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<p>PMG NEW JERSEY II, L.L.C.,</p> <p>Plaintiff/Respondent Vs.</p> <p>AMRIT, INC., d/b/a CIRCLE EXXON, 34 US-1, LLC d/b/a FUEL ONE, INC., SHAMSHER SINGH RATHORE, KOMAL SINGH, and JABBAR SINGH.</p> <p>Defendant/Appellant,</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001854-23</p> <p>ON APPEAL FROM: MIDDLESEX COUNTY SUPERIOR COURT CHANCERY DIVISION/GENERAL EQUITY PART DOCKET NO.: MID-C-84-23</p>
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DEFENDANTS'/APPELLANTS', AMRIT INC. D/B/A CIRCLE EXXON, SHAMSHER  
SINGH RATHORE AND KOMAL SINGH, BRIEF and APPENDIX VOLUME I  
(Da001 to Da106)

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INC. D/B/A CIRCLE EXXON, SHAMSHER  
SINGH RATHORE AND KOMAL SINGH

On the Brief: PATRICIA M. LOVE, ESQ.

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07/25/2023 Hearing of Defendants' Motion to Dissolve Temporary Restraints/Transfer to Law Division and Plaintiff's Cross Motion For Preliminary Injunction Before Hon. Thomas D. McCloskey, J.S.C. . . . . 2T

02/16/2024 Hearing of Plaintiff's Motion for Summary Judgment and Defendants' Cross Motion For Summary Judgment Before Hon. Thomas D. McCloskey, J.S.C. . . . . 3T

PRELIMINARY STATEMENT

On March 4, 2012, the Plaintiff, PMG and Defendant Amrit, Inc. entered into a Motor Fuel Supply Agreement in conjunction with the Defendant's purchase of an Exxon gas station. Da21. Two further amendments extended the fuel supply agreement. Da37, Da40. The amendments added a right of first refusal (ROFR) and extended the MFSA to December 31, 2027 with penalties attached for early termination. Da37, Da40.

In late 2022, a good faith buyer (former Defendant 34 US1, LLC, d/b/a Fuel One, Inc.) made an offer to buy the gas station for \$2.5 million. Da49. The parties arrived at terms which were memorialized in an agreement that was signed in or about October 14, 2022. Da49. The principal of Amrit, recognizing that PMG had to be given the opportunity to exercise their right of first refusal (hereinafter, "ROFR"), presented the contract to PMG. Although there is a dispute of when the offer was first presented to PMG, all parties agree that the contract (either signed or unsigned) was presented to PMG at least by January 17, 2023. Da84, Da190, Da292. Everyone agrees that the contract did not mention PMG's ROFR, however it was in the Fuel Supply Agreement, which the good faith buyer (34 US1, LLC, d/b/a Fuel One, Inc.) had also been provided prior to January 17, 2023. 2T.28:17-29:7. PMG's representative, Christopher Krisza,

expressed to Amrit that the failure to mention the ROFR rendered the offer *invalid* and therefore he/PMG refused to accept it as a good faith offer. Da.329-332. It is Amrit's position that PMG's rejection of the offer as a "bona fide offer" as the language of the contract requires, was at their own peril and had no legal impact on the contractual relationship developing between Amrit and Fuel One. 1T.17:10-18:5. PMG's silence and the passage of 30 days operated as a waiver. However, in order to placate PMG and obtain an affirmative waiver of their ROFR, Amrit amended the contract to include an explicit mention of the ROFR. Da214. The amendment was submitted by Fuel One's attorney to PMG on May 4<sup>th</sup>, 2023, although it was not signed by Amrit, Inc. Da70. On May 8<sup>th</sup>, 2023, Amrit's attorney submitted the amendment, now signed by Amrit, Inc. and Fuel One, to PMG. Da72. On June 6<sup>th</sup>, 2023, PMG attempted to exercise its ROFR. Da75. It is Amrit's position that the ROFR was waived as of February 17, 2023 and that the amendment had no effect on that waiver as it did not change the essential and material terms of the proposed contract. 3T.17:11-18:10. It is Amrit's further position, however, that even if it did have the effect of creating a new offer, that offer was tendered on May 4<sup>th</sup>, 2023 and waived (by PMG's silence), as of June 3<sup>rd</sup>, 2023. 3T. 34:11-22. The Trial Court disagreed with Amrit's position and on February 20, 2024, granted the Plaintiff's Motion for Summary

Judgment. Da350. On February 22<sup>nd</sup>, 2024, Defendant Amrit, Inc., filed a Notice of Appeal, CIS and Transcript Request. Da400-414. Defendant Amrit now requests that the Judgment entered by the Trial Court be stayed pending that appeal.

#### PROCEDURAL HISTORY

On June 21, 2023, Plaintiff PMG New Jersey II, LLC (hereinafter "PMG") filed an Order to Show Cause and Verified Complaint requesting temporary restraints to prevent the closing of title on real estate owned by Defendant Amrit, Inc., being transferred to the buyer, former Defendant 34 US1, LLC, d/b/a Fuel One, Inc. 1T. Da1. The Defendants were present for arguments on June 21, 2023 and the Trial Court granted the Plaintiff's request for temporary restraints, setting dates for submissions and a return date for July 25, 2023. Da100. On July 11, 2023, all Defendants filed Answers and Defendant Amrit, Inc. and its principals (also named as Defendants) filed an Objection to the Order to Show Cause with exhibits. Da107, Da115, Da125. On July 12, 2023, Defendant 34US1, LLC filed a Motion to Dissolve the temporary restraints. Da135. Defendant, Amrit filed an Affidavit and also joined in the motion. Da164, Da140. On July 21, 2023, Plaintiff filed an objection to the motion. Da148. The return date of the Order to Show Cause and the motion were heard at oral argument on July 25, 2023 before

the Trial Court. 2T. The Trial Court denied the Defendants' Motion and set a discovery schedule. Da165. On or about September 29, 2023, the Trial Court signed an Order of Dismissal by consent of the parties, of Defendant 34US1, LLC, d/b/a Fuel One, Inc. with prejudice. Da169. Discovery continued between the Plaintiff and the remaining Defendants (Amrit and its principals). At the conclusion of discovery, Plaintiff filed a Motion for Summary Judgment. Da171. Defendants Amrit, Inc. and its principals filed Opposition to the Plaintiff's Motion and a Cross Motion for Summary Judgment on the issues regarding whether the Plaintiff waived its Right of First Refusal prior to June 6<sup>th</sup>, 2023. Da251. On January 29, 2024, the Plaintiff filed a Reply Brief in which it opposed the Defendant's filing of a Cross Motion for Summary Judgment. Da342. The Trial Court permitted the Cross Motion but allowed the Plaintiff additional time to oppose the Cross Motion, which Plaintiff filed on or about February 7, 2024. Da344. Defendants Amrit, Inc. and its principals filed their Reply on February 12, 2024. Da349. Thereafter, on February 16, 2024, the Trial Court held oral argument on the motions. 3T. The Trial Court reserved and issued a written decision on February 20, 2024. Da350. The Defendants Amrit, Inc. and its principals filed a Notice of Appeal and Case Information Statement on February 22, 2024. Da400-Da414. Thereafter the Defendants filed a Motion for a Stay

of Judgment pending Appeal with the Trial Court and the Plaintiff filed Opposition. The Trial Court denied the request for a stay. The Defendants then filed an emergent Motion for Stay with the Appellate Division, which was Opposed by the Plaintiff. This Court granted the request for a stay. This appeal of the Trial Court's decisions in this case follows.

STATEMENT OF FACTS

On March 4, 2012, the Plaintiff, PMG and Defendant Amrit, Inc. entered into a Motor Fuel Supply Agreement in conjunction with the Defendant's purchase of an Exxon gas station. Da21. Two further amendments extended the fuel supply agreement. Da37, Da40. The amendments added a right of first refusal (ROFR) and extended the MFSA to December 31, 2027 with penalties attached for early termination. Da37, Da40. The portion of the amendments that is germane to this litigation is contained in paragraph 39 of Amendment #1, which provides:

39. Preemptive right. If Purchaser is the owner or lessee of the Premises, Seller shall have the following preemptive rights:  
If, at any time during the term of this Agreement Purchaser shall receive a bona fide offer from a third party (the "Offer") to purchase or otherwise acquire the Premises, **Purchaser shall, before accepting said Offer, promptly send a copy of the Offer to Seller** which shall have the preemptive right to purchase or otherwise acquire the Premises on the same terms and conditions as set forth in the Offer. **If Seller elects to exercise its preemptive right under this Section 36(a) (1), it shall do so by providing written notice to**

Purchaser within thirty (30) days following receipt of the offer and the closing shall take place within ninety (90) days thereafter (or at such later date as provided in the Offer). If Seller does not exercise its preemptive right within the foregoing thirty (30) day period, Purchaser shall have the right to sell to the third party from whom it received the offer (and no other party, without again first giving Seller its preemptive right as provided in this Section 36(a)(1), on the same terms and conditions as set forth in the Offer (but not on different terms or conditions, without first giving Seller its preemptive right as provided in this Section 36(a)(1)). If during the term, Purchaser is actively negotiating with a a third party to sell the Premises, and within six (6) months following the expiration of the term, Purchaser enters into a definitive transfer agreement with said third party, Seller shall have a preemptive right to purchase or otherwise acquire the Premises, in accordance with the provisions contained herein, as though the definitive transfer agreement had been executed during the term and had constituted the Offer received by Seller on the last day of the term. Da38 (**emphasis added**).

In late 2022, the Defendant, Amrit, Inc. negotiated with a third-party potential buyer, former Defendant, 34 US1, LLC, d/b/a Fuel One, Inc ("Fuel One"). Da49. They reached a price of \$2.5 million and a detailed contract was prepared and signed by both parties on or about October 14, 2022. Da49. Although the contract did not reference the Plaintiff's ROFR, as laid out in paragraph 39 of the amendment to the MFSA, the proposed PSA did contain a provision that required Defendant Amrit to provide Fuel One with its Fuel Supply Agreement with PMG New Jersey II,

Inc, (section 3(b) of the 16 page contract), *which contained the ROFR language*. Da51.

There is no dispute that the PSA between Defendant Amrit and Fuel One was presented to the Plaintiff (whether signed or unsigned) on January 17, 2023, in writing. Da84, Da190, Da292. There is no factual allegation by the Plaintiff that it ever attempted to exercise its ROFR in the 30 days subsequent thereto. The Plaintiff's waiver of its ROFR was contested by Plaintiff because Plaintiff believed that the offer they were provided with (and admit that they were provided with) on January 17, 2023, was somehow "invalid". Da329-332. This was their own assessment, and they waived their ROFR as of February 17<sup>th</sup>, 2023, at their own peril. The Plaintiff claimed that the contract/offer was somehow invalid and therefore not able to be considered as a "bona fide offer" (as paragraph 39 requires) because it did not reference the Plaintiff's ROFR. Da85. (see paragraph 11). The Plaintiff refused, moreover, to provide the figures requested to calculate the penalty for debranding the gas station in the event of a sale to the third-party buyer (Fuel One). Da144. It is important to note, however, that the PSA contained NO CONTINGENCIES and the calculations of the penalties for debranding were part of the contract. Da49, Da51.

In order to obtain the information that was needed to get the figures and in order for the Defendant, Amrit's principal to



feel secure in proceeding with the closing, the Defendant, Amrit, Inc., amended the contract/offer and presented that amendment to Defendant Fuel One, Inc. Da145. Former defendant 34 US 1, LLC, d/b/a Fuel One, Inc. (hereinafter, "Fuel One") then signed and presented the offer to Plaintiff on May 4, 2023. Da70, Da145. On May 5, 2023, PMG's general counsel acknowledged receipt and indicated that the offer was to operations for processing. Da69. On May 8<sup>th</sup>, 2023, at the Plaintiff's request, Defendant Amrit also signed the document (thereby transforming it into a contract) and sent it to Plaintiff. Da72. On June 6<sup>th</sup>, 2023, Plaintiff announced that it was exercising its ROFR under the MFSA. Da75. The Defendants refused to recognize this attempt by the Plaintiff to exercise its ROFR as it had been more than 30 days since the Plaintiff was presented with the bona fide offer (January 17, 2023) and no material changes had been made to that offer. Da80. It was the Defendants' position that the Plaintiff had waived the ROFR in February and proceeded with their contract with Amrit selling to Fuel One. Da80. On June 21, 2023, PMG filed an Order to Show Cause and Verified Complaint requesting temporary restraints to prevent the closing. Da1. Both corporate Defendants in conjunction with their respective principals opposed the application. 1T; Da88, Da99. At the hearing on June 21<sup>st</sup>, 2023, counsel for PMG admitted that his client had been provided with the contract but

that "We pointed out the material terms that were missing." 1T @18:19-20. Defendants argued that the Plaintiff's insistence that the offer/contract be modified to make reference to their ROFR was an "attempt to intervene and interfere in our contract" as Plaintiff was a "stranger to the contract." 1T @11:5-7. The Trial Court, relying on the principle that injunctive relief is permitted (stopping the sale of the gas station from Defendant Amrit to Fuel One) "even if the claim appears doubtful", granted the Order to Show Cause. 1T @27:9-12. Da100. On July 12, 2023, Defendant 34US1, LLC filed a Motion to Dissolve the temporary restraints. Da135. Defendant, Amrit filed an Affidavit and joined in the motion. Da140, Da164. On July 21, 2023, Plaintiff filed opposition to the motion. Da148. The return date of the Order to Show Cause and the motion were heard at oral argument on July 25, 2023 before the Trial Court. 2T. At oral argument, Alan Ackerman, Esq., counsel for Fuel One states on the record that

...the fuel supply agreement was part of the contract. So when I am speaking to the Court as the attorney for my client, I'm not speaking because I knew it. I'm speaking because my client had that information. So the buyer had the complete fuel supply agreement when the agreement was signed, including 39." 2T.18:2-8.

The Trial Court then confronts Mr. Ackerman with PMG;s position that because the PSA at 10(c) states that there are no existing rights of first refusal, this created the requirement

that a modification was necessary. 2T@18:23-21:21. The Trial Court then states, "...PMG wants the buyer to acknowledge that it has a prior right, and that it was entitled to exact that corrective representation." 2T@22:10-12. The Court then agrees that whether the buyer (Fuel One) knew about the ROFR from the MFSA which was supplied as part of the transaction in October of 2022 is an "issue of fact." 2T @22:16. The Trial Court then stresses the importance of the formal acknowledgement of the buyer that Plaintiff held the ROFR which, in turn, "triggered the 30-day provision". 2T@22:22-23. Counsel for PMG then recounts the fact that the addendum was initialed by Fuel One and sent to PMG by Mr. Ackerman on May 4<sup>th</sup>, 2023 "as requested by PMG" 2T@37:20. The Trial Court denied the Defendants' Motion and set a discovery schedule. Da165. On or about September 29, 2023, the Trial Court signed an Order of Dismissal by consent of the parties, of Defendant 34US1, LLC, d/b/a Fuel One, Inc. with prejudice. Da169. Discovery continued between the Plaintiff and the remaining Defendants (Amrit and its principals). Following discovery, the Plaintiff filed a Motion for Summary Judgment. Da171. The Plaintiff argued that the presentation of the contract on January 17, 2023 was invalid because the failure to recognize Plaintiff's ROFR in the contract was a "material misstatement". Da179. Plaintiff further argued that although the contract was amended and presented to them on May 4<sup>th</sup>, 2023,

it was still not a valid "bona fide offer" until presented to them by the Defendant Amrit on May 8, 2024. Da179. This is how the Plaintiff is able to argue that their announcement on June 6<sup>th</sup>, 2023 that they want to exercise their ROFR lies within the required 30 day period as explicitly stated in paragraph 39 of the amendment to the MFSA. Da38. Defendant Amrit thereafter filed a Cross Motion for Summary Judgment arguing the opposite on both points: (a) it is immaterial to the contract from the Plaintiff's perspective, whether the ROFR is mentioned or not and therefore the ROFR was waived on February 17, 2023 (30 days following the date that Plaintiff admits to having received the bona fide offer, and (b) even if the ROFR needed to be explicitly mentioned in the bona fide offer, it was amended and tendered to Plaintiff no later than May 4, 2023, thereby rendering the June 6, 2023 acceptance by Plaintiff untimely and invalid. Da256. Plaintiffs filed a Reply Brief in two parts as permitted by the Court. Da342, Da344. Additionally, Defendant Amrit filed a Reply on February 12, 2024. Da349. The former Defendant, Fuel One/Jabbar Singh, submitted a certification to the Court on February 13, 2024 but it is believed that the Trial Court did not consider that certification. (Not included in Appendix). The Trial Court heard oral argument on February 16, 2024. 3T. Counsel for PMG argued that the presentation of the contract to them was rejected initially because "it was missing

terms that we believed were material..." 1T@6:22-23. Judge McCloskey adopted the idea that the Defendant Amrit "materially withheld the fact of the ROFR under the motor supply agreement..." 3T@11:13-14. Judge McCloskey further attempts to infer that there is a familial relationship between the principal of Defendant Amrit and the principal of former Defendant Fuel One, stating: "And the prospective buyer is the brother-in-law of the principal of Amrit, right?" 3T@12:15-16. Judge McCloskey even went further when PMG's attorney responded that he had no knowledge of their relationship thusly: "Well, Jabbar Singh is related to the Singhs." 3T@12:19-20. The Trial Court was thereafter corrected that in fact there is no familial relationship between the buyer and seller's principals. 3T@12:21-23.

During argument, the Trial Court asks "How is the offer bona fide when it failed to disclose the existence of the right of first refusal?" 3T@16:17-19 and as counsel for Defendant Amrit begins to answer that question, the Court interrupts with the phrase "bona fide" several times. 3T@16:23-25. Then the Court asks, "The fact of a competitor who has been vested with the right of first refusal would most certainly have had an impact on whether to consider that offer." 3T@17:5-8. This shows that the Trial Court was mixing up the perspectives between what would be "good faith" from the buyer's view and what would be a

"good faith" offer from the ROFR holder's view. While disallowing argument by counsel for the Defendant Amrit by repeatedly interrupting counsel, the Trial Court ultimately states, "It's self defective because it materially misrepresented the existence of the ROFR and represented that everything contained in it was accurate and true." 3T@20:1-6. The Trial Court issued a Decision in favor of the Plaintiff on February 20, 2024. Da350. In that Decision, the Trial Court found as a part of the "Salient and Undisputed/Undisputable Material Facts" portion of the "Statement of Reasons" that

The Original PSA contained material misrepresentations regarding the agreements with PMG. For instance, Section 10(c) of the Original PSA, titled "No Other Contracts," falsely states that "[t]o the best of Seller's knowledge, there are no existing or claimed purchase contracts, rights of first refusal or special assessments affecting the Property." **This was a materially false term. Ibid. Da366.**

Here, the Trial Court, in its statement of undisputed facts, includes the Trial Court's finding of fact within the context of a Motion for Summary Judgment, or, alternatively, finds as a matter of law, that provision 10 (c) of the PSA was a "materially false term". Da366. Reference to multiple misrepresentations is not expanded upon because nothing could possibly be characterized in the PSA as a "misrepresentation." The statement that this provision of the Original PSA constituted a "materially false term" was the Trial Court's conclusion, not an undisputed or undisputable fact. Da366. The

Trial Court essentially adopts the certification of Plaintiff submitted as part of the Plaintiff's Motion for Summary Judgment and adopts the characterizations of those facts. Da188, Da259-260. The Trial Court, for example, states that on May 4, 2023, "Mr. Ackerman openly acknowledged that the process of waiving the ROFR had yet to even begin." Da370. The Trial Court recited the Plaintiff's position in the Decision, in part by stating:

It was important for PMG to know that the final offer was being made subject to the ROFR and approval for assumption of the fuel contract so it could gauge the value of the offer as well as making sure the parties acknowledged its right, which were fraudulently omitted from the original PSA. It is asserted that PMG had every right to expect that its rights would be set forth in the final PSA. Da376.

The Trial Court also makes a finding of fact by adopting the position of the Plaintiff that Defendant Amrit "voluntarily recognized that their contract was incomplete until its final submission to PMG on May 8, 2023, which was legally valid notice of the third-party "offer" under Section 39 for PMG to exercise its ROFR." Da376-377. The Trial Court does not even carve out the question of whether Plaintiff PMG waived its ROFR as of February 17, 2023 in the Decision. Da385. Instead, the Trial Court concludes that amendments were made to the PSA "to conform the Offer with the underlying requirements and obligations owed by Amrit to PMG with respect to the same under the MFSA, and to thereby put the third-party offeror on notice of PMG's priority

rights..." Da392. Finally, the Trial Court points to one-sided negotiations that have no impact on the revised offer submitted on May 4<sup>th</sup>, 2023 and do not appear in same, as a basis for concluding that the Defendant, Amrit had to also acknowledge the revised offer in order to make it a valid offer. Da396. The Trial Court, in other words, got underneath the bona fide offers (the one submitted to PMG on January 17<sup>th</sup> and the one submitted on May 4<sup>th</sup>, 2023, to see that ongoing negotiations might change more than just the acknowledgement of the Plaintiff's ROFR, thereby requiring a presentation to the Plaintiff by Amrit, not Fuel One. No other change was made to the offer and therefore, there was no reason to require Amrit to be the one to present the amendment to Plaintiff PMG in May of 2023.

Defendant Amrit, Inc., Shamsheer Singh Rathore and Komal Singh filed a Notice of Appeal and CIS on February 22<sup>nd</sup>, 2024. Da400-414. Defendant Amrit filed a Motion for Stay with the Trial Court, which was denied, followed by with the Appellate Division, which was granted.



LEGAL ARGUMENT

- I. The Trial Court erred in finding that the third party offer was invalid because it did not explicitly reference the Plaintiff's Right of First Refusal. (Raised below, Da366,378,385; 1T@19-20)

For purposes of the Motion for Summary Judgment in this matter, the Defendant, Amrit and its principals, stipulated that the contract between them and former Defendant Fuel One was not presented in writing to the Plaintiff, PMG until January 17, 2023. Da84, Da190, Da292. That contract may or may not have been a signed/executed copy. The Defendant Amrit, regardless of having signed the contract in October of 2022, held back on proceeding with a closing in order to satisfy their obligation under the MFSA, which required that Plaintiff, PMG receive a 30 day period during which they might be able to consider and possibly exercise their Right of First Refusal. It is and has been the Defendant, Amrit's position that because the Plaintiff, PMG failed to exercise their ROFR by February 17, 2023 (30 days following the date that they admit to having received the contract), their ROFR was waived. Da80. The Trial Court disagreed with this position because the Trial Court found that the contract/offer presented to the Plaintiff, PMG on January 17, 2023, was "self defective because it materially misrepresented the existence of the ROFR, and represented that

everything contained in it was accurate and true." 3T. 20:1-6. The Decision of the Trial Court, issued on February 20, 2024 fails to articulate the clearly identified issue of whether the Plaintiff waived its right of first refusal on January 17, 2023, when it admittedly received the offer (in the form of a contract) and never exercised its ROFR within 30 days thereof (by February 17, 2023). Da385. In the discussion portion of the Trial Court's written decision in this matter, the Trial Judge states, we can only presume, as a finding of fact, that "...amendments were made to [Fuel One's original offer] in order to conform the Offer with the underlying requirements and obligations owed by Amrit to PMG..." Da392. The Trial Court, in other words, found that the original offer was in some fashion deficient *as a matter of law* such that it was invalid. However, the Court never explains its finding in those terms, but simply adopts the position of the Plaintiff on this issue without any discussion or legal justification. During oral argument, the Trial Court challenged counsel for the Defendant, Amrit, coming to the conclusion that the offer/contract as presented to Plaintiff PMG on January 17, 2023, was invalid without identifying that "conclusion" as an issue in the motion that required some level of legal basis. Rather, the Trial Court simply calls the contract "self-defective". 3T. 20:1-6.

Whether a term or terms of an offer that may be factually inaccurate but nevertheless **have no impact legally or factually on the holder of the ROFR**, renders that offer to be invalid is an issue that the Trial Court never addresses. The Trial Court provided no supporting law to justify the adoption of that position from the Plaintiff. *N.J.S.A. 12A:2-206* clearly states,

Unless otherwise unambiguously indicated by the language or circumstances (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances; *See N.J.S.A. 12A:2-206*.

In the case at bar, the Trial Court apparently concluded that a holder of a ROFR is able to dictate the terms of an offer before the clock begins to tick on its time for exercising that ROFR. This is clear error. Not only is there no legal precedent for this position, but the plain language of the contract (paragraph 39 in the MFSA) requires nothing more than a "bona fide offer".

In the Cross Motion for Summary Judgment filed by the Defendant, Amrit and its principals, the primary argument is that the presentation of the PSA on January 17, 2023 Satisfied the requirements of paragraph 39 of the MFSA amendment and that the Plaintiff waived (by its silence) the ROFR as of thirty (30) days thereafter, on February 17, 2023. Da256. In its Decision, the Trial Court does not even address or consider the arguments of the Defendant on this issue. Da385. Instead, the Trial

Court adopts the disputed factual assertions of the Plaintiff on this point and includes those assertions as part of its Undisputed/Undisputable facts section. Da366, Da370. It seems possible that the Court, ahead of oral argument, had made up its mind that the Defendants were related to each other and were out to defraud the Plaintiff, PMG in some fashion. When the Trial Court is corrected on this point, the prejudice very possibly remained. 3T.12:15-23.

The clear facts were that the ROFR was obviously never concealed from the Plaintiff. The Plaintiff knew what its rights were and asserted them even beyond what they were entitled to. Even if a prospective buyer's prior knowledge of a ROFR was necessary to a bona fide offer being "bona fide", there is a serious question of fact as to whether Fuel One was aware of the ROFR due to the MFSA being provided to them as part of the PSA signed on October 14, 2022. Da58.

The Trial Court further, latches onto a letter from April of 2023 from the third-party buyer's attorney and misinterprets it to mean that the third-party buyer, even at that time, was not aware of the ROFR. Da249. The Trial Court seemed to be extremely wed to the idea that in order for the "bona fide offer" to be "bona fide", the written offer would have to acknowledge the existence of the ROFR. Da366. This is error.

In its discussion of the concept of a right of first refusal, our courts have stated that the right may vary depending on how the parties have structured it.

A contract granting a right of first refusal may take various forms, including the type at issue here which contemplates a bona fide third party offer as the triggering event. *Mazzeo v. Kartman*, 234 N.J. Super. 223, 229 (App. Div. 1989).

Thus, the price is not defined in the right-of-first-refusal clause, but rather is defined in the third party's offer or "'by the terms on which [the owner] has expressed a willingness to sell.'" *Id.* at 230, (quoting 1A Corbin on *Contracts* § 261, at 470 (2d ed. 1963)).

The term, "bona fide"

has consistently been equated with good faith conduct, honesty and fair dealing. *State v. Rowland*, 183 N.J. Super. 558, 568, (Law Div. 1982) (citing *Garford Trucking, Inc. v. Hoffman*, 114 N.J.L. 522, 530, (Sup. Ct. 1935) *Black's Law Dictionary* (5 ed. 1979), overruled on other grounds, *State v. Hancock*, 210 N.J. Super. 568, 569, 510 A.2d 278 (App. Div. 1985)).

In the present case, the ROFR clause in paragraph 39 of the MFSA is simple and straightforward. It requires a good faith offer to be presented to the holder of the ROFR (Plaintiff PMG) and allows 30 days to affirmatively exercise that right. If no expression of acceptance is made by the holder of the ROFR, the right is waived. Da38. The Trial Court improperly adopted the claim by the Plaintiff that an "offer" is not valid if it fails to contain terms that the *Plaintiff ROFR* holder somehow deems

necessary. Da366. The Trial Court agreed with the proposition of the Plaintiff that before the Plaintiff need even consider a "bona fide" offer to be "valid" it must first contain terms that the holder of the ROFR deems necessary. Nothing in Section 39 even begins to articulate any requirements of a bona fide offer that might disqualify such offer ahead of the Plaintiff's obligation being triggered to review said offer and exercise or, by their silence, waive their ROFR within 30 days. Moreover, any terms in a bona fide offer would have to be dictated by the third party proposed **buyer**, not the holder of a ROFR.

Assuming that, as the Trial Court seems to have found in this case, a ROFR holder does have the power to dictate what terms and conditions must be included in an offer, the terms that the Plaintiff deemed to be "missing" have no legal or practical impact on the Plaintiff whether they were missing or included. Obviously, a ROFR held by the Plaintiff is not something of which the Plaintiff could be ignorant. It is a term connected to a different, prior contract in which the Plaintiff was a party. If the Plaintiff were to exercise their ROFR, then the mention or failure to mention it in the offer would have no impact on the Plaintiff. It melts away. The ROFR exists because of the earlier contract between the holder of that ROFR and the seller, not because of any language that may or may not be included in a "bona fide offer" from a third

party. Likewise, even in the event that Fuel One changed its mind and decided not to rebrand the gas station, the term relating to approval of an assignment of the contract would be a moot term in the contract if the Plaintiff chose to exercise its ROFR. Both issues would essentially dissolve away and be irrelevant in the event that the Plaintiff chose to exercise its ROFR. These terms, missing or present, would have no legal impact on the Plaintiff. Simply put, the Plaintiff and its agent(s) were mistaken in their assessment of the offer presented to them on January 17, 2023 being "incomplete" and therefore "invalid". Plaintiff failed to seriously consider the offer at its own peril. As of February 17, 2023, (30 days from when the Plaintiff admits it received the offer) Plaintiff waived its rights under Section 39 of the Amendment of the MFSA and, in theory, the Defendant was free to close. The Trial Court's conclusion that the absence of any reference in the offer/contract of the Plaintiff's ROFR was "self defective" was clear error. The implications of a decision that is otherwise would be long-reaching into every real estate transaction that involved a ROFR. The modification of any terms in the context of attorney review or inspections would cause the transaction to be held in abeyance and the new matter presented to the ROFR holder in the middle of the pre-closing period even after a signed contract existed. Litigation in the Chancery Division

would expand exponentially with conflicting contractual rights between the ROFR holder and the buyer.

Although the Defendant Amrit and the third party buyer could have legally proceeded with the closing any time after February 17<sup>th</sup> of 2023, they did not do so because Inder Rathore, the principal of Defendant Amrit, wanted an affirmative written waiver (which was not legally necessary) before closing and so, the Defendant indulged the demand of the Plaintiff to add in the ROFR language to the proposed contract in the hope of receiving a written waiver (which is not required in paragraph 39 of the MFSA). More significantly, the Plaintiff, PMG would not provide the calculations of what the buyer would have to pay as a penalty if they debranded the gas station unless and until the ROFR language was included in the offer and re-presented to the Plaintiff. Much confusion ensued in large part because the demand of the Plaintiff was so out of order and was not in keeping with their limited rights under Section 39. Da249.

**II. The Trial Court erred in finding that the addition of the Right of First Refusal acknowledgement clause was a material modification and therefore triggered a new 30 day period within which the Plaintiff might exercise its Right of First Refusal. (raised below, Da379,394)**

The Trial Court seems to agree that only a change in “material” terms of the offer would cause the seller to have to



re-present an offer to the ROFR holder. Da355. Whether the third-party buyer was advised of the existence of the Plaintiff's ROFR *is not material to the ROFR holder*. The third party buyer's knowledge of the ROFR has no impact on the ROFR holder's rights. Yet, the Trial Court found that it *was* a material term, as a matter of law and that once that term was added to the offer and presented to the Plaintiff on May 4<sup>th</sup>, 2023, it materially changed the contract terms such that a new presentation of the offer to the Plaintiff was necessary. Da366. This is error.

In the case of *Jabbar Singh v. South Brunswick Plaza, L.P.*, (unpublished) the Appellate Division dealt with the issue of a material change vs. a "tweak" of the offer. The Court discussed the issue in terms of materiality, saying:

[t]here is no factual dispute concerning what was offered and when. The parties agree on what was discussed and what was offered. The only argument is whether the changes in the terms of the offer was, in the words of plaintiff, mere "tweaking", or whether the changes were such as to constitute a new offer. We are convinced that the changes in this case were not mere "tweaking." The change in price was certainly material. The language and extent of an indemnity agreement was material, as was the determination to "cap" legal fees. In a \$ 1,500,000 transaction which involves property that may have significant environmental issues, as well as other issues, a limitation of \$ 5000 on legal fees on its face appears material. The changes in each successive offer were inconsistent with the prior offer and, therefore, terminated the prior offer and created a new offer. *See RGC Int'l Investors, LDC v. Ari Network Services, Inc.* 2004 U.S. Dist. LEXIS 1161 (D. Del. 2004); *Norca Corp. v. Tokheim Corp.*, 227 A.D.2d 458, 643 N.Y.S.2d 139 (App. Div. 1996); *Restatement of the Law (Second)*

*Contracts* § 43 (1981); 1-2 *Murray on Contracts* § 42 (4th ed. 2001). Da415.

It can hardly be the case that acknowledging the existence of the language of paragraph 39 from the MFSA in the offer is a material change that created a new offer. Rather, it reduced to writing a term that everyone already was aware existed, a term that had no impact on the manner by which PMG would acquire the property if they were to properly exercise their ROFR and a term that did not alter the offer in any other manner, including the purchase price. Thus, it was a non-essential term and did not even need to be resubmitted to the Plaintiff prior to Amrit and Fuel One proceeding to closing. The ROFR had already been waived on February 17, 2023. Adding the acknowledgement of Plaintiff's ROFR was mere "tweaking". It was the only change made to the offer/contract and it was made *at the insistence of the Plaintiff ROFR holder* and did not alter the terms by which the property would be acquired. It was a "tweak" if ever there was a "tweak". Moreover, it was a tweak made with the ROFR holder's full knowledge and on their demand, so they were aware of the term even before they were made officially aware of it on May 4<sup>th</sup>, 2023. Indeed, the Plaintiff's general counsel accepts the offer and acknowledges to Fuel One's attorney that the offer is being processed on May 5<sup>th</sup>, 2023. Da69. The inclusion or failure to include the provision regarding the existence of the

ROFR would not alter anything. The ROFR existed before the change was made to the offer because it was included in the FMSA amendment, which was the contract between the Plaintiff and Defendant Amrit. The ROFR did not need to be mentioned in the agreement between the third-party buyer and the seller in order for it to be a condition attached to the sale of the gas station. It was therefore not a "material term" of the offer/contract between Defendant Amrit and Fuel One.

*Black's Law Dictionary* defines "material term" as a "contractual provision dealing with a significant issue such as subject matter, price, payment, quantity, duration or the work to be done." *Black's Law Dictionary*, 10<sup>th</sup> Ed. 2014. A representation is material "if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question." *Restatement Restitution*, sec.8(2). In the instant case, although the existence of a ROFR might be material to a third-party buyer, it was not and could not be material to the ROFR holder. Not only is a ROFR holder already aware of the existence of its own ROFR regardless of whether it is included in a bona fide offer, but that ROFR is their right, which, if they exercise it, the limiting effect of it in the offer would become moot. We know that the absence or presence of the mention of the ROFR had no impact on the third-party buyer because even after that provision was added in writing to the

contract, neither the price, nor any other term changed. Da71. The issue of the ROFR being contained or not contained in the offer/contract only served as a mechanism for the Plaintiff to justify taking the position that the offer was somehow not valid. The Trial Court agreed with this position. The Trial Court's decision was therefore in error.

The failure to explicitly mention the Plaintiff's ROFR did not invalidate the offer nor did including a new provision in which it was explicitly mentioned change the offer in a material way. This is akin to the facts and result of the unreported case of *H&G Hardware v. Cohen* A0667-04T2 2006 WL 27624 (App.Div. Jan 6, 2006). Da335. That matter involved a seller who conveyed the sale price of real estate "as is" to the ROFR holder, who wanted to exercise its ROFR, but the trial court found that the price and "as is" alone was not enough to constitute an offer. Da335-341. In the matter at bar, the facts are reversed and so should the outcome be reversed. There was only one term, which was a non-essential term, that was added to the offer different from that initially presented to the ROFR holder.

In *H&G Hardware, supra*, the Appellate Division took special note of the fact that the existence of a ROFR by the tenant was not mentioned in the contract between the property owner and the third-party buyer. Other than making mention of the ROFR not being a written term of the offer, no further discussion

regarding that issue is contained in the opinion of the Court. Da335. It had no place in the Trial Court's decision nor, despite it being explicitly mentioned by the Appellate Division, did it have any influence on the decision of the Appellate Court. One can only conclude that this is because it was not a material term that was necessary to make it a valid, good faith offer.

In the case at bar, a non-essential term of the contract was added only at *the ROFR holder's behest* and under the duress of the seller (Amrit) and the third party buyer, (Fuel One). The non-essential term is non-essential (As in *H&G Hardware v. Cohen* A0667-04T2 2006 WL 27624 (App.Div. Jan 6, 2006)), because in the event that the ROFR holder (PMG) were to exercise its ROFR, the ROFR would have virtually no impact on the manner by which the ROFR holder can acquire the property. The ROFR holder already has the right by way of the prior contract between PMG and Amrit. Because of that one non-essential term being missing, the ROFR holder refused to acknowledge it as a bona fide offer. The Trial Court agreed with the Plaintiff/ROFR holder's assessment. This is clear error.

III. Presuming a written acknowledgement of the Plaintiff's ROFR to be a material modification of the third party's offer/contract, the Trial Court erred in finding that the ROFR was not waived by the Plaintiff on June 3<sup>rd</sup>, 2023. (raised below, Da395)

Presuming that this Appellate Court agrees with the Trial Court that the addition of the ROFR provision to the offer/contract actually was in some way a "material" change to the offer/contract, the presentation of the revision by Fuel One's attorney, Alan Ackerman on May 4, 2023, which explicitly included the ROFR, marked the beginning of a new 30-day period during which the Plaintiff could exercise its ROFR. Da70.

The Trial Court concluded that the second presentation of the contract to the Plaintiff on May 4<sup>th</sup>, 2023 did not count and that the clock on the Plaintiff's time within which it may exercise its ROFR did not start ticking until May 8<sup>th</sup>, 2023 because the document which was presented on May 4<sup>th</sup>, 2023 was not presented by the *seller*, but was presented by the **third party buyer** (Fuel One's attorney, Alan Ackerman, Esq.) to the Plaintiff. Da395. The Plaintiff's general counsel even acknowledges receipt and begins "processing" the offer as of May 5<sup>th</sup>, 2023. Da69. The Trial Court's assessment of the impact of the third-party buyer presenting the document was that it didn't "ripen" into a "truly 'bona fide'" offer until the seller (Amrit) presented it to [PMG] on May 8<sup>th</sup>. Da395. Thus, it was not because the offer was

signed by Amrit and Fuel One that was the determining factor, but that Amrit was the one "confirming its intention to sell the property..." Da395. The fact that the Plaintiff PMG had the contract, with the amendment that they demanded, in its possession since May 4<sup>th</sup>, 2023 was, according to the Trial Court, of no import. The Trial Court bases its decision in this regard on no case, no law, no argument presented by the Plaintiff, but its own bald analysis.

In its Decision, the Trial Court points to one-sided negotiations (Alan Ackerman's attempt to get Amrit to shoulder some of the debranding penalties) that have no impact on the revised offer submitted on May 4<sup>th</sup>, 2023 and do not appear in same, as a basis for concluding that the Defendant, Amrit had to also acknowledge the revised offer in order to make it a valid offer. Da395 (see footnote). The Trial Court, in other words, got behind/underneath the bona fide offers (the one submitted to PMG on January 17<sup>th</sup> and the one submitted on May 4<sup>th</sup>, 2023), to see that ongoing negotiations might change more than just the acknowledgement of the Plaintiff's ROFR, thereby requiring a presentation to the Plaintiff by Amrit, not Fuel One. No other change was made to the offer and therefore, there was no reason to require Amrit to be the one to present the amendment to Plaintiff PMG in May of 2023. The one-sided negotiating (or, attempt to renegotiate terms) by Fuel One's attorney could not

alter the terms of the already established contract without some expression by Defendant Amrit to these issues. The Trial Court went too deeply behind the transaction because of discovery having revealed communications post contract that had no legal impact on the original PSA, and, due to the ROFR term being non-essential, no need to resubmit the offer to the Plaintiff except that the Plaintiff insisted upon it.

The Trial Court even seems to be indicating that a provision relating to the MFSA in the original PSA that are "reaffirmed and incorporated by reference" in the May 4<sup>th</sup>, 2023 amendment somehow modify a prior offer. Da395. However, the only prior offer was the one that the Plaintiff PMG admits to receiving on January 17, 2023. Certainly, a reaffirmation from a prior contract is not a material change yet, it is this upon which the Trial Court seems to base its conclusion that the offer did not "ripen" until May 8, 2023. This analysis is simply not based on the facts of the case.

The Trial Court views this series of events in a vacuum and fails to consider the surrounding circumstances, which were unique and important: a good faith buyer and its attorney are waiting in the wings, extremely eager to close on the sale of a gas station. The buyer knows that the ROFR holder won't provide information needed to finalize the sale until it receives this ROFR language in the "bona fide offer" and represents to the



buyer and the seller that once that language is included, it will waive the ROFR. In an effort to appease the ROFR holder, who also happens to have control over what the calculations for penalty in debranding will be, the language is modified to explicitly reference the ROFR. The Trial Court ignores all of these circumstances and instead focuses on a letter from April 2023 in which counsel for the good faith buyer, who believes that any ROFR has already been waived and that Plaintiff, PMG has no standing to dictate anything to anyone, writes a frustrated letter in which he says, "PMG's insistence [on adding the ROFR language to the contract] is both misplaced and irrelevant to our transaction." Da249. Later in the letter, he states, "Purchaser is buying the property subject to all existing agreements between Seller and PMG. The insistence on the initial by Buyer adds nothing." Da249. He then tries to re-open the issue of who will pay the debranding penalties. Da250. The Trial Court bases its decision on this as a change in the material terms of the contract. However, the ultimate outcome of this attempt to renegotiate that term never resulted in any change to the contract between Amrit and Fuel One. Moreover, even if it HAD resulted in a change to the issue of who would be paying the penalties for debranding, that term would have no impact whatsoever on the ROFR holder's position (i.e. whether to exercise its ROFR or not). The debranding penalty would not

apply to PMG because as the new owner of the property they would be paying that penalty to themselves (*in other words, they would not be paying any penalty*). An email from Alan Ackerman, Esq., attorney for Fuel One, which is dated March 29<sup>th</sup>, 2023 (prior to the April letter) expresses his (a) understanding of the ROFR having existed and (b) belief that the ROFR was already waived. Da247. This email is consistent with the later letter in April in which Mr. Ackerman states that he believes PMG has notice of the contract (for purposes of exercising or not exercising its ROFR) since they are demanding an initial on the provision of the contract between PMG and Amrit that references the ROFR. Da249. Clearly, at that point, if it was even relevant to the issue of whether the offer was valid when presented to PMG on January 17, 2023, former Defendant Fuel One was aware of the ROFR. As Mr. Ackerman succinctly states in his letter of April 21<sup>st</sup>, 2023, however, "PMG's insistence is both misplaced and irrelevant to our transaction." Da249.

Even at oral argument on Fuel One's Motion to dissolve restraints on July 25, 2023, counsel for PMG takes issue with the May 4<sup>th</sup>, 2023 amendment, initialed by Fuel One's principal, sent to PMG by Alan Ackerman, Esq., because, he stated, "...we didn't know what was real because we're dealing with the buyer and not the seller. And it's the seller that needs to provide this to us, and not the buyer." 2T.@43:17-20. Counsel for PMG,

like the Trial Court, ignores (willfully) the context. He wants the Trial Court to assume that (a) the ROFR acknowledgement by the buyer is material to the offer such that the offer is invalid without it and (b) even though it is the **only** term to change in the contract, even though it is a change that PMG is demanding, from Amrit (who already is a party to the contract with PMG in which the ROFR applicable and therefore did not need to acknowledge the ROFR) under duress, and even though both Amrit and Fuel One have been pushing for an affirmative expression of waiver from PMG as well as debranding figures from January through May of 2023, it is the formal acknowledgement by both buyer and seller (Amrit) that were necessary to trigger the 30 day period because PMG needed to know "what was real." Defendant Amrit submits that the evidence clearly showed that Amrit and Fuel One were in a continuous state of trying to move forward to closing on the gas station under all the same terms of the original PSA and only being held up by the insistence of Plaintiff, PMG that the ROFR must be acknowledged by Fuel One in writing. The need for Defendant Amrit to also acknowledge that ROFR was an excuse for PMG after the fact to squeeze their exercise of their ROFR within the 30-day period that paragraph 39 required. They knew "what was real" all the time. Thus, even in the Trial Court's determination of whether the May 4<sup>th</sup>, 2023

presentation of the amendment to Plaintiff triggered the 30 day period, the Trial Court was in error.

CONCLUSION

Based on the foregoing arguments of counsel Defendants Amrit, Inc., d/b/a Circle Exxon, Shamsher Singh Rathore and Komal Singh request that the Judgment in favor of the Plaintiff entered by the Trial Court in this matter be reversed and that the denial of the Defendant's Cross Motion for Summary Judgment be granted.

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Singh Rathore and Komal Singh

/s/ Patricia M. Love

DATED: May 20, 2024

By: \_\_\_\_\_  
PATRICIA M. LOVE, ESQ.

PMG NEW JERSEY II, LLC,

Plaintiff/Respondent,

vs.

AMRIT INC., d/b/a CIRCLE EXXON,  
34 US-1 LLC d/b/a FUEL ONE, INC.,  
SHAMSHER SINGH RATHORE,  
KOMAL SINGH, and JABBAR  
SINGH

Defendants/Appellants.

X SUPERIOR COURT OF NEW JERSEY  
: APPELLATE DIVISION  
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: DOCKET NO. A-001854-23  
:  
: ON APPEAL FROM:  
:  
: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION GENERAL  
: EQUITY PART – MIDDLESEX  
: COUNTY, DOCKET NO. MID-C-84-23  
:  
: Sat Below:  
: Hon. Thomas D. McCloskey  
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X

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**BRIEF OF RESPONDENT PMG NEW JERSEY II, LLC**  
**Submitted: June 19, 2024**

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## **PRELIMINARY STATEMENT**

Defendant Amrit Inc., d/b/a Circle Exxon (Amrit) breached the Right of First Refusal (ROFR) provision in its motor fuel supply contract with Plaintiff PMG New Jersey II LLC (PMG) that would have enabled PMG to buy its service station property. The Trial Court found as such and ordered the sale. In deciding this appeal, this Court should respectfully decline to condone Amrit's breaches as well as its material misrepresentations to both PMG and the prospective buyer of the property based upon the fundamental tenets of contract law and general principles of equity and uphold the decision below.

The basic facts of this case are simple. Amrit granted a ROFR to PMG on any future sale of the property located at 34 Route 1, New Brunswick, NJ 08901 (Premises) through a Motor Fuel Sale Agreement (MFSA) and subsequent amendments. The ROFR required Amrit to "promptly" send a copy of bona fide third party offers to PMG, before Amrit accepted said offer. PMG could purchase the Premises on the same terms and conditions for a 30-day period after receipt of the offer. If any of the terms and conditions changed, Amrit was required to present the new offer to PMG, creating another 30-day period.

Amrit did not abide by the plain terms of the ROFR. Instead of obtaining and presenting an offer, Amrit executed a fully-formed Purchase Sale Agreement (PSA) with third party buyer 34 US 1 LLC d/b/a Fuel One Inc. (Fuel



One) on October 14, 2022 without presenting the offer to PMG. In a belated—but ultimately flawed—attempt to comply with the ROFR, Amrit presented PMG with an unsigned copy of the PSA three months after it was executed, creating the illusion that the offer had not yet been accepted. Moreover, the PSA was fundamentally flawed because it falsely represented to Fuel One that no ROFR existed on the Premises. Because Amrit misled Fuel One into believing that the Premises was unencumbered, Fuel One’s offer lacked a true measure of the market value of the property (one of the purposes of the ROFR mechanism).

When Fuel One was finally informed of the ROFR several months after the PSA had been signed, Fuel One attempted to renegotiate the purchase price of the property with Amrit. While the purchase price did not change, other terms and conditions of the PSA did: Amrit and Fuel One executed two separate amendments to the PSA: an environmental disclosure amendment on May 2, 2023, and an amendment on May 8, 2023 which finally recognized PMG’s existing ROFR. This last amendment constituted the final offer, which PMG ultimately accepted by exercising its preemptive right to purchase the Premises on June 6, 2023. Amrit refused to accept PMG’s exercise of the ROFR.

The instant litigation ensued. In a comprehensive February 20, 2024 opinion, the Trial Court found that PMG had properly exercised its ROFR within

30 days of the final offer and granted summary judgment compelling specific performance of the sale to PMG.

Amrit's appeal claims that the Trial Court erred on three spurious grounds: 1) in not holding that PMG waived its ROFR within 30 days of January 17, 2023; 2) in finding that the May 8, 2023 amendment triggered a new 30-day ROFR period; and 3) in not holding that the 30-day period ran from May 4, 2023, when a partially signed amendment was circulated by Fuel One.

All three arguments are meritless. Amrit had unclean hands in executing the PSA and converting the offer into a binding contract without first notifying PMG of the offer; but once it created an executory contract, by its own terms all amendments were required to be similarly executed by the parties in writing. The ROFR was exercised within 30 days of the final executed contract.

For these and the reasons set forth below, Amrit's appeal should be denied.

### **STATEMENT OF FACTS**

PMG submits the following statement of facts in opposition to Amrit's inaccurate and selective recitation of the record.<sup>1</sup> As Amrit<sup>2</sup> appeals from the Trial Court's February 20, 2024 Order granting summary judgment in favor of

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<sup>1</sup> 1T, February 16, 2024 transcript of oral argument.

<sup>2</sup> PMG refers to all of the defendants collectively as "Amrit" herein.

PMG and denying summary judgment to Amrit, the record below should be limited solely to those documents filed with the Trial Court for the motion.

**I. Amrit grants PMG a ROFR.**

On March 4, 2012, PMG entered into the MFSA with Amrit.<sup>3</sup> Da021. Amrit Inc. is the corporate entity that owns and operates the gas station at the Premises. Ibid. Under the MFSA, Amrit agreed, among other things, to purchase all motor fuel products for use in the operation of its business at the Premises exclusively from Plaintiff. Ibid. On April 24, 2015, Plaintiff and Amrit entered into Amendment Number 1 to the MFSA. Da037. Among other provisions, the Amendment includes Section 39, which provides PMG with a preemptive right of first refusal in the event Amrit sought to sell the Premises to a third party. Ibid.

Section 39 of Amendment Number 1 to the MFSA provides that:

39. Preemptive Right. If Purchaser is the owner or lessee of the Premises, Seller shall have the following preemptive rights:

If, at any time during the term of this Agreement Purchaser shall receive a bona fide offer from a third party (the "Offer") to purchase or otherwise acquire the Premises, Purchaser shall, before accepting said Offer, promptly send a copy of the Offer to Seller which shall have the preemptive right to purchase or otherwise acquire the Premises on the same terms and conditions as set forth in the Offer. If Seller elects to

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<sup>3</sup> Contrary to the claim in Amrit's brief (and despite this having been clarified to counsel previously), PMG is not and never has been a subsidiary of Exxon Mobil. It is an independent company that owns, operates and/or supplies fuel to service stations along the Atlantic seaboard.

exercise its preemptive right under this Section 36(a)(1), it shall do so by providing written notice to Purchaser within thirty (30) days following receipt of the Offer and the closing shall take place within ninety (90) days thereafter ( or at such later date as provided in the Offer). If Seller does not exercise its preemptive right within the foregoing thirty (30) day period, Purchaser shall have the right to sell to the third party from whom it received the Offer (and no other party, without again first giving Seller its preemptive right as provided in this Section 36(a)(1), on the same terms and conditions as set forth in the Offer (but not on different terms or conditions, without first giving Seller its preemptive right as provided in this Section 36(a)(1)). If during the term, Purchaser is actively negotiating with a third party to sell the Premises, and within six (6) months following the expiration of the term, Purchaser enters into a definitive transfer agreement with said third party, Seller shall have a preemptive right to purchase or otherwise acquire the Premises, in accordance with the provisions contained herein, as though the definitive transfer agreement had been executed during the term and had constituted the Offer received by Seller on the last day of the term.

Da38.

The ROFR is clear that Amrit, before accepting an offer, must promptly send a copy of the offer to PMG. Ibid. The word “material” does not appear at any point in the ROFR. Ibid. In the event that any of the terms and conditions of the offer are modified, a new 30-day period is triggered for PMG to exercise its ROFR.

On May 2, 2018, PMG and Amrit entered into the Second Amendment to the MFSA, which extended the term of the MFSA until December 31, 2027. Da040. PMG and Amrit have not subsequently amended the MFSA, which remains in full force and effect. There is no dispute that Amrit signed the MFSA

and all of its amendments and agreed to the terms as written. Da181-184, Da258-259.

**II. Amrit enters the PSA without PMG's knowledge.**

At the end of 2021, Amrit's *de facto* manager Inder Rathore approached the local PMG representative Christopher Krisza and made a general inquiry as to whether PMG might be interested in purchasing the Premises. Da209. Amrit did not have an offer in hand at the time and was merely inquiring if PMG wanted to purchase the property outright. *Ibid.* PMG informed Amrit that it would only consider a purchase through the ROFR mechanism upon the submission of a bona fide offer from a third party. *Ibid.* Amrit was so unhappy with PMG's decision not to directly buy the Premises in 2021, that Amrit now admits that sentiment is behind its refusal to sell to PMG at all, even under an exercise of the ROFR. Da222.

But wanting more money from PMG may also be behind that decision. Ms. Rathore later testified that she believed a ROFR does not entitle PMG to purchase the Premises at the same price as a third-party offer. Da224.

Nevertheless, no further mention of any potential sale of the Premises was raised by Amrit to PMG until September 18, 2022, when Ms. Rathore sent Krisza the following email: "Due to a potential sale of the business, I am requesting that you provide me with the Exxon DE branding penalties as well as

penalties to terminate supply agreement with PMG for site 8112 - 34 US Highway 1, New Brunswick, NJ. The potential buyer would operate the site as an unbranded gas station.” Da111.<sup>4</sup> The September 18, 2022 email contained zero terms or conditions and did not constitute a bona fide offer as required by the ROFR. Ibid. As requested by Mr. Rathore for Amrit, on October 26, 2022, Krisza provided the penalty calculations for termination of the supply agreement by email, which were calculated at \$512,933.77. Da112.

However, unbeknownst to PMG, 12 days earlier, on October 14, 2022, Amrit had already entered into the executed PSA to sell the Premises to Fuel One for \$2.5 million. Da049. Amrit did not provide the PSA to PMG prior to executing the agreement and turning the offer into a legally binding contract. Da084, Da187 ¶29, Da259 ¶29.

The PSA contained material misrepresentations regarding the agreements with PMG. Da190 ¶43. For instance, Section 10(c) of the Original PSA, titled “No Other Contracts,” falsely stated that “[t]o the best of Seller’s knowledge, there are no existing or claimed purchase contracts, rights of first refusal or

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<sup>4</sup> Amrit has contractual agreements with both Exxon Mobil and PMG. Operating the station without advertising the Exxon Mobil brand and/or ending the MFSA agreement for PMG to exclusively supply Exxon Mobil gasoline to the station would result in separate contractual penalties.

special assessments affecting the Property.” Da055. This was a materially false term. Ibid.

The PSA also contained a “Full Disclosure” provision, noting that Amrit had disclosed all material facts relating to the ownership, operation and maintenance of the Premises and that the statements in the PSA did not contain any untrue statement or omitted a material fact. Da057.

In fact, Fuel One was not aware that PMG possessed a ROFR on the Premises at the time that it signed the PSA. Da262, ¶46, Da248.

The PSA also contained an “Entire Agreement” clause, which stated “[t]his Agreement contains the entire Agreement between Seller and Purchaser relative to purchase of the Premises and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. Any changes or additions to this Agreement must be made in writing and executed by the parties hereto.” Da057. This was a primary reason why PMG asked that the PSA be amended by the parties in writing to reflect the ROFR.

Amrit knew that the terms of the Original PSA were wrong, as the contract stated that there was no existing ROFR, yet Amrit signed it anyway. Da216. For reasons unknown, Amrit withheld the Original PSA from PMG and did not

provide notice that a PSA had been executed for an extended period of time. Da152, ¶9, Da190 ¶39- ¶40, Da261 ¶39-¶40.

On January 17, 2023, Krisza, whose official title is PMG's District Development Manager for the region, went to the Premises and was given a copy of an unsigned PSA by Inder Rathore. Da153 ¶14, Da190 ¶41, Da261 ¶41. PMG reviewed the copy of the PSA and found that it was missing key terms, such as the existence of the ROFR and the PMG's right to approve any prospective applicant under the Assignment clause of the MFSA. Da153 ¶15, Da190 ¶42, Da261 ¶42 .

On January 19, 2023, Krisza called Ms. Rathore to discuss the missing terms in the PSA and to set up a meeting at the Premises on January 26, 2023. Da261 ¶44. On January 26, 2023, Krisza met her at the Premises to discuss the PSA, as well as to review sales and expense figures for the Premises in anticipation that PMG would consider exercising the ROFR after the offer was corrected. Da261 ¶45.

The missing terms reflected both Amrit and Fuel One's misunderstandings about the MFSA's requirements. Amrit's longtime attorney, George Hendricks, was apparently unaware of the existence of the ROFR until PMG provided that information directly to him. Da261 ¶46. On February 8, 2023, Krisza had calls with Hendricks and his legal assistant, Pam Shields, whereby he informed them



that PMG had a ROFR under the MFSA and that the PSA needed to be corrected to account for this material term. Da191 ¶46, Da262 ¶46.

That same day, per their request, Krisza emailed them the language from Amendment Number 1 of the MFSA, containing Section 39, which included the ROFR requirement, the amortization table and termination costs. Da191 ¶47, Da262 ¶47. On March 27, 2023, Kriza again sent Shields the First Amendment to the MFSA, which contains Section 39 and the ROFR language. Da191 ¶48, Da262 ¶48.

Incredibly, as of March 29, 2023, Hendricks and Fuel One’s attorney, Alan Ackerman, apparently still did not believe that PMG had an existing ROFR on the Premises or that PMG would exercise it. Da191 ¶49, Da262 ¶49. In that same email, Ackerman wrote to Hendricks that Krisza had told him “it makes no sense for PMG to purchase this property by exercising the Right of First Refusal. However, he can’t commit to that at this point in time.” Da191 ¶50, Da262 ¶50. This statement confirmed Krisza’s previous remarks to Amrit that while he did not think PMG would ultimately exercise its ROFR, he had no authority to commit to that position and never did so. Da156 ¶26-27.

As late as one month before the PSA was finalized there was further evidence the attorneys were unaware of the full scope of the MFSA. On April 3, 2023, Krisza corresponded again with Shields, who had been under the

impression the MFSA had expired, to explain that the MFSA was still in effect. Da192 ¶¶51, Da262 ¶¶51. Krisza emailed her the language of Section 4 of the Second Amendment to MFSA, reflecting that the term of MFSA had been extended through December 31, 2027. Ibid.

Amrit also tried to “satisfy” the ROFR (without PMG’s involvement) in April of 2023 by offering to have Fuel One “assume” and grant PMG a ROFR upon Closing, which Fuel One rejected. Da249.

On April 21, 2023, Attorney Ackerman, on behalf of Fuel One, objected to the assumption of the ROFR and further demanded that Amrit “agree to contribute to [the] termination penalty” of \$328,740.14, calling it an issue “that must be resolved immediately if this closing is to proceed.” Ibid.

On May 2, 2023, Ackerman sent an email to PMG which expressly acknowledged that PMG held a ROFR and indicated that Fuel One expected an extra-contractual discount for termination fees that might be due and owing to PMG (and Exxon Mobil):

I annex Addendum 1 which has been initialed by the Buyer as requested by PMG. I am requesting that PMG advise that its right of first refusal is being waived so that this matter can close. I am also requesting updated termination amounts from PMG. The agreement by Buyer to purchase the property continues to be subject to calculation of the amount of termination fees due and owing to PMG, and review and acquiescence by Buyer.

Da145.

Addendum I was an amendment to the PSA by Amrit and Fuel One, disclosing environmental issues and assigning indemnification rights not previously stated in the PSA. Da96. PMG was not involved in Amrit's decision to enter into Addendum I.

On May 4, 2023, Ackerman openly acknowledged that the process of waiving the ROFR had yet to even begin. Da070. Although the MFSA clearly states that an offer is to be provided to PMG by Amrit and because the PSA was an executed contract that required by its terms that all amendments be signed by the parties, it was Fuel One which provided a copy of Addendum II acknowledging the ROFR, signed only by its principal:

Jabbar Singh has executed the annexed Addendum II. Hopefully, Seller's signatures will be received quickly. In an effort to expedite the process, I am forwarding the executed Addendum to PMG for their review. Since I am sure that Seller will execute as well, I am requesting that Mr. Ejtemai [General Counsel for PMG] begin the process of waiving its right of first refusal.

Ibid.

The Addendum II referenced in the May 4, 2023 email was an amendment to the PSA modifying Section 10(c) to state, “[t]o the best of Seller’s knowledge, there are no existing or claimed . . . rights of first refusal . . . affecting the Property except for ongoing Fuel Supply Agreements between Seller and PMG New Jersey II which includes a right of first refusal on the sale of property in

Addendum 1 dated April 24, 2015.” Ibid. However, the Addendum II attached to the May 4, 2023 email was only signed by Fuel One, not Amrit. Da071.

On May 8, 2023, PMG received an email from Shields with the fully executed Second Addendum to the PSA. Da072. On May 24, 2023, PMG informed Ackerman that PMG was considering its ROFR and would respond on or before 30 days from receipt of this executed offer, by June 8, 2023. Da069.

On June 6, 2023, well within the 30-day window, PMG Vice President Jeff Bucaro notified Defendants that PMG was exercising its ROFR under the same terms and conditions contained in the PSA and related addendums. Da075.

On June 7, 2023, Ackerman emailed Amrit’s counsel complaining that “[t]he buyer was not informed of the are [sic] right of first refusal.” Da248.

PMG never provided Amrit with a clearance letter waiving its ROFR so Amrit could sell the gas station to a third party. Da211-Da212. Amrit at first had refused to proceed with closing on the Property with Fuel One until PMG issued a clearance letter. Ibid. When PMG actually exercised its ROFR, however, Amrit refused to acknowledge same and announced it would close on the PSA with Fuel One. Da076.

**III. The Parties engage in litigation and the Trial Court grants summary judgment in favor of PMG.**

PMG filed its Verified Complaint and Order to Show Cause against Amrit, its principals, and Fuel One and its principal and was granted temporary

restraints enjoining all defendants from closing on the Premises. Da100. The defendants filed a motion to terminate the temporary restraints, arguing that the sale to Fuel One should proceed in accordance with the PSA. Da135, Da164. The Trial Court denied this motion. Da165.

On or around September 13, 2023, Fuel One reached an agreement with PMG to be dismissed from the case upon a representation that Fuel One had withdrawn their offer to purchase the Premises under the PSA and that certain discovery would be produced to Plaintiff. Da169. An executed stipulation of dismissal as to Fuel One was filed shortly thereafter. Ibid.

The remaining parties conducted expedited fact discovery and took the depositions of key party witnesses to this case. After that was completed, the parties filed dispositive motions with oral argument heard on February 16, 2024. Da171, Da251, 1T. On February 20, 2024, the Court issued an Order and lengthy Statement of Reasons granting Plaintiff's motion for summary judgment, compelling specific performance of the ROFR, and denying Defendants' cross-motion for summary judgment. Da350.

The Trial Court's decision was fulsome and well-supported in the record, as evident by the lengthy recitation of the timeline and statement of material facts. As this Court specifically noted,

This motion record fails to reveal any genuine issue of material fact that, after according the Amrit Defendants with all legitimate inferences and viewing

that record in a light most favorable to them as the non-moving parties, no rational factfinder could find otherwise. At best, the Amrit Defendants point only to disputed issues of facts that are either irrelevant and immaterial and/or of an insubstantial nature.

Da385.

The Trial Court also made three queries which it answered as pertinent to the motions for summary judgment:

**Question 1:** Was the Right of First Refusal (ROFR) conferred by Amrit upon PMG in their MFSA for the potential sale and purchase of the real estate, business and equipment in use at the Exxon station located at 34 Route 1, New Brunswick, New Jersey 08901 (“Premises”), currently owned by Amrit, clear, unambiguous, valid, and binding upon the parties? If so,

**Question 2:** Was the valid final “bona fide offer”<sup>38</sup> made by the Fuel One Defendants to purchase the Premises not delivered by the Amrit Defendants until May 8, 2023 (instead of May 4, 2023 or earlier)? If so,

**Question 3:** Is PMG entitled to specific performance of the ROFR even though (i) Amrit accepted the original Offer made by Fuel One and executed the PSA *before* ever presenting it to PMG, (ii) Amrit thereafter amended it to conform with the preemptive right of first refusal provisions and early termination penalty provisions of the MFSA, but did not deliver the final “bona fide offer” and executed Second Amendment until May 8, 2023, and (iii) Fuel One subsequently rescinded the PSA and First Amendment - once revised by the Second Amendment of May 8, 2023 - to disclose the ROFR and other material terms (and Amrit’s commitment to post-institution of this litigation?)

Ibid.

The Court answered all three questions in the affirmative in a lengthy discussion and analysis. Da392-397. It found that the ROFR was clear,

unambiguous, valid, and binding upon the parties, a finding that Amrit does not actually challenge in the present appeal. *Ibid.*

Amrit challenges only the Trial Court’s factual and legal findings on question 2 posed by the Court in its opinion. The Trial Court held that the valid final “bona fide offer” was not delivered by Amrit until May 8, 2023. *Ibid.* The decision noted:

At oral argument, counsel for Amrit asserted that PMG had notice of the revised, final “bona fide” offer in the form of the Second Amendment – executed by Jabbar Singh on behalf of Fuel One, but not executed by Amrit – when it was emailed by Fuel One counsel (Mr. Ackerman) on May 4, 2023, and not by Amrit. Thus, in the view of the Amrit Defendants, the 30-day window for the ROFR was then triggered, but PMG did not elect to exercise its right to purchase until its letter of June 6, 2023 – two (2) days to [sic] late. As a result, Amrit contends that the ROFR expired on its terms and PMG, therefore, is not entitled to specific performance.

However, the Court is unpersuaded by that argument. For one, Amrit (denominated as Purchaser in the MFSA), if it received a “bona fide offer from a third party (“Offer”)”, had the obligation under Paragraph 39, “before accepting said Offer”, of “promptly” sending the Offer to PMG (denominated as the Seller in the MFSA). While the Second Amendment included a new Paragraph 10(c) to incorporate explicit reference to PMG’s ROFR and “Right of Last Offer” that had been added by the parties in their First Amendment of April 24, 2015 (as new Pars. 39 and 40), the Second Amendment also contained a provision stating “[i]n all other respects, the terms of the original Agreement of Sale, as amended, shall remain full force an effect.” Thus, the requirements of Paragraph 10(r) (entitled “Gasoline Supply, Petroleum, Or Similar Contracts”) of the original Agreement that explicitly acknowledged Amrit’s Fuel Supply Agreement with PMG, and Amrit’s potential responsibility for payment of termination penalties owed to PMG if its MFSA with Amrit was terminated (and gasoline purchase price obligations of Amrit as modified by the First Amendment of April 24, 2015), were re-affirmed and incorporated by reference.

In the latter regard, and prior to the preparation and execution of the Second Amendment, it was acknowledged by Fuel One and Amrit that PMG would

be entitled to an early termination penalty and thus early termination damages in the amount of approximately \$328,740.14 that would have to be borne by Amrit (or shared by it with Fuel One) if and as the MFSA with PMG was terminated.

Consequently, the Fuel One offer did not ripen into one that was truly “bona fide” until Amrit – pursuant to Par. 39 – “promptly” sent the Offer to PMG, which Amrit finally did by providing PMG with what turned out to be the fully executed Second Amendment at one and the same time on May 8, 2023. In so doing, Amrit was thereby and therein confirming its intention to sell the Property (whether to PMG, if it elected to exercise its ROFR, or to Fuel One if PMG determined not to or otherwise failed to give notice within 30 days of its receipt), and to assume responsibility for payment of termination penalties, if, PMG passed on the opportunity to purchase, Fuel One proceeded to purchase, and Amrit became obligated to honor PMG’s entitlement to payment of termination damages.

Da394-395.

The Trial Court raised concerns with Amrit’s failure to promptly provide a copy of the PSA to PMG before executing it as well as Amrit’s blatant misrepresentations in the PSA, stating:

For certain, the PSA needed to be amended to correct the misrepresentations made initially as to the existence of the ROFR, as well as affirmative confirmation of Amrit’s obligations for potential early termination penalties payable to PMG (including finalization of the early termination penalty payouts that would be required of Amrit if its Fuel Supply Agreement with PMG was terminated as a consequence of any sale to Fuel One).

Da396-397.

The Trial Court observed that beyond just the contractual language in PMG’s favor, there were equitable considerations due to Amrit’s behavior, stating, “If anything, at the end of the day, the amendments necessitated and made to the PSA



to conform it with the provisions of the MFSA, the ensuing conduct and negotiations by and among the parties in connection with the same, and resultant perfection of the Fuel One ‘bona fide’ Final Offer intermittently, and equitably, tolled the triggering of the 30-day exercise period until delivery made of the offer by Amrit to PMG on May 8, 2023.” Da397.

The Trial Court ordered Defendants to cooperate and facilitate a closing on the Premises to Plaintiff within 30 days of the date of the Order. Da397-398. This appeal followed.

## **LEGAL ARGUMENT**

### **I. STANDARD OF REVIEW**

The standard of review in determining whether the February 20, 2024 ruling by the Trial Court constituted error is de novo. Fernandez v. Nationwide Mutual Fire Ins. Co., 402 N.J. Super. 166, 170 (App. Div. 2008); Prudential Prop. Cos. Ins. Co. v. Boylan, 307 N.J. Super. 162 , 167 (App. Div.), certif. denied, 154 N.J. 608 (1998)("We employ the same standard that governs trial courts in reviewing summary judgment orders.")

Summary judgment is proper when a moving party is able to show that there is no genuine issue as to any material fact and that it is thereby entitled to judgment as a matter of law. R. 4:46-2. See also, Brill v. Guardian Life Ins. Co., 142 N.J. 521, 540 (1995). R. 4:46-2 states in pertinent part that a motion for summary judgment

should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment for order as a matter of law.” “[T]he standard of decision governing the grant or denial of a summary judgment emphasize that a party opposing a motion is not to be denied a trial unless the moving party sustains the burden of showing clearly the absence of a genuine issue of material fact.” Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1955).

In Brill, the Supreme Court held that “a determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill, 142 N.J. at 540. Even if there is a denial of essential fact by the non-moving party, a motion for summary judgment should be granted if the rest of the record viewed most favorably to the party opposing the motion demonstrates the absence of a material and genuine factual dispute. Rankin v. Sowinski, 119 N.J. Super. 393, 399-400 (App. Div. 1972).

A disputed issue of insubstantial nature should not preclude the grant of the motion. Prant v. Sterling, 332 N.J. Super. 369, 377 (Ch. Div. 1999). If the evidence

is so one-sided that a party must prevail as a matter of law, the motion should be granted. BOC Group v. Chevron Chemical Co., 359 N.J. Super. 135, 149-150 (App. Div. 2003). A respondent must show that there is more than some metaphysical doubt as to the material facts. Triffin v. American Intern., 372 N.J. Super. 517, 523-524 (App. Div. 2004). Mere conclusionary statements are inadequate to defeat a motion for summary judgment.

Nor will summary judgment be defeated by the private intent of a party to a contract regarding the interpretation of the contract. Domanske v. Rapid-Am. Corp., 330 N.J. Super. 241, 246 (App. Div. 2000) (“Under long-settled principles, the secret, unexpressed intent of a party cannot be used to vary the terms of an agreement. A contracting party is bound by the apparent intention he or she outwardly manifests to the other party. It is immaterial that he or she had a different, secret intention from that outwardly manifested.”) An issue regarding interpretation of a contract clause is a purely legal question ripe for summary judgment. See, Grow Co. v. Chokshi, 403 N.J. Super. 443, 476 (App. Div. 2008).

The Trial Court properly applied the summary judgment standards under Brill in finding that there was no genuine dispute of material fact. This is further confirmed by Amrit’s concession, vis à vis its own cross-motion for summary judgment, that no genuine dispute of material fact exists to bar the grant of summary judgment.

**II. The Trial Court Did Not Err In Granting Summary Judgment To PMG and Denying Amrit's Cross-Motion for Summary Judgment (raised below).**

As a preliminary issue, Amrit failed to comply with the written terms of the ROFR when it executed a complete contract for sale without first sending a copy of the offer to PMG. This initial breach had a cascading effect on the Parties' subsequent actions. It deprived PMG of an opportunity to evaluate the true market value of the Premises that took the ROFR into consideration. In converting the offer into a fully executed contract without providing notice to PMG, Amrit also bound itself to a legal document that required that "[a]ny changes or additions to this Agreement must be made in writing and executed by the parties hereto." Da063. What could have been easily amended before the offer was accepted no longer sufficed as both Amrit and Fuel One had to execute formal amendments to the PSA. Without explanation, Amrit hid the executed PSA from PMG for several months and then provided an unsigned copy of the PSA in a farcical attempt at compliance.

Amrit's unclean hands also extended to the PSA itself. The PSA falsely stated that there was no ROFR on the Premises. This misled Fuel One into believing that it was free to purchase the property without impinging on any third-party rights. Fuel One was not aware of the ROFR's existence until several months later, when PMG was finally provided with the PSA and objected to the incorrect terms. Amrit's

misrepresentation had to be corrected in order for PMG to properly exercise its ROFR. When PMG advised in January of 2023 that the PSA should be revised to include disclosure of the ROFR, Amrit bewilderingly refused to do so for nearly half a year.

Amrit is not an innocent victim here. It is a breaching party that seeks to avoid the consequences of its own actions. “He who seeks equity must do equity.” Natovitz v. Bay Head Realty Co., 142 N.J. Eq. 456, 463 (1948)(holding that “Equity may not, under this principle, alter the contract of the parties, but must enforce it according to its terms.”). As the Trial Court noted, strong equitable considerations should be taken into account against Amrit even beyond strict contract interpretation.

Amrit argues that the Trial Court erred in three ways: 1) in failing to find that PMG waived its ROFR within 30 days of January 17, 2023; 2) in finding that the May 8, 2023 amendment triggered a new 30-day ROFR period; and 3) in failing to find that the 30-day period ran from May 4, 2023, when a partially signed amendment was circulated by Fuel One. A thorough review of the record and of the Trial Court’s decision evinces Amrit’s misunderstandings as to the fundamental requirements of the ROFR terms, contractual interpretation, and the general principles of equity. All three arguments are wholly without merit.

**A. A New 30-Day ROFR Period Was Triggered by the May 2, 2024 Addendum I to the PSA (raised below, Da381).**

Amrit argues that the Trial Court erred in not finding that PMG waived its ROFR after the unsigned PSA was provided to PMG on or around January 17, 2023. This position is fundamentally flawed, as it ignores the plain meaning of the contract which grants PMG a new 30-day period with each and every modification to the offer.

It is an undisputed fact that Amrit did not understand what the ROFR actually required. Amrit's representative testified that its principals willingly and voluntarily signed the MFSA and the Amendments in order to do business as a branded fuel station, but that they did not fully understand how to comply with the ROFR. Da181 ¶6, Da184 ¶13, Da196 ¶72-¶73. In fact, Inder Rathore, the de facto manager of Amrit, testified that she only became aware of the ROFR in 2018, when the Amrit Defendants signed the Second Amendment. Da184 ¶13. She erroneously believed that Amrit satisfied the ROFR simply by asking PMG if it wanted to purchase the Premises in 2021, before Amrit had ever received an offer. Da195-196, ¶70, 72. This is not how the ROFR in the MFSA operated.

PMG was never required to present an offer to Amrit. Instead, under the MFSA, Amrit must present any third-party offers *to* PMG, and PMG then has the right to meet that offer or waive its right to meet that offer. The ROFR stated:

If, at any time during the term of this Agreement Purchaser shall receive a bona fide offer from a third party (the "Offer") to purchase or otherwise acquire the Premises, Purchaser shall, before accepting said Offer, promptly send a copy of the Offer to Seller which shall have the preemptive right to purchase or otherwise acquire the Premises on the same terms and conditions as set forth in the Offer. If Seller elects to exercise its preemptive right under this Section 36(a)(1), it shall do so by providing written notice to Purchaser within thirty (30) days following receipt of the Offer and the closing shall take place within ninety (90) days thereafter ( or at such later date as provided in the Offer). If Seller does not exercise its preemptive right within the foregoing thirty (30) day period, Purchaser shall have the right to sell to the third party from whom it received the Offer (and no other party, without again first giving Seller its preemptive right as provided in this Section 36(a)(1), on the same terms and conditions as set forth in the Offer (but not on different terms or conditions, without first giving Seller its preemptive right as provided in this Section 36(a)(1)).

Da038.

By the plain language of the contract terms, Amrit was required to send a copy of any bona fide offer to PMG, an action which would commence the 30-day period for PMG to exercise its right to purchase the Premises on those same terms and conditions. PMG was not required to "outbid" any offer Amrit received.

A real-estate owner's obligations to provide notice of an offer to sell said real estate to a ROFR holder are determined by the contractual provisions governing the ROFR. See, Gutch v. Meccia, 142 N.J. Eq. 430, 431-32 (Ch. 1948) (analyzing contractual provision granting a ROFR to determine the property owner's specific responsibilities for providing notice of a prospective sale to the ROFR holder under the contract). Here, Section 39 of Amendment Number 1 to MFSA governs PMG's

ROFR. In pertinent part, Section 39 provides that “[i]f . . . [Amrit] . . . receive[s] a bona fide offer from a third party . . . to purchase . . . the Premises, [Amrit] shall, before accepting said Offer, promptly send a copy of the Offer to [PMG] which shall have the preemptive right to purchase . . . the Premises on the same terms and conditions as set forth in the Offer.” Da038.

Tellingly, Amrit’s own attorney (who had purportedly advised the Amrit Defendants when they originally signed the MFSA, per Amrit’s testimony) was not even aware of the existence of the ROFR until PMG pointed out the exact language of the MFSA on March 27, 2023.<sup>5</sup>

What *is* clear from the undisputed facts is that Amrit agreed to be bound by the terms of the ROFR in the MFSA and had to comply with the written requirements, even if it fundamentally misunderstood or is willfully ignorant of what those terms are. The terms of the ROFR are clear and unambiguous. Nor is there a dispute that the ROFR was valid and binding upon the Amrit Defendants, or that any time Amrit changed the terms and conditions of the PSA, that change renewed PMG’s 30-day period to exercise its ROFR.

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<sup>5</sup> As to Amrit’s insistence that Fuel One was provided with the MFSA prior to signing the PSA, this fact is not reflected in the record and remains merely a bald allegation. Fuel One’s attorney was clear that Fuel One was not informed about the ROFR in private correspondence with Amrit’s counsel, which was provided in discovery and made part of the record below.



Amrit was provided with Amended PSAs on May 2, 2023 and again on May 8, 2023, each triggering new 30-day periods for consideration of the ROFR. Whether Amrit presented PMG with a copy of the unsigned PSA on January 17, 2023 is thus wholly irrelevant to the Trial Court's decision and cannot form the basis of any meritorious appeal.

**B. The Trial Court Did Not Err in Finding That Addendum II Triggered a New 30-day ROFR Period (raised below, Da375).**

Amrit places inordinate emphasis on the concept of "materiality" of any revised terms and conditions of the offer when a plain reading of the ROFR terms shows an absence of any such requirement. Rather, the MFSA states that a new 30-day period for PMG to exercise its waiver is created whenever the terms and conditions of the original offer are modified. "Purchaser shall have the right to sell to the third party from whom it received the Offer ... on the same terms and conditions as set forth in the Offer (but not on different terms or conditions, without first giving Seller its preemptive right...)". Amrit willfully seeks to read into the contract a materiality clause that does not exist.

While the correction of a mere typographical error or a formatting change would not grant a new 30-day period for PMG to exercise its ROFR, common sense would dictate that those are not "different" terms and conditions from the original offer. Yet here, the terms and conditions were so clearly changed by Amrit's execution of Addendum I and Addendum II to the PSA that there is no question that

it created a new 30-day period for PMG to exercise its ROFR. It was no mere “tweak” for Amrit to correct its palpable misrepresentations to the potential buyer of the property.

The first Addendum, presented to PMG on May 2, 2023, modified the environment disclosures of the PSA and assigned indemnification rights granted by Exxon-Mobil. Environmental issues can often impose significant liabilities for a motor fuel station. Addendum I created a significant change to the PSA, as without this term the indemnification rights remained with Amrit and not the potential buyer.

The second Addendum similarly modified the PSA. The October 14, 2022 PSA executed by Amrit and Fuel One omitted key terms – terms that Amrit knew existed, but materially misrepresented in the contract. Da188 ¶33. The original PSA lacked disclosure of PMG’s ROFR, as well as the requirement that PMG’s consent was required to before the MFSA could be assigned to Fuel One. Fuel One was not aware that a ROFR existed until several months after it executed the PSA. Da249, Da262 ¶46. Amrit’s failure to disclose the existence of PMG’s ROFR violated the “full disclosure” provision of the PSA, which required Amrit to disclose all material facts relating to the ownership, operation and maintenance of the Premises and that the statements in the PSA did not contain any untrue statement or omitted a material fact.

Subsequent to Fuel One's discovery that its offer was contingent upon PMG's waiver of the ROFR, it demanded that Amrit agree to contribute to the penalties that would be incurred in de-branding the fuel station. Da249. It is no mere coincidence that this demand occurred subsequent to the disclosure of PMG's ROFR to Fuel One. Had Fuel One known of the ROFR before it signed the PSA, it may have well negotiated for a lower purchase price to account for the additional considerations necessary where a ROFR is involved.

PMG calculated that in the Spring of 2023, it would have been entitled to an early termination penalty in the amount of approximately \$328,740.14 that would have to be borne by Amrit (or shared by it with Fuel One) if the MFSA with PMG was terminated. As of May 2, 2023, Fuel One was still insistent upon imposing contingencies upon the sale, specifically as to the amount of termination fees that had to be approved by Fuel One:

I annex Addendum 1 which has been initialed by the Buyer as requested by PMG. I am requesting that PMG advise that its right of first refusal is being waived so that this matter can close. I am also requesting updated termination amounts from PMG. The agreement by Buyer to purchase the property continues to be subject to calculation of the amount of termination fees due and owing to PMG, and review and acquiescence by Buyer.

Da145.

As reflected by Fuel One's own words that it had yet to "acquiesce[]" to the PSA pending the re-calculations of the termination fee, the terms and conditions of the

prospective sale were still in flux. Under these circumstances, PMG could not have exercised the ROFR because the terms and conditions of the sale of the Premises had not been finalized.

This fact was particularly salient to the Trial Court's decision, which noted that:

While the Second Amendment included a new Paragraph 10(c) to incorporate explicit reference to PMG's ROFR and 'Right of Last Offer' that had been added by the parties in their First Amendment of April 24, 2015 (as new Pars. 39 and 40), the Second Amendment also contained a provision stating '[i]n all other respects, the terms of the original Agreement of Sale, as amended, shall remain full force an effect.' Thus, the requirements ... of the original Agreement that explicitly acknowledged Amrit's Fuel Supply Agreement with PMG, and Amrit's potential responsibility for payment of termination penalties owed to PMG if its MFSA with Amrit was terminated (and gasoline purchase price obligations of Amrit as modified by the First Amendment of April 24, 2015), were re-affirmed and incorporated by reference.

Da394-395.

Fuel One, which had raised objections to paying the termination penalties for the MFSA and sought Amrit's contribution towards same after the PSA was signed, abandoned those objections and acquiesced to proceeding with the closing upon the execution of Addendum II.

Although the ROFR does not require that any changes to the terms and conditions of the offer need to be material in order to trigger a new 30-day period, it is undisputed that the existence of a ROFR is a material term in any purchase agreement for real estate.

Further, the existence of a ROFR could easily impact the market price of the property, while an interested buyer would not likely engage in due diligence (as Fuel One unknowingly did) until the ROFR had expired or been waived. However, the Parties here will never truly know what might have occurred but for Amrit's breach of the ROFR and contractual misrepresentations to Fuel One. PMG, for its part, had to know that the executed PSA was being made subject to the ROFR and approval for assumption of the fuel contract, which is why the Second Amendment was required.

Amrit's argument that it made and executed Addendum II "under duress" also wholly lacks merit and is unsupported in the record. Amrit was represented by counsel throughout the process. When PMG repeatedly informed Amrit that it had to disclose the ROFR to Fuel One, Amrit failed to do so for over four months. These facts do not constitute duress. Furthermore, Amrit's principals testified that they did not feel comfortable moving forward in the sale to Fuel One without an affirmative waiver from PMG—a waiver that would not come unless and until Amrit fully complied with the ROFR.<sup>6</sup>

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<sup>6</sup> The record is utterly devoid of any evidence to suggest that PMG made any threats or coerced Amrit to act not of their own free will. The very suggestion is defamatory. PMG did not take any legal action until after it had already exercised its ROFR and Amrit refused to honor it.

As Addendum II changed the terms and conditions of the PSA irrespective of materiality, it triggered a new 30-day period for PMG to exercise its ROFR. The Trial Court did not err on this basis.

**C. The Trial Court Did Not Err In Finding That Addendum II Only Constituted a Final Offer Once Executed and Delivered by Amrit On May 8, 2023 (Da376).**

Lastly, Amrit argues that the Second Addendum was a mere act of “humoring” PMG and that the May 4, 2023 transmittal by Fuel One’s counsel of a Second Addendum—signed only by Fuel One—triggered the 30-day period for PMG to exercise the ROFR. This argument must be rejected by this Court as antithetical to contract interpretation as well as common sense.

Amrit was required, as the grantor of the ROFR, to comply with the ROFR’s terms. It had already breached the ROFR in converting the offer into a contract without PMG’s knowledge. The Trial Court did not err in finding that Amrit did not present the modified offer to PMG on May 4, 2023. More importantly, Amrit’s arguments ignore the true basis for the Trial Court’s determination that a final Offer was not conveyed until May 8, 2023.

PMG’s demand for a fully executed Second Addendum was necessitated by Amrit’s actions in executing the Original PSA on October 14, 2022. The PSA became more than a mere “offer” once Defendants and Fuel One executed the

document; it became a legally binding document that could only be amended by fully executed documents.

This is directly based on the language of the PSA itself, which contains the plain language normally found in such purchase sale agreements. Section 10(t) of the Original PSA states “[t]his Agreement constitutes, a legal, valid and binding obligations of Seller, enforceable and in accordance with the terms except to the extent that enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws presently or hereafter in effect relating to or affecting the enforcements of creditor's rights generally and by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).” Da058. Section 18 of the Original PSA states:

18. Entire Agreement. This Agreement contains the entire Agreement between Seller and Purchaser relative to purchase of the Premises and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. Any changes or additions to this Agreement must be made in writing and executed by the parties hereto.

Da063.

PMG was entitled to a fully executed Second Addendum, not only because the PSA contained fraudulent misrepresentations, but also because the PSA required it in order for it to have any effect.

While PMG’s ROFR, on its face, does not require that a legitimate, bona fide offer has to be a contract signed by both parties, the ROFR does require that Amrit

present the offer to PMG before accepting it. That did not occur here. Amrit (eventually) presented a fully executed contract to PMG, one that was clearly inaccurate and needed corrections. Amrit was notified shortly after January 17, 2023 that it had to correct the PSA, but inexplicably refused to do so until May of 2023. That refusal was likely premised, in part, upon Amrit's counsel's confusion over whether a ROFR existed.

Again, Fuel One was not aware of the ROFR until several months after it had signed the PSA, which then resulted in testy negotiations with Amrit over price adjustments. Fuel One noted explicitly on April 21, 2023 that it would not close on the sale until Amrit agreed to contribute the penalty terminations. Da249. Fuel One apparently capitulated on the contribution to penalty terminations and reaffirmed its intention to purchase the Premises after the disclosure of the ROFR in Addendum II. Addendum II made clear for the first time that Fuel One—which was previously demanding price adjustments—agreed to move forward with the transaction and the agreed-upon sales price in the PSA after the ROFR disclosure had been properly made in writing.

A partially-signed Addendum II to the PSA would not constitute a final term and condition to the PSA unless Amrit also executed the amendment. As Amrit itself argues in its brief, “The one-sided negotiating (or, attempt to renegotiate terms) by



Fuel One's attorney could not alter the terms of the already established contract without some expression by Defendant [sic] Amrit to these issues.” Db 46-47.

Amrit cannot be permitted to argue out of both sides of its mouth. In order for Addendum II to have any legal validity, it had to be signed by Amrit. Moreover, it was not Amrit that had presented the draft Addendum II to PMG or otherwise indicated that it intended to sign the document. Instead, it was Fuel One, which presented the draft to PMG on May 4, 2023, with only a note from its attorney stating he was “sure that Seller will execute as well”. Da070.Worse, Amrit, which was copied on the transmittal, failed to respond to the communication by expressing that they would sign the document. PMG’s first indication that Amrit agreed to the modification was when they received the fully executed version on May 8, 2023.

Where the contractual provision governing the ROFR expressly grants the ROFR holder the right to “purchase” the real estate on the “same terms” as a third-party purchaser, New Jersey courts have held that the property owner must provide the ROFR holder with all final terms of the prospective sale or offer to provide the ROFR holder with legally adequate notice of the sales terms and start the clock for the holder to exercise its ROFR. See Gutch, 142 N.J. Eq. at 431-33 (finding that a contractual provision granting a ROFR holder “the option of purchasing said premises on the same terms and conditions . . . within 15 days after . . . notice by the

[property owner]” required the property owner to send notice to the ROFR holder of “the terms and conditions of the prospective sale,” and holding that the property owner’s letters to the ROFR holder were legally inadequate to provide such notice in part because “[n]either letter recites . . . the terms of the prospective sale mentioned therein”); H&G Hardware, Inc. v. Cohen, A-0667-04T2, 2006 WL 27624, at \*1, 6, 8-9 (App. Div. Jan. 6, 2006). Da335.

In H&G Hardware, the contractual provision governing the ROFR at issue provided that “[i]f [the property owners] . . . receive[] a bonafide offer in writing, they hereby agree to forward a true copy of said written offer to [the ROFR holder] . . . . [who] shall have thirty (30) days . . . to elect to purchase the property on the same terms.” Id. at \*1. Da335. Given this contractual language, the Appellate Division affirmed the trial court’s rulings that “[t]he obligations that [the property owner] had was to advise [the ROFR holder] when there was a final offer . . . . [a]nd, at that point in time, to communicate the offer to [the ROFR holder], to give [the ROFR holder] a right to purchase on the same . . . terms and . . . conditions in accordance with [the provision of the agreement governing the ROFR].” Id. at \*6. H&G Hardware held that a ROFR holder never had an opportunity to “intelligently decide to exercise or not to exercise its [ROFR]” where terms of the prospective sale between the owner of the premises and the third party were not final. Id. at \*8. The Appellate Division also affirmed the trial court’s further ruling that “there should

have been a document prepared setting forth all of the terms and conditions of that offer and it should have been sent to [the ROFR holder] . . . . [who] would have the right to meet the offer or not.” Id. Contrary to Amrit’s assertion, the decision does not, however, state that the absence of an ROFR in the sale contract “is of no importance whatsoever.” The decision noted the lack of a ROFR but refrained from remarking substantively on that lack. Nor was there a representation in the sale contract that no ROFR existed, as was the situation here.

The ROFR provides PMG with the right to purchase the premises on the same terms as a third party. Amrit, therefore, needed to provide PMG with a copy of the final PSA containing all the terms and conditions that Amrit accepted to provide PMG with (1) adequate legal notice of the sales terms and (2) the opportunity to exercise its ROFR and purchase the premises on the same terms. See, Gutch, 142 N.J. Eq. at 431-33; H&G Hardware, 2006 WL 27624 at \*1, 6. Da335. That PSA was not finalized unless and until Amrit executed Addendum II and transmitted the document to PMG.

In accordance with the principles of H&G Hardware, PMG did not receive legally adequate notice of the final terms and conditions as required by Section 39 until May 8, 2023. That day, Shields, the legal assistant for Amrit’s law firm, emailed PMG with a fully executed Second Addendum to the PSA, confirming the final terms and conditions of the deal that PMG needed to match to purchase the Premises.

Da072. After receiving the final terms and conditions, PMG exercised its ROFR on June 6, 2023, within the 30-day term provided under Section 39. Da075.

As the Trial Court did not err in finding that Amrit did not provide PMG with legally adequate notice of the final terms and conditions of the prospective sale of the Premises until May 8, 2023, Amrit's appeal should be denied.

### **CONCLUSION**

For the above stated reasons, it is respectfully requested that this Court deny Amrit's appeal in its entirety.

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July 24, 2024

APPELLATE DIVISION  
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Hughes Justice Complex  
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ATTN: Denise L. Koury, Case Manager

Re: PMG NEW JERSEY II, LLC v. AMRIT, INC., d/b/a  
CIRCLE EXXON, 34 US-1, LLC d/b/a FUEL ONE, INC.,  
SHAMSHER SINGH RATHORE, KOMAL SINGH AND JABBAR SINGH  
Docket No. A-0001854-23  
On Appeal From: SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-GENERAL EQUITY PART  
MIDDLESEX COUNTY  
DOCKET NO.: MID-C-84-23

Sat Below: Hon. Thomas D. McCloskey, J.S.C.

Dear Ms. Koury:

Please accept the following letter memorandum in lieu of a more formal brief in Reply to the Defendant, PMG New Jersey II, LLC's Brief submitted to this Court in the above-entitled case.

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**LEGAL ARGUMENT**

I. **The Trial Court erred in granting the Plaintiff's Motion for Summary Judgment and in denying Defendant's Cross Motion for Summary Judgment**

The legal impact of Amrit having signed the PSA in October of 2022 instead of first presenting an unsigned, unaccepted offer to PMG "promptly" was simply that PMG's ROFR continued to remain viable until the terms and conditions were presented to them. Those terms and conditions were, in fact, presented no later than January 17, 2023. If PMG had, during the 30 days that followed the presentation on January 17, 2023, exercised their ROFR, that exercise of their ROFR would certainly have been enforceable. Even with a signed contract with Fuel One, Amrit would have been legally obligated to sell to PMG. The fact that the terms and conditions did not list the ROFR as a term or condition did not invalidate the offer, nor did it have any effect on the rights of PMG to exercise

its ROFR. The emphasis placed on **H&G Hardware** by PMG (the principle that there is more to an offer than the purchase price) ignores the very clear fact that **H&G Hardware** involved an offer that also failed to explicitly include language regarding the ROFR holder's right of first refusal. **H&G Hardware v. Cohen A0667-04T2 2006 WL 27624 (App.Div. Jan 6, 2006). Da335.** Counsel for PMG characterizing the presentation of the contract to PMG on January 17, 2023 as a "flawed" attempt to comply with the ROFR is simply wrong. There is nothing in paragraph 39 of the MFSA that in any way extends the time within which PMG may exercise its ROFR if the offer is not "promptly" presented or if an offer contains or fails to contain terms that PMG might deem necessary. Counsel for Plaintiff further mischaracterizes the testimony by stating that the Defendant Amrit knew that the "terms of the Original PSA were wrong" yet "signed it anyway". Pb8. Not only was the witness referenced not a signator to the contract, but she further testified that she did not read it. Da216. This kind of mischaracterization by the Plaintiff is sprinkled throughout this case in which the Plaintiff attempts to portray the actions of Defendant Amrit as being somehow fraudulent or knowingly making misrepresentations. The failure to mention the ROFR in the PSA had no legal impact

on the Plaintiff and there was no fraud. Unfortunately, the Trial Court adopted that characterization and had itself believing up until the date of the oral argument on the motion that the third-party buyer was related to the seller and that they were trying to cheat the Plaintiff. Again, in an attempt to cure the Court of that misunderstanding, it bears repeating that the Plaintiff was offered the opportunity to purchase the property on January 17, 2023 under the same terms and conditions as the third-party buyer and Plaintiff failed to exercise their ROFR within the 30 day time period provided for in the MFSA. There was no fraud. There was no misrepresentation. Plaintiff knew it had a ROFR and failed to exercise it. No closing of title happened prior to the Plaintiff being given that opportunity.

Counsel for PMG characterizes the email from Amrit on May 8<sup>th</sup> as the "final offer" repeatedly in their Brief, thereby labeling the email as the legal instrument that they wish it to be to achieve their ends. It was not a "final offer". It was Amrit's acquiescence to the demands of PMG to obtain an affirmative waiver (something that was not provided for in the MFSA). It was an affirmation of the existence of PMG's ROFR submitted to PMG at PMG's request even though all had already acknowledged that a ROFR had



existed at some point but did not necessarily continue to exist. The explicit reference that was demanded by Plaintiff PMG in order to obtain a written waiver of their ROFR caused an addendum to be created by Defendant Amrit's attorney which was then signed and delivered to Plaintiff PMG, thereby demonstrating that all were aware of the existence of the ROFR regardless of the legal impact on PMG's rights, which was none at all. Counsel for PMG's characterization that Fuel One's offer "lacked a true measure of the market value of the property" and parenthetical explanation that somehow the market value was "one of the purposes of the ROFR mechanism" is not in the record in any respect and should be disregarded by this Court. Nothing in any document in the record or any testimony of any witness indicates that the reason for the ROFR was to gauge the true market value of the property. What is, however, a part of the record, is the fact that the offer by Fuel One to purchase the property did not change when the ROFR language demanded by PMG was ultimately explicitly added to the contract. Essentially, counsel for PMG is attempting to add materiality to the inclusion of the ROFR to the contract even though the term is completely immaterial to PMG. PMG certainly knew back in 2015 that they had a ROFR and did not need an offer to

contain that term in order to consider it. Prior to the inclusion of that non-material term, as with *H&G Hardware, supra*, "...there is no reference in the contract [between seller and third-party buyer]." In *H&G Hardware*, the reason for the Trial Court's decision had nothing to do with whether the ROFR was contained in the contract or not. *Id.* Likely, this is because, as with the present case, "...the contract was presented to plaintiffs." *Id.* The Defendant complied with the contract by presenting the offer to the Plaintiff before closing on the transaction, thereby giving the Plaintiff the opportunity to buy the property under the same terms and conditions as the third party buyer was going to do. Thus, even if the failure to mention the ROFR was in some way a "deficiency" in the "bona fide offer", that "deficiency" was cured by the Defendant presenting the offer/contract to the Plaintiff before a closing took place transferring title to some other buyer before Plaintiff had the opportunity to consider the purchase at that price and under those terms. Nothing about the second presentation in May altered the price and terms under which the Plaintiff would have to consider the matter. That second presentation was demanded by and controlled by the Plaintiff, who already knew the terms and conditions of the sale in all respects. The

second presentation, therefore, was of no moment even if it had to be signed by Defendant Amrit before being presented to the Plaintiff for consideration. However, on top of the second presentation of the contract to the Plaintiff being altogether unnecessary, as the terms were no different than those of the first in January of 2023, that second presentation did not need to be presented by Defendant Amrit in order to be legitimate. The presentation by Fuel One's attorney, especially since the addendum was prepared by Defendant Amrit at the Plaintiff's insistence, satisfied the terms of paragraph 39 of the MFSA.

**CONCLUSION**

Based on the foregoing and the Appellant's Brief and Appendix, Amrit, Inc., d/b/a Circle Exxon, Shamsheer Singh Rathore and Komal Singh hereby request that the decision of the Trial Court granting the Plaintiff's Motion for Summary Judgment and denying these Defendants' Cross Motion for Summary Judgment be reversed.

Respectfully submitted,

*Patricia M. Love*

PATRICIA M. LOVE

PML/lff

Cc: Bruce Rosen, Esq.