

APPELLATE COURT'S OPINION  
AFFIRMING SUPERIOR COURT'S  
DISMISSAL OF PLAINTIFF'S  
VERIFIED COMPLAINT

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, Appellate Division

Appellate Docket No. A-001384-20-T4

Decided - File Date: May 18, 2022

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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1384-20**

**KENNETH FRANK IREK,**

Plaintiff-Appellant,

v.

**NEW JERSEY LAWYERS'  
FUND FOR CLIENT  
PROTECTION and THE  
SUPREME COURT OF  
NEW JERSEY,**

Defendants-Respondents.

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Argued March 3, 2022 – Decided May 18, 2022

Before Judges Mawla and Alvarez.

On appeal from the Superior Court of New Jersey, Law  
Division, Mercer County, Docket No. L-2022-20.

Kenneth Frank Irek, appellant, argued the cause pro se.

Michael T. Moran, Deputy Attorney General, argued  
the cause for respondents (Matthew J. Platkin, Acting  
Attorney General, attorney; Sookie Bae-Park, Assistant  
Attorney General, of counsel; Michael T. Moran, on the  
brief).

## PER CURIAM

Plaintiff Kenneth Frank Irek, a former member of the New Jersey bar, owes a remaining balance of \$2,500 on a \$5,000 default judgment obtained in 1995 by the New Jersey Lawyers' Fund for Client Protection (previously named the Clients' Security Fund). The Fund has been attempting to collect on the judgment since. The judgment represents a security deposit held by Irek in 1993 for land his solely owned corporation had contracted to sell. As a result of Irek "bec[oming] unavailable"<sup>1</sup> at the date of closing and failing to refund the deposit, the Supreme Court of New Jersey disbarred him.

Irek's 2020 verified complaint, the within matter, names the Fund and the New Jersey Supreme Court as defendants. He seeks to vacate the judgment, reinstate his law license, and be awarded compensatory and punitive damages together with interest. On December 21, 2020, Judge Douglas H. Hurd dismissed the complaint in a cogent and thoughtful decision, which denied injunctive relief and did not compel defendants to file an answer. For the reasons he stated, we affirm that decision.

Irek's claims of error are as follows:

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<sup>1</sup> The explanation of the underlying event is taken from Irek's 2020 verified complaint.

### POINT I

THE TRIAL COURT ERRED IN NOT FINDING THE DEFAULT JUDGMENT VOID AB INITIO BECAUSE THE [FUND] ONLY HAD JURISDICTION OVER LAWYERS ACTING AS AN ATTORNEY OR FIDUCIARY.

A. The Trial Court committed plain error by not finding the Default Judgment void ab initio because the [Fund] did not have the elements required by Rule 1:28-3, to acquire subject matter jurisdiction over Plaintiff's personal business transactions, and Plaintiff's Verified Complaint should not have been dismissed.

### POINT II

THE TRIAL COURT ERRED IN NOT DECLARING THE 1993 DISBARMENT ORDER RELIED ON BY THE [FUND] AS A REQUIREMENT FOR AN ELIGIBLE CLAIM, TO BE VOID AB INITIO FOR LACK OF SUBJECT MATTER JURISDICTION.

A. The Trial Court committed plain error by not finding the 1993 Disbarment Order of Plaintiff, void ab initio, because the undisputed record contains clear and convincing evidence that the Supreme Court lacked subject matter jurisdiction over Plaintiff engaged in a personal business transaction, and the decision should be reversed.

### POINT III

THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' CROSS-MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT BECAUSE

THE PLEADINGS CONTAIN UNDISPUTED FACTS  
SUPPORTING A CAUSE OF ACTION.

A. The Trial Court's dismissal of Plaintiff's Verified Complaint was plain error because it contained undisputed evidence supporting the claim that the underlying Default Judgment was void ab initio, which is a claim upon which relief can be granted at any time, and should be reversed.

POINT IV

THE TRIAL COURT ERRED IN DENYING IREK'S  
MOTION FOR INJUNCTIVE RELIEF TO PREVENT  
IRREPARABLE HARM BY ARREST AND  
INCARCERATION.

A. The Trial Court's Decision denying Plaintiff's claim for monetary injunctive relief based upon absolute immunity, does not affect the non-monetary injunctive claims and the denial of all the injunctive claims is plain error, and should be reversed.

POINT V

THE TRIAL COURT ERRED IN NOT ALLOWING  
THE DEFENDANTS' ANSWER TO BE FILED  
BEFORE DISMISSAL OF THE COMPLAINT.

A. The Trial Court's Decision that it lacks subject matter jurisdiction over Plaintiff's claim is plain error.

We consider Irek's arguments so lacking in merit as to not warrant much discussion in a written decision. See R. 2:11-3(e)(1)(E).

The cornerstone of Irek's arguments is that since he was acting as an escrow agent for his corporation, and did not represent the buyers, he cannot be held accountable for his failure to return the deposit. The mistaken premise that neither the Court nor the Fund can sanction him because there was no attorney-client relationship colors his analysis of the law.

The Court's disbarment decision identified the "knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c)" as Irek's wrong. It seems a self-evident proposition, and one supported by caselaw, that licensed attorneys must honor their oath, even if acting only as an escrow agent, regardless of any attorney-client relationship with the owner of the funds. See, e.g., Innes v. Marzano-Lesnevich, 435 N.J. Super. 198, 217 (App. Div. 2014) ("RPC 1.15(a) requires a lawyer to appropriately safeguard the property of clients or third parties in his or her possession."). Thus, Irek's flawed premise cannot sustain his causes of action. Attorneys may be disbarred even for conduct unrelated to the practice of law. See In re Witherspoon, 203 N.J. 343, 357 (2010).

As separate grounds for the dismissal, Irek's claims cannot be pursued in the Law Division. The Supreme Court has exclusive authority over the state bar and established the Fund pursuant to this authority. See G.E. Cap. Mortg. Servs.,

Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1, 5 (App. Div. 2000). In G.E., the late Judge King said that the Fund may not be sued in Superior Court because only the Supreme Court "determine[s] whether alternate procedures may be followed in order to pursue a claim against the Fund." Id. at 6. Furthermore, the Fund enjoys immunity from suit for direct claims. Ibid.; see also R. 1:28-1(f).

Finally, Irek's late filing also necessitated dismissal. The Tort Claims Act is a comprehensive statutory scheme regulating suits against entities such as the Fund and the Supreme Court. See N.J.S.A. 59:1-1 to 12-3. This action sought damages for events that occurred in 1994. It falls well outside the Act's two-year statute of limitations. See N.J.S.A. 59:8-8. In sum, no error is committed when a trial court dismisses an action filed more than twenty years out of time in a venue without authority to act and against entities immune from suit.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION