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June 28, 2024

Honorable Judges of the
Superior Court of New Jersey
Appellate Division
R.J. Hughes Justice Complex
25 W. Market Street
P.O. Box 006
Trenton, NJ 08625-0006

Re: THE MOORISH SCIENCE TEMPLE OF AMERICA, NEW JERSEY, Plaintiff-Appellant, V. MOORISH SCIENCE TEMPLE OF AMERICA, INC. Defendant-Respondent. SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-2287-23T4; ON APPEAL FROM ORDER ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION-GENERAL EQUITY PART, MERCER COUNTY (MER-C-4-23); CIVIL ACTION; SAT BELOW: HON. PATRICK J. BARTELS, P.J.Ch.; SUBMITTED: JUNE 28, 2024

Dear Honorable Judges:

Please accept plaintiff's appellate letter merits brief [1] .

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[1] On the brief: Shanna Cushnie (#159412016; cushnie.shanna1@gmail.com).

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I. MARCH 4, 2024 ORDER DENYING PLAINTIFF SUMMARY JUDGMENT (Pa27 to Pa28).
A. Order is at Pa27 to Pa28.
B. Verbal opinion is at T12-10 to T14-14; T15-23 to T16-14.
C. No intermediate opinion.

II. MARCH 4, 2024 ORDER GRANTING DEFENDANT SUMMARY JUDGMENT (Pa27 to Pa28).
A. Order is at Pa27 to Pa28
B. Verbal opinion is at T14-15 to T15-18.
C. No intermediate opinion.

PRELIMINARY STATEMENT

This appeal challenges the decision of the Superior Court of New Jersey Chancery Division: General Equity Part, Mercer County (the "trial court"), which erroneously granted summary judgment in favor of Defendant, The Moorish Science Temple of America, Inc. ("Defendant"), and improperly denied Plaintiff, The Moorish Science Temple of America, New Jersey's ("Plaintiff"), motion for summary judgment. This ruling was grounded in procedural technicalities and failed to address substantive merits and factual disputes crucial to the case.

Plaintiff asks this court to reverse the trial court's decision to grant summary judgment and to remand the case back to the trial court.

PROCEDURAL HISTORY [2]

On October 5, 2021, Plaintiff, the Moorish Science Temple of America, New Jersey, commenced a civil action in the Superior Court of New Jersey, Law Division, Mercer County (MER-L-2259-21). Pa1 to Pa5 (complaint). The matter was transferred to the Mercer County Chancery Division (MER-C-4-23) on January 12, 2023. Pa6 (order).

A January 13, 2023 judgment in Plaintiff's favor (Pa7 to Pa8) was vacated by order (Pa9 to Pa10) entered on March 23, 2023. On the same date, Defendant, Moorish Science Temple of America, Inc., filed an answer and counterclaim (Pa11 to Pa21). Plaintiff answered the counterclaim on March 30, 2023. See pleading at Pa22 to Pa26.

On January 8, 2024, Plaintiff moved for summary judgment. Pa33 to Pa35 (notice of motion). On February 5, 2024, Defendant cross-moved for summary judgment (see notice at Pa136 to Pa137); the cross-motion papers were resubmitted on February 6, 2024. A statement of all items submitted vis-à-vis the motion and cross-motion is at Pa351 to Pa355.

On March 4, 2024, the Honorable Patrick J. Bartels, P.J.Ch., entered an order (Pa27 to Pa28) denying Plaintiff's motion and granting Defendant's cross-

[2] Transcript reference: "T__-__" refers to the March 1, 2024 summary judgment motion/cross-motion hearing.

motion. The court's March 1, 2024 verbal opinion is at T12-10 to T15-18; T15-23 to T16-18.

On April 3, 2024, Plaintiff filed the within appeal. Pa29 to Pa31 (notice of appeal).

STATEMENT OF FACTS

Plaintiff purchased the property at 671 Pennington Avenue, Trenton, NJ 08618, on March 6, 1995. (Pa3; Pa100). The fee simple title was obtained via a grant deed from Leon A. Fraser and Elizabeth Fraser, dated March 5, 1996, and recorded in Vol. 3045, pg. 250 of the Mercer County official records, New Jersey. (Pa3; Pa100).

Defendant claims an interest in the plaintiff's property, believing its name is on the deed. (Pa3; Pa100). However, while Defendant's name is similar, Defendant did not participate in the actual purchase of the property. (Pa3; Pa100). The sellers mistakenly placed the wrong name on the deed by omitting the proper entity name. (Pa3; Pa100). If they had followed the New Jersey Secretary of State records for business names, they would have noticed the omission of certain words that distinguish the two entity names. (Pa3). Therefore, the Defendant's claim is without merit. (Pa3; Pa100). Defendant has no right, estate, title, or interest in the Plaintiff's property or any part of it. (Pa3; Pa100).

Plaintiff is registered under two distinct names in New Jersey: the original name "MOORISH SCIENCE TEMPLE OF AMERICA, INC." and the current name "THE MOORISH SCIENCE TEMPLE OF AMERICA NEW JERSEY, A NJ NONPROFIT CORPORATION." (Pa100).

Conversely, Defendant is registered under the name "THE MOORISH SCIENCE TEMPLE OF AMERICA." (Pa3; Pa100; Pa228).

In 2019, Plaintiff attempted to lease the property to Defendant, including MOORISH SCIENCE TEMPLE OF AMERICA INC., MOORISH SCIENCE TEMPLE OF AMERICA INC. SUBORDINATE TEMPLE NO. 48, and JAMES A. FLORENCE-EL, Grand Chief of Temple #48, offering a nominal fee of $750/month. (Pa100). However, Defendant declined to execute the lease. (Pa100). In 2020, Plaintiff revised the monthly rent to $350 in a subsequent lease offer to Defendant, who still refused to sign. (Pa100). Following unsuccessful leasing attempts, Plaintiff then endeavored to sell the property to the Defendant. (Pa100). However, Defendant declined the purchase offer. (Pa100). Consequently, Plaintiff placed the real property on the market for sale. (Pa100; Pa228).

Defendant claims that any property acquired by any branch of the Moorish Science Temple must be held in the name of the national organization, The Moorish Science Temple of America, Inc. (Pa228). According to Defendant,

this organizational rule overrides any claim by Plaintiff; Defendant alleges that all properties are effectively owned by the national entity. (Pa228).

Plaintiff presented numerous documents, including the deed and transaction records, which purportedly demonstrate its rightful purchase and ownership of the Property. (Pa100). Despite Plaintiff's request during discovery, Defendant failed to produce any documentary evidence that it, as the national organization, had either purchased the Property or had any legal or financial contribution towards its acquisition. (Pa100). There is a significant dispute over the interpretation of the organizational rules governing property ownership. (Pa100; Pa228). Plaintiff argues its autonomy as a local entity to purchase property, while Defendant asserts overarching control by the national organization. (Pa100; Pa228). During the hearing, the Court did not address these substantial factual disputes. Instead, the Court focused on procedural formalities, leading to the decisions now under appeal. (1T; Pa233).

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BASED ON TECHNICAL NON-COMPLIANCE. (Order at Pa27 to Pa28; Opinion at T12-10 to T14-14; T15-23 to T16-14).

The trial court's decision to deny Plaintiff's motion for summary judgment on procedural grounds, specifically for noncompliance with Rule 4:46-2, represents a fundamental misapplication of the principles governing

summary judgment. New Jersey courts have long espoused a doctrine that places substantive justice over procedural formalism, particularly in the context of dispositive motions where the stakes are inherently high. This decision ignored the foundational principle established in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), which mandates that courts should grant summary judgment only when "the evidential materials show that one party is entitled to judgment as a matter of law, and the evidence is so one-sided that there is no genuine dispute as to any material fact." The trial court failed to consider the evidence in the light most favorable to plaintiff, a crucial requirement as elucidated in Brill. This principle is further reinforced by the New Jersey Supreme Court's emphasis in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954), which articulates that summary judgment should be granted sparingly and only in cases where the right of the moving party is beyond doubt. This standard underscores that any doubt regarding the existence of a material fact must be resolved in favor of the non-moving party, thus ensuring fairness and a complete evaluation of the facts before granting summary judgment.

Furthermore, the trial court's decision to grant defendant's cross-motion for summary judgment as unopposed, based on technical noncompliance by plaintiff, neglected the substantive opposition presented during oral arguments.

This approach contradicts the judicial guidance provided by R. 4:46-2, which stresses the necessity for a clear presentation of material facts to ascertain the presence of genuine issues requiring a trial.

A. THE SUPREME COURT OF NEW JERSEY'S EMPHASIS ON SUBSTANCE OVER FORM.

In Brill, the Supreme Court of New Jersey firmly established that the pivotal inquiry in a summary judgment motion is whether the disputing parties have presented sufficient evidence to warrant a trial. The Court stated that summary judgment should be employed only when the evidence "is so one-sided that one party must prevail as a matter of law." This principle underscores the importance of assessing the substantive merits of a case rather than focusing exclusively on procedural nuances that do not affect the ultimate fairness of the proceedings.

Building upon the foundational principles articulated in Brill, subsequent cases have further cautioned against the dismissal of meritorious claims on minor technical grounds. For instance, in Mancini v. Township of Teaneck, 179 N.J. 425 (2004), the court reiterated that procedural rules "should not be enforced mechanistically if such enforcement would undermine the rules' purposes or lead to unjust results." This position aligns with the overarching judicial philosophy that procedural rules are tools designed to facilitate justice, not to obstruct it.

B. ERRONEOUS APPLICATION OF RULE 4:46-2.

Rule 4:46-2 mandates that motions for summary judgment be accompanied by a statement of material facts. While compliance with this rule facilitates clarity and efficiency in adjudication, it is not an end in itself. In the present case, the Plaintiff's purported failure to format the statement of material facts in the precise manner described by the rule was used as a basis to deny the motion for summary judgment. However, this rigid application of the rule disregards the substantive evidence presented by Plaintiff, which included detailed documentation proving ownership of the disputed property.

The New Jersey Appellate Division's decision in Rodriguez v. Raymours Furniture Company, Inc., 225 N.J. 343 (2016), provides a compelling analogy. In Rodriguez, the court warned against the draconian application of procedural dictates that would preclude a substantive determination of a party's rights, especially when such an application would serve no real purpose other than to enforce a technical requirement.

Finally, the assertation that there was no dispute over the material facts was in itself a legal error, as recognized in Jennings v. Borough of Highland, 418 N.J. Super. 405 (App. Div. 2011), where it was established that summary judgment is inappropriate where the evidence presents reasonable doubts concerning material facts.

C. JUDICIAL DISCRETION AND THE INTEREST OF JUSTICE.

The trial court has broad discretion in managing its docket and ensuring the efficient administration of justice. However, this discretion includes the responsibility to apply procedural rules in a manner that does not impede substantive justice. In Delvecchio v. Township of Bridgewater, 224 N.J. 559 (2016), the Supreme Court of New Jersey highlighted that trial courts must exercise their discretion by considering the broader interests of justice, particularly when dealing with the potentially dispositive motions.

It should be noted that the Plaintiff's motion was denied "without prejudice" (Pa27), with the judge instructing Plaintiff's counsel to "do whatever you need to do to get this back before me" (T16-9 to T16-10). Plaintiff was required to appeal the "without prejudice" decision because the judge simultaneously ordered judgment declaring the Defendant the owner of the Property. See Point II. It was erroneous for the court to deny Plaintiff's motion "without prejudice" when the subject matter of that motion (ownership of the Property) became a moot issue.

In conclusion, the trial court's decision to deny Plaintiff's motion for summary judgment due to technical noncompliance with procedural requirements contravenes the well-established legal framework that prioritizes substantive justice over procedural perfection. Such an approach not only

undermines the principles laid out in Brill and its progeny but also discourages the fair and efficient resolution of legal disputes. As such, this Court should reverse the trial court's decision and allow the case to be determined on its merits, consistent with the principles of equity and judicial efficiency.

II. THE TRIAL COURT IMPROPERLY GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AS UNOPPOSED.

(Order at Pa27 to Pa28; Opinion at T14-15 to T15-18).

The trial court's decision to grant Defendant's cross- motion for summary judgment as unopposed constitutes a significant error, potentially resulting from an overemphasis on procedural technicalities to the detriment of substantive justice. This decision ignored the substantive opposition presented by Plaintiff during oral arguments, which highlighted significant disputes over material facts essential to the resolution of the case. This section will elaborate on the errors involved and reinforce the need for this decision to be reversed.

A. MISAPPLICATION OF THE STANDARD FOR UNOPPOSED MOTIONS.

Granting summary judgment purely because a motion appears unopposed is inherently problematic, especially when the record reflects substantive opposition or when material facts remain in dispute. The New Jersey court system emphasizes that summary judgment is a severe remedy that should be granted only when the moving party has clearly demonstrated the absence of any genuine issues of material fact, and that the right to judgment is clear.

The trial court's reliance on procedural default (failure to formally oppose the motion) to grant Defendant's motion for summary judgment is contrary to the judicial directive to resolve cases on substantive grounds. In Musto v. Vidas, 333 N.J. Super. 52 (App. Div.), certif. denied, 165 N.J. 607 (2000), the court noted that a failure to formally oppose a motion does not automatically entitle the moving party to judgment if substantive opposition exists or if material facts are demonstrably in dispute. The court should not enforce a default without a careful assessment of the motion's merits and the actual existence of disputes regarding critical facts.

B. EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT.

The decision by the trial court to treat the Defendant's motion as unopposed effectively ignored the substantive presentations made by Plaintiff, which clearly indicated significant disputes concerning the ownership and control of the Property. Plaintiff's presentation included documented evidence of its ownership claims, directly contradicting Defendant's assertions. Summary judgment is inappropriate where the evidence presented could lead a reasonable jury to return a verdict for the non-moving party.

The landmark case Brill, remains pivotal, as it underscores that a court must deny summary judgment if the evidence, when viewed in the light most favorable to the non-moving party, could lead a reasonable factfinder to rule in

their favor. This principle was ignored when the trial court decided the motion based on procedural default without addressing these evidentiary conflicts.

C. JUDICIAL DUTY TO ENSURE FAIR EXAMINATION OF THE ISSUES.

In Potente v. County of Hudson, 187 N.J. 103 (2006), the New Jersey Supreme Court emphasized that trial courts hold a responsibility not just to the letter of the procedural law but to the overarching principles of fairness and justice. Courts must ensure that decisions are not merely reflections of procedural compliance but are founded on a thorough and fair examination of the contested issues.

As noted in Point I, Plaintiff's motion was denied "without prejudice" (Pa27), and Plaintiff was told to "do whatever [Plaintiff] need[s] to do to get this back before [the motion judge]" (T16-9 to T16-10). Because the lower court contemplated Plaintiff having another opportunity to substantively litigate which party owns the Property, it was erroneous to award the Property to Defendant (via its cross-motion) solely on procedural grounds.

CONCLUSION

For the foregoing reasons, the appellate court should find that the trial court erred in granting summary judgment in favor of Defendant solely on procedural grounds of non-opposition. The substantive matters presented by

Plaintiff, reflecting genuine disputes of material facts, mandated a denial of the motion.

The appellate court should reverse the trial court's order granting Defendant's cross-motion for summary judgment and remand the case for further proceedings that properly account for the substantive legal and factual issues critical to the dispute. This correction will reaffirm the judiciary's commitment to just outcomes over procedural expedience.

Respectfully Submitted,

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THE MOORISH SCIENCE TEMPLE OF AMERICA NEW JERSEY, A NJ NON PROFIT CORPORATION, Plaintiff-Appellant, vs. MOORISH SCIENCE TEMPLE OF AMERICA, INC. SUBORDINATE TEMPLE NO. 48, JAMES A. FLORENCE-EL, TENNYSON LEWIS-EL, JOHN DOES 1-10, and JOHN DOE ENTITIES 1-10, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-2287-23 Civil Action Sat Below: Honorable Patrick J. Bartels, P.J.Ch., Superior Court of New Jersey, Chancery Division-General Equity Part, Mercer County Docket No.: MER-C-4-23 Submitted: August 1, 2024

BRIEF OF DEFENDANTS MOORISH SCIENCE TEMPLE OF AMERICA, INC. AND JAMES A. FLORENCE-EL

JAY B. FELDMAN, ESQUIRE
Of Counsel and on the Brief

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PROCEDURAL HISTORY

On October 25, 2021, this civil action was filed in the Law Division, Mercer County under docket number MER-L-2259-21. (Pa1-Pa5). The Plaintiff's complaint asserted claims of quiet title, injunction, and tortious interference. (Pa1-Pa5).

On November 2, 2022, Plaintiff filed its first of three Motions for Summary Judgment. (Da1-Da3). The Plaintiff's Statement of Material Facts filed in support of its first summary judgment motion was not submitted in numbered paragraph format and it did not include proper citations to the motion record. (Da4-Da8).

On January 12, 2023, Judge Walcott-Henderson entered an Order transferring the case to the Chancery Division-General Equity Part. (Pa6). On January 13, 2023, this Court entered an Order granting summary judgment to the Plaintiff, albeit by default. (Pa7-Pa8).

On March 16, 2023, Defendants Moorish Science Temple of America, incorrectly pled as Moorish Science Temple of America, Inc. Subordinate Temple No. 48 and James A. Florence-El filed an application for an Order to Show Cause with Temporary Restraints seeking to vacate the judgment that was entered by default and for injunctive relief, which was granted by the Court Order dated March 23, 2023 (Pa9-Pa10). Also, on March 23, 2023, the Defendants filed their Answer and Counterclaim, which pled counterclaims for quiet title and declaratory

judgment. (Pa11-Pa21). On March 30, 2023, the Plaintiff filed an answer to the Defendants' Counterclaim. (Pa22-Pa26).

On April 7, 2023, the Plaintiff filed its second Motion for Summary Judgment. (Da9-Da13). On May 15, 2023, the Defendants' filed opposition to the Plaintiff's second Motion for Summary Judgment and objected/responded to the Plaintiff's Statement of Material Facts. (Da14-Da16). On August 21, 2023, the Defendants filed a Motion to Compel Discovery and a Motion for Leave to File an Amended Answer, which were both granted by an Order dated September 20, 2023. (Da19). On September 7, 2023, the Plaintiff filed a sur-reply, without leave of Court, and Defendants' counsel filed a letter on September 8, 2023 with the trial court requesting that the Plaintiff's sur-reply be stricken. (Da17-Da18). Also, on September 20, 2023, the Defendants filed their Amended Answer and Counterclaim with the trial court. (Da20-Da30).

On January 8, 2024, the Plaintiff filed its third Motion for Summary Judgment. (Pa33-Pa35). The Plaintiff's Notice of Motion made that motion returnable for January 19, 2024, a date that was only 11 days after the date on which Plaintiff filed its third summary judgment motion. (Pa34). Once again, the Plaintiff's Statement of Material Facts was not submitted in numbered paragraphs and it did not include proper citations to the motion record (Pa126-Pa130). The third Statement of Material Facts also included argument. (Pa126-Pa130). On

February 6, 2024, the Defendants filed their opposition to the Plaintiff's Motion for Summary Judgment as well as their own Cross-Motion for Summary Judgment, which included Defendants' Statement of Material Facts. (Pa136-Pa 319).

On March 4, 2024, the trial court entered an order granting Defendants' unopposed cross-motion for summary judgment and denying the Plaintiff's motion for summary judgment, without prejudice. (Pa27-Pa28).

COUNTERSTATEMENT OF FACTS

Defendant, Moorish Science Temple of America, Inc. ("Defendant") was incorporated as a not-for-profit corporation in the State of Illinois in 1926. (Pa139). Defendant was registered with the State of New Jersey in 1934. (Pa139). Defendant, Moorish Science Temple of America, Inc. founded the Moorish Science Temple religion in the United States of America. (Pa139). One of the core purposes of the Moorish Science Temple of America is "To appoint and consecrate the faith of Mohammed in America." (Pa 139; Pa148). According to a letter from the Office of the Secretary of State for the State of Illinois, dated September 15, 2016, Defendant Moorish Science Temple of America, Inc. has the "legal right to the **sole use** of the corporate name 'Moorish Science Temple of America.'" (emphasis added). (Pa150).

Defendant is a hierarchical religious organization. (Pa139; Pa153-Pa154). It has officers and officials at multiple levels of the organization. (Pa139; Pa153-

Pa154). Defendant has Rules and Regulations that were originally enacted in 1934. (Pa139; Pa156). Defendant's Rules and Regulations were later revised in 2000. (Pa139; Pa161). In addition to Grand Sheik Robert Jones-Bey, Defendant's other national officers are Brother A. Hopkins-Bey, Assistant Grand Sheik; Brother P. Chase-El, Chairman; Brother W. Clendenin-Bey, Assistant Grand National Chairman; Sister W. Wright-Bey, Grand National Secretary; Sister A. Raveneau-Bey, Assistant Grand National Secretary; Sister S. Jones-Bey, Grand National Treasurer; and Sister J. Arthur-El, Assistant Grand National Treasurer. (Pa139-Pa140). All of Defendant's national officials and officers are elected. (Pa140). The Grand Governor of the State of New Jersey is Sister Susan Dunbar-Bey. (Pa140). The Assistant Grand Governor for the State of New Jersey Defendant James A. Florence-El. (Pa140). There are also elected officers at the local Temple level. (Pa140). All Grand Governors are elected by state members annually during the national convention. (Pa140).

Under Rule 14, Grand Sheik Robert Jones-Bey is the highest-ranking officer of the Moorish Science Temple of America, Inc. (Pa140; Pa170). In addition, the organization has a Board of Directors/Grand Body. (Pa140). Under Rule 8 of the current Rules and Regulations, the Grand Sheik is empowered to "oversee <u>all temples, entities, subsidiaries, rights, and possessions of the Moorish Science Temple of America, Inc. throughout the U.S.A.</u> and the world established by the

Grand Body." (Pa169) (emphasis added).

Act 13 of Defendant's original Rules and Regulations and Rule 13 of its current Rules and Regulations prohibit members from withholding property from the national religious organization. (Pa140; Pa158; Pa170). Under the Rules and Regulations, all local Temples and officials must follow the instructions and decisions issued by the Grand Sheik. (Pa140).

In this case, by letter dated May 19, 2021, the Grand Sheik informed the Plaintiff that 671 Pennington Avenue, Trenton, New Jersey 08618 (Tax Map Block 5402, Lots 1 & 64) (hereinafter, the "Property"), which includes a Moorish Temple, is the Property of Defendant Moorish Science Temple of America, Inc. and directed them to relinquish their claims of title. (Pa176-Pa177). But, contrary to the Rules and Regulations of the Moorish Science Temple of America religion, they have ignored the Grand Sheik's instructions. (Pa140-Pa141). The Defendant's Grand Body/Board of Directors concurs with the Grand Sheik's determination that the Property is owned by the Defendant Moorish Science Temple of America, Inc. and not the Plaintiff. (Pa141).

Defendant Moorish Science Temple of America, Inc. is the true record owner of 671 Pennington Avenue, Trenton, New Jersey 08168 (Tax Map Block 5402, Lots 1 & 64) (hereinafter, the "Property") and has at all times relevant to this action held title thereto in fee simple. (Pa141). Members of the Moorish Science

Temple of America religion have worshipped and attended meetings at the Temple located at the Property for decades. (Pa141).

In March of 1996, a deed was executed and recorded conveying title to the Property to Moorish Science Temple of America, the national religious organization that is one of the defendants in this litigation. (Pa141; Pa179-Pa180). The name of the grantee on the 1996 deed very closely matches the name of the national religious organization Defendant and it does not include the words "New Jersey" or the abbreviation "NJ". (Pa141; Pa179-Pa180). Defendants firmly believe that the funds used to purchase the Property came from donations made by members of the Moorish Science Temple of America religion. (Pa141).

The Plaintiff has also used the Defendant's organization's federal tax identification number. (Pa141). The Moorish Science Temple of America, Inc. has paid expenses for the Property as well. (Pa142; Pa182-Pa195). The Plaintiff has also apparently paid certain expenses for the Property, but they have refused to provide supporting documentation to show the source of the funds used to pay those expenses. (Pa142).

On March 25, 2021, a quitclaim deed (dated March 23, 2021) purportedly conveying the Property from "The Moorish Science Temple of America New Jersey, a NJ Non-Profit Corporation" to "The Moorish Science Temple of America New Jersey, a NJ Non-Profit Corporation" was recorded in the office of the Mercer

County Clerk. (Pa197-Pa201). The grantor on the 2021 deed for the Property does not match the name of its record owner at that time, which was the Defendant national religious organization, the Moorish Science Temple of America, Inc. (Pa142; Pa197-Pa201). Defendant Moorish Science Temple of America never authorized the transfer of title to the Property to the Plaintiff or anyone else. (Pa142). Mr. Othello Ellis-El, who signed the quitclaim deed in 2020, did not have any authority on behalf of the owner, Defendant Moorish Science Temple of America, Inc., to execute a deed as he was not in 2020 (and is presently not) an officer or otherwise empowered with the authority to execute a deed on behalf of Defendant Moorish Science Temple of America, Inc., the national not-for-profit religious organization. (Pa142-Pa143).

The attorney whose name appears as preparer on the 2021 deed being challenged, Spencer F. Cargle, Esquire, was not and is not licensed to practice law in the State of New Jersey. (Pa143). Despite the statements in the 2021 deed, Melissa Ellis-El, the Executive Secretary of the Plaintiff, is claiming she prepared the deed on behalf of the Plaintiff. (Pa143). Melissa Ellis-El is also not licensed as an attorney in the State of New Jersey and she has no authority to convey property owned by Defendant Moorish Science Temple of America, Inc. (Pa143). On June 7, 2021, the Plaintiff Non-Profit Corporation was dissolved. (Pa143; Pa203-Pa204).

Only co-Defendant James A. Florence-El and other members of the Moorish Science Temple of America religion have worshipped at the Temple located on the Property since its purchase in 1996, including officers of the Plaintiff. (Pa143). Money is collected from Temple members at the Temple located on the Property and that has been happening for decades. (Pa143). The money that is donated by Temple members is donated to support and further the Moorish Science Temple of America, a national religious organization and a defendant in this lawsuit; the donated funds are not donated in order to support the New Jersey corporation created by Mr. Othello Ellis-El or to personally benefit Mr. Othello Ellis-El. (Pa143). The donations were collected at the Temple located on the Property in Trenton and those funds were collected in the name of the Defendant, a national religious organization. (Pa143; Pa352-Pa354).

The Defendant requires that all property purchased at the local level be purchased solely in the name of the national organization, the Moorish Science Temple of America. (Pa144; Pa206-Pa208). Indeed, the Moorish Guide on Humanity clearly states that: "**When any said Temple desires to purchase property they must first notify the grand body of the Prophet and it must be purchased under the name of the Moorish Science Temple of America or Noble Drew Ali. An individual name should never be applied.** I, Noble Drew Ali, am responsible for all finance including purchase of property and whatever it

might be that pertains to finance . . . . Everything, every business transaction or anything pertaining to finance is to be transacted in the name of the Moorish Science Temple of America or Noble Drew Ali." (Pa207 (emphasis added)). Furthermore, all local Temples should maintain their bank and other financial accounts jointly in the name of the local chapter and the Defendant national religious organization. (Pa144).

Under the Moorish Science Temple of America religion, the Plaintiff is not the lawful owner of the Property and is not authorized to sell or otherwise transfer the Property for its own benefit. (Pa144). The Defendant national organization is the lawful owner of the Property commonly known as 671 Pennington Avenue, Trenton, New Jersey. (Pa144). The Plaintiff's own officers are (and have been so for many years) followers of the Moorish Science Temple religion and the teachings of the Prophet Noble Drew Ali. (Pa144; Pa247; Pa272). For several years, Plaintiff's own representatives attended the national conventions of the Moorish Science Temple of America. (Pa144; Pa248; Pa273). In addition, the local Temples, including the one in Trenton at the Property, pay required assessments to the Defendant national religious organization. (Pa145).

The Plaintiff's own Certificate of Incorporation demonstrates that the Plaintiff and its officers follow the Moorish Science Temple of America religion:

> "The purposes for which this corporation is formed are to uplift fallen humanity; **to propagate the faith and extend the**

> **learning and truth as laid down by the Great Prophet Noble Drew Ali, the Founder, and the Grand Advisory Moderator, F. Nelson-Bey,** according to the teachings of the Great Koran of Muhammed; to appoint and consecrate missionaries and to establish temples and homes, for the extension of this work, **being affiliated with and subservient to the Moorish Science Temple of America incorporated in the State of Illinois**."

(Pa145; Pa235) (emphasis added). The Great Prophet Noble Drew Ali is the Founder of the Moorish Science Temple of America religion and the Grand Advisory Moderator, F. Nelson-Bey was one of the Defendant's past officers, as is noted on the true and correct copy of the Defendant's letterhead. (Pa145; Pa237).

According to the State of New Jersey, the original name of the Plaintiff corporation (before it was changed in 2019) was "Moorish Science Temple of America, Inc.," which corresponds to the requirements of the Defendant's Guide on Humanity (and other doctrinal documents) which requires that all property (including real estate) be purchased in the name of the Defendant national religious organization as all property is owned by the national religious organization. (Pa145). As late as June of 2004, about 8 years after the Property was purchased, the Plaintiff was still filing documents with the State of New Jersey and using its original name "Moorish Science Temple of America, Inc." (Pa145; Pa239).

LEGAL ARGUMENT

Standard of Review (Pa27-Pa28)

"A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan Twp., 140 N.J. 366, 378 (1995). With respect to the trial court's conclusions on issues of law, this Court reviews such conclusions de novo and accords "no deference" to such conclusions. Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 201 (App. Div. 2013).

The Appellate Division employs "the same standard that governs trial courts in reviewing summary judgment orders." Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998). The Appellate Division "first decides whether there was a genuine issue of material fact and, if there was not, it then decides whether the trial judge's ruling on the law was correct." Walker v. Atl. Chrysler Plymouth, Inc., 216 N.J. Super. 255, 258 (App. Div. 1987).

I. THIS COURT SHOULD NOT CONSIDER ANY ARGUMENTS NOT RAISED BY PLAINTIFF BELOW

"Appellate review is not limitless. The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves." State v. Robinson, 200 N.J. 1, 19-20 (2009).

It is well-settled "that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)); see also Zaman v. Felton, 219 N.J. 199, 226-227 (2014).

Here, the Plaintiff, despite being represented by two attorneys, inexplicably failed to file any opposition to the Defendants' cross-motion for summary judgment. The Plaintiff's third summary judgment motion was originally returnable on February 16, 2024, but was adjourned, at the Plaintiff's request, to Marh 1, 2024. The Plaintiff had more than ample time to file opposition to the Defendants' cross-motion for summary judgment. The Plaintiffs' attorneys did not argue before the Chancery Division that the court needed to emphasize substance over form. The Plaintiff also did not argue that the interest of justice required that their failure to oppose the Defendants' cross-motion for summary judgment should be excused. No explanation was provided to the trial court as to why the Plaintiff's counsel never opposed the cross-motion. Nearly all of the Plaintiff's appellate brief is filled with arguments that could have been but were inexplicably not made before the trial court. The Court Rules exist for a reason and they should be

followed. Furthermore, the issues raised on appeal by the Plaintiff do not go to the jurisdiction of the trial court and they do not concern matters of great public interest.

Accordingly, all arguments not raised by the Plaintiff before the trial court should not be considered by this Court.

II. THE CHANCERY DIVISION'S MARCH 4, 2024 ORDER SHOULD BE AFFIRMED AS PLAINTIFF'S COUNSEL VIOLATED THE COURT RULES NUMEROUS TIMES AND THEIR FAILURE TO OPPOSE DEFENDANTS' SUMMARY JUDGMENT CROSS-MOTION AND THEIR DEFECTIVE STATEMENT OF MATERIAL FACTS SHOULD NOT BE EXCUSED (Pa27-Pa28)

In this case, the Plaintiffs counsel filed three motions for summary judgment. The Plaintiffs' Statements of Material Facts violated Rule 4:46-2 multiple times. In response to the Plaintiff's second motion for summary judgment, the Defendants' counsel, in the Defendants' response to the Plaintiff's Statement of Material Facts stated in a footnote that the Plaintiff's Statement of Material Facts had violated Rule 4:46-2. (Da14). Thus, by the time the Plaintiff filed its third (and last) motion for summary judgment in January of 2024, the Plaintiff's counsel was already on notice that Plaintiff's prior Statement of Material Facts was deficient. Plaintiff's third Statement of Material Facts includes the same violations of Rule 4:46-2 as Plaintiff's counsel previously made. As the trial judge

explained, Rule 4:46-2, exists for a reason. The Court Rules each have their own purpose.

Thus, Plaintiff's violation of Rule 4:46-2 in its third motion for summary judgment should not be excused. The violation of Rule 4:46-2 in Plaintiff's third motion for summary judgment was not the first violation of Rule 4:46-2. Plaintiff's counsel somehow violated the same requirements of the same rule, Rule 4:46-2, multiple times. Unfortunately, the violations of the Court Rules by the Plaintiff's counsel were not limited to Rule 4:46-2. Plaintiff's counsel repeatedly violated other Court Rules as well. Plaintiff's counsel filed an improper sur-reply and submitted additional documents to the trial court in support of their third summary judgment motion, without leave, after Defendants had already filed their opposition and cross-motion. (Da17-Da18; Pa327). Plaintiff's counsel also repeatedly failed to select a proper return date in their notices of motion. (Pa135; Da2). The blatant and repeated violations of the Court Rules cannot be condoned.

The Plaintiff's most recent violation of Rule 4:46-2 was one in a long line of many flagrant violations of our Court Rules. It was a pattern of inexcusable behavior; not an isolated incident that would justify a reversal of the Chancery Division's March 4, 2024 Order. That Order should be affirmed in all respects.

III. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WAS PROPERLY DENIED BY THE TRIAL COURT AND DEFENDANTS' UNOPPOSED CROSS-MOTION FOR SUMMARY JUDGMENT WAS PROPERLY GRANTED (Pa27-Pa28)

A. The Summary Judgment Standard (Pa27-Pa28)

Pursuant to Rule 4:46-2(c), summary judgment shall be granted in favor of the movant only "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 a judgment or order as a matter of law."

In Brill v. Guardian Life Insurance Company, 142 N.J. 520 (1995), the New Jersey Supreme Court adopted the federal standard for granting summary judgment set forth in the United States Supreme Court trilogy of decisions: Matsushita Elec. Indus. Co., Ltd. v. Zenith Video Corp., 475 U.S. 574, 106 S. Ct. 1348 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505 (1986); and Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986).

Under the Brill standard, the motion judge must decide:

> Whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party.
> . . .

> To send a case to trial, knowing that a rational jury could reach but one conclusion, is indeed "worthless" and will "serve no useful purpose."

Id. at 523 & 541. The Brill Court emphasized that the thrust of its decision "is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541. Summary judgment should only be granted where the competent evidential materials are "so one-sided that one party must prevail as a matter of law." Id. at 536. The Brill Court further stated that its purpose was to afford "protection . . . against groundless claims or frivolous defenses, not only to save antagonists the expense of protracted litigation, but also to reserve judicial manpower and facilities to cases which meritoriously command attention." Id. at 542 (citing Robbins v. Jersey City, 23 N.J. 229, 240-41 (1954)) (emphasis added). The Brill Court went on to note that the thrust of its decision "is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541. The Court addressed what it perceived to be the prior hesitancy of motion judges, stating:

> Some have suggested that trial courts, out of fear of reversal, or out of an overly restricting reading of Judson, supra, 17 N.J. at 65, or a combination thereof, allow cases to survive summary judgment so long as there is any disputed issue of fact . . . .

Id. at 541 (emphasis in original).

The court's task is to decide "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-446 (2007) (quoting Brill, 142 N.J. at 536). Although "the trier of fact makes determinations as to credibility," the law "does not require a court to turn a blind eye to the weight of the evidence; the opponent must do more than simply show that there is some metaphysical doubt as to the material facts." O'Loughlin v. Nat'l Cmty. Bank, 338 N.J. Super. 592, 606-607 (App. Div. 2001) (internal quotation marks omitted).

"Mere assertions in the pleadings" are not sufficient to defeat a motion for summary judgment. Ocean Cape Hotel Corp. v. Masefield Corp., 63 N.J. Super. 369, 383 (App. Div. 1960). "Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." Petersen v. Twp. of Raritan, 418 N.J. Super. 125, 132 (App. Div. 2011). One party's self-serving assertions are "clearly insufficient to create a question of material fact for purposes of a summary judgment motion." Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002). Furthermore, mere speculation and disputes as to irrelevant facts are insufficient to bar entry of summary judgment. Merchants Express Money Order Co. v. Sun National Bank, 374 N.J. Super. 556, 563 (App. Div. 2005). In response to a summary judgment

motion, "the nonmovant cannot sit on his or her hands and still prevail." Housel v. Theodoridis, 314 N.J. Super. 597, 604 (App. Div. 1998).

Rule 4:46-2(a) states as follows:

> (a) Requirements in Support of Motion. The motion for summary judgment shall be served with a brief and a separate statement of material facts with or without supporting affidavits. The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on. A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts.

R. 4:46-2(a). The "requirements [in Rule 4:46-2] for the filing of statements of material facts by parties to a motion for summary judgment are designed to focus . . . attention on the areas of actual dispute and facilitate the court's review of the motion." Claypotch v. Heller, 360 N.J. Super. 472, 488 (App. Div. 2003) (internal quotation marks omitted). A party's failure to dispute facts in an opposing party's statement of material facts should result in all such facts being deemed admitted. Housel, 314 N.J. Super. 602 (citing R. 4:46-2(b)).

In this case, even if the trial court had delved into the substance of the parties' summary judgment arguments, the trial court would have (and should have) arrived at the same result. The Plaintiff's counsel did not file any document

disputing the Defendants' Statement of Material Facts. Under Rule 4:46-2(b), all of those facts are deemed admitted by the Plaintiff. There was no dispute as to any alleged material facts in the Defendants' summary judgment motion before the trial court as the Defendants' summary judgment cross-motion was unopposed and the Plaintiff never denied any of the material facts set forth in the Defendants' Statement of Material Facts. Furthermore, the substance of the parties' dispute confirms that summary judgment was appropriately entered in favor of the Defendants and against the Plaintiff.

B. The Indisputable Material Facts Warranted A Summary Judgment in Favor of the Defendants as to the Parties' Quiet Title Claims on Constitutional and Equitable Grounds (Pa27-Pa28)

A cause of action to quiet title is provided for by New Jersey statute:

> Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part thereof, is denied or disputed, or any other person claims or is claimed to own the same, or any part thereof or interest therein, or to hold a lien or encumbrance thereon, and when no action is pending to enforce or test the validity of such title, claim or encumbrance, maintain an action in the superior court to settle the title to such lands and to clear up all doubts and disputes concerning the same.

N.J.S.A. 2A:62-1. Although the quiet-title action has been codified by statute, it retains its equitable origins, Estate of Smith v. Cohen, 123 N.J. Eq. 419, 425 (E. & A. 1938); Brady v. Carteret Realty Co., 70 N.J. Eq. 748, 754 (E. & A. 1906).

Property disputes involving religious organizations often implicate both the Free Exercise Clause and/or the Establishment Clause. "It has been often stated that '[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.'" The Protestant Episcopal Church v. Graves, 83 N.J. 572, 576 (1980) (quoting Watson v. Jones, 20 L. Ed. 666, 676 (1872)). The Establishment Clause "prohibits states from promoting religion or becoming too entangled in religious affairs, such as by enforcing religious law or resolving religious disputes." McKelvey v. Pierce, 173 N.J. 26, 40 (2002) (internal quotation marks omitted). Furthermore, "[a]s the United States Supreme Court has stated, '[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.'" McKelvey, 173 N.J. at 39. "[T]he Establishment Clauses of our Federal and State Constitutions . . . severely circumscribe the role that civil courts may play in resolving church property disputes." Solid Rock Baptist Church v. Carlton, 347 N.J. Super. 180, 191 (App. Div. 2002).

In Graves, which involved a dispute over local church property, our Supreme Court briefly summarized the analysis of the United States Supreme Court in its landmark decision in the Watson case:

> The Supreme Court held that our basic constitutional requirement of the separation of Church and State prevented courts from using the departure from doctrine approach in the adjudication of church property disputes.

> In the absence of specific trust provisions in the deed, will or other instrument by which the property is held, Watson made inquiry as to where the particular church body had placed ultimate authority over the use of church property. Two broad types of church government were recognized. In a congregational church, church authority and control over church property rested completely in the local congregation and its elected elders. In a hierarchical church, however, the local church is an integral and subordinate part of the general church and subject to its authority. Watson, therefore, held that in a hierarchical situation where there was a property dispute between a subordinate local parish and the general church, civil courts must accept the authoritative ruling of the higher authority within the hierarchy.

Graves, 83 N.J. at 577 (emphasis added). In Graves, the Court noted that the purchase of the local church property "was made with local funds without Diocesan financial assistance" and that "the deeds run to the parish corporation and do not contain any words of trust or reverter in favor of the Diocese." Id. at 574.

The Supreme Court in Graves affirmed the lower court ruling that was in favor of the national church as to its declaratory judgment claim and it placed control of the local church property in the hands of the Diocese of New Jersey. Id. at 576, 582. "In the absence of express trust provisions, we conclude that the hierarchical (Watson) approach should be utilized in church property disputes in this State." Id. at 580; see also Presbyterian Church of the Palisades, Inc. v.

Hwang, Appeal No.: A-3217-19 (App. Div. Nov. 29, 2021).[1] In its reasoning, our Supreme Court stated:

> Here it has been established that the Protestant Episcopal Church is a completely integrated hierarchical body, the ecclesiastical determination of which incidentally resolves the question of control over local church property. This is dispositive of the case.
>
> St. Stephen's Church was incorporated as an affiliated member of the Protestant Episcopal Church. This incorporation has never been changed and the local church organization and its property are subject to the hierarchical authority of the parent church as indicated in the constitutions and canon law of the national church and its dioceses. Under the Watson rule, therefore, plaintiffs [the national church] were entitled to the relief sought.
> . . .
>
> The problem lies in defendants' [local church] efforts to take the church property with them. This they may not do.

Graves, 83 N.J. at 580.

Similarly, in Presbyterian Church of the Palisades, Inc. v. Hwang, a more recent case, the Appellate Division decided a dispute over local church property. In Hwang, the Court determined that the national Presbyterian Church was a hierarchical religious organization. Id. at 1. The Chancery Division found in favor of the national church and the Appellate Division affirmed. Our Supreme Court

[1] Pursuant to Rules 1:36-3 and 2:6-1(a)(1)(h), a copy of this unpublished Appellate Division decision is included in the Plaintiff's appendix. (Pa295).

declined to grant certification. As part of the Appellate Division's holding, the Appellate Division stated as follows:

> Therefore, under the deference approach, courts must accept the authoritative ruling of the higher authority within that hierarchy. Accordingly, the determination of the EKP and the Administrative Commission, as that higher authority, controls. Under these circumstances, we conclude, as did the trial court, that the Church property was owned by the PC(USA) [the national church].

Id. at 5.

The hierarchical approach to religious property disputes is also sometimes referred to as the "deference" approach. The analytical framework used in the Graves decision from the New Jersey Supreme Court has been applied by New Jersey courts in other cases involving non-church religious disputes. See, e.g., Elmora Hebrew Ctr., Inc. v. Fishman, 125 N.J. 404, 414 (1991); Abdelhak v. Jewish Press, Inc., 411 N.J. Super. 211 (App. Div. 2009); Islamic Ctr. of Passaic Inc. v. Salahuddin, Appeal No.: A-0387-18T1 (App. Div. Dec. 13, 2020).[2] "In disputes involving a church governed by a hierarchical structure, courts should defer to the result reached by the highest church authority to have considered the religious question at issue." Fishman, 125 N.J. at 414.

Here, in this action, the Moorish Science Temple of America, Inc. is a hierarchical, national religious organization. As was done in our Supreme Court's

[2] Pursuant to Rules 1:36-3 and 2:6-1(a)(1)(h), a copy of this unpublished Appellate Division decision is included in the Defendant's appendix. (Da31).

decision in Graves, which involved similar facts, the hierarchical approach to religious property disputes should similarly apply in this case.

The Moorish Science Temple of America has officers and a Grand Body at the national level. It also has state-level officers and local Temple officials. The Grand Body of the Moorish Science Temple of America, Inc. and the highest-ranking officer, the Grand Sheik, Robert Jones-Bey, has determined that the Property in Trenton belongs to the Defendant, the Moorish Science Temple of America, Inc., and demanded its return prior to this litigation. Under the Defendant's Rules and Regulations, the Defendant owns the Temple Property. The Grand Sheik has power over all Moorish Science Temples in the United States, including the one located at the Property. Under Act 13 of the Defendant's original Rules and Regulations and Rule 13 of the current Rules and Regulations members, like the Plaintiff, cannot withhold property from the national religious organization. (Pa140).

Furthermore, the doctrinal Moorish Guide on Humanity clearly states that: "**When any said Temple desires to purchase property they must first notify the grand body of the Prophet and it must be purchased under the name of the Moorish Science Temple of America or Noble Drew Ali. An individual name should never be applied.** I, Noble Drew Ali, am responsible for all finance including purchase of property and whatever it might be that pertains to finance . . .

. Everything, every business transaction or anything pertaining to finance is to be transacted in the name of the Moorish Science Temple of America or Noble Drew Ali." (Pa206-Pa208). The name on the 1996 deed to the Property is "Moorish Science Temple of America". The Plaintiff did not file papers with the State of New Jersey to change its name until 2019. The purpose of the 2021 quitclaim deed executed by the Plaintiff was to take the Defendant's Temple Property.

Furthermore, the Plaintiff's own officers admitted in their depositions that they follow the teachings of the Moorish Science Temple of America and that they have been followers for most of their lives. This is also confirmed by the Plaintiff's own Certificate of Incorporation. In fact, the Plaintiff, in its own Certificate of Incorporation states that it is "subservient" to the Defendant and affiliated with Defendant. (Pa235). The facts of this case mirror the facts in Graves. The result should likewise mirror Graves.

In addition, the Plaintiff's own officers attended Defendant's national conventions multiple times, as the convention minutes establish. The Plaintiff submitted financial reports to the Defendant and paid assessments to the Defendant. The Plaintiff cannot simply decide they will not follow certain Rules, Regulations, and doctrine of their own religion.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ." U.S. Constitution, 1st Amend. The Free

Exercise and Establishment Clauses of the First Amendment to the United States Constitution is applied to the states through the Fourteenth Amendment. Clayton v. Kervick, 56 N.J. 523, 528 (1970). Article I of the New Jersey Constitution provides similar religious protections:

> 3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.
>
> 4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

N.J. Constitution, Art. I, §§ 3 & 4.

In this matter, it would have violated the First Amendment of the federal Constitution and Article I of the New Jersey Constitution if the trial court had found find in favor of the Plaintiff. The Grand Sheik of the Moorish Science Temple of America has determined that under the Defendant's Rules and Regulations and Guide on Humanity, the Property belongs to the Defendant. The Grand Sheik demanded that the Plaintiff, whose officers are followers of the Moorish Science Temple of America religion, relinquish all claims to the Property. The Grand Body has concurred in the determination of the Grand Sheik. The

Grand Sheik is the highest officer/official of the Moorish Science Temple of America religion. The Plaintiff improperly refused the Grand Sheik's request and filed suit. The Plaintiff's own Certificate of Incorporation states that it is "subservient" to the Defendant. The Plaintiff does not have the right to take the Property and sell it under a baseless claim of ownership.

There are also equitable reasons to find in favor of the Defendant as to the quiet title claims. The Plaintiff did not create the Moorish Science Temple of America religion. However, they raised substantial funds and accepted large donations from followers of the Moorish Science Temple religion for many years. The funds received by the Plaintiff were not donated to further the Plaintiff's own individual, purposes. The trial court properly found that the Plaintiff is not the owner of the Temple Property. Allowing the Plaintiff to prevail in this litigation would be grossly inequitable. The Temple Property is property of the Defendant pursuant to its governing documents/doctrine and by the decision of the Grand Sheik.

Accordingly, there is no genuine issue of material fact and the lower court's entry of summary judgment in favor of Defendants as to the Plaintiff's claim and Defendant's Counterclaim for quiet title was proper.

C. Summary Judgment Was Properly Denied as to the Plaintiff's Claim for Tortious Interference (Pa27-Pa28)

First, a claim for tortious interference with prospective economic advantage requires the plaintiff to prove "some protectable right which need not equate with that found in an enforceable contract, so long as there are allegations of fact giving rise to some reasonable expectation of economic advantage." Van Natta Mech. Corp. v. Di Staulo, 277 N.J. Super. 175, 182 (App. Div. 1994) (internal quotation marks omitted); see also Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 751-52 (1989); Mandel v. UBS/PaineWebber, Inc., 373 N.J. Super. 55, 79-80 (App. Div. 2004).

Second, the defendant's actions must be "intentional and malicious, but malice is defined to mean that the harm was inflicted intentionally and without justification or excuse." Van Natta Mech. Corp., 277 N.J. Super. at 182. As to the crucial second element, the Supreme Court has stated that "[f]or purposes of this tort, the term malice is not used in the literal sense requiring ill will toward the plaintiff. Rather, malice is defined to mean that the harm was inflicted intentionally and without justification or excuse." Printing Mart-Morristown, 116 N.J. at 751 (internal citations and quotation marks omitted); see also Louis Kamm, Inc. v. Flink, 113 N.J.L. 582, 588-89 (E. & A. 1934). To prove malice, the party asserting the tortious interference claim must show the interference was "wanton, malicious and unjustifiable." Kurtz v. Oremland, 33 N.J. Super. 443, 455 (Ch.

Div. 1952). "Malice may be inferred from the absence of just cause or excuse." Louis Schlesinger Co. v. Rice, 4 N.J. 169, 181 (1950).

"Third, a plaintiff must show that the interference caused the loss of a prospective gain in that there was a reasonable probability that the victim of the interference would have received the anticipated economic benefits." Van Natta Mech. Corp., 277 N.J. Super. at 182. The third element of a tortious interference claim, which is causation, "is shown where there is proof that if there had been no interference there was a reasonable probability that the victim of the interference would have received the anticipated economic benefits." Ideal Dairy Farms, Inc. v. Farmland Dairy Farms, Inc., 282 N.J. Super. 140, 199 (App. Div. 1995) (internal quotation marks omitted); accord Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 186 (App. Div. 1978). "Lastly, there must be proof that the injury caused the plaintiff damage." Van Natta Mech. Corp., 277 N.J. Super. at 182.

Here, the Defendants were entitled to use their own Temple as they have done for decades. One of the Defendants, the Moorish Science Temple of America, Inc., owns the Temple Property. Defendant James A. Florence-El was the duly-elected Assistant Grand Governor of the Moorish Science Temple of America for the State of New Jersey. A party cannot tortiously interfere with their own property. The Defendant's doctrines as well as the Rules and Regulations of the Moorish Science Temple of America religion require that the Defendant be the

owner of the Temple Property and that its members be allowed to attend religious meetings and events at the Temple.

This trial court vacated the judgment entered in favor of the Defendants. This trial court also granted the Defendants' successful application for an interlocutory injunction. The Defendants had the legal right to use the Temple even after Plaintiff's suit was filed. In addition, the Plaintiff did not present any proof of damages in support of its tortious interference claim to the trial court. Any claim of alleged damages is speculative, at best. There was also no proof presented of Defendants acting with malice as Defendant, the Moorish Science Temple of America, is the rightful owner of the Property, as the Chancery Division concluded.

Accordingly, there is no genuine issue of material fact and summary judgment was properly entered in favor of the Defendants as to Plaintiff's tortious interference claim.

D. Plaintiff's Request for an Injunction was Correctly Denied by the Chancery Division (Pa27-Pa28)

The Plaintiff also requested an injunction from the Court. An injunction is an equitable remedy; it is not a separate legal claim in and of itself. Madej v. Maiden, 951 F.3d 364, 369 (6th Cir. 2020) (stating "an injunction is a remedy, not a claim. If [plaintiff] cannot show 'actual success' on their claims, they cannot obtain a permanent injunction."). The Plaintiff's injunction "claim" was actually a

request for a remedy from the trial court. Because summary judgment against the Plaintiff was appropriate as to its claims for quiet title and tortious interference, the Plaintiff's request for an injunction against the Defendants was also properly denied by the Chancery Division.

Thus, the Chancery Division's Order of March 4, 2024 should be affirmed.

E. Summary Judgment Was Properly Granted to the Defendant as to its Counterclaim for Declaratory Judgment (Pa27-Pa28)

"The Uniform Declaratory Judgment Law, N.J.S.A. 2A:16-50, et seq., has been expressly declared to be remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered." Civil Serv. Comm'n v. Senate of State of N. J., 165 N.J. Super. 144, 148 (App. Div. 1979). Under the Declaratory Judgment statute,

> A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

N.J.S.A. 2A:16-53. "There are certain fundamental attributes of a declaratory judgment action. There must be an actual controversy between a plaintiff and a defendant having an interest in opposing a claim. The action must be adversary in

character. The controversy must be bona fide . . . ." Weir v. Mkt. Transition Facility of New Jersey, 318 N.J. Super. 436, 442 (App. Div. 1999). "To maintain such an action, there must be a "justiciable controversy" between adverse parties, and plaintiff must have an interest in the suit." Chamber of Commerce of U. S. v. State, 89 N.J. 131, 140 (1982).

Here, based upon the arguments above in the quiet title claims section of this brief, the hierarchical approach is appropriate in this case as it was in The Protestant Episcopal Church v. Graves, 83 N.J. 572, 576 (1980) and Presbyterian Church of the Palisades, Inc. v. Hwang, Appeal No.: A-3217-19 (App. Div. Nov. 29, 2021). The law, facts, and argument set forth above in the quiet title claims section of this brief are incorporated herein by reference.

Accordingly, summary judgment as to the Defendant's declaratory judgment claim was properly entered in favor of Defendant Moorish Science Temple of America, Inc. declaring it to be the lawful and rightful owner of the Property. The Plaintiff's 2021 deed was also properly declared to be "null, void, and of no legal force or effect" by the trial court. There was no genuine issue of material fact in dispute for trial. The trial court's order dated March 4, 2024 should be affirmed in all respects.

F. Summary Judgment Was Properly Entered in Favor of Defendants Because The 2021 Quitclaim Deed is Invalid (Pa27-Pa28)

The practice of law is, without question, a highly regulated profession. No attorney has the automatic right to practice before our Courts. "The privilege of engaging in the practice of law is strictly confined to individual attorneys who have been duly licensed upon a proper showing of character and competency, and who are at all times subject to rigid rules of conduct." Appell v. Reiner, 81 N.J. Super. 229, 236 (Ch. Div. 1963). "Such regulation is designed to serve the public interest by protecting the unwary and ignorant from injury at the hands of persons unskilled or unlearned in the law.'" Id. (internal quotation marks omitted). "The unauthorized practice of law may be committed by both laypersons and out-of-state attorneys." Johnson v. McClellan, 468 N.J. Super. 562, 582 (App. Div. 2021).

Our Supreme Court has discussed the broad scope of what is considered the practice of law as follows:

> In determining what is the practice of law it is well settled that it is the character of the acts performed and not the place where they are done that is decisive. **The practice of law is not, therefore, necessarily limited to the conduct of cases in court but is engaged in whenever and wherever legal knowledge, training, skill and ability are required.** As was stated in Tumulty v. Rosenblum, 134 N.J.L. 514, 517-18 (Sup. Ct. 1946):

> "The practice of law is not confined to the conduct of litigation in courts of record. Apart from such, it consists, generally, in the rendition of legal service to another, or legal advice and counsel as to his rights and obligations under the law, . . . calling for . . . a fee or stipend, *i.e.,* that which an attorney as such is authorized to do; and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a *quasi*-judicial tribunal. Such is the concept of R.S. 2:111-1, classifying as a misdemeanor the practice of law by an unlicensed person."

Stack v. PG Garage, Inc., 7 N.J. 118, 120-121 (1951). It is well-established that the preparation of a deed, among other conveyancing documents, constitutes the practice of law. See, e.g., Cape May Cnty. Bar Ass'n v. Ludlam, 45 N.J. 121, 124-25 (1965) (stating "[t]he practice of law embraces the art of conveyancing, . . . which has been defined as [a] term including both the science and art of transferring titles to real estate from one man to another.") (citations and internal quotation marks omitted); N.J. State Bar Ass'n v. Northern N.J. Mortg. Assocs., 32 N.J. 430 (1960); Opinion Number 17, New Jersey Supreme Court Committee on the Unauthorized Practice of Law (June 26, 1975). Our courts must "vigilantly scrutinize [the unauthorized practice of law] so that the practice of law in this state does not degenerate into a jungle." Estate of Vafiades, 192 N.J. Super. at 316.

In New Jersey, the unauthorized practice of law is a crime. N.J.S.A. 2C:21-22. It is also an ethical violation. R.P.C. 5.5(a)(1) (stating "A lawyer shall not

practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.").

In this case, no evidence was presented to the trial court that a licensed New Jersey attorney prepared the 2021 quitclaim deed, which purported to convey the Property to the Plaintiff. Neither Melissa Ellis-El nor out-of-state attorney Spencer F. Cargle was ever licensed to practice law in the State of New Jersey. The deed was prepared by one of them. It would be a violation of the public policy of this State to recognize the 2021 deed as valid. Also, the Plaintiff corporation has been dissolved. The lower court properly granted summary judgment to the Defendants. The Plaintiff's 2021 deed was also properly declared to be "null, void, and of no legal force or effect" by the trial court.

Accordingly, the Order under appeal should be affirmed.

G. The Trial Court's Denial of Plaintiff's Request for an Award of Attorney's Fees Should be Affirmed (Pa27-Pa28)

"In general, New Jersey disfavors the shifting of attorneys' fees." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009). "New Jersey is an American Rule jurisdiction, reflecting a strong public policy against shifting counsel fees from one party to another." Tarta Luna, LLC v. Harvest LLC, 466 N.J. Super. 137, 154 (App. Div. 2021) (internal quotation marks omitted); Coleman v. Fiore Bros., Inc., 113 N.J. 594, 596 (1989) (stating "[i]n New Jersey, we accept, as do most other courts, the premise of the American Rule that

ordinarily society is best served when the parties to litigation each bear their own legal expenses."). "The American Rule generally precludes a party from recovering counsel fees from his or her adversary in that litigation." In re Estate of Lash, 169 N.J. 20, 30 (2001). The reasons supporting "the American Rule are threefold: (1) unrestricted access to the courts for all persons; (2) ensuring equity by not penalizing persons for exercising their right to litigate a dispute, even if they should lose; and (3) administrative convenience." Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016) (internal quotation marks omitted). "The general and long-standing rule in New Jersey is that unless legal fees are authorized by statute, court Rule, or contract, they are not recoverable." Litton Indus., 200 N.J. at 385 (internal quotation marks omitted).

Here, the Plaintiff requested an award of attorney's fees from the trial court. But, there is no statute, Court Rule, or contract that would entitle the Plaintiff to an award of attorney's fees. The American Rule applies in this case. Therefore, there was no basis for an award of attorney's fees to the Plaintiff and its request was properly denied. Thus, the trial court's order of March 4, 2024 should be affirmed.

CONCLUSION

Based upon the foregoing, the trial court's order dated March 4, 2024 should be affirmed in all respects.

Respectfully submitted,

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Attorneys for Defendants-Respondents

BY: s/ *Jay B. Feldman*
JAY B. FELDMAN

DATED: August 1, 2024

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August 14, 2024

Honorable Judges of the
Superior Court of New Jersey
Appellate Division
R.J. Hughes Justice Complex
25 W. Market Street
P.O. Box 006
Trenton, NJ 08625-0006

Re: THE MOORISH SCIENCE TEMPLE OF AMERICA, NEW JERSEY, Plaintiff-Appellant, V. MOORISH SCIENCE TEMPLE OF AMERICA, INC. Defendant-Respondent.
SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-2287-23T4; ON APPEAL FROM ORDER ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION-GENERAL EQUITY PART, MERCER COUNTY (MER-C-4-23); CIVIL ACTION; SAT BELOW: HON. PATRICK J. BARTELS, P.J.Ch.; SUBMITTED: AUGUST 14, 2024

Dear Honorable Judges:

Please accept plaintiff's reply letter brief [1] .

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[1] On the brief: Shanna Cushnie (#159412016; cushnie.shanna1@gmail.com).

REPLY TO DEFENDANTS' STATEMENT OF PROCEDURAL HISTORY

At Db9 to Db10, defendants emphasize prior motions for summary judgment (portions of which are included in defendants' appendix). The only summary judgment applications for this Court's consideration are the plaintiff's January 8, 2024 motion and the defendants' February 5, 2024 cross-motion. The items in defendants' appendix were not before Judge Bartels when he issued his March 4, 2024 order.

Defendants assert that their cross-motion was "unopposed" (Db11). Plaintiff's original motion established its position that it was the true owner of the property. Plaintiff also responded to defendants' cross-motion. See Pa320 to Pa325.

At Db11, defendants point out that the denial of plaintiffs' summary judgment motion was "without prejudice," i.e., interlocutory, see Lombardi v. Masso, 207 N.J. 517, 534 (2011). If the March 4, 2024 order is not appealable as of right, R. 2:2-3(a)(1), then the defendants are providing an additional reason for this Court not to affirm a decision that never resolved the parties' dispute on the substantive merits.

REPLY TO COUNTERSTATEMENT OF FACTS

At Db11, defendants rely on the first page of a letter from the Illinois Secretary of State (Da150). But the second page of that letter (Da151) states: "Obviously, there appears to be a disagreement as to what entity is rightfully entitled to the use of the name: 'Moorish Science Temple of America.'" Far from proving anything, the letter indicates that the defendants' claim to that name should be "decided in the Courts of the State of Illinois."

At Db11 to Db13, defendants, relying on their own documents, proclaim Moorish Science Temple of America, Inc. to be "hierarchical." That does not prove that plaintiff agreed to be part of its hierarchy. Melissa Ellis-El, who has

been plaintiff's Executive Secretary for over 20 years, certainly did not agree. See Pa284 to Pa285 (T13-10 to T14-11); Pa287 (T23-23 to T24-4); Pa289 (T35-21 to T36-25). Clearly, hierarchical control was not established as a matter of law.

"Defendants firmly believe that the funds used to purchase the Property came from donations made by members of the Moorish Science Temple of America religion." Db14. If Moorish Science Temple of America, New Jersey and Moorish Science Temple of America, Inc. are in a hierarchical relationship, the defendants ought to have evidence stronger than their 'firm belief.' The right to relief under the cross-motion was not proven.

Most of defendants' proofs are in the form of declarations by defendant's Grand Sheik Robert Jones-Bey (see certification, Pa138 to Pa146). If he has evidence that " Plaintiff has also used the Defendant’s organization’s federal tax identification number" (Db14 (citing Pa141)), he should produce or at least identify that evidence. The record is devoid of such proof.

Defendants admit that plaintiff paid property expenses, but they claim they need "supporting documentation" (Db14). Any discovery matter can be resolved following the remand of this case -- where there are clearly genuine disputed issues of fact.

At Db15, defendants question the propriety of Attorney Cargle (who is not licensed in New Jersey, but who was admitted pro hac vice in this litigation) preparing the deed. If plaintiff is the true owner of the property, then that is a matter between plaintiff and Mr. Cargle.

At Db16, defendants supplement Jones-Bey's conclusory remarks with "Pa352-Pa354." Pa352 indicates that $401 were collected back in March 2012. Pa352 is an August 18, 2011 letter regarding a former joint account with a temple located in Philadelphia. None of this proves hierarchical control over the plaintiff's finances or its property.

At Db16 to Db17 defendants cite the "subservient" language in the certificate of incorporation (Pa235).

REPLY TO DEFENDANTS' LEGAL ARGUMENT

I. PLAINTIFF DOES NOT DISAGREE WITH DEFENDANTS' DISCUSSION OF THE STANDARD OF REVIEW.

The language at Db19 is essentially the same as that set forth at Pb7.

II. DEFENDANTS' POINT I IS MEANINGLESS AND DOES NOT WARRANT A REPLY.

At Db19 to Db21, defendants declare that the plaintiff made arguments on appeal which were not presented below. Which arguments are they referring to? The defendants do not tell us, apparently expecting the undersigned and this Court to divine the grievance. Defendants are ignoring their "absolute duty to

make unnecessary an independent examination of the record by the court[.]" State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1978) (citing R. 2:6-9). It is neither possible nor fair to expect plaintiff to reply.

III. REPLYING TO POINT II, ENTERING SUMMARY JUDGMENT IN DEFENDANTS' FAVOR OVER PROCEDURAL ISSUES WAS TOO HARSH A SANCTION.

At T12-10 to T15-18, the motion judge expressly granted summary judgment, not because of the substantive merits, but instead because plaintiff did not respond to the cross-motion statement of facts or otherwise formally oppose defendants' application. At Db21 to Db22, defendants urge this Court to affirm on that basis.

R. 4:46-2(b) provides in relevant part:

> [A]ll material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of [R. 4:46-2(a)] demonstrating the existence of a genuine issue as to the fact.

The Rule does not state that the entry of summary judgment is a sanction for noncompliance. The motion judge was required to make findings on whether defendants' contentions were 'sufficiently supported' via Grand Sheik Robert Jones-Bey's 'firm beliefs.' And even if the cross-motion were sufficiently supported, that does not divest the plaintiff of its property as a matter of law. Had the motion judge applied the 'hierarchy' law to the factual record -- instead

of granting the cross-motion as a procedural penalty -- he would have recognized the problems with the defendants' proofs and the consequent need for a trial.

IV. REPLYING TO POINT III, DEFENDANTS' CROSS-MOTION WAS IMROPERLY GRANTED.

Plaintiff acknowledges that "[a] motion for summary judgment may be denied without prejudice for failure to file the required statement of facts." R. 4:46-2(a).

At Db23 to Db26, defendants repeat the summary judgment standard that was provided at Db19.

Defendants state: "even if the trial court had delved into the substance of the parties' summary judgment arguments . . . ." Defendants thus admit that the substance of the parties' dispute was unaddressed. "Although our standard of review from the grant of a motion for summary judgment is de novo, Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016), our function as an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa." Estate of Doerfler v. Federal Ins. Co., 454 N.J. Super. 298, 301-02 (App. Div. 2018). A remand vis-à-vis defendants' cross-motion (and plaintiff's motion, which was denied "without prejudice") is in order.

At Db26 to Db27, defendants point out (again) that there was no response to the cross-motion statement. They already said this, several times, in their Point II.

At Db28, defendants refer to "peaceable possession of lands" for purposes of N.J.S.A. 2A:62-1. The plaintiff was in possession of the land. The litigation started because of the defendants' interference.

Db28 to Db32 is defendants' discussion of Protestant Episcopal Church in Diocese of N.J. v. Graves, 83 N.J. 572 (1980). The Graves Court declared that "[o]nly where no hierarchical control is involved, should the neutral principles of law principle be called into play. Here it has been established that the Protestant Episcopal Church is a completely integrated hierarchical body . . . ." Id. at 580. Defendants failed to establish integrated hierarchy as a matter of law.

At Db32 to Db34, the defendants rely on their self-serving statements that they believe that they have integrated hierarchy for purposes of controlling plaintiff's property. That is not proof that the plaintiff ever accepted the alleged integration.

As usual, the defendants claim that plaintiff "raised substantial funds and accepted large donations from followers of the Moorish Science Temple religion for many years" (Db35) without proof.

At Db36 to Db38, defendants reject plaintiff's tortious-interference claim. If plaintiff is the true owner of its property -- a dispute on the substantive merits that was never resolved below -- then the defendants have unjustifiably

interfered with plaintiff's right to lease, sell or otherwise enjoy economic advantage respecting the property.

The denial of injunctive relief has become moot because of the summary judgment entered below. There is no reason to address the arguments at Db38 to Db39.

The argument at Db39 to Db40 is repeating what was set forth at Db28. Defendants were not in "peaceable possession" for purposes of a quiet-title action.

At Db41 to Db43, defendants argue that Mr. Cargle engaged in the unauthorized practice of law by preparing the deed. Even if that were true, it does not undo plaintiff's true ownership of the property and it does not vest title in the defendant. The act of an unauthorized attorney is merely voidable, not void. Gobe Media Group, LLC v. Cisneros, 403 N.J. Super. 574, 577 (App. Div. 2008). Plaintiff has not elected to void the deed, and the defendants do not indicate how they would have standing to do so.

As for the arguments at Db43 to Db44, plaintiff agrees that, on this record and at this juncture, there is no statute, rule or other authority that would support an award of counsel fees in its favor. If that changes on remand, the plaintiff would seek fees.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the original appellate merits brief, the March 4, 2024 order should be reversed and vacated. The case should be remanded to the Chancery Division.

Respectfully Submitted,

Law Office of Shanna L. Cushnie
Attorney for Plaintiff-Appellant

By: s/ Shanna Cushnie
Shanna Cushnie