

PLAINTIFF'S REPLY BRIEF

Kenneth Frank Irek, *Plaintiff*

v.

New Jersey Lawyers' Fund
For Client Protection, *Defendant*

and

The Supreme Court of New Jersey, *Defendant*

From:

Superior Court of New Jersey

Mercer County

Law Division

Docket No. MER-L-002022-20

Appeal Docket No. A-001384-20

Filed August 23, 2021

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KENNETH FRANK IREK,

Plaintiff-Appellant

v.

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION,

Defendant-Respondent

and

THE SUPREME COURT OF NEW JERSEY,

Defendant-Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-001384-20T

CIVIL ACTION

On Appeal from a Final Order
of the Superior Court of New
Jersey, Law Division, Mercer
County, Dismissing the Verified
Complaint and Denying Motion
for Injunctive Relief

Docket No. MER -L-2020-20

Sat Below:

Hon. Douglas H. Hurd, P.J.S.C.

APPELLANT'S REPLY BRIEF

ON BEHALF OF

PLAINTIFF-APPELLANT KENNETH FRANK IREK

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PRELIMINARY STATEMENT

This is Plaintiff's Reply Brief from the dismissal, with prejudice, of Plaintiff's Verified Complaint which sought to declare, void *ab initio*, a Default Judgment entered by the Superior Court of Mercer County, Law Division, on March 22, 1995. The Verified Complaint was based wholly upon records obtained by Plaintiff through Records Requests, directly from Defendants. At all times, from the date of their creation, these documents were in the custody and control of Defendants. There are only three (3) original evidentiary records:

- 1) On or about February 27, 1991, Zontan and Cathleen Szatmary filed an Attorney Grievance Form with the District IX Ethics Committee stating that they did not receive back the \$5,000 down payment they paid to Kirex Development Co., for the purchase of a lot that did not close;
- 2) On April 12, 1991, Cathleen D. Szatmary and Zontan J Szatmary filed a written Statement of Claim with the New Jersey Lawyers' Fund for Client Protection, stating that they lost Five Thousand dollars (\$5,000) from Kenneth Irek (Plaintiff), based on a Fiduciary Relationship [escrow agent].
- 3) On July 29, 1992, a District IX Ethics Committee hearing was held in Middletown, New Jersey, where sworn oral testimony was taken from Cathleen Szatmary, the sole witness. The Hearing Panel Report conclusions were used to disbar Plaintiff.

This appeal was brought by Plaintiff in order to have a thorough review of the undisputed record and properly apply the appropriate New Jersey laws, statutes and regulations, to them.

PROCEDURAL HISTORY

The Procedural History section of a Brief shall conform to the following Court Rules:

Rule 2:6-4. Contents of Respondent's Brief ... , states:

(a) Contents. Except as otherwise provided by R. 2:9-11 (sentencing appeals), the respondent's brief shall conform either to the requirements of R. 2:6-2(a) (formal brief) or (b) (letter brief), insofar as applicable, except that a counterstatement of facts need be included only if the respondent disagrees with such statements in the appellant's brief.

Rule 2:6-2. Contents of Appellant's Brief, states:

(a)(4) A concise procedural history including a statement of the nature of the proceedings and a reference to the judgment, order, decision, action or rule appealed from or sought to be reviewed or enforced. The appendix page of each document referred to shall be stated. The plaintiff and defendant shall be referred to as such and shall not, except where necessary, be referred to as appellant and respondent.

The Merriam-Webster online Dictionary defines "concise" as:
"Marked by brevity of expression or statement; free from all elaboration and superfluous detail".

Defendants' Procedural History is a reiteration and discussion of the contents of Plaintiff's Verified Complaint and is not in chronological order. More importantly, it is missing the decisions and actions relating to the Szatmary's 1991 Attorney Grievance Form and their Statement of Claim, which are the

seminal events leading to this Appeal. In contrast, the Procedural History contained in Plaintiff's Brief begins in 1991, and sets forth all the recorded legal actions up to the present. (Pb4) A clearer understanding of this Appeal may be achieved by examining Defendants' Procedural History in tandem with Plaintiff's.

STATEMENT OF FACTS

Plaintiff relies upon his Statement of Facts found in his opening Brief. A condensed version is included here; on or about May, 1990, Plaintiff, Kenneth Frank Irek (Irek) advertised the sale of a vacant construction lot in Jackson, New Jersey that his solely owned New Jersey corporation, Kirex Development Company, Inc., owned. Zontan Szatmary and his wife, Cathleen Szatmary, decided to purchase the lot and retained a licensed New Jersey attorney, Dennis D. Poane to represent them. A "Contract for Sale of Real Estate" was signed by both parties and Cathleen Szatmary gave a \$5,000 check payable to "Kirex Dev. Co", dated May 29, 1990, to Irek as the initial deposit of the purchase price of \$35,000. Irek, acting in his official capacity as the President of Kirex Development Company, Inc., endorsed the check as "Kirex Development Co", and later deposited it into the Kirex business bank account. Dennis D. Poane, Esq, proceeded to prepare for closing with a series of correspondences back and forth with Fran Donahue, a Realtor friend of Irek, at the end of

June and early July, 1990. On or about August, 1990, Irek became unavailable and the closing never took place and the \$5,000 was not returned. On or about February, 27, 1991, Zontan and Cathleen Szatmary filed an Attorney Grievance Form with the NJ District Ethics Committee, District IX Secretary, Walton W. Kingsbery, III, claiming Irek, acting as an attorney for Kirex Development Co., took their \$5,000 down payment.

On July 29, 1992, a District IX Ethics Committee hearing was held in Middletown, New Jersey, where sworn oral testimony was taken from Cathleen Szatmary, the sole witness. The Hearing Panel Report concluded:

1) Irek (Respondent), is guilty of Count One, a violation of R.P.C. 1.15(b), in that he received money in a fiduciary capacity with the money placed in trust and failed to safeguard it and return it; and

2) Irek is guilty of Count Three, a violation of R.P.C. 8.4(c) because he accepted the money, misrepresented that it would be placed in trust and held until closing and then absconded with the funds. His actions constituted misrepresentation, deceit, dishonesty and fraud upon Mr. and Mrs. Szatmary.

On December 28, 1992, the New Jersey Disciplinary Review Board sent their Conclusions and Recommendations to the NJ Supreme Court.

On May 11, 1993, Chief Justice Robert N. Wilentz signed an Order that permanently disbarred Kenneth F. Irek and restrained and enjoined him from practicing law in New Jersey.

On November 26, 1993, the Trustees of the Client Protection Fund paid to Zontan and Cathleen D. Szatmary the sum of \$5,000, "arising from the dishonest conduct of their attorney, Kenneth Irek ... ", and received a signed Release, Assignment and Subrogation Agreement from the Szatmarys.

On December 29, 1994, the New Jersey Lawyers' Fund for Client Protection, filed a Civil Complaint in the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-5664-94, demanding Kenneth Irek reimburse the NJLFCP for the Five Thousand Dollars (\$5,000), paid on his behalf to the Szatmarys, plus interests and costs of suit. Paragraph 4 of the NJLFCP Complaint states: "4. In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant embezzled, misapplied and converted to his own use the sum of \$5,000.00 received by him on behalf of Mr. and Mrs. Szatmary as funds to be held, in a fiduciary capacity, in escrow in connection with a real estate transaction."

On March 22, 1995, Default Judgment (J 082161-95) was entered in favor of the New Jersey Lawyers' Fund for Client Protection, and against Kenneth Irek, in the sum of Five Thousand (\$5,000.00) Dollars, plus interest and costs of suit.

For the next twenty-six (26) years, and still continuing, the Defendant NJLFCP, attempted to recover the \$5,000 they paid the Szatmarys from Irek.

Daniel R. Hendi, Director and Counsel to the Defendant NJLFCP, responding to a Record Request from Plaintiff, states that, inter alia: "**As there has been no activity in this account since May 2017, the balance in the account as of today remains \$2,500.**", showing that the Defendants still consider the Default Judgment active and their collection activities ongoing. (Pa315)

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN NOT FINDING SUBJECT MATTER JURISDICTION TO DETERMINE IF DEFENDANTS PROPERLY PAID A CLAIM AGAINST PLAINTIFF UNDER THE AUTHORITY OF RULE 1:28-3

A. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S VERIFIED COMPLAINT AND ERRED BY DISMISSING IT ON THE GROUNDS THAT THE NEW JERSEY SUPREME COURT HAD EXCLUSIVE AUTHORITY OVER IT.

Defendants ignore Plaintiff's discussion regarding whether the necessary elements of Rule 1:28 were present to authorize the NJLFCP to pay the Szatmary's \$5,000 claim against Plaintiff, by incorrectly expanding the holding in GE Capital Mortg. Servs., Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1 (App. Div. 2000). (Pb48-51) from its conclusion that "the Fund may not be sued in Superior Court by a disappointed claimant..." because the Superior Court lacks subject matter jurisdiction over the Fund's

discretionary determinations under R. 1:28-3(b); to the premise that GE Capital applies to all the Trustees' actions, including the required elements for "eligible claims" under R. 1:28-3(a).¹
(Rb17)

¹ Plaintiff concedes that the New Jersey Supreme Court derives its authority over New Jersey attorneys from Article VI of the New Jersey State Constitution:

"3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." (N.J. Const. art. VI, § II, ¶ 3)
(Also SEE Pb13)

GE Capital was a case brought against the Fund by a disappointed claimant and the Superior Court granted summary disposition in favor of the Fund, based upon R. 1:28-3(b), Consideration of Claims, which gives the Trustees sole discretion regarding "eligible claims". The Court stated plaintiff cannot:

"... utilize the court system to establish a viable and enforceable claim against the Fund. This proposed collateral approach would directly violate the procedure established by our Supreme Court for the processing of such claims. Because the Fund is wholly a creature of the Supreme Court, the Court should determine whether alternate procedures may be followed in order to pursue a claim against the Fund." Ibid.

The Court further stated:

"Contrary to plaintiff's contention, the mere fact that R. 1:28-2(f) specifically grants immunity from suit to

the Fund's trustees and personnel will not be interpreted as an inferential endorsement by the Supreme Court of direct claims against the Fund in the trial divisions. We will not permit such a dramatic abrogation of the procedures established by R. 1:28-1 to -9 without express sanction of the Supreme Court." Ibid.

The word "abrogation" as found in the online Cambridge dictionary, defines "abrogation" as a noun meaning: "The act of formally ending a law, agreement, or custom". Contrary to the GE Capital Mortgage plaintiff's abrogation of the procedures of R. 1:28-1 to -9, Ibid., the Plaintiff in the instant case is seeking the enforcement of those procedures. (Pb13) Plaintiff is not a "disappointed claimant"; seeking alternate procedures; nor proposing to "violate the procedure established by our Supreme Court for the processing of such claims", Ibid., therefore GE Capital is not controlling in this R. 1:28-1((a) based Complaint.

Once it is recognized that GE Capital does not apply to this case, the Superior Court of Mercer County, the same Court that issued the Default Judgment in 1995, being a court of general jurisdiction, has subject matter jurisdiction to decide the validity of that Civil Action Default Judgment, (Plaintiff's Verified Complaint):

"SUMMARY OF COMPLAINT

10. This is an action brought by Plaintiff to declare, *void ab initio*, a fraudulently obtained Default Judgment entered by this Court on March 22, 1995, Docket No. MER L

005664-94; Judgment No. J 082161-95; and entered as a Lien on 3-31-1995." (Pa7)

Defendants' Brief is devoid of any discussion or reference to Rule 1:28-3(a), although Plaintiff's main assertions have been that the requirements of R. 1:28-3(a) must be present before the Defendants acquire any jurisdiction over Plaintiff or his conduct. (Pa10, Lines 44 -49, Verified Complaint); (Pb13) Plaintiff surmises that Defendants absolute reliance on GE Capital for the mistaken premise that the Superior Court lacked subject matter jurisdiction to decide any substantive issues presented by Plaintiff, prevented them from addressing them in their Brief. Whether or not that constitute a waiver of Defendants opposition to those areas of Plaintiff's arguments, an analysis of the meaning of Rule 1:28 is relevant to a clearer understanding of Plaintiff's Complaint.

The first step in our analysis is to apply general rules of construction.

"In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language. Technical words and phrases, and words and phrases having a special or accepted meaning in the law, shall be construed in accordance with such technical or special and accepted meaning." N.J.S.A. 1:1-1, General rules of construction.

In that task, we are guided by well-settled standards of statutory construction. As we recently noted, "[g]enerally, under those standards, the intent of the drafters is to be found in the plain language of the enactment [,]" and "[i]f the language is clear, then the interpretative process will end without resort to extrinsic sources." Bedford v. Riello, 195 N.J. 210, 221-22, 948 A.2d 1272 (2008) (citing DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005)). Our resort to outside sources in determining legislative intent is not without limits: "We look to extrinsic evidence if a plain reading of the enactment leads to more than one plausible interpretation." Id. at 222, 948 A.2d 1272 (citing DiProspero, *supra*, 183 N.J. at 492-93, 874 A.2d 1039). The plain language of a statute is always our starting point in discerning and implementing the legislative intent underlying a statute. Spencer Sav. Bank SLA v. McGrover, 2015 N.J. Super. Unpub.LEXIS 459 (2015) Plaintiff's Complaint is based upon R. 1:28-3(a), Eligible Claims, not R. 1:28-3(b), Consideration of Claims. As the titles suggest, part (a) contains the necessary requirements for an "Eligible Claim, while part (b) contains factors the Trustees shall consider in determining which eligible claims merit reimbursement. The very first sentence of (a) states that the Trustees may consider for payment all claims resulting from the dishonest conduct of a

member of the bar of this state... if the attorney was acting either as an attorney or fiduciary, and ... the attorney has been suspended, disbarred or placed in disability inactive status. [*emphasis added*] It is a condition precedent to the following provisions of R. 1:28-3. The requirements of R. 1:28-3(a) must be met before the Trustees can consider, in their sole discretion, which eligible claims [*emphasis added*] merit reimbursement from the fund.... Paragraph (a) can be considered the NJ Supreme Court's written acknowledgment of the limits of their Constitutional jurisdiction over its lawyers:

The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (N.J. Const. art. VI, § II, ¶ 3.)

Part (a) is not discretionary; the specific requirements for a claim to be an "Eligible Claim" that may be considered by the Trustees, are listed as "if" and "provided that". It erects the framework that the Trustees must work within.

Part (b) Consideration of Claims, begins with: "The trustees in their sole discretion..., and lists the determinations they may make, including which eligible claims merit reimbursement from the Fund and the amount, time, manner, conditions and order of payment of reimbursement. It continues by listing factors that they shall consider, in making their determination. The statutory construction, Part (a) and Part (b) clearly indicates

the Supreme Court's articulate drafting of a mandatory Part (a) and a discretionary Part (b).

The gravamen of Plaintiff's Complaint, succinctly stated, is that without meeting the requirements of Part (a), Part (b) does not arise, and the Trustees have no authority to pay the claim.

POINT II

THE TRIAL ERRED IN DISMISSING PLAINTIFF'S VERIFIED COMPLAINT BECAUSE THE PLEADINGS CONTAIN UNDISPUTED FACTS SUPPORTING A CAUSE OF ACTION THAT THE DEFAULT JUDGMENT WAS VOID FOR LACK OF SUBJECT MATTER JURISDICTION AND FRAUD.

Defendant cites Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989), and its progeny, for the standards that govern the analysis of a motion to dismiss pursuant to R. 4:6-2(e). (Db20)

Basically the complaint is examined "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252, 128 A.2d 281 (App. Div. 1957)).

Defendant avers that there was no cause of action in Plaintiff's Complaint because the claims that may be adjudicated under The Tort Claims Act N.J.S.A. 59-1-1, et seq., are time-barred; the causes of actions titled as Common-law Fraud; Intentional

Infliction of Mental Duress; and Libel-Defamation also are barred because the applicable tort statute of limitations has expired. Additionally, Defendant states that they enjoy "absolute immunity" under N.J.S.A. 59:2-2b and Rule 1:28-1f, while performing their official responsibilities. (Db26)

Defendant does not dispute that valid causes of action pervade throughout Plaintiff's Verified Complaint, with accompanying proofs; only that they have defenses that may counter those claims. Additionally, and more importantly, Defendant does not consider Plaintiff's claim that the underlying Default Judgment was void *ab initio*, as a type of cause of action, upon which relief can be granted at any time. (Pb35)

In summary, there is no credible evidence that Kenneth Irek represented the Szatmarys as an attorney or as a fiduciary, nor is there credible evidence of any dishonest conduct by Kenneth Irek. Since the NJLFCP lacked jurisdiction over Irek, the Mercer County Superior Court lacked subject matter jurisdiction over the original 1994 legal proceeding, because the NJLFCP, an entity of the NJ Supreme Court, lacked subject matter jurisdiction to pay a claim against Kenneth Irek, and could not create jurisdiction where there was none. Therefore, the Verified Complaint states a claim upon which relief can be granted, because it contains credible evidence that the 1995

Default Judgment was void *ab initio* for lack of subject matter jurisdiction by the NJLFCP, pursuant to R. 1:28-3.

POINT III

THE TRIAL ERRED IN DISMISSING PLAINTIFF'S VERIFIED COMPLAINT BECAUSE THE PLEADINGS CONTAIN UNDISPUTED FACTS SUPPORTING CAUSES OF ACTION THAT COULD DEFEAT IMMUNITY DEFENSES.

Defendant states that: "to shield the Fund and its employees from liability for actions taken within their discretionary capacities, the Court Rules provide that "[t]he Board of Trustees, Director and Counsel, Deputy Counsel, and Secretary and all staff personnel shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties." R. 1:28-1(f) (emphasis added). The TCA further provides that "[a] public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable." N.J.S.A. 59:2-2b. (Db26)

And further states: "Here, the absolute immunity expounded in Rule 1:28-1(f) was properly applied to the Fund and warranted dismissal of Irek's claims in law and equity. Contrary to Irek's factually unsupported allegations, the complained of conduct falls squarely within the Fund's trustees and deputy counsel's official responsibilities, namely their decision to award the Szatmarys \$5000 and attempts to pursue and recover an outstanding default judgment that was obtained against (and unopposed by) Irek. None

of the purported conduct occurred outside the trustees and deputy counsel's scope of employment. Consequently, the trustees and deputy counsel enjoy absolute immunity in law and equity." (Db27)

Plaintiff's Verified Complaint contains uncontested documents that indicate, on their face, that Defendants conduct was not in the performance of their official duties when they violated or ignored statutes, rules and legal procedures, for example, were there violations of: The Federal Fair Debt Collections Act; the Interstate Driver License Compact; and Sister State judgment enforcement, among others. Defendants could lose their absolute immunity if proven they acted outside their official duties. (Pa137; 142; 306)

POINT IV

THE TRIAL COURT ERRED IN DENYING IREK'S MOTION FOR INJUNCTIVE RELIEF WHERE ALL THE DETERMINING FACTORS OF CROWE v. De GIOIA ARE PRESENT.

The Defendants correctly cite Crowe v. De Gioia, 90 N.J. 126 (1982), as the long recognized standard for granting injunctive relief and describe the (3) major Crowe factors a reviewing court should analyze in determining whether injunctive relief is warranted: (1) such relief is necessary to prevent irreparable harm; (2) there is a settled underlying claim and a showing of reasonable probability of success on the merits; and (3) the relative hardship to the parties in granting or denying relief.

Additional cases are cited that assist in applying the Crowe factors. (Db28)

Defendants then "Guided by the above principles...", begin to apply their version of the facts to the Crowe factors, (Db29) which results in a litany of conclusions not supported by the evidentiary record: 1) as to the irreparable harm factor, Irek faces no harm via an ongoing violation of his rights; 2) he has not demonstrated that the default judgment was improperly procured; 3) The judgment exists only because Irek did not defend his position when the Fund brought suit against him in 1994 after it awarded the Szatmarys \$5000 for Irek's misappropriation of their funds in that exact amount; 4) The mere fact that he was not the Szatmarys' attorney at the time of the underlying real estate transaction does not negate the obvious that their initial deposit was held in escrow and Irek was the designated escrow agent when he absconded with the money; 5) Moreover, over two decades have elapsed since the default judgment was entered, and, despite being duly notified, Irek failed to contest the judgment's validity on numerous occasions; 6) Irek was provided ample opportunities to challenge the judgment, but elected to ignore the notices; 7) A bench warrant would not be issued if he simply appeared in court as ordered. 8) In short, Irek is not subject to any immediate or irreparable harm because the alleged "harm" stems from Irek's own clear

defiance of judicial authority and court orders. Therefore, the first Crowe factor is not met.

Plaintiff's short rebuttal: 1) Defendants have caused the New Jersey Driver's License Forfeiture to be sent directly to the California Department of Motor Vehicles, requesting them to suspend or refuse to renew Plaintiff's California driver license. (Pa159)

2) (Pa13, Line 68)

3) There is no legal authority to compel a person to defend an action where there is no subject matter jurisdiction and the action was fraudulently instituted.

4) There is no credible evidence that the deposit was held in escrow, nor that Irek was designated an "escrow agent".

5) There is no time limit on contesting a judgment entered without subject matter jurisdiction.

6) It was the Defendants' responsibility to state the true facts in their Complaint, and they had ample opportunities to correct the Judgment.

7) There is no legal authority to order a person to travel 3,000 miles to another state to defend against the issuance of a bench warrant for his arrest where there is no subject matter jurisdiction and the action was fraudulently instituted.

8) The possibility of arrest and incarceration is irreparable harm that cannot be satisfied by a money judgment.

Defendants rendition of the remaining Crowe factors are equally fraught with inaccuracies and omissions, and should be compared with the existing evidence.

POINT V

THE TRIAL COURT ERRED IN DISMISSAL OF THE VERIFIED COMPLAINT BASED UPON A LACK OF SUBJECT MATTER JURISDICTION.

Defendants state that they filed a timely pre-answer motion, pursuant to R. 4:6-2. It was titled: NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION AND SUPREME COURT OF NEW JERSEY'S CROSS-MOTION TO DISMISS THE VERIFIED COMPLAINT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF, and the trial judge granted their Cross-Motion to Dismiss Irek's Verified Complaint; dismissed with prejudice Irek's Verified Complaint; and denied with prejudice, Irek's Motion for Injunctive Relief.

Defendants make no further arguments or discussion, inferring that this Motion was correctly decided, and for the proper reasons. Defendants' Motion Brief arguments were the major source for Judge Hurd's Motion Decision:

"Defendants are correct that the Court lacks subject matter jurisdiction over the plaintiff's claim because the Constitution unequivocally provides the Supreme Court with exclusive authority over the State Bar, and under this authority the Supreme Court established the New Jersey Lawyers' Fund for Client Protection." (2T-5,6);

and from Defendants' Motion Brief:

"Succinctly stated, this Court lacks authority to scrutinize the decision-making that is within the "sole

discretion" of seven trustees who were appointed by and answer directly to the Supreme Court. Absent an express sanction of the Supreme Court, Irek is barred from pursuing any claims against the Fund in this Court. (Pa347)

Plaintiff maintains that the Superior Court is the proper forum to adjudicate this case. As Plaintiff has continually asserted, Judge Hurd's decision that the Superior Court does not have subject matter jurisdiction over the Plaintiff's claim (2T5-21) incorrectly categorizes this case as one disputing the Fund's discretion under R. 1:28-3(b), where the holding in GE Capital governs, while this case is actually a reply to the NJLFCP 1994 Complaint and subsequent Default Judgment entered March 22, 1995, in this Court; **" This is an action brought by Plaintiff to declare, void ab initio, a fraudulently obtained Default Judgment entered by this Court on March 22, 1995, Docket No. MER L 005664-94; Judgment No. J 082161-95; and entered as a Lien on 3-31-1995."** (Pa7) and **"NJLFCP lacked subject matter jurisdiction over Kenneth Irek because he did not represent the Szatmarys as an attorney or as a fiduciary."**

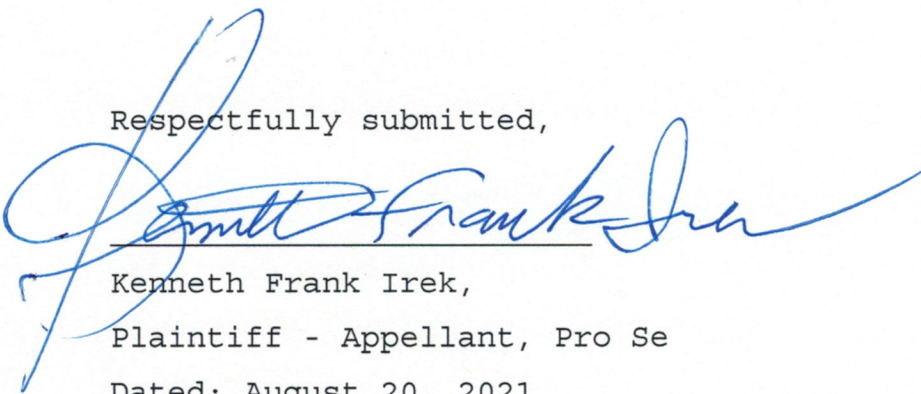
(Pa10) This case began here and should end here. It is the proper forum for cases brought for or against the NJLFCP, and has been since its creation. See NJLFCP v. Pace, 374 N.J. Super 57 (2005); N.J. Lawyers' Fund for Client Prot. v. First Fidelity Bank, N.A., 303 N.J. Super. 208, App Div. (1997)

In summary, the trial court incorrectly based its decision on its lack of subject matter jurisdiction and should be reversed.

CONCLUSION

Plaintiff therefore respectfully requests that this Court review the undisputed evidentiary record contained in the Verified Complaint, solely obtained from Defendants acting as the Custodian of Records, and reverse the trial court's order granting Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint, with prejudice and denying Plaintiff's Motion for Injunctive Relief, with prejudice; hold that the Default Judgment was void *ab initio*, because Plaintiff was not acting as an attorney or fiduciary, and the New Jersey Supreme Court and its entities lacked subject matter jurisdiction over Plaintiff while engaging in personal business transactions; and grant injunctive relief as requested in the underlying Motion, and remand for determination of Plaintiff's amount of damages. If remanded for a trial on the merits, Plaintiff requests a jury trial.

Respectfully submitted,



Kenneth Frank Irek,
Plaintiff - Appellant, Pro Se
Dated: August 20, 2021