

In Re Estate of Rhoda Crane,
Deceased.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003739-22

CIVIL ACTION

On Appeal from the
Superior Court of New Jersey
Chancery Division, Probate Part
Bergen County

Sat Below:

Hon. Robert M. Vinci, J.S.C.

Docket No. Below:
BER-P-138-23

BRIEF OF PLAINTIFF/APPELLANT, MICHAEL E. CRANE

GREENBAUM, ROWE, SMITH & DAVIS LLP
Metro Corporate Campus One
99 Wood Avenue South
Iselin, New Jersey 08830-2712
(732) 549-5600
Attorneys for Plaintiff/Appellant, Michael E. Crane

Of Counsel and On the Brief:

Darren C. Barreiro, Esq. (ID No.: 047911998)

On the Brief:

Brian Selvin, Esq. (ID No.: 049161995)

Olivier Salvagno, Esq. (ID No.: 024101998)

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED	iii
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT	1
CONCISE STATEMENT OF PROCEDURAL HISTORY	4
CONCISE STATEMENT OF FACTS MATERIAL TO ISSUES ON APPEAL	7
LEGAL ARGUMENT	9
POINT I	
THIS COURT’S REVIEW OF THE TRIAL COURT’S DISMISSAL OF THIS ACTION WITH PREJUDICE AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE IS PLENARY. (Not raised below).....	9
POINT II	
THE COURT FAILED TO APPLY THE REQUISITE LAW IN DISMISSING PLAINTIFF’S VERIFIED COMPLAINT AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE. (Pa434-35; 1T15:22 – 1T19:3).....	11
POINT III	
THE TRIAL COURT ERRED IN FAILING TO COMPEL AN ACCOUNTING WHERE THE FIDUCIARY DID NOT PROVIDE REASONABLE INFORMATION THAT IS REQUIRED UNDER THE NEW JERSEY PROBATE CODE. (Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).....	18
POINT IV	
EVEN ASSUMING AN ACCOUNTING IS DISCRETIONARY, THE TRIAL COURT SHOULD HAVE	

EXERCISED THAT DISCRETION IN THIS MATTER.
(Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).....20

POINT V

THE TRIAL COURT SHOULD HAVE GRANTED
PLAINTIFF’S MOTION FOR RECONSIDERATION, IN
WHICH MOTION RECORD PLAINTIFF PROVIDED
ADDITIONAL MATERIAL NOT BEFORE THE COURT ON
THE RETURN DATE ON WHICH THE TRIAL COURT
DISMISSED THE VERIFIED COMPLAINT. (Pa525-26;
2T23:14 – 2T27:10).....22

CONCLUSION.....23

TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED

Order Denying Relief Sought in Order to Show Cause and Dismissing
Plaintiff’s Complaint with Prejudice, filed May 18, 2023.....Pa434

Order Denying Motion for Reconsideration, filed July 14, 2023.....Pa525

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<u>In re Hekemian,</u> A-1774-21, 2023 WL 176098 (N.J. Super. Ct. App. Div. Jan. 13, 2023).....	12
<u>In re Kelly,</u> 120 N.J. 679 (1990).....	12, 15
<u>In re Wilson,</u> 81 N.J. 451 (1979).....	15
<u>Kocanowski v. Twp. of Bridgewater,</u> 237 N.J. 3, 9 (2019).....	10
<u>Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan,</u> 140 N.J. 366 (1995).....	10
<u>Save Camden Pub. Schs. v. Camden City Bd. of Educ.,</u> 454 N.J. Super. 478 (App. Div. 2018).....	10
<u>State v. Dickerson,</u> 232 N.J. 2 (2018).....	9
<u>State v. Fuqua,</u> 234 N.J. 583 (2018).....	10
<u>State v. G.E.P.,</u> 243 N.J. 362 (2020).....	9
<u>State v. Hemenway,</u> 239 N.J. 111 (2019).....	10
<u>United Towns Bldg. & Loan Assoc. v. Schmid,</u> 23 N.J. Super. 239 (Ch. Div. 1952).....	12
<u>Statutes</u>	
<u>N.J.S.A. § 3A:9-2</u>	15

N.J.S.A. § 3B:16-1 to -8 13, 16
N.J.S.A. § 3B:17-109
N.J.S.A. § 3B:17-2 2, 4, 9, 11, 12, 13, 14, 15
N.J.S.A. § 3B:17-2 b12
N.J.S.A. § 3B:17-39, 14
N.J.S.A. § 3B:31-678
N.J.S.A. § 3B:31-67(a) 14, 19

Rules

Rule 2:10-210
Rule 3.110
Rule 4:87-113
Rule 4:87-1(a)14
Rule 4:87-1(b) 3, 5, 13, 14
Rule 4:87-3(b) 18, 19

PRELIMINARY STATEMENT

On March 21, 2023, Plaintiff/Appellant, Michael E. Crane (“Plaintiff”), filed an Order to Show Cause and Verified Complaint seeking an Order compelling an accounting from David M. Repetto, Esq. (“Defendant”), the court-appointed Administrator of the Estate (the “Estate”) of Rhoda Crane (“Decedent”) and court-appointed Trustee of the Decedent’s Revocable Trust (“Rhoda’s Trust”). Rhoda Crane died a resident of Bergen County, New Jersey on July 5, 2020, leaving a Last Will and Testament dated June 4, 1999, (“Rhoda’s Will”). Rhoda’s Will left everything to Rhoda’s Trust, executed the same day, naming herself and her sister, Joyce Crane, as co-Trustees.

Joyce Crane died on October 9, 2020. Under Rhoda’s Trust, all of her tangible property, including her jewelry, was bequeathed to her sister Joyce, and everything else was held in trust until Joyce’s death, at which time everything passed to Joyce’s children, Plaintiff and Jacqueline Crane.

On January 27, 2021, the Court appointed Defendant Administrator of Rhoda’s Estate and Trustee of Rhoda’s Trust. Thus, at the time the Verified Complaint seeking an accounting was filed, more than two years had passed since Defendant had been appointed as Administrator and Trustee, and over one year since Defendant had allegedly sold property of the Decedent at an auction – and Defendant had not provided the beneficiaries with an accounting, despite written demand.

Notwithstanding the timely requests set forth in the Verified Complaint, the

trial court dismissed this action with prejudice on the return date of the order to show cause. As will be shown herein, the trial court erred in dismissing Plaintiff's Verified Complaint, and by refusing to compel Defendant to provide an accounting, as required of an administrator pursuant to N.J.S.A. § 3B:17-2, in addition to the requirement that a trustee promptly respond to a beneficiary's request for information related to the administration of a trust.

To date, Defendant has merely accounted solely for the assets that existed on the date he was appointed. Such initial asset listing is neither a complete listing of his receipts of principal, nor is it an accounting of his actions or of the sale or other transfer of said assets, as required by a fiduciary, as well as an entitlement of the beneficiaries. Significantly, Defendant has steadfastly refused to provide any information as to the disposition of the Decedent's tangible personal property, or of any cash or securities that came into his possession, including, but not limited to, the sales proceeds of the Decedent's home in Englewood, New Jersey. This is particularly disturbing given Defendant's representations to the trial court that "there is nothing in the estate." 1T8:3-5.

Moreover, both of the beneficiaries of this Estate and Trust have made statements that there are personal assets belonging to them located in the Decedent's home at the time of her death that are missing. Whether any of those assets are either still held in the Estate, or were sold along with other Estate assets, this can only be determined by Defendant providing an accounting of his actions after his

appointment. Despite all of the unanswered questions raised by Defendant’s filings with the trial court, the court focused its decision on the Bruce Springsteen memorabilia collection, owned by Plaintiff – an issue raised by Defendant in his opposition to the order to show cause application – in order to distract the trial court from Defendant’s own failure to provide the beneficiaries with information about the disposition of the assets in the Estate and Trust. This action was brought to compel an accounting of the assets that came into Defendant’s hands and the disposition of those assets – not of assets that do not belong to the Estate or Trust.

The trial court erred by misreading Rule 4:87-1(b) to hold that “a formal accounting is not required in every case” a beneficiary requests one, and may be compelled at the Court’s discretion. As a result, the court denied Plaintiff’s simple request for a judgment requiring Defendant “to present and settle an account of his administration of the Estate and Trust.” (Pa7 ¶ 15(a)). In “skip[ping] a few words[,]” 1T7:1–7, contained in the statutory edict, the trial court misapplied the statute enacted to protect/safeguard the beneficiary’s rights, in favor of allowing a fiduciary to conceal his activities. The trial court erred in failing to require that Defendant account, if for no other reason than to ensure that the assets of the Estate and Trust that are subject to the court’s oversight, and have been entrusted to Defendant by the Court, have been properly administered. Plaintiff requests that this Court reverse the trial court’s dismissal with prejudice of his Verified Complaint (and subsequent denial of his motion for reconsideration), and enter an Order

compelling Defendant to file an accounting of the account's transactions.

CONCISE STATEMENT OF PROCEDURAL HISTORY

On March 21, 2023, Plaintiff filed a Verified Complaint and proposed Order to Show Cause in this action. (Pa1–6). As stated by the trial court at the return date of the Order to Show Cause, the Verified Complaint sought only to require Defendant, the Administrator CTA of the Estate of Rhoda Crane and Court-appointed Trustee of the Rhoda Crane Trust, to file a complete accounting for his actions as Administrator and Trustee, and for an award of counsel fees. (See Pa1 ¶ 1–Pa4 ¶ 15).

On April 24, 2023, Defendant filed an Answer and Certifications opposing the relief being sought. (Pa37–39); (Pa40–41); (Pa62–87).

On May 18, 2023, the trial court held oral argument on the order to show cause application. 1T.¹ During that argument, counsel for Defendant stated, “In this case, I thought our papers were fairly clear, and certainly they were comprehensive, in that there is nothing in the estate.” 1T8:3–5 (emphasis added).

Following oral argument, the trial court denied the relief requested by Plaintiff, and dismissed the Verified Complaint with prejudice. 1T3:15–1T5:3. The trial court stated that N.J.S.A. § 3B:17-2 does not require that a fiduciary be

¹ “1T” shall refer to the transcript of the argument before the trial court dated May 18, 2023, and “2T” shall refer to the transcript of the argument before the trial court dated July 14, 2023.

compelled to account, but merely provides the court with the discretion to order one.

In this regard, the trial court held as follows:

A formal accounting is not required in every case. Pursuant to Rule 4:87-1(b), an accounting may be ordered in appropriate circumstances. And N.J.S.A. 3B:17-2 also provides for an accounting to be ordered, but it certainly doesn't require an accounting in every case.

1T17:25–1T18:5.

Additionally, the trial court held that Rule 4:87-1(b) gives the court the discretion to order an accounting in “appropriate circumstances.” 1T4:16–17; 1T5:2–4; 1T17:25–1T18:5.

On June 7, 2023, Plaintiff filed a Motion for Reconsideration. (Pa456–65). In his motion, Plaintiff argued that the trial court had misapplied the law governing an interested party's right to compel an accounting, erred in determining that Defendant's filings constituted an informal accounting, and made erroneous determinations of fact. On June 26, 2023, Plaintiff filed a Reply Certification of Michael E. Crane in further support of the Motion. (Pa473–82).

At the oral argument on July 14, 2023, counsel for Plaintiff argued that a court may be subconsciously biased to believe a court-appointed fiduciary and cited to the trial court's prior statement that “the suggestion that [Defendant] converted Plaintiff's property is simply outrageous.” 2T13:14–2T14:9. The trial court had two replies to this argument: First, the trial court denied having known Defendant prior to the filing of the Verified Complaint to Compel an Accounting. 2T14:21–

24. This begs the question, why would the trial court assume that any allegation against Defendant is “outrageous” if he were not known to the trial court. And second, the trial court in several instances chastised counsel for making allegations against Defendant. See, e.g., 2T14:23–2T15:3; 2T15:4–16; 2T16:5–6. Unfortunately, counsel’s argument that no such allegation was made in the Verified Complaint fell on deaf ears. Plaintiff’s Verified Complaint asserted that:

1. Plaintiff stored valuable items at his Aunt’s residence;
2. After Defendant’s appointment, Defendant controlled the contents of the residence;
3. Defendant informed Plaintiff that “all items unquestionably belonging to Rhoda Crane were sold or distributed in February 2022”;
4. Plaintiff was allowed to retrieve his possessions that were previously stored in his Aunt’s residence, but certain items were missing;
5. Plaintiff requested an accounting of the items sold by Defendant and those items he still retains;
6. Defendant refused to provide such information; and
7. Plaintiff’s personal items may have been sold along with the Estate and Trust’s other assets.

(Pa2–3.)

Nowhere in the Verified Complaint is it alleged that Defendant absconded with Plaintiff’s property. The only claim set forth in the Verified Complaint is one to compel an accounting of the Estate and Trust.

It is clear that the trial court misapplied the controlling statutes and Court Rule, as well as made factual determinations that were wholly unsupported by the record evidence, in rendering its decision dismissing the Verified Complaint. Thus, the trial court's order dismissing the Verified Complaint should be reversed.

CONCISE STATEMENT OF FACTS MATERIAL TO ISSUES ON APPEAL

Rhoda Crane (“Rhoda”) died on July 5, 2020. (Pa1 ¶ 1). Rhoda left no spouse or descendants surviving. (*Id.* at ¶ 2). At the time of her death, Rhoda resided at 415 Gloucester Street, Englewood, New Jersey (the “Englewood Property”). (*Id.* at ¶ 1). Title to the Englewood Property was held in Rhoda’s Trust, with Rhoda and her sister, Joyce Crane, as co-trustees. (Pa2 ¶ 3); (Pa19).

Joyce died on October 9, 2020, survived by her two children, Plaintiff and Jacqueline Crane (“Jacqueline”). (Pa2 ¶ 4). Pursuant to Rhoda’s Will admitted to probate, her residuary estate is to be paid to the Trustees of Rhoda’s Trust. (Pa2 ¶ 5); (Pa25–32).

On January 27, 2021, the Court appointed Defendant as Administrator of Rhoda’s estate and Trustee of Rhoda’s Trust. (Pa2 ¶ 6). Since January 27, 2021, Defendant has had the sole responsibility for the administration of the Estate and Rhoda’s Trust. (Pa2 ¶ 7); (Pa95).

On August 9, 2022, Defendant sent a letter to Plaintiff stating that (i) “all items unquestionably belonging to Rhoda Crane were sold or distributed in February

2022,” and (ii) that Plaintiff had ten days to make an appointment to retrieve those items which he claimed ownership from storage. (Pa2 ¶ 8).

Plaintiff made an appointment and retrieved his property from storage, but noted that many of his possessions stored at his Aunt’s home on January 27, 2021 were missing. (Pa2 ¶ 9). He requested from Defendant an accounting of the tangible property sold and distributed by the Estate and Trust. (Id.)

Defendant responded to Plaintiff’s request by letter dated October 12, 2022, wherein he stated that he would not respond to Plaintiff’s request for information until the Judgment the Estate holds against him has been repaid. (Pa3 ¶ 10).

Counsel for Plaintiff emailed Defendant’s counsel on October 17, 2022, stating that Plaintiff’s status as a debtor of the Estate does not relieve Defendant’s duty under N.J.S.A. § 3B:31-67 to “promptly” respond to a beneficiary’s reasonable request for information, and gave Defendant thirty (30) days to provide the information. (Pa3 ¶ 11).

At the time of the filing of the Verified Complaint, it had been over 100 days since Plaintiff’s written request, and no information had been provided by Defendant. (Pa3 ¶ 12).

This is most disturbing since the items Plaintiff stored at his Aunt’s home are potentially worth well more than the amount he owes the Estate, and if said items were sold by the Administrator and Trustee, Plaintiff’s debt may well have been paid off. Unfortunately, Defendant’s refusal to comply with the law and his fiduciary

duty make such a determination impossible. (Pa3 ¶ 13).

At the time of the filing of the Verified Complaint, more than two (2) years had elapsed since Defendant was appointed Administrator and Trustee, and he had not settled his account as provided under N.J.S.A. §§ 3B:17-2, 3B:17-3, or 3B:17-10. (Pa4 ¶ 15). Accordingly, Michael Crane filed the within action, seeking an order that, inter alia, Defendant, Administrator CTA of the Estate of Rhoda Crane and Trustee of Rhoda's Trust, present and settle an account of his administration of the Estate and Trust. (Id.)

LEGAL ARGUMENT

POINT I

THIS COURT'S REVIEW OF THE TRIAL COURT'S DISMISSAL OF THIS ACTION WITH PREJUDICE AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE IS PLENARY. (Not raised below).

The trial court's decision to dismiss this action with prejudice on the return date of the order to show cause is subject to the de novo, or plenary, standard of review applied to rulings of law.

An appellate court's review of rulings of law and issues regarding the applicability, validity, or interpretation of laws, statutes, or rules is de novo. See, e.g., State v. Dickerson, 232 N.J. 2, 17 (2018) (interpretation of court rules); State v. G.E.P., 243 N.J. 362, 382 (2020) (retroactivity of statute); State v. Hemenway, 239

N.J. 111, 125 (2019) (constitutionality of a statute); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018) (determining whether a cause of action is barred by a statute of limitations).

Our Supreme Court, in Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366 (1995), held that “[a] trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Id. at 378. This Court exercises plenary review over the application of the law to the facts. Id.: see also Pressler & Verniero, Current N.J. Court Rules, cmt. 3.1 on R. 2:10-2 (2023) (“Thus[,] the appellate court is not bound by the trial court’s application of law to the facts or its evaluation of the legal implications of facts where credibility is not in issue.”). This is the “plenary” or “de novo” standard of review.

The issue before the Court is whether the trial court erred in refusing to require an accounting, i.e., whether a court-appointed trustee and administrator of a (formerly) revocable trust and the decedent’s estate is statutorily obligated to provide an accounting of the estate and trust upon a beneficiary’s request after more than two years have passed since the appointment of the trustee and administrator. Applying the applicable standards here makes clear that the Order dismissing the Verified Complaint should be reversed.

POINT II

THE COURT FAILED TO APPLY THE REQUISITE LAW IN DISMISSING PLAINTIFF'S VERIFIED COMPLAINT AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE. (Pa434-35; 1T15:22 – 1T19:3).

N.J.S.A. § 3B:17-2 governs the accounts of personal representatives, and provides as follows:

A personal representative may settle his account or be required to settle his account in the Superior Court. Unless for special cause shown, he shall not be required to account until after the expiration of 1 year after his appointment.

The second sentence states that an Administrator cannot be compelled to account during his first year without special cause being shown. In this situation, the trial court is given discretion over whether or not to compel an accounting. But that situation is not at issue in this case, where the Administrator was appointed more than two years ago.

In the first sentence of the statute, the Legislature provided that the administrator “may settle his account or be required to settle his account” in court. It is in the interpretation of these two grammatical clauses that the trial court has erred in its ruling. The word “may” in the first clause gives a personal representative the option to settle his account formally. On the other hand, the words “be required” in the second clause makes the account mandatory. In In re Hekemian, A-1774-21,

2023 WL 176098 (N.J. Super. Ct. App. Div. Jan. 13, 2023),² where co-Executors disputed a beneficiary’s right to an accounting due to an arbitration clause in the Last Will, the Court stated that “Defendants do not contest the expiration of the one-year period or otherwise deny [Appellant’s] entitlement to an accounting. As such, Plaintiff’s Verified Complaint simply invokes a **statutory right**.” Id. at *7 (emphasis added).

In citing to the lower court’s ruling, the Appellate Division stated that “under N.J.S.A. § 3B:17-2, [the beneficiary] was **entitled** to an accounting.” Id. at *3 (emphasis added). The Supreme Court of New Jersey agreed with this position when it stated that “[a]n executor is **required** to account for each item of the estate that comes into his hands.” In re Kelly, 120 N.J. 679, 684 (1990) (emphasis added). New Jersey courts have also held that a beneficiary of a trust has a right “to oblige a trustee of an inter vivos trust to account in this court.” United Towns Bldg. & Loan Assoc. v. Schmid, 23 N.J. Super. 239, 246 (Ch. Div. 1952).

In its July 14, 2023, ruling, the trial court misstated N.J.S.A. § 3B:17-2 by saying “the words of the statute are ‘A personal representative may be required to settle his account in the Superior Court.’” 2T25:18–22. As set forth above, the sentence the trial court misstated had two clauses, the first giving the personal

² Pursuant to R. 1:36-3 and 2:6-1(a)(1), a copy of this opinion is included in the accompanying Appendix. Counsel for Plaintiff are not aware of any contrary unpublished opinions.

representative the discretion to voluntarily file an accounting, and the second giving an interested party (or the court) the right to “require” an accounting. But in its decision, the trial court “skip[ped] a few words[,]” 2T7:1–7, turning two clauses into one, and applied the discretion to the right of an interested party to compel an account. Compare 2T25:20–22 with N.J.S.A. § 3B:17-2.

The trial court further justified its decision by reference to Rule 4:87-1(b), which states that “[a]n action may be commenced by an interested person to compel a fiduciary referred to in paragraph (a) of this rule to settle his or her account, and, in appropriate circumstances, to file an inventory and appraisalment.” 2T25:6–22. While there are words of discretion in said Rule, such as “may” and “in appropriate circumstances,” neither are applicable in this circumstance.

First, the word “may” applies to the discretion given to a beneficiary in filing an action to compel an accounting, not to the court in granting such relief. As for the words “in appropriate circumstances,” this comes after a comma and the word “and,” and only applies to the filing of an inventory and appraisalment, not an accounting. An accounting is not an inventory, as shown by the differing statutes requiring the filing of an inventory, N.J.S.A. § 3B:16-1 to -8, and those for filing an accounting, N.J.S.A. § 3B:17-1 to -13.

Additionally, it should be noted that Rule R. 4:87-1 applies in a number of differing statutory contexts, such as executors, administrators, testamentary trustees, non-testamentary trustees, guardians, and assignees for the benefit of creditors. R.

4:87-1(a). Under N.J.S.A. § 3B:17-3, a guardian or trustee must account in the Superior Court as required by court order. If a trustee, for example, failed to account as required by the court, and a beneficiary filed an action to compel an accounting under R. 4:87-1(b), it is doubtful that the court would deem the requirement to account discretionary simply because the applicable Court Rule was drafted as a “one-size-fits-all” rule for several differing fiduciary situations.

In addition to N.J.S.A. § 3B:17-2 requiring an administrator to account after one year, the New Jersey Uniform Probate Code requires a trustee to provide reasonable information to beneficiaries so that they may “protect their interests,” and to promptly respond to a beneficiary’s request for information about the trust administration. N.J.S.A. § 3B:31-67(a). As stated in the Verified Complaint, Defendant failed to respond to Plaintiff’s requests for information for over 100 days as of the time this action was filed. (Pa2 ¶ 12). When read together, these two statutes further demonstrate that a request for an accounting is not permissive, but mandatory.

The trial court failed to explain why N.J.S.A. § 3B:31-67(a) does not give Plaintiff the right to the information he seeks. In fact, in the trial court’s sole reference to this statute in its opinion, the trial court mischaracterizes the allegation that Defendant breached his fiduciary duty in failing to provide information as an allegation of conversion. 1T16:10–15. Thus, the trial court’s mistake of fact in its ruling, as a practical matter, can result in a court-appointed trustee continuing to

breach his fiduciary duty in failing to provide information to a beneficiary.

Finally, in researching the legal precedents applicable to this matter, searches of N.J.S.A. § 3B:17-2 and its predecessor (N.J.S.A. § 3A:9-2 (1981)) were performed, and resulted in seven (7) Appellate Division cases (including Hekemian) and four (4) trial court decisions. In several cases, the court denied a beneficiary’s request to compel an accounting because the request was made during the first year of administration, and the court did not find any special cause warranting an order for a statutorily-prohibited accounting during the first year of administration. In no case did the court reject such an application after the end of the first year of administration. None, in the 72 years since the two statutes were enacted. This is precisely because a beneficiary has the right to compel an accounting after the end of the first year of administration. See, e.g., In re Kelly, 120 N.J. at 684 (“An executor is required to account for each item of the estate that comes into his hands.”); see also In re Wilson, 81 N.J. 451, 454 (1979) (explaining that “money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly[.]”).

Plaintiff has carefully examined the trial court’s decision rejecting his request for an accounting. In its reasoning, the trial court highlighted the arguments made by Defendant disputing the allegedly suggested³ reasons for Plaintiff’s request for

³ 1T18:22–25.

an accounting, and Plaintiff's lack of a supporting certification.⁴

The reason for Plaintiff's "bare-bones" pleading was two-fold. First, Plaintiff was not asking the trial court to determine whether any assets were missing, and if so, who was responsible for the lost items. Plaintiff merely wished for Defendant to account for his actions, and to inform Plaintiff of the assets that remain in his hands and of those sold. In response, Defendant submitted an extensive Certification outlining some of the assets that came into his possession upon appointment (Pa62–86), but failed to inform the trial court of the disposition of those assets since that time or those that remain. Unfortunately, this "red herring" achieved its desired effect in leading the trial court to not only assume that breaches of fiduciary duty had not occurred and that an accounting was unnecessary, but to go so far as to state that "Mr. Repetto has provided a comprehensive and exhaustive informal accounting of everything that was in the residence and all of the personal property contained in the residence." 1T16:25–1T17:3. At best, Defendant provided the trial court with a partial inventory under Chapter 16 of the New Jersey Probate Code, N.J.S.A. § 3B:16-1 to -8; Defendant did not provide an accounting.

The trial court also stated that Plaintiff's claims that items are missing were

⁴ As the Court is aware, unlike with typical complaints, a Verified Complaint contains a written declaration of the Plaintiff that the allegations set forth therein are true and accurate to the best of his personal knowledge and belief. With rare exceptions, a supporting certification is not provided, given that the verification already serves that function.

“not set forth in any certified document in connection with this application.” 1T16:3–9. However, in addition to Paragraphs 9 and 13 of the Verified Complaint, (Pa2 ¶¶ 9, 13), Defendant’s Certification contains numerous references and exhibits supporting Plaintiff’s claims, in, e.g., Paragraph 24 (Pa66 ¶ 24); Paragraph 36 (Pa69 ¶ 36); Paragraph 51 (Pa72 ¶ 51); and, more particularly, Exhibit I thereto (Pa297-98).

The trial court then accepted evidence provided by Defendant that refuted Plaintiff’s allegations that framed Bruce Springsteen lyrics were hung in the guest room of the Englewood Property. 1T18:12–17. Yet, such evidence was questionable at best, and at worst, unintentionally misleading. In paragraph 44 of his Certification (Pa71 ¶ 44), and Exhibit N (Pa332–39), Defendant attached photographs purporting to show the guest bedroom walls without any framed Bruce Springsteen lyrics. These photos were allegedly supplied by Jacqueline Crane, Plaintiff’s estranged sister, who Plaintiff has alleged in other lawsuits had, along with family members, removed numerous boxes from the Englewood Property after the Decedent’s death and prior to Defendant’s appointment. Said photos lack any proper foundation as to, e.g., who took each photograph, or when they were taken. In fact, Defendant would be unable to testify as to what was hanging on the guest room walls at the time of the Decedent’s death, but instead is relying on unauthenticated evidence provided by someone who has been fighting with Plaintiff since before the Decedent’s death.

And second, Plaintiff did not wish to incur additional fees arguing for relief to which we believed he is statutorily entitled. Furthermore, the trial court placed a requirement on Plaintiff to prove issues that are properly raised as exceptions to a formal accounting, but did not require the formal accounting to be filed. Essentially, the trial court faulted Plaintiff for failing to prove his case before it even began.

POINT III

THE TRIAL COURT ERRED IN FAILING TO COMPEL AN ACCOUNTING WHERE THE FIDUCIARY DID NOT PROVIDE REASONABLE INFORMATION THAT IS REQUIRED UNDER THE NEW JERSEY PROBATE CODE. (Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).

Rule 4:87-3(b) governs the form of accounts to be submitted in a formal accounting, and provides that all accounts shall include the following components:

- (1) a full statement or list of the investments and assets composing the balance of the estate in the accountant's hands, setting forth the inventory value or the value when the accountant acquired them and the value as of the day the account is drawn, and also stating with particularity where the investments and assets are deposited or kept and in what name;
- (2) a statement of all changes made in the investments and assets since they were acquired or since the day of the last account, together with the date the changes were made;
- (3) a statement as to items apportioned between principal and income, showing the apportionments made;
- (4) a statement as to apportionments made with respect

to transfer inheritance or estate taxes;

- (5) a statement of allocation if counsel fees, commissions and other administration expenses have been paid out of corpus, but the benefits of the deductions from corpus have been allocated in part or in whole to income beneficiaries for tax purposes; and
- (6) a statement showing how the commissions requested, with respect to corpus, are computed, and in summary form the assets or property, if any, not appearing in the account on which said commissions are in part based.

R. 4:87-3(b).

The responsive papers submitted by Defendant can be deemed to have mostly satisfied subpart “(1)” of Rule 4:87-3(b), except that he has not provided a full inventory value for each asset, and did not even reference every asset that came into his possession. For each and every other component of an accounting, there is absolutely no information to be found in the papers submitted to the trial court or previously provided to Plaintiff, despite numerous requests.

Even without filing for an accounting, the limited information previously requested by Plaintiff was required to be provided by Mr. Repetto. See N.J.S.A. § 3B:31-67(a). Defendant’s failure to provide this information is a breach of his fiduciary duty. Plaintiff’s status as a debtor of the Estate as well as a beneficiary does not alleviate Defendant of his fiduciary responsibilities.

Moreover, as seen from Defendant’s responsive papers, he went to great

lengths to avoid providing an accounting in this Estate and Trust – an accounting that would be provided not only to Plaintiff, but also the other beneficiaries, namely, Jacqueline Crane and the Estate of Joyce Crane. Said responsive papers provided voluminous details with respect to the assets that came into Defendant’s hands, but virtually nothing about what has become of said assets.

Most curiously, Defendant has stated to the trial court that “there is nothing in the estate.” 1T8:3-6. One would think that given these statements by the Administrator and Trustee, the trial court would want to see what has become of the sales proceeds of the Englewood Property⁵ and the tangible property, if for no other reason than to protect all of the beneficiaries of the Estate and Trust from potential breaches by a court-appointed fiduciary.

POINT IV

EVEN ASSUMING AN ACCOUNTING IS DISCRETIONARY, THE TRIAL COURT SHOULD HAVE EXERCISED THAT DISCRETION IN THIS MATTER. (Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).

Even in the event that the trial court was correct on a legal basis that a formal accounting is discretionary – and Plaintiff believes that it was not – the trial court should have exercised that discretion in this instance, as there are substantial

⁵ The Englewood Property sold for \$850,000 on November 15, 2021, according to a search on njparcels.com. 415 Gloucester St, New Jersey Property Information, https://njparcels.com/sales/0215_3702_9 (last visited Nov. 6, 2023).

questions raised as to which even the most basic, fundamental underlying information is missing, and an absence of communication from Defendant in response to Plaintiff's various requests for information concerning the disposition of Estate property. Many substantial questions were raised in the Plaintiff's Certifications (Pa458–65), (Pa473–82) – which also provided evidence of the existence of possessions at the Englewood Property – but the trial court summarily ignored them based upon nothing more than Defendant's opposition Certification, whose facts were derived to a great extent on information gleaned from others, rather than from first-hand knowledge.

As discussed above, Plaintiff is a beneficiary of the Estate, and has no information as to what was sold, how much money was obtained in connection with the sales, and the disposition of the funds. More importantly, said accounting would disclose whether any of the items sold by Defendant were not actually an asset of the Estate or Trust, as allegations of missing items have been made not only by Plaintiff, but also by his sister, Jacqueline Crane. (See, e.g., Pa300).

POINT V

THE TRIAL COURT SHOULD HAVE GRANTED PLAINTIFF'S MOTION FOR RECONSIDERATION, IN WHICH MOTION RECORD PLAINTIFF PROVIDED ADDITIONAL MATERIAL NOT BEFORE THE COURT ON THE RETURN DATE ON WHICH THE TRIAL COURT DISMISSED THE VERIFIED COMPLAINT. (Pa525-26; 2T23:14 – 2T27:10).

The trial court likewise erred in denying, by order dated July 14, 2023, Plaintiff's motion for reconsideration. (Pa525–26).

As shown in Plaintiff's Certifications in support of his reconsideration motion, Plaintiff furnished the trial court with certain information and documents which the trial court did not have on the return date. (Pa458–72); (Pa473–524). This material was not provided in connection with the order to show cause application because, as noted above, the matter was instituted solely to seek an accounting, to which Plaintiff believes he has a statutory entitlement. When the trial court instead determined to dismiss the action with prejudice, Plaintiff wished to supplement the record before the trial court with certain information and documents, which (1) clearly demonstrate the utter dearth of information with which he had been provided by Defendant; (2) proved the existence of, among other things, the Bruce Springsteen memorabilia prior to the Decedent's death; and (3) underscored numerous examples of the information needed in the requested accounting.

It is respectfully submitted that the material in the record on the motion for

reconsideration rendered it utterly compelling that an accounting be ordered, in order that Plaintiff could receive the most basic information concerning the assets of the Estate and Trust and the disposition thereof. The trial court's determination to deny the motion for reconsideration should be reversed.

CONCLUSION

For all of the foregoing reasons, Plaintiff, Michael E. Crane, respectfully requests that the Court reverse the trial court's May 18, 2023 Order dismissing this action in favor of Defendant and against Plaintiff, and its July 14, 2023 Order denying Plaintiff's motion for reconsideration, and that the Court compel Defendant to provide an accounting to the beneficiaries.

Respectfully submitted,

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff/Appellant, Michael E. Crane

/s/ Darren C. Barreiro

By: _____
DARREN C. BARREIRO

Dated: November 13, 2023

Kathleen M. Lee, Esq. - #014871997
klee@harwoodlloyd.com
HARWOOD LLOYD, LLC
130 Main Street
Hackensack, New Jersey 07601
(201) 487-1080
Attorneys for David M. Repetto, Esq.

In Re Estate of Rhoda Crane.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO. A-003739-22

Civil Action

ON APPEAL FROM

SUPERIOR COURT OF NEW
JERSEY
CHANCERY DIVISION: BERGEN
COUNTY
DOCKET NO. BER-P-138-23

Sat Below:
Hon. Robert M. Vinci, J.S.C.

**BRIEF OF RESPONDENT DAVID M. REPETTO, ESQ.,
ADMINISTRATOR C.T.A. OF THE ESTATE OF RHODA CRANE**

KATHLEEN M. LEE, ESQ.
Of Counsel and On the Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 4

STATEMENT OF FACTS 5

LEGAL ARGUMENT 8

 I. THE STANDARD OF REVIEW IS NOT PLENARY WITH REGARD
 TO THE ENTIRE LOWER COURT RULING 8

 II. APPELLANT HAS FAILED TO PROVE THAT THE APPLICABLE
 STATUTE AND RULE REQUIRE AN ACCOUNTING IN ALL CASES
 9

 III. APPELLANT HAS RECEIVED SUFFICIENT INFORMATION TO
 CONSTITUTE AN INFORMAL ACCOUNTING 11

 IV. APPELLANT FAILED TO MEET THE STANDARD FOR
 RECONSIDERATION 12

 V. APPELLANT COMES BEFORE THE COURT WITH UNCLEAN
 HANDS..... 15

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

American Dream at Marlboro, LLC v. Planning Board of the Twp of Marlboro, 209 N.J. 161 (2012) 15

Borough of Princeton v. Bd of Chosen Freeholders of Mercer, 169 N.J. 135(2001)..... 15

Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299 (App. Div. 2008)..... 13

D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990) 13

Fagliarone v. Twp of No. Bergen, 78 N.J. Super. 154 (App. Div. 1963)..... 8

In re Hekemian, A-1774-21, 2023 WL 176098 (N.J. Super. Ct. App. Div. Jan 13, 2023)..... 10

Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250 (App. Div. 1987) 13

In re Kelly, 120 N.J. 679 (1990) 10

Palombi v. Palombi, 414 N.J. Super. 274 (App. Div. 2010) 13-14

Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474 (1974)..... 8

STATUTES

N.J.S.A. 3B:17-2 1; 8-10

COURT RULES

R. 1:36-3 10

R. 4:49-2 12-13

R. 4:87-1 1; 8-10

PRELIMINARY STATEMENT

Appellant Michael Crane (“Appellant”) appeals the rulings issued by the Hon. Robert M. Vinci, J.S.C., denying Appellant’s demand for an accounting of his aunt, Rhoda Crane’s Estate (the “Estate”), pursuant to R. 4:87-1 and N.J.S.A. 3B:17-2, and subsequent Motion for Reconsideration.

Based on the last three years of litigation with Appellant, it is not surprising that his arguments on appeal contain blatant lies. Appellant claims that he requested information on Estate assets and their disposition and was denied that information. He first received a complete list of items contained in Rhoda Crane’s Englewood, New Jersey home (the “Englewood Home”) and their collective value over two years ago. (Pa297-Pa298). Thereafter, Appellant and/or his counsel were advised on numerous occasions that the personal property belonging to Rhoda Crane was sold. Appellant also knows that the Englewood Home was sold, and for what price. Further, he unquestionably knows the nature of Rhoda Crane’s remaining two properties as he is currently defendant in litigations with the Estate, wherein the Estate is seeking his removal from both properties as he has no legal rights to reside in same. In sum, Appellant has all relevant information regarding the Estate.

Appellant’s Brief glosses over the fact that the court below did not only find that the statute and rule regarding an accounting are permissive not

mandatory, but that even if mandatory, the wealth of information provided by Mr. Repetto constituted a comprehensive informal accounting.

By order dated January 27, 2021, the Hon. James J. DeLuca, J.S.C. admitted Decedent Rhoda Crane's June 4, 1999 Last Will and Testament to probate and appointed Mr. Repetto Administrator C.T.A. of the Estate. (Pa95). Since that time, Appellant has been involved in or been the cause of at least six lawsuits involving Rhoda Crane's assets. Appellant demands he be provided a formal accounting yet ignores that he has been told numerous times that the vast majority of Estate expenses were legal fees occasioned by his conduct.

After over a year of litigation during which time Appellant ignored every order issued by the Court (Pa394-Pa397), judgment was entered directing Appellant to repay the Estate \$2,440,702.00 that he misappropriated (the "February 4 Judgment"). (Pa43-Pa56). To date he has failed to make any payments towards that debt. The February 4 Judgment further required Appellant to pay legal fees to the Estate and to his sister, Jacqueline Crane. (Pa43-Pa56). To date, no portion of any of those sums has been paid.

Appellant is now a squatter, paying no rent in the two properties owned by the Estate and preventing sale of those properties to meet the Estate's tax obligations. In one of those properties, located on the Upper East Side of New York City, (the "UES Property"), in direct violation of court orders, Appellant

has been collecting and keeping rents. 1T11:6-1T11:9. As a result of his improper conversion of rents and misappropriation of mortgage funds, the UES Property is now in foreclosure. Finally, due to Appellant's conduct, the Estate faces a lawsuit from an individual claiming to have a contract to purchase the UES Property (the "UES Contract Case"). That "contract" was signed by Appellant when he had no legal standing to do so, and the "deposit" was paid to an account in the name of Appellant's deceased mother and his son.

In his Appellate Brief, Appellant attempts to distract this court by changing his story and shifting his focus as to whether he is seeking an accounting of the Estate's assets and expenses or continuing to search for his personal property that he alleges is missing. His claim to still not have any information regarding sale of the items located at Rhoda Crane's Englewood Home has been answered countless times. Appellant knows that the appraisal report obtained by the Estate listed all items located at the Englewood Home on the date Mr. Repetto gained entry. All items were later placed in storage, segregating out any Appellant claimed to own. Thereafter, Appellant was given the opportunity to retrieve his possessions from storage. The remaining items were sold. That sale was for less than \$61,000, which was the value of all items in the Englewood Home, including those belonging to Appellant.

PROCEDURAL HISTORY

In January 2021, Judge DeLuca appointed Mr. Repetto as Administrator C.T.A. of the Estate as a result of a lawsuit between Appellant and his sister, Jacqueline Crane, over distribution of the Estate. (Pa95). The parties litigated for over a year during which time Appellant ignored every order entered by the court, eventually resulting in default being entered against him. (Pa394-Pa397). Thereafter, on February 4, 2022, the court entered judgment against Appellant, requiring him to repay the Estate over \$2,400,000 that he has misappropriated. (Pa43-Pa56). Appellant did not appeal the February 4 Judgment.

One year later, after effectively bankrupting the Estate with his conduct and endless lawsuits, Appellant, who is the Estate's largest debtor by far, demanded a formal accounting by way of Order to Show Cause and Verified Complaint. (Pa1-Pa6); (Pa33-Pa36). After full briefing and oral argument, the court denied that application, finding that the applicable rule and statute were discretionary, not mandatory, leaving the court to decide if an accounting should be required in each case. (Pa434-Pa435); 1T17:25-1T18:5. The court also found that even if the rule and statute required Mr. Repetto to account to beneficiaries after one year of administering the Estate, the information he had already provided to Appellant constituted an informal accounting. 1T18:6-

1T18:9. Appellant then filed a Motion for Reconsideration, attempting to assert new claims and evidence not initially raised. (Pa456-Pa457). After briefing and oral argument, the court denied that application. (Pa525-Pa526). Undeterred, Appellant has now filed the within appeal, again seeking a formal accounting without having paid any portion of the \$2,440,702 Judgment or legal fee reimbursements he owes as a result of the February 4 Judgment. All he is accomplishing by this appeal is to further deplete Estate assets.

STATEMENT OF FACTS

Rhoda Crane, a resident of Englewood, Bergen County, New Jersey, died testate on July 5, 2020. (Pa1, ¶1). She was unmarried and had no children. (Pa1, ¶2). On January 26, 2021, Mr. Repetto was appointed temporary Administrator of the Estate. (Pa89-Pa93). Appellant is Rhoda Crane's nephew. (Pa3, ¶4). Jacqueline Crane is Appellant's sister and Rhoda Crane's niece. *Id.* Joyce Crane was Rhoda Crane's sister and Appellant and Jacqueline Crane's mother. (Pa3, ¶3). Joyce Crane died on or about October 9, 2020. (Pa3, ¶4). Rhoda Crane and Joyce Crane jointly owned properties in New York City, (the "UES Property") and Long Beach, New York (the "Long Beach Property") through entities. (Pa47, ¶14); (Pa48, ¶19); (Pa49, ¶24); (Pa50, ¶29). The court has ruled that Appellant was not an owner of either of those entities. (Pa47, ¶13); (Pa49, ¶23).

Following the deaths of Rhoda Crane and Joyce Crane, there were multiple lawsuits filed in New York and New Jersey between Appellant and Jacqueline Crane. (Pa89-Pa93). Appellant and Jacqueline Crane disputed ownership of the entities owned by Rhoda Crane and Joyce Crane and accused each other of misappropriating assets including personal property allegedly stored at the Englewood Home. *Id.* These lawsuits resulted in the appointment of Mr. Repetto in January 2021. *Id.*

As part of the administration of the Estate, Mr. Repetto retained Bernards Appraisal Associates to prepare a report (the “Bernards Report”) of Rhoda Crane’s personal property contained in the Englewood Home and the value of those items. (Pa65, ¶17). The 135-page report listed 350 items with a total value of \$61,245. (Pa97-Pa231). The report was provided to Appellant and Jacqueline Crane prior to August 12, 2021. (Pa297-Pa298).

Throughout the course of this matter Appellant has constantly expanded the list of items he claims he owned and stored at the Englewood Home, that do not appear in the Bernards Report. (Pa70, ¶39-Pa73, ¶55). He continued to do that in his Order to Show Cause and Verified Complaint for an accounting as well as his Motion for Reconsideration. (Pa1-Pa6); (Pa458-Pa465); (Pa473-Pa482).

Appellant further demands an accounting of the value and status of all

accounts and properties owned by the Estate. 1T5:25-1T6:4. Appellant clearly knows that the Estate has been forced to commence multiple lawsuits in New York for removal of Appellant from the UES Property and the Long Beach Property and has had to defend against the within action, a foreclosure action on the UES Property where Appellant has been unlawfully converting rents from tenants, and the UES Contract Case. (Pa77, ¶85); (Pa84, ¶127); (Pa84, ¶129); (Pa84, ¶130); (Pa84, ¶131). The Plaintiff in the UES Contract Case asserts that he gave Appellant a \$100,000.00 deposit in connection with the purchase. (Pa85, ¶132). Instead of the purported “deposit” funds being placed in an account in the name of Treasures & Gems Ltd. (the entity that owns the UES Property), Appellant had the funds deposited into an account in the joint names of Joyce Crane (who died 3 months prior to the deposit) and his adult son Daniel Crane, who lives in Israel and has never had any ownership interest in the UES Property or Treasures & Gems, Ltd. *Id.*

Not only has Appellant misappropriated Estate assets, but he continues to deplete the little that remains by preventing the Estate from collecting rents for the UES Property (1T11:6-1T11:8), preventing the Estate from selling the UES Property and the Long Beach Property and requiring the Estate to engage in otherwise unnecessary litigation.

LEGAL ARGUMENT

POINT I

THE STANDARD OF REVIEW IS NOT PLENARY WITH REGARD TO THE ENTIRE LOWER COURT RULING

Appellant takes the position that this court's review of the lower court's decisions is *de novo*. While questions on appeal as to statutory interpretation may require plenary review, Appellant ignores the breadth of the ruling below. The Court did interpret N.J.S.A. 3B:17-2 and R. 4:87-1 as permissive, not mandatory, but the Court's ruling did not end there. The Hon. Robert M. Vinci, J.S.C. found that even if an accounting was required, Mr. Repetto had already provided sufficient information and documents to constitute such accounting. 1T16:25-1T17:3; 1T18:6-1T18:9. Review of that part of the decision should give deference to Judge Vinci's factual findings and determinations as to credibility. Rova Farms Resort, Inc v Investors Ins. Co., 65 NJ 474, 483-84 (1974). The Appellate Court has held that it does "not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice," Fagliarone v. Twp. of No. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963). Appellant has made no showing that the lower court's

finding that Mr. Repetto provided Appellant with sufficient information to constitute an informal accounting was “manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice”.

POINT II

APPELLANT HAS FAILED TO PROVE THAT THE APPLICABLE STATUTE AND RULE REQUIRE AN ACCOUNTING IN ALL CASES

R. 4:87-1 states:

(a) Actions to settle the accounts of executors, administrators, testamentary trustees, non-testamentary trustees, guardians and assignees for the benefit of creditors shall be brought in the county where such fiduciaries received their appointment. The action shall be commenced by the filing of a complaint in the Superior Court, Chancery Division, and upon issuance of an order to show cause pursuant to R. 4:83. A non-testamentary trustee shall annex to the complaint a copy of the written instrument creating the trust and stating its terms. The order to show cause shall state the amount of commissions and attorney's fee, if any, which are applied for.

(b) An action may be commenced by an interested person to compel a fiduciary referred to in paragraph (a) of this rule to settle his or her account, and, in appropriate circumstances, to file an inventory and appraisal.

N.J.S.A. 3B:17-2 states:

A personal representative may settle his account or be required to settle his account in the Superior Court.

Unless for special cause shown, he shall not be required to account until after the expiration of 1 year after his appointment.

The court properly found that R. 4:87-1 and N.J.S.A. 3B:17-2 are permissive, not mandatory with regard to compelling an accounting, and such is left to the discretion of the judge. The language is clear. Nothing in either the statute or the rule states that a court must direct an administrator to provide an accounting upon the beneficiary's request one year after appointment.

With regard to the case law cited in Appellant's brief, In The Matter of the Estate of Hekemian, A-1774-21, 2023 WL 176098 (N.J. Super. Ct. App. Div. Jan 13, 2023), is an unpublished decision. Pursuant to R.1:36-3, it does not constitute precedent and is not binding upon the court. Further, the Hekemian case focuses on the enforceability of an arbitration clause in a last will and testament. The court in Hekemian undertook no evaluation of the statutes and rule applicable herein. Similarly, Matter of Kelly, 120 N.J. 679 (1990) is not relevant to Appellant's arguments. Kelly is the review of a report and recommendation of the Disciplinary Review Board that recommended disbarment. The case simply states that an executor is required to account for items coming into his hands. There is no reference to or interpretation of R. 4:87, and no indication a formal accounting must be filed immediately upon request of a beneficiary or at all. Appellant has failed to cite any controlling

case finding that ordering an accounting is not in the discretion of the judge who has reviewed all of the relevant facts and evidence.

POINT III

**APPELLANT HAS RECEIVED SUFFICIENT INFORMATION TO
CONSTITUTE AN INFORMAL ACCOUNTING**

Judge Vinci specifically found that Appellant had already received all necessary information, effectively an informal accounting, by way of the Bernards Report and the detailed Certification Mr. Repetto submitted in opposition to Appellant's Order to Show Cause. 1T18:6-1T18:9. Appellant has failed to point to any caselaw, rule or statute that indicates that such an accounting must be formal. Therefore, even if the court were to find that as a beneficiary Appellant is entitled to an accounting after one year, it does not mean he has not already received one. Judge Vinci ruled that Appellant has effectively received an accounting.

The Bernards Report, that Appellant has had since at least August 2021, lists all items of personal property at the Englewood Home at the time of Mr. Repetto's appointment. (Pa97-Pa231). It values those items collectively at approximately \$61,000.00. *Id.* Appellant, who claims he ran Rhoda Crane's businesses, certainly knows the identities and values of her properties. 1T11:6-1T11:9. Further, as he is the defendant in multiple cases seeking his removal

from the UES Property and the Long Beach Property, he knows he is the cause of ever-increasing legal fees and the reason those properties cannot be sold. In addition, Appellant is the one who misappropriated mortgage funds and has been and continues to convert rents on the UES Property. He knows the precarious financial position in which he has placed the Estate. (Pa394-Pa397). Appellant certainly knows that the Estate has a \$2,400,000 judgment against him. (Pa43-Pa56). Finally, Appellant is either a defendant in or the cause of 5 or 6 lawsuits depleting what funds were received through sale of the Englewood Home. There is no other information he needs or is entitled to.

POINT IV

APPELLANT FAILED TO MEET THE STANDARD FOR RECONSIDERATION

Appellant also seeks to reverse the court's denial of his Motion for Reconsideration. Motions for reconsideration are governed by R. 4:49-2, which provides:

Except as otherwise provided by R. 1:13-1 (clerical errors), a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment

or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

“Reconsideration is a matter to be exercised in the trial court's sound discretion.” Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) citing Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257, 531 A.2d 1078 (App. Div. 1987), certif. denied, 110 N.J. 196, 540 A.2d 189 (1988). “A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt.” Capital Fin. Co. at 310 citing D'Atria v. D'Atria, 242 N.J. Super. 392, 401, 576 A.2d 957 (Ch. Div. 1990). “Reconsideration should be utilized only for those cases . . . that fall within that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.” *Ibid.* The movant must first demonstrate that the court acted in an arbitrary, capricious or unreasonable manner in order for the court to entertain reconsideration. Palombi v. Palombi, 414 N.J. Super 274, 289 (App. Div. 2010). Further, the motion is not to be based upon facts or evidence a party failed to initially put before the court when that information was available to the moving party. *Ibid.*

Plaintiff's Motion for Reconsideration ignored the standard and the ruling below. Appellant submitted for the first time, a certification (likely in response to the court pointing out at oral argument on the original Order to Show Cause, that none of the claims regarding personal property were supported by a certification), allegedly supporting his claims for missing personal property worth millions of dollars. (Pa473-Pa482). At oral argument the court acknowledged the impropriety of offering new evidence. 2T19:25-2T20:6; 2T25:1-2T25:2.

A Motion for Reconsideration is not the time to provide evidence the moving party had at the time of the underlying application and simply chose not to provide to the court. See Palombi, supra. Moreover, Appellant and his certification lacked all credibility as Appellant once again changed his story to suit his needs and provided no documents or other proof to support any of his new claims.

In denying Reconsideration, the court found that Appellant's arguments were "a rehash of the same arguments previously made and rejected". 2T25:6-2T25:10. The court then restated its earlier finding that, "the court absolutely has the ability to - - and the discretion to say that an accounting is not required in every case." 2T25:24-2T26:1.

POINT V

**APPELLANT COMES BEFORE THE COURT
WITH UNCLEAN HANDS**

In addition to the reasons stated by the Court for denial of Appellant's application, it is Mr. Repetto's position, as it was in the underlying motions, that the application should have been denied as a result of the doctrine of Unclean Hands. "The essence of [the unclean hands] doctrine . . . is that [a] suitor in equity must come into court with clean hands and he must keep them clean after his entry and throughout the proceedings." American Dream at Marlboro, LLC v. Planning Bd. of the Tp of Marlboro, 209 N.J. 161, 170 (2012) *citing* Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 158, 777 A.2d 19 (2001).

A review of the long, tortured history of this Estate leads to no conclusion but that Appellant begs relief from the court with unclean hands. He has disregarded countless orders entered by the court, defaulted in multiple lawsuits, misappropriated the Estate's funds, and asserted baseless allegations against Mr. Repetto. The February 4 Judgment requires Appellant to reimburse the Estate and Jacqueline Crane over \$3,000,000.00, of which he has paid nothing. He has single-handedly made the Estate effectively

insolvent and it is unable to pay the New Jersey Inheritance Tax that is due and owing. Appellant comes before the court seeking a formal accounting of an Estate he has already plundered.

CONCLUSION

Based upon the foregoing, Mr. Repetto respectfully requests that Appellant's appeal be denied, and the trial court's May 28, 2021 and July 14, 2023 Orders be affirmed.

HARWOOD LLOYD, LLC
Attorneys for David M. Repetto, Esq.
Court-Appointed Administrator C.T.A. of
the Estate of Rhoda Crane

BY: 
KATHLEEN M. LEE

DATED: December 15, 2023

In Re Estate of Rhoda Crane,
Deceased.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003739-22

CIVIL ACTION

On Appeal from the
Superior Court of New Jersey
Chancery Division, Probate Part
Bergen County

Sat Below:

Hon. Robert M. Vinci, J.S.C.

Docket No. Below:
BER-P-138-23

REPLY BRIEF OF PLAINTIFF/APPELLANT, MICHAEL E. CRANE

GREENBAUM, ROWE, SMITH & DAVIS LLP
Metro Corporate Campus One
99 Wood Avenue South
Iselin, New Jersey 08830-2712
(732) 549-5600
Attorneys for Plaintiff/Appellant, Michael E. Crane

Of Counsel:

Darren C. Barreiro, Esq. (ID No.: 047911998)

On the Brief:

Brian Selvin, Esq. (ID No.: 049161995)

Olivier Salvagno, Esq. (ID No.: 024101998)

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
REPLY STATEMENT OF FACTS	1
LEGAL ARGUMENT	3
POINT I	3
THIS COURT’S REVIEW OF THE TRIAL COURT’S DISMISSAL OF THIS ACTION WITH PREJUDICE AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE IS PLENARY. (Not raised below).....	3
POINT II.....	5
THE COURT FAILED TO APPLY THE REQUISITE LAW IN DISMISSING PLAINTIFF’S VERIFIED COMPLAINT AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE. (Pa434-35; 1T15:22 – 1T19:3).....	5
POINT III.....	7
THE TRIAL COURT ERRED IN FAILING TO COMPEL AN ACCOUNTING WHERE THE FIDUCIARY DID NOT PROVIDE REASONABLE INFORMATION THAT IS REQUIRED UNDER THE NEW JERSEY PROBATE CODE. (Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).....	7
CONCLUSION.....	11

TABLE OF AUTHORITIES

Page

Cases

Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl,
P.C., 237 N.J. 91 (2019).....4

In re Hekemian,
A-1774-21, 2023 WL 176098 (N.J. Super. Ct. App. Div. Jan. 13,
2023).....6

Matter of Risica’s Estate,
179 N.J. Super. 452 (App. Div. 1981).....10

Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189 (1988).....4

Statutes

N.J.S.A. § 3A:9-2.....5

N.J.S.A. § 3B:17-2.....5, 7

N.J.S.A. § 3B:31-67(a)6

Rules

R. 4:42-9(b).....9

R. 4:87-1.....5

R. 4:88-4.....9

PRELIMINARY STATEMENT

In his brief submitted in this appeal, Defendant/Respondent, David M. Repetto, Esq. (“Defendant”), the court-appointed Administrator of the Estate (the “Estate”) of Rhoda Crane (“Decedent”) and court-appointed Trustee of the Decedent’s Revocable Trust (“Rhoda’s Trust”), continues to attempt to distract this Court with “red herrings” regarding the Decedent’s tangible personal property, ignores the New Jersey Uniform Trust Code provision that he has violated, and makes numerous statements that are unsupported by any reference to the record in this case. Nothing presented by Defendant in his brief can succeed in rebutting the fact that Plaintiff/Appellant, Michael E. Crane (“Plaintiff”), is entitled to an accounting, both as a matter of law and under principles of equity.

REPLY STATEMENT OF FACTS

In the preliminary statement to his brief, Defendant makes numerous misstatements of fact. In the very second paragraph, Defendant references Plaintiff’s request for information regarding Estate assets and thereafter denies that such information was refused to him. Defendant then cites to the information that Plaintiff already possessed, and claims that to constitute “all relevant information regarding the Estate.” (Db1). Not only does Defendant ignore his own letter to Plaintiff, wherein he states, “I will discuss the personal property issues with Michael Crane once he has met all of his obligations under the court’s numerous orders and

the February 4, 2022 Judgment, and has vacated the UES Property and the Long Beach Property” (Pa507), but he also fails to even mention, let alone address, any of the stocks, bonds, or cash owned by the Decedent at her death, or the disposition of the Estate’s liquid assets – all of which are unknown to Plaintiff, and all of which are unquestionably relevant information regarding an estate.

Defendant then states that Plaintiff “has been told numerous times that the vast majority of Estate expenses were legal fees occasioned by his conduct.” (Db2). Defendant provides no citation to the record for this factual statement, as this was never set forth before the trial court. Indeed, Plaintiff expressly argued before the trial court that he was unaware as to the disposition of the Estate’s liquid assets. (See, e.g., 2T10:25-11:11; 2T12:12-17). Such information is an integral part of an accounting.

Next, Defendant tries to accuse Plaintiff of attempting to distract the Court with his lack of information about the “Estate’s assets and expenses,” rather than merely “continuing to search for his personal property,” and that his request for information about the sale of the personal property “has been answered countless times.” (Db3). First, the last portion of such sentence is contradicted by Defendant’s own correspondence dated October 12, 2022. (Pa507) (stating, “I will discuss the personal property issues with Michael Crane once he has met all of his obligations under the court’s numerous orders and the February 4, 2022 Judgment, and has

vacated the UES Property and the Long Beach Property.”) (emphasis added). Second, as an attorney who has been appointed as a fiduciary previously, Defendant is well aware that an accounting has a particular format, and he cites to no statute that would allow Plaintiff to compel an executor to provide information on a “piecemeal” basis.

Finally, Defendant cites to several pending lawsuits he has in New York, two of which involve Plaintiff as a party, regarding eviction and access to the Estate’s property on the Upper East Side. (Db7). Of course, Defendant gives no particulars as to such suits because they are each several years old and yet Defendant has been unsuccessful in his efforts because, contrary to Defendant’s belief, Plaintiff has rights in these properties that are recognized by the New York Courts.

LEGAL ARGUMENT

POINT I

THIS COURT’S REVIEW OF THE TRIAL COURT’S DISMISSAL OF THIS ACTION WITH PREJUDICE AT THE RETURN DATE OF THE ORDER TO SHOW CAUSE IS PLENARY. (Not raised below).

Defendant argues that this Court “should give deference” to the trial court’s “factual findings and determinations as to credibility.” (Db8). Plaintiff respectfully submits that this argument is misguided, and that no such factual findings or credibility determinations were made by the trial court. This is not a case in which

the trial court conducted a hearing, and heard testimony. Indeed, no discovery whatsoever was permitted by the trial court, no hearing was conducted, and no testimony was taken.

Instead, the trial court simply heard the oral arguments of counsel on the return date of the order to show cause, and then abruptly dismissed the case, with prejudice. It is respectfully submitted that this does not constitute a ruling to which this Court should give any deference. This is the procedural equivalent of a dismissal with prejudice on a motion to dismiss for failure to state a claim. This Court reviews such decisions using the same standard as the trial judge, without deference to that court's legal conclusions. See, e.g., Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). Accordingly, the Court examines the legal sufficiency of the facts alleged on the face of the complaint, generously and with liberality. See Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189, 192 (1988). For the reasons set forth in Plaintiff's opening brief, this Court's review of the trial court's rulings is de novo.

The issue before the Court is whether the trial court erred in refusing to require that a court-appointed trustee and administrator of a (formerly) revocable trust and decedent's estate is statutorily obligated to provide an accounting of the estate and trust upon a beneficiary's request after more than two years have passed since the appointment of the trustee and administrator. Plaintiff submits that the trial court's

dismissal of the action at the return date of the order to show cause is subject to the “plenary” or “de novo” standard of review, and that the Order dismissing the Verified Complaint should be reversed.

POINT II

**THE COURT FAILED TO APPLY THE REQUISITE
LAW IN DISMISSING PLAINTIFF’S VERIFIED
COMPLAINT AT THE RETURN DATE OF THE
ORDER TO SHOW CAUSE. (Pa434-35; 1T15:22 –
1T19:3).**

In his Brief, Defendant merely states that the language of N.J.S.A. § 3B:17-2 and R. 4:87-1 is clear, and does not entitle Plaintiff to an accounting. However, the Defendant intentionally ignores that section of the statute that an executor can “be required” to settle his account, and the fact that the word “may” in the Court Rules applies to the discretion of an interested party in bringing such an action, and not to the Court in ordering such.

Furthermore, Defendant does not cite to a single case in support of his position. As argued in both Plaintiff’s opening brief and before the trial court, all of the previous court cases denying an accounting under N.J.S.A. § 3B:17-2 and its predecessor (N.J.S.A. § 3A:9-2) occurred during the first year of a personal representative’s administration. In those circumstances, the legislature has specifically given the court discretion as to whether or not to order an accounting. Such discretion is not given after the end of the first year of administration.

Plaintiff's Verified Complaint was brought two years after Defendant's appointment.

Even more significant is Defendant's failure to even mention N.J.S.A. § 3B:31-67(a) in his brief. That statute requires that a trustee promptly respond to a beneficiary's request for information regarding the trust administration. In this case, Defendant was appointed as both administrator of the Decedent's estate and trustee of her revocable trust. Defendant not only failed to respond to Plaintiff's request for information, he refused to respond. This blatant breach of Defendant's fiduciary duty was not only missed by the trial court, but it was misconstrued as an allegation of conversion – an allegation never made by the Plaintiff in the Verified Complaint. (1T16:10–15.) The only reasonable explanation for Defendant's failure to address N.J.S.A. § 3B:31-67(a) is his recognition that he had breached his fiduciary duty, and his hope that this Court will follow his example and ignore it too.

Plaintiff respectfully submits that the decision of In re Hekemian, A-1774-21, 2023 WL 176098 (N.J. Super. Ct. App. Div. Jan. 13, 2023), discussed in Plaintiff's opening brief, is very persuasive in connection with the matter at bar. There, the Court stated, "Defendants do not contest the expiration of the one-year period or otherwise deny [Appellant's] entitlement to an accounting. As such, Plaintiff's Verified Complaint simply invokes a statutory right." Id. at *7 (emphasis added). In citing to the lower court's ruling, the Appellate Division stated that "under

N.J.S.A. § 3B:17-2, [the beneficiary] was entitled to an accounting.” Id. at *3 (emphasis added). This Court should similarly rule that Plaintiff and the other beneficiaries are entitled to an accounting of the Estate and Trust from Defendant.

POINT III

THE TRIAL COURT ERRED IN FAILING TO COMPEL AN ACCOUNTING WHERE THE FIDUCIARY DID NOT PROVIDE REASONABLE INFORMATION THAT IS REQUIRED UNDER THE NEW JERSEY PROBATE CODE. (Pa434-35; Pa525-26; 1T15:22 – 1T19:3; 2T23:14 – 2T27:10).

Again, Defendant fails to address the arguments raised by Plaintiff in Point III of his opening brief, and attempts to distract this Court with unrelated and irrelevant arguments.

First, he cites to the basic information that was set forth before the trial court, while continuing to ignore all of the information that was sought by Plaintiff, none of which was answered by Defendant, either before or after the filing of the Verified Complaint for an accounting. More particularly, Defendant failed to address the lack of information regarding the following very basic issues:

- i. Which items of tangible property were sold;
- ii. What the sale prices were, for such items;
- iii. What items of tangible personal property remain in the Estate, if any;

- iv. What assets (other than the tangible personal property, Decedent's home, and the New York real estate) existed on the Decedent's date of death;
- v. What happened to the cash that existed on the Decedent's date of death;
- vi. What happened to the securities that existed on the Decedent's date of death;
- vii. What happened to the proceeds of the sale of the Decedent's house; and
- viii. What happened to the proceeds of the sale of the Decedent's personal property.

Defendant claims that Plaintiff is not entitled to any further information. Yet, set forth above are numerous examples of information to which Plaintiff, and his sister (Jacqueline Crane), are both statutorily entitled to receive, but have not been provided.

As just one example of many, given the Decedent's other assets, it defies common sense that Decedent would pass away without a checking account, a savings account, or a brokerage account. Yet, Defendant has provided Plaintiff with no information as to any such assets, all of which would be required to be disclosed in an accounting.

During the hearing at the return date of the Order to Show Cause, Defendant made the representation to the court that there are no funds remaining in the Estate. (1T8:3–5.) Now, in his brief, Defendant argues that the “vast majority of Estate expenses were legal fees.” (Db2). This is the first time that the issue of Defendant’s payment to his own firm of legal fees has been raised, and Defendant does not provide any citation to the record in support of this allegation.

Notwithstanding that Defendant is attempting to raise facts unsupported by the record, the issue of Defendant’s payments to himself of legal fees is yet another reason the Court should require him to account for his actions as administrator and trustee. The amount and propriety of Defendant’s payments of legal fees is certainly an issue that would be disclosed on an accounting, R. 4:88-4, and is subject to the discretion of the Court, R. 4:42-9(b). The fact that Defendant admits that the “vast majority” of the over \$900,000 in cash received from the sale of the Decedent’s home and personal property – and possibly other assets which Defendant has refused to disclose – has been spent on his legal fees is something that the Court should have an interest in overseeing, particularly when the fiduciary was chosen by the Court, and not by the Decedent.

This becomes even more compelling when the Decedent has used his own law firm to represent the Estate, and has admitted that property owned by the Estate is subject to a foreclosure action due to the Estate’s inability to pay the mortgage.

In the interest of protecting the Estate, the Court should determine whether the payment of legal fees to Defendant's own law firm – at the expense of placing Estate assets at risk – was appropriate. This is particularly true when Defendant has acknowledged using his law firm to perform common and unskilled functions. See, e.g., Matter of Risica's Estate, 179 N.J. Super. 452, 458 (App. Div. 1981).

Furthermore, in his brief, Defendant cites to several litigations pending in the New York Courts involving the Estate or a New York corporation partially owned by the Estate. While Defendant's Certification stated that the litigation to evict Plaintiff from and gain access to the New York property was instituted in December 2021 (Pa84, at ¶127), said matter is still pending more than two years later. Furthermore, despite Defendant obtaining injunctions in both New York and New Jersey granting him access to and management of the Upper East Side property, he has allowed the property to fall into disrepair, and be subject to numerous violations of New York building and sanitation codes, including the tenants being without hot water.

The trial court was aware that the Decedent's home and personal property were sold for over \$900,000 combined, and heard Defendant's counsel state that "there is nothing in the estate." (1T8:3-6). Nevertheless, the Court found that the information provided constituted an informal accounting. Nothing could be further

from the truth, and such a gross conclusion requires not just a reversal by this Court, but an Order requiring that Defendant file a judicial accounting.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in his opening brief, Plaintiff/Appellant, Michael E. Crane, respectfully requests that the Court reverse the trial court's May 18, 2023 Order dismissing this action in favor of Defendant and against Plaintiff, and its July 14, 2023 Order denying Plaintiff's motion for reconsideration, and that the Court compel Defendant to provide an accounting to the beneficiaries.

Respectfully submitted,

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff/Appellant, Michael E. Crane

/s/ Olivier Salvagno

By: _____
OLIVIER SALVAGNO

Dated: January 12, 2024