SUPREME COURT OF NEW JERSEY

No. 085157

KATHLEEN M. MOYNIHAN,	:	PETITION FOR CERTIFICATION TO THE SUPREME COURT OF NEW JERSEY
Plaintiff-Petitioner,	:	APPELLATE DIVISION DOCKET NUMBER: A-4883-18T3
v.	:	
EDWARD J. LYNCH,	:	Sat Below:
Defendant-Respondent.	:	HON. JOSEPH L. YANNOTTI, P.J.A.D. HON. MICHAEL J. HAAS, J.A.D. HON. ARNOLD L. NATALI, JR., J.A.D.

PETITION FOR CERTIFICATION ON BEHALF OF PLAINTIFF-PETITIONER

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PRELIMINARY STATEMENT

In 2010, the Legislature amended the Statute of Frauds, N.J.S.A. 25:1-5(h), to require that all promises of lifetime support (palimony agreements) must be in writing and made with the independent advice of counsel for both parties (hereinafter "Amendment"). The Amendment was previously challenged on several grounds in Maeker v. Ross, including the retroactivity of the Amendment, the viability of other equitable claims, partial performance as an exception, and the unconstitutionality of the requirement of independent advice of counsel. In Maeker v. Ross, 219 N.J. 565 (2014), this Court reversed the Appellate Division based solely on the retroactivity issue. As a result, the Appellate Division opinion in Maeker v. Ross, 430 N.J. Super. 79 (App. Div. 2013), continues to control as to the other issues raised therein and the legal arguments raised therein regarding the Amendment were never adjudicated.

Plaintiff and Defendant herein entered into a written palimony agreement (hereinafter "written agreement") in the presence of a Notary Public in 2014. This case is the first challenging the applicability of the Amendment to a written palimony agreement. Like in Maeker, supra, which was argued more than six years ago, Plaintiff is asking this Court to consider and address: (1) whether that portion of the Amendment requiring the independent advice of counsel is unconstitutional; and (2)

whether one party should be permitted to use the Statute of Frauds as an instrument of fraud on the other party after that other party performed in accordance with the agreement.

As to the constitutional issue, palimony claims are unique to a family-type relationship and are addressed in the Family Part. However, there is no other family-type relationship, and more importantly, no other family-type agreement in New Jersey, that requires independent advice of counsel before being entered. Non-married individuals can enter into domestic partnerships, civil unions, and prenuptial agreements without the independent advice of counsel. Married individuals can enter into mid-marriage, reconciliation, and marital settlement agreements without the independent advice of counsel. Yet, individuals wishing to enter into palimony agreements, who are not same sex or wish to get married, must have counsel.

An individual can represent himself/herself in every other type of transaction and case in New Jersey, except those assigning their lottery winnings. Even individuals accused of murder can proceed without counsel. However, by enacting the Amendment, the Legislature forced non-married individuals wishing to enter long-term personal relationships to obtain the independent advice of counsel. The requirement of independent advice of counsel does not benefit these individuals, it simply makes it harder for them to enter into binding palimony

agreements. The requirement only financially benefits attorneys, who are now required to be a part of the contractual process. Where does this slippery slope end? Will counsel eventually be required in all contracts?

To this very point, in his Statement on Signing of the Amendment, then-Governor Corzine recognized that the requirement of independent advice of counsel would have an adverse impact on an individual's ability to enter into a binding palimony agreement, specifically those individuals who may not be able to afford counsel. As a result, he cautioned that he was only signing the Amendment on his last day in office because legislative leaders represented to him that the requirement of independent advice of counsel would be removed and replaced with a requirement of signing in the presence of a Notary Public, which is exactly what the parties did in this case.

As to the performance/estoppel issue, Plaintiff performed, and Defendant's promises and performance induced her to further perform. Performance and promissory estoppel are long-established exceptions in the law to the Statute of Frauds. They are not causes of action that need to be pled. They are defenses to the claim by Defendant that the written agreement does not satisfy the Amendment. They were developed throughout the trial brief, testimony on direct, cross examination, and summation. No basis exists to exclude these exceptions in palimony cases.

STATEMENT OF THE MATTER INVOLVED

Plaintiff and Defendant began dating in 1997, while Plaintiff was involved in lengthy divorce litigation. (Peta4). Shortly after Plaintiff's divorce was finalized in 2000, Defendant purchased the Bordentown property for Plaintiff and her children, although the property was solely in Defendant's name. (Peta5). Plaintiff paid the initial down payment and Defendant secured a mortgage to fund the balance. (Peta5). Plaintiff paid the mortgage and property taxes, while Defendant paid the homeowner's insurance and other carrying costs. (Peta5). Although Defendant maintained a home in New Hampshire, he spent more time in the Bordentown property. (Peta5).

On January 26, 2007, Defendant created a trust in which he designated himself as the trustee and Plaintiff as the successor trustee and beneficiary. (Peta6). Defendant then conveyed title of the Bordentown property into the trust. (Peta6). Defendant also transferred his basic and optional life insurance policies into the trust, and designated the trust as the beneficiary of his accidental D&D policy and 401(k) account. (Peta6).

After selling his home in New Hampshire in 2013, Defendant used the net sale proceeds to purchase bonds. (Peta6). Defendant designated Plaintiff as the beneficiary of his bond account and she remained the beneficiary during the relationship. (Peta6).

On April 10, 2013, Defendant conveyed title of the Bordentown property from the trust to Plaintiff and Defendant as joint tenants with rights of survivorship. (Peta6).

During the relationship, Plaintiff and Defendant had numerous discussions about their future, which always included Defendant promising to take care of Plaintiff financially. (Peta6). Defendant always talked about how he was planning for their future and Plaintiff's security should anything happen to him or their relationship. (Peta6). Defendant also told Plaintiff's children that he would always take care of and support Plaintiff. (Peta7).

The relationship began to deteriorate in 2013 and 2014. (Peta10). However, on March 26, 2014, Defendant sent Plaintiff a text message stating: "I do love you and all I do is planning for your future but you don't seem to realize that". (Peta7). Moreover, in 2014, Defendant drafted the written agreement stating what Plaintiff would receive upon the termination of the relationship. (Peta8). The written agreement provided:

> In the event that Kathleen Moynihan and Edward Lynch Terminate their Relationship I agree to the following Terms:
>
> 1. The home at 2 Andover Ct in Bordentown NJ will be paid off within five years after Mr. Lynch's vacates the property.
>
> 2. After paying off the mortgage note Mr. Lynch will sign the deed over to Ms. Moynihan therefore giving her sole ownership of said property.

> 3. Until the mortgage is satisfied Mr. Lynch will pay the monthly mortgage payment.
>
> 4. Mr. Lynch will pay the property tax at 2 Andover Ct Bordentown N.J. for two years after his departure.
>
> 5. Mr. Lynch will pay Kathleen Moynihan a sum of $100,000 dollars by the end of a five year period starting when Mr. lynch vacate the property at 2 Andover Ct.
>
> This Agreement finalizes all obligations of Mr. Lynch to Ms. Moynihan.

(Peta8-9). Plaintiff did not request the terms in the written agreement. (Peta9). Plaintiff requested that the written agreement be reviewed by an attorney but Defendant assured her that it would be enforceable if it was signed in the presence of a Notary Public. (Peta9). In fact, Defendant told Plaintiff that attorneys were not needed because he was a "man of my word" and that "if I tell you I'm going to do something, I'm going to do it". (Peta9). Plaintiff and Defendant signed the written agreement in the presence of a Notary Public. (Peta9-10).

Defendant testified that he never intended to be bound by the written agreement, and that his actions were "dishonest" and intended to "shut her up". (Peta9; Peta11).

The relationship terminated when Defendant vacated the Bordentown property in April 2015. (Peta10). Thereafter, Defendant initially complied with paragraphs 3 and 4 of the written agreement by continuing to pay the mortgage and real

estate taxes for the Bordentown property. (Peta10). However, when Plaintiff sent the property tax bill to Defendant on July 6, 2015, he responded:

> I'm not paying it as far as I'm concerned we don't have an agreement anymore I'll pay the mortgage you live there pay the taxes

(Peta10).

QUESTIONS PRESENTED

1. Did the Appellate Division err in failing to declare that portion of the Amendment requiring the independent advice of counsel for both parties unconstitutional?

2. Did the Appellate Division err in allowing Defendant to use the Statute of Frauds as an instrument of fraud on Plaintiff?

3. Did the Appellate Division err in affirming that Defendant made no oral promises of lifetime support to Plaintiff?

ERRORS COMPLAINED OF AND COMMENTS ON APPELLATE DIVISION OPINION

I: THAT PORTION OF THE AMENDMENT REQUIRING THE INDEPENDENT ADVICE OF COUNSEL FOR BOTH PARTIES IS INHERENTLY UNCONSTITUTIONAL.

On January 18, 2010, the Legislature amended the Statute of Frauds to require that a promise by one party to a non-marital personal relationship to provide support or other consideration to the other party be in writing and with the independent advice of counsel for both parties. N.J.S.A. 25:1-5(h):

> [N]o action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by

> some other person thereunto by him lawfully authorized:
> …
>
> (h) A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

Prior to signing the Amendment into law on his last day in office, then-Governor Corzine expressed his concern that the Amendment infringed on an individual's right to contract. Specifically, in his Statement on Signing Senate Bill No. 2091, dated January 18, 2010, he stated:

> I approve Senate Bill No. 2091 (First Reprint) in light of the representation by the legislative leadership and the bill sponsors that this law will be improved to recognize agreements or promises in a non-marital relationship as binding when they are mutual, in writing, and notarized as opposed to mandating the involvement or services of an attorney. Legislative leadership and the sponsors share my goal of providing greater clarity in the enforcement of palimony agreements but ensuring that this law does not have an adverse impact on parties who may not be able to afford the services of an attorney. I take this action in light of the time constraints that result of the end of a legislative sessions, which do not afford time for a Conditional Veto to recommend removal of this provision.

(Peta22-23). In effect, he would have conditionally vetoed the Amendment to ensure that the requirement of independent advice of counsel was removed but did not do so because "legislative leadership and the bill sponsors" represented to him that the

requirement of independent advice of counsel would be removed. However, no action was taken by "legislative leadership and the bill sponsors." This is now the first case challenging the sufficiency of a written agreement since the Amendment.[1]

Both the United States and New Jersey Constitutions "prohibit the passage of laws impairing the obligation of contracts." U.S. Const. art. I, § 10, cl. 1 ("No State shall … pass any … Law impairing the Obligation of Contracts … ."); N.J. Const. art. IV, § 7, ¶ 3 ("The Legislature shall not pass any … law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."). Both the United States and New Jersey contracts clauses provide "parallel guarantees." Fid. Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 299 (1981)(quoting P. T. & L. Constr. Co. v. Comm'r, 60 N.J. 308, 313 (1972)); see also In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling, 330 N.J. Super. 65, 92 (App. Div. 2000)(noting coextensive protection provided under both contracts clauses), aff'd o.b., 167 N.J. 337, 382, 395, cert. denied, 534 U.S. 813 (2001).

Legislation is deemed to unconstitutionally impair a contract when it: (1) "substantially impair[s] a contractual relationship," (2) "lack[s] a significant and legitimate public

[1] Plaintiff put the Attorney General on notice during the pendency of both the trial court and Appellate Division cases. The Attorney General has not filed any response.

purpose," and (3) is "based upon unreasonable conditions and … unrelated to appropriate governmental objectives." Farmers Mut. Fire Ins. Co. of Salem v. N.J. Prop.-Liab. Ins. Guar. Ass'n, 215 N.J. 522, 546-47 (2013) (quoting State Farm Mut. Auto Ins. Co. v. State, 124 N.J. 32, 64 (1991)). The contracts clauses are intended to be applied flexibly. Ibid. (citing Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 240 (1978)).

As to the first prong, the Appellate Division held that the requirement of independent advice of counsel "is not a substantial impairment" because the "Legislature routinely imposes additional costs on parties who seek to enter contractual relationships." (Peta35). As its only example, the Appellate Division noted that the Legislature "has required independent legal counsel if a lottery winner seeks to assign their winnings. See N.J.S.A. 5:9-13(d)(15)." (Peta36). This example was raised by Plaintiff in her Appellate Division Brief to point out that it is the only statute in New Jersey requiring the independent advice of counsel. The Appellate Division's reliance upon this statute is misleading.

Unlike agreements governed by the Amendment, every other agreement in a family law setting can be entered into without the independent advice of counsel for both parties. In fact, a prenuptial agreement is the only other agreement in a family law setting that is governed by statute. The Uniform Premarital and

Pre-Civil Union Agreement Act allows parties to "voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel." N.J.S.A. 37:2-38. There is no such opportunity to waive the independent advice of counsel in the Amendment. Even criminal defendants facing harsh penalties can waive counsel. See, e.g., State v. Crisafi, 128 N.J. 499, 509 (1992)("Defendants possess not only the right to counsel, but the right to dispense with counsel and to proceed pro se.").

The only statute that exists in New Jersey that requires the independent advice of counsel is the statute addressing the assignment of lottery winnings. See, e.g., N.J.S.A. 5:9-13(d)(15). In fact, in our Appellate Division brief, we identified this statute and highlighted its legitimate public purpose of maintaining the State's *parens patriae* interest by insulating lottery winners from their own human frailties by allowing assignments after the winner complied with rigorous safeguards, including consulting with independent legal counsel and a tax advisor. N.J.S.A. 5:9-13. There is no such rationale that is applicable to palimony agreements.

What is the legitimate public purpose necessitating the independent advice of counsel for palimony agreements? It does nothing but make it more difficult to enter into such agreements, which agreements are clearly disfavored by the Legislature as reflected in the Amendment. Moreover, there is no

rational basis to treat non-married individuals wishing to enter into palimony agreements differently. See, e.g., Teamsters Local 97 v. State, 434 N.J. Super. 393, 421 (App. Div. 2014).

Individuals in a non-personal relationship, such as two business partners, could enter into the same written agreement as Plaintiff and Defendant, but would not be bound by the Amendment. If two business partners purchased a property, agreed that one of the partners could keep the property upon a future triggering event, and agreed that the other partner would be required to pay off the mortgage, said agreement would not be governed by the Amendment and would not require independent advice of counsel because the business partners, unlike Plaintiff and Defendant, are not in a personal relationship. Why is a different result warranted here?

Also as to the first prong, the Appellate Division held that Plaintiff could afford to obtain the independent advice of counsel but chose not to. (Peta36). As then-Governor Corzine recognized, the Amendment is not only applicable to Plaintiff, but it is applicable to an entire class of individuals similarly situated to Plaintiff, and some of those individuals may not be able to afford counsel. Therefore, the Appellate Division very narrowly considered the legal impact of the Amendment.

As to the second and third prongs, the Appellate Division held that the requirement of independent advice of counsel

"reasonably relate[s] to a significant and legitimate public purpose":

> With respect to the Amendment specifically, we noted that the Legislature was concerned with the burden of proof difficulties in establishing valid palimony agreements. While independent attorney review is not required in other provisions of the Statute of Frauds or other family law agreements, the Legislature has required so for palimony agreements with the very purpose of protecting the rights of contracting parties. The Amendment is one legitimate way of addressing this significant issue and is reasonably related to appropriate legislative objectives.

(Peta37).

The Statute of Frauds acknowledges that certain agreements may be "susceptible to fraudulent and unreliable methods of proof" and mandates that those agreements be reduced to writing and signed. Maeker, supra, 219 N.J. at 578 (quoting Lahue v. Pio Costa, 263 N.J. Super. 575, 5999 (App. Div.), certif. denied, 134 N.J. 477 (1993); see Moses v. Moses, 140 N.J. Eq. 575, 584 (E. & A. 1947)("The primary design of … the Statute of Frauds is to avoid the hazards attending the use of uncertain, unreliable and perjured oral testimony, ….").

The Amendment was intended to "overturn recent 'palimony' decisions by New Jersey courts by requiring that any such contract must be in writing and signed by the person making the promise." Maeker, supra, 219 N.J. at 577-78 (quoting Assem. Judiciary Comm. Statement to S. No. 2091, 213th Leg., 2d Sess. 1 (December 3, 2009); S. Judiciary Comm. Statement to S. 2091,

213th Leg., 2d Sess. 1 (Feb. 9, 2009)). There is no indication in the Amendment or in any of the legislative history as to the specific purpose of requiring the independent advice of counsel for a palimony agreement, but not for any other agreement.

The Appellate Division, however, reasoned that the purpose was to "protect the rights of contracting parties" and that the Amendment, not specifically the requirement of independent advice of counsel, is "one legitimate way of addressing this significant issue and is reasonably related to appropriate legislative objectives." (Peta37). Again, there is no legislative history with any specific explanation as to why the requirement of independent advice of counsel is necessary for palimony agreements, but not for any other agreements. There is no legitimate public purpose. To the contrary, then-Governor Corzine recognized that the legitimate public purpose was best served by requiring a Notary Public.

No court, other than in this matter, has addressed whether the Amendment violates an individual's constitutional right to contract. However, in an unpublished trial court opinion, a judge stated that "[t]here is nothing in the palimony law that prevents the parties from waiving counsel as is sometimes done in matrimonial settlement agreements." Sook Hee Lee v. Kim, 2016 N.J. Super. Unpub. LEXIS 1725, *19 (Ch. Div. 2016). (Ra129). This is misleading. As set forth above, the Uniform Premarital

and Pre-Civil Union Agreement Act allows parties to "voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel." N.J.S.A. 37:2-38. There is no such explicit opportunity to waive the requirement of independent advice of counsel in the Amendment. Instead, the Amendment explicitly requires independent advice of counsel.

II: EQUITY WILL NOT SUFFER THE USE OF THE STATUTE OF FRAUDS AS AN INSTRUMENT OF FRAUD.

The purpose of the Statute of Frauds is to prevent "many fraudulent practices which are commonly endeavored to be upheld by perjury and subornation of perjury." Carlsen v. Carlsen, 49 N.J. Super. 130, 134 (App. Div. 1958). Since, however, the Statute of Frauds is designed to prevent fraud, a court of equity will not permit it to be used to accomplish a fraud. Cauco v. Galante, 6 N.J. 128, 138 (1951); see Moses, supra, 140 N.J. Eq. at 581-82 ("Equity will not suffer the use of the Statute of Frauds as an instrument of fraud."). As a result, to avoid such an inequity, exceptions exist to the Statute of Frauds, including partial or full performance and promissory estoppel. See, e.g., Lahue, supra, 263 N.J. Super. at 599; Crowe v. De Gioia, 203 N.J. Super. 22 (App. Div. 1985), affirmed by 102 N.J. 50 (1986); Mazza v. Scoleri, 304 N.J. Super. 555, 559-60 (App. Div. 1997). In Mazza, the Appellate Division adopted

Section 139(1) of the Restatement (Second) of Contracts, which provides:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promise or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

Mazza, supra, 304 N.J. Super. at 560.

Plaintiff and Defendant both acknowledged, and the trial judge found, that they entered into a written agreement that they signed in the presence of a Notary Public. The written agreement would be legally binding based upon then-Governor Corzine's intent when he signed the Amendment. The terms of the agreement are unambiguous. The written agreement, as signed before a Notary Public, was not susceptible to fraudulent or unreliable methods of proof simply because there was no independent advice of counsel.

The trial judge never considered whether Plaintiff's performance and reliance removed the written agreement from the Statute of Frauds. (Peta13-14). However, the Appellate Division held that Plaintiff "did not plead a proper cause of action for partial performance" and that "her claim for partial performance is in direct contradiction to the Amendment and the services performed are not exceptional in character." (Peta25-26).

First, New Jersey is a notice pleading State and partial performance and estoppel are defenses to Defendant's claim that the written agreement did not comply with the Amendment, not causes of action that require specific pleading. (Peta25). As set forth in paragraphs 6 through 20 of her Amended Complaint, Plaintiff pled her performance and the promises and performance by Defendant that induced her to perform. (Pa23-28).

According to the trial judge, "no matter how you look at it, this was a cohabitation and certainly had all of the earmarks of a marital style relationship and a family style relationship." (8T14:12-15). Plaintiff and Defendant acted and lived their lives as a marital-type unit and they were recognized as such by their peers at work, each of their families, their neighbors, and their community. (Pa24). They spent most holidays together, including birthdays, Christmas, Easter, etc., and they exchanged cards expressing their love for each other. (1T200:6-201:20; Ra35-117). Plaintiff appointed Defendant as the executor of her Last Will and Testament, as her attorney-in-fact in her Power of Attorney, and as her health care representative in her Health Care Directive. (1T175:14-183:25). They attended each other's children's events, including birthdays, sporting events, school concerts, school plays, and graduations. (4T181:3-7; 4T183:14-16; Pa24-25). They vacationed regularly with each other, and with their children. (1T101:12-

103:1). As a result of Defendant's promises and conduct, and with an attorney paid for by Defendant, Plaintiff terminated her ex-husband's alimony obligation. (Peta5; Peta7).

Second, no court, except the Appellate Division in this matter, has ruled that partial performance is no longer a viable exception to the Statute of Frauds. (Peta26-27). The statutory purpose of the Amendment was to overturn the recent New Jersey palimony decisions. However, neither the Amendment's plain language nor the legislative intent modified the purpose of the Statute of Frauds or the exceptions thereto. If the Legislature had intended to modify the purpose of the Statue of Frauds or the exceptions thereto, they could have explicitly done so, or they could have created an entirely separate statute.

Third, relying upon its Appellate Division ruling in Maeker, supra, if Plaintiff's performance is not considered "exceptional", then there likely never will be a partial performance exception to the Amendment. As set forth above, Plaintiff remained in the relationship for approximately 18 years, dedicated her life to Defendant, maintained a home for Defendant, gave up her alimony from her ex-husband, and otherwise engaged in a marital-type relationship with Defendant, all as a result of his promises and conduct. Now, at the end of 18 years, after relying upon Defendant's promises, both oral and written, Plaintiff has nothing to show for it.

III: PLAINTIFF AND DEFENDANT ENTERED INTO A BINDING ORAL PALIMONY AGREEMENT PRIOR TO THE AMENDMENT.

In Maeker, supra, this Court confirmed that oral promises of lifetime support pre-dating the Amendment remain enforceable. Maeker, supra, 219 N.J. at 581-82. In 2006, the Appellate Division reaffirmed what is necessary to prove an oral palimony agreement: (1) that the parties cohabited; (2) in a marriage-type relationship; (3) that, during this period of cohabitation, there was a promise of life-time support; and (4) that this promise was made in exchange for valid consideration. Levine v. Konvitz, 383 N.J. Super. 1, 2 (App. Div. 2006).

The only question at trial was whether Defendant had made oral promises to Plaintiff. The Appellate Division in In re Estate of Robert P. Quarg, 397 N.J. Super. 559 (App. Div. 2008) held that a promise will be enforced, whether it is implied or express, or inferable from the parties' acts and conduct.

It is inconceivable to conclude that Plaintiff would spend 18 years of her life in a relationship with Defendant without a promise being made to her. Throughout the relationship, Defendant told Plaintiff and her children that he was planning for their future should anything happen to him or their relationship. Defendant's conduct evidenced his commitment to Plaintiff. Defendant purchased the Bordentown property, designated Plaintiff as the beneficiary of the Bordentown

property, designated Plaintiff as the beneficiary of his life insurance and accidental D&D policies, designated Plaintiff as the beneficiary of his retirement assets, designated Plaintiff as the beneficiary of his bond account, added Plaintiff's name to the Bordentown property, and drafted the written agreement. This conduct bespeaks of a promise. If Defendant's conduct does not evince a promise, no conduct will suffice. Short of marrying Plaintiff, Defendant did everything, between his words to Plaintiff and her children, and his conduct, to demonstrate that he intended to support Plaintiff for life.

CONCLUSION

It is respectfully submitted that, in the interests of justice, this Court should grant Plaintiff's Petition for Certification as to questions 1, 2 and 3 above.

CERTIFICATION PURSUANT TO R. 2:12-7

I hereby certify that the within Petition for Certification presents a substantial question and is filed in good faith and not for purposes of delay.

Respectfully submitted,

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By: _____
ANGELO SARNO

DATED: December 14, 2020