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BPREP 530 DUNCAN LLC, Plaintiff-Appellant, v. STANDARD LOGISTICS, LLC, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-002067-23 Civil Action On Appeal from an Order of the Superior Court, Law Division, Hudson County Law Div. Docket No.: HUD-L-483-23 Sat below: Hon. Kalimah H. Ahmad, J.S.C Date of Submission: June 7, 2024

AMENDED OPENING BRIEF OF PLAINTIFF-APPELLANT BPREP 530 DUNCAN LLC

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Plaintiff-Appellant BPREP 530 Duncan LLC ("BPREP") submits this brief in support of its appeal of an Order, entered on February 2, 2024 (the "Order"), denying BPREP's motion to enforce the parties' Settlement Agreement and Release, dated June 30, 2023 (the "Settlement Agreement").

PRELIMINARY STATEMENT

This matter involves the straightforward breach of a settlement agreement by Defendant-Respondent Standard Logistics, LLC ("Standard"). Standard was the sole tenant at a commercial warehouse located at 530 Duncan Avenue, Jersey City, New Jersey 07306 (the "Leased Premises") pursuant to a lease agreement with BPREP. After numerous payment defaults, BPREP filed this action to recover $796,484.39 then due and a companion action to recover possession, both of which were resolved pursuant to a written Settlement Agreement. Standard ultimately breached four separate settlement obligations without disputing three of them. Despite this, the trial court entered an Order denying BPREP's motion to enforce the Settlement Agreement, and to enter the monetary consent judgment to which Standard had agreed in the event of a breach, without considering (or even acknowledging) the three undisputed breaches that independently required that relief. The trial court's Order should be reversed for several reasons.

First, it should be observed that many of the operative facts before this Court are not in dispute. Indeed, Standard does not dispute that it consummated a binding Settlement Agreement with BPREP, or that: (i) it failed to make all required settlement payments; (ii) its subtenant failed to timely vacate the Leased Premises; and (iii) Standard and its subtenant failed to leave the Leased Premises "broom clean," any one of which constituted a breach. Nor does Standard deny that it engaged in unauthorized post-settlement dumping at the Leased Premises weeks before its scheduled vacation that has caused BPREP significant and unexpected damages – and also constitutes a fourth breach.

The only dispute between the parties concerns the volume of post-settlement dumping that Standard undertook and the cost associated with rectifying it. While the facts surrounding these post-settlement events are likely to be central to BPREP's environmental and property damage claims that will be the subject of a new action, they have no impact upon BPREP's right to enforce the Settlement Agreement following Standard's three unrelated contractual breaches that also occurred.

The trial court mistakenly conflated BPREP's post-settlement claims arising from Standard's unauthorized dumping, yet to be filed, with the present breach of contract claim that was actually before the trial court.

Consequently, the trial court erred when it concluded that "[t]his alleged 'property damage claim' is better suited in a separate action" without appreciating that it was not asked to decide a "property damage claim," but rather a breach of contract claim for which the relief was clear. [Pa2]. Any one of Standard's breaches of the Settlement Agreement entitled BPREP to present the monetary consent judgment for entry. The trial court's failure to enforce this unambiguous contract right, as it was written, was reversible error.

For these reasons, and those expressed below, the Order should be reversed and this matter should be remanded to the trial court for entry of the monetary consent judgment for the full amount due, together with attorneys' fees and costs incurred to obtain that relief, as the parties agreed.

PROCEDURAL HISTORY

BPREP filed this action against Standard on February 7, 2023 to recover monetary damages under a lease for the Leased Premises following Standard's payment default, among other breaches (the "Money Judgment Action"). [Pa3]. Also on February 7, 2023, BPREP filed a second action against Standard to recover possession of the Leased Premises, captioned *BPREP 530 Duncan LLC v. Standard Logistics, LLC*, Docket No. HUD-LT-894-23 (the "Dispossession Action"). [Pa23].

On April 20, 2023, BPREP filed a motion for summary judgment in the Money Judgment Action. [Pa44 at ¶ 4]. Before the motion was decided, the parties negotiated and executed the Settlement Agreement which memorialized the settlement terms to which the parties had agreed. [Pa44 at ¶ 5]. Among them was Standard's agreement to execute a Consent Judgment for all sums due, in the amount of $796,484.39 (the "Consent Monetary Judgment"), and a Consent Judgment for Possession (the "Consent Judgment for Possession"), both of which BPREP was authorized to present to the trial court for entry upon an event of default together with a representation that Standard had consented to the entry of that relief. [Pa59; Pa62].

By letter dated July 5, 2023, BPREP withdrew its motion for summary judgment, without prejudice, and notified the trial court that "the parties' settlement of this matter. . . requires the performance of certain settlement terms no later than the conclusion of October. The parties have agreed that this matter will remain pending during this period, and that Plaintiff will alert the Court concerning the disposition of this action at that time." [Pa40].

In September 2023, one month before the date by which Standard was required to vacate the Leased Premises, BPREP discovered that Standard had breached the Settlement Agreement by, among other things, dumping and

dispersing thousands of cubic yards of unknown and unauthorized materials across the parking lot exterior of the Leased Premises. [Pa213 at ¶ 6]. Consequently, by letter dated September 29, 2023, BPREP advised the trial court of Standard's breach and submitted for entry: (i) the Consent Judgment for Possession; (ii) the Consent Money Judgment; (iii) a Certification of Amount Due; and (iv) an Affidavit of Services, as it was authorized to do under the Settlement Agreement. [Pa41].

Standard engaged new counsel who, by letter dated October 10, 2023, objected to the entry of the Consent Judgments and requested additional time to respond further. [Pa160]. By letter dated October 20, 2023, BPREP provided the trial court with additional information that it had obtained concerning the damage that Standard had caused, including evidence that "[t]he volume of unknown and unauthorized material is so extensive that the elevation of the 2.5 acre parking area has been raised by three feet in certain areas, and is believed to consist of tens of thousands of cubic yards of new, unsourced material that would be alarming even if it did not also obstruct the loading docks." [Pa162]. By letter dated October 30, 2023, Standard disputed the volume of materials that had been dumped (without disputing that dumping had occurred), but admitted that it failed to pay the fourth settlement payment

to which it agreed, thus confirming at least one of the breaches that had been alleged. [Pa167].

The trial court did not address the parties' letter submissions after more than three months, although it entered the Consent Judgment for Possession on January 4, 2024.[1] [Pa228]. But because the trial court had yet to also enter the Money Judgment, on January 3, 2024, BPREP filed its motion to enforce the Settlement Agreement. [Pa197]. Following oral argument on February 2, 2024,[2] the trial court entered the Order denying BPREP's motion, stating:

> For the reasons set forth on the record during oral argument on February 2, 2024. There are several compelling circumstances present in this matter to not enforce the settlement agreement. First, Plaintiff jumped the gun and took over the property. In addition, there is no proven and contingent "dumping" claim addressed by the current lawsuit or addressed by the Settlement Agreement. Giving Plaintiff approximately $800,000 as part of a consent judgment for Plaintiff's allegations of contaminated debris being dumped onto the property by Defendant would deprive Defendant of discovery, defenses, expert opinions, and ability to sue any [responsible] parties. This alleged "property damage claim" is better suited in a separate action.

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[1] The Court may take judicial notice of other Orders in the action. *See Narain v. George Harms Constr. Co.*, 2023 WL 3575597, at *8 (N.J. Super. Ct. App. Div. May 22, 2023), appeal denied sub nom. *Narain v. George Harms Constr. Co.*, 255 N.J. 380 (2023) ("On appeal, we have the discretion to 'take judicial notice of any matter specified in *Rule* 201, whether or not judicially noticed by the trial court'…[including] records of the court in which the action is pending.").

[2] See February 2, 2024 Transcript, filed with the Clerk on April 15, 2024 ("1T").

[Pa2]. The trial court did not address (or acknowledge) Standard's failure to make the fourth settlement payment, its failure to leave the Leased Premises in broom clean condition, or its failure to vacate by October 31, 2023, any one of which would constitute an additional event of default that entitled BPREP to present the Consent Judgments for entry even if unauthorized dumping had not also occurred.

STATEMENT OF FACTS

A. The Lease.

On or about May 7, 2015, Grenwolde Investment Corp. ("Original Landlord") let and rented the Leased Premises to Standard pursuant to a Lease Agreement, dated May 7, 2015, which commenced on June 1, 2015 and was to continue through and including May 31, 2025 (the "Original Lease"). [Pa72]. Original Landlord sold and conveyed the Leased Premises to BPREP by Deed dated March 11, 2020, and recorded on April 9, 2020, with the Hudson County Register of Deeds at Book 9481, Page 379. [Pa4 at ¶ 5]. In connection with the sale, Standard executed an Addendum to Lease, dated March 9, 2020, in which it acknowledged BPREP's rights as the purchaser of the Leased Premises and as its new landlord (the "Addendum," and with the Original Lease, the "Lease"). [Pa4, ¶ 4].

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The Lease provided that Standard shall pay Base Rent ("Base Rent"), as set forth therein, on or before the first day of each month, time being of the essence. [Pa73 at ¶ 4]. The Lease further provided that Standard shall pay all costs, expenses, and obligations relating to the Leased Premises, such that it is "triple net." [Pa75 at ¶ 9]. Such costs include, without limitation, operating expenses, costs for security, landscaping, extermination, interior and exterior lighting systems, storm and sanitary drainage systems, plumbing, electrical, HVAC systems, insurance, real estate taxes, and utilities (hereinafter, "Additional Rent"). [Pa75 at ¶¶ 9-11].[3]

The Lease required Standard to "operate its business in a lawful manner, and in conformance with all applicable Environmental Laws, ordinances and statutes," including a prohibition against the "transport" or "dispos[al]" of waste. [Pa77 at ¶ 17] The Lease also prohibited Standard from making "alterations or additions to the Leasehold or any Building System without Landlord's prior written consent," and provided that "[a]ll costs and expenses incurred with respect to any alterations or additions will be paid promptly when due by Tenant…." [Pa80 at ¶ 21] Standard also agreed to:

> indemnify, defend and hold Landlord harmless from any liabilities, obligations, damages, claims, charges or expenses including reasonable legal fees which may be imposed upon

[3] Base Rent, Additional Rent, and additional sums due under the Lease shall be referred to collectively as "Rent."

> or incurred by Landlord, by reason of any of the following occurrences during the term of this Lease:
>
> a. Any matter, cause or thing arising out of Tenant's use or occupancy of the Leasehold or any part thereof or any act or omission of Tenant, Tenant's agents, representatives or invitees.
>
> * * *
>
> d. Any failure on the part of the Tenant to perform or comply with any covenant, agreement, term or condition in this Lease.

[Pa85 at ¶ 44].

The Lease provided that if Standard fails to pay Rent or any other sums payable under the Lease within ten (10) days of the due date, it shall be in default. [Pa75 at ¶ 7; Pa82 at ¶ 28(a)]. The Lease also provided that if Standard is "habitually late" in paying Rent – which is defined as failing to pay Base Rent when due on two (2) or more occasions during a twelve (12) month period – Standard also shall be in default. [Pa82 at ¶ 28(b)].

Upon a payment default that continues for ten (10) days, BPREP may issue a written demand for payment within five (5) business days from the date of the notice. [Pa82 at ¶ 28(a)]. If Standard fails or refuses to comply, the Lease provided that Standard's rights would automatically terminate without further notice or a right to cure. [Pa82]. In the event of a default which is not timely cured, all remaining Rent for the term of the Lease shall be accelerated and shall be immediately due and payable in full ("<u>Accelerated Rent</u>"),

whereupon Standard will also be required to pay as Additional Rent all of BPREP's attorneys' fees and other expenses incurred which relate to the enforcement of its rights under the Lease. [Pa83 at ¶¶ 28(c), (d)].

Notably, from the time that BPREP purchased the Leased Premises, Standard was not in possession due to a sublease that it entered with Raji Abdelfetah, Omer El Siddig and Abdulgader Ahmed (together, "Subtenant") for the entire Leased Premises – although the sublease was neither disclosed to nor authorized by Original Landlord or BPREP as required under the Lease. [Pa214 at ¶ 10]. Standard has never argued that it did not receive payments from Subtenant during the relevant period, and is therefore presumed to have received and pocketed those funds.

B. The Lease Default.

Standard initially defaulted under the Lease when it subleased the Leased Premises without Landlord consent, when it failed to pay all Rent due in March 2022 and thereafter, and when it transmitted "habitually late" payments on more than two separate occasions within a 12-month period. [Pa6 at ¶¶ 6-7]. BPREP provided Standard with written notice of its default in a Default Notice and Demand for Payment, dated September 14, 2022, in which BPREP demanded payment of all sums due within five (5) days from the date of the Notice, including the restoration of its security deposit in the amount of

$55,204.04 (the "Notice of Default"). [Pa12]. As of that date, more than $175,000 was due and outstanding. [Pa12]. Standard did not satisfy the amounts outstanding or respond to the Notice of Default. [Pa7 at ¶ 20].

Instead, Standard continued to disregard its payment obligations, materially increasing its indebtedness in the months that followed. [Pa7 at ¶ 21]. Accordingly, BPREP provided Standard with a written Notice of Default and Termination, dated January 26, 2023, in which BPREP repeated its demand for payment of all Rent and other sums due under the Lease, including the restoration of the security deposit, within five (5) business days from the date of that Notice (the "Notice of Default and Termination"). [Pa17]. The Notice of Default and Termination cautioned that if BPREP failed or refused to cure its default within the time prescribed, the Lease would terminate without further notice or a right to cure. [Pa17]. As of that date, more than $144,000 was due and outstanding. [Pa17].

On or about January 30, 2023, Standard transmitted a partial payment to BPREP in the amount of $95,000.00 (the "Partial Payment") that was insufficient to cure Standard's payment defaults. [Pa7 at ¶ 24]. More than five (5) business days passed after the Notice of Default and Termination was served without Standard curing (or disputing) its events of default, and without it vacating the Leased Premises. [Pa7 at ¶ 25]. Consequently, the Lease

terminated by its own terms, together with any right to possession that Standard (or its unauthorized Subtenant) previously held, although Standard remained liable for all sums due thereunder. [Pa7 at ¶ 25].

By letter dated February 3, 2023, BPREP reminded Standard that: (i) the Partial Payment did not cure Standard's events of default, (ii) its Lease automatically terminated on February 2, 2023, and (iii) Standard was required to immediately vacate and relinquish possession of the Leased Premises to BPREP (the "Notice to Vacate"). [Pa20]. BPREP also demanded payment of all sums due, or that may become due, including Accelerated Rent of $765,260.42 ($27,602.02 per month for three months, $28,154.06 per month for twelve months, and $28,717.14 per month for twelve months). [Pa20]. Despite demand, Standard (and its Subtenant) did not vacate the Leased Premises and remained in unlawful possession as a holdover tenant. [Pa28 at ¶ 29]. Consequently, BPREP filed the Money Judgment Action and the Dispossession Action on February 7, 2023. [Pa3; Pa23]

C. The Settlement Agreement.

BPREP filed its motion for summary judgment in the Money Judgment Action on April 20, 2023. [Pa44 at ¶ 4]. While the motion was pending, the parties negotiated the Settlement Agreement that allowed Standard to remain until October 31, 2023, whereupon it (and its Subtenant)

would be required to vacate the Leased Premises. [Pa44 at ¶¶ 5-6]. The Settlement Agreement also required Standard, among other things, to: (i) remove all personal property and debris from the interior and exterior of the Leased Premises such that it is broom clean, as set forth in and required by Paragraph 31 of the Lease, on or before October 31, 2023; (ii) make monthly payments of $46,058.39 on or before July 1, August 1, September 1, and October 1, 2023, through the date of Standard's vacation, but in no event later than October 31, 2023; (iii) execute the Consent Judgment for Possession, annexed to the Settlement Agreement as Exhibit A, and (iv) execute the Consent Money Judgment, annexed to the Settlement Agreement as Exhibit B. [Pa49; Pa44 at ¶ 6].

Paragraph 4 of the Settlement Agreement provided that it would constitute an Event of Default if Standard: "(i) fails to make any Monthly Payment when due,… (iii) fails to timely vacate, or (iv) breaches any other settlement term," and that "[u]pon an Event of Default, Landlord may immediately submit the Consent Judgment for Possession in the Tenancy Action and/or the Consent [Money] Judgment in the Law Division Action to the appropriate Court(s) for entry, together with a representation that such submission has been made with the consent of all Parties. Landlord may

execute upon any judgment entered thereafter without further notice or demand." [Pa52 at ¶ 4].

The Settlement Agreement did not relieve or release Standard from its continuing obligations owed under the Lease. This includes Paragraph 17 which precludes Standard from acting in violation of any environmental law, and should it do so notwithstanding such prohibition, "Tenant shall defend, indemnify and hold Landlord harmless against any [environmental] liability, loss, cost or expense, including reasonable attorneys' fees and costs incurred by Landlord." [Pa77 at ¶ 17].

By their express terms, the Settlement Agreement and Consent Monetary Judgment provide that, upon an Event of Default, the Consent Monetary Judgment may be submitted to the trial court for entry and execution in the stipulated amount of $796,484.39, not including attorneys' fees and costs, consisting of the following amounts the parties agreed that Standard owed to BPREP as of June 1, 2023: (i) Base Rent in the amount of $29,745.66; (ii) CAM Charges/ Operating Expenses in the amount of $40,338.91; (iii) Real Estate Taxes in the amount of $77,409.91; (iv) Insurance in the amount of $1,260.85; (v) Late Fees in the amount of $1,855.20; (vi) Security Deposit in the amount of $55,204.04; and (vii) Accelerated Rent in the amount of $765,260.42; less (viii) a credit in the amount of $174,590.60 (together, the

"Judgment Amount"). [Pa51 at ¶ 3(d); Pa62]. Standard not only agreed that this amount was actually and presently owed under the Lease and may be adjudicated against it upon an event of default, but also agreed that BPREP may represent to the trial court that Standard had consented to the entry of the Money Judgment in that amount. [Pa52 at ¶ 4].

D. Standard's Unlawful Dumping At The Leased Premises.

On or about September 19, 2023, more than two months after the parties executed the Settlement Agreement and one month before Standard was required to vacate, a neighboring property owner alerted BPREP that Standard had been seen engaging in unauthorized and potentially unlawful conduct at the Leased Premises – namely, the importation of truckloads of unknown and unauthorized material, using unmarked trucks driven by unidentified individuals, that dumped and then spread large volumes of unknown material across the Leased Premises. [Pa213 at ¶ 6].

In the weeks that followed, BPREP's environmental expert, Kevin Billings, arranged for four long trenches to be dug across the north, west and east sides of the Leased Premises, and for 227 small test pits to be advanced in the areas of dumping. [Pa305 at ¶ 6]. After measuring the depth and extent of the newly deposited material at different locations around the Leased Premises, Mr. Billings observed a clear delineation between the new materials

and the prior surface area at the Leased Premises. [Pa305 at ¶ 7]. These measurements, together with comparisons of new and old photographs of the site and trimble data, allowed Mr. Billings to calculate the volume of material that had been deposited by multiplying the depth measurements by the relevant square footage, which revealed that approximately 700 cubic yards of new construction and demolition materials had been dumped, together with 8,000-9,000 cubic yards of asphalt millings. [Pa305 at ¶¶ 8-9].

To put this volume of material in perspective, it would take *hundreds* of dump trucks to deliver this quantity of materials, even using the largest "roll-off" containers which typically hold 30 cubic yards of material. [Pa305 at ¶ 10]. By comparison, typical dump trucks carry less than 15 cubic yards of material. [Pa305 at ¶ 10]. BPREP shared this information with Standard's LSRP and offered to accompany him on a visit the Leased Premises to see for himself, but he never responded. [Pa306 at ¶¶ 13-15].

These events created an urgency for BPREP to determine what, exactly, Standard had dumped across the Leased Premises and to prevent any further dumping (or damage) from occurring. As a result, by letter dated September 20, 2023, BPREP demanded that Standard immediately "cease and desist" its unauthorized conduct and provide detailed information about its unauthorized activities. [Pa205]. This letter expressly advised that Standard's

conduct constituted an Event of Default under the Settlement Agreement and the Lease, and, consequently, that BPREP would submit the Consent Judgments for entry. [Pa205]. Standard's then-counsel confirmed receipt of the demand and that it had been shared with Standard. [Pa202 at ¶ 13].

On September 20 and 21, 2023, BPREP's representatives visited the Leased Premises, observed additional dump trucks attempting to access the Leased Premises, and engaged 24-hour security to prevent Standard, or those acting in concert with it, from exacerbating the damage it had already inflicted. [Pa214 at ¶ 7]. At no point did BPREP prohibit Standard, or its Subtenant, from accessing the Leased Premises. [Pa214 at ¶ 9].

By letter dated September 22, 2023, BPREP's counsel again requested information pertaining to Standard's conduct and the materials that had been dumped at the Leased Premises. [Pa209]. Although Standard's counsel exchanged several emails with BPREP's counsel requesting additional time and promising to provide the information requested, Standard never did. [Pa203 at ¶ 14].

By email dated September 26, 2023, BPREP's counsel advised Standard's counsel that if BPREP did not receive the documents and information it had repeatedly requested by 5:00 p.m. on September 27, 2023, BPREP would proceed with all remedies available to it without further notice,

including submitting both Consent Judgments for entry and execution. [Pa96]. By email dated September 27, 2023, Standard's then-counsel agreed to provide all documents and information requested if BPREP would agree to a 24-hour extension of time. [Pa103]. BPREP's counsel agreed, but cautioned that "[n]o further extensions or accommodations will be provided." [Pa103].

Standard again failed to honor its promise. [Pa203 at ¶ 16]. As a result, BPREP submitted the Consent Judgments for entry on September 29, 2023, along with a certification setting forth Standard's default. [Pa41; Pa43]. In its October 30, 2023 response, Standard did not dispute that it had authorized third-parties to dispose of unknown materials at the Leased Premises, or that Standard had failed to provide any documentation or information regarding the source or composition of these materials. [Pa167]. Instead, it claimed that "an individual by the name of Miguel" had ostensibly agreed to pave the Leased Premises for $1,500 in the final month of Standard's occupancy. [Pa169]. Standard further alleged that the material, consisting largely of asphalt millings, was provided "by one Rey Perez." [Pa170]. Standard provided cell phones numbers for both individuals, but to this day has not produced a *single document* to support its claims or to lend clarity

about the tons of material that BPREP would be required to address. [Pa175 at ¶¶ 7-8].[4]

In light of Standard's refusal to cooperate further, BPREP attempted to locate the individuals responsible for the materials that had been dumped at the Leased Premises to determine what, exactly, had been dumped. BPREP's investigation revealed that "Miguel" is Miguel Urena-Delance, the principal of YAS Trucking, LLC, and that Rey Perez is the principal of Thebag Trucking, LLC. [Pa204 at ¶ 19]. BPREP served both with subpoenas and, on December 20, 2023, Mr. Urena-Delance appeared for a deposition at which he provided testimony that contradicted Standard's version of events. [Pa204 at ¶¶20-21; Pa250]. Mr. Urena-Delance denied that he had discussed paving the Leased Premises with Standard, or that Standard had paid him $1,500. [Pa267 at 64:18-22; Pa266 at 61:22-25]. In fact, he testified that the parties never discussed Standard paying anyone for the materials. [Pa266 at 61:7-25]. Mr. Urena-Delance did claim, however, that the materials dumped at the Leased Premises were provided by Mr. Perez – who is currently incarcerated – and that Mr. Perez only informed him that the materials are from "the port," with no further information. [Pa259 at 30:1-13].

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[4] It should not go unnoticed that, after years of failing to pay Rent, Standard claims that it suddenly chose to pave BPREP's parking lot for no reason beyond pure altruism, and without advising BPREP of its putative gesture.

E. **The Trial Court Failed To Consider Standard's Four Separate Breaches Of The Settlement Agreement, Any One Of Which Required The Consent Judgments To Be Entered.**

After the Settlement Agreement was executed, Standard made three of the four payments to which it had agreed in Paragraph 3(b) of the Settlement Agreement, totaling $138,175.17. [Pa176 at ¶ 17; Pa185]. Standard admits that it failed to make the fourth payment due on October 1, 2023, thus also admitting a ***second*** event of default under the Settlement Agreement (in addition to its unauthorized dumping). [1T at 14:7-16; Pa176 at ¶ 17]. Additionally, as the October 31, 2023 vacation date approached, Standard's Subtenant contacted BPREP's counsel to request additional time to vacate beyond the October 31, 2023 vacation date to which BPREP and Standard had agreed -- which request was denied. [Pa297 at ¶¶ 2-4]. Subtenant ultimately held over beyond the October 31, 2023 vacation date (a ***third*** event of default) [Pa298 at ¶ 4], and neither Standard nor Subtenant left the Leased Premises "broom clean" as they had agreed to do and were required to do – constituting a ***fourth*** event of default. [Pa215; Pa310].

While Standard vigorously disputed the volume of materials that had been dumped at the Leased Premises, it did not (and could not) dispute its remaining three events of default. Despite this, and the express terms of the Settlement Agreement that required entry of the Consent Judgments upon *any*

event of default, the trial court erroneously failed to consider Standard's three *additional* events of default, any *one* of which also triggered BPREP's right to present the Consent Judgments for entry.

Focusing instead upon Standard's unauthorized dumping, the trial court further erred in concluding that BPREP "jumped the gun" when it took action to prevent the unauthorized dumping from continuing, as it was required to do, and that "[t]his alleged 'property damage claim' is better suited in a separate action" -- although the trial court was asked to consider the present breach of contract claim, and *not* a "property damage claim." [Pa2]. While the trial court was correct that BPREP's "property damage claim" will indeed be the subject of a separate action once the damage has been quantified, that eventual action will involve new and entirely distinct causes of action (and damages) arising from Standard's post-settlement dumping that are separate and distinct from the present breach of contract claim that arose from Standard's breach of the Lease and Settlement Agreement for which the remedy – *i.e.*, entry of the Consent Judgments – had previously been negotiated and agreed to by these commercial parties and their counsel.

BPREP is entitled to the remedy for which the parties contracted upon Standard's breach of the Settlement Agreement. The fact that BPREP will pursue a separate damage claim in the future for Standard's post-

settlement conduct should not have been a consideration – much less the dispositive consideration – when the trial court refused to enforce the Settlement Agreement as it was written. The Order should be reversed and this matter should be remanded to the trial court for entry of the Money Judgment for the full Judgment Amount, together with attorneys' fees and costs incurred to obtain that relief, as the parties agreed.

STANDARD OF REVIEW

The Appellate Division reviews Orders granting or denying motions seeking the enforcement of a litigant's rights, pursuant to *Rule* 1:10-3, under an abuse of discretion standard. *See Lemad Corp. v. Honachefsky*, 2017 WL 5478344, at *2 (N.J. Super. Ct. App. Div. Nov. 14, 2017). When the subject is a breach of contract claim, "[i]n the absence of a factual dispute, the interpretation and enforcement of a contract, including a settlement agreement, is subject to de novo review by the appellate court. Under that standard of review, '[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" *Savage v. Twp. of Neptune*, 472 N.J. Super. 291, 306 (App. Div. 2022), *rev'd on other grounds*, 2024 WL 2002418 (N.J. May 7, 2024) (citation omitted).

In *Savage*, the Appellate Division reviewed a trial court's decision regarding whether statements made in an interview were disparaging, in which

case they would have violated the parties' settlement agreement. The Appellate Division held there that the question of whether the statements were disparaging was subject to an abuse of discretion standard, but "the question of whether those statements violated the terms of the agreement, that is, the interpretation of the settlement agreement, is a matter of law subject to our de novo review." *Id.* Under this standard, this Court's determination of BPREP's rights and remedies following Standard's multiple and undisputed breaches of the Settlement Agreement should be reviewed under a de novo standard.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN REFUSING TO ENFORCE THE SETTLEMENT AGREEMENT AS WRITTEN DESPITE STANDARD'S UNDISPUTED BREACHES. (Pa2).

New Jersey has a strong public policy favoring the settlement of litigation. *Zuccarelli v. Dept. of Environmental Protection*, 326 N.J. Super. 372, 380 (App. Div. 1999). *See also Jannarone v. W. T. Co.*, 65 N.J. Super. 472, 476 (App. Div. 1961) ("settlement of litigation ranks high in our public policy."). In recognition of this strong public policy:

> [C]ourts will strain to give effect to the terms of a settlement wherever possible. It follows that any action which would have the effect of vitiating the provisions of a particular settlement agreement and the concomitant effect of undermining public confidence in the settlement process in general, should not be countenanced.

Dep't. of the Pub. Advocate v. N.J. Board of Pub. Util., 206 N.J. Super. 523, 528 (App. Div. 1985). Parties may bring a motion to enforce a written settlement agreement in the same action that was settled. *See Hannigan v. Township of Old Bridge*, 288 N.J. Super. 313, 320-21 (App. Div. 1996).

A settlement agreement between parties to a lawsuit is a contract like any other contract, *Nolan v. Lee Ho*, 120 N.J. 465, 472 (1990), as is a lease, both of which must be enforced according to their terms. *Fargo Realty, Inc. v. Harris*, 173 N.J. Super. 262, 265-66 (App. Div. 1980); *Swisscraft Novelty Co., Inc. v. Alad Realty Corp.*, 113 N.J. Super. 416, 421 (App. Div. 1971). The terms to which parties have agreed must be afforded a rational interpretation consistent with the parties' intentions. *Liqui-Box Corp. v. Estate of Elkman*, 238 N.J. Super. 588, 599 (App. Div. 1990). Courts should not undertake to write a different contract than the parties themselves made. *Kampf v. Franklin Life Ins. Co.*, 33 N.J. 36, 43 (1960).

Here, Standard breached the Settlement Agreement and Lease by: (i) failing to make the final October 2023 payment [Pa176 at ¶ 17]; (ii) failing to timely vacate the Leased Premises on or before October 31, 2023 [Pa298 at ¶ 4]; (iii) failing to leave the Leased Premises in "broom clean" condition [Pa309 at ¶¶ 4-5]; and by (iv) facilitating unauthorized dumping of unknown materials at the Leased Premises. [Pa215; Pa305 at ¶ 9]. Under the

unambiguous terms of the parties' Settlement Agreement, Standard explicitly agreed that any one of these breaches entitled BPREP to submit the Monetary Judgment for entry in the full Judgment Amount – much less all four. The trial court's failure to enforce the Settlement Agreement as written was reversible error.

A. <u>Standard's Failure To Pay The Fourth Settlement Payment Constituted A Breach Of The Settlement Agreement (Pa2).</u>

Under the Settlement Agreement, Standard was required to pay $46,058.39 on the first day of each month beginning July 2023 and concluding in October 2023. [Pa51 at ¶ 3(b)]. Failure to strictly comply constituted an event of default under the Settlement Agreement that triggered BPREP's right to submit the Monetary Judgment to the trial court for immediate entry. [Pa51 at ¶ 3(b); Pa52 at ¶ 4 ("An Event of Default shall occur if Tenant: (i) fails to make any Monthly Payment when due")].

Standard conceded to the trial court – as it must – that it failed to make the final settlement payment when due. [1T at 14:7-16; Pa176 at ¶ 17 ("I decided that given the Plaintiff landlord's abrupt interference, disruption, and wrongful self-help by kicking us out of the Property, Standard did not have to make the last payment of $46,058.39.")]. Although this should be the end of the discussion, Standard has attempted to justify its default by falsely claiming that it was locked out when BPREP implemented security measures to deter

further dumping. The record is undisputed, however, that BPREP *never* prohibited Standard from accessing the Leased Premises despite its alarming conduct. [Pa214 at ¶ 9]. Indeed, Miguel Urena-Delance, the principal of YAS Trucking, LLC who bulldozed the unauthorized materials at Standard's direction, admitted that BPREP did not lock him out while he completed this unauthorized task – as much as it wanted to do so. [Pa270 at 75:1-23].

Confronted with these facts, and the photographs and testimony that substantiate them, Standard introduced an unsupported certification in which it claimed to have been excluded despite clear evidence that this was untrue. [Pa176]. But even if some debate could be had about whether the security that was implemented created some measure of exclusion, Standard *could not* have been locked out where it *was not in possession* as a result of its improper and unauthorized sublease with Subtenant – and Subtenant never complained about being excluded or suffering any impairment of its rights and, in fact, remained at the Leased Premises beyond October 31, 2023. [Pa298 at ¶ 4].

Standard breached the Settlement Agreement when it failed to make the final settlement payment due to BPREP. The trial court erred when it failed to consider this irrefutable event of default, or to enforce the Settlement Agreement as a consequence, as it should have done. The Order should be

reversed, and this matter should be remanded for entry of the Money Judgment, for this reason alone.

B. **Standard's Failure To Timely Vacate The Leased Premises, Or To Leave It In Broom Clean Condition, Constituted Two Additional Breaches Of The Settlement Agreement (Pa2).**

In addition to its unauthorized dumping and its failure to pay the settlement amount to which it agreed, Standard also breached the Settlement Agreement by failing to timely vacate the Leased Premises. [Pa298 at ¶ 4]. As Standard was not actually in possession, it was Subtenant's counsel who contacted BPREP's counsel on October 31, 2023 – the final date by which Standard was required to deliver possession to BPREP under the Settlement Agreement – to state: "My client has advised that he has removed most of the vehicles from the property [but] requests [7 days] to remove the rest." [Pa300]. BPREP declined to agree to the extension of time, and Subtenant remained until November 2023 – after the vacation date had passed. [Pa298 at ¶ 4].

When possession was eventually restored to BPREP, the Leased Premises were not only profoundly damaged by the unauthorized dumping that raised the elevation of the parking area by *three feet* in certain areas, but were also left with mountains of personal property and debris that BPREP was forced to remove itself. [Pa175 at ¶ 6 (Standard admitting that it "was to return the Property in broom clean condition and free of personal property and

debris"); Pa309 at ¶¶ 4-5 (BPREP certifying that Standard left abandoned vehicles, trailers, approximately 17 commercial vehicle tires, and an approximately 50-gallon drum, in addition to the other debris dumped at the Leased Premises, and that removal of these additional items alone was estimated to cost $40,000)]. Both of these constituted additional events of default for which BPREP was also entitled to the entry of the Money Judgment. The Order should also be reversed, and the matter remanded to the trial court for entry of the Money Judgment, for these additional reasons.

C. Standard's Improper Dumping Also Constituted A Breach Of The Settlement Agreement (Pa2).

In its submissions to the trial court, BPREP detailed its discovery of Standard's unauthorized dumping and provided photographic evidence depicting the mountains of solid waste and debris that Standard and Subtenant left behind as they vacated the Leased Premises. [Pa215]. In response, Standard submitted a certification dated three months earlier than these events that completely ignored the evidence presented and instead made the conclusory (and demonstrably untrue) assertion that only six dump trucks of materials were transported to the Leased Premises – which the record squarely refuted. [Pa175 at ¶ 9].

Among the evidence that Standard ignored was Mr. Urena-Delance's testimony which put the lie to Standard's fabricated claims. [Pa266

at 61:7-25 (testifying that Standard did not pay anything for the material); Pa259 at 30:1-13 (testifying that the materials were from "the port" without any documentation)]. The record is unrefuted that ***hundreds*** of dump trucks of material were dumped at the Leased Premises – far more than the six trucks that Standard had claimed, which would have been bad enough.[5] [Pa305 at ¶ 10]. Standard did not remove or remediate this material, and plainly did not leave the Leased Premises in "broom clean" condition, as required under the Settlement Agreement.

As a result, even if Standard's first three breaches were not enough, this fourth breach of the Settlement Agreement presented yet another reason that the Money Judgment should have been promptly entered. The trial court's failure to do so was erroneous for this reason, too, and requires the Order to be reversed and this matter remanded for entry of the Monetary Judgment in the full Judgment Amount, together with attorneys' fees and costs.

[5] Standard has not provided a single document to substantiate its contentions.

CONCLUSION

For the foregoing reason, BPREP respectfully requests that this Court reverse the Order below and remand the matter for the entry of the Money Judgment that BPREP was authorized to present for entry upon any one of Standard's four events of default.

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Dated: June 7, 2024

FILED, Clerk of the Appellate Division, July 08, 2024, **A-002067-23**

BPREP 520 Duncan LLC Plaintiff/Appellant vs. STANDARD LOGISTICS LLC Defendant/Respondent	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** DOCKET NO. A-2067-23 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION – HUDSON COUNTY, DOCKET NO. HUD-L-483-23 Sat Below: Hon. Kamilah H. Ahmad, J.S.C.

BRIEF OF RESPONDENT STANDARD LOGISTICS LLC
Submitted: July 8, 2024

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Defendant-Respondent Standard Logistics LLC (Standard) submits the following brief in opposition to Plaintiff BPREP 530 Duncan LLC's (BPREP) appeal of the Trial Court's denial of BPREP's motion to enforce a June 30, 2023 Settlement Agreement (Settlement Agreement). For the reasons that follow, BPREP's appeal should be denied in its entirety.

PRELIMINARY STATEMENT

This case arises out of a commercial lease where BPREP became Standard's new landlord. Standard fell behind in rent payments and BPREP filed a rent collection action. That action was settled by the parties, with Standard agreeing to make certain rental payments and to vacate the premises by October 31, 2023. When Standard was in the middle of cleaning up and repairing the parking lot (as it is a transportation company that allows trucks into its facilities that often damage the pavement), and before Standard was about to timely make the last of four settlement payments, BPREP suddenly alleged that Standard had a vendor deposit fill at the premises, and BPREP suddenly and unilaterally took over the premises. BPREP locked Standard out a month before Standard was supposed to vacate the premises under the settlement agreement. BPREP engaged in wrongful self-help. Then BPREP had the audacity to seek enforcement of a $796,484 Consent Judgment which Standard had previously executed pursuant to the Settlement Agreement simply to secure the four rental payments and its surrender of possession. The Trial

Court thankfully stopped that and held that Standard breached the settlement agreement and was not entitled to enforce such Consent Judgment. The Trial Court agreed with Standard's argument and position that if BPREP alleged Standard damaged the premises, it could file a separate action, entitling Standard to defend itself, engage in discovery, retain experts and have the case fully adjudicated. Instead, wanting a wrongful and egregious windfall for itself to compensate it for unproven allegations of contamination, BPREP insists on summary enforcement of this huge Consent Judgment which related only to settlement of a rent action, a settlement which BPREP itself breached.

BPREP's appeal is fatally flawed as it ignores a substantial fact—that BPREP improperly took possession of the premises, which precluded the grant of its motion to enforce the Settlement Agreement. BPREP bore the burden of proof as the moving party to convince the Trial Court that no improper self-help had occurred. It failed to carry that burden.

The Trial Court correctly held that BPREP should not benefit from a breach that it caused, and that Standard is entitled to a full defense and adjudication of BPREP's "dumping" and "contamination" allegations in a separate lawsuit which BPREP may file. There was no error, and BPREP's appeal should be denied.

PROCEDURAL HISTORY

The procedural history pertinent to this appeal is far simpler and less biased than that set forth in BPREP's brief.

BPREP originally initiated this rent-collection and possession action against Standard on February 7, 2023. Pa3. The Parties settled this matter and memorialized the terms in a June 23, 2023 Settlement Agreement. Pa49. The Settlement Agreement indicated that no admission of liability was being made by any party, and modified the Lease Agreement by ending the lease on October 31, 2023. Ibid. Standard was required to pay $46,058.39 each month for four months, on or before July 1, August 1, September 1, and October 1, 2023. Ibid. The Settlement Agreement included a Consent Judgment for possession of the premises and a Consent Judgment for $796,484.39 in the event Standard defaulted. Ibid.

In late September of 2023, BPREP was purportedly alerted by a neighbor of Standard's attempt to repave the parking lot. BPREP then rushed to take over the property, locked Standard out and posted a security guard at the premises to prevent further access, and on September 29, 2023 issued a letter to the Court asking for the entry of both Consent Judgments. Pa41. The Trial Court did not do so. On October 20, 2023, BPREP again asked the Trial Court to enter the Consent Judgment. Pa162. Standard objected, submitting a Certification of its principal, Giovanni Garcia, who stated that Standard had been prematurely locked out of the property before the lease

as modified by the Settlement Agreement had expired. Pa173. The Trial Court declined to enter the monetary Consent Judgment.

On November 30, 2023, the Parties attended a mandatory court-ordered arbitration before retired Judge Barry P. Sarkisian, the former presiding judge of Hudson County Superior Court, Chancery Division. Da1. Judge Sarkisian (as Arbitrator) issued a decision ruling that he was not in a position to rule on the merits of BPREP's application for the entry of the Consent Judgment. Ibid. In his Addendum, Judge Sarkisian noted the allegations that BPREP engaged in self-help to possession before the vacation date and that the case required a hearing or separate action for a determination on entitlement to additional damages. Ibid.

On December 14, 2023, BPREP filed a notice of rejection of the Arbitrator's award and request for trial de novo. Da4.

On January 3, 2024, BPREP filed its motion to enforce the Settlement Agreement, which Standard opposed. Pa197. As Standard had already vacated the premises as of the date of the motion, it did not object to the Trial Court's entry of the Consent Judgment for possession on January 4, 2024. Pa228. The Trial Court heard oral argument on February 4, 2024. 1T.

The Trial Court raised significant concerns with BPREP's resort to self-help and locking out of Standard from the premises.

> THE COURT: It sounds like I'm going to need testimony from your clients because your -- I can't even -- it sounds to me like one of you is saying --

> MS. SUSSNER: (inaudible - crosstalk).
> THE COURT: -- that you were locked out, because that's a very important fact. Should they pay if --
> MS. SUSSNER: (inaudible - crosstalk).
> THE COURT: -- they don't have the access? You're saying they had the access. How do I know which one is true?
>
> 1T, 19:16-20:1.
>
> THE COURT: All right. I've heard the parties, but someone -- I'm not still clear on whether or not that happened or not. But it sounds to me, if a security guard was there, it happened.
>
> 1T, 22:3-6.

On February 2, 2024, the Trial Court entered an Order denying BPREP's motion. Pa1. The Trial Court referenced the record on oral argument, and noted that there were "several compelling circumstances present in this matter to not enforce the settlement agreement. First, Plaintiff jumped the gun and took over the property. In addition, there is no proven and contingent 'dumping' claim addressed by the current lawsuit or addressed by the Settlement Agreement." Ibid.

This appeal followed.

STATEMENT OF FACTS

Standard strongly disagrees with BPREP's one-sided recitation of the facts and present the following facts to this Court's attention. BPREP was the new landlord of a commercial property rented by Standard. When disagreements between the parties arose, BPREP sued for possession and collection of rents, and the case was settled.

Under the Settlement Agreement, Standard agreed to make four payments of $46,058.39 each for July, August, September, and October 2023. Standard made all of those payments except for October 2023 because of BPREP's rush, self-help and forced repossession of the property.

Standard had an obligation to leave the property in good repair and dispose of personal property and debris in accordance with the Lease Agreement:

> 20. Maintenance of Repairs. During the term of the lease:
>
> a. Landlord will have no obligation to provide maintenance, repairs, replacements or services at the Premises. Tenant shall, at its own cost and expense, keep and maintain the Leasehold in good repair. This obligation shall include, but not be limited to, all repairs and maintenance of the parking areas, floors, windows, interior walls, interior and exterior glass, doors, office partitions, bathrooms, mechanical, electrical and plumbing systems, light fixtures, ramps, dock levelers and loading doors…
>
> Pa79.

To that end, Standard spent $6,000 in dumpsters where such items were disposed of. Pa179. During this time, an individual by the name of Miguel stopped by the property, and having seen the dumpsters and clean-up effort, offered to provide paving services to repair the parking lot and loading dock areas which were in disrepair. Pa175. Miguel told Standard that he possessed surplus construction materials left over from a prior project, and that the areas at the property which needed repair would be paved for $1,500. Ibid. He assured that this was good asphalt that could be used at Standard's facility. Ibid.

BPREP took the deposition of Miguel on December 20, 2023 pursuant to a subpoena. Pa250. In his deposition, Miguel confirmed that he went to the property in September 2023 to repair holes in the parking lot. Pa263, 48:21-22; 52:20-53:1. Miguel discussed with Standard flattening the lot and bulldozing asphalt millings to cover the holes, including a large hole in front of the warehouse. Pa264, 55:9-59:15. He testified that there were a lot of holes and he filled them. Pa267, 65:16-68:5.

Abruptly, before Standard made the last of the four settlement payments, BPREP rushed to the premises and stopped the repair of the property's parking lot, locked out Standard, and took over the property because of fears of alleged contamination. Pa270, 75:4-76:21. Even a security guard was posted to prevent Standard's possession and entry. This was a breach of the Settlement Agreement which had allowed Standard to be at the property and have possession until October 31, 2023. Pa49.

Although BPREP continues to perpetuate this myth that the asphalt millings were contaminated, after months of "investigating," BPREP has presented zero evidence of such alleged contamination. Notably, it did not do so to the Trial Court. BPREP did not present any expert report to the Trial Court despite working with a Licensed Site Remediation Professional (LSRP).[1] Standard's requests for

[1] The Trial Court correctly noted that any claims of environmental contamination, given their complexity, would have to be subject of a separate lawsuit rather than be adjudicated in a summary fashion, yet that is precisely what BPREP continues to

documentation of any testing that has been conducted at the site by BPREP, at this point for months, have been met with perpetual silence.[2] Pa231. Because of the lack of any report, no expert depositions have been taken and no expert testimony has been provided. Additionally, there remain substantial allegations th*at the site was previously contaminated even before Standard rented the premises*, which have not been resolved, and that Standard should be allowed to prove in a full-fledged lawsuit. Pa177.

STANDARD OF REVIEW

The standard of review on this appeal is *de novo*. "On a disputed motion to enforce a settlement," a trial court must apply the same standards "as on a motion for summary judgment." Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997). This standard is *de novo*, as a “trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

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push as part of its meritless arguments. There is nothing in the record below from any expert.

[2] Additionally, Standard recently received late notice from BPREP that they have hired a contractor to excavate the asphalt millings from the site as of May 28, 2024.

Standard is entitled to due process and a full-fledged lawsuit with discovery and experts (and a trial) "to establish the facts." Ibid. (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995)).

LEGAL ARGUMENT

I. The Trial Court Did Not Err In Finding That BPREP's Rushed Takeover and Lockout of the Premises Precluded The Grant of The Motion To Enforce (Pa3).

Strong public policy favors settlement of litigation in New Jersey, but it is not absolute. Borough of Haledon v. Borough of North Haledon, 358 N.J. Super. 289, 305 (App.Div.2003) (citing Nolan v. Lee Ho, 120 N.J. 465, 472 (1990)). "Compelling circumstances" can preclude the denial of a motion to enforce a settlement agreement. Id. at 305 (citing Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App.Div.1983)). Such compelling circumstances were present here when BPREP conducted improper, wrongful self-help and seized possession of the property a month before Standard's leasehold expired or Standard vacated the premises per the Settlement Agreement.

The Trial Court did not err in finding that BPREP's actions precluded Standard's obligation to pay the last settlement payment or comply with the other terms of the Settlement Agreement. BPREP is the initial breaching party under the Settlement Agreement and the Lease Agreement yet argues that it is nonetheless entitled to the full benefit of the bargain from the Settlement Agreement. This

argument completely disregards Standard's rights as a tenant (and settling party) and cannot be sanctioned by the Court.

Significantly, BPREP's argument that it did not improperly restrict Standard's access to the property is a bare assertion unsupported by actual evidence in the record. BPREP does not deny that it posted security guards at the premises to restrict entry shortly after it discovered that Standard was repaving the parking lot in the last week of September 2023. And, as BPREP bears the burden of proof on its motion to enforce to convince the Trial Court (and this Court) that no improper self-help had occurred, it fails to carry that burden. The Trial Court noted at oral argument that resolution of this key issue likely required testimony from the clients, but the presence of a security guard indicated that some sort of lockout *had* occurred. 1T, 19:16-20:1.

Indeed, BPREP admits in its opening brief and supporting certification that BREP "engaged 24-hour security to prevent Standard, or those acting in concert with it, from exacerbating the damage". Pb17, Pa214. Yet in the same breath, BPREP contradicts itself by asserting that "[a]t no point did Plaintiff prohibit Defendant from accessing the Leased Premises". Ibid. These two statements inherently conflict with each other. The security guard was not there simply to observe the condition of the premises; the guard's function was to prevent access to the property, especially Standard's.

Nothing in BPREP's submission to this Court resolves that factual conflict in BPREP's favor. Standard's principal certified that BPREP locked Standard out of the property by posting a security guard. BPREP does not dispute that it did so. In fact, Standard still had a water cooler and some personal property at the site when BPREP took possession.[3] As a result of BPREP's improper self-help, Standard also discontinued a legal action to evict a sub-tenant at the property.[4] As the Trial Court noted, ultimate resolution of the issue likely required testimony from both BPREP and Standard. BPREP failed to bear its burden of proof on the motion, and it was properly denied.

Because the Trial Court found that BREP had engaged in improper self-help by locking Standard out of the premises, it was wholly unnecessary to address any of BPREP's remaining arguments about Standard's purported breaches of the Settlement Agreement. BPREP asserts that Standard breached the Settlement Agreement in four ways: 1) that Standard failed to make the October 2023 rent payment; 2) that Standard's subtenant failed to timely vacate the premises; 3) that Standard failed to leave the premises in broom-clean condition; and 4) that Standard

[3] BPREP even states that additional items were left at the premises. Pb28.

[4] BPREP's assertion that the sub-tenant asked for additional time to remove its vehicles from the property is irrelevant to this appeal. The focus of the Trial Court's decision was properly on whether BPREP improperly prevented Standard from access to the property, not whether the sub-tenant still had property at the site as of October 31, 2023.

engaged in "dumping" contaminated asphalt millings at the property. The first three arguments concern (alleged) events that happened subsequent to, and as a *result* of, BPREP's breach by way of rushed, sudden and wrongful self-help. The last argument, regarding alleged "contamination," has not even been proven. Moreover, BPREP can hardly be heard to complain about the incomplete condition of the parking lot or the presence of debris at the site when it was directly responsible for stopping the work and preventing further access by Standard.

BPREP asks this Court to condone its unclean hands by awarding it the full amount of the $796,484 Consent Judgment despite BPREP's abrupt, impetuous and premature interference with the Lease and the Settlement Agreement. In fact, quite beyond that, BPREP in effect wants an automatic judgment close to $800k for alleged contamination, without Standard having any right to defend itself and have a court adjudicate this alleged "contamination" claim. If, in September of 2023, BPREP truly feared that the asphalt millings were contaminated, the correct course of action was to a) communicate with Standard; b) join Standard in investigating the allegation and pausing whatever work was being conducted; and c) if this failed, file a lawsuit focused on the alleged "dumping" or contamination."

BPREP elected not to do so and unilaterally and impetuously instead took matters into its own hands, acting as judge, jury, and executioner. This clearly violated Standard's rights under the Lease Agreement and under the Settlement

Agreement and negated (if not rendered impossible) any further compliance by Standard and most importantly, any purported right or entitlement BPREP had to have the Court enter and enforce the Consent Judgment.

The Trial Court was correct in denying the motion to enforce the Settlement Agreement based upon BPREP's failure to bear its burden of proof on this issue, its wrongful and improper self-help lockout of Standard, and unquestionable breach of the Settlement Agreement. There is no support in the record to disturb its finding.

II. BPREP'S Motion To Enforce is a Disguised Pre-Judgment Writ of Attachment as The Settlement Agreement Does Not Provide For Relief For Environmental Contamination Claims (Pa161).

This appeal is before the Court today because BPREP saw an easy and quick opportunity to get a windfall and collect an undeserved $796,484.39 Consent Judgment by asserting that there was a breach of the Settlement Agreement—a breach which BPREP itself precipitated and committed. Because the Trial Court did not rubber-stamp BPREP's request to enter the Consent Judgment based upon conclusory and unproven allegations of contamination, BPREP claims this was reversible error. It was not.

BPREP's claims of "dumping" and "contamination" are currently unsupported allegations that cannot form the basis of a breach of the Settlement Agreement or entry of the Consent Judgment. Environmental contamination claims are complicated cases that are ill-suited to summary adjudications. Here, BPREP

seeks to prove allegations of contamination by mere assertions in an affidavit. No expert report or objective testing results have been provided by BPREP. There is no language in the Settlement Agreement that provides a truncated process in the event of contamination claims.

"Courts cannot make contracts for parties. They can only enforce the contracts which the parties themselves have made." Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960). It is not the court's function to supply terms that are absent from the contract. Temple v. Clinton Trust Co., 1 N.J. 219, 225 (1948). The court "has no power to add to that judgment." Long v. Mertz, 21 N.J. Super. 401, 403 (App.Div.1952).

Asking this Court to give BPREP a judgment close to $800,000 now as part of a Consent Judgment that was never meant to secure all kinds of claims—but only secured payment of the rent owed under settlement—to satisfy an as-yet unproven claim of "dumping" or "contamination" (without any due process or opportunity given to Standard to defend itself or challenge or prove the opposite of BPREP's claims) is tantamount to giving BPREP a pre-judgment writ of attachment. It deprives Standard of regular due process in the form of discovery, defenses, expert opinions, cross-examination, trial and the ability to sue any responsible third parties—if there is any damage to the property at all—and have the claim adjudicated by a neutral tribunal. "Equity should and does intervene when it can prevent the injury which would

otherwise give rise to an action for money." Del. River & Bay Auth. v. Hunter Constr. Inc., 344 N.J. Super. 361, 368 (Ch. Div. 2001). A pre-judgment attachment is an "extraordinary remedy in rem for the collection of an ordinary debt by seizure of the property of the debtor." Wolfson v. Bonello, 270 N.J. Super. 274, 289 (App. Div. 1994) (emphasis in original).

Granting a reversal of the Trial Court's denial of the motion to enforce the Settlement Agreement would have disastrous consequences for Standard. BPREP's allegations that Standard allegedly dumped contaminated debris onto the Property are not addressed by the pleadings in the current lawsuit or the Settlement Agreement. The Settlement Agreement simply required Standard to make monthly rent payments to BPREP, which it did until BPREP wrongfully took over and locked Standard out of the Property in breach of the Settlement Agreement. The Trial Court was correct in holding that BPREP should file a new lawsuit related to any environmental contamination claims. So, BPREP is not harmed by the Trial Court's ruling.

Puzzlingly, although BPREP indicates it will file a new lawsuit for contamination claims, which it has yet to do, it nonetheless seeks to use the Consent Judgment as an improper vehicle for a pre-judgment writ of attachment. The Settlement Agreement should not be used to impose liability on Standard in a draconian, egregious and oppressive way for matters which arose after settlement

was reached. BPREP will have the same fair and full opportunity to litigate and seek relief in a separate action as Standard will have to defend itself. There is no reason to impose liability before BPREP has even proven its case against Standard for highly contested environmental contamination claims.

CONCLUSION

For the above stated reasons, it is respectfully requested that this Court deny Plaintiff/Appellant BPREP 520 Duncan LLC's appeal in its entirety.

Respectfully,

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BPREP 530 DUNCAN LLC, Plaintiff-Appellant, v. STANDARD LOGISTICS, LLC, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-002067-23 <u>Civil Action</u> On Appeal from an Order of the Superior Court, Law Division, Hudson County Law Div. Docket No.: HUD-L-483-23 Sat below: Hon. Kalimah H. Ahmad, J.S.C Date of Submission: July 22, 2024

REPLY BRIEF OF PLAINTIFF-APPELLANT
BPREP 530 DUNCAN LLC

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BPREP[1] submits this reply brief in further support of its appeal of the trial court's Order denying BPREP's motion to enforce the Settlement Agreement.

PRELIMINARY STATEMENT

In opposition to this appeal, Standard does not dispute that it breached the parties' Settlement Agreement when it: (i) failed to make its fourth settlement payment, (ii) failed to vacate by October 31, 2023, and (iii) failed to leave the Leased Premises "broom clean." While Standard goes on to claim that dumping thousands of cubic yards of solid waste at the Leased Premises should not constitute a fourth event of default, it does not actually dispute that it was. Nevertheless, Standard argues that the trial court correctly relieved it of the consequences its breaches because its unauthorized dumping was well-intended and should have been permitted to continue. Even if this were plausible – and it is not – there is nothing to explain its three remaining events of default, any one of which should have compelled the trial court to enforce the parties' Settlement Agreement as written, and to enter the Money Judgment, regardless of its views of Standard's dumping. The trial court's failure to do so was reversible error.

[1] Capitalized terms shall have the same meaning ascribed to them in BPREP's Appellate Brief filed on June 7, 2024.

On appeal, Standard presents three principal reasons that it should be relieved of its contractual obligations, all of which lack merit. First, Standard argues that because BPREP installed security to prevent it from importing even more solid waste (as it attempted to do), it was not required to comply with the Settlement Agreement because it was "locked out" – even though it had vacated the Leased Premises two months earlier. But even if this were not the case, because Standard and its Subtenant retained continuous and uninterrupted access to the Leased Premises throughout, to equate non-exclusive security measures with a lockout is as absurd as it is meritless.

Standard also claims that dumping and dispersing thousands of cubic yards of debris and millings was intended to "clean up" the Leased Premises prior to its departure. Standard's motivation in breaching its settlement obligations is irrelevant, however, particularly after it was advised of its breach and directed to stop, but it refused.

Standard's final contention is that the Money Judgment should be construed as "pre-judgment attachment," although it not only consented to that relief, but also agreed to the amount and the terms of enforcement. And because the Money Judgment memorialized a past-due obligation, and not a future liability yet to be liquidated, pre-judgment attachment is inapposite to these issues. In the end, it is the plain language of the Settlement Agreement

that controls. There is no dispute that settled law requires the parties' Settlement Agreement to be enforced as written and that trial courts cannot re-write settlement agreements to suit their own notions of fairness. For this reason, and those expressed in BPREP's opening brief, the trial court's Order should be reversed and this matter should be remanded to the trial court for entry of the Money Judgment for the full amount due, together with attorneys' fees and costs incurred to obtain that relief, as the parties agreed.

RESPONSIVE STATEMENT OF FACTS

In opposition to this appeal, Standard pretends to "strongly disagree" with the facts presented before conceding nearly all of them. [Db5]. Among its concessions is its breach of four separate settlement obligations: (i) its *admitted* failure to pay the final settlement payment to which it agreed [Pa178 at ¶ 25, Db6]; (ii) its *admitted* abandonment (and importation) of mountains of debris and millings that left the Leased Premises nowhere near "broom clean" [Db11, Pa309-12 at ¶ 4][2]; (iii) its *admitted* failure to deliver possession by October 31, 2023 [Pa214 at ¶ 10, Pa297-303 at ¶¶ 2-4]; and (iv) its *admitted* dumping of solid waste (although it disputes the volume). [*Cf.* Pa175 at ¶ 9 with Pa163, Pa305]. Despite this, Standard contends that it should be relieved of the consequences of its multiple breaches because "[t]he Trial

[2] Standard concedes that "Standard was to return the Property in broom clean condition and free of personal property and debris." [Pa169, Pa175 at ¶ 6].

Court … held that Standard [sic] breached the settlement agreement and was not entitled to enforce such Consent Judgment" – although the trial court made no such finding. [Db2].

Presumably appreciating that its version of events is not supported by the record, Standard attempts to reach beyond it in search of something more favorable. [*See, e.g.*, Db4 (discussing a Court-ordered arbitration decision that (i) was not provided to the trial court, and (ii) is not provided to this Court, either)]. But because Standard did not file an appendix, any references to a Defendant's Appendix are also not before this Court and may not be considered. *See Burt v. W. Jersey Health Sys.,* 339 N.J. Super. 296, 311 (App. Div. 2001) ("Ordinarily, on appeal, we generally confine ourselves to the record"). *See also Eichenbaum & Stylianou, LLC v. Osaedebiri*, 2013 WL 4104105, at *1 (N.J. Super. Ct. App. Div. Aug. 15, 2013) ("We have before us only the statements made in defendant's brief which are outside the record. As such, we cannot adequately review[.]"). The same is true for Standard's footnote reference to a May 28, 2024 excavation of asphalt millings that is also dehors the record and ineligible for consideration. [Db8, fn 2].

Additionally, two of Standard's central contentions materially mischaracterize the record and therefore require correction. First, Standard complains that when its unauthorized dumping was discovered, BPREP

"rushed to take over the property" when "the correct course of action was to a) communicate with Standard; b) join Standard in investigating the allegation and pausing whatever work was being conducted; and c) if this failed, file a lawsuit focused on the alleged 'dumping' or 'contamination.'" [Db3; Db12]. Ironically, this is not dissimilar to how BPREP proceeded. Indeed, after learning of Standard's misconduct, BPREP immediately contacted Standard to request information and to solicit cooperation. [Pa46, Pa206]. Standard devoted the next nine days to repeated promises that documents and information would be forthcoming, knowing all along that it would provide neither.[3]

The parties' extensive exchange during that period included the following: (i) a letter to Standard's counsel on September 20, 2023, one day after BPREP learned of its unauthorized dumping, to demand that Standard cease and desist and that it provide documents and information concerning the source and composition of the materials that it had imported [Pa46 at ¶¶ 11-13, Pa206]; (ii) an email to Standard's counsel on September 21, 2023 urging a returned telephone call "as soon as [counsel is] able" due to the "time-

[3] Paragraph 17(a) of the Lease provides that "Tenant shall not… dispose [of] hazardous materials or waste," and Paragraph 17(b) provides that "within five (5) days after any request by Landlord, Tenant will supply all information requested by Landlord with respect to Tenant's operations at the Property and Tenant's use, storage or discharge of hazardous substances or hazardous wastes at or within the Leasehold." [Pa77] Standard complied with neither.

sensitivity" of these events [Pa101]; (iii) another letter to Standard's counsel on September 22, 2023 following a telephone call repeating the urgency of BPREP's request for information [Pa46 at ¶ 14, Pa210]; (iv) an email dated September 22, 2023 from Standard's counsel representing that it was assembling documents for turnover [Pa98]; (v) an email exchange on September 26, 2023 in which BPREP reiterated that its need for information "is not something that can wait," while Standard's counsel *again* promised "I will provide it to you as soon as I have it" [Pa97]; and (vi) an email dated September 27, 2023 in which Standard's counsel's stated: "I understand your frustration. My client has assured me that they will have all the documents ready by tomorrow." [Pa47 at ¶ 16, Pa104]. No documents were ever provided. [Pa163]. BPREP wrote to the trial court for assistance on September 29, 2023, after nine days of pleading with Standard for cooperation proved fruitless. [Pa203 at ¶ 16]. That is when Standard disclosed that it never had any documentation (Pa175 at ¶ 8), and that its promises to provide non-existent documents were a ruse from the start.

Because efforts to "communicate" with Standard were unsuccessful and demands to "pause whatever work was being conducted" were ignored [Db3, Db12], BPREP was forced implement its own non-exclusive security measures to prevent further dumping (which had at that

point been continuing without end). BPREP made clear to Standard that "[t]he security was not installed to deprive Defendant of a possessory right, but to prevent further unauthorized conduct and damage to Plaintiff's Property" — without ***ever*** prohibiting Standard, its principal, or its Subtenant from accessing the Leased Premises during that period.[4] [Pa46 at ¶¶ 11-13, Pa163, Pa214 at ¶¶ 7, 9]. This measure proved necessary as one dump truck after the next was turned away when they tried to gain entry. [*Id.*].

Standard tries to justify these jaw-dropping events by claiming "BPREP locked Standard out of the property by posting a security guard. BPREP does not dispute that it did so." [Db11] This is untrue. Standard's own principal certified: "Standard's operations moved out of the Property sometime in late July 2023," and all that remained in September 2023 was the "cleanup and disposal of debris and personal property" that *it* had imported in its final weeks. [Pa171, Pa176 at ¶ 15]. Standard's Subtenant, on the other hand, remained in possession and held over until November — *after* the Vacation Date had passed — which Standard does not dispute. [Pa298 at ¶ 4; Pa300].

Standard also contends that its importation of *hundreds* of truckloads of unknown and unauthorized solid waste, in unmarked trucks by

[4] Because Standard and its principal were permitted to remain in possession despite their unauthorized dumping, they prevented BPREP's environmental expert from accessing the Leased Premises to assess the damage they had caused as late as October 19, 2023. [Pa163].

unknown individuals, was merely a "paving" project after it vacated that it neglected to mention to its landlord. [Db6] 700 cubic yards of construction and demolition materials and 8,000-9,000 of cubic yards of asphalt millings, deposited by *hundreds* of dump trucks, are not a "paving" project – particularly where there was no paving. Moreover, the volume of materials that was dispersed across BPREP's 2.5-acre parking area was so extensive that it raised the ground level by *three feet* in some locations — preventing access to the docking bays and rendering the Leased Premises completely unusable. [Pa163, Pa305 at ¶¶ 5-10] But even if Standard's misguided intention was to undertake a paving project, the unauthorized importation of any volume of solid waste constitutes a breach of numerous Lease and settlement provisions regardless of Standard's intent. [Pa77 at ¶ 15-17 ("Tenant shall not… store [or]… dispose [of]… waste"), Pa79 at ¶ 20 ("Tenant shall not permit any debris or garbage to accumulate in or about the exterior of the Building…")]. The fact that Standard ignored repeated demands to cease and desist says it all.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT REFUSED TO ENFORCE THE SETTLEMENT AGREEMENT AS WRITTEN DESPITE STANDARD'S UNDISPUTED BREACHES.

The parties agree that the standard of review for this appeal is *de novo*. *See, e.g.*, *Savage v. Twp. of Neptune*, 472 N.J. Super. 291, 306 (App.

Div. 2022), *rev'd on other grounds*, 2024 WL 2002418 (N.J. May 7, 2024) (citation omitted). [*See also* Db8]. While the parties also agree that "[s]trong public policy favors settlement of litigation in New Jersey," Standard relies upon *Borough of Haledon v. Borough of N. Haledon,* 358 N.J. Super. 289, 305 (App. Div. 2003) for the ostensible proposition that "[c]ompelling circumstances can preclude the denial of a motion to enforce a settlement agreement." [Db9]. Standard neglects to disclose that the *Haledon* Court: (i) did *not* find compelling circumstances that could disturb the settlement there, (ii) reversed the trial court's order vacating the settlement, and (iii) enforced the parties' settlement, instead, in the absence of "clear and convincing proof" that disturbing the parties' settlement was warranted. *See Haledon,* 358 N.J. Super. at 305-06 (*citing DeCaro v. DeCaro*, 13 N.J. 36 (1953)).

Because the facts here are even less compelling than those in *Haledon,* and the trial court below did not find clear and convincing proof that this settlement should be disturbed, this Court should follow *Haledon,* reverse the trial court, and enforce the parties' settlement following its *de novo* review.

A. Standard Does Not Dispute That Its Failure To Pay The Fourth Settlement Payment Constituted A Breach Of The Settlement Agreement That Should Have Resulted In The Entry Of The Money Judgment.

In opposition to this appeal, Standard does not dispute that it failed to make its fourth settlement payment [Db6], or that its failure constituted an

event of default under the Settlement Agreement that entitled BPREP to submit the Money Judgment to the trial court for immediate entry. [Pa51 at ¶ 2 (admitting the liability expressed in the "Consent Judgment in the Law Division Action"), Pa51 at ¶ 3(b) (confirming Standard would make monthly payments through October 1, 2023); Pa51 at ¶ 3(d) ("The Consent Judgment in the Law Division Action shall be held in escrow by Landlord's counsel unless and until an Event of Default occurs, as defined in Paragraph 4 below, whereupon Landlord may execute upon and enforce all rights and remedies in connection therewith"); Pa52 at ¶ 4 ("An Event of Default shall occur if Tenant: (i) fails to make any Monthly Payment when due[.]")].

The installation of security to prevent further unauthorized dumping (and damage) to the Leased Premises does not alter this unambiguous contractual obligation or the agreed-upon remedy in the event of a breach – as Standard's own authorities observe. [*See* Db14 *citing Kampf v. Franklin Life Ins. Co.*, 33 N.J. 36 (1960) ("'Courts cannot make contracts for parties. They can only enforce the contracts which the parties themselves have made.'" (additional citations omitted); *Temple v. Clinton Tr. Co.*, 1 N.J. 219, 225 (1948) ("It is beyond the province of equity to substitute terms for those made by the parties to a contract, or to supply terms that have not been agreed upon")]. Absent clear and convincing proof to the contrary, which does not

exist, the trial court's Order should be reversed, the parties' settlement should be enforced, and the Money Judgment should be entered by the trial court.

B. Standard Does Not Dispute That Its Failure To Timely Vacate The Leased Premises Or To Leave It Broom Clean Constituted Two Additional Breaches Of The Settlement Agreement That Should Have Resulted In The Entry Of The Money Judgment.

Standard also does not dispute that Subtenant's continued possession of the Leased Premises beyond the October 31, 2023 Vacation Date constituted another event of default. [Pa214 at ¶ 10]. Nevertheless, Standard argues: "BPREP's assertion that the sub-tenant asked for additional time to remove its vehicles from the property is irrelevant to this appeal. The focus of the trial court's decision was properly on whether BPREP improperly prevented Standard from access to the property, not whether the sub-tenant still had property at the site as of October 31, 2023." [Db11, fn 4 (emphasis in original)]. This is incorrect.

Standard agreed in Paragraph 3(a) of the Settlement Agreement to "vacate the Leased Premises and relinquish all possessory rights that Tenant, ***or those claiming under it,*** presently has, or has ever had. On or before the Vacation Date, Tenant, ***and all other persons or entities in possession,*** will remove all personal property and debris from the interior and exterior of the Leased Premises such that it is broom clean, as set forth in and required by Paragraph 31 of the Lease." [Pa51 at ¶ 3(a) (Emphasis added.)]. It is

immaterial whether it was Standard or its Subtenant that failed to relinquish possession or to remove personal property, as such a failure by either of them constituted a breach of the Settlement Agreement that entitled BPREP to submit the Money Judgment for entry. [Pa52 at ¶ 4].

Standard has also admitted that it did not leave the Leased Premises "broom clean." [Db11 ("Standard still had a water cooler and some personal property at the site when BPREP took possession"); Pa309 at ¶¶ 4-5 (BPREP certifying that Standard left abandoned vehicles, trailers, approximately 17 commercial vehicle tires, and an approximately 50-gallon drum, in addition to the other debris dumped at the Leased Premises, and that removal of these items alone was estimated to cost $40,000)]. BPREP was entitled to submit the Money Judgment for entry for this reason, too. The trial court's failure to enforce the Settlement Agreement, and to enter the Money Judgment as a consequence of these additional breaches, was reversible error.

C. Standard Does Not Dispute That Its Unauthorized Dumping Constituted A Fourth Breach Of The Settlement Agreement, Regardless Of The Volume Dumped, That Should Have Resulted In The Entry Of The Money Judgment.

Standard does not dispute that unauthorized and unsourced solid waste was imported and dispersed across the Leased Premises, or that such activity constituted an express a breach of Paragraphs 16, 17 and 20 of the Lease. [Pa77, Pa79]. Instead, Standard disputes the volume of material that it

wrongfully deposited and its motivation in doing so. [Pa175 at ¶ 9]. But because a breach is a breach, it is irrelevant whether the breach resulted from 6 unauthorized truckloads or 6,000 – the remedy is the same. *See Verbal v. Tiva Healthcare, Inc.,* 2021 WL 9527858, at *7 (S.D. Fla. Aug. 19, 2021) ("Simply put, '[a] breach is a breach is a breach'"). The trial court therefore also erred when it failed to enforce the consequences of this fourth breach, too.

II. ENFORCEMENT OF THE MONEY JUDGMENT FOR UNPAID RENT IS NOT PRE-JUDGMENT ATTACHMENT FOR THE UNRELATED DAMAGES CAUSED BY STANDARD'S POST-SETTLEMENT DUMPING.

Standard argues that the trial court properly denied BPREP's motion to enforce the Settlement Agreement because the Money Judgment would constitute a "pre-judgment writ of attachment" and "a windfall," although the trial court made no such ruling. [Db13]. But even if it had, this assertion mischaracterizes the parties' settlement as well as the damages reflected in the Money Judgment to which the parties explicitly agreed. [Pa93]

To be clear, the Money Judgment has *nothing* to do with the post-settlement damages caused by Standard's unauthorized dumping. The damages resulting from the solid waste that Standard imported and dispersed has yet to be quantified by BPREP's environmental experts, and will be the subject of a new action to recover these distinct amounts once this damage has been quantified. The Money Judgment, on the other hand, was negotiated and

agreed to by both parties as "the total amount due under the Parties' Lease… as of June 1, 2023" that BPREP was entitled to recover upon default. [Pa50 at Recital D; Pa93-95]. In other words, the Money Judgment represented Standard's *past-due* liability that both parties agreed was due as of that date to secure performance of its settlement obligations. [*Id.,* Pa52 at ¶ 4].

But because Standard did *not* comply with its settlement obligations, BPREP was entitled to enforce the parties' agreed-upon remedy and to present the Money Judgment for entry in an amount equal to that *past-due* Arrearage. *See Ramada Worldwide Inc. v. 4018 W. Vine St., LLLP*, 2022 WL 263436, at *2 (D.N.J. Jan. 28, 2022) ("The parties executed a second settlement agreement to resolve the lawsuit on September 12, 2019 (the '2019 settlement'), under which defendants executed a consent judgment and agreed to entry of a $565,743.31 judgment if they failed to comply with its terms. Again, defendants breached their obligations and the consent judgment was entered on December 18, 2019."). Such a remedy is *not* a seizure of assets as it is limited to BPREP's actual damages for unpaid rent as contemplated by the Settlement Agreement, and does *not* address BPREP's post-settlement environmental clean-up costs that had yet to be realized when the Settlement Agreement was executed. [Db15].

The trial court's failure to enter the Money Judgment due to its conflation of these issues was erroneous and should be reversed. *See Dep't. of the Pub. Advocate v. N.J. Bd. of Pub. Util.*, 206 N.J. Super. 523, 528 (App. Div. 1985) ("[C]ourts will strain to give effect to the terms of a settlement wherever possible. It follows that any action which would have the effect of vitiating the provisions of a particular settlement agreement and the concomitant effect of undermining public confidence in the settlement process in general, should not be countenanced.").

CONCLUSION

For the foregoing reasons, and those set forth at length in BPREP's opening brief, BPREP respectfully requests that this Court reverse the Order below and remand the matter for the entry of the Money Judgment that BPREP was authorized to present for entry upon any one of Standard's four events of default.

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