

IN THE MATTER OF THE
ESTATE OF BYUNG-TAE OH,
DECEASED.

SUPERIOR COURT OF NEW JERSEY
APPELATE DIVISION

DOCKET NO.: A-003678-22

CIVIL ACTION

ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
PROBATE PART
BERGEN COUNTY

SAT BELOW
HON. EDWARD A. JEREJIAN, J.S.C.
HON. ROBERT P. CONTILLO, P.J.Ch.

DOCKET NO. BELOW
BER-P-18-13

BRIEF OF PLAINTIFF/APPELLANT, WON KI OH

WON KI OH
122 GIL 32
GANGNAM GU
SEOUL
ZIP CODE: 06085
(82) 010 3715 3883
BMW8827@GMAIL.COM
PLAINTIFF, (PRO SE)

ON THE BRIEF:
WON KI OH (PRO SE)

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Cases

No Legal Authorities are cited in this brief. The issues presented primarily involve factual and procedural matters, and the arguments are based on the unique circumstances of the case rather than relying on established legal precedents or rules.

PRELIMINARY STATEMENT

On June 19, 2023, the New Jersey Probate Court denied the Plaintiff's Cross-Motion in its entirety without offering a clear and fair explanation.

Upon the Estate Administrator's appointment in 2014, a pivotal duty entrusted to him was the filing of the Non-Resident United States Tax Return, Form 706-NA, thereby disclosing the comprehensive value of the Estate. Regrettably, the Probate Court has, contrary to the Administrator's unmet obligation, granted the Administrator's relief and granted the designation of the Defendant as a Party having the authority to file a Non-Resident United States Tax Return, Form 706-NA.

The order denying the release of funds from the Escrow Account amounting to \$75,000, advanced by the Plaintiff for the Administrator's fees and expenses in 2015 is a critical error. The Probate Court fails to consider the merits of the Plaintiff's claim and unjustly restricts the Plaintiff's access to funds rightfully.

Furthermore, the order denying the direct payment of the Fee Award, amounting to \$1,049,589.14, from the Escrow Account, is inconsistent with the principles of equity and fairness. The Escrow Account is undoubtedly a part of the Estate as evidenced by the prior disbursement of the Administrator's fees in 2018. Both the Appellate Decision on March 23, 2021,

and Probate Court's Order on August 31, 2022, affirm the Plaintiff's right to reimbursement from the Escrow Account, given its undeniable inclusion as part of the Estate.

Moreover, the order denying the Plaintiff's cross-motion for the Administrator to recover outstanding account receivables on behalf of B&H neglects the fiduciary duty owed to the Estate. The Probate Court's decision fails to protect the interests of the Estate and its beneficiaries.

PROCEDURAL HISTORY

A. Background of the Case

Plaintiff, Wonki Oh, a resident of the Republic of Korea, is the natural son of Byung-Tae Oh (a61). Decedent, Byung-Tae Oh (“Decedent”), died on February 06, 2012. (a61). The Decedent was a citizen and domiciliary of South Korea all his life and resided at 25-12, Seongbuk-Dong, Seongbuk-Gu, Seoul, South Korea at the time of his death. (a61). Decedent died intestate and no Administrator has been appointed for the Estate, as is customary in Korea. (a61).

Decedent’s next of kin include a surviving spouse, Hiesung Lee, two sons – Plaintiff and Defendant Hyung Kee Oh and one daughter, Hien Joo Oh. (a62). Pursuant to Korean law, in the absence of a will, the children and spouse of a decedent inherit the Estate. Thus, Plaintiff and his siblings will receive an equal share of the Estate and the surviving spouse will receive one and one half (1.5) times the share inherited by each child. (a62).

At the time of his death, Decedent was the majority shareholder, chief executive office, and chairman of the board of directors of another entity known as Dong Nam Housing Industrial Co., Ltd. (“Dong Nam Korea”), a prominent real Estate and construction company located in South Korea. (a65).

B. Oh Chronology – prepared by David M. Repetto

This is a chronology of the key events in the Matter of Byoung-Tae Oh, Deceased. This chronology was prepared by Plaintiff's former attorney, David M. Repetto, HARWOOD LLOYD, LLC., and is attached in the appendix with David's Certification (a452).

01/18/13 - On or about January 18, 2013, Wonki Oh ("Plaintiff") filed a complaint against Hyung Kee Oh, Heinjoo Oh and Hiesung Lee ("Defendants") at the New Jersey Probate Court (a61) seeking appointment of an Estate Administrator to investigate the Estate assets/gifts in New Jersey and thereafter to file federal and Estate tax and gift returns—defendants are Hyung Kee Oh, Heinjoo Oh and Hiesung Lee. (a62). B&H Consulting and Development Company, LLC ("B&H LLC") is not a defendant to the litigation. As shown in the attached copy of the complaint filed, this case is an Estate litigation.

03/13 - In or about March, 2013, Defendants filed a motion to dismiss (a8) claiming that there is no Estate asset in New Jersey but it was denied. Since then, Hyung Kee Oh started to claim that decedent's \$900,000 (wired from decedent's personal bank account to B&H LLC's corporate bank account in December 2001) is an inter vivos gift to him, not decedent's investment in B&H LLC (a318).

10/13 - In or about October 2013, Plaintiff changed the law firm representing him in this case from Norris McLaughlin & Marcus, P.A. to Harwood Lloyd, LLC.

03/14 - In or about March 2014, Plaintiff filed a motion for summary judgment seeking the appointment of the Estate Administrator in New Jersey, claiming that such \$900,000 is an Estate asset in New Jersey, justifying the appointment of the Estate Administrator in New Jersey. (a55). Defendants filed a cross motion for summary judgment dismissing Plaintiff's request for appointment of the Estate Administrator in New Jersey, alleging that such \$900,000 is an inter vivos gift to him from the decedent and there is no Estate asset in New Jersey. (a324).

05/14 - In or about May 2014, Plaintiff's motion for summary judgment was granted (a313) and Defendants' cross motion for summary judgment was denied. (a328).

The New Jersey Probate Court held that the decedent's \$900,000 is an investment in B&H LLC and there is an Estate asset in New Jersey justifying the appointment of the Estate Administrator in New Jersey. (a327) (a328)

05/14 - In or about May 2014, Stuart Reiser, Esq. was appointed as the Estate Administrator in New Jersey as Plaintiff's motion was granted. (a313)

05/14 - In or about May 2014, Defendants appealed. (a329)

08/14 - In or about August 2014, a motion to stay filed by Defendants (a340) was denied, except dissemination of information to third parties was proscribed during the pendency of the appeal and the order denying the stay was affirmed by the appellate court thereafter.

09/14 - In or about September 2014, Defendants changed their law firm in this case from Archer & Greiner P.C. to Greenbaum, Rowe, Smith & Davis LLP.

02/15 - In or about February 2015, a confidentiality order was entered. Hyung Kee Oh claimed that he would not produce the accounting and financial documents of B&H LLC without the confidentiality order.

02/15 - In or about February 2015, a motion for interim Estate Administrator fee (a370) of \$75,000 filed by Stuart Reiser, Esq. was granted and the New Jersey Probate Court issued such court order that such \$75,000 shall be paid from the Estate. (a371).

09/15 - In or about September 2015, a motion to compel the Estate to comply with the court order regarding the interim fee of \$75,000 filed by Plaintiff was denied. (a374). The New Jersey Probate Court denied it as the Estate is under foreign jurisdiction. As Defendants were controlling the Estate assets both in Korea and the US, Plaintiff asked the New Jersey Probate Court to issue the court order that Defendants shall lift the

attachment on his inheritance share of the decedent's cash deposit at the bank accounts in Korea and pay the Estate administration fee of \$75,000 from such. At that time, Hiesung Lee filed a lawsuit for attachment on Plaintiff's inheritance shares of such cash deposit, alleging that she paid his Estate/inheritance tax portion and she wanted to file an attachment on Plaintiff's inheritance. She did not file similar motions against the other heirs who did not pay.

Thereafter, a motion for reconsideration was denied.

01/16 - In or about January 2016, Stuart Reiser, Esq. filed an action for discovery at the New Jersey Chancery Court. Despite the repeated requests, Hyung Kee Oh did not cooperate with the document production necessary for the Estate administration in New Jersey. (a377).

05/16 - In or about May 2016, the New Jersey Probate Court's decision granting Plaintiff's motion for summary judgment was affirmed by the New Jersey Appellate Court. (a411).

08/16 - In or about August 2016, Defendants' motion to limit the authority of the Estate Administrator was denied. They alleged that the Estate Administrator's authority is too broad.

08/16 - In or about August 2016, Stuart Reiser, Esq.'s motion for the 2nd Estate Administrator fee of \$75,000 was granted (a424) and the New Jersey

Probate Court issued the court order that it shall be paid from the Estate.
(a443).

Stuart Reiser, Esq. has hired a forensic accountant and has been pursuing information from Hyung Kee Oh who has continued to resist for long periods of time. Once Stuart Reiser, Esq. obtains necessary information, the Estate administration in New Jersey can be done.

C. **The Following Key Court Decisions**

The following are key court decisions that occurred after the above chronology.

On July 30, 2018, Judge Robert P. Contillo, granted the Administrator's Motion for Approval of the Forensic Report and for further Directions. (a601).

Following the aforementioned Court Decision, Won Ki Oh ("Plaintiff") and Hyung Kee Oh ("Defendant") filed motions seeking an award of counsel fees and costs to be extracted from the Estate because of their contributions in unveiling the Estate. And on January 14, 2019, Judge Edward granted the proposed amounts submitted by the Administrator for the Plaintiff and the Defendant (a563). The Order stated Won Ki Oh ("Plaintiff") shall be entitled to reimbursement in the amount of \$1,049,589.14 and Hyung Kee Oh ("Defendant") shall be entitled to reimbursement in the amount of \$978,157.99. (a573) and that the parties' attorney's fees and costs

reimbursements shall be distributed out of the Decedent's New Jersey Estate assets.

In response to this decision, Won Ki Oh ("Plaintiff") and Hyung Kee Oh ("Defendant") appealed to the Superior Court seeking an increase in award of attorney's fees.

However, the Superior Court's Appellate decision of March 23, 2021 concluded that Hyung Kee Oh ("Defendant") is not entitled to attorney's fees, whilst Won Ki Oh ("Plaintiff") should receive attorney's fees, however the specific amount is subject to determination by the New Jersey Probate Court, as the case has been remanded for reconsideration. (a616).

Following the Superior Court's Decision, the New Jersey Probate Court took one year and five months to reconsider Plaintiff's attorney's fees and on August 31, 2022, the Court ordered that the Plaintiff is entitled to a reimbursement of \$1,049,589.14 from the Estate. (a617).

Hyung Kee Oh ("Defendant") and the Administrator led Won Ki Oh ("Plaintiff") to believe that they would promptly disburse this amount to him, only to fail in fulfilling that commitment. Subsequently, on February 02, 2023, the Administrator filed a motion for an Order granting a final award of fees and disbursements to the Administrator, designating Defendant (or his

Agent) as a party having the authority to file a Non-Resident United States Tax Return, Form 706-NA, if he or his Agent determines the filing of the return is required, and discharging the Administrator of any further duties as Administrator in this matter. (a625). In his motion, the Administrator mentions that the Defendant has agreed to personally cover the final fees and costs that are outstanding amounting to \$25,000.00 within two weeks of the Court's Order if granted (a633).

Consequently, the Plaintiff filed a cross-motion opposing the Administrator's motion and to request the disbursement of award of fees to Plaintiff from the Escrow Account. However, on June 19, 2023, the New Jersey Probate Court denied Plaintiff's cross-motion without offering clear and fair explanation. (a694). As a result, the Plaintiff has chosen to appeal this matter to the Appellate Court.

STATEMENT OF FACTS

A. Overview

The matter at hand involves the Estate of Byung-Tae Oh, who passed away on February 06, 2012, a resident of the Republic of Korea (a67). The case commenced on January 18, 2013, when Won Ki Oh, (“Plaintiff”) filed a verified complaint against Defendants seeking the appointment of an Estate Administrator to investigate assets in New Jersey and handle tax-related matters (a67).

B. Material Events

1. Appointment of Estate Administrator (May 2014):

- Plaintiff’s successful motion for Summary Judgment led to the appointment of Stuart Reiser, Esq., as the Estate Administrator in New Jersey in May 8, 2014. (a55). (a313). (a328).

2. Legal Challenges and Appeals (2013-2016):

- Defendant’s unsuccessful attempts to dismiss the case and limit the authority of the Estate Administrator dated March 04, 2013. (a8). (a329).
- Appellate affirmations of Plaintiff’s Summary Judgment and the denial of Defendant’s motions in May 2016. (a313). (a328). (a423).

3. Fee Award Decision (March 23, 2021):

- Judge Edward A. Jerejian granted an award of Attorney's Fees to Plaintiff and Defendant on January 14, 2019, setting the stage for subsequent appeals. (a573).
- Superior Court's Appellate decision on March 23, 2021, concluded that Defendant is not entitled to fees, and Plaintiff's amount is subject to determination by the Probate Court. (a616).

4. Probate Court Decision on Fees (August 31, 2022):

- The Probate Court ordered Plaintiff's reimbursement of \$1,049,589.14 from the Estate. (a617).
- Administrator's motion in 2023 to finalize fees and discharge, leading to Plaintiff's cross-motion and its subsequent denial on June 19, 2023. (a694)

C. Outstanding Financial Matters (June 19, 2023):

- Administrator's failure to reveal the total estate value and fulfill tax-related duties.
- Denial of Plaintiff's cross-motion for funds release from the Escrow Account, including \$75,000 advanced in 2015. (a694). (Page 46 of Transcript – the court denying \$75,000 reimbursement because “this Court is in a place to be able to do that.”)

- Denial of Plaintiff's cross-motion for Fee Award of \$1,049,589.14 from the Escrow Account (a694). (Page 46 of Transcript – the court denying fee award as it would not be “proper”).
- Ongoing account receivables issues (a755), (Page 46 of Transcript – recouping of funds denied even though evidence of balance sheet shows receivables owed to the company.)

LEGAL ARGUMENT

POINT I

THE PROBATE COURT’S ORDER GRANTING THE ADMINISTRATOR’S MOTION ON JUNE 19, 2023, SHOULD BE REVERSED AS THE ADMINISTRATOR HAS FAILED TO REVEAL THE TOTAL VALUE OF THE ESTATE AND FULFILL HIS DUTY TO FILE THE NON-RESIDENT UNITED STATES TAX RETURN, FORM 706-NA, HIMSELF AND HE SHOULD NOT BE DISCHARGED. (Order Granting the Administrator’s Motion dated June 19, 2023, a694).

A. The Administrator’s Motion filed on February 02, 2023

The Administrator filed a motion for an Order granting a Final Award of fees and disbursements to the Administrator, designating Defendant (or his agent) as a party having the authority to file a Non-Resident United States Tax Return, Form 706-NA, if he or his agent determines the filing of the return is required, and discharging the Administrator of any further duties as Administrator in this matter. (a625).

When the Estate Administrator was appointed back in 2014, it was part of his duty to file the Non-Resident United States Tax Return, Form 706-NA himself, and revealing the total value of the Estate. However, the Probate Court has granted his relief and granted the designation of the Defendant as a

Party having the authority to file a Non-Resident United States Tax Return, Form 706-NA despite the Administrator's unfulfilled duty. (a699). His duties should have only been terminated once he had revealed the total value of the Estate and filed the Non-Resident United States Estate Tax Return, Form 706-NA himself.

It is essential that the Administrator reveals the total value of the Estate as there has yet to be a final determination of the value of the Estate in the United States. The value of the Estate's interest in B&H can and does affect the inheritance amount of share to which each beneficiary is entitled, including the Plaintiff. Furthermore, it will affect the amount of the Non-Resident United States Tax Return, Form 706-NA.

At that point in time, having reviewed the forensic report in detail, the Plaintiff, believed that he would find out exactly how much the Estate assets were valued at, on the assumption that the if the Administrator had fulfilled his duties, he would have revealed how much Non-Resident United States Tax Return, Form 706-NA needed to be filed.

However, in February 02, 2023, in the Administrator's Motion for Award of Final Fees and Disbursements, the Administrator has failed to report the total value of the Estate and in addition, the Administrator requests

his final payment of \$25,000 from the Defendant in the condition that he will be discharged of any and all further duties as Administrator and that the Defendant has been designated and authorized as the person having the authority to file a Non-Resident United States Tax Return, Form 706-NA, if he determines that one is required to be filed. (a633).

B. Certification of Administrator Appending Forensic Report, dated January 08, 2018, and Approval of Administrator's Forensic Report, filed July 30, 2018

Having begun his duties as Administrator in 2014, the Administrator has been investigating the Estate for three years and eight months and his Forensic Report was approved on July 30, 2018. (a515).

The Administrator and the Defendant became aware of the total value of the Estate's assets back in 2018 when the Administrator filed the Forensic Report, and it was approved by the Judge at the time. (a515). In the report, the Administrator states that his duty will be concluded after determining how much Non-Resident United States Tax Return, Form 706-NA, shall be paid to the US government, which also includes the assets in the Hawaiian Account and stated that the money from the Escrow Account should be used to pay for this tax. (a779). (a780).

In his Certification of Administrator in support of the Forensic Report (a779), shows the shares now belong to Hyung Kee Oh (“Defendant) and the mention of filing the Non-Resident Federal Tax Return, Form 706-NA, as well as footnote where the Administrator mentions the deferring of filing this tax until the Hawaiian Special Administrator issues his/her report. (a779). (a780).

On January 14, 2019, Judge Edward A. Jerejian granted order that Plaintiff shall be entitled to reimbursement in the amount of \$1,049,589.14 and that Defendant shall be entitled to reimbursement in the amount of \$978,157.99 and that the attorney’s fees and costs reimbursements shall be distributed out of the Decedent’s New Jersey Estate assets. (a573).

The Plaintiff originally sought an allowance of fees and costs totaling \$1,441,139.96 (a578) and the Defendant, \$1,440,557.90 (a579). The Court found that Plaintiff is only entitled to reimbursement of fees and costs pursuant to demonstrated invoices during the time in which Plaintiff benefited the Estate, which totals \$1,049,589.14, the value directly taken from Reiser Cert. (a579). The Court also found that the Defendant is entitled to \$978,157.99 for its legal fees and costs. (a579)

The Administrator has been awarded the total sum of \$297,809.33 in fees and costs, and the accounting firm of Weinberg, Liebman & Co. has been awarded the sum of \$149,000.00, both of which have been paid from the Escrow account. (a575). (a576).

Judge Edward A. Jerejian ordered that all costs and fees should be distributed out of the Decedent's New Jersey Estate Assets. (a573).

The sum requested by the Plaintiff and Defendant totaled \$2,881,697.86 and the sums paid to the Administrator and Accountant were \$446,809.33. All costs total up to \$3,328,507.19.

At the time of the claim for attorney's fees, the Administrator, and the Defendant were aware of the total value of the Estate whilst the Plaintiff was not.

Based on the claim and proposal by the Defendant, seeking the initial disbursement of fees and costs totaling \$1,441,139.96, and the Administrator's proposal (stating that the Plaintiff and Defendant contributed \$1,049,589.14 and \$978,157.99, respectively to the Estate), it is difficult to believe that this is possible unless the Estate's total value is over \$5,000,000.

On March 8, 2018, during the Hawaii trial, the details of the joint account held by Byung-Tae Oh (“Deceased”) and Hiesung Lee were revealed, confirming a balance of \$1,132,310.55. (a459). Under the Korean law, this balance belongs to Byung-Tae Oh’s (“Deceased”) Estate.

Hyung Kee Oh (“Defendant”) has been falsely claiming in New Jersey Court, Hawaii Court, and the Korean Court that there are no deposit accounts under the name of Byung-Tae Oh (“Deceased”). However, given the revelation of the balance in the Hawaii Joint account, the Administrator should have fulfilled the obligation file the Non-Resident United States Estate Tax Return, Form 706-NA in 2018.

Despite this however, the Administrator has yet to file the Non-Resident United States Estate Tax Return, Form 706-NA for nearly 5 years, until 2023. Furthermore, he has designated the Defendant as a Party having the authority to file the Non-Resident United States Estate Tax Return, Form 706-NA who is fully aware of the true value of the Estate. It is highly improbable that the Defendant, who has not paid the federal tax for over five years, will voluntarily make the payment now. Essentially the Administrator has provided the Defendant with the means to evade paying the federal tax by filing the Non-Resident United States Estate Tax Return, Form 706-NA.

Both the Administrator and the Defendant are aware the Estate exceeds \$5,000,000, which is the threshold for filing the Non-Resident United States Estate Tax Return, Form 706-NA.

If the Defendant is left to calculate the amount of the Estate, he, as the largest beneficiary has the most to gain by reducing the amount of the value of the Estate contrary to the interest of the Plaintiff and the Non- Resident United Tax Return, Form 706-NA. Such duty should not be delegated to the Defendant.

Each member of the family of the Decedent inherited the below in the Korean Estate: Hiesung Lee (wife): 49.41%, Heinjoo Oh (daughter):26%, Hyung Kee Oh (“Defendant”): 5.58%, Won Ki Oh (“Plaintiff”): 19.01%. (a798).

The Administrator stated in his Certification of Administrator in support of the Forensic Report that out of the 40.8% share of B&H that belongs to the Decedent, Byung-Tae Oh. (a775). In accordance with the Korean Judgment, and with certain subsequent assignments of the shares of B&H to Hyung Kee Oh, the current owners of shares of B&H and their respective interests are as follows: Hyung Kee Oh: 34.04%, Sunghee Park: 58.20% and Won Ki Oh: 7.76%. (a779).

As set forth in the Administrator's Forensic Report, Hiesung Lee and Heinjoo Oh transferred their respective 49.41% and 26% shares of B&H to the Defendant, Hyung Kee Oh who now has shares now equal to 34.04%. (a779).

Hiesung Lee (wife) inherited around 49.41% and Heinjoo Oh (daughter) inherited around 25.99%. (a798) The two then transferred (gifted) their New Jersey Estate/shares to the Defendant, Hyung Kee Oh, equaling around 75.41%. The Defendant must pay the Korean National Tax Service for the 75.41% of inheritance that was bequeathed.

The Administrator and the Defendant have failed to disclose the total value of the Estate. This has an effect of avoiding 'gift tax' to the Korean National Tax Service.

In the Report, the Administrator states that the Appointment Order does not require him to determine the value of the Estate's interest in B&H at the time of Decedent's death or any other time. (a780). However, the Administrator is ignoring the fact that the value of the Estate's interest in B&H can affect the inheritance share to which each beneficiary is entitled. The value of the Estate's interest in B&H should be determined for a fair Estate division and distribution.

It is acknowledged that the Non-Resident Federal Estate Tax Return, Form 706-NA must be paid, should the Estate's value be over \$5,000,000.

If the Estate is valued just over \$5,000,000, the Defendant has gotten 'gifted' or got a transfer of ownership of shares of around \$3,750,000. The Defendant would then be obligated to pay the Korean government approximately \$1,875,000 gift taxes regarding this amount (50% tax rate). To date the Defendant has failed to pay this gift tax in Korea.

For the Administrator to be paid \$25,000 and concluding his duties, essentially the Administrator is not only assisting the Defendant in avoiding the federal taxes owed in the US but also the gift tax that the Defendant is obligated to pay in Korea. If the Defendant files the Non-Resident Federal Tax Return, Form 706-NA, the Defendant will be required to make a minimum gift tax payment of \$1,875,000 to the Korean National Tax Service. Given this circumstance, it is highly unlikely that the Defendant will willingly pay the federal taxes.

Unless a final valuation of the Estate is revealed and confirmed and the Non-Resident Federal Estate Tax Return, Form 706-NA is filed and paid, the Administrator cannot be discharged. Such discretionary authority should not be delegated to a party in a highly contested litigation. Only a Court

appointed Administrator may be burdened with such duty to a neutral party that owes a fiduciary duty to the Estate.

POINT II

THE ORDER DENYING PLAINTIFF'S CROSS-MOTION FOR THE ESCROW HOLDER TO RELEASE \$75,000 TO THE PLAINTIFF SHOULD BE REVERSED AS THIS WAS AN ADVANCE MADE BY THE PLAINTIFF TO THE ADMINISTRATOR FOR THE FEES AND COSTS OF THE ADMINISTRATOR. (Order Denying Plaintiff's Cross-Motion dated June 19, 2023, a694).

A. The Administrator has yet to return to the Plaintiff the \$75,000 advanced payment he had made to the Administrator back in 2015 (a376)

This should have been returned to the Plaintiff back in 2018 following the Administrator's Third Allowance of fees and costs of \$147,809.33 that was paid from the Escrow Account. (a630).

Claiming that he is unable to proceed with his duties as Administrator because of the costs of the forensic accountant, the Administrator has filed two motions for payment of his fees in the amount of \$75,000 each.

In the Administrator's first and second motion requesting payments of \$75,000 each, Judge Robert P. Contillo had ordered for the fees to the

Administrator to be awarded from the Escrow Account. (a370). (a424). The \$75,000 payment the Plaintiff had advanced to the Administrator should have been claimed from the Escrow Account by the Administrator and returned to the Plaintiff back in 2018. Footnote confirms receipt of \$75,000 advance payment by the Administrator. (a630).

In 2018, The Administrator claimed payment of \$147,809.33 (+\$150,000 personal payment from Plaintiff and Defendant) for his expenses and was fully paid from the Escrow Account. The Administrator had requested prepayment of \$75,000 from Plaintiff on behalf of the Estate, back in 2015, and on September 18, 2015, Plaintiff paid \$75,000 to Shapiro Croland Reiser Apfel and Dilorio, LLP as part of the Administrator's expenses. (a376). With the money wired by the Plaintiff, the Administrator was able to hire a forensic accountant to perform the duties of the Estate Administrator.

To this day, having been paid \$75,000 from Plaintiff in 2015, and \$75,000 from the Defendant, the Administrator has awarded himself an allowance of fees and costs of \$147,809.33 and he claims in his final motion that a total of \$264,059.33 was awarded for his expenses. (a630).

Instead, the below should have happened:

a) If the Administrator had returned the \$75,000 back to the Plaintiff in 2018, he should have claimed the full expenses from the Escrow Account.

b) If the Administrator did not return the \$75,000 back to the Plaintiff in 2018, he should have claimed -\$150,000 of total expenses (\$75,000 advance payments from both Plaintiff and Defendant) from the Escrow Account and the Court should have ordered for Plaintiff to be reimbursed \$75,000.00 from the Escrow Account.

B. The response letter from Defendant's attorney to Plaintiff's representative at the time

Since 2018, the Plaintiff has requested a dozen times to the Administrator to return the \$75,000.00 however this sum still remains unreturned, The response letter from the Defendant's attorney to Plaintiff's representative at the time (Minjung Suh) from Harwood Lloyd LLC states that 'Your client's request (for reimbursement of \$75,000 from the Escrow Account to Plaintiff) is without basis,' and that 'Neither the Estate nor anyone else has reimbursed Hyung Kee Oh' either. (a580).

This is contrary to the order from the court that all expenses due to the Administrator should be awarded from the Estate of Byung-Tae Oh, i.e. Escrow account. Since the Administrator fees were disbursed from the Estate,

the Escrow Account is considered part of the Estate. The \$75,000 the Plaintiff transferred in 2015 is for Administrator fees. The Plaintiff is entitled to receive the \$75,000 from the Escrow Account. The Administrator however, has neglected to pay the Plaintiff the \$75,000 for over 5 years since 2018, then filed the motion to terminate his duties as Administrator in 2023. This is a dereliction of duty.

POINT III

THE ORDER DENYING PLAINTIFF'S CROSS-MOTION FOR THE ESCROW HOLDER TO RELEASE TO THE PLAINTIFF THE TOTAL OF \$1,049,589.14 REIMBURSEMENT AMOUNT FROM THE ESCROW ACCOUNT SHOULD BE REVERSED. (Order Denying Plaintiff's Cross-Motion dated June 19, 2023, a694).

A. The Escrow Account is part of the Estate

The Escrow Account is undoubtedly a part of the Estate and that is why the Administrator's Third Allowance of fees and costs were disbursed from the Escrow Account in 2018. (a630).

On August 10, 2016, Judge Robert P. Contillo granted order of second interim Fee Award for the Administrator. In his Letter Decision, he reiterates that the fee award must be funded by the Estate. It is the Estate's obligation to do so, he also states that, Relief directly from the Estate can be sought in the Republic of Korea, where such remedy is available. The Administrator may also seek to realize value from the Estate's interest in the New Jersey entity, B&H, as a means of funding Estate administration here in New Jersey. (a443).

On January 14, 2019, Judge Edward A. Jerejian granted order that Plaintiff shall be entitled to reimbursement in the amount of \$1,049,589.14 and that the attorney's fees and costs reimbursements shall be distributed out of the Decedent's New Jersey Estate assets. (a573).

B. There is currently an award of attorney fees to the Plaintiff in the amount of \$1,049,589.14

As per the Appellate Decision on March 23, 2021 (a585) and Probate Court's Order on August 31, 2022 (a617), the Plaintiff should therefore be reimbursed the fee award of \$1,049,589.14 from the Escrow Account as the Escrow Account is undoubtedly part of the Estate. As stated earlier, the Escrow account was set up to pay administrative fees of the Estate which certainly includes fees incurred by Plaintiff since the award speaks for itself.

POINT IV

THE PROBATE COURT’S ORDER GRANTING THE ADMINISTRATOR’S MOTION ON JUNE 19, 2023 SHOULD BE REVERSED AS THE ADMINISTRATOR SHOULD NOT BE DISCHARGED BECAUSE THERE IS OUTSTANDING ACCOUNT RECEIVABLES AND OTHER RECEIVABLES OF B&H. (Order Denying Plaintiff’s Cross-Motion dated June 19, 2023, a694).

A. B&H currently has pending Account Receivables Account and Other Receivables Account (a755)

There is outstanding Account Receivables and Other Receivables in B&H’s balance sheet. B&H has 2 major pending Receivables. (a755).

As of December 31, 2015, upon information and belief, the above referenced Account Receivable bare direct nexus to 18 Richard Court, Closter, New Jersey (“18 Richard Court”). 18 Richard Court (value totaling at \$1,847,549.18) was owned by Hyung Kee Oh and his wife, Sung Hee Park. Other Receivable Account totals \$889,000 which is owed by the Defendant. The total equates to \$2,736,546.18. (a743). (a744) (a755).

The Account Receivable related to ‘18 Richard Court’ currently remains in the Account Receivable Account since 2006 – around 17 years that it has not been collected and other receivables currently remains in the Account since 2006 – around 17 years that is has not been collected.

The Forensic report fails to mention the Other Receivables. At the time that the Forensic Report was filed (a761), the Plaintiff firmly believed that the Administrator would fulfil his duties by concluding his final letter revealing how much the Non-Resident United States Tax Return, Form 706-NA, should be paid to the US government which would therefore reveal the total value of the Estate. This would mean that the Administrator would have to disclose any assets belonging to B&H which would include other assets too.

The Administrator has failed to mention or liquefy such assets in order to secure the funds to be deposited into the Escrow Account.

The Account Receivable and Other Receivable described above was registered as B&H’s Assets and currently still is, B&H’s Assets. The above Account Receivable and Other Receivable is money owed by the Defendant to B&H. To ensure the integrity of the Estate assets, the Administrator should

have suggested and concluded to collect the two Receivables and for it to be deposited into the Escrow Account.

However, on June 6, 12, 2018 there was a transfer of ownership of the “18 Richard Court” asset, (a565). Even though there was still pending Account Receivable to be received totaling \$1,847,549.18 to B&H, the deed states that ownership of the property of 18 Richard Court was transferred to Dong Nam NY LLC from Hyung Kee Oh and Sung Hee Park.

The Defendant, Hyung Kee Oh and his wife, Sung Hee Park had sold the asset to Dong Nam NY LLC at the price of \$2,250,000. This is when the Defendant should have settled the pending B&H’s Account Receivable Account totaling \$1,847,549.18, however instead he has utilized this fund for personal/other uses.

It would therefore only make sense that the pending Account Receivable is needed to be paid by Dong Nam NY LLC which is the current owner of the “18 Richard Court”.

B. The Administrator should retrieve and recoup funds belonging to B&H from Dong Nam NY LLC’s ‘18 Richard Court’ Estate which remains in B&H’s Account Receivable that is valued at \$1,847,549.18, and for it to be deposited into the Escrow Account

Despite the transfer of ownership of the ‘18 Richard Court’ asset (a565), the Administrator has not made any attempt to enforce the Account Receivable of B&H.

The Defendant knew well that he and his wife owed \$1,847,549.18 to B&H at the time “18 Richard Court” was transferred to Dong Nam NY LLC. This transfer took place while this litigation was pending on or about November 29, 2018.

On December 3, 2018, Dong Nam New Jersey LLC then filed a merger/consolidation with DNI Group, LLC which is a New Jersey Entity that was formed in January 26, 2018 whose members are Dong-Nam Housing Industrial, CO. LTD and Sung Hee Park (Defendant’s wife). (a572).

There can be no other explanation for the above transfers other than to avoid debts owed to B&H. For the above reasons, the Administrator should not have been discharged and should have:

a. Paid all expenses relating to the Estate, including the award of attorney fees to the Plaintiff from the Escrow Account including the \$75,000.00 initial payment to the Administrator.

b. Pursued all Account Payables due to the Estate from any and all entities and individuals or bring an action against B&H to pursue such collection effort.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court reverse the Order Denying Plaintiff's Cross-Motion that Administrator's motion is denied in its entirety; and that the Escrowee return \$75,000.00 advanced by Plaintiff for the Administrator's fees and expenses in 2015 from the Escrow account currently held by Defendant's Attorneys be released to the Plaintiff, that the Fee Award of \$1,049,589.14 be paid from the Escrow account currently held by Defendant's Attorneys, that Plaintiff's application for the Administrator or another designee to recoup or collect outstanding account receivable on behalf of B&H for the benefit of the Estate; and that Plaintiff's request for counsel fees is granted, filed June 19, 2023.

Respectfully submitted,

Won Ki Oh
Plaintiff (PRO SE)

By: /s/ Won Ki Oh
WON KI OH

Dated: February 16, 2024

In the Matter of the Estate of
Byung-Tae Oh, Deceased.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-003678-22

CIVIL ACTION

On Appeal From the
Superior Court of New Jersey
Chancery Division: Probate Part
Bergen County

Sat Below:

Hon. Edward A. Jerejian, J.S.C.
Hon. Robert P. Contillo, P.J.Ch.

Docket No. Below:
BER-P-18-13

BRIEF OF DEFENDANT/RESPONDENT, HYUNG KEE OH

**GREENBAUM, ROWE, SMITH &
DAVIS LLP**

Metro Corporate Campus One
99 Wood Avenue South
Iselin, New Jersey 08830-2712
(732) 549-5600

Attorneys for Defendant/Respondent,
Hyung Kee Oh

Of Counsel and on the Brief:

William D. Grand, Esq. (280521972)
Luke J. Kealy, Esq. (017071992)
Olivier Salvagno, Esq. (024101998)

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POINT I

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PRELIMINARY STATEMENT

Wonki Oh (“Plaintiff”) filed this lawsuit in probate court in New Jersey on January 18, 2013. The lawsuit was an ancillary proceeding to the primary proceeding that was litigated in the Republic of Korea, which Plaintiff also filed in January 2013.

In Korea, unlike in the United States, the distribution of a decedent’s estate is governed by statute. Plaintiff filed the lawsuit in 2013 in the Korean Family Court to resolve issues among the beneficiaries regarding the disposition of the assets of the Estate of Byung-Tae Oh (the “Decedent”). The beneficiaries of the Estate were the Decedent’s widow, Hie Sung Lee, and the Decedent’s three children, Plaintiff, Defendant Hyung Kee Oh (“Defendant), and their sister, Hien Joo Oh.

The Decedent had resided and worked in Korea. The Plaintiff and the Decedent’s widow also resided and still reside in Korea. The ancillary proceeding was filed to determine whether any assets of the Estate that were subject to probate under Korean law were located in New Jersey.

Plaintiff commenced this action in New Jersey by filing a Verified Complaint. Plaintiff acknowledged in the Verified Complaint that the beneficiaries had filed an estate tax return in Korea stating that Decedent had invested \$930,000.00 in a New Jersey limited liability company, B&H Consulting and Development Co., LLC (“B&H”), and had an interest in B&H to that extent.

Plaintiff contended, however, that the Decedent's transfers of assets into New Jersey totaled ten times that amount. The Plaintiff also contended that Defendant had engaged in fraudulent activity in his management of B&H. The Verified Complaint asked the court to appoint an administrator to marshal all of the alleged additional assets in New Jersey that belonged to the Estate and to investigate Plaintiff's allegation that Defendant had engaged in fraudulent mismanagement.

The New Jersey probate court appointed an Administrator, Stuart Reiser, Esq., on May 14, 2014. As will be set forth in detail in the Statement of Facts, the Administrator examined B&H's books and records that covered a lengthy period of time, examined years of bank account records of numerous banks, and pursued other discovery searching for assets and malfeasance, all at the urging of the Plaintiff.

In 2019, a dispute arose in the New Jersey action between Plaintiff and Defendant regarding the entitlement to legal fees. The probate court awarded fees to both parties, and both parties appealed the probate court's rulings regarding legal fees.

Plaintiff, in the same appeal, cross-appealed the probate court's orders entered on July 30, 2018 involving two separate issues: Plaintiff appealed orders that had been entered by the Honorable Robert P. Contillo, P.J.Ch. wherein Judge Contillo (1) approved the Administrator's comprehensive forensic report and the settlement agreement between the Administrator and Defendant, and (2) denied Plaintiff's

cross-motion that sought, among other things, an order to compel the Administrator to continue his investigation.

In a Decision on March 23, 2021, in addition to addressing the legal fee issue, the Appellate Division affirmed the July 30, 2018 orders of Judge Contillo that approved the Administrator's Forensic Report in its entirety, including the settlement agreement between the Administrator and the Defendant. The Appellate Division remanded Plaintiff's legal fee issue to the probate court for further proceedings.

The proceedings on the legal fee remand continued through the first six months of 2023. Plaintiff's appeal in this matter involves motions filed in January and February, 2023. The Administrator filed a motion to be relieved of his remaining duties under the May 14, 2014 appointment order, and Plaintiff filed a cross-motion that requested, among other things, that the court order the Administrator to continue his investigation and continue performing his alleged duties.

Plaintiff's cross-motion, which is the subject of Plaintiff's appeal herein, was based upon the same arguments that had been rejected by Judge Contillo in a lengthy opinion that "closed the door" to further litigation of the issues that are now being raised by the Plaintiff. The Appellate Division had affirmed Judge Contillo's rulings in its March 23, 2021 Decision.

STATEMENT OF PROCEDURAL HISTORY

A. Background

Decedent died on February 6, 2012. (Pa61). Decedent was a citizen and resident of the Republic of Korea at the time of his death. (Pa61). The Decedent's widow and three children (Plaintiff, Defendant, and their sister, Hien Joo Oh) are all beneficiaries of the Decedent's Estate, pursuant to the laws of the Republic of Korea. (Pa62).

B. Plaintiff's Complaint

Plaintiff filed complaints in both Korea and New Jersey in January of 2013. The Korean Complaint was the primary proceeding to resolve issues among the beneficiaries regarding the distribution of the Decedent's Estate. Plaintiff commenced this ancillary proceeding by filing a Verified Complaint seeking the appointment of a limited administrator to marshal any assets held by the Decedent in New Jersey. (Pa61).

Plaintiff contended that there was jurisdiction in New Jersey for the commencement of the ancillary proceeding because Decedent had made an "initial capital contribution" to B&H, a New Jersey-based development company, as an investment. (Pa63). Plaintiff contended that an administrator should be appointed based upon his allegation that the Decedent had transferred an additional \$10 million into New Jersey, for the benefit of the Estate. (Pa63-Pa66). Plaintiff also contended

that the administrator should investigate alleged fraud in Defendant's management of B&H. (Id.).

C. Summary Judgment and the First Appeal

On May 8, 2014, the probate court entered an order granting summary judgment in Plaintiff's favor, finding that a \$900,000 transfer by Decedent in 2001 constituted an investment in B&H, thus establishing jurisdiction in New Jersey for the appointment of an administrator to search for the \$10 million in alleged transfers and to search for alleged malfeasance in the operation of B&H. (Pa313).

Judge Contillo ruled in his decision that Dong Nam New Jersey, LLC ("Dong Nam NJ") was not includable in the Decedent's Estate, as had been alleged by Plaintiff. (Pa326). The Plaintiff did not appeal Judge Contillo's ruling that Dong Nam NJ was not a part of Decedent's Estate. (See subsequent Appellate Decision dated March 23, 2021, wherein the Court ruled that Plaintiff was barred from arguing that Dong Nam NJ was a part of the decedent's estate, noting that: "Plaintiff did not seek review of the Court's finding that the decedent had no personal interest in Dong Nam NJ," and was therefore barred from raising the issue in a subsequent appeal). (Pa637, Pa643-Pa644, Pa656, Pa658, n. 6).

On appeal, in a Decision entered on May 13, 2016, the Appellate Division affirmed Judge Contillo's order. (Pa411).

D. The Administrator's Investigation

The Administrator undertook a thorough and comprehensive investigation of B&H, as authorized by Judge Contillo's May 8, 2014 summary judgment Order. The results of the Administrator's investigation are set forth in the Counter-Statement of Facts, infra, pages 11-13.

E. The Administrator's Motion for Court Approval of His Forensic Report, Plaintiff's Cross Motion, and Judge Contillo's Ruling.

On January 8, 2018, the Administrator issued his Forensic Report. (Da233-250). On January 9, 2018, the Administrator filed a motion seeking court approval of his Report. (Da18). Plaintiff opposed the motion and filed a cross-motion, arguing that the Administrator's Report should not be approved, that a substantial period of additional discovery was needed, and that Dong Nam NJ should be investigated, among other things. (Da21-24).

Judge Contillo entered orders on July 30, 2018 approving the Administrator's Report and denying Plaintiff's cross-motion. (Da150-155). Judge Contillo also issued a lengthy decision on the same date. (Da157-199). See also Counter-Statement of Facts, infra, pages 18-21.

F. The Legal Fee Dispute, the Appellate Rulings on Appeal, and the Remand

In 2019, a dispute arose in the New Jersey action between Plaintiff and Defendant regarding the entitlement to legal fees. The probate court awarded fees to both parties, and both parties appealed.

Pertinent to the present appeal, Plaintiff appealed two of the orders that had been entered by Judge Contillo on July 30, 2018. (Da61-63).

The first order that Plaintiff appealed, among other things, had: (1) approved the Administrator's Report dated January 8, 2018; (2) approved the Settlement Agreement between the Administrator and Defendant "as set forth in the Forensic Report at Section IV, thereof;" (3) ruled that any Non-Resident United States Estate Tax Return, Form 706-NA that may be required should await the final report of the Special Administrator appointed in Hawaii; and (4) granted leave to the Administrator to file a future application, after the Hawaiian Report was completed, for further instructions regarding the completion of his duties, and that the future application could include the Administrator's request "to designate a party to these proceedings, or that party's agent, who has access to all information about all of the Estate's United States and Korean assets, as the party responsible and empowered on behalf of the Estate to prepare and file the Estate Tax Return that may be required." (Da153-155).

The second order that Plaintiff appealed was Judge Contillo's July 30, 2018 order that denied Plaintiff's cross-motion, as more particularly set forth in the order. (Da150-152).

In a Decision on March 23, 2021, the Appellate Division reversed and vacated the legal fee awards that had been awarded to the Plaintiff and Defendant in

2019 by Judge Jerejian after Judge Contillo had retired. Pertinent to this appeal, the Appellate Division affirmed the July 30, 2018 orders and Decision entered by Judge Contillo that had approved the Administrator’s Report, including the Settlement Agreement contained therein, and denied Plaintiff’s cross-motion that had sought an order that the Administrator’s investigation continue. (Pa637; Pa656-Pa658).

G. Proceedings on the Remand

On July 13, 2021, the probate court entered an order in connection with the remand. In a letter order to counsel, the court ordered: “All parties must exchange written submissions regarding their respective positions [on the legal fee issue] by September 30, 2021.” (Da60).

The proceedings on the remand continued through the first six months of 2023. On February 1, 2023, the Administrator filed a motion, supported by a certification, to, among other things, be relieved of any remaining duties under the May 14, 2014 appointment order. (Pa625-Pa635).

On March 16, 2023, Plaintiff filed a “Notice of Cross Motion and Opposition to Motion by Plaintiff Won Ki Oh.” (Da134-135).

In orders and a decision entered on June 19, 2023, the probate court granted the Administrator’s motion and denied Plaintiff’s cross-motion. (Pa694-Pa700). Plaintiff appealed both orders. (Pa701). A summary of the content of the motions

and the orders and decisions will be set forth in the Counter-Statement of Facts, infra.

COUNTER-STATEMENT OF FACTS

A. The Litigation and Judgment in the Korean Action

Plaintiff filed a lawsuit in January 2013 (the same month in which he filed his Verified Complaint in New Jersey) in the Korean Family Court to resolve the issues among the beneficiaries surrounding the Decedent's Estate.

After several years of litigation, the Korean Family Court entered its judgment on September 20, 2017. (Da1-17). The Family Court's decision included a determination that the Decedent's Estate held a total interest of 40.8% in B&H, which interest the Court valued at approximately \$900,000, and that Plaintiff's financial interest in B&H totaled 7.76 percent, based upon his 20% interest in the Estate's 40.8% interest in B&H. (Id.). The Korean Family Court rejected all of Plaintiff's allegations that millions of dollars of other assets existed in New Jersey and elsewhere that should be included in the Decedent's Estate. (Id.).

The Korean Family Court ruled, in pertinent part, as follows:

- a. The Decedent's Estate held a 40.8 percent interest in B&H, which interest the Court held to be valued at approximately \$900,000. (Da16).

- b. The Court rejected Plaintiff's contention that Decedent had paid Defendant \$1,304,000 in 1999 for the purpose of establishing B&H, and that the monies were therefore a "special benefit" under Korean Law. The Court held that "[t]here is no evidence to support the alleged fact that the inheritee [Decedent] bequeathed USD 1,304,000 to Opposing Party Hyung Kee Oh in 1999." (Da11 at item #3).
- c. The Court rejected Plaintiff's contention that Decedent had paid Defendant \$1 million to cover his tuition and living expenses during the years 1991 to 1997 when Defendant was residing in Connecticut and pursuing a Ph.D. degree, and that those payments should be considered a "special benefit" to Defendant under Korean law. (Da11 at item #2).
- d. The Court rejected Plaintiff's claim that Decedent had bequeathed the Richard Court property to Defendant in 2005. (Da11 at item #5).
- e. The Court rejected Plaintiff's claim that the Hawaii condominium should be included as a "special benefit"

received by Hie Sung Lee, holding that the evidence submitted was “not sufficient to prove the bequest.”

(Da11 at item #1).

Plaintiff appealed the Family Court Judgment. The Judgment was affirmed by the Korean appellate court, and then by the Korean Supreme Court. (Da199 at ¶ 3; Da203-206).

B. The Administrator’s Conclusions in the New Jersey Ancillary Proceeding

On January 8, 2018, the Administrator issued his Report. The Report documents the investigation in detail, including the books and records reviewed, and sets forth the Administrator’s conclusions. (Da233). Contrary to the allegations advanced by Plaintiff throughout the course of this litigation, the Administrator concluded as follows:

- a. There is no evidence of malfeasance.
- b. Defendant cooperated fully in the Administrator’s investigation.
- c. Based upon the information provided and the review undertaken by the Administrator’s accountants, all business activity was accounted for, and Defendant’s actions in the operation of the business were appropriate.

- d. The QuickBooks records of B&H were consistent with all the available checking and banking records. All deposits and disbursements were reported. All liabilities were not overstated.
- e. The low profitability of B&H was the result of economic facts and ordinary business judgments.
- f. No assets of the Decedent's Estate were discovered, other than the \$900,000 deposited into B&H in 2001.
- g. There is no evidence of any inter vivos gifts by the Decedent to anyone in New Jersey.

(Da243-245).

After all this discovery, and the Administrator's detailed and thorough review of thousands of pages of financial records, including checking account statements, project records, and more than ten years of books and records of B&H, the Administrator found no transfers of monies or gifts that were includable in Decedent's Estate beyond the \$900,000 that had already been established during the summary judgment phase. (Id.). The Administrator also found no malfeasance in Defendant's operations of B&H, which had been vigorously and persistently alleged by Plaintiff. (Id.).

The Administrator concluded that Defendant had provided explanations for journal entries that the Administrator had asked for. Da245. As a result of the explanations, and in order to recognize the Estate's 40.8 percent interest in B&H, agreed-upon adjustments were made to certain entries in the books and records. (Id.).

The report includes a reference to an adjustment to Defendant's capital account in the amount of \$1,200,000. The adjustment was made to account for the Estate's membership interest in B&H. The Administrator, in his Report, stated: "This contribution shall constitute Hyung Kee Oh's and Sung Hee Park's (majority owners of B&H) full and complete financial contribution in recognition of the Estate's interest in B&H." (Da246, Para. 2) (emphasis added).

C. The Settlement Agreement Set Forth in the Administrator's Forensic Investigation Report

The Administrator's forensic investigation report included a settlement agreement that was reached among the Administrator, Defendant, and B&H. The relevant portions of the Settlement Agreement provide as follows:

1. An escrow account, called the "B&H Escrow Account," will be created, and the sum of \$1.2 million shall be deposited into the Account.
2. \$275,000 of that amount shall be deposited into the trust account of Defendant's counsel.

3. Up to \$250,000 of the \$275,000 shall be used to pay the administrative expenses and professional fees that had already been applied for by the Administrator for his and his accountant's expenses.
4. The balance of the \$275,000 (\$25,000) shall be used to pay administration fees incurred after the date the Administrator had filed his motion for approval of his Report.
5. The \$275,000 "is a 'cap'..., and there will be no obligation to pay any administrative expenses from the B&H Escrow Account that exceed the cap."
6. The balance of the B&H Escrow Account (\$925,000) "shall be used to pay any federal estate taxes, and any interest and penalties thereon, that may be due and owing from the Estate in connection with the filing of a Non-Resident Estate Tax Return (Form 706-NA), if required."
7. The Non-Resident Estate Tax Return will take into account minority discounts and discounts for lack of marketability.
8. The Administrator may assign the task of filing the Non-Resident Federal Estate Tax Return to a party to the lawsuit who has knowledge of the relevant books and records (n.4).

9. “After the payment of any such amounts [due under the Non-Resident Federal Estate Tax Return], any remaining balance in the B&H Escrow Account shall be immediately released from escrow and deposited into the general account of B&H.” (emphasis added).

(Da246-249).

D. Plaintiff’s Opposition to Approval of the Administrator’s Report

On January 9, 2018, the Administrator filed a motion seeking the probate court’s approval of his Forensic Report. (Da18-20). On February 5, 2018, Plaintiff filed a cross-motion opposing the Administrator’s motion and requesting that the Court order that the Administrator continue his role and produce additional documents. (Da25).

Most of the issues that Plaintiff addressed in his cross-motions had previously been the subject of comprehensive review and investigation, at Plaintiff’s behest, by the Korean Family Court, the Seoul Central District Court, the Prosecutors’ Office for the Northern District of Seoul, the Seoul High Prosecutor’s Office, and the Seoul District Tax Office of the National Tax Service. (Pa651-Pa652). Each of these governmental bodies had rejected Plaintiff’s allegations, both as to the existence of additional transfers and as to alleged malfeasance in the management of B&H. (Id.).

E. The Administrator’s Description of Plaintiff’s Actions During His Investigation

Plaintiff’s insistence that the Administrator should “keep looking” for assets that did not exist was causing enormous financial harm to the parties and to the Estate. This became obvious to the Administrator after he had spent hundreds of hours conducting an extremely detailed investigation, the results of which did not support Plaintiff’s allegations.

When Plaintiff opposed the Administrator’s motion seeking approval of his Report and cross-moved to extend the investigation, the Administrator, in response, laid bare the facts that had become clear from his investigation:

At each turn, when the Administrator has tried to engage plaintiff in a settlement dialogue or mediation effort to resolve the issues he has identified, the plaintiff has made it crystal clear he would not participate until all the discovery he was seeking was completed. Unfortunately, as represented by the recent letter sent by plaintiff to the Administrator, it appears that plaintiff has different goals for this ancillary probate proceeding that do not align with the goals of “compromise,” “fairness,” or “finality.” Rather, plaintiff’s mantra to the Administrator and the court seems to be “keep on searching...without consideration to the expense to the Estate, until you reach a conclusion that I find acceptable. When I agree with your conclusions, I may speak with you about resolving the identified issues.”

Appellate Division Decision, March 23, 2021, (Pa650-Pa651).

In addition, the Administrator told the probate court that Plaintiff appeared to want to turn this ancillary proceeding into a “never-ending circular chase to prove a

construct/thesis of his own creation so that he can continue to strategically exert pressure on his family and stepmother in the probate proceedings pending in the Republic of Korea; and that “plaintiff failed to take into consideration the substantial costs the estate would incur if the investigation were to continue.” (Id.).

The Appellate Division, in its March 23, 2021 opinion in the first legal fee appeal, cited the Administrator’s finding that Plaintiff had “maintained a remarkably obstinate and impractical approach to the many efforts made by [him] to reach a consensual and amicable resolution of the numerous . . . issues”; that “plaintiff never provided him with any hard evidence of additional New Jersey assets belonging to the estate or other gifts made by decedent to defendant”; that “plaintiff could have inquired into these matters himself before he moved for summary judgment in 2014”; that “plaintiff appeared to want to turn this ancillary proceeding into a never-ending ‘circular chase to prove a construct/thesis of his own creation so that he can continue to strategically exert pressure on his family and stepmother in the probate proceedings pending in the Republic of Korea’; and that “plaintiff failed to take into consideration the substantial costs the estate would incur if the investigation were to continue.” (Pa650-Pa651).

F. Judge Contillo’s July 30, 2018 Opinion and Orders Approving the Administrator’s Forensic Investigation Report

By Orders and Opinion dated July 30, 2018, Judge Contillo approved the Administrator’s Report. (Da153-155).

Judge Contillo's Orders state, among other things, as follows:

1. The forensic investigation report of the Administrator dated January 8, 2018 is approved. (Da154).
2. The agreement made between the Estate, Defendant, and B&H as set forth in Section IV of the Forensic Report is approved. (Id.).
3. A Non-Resident Estate Tax return should not be filed until the Hawaii Administration report is completed and received by the Administrator. (Id.).
4. The Administrator may file a future application to have a party to the proceedings or an agent of that party prepare and file the Non-Resident Estate Tax return. (Id.).

The Judge Contillo's very comprehensive Opinion includes the following:

1. "Following oral argument the Korean Appellate Court affirmed the rulings of the Korean Family Court including the determination that the date of death value of the Decedent's interest in B&H Consulting was \$900,000...All sides concur the Court should resolve the pending application on the record established." (Da158, n. 1).

2. The Court summarizes the fees awarded to the Administrator and his accountant. (Da159-160).
3. Judge Contillo reviews Plaintiff's allegations regarding transfers from Dong Nam NJ and allegations regarding the Richard Court property. (Da180-184).
4. Judge Contillo also reviews Plaintiff's other allegations, noting that: "Plaintiff also questions the loan transaction history, arguing that amounts remain unpaid by Defendant." (Id.).
5. Judge Contillo reviews the rulings of the Korean Court (which support the Administrator's conclusions in his report). (Da188).
6. Judge Contillo states that once his shares vest, Plaintiff would not be able to bring a minority shareholder lawsuit for any alleged historical wrongs. (Da189).
7. Judge Contillo rules that Plaintiff cannot challenge the underlying basis and terms of the Settlement Agreement between the Administrator and Defendant, and that the Settlement Agreement is binding on the Estate. (Da189-190).
8. The Court states that "if the Court approves the proposed settlement, Plaintiff will be unable to bring a cause of action against the Administrator, or any other individual, to challenge

the underlying basis for the terms reached in the settlement.”
(Da189-190).

9. The Court states: “Specifically, the Court is persuaded that the Administrator has made a conclusive determination of all material issues presented to him, including (i) whether any *inter vivos* gifts were made by the Decedent to any individual in New Jersey, (ii) what amounts are due to B&H, (iii) what would be an appropriate capital contribution from Defendant, and (iv) how much further the scope of inquiry should extend, if at all.”
(Da192) (emphasis added).
10. “Accordingly, the Court cannot allow the Plaintiff to now re-open all of the doors that the Administrator had previously explored, let alone new ones.” (Da191) (emphasis added).
11. The Court concludes that the Administrator properly carried out his duties. (Da191).
12. “[T]he Court finds that the Administrator properly relied upon this Court’s Summary Judgment decision whereby Plaintiff was found to have failed to demonstrate that the Estate has any interest in Dong Nam NJ.” (Da192).

13. “Furthermore, the Court finds that the Administrator properly relied upon the rulings made in the Korean Judgment and in various South Korean proceedings and investigations.” (Da190; Da 193).
14. “South Korea is far more familiar with the Estate, of which the New Jersey portion is a minor piece.” (Da194).
15. “There is no evidence of inter-vivos gifts, and no basis to compel the fiduciary to pursue this matter further...No evidence has been submitted to this Court that any asset exists or existed in New Jersey besides the Estate’s interest in B&H. The valuation of that asset as of the date of death has likewise been determined.” (Da195).

G. The Proceedings on the Remand

The proceedings on the remand were set forth in the “Procedural History” above. The Administrator filed a Notice of Motion, with a supporting Certification, seeking an order granting a final award of fees and disbursements to the Administrator, designating Defendant (or his agent) as a party having the authority to file a Non-Resident Estate United States Tax Return Form 706-NA, if he or his agent determines the filing of the return is required (which was referenced in Judge Contillo’s July 30, 2018 order), and discharging the Administrator of any further

duties. (Pa625-Pa635). (The Appellate Division, in its March 23, 2021 Decision, affirmed Judge Contillo's orders in their entirety. (Da77-Da108).

On March 16, 2023, Plaintiff filed a cross-motion, taking the position that the Administrator should not be discharged, but should keep searching for additional assets, should continue to examine transactions in the books and records, and should not be permitted to assign the responsibility for filing the tax return, if one were required. (Da134).

The probate court issued its decision at the June 19, 2023 hearing.¹ 1T31:24-44:7. The court granted the Administrator's motion and entered an order. (Da139-145). The court denied the cross-motion filed by Matthew Jeon, Esq., who represented Plaintiff in connection with these motions. (Id.).

Contrary to the allegations in Plaintiff's cross-motion, the probate court in its decision addressed the issues raised by the motions, and explained the reasons it was granting the Administrator's motion and denying Plaintiff's cross-motion. Among other things, the court explained: (1) The Plaintiff had contended in his Complaint that an Administrator should be appointed to recover transfers into New Jersey by the Decedent in the millions of dollars. The Administrator examined voluminous financial documents and concluded in his Forensic Report "that there were no

¹ "1T" shall refer to the transcript of the motion hearing and decision before Judge Jerejian on June 19, 2023.

transfers of money or gifts includable in decedent's estate other than the \$900,000 that have been already established during an earlier phase." 1T31:16-23; (2) The Korean Court also "weighed in" on Plaintiff's allegations, and rejected them. 1T32:14-18; (3) Judge Contillo's July 30, 2018 Decision approved the Administrator's Report and denied Plaintiff's cross-motion, wherein Plaintiff made many of the same arguments he now raises. 1T32:19-23, 1T36:14-17; (4) Judge Contillo had ruled that "Plaintiff cannot challenge the Settlement Agreement between the Administrator and Defendant, and that the Settlement Agreement is binding on the Estate." 1T36:21-24. Further, "Plaintiff would be unable to bring a cause of action against the Administrator or any other individual to challenge the terms of the settlement." 1T37:1-4. Judge Jerejian quotes Judge Contillo: "The court cannot allow plaintiff to now reopen all the doors the administrator had previously enforced, let alone new ones." 1T-37:13-16; (5) The Appellate Division affirmed the approval of the Administrator's forensic investigation in all respects. 1T38:13-1, 1T40:13-19; (6) "It is the proverbial dog chasing its tail to try to find assets to collect, by we are just digging the hole deeper." 1T39:3-5; (7) The Administrator's designation of Defendant as the person having authority to file a non-resident United States Tax Return, if one is required, is "fair" and makes sense. 1T42:10-43:1; (8) The settlement approved by Judge Contillo "explicitly sets forth how the escrow is to be managed..." 1T39:18,-20; and (9) "So basically there is no doubt in this

Court’s mind that Judge Contillo’s July 30, 2018 decision resolved these issues.”

1T38:19-21.

LEGAL ARGUMENT

POINT I

JUDGE CONTILLO, IN HIS JULY 30, 2018 OPINION, CLOSED THE DOOR TO PLAINTIFF’S CONTINUED LITIGATION OF THE ISSUES IN PLAINTIFF’S CROSS-MOTION THAT ARE THE SUBJECT OF THIS APPEAL. RELYING ON THAT RULING, WHICH WAS AFFIRMED BY THE APPELLATE DIVISION, THE PROBATE COURT PROPERLY DENIED PLAINTIFF’S CROSS-MOTION.

Plaintiff’s attempts to relitigate issues within the purview of the Administrator’s investigation and forensic report were expressly shut down by Judge Contillo in his July 30, 2018 Opinion.

There, as discussed in the Counter-Statement of Facts above, Judge Contillo ruled that “the Court is persuaded that the Administrator has made a conclusive determination of *all* material issues presented to him, including (i) whether any *inter vivos* gifts were made by the Decedent to any individual in New Jersey, (ii) what amounts are due to B&H, (iii) what would be an appropriate capital contribution from Defendant, and (iv) how much further the scope of inquiry should extend, if at all.” (italics in original; underscoring added). (Da192). “Accordingly,” Judge Contillo continued, the court “cannot allow the Plaintiff to now re-open all of the

doors that the Administrator had previously explored, let alone new ones.” (Da191)
(emphasis added).

In his July 30, 2018 Decision, Judge Contillo reviewed the issues that were raised by Plaintiff in his cross-motion, and they coincide with the issues that were once again raised in Plaintiff’s cross-appeal that is the subject of this appeal.

Judge Contillo listed, among others, the following issues that had been presented to him: (1) “Plaintiff maintains that the Report is incomplete and the proposed settlement is premature and insufficient.” (Da167-168; Da181-184); (2) Plaintiff questions the \$900,000 valuation of B&H. (Id.); (3) “Plaintiff argues that the Report does not address loan transactions between B&H and Defendant, but the books show that there are millions of dollars in such transactions.” (Id.); (4) Plaintiff challenges the Administrator’s conclusion that no evidence of additional transfers of assets subject to probate could be found (Id.); (5) Plaintiff objects to the conclusion that the Estate held a 40.8% interest in B&H. (Id.); (6) “Plaintiff also argues that the Report fails to sufficiently address Norwood Plaza LLC and Dong Nam and the alleged transactions with B&H.” (Id.); (7) Plaintiff’s “Counsel states that upon review of B&H’s QuickBooks there are loan balances in the millions of dollars, some of which, upon information and belief, were actually funded by other entities but credited to Defendant.” (Id.); (8) Plaintiff argues that “Defendant purchased a real estate [Richard Court] ... [for] \$739,000 in September 2003 and constructed his

personal house on it,” which “accounted for Accounts Receivable in a huge amount still now [due and owing].” (Id.); (9) Plaintiff argues that he needs to depose two witnesses, Carol Wolfsen and Timothy Woo [for a second time each]; (10) Plaintiff argues he should be “afforded an opportunity to weigh in on the Report and settlement.” (Id.); (11) Plaintiff “alludes to ‘suspicious inter-company transfers that are not explained, including a \$3.4 million transfer from Dong Nam,’” (Id.); (12) Plaintiff “raises assertions that a condominium in Hawaii was purchased.” (Id.); (13) Plaintiff argues that “the most glaring error ... is the failure to account at all for inter vivos gifts that could be adjudged a special benefit by the Korean court.” (Id.); (14) Plaintiff questions transactions between Dong Nam NJ and Defendant, and transactions involving 364 Mauro Road, 401 N. Woodland Street, 40 Holland Ave., the Richard Court property, Norwood Plaza, Tazz Mall, among others. (Id.); (15) Plaintiff questions the “relatively low profitability of B&H during the period 2000-2017.” (Id.); (16) Plaintiff questions whether the determination that a \$1.2 million capital contribution from Defendant in the Settlement Agreement between the Administrator and Defendant was appropriate. (Id.); (17) Plaintiff opposes the Administrator’s request to delay the filing of the estate tax return. (Id.); and (18) Plaintiff argues that the Administrator’s fees should not be derived from Defendant’s capital contribution of \$1.2 million but should be paid by the Estate. (Id.).

Judge Contillo's rulings, as set forth in the Counter-Statement of Facts, supra, pages 17-21, were affirmed in the Appellate Division's March 23, 2021 Decision. On this basis alone, Plaintiff's continued efforts to revive and relitigate the issues and arguments in his cross-motion should be denied.

POINT II

THE PROBATE COURT PROPERLY DENIED THE PLAINTIFF'S CROSS-MOTION SEEKING AN ORDER FOR REIMBURSEMENT TO THE PARTIES FROM THE B&H ESCROW ACCOUNT OF THE \$75,000 PAID BY EACH TO THE ADMINISTRATOR AS WELL AS HIS LEGAL FEES.

Plaintiff, in his appeal, argues that the probate court incorrectly denied his motion requesting that his legal fee award and the \$75,000 that both he and Defendant paid the Administrator be reimbursed from the B&H Escrow Account.

Plaintiff is wrong, and he has no standing or legal basis to collect any judgment or counsel fees from the escrow account. The Settlement Agreement, approved by Judge Contillo both in the language of his Opinion and in his Order, is explicit in setting forth how the escrow account may be disbursed.

The Settlement Agreement is crystal clear as to how the monies that are the subject of the escrow account must be disbursed. The applicable portions of the Settlement Agreement are at pages 13 – 16 of the Administrator's Forensic Report (Da246-249). The Settlement Agreement states:

1. An escrow account, called the “B&H Escrow Account,” will be created, and the sum of \$1.2 million shall be deposited into the Account.
2. \$275,000 of that amount shall be deposited into the trust account of Defendant’s counsel.
3. \$250,000 of the \$275,000 shall be used to pay the administrative expenses and professional fees that had been already applied for by the Administrator for his and his accountant’s expenses.
4. The balance of the \$275,000 (\$25,000) shall be used to pay administration fees incurred after the date the Administrator had filed his motion for approval of his Report.
5. The balance of the B&H Escrow Account (\$925,000) “shall be used to pay any federal estate taxes, and any interest and penalties thereon, that may be due and owing from the Estate in connection with the filing of a Non-Resident Estate Tax Return (Form 706-NA), if required.”
6. “After the payment of any such amounts [due under the Non-Resident Federal Estate Tax Return], **any remaining balance in the B&H Escrow Account shall be immediately released**

from escrow and deposited into the general account of B&H.”

(emphasis added).

(Da246-Da249).

Pursuant to the unambiguous terms of the Settlement Agreement approved by the Court and affirmed by the Appellate Division, \$275,000 was to be put into a separate account to pay the Administrator’s fees. The balance of the B&H Escrow account, \$925,000, was to first be used to pay Non-Resident Federal Estate Tax, if any is due. Once that occurs, the requirement for the disposition of the remainder of the monies in the Escrow Account is clear: it is to be paid into the general account of B&H. In his July 30, 2018 Decision, Judge Contillo clearly ruled that Plaintiff cannot challenge the underlying basis and terms of the Settlement Agreement, and that the Settlement Agreement is binding on the Estate. (Da189-190).

Unless otherwise stated in the judgment appointing the fiduciary to an estate, the fiduciary has the power “to compromise, contest, or otherwise settle any claim in favor of the estate, trust, or fiduciary or in favor of third persons and against the estate, trust, or fiduciary, including transfer inheritance, estate, income and other taxes....” N.J.S.A. 3B:14-23(m) (requiring all exercise of powers to be “exercise[d] in good faith and [with] reasonable discretion.”). Furthermore, that “an executor or administrator ordinarily can release or compromise a cause of action accruing to his

decendent is the established law of our state.” Sheridan v. Riley, 133 N.J. Eq. 288, 291 (1943). Judge Contillo approved the Settlement Agreement as written.

In view of the clear statements in the Settlement Agreement as to how the B&H Escrow Account is to be disbursed – which Judge Contillo ruled could not be challenged – Plaintiff’s claim that the funds in the B&H Escrow Account should be paid to Plaintiff has no legal basis whatsoever.

Accordingly, Plaintiff’s request that his outstanding fees be paid from the B&H Escrow Account should be rejected.

POINT III

THE SETTLEMENT AGREEMENT IN THE FORENSIC INVESTIGATION REPORT – WHICH WAS APPROVED BY JUDGE CONTILLO AND BY THE ADMINISTRATOR’S REPORT – PERMITTED THE ASSIGNMENT TO DEFENDANT, OR HIS ASSIGNEE, OF THE RESPONSIBILITY TO FILE A NON-RESIDENT FEDERAL ESTATE TAX RETURN, IF ONE IS REQUIRED. THE TRIAL COURT’S ORDER APPROVING THE ASSIGNMENT SHOULD BE AFFIRMED.

Plaintiff argues that the Administrator should be precluded from designating Defendant to prepare and file any Non-Resident Federal Estate Tax Return (Form 706-NA), if needed. In making his argument, Plaintiff referenced pages 15 – 16 of the Administrator’s Forensic Report. (Da248-249). Notably, those very pages, including the footnote, expressly provide that the Administrator may assign the task

of filing the Non-Resident Federal Estate Tax Return to a party to the lawsuit who has knowledge of the relevant books and records. (Id.).

Judge Contillo's order entered on July 30, 2018 permitted this assignment. (Da153-155). The Appellate Division, in its March 23, 2021 Decision, affirmed Judge Contillo's orders. (Da77-108). Plaintiff cannot now challenge the assignment.

POINT IV

THE VALUATION OF B&H REQUESTED BY PLAINTIFF WAS ALREADY PREVIOUSLY PERFORMED BY THE COURTS OF THE REPUBLIC OF KOREA, WHICH VALUATION DETERMINATIONS WERE APPEALED BY PLAINTIFF AND AFFIRMED BY THE KOREAN SUPREME COURT. PLAINTIFF'S INSISTENCE THAT THE ADMINISTRATOR MUST VALUE B&H IS WITHOUT MERIT.

Plaintiff is attempting to circumvent and undermine a holding of the Supreme Court of the Republic of Korea, which affirmed the valuation of B&H that had been established by the Korean trial court and affirmed by the Korean appellate court.

The methodology for valuing companies such as Dong Nam NJ and B&H follows procedures set forth in Korean Law. In accordance with these established procedures, the Korean Family Court determined the value of B&H. (Da1-17).

It is important to reiterate that this proceeding in New Jersey is an ancillary, limited administration proceeding. The main forum for matters relating to the

Decedent's Estate are the courts of the Republic of Korea. Plaintiff, having lost the battle before the Korean courts, is now improperly seeking a different outcome.

Moreover, as set forth in Judge Contillo's June 30, 2018 Decision, the value of B&H has been decided and cannot be challenged again. (Da195; Da191). The Appellate Division affirmed Judge Contillo's rulings. (Da77-108).

The Court should affirm the New Jersey probate court's rejection of Plaintiff's request to review this issue, as well as the other issues that Plaintiff had raised in his cross-motion.

POINT V

PLAINTIFF'S REQUEST FOR AN AWARD OF COUNSEL FEES RELATED TO THIS APPEAL SHOULD BE DENIED.

Surprisingly, Plaintiff asks that he be granted an award of counsel fees. Counsel fees in the Appellate Division must be made to the Appellate Court in accordance with R. 2:11-4. Moreover, Plaintiff advances no legal argument or basis in support of his request. Plaintiff's request for counsel fees should be denied.

POINT VI

PLAINTIFF'S ARGUMENT THAT JUDGE JEREJIAN DID NOT EXPLAIN HIS REASONING FOR DENYING PLAINTIFF'S FEBRUARY 5, 2023 CROSS-MOTION IS WITHOUT MERIT.

Plaintiff alleges that the probate court did not provide findings of fact in support of the orders that Plaintiff is now appealing.

The court did, in fact, set forth and explain its findings. The probate court, in its decision, addressed the issues raised by the motions, and explained the reasons it was granting the Administrator's motion and denying Plaintiff's cross-motion. Among other things, the court explained: (1) The Plaintiff had contended in his Complaint that an Administrator should be appointed to recover transfers into New Jersey by the Decedent in the millions of dollars. The Administrator examined voluminous financial documents and concluded in his Forensic Report "that there were no transfers of money or gifts includable in decedent's estate other than the \$900,000 that have been already established during an earlier phase." 1T31:16-23; (2) The Korean Court also "weighed in" on Plaintiff's allegations, and rejected them. 1T32:14-18; (3) Judge Contillo's July 30, 2018 Decision approved the Administrator's Report and denied Plaintiff's cross-motion, wherein Plaintiff made many of the same arguments he now raises. 1T32:19-23, 1T36:14-17; (4) Judge Contillo had ruled that "Plaintiff cannot challenge ... the settlement agreement between the administrator and defendant, and the settlement agreement is binding on the estate." 1T36:21-24. Further, "Plaintiff would be unable to bring a cause of action against the Administrator or any other individual to challenge the terms of the settlement." 1T37:1-4; (5) Judge Jerejian quotes Judge Contillo: "The court cannot allow plaintiff to now reopen all the doors the administrator had previously enforced, let alone new ones." 1T-37:13-16; (6) The Appellate Division affirmed the approval

of the Administrator’s forensic investigation in all respects. 1T38:13-1, 1T40:13-19; (7) “It is like the proverbial dog chasing its tail to try to find assets to collect, but yet we are just digging the hole deeper.” 1T39:3-5; (8) The Administrator’s designation of Defendant as the person having authority to file a non-resident United States Tax Return, if one is required, is “fair” and makes sense. 1T42:10-43:1; (9) The settlement approved by Judge Contillo “explicitly sets forth how the escrow is to be managed...” 1T39:18-20; and (10) “So basically there is no doubt in this Court’s mind that Judge Contillo’s July 30, 2018 decision resolved these issues.” 1T38:19-21.

CONCLUSION

For all of the foregoing reasons, the probate court’s June 19, 2023 Orders should be affirmed.

Respectfully submitted,

**GREENBAUM, ROWE, SMITH
& DAVIS LLP**

Attorneys for Defendant/Respondent,
Hyung Kee Oh

By: /s/ William D. Grand
WILLIAM D. GRAND

Dated: March 22, 2024

IN THE MATTER OF THE
ESTATE OF BYUNG-TAE OH,
DECEASED.

SUPERIOR COURT OF NEW JERSEY
APPELATE DIVISION

DOCKET NO.: A-003678-22

CIVIL ACTION

ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
PROBATE PART
BERGEN COUNTY

SAT BELOW
HON. EDWARD A. JEREJIAN, J.S.C.
HON. ROBERT P. CONTILLO, P.J.Ch.

DOCKET NO. BELOW
BER-P-18-13

REPLY BRIEF OF PLAINTIFF/APPELLANT, WON KI OH

WON KI OH
122 GIL 32
GANGNAM GU
SEOUL
ZIP CODE: 06085
(82) 010 3715 3883
BMW8827@GMAIL.COM
PLAINTIFF, (PRO SE)

ON THE BRIEF:
WON KI OH (PRO SE)

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No Legal Cases are cited in this brief. The issues presented primarily involve factual and procedural matters, and the arguments are based on the unique circumstances of the case rather than relying on established legal precedents or rules.

PRELIMINARY STATEMENT

The Plaintiff's appeal arises from a complex legal narrative surrounding the administration of an estate, spanning multiple judicial determinations. While not contesting the finality of Judge Robert P. Contillo's ruling on July 30, 2018, the appeal pivots on the significance of Judge Jerejian's subsequent ruling on January 14, 2019, which granted disbursements of \$1,049,589.14 to the Plaintiff and \$978,157.99 to the Defendant.

The Probate Court's denial of the Plaintiff's cross-motion is based on a misapplication of Judge Contillo's ruling, allowing for the Plaintiff's pursuit of relief concerning matters addressed post the July 30, 2018, judgment. The Plaintiff contends that the lower court's errors, rooted in procedural and substantive irregularities, warrant appellate review.

Challenges include the Plaintiff's dispute over the denial of the cross-motion, seeking reimbursement from the Escrow account for fees advanced to the Administrator. Additionally, concerns arise over the Defendant's utilization of the settlement agreement in the Administrator's Forensic report, which the Plaintiff argues was done without his awareness and consent. Furthermore, the Plaintiff rebuts the Defendant's assertion regarding the valuation of B&H by the Korean Court, arguing it is a misguided representation of facts.

Moreover, the Plaintiff seeks an award of counsel fees related to this appeal, emphasizing the importance of judicial transparency and procedural clarity.

REPLY STATEMENT OF FACTS

Plaintiff's "Statement of Facts" in his Opening Brief provides a comprehensive overview of the circumstances central to the appeal of the probate court's Order denying the Plaintiff's Cross-motion, filed June 19, 2023. (a701). The following Reply Statement of Facts supplements and clarifies certain points raised therein.

On August 31, 2012, Hiesung Lee, acting in her capacity as stepmother to both the Plaintiff and Defendant, reported to the Korean National Tax Service of an alleged \$900,000 estate associated with B&H, purportedly owned by Byung-Tae.

When legal proceedings concerning Byung-Tae Oh's estate commenced in New Jersey in 2013, Defendants filed a motion to dismiss (a8) claiming that there is no Estate asset in New Jersey, but it was denied. The Defendants claimed that decedent's \$900,000 is an inter vivos gift to him, not decedent's investment in B&H LLC. (a318).

Persistently, the Defendants championed these claims before the New Jersey court, challenging the need for an estate Administrator in the absence of a recognized estate within New Jersey. (a17). However, on May 8, 2014, Judge Robert P. Contillo acknowledged the existence of an estate valued at a minimum of \$900,000, thereby necessitating the appointment of an estate Administrator. (a313).

On September 20, 2017, the Defendant's assertion regarding the valuation of a 40.8% stake in B&H at \$900,000 by the Korean court stands as inaccurate. (page 9, Da1-17, Defendant's Respondent Brief).

It was only on January 8, 2018, due to the Defendant's strategic delay tactics, that the Administrator finally submitted the Forensic report. (a761). This occurred precisely 110 days after the resolution of the inheritance dispute in Korea, dated September 20, 2017. (page 9, Da1-17, Defendant's Respondent Brief).

LEGAL ARGUMENT

POINT I

THE PLAINTIFF'S APPEAL DOES NOT CONTEST THE FINALITY OR VALIDITY OF JUDGE ROBERT P. CONTILLO'S RULING ON JULY 30, 2018. INSTEAD, IT PERTAINS TO

SUBSEQUENT JUDICIAL DETERMINATIONS, PARTICULARLY THOSE ISSUED BY JUDGE EDWARD A. JEREJIAN, WHICH ARE DISTINCT AND INDEPENDENT FROM JUDGE CONTILLO'S DECISION. THE PROBATE COURT'S DENIAL OF THE PLAINTIFF'S CROSS-MOTION IS PREDICATED ON A MISAPPLICATION OF JUDGE CONTILLO'S RULING, WHICH NEITHER PRECLUDES NOR EXTINGUISHES THE PLAINTIFF'S RIGHT TO PURSUE RELIEF CONCERNING MATTERS ADDRESSED SUBSEQUENT TO THE JULY 30, 2018, JUDGMENT.

In the present appeal, the Plaintiff has not sought a reexamination of the estate. The Defendant's exposition pertains to legal facets unrelated to the current appeal. The Plaintiff's plea is singularly directed towards the disbursement of \$1,049,589.14 in attorney fees from the estate's Escrow Account. (a573). (a617).

The instant appeal maintains no nexus with the adjudication rendered by Judge Contillo on July 30, 2018. (a515). Rather, it pivots on the judicial pronouncement issued by Judge Jerejian on January 14, 2019, subsequent to Judge Contillo's aforementioned ruling. (a573).

At present, the estate Administrator's duty remains incomplete. Upon its finalization, the Plaintiff intends to contest and appeal the Administrator's Forensic Report. Hence, the Defendant's contention alleging the conclusive settlement of the estate in 2018 is demonstrably erroneous.

POINT II

THE PROBATE COURT ERRED IN DENYING THE PLAINTIFF'S CROSS-MOTION SEEKING AN ORDER FOR REIMBURSEMENT TO THE PARTIES FROM THE B&H ESCROW ACCOUNT OF THE \$75,000 PAID BY EACH TO THE ADMINISTRATOR AS THIS WAS AN ADVANCE MADE BY THE PLAINTIFF TO THE ADMINISTRATOR FOR THE FEES AND COSTS OF THE ADMINISTRATOR. (Order Denying Plaintiff's Cross-Motion dated June 19, 2023, a694).

Judge Contillo expressly articulated in distinct rulings that the estate should fully cover the Administrator's expenses. These rulings were pronounced in subsequent motions where the Administrator sought a payment of \$75,000. (a371). (a443). Judge Edward A. Jerejian ordered that all costs and fees should be distributed out of the Decedent's New Jersey Estate Assets. (a573).

For the reasons articulated in the Plaintiff's Opening Brief (Page 24), it is imperative to reimburse the Administrator with the \$75,000 advance from the estate Escrow account and return it to the Plaintiff.

The Defendant has cited the provisions of a settlement agreement executed between the Administrator, the Defendant, and B&H. The Plaintiff, however, was wholly uninformed regarding the agreement's contents until being apprised of them through the Administrator's Forensic report, which solely delineated the details set forth in the Forensic report, neglecting to encompass the entirety of the agreement. (a761). Utilizing the terms of an agreement unbeknownst and non-consensual to the Plaintiff in an attempt to prevail in this litigation is legally inappropriate and ethically unsound.

This agreement was drafted antecedent to the Order granting payment of legal fees totaling \$1,049,589.14 to the Plaintiff and \$978,157.99 to the Defendant from the estate. (a573). Consequently, the settlement agreement did not incorporate a provision for the disbursement of attorney fees from the Escrow account, rendering superfluous the Defendant's inclusion of such a provision.

Following the court's directive to disburse \$1,049,589.14 to the Plaintiff and \$978,157.99 to the Defendant from the estate (a573), it was imperative

for both the Administrator and the Defendant to expeditiously amend the settlement agreement to encompass provisions enabling the reimbursement of fees from the Escrow account. Despite their obligatory duty to effectuate this amendment, they have defaulted on their responsibilities. Rather than acknowledging this lapse, they paradoxically contest the payment of attorney fees from the estate's Escrow account, citing the agreement's contents, thereby presenting an argument fraught with inherent contradiction.

The Administrator is obliged to expeditiously revise the terms of the settlement agreement. Given that the Escrow account is designated for the payment of all estate-related expenses, it is incumbent upon them to include provisions for attorney fees in the amendment. The estate administrator's failure to diligently address this matter and abandonment of their duty is legally untenable and ethically unsound.

POINT III

**THE UTILIZATION OF THE SETTLEMENT AGREEMENT IN
THE FORENSIC INVESTIGATION REPORT IS PRECLUDED DUE
TO THE PLAINTIFF'S UNAWARENESS AND NON-CONSENT.
HENCE, ITS INVOCATION IS INVALID AND UNENFORCEABLE IN
LEGAL CONSIDERATION.**

In Point II, the Plaintiff contends that a settlement agreement, devised solely by the Defendant and the Administrator without his consent, lacks legal validity. This argument is founded on the principle that legal agreements require mutual understanding and consent. Without the Plaintiff's awareness or agreement, the use of such an agreement in legal proceedings is inappropriate and undermines the fairness of the process. Therefore, the Plaintiff's lack of involvement renders the settlement agreement legally invalid.

The inheritance tax rate in South Korea stands at 50%. In the United States, it is recognized that the Non-Resident Federal Estate Tax Return, Form 706-NA, must be filed if the Estate's value exceeds \$5,000,000. Given the actions taken by the Administrator and the Defendant thus far, it is evident that federal taxation is warranted.

It is noteworthy that both the Administrator and the Defendant were apprised of the total value of the Estate's assets back in 2018 when the Administrator submitted the Forensic Report, which received judicial approval at the time. (a515). However, despite over five years passing since then, they have failed to fulfill their federal tax obligations, ostensibly citing the presence of the Hawaiian estate. (a779). (a780). Additionally, the

Administrator's prior knowledge of the \$1,132,310.55 (a459) balance in the Hawaiian bank account underscores their prolonged inaction.

Consequently, incorporating this \$1,132,310.55 sum into the New Jersey estate would adequately cover federal tax liabilities. The Administrator's neglect to pursue this straightforward course of action suggests a mutual accommodation aimed at safeguarding their respective interests.

It is evident that the Defendant stands to gain significant advantages by evading federal tax reporting to the South Korean tax authorities, potentially amounting to \$1.8 million or more, as indicated in Page 22 of the Plaintiff's Opening Brief. Furthermore, there are indications suggesting the Administrator's complicity in facilitating the Defendant's efforts to evade taxes.

POINT IV

THE DEFENDANT'S ASSERTION REGARDING THE VALUATION OF B&H BY THE KOREAN COURT IS A MISGUIDED REPRESENTATION OF FACTS.

On August 31, 2012, Hiesung Lee, acting in her capacity as stepmother to both the Plaintiff and Defendant, reported to the Korean National Tax

Service of an alleged \$900,000 estate associated with B&H, purportedly owned by Byung-Tae.

When legal proceedings concerning Byung-Tae Oh's estate commenced in New Jersey in 2013, Defendants filed a motion to dismiss (a8) claiming that there is no Estate asset in New Jersey, but it was denied. The Defendants claimed that decedent's \$900,000 is an inter vivos gift to him, not decedent's investment in B&H LLC. (a318).

Persistently, the Defendants championed these claims before the New Jersey court, challenging the need for an estate Administrator in the absence of a recognized estate within New Jersey. (a17). However, on May 8, 2014, Judge Robert P. Contillo acknowledged the existence of an estate valued at a minimum of \$900,000, thereby necessitating the appointment of an estate Administrator. (a313).

Efforts to expedite the investigation by the estate Administrator were met with deliberate obstruction from the Defendant, resulting in significant delays. (Page 5-6, Plaintiff's Opening Brief)

After a protracted wait of over 4 years and 6 months for the New Jersey court's validation of the estate, the Korean court ultimately acceded to the

Defendant's insistence that United States estate matters be resolved domestically.

On September 20, 2017, the Defendant's assertion regarding the valuation of a 40.8% stake in B&H at \$900,000 by the Korean court stands as inaccurate. (page 9, Da1-17, Defendant's Respondent Brief). Notably, the Korean court did not engage in any formal assessment of B&H. The Defendant advocated for the adjudication of United States estate matters within the jurisdiction of the United States, given ongoing proceedings there, urging an expeditious resolution and seeking finalization of the remaining Korean estate.

The argument posited was that United States estate affairs should be resolved domestically. Over a span of approximately 4 years and 6 months, the Korean court entertained the Plaintiff's entreaty to await the verdict of the New Jersey court concerning the United States estate. However, compelled by circumstances, the Korean court ultimately concluded the Korean estate based on the reported tax amount, thus bringing the matter to a close.

The Defendant intentionally employed dilatory tactics throughout the New Jersey litigation proceedings, prompting the estate Administrator file a legal complaint. (a377). As a result of the Defendant's reprehensible conduct,

the Appellate Court was compelled to issue a verdict denying the Defendant's request for attorney fees. It was only on January 8, 2018, due to the Defendant's strategic delay tactics, that the Administrator finally submitted the Forensic report. (a761). This occurred precisely 110 days after the resolution of the inheritance dispute in Korea, dated September 20, 2017. (page 9, Da1-17, Defendant's Respondent Brief).

The Korean court has not undertaken any appraisal of B&H, nor has the Defendant presented any substantiating evidence for the valuation of B&H before the Korean court. The assertion contained within the opposing party's response, indicating that the Korean court concluded an assessment valuing B&H at \$900,000, is unequivocally erroneous and misleading.

These misunderstandings highlight the importance of accurate information in legal proceedings, particularly in international legal matters, where clear communication based on facts and evidence is crucial. To prevent misinformation or misunderstandings from affecting legal judgments, all claims must be carefully reviewed and supported with evidence.

POINT V

**PLAINTIFF'S REQUEST FOR AN AWARD OF COUNSEL FEES
SHOULD BE GRANTED.**

Since the Probate court's decree on August 31, 2022, ordering the disbursement of \$1,049,589.14 to the Plaintiff, the Defendant's intentional delays have led to extra legal fees. Notably, the Plaintiff, representing themselves, doesn't seek legal fees for this appeal but seeks reimbursement for costs incurred up to the appeal's initiation.

The defendant's actions have placed financial strain on the plaintiff, warranting compensation for incurred costs. Given the defendant's delay tactics leading to additional expenses, it's imperative to approve such demands to uphold the fairness of the legal process and ensure all parties can respond appropriately.

POINT VI

PLAINTIFF'S ASSERTION REGARDING JUDGE JEREJIAN'S LACK OF EXPLANATION FOR DENYING PLAINTIFF'S FEBRUARY 5, 2023, CROSS-MOTION IS WARRANTED DESPITE THE JUDGE'S STATED REASONS, AS THEY ARE DEEMED ERRONEOUS

At present, the Administrator's duty remains incomplete. Upon its finalization, the Plaintiff intends to contest and appeal the Administrator's Forensic Report. Hence, the Defendant's contention alleging the conclusive settlement of the estate in 2018 is demonstrably erroneous.

Given the potential for an appeal concerning the Administrator's report on the estate, its finality is not established. Consequently, the Defendant's sixth legal argument should not be accorded consideration.

CONCLUSION

It is unequivocally true that the Escrow account forms an integral part of the estate. The mandate for the disbursement of \$1,049,589.14 to the plaintiff from the estate's Escrow account is unmistakably clear and must be executed without delay.

The Administrator's attempt to prematurely terminate his duties in contravention of Judge Contillo's directive is improper and unacceptable.

Moreover, the Administrator has been paid \$75,000 in administration fees each from both the Plaintiff and the Defendant. It's crucial to highlight that Judge Contillo consistently ruled that such fees should be sourced from the estate's funds. However, there's a discrepancy as the estate administrator has received a total of \$150,000 directly from the Plaintiff and the Defendant, bypassing the estate's assets. This discrepancy must be promptly addressed in compliance with Judge Contillo's directives. To adhere to the court's orders, the Administrator must be paid \$150,000 from the estate's Escrow account and then reimburse the Plaintiff and the Defendant with \$75,000 each.

Furthermore, considering the conclusive resolution of inheritance matters in Korea by September 20, 2017, all estates are deemed settled. Therefore, the plaintiff's pursuit of \$1,049,589.14 from the estate via litigation seeking reimbursement of legal fees in Korea lacks legal basis.

In light of the foregoing, it is imperative to grant the plaintiff's request for reimbursement of the previously determined \$1,049,589.14 from the estate's Escrow account. Furthermore, the Administrator must diligently adhere to Judge Contillo's directive to ensure the full receipt of fees from the estate.

Respectfully submitted,

Won Ki Oh
Plaintiff (PRO SE)

By: /s/ Won Ki Oh
WON KI OH

Dated: April 9, 2024