible. Saleena had an overly generous 3 ½ year discovery period to prove her R. 4:50 case, which she and her lawyers knew was false and frivolous when filed. The evidence presented at the 23-day Plenary Hearing supported that statement. Saleena did not prove any of her allegations contained in her certification supporting her motion.

Saleena's "set aside" case was dismantled by the documentary and testimonial evidence Abe marshalled in discovery. At the Plenary Hearing, Abe relied on all information exchanged during discovery, and the witnesses, and the legal arguments herein. This Court should affirm the trial court's denial of Saleena's motion to set aside, which the trial court correctly found had no credibility and was time barred. However, this Court should reverse the trial court's rulings on the issues of counsel fees and sanctions, the possession of the Lexus, and the $15,459.21 Bank of America reimbursement.

PROCEDURAL HISTORY

Due to the lengthy procedural history of this case, we begin with a list of relevant dates and events to acclimate the Court:

March 3, 1946	Birthdate of Abe (Current Age 77)
June 28, 1972	Birthdate of Saleena (Current Age 51)
September 7, 2004	Date of Marriage (no children born of marriage)
Late 2008/Early 2009	Asset Protection Plan/Spinoff Transaction Documents
December 3, 2008	Durable General Power of Attorney – Saleena
Summer-Fall 2013	Saleena's Extramarital Affair
December 5, 2013	Mid-Marriage Agreement & Second Irrevocable Power of Attorney- Saleena
January 17, 2014	Matrimonial Settlement Agreement
November 11, 2014	Bankruptcy Irrevocable Power of Attorney/Tolling/Settlement "Trifecta" Agreement – Saleena
November 24, 2014	Bankruptcy Global Settlement Agreement
January 13, 2015	Divorce Complaint by Abe (filing withheld one year on advice of bankruptcy counsel)
March 18, 2015	Final Judgment of Divorce
August 23, 2017	Abe's Motion to Enforce FJOD & MSA (deed and Lexus)
September 25, 2017	Saleena cross-motion seeking credit card payments, etc.
October 20, 2017	Order allowing R. 4:50 motion and discovery period
October 27, 2017	R. 4:50 motion filed by Saleena

The R. 4:50 litigation is summarized as follows. On August 23, 2017, Abe filed a motion to enforce litigant's rights pursuant to R. 1:10-3 because Saleena (a) wrongfully transferred a deed to a more than half-million dollar home in Delaware to her mother, Lan Pham[1] for $10 and (b) wrongfully transferred title to Abe's Lexus to herself. (A33; A36). The house transfer violated the parties' Matrimonial Settlement Agreement (hereafter "MSA" or "PSA") at paragraph 14, a provision governing the sale of the Delaware home and allocating the sales proceeds to Abe, as well as the Tolling Agreement/Irrevocable Power of Attorney dated November 11, 2014. (Ca14; A27). The Lexus is Abe's vehicle that he purchased long after the March 18, 2015 Final Judgment of Divorce and he carried his own insurance for the vehicle. (A45; A48; Pa94)

On September 25, 2017, Saleena opposed and filed a cross-motion seeking credit card payments, and other relief. (A57). Implicitly, if not explicitly, her responses acknowledged the validity of her divorce judgment and related documents. (A59). She was silent on any "set-aside claims." (A57; A59). It was not until a month later, on October 27, 2017, that Saleena cross-moved seeking to set aside the Mid-Marriage Agreement (Ca1), Final Judgment of Divorce(A15), Matrimonial Settlement Agreement (Ca14), and the three Powers of

[1] As a result of Abe's motion to join Saleena's mother Lan Pham in this litigation, the trial court ordered the deed to be transferred from Lan Pham back to Saleena on July 27, 2020. (A514).

Attorney(A21;A27;A29); all of which she lawfully signed and remained silent about since December 3, 2008. (A77)

On October 20, 2017, Judge Maven ordered an initial 3-month discovery period and a plenary hearing to follow. (A439). Abe, then self-represented, desperately argued that extensive litigation was unnecessary given Saleena's specious and false claims, unreasonable timing and the obvious facts enumerated in legal documents. In light of the trial court's October 20, 2017 Order, Abe's plea to stop the costly litigation from the start and continuing thereafter was ignored. (A439).

At various times in this litigation, Judge Maven entered case management orders that set the deadlines for discovery in this case and controlled discovery disputes. Other orders raised jurisdictional questions, especially since the parties were involved in a complex bankruptcy case and a currently pending ancillary legal malpractice case in Pennsylvania.

On June 1, 2018, Judge Maven granted Abe's motion for declaratory judgment that the New Jersey Courts could not disturb the findings of the Bankruptcy Court under the Supremacy Clause:

> Plaintiff's motion for declaratory judgment that this Court is without jurisdiction to disturb the findings of the United States Bankruptcy Court is GRANTED. The Court finds, as a matter of law, that this Court is without jurisdiction to vacate, modify, subjugate or otherwise change the decision of the United States Bankruptcy Court, which

> Orders and Decisions were rendered with respect to Case No.: 12-13316 (KG) and Case No.: 12-13317 (KG) and as pertaining to Plaintiff and Defendant in the above referenced matter, including specifically the Order of the Honorable Kenneth Gross, dated December 3, 2014.

[A444].

An earlier Order dated October 20, 2017 addressed enforcement status quo of properties (particularly the 32619 Bella Via Court, Delaware home, its contents, and the Lexus pending disposition of the set aside claims). (A439). The October 20, 2017 Order at paragraph 2 stated:

> Pending the resolution of the motions, the status of all properties at issue herein shall remain at the status quo. Neither party may transfer ownership, sell, encumber, dissipate or cause the destruction or diminution of value or otherwise negatively effect such property during the course of this litigation.

[A439].

The trial court without basis later enforced the above provision in relation to the legal malpractice litigation in Pennsylvania, which was never mentioned by anyone at the October 20, 2017 hearing. [Id.; see also A449, Order, Jan. 11, 2019; A514-518 Orders, July 27, 2020].

On August 19, 2019, Judge Maven entered a sua sponte recusal order in anticipation of Abe's Notice of Motion to recuse based on the appearance of

impropriety[2]. (A454). In so doing, Judge Maven acknowledged that she officiated the wedding ceremony of Saleena's attorney, Amy R. Weintrob, Esq. (See Id.). Neither the Judge nor Defense Counsel divulged that information until two years after Saleena's R. 4:50 cross-motion was filed and several orders were entered[3].

The litigation was transferred to Assignment Judge Mendez, who appointed a Special Discovery Master, Hon. Charles M. Rand, P.J.F.P. (ret.). (A458, Order, Oct. 11, 2019). The matter was then assigned to the Honorable Stanley L. Bergman, Jr., J.S.C. where it remained through the plenary hearing. (A518, Order, July 27, 2020).

Discovery

The discovery period was lengthy (nearly 3 years) and contentious. The parties completed "paper" discovery by way of notices to produce, interrogatories, requests for admissions[4], subpoenas duces tecum (including Plaintiff's out-of-state commissions to serve Delaware and Pennsylvania records subpoenas), as well as client authorizations for banking records. Both parties filed Case Information Statements.

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[2] The motion would have included allegations concerning the Judge's social relationship with defense counsel Ms. Weintrob, including without limitation officiating and attending her wedding.

[3] Abe has argued that all Orders of the recused Judge were improvidently entered.

[4] See also Legal Argument, Point IV, subpoint D, *infra*, discussing the fee shifting requirement of this discovery tool per R. 4:23-3.

Discovery motions and issues were heard by Special Discovery Master Judge Rand, who effectively resolved the discovery disputes with useful discovery management orders (including a deposition plan) and proper rulings on paper discovery issues. Regarding depositions, Plaintiff's Counsel deposed Saleena (over the course of 3 days) and nine fact witnesses, as follows:

1. Eric Browndorf, Esq. (Cooper Levenson organization designee)
2. Maria Ferragame (Cooper Levenson notary)
3. Linda Fante (Cooper Levenson notary)
4. Robert Beckley (Saleena's paramour)
5. Lan Pham (Saleena's mother)
6. Dieu Tanh Bang (Saleena's sister)
7. Phuocc Bang (Saleena's brother in law)
8. Ngoan Le (Saleena's father)
9. Mabel Louie (Saleena's friend)

Defense Counsel did not take any depositions.

Dispositive Motions

On September 3, 2019, Abe moved to dismiss Saleena's pleadings, pursuant to R. 4:6-2(e). The motion was briefed, opposed, argued and denied. But in denying the motion, the trial court was bound by the strictures of Printing Mart-Morristown v. Sharp Electronics, 116 N.J. 739 (1989). That New Jersey Supreme Court decision required the trial court to accept as true all of the factual allegations made by Saleena; and required the trial court to give Saleena all favorable inferences suggesting she actually had a cause of action. So the trial court's denial is understandable. (See A455, Order, Oct. 10, 2019).

Later, specifically on September 4, 2020, Abe moved for summary judgment against Saleena, pursuant to R. 4:46-1. That motion was supported by a statement of material facts and a brief and later by oral argument. That motion too was denied. (A485, Memorandum of Decision, Feb. 3, 2020). But in this context, the trial court was constrained by Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). That New Jersey Supreme Court decision required the court to review the evidence in a light most favorable to the non-moving party, namely Saleena. Phrased otherwise, if a rational fact finder could resolve a disputed issue in favor of the nonmoving party, then the summary judgment motion must be denied. Here again, under this standard, the denial of Plaintiff's motion is understandable. (See A485).

On August 12, 2021, at the conclusion of Saleena's presentation of her entire case, Abe moved for dismissal under R. 4:40-1. Here again, the trial court was under strictures regarding its consideration of evidence. Estate of Roach v. Trw, Inc., 164 N.J. 598, 612 (2000) required that the trial court accept as true all testimony and documents and evidence presented by Saleena; and required that she receive all legitimate inferences from that evidence. In denying the R. 4:40-1 motion to dismiss, the trial court made very clear that the denial was entered after hearing only one side of the case and made within the dictates of case law.

The Plenary Hearing & The Trial Court's Decision

After the case had been presented over 23 days of plenary hearing, the trial court was no longer bound by the restrictive standards applicable to R. 4:6-2(e) or R. 4:46-1 or R. 4:40-1. On the contrary, the trial court determined whether Saleena met the burden of proof imposed upon her by R. 4:50-1, which is either a preponderance of the evidence or clear and convincing proof (for fraud allegations). In the pretrial motions, Saleena had the enormous benefit of assumptions and presumptions of credibility under prior court decisions dealing with the three applicable rules. She no longer had the benefit of those assumptions and presumptions. She presented her entire case as had Abe.

Saleena's entire case sounded in fraud and trickery, dealt with specifically under R. 4:50-1(c). So if the trial court were to agree with that, Saleena lost because she failed to file her motion within the one year timeframe. Her resort to R. 4:50-1(f) was a "back door" effort to avoid that time limitation. Both her certifications and her testimony are replete with fraud claims: Abe tricked her, hid documents from her, provided only signature pages, etc. (See generally, e.g., A80; see also A229. Op. at 16 "Defendant's Contentions Sounding in Fraud").

As to Saleena masquerading her claims under R. 4:50-1(f), claiming "unconscionability", she at the minimum was required to prove her case by a preponderance of the evidence. Hyland v. Aquarian Age 2,000, inc., 148 N.J. Super.

186 (Ch. Div. 1977). As stated in Del Vecchio v. Hemberger, 388 N.J. Super. 179, 187 (App. Div. 2006):

> Bald allegations do not give rise to proof necessary to meet the standard necessary to set aside a final judgment.

But again, in reality, she alleged fraud. And fraud claims require a higher, clear and convincing, burden of proof. Albright v. Burns, 206 N.J. Super. 625, 636 (App. Div. 1986). On timing of such motions based on fraud, R. 4:50-2 prescribes:

> The motion shall be made within a reasonable time, and for reasons of (a), (b) and (c)[Fraud] not more than one year after the judgment, order or proceeding was entered or taken.

In the end, the trial court found that Saleena did not shoulder the burden of proof which was at a minimum preponderance of the evidence, but more appropriately clear and convincing proof. Obviously, Saleena knew there was a divorce judgment executed by a Judge on March 18, 2015 (A15) and the MSA signed by all parties on January 17, 2014 (Ca14). That is two-and-a half and three-years-and-10 months, respectively, before Saleena's October 25, 2017 cross-motion to set aside (A77) filing date, well past the R. 4:50-1 one-year time limitation. The trial court agreed:

> Her motion to vacate the FJD based on fraud should have been filed at the latest within one year from the date of the final judgment of divorce which was entered on March 18, 2015 as a result of an uncontested hearing held on March 10 [sic], 2015. [Saleena's] motion seeking said relief

> should have been filed by March 18, 2016. Her cross motion requesting the relief based on fraud and filed on October 27, 2017, was beyond the time limits permitted of one year set forth at R.4:50-2 and is denied.

[A229, Op. at 20].

Additionally, the trial court found that "the delay in filing her motion based on the arguments as to substantive unconscionability was unreasonable." (Id. at 52)(emphasis added).

The trial court upheld the operative documents, including the parties' PSA (Ca14):

> Having found [Saleena's] signature is on the PSA and MMA, and that [Saleena] was provided with full copies of these documents at the time of the execution, when coupled with the language contained in the both documents concerning the right to legal representation to review the agreements, that each party was aware of the assets and debts of the other and that each entered into the agreement freely and voluntarily and without coercion, fraud or duress, the court finds that [Saleena's] assertions that she was unaware of the agreements and signed such without knowing her right to legal counsel, that she was under duress by [Abe] and that she never read the agreements nor understand same are found to be unpersuasive. The court finds there was a meeting of the minds between the parties as to the terms of the settlement agreements.

[A229, Op. at 27, July 22, 2022].

Regarding the Powers of Attorney, the trial court found:

> [B]oth parties were fully aware of the transfers being made under the asset protection plan and the documents including the POAs which were necessary to complete

> such. [Saleena] signed all of the documents that clearly indicated such were being executed as part of the plan.

[A229, Op. at 26-27].

The trial court ruled against Saleena's actions to set them aside:

> As to the [Saleena's] application to set aside the 2013 and 2014 Irrevocable Powers of Attorney, the court denies that these POAs should be set aside in the context of their use during the bankruptcy and divorce process for the same reasons concerning the MMA, PSA, and Final Judgment of Divorce.

[Id. at 51].

Counsel Fee Applications

Following the Plenary Hearing, the trial court required the parties to file their counsel fees applications. (A227 Order ¶7, July 22, 2022). Abe filed a motion requesting the trial court to award him attorney's fees against Saleena pursuant to R. 5:3-5(c), paragraph 27 of the MSA (Ca14) which was incorporated into the Final Judgment of Divorce (A15) and the trial court's July 22, 2022 Order (A227). (Pa21, Mot., Sep. 22, 2022). He also requested sanctions, including attorney's fees, against defense counsel for their wrongful litigation conduct promoting Saleena's false and frivolous "set aside" case. (Id.)

On January 10, 2023, the trial court issued a 15-page written Opinion deciding the parties' fee applications. (Pa1). The trial court found, "[Saleena] to not be credible concerning both her procedural and substantive unconscionability

arguments, failed to carry her burden and failed to file her motion in a reasonable period of time." (Pa1, Op. at 11). The trial court further found:

> Saleena was unreasonable in attempting to vacate the FJD by asserting arguments that she did not sign the PSA; she was not served the divorce Page 13 of 15 complaint and she was unaware that she was divorced until almost two years after the FJD was entered. All of these arguments were clearly rejected by the court. Her assertions that she never received the $200K payment as required by the FJD was also a total façade.

[Id. at 12-13(emphasis added)].

However, the trial court went on to rule that since enforcement relief was afforded to both parties and "under the totality of the circumstances" the trial court followed the "American Rule," requiring each side to pay their own counsel fees. See Id. at 12.

Notices of Appeal

Saleena filed a Notice of Appeal challenging the trial court's denial of her motion to set aside[5]. (A584). Abe filed a Notice of Cross-appeal, challenging the trial court's decision on counsel fees and sanctions, as well as its decision on the possession of the Lexus and the $15,459.21 Bank of America reimbursement issues. (A589).

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[5] Abe has served R. 1:4-8 letters upon Saleena's appellate counsel, contending Saleena's appeal is frivolous under the applicable appellate standards of review and demanding it be withdrawn. (Pa23; Pa24; Pa25). Abe reserves his right to seek attorneys' fees upon determination of the appeal. See R. 2:11-4.

STATEMENT OF FACTS

Abe adopts and incorporates by reference the factual findings and credibility determinations as found by the trial court in its July 22, 2022 Opinion except for the those concerning the issues of counsel fees, the Lexus, and Bank of America reimbursement. (A229). A concise summary follows.

At the time of the Plenary Hearing, Abe was a 75-year-old, retired real estate developer and investor, retired Maryland attorney[6], and a recreational tournament poker player. (A229, Op. at 12). Twenty-six years his junior is his former wife, Saleena (Age 49 at the time of trial). Id. The parties were introduced at the former Trump Marina casino in Atlantic City and were soon after married on a Glacier in Juno, Alaska on September 7, 2004. Id. at 12. Abe came into the marriage as a multi-millionaire. Id. at 34. Saleena made a modest living as a casino pit boss. See Id. at 47; see also 5T22-20-23-4.

In 2008, the parties collaborated on an "asset protection plan" (with the assistance of a National Law firm) during the marriage to protect Abe's assets.

[6] On page 2, footnote 1, of her brief, Saleena conveniently ignores that Abe's suspension from the practice of law was unanimously overturned following a fair and impartial hearing by a panel of judges as noted in their April 7, 1992 written opinion. (Pa28, Pl.'s. Trial Ex. P-1, Reinstatement to Practice Law).

(A229, Op. at 13). Three years and eleven months later, he filed[7] for bankruptcy (Chapter 11 Reorganization). Id. Around that time, in the summer of 2013, Saleena had an extramarital affair with her tennis playing partner. Id. at 35. The parties signed a Mid-Marriage Agreement (CA1) on December 5, 2013, followed by the MSA on January 17, 2014 (Ca14). The parties were divorced a year later on March 18, 2015. (A15). Saleena received the benefit of her bargain in the March 18, 2015 Final Judgment Divorce (and related agreements). She admitted so under oath in a deposition in another case one year later:

> A: WE ARE NOW STILL FRIENDS. WE'RE DIVORCED, I ASK WHAT I WANT, I GOT WHAT I WANT AND THAT'S IT.

[Pa30, Pl's. Trial Ex. P-19, Def. Dep. at 59:19- 21, Mar. 23, 2016 (EMPHASIS added)].

The much younger Saleena, who came into the marriage with limited resources, had an extramarital affair and betrayed Abe, who spent his entire life before the marriage building an empire. (See A229, Op. at 35-36). He lost nearly all in bankruptcy. Id.

To make matters worse, post-divorce in 2017, his ex-wife (a) Saleena stole title and possession of his Lexus automobile, (b) stole $15,459.21 from his Bank of America Checking Account, and (c) fraudulently conveyed title to Abe's Delaware

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[7] Premature timing of the bankruptcy filing is at issue in ancillary legal malpractice litigation in Delaware and Pennsylvania, since it resulted in the Trustee's ability to reach assets covered in the Asset Protection Plan.

home to her mother. This resulted in Abe filing his August 23, 2017 motion to enforce litigant's rights (A33; A36). Saleena reacted with her false, frivolous and untimely cross-motion to set aside. (A77).

Turning to Saleena's factual renditions in making her R. 4:50 challenge at the Plenary Hearing, the trial court found each of them to be incredible:

1. As to her lack of awareness of the Asset Protection Plan, her false denials were eviscerated by at least eight exhibits, both Plaintiff's and her own, such that the trial court concluded:

> As to defendant's claims concerning her lack of any knowledge of the asset protection plan, the court finds that defendant was completely aware of the asset protection plan, the purpose of the plan and the plan's intent to transfer all of plaintiff's pre-marital assets to companies/ LLCs in which defendant was the sole member. The court finds both parties were fully aware of the transfers being made under the asset protection plan and the documents including the POAs which were necessary to complete such. Defendant signed all of the documents including documents that clearly indicated such were being executed as part of the plan.

[A229, Op at. 26 (emphasis added)].

2. Saleena tried to convince the court that there was no relationship between her extramarital dalliance and the marriage terminating documents, but the trial court concluded:

> The court finds this event was a substantial reason among other reasons set forth herein for defendant to resolve the marital issues by way of the MMA and PSA. The court finds that defendant knew there was a risk that all the

> parties' assets including any marital assets were at risk of being lost or substantially decreased in value if the transfers were found to be fraudulent by the bankruptcy court. The court finds no credibility to defendant's reasons proffered as to why she was having what she termed as "sex only" with the third party. Her testimony that plaintiff requested her to have sex with the third party so defendant could describe to plaintiff the particular sexual activity in which they engaged and to describe the third party's anatomical features is beyond belief and incredible.

[A229, Op. at. 36 (emphasis added)].

3. Saleena claimed to be oblivious to the bankruptcy proceedings and the financial loss to the marital estate, but trial court found otherwise:

> Defendant was an integral part of the bankruptcy as was represented by her own counsel, Mr. Saccullo in that proceeding. The court also finds that the evidence shows that defendant was fully aware of the risks which arose from the bankruptcy proceeding and that she had mutual interests with plaintiff to receive as many assets as possible at the conclusion of the bankruptcy.

[A229, Op. at. 55].

The trial court further calculated the $28 million loss to the marital estate:

> [A]fter the bankruptcy, the marital estate was, at best, valued at $4.8 million. This was a decrease in value from the pre-bankruptcy value of approximately $28 million.

[A229, Op. at. 34].

4. Saleena made false claims of conflict of interest and lack of access to independent counsel. When Eric A. Browndorf, Esq. testified as a defense witness on August 11, 2021, he made very clear that the July 19, 2013 fee letter he prepared mistakenly included the name of Saleena Korotki. (12T32-2-22). He pointed out

that she already had a bankruptcy lawyer, Anthony M. Saccullo, esquire, a day earlier. (12T32-2-22). He testified that he never met her or spoke with her and certainly never represented her. (12T32-2-22). She was represented by other counsel. (12T32-2-22). Based on that credible testimony, the trial court rejected Saleena's claims about Mr. Browndorf. (A229, Op. at 25). The trial court applied a similar analysis against Saleena's assertion that Mr. Klein represented her in the matrimonial matter:

> The clear language in both the MMA and PSA show defendant attested to the fact that Mr. Klein represented plaintiff and she was aware of her right to obtain counsel and chose to be unrepresented. The court finds this assertion by defendant is not credible and holds no weight.

[A229, Op. at 16(emphasis added)].

Additionally, the trial court found Saleena's claims concerning lack of access to independent counsel be incredible:

> The court also finds that the defendant's testimony concerning she was unaware of her right to have legal counsel review the PSA to be incredible. The court having found she signed the PSA, the PSA included language at paragraph 40 concerning her right to be represented by counsel in reviewing and signing the agreement as well as her knowingly waiving her right to counsel. Although the court finds that Ms. Weinstock did not represent her in a review of the PSA or other documents challenged, the court does find that defendant with reasonable diligence could have requested Ms. Weinstock to review the agreement or could have requested a referral from her to an attorney who had specialized knowledge of matrimonial law and could review it for her. She also, with

> reasonable diligence, could have contacted an attorney to review the PSA directly.

[A229, Op. at 24(emphasis added)].

5. Saleena tried to convince the trial court that she never really thought she was divorced; and that Abe led her to believe it was all a fiction and controlled her; and that she did not sign the documents at issue. Saleena's claims were squarely rejected by the trial court based on the documentary evidence and multiple witnesses, including notaries:

> The court finds the assertions made by defendant to be incredible under the totality of the circumstances...the court's observations of defendant at trial do not support her assertions that she misunderstood questions and facts at the time she executed the documents being challenged herein, at her depositions or at trial... The court finds defendant has not proven by a preponderance of the evidence that she was forced or coerced to sign the documents in question. The court finds she signed the documents freely and voluntarily.
>
> The court finds multiple witnesses testified including notaries employed by Bank of America concerning the circumstances surrounding the procurement of her signature on the documents. The court finds the testimony of the notaries to be credible in that they testified that their typical procedure is to properly identify the signee, provide the full document referenced and witness the signature of the signee. The court finds the notaries used this same procedure when obtaining the defendant's signatures. Additionally, defendant testified the signatures on the documents were hers but that she did not have the full documents, did not ask to review the full documents and simply signed them based on plaintiff's instruction. She testified that she simply signed the documents because plaintiff told her to do so. The court's observations of

> defendant over the 23-day trial and during her multiple days of testimony do not support her claims that she was forced to sign the documents or that she was so cognitively deficient or unable to process or understand what she was signing. The court finds defendant was well aware of what was being presented to her and what she was signing.

[A229, Op. at 23-24(emphasis added)].

As explained in the Legal Argument below, these facts and credibility determinations as found against Saleena by the matrimonial court judge are entitled to special deference. The divorce was obviously not "unconscionable" given this factual backdrop. This Court should affirm the trial court's denial of Saleena's motion to set aside (as is argued in Legal Argument POINTS I, II, and III, *infra*), but reverse the trial court's findings as to counsel fees, the Lexus and Bank of America issues (as is argued in Legal Argument POINTS IV, V and VI, *infra*).

LEGAL ARGUMENT

Standards of Review

The Appellate Division does not disturb a trial judge's fact-findings unless there is a palpable abuse of discretion, that is the findings "are so wide of the mark that a manifest denial of justice resulted." State v. Carter, 91 N.J. 86, 106 (1982). Appellate Division review is even more limited in family court matters. Matrimonial courts possess special expertise in the field of domestic relations. Brennan v. Orban, 145 N.J. 282, 301 (1996)(recognizing that [matrimonial courts] specialize in and uniquely understand the problems of families and all matters related thereto). Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding. Cesare v. Cesare, 154 N.J. 394, 413 (1998). Further, the nature of bench trials puts the trial judge in the best position to make credibility determinations. Id. at 411; see also Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016).

The Appellate Division "will disturb a trial court's determination on counsel fees only on the "rarest occasion," and then only because of clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298 (App. Div. 2008). That is:

> An abuse of discretion occurs when a trial court makes "findings inconsistent with or unsupported by competent evidence," utilizes "irrelevant or inappropriate factors, or "fail[s] to consider controlling legal principles." An abuse of discretion is also demonstrated if the court fails to consider "all relevant factors."

[Steele v. Steele, 467 N.J. Super. 414, 444 (App. Div. 2021), cert. denied, 258 A.3d 348 (N.J. 2021)(internal citations omitted)].

POINT I

SALEENA'S CLAIM FOR THE FIRST TIME ON APPEAL THAT THERE WAS UNFAIRNESS IN THE DIVORCE PROCESS OF DEFAULT JUDGMENT SHOULD BE REJECTED. (Db at 3-10; 21-27, Oct. 11, 2023; 25T)

R. 2:6-2 requires that "If the issue was not raised below [the brief must include] a statement indicating that the issue was not raised below." Along the same lines, "It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)(internal quotations omitted).

Here, Saleena devoted pages 3 through 10 of the Facts section of her Appellate Brief and pages 21 through 27 of the Legal Argument section of her Appellate Brief to matters not raised below concerning the March 18, 2015 uncontested divorce hearing before Judge Light. In so doing, she argues for the first time that there was "Unfairness in the Process" of default judgment at the uncontested divorce hearing and that the Mid-Marriage agreement incorporated into the Final Judgment of Divorce was not scrutinized by the trial court during the hearing. There are three major flaws with her argument on appeal.

First, the transcript of the March 18, 2015 uncontested divorce hearing "25T" is improperly relied upon in Saleena's Appellate Brief. That transcript was not moved into evidence. One will not find that transcript in the Defendant's 201

exhibits moved into evidence as listed on pages 6 through 10 of the Trial Court's Opinion or in the Plaintiff's 85 exhibits moved into evidence as listed on pages 4 through 5 of the Trial Court's Opinion. (A229). One will also not find the transcript as an exhibit to Saleena's R. 4:50 Cross motion and Certification. (See A77 through A219). So, this Court should not consider it[8].

Second, Saleena never made a claim below to the trial court that R. 5:5-10 was not followed, and she violated R. 2:6-2 by failing to state that fact in her brief. (See A77 through A219). Any contentions about that hearing are conspicuously absent from Saleena's brief section, "The Parties' Contentions of the Rule 4:50 Motion before Judge Bergman" at pages 10-13. That is because she has never made this contention about Default Judgment process until now. Her arguments to the trial court concerned the alleged "unconscionability" of the agreements, having nothing to do with the process of the uncontested divorce hearing or default judgment.

Nor could she have made her meritless claim about Default Judgment process below. As she recognizes in footnote 5 of her Appellate Brief, R. 5:5-10 is inapplicable where there is an executed Property Settlement Agreement such as here (C14). R. 5:5-10 states in pertinent part:

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[8] Plaintiff had grounds to file a R. 2:6-11(e)(1)(c) motion to strike the portions of Defendant's Brief and Appendix, but to avoid delay and expense Plaintiff makes the claim here.

> When a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a Notice...Defaults shall be entered in accordance with R. 4:43-1, except that a default judgment in a Family Part matter may be entered without separate notice of motion as set forth in R. 4:43-2.(emphasis added).

Since a motion was not required for default within the Family Part, R. 1:7-4 required findings by opinion or memorandum of decision is inapplicable. Additionally, Saleena ignores the trial court's findings about her conduct at the time of the divorce hearing:

> The defendant not only signed the MMA and PSA, but the court also finds that she signed an acknowledgment of service for the Summons and Complaint for Divorce which was requesting the incorporation of said documents. She signed a certified mailing card for the letter providing her notice of the divorce hearing. Her efforts to claim that the year on the green certified mailing card with her signature was 2013 not 2015 is simply an incredible assertion that the court finds astounding and incredible.

[A229, Op. at 24(emphasis added)].

Third, following the plenary hearing, the trial court did analyze the Mid-Marriage Agreement (MMA) and rejected Defendant's contentions of coerciveness:

> The MMA was incorporated into the PSA at paragraph 16 of the PSA, and similar to the PSA, the MMA also included language at page 11, last paragraph which in summary, stated that the parties understood the income and assets of the other party, their right to independent legal counsel and that the terms of the MMA were "fair, just and reasonable." The court finds the incorporation of the terms of the MMA into the PSA differentiates this from the holding in Pacelli v. Pacelli, 319 N.J. Super. 185

> (App. Div. 1999) which found that mid-marriage agreements are inherently coercive and unenforceable. In this matter the PSA included terms which clearly provided notice that plaintiff desired the marriage to terminate. The incorporation of the terms of the MMA under those circumstances did not hold the same coercive effect as were found in Pacelli, supra. Additionally, the MMA and PSA were executed shortly after it was divulged that she was engaged in an extra-marital affair which tempers any argument that either party had no reasonable belief that the agreements were not intended to define the terms which would terminate the marriage.
>
> Significantly, the MMA also included language at pg. 9, paragraph A, 3rd full paragraph set out in bold, that defendant '**does not waive any rights whatsoever under the Divorce Laws of the State of New Jersey**.' This paragraph reserved defendant the right to modify the terms of the MMA in the negotiation of the terms in any subsequent agreement or in the litigation of the marital issues in court. The court finds that this provision in the MMA clearly reserved the right for defendant to re-negotiate, or litigate in court, any of its provisions. Defendant was clearly not locked into the provisions set forth in the MMA.

[A229 at 37-38 (emphasis in original)].

For all those reasons, Saleena's argument on appeal concerning default judgment should be rejected.

POINT II

THE TRIAL COURT CORRECTLY DETERMINED THAT SALEENA'S SET ASIDE CLAIMS WERE TIME BARRED UNDER R. 4:50-2. (A229).

R. 4:50-1 permits a litigant to move for relief from Judgment on several grounds:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; © the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

[R. 4:50-1].

Saleena moved under the so-called "catch all" provision found in R.4:50-1(f). While Grounds (a), (b), and (c) above are subject to the one-year time limitation of R. 4:50-2, any R. 4:50 motion must still be made within "a reasonable time":

> The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

[R. 4:50-2].

As explained by the Appellate Division in Orner v. Liu, 419 N.J. Super. 431 (App Div. 2011), even motions filed less than one year from the Judgment might not be "within a reasonable time:" See Orner v. Liu, 419 N.J. Super. 431, 437-438(App. Div. 2011).

In assessing whether Saleena filed her motion "within a reasonable time," the trial court correctly found that Saleena was lying about her ignorance of the March 18, 2015 Judgment of Divorce and lying about her claims as to the execution of all the operative documents. That is discussed by the trial court on pages 16 through 19 of the Trial Court Opinion (A229) and firmly based on the critical evidence at trial such as the following:

- Saleena's signed Certified mail return receipts (Pa33,Trial Ex. P-45).
- Saleena's own Certifications filed during the pendency of the hearing in which she admitted her awareness of the Asset Protection Plan and certain transfers being made at the time they were made.
- Saleena's signed Acknowledgement of Service of the Summons and Complaint on January 13, 2015 (A11).
- Saleena's November 26, 2014 Application in Pennsylvania for benefits (in which she stated she was single, never married, and living in Harrisburg) (Pa35, Trial Ex. P-24).
- Saleena's April 3, 2019 Deposition testimony in the personal injury case; (Pa45, Trial Ex. P-38).
- Saleena's sworn statements in her August 13, 2017 Domestic Violence Complaint/Temporary Restraining Order. (CPa1, Trial Ex. P-44). During his testimony, Police Officer Nathan Lahr testified that Saleena was the sole source of information for the Complaint and that she referred to Abe as her "ex-husband" and that they were "married from 2004 to 2015" and "after their divorce, Abe invited [Saleena] back" and that Abe was her "ex-spouse/partner". (14T12-6-15-20).

The trial court was correct that "all of the above ... completely contradict Saleena's testimony that she was unaware she was divorced until sometime in 2017." (A229, Op. at 19). The trial court further supported its reasoning by finding that the Notaries were credible:

> [T]hey testified that their typical procedure is to properly identify the signee, provide the full document referenced and witness the signature of the signee. The Court finds those Notaries used the same procedure when obtaining the Defendant's signatures.

[Id. at 23].

Then – in relying upon the unpublished case of Tirendi v. Tirendi, No. A-1543-15T4, 2017 WL 4104849 (App. Div. 2017)(Pa18) – the trial court bolstered its reasoning by stating:

> The facts of this matter in that the parties continued to travel and live together, in and of itself, does not carry defendant's burden by a preponderance of the evidence that plaintiff defrauded her in that they were not divorced and remained married during that period of time.

[Id. at 28].

The trial court made clear, after finding that Saleena was not credible, that the parties' separation date in August 2017 does not control the "clock" of R. 4:50-1. Again, the fact that the trial court found that Saleena was completely aware of the 2015 proceedings controlled the timeline under the Rule. The trial court correctly found that that Saleena's claims are time-barred, having been belatedly filed two-and-one-half years after the Divorce. Saleena's fraud claims were time barred under

the one-year[9] time limitation of R. 4:50-1(c). [A229, Op. at 20] Saleena's R. 4:50-1(f) were time barred because "the delay in filing her motion based on the arguments as to substantive unconscionability was unreasonable." (Id. at 52). Even if the case was timely brought, the trial court correctly analyzed why the result would not have been different, as discussed in Point III below.

[9] Saleena did not retain the firm who represented her in the set aside case until August 2017 (which was already two-years-and-four months past the date of the March 2015 divorce judgment). She also retained that same firm for her auto accident personal injury case on or about October 20, 2016, which was a year-and-a-half past the date of the March 2015 divorce judgment. Per payment records in evidence (P-39), Saleena made a payment on the matrimonial file in the amount $20,004.82 on October 31, 2016. While the firm's bookkeeper certified about a discrepancy/clerical error, Abe asked the trial court to draw its own conclusions. Simply put, Saleena's fraud claims were time barred before she ever consulted with post-judgment counsel and they should have so advised. For further discussion, see POINT IV, subpoint C, *infra*.

POINT III

THE TRIAL COURT CORRECTLY DETERMINED THAT SALEENA DID NOT PROVE SUBSTANTIVE OR PROCEDURAL UNCONSCIONABILITY. (A229).

The terms "substantive unconscionability" and "procedural unconscionability" have been explained by the Appellate Division as follows:

> The worth of defendant's contentions should be examined in light of two factors: procedural unconscionability, which can include a variety of inadequacies, such as age, literacy, lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the particular setting existing during the contract formation process, and substantive unconscionability, which generally involves harsh or unfair one-sided terms.

[Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 101(App. Div. 2014)(internal quotations omitted)].

A. Saleena Failed to Prove Substantive Unconscionability.

The trial court was convinced that Abe's "timing argument and the strong inferences drawn from this support [Abe's] assertion that the PSA was not unfair or inequitable nor substantively unconscionable." (A229, Op. at 35). The trial court properly valued the marital estate based on the evidence. The trial court correctly determined that the marital estate suffered a $28,000,000 loss. (Id. at 34). In arriving at a proper valuation of the marital estate, the trial court found:

> Both parties testified and agreed that [Saleena] brought no or nominal assets into the marriage. The Court finds these facts must be taken into consideration when determining the fairness of the PSA (which incorporated the MMA) and whether the PSA is substantively unconscionable.

[Id. at 32].

The trial court further reasoned:

- Saleena was "intricately aware of the financial status of the parties during the marriage. . .[and] . . .provided full access to the vast majority, if not all, of the parties' bank accounts, CD's, credit cards and was a signatory on the vast majority of all of the parties' checking accounts", and

- She was adequately represented by Mr. Saccullo concerning the legal risk involved and her exposure for fraudulent transfers in the bankruptcy", and

- "All evidence submitted shows [Abe] brought significant monies and assets into the marriage.", and

- "The loss of value as to the assets which originated from [Abe's] pre-marital assets must be substantially considered when determining the fairness of the PSA."

(Id. at 35).

Similarly, the trial court was not swayed by Saleena's attempt to inflate the estate:

- While 115 South Avolyn Avenue had a value of $3,000,000, Saleena ignored the fact that the evidence in the trial show this was a jointly titled home which was foreclosed by Sheriff's sale. The trial court confirmed, "Avolyn Avenue was lost to a foreclosure and was carrying a large mortgage in both parties' names at the time of the foreclosure." (A229, Op. at 30).

- While Abe won two poker tournaments, Saleena ignored the fact that those tournaments were won after the Property Settlement Agreement was executed and the Final Judgement of Divorce. The trial court recognized, "all of plaintiff's poker records were requested and exchanged in discovery and are in evidence " (A229, Op. at 42) and found "plaintiff's testimony more credible that the cash was primarily from his real estate holdings/ sales and poker/ gambling winnings prior to and some during the marriage." (A229, Op. at 32).

- Regarding the Bella Via and STL holdings, the trial court found that the LLC's and transfers were a part of "a detailed Asset Protection Plan organized by legal counsel to preserve assets which substantially if not completely, [Abe] had acquired prior to the marriage." The trial court rejected Saleena's testimony that they were gifts because Abe "loved her." (A229, Op. at 31).

Saleena continues to make her same illogical and unpersuasive claims about the marital estate's value that were properly rejected by the trial court. (Db at 37-39). At the same time, she finally concedes that she was equitably distributed a Mercedes and that she "received $200,000 lump sum payment for her share of the equitable distribution." (Db. at 38). In the underlying litigation, she provided 3 different versions regarding the $200,000: (1) She never received it; (2) she received it but it was her money to begin with; and (3) she received it but it was poker money. She also alleged that the Mercedes was sold.

Saleena wrongly claimed she is the owner of STL and ST2K in this and other litigation in contravention of paragraph 16 of the PSA and the parties' Mid-marriage agreement. The trial court found:

> The transfer of assets to [Saleena], STL and ST2K as part of the asset protection plan made these assets part of the marital estate. The court finds when determining equitable distribution of these assets that it must consider that the substantial majority of the parties' wealth at the time of divorce was based on [Abe's] acquisition of assets prior to the marriage. The court finds the transfers made as part of the asset protection plan were not intended to be gifts to [Saleena], but even if they were, the Court's analysis would be the same... the court's prior findings as to the tracing of the parties' assets back to the pre-marital

> acquisition by [Abe] is a substantial factor which makes the distribution of assets to [Saleena] in the PSA to be fair and reasonable...

[Id. at 43].

In the final analysis, Saleena received a minimum of $280,000 at the time of divorce not including the million dollars in jewelry[10] she had to Abe's estimation:

> The court finds that that the PSA awarded defendant assets with a minimum value of $280,000 not considering the value of defendant's jewelry collection and other personal items including multiple designer handbags. Plaintiff's testimony was that defendant's jewelry alone purchased during the marriage approached $1,000,000 in value. The court finds plaintiff did not provide any expert testimony or any other significant proofs as to the value for these items. The court finds that defendant disagreed as to plaintiff's valuation testimony but failed to offer any real rebuttal as to his valuation based on his testimony as to the purchase prices of the items. The court finds defendant testified as to shopping regularly at Louis Vuitton, Gucci and Nordstrom. She testified she owned at least six Louis Vuitton bags and two Gucci Bags.

[Id. at 39(emphasis added].

Next, the trial court correctly rejected Saleena's claim that the alimony waiver pursuant to the terms of the PSA is "unfair and inequitable". (See Id. at 44-50). In

[10] Although not discussed by the trial court, Saleena answers to interrogatories in evidence as Trial Exhibit P-34 confirmed that she acquired that valuable jewelry "prior to 2010" (the parties were married in 2004) and that it included "Jade from Virginia and Philadelphia Asian Jewelry Stores, Diamond Necklaces, Earrings at Casino Stores, Longines Watch, Movado Watch, and Baume Mercier Watch."

a sound analysis based on the New Jersey Alimony Statute, N.J.S.A. 2A:34-23(b), factors, the trial court concluded that the alimony waiver was fair and equitable:

> The court finds the [Saleena's] primary arguments in support of her requested relief concerning the equitable distribution allocation and the waiver of alimony by way of the terms in the PSA were not so disproportionate to render the PSA substantively unconscionable.

(Id. at 49-50).

The trial court reasoned "age is an extremely weighty factor." (Id. at 49). There is a 26-year age disparity between the parties and the fact Abe was 69 years old when the parties divorced undermines any alimony claim by Saleena who was 43 years old. (See Id. at 44). Additionally, the fact that Abe's "income in the four years preceding the PSA was not significantly greater than [Saleena's]" further undermined any alimony claim. (Id. at 49). She had sufficient earning capacity in the casino gaming industry and further derived "de-facto" support from Abe in their post-judgment attempt at reconciliation. (Id. at 48). More to the point, the trial court found Saleena was aware of the parties' financial standing:

> [Saleena] was aware of the assets and debts of the parties, their respective income, her standard of living, and the remaining factors of the equitable distribution and alimony statutes at the time she executed the MMA and PSA.

[Id. at. 50-51].

The trial court correctly ruled that Saleena failed to prove substantive unconscionability:

> Under these circumstances, the court cannot find that defendant has met her burden by a preponderance of the

> evidence that the PSA was patently unfair in that no reasonable person not acting under compulsion or out of necessity would accept its terms.

[Id. at 44].

B. Saleena Failed to Prove Procedural Unconscionability.

Astoundingly, on pages 31-33 of her Appellate Brief, Saleena ignores that her own witness from the Cooper Levenson law firm, Eric A. Browndorf, Esq., credibly testified that Saleena was represented by independent counsel Anthony M. Saccullo, Esq. in the bankruptcy. And the trial court found Saleena's assertions about Mr. Klein in the matrimonial matter were undermined by the explicit language of the PSA. The trial court's findings concerning counsel were correct, based on competent evidence such as retainer agreements and the witness testimony:

> The court also gives minimal weight to defendant's assertions that she believed Mr. Browndorf represented her as to the financial affairs of the parties and that Mr. Klein represented her in the divorce matter. The court finds Mr. Browndorf's testimony to be credible. He admitted that the written retainer agreement in evidence was drafted and executed in error due to its inclusion of defendant. His testimony that he never had any conversations or contact with defendant as to the financial issues or as part of the bankruptcy and that she signed a retainer agreement with Mr. Saccullo are found to be credible. The court finds that the preponderance of the evidence shows that an attorney-client relationship was not established between defendant and Mr. Browndorf. Defendant could not even clearly recollect any meetings or substantive discussions she had with Mr. Browndorf concerning any legal financial issue. The clear evidence supports Mr. Browndorf's position that the signed retainer agreement was an error and that he never engaged in any representation of defendant's legal interests. His claim is

> further supported by the evidence showing defendant retained Anthony Saccullo, Esq. the day before the date of the retainer agreement with Cooper Levenson, billings were sent to her by Mr. Saccullo and emails and communications were made between Mr. Saccullo and Mr. Browndorf concerning the bankruptcy and financial issues which show the clear representation of plaintiff by Mr. Browndorf and defendant by Mr. Saccullo.
>
> The court incorporates the same analysis as to defendant's assertions that she believed Mr. Klein represented her in the matrimonial matter. Initially, the court is confused as to how defendant would believe she was represented by Mr. Klein when she is claiming complete ignorance as to the MMA, PSA and FJD. Again, the clear language in both the MMA and PSA show defendant attested to the fact that Mr. Klein represented plaintiff and she was aware of her right to obtain counsel and chose to be unrepresented. The court finds this assertion by defendant is not credible and holds no weight.

[A229, Op. at 25-26].

Moreover, the trial court determined that Saleena's position concerning her lack of access to lawyers during the divorce was not credible:

> Although the court finds that Ms. Weinstock did not represent her in a review of the PSA or other documents challenged, the court does find that defendant with reasonable diligence could have requested Ms. Weinstock to review the agreement or could have requested a referral from her to an attorney who had specialized knowledge of matrimonial law and could review it for her. She also, with reasonable diligence, could have contacted an attorney to review the PSA directly. Defendant attempts to convince the court that she was so controlled by plaintiff and that she was helpless to understand the surrounding circumstances of the execution of the MMA, PSA and divorce process do not hold weight with the court.

[Id. at 24].

On pages 23 to 24 of its Opinion, the trial court correctly found that Saleena's assertions concerning lack of understanding, force or coercion, and her signatures on the operative documents were not credible:

> The court finds the assertions made by defendant to be incredible under the totality of the circumstances. Although this court can understand that there may be certain language barriers for defendant, the court's observations of defendant at trial do not support her assertions that she misunderstood questions and facts at the time she executed the documents being challenged herein, at her depositions or at trial. The court finds defendant understood the vast majority of questions during cross examination and all of the questions posed to her on direct. The court finds that defendant was not so controlled by plaintiff to completely vitiate her free will to review documents which were presented to her for signature including those surrounding the settlement agreements and other legal documents which she signed. The court finds defendant has not proven by a preponderance of the evidence that she was forced or coerced to sign the documents in question. The court finds she signed the documents freely and voluntarily.
>
> The court finds multiple witnesses testified including notaries employed by Bank of America concerning the circumstances surrounding the procurement of her signature on the documents. The court finds the testimony of the notaries to be credible in that they testified that their typical procedure is to properly identify the signee, provide the full document referenced and witness the signature of the signee. The court finds the notaries used this same procedure when obtaining the defendant's signatures. Additionally, defendant testified the signatures on the documents were hers but that she did not have the full documents, did not ask to review the full documents and simply signed them based on plaintiff's instruction. She testified that she simply signed the documents because

> plaintiff told her to do so. The court's observations of defendant over the 23-day trial and during her multiple days of testimony do not support her claims that she was forced to sign the documents or that she was so cognitively deficient or unable to process or understand what she was signing. The court finds defendant was well aware of what was being presented to her and what she was signing.

[Id. at 23-24].

Additionally, in exercising concurrent jurisdiction with the Bankruptcy Court, the trial court properly found "no terms in the parties' PSA had any substantial effect on the bankruptcy creditors or other interested parties" and that "[Saleena] was waiving all claims with regard to any assets which may be subject to the bankruptcy proceeding" per the terms of the PSA. (See Id. at 55). The parties' PSA provided:

> [S]aleena waives any and all claims with regard to any asset which may be subject to the Bankruptcy proceeding. Thus, [A]be may retain same free of any claim, right, title or interest by Wife either with regard to said entities or proceeds there from.

[Ca14].

Additionally, the trial court recognized that pursuant to paragraph 7 of the PSA Abe indemnified Saleena from the risk of ~$15 million in liabilities in the bankruptcy litigation. (See A229, Op. at 50).

The trial court correctly found that Saleena was:

> [A]n integral part of the bankruptcy as was represented by her own counsel, Mr. Saccullo in that proceeding. . .the evidence shows that [Saleena] was fully aware of the risks which arose from the bankruptcy proceeding and that she had mutual interests with [Abe] to receive as many assets as possible at the conclusion of the

> bankruptcy [which was] essentially concluded with the execution of the Global Settlement Agreement on November 20, 2014.

[A229, Op. at 55].

The trial court found "no evidence. . .in this proceeding that provides sufficient proofs that all creditors and all other interested parties' claims were not disposed of fully by way of the GSA." Id. The trial court properly concluded:

> "[Saleena]is not an innocent party. . .she signed the Agreements which she now claims violated the stay. She took affirmative actions in obtaining the $200,000 due to her by transactions made in September 2014 even before the GSA was reached and during the period of time that she argues the bankruptcy was pending. To find she had unclean hands based on her own actions would be an understatement."

[Id. at 56 (emphasis added)].

For those reasons, Saleena failed to prove procedural unconscionability.

POINT IV

THE TRIAL COURT ERRED IN DENYING ABE'S MOTION FOR COUNSEL FEES AND SANCTIONS (Pa1; Pa16).

A. THE "AMERICAN RULE" SHOULD NOT HAVE APPLIED BECAUSE OF THE APPLICABLE EXCEPTIONS.

There are eight recognized exceptions to "The American Rule," which provides that litigants must bear the cost of their own attorneys' fees. Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016). Many of those exceptions are codified in R. 4:42-9(a), which states in applicable part that there may be fee awards in family actions:

> (a) Actions in Which Fee Is Allowable. No fee for legal services shall be allowed in the taxed costs or otherwise, except:
> (1) In a family action, a fee allowance both pendente lite and on final determination may be made pursuant to R. 5:3-5(c)…

Additionally, fees may be awarded when a contractual provision so provides: "A prevailing party can recover [counsel] fees if they are expressly provided for by statute, court rule, or contract." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009) citing Packard–Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 440 (2001)(emphasis added). For interpreting domestic relations contracts, the Appellate Division in Massar v. Massar, 279 N.J. Super. 89, 93 (App. Div. 1995) explained that:

> [T]he contractual nature of [domestic relations] agreements has long been recognized and principles of contract interpretation have been invoked particularly to define the terms of the agreement and divine the intent of the parties. In interpreting the agreement, the court will not draft a new agreement for the parties. (emphasis added).

In the present case, the parties' PSA (Ca14) was upheld by the trial court in its July 22, 2022 decision:

> Having found [Saleena's] signature is on the PSA and MMA, and that [Saleena] was provided with full copies of these documents at the time of the execution, when coupled with the language contained in the both documents concerning the right to legal representation to review the agreements, that each party was aware of the assets and debts of the other and that each entered into the agreement freely and voluntarily and without coercion, fraud or duress, the court finds that [Saleena's] assertions that she was unaware of the agreements and signed such without knowing her right to legal counsel, that she was under duress by [Abe] and that she never read the agreements nor understand same are found to be unpersuasive. The court finds there was a meeting of the minds between the parties as to the terms of the settlement agreements.

[A229, Op. at 27 (emphasis added)].

Paragraph 27 of the valid PSA provides for fee shifting:

> [I]n the event that either party is forced to expend additional counsel fees as a result of the non-compliance of the other party with any of the terms and conditions set forth within this Agreement, then it is specifically acknowledged and agreed that said counsel fees shall be borne by the party who has violated the terms and conditions of this Agreement.

[Ca14].

The trial court erred by not looking to the intent of the parties (i.e., their "meeting of the minds") in making that contractual provision and essentially "drafted a new agreement for the parties" by deciding the "American Rule" should be followed. Under the applicable standard of review, this Court should find that to be a clear abuse of discretion on the part of the trial court by failing to apply the controlling legal principles.

Paragraph 27 of the parties' PSA is a contractual provision that warranted an attorneys' fee award to Abe, who was forced to incur over a million dollars in counsel fees because of Saleena's non-compliance with the terms and conditions of the PSA. On August 27, 2017, Abe filed a motion to enforce litigants' rights under the PSA because Saleena was non-compliant with its provisions. (A33). What follows are the specific areas of Saleena's non-compliance with the PSA that trigger the counsel fee award to Abe pursuant to paragraph 27.

First, Saleena failed to comply with paragraph 9 of the PSA, her alimony waiver. Her motion to set aside set aside was in non-compliance with the provision stating:

> [Saleena] waives all past, present or future rights to require [Abe[to provide alimony for her support and maintenance. It is the intention of this Agreement that [Saleena] shall not now or at any time hereafter seek alimony or support from husband, regardless of any future circumstances or changes in circumstances, whether contemplated by the parties or not.

[Ca14 at ¶9].

Second, Saleena failed to comply with paragraph 14 of the MSA, governing equitable distribution of the 32619 Bella Via Court, Delaware model home. (Ca14). She improperly and illegally deeded the home to her mother Lan Pham. Saleena, her mother, and other family members were squatters in that valuable residence for over 5 years and prevented it from being listed for sale in accord with paragraph 14. In so doing, Saleena did not comply with paragraph 14, which also states "the property is the sole and exclusive property of [Abe] free and clear of right, claim, title or interest by [Saleena]." (Ca14 at ¶14). Following the plenary hearing, the trial court ordered that the deed to the property be given to Abe within 30 days of July 22, 2022. (A227, Order at ¶4, July 22, 2022). In its decision, the trial court concluded:

> Based on the findings herein, the court finds that [Abe] is the rightful and legal owner of Lot 5, 32619 Bella Via Court. [Saleena] shall execute a bargain and sale deed to [Abe] within thirty days of the date of this opinion and corresponding order.

[A229 Opp. At 60].

The deadline of August 21, 2022 expired and Saleena violated the Order by not providing the recorded deed. She and her attorneys further failed to comply with the September 8, 2022 Order again ordering the same as on July 22, 2022. (A579).

Third, Saleena failed to comply with paragraph 13 of the PSA, the "Distribution of Motor Vehicles" provision. (Ca14). This was also the subject of

Abe's motion for partial reconsideration. (A220) and is discussed further in POINT V *infra.*

Fourth, Saleena failed to comply with paragraph 16 of the PSA, concerning the equitable distribution of business entities. (Ca14). Saleena wrongly claimed to be the owner of business entities STL and ST2K in this and other litigation in contravention of paragraph 16 of the PSA and the parties' Mid-marriage agreement. After firing Braverman Kaskey on or about April 18, 2018, Saleena had Pennsylvania Attorney Gary Lightman enter his appearance in the Pennsylvania legal malpractice case for STL and ST2K without authority on November 7, 2019. Abe had argued this was in violation of the trial court's status quo Order. (A439). Following the trial court's decision determining the companies were Abe's, Mr. Lightman withdrew his appearance on behalf of the companies on February 7, 2023.

Fifth, Saleena failed to comply with paragraphs 15 and 16, collectively, by making a claim to the Bankruptcy Settlement Proceeds. (Ca14). Her claim was rejected by the trial court as discussed on page 38, *supra.*

Sixth, Saleena failed to comply with Paragraph 19 of the MSA by seeking reimbursement for her Bank of America Credit Card debt. (Ca14). This was also the subject of Abe's motion for partial reconsideration. (A220) and is discussed further in POINT VI, *infra.*

Seventh, Saleena failed to comply with MSA Paragraph 22 by taking action to revoke the Powers of Attorney. (Ca14). The MSA states at paragraph 22, "[I[revocable Power of Attorney shall remain in full force and effect and [Saleena] shall take no action whatsoever to revoke same now and forever". (Ca14). As the trial court's July 22, 2022 ruling made clear, the Powers of Attorney were valid in the context of the divorce and bankruptcy:

> [B]oth parties were fully aware of the transfers being made under the asset protection plan and the documents including the POAs which were necessary to complete such. [Saleena] signed all of the documents that clearly indicated such were being executed as part of the plan.

[A229, Op. at 26-27].

The trial court ruled against Saleena's actions to set them aside:

> As to the [Saleena's] application to set aside the 2013 and 2014 Irrevocable Powers of Attorney, the court denies that these POAs should be set aside in the context of their use during the bankruptcy and divorce process for the same reasons concerning the MMA, PSA, and Final Judgment of Divorce.

[A229, Op at 51].

Counsel fees and costs incurred by Abe for Saleena's non-compliance were addressed in his counsel's Certifications of Services and total over $1.1 million. [See Pa1, Op at. 8, Jan 10. 2023 (recognizing "Plaintiff has requested approximately $1.1 million in fees to be shifted to Defendant)].

B. A Proper R. 5:3-5(c)Analysis Warranted Fee Shifting to Abe.

Under R. 5:3–5(c), the trial judge, in his or her discretion, may award counsel fees in a matrimonial action. All applications for counsel fees in family actions must address the factors set forth in RPC 1.5(a). See R. 4:42–9(b). These include the reasonableness of the fees charged given the task and the skill level of the attorney. RPC 1.5(a). The Family Part Judge also should consider the following factors in an award of fees:

> (a) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

[See J.E.V. v. K.V., 426 N.J. Super. 475, 492–93 (App. Div. 2012) citing R. 5:3–5(c).]

The rationale behind factor (3) above, an assessment the reasonableness and good faith positions advanced by the parties, was explained in Fagas v. Scott, 251 N.J. Super. 194, 197–200 (Law Div.1991):

> With the addition of bad faith as a consideration, it is also apparent that fees may be used to prevent a maliciously motivated party from inflicting economic damage on an opposing party by forcing expenditures for counsel fees. This purpose has a dual character since it sanctions a

> maliciously motivated position and indemnifies the "innocent" party from economic harm.

The trial court's reasoning on each of the areas of Saleena's non-compliance addressed above shows Saleena's bad faith positions and total lack of credibility. The trial court erred in finding that Abe employed litigations techniques not supportive of awarding legal fees to him. In denying Abe's request for legal fees, the trial court reasoned that Abe engaged in bad faith by "aggressive and scorched earth litigation tactics" in a manner to get Defendant to "give up her claims", was "non-compliant with prior court orders", was "unreasonable in not answering questions at his deposition" [11] and due to his positions concerning the Bank of America reimbursement and Mercedes/Lexus issues. [See Pa1, Op. at 13, Jan. 10, 2023]. Based on that misguided portrayal of Abe's conduct, the trial court stated "partial success on the merits should not entitle [Abe] to a fee shift." [See Id.].

That trial court erred for several reasons. First, as discussed in POINTS V and VI below, the trial court was incorrect concerning the Lexus/Mercedes issue and the Bank of America account reimbursement issue. As a result, those issues should not have contributed to a finding that Abe acted in bad faith.

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[11] As the trial court was aware, the deposition questions Abe was ordered to answer (and he immediately complied) had to do with his relationship with his son and family, ultimately having no relevance in these proceedings. Abe had argued within reason, under R. 4:10-3, that those depositions questions posed to him were intended to annoy, embarrass, and oppress. Thus, unsupportive of the trial court's finding of bad faith.

Second, the trial court also missed the point that Abe credibly explained that Saleena's claims were false in several dispositive motions to dismiss. He attempted to end the litigation by filing four dispositive motions. But the trial court allowed Saleena's case to continue in a manner that was financially crippling to Abe: he had to incur over $1 million in attorneys' fees to defend against Saleena's bogus claims. Of course Abe wanted Saleena to "give up" such claims. Abe argued that the case should never have been allowed to proceed in the first place because the initial order and permission to file the motion was improvidently entered by a later-recused Judge.

Third, based on her total lack of credibility, Saleena was a maliciously motivated party who was inflicting millions of dollars of economic harm on Abe, who was the innocent party. To be sure, she was seeking well over $5 million dollars as confirmed by her sworn answers to interrogatories #101 in evidence:

- $720,000 in alimony ($10,000 per month for 6 years),
- $2m in bankruptcy settlement proceeds,
- $2m in account funds,
- the Bella Via House,
- ½ of any proceeds from Abe's malpractice case,
- Lexus ($52,395 purchase price), and other significant economic claims.

(See Pa55, Pl.'s Trial Ex. P-23, Saleena's Interrog. Answers #101, Sep. 27, 2018).

Saleena and her attorneys knew this was more than Abe can ever afford, especially following bankruptcy and their knowledge of the bankruptcy settlement and expenses incurred therein and a result thereof.

Additionally, the trial court erred in concluding "certain sections of the court rules (governing counsel fees)... are not relevant or sufficiently probative to address in its findings based on the factual record at trial." It is an abuse of discretion if the trial court does not consider the relevant portions of the Rule. Steele v. Steele, 467 N.J. Super. 414, 444 (App. Div. 2021).

The trial court should have analyzed the extent of the fees incurred by both parties, which was relevant to a proper determination of a fee award. To find Abe obtained "partial success on the merits" as the trial court did on page 13 of its decision was in error. That is not only due to the fact Abe cross-appealed the trial court's decision as to the Lexus and Bank of America reimbursement issues for the reasons in POINTS V and VI, *infra*, but also is an understatement because the litigation was extensively focused upon Saleena's set aside claims. In that regard, the trial court should have found it relevant to analyze the stark differences in the results obtained: a near complete victory for Abe and a near complete loss to Saleena:

1. The equitable distribution remained intact;
2. The alimony waiver was rendered effective;

3. All the documents were proper; and

4. She was found to be a knowing participant in the Asset Protection Plan.

Along the same lines, the trial court should have analyzed, based on the Certifications of Services filed, the degree to which the fees were incurred to enforce the agreements Saleena challenged. In the end, Saleena realized a remedy of approximately $70,000 (the Lexus and the Bank of America funds), which was 98.5% less than the approximate $5 million she was seeking against Abe. Nearly all the pre-trial litigation and 23 days of Plenary Hearing focused upon Saleena's failed challenges, resulting in Abe incurring over $1.1 million in legal fees.

The trial court also erred in its analysis of fees previously awarded to Saleena. The trial court referred to fee awards to defendant at the pre-trial stage, but those awards only resulted from the fact that Saleena wrongfully challenged the Final Judgment of Divorce in the first place. Abe should not have been prejudiced in fee application for vehemently defending against Saleena's false claims.

Additionally, the trial court failed to question Saleena's financial circumstances, including the veracity of Saleena's claims about loans from friends and family members. She never produced any promissory notes as proof of these purported "loans" that allegedly total approximately $270,000. (See Db39). Saleena further claims in her brief that she owes $75,000 to various bank credit cards. (See Db39).

According to her counsel's September 22, 2022 Certification of Services, the total counsel fees billed to Saleena was $478,279.35. Her counsel certified that Saleena was billed a total of $383,645.39 by the HSPWB firm and owed a total of $91,545.02 to the HSPWB firm, which meant that Saleena paid a total of $292,100.37 to that firm. Her counsel further certified that Saleena was billed a total of $94,633.96 by the WLG firm and the total owed to WLG (including pre-bill) was $22,502.30, which meant that Saleena paid $72,131.96 to that firm. It was further clear to the trial court that Saleena retained significant assets in equitable distribution at least $280,000, not including the valuable jewelry and designer accessories and clothing (in excess of $1 million to Abe's estimation).

C. The Trial Court Erred in Denying Abe's Requests for Sanctions and Fees pursuant to R. 1:4-8 and Failing to Exercise its Inherent Power to Sanction based on the Facts of Defense Counsel's Wrongful Litigation Conduct.

Abe's motion for counsel fees and sanctions was based on several legal grounds:

> (b) Paragraph 7 of the Court's July 22, 2022 Order and its accompanying Memorandum of Decision authorizing counsel fee applications;
>
> (c) Paragraph 27 of the Parties' Property Settlement Agreement requiring fee-shifting for a party's non-compliance;
>
> (d) an analysis under R. 5:3-5(c); or
>
> (d) as to sanctions, R. 1:4-8(b).

[See Pa21, Pl.'s Mot. Sep. 22, 2022]

It was also based on the inherent powers of the trial court to issue sanctions for wrongful litigation conduct:

> [T]he threshold for the use of inherent power sanctions is high. Consequently, even where the inherent power to award attorney fees as a sanction against an attorney has been found to exist, the imposition of such a sanction is generally not imposed under this power without a finding generally that the attorney's conduct constituted or was tantamount to bad faith.

[Dziubek v. Schumann, 275 N.J. Super. 428, 440 (App. Div. 1994)(emphasis added)].

The trial court denied Plaintiff's request for fees and sanctions against defense counsel by reasoning that Plaintiff did not send a safe harbor letter or notice:

> In this matter, plaintiff has failed to provide a certification and a copy of any letter sent to defense counsel which complies with the rule. Nor did plaintiff respond to defendant counsels' arguments contained in the record which asserted that no safe harbor letter or notice was ever received from plaintiff at any time during this approximate five-year litigation.

[Pa1, Op. at 6-7].

Absent from that reasoning was any required analysis of the practicability of compliance with the notice requirements of R. 1:4-8. The authoritative New Jersey Supreme Court case makes clear: "The Court should not dismiss an application governed by subsection (f) without making an assessment about the practicability of compliance" Toll Bros. v. Twp. of W. Windsor, 190 N.J. 61, 73 (2007). The Court continued, that "the practicality requirement ... requires a fact-sensitive analysis." Id. at. 71. The following facts should have been considered by the trial court in a required practicability analysis.

First, the practicability of compliance was undermined by the fact that the defense survived Plaintiff's pre-trial dispositive motions. United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 394(App. Div. 2009)(reasoning "a pleading cannot be deemed frivolous as a whole nor can an attorney be deemed to have litigated a matter in bad faith where...the trial court denies summary judgment on at least one count in the complaint and allows the matter to proceed to trial").

Second, the trial court ignored that it was not until September 22, 2022—after the plenary hearing and as part of their own fee application—when HSPWB finally supplied the relevant invoices to Plaintiff confirming the sanctionable conduct. Those detailed invoice entries show HSPWB never conducted a reasonable investigation before filing Defendant's motion to set aside. (Pa124). As discussed by the Court in Toll Bros., *supra* at 72-23, sanctions can be calculated "from the point where compliance became practicable" and "reduced concomitantly at the point."

Third, Saleena's attorneys claimed they did not have notice their "set-aside" pleadings violated R. 1:4-8, which was at odds with Abe's multiple filings in this case plainly stating the claims were frivolous, replete with lies, contradicted by sworn deposition testimony, and without reasonable basis in law or fact. Saleena and her lawyers were placed on notice to the frivolous claims in various pleadings throughout this litigation since 2019:

- September 3, 2019 Abe's Brief in support of Motion to Dismiss: "Under governing law, including controlling court rules and pertinent case law, Defendant's motion to Set Aside should be dismissed as time-barred, judicially estopped and equitably estopped. The cross-motion to Set Aside filed by Defendant contains an abundance of false statements and that fact has been known by Defendant long before she filed it."

- September 4, 2020 Abe's Summary Judgment brief: "When Saleena filed her motion for summary judgment, she had a duty to do so in good faith and must have viewed discovery complete. See. R. 1:4-8."

- January 14, 2021 Abe's Reply Brief in further support of Summary Judgment: "[Defendant's] positions throughout this litigation, as promoted by her lawyers, are entirely made in bad faith." (emphasis added).

- March 15, 2021 Abe's Trial Brief stated, "Saleena has had an overly generous 3 ½ year discovery period to prove her "set aside" case, which she and her lawyers knew was false and frivolous when filed. The evidence presented at the plenary hearing will support that statement. Saleena cannot prove any of her allegations contained in her certifications supporting her motion. Saleena's "set aside" case has been dismantled by the documentary and testimonial evidence Plaintiff marshalled in discovery." (emphasis added).

[Briefs are omitted from Plaintiff's Appendix pursuant to R. 2:6-1(a)(2)].

The trial court's own decisions on dispositive motions indicated Saleena's claims were indeed frivolous:

- In the trial court's December 10, 2020 Decision on Motion for Summary Judgment, the trial court took an extraordinary step of making the following conclusory statement, "The court also notes that defendant should not consider herself absolved as to the potential fraud issues, as it certainly may be determined on the present known facts that she was a willing participant in the "techniques" used in the bankruptcy so she could preserve assets…"[A530, Op. at 24-25, Dec. 10, 2020].

- In the trial court's September 14, 2021 Decision on Motion for Judgment at Trial, it stated, "The Court also feels compelled to find that serious and substantial issues have been brought out by plaintiff's cross-examination of defendant as to certain seminal points of argument by defendant about her case…" The trial court found Defendant's own witness Eric Browndorf, Esq. to be credible when he testified that Defendant was not telling the truth about bankruptcy representation. [See generally Pa157].

Defense counsel ignored that when Saleena prevailed in dispositive motions, she had the enormous benefit of assumption and presumptions of credibility in the three restrictive standards appliable to R. 4:6-2(e), R. 4:46-1 or R. 4:40-1. Whenever

the trial court decided the issues raised in those pre-trial motions, the trial court was cautious to couch its decisions under those very restrictive standards. By forcing the plenary hearing, defense counsel knew that the trial court would have to determine whether Saleena could meet her burden of proof imposed upon her by R. 4:50-1.

Aside from that, the trial court failed to provide any discussion as to why it did not invoke its inherent power to sanction based on the following facts confirming Defense Counsel's wrongful litigation conduct. The trial court did not consider that Saleena's attorneys failed to absolve the deficiencies of the Fee Letter (Pa49, Pl.'s Trial Ex. P-25), their investigation and Saleena's lies and contradictions detailed below.

First, Saleena's August 14, 2017 Fee Agreement (Pa49) stated the firm would perform a reasonable investigation before commencing litigation to set aside the divorce and that the matter would need to be approved by the firm's "management committee" and then a subsequent retainer would be provided. The invoices provided for Saleena's September 22, 2022 fee application reveal that the defense lawyers never conducted the management committee meeting nor the reasonable investigation promised in the firm's fee letter before filing a motion to set aside. Based on those invoices produced (Pa124), in the 66 days that passed from defense counsel being retained until the October 27, 2017 Motion to Set Aside filing, did they do any of the following:

- Find and contact the notaries to test the veracity of Saleena's claims about the signatures on the operative documents. Had they done so they would have learned all notaries followed standard protocol; Saleena had the complete documents, and signed the documents.

- Review Saleena's name change petition which she filed two days before the firm's initial meeting with her and which relied upon the Final Judgment of Divorce. Defense counsel did nothing to stop the name change, which was granted on September 19, 2022. (Pa58, Pl's. Trial Ex. P-22).

- Consult with attorneys Mr. Browndorf or Mr. Saccullo concerning Saleena's involvement in the bankruptcy case and her representation by Mr. Saccullo and not by Mr. Browndorf.

- Read Saleena's March 23, 2016 deposition during which she swore she was divorced and got what she wanted, gave a very clear explanation and acknowledgment of her December 3, 2008 Power of Attorney, and stated she knew what the Asset Protection plan was. (See Pa30 Pl's. Trial Ex. P-19)

- Check whether Saleena had notice of the divorce. This was confirmed in discovery by a certified green mail return receipt signed by Saleena. (Pa33 Pl's. Trial Ex. P-45). [The trial court found incredible and astounding Saleena's claims about the date being 2013 as opposed to 2015. (A229, Op. at 24)]

- Consult with their partner Robert S. Sandman, Esq. about the contradictory claims Saleena made in the personal injury case he handled (which began a year before the motion to set aside in October 2016). On October 27, 2016, Mr. Sandman personally made the initial medical appointment and provided the intake information to the medical receptionist named Holly [LNU]. Documents in that personal injury case, ultimately subpoenaed by Abe in this litigation through the insurance companies, revealed that the firm had in possession medical records and intake records that completely contradicted Saleena's claims in this litigation. On April 18, 2019, the defense firm further became aware that Saleena testified she was divorced in her personal injury case deposition. (Pa45, Pl.'s Trial Ex. P-38).

Second, as seen in the defense firm's billings (Pa124), they improperly worked in lockstep with Pennsylvania Attorney Gary Lightman, Esq., who had filed an improper appearance on behalf of Saleena and STL2K and STL in the Pennsylvania Malpractice Case. The trial court squarely held that those companies belong to Abe and the use of powers of attorney were valid in the context of divorce and bankruptcy. (A229, Op. at 51). They collaborated with Mr. Lightman when he filed Saleena's self-contradictory federal malpractice case against Cooper Levenson in August 21, 2020. In that Complaint, Saleena blames that firm not Abe for the very same conduct she never proved in this case. (Pa99, Pl.'s Trial Ex. P-84).

The defense lawyers did nothing to prevent Saleena from playing fast and loose with the courts and inflicting improper economic harm against Abe. He adequately explained what defense counsel knew and when they knew it. Here are the highlights in quick summary: they knew about the Beckley Affair/Criminal Complaints, the Name Change Petition, the Personal Injury case, that the operative documents were notarized, the dismissed domestic violence allegations, and that Saleena was represented by Mr. Saccullo in the bankruptcy. All the above shows that the trial court erred by (a) not considering the practicability of the safe harbor notice and (b) by not considering the above wrongful litigation conduct of the defense lawyers to trigger the inherent power of the trial court to sanction.

D. The Trial Court Erred by Not Ordering Fee Shifting to Abe required by R. 4:23-3 due to Saleena's Failure to Admit the Genuineness of the Operative Documents and the Truths of the Matters surrounding the divorce. (Pursuant to R. 2:6-2(a)(1), Plaintiff states this issue was not raised below)(Pa72).

R. 4:23-3 provides for attorneys' fees and expenses stemming from a litigant's failure in a response to requests for admissions to admit the genuineness of any document or truth of any matter that is later proven by the propounding party:

> If a party fails to admit the genuineness of any document or the truth of any matter as requested under R. 4:22, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:
> (a) The request was held objectionable pursuant to R. 4:22-1, or
> (b) The admission sought was of no substantial importance, or
> (c) The party failing to admit had reasonable ground for not making the admission.

In evidence were Saleena's October 5, 2018 Responses to Abe's Request for Admissions. (Pa72, Pl.'s Trial Ex. P-32). From that early stage in this litigation, Saleena repeatedly denied that she executed or reviewed the Matrimonial Settlement Agreement, the Mid-Marriage Agreement, and the Powers of Attorney. (See generally Pa72). She also failed to admit that she received the $200,000 check as part of her equitable distribution. Id. It was clear from the trial court's decision that Abe proved the genuineness of the documents and the truth of these matters in his

favor. That was so after Saleena denied these facts requiring another four to five years of litigation. This Court should remand for the trial court to determine the reasonable attorneys' fees and expenses incurred by Abe for proving his requests for admissions at trial.

POINT V

THE TRIAL COURT ERRED IN DENYING ABE'S REQUEST FOR THE RETURN OF HIS LEXUS. (A229; A427).

Under the parties' MSA paragraph 13, Saleena was given a Mercedes. (Ca14). That Mercedes had been titled exclusively in her name alone upon purchase in June 2010. (A218). The trial court erred in finding Saleena did not receive the Mercedes:

> [T]he court finds no evidence to rebut defendant's claims that she never received full possession of the 2010 Mercedes as required by the Final Judgment of Divorce and that this automobile was disposed of prior to the date the Final Judgment of Divorce was entered. Plaintiff has failed to rebut these assertions by defendant. No sale or other documents concerning the Mercedes automobile were produced by either party as part of the evidence submissions. The court finds defendant never received the 2010 Mercedes or the cash value of the automobile which the parties agreed was $55K at the time the PSA was executed.

[A229, Op. at 60-61].

The trial court clearly overlooked competent evidence, such as Saleena's own Deposition testimony, in which she acknowledged she received the Mercedes as part of equitable distribution:

> Q. Now look, turn the page, go to paragraph 13 [of the parties' Property Settlement Agreement], and you will see a reference to a 2010 Mercedes E 550. Do you see that?
>
> A. Yes.

> Q. Was that car in existence back on January 17, 2014?
>
> A. I forgot. I don't recall the date, the year, the car was –
>
> Q. What kind of car were you driving back then?
>
> A. I had a Mercedes, a small convert –small sports car, two doors, yes. E550 or E350, yes.
>
> Q. So that is a reference to your car?
>
> A. Yes.
>
> Q. And it says you got it, right?
>
> A. Yes.
>
> Q. And you did get it, right?
>
> A. Yes.

[Pa87, Def. Dep. at 258:1-20, Aug. 8, 2019(emphasis added)].

Inconsistently, she claimed at trial that she did not get it and that it was sold. (7T58-2-9). The trial court should not have credited Saleena for that inconsistent testimony. Abe credibly testified that Saleena received the Mercedes:

> Q Did this agreement distribute a 2010 Mercedes Benz E-550 to Saleena?
>
> A The answer is yes, and that Mercedes Benz I purchased for her birthday. It was a Mercedes Benz special edition, a very special car. And it was purchased through a friend that I had for 50 years, Dr.-- oh, boy -- Lenny Berger, Dr. Berger, who bought Atlantic City Mercedes at the time. And -- and when I give a gift, I give a gift. That means I

> gave a gift, it was in her name alone, never in my name, and it was her property, and that's what this says.

[16T30-6-17].

Abe also testified that she was driving her brother-in-law's Honda Pilot[12] for two-years and three months until it was totaled in an auto accident on October 20, 2016. (16T73-23-75-6). That accident was the subject of Saleena's personal injury case and she was compensated for the property loss of that vehicle. Abe testified that Saleena was supposed to pay for the Lexus from those proceeds if she wanted to keep it:

> [S]aleena told me she was going to pay me for it and she called me and said she'll have the money in a couple of days. So when she did I'd just signed the back of the title. That was my understanding with her when I bought the car, that she would pay for it.

[15T108-8-13].

She never did. Saleena instead stole the Lexus title from Abe's filing cabinet. She wrongfully changed title of Abe's Lexus by "doctoring" a transfer from "Husband to Wife" in her own handwriting, which was not true as the parties had been divorced for almost two-and-a-half years. (A48). Saleena knew as much, since within 24 hours she filed a Delaware Name Change Petition using the parties' 2015 Divorce Decree as an exhibit. (Pa58, Trial Ex. P-22). It was only until Saleena's

---

[12] Abe testified that the Honda Pilot was "really [Saleena's] car and she was hiding her money." (16T75-2). Her obvious incentive was to receive Pennsylvania Health Benefits for free (See Pa35).

false domestic violence[13] report that Abe learned from the investigating police officer the Lexus title had been changed. Abe immediately filed a report of theft of the Lexus and filed his August 2017 Notice of Motion to Enforce Litigant's Rights against Saleena for the return of the Lexus. (A33).

Abe's claims about his Lexus were made in good faith based on the significant proofs including without limitation:

- The "doctored" Lexus title "from husband to wife" at a time the Court found the parties were divorced. (A48).
- Saleena filed her Delaware name change petition saying that she was in fact divorced within 24 hours of altering the Lexus title. (Pa58, Pl.'s Trial Ex. P-22).
- Saleena's own exhibit shows the Lexus was purchased on October 21, 2016 solely in Abe's name two years and seven months after the parties' valid divorce. (A45).
- Paragraph 6 of the July 17, 2018 verified UIM Complaint) in evidence contains Saleena and her attorney's admission that Abe was the owner of the Lexus. (Pa94, Pl's Trial Ex. P-37).
- Abe's testimony that he filed Police Reports claiming that the Lexus was stolen by Saleena.
- Saleena previously testified in the firearms hearing (Pl.'s Trial Ex. P-29) that Abe bought the Lexus for Saleena's birthday, but the Lexus sales invoice (A45) shows that the Lexus was purchased on October 31, when Saleena's birthday is June 28. Obviously, Saleena was lying.

---

[13] She voluntarily dismissed the domestic violence complaint before Judge Bergman (See CPa1, Pl.'s Trial Ex. P-44), and she ultimately conceded to Judge Taylor at the Firearms hearing that she felt safe dismissing it and told the truth to Judge Bergman. (See Pa68, Pl.'s Trial. Ex. P-29, Firearms H'rg Tr. at 61:24-64:21).

- Abe's R. 4:16 offer of Saleena's August 8, 2019 Deposition in evidence where she admitted she got the Mercedes as part of equitable distribution per paragraph 13 of the parties' PSA, quoted above.

The trial court missed the point regarding the dispute over the Lexus title. Abe does not dispute that he signed the title. But he did not sign the title "from husband to wife" to Saleena. Saleena completed the title in her own hand with false statements. She stole the title from Abe's office while he was away in North Carolina, then she "doctored" the title "from husband to wife" and thus has stolen the Lexus. As Abe proved at the plenary hearing, the Lexus was purchased solely in Abe's name [as seen in the defense's own exhibit (A45)]. If he had purchased it for Saleena, Abe testified he would have purchased it in her name as was the parties' historical practice during the marriage. [See, e.g., 15T76-20-21 "the Mercedes that I bought for her in her name"(emphasis added)].

The trial court abused its discretion in engaging in creative math to credit Saleena for the Mercedes (valued at $55,000) and award her with the Lexus (valued at $52,395.61):

> The court finds that defendant shall retain the 2017 Lexus and its value on the date of purchase of $52,395.61 shall be credited against the value of the 2010 Mercedes E 350 which the court found she never received. This leaves a credit to defendant form plaintiff in the amount of $2,604.39.

The trial court ignored Saleena's own admissions during her August 8, 2019 deposition and her March 23, 2016 deposition (testifying she got what she wanted),

indicating she received the Mercedes as part of her equitable distribution. The Lexus should be returned to Abe, with compensation for its use for over 5 years.

POINT VI

THE TRIAL COURT ERRED IN DENYING ABE'S REQUEST FOR THE REIMBURSEMENT OF HIS BANK OF AMERICA ACCOUNT FUNDS TAKEN BY SALEENA. (A229; A427).

The trial court's July 22, 2022 reimbursement order should be reversed in light of the bedrock "equitable principle that a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit." Borough of Princeton v. Bd. of Chosen Freeholders of Cnty. of Mercer, 169 N.J. 135, 158 (2001).

Saleena did not dispute that Bank of America previously found after a full investigation that Saleena's payment to her credit card was from Abe's solely owned checking account #4330. That was not part of the parties' historical practices and was clearly a wrongful action on the part of Saleena. Abe testified that his checking account # 4330 was opened at the Bank of America Margate City, New Jersey office with ownership, check writing privileges, money transfers all belonging exclusively to Abe:

> Q All right. Is Exhibit 26 a set of Bank of America statements for your account ending in 4330?
>
> A That is correct. And account 4330 has and is and has always been in my name alone as the user of that account. Only me always.
>
> Q And when you say user, do you mean the owner of that account?

> A I'm the owner, I'm the one that writes checks, I'm the one that puts in deposits. I am everything on that account, nobody else. Nobody but nobody, regardless of what Ms. Budrock has to say as to the ownership of this account, ever.

[16T74-4-1].

Saleena, by illegally and improperly assuming Abe's identity while he was away in North Carolina used Abe's home telephone lines, without Abe's knowledge or permission, and caused the theft of Abe's money from his solely owned checking account # 4330:

> Q Okay. Looking at the first page left, was the amount in dispute $15,459.21?
>
> A Yes it was.
>
> Q And according to this bank document, was your account credited that amount?
>
> A Yes. After the complaint was filed to Bank of America it was very quickly put back into my account.
>
> Q Now where were you when Saleena took this money?
>
> A I was in -- attending the tournament in Cherokee, North Carolina. She pulled this crap when I was away and I have the phone records to prove it.
>
> ***
>
> Q [H]ere's the question. Do you know what Saleena did to get this $14,000 -- I'm sorry, $15,459? What did she do?
>
> A She came into my home, used my telephone, used my code and my Social Security -- my Social Security

> number, the code, and she went ahead and used the phone to take money out of my checking account and put it in her account.
>
> Q Did you authorize any of that?
>
> A Absolutely not.

[16T76-16-77-2; 16T79-5-14].

Saleena did this to exclusively benefit herself. The credit card Saleena paid with the funds was opened by Saleena at Bank of America on her own and was the exclusive liability of Saleena without any relationship to Abe whatsoever. Abe was never told of the opening of this card solely in Saleena's name. Saleena did not prove that Abe made any charges thereon, Abe never paid any bills thereto, and Abe was completely unaware of same.

The theft by Saleena was investigated by Bank of America specialists familiar with these types of matters. The trial court should not have disturbed the Bank's findings:

> Q [P]ertinent to this $15,459.21 claim, on the first page does it not reflect your account has been credited for that amount?
>
> A Yes. A permanent credit was given.

[16T89-21-24].

The parties each wrote their version of events to the investigators from Bank of America who found Abe's story to be credible and the determination the money

stolen from account # 4330 to be replaced. In arriving at its decision to restore Abe's money, Bank of America advised Saleena of her right to appeal the determination and restoration if she did not agree with same. She did not. (See Pa90, Pl.'s Trial Ex. P-26).

The lower court of equity should not have rewarded Saleena, a litigant with "unclean hands" who improperly utilized the checking account of another without authorization to pay for her credit card. The trial court found that checking account #4330 was solely in Abe's name. (A229 Op. at 39). The trial court's reimbursement of the funds taken by Saleena from that account was inconsistent with that finding. It is undisputed that Saleena used Abe's home telephone landline to clandestinely make an automated phone payment assuming Abe's identity and using Abe's private checking account record information. That conduct is illegal and shows Saleena's "unclean hands". This Court should therefore reverse the trial court's order concerning the Bank of America reimbursement.

CONCLUSION

For all the above reasons, this Court should:

- affirm the trial court's denial of Saleena's R. 4:50 motion;
- reverse the trial court's denial of an award of counsel fees and costs to Abe and remand for further proceedings to award reasonable attorneys' fees and costs to Abe based on the Certifications of Services filed by Abe's counsel;
- reverse the trial court's award of the Lexus; and
- reverse the trial court's award of the $15,459.21 Bank of America reimbursement to Saleena.

Respectfully submitted,
JACOBS & BARBONE, P.A.

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Encls.
cc w/ encls: Michael Confusione, Esq.
cc w/ encls: Abraham Korotki

Superior Court of New Jersey
Appellate Division
Docket No. A-1778-22

ABRAHAM KOROTKI,

PLAINTIFF-RESPONDENT,
CROSS-APPELLANT,

V. CIVIL ACTION

SALEENA KOROTKI,

DEFENDANT-APPELLANT,
CROSS-RESPONDENT.

On appeal from a final order entered
in the Superior Court of New Jersey,
Chancery Division, Family Part,
Atlantic County, FM-01-510-15
Hon. Stanley L. Bergman, Jr., J.S.C.

REPLY BRIEF AND OPPOSITION TO CROSS-APPEAL BY APPELLANT/CROSS-RESPONDENT, SALEENA KOROTKI

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BRIEF FILED ON DECEMBER 14, 2023

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ARGUMENT

REPLY BRIEF - NOTHING RAISED BY RESPONDENT WARRANTS DENYING MRS. KOROTKI RELIEF ON HER APPEAL

We submit that Mrs. Korotki is entitled to relief because the Final Judgment of Divorce was improperly entered against her in the first place – as the transcript of the March 18, 2015 default judgment hearing shows:

- Mr. Korotki and his lawyer lied to Judge Light, during the hearing, that Mrs. Korotki had her own "independent counsel" who reviewed the marital settlement agreements with her -- which Judge Bergman, in his R. 4:50 decision below, acknowledged was false (*i.e.*, Mrs. Korotki did *not* have her own independent counsel as Mr. Korotki and his lawyer falsely told Judge Light).
- The Final Judgment of Divorce incorporated a "Mid-Marriage Agreement" that is inherently coercive and presumptively invalid under New Jersey law, yet Judge Light made no findings of fact or law with regard to the Mid-Marriage Agreement, or with regard to the alimony and equitable distribution determinations that Judge Light's Final Judgment of Divorce put into effect (contrary to New Jersey law requiring such findings to be made in a divorce case whether the divorce judgment is premised on default or not, Gnall

v. Gnall, 222 NJ. 414, 428 (2015); Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)).

Those two undisputed aspects of this case – shown by the transcript of the March 18, 2015 default judgment hearing held before Judge Light that culminated in the divorce judgment he entered against Mrs. Korotki by default that day -- show that the judgment was invalid from its inception, was improperly entered against the absent spouse's rights, was premised at least in part on a lie Mr. Korotki and his lawyer told Judge Light in open court, and is not remotely equitable such that it should be enforced, in a chancery court (where the Family Court sits), to saddle Mrs. Korotki with its alimony and equitable distribution determinations, cf. A.M.S. v. M.L.S., No. A-1905-19, 2021 WL 3197768, at *5–7 (N.J. Super. Ct. App. Div. July 29, 2021) (so ruling where divorce judgment obtained by default without family judge making findings required by New Jersey law). The remaining legal flaws set forth in Appellant's Brief – the conflicted Cooper Levenson representation, the bankruptcy litigation, etc. – only further cement this conclusion, we submit, that relief to Mrs. Korotki is warranted by vacating the alimony and equitable distribution determinations and holding a fresh and fair hearing on them.

Respondent and his lawyer, in their brief before this Court, do not even acknowledge the fundamental flaws upon which Mr. Korotki obtained the

default judgment against his absent wife in the first place. Instead, respondent asks this Court to simply turn a blind eye to what the transcript of the March 18, 2015 default judgment hearing plainly shows -- because the transcript was produced by either party during the Rule 4:50 proceeding below.

It's admittedly baffling why the transcript was not provided by either party below; it should have been, because it's the starting point for evaluating whether any divorce judgment predicated on one party's default is valid.

But no one disputes that the March 18, 2015 default judgment hearing took place in this case before Judge Light. It was Mr. Korotki and his divorce lawyer (Mr. Klein) who filed the Complaint for Divorce; obtained a "waiver" from Mrs. Korotki before the Complaint was even filed; filed for entry of default against Mrs. Korotki based on the signed waiver; then appeared for the default judgment hearing before Judge Light that day – presenting the Final Judgment of Divorce to Judge Light that Mr. Korotki and Mr. Klein then persuaded him to enter.

The default judgment hearing is part of the official proceedings of this case. The transcript of the proceeding is part of the official record of this case. It is not "evidence" that a party has to introduce at trial in order to prove a contested fact (such as a document or witness brought into court at a trial, for instance). The transcript, prepared by an official court reporter assigned by the

Superior Court, simply reflects what happened at this court hearing where the divorce case began and ended in a lightning speed two month span. Nobody disputes the accuracy of the transcript.

The transcript shows not just arguable but, we respectfully submit, obvious unfairness in the manner in which Mr. Korotki and his lawyer induced Judge Light to enter the Final Judgment of Divorce they had presented to him. The transcript shows that Mr. Korotki and his lawyer transgressed the most basic concepts of fairness and due process to an absent party that New Jersey law mandates by lying to Judge Light on a central issue the Judge asked about: whether Mrs. Korotki not only had voluntarily waived her right to appear that day, but whether the settlement agreements that Mr. Korotki and Mr. Klein were asking Judge Light to enter were reached fairly and with awareness by both spouses of what they were agreeing to, which New Jersey law mandates, in particular, for divorce cases premised on one spouse's non-participation (an even more pressing concern where the absent spouse is the far less monied and less powerful wife as in this case).

Nothing that Judge Bergman found in his Rule 4:50 decision cures those fundamental problems with the March 18, 2015 entry of the default judgment. Yes, Judge Bergman found that Mrs. Korotki "knew of the divorce complaint in January 2015 and knew there was a final hearing on March 10, 2015" (A247,

sic), but that does not mean that Mr. Korotki and his lawyer obtained the Final Judgment in accordance with Mrs. Korotki's due process rights – particularly stressed by New Jersey courts for divorce cases (as stressed).

Judge Bergman said that Mrs. Korotki "has failed to prove by clear and convincing evidence that plaintiff committed fraud upon her under these circumstances" A247. But the record shows that's precisely what Mr. Korotki and his conflicted attorney (Mr. Klein) did by obtaining the "waiver" from Mrs. Korotki before the divorce complaint was even filed, then lying to Judge Light that Mrs. Korotki had "independent counsel" who'd reviewed the settlement with her. The conflict of interest by Cooper Levenson, and the other flaws with the process leading to the entry of the final judgment, only add further to this showing.

Affording relief to Mrs. Korotki, as Judge Bergman erroneously failed to do in the proceeding below, is fully consistent with Rule 4:50.

R. 4:50–1 provides that a court (among other grounds) "may relieve a party or the party's legal representative from a final judgment or order" for "(c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." The record shows that Mr. Korotki and his lawyer lied to Judge Light to obtain the divorce judgment in the first place. Judge Bergman found this was a lie in his Rule 4:50 decision. This alone warrants subsection (c) relief to the affected party.

R. 4:50-1 (d) provides for relief where "the judgment or order is void." Because Mr. Korotki and his lawyer lied to Judge Light to obtain the divorce judgment in the first place, and because the manner in which Judge Light proceeded at the default judgment hearing violated the fundamental requirements for entry of divorce judgments on default against an absent spouse, the final judgment that was entered that day was void and, because it was void, has been without legal effect from its inception, regardless of how much time has passed since it was entered, cf. Dawson v. Wright, A-0952-06T5, 2007 WL 3376226 (N.J. Super. Ct. App. Div. Nov. 15, 2007) ("Nothing in the Rules of Court permits out-of-state mail service upon an individual at a commercial establishment. This attempt at service violated Wright's entitlement to due process and the judgment was void at the moment it was entered.")

Rule 4:50 relief is also warranted under subsection (e), providing for relief where "it is no longer equitable that the judgment or order should have prospective application," under subsection (f)'s exceptional circumstances provision, or per the Court's inherent authority in this chancery action. An abuse of discretion occurs where the decision under appeal "inexplicably departed from established policies," Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007). That is the case here, because of the fundamental flaws in the

entry of the Final Judgment of Divorce in the first place – as shown by the record beginning with plaintiff's filings, through the March 18, 2015 default judgment hearing before Judge Light, and culminating in the Final Judgment of Divorce entered that day.

If the Court agrees that these fundamental flaws existed with regard to the process leading to the default judgment, Mrs. Korotki should not be denied relief on the ground that she waited too long to seek it (as Judge Bergman also erroneously ruled in denying relief below). A "reasonable time" to seek relief under R. 4:50-1, -2 "is determined based upon the totality of the circumstances," Romero v. Gold Star Distribution, LLC, 468 N.J. Super. 274, 296 (App. Div. 2021). In his decision below, Judge Bergman said that the parties were legally divorced when the Final Judgment of Divorce was entered on March 18, 2015. But Judge Bergman acknowledged also that the parties continued living together for another two and one-half year -- until August 2017, and that neither spouse took steps to enforce any aspect of the purported divorce until the parties' actually split in August 2017 (consistent with Mrs. Korotki's affirmations that her husband had assured her that this was a divorce "on paper" only that had no real life impact upon their life and was for financial reasons only). Judge Bergman found,

> Unfortunately, the court finds the events that occurred in August 2017 with defendant filing a complaint against plaintiff under the

> Prevention of Domestic Violence Act which resulted in a domestic violence TRO being issued against plaintiff seemed to put an end to any reunification. The court is unable to make findings as to what occurred that night as both parties presented viable factual assertions as to what happened. Neither has proven their version of the story by a preponderance of the evidence. The bottom line is that this event caused the final separation of the parties, a separation that occurred two years and eight months after the PSA was executed and two years and eight months after the Final Judgment of Divorce was entered. [A257]

That same month (August 2017), Mr. Korotki filed his motion to enforce litigant's rights against Mrs. Korotki. Mrs. Korotki filed her cross-motion for Rule 4:50 relief two months afterward in response. A239.

Judge Bergman erred in ruling that those facts and the "totality of the circumstances" of this case do not show that Mrs. Korotki sought R. 4:50 relief within a reasonable time and that she should be denied relief, in this divorce case in a court of equity, because she failed to seek relief earlier. As noted, Judge Bergman recognized that the actual separation of the parties occurred in August of 2017. It cannot be said that Mrs. Korotki waited too long when she sought relief only two months after that actual breakup of the marriage – right after Mr. Korotki filed his motion to enforce his claimed rights under the divorce judgment. As Mrs. Korotki affirmed to Judge Bergman, "While the Court correctly found that Abraham and I did not separate until August of 2017, the Court failed to appreciate same when determining the reasonableness of my request to vacate the divorce documents, or the witness testimony

regarding what actions I took immediately after Abraham and I actually separated. Upon my actual separation with Abraham, within two (2) months I filed the Motion to Vacate the divorce documents." A301; cf. Romero v. Gold Star Distribution, LLC, 468 N.J. Super. 274, 297 (App. Div. 2021) (measuring "reasonable time" from when movant "learned of" the facts or evidence upon which motion is based). The circumstances of this case show that Mr. Korotki sought relief within a reasonable time as the Rule requires.

Denying relief to Mrs. Korotki on the ground that she took too long to seek relief is unfair and improper, also, because of the fundamental due process problems that the record of this case shows from the time of the filing of plaintiff's divorce complaint through the default judgment entered against Mrs. Korotki only two months later. As argued above, these fundamental procedural flaws and violations of the absent Mrs. Korotki's due process rights rendered the March 18, 2015 Final Judgment invalid from the start. Denying relief on ground of untimeliness is improper and an abuse of discretion, especially since in this case, the final judgment was premised on default, where relief is supposed to be granted liberally, Marder v. Realty Const. Co., 84 N.J. Super. 313, 318 (App. Div. 1964), aff'd, 43 N.J. 508 (1964) – particularly for defaults in a divorce case against the plainly less monied and

less powerful spouse, Curry v. Curry, 108 N.J. Super. 527, 529 (App. Div. 1970).

The circumstances of this case and the fundamental unfairness that the March 18, 2015 default judgment proceeding alone shows support relaxation of the reasonable time requirement as well. Any rule of court can be relaxed in the interests of justice, R. 1:1-1 ("Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.") Our Supreme Court in State v. Womack, 145 N.J. 576, 586 (1996) said that the boundaries of the relief that a court can afford under subsection (f) of R. 4:50 are "as expansive as the need to achieve equity and justice." Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); see Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 289 (1994) ("[T]he Rule is designed to provide relief from judgments in situations in which, were it not applied, a grave injustice would occur.")

The family court is part of the court of equity, moreover, with inherent power to see that justice is done in the particular case before it. The "very foundation of equitable jurisprudence" is "that equity 'will not suffer a wrong without a remedy'" and that a chancery court will enter its orders to achieve "a just and equitable result" on the case before it. Crane v. Bielski, 15 N.J. 342, 349 (1954); cf. Penn Fed. Sav. & Loan Ass'n of Philadelphia v. Joyce, 75 N.J.

Super. 275, 278 (App. Div. 1962) ("Quite independent of statute or rule of court, Chancery has inherent power to set aside a sale or to order redemption 'when there is an independent ground for equitable relief, such as fraud, accident, surprise, irregularity in the sale, and the like'"); Karel v. Davis, 122 N.J. Eq. 526, 528 (1937) ("In these circumstances, it was entirely proper for the Chancellor, in the exercise of the power inherent in courts of equitable jurisdiction to control their own process, to relieve the mortgagee of such obligation as the sale imposed, and to direct a resale of the mortgaged lands").

All of these principles show that it would be improper and inequitable to deny relief to Mrs. Korotki from the alimony and equitable distribution rulings effected by the default judgment entered against her -- a judgment premised in part on a lie that Mr. Korotki and his lawyer told the family court judge who entered it; a judgment that enforced a presumptively unenforceable Mid-Marriage Agreement that New Jersey law holds is inherently coercive; a judgment that was not premised on any findings of fact and conclusions of law about the propriety of the alimony and equitable distribution determinations Mr. Korotki and his lawyer demanded the family court enter against the absent Mrs. Korotki. The process itself warrants relief – only more so in light of the substantive result providing the absent wife, who was always dependent on her

far more sophisticated, older, and powerful husband, with only a token share of the marital assets with zero alimony.

At bottom, no New Jersey court should tolerate what Mr. Korotki and his divorce lawyer did to obtain the default judgment against Mrs. Korotki in this case. It's not right. It's the complete opposite of what our courts have stressed must be an open, aboveboard, and transparent divorce process. Mrs. Korotki must be provided with a fair opportunity to be heard on the equitable distribution and alimony issues that will impact her life moving forward. Due process and the most fundamental concepts of fairness require this – a process that any ordinary observer would see as fair to both spouses. Even if the same substantive result occurs at the end, no matter; it will be a result premised on full and fair participation by both spouses -- not one premised on a lie, on ethically conflicted counsel, and on an absent wife bullied and duped by her previously protective, wealthier, powerful, older, and more capable husband.

OPPOSITION TO CROSS-APPEAL -- NOTHING RAISED BY MR. KOROTKI WARRANTS GRANTING HIM ANY RELIEF

Frivolous litigation sanctions or attorney's fees.

With regard to sanctions, Judge Bergman cited the correct governing law (Pa2), then applied that law to the findings made (Pa6). Judge Bergman said, "plaintiff has failed to provide a certification and a copy of any letter sent to defense counsel which complies with the rule" (the frivolous litigation rule).

"Nor did plaintiff respond to defendant's counsels' arguments contained in the record which asserted that no safe harbor letter or notice was ever received from plaintiff at any time during this approximate five-year litigation. The court finds based on the record before it, which does not include a copy of the safe harbor notice sent to opposing counsel, that plaintiff did not provide the safe harbor notice to defendants' counsel as required by the rule. Based on such, plaintiff's motion for sanctions as against defendants' counsel is denied." Pa6. Beyond that procedural deficiency, Judge Bergman did not find at any point in the proceedings below that Mrs. Korotki or her lawyer engaged in frivolous behavior in pursuing the motion for relief from the default judgment entered against her. Her appeal before this Court shows this is not the case.

With regard to Mr. Korotki's demand for attorney's fees, Judge Bergman again cited the correct governing law and pertinent provisions of the divorce agreements upon which respondent relied, then applied the law to this case (Pa7-11). Judge Bergman ruled that neither paragraph 27 of the PSA nor New Jersey law warranted awarding counsel fees to Mr. Korotki because, "The court finds that both parties were granted some form of enforcement during this litigation. Plaintiff was granted enforcement of the FJD which the court finds was a substantial issue in this litigation." Judge Bergman noted,

> The court found defendant to not be credible concerning both her procedural and substantive unconscionability arguments,

> failed to carry her burden and failed to file her motion in a reasonable period of time. The court granted defendant's request to void the POAs which were general durable powers of attorney and limited plaintiff's use of such to the Pennsylvania malpractice matter. The court also granted defendant relief concerning a $1SK+ reimbursement from plaintiff which she was requesting as part of her original cross motion for the Bank of America credit line. This B of A credit line was in her name and the parties utilized this line during the marriage and after the divorce. The court also granted defendant monies it found was owed to her for the value of the Mercedes automobile and further granted her ownership of the Lexus automobile purchased by plaintiff after the divorce for her use. PA11-12

Judge Bergman stressed further, "The court has also taken into consideration the amount of enforcement motions granted in defendant's favor while this matter was in the post judgment discovery phase." Pa11-12. Judge Bergman reasoned,

> Based on the totality of circumstances surrounding the fee requests this court finds that the American Rule is most appropriate. Both parties were found not to be credible as to certain specific issues in this litigation and at trial. The court finds it inappropriate to weigh the percentage of fees incurred by the other party based on their lack of credibility during certain phases of this litigation. It is also fairly obvious from the court's opinion that plaintiff has substantially more assets than defendant and has a much greater ability to pay his own fees. When balancing all of the factors herein, including paragraph 27 of the PSA and R. 5:3-5 and R. 4:42-9, the court finds it would be inequitable to award counsel fees to either party.
>
> Both parties are found to have litigated aggressively and vigorously in this matter. The court finds the majority of time spent by the parties during this litigation was incurred due to the unreasonable positions of both parties. Defendant was unreasonable in attempting to vacate the FJD by asserting

arguments that she did not sign the PSA; she was not served the divorce complaint and she was unaware that she was divorced until almost two years after the FJD was entered. All of these arguments were clearly rejected by the court. Her assertions that she never received the $200K payment as required by the FJD was also a total facade.

Likewise, plaintiff's aggressive and scorched earth litigation tactics resulted in multiple orders and findings by this court that plaintiff was non-compliant with prior court orders, was unreasonable in not answering questions at his deposition, had not paid fees and other costs as ordered by the court. The court finds plaintiff attempted to financially cripple defendant during this litigation as a tactic to get her to give up her claims. The court finds these actions by plaintiff to have been done in bad faith. Plaintiff also is found to have steadfastly refused to pay a credit line charge which was historically paid from his bank account during the marriage and even after the divorce. The court finds those actions were also done in bad faith. The plaintiff also has continued to claim that defendant received her $SSK Mercedes yet no documents were produced as to the proceeds of sale after an alleged accident damaged the vehicle nor were sufficient proofs that defendant received those proceeds. Defendant has denied she ever received those proceeds which this court found was the reason that the Lexus was eventually purchased by plaintiff for her. Plaintiff's testimony as to the Lexus was found to be incredible and the court shall not repeat its findings in its opinion at length herein. The court finds plaintiff acted in bad faith to such a degree that even his partial success on the merits should not entitle him to a fee shift. The court finds the sections of the court rules not addressed herein are not an oversight by the court but because the court finds such portions of the rule(s) are not relevant or sufficiently probative to address in its findings based on the factual record at trial.

The undersigned managed this matter for almost 2 ½ years and observed both parties at the time of the 22-day trial. This court presided over multiple motions and disputes. Disputes which the court finds were unnecessary and based on the bad faith behavior of both parties as outlined above.

> In the end, these types of litigation techniques employed by both parties, including all the actions as listed above, is not supportive of either party receiving a fee award against the other.
>
> These requests become even more tenuous and unreasonable when the court looks to its prior opinion in which it found that the parties lived together in a substantial manner after the divorce judgment was entered. Sharing in assets and both living a significantly upper-class lifestyle even after the divorce judgment. For whatever reason that time ended in August 2017 and both then immediately attacked the other by way of litigation in this court. Only the parties will know the true reasons for this "reunification" attempt. But what the court finds, in the context of this application, is that both parties committed their fair share of deception in this litigation and neither is deserving of the other paying any portion of their counsel fees. Based on the above findings, the court shall not address the reasonableness of the fees asserted in plaintiff's motion. [PA11-14]

This was a reasonable exercise of Judge Bergman's discretion, particularly because the court equally denied counsel fees for Mrs. Korotki as well. Mr. Korotki has made the required showing of a "clear abuse of discretion" that would warrant the appellate court's interference with this discretionary decision. Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008); Milne v. Goldenberg, 428 N.J. Super. 184, 209 (App. Div. 2012). Ms. Korotki pursued a motion for relief under R. 4:50 in an obviously heated breakup involving complex and high-value assets, but which the default judgment entered against her (without any due process) provided her with far less that any "equitable distribution" of the marital assets. Judge Bergman did not find frivolous litigation or "bad faith" by Mrs. Korotki, Welch v. Welch,

401, N.J. Super. 438, 448 (Ch. Div. 2008) (*citing* Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000) ("where a party acts in bad faith the purpose of a counsel fee award is to protect the innocent party from unnecessary costs and to punish the guilty party"). "The assessment of counsel fees is discretionary." Slutsky v. Slutsky, 451 N.J. Super. 332, 365 (App. Div. 2017). An abuse of discretion arises when the trial judge has not considered and applied the correct governing law or has failed to make adequate findings to support the counsel fee decision. Clarke, supra, 359 N.J. Super. 572. Those grounds for reversal are not present in this case; Mr. Korotki simply disagrees with the decision, which does not demonstrate the clear abuse of discretion required for relief on appeal.

The Lexus[1]

Judge Bergman credited testimony from Mrs. Korotki that she never received the 2010 Mercedes "as required by the Final Judgment of Divorce" that Judge Bergman was enforcing (A229). Mrs. Korotki was cross-examined extensively at the hearing below; whether she was inconsistent on this claim, or what the facts regarding the Mercedes were, was entirely up to the

[1] If the Court agrees with Mrs. Korotki that the alimony and equitable distribution provisions of the Final Judgment of Divorce cannot stand for the reasons set forth in Appellant's Brief and above in this Reply, then these issues of the Lexus and the Bank of America charge would be subject to revisiting in remanded proceedings.

factfinder – Judge Bergman below. Respondent has not shown reversible error in this appeal on that issue.

The Bank of America Charge

Again, this was a credibility and fact determination by Judge Bergman, who found that the "charges for the $15,459.21 were made by both parties and were consistent and made in line with the charges for that entire year. Plaintiff's stop payment was inappropriate and was in violation of the practices followed by the parties for the use and payment of the credit line. Defendant had a reasonable expectation and plaintiff had an obligation to pay the bill pursuant to the practices utilized by the parties for the prior six months in 2017. It would be inequitable and unfair for defendant to be responsible for that amount." Mr. Korotki has not shown an abuse of discretion on this ruling.

CONCLUSION

For all these reasons and those set forth in the Appellant's Brief, Saleena Korotki respectfully requests that the Court

- reverse Judge Bergman's July 22 and September 8 Orders denying Rule 4:50 relief to Mrs. Korotki, and vacate the equitable distribution and alimony provisions contained in the Final Judgment of Divorce previously entered in this case, and remand for a fresh determination of those issues with all of the financial disclosures, discovery rights,

and judicial findings of fact and law that New Jersey law requires;

and

- deny respondent's cross-appeal in its entirety.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant/Cross-Respondent,
Saleena Korotki

Dated: December 14, 2023

ABRAHAM KOROTKI Plaintiff/Respondent/Cross-Appellant, v. SALEENA THU LE f/k/a SALEENA KOROTKI Defendant/Appellant/Cross-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001778-22 Atlantic County Trial Court Docket No. ATL-FM-01-510-15 Sat Below: Hon. Stanley L. Bergman, Jr.

REPLY BRIEF ON BEHALF OF PLAINTIFF/RESPONDENT/CROSS-APPELLANT ABRAHAM KOROTKI

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Dated: December 27, 2023

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LEGAL ARGUMENT

POINT I

DEFENDANT'S ARGUMENT CONCERNING DEFAULT JUDGMENT IS MISGUIDED, INAPPLICABLE TO THIS CASE AND CANNOT BE CONSIDERED ON APPEAL. (Drb. 1-12).

On Page 3 of Defendant's Reply Brief, she concedes, "the transcript [of the March 18, 2015 uncontested divorce hearing before Judge Light] was not provided by either party below..." (Drb. at 3). As previously mentioned, Defendant's argument about default judgment, raised for the first time on appeal, violates R. 2:6-2. In her Reply Brief, she recognized there was an opportunity to raise that issue below by stating, "[I]t should have been..." (Drb. at 3). It was not. As explained by the New Jersey Supreme Court, "[A]ppellate courts will decline to consider issues not properly presented to the trial court when an opportunity for such a presentation is available..." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)(internal quotations omitted). The claim is waived, having never been made in the underlying litigation. Even if she did properly raise her claim about default judgment, the issue could not possibly be decided in her favor for several reasons discussed below.

Defendant relies on two unpersuasive, non-binding unreported decisions that do not support her argument about default judgment. See R. 1:36-3[1]. The *unreported* debt-collection case of Dawson v. Wright, No. A-0952-06T5, 2007 WL 3376226

[1] In violation of R. 1:36-3, Defendant failed to provide copies of the unpublished opinions she cited. Plaintiff provides copies in the accompanying Reply Appendix.

(App. Div. Nov. 15, 2007)(Pra8) involved an issue where service was defective and there was no evidence the movant was aware of the suit. See Id. at *4-7. But here, there is ample evidence confirming Defendant's acceptance of service. (A11, Affidavit of Service). And, in considering that evidence, the trial court found Defendant was completely aware of the divorce litigation:

> The defendant not only signed the MMA and PSA, but the court also finds that she signed an acknowledgment of service for the Summons and Complaint for Divorce which was requesting the incorporation of said documents. She signed a certified mailing card for the letter providing her notice of the divorce hearing. Her efforts to claim that the year on the green certified mailing card with her signature was 2013 not 2015 is simply an incredible assertion that the court finds astounding and incredible.

[A229, Op. at 24(emphasis added)].

On pages 8-9 of her Reply Brief, Defendant baselessly relies on her incredible Certification to claim she was reasonable in her timing to move to vacate. (A301). She was anything but reasonable in her timing and the trial court so found. It is wrong for Defendant to again rely upon R. 4:50-1(c) on page 5 of her Reply Brief, when that provision has a stated one-year time limitation that required Defendant to file her motion one year after March 17, 2015. Instead, she waited two-and-a-half years.

To that end, the facts here are distinguishable[2] from another *unreported* case of A.M.S. v. M.L.S., No. A-1905-19, 2021 WL 3197768 (App. Div. July 29, 2021)(Pra1), baselessly relied upon by Defendant. In that case, default judgment was entered on October 12, 2018 and the movant timely filed her R. 4:50 claim less than one year later on October 10, 2019. Id. at *3. The movant was living abroad in India during the litigation and never responded nor participated. Id. at *1. In M.L.S. there was no signed property settlement agreement, so the non-movant relied upon the notice of proposed equitable distribution to support the default judgment. Id. at *2. That required findings of fact and conclusions of law for the request. Id. at *6.

Here, however, Defendant did respond and participated by signing a property settlement agreement and all other operative documents at issue, as was confirmed by credible notaries. On page 11 of her Reply brief, Defendant again ignores that here was a signed property settlement agreement, which obviates any need for findings of fact and conclusions of law. To reiterate, R. 5:5-10 states in pertinent part:

> When a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a Notice...Defaults shall be entered in accordance with R. 4:43-1, except that a default judgment in a Family Part

[2] Defense counsel should have immediately recognized the distinguishing features of the A.M.S. v. M.L.S. case because he was the appellant's attorney.

> matter may be entered without separate notice of motion as set forth in R. 4:43-2.(emphasis added).

After extensive cross-examination confronting Defendant with her own sworn statements, the trial judge found Defendant's version of events was "beyond belief and incredible":

> The court finds this event was a substantial reason among other reasons set forth herein for defendant to resolve the marital issues by way of the MMA and PSA. The court finds that defendant knew there was a risk that all the parties' assets including any marital assets were at risk of being lost or substantially decreased in value if the transfers were found to be fraudulent by the bankruptcy court. The court finds no credibility to defendant's reasons proffered as to why she was having what she termed as "sex only" with the third party. Her testimony that plaintiff requested her to have sex with the third party so defendant could describe to plaintiff the particular sexual activity in which they engaged and to describe the third party's anatomical features is beyond belief and incredible.

[A229, Op. at. 36 (emphasis added)].

The trial court further reasoned:

> The facts of this matter in that the parties continued to travel and live together, in and of itself, does not carry defendant's burden by a preponderance of the evidence that plaintiff defrauded her in that they were not divorced and remained married during that period of time.

[Id. at 28].

Next, Defendant falsely claims that "neither spouse took steps to enforce any aspect of the parties divorce until the parties split in August [17], 2017." That ignores her own conduct accepting the terms of the divorce, without limitation:

1. Defendant's receipt of the $200,000 equitable distribution payment. The trial court found:

> The court finds that defendant had submitted sworn certifications to the court as part of her prior motions filed in this matter that she had never received the $200,000 which was required to be paid as part of the Final Judgment of Divorce, which ironically she has stated she was not even aware of. The court finds when questioned at trial on cross examination, and when referencing her prior deposition testimony, defendant had testified that she had not received the $200K, then that she had received $200k but that it was her money from STL, not from plaintiff. She has also testified that the $200K was not paid by plaintiff but was her money since the monies came from the STL account at Bank of America and she was the sole owner of STL.
>
> The court finds that defendant's testimony claiming she never received these monies to be highly incredible. The court has previously found that she was aware of the PSA executed on January 17, 2014. The PSA required a settlement payment of $200K to be paid to her. The court finds defendant made a withdrawal from an STL account in that exact amount in September 2014, and then on the same day deposited $200K into a separate account at TD Bank under her parents address in Harrisburg, PA. The court finds it was not an incredible coincidence that the amount of withdrawal by defendant was in the amount of $200K because the court finds it was clearly the equitable distribution payment required in the PSA.
>
> ***
>
> She took affirmative actions in obtaining the $200,000 due to her by transactions made in September 2014 even before the GSA was reached and during the period of time that she argues the bankruptcy was pending. <u>To find she had unclean hands based on her own actions would be an understatement.</u>.

[A229, Op. at 40; 56(emphasis added)].

Similarly, the trial court found:

> Her assertions that she never received the $200K payment as required by the FJD was also a total façade.

[Pa1, Op. at 12].

2. Defendant's Pennsylvania Department of Human Services Benefits application dated November 16, 2014, in which she confirmed she was single and not receiving alimony, in order to obtain medical benefits. (Pa35)

3. Defendant's Delaware Name Change Petition dated August 1, 2017, relying upon the Final Judgment of Divorce. (Pa58).

4. Plaintiff's payment of $57,000 to Defendant's mother. (Pa66). The trial court found, "Paragraph 21 of the PSA also required plaintiff to pay defendant's mother $57,000. The court finds this obligation was paid as set forth in P-66 in evidence by check deposited on February 24, 2014." (A229, Op. at 39).

In raising due process concerns, Defendant ignores that the Court Rules permit Default Judgment and that those Rules were followed in this case. There can be no "due process" violation where Defendant had notice and an opportunity to be heard in 2015. The trial court so found and rejected her claims, including those she brings up again on page 12 of her Reply Brief:

1. As to Defendant's claim of "Ethically conflicted counsel" (Drb12), here was the result:

    a. When her own witness, Eric A. Browndorf, Esq. testified on August 11, 2021, he made very clear that the July 19, 2013 fee letter he prepared mistakenly included the name of Saleena Korotki. (12T32-

2-22). He pointed out that she already had a bankruptcy lawyer, Anthony M. Saccullo, Esq., a day earlier. (12T32-2-22). He testified that he never met her or spoke with her and certainly never represented her. (12T32-2-22). She was represented by other counsel. (12T32-2-22). Based on that credible testimony, the trial court rejected Defendant's claims about Mr. Browndorf. (A229, Op. at 25).

b. The trial court applied a similar analysis against Defendant's assertion that Mr. Klein represented her in the matrimonial matter:

> The clear language in both the MMA and PSA show defendant attested to the fact that Mr. Klein represented plaintiff and she was aware of her right to obtain counsel and chose to be unrepresented. The court finds this assertion by defendant is not credible and holds no weight.
>
> [A229, Op. at 16(emphasis added)].

c. The trial court found Defendant's claims concerning lack of access to independent counsel be incredible:

> The court also finds that the defendant's testimony concerning she was unaware of her right to have legal counsel review the PSA to be incredible. The court having found she signed the PSA, the PSA included language at paragraph 40 concerning her right to be represented by counsel in reviewing and signing the agreement as well as her knowingly waiving her right to counsel. Although the court finds that Ms. Weinstock did not represent her in a review of the PSA or other documents challenged, the court does find that defendant with reasonable diligence could have requested Ms. Weinstock to review the agreement or could have requested a referral from her to an attorney who had specialized knowledge of matrimonial law and could review it for her. She also, with

> reasonable diligence, could have contacted an attorney to review the PSA directly.
> [A229, Op. at 24(emphasis added)].

2. As to Defendant's claim she was, "Bullied and duped by her ... husband" (Drb 12), this is what the trial court found:

> The court finds the assertions made by defendant to be incredible under the totality of the circumstances...the court's observations of defendant at trial do not support her assertions that she misunderstood questions and facts at the time she executed the documents being challenged herein, at her depositions or at trial... The court finds defendant has not proven by a preponderance of the evidence that she was forced or coerced to sign the documents in question. The court finds she signed the documents freely and voluntarily.
> [A229, Op. at 23 (emphasis added)].

Next, Defendant misreads Curry v. Curry, 108 N.J. Super. 527 (App Div. 1970)[3] in claiming default should be vacated liberally in divorce cases. (See Drb at 9-10). That is only true where certain prerequisites are met. First, the litigant in Curry moved to vacate default within a mere two months of default having been entered. Id. at 529 (noting "the judgment *Nisi* was entered February 18, 1969. On April 16, 1969 defendant obtained an order to show cause why the judgment should

[3] This case relied upon by Defendant was decided before the New Jersey Divorce Reform Act of 1971, which overhauled the divorce system in New Jersey. The legislature eliminated procedural concepts such as a "Judgment *Nisi*" to account for the societal shift in favor of dissolving marriages. C.f. Mani v. Mani, 183 N.J. 70, 82 (2005).

not be vacate..."). Second, the trial court permitted the litigant to answer only because she did so before the Final Judgment was entered:

> In my judgment a defendant who comes forward and says he desires to defend a case for divorce should be given an opportunity to do so at any moment before the chancellor's signature is actually affixed to the final decree. The only limitation I can think of would be an apparent lack of good faith on the part of the applicant, which would be the case if it clearly appeared he did not intend to answer even after obtaining the right to do so; his attempt being merely for delay prompted by ulterior motive.

Curry v. Curry, 108 N.J. Super. 527, 530 (App. Div. 1970)(emphasis added).

Here, Defendant never moved to vacate default judgment. Instead, she waited two-and-half years to vacate final judgment under R. 4:50-1 (an entirely different procedural concept). Her opportunity to vacate default lapsed as soon as Judge Light affixed his signature to the Final Judgment of Divorce. To reiterate, her claim to vacate default was waived because it was never raised below.

Lastly, Defendant desperately claims that subsection R. 4:50-1(f) should have applied no matter her unreasonable timing, to prevent a "grave injustice." There was nothing of the sort that resulted here. Defendant's own testimony was that she was divorced and got what she wanted. (Pa30, Pl's. Trial Ex. P-19, Def. Dep. at 59:19-21, Mar. 23, 2016). The trial court properly found:

> The court finds the Defendant's primary arguments in support of her requested relief concerning the equitable distribution allocation and the waiver of alimony by way

> of the terms in the PSA were not so disproportionate to render the PSA substantively unconscionable.

(Id. at 49-50).

The trial court properly assessed that there was no unconscionability of the divorce settlement. Regarding equitable distribution, the trial court correctly found that the marital estate suffered a staggering 28-million-dollar loss. (A229, Op. at 34). And that the "the loss of value as to the assets which originated from Plaintiff's pre-marital assets must be substantially considered when determining the fairness of the PSA." (Id. at 35). On alimony, the trial court recognized the 26-year age disparity between the parties and the fact Plaintiff was 69 years old when the parties divorced undermines any alimony claim by Defendant who was 43 years old. (See Id. at 44). Additionally, the fact that Plaintiff's "income in the four years preceding the PSA was not significantly greater than Defendant's" further undermined any alimony claim. (Id. at 49). She had sufficient earning capacity in the casino gaming industry and further derived "de-facto" support from Plaintiff in their post-judgment attempt at reconciliation. (Id. at 48).

For all those reasons, Defendant's argument on appeal concerning default judgment should be rejected.

POINT II

REGARDING SANCTIONS AND COUNSEL FEES, DEFNDANT FAILED TO COUNTER PLAINTIFF'S ARGUMENT OF IMPRACTICABILITY OF THE SAFE HARBOR LETTER REQUIREMENT AND THE TRIAL JUDGE'S FAILURE TO ANALYZE ALL RULE 5:3-5 FACTORS AND ADHERE TO THE FEE SHIFTING TERM OF THE PARTIES' PROPERTY SETTLEMENT AGREEMENT. (Pa1; Pa16; Ca14¶27).

Coincidentally, the A.M.S. v. M.L.S. case (Pra1), *supra*, recognizes reversible error where a trial judge fails to analyze the R. 5:3-5 factors in determining counsel fees:

> We are persuaded such an abuse of discretion occurred here. Indeed, the judge's truncated analysis of defendant's counsel fee application is captured in the following brief excerpt from his December 3, 2019 oral opinion...Because the judge did not analyze the factors set forth in the Rules he cited, we are constrained to vacate that provision of the December 3, 2019 order denying defendant's counsel fee request.

A.M.S. v. M.L.S., No. A-1905-19, 2021 WL 3197768, at *7 (App. Div. July 29, 2021).

In her Reply Brief, Defendant does not refute Plaintiff's argument on cross-appeal that the trial judge here also "truncated" his analysis of R. 5:3-5 and failed to analyze all the applicable R. 5:3-5 factors. That is reversible error. Nor does Defendant comment on the fact that Plaintiff achieved overwhelming enforcement of several provisions of the Property Settlement Agreement, which required fee shifting. But the trial court ignored that term of the agreement (Ca14 ¶27) and undermined the parties' intent. That is reversible error.

Defendant also does not contest that her Responses to Plaintiff's Requests For Admissions were in evidence. (Pa72). Defendant denied the following key facts and required Plaintiff to incur significant fees proving them at the Plenary Hearing:

- Defendant repeatedly denied that she executed or reviewed the Matrimonial Settlement Agreement, the Mid-Marriage Agreement, and the Powers of Attorney. (See generally Pa72).
- She also failed to admit that she received the $200,000 check as part of her equitable distribution. Id.

The trial court committed reversible error by not considering that evidence to apply the fee shifting requirement of R. 4:23-3. It was clear that the Plaintiff's requests were not objectionable, they were of substantial importance, and Defendant did not have reasonable grounds for not making the admissions. See generally Pa72; see also R. 4:23-3.

On the issue of sanctions, Defendant fails to dispute Plaintiff's claim that there was no "practicability" for compliance with the safe harbor letter. Nor does she refute Plaintiff's claim that regardless of the safe harbor letter, there is an inherent power of the trial court to sanction. The trial court committed reversible error by not commenting on the practicability of compliance with the safe harbor letter requirement, and by not utilizing its inherent power to sanction.

Nonetheless, it was clear the sanctions request was a minor part of Plaintiff's fee application; the major part of Plaintiff's fee application was against the Defendant. The trial court improperly applied the American Rule in contravention

to paragraph 27 of the parties' Property Settlement Agreement. (Ca14). In so doing, the trial court abused its discretion and ignored no less than seven instances of Defendant's non-compliance with the provisions of the Property Settlement Agreement:

1. The Alimony Waiver Provision (Ca14 at ¶9)
2. The Bella Via Court Provision (Ca14 at ¶14)
3. The Motor Vehicles Provision (Ca14 at ¶13)
4. The Business Entities Provision (Ca14 at ¶16)
5. The Bankruptcy Settlement Proceeds Provisions (Ca14 at ¶¶15-16)
6. The Credit Card Debt Provision (Ca14 at ¶19)
7. Revocation of Power of Attorney Provision (Ca14 at ¶22).

This warranted fee shifting in accordance with paragraph 27 of the Property Settlement Agreement and directly caused Plaintiff to incur over a million dollars in counsel fees. (See Ca14 at ¶27).

POINT III

DEFENDANT FAILS TO RECOGNIZE THE TRIAL JUDGE ABUSED DISCRETION BY NOT CONSIDERING ALL EVIDENCE AND TESTIMONY CONCERNING THE LEXUS AND INCONSISTENTLY DECIDING THE BANK OF AMERICA ACCOUNT REIMBURSEMENT. (A229;A427; Drb17-18)

On the issue of the Lexus, contrary to Defendant's assertion, it was not "entirely up to the trial court" to award Defendant with the Lexus. (See Drb. at 17). The trial court abused discretion by ignoring Defendant's deposition testimony in evidence, confirming she received the Mercedes. (Pa87, Def. Dep. at 258:1-20, Aug. 8, 2019). The trial court also ignored the parties' property settlement agreement (that the court held entirely valid), a term of which equitably distributed the Mercedes to Defendant. (Ca14, ¶13). It was an abuse of discretion for the trial court to not consider that critical evidence and then award Defendant with the Lexus she stole.

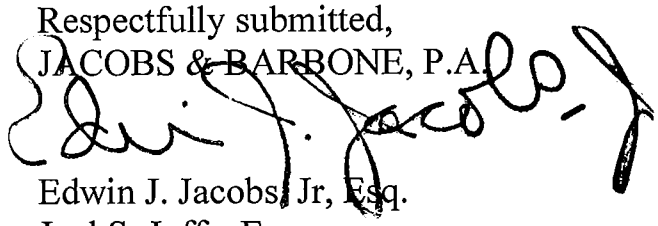
On the issue of Bank of America reimbursement, Defendant fails to counter that trial court's findings on the account ownership were inconsistent with her claims about past practices. Those past practices involved a different account. The trial court found that the account as issue was solely Plaintiff's. (A229, Op. at 39). His testimony was unequivocal that the account was never utilized for payments of Defendant's credit card charges. [16T74-4-1]. No party can have any "reasonable expectation" to steal the other's bank account, as Defendant preposterously argues. (Drb. at 18).

CONCLUSION

For all the above reasons, and those contained in Plaintiff's Initial Brief, this Court should:

- affirm the trial court's denial of Defendant's R. 4:50 motion;
- reverse the trial court's denial of an award of counsel fees and costs to Plaintiff and remand for further proceedings to award reasonable attorneys' fees and costs to Plaintiff based on the Certifications of Services filed by Plaintiff's counsel;
- reverse the trial court's award of the Lexus; and
- reverse the trial court's award of the $15,459.21 Bank of America reimbursement to Defendant.

Respectfully submitted,
JACOBS & BARBONE, P.A.



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