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RICHARD WU,

Plaintiff/Respondent/Cross-Appellant

v.

YIN SHAN WU a/k/a SAM WU  
and GLOBAL CHAMPION CAPITAL LLC,

Defendants/Appellants/Cross-Respondents

Superior Court of New Jersey  
Appellate Division  
Docket No. A-003300-22

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT  
CHANCERY DIVISION  
HUDSON COUNTY  
Docket No. C-157-20

Hon. Mary K. Costello, J.S.C.  
Sat below

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BRIEF FOR APPELLANTS  
YIN SHAN WU a/k/a SAM WU  
and GLOBAL CHAMPION CAPITAL, LLC

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## PRELIMINARY STATEMENT

This is a case that concerns conduct that occurred more than twenty years before the filing of the underlying lawsuit, involving title to property and two brothers on opposing sides. Plaintiff Richard Wu claims that Defendant, his brother Yin Shan Wu a/k/a Sam Wu, sold him a certain piece of real property in Jersey City, back in 1997 and that he has been the clear owner since then. Defendants argued that the initial sale was fraudulent, and the deed was reverted to Defendant Sam Wu in 1998. Sam Wu, prior to his passing, sold the property to Global Champion Capital, LLC, a corporation owned by his sons. Plaintiff initiated this action after learning that the property in question was transferred.

The trial court sided with the Plaintiff, holding that the property rightfully belonged to Plaintiff Richard Wu. The court also made a number of factual findings. However, the trial court overlooked several legal factors, namely, statute of limitations, and the unclean hands of the Plaintiff. The trial court offhandedly dismissed the statute of limitations argument, and failed to even analyze Defendant's unclean hands argument, which is one of Defendants' important arguments. These legal arguments form the basis of the Defendants' appeal.

Plaintiff has also filed a cross-appeal. Part of the Plaintiff's claim was Defendants' alleged fraudulent conduct. The trial court found that the Plaintiff failed to prove legal or equitable fraud against the Defendants. Plaintiff/Cross-Appellee also argues that the court improperly denied the Plaintiff damages

based upon fraud, unjust enrichment, and fraudulent conveyance. There are all points that the trial court thoroughly analyzed and ruled against.

The trial's decision was improper because, legally, the case should have never been allowed to go forward due to the Statute of Limitations for real property issues. Furthermore, any fraudulent conduct was initiated by the Plaintiff and the Plaintiff approached this litigation with unclean hands. However, the trial court was correct to note that the Defendants did not commit fraud or any unethical behavior. For the following reasons, Defendants/Appellants asks this court to reverse the trial court's decision, and grant the property to Defendant Global Champion LLC.

### **PROCEDURAL HISTORY**

Plaintiff filed a complaint against Defendants on August 16, 2020, alleging fraud and quiet title among other things (Da001 – Da017). On January 6, 2021, Defendants' previous counsel filed an answer and counterclaims (Da018 – Da039). Plaintiff filed an answer to counterclaims on February 11, 2021 (Da040 – Da047). After a significant amount of litigation, the trial for this case began on January 10, 2023, and lasted until February 1, 2023 (1T – 15T). On January 26, 2023, Defendants' counsel made an oral motion for judgment under Rule 4:40-1 (11T). On January 27, 2023, the court denied Defendants' motion and continued the trial to completion (12T). On April 20, 2023, both Plaintiff and Defendants submitted post-trial briefs regarding their respective

positions. On May 22, 2023, the trial court issued its memorandum decision (Da50 – Da74).

### **STATEMENT OF FACTS**

This is a case where the relevant conduct dates back to the 1990s. Plaintiff Yin Fu Wu (also known as Richard Wu) and Defendant Yin Shan Wu (also known as Sam Wu) were brothers, prior to Sam Wu’s unfortunate passing in 2020 (Da371). In 1986, the brothers bought adjacent properties located at 291 2nd Street and 293 2nd Street, Jersey City, New Jersey 07302, with Richard purchasing the 291 property and Sam purchasing 293 property with his wife Jane Wu (Da094 – Da113).

In 1997, there was a purported deed that transferred the 293 2nd Street property (the “293 Property”) from Sam and Jane Wu to Bonnie Wu, who was married to Richard Wu at the time (though they have since divorced) (Da444 – Da445). Plaintiff claimed that Sam and Jane Wu sold the 293 Property to Bonnie Wu/Richard Wu in 1997. Defendants denied this alleged sale (9T112). The next year, on June 28, 1998, Bonnie Wu granted the 293 property to her husband Richard Yin Fu Wu via deed (Da338 – Da342). Defendants alleged that the aforementioned two (2) title transfers were fraudulent because Sam and Jane Wu’s signatures on the 1997 deed were forged. Defendants further alleged that after Sam Wu found out about Plaintiff Richard Wu’s fraud, Richard Wu agreed



to transfer the property back to Sam Wu. A deed dated December 10, 1998 was recorded on December 16, 1998 which listed Richard Yin Fu Wu as the grantor and Yin Shan Wu as the grantee (Da359 – Da362). The deed contains language stating that “Richard Yin Fu Wu is the same person as Yin Shan Wu,” and the affidavit of consideration contains a signature for Yin Shan Wu (Da343 – Da346). At trial, Plaintiff Richard Wu admitted that he forged Yin Shan Wu’s signature by signing for the name Yin Shan Wu (3T62-2). This important fact is not in dispute. The deed was recorded again on January 25, 1999 which corrected a block number that was incorrect on a previous deed (Da347 – Da350). This new deed did not, however, change the grantor or grantee.

In 2019, Sam Wu transferred the property to a company called Global Champion Capital LLC, which is owned by Sam Wu’s sons, for \$171,000 (Da351 – Da370). Shortly after the transfer, Plaintiff Richard Wu filed the underlying lawsuit, seeking, among other things, to quiet title.

### **LEGAL ARGUMENT**

#### **POINT 1: THE TRIAL COURT ERRED BY FAILING TO ANALYZE PLAINTIFF’S UNCLEAR HANDS**

(Da081 – Da090, not analyzed by the trial court)

Under the equitable doctrine of unclean hands, “[a] suitor in equity must come into court with clean hands and he must keep them clean after his entry

and throughout the proceedings.” Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 158, 777 A.2d 19, 32, 2001 N.J. LEXIS 809, \*44 (quoting A. Hollander & Son, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 246, 66 A.2d 319 (1949)). Essentially, “a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit.” Id. (quoting Faustin v. Lewis, 85 N.J. 507, 511, 427 A.2d 1105 (1981)). Thus, the court should question if the Plaintiff is coming to court without any wrongdoing on Plaintiff’s own behalf. Where the relief sought by the plaintiff is the result of his own wrongdoing, where the unclean hands of the plaintiff [have] infected the very subject matter in litigation, the plaintiff is barred from relief in a court of equity. Rolnick v. Rolnick, 290 N.J. Super. 35, 45, 674 A.2d 1006, 1011, 1996 N.J. Super. LEXIS 173, \*15 (quoting Pollino v. Pollino, 39 N.J. Super. 294, 298-99, 121 A.2d 62 (Ch.Div.1956)). If the court determines that the Plaintiff has committed a wrong, then Plaintiff is not entitled to any relief.

It is undisputed that the December 10, 1998 deed in question, which contains the signature Yin Shan Wu, was in fact signed by Plaintiff (3T62-2). We can only question the motives, as Plaintiff did not give any clear indication as to the purpose for Plaintiff signing Sam Wu’s name on a deed that transferred title to the property back to Sam Wu. Perhaps it was to mislead Sam Wu, who had no English ability. Perhaps it was to create confusion. However, the fact is

that Plaintiff did forge his brother's name onto the deed document (3T62-2, Da343 – Da350). It further coincides with the misleading representation on the deed itself, which states that Richard Wu and Yin Shan Wu were the same person (Da343 – Da350). This is unequivocally false.

Clearly, this falls under relief that is sought by the Plaintiff as a “result of his own wrongdoing.” Plaintiff fraudulently placed his brother's signature on a deed that was to be recorded with the county. He attempted to create further confusion by noting that Yin Shan Wu and Richard Wu are the “same person.” The cloud to the title and the issues that Plaintiff now complains of were issues that Plaintiff ratified himself by forging his brother's signature on the deed.

Defendants presented this argument to the trial court; however, the memorandum decision completely ignores Defendant's argument (Da081 – Da090; Da050 – Da072). Defendants listed “unclean hands” as an affirmative defense in their pleading, and called it “another important argument of Defendants” in their post-trial brief (Da018 – Da039; Da81 – Da090). However, the words “unclean hands” are not even mentioned in the judge's decision. There was no analysis performed by the trial court. The trial court did not even acknowledge that this was an argument raised by Defendants. The trial court did not even give so much as a summary dismissal of the argument. This is a reversible error of the trial court that should be rectified upon appeal.

N.J. Ct. R. 2:10-2 states that “any error or omission shall be disregarded by the appellate court *unless* it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court.” The plain language of this rule suggests that an error may be reversed upon appeal when the error denied a “fair decision on the merits.” C.E. & B. v. Elizabeth Pub. Sch. Dist., 2023 N.J. Super. Unpub. LEXIS 1206, \*11, 2023 WL 4571437 (quoting State v. G.E.P., 243 N.J. 362, 389, 235 A.3d 157 (2020)).

In this case, the trial court committed reversible error by declining to even consider the merits of the Defendant’s argument for unclean hands. Plaintiff admitted to signing Yin Shan Wu’s name. He knew that he was not Yin Shan Wu. During Plaintiff’s cross-examination, Plaintiff stated that his signature is “Richard Yin Fu Wu” (5T80-16) Plaintiff further stated during his cross-examination that the attorney who drafted the deed knew that the Plaintiff was not Yin Shan Wu (5T81-25 – 5T82-1). The fraud continued to be perpetuated even on a second corrected deed that was filed on January 25, 1999, on behalf of Plaintiff. The Plaintiff’s hands are clearly unclean, and the trial court committed reversible error by failing to take Plaintiff’s unclean hands into account.

In their post-trial brief, Defendants presented the following issue to the

trial court, which however was completely ignored in the trial court's decision: "[w]here a plaintiff engaged in a fraud by forging the defendant's signature on title transfer paperwork, thereby enabling the defendant to transfer the title to others at a later time, whether the plaintiff is entitled to seek relief?" (Da081). Given Plaintiff's admission regarding his forgery in connection with the December 10, 1998 deed, the doctrine of unclean hands bars Plaintiff from attacking the deed fraudulently created by himself. Therefore, Defendants respectfully request that the Appellate Division rule on this issue in Defendants' favor.

**POINT 2: THE TRIAL COURT ERRED IN GRANTING JUDGMENT TO PLAINTIFF BECAUSE THE STATUTE OF LIMITATIONS REGARDING REAL PROPERTY HAD EXPIRED PRIOR TO FILING THE LAWSUIT.**

Da072

The trial court erred as a matter of law in granting judgment to Plaintiff because the trial court failed to properly analyze statute of limitations. Defendant made a motion to dismiss the action at the close of Plaintiff's case, including an argument based on statute of limitations. However, the judge improperly denied Defendant's motion at that time (12T). The parties submitted post-trial briefs where Defendants supplied further written argument, including supportive case law, but the judge simply noted that the statute of limitations issue has already been ruled on and did not consider Defendants' written

submission (Da072).

In a quiet title action, the statute of limitations is twenty (20) years. See N.J.S.A. 2A: 14-7. A party's failure to bring an action within the statutorily set time limit bars a party from relief or an opportunity to continue the case, regardless of the merits of the case. The only defense to this is New Jersey's "discovery rule." The effect of the discovery rule does not carve out an exception to the statute of limitations rule, but rather tolls or resets the statute of limitations period. The discovery rule states that "a cause of action will not be held to accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Benipal v. Tri-State Petro, 2019 N.J. Super. Unpub. LEXIS 26, \*5.

First, the standard of review for Defendant's motion at the close of the case is not the proper burden of proof overall. The trial court judge, in denying the Defendant's motion at close of business, analyzed the Defendants' argument about statute of limitations under Rule 4:40-1, which in turn meant that the court analyzed the argument under a Rule 4:37-2(b) analysis for involuntary dismissal. Importantly, analysis under a Rule 4:40-1 motion specifically ignores credibility determinations of the witnesses and holds true all evidence that supports the non-moving party's position plus any inferences that can be made therefrom. (12T). It does not factor in evidence presented by the defendant.

While this is the correct analysis for a motion to dismiss filed at the close of Plaintiff's case, this is not ultimately the standard of analysis for the case as a whole. Essentially, a motion under this rule is to determine if there is sufficient basis for the case to continue to move forward for an ultimate decision. Defendants do not argue that this was appropriate analysis *at that time*. The trial court committed reversible error, however, by applying the *same analysis* at the close of the case, in response to Defendants' post-trial brief. In the trial court's memorandum decision, the court stated, "The court ruled in favor of Plaintiff Richard Wu on the issue of Statute of Limitation for the Quiet Title Action by denying Defendant's motion during trial." (Da072). Apparently, the court completely dismissed Defendant's post-trial argument under a standard that does not comport with the law.

To a degree, admittedly, the court did perform some substantive analysis on the statute of limitations issue. The primary concern raised by the court is when the statute of limitations should begin to apply. This is the point where the court diverges from what is proper. The title to the property was clouded on the date the Plaintiff forged his brother Sam Wu's name on the title to the property located at 293 2nd Street. This occurred on December 10, 1998, where the property was signed over to "Yin Shan Wu", who is the brother, Defendant, and decedent to the Plaintiff (Da343 – Da346). However, the signature was forged

by Plaintiff, who does not go by the name Yin Shan Wu and clearly is not the person who was listed as the grantee. This is the point where the title action should have begun to accrue, as any reasonable person would know that signing the title over to another person who is not you will result in a transfer, or at least, a clouded title. However, incredibly enough, not only did Plaintiff forge Sam Wu's name on the deed, the deed stated that "Richard Yin Fan Wu" and "Yin Shan Wu" were the same person (Da343 – Da346). This is clearly incorrect, as Yin Fan Wu and Yin Shan Wu are distinctly different people. This bit of subterfuge created a clouded title wherein the purported owner was Yin Shan Wu.

If this was not the intention to shift the title to Yin Shan Wu, however, he had an opportunity to correct this mistake. A *second* deed was drafted about a month later as a correction to the December 10, 1998 deed (Da347 – Da350). However, the correction deed, dated January 25, 1999, did not clear the issue or the cloud to the title. The only thing that was "corrected" was the lot number, but the true issues with the deed that Plaintiff now seeks to invalidate were not corrected.

In the trial court's decision on the motion, the court determined that this was merely an "error". However, how can the same error and the same transfer to Yin Shan Wu be made *twice* in such a short time period without the clear and



obvious error being “discovered” by the Plaintiff? Plaintiff knew he signed a name that wasn’t his on the December 10, 1998 deed, and he certainly should have been aware that he didn’t sign his name for a *second* time on the January 25, 1999 deed.

It defies logic that the Plaintiff can feign ignorance on a deed that he not only had created, signed, and knowingly placed in his brother’s name as grantor, but performed this action on two occasions, both of which occurred more than twenty (20) years prior to this litigation. Plaintiff *knowingly* created a deed that granted the property to his brother Yin Shan Wu, yet waited until more than twenty (20) years before taking any action. By signing his brother Yin Shan Wu/Sam’s name, Plaintiff made a misrepresentation that he was his brother Sam. Richard, an experienced real estate owner who possessed a Master’s Degree, knew, or should be held to know, the significance of his own conduct, i.e., forging his brother Sam’s name on the title transfer documents. It appears that he willfully made such an egregious misrepresentation so as to be consistent with the same misrepresentation on the first page of the deed stating that he is the same person as Yin Shan Wu.

Despite the forged signature and the awareness that the deed was defective, the trial court simply ignored much of the issues. The Court did not use the defective December 10, 1998 deed or the follow up deed recorded in

January 1999 as the period to start the statute of limitations. The court, instead, confusingly states that the issue with the title did not become discovered by the Plaintiff until the Plaintiff was informed by realtor Dean Clark that the decedent defendant Yin Shan Wu/Sam Wu was seeking an appraisal on the property in 2019 (12T). However, Defendants respectfully submit that the moment that Plaintiff Richard Wu forged Sam Wu's signature on the defective deed on December 10, 1998 purporting to transfer the title to Sam Wu, he was already fully aware of the issue, which was willfully created by himself.

The court went on to further state that the Plaintiff was not made aware of a claim against his ownership of the property until this time. However, there is an INHERENT claim against Plaintiff's ownership of the property in that the Plaintiff filed not one, but *two* deeds granting the ownership of the property to Yin Shan Wu. It simply does not make sense that Plaintiff would be somehow unaware of his ownership rights to the property when he signed a deed that placed the property in the grant of his brother twice.

In Benipal v. Tri-State Petro, 2019 N.J. Super. Unpub. LEXIS 26, the court tackled a similar question in regards to quiet title of a deed and the statute of limitations. In Benipal, a group of people agreed to a joint purchase of commercial real estate through a joint company. However, one of the joint purchasers titled the property in the name of a different entity owned by one of

the purchasers and his family, and duly recorded the deed. Id. Twenty-three years later, the other Plaintiffs/joint purchasers filed a quiet title action, as they claimed to not have discovered that the property was not titled in the joint enterprise's name until one year before the complaint was filed.

The court remanded the case for a hearing to determine the discovery date (a "Lopez" hearing). On remand, the Benipal court noted the Lopez factors, which the court is to consider as to whether or not to apply the discovery rule: "the nature of the alleged injury, the availability of witnesses and written evidence, the length of time that has elapsed since the alleged wrongdoing, whether the delay has been to any extent deliberate or intentional, whether the delay may be said to have peculiarly or unusually prejudiced the defendant." Benipal v. Tri-State Petro, 2022 N.J. Super. Unpub. LEXIS 1437, \*6, 2022 WL 3363909. In Benipal, when weighing those factors, the court noted that a "reasonable, prudent" investor would have learned that the property was not titled in the name of the joint venture. "In order to justify the tolling of a statute of limitations, plaintiffs must explain why they reasonably could not have discovered their cause of action in time to comply with the limitation period." Id. (quoting Phillips v. Gelpke, 190 N.J. 580, 595, 921 A.2d 1067 (2007)). The Benipal court ultimately declined to toll the statute of limitations because the Plaintiffs should have known about the title issue had they acted in a reasonably

prudent manner.

This case does not even present so much of an issue as the Plaintiffs in Benipal. In the instant case, there was no need for the Plaintiff to discover that there was a deed that titled the property in the name of Yin Shan Wu. He *created* it. Then created it *again*. He was well aware that he signed the deed, as well as what was contained within the deed. Plaintiff not only possesses a Master's Degree, but also was a sophisticated property owner that had handled deeds, leases, and mortgages many times. He also testified that he understood the significance of deed, which demonstrates ownership of property.

Moreover, the Plaintiff *himself* recognized that ownership of the property was in question, as demonstrated by his treatment of the tax rebate checks that were delivered for the 293 property in question (Da442 – Da443). The tax rebate checks made out to the property located at 293 were made payable to Yin Shan Wu; as a result, Plaintiff admits that he failed to deposit them because they were not in his name. This continued failure to deposit rebate checks went on since the deed was signed over to Sam Wu, yet Plaintiff knew exactly why these tax rebate checks continued to be sent and why Plaintiff was unable to deposit them. He never took any corrective action to change the ownership or the deed. For about twenty-two (22) years, Richard chose not to do anything to fix the alleged title problem, knowing the government did not treat him as the title owner of the

293 Property. The fact that Richard deposited only the tax rebate checks for *only* the 291 Property (not those for the 293 Property), knowing the tax rebate checks for the 293 Property were always sent to his brother's name for 22 years, and chose to do nothing about it, clearly supports Defendants' statute of limitation argument.

Moreover, for ten years since the Property was transferred back to Sam Wu, multiple water bills remained in the name of Sam Wu. Multiple water bills for the 293 Property confirm that Sam Wu and his wife Jane Wu's names were still on the water bills for the 293 Property after 1998, such as the water bills from August 1999 to November 2019, a span of ten (10) years (Da281 – Da313). It is common sense that a property owner would not allow the prior owner's name to continue to stay on the utility bills for many years. The only reasonable explanation would be that Richard knew, all the time, that Sam was the owner of the 293 Property and did not dispute Sam's ownership of the property, until the filing of this lawsuit twenty-two years after the transfer.

Also see Plaintiff's initial pleading, where the Plaintiff ADMITS that he transferred the property to Sam Wu, though claims it was "by mistake and without consideration." (Da002). The Plaintiff's complaint further goes on to say that the Plaintiff hired an attorney to correct the mistake and "reverse the erroneous transfer," but "failed to do so." (Da003). The alleged corrected deed

was almost identical, other than correcting the block and lot number for the parcel. However, Plaintiff *still signed his brother's name* to the uncorrected deed. With Plaintiff's level of sophistication, Plaintiff would have easily been able to determine that the January 1999 deed did not, in fact, correct the alleged erroneous transfer. Plaintiff has known since *at least* January 1999 that the deed to the property was transferred to Sam Wu. Still, Plaintiff decided to do nothing about this deed until 2020, outside of the applicable statute of limitations.

For all of the foregoing reasons, the appellate court should overturn the trial court's determination that the Statute of Limitations does not apply. Plaintiff knew, or should have been aware, that the deed to the property raised an issue regarding his ownership of the property in question, and did nothing about it for more than twenty years. Plaintiff's case should be deemed time-barred, and the property should revert back to the proper owner of the parcel, Global Champion Capital LLC.

**POINT 3: TRIAL COURT ERRED BY FAILING TO DISMISS THE COMPLAINT DUE TO EQUITABLE ESTOPPEL, FRAUD, WAIVER, LACHES, AND FAILURE TO ADHERE TO THE STATUTE OF FRAUDS**

(Da050 – Da072, not analyzed by the trial court)

The court further failed to analyze other equitable doctrines that should have led to the complaint being dismissed.

Equitable Estoppel

“Estoppel is an equitable doctrine, founded in the fundamental duty of fair dealing imposed by law.” Casamasino v. City of Jersey City, 158 N.J. 333, 354, 730 A.2d 287 (1999). Estoppel is invoked in “the interests of justice, morality and common fairness.” Palatine I v. Planning Bd., 133 N.J. 546, 560, 628 A.2d 321 (1993). The courts have defined equitable estoppel as “the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed . . . as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse. . . .” W.V. Pangborne & Co. v. New Jersey Dep't of Transp., 116 N.J. 543, 553, 562 A.2d 222, 227, 1989 N.J. LEXIS 114, \*14 (quoting Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334, 339 (1979)).

The doctrine of equitable estoppel bars Plaintiff’s claims. Plaintiff Richard engaged in a fraud by listing Sam Wu as the grantee of the 293 Property and forging Sam’s signature on title transfer paperwork (Da343 – Da350). There is no excuse for his such misconduct. By forging Sam’s signature, Plaintiff Richard misrepresented that he was Yin Shan Wu (Sam), and knowingly allowed the title to be transferred from the name Richard Wu, as the Grantor, to the name Yin Shan Wu (Sam), as the Grantee (Da343 – Da350). Defendant Sam Wu relied

on this legal document when transferring the property to his sons and their company (Da351 – Da370).

Plaintiff Richard should not be allowed to seek relief from this honorable Court given his misconduct, false representations, and document subterfuge. He purposely created misleading documents that Defendants relied upon to conduct business. Such claims are barred by the equitable estoppel doctrine, as required by “the interests of justice, morality, and common fairness.”

#### Fraud

Equitable fraud is a legal, provable defense that could include remedies such as rescission of a contract. Boncco Petrol, Inc. v. Epstein, 115 N.J. 599, 608, 560 A.2d 655, 659, 1989 N.J. LEXIS 88, \*11. Equitable fraud is distinguishable from legal fraud in that there is a lesser burden as the remedies are equitable in nature. Id. For equitable fraud, a party need only show that there was a misrepresentation, a party need not show there was “scienter”, in other words, that the party committing the alleged fraud had knowledge of the falsity and the intent to create an advantage from the falsity. Id.

Certainly, the Plaintiff made clear misrepresentations by signing Defendant Sam Wu’s name on the 1998 deed, which contained a further misrepresentation that Richard Yin Fu Wu and Yin Shan Wu were the “same person.” (Da343 – Da350). Yin Shan Wu reasonably relied on the deed in



transferring his interest in the property to Global Champion Capital LLC. Plaintiff cannot recover because it was the Plaintiff's own misrepresentations that created the title issue. Plaintiff committed equitable fraud and, as such, should be barred from recovering the quiet title to the 293 Property. The trial court failed to analyze this and the appellate court should take this argument into account.

### Waiver

Waiver, under New Jersey law, involves the intentional relinquishment of a known right, and thus it must be shown that the party charged with the waiver knew of his or her legal rights and deliberately intended to relinquish them.” Shebar v. Sanya Bus. Sys. Corp., 111 N.J. 276, 291, 544 A.2d 377 (1988) “The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference.” Knorr v. Smeal, 178 N.J. 169, 177, 836 A.2d 794 (2003).

The doctrine of waiver also operates to bar Plaintiff's claims. When Plaintiff Richard forged Sam's signature as the Grantee, he obviously knew that he was not Sam; yet, he knowingly signed Sam's name, and allowed the title of the 293 Property to be transferred to Sam's name Yin Shan Wu, as the Grantee (Da359 – Da366). To the extent Plaintiff Richard would otherwise have certain legal rights with respect to the property ownership subject to this litigation, by

signing Sam's name as the Grantee, he knowingly and deliberately allowed, and in fact facilitated, the title to be transferred to Sam. In light of his such conduct, Plaintiff Richard has demonstrated his "intentional relinquishment of a known right," to the extent he had such a right. Therefore, his claims are barred by the doctrine of waiver. The trial court failed to analyze this and the appellate court should take this argument into account.

### Laches

Laches is an equitable doctrine, operating as an affirmative defense that precludes relief when there is an "Unexplainable and inexcusable delay" in exercising a right, which results in prejudice to another party. Cnty. of Morris v. Fauver, 153 N.J. 80, 105, 707 A.2d 958 (1998). Our courts have long recognized that laches is not governed by fixed time limits, *see* Hinners v. Banville, 114 N.J. Eq. 348, 357, 168 A. 618 (E. & A.1933) ("Laches involves something more than mere delay, mere lapse of time."), but instead relies on analysis of time constraints that "are characteristically flexible," Lavin v. Bd. of Educ., 90 N.J. 145, 151, 447 A.2d 516 (1982). Unlike the mechanical application of a fixed time prescribed by a statute of limitations, laches operates as do other equitable doctrines. That is, "[w]hether laches should be applied depends upon the facts of the particular case and is a matter within the sound discretion of the trial court." Mancini v. Twp. of Teaneck, 179 N.J. 425, 436, 846 A.2d 596

(quoting Garrett v. Gen. Motors Corp., 844 F.2d 559, 562 (8th Cir.), *cert. denied*, 488 U.S. 908, 109 S. Ct. 259, 102 L. Ed. 2d 248 (1988)).

“The United States Supreme Court has observed that if a suit in equity raises claims as to which there is an applicable statute of limitations, there is nevertheless a role for the equitable doctrine of laches. Patterson v. Hewitt, 195 U.S. 309, 318, 25 S. Ct. 35, 37, 49 L. Ed. 214, 218 (1904). As the Court explained, in that circumstance, the statute [of limitations] is in terms applicable to suits in equity, as well as at law, it is ordinarily construed, in cases demanding equitable relief, as fixing a time beyond which the suit will not under any circumstances lie, *but not as precluding the defense of laches, provided there has been unreasonable delay within the time limited by the statute.* [*Ib(Id.)* (emphasis added).] In other words, “[i]n an action at law courts are bound by the literalism of the statute, but in equity the question of unreasonable delay within the statutory limitation is still open.” *Ib(Id.)* (citation omitted). On the other hand, if the suit is solely one at law rather than in equity, the United States Supreme Court has held that applying “[l]aches within the term of . . . [the governing] statute of limitations is no defense at law.” United States v. Mack, 295 U.S. 480, 489, 55 S. Ct. 813, 818, 79 L. Ed. 1559, 1565 (1935); Fox v. Millman, 210 N.J. 401, 419 (2012).

In addition to the statute of limitations argument, the court should dismiss Plaintiff's claims based on the doctrine of laches. Plaintiff Richard knew, as early as 22 years before he filed this lawsuit, that the December 10, 1998 deeds contained the alleged error that he now attempts to attack (Da343 – Da350). In fact, to the extent that that deed should be deemed defective, he was the one that knowingly created that defective deed. In addition, his own allegations in his Complaint confirm his knowledge of the alleged error as well (Da001 – Da003). Moreover, he also knew, for 22 years, that the tax rebate checks for the 293 Property were sent to his brother Sam's name, and, as a result, he could not deposit the tax rebate checks sent for the 293 Property in the name of Sam Wu (Da442 – Da443). Further, the fact that Sam and Jane's names continued to remain on homeowner insurance for the 293 Property, despite Plaintiff's allegation that Sam and Jane sold the 293 Property as early as 1997, and despite the fact that Richard was actually the one that purchased the homeowner insurance for both the 291 Property and the 293 Properties. Clearly, Plaintiff Richard has demonstrated "unreasonable delay," as required by this doctrine, in connection with his claims, despite the fact that he knew or should have known that the deed was evidence that he was not the owner of the 293 Property. Consequently, his claims are barred by the doctrine of laches. The trial court

failed to analyze this and the appellate court should take this argument into account.

### Statute of Frauds

Statute of frauds applies to real estate title transfers. N.J.S.A. §25:1-11 and its related Title 25 statutes contain specific requirements for the conveyance of any interest in real estate, all of which require, among other things, a descriptive writing signed by the party to be charged therewith. N.J.S.A. §25:1-2. The Plaintiff must prove the existence of a clear and specific signed agreement by clear and convincing evidence. N.J.S.A. § 25-2-13; Liberty Mut. Ins. Co. v. Land, 892 A.2d 1240, 1252 (2006).

Plaintiff does not have a signed “descriptive writing” in support of his ownership claims. In contrast, the title documents, including the 1998 deeds signed by Plaintiff Richard himself transferring the title to Sam, and the deed signed by Sam to transfer the title to Global Champion, demonstrate that Plaintiff Richard is not the title owner of the 293 Property (Da343 – Da370). Plaintiff cannot establish otherwise by proving “the existence of a clear and specific signed agreement by clear and convincing evidence” as required by the statute of frauds. The trial court failed to analyze this and the appellate court should take this argument into account.

### CONCLUSION

Plaintiff therefore respectfully asks that this court reverse the trial court's order granting judgment to Plaintiff, and hold that Defendant Global Champion Capital LLC is the rightful owner of the 293 property.

Dated: September 28, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Heng Wang', written in a cursive style.

---

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RICHARD WU

Plaintiff/Respondent/Cross-Appellant  
-against-

YIN SHAN WU a/k/a SAM WU,  
GLOBAL CHAMPION CAPITAL LLC, a  
New York limited liability company, JOHN  
DOES #1-10, JANE DOES #1-10,  
fictitiously named parties, true name(s)  
unknown, and COMPANY ABC #1-10,  
fictitiously named entities, true name(s)  
unknown.

Defendants/Appellants/Cross-Respondents

SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION  
DOCKET No. A-003300-22

ON APPEAL FROM  
SUPERIOR COURT,  
CHANCERY DIVISION  
HUDSON COUNTY  
DOCKET NO.: HUD-C-157-20

Hon. Mary K. Costello, P.J.Ch.  
sat below

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**BRIEF FOR RESPONDENT/CROSS-APPELLANT RICHARD WU IN  
OPPOSITION TO APPEAL OF APPELLANTS/CROSS-RESPONDENTS,  
YIN SHAN WU A/K/A SAM WU AND GLOBAL CHAMPION CAPITAL,  
LLC AND IN SUPPORT OF RESPONDENT/CROSS-APPELLANT'S  
CROSS-APPEAL**

---

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**PRELIMINARY STATEMENT**

This matter emanates from a concerted and premeditated effort by the Appellant/Cross-Respondents, Sam Yin Shan Wu a/k/a Yin Shan Wu a/k/a Sam Wu, deceased (“Sam Wu”), his family, and their sham company, Global Champion Capital, LLC (“GCC”) (collectively, “Appellant/Cross-Respondents” or “Defendants”), to defraud the Plaintiff, Richard Wu (“Richard”), by exploiting a clear error/mistake in a deed for the property located at 293 2<sup>nd</sup> Street, Jersey City, New Jersey (the “Property”). With the oversight of the counsel, the plan, which started with a title search in 2016, culminated in the execution of a deed by Sam Wu to GCC in October 2019 (the “October 2019 Deed”) for the sole purpose of quickly listing the Property for sale, all without the knowledge of the Property’s true owner, Richard.

As outlined below, once the fraudulent transfer came to light in early 2020, Richard took immediate action to defend his interest in the Property by filing the subject lawsuit. In response, in an effort to explain away their clearly fraudulent conduct, Defendants offered varying and contradicting theories in defense of their actions, none of which were supported by any credible evidence. First, Defendants argued that the Property was, in fact, theirs all along and that Sam Wu, as the owner for over 20 years, maintained the Property, paid the taxes, paid the utilities, and

collected rents. Indeed, Defendants went so far as to assert that Richard had no business at the Property and should not have access to the Property. When that theory became unsustainable in light of mountains of evidence establishing that Richard, not Sam Wu, was the true owner, Defendants switched course. Defendants' second theory, which was not espoused until the eve of trial, argued that Richard was merely a property manager on behalf of the Defendants. Not only did this theory directly contradict Defendants' initial position that Sam Wu took care of the Property for 20 years, but Defendants also failed to offer any evidence in support of their two contradicting theories. .

By contrast, Richard offered documentary and testimonial evidence at trial reflecting all aspects of ownership and control of the Property for 20 years, including proofs of payment for mortgages, utilities, property taxes, insurance, and maintenance of the property, testimony and rent checks from his long-term tenant Chris Theodore, testimony from his wife, Lilly Wang as to Richard's ownership and control, testimony from his realtor/property manager, Bradley Robinson and testimony and repair check from repairperson, Yan Sippeseuth.

After hearing testimony and reviewing evidence, Hon. Mary K. Costello, P.J.Ch. found "that all indicia of ownership supports the contention that Richard owned 293 2<sup>nd</sup> Street." Despite finding no basis for Defendants' claim of ownership,



the Court nevertheless dismissed Richard's claims in fraud, conspiracy to commit fraud and fraudulent conveyance.

The subject appeal followed. Notably, Defendants' appeal does not seek review of the Trial Court's findings with respect to Richard's longstanding ownership and control of the Property, the Court's conclusion that their claims of ownership and control were "not worthy of belief", or their counterclaims against Richard. Rather, Defendants' appeal is limited to arguments that Judge Costello erred and/or failed to fully address a limited number of their affirmative defenses. As outlined herein and as found by Judge Costello, the Defendants' arguments are without merits, as undisputedly, Richard is and has always been the owner of the Property, who has and has always had complete control of the Property.

It is further respectfully submitted that the Court's opinion denying Richard's claims of fraud, conspiracy to commit fraud and fraudulent conveyance against the Defendants was in error. As noted above, the Court specifically concluded that the Defendants' claim of ownership was wholly without merits. Notwithstanding, and despite finding no reasonable basis for the transfer of the Property by Sam Wu to GCC in 2019, the court declined to find that the Defendants committed fraud, conspired to commit fraud, and made fraudulent conveyance in their act of essentially stealing Richard's property.

## PROCEDURAL HISTORY

On August 16, 2020, the Plaintiff filed this lawsuit against the Defendants Yin Shan Wu and Global Champion Capital LLC for claims of Fraud, Conspiracy to Commit Fraud, Unjust Enrichment, Fraudulent Conveyance and Quiet Title. The Plaintiff sought relief for quieting title and awarding compensatory and actual damages, punitive damages, attorney's fees and costs, and prejudgment and post judgement interests against the Defendants jointly and severally. (Da001-17).

On December 18, 2020, upon a Consent Order, the Estate of Sam Yin Shan Wu was substituted as one of the defendants in place of Yin Shan Wu. (Pa2993-2994).

On January 6, 2021, the Defendants filed their answer with counterclaims against the Plaintiff for claims of Fraud, Estoppel/Unclean Hands, Equitable Estoppel, Promissory Estoppel, Breach of Contract, Declaratory Judgment, Quiet Title, Slander of Title and Tortious Interference of Contract. (Da018-39).

On February 11, 2021, the Plaintiff filed his answer to the Defendant's counterclaims. (Da040-47).

On January 26, 2023, after the plaintiff rested in his case in chief, the defendant moved for judgment pursuant to R. 4:40-1 on the ground of Statute of

Limitations. The trial court denied the motion on January 27, 2023. (12T, Jan. 27, 2023).

On May 22, 2023, the trial court entered an Order of Judgment and Memorandum Decision in favor of the plaintiff on his quiet title claim and dismissing the Plaintiff's all other claims, and dismissing the Defendants' all counterclaims against the Plaintiff. (Da50-74).

On July 3, 2023, the Defendants filed the Notice of Appeal appealing the Trial Court's decision quieting title in favor of the Plaintiff. (Da75-78)

On July 12, 2023, the Plaintiff cross-appealed appealing the Trial Court's decision dismissing the Plaintiff's fraud, conspiracy to commit fraud and fraudulent conveyance against the Defendants. (Pa0001-4).

## STATEMENT OF FACTS<sup>1</sup>

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<sup>1</sup> The trial transcripts will be referenced as follows throughout Plaintiff's brief:

- 1T = January 4, 2023
- 2T = January 5, 2023
- 3T = January 9, 2023
- 4T = January 10, 2023
- 5T = January 11, 2023
- 6T = January 12, 2023
- 7T = January 17, 2023
- 8T = January 23, 2023
- 9T = January 24, 2023
- 10T = January 25, 2023
- 11T = January 26, 2023
- 12T = January 27, 2023
- 13T = January 30, 2023
- 14T = January 31, 2023
- 15T—February 1, 2023

## A. THE PARTIES

Plaintiff, Respondent/Cross-Appellant, Richard Wu a/k/a Richard Yin Fu Wu (“Richard”) and Defendant Sam Wu a/k/a Sam Yin Shan Wu (“Sam Wu”) were biological brothers. They have nearly identical Chinese names, except one word in the middle name, Yin Fu Wu/Yin Shan Wu. Richard Yin Fu Wu’s English name is “Richard”. Sam Yin Shan Wu’s English name is “Sam.” (2T 116: 13-117-20, Jan. 5, 2023)

Sam Wu died on April 10, 2020. (Pa 2292). The Estate of Sam Yin Shan Wu (the “Estate”) was substituted as defendant in this action on or about November 9, 2020. Sam Wu’s wife, Jane Wu, is the sole executrix and sole beneficiary of Sam Wu’s Estate. (Pa0799-819).

Defendant Global Champion Capital, LLC (“GCC”) was the title owner of the disputed property located at 293 2<sup>nd</sup> Street, Jersey City, New Jersey (“Property”) at the time of trial. (Pa2270-2291). GCC is a subsidiary wholly owned by a company named W Family Holding LLC (“W Family”). (2T10: 18-11:4, Jan. 05, 2023). Sam Wu and Jane Wu, through their respective living trusts, jointly owned W Family Holding LLC at the time of Sam Wu’s death. The Property, which was the only asset that GCC owned, was part of the assets of the Estate of Sam Wu. (Pa1958-2212;

Pa2213-2233). Through the transfer of the title from the name “Yin Shan Wu” to GCC in 2019, Sam Wu became the title owner of the Property through his company.

## **B. THE DEEDS**

### **1. The deed dated May 15, 1986 from Trowel Corporation to Yin Wu and Jane Wu**

A deed dated May 15, 1986 that was recorded on May 23, 1986 transferred title of the Property from Trowel Corporation to “Yin Wu” and “Jane Wu,” Husband and Wife for consideration of \$171,500.00. (the “1986 Deed”). (Da094-113). A 15-year Citi bank mortgage dated on the same date was recorded together with the deed in the name of “Yin Wu” & “Jane Wu” in the amount of \$120,000. (D127-280). Said mortgage was paid off by the Plaintiff in September 1998. (Pa 0014-18).

It is undisputed that Sam Wu and his wife owned the Property from May 15, 1986 to May 12, 1997.

### **2. The deed dated May 12, 1997 from Yin Wu and Jane Wu h/w to Bonnie Wu**

A deed dated May 12, 1997 that was recorded on May 27, 1997 transferred title for the Property from “Yin Wu” and “Jane Wu” h/w to Bonnie Wu for a consideration of \$100,000.00. (the “1997 Deed” or the “Bonnie Wu Deed”). At the time of the transfer of title, Bonnie Wu and Plaintiff were husband and wife. The deed was signed by “Yin Wu” and “Jane Wu.” (Pa0009-13). In addition to payment

of \$100,000, the Plaintiff also assumed the remainder of the Citi mortgage taken out by Yin Wu and Jane Wu upon purchasing the Property in 1986. (3T8:6-9:14, Jan. 9, 2023; Pa0014-18).

The Plaintiff testified that he paid \$50,000 in check at the title closing, which took place at the office of Plaintiff's attorney, Patrick DiMartini, Esq. The deed transferring ownership of the Property to Plaintiff was notarized by Mr. DiMartini. (Pa 0009-13). The remainder of the payment funds in the amount of \$50,000 came two months after closing at a meeting at Richard Wu's office. (3T 13: 6-14:1, Jan. 9, 2023). Non-party witness, Allen Tan, the brother-in-law of *both* Richard and Sam Wu, testified that he was present at the meeting and, in fact, supplied Richard with a portion of the \$50,00 payment. Mr. Tan had previously borrowed \$25,000 from Richard to purchase a property of his own, which Richard requested repayment of so he could finalize his purchase from Sam Wu. (10T 115:7-116:20, Jan. 25, 2023).<sup>2</sup>

### **3. The deed dated June 28, 1998 from Bonnie Wu to Richard Yin Fu Wu**

A deed dated June 28, 1998 that was recorded on October 28, 1998 transferred title to the Property from Bonnie Wu to Richard Yin Fu Wu (the "June 1998 Deed"). (Da338-342). The deed was signed by Bonnie Wu, the then-wife of Richard Yin Fu

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<sup>2</sup> Notably, Allen Tan's testimony is fully consistent with Richard's testimony on this same point. 3T13-14 ("Another relative whose name is Allen Tan who borrowed 25,000 dollars from me. He brought 25,000 dollars plus 25,000 dollars from myself.")

Wu. On the Affidavit of Consideration signed by Bonnie Wu, it stated that “Deed from wife to husband for which no consideration was paid.” Id. Bonnie Wu transferred her interest in the Property to Richard because she was moving to California and no longer wanted ownership interest or responsibilities related to the Property. (3T 27:17-28:25, Jan. 9, 2023).

**4. The Correctory Deed Dated December 10, 1998 from Richard Yin Fu Wu to Yin Shan Wu**

Following the 1997 transfer of the Property from Sam Wu to Richard, Richard continued to make payments on Sam Wu’s Citi mortgage. (3T 44:3-47:2, Jan. 9, 2023). On or about September 16, 1998, Richard received a letter from Citicorp advising that the mortgage had been paid off and that there was an overage of \$9,500, which was being returned therewith. (3T 47:7-49:3, Jan. 9, 2023; Pa 0014-18). Richard testified that this overage resulted when he and his ex-wife, Bonnie Wu, issued checks totaling \$9,500 to Citicorp on or about July 20, 1998 to pay off the mortgage. When Richard received the check for \$9,500 and the letter confirming that the mortgage was paid off, he advised his attorney, Mr. DiMartini and requested that he do whatever needs to be done to confirm that title to the Property was properly vested with Richard. (3T 50:6-52:18, Jan. 9, 2023).

This request resulted in a correctory deed dated December 10, 1998 (the “December 1998 Deed”), which was drafted by Mr. DiMartini and recorded on

December 16, 1998. (Da343-346). The deed was recorded in the names of Richard Yin Fu Wu and Yin Shan Wu. Specifically, on the deed, it stated that “Richard Yin Fu Wu, the Grantor herein, is the same person as Yin Shan Wu. The Within Deed Correctory deed executed and recorded in order to vest title in the Grantee’s proper name.” On the Affidavit of Consideration, it stated “Correctory Deed executed to vest title in the Grantee under his correct name for which no consideration was paid.” (Da344).

The transferring documents contained signature blocks for both Richard Yin Fu Wu and Yin Shan Wu. (Da344). With respect to the Yin Shan Wu signature, Richard concedes that he signed the name Yin Shan Wu pursuant to the advice and guidance of Mr. DiMartini. (3T 61:23-62:5, Jan. 9, 2023). Sam Wu was not even present when the deed was signed. Further, at no point in time did Richard advise his brother about the contents of the December 1998 Deed. (3T 63:6-21, Jan. 9, 2023). No evidence was adduced at trial to establish that Sam Wu personally signed the deed. Moreover, Richard specifically testified that he did not intend this deed to transfer title of the Property to Sam Wu. (3T 56:1-57:3, Jan. 9, 2023).

The deed dated December 10, 1998 was re-recorded by the County Clerk for the second time due to clerical error on January 25, 1999. On the re-recorded deed, it stated that “The within deed is being re-recorded in order to recite the correct lot



number of the premises being conveyed and to provide the correct metes and bounds description of the property.” (Da347-350).

**5. The deed dated October 25, 2019 from Yin Shan Wu to Global Champion Capital LLC.**

A deed dated October 25, 2019 was recorded on February 11, 2020 purporting to transfer title to the Property from “Yin Shan Wu” to GCC for consideration of \$180,000.00 (the “October 2019 Deed”). (Da351-370). Sam Wu signed in the name of “Yin Shan Wu.” Seller’s residence certification/exemption stated that the gain from the sale is not recognized for tax purpose under 26 U.S. Code section 721.(Da354). Under said section, the gain is not recognized when a property is contributed to a partnership in exchange of an interest in the partnership.

In the seller’s Affidavit of Title, Sam Wu made a sworn statement certifying that he had never used any other name, despite the fact that he had exclusively used the names “Sam Wu” and “Sam Yin Shan Wu” for over 30 years, and had never used the name “Yin Shan Wu” to sign any documents before. (Da359). At trial, because of Sam Wu and his wife’s substantial holding of investment properties in New York, mountains of documents were introduced to show that Sam Wu had exclusively used the names “Sam Wu” and “Sam Yin Shan Wu” to sign documents. The established fact at trial is that Sam Wu had never used the name “Yin Shan Wu” to sign any documents other than the 2019 fraudulent deed. (Pa506-798, 799-819,

843-1097, 1098-1118, 1119-1152). Nor did his wife list “Yin Shan Wu” as one of the names that Sam Wu had ever used after his death. (Pa 0799). On Sam Wu’s death certification, his name was listed as “Sam Yin Shan Wu.” (Pa2292).

**C. RICHARD ‘S TWENTY YEAR’S CONTROL AND MAINTENANCE OF THE PROPERTY.**

From the time Richard and Bonnie Wu purchased the Property from Sam Wu and Jane Wu in 1997, Richard maintained and controlled the Property in accordance with his then-vested ownership interest. (Pa0045-473; Pa474-505) This included the following undisputed facts:

- Richard paid off the Citicorp mortgage and received the check for the overage in 1998 (Pa0014-18);
- Richard maintained keys for the Property (4T 60:8-61:3,67:3-68:15 Jan. 10, 2023).;
- Richard secured tenants for the Property and collected rent from them (P0019-40; Pa41-44);
- Richard paid maintenance persons to take care of maintenance issues at the Property (4T 69:2-70:7, Jan. 10, 2023). (Pa0377, by way of example));
- Richard paid the utilities at the Property (Pa0338; 0409, by way of example);
- Richard paid the Property taxes at the Property (Pa0317, 409, by way of example);

- Richard paid the insurance for the Property (Pa0319, by way of example);
- Hired/utilized the services of a local realtor to manage the Property (9T 8:16-12:16, Jan. 24, 2023).

Richard's testimony on these facts was buttressed by the testimony of his current wife, Lilly Wang, who testified that she assisted Richard in managing the Property. For example, Ms. Wang testified in detail about how she was personally responsible for paying insurance for the Property, including details about the insurance broker she deals with in making payments and renewing the insurance policy. (8T 82:3-84:20, Jan. 23, 2023).

Two non-party witnesses also testified as to Richard's ownership, maintenance, and control of the Property. Christopher Theodore testified that he was a tenant at the Property for approximately fourteen (14) years. (Pa0019-40; 10T 56:15-58-7; 61:15-62:3; 62:7-17, Jan. 25, 2023). Throughout that time, it was his belief based on his interactions and observations that Richard was the landlord/owner of the Property. *Id.* This included that Richard would make sure all maintenance issues were taken care of. He also wrote out his rent checks to Richard Wu. Moreover, despite Defendants' claim of ownership, Mr. Theodore never heard of, let alone communicated with, Sam Wu, Charles Wu, or Jason Wu. (10T 61-62; Jan. 25, 2023). When Dean Clarke, Sam Wu's real estate agent and supposed property manager for the Property showed up for the first time in 2020, Mr.

Theodore refused to let him in as he had no knowledge of Mr. Clark or Sam Wu's supposed ownership in the Property. (10T 60:8-22, Jan. 25, 2023).

Bradley Robinson, Richard's realtor and property manager, also testified about Richard's ownership and control of the Property. Mr. Robinson testified that he helped maintain the Property for Richard for the past four-plus years. (9T 7:18-12:16, Jan. 24, 2023). In particular, he would conduct and/or arrange for sidewalk maintenance, fix the steps, paint, arrange for snow removal, and find tenants. He would also act as a liaison between the tenant, Mr. Theodore, and Richard with respect to maintenance requests, often hiring the maintenance personnel on Richard's behalf. He would also check on the Property and make sure that there were no cars illegally parked at the Property. As was the case with Mr. Theodore, Mr. Robinson has never heard of or met Sam Wu, Yin Shan Wu, Charles Wu or Jason Wu. (9T 13:17-14:8, Jan. 24, 2023).

In addition to testifying with respect to his maintenance of the Property, Mr. Robinson also testified that at some point of time, he received notifications through property tracking portals that the Property had been transferred to an LLC. (9T14:19-16:12, Jan. 24, 2023). When he brought up the issue to Richard, Richard brushed off the notion that the Property had been transferred. ("No. He didn't seem like he had any knowledge whatsoever, he just kind of brushed it off as if it was one of those things that -- one of those things that just happened."). Moreover, even after the

notification with respect to the change in ownership, Mr. Robinson continued to act as property manager for the Property. (9T16:14-17, Jan. 24, 2023).

Yan Sipasseuth, another non-party witness, also testified about his work for Richard with respect to the Property. He testified that he has been doing repairs at the Property for over twenty (20) years. (10T 91:2-94:15, Jan. 25, 2023). When repairs were done either at the request of Richard or his tenant, Mr. Theodore, Mr. Sipasseuth would issue a bill which Richard would pay. (10T 92:2-20, Jan. 25, 2023). Mr. Sipasseuth has no knowledge of Sam Wu, Jason Wu, or Charles Wu. (10T 93:2-13 Jan. 25, 2023). His work was at all times for Richard. Mr. Sipasseuth even paid property taxes for the Property on Richard's behalf on a number of occasions. (10T 108:1-14, Jan. 25, 2023).

**D. RICHARD WU'S DISCOVERY OF THE FRAUD IN 2020**

Richard only used the internet when he checked emails. (8T 79:2-25 Jan. 23, 2023). Richard testified that he used to making tax payments by going to the county clerk's counter at City Hall. (6T 85:13-20, Jan. 12, 2023). His wife testified that she accompanied him to the county clerk's cashier window to make tax payments. (8T 83:14- 84:20, Jan. 23, 2023). Because Richard and his wife do not drive, Mr. Sipasseuth also testified that he drove Richard to the County Clark office to pay property taxes several times. (10T 108:1-7; 110:13-19, Jan. 23, 2023). Other than

the property taxes, Richard relied on his wife to mail checks or go in person to make payments, including insurance and utilities. Thus, there had not been any doubts for Richard and his wife that Richard owned the Property.

In the spring of 2020, the Covid Pandemic started, which resulted in the closure of municipal offices including the County Clerk. As a result, Richard was forced to make all tax payments online. Since Richard did not know how to do online payments, his wife started to make tax payments online. Around April 2020, while attempting to pay the property tax for the Property online, Richard's wife discovered that ownership of the Property was now titled to GCC. Upon discovery of the fraudulent transfer, Richard immediately retained counsel and started this action. (3T 107:19-108:19, Jan. 9, 2023).

**E. SAM WU AND HIS FAMILY'S TWENTY YEARS' OF NON-INVOLVEMENT IN THE PROPERTY**

Despite contending that Sam Wu was the rightful owner of the Property, Defendants offered no evidence at trial, either testimonial or documentary, which would in any way establish or even suggest that Sam Wu took any actions consistent with ownership of the Property. To the contrary, Defendants' varying and contradictory theories of ownership, if anything, reflect Defendants' *ex-post* effort to justify the fraudulent transfer of the Property to GCC in 2019.

**a. Sam Wu Did Not Maintain the Property**

As outlined above, from 1997 through the present, Richard's conduct was in all ways consistent with someone exercising their ownership interest in a rental property. Conversely, outside of inconsistent testimony that Sam Wu would from time-to-time go to the Property to perform varying and unspecified maintenance tasks, Defendants offered no evidence of ownership. For example, while at once testifying that Sam Wu maintained files with respect to the various properties he owned, Defendants were unable to produce any documents after 1997 which would support their claim to ownership despite repeated demands for same by Plaintiff. To this end, Jane Wu, Sam Wu's widow, was repeatedly questioned about whether bills were paid by Sam Wu after 1997. She had no answers. When asked about who paid the water and utility bills after 1997, Ms. Wu testified that while she assumed her husband paid the bill, she did not have personal knowledge of payments. (10T 6:21-7:3; 8:23-9:5 Jan. 25, 2023). She also testified that she was unaware of anyone other than her husband paying any of the water or utility bills.<sup>3</sup> (10T7, Jan. 25, 2023). Similarly, with respect to sewage bills, Ms. Wu testified that she did not pay the bills and she did not know whether her husband or anyone else paid the bills for the Property. (10T7-8, Jan. 25, 2023). With respect to repair bills, Ms. Wu believed that her husband paid them and was unaware of anyone else who may have paid them

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<sup>3</sup> Notably, this testimony contradicts her later testimony that Richard paid these bills on behalf of her and her husband. (13T 22:14- 23:9; 44:7-21; 45:25-46:15, Jan. 30, 2023).

after 1997. The Citi account jointly in the name of Sam Wu and his wife is devoid of any payment for the expenses of the Property. (Pa843-1957) (the absence of any expenses paid with respect to the Property in Sam Wu and his wife's bank accounts).

Ms. Wu testifies that her husband kept good records with respect to the various properties they owned, including the Property. Per Ms. Wu, in response to discovery demands in this lawsuit, Ms. Wu reviewed her husband's records with respect to the Property and turned them over to her attorney for production. (9T 101:17- 103:18, Jan. 24, 2023). Despite the foregoing testimony, Defendants' document production was bereft of any documents which would support the assertion that Sam Wu maintained the Property or made payments related thereto after 1997.

**b. Dean Clark, the Defendants' Real Estate Agent, Did Not Maintain the Property**

After her husband passed away, Ms. Wu testified that Dean Clark, a local realtor, took care of the Property. (9T 118:6-21, Jan. 24, 2023). Mr. Clark was called to testify with regard to his involvement in the Property. He testified that he met Sam Wu, his wife Jane Wu, and his two sons, Charles Wu and Jason Wu for the first time at the end of 2019 outside the Property. (4T 59:18- 60:11, Jan. 10, 2023). Despite Sam Wu purporting to be the owner of the Property (either individually or through GCC), he came to the meeting with Mr. Clark without a key to Property. Thus, when they attempted to get into the Property, they were unable to secure access. (4T 60:12-



61:6, Jan. 10, 2023). Dean Clark went to the Property approximately three times in total, but was never able to secure access despite the Defendants' claim of ownership. (4T 62:12- 64:2, Jan. 10, 2023).

Dean Clark went on to testify that he did not do or oversee repairs to the Property, did not pay Property expenses, and did not collect rent. (4T 69:2-25, Jan. 10, 2023). Dean Clarke did not believe he ever had a key to the Property. (4T 68:11-15, Jan. 10, 2023). In reality, Dean Clark was hired to sell the Property, not to manage the Property. (4T 70:8-10 , Jan. 10, 2023). Based on his expertise, he estimated the sales price for the Property to be \$1 million to \$1.1 million. (4T 73:19-22, Jan. 10, 2023).

At trial, in an effort to clarify the role Dean Clark actually played with respect to the Property, Mr. Clark was confronted with a sworn certification produced earlier in the subject litigation. In all respects, Mr. Clark testified that the material contents of his certification were simply not true. For example, echoing the testimony of Ms. Wu, Mr. Clark's certification stated that since GCC purchased the Property, Mr. Clark maintained and managed the Property. Mr. Clark denied that accuracy of the assertion and testified that, at most, he drove by two or three times and never did anything with respect to the Property. (4T 82:15- 88:12, Jan. 10, 2023). In a similar vein, Mr. Clark's certification stated that he had been to the Property on "countless" occasions when, in reality, he was only there on three (3) occasions. Id.

**c. Jason Wu and Charles Wu Did Not Maintain the Property**

After the transfer to GCC, Charles Wu testified that he paid some bills for the Property including property taxes for about a year and insurance. (2T 34:9- 37:16, Jan. 5, 2023). Notwithstanding, Defendants failed to provide any evidence to substantiate said payments, including cancelled checks, bank records or otherwise. Conversely, and despite Charles' clearly false testimony, Richard continued paying property taxes for the Property through present, including, by way of example, a payment on May 3, 2021 in the amount of \$2,641.69. (Pa409).

Further, Charles Wu testified that after the transfer to GCC, he delegated inspection responsibilities to Dean Clark, which included going to the Property and doing an inspection. (2T 52:8- 54:10, Jan. 5, 2023). The inspection, per Mr. Wu uncovered that a tenant was living there, a point that Mr. Wu would certainly have known if he or his father had, in fact, been managing the property. ("He visited – told me about a tenant that was living there.").

**F. CONSPIRACY AND FRAUDULENT CONVEYANCE OF THE PROPERTY BY SAM WU TO GCC**

The 2019 transfer of the Property to GCC was part of a premeditated scheme by the Defendants to steal and then quickly sell the Property without Richard's knowledge.

**a. 2016 Title Search for the Property Conducted by Vincent Wong, Esq.**

Jane Wu was questioned with respect to a Citibank bank account she shared with her husband and which was produced in discovery pursuant to subpoena by Plaintiff. Notwithstanding her testimony, as noted above with respect to Sam Wu's management of the Property, only one check – Check No. 2236 – from the bank record had anything to do with the Property. (9T 90:7- 92:23, Jan. 24, 2023). The check was signed by Sam Wu and was issued to Vincent Wong, Esq., Sam Wu's attorney, in the amount of \$400 on February 4, 2016. (Pa1396). The memo line for the check reads: "293 2<sup>nd</sup> St., Jersey City, Title Search." Id.

When questioned about the check and the title search performed in 2016, Ms. Wu testified as follows:

Q: Do you know in 2016, as far as you know at that time, who owned this 293 property?

A: My husband.

Q: Okay. How did you come to know your husband own that property in 2016

A: Because, you know, there were many times that I went with my husband to Vincent Wong's office and I don't know the details but I always heard they talk about the house and about the owners, Vincent Wong and Sam Wu.

Q: So how did you come to know your husband owned the 293 property in 2016? 2016?

A: I don't quite understand the detail because Vincent Wong was thinking about the title of the 293 property, and he had to do some research.

Q: That is not my question.

My question, is, how did you come to know your husband owned the 293 property in 2016?

A: Vincent Wong had done some research and then he found that the property at 293 still belongs to Yin Wu, and then he did some further research about it.

(4T 135:3-23, Jan. 10, 2023).

Despite this realization in 2016, Sam Wu did not take any action with respect to the Property until October 2019, just over twenty (20) years following the December 1998 deed and the January 1999 re-recording of the December 1998 deed.

**b. The Creation of GCC to Hide Sam Wu's Eventual Ownership of the Property**

As noted above, after discovering Sam Wu's name on the December 1998 Deed, the Defendants took no actions with respect to the Property until October 2019. In contemplation of the transfer in October 2019, however, in 2018, Sam Wu and his wife hired lawyers to structure a complex estate and business plan that, among other things, would attempt to hide the theft of the Property in October 2019.

On January 17, 2018, Sam Wu and his wife, with assistance of their lawyer, signed two trust instruments, setting up two trusts "The Sam Yin -Shan Wu Living Trust" and "The Jane Suk- Chun Wu Living Trust." (Pa 1958-2212). Under the two

trusts, Sam Wu and his wife were both settlors and beneficiaries. On March 20, 2019, Sam Wu and his wife, with assistance of their lawyer, signed the operating agreement of W Family Holding, LLC. (Pa 2213-2233). The two grantor trusts each had 50% membership interest in W Family Holding. W Family Holding was the owner of GCC at the time of Sam Wu's death in 2020. (2T10: 18-11:4, Jan. 05, 2023). For all the documents in preparation of the complex estate and business planning, Sam Wu signed his name either as "Sam Wu" or "Sam Yin-Shan Wu", not "Yin Shan Wu." (Pa1996, 2039, 2233).

On October 25, 2019, less than one year after setting up GCC, W Family Holding, and two self-settled trusts, Sam Wu signed "Yin Shan Wu" on a deed conveying the Property to his company GCC. In the Seller's Affidavit of Title, Sam Wu certified that he had never used any other names, other than the name of "Yin Shan Wu." (Pa 2279).

Notwithstanding this representation, in Sam Wu's probate petition filed in the Queens County Surrogate Court on July 7, 2020, his wife certified his name as "Sam Yin Shan Wu a/k/a Sam Yin-Shan Wu and Sam Wu." (Pa 799). "Yin Shan Wu" was not listed as his name or a/k/a name.

The probate court filing was wholly consistent with all documents signed by Sam Wu throughout his life. Indeed, with the sole exception of execution of the Deed

transferring the Property to GCC for the purpose of fraudulently conveying the Property from Yin Shan Wu to his Company GCC in 2019 (Pa. 843-2267), Sam Wu had never used the name Yin Shan Wu during his more than thirty years' life in the U.S.

**c. The 2019 Fraudulent Transfer**

The suspicious circumstances surrounding the execution of the 2019 Deed and the attendant payment by GCC are further evidence of the Defendants' fraudulent actions. To begin, Charles Wu's testimony with respect to the transfer was particularly cryptic despite the Defendants' portrayal of the deed as nothing more than a run-of-the-mill corporate realignment within the family's holding company. For example, when asked about how GCC arrived at the purchase price of \$180,000, he refused to provide a concise answer despite admitting to being present when the discussion took place. (2T 44:20- 45:11, Jan. 5, 2023) ("Someone made a decision in the lawyer's office, Vincent S. Wong's office."). Upon further questioning by counsel and the Court, Charles Wu continued to provide purposefully vague responses to an otherwise simple question:

Q: Could you just tell me the name of the person who decide the price would be \$180,000. I just need a name of the person.

A: I don't know.

THE COURT: So Mr. Wu, what I want to understand, is, you signed these documents as a representative of Global Champion

Capital by authority granted to you by your own self on behalf of W Family Holding.

So you represent everyone involved and every entity involved on the one side of this transaction, and you cannot tell us who decided that price would be \$180,000? Is that your testimony?

THE WITNESS: I cannot – I don't know who – there was more than one person, I can tell you that.

(2T 46:25-47:14, Jan. 5, 2023)

Charles Wu was also questioned about who the maker was with respect to the \$171,000 check paid by GCC to Sam Wu for the Property. In particular, he was confronted with one version of a check wherein Charles Wu was noted as the maker, which was secured by subpoena from Citi Bank, and another wherein GCC was noted as the maker, which was produced by Defendants. (2T 19:5- 23:20, Jan. 5, 2023; Pa822; Pa2291). Mr. Wu had no explanation for discrepancy and agreed that one check was not authentic. (2T 83:24- 84:15, Jan. 5, 2023). Conversely, while Mr. Wu struggled to explain why the check he produced differed from the check produced in response to a subpoena to Citi, Citi, both through the affidavit of Jessica De La Torre (Pa2268-2269) and the testimony of its representative Leon Lu (11T 113:19- 115:8, Jan. 26, 2023), confirmed the authenticity of the plaintiff's version of the check.

Perhaps most indicative of the Defendants' fraudulent execution of the 2019 Deed is Sam Wu's use of the name "Yin Shan Wu" and the accompanying signature.

In this regard, outside of the December 1998 Deed wherein Richard readily admitted signing his brother's Chinese name due to his attorney's error, there are no examples of Sam Wu signing as "Yin Shan Wu" on any other documents, checks, or deeds. In fact, Kimberly Neal, Esq., Sam Wu's own estate planning attorney, reviewed numerous signatures by Sam Wu in her firm's file related to Sam Wu and testified that none of them contained a signature with the name "Yin Shan Wu." (11T 63:11-77:3, Jan. 26, 2023); Pa1119-1152

Similarly, the Citi records, which were secured pursuant to subpoena, contain all checks signed by Sam Wu from January 2016 through October 2019, including an October 17, 2019 check to GCC in the amount of \$5,000 noted as "initial contribution." (Pa1386-1740). None these checks bear the signature of "Yin Shan Wu." Rather, they are all signed by "Sam Wu."

In sum, whether a check or a formal legal document, the name and corresponding signature "Yin Shan Wu" are found in *only* two places – the December 1998 Deed Sam Wu did not sign and the fraudulent October 2019 Deed.

#### **d. Defendants Concealed the 2019 Transfer from Richard**

Not only were the circumstances surrounding the preparation and execution of the deed transferring ownership to GCC suspicious, the Defendants' decision to keep Richard in the dark with respect to (1) the transfer, (2) the hiring of Dean Clark,



and (3) the death of Sam Wu are clear indications of their fraudulent intent. Indeed, when questioned on this exact point, Jason Wu specifically testified that nobody notified Richard of any of these critical matters:

Q: When Global Champion Capital purchased the property in 2019, no one from Global Champion Capital reached out to Richard to advise them – to advise him of the purchase, correct?

A: No. No.

Q: And even though you just testified that Richard had been doing some maintenance at the property on behalf of your father, you didn't think it was important to let Richard know that there was a change in ownership?

A: I thought it was important.

MR. WANG: I am going to object, your Honor. This is again beyond the scope. I don't think this was explored.

THE COURT: That is okay. I am interested in the answer.

So the answer was what, sir? No one contacted Richard – what is your answer?

THE WITNESS: No.

THE COURT: No, they did, or no they did not?

THE WITNESS: No, we did not.

...

Q: Correct. But my next question, sir, is, so after Global Champion took over the property, Richard continued to maintain it without knowledge that Global Champion was the owner, correct?

A: I presume so.

Q: No one from Global Champion reached out to Richard to say, hey, let's discuss a new management agreement or anything like that, correct?

A: No.

THE COURT: No, you didn't or no he is incorrect?

THE WITNESS: No, we did not. Sorry.

...

Q: And similarly, nobody told Richard when Dean Clark was hired, Correct?

A: No.

...

Q: And nobody told Richard when Sam died, correct?

A: No.

(14T 24:7-26:8, Jan. 31, 2023).

Defendants had no intention to tell Richard about their "ownership," or "transfer." The Defendants' plan was to transfer title to and sell the Property as quickly as possible. This point was confirmed by Jason Wu who testified that GCC purchased the Property from Sam Wu (an owner of GCC) with the specific intention of selling the property. (14T 19:11- 14, Jan. 31, 2023). Revealingly, Jason Wu further testified that the sale of the Property was necessitated after the transfer because "we didn't live in New Jersey." (14T 19:7- 10, Jan. 31, 2023). In that Defendants never lived in New Jersey (or at least not since 1987), under this logic, it never made sense for Sam Wu or his family to own and manage the Property. That managing the Property in New Jersey only became an issue upon the transfer to GCC further evidences the fact that the Defendants were not the owners of the Property

beforehand. See also (4T 70:8-10, Jan. 10, 2023) (Dean Clark testimony that he was hired to sell the Property).

**G. DEFENDANTS' UNFOUNDED AFTER-THE-FACT ATTEMPTS TO JUSTIFY THEIR FRAUDULENT CONDUCT**

**a. Richard Was Not a Property Manager for Sam Wu**

Defendants' initial effort to justify the transfer of the Property to GCC was by asserting, under oath, that Sam Wu was responsible for all of the maintenance of the Property. Indeed, at her deposition, Jane Wu testified that her husband made all relevant payments for the Property. (13T 89:1-7, 90:6-14, 91:20-92:18, Jan. 30, 2023) ("We pay for all of it."). When that assertion fell flat in light of Defendants' inability to produce any documentary evidence confirming that Sam Wu paid any of the expenses related to the Property and Richard's subsequent production of all relevant documents, Defendants changed course and alleged Richard was actually Sam Wu's property manager. When Jane Wu was questioned about this purported relationship at trial, her testimony made it clear that no such relationship existed.

For example, Ms. Wu testified as to the importance of maintaining good records for properties that her family owns, including records related to insurance and the collection of rent. (13T 79:3- 84:12, Jan. 30, 2023). Indeed, whether managed through a management company or by her family, Ms. Wu made it clear that maintaining proper records was imperative. Id. Ms. Wu also testified she utilizes

management companies with respect to her other properties, that they report to her with respect to the status of the property, and that they have written management agreements outlining the managers duties and responsibilities. (“Because we have a management company working for us, therefore if anything happened, they will let us know”).

When questioned whether she had any such records or agreements with Richard, the supposed property manager, she testified she did not:

- Q: Now, Ms. Wu, that is actually getting to my next point.  
You have no personal knowledge of any arrangement with respect to Richard managing 293, correct?
- A: Even though I don’t know the great detail, but my husband and him has a close relation to manage that property.
- Q: Again, you never had that conversation with Richard Wu about his responsibility as a property manager, right?
- A: Because I don’t like him, and my husband don’t like him either, and we don’t like our son and daughter to contact with him, so it is only my husband to contact with him.
- ...
- Q: Sure. In addition to not having any conversations with Richard Wu about managing the property, you have no records that would reflect that Richard Wu managed the property on your behalf?
- A: I personally don’t have any record, however my husband should have.

(13T 84:23-86:3, Jan. 30, 2023).

Ms. Wu also testified that if she had any such records, including maintenance, property taxes paid for the Property, she would have produced them in discovery. (9T 103:15-18, Jan. 24, 2023). None were produced in discovery or entered into evidence at trial.

Perhaps most illustrative of the completely incoherent argument that Richard managed the Property on behalf of Sam Wu, was Jane Wu's testimony that her family did not like or trust Richard:

Q: Now, you also testified just before, earlier today, that you and your family didn't trust Richard Wu, right?

A: We don't have any communication with him except my husband.

Q: Okay. So despite not trusting him, your family put him in charge of 293 Second Street and didn't ask for an accounting or other records relating to the management of the property, right?

A: That is all managed by my husband and Richard because I don't like him. I have no contact with him.

(13T 88:2-12, Jan. 30, 2023).

Jane Wu was also confronted with her sworn interrogatory responses, which specifically asked her to identify "any and all persons who was involved in maintaining the property or making repairs from 2007 to 2019" including the name of the person, the amount of payment, the method of payment, and copies of related documents. Ms. Wu confirmed that her sworn answer to this question was that she had no such knowledge. (13T 97:7, Jan. 30, 2023)

## THE TRIAL COURT'S RULING

Following trial, the court issued an Order and Opinion dated May 22, 2023 granting Richard's quiet title cause of action. Richard's remaining causes of action, including fraud, conspiracy to commit fraud, fraudulent conveyance, unjust enrichment, and punitive damages were denied. Similarly, the Court's Order and Opinion denied all of the Appellant/Cross-Respondents' counterclaims and affirmative defenses.

In the Court's May 22, 2023 Opinion, the Court concluded as follows with respect to ownership of the Property and the 1998 Deed:

The court finds that Richard was under the misapprehension that he needed to create and record a Deed reflecting his ownership of the property once the mortgage was paid off. He already had the Deed from Bonnie Wu placing the property in his name. For unknown reasons, Patrick DiMartini, Esq. acquiesced and prepared the voidable Deed which then contained indisputably incorrect information in the body of the Deed regarding the identity of the grantor and grantee. What's more, Richard admits signing his brother's name. Ironically, a "corrective Deed" (the same actual document) was recorded within days only to reflect the proper lot number. With this wholly incorrect, voidable Deed in the public record, Yin Shan Wu (Sam Wu) and his family were alerted to it and sought to capitalize on it.

The entire process began with the 2016 title search which uncovered the voidable Deed and thus provided the opportunity for Sam Wu and family to plausibly claim that Sam Wu was the titleholder. The contention of the Estate and Global that this was a valid deed created at the request of Sam Wu is unsupported by any competent evidence. This court finds the argument to be a lame, speculative attempt to explain why it would have been created. There is nothing to

suggest or corroborate the claim that Sam demanded title back and that Richard agreed by making the December 10, 1998 Deed. Enter the opportunistic Dean Clark who, seeking to market other properties in the downtown Jersey City area, began inquiries about the subject property. Clark conducted a due diligence of sorts on behalf of Sam Wu with the hope of becoming the listing agent and marketing the property. This included inperson visits to the premises and an attempt to gain access which was thwarted by Chris Theodore, the long-time tenant. So, the Deed from Sam Wu to Global cannot be considered a material misrepresentation due to the existence of the December 10, 1998 voidable Deed in the public record. It cannot be said that Sam Wu or his family knew that the Deed of transfer to Global was knowing false as long as they could reasonably rely on the public record that seemingly showed Sam Wu to be the titled owner. The failure of the Sam Wu side of the family to reach out to Richard is emblematic of the fallout between the two sides of the family that had been on-going for years. The notion that Sam Wu or his family would reach out to Richard upon discovering the 1998 Deed in 2016 and make inquiries is absurd. For these reasons the court finds that the December 10, 1998 Deed is void due to the legal insignificance (since title was already transferred from Bonnie Wu to Richard); the patently false statement in the body of the Deed as to the names of the grantor and grantee; and, the fact that Richard knowingly signed his brother's name. Once that deed is removed from the equation, the most recent, prior Deed from Bonnie Wu to Richard Wu controls. As such, Sam Wu had no legal right or title to transfer thus nullifying the transfer from Sam Wu to Global.

(Da066-Da068).

The Court went on to conclude as follows with respect to Richard's ownership of the Property and the absurdity of Appellant/Cross-Respondents' claims of ownership:

Despite Richard's failure to prove either legal or equitable fraud, the court nonetheless finds in his favor and declares the transfer from Sam Wu to Global a nullity and vests title in the property to Richard Wu. Richard's colossal error in creating and recording the December 10, 1998 Deed paved the way for the attempted transfer from Sam Wu

to Global. Since the December 10, 1998 Deed is deemed by this court to be void, so too, is the October 25, 2019 Deed from Yin Shan Wu (Sam Wu) to Global a nullity.

(Da068)

With respect to the issue of ownership of the Property, the Court went on to state as follows:

In addition to the paper trail of deeds, all the indicia of ownership supports the contention that Richard owned 293 2<sup>nd</sup> Street. Richard (and Bonnie) assumed the mortgage payments. Richard and/or his wife at any given time paid the real estate taxes. Richard held the keys while no member of the Sam Wu family had keys. Richard hired and paid for repairs and maintenance on the property....

...

The proposition that Richard did all these things for all those years merely as a property manager and at the behest of his brother Sam is not worthy of belief. There was no evidence of a written management agreement. There was no evidence offered to show an oral management agreement. There was no evidence of any compensation paid to Richard for such services. If Richard were indeed under contract to his brother for management services, how is it that no one informed one party to this “agreement” that the other party had died? Finally, in October, 2019 after the purported transfer from Yin Shan Wu (Sam Wu) to Global, no one on behalf of the Estate or Global renewed or revisited the terms of any such management agreement nor did anyone from the Estate or Global assume any payment to Richard for these services. There is no truth whatsoever to the claim that Richard was only a property manager.

(Da068-Da069)

With respect to Richard’s fraud claims, the Court dismissed them by finding that Sam Wu could rely on the recorded 1998 deed, despite also concluded that Sam



Wu knew that he did not sign the deed and that he did not own or maintain the Property:

On the facts presented at trial, Richard has not satisfied his burden of proof on either equitable or legal fraud. Whether the December 10, 1998 Deed was a scrivener's error by Patrick DiMartini, Esq., or, as this court will explain, a voidable, error-filled document, since neither the Estate or Global had any knowledge regarding the creation of the document, they cannot have intentionally committed fraud when they tried to capitalized on it being in the public record by transferring the property from Yin Shan Wu (Sam Wu) to Global in 2019.

(Da065).

With respect to the Appellant/Cross-Respondents' argument that Richard's quiet title action was barred, by the statute of limitations, the Court referenced its decision on Appellant/Cross-Respondents' R. 4:40-1 motion at the close of Plaintiff's case wherein the Court denied Appellant/Cross-Respondents' motion under the discovery rule:

I realize the existence of the December 10<sup>th</sup>, 1998 deed is being used by the moving party, the defendants at this point, to support their argument that Richard Wu knew his title was possibly in doubt as early as December 1998.

However, the reason, albeit erroneous, stated by Richard, was that he sought to record his deed because he had recently paid off the mortgage debt on the property.

That, in the view of this Court, was unnecessary, erroneous, and need not have been done.

The plain language of the statute in this case, which I read in its entirety, provides for the accrual of a cause of action, quote, when any other person claims or has claimed to own the same or any part thereof, unquote.

In the view of this Court, the cause of action to quiet title in this case did not accrue until the very earliest when witness Chris Theodore informed Richard Wu, that realtor, Dean Clark, had approached him on behalf of his client, Sam Wu, seeking an appraisal inasmuch as it was believed at that time by Dean Clark, that Sam Wu was the owner of the property.

According to the trial testimony, that did not occur until 2019.

(12T7:15-8:14, January 27, 2023).

The Court went to describe how Richard's peaceable possession of the Property and Sam Wu's lack of involvement in the Property were integral to the Court's conclusion:

A word about peaceable possession. Richard Wu was in peaceable possession in the legal sense from 1997, and was not made aware of any claim against his ownership interest until, as I have said, at the earliest, his conversation with Chris Theodore, and certainly not until the purported transfer to Global Champion Capital.

For these reasons, I find there to be no impediment or time barred claim here that the statute of limitations issue is not a real one.

Further indicia of the peaceable possession by Richard Wu is the failure of Sam Wu, or any member of his family, to make even an overture of ownership in all the years that Sam – that Richard Wu was in possession.

Advanced at trial is a defense theory that Richard Wu was nothing more than a property manager who was taking care of and paying the expenses and carrying costs of 293 as a property manager because it was convenient, since he lived or had possession of premises next door.

However, there has been presented no express property management agreement for – to support the notion that Richard was simply a manager.

Further, the conduct of the parties demonstrates that there was never any compensation to Richard for any services, and there was no reimbursements for costs and payments advanced by Richard for the repair, the maintenance, the taxes, or the mortgage, from Sam or the Sam Wu family.

(12T9:2-10:6, January 27, 2023)

## LEGAL ARGUMENT

### I. APPELLANT/RESPONDENT’S APPEAL

#### A. Unclean Hands (Da66)

It is well established that “a suitor in equity must come to court with clean hands and must keep them clean after his entry and throughout the proceedings.” A. Hollander & Son, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 246 (1949). The clean hands doctrine is “an equitable principle which requires a denial of relief to a party who is himself guilty of inequitable conduct in reference to the matter in controversy.” Glaser Motors v. Osterlund, Inc., 180 N.J.Super. 6, 13, (App.Div.1981).

In Untermann v. Untermann, 19 N.J. 507, 518 (1955), the Supreme Court provided the following guidance as to the doctrine's applicability:

It is the effect of the inequitable conduct on the total transaction which is determinative whether the maxim shall or shall not be applied. Facades of the problem should not be examined piecemeal. Where fraudulent conduct vitiates in important particulars the situation in respect to which judicial redress is sought, a court should not hesitate to apply the maxim.

As articulated in Untermann, the doctrine has its limitations. Unclean hands is “not an arbitrary rule and calls for the exercise of just discretion” by the court. Id. at 518.

Appellant/Cross-Respondents’ contends that the Judge Erred by not finding that Richard acted with unclean hands when executing the 1998 Deed and signing both his name and Sam Wu’s name. Per the Appellant/Cross-Respondents’, this act “could”<sup>4</sup> have been done for some malicious purpose and therefore a finding in

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<sup>4</sup> Appellant/Cross-Respondents’ brief supports their unclean hands argument by resorting to speculation and misstatements of the record which are completely belied but the undisputed record evidence:

It is undisputed that the December 10, 1998 deed in question, which contains the signature Yin Shan Wu, was in fact signed by Plaintiff (3T62-2). We can only question the motives, as Plaintiff did not give any clear indication as to the purpose for Plaintiff signing Sam Wu’s name on a deed that transferred title to the property back to Sam Wu. Perhaps it was to mislead Sam Wu, who had no English ability. Perhaps it was to create confusion. However, the fact is that Plaintiff did forge his brother’s name onto the deed document (3T62-2, Da343 – Da350). It further coincides with the misleading representation on the deed itself, which states that Richard Wu and Yin Shan Wu were the same person (Da343 – Da350). This is unequivocally false.

See Appellant/Cross-Respondents’ brief at Pgs 8-9.

Richard's favor was improper. Because the testimony and record evidence conclusively established that Richard's actions in making the deed were simply erroneous/mistaken and at the instructions of his then attorney and that he always exhibited all aspects of ownership over the Property, the doctrine of unclean hands is simply not applicable.

**i. Richard Never Intended to Transfer the Property to Sam Wu**

Despite Appellant/Respondent's contention that Richard somehow executed the December 1998 Deed with an intent to deceive Sam Wu, the record facts, as found by Judge Costello, establish that the December 1998 Deed was simply made in error upon advice of counsel. To begin, a review of the language of the deed itself precludes any conclusion that Richard intended to transfer the property to his brother or otherwise deceive him: "Richard Yin Fu Wu, the Grantor herein, is the same person as Yin Shan Wu. The Within Deed Correctory deed executed and recorded in order to vest title in the Grantee's proper name." (Da343). The Affidavit of Consideration states: "Correctory Deed executed to vest title in the Grantee under his correct name for which no consideration was paid." (Da344). Additionally, the deed contained signature blocks for both Richard Yin Fu Wu and Yin Shan Wu. Id.

With respect to the Yin Shan Wu signature, Richard concedes that he signed the name Yin Shan Wu pursuant to the advice and guidance of his attorney, Patrick DiMartini, Esq. 3T61-62. No evidence was adduced at trial to establish that Yin Shan

Wu a/k/a Sam Wu personally signed the deed.<sup>5</sup> Rather, Sam Wu was neither present when the December 1998 Deed was signed or otherwise made aware that Richard had the deed drawn up by his attorney. (3T57-58; 3T63:18-21, January 9, 2023). In short, the December 1998 Deed was not a deed intended to transfer title. It was a deed that by its very terms was meant to clarify title. Further, no consideration was paid in furtherance of the alleged transfer.

**ii. The Circumstances Attendant to the signing of the Deed and the Parties' Respective Relationship with the Property Establish Richard's Peaceable Possession of the Property**

Not only were Richard's intentions with respect to signing the December 1998 Deed not fraudulent or otherwise intended to deceive Sam Wu, the circumstances surrounding the Execution and Richard's ownership and control of the Property buttress this point.

*(1). The Preparation and Signing of the Deed Were for the Express Purpose of Reaffirming Richard's Ownership of the Property*

As noted above, following the 1997 transfer of the Property from Sam Wu to Richard, Richard continued to make payments on Sam Wu's Citi mortgage. On or about September 16, 1998, Richard received a letter from Citicorp advising that the mortgage had been paid off and that there was an overage of \$9,500, which was

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<sup>5</sup> In fact, the record evidence establishes that Sam Wu never signed his named "Yin Shan Wu" with the sole exception of the December 1998 deed. (11T77-79; Pa843-2265).

being returned therewith. (Pa 0014-18). Richard testified that this overage resulted when he and his ex-wife, Bonnie Wu, issued checks totaling \$9,500 to Citicorp on or about July 20, 1998 to pay off the mortgage. Per Richard, when he received the check for \$9,500 and the letter confirming that the mortgage was paid off, he advised his attorney, Mr. DiMartini and requested that he do whatever needs to be done to confirm that title to the Property was properly vested with Richard. (3T50-52, January 9, 2023).

(2) *Defendants Neither Maintained the Property nor Hired Richard to Manage the Property*

Defendants' claim of ownership is premised on the notion that the December 1998 Deed transferred the Property to Sam Wu which he maintained on his own or, alternatively through Richard as property manager. The complete absence of any facts which would give rise to a presumption of peaceable possession on the part of Defendants precludes any determination awarding ownership to Defendants. As outlined in detail above, Defendants failed to produce any evidence which would support a conclusion that Sam Wu maintained the Property, including any records related to payment of taxes, utilities, or other expenses. Similarly, and despite their sworn testimony to the contrary, Dean Clarke testified that he did not act as property manager for the property. (4T70; 4T83-84, January 10, 2023). Further, Defendants failed to produce any evidence would in any way establish that Richard acted as property manager for the Property, including a property management agreement,

copies of important Property-related documents, i.e., insurance, or records of rent received and expenses paid. (13T84:23-86:3; 3T97:24-98:4).

In direct contrast with Defendants, Richard produced extensive documentary and testimonial evidence establishing his ownership, control, and peaceable possession of the Property from 1997 through early 2020 when his wife first learned of the ownership transfer to GCC and beyond. Indeed, and despite the transfer to GCC, Richard has continued paying for all Property related expenses to this day. See e.g. Pa0409 (2021 Property Tax Payment).

### **iii. Judge Costello's Opinion**

Judge Costello inferentially dealt with this issue when Her Honor conclusively determined that Richard's conduct in creating the December 1998 Deed and signing Sam Wu's name was mistaken and unnecessary, but not fraudulent. Indeed, Judge Costello succinctly addressed the facts surrounding the December 1998 Deed including how, if anyone, it was the Appellant/Cross-Respondents' who acted with malintent:

The court finds that Richard was under the misapprehension that he needed to create and record a Deed reflecting his ownership of the property once the mortgage was paid off. He already had the Deed from Bonnie Wu placing the property in his name. For unknown reasons, Patrick DiMartini, Esq. acquiesced and prepared the voidable Deed which then contained indisputably incorrect information in the body of the Deed regarding the identity of the grantor and grantee. What's more, Richard admits signing his brother's name. Ironically, a "corrective



Deed” (the same actual document) was recorded within days only to reflect the proper lot number. With this wholly incorrect, voidable Deed in the public record, Yin Shan Wu (Sam Wu) and his family were alerted to it and sought to capitalize on it.

The entire process began with the 2016 title search which uncovered the voidable Deed and thus provided the opportunity for Sam Wu and family to plausibly claim that Sam Wu was the titleholder. The contention of the Estate and Global that this was a valid deed created at the request of Sam Wu is unsupported by any competent evidence. *This court finds the argument to be a lame, speculative attempt to explain why it would have been created. There is nothing to suggest or corroborate the claim that Sam demanded title back and that Richard agreed by making the December 10, 1998 Deed.*

(Da66) (emphasis added).

In point of fact, and despite the misdirection from Appellant/Cross-Respondents’, as the Trial Court concluded, the error in the December 1998 Deed was nothing more than a misunderstanding by Richard, one which the Appellant/Cross-Respondents fraudulently attempted to take advantage. Accordingly, it is respectfully submitted that Judge Costello’s opinion be affirmed and Appellant/Cross-Respondents appeal seeking review of their affirmative defense of unclean hands be denied.

**B. Plaintiff’s Quiet Title Claim is Not Barred by the Statute of Limitations (Da8-72).**

In seeking reversal of the Trial Court’s ruling with respect to the statute of limitations, the Appellant/Cross-Respondents’ argument focuses on the applicable burden of proof. Per the Appellant/Cross-Respondents’, the burden of proof at the

R. 4:40-1 stage is higher than at the close of trial and, therefore, the Court should have reconsidered their statute of limitations argument under the lesser standard. Even if the Court's opinion did not specifically spell out the burden of proof applicable at the conclusion of the case, the Court's opinion made it clear that reasoning behind its decision on Appellant/Cross-Respondents' R. 4:40-1 motion was incorporated into the post-trial opinion. Specifically, in the Conclusion section of its opinion, the Court summarized its findings with respect to Appellant/Cross-Respondents' claims as follows:

As to the Counterclaim, the court finds against Defendant/Counterclaimants and in favor of Plaintiff Counterclaim due to the failure of Defendants/Counterclaimants to sustain their burden of proof.

The court ruled in favor of Plaintiff Richard Wu on the issue of Statute of Limitation for the Action to Quiet Title by denying the defendant's motion during trial.

(Da071-Da072)

There, the Court specifically found that the December 1998 Deed could not have put Richard on notice of Sam's purported claim of ownership because Richard's execution of the Deed was a mistake:

I realize the existence of the December 10<sup>th</sup>, 1998 deed is being used by the moving party, the defendants at this point, to support their argument that Richard Wu knew his title was possibly in doubt as early as December 1998.

However, the reason, albeit erroneous, stated by Richard, was that he sought to record his deed because he had recently paid off the mortgage debt on the property.

That, in the view of this Court, was unnecessary, erroneous, and need not have been done.

The plain language of the statute in this case, which I read in its entirety, provides for the accrual of a cause of action, quote, when any other person claims or has claimed to own the same or any part thereof, unquote.

In the view of this Court, the cause of action to quiet title in this case did not accrue until the very earliest when witness Chris Theodore informed Richard Wu, that realtor, Dean Clark, had approached him on behalf of his client, Sam Wu, seeking an appraisal inasmuch as it was believed at that time by Dean Clark, that Sam Wu was the owner of the property.

According to the trial testimony, that did not occur until 2019.

(12T7:15-8:14, January 27, 2023).

The Court went to describe how Richard's peaceable possession of the Property and Sam Wu's lack of involvement in the Property were integral to the Court's conclusion:

A word about peaceable possession. Richard Wu was in peaceable possession in the legal sense from 1997, and was not made aware of any claim against his ownership interest until, as I have said, at the earliest, his conversation with Chris Theodore, and certainly not until the purported transfer to Global Champion Capital.

For these reasons, I find there to be no impediment or time barred claim here that the statute of limitations issue is not a real one.

Further indicia of the peaceable possession by Richard Wu is the failure of Sam Wu, or any member of his family, to make even an

overture of ownership in all the years that Sam – that Richard Wu was in possession.

Advanced at trial is a defense theory that Richard Wu was nothing more than a property manager who was taking care of and paying the expenses and carrying costs of 293 as a property manger because it was convenient, since he lived or had possession of premises next door.

However, there has been presented no express property management agreement for – to support the notion that Richard was simply a manager.

Further, the conduct of the parties demonstrates that there was never any compensation to Richard for any services, and there was no reimbursements for costs and payments advanced by Richard for the repair, the maintenance, the taxes, or the mortgage, from Sam or the Sam Wu family.

(12T9:2-10:6, January 27, 2023)

Importantly, the Court's findings of fact post-trial as to Richard's peaceable possession was, if anything, more emphatic as to Richard's unchallenged ownership of the Property:

In addition to the paper trail of deeds, all the indicia of ownership supports the contention that Richard owned 293 2<sup>nd</sup> Street. Richard (and Bonnie) assumed the mortgage payments. Richard and/or his wife at any given time paid the real estate takes. Richard held the keys while no member of the Sam Wu family had keys. Richard hired and paid for repairs and maintenance on the property. This was corroborated by the testimony of Chris Theodore and Yan Sipasseuth. Despite the tax and municipal records listing Sam Wu as the account holder, it was Richard who paid the utility bills and insurance. *In sum, no one from the Sam Wu side of the family had any involvement in the ownership, repair, maintenance or financial responsibilities associated with the subject property after the May 12, 1997 transfer to Bonnie Wu.*

*The proposition that Richard did all these things for all those years merely as a property manager and at the behest of his brother Sam is not worthy of belief...*

(Da068-Da069) (emphasis added).

...The rent was paid to Richard as landlord by the tenant, out of which Richard paid for the expenses of the property *without tendering any of the rent receipts to Sam Wu or his family due to the simple fact that they did not own it.*

(Da069-Da70) (emphasis added).

As such, it is respectfully submitted that Court's reference to its prior opinion on the statute of limitations without restating the applicable burden of proof should not alter the Court's unmistakable conclusion: Richard was not aware of any alleged challenge to his ownership until 2019 at the earliest because there was no so challenge. Indeed, even if the record facts are reviewed *de novo*, New Jersey jurisprudence establishes that the statute of limitations is not a viable defense to Richard's quiet title cause of action.

(1) *The Twenty (20) Year Statute of Limitations Outlined in N.J.S.A. 2A:14-7 Does Not Apply to Equitable Causes of Action*

In arguing that the Plaintiff's claim is barred by the statute of limitations, Defendants rely on N.J.S.A. 2A:14-7, which provides as follows:

Every action *at law* for real estate shall be commenced within 20 years next after the right or title thereto, or cause of such action shall have accrued.

N.J.S.A. 2A:14-7 (emphasis added).

Defendant's cause of action here, however, is one seeking an equitable remedy, not a remedy at law. Indeed, as outlined in Plaintiff's complaint, Plaintiff is seeking a correction in the December 1998 deed to vest title in its true owner, Richard Wu. This precise circumstance was ruled on by the Appellate Division in its recent decision in Lott v. Borough of Roselle, A-1123-19T4, 2020 WL 7688039 (N.J. Super. Ct. App. Div. Dec. 28, 2020).<sup>6</sup> In Lott, the Court addressed whether plaintiffs' equitable claim to correct an erroneous deed could be governed by a statute of limitations addressing actions at law. Id. at \*9. In ruling that it could not, the Court, on its own, held that actions to correct a clear mistake/error in a deed are governed by the equitable doctrine of laches in the absence of a statute of limitations applicable to an analogous remedy at law. Ibid. Per the Lott Court, because "no analogous statute of limitations for a claim to correct admitted and undisputed errors in a deed, defendants' timeliness claim should have been based on the doctrine of laches." Ibid.

The Lott Court went on to outline the law as it relates to the equitable doctrine of laches:

The doctrine of laches is "invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party." Knorr v. Smeal, 178 N.J. 169, 180-81 (2003). "[L]aches is not governed by fixed time limits but instead relies on analysis of time constraints that 'are characteristically flexible.'" Fox, 210 N.J. at 418

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<sup>6</sup> Copies of all unpublished opinions are being provided herewith.

(citation omitted) (quoting Lavin, 90 N.J. at 151). A court may apply the doctrine of laches “when the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned.” Knorr, 178 N.J. at 181. The judge should consider “the length of the delay, the reasons for the delay, and the ‘changing conditions of either or both parties during the delay.’” Ibid. (quoting Lavin, 90 N.J. at 152). The “central issue” in the application of the doctrine of laches “is whether it is inequitable to permit the claim to be enforced,” and “[i]nequity, more often than not, will turn on whether a party has been misled to his harm by the delay.” Lavin, 90 N.J. at 152-53.

Id. at \*10.

When the foregoing Laches analysis is applied this matter, the undisputed record facts weigh heavily against preclusion of Plaintiff’s quiet title cause of action. As articulated at length herein, Richard acted at all times with the express understanding that he was the owner of the Property from the point of purchase in 1997 forward. Indeed, he undertook activities consistent with ownership of the Property even after the transfer to GCC. When he did discover the Defendants’ fraudulent actions in transferring title to GCC, he acted immediately to defend his right to the Property. Indeed, in that Defendants purposefully chose not to disclose the October 2019 Deed to Richard, Richard’s diligence was the only thing that prevented the Defendants from selling the property to a third-party. As such, it is respectfully submitted that laches should not be a bar to the Plaintiff’s quiet title claim.

(2) *Even if the Statute of Limitations Applied, Plaintiff’s Claim did not Accrue Until Spring 2020*

Defendants’ arguments notwithstanding, Plaintiff’s claims are not barred by the twenty-year statute of limitations. Per the clear language N.J.S.A. 2A:62-1, a claim to quiet title accrues when title to a property otherwise in the peaceable possession of a plaintiff is “is denied or disputed, or any other person claims or claimed to own the same...” N.J.S.A. 2A:62-1. Here, the transfer of title to GCC did not occur until October 2019 by way of the October 2019 Deed, marking the first time that title to the property was “denied or disputed”. Moreover, Defendants specifically testified that they did not communicate the change in title to Richard, the fact that they hired Dean Clarke as a supposed property manager, or even that Sam Wu passed away. 14T24:7-26:8. Once Richard did learn of the transfer in early 2020 when his wife attempted to pay property taxes via Jersey City’s online portal, he took immediate action, including filing the subject litigation. (8T87:5-91:11; 3T107:19-108:14).<sup>7</sup>

(3) *The Discovery Rule Tolled the Applicable Statute of Limitations*

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<sup>7</sup> Notably, and evidential of the fact that the Defendants did not notify Richard of their alleged interest in the Property or that Richard was somehow working with or on behalf of Sam Wu to manage the Property, the subject lawsuit was initially filed against Sam Wu despite the fact he had already passed away. Richard was not made aware of the fact that his brother had died until later on in the litigation, at which point he amended the Complaint to name Sam Wu’s estate.



Even if the Court were to conclude that the Statute should run from the signing of the December 1998 Deed, not the October 2019 Deed, the discovery rule would nonetheless act to toll the applicable statute of limitations until spring 2020 when Richard learned about the challenge to his ownership after discovering the transfer to GCC. Under the discovery rule, “a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim.” Lopez v. Swyer, 62 N.J. 267, 272 (1973). In determining whether the discovery rule applies, a court applies an objective standard: “whether plaintiff ‘knew or should have known’ of sufficient facts to start the statute of limitations running.” Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017) (quoting Caravaggio v. D'Agostini, 166 N.J. 237, 246 (2001)).

Like the issue of which statute applies, the Appellate Division’s opinion in Lott is also instructive on the issue of whether a statute of limitations attendance to a quiet title action should be tolled in light of the discovery rule. As noted above, the issue before the Court in Lott was whether to issue a corrective deed in light of an incorrect metes and bounds description in a deed from the Borough of Roselle to the plaintiffs. Despite an incorrect description in the deed, the plaintiffs maintained the property for over a decade and utilized it as a side yard. Notwithstanding, the borough had sold the property to a third-party developer years later. Plaintiffs

brought an action to quiet title, which the defendants challenged by arguing application of the statute of limitations. In particular, the defendants in Lott, like the Defendants here, pointed to tax bills which defendants claimed should have put the plaintiff on notice of the error in the deed. Lott, 2020 WL 7622039 at \*4. In affirming the trial court, the Lott Court specifically held as follows:

[u]nlike the defendants' myopic focus on the tax bills, the court properly considered the totality of the circumstances presented by the evidentiary record in its application of the objective standard. See Henry v. N.J. Dep't of Hum. Servs., 204 N.J. 320, 339 (2010) (explaining the court must evaluate the "totality of the circumstances" in determining the date of accrual of a cause of action under the discovery rule).

Id. at \*8-9.

In reviewing the subject matter under the same "totality of the circumstances" lens required by Henry and Lott, it is respectfully submitted that the discovery rule would similarly toll the statute of limitations until spring 2020 when Lilly Wang, Richard's wife, discovered the change in ownership on Jersey's City's online property tax portal. In this regard, and without restating the facts outlined above, Richard undertook all duties and responsibilities associated with ownership of the Property from 1997 forward without any input, communication, or interference from Defendants. Not only was this the testimony of the Plaintiff, but it was the testimony of three non-party witnesses, including Richard's long-term tenant, his maintenance person, and his property manager/realtor. By contrast, not only did the Defendants

not undertake any ownership or control of the Property, the undisputed evidence establishes that (1) as of 2016, Sam Wu was unaware of a potential claim to the Property as evidenced by the 2016 title report done by Vincent Wong; (2) notwithstanding the 2016 title report, Sam Wu did not undertake any actions consistent with ownership of the property until executing the October 2019 Deed; and (3) Defendants did not notify Richard of their claim to the Property at any point in time.

Given the foregoing, a reasonable person in the same or similar position as the Plaintiff here would not have any reason to believe that they did not have clear title to the Property. Indeed, and perhaps most telling, despite being aware of a potential claim in 2016, Defendants intentionally kept Richard in the dark, including when they transferred the Property to GCC and hired Dean Clarke to list it for sale. As such, it is respectfully submitted that, as was the case in Lott, the discovery rule would act to toll any applicable statute of limitations.

Notwithstanding the foregoing, Appellants/Cross-Respondents argue that the subject matter is governed by Appellate Division's decision in Benipal v. Tri-State Petro, Inc., A-2306-19, 2022 WL 3363909, at \*1 (N.J. Super. Ct. App. Div. Aug. 16, 2022).<sup>8</sup> Benipal is wholly distinguishable and therefore does not impact the

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<sup>8</sup> There are two Benipal decisions. The first remanded the matter for a Lopez hearing on whether the discovery rule applied. Benipal v. Tri-State Petro, Inc., A-0894-17T3, 2019 WL 149524, at \*1 (N.J. Super. Ct. App. Div. Jan. 4, 2019). The second

outcome of the subject action. In Benipal, in 1994, the plaintiffs and defendant agreed to purchase a piece of real estate together through G&B Business Associates, Inc. (G&B), a jointly-owned entity. Benipal v. Tri-State Petro, Inc., A-0894-17T3, 2019 WL 149524, at \*1 (N.J. Super. Ct. App. Div. Jan. 4, 2019). Instead of titling the property in G&B's name, however, the defendant ***purposefully*** titled the property in the name of defendant Tri-State Petro, Inc. (TSP), a company defendant owned with his family. Ibid. A deed evidencing title in the name of TSP was recorded in February 1994. For the subsequent twenty-two (22) years, the defendant and his family handled G&B's operations, finances and "all paperwork connected with the [property]." Ibid. In finding that the twenty-year statute of limitations applied, the Court found that an average investor exercising reasonable diligence and intelligence would have discovered the issue in title. Benipal, 2022 WL 3363909, at \*3.

The distinctions between this matter and Benipal are numerous. First, in Benipal, the defendant ***purposefully*** had the deed prepared in the name of TSP, his family entity, not G&B, the agreed-upon purchasing entity, with the specific intent of conferring title upon TSP. Here, the December 1998 deed was not purposefully done to transfer title to Sam Wu. Rather, by the terms of the deed itself, the deed was a "correctory deed" for which no consideration was paid and with no intent to

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affirmed the trial court's ruling post-Lopez hearing that it did not. Benipal v. Tri-State Petro, Inc., A-2306-19, 2022 WL 3363909, at \*1 (N.J. Super. Ct. App. Div. Aug. 16, 2022).

conferring title upon Sam Wu. Moreover, Richard specifically testified that he in no way intended for the December 1998 Deed to transfer title to Sam Wu. 3T56:7-57:2. Thus, the issue here involves the Plaintiff's equitable effort to quiet title in light of an apparent error/mistake in the December 1998 Deed whereas Benipal involved changing the terms of a deed that purposefully placed title in TSP despite an apparent business agreement to title the Property to G&B. See Lott, Supra.

Second, the plaintiffs in Benipal were admittedly hands-off, out-of-possession investors who were held to the standard of a reasonable investor. By contrast, Richard, who is not a sophisticated investor, handled all aspects of ownership for over twenty (20) years without any reason to believe that the Defendants had a claim to the Property. Indeed, if anything, the facts in Benipal weigh *in favor of quieting title and barring any interest that Sam Wu allegedly has in the Property.*<sup>9</sup> In this regard, to the extent Sam Wu believed he had a claim to the Property based on the December 1998 Deed notwithstanding Richard's clear exercise of ownership and control of the Property, it was incumbent upon him to timely file a quiet title action. Whether under the doctrine of laches or a twenty (20) year statute of limitations, Sam Wu's failure to take any action, especially after conducting a title search in 2016 bars any claim to the Property now.

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<sup>9</sup> Richard specifically denies that Sam Wu had any interest in the Property after the 1997 transfer.

Accordingly, it is respectfully submitted that the discovery rule applies and any statute of limitations should be tolled until Richard was on notice of Sam Wu's claimed ownership in spring 2020.

(4) *Equitable Tolling Applies in Light of the Defendants' Deceitful Conduct*

Equitable tolling may be applied where "the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." Dunn v. Borough of Mountainside, 301 N.J. Super. 262, 280 (App. Div. 1997) (citing Irwin v. Dept. of Veterans Affairs, 498 U.S. 89, 96 (1990)). A statute of limitations is not permitted to be used "as a sword" by an adversary whose misconduct prevents a claimant from filing within the limitation period. Ibid. Another circumstance in which equitable tolling has been held to apply is where a plaintiff has "in some extraordinary way" been prevented from asserting his rights. U.S. v. Midgley, 142 F.3d 174, 179 (3d Cir.1998) (citing Kocian v. Getty Refining & Marketing Co., 707 F.2d 748, 753 (3d Cir.1983)).

Equitable tolling is fully at play here. As noted above, there is no evidence that the Defendants asserted their right to the property throughout the last twenty-five (25) years. In fact, if anything, the Defendants intentionally hid their purported interest in the Property from Richard. This is most evident as it relates to the title search conduct by Vincent Wong, Esq. on behalf of Sam Wu in 2016. As per Jane Wu, Vincent Wong was the one who did the "research" and first learned of the error

in the December 1998 Deed and reported his findings to Sam Wu. (9T135:3-23, January 24, 2023). Notwithstanding, Sam Wu did not share the results of the 2016 title search with Richard. Similarly, the Defendants did not notify Richard when they transferred the Property from Sam Wu to GCC in October 2019 despite knowing full-well that Richard believed he owned the Property. Sadly, Defendants didn't even tell Richard when his own brother passed away. Again, Richard had to find out through the subject litigation that was instituted to enforce his ownership rights in the Property upon becoming aware of same in 2020.

The conduct of the Defendants was at all times purposeful and with the intent to deceive Richard, with the end-goal of quickly selling the Property before Richard could uncover the plot. Simply stated, keeping Richard in the dark was part and parcel of the Defendants' plan to steal Richard's Property. As such, it is respectfully submitted that equitable tolling applies and Richard should not be penalized by the purposefully deceitful conduct of the Defendants.

**C. Other Affirmative Defenses (Da64-72).**

Appellants/Cross-Respondents also appeal from the Court's denial of various affirmative defenses that the Appellants/Cross-Respondents contend were not fully addressed in the Trial Court's Opinion including Equitable Estoppel, Fraud, Waiver, Laches, and Failure to Adhere to the Statute of Frauds. Simply, because the Court

concluded that (1) Richard's conduct in creating the December 1998 Deed was an error made in good faith with the advice of counsel and (2) Richard enjoyed peaceable possession of the Property until 2019 at the earliest, these affirmative defenses have no merit as a matter of law. This is especially so with respect to Appellants/Cross-Respondents' claims sounding in Equitable Estoppel, Fraud, Waiver, and Laches which are expressly precluded by the Court's findings.

As for the claim of Statue of Frauds, to the extent arguably applicable, N.J.S.A. 25:1-11. Writing requirement, conveyances of an interest in real estate, would govern the analysis and provides as follows:

*a. A transaction intended to transfer an interest in real estate shall not be effective to transfer ownership of the interest unless:*

(1) a description of the real estate sufficient to identify it, the nature of the interest, the fact of the transfer and the identity of the transferor and the transferee are established in a writing signed by or on behalf of the transferor; or

(2) the transferor has placed the transferee in possession of the real estate as a result of the transaction and the transferee has paid all or part of the consideration for the transfer or has reasonably relied on the effectiveness of the transfer to the transferee's detriment.

b. A transaction which does not satisfy the requirements of this section shall not be enforceable except as an agreement to transfer an interest in real estate under section 4 of this act.<sup>1</sup>

c. This section shall not apply to leases.

d. This section shall not apply to the creation of easements by prescription or implication.

N.J.S.A. 25:1-11 (emphasis added).



Because, as the Court found, there was no intention to transfer real estate by the December 1998 Deed, the statute of frauds does not apply to the December 1998 Deed. Further, even if it did and the December 1998 Deed was nonetheless invalidated because of the absence of an appropriate descriptor as argued by Appellants/Cross-Respondents, the Property would revert to the prior deed which also has Richard as owner.

## II. RESPONDENT/CROSS-APPELLANT'S APPEAL

Respondent/Cross-Appellant, Richard, appeals from that portion of the Court's Order and Opinion denying his claims of Fraud, Fraudulent Conveyance, Conspiracy to Commit Fraud and Punitive Damages.

### A. Fraud (Da64-69)

To state a claim for common law fraud, the following five elements must be pled:

(1) a material misrepresentation [or omission] of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.

Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997) (citing Jewish Ctr. of Sussex County v. Whale, 86 N.J. 619, 624-25 (1981)).<sup>10</sup>

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<sup>10</sup> In Jewish Ctr. Of Sussex, our Supreme Court further explained the distinction between equitable fraud and legal fraud:

All of the elements of fraud are present here. First, Defendants made a number of material misrepresentation and omissions, all with the intent of defrauding and/or deceiving Richard. To begin, in executing the October 2019 Deed, Defendants materially misrepresented a claim of ownership with respect to the Property. Moreover, in transferring the Property without notifying Richard, they committed a material omission by transferring title without notice to the title holder. Additionally, Defendants jointly made material misrepresentations in the Affidavit of Title for the October 2019 Deed when Sam Wu, signing as Yin Shan Wu, certified that Yin Shan Wu did not go by any other names. As outlined at length above, with the exception of the October 2019 Deed, Sam Wu never used the name Yin Shan Wu. This was all done with the express intent of hiding the transfer of the Property from Richard.

Second, Defendants at all times had knowledge as to the falsity of all of their actions related to the Property. As of October 2019, Defendants (Sam Wu, GCC, and

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The elements of scienter, that is, knowledge of the falsity and an intention to obtain an undue advantage therefrom, see Pomeroy, supra at 422; Gordon v. Schellhorn, 95 N.J.Eq. 563, 573-74, 123 A. 549 (Ch.1924), are not essential if plaintiff seeks to prove that a misrepresentation constituted only equitable fraud. Equitable Life Assurance Soc'y v. New Horizons, Inc., 28 N.J. 307, 314, 146 A.2d 466 (1958).

Jewish Ctr. of Sussex, 86 N.J. at 624–25.

While our discussion of fraud focusses on legal fraud and Plaintiff's damages stemming therefrom, equitable fraud provides another legal basis for conferring title to the Property on Plaintiff.

his family who are members of GCC), all knew that Richard, not Sam Wu, was the owner of the Property. In this regard, after the 1997 transfer, Sam Wu and his family never exercised any manner of control over the Property that would in any way be consistent with an ownership interest. They did not pay any maintenance, utilities, taxes or collect rent for the Property. They did not have a key to the Property. Further, and perhaps most damning, per the testimony of Jane Wu, the error in the deed was only first brought to their attention in 2016 by their attorney, Vincent Wong, Esq. (9T135:3-23, January 24, 2022). In that Sam Wu was not present when the December 1998 Deed was signed, Sam Wu could not have reasonably believed that he was somehow the grantee of the Property under the deed. Rather, Sam Wu and his family simply sought to capitalize on Richard's mistake knowing full-well that they had no legitimate interest in the Property. In furtherance thereof, as it relates to the Affidavit of Title, Sam Wu signed the October 2019 Deed as Yin Shan Wu for the sole purpose of aligning that signature with the December 1998 Deed despite never utilizing that name. Defendants' conduct, in this regard, was a knowing and purposeful misrepresentation designed specifically to defraud Richard.

Third, Defendants' intentional omissions and misrepresentations were all done with the actual fraudulent intent of hiding the transaction from Richard, thus precluding Richard from taking action to defend his ownership. Said another way, Defendants specifically intended for Richard to rely upon his continued belief in his

ownership so he would not scuttle their plan to transfer the Property and sell it out from under him.

Indeed, keeping Richard in the dark about the transaction was a key element of the Defendants' plan to sell the Property shortly after the transfer in October 2019. As testified to by Jason Wu, Defendants did not tell Richard that the Property was transferred to GCC nor did they tell him that they hired a realtor to list the Property for sale. By keeping these facts unknown to Richard, Defendants hoped to complete the sale to a bona fide purchaser before anticipated litigation could be instituted. But for a fortuitous review of the city's property tax record by Richard's wife, Lilly Wang, Defendants' plan would have worked. Similarly, with respect to the Affidavit of Title, utilization of the name Yin Shan Wu was part of the Defendants' concerted effort to incorporate the prior error/mistake in the December 1998 Deed into the Property's chain of title.

Fourth, Defendants' failure to notify and/or consult Richard prior to signing the October 2019 deed resulted in the transfer of title without any objection by Richard. To be sure, had they notified Richard, there is little doubt that the transfer would not have occurred. Conversely, but for Lilly Wu's fortuitous online review of the Property's property tax record, the Defendants' efforts may well have succeeded as Richard at all times believed he was the owner of the Property.

Fifth, as a result of Defendants' deceitful conduct, Richard has suffered significant damages, including, most significantly, extensive attorneys' fees incurred in this litigation to quiet title against GCC's ownership stemming from Sam Wu's fraudulent transfer. Under such circumstances, as the Supreme Court explained in DiMisa v. Acquaviva, 198 N.J. 547, 553-554 (2009), New Jersey courts have recognized the third-party exception to the American Rule as discussed in the *Restatement (Second) of Torts* § 914(2) (1979):

One who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action.

Per the DiMisa Court:

That exception reflects the principle that those fees incurred in an action against a third party are merely an additional element of "damages flowing from the tort." *State, Dep't of Env'tl. Prot. v. Ventron Corp.*, 94 N.J. 473, 505, 468 A.2d 150 (1983) (quoting *Dorofee v. Pennsauken Twp. Planning Bd.*, 187 N.J. Super. 141, 144, 453 A.2d 1341 (App.Div.1982)) (holding defrauded party who is sued by third party may recover counsel fees from tortfeasor as damages flowing from tort); *In re Estate of Lash*, 169 N.J. 20, 27-28, 776 A.2d 765 (2001) (awarding counsel fees to estate incurred in suit to establish surety's liability for administrator's defalcation); *Jugan v. Friedman*, 275 N.J. Super. 556, 573, 646 A.2d 1112 (App.Div.) (awarding counsel fees incurred by judgment creditor against judgment debtor's wife and sons to whom judgment debtor's assets were fraudulently transferred, but not those fees incurred against judgment debtor), *certif. denied*, 138 N.J. 271, 649 A.2d 1291 (1994).

As is evident from those holdings, a prerequisite to an award of counsel fees under the exception to the American Rule is litigation with

a third party precipitated by another party's wrongful act. No matter how egregious that wrongful act, in the direct action between a plaintiff and a defendant, each party bears his or her own fees under the American Rule. It is only the requirement of litigation against a stranger that calls the exception into play. *See, e.g., Jugan, supra*, 275 N.J.Super. at 573, 646 A.2d 1112 (“[A]lthough [plaintiff] may not recover his litigation expenses for litigating with [defendant] to establish that his transfers were fraudulent, he is entitled to reimbursement for reasonable attorneys' fees expended in litigating with third parties, including the other defendants, to void or set aside the transfers.”).

DiMisa v. Acquaviva, 198 N.J. 547, 553–54 (2009)

In-line with DiMisa, Sam Wu’s fraudulent transfer of the Property here, which forced Plaintiff’s action against GCC, warrants an award of attorneys’ fees as part of his overall damages.<sup>11</sup>

**B. Fraudulent Conveyance (Da7-9, not addressed by the Trial Court)**

Under New Jersey’s Uniform Fraudulent Transfer Act (“UFTA”), a transfer made or obligation incurred by a debtor is fraudulent if done with actual intent to hinder, delay, or defraud any creditor of the debtor. N.J.S.A. 25:2-25(a). The Act addresses fraudulent transfers, not solely as to present creditors, but also as to future creditors—i.e., creditors whose claims arose after the transfer was made but not

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<sup>11</sup> In that the quantum of Plaintiff’s damages could not be known until the Court issues a ruling in this matter, Plaintiff’s attorneys will provide a certification of services in accordance with RPC 1.5 following a ruling on these issues by the Court or can otherwise participate in a proof hearing with respect to the quantum of damages.

necessarily before judgment in an underlying matter is entered. N.J.S.A. 25:2–25

states:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- a. With actual intent to hinder, delay, or defraud any creditor of the debtor.

In Rosario v. Marco Const. & Mgmt. Inc., 443 N.J. Super. 353, 354-355 (App. Div. 2016), the Appellate Division specifically detailed that under the UFTA, a creditor need not have a ripe claim and that a debtor is anyone liable on a claim:

The Act provides precise definitions of the terms used. A “transfer” is defined as “every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.” *N.J.S.A. 25:2–22*. For cases involving real property, “transfer” has been defined as the date real property is recorded. *See N.J.S.A. 25:2–28(a)(1); Boardwalk Regency Corp. v. Burd*, 262 *N.J. Super.* 162, 165, 620 *A.2d* 448 (App.Div.1993). A “debtor” is defined as “a person who is liable on a claim.” *N.J.S.A. 25:2–21*. A “claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” *Ibid.* A “creditor” is “a person who has a claim.” *Ibid.*

Importantly, a claim, as that term is defined in the Act, need not be reduced to a judgment. Consequently, a “creditor” may include “the holder of an unliquidated tort claim or a contingent claim.” *Ibid.*; *see also SASCO, supra*, 166 *N.J.* at 588, 767 *A.2d* 469 (stating the clear

language of *N.J.S.A. 25:2–31* reveals “the Legislature concluded that the date of judgment was not determinative of the timeliness of claims under the [Act]”); *Flood v. Caro Corp.*, 272 *N.J.Super.* 398, 405, 640 *A.2d* 306 (App.Div.1994) (stating \*355 “[a]ny creditor, with or without a judgment, may prosecute a suit” under the Act).

Rosario, 443 *N.J. Super.* at 353–55.

In this case, there are mountains of evidence showing the defendants’ actual intent to defraud the plaintiff by transferring the Property from Sam Wu to GCC, which include the following:

- a. Sam Wu and GCC are one and the same. Sam Wu owned GCC and had exclusive control over the entity.
- b. GCC had the title of the Property after the transfer.
- c. The transfer was deliberately concealed from the plaintiff.
- d. The value of the property was given to GCC in a nominal value, substantially lower than the fair market value of the Property.
- e. The transfer occurred shortly after 20-years of the erroneous deed in 1998.

In their answer, the Defendants presented an affirmative defense and counterclaim, claiming that GCC was a Bona Fide Purchaser for Value. Obviously, the transfer from Sam Wu to GCC was not a bona-fide transaction. The transfer was made with the actual fraudulent intent to hinder, delay and defraud Richard for his future then-unmatured claim against Sam Wu.

The remedies available under the UFTA are broad. A voidance of the transfer is primary. N.J.S.A. 25:2-29(a)(1). The statute also contains a catch-all provision,



affording a creditor "[a]ny other relief the circumstances may require." N.J.S.A. 25:2-29(a)(3)(c).

In enacting the UFTA, the Legislature specifically opted not to preclude related causes of action. N.J.S.A. 25:2-32 states, "Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions." Thus, to the extent that the facts undergirding a UFTA claim also establish other recognized causes of action, for example, breach of contract, negligence, or common law fraud, a creditor may pursue that claim as well. Banco Popular No. America v. Gandi, 876 A. 2d 253, 263 (2005).

As to damages, as was the case with the Plaintiff's common law fraud claim, Plaintiff is entitled to damages for fraudulent conveyance based upon Sam Wu's conduct which required Richard to pursue litigation against third-party, GCC.

**C. Conspiracy To Commit Fraud/Civil Conspiracy (Da 5-6, not addressed by the Trial Court)**

A civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage.'" Morgan v.

Union County, 268 N.J. Super. 337, 364 (App. Div. 1993) (citing Rotermund v. United States Steel Corp., 474 F.2d 1139, 1145 (8th Cir.1973)).

The gist of the claim is not the unlawful agreement, "but the underlying wrong which, absent the conspiracy, would give a right of action." Id. (citing Board 365\*365 of Education v. Hoek, 38 N.J. 213, 238, 183 A.2d 633 (1962); Middlesex Concrete Prods. and Excavating Corp. v. Carteret Indus. Ass'n, 37 N.J. 507, 516, 181 A.2d 774 (1962); Earl v. Winne, 14 N.J. 119, 135, 101 A.2d 535 (1953)). As the court recognized that "the nature of a conspiracy is such that more often than not the only type of evidence available" is circumstantial in nature." Id.

In this case, documentary evidence revealed the circumstances under which the fraud was planned and committed by the defendants from 2016 to 2019. As early in 2016 when they found out the error on the deed, Sam Wu and his family started to set up a plan for a quick sale of the Property later. In 2019, the fraud cumulated in Sam's signing a fraudulent deed transferring the Property from "Yin Shan Wu" to GCC, with all defendants' knowing that Sam Wu was not the owner of the Property. In 2019, when Sam signed the name "Yin Shan Wu", a name that he had never used before on any documents for decades, the defendant's actual and sole intent was to defraud Richard and steal his property.

When the Trial Court found that when in 2019 Sam Wu signed the name “Yin Shan Wu” on the deed, the defendants had clear knowledge that Sam was not the owner, the Trial Court should also have found the plaintiff’s fraud and fraudulent conveyance claim in favor of the plaintiff. Because both defendant Sam Wu and his family (through GCC) were in agreement with the fraudulent transfer of the Property to GCC, signed the deed, and/or were present when the transaction occurred, they all bear liability for the plaintiff’s conspiracy claim. See Awonusi v. Yaboh, A-3023-18T1, 2020 WL 1062395, at \*1 (N.J. Super. Ct. App. Div. Mar. 5, 2020) (finding liability on co-defendant who knew or should have known that property was being fraudulently transferred without authority from the true owner).

**D. Punitive Damages (Da10, Da72).**

The New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9 allows plaintiffs to receive punitive damages of up to five times their compensatory damages or \$350,000, whichever is greater. N.J.S.A. 2A:15-5.12. Award of punitive damages; determination provides:

- a. Punitive damages may be awarded to the plaintiff only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.

b. In determining whether punitive damages are to be awarded, the trier of fact shall consider all relevant evidence, including but not limited to, the following:

- (1) The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
- (2) The defendant's awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
- (3) The conduct of the defendant upon learning that its initial conduct would likely cause harm; and

(4) The duration of the conduct or any concealment of it by the defendant.

c. If the trier of fact determines that punitive damages should be awarded, the trier of fact shall then determine the amount of those damages. In making that determination, the trier of fact shall consider all relevant evidence, including, but not limited to, the following:

- (1) All relevant evidence relating to the factors set forth in subsection b. of this section;
- (2) The profitability of the misconduct to the defendant;
- (3) When the misconduct was terminated; and
- (4) The financial condition of the defendant.

In this case, the Plaintiff has proven by clear and convincing evidence that, since 2016, the Defendants embarked on a purposeful and concerted plan to defraud the Plaintiff by utilizing a recently uncovered mistake/error in the December 1998 Deed to steal the Property. The Defendants knew full-well that they lost all interest in the Property when they sold it to Richard and Bonnie Wu in 1997. Nonetheless, after Vincent Wong's "research" uncovered the error/mistake in the December 1998

Deed, and after waiting three-plus years without notifying Plaintiff, the Defendants set up a sham company, GCC, for the sole purpose of stealing and then selling the Property before Richard uncovered the Plot. The Defendants' conduct was actuated by actual malice<sup>12</sup> and accompanied by a wanton and willful disregard of the Plaintiff who would foreseeably be harmed by their acts.

The plaintiff has further proved the factors under section "c" of N.J.S.A. 2A:15-5.12. The property has value exceeding \$1.1. million. Additionally, Defendants did not/would not stop the theft unless and until they were stopped by this Court. The defendants are wealthy -- through W Family Holding, the Estate of Sam Wu owned several real properties in NYC with significant value. Pa799-819; Pa1958-2233.

Accordingly, it is respectfully submitted that Defendants' willful and wanton conduct warrants an award of punitive damages.

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<sup>12</sup> Jane Wu's testimony left no doubt as to the malice that she and her family had for the Plaintiff. 13T84:23-86:3 ("Because I don't like him, and my husband don't like him either, and we don't like our son and daughter to contact with him, so it is only my husband to contact with him."); 13T88:2-12 ("That is all managed by my husband and Richard because I don't like him. I have no contact with him.")

## CONCLUSION

For each of the foregoing reasons, it is respectfully submitted that this Court should affirm the Trial Court's ruling with respect to Appellants' appeal and reverse and remand with respect to Richard's cross-appeal with instructions for the Trial Court to make a determination as to Richard's compensatory damages and the quantum of punitive damages.

Dated: March 27, 2024

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RICHARD WU,

Plaintiff/Respondent/Cross-Appellant

v.

YIN SHAN WU a/k/a SAM WU  
and GLOBAL CHAMPION CAPITAL LLC,

Defendants/Appellants/Cross-Respondents

Superior Court of New Jersey  
Appellate Division  
Docket No. A-003300-22

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT  
CHANCERY DIVISION  
HUDSON COUNTY  
Docket No. C-157-20

Hon. Mary K. Costello, J.S.C.  
Sat below

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APPELLANTS' BRIEF IN RELY TO OPPOSITION BRIEF,  
AND IN OPPOSITION TO CROSS-APPEAL

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Appellants respectfully submit this brief in reply to the Opposition Brief, and in Opposition to the Affirmative Brief of the Cross-Appellant.

## LEGAL ARGUMENT

For reasons discussed below, the Court should grant the relief requested by the Appellant, and deny the Cross-Appeal.

### **I. RESPONDENT/CROSS-APPELLANT BEARS THE BURDEN OF PROOF TO ESTABLISH HIS CLAIMS, PURSUANT TO THE CLEAR AND CONVINCING EVIDENCE STANDARD UNDER THE DEAD MAN'S STATUTE.**

As reflected by the Appellant Brief and the Opposition Brief, the parties apparently have different positions on the material facts in the case.

Only two men in the world knew the truth of the key facts subject to this litigation, namely, Sam Wu and Richard Wu, but unfortunately Sam Wu passed away. Richard Wu's lawyer Patrick DiMartini, who prepared the two (2) defective deeds both dated December 10, 1998, also had certain knowledge of facts and circumstances surrounding these two (2) deeds. However, Mr. DiMartini passed away as well. (Trial Tr., Jan. 11, 2023, Pg. 73, Ln. 5 – 6) Thus, to the extent a determination needs to be made in connection with material facts in dispute, the Court should keep in mind that as the plaintiff in the underlying litigation, Respondent/Cross-Appellant is the one that bears the burden to establish his

claims, pursuant to the clear and convincing evidence standard under New Jersey's dead man's statute. N.J.S.A. 2A:81-2.

## **II. THE COURT SHOULD GRANT RELIEF REQUESTED BY APPELLANTS**

The trial court's decision contains multiple errors. The trial court incorrectly brushed off the Appellants' important unclean hands argument, despite Richard Wu's forgery of Sam Wu's signature on the title transfer documents, which was *admitted* by the Cross-Appellant Richard Wu. In addition, the trial court incorrectly decided the statute of limitations issue. Further, the trial court failed to analyze the other legal issues contained in the Appellant's Affirmative Brief.

### **A. Unclean Hands**

The unclean hands argument is an important argument made by Appellant in the underlying litigation. However, unfortunately the trial judge failed to properly decide this important case issue, and simply brushed it off.

What caused this legal dispute? *This legal dispute originated from the two (2) December 10, 1998 deeds*, listing Yi Shan Wu (namely, Sam Wu) as the owner, thereby enabling him, as the title owner listed in the deed, to transfer the title to others. Pursuant to these two (2) deeds, the title of the property was transferred from Richard Wu to Yin Shan Wu (a/k/a Sam Wu), which resulted in the further

transfer from Yin Shan Wu to Global Champion Capital LLC many years later. As a result, Richard Wu filed the underlying litigation.

Trial transcripts contain the following testimony of Richard Wu regarding the names used by Richard Wu and Sam Wu, respectively.

Q ... Do you know your brother Sam Wu have any Chinese names?

A Yes.

Q What is that?

A Yin Shan Wu.

(Trial Tr., Jan. 5, 2023, Pg. 116, Ln. 13 – 17)

Q There is another name, Yin Shan Wu. Whose name is Yin Shan Wu?

A My brother.

(Trial Tr., Jan. 9, 2023, Pg. 55, Ln. 23 – 25)

Was Yin Shan Wu, also known as Sam, present at the time the deed was signed?

Do not interrupt the Court again.

THE WITNESS: He was not. He was not.

(Trial Tr. Jan. 9, 2023, Pg. 57, Ln. 21 – 24)

Q Under this paragraph they said the same person is Yin Shan Wu as Richard Yin Fu Wu. My question, is, if Richard Yin Fu Wu the same person as Yin Shan Wu?

A No.

(Trial Tr. Jan. 9, 2023, Pg. 59, Ln. 10 – 14)

Q You never had a name Yin Shin Wu – let me spell. The first words is Y-I-N, the second word is S-H-I-N. The last word is W-Wu.

You have never had a name Yin Shin Wu, correct?

A This is my brother's name.

Q When you said your brother, you meant the defendant, Yin Shan Wu, correct?

A Yes.

Q And you never had a name Yin Shan Wu, the second word is S-H-A-N.

You never had such a name, correct?

A It is also my brother's name.

Q So that is not your name, to be clear, correct?

A Correct.

Q Your brother, Yin Shan Wu, was also known as Sam Wu, correct?

A Correct.

(Trial Tr. Jan. 10, 2023, Pg. 27, Ln. 7 – 25)

During the trial, at times, Richard Wu attempted to blur the differences between the two (2) names used by the two (2) brothers respectively. However, as the trial judge found, Richard Wu “willfully and knowingly” forged Sam Wu’s name on the December 10, 1998 deed, which Richard Wu does not dispute. (Trial Tr., Jan. 23, 2023, Pg. 28, Ln. 8 – 11) Richard Wu only attempted to downplay his fraud by saying his attorney told him to do it so he did it.

An important determination must be made as to whether or not Richard Wu’s egregious forgery of his brother Sam Wu’s name (as the transferee) on the title transfer documents constituted unclean hands barring him from complaining about Sam Wu’s subsequent title transfer to Global Champion, or should his blatant willful forgery of someone else’s name on title transfer documents be deemed

merely an innocent error. We respectfully request that the Appellate Division directly address this issue in its ruling.

Pursuant to the clear and convincing evidence standard, Richard Wu cannot establish that the purpose of the December 10, 1998 deeds was merely to reaffirm his ownership, or somehow his blatant forgery of Sam Wu's signature was an innocent error. When the December 10, 1998 deed was prepared, at that time, the property was *already* under Richard Wu's name, pursuant to the June 28, 1998 deed (transferring the title from Bonnie Wu to Richard Wu), which was *also* prepared by Mr. DiMartini. At that time, Richard Wu possessed an U.S. master's degree obtained in New York, had been involved in real estate transactions multiple times, and was assisted by a real estate lawyer Mr. DiMartini who was the one that *also* prepared the June 28, 1998 deed. Richard Wu incredibly claimed that after paying off the mortgage, he merely wanted to make sure that the property was under his name, so he asked his lawyer Mr. DiMartini to prepare the December 10, 1998 deed. The trial court should not have accepted Richard Wu's fabricated story that he, as an experienced property owner with a Master's Degree, somehow felt a need to prepare a new deed at the time, knowing he was *already* the title owner at the time. The trial court should also not have accepted the claim that Richard Wu's real estate lawyer Mr. DiMartini was also as clueless as Richard Wu with respect to handling title transfers.

In addition, at trial, Richard Wu also described his relevant communications with his lawyer Mr. DiMartini, as follows:

A ... I told – I told my attorney, I pay off the mortgage –

THE COURT: Ugh, G-d.

A – and then I call an attorney’s office. I want him to make sure the name is under my name after the mortgage was under my brother’s name was already paid off. And then so all the document are all in my name now.

**So I told him my name is Yin Fu Wu, and my brother’s name is Yin Shan Wu, Sam Wu –**

THE COURT: Jeeze.

(Trial Tr. Jan. 23, 2023, Pg. 41, Ln. 4 – 13)

Clearly, based on Richard Wu’s own admission under oath, he told his lawyer Mr. DiMartini that **Yin Fu Wu and Yin Shan Wu were two different individuals**, and that Yin Shan Wu was his brother! In addition, there was absolutely no reason for his lawyer Mr. DiMartini, who was the *very* lawyer that just did the title transfer transferring the title from Bonnie Wu to Richard Wu less than half a year ago, to prepare yet another new deed just to reaffirm Richard Wu’s ownership based on the purported reason that he had paid off the mortgage, knowing he was already the title owner. Under the clear and convincing evidence standard, the trial court should have rejected Richard Wu’s alleged belief that he needed to sign yet another deed to reaffirm his ownership, or that his real estate lawyer Mr. DiMartini *also* believed Richard Wu needed to sign another deed to

reaffirm ownership in property, especially given that he was the *same* lawyer that did the June 28, 1998 deed transferring the title from Bonnie Wu to Richard Wu. Therefore, the Court should reach the conclusion that Richard Wu failed to establish that the purpose of the December 10, 1998 deed was merely to reaffirm Richard Wu's ownership in the property.

Given that his lawyer Mr. DiMartini, who just prepared the June 28, 1998 deed less than half a year ago, *knew* that Yin Fu Wu and Yin Shan Wu were two different individuals, there are *only* two logic explanations for the creation of the December 10, 1998 deed: (1) the purpose of the December 10, 1998 deed was to transfer the title from Richard Wu to Yin Shan Wu (namely, Sam Wu), as reflected by the language stating Richard Wu being the transferor and Yin Shan Wu being the transferee, (2) Richard Wu purposefully created an identity issue that he and Yin Shan Wu were the same person, as reflected by the language stating that Yin Fu Wu and Yin Shan Wu are the same person, which would explain why he signed both his name and Yin Shan Wu's name on the title transfer documents. Given Richard Wu's admission that he specifically told his lawyer Mr. DiMartini that Yin Fu Wu and Yin Shan Wu were two different individuals, the Court should find that the purpose of the December 10, 1998 deed was indeed to transfer the title from Richard Wu to Sam Wu. Indeed, whatever the scenario is, it would not change the fact that Richard Wu engaged in an egregious fraud by forging his brother Sam



Wu's signature, as the transferee, on the title transfer documents that he also signed as the transferor.

There is no dispute, as the trial judge found, that Richard Wu "willfully and knowingly" signed his brother Yin Shan Wu's name on the title transfer documents on December 10, 1998. (Trial Tr., Jan. 23, 2023, Pg. 28, Ln. 8 – 11) Appellants fail to understand how Richard Wu's forgery of his brother Sam Wu's name on the deed would not constitute unclean hands. Richard Wu's any attempt to brush away the forgery issue, or otherwise claims it was an innocent error, must be rejected, under the clear and convincing evidence standard. In his Opposition Brief, Richard Wu conveniently claimed that he forged his brother's signature because his lawyer Mr. DiMartini told him to do it. Mr. DiMartini passed away, and the Court should not simply accept Richard Wu's convenient, self-serving, statement that his lawyer told him to sign someone else's name so he did it. Even assuming Mr. DiMartini indeed told him to fraudulently sign his brother's name, clearly that is still no excuse for Richard Wu to engage in such an egregious fraud.

With respect to the unclean hands argument, the issue presented to the Appellate Division is as follows: where Richard Wu willfully engaged in a fraud by forging his brother Sam Wu's signature on the title transfer documents, thereby enabling Sam Wu to transfer the title to others at a later time, whether Richard Wu is entitled to seek relief as a result of Sam Wu's subsequent title transfer?

Richard Wu was a sophisticated individual that possessed a Master's Degree and had been involved in a series of real estate transactions. He knew that he was forging his brother Yin Shan Wu's (namely, Sam Wu) signature as the transferee in connection with the December 10, 1998 title transfer, and he knew the consequence. There must have been a reason why he engaged in such a fraud, and presumably the reason is the ownership dispute between the two (2) brothers which was explored at trial. In any event, Richard Wu (the fraudster that created the December 10, 1998 deeds) is not entitled to seek any relief from a court after Sam Wu (as the title owner pursuant the deed created by Richard Wu) transferred the title to Global Champion, due to his unclean hands.

Richard Wu attempted to downplay his forgery of Sam Wu's signature on the December 10, 1998 deed by claiming that it "was nothing more than a misunderstanding by Richard." Should Richard Wu's willful forgery of Sam Wu's signature on the deed be deemed as merely "nothing more than a misunderstanding," or should Richard Wu be viewed as a "wrongdoer with respect to the subject matter in suit"? Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 158, 777 A.2d 19, 32 (2001)

The Appellate Division may find it confusing as to how the December 10, 1998 deed was prepared and the surrounding circumstances. However, what is crystal clear is that Richard Wu did willfully engage in a fraud by forging his

brother Sam Wu's signature on the title transfer documents listing Sam Wu as the transferee, and Richard Wu signed his own name at the end of the document as the transferor. Richard Wu certainly knew the legal consequence of creating and signing such a title document listing Yin Shan Wu as the transferee/new owner. We reserve all rights with respect to arguments why Sam Wu is the rightful owner of the 293 Property; however, for the purposes of the unclean hands argument, the fact that Richard Wu willfully forged his brother Sam Wu's signature on the title transfer documents (thereby enabling Sam Wu to subsequently transfer the title to someone else) is enough.

The trial court's logic was that the December 10, 1998 deed was voidable due to the incorrect statement therein regarding Richard Wu and Sam Wu being the same person, and as a result, the June 28, 1998 deed, which listed Richard Wu as the property owner, became the controlling deed. However, this is not an analysis under the unclean hands doctrine. Respectfully, the finding of the December 10, 1998 deed being voidable (which Appellants disputes) does not preclude a finding that Richard Wu engaged in unclean hands. Voidability and unclean hands are two (2) different legal issues. Appellants respectfully request the Court to specifically and directly address the unclean hands issue in its ruling, namely, whether Richard Wu's egregious forgery of Sam Wu's signature on title transfer documents listing Sam Wu as the transferee, thereby permitting Sam Wu to transfer the title to others,

bars Richard Wu's action to seek relief in connection with Sam Wu's subsequent title transfer (regardless of whether the December 10, 1998 deed is voidable).

For the foregoing reasons, Appellants respectfully request that the Appellate Division finds that Richard Wu's claims have been barred by the unclean hands doctrine, and reverse the trial court's decision accordingly.

### **B. Statute of Limitations**

Richard Wu's quiet title action is also barred by the statute of limitations. Both sides agree that the applicable statute of limitations is twenty (20) years. N.J.S.A. 2A:14-7.

The Court should find that for statute of limitations purposes, the clock already started to tick the moment Richard Wu forged his brother Sam Wu's name on the problematic deed on December 10, 1998, which enabled Sam Wu to later transfer the title to someone else. As discussed *supra*, there is no basis to say that Richard Wu forged Sam Wu's signature was any innocent error, whether or not his lawyer told him to engage in such a fraud. As a well-educated, and experienced, property owner, Richard Wu knew that he was forging his brother's signature, and he knew that he was forging his brother's signature in connection with the title transfer documents that he hired his real estate lawyer Mr. DiMartini to prepare. Therefore, he knew that by virtue of his fraud, he had created a deed naming Sam

Wu as the new owner, which enabled Sam Wu to transfer the title to someone else. Unfortunately, the trial judge merely found that the deed at issue was voidable because the identity information stated in the body of the deed was incorrect. Richard Wu filed the underlying lawsuit because he purportedly found out that Sam Wu transferred the title to Global Champion in 2019, *pursuant to the December 10, 1998 deed* that was fraudulently created by Richard Wu himself.

Respectfully, for the purposes of a statute of limitation analysis, the issue is, whether Richard Wu knew, or should have known, that on December 10, 1998, he had already fraudulently created a problematic deed permitting Sam Wu to transfer the title to someone else. Obviously, the answer is: Yes! Therefore, the underlying lawsuit, which was filed on August 16, 2020, was untimely because Richard Wu's claims have been barred by the 20-year statute of limitations.

Appellants stand by their other arguments with respect to the statute of limitations issue, including the arguments based on Richard Wu's handling tax rebate checks, and utility bills still listing Sam Wu and his wife Jane Wu's names. For instance, Richard Wu admitted that he deposited only the tax rebate checks for only the 291 property, but did not deposit the tax rebate checks he received for 293 property because they were sent to his brother's name for 22 years. Thus, for at least 22 years, he knew, or should have known, that there existed a title issue with

respect to the 293 property subject to this litigation, but failed to initiate any legal action to address it until after the applicable statute of limitations had expired.

Richard Wu baselessly argued the discovery rule. However, given the fact that the clock already started to tick when he fraudulently created the December 10, 1998 deed, and how he handled tax rebate checks for at least 22 years, there is no room for the discovery rule to apply.

Appellants stand by their arguments set forth in the Appellate Brief with respect to multiple equitable doctrines, such as equitable estoppel, fraud, waiver, laches, and statute of frauds. Among other things, Appellants vigorously dispute Richard Wu's assertion that his egregious forgery of Sam Wu's signature on the title documents (although allegedly pursuant to advice of counsel) should be deemed merely "an error made in good faith." (Opp. Br., Pg., 57) These equitable doctrines, which were presented by Appellant in the underlying litigation but the trial judge failed to analyze, would also result in the dismissal of the Complaint.

### **III. THE COURT SHOULD DISMISSAL THE CROSS-APPEAL**

Richard Wu filed a cross-appeal, wherein he packed multiple meritless arguments. The Court should outright dismiss his meritless cross-appeal, which lacks both factual and legal support.

### **A. Fraud**

The trial court correctly dismissed Richard Wu's fraud claim. The Court should first note that the aforementioned unclean hands argument equally applies to Richard Wu's other causes of action, including without limitation the fraud claim. It is Richard Wu that fraudulently forged Sam Wu's signature on the title transfer documents on December 10, 1998. Given his unclean hands, he is not entitled to assert causes of action against Sam Wu based on his transfer of the title to Global Champion.

The Court should also note that Richard Wu failed to meet the elements of the cause of action of fraud. First, given the December 10, 1998 deed (which was created by Richard Wu himself) listing Sam Wu as the property owner, Richard Wu cannot meet his burden of proof, which is a heavy burden under a heightened standard, that either the estate or Global Champion made any misrepresentation. In fact, to the extent any incorrect information in the December 10, 1998 deed is deemed as a misrepresentation, it is Richard Wu (the creator of the deed), not Appellants, that made such a misrepresentation. Secondly, as the trial court pointed out, neither the estate nor Global Champion had knowledge regarding the creation of the two (2) problematic December 10, 1998 deeds, they cannot have intentionally committed fraud when conducting the transaction based on a title document in the public record. Thirdly, the Court should also note that before the

transaction, they hired an attorney Vincent Wong to research the title issue and relied upon Mr. Wong's findings and advice, which means they did not have the knowledge or belief of the falsity of the alleged misrepresentation. Further, Richard Wu also failed to establish his "reasonable reliance" because as confirmed by the Opposition Brief, he was not even aware when the transaction occurred. Last but not least, the only alleged damages discussed in the Opposition Brief are the attorney's fees, which Richard Wu argued to be an exception to the American Rule because "the other defendants" should be deemed as third parties. We fail to see how Richard Wu can get around the American Rule, and fail to understand his confusing logic as to how the defendants he has been litigating with should be deemed as third parties.

### **B. Fraudulent Conveyance**

By the same token, Richard Wu's fraudulent conveyance claim should be dismissed. The only theory advanced in the Opposition Brief is "actual intent to defraud." However, as discussed *supra*, Richard Wu cannot establish Defendants' actual intent to defraud in light of the fact that Richard Wu created the December 10, 1998 deed listing Same Wu as the title owner, and that Defendants relied on Vincent Wong, Esq.'s investigation and advice. Moreover, again, the unclean hands doctrine bars Richard Wu's fraudulent conveyance claim.



### **C. Conspiracy To Commit Fraud/Civil Conspiracy**

Other than the fact that Sam Wu transferred the title to Global Champion in 2019, there is nothing in the record with respect to any alleged conspiracy among the defendants. There is no evidence whatsoever in the record with respect to how Appellants/Defendants formed any sort of agreement among themselves to commit any wrongdoing against Richard Wu. Richard Wu failed to prove the existence of any such agreement, the content of such an agreement, or exactly which Appellant(s) were involved in such an agreement. The Court cannot conclude there was any conspiracy based on vague and conclusory allegations. Delbridge v. Office of Pub. Defender, 238 N.J. Super. 288, 314, 569 A.2d 854 (Law Div. 1989).

In addition, conspiracy is not an independent cause of action, but rather a “liability expanding mechanism” which exists only if a plaintiff can prove the underlying “independent wrong.” L.C. v. Middlesex County Prosecutor’s Office, 2021 N.J. Super. Unpub. LEXIS 598, \*55 (App. Div. 2021). Because Richard Wu’s fraud claim fails, his conspiracy to commit fraud claim fails as well.

### **D. Punitive Damages**

Richard Wu’s punitive damages claim is frivolous. This is clearly not a case where Richard Wu should be entitled to any punitive damages under the applicable standard.

First, Richard Wu's unclean hands bars him from seeking *any* damages, not to mention punitive damages, in light of his egregious forgery of Sam Wu's signature on the title transfer documents. In addition, the transaction at issue, which was complained by Richard Wu, is justified by the December 10, 1998 deed listing Sam Wu as the property owner. Moreover, there is nothing in the record showing that Global Champion was even aware of the fact that it was Richard Wu, not Sam Wu, that signed Sam Wu's signature on the December 10, 1998 deed. Further, Defendants hired an attorney Vincent Wong, Esq. to conduct research with respect to the title issue, and acted accordingly based on Mr. Wong's advice. There is no way for Richard Wu to prove, by clear and convincing evidence, that Appellants/Defendants' conduct was malicious, or they acted in wanton and willful disregard of Richard Wu's rights. N.J.S.A. 2A:15-5.10.

### CONCLUSION

None of the arguments advanced by Respondent/Cross-Appellant Richard Wu has any merit. Therefore, the Court should grant the relief requested by Appellant, and outright deny the Cross-Appeal.



Dated: May 7, 2024

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Plaintiff/Respondent/Cross-  
Appellant

-against-

YIN SHAN WU a/k/a SAM WU,  
GLOBAL CHAMPION CAPITAL  
LLC, a New York limited liability  
company, JOHN DOES #1-10, JANE  
DOES #1-10, fictitiously named parties,  
true name(s) unknown, and COMPANY  
ABC #1-10, fictitiously named entities,  
true name(s) unknown.

Defendants/Appellants/Cross-  
Respondents

SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION  
DOCKET No. A-003300-22

ON APPEAL FROM SUPERIOR  
COURT, CHANCERY DIVISION  
HUDSON COUNTY  
DOCKET NO.: HUD-C-157-20

Hon. Mary K. Costello, P.J.Ch.  
sat below

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REPLY BRIEF FOR RESPONDENT/CROSS-APPELLANT RICHARD WU IN  
RESPONSE TO OPPOSITION OF APPELLANTS/CROSS-RESPONDENTS  
WITH RESPECT TO RESPONDENT/CROSS-APPELLANT'S CROSS-APPEAL

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## PRELIMINARY STATEMENT

The Opposition filed by Appellant/Cross-Respondents, Sam Yin Shan Wu a/k/a Yin Shan Wu a/k/a Sam Wu, deceased (“Sam Wu”), his family, and their sham company, Global Champion Capital, LLC (“GCC”) (collectively, “Appellants”), continues to argue, that Respondent/Cross-Appellant, Richard Wu (“Richard”), acted with unclean hands when he signed the name “Yin Shan Wu” on the December 1998 Deed. As a result of this “egregious” fraud, Appellants contend that Richard should be precluded from seeking the affirmative relief addressed in his cross-appeal. What Appellants fail to identify, however, is who exactly was harmed by Richard’s actions, which, as the Trial Court concluded, was merely a mistake by Richard, not an attempt to deceive anyone or otherwise alter title. In point of fact, again as found by the Trial Court, because Richard maintained all indicia of ownership of the property at all times relevant after signing the December 1998 Deed, Richard’s mistake did not impact anyone’s rights or title to the Property, including that of Appellants.

By contrast, the fraud perpetrated by the Appellants as articulated in Richard’s cross-appeal is laid bare in Appellants’ opposition wherein they *concede* that they had no knowledge their potential claim of ownership of the Property or the December 1998 deed until it was uncovered by their attorney, Vincent Wong, Esq. in or about 2016. Importantly, this position is in stark contrast to the Appellants’



arguments and sworn testimony throughout this litigation, wherein Appellants repeatedly argued that they had always been the rightful owners of the Property. In fact, Appellants relied upon a series of stories to support their supposed claim of ownership and control of the property including (1) that Sam Wu, as the owner, maintained the property, paid the taxes, collected the rents, etc. and (2) that Richard was a property manager for Sam Wu. While these theories always lacked believability, Appellants' admission that they knew Sam Wu was not the owner or caretaker of the Properties, evidences the fraudulent and malicious nature of Appellants' actions which are at issue in Richard's cross-appeal. Respectfully, Appellants should be held to account for their actions by way of the relief sought in Richard's counterclaim/cross-appeal.

## ARGUMENT

### **I. The Trial Court Erred in Denying Richard’s Counterclaim**

As outlined in Richard’s initial brief, it is respectfully submitted that the Trial Court erred in denying Richard’s counterclaims, which are all premised on the dishonest and fraudulent conduct of the Appellants. Indeed, as outlined below, in opposing Richard’s counterclaim on these issues, Appellants concede the that their previously articulated defense – actual ownership of the property – was a conjuring for this litigation. In fact, Appellants now go so far as to argue, for the first time, that they were simply acting upon the advice of counsel when their attorney, Vincent Wong, Esq. discovered the error in the December 1998 Deed. Respectfully, Appellants’ resorting to new arguments at this late date to account for the otherwise unaccountable actions evidences the very fraud they argue against.

#### **A. Appellants’ Actions in Transferring the Property Constitute Fraud, Fraudulent Conveyance, Conspiracy, and Warrant Punitive Damages**

Appellants contend that Richard’s cross-appeal must be denied as Richard was acting with unclean hands in light of his admission that he signed the name Yin Shan Wu on the December 1998 Deed. They further argue that their actions were not fraudulent because (1) Richard knowingly signed the name; (2) neither Sam Wu (or his estate) nor GCC knew about the December 1998 Deeds; and (3) they relied upon advice of counsel, Vincent Wong, Esq., with respect to their decision to transfer the

property after hiring him to conduct title issues. None of these provide a defense to Richard's claims of fraud and request for punitive damages.

(i) *Richard Did Not Act with Unclean Hands*

Beginning with Richard's signing of the name Yin Shan Wu on the December 1998 correctory deed, as found by the Trial Court, this was done in error by Richard under the mistaken impression that he needed to reestablish title in his name. (Da066-Da068). As further found by the trial Court, because the December 1998 Deed contained a "forgery," it was not only null and void as a matter of law, it was incapable of passing any rights, even to a bona fide purchaser. Ibid; See e.g., Szelc v. Stanger, 2011 WL 1467187, at \*13 (D.N.J. Apr. 18, 2011) (citing U.S. v. Guaranty Trust Co. of N.Y., 293 U.S. 340, 345, 55 S.Ct. 221, 79 L.Ed. 415 (1934)).

Moreover, there was nothing nefarious about Richard's action, as it was done under the supervision of his then attorney, Patrick DiMartini, Esq. (Da065-Da066). Additionally, following execution of the December 1998 Deed, Richard exercised all indicia of ownership of the property up through the present, including paying all taxes, expenses, and collecting rents. (Da068-Da069). Thus, contrary to the Appellants' arguments, Richard cannot be guilty of unclean hands as there was no intention to transfer the property or reliance thereon. The creation of the December 1998 Deed and Richard's signing of the name Yin Shan Wu was nothing more than an innocent, superfluous error.

(ii) *Appellants' Admission That They Were Unaware of the December 1998 Deed Until So Informed by Vincent Wong, Esq. Evidences the Very Fraud They Argue Against*

Rather than absolving Appellants of fraud, the Appellants' admission in their opposition brief that they only became aware of the December 1998 Deed from Vincent Wong, Esq. is *prima facie* proof that Appellants have acted in a malicious and fraudulent manner throughout. See Appellants' Reply Brief at Pg 14 ("Secondly, as the trial court pointed out, neither the estate nor Global Champion had knowledge regarding the creation of the two (2) problematic December 10, 1998 deeds...") By way of a recap, Appellants' defense of this litigation from the outset, including through sworn testimony, has been that Appellants owned and personally cared for the property from 1986 to the present including by hiring Richard to manage the property. (See e.g., 13T47:9-11) (Jane Wu testifying Sam Wu "was constantly involved in the management of the particular property up until 2019. Prior to 2019 he was involved."); 13T75:10-23 (Jane Wu explaining that her family has owned the property since 1986 and that Richard merely collected rents and paid expenses on their behalf); 3T84:13-17 (Jane Wu agreeing that Richard was their property manager).

Appellants' position that they became aware of the December 1998 deed and transferred the property to GCC with and through the advice of counsel (in 2016), as articulated in their opposition brief, is a complete "180" from the foregoing sworn

testimony. Said another way, Appellants could not at once be the knowing and rightful owners of the Property exercising all aspects of ownership, as they testified, while, at the same time, having no knowledge of the existence of the deed purporting to convey them the very same ownership interest.

Appellants' assertion that they were merely acting upon advice of counsel in transferring the property to GCC is equally unavailing and similarly inculcating with respect to their fraudulent actions. To be clear, Appellants' opposition brief is the first time Appellants have ever conceded that they were first notified about the Deed by Mr. Wong and that they acted pursuant to his legal guidance in selling the property. Rather, as noted above and in Richard's initial brief, Appellants have at all times argued that they were and have always been the rightful owners of the Property. Moreover, and even more egregiously, Appellants are seemingly now relying upon an "advice of counsel" defense that was never previously raised in the many years of the subject litigation. Not only are Appellants precluded from relying on this novel theory at this late date (See e.g., State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006) (explaining that "issues not raised below, even constitutional issues, will not ordinarily be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest.")), but their failure to raise the issue earlier deprived Richard of the ability to seek discovery on this issue, including production of otherwise protected attorney-client communications. Blitz v. 970

Realty Associates, 233 N.J. Super. 29, 37 (App. Div. 1989) (concluding plaintiff waived the attorney-client privilege as to her communications with her counsel prior to entering into the contract to address issue of reasonable reliance in claim of legal and equitable fraud).

In short, Appellants' opposition, if anything, removes any doubt that the Appellants' actions in deeding the Property from Sam Wu to GCC were a knowing and malicious attempt to steal the Property from Sam Wu's estranged and hated brother, Richard. See e.g., 13T84:23-86:3 (Jane Wu explaining that neither she nor her husband like Richard). Indeed, while Appellants had previously asserted that this matter involved, at worst, a dispute over who had cared for the property for the last 25 years, their most recent submission makes it clear that these positions were a smokescreen. Said another way, until at least 2016, Appellants had no claim of ownership and simply sought to take advantage of Richard's mistake when it was brought to their attention by Vincent Wong, Esq. These actions are the very definition of malice for which punitive damages are appropriate. See N.J.S.A. 2A:15-5.12(a) (explaining that punitive damages are appropriate where the "acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by [them].").

**B. Appellants Conspired To Commit The Fraud And Acted In Concert To Commit The Fraud**

Appellants' opposition contends that "only two men in the world knew the truth of the key facts subject to this litigation, namely, Sam Wu and Richard Wu." This contention, however, is wholly contradicted by the record which establishes that the Wu Family, including Sam Wu, Jane Wu, Jason Wu and Charles Wu all knew the truth as to ownership of the property and participated in the conspiracy to deprive Richard of the property.

For example, the whole family, including Sam Wu, Jane Wu, Jason Wu and Charles Wu, knew and actively conspired and acted in concert to plan the fraud scheme. In 2016, Sam Wu and Jane Wu sat together in Vincent Wong, Esq.' office to discuss with their lawyers about the title search of 293 Property. See 9T 73:9-12; 80:17-20; 81:4-6, Jan. 24, 2023) (Jane Wu explaining that she went with her husband to Vincent Wong's office on February 4, 2016). See also 9T 62:15-23; 64:18-25; 90:7-91:2 Jan 24, 2023) (Jane Wu admitted that she personally used the Citibank account that she jointly owned with Sam Wu to pay the expenses of their rental properties, among which one check was issued to Vincent Wong's office for a title search on the Property in 2016). Similarly, Jason Wu and Charles Wu's testimony established that the whole family participated in the conspiracy to fraudulently convey the property to GCC. See 1T 95:21-96:15, Jan. 4, 2023 (Jason Wu admitted that he and his brother Charles Wu managed the GCC. See also 2T 37:1-16, Jan. 5,

C. (Chales Wu admitted that he and Jane Wu managed the finances of GCC and W Family Holding, the holding company of GCC).

The Trial Court recognized as much when it sought to clarify this exact point the participants at the meeting in 2019 when the plan to transfer the property was hatched:

THE COURT: So Mr. Wu, what I want to understand, is, you signed these documents as a representative of Global Champion Capital by the authority granted to you by your own self on behalf of W Family Holding. So you represent everyone involved and every entity involved on the one side of this transaction, and you cannot tell us who decided that the price would be \$180,000? Is that your testimony?

THE WITNESS: I cannot -- I dont know who -- there was more than one person, I can tell you that.

THE COURT: Well, were you one of the people?

THE WITNESS: Pardon me?

THE COURT: Were you one of the persons who came to this decision?

THE WITNESS: Came one. One of them.

THE COURT: You were one of them. Who were the other people?

THE WITNESS: The lawyer from the law office of Vincent S. Wong.

THE COURT: Give me that persons name. Is it Mr. Wang himself o r somebody else?

THE WITNESS: That include Vincent S. Wong.

THE COURT: Okay. So we now know that you and your attorney were two of several people that decided on the purchase price.



Her question, is, who else was involved in deciding the purchase price besides you and Mr. Wang.

THE WITNESS: I presume it would be Yin Shan Wu.

THE COURT: Who is the grantor under the deed, right?

THE WITNESS: Yes, thats correct.

THE COURT: All right. Anybody else other than you, Mr. Wang, and Yin Shan Wu?

THE WITNESS: Not that I know of.

2T 47:4-48:14, C. Wu Direct Examination, Jan. 5, 2023

Jane Wu Similarly recalled the entire family being present for the fraudulent deed transfer:

Q: The question, is, where did the closing -- I mean sign the deed, took place?

A: At Vincent Wong attorney office.

Q: Who were there at closing in the Vincent Wong office?

A: I think all the people is there.

...

Q: Do you remember at deposition you testify your family, including you, Sam Wu, and your two son were there?

A: *Now you just refresh my memory.*

Q: Okay. So other than your family, did you --was there any lawyer present at the closing?

A: I cannot recall anymore. I know there is two attorney there, but it is so many people was there.

9T 83:8-84:8, Jane Wu Direct Examination, Jan. 24, 2023 (emphasis added)

The entire family similarly participated in hiring and working with Dean Clark quickly put the property up for sale following the 2019 fraudulent transfer:

Q: Could you describe me the circumstances when you first met Sam Wu.

A: Yes. So I had reached out to Mr. Sam Wu and we had the discussion about his property on Second Street there, and he let me know that he was interested in selling, and so we arranged a meeting a couple months after that initial phone call to meet in person at the property, and that is how we got together.

Q: Right. Along with Sam Wu, was there anybody else you met?

A: *His two sons and his wife.*

Dean Clark, 4T 59:18-60:5, Jan. 10, 2023 (emphasis added).


Thus, contrary to the Appellant's argument, the record is replete with testimony by the Appellants themselves specifically acknowledging that they all played a role in planning and carrying out the fraudulent to convey Richard's property to GCC without Richard's knowledge or consent.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should reverse and remand with respect to Richard's cross-appeal with instructions for the Trial Court to make a determination as to Richard's compensatory damages and the quantum of punitive damages.

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