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

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Docket No.: A-003686-22

**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

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**BRIEF OF DEFENDANT/APPELLANT, HYUNG KEE OH**

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## PRELIMINARY STATEMENT

On March 23, 2021, the Appellate Division filed a decision vacating the probate court's attorney fee award in favor of Plaintiff, Wonki Oh ("Plaintiff"), and against the Estate of Byung-Tae Oh in the amount of \$1,049,589.14. The Appellate Division remanded the case to the probate court for a recalculation of the legal fees in accordance with its express instructions as to how time entries should be analyzed to determine whether they are reimbursable.

On the remand, the probate court entered an order and opinion on August 31, 2022. The probate court did not follow the Appellate Division's instructions, and entered an award that was identical – to the penny – to the award that had been vacated.

Defendant, Hyung Kee Oh ("Defendant"), is appealing two orders: (1) the probate court's August 31, 2022 order and decision awarding Plaintiff attorney fees in the amount of \$1,049,589.14; and (2) the probate court's order of the same date that denied Defendant's motion to dismiss Plaintiff's attorney fee claim because of Plaintiff's failure to comply with a July 13, 2021 order that had directed the parties to submit position papers, and responses to the opposing party's position papers, by specified dates, which were to assist the court in its analysis. The motion is also based upon the trial court's failure to recognize that Plaintiff's actions in this case



failed to meet the equitable requirements and other requirements for fee shifting under R. 4:42-9(a)(2).

## **PROCEDURAL HISTORY**

### **A. Background of the Case**

Decedent, Byung-Tae Oh (“Decedent”), died on February 6, 2012. (Da1). The Decedent was a citizen and resident of the Republic of Korea at the time of his death. (Da1). Decedent’s widow and three children (Plaintiff, Defendant, and their sister, Hien Joo Oh) are the beneficiaries of Decedent’s Estate, pursuant to the laws of the Republic of Korea. (Da2). At the time of his death, Decedent was the majority shareholder of Dong Nam Housing Industry Co. Ltd. (“Dong Nam Korea”), a real estate development company located in Seoul, which he founded and ran for many years. (Da5).

### **B. Plaintiff’s Verified Complaint**

Plaintiff commenced this action with the filing of a Verified Complaint on January 18, 2013. (Da1). Plaintiff acknowledged, in ¶ 19 of the 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 in the Verified Complaint, however, that the Decedent’s investments and transfers into New Jersey actually totaled ten times that amount. Specifically, Plaintiff alleged that the following alleged transfers should be included:

(1) a \$5 million investment in a New Jersey limited liability company, Dong Nam New Jersey, LLC (“Dong Nam NJ”) (Da3, ¶¶26 and 28); (2) a condominium in Hawaii allegedly worth more than \$2 million (Da6 at ¶ 30); (3) a \$2.2 million additional investment in B&H (Da6, at ¶¶ 13 and 19); and (4) an additional almost \$1 million transfer to a beneficiary of the Estate (Da6 at ¶30), for a total of over \$10 million. Plaintiff contended that a New Jersey administrator should therefore be appointed to recover over \$10 million, as well as to examine the books and records of B&H to find evidence of alleged mismanagement by Defendant. (Da6 at ¶ 29).

Specifically, the Verified Complaint asked the court to appoint a receiver to marshal all the assets in New Jersey belonging to the Estate in addition to the \$900,000 investment in B&H and obtain accountings in pursuit of that goal, of B&H, Dong Nam NJ, Tazz Mall, Norwood Plaza Inc., and from Hyung Kee Oh and sister Hien Joo Oh. (Da7, ¶32).

**C. The Discovery Conducted in this Action**

Prior to the appointment of an Administrator, the parties engaged in discovery, searching for assets in New Jersey that might belong to Decedent’s Estate. A Case Management Conference with the Court took place on June 27, 2013. (Da915; Da924 at T17:12-24) (counsel for Plaintiff stating: “Judge, I’m also interested in other transfers.... I really want to be sure that your ruling is going to encompass other transfers [inaudible] whether they’re loans or gifts or something else,” from

Decedent into B&H or any of its subsidiaries) (Da919 at 6:13-14) (counsel for Plaintiff affirming that, “I have also asked for information about other cash [gifts] from Decedent to Defendant.”). Id.

On March 21, 2013, Plaintiff served an “Initial Request for Production of Documents” on Defendant. (Da931) The document demand contained requests for 65 categories of documents.

In addition to the document requests, Plaintiff served numerous subpoenas seeking documents from third parties relating to the same issues, namely, on TD Bank, H. Timothy Woo, CPA (B&H’s accountant), and Barry M. Schwartz, Esq. of Cole, Schotz. (Da961, Da967, Da980).

Furthermore, the following depositions were taken in discovery in this matter prior to the summary judgment order on May 8, 2014:

- a. Hyung Kee Oh – 8/28/13;
- b. Won Ki Oh – 8/27/13 and 8/28/13;
- c. Hie Sung Lee – 9/30/13;
- d. Barry M. Schwartz, Esq. – 2/11/14;
- e. Sung Hee Park – 2/18/14; and
- f. H. Timothy Woo, CPA – 2/28/14.

(Da824 at ¶ 13).

**D. Summary Judgment and the First Appeal**

On May 8, 2014, the court entered an order granting summary judgment in favor of Plaintiff, 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. (Da11).

Although Plaintiff had alleged in his Complaint that Decedent (and, therefore, the Estate) held an interest in Dong Nam NJ, the trial court in its May 8, 2014 summary judgment opinion held that Plaintiff had failed to establish that Decedent held an interest in Dong Nam NJ. (Da 14-27, at Da 24). The court recognized that Dong Nam NJ was a subsidiary of Dong Nam Korea; it was not owned by the Decedent individually. Accordingly, Dong Nam NJ was expressly determined to be outside the scope of this limited administration proceeding. Plaintiff did not appeal this determination. (Da229, page 22, fn. 6)

Defendant appealed the trial court's order granting summary judgment. On May 3, 2016, the Appellate Division issued its decision, affirming the decision of the trial court. (Da2470-2482).

**E. Proceedings During and Subsequent to the Summary Judgment Decision**

As will be set forth in greater detail in the Statement of Facts below, the Administrator, from the date of his appointment in May 2014 (simultaneously with

an appeal of the summary judgment ruling) initiated, at Plaintiff's urging, a thorough and comprehensive investigation in a search for Decedent's assets in New Jersey that Plaintiff insisted existed, and also conducted an extensive investigation of the books and records of B&H as well as its financial transactions and bank records to determine the bona fides of Plaintiff's claim of malfeasance in the management of B&H.

The Administrator's multi-year investigation included a review of thousands of pages of financial records, including checking account statements, project records and more than ten years of the books and records of B&H. After several years of investigation, 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. (Da312-314). The Administrator also could find no malfeasance in Defendant's operations of B&H, which had been vigorously and persistently alleged by Plaintiff. (Da313-314).

**F. The Administrator's Motion Seeking Court Approval of His Forensic Investigation Report, Plaintiff's Opposition to Same, Plaintiff's Cross-Motion, and the Court's Approval of the Administrator's Motion and Denial of the Cross-Motion.**

On January 9, 2018, the Administrator filed a motion seeking court approval of his forensic investigation report ("Administrator's Report"). (Da172). Plaintiff opposed the motion and filed a cross-motion (Da268), supported by multiple briefs, 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. (See Judge Contillo's July 30, 2018 Orders and Opinions. (Da118-167). Judge Contillo approved the Administrator's Report and denied Plaintiff's cross-motion. (Id.).

The court, in its opinion, stated the following:

1. The Administrator had properly carried out his duties.
2. The Administrator had made a conclusive determination of all material issues, including whether there were any inter vivos gifts made to any individuals in New Jersey, what amounts were due to B&H, the amount of the appropriate capital contribution to be made by Defendant, and whether the inquiry was complete.
3. The Administrator had properly relied upon Judge Contillo's May 8, 2014 ruling that the Decedent did not have an interest in Dong Nam NJ.
4. The Administrator had properly relied upon the rulings made in the Korean Judgments and in various Korean proceedings and investigations.
5. The allegation that Defendant had received funds from Decedent for his education had been addressed and denied by the Korean Court.
6. The court denied Plaintiff's cross-motions to allow Plaintiff 150 days to review and file further objections to the Administrator's Report and the settlement agreement included therein.

(Da151-57).

**G. Plaintiff’s Application for Legal Fees and the Trial Court’s Award.**

On August 31, 2018, after the retirement of Judge Contillo – who had presided over the case for more than five years – Plaintiff filed a motion for an award of counsel fees and costs. (Da385-792). Defendant also filed a motion for an award of attorney fees and costs.

Plaintiff’s legal fee application attached invoices from three law firms. The total was \$1,441,139.96, consisting of \$1,387,392.22 in fees and \$53,747.74 in disbursements. (Da394). Plaintiff alleged that each and every entry for fees and disbursements that had been billed to Plaintiff by the three firms should be awarded.

On January 14, 2019, the trial court entered an order and opinion providing, inter alia, that Plaintiff be awarded counsel fees and costs in the amount of \$1,049,589.14, “to be distributed out of the Decedent’s New Jersey estate assets.” (Da212-218). (See Statement of Facts, infra, for an explanation as to how the court determined the award.) The trial court also awarded counsel fees and costs to Defendant in the amount of \$978,157.99. (Id.).

**H. The First Legal Fee Award That Was Vacated**

Defendant appealed the trial court’s award of counsel fees to Plaintiff, and Plaintiff appealed the court’s award of counsel fees to Defendant. (Da224). Plaintiff also appealed the trial court’s July 30, 2018 order that had approved the

Administrator's Report and had denied Plaintiff's motion seeking additional discovery. (Da118-167)

In its March 23, 2021 decision, the Appellate Division reversed the legal fee award in favor of Defendant in the amount of \$978,157.99; vacated the portion of the trial court's January 14, 2019 Order that awarded Plaintiff counsel fees in the amount of \$1,049,589.14; affirmed the trial court's rulings denying Plaintiff's challenge to the court's approval of the Administrator's Report and denied Plaintiff's motion seeking additional discovery. The Appellate court remanded the matter for further proceedings "in conformity with this opinion" with respect to Plaintiff's motion for counsel fees under Rule 4:42-9(a)(2). (Da229, page 35).

**I. Procedural History of the Remand Proceeding**

On July 13, 2021, the probate court entered an order in furtherance of the proceedings on the remand. In a letter order to counsel, the court ordered that, "All parties must exchange written submissions regarding their respective positions by September 30, 2021," and "All parties must respond to the respective positions by October 29, 2021." (Da261).

On September 29, 2021, Defendant filed, in accordance with the court order, a comprehensive submission consisting of a 58-page submission with a supporting certification. (Da1229-1289; Da1290-1291). Plaintiff did not file a position statement. (Da265)



On October 13, 2021, Defendant filed a notice of motion to dismiss Plaintiff's attorney fee application, based upon Plaintiff's failure to comply with the court's July 13, 2021 order. (Da262; Da265).

On December 3, 2021, the probate court held a telephone conference with counsel to discuss the status of the remand. At that conference, the court said that Plaintiff should make his submission within 10 days. The court stated that it would then review the submission, and would review Defendant's counsel's submission, and would decide the appropriate amount of the fee award. (2T33-34).

On December 13, 2021, Plaintiff filed his "submission." His submission consisted of a cover letter and a copy of the fee application that had been filed by Harwood Lloyd in August 2018, prior to the first legal fee appeal. The only substantive addition to the 2018 fee application in Plaintiff's December 13, 2021 letter was the following statement: "We believe that each and every legal work that was undertaken was wholly justified and necessary...." (Da2469; Da385-792).

On August 31, 2022, the trial court entered an order and opinion awarding Plaintiff attorney fees in the amount of \$1,049,589.14 – the same amount that had been previously awarded and then vacated by the Appellate Division. (Da271-281). The Court also denied Defendant's motion to dismiss Plaintiff's legal fee application. (Da271). The Court entered a separate order on that date denying a

motion by the Harwood Lloyd firm (which was no longer an attorney of record at the time it filed its motion) for a charging lien. (Da279).

### **STATEMENT OF FACTS**

#### **A. Plaintiff's Secret Recording of a Family Meeting**

Early on, Plaintiff expressed his extreme displeasure to Defendant and other members of the family regarding Plaintiff's perceived unfair treatment with respect to his inheritance. (Da821, Ex. C, at Da835). Plaintiff declared that because he is the eldest son, he was entitled to inherit Dong Nam Korea, the Korean company that Decedent owned and ran during his lifetime and was angry that he had not. (Da830 at ¶ 4). As a result of his displeasure, Plaintiff has undertaken a campaign to harass Defendant to the greatest extent possible. (Da830 at ¶ 5).

On February 15, 2012 – just days after Decedent's passing – plaintiff attended a family meeting and secretly recorded a discussion. (Da830-912). Plaintiff aggressively and repeatedly demanded that his stepmother simply surrender to him her entire 30 percent ownership interest in Dong Nam Korea, as well as her entire 3/9 share of Decedent's estate – all on the basis that Plaintiff is Decedent's eldest son. (Da890-893) (e.g., plaintiff demanding, "I want you to give the whole 30% [ownership interest in Dong Nam Korea] to me and then give up [those assets] to which you have the right to inherit.... You are an inheritor so giving up the right of inheritance means giving up everything.").

Plaintiff's bitterness and vindictiveness at having been excluded from the family business in Korea despite being the eldest son is the engine that has driven his insistence on having an Administrator appointed to search for assets that did not exist.

**B. The Beneficiaries Other Than Plaintiff Oppose the Litigation**

Plaintiff is the only person who sought the Administrator's efforts to search for additional Estate assets in New Jersey; all of the remaining beneficiaries of the Estate, including not only Defendant but his step-mother, Hie Sung Lee, and his sister, Hien Joo Oh, did not join in Plaintiff's efforts, and, in fact, objected to the Estate's being charged for the costs of the administration, acknowledged that the only person interested in pursuing the administration is Plaintiff, and believed that such efforts constituted a waste of the assets of the Estate. (Da988; Da991).

**C. Plaintiff Violates Court Orders**

On February 18, 2015, the Court entered a Confidentiality Order, which provides, in pertinent part, as follows: "[W]ith respect to all documents and information that have been or will be provided by the Court-appointed Administrator (Stuart Reiser, Esq.) to the Plaintiff or his counsel, Harwood Lloyd, LLC (hereinafter, the "Confidential Material"), such Confidential Material may not be disseminated or disclosed by the Plaintiff or his counsel, in whole or in part, to any

person or entity not a party to this action, nor to any other court, without leave of Court.” (Da995-96) (emphasis added).

Despite the Confidentiality Order’s prohibitions, Plaintiff filed three criminal complaints with Korean prosecutors in which he alleged malfeasance of Defendant in connection with his operation of B&H. Plaintiff supported his complaints with confidential financial documents of B&H and Defendant that had been produced by Defendant in this litigation, which documents were subject to the confidentiality order. (Da1003 at ¶ 3, Da1069-70 at ¶ 11).

The Korean prosecutors conducted a thorough investigation of Defendant’s activities in the management of B&H, including extensive document review and multi-day interviews of Defendant and Plaintiff. The prosecutors concluded that Plaintiff’s allegations were without basis and dismissed the criminal complaints. (Da1003 at ¶ 3; Da1069 at ¶ 10 – Da1072 at ¶ 20).

On March 16, 2017, the New Jersey trial court entered an order imposing monetary sanctions against Plaintiff for violating the court’s confidentiality orders. (Da1057).

Soon thereafter, in August 2017, Plaintiff once again attempted to disclose confidential information, this time to the Korean Court that was litigating the inheritance disputes. (Da1003 at ¶ 4). Plaintiff submitted a letter to the court stating: “According to the confirmation [that Plaintiff] has received from the Administrator

of the Estate in the United States, Respondent Hyung Kee Oh embezzled money from B&H and thus he is now liable to repay some \$5,000,000 to B&H.” (Da1003 at ¶ 5; Da1006-10).

When the Administrator was apprised of the letter and the allegation, he wrote to the Korean Court stating that Plaintiff’s allegation was “absolutely untrue.” (Da1003 at ¶ 6; Da1020-21). The Local Administrator advised as follows:

Contrary to the [Plaintiff’s] statement, however, I have not concluded that Hyung Kee Oh has embezzled monies, or that he is liable to repay some \$5,000,000 to B&H. That statement is absolutely untrue. I have made no such conclusion. Indeed, my conclusions will be set forth in my report to Judge Contillo in the above matter, which has not yet been completed. This report will detail my estate administration activities and conclusions, and my recommendations for the handling of future estate administration matters in New Jersey.

(Da1021) (emphasis added).

**D. Defendant’s Cooperation with the Administrator**

Defendant cooperated with the Administrator’s investigation. (Da313 at ¶ 5). Among other things, Defendant furnished the financial books and records, B&H project files, and other relevant documents. These records included, among other items, the following:

- i. Eleven years of B&H QuickBooks records, dating from 2006 to March 7, 2016;

- ii. Nine years of B&H checking account statements and cancelled checks;
- iii. The checking account statements and canceled checks for the period January 2007 to 2015 (1,731 pages);
- iv. Sixteen years of B&H tax returns dating from 2001 through 2016; and
- v. B&H project files from multiple years.

(Da306-7).

The Administrator also received 1,250 pages of documents produced by TD Bank pursuant to an October 28, 2016 subpoena served by the Administrator. (Da961). Indeed, the Administrator asked for and received many thousands of pages of records – including, but not limited to, all QuickBooks records for B&H. (Da306-7).

**E. 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. (Da1109-25). The court's decision included a determination that 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. (Id.). The Korean 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. (Da1124).
- 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." (Da1119 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. (Da1119 at item #2).

- d. The Court rejected Plaintiff’s claim that Decedent had bequeathed the Richard Court property to Defendant in 2005. (Da1119 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.” (Da1119 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. (Da1203; Da199 at ¶ 3; Da203-6).

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

On January 8, 2018, the Administrator issued his Report and filed a motion seeking the court’s approval. (Da302). The Report documents the investigation in detail, including the books and records reviewed, and sets forth the Administrator’s conclusions. (Da312-314). 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.

(Da312-314).

**G. Plaintiff's Disregard of Court Orders and Plaintiff's Constant Demands on the Administrator to Continue Searching the Books and Records of Dong Nam NJ Did Not Benefit the Estate and Was Detrimental to the Estate**

Despite the above rulings and findings, Plaintiff's insistence, announced at the family meeting in 2012, on obtaining a greater inheritance than he was entitled to under Korean law, never ceased. From the date the Administrator was appointed by the court on May 14, 2014, Plaintiff insisted that the Administrator continue to search for assets of the Estate that did not exist.

In addition to Plaintiff's disregard of the confidentiality orders that had been entered, Plaintiff disregarded, for example, Judge Contillo's May 8, 2014 ruling that Dong Nam NJ was not an asset of Decedent's Estate; Plaintiff continued to insist, over a period of several years, that the Administrator continue to investigate Dong Nam NJ.

Similarly, under pressure from Plaintiff, the Administrator initially bowed to his demands and did some investigation regarding real estate transfers in Hawaii, but subsequently informed Plaintiff that Hawaii was not within the jurisdiction of the New Jersey court.

The Administrator informed the court in a certification filed in February 2018 of the pressure the Plaintiff was applying for the Administrator to pursue inappropriate avenues in his search for assets. The Administrator attached evidence of the pressure in his exhibits to the certification, as follows:

- (1) Exhibit C is a lengthy email from Plaintiff's counsel pushing for a deposition of Defendant's immigration status through his immigration counsel. (Da35)
- (2) Exhibit D is an email from Plaintiff's attorney to the Administrator enclosing "an analysis" of Dong Nam NJ and insisting that he pursue the same. (Da38)

- (3) Exhibit H is a letter from Plaintiff's attorney urging the Administrator to explore numerous transactions, including some in Hawaii. (Da41)
- (4) Exhibit J is the Administrator's April 3, 2017 letter responding to numerous requests for continued searches. The Administrator explains, among other things, that Hawaii is beyond the jurisdiction of the New Jersey proceeding. (Da51)
- (5) Exhibit K is Plaintiff's counsel's five-page, single spaced letter responding to the Administrator's April 3 letter, in which Plaintiff's counsel urges the Administrator to continue to investigate. (Da61)
- (6) Exhibit N is an eight-page single-spaced letter signed by the Plaintiff in which he attempts to convince the Administrator to keep searching for additional assets. (Da67)

This pressure, including the pressure to investigate alleged Estate assets in Dong Nam NJ, was a significant reason there were some differences of opinion between Defendant and the Administrator.

With respect to the Hawaii issue, Plaintiff eventually did file a petition in Hawaii seeking the appointment of a special administrator, and an administrator was appointed. After an investigation, the Hawaii administrator issued a report stating

that no assets belonging to the Estate were found in Hawaii. (2T:8:16-19)<sup>1</sup>. Not unlike what occurred in New Jersey, legal fees, once again, this time in connection with Hawaii, were spent on a fruitless search at Plaintiff's urging.

The trial court in the action at bar recognized Plaintiff's wasteful litigation. In his opinion with respect to his first legal fee award that was vacated, the court had found that Plaintiff had "vehemently opposed" the Administrator's application that sought approval of the Administrator's Report. The court ruled that Plaintiff's filing of a cross-motion seeking to keep the investigation open, was "directly adverse to the best interests of the Estate." (Da 212-218, at 218).

Unfortunately, based upon its August 31, 2022 opinion, the trial court had not reviewed the earlier time entries of Plaintiff's counsel with the rigor required by case law and Rule 4:42-9(a)(2), and did not properly assess the overall equities in the case to determine whether the equities supported Plaintiff's application for fee shifting.

**H. 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

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<sup>1</sup> "IT" shall refer to the transcript of the motion hearing before Judge Jerejian on June 19, 2023. "2T" shall refer to the transcript of a telephone conference before Judge Jerejian on December 3, 2021.

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 (Exhibit N to the Supplemental Certification filed herein) 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, Da229 at 242-243.

In addition, the Administrator told the 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.” (Ibid., Da241-243).

**I. The Trial Court’s Rulings on the Remand Of the Legal Fee Award**

Surprisingly, the trial court’s August 31, 2022 analysis and decision on the post-remand legal fee issue was not, in any significant respect, different from its ruling that had been vacated in the first appeal. (Da271)

The trial court, in its first legal fee decision, had relied upon the Administrator’s statement in a certification (Da186-195) that, in the Administrator’s opinion, Plaintiff should receive all the attorney fees incurred up to January 5, 2017

(Da212-218), and that Defendant should receive legal fees for all activity after that date. The trial court not only failed to assess the equities of the case to determine whether fee shifting was appropriate under Rule 4:42:9(a)(2), but the trial court adopted the Administrator's statement without any investigation whatsoever into the actual work that was performed by Plaintiff's counsel during the time period prior to January 5, 2017, to determine whether the work complied with other requirements of the "fund in court" rule, Rule 4:42:9(a)(2). Although the Appellate Division criticized the trial court's approach, the court used the same approach on the remand, as more particularly described below.

The court, in adopting the Administrator's suggestion, completely ignored the Administrator's cautionary statement in his certification: "This Certification does not address any of the legal arguments advanced by the parties as to whether fees ought to be awarded or the factors the Court considers as to the reasonableness of the fees sought as provided in the Rules of Court and by applicable law." (Da188, Para 8) (emphasis added).

The Administrator's suggestion that Plaintiff was cooperating with him prior to January 5, 2017 was obviously based upon the nature of the interactions between them during that time. During that period, Plaintiff's activity consisted of explaining his allegations to the Administrator; Plaintiff was more than happy to expound upon them. As was later explained by the Administrator in his Report, Plaintiff had failed

to produce any evidence to support his allegations, and the Administrator concluded that the Defendant “fully cooperated” with his investigation. (Da312-314)

From Defendant’s perspective, the Administrator’s suggestion that Defendant had not cooperated with him prior to that date was largely based upon the fact that Defendant was resisting demands (that had originated with Plaintiff) that he supply information and documents as to matters that the trial court had already ruled were not a part of the case.

The Appellate Division not only reversed the court’s initial fee award and vacated the amount of legal fees awarded, but the Appellate Division also provided instructions regarding the review that was to be conducted on the remand.

Among other things, the Appellate Division observed that the court had adopted a dollar amount in the most “conclusory of fashions” by rigidly utilizing that January 5, 2017 date as the cut-off without analyzing the reasonableness of the services occurring within that time frame. The Appellate Division instructed that the determination “required a more searching analysis than that.” (Da258).

The Appellate Decision also stated: “When the fee application is based on the ‘fund in court’ rule, a court should also consider: (1) the amount of the estate and the amount in dispute; (2) the skill, diligence, ability and judgment shown by the attorney; (3) the results obtained; and (4) the benefits or advantages resulting to the estate, and their importance.” (Ibid., Da258). The Appellate Division held: “The



judge should focus on those steps taken by plaintiff that actually benefited the estate and fix a reasonable fee for those steps based on the principles outlined in Rendine v. Pantzer, 141 N.J. 292 (1995)], RPC 1.5(a), and [In re] Bloomer [37 N.J. Super. 85 (App. Div. 1955)].” (Ibid., Da258).

**J. The Trial Court Did Not Follow the Appellate Division’s Instructions.**

The court’s August 31, 2022 analysis and award mirrored the analysis and award from the first legal fee appeal that had been vacated. Once again, the court used the arbitrary date selected by the Administrator and awarded the exact same amount as the first award – \$1,049,589.14. The court awarded fees for every single time entry up to January 5, 2017, without examining the time entries or evaluating whether the work performed benefited the Estate or otherwise met the requirements of Rule 4:42-9(a)(2).

By way of example, the trial court did not explain why work searching for assets in Hawaii was being reimbursed; why work with regard to Dong Nam NJ was being reimbursed, even though Judge Contillo had ruled on May 8, 2014 that Dong Nam NJ asset was not a part of the case; and why invoices from the Rosensteel Law firm totaling \$309,000 were included in the award, even though Rosensteel was a New York firm that had never appeared in the case, and whose work was duplicative and not necessary – Harwood Lloyd, the law firm of record, was fully engaged in the case, entering all the appearances and preparing and submitting all of the filings.

In fact, in his opinion on August 31, 2022, the court lists the attorneys and law firms that that had represented Plaintiff, and never mentions the Rosensteel Law Firm. (Da276-277).

In addition, the trial court performed no analysis of the overall equities of the case to determine whether fees shifting was appropriate. The trial court's opinion also contained no analysis as to whether the legal fee award was reasonable in view of the size of the Estate from which the legal fees are to be paid. The court did not review any time entries to determine whether the time entered was in furtherance of activity that benefited the Estate, as opposed to activity that was spent pursuing Plaintiff's false claims. The court also never explains why an award that was in excess of \$1 million is appropriate when Plaintiff had initiated his action with a Verified Complaint acknowledging that the beneficiaries had already reported to Korean authorities the Decedent's \$900,000 investment in B&H, yet urged that there was a need to appoint an Administrator to recover an additional \$10,000,000 in Estate assets in New Jersey, and to uncover the "malfeasance" of Defendant in his management of B&H. (Da272) The Administrator concluded, after a long and arduous effort, that all of Plaintiff's allegations were untrue.

In summary, the trial court did not perform the required analysis in accord with case law, Rule 4:42-9(a)(2) and the Appellate Division's instructions.

## LEGAL ARGUMENT

### POINT I

**THE TRIAL COURT’S AUGUST 31, 2022 AWARD OF LEGAL FEES AND COSTS SHOULD BE REVERSED, BECAUSE PLAINTIFF’S FEE APPLICATION DID NOT MEET THE REQUIREMENT UNDER R. 4:42-9(a)(2) THAT THE EQUITIES OF THE CASE SUPPORTED FEE SHIFTING IN THIS CASE; PLAINTIFF DID NOT PROVE THAT THE LITIGATION BENEFITED BENEFICIARIES OTHER THAN HIMSELF; AND BECAUSE THE TRIAL COURT’S CALCULATION OF THE LEGAL FEES THAT SHOULD BE AWARDED WAS NOT PERFORMED IN ACCORDANCE WITH THE APPELLATE DIVISION’S RULINGS AND RELEVANT COURT RULES AND CASE LAW. (Trial Court Order and Opinion dated August 31, 2022, Da271).**

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**A. The Appellate Court’s Instructions And Applicable Law for Fee Shifting.**

In its March 23, 2021 decision, the Appellate Division vacated the trial court’s January 14, 2019 attorney fee award in the amount of \$1,049,589.14 and remanded the matter to the trial court for further proceedings “in conformity with this opinion.” (Da229).

The Appellate Division’s decision included the following statements, analysis, and instructions:

- (1) “We start with the well-established tenet that our courts adhere to the American rule that litigants bear their own fees unless otherwise provided by court rule, statute, or contract.” (Da250);

- (2) The “only arguable basis for an award in this matter rests with Rule 4:42-9(a)(2), which authorizes an award of fees to a litigant from a ‘fund in court’.” (Da251);
- (3) “The Supreme Court has cautioned that ‘trial courts should not accept passively the submissions of counsel to support the lodestar amount’ but should instead inquire as to what a reasonable amount of time expended should have been, as opposed to the hours actually expended by counsel.” (Da258);
- (4) “The judge fixed plaintiff’s fee by adopting a date suggested by the administrator as the moment when plaintiff ceased providing a benefit to the estate and then adopting a dollar amount in the most conclusory of fashions by rigidly utilizing that date as the cut-off without analyzing the reasonableness of the various services occurring within that time frame.” (Da259);
- (5) The Court cited the Administrator’s finding of Plaintiff’s obstinate nature and that there was no evidence of any transfers over and above the initial \$900,000. The Court observed that: “plaintiff could have inquired into these matters himself before he moved for summary judgment in 2014.” (Da242; and
- (6) The Court instructed that, “Because the rule does not permit an award of fees for services that did not benefit the estate, 7A Clapp & Black, § 1547, at 97, the judge should focus on those steps taken by plaintiff that actually benefited the estate....” (Da259) (emphasis added).

The trial court not only failed to follow the Appellate Division’s instructions, but also did not follow the requirements for fee shifting under Rule 4:42-9(a)(2). Our courts adhere to the American Rule, that litigants bear their own fees unless otherwise provided by court rule, statute, or contract. See In re Niles Trust, 176 N.J.

282, 294 (2003); Henderson v. Camden Cty. Mun. Util. Auth., 176 N.J. 554, 564 (2003).

The concept of a “fund in court” is intended to embrace certain situations in which equitable allowances should be made in a way that is compatible with the policy of the American Rule that each litigant shall bear his own costs. (March 23, 2021 Appellate Decision, (Da250-252)) (emphasis added). Defendant submits that based upon the history of this case and Plaintiff’s misdeeds and fruitless, costly litigation, it was inequitable to award legal fees to Plaintiff.

**B. The Trial Court’s Decision and Fee Award on the Remand Was Similar in Analysis and Content To the First Fee Award, Which Was Reversed and Vacated.**

In the trial court’s first attorney fee opinion, the court had relied upon the Administrator’s statement that, from his perspective, Plaintiff’s actions were beneficial until January 5, 2017, and that Defendant’s actions were beneficial at all dates subsequent to January 5, 2017. (Da187, Para. 3). In relying upon the Administrator’s feelings about the parties’ assistance to him as the basis for the court’s analysis, the trial court not only did not fulfill its role, but the court also overlooked the Administrator’s caveat in his Certification: “This Certification does not address any of the legal arguments advanced by the parties as to whether fees ought to be awarded or the factors the Court considers as to the reasonableness of

the fees sought as provided in the Rules of Court and by applicable law.” (Da188, Para. 8) (emphasis added).

The Administrator’s suggestion that Plaintiff was cooperating with him prior to January 5, 2017 was based primarily upon the nature of the interactions between them during that time. During that period, Plaintiff’s activity consisted of explaining his allegations to the Administrator, and Plaintiff was more than happy to expound upon them. As was later explained by the Administrator, however, Plaintiff had produced no evidence in support of his allegations. At the end of the day, after years of a highly labor-intensive investigation, which began as far back as May 14, 2014, the Administrator, in hindsight, concluded 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 plaintiff failed to take into consideration the substantial costs the estate would incur if the investigation were to continue.”

(Da241-243).

The Administrator summarized: “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.” (Id.).

Thus, the trial court should not only have analyzed all of the requirements for fee shifting under R. 4:42-9(a)(2), but should have carefully reviewed the time entries during the discovery period from the filing of the Verified Complaint in 2013 to the summary judgment in May of 2014, and then subsequent to the commencement of the Administrator's investigation in May of 2014, to determine whether the efforts for which Plaintiff was reimbursed resulted in any benefit to the Estate, or, to the contrary, whether they depleted the Estate's assets as a result of the approximately \$322,809.33 that was paid to the Administrator and his accountants for his fruitless search for non-existent assets and for his search for the alleged malfeasance of Defendant in the management of B&H. (Da287)

As was set forth in the Procedural History, the major goal of the lawsuit was to have an Administrator appointed to search for and locate almost \$10 million in assets that Plaintiff swore in his Verified Complaint belonged to the Estate, over and above the \$900,000 that had been transferred into B&H. (See Procedural History, supra, pages 2-3). The document discovery and the depositions taken by Plaintiff during the summary judgment phase were, in large part, in pursuit of that goal (Id., pages 3-4), as were the Administrator's activities from the date of his appointment.

During the attorney fee phase of the litigation, the court adopted the Administrator's opinion that was set forth his Certification dated November 6, 2018 (Da186-195) as the final say as to what legal fees should be awarded. The

Administrator attached a spreadsheet to his Certification that totaled all of the fees that had been billed to Plaintiff from the inception of the lawsuit through January 5, 2017, and opined that all the fees and disbursements in each of the invoices should be awarded. The court accepted that statement, ignoring the Administrator's cautionary statement that his opinion "does not address ... the factors [a] Court considers as to the reasonableness of the fees sought as provided in the Rules of Court and by applicable law." (Da188, Para. 8). There is nothing in the court's opinion that suggests that the court reviewed any of the invoices.

The Norris McLaughlin law firm commenced the lawsuit on Plaintiff's behalf and litigated the matter at least until October 2013, according to the Administrator's spreadsheet that was based upon Plaintiff's attorney fee application. (Da191). Its fees and disbursements totaled \$160,448.70, and they were awarded in full. Ibid. The Harwood Lloyd law firm commenced its work for the Plaintiff in October 2013. Its invoices through the date that a summary judgment order was entered on May 8, 2014, totaled \$152,750.49, according to the spreadsheet. These fees were also awarded in full by the court. (Da 192-193). The total fees awarded through the entry of summary judgment was thus \$313,198.00.<sup>2</sup>

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<sup>2</sup> The invoices of Rosensteel Law on the Administrator's spreadsheet were awarded in full by the court but were not included in this total. See the discussion of Rosensteel's involvement in Section C, below.



However, a large part of the Norris and Harwood fees was incurred pursuing Plaintiff's goal of attempting to prove that additional assets should be included in the Estate. The court's opinion contained no analysis of the time entries. In view of the fact that the Verified Complaint shows that the Plaintiff's ultimate goal in the lawsuit was to obtain proof in support of his false allegations that there were \$10,000,000 in additional transfers and malfeasance in the operation of B&H, and the fact that the discovery pursued both prior to and subsequent to the May 8, 2014 summary judgment was in pursuit of the same, the amount that should have been considered for fee shifting should have been substantially less than \$313,198.00. Defendant's submission to the court on the remand, on the other hand, did analyze the time entries, and that analysis demonstrated that most of the fees incurred should not have been awarded. (See Point II, infra, and Subsection C below).

On the remand, all the above errors by the trial court in its first legal fee opinion were repeated. The trial court not only once again accepted the Administrator's date of January 5, 2017 as the determinative date, but he also accepted the spreadsheet totals attached to the Administrator's Certification. (Da191-193). The court once again awarded fees and disbursements for each and every time entry that was included in Plaintiff's fee application up to the Administrator's hand-selected date, without examining the entries. The total award was \$1,049,589.14, the identical amount as the trial court's initial award.

The Supreme Court has cautioned that “trial courts should not accept passively the submissions of counsel to support the lodestar amount’ but should instead inquire as to what a reasonable amount of time expended should have been, as opposed to the hours actually expended by counsel.” (Da258). According to the Appellate Court in this case, the trial court had adopted a dollar amount in the most “conclusory of fashions” by rigidly utilizing that January 5, 2017 date as the cut-off without analyzing the reasonableness of the services occurring within that time frame. The trial court repeated that error on the remand. The Appellate Division instructed that the determination “required a more searching analysis than that.” (Da259).

C. **By Adopting the Administrator’s Methodology, the Trial Court Awarded Fees That Clearly Did Not Meet the Requirements of Rule 4:42-9(a)(2) and the Appellate Division’s Instructions**

In addition to Plaintiff’s not having proven that the equities of the case supported fee shifting under R. 4:42-9(a)(2), Defendant also showed that very little, if any, of the fees set forth in Plaintiff’s application should have been awarded. Defendant’s comprehensive submission to the trial court on the remand color-coded all the time entries that were submitted in support of Plaintiff’s fee application. (See Exhibit C to Defendant’s supporting certification, Da1294) Defendant’s certification set forth the code to the colors that had had been affixed. (Exhibit B, Da1293).

A review of the record demonstrates that from the date Plaintiff filed his Verified Complaint in January 2013, Plaintiff's counsel was engaged in attempting to convince the court and then the Administrator that \$10,000,000 in Estate assets existed in New Jersey over and above the \$900,000 investment in B&H, and that Defendant had engaged in malfeasance in the operation of B&H. Both allegations were ultimately rejected in full.

Even when the Plaintiff was told that certain of his contentions lacked merit, Plaintiff continued to argue. For example, Judge Contillo, in his summary judgment ruling on May 8, 2014, had rejected Plaintiff's argument that another entity, Dong Nam NJ, contained assets that were a part of the Estate, but Plaintiff continued vociferously make that argument throughout the litigation.

Plaintiff also continuously argued that the Administrator should search for Estate assets in Hawaii clearly outside of the jurisdiction of the New Jersey courts, until the Administrator told him in no uncertain terms that the proper procedure was for him to file a petition in Hawaii for the appointment of an administrator there. As was set forth, supra., the Plaintiff thereafter filed a petition in Hawaii, an administrator was appointed, and, after a search, the administrator concluded that there were no assets in Hawaii belonging to the Estate.

The court also improperly awarded in full \$309,760.71 in fees billed by Rosensteel Law, a New York law firm that had not appeared in the New Jersey

action, and whose work was duplicative of the work of the attorneys of record. Harwood Lloyd, based only upon the fact that Plaintiff had included Rosensteel's invoices as fees that had been billed prior to the court's January 5, 2017 cut-off date. In fact, Rosensteel Law was not even mentioned in the trial court's August 31, 2022 opinion wherein the court lists Plaintiff's attorneys. (Da277); Da186-195, at Da192-193).

There were numerous other obvious errors. Plaintiff's fee application included fees incurred in connection with the appeals in this case. For example, pursuant to Rule 2:11-4, the request for counsel fees for work performed in connection with the appeals were required to have been made before the appellate court within 10 days following the determination of the appeal, which was not done (Da255); the court awarded attorney's fees for Plaintiff's counsel's providing assistance to Plaintiff in connection with his unsuccessful criminal complaints filed in Korea against Defendant alleging malfeasance in the management of B&H; and the court awarded fees for Plaintiffs' lawyers' subpoenas to and deposition of Defendant's immigration attorney, Carol Wolfenson, Esq., which proved fruitless and was another of Plaintiff's "wild goose chases."

The Administrator filed with the trial court a certification wherein he attached many documents for the purpose of showing the pressure that Plaintiff was continually exerting upon him to, for example, investigate Dong Nam NJ, the entity

that Judge Contillo had ruled in 2014 was not includable in the Estate. On this point, see also the Appellate Division's March 23, 2021 Decision, pages 7 and 22, wherein the Court notes that Judge Contillo had already ruled that the assets of Dong Nam NJ were not included in the Estate, and that Plaintiff had failed to appeal that ruling. The Administrator's certification also attached evidence that Plaintiff continuously insisted that a search in Hawaii should be conducted to find assets. (Da30; Da42; Da52) and see also, Da229, page 22, fn. 6).

**D. The Trial Court Failed to Conduct a Proper Analysis to Determine Whether the Particular Work of Plaintiff's Attorneys Was a Benefit to the Beneficiaries of the Estate Other Than Plaintiff. The Court Also Failed to Address Other Requirements of Rule 4:42-9(a)(2).**

**1. The Trial Court Did Not Undertake A Thorough Analysis of the Extent of Any Benefit That Resulted From Plaintiff's Litigation.**

As was noted by the Appellate Division in the prior appeal, among other things, “[t]he judge should focus on those steps taken by plaintiff that actually benefited the Estate and fix a reasonable fee for those steps....” (Da259).

Our courts adhere to the American Rule that litigants bear their own fees unless otherwise provided by court rule, statute, or contract. See In re Niles Trust, 176 N.J. 282, 294 (2003); Henderson v. Camden Cty. Mun. Util. Auth., 176 N.J. 554, 564 (2003).

The concept of a “fund in court” is intended to embrace certain situations in which equitable allowances should be made in a way that is compatible with the policy of the American Rule that each litigant shall bear his own costs. (Da251). Defendant submits that based upon the history of this case, Plaintiff’s misdeeds and fruitless, costly litigation should lead to the conclusion that it would be inequitable to award legal fees to Plaintiff.

Admittedly, the summary judgment phase resulted in the confirmation that Decedent had invested \$900,000.00 in B&H. However, that was not Plaintiff’s primary goal, it was a goal that was rejected by the other beneficiaries (Da988; Da991), and it was Plaintiff’s allegations and misrepresentations that provided the fuel for the Administrator’s work for many years following the filing of the Verified Complaint. As was set forth in the Statement of Facts, Plaintiff admitted in his Complaint that the beneficiaries had acknowledged the investment in Korea. Plaintiff’s primary goal was to have the New Jersey court agree, so that jurisdiction would be established for use as a springboard to have an Administrator appointed to search for the alleged \$10 million, and for malfeasance that did not exist.

In view of this, the enormous costs to all parties and to the Estate that ensued, and Plaintiff’s bad acts in violating the court-imposed confidentiality orders, the trial court should have concluded that the equities for an award of attorney fees did not

favor Plaintiff, and the request for fee shifting pursuant to R. 4:42-9(a)(2) should have been denied.

Plaintiff has argued that the appointment of an Administrator was not fruitless, because Defendant paid \$1,200,000 into the B&H general account.

First, it should be noted, the Estate's potential financial interest in this payment was 40.8% of that amount, or \$489,600, not \$1,200,000, as the latter amount was paid into B&H's general account in accordance with the agreement and findings of the Administrator.

Second, the Administrator explained in his Report, at Exhibits F and G, the \$1,200,000 capital contribution was an accounting adjustment. The adjustment was not based upon the discovery of any new transfers or gifts from the Decedent into New Jersey or any malfeasance by Defendant. As was stated in Exhibit G to the Administrator's Report, "Narrative to Proposed Adjusting Journal Entries":

[T]he initial \$900,000 credit to the Estate's capital account is the starting point that should appear in B&H's books and records as this was determined to be the amount of the capital contribution that was made by the Decedent in November 2001. This entry, in turn, also requires that adjustments be made to Dr. Oh's capital account as the books and records of B&H had historically treated him as the 100% owner of the entity.

Exhibit G., "Narrative to Proposed Adjusting Journal Entries," Para. A. (Da371).

And as important, the payment was made by Defendant, who, on the date he agreed to pay the \$1,200,000 capital contribution to B&H, owned all of the 40.8%

minority interest. It cannot be said that the Plaintiff's lawsuit benefited beneficiaries other than the Plaintiff; Defendant cannot be said to have benefited if he funded the capital contribution. Therefore, a critical essential element for fee shifting under R. 4:42-9(a)(2) was not met, and the Plaintiff's fee application should have been dismissed.

Plaintiff could have avoided years of litigation had he dropped his claims that a search should continue for additional transfers and malfeasance, which was at the heart of the Administrator's work.<sup>3</sup> As was observed by the Appellate Division in its initial Decision on the legal fee issue, "plaintiff could have inquired into these matters himself before he moved for summary judgment in 2014." (Da242).

Plaintiff could have also avoided a good portion of the fees incurred during the summary judgment phase. Moreover, once the summary judgment appeal by both parties had been decided, Plaintiff could have demanded that B&H immediately adjust its books to account for the Decedent's 40.8% interest. If his demand went unheeded, he could have filed a relatively simple enforcement action, asking that the court appoint an accountant to adjust the books and records, just as the accountants had done in Exhibits F. and G. This could have been accomplished in relatively

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<sup>3</sup> Once the Administrator commenced his search for additional New Jersey assets after the court's May 8, 2014 summary judgment, the Administrator advised that any adjustment of B&H's books and records to account for the minority interest should await the results of his investigation, as the discovery of additional assets would change the percentage of the minority interest.



short order. The adjustment would have been (and was) the task of an accountant, not an attorney; the attorney's fees that ensued in the litigation would have been avoided. Instead, Plaintiff chose to spend 10 years litigating his false claims of malfeasance and that almost ten million dollars of additional assets existed, that did not exist.

The trial court failed to follow case law and Rule 4:42-9(a)(2) in determining whether attorney fees should be shifted in this case. Not only did the trial court erroneously award fees in full through January 5, 2017 for every item of work listed in the invoices, but the trial court also erred by awarding any fees at all.

**2. In Determining a Reasonable Attorney Fee Award, The Trial Court Should Have Assessed Whether the Award is Appropriate in View of the Size of The Estate.**

The trial court failed to make the required analysis as to whether the award is appropriate in view of the size of the Estate. The trial court also failed to analyze the proportionality of the legal fees to the results achieved.

With respect to the size of the Estate, the Administrator's Report concluded that the owner's equity in B&H was \$1,224,321.93. Da369. The minority interest held by the Decedent's beneficiaries was, therefore, at most, 40.8% of that total, or \$499,523.35. The \$1,049,589.14 counsel fee award in favor of Plaintiff dwarfed the entirety of the value of Decedent's New Jersey estate assets. How could this have

been construed to be a result that benefited the Estate? It would drain the Estate completely.

The Appellate Division's comment in its March 23, 2021 Decision, that, "no one would quarrel with the notion that it is unreasonable to spend \$100,000 in fees to recover \$50,000," is applicable. (Da259). Why would it be appropriate to award Plaintiff \$1,049,589 in legal fees to be paid by an estate valued at \$449,523.79? Would it not have been appropriate, if any fees were to be awarded, to award an amount that took into consideration all of Plaintiff's bad acts and wasteful litigation during the course of this matter and be in the magnitude of \$50,000 and not \$1,000,000, if any fees were awarded at all?

**3. The Trial Court Failed to Adequately Consider Plaintiff's Degree of Success.**

Our Supreme Court has held that "the court must consider the degree of success in determining the reasonableness of the time expended." Litton Industries v. IMO Industries, 200 N.J. 372, 387 (2009). "Thus, when a party has succeeded on only some of its claims for relief, the trial court should reduce the lodestar to account for the limited success." Id. "The ultimate goal is to approve a reasonable attorney's fee that is not excessive." Id. at 394.

Plaintiff's Verified Complaint acknowledged from the start that the Decedent's beneficiaries had reported to the appropriate Korean authorities that the Decedent had invested \$900,000 in B&H (which translated into a 40.8% interest).

Plaintiff filed the lawsuit anyway, according to the Verified Complaint, in order to have an Administrator appointed to search for an alleged additional \$10 million in assets, and to examine Defendant's alleged mismanagement of B&H, both of which proved not to exist. Plaintiff's litigation was unsuccessful to a huge degree.

The trial court failed to address this lack of proportionality – Plaintiff spent over \$1.4 million pursuing an investigation that was fruitless.

As a result of the trial court not following the proper procedures for determining reasonable counsel fees, and as was further explained in Defendant's position document presented to the trial court on the remand (see Point II, infra), the trial court erroneously awarded fees in full through January 5, 2017 for every item of work listed in the invoices submitted, most, if not all, of which should not have been reimbursed.<sup>4</sup>

**E. The Benefit Resulting from the Administrator's Lengthy and Comprehensive Search for Additional Assets and Malfeasance Did Not Benefit the Beneficiaries.**

Plaintiff was the only beneficiary who benefited from the Administrator's efforts. The Plaintiff obtained confidential business and personal information that he then, in violation of court orders, turned over to Korean prosecutors as "evidence"

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<sup>4</sup> The trial court did make a finding, however, that nothing should be awarded to Plaintiff for work subsequent to January 7, 2017 because of Plaintiff's wasteful efforts in challenging the approval of the Administrator's Report and for filing a cross-motion in an attempt to perpetuate his search. (Da1143-1155).

of Defendant's alleged improprieties and illegal activity. This resulted in Judge Contillo's imposing monetary sanctions against Plaintiff.<sup>5</sup>

The beneficiaries of the Estate did not benefit from the endless litigation that was engaged in by Plaintiff. See page 40, supra. Moreover, The Estate paid administration fees totaling more than \$322,809.33, which was to the detriment of everyone. Plaintiff achieved his goals, as set forth throughout this brief, but Plaintiff's lawsuit provided no benefit to the other beneficiaries.

Plaintiff initiated an investigation in New Jersey that lasted years in an attempt to gain information. He wanted to apply pressure on the family to give him a greater inheritance than Korean law permitted (see the content of the secretly-recorded family meeting at pages Da835-911). The Appellate Division in its Decision on the initial attorney fee appeal quoted the Administrator's statement 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." (Da242). It is clear that Plaintiff used his lawsuit primarily as a springboard to launch a time-consuming search to punish his family by initiating a search for assets that did not exist.

---

<sup>5</sup> As discussed in the Statement of Facts above, after an extensive investigation of B&H financial information by the Korean prosecutors and tax authorities, Defendant was completely exonerated. (Da1070, ¶16; Da1089-1095; Da1180, ¶17).

Equitable considerations dictate that Plaintiff's ploy that should not be rewarded through an award of any legal fees.

The trial court erred on the remand by not following the proper procedure for determining whether attorney fees were appropriate in this case, and, if so, in what amount. The court's legal fee award should be reversed.

**POINT II**

**THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S LEGAL FEE CLAIM DUE TO PLAINTIFF'S FAILURE TO COMPLY WITH THE ORDER REQUIRING THE PARTIES TO PROVIDE SUBMISSIONS TO THE COURT EXPLAINING THEIR POSITIONS AS TO HOW THE LEGAL FEE AWARD SHOULD BE DETERMINED ON THE REMAND AND FOR PLAINTIFF'S FAILURE TO MEET THE EQUITABLE AND OTHER REQUIREMENTS FOR FEE SHIFTING UNDER R. 4:42(9)(a)(2). (Trial Court Order and Opinion dated August 31, 2022, Da271).**

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On July 13, 2021, the trial court entered an order in the remand proceeding as follows: "All parties must exchange written submissions regarding their respective positions by September 30, 2021," and "All parties must respond to the respective positions by October 29, 2021." Da261.

On September 29, 2021, Defendant filed and served the required submission. Defendant's position papers were extremely detailed, consisting of a 58-page brief and a certification in support of Defendant's submission. (Da1229). Attachments to

the certification included a copy of all invoices that had been submitted with Plaintiff's August 31, 2018 motion for legal fees. Defendant noted on the invoices his position as to why the vast majority of the time entries entered were not reimbursable under Rule 4:42-9(a)(2) (the "fund in court" rule) and under applicable case law.

Plaintiff did not submit a position document by the September 30, 2021 deadline. Defendant thus filed a motion with a supporting certification on October 12, 2021, seeking the dismissal of Plaintiff's attorney fee application for failure to comply with the court's July 13, 2021 order. (Da262, Da265).

Plaintiff responded to Defendant's motion to dismiss, stating only that he was still relying upon his prior counsel's August 30, 2018 fee application (which was filed prior to the first legal fee appeal). (Da387).

On December 3, 2021, the probate court held a teleconference with counsel to discuss the status of the remand. At that conference, the court directed that Plaintiff make his submission within 10 days. (2T:46:17-18).

Plaintiff filed his "submission" on December 13, 2021. His "submission" consisted of a one-page letter and a copy of the fee application that had been filed by Harwood Lloyd in August 2018. (Da2469). The only substantive addition to Plaintiff's submission was his statement: "We believe that each and every legal work that was undertaken was wholly justified and necessary...." There was no

submission that addressed individual time entries on the invoices, or even an attempt to comply with the Appellate Division's instructions as to how the legal fee issue should be analyzed on the remand.

Plaintiff also failed to respond to Defendant's submission, as was required by the court's July 13, 2021 order. (Da261).

Defendant's detailed analysis of the time records specified all the time that was improperly included in the fee application, and the reasons why each time entry should not have been included in the attorney fee award. The trial court, in its opinion, made no reference to Defendant's comprehensive analysis. It was as if the trial court had relied upon Plaintiff's scant submission, that was supposed to be of benefit to the court, and completely ignored Defendant's detailed submission.

In view of (1) the enormous amount of time that was expended by the Administrator and the parties at Plaintiff's behest in an eight-year search for assets of the Estate that did not exist, and (2) Plaintiff's failure to file a court-ordered submission that addressed the concerns of the Appellate Division and failure to file a court-ordered response to Defendant's submission, (3) the fact that Plaintiff's actions throughout this entire case--including his brazen violation of confidentiality orders and his actions that extended this litigation for years--show that Plaintiff did not meet the equitable considerations that must be present for attorney fee shifting under to R. 4:42-9(a)(2), and (4) the fact that Plaintiff did not follow court directions

and orders on the remand, the trial court should have dismissed Plaintiff's fee application with prejudice.

**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court reverse and vacate Paragraph 1 of the trial court's Order dated August 31, 2022, which awarded counsel fees and costs in favor of Plaintiff in the amount of \$1,049,589.14.

Defendant also requests that the Court rule that the Plaintiff's fee claim should be dismissed for the reasons set forth in this brief. Alternatively, if this court does not rule that the fee claim should be dismissed, Defendant requests that this Court enter an order requiring that the trial court accept Defendant's conclusions set forth in his submission on the remand.

Respectfully submitted,

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

Attorneys for Defendant/Appellant,  
Hyung Kee Oh

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

Dated: January 17, 2024



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

SUPERIOR COURT OF NEW JERSEY  
APPELATE DIVISION

DOCKET NO.: A-003686-22

**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

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**BRIEF OF PLAINTIFF/RESPONDENT, WON KI OH**

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---

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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.

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**PRELIMINARY STATEMENT**

In the matter before this Honorable Court, the Plaintiff, Won Ki Oh, seeks to uphold the integrity of the legal process and secure the enforcement of a rightfully awarded legal fee.

Despite the Plaintiff's diligent efforts and adherence to court orders, the Defendant, Hyung Kee Oh, now seeks to evade their obligation through procedural maneuvers and untimely appeals. This case revolves around the Defendant's failure to comply with a court-ordered fee award and subsequent attempts to delay and obstruct the resolution of this matter.

As we proceed, it is essential to recognize the Plaintiff's unwavering commitment to justice and the rule of law, contrasted with the Defendant's disregard for court orders and attempts to circumvent accountability. Through this litigation, the plaintiff seeks nothing more than the fair and just enforcement of the court's decision, in accordance with established legal principles and procedural rules.

## 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 (Da1). Decedent, Byung-Tae Oh (“Decedent”), died on February 06, 2012. (Da1). 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. (Da1). Decedent died intestate and no Administrator has been appointed for the Estate, as is customary in Korea. (Da1).

The instant matter arises from the dispute over legal fees and costs incurred in the litigation regarding the Estate of Byung-Tae Oh (“Decedent”). Plaintiff, Won Ki Oh, initiated legal proceedings seeking clarification on matters pertaining to the Estate. On January 18, 2013, Plaintiff filed a Verified Complaint, commencing the case. (Da1).

The litigation endured a lengthy and complex trajectory, progressing through various stages of judicial review over the course of several years. Ultimately, on July 30, 2018, the Trial Court entered an order approving the Administrator's report and making other determinations. (Da118). (Da161).

Subsequently, on January 14, 2019, the Trial Court issued an order granting Defendant a sum of \$978,157.99 in fees. (Da212), However, this

decision was later reversed by the Appellate Court on the grounds that Defendant was not entitled to counsel fees from Estate assets on March 23, 2021. (Da229). (Da260).

On the same date, the Trial Court's order awarded Plaintiff a sum of \$1,049,589.14 in fees. (Da212). This aspect of the order was vacated by the Appellate Court, which remanded the case back to the Trial Court for further proceedings regarding Plaintiff's motion for counsel fees under Rule 4:42-9(a)(2). (Da 229). (Da260).

Following the Appellate Division's ruling, the matter was remanded to the Trial Court for further proceedings concerning Plaintiff's motion for counsel fees under R. 4:42-9(a)(2). Subsequently, on August 31, 2022, the Trial Court issued an order awarding Plaintiff legal fees and costs totaling \$1,049,589.14. (Da271).

This decision prompted Defendant, Hyung Kee Oh, to file an appeal challenging the Trial Court's ruling. Defendant contests the trial court's award of legal fees and costs, asserting errors and challenging the equities of the case. Additionally, Defendant contends that Plaintiff failed to comply with court orders regarding submissions outlining positions on the fee determination. However, the Trial Court denied Defendant's motion to



dismiss Plaintiff's fee claim, citing extenuating circumstances and Plaintiff's eventual compliance with the court's directives. (Da274).

As per the Appellate decision, the Trial Court's order was affirmed in part, reversed in part, and vacated and remanded in part, with no retention of jurisdiction by 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. (Da1). 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. (Da1).

### **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 on May 8, 2014. (Da11).

#### **2. Legal Challenges and Appeals (2016):**

- Appellate affirmations of Plaintiff’s Summary Judgment and the denial of Defendant’s motions in May 2016. (Da2470). (Da2481).

#### **3. Order Approving Administrator’s Forensic Report (July 30, 2018):**

- Judge Robert P. Contillo approves Administrator’s Forensic Report on July 30, 2018. (Da118). (Da165).

#### **4. 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. (Da212).
- 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 Trial Court. (Da260).

**5. Defendant's Motion to Dismiss Plaintiff's Legal Fee Claim**

**(October 12, 2021):**

- Defendant raised objections regarding Plaintiff's compliance with court orders on July 13, 2021. Plaintiff submitted their position on November 11, 2021, due to Hurricane Ida's impact on Plaintiff's former attorney's office. The court granted Plaintiff an additional ten days to supplement their submission on December 3, 2021, which Plaintiff promptly did on December 13, 2021. (Da273). (Da274).

**6. Trial Court Decision on Fees (August 31, 2022):**

- The Trial Court ordered Plaintiff's reimbursement of \$1,049,589.14 from the Estate. (Da271).

**LEGAL ARGUMENT**

**POINT I**

**THE TRIAL COURT’S DECISION ON AUGUST 31, 2022, REGARDING THE AWARD OF LEGAL FEES AND COSTS CANNOT BE SUBJECTED TO APPEAL DUE TO THE EXPIRATION OF THE APPEAL DEADLINE AS OUTLINED IN R. 2:4-1(A) OF THE NEW JERSEY RULES OF COURT, PURSUANT TO THIS RULE, APPEALS IN CIVIL ACTIONS MUST BE FILED WITHIN 45 DAYS OF THE ENTRY OF THE JUDGMENT OR ORDER APPEALED FROM. (Order Denying Defendant’s Motion to Dismiss Plaintiff’s Application for an Award of Legal Fees and Ordering Plaintiff to be Reimbursed in the amount of \$1,049,589.14, filed August 31, 2022, Da271).**

**A. Following the Order Denying Defendant’s Motion to Dismiss Plaintiff’s Application for an Award of Legal Fees and Ordering Plaintiff to be Reimbursed in the amount of \$1,049,589.14, filed August 31, 2022, Da271**

Shortly after the decision on August 31, 2022, attorneys representing Hyung Kee Oh (“Defendant”) informed Matthew Jeon, former attorney for Won Ki Oh (“Plaintiff”), that they would imminently pay Won Ki Oh

\$1,049,589.14 from the Estate. However, after a considerable amount of time had elapsed, they reversed course, citing an intention to appeal, and subsequently failed to fulfill the payment of the fee award.

Furthermore, this action by the Defendant occurred after the Appellate Court's decision, which explicitly stated that the defendant was not entitled to any fees. (Da260). In this instance, Hyung Kee Oh's appeal amounts to a deliberate evasion of responsibility for disregarding the court's directive to remit \$1,049,589.14.

**B. Expiration of Appeal Deadline Contrasted with Defendant's Arguments**

The central issue at hand is the expiration of the appeal deadline, which precludes further consideration of the defendant's arguments regarding the Trial Court's decision on legal fees and costs. Despite any assertions made by the Defendant, the untimely filing of their appeal undermines the integrity and finality of the judicial process.

**C. Defendant asserts he will not file any objection to the Administrator's Forensic Report**

At the outset, the Defendant's legal counsel communicated to Plaintiff's former attorney, Matthew Jeon, their intention to pursue an appeal subsequent

to the completion of the Administrator's duties. However, the refusal to disburse the owed sum of \$1,049,589.14 to the Plaintiff, contingent upon the estate administrator's fulfillment of obligations before initiating an appeal, lacks legal merit. The determination of the appeal's validity period is unequivocally tied to the August 31, 2022, deadline.

Furthermore, the statement within the Administrator's Forensic Report, attesting to Hyung Kee Oh's lack of objections to the administrator's decisions, underscores the defendant's legal commitments. (Da315). The Report explicitly states, "The Administrator concluded, and, subject to the entry of an Order from this Court approving the Administrator's Report that had been reviewed by Hyung Kee Oh, Hyung Kee Oh agreed to the following:  
1. Hyung Kee Oh will not file any objection to the Report." (Da315).

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. (Da212). The attorney fees outlined in the Order dated January 14, 2019, were determined by the Administrator, as noted in the Judge's Opinion, referencing the "Reiser Cert." (Da218).

The Plaintiff originally sought an allowance of fees and costs totaling \$1,441,139.96 (Da217) and the Defendant, \$1,440,557.90 (Da218). 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. (Da218). The Court also found that the Defendant is entitled to \$978,157.99 for its legal fees and costs. (Da218).

Given the Defendant's statement that they will not file any objection to the Administrator's Report, it follows that they cannot contest the value directly extracted from the Reiser Certification.

**D. Abuse of Process and Delay Tactics**

By attempting to appeal outside the prescribed time frame, the Defendant engages in an abuse of process and delay tactic. While asserting procedural irregularities in the fee award, the Defendant disregards procedural deadlines, thereby unfairly prejudicing the Plaintiff and obstructing the efficient administration of justice.

The Defendant's failure to adhere to the appeal deadline undermines the equitable considerations they seek to invoke in challenging the fee award. Equity and fairness in litigation necessitate compliance with court orders,

including timely filing of appeals. Allowing the Defendant to proceed with their untimely appeal would sanction an abuse of the judicial process.

**E. Legal Precedent and Finality of Judgments**

Legal precedent and the New Jersey Rules of Court support the dismissal of the Defendant's untimely appeal. Upholding the integrity of judgments rendered by Trial Courts requires strict adherence to procedural rules and deadlines. As per Rule 2:4-1(a) of the New Jersey Rules of Court, appeals in civil actions must be filed within 45 days of the entry of the judgment or order appealed from. By dismissing the Defendant's appeal, the court affirms the finality of the Trial Court's decision on legal fees and costs.



**POINT II**

**THE TRIAL COURT DID NOT ERR IN DENYING  
DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S LEGAL FEE  
CLAIMED BASED ON ALLEGED NON-COMPLIANCE WITH  
COURT ORDERS AND EQUITABLE REQUIREMENTS UNDER R.  
4:42(9)(a)(2) (Trial Court Order and Opinion dated August 31, 2022,  
Da271).**

**A. The Trial Court's denial of the Defendant's Motion to dismiss  
Plaintiff's legal fee claim was not erroneous**

The Defendant's argument that the Plaintiff failed to comply with the court's order requiring submissions on the legal fee award determination overlooks critical facts and mischaracterizes the Plaintiff's actions.

In response to the court's July 13, 2021, Letter Order, the Defendant contends that the Plaintiff did not submit the required written submissions by the specified deadline of September 30, 2021. While it is true that the Plaintiff's initial submission was delayed, this delay was due to extraordinary circumstances beyond his control. (Da273).

Hurricane Ida's impact on Matthew Jeon's (the Plaintiff's former attorney) office in Englewood Cliffs, New Jersey, resulted in significant damage and prevented access to necessary files and documents until October 14, 2021. (Da273).

In consideration of the extraordinary circumstances described above, the Court allowed Plaintiff to submit their response beyond the initial deadline of September 30, 2021. Plaintiff's failure to submit on time was not intentional. Plaintiff appealed to the Court for an extension of the deadline, which was granted. (Da274).

Despite these challenges, the Plaintiff and Mr. Jeon diligently sought to comply with the court's order and submitted their position via letter on November 11, 2021, stating that Plaintiff's position was to adopt the fee application previously put before Judge Contillo and this court. (Da273).

Subsequently, at a conference with the court on December 3, 2021, the Defendant raised objections to the sufficiency of Plaintiff's submission. In response, the court granted the Plaintiff an additional ten days to supplement their submission, which the Plaintiff promptly did on December 13, 2021. (Da274).

Although Plaintiff indeed resubmitted the previously filed motion in support of legal fees, it is important to note that Plaintiff adhered to the directives outlined in this Court's Letter Order dated July 13, 2021. The Letter Order specifically requested that parties state their "respective positions." Plaintiff's stance is grounded in the belief that every legal action undertaken was wholly justified and necessary, as articulated in the motion. (Da274).

Contrary to the Defendant's assertions, the Plaintiff's submissions were made in good faith and in accordance with the court's directives. The plaintiff's position, as articulated in their submissions, aligns with the requirements outlined in the court's Letter Order and addresses the concerns raised by the Appellate Division. (Da274).

In light of these facts, the Defendant's appeal and argument that the Trial Court erred in denying Defendant's Motion to dismiss Plaintiff's legal fee claim lacks merit and should be denied. The Plaintiff made genuine efforts to comply with court orders and provided substantive submissions addressing the legal fee award determination, as required by the court and the Appellate Division.

**CONCLUSION**

In light of the expiration of the appeal deadline and the Defendant's failure to comply with procedural requirements, the court must dismiss the Defendant's appeal as procedurally defective. Upholding the integrity and finality of the Trial Court's decision is paramount to ensuring the fair and efficient administration of justice. Any further consideration of the appeal would undermine the established procedural framework and risk unjust disruption to the resolution of the legal matter at hand. Therefore, the dismissal of the appeal is not only warranted but necessary to maintain the integrity of the judicial process.

Respectfully submitted,

Won Ki Oh  
Plaintiff (PRO SE)

By: /s/ Won Ki Oh  
WON KI OH

Dated: March 18, 2024

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

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Docket No.: A-003686-22

**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

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**REPLY BRIEF AND SUPPLEMENTAL APPENDIX OF  
DEFENDANT/APPELLANT, HYUNG KEE OH**

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## PRELIMINARY STATEMENT

A review of the brief of Plaintiff/Respondent Won Ki Oh (“Plaintiff”) reveals the following: Plaintiff did not oppose or even respond to Point I of the opening brief of Defendant/Appellant Hyung Kee Oh (“Defendant”).

Point I of Defendant’s opening brief argued, among other things, that 1) Plaintiff’s fee application did not meet the requirements for the award of legal fees pursuant to R. 4:42-9(a)(2) because the equities of the case do not support fee shifting under the rule; 2) The litigation did not serve as a benefit to the beneficiaries other than Plaintiff; and 3) By adopting the Administrator’s methodology for awarding fees, the probate court used a methodology that did not meet the requirements of the above rule and did not follow the Appellate Division’s instructions as set forth in its March 23, 2021 Decision.

Because Plaintiff’s Brief did not oppose any of the arguments in Point I, and because Defendant’s arguments have merit, Defendant submits that his arguments in Point I should be accepted.

Second, because Plaintiff’s argument that Defendant’s appeal was untimely is not supported by the court rules, by applicable case law, nor the facts of this case, the argument should be rejected.

## REPLY STATEMENT OF FACTS

Defendant’s “Statement of Facts” in his opening brief sets forth in detail the overall facts relevant to his appeal of the probate court’s August 31, 2022 legal fee award. This Reply Brief will address the facts relevant to the timeliness of Defendant’s appeal of that award.

The probate court’s August 31, 2022 order regarding legal fees is entitled “Order.” It did not state that it was a “judgment,” or, for that matter, a “final” judgment. (Da 271). The order’s language was: “1. Plaintiff shall be entitled to reimbursement in the amount of \$1,049,589.14; and 2. Defendant’s motion to dismiss Plaintiff’s application for an award of legal fees is DENIED. Plaintiff did not seek to certify the Order as final under R. 4:42-2, nor did the probate court certify the Order as final. See, R. 2:2-3(b)(3), “orders properly certified as final under R. 4:42-2.”

On September 13, 2022, just thirteen days after the entry of the August 31, 2022 order, the Administrator of the Estate, Stuart Reiser, Esq., contacted Defendant’s counsel, William Grand, Esq. Mr. Reiser informed him that he would be filing a motion with the probate court to, among other things, be relieved of the responsibility for filing on behalf of the Estate a non-resident United States Tax Return; to have Defendant designated as the person responsible for the filing, if one

was required; for an award of additional fees and disbursements; and to be discharged of any further duties as Administrator in the matter. (Da2488-2490).<sup>1</sup>

Defendant's counsel and the Administrator thereafter engaged in discussions, which were interrupted to a degree by the Administrator's vacation, regarding whether counsel would object to the Administrator's proposed motion and whether counsel would consent to the Administrator's form of order. Both the Administrator and Defendant's counsel attempted, unsuccessfully, to speak with Plaintiff's counsel, Matthew Jeon, Esq., to seek his consent also. (*Id.*, Paras. 4-6).

On February 1, 2023, the Administrator filed his Notice of Motion seeking the relief set forth above. (Da2483-2485). On March 16, 2023, Plaintiff filed a cross-motion entitled, "Notice of Cross Motion and Opposition to Motion." (Da 2486-2487).

In orders entered on June 19, 2023, the probate court granted the Administrator's motion (Da 2491-2493) and denied Plaintiff's cross-motion. (Da 2496-2497). Plaintiff appealed both of these orders on August 2, 2023. (Da2494-2495).

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<sup>1</sup> The "Da" cites in the remainder of this "Reply Statement of Facts" are to documents that are attached to this Brief as a Supplemental Appendix. The "Da" cites continue the numbering from the original Appendix that was submitted by Defendant with his Appellant's Brief. The reason that these additional documents are being submitted is because Plaintiff, in his Respondent's Brief, raised a new issue--the timeliness of Defendant's appeal. The documents attached are relevant to that issue.

In view of the fact that the June 19, 2023 order entered in favor of the Administrator (Da 2491-2493) “Ordered” that “the within Order is the final order in this matter that concludes all issues and proceedings presently before the trial court in connection with this action,” Defendant appealed the Court’s August 31, 2022 interlocutory order at that time, which was within 45 days of the “final order” that “concluded all issues and proceedings” before the probate court in the matter.

## LEGAL ARGUMENT

### POINT I

**PLAINTIFF’S ARGUMENT IN POINT I OF HIS BRIEF THAT DEFENDANT’S APPEAL IS BARRED BECAUSE IT WAS NOT FILED WITHIN 45 DAYS OF ENTRY OF THE AUGUST 31, 2022 ORDER IS WITHOUT MERIT BECAUSE THE ORDER WAS NOT A FINAL ORDER THAT RESOLVED ALL ISSUES AND CLAIMS AMONG THE PARTIES.**

The probate court’s August 31, 2022 order is entitled “Order.” It did not state that it was a final order. The order’s language was: “1. Plaintiff shall be entitled to reimbursement in the amount of \$1,049,589.14; and 2. Defendant’s motion to dismiss Plaintiff’s application for an award of legal fees is DENIED.”

On September 13, 2022, just thirteen days after the entry of the August 31, 2022 Order, the Administrator, Stuart Reiser, Esq., contacted Defendant’s counsel, William Grand, Esq. Mr. Reiser informed him that he would be filing a motion with the probate court to, among other things, be relieved of the responsibility for filing

on behalf of the Estate a non-resident United States Tax Return; to have Defendant designated as the person responsible for the filing, if one was required; for an award of additional fees and disbursements; and to be discharged of any further duties as Administrator in the matter. (Da2488-2490).

Defendant's counsel and the Administrator thereafter engaged in discussions, which were interrupted to a degree by the Administrator's vacation, regarding whether counsel would object to the Administrator's proposed motion and whether counsel would consent to the Administrator's form of order. Both the Administrator and Defendant's counsel attempted, unsuccessfully, to speak with Plaintiff's counsel, Matthew Jeon, Esq., to seek his consent also. (Id.)

On February 1, 2023, the Administrator filed his motion seeking the relief set forth above. (Da2483-2485). On March 16, 2023, Plaintiff filed a cross-motion entitled, "Notice of Cross Motion and Opposition to Motion." (Da2486-2487).

The Administrator's motion, Plaintiff's cross-motion and the probate court's Order are clear evidence that the August 31, 2022 order entered by the probate court did not "resolve all issues as to all parties," as required by R. 2:2-3(b). The Administrator's motion sought leave of court to assign the responsibility for the filing of the United States Non-Resident tax return to Defendant or his agent, if one were required; for an order discharging the Administrator from further duties in the matter; and for additional fees.

Plaintiff's cross-motion clearly acknowledged on his part that the issues among the parties had not been resolved. First, Plaintiff's cross-motion opposed the Administrator's discharge, arguing that the Administrator had not completed his duties. Second, Plaintiff's cross-motion sought affirmative relief, among other things, as follows: 1) Plaintiff sought a \$75,000 payment and the payment of legal fees from an escrow fund that had been established in accordance with a settlement agreement between Defendant and the Administrator. (Da2486-2487). The settlement agreement was set forth in the Administrator's Report which had been approved by the probate court. The settlement agreement explicitly set forth how the escrow fund would be disbursed. It did not allow for the disbursement of any funds from the escrow account to Plaintiff with respect to the \$75,000 payment or with respect to his legal fees (see Da 1182); and 2) Plaintiff sought an order that the Administrator or a designee should be required to collect account receivables allegedly owed to B&H Consulting and Development, LLC, another issue that had not yet been resolved, at least in Plaintiff's mind. (Da 2486-2487).

The June 19, 2023 order entered by the probate court that denied Plaintiff's cross-motion also evidenced the fact that Plaintiff believed issues remained. The probate court, using the form of order that had been submitted by Plaintiff, crossed off the paragraphs in Plaintiff's proposed order and hand-wrote the word "denied" next to each of the paragraphs. Those paragraphs included Plaintiff's proposed

paragraphs that allowed monies to be disbursed from the escrow account, contrary to the provisions of the settlement agreement between the Administrator and Defendant; a paragraph that sought an order that the Administrator take action to collect accounts receivable on behalf of B&H Consulting; and a paragraph that opposed the Administrator's motion to be discharged of further responsibility in the matter. (Da 2496-2497)

Case law sets forth an important policy in New Jersey—piece-meal appeals should be avoided. On September 13, 2022, just two weeks after the entry of the August 31, 2022 Order that Defendant is appealing, the Administrator announced his intention to seek additional fees and relief from the probate court that impacted both Plaintiff and Defendant. In accordance with the above policy, and because it was evident that all issues had not been resolved before the probate court, Defendant was correct in waiting until all issues were, in fact, resolved before filing his notice of appeal.

In Frantzen v. Howard, 132 N.J. Super. 226 (App. Div. 1975), the Appellate Division ruled that the plaintiff had no right to appeal the adverse portions of an incomplete judgment without leave of court, citing R. 2:2-4. Id., at 227. The Frantzen court explained the prevailing policy:

Piecemeal reviews, ordinarily, are anathema to our practice, as expressed in the rules which require the final disposition of all issues at one hearing on the trial level followed by orderly appellate review. The interruption of the litigation at

the trial level, by the taking, as here, of an unsanctioned "appeal", disrupts the entire process and is wasteful of judicial resources.

Id., at 227-228.

In the case of In re: Donahue, 329 N.J. Super. 488 (2000), the Appellate Division stated: "Had appellants attempted to file a direct appeal from the Commissioner's decision of November 27, 1995, we would have dismissed it because it was not final. To be appealable without leave granted, the judgment or administrative determination must be final as to all parties and all issues." Id., at 494 (emphasis added). See also, Peterson v. Falzarano, 6 N.J. 447 (1951), where the New Jersey Supreme Court ruled that the trial court's ruling that a third-party complaint would be tried separately from the main action did not make the trial court's ruling on the main action, which was permitted to continue, a final ruling "as to all parties." The Court also stated: "Obviously, the order in question does not meet the requirements of a final judgment within the intendment of Rules 4:2-1 and 1:2-1, since it is not a final disposition of all the issues in the case." Id. at 453. See also, Vitanza v. James, 397 N.J. Super. 516, 517-18 (App. Div. 2008), where the Appellate Division ruled that an appeal from a summary judgment order dismissing plaintiff's liability claim was improper, because defendant's counterclaim for libel and slander had not been adjudicated. The Court held that there is a strong policy



against piecemeal review, and that a matter must be resolved in the trial court as to all issues and all parties. Id.

In view of the fact that the June 19, 2023 order entered in favor of the Administrator “Ordered” that “the within Order is the final order in this matter that concludes all issues and proceedings presently before the trial court in connection with this action,” Defendant appealed the Court’s August 31, 2022 legal fee award at that time, which was within 45 days of the “final order” that “concluded all issues and proceedings” before the probate court in the matter.

For all the above reasons, Plaintiff’s argument that Defendant’s appeal should be dismissed as untimely, should be rejected.

## POINT II

### **DEFENDANT’S ARGUMENTS IN POINT I OF DEFENDANT’S OPENING BRIEF SHOULD BE ACCEPTED BY THIS COURT BECAUSE PLAINTIFF’S BRIEF FAILED TO OPPOSE OR REFUTE ANY OF THE ARGUMENTS THEREIN.**

Plaintiff, in his Respondent Brief, failed to address or refute Defendant’s arguments in Point I of Defendant’s Appellant Brief. Specifically, Plaintiff did not oppose or refute the following:

- (1) “The concept of a “fund in court” is intended to embrace certain situations in which equitable allowances should be made in a way that is compatible with the policy of the American Rule that each litigant shall bear his own costs. (March 23, 2021 Appellate Decision, (Da250-252)) (emphasis

added). Defendant submits that based upon the history of this case and Plaintiff's misdeeds and fruitless, costly litigation, it was inequitable to award legal fees to Plaintiff." (Defendant's Brief, page 30).

- (2) "And as important, the payment was made by Defendant, who, on the date he agreed to pay the \$1,200,000 capital contribution to B&H, owned all of the 40.8% minority interest. It cannot be said that the Plaintiff's lawsuit benefited beneficiaries other than the Plaintiff; Defendant cannot be said to have benefited if he funded the capital contribution. Therefore, a critical essential element for fee shifting under R. 4:42-9(a)(2) was not met, and the Plaintiff's fee application should have been dismissed." (Defendant's Brief, pages 40-41).
- (3) "The beneficiaries of the Estate did not benefit from the endless litigation that was engaged in by Plaintiff. Moreover, the Estate paid administration fees totaling more than \$322,809.33, which was to the detriment of everyone. Plaintiff achieved his goals, as set forth throughout this brief, but Plaintiff's lawsuit provided no benefit to the other beneficiaries." (Defendant's Brief, page 45).
- (4) "The trial court failed to follow case law and Rule 4:42-9(a)(2) in determining whether attorney fees should be shifted in this case. Not only did the trial court erroneously award fees in full through January 5, 2017 for every item of work listed in the invoices, but the trial court also erred by awarding any fees at all." (Defendant's Brief, page 42).
- (5) "Plaintiff's Verified Complaint acknowledged from the start that the Decedent's beneficiaries had reported to the appropriate Korean authorities that the Decedent had invested \$900,000 in B&H (which translated into a 40.8% interest). Plaintiff filed the lawsuit anyway, according to the Verified Complaint, in order to have an Administrator appointed to search for an alleged additional \$10 million in assets, and to examine Defendant's alleged mismanagement of B&H, both of which proved not to exist." (Defendant's Brief, page 44).
- (6) "The trial court failed to address this lack of proportionality – Plaintiff spent over \$1.4 million pursuing an investigation that was fruitless." (Defendant's Brief, page 44).

- (7) “For the foregoing reasons, Defendant respectfully requests that the Court reverse and vacate Paragraph 1 of the trial court’s Order dated August 31, 2022, which awarded counsel fees and costs in favor of Plaintiff in the amount of \$1,049,589.14.” (Defendant’s Brief, page 49)
- (8) “Plaintiff initiated an investigation in New Jersey that lasted years in an attempt to gain information. He wanted to apply pressure on the family to give him a greater inheritance than Korean law permitted (see the content of the secretly recorded family meeting at pages Da835-911). The Appellate Division in its Decision on the initial attorney fee appeal quoted the Administrator’s statement 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.” (Da242). It is clear that Plaintiff used his lawsuit primarily as a springboard to launch a time-consuming search to punish his family by initiating a search for assets that did not exist. Equitable considerations dictate that Plaintiff’s ploy that should not be rewarded through an award of any legal fees.” (Defendant’s Brief, pages 45-46).

Plaintiff also did not refute Defendant’s argument that Plaintiff’s submission to the probate court on the remand disregarded the Appellate Division’s instructions in its March 23, 2021 Decision, as well as applicable case law.

In view of (1) the enormous amount of time that was expended by the Administrator and the parties at Plaintiff’s behest in an eight-year search for assets of the Estate that did not exist, (2) Plaintiff’s failure to file a court-ordered submission that addressed the concerns of the Appellate Division and failure to file a court-ordered response to Defendant’s submission, (3) the fact that Plaintiff’s actions throughout this entire case --including his brazen violation of confidentiality orders and his actions that extended this litigation for years-- and

(4) the fact that Plaintiff did not follow court directions and orders on the remand, Defendant respectfully submits that Plaintiff did not meet the equitable considerations that must be present for attorney fee shifting under R. 4:42-9(a)(2), and the probate court should have dismissed Plaintiff's fee application with prejudice.

### CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court reject Plaintiff's argument that Defendant's appeal was untimely and for the reasons set forth herein and in his opening brief, that the Court accept each of the arguments presented in Defendant's opening brief, and, further, reverse Paragraph 1 of the probate court's order dated August 31, 2022, which awarded counsel fees and costs in favor of Plaintiff in the amount of \$1,049,589.14, and remand the matter to the probate court with directions to dismiss Plaintiff's legal fee claim with prejudice.

Respectfully submitted,

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

Attorneys for Defendant/Appellant,  
Hyung Kee Oh

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

Dated: April 1, 2024

**SHAPIRO, CROLAND, REISER, APFEL & DI IORIO, LLP**

Stuart Reiser, Esq. - Atty. ID. No. 015051980

Continental Plaza II

411 Hackensack Avenue, 6<sup>th</sup> Floor

Hackensack, NJ 07601

Tel.: (201) 488-3900

Fax: (201) 488-9481

Administrator of the Non-Resident New Jersey

Estate of Byung-Tae Oh, Deceased

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

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

DOCKET NO. P-018-13

Civil Action

**NOTICE OF 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**

**ON NOTICE TO:**

Matthew Jeon, Esq.  
Matthew Jeon, PC  
560 Sylvan Avenue, Suite 1010  
Englewood Cliffs, New Jersey 07632  
Attorneys for Plaintiff, Wonki Oh

William D. Grand, Esq.  
Olivier Salvagno, Esq.  
Greenbaum Rowe Smith & Davis, LLP

99 Wood Avenue South  
Iselin, NJ 08830  
Attorneys for Defendant, Hyungkee Oh

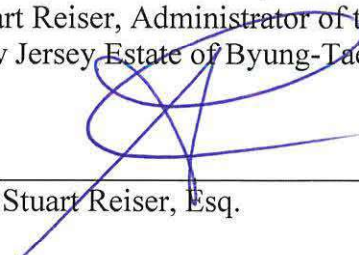
**PLEASE TAKE NOTICE** that on **Friday, February 24, 2023**, at 9:00 a.m., or as soon thereafter as counsel may be heard, Stuart Reiser, Esq., Administrator of the Non-Resident New Jersey Estate of Byung-Tae Oh, Deceased (the "Administrator"), shall move before the Hon. Edward A. Jerejian, P.J. Ch. of the Superior Court of New Jersey, Chancery Division, Probate Part, at the Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey, for the entry of 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.

**PLEASE TAKE FURTHER NOTICE** that in support of this application, movant shall reply upon the Certification of Stuart Reiser, Esq. and the Exhibits annexed thereto.

**PLEASE TAKE FURTHER NOTICE** that a proposed form of Order is submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that oral argument is waived unless opposition is filed in connection with this application.

**SHAPIRO, CROLAND, REISER,  
APFEL & DI IORIO, LLP**  
Stuart Reiser, Administrator of the Non-Resident  
New Jersey Estate of Byung-Tae Oh, Deceased

By:   
\_\_\_\_\_  
Stuart Reiser, Esq.

Dated: February 2, 2023

CERTIFICATION OF SERVICE

I hereby certify that on this date, an original and one (1) copy of the within Notice of Motion, Certification of Stuart Reiser, Esq. dated February 1, 2023 and the proposed Order were delivered via Lawyers Service for filing with the Clerk, Superior Court of New Jersey, Chancery Division, Probate Part, Bergen County, 10 Main Street, Room 211, Hackensack, New Jersey; a copy of same was simultaneously served via Lawyers Service and email upon:

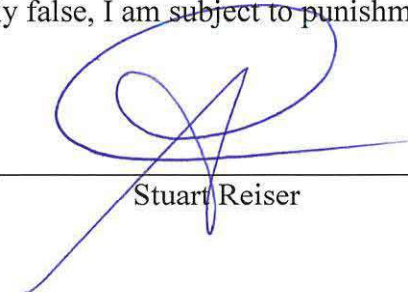
Matthew Jeon, Esq.  
Matthew Jeon, PC  
560 Sylvan Avenue, Suite 1010  
Englewood Cliffs, New Jersey 07632  
Attorneys for Plaintiff, Wonki Oh

William D. Grand, Esq.  
Olivier Salvagno, Esq.  
Greenbaum Rowe Smith & Davis, LLP  
99 Wood Avenue South  
Iselin, NJ 08830  
Attorneys for Defendant, Hyungkee Oh

A courtesy copy was simultaneously served via Lawyers Service upon:

Honorable Edward A. Jerejian, P.J.Ch.  
Superior Court of New Jersey  
Chancery Division  
Bergen County Justice Center  
10 Main Street, Chambers 420  
Hackensack, NJ 07601

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Stuart Reiser

Dated: February 2, 2023

Matthew Jeon, Esq. (ID No.: 047331989)  
Matthew Jeon, PC  
560 Sylvan Avenue, Suite 1010  
Englewood Cliffs, New Jersey 07632  
(201) 947-9475  
*Attorneys for Plainiff, Won Ki Oh*

IN THE MATTER OF THE ESTATE OF  
BYUNG-TAE OH

SUPERIOR COURT OF NEW JERSEY  
BERGEN COUNTY: CHANCERY  
DIVISION

PROBATE PART

DOCKET NO. BER-P-018-13

CIVIL ACTION

NOTICE OF CROSS MOTION AND  
OPPOSITION TO MOTION BY  
PLAINTIFF WON KI OH

To: Bergen County Surrogate's Court  
Two Bergen County Plaza, 5<sup>th</sup> Floor  
Hackensack, New Jersey 07601

William D. Grand, Esq.  
Greenbaum, Rowe, Smith & Davis, LLP  
99 Wood Avenue, South  
Iselin, New Jersey 08830-2712  
Attorneys for Defendant Hyung Kee Oh

Stuart Reiser, Esq.  
Shapiro, Croland, Reiser, Apfel & Dilorio, LLP  
411 Hackensack Avenue, 6<sup>th</sup> Floor  
Hackensack, New Jersey 07601  
Administrator of the Non-Resident  
New Jersey Estate of Byung-Tae Oh, Deceased



PLEASE TAKE NOTICE, that on March 24, 2023, at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorney for Plaintiff, Won Ki Oh ("plaintiff"), shall cross move to the Surrogate's Court, Bergen County for an Order:

- (1) Denying Administrator's, motion in its entirety;
- (2) Granting Plaintiff's application for return of \$75,000.00 advanced by him for the Administrator's fees and expenses in 2015 from the Escrow account currently held by Defendant's Attorneys;
- (3) Granting Plaintiff application for Attorney fees award from the Escrow account currently held by Defendant's Attorneys;
- (4) Granting Plaintiff 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;
- (5) Awarding counsel fees to the Plaintiff; and
- (6) Any other relief that the Court deems equitable and just.

PLEASE TAKE FURTHER NOTICE that Plaintiff shall rely upon the attached Certification of Plaintiff's counsel of even date herewith in support of the within Cross Motion.

PLEASE TAKE FURTHER NOTICE that Plaintiff hereby request oral argument pursuant to R. 1:6-2, *if an Opposition is filed*.

A proposed form of Order is annexed hereto.

Matthew Jeon, P.C.  
Attorneys for Plaintiff

By: *Matthew Jeon*  
Matthew Jeon, Esq.

Dated: March 16, 2023

William D. Grand, Esq.: 280521972  
Luke J. Kealy, Esq.: 017071992  
Olivier Salvagno, Esq.: 024101998  
**GREENBAUM, ROWE, SMITH & DAVIS LLP**  
Metro Corporate Campus One  
99 Wood Avenue South  
Iselin, New Jersey 08830-2712  
(732) 549-5600  
Attorneys for Defendant, Hyung Kee Oh

**FILED**

APR 05 2023

Superior Court Chancery Division  
Probate Part

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

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

Docket No.: BER-P-18-13

**CIVIL ACTION**

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**CERTIFICATION OF WILLIAM D. GRAND, ESQ.  
IN RESPONSE TO THE ADMINISTRATOR'S MOTION**

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**WILLIAM D. GRAND**, being of full age, hereby certifies and says:

1. I am an attorney-at-law of the State of New Jersey and Of Counsel to the firm of Greenbaum, Rowe, Smith & Davis LLP, attorneys for Defendant, Hyung Kee Oh ("Defendant"). As such, I have knowledge of the facts set forth herein.

2. I am making this Certification in response to the motion filed by Stuart Reiser, Esq., the Administrator of the Non-Resident New Jersey Estate of Byung-Tae Oh, Deceased (the "Administrator" or "Mr. Reiser"), for an Order granting a final award of fees and disbursements to the Administrator, designating Defendant (or his agent) as the 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.

3. On or about September 13, 2022, I was contacted by Mr. Reiser. Mr. Reiser informed me that he would filing a motion with the Court (1) to be relieved of the responsibility for filing on behalf of the Estate a non-resident United States Tax Return, Form 706-NA (the "Estate Tax Return"), (2) to have Defendant designated as the person responsible for filing the Estate Tax Return if one was required to be filed, (3) to be discharged of any further duties as Administrator in this matter, and (4) for an award of additional fees and disbursements in connection with his duties as Administrator.

4. Mr. Reiser asked whether Defendant would object to his proposed request for relief. I told Mr. Reiser that I would need to review his proposed motion and discuss the same with my client. Mr. Reiser informed me that he was leaving for a vacation, and that he would contact me when he returned.

5. After Mr. Reiser returned from his vacation, we spoke again. He said he would forward to me an invoice to review outlining the additional fees and disbursements he would be seeking. He said he would also forward to me a draft of a proposed Order containing the language and the relief he would be requesting, which he did.

6. Mr. Reiser thereafter told me he had called counsel for Plaintiff, Matthew Jeon, Esq., to determine whether his client would consent to the proposed Order. Mr. Reiser told me that despite his many attempts over several weeks to obtain a response from Mr. Jeon's client, no response was forthcoming.

7. I also tried to contact Mr. Jeon several times during this time period, but my phone calls and email communication went unanswered. (Mr. Jeon later told me he had not returned my calls because he had been in consecutive trials on two cases.)

8. After I received a copy of the proposed Order from Mr. Reiser, I told Mr. Reiser that subject to minor revisions (which Mr. Reiser accepted), Defendant had no objection to the entry of the Order, provided that it was entered by the Court without modification.

9. Defendant objects to the relief requested by Plaintiff in his Cross-Motion in its entirety. The reasons for the objection, and the support for Defendant's cross motion for sanctions, are set forth in the separate Certification and the Brief being filed herewith.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*/s/ William D. Grand*

---

WILLIAM D. GRAND

Dated: April 4, 2023

**SHAPIRO, CROLAND, REISER, APFEL & DI IORIO, LLP**

Stuart Reiser, Esq. - Atty. ID. No. 015051980

Continental Plaza II

411 Hackensack Avenue, 6<sup>th</sup> Floor

Hackensack, NJ 07601

Tel.: (201) 488-3900

Fax: (201) 488-9481

Administrator of the Non-Resident

New Jersey Estate of Byung-Tae Oh, Deceased

**FILED**

JUN 19 2023

Superior Court Chancery Division  
Probate Part

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

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

DOCKET NO. P-018-13

**Civil Action**

**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**

**THIS MATTER** having been brought before the Court by Stuart Reiser, Esq., (the “Administrator”) in his capacity as the Administrator of the Non-Resident New Jersey Estate of Byung-Tae Oh, Deceased (the “Estate”), in the presence of Matthew Jeon, P.C. (Matthew Jeon, Esq., appearing), Attorneys for Plaintiff, Wonki Oh) and Greenbaum Rowe Smith & Davis,

LLP, Attorneys for Defendant, Hyung Kee Oh (William D. Grand, Esq., appearing), and for good cause appearing,

**NOW THEREFORE,**

**IT IS** on this 19<sup>th</sup> day of June, 2023,

**ORDERED** as follows:

1. That a final award of \$25,000.00 (the "Final Award") be, and hereby is, awarded to the Administrator for fees and disbursements;

2. That no further request for fees and/or disbursements shall be made by the Administrator and no additional fees and/or disbursements shall be authorized beyond this Final Award;

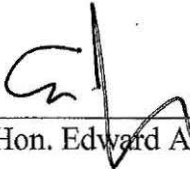
3. That Defendant, in order to assist the Administrator in the completion of his responsibilities as Administrator of the Estate, and in exchange for this negotiated Final Award, and to facilitate a prompt payment of the Final Award, and with the knowledge that the payment of fees is the responsibility of the Estate of Byung-Tae Oh, has agreed to pay the Final Award to the Administrator from his personal funds without prejudice to his right to obtain reimbursement from the Estate's interest in B&H Consulting & Development Co., LLC, with such payment being made within fourteen (14) days from the entry of this Order;

4. That the Administrator's designation of Defendant Hyung Kee Oh (or Hyung Kee Oh's agent) as a person having the authority to file a Non-Resident United States Tax Return, Form 706-NA, if they determine that one is required to be filed, is approved;

5. That Stuart Reiser, Esq., the Administrator, be, and hereby is, discharged of any and all further duties as Administrator;

6. That the within Order is the final order in this matter that concludes all issues and proceedings presently before the trial court in connection with this action; and,

7. That a copy of the within Order shall be served via email upon all parties within seven (7) days of the date hereof.

  
\_\_\_\_\_  
Hon. Edward A. Jerejian P.J.Ch.



New Jersey Judiciary  
 Superior Court - Appellate Division  
**Notice of Appeal**

TITLE IN FULL (AS CAPTIONED BELOW) <b>IN THE MATTER OF THE ESTATE OF BYONG-TAE OH</b>	ATTORNEY / LAW FIRM / PRO SE LITIGANT			
	NAME <b>MATTHEW JOONHO JEON, Esq.</b>			
	STREET ADDRESS <b>560 SYLVAN AVE STE 1010</b>			
	CITY <b>ENGLEWOOD CLIFFS</b>	STATE <b>NJ</b>	ZIP <b>07632</b>	PHONE NUMBER <b>201-947-9475</b>
	EMAIL ADDRESS <b>jeon@jeonlaw.com</b> <b>office@jeonlaw.com (*)</b>			

ON APPEAL FROM		
TRIAL COURT JUDGE <b>EDWARD A. JEREJIAN, JSC</b>	TRIAL COURT OR STATE AGENCY <b>BERGEN</b>	TRIAL COURT OR AGENCY NUMBER <b>P-18-13</b>

Notice is hereby given that **WON KI OH** appeals to the Appellate Division from a  Judgment or  Order entered on **06/19/2023** in the  Civil  Criminal or  Family Part of the Superior Court  Tax Court or from a  State Agency decision entered on \_\_\_\_\_

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

**Granting Administrator to Conclude its duties; denial of payment for attorney fees from Escrow account; and denial of request to appoint another administrator or designee**

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a  conviction  post judgment motion  post-conviction relief  pre-trial detention  
 If post-conviction relief, is it the  1st  2nd  other \_\_\_\_\_ specify

Is defendant incarcerated?  Yes  No

Was bail granted or the sentence or disposition stayed?  Yes  No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender  self  private counsel \_\_\_\_\_ specify

**Da2494**



Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	<b>EDWARD A. JEREJIAN, JSC</b>	<b>08/02/2023</b>
Trial Court Division Manager	<b>BERGEN</b>	<b>08/02/2023</b>
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(b)		

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
<b>HYUNG KEE OH</b>	<b>WILLIAM D GRAND, Esq.</b> <b>GREENBAUM ROWE SMITH &amp; DAVIS, LLP</b> <b>METRO CORPORATE CAMPUS ONE</b> <b>PO BOX 5600</b> <b>WOODBIDGE NJ 07095-0988</b> <b>732-549-5600</b> <b>wgrand@greenbaumlaw.com;</b> <b>lcardazone@greenbaumlaw.com;</b> <b>anaar@greenbaumlaw.com</b>	<b>08/02/2023</b>

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Transcript Office	<b>APPELLATE TRANSCRIPT OFFICE</b>	<b>08/02/2023</b>
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

- 
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for transcripts at public expense filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

08/02/2023

Date

s/ MATTHEW JOONHO JEON, Esq.

Signature of Attorney or Pro Se Litigant

Matthew Jeon, Esq. (ID No.: 047331989)  
Matthew Jeon, PC  
560 Sylvan Avenue, Suite 1010  
Englewood Cliffs, New Jersey 07632  
(201) 947-9475  
*Attorneys for Plaintiff*  
*Won Ki Oh*

**FILED**

JUN 19 2023

Superior Court Chancery Division  
Probate Part

IN THE MATTER OF THE ESTATE OF  
BYONG-TAE OH

SUPERIOR COURT OF NEW JERSEY  
BERGEN COUNTY: CHANCERY  
DIVISION

PROBATE PART

DOCKET NO. BER-P-018-13

CIVIL ACTION

ORDER

THIS MATTER having been ordered to the Court by Matthew Jeon, Esq. counsel for Plaintiff, Won Ki and William Grand, Esq. for Defendant Hyung Kee Oh appearing and Stuart Reiser, Esq., Administrator appearing for an Order Denying Administrator's, motion in its entirety; Granting Plaintiff's application for return of \$75,000.00 advanced by him for the Administrator's fees and expenses in 2015 from the Escrow account currently held by Defendant's Attorneys; Granting Plaintiff application for Attorney fees award from the Escrow account currently held by Defendant's Attorneys; Granting Plaintiff 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 the Court having considered the matter; and good cause shown:

IT IS ON THIS 19<sup>th</sup> DAY OF June 2022:

~~ORDERED that Administrator's motion is denied in its entirety; and it is further~~

*denied*

~~ORDERED 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 release to the Plaintiff within 7 days of this Order; and it is further~~

*denied*

~~ORDERED that the Fee Award of \$1,049,589.14 be paid from from the Escrow account currently held by Defendant's Attorneys within 7 days of this Order; and it is further~~

*denied*

~~ORDERED 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 is granted; and it is further~~

*denied*

~~ORDERED that Plaintiff's request for counsel fees is granted and Plaintiff's counsel shall submit a certification of service within \_\_\_\_\_ days of this Order; and it is further~~

*denied*

ORDERED, that copy of this Order shall be served upon all parties within 7

days of the date hereof.

*Ed A. Jerjian*

Edward A. Jerjian, P.J.Ch.

OPPOSED

UNOPPOSED