MASELLI, MILLS & FORNAL, P.C.
By: Nicholas J. Loiodice, Esquire
Attorney No. 409362022
nloiodice@masellilaw.com
(609) 452-8411 Ext. 119
400 Alexander Park, Suite 101
Princeton, New Jersey 08540
*Attorneys for Appellant, John Miranda*

JOHN MIRANDA and VICTOR MIRANDA,

Plaintiffs/Appellant,

v.

ALEXANDER J. RINALDI and SALNY, REDFORD AND RINALDI, COUNSELLORS AT LAW,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal Docket No. A-003780-22T2

On Appeal From:
New Jersey Superior Court
Law Division, Hunterdon County

Trial Docket No. HNT-L-000136-20

Sat Below: Hon. Michael F. O'Neill, J.S.C.

# AMENDED BRIEF OF APPELLANT, JOHN MIRANDA

Dated: October 17, 2023

Of Counsel:
PAUL J. MASELLI, ESQUIRE

On the Brief:
SHAWN D. EDWARDS, ESQUIRE
NICHOLAS J. LOIODICE, ESQUIRE

## Table of Contents



## Table of Judgments, Orders and Rulings

# Table of Authorities

## Cases



## Rules



## Treatises

## PRELIMINARY STATEMENT

This matter comes before the Court on appeal from an improper grant of summary judgment in favor of the Defendants/Respondents, Alexander J. Rinaldi and Salny, Redford, and Rinaldi, Counselors at Law, dismissing the Appellant's Complaint.

Plaintiffs, John Miranda ("John") and Victor Miranda ("Victor") filed a legal malpractice action against the Respondents for their failure to timely contest their father's will. From the time their father's Will was submitted to probate through the expiration of the statute of limitations, the Respondents made representations to other attorneys and to the Morris County Surrogate that John was their client. They took affirmative actions on behalf of John, and John relied on Respondents' provision of legal services.

In considering the Respondent's motion for summary judgment, the lower court exceeded the permitted scope of review and weighed the evidence presented concerning the relationship between John and the Respondents. Despite finding that the facts of this case "cut both ways", the lower court found that the Respondents did not have a duty to John and entered judgment in favor of the Respondents.

The lower court erred by conflating the questions of the nature of the parties' relationship with the existence of a duty. While the existence of a duty is a question of law, determination of the nature of the relationship between the parties is a

question of fact for the jury. Had the court considered the evidence in a light most favorable to John, it would have found that genuine issues of material facts exist as to the Respondents' relationship with John that could give rise to a duty. In addition, John presented evidence demonstrating a breach of this duty and proximate causation.

Accordingly, Appellant respectfully requests this Court reverse the lower court's grant of summary judgment in favor of the Respondents and against the Appellant, and remand the case to the lower court for a jury to determine the issues of fact presented.

## STATEMENT OF FACTS

The Miranda family consists of father, Modesto Miranda ("Decedent" or "Modesto") and three adult children; sons, John Miranda and Victor Miranda; and daughter, Maria Miranda ("Maria"). Pa134-135. Modesto resided in both New Jersey and in Portugal, where he split his time, traveling between the two places. Pa002; Pa136. He died on June 5, 2017 in Portugal at the age of 80. Pa002.

Approximately three years before his death, Modesto executed a Last Will and Testament (the "2014 Will") replacing his prior Will. Pa002. The 2014 Will was very different from Modesto's prior Will in that he disinherited his two sons leaving all his assets to his daughter, Maria. Pa002. The 2014 Will named Maria as sole beneficiary. Pa002. Modesto also paid off the mortgage on Maria's home at or

around this same time. In 2014, Plaintiffs believed Modesto to be incapacitated. Pa003. A few years prior, Modesto had undergone heart surgery followed by admission to a rehabilitation facility where he was in a medically induced coma for about a month. Pa136. His health issues left him incoherent, disoriented and childlike. Pa136. He thereafter resided with Maria, sometimes spending weekends with John. Pa136.

John and Victor believed their father's Will was kept in a safe in Maria's home; however, for nearly two months after Modesto's death, no Will was probated. Pa002. Accordingly, John consulted with an attorney who prepared a caveat and on or about August 7, 2017, John went to the Bergen County Surrogate to file the caveat. Pa002. The Surrogate informed John that earlier that same day, a Will had been submitted for probate by Maria and letters testamentary were issued to Maria. Pa002. It was then that John learned of the 2014 Will for the first time. Pa002.

John and Victor believe Maria exerted undue influence on their incapacitated father resulting in Modesto unwittingly changing his Will and making inter vivos gifts to Maria such as, paying off Maria's mortgage. Pa003.

In August or September 2017, Victor retained Salny, Redbord and Rinaldi, Counsellors at Law (the "Law Firm") to provide legal representation to set aside the 2014 Will and revoke the letters testamentary issued to Maria. Pa003. This date is of crucial significance since the Law Firm had at least three and a half months within

which to file a complaint to set aside the 2014 Will. Victor told the Law Firm that Modesto was a Bergen County resident at his death. Pa003. Despite this, on September 14, 2017, the Law Firm sent correspondence to the Morris County Surrogate advising the Surrogate that the Firm represented both John and Victor and inquiring whether a Will had been probated on behalf of Modesto. Pa133. Indeed, the September 14th letter reads:

> Dear Sir or Madam:
>
> Please be advised that this law firm represents Mr. Victor Miranda and Mr. John Miranda with regard to their deceased father, Modesto Miranda.
>
> Pa133.

This September 14, 2017 letter was signed by Respondent, Alexander Rinaldi, Esquire. Pa133.

Two months after receiving no response from the Morris County Surrogate, on December 11, 2017, the Law Firm telephoned the Morris County Surrogate to inquire if a Will for Modesto was probated. Pa003. The Morris County Surrogate told the Firm no Will was probated in Morris County. Pa003.

On February 13, 2018, the Firm filed a Verified Complaint in the Superior Court of New Jersey, Chancery Division, Probate Part, Bergen County, Docket No.: BER-P-102-18 (the "underlying action"). Pa125. The complaint set forth a dispute as to the validity of the Will and sought to revoke the letters testamentary and to

have Victor appointed Administrator of Modesto's estate. Pa003. The complaint was dismissed due to the Firm's failure to timely file within the four-month time limitation as set forth in Rule 4:85-1. Pa003. On March 23, 2018, the Firm filed an Order to show Cause and Verified Complaint (the "Second Complaint") requesting the court to order the relief set forth in the Second Complaint. Pa003. The Court held that the Firm failed to establish exceptional circumstances under Rule 4:50-1(f) to warrant reopening the judgment admitting Modesto's Will to probate, neither did it establish a basis to warrant the relaxation of the time limitations set forth in Rule 4:85-1. Pa004.

Victor engaged another law firm to appeal the dismissal. Pa004. On September 25, 2019, the Appellate Division affirmed the lower court's decision, holding that Plaintiff's "complaint was untimely under Rule 4:85-1 because plaintiff did not file it within four months after Modesto's will was probated." Pa004.

As a result of the Firm's failure to file the complaint within the time limitations set forth in Rule 4:85-1, John and Victor were unable to pursue their claim for damages and were prevented from proving they were entitled to receive a share of their father's estate. Pa004.

## PROCEDURAL HISTORY

On April 1, 2020, John and Victor Miranda filed a complaint against Respondents, Alexander J. Rinaldi ("Rinaldi") and Salny, Redbord and Rinaldi,

Counsellors at Law alleging legal malpractice for the Respondents' failure to timely file the complaint within the time limitations set forth in Rule 4:85-1. Pa002-Pa007. On June 16, 2020, the Respondents filed their Answer. Pa009.

On May 24, 2022, the Respondents filed a motion to bar the plaintiffs' expert testimony. Pa025. On June 2, 2022, the John and Victor filed a cross motion to extend discovery. Pa053. Thereafter, on June 7, 2022, the lower court entered a consent order finding plaintiffs' expert report to be filed timely. Pa057.

On June 24, 2022, the Respondents filed a motion for partial summary judgment seeking to dismiss the complaint of John Miranda. Pa060.

On September 14, 2022, the lower court entered an order (the "Order") granting partial summary judgment in favor of the Respondents and against John Miranda dismissing John Miranda's complaint and finding that Respondents had no duty to John. Pa214. In deciding the motion, the lower court determined that the question of whether Respondents had a duty to John under the circumstances was one of law, specifically whether Respondents had a duty to a nonclient. T005:15-19. The court noted the difficulty of the decision explaining that "there are facts that cut both ways, which has made the case an issue -- made the decision a challenging one for me." T005:9-11. The judge would also say:

> What I did struggle with and find that the facts really cut both ways on is this question of whether or not Mr. Rinaldi invited the non-client to rely on the lawyer's opinion or

> provision of legal services; and secondly, to the extent he did, whether the non-client did so rely.
> . . . and as I say, there are some facts that really would support either result here.
>
> T006:21-7:4.

The court went on to engage in fact-finding in order to determine whether the Respondents had a duty to John. The judge explained that while there are facts in the record supporting the implication that the Law Firm invited John to rely on its provision of legal services, there were insufficient facts in the record establishing John's reliance on the Law Firm's services. In his analysis, the judge considered John's responses, or lack thereof, to certain communications with the Law Firm and analyzed events which occurred beyond the relevant time period for this matter, ultimately concluding that, "beyond the letter that Mr. Rinaldi wrote, he did very little to invite…John Miranda to rely upon him." T010:10-12.

All issues in this matter became final on July 14, 2023 pursuant to the terms of a stipulation of dismissal. Pa208. John now appeals the Order.

## LEGAL ARGUMENT

### I. THE LOWER COURT IMPROPERLY ENGAGED IN FACFINDING IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AGAINST JOHN MIRANDA (T 4:17-17:16).

The lower court went beyond the scope of its review in reaching its decision and failed to apply the proper standard for summary judgment. To prevail on a motion for summary judgment, that moving party must demonstrate that "the

pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2.

"[W]hen deciding a motion for summary judgment under Rule 4:46–2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the *non-moving party* in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995) (emphasis added). In determining a motion for summary judgment, "[t]he judge's function is not himself or herself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 540. "All inferences of doubt are drawn against the movant in favor of the opponent of the motion . . . The papers supporting the motion are closely scrutinized and the opposing papers indulgently treated.. . ." Judson v. Peoples Bank & Trust Co.,17 N.J. 67, 75 (1954). Summary judgment will only be granted "when the evidence is so one-sided that one party must prevail as a matter of law." Id.

The lower court granted Respondents' motion for summary judgment finding as a matter of law that the Respondents had no duty to John Miranda. However, as explained in greater detail below, the court failed to engage in the proper analysis in determining the motion. The question of whether a duty arises from a relationship between two parties, such as an attorney-client relationship, is certainly a question of law. However, determination of whether the specific relationship giving rise to said duty existed is a question of fact to be determined by the jury.

Here, the trial court conflated those two questions. The court properly explained the elements that must be established to give rise to a duty between an attorney and a nonclient. However, instead of determining whether a genuine issue of material fact existed as to those elements, the court actually weighed the evidence finding that the relationship between John and the Respondents did not give rise to a duty. Had the Court applied the proper standard, the trial court would have denied the motion finding there are sufficient facts upon which a reasonable jury could resolve the dispute in favor of John.

### A. The Lower Court Improperly Resolved Disputed Issues of Fact Concerning the Parties' Relationship (T 7:23-17:16).

The nature of the relationship between two parties is a distinct issue from the existence of a duty. It well-settled that the existence of a duty is a question of law. Baen v. Farmers Mut. Fire Ins. Co. of Salem Cty., 318 N.J. Super. 260, 266 (App. Div. 1999). However, where there is conflicting evidence about those elements

essential to formation of a relationship giving rise to a duty, the existence of the relationship is an issue of fact. See Froom v. Perel, 377 N.J. Super. 298, 310-12 (App. Div. 2005) (holding that the existence of an attorney-client relationship could not be determined as a matter of law due to conflicting evidence); Hernandez v. Velez, 267 N.J. Super. 353, 358 (Law Div. 1993) (dispute of fact over existence of agency relationship).

Here, the lower court treated both questions as if they were questions of law to be decided by the court. In the lower court's opinion, the Honorable Michael F. O'Neil stated:

> . . . for purposes of liability, a lawyer owes a duty of care to a non-client when, and to the extent that the lawyer or with the lawyer's acquiescence the lawyer's client, which in this case would be Victor, invites the non-client to rely on the lawyer's opinion or provision of legal services.
>
> So that's the first thing I have to find, that either the lawyer or the lawyer's client invited the non-client to rely on the lawyer's opinion or provision of legal services.
>
> Second, I would have to find that the non-client so relies.
>
> And three, the non-client is not under applicable law too remote from the lawyer to be entitled to protection.
>
> The third element of the test is not really at issue here. Certainly John Miranda was not too remote. There is some evidence to suggest that he did at one point in time expect that Mr. Rinaldi was going to represent him and his brother, or certainly might, the issue was under discussion. So as far as the non-client being too remote, that's issue of concern to the Court.

> What I did struggle with and find that the facts really cut both ways on is this question of whether or not Mr. Rinaldi invited the non-client to rely on the lawyer's opinion or provision of legal services; and secondly, to the extent he did, whether the non-client did so rely.
>
> And . . . as I say, there are some facts that really would support either result here.
>
> T 5:23-7:4.

Judge O'Neill correctly identified the elements that John must establish in order for the Respondents to have had a duty to John. He also rightly concluded that disputed issues of fact existed as to whether Respondents invited John to rely on their opinion and whether John, in fact, did. But the trial court went too far when it weighed the evidence and decided the question on its own. Faced with disputed issues of fact, the lower court should have denied the Respondents' motion for summary judgment to allow a jury to weigh the evidence concerning the first and second elements.

### B. A Genuine Issue of Material Fact Exists as to Whether the Respondents Represented John Miranda (T 7:23-17:16).

The lower court erred in deciding as a matter of law that Respondents did not represent John during the relevant period for the contest of Modesto's Will. Our Supreme Court has recognized that attorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorneys' representations, the lawyer invite or acquiesce in the non-client's reliance, and the

non-clients are not too remote from the attorneys to be entitled to protection. Petrillo v. Bachenberg, 139 N.J. 472, 483-84 (1995).

New Jersey law adopts a broad view when considering the existence of an attorney client relationship for legal malpractice purposes. In Petrillo v. Bachenberg, a buyer of real estate received a misleading test report from the seller's attorney and relied on it in making the purchase. Although the defendants did not represent the buyer, our Supreme Court recognized that a limited duty may exist where an attorney knows or reasonably should know that a nonclient will rely on the attorney's representation or opinion. Id. at 483–84.

In reaching this conclusion, the Supreme Court, engaged in an exhaustive analysis to carefully balance the attorney's duties to the client against the potential duty to the nonclient. Id. at 479-80. The Court then considered our system of discipline to determine whether recognizing a remedy in favor of a nonclient would conflict with or supplement those deterrents. Id. at 479. Finally, the Court turned to other sources for further persuasive support, including decisions published in other jurisdictions and scholarly commentaries. Id. at 480–82.

In the end, the Court concluded that the rule expressed in the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS that would permit such a suit was consistent with our established jurisprudence. See Petrillo, 139 N.J. at 483–84. The RESTATEMENT provides,

> For the purposes of liability . . . a lawyer owes a duty to use care . . .
>
> (2) To a non-client when and to the extent that the lawyer or (with the lawyer's acquiescence) the lawyer's client invites the non-client to rely on the lawyer's opinion or provision of other legal services, the non-client so relies, and the non-client is not, under applicable law, too remote from the lawyer to be entitled to protection....
>
> Section 73, RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS.

Our courts have recognized numerous circumstances where an attorney may be liable to a non-client. The question of whether a duty of care is owed requires the examination of fairness and public policy, foreseeability, and the relationship between the parties. "Foreseeability of the risk of harm is the foundational element in the determination of whether a duty exists" G.A.H. v. K.G.G., 238 N.J. 401 (2019).

As the lower court found in its opinion, the evidence clearly creates a genuine issue of material fact to be determined by a jury as to whether the Respondents represented John Miranda. Respondents repeatedly acknowledged it was aware of John's interest in the will contest litigation. Respondents sent both John and Victor a retainer agreement because they believed they were going to represent both of the brothers. The next day, the Respondents sent a letter to the Morris County Surrogate Court stating it represented both John and Victor. Rinaldi even called attorney Carlos Sanchez to tell Mr. Sanchez he would represent both brothers. These facts

demonstrate an invitation to rely on the Respondents' representation even in the absence of a signed retainer agreement. After receiving the retainer agreement and letter to the surrogate, John took no immediate, independent action to further pursue his rights despite having previously sought to challenge his father's will. A factfinder could easily conclude that John was relying on Respondents' representation prior to the expiration of the statute of limitations.

Since the Court determined that Respondents had no duty to John as a matter of law, the lower court did not determine whether Respondents' breached their duty causing damage to John. As discussed in greater detail below, the Respondents breached their duty owed to John and proximately caused the damages John suffered.

Accordingly, John Miranda respectfully requests that this Court reverse the lower court's grant of summary judgment in favor of Respondents and remand the matter to the lower court to proceed to trial.

### C. The Court Gave Improper Weight to Events that Occurred After the Statute of Limitations Expired (T 11:23-17:16).

Even assuming arguendo that the lower court acted appropriately in weighing the evidence, its analysis is critically flawed. The relevant time period for determining whether the Law Firm represented John commenced on August 7, 2017, when Modesto's Will was submitted to probate. The Law Firm had four months, or until approximately December 7, 2018, from that date to file a complaint on behalf

of John and Victor contesting the Will. During this time period, the Law Firm took affirmative actions which could lead a reasonable jury to infer the Law Firm invited John to rely on its provision of legal services and thus, represented John.

On September 6, 2017, Rinaldi had a telephone call with John's long-time attorney, Carlos Sanchez ("Sanchez"), wherein Rinaldi informed Sanchez that he will be including John in the contest of Modesto's Will. Rather than focusing on this phone call from Rinaldi, the lower court significantly relies on Sanchez's email response to Rinaldi wherein Sanchez advised Rinaldi that he would recommend John retain him rather Rinaldi. Further, the lower court find significance in Sanchez's recommendation that John retain him rather than Rinaldi. This email and recommendation, however, is immaterial to the determination of whether Rinaldi invited John to rely on his provision of legal services. The issue before the court is not whether Sanchez invited John to rely on his services; the issue is whether Rinaldi invited John to do so.

The significance of Sanchez's email and recommendation is further diminished when Rinaldi sent John a fee agreement on September 13, 2017, after receiving Sanchez's email. In other words, Rinaldi was still inviting John to rely on his legal services despite Sanchez's recommendations. While it is true that an "X" was placed on the line for John's signature, the very next day, Rinaldi sent the letter to the Morris County Surrogate Court stating that he represented both John and

Victor. After the Law Firm sent the letter to Morris County, the Law Firm did not reach out to Morris County until after the statute of limitations expired. In the meantime, John, who clearly demonstrated his intention to challenge the will, did not take any further action through Sanchez once the letter was sent. Thus, a reasonable jury could infer that from September 13, 2017 through December 7, 2017, the Law Firm represented John in the contest of Modesto's Will.

The lower court finds further support for its decision in the fact that John did not sign and return the retainer agreement, stating that there is an indication that John's signature is blacked out. Indeed, the lower court found:

> That letter can be read as an indication that John intended to tell Victor that he intended to be continued to be represented by the Sanchez firm .
>
> The only conclusion the Court can reach and there is no definitive statement here as to who X'd out the retainer letter and struck out John's name and . . . just left Victor's signature on the retainer. The only conclusion the Court can draw based upon what's in front of me is that Victor is the one who crossed it out and sent it back.
>
> T0011:7 – 11:20.

Unfortunately, the lower court did not further explain why this is the "only" conclusion which can be drawn. No evidence was produced showing who crossed it out. Whether the fact the blacked-out signature block was an indication by John to Victor that he intended to be represented by Sanchez rather than Rinaldi is a matter for a jury to decide. It is wholly inappropriate and entirely beyond the scope of the

lower court's review on a motion for summary judgment to make such a determination.

In fact, the court's conclusion is incongruous with John's actions both prior to and after the agreement was signed. It is undisputed that John sought to challenge the will as he had contacted Sanchez about filing a caveat to the Will. If John did not believe he was represented by Respondents, then one would think that he would have had Sanchez take further action to challenge the Will as well or at least have notified the Respondents that their letter incorrectly identified him as a client. Yet, John took no further action until after it was discovered that the Respondents had contacted the wrong surrogate. A reasonable factfinder could conclude that John believed the Respondents were representing him based on their letter sent to the surrogate.

The Law Firm knew John and Victor were brothers and that their interests mirrored one another's. The Law Firm's actions during the relevant time period demonstrate that it was well aware of the risk of harm John was facing and that John, who did not retain another attorney, would rely on their representation. A successful outcome for Victor would be a successful outcome for John.

John did not, as Respondents alleged, and the lower court implied, have an attorney representing him in the action. John's longtime attorney, Sanchez, prepared a caveat for John to file. When John took the caveat to the Bergen County Surrogate, he was advised that Maria Miranda had just probated Modesto Miranda's Will earlier

that morning. John gave the Will to Sanchez. Shortly thereafter, Sanchez told John that he spoke with Rinaldi, and Rinaldi told Sanchez he was representing both Victor and John. Sanchez suggested to John he retain separate counsel and advised him there could be a conflict of interest in the future. However, no evidence was produced that John did, in fact, retain Sanchez, fully justified in believing that the lawsuit Rinaldi was filing was sufficient to represent his interests as well.

Moreover, the trial court gave undue weight to the parties' actions after the statute of limitations expired. In its decision, the lower court gave substantial weight to the fact that Respondents filed the complaint dated January 16, 2018 in Victor's name alone. Judge O'Neill concluded that the lack of evidence that John complained to Respondents that he was omitted from the complaint must mean that he understood that he was not represented by Respondents. However, this conclusion fails to account for the fact that Respondents had already blown the statute of limitations when it filed this complaint. During the critical period from the time the will was submitted for probate to the time that the statute of limitations expired, the evidence shows that a reasonable person in John's position would have believed that the Respondents were representing them. The last action taken by Respondents before the statute of limitations expired was sending the letter to the Morris County Surrogate stating that Respondents represented both John and Victor. It is unclear why the lower court believes that the actions taken after the statute of limitation had

run are more probative of the parties' intentions than the actions taken before the statute had run.

When applying New Jersey law to these facts, it becomes clear that the lower court erred in granting partial summary judgment in favor of the Respondents. The law is not so constrained as to merely look to the existence of a fee agreement to determine an attorney client relationship. The point is to prevent abuse of the remedy so the resulting obligation is fair to both lawyers and the public. Petrillo, at 484. Here, there has been no abuse. It is equally foreseeable that the Law Firm knew John was relying on their representation, as it is that John rely on their representation. This is buttressed by Rinaldi telling Sanchez that they were, in fact, representing John in the case.

The facts presented in this matter create a genuine issue of material fact as to whether the Law Firm represented John. Therefore, the lower court erred in determining that Respondents had no duty to John Miranda as a matter of law.

### D. Evidence Demonstrates that the Respondents Breached their Duty to John Miranda (Not Addressed Below).

The lower court did not reach the issue of the breach of the duty owed to John Miranda because the lower court incorrectly determined that an attorney-client relationship was not established. Nonetheless, the facts of this case clearly demonstrate that breach of duty has been established. New Jersey courts have held, "failure to file suit before the running of the period of the statute of limitations

plainly constitutes malpractice where there is no reasonable justification shown therefor." Hoppe v. Ranzini, 158 N.J. Super. 158 (App. Div. 1978). The Respondents did not file the pleadings contesting Modesto Miranda's will within four months as required in Rule 4:85-1, and this constitutes malpractice.

Although the Law Firm has asserted that Victor did not tell them his father lived in Bergen County, the evidence demonstrates otherwise. Victor knew his father lived with his sister, Maria, and he knew she moved to Mahwah. Victor testified that he told Rinaldi her address. By failing to file the lawsuit in the proper venue within the statute of limitations, the Law Firm breached its duty.

### E. John Miranda Presented Sufficient Evidence to Establish Proximate Causation (Not Addressed Below).

John Miranda also presented evidence demonstrating proximate causation. In his report, Appellant's expert, Martin Jennings, Esquire, opined that the Law Firm's breach of duty was the proximate cause of John and Victor's damages, writing, "[b]ut for the [Law] Firm's failure to file the lawsuit contesting the 2014 Will within the statute of limitations, Victor and John would have been able to challenge the 2014 Will." He further opines that to a reasonable degree of legal certainty the 2014 Will would have been set aside.

These issues cannot be decided in a summary fashion. They are entirely dependent on the facts and must be decided by a jury. Therefore, this Court must reverse the lower court's grant of summary judgment in favor of the Respondents

and against the Appellant and remand the matter to the lower court for a trial by jury to determine whether the Respondents' breach proximately caused Appellant's damages.

## CONCLUSION

For the foregoing reasons, Appellant, John Miranda, respectfully requests this Court reverse the lower Court's decision granting Respondents' partial summary judgment motion dismissing Appellant's complaint. and remand the matter to the lower court for a trial by jury.

Date: October 10, 2023

MASELLI, MILLS & FORNAL, P.C.
*Attorneys for Plaintiff/Appellant, John Miranda*

By: */s/ Nicholas J. Loiodice*
NICHOLAS J. LOIODICE

01280-00366-JLS/LEGAL/156830310.v1
MARSHALL DENNEHEY, P.C.
By: John L. Slimm, Esquire -- NJ Attorney ID: 263721970
(JLSlimm@mdwcg.com)
15000 Midlantic Drive, Suite 200
P.O. Box 5429
Mount Laurel, NJ 08054 856-414-6000
Attorneys for Defendants, Alexander J. Rinaldi and Salny, Redbord and Rinaldi, Counsellors at Law

| | |
|---|---|
| JOHN MIRANDA AND VICTOR MIRANDA<br><br>Plaintiffs/Appellant,<br>vs.<br><br>ALEXANDER J. RINALDI, AND SALNY, REDBORD AND RINALDI, COUNSELLORS AT LAW,<br><br>Defendants/Respondents. | SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION<br><br>DOCKET NO: A-003780-22T2<br><br>On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County, Docket No: HNT-L-136-20<br><br>Sat Below:<br>Hon. Michael F. O'Neill, J.S.C.<br><br>Date Submitted: November 13, 2023 |

# BRIEF OF DEFENDANTS/RESPONDENTS, ALEXANDER J. RINALDI AND SALNY, REDBORD AND RINALDI, COUNSELLORS AT LAW

On the Brief:
John L. Slimm, Esquire – NJ Attorney ID No. 263721970
Jeremy J. Zacharias, Esquire – NJ Attorney ID No. 108712014

# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Page**

**Cases**

**Other Authorities**



**Rules**

# TABLE OF JUDGMENTS, ORDERS AND RULINGS

## PRELIMINARY STATEMENT

John Miranda ("John") has filed this meritless appeal from the Order of the Honorable Michael F. O'Neill, J.S.C. of September 14, 2022, granting the Motion for Partial Summary Judgment of defendants Alexander J. Rinaldi and Salny, Redbord and Rinaldi, Counsellors at Law ("Rinaldi"), and dismissing the claims of John Miranda.

The appeal lacks merit because (a) John did not have an attorney-client relationship with Rinaldi; (b) John was a non-client to whom no duty was owed; and (c) John has failed to prove causation and damages.

## PROCEDURAL HISTORY

### A. The Probate Action

John consulted with an attorney, who prepared a caveat, and on or about August 7, 2017, John went to the Bergen County Surrogate to file the caveat. Mr. Sanchez of the Lindabury firm prepared the caveat for John Miranda, which John filed with the Surrogate's Office. (T1:10:5-8). The Will was submitted for Probate by Maria Miranda ("Maria"), and Letters Testamentary were issued.

On January 24, 2018, Rinaldi, on behalf of Victor Miranda ("Victor"), filed the Verified Complaint on Order to Show Cause, together with a filing letter, the Verified Complaint, the Will of Modesto Miranda of March 5, 2014,

together with the Certification of plaintiff Victor Miranda of January 24, 2018. (Da1).

On February 12, 2018, Victor provided his Certification and Verification in support of the Verified Complaint in The Matter of Modesto Miranda, Deceased, under Docket No: BER-P-102-18. (Da1).

On April 23, 2018, Mr. Quinn, on behalf of Maria, filed an Answer to the Verified Complaint, a Brief in opposition to plaintiff's Order to Show Cause, a Certification of Maria in opposition to the Order to Show Cause, and a proposed Order of Dismissal. (Da15).

On August 22, 2018, Mr. Quinn filed a Motion on behalf of Maria to dismiss the Complaint, together with a Letter Brief, the Certification of Maria, and a proposed Order. (Da38). Maria's Certification attached the letter of Carlos Sanchez of the Lindabury firm of August 2, 2017 to Maria and Victor, noting that the Lindabury firm was retained by John, and requested status of the Estate, including requests for a Will and a Death Certificate. (Da38).

On September 25, 2018, Mr. DeLaney of the Lindabury firm filed a Motion to Intervene and a Certification in support of the same, in the action under BER-P-102-18, on behalf of John. (Da42).

The Certification of Mr. DeLaney stated that Maria's attorney, Mr. Quinn declined to consent to intervention by John. (Da44). Mr. DeLaney's

Certification also noted that, on July 20, 2018, he responded to Mr. Quinn's letter of July 16, 2018 asking Mr. Quinn to reconsider his position. (Da44). However, Mr. Quinn declined to reconsider his position. (Da44).

On September 26, 2018, Judge DeLuca entered an Order of Dismissal with prejudice under Docket No: P-101-18, under R. 4:85-1. (Da46). The Order was accompanied by a rider of Judge DeLuca finding in favor of Maria. (Da46).

An appeal was taken from Judge DeLuca's decision, and the Appellate Division rendered a decision in The Matter of Modesto Miranda, A-1117-18T3 (App. Div. September 25, 2019).

The Appellate Division decision confirmed that it was Victor who took the appeal. In Victor's Appellate Brief, filed by Ms. Adu, it states:

> Plaintiff and his brother John were never represented by the same attorney. Although the September 14, 2018 letter from Mr. Rinaldi, former counsel for Plaintiff, refers to representing both brothers, the Verified Complaint filed in this matter was filed under Plaintiff's name alone. Further, any correspondence that was sent on behalf of the parties' brother John was sent from a completely different law firm, the same law firm that eventually filed a motion to intervene on September 25, 2018. Moreover, the law firm representing John never asserted to represent Plaintiff.

### B. The Legal Malpractice Action

On April 1, 2020, a Complaint was filed in the Superior Court of New Jersey, Law Division, Hunterdon County, under Docket No: HNT-L-136-20, in the matter of John Miranda and Victor Miranda v. Alexander J. Rinaldi and Salney, Redbord and Rinaldi, Counsellors at Law. (Pa001). On June 16, 2020, defendants filed their Answer. (Pa009).

On June 24, 2022, defendants filed a Motion for Partial Summary Judgment to dismiss with prejudice the claims of plaintiff John Miranda. (Pa060). The Trial Court conducted oral argument on the Motion for Partial Summary Judgment on August 9, 2022 and on September 13, 2022, Judge O'Neill put his decision granting the Motion for Partial Summary Judgment on the record. (T001).

On September 14, 2022, Judge O'Neill entered an Order granting defendants' Motion for Partial Summary Judgment, and dismissing the Complaint of plaintiff John Miranda with prejudice. (Pa214).

On January 17, 2023, plaintiffs filed a Notice of Motion to shift the burden of persuasion and on April 14, 2023, Judge Suh entered an Order denying plaintiffs' Motion as premature. (Da53).

On January 27, 2023, defendants filed a Notice of Motion for Summary Judgment. (Da56).

On March 17, 2023, Judge Suh entered an Order granting in part and denying in part defendants' Motion for Summary Judgment. (Da58). The Trial Court held that denied the Motion to bar plaintiffs' expert report. (Da58). The Court ruled that plaintiff waived his lack of capacity claim, and would not be permitted to pursue that claim in the "case-within-a-case" litigation. (Da58).

In the Statement of Reasons in connection with the Court's ruling, the Court references defendants' Motion to bar the report of plaintiffs' expert Jennings. (Da60). Plaintiff waived his right to pursue a claim for lack of capacity. Therefore, the same was dismissed from the "case-within-a-case" litigation. (Da60).

A Stipulation of Dismissal dismissing the claims of Victor was filed on July 14, 2023. (Pa208). A Notice of Appeal was filed on behalf of John on August 9, 2023.

## STATEMENT OF FACTS

Victor retained Mr. Rinaldi to provide legal representation in an action to set aside the 2014 Will, and to revoke the Letters Testamentary issued to Maria. (Pa080). John never retained Rinaldi and his firm, and Rinaldi never represented John in the underlying Probate case. John's lawyer was Carlos Sanchez from the Lindabury firm. (Pa200). Also, Carlos Sanchez wrote correspondence for John in the underlying matter of August 2, 2017, sending a

letter to his brother, Victor, and his sister, Maria. John has been represented by Mr. Sanchez for the last 23 years. Also, John stated that he never would have signed a Retainer Agreement with anyone other than Carlos Sanchez.

Moreover, John confirmed his status as a non-client when he confirmed that he was suing Mr. Rinaldi, an attorney who never represented him in the Probate case. John testified that he was suing Mr. Rinaldi, notwithstanding the fact that he never entered in a Retainer Agreement with Mr. Rinaldi to be represented by him in the Probate case.

On September 13, 2017, Mr. Rinaldi sent a form of retainer letter to Victor and John Miranda. (Da154). In the same, Mr. Rinaldi outlined the services to be provided, and asked John and Victor to sign. (Da154). However, the retainer letter was signed only by Victor, and John's name was crossed out with an N/A. (Da155).

Rinaldi filed a Verified Complaint on Order to Show Cause on January 24, 2018. (Da1). Significantly, the Verified Complaint names only Victor as the plaintiff. (Da1). The Verified Complaint does not name John as the plaintiff. Rather, the Verified Complaint simply lists John as the son of Modesto Miranda. (Da1).

In the Probate case, Rinaldi served John with the Order to Show Cause Summary Action, returnable May 4, 2018, with the Verified Complaint. (Da15).

On September 25, 2018, the Lindabury firm filed a Motion with the Surrogate of Bergen County to intervene in the Probate case. (Da42). Mr. DeLaney of the Lindabury firm confirmed that he and his firm were attorneys for defendant John Miranda. (Da42).

Attorney Vincent Riccardi ("Riccardi") was deposed on June 23, 2021. (Pa045). During his deposition, Riccardi identified the Will of September 20, 2011, and the witness signatures. (Da74). Mr. Riccardi testified that he did not know Modesto. (Da77). Modesto signed the Will "willingly as his free and voluntary act for the purpose therein expressed …." (Da78). The Will provided that Modesto was not under any undue influence. (Da78).

Mr. Riccardi testified if he ever saw any evidence that the Testator did not act freely or voluntarily, or saw any evidence that the Testator was under undue influence, or saw any evidence that the Testator was not of sound mind, he would not proceed with the signing of the Will. (Da 81).

The Will of September 15, 2011 provided that the remainder of the Estate was given to the children – Maria, John, and Victor. (Da 79).

Mr. Riccardi had no recollection of Maria ever coming to his office to tell him what to write in any of the Wills. (Da78). Also, Mr. Riccardi testified that he was the attorney who drafted the Power of Attorney, of September 20, 2011. (Da78).

Attorney Cotov ("Cotov") was deposed on June 14, 2021. (Pa043). Mr. Cotov is the Executive Director of Legal Services, which includes a staff, as well as Mr. Riccardi. (Da93). The firm provides services for Union members. (Da91). That includes Wills, matrimony, and real estate. (Da91).

Mr. Cotov confirmed that his firm did Wills for Modesto, as well as other services. (Da91). Mr. Cotov identified the Testator's signature and the signatures of the witnesses, and then the acknowledgment taken by Mr. Riccardi. (Da92). They were all dated September 20, 2011. (Da93). The Testator signed willingly, was of sound mind, and not under undue influence. (Da93). Also, the witnesses signed, and declared that the Testator signed willingly, and that, to the best of their knowledge, was of sound mind, and not under any undue influence. (Da93).

With regard to the Will of March 5, 2014, Mr. Cotov testified that it was prepared in his office. (Da95). That Will of March 5, 2014 was also witnessed by staff members. (Da95). That Will contained the statement that the Testator

signed willingly and voluntarily, was of sound mind, and not under undue influence. (Da95). The witnesses were members of the firm. (Da95).

Mr. Riccardi signed the acknowledgment of the witnesses' signatures for the March Will. (Da97). Mr. Cotov testified that he never received a call from Maria to discuss any of the Wills with him. (Da96).

In his deposition, John Miranda testified that his lawyer was Carlos Sanchez from the Lindabury firm. (Da103). John Miranda testified that Carlos Sanchez wrote correspondence for him in the underlying matter of August 2, 2017, sending a letter to John's brother, Victor, and his sister, Maria. (Da102). John Miranda testified that he has been represented by Mr. Sanchez for the last 23 years. (Da109). Significantly, John Miranda testified that he never would have signed a Retainer Agreement with anyone other than Carlos Sanchez. (Da109).

Victor met with Mr. Rinaldi to file a Complaint to challenge the Will. (Da126). Victor testified that he eventually learned that his father went to the office of Mr. Riccardi in Newark to sign the Will. (Da126). He was not there when the Will was signed in Mr. Riccardi's office. (Da126). Victor testified that it would be a true guess or speculation to say that the Will was not signed in the presence of witnesses. (Da126).

When confronted at his deposition with the fact that the Will provides that Modesto signed in front of the witnesses and Mr. Riccardi, and that they swore that he signed it willingly and that he was of sound mind, Victor testified, "That's what they say." (Da126).

Also, when confronted with the fact that the Will provided that the witness stated under oath that Modesto was not under undue influence, Victor testified, "That's what they say." (Da126). Victor then stated, "I guess I don't know. I don't know." (Da126). Victor testified that he has never seen an Affidavit from a doctor stating that Modesto had dementia when he signed the Will. (Da127).

At the time of Modesto's passing, in June of 2017, Modesto had been living with Maria for approximately 12 years. (Da127).

Victor did not know that Maria was not in Mr. Riccardi's office when Modesto signed the Will. (Da126). Victor did not know that Maria did not take Modesto to Riccardi's office to sign a Will. (Da126). Victor was not aware of the fact that the Will that was being challenged was the March 5, 2014 Will, which was signed four years after Modesto's surgery in 2010. (Da124).

Victor recalled that he retained Rinaldi to file the action to challenge the Will in Bergen County. He made various allegations against Maria. (Da128).

However, Victor did not remember the fact that he could not prove that Modesto was incompetent at the time Modesto signed the 2014 Will. (Da128).

When confronted with the fact that he could not prove that Maria exerted undue influence over Modesto in connection with the 2014 Will, Victor testified, "I'm not sure. I don't remember." (Da129).

Maria was deposed on February 24, 2022. (Pa049). Maria testified that her Certification was "absolutely true". (Da135). Maria confirmed that her father was cleared to drive at the time he wrote his Will. (Da145). Maria testified, consistent with her Certification, that she recognized her father's signature on the Will. (Da133).

After Modesto's wife passed away, Maria was living in a single-family home in Hiawatha. However, she was the one better prepared to take care of Modesto. (Da141). According to Maria, Victor was unwilling to help after Modesto returned from Portugal. So, at that point, Maria agreed to take care of her father, and set up a bedroom for him. (Da141).

Maria recalled that, on occasion, Modesto would stay with John. She did not recall him ever staying with Victor. (Da141). Also, Modesto never had a room at John's house. Da142). According to Maria, John and his wife would "shove my father into the basement to sleep … or on a couch to sleep …" (Da142).

Maria testified that neither John nor Victor helped out financially with the care of Modesto from 2005 to his illness. (Da143).

Also, Maria confirmed that between 2005 and her father's illness, Modesto would go back and forth to Portugal "a lot". (Da143). Modesto's time was split 50/50 between the United States and Portugal at the time. (Da143). Maria explained that Modesto would stay in Portugal in the Summer, and then would return to the United States around Halloween. (Da143).

Eventually, Modesto needed heart surgery. (Da121). Following the surgery, Modesto had rehab. (Da121). Maria was still living in Lake Hiawatha. (Da141).

Also, Maria recalled that her son was in daycare at the time, and she would use her lunch hour to come home and check in on her father. She would then return to work. (Da143). On some occasions, when Maria needed help, she asked Victor, but Victor gave an excuse that he had to work. (Da144). So, Victor never came to the house to assist Modesto with Modesto's bathing. (Da145).

At one point, there was a meeting at John's home where Modesto stated he did not want to stay in the United States, and did not want to go to a nursing home. (Da145). Maria testified that her father always maintained that he did not want to go into a nursing home. (Da145).

After Modesto was released from the Care One facility, he returned to Maria's home. (Da145). When Modesto would take his trips to Portugal, he would travel alone. Also, Maria explained that when Modesto went to Portugal with John, Modesto was "ambushed" and "surprised" and "upset". (Da147). Maria did not know that John was going to show Modesto a nursing home. (Da147).

Maria testified that after they moved into the Mahwah house in the Fall of 2014, Modesto gave her a copy of the Will. (Da148). Maria explained that Modesto was flattered that she did not ship him off to Portugal, or stick him in a nursing home. (Da148). Modesto was touched that they made renovations to the Mahwah house, and included Modesto in the plans to move to Mahwah. (Da149).

Maria explained that her father gave her the Will after they moved into the Mahwah house in the Fall of 2014. At the time they moved into Mahwah, Modesto was on the second floor, and he did not have any physical limitations. (Da149). Maria explained that her father visited with John on occasion after he left Care One until the Fall of 2012. (Da149). However, John's wife, Lola, was frustrated with Modesto and, on occasion, she would yell at Modesto. So, at that point, Maria made it clear that Modesto could stay at her house. (Da149).

Also, Maria testified that Lola "spat on him," got angry, and said that Modesto should go to Portugal and "leave us alone." (Da150).

Modesto wanted reassurance from Maria that she would not put him in a nursing home. (Da150). She told Modesto that would not happen. (Da150). Also, Modesto would visit John at his business, and John was "very rude". (Da151). Modesto visited John, but John turned his back on Modesto. (Da151).

Modesto did not like staying at Victor's house because Victor made Modesto sleep on the couch. (Da151). Also, Victor stated that he would help if Modesto gave Victor access to his bank accounts. (Da151). Maria explained that Victor made Modesto feel unwelcome. (Da151).

Maria identified the March 5, 2014 Will which Modesto provided to her. (Da152). When Modesto passed, Maria did not contact Modesto's attorney who prepared that Will. (Da152). Prior to Modesto providing Maria with a copy of that Will, Modesto did not tell Maria that he was having a Will prepared. (Da152). Maria understood that Modesto had an attorney available through the Union. (Da152). However, Maria never spoke to Mr. Riccardi regarding the Will. (Da152). In fact, Maria never met Mr. Riccardi. (Da152).

On September 13, 2022, Judge O'Neill put his decision granting the Motion for Partial Summary Judgment on the record. (T001). In the same,

Judge O'Neill set forth a well thought out decision granting the Motion for Partial Summary Judgment.

In his decision, Judge O'Neill properly observed that this was not a jury issue. He had to determine whether Mr. Rinaldi and his firm owed a duty to John Miranda under all of the facts and circumstances available to the Court. In this case, Judge O'Neill stated, "I really gave a lot of thought to it. And I studied very closely the whole history of the litigation which evolved, of course, from a Probate matter involving the Miranda's father, Modesto Miranda."

Properly noting that this was a legal issue on whether a duty was owed, Judge O'Neill turned to the applicable governing principles. First, the Court would have to look at the Restatement (Third) of the Law Governing Lawyers, to determine whether the lawyer invited the non-client to rely on the lawyers opinion and or provision of the legal services.

Considering the factors, including fairness, foreseeability, and the relationship between the parties, including public policy and legal requirements, Judge O'Neill was not satisfied that Mr. Rinaldi and his firm owed John a duty of care. Accordingly, Judge O'Neill granted the Motion for Partial Summary Judgment.

Judge O'Neill explained that although an agreement was sent to the brothers for the Probate claim on September 13, 2017, John did not sign the same. Mr. Rinaldi did prepare a letter to the Surrogate's Office in Morris County stating that he represented John and Victor. Mr. Rinaldi called Mr. Sanchez, who, at the time, was John's attorney, and had historically been John's attorney. The record confirms that Mr. Sanchez was indeed John's attorney. The Court noted that is "just about the extent of it" when it comes to any facts to support that there was a duty owed.

The Stipulation of Dismissal dismissing the claims of Victor was filed on July 14, 2023. (Pa208). A Notice of Appeal was filed on behalf of John on August 9, 2023.

## ARGUMENT

### *I.* THE TRIAL COURT'S ORDER FOR PARTIAL SUMMARY JUDGMENT SHOULD BE AFFIRMED SINCE JOHN MIRANDA DID NOT HAVE AN ATTORNEY-CLIENT RELATIONSHIP WITH ALEXANDER RINALDI (T1:4-17-17:16)

#### A. Lack Of An Attorney-Client Relationship (T1:7:23-17:16)

In this case, John Miranda was not a client of the defendants, and the defendants did not owe him a duty. It has been held, "The determination of the existence of a duty is a question of law for the Court." DeAngelis v. Rose, 320 N.J. Super. 263 (App. Div. 1999)(quoting, Petrillo v. Bachenberg, 139 N.J.

472, 479 (1995)); McGrogan v. Till, 167 N.J. 414, 425 (2001); Jerista v. Murray, 185 N.J. 175, 190-91 (2005)(Legal malpractice suits are grounded in negligence law, and require three elements: "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff.")

### B. The Order For Partial Summary Judgment Should Be Affirmed Since The Record Below Shows That There Is No Genuine Issue As To Any Material Fact Challenged (T1:7:23-17:16)

Pursuant to R. 4:46-2(c), defendant Rinaldi was entitled to an Order for Partial Summary Judgment since John did not enjoy an attorney-client relationship with Rinaldi. John, at all times, considered the Lindabury firm to be his attorneys; and since John testified that he would have never retained Rinaldi. Pursuant to R. 4:46-2(c), there were no genuine issues of material fact on that issue and, therefore, the Trial Court's decision granting partial Summary Judgment should be affirmed. It has been held that "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the Motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c); see also, Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

In Cortez v. Gindhart, 435 N.J. Super. 589 (App. Div. 2014), certif. den., 220 N.J. 269 (2015), a legal malpractice Complaint was filed against an attorney who was retained in connection with an IRS investigation regarding the preparation of fraudulent tax returns. The Court noted that in order to defeat a Motion for Summary Judgment, the opponent must "'come forward with evidence' that creates a genuine issue of material fact." Cortez, citing Horizon Blue Cross/Blue Shield of NJ v. State, 425 N.J. Super. 1, 32, 26 N.J. Tax 575, 39 A. 3d 228 (App. Div.) (quoting, Brill, supra, 142 N.J. at 529, 66 A. 2d 146), certif. denied, 211 N.J. 608, 50 A. 3d 41 (2022). Also, the Cortez Court stated, "Competent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Citing, Hoffman v. Asseenontv.com, Inc., 404 N.J. Super. 415, 425-26, 962 A. 2d 532 (App. Div. 2009). In addition, the Cortez Court stated, "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the Motion."

In Prant v. Sterling, 332 N.J. Super. 369, 377 (Ch. Div. 1999), aff'd o.b., 332 N.J. Super. 292 (App. Div. 2000), the Court held that "Under R. 4:46-2, when deciding Summary Judgment Motions, Trial Courts are required to engage in the same type of evaluation, analysis, or sifting of evidential material as required by R. 4:37-2(b) in light of the burden of persuasion that

applies if the matter goes to trial." (at 539 and 540, 666 A. 2d 146). That is exactly what Judge O'Neill did in this case.

The Prant Court further held, "Thus, the Brill opinion makes it clear that a disputed issue of fact of an insubstantial nature should not preclude the grant of Summary Judgment." In this case, Judge O'Neill properly found that there were not any issues of material fact which would preclude granting defendants' Motion for Partial Summary Judgment. The defendants were entitled to pretiral Summary Judgment since Judge O'Neill properly did the appropriate analysis, and sifted through the evidential material as required under Brill. Accordingly, the Order for partial Summary Judgment should be affirmed.

### C. Defendants Did Not Owe A Duty To John Miranda As A Non-Client (T1:7:23-17:16)

In Green v. Morgan Properties, 215 N.J. 431, 460 (2013), the Supreme Court noted that it was reluctant to prevent non-clients to sue attorneys. The Green Court noted, "The grounds on which any plaintiff may pursue a malpractice claim against an attorney with whom there was no attorney-client relationship [remain] exceedingly narrow." Green, 215 N.J. at 458.

As noted by the Court in Green:

> We have recently reiterated that [w]e have judicially been reluctant to permit a non-client to sue an adversary's attorney, and with good reason. Lobiondo

> v. Schwartz, 199 N.J. 62, 100 (2009). As we explained, our reluctance to prevent non-clients to institute litigation against attorneys who are performing their duties is grounded on our concern that such a cause of action will not serve its legitimate purpose of creating a remedy for a non-client who has been wrongfully pursued, but instead will become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends.

Whether a duty exists is a question of law. DeAngelis v. Rose, 320 N.J. Super. 263, 274 (App. Div. 1999). There needs to be considerations of fairness and public policy. Estate of Albanese v. Lolio, 393 N.J. Super. 355, 372 (App. Div. 2007)(quoting Fitzgerald v. Linnus, 336 N.J. Super. 458, 468 (App. Div. 2001)). Judge O'Neill made that analysis in his decision. There was no "express" attorney-client relationship between John and Mr. Rinaldi since John never signed a fee agreement with Mr. Rinaldi.

There was no inferred relationship since John never testified that he thought that Mr. Rinaldi was representing him. John testified to the opposite. In John's view, John testified that he would never have retained Mr. Rinaldi.

There was no evidence that John sought advice from Mr. Rinaldi at any point. There were no emails from John to Mr. Rinaldi where John was asking for Mr. Rinaldi's legal representation at any time. In addition, John did not argue before Judge O'Neill that Mr. Rinaldi gave him legal advice. So, that leaves plaintiff to argue that he was a non-client who relied upon the advice of

the attorneys. However, John did not get any advice from Mr. Rinaldi, and never asked for advice, and Mr. Rinaldi never gave advice to John. Cf., Petrillo, 139 N.J. at 483-84, supra.

The problem with John's argument that he was owed a duty is that John testified that Mr. Rinaldi was not his attorney, that he would never hired Mr. Rinaldi, and that he would only hired Mr. Sanchez of the Lindabury firm. Accordingly, since reliance is the linchpin, plaintiff cannot prove that Rinaldi gave advice upon which John relied to his detriment.

There are limited circumstances on which non-clients can bring a claim against attorneys who do not represent them. See, Banco Popular, N.A. v. Gandi, 184 N.J. 161 (2005); Petrillo v. Bachenberg, 139 N.J. 472 (1995).

In Petrillo, the Court quoted from the proposed Restatement of the Law Governing Lawyers. In the comments to the same section cited in Petrillo, the Restatement provides:

> Opposing parties. A lawyer representing a party in a litigation has no duty of care to the opposing party under this section and hence no liability for lack of care, except in unusual situations such as when a litigant is provided with an opinion letter from opposing counsel as part of a settlement … [T]he opposing party is protected by the rules and procedures of the adversary system and, usually, by counsel.

See, Restatement of Law Governing Lawyers Section 51 cmt.b (1998); DeAngelis v. Rose, 320 N.J. Super. 263, 274-275 (App. Div. 1999) (citing the same tentative draft of the Restatement).[1]

In the Complaint, the pleading did not set forth a cause of action under which Rinaldi had a liability to John Miranda as a non-client. See, e.g., Barsotti v. Merced, 346 N.J. Super. 504 (App. Div. 2002). The discovery in the case did not produce any facts upon which the Trial Court could find an attorney-client relationship. Accordingly, Judge O'Neill's Order granting partial Summary Judgment should be affirmed.

This is not a case where John, as a non-client, was relying upon any advice and counsel of Mr. Rinaldi. Cf., Estate of Albanese v. Lolio, 393 N.J. 355 (App. Div. 2007); Banco Popular, N.A. v. Gandi, 184 N.J. 161 (2005).

Rinaldi served John with the Probate pleadings. The retainer letter signed by Victor was not signed by John. Under the circumstances, Mr. Rinaldi and his firm did not owe a duty to John Miranda.

Accordingly, the Order of Judge O'Neill granting partial Summary Judgment of September 14, 2022 should be affirmed because (a) there was no

[1] The proposed section of the Restatement, quoted in Petrillo (Section 73) was adopted a few years later in Section 51 of the Restatement of the Law Governing Lawyers.

attorney-client relationship between John Miranda and Mr. Rinaldi; and (b) there was no duty owed by Mr. Rinaldi and his firm to John Miranda.

This is not a case where John met with Rinaldi to discuss the claim. John never met with Rinaldi. This is not a case where John sent letters to Rinaldi asking for his opinion on the viability of the claim. Likewise, this is not a case where Rinaldi offered an opinion letter to John on which John relied.

There was also an email of September 6, 2017 from Mr. Sanchez to John Miranda, recommending that his long-term client retain him instead of the Rinaldi firm. The Court found that email to be of significance because it was dated September 6, 2017, before Rinaldi's letter was written. Accordingly, beyond the letter that Rinaldi wrote, he did very little to invite John to rely on him.

John indicated in his Certification that he received the September 13, 2017 letter after he heard from Mr. Sanchez. However, there was the email from Mr. Sanchez, and there was ongoing communication between Mr. Sanchez and John.

On September 6, 2017, Mr. Sanchez wrote the email talking about the phone call he received from Mr. Rinaldi, and telling him that Victor retained him and "will include you in the Will contest … Victor were his co-clients."

However, Mr. Sanchez then recommended to his long-term client that "I think you should have your own counsel," and he explained why. (Pa206).

Also, the Court noted that the retainer letter was not signed by John, it was only signed by Victor. There was an indication that John's signature was "X'd out" and then it said "N/A". The only conclusion the Court could reach is that there is no definitive statement as to who crossed out the signature line and sent it back. Those facts weighed in favor of finding that there was no duty.

Going beyond that, John did nothing to communicate with the Rinaldi firm, which he claimed was retained to represent him, until well into 2018, long after the Statute of Limitations expired, and long after the Complaint was filed by the Rinaldi firm on behalf of Victor.

The Complaint in Probate, which was filed in January of 2018, only named Victor as the plaintiff. At that point, upon receipt of the same, Victor did not call or write Mr. Rinaldi, and state, "Hey, why is this thing only naming me? You're -- you're -- you've been retained to represent both of us. Why didn't John say something?"

All indications were that John was not an unsophisticated individual. That was part of the Court's analysis. John Miranda was not some inexperienced person who was not familiar with legal counsel. John had Mr.

Sanchez as his lawyer for a long time. (Da98). The record reflected that John was well acquainted with attorneys, and he knew the importance of being represented by counsel. (Da98). John considered Sanchez to be his attorney, and that was an argument being made by the defense on the Motion for Partial Summary Judgment. (Da98).

The Court focused on what occurred in the Fall of 2017. However, Judge O'Neill also reviewed the events in 2018. In the January 24, 2018 letter to the Surrogate in Bergen County, Mr. Rinaldi wrote and indicated that he was representing Victor Miranda. Then, Mr. Rinaldi drafted the Verified Complaint, which was filed January 24, 2018. (Da1). That Verified Complaint was served by Mr. Rinaldi on John on March 26, 2018. (Da1).

Those facts reinforced the Court's view that John was not relying on Mr. Rinaldi. (Da98). That is a big part of the test referred to earlier. There was must be an invitation by the lawyer on which the non-client relied. There must be evidence that a non-client relies upon the lawyer to represent him.

In addition, the Court reviewed Victor's Certification to see what he stated leading up to the drafting of the Complaint. (Da10). The Certification was conspicuously silent on what he did. (Da10). John would pay Rinaldi's legal fees, but after that he was silent. (Da10).

Also, when Mr. Rinaldi started drafting the Complaint, he did not complain that Rinaldi would be representing both brothers. (Da98). The silence from John and Victor, commencing in the Fall of 2017 through the drafting of the Complaint in 2018, were facts that led the Court to conclude that John really was not at any point relying on Mr. Rinaldi to represent him. (Da98).

In addition, the Court pointed out that the Lindabury firm, in September of 2018, filed the Motion to Intervene on behalf of John. (Da42). Mr. Rinaldi consented to that. (Da42).

There were other communications in July and leading up to September of 2018, when the Lindabury firm actually intervened in the litigation on behalf of John. The Court found that the point was that there were not enough facts to support the imposition of a duty that would make it fair. Fairness is a big part of it according to the Court. It must be fair and foreseeable that John would have expected Rinaldi to represent him and protect his interests.

Extending an attorney's duty to a third-party not in privity with the attorney has been approached with care so as to be fair with all. See, e.g., Meisels v. Fox Rothschild, LLP, 2020 WL 97718 (N.J. January 9, 2020). In Meisels, the Court noted that an attorney's duty "… is cabined by considerations of reasonableness." See, generally, Petrillo, 139 N.J. at 484.

There was no implied agreement between John and Rinaldi. See, Meisels, supra. Mr. Rinaldi had reason to know that John was allegedly relying on him. Of course, John made it clear in his deposition that he did not rely on Rinaldi because he had his own attorney, Mr. Sanchez from the Lindabury firm. There was no reliance. Mr. Rinaldi did absolutely nothing to induce reasonable reliance from John. See, Banco Popular, N.J. v. Gandi, 184 N.J. 161 (2005); Petrillo v. Bachenberg, 139 N.J. 472 (1995); Meisels v. Fox Rothschild, LLP, 2020 WL 97718 (N.J. January 9, 2020).

In Petrillo v. Bachenberg, 139 N.J. 472 (1995), the attorney for the seller provided misleading percolation composite reports on which the buyer relied to purchase the property. He provided test results showing that the property percolated. There, the attorney for the seller made a misrepresentation which the buyer relied on to purchase the property. That was a case of negligent misrepresentation. In this case, there is no claim of negligent misrepresentation because negligent misrepresentation did not occur.

In Petrillo, it was held that the attorney for the seller had a duty not to misrepresent negligently the contents of a material document on which he knew others would rely to their financial detriment. In this case, there was no document which John relied on to his financial detriment. At all times, John considered Mr. Sanchez and the Lindabury firm to be his attorneys, and he

testified that he would not have retained Rinaldi to provide legal services. In fact, John did not do so.

Also, this is not a case, like Banco Popular, where the attorney issued an opinion letter to the non-client on which the non-client relied. The record in this case demonstrates that Rinaldi never issued an opinion letter to John. John received advice from Mr. Sanchez.

### D. The Trial Court Properly Found, As A Matter Of Law, That Plaintiff John Miranda Did Not Have An Attorney-Client Relationship With Alexander Rinaldi (T1:7:23-17:16)

Plaintiff John Miranda argues that Judge O'Neill erred in deciding the Motion for Partial Summary Judgment. More specifically, plaintiff John Miranda argues that the question of duty is a question of law for the Court. Yet, John improperly attempts to argue that determination of whether the specific relationship giving rise to the duty is a question of fact to be determined by the jury. John is wrong. The Court should reject plaintiff's analysis, and affirm the Order for Partial Summary Judgment entered by Judge O'Neill.

The plaintiff/appellant admits in his Brief that it is well settled that the existence of duty is a question of law. Citing, Baen v. Farmers Mut. Fire Ins. Co. of Salem Cty., 318 N.J. Super. 260, 266 (App. Div. 1999). However, plaintiff argues that there is conflicting evidence, and the existence of

relationship is an issue of fact. Plaintiff relies on Froom v. Perel, 377 N.J. Super. 298, 310-12 (App. Div. 2005).

Plaintiff's reliance on Froom is misplaced. Plaintiff does not claim that he signed the Retainer Agreement. Therefore, Froom is inapposite. In Froom, the plaintiff claimed that he did sign the letter Retainer Agreement, and returned it. There was no such testimony by John in this case. In fact, John's testimony makes it clear that, at all times, he considered his attorney to be Mr. Sanchez, and that he would not have hired Rinaldi to represent him.

The mere fact that the Trial Court saw some immaterial facts in issue was not sufficient and, at the end of the day, it was clear that the plaintiff considered Rinaldi to be his attorney, and never relied on Rinaldi as his attorney. He only considered Sanchez to be his attorney, and relied on Sanchez. The point here is that, in Froom, the plaintiff claimed that he signed the retainer letter and returned it. There are no such proofs in this case. Therefore, plaintiff's reliance upon Froom is misplaced.

It should be noted, however, that, in Froom, the Court found that there was no causation, and dismissed the legal malpractice action.

Next, John relies on Hernandez v. Velez, 267 N.J. Super. 353 (Law Div. 1993). However, in Hernandez, considered the Oswin v. Shaw, 129 N.J. 290 (1992) verbal threshold issue, and held that the Oswin Motion could not be

granted because there was not enough information to show that the plaintiff was subject to the verbal threshold. Obviously, Miranda's reliance on Oswin is misplaced. That is not the issue in this case.

The Hernandez Court also denied the Motion for Summary Judgment on agency in that automobile accident case. There, the defendant-owner moved for Summary Judgment. Hernandez was an automobile case involving when the issue of agency can be removed from the jury if evidence is not contradicted. That was not the issue before Judge O'Neill.

The defendant-owner argued there was no evidence that the stolen vehicle was being operated at the time of the accident by the agent of defendant Braschi, who was the owner of the automobile. The issue was whether she could be held liable when it appears established that she was not driving nor present at the time of the accident.

The Police Report stated that Juan Velez, while out looking for his mother-in-law's vehicle, which was stolen, spotted the vehicle on Second Avenue. Velez stated that the unknown driver of vehicle number two made a left off of Second Avenue onto Summer Avenue, and then stopped. Velez stated that he jumped out, ran to vehicle two, grabbed the driver around the neck, pulled himself into the vehicle, and told the suspect to cut the vehicle off. The driver of the vehicle pulled away at a fast speed.

The defendant relied on cases which hold that an automobile owner cannot be held liable for the negligence of a third-party car thief in the absence of evidence of the defendant's negligence incurring or allowing the theft. However, it was not a standard car theft case, because the Police Report indicated that the defendant's son-in-law, Velez, contributed to causing the accident. That raised the question of whether defendant Braschi could be held answerable for her son-in-law's superhero stunt.

Accordingly, plaintiff's reliance on Hernandez is also misplaced since the present action is not an automobile agency case, it is not an Oswin verbal threshold case. Here, there was no question of fact as a result of the deposition of John in connection with who he considered to be his attorney. John never testified that he considered Rinaldi to be his attorney. John never testified that he was relying upon Rinaldi to do anything.

A disputed material fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the Motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. R. 4:46-2(c). See also, Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "[b]are conclusions in the pleadings, without factual support and tendered Affidavits, will not defeat a meritorious application for Summary Judgment."

U.S. Pipe & Foundry Co. v. Am. Arb. Ass'n, 67 N.J. Super. 384, 399-400 (App. Div. 1961).

Whether a party has a duty to act is a question of law, not one of fact. Strawn v. Canuso, 271 N.J. Super. 88, 100 (App. Div. 1994), aff'd, 140 N.J. 43 (1995).

John did not submit anything to the Court in opposition to the Motion for Partial Summary Judgment that would have resulted in Judge O'Neill denying the Motion. There were no disputed issues of fact created by John, which would have required the Motion for Partial Summary Judgment to have been denied. A disputed issue of fact of an insubstantial nature would not preclude the grant of the Motion. Prant v. Sterling, 332 N.J. Super. 369, 377 (Ch. Div. 1999), aff'd o.b., 332 N.J. Super. 292 (App. Div. 2001).

John Miranda failed to create a genuine issue of material fact as to whether Rinaldi represented John. It was clear, based upon the record before Judge O'Neill, that John could not create a genuine issue of material fact as to whether Rinaldi represented him. John's deposition makes that clear. Victor signed the Retainer Agreement, but John did not.

John Miranda confirmed that he never retained Mr. Rinaldi and his firm, and also testified that Rinaldi did not represent him in the Probate case. That is not only the beginning of the analysis, that is the end. John testified that his

lawyer was Carlos Sanchez of the Lindabury firm. (Da109). John testified that Carlos Sanchez wrote correspondence for him in the underlying matter of August 2, 2017, sending a letter to John's brother, Victor, and his sister, Maria. (Da109). John testified that he has been represented by Mr. Sanchez for the last 23 years. (Da109). John testified that he never would have signed a Retainer Agreement with anyone other than Carlos Sanchez. (Da109).

John testified that his lawyers at the Lindabury firm were Mr. DeLaney and Carlos Sanchez. (Da109). In fact, Sanchez sent a letter to Maria Miranda of August 7, 2017 on behalf of John. In a letter of August 2, 2017 from Sanchez to Maria, Sanchez stated that he was representing John Miranda. (Da109).

Also, counsel for Maria, in the Probate case, Mr. Quinn, recognized Carlos Sanchez as counsel for John Miranda in his correspondence of July 16, 2018. (Da112). In fact, the Lindabury firm filed a Motion on behalf of John to intervene in the Probate case on September 25, 2018. (Da42). In addition, John confirmed that Mr. Rinaldi never represented him in the Probate case. (Da154).

The retainer letter was signed only by Victor, and John's name was crossed out with an N/A. (Da155).

In the Matter of The Estate of Modesto Miranda (the Probate action), Mr. Rinaldi sent a filing letter of January 24, 2018 to the Surrogate, in which he stated:

> Dear Mr. Dressler:
>
> Please be advised that this law firm represents Mr. Victor Miranda, plaintiff in the above referenced matter.

(Da1).

The Verified Complaint named Victor Miranda as the plaintiff. (Da1). The Verified Complaint did not name John Miranda as the plaintiff. The Verified Complaint simply listed John as the son of Modesto. (Da1).

In the Bergen County Probate Action, the Certification in support of the Verified Complaint was signed by Victor . (Da14). In the Certification, Victor stated that his attorney was Alexander J. Rinaldi. (Da10). Victor's Certification did not state that Rinaldi was representing John at the time of the filing. (Da10).

Also, Mr. Rinaldi, in the Probate action, served John Miranda with a copy of the Order to Show Cause Summary Action returnable May 4, 2018 in the Verified Complaint. The service letter had attached to it the February 13, 2018 Letter Brief filed by Mr. Rinaldi in the Bergen County Surrogate's Office. The Letter Brief clearly stated that the firm represented Victor Miranda.

In Mr. Rinaldi's Subpoena to Dr. Karanam for medical documents, Mr. Rinaldi stated that he represented plaintiff Victor Miranda.

On September 25, 2018, the Lindabury firm filed a Motion with the Surrogate of Bergen County to intervene in the Probate action, together with a Notice of Motion, Certification, and Brief. (Da42). That application sought to intervene on behalf of John. (Da42).

In his Certification, Mr. DeLaney of the Lindabury firm confirmed that he and his firm were the attorneys for defendant John Miranda. (Da44).

Also, in his Certification, Mr. DeLaney certified that Mr. Rinaldi, counsel for Victor, consented to allow John to file an Answer. Also, Mr. DeLaney confirmed in his Certification that he, on behalf of John, contacted counsel for Maria on July 6, 2018 to request consent to participate. (Da44).

In addition, in the DeLaney Certification of July 18, 2018, Mr. DeLaney certified that he received a letter from Colin Quinn, counsel for Maria, on July 16, 2018, indicating that he would not consent to intervention by John based on R. 4:85-1.

Mr. Delaney certified that, on July 20, 2018, he responded to the July 16, 2018 letter from Colin Quinn, asking Mr. Quinn to reconsider. (Da44). Mr. Rinaldi provided Mr. DeLaney with a form of Consent Order, which he signed on behalf of Victor. (Da44). Accordingly, all of the correspondence in and

among the attorneys confirmed that the Lindabury firm was counsel to John Miranda.

Mr. Rinaldi testified at his deposition that Victor came in to see him because he was pleased with his work on a prior matter. (Pa047). Mr. Rinaldi's firm entered into the fee agreement with Victor, with an upfront retainer of $2,500. (Da154). Mr. Rinaldi recalled meeting with Victor on September 6, 2017 in his office. (Pa047). Victor gave Mr. Rinaldi information regarding Modesto Miranda's address.

At his deposition, John did not create a genuine issue of material fact on whether Rinaldi represented him. Accordingly, the Trial Court's Order for Partial Summary Judgment should be affirmed.

### E. The Appellate Division Should Reject Plaintiff's Argument That Judge O'Neill Gave Improper Weight To Events That Occurred After The Statute Of Limitations Expired (T1:11:23-17:16)

At p. 14 of his Brief, John argues that he had four months to file a Complaint on behalf of John and Victor contesting the Will. Plaintiff argues that Judge O'Neill was not an appropriate in connection with the fact that John's signature was blacked out on the retainer letter. John did not sign the Retainer Agreement, and the X was on the signature line. There never was a signature of John on the retainer. The only conclusion that one could draw was that Victor is the one who crossed it out and sent it back. This would be a

different situation if John testified that he did indeed sign the Retainer Agreement. Cf., Froom, supra.

John testified that his lawyer was Carlos Sanchez from Lindabury's office, and that he sent correspondence for John in the Probate matter. Therefore, there is no basis for plaintiff to make this unsupported argument. More specifically, John testified that he would never have signed a Retainer Agreement with anyone other than Carlos Sanchez. Therefore, there was no reliance by John on anything that Mr. Rinaldi did. Accordingly, this Court should reject plaintiff's argument.

### F. There Was No Evidence To Demonstrate That Mr. Rinaldi Owed A Duty To The Non-Client John Miranda (Not Addressed Below)

It has been conclusively established that Mr. Rinaldi never owed a duty to the non-client John Miranda. This appeal by John lacks merit, based upon John's own testimony at his deposition. John is bound by that testimony and, therefore, it is respectfully submitted that the decision of Judge O'Neill granting partial Summary Judgment should be affirmed. After all, John could never have relied upon any legal work performed by Rinaldi, based upon his deposition.

### G. The Evidence Failed To Show That There Was Proximate Causation (Not Addressed Below)

Plaintiff, in his Brief at p. 21, argues that there is evidence on causation, and that his expert, Martin Jennings, opined that the attorney's breach of duty was the proximate cause of John and Victor's damages. He opined that Victor and John would have been able to challenge the 2014 Will and, had they done so, it would have been set aside. (See plaintiff's Brief at p. 20).

The Court should reject plaintiff's argument that John Miranda presented sufficient evidence to establish proximate causation. Plaintiff relies upon the report of his expert, Martin Jennings, Jr., who opined that but for the firm's failure to file the Probate lawsuit contesting the 2014 Will within the Statute, Victor and John would have been able to challenge the 2014 Will. Mr. Jennings offered the net opinion that the probated 2014 Will would have been set aside, the original Will naming John, Victor, and Maria as beneficiaries would have been probated, and John and Victor would have each received a one-third share of their father's Estate, equal to the share Maria would have received.

The expert opined that Victor and John did not receive a share of their father's Estate, but rather were disinherited. However, Jennings admits that this case must be proven through a case-within-a-case analysis.

In his net opinion, Jennings opined that Modesto's 2014 Will would be invalidated, and the original Will would have been probated. Jennings' argument was that there was a confidential relationship with Maria, that Modesto wanted to move back to Portugal, and that, on the second trip, John and Modesto took account of Modesto's assets in Portugal, consisting of 15 properties. Jennings recognized that Modesto never moved into a Portuguese nursing home.

Jennings offered the opinion, without proofs, that Modesto's decision to move in with Maria, rather than move to his birthplace, was "abrupt and out of character." In addition, Jennings made the argument that because Modesto became older and weaker, he relied on Maria for his care and assistance.

Jennings offered the opinion that there were suspicious circumstances under Haynes v. First National, 87 N.J. 163 (1981). Jennings argued that Maria was hostile towards John and Victor, and that she was an influencer. However, Jennings missed the point that Maria did not take Modesto to the Union lawyers to draft the Will. Maria was not present when the drafting took place. Jennings did not cite one case to support his opinion on that issue. In fact, the facts in this case are lacking to establish suspicious circumstances and undue influence when one takes into consideration the testimony of the Union lawyers.

Jennings relied on In Re: Estate of Stockdale, 196 N.J. 275 (2008). However, Stockdale does not support his opinion. The Stockdale Court noted that undue influence is only presumed if there is a confidential relationship coupled with suspicious circumstances. It is only then that the burden shifts to the Will proponent to overcome the presumption. The Stockdale Court noted that the presumption arises from a professional conflict of interest on the part of an attorney, coupled with confidential relationships between a Testator and the beneficiary, as well as the attorney. The presumption must instead be rebutted by clear and convincing evidence. Haynes, 87 N.J. at 183.

Here, however, there were no proofs that the Union attorneys had a conflict, or that they were somehow involved with assisting Maria in connection with undue influence on Modesto. There were no such proofs in this case. For example, this is not a case where a beneficiary took advantage of the Testator by getting assistance from the attorney, who advised the Testator, and drafted the Wills. In this case, Maria did not take Modesto to see the Union lawyers for a new Will. This is not a case where Maria moved Modesto out of the house, and put him in a facility or an apartment without care. Cf., Stockdale. All of that was missed by Jennings in his report.

As noted in the report of defendants' expert, Glenn Henkel, Jennings failed to address the legal merits of the claim filed by Mr. Rinaldi that was

being decided by Judge DeLuca. (Da156). As properly noted by Mr. Henkel, Jennings simply stated that "The Court would have set aside the 2014 Will and plaintiffs would have each received one-third of their father's Estate." (Da156). Of course, that is nothing more than a conclusion, and was not based on any facts or legal analysis.

Accordingly, this Court must reject those conclusions, as well as Jennings' opinion that because Maria benefited from the Will, there are "suspicious circumstances" to meet the second prong of the test. As properly noted by Mr. Henkel in his report, it was Maria who took care of Modesto from 12 years before he passed. (Da156).

In addition, as noted by Mr. Henkel, neither Mr. Cotov nor Mr. Riccardi, the Union lawyers who assisted Modesto with his Will and the revisions to the Will, ever met or spoke to Maria or any other family member. So, Mr. Rinaldi would have been unsuccessful before Judge DeLuca to try to shift the burden of proof under the Haynes standard. (Da156). The burden would have remained on Victor, and that would have been the end of the case since there was no evidence that the Will, which was presumptively valid, should be set aside. (Da156). That being the case, there never was a viable case-within-a-case to be proven here, and the Will would have been upheld by Judge DeLuca no matter who had the burden. (Da156).

Accordingly, the Appellate Division should reject the point advanced by John that he presented sufficient evidence to establish proximate causation. Clearly, the Jennings report violated the Net Opinion Rule. See, Kaplan v. Skoloff & Wolfe, P.C., 339 N.J. Super. 97 (App. Div. 2001).

Jennings did not have evidential support in the record to support a conclusion that Judge DeLuca would have ruled in favor of Victor on any of the points. Jennings simply relied on speculations and assumptions regarding what Judge DeLuca would have done, rather than facts and applicable case law interpreting those facts. Cf., Townsend v. Pierre, 221 N.J. 36 (2015). See also, Morris Properties, Inc. v. Wheeler, et al., No. A-2653-20, 2023 WL 2249975, at *1 (N.J. Super. Ct. App. Div. Feb. 28, 2023)(approved for publication August 22, 2023).

Also, Jennings did not provide the appropriate opinion on causation and damages. Cf., Morris Properties, supra. John is unable to demonstrate that he would have prevailed or would have won materially more but for a substandard performance.

In addition, Jennings did not put any numbers in his report (valuation). Jennings stated that he could not provide numbers because he did not have any data on which to do so. (Da156). No values are provided in connection with what John would have or should have obtained. In any event, that was John's

burden to demonstrate, and he could not do it through the report of Jennings. (Da156).

Accordingly, the Jennings report was deficient, and plaintiff's argument that he established proximate cause should be rejected.

### H. Since John Miranda Failed To Establish An Attorney-Client Relationship With Mr. Rinaldi And His Firm, And Also Since John Miranda Failed To Establish Proximate Causation, The Order For Partial Summary Judgment Should Be Affirmed (T1:7:23-17:16)

"Legal malpractice suits are grounded in the tort of negligence." McGrogan v. Till, 167 N.J. 414, 425 (2001). "[A] legal malpractice action has three essential elements: '(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by plaintiff.'" Jerista v. Murray, 185 N.J. 175, 190-91 (2005) (quoting, McGrogan, 167 N.J. at 425). The plaintiff bears the burden of proving all three elements. Davis v. Brickman Landscaping, 219 N.J. 395, 406 (2014).

To establish proximate causation and damages in a legal malpractice action, a plaintiff must first establish causation in fact which "requires proof that the result complained of probably would not have occurred 'but for' the negligence conduct of the defendant." Conklin v. Hannoch Weisman, 145 N.J. 395, 417 (1996).

Additionally, a plaintiff "must present evidence to support a finding that defendant's negligent conduct was a 'substantial factor' in bringing about plaintiff's injury, even though there may be other concurrent causes of the harm." Froom v. Perel, 377 N.J. Super. 298, 313 (App. Div. 2005) (quoting, Conklin, 145 N.J. at 419).

Also, the plaintiff must show "what injuries were suffered as a proximate consequence of the attorney's breach of duty," ordinarily measured by "the amount that a client would have received but for the attorney's negligence." 2175 Lemoine Ave. Corp. v. Finco, Inc., 272 N.J. Super. 478, 488 (App. Div. 1994). The burden is on the plaintiff to establish proximate causation and damages "by a preponderance of the competent, credible evidence and is not satisfied by mere 'conjecture, surmise or suspicion.'" Finco, 272 N.J. Super. at 488 (quoting, Long v. Landy, 35 N.J. 44, 54 (1961)).

In legal malpractice actions, proximate causation must ordinarily be established by expert testimony that establishes the particular facts of the case. See, Morris Properties, Inc. v. Wheeler, et al., No. A-2653-20, 2023 WL 2249975, at *1 (N.J. Super. Ct. App. Div. Feb. 28, 2023)(approved for publication August 22, 2023).

"Actual damages … are real and substantial as opposed to speculative." Cortez v. Gindhart, 435 N.J. Super. 589 (App. Div. 2014)(quoting, Grunwald

v. Bronkesh, 131 N.J. 483, 495 (1993)). Damages must be supported by more than mere "conjecture, surmise or suspicion." 2175 Lemoine Ave. Corp. v. Finco, Inc., 272 N.J. Super. 478 (App. Div. 1994). "Ordinarily, the measure of damages is what the client would have obtained in the absence of attorney negligence." Cortez, 435 N.J. Super. at 604 (citing, 2175 Lemoine Ave., 272 N.J. Super. at 488).

Here, the Court should not reach the causation point since no attorney-client relationship was established. John, even if there was an attorney-client relationship, would have to demonstrate that he would have prevailed, or would have won materially more, but for the alleged substandard performance. Here, there are no numbers in the Jennings report. In fact, Jennings states he could not provide numbers because he did not have any data on which to do so. No values were permitted in connection with what Victor and John would have or should have obtained. In any event, that was Victor and John's burden to demonstrate, and they could not do it through the report of Mr. Jennings.

As noted above, the Court should not reach this causation issue since there was no attorney-client relationship between John and Mr. Rinaldi, based upon the testimony of John Miranda.

John Miranda argues that he has presented evidence demonstrating proximate causation. He refers to the report of his expert, Martin Jennings. At

the time of the Motion hearing on August 9, 2022 before Judge O'Neill, counsel for plaintiff John Miranda argued that Mr. Rinaldi knew or should have known or foreseen that John would rely on his work as set forth in Petrillo. (T1:11:5-10). Plaintiff's counsel argued that John Miranda did not retain Mr. Sanchez of the Lindabury firm, and did not sign the Sanchez fee agreement. (T1:11:16-25).

However, on August 2, 2017, Mr. Sanchez of the Lindabury firm questioned Maria and Victor on the status of the overall Estate Plan and Estate Administration. (Pa200). In his opinion, he found that Victor had received notice, if not from personal knowledge, from correspondence from Mr. Sanchez. In response to the questions from Mr. Sanchez, Maria provided information concerning probate of the Will.

Plaintiff relies upon the worthless Jennings report. That report failed to address the legal merits of the underlying Will contest claim had a challenge been raised. The Jennings report simply states, "The Court would have set aside the 2014 Will and plaintiffs would have each received one-third of their father's Estate." Mr. Jennings admitted that the case must be proven through a case-within-a-case analysis. (Da156).

In Jennings net opinion, he stated that had the underlying case been litigated, Modesto's 2014 Will would have been invalidated, and the original Will probated. However, that is a net opinion.

In the argument before Judge O'Neill, counsel for John never relied on the Jennings report in opposition to defendants' Motion for Partial Summary Judgment. The report of defendants' expert, Glenn Henkel, he notes that the Jennings report failed to address the legal merits of the claim filed by Mr. Rinaldi that was being decided by Judge DeLuca. (Da156).

As properly noted by Mr. Henkel in his report, Jennings simply stated that "The Court would have set aside the 2014 Will and plaintiffs would have each received one-third of their father's Estate." (Da156). However, that is simply a conclusion, and it was not based upon any facts or legal analysis.

In any event, the Court should reject the conclusions in the Jennings report, as well as Jennings opinion that because Maria benefited from the Will, there are "suspicious circumstances". As noted by Mr. Henkel, neither Mr. Cotov nor Mr. Riccardi, the Union lawyers who assisted Modesto with his Will and the revisions to the Will, ever met or spoke with Maria or any other family member.

So, clearly, Mr. Rinaldi would have been unsuccessful before Judge DeLuca to try to shift the burden of proof under the Haynes standard. The

burden would have remained on Victor, and that would have been the end of the case since there was no evidence that the Will, which was presumptively valid, should be set aside. (Da156).

That being the case, there really was not a viable case-within-a-case to be proven here, and that Will would have been upheld by Judge DeLuca no matter who had the burden. The Court need not reach the issue of causation since John Miranda has not come forward with sufficient facts to establish an attorney-client relationship with Victor Rinaldi. Haynes v. First National, 87 N.J. 163, 182 (1981).

In his Brief, John Miranda argues that the case should be remanded for a trial to determine whether Mr. Rinaldi's breach proximately caused John's damages. However, that argument misses the point that John never established an attorney-client relationship with Mr. Rinaldi, and that John has testified that he never would have retained Mr. Rinaldi to represent him.

Accordingly, Judge O'Neill properly granted the Motion for Partial Summary Judgment, and dismissed John's claims.

## CONCLUSION

For the reasons expressed above, it is respectfully submitted that the Order of Judge O'Neill of September 14, 2022 granting partial Summary Judgment should be affirmed. Oral argument is requested.

MARSHALL DENNEHEY, P.C.
Attorneys for Defendants/Respondents,
Alexander J. Rinaldi and Salny, Redbord
and Rinaldi, Counsellors at Law

BY: */s/ John L. Slimm*
JOHN L. SLIMM

Dated: November 13, 2023

MASELLI, MILLS & FORNAL, P.C.
By: Shawn D. Edwards, Esquire
Attorney No. 910252012
400 Alexander Park, Suite 101
Princeton, New Jersey 08540
(609) 452-8411
sedwards@masellilaw.com
*Attorneys for Appellant, John Miranda*

JOHN MIRANDA and VICTOR MIRANDA,

Plaintiffs/Appellant,

v.

ALEXANDER J. RINALDI and SALNY, REDFORD AND RINALDI, COUNSELLORS AT LAW,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal Docket No. A-003780-22T2

On Appeal From:
New Jersey Superior Court
Law Division, Hunterdon County

Trial Docket No. HNT-L-000136-20

Sat Below: Hon. Michael F. O'Neill, J.S.C.

# REPLY BRIEF OF APPELLANT, JOHN MIRANDA

Of Counsel:
PAUL J. MASELLI, ESQUIRE
SHAWN D. EDWARDS, ESQUIRE

On the Brief:
SHAWN D. EDWARDS, ESQUIRE

Table of Contents

# Table of Authorities

## Cases

# LEGAL ARGUMENT

## I. DEFENDANTS ADOPT THE SAME FLAWED ANALYSIS USED BY THE TRIAL COURT TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

In their brief, Defendants essentially rehash the same arguments that they made to the court below. They argue that John did not have an attorney-client relationship with Defendants based on (1) a single statement made during his deposition that he would only sign a fee agreement with his longtime attorney, (2) the crossing out of John's name and signature line in the engagement letter, and (3) John's retention of another attorney to represent him in the will contest after Defendants failed to timely challenge the will. The only difference now is that the Defendants are able to point to the lower court's decision to grant their motion as evidence that these arguments are meritorious.

As explained in greater detail below, the lower court erred when it usurped the role of the jury in resolving genuine issues of material fact concerning the parties' relationship in order to finding that no duty existed. The lower court also placed too great an emphasis on the question of whether an attorney-client relationship existed despite John having presented substantial evidence that he relied on Defendants' representation of his interests in the will contest. As a genuine issue of material fact exists as to the John's relationship with Defendants, the Court must reverse the lower court's decision and remand for further proceedings.

### A. The Defendants Failed to Consider Settled Case Law Establishing that Genuine Issues of Material Fact Concerning the Parties' Relationship Must Be Resolved by the Jury.

Defendants misunderstand John's argument concerning the jury's role in determining whether they had a duty to John. John is not arguing that it is the jury's duty to determine whether their relationship gave rise to a duty. Rather, John argues that it is the jury's role to resolve disputes of material fact concerning the parties' understanding of their relationship in accordance with Froom v. Perel, 377 N.J. Super. 298 (App. Div. 2005).

In Froom, a real estate development company and its principal brought claims against various parties including a legal malpractice claim against Wilentz, Goldman & Spitzer, P.C. and Vincent P. Maltese, a member of the firm, arising from the latter's representation of the parties in the purchase and development of real estate. One of the issues in the case was whether Maltese and the Wilentz firm represented the plaintiffs in the underlying transaction. A jury trial was held during which both Froom and Maltese offered conflicting testimony concerning the Wilentz firm's relationship with the plaintiffs. The witnesses disagreed over whether Froom signed and returned the engagement letter and the nature of Maltese's communications with Froom over the course of the transaction. After the parties' rested, the trial judge determined that an attorney-client relationship existed as a matter of law and instructed the jury that the plaintiffs were clients of the Wilentz firm. Id. at 312.

Based on these instructions, the jury found the Wilentz firm and Maltese liable to the plaintiffs for legal malpractice. Id. at 309.

On appeal, the Wilentz defendants argued that the trial judge made a number of errors which included failing to rule as a matter of law that no attorney-client relationship existed and erroneously instructing the jury that the plaintiffs were clients of the Wilentz firm. Id. at 310. After considering the evidence presented at trial, the Appellate Division concluded that the trial judge erred in deciding as a matter of law that an attorney-client relationship existed because it was not an issue that could be decided by the judge as a matter of law. Id. at 312. In coming to this conclusion, the Froom court noted that the parties had presented substantial evidence that supported and refuted the existence of an attorney-client relationship, including evidence that plaintiffs may have terminated the law firm's representation before the closing of the transaction. The Froom court declared that the trial judge committed reversable error by withdrawing from the jury a critical issue of material fact on an essential element of the plaintiffs' claim. Id. at 312.

As in Froom, the trial judge denied John the opportunity to present to a jury a critical issue of material fact, that is, the nature of the relationship between John and the Defendants. John presented substantial evidence demonstrating the following facts:

- On June 5, 2017, Modesto Miranda died in Portugal.

- On August 7, 2017, John went to the Bergen County Surrogate's Office to file a caveat, prepared by his long-time attorney, Carlos J. Sanchez ("Sanchez", challenging the Will. During his visit, the surrogate's office provided John with a copy of the Will. Pa194, at ¶¶5-6.

- On August 18, 2017, Sanchez sent John a retainer agreement to represent him in challenging the Will. Pa195, at ¶11, Pa201.

- On August 28, 2017, Sanchez sent John an email following up on his request that John sign the retainer agreement. Pa196, at ¶15, Pa202.

- John did not return a signed retainer agreement to Sanchez in 2017 or otherwise confirm that Sanchez was representing him until the middle of 2018. Pa195, at ¶11.

- Sometime between August 28, 2017 and September 6, 2017, Victor met with Rinaldi in Defendants' office to discuss representing him in challenging Will. Pa192, at ¶14; Pa195, at ¶12.

- During their initial meeting, Rinaldi told Victor that John and Victor did not need two attorneys and his law firm could represent both of them because they had the same claims and the same damages. Pa192, at ¶16.

- On or about September 6, 2017, Victor tells John that Rinaldi advised him that Defendants could represent both of their interests in the will contest. Pa192, at ¶16; Pa195, at ¶13.

- On September 6, 2017, Sanchez sent John an email informing him that Rinaldi called and advise him that Defendants were representing both John and Victor in the will contest. Sanchez said that Rinaldi specifically referred to John and Victor as his co-clients and advised John that he should have a separate attorney. Pa196, at ¶16, Pa205.

- On September 13, 2017, Defendants sent John and Victor an engagement letter to represent them in the will contest. Pa80; Pa192, at ¶18; Pa196, at ¶19.

- The engagement letter confirmed that Defendants had already received the requested deposit from John and Victor. Pa80.

- On September 14, 2017, Defendants sent a letter to the Morris County Surrogate's Office notifying the office that the Defendants represent both John and Victor and requesting information regarding the Will. Pa133, Pa196, at ¶19.

- On December 11, 2017, Defendants contacted the Morris County Surrogate's Office, which informed them that the Will had not been submitted for probate in the office. Pa135, at ¶10.

- On December 18, 2017 – The final day to file an action challenging the Will has passed, and Defendants did not file a complaint or otherwise protect John's right to challenge the Will.

- On or about January 24, 2018, Defendants filed a Verified Complaint and application for an order to show cause challenging the Will. Pa130 - Pa138.

- On March 26, 2018, Rinaldi sends a letter to John stating that Defendants represent Victor and enclosing an order to show cause. Pa147.

When viewing these facts in a light most favorable to John, they show that John intended to challenge the Will before Victor had even spoken to Rinaldi. He initially involved his longtime attorney, Sanchez, having him prepare the caveat. Sanchez sent John a retainer agreement to represent him further in the will contest. However, Rinaldi informed Sanchez he was representing both John and Victor and referred to them as his co-clients. Rinaldi sent John a fee letter and even represented himself to the Morris County Surrogate's Office as John's attorney. Despite Sanchez's advice that he retain separate counsel, John did not request that Sanchez take further action

on his behalf until the middle of 2018. Defendants have not presented any evidence that they informed John that they were not representing him. Rinaldi's letter dated March 26, 2018 is the earliest evidence from which John could have inferred that Defendants were not representing him. However, at this point, the deadline to contest the Will had passed.

To accept the Defendants' interpretation of events, one would have to believe that despite having initially sought to file a caveat, John decided that he no longer wished to challenge the will. That is, until he reached out to Sanchez after receiving the Rinaldi's March 28, 2023 letter. It beggars belief that any reasonable juror would conclude that either John or Rinaldi never believed that the Defendants were representing John at least for some period of time based on this evidence.

Defendants argue that John's failure to return the signed retainer agreement to Defendants is fatal to his malpractice claim. While this is certainly probative evidence, it is not dispositive of the issue. The existence of an attorney-client relationship may be inferred from the conduct of the parties. In re Palmieri, 76 N.J. 51, 58-59 (1978). Based on the actions of both John and Rinaldi, a reasonable jury could infer that the parties had an agreement that Defendants would represent John, at least during the crucial time period before the deadline expired.

Defendants also attempt to make hay out of an offhand response to a question during John's deposition -- that he would only sign a fee agreement with Sanchez.

Defendants attribute a world of meaning to this answer concluding that it shows John did not consider Rinaldi his attorney and that he never would hire Rinaldi. However, John's additional statements further contextualize this statement. As John explained in his certification, he had an agreement with his brother, Victor, that he would reimburse Victor for his share of the legal fees.[1] It is undisputed that John never repudiated Rinaldi's representation to Sanchez that he was representing both John and Victor. To the contrary, John did not engage Sanchez to represent him until Rinaldi notified him that he had filed the order to show cause application on behalf of Victor alone.

In opposition to the summary judgment motion, John produced sufficient evidence to create a genuine issue of material fact as to the existence of an attorney-client relationship that must be presented to the jury. The trial court improperly usurped the jury's role by weighing the evidence and concluding that an attorney-client relationship did not exist between John and the Defendants. Therefore, John respectfully requests that the Court reverse the lower's court's decision and remand the matter so it may proceed to trial.

**B. The Evidence Demonstrates that Defendants Knowingly Undertook the Representation of John's Interests in the Will Contest.**

[1] Incidentally, the plaintiffs in Froom also believed that they did not need to sign the engagement letter where the co-client had agreed to pay their legal fees. 377 N.J. Super. at 304.

An attorney has a duty of care to clients and non-client alike where the attorney induces reasonable reliance upon his representation. Generally, this reliance is demonstrated by the existence of a signed engagement; however, our court do not exalt form over substance. Reliance may be inferred from the conduct of the parties. Palmieri, 76 N.J. 51, 58-59 (1978). "[E]ven absent an attorney-client relationship, an attorney owes a fiduciary duty to persons, though not strictly clients, who he knows or should know rely on him in his professional capacity." R. J. Longo Constr. Co. v. Schragger, 218 N.J. Super. 206, 209 (App. Div. 1987); see also Innes v. Marzano-Lesnevich, 435 N.J. Super. 198, 213 (App. Div. 2014) ("Privity between an attorney and a non-client is not necessary for a duty to attach where the attorney had reason to foresee the specific harm which occurred.").

Regardless of whether an attorney-client relationship was formed, the evidence demonstrates that Defendants knew or should have known that John was relying upon them. Defendants were aware that John was ordinarily represented by Sanchez in legal matters. Rinaldi took the affirmative action of reaching out to Sanchez to notify him that Defendants are representing John. To put it another way, Rinaldi told Sanchez that he should not take any further action on behalf of John to challenge the Will. Defendants represented to the Morris County Surrogate's Office that they were representing John. Defendants have not presented evidence that John had rejected their representation.

Call it an attorney-client relationship. Call it something else. Either way Defendants should have expected that John would rely on them in their professional capacity. Therefore, they had a duty of care to John, which they breached by failing to timely contest the Will.

## II. THE COURT CANNOT CONSIDER THE ISSUE OF PROXIMATE CAUSATION AS IT WAS NOT RAISED BELOW.

John addressed the issue of proximate causation in his initial brief out of an abundance of caution; however, the issue is not properly before this Court. "Unless the question raised on appeal goes to trial court's jurisdiction or the matter is of great public interest, issues not raised before trial court are not considered on appeal." Savage-Keough v. Keough, 373 N.J. Super. 198, 209 (App. Div. 2004).

In their motion for partial summary judgment, Defendants focused their argument entirely on the issue of whether the relationship between John and the Defendants gave rise to a duty of care. They did not address issue of breach, proximate causation, or damages. Neither did the trial court in its opinion. The question presented does not go to the trial court's jurisdiction nor is it a matter of great public interest.

Even if it wanted to, the Court cannot address these issues because the record is lacking in evidence addressing proximate causation or damages. As Defendants' point out in their brief, John intends to prove proximate causation through the testimony of his expert, Martin Jennings, Esquire, However, Mr. Jennings' report is

not part of the motion record. Moreover, evidence of the Defendants' damages, which includes records showing his father's assets at the time of his death, are also absent. These documents are not part of the record because they were not relevant to issue of whether Defendants had a duty to John. Without these documents, the Court cannot determine whether Defendants are entitled to summary judgment as to these issues.

It is worth noting that the lower court actually addressed the issues of breach, causation, and damages in Defendants' summary judgment motion against Victor , which was filed after the instant motion was decided. The trial judge denied Defendants' motion concluding that genuine issues of material fact existed as to breach, causation, and damages. In its decision, the trial court rejected Defendants' argument that Mr. Jennings had offered a net opinion. Regardless, much of the evidence presented to the lower court by the parties for the later motion for summary judgment was not part of the record for this motion.

As the issues of breach, causation, and damages were not raised below, the Court cannot consider them. Therefore, the Court should limit its analysis to the parties' relationship and conclude that genuine issues of material fact exist requiring the reversal of the trial court's order.

## CONCLUSION

For the foregoing reasons, Appellant, John Miranda, respectfully requests this Court reverse the lower Court's decision granting Respondents' partial summary judgment motion dismissing Appellant's complaint. and remand the matter to the lower court for a trial by jury.

Date: November 27, 2023

MASELLI, MILLS & FORNAL, P.C.
*Attorneys for Plaintiff/Appellant, John Miranda*

By: */s/ Shawn D. Edwards*
SHAWN D. EDWARDS