SUPERIOR COURT OF NEW JERSEY

SADDLEWOOD COURT, LLC, Plaintiff-Appellant, v. CITY OF JERSEY CITY, JERSEY CITY REDEVELOPMENT AGENCY, LENNAR MULTIFAMILY COMMUNITIES, and LMC LAUREL-SADDLEWOOD HOLDINGS, LLC, Defendants-Respondents.	APPELLATE DIVISION DOCKET NO. A-002649-22 Civil Action ON APPEAL FROM THE FINAL ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, HUDSON COUNTY Docket No.: HUD-L-2638-21 Sat Below: Hon. Anthony V. D'Elia, J.S.C.

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT SADDLEWOOD COURT, LLC

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TABLE OF CONTENTS

TABLE OF JUDGMENTS AND ORDERS BEING APPEALED

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Trial courts, in their capacities as finders of fact, are given a high degree of deference by higher courts, particularly when witness credibility is at issue. In dismissing this action, the trial court ignored that core principle and retroactively replaced its own well-reasoned factual and credibility findings with statements made by this Court in another case. Significantly, this Court's remarks were made in an entirely different context, and without the benefit of the robust evidentiary record the trial court in this action relied upon. Moreover, this Court's comments were not essential to its decision. Irrespective of whether the trial court felt pressure to adopt the comments of this Court, the end result deprived Plaintiff of its day in court and wrongfully preempted meritorious claims that would have addressed corrupt dealings between the City of Jersey City ("City") and Lennar Multifamily Communities ("Lennar").

In February 2021, Saddlewood Court, LLC ("Plaintiff") learned, for the first time, that the City's decision to blight certain properties in Jersey City, including Plaintiff's property, was the product of a corrupt backroom *quid pro quo* arrangement with Lennar. Pursuant to that illicit arrangement, City officials agreed to a pre-determined, sham blight designation in exchange for Lennar's development of a multi-million dollar City school. The sordid details of that corrupt agreement were first revealed to Plaintiff one month after the completion

of a prior litigation (the "First Action") – an action that only challenged the blight designation due to a lack of evidence. Significantly, Plaintiff did not assert a bad faith claim because it did not discover the facts underlying that claim until after judgment was entered. While Plaintiff sought leave, on a post-judgment basis, to amend its complaint in the First Action to assert a bad faith claim, the trial court denied the motion holding that the case was marked "closed." Plaintiff appealed that decision to this Court.

Having been deprived of the opportunity to assert its bad faith claim in the First Action, Plaintiff commenced this action. After the trial court in this action properly concluded that Plaintiff's bad faith claim was not barred by the doctrines of *res judicata* or collateral estoppel, the trial court directed the parties to engage in discovery regarding the entire controversy doctrine – the only theory the trial court determined might theoretically bar the claim. Discovery on that issue included production of hundreds of pages of documents and two days of deposition testimony. Following discovery, the trial court then ruled on the issue. The trial court's factual findings and credibility determinations were unequivocal – Plaintiff did not possess knowledge of the facts underlying its bad faith until after the First Action:

> ***I believe what [Plaintiff] says, that the new evidence that supports the second Complaint was as a result of a February '21 conversation [Plaintiff] had with***

> ***[Lennar]. . .That's what his testimony was. I'm accepting it. I'm making that finding of fact. . .***

Based on that credibility finding, the trial court correctly concluded that Plaintiff's claims were not barred by the entire controversy doctrine.

Several months later, this Court rendered a decision in the First Action, affirming the trial court's denial of Plaintiff's post-judgment motion to amend because the case was "closed." This Court went further, however, and remarked that Plaintiff was aware of the "illegal favoring of a competing developer" prior to completion of the First Action. Thereafter, the trial court below, without justification, disavowed its own factual and credibility determinations - stating they were "irrelevant". In so doing, the trial court incorrectly replaced its well-reasoned findings with comments made by this Court in a separate action, in a different context, and without the benefit of any discovery.

Considering that all preclusionary doctrines are equitable in nature, the trial court should have been less concerned with the hyper technicalities of the collateral estoppel doctrine (which were not even satisfied) and more concerned with achieving the correct outcome based on the evidence. It was clear - at least to the trial court which carefully examined the evidence - Plaintiff did not know of the facts underlying its bad faith claim in the First Action. The trial court's factual and credibility determination in this action should be given the weight they deserve.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

The First Action

On March 16, 2020, Plaintiff commenced the First Action by filing a Complaint in Lieu of Prerogative Writs against the City, the City Council of Jersey City and the City of Jersey City Planning Board challenging their arbitrary, capricious, and unreasonable actions of declaring certain property referred to as the "Laurel-Saddlewood Block" as being a condemnation area in need of redevelopment under N.J.S.A. 40A:12A-1, *et seq*. (Pa286.)[2] Plaintiff asserted three causes of action in the First Action: (Count I) that the City's adoption of Resolution No. 20-103 pertaining to the Laurel-Saddlewood Block was an arbitrary, capricious, and unreasonable act; (Count II) that the City's adoption of Resolution No. 20-103 pertaining to Plaintiff's property (the "Saddlewood Property") was an arbitrary, capricious and unreasonable act; and (Count III) that the Laurel-Saddlewood Block and Saddlewood Property were not properly blighted as required for a public taking under Article 8, Section 3 of the New Jersey Constitution. (Pa298-300.) Plaintiff's challenges to the City's blight designation were ***solely*** based on allegations that the City lacked

[1] As explained herein, the Procedural History in this matter is material to the issues on appeal. Accordingly, Plaintiff has combined the Procedural History and the Statement of Facts.

[2] Citations to Plaintiff's Appendix will be designated as "Pa__."

"substantial credible evidence" required to legally determine that an area is "blighted" under New Jersey's statutory criteria. (*Id.*)

On January 8, 2021, the trial court in the First Action entered a decision finding that the City's designation of the Laurel-Saddlewood Block as an area in need of redevelopment was supported by credible evidence. (Pa135.) That decision provided, in relevant part, as follows:

> The evidence credibly shows that redevelopment is not only what the area needs but also what the community wants. The specific facts proffered in the sworn testimony of the homeowners coupled with the Krehel Report constitutes substantial credible evidence which satisfies the statutory criteria under N.J.S.A. 40A:12A-5 to support and warrant the designation concerning Block 11501.
>
> [Pa145.]

By Order dated March 4, 2021, the trial court dismissed Plaintiff's Complaint in the First Action. Significantly, absent from the complaint in the First Action or the trial court's decision was any reference, whatsoever, to any bad faith claims or any of the other claims asserted in the current action. (*See, e.g.,* Pa286-300; Pa135-145.)

Lennar Advises Plaintiff of its Illicit Agreement With the City

Following entry of the decision in the First Action, representatives from Lennar contacted Plaintiff and requested a meeting to discuss the redevelopment of the Laurel-Saddlewood Block in Jersey City (which includes the Saddlewood

Property). (Pa10, ¶ 25.) On February 25, 2021, representatives of Plaintiff attended a meeting with Mr. Epstein (Lennar's representative), who advised Plaintiff that the City had promised and, in fact, guaranteed Lennar, well before the redevelopment process began, that the Laurel-Saddlewood Block would be declared blighted and that Lennar or its affiliate would be designated as redeveloper. (*Id.*, ¶ 26.)

When Plaintiff expressed outrage at what appeared to be a premature and improper determination, Mr. Epstein advised that Lennar had promised the City a new school in exchange for the City agreeing to declare the Laurel-Saddlewood Block as an area in need of redevelopment and to designate LMC Laurel-Saddlewood Holdings, LLC ("LMC") as the redeveloper. (*Id.*, ¶ 27.) In fact, Mr. Epstein went so far as to admit that Lennar was told by the City, prior to the time it even commissioned an investigation of the Laurel-Saddlewood Block, that if the City received a new school from Lennar, it would declare the Laurel-Saddlewood Block blighted and designate Lennar's affiliate – LMC – as redeveloper. (*Id.*, ¶ 28.) As Mr. Epstein tellingly explained, "this is the way things are done in New Jersey." (Pa6, ¶ 3.) As explained below, Mr. Epstein's revelations were later substantiated by and through the Redevelopment Agreement (defined below).

Plaintiff is Denied the Right to Assert a Bad Faith Claim in the First Action Because the Case Was Marked Closed

In light of the newly discovered evidence, on March 24, 2021, Plaintiff filed a post-judgment motion for leave to amend in the First Action, seeking permission to assert, for the very first time, a bad faith claim against the City based on the City's improper *quid pro quo* agreement with Lennar. (Pa533.) On April 30, 2021, the trial court in the First Action entered an order denying Plaintiff's motion for leave to amend. (Pa180.) The April 30, 2021 order provided that "[t]he motion to amend is denied as this case is closed per Judge Isabella's January 8, 2021 lettor [*sic*] of opinion." (*Id*.) The court did not mention, let alone address, the merits of Plaintiff's bad faith claim or that the basis for that claim was discovered after the case was closed. (*Id*.)

On May 26, 2021, Plaintiff filed a Notice of Appeal with this Court challenging, among other things, the following rulings in the First Action: (i) the trial court's finding that the City's "blight" designation was supported by the requisite substantial credible evidence under New Jersey's statute, and (ii) the trial court's denial of Plaintiff's post-judgment motion for leave to amend to assert a bad faith claim. (Pa183.) Significantly, Plaintiff's appeal did not involve the merits of its bad faith claim because Plaintiff was not granted permission to assert those claims. (*Id*.)

LMC is Appointed Redeveloper Pursuant to the Illicit Agreement

On or about March 18, 2021, Lennar created and formed LMC for purposes of serving as the redeveloper of the Laurel-Saddlewood Block pursuant to, and in furtherance of, Lennar's illicit agreement with the City. (Pa10, ¶ 29.) On May 18, 2021, the Jersey City Redevelopment Agency (the "Agency"), in accordance with the City's illicit agreement with Lennar and at the instruction of City representatives, adopted Resolution No. 21-05-12 which provides, in relevant part, as follows:

> **Section 2**. The Board of Commissioners hereby designates LMC Laurel-Saddlewood Holdings, LLC as redeveloper of the Property.
>
> **Section 3**. The Chair, Vice-Chair, Executive Director and/or Secretary of the Agency are hereby authorized to execute the Redevelopment Agreement, in substantially the form on file with the Agency, together with such additions, deletions and modifications as deemed necessary or desirable by the Executive Director in consultation with Counsel, and any and all other documents necessary or desirable to effectuate the Resolution, in consultation with counsel.
>
> **Section 4**. The Chair, Vice-Chair, Executive Director and/or Secretary of the Agency are hereby authorized to undertake all actions necessary to effectuate this Resolution.
>
> **Section 5**. This Resolution shall take effect immediately.
>
> [Pa198-99.]

The Agency's decision to authorize the execution of a redevelopment agreement between the City and LMC, and to designate LMC as the redeveloper of the Laurel-Saddlewood Block, was a predetermined conclusion pursuant to the City's improper agreement with Lennar. (Pa11, ¶ 31.) But for Lennar's back room promise to develop a multi-million-dollar school for the City, the City would not have caused the Agency to adopt Resolution No. 21-05-12. (*Id.*, ¶ 32.)

On May 26, 2021, the Agency, pursuant to Resolution No. 21-05-12, executed a Redevelopment Agreement (the "Redevelopment Agreement") with LMC for the proposed redevelopment of the Laurel-Saddlewood Block. (Pa569.)

The illegal agreement between the City and Lennar was confirmed by and memorialized in Section 2.15 of the Redevelopment Agreement, which provides, as follows:

> Community Benefits Agreement. Redeveloper shall construct and/or provide the following projections which shall be included as part of the Project, including (i) the construction of a Pre-K through Grade Five public school which will comprise at a minimum 45,000 square feet with at least fifteen (15) classrooms, a combined gymnasium and auditorium, and a cafeteria (the 'School'). . .
>
> [*Id.*]

Pursuant to Article 2 of the Redevelopment Agreement, LMC was responsible for all reasonable and actual costs associated with, among other things, the construction of the school. (*Id.*)

Plaintiff Commences the Current Litigation

On July 2, 2021, Plaintiff commenced the current action by filing a Complaint in Lieu of Prerogative Writs and for Other Related Claims and Relief (the "Complaint"). (Pa5.) Plaintiff's Complaint initially alleged four causes of action: (i) bad faith in connection with the adoption of Resolution 20-103, (ii) bad faith in connection with the adoption of Resolution 21-05-12, (iii) civil conspiracy, and (iv) declaratory judgment as to the illegality of the Redevelopment Agreement. (*Id.*)

In September 2021, Defendants filed motions to dismiss. (*See* Pa63-282.) In those motions, Defendants raised the following arguments: (i) *res judicata*, (ii) collateral estoppel, (iii) entire controversy doctrine, (iv) lack of jurisdiction, and (v) failure to state a claim for civil conspiracy. (*See id.*) By Orders dated November 18, 2021, the trial court denied Defendants' motions to dismiss. (Pa364-367.)

In reaching that decision, the trial court (correctly) held that the doctrines of *res judicata* and collateral estoppel were inapplicable and did not act as a bar to Plaintiff's claims. (*Id.*) Specifically, the trial court made the following rulings:

> That's not res judicata. Res judicata is the particular issue has been decided between the parties, it's res judicata, it is what it is, and you can't reopen it and re-argue it. . .I don't know why Judge Turula denied the

> Motion to Amend, but it certainly wasn't on the substance of the claims. It was not on substance. So res judicata and collateral estoppel, there's been no decision on the substance in those claims.
>
> * * *
>
> I don't believe it's a res judicata because [Plaintiff] never had a chance to argue this on summary judgment in any way. So I don't see that, collateral estoppel and res judicata. Entire controversy doctrine is probably the only way to go for defendants, at best.
>
> [1T12:5-8, 16-20; 40:16-21.][3]

The trial court – after denying Defendants' motions – directed the parties to engage in early discovery specifically limited to the issues of whether the claims were "barred by the Entire Controversy Doctrine." (2T11:12-15;[4] *see also* 2T7:20-22 ("[t]he only question that would be in front of the Court would be, what [Plaintiff] knew and when [it] knew it"); 2T14:23-15:3 ("I'll do an order denying both motions that were filed [] without prejudice. I'll put in the order that – that the defendants will get limited discovery of Plaintiff re. the Entire Controversy Doctrine")).

[3] Citations to the November 10, 2021 Oral Argument are designated with the prefix "1T".

[4] Citations to the November 18, 2021 Case Management Conference are designated with the prefix "2T".

On January 21, 2022, Plaintiff produced over 1,200 pages of discovery in response to Defendants' request for production of documents. (Pa640.) On April 11, 2022 (and continuing on April 25, 2022), Defendants conducted the deposition of Plaintiff's principal – Eyal Shuster. (Pa377; Pa455.) Despite the substantial evidence provided by Plaintiff (*i.e.*, over 1,200 pages of documents and 2 days of deposition testimony), Defendants did not adduce any evidence whatsoever suggesting that Plaintiff knew of Defendants' illicit agreement until February 2021, at the earliest.

LMC Conspicuously and Unceremoniously Withdraws as Redeveloper for Unspecified Reasons

While Defendants were conducting limited discovery regarding the entire controversy doctrine, LMC abruptly withdrew as the redeveloper of the project for unspecified reasons. On February 28, 2022, the trial court conducted a case management conference, at which time Defendants' counsel represented, for the first time, that the Redevelopment Agreement expired as of February 28, 2022. (Pa642-45.)

Following the conference, counsel for Plaintiff requested certain basic information regarding the purported "expiration" of the Redevelopment Agreement, including, (i) confirmation that the agreement terminated as of February 28, 2022, (ii) documentation memorializing the expiration, and (iii) the basis under which the Redevelopment Agreement purportedly terminated.

(*Id.*) Rather than provide that basic information, Lennar's counsel responded, in relevant part, as follows:

> [Defendants] have now made several representations, all consistent, that the RDA expired by virtue of its terms. Your client has the contract, as do you. The contract had an expiration date and that date has passed. It is expired. It was not renewed prior to expiration, likely for the reasons widely reported in the press, and the Resolution authorizing entry into the RDA is irrelevant.
>
> [*Id.*]

By letter dated March 18, 2022, counsel for the Jersey City Redevelopment Agency, stated the following:

> The Redevelopment Agreement ('Agreement') at issue in this matter has expired as per its terms pursuant to Section 11.02 as of February 28, 2022. Pursuant to the Agreement, no further action needs to be taken by the Jersey City Redevelopment Agency and the previously adopted resolution designating the Redeveloper is now moot.
>
> [Pa648.]

Notwithstanding counsel's representations that the Redevelopment Agreement "expired by virtue of its terms," the Redevelopment Agreement does not contain an expiration date. (*See* Pa569-638.) Moreover, the terms of the Redevelopment Agreement undermine any suggestion that it expired by its terms under Section 11.02:

> 11.02 Competitive Bidding Process Agreement. The Redeveloper or its designee shall execute a competitive

> bidding process agreement (the 'Competitive Bidding Process Agreement') within ninety (90) Days of the Effective Date and provide a copy of same to the Agency. This Agreement shall terminate on the ninety-first (91st) Day following the Effective Date if the requirements of this Section 11.02 are not met.
>
> [*Id.*]

The "Effective Date" under the Redevelopment Agreement was May 26, 2021. (*Id.*) Ninety-one days following the Effective Date was August 25, 2021, not February 28, 2022 (which was 278 days after the Effective Date).

The Trial Court, Having the Benefit of a Full Evidentiary Record Including Deposition Testimony, Finds that Plaintiff Did Not Know of the Illicit Agreement Until After the Conclusion of the First Action

Despite the lack of evidence to support an argument that Plaintiff's claims were barred by the entire controversy doctrine, on May 13, 2022, Defendants filed another motion to dismiss Plaintiff's Complaint, or in the alternative, for summary judgment. (Pa368.) On July 8, 2022, the trial court conducted oral argument on Defendants' second motion to dismiss. (3T.)[5] During oral argument, the trial court found, based on the complete evidentiary record before it, that Plaintiff did not know of the illicit *quid pro quo* agreement until February 2021 and, therefore, Plaintiff's claims are not barred by the Entire Controversy

[5] Citations to the July 8, 2022 Oral Argument are designated with the prefix "3T".

Doctrine. (3T28:19-29:1.) Specifically, the trial court made the following findings of fact:

> In his deposition. . .[Mr. Shuster] testifies that the reason that he believes he now has new evidence in this lawsuit that would justify a second lawsuit is as a result of a February 21 conversation with Mr. Epstein. During that conversation the school was discussed. And that he then felt that the City played it out in order to get the school. It wasn't right to, according to him, 'it wasn't right to condemn my property to get a school. And I told Epstein that during the February 2021 call.'
>
> I am going to grant Mr. Shuster the benefit of all reasonable inferences and credibility calls in connection with the motion in front of me. ***I believe what he says***, that the new evidence that supports the second Complaint was as a result of a February '21 conversation he had with Epstein. The lightbulb goes off. And he thinks now that's the reason why they're favoring Lennar, because they promised the school. ***That's what his testimony was. I'm accepting it. I'm making that finding of fact in connection with this motion***.
>
> [3T9:18-10:16 (emphasis added).]
>
> * * *
>
> ***I do not believe that the generalized suspicions that this record reflects of Mr. Shuster before the phone conversation of '21 would have justified or required him to include that claim in the first Complaint***. So on that basis alone that's not enough to say that he's estopped from raising them now ***or the entire controversy doctrine operates [to] bar his claim***.
>
> [3T41:14-22 (emphasis added).]
>
> * * *

> There's nothing in the City Council transcript from January of '20 or the Certification that you talk about ***that even remotely indicates that there was this indication that the school was a deal or an agreement or anything like that***. So I don't think he even had a basis to speculate about that before February '21
>
> [3T27:10-16 (emphasis added).]
>
> * * *
>
> I just made a finding that he did not have a real indication about the quid pro quo with the school until February, ***a month after the [First Action] was dismissed***.
>
> [3T28:24-29:1 (emphasis added).]
>
> * * *
>
> ***I looked at his deposition testimony. Anything up until that [February 2021] phone call about the school was pure guesswork on [Plaintiff's] part.*** And for [Plaintiff] to include a claim like that in the first lawsuit, you would have filed a Motion to kick it out in two seconds. . . So I disagree with you having that suspicion required [Plaintiff] to include that claim in the first Complaint.
>
> [3T34:11-13, 35:2-4.]

Even after the trial court made those specific factual findings and credibility determinations, Defendants continued to argue that Mr. Shuster somehow knew of the illicit agreement prior to February 2021. Each time, however, the trial court expressly rejected Defendants' arguments. To that end, the trial court stated as follows:

> No, no, no, no, no. I don't see anything in this record to show anything except his quote, unquote, feelings before the phone call of February where the school came up.
>
> * * *
>
> No, that was all speculation on [Mr. Shuster's] part until there's a promise of a school.
>
> * * *
>
> [S]o there was a school discussed but where was the idea that he was aware that it was a promise for a school?
>
> * * *
>
> There's nothing in the City Council transcript from January of '20 or the Certification that you talk about that even remotely indicates that there was this indication that the school was a deal or an agreement or anything like that. So I don't think he even had a basis to speculate about that before February '21.
>
> [3T19:4-7; 19:17-18; 22:10-11; 27:10-16.]

The Trial Court Dismisses Plaintiff's Complaint, Without Prejudice, Despite Finding the Claims Were Not Barred By Any Preclusionary Doctrine

Notwithstanding the above factual and credibility determinations – and despite previously concluding the doctrines of *res judicata* and collateral estoppel and the entire controversy doctrine did not operate as a bar to Plaintiff's claims – the trial court dismissed Plaintiff's claims, without prejudice. (Pa3.) In so doing, the trial court did not provide any legal basis whatsoever for its decision. (*Ibid*.) Instead, the trial court "explained" that it was dismissing

Plaintiff's claims – over one year into the pending matter – to "see" what action this Court would take in connection with the appeal of the First Action. (3T42:5-14.) To that end, the trial court stated, in relevant part, as follows:

> The only argument in front of me, I think plaintiff counsel agrees, is they want a chance to argue this bad faith argument based on the promise of the school. I disagree with [the City's counsel]. I do not believe that generalized suspicions that this record reflects of Mr. Shuster before the phone conversation in February '21 would have justified or required him to include that claim in the first Complaint. So on that basis alone that's not enough to say that he's estopped from raising them now or the entire controversy doctrine operates [to] bar, his claim.
>
> The real question is whether the attempt to get the claim regarding the school in the first case when it was barred by Judge Isabella, and that question is now up on appeal, should bar the second Complaint now. . .I'm going to dismiss the second Complaint now without prejudice pending the results of the Appellate Division. It's important – and you'll get a copy of this transcript to me – it's important for me to see why the Appellate Division takes action, whatever action it will take in connection with the appeal from the first case because, as I said, theoretically the Appellate Division can simply say the case was closed, Judge Isabella was correct, and according to my finding, the first time the plaintiff really should have raised the issue was as of February '21. The case had been dismissed before that in January '21.
>
> So if the Appellate Division rules on a strict procedural rule that Judge Isabella was correct, there was no open case; therefore, the second case couldn't be filed, then after that Decision the plaintiff can refile a second

> Complaint and come in front of the Court on that bad faith argument only.
>
> Now if the Appellate Court rules that Judge Isabella was correct, the second Amended Complaint was properly – the Motion to Amend the second Complaint was properly denied for some other reason, well then the plaintiff will be barred from filing the second Complaint.
>
> [3T41:11-43:2.]

By Order dated July 8, 2022, the trial court dismissed Plaintiff's Complaint, without prejudice, for the reasons placed on the record during the July 8, 2022 oral argument. (Pa3.)

This Court Affirms the Trial Court in the First Action

By Decision dated November 2, 2022, this Court affirmed the trial court's decision in the First Action denying Plaintiff's motion for leave to appeal. (Pa769.) Specifically, this Court held that the trial court in the First Action did not abuse its discretion in denying the motion for leave to amend because the motion was filed after the conclusion of the First Action. (*Ibid*.) To that end, this Court found, in relevant part, as follows:

> The motion judge correctly recognized plaintiff had filed its motion seeking leave to amend its complaint after the trial judge had conducted the trial and rendered his decision dismissing plaintiff's complaint. See Grimes v. City of E. Orange, 285 N.J. Super. 154, 167 (App. Div. 1995) (finding the trial court did not err 'when it refused to permit [the plaintiff] to amend his complaint to assert an entirely new cause of action never pled, argued or proven, after the jury returned its

> verdict.'); Du-Wel Prods., Inc. v. U.S. Fire Ins. Co., 236 N.J. Super. 349, 364 (App. Div. 1989) (finding 'well-settled that an exercise of discretion will be sustained where the trial court refuses to permit new claims and new parties to be added late in the litigation and at a point at which the rights of other parties to a modicum of expedition will be prejudicially affected").
>
> [Pa788-89.]

After affirming the trial court in the First Action's decision to deny Plaintiff's motion for leave to amend as untimely, this Court noted, in its unpublished opinion, that Plaintiff's motion for leave to amend "lacked merit." (Pa789.) This Court – relying solely on competing factual certifications submitted in connection with the underlying motion for leave to amend – made the following comments:

> In addition to being untimely, plaintiff's motion lacked merit. The premise of plaintiff's proposed amended complaint was the alleged agreement by the City to blight the Block in exchange for Lennar's promise to build a new school Plaintiff contends its motion was based on 'newly-discovered evidence.' Yet, during the Council's February 13, 2020 public hearing, Shuster, plaintiff's managing member, acknowledged and took credit for the proposed construction of the school: 'we are in support of the future development and fully on board of the proposed affordable [housing] and school that is proposed by the City. The school was our idea.' During that hearing, Shuster also asserted 'the City is unfairly and illegally favoring a competing developer. . .' Even though its managing member was aware of the school construction and the alleged illegal 'favoring of a competing developer,' plaintiff chose not to include a bad-faith claim in its complaint and inexplicably waited

> until after the trial judge rendered a verdict to seek leave to add a claim based on those allegations.
>
> [Pa789-90.]

The Trial Court Improperly Ignores Its Express Factual and Credibility Determinations and Dismisses Plaintiff's Claim with Prejudice

On February 1, 2023, Plaintiff filed a motion to reinstate its Complaint in this action. (Pa758.) On March 23, 2023, the trial court conducted oral argument on Plaintiff's motion. (4T.)[6] During oral argument, the trial court erroneously (i) substituted this Court's limited remarks in place of its own (directly contradictory) factual and credibility determinations, and (ii) found that Plaintiff was "stopped" from asserting its claims. (*Id*.) To that end, the trial court stated:

> I think [the Appellate Court decision] stopped your party. I think it's binding on your party, and all the other parties who participated in that other case, who fully litigated that question, when the question was squarely presented on the same record that I have to the Appellate Division. I think the findings of the Appellate Division in that unreported case are binding on [Plaintiff], ***and I'm not going to disagree with that Appellate Division whether it is reported or not.***
>
> [4T8:3-11.]

[6] Citations to the March 23, 2023 Oral Argument are designated with the prefix "4T".

In reaching that "conclusion," the trial court erroneously found that its factual findings and credibility determinations were "irrelevant." Specifically, the trial court held:

> If the Appellate Division says this issue should have been raised in the original complaint, and when you first brought it up on the motion to amend in front of Judge Isabella it was too late, ***then my findings of fact are irrelevant***, because the Appellate Division is saying in their ruling, that this whole issue, the whole reason why you should amend the complaint, should've been – it should've been filed in that first lawsuit, not on a motion to amend[.]
>
> * * *
>
> I've summarized the Appellate Division opinion. . .The only thing is this whole bad faith claim. The Appellate Division specifically said that the motion to amend the complaint lacked merit. It should've been brought earlier. That's what they ruled. ***Despite what I may have said on the record in this case***, I was waiting for them to decide those issues. The Appellate Division has decided that issue.
>
> [4T15:17-25; 17:18-18:4]

LEGAL ARGUMENT

I. STANDARD OF REVIEW

The standard of review is plenary for dismissal of a complaint based on a preclusionary doctrine. See Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div.), certif. denied, 164 N.J. 188 (2000).

With respect to findings of fact, the "scope of appellate review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, and credible evidence." Id. (citing Rova Farms Resort, Inc. v. Investors Inc. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Id. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). "Therefore, an appellate court should not disturb the 'factual findings and legal conclusions of the trial judge unless [it is] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend interests of justice.'" Id. (quoting Rova Farms, 65 N.J. at 484). In other words, the appellate court should "exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter." Id.

II. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF WAS "STOPPED" FROM PURSUING A BAD FAITH CLAIM DESPITE DETERMINING, ON A FULL EVIDENTIARY RECORD, THAT PLAINTIFF DID NOT POSSESS KNOWLEDGE OF THE FACTS UNDERLYING ITS CLAIMS UNTIL AFTER THE CONCLUSION OF THE FIRST ACTION (PA3; 4T8:3-11).

Although not clearly articulated, the trial court presumably dismissed Plaintiff's claims pursuant to the entire controversy doctrine. The trial court rendered that decision despite making factual findings and credibility determinations, based on a full evidentiary record (*i.e.*, document discovery and witness testimony), that Plaintiff did not possess knowledge of the facts underlying its claims prior to the completion of the First Action. The trial court's decision to dismiss the Complaint should be reversed.

The entire controversy doctrine "is equitable in nature and is fundamentally predicated upon 'judicial fairness and will be invoked in that spirit.'" Cafferata v. Peyser, 251 N.J. Super. 256, 261 (App. Div. 1991) (citing Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 343 (1984). "Thus, as in the case of all other preclusionary doctrines, its application requires, as a matter of first principle, that the party whose claim is being sought to be barred must have had a fair and reasonable opportunity to have fully litigated that claim in the original action." Id. (citation omitted).

With those principles in mind, "the entire controversy doctrine ***only*** applies to component claims that 'arise during the pendency of the first action that were known to the litigant[.]'" Lanziano v. Cocoziello, 304 N.J. Super. 616, 626 (App. Div. 1997) (emphasis added) (quoting Circle Chevrolet Co. v. Giordano, Halleran & Ciesla, 142 N.J. 280, 290 (1995), abrogated by Olds v. Donnelly, 150 N.J. 424, 435-37 (1997)). The entire controversy doctrine "does not apply to bar component claims ***that are unknown, unarisen, or unaccrued*** at the time of the original action." Id.; see also Cafferata v. Peyser, 251 N.J. Super. 256, 261 (App. Div. 1991) (emphasis added) ("as a matter of first principle," the party whose claim is sought to be barred by the entire controversy doctrine "must have had a fair and reasonable opportunity to have fully litigated that claim in the original action.")

There is no legitimate dispute that the facts underlying Plaintiff's claims – *i.e.*, the illicit agreement between the City and Lennar wherein the City agreed to effectuate a sham blight designation in exchange for the development of a public school – were unknown to Plaintiff until after completion of the First Action. In fact, the trial court – equipped with and relying heavily upon a full evidentiary record – reached that very conclusion. Specifically, during the July 8, 2022 oral argument, the trial court: (1) made a finding of fact that Plaintiff did not know, nor could it have known, of facts sufficient to give rise to its

claims until after the completion of the First Action, and (2) applied its factual findings to render a legal determination that the entire controversy doctrine did not apply to bar Plaintiff's claims. Specifically, the trial court expressly found:

> I do not believe that the generalized suspicions that this record reflects of Mr. Shuster before the phone conversation of '21 would have justified or required him to include that claim in the first Complaint. So on that basis alone that's not enough to say that he's estopped from raising them now ***or the entire controversy doctrine operates [to] bar his claim***. (3T41:14-22) (emphasis added).
>
> I am going to grant Mr. Shuster the benefit of all reasonable inferences and credibility calls in connection with the motion in front of me. ***I believe what he says, that the new evidence that supports the second Complaint was as a result of a February '21 conversation he had with Epstein***. The lightbulb goes off. And he thinks now that's the reason why they're favoring Lennar, because they promised the school. ***That's what his testimony was. I'm accepting it. I'm making that finding of fact in connection with this motion***. (3T10:6-16) (emphasis added).
>
> There's nothing in the City Council transcript from January of '20 or the Certification that you talk about ***that even remotely indicates that there was this indication that the school was a deal or an agreement or anything like that***. So I don't think he even had a basis to speculate about that before February '21. (3T27:10-16) (emphasis added).
>
> I just made a finding that he did not have a real indication about the quid pro quo with the school until February, ***a month after the [First Action] was dismissed***. (3T28:24-29:1) (emphasis added).

> ***I looked at his deposition testimony***. Anything up until that [February 2021] phone call about the school was pure guesswork on [Plaintiff's] part. And for [Plaintiff] to include a claim like that in the first lawsuit, you would have filed a Motion to kick it out in two seconds. .. So I disagree with you having that suspicion required [Plaintiff] to include that claim in the first Complaint. (3T34:11-16, 35:2-4) (emphasis added).

Notwithstanding those explicit credibility determinations and findings of fact – findings that should be treated as binding on this appeal – the trial court inexplicably (and without meaningful explanation) dismissed Plaintiff's claims.

The trial court's decision to dismiss Plaintiff's claims in light of its factual findings and credibility determinations runs afoul of black letter law, which provides that the entire controversy doctrine ***only*** applies to claims that were known to the litigant in a prior action. See, e.g., Lanziano, 304 N.J. at 626. Accordingly, the trial court's dismissal of Plaintiff's claims should be reversed.

III. THE TRIAL COURT ERRED BY REPLACING ITS OWN FINDINGS AND CREDIBILITY DETERMINATIONS WITH NON-ESSENTIAL COMMENTS MADE BY THIS COURT IN A SEPARATE MATTER, IN A DIFFERENT CONTEXT, AND WITHOUT THE BENEFIT OF A FULL EVIDENTIARY RECORD (PA3).

The trial court's decision to dismiss Plaintiff's Complaint, with prejudice, was predicated on its decision to adopt comments made by this Court in the First Action in place of its own factual findings and credibility determinations, which pre-dated this Court's comments. The trial court adopted those comments

without providing any meaningful explanation or performing any legal analysis whatsoever. Instead, the trial court simply "concluded" as follows:

> I think [the Appellate Court decision] stopped your party. I think it's binding on your party, and all the other parties who participated in that other case, who fully litigated that question, when the question was squarely presented on the same record that I have to the Appellate Division. I think the findings of the Appellate Division in that unreported case are binding on [Plaintiff], and I'm not going to disagree with that Appellate Division whether it is reported or not.
>
> * * *
>
> If the Appellate Division says this issue should have been raised in the original complaint, and when you first brought it up on the motion to amend in front of Judge Isabella it was too late, ***then my findings of fact are irrelevant***, because the Appellate Division is saying in their ruling, that this whole issue, the whole reason why you should amend the complaint, should've been – it should've been filed in that first lawsuit, not on a motion to amend[.]
>
> * * *
>
> I've summarized the Appellate Division opinion. . .The only thing is this whole bad faith claim. The Appellate Division specifically said that the motion to amend the complaint lacked merit. It should've been brought earlier. That's what they ruled. ***Despite what I may have said on the record in this case***, I was waiting for them to decide those issues. The Appellate Division has decided that issue.
>
> (4T8:3-11; 15:17-25; 17:18-18:4) (emphasis added).

The trial court's comments do not: (i) identify or explain the legal basis underlying its ruling, or (ii) provide any meaningful application of the facts to the unarticulated legal doctrine(s) upon which the trial court purportedly relied. The trial court's failure to provide any legal basis for its decision alone warrants reversal. See, e.g., Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990) ("Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion. In the absence of reasons, [this Court is] left to conjecture as to what the judge may have had in mind."); Rule 1:4-7(a) ("The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury[.]")

Assuming the trial court relied on the doctrine of collateral estoppel when electing to replace its own findings with this Court's comments in the First Action – application of that doctrine was inappropriate and must be reversed.

A. The Issue of "What Plaintiff Knew and When It Knew It" Was Not Actually Litigated in the First Action, Was Not Adjudicated by the Trial Court, and Was Not Essential to the Ultimate Decision

"The doctrine of collateral estoppel is a branch of the broader law of *res judicata* which bars relitigation of any issue *actually determined* in a prior action generally between the same parties and their privies involving a different claim or cause of action." Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173

(App. Div. 2000) (emphasis added). For the doctrine of collateral estoppel to apply, the party asserting the bar must show that:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
>
> Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006).

"Even where these requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so." Id. at 521-22 (internal quotation omitted); see also Pivnick v. Beck, 326 N.J. Super. 474, 486 (App. Div. 1999), aff'd, 165 N.J. 670 (2000) ("because collateral estoppel is equitable in nature, it should only be applied when fairness requires.") To that end, factors disfavoring application of collateral estoppel include:

> [T]he party against whom preclusion was sought could not have obtained review of the judgment in the initial action; the quality or extensiveness of the procedures in the two actions were different; it was not foreseeable at the time of the initial action that the issue would arise in subsequent litigation; and the party sought to be precluded did not have an adequate opportunity to obtain a full and fair adjudication in the first action.
>
> Pivnick, 326 N.J. Super. at 486.

Significantly, when analyzing collateral estoppel, New Jersey courts follow the concepts "described in the Restatement of Judgments." Hernandez v. Region Nine Hous. Corp., 146 N.J. 645, 659 (1996); see also Olivieri, 186 N.J. at 525, n. 7 (applying Restatement of Judgments § 28.)

To the extent the trial court relied on the doctrine of collateral estoppel in dismissing Plaintiff's claims, it failed to perform any meaningful analysis to determine whether the elements were actually met under the circumstances. Had the trial court performed a proper analysis, it could have reached only one conclusion: the elements necessary to apply collateral estoppel are not present, whereas all of the factors disfavoring application of the doctrine are present.

The issue was not actually litigated in the First Action. The issue of "what Plaintiff knew and when it knew it" was not actually litigated in the First Action. An issue is "actually litigated" when it is properly raised by pleadings or otherwise, is submitted for determination, and a decision is rendered. See Velasquez v. Franz, 123 N.J. 498, 506 (1991) (citing Restatement (Second) of Judgments, § 27, cmt. d (1982)). The issue was raised, for the first and only time, in connection with a post-judgment motion for leave to amend. (Pa154.) The issue was not fully briefed and the parties did not engage in any discovery on the issue – they merely submitted competing factual certifications in

connection with the post-judgment motion for leave to amend. (*See*, *e.g.*, Pa754-57.)

In fact, the trial court below – immediately after making a factual and credibility determination that Plaintiff did not possess knowledge of the facts underlying its bad faith claim while the First Action was pending – acknowledged that the issue was not addressed in the First Action given the summary nature of the proceeding. To that end, the trial court stated:

> Did you have discovery in the first prerogative writ matter? No. You had a Brief. It was based all on transcript [*sic*] below. There was a Brief by [Plaintiff]. There was a brief by [the defendants]. There was no testimony taken by Judge Isabella. . .That' what prerogative actions are all about. So what kind of due diligence are you going to do under those circumstances when all you've got is a suspicion that a deal is going on?
>
> [3T35:12-22.]

The trial court did not issue a final judgment on the merits. The trial court in the First Action did not even acknowledge, much less adjudicate, the issue. Rather, the trial court in that action simply denied the motion for leave to amend on strictly procedural grounds because the case was marked "closed." (Pa180-81.) Thus, there was no final judgment on the merits as to the issue of Plaintiff's knowledge.

The issue was not essential. Given that the issue was not even considered by the trial court in the First Action, the issue of "what Plaintiff knew and when it knew it" was not essential to the trial court's decision to deny Plaintiff's post-judgment motion for leave to amend in the First Action. The Restatement of Judgements describes determinations that are not essential, as follows:

> *Determinations not essential to the judgment.* If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded. Such determinations have the characteristics of dicta, and may not ordinarily be the subject of an appeal by the party against whom they were made. In these circumstances, the interest in providing an opportunity for a considered determination, which if adverse may be the subject of an appeal, outweighs the interest in avoiding the burden of relitigation.
>
> [Restatement (Second) of Judgments § 27 (1982).]

The ***only*** time the issue was even mentioned in the First Action was by this Court when ruling on Plaintiff's appeal. This Court's comments on the issue were not "essential" to the ultimate decision to affirm the trial court's denial of Plaintiff's post-judgment motion for leave to amend but, rather, possessed the characteristics of *dicta*. This is the ***precise*** scenario contemplated by the Restatement of Judgments when describing determinations that are not essential.

Factors disfavoring preclusion. At the risk of stating the obvious, the "quality" and "extensiveness" of the procedures in the two actions were vastly

different. The issue of knowledge simply was not addressed in the First Action, whereas the issue was vigorously and extensively litigated in the action below. Indeed, the parties engaged in discovery on that very issue – including production of hundreds of pages of documents and two days of witness testimony – and the trial court made factual findings, credibility determinations, and legal conclusions based on the full evidentiary record. The conclusion: Plaintiff could not have known about the facts underlying its claims until after the conclusion of the First Action. (3T10:6-7.) The Appellate Division in the First Action did not have the benefit of that record. In fact, the Appellate Division in the First Action based its comments ***solely*** on remarks from a transcript that the trial court below ***expressly*** rejected. (*See* 3T27:10-16 ("There's nothing in the City Council transcript from January of '20 . . . that even remotely indicates that there was this indication that the school was a deal or an agreement or anything like that. So I don't think he even had a basis to speculate about that before February '21"))

Most significantly, Plaintiff did not have any opportunity, much less an adequate opportunity, to obtain a full and fair adjudication of its bad faith claim in the First Action. At best, the competing certifications, considered for the first time by the Appellate Division, created an issue of fact. That issue of fact was never fully and fairly adjudicated in the First Action. It was, however, fully and

fairly adjudicated in the underlying action – and the result of that full and fair adjudication was a finding that Plaintiff did not know of the facts giving rise to its claims until ***after*** completion of the First Action. Under the circumstances, it would be manifestly unfair to apply the doctrine of collateral estoppel. Olivieri, 186 N.J. at 521-22.

B. The Inconsistent Remarks Made by This Court in a Completely Different Context Do Not Bar Litigation of the Issue in This Matter

Even if all the essential elements of collateral estoppel are satisfied here (which they are not), Plaintiff should not be precluded from litigating the issue in the current action pursuant to several widely-accepted limitations to the doctrine of collateral estoppel. "New Jersey has specifically adopted limitations on the doctrine contained in the *Restatement (Second) of Judgments, supra,* §§ 28 and 29." Gannon v. Am. Home Prod., Inc., 414 N.J. Super. 507, 521 (App. Div. 2010), rev'd, 211 N.J. 454, (2012).

First, Section 28(4) of the Restatement (Second) of Judgments provides that litigation of an issue in a subsequent matter is not precluded where:

> The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary had a significantly heavier burden than he had in the first action . . .

The current situation fits squarely within the above exception. Plaintiff's burden of persuasion was significantly higher in the First Action than in the current action. In the First Action, the issue of what "Plaintiff knew and when it knew it" was only first raised in connection with a post-judgment motion for leave to amend – and only first considered by this Court when reviewing the denial of that application under an abuse-of-discretion standard. (*See* Pa788.) Thus, Plaintiffs had a significantly heavier burden of persuasion with respect to the issue. Not only was Plaintiff tasked with attempting to meet the exceedingly high standard required to amend post-judgment – but the issue was scrutinized (for the very first time without the benefit of an evidentiary record) by this Court when deciding whether the trial court in the First Action abused its discretion in denying Plaintiff's post-judgment motion for leave to amend on strictly procedural grounds.

The burden of persuasion in the current action is reversed. The application of the entire controversy doctrine – the only doctrine to which the issue is relevant – is an affirmative defense, and Defendants have the burden of establishing their entitlement to that defense. See, e.g., Sweeney v. Sweeney, 405 N.J. Super. 586, 598 (App. Div.), certif. denied, 199 N.J. 518 (2009). The trial court below – analyzing that defense under the proper standard and with the

benefit of full discovery – already concluded that Defendants failed to meet their burden.

In addition, Section 29(4) of the Restatement (Second) of Judgments provides that litigation of an issue in a subsequent matter is not precluded where:

> The determination relied on as preclusive was itself inconsistent with another determination of the same issue.

As set forth in detail above, this Court's remarks are entirely inconsistent with the trial court's factual findings and credibility determinations made on a complete evidentiary record. The trial court should not have replaced its own well-reasoned decision with inconsistent remarks made by this Court in a different context and without the benefit of full discovery and briefing.

CONCLUSION

For the foregoing reasons and authorities, Plaintiff respectfully requests that this Court (i) reverse the trial court's July 8, 2022 and March 23, 2023 Orders in their entirety, and (ii) reinstate Plaintiff's Complaint.

COLE SCHOTZ P.C.
Attorneys for Plaintiff/Appellant,
Saddlewood Court, LLC

By: */s/ Joseph Barbiere*
Joseph Barbiere

DATED: September 14, 2023

SUPERIOR COURT OF NEW JERSEY

SADDLEWOOD COURT, LLC,

Plaintiff-Appellant,

v.

CITY OF JERSEY CITY, JERSEY CITY REDEVELOPMENT AGENCY, LENNAR MULTIFAMILY COMMUNITIES, and LMC LAUREL-SADDLEWOOD HOLDINGS, LLC,

Defendants-Respondents.

APPELLATE DIVISION
DOCKET NO. A-002649-22

Civil Action

ON APPEAL FROM THE FINAL ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, HUDSON COUNTY

Docket No. HUD-L-2638-21

Sat Below:

Hon. Anthony V. D'Elia, J.S.C.

Date Submitted: December 8, 2023

DEFENDANTS-RESPONDENTS' BRIEF AND APPENDIX

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

APPENDIX TABLE OF CONTENTS

Defendants-Respondents the City of Jersey City (the "City") and Lennar Multifamily Communities and LMC Laurel-Saddlewood Holdings, LLC ("Lennar") (collectively, "Defendants") respectfully submit this memorandum of law in opposition to Plaintiff-Appellant Saddlewood Court, LLC's ("Plaintiff" or "Saddlewood") appeal from the Hudson County Superior Court, Law Division's order denying Saddlewood's motion to reinstate ("Motion to Reinstate") and dismissing Saddlewood's Complaint with prejudice ("Denial and Dismissal Order").

PRELIMINARY STATEMENT

This appeal involves Saddlewood's challenge to the trial court's unremarkable application of the entire controversy doctrine to bar claims in Saddlewood 's second lawsuit—claims that could have been raised in its first lawsuit. Saddlewood cannot repackage an old and withheld claim in new wrapping. That is the point of the entire controversy doctrine—to discourage piecemeal and repetitive lawsuits and to bring finality to cases where claims and parties should have been joined in one proceeding.

In the first lawsuit, the trial court dismissed Saddlewood's claims against Jersey City, finding that the City's designation of certain property as blighted and in need of redevelopment was supported by substantial evidence in the record. The trial court also denied Saddlewood's post-judgment motion to

amend the Complaint to assert an illicit alliance between the City and the redeveloper, Lennar. The Appellate Division affirmed the trial court's ruling in its entirety. The appellate panel specifically found that not only was the post-judgment motion to amend untimely but also meritless because the alleged claim that the City was unfairly and illegally favoring Saddlewood's competitor, Lennar, was not newly discovered evidence.

In the second lawsuit, Plaintiff continued its sour-grapes campaign over the selection of Lennar as the redeveloper. Plaintiff raised the same baseless claim about a corrupt alliance between the City and Lennar concerning the development of the blighted property, this time adding Lennar as a named defendant. The trial court determined that the claim was barred by the entire controversy doctrine, relying on the conclusions reached by the Appellate Division in affirming the dismissal of the first lawsuit. The trial court's dismissal of the second lawsuit—the one before this Court—is unassailable and must be affirmed.

In this appeal, Saddlewood grasps on to some extraneous statements made by the trial court in the second lawsuit that are not germane to the trial court's decision nor to the outcome of this appeal. Immediately before declaring that it had no jurisdiction while the first lawsuit remained on appeal, the trial court nevertheless offered needless statements that the second lawsuit was based on

newly discovered evidence. The court, however, added that it would await the ruling of the Appellate Division in the first action before rendering a decision and therefore dismissed the lawsuit without prejudice.

The Appellate Division quashed the idea that Saddlewood's proposed amended complaint, alleging a corrupt "agreement by the City to blight the Block in exchange for Lennar's promise to build a new school," was based on newly discovered evidence. The panel pointedly noted that, during a City Council hearing on the redevelopment project, Saddlewood's managing partner, Eyal Shuster, not only "took credit for the proposed construction of the school," but also accused "the City [of] unfairly and illegally favoring a competing developer . . . ." The same stale evidence is at the heart of Saddlewood's second lawsuit.

The trial court in the second lawsuit stated that, despite what it had said earlier—statements the court characterized as irrelevant—it had been "waiting" for the Appellate Division to decide the "bad faith" claim. Recognizing that the appellate panel found "no merit" to the "bad faith" claim because it could have been brought earlier, the trial court dismissed with prejudice the second complaint. The trial court held that "if the bad faith claim is barred by the Appellate Division, then a conspiracy with Lennar to act in bad faith is also

barred because [Shuster] clearly knew that Lennar was one of the parties to [Shuster's] alleged bad faith claim."

The trial court simply applied the fundamental principles of the entire controversy doctrine to bring this litigation to an end. This Court is urged to do the same.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. FACTUAL BACKGROUND.

On February 13, 2020, the City passed and adopted Resolution No. 20-103 (the "Redevelopment Resolution"). (Pa69–106.) The Redevelopment Resolution confirmed Jersey City Council's ("City Council") designation of Block 11501, lots 1–39 in the City of Jersey City (the "Property") as an area in need of redevelopment subject to condemnation. (Pa69.) Saddlewood is a limited liability company Eyal Shuster ("Shuster") created to purchase one of the homes located within the Property. (See Pa7–8, Pa112 at 17:24–25, Pa113 at 18:1–23.) Both Shuster and Lennar are developers. (See Pa10 ¶ 29, Pa112 at 17:24–25, Pa113 at 18:1–14.)

A. City Council Approves a Blight Study on the Property.

On April 24, 2019, the City Council voted to allow the City's planning board ("Planning Board") to commence the "Area in Need of Redevelopment

with the Power of Condemnation" study on the Property (the "Blight Study").[1] (Pa505–09.) On July 8, 2019, a report was issued as a result of the Blight Study that found that all 39 properties, including Shuster's, met the criteria for designation as an area in need of redevelopment. (See Pa73–106.)

On January 7, 2020, the Planning Board held a public hearing concerning the Blight Study and subsequently adopted a resolution accepting the recommendations contained in the Blight Study, including that the Property be declared as a condemnation area in need of redevelopment. (See Pa69.) In a letter dated February 5, 2020, Shuster's then-counsel advised the City Council that Shuster "has spent almost six years seeking to assemble these properties for development" and thus, "[b]y this effort to condemn the Area, [as a result of the Blight Study,] the City is ***unfairly and illegally*** favoring a competing developer, and assisting its interference with our client's efforts." (See Pa527 (emphasis added).)

B. The February 13, 2020 City Council Meeting.

On February 13, 2020, the City Council held a meeting to consider the Redevelopment Resolution (the "February 2020 City Council Meeting"). (See

[1] Throughout 2018 and 2019, Shuster and Lennar discussed partnering to redevelop the Property. (See, e.g., Pa445–449; Pa480–82; Pa495–504; Pa517.) At some point after the Blight Study, Shuster and Lennar's partnership talks ceased.

Pa108–33.) At this meeting, members of the public were given a chance to address the City Council. Many homeowners within the Property spoke in favor of the redevelopment. (See generally Pa109–12.) The sole homeowner opposing the redevelopment was Shuster. (See Pa113 at 18:10–20:13, Pa115 at 29:1–2, Pa115 at 29:18–25.) When Shuster's turn came to address the City Council, he said that in 2004, he had approached the homeowners "and came with an idea of assembling the houses in order to develop the property." (Pa113 at 18:4–7.) Shuster continued to say that he is "in support of the future development and fully onboard of the proposed affordable and school that is proposed by the City. ***The school was our idea***." (Id. at 18:7–10 (emphasis added).)

Shuster continued that, "[u]nfortunately, the City proposed a resolution that include[d] the right to condemn my property. Jersey City is unfairly and illegally will partner with a developer against a local developer. This local developer is me." (Id. at 18:15–19.) Shuster repeated: "[T]he City is ***unfairly and illegally favoring a competing developer*** and assisting its interference with our six-years effort to develop [the Property] . . . ." (Id. at 19:11–20:6 (emphasis added).)

After Shuster made his statements, another homeowner addressed the City Council reiterating other homeowners' statements that "37 out of 38 of the

homes are in support of this project . . . [t]he only reason we are having to follow this path is because Shuster . . . purchased a home in the middle of the block and has never for one second acted in good faith and agreed to even discuss selling his property along with the rest of us." (Pa115 at 29:1–2, 29:18–23.)

Upon the conclusion of the public's statements and with the support of 37 out of 38 homeowners, the City Council approved the Redevelopment Resolution, which did not name any developer. (See Pa69–70.)

II. THE FIRST ACTION.

Displeased with the City Council's decision, on March 17, 2020, Shuster, through his LLC, Saddlewood, filed a complaint in lieu of prerogative writs to vacate the Redevelopment Resolution (the "First Action") in Hudson County Superior Court, captioned Saddlewood Court, LLC v. City of Jersey City, (Docket No. HUD-L-1130-20). (Pa286–303.) Saddlewood did not name Lennar as a defendant in this action. (See id.)

A. The City's Continued Development Process and Shuster's Additional Allegations of the City's "Unfair" Favoring of Lennar.

While the First Action was pending, in June 2020, the City published its proposed redevelopment plans for the Property on its website. (Pa207–32.) Shuster saw these plans and his then-counsel wrote a letter to the Planning Board, dated July 7, 2020, stating that (1) "[i]t has come to my attention that at

tonight's scheduled Planning Board meeting, the Board will be reviewing and considering the [redevelopment plan]"; (2) "the Board's review of the Redevelopment Plan was 'initiated' by Lennar"; and (3) "[u]pon information and belief, Lennar has yet to be formally designated as redeveloper for the area in question." (Pa529–30.) The letter continued: "The fact that Lennar is initiating the redevelopment plan process underscores that this redevelopment is being driven by a private redeveloper for private gain and not being done to ameliorate any alleged conditions of blight in the area." (Pa529.)

Shuster made similar allegations in a separate litigation in Hudson County Superior Court captioned Palomar v. Saddlewood Court, LLC, (Docket No. HUD-C-116-20).[2] (See Pa488–93.) On September 23, 2020, in a certification filed with the court, Shuster averred that "[w]ithout [his] knowledge, the City of Jersey City was actively working with Lennar to designate the [Property] as a condemnation area in need of redevelopment . . . ." (Pa492 ¶ 24.) Shuster also asserted that Lennar "obtained conditional purchase contracts with the majority of the [Property] owners," and that Shuster was the only property owner that

[2] In the Palomar case, the prior owner of Shuster's Saddlewood Court property (the plaintiff) filed suit to rescind the sale of the property to Saddlewood on the basis of fraud. The complaint alleged various counts against Saddlewood and Shuster, including a count for recission of the property sale agreement and counts for equitable fraud, consumer fraud, and fraud. See Palomar v. Saddlewood Court LLC, Dkt. No. HUD-C-116-20 (N.J. Super. Ch. Div. Nov. 12, 2020) (Trans ID: CHC2020262555).

objected to Lennar's involvement due to the City "apparently favoring Lennar for the slated development despite the previous good faith efforts [Shuster] had gone through to try and assemble the [Property]." (Pa490 ¶ 16, Pa491 ¶ 23.)

Despite Shuster's public allegations about the City's "favoritism," on November 12, 2020, the City formally adopted the Laurel-Saddlewood Redevelopment Plan, Ordinance No. 20-097. (Pa234–57.) Not until May 18, 2021, did the City pass Resolution No. 21-05-12 (the "Lennar Resolution") formally naming Lennar as the redeveloper for the Property. (See Pa198–99.)

B. The First Action is Dismissed.

In the First Action, on December 21, 2020, Judge Joseph V. Isabella heard the parties' arguments and, on January 8, 2021, found that substantial credible evidence supported the City's blight designation and dismissed Saddlewood's complaint. (See Pa142–45.) The court entered a formal order dismissing the First Action in its entirety on March 4, 2021. (See Pa151–52.)

C. Saddlewood Files Motions for Reconsideration and for Leave to Amend the First Action Complaint.

On March 24, 2021, Saddlewood filed a motion for reconsideration and a motion for leave to amend the complaint in the First Action. (Pa533–36.) In the post-judgment attempt to amend the complaint, Saddlewood sought to assert a bad faith claim against the City based on newly discovered evidence of a purported illicit agreement between the City and Lennar. (See Pa159–78.)

Saddlewood alleged that in February 2021, Shuster conferred with Charles Epstein, Lennar's then-Vice President of Development – Northeast Region, and that Epstein supposedly admitted to an "illicit agreement" between the City and Lennar. (See Pa191–92.) In the proposed amended complaint ("Proposed Amended Complaint"), Shuster alleged that the City agreed to "name Lennar as the preferred redeveloper, in exchange for . . . Lennar's back room promise to construct a multi-million dollar public school for the City." (See Pa176 ¶ 119.) But at the February 2020 City Council Meeting, Shuster claimed that construction of the school was his idea. (See Pa113 at 18:10.)

On April 30, 2021, the court denied Saddlewood's motion to reconsider and for leave to file an amended complaint to assert a bad faith claim. (See Pa180–81.)

On May 26, 2021, Saddlewood filed a notice of appeal of the First Action (Docket No. A-2665-20) (the "First Appellate Action"). (Pa183–88.) On appeal of the First Action, Saddlewood challenged the trial court's findings that the evidence in the record supported "Jersey City's Designation of the Subject Area as an Area in Need of Redevelopment" and the City Council's Redevelopment Resolution designating "the Area as a Condemnation Area in Need of Redevelopment." (Pa192.) Saddlewood also raised the following issue: "The Trial Court Erred by Denying Saddlewood Leave to File an Amended Complaint

to Assert a 'Bad Faith' Claim Against the City of Jersey City Based Upon Newly Discovered Evidence." (Ibid.)

III. THE SECOND ACTION.

While the First Appellate Action was pending, Shuster, through Saddlewood, filed the instant complaint ("Complaint") challenging the same Redevelopment Resolution based on the same bad faith claim it tried asserting in the First Action and adding Lennar as a defendant (the "Second Action"). (See Pa5–17.) In the Second Action, Saddlewood primarily sought two remedies: (1) a judgment declaring the Redevelopment Resolution (No. 20-103) null and void and/or vacated and (2) a judgement declaring the Lennar Resolution (No. 21-05-12) null and void and/or vacated. (See Pa13–17.)

A. The First Motion to Dismiss the Second Action.

On September 30, 2021, Defendants filed separate motions to dismiss the Complaint. (Pa201–03.) In the first motion to dismiss, Lennar argued that the Complaint was barred by the entire controversy and collateral estoppel doctrines and failed to state a cause of action for bad faith, civil conspiracy, and a declaratory action. Defendants also argued that the trial court lacked jurisdiction while the First Appellate Action was pending.

On November 18, 2021, the trial court denied the motions to dismiss without prejudice to allow Defendants limited discovery to determine "[w]hat

[Shuster] knew, when he knew it as to the Entire Controversy Doctrine." (2T12:1–2.) The parties engaged in limited discovery, which consisted of Saddlewood's document production and a two-day deposition of Shuster. (See Pa377–435; Pa455–78.)

B. The Lennar Resolution Expires.

On February 28, 2022, the redevelopment agreement naming Lennar as the developer of the Property expired. (See Pa648.) As a result, the previously adopted Lennar Resolution containing the expired redevelopment agreement was rendered moot. (See ibid.)

C. The Second Motion to Dismiss the Second Action.

On May 13, 2022, Defendants jointly moved again to dismiss the Second Action, for the most part restating the arguments set forth in the First Motion to Dismiss. (Pa368–70.) After full briefing, the trial court heard oral argument on the second motion to dismiss ("July 8 Oral Argument"). (See 3T.) Defendants argued that the trial court lacked jurisdiction due to the pending appeal, and the trial court agreed with that position. (See 3T18:12–18, 3T43:3–8.) Nevertheless, despite its own admission that it lacked jurisdiction to hear the matter, the trial court made a series of extraneous and contradictory "factual findings" that the court ultimately set aside and disregarded—as it should have. (See 3T8:5–17, 3T9:18–11:21.)

For example, on the one hand, the trial court stated, "I don't think there's any dispute that up until February of 2021 when [Shuster] allegedly had this phone call with Mr. Epstein that he always suspected that there was some quid pro quo going on even if he didn't know about the school. We can all agree on that, right?" (3T8:12–17.) On the other hand, the court stated:

> I am going to grant Mr. Shuster the benefit of all reasonable inferences and credibility calls in connection with the motion in front of me. I believe what he says, that the new evidence that supports the second Complaint was as a result of a February '21 conversation he had with Epstein. The lightbulb goes off. And he thinks now that's the reason why they're favoring Lennar, because they promised the school. That's what his testimony was. I'm accepting it. I'm making that finding of fact in connection with this motion.
>
> [(3T10:6–16.)]

Those seven sentences of extraneous "findings of fact" comprise the entire basis for Saddlewood's present appeal. (See, e.g., Pb2–3.) Not only does the trial court go on to contradict those findings, but in advising the parties that it has no jurisdiction while the First Appellate Action is pending, it becomes clear that those findings were tentative and not final. (See 3T11:8–21, 3T43:5–8.) The trial court let Saddlewood know that its relief depended on succeeding in the First Appellate Action:

> Having said all of that, counsel for the plaintiffs, it sounds like we're going to see if you win your argument

> on the appeal. There's nothing new. I gave you the chance for discovery. It's pretty clear from the dep transcripts that I read and the Briefs that it's this school, and I put the word school. I don't care that he suspected that there was something going on before the last case was dismissed and you take it up on appeal. He knew about the school. It's in his filings to [Judge] Isabella. [Judge] Isabella said that's not good enough. You've got to get [Judge] Isabella reversed. Why are we doing a second Complaint with the same quote, unquote, new evidence?
>
> . . . .
>
> Your client knew about it. Your client raised it in front of [Judge] Isabella. You are claiming he incorrectly denied your client the right to bring it in the first case. And that's why I'm denying, and I'm granting the Motion and I'm going to dismiss this second Complaint.
>
> [(3T11:8–21, 12:24–13:9.)]

In light of the pending First Appellate Action, the trial court dismissed Saddlewood's Complaint without prejudice due to lack of jurisdiction, concluding that "[d]epending on the Appellate Division ruling, [the] entire controversy doctrine would apply." (3T44:4–5.) The trial court stated:

> So if the Appellate Division rules on a strict procedural rule that Judge Isabella was correct, there was no open case; therefore, the second case couldn't be filed, then after that Decision the plaintiff can refile a second Complaint and can come in front of the Court on that bad faith argument only.
>
> Now if the Appellate Division rules that Judge Isabella was correct, the . . . Motion to Amend the second Complaint was properly denied for some other reason,

> well then the plaintiff will be barred from filing the second Complaint.
>
> So that's the reason why I'm doing it. So since that issue is up on appeal in front of the Appellate Division, I am buying the movant's argument that ***I don't have any jurisdiction at this time on this Complaint to let this case proceed***. We have to wait to see what the Appellate Division will do.
>
> [(3T42:16–43:8 (emphasis added).)]

The trial court made clear that Saddlewood's bad faith claim against Defendants would turn on whether the claim would be barred by the entire controversy doctrine. (3T43:24–44:22.)

D. The First Appellate Action is Decided.

On November 2, 2022, the Appellate Division affirmed the dismissal of Saddlewood's First Action, holding that "the City's blight designation was supported by substantial credible evidence in the record." (Pa784.) Significantly, the Appellate Division found that Saddlewood's motion to amend was not only untimely because the bad faith claim could have been included in the original complaint, but also that the bad faith claim "lacked merit." (Pa789.) The Appellate Division elaborated on this point:

> In addition to being untimely, ***plaintiff's motion lacked merit***. The premise of plaintiff's proposed amended complaint was the alleged agreement by the City to blight the Block in exchange for Lennar's promise to build a new school. Plaintiff contends its motion was based on "newly-discovered evidence." Yet, during the Council's February 13, 2020 public hearing, Shuster,

> plaintiff's managing member, acknowledged and took credit for the proposed construction of the school: "we are in support of the future development and fully on board of the proposed affordable [housing] and school that is proposed by the City. The school was our idea." During that hearing, Shuster also asserted "the City is unfairly and illegally favoring a competing developer . . . ." Even though its managing member was aware of the school construction and the alleged illegal "favoring" of a competing developer, ***plaintiff chose not to include a bad-faith claim in its complaint and inexplicably waited until after the trial judge had rendered a verdict to seek leave to add a claim based on those allegations***.
>
> [(Pa789–90 (emphases added).)]

In conclusion, the Appellate Division held that "[u]nder the totality of these circumstances . . . the motion judge did not abuse his discretion in declining to permit plaintiff's belated amendment" to add a bad faith claim because "[p]laintiff [did] not demonstrate[] that its proposed amendment would change [the] conclusion" that the blight designation was supported by "substantial credible evidence." (Pa790.)

E. Saddlewood Moves to Reinstate the Second Action.

Despite the Appellate Division's findings that the alleged bad faith claim in Saddlewood's Proposed Amended Complaint lacked merit, on February 1, 2023, Saddlewood moved to reinstate Count One (Bad Faith as related to the Redevelopment Resolution) and Count Three (Conspiracy as related to the Lennar Resolution) in the Second Action. (Pa758–59.)

On March 23, 2023, the trial court denied Saddlewood's Motion to Reinstate and dismissed the Complaint with prejudice. (4T20:22–24.) The trial court held that Saddlewood was bound by the Appellate Division's ruling that its bad faith claim lacked merit. (4T8:3–4.) In rendering its decision, the trial court noted that the Appellate Division "had the full record" of and relied on Shuster's "bad faith" comments during the redevelopment proceedings. (4T8:17–20.) The trial court concluded that "[t]he question of when [Shuster] first learned about this bad faith, clearly was an issue on a motion to amend in front of Judge Isabella." (4T13:22–25.)

The trial court conceded that its volunteered findings of facts during the oral argument on the second motion to dismiss were "irrelevant, because the Appellate Division" ruled that the "whole [bad faith] issue . . . should've been filed in that first lawsuit, not on a motion to amend . . . ." (4T15:21–16:1.) The court emphasized that it did not "care what [its own] findings of fact were" because it "specifically said that [it] wanted to wait to make a decision based on the Appellate Division ruling." (4T16:8–11.)

In finding that Saddlewood's bad faith claim was barred by the First Appellate Action decision, the trial court likewise barred Saddlewood's conspiracy claim "because [Shuster] clearly knew that Lennar was one of the parties to his alleged bad faith claim." (4T20:15–25.)

The trial court's Denial and Dismissal Order is the basis for this appeal. (See Pa1–2.)

LEGAL ARGUMENT

I. LEGAL STANDARD OF REVIEW.

"Whether to grant or deny a motion to reinstate a complaint lies within the sound discretion of the trial court." Sullivan v. Coverings & Installation, Inc., 403 N.J. Super. 86, 93 (App. Div. 2008). "A court abuses its discretion when a decision 'is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis."'" Terranova v. Gen. Elec. Pension Tr., 457 N.J. Super. 404, 410–11 (App. Div. 2019) (quoting U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)). In other words, the Appellate Division "will 'decline[ ] to interfere with [such] matters of discretion unless it appears that an injustice has been done.'" Sullivan, 403 N.J. Super. at 93 (alterations in original) (citation omitted).

Here, the trial court provided a rational explanation for dismissing the Second Action based on the entire controversy doctrine and therefore its decision should not be disturbed by this Court. Kornbleuth v. Westover, 241 N.J. 289, 301 (2020) (citation omitted) (stating that a reviewing court "will not disturb the trial court's reconsideration decision 'unless it represents a clear abuse of discretion'").

II. THE TRIAL COURT DID NOT ERR IN FINDING THE ENTIRE CONTROVERSY DOCTRINE BARRED SADDLEWOOD'S BAD FAITH AND CIVIL CONSPIRACY CLAIMS.

The trial court properly dismissed the Second Action with prejudice based on the Appellate Division's determination that the bad faith claim alleged in the Proposed Amended Complaint in the First Action should have been raised earlier in the First Action and that, in any event, the bad faith claim lacked merit. (4T20:9–14.) The trial court followed the unassailable reasoning of the Appellate Division in holding that the bad faith claim could not be resurrected in the Second Action. (4T20:9–25.) This is the precise scenario in which the entire controversy doctrine applies.

The entire controversy doctrine is an equitable doctrine that serves three purposes: "(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay." DiTrolio v. Antiles, 142 N.J. 253, 267 (1995). This doctrine is codified in R. 4:30A, which provides: "Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine . . . ." In considering whether to apply the doctrine, courts consider "the general principle that all claims arising from a particular transaction or

series of transactions should be joined in a single action." Archbrook Laguna, LLC v. Marsh, 414 N.J. Super. 97, 105 (App. Div. 2010).

A. Saddlewood's Claims in the Second Action Arise from the Same Facts and the Same Transaction as the First Action.

The entire controversy doctrine "chiefly turns on whether the separately-asserted claims 'arise from related facts or the same transaction or series of transactions.'" Ibid. (quoting DiTrolio, 142 N.J. at 267).

It is indisputable that the facts and transaction (the Redevelopment Resolution) underlying Saddlewood's proposed bad faith claim in the First Appellate Action and in this action are the same: (1) the Blight Study recommended the City designate the Property as a condemnation area in need of redevelopment, (2) the City proposed a resolution to redevelop the Property based on the Blight Study's recommendations, (3) Shuster/Saddlewood was the sole homeowner out of thirty-eight that did not support the Redevelopment Resolution, (4) Shuster publicly took credit for the idea of building a school, despite later claiming the school was part of some quid pro quo agreement between the City and Lennar, (5) Shuster objected to the Redevelopment Resolution in a public meeting and declared that the City was "unfairly and illegally" partnering with "a developer [(Lennar)] against a local developer [(Shuster)]," and (6) Shuster believed as of at least February 13, 2020, the City was "unfairly and illegally" partnering with or favoring Lennar over himself—

which is the basis for the purported bad faith in the current frivolous Complaint. (See Pa113 at 18:15–19, 19:10–14.)

Further, the only remedies Saddlewood seeks through its bad faith claim are for the court to (1) declare "null and void and/or vacat[e]" the Redevelopment Resolution and (2) declare "null and void all actions taken by the City in furtherance of the authorization and designation made by [the Redevelopment] Resolution . . . ." (See Pa12–13.) Saddlewood was already denied these exact remedies twice: the trial court in the First Action explicitly found that the Redevelopment Resolution "was based on substantial credible evidence and it was not made arbitrarily, capriciously, or unreasonably," (see Pa145), and the Appellate Division affirmed this decision, thus denying Saddlewood its sought-after vacation of the Redevelopment Resolution, (see Pa784 ("Here, the City's blight designation was supported by substantial credible evidence in the record.")). That the remedy Saddlewood seeks in the Second Action is the same remedy it sought in the First Action makes clear that the entire controversy doctrine should bar Saddlewood's Complaint.

Because the "'factual circumstances giving rise to the controversy itself' are the same" in both the First Action and the Second Action, the trial court did not err in entering the Denial and Dismissal Order. See, e.g., J-M Mfg. Co. v. Phillips & Cohen, LLP, 443 N.J. Super. 447, 455 (App. Div. 2015) (quoting

Brennan v. Orban, 145 N.J. 282, 290 (1996)); see also id. at 460–61 (holding that dismissal of plaintiff's complaint is "mandated by the entire controversy doctrine" because the "issues [were] properly adjudicated in conjunction with" a prior court proceeding).

B. Shuster Knew of the Bad Faith Claim When He Caused Saddlewood to Bring the First Action.

Although the entire controversy doctrine does not "apply to bar component claims that are unknown, unarisen, or unaccrued at the time of the original action," Archbrook Laguna, 414 N.J. Super. at 105 (quoting Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995)), the basis for Shuster's purported bad faith claim was known to Shuster when he filed the First Action and that is why the trial court barred his post-judgment motion to amend his complaint and why the Appellate Division affirmed. (See Pa789–90.)

There is no question that Shuster knew of the basis for his purported bad faith claim prior to bringing the First Action. During the February 2020 City Council Meeting, Shuster admitted that he had been working for years to try to develop the property and that it was his idea to build a school. (See Pa113 at 18:4–10.) At the same meeting, Shuster accused the City of "unfairly and illegally" partnering "with a developer against a local developer. This local developer is me." (Id. at 18:15–19.) Shuster further accused the City of "unfairly and illegally favoring a competing developer and assisting its

interference with [my] six-years effort to develop [the Property]." (Id. at 19:11–14.) Thus, as of the February 2020 City Council Meeting, Shuster clearly claimed that both the City and Lennar were acting in bad faith—indeed, illegally—in developing the Property. (See id. at 18:11–19:19.)

Yet, after making those statements on February 13, 2020, Shuster did not include a bad faith claim in his first complaint, which was dismissed on January 8, 2021. Instead, seeking a second bite of the apple, Shuster—in a post-judgment motion for leave to amend his complaint—raised the bad faith allegation that "the City's decision to declare the Study Area as a condemnation area was intended to disguise the City's ulterior and true motive, *i.e.*, to secure a multi-million dollar benefit [a school] from Lennar." (See Pa176 ¶¶ 120–21.) After that motion to amend was denied, Shuster tried a third bite of the apple. He raised the bad faith allegations in the Second Action under the pretense that he did not know the basis for a bad faith claim until after the First Action was dismissed. No court has bought this argument.

Shuster cannot restyle claims by using words that are interchangeable, such as "bad faith" and "illicit agreement" to evade the entire controversy doctrine. Shuster cannot escape the fact that he expressed his suspicions of this purported "illicit" or illegal activity and favoritism between the City and Lennar

no less than five times before the First Action was dismissed. (See Pa113 at 18:15–19, 19:10–14; Pa491–92 ¶¶ 23–24; Pa527; Pa529.)

This Court has already found that Shuster expressed the basis for a bad faith claim at the February 2020 Council Meeting but declined to advance it in the First Action—and that, in any event, the bad faith claim was unmeritorious. The trial court's Denial and Dismissal Order of the Second Action was predicated on precisely what this Court decided. (See, e.g., Pa789–90 (finding that "[e]ven though [Shuster] was aware of the school construction and the alleged illegal 'favoring' of [Lennar], [Saddlewood] chose not to include a bad-faith claim in its complaint and inexplicably waited until after the trial judge had rendered a verdict to seek leave to add a claim based on those allegations.").)

Moreover, Saddlewood uses its bad faith claim to seek a remedy declaring the Redevelopment Resolution null and void—the same remedy it sought when it filed the First Action. (Compare Pa13 (seeking a judgment in the Second Action "[d]eclaring null and void and/or vacating the City's Resolution No. 20-103") with Pa299 (seeking a judgment in the First Action "[d]eclaring null and void and/or vacating the City's Resolution No. 20-103").) In this Second Action, Saddlewood seeks the same remedy with the same stale evidence that it possessed at the time it filed the First Action. See, e.g., Archbrook Laguna, 414 N.J. Super. at 106 (applying the entire controversy doctrine to claims where any

damages that the plaintiff may have incurred accrued no later than when the first action was filed).

C. Saddlewood's Failure to Join Lennar in the First Action Does Not Bar the Doctrine's Application.

Saddlewood's failure to join Lennar in the First Action and its feckless attempt to feign ignorance of Lennar's involvement in the redevelopment project also does not relieve Saddlewood of the preclusive effect of the entire controversy doctrine. "[A] court must also be sensitive to the possibility that a party has purposely withheld claims from an earlier suit for strategic reasons or to obtain 'two bites at the apple.'" Hobart Bros. Co. v. Nat'l Union Fire Ins. Co., 354 N.J. Super. 229, 241 (App. Div. 2002) (citation omitted). As such, a successive action may be precluded even when a person is not a party to the first action where there is "both inexcusable conduct and substantial prejudice to the non-party resulting from omission from the first suit . . . ." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:30A (2024).

Here, Shuster knew of Lennar's involvement in the redevelopment project well before filing the First Action. Indeed, he publicly accused the City of "unfairly and illegally favoring" Lennar during the February 2020 City Council Meeting. (See, e.g., Pa490 ¶ 16, Pa491 ¶ 23, Pa492 ¶ 24, Pa529; see also Pa113 at 19:11–13.) Given this knowledge, Saddlewood was required to "disclose in the certification [filed in the First Action] the names of any non-party who

should be joined in the action . . . because of potential liability to any party on the basis of the same transactional facts." See R. 4:5-1(b)(2). And Saddlewood had a continuing obligation to amend. Ibid. Rule 4:5-1(b)(2) further provides that when there is a failure to comply with this rule, "the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed . . . ." Saddlewood's failure to disclose Lennar also deprived the court of its own ability to join Lennar in the First Action. See R. 4:28-1(a).

It was thus inexcusable for Saddlewood to not join Lennar in the First Action. See, e.g., TLC Servs., LLC v. Devine Roofing & Constr., LLC, No. A-5626-17T4, 2019 WL 5824780, at *3 (N.J. App. Div. Nov. 7, 2019) (finding it inexcusable for a plaintiff "not to assert a timely direct claim" against a defendant in a prior action where the "record establishes that [the plaintiff] was aware of [the defendant's] role" in the conduct giving rise to the first action).

Defendants also face substantial prejudice if Saddlewood could pursue the Second Action because the First Action was already dismissed and affirmed on appeal—and the motion to amend to add a bad faith claim was determined to lack merit. Lennar, the City, and our courts should be spared the time and expense of litigating the same issue twice.

D. Whether Saddlewood Even Raised the Bad Faith Claim in the First Action Would Not Bar the Doctrine's Application.

The entire controversy doctrine's preclusive effect applies "not only to matters actually litigated, but to all aspects of a controversy that *might* have been thus litigated and determined." Vision Mortg. Corp. v. Patricia J. Chiapperini, Inc., 307 N.J. Super. 48, 52 (App. Div. 1998) (emphasis in original) (citation omitted). The doctrine is clear that "[a] plaintiff bringing an action based on two distinct legal theories is required to bring those claims together in one proceeding." DiTrolio, 142 N.J. at 271.

This appeal is simply Shuster/Saddlewood's impermissible attempt to have this Court consider, for the second time, whether it should have a chance to litigate a bad faith claim. (See 3T15:3–5.) This Court, however, already held that Saddlewood should not get that second chance. (See, e.g., Pa789–90 ("[P]laintiff chose not to include a bad-faith claim in its complaint and inexplicably waited until after the trial judge had rendered a verdict to seek leave to add a claim . . . . [T]he motion judge did not abuse his discretion in declining to permit plaintiff's belated amendment.").)

Even if Saddlewood made no attempt to assert its bad faith claim in the First Action, the doctrine still applies—bad faith was clearly a component of this controversy that could have been litigated and determined, and in fact, was later determined to lack merit. That Saddlewood failed to raise it in its initial

complaint does not save the claim now. See, e.g., William Blanchard Co. v. Beach Concrete Co., 150 N.J. Super. 277, 294 (App. Div. 1977) (finding dismissed claims to "inescapably" be part of the entire controversy when the litigation concerned a single transaction and the purpose of obtaining a definitive adjudication of rights and liabilities resulting from the transaction "would be patently frustrated if this litigation were . . . limited only to an adjudication of the rights and liabilities initially asserted").

Accordingly, the Court should affirm the trial court's Denial and Dismissal Order.

III. THE TRIAL COURT CORRECTLY DISREGARDED ITS SO-CALLED FINDINGS OF FACT DURING THE JULY 8 ORAL ARGUMENT BECAUSE, AS IT RECOGNIZED, IT LACKED JURISDICTION.

During oral argument of Defendants' second motion to dismiss, the trial court needlessly engaged in extraneous fact findings. (See 3T8:5–17, 9:18–11:21.) Saddlewood's appeal of the First Action divested the trial court of jurisdiction over the motion in the Second Action. The trial court recognized its own mistake by calling its findings irrelevant. (See 4T15:21.)

"[T]he ordinary effect of the filing of the notice of appeal is to deprive the court below of jurisdiction to act further in the matter under appeal unless directed to do so by the appellate court." Pressler & Verniero, cmt. 1 on R. 2:9-1 (citing Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140

N.J. 366, 376 (1995)); see also McNair v. McNair, 332 N.J. Super. 195, 199 (App. Div. 2000) ("Unquestionably, as a general rule, once an appeal is filed, the trial court loses jurisdiction to make substantive rulings in the matter.").

As discussed, the claims in this case are identical to those Saddlewood appealed in the First Action. (See, e.g., Pa192 (stating "[t]he Trial Court Erred by Denying Saddlewood Leave to File an Amended Complaint to Assert a 'Bad Faith' Claim Against the City of Jersey City Based Upon Newly Discovered Evidence").) Here, Saddlewood tried to assert a bad faith claim in the Second Action based on the same evidence that it unsuccessfully auditioned in the First Action. No matter how Saddlewood tries to restyle that bad faith claim, it cannot readjudicate it in a successor forum. The trial court should not have commented on the merits of the Second Action until the Appellate Division resolved the issues raised in the First Action. To the trial court's credit, it ultimately recognized that its pre-Appellate Division judgment findings were irrelevant.

This Court should affirm the trial court's dismissal of Saddlewood's Complaint and accept the trial court's explanation that its findings in the July 8 Oral Argument were of no moment.

IV. THE TRIAL COURT DID NOT ERR IN RELYING ON THE APPELLATE DIVISION'S FINDINGS IN DENYING THE MOTION TO REINSTATE AND DISMISSING ALL CLAIMS WITH PREJUDICE.

The trial court did not err in denying the Motion to Reinstate and dismissing all claims with prejudice based on the First Appellate Action decision. A "trial court has the discretion to structure the litigation to assure efficient administration, clarity and fairness." Mystic Isle Dev. Corp., 142 N.J. at 332.

Here, the trial court exercised its discretion to properly dismiss Saddlewood's Complaint for lack of jurisdiction pending the outcome of the Appellate Division's decision on whether its bad faith claim "should have been and could have been raised in the [First Action]" and whether the claim was "properly barred and prevented from being raised in the [First Action] a month after the plaintiff knew about the issues . . . ." (3T44:18–21.) In making that decision, the trial court stated that "[d]epending on the Appellate Division ruling, [the] entire controversy doctrine would apply" to Saddlewood's Complaint in the Second Action. (3T44:4–5.) "[T]he entire controversy doctrine is an equitable principle," and thus "its applicability is left to judicial discretion based on the particular circumstances inherent in a given case." Mystic Isle Dev. Corp., 142 N.J. at 323. While the matter was pending before the Appellate Division involving the same facts and transaction, the trial court

was required to stay its hand and await that decision. Doing so prevents duplicative litigation and advances the effective administration of justice.

Saddlewood's appeal relies mainly on statements that the trial court should not have made while the appeal was pending—statements the trial court itself deemed irrelevant to the adjudication of this case. (See 3T10:14–16, 43:6–8; 4T15:21.) The trial court's decision to reject its earlier tentative factual findings in the July 8 Oral Argument was not in error because a trial court may, at any time, correct "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission . . . on its own initiative. . . ." See R. 1:13-1. Here, the trial court corrected the record regarding its factual findings during the July 8 Oral Argument at the end of the argument when it determined it lacked jurisdiction over the action, (see 3T43:6–8), and again during the hearing on Saddlewood's Motion to Reinstate its Complaint by stating, "I don't care what my findings of fact were. I specifically said that I wanted to wait to make a decision based on the Appellate Division ruling. That's why I dismissed it without prejudice" and "[d]espite whatever I may have said on the record on this case, I was waiting for [the Appellate Division] to decide those issues." (4T16:8–14, 18:2–4.)

Once the Appellate Division rendered a decision, the trial court properly denied Saddlewood's Motion to Reinstate and dismissed the Complaint with prejudice due to the entire controversy doctrine. (See 4T18:15–25, 20:9–25.)

Regardless of the trial court's extraneous and tentative statements during the July 8 Oral Argument, "[i]t is well-settled that appeals are taken from orders and judgments and not from . . . oral decisions . . . or reasons given for the ultimate conclusion." Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). It is the court's final adjudication and not its tentative oral statements that it later disregarded that has the effect of a judgment. See, e.g., ibid.; see also Macfadden v. Macfadden, 49 N.J. Super. 356, 359 (App. Div. 1958) ("The . . . conclusions or opinion of a court do not have the effect of a judgment."); Suburban Dep't Stores v. City of E. Orange, 47 N.J. Super. 472, 479 (App. Div. 1957) (same)). This Court is tasked with determining whether the trial court's denial of Saddlewood's Motion to Reinstate and its dismissal of all claims with prejudice should be affirmed. Given that the entire controversy doctrine applies to this appeal and that the trial court properly exercised its discretion in barring the Second Action, statements that the court itself described as irrelevant are inconsequential. This Court should affirm the trial court's final Denial and Dismissal Order.

V. COLLATERAL ESTOPPEL ALSO BARS SADDLEWOOD'S CLAIMS.

In arguing that the trial court erred in its decision to dismiss Saddlewood's claims with prejudice, Saddlewood assumes that the trial court relied upon the doctrine of collateral estoppel when citing this Court's findings in the First Appellate Action to bar the Second Action. (See Pb29.) This argument, however, conflicts with both the trial court's rulings and Saddlewood's own statements in its opening brief. (See 3T43:24–44:6; Pb17.) Indeed, Saddlewood admits that "[a]lthough not clearly articulated, the trial court presumably dismissed Plaintiff's claims pursuant to the entire controversy doctrine." (See Pb24.)

In granting Defendants' second motion to dismiss without prejudice, the trial court explicitly stated that "res judicata and collateral estoppel I don't think apply," (3T43:24–25), and thus concluded that it did not have jurisdiction at the time and had to wait for the Appellate Division's decision. (See 3T43:5–8; see also 3T44:4–5, 44:14–17 ("Depending on the Appellate Division ruling, [the] entire controversy doctrine would apply" and "for those reasons, under the entire controversy doctrine I'm not going to decide that the plaintiff is barred at this time. We'll see what the Appellate Division rules.").)

In accordance with that ruling and upon this Court's decision barring Saddlewood's bad faith claim in the First Action, the trial court denied

Saddlewood's Motion to Reinstate and dismissed Saddlewood's claims with prejudice. (See 4T20:9–25.) The trial court did not conduct an analysis of the doctrine of collateral estoppel because it found the doctrine did not apply. (See 3T44:4–5, 44:14–17.) As such, Defendants did not argue the collateral estoppel issue during oral argument on the Motion to Reinstate, and the trial court found it had "enough to make a decision" without considering the collateral estoppel issue. (See 4T9:20–10:6.)

It makes no difference, however, whether the trial court relied upon the entire controversy doctrine or the doctrine of collateral estoppel in dismissing Saddlewood's Complaint because both doctrines nevertheless apply. If this Court were to consider the doctrine of collateral estoppel, it should find that all elements are met.

Collateral estoppel applies when:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
>
> [Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 85 (2012) (quoting Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006)).]

The first element is satisfied because here, the issue is whether Saddlewood can proceed with its bad faith claim, which is the same issue Saddlewood raised in its appeal of the First Action. (See Pa192; Pa779–80.) The second element is also satisfied because Saddlewood unsuccessfully litigated the same bad faith claim in the trial court and in this Court, and now seeks to raise it again in a third attempt to have the Redevelopment Resolution declared null and void. (See Pa788–90.) The Appellate Division issued a final judgment affirming the trial court's denial of Saddlewood's motion for leave to amend its complaint in the First Action thus satisfying the third element. (See Pa769–90.) And in affirming the trial court's decision on an abuse of discretion standard, the fourth element is met because the Appellate Division specifically considered this issue and found Saddlewood's bad faith claim to lack merit and that the Redevelopment Resolution was supported by credible evidence. (See, e.g., Pa789–90.) The fifth factor is easily met because Saddlewood is the party against whom the doctrine is asserted and the plaintiff in the First Action. (See Pa770.)

Thus, even if the Court were to entertain Saddlewood's argument on the doctrine of collateral estoppel—which it need not because the entire controversy doctrine precludes Saddlewood's action—it should find that the doctrine provides further support for finding that the trial court did not err in its decision

to deny Saddlewood's Motion to Reinstate and dismiss its Complaint. Lennar is no longer the named redeveloper, (see Pa648), and the relief Saddlewood seeks against the City was fully litigated, (see Pa790).

Finally, Saddlewood's reference to Section 28(4) of the Restatement (Second) of Judgments does not save its claims from the doctrine of collateral estoppel. (See generally Pb35–37.) The Appellate Division, after considering the record, concluded that Saddlewood's motion to amend the complaint in the First Action to add a bad faith claim had no merit. (See Pa789 ("In addition to being untimely, Plaintiff's motion lacked merit.").) It is fair to say that Saddlewood did not succeed even under the least rigorous standard of persuasion. A cursory review of the record reveals that the bad faith claim is frivolous.

The trial court's denial of Saddlewood's Motion to Reinstate and dismissal of Saddlewood's Complaint with prejudice should be affirmed.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court affirm the trial court's March 23, 2023 order denying Saddlewood's Motion to Reinstate and dismissing Saddlewood's Complaint in its entirety with prejudice.

Respectfully submitted,

Dated: December 8, 2023

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SUPERIOR COURT OF NEW JERSEY

SADDLEWOOD COURT, LLC, Plaintiff-Appellant, v. CITY OF JERSEY CITY, JERSEY CITY REDEVELOPMENT AGENCY, LENNAR MULTIFAMILY COMMUNITIES, and LMC LAUREL-SADDLEWOOD HOLDINGS, LLC, Defendants-Respondents.	APPELLATE DIVISION DOCKET NO. A-002649-22 Civil Action On Appeal from the Final Orders of the Superior Court of New Jersey, Law Division, Hudson County Sat Below: Hon. Anthony V. D'Elia, J.S.C.

REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT SADDLEWOOD COURT, LLC

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

Defendants' opposition underscores the significant flaws in the trial court's decision and confirms that reversal is warranted. The following statement in Defendants' opposition succinctly identifies the trial court's main error: "The trial court did not conduct an analysis of the doctrine of collateral estoppel because it found the doctrine did not apply." (Db34.) That admission precisely explains the reason the trial court's decision must be reversed.

The trial court relied solely on commentary made by this Court in a separate action to reach its erroneous conclusion that Plaintiff's claims are barred by the entire controversy doctrine. In so doing, the trial court adopted, on a wholesale basis, non-essential comments made by this Court in a separate matter involving some of the parties, without the benefit of a full evidentiary record. The trial court, however, failed to provide any explanation as to ***how*** this Court's factual findings in a separate matter are binding in this matter. Instead, the trial court simply assumed, without any analysis whatsoever, that whatever factual finding this Court made in a separate action was automatically binding in this litigation. Now, Defendants invite this Court to follow the same deficient logic – an invitation this Court should soundly reject. That this Court in a separate matter involving some of the same parties made non-essential comments, in a different context, does not make those comment binding in this matter. To hold otherwise would turn settled law on its head. A

factual issue decided by another court in another matter is binding **only** if the doctrine of collateral estoppel applies – a doctrine the trial court affirmatively and unequivocally found does not apply at the outset of this matter. Indeed, at the inception of the case, and in connection with Defendants' initial motion to dismiss, the trial court held "So I don't see that, collateral estoppel and res judicata. Entire controversy doctrine is probably the only way to go for defendants, at best."

Had the trial court conducted a proper analysis on Plaintiff's second motion to dismiss, it would have concluded, as it did earlier in the case, that the doctrine of collateral estoppel does not apply. The issue of "what Plaintiff knew and when it knew it" was not actually litigated in the First Action. It was raised in a post-judgment motion for leave to amend – a motion that was denied out of hand on procedural grounds. That this Court made non-essential comments on the issue on appeal does not somehow mean that the issue was "actually litigated." It was not.

Rather than meaningfully address the trial court's fatal deficiency head on, Defendants attempt to salvage the trial court's erroneous decision by revisiting the same hollow argument the trial court soundly rejected. That is, Defendants argue, again, that "there is no question" Plaintiff knew of the facts underlying its claims prior to the completion of the First Action. The trial court – having the benefit of and relying upon a full evidentiary record, including deposition testimony – **reached the exact opposite conclusion**. The trial court made repeated findings of fact that

Plaintiff did not possess knowledge of the facts underlying its claims prior to the completion of the First Action. While Defendants use every adjective in the book to try to discredit the trial court's factual findings – characterizing them as "extraneous," "needless," "irrelevant," and "tentative"– they cannot escape the fact that their argument was properly rejected on a full record, following discovery on the issue. Given the trial court's role as fact finder and considering Defendants have not appealed the trial court's factual and credibility findings, there is no basis for this Court to supplant those findings with completely contrary conclusions.

Finally, Defendants' argument that the trial court lacked jurisdiction is baseless. There is no support for Defendants' contention that an appeal in one action somehow strips a trial court in a separate action of jurisdiction. It does not. If the trial court lacked jurisdiction, it would have dismissed the case at the outset for that very reason. Instead, this action was litigated **for over one year** – litigation that included conferences, document productions, depositions, and substantive rulings on numerous dispositive motions. Most critically, if the trial court lacked jurisdiction, it could not have dismissed Plaintiff's claims, with prejudice, pursuant to the entire controversy doctrine. It would have refrained from taking any action whatsoever. This is not an issue of jurisdiction – it is an issue of collateral estoppel and whether that doctrine applies. An issue the trial court failed to properly address and, ultimately, got wrong.

STATEMENT OF FACTS

Plaintiff relies on the statement of facts set forth in its Opening Brief.

PROCEDURAL HISTORY

Plaintiff relies on the procedural history set forth in its Opening Brief.

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY CONCLUDED COLLATERAL ESTOPPEL DID NOT APPLY, WHICH IS THE ONLY CONCEIVABLE LEGAL BASIS ON WHICH THIS COURT'S COMMENTS IN A SEPARATE ACTION COULD HAVE BEEN BINDING IN THIS MATTER.

Throughout their opposition, Defendants summarily conclude that Plaintiff's claims in this action must be barred by the entire controversy doctrine based on findings made by this Court in a different action (*i.e.*, the First Action). That argument is premised on a fundamentally flawed interpretation and application of preclusionary principles.

While the trial court failed to sufficiently identify the legal basis underlying its ruling, the only conceivable vehicle through which the trial court could have adopted commentary from another court, in a separate matter, and in a different context, is collateral estoppel (*i.e.*, issue preclusion). That is particularly true where, like here, the finding being adopted was articulated in an unpublished decision. See R. 1:36-3 ("No unpublished opinion shall constitute precedent or be binding upon any court. . .[E]xcept to the extent required by res judicata, collateral estoppel, the

single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court.") As explained in detail in Plaintiff's appeal brief, had the trial court undertaken a proper collateral estoppel analysis, the only conclusion it could have reached is that the doctrine does not apply.

The relevant issue – whether Plaintiff knew of the facts underlying its claims before the conclusion of the First Action – was not "actually litigated" in the First Action. That issue was raised in the First Action, for the first and only time, in connection with a post-judgment motion for leave to amend – a motion that was denied by on purely procedural grounds. (Pa154.) Defendants nevertheless argue, in one fleeting sentence, that the element of collateral estoppel is satisfied

Rather than meaningfully address this issue in opposition, Defendants claim (in one fleeting sentence) that the element is satisfied because Plaintiff "unsuccessfully litigated the same bad faith claim in the" First Action. (DB35.) Not only is that statement factually inaccurate – as Plaintiff was denied leave, on procedural grounds, to even file its bad faith claim in the First Action – but it misconstrues the actual issue. The pivotal issue is not whether Plaintiff's bad faith claim was actually litigated (which it was not), but rather whether the issue of whether Plaintiff learned of its claim prior to the completion of the First Action was actually litigated. It was not. There was no discovery or briefing on the issue, nor did the trial court consider and/or actually reach a determination on the issue.

Instead, the issue was raised in competing post-judgment certifications – certifications that were summarily disregarded by the trial court when it elected to deny Plaintiff's post-judgment motion for leave to amend out of hand on strictly procedural grounds.

Moreover, it is beyond dispute that this Court's comments in the First Action were not essential to the judgment in that matter. In the First Action, the trial court denied the motion for leave to amend on procedural grounds. This Court affirmed the trial court's denial of Plaintiff's motion for leave to amend because it found the motion was "untimely." While this Court commented on Plaintiff's alleged knowledge, its decision to affirm the trial court was not dependent on those comments. Therefore, litigation of that precise issue is not precluded. See Restatement (Second) of Judgments § 27 (1982) ("If issues are determined by the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded.")

II. THE TRIAL COURT MADE AN EXPRESS FINDING OF FACT THAT PLAINTIFF DID NOT POSSES KNOWLEDGE OF ITS CURRENT CLAIM PRIOR TO THE CONCLUSION OF THE FIRST ACTION, NEGATING ANY ARGUMENT THAT THE ENTIRE CONTROVERSY DOCTRINE BARS PLAINTIFF'S CLAIMS.

In what is tantamount to an admission that the trial court erred in dismissing Plaintiff's claims based ***solely*** on a wholesale adoption of non-essential comments

from a separate matter, Defendants dedicate a substantial portion of their opposition rearguing the entire controversy doctrine anew. In so doing, Defendants ask this Court to not only turn a blind eye to the trial court's unchallenged findings of fact and credibility determinations, but to supplant those findings with directly contradictory findings of fact. The Court should not even entertain Defendants' improper attempt to reargue.

In opposition, Defendants boldly claim that "[t]here is no question that [Plaintiff] knew of the basis for [its] purported bad faith claim prior to bringing the First Action." (Db22.) It is hard to fathom how Defendants could possibly advance such an argument considering the trial court, relying upon a full evidentiary record, reached the exact opposite conclusion. Indeed, the trial court made crystal clear that: (i) the fully developed evidentiary record revealed that Plaintiff did not know, and could not have none, of its claims prior to the conclusion of the First Action, and (ii) "the entire controversy doctrine [does not] operat[e] [to] bar Saddlewood's claims." (3T9:18-10:16, 27:10-16, 28:24-29:1; 34:11-13, 35:2-4, 41:14-22.)

What's more, the trial court specifically addressed the comments made by Mr. Shuster during the January 2020 City Council Meeting – the only so-called "evidence" Defendants cite to support their previously-rejected argument – and emphatically rejected any suggestion that those comments established actual knowledge of Plaintiff's bad faith claim. To that end, the trial court found:

> There's nothing in the City Council transcript from January of '20. . . that even remotely indicates that there was this indication that the school was a deal or an agreement or anything like that. So I don't think [Plaintiff] had a basis to speculate about that before February '21.
>
> [3T27:10-16.]

While Defendants desperately attempt to discredit the trial court's specific factual findings – unilaterally deeming them "extraneous," "needless," and "tentative" – no number of adjectives can erase the trial court's dispositive findings of fact. The fact is the findings were rendered – on a full record, following discovery on the issue – with careful deliberation by the trial court. Those findings necessitate a denial of Defendants' (re)argument that Plaintiff's claims are barred by the entire controversy doctrine.

III. NOTWITHSTANDING ITS ERRONEOUS DECISION TO DISMISS PLAINTIFF'S CLAIMS, THE TRIAL COURT POSSESSED AND PROPERLY EXERCISED JURISDICTION OVER THIS MATTER.

In furtherance of their attempt to whitewash the proceedings below in their entirety, Defendants argue that the trial court lacked jurisdiction. That argument misses the mark.

First, as a matter of common sense, this case was pending before the trial court for over one year – subject to motion practice, numerous conferences, discovery, etc. – all while the appeal in the First Action was pending. If the trial court lacked jurisdiction, the case would have been dismissed at the outset of the litigation.

Moreover, contrary to Defendants' legal argument, it is well established that the filing of an appeal in one matter does not divest a trial court of jurisdiction in a completely separate action. See, e.g., Carlucci v. Carlucci, 265 N.J. Super. 333, 339 (Ch. Div. 1993), disapproved of by, Kiernan v. Kiernan, 355 N.J. Super. 89, 89 (App. Div. 2002). The Court in Carlucci analyzed the interplay between R. 2:9-1 and subsequent actions, stating:

> The logic which underlies this rule, of course, recognizes that an application which does not seek to modify the order or judgment appealed is, for all practical purposes, a new case and should be so treated for all legal purposes. This is clear when two litigants involved on an appeal become embroiled in a separate and distinct controversy. In such a situation, ***no one would suggest that the pending appeal would preclude the filing of a new case***.
>
> [Carlucci, 265 N.J. Super. at 339 (emphasis added).]

Defendants have not cited a single authority to support their tenuous argument that an appeal in one action can act as a jurisdictional bar in a completely separate action. To the contrary, the limited authorities cited by Defendants (Db10) confirm that Rule 2:9-1 ***only*** applies to the matter actually under appeal. See, e.g., Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:9-1 (2022) ("[The ordinary effect of the filing of a notice of appeal is to deprive the court below of jurisdiction to act further ***in the matter under appeal*** unless directed to do so by the appellate court"); McNair v. McNair, 332 N.J. Super. 195, 199 (App. Div. 2000) ("[A]s a general rule, once an appeal is filed, the trial court loses jurisdiction to make

substantive rulings ***in the matter***.") (emphasis added). The rule and case law make clear that the application of Rule 2:9-1(a) is limited to the jurisdiction of the specific trial court from which an appeal is taken, and not to the jurisdiction of other courts presiding over separate matters.

Defendants nevertheless attempt to avoid the clear case law by arguing that "the claims in this case are identical to those Saddlewood appealed in the First Action." (Db29.) Not so. As the trial court previously found, that argument is flatly inaccurate. Nevertheless, even if the claims were identical (which they are not), it has no bearing on this Court's jurisdiction over this matter. At best, that would create a *res judicata*/collateral estoppel issue, which, as described above, the trial court correctly found is inapplicable.

Moreover, all the events that transpired below – including the trial court's ultimate decision that precipitated this appeal – directly undermine Defendants' argument that Plaintiff's claims were somehow dismissed on jurisdictional grounds. If the trial court lacked jurisdiction, it would not (and could not) have: (i) permitted the parties to actively litigate the matter for over one year, (ii) ordered the parties to engage in discovery – including depositions and document productions, and/or (iii) adjudicated various substantive motions to dismiss and for summary judgment. Instead, the trial court would have dismissed the action at the outset for lack of jurisdiction. It took no such action.

Finally, it is unclear how Defendants argue, on the hand, that the trial court lacked jurisdiction in this matter but then, on the other hand, argue that this Court possesses jurisdiction to render specific findings regarding Plaintiff's alleged "knowledge" of the facts underlying its claims. The argument, like Defendants' other arguments, is inherently contradictory and should be rejected.

CONCLUSION

For the foregoing reasons and authorities, as well as those set forth in Plaintiff's initial appeal brief, Plaintiff respectfully requests that this Court: (i) reverse the trial court's July 8, 2022 and March 23, 2023 Orders in their entirety, and (ii) reinstate Plaintiff's Complaint.

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By: */s/ Michael C. Klauder*
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DATED: January 9, 2024