ROBERT SIPKO, Plaintiff-Respondent, vs. KOGER, INC., KOGER DISTRIBUTED SOLUTIONS, INC., KOGER PROFESSIONAL SERVICES, INC., KOGER LIMITED (DUBLIN), RASTISLAV SIPKO and GEORGE SIPKO, Defendants-Appellants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003819-22T4 Civil Action **ON APPEAL FROM:** Superior Court, Chancery Division Bergen County Hon. Edward A. Jerejian, P.J.Ch. Sat Below Docket Below: BER-C-393-07

DEFENDANT-APPELLANT RASTISLAV SIPKO'S BRIEF

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PRELIMINARY STATEMENT

Plaintiff Robert Sipko (Robert or Plaintiff) filed an application with the trial court for an award of attorneys' fees incurred in connection with post-judgment efforts spanning an approximate six-year period. By way of a judgment, dated June 29, 2023, the trial court effectively rubber-stamped that application by awarding every penny of the ***$3,570,3557.50*** sought by Robert.

In doing so, the trial court ignored the New Jersey Supreme Court's repeated admonishments not to passively accept the submissions of counsel in fee applications. Indeed, numerous opinions of the New Jersey Supreme Court and this Court have made unmistakably clear that fee applications must be subjected to a very high level of critical analysis and scrutiny.

Here, the trial court fell far short of meeting that elevated standard. The trial court did not meaningfully engage in the required calculation of a proper lodestar comprised of a reasonable number of hours multiplied by a reasonable hourly rate. Rather, the trial court approved every minute of the ***5,485.1 hours*** of legal work included in the fee application and approved Robert's counsels' rates in full – which ranged as high as $825 per hour and averaged almost $700 per hour for the four firm partners that performed roughly 94% of the subject services – despite those rates being multiples of the average rate in New Jersey. No reductions to the fee request were applied whatsoever. In fact, the

trial court awarded Plaintiff fees in connection with motions brought by Plaintiff that the same trial court denied based on an obvious lack of merit.

The nature of this omnibus fee application in and of itself should never have been countenanced by the trial court. Robert and his counsel sought payment for 5,485.1 hours of fees vaguely relating to "execution and collection efforts" (but supposedly not the same efforts for which Robert had already been awarded a total of $2,721,804.14 in attorneys' fees/costs) covering more than six years of post-judgment proceedings, two years of which the reviewing trial court judge, the Honorable Edward A. Jerejian, P.J.Ch. did not even oversee. Under these circumstances, no critical analysis was possible and the fee application should have been denied for that reason alone.

Indeed, the trial court judge who originally oversaw this matter, the Honorable Robert P. Contillo, P.J.Ch. (ret.), denied Robert's two prior applications, respectively filed in 2017 and 2018, in which Robert likewise sought all fees relating to general execution and collection efforts. Judge Contillo found there was no legal basis to generally award fees for collection efforts and instructed Robert that if he wanted to re-apply for such an award, he needed to first provide a basis connecting the specific collection efforts to an entitlement to awarded fees and then, once that was established, submit a

proposed quantification of the applicable fees. Robert, however, chose not to follow that orderly process mandated by Judge Contillo. Instead, Robert waited four years and then resubmitted a massive, unreviewable "global" fee application, seeking payment of his fees at substantially increased rates, which was erroneously granted by Judge Jerejian.

For these reasons and those set forth in more detail herein, the trial court erred and it is respectfully requested that this Court reverse those errors.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

This matter is presently subject to post-judgment proceedings. The portions of its lengthy and extraordinarily complex procedural history specifically relating to the issues of this appeal follow.

On August 19, 2016, the Superior Court of New Jersey, Bergen County, Chancery Division (Chancery Court) entered judgment in the amount of $24,697,571.14 in favor of Robert against his twin brother Ras; Ras and Robert's father, George Sipko (George); and their family-owned fund administration software business, Koger, Inc. (Koger). (Da202[2]).

In January 2017, in connection with post-judgment proceedings, George and Ras disclosed that they had transferred certain funds overseas. In April

[1] The procedural and factual histories are wholly entangled and are therefore combined for clarity and to avoid repetition.
[2] "Da" refers to Defendant-Appellant Ras Sipko's appendix.

2018, following a plenary hearing, the Chancery Court concluded that those transfers were made to avoid having sufficient cash to post a bond to secure the judgment. By Order dated July 3, 2018 (July 3rd Order), the Chancery Court directed George and Ras to return $18 million (Funds) by July 16, 2018, and, if they failed to do so, they were to appear in Court on July 19, 2018 to be remanded to the Bergen County Jail (BCJ) to serve each weekend until the money was returned. (See Da177).

When the Funds were not returned by July 19, Ras appeared in Court without issue to commence his commitment, but George did not, having by then left the country and not having returned since. (See id.)

After Ras spent approximately 70 weekends in jail, via Orders of January 22, 2020 and March 6, 2020, the Chancery Court ordered that Ras be committed to the BCJ full-time in a further effort to coerce him to repatriate the Funds. (See Da20, ¶55). Ras timely appeared at the BCJ on March 6, 2020, and began his full-time commitment. (See id.). Via Order of March 23, 2020, however, the Chancery Court, over Robert's objection, stayed the full-time commitment order and ordered that Ras be released due to the dangers posed by COVID-19. (See id.).

Via Orders filed March 21, 2022, the Chancery Court granted Robert's motion to vacate the stay of Ras's incarceration. (See id.). After his emergent

applications to this Court and the New Jersey Supreme Court were denied, Ras timely returned to the BCJ on April 1, 2022 and he has remained behind bars for the past 626 days[3] (as of December 18, 2023). (See id.).

On September 23, 2022, Robert filed a "motion for an award of attorneys' fees" seeking to require Ras and George, jointly and severally, to pay all of Robert's attorneys' fees in connection with all efforts to collect on the underlying judgment for the period of July 27, 2016[4] to September 7, 2022 (Global Fee Application). (Da3; Da6, ¶1). The Global Fee Application sought fees in the amount of $3,570,357.50 in connection with 5,485.1 hours of work covering the specified six+ year period. (Da7, ¶3). For the first two of those six years (July 27, 2016 to approximately July 27, 2018) now-retired Chancery Court Judge, the Honorable Robert P. Contillo, P.J.Ch. (ret.)[5] presided over the post-judgment proceedings. For the next four years to present, the Honorable Edward A. Jerejian, P.J.Ch. has presided over these matters.

This is not Robert's first fee application. Notably, the Global Fee Application claimed *not* to include "fees incurred and awarded as a result of certain other discrete efforts that previously resulted in awards of attorneys'

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[3] In total, Ras has spent approximately 784 days (as of December 18, 2023) incarcerated in the BCJ in connection with this litigation.
[4] July 27, 2016 is the date the Chancery Court issued its decision which resulted in the underlying August 19, 2016 judgment.
[5] Judge Contillo also oversaw all prior proceedings in the trial court from the case's inception in 2007.

fees … ." (Da7, ¶5). Rather, the Global Fee Application noted that although a total of $2,721,804.14[6] in attorneys' fees/costs had previously been awarded to Robert in connection with "discrete efforts" to remedy specific purported bad acts of Ras and/or George, legal work related to those efforts and the related specific purported bad acts were supposedly *not* included in the 5,485.1 hours of legal work included in the Global Fee App. (Da7-8, ¶5). In other words, the Global Fee App. sought payment of $3,570,357.50 in attorneys' fees for general "execution and collection efforts" *in addition to* the $2,721,804.14 in attorneys' fees that had been previously awarded to Robert in connection with remedying specific purported bad acts. (Da6-8; ¶¶2, 5).

Importantly, the Global Fee Application was also not the first time that Robert sought to have Ras pay all of his attorneys' fees in connection with *general post-judgment execution and collection efforts* (as opposed to fees in connection with remedying specific purported bad acts). Rather, it was at least the third time that Robert filed such an application. First, in April of 2017, the Chancery Court (then, Judge Contillo) denied Robert's motion to require the

[6] Because those prior orders were and remain interlocutory, they have not yet been the subject of appeals. Because the "judgment" granting Robert's Global Fee Application, unlike the prior orders, adjudicates all rights of the parties on a definite and separate branch relating to Robert's attorneys' fees for specified post-judgment collection efforts for a defined period of time, it is final notwithstanding that other branches of the general underlying controversy remain pending before the trial court.

Defendants to pay for all of Robert's attorneys' fees since the July 2016 decision, stating:

> The Court has determined that the defendants must pay for plaintiff's attorney's fees and costs reasonably incurred by plaintiff ***with respect to plaintiff's efforts – defensively and offensively – regarding security to be posted pending appeal***. However, the court does not agree that the defendants can at this stage of the proceedings be made to pay for all attorney's fees and costs incurred by plaintiff since the July, 2016 decision in seeking to ***collect*** on the judgment that was entered following the July decision. Attorney's fees and costs incurred in collection efforts must accordingly be backed out.
>
> [Da156 (emphasis added, except the emphasis of the word "collect," which was originally provided by Judge Contillo in his letter decision on Robert's fee application)].

Then, in July of 2018, Judge Contillo again denied an application by Robert for all of his attorneys' fees purportedly incurred due to collection efforts up to that point. In so doing, Judge Contillo stated as follows:

> I'm well aware of the efforts that the plaintiff has undertaken since the judgment was rendered to attempt to collect on the judgment. And their efforts have been almost on a weekly basis over the last two years to do that. So I'm sure that the ultimate attorney's fees that have been incurred will be substantial. Whether they're a million dollars or not, I don't know. But they'll be substantial.
>
> But I can't make an award of fees prior to the Court determining that the plaintiff is entitled to fees for collection. I did make a determination that they were

> entitled to fees that they incurred due to the shenanigans about the overseas transfers, and I made my award in that regard. But … I was not prepared then and I'm not prepared now to say that they're legally entitled to an award of fees against the defendants or any of the defendants for all of those collection efforts. ***It would have to really be done in a stage where the -- an application is made for a determination of entitlement. Then you get to the issues of quantification.***
>
> I don't consider that I've created a fund in court with respect to crossing the Rubicon of whether or not someone's entitled to fees. So that has to happen at some point before someone can seriously take up the question of how much if at all should the defendants pay toward the attorney's fees that the plaintiffs have incurred in their collection efforts
>
> There's an interesting question lurking in this application as to the extent to which Koger would be liable for efforts to collect from Koger on the judgment or efforts to collect as against Ras and George on the judgment. But I don't need to address that case. ***And I don't think under the general equitable authority of the Court I can entertain an application for fees that doesn't have a grounding in a particular application for a determination that in fact the plaintiffs are entitled to those fees***.
>
> [2T14:10-15:23].

Nevertheless, several years later when a new trial court judge assumed oversight of this matter, Robert filed the Global Fee Application, which supposedly is based on general collections-related activity over more than six years, untethered to any specific bad act(s) (for which $2.7+ million in

attorneys' fees has already been awarded). As he did in his prior applications for all fees incurred in connection with collections efforts, Robert relies on the broad discretion of the Chancery Court and Ras's wrongful acts as his "legal basis" for the Global Fee Application – bases that Judge Contillo had expressly rejected as sufficient for such an application.

Ras opposed the Global Fee Application and the trial court heard oral argument on April 28, 2023. (1T[7]). The trial court issued an oral opinion at the April 28, 2023 hearing pursuant to which it granted the Global Fee Application in its entirety and awarded the entire amount sought by Robert – $3,570,357.50 – without any reduction whatsoever. (1T68-72). This was memorialized by way of a judgment, rather than an order, dated June 29, 2023. (Da1-2). The judgment was issued in favor of both Robert and his counsel, Pashman Stein Walder Hayden, P.C., and against Ras and George, jointly and severally. Id. This appeal of that June 29, 2023 judgment follows.

[7] "**1T**" refers to the transcript of the April 28, 2023 hearing on the Global Fee App.; "**2T**" refers to the transcript of the July 28, 2018 hearing on Robert's prior global fee application; "**3T**" refers to the April 1, 2022 transcript of the hearing on another of Robert's prior fee applications; "**4T**" refers to the Certification of Lost Verbatim Court Record filed by the Court's Transcript Coordinator on November 20, 2023, related to the lost/damaged transcript of the May 27, 2021 transcript of the hearing on another of Robert's prior fee applications.

LEGAL ARGUMENT
POINT I

THE GLOBAL FEE APPLICATION AND THE CHANCERY COURT'S REVIEW OF IT DID NOT ACCORD WITH THE REQUIREMENTS OF NEW JERSEY LAW AND THE CHANCERY COURT'S OWN PRIOR ORDERS AND INSTRUCTIONS (Da3-233; 1T68-72)

A. Legal Standard for the Review of Fee Applications

The party bringing a fee application bears the burden of proving the reasonableness of the fees by a preponderance of the evidence in accordance with RPC 1.5(a). Lopez v. Pitula, 271 N.J. Super. 116, 122 (App. Div. 1994). "Compiling raw totals of hours spent … does not complete the inquiry. It does not follow that the amount of time actually expended is the amount of time reasonably expended." Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995). (quoting Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980)). Rather, in determining the reasonableness of attorneys' fees, a "lodestar" must be calculated, "which is that number of hours reasonably expended by the successful party's counsel in the litigation, multiplied by a reasonable hourly rate." Litton Industries, Inc. v. IMO Industries, Inc., 200 N.J. 372, 387-88 (2009) (citations omitted). Determining the lodestar "requires the trial court to evaluate ***carefully and critically*** the aggregate hours and specific hourly rates advanced by counsel." Rendine 141 N.J. at 335 (emphasis added). As

recognized by the Supreme Court in Litton Industries, RPC 1.5(a) requires the Court to consider:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
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> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent.
>
> Id. at 387.

The New Jersey Supreme Court has frequently "admonished trial courts 'not [to] accept passively' the submissions of counsel" to support the lodestar amount. Walker v. Giuffre, 209 N.J. 124, 132 (2012) (quoting Rendine 141 N.J. at 335); See Yueh v. Yueh, 329 N.J. Super. 447, 468 (App. Div. 2000) (rejecting a trial court's "unquestioning acceptance of all plaintiff's requested attorney's fees"). Rather, the Court must conduct a "***critical analysis***." Id. at 467 (emphasis added). In so doing, the Court must exclude hours that are not

reasonably expended if "excessive, redundant, or otherwise unnecessary." Rendine 141 N.J. at 335 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)). A further reduction is called upon "if the level of success achieved … is limited as compared to the relief that is sought." Id. at 336. This is true even if the efforts were "interrelated, nonfrivolous, and raised in good faith." Id. at 336 (quoting Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)). The party bringing the fee application must also establish that the actions taken were necessary. "[A] fee award is justified if [the party's] efforts are a necessary and important factor in obtaining the relief." Litton Industries, 200 N.J. at 386 (citations omitted).

The presentation of time spent must also be "set forth in sufficient detail to permit the trial court to ascertain the manner in which the billable hours were divided among the various counsel." Rendine, 141 N.J. at 337. While minute-by-minute precision is not required, the requestor must provide "some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates." Id. at 337. (internal quotation and citation omitted). Without this information "the court cannot know the nature of the services for which compensation is sought." Ibid.

After the reasonable number of hours has been established, the court must determine "whether the assigned hourly rates for the participating attorneys are reasonable." Id. In determining whether an attorney's hourly rate is reasonable, "the court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Id. at 337 (quoting Rode 892 F.2d at 1183). The New Jersey Supreme Court has repeatedly stated, however, that a "reasonable hourly rate" is one "that would be charged by an adequately experienced attorney possessed of average skill and ordinary competence—not those that would be set by the most successful or highly specialized attorney in the context of private practice." Walker, 209 N.J. at 132 (quoting Singer v. State, 95 N.J. 487, 500-01 (1984)).

Notably, numerous federal courts have found that when fee applications are grossly excessive and unreasonable, they may be denied in their entirety. See, e.g., Young v. Smith, 905 F.3d 229, 236 (3d Cir. 2018); Clemens v. New York Central Mutual Life Insurance Co., 903 F.3d 396, 402-03 (3rd Cir. 2018), Fair Housing Council of Greater Washington v. Landow, 999 F.2d 92, 98-99 (4th Cir. 1993), Lewis v. Kendrick, 944 F.2d 949, 958 (1st Cir. 1991), and Brown v. Stackler, 612 F.2d 1057, 1059 (7th Cir. 1980).

> Underlying these decisions is the idea that if courts did not possess this kind of discretion, 'claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such conduct would be reduction of their fee to what they should have asked for in the first place.

Clemens, 903 F.3d at 403. (citing Landow, 999 F.2d at 96 and Stackler, 612 F.2d at 1059).

Generally, a trial court is entitled to significant deference in awarding counsel fees, but a reviewing court still must reject such an award when there is a "clear abuse of discretion." Litton Industries 200 N.J. at 386 (internal citations omitted). Importantly, however, this deferential standard only applies where the "analytical framework is followed and the judge makes appropriate findings of fact…" Yueh, 329 N.J. Super. at 466. On the other hand, when there is a "lack of critical analysis of counsel's fee request … the judge's assessment of the reasonableness of the hours expended cannot be given weight and hence is not entitled to any deferential treatment." Id. at 467-68.

B. The Chancery Court Did Not Conduct the Required Critical Analysis and Could Never Have Done So Given the Method by Which the Global Fee Application was Presented.

Robert's Global Fee Application sought to have the Chancery Court engage in the utterly impossible task of critically analyzing **5,485.1 hours** of post-judgment collection work purportedly conducted over a roughly six-year

period (from July 27, 2016 to September 7, 2022). Two of those six years (July 27, 2016 to approximately July 27, 2018) were overseen by a different Chancery Court Judge (Judge Contillo). Accordingly, in 2023, Judge Jerejian was required to evaluate, among other things, a two-year period of extremely complicated and highly unusual post-judgment proceedings that he did not oversee and which took place half a decade or more before he conducted his review. That time-period of work was lumped in with the rest of the 5,485.1 hours of work for which Robert sought payment of counsel fees in the Global Fee Application.

Robert's counsel also claimed the Global Fee Application did not include "fees incurred and awarded as a result of certain other discrete efforts that previously resulted in awards of attorneys' fees." (Da7-8, ¶5). That is, Robert had previously been awarded a total of $2,721,804.14 in connection with several prior fee applications, all of which, importantly, ***were related to specific alleged bad acts*** by George and/or Ras. (Id.) Of course, it would have been incredibly time consuming and likely impossible for the Chancery Court or Ras to effectively compare the 5,485.1 hours sought for payment in Robert's Global Fee Application with the numerous prior fee applications to truly conclude that there was no duplication between the applications. While the Chancery Court indicated it was satisfied that it had reviewed the Global

Fee Application carefully enough to determine there were no entries included that are not subject to payment under New Jersey law, it simultaneously expressed frustration at Ras's insistence that a critical analysis of the application was legally required. (1T68:18-22) ("But now I guess the Court should spend, you know, hundreds of hours and whatever. But I looked at this carefully, and I agree, I think this [sic] items that shouldn't have been billed for, weren't billed for.").

Robert now seeks to benefit from submitting an application that was truly incapable of proper review. Obviously, neither the Chancery Court nor this Court had or has any real ability to conduct the legally mandated critical analysis of the Global Fee Application given its presentation as a single massive submission. See Yueh, 329 N.J. Super. at 467. Doing so would require, among other things, parsing through each of the countless motions and applications included in the 5,485.1 hours of legal work for which Robert sought payment**,** recreating the context in which each motion/application was made, determining whether it was granted (and, if so, to what degree), and, if granted to some degree, whether the work done was reasonable and necessary (and if so, to what degree). Clearly, this was not done by the Chancery Court and, realistically, could never have been done given the way the Global Fee Application was submitted.

Indeed, both the trial court and Ras were greatly prejudiced by Robert's unilateral delay in filing the Global Fee Application. For that reason alone, the Global Fee Application should have been denied in its entirety. Specifically, it should have been denied on the basis of the doctrine of laches. The New Jersey Supreme Court has stated that "the time period before laches applies ***should be stricter*** for motions for attorney's fees than for substantive redress." Urban League of Greater New Brunswick v. Carteret, 115 N.J. 536, 554 (1989)(emphasis added). That is because "[a] claim for attorney's fees … should be decided while the trial court still has a good memory of the plaintiff's degree of success, the counsel's advocacy, and the time expended on the case." Id. at 555. Thus, the Global Fee Application should not have been filed as a "global" application at all; rather, Robert should have applied for fees in connection with specific motions he filed or other activities at or near the time that those motions or activities took place[8]. In instead proceeding with a "global," application going back six years, he deprived Ras of a meaningful ability to challenge the application, thus depriving him of due process. See McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993) ("To comport with due process, a judicial hearing requires notice

[8] As noted below, Robert sometimes did apply for fees as part of the motions he filed, some of which applications were denied at the time they were made but appeared to be resubmitted in the Global Fee Application.

defining the issues and ***an adequate opportunity to prepare and respond***." (emphasis added; internal citations omitted). He also deprived the Chancery Court of its ability to conduct its required critical analysis. See Urban League, 115 N.J. at 546-556.

Perhaps the best evidence of the lacking critical analysis is the fact that the Chancery Court simply granted the application in its entirety without reducing it by a single cent, notwithstanding the fact that Robert's Global Fee Application openly sought fees for all of his collection efforts, ***including motions Robert filed that were denied.*** (see e.g. Da23, ¶67 ("we filed an order to show cause, which the Court ultimately denied …"). Indeed, although Robert's Global Fee Application did not identify every motion that was denied, in full or in part, for which he nevertheless sought payment in the Global Fee Application, there appeared to be many of them. This issue was raised before the Chancery Court. (1T56:16-18) (Ras's counsel: "By my count, they are seeking fees for seventeen motions that were either denied in their entirety, or denied in part."). Robert's Global Fee Application also appeared to improperly seek fees in connection with motions for which he had originally sought fees when he filed the motions despite the fact that the trial court previously denied those requests at the time it ruled on the subject motions. This issue was likewise raised below (1T56:16-18) but was erroneously not

accounted for by the Chancery Court. See Rendine 141 N.J. at 336 ("a trial court should reduce a lodestar fee if the level of success achieved in the litigation is limited as compared to the relief sought.") (internal citations omitted); Yueh 329 N.J. Super. at 468-69 (rejecting a trial court's fee award where "the judge did not properly relate the hours expended to the result and did not sufficiently discriminate between the hours expended on successful and unsuccessful positions.") In sum, the Chancery Court erred in failing to critically analyze the Global Fee Application. Instead, the Chancery Court only provided short, broad conclusions as to the appropriateness of the Global Fee Application and granted it. (1T67:20 – 1T70:18). This Court and the New Jersey Supreme Court have repeatedly made clear that is insufficient. See S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 91 (App. Div. 1998) (holding that trial court "failed to make specific findings as to the reasonableness of the legal services provided and the fees charged … and that the court erred in denying [opposing party's] request for discovery[9] with respect to those fees" and noting that the trial courts "oral opinion … simply

[9] In S.N. Golden Estates, this Court held, "***in view of the magnitude and complexity*** of Golden's counsel fee application and of the issues presented in the prior appeal and in this appeal, we conclude that Continental should be afforded an opportunity to conduct discovery in connection with the application. See Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 215-17, 521 A.2d 872 (App.Div.1987)." (emphasis added). There, the fee application award was $244,245.53. Id. at 86. The Global Fee Application at issue here is ***more than 14.6 times that amount***.

makes broad conclusionary statements regarding the legal services performed" which "does not provide an adequate foundation for appellate review." See also, Walker, 209 N.J. at 132 (2012); Rendine, 141 N.J. at 335); Yueh, 329 N.J. Super. at 468.

C. The Chancery Court Did Not Enforce Its Own Prior Orders and Instructions, Which Mandated that Robert Present His Fee Application for Collection Efforts Differently

Robert failed to follow the Chancery Court's required procedure, which it established in connection with denying Robert's two prior submissions of effectively the same fee application. As noted above, in April of 2017, Judge Contillo denied Robert's motion to require the defendants to pay for all of Robert's collection efforts since the July 2016 decision (i.e., exactly what Robert sought again in the Global Fee Application). In denying that prior application, Judge Contillo held:

> The Court has determined that the defendants must pay for plaintiff's attorney's fees and costs reasonably incurred by plaintiff with respect to plaintiff's efforts – defensively and offensively – regarding security to be posted pending appeal. However, the court does not agree that the defendants can at this stage of the proceedings be made to pay for all attorney's fees and costs incurred by plaintiff since the July, 2016 decision in seeking to ***collect*** on the judgment that was entered following the July decision. Attorney's fees and costs incurred in collection efforts must accordingly be backed out.

[Da156 (emphasis in original)].

In July of 2018, Judge Contillo denied another application by Robert for all of his attorneys' fees for collection efforts up to that point. There, Judge Contillo stated as follows:

> I'm well aware of the efforts that the plaintiff has undertaken since the judgment was rendered to attempt to collect on the judgment. And their efforts have been almost on a weekly basis over the last two years to do that. So I'm sure that the ultimate attorney's fees that have been incurred will be substantial. Whether they're a million dollars or not, I don't know. But they'll be substantial.
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> But I can't make an award of fees prior to the Court determining that the plaintiff is entitled to fees for collection. I did make a determination that they were entitled to fees that they incurred due to the shenanigans about the overseas transfers, and I made my award in that regard. But … I was not prepared then and I'm not prepared now to say that they're legally entitled to an award of fees against the defendants or any of the defendants for all of those collection efforts. ***It would have to really be done in a stage where the -- an application is made for a determination of entitlement. Then you get to the issues of quantification.***
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> I don't consider that I've created a fund in court with respect to crossing the Rubicon of whether or not someone's entitled to fees. So that has to happen at some point before someone can seriously take up the question of how much if at all should the defendants pay toward the attorney's fees that the plaintiffs have incurred in their collection efforts

> There's an interesting question lurking in this application as to the extent to which Koger would be liable for efforts to collect from Koger on the judgment or efforts to collect as against Ras and George on the judgment. But I don't need to address that case. ***And I don't think under the general equitable authority of the Court I can entertain an application for fees that doesn't have a grounding in a particular application for a determination that in fact the plaintiffs are entitled to those fees.***
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> [2T14:10-15:23; (emphasis added)].

Thus, the Chancery Court twice rejected Robert's claim that he is entitled to fees for all post-judgment collection efforts. In denying the second such motion, the Chancery Court explained that if Robert wanted to again seek fees for all collection efforts, he had to first establish his legal entitlement to fees for the collection efforts for which he sought payment. Judge Contillo made clear that the "general equitable authority of the Court" was insufficient to establish such legal entitlement. If Robert was able to come up with some other sufficient grounds for legal entitlement, however, then, by way of separate, subsequent application, he could set forth the quantity of fees requested and ask that they be awarded.

Robert failed to heed those instructions. Rather, he waited until Judge Contillo retired and then brought a single "global" fee application in which he sought $3.5+ million in fees covering over six years, much of which the reviewing judge, Judge Jerejian, did not oversee. The Global Fee Application

sought payment for 5,485.1 hours, which includes essentially everything that Robert's counsel has done in that time frame except issues which were already adjudicated in prior fee applications (Da7-9, ¶¶5,7); appeals (which they bafflingly claimed required the incurrence of another $1.4 million in fees) (Da8, ¶6); or actions regarding collection efforts pertaining to certain Slovakian properties, which were the subject of a separate fee application (Da16-17, ¶38). The Chancery Court could not possibly conduct the legally required "critical analysis" of 5,485.1 hours of work when presented in this improper summary fashion, Yueh, 329 N.J. Super. at 467. That is precisely why Judge Contillo required that Robert first establish a legal entitlement to fees, presumably tethered to a specific purported bad act(s), and then, if legal entitlement was established, file a motion for quantification of fees incurred in connection with the specific relevant work. If Robert wanted to seek fees for his collection efforts, he should have done so within a reasonable time after the work was done, and in the multi-stage fashion that Judge Contillo directed. Instead, Robert waited for over four years after Judge Contillo denied his last "global" fee application, ignored Judge Contillo's instructions as to how the application must be presented, and essentially sought to cram through an additional $3.5+ million judgment against Ras based upon the Chancery

Court's general ability to craft flexible equitable remedies – a basis already expressly rejected by Judge Contillo. (2T15:19-23)

It is well-established that "New Jersey is an 'American Rule' jurisdiction, meaning the state has a 'strong public policy against shifting counsel fees from one party to another.'" In re Estate of Folcher, 224 N.J. 496, 506-07 (2016) (citing In re Estate of Stockdale, 196 N.J. 275, 307 (2008) As Judge Contillo concluded, the broad equitable powers of the Chancery Court do not provide a legal basis for awarding Robert fees for all of his collection efforts in this case. The prior fee applications granted by the Chancery Court, including those granted by Judge Contillo, were each tied to specific purported bad acts, which the Chancery Court found served as a basis for the shifting of fees. (Da7-9, ¶¶5,7). Indeed, for those specific purported bad acts, Ras has already been sanctioned more than $2.7 million dollars in attorneys' fees/costs and has been incarcerated for nearly 800 days. Notably, the Global Fee Application included fees incurred prior to the Chancery Court's February 13, 2017 Order lifting the stay of execution. (See Da13, ¶26). Fees incurred prior to that date would have related strictly to standard post-judgment collection efforts. For all of these reasons, the Chancery Court erred in granting the Global Fee Application.

D. The Global Fee Application is Excessive and Punitive on Its Face and Should Have Been Denied for That Reason Alone

The Chancery Court should have denied the Global Fee Application outright based given the blatantly excessive quantum of fees sought. No critical analysis of the fees sought was even required to make that determination, but, at a minimum, the shocking numbers submitted for payment in the Global Fee Application should have given the Chancery Court pause.

On its own, the 5,485.1 hours of legal work sought for payment in the Global Fee Application is astonishing. Over the relevant time period, that equates to approximately 900 hours per year spent on general efforts to collect on the judgment. Again, this time is *in addition to* the thousands of hours purportedly spent by Robert's counsel on the "discrete efforts" in relation to other post-judgment collection proceedings tethered to specific bad acts for which Robert and his counsel were already awarded $2,721,804.14. (Da7-9, ¶¶5,7). The 5,485.1 hours also apparently excludes all time spent on related appeals, which Robert's counsel claimed constitutes an additional $1.4 million in fees not including in the Global Fee Application. (Da8, ¶6). It also excludes time spent on efforts to execute on defendants' assets in Slovakia. (Da16-17, ¶38). Combining all of these purported efforts, Robert's billing is roughly the

equivalent of one highly experienced attorney working on nothing but this post-judgment case all day, every business day, for six years. Such an extraordinary expenditure of time was not remotely reasonable or necessary.

5,485.1 hours on general collection efforts is excessive and punitive on its face, especially when millions in attorneys' fees have already been awarded for the thousands of hours purportedly spent on other efforts to "secure security" or otherwise remedy purported bad acts of the defendants. (Da7-9, ¶¶5,7; Da13, ¶27). Robert intentionally filed the Global Fee Application in its excess form hoping that the trial court would summarily grant it based on Ras's general bad acts during these post-judgment proceedings. Fee applications demonstrating this level of excess can and should be denied in their entirety to disincentivize parties from filing them. See, e.g., Young, 905 F.3d at 236; Clemens, 903 F.3d at 402-03; Fair Housing Council of Greater Washington v. Landow, 999 F.2d at 98-99; Lewis, 944 F.2d at 958; Brown, 612 F.2d at 1059.

E. The Chancery Court Did Not Properly Scrutinize the Billing Rates or Staffing Decisions of Robert's Counsel

The 5,485.1 hours of work for which Robert and his counsel sought payment in the Global Fee Application was conducted by twelve attorneys from the Pashman Stein Walder Hayden law firm, most of whom were partners of the firm or otherwise senior attorneys – specifically, eight partners, two

"counsel," and only two associates. (Da212-233). Of those twelve attorneys, the vast majority (93.8%) of the work – 5,145.7 hours – for which payment was sought was conducted by four partners, one of which, Michael S. Stein, Esq., is the firm's chair and managing partner, and another, Brendan M. Walsh, Esq. is co-chair of the firm's litigation department. (Id.) A mere 74.2 hours – only 1.3% of the total work sought for payment – was conducted by associates. (Da25, ¶75; Da233). The Chancery Court provided no analysis whatsoever as to whether it was reasonable or necessary for Robert's counsel to have proceeded in this way, utilizing almost exclusively senior attorneys likely commanding some of the highest rates in the firm to do almost all of the work. Indeed, it is well established that it is not proper for senior attorneys to do all the work and then demand their higher rates when many of the same tasks could have been delegated to less experienced professionals. Delaware Valley Citizens' Council for Clean Air v. Pennsylvania, 762 F.2d 272, 279 (3d Cir. 1985) (awarding able and experienced counsel fees under the Clean Air Act at paralegal rates for work which was "mundane or minor in character"), modified, 478 U.S. 546, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986); In re Fine Paper Antitrust Litig., 751 F.2d 562, 591-93 (3d Cir. 1984) (awarding partners compensation under the equitable fund doctrine in a class action at an associate attorney level for "tasks which are customarily performed by junior associates

or paralegals"); Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983) ("Nor do we approve the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates. Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn."); Transamerica Life Ins. Co. v. Daibes Gas Holdings Atlanta, L.L.C., Civil Action No. 18-cv-10869(SRC)(CLW), 2022 U.S. Dist. LEXIS 44489, at *15 (D.N.J. Jan. 26, 2022)("While a partner may rightly spend time working on all of these tasks, (e.g., drafting a pleading, taking part in discovery, and working with an expert), most appropriately in a supervisory capacity, Plaintiff here does not adequately justify the amount of partner time spent on these tasks.")(citing Ursic, 719 F.2d. at 676); see also, Rendine, 141 N.J. at 336 (trial court may reduce a fee request if the hours expended "exceed those that *competent counsel* reasonably would have expended to achieve a comparable result")(emphasis added).

The Chancery Court also erred in not properly analyzing the billing rates of counsel. The Chancery Court's oral opinion reflects no real analysis of the rates or how they compare to "prevailing market rate in the relevant community." Rendine 141 N.J. at 337 (internal quotation/citation omitted).

Moreover, the New Jersey Supreme Court has repeatedly advised that a "reasonable hourly rate" is one "that would be charged by an adequately experienced attorney possessed of average skill and ordinary competence—not those that would be set by the most successful or highly specialized attorney in the context of private practice." Walker, 209 N.J. at 132 (quoting Singer, 95 N.J. at 500-01). The Chancery Court's opinion does not even address that issue. Rather, the Chancery Court's opinion as to the rates was limited to the following conclusion: "Fees customarily charged. I think they are similar for legal services for the type of attorneys and the work that is involved here." (1T71:5-7). That is simply not sufficient analysis in that it is unclear what the Chancery Court's conclusions as to rates were based on.

The Global Fee Application did not include any objective information as to the "prevailing market rate in the relevant community" or any information whatsoever about the rate "that would be charged by an adequately experienced attorney possessed of average skill and ordinary competence." Instead, the Global Fee Application simply referred to the Chancery Court's prior approval of Robert's counsels' rates in two earlier fee applications (Da25-26, ¶¶77-78). Even in those prior fee applications, however, the Court did not engage in the required analysis of the rates and almost no information was provided by Robert's counsel in those prior fee applications to support

their claim that their proposed rates were not well above the applicable standard. (See 3T42:8 -19[10]; Da246-270; Da271-78) In fact, in previously claiming that their rates are consistent with rates customarily charged in the area, Robert's counsel cited solely and exclusively to the rates of Cole Schotz P.C. set forth in that firm's request for professional compensation pursuant to 11 U.S.C. §§327, 328, 330 and 331 as bankruptcy counsel for Modell's Sporting Goods, Inc. in a highly complex Chapter 11 bankruptcy matter. (Da259, ¶52; Da263-70) Clearly, that application was made in an entirely different context, pursuant to specific sections of the United States Bankruptcy Code, was not subject to the mandatory critical analysis set forth by the New Jersey Supreme Court in Rendine and its progeny, and is poor evidence of the area's customarily charged hourly rate or one "that would be charged by an adequately experienced attorney possessed of average skill and ordinary competence." Walker, 209 N.J. at 132. Indeed, Robert's counsel's rates are, indisputably, far higher than those charged by an adequately experienced attorney possessed of average skill and ordinary competence. According to the New Jersey Law Journal, the average rate for New Jersey lawyers in 2016 was

[10] Unfortunately, we have been advised by the Court's Transcript Coordinator that the verbatim record of the May 27, 2021 hearing on Robert's "2021 fee application" was damaged or otherwise lost. Accordingly, on November 20, 2023, a Certification of Lost Verbatim Court Record was filed by the Transcript Coordinator. See 4T.

$288 per hour. (Da283). The four primary attorneys for whose work payment was sought – Messrs. Stein, Walsh, Corlett, and Malone – sought hourly rates of $825, $725, $635, and $550, respectively; averaging almost $700 per hour, which is nearly 2.5 times the 2016 average for New Jersey lawyers. (Da24-25; ¶¶71-74; Da283).

The Chancery Court also wrongfully approved Robert's counsel's application of their billing rates for 2022 (the year the Global Fee Application was filed) rather than the rates in effect when the applicable work was actually performed (up to six years earlier). For that proposition, Robert and the Chancery Court relied on Rendine v. Pantzer, 141 N.J. 292 (1995), which, in turn, cited Pennsylvania v. Delaware Valley Citizens' Council, 483 U.S. 711, 716 (1987) for authority. (Da25-26; ¶77; 1T71). There, the Court stated the current rate, rather than the rate at the time the work was done, should be applied "[t]o take into account delay in payment" that exists in the typical contingency payment arrangement, particularly in civil rights or discrimination cases that involve fee shifting statutes. Rendine, 141 N.J. at 337 ("We hold that the trial court, after having carefully established the amount of the lodestar fee, should consider whether to increase that fee to reflect the risk of nonpayment in all cases in which the attorney's compensation entirely or substantially is contingent on a successful outcome"); Delaware Valley 483

U.S. at 716 ("When plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable decision finally eventuates, which may be years later, as in this case. Meanwhile, their expenses of doing business continue and must be met. In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value."); see also; Ginsberg v. Bistricer, No. A-2194-10T3, 2012 N.J. Super. Unpub. LEXIS 497, at *26-27 (Super. Ct. App. Div. Mar. 7, 2012) ("Rendine indicates that when awarding attorneys' fees under fee shifting statutes, the trial court should take into account the delay in payment, and award fees "based on current rates rather than those in effect when the services were performed." Id. at 337. ***The Rendine analysis is, however, generally limited to "setting fee awards in civil rights and discrimination cases, or other fee shifting contexts."***) (citing Distefano v. Greenstone, 357 N.J. Super. 352, 362 (App. Div.), certif. denied, 176 N.J. 278 (2003))) (emphasis added).

Obviously, the basis for these holdings in Rendine and Delaware Valley is the concern that an attorney in a typical contingency payment arrangement involving statutory fee shifting works throughout the life of the case but does not get paid unless and until they obtain a favorable judgment for their client, therefore taking on additional risk. See Delaware Valley 483 U.S. at 716. This

case does not present that same concern. Instead, here, Robert and his counsel simply waited for many years to file the Global Fee Application after the prior two such applications were denied by Judge Contillo in April 2017 and July 2018. Nothing prevented them from filing years earlier and, of course, they did file the prior two applications, which were denied. They then chose to wait several years before trying again, perhaps hoping for a different result from a different judge, which they did ultimately obtain. Having made that unilateral choice, Robert and his counsel should not be allowed to apply significantly higher 2022 rates in their application and thus be rewarded for their entirely self-imposed years-long delay. Notably, ***between 2018 and 2022, Robert's counsel's rates increased by approximately 30% on average***. (See Da109; Da149) [11]. Although their 2016 rates were not specified in the Global Fee Application, assuming they were increased by an amount similar to their increases between 2018 and 2022, ***Robert's counsel's rates increased by an average of almost 53% between 2016 and 2022***[12].

[11] The 2018 rates of Messrs. Malone, Corlett, Smith, and Stein were $400, $475, $575, and $675, respectively. (Da109). Their 2022 rates were $550 (37.5% increase), $635 (33.68% increase), $725 (26.09% increase), and $825 (22.22% increase, respectively. (Da149)

[12] This is assuming the 2016 rates of Messrs. Malone, Corlett, Smith, and Stein were $325, $400, $500, and $600, respectively ($75 less than their respectively 2018 rates). This is a reasonable assumption since, between 2018 and 2020 each of their rates increased by $75, except Mr. Corlett, whose rate increased by $100.

The Global Fee Application was filed on September 23, 2022. Had Robert and his counsel decided to wait a few more months until the end of the calendar year, would they instead have been entitled to their even higher 2023 rates? Such a finding would be a total distortion of Rendine and Delaware Valley and would incentivize all litigants, where applicable, to delay filing fee applications for as long as possible. Therefore, if this Court determines that Robert and/or his counsel are entitled to any fees from the Global Fee Application – which it should not do – the rates in place when the work was conducted should be applied, not the 2022 rates.

POINT II

THE CHANCERY COURT ERRED IN GRANTING THE FEE APPLICATION, AS RAS HAS ALREADY BEEN SANCTIONED TO AN UNPRECEDENTED DEGREE FOR THE SAME CONDUCT (Da7-9, ¶¶5,7; Da20, ¶55; Da177; 1T68-72)

Prior to granting the Global Fee Application and thereby awarding Robert and his counsel a judgment in the amount of $3,570,357.50, the Chancery Court had already issued unprecedented sanctions against Ras, including ordering Ras to full-time incarceration. Indeed, Robert's true underlying motive for the Global Fee Application was likely to tack on to the

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(See Da109 (2018 rates); Da119 (2019 rates); Da134 (2020 rates); Da143 (2021 rates; Da149 (2022 rates)).

amounts owed by Ras so he can later argue that Ras's incarceration should continue even if the primary judgment is satisfied.

As of December 18, 2023, Ras has been incarcerated for approximately 784 days over the last four years. Moreover, Ras has already been sanctioned over $2.7 million dollars as result of Robert's numerous prior fee applications in connection with specific alleged wrongful actions. Recitation of these facts is not in any way intended to excuse Ras's prior conduct. This history, however, demonstrates that Ras has been and continues to be severely punished to a degree perhaps never seen before in any New Jersey Court. In fact, the Chancery Court acknowledged that it had never seen a sanction as high as the $50,000 sanction levied against Ras's prior counsel (3T43:15-17), but, just by way of the prior fee awards (not including the Global Fee Application), Ras has already been personally sanctioned 60 times that amount. No more sanctions are warranted by the circumstances or the law and the Chancery Court erred in granting the Global Fee Application, which constituted duplicative sanctions for conduct Ras had already been, and continues to be, forcefully sanctioned for.

In the context of another type of civil sanction, the New Jersey Supreme Court has made clear that a Court considering a monetary penalty must consider whether the subject party has already been, or is likely to be,

punished for the same conduct. See, e.g., Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 139 (1987). In Kimmelman, the New Jersey Supreme Court established seven factors that should be considered by a court determining a civil penalty. Id. at 137-140. Notably, the sixth factor in the Kimmelman analysis was whether criminal or treble damages actions have also been filed since "[a] large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation …"[13] This Court has since clarified that the sixth factor of the Kimmelman analysis requires a court "to specifically acknowledge and evaluate the impact of the totality of the sanctions imposed … to decide whether, in the aggregate, it would be unduly punitive to impose a substantial penalty on top of those sanctions." Comm'r of Banking & Ins. v. Nasir, No. A-6060-04T1, 2007 N.J. Super. Unpub. LEXIS 1758, at *7-8 (Super. Ct. App. Div. Jan. 30, 2007) (remanding an agency decision in which the evaluating commissioner failed to properly evaluate whether other punishment aimed at the defendant for the same conduct should reduce the sanction issued). While Kimmelman was decided in the context of a determining a sanction under the New Jersey Antitrust Act,

[13] The Kimmelman Court's complete list of factors to be considered can be summarized as: (1) the good or bad faith of the defendant, (2) the defendant's ability to pay, (3) the amount of profits defendant gained as a result of the illegal activity, (4) the injury to the public, (5) the duration of the conspiracy or scheme, (6) whether criminal or treble damages actions have been filed, and (7) whether past violations had occurred.

N.J.S.A. § 56:9-2 to -19, the Kimmelman factors have been applied in other contexts. Notably, the Kimmelman factors were, just a few months ago, applied by this Court in evaluating sanctions in the context of a civil action concerning violations of the Consumer Fraud Act, N.J.S.A. § 56:8-1 to -227. See Platkin v. 22mods4all Inc., No. A-2717-21, 2023 N.J. Super. Unpub. LEXIS 1734 (Super. Ct. App. Div. Oct. 12, 2023). See also, Caride v. Young, No. A-5419-17T4, 2019 N.J. Super. Unpub. LEXIS 2195 (Super. Ct. App. Div. Oct. 25, 2019) (applying Kimmelman factors in determining sanctions for violation of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. § 17:22A-26 to - 57 and the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to – 34). The focus of the Kimmelman analysis on considering other sanctions that the defendant has been subject to also makes sense here in the context of sanctions for civil contempt.

There can be no dispute that Ras has already been sanctioned to an unprecedented degree. He remains incarcerated in the Bergen County Jail to this day, and, unless he is released beforehand, he will likely have spent more than 1,000 days behind bars by the time this appeal is decided. In addition to the years-long loss of his liberty, he has also already been sanctioned at least $2,721,804.14 in connection with specific prior bad acts. Another massive monetary sanction – one more than $3.5 million – is undeniably punitive. It

serves no justifiable purpose, is legally unwarranted, unprecedented, and does not practically benefit the New Jersey Court, the public, or anyone else. In concluding otherwise, the Chancery Court erred.

CONCLUSION

For the reasons set forth above, Ras respectfully requests that this Court vacate the subject judgment of the Chancery Court.

Respectfully submitted,
NEWMAN, SIMPSON & COHEN, LLP
Attorneys for Defendant-Appellant,
Rastislav Sipko

By: /s/ Daniel Cohen
Daniel J. Cohen, Esq.

Dated: December 18, 2023

ROBERT SIPKO, Plaintiff-Respondent, v. RASTISLAV SIPKO, Defendant-Appellant, and KOGER, INC., KOGER DISTRIBUTED SOLUTIONS, INC., KOGER PROFESSIONAL SERVICES, INC., KOGER LIMITED (DUBLIN) and GEORGE SIPKO, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3189-22 **ON APPEAL FROM**: Chancery Division, Bergen County Docket No. BER-C-393-07 Sat Below: Hon. Edward A. Jerejian, P.J.Ch. **Civil Action**

BRIEF OF PLAINTIFF-RESPONDENT ROBERT SIPKO

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TABLE OF PLAINTIFF-RESPONDENT'S APPENDIX

[1] This and all other transcript excerpts were provided to and considered by the trial court as an exhibit and are thus included in Plaintiff's appeal appendix.

PRELIMINARY STATEMENT

Defendant-Appellant, Rastislav Sipko (Ras), and his father, Defendant George Sipko (George), have engaged in one of the most egregious frauds on the courts ever seen in this State following the issuance of an $18 million buyout award ($25 million with interest) in favor of Plaintiff-Respondent, Robert Sipko (Robert), in July 2016. Despite having the ability to either pay in full or bond the judgment pending their merits appeal, in cash, Defendants instead misrepresented their finances to the trial court and secreted all their liquid assets overseas to avoid paying the judgment. After the transfers were discovered and the excuse of an antecedent debt proven false at a plenary hearing, Defendants doubled down. George fled the country and Ras remained in the United States while George funded his lawyers to file unending applications with the courts. Over the course of six years, Defendants pursued serial applications and more than 20 appeals to stop the execution process on the premise that they had no funds overseas, all of which was proven demonstrably false in January 2023 when Plaintiff located $3 million in cash accounts in Slovakia held by Ras and George, and it was confirmed George is paying for Ras's attorneys.

Defendants' obstruction has required extraordinary efforts by Plaintiff and his counsel to attempt to collect on the judgment. Through exhaustive work, Plaintiff has secured the turnover of multiple accounts, the appointment of a

special fiscal agent to operate and then sell Defendant Koger, Inc. (Koger), a closely-held family company that Defendants foisted the burden of the judgment upon, liquidated real estate, and engaged in discovery to locate and liquidate other property, including Ras's Porsche 911; Plaintiff has obtained $21.5 million towards the judgment, with approximately $6.2 million outstanding.

This firm, which has worked on a contingency basis since the underlying trial concluded in 2009, was required to undertake substantial uncompensated post-judgment work to collect on a judgment from Defendants who could have readily paid it in full at any time or bonded it, either of which would have eliminated the need for the millions of dollars in time spent chasing them. Thus, when efforts to enforce the judgment in New Jersey were largely exhausted in 2022, Plaintiff moved for an award of post-judgment attorneys' fees. The motion was supported by a brief explaining the entitlement to those fees because of Defendants' fraud on the court, and a detailed affidavit addressing the factors of R.P.C. 1.5 and supported by comprehensive billing records. Significantly, the motion did not include the $1.4 million spent opposing Defendants' countless appeals. Nor, of course, did it include any fees previously awarded. After deliberating for months and holding oral argument in April 2023, the Chancery court granted the motion, finding Plaintiff entitled to an award of attorneys' fees and that the fees sought were reasonable, thus awarding $3,570,357.50 in fees.

That fee award was well within the court's discretion and justified by the egregious circumstances of this case. None of Ras's arguments on appeal support its reversal. Ras rests heavily on an invented procedural technicality, claiming there needed to be a separate motion to establish entitlement to fees before quantification of them could be addressed. But that position finds no support in the Court Rules. Indeed, where the Rules address it, they require both issues to be addressed in the same motion.

Ras also claims that it was "impossible" for the Chancery court to review the contemporaneous billing records submitted, but the Hon. Edward A. Jerejian, P.J.Ch., expressly stated that he reviewed the time entries. Judge Jerejian likewise acted within his broad discretion in finding the rates charged to be reasonable and in line with those charged by other area firms, after considering supporting documentation of rates charged by comparable firms.

Finally, Ras claims the fees sought were excessive, but despite ample time to do so, Ras has not identified any specific duplicative or objectionable time entry, and has refused to delineate how much he and George have spent on attorneys. This complex, high-stakes matter – handled on a contingency basis – required, due only to Defendants' yearslong fraud on the New Jersey Judiciary, exhaustive work and dedicated effort. The fee award should be affirmed in full, and Ras's appeal dismissed.

COMBINED PROCEDURAL HISTORY AND STATEMENT OF FACTS[2]

A. Summary of Proceedings.

Plaintiff filed this action in 2007, and was, for the most part, denied relief following a 2008 trial. Both Plaintiff and Defendants appealed, and the case ultimately made it to the Supreme Court for the first time in 2012, which resulted in Robert's claims being reinstated and a remand to address what relief he should be afforded. Sipko v. Koger, Inc., 214 N.J. 364 (2013). Plaintiff's underlying fee application that is the subject of this appeal did not seek an award for any of the fees incurred from 2007 to 2016 prior to the entry of an August 19, 2016 judgment in his favor. (Da6).[3]

On remand from the Supreme Court, the trial court awarded Plaintiff an approximately $18 million buyout of his ownership interest in two family

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[2] The procedural and factual histories are closely interrelated and are thus combined for clarity and to avoid repetition.

[3] "Da" refers to Defendant Ras's appendix.
"Pa" refers to Plaintiff's appendix.
"Db" refers to Ras's brief.
"1T" refers to the transcript of the April 28, 2023 Chancery court hearing.
"2T" refers to the transcript of the July 27, 2018 Chancery court hearing.
"3T" refers to the transcript of the April 1, 2022 Chancery court hearing.
"4T" refers to the November 20, 2023 Certification of Lost Verbatim Court Record filed by the Court's Transcript Coordinator, with respect to the lost/damaged transcript of the May 27, 2021 Chancery court hearing.

companies, Defendants Koger Professional Services, Inc. and Koger Distributed Solutions, Inc., and held all defendants, including Ras and George, jointly and severally liable. The Supreme Court affirmed that judgment in full. Sipko v. Koger, Inc., 251 N.J. 162 (2023).

While nearly unmentioned in Ras's appeal brief, the die was cast in this matter by Defendants when they decided in July 2016 that they were not going to, ever, pay a single penny voluntarily to Robert, and instead would fight all collection efforts by hook or by crook. Thus, in the days immediately following the court's July 27, 2016 buyout decision (Pa1-12), and while proceedings were ongoing concerning the form of final judgment ultimately entered on August 19, 2016, Ras and George secretly transferred nearly all their liquid assets – more than $20 million – to family members in Slovakia. (Pa54-55). Defendants did not voluntarily disclose these transfers (as is disingenuously suggested in Ras's brief (Db3)) or the purported antecedent debt they later claimed the transfers were to repay. Instead, Defendants represented that they would post a cash bond for the judgment pending appeal. (Pa54).

Based on that representation, the judgment contained a stay of execution for 30 days. (Da204). Defendants then, just before the stay of execution was to expire, and again without disclosing the transfers, falsely claimed that they lacked sufficient collateral to obtain a cash bond, and filed motions seeking

permission to pledge largely illiquid alternative security, including their interests in Koger, real property in Greenwich, Connecticut (a mansion that Ras owned through a single-member LLC), and $3 million in cash from Koger. Sipko, 251 N.J. at 173. The stay was granted subject to accurate asset disclosures being made by Defendants to verify Defendants' asserted inability to post liquid security. Ibid.

After several motions over the gross inadequacy of Defendants' disclosures, and only after Plaintiff had been granted permission to subpoena their bank records, Defendants finally disclosed the overseas transfers in January 2017. (Pa55). On February 13, 2017, the court lifted the stay of execution and forfeited to Plaintiff all collateral that had been pledged with the exception of Defendants' Koger stock, and expanded a constructive trust that had been placed over Koger's profits to include all of Defendants' assets, wherever located. (Pa31-32). The powers of a court-appointed special fiscal agent were expanded pursuant to a March 3, 2017 order to include overseeing the constructive trust and Koger's operations, with George and Ras being permitted, over Plaintiff's objection, to continue at the helm of the entity as President and COO, with the special fiscal agent directed to make periodic payments to Plaintiff from the entity towards the judgment. (Pa34-41).

In April 2017, the court awarded Plaintiff attorneys' fees for efforts to secure security for the judgment in light of Defendants' misconduct. (Da155). That fee award was subsequently quantified at $599,653.48, and did not include other post-judgment fees other than those to "secure security." (Pa48). The court denied those other fees without prejudice as it did "not agree that defendants can ***at this stage of the proceeding*** be made to pay" fees incurred "in seeking to collect on the judgment." (Da156) (emphasis added).

After a week-long plenary hearing in April 2018, the trial court issued a July 3, 2018 order and decision rejecting Defendants' story of an antecedent debt owed to a cousin as a "made up story to camouflage a desperate effort to secrete assets overseas to family members to shield those monies from" Plaintiff. (Pa67). The court ordered the return of the funds and weekend commitment to coerce compliance. (Pa73).[4] George fled the country and remains a fugitive. Sipko, 251 N.J. at 176. Ras chose jail over compliance and, after weekend commitment proved insufficiently coercive, his commitment was increased to full-time (which was stayed for two years during the height of the pandemic). (Pa200; Pa201). Ras has filed appeals and serial motions in all levels of courts

[4] The court awarded Plaintiff's fees incurred in prosecuting the overseas hearing. Plaintiff separately moved again for fees incurred in pursuing collection efforts, but the court denied that application without prejudice, finding it had not made a determination that Plaintiff was entitled to those fees. (Da158).

seeking release based on a feigned inability to return any funds, including an unsuccessful petition for a writ of habeas corpus in which the federal court fully approved of Ras's ongoing civil commitment for his ongoing refusal to comply with court orders to return funds from overseas to pay the judgment (as opposed to returning funds to pay his lawyers, which is what they are being returned to do, in violation of court orders). (Pa110-148; Pa194-199; Pa202-252).

In January 2023, Ras retained additional counsel (he currently has three firms, including McElroy Deutsch and Chiesa Shahinian & Giantomasi, as counsel of record before the trial court in this matter), and dismissed his pending appeal of his fulltime commitment so he could instead pursue his third motion in the trial court seeking release (under his new counsel). (Da19; Pa93; Pa211). The motion was accompanied by a sworn certification from Ras stating that he had no additional assets he could pay towards even partial compliance with the order to return the secreted funds. (Pa95-98). That certification was proven brazenly false, as days after it was submitted, a public marshal in Slovakia located, froze and distributed to Plaintiff an account holding $2 million of the funds Ras sent overseas, and froze a $1 million account belonging to George. (Pa106).[5] Ras and George have filed applications in Slovakia to reclaim those

[5] Ras's objection to the trial court and this Court's consideration of this evidence based on the timing of its discovery is misplaced. The revelation of Ras's and

funds and opposing other foreign execution efforts, misrepresenting to the Slovakian courts that the New Jersey judgment has been fully satisfied. (Pa170-178). The $17 million remainder of the secreted funds are unaccounted for.

B. Plaintiff's Exhaustive Execution Efforts Result in the Collection of $21.5 Million Despite Defendants' Repeated Frauds on the Courts Engaged in to Thwart Execution.

i. Appointment of Special Fiscal Agent, Turnover Motions and Sales of Real Property.

Since the lifting of the stay of execution in 2017 and because of Defendants' refusal to disclose and return the secreted funds, Plaintiff has been required to engage in herculean efforts – and incurred substantial attorneys' fees that would not have been necessary but for Defendants' conduct – to attempt to collect on the judgment in the face of unrelenting, bad faith efforts from Defendants to obstruct any collection. To achieve their objective, Defendants have filed uncountable applications from 2016 to 2023 on the now-proven-fraudulent premise that they did not have $20 million in cash hidden overseas available to pay the judgment. A summary of Plaintiff's efforts and Defendants' frauds, which were well-known to the trial court, follows.

George's Slovakian accounts only crystallized that their strongly suspected misrepresentations were indeed outright perjury, and the trial court was entitled to take judicial notice of these intervening filings in evaluating the equities of the motion before it. See N.J.R.E. 201(b)(4); N.J.R.E. 201(c).

Immediately following the lifting of the stay of execution in February 2017, Plaintiff caused writs of execution to be served on Defendants' financial institutions. (Da14). Plaintiff then filed seven successful turnover motions seeking to recover the limited funds that remained in the United States. (Da14-15). Defendants opposed several of the motions, with George arguing without evidence that the funds belonged to his wife. (Da14-15). All turnover motions were granted, resulting in recovery of approximately $630,000. (Da14-15). Plaintiff also secured a levy and turn-over order on accounts held at Merrill Lynch worth approximately $1.1 million, however Ras attached the accounts in a Connecticut divorce proceeding, and they have not been turned over, even though Robert was awarded 65% of the accounts (~$700,000) by a Connecticut court (with Ras's wife receiving the other 35%). (Pa42-47; Pa88-89).

Plaintiff also engaged in efforts to liquidate the real property that had been pledged, forfeited, and ordered sold after the stay of execution was lifted, including a house in Mahwah, a parcel of land in Mahwah, and a condominium in Passaic. (Da15-16). Defendants strenuously opposed marketing efforts, seeking to have the Mahwah residence listed for hundreds of thousands more than recommended by the special fiscal agent's real estate agent, and resisting efforts to place a "For Sale" sign on the property. (Da15-16).

The special fiscal agent was thus required to seek authority to auction that property. Even though it was jointly owned by George and Ras as tenants in common, George's wife, Olga Sipko (Olga), for the first time, then asserted a possessory interest in the property, requiring further motion practice. The court ordered a sale by auction over George and Olga's objection, and the auction was conducted in June 2018. (Da15). The highest bidder was discovered to have undisclosed connections to George and Ras, leaving Plaintiff and the special fiscal agent concerned there was a straw-buyer and the sale to him would fail to close. (Da15-16). The court approved the sale to the second-highest bidder – with a judgment credit in favor of Defendants for the highest bid – but only after additional motion practice and an attempted order to show cause filed by Defendants' straw-man purchaser seeking to prevent the sale to a disinterested third party from closing. (Da15-16).

Motion practice was required to close the sales of two other forfeited properties in Mahwah and Passaic. (Da16). Although the Passaic property was owned by George, then a fugitive after fleeing to avoid the weekend commitment ordered on July 3, 2018, Ras stood in George's shoes to file motions opposing the sale, including objecting to the realtor and sale price, and filing a meritless motion for reconsideration related to the sale. (Da16). The court approved both sales. (Da16).

ii. Operation and Sale of Koger to Pay for the Judgment.

In addition to the execution efforts set forth above, Plaintiff was also required to pursue substantial motion practice to enforce the constructive trust over Koger (the entity pledged as security on the false premise that cash was not available to bond or pay the judgment) and to ultimately pursue its sale towards satisfaction of the judgment. (Da17). In March 2017, several submissions were made to the court concerning the authority of the special fiscal agent to oversee Koger's operations, including the distribution of a $3.7 million payment to Koger being held in escrow. (Da17). The court approved $2.5 million being distributed to Plaintiff, with the remainder being allotted for Koger's operating expenses, but which Ras and George purloined thereafter. (Da17).

Ras, then Koger's COO, continually disregarded the special fiscal agent's instructions concerning preserving Koger's revenues to make payments toward the judgment – including making unauthorized payments to himself and George. (Da17). This resulted in further motion practice to provide the special fiscal agent with signatory authority over Koger's financial accounts. (Da17). Plaintiff's counsel was also required to devote time to review of the special fiscal agent's periodic budgets, and to respond to motion practice related to court approval of those budgets filed by Defendants. (Da17).

In December 2017, after it became clear Defendants would not abide the special fiscal agent's instructions concerning the operation of Koger for the benefit of Plaintiff, Plaintiff filed a joint application with the special fiscal agent seeking the removal of George and Ras from Koger and to authorize a due diligence investigation into Koger's sale prospects. (Da17). Although the court initially declined to remove George and Ras, it authorized the retention of the DAK Group to investigate Koger's sale prospects, and ordered George and Ras to cooperate with that effort. (Da17).

Lengthy motion practice then ensued relating to Koger's sale and George and Ras's efforts to obstruct it. (Da18-21). Based on the outcome of the DAK Group's investigation – which took longer than anticipated because Ras delayed providing responses to information requests – the court ordered the special fiscal agent to sell Koger in April 2018 and again ordered George and Ras to cooperate in the sale process. (Da18). Instead of cooperating, they continued to obstruct and delay providing information needed to bring Koger to market, and Plaintiff again filed a motion seeking their removal in May 2018. (Da18). The court granted the special fiscal agent the authority to remove George and Ras from management if they continued to be uncooperative. (Da18). The special fiscal agent removed George in July 2018 after he fled the country to avoid the court's July 3, 2018 order and became a fugitive. (Da18). After Ras continued to be

uncooperative, and after it was revealed, after the fact, that Ras had filed unauthorized amended tax returns on behalf of Koger (in an attempt to lower George's tax burden, which triggered an IRS audit), the special fiscal agent removed Ras in November 2018. (Da19). Ras filed an order to show cause seeking his reinstatement, which the court denied in January 2019. (Da19).

In 2018, Ras retained new counsel – Newman, Simpson, & Cohen, LLP – after his removal, who filed serial motions related to stopping Koger's sale, including seeking to permit Ras to obtain a loan to "secure" the judgment using Koger as collateral, seeking to gain access to sensitive information concerning the sale process, and to stop the sale and "reset" the powers of the special fiscal agent. (Da19). Plaintiff opposed the motions, and they were denied. (Da19).

In June 2019, Ras retained yet another firm – McElroy, Deutsch, Mulvaney & Carpenter, LLP. (Da19). That firm filed an additional series of applications seeking to permit Ras and George to "secure" the judgment using a loan from a third-party lender secured by Koger and Ras's forfeited Greenwich, Connecticut mansion (assets that George and Ras had no right to pledge to a lender because they had already been pledged and forfeited to Plaintiff). (Da19). The applications were premised again on the contention that they had no liquid assets available to secure/pay the judgment, which was not true.

The motions to obtain a loan to secure the judgment through a third-party were not viable for several reasons. At the outset, it was clear that the real purpose of those applications was to try to stop the sale of Koger for the benefit of George, who was the 97% shareholder, but who could not access the courts himself under the fugitive disentitlement doctrine.[6] (Da19). Ras also did not have the consent of his then-wife Kristyna, who had asserted an interest in the assets in their divorce proceedings. (Da19). The complex bankruptcy risks created by the proposed loan structure made it possible that the funds could be clawed back from Plaintiff if a bankruptcy was filed, which thus provided no security at all for the judgment. (Da19). Plaintiff pursued extensive negotiations with Ras's counsel to attempt to resolve these issues but could not do so. (Da20). Instead of accepting that the structure would not work, Ras repeatedly filed applications with the court trying to force the approval of the loan. (Da19). The applications, including a third one filed on the eve of the closing of the sale of Koger's assets, were all denied. (Da19).

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[6] See Matsumoto v. Matsumoto, 171 N.J. 110, 128-29 (2002) (a party that has fled the jurisdiction to avoid court directive is divested of standing to pursue relief in such court); Matison v. Lisyansky, 443 N.J. Super. 549, 552 (App. Div. 2016) (applying the fugitive disentitlement doctrine and "declin[ing] to afford ... the protection of the court while [defendant] flaunts the court's authority from overseas").

The sale of Koger ultimately closed in April 2021. (Da21). Plaintiff's counsel was required to perform extensive work throughout the entire sale process to monitor the efforts to ensure Plaintiff's interests were protected and that maximum value towards the judgment was received. (Da20-21). Ras and George objected to the sale, claiming the sale price was insufficient (ignoring their fleecing of the entity). (Da21). The court overruled their objections, deferring to the special fiscal agent's assessment that the highest sale price possible had been obtained on the open market under the circumstances, which included Ras and George's noncooperation and abuse of the entity, that Koger's largest customer had left the company while Ras was still COO, and that the few financial-industry purchasers were interested in a company of Koger's size. (Da21). For context on the enormous burden that George's and Ras's continuous frauds placed on the judiciary and Koger, the special fiscal agent charged with selling Koger incurred and was paid more than $2.2 million out of Koger's operating revenue and sale proceeds for his yearslong efforts, in addition to $2.7 million paid to counsel for the special fiscal agent to represent him in the litigation initiated by Defendants challenging the special fiscal agent's decisions and premised on the utter and ongoing fraud on the courts by Defendants that Defendants could not readily pay the judgment with cash they had hid overseas. (Pa75; Pa81).

iii. Commitment Motions For the Return of $18 Million Defendants Fraudulently Claim They Do Not Possess.

The serial loan applications by Defendants were also used to delay an application filed by Robert in July 2019, a year after the court had initially ordered weekend commitment to coerce Defendants to bring back the $20 million they sent overseas, to have Ras committed full-time to coerce compliance. (Da20). In that regard, in August 2019 Robert sought and was granted a limited remand from this Court to seek to have Ras's commitment be modified to full-time. (Da20). The application was delayed for six months while Ras's various loan applications were addressed. (Da20). On January 6, 2020, the Chancery court ordered that Ras be committed full-time beginning on March 6, 2020. (Da20; Pa111-148). Ras appeared for his incarceration on March 6, 2020, but was released on March 25, 2020 due to the onset of the Covid-19 pandemic. (Da20). Ras remained free due to Covid-19 from March 2020 until April 1, 2022, when he was recommitted full-time on an application filed by Robert in February 2022. (Da20). During the time that he was on release, Ras lived in the Connecticut mansion he had pledged as security for the judgment with his family, supporting them while living in an $8 million mansion in Greenwich, Connecticut, for two years while he represented, repeatedly and fraudulently, to have no means whatsoever to pay the judgment. (Da20).

Since Ras was ordered to return to jail full-time beginning on April 1, 2022, Ras has made repeated filings to stay or vacate his incarceration. In March 2022, Ras appealed and filed related emergent applications to stay his full-time commitment. (Pa202-206). Shortly thereafter, in May 2022, Ras filed a motion in this Court seeking to vacate his commitment asserting there were changed circumstances based on the Connecticut court's May 5, 2022 divorce judgment, or in the alternative for a remand to consider an application to reconsider his commitment based on the Connecticut decision or to conduct a hearing under Marshall v. Matthei, 327 N.J. Super. 512 (App. Div. 2000), concerning a claimed inability to pay by Ras. (Pa207).

This Court granted the motion in-part, remanding to the Chancery court "for further consideration of the commitment in light of the current status of the Connecticut proceedings." (Pa207). Ras was offered the opportunity for a testimonial hearing on his ability to pay on three dates: July 22, 2022, September 15, 2022, and September 28, 2022. (Pa209). Each time counsel had to prepare for a testimonial hearing, but each time on the hearing date Ras opted not to testify or put any evidence into the record concerning his purported cooperation in Connecticut or his ability to pay the judgment. During the September 28, 2022 hearing, the Chancery court was repeatedly assured by Ras's counsel that the only thing Ras could do to try to pay the judgment was to try to get the assets

in Connecticut released because he had nothing left and all he could do was cooperate in Connecticut. That was false, and his application was denied in October 2022. (Pa209-210).

In October 2022, Ras, while claiming no ability to pay the judgment, then retained additional counsel at Chiesa Shahinian & Giantomasi P.C., and his new counsel then filed yet another application for Ras to be released in January 2023, again on the premise that he had no assets other than those being litigated in the Connecticut divorce proceedings, which was a materially false representation. (Pa90; Pa95-96). During the pendency of the motion Ras filed in January 2023, Robert located $2 million in an account in Slovakia held in Ras's name, and an additional $1 million held by George. (Pa105-106). When notified of this, Ras proceeded with the motion anyway, claiming that now there was really nothing left being hidden overseas (despite $17 million being unaccounted for). The motion was denied, and Ras later frivolously sought reconsideration of the decision, which was also denied. (Pa212-215; 1T38-43).

iv. Asset Investigations and Other Execution Efforts.

In order to identify additional assets that may be sheltered or otherwise hidden, Plaintiff's counsel engaged in a number of asset investigation efforts, including depositions of George and Ras in September 2017. (Da22). Several rounds of information subpoenas were served on Defendants and third-party

subpoenas on Defendants' financial institutions, which revealed, among other things, various additional efforts by Defendants to hide assets from execution, including a $750,000 transfer by George in February 2017 just as the stay of execution was being lifted. (Da22).

At various times applications were filed to collect on miscellaneous assets, including and an order to show cause concerning a $67,000 tax refund Ras was slated to receive in 2018 from the federal and state treasuries, which Ras then unilaterally used for his own benefit. (Da22). Ras's Porsche was sold in mid-2018 under the special fiscal agent's oversight. (Da23). In January 2021, it was revealed that Ras had, without prior notification, entered a contract to sell a property owned by him and Kristyna in North Bergen (that was within the constructive trust on his assets). (Da24). Plaintiff's counsel prepared an order to show cause, which resulted in controls being put in place to secure the proceeds of the sale. (Da24). Several motions followed concerning the proceeds of the sale (with Ras arguing he should get all the proceeds). (Da24). In the end, Robert and Kristyna each received half of the proceeds (each received $492,000), despite Ras's efforts premised yet again on his non-disclosure of the funds he was hiding overseas. (Da24).

A significant amount of time was also devoted to other post-judgment litigation to represent plaintiff's interests; time which would not have been

incurred if Defendants had not engaged in such significant post-judgment obstruction and misconduct premised on the repeated false representation that they did not have $20 million in cash hidden overseas. By way of one example, following the sale of Koger, the special fiscal agent sought authority from the court to distribute the proceeds of the sale, of which Robert ultimately received ~$7.5 million towards satisfaction of the judgment. (Da21). Ras filed applications related to the sale proceeds and credits related to the sale proceeds, arguing that he should receive credit for the fees paid to the special fiscal agent, and challenging the complex application of credits to the judgment over the last six years. (Da21). The Chancery court rejected Ras's application to receive a credit for the special fiscal agent's fees, and approved Plaintiff's calculation of the judgment credits, which was also affirmed by this Court on appeal in 2023. (Da21; Sipko v. Koger, Inc., No. A-439-22 (App. Div. Nov. 13, 2023)).

C. Fee Application and Decision.

In fall of 2022, as it appeared that efforts to execute on the judgment in New Jersey were largely exhausted after the sale of Koger and a related accounting application (Sipko v. Koger, Inc., No. A-439-22 (App. Div. Nov. 13, 2023)), Plaintiff renewed his application for post-judgment attorneys' fees which would not have been incurred but for George and Ras's repeated frauds on the courts. The motion was accompanied by a brief explaining Plaintiff's

legal entitlement to those fees, as well as a detailed affidavit describing the exhaustive efforts in which Plaintiff's counsel had been required to engage and fully addressing the factors of R.P.C. 1.5. (Da3-27). Contemporaneous time entries detailing the work performed were submitted with the certification. (Da28-107). The certification also addressed the qualifications of the attorneys handling the matter,[7] that the matter had been handled on a contingency basis since the initial 2009 trial court decision, the reasonableness of the hourly rates, including that they had previously been approved by the trial court in 2022 and years prior, and were consistent with those customarily charged by similar New Jersey firms. (Da24-26; Da211-231). The court below had already adjudicated numerous fee applications in this case from 2016 - 2022 in which it had on many occasions conducted an analysis and concluded that the rates charged by Plaintiff's attorneys were reasonable and compatible with rates charged by comparable firms in our region. (Da7-8). Defendants even appealed prior fee orders for prior awards in which they had challenged counsel's rates, but later abandoned such efforts. See, e.g., Docket No. A-106-18 (appeal dismissed).

[7] Ras objects to the number of partners that have worked on the matter, but fails to acknowledge that Mr. Corlett and Mr. Malone were counsel and associate when initially staffed on the matter upon joining the firm in 2016 and 2017, respectively. Based on their familiarity with the complicated history of this matter, they have continued to work on it following their respective elevations to partner.

Plaintiff's application made clear that the time sought to be awarded had been reviewed for reasonableness by counsel before being submitted, i.e., counsel did not simply include all time that was billed over the prior six years, but rather engaged in a reasoned review to cull out time that, while reasonably incurred, could not under the complex circumstances by sought to be charged to Defendants even despite their egregious fraud on the court. (Da10). Plaintiff also did not seek an award of fees that had been previously awarded, or for the more than $1.4 million incurred on the 20+ appeals Defendants have filed since 2016.[8] (Da6-8).

Plaintiff suggested that if Ras disputed those rates or hours spent, he should disclose the rates charged and time spent by his own attorneys, as Ras was then represented by multiple well-respected New Jersey firms in the matter, but he refused, leading to an inference that the rates and time spent by his attorneys are similar to those charged and spent by Plaintiff's counsel. (Da26;

[8] Ras questions how $1.4 million could have been spent on appeals, but fails to mention that there were 20+ appeals filed, many of which included full emergent briefing at the request of Defendants. See Docket Nos. A-495-16; A-3128-16; A-3129-16; A-4520-16; A-666-17; A-1960-17; A-2933-17; A-5355-17; A-5762-17; A-5763-17; A-106-18; A-5608-17; A-3012-18; A-3650-18; A-662-20; A-670-20; A-1793-20; A-2225-21; A-3846-21; A-439-22; and A-3819-22. Ras's suggestion (Db6 n.6) that he intends to file additional appeals related to final, appealable orders on prior fee awards proves his design to continue filing meritless applications, even if years out-of-time, to further needlessly waste party and court resources.

1T67). Indeed, based on filings in Ras's divorce proceedings, Ras incurred more than $2 million in fees to the McElroy firm and Newman Simpson firm since their retention in 2018/2019. (Da20). In January 2023, after the filing of Plaintiff's fee application, Ras retained a third firm – Chiesa Shahinian & Giantomasi P.C. – to pursue additional applications for release on his behalf.[9] (Pa93).

Ras requested and was granted an extension of time to respond to the motion, and it was ultimately argued on April 28, 2023, six months after it was filed, giving Ras ample time to review and object to it. 1T. Ras "acknowledge[d] that the Pashman Stein firm has had to do a lot of work to collect what they've collected over the time period they've been collecting it." 1T54-55. Ras did not dispute that his "lies" and "obstruction" caused the need for that work, but instead focused largely on procedural arguments – that the application should have been filed earlier and/or in stages. 1T55. George, a fugitive from the New Jersey courts, did not oppose the motion.

The judge rejected Ras's argument concerning the timing of the application, as it was inconsistent with prior arguments that other fee applications were premature. 1T67-68. The court found that Plaintiff was

[9] The primary attorney for Ras at the Chiesa firm, Lee Vartan, Esq., charges Ras at least $900 per hour in connection with his services. (Pa90).

entitled to an award of fees, because the fees were incurred to "chase [Defendants] around and try to [undo] the frauds on the Court, and to try to . . . find where the money is, and the lies continue, and the misrepresentations continue." 1T68. There had been "nothing in the way of any kind of showing of good faith" by Defendants "or anything to stop the run away train of causing expenses in this case." 1T69. Defendants "don't want to finish it. They will never finish it." 1T69. The court thus rejected Ras's arguments that Plaintiff should not be compensated or that it was Plaintiff's fault for incurring attorneys' fees, and found an award of fees was warranted. 1T68.

In quantifying the fees awarded, Judge Jerejian – who has handled the matter since August 2018 – discussed the factors of R.P.C. 1.5, finding them satisfied. The court applied the standards of Rendine v. Pantzer, 141 N.J. 292 (1995) and the need to calculate the lodestar. 1T71. The court acknowledged that "it would often make adjustments" in determining the lodestar, but found that the fees sought here were "fair, realistic, and accurate." 1T71-72. Although it was "just mind boggling how much time and effort" had been required, "[t]here still has not been one cent that has been voluntarily returned without the need for, you know, Court proceedings and -- or finding misrepresentations." 1T72. "[F]or what we have here, for how long we've had it" the court thought the fees

sought were "actually reasonable" and "it probably could have been a lot more." 1T70. Plaintiff's counsel had "no choice but to have done this work." 1T70.

The judge made clear that "I looked at this carefully, and I agree, I think [that] items that shouldn't have been billed for, weren't billed for." 1T68. The fees charged were "similar for legal services for the type of attorneys and the work that is involved here." 1T71.

As noted above, this was not the first fee application considered by the trial court, and the court had previously made findings concerning the rates charged by Plaintiff's counsel. For example, in granting a motion in April 2022 for fees incurred in attempting to undo Ras's surreptitious attachment of assets in his Connecticut divorce proceedings, the court observed that "Ras has some of the finest lawyers in the State. . . . And [Plaintiff] is entitled to the same." 3T41. The rates charged by Plaintiff's counsel were "[c]ertainly . . . in line with the rates being charged in this area." 3T42. Although Ras has at times claimed otherwise, he has refused repeated invitations to disclose the rates being charge by his own attorneys. See, e.g., 3T38 ("I've never been told, coincidentally . . . what fees are going on the other side"); 1T68.

The court thus granted the motion, awarding $3,570,357.70 in attorneys' fees, and holding George and Ras jointly and severally liable for the fee award.

1T72. The court memorialized the judgment in a June 29, 2023 judgment. (Da1-2).

This appeal by Ras followed.[10]

ARGUMENT

POINT I

RAS'S UNCLEAN HANDS SHOULD PRECLUDE ANY RELIEF TO HIM IN THIS COURT.

Parties have an obligation to comply with unstayed trial court orders even when the orders have been appealed. McNair v. McNair, 332 N.J. Super. 195, 198 (App. Div. 2000); R. 2:9-5. Failure to obey an unstayed order may result in the dismissal of the appeal from that order. D'Arc v. D'Arc, 175 N.J. Super. 598, 601 (App. Div.) (finding that an appellant "had an obligation to comply with the [post-judgment] order . . . since no stay was issued pending appeal," and that given appellant's willful non-compliance, the Court "would be fully justified in dismissing his appeal"), certif. denied, 85 N.J. 487 (1980), cert. denied, 451 U.S. 971 (1981).

[10] Although there had been extensive post-judgment proceedings in connection with which Plaintiff had been awarded attorneys' fees, Ras identified only a single transcript in his notice of appeal, and subsequently filed 2 additional transcripts. Plaintiff moved to settle the record to include the transcripts of the additional post-judgment proceedings to illustrate the efforts that have been undertaken over the last six years, but this Court denied that motion by order dated December 7, 2023. (Pa193).

Ras's never-ending defiance of court orders and ongoing fraud on the courts is incredible. Ras has repeatedly lied to the courts about his finances. He comes to this court asking to condone what has been determined to be a massive fraud on the court in order to avoid payment of the judgment. Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 298 (App. Div. 2010) ("a fraud on the court occurs where . . . a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier . . . ." (internal quotation marks and citations omitted)). Ras comes to this Court with unclean hands, and it is therefore inequitable for the Court to entertain his appeal. Cf. In re Indus. Inc. v. Transamerica Corp., 437 N.J. Super. 577, 612-13 (App. Div. 2014) (doctrine of unclean hands "permits the court to refuse equitable relief to a wrongdoer with respect to the subject matter of the suit" in circumstances "where the party is guilty of bad faith . . . in the underlying transaction") (internal quotation marks and citations omitted)).

The Court's analysis can and should stop at this point, and an order dismissing the appeal should be entered.

POINT II

THE TRIAL COURT DID NOT ABUSE ITS BROAD DISCRETION IN AWARDING PLAINTIFF ATTORNEYS' FEES RESULTING FROM DEFENDANTS' FRAUD ON THE COURT.

Trial courts are "invest[ed] . . . with wide latitude in resolving attorney-fee applications . . . ." Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 25 (2004). The Appellate Division "will disturb a trial court's determination of counsel fees only on the rarest occasion and then only because of a clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (internal quotation marks and citations omitted).

"'[I]n reviewing the exercise of discretion it is not the appellate function to decide whether the trial court took the wisest course, or even the better course, since to do so would substitute [the Appellate Division's] judgment for that of the lower court. The only question is whether the trial judge pursues a manifestly unjust course.'" Gillman v. Bally Mfg. Corp., 286 N.J. Super. 523, 528 (App. Div.), certif. denied, 144 N.J. 174 (1996) (quoting Gittleman v. Cent. Jersey Bank & Trust Co., 103 N.J. Super. 175, 179 (App. Div. 1967)). "Findings by the trial judge are . . . binding on appeal when supported by adequate, substantial, and credible evidence," and will not be disturbed "unless . . . so manifestly unsupported by or inconsistent with the competent, relevant, and

reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

The trial court did not abuse its discretion in determining that an award of fees was warranted by Defendants' egregious post-judgment fraud on the court that has gone on since 2016. "[I]t is within the court's discretion to award attorney's fees as a sanction for committing a fraud on the court". Triffin, 411 N.J. Super. at 314 (citing Kingsdorf v. Kingsdorf, 351 N.J. Super. 144, 159 (App. Div. 2002)). "[S]eparate and distinct from court rules and statutes, courts possess an inherent power to sanction an individual for committing a fraud on the court." Ibid.

The chancery court likewise holds the inherent equitable authority to mold a remedy for the conduct of the parties before it. Red Devil Tools v. Tip Top Brush Co., 50 N.J. 563, 575 (1967) (awarding fees as an equitable matter in an unfair competition suit and noting that "[t]his relief will . . . take care of its actual damages to date" and "will cut into any unjust enrichment of the defendants"). "[C]ourts of equity and their remedies are distinguished for their flexibility, their unlimited variety, their adaptability to the circumstances, and the natural rules which govern their use." Banuch v. Cannon, 356 N.J. Super. 342, 361 (Ch. Div. 2002).

Ras does not contest that his and George's post-judgment conduct constituted a fraud on the court. Nor could he. Beginning in the days after the court entered its buyout decision, Ras and George lied to the court concerning their ability to post a bond and about their assets. (Pa54). They hid their overseas transfer of $20 million from Plaintiff and the court for months, and then perjured themselves with a made-up story of an antecedent debt owed to a relative. (Pa55-56). Even after that excuse was proven false by clear and convincing evidence, Ras persisted in claiming a lack of any assets – which was again proven false while Plaintiff's fee application was pending. (Pa95-98; Pa106). $17 million remains wholly unaccounted for, yet Ras continually claims he has no money to pay the judgment (while employing multiple high-end law firms, including his current counsel of record in this matter Newman, Simpson, & Cohen, LLP, McElroy, Deutsch, Mulvaney & Carpenter, LLP, and Chiesa Shahinian & Giantomasi P.C.; Ras also employes two firms in Connecticut, including Robinson & Cole, and lawyers in Slovakia, all related to fighting execution on the judgment).

Instead, Ras rests his appeal on a procedural argument, claiming that Plaintiff needed to file his application in two steps. But Ras points to no principle of law that requires such drawn out motion practice and separate applications concerning an entitlement to fees and the quantification of those

fees. Instead, he relies solely on a statement by the then trial judge in denying, without prejudice, an earlier fee application.[11] But "an interlocutory order is always subject to revision where the judge believes it would be just to do so." Lombardi v. Masso, 207 N.J. 517, 536 (2011). Nor does the fact that a prior judge entered the earlier order provide it any particular deference. See Lawson v. Dewar, 468 N.J. Super. 128, 135 (App. Div. 2021) (finding a new trial judge erred by giving "undue deference to the interlocutory rulings of the [prior] judge" and recognizing that "[i]f a prior judge has erred or entered an order that has ceased to promote a fair and efficient processing of a particular case, the new judge owes respect but not deference," with the "polestar [being] always what is best for the pending suit").

Ras fails to point to anywhere in the court rules or caselaw that requires separate motions concerning an entitlement to an award of attorneys' fees, and the quantification of attorneys' fees. Indeed, the rules expressly contemplate, and at times require, both issues to be addressed in one motion. For example, a motion for an award of fees incurred in the Appellate Division must be accompanied by an affidavit concerning the fees incurred, thus contemplating

[11] That fee application was made at an earlier stage of the post-judgment proceedings – just after the court had ordered Ras and George to return the funds transferred overseas and when it was anticipated they would comply with that order – and under a different legal theory, seeking an award under the "fund in court" provision of Rule 4:42-9(a)(2).

the issues will be decided together. See R. 2:11-4. Likewise, in family actions, the rules expressly provide that "[a]ny applications or motions seeking an award of attorney fees shall include an affidavit of services *at the time of the initial filing*." R. 5:3-5(c) (emphasis added). The general civil practice rules do not provide to the contrary, and the chancery judge acted within his discretion in declining to reject Plaintiff's motion based on its inclusion of a fee affidavit.

Additionally, a remand to follow the procedures Ras believes should have been followed would be inequitable and unnecessarily require protracted proceedings for the same result. In filing the fee application, Plaintiff explained why he was entitled to an award of fees. The trial judge necessarily agreed that an award of fees was warranted before proceeding to quantify the amount of fees to be awarded. Ras had ample opportunity to oppose both the entitlement and amount in his opposition and indeed Plaintiff consented to an adjournment of the fee application to permit Ras sufficient time to submit fulsome opposition. Had Ras believed more time was required to permit him to fully review the time entries, he could have requested additional extensions. Instead, he strategically chose to rest on an invented procedural technicality, and opted not to challenge any specific entries submitted by Plaintiff.

Thus, the fact that Plaintiff's motion was supported by a fee affidavit justifying the amount of fees he sought to be awarded did not prevent the court

from adjudicating that Plaintiff was entitled to an award of fees, or from quantifying the amount of that award without further motion practice. The trial court's award of fees was justified based on George and Ras's fraud on the court, and should be affirmed.

Ras also laments, baselessly, that Robert's application was "untethered to any specific bad act(s)." (Db8). Again, from 2016 to 2023, Ras repeatedly misrepresented that he and George were not sitting on money overseas that could be used to pay the judgment. They repeatedly filed affirmative motions to stop the sale of Koger and to have Ras released from jail predicated on a fraud on the court. (Da19-22). The fraud is ongoing as George is paying for Ras's attorneys to continue to make motions that there is no further money to be brought back when at least $17 million is unaccounted for. (Pa246). The fee application was tethered directly to Defendants' fraud on the court, which was literally proven again while the fee motion was pending (when, in January 2023, $3 million in accounts held overseas by George and Ras was located in Slovakia). (Pa105-106).

And to be clear, contrary to the vague aspersions made by Ras (Db15; Db17), the time sought and awarded in Plaintiff's application had not been previously awarded in several prior awards related to other bad acts of defendants, including Ras's efforts to obtain a prejudgment attachment order in

Connecticut in May 2017 that has thwarted, from 2017 and continuing to this day, execution on his $8 million mansion (that he pledged as security for the judgment in September 2016 and that was forfeited to Robert in February 2017) and more than $1 million in financial accounts at Merrill Lynch (ordered turned over to Plaintiff the day prior to Ras seeking the attachment order in Connecticut). (Da6-9).

Ras's complaints concerning quantification of the awarded fees also lack merit, and many were not raised below. The trial court had ample evidence before it to justify the quantum of fees awarded. Just as he strategically chose to do before the trial court, Ras has opted in his appellate brief not to identify specific time entries that are objectionable, but instead claims it was "impossible" for the court to have reviewed them. Plaintiff's motion was fully briefed as of November 14, 2022, and not argued until April 2023, providing the trial judge, and Ras, with more than ample time to review and consider it. Indeed, Judge Jerejian explicitly stated that he had reviewed the fee application and supporting invoices carefully, and made all findings required by the applicable Court Rules, R.P.C.s and governing caselaw. 1T68; 1T70-72. The trial judge reasonably exercised its discretion in granting the full quantum of attorneys' fees sought, and the judgment awarding fees should be affirmed.

Rendine, 141 N.J. at 317 (fee determinations are reviewed are disturbed "only on the rarest occasions, and then only because of a clear abuse of discretion.").

As explained in the Supreme Court's seminal opinion in Rendine, "the first step in the fee-setting process is to determine the "lodestar": the number of hours reasonably expended multiplied by a reasonable hourly rate." Id. at 334-35. In determining the lodestar, the court must consider the factors of R.P.C. 1.5(a):

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitation imposed by the client or the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; [and]
>
> (8) whether the fee is fixed or contingent.

> [Litton Indusits, Inc. v. IMO Industries, Inc., 200 N.J. 372, 386-87 (2009) (quoting R.P.C. 1.5(a)).]

"Whether the hours the prevailing attorney devoted to any part of a case are excessive ultimately requires a consideration of what is reasonable under the circumstances." Furst, 182 N.J. at 22-23. If the attorney has entered into a contingent fee arrangement, a fee enhancement may be warranted. Id. at 23.

"[T]he attorney's presentation of billable hours should be set forth in sufficient detail to permit the trial court to ascertain the manner in which the billable hours were divided among the various counsel[.]" Rendine, 141 N.J. at 337. "'It is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.'" Ibid. (quoting Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973)). Rather, all that is required is "'some fairly definite information as to the hours devoted to various general activities . . . and the hours spent by various classes of attorneys.'" Ibid.

The court must "satisfy itself that the assigned hourly rates are fair, realistic, and accurate" as compared to prevailing market rates, or the court "should make appropriate adjustments." Ibid. "That determination need not be unnecessarily complex or protracted." Ibid.

Plaintiff's fee affidavit fully addressed all required factors and explained the lodestar sought to be awarded. (Da9-27). The trial court acted within its discretion in agreeing with that lodestar, and awarding the full amount sought. The fee affidavit fully summarized the work performed for which fees were sought. (Da11-24). Contemporaneous supporting time entries were appended as exhibits for the court's review, and the court did so review and found the entries sufficiently descriptive and reasonable. (Da28-153; 1T68; 1T70).

The fee application discussed the qualifications of the attorneys handling the matter, which included primarily Michael Stein, the firm's managing partner who had handled the matter since its inception; Erik Corlett, a member of the firm with extensive Chancery Division experience including in closely-held family business disputes like this matter and who had begun working on the matter in 2016, and Timothy Malone, a member of the firm who had previously worked as a Deputy Attorney General at the Division of Law, and who had begun working on the matter in connection with post-judgment enforcement shortly after joining the firm in 2017. (Da10; Da24-25; Da211-231).

Disingenuously, Ras suggests that "93.8%" of the work was done by four partners, specifically referencing work by Brendan Walsh to suggest that the Co-Chair of the firm's litigation was working large amounts of time on the matter (Db27). Mr. Walsh worked a total of 23.5 hours (or 0.4% of the time sought for

recovery) on the matter in 2018 and before, long prior to when he became the Co-Chair of this Firm's litigation department.[12] Again, while it is true that partners primarily worked on this matter, that was due to the evolution of the matter over decades due to Defendants' conduct, not because partners were specifically assigned to increase fees as Ras suggests.

Ras complains about the number of partners that performed work on the application, but does not identify any duplicative work. This complex, high-stakes matter required near daily attention and the work of multiple attorneys. Given the matter's complicated and lengthy history, it was reasonable that the attorneys most familiar with it continued to perform substantive work even after their promotion from associate to counsel and partner, rather than incur the unnecessary time it would take a new attorney to take command of this matter's extraordinarily complicated history. Ras himself employed two (now three) law firms, with at times as many as four attorneys, including multiple partners, appearing at hearings on his behalf. The trial court reasonably exercised its discretion in declining to reduce the fees sought based on this objection.

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[12] Ras's suggestion that the hours sought amount to one attorney working every day for six years does not pass an arithmetic check. Robert sought 5,485.1 hours over the course of 76 months, which would be about 800 hours per year (maybe half a years' worth of billing for a normal attorney). That amounts to under 20 hours a month (less than an eighth of normal monthly billing hours) for the four attorneys primarily involved in the matter (not including Mr. Walsh).

The application also explained the reasonableness of the hourly rates, and that they had previously been approved by the trial court in connection with other fee applications in this matter. (Da25-26). As Ras acknowledges, in prior fee applications considered by the same judge, Plaintiff had further supported the reasonableness of the rates by comparison to the rates of Cole Schotz, P.C., a comparably-sized firm with a large Bergen County presence. (Da266-270). Ras concedes that the rates charged were similar to those of Plaintiffs' counsel. His objection that they were charged in connection with a bankruptcy proceeding is without merit, as the stakes here are similarly high and have required diligent, creative, and high-level legal work to attempt to collect in the face of unprecedented obstruction.[13]

Moreover, Ras has demurred on repeated invitations to disclose the rates charged by his own stable of attorneys from multiple highly respected New Jersey firms, and the court therefore reasonably inferred that the rates Defendants' attorneys employ are similar if not higher. State v. Clawans, 38 N.J. 162, 170 (1962) ("failure of a party to produce before a trial tribunal proof which, it appears, would serve to elucidate the facts in issue, raises a natural

[13] The 2016 New Jersey Law Journal article relied upon by Ras in his appeal brief to claim Plaintiff's rates are excessive was not part of the record below, and is of little relevance as it is outdated, does not distinguish among type of firm, practice area, or location in the state, and which is based on data compiled from attorneys using a specific billing software. (Da283; Db30-31).

inference that the party so failing fears exposure of those facts would be unfavorable to him"); Darling Int'l, Inc. v. Baywood Partners, Inc., 2007 WL 4532233, at *2-*3 (N.D. Cal. Dec. 19, 2007) ("Moreover, [fee objector] Darling's decision not to disclose the attorney's fees it incurred in litigating this case strongly suggests that [fee applicant] Baywood's fees compare favorably to those incurred by Darling.") (Pa254). Indeed, Ras recently revealed that his lead attorney from Chiesa Shahinian & Giantomasi P.C. charges $900 per hour and is being paid for by George (recall, $17 million remains unaccounted for but at least some of that is being used to pay Ras's attorneys). (Pa90).

Ras further objects to the fact that the fees were awarded based on the current rates charged. But contrary to Ras's argument, governing case law fully supports the award of fees based on billing rates at the time the application is filed. As our Supreme Court explained in Rendine, when calculating a fee award, so as "[t]o take into account delay in payment, the hourly rate at which compensation is to be awarded should be based on current rates rather than those in effect when the services are performed." 141 N.J. at 337. In so holding, the Court cited to the U.S. Supreme Court's holding in Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 483 U.S. 711, 717 (1987), in which the Court explained:

> When plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable

> decision finally eventuates, which may be years later, as in this case. Meanwhile, their expenses of doing business continue and must be met. In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value.

That logic is equally applicable here. Plaintiff's fee affidavit discussed that Pashman Stein has been handling the matter on a contingency basis since the first trial concluded in a loss in 2009. (Da26). Thus, the firm took on significant risk in pursuing the matter to the New Jersey Supreme Court to achieve a reversal and remand for further proceedings. Even after receiving the $25 million buyout award in 2016 as a result of that remand, this firm still faced no certainty of payment despite Defendants' undisputable ability to pay, and was forced to instead undertake substantial additional uncompensated work to attempt to collect on the judgment because of Defendants' decision to commit frauds on the courts, including secreting their assets and misrepresenting their ability to comply with orders to return them. Applying current rates at the time the fee application to account for that risk and the delay in collection caused by Defendants' conduct was fully equitable.

Ras's contention that current rates should not be used is supported solely with a citation to an unpublished Appellate Division case from 2012 (Db32) and is simply incorrect. Rendine has been applied, when appropriate, in many

contexts other than civil rights. See, e.g., New Jerseyans for Death Penalty Moratorium v. New Jersey Dep't of Corr., 185 N.J. 137, 157 (2005) (providing for fee enhancement in an OPRA matter and explaining "unusual circumstances" may justify fee enhancement where, for example, "the attorney did not receive a fee from his client," "the risk of failure was high," and "the attorney achieved an excellent result" with "exemplary competence and commitment."); JHC Indus. Servs., LLC v. Centurion Cos., Inc., 469 N.J. Super. 306, 316, n.5 (App. Div. 2021) (remanding to determine if an increased award should have been made where defendants' conduct increased fees and directing that Rendine's current-rate rule be applied on remand).

Ras's argument that Plaintiff inordinately delayed bringing this fee application is likewise misplaced. Particularly after the trial court's denial, without prejudice, of a prior application for post-judgment fees, it was fully reasonable to wait to file the application until domestic collection efforts were largely exhausted, so the breadth of efforts and Defendants' obstruction requiring them could be viewed in their entirety. Substantial motion practice concerning the application of judgment credits for the proceeds of Koger's sale, as well as other judgment credits sought by Ras and his continuing applications for release – which were premised on misrepresentations to the court concerning his assets – continued through 2022 (e.g., Pa182), and Plaintiff appropriately

filed the fee motion after those motions were resolved rather than further burden the trial court with piecemeal fee applications.[14] Ras's contention concerning the equitable doctrine of laches are certainly not applicable as he has never acted equitably in this matter so much so that the Supreme Court expressly held he was not entitled to any equitable considerations. Sipko v. Koger, Inc., 251 N.J. 162, 187 (2022) ("If ever there was an instance in which equity *did not* fall in a party's favor, it is this case.").

Ras also argues the fact that certain post-judgment motions were denied means that an award of attorneys' fees should have been denied or reduced. Ras declines to quantify the hours or amounts he disputes. Any such hours were *de minimis* or in connection with the successful motions, and all work advanced was in connection with efforts to collect on the judgment, which efforts have been overwhelming successful, collecting $21.5 million in the face of unrelenting opposition and frauds on the court.

Ras is correct that "[i]f a 'prevailing' plaintiff has succeeded on only some of his claims for relief, 'the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount.'" Singer v. State, 95 N.J. 487, 499-500 (1984) (quoting Hensley v.

[14] As noted above, Ras has continued to file applications for his release despite no change in circumstances and a clear ability to comply with the order to return funds, requiring Plaintiff's counsel to incur additional unreimbursed fees.

Eckerhart, 461 U.S. 424, 436 (1983)). However, and overlooked by Ras, "if a plaintiff's unsuccessful claims are related to the successful claims, either by a 'common core of facts' or 'related legal theories,' the court must consider the significance of the overall relief obtained to determine whether those hours devoted to the unsuccessful claims should be compensated." Id. at 500 (quoting Hensley, 461 U.S. at 435). "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters." Hensley, 461 U.S. at 435.

The sole "denied" motion Ras points to his brief is that acknowledged in Plaintiff's fee affidavit – an order to show cause to prevent Defendants from harassing Plaintiff and appearing at his home. (Da23). George had consented to that relief and temporary restraints were issued. (Da23). However, George then withdrew and sought reconsideration of his consent, and the court denied the application on the order to show cause return date. (Da23). In the scheme of the plethora of successful efforts, this application – which did result in pendente lite relief and did stop the in-person, uninvited visits – did not warrant the denial of Plaintiff's fee application. Rather, the motion was plainly related to the numerous successful efforts to enforce the judgment, and the trial court did not abuse its discretion in not reducing the fee award based on the *de minimis* times

certain relief sought was denied without prejudice. See Singer, 95 N.J. at 500. The trial court acted within its discretion in declining to reduce the fee award based on Ras's objections, and in awarding the full quantum of fees sought.

But even if this Court were to find that the lower court erred in granting the full quantum of fees sought, the proper result would be to remand for further proceedings over the amount to be awarded and not, as Ras posits, to order it be denied in its entirety. The cases Ras relies on are plainly inapplicable in these circumstances, as they concern matters where the attorney's bills in support of the application "f[e]ll somewhere between gross negligence and outright fraud," including "so many inappropriate billing entries and . . . deficiencies were so widespread" that the application was sanctionable as frivolous, see Young v. Smith, 905 F.3d 229, 234-35 (3d Cir. 2018) (citing Fed. R. Civ. P. 11); consisted entirely of "vague entries" that were "on their face[] unnecessary or excessive" such as "the staggering 562 hours that counsel billed for 'Trial prep' or 'Trial preparation' with no further description of the nature of the work performed," see Clemens v. N.Y. Cent. Mut. Fire Ins. Co., 903 F.3d 396, 401 (3d Cir. 2018), and were so excessive in relation to the nature of the claims as to "shock the conscience," see Lewis v. Kendrick, 944 F.2d 949, 958 (1st Cir. 1991) and Brown v. Stackler, 612 F.2d 1057, 1059 (7th Cir. 1980).

Here, it is Defendants' seven years and counting of frauds on the court to avoid payment of a judgment that shock the judicial conscience, not Plaintiff's efforts to recover what he was awarded and what Defendants can readily pay. Ras acknowledged that Plaintiff's counsel "had to do a lot of work to collect what they've collected over the time period they've been collecting it" because of his "lies" and "obstruction."

Defendants held the power at all times to eliminate the need for collection fees to be incurred by posting a bond for the merits appeal, as they had pledged to the trial court they would do, to return the secreted funds after they were ordered to do so, or to cooperate with rather than obstruct efforts to liquidate their remaining domestic assets, including Koger. Instead, they have repeatedly perjured themselves concerning their ability to pay and thrown up roadblock after roadblock in response to every attempt to collect what is owed. Notwithstanding that ongoing obstruction, through painstaking and persistent efforts, Plaintiff's counsel has managed to recover more than $21 million thus far towards satisfaction of the judgment. All work done in furtherance of those efforts was necessary and in good faith, and fastidiously documented in the records appended to counsel's affidavit.

Plaintiff believes reimbursement of all of those fees is warranted and that the fee award should be affirmed in full. And again, as a reminder, none of the

$1.4 million spent on appeal work was included in the fee application. But to vacate and mandate denial of any fees here if this reviewing court disagrees with the quantification would be inequitable and create perverse incentives. Well-funded judgment debtors would be incentivized to do just what George and Ras did here – secrete their assets and use them to fund post-judgment litigation and obstruction and make the costs of enforcement so high that a court reviewing a fee application deems it so excessive as to be unrecoverable at all. Such an outcome would render a monetary judgment meaningless and reward bad conduct. It would also disincentive firms from being willing to work on contingency fee arrangements on otherwise meritorious matters, freezing less well-off parties who rely on such fee structures for access to the courts. Equity should not abide such a result. Thus, even if the court were to find the fee award too high in these circumstances – which it should not – a remand and not reversal would be the correct result.

CONCLUSION

For all the foregoing reasons, Robert respectfully submits that Ras's appeal should be denied, and the fee award affirmed in full.

Respectfully submitted,
PASHMAN STEIN WALDER HAYDEN
A Professional Corporation

s/Michael S. Stein
MICHAEL S. STEIN

Date: February 16, 2024

ROBERT SIPKO, Plaintiff-Respondent, vs. KOGER, INC., KOGER DISTRIBUTED SOLUTIONS, INC., KOGER PROFESSIONAL SERVICES, INC., KOGER LIMITED (DUBLIN), RASTISLAV SIPKO and GEORGE SIPKO, Defendants-Appellants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003819-22T4 Civil Action **ON APPEAL FROM:** Superior Court, Chancery Division Bergen County Hon. Edward A. Jerejian, P.J.Ch. Sat Below Docket Below: BER-C-393-07

DEFENDANT-APPELLANT RASTISLAV SIPKO'S REPLY BRIEF

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PRELIMINARY STATEMENT

Robert's defense of the subject judgment distills down to a belief that it is permissible to cut corners if the result inures to Ras's detriment, because he deserves it. Robert also asks this Court to make extraordinary, draconian, new law. First, he asks the Court to create law that bars a party with "unclean hands" from appealing *any* orders of the trial court. Alternatively, he essentially asks this Court to create a "fraud" exception to the long-established legal analysis concerning fee applications. That is, there is no real question that the Chancery Court did not critically review the Global Fee Application in accordance with New Jersey law. Nevertheless, Robert argues that the "egregious circumstances" of this case "justify" the Chancery Court having effectively rubber-stamped without any meaningful analysis an award of attorneys' fees in excess of $3.5 million for purportedly over 5,400 hours of post-judgment collection work. That is not the law and cannot become the law. The long and unique history of this case cannot be an excuse to avoid the requisite legal analysis of fee applications.

As the filing party, Robert had the burden to support his Global Fee Application, and he clearly failed to meet that burden. Likewise, the Chancery Court was required to evaluate the Global Fee Application in accordance with the applicable legal standard, which mandates a high level of scrutiny; or, if the Global Fee Application was improperly presented and impossible to properly

scrutinize (as it was) the Chancery Court was required to reject it. It failed to do so, however, and erred as a result.

Robert's focus on prior bad acts is simply a not-so-veiled attempt to divert this Court and escape from his clearly deficient fee application. As a fundamental matter of due process, Ras simply asks that this Court uphold the law as it pertains to fee applications. We respectfully submit that doing so requires that the "judgment" on appeal be reversed.

LEGAL ARGUMENT

POINT I

THE GLOBAL FEE APPLICATION AND THE CHANCERY COURT'S REVIEW OF IT WERE LEGALLY DEFICIENT (Da[1]3-233; 1T68-72)

Contrary to Plaintiff's claim, Ras's appeal does not "rest[] heavily on an invented procedural technicality." While we respectfully submit that Judge Jerejian should have enforced Judge Contillo's two denials of Robert's prior "global" applications for general collections-related fees and instructions that Robert first establish a legal basis for his fee requests before filing a motion to

[1] "**Da**" refers to Defendant-Appellant Ras Sipko's appendix; "**Pb**" refers to Plaintiff-Respondent Robert Sipko's opposition brief; "**1T**" refers to the transcript of the April 28, 2023 hearing on the Global Fee App.; "**2T**" refers to the transcript of the July 28, 2018 hearing on Robert's prior global fee application; "**3T**" refers to the April 1, 2022 transcript of the hearing on another of Robert's prior fee applications; "**4T**" refers to the Certification of Lost Verbatim Court Record filed by the Court's Transcript Coordinator on November 20, 2023, related to the lost/damaged transcript of the May 27, 2021 transcript of the hearing on another of Robert's prior fee applications.

quantify his fees, that is not the main crux of Ras's appeal. The main crux of the appeal is the Chancery Court's cursory analysis of the Global Fee Application – an analysis which plainly failed to reach the required standard.

Per Litton Industries, Inc. v. IMO Industries, Inc., 200 N.J. 372, 387-88 (2009), RPC 1.5(a) requires an evaluation of the following factors when considering whether an attorney's fee is reasonable in any context: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent. Id. at 387. Per Rendine v. Pantzer, 141 N.J. 292 (1995), in the context of fee shifting applications:

> the first step … is to determine the "lodestar": the number of hours reasonably expended multiplied by a reasonable hourly rate. In our view, the trial court's determination of the lodestar amount is the most significant element in the award of a reasonable fee because that function requires the trial court to ***evaluate carefully and critically*** the aggregate hours and specific hourly rates advanced by counsel for the

> prevailing party to support the fee application. ***Trial courts should not accept passively the submissions of counsel to support the lodestar amount****:*
>
> "Compiling raw totals of hours spent, however, does not complete the inquiry. It does not follow that the amount of time actually expended is the amount of time reasonably expended. In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary …"

Rendine v. Pantzer, 141 N.J. at 334-35 (quoting Copeland v. Marshall, 641 F.2d 880, 892-93 (D.C. Cir. 1980)(emphasis added).

After a critical analysis of the hours is conducted, the rates must be similarly scrutinized. In Walker v. Giuffre, 209 N.J. 124 (2012) the Court stated:

> Our decision in Rendine also articulated the principles that inform the calculation of a reasonable hourly rate, noting that it "is to be calculated according to the prevailing market rates in the relevant community" and should include an assessment of the "experience and skill of the prevailing party's attorneys and [a] compar[ison] . . . to the rates prevailing in the community for similar services" by comparable lawyers. Id. at 337, 661 A.2d 1202 (quoting Rode*,* supra, 892 F.2d at 1183). We directed trial courts to ensure that the hourly rate awarded is "fair, realistic, and accurate," allowing for adjustments to the requested rate when appropriate. Ibid. In another context, ***this Court described a reasonable hourly rate as being one "that would be charged by an adequately experienced attorney possessed of average skill and ordinary competence—not those that would be set by the most successful or highly specialized attorney in the context of private practice.****"*

Id. at 132-33 (quoting Singer v. State, 95 N.J. 487, 500-01, cert. denied, 469 U.S. 832 (1984))(emphasis added).

Trial courts that "accept passively' the submissions of counsel" to support the lodestar amount have repeatedly been "admonished" for doing so. Walker, 209 N.J. at 132 (quoting Rendine 141 N.J. at 335). This Court has made clear that an "unquestioning acceptance of all plaintiff's requested attorney's fees" is error, and when there is a "***lack of critical analysis*** of counsel's fee request … the judge's assessment of the reasonableness of the hours expended cannot be given weight and hence is ***not entitled to any deferential treatment***."[2] Yueh v. Yueh, 329 N.J. Super. 447, 467-68 (App. Div. 2000) (emphasis added).

Here, the Chancery Court's oral decision clearly lacks any careful or critical evaluation. The following is the entirety of the Chancery Court's substantive analysis of the RPC 1.5(a) factors and application of the legal standard:

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17 And so, you know, I reviewed all the entries,
18 and there was a lot of them, and I started looking at
19 them, and I came to the conclusion that of course you
20 have to look at the factors under RPC 1.5A in
21 evaluating the services rendered, the amount of the
22 allowance applied for the itemization, time and labor

[2] Plaintiff incorrectly relies on the "abuse of discretion" standard in his opposition. Due to the lack of critical analysis of the trial court, that is not the applicable standard, and this Court should review the matter *de novo*. Yueh, 329 N.J. at 467-68. Even if "abuse of discretion" did apply, however, the Chancery Court abused its discretion for all of the reasons argued by Ras in this appeal.

required, which was enormous, the likelihood it could preclude other work.
I am sure all the attorneys working on this had plenty else to do. And some attorneys may spend their entire careers working on this case, including Mr. Malone, who I am sure I know has done a lot of work on this case.
Fees customarily charged. I think they are similar for legal services for the type of attorneys and the work that is involved here.
The results that have been obtained I think have also shown itself.
Time limitations, the nature and likely professional relationship. And we are going back to 2007 when you experienced -- even though this fee application is not for the entire time -- and the experience, reputation, ability of the lawyers which I think nobody is disputing that.
And then when we apply the lodestar, the hourly rates, Rendine v. Pantzer, 141 N.J. 292 at 337. And as Mr. Stein points out, and it was Justice Stein who wrote the case, and I think it began, if I am not mistaken, with Judge Mehan here in Bergen County.
So it is one of those landmark cases that everyone uses. And when you apply it, I think it is fair, realistic, and accurate.
And honestly, this Court often would make adjustments, and, you know, it is just mind boggling how much time and effort -- and it just hasn't stopped. I mean now, one only knows what has to be done in Slovakia. Who knows how this is going to play out in Connecticut.
There still has not been one cent that has been voluntarily returned without the need for, you know, Court proceedings and -- or finding misrepresentations. This whole thing with the money.
You are right. This was filed before then, but I think it sort of bears out the whole point of what happened even during the time of this fee

> application.
> So, you know, we are talking about over 5,000
> hours, 5,485.1 hours for fees equalling 570857 [sic] and 50
> cents, and I think it is warranted, so I am going to
> order it.
> It will be granted.

(1T70-72). That oral opinion simply does not display the high level of scrutiny required by New Jersey law. It is merely a series of short, conclusory statements and, as such, cannot suffice. See S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 91 (App. Div. 1998) (holding that trial court "failed to make specific findings as to the reasonableness of the legal services provided and the fees charged" and noting that the trial courts "oral opinion … simply makes broad conclusionary statements regarding the legal services performed" which "does not provide an adequate foundation for appellate review." Similarly, in Walker, this Court rejected a trial court's opinion that, regarding the appropriate rate, merely stated, "I have handled a significant number of class actions and ruled on a number of fee requests. The fees requested in this case are generally consistent with what I have seen and awarded in the past. In my opinion, they are reasonable." Walker v. Giuffre, 415 N.J. Super. 597, 607, (App. Div. 2010), *rev'd in part on other grounds*, 209 N.J. 124 (2012).

Here, the Chancery Court provided even less than the trial court in Walker, merely stating, regarding the rates: "Fees customarily charged. I think they are similar for legal services for the type of attorneys and the work that is involved

here." (1T71:5-7). No factual basis for that conclusion was provided, nor could it have been, since Plaintiff submitted no evidence whatsoever in the Global Fee Application of the "prevailing market rates in the relevant community" [3] (Rendine 141 N.J. at 337) or the rate that "would be charged by an adequately experienced attorney possessed of average skill and ordinary competence." Walker 209 N.J. at 132-33.

Plaintiff disingenuously claims that the New Jersey Law Journal article establishing $288 as the average rate of New Jersey attorneys in 2016 was not part of the record below while, in the same paragraph of his brief, relies on the rates of Cole Schotz P.C. from a dissimilar Chapter 11 bankruptcy matter, which rates, *Plaintiff acknowledges*, were not part of the Global Fee Application. As Plaintiff knows, Ras submitted the 2016 New Jersey Law Journal article in opposition to prior fee applications and expressly incorporated all his arguments as to the impropriety of Robert's rates in his brief to the trial court relating to the Global Fee Application. (Da281, ¶4). Nonetheless, the burden to establish prevailing rates is squarely on

[3] Plaintiffs attempt to compare his counsels' rates to the rate of Ras's attorney, Mr. Vartan, is improper. First, Mr. Vartan's rate was not part of the record below and was therefore not considered by the Chancery Court. Second, Mr. Vartan is a criminal defense attorney and his firm's involvement is strictly related to issues concerning Ras's incarceration, not general collection efforts, which are the subject of the Global Fee Application.

Robert who submitted no evidence whatsoever as to that issue in his Global Fee Application and instead merely stated:

> As the Court has already found, our rates are consistent with customary rates charged in New Jersey for similar services for matters of this size and complexity by lawyers with similar experience and skills, at firms similar to my firm, of which I am aware of from my 30+ years of experience practicing law in New Jersey, managing my firm, and discussions with managing partners at other firms, as well as rate surveys and fee applications I have reviewed. [Da26, ¶78]

Robert's counsel's mere invocation of prior unspecified interlocutory findings and citation to his own personal experience practicing law, vague "discussions" with anonymous "managing partners at other firms" and unnamed/undated rate surveys and fee applications, is not evidence of the appropriate rate to be applied and does not remotely satisfy ***Plaintiff's burden to provide evidence to support his fee application***. Seigelstein v. Shrewsbury Motors, Inc., 464 N.J. Super. 393, 406 (App. Div. 2020) ("The party seeking attorney's fees has the burden to prove that its request for attorney's fees is reasonable … To meet its burden, the fee petitioner must 'submit evidence supporting the hours worked and rates claimed.'") (quoting Rode, 892 F.2d at 1183 and Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).

Plaintiffs claim that the New Jersey Law Journal article is outdated, and should therefore be ignored, is also wrong. The article, which cites data

collected from 60,000 individuals "as well as surveys of legal professionals and consumers of legal services" is from 2016 and notes the average rate of New Jersey attorneys in 2016 was $288 per hour. (Da283-4). The Global Fee Application seeks fees from the same year, 2016[4], through 2022. Adjusted for inflation[5], $288 in 2016 is roughly the equivalent of $342 in 2022. Mr. Stein – who conducted approximately 17.5% of the work – sought payment for 958.2 hours in the Global Fee Application at a rate of $825/hour – almost 2.5 times the inflation-adjusted New Jersey average (Da107; Da153). Mr. Corlett – who conducted approximately 38.5% of the work – sought payment for 2,113.6 hours in the Global Fee Application at a rate of $635/hour – nearly double the inflation-adjusted New Jersey average. (Ibid.) Mr. Malone, – who conducted approximately 23% of the work – sought payment for 1,266 hours in the Global Fee Application at a rate of $550/hour – over 1.6 times the inflation-adjusted average. (Ibid.) Those three attorneys account for roughly 80% of the fees sought in the Global Fee Application. The Chancery Court did not address these issues concerning the rates; nor could it, since no objective evidence to support the rates was submitted in the Global Fee Application.

[4] As noted in our primary brief and below, however, Plaintiff wrongly seeks to apply his attorneys' 2022 rates for work in all years.

[5] See U.S. Bureau of Labor Statistics CPI Inflation Calculator - https://www.bls.gov/data/inflation_calculator.htm

The Chancery Court also did not address the gross overstaffing or the fact that nearly the entire Global Fee Application (98.7%) was comprised of work by senior attorneys at their elevated rates. Robert makes no real effort to challenge these facts, nor can he.[6] Indeed, Plaintiff says nothing about the fact that associate rates account for a meager 1.3% of the Global Fee Application. While Plaintiff protests that two of the partners were an associate and "counsel" at the time they started working on the case in 2016 or 2017, it is irrelevant since the Global Fee application sought to apply their far higher 2022 partner rates, and the Chancery Court did so.

Plaintiff argues that Ras has incurred significant legal fees of his own, but that argument fails to justify the extraordinary quantum of counsel fees Robert has demanded that Ras *also pay*. First, Robert provides no objective facts supporting his claim that Ras has incurred more than $2 million in fees since "2018/2019".[7] Even if that claim was true, however, Ras's attorneys' purported

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[6] Plaintiff objects to our claim that four specific partners of the firm did 93.8% of the work. While our primary brief did erroneously refer to Brendan M. Walsh as one of the four, the intended reference was to Dennis T. Smith, a *founding member* of the firm with *more* experience than Mr. Walsh and a *higher* billing rate ($725). (Da24 at ¶¶72, 75; Da233). ***Founding partner Smith (336.9 hours), partners Malone (1,266) and Corlett (2,583.6) and, firm chairman Stein (958.2) collectively account for 93.8% of the total 5,485.1 hours sought.*** (Da107; Da153).

[7] Plaintiffs' brief cites to Da20 to claim, "based on filings in Ras's divorce proceedings, Ras incurred more than $2 million to the McElroy firm and Newman Simpson firm since their retention in 2018/2019" (Pb 24); but Da20 contains only a line in Plaintiff's counsel's certification that says the same thing. The "filings" and "disclosures" referred to in the brief and certification were not attached, so the claim cannot even be evaluated.

fees are not subject to the scrutiny required of fees sought via a fee application and are dwarfed by the at least ***$8.1+ million[8] in fees Robert claims to have incurred since the 2016 judgment was awarded***.

Robert also argues that both Ras and the Chancery Court had sufficient time and ability to review the Global Fee Application. Obviously, that is false. The Chancery Court could never have carefully and critically reviewed the ***5,485.1 hours*** of legal work included in the Global Fee Application. The Chancery Court's short and conclusory oral opinion makes clear that no critical review took place, and it was unreasonable for Plaintiff to expect the Chancery Court would have sufficient time to properly review his prodigious submission. Ras likewise could never have reviewed and responded to the Global Fee Applications in the fashion it was submitted. Robert's suggestion that Ras had six months to "review and object to" the Global Fee Application (Pb24) is absurd and disproven by other portions of his own brief. Although the Global Fee Application was filed on September 23, 2022, and argued on April 28, 2023[9], it was "fully briefed as of November 14, 2022." (Pb35). Since a meaningful

[8] $3,570,357.50 was awarded in the Global Fee Application (Da2); $2,721,804.14 was previously awarded in connection with other applications (Da7-9, ¶¶5,7); $1.4 million is claimed to have been incurred for appeals (Da8, ¶6); and another $424,600.17 is sought by Robert's in a motion that is currently pending before the trial court.

[9] The Chancery Court deferred the hearing for months in the hope that the parties could reach a resolution in the interim, which sadly did not occur.

substantive review of the Global Fee Application was impossible, Ras objected to the form of the application itself in that it would have required hundreds of hours to attempt to identify all of the objectionable entries. Indeed, the Chancery Court effectively conceded that a substantive review to identify entries that were duplicative[10], redundant, excessive, or otherwise unnecessary would have taken hundreds of hours. See 1T68:18-19.

Robert's attempt to explain why he should be rewarded for his unilateral delay in filing the Global Fee Application by receiving his 2022 rates for all of the work done rather than the rates in place when the work was conducted simply makes no sense. None of the cases cited by Robert are remotely similar to this case, where Robert is seeking an award of all fees incurred for general post-judgment collection efforts based on the general equitable powers of the Chancery Court. Rather, the cases Robert cites only confirm that the fee enhancement analysis under Rendine is "generally limited to 'setting fee awards in civil rights and discriminations cases, or other fee shifting contexts.'" Ginsberg v. Bistricer, 2012 N.J. Super. Unpub. LEXIS 497, at *26-27 (Super. Ct. App. Div. Mar. 7, 2012) (citing Distefano v. Greenstone, 357 N.J. Super.

[10] For example, see the blatant double 5-hour billing entry by Mr. Stein on May 27, 2021. That is, ***Mr. Stein literally billed 5 hours for "Prepare for and participate in hearing on a variety of motions" twice at $825 per hour – thus billing an extra $4,125*** (Da147). The failure of the Chancery Court to notice this obvious double entry supports the notion that the review of the Global Fee Application was deficient.

352, 362 (App. Div.), certif. denied, 176 N.J. 278 (2003))); See, New Jerseyans for Death Penalty Moratorium v. New Jersey Dep't of Corr., 185 N.J. 137, 143 (2005)(cited by Plaintiff)("This appeal requires us to address once again the standards that govern an award of attorney's fees under a state fee-shifting statute)(emphasis added); JHC Indus. Servs., LLC v. Centurion Cos., Inc., 469 N.J. Super. 306, 309 (App. Div. 2021)(cited by Plaintiff)(relating to fee awarded under the Prompt Payment Act, N.J.S.A. 2A:30A-2(f), a fee-shifting statute). This case does not involve a contingency payment arrangement under statutory fee shifting where the Court needs to adjust for the inherent risks of nonpayment, nor is it analogous. See Rendine, 141 N.J. at 339. Rather, after initially losing at trial, Robert's counsel converted to a contingency fee arrangement and they have since "been paid on a contingency basis." (Da26, ¶80). They failed to include their retainer agreement in the Global Fee Application and did not otherwise explain *how or how much* they have "been paid on a contingency basis." Nonetheless, it seems safe to assume that they have been paid a significant percentage of the $21.5 million they have collected for their client to date – almost certainly many millions – not even including the massive amounts they have been paid based on other fee awards in this case. (Pb2). Thus, there is no need to mitigate any risk of non-payment by awarding their far higher 2022 rates for all of the work conducted in prior years. See Rendine, 141 N.J. at 340.

Moreover, any "delay" in payment is of their own doing. Indeed, they filed two prior "global" fee applications for general collection efforts in April of 2017 and July of 2018, which were denied by Judge Contillo. Whether it was "reasonable," as they claim, for them to wait four years to re-file another "global" fee application, is not relevant to the analysis; but it is manifestly *unreasonable* for them to expect to receive significantly higher rates because they unilaterally chose to file the Global Fee Application when they did.

POINT II

THE JUDGMENT IS AN UNNECESSARY DUPLICATIVE SANCTION (Da7-9, ¶¶5,7; Da20, ¶55; Da177; 1T68-72)

Robert does not even address Ras's argument that the unprecedented prior sanctions against Ras for the same conduct Robert complains of in his opposition – including, but not limited to Ras's full-time incarceration, now ongoing for over two years, and the $2.7 million+ in attorneys' fees already awarded to Robert for remedying specific bad acts – should be considered by this Court in evaluating the reasonableness of the fee award on appeal. The fact is, the judgment is a duplicative sanction for conduct Ras has already been, and continues to be, strongly sanctioned for, and it is therefore unjustifiable.

CONCLUSION

For the reasons set forth above, Ras respectfully requests that this Court vacate the subject judgment of the Chancery Court.

Respectfully submitted,
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