19-8834

IN THE SUPREME COURT

OF

THE UNITED STATES OF AMERICA

ORIGINAL

MONOSIJ DUTTA-ROY Successor to **BazaarWorks, LLC** **Petitioner**: **Dutta-Roy** Counsel: pro se v. JYSK BED'N LINEN, D/B/A BY DESIGN **Respondent** : ***Jysk*** Counsel: *Mr. Jonathan Fain, Mr. Ashutosh Joshi*	**IN** **THE SUPREME COURT** **OF** **THE UNITED STATES OF AMERICA** **OPINION FROM** **The Eleventh Circuit:** **Civil/ Appeal: 18-14410-HH** ***Decisions From*:** ***US District Court*: *1:12-cv-03198-TWT*** ***Monday, June 22, 2020***

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SUPREME COURT, U.S.

Civil/ Appeal:	**18-14410-HH**	**The Eleventh Circuit**
Original Case:	**1:12-cv-03198-TWT**	**US District Court: Northern District of Georgia**

Petitioner Dutta-Roy's

PETITION FOR A WRIT OF CERTIORARI

Questions Presented

The issues, in this sum of matters, between *pro se* Monosij Dutta-Roy (**Petitioner** or **Dutta-Roy**) and Jysk Bed 'N Linen, formerly Quick Ship Holding, DBA **By Design** (**Respondent** or **Jysk** or **By Design** or **then Quick Ship**) arose out of a profit-sharing joint-venture (J/V) partnership agreement to develop an eCommerce furniture site on the domain ***bydesignfurniture.com***, signed on or about July 2000 (**P/A or 2000 P/A**) (**Apdx-E4**) between Quick Ship and BazaarWorks.[1]

Quick Ship's by sole-owner Mr. Kjell Bratengen (**Bratengen**), canceled the eCommerce go-live, soon after Quick Ship manager Mr. Scott Bell (**Bell**)'s[2] purchase of deployment servers in 2003, in eCommerce development finalized by Dutta-Roy. This denied junior partner Dutta-Roy, any income from the J/V profit-sharing earnings arrangement of 12% →11%→10% from the estimated furniture sales of $1M→$2M→$3M+ on the site[3] – a significant loss just by Dutta-Roy's 4000+ development time. Quick Ship was then sold to Jysk in 2006.

Set of questions presented are on whether The Eleventh Circuit (**11th Cir.**) has reviewed *de novo*, US District Court, Northern Dist. Of Georgia's (**NDGA**) grant of Sum. Jud. (**Apdx-B3 (DN-69)**), endorsing Jysk's claims for ***bydesignfurniture.com***?

1) Can the 11th Cir. ignore the **fraudulent** nature of the affidavits used by the NDGA to grant summary judgment, ignoring the critical issue of Jysk's **identity** claimed and granted as BYDESIGNFURNITURE? Should NDGA and the 11th Cir. (the Courts) have allowed Jysk to proceed filing as DBA ***By Design Furniture***, only based on a USPTO filing for BYDESIGNFURNITURE, yet to be granted by Dutta-Roy's opposition?

2) Can the NDGA apply the Anti-Cybersquatting Consumer Protection Act (ACPA), **15 U.S.C. § 1125 retroactively**, arguing Jysk's right to ***bydesignfurniture.com*** by common-law,

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1 The 2000 P/A was between Jysk, then Quick Ship, and Dutta-Roy, then BazaarWorks. The BazaarWorks partnership was between Dutta-Roy, Ashish Negandhi (**Negandhi**), Shashi Sonnad (**Sonnad**) and Devashish Worah (**Worah**), formalized September 12, 1999, to take on the eCommerce development. Dutta-Roy took over BazaarWorks since about 2002.

2 Bell and others at **By Design** had validated, in 2002/ 03, functionality of the secure eCommerce, on servers running on Dutta-Roy's home-office.

3 Dutta-Roy has shown an unsigned copy of the J/V, 2000 P/A, corroborating emails between Bratengen and himself, confirming eCommerce development. He has also submitted affidavits from former BazaarWorks partner Negandhi, noting the eCommerce development started about July 2000, in express understanding with Bratengen.

ignoring Dutta-Roy's continuous ownership and licensing of his mark to Jysk? Can the Courts, flip-flopping on **renew** v. **register** arguments, retroactively apply the ACPA?

3) Have the Courts also failed to address the basis for any of Jysk's ACPA claims against Dutta-Roy, granted also by contract/ property rights, ignoring Dutta-Roy's *prima facie* pre-ACPA ownership and his J/V rights to ***bydesignfurniture.com***? Thus did the Courts fail to address fraud and reverse-cybersquatting, just by that when after five years of litigation Jysk dropped Lanham Act claims against Dutta-Roy?

4) Have the 11th Cir. failed to address how NDGA could allow Jysk to amend its pleading so as to conform to the original sum. jud., while not allowing Dutta-Roy to amend his pleading? How can this be allowed on plausibility issues cited?

5) On a broader note, have the ACPA and the Lanham Act **15 U.S.C. § 1051 et. seq**, been applied the right contexts in the profit-sharing, joint-venture, fiduciary duty thereof, beyond just the historical contexts of **property** and **contract**? Here the *prima facie* profit-sharing fiduciary arguments in joint-venture on the domain has been completely ignored.

6) In market structure arguments showing *prima facie* that the joint-venture mark is **significantly overvalued** to the primary partner's mark (**By Design** stores) it is dependent on – can the 11th Cir. also ignore Dutta-Roy's arguments for an equitable accounting process, in significant ***benefits conferred*** to Jysk? Thus if not by a signed contract, did the Courts give any consideration for the quasi-contract shown by emails with Bratengen and Sonnad, in continuance of the original BazaarWorks contract, to Dutta-Roy? Court also ignored new evidence in Negandhi's affidavit noting the basis of the eCommerce development.

7) Thus, can the 11th Cir. ignore the **intertwined** and **supplemental** damages brought about by Jysk's state court garnishments against Dutta-Roy, in NDGA – applying the ACPA retroactively, fiduciary by four year contract statues, allowing damages not authorized by the ACPA – allowing Jysk to proceed on damages even when the issues were in Appeal at the 11th Cir.?

8) Can the 11th Cir. just ignore Dutta-Roy's arguments in legal malpractice against Jysk General Counsel Mr. Barry Zipperman (**GC Zipperman**) in fraud, conspiracy, aiding and abetting a fiduciary duty – in that the arguments are shown by 11th Cir,'s own opinion in ***Lucky Capital Management, LLC, v. Miller & Martin, PLLC*** (***Lucky***). Jysk counsels Mr. Jonathan Fain (Counsel Fain) and Mr. Ashutosh Joshi (Counsel Joshi) were also shown to have no standing and this was also never addressed.

List Of Parties

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1) **Monosij Dutta-Roy**: Pro Se, **Petitioner**

2) ***Jysk Bed'n Linen***: ***Respondent***, represented as follows:
   A) Mr. Kjell B. Bratengen: Employee of Appellee Jysk: Original sole-owner of Quick Ship Holding DBA ***By Design***, sold to Jysk Bed'n Linen in 2006.
   B) Ms. Shashi Sonnad: Employee of Appellee Jysk; Former Partner of BazaarWorks, LLC.
   C) Mr. Peder Sorensen: Employee of Appellee Jysk.
   D) General Counsel Mr. Barry Zipperman

   Jysk has been represented in the Courts by Counsels:
   E) Mr. Jonathan Fain
   F) Mr. Ashutosh Joshi

List Of Cases

PETITIONED CASES		
Eleventh Circuit: This Third Appeal	**18-14410-HH**	OCT.19.2018: Appeal Final Jud. DN-148 (incorp. Apdx-B3 (DN-69), Apdx-B2 (DN-88)). **Appeal Denied: SEP.23.2019. Rehearing Denied: JAN.23.2020.**
NORTHERN DISTRICT OF GEORGIA (NDGA)	**1:12-cv-03198-TWT**	SEP.12.2012: Jysk Claims; OCT.10.2012: Dutta-Roy Counter-Claims; OCT.22.2013: Apdx-B3 (DN-69): Sum.Jud.; JAN.08.2014: Apdx-B2 (DN-88): $4000 Damages.
DIRECTLY RELATED: USPTO FILING + INITIAL APPEALS		
US PATENT AND TRADEMARK OFFICE (USPTO)	**Serial No: 85350874 Oppos. No: 91215293**	JUL.23.2012: Jysk Application; MAR.05.2014: Dutta-Roy Opposition;
ELEVENTH CIRCUIT: First Appeal	**13-15309-AA**	NOV.19.2013: Appeal: Injunction; DEC.16.2015: Opinion: Affirming Injunction;
ELEVENTH CIRCUIT: Second Appeal	**15-14859-AA**	OCT.28.2015: Appeal: Jurisdiction/ Contempt/ Fees; OCT.10.2017: Affirmed/ Vacated/ Remanded
SUPPLEMENTAL & INTERTWINED: GARNISHMENTS + EARLY-TERMINATION + EVICTION		
FULTON: Garnishment: Magistrate	**14-GR-000-658**	MAY.02.2014: Jysk: Garnishment of rent on Mrs. Angelou Ezeilo, tenant of Inman Unit.
GWINNETT: Garnishment: Magistrate	**15-GM-03448**	FEB.02.2015: Jysk: Dutta-Roy's SunTrust Bank, Holding Inman Rent/ Business Files; MAR.16.2015: Dutta-Roy: Traverse; NOV.12.2015: Dismissal/ Release of Garnishee
FULTON: Appeal: State:14-GR-000-658	**14-VS-002-567**	JUL.03.2014: Appeal: 14-GR-000-658; JUL.18.2016: Dismissed
ELEVENTH CIRCUIT: Second Appeal	**15-14859-AA**	OCT.28.2015: Appeal: Jurisdiction/ Contempt/ Fees; OCT.10.2017: Affirmed/ Vacated/ Remanded
GWINNETT: Early-Termination: Magistrate	**16-M-09896**	APR.11.2016: Damages in Early-Term. Of Inman Unit; JUN.09.2016: Hearing – Appealed to Superior.
GWINNETT: Appeal: Superior: 16-M-09896	**16-A-06591-5P1**	JUN.09.2016: Appeal 16-M-09896 decision; JUN.09.2016: 1st Hearing; JUN.07.2017: 2nd Hearing; OCT.02.2017: Dismissed denying Dutta-Roy claims.
FULTON: Dispossessory: Magistrate	**18-ED-098-724**	NOV.09.2018: Mr. Matteo Toniolo in Disposessory of Inman Unit; NOV.21.2018: Dutta-Roy Answer/ Motion to Dismiss; DEC.04.2018: Hearing.

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Apdx-A2	18-14410-HH	Appeal Denied: September 23, 2019	Appeal Filed: October 19, 2018 On Final Jud. DN-148 (incorp. DN-69, DN-88)
DISTRICT COURT (NDGA) CASE			
Apdx-B1	1:12-cv-03198-TWT	Order: **DN-148**: Incorporates DN-69/ DN-88	Referred: **Apdx-B1 (DN-148)**
Apdx-B2	1:12-cv-03198-TWT	Order: **DN-88**	Referred: **Apdx-B2 (DN-88)**
Apdx-B3	1:12-cv-03198-TWT	Order: **DN-69**	Referred: **Apdx-B3 (DN-69)**
REFERENTIAL FILING			
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Apdx-D1	1:12-cv-03198-TWT	**DN-57-4**: Kjell Bratengen Aff. Submitted w. Mot. for Partial Sum. Jud.	Referred: **Apdx-D1 (DN-57-4)**
Apdx-D2	1:12-cv-03198-TWT	**DN-57-5**: Shashi Sonnad Aff. Submitted w. Mot. for Partial Sum. Jud.	Referred: **Apdx-D2 (DN-57-5)**
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Apdx-D4	1:12-cv-03198-TWT	**DN-58-4**: Kjell Bratengen Aff. Submitted w. Mot. for Sum. Jud.	Referred: **Apdx-D4 (DN-58-4)**
Apdx-D5	1:12-cv-03198-TWT	**DN-58-5**: Shashi Sonnad Aff. Submitted w. Mot. for Sum. Jud.	Referred: **Apdx-D5 (DN-58-5)**
Apdx-D6	1:12-cv-03198-TWT	D**N-68-1**: Kjell Bratengen Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **Apdx-D6 (DN-68-1)**
Apdx-D7	1:12-cv-03198-TWT	D**N-68-2**: Shashi Sonnad Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **Apdx-D7 (DN-68-2)**
Apdx-D8	1:12-cv-03198-TWT	**DN-68-3**: Barry Zipperrman Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **Apdx-D8 (DN-68-3)**
ESSENTIAL EXHIBITS SUBMITTED			
Apdx-E1	1:12-cv-03198-TWT	Jysk, then Quick Ship, DBA **By Design** filing at Gwinnett.	Jysk never filed for **BYDESIGNFURNITURE** until USPTO filing at July 23, 2012.
Apdx-E2	1:12-cv-03198-TWT	A sample of Jysk marketing materials showing **By Design** or **By Design**	Never used ***By Design Furniture***.

		International Furniture, never ***By Design Furniture***.	
Apdx-E3	1:12-cv-03198-TWT	Dutta-Roy's ***bydesignfurniture.com*** WHOIS registration record.	Dutta-Roy registered pre-ACPA and continuously held.
Apdx-E4	1:12-cv-03198-TWT	Unsigned Partnership Agreement (P/A or 2000 P/A).	Bratengen email shown in Petition noting he has copy.
Apdx-E5	1:12-cv-03198-TWT	***bydesignfurniture.com*** hosting transfer from Interland to Genesis for transferring ***By Design Coming*** and Jysk's email.	Shows Dutta-Roy's continuous use in over three years of development for eCommerce.
Apdx-E6	1:12-cv-03198-TWT/ 18-14410-HH	Ex-BazaarWorks partner, Ashish Negandhi Affidavit.	Shows eCommerce started with express understanding with Bratengen in profit-sharing.
Apdx-E7	1:12-cv-03198-TWT/ 18-14410-HH	Sum of evidence/ discovery submitted by Dutta-Roy.	A list of the evidence submitted to NDGA even at Sum. Jud. Apdx-B3 (DN-69).
Apdx-E8	1:12-cv-03198-TWT/ 18-14410-HH	A subset of torts cited by Dutta-Roy.	cited by the sum of federal and state court actions.

Opinions Below

The opinion of the **United States Court of Appeals for The Eleventh Circuit**, appears at Appendices: **Apdx-A1**, denying Petition for hearing on Opinion: **Apdx-A2**, and is:

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the **United States District Court, Northern District of Georgia**, appears at Appendices: **Apdx-B1 (DN-148)**, incorporating Orders, **Apdx-B2 (DN-69)**, **Apdx-B3 (DN-88)** in the petition and is:

[X] reported at **on docket**; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

Statement of Jurisdiction

The date on which the **United States Court of Appeals for The Eleventh Circuit**, decided my case was **September 23, 2019**. The opinion is shown by **Apdx-A2**.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **January 23, 2020**, and a copy of the order denying rehearing appears at Appendix: **Apdx-A1**.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional And Statutory Provisions Involved

1.

Jysk's claims by cybersquatting, Dutta-Roy's opposition in reverse-cybersquatting, by **ACPA** in **15 U.S.C. § 1125(a)/(c)/(d)** and dilution by **Lanham Act** in by **15 U.S.C. § 1051, et seq.** is the central issue in the arguments by joint-venture and fiduciary duty presented, with retroactive application of the ACPA is a primary factor in ***void*[4] *judgments*** claimed.

2.

Void judgments in decisions in contract and *prima facie* fiduciary duty by the partnership by **O.C.G.A. § 14-8-7(4)**, where NDGA's **Apdx-B3 (DN-69)** Order misaddresses 10 year statute of limitations by **O.C.G.A. 9-3-27**, in four year contract law by **O.C.G.A. § 9-3-26**.

3.

Fraud and fraud on court by all aspects **Federal Rules of Civil Procedure (FRCivP) Rule 60** were argued by fraudulent affidavits, and denied. **FRCivP Rule 60(b)** fraud and **FRCivP Rule 60(d)** fraud on court – in **Rule 9(b)** particularity was shown in conflicting evidence from Jysk members in Bratengen, Sonnad and GC Zipperman, as to servers were purchased for eCommerce go-live, that both NDGA and then 11th Cir. ignored, even in light of new evidence from BazaarWorks former partner Negandhi, at second Appeal.

4.

Plausibility and whether Jysk even has a case against Dutta-Roy has been argued by **FRCivP Rule 8** and **Rule 12(b)(6)** in that Jysk has been using domain, unhindered since about August 2002, and Dutta-Roy has never sold any furniture as as **By Design** or ***By Design Furniture*** is also a central issue in these matters.

5.

Dutta-Roy's **Seventh Amendment** (trial by jury) rights were violated in NDGA's denial that a contract or fiduciary obligation existed with Dutta-Roy, in significant evidence shown, that Dutta-Roy's spent more than 4000+ hours fulfilling his J/V, P/A eCommerce agreement. NDGA/ 11th Cir. repeatedly denied Dutta-Roy's contract, fiduciary arguments, first by lack of a signed agreement, and then by four year contract statutes, despite facts and emails shown in continuance of contract – are also violations of contract law.

6.

NDGA has also allowed Jysk to proceed in these matters in violation of **Federal Rules of Evidence (FREvid) Rule 103**, **FRCivP. Rule 51(d)(2)**, **FRCivP Rule 52**.

7.

4 Relief from void judgment available at any time. E.g., ***Sea-Land Serv., Inc. v. Ceramica Europa II, Inc.***, 160 F.3d 849, 852 (1st Cir. 1998) (if judgment is void **for lack of personal jurisdiction**, **FRCivP 60(b)(4)** motion to set aside judgment may be made at any time).

By application of non-retroactive ACPA, proceeding without a jury on contract and fiduciary, Court has then allowed $4,000.00, then $2,150.00 in damages to Jysk, in violation of **15 U.S.C. § 1117**, which specifically states damages prior to ACPA are not applicable. Court then dismissed Dutta-Roy's Rule 60 opposition stating it was late, when there is no time limit to fraud.

8.

By these damages, by void judgments, Jysk's intentional, malicious garnishments causing Dutta-Roy's loss of his Inman home, destroying his new-venture Royz-Dutta, LLC are torts on personalty and property, by void judgments and matters already in appeal by FRAP Rules **12.1**/ **62.1**, **O.C.G.A. § 5-3-7**. By **28 U.S.C. 1367(a)** '*so related to claims in the action within such original jurisdiction*' by collateral attacks in void judgments, these are essential matters for this Court's consideration.

9.

By the sum of these issues, Dutta-Roy's **Fourth Amendment** in security, **Eighth Amendment** in cruel and unjust punishments in that these actions have almost rendering Dutta-Roy almost homeless, unable to visit essential family who passed away, then having to move when the pandemic started.

10.

Essential arguments in unjust enrichment by Dutta-Roy's amended complaints citing misappropriation, trade secret violation, prima facie antitrust restraint by USC$1 by market structure, conspiracy in denying Dutta-Roy entry into the $100B per year US furniture market – was denied by NDGA and the 11th Cir. with no reason or explanation – making the judgments ***inconsistent***.[5]

11.

By essential aspect of collateral issues and pragmatic efficiency, in this totality of seven litigations, the supplemental issues in the state court garnishments were requested to added to the original litigation by **28 U.S.C. §§ 1331, 1338**, by federal question[6] in unfair competition, then by ***void*** and inconsistent District Court judgments, being so ***related***[7] to the common ***nucleus***[8] of

5 Verdict must conform to pleadings and must not be inconsistent. ***Miller v. Ray***, 84 Ga. App. 251, 65 S.E.2d 923 (1951).

6 **MOORE'S FEDERAL PRACTICE 3D (HENCE MOORE'S): §103.43**: "*A plaintiff cannot avoid federal court simply by omitting a necessary federal question in the complaint; in such a case the necessary federal question will be deemed to be alleged in the complaint.*"

7 Citing *Matt D. Basil, Stephen R. Brown, Ashley M. Schumacher, Devin R. Sullivan,* **FEDERAL SUBJECT MATTER JURISDICTION OUTLINE**: Courts have interpreted the "*so related*" language to be satisfied when both the jurisdiction-invoking claim and the supplemental claim derive from a common nucleus of operative fact. **13D WRIGHT & MILLER § 3567.1, p. 337**.

8 The "*common nucleus*" test "*requires only that the jurisdiction-invoking claim and the supplemental claim have some loose factual connection.*" Id. at 349. "*This standard is broad and fact-specific, and should be applied with a pragmatic appreciation of the*

Jysk claims – to address the state law claims shown. Essential parties by **FRCivP Rules 13/ 15/ 19** in amendments/ compulsory/ permissive counter-claims has also been discounted.

12.

False imprisonment of Dutta-Roy at NDGA contempt of court by in void judgments Jysk was also shown to be grounds for criminal tort actions by **O.C.G.A. §§ 51-7-20/ 51-7-22** in criminal negligence.

13.

Thus by provisions of **Supreme Court Rule 10(a)**, proceedings '*ha[ve] so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power*," especially by fraud-on-court (**O.C.G.A. § 23-2-50 et seq./ Rule 60(b)/ (d)**) – this Petition is submitted for consideration, as the sum of these issues in seven+ years of litigation are also matters of ***plain error*** and ***substantial rights*** (**FREvid Rule 103(e)**) of Dutta-Roy, in that it "*seriously affects the fairness, integrity, or public reputation of judicial proceedings.*"[9]

> **O.C.G.A. §§ 15-1-3(6)** and **9-12-14** give a trial court the power to amend and control its processes and orders, so as to make them conformable to law and justice, and to amend its own records, so as to make them conform to the truth. **O.C.G.A. § 9-12-14** states that "[a] judgment may be amended by order of the court to conform to the verdict upon which it is predicated, even after an execution issues." Neither Code section sets a time limitation for moving to amend a judgment. It has been held that a motion to amend a judgment entered nine years earlier was not time barred.[10] *Davis and Shulman*, **Georgia Practice and Procedure**.

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efficiency promoted by supplemental jurisdiction."

9 ***Johnson v. United States***, 520 U.S. 461, 466-67 (1997).

10 See ***Rucker v. Williams***, 129 Ga. 828, 60 S.E. 155 (1908).

Trial court's amendment was proper as it was merely a clarification of the prior judgment. A judgment may be revised or amended, or entered of record, *nunc pro tunc*, on proper motion, at a term subsequent to that at which the judgment was rendered, so as to make the judgment speak the truth of the decision that was actually rendered. See ***Burns v. Fedco Management Co.***, 168 Ga. App. 15, 308 S.E.2d 38 (1983). The amendment does not change result, but only provides clarification and allows the original judgment to be enforced. ***Floyd v. Springfield Plantation Property Owners' Ass'n, Inc.***, 245 Ga. App. 535.

Statement Of The Case

1. Background Matter: eCommerce: Domain Registration, Partnership & Development in *bydesignfurniture.com*

A. Initial Years: 1999 – 2002

About July 2000, Dutta-Roy, with his BazaarWorks partners, started development on the ***bydesignfurniture.com*** eCommerce site in the profit-sharing arrangement per the 2000 P/A shown with Jysk,[11] then Quick Ship, DBA **By Design**. Dutta-Roy had registered ***bydesignfurniture.com*** on April 9, 1999, then formed the BazaarWorks partnership on September 12, 2000, in anticipation of the eCommerce P/A with Jysk.[12]

Dutta-Roy, primarily, worked full-time on this eCommerce development, from about mid 2000 to about mid 2002, with a functional ordering system readied by end 2001.[13] During this time, at Bratengen's urging, Negandhi and Sonnad had also deployed a temporary website ***By Design Coming*** on the ***bydesignfurniture.com*** domain. This allowed potential customers to leave their email addresses for future discounts on their purchases from the site.

The ***By Design Coming*** site and the eCommerce email server was first hosted on Interland servers (now defunct). The main eCommerce system was hosted on Dutta-Roy's home-office environment, leveraging email services on the Interland servers, where BazaarWorks members also had their emails. While Dutta-Roy has claimed 4000+ hours over four years that he spent on the eCommerce development, he also spent significant additional time in – setting up a secure and comprehensive home-office environment, meetings with ***By Design*** managers, extractions of data from ***By Design***'s STORIS Point of Sale (POS) system, organizing the images for the site.

B. Middle Years: 2002 – 2005

Despite the best efforts, the BazaarWorks partnership in Negandhi, Sonnad, Worah and Dutta-Roy fell apart, in much delays caused by Bratengen. Partly by the eCommerce downturn in 2002,

11 Dutta-Roy remembers there was signed copy of the 2000 P/A, however he has not been able to find his copy. Bratengen's emails acknowledge there was a P/A, shown later.

12 To confirm, there were two partnerships, first one BazaarWorks – formalized by articles of organization, second one between BazaarWorks and Jysk, then Quck Ship . The second partnership would share profits in sales of furniture on ***bydesignfurniture.com***, registered and owned by Dutta-Roy, pre-ACPA, and held continuously.

13 Part of exhibits submitted: A basic, secure, ordering system was completed by late 2001 using Verisign SSL Certificate.

but significantly by Bratengen's on again, off-again attitude, meeting cancellations, disrupting the development flow, BazaarWorks disbanded. Bratengen also fired a key **By Design** manager who was much involved with the eCommerce. The registration of ***bydesignfurniture.com*** was also renewed in April 2002 for a 10 year period.

Dutta-Roy persisted with the development and in continued discussions, Bratengen restarted the process about end-2002, appointing new warehouse manager, Bell, to the development efforts. Bell helped validate and finalize essential delivery and shipping processes for the eCommerce.[14] At Bratengen's direction Dutta-Roy started preparing for going online in transferring the hosting of the ***bydesignfurniture.com*** from Interland to Genesis in October 2002 so that the domain could also be used for Jysk's emails.[15] In having accessed and validated the eCommerce on Dutta-Roy's servers, Bell in discussion with Dutta-Roy and Bratengen, purchased three Dell servers to be setup for the eCommerce in mid 2003.[16]

At the next meeting, however, Bratengen wanted to postpone the go-live we had initiated, stating that By Design floor managers raised objection to the eCommerce in that they would have no way to earn commission on the sales from the site. Bratengen insisted that the floor managers wanted to have integration with the back-end STORIS system.

Integration with STORIS was never part of any agreement – it was a difficult proposition in that STORIS was an antiquated system, lacked necessary security measures,never been discussed prior in so many meetings at **By Design**. In the era of web computing, integrating STORIS, where many customer, vendor information was stored, was a highly unsecure proposition. Importantly, Dutta-Roy, alone now, did not have the resources to explore the integration after having spent three years already in development with zero financial support for anything, from Bratengen.

Dutta-Roy suggested, he could build in accounts for the store managers in the eCommerce system where they could place orders for their prospective clients.[17] A simple vendor notification system was also offered to be integrated. These features would have made the eCommerce unique and advanced by many standards – in its multi-language design, allowing different

14 Bell organized the sFedEx/ UPS, including a local '*white-glove*' approach for the furniture delivery – in the early years of large home delivery.

15 **Apdx-E5**: This transfer of the domain hosting to Genesis from Interland, to be in October 2002, was shown to confirm hosting transfer, and not ownership transfer.

16 These Dell servers were just setup to be powered on, and Dutta-Roy requested the bare-bone servers to save **By Design** necessary finances in getting three full-functional servers, opting instead to set them up himself, purchasing the necessary parts through Bell at **By Design**.

17 And surely there are other ways to integrate commissions in online sales.

configurations of furniture, both on-line and in-store sales, a rudimentary business to consumer (B2C) notification system.

Bratengen did not relent on canceling the go-live. He fired Mr. Bell, putting a stop to the setup of the servers Dutta-Roy had already initiated. Dutta-Roy already having spent much time, but now having a full-time job, and other pressing matters, eased off his intense work on the eCommerce, hoping the situation could still change given the rise in eCommerce.

In 2005 Bratengen had a final change of mind, and wanted the domain ***bydesignfurniture.com*** transferred to him, and also the three servers back. Dutta-Roy met Bratengen to discuss the issues and ask how he was going to recuperate his efforts, the time and money spent– however the meetings were inconclusive. Dutta-Roy dealing with his own personal and family issues, needed to focus on other urgent matters. Dutta-Roy made an arrangement to purchase the three skeleton servers for $600.00, with the domain still remaining in his possession.

C. Post Merger and Acquisition (M&A): 2006 – 2012 (MAY)

While Dutta-Roy was notified by Sonnad that Quick Ship was sold to Jysk in 2006, and that she was now a full-time employee of Jysk. In 2007, then in 2010, Sonnad wanted to discuss the eCommerce again, with respect to STORIS, integration. Both times the discussions failed to materialize the eCommerce initiated.[18]

In April 2012 Dutta-Roy received a call from **By Design** manager Mr. Peder Sorensen (**Sorensen**) that the ***bydesignfurniture.com*** site was not accessible and the registration of the domain needed to be renewed in payment of fees to Network Solutions. Dutta-Roy renewed the domain the next day, getting ***bydesignfurniture.com*** active. Sorensen initiated with Dutta-Roy that Jysk wanted the domain ownership transferred back to Jysk – making the claim that the domain was Jysk's.

Dutta-Roy negotiated with Sorensen in good-faith to get compensated for at least the 4000+ hours of development effort he put in. However, he was offered only $3000.00, then a final $5000.00 for his work. Dutta-Roy also received a demand letter for $3000.00 for the domain from Jysk counsel Fain as well. As the negotiations fell apart, Sorensen registered four surrounding domains (Jysk's 2012 surrounding domains). In response Dutta-Roy registered three domains (Dutta-Roy's 2012 surrounding domains).

18 Dutta-Roy has shown this emails in material and discussions from Sonnad.

2. Case History

The orders noted are the subject matter of this certiorari to SCOTUS. As noted in Appendix, NDGA documents are also parenthesized by their docket number as: Apdx-B3 (DN-69)/ Apdx-B2 (DN-88)/ Apdx-B1 (DN-148). As noted in Appendix, DN-161 incorporates Apdx-B3 (DN-69) and Apdx-B2 (DN-88), thus these NDGA orders were the subject matter of the Appeal, denied review by the January 23, 2020 denial of Dutta-Roy's En Banc petition.

A. USPTO Filing

The legal nature of the matters ensued with Jysk, without notifying Dutta-Roy, filed for ownership of mark ***bydesignfurniture.com*** at USPTO on July 23, 2012 noted in List of Cases. This is while Dutta-Roy was in discussions with Jysk's Sorensen on an equitable payment for Dutta-Roy's 4000+ hours of development for the eCommerce on ***bydesignfurniture.com***. The matter at the USPTO is currently on hold pending final decision on the matter.

An essential aspect of the fraud on court argued is that Jysk has proceeded in this litigation filing as Jysk DBA ***By Design Furniture***, on the basis of their USPTO filing – when Jysk's DBA name has been shown to be **By Design** by Gwinnett Court filings from September 1989 (Apdx-E1). Neither Jysk, or then Quick Ship, had filed for the mark ***By Design Furniture*** or BYDESIGNFURNITURE on any register, prior to Jysk's July 2012 filing.

B. NDGA Filings

On September 12, 2012 Jysk filed cybersquatting claims by ACPA and dilution by Lanham Act claims against Dutta-Roy at the NDGA – arguing in common-law ownership of the ***bydesignfurniture.com*** domain and mark. Dutta-Roy, counterclaimed October 10, 2012, seeking jury review, in breach of contract, fiduciary duty, unjust enrichment, litigation expenses in an equitable accounting process – arguing reverse-cybersquatting in his continuously held, pre-ACPA registration of bydesignfurniture.com., showing the joint-venture in ***bydesignfurniture.com***, along with the unsigned 2000 P/A. Through his then lawyers at North Atlanta Law (NAL), he also made necessary representations to try and settle the matter.

Dutta-Roy showed emails with Bratengen, fact that servers were purchased for the eCommerce to go-live, offered to show all the development work from the backup CDs – as proof of continuation of the eCommerce P/A with Dutta-Roy alone as BazaarWorks. That Sonnad wanted to meet with Dutta-Roy in 2007, then in 2010 to discuss the eCommerce, that Dutta-Roy had in fact kept the domain registered, never subverted its use, that he renewed it in 2012 to then enter into discussions of his *quantum meruit* – six years since development was canceled on

eCommerce – must show Dutta-Roy's good faith. Dutta-Roy also argued there was no basis for either the ACPA or even Lanham Act claims against him as he was not selling/ promoting anything as **By Design** or ***By Design Furniture*** or even subverting Jysk's use of the domain bydesignfurniture.com.

The ***renewal*** vs ***registration*** discussion is a central matter of confusion by which Dutta-Roy is requesting reversal of the Sum. Jud. **Apdx-B3 (DN-69)**. NDGA has granted **Apdx-B3 (DN-69)** on bad-faith, arguing Dutta-Roy **re-registered** ***bydesignfurniture.com*** in 2002 and 2012, while Jysk has shown in its filings that Dutta-Roy actually **renewed**, the partnership domain ***bydesignfurniture.com*** ,

> ***DN-1/ page-8/ para-21***: Thereafter on or about April 25, 2012, Defendant contacted Plaintiff to inform Plaintiff that Defendant had **renewed** the registration for the Web site www.***bydesignfurniture.com***; however Defendant further informed Plaintiff that he (Defendant) was now the owner of the Web site www.***bydesignfurniture.com*** as Defendant had done the renewal in his own personal name.

NDGA denied Dutta-Roy enjoining BazaarWorks partners. Dutta-Roy filed against Jysk's Injunction claims showing it was Jysk who was using the domain, part of a mutual licensing agreement, since October 2002. Unable to afford counsel, Dutta-Roy proceeding pro se submitted significant Discovery to Jysk, but was late in filing Discovery to Jysk. NDGA denied Dutta-Roy's Motion to Compel Discovery. Jysk has thus proceeded in this case without filing any evidence, only citing Dutta-Roy's evidence once against him. Despite numerous petitions from Dutta-Roy, neither the NDGA, nor the 11th Cir. has enforced any evidence from Jysk.

a. Issue of Evidence

11th Cir. in its opinion by Apdx-A2, denying Appeal, cited about times that they found no evidence of a contract or partnership agreement between Dutta-Roy and Jysk.

> **Apdx-A2: page-9/ para-2**: Dutta-Roy did not present sufficient evidence to establish a breach of contract. In Georgia, a valid contract must have a subject matter, consideration, and mutual assent by all parties to all terms. **Page-10/ para-3**: The district court concluded that Dutta-Roy produced no evidence that he had performed any work on Jysk's behalf since 2005. P**age 10/ para-2**: An unexecuted agreement to which Dutta-Roy was not a party and an ambiguous email are together, at most, a "***mere . . . scintilla***" of evidence in support of Dutta-Roy's contention that a contract existed between the parties. [Citation Omitted]. **Page 10/ para-2**: Dutta-Roy has presented no evidence of mutual assent between himself and Jysk regarding a plain and explicit set of terms, and no reasonable jury could infer that Jysk breached a contract with Dutta-Roy. Id.; [Citation Omitted]. The district court therefore did not err in granting summary judgment. P**age-9/ para-3**: Dutta-Roy presented no evidence from which a jury could reasonably infer the existence of an agreement between himself and Jysk. [Citation Omitted]. Several Jysk employees stated in sworn affidavits that there was no agreement between between Jysk and Dutta-Roy. In response, Dutta-Roy attached a partnership agreement between BazaarWorks—not Dutta-Roy—and Jysk's predecessor. This agreement was unexecuted, with blank spaces for the that appears to relate to Jysk's recovery of computer equipment from Dutta-Roy.

NDGA in granting Sum. Jud. **Apdx-B3 (DN-69)**, also cited the issue of no evidence more than 10 times. Dutta-Roy thus attaches as Apdx-E7, a sum of all evidence submitted by Dutta-Roy,

mostly with Summary This voluminous evidence was not reciprocated in any way by Jysk, neither was it enforced by NDGA.

NDGA denial of Dutta-Roy's Motion to Compel Discovery **DN-54** was plain error by **LR 26.2**. Compel Discovery is governed by **LR 37.1.B**,[19] and Dutta-Roy's motion, filed March 25, 2015, was within the 14 day time period from Discovery Deadline of March 11, 2015. Subsequently Dutta-Roy filed several motions to compel essential evidence from NDGA on emails between then Quick Ship and Jysk and its counsel with regards to the M&A agreement – but they were also subsequently denied.

b. Addressed in this Appeal (DN-161 – Incorporating Apdx-B3 (DN-69)/ Apdx-B2 (DN-88))

I. Apdx-B3 (DN-69)

Jysk first won Injunction (**DN-65**), then won Summary Judgment (**Apdx-B3 (DN-69)**). Beyond the issues of Jysk's identity and denial of the 2000 P/A, Dutta-Roy showed significant aspects of the affidavit was clearly fraudulent, just in timing of public facts noted, that this was in fact a reverse-cybersquatting claim. Ignoring Dutta-Roy's: ***a)*** three year use of the domain; ***b)*** his J/V pursuance by the 2000 P/A; ***c)*** his continuously held domain since April 9, 1999 pre-ACPA; ***d)*** licensing of the domain to Jysk since October 2002 for email, deploying temporary site ***By Design Coming***, in anticipation of going live with the eCommerce – NDGA concluded that Jysk DBA **By Design** owned rights to distinctive ***bydesignfurniture.com***, by common-law conversion. This is despite Dutta-Roy showing Jysk: ***a)*** never having filed for the mark ***By Design Furniture***; ***b)*** ever having used the domain until October 2002; ***c)*** or having ever used it in marketing materials (**Apdx-E2**).

> **Apdx-B3 (DN-69)/ Pages 8-9**: The Court concludes that in the totality of the circumstances the Plaintiff has established common law trademark rights through prior use of the "**By Design**" mark and the ***bydesignfurniture.com*** mark in commerce.

In coming to this conclusion NDGA is shown below confusing Dutta-Roy's ***renewal*** as ***registration***, a critical factor in the definition of the ACPA:

> **Apdx-B3 (DN-69)/ page-10**: Here, although the Defendant may not have **registered** ***bydesignfurniture.com*** with bad faith in 1999 and 2001, the Plaintiff has shown that the registrations of ***bydesignfurniture.com*** and the related domain names in 2012 were made in bad faith.

19 **LR 37.1: MOTIONS TO COMPEL A DISCLOSURE OR DISCOVERY**: B. Time for Filing. Unless otherwise ordered by the court, a motion to compel disclosure or discovery must be filed within the time remaining prior to the close of discovery or, if longer, within fourteen (14) days after service of the disclosure or discovery response upon which the objection is based. The close of discovery is established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the court, indicating that discovery was completed earlier.

This is while NDGA's opinion notes earlier in introduction, that it was in fact a **renewal**, in accordance with Jysk's claim shown earlier.

> **Apdx-B3 (DN-69)/ page-3/ para-1**: When the registration for the ***bydesignfurniture.com*** website lapsed, the Plaintiff demanded that the Defendant turn over the domain name. The Defendant refused and **renewed** his registration to the domain name on April 20, 2012.

Sum. Jud. (**Apdx-B3 (DN-69)**) has been shown to be a ***void*** judgment, in that NDGA applied ACPA retroactively: ***a)*** upholding Jysk's false claims in ownership of mark ***bydesignfurniture.com*** ; ***b)*** confusing renewal with registration; ***c)*** by inapplicable common-law arguments; ***d)*** adjudicating without a jury that there was no breach of fiduciary duty; ***e)*** ignoring the unsigned P/A and the emails with Bratengen shown; ***f)*** and despite significant evidence only from Dutta-Roy, especially in servers purchased by Bell for the eCommerce to go live; ***g)*** then addressing fiduciary claims by four year contract limitations, when the 10 year imitations are clearly dictated by OCGA.

Incredulously, 11th Cir. in its Opinion (**Apdx-A2**), simply endorsed the NDGA Sum. Jud., ignoring the conflicting affidavits of Bratengen (**Apdx-D6 (DN-68-1)**) and Sonnad (Apdx-D5 (**DN-58-5)**) as to why servers were purchased – thus casting serious doubt on **whether an independent review of the facts were conducted by the 11th Cir**.

Beyond ***renew*** v. ***register***, NDGA has also flip-flopped in its Opinion, first noting there was a partnership agreement, but then deciding there was none, without adequately explaining why, and without consideration for any of the significant evidence from Dutta-Roy – that the partnership extended to Dutta-Roy after BazaarWorks as a group of four disbanded. In its assessment of the ***bydesignfurniture.com*** registration, NDGA briefly agrees that there was a '*Partnership Agreement between BazaarWorks and the Plaintiff*':

> **Apdx-B3 (DN-69)/ page-11/ para-2**: Here, the Defendant contends he used the ***bydesignfurniture.com*** domain name under the **Partnership Agreement between BazaarWorks and the Plaintiff**. However, **whatever relationship** existed concerning the 1999 and 2001registrations of ***bydesignfurniture.com***, the Defendant cannot avail himself of the safe harbor provision of the ACPA with respect to the 2012 registrations, where the Defendant's bad faith is readily apparent. And **the Partnership Agreement does not authorize the bad faith is readily apparent**. And the Partnership Agreement does not authorize the Defendant to take the Plaintiff's trademark hostage even if the Defendant was due payment under the agreement.

Neither did NDGA explore the relationship seeking any evidence from Jysk, nor did it consider Dutta-Roy's evidentiary arguments that it was not just a '*whatever relationship*' but a fiduciary relationship shown by it profit-sharing nature, *prima facie* by **O.C.G.A. § 14-8-7(4)**, and that the emails, servers purchased, 2007/ 2010 discussions with Sonnad, domain registration maintained – show the affirmation of the original relationship. As shown later, again 11th Cir. simply endorsed this view.

Negandhi's affidavit noting Bratengen's intent started the partnership eCommrce, thus not a speculative relationship, initiated at the second Appeal to 11th Cir. was ignored by both Courts. In dismissing the P/A by '*whatever relationship*,' NDGA stating as below, again dismisses Dutta-Roy's quantum meruit in 4000+ hours of works without any reason whatsoever:

> **Apdx-B3 (DN-69)/ page-16/ para-1**: Even assuming he is a successor in interest to BazaarWorks, there is no discussion of why the Defendant himself has purportedly been maintaining a website for the Plaintiff for over seven years without compensation and apparently without the Plaintiff's knowledge.

Beyond these issues, **Apdx-B3 (DN-69)** was shown to be a ***void judgment*** per 11th Cir.'s own directive, prior April 14, 2015 hearing noting:

> In its complaint, Jysk alleged facts and causes of action related to only Dutta-Roy's registration of bydcsignfurniture.com. Jysk never amended its complaint to allege anything about the registrations of bydesignfurniture.org, bydesignfurnitures.com, or bydesign-furnitures.com. Could the district court properly grant a summary judgment in favor of Jysk on causes of action related to those three domain names? See Flintlock Const. Services, LLC 710 F.3d1221, 1227-28 (11th Cir. 2013) (explaining that "we refuse[] to consider ... additional facts" not alleged in the complaint even though "[t]he defendants d[o] not object" and "the district court ... appear[s] to have considered the additional facts as if they had been alleged in the complaint") (citing GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244,1258 n.27 (11th Cir. 2012)).

II. Apdx-B2 (DN-88) – Series of void judgments

Order **Apdx-B1 (DN-148)**, also includes **Apdx-B2 (DN-88)** is also a significant subject matter of this Appeal – again by ***void judgments***, then intertwined claims. Logic states that in **Apdx-B3 (DN-69)** shown to be a ***void judgment***, **Apdx-B2 (DN-88)**, granting $4000.00 in damages to Jysk, when **Apdx-B3 (DN-69)** was already in Appeal **must be void as well**.

Whether NDGA could grant the damages by **Apdx-B2 (DN-88)** filed on same day as Dutta-Roy's first Appeal against void judgment **Apdx-B3 (DN-69)** or not – the fact that NDGA held a notice of hearing on February 9, 2014, for Jysk's Show Cause by **DN-87** (filed: January 8, 2014) for transfer of domain names to Jysk, then authorized DN-98 in granting an additional $2,150.00 to Jysk in litigation expenses – must make the judgments significantly void. Significantly NDGA notes in its order that:

> **Apdx-B2 (DN-88)/ page-3/ para-2**: Next, the Defendant seeks relief from judgment under Rule 60. [Doc. 84]. As noted, "*Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of.*" Fed. R. Civ. P. 62.1 advisory committee's notes. Those motions include motions "for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered."

However, now Dutta-Roy has now argued several times, that void judgments can be addressed at any time and that aspects in fraud can be brought to the Courts at any time – even nine years after judgment has executed.

Dutta-Roy's several Reconsideration and Set Aside filings in requesting proof of how ownership could be transferred to Jysk in the M&A of Quick Ship and Jysk in 2006, when Dutta-Roy was holding domain registration, again pre-ACPA, has never addressed by Court. Instead, NDGA held

Dutta-Roy in Contempt of Court in Hearing on March 5, 2014, briefly placing him in handcuffs by which he was forced to transfer over ***bydesignfurniture.com*** and the three surrounding domains to Jysk.

Here NDGA aided and abetted its own void judgment and Jysk's tortious and abusive litigation, by false imprisonment of Dutta-Roy at the NDGA hearing. This conduct by Jysk was also shown to be grounds for criminal tort actions by **O.C.G.A. §§ 51-7-20/ 51-7-22** in criminal negligence.

> To arrest one illegally and detain him for any length of time is a **criminal offense**, and is likewise a tort for which an action for damages will lie; if the imprisonment be the act of several persons, they may be sued jointly or severally. ***Livingston v. Schneer's Atlanta, Inc.***, 61 Ga. App. 637, 7 S.E.2d 190 (1940); ***Duchess Chenilles, Inc. v. Masters***, 84 Ga. App. 822, 67 S.E.2d 600 (1951).

The Orders Apdx-B2 (DN-88) and then DN-98 are surely void as well by FRAP Rule 12.1/ FRAP.Rule.62.1 / O.C.G.A. § 5-3-7 and are an essential part of this Appeal in that Jysk pursued garnishment actions against Dutta-Roy's tenants and bank account – causing Dutta-Roy to lose his home to the point of being homeless during this contagious and dangerous Covid-19 crisis.

The intertwined issues, by **28 U.S.C. § 1338** and **28 U.S. Code § 1367(a)** is described in section below: **Intertwined Cases in State Court Garnishments**

III. DN-148

Thus Dutta-Roy has now severally cited Jysk's lack of defenses in these matters by FRCivP Rule 8(b), by Rule 12(b)(6), in Jysk's "failure to state a claim upon which relief can be granted," in Request for Affirmative Relief as a Motion for Judgment As A Matter of Law (JMOL) for fraudulent misrepresentation and conspiracy under FRCivP Rule 50(a), or even by Rule 55(a) an Entry of Default – by the provisions of FRAP Rule 27(a)(3)(B).

NDGA vacated the Order DN-98 by which Dutta-Roy was detained for a short period of time – but vacating the judgment does not remove the stigma associated with being put under restraint, and thus the criminal liability to Jysk's Counsel Fain and Joshi remains.

Additionally, the Order did not mention one Rule 60(b/ d) motion still pending at NDGA and one Default Jud. also dismissed by NDGA. More importantly, can NDGA allow Jysk to Amend its pleading to conform to the verdict, by adding the four domain names it registered? 11th Cir. had already stated that was not permissible.

C. 11th Circuit Appeals

a. First and Second Appeals to the 11th Cir.

While, In Dutta-Roy's first Appeal (13-15309-AA, November 19, 2013) 11th Cir. upheld the Injunction even though the four factor, or any factor, for upholding injunction was shown.

In the second Appeal (15-14859-AA, October 28, 2015) , 11th Cir., with already ensuing State Court garnishments, Dutta-Roy's noted there were significant issues of material fact, that NDGA did not have jurisdiction under the ACPA on ***bydesignfurniture.com*** and Jysk has not shown any rightful claim to mark ***bydesignfurniture.com***. By the sum of the garnishment actions shown below, Dutta-Roy asserted that arbitration should be granted, especially in that no Discovery from Jysk has been enforced to show whether in fact there was an arbitration clause in the M&A of Jysk and Quick Ship in 2006.

Dutta-Roy briefly mentions the first and second Appeals to note that the pattern of ***void judgments*** and **fraudulent misrepresentation** by Jysk, upheld by NDGA, has continued uncontested at the 11th Cir. Fraud on court being a significant issue in the validity of proceedings, here either by void judgments or fraud, '*the law of the case doctrine*,' abusive litigation by Jysk, not addressed.

11TH CIR.: 13-15309-AA, OPINION: DECEMBER 16, 2015	**11TH CIR.: 15-14859-AA, OPINION: OCTOBER 10, 2017**
Under the law of the case doctrine, district and appellate courts generally are bound by prior appellate decisions in the same case. Thomas v. United States, 572 F.3d 1300, 1303 (11th Cir. 2009). An appellate decision is binding in all subsequent proceedings in the same case unless: (1) new evidence or an intervening change in the law dictates a different result, or (2) the appellate decision is clearly erroneous, and applying the law of the case doctrine would work a manifest injustice. Id. At 1303-04.	While Dutta-Roy argues that the district court was incorrect in its evaluation of Jysk's motion for partial summary judgment, that does not make the contempt order invalid. No party disputes that Dutta-Roy had the ability to comply with the order. Finally, the order clearly and unambiguously ordered Dutta-Roy to transfer the disputed domain names to Jysk, and he refused to do so. See Riccard, 307 F.3d at 1296; F.T.C., 618 F.3d at 1231. As such, the district court did not abuse its discretion in holding him in contempt.

b. Addressed in this Appeal (Denial of En Banc Petition on 11th Cir. Opinion addressing DN-161)

In the final appeal, Dutta-Roy argued that there was fraud on court by fraudulent misrepresentation and the affidavits of Jysk along with email with Dutta-Roy show conspiracy by jysk and counsels, by 11th Cir.'s own opinion in Lucky. Regardless of whether Jysk has rights to ***bydesignfurniture.com*** by common-law, by contract or by property rights – Dutta-Roy showed the affidavits of Jysk's Bratengen, Sonnad and GC Zipperman conflict on essential facts, citing **Rule 9(b)** particularity in fraudulent misrepresentation of the eCommerce partnership with Dutta-Roy in the key areas of initiation, participation and continuation.

Fraud and fraud on court, fiduciary duty, fraudulent misrepresentation were not ruled upon in those decisions. While Dutta-Roy's Appeal specifically addressed fraud, fiduciary duty by joint-venture to the domain, 11th Cir.'s September 23 opinion incredulously cited that Dutta-Roy did not adequately argue fraud.

> **App-3/ page-9/ para-1**: Dutta-Roy has also abandoned any argument that the district court erred in denying his **60(b)** motion. He does not argue in his brief that his motion should have been granted, and mentions **Fed. R. Civ. P. 60(b) only once in his brief**, in the heading of an unrelated section. This is not enough to raise the issue on appeal, and it is abandoned. Timson, 518 F.3d at 874.

It is the 11th Cir. Opinion that actually only refers to **FRCivP Rule 60(b)** once. The index of Dutta-Roy's Appellant's Initial Brief (AIB) shows **Rule 60 (b/ d)** and **Rule 9(b)** mentioned **eight times** each. The index in Dutta-Roy's Appellant's Reply Brief (ARB) shows Rule 60(b) mentioned once and **Rule 9(b)** mentioned five times. Dutta-Roy's then a Motion for Substantive Relief: Rule 9(b) Motion In Loss-Causation – specifically to compel closure of the case towards restitution. A specific motion in Unjust Enrichment was also filed.

To further his fraud, conspiracy and legal malpractice arguments, on March 18, 2019 – Dutta-Roy, filed an Opposition to Jysk Motion for Sanctions in Affirmative Relief by Disqualification of Counsel, 6X-18X Reverse Sanctions against Jysk in Interim Relief in fraudulent misrepresentation – also showing why Jysk counsels have no standing.

The question asked by the En Banc petition was '***Are any of Jysk's statements believable?***' that 11th Cir. did not rule on and NDGA passed **Apdx-B3 (DN-69)** by. The issue of the servers is a central issue in this matter of perjury – why the servers were purchased. Bratengen denial of the fact that they were for eCommerce, with Sonnad noting the servers were for eCommerce – is a critical matter in this case – were submitted at Sum Jud. Apdx-B3 (DN-69), and are an essential argument presented in why this Petition should be granted.

Dutta-Roy filed these several **Rule 60(b/ d)** motions at NDGA, with DN-XX still pending, and particular Rule 9(b) petitions in fraud at the 11th Cir. Dutta-Roy had filed several such motions as he believed that should be able to end the case to then could go visit his old and frail uncle Asit Dutta-Roy, and other relatives who have been passing away during this litigation. Asit passed way the same day Dutta-Roy filed his AIP on February 5, 2019.

By the provisions of **28 U.S.C. § 1338** and **28 U.S. Code § 1367(a)**, Jysk, Counsels Fain, Joshi, and GC Mr. Zipperman, by arguments in legal malpractice, in breach/ aiding and abetting of fiduciary duty were presented by 11th Cir.'s own opinion in ***Lucky***. Dutta-Roy requested an extension of time from the 11th Cir. which was granted for him to then address these garnishment actions – to then file his second Appeal, which denied the state court actions. The

state court garnishment actions are absent in 11th Cir.'s opinion from September 23, 2019 in the intertwined supplemental issues argued.

All these arguments were dismissed by the 11th Cir., endorsing Jysk claims for bydesignfurniture.com, especially when Dutta-Roy has shown repeatedly his continuous ownership in the domain – this the question comes back to whether the 11th Cir. actually do a de novo review of the matter?

3. Intertwined Cases: Jysk State Court Garnishment Actions | Resulting Early-Termination, Dispossessory

Thus even while issues by Apdx-B3 (DN-69)/ Apdx-B2 (DN-88)/ DN-98 were in first Appeal and second Appeal, granted November 19, 2013, Jysk started untrue garnishment actions on Dutta-Roy's property Inman Unit, and SunTrust Bank account. These malicious actions in abusive litigation caused Dutta-Roy to lose his tenants Angelou and James Ezeilo (Ezeilos) who left the Inman Unit in a damaged state. Ultimately, Dutta-Roy lost his his property to Neelu Daswani by sums owed and was evicted.

Jysk's untrue and invalid garnishments in garnishment actions (Fulton: 14-GR-000-658 And Appeal: 14-VS-002-567/ Gwinnett: 15-GM-03448), by all orders of case already being at Appeal were cited as further void by essential statutes in: ***1)*** **O.C.G.A. § 5-3-7** - *Appeal Suspends Judgment; Effect of Dismissal or Withdrawal of Appeal*; ***2)*** **FRAP Rule 12.1** - *Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal*; ***3)*** **FRAP.Rule.62.1** – *Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal*; ***4)*** Pre-judgment garnishment processes employed were also wrongfully executed by **O.C.G.A. §§ 18-4-40/ 18-4-43/ 18-4-44**; (5) Jysk's lien on the Inman Unit is also an unprivileged slander of title by malicious use of privilege (**O.C.G.A. §§ 51-5-9/ 51-7-82**).

The sum of these actions also left Dutta-Roy unable to launch his new startup Royz-Dutta, LLC, in medical records management that he had been working on since August 2012. In the years of 2012 – 2015, Dutta-Roy had invested significant time into a software development framework behind this effort and had applied for three National Institutes of Health (NIH) and one National Science Foundation (NSF) grant. In now facing one federal action, in Appeal, then these garnishment actions, Dutta-Roy had to abandon all his work to focus on saving his property.

A. Fulton Magistrate: Garnishment MAY.02.2014: 14-GR-000-658 | Appeal State: 14-GR-000-658 (Dismissed)

On May 2, 2014, Jysk filed garnishment on rent on Mrs. Angelou Ezeilo, tenant of Inman Unit, owned byDutta-Roy and Ms. Neelu Daswani (Daswani) – by Fulton Magistrate Court garnishment action 14-GR-000-658. While the garnishment of rent was initially granted, the decision was appealed at Fulton State Court by Appeal 14-GR-000-658, and on July 03, 2014, with the case dismissed on July18, 2016.

B. Gwinnett Magistrate: SunTrust Garnishment FEB.02.2015: 15-GM-03448 (Dismissed)

On February 2, 2015, Jysk again filed a garnishment action on Dutta-Roy's SunTrust Bank Account. While the untrue garnishment action was dismissed on November 12, 2015 – it made Dutta-Roy fall behind on his mortgage payments.

C. Gwinnett Magistrate: Dispossesory FEB.02.2015: 16-M-09896 | Appeal: Superior: 16-A-06591-5P1 (Dismissed)

By the sum of the garnishment actions, which caused much harassment to Dutta-Roy, Daswani and their tenants Ezeilos, the Ezeilos early-terminated on their tenancy in the Inman Unit – leaving the unit with much damages that cost Dutta-Roy a significant amount to repair. The resulting action was ultimately dismissed in Ezeilos favor causing Dutta-Roy significant losses in time and money.

The Ezeilios made slanderous statements against Dutta-Roy, filed unverified by Counsel Maia Cogen (Cousel Cogen) of Lawrence & Bundy, were cited in a sum of tort clauses in causing damages to Dutta-Roy's good reputation, also must be attributed to Jysk.

D. Fulton Magistrate: Disposessory NOV.21.2018: 18-ED-098-724 (Evicted)

In amounts due by the sum of actions above Inman Unit went into foreclosure in August 2018. Daswani who held title to the unit, while Dutta-Roy held the mortgage, settled the mortgage and filed dispossessory action against Dutta-Roy, forcing him to move out of the Inman Unit on December 31, 2018.

While he stayed at a friend's place fr about a year, Dutta-Roy was forced to move again in March 2020 just as the Covid-19 pandemic was disrupting life across the US and the world. If not for the help of good friends he would be homeless in a dangerous pandemic situation.

The garnishment, early-termination action and eviction thereof caused significant distress to Dutta-Roy in nt only defending the federal actions, damages, then loss to his property, but

abandonment of his new venture Royz-Dutta, LLC, loss of family members he was uable to visit – by which he has severally noted tort causes of action against Jysk and counsels by the sum of tort actions cited in **Apdx-E7**.

Reasons For Granting The Petition

In NDGA's Orders by Apdx-B1 (DN-148)/ Apdx-B3 (DN-69), first the NDGA ignored, then the 11th Cir., by ApdxA1/ Apdx-A2, simply endorsed the fraudulent misrepresentation by Jysk's affidavits shown – in that the words ***fraud***, ***perjury***, ***fraudulent misrepresentation***, ***benefits conferred***, ***legal malpractice*** – do not appear in 11th Cir. September 23, 2019 Opinion, and **neither did they appear** in NDGA Final Order by **Apdx-B1 (DN-148)**, despite several motions in **Rule 60(b/ d)**, then **Rule 9(b)** particularity, filed in both Courts.

Certiorari is also warranted to resolve the issue of ACPA applied retroactively. In amending an act of Congress, NDGA's *plain error* decision, upheld by the 11th Cir., has also misapplied ACPA arguing for Jysk by domain ***re-registration*** vs Dutta-Roy's ***renewal***, fundamental to the application of the ACPA. Further, in ruling on ACPA in ***property*** vs ***contract***, both Courts have ignored the highest standard of care shown by Dutta-Roy's fiduciary duty in getting ***bydesignfurniture.com*** ready for go-live – spending 4000+ hours, in utter disregard, from Jysk. Whether these aspects are due to the ACPA historically being applied in ***contract*** vs. ***property***, but never in a fiduciary context, is an essential question for this Court – as the 11th Cir. has not addressed it, despite its precedent in ACPA by contract.

Whether NDGA, then the 11th Cir. *de novo*, should have conducted a plausibility analysis to first resolve if in fact Dutta-Roy had violated the ACPA and Lanham Act against Jysk, is another urgent question here. In light of both Courts' judicial experience, in significant evidence from Dutta-Roy, in Courts dismissal of the *prima facie* nature of fiduciary duty in the joint-venture in ***bydesignfurniture.com*** – both Courts have ignored that Jysk has been using the domain by licensing from Dutta-Roy. Thus, both Courts have upheld Jysk's utter disregard for the ***benefits conferred*** upon Jysk in the domain name, ***By Design Coming*** site, emails transferred, product management information gained in the new digital and eCommerce world of 2000s.

The loss of eCommerce and his surrounding interests, then and now, has been an irreparable injury to Dutta-Roy. Jysk and counsels unjust enrichment by conspiracy, antitrust restraint, are but one factor in unfair methods of competition in Jysk blocking Dutta-Roy's entrepreneurial entry into the $100B/ year US furniture market. This is an essential aspect of an equitable

accounting process in misappropriation of ***bydesignfurniture.com***. These issues have also not been addressed by NDGA, and then the 11th Cir.

Dutta-Roy's substantial rights, shown by ***void judgments***, intertwined matters in the state court garnishment, is also a critical matter for granting the petition. Dutta-Roy has lost the his home, a complete sense of any freedom in being tied to this seven+ year litigation in seven courts, commensurate jobs, credit rating, missing the chance to visit his relatives in India who passed away – making this set of seven+ year in seven court cases a significant issue of his constitutional rights, in at least cruel and unjust punishments. These aspects do not have any mention in NDGA's Order Apdx-B1 (DN-148) and neither do then in 11th Cir. Opinion Apdx-A2).

In that the 11th Cir. has simply endorsed NDGA's arguments in ACPA, ignoring plain evidence in fraud, fiduciary duty, unjust enrichment, legal malpractice arguments, ignoring Dutta-Roy's substantial rights lost, certiorari is applicable here, at least by **Supreme Court Rules 10(a)** and **10(c)**:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

By Rule 10(a), NDGA's, endorsed by the 11th Cir., decisions have '*has so far departed from the accepted and usual course of judicial proceedings*' in the essential issue of fraud and fraud on court that it is urgent '*to call for an exercise of this Court's supervisory power.*' By Rule 10(c), NDGA, then the 11th Cir. have '*decided [on at least three][20] important federal question(s) in a way that conflicts with relevant decisions*' of any court, if not the plain meaning of the law itself. State court questions are involved in unresolved damages and early-termination

The details shown are to highlight that **a *de novo* adjudication on of Dutta-Roy's Appeal has not been conducted by the 11th Cir.**, the essential reason by which this Petition is requested to be granted.

1. Fraudulent Misrepresentation Not Addressed

The question asked by Dutta-Roy's EBP was '***Are any of Jysk's statements believable?***' The issue of the servers is a central issue in this matter of perjury – why the servers were purchased. Bratengen denial of the fact that they were for eCommerce, with Sonnad contradicting that the servers were for eCommerce – is a critical matter of the fraud and perjury in this case that 11th Cir. did not rule on and NDGA's Apdx-B3 (DN-69) does not mention.

20 The three essential questions are in fraud, ACPA and fiduciary duty shown to be not addressed, misapplied and departed from plain meaning of the law, also not reviewed *de novo* by 11th Cir.

A. Perjury by Bratengen/ Sonnad/ GC Zipperman by Server and Denial of 2000 P/A

BRATENGEN	SONNAD
Apdx-D6 (DN-68-1): 'agreement being discussed was wholly unrelated to the present matter and concerned servers and an agreement by and between an individual named Scott Bell, an employee of By Design Furniture and Defendant.' [And that the servers purchased by Mr. Scott Bell were] 'a portion of a large discussion concerning servers, and the agreement referenced therein refers to an agreement between Defendant and Scott Bell, an employee of By Design Furniture concerning servers ...'	***Apdx-D5 (DN-58-5)/ para-7***: That all of the servers to host the virtual shopping mall were purchased by Plaintiff. ***Apdx-D5 (DN-58-5).para-8***: That, BazaarWorks LLC provided the specifications for the servers, which were then purchased by the Plaintiff.

Dutta-Roy argued that just this aspect of the servers, in Sonnad's confirmation that '*all of the servers to host the virtual shopping mall were purchased by Plaintiff*' must make it clear that Bratengen perjured himself about the servers. If the servers were not for eCommerce, what were they for? – is a question repeatedly asked by Dutta-Roy and never addressed.

However, NDGA's assertion, that there was actually a contract, and not merely '*Dutta-Roy's contention that a contract existed between the parties*' is by the email exchange with Bratengen shown below that there was an agreement, it extended to Dutta-Roy, confirming GC Zipperman's knowledge about it.

BRATENGEN EMAILS → DUTTA-ROY	GC ZIPPERMAN AFFIDAVIT
SUNDAY, FEBRUARY 15/ 16, 2004, 9:42AM:	
Hi Monosij, I am ready and motivated to get started again. Let's get going. Kjell --- O boy...should I get him to correct this or can we take care of this. I will start on giving you the additional product information if you can take care of the other items. Kjell	***Apdx-D8 (DN-68-3)/ para-3***: I have no personal recollection of reviewing or commenting to the alleged Partnership Agreement, a copy of which is attached hereto as Attachment "A", in my capacity as general counsel for Quick Ship Holding, Inc. and have no personal recollection of ever seeing said agreement outside of becoming aware of the assertions of the Defendant with reference to said agreement in the above-captioned litigation. ***Apdx-D8 (DN-68-3)/ para-2***: I am a member of the State Bar of Georgia. I, together with my law firm, Davis, Zipperman, Kirschenbaum & Lotito, LLC, have represented Kjell Bratengen together with various companies in which he has held an ownership interest, including but not limited to Quick Ship Holding, Inc., and have served as
WEDNESDAY, MARCH 9, 2005, 9:05AM:	
There is nothing to talk about. I will go out and buy a server and at the same time ask my attorney to handle the matter. It is obvious that you have no intentions to give me back the equipment as I have asked for it for over a year. You can call me on my cell phone if you want to discuss it with me otherwise you can discuss it with my attorney, Barry Zipperman. Ps. I also have a copy of your agreement and so does my attorney so bring it on. Kjell	

	general counsel for said companies from 1998 through the present. Specifically, I was general counsel for Quick Ship Holding, Inc. during calendar year 2000.

Table S–2: Bratengen ←→ GC Zipperman: Perjury in knowledge of eCommerce

References to just these aspects of the evidence already presented must make it clear that there was an agreement and in denial of the P/A, Bratengen and GC Zipperman perjured themselves with regards to the contract. NDGA's and 11th Cir.'s argument below must lack any basis, and the above must exchange must show the 2000 P/A extended to Dutta-Roy:

NDGA SUMMARY JUDGMENT	11TH CIR. SEPTEMBER 23 OPINION
Apdx-B3 (DN-69)/ page-15/ para-2: The Plaintiff denies executing the Partnership Agreement, and attaches affidavits denying the execution of any such agreement and even an affidavit from its former attorney denying any knowledge of the agreement. (See Zipperman Aff. ¶ 3; Third Sonnad Aff. ¶ 4; Third Bratengen Aff. ¶ 4).	**Apdx-A2/ page-9/ para-2**: Dutta-Roy presented no evidence from which a jury could reasonably infer the existence of an agreement between himself and Jysk. [Citation Omitted]. Several Jysk employees stated in sworn affidavits that there was no agreement between between Jysk and Dutta-Roy. In response, Dutta- Roy attached a partnership agreement between BazaarWorks—not Dutta-Roy.

None of this essential conflict in affidavits appears in the 11th Cir. Opinion Apdx-A2, and they also lack in NDGA's Order Apdx-B1 (DN-148), thus confirming Dutta-Roy's assertion that a *de novo* review was never conducted by the 11th Cir.

B. Perjury by Bratengen in No Verbal Agreement – Refuted also by former BazaarWorks partner Negandhi

Brategen's email above that he was '*ready and motivated to get started again. Let's get going.*' must not only show the agreement between Jysk and BazaarWorks extended to Dutta-Roy, but that fact was not refuted by Negandhi's affidavit, which was introduced at the second Appeal.

Thus, Negandhi's affidavit, submitted at second Appeal to 11th Cir., also refutes Bratengen in that there was no agreement:

> This letter is to state that I, Ashish Negandhi, confirm that the purpose of BazaarWorks was to design and build a virtual eCommerce platform or on-line shopping mall on the Internet and there was a verbal agreement between BazaarWorks and Kjell Bratengen of By Design Furniture,[21] in development of the Kjell Bratengen **By Design** eCommerce site for **By Design** on this eCommerce platform. This verbal agreement helped start the development of the eCommerce site, on or about July 2000 at no cost to **By Design** This agreement indicated that BazaarWorks would be compensated through a percentage of future sales of **By Design** furniture products from the eCommerce site.

21 Negandhi mistakenly enters By Design Furniture here, but corrects it in the remainder of his Affidavit.

Bratengen has flatly denied that there was no verbal agreement:

> ***Apdx-D4 (DN-58-4)/ para-6****: That, there was never any verbal agreement between Plaintiff, Defendant and/or BazaarWorks, LLC regarding compensation for work related to the development of the website for the Plaintiff [then Quick Ship now Jysk].*

The falsity and implausibility of Bratengen's statements were shown by that – if there was no agreement,verbal or written, why was Dutta-Roy still rendering services from 2004 to 2005? And if services were accepted – how is it possible that there was no arrangement with Dutta-Roy for any payment for them?

> ***Apdx-D4 (DN-58-4)/ para-8****: That the last time any services were offered by Defendant or BazaarWorks, LLC to Plaintiff was at latest 2005. DN- 58-4.p9: That the last time any services or works were rendered to Plaintiff from Defendant or BazaarWorks, LLC were at the latest in 2005. Apdx-D4 (DN-58-04).p10: That the last time any services or works were accepted by Plaintiff from Defendant or BazaarWorks, LLC were at the latest in 2005.*

Sonnad's perjury, was also shown by plausibility, in that she states she was part of BazaarWorks, but did not expect to be compensated.

> ***Apdx-D5 (DN-58-5)/ para-3****: That, since the organization of BazaarWorks, LLC, up to the dissolution thereof by the Georgia Secretary of State, Dev Worah, Ashish Negandhi, Monosij Dutta-Roy and I were the only employees and members of BazaarWorks, LLC. 58-5/ para-6: That the purpose of BazaarWorks, LLC was to design and build a virtual shopping mall on the internet. 58-05/ para-15: That, Plaintiff and BazaarWorks, LLC never agreed with BazaarWorks, LLC regarding compensation for work related to the development for the* ***By Design*** *online store which was published to the internet within the virtual shopping mall.*

C. Perjury by Bratengen and Sonnad in the Essential Matter of Identity: Prior and Actual use

In further supporting the nature of the unsigned 2000 P/A, the aspects of prior and actual use of the trademark ***By Design Furniture*** or ***bydesignfurniture.com*** since 1990 were shown to be beyond plausible, but impossible.

> ***Apdx-D1 (DN-57-4)/ para-4****: That, Jysk Bed'N Linen d/b/a* ***By Design Furniture****, as successor to Quick Ship Holdings, Inc. d/b/a* ***By Design Furniture*** *("Plaintiff") is a retail seller of furniture, for the home, office and patio and has operated under the trade name and common law trademark BYDESIGNFURNITURE (the "Mark") since 1990.*
>
> ***Apdx-D1 (DN-57-4)/ para-6****: That Plaintiff has continuously used the Mark in connection with its offering of products and services to the public since 1990.*
>
> ***Apdx-D4 (DN-58-4)/ para-7****: That Plaintiff has used the variation of the Mark,* ***bydesignfurniture.com*** *in connection with its offering of goods and services to the public since approximately April 20, 1999.*

These statements are an impossibility, not just by Jysk's DBA **By Design** filing at Gwinnett. Quick Ship could not have used the mark ***bydesignfurniture.com*** since 1990 as it was first registered by Dutta-Roy on April 9, 1999 (Exhibit-B) and only transferred for Jysk's use on August 2002 (Exhibit-C).

While Prior or Actual Use of a trademark is not required before registration, but there must be actual use after registration. Dutta-Roy has shown his actual use of ***bydesignfurniture.com*** in development until August 2002, on Interland servers. Dutta-Roy's joint-venture use of ***bydesignfurniture.com*** was in first launching ***By Design Coming*** on Interland before moving the domain to Genesis on October 2003 (Exhibit-XXX). Jysk's usage of the mark contending it has used the variation of the Mark, ***bydesignfurniture.com*** in connection with its offering of goods and services to the public since approximately April 20, 1999' are beyond fraudulent, they are an impossibility. It could not have used the mark in three years after registration as Dutta-Roy was using it.

Not only has NDGA refused to address the fraud on court shown, but as shown in the renewal v. registration argument fallacy, NDGA has clearly again flip-flopped on the fact that Dutta-Roy was maintaining the domain till 2012 and the ***By Design Coming*** site till about 2005.

Apdx-B3 (DN-69)/ page-3/ para-1: The Plaintiff contends it hired Sonnad to maintained the ***bydesignfurniture.com*** website from its inception in 1999 through April 2012, and only learned that it did not hold the domain's registration when the Defendant let the registration expire on April 9, 2012.	**Apdx-B3 (DN-69)/ page-16/ para-1**: Even assuming he is a successor in interest to BazaarWorks, there is no discussion of why the Defendant himself has purportedly been maintaining a website for the Plaintiff for over seven years without compensation and apparently without the Plaintiff's knowledge.

Thus, if there was a 'scintilla' of evidence, then surely the 11th Cir. or the NDGA should have investigated further.

> **Apdx-3/ page-10/ para-2**: An unexecuted agreement to which Dutta-Roy was not a party and an ambiguous email are together, at most, a "mere . . . scintilla" of evidence in support of Dutta-Roy's contention that a contract existed between the parties. Anderson, 477 U.S. at 252, 106 S. Ct. at 2512. Dutta-Roy has presented no evidence of mutual assent between himself and Jysk regarding a plain and explicit set of terms, and no reasonable jury could infer that Jysk breached a contract with Dutta-Roy. Id.; Dibrell Bros. Int'l S.A., 38 F.3d at 1582. The district court therefore did not err in granting summary judgment.

These issues in fraud were all shown in every aspect of Rule 60(b), Rule 60(d) and by particularity in a Rule 9 (b) filing. 11th Cir. ignoring these central issues of fraud make its decisions inconsistent.

2. Void Judgment in Retroactive Application of the ACPA – In Renewal vs Registration

While this certiorari should be granted on the basis of fraud on court alone, it should also be granted on the basis of inapplicable arguments in a retroactive application of the ACPA in NDGA arguments confusing ***renewal*** vs ***registration*** – that was not even addressed. As shown earlier,

Jysk has cited renewal, NDGA initially noting renewal, then decided bad-faith on Dutta-Roy arguing registration.

***DN-1/ page-8/ para-21**: Thereafter on or about April 25, 2012, Defendant contacted Plaintiff to inform Plaintiff that Defendant had renewed the registration for the Web site www.**bydesignfurniture.com**; however Defendant further informed Plaintiff that he (Defendant) was now the owner of the Web site www.**bydesignfurniture.com** as Defendant had done the renewal in his own personal name.*	**Apdx-B3 (DN-69)/ page-3/ para-1**: When the registration for the ***bydesignfurniture.com*** website lapsed, the Plaintiff demanded that the Defendant turn over the domain name. The Defendant refused and renewed his registration to the domain name on April 20, 2012.	**Apdx-B3 (DN-69), Page 10**: Here, although the Defendant may not have registered ***bydesignfurniture.com*** with bad faith in 1999 and 2001, the Plaintiff has shown that the registrations of ***bydesignfurniture.com*** and the related domain names in 2012 were made in bad faith.

In his Opposition to Partial Sum. Jud. DN-64, Dutta-Roy, pages 2 – 3 has already clarified that the ACPA does not apply here. Neither the NDGA, nor the 11th Cir. are authorized to amend an act of Congress, to apply ACPA retroactively, when Dutta-Roy has showed he has held ownership of ***bydesignfurniture.com*** continuously, pre-ACPA, since April 9, 1999 in pursuance of the partnership, and renewed the domain in April 2002 for 10 years, and then again in April 2012, when the registration lapsed.

At 11th Cir. Hearing in April 2015, at the first Appeal, Dutta-Roy believed it was clarified by Hon. William Pryor Jr. III that domain as a ***property*** right applies here per decision in ***GoPets v. Hise, No. 12-56863 (9th Cir. 2015)***. Dutta-Roy registered domain pre-ACPA, has held it continuously since April 9, 1999. As Hon. Pryor clarified at hearing, Dutta-Roy's actions in 2002 and 2012 were similar to a car tag renewal. Network Solutions allows 30 days to renew the registration of a domain after expiry, before the domain is released to the public for registration again for transfer of ownership – and it was within a lapse of one day that Dutta-Roy had the domain renewed on April 10, 2012.

By these facts, Dutta-Roy's domain name registration (**Apdx-E3**) submitted , NDGA's Sum. Jud. Apdx-B3 (**DN-69**) is a ***void*** judgment in plain error of the ACPA enactment.

NDGA's ruling in Sum. Jud. **Apdx-B3 (DN-69)** in registrations of ***bydesignfurniture.com*** and the related domain names in 2012 were made in bad faith also must not apply, because the registrations of the three domain names by Dutta-Roy, end of April 2012, were made in protection of the partnership mark ***bydesignfurniture.com***. Also, Dutta-Roy registered the domain names after he noticed that during the discussion of the payment of the 4000+ hours of work, Sorensen had registered four domain names, noted earlier as Jysk's four surrounding domains.

NDGA also bases its bad-faith on the registration of the three additional domain names that were never amended from original complaint (DN-5), but only alleged at Jysk's Motion for Summary Jud. Thus by NDGA arguments above in Apdx-B3 (DN-69), Page 10, NDGA has flip-flopped on the ***renewal*** v. ***registration*** question and its holding that '*the related domain names in 2012 were made in bad faith*' is also in plain error by the issue of the original complaint by 11th Cir. April 6, 2015 directive to parties stating:

> In its complaint, Jysk alleged facts and causes of action related to only Dutta-Roy's registration of bydcsignfurniture.com. Jysk never amended its complaint to allege anything about the registrations of bydesignfurniture.org, bydesignfurnitures.com, or bydesign-furnitures.com. Could the district court properly grant a summary judgment in favor of Jysk on causes of action related to those three domain names? See Flintlock Const. Services, LLC 710 F.3d1221, 1227-28 (11th Cir. 2013) (explaining that "we refuse[] to consider ... additional facts" not alleged in the complaint even though "[t]he defendants d[o] not object" and "the district court ... appear[s] to have considered the additional facts as if they had been alleged in the complaint") (citing GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244,1258 n.27 (11th Cir. 2012)).

By this directive alone, from 11th Cir., at the 2014 hearing, Sum. Jud. should have been overturned by the 11th Cir. Yet the 11th Cir. had no mention of this directive in its Opinion, and neither did it address how NDGA could allow Jysk to change its claim to include the Jsyk's four additional domains so as to make NDGA's Sum. Jud. Apdx-B2(DN-69) valid. In the process how could NDGA deny Dutta-Roy's amendment to claims has also not been addressed.

A. Damages by Apdx-B2 (DN-88)

In DN-64, Dutta-Roy argued: '*The ACPA was enacted on October 26, 1999 as Senate Bill, S. 1255 (106th) by the 106th Congress (1999-2000) as an amendment to the Lanham Act, 15 U.S.C. § 1051, et seq. Defendant had already registered the Domain Name on April 9, 1999 (Plaintiff's Statement of Material Facts No. 21) over six (6) months earlier. The ACPA specifically states that:*

> *...damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) [e.g. the provision of the ACPA that Plaintiff alleges Defendant violated] ... shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act [emphasis added].*'

In DN-64 Dutta-Roy also stated that '*Because the Domain Name was originally, initially and personally registered by Defendant prior to the effective date of the ACPA and has been subsequently personally maintained and timely re-renewed without any gaps in ownership by Defendant ("Dutta-Roy Affidavit Nos 7.m & 7.n), the Domain Name is not subject to or covered by the ACPA. Compare, Schmidheiny v. Weber, 319 F3d 581 (3rd Cir. 2003), holding party there had materially changed the ownership of the Domain Name after the effective date of the act, contrasting it with a situation such as the one before this Court.*' In Scmidheiny, the domain was treated as a contractual right, and Schmidheiny does not apply as Dutta-Roy never changed the ownership of the ***bydesignfurniture.com*** when he renewed it in 2002 and in 2012.

In not discussing the fraud, the retroactive application of the ACPA, damages by **15 U.S. Code § 1117(e)**. Recovery for violation of rights, must not hold.

> (e)Rebuttable presumption of willful violation
> In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.

How can there be any willful violation when NDGA itself claimed there was Partnership, which it then failed to investigate? Surely, 11th Cir. should have asked how it allowed Jysk to amend its pleading, adding in the four domain names to its complaint, so essentially the original summary judgment Apdx-B3 (DN-69) and subsequent damages Apdx-B2 (DN-88) would hold.

These are significant factors in damages that the NDGA has not applied and in granting Apdx-B3 (DN-69) and Apdx-B2 (DN-88), 11th Cir. has not only endorsed the ruling, it has allowed Jysk to amend its pleading to conform to the Orders – inexplicable in its own right! In light of the perjury shown before – this must be also be a void judgment, more important a clear issue of whether a de novo review was undertaken by the 11th Cir.?.

3. Void Judgment In Decision Without a Jury On Fiduciary Rights – ACPA Beyond Contract or Property Rights

NDGA's denial of Dutta-Roy's rights to ***bydesignfurniture.com***, continues with its own differing opinion in whether a partnership existed.

Apdx-B3 (DN-69)/ page-11/ para-2: Here, the Defendant contends he used the ***bydesignfurniture.com*** domain name under the Partnership Agreement between BazaarWorks and the Plaintiff. However, whatever relationship existed concerning the 1999 and 2001registrations of ***bydesignfurniture.com***, the Defendant cannot avail himself of the safe harbor provision of the ACPA with respect to the 2012 registrations, where the Defendant's bad faith is readily apparent. And the Partnership Agreement does not authorize the bad faith is readily apparent. And the Partnership Agreement does not authorize the Defendant to take the Plaintiff's trademark hostage even if the Defendant was due payment under the agreement.	**Apdx-B3 (DN-69)/ page-13/ (middle)**: The fact that the Defendant may have initially believed he could register the domain name in his own name under the Partnership Agreement does not undermine the bad faith associated with the 2012 transaction. See Victoria's Cyber Secret, 161 F. Supp. 2d at 1353 (quoting Virtual Works, Inc. v. Volkswagen of America, Inc., 238 F.3d 264, 270 (4th Cir. 2001) ("A defendant who acts even partially in bad faith in registering a domain name is not, as a matter of law, entitled to benefit from the [ACPA's] safe harbor provision.")). Accordingly, the Court concludes the Defendant acted in bad faith with respect to the 2012 registrations and cannot benefit from the safe harbor provision.

A. Contract Right

11th Cir.'s endorsement of NDGA's argument in not contract or fiduciary rights ignores the affirmation of the original contract in the mutual assent by Bratengen's email. That affirmation and continuation of the original 2000 P/A is also shown by Sonnad's affidavit that servers were purchased.

> Apdx-2/ page-10: An unexecuted agreement to which Dutta-Roy was not a party and an ambiguous email are together, at most, a "mere . . . scintilla" of evidence in support of Dutta-Roy's contention that a contract existed between the parties. [Citation Omiited]. Dutta-Roy has presented no evidence of mutual assent between himself and Jysk regarding a plain and explicit set of terms, and no reasonable jury could infer that Jysk breached a contract with Dutta-Roy. Id.

BRATNGEN EMAILS: FEBRUARY 15/ 16, 2004	**SONNAD'S AFFIDAVIT**
Hi Monosij, I am ready and motivated to get started again. Let's get going. Kjell ----- O boy...should I get him to correct this or can we take care of this. I will start on giving you the additional product information if you can take care of the other items. Kjell	***Apdx-D5 (DN-58-5)/ para-7***: That all of the servers to host the virtual shopping mall were purchased by Plaintiff. ***Apdx-D5 (DN-58-5)/ para-8***: That, BazaarWorks LLC provided the specifications for the servers, which were then purchased by the Plaintiff.

In stating that the return of the servers, signaled an end to the eCommerce contract, NDGA surely agrees as well that the servers were for eCommerce, but does not ask what was the consideration shown for the eCommerce developed and what the servers were for?

> Apdx-B2/ page-16/ para-2: Without evidence that the Defendant has done anything with the Plaintiff since at the latest 2005 – as evidenced by the 2005 emails in which Bratengen demands the return of computer equipment from the Defendant and announces the end of their relationship – and without evidence of any specific part of the Partnership Agreement that supports his breach of contract claim in his own name, the Plaintiff's motion for summary judgment on the Defendant's breach of contract counterclaim should be granted.

But did this relationship actually end? If the Courts disagree that the contract was maintained in maintenance of registration ***bydesignfurniture.com*** over 10 years, that surely the affirmation occurred when Sonnad met Dutta-Roy for discussions on the eCommerce in 2007 and 2010, in continuation of contract occurred when Dutta-Roy renewed the domain in 2012 in the call from Sorensen, these aspects should have been decided by a jury as well. How could the contract end if the domain was still in Dutta-Roy's possession?

There was no fact-finding in consideration by Dutta-Roy undertaken, that should have been imposed in Jysk. If NDGA and the 11th Cir. do not believe that after BazaarWorks breakup in 2002, does not in fact extend to Dutta-Roy by: a) the servers purchased for eCommerce in

Sonnad's affidavit or b) the email evidence from Bratengen; c) and these facts were not needed to be confirmed by GC Zipperman – then surely by the necessary OCGA laws in contract and fiduciary duty, the matters should have been decided by an honorable jury. Whether a contract or fiduciary duty existed and the applicable statues of limitation should have been applied by the necessary set of partnership guidelines set forth in OCGA.

Thus, while 11th Cir.'s September 23 Opinion agrees by the '**scintilla**' consideration (pg-10) in '*supporting the contention that a fiduciary obligation existed.*' even this 'scintilla' consideration is set forth by contract laws in:

> **O.C.G.A. § 13-2-1** in contract '*the jury should find the fact,*' then **O.C.G.A. § 13-2-2(6)** in that '*that which goes most strongly against the party executing the instrument or undertaking the obligation is generally to be preferred,*' and **O.C.G.A. § 13-2-3** to '*ascertain the intention of the parties*'

B. Fiduciary Right

Dutta-Roy's EBP, following up on Dutta-Roy's AIB/ ARB argued the breach of fiduciary duty by '*(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach,*'[22] is upheld by O.C.G.A. § 14-8-7(4) in that '*share of the profits of a business is prima-facie evidence that he is a partner in the business [..]*' – must be surely be clear by Negandhi's affidavit, no compensation to Dutta-Roy for any of his 4000+ hours of work and surely by future compensation missed.

NDGA, nor the 11th Cir. has not given any consideration to the fiduciary and partnership laws set forth in OCGA that Dutta-Roy has now pointed out numerous filings, but especially in Dutta-Roy's ARB and EBP – that O.C.G.A. § 9-3-27 shows the fiduciary statute allows in 10 years for actions.

O.C.G.A. § 14-8-7: Determination of existence of partnership: (4) The receipt by a person of a share of the profits of a business is prima-facie evidence that he is a partner in the business; provided, however, that no such inference shall be drawn if profits were received in payment of the following, even though the amount of payment varies with the profits of the business: [...].	**O.C.G.A. § 23-2-58**: The existence of a confidential relationship is a question for the jury. "Such relationship may be created by law, contract, or the facts of a particular case. Moreover, since 'a confidential relationship may be found whenever one party is justified in reposing confidence in another, the existence of (this) relationship is generally a factual matter for the jury to resolve.' " (Footnote omitted.) Douglas v. Bigley, 278 Ga.App. 117, 120(1)(a), 628 S.E.2d 199 (2006).	**O.C.G.A. § 9-3-27**: – Actions against fiduciaries: All actions against executors, administrators, or guardians, except on their bonds, shall be brought within ten years after the right of action accrues.

22 ***Atwater v. National Football League Players Ass'n***, 626 F.3d 1170, 1183 (11th Cir. 2010)

So if according to NDGA's argument, the statute in contract fails by four years, surely the fiduciary laws must apply by the 2000 P/A or surely it should be addressed by a jury?

But this fiduciary surely is **prima facie** and ***not*** **scintilla** – in that Jysk has never shown any payment for any of the work that was much enriched by, if not by the eCommerce, then surely by the ***By Design Coming*** site, the usage of the partnership's domain ***bydesignfurniture.com***, the email addresses gathered. These aspects were also argued to be a matter of trade-secret.

Bratengen's '*controlling influence over the will, conduct, and interest*'[23] *on* ***bydesignfurniture.com*** *is shown in that his sale of* ***By Design*** *to Jysk, in zero consideration for Dutta-Roy, destroyed the J/V early-stage eCommerce. His 'resulting superiority and influence*'[24] is evident in Dutta-Roy's loss-causation in 4000+ hours innovative development as Bratengen's cancellation of going live not only canceled Dutta-Roy's eCommerce income prospects, but also future eCommerce prospects of the surrounding mall that Bratengen and Sonnad's affidavits both clearly state.

While Dutta-Roy focused with more than diligence, care, loyalty and candor on the eCommerce and its security thereof, he did not believe that he would be sabotaged from within – in Bratengen selling his stake to Jysk.

By Dutta-Roy's EBP, AIB, ARB, his Amendment to Complaint at NDGA, Dutta-Roy has argued the questions should really have been determined by **The Georgia Revised Uniform Limited Partnership Act (RULPA)**.[25][26] Opinion clearly failed to note, just by emails shown, that Bratengen's encouraging Dutta-Roy to develop the eCommerce, while in back-door negotiations to sell ***By Design*** as intentional malice. "*A superior financial interest*[27] *in the subject matter of the alleged interference*" cannot be claimed by Bratengen, by Dutta-Roy's domain, ***By Design Coming*** deployed, emails collected, the eCommerce thereof, much enlarged the geographic market for ***By Design*** to at least the $100B US furniture market.

All these issues have been ignored by the 11th Cir. Opinion, no discussion of RULPA, discussed in Dutta-Roy's AIB/ ARB, then touched upon in Dutta-Roy's EBP – and not addressing them makes this again an essential question in whether 11th Cir. considered Dutta-Roy's arguments *de novo*?

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23 ***Id.*** (citations omitted).

24 ***U.S. v. Kim***, 184 F.Supp.2d 1006, 1010-1011 (N.D.Cal. 2002).

25 **O.C.G.A. § 14-9-100 et seq**.

26 **O.C.G.A. § 14-9-1201(a)**.

27 ***Chapman v. Crown Glass Corp.***, 557 N.E.2d 256, 262 (Ill. App. Ct. 1990). [...] in some instances an actor's conduct may protect an interest that the law deems of greater importance than the plaintiffs rights.

4. Unjust Enrichment/ Quasi-Contract in Benefits Conferred

Beyond the issue of identity, inapplicability of ACPA and void judgment by contract and fiduciary, Dutta-Roy argued in a MAY.21.2019 ***Motion for Equitable Accounting In Unjust Enrichment With Consideration for Pre-Award Attachment by the 'Rendered Ineffectual Standard*** that – if not a contract, surely a quasi-contract was shown in the evidence presented. It was argued that recovery under a theory of unjust enrichment "*does not require the existence of an enforceable agreement, but instead looks to the underlying fairness of the conduct at issue.*"[28] "*When a defendant has given adequate consideration to someone for the benefit conferred, a claim of unjust enrichment fails.*"[29]

The benefits conferred to Jysk: a) deploying ***By Design Coming***; b) allowing Jysk to use the J/V domain ***bydesignfurniture.com***; c) emails transferred for marketing purposes were argued by, 11th Cir. own opinion in unjust enrichment claims that: "*(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendant[...] to retain it without paying the value thereof.*" ***Virgilio v. Ryland Grp.***, Inc., 680 F.3d 1329, 1337 (11thCir. 2012).

Just the sum of these facts shown in fraud and unjust enrichment are beyond a '*Passing reference to a claim without support or citation without support or citation is not enough to preserve an issue.*' that the 11th Cir. has claimed. Here omitting any references to the fraudulent misrepresentation shown, the benefits conferred, 11th Cir. is adverse to its own arguments by ***Virgilio***.

> Apdx-2/ page-8/ para-2: Dutta-Roy has also abandoned his equitable claims. Georgia provides quantum meruit and unjust enrichment theories of recovery when, under certain circumstances, parties cannot recover under a contract.

A. Securites Act and Trade Secret

The significant value of the benefit conferred, thus enhancing the value of **By Design** was in that ***bydesignfurniture.com*** was both a trade-secret and security. That domain/ word mark ***bydesignfurniture.com*** meets the broad definition of security was argued by the **1933/ 34 Securities Acts, 15 U.S.C. 77a et seq.**, by ***Howey***, a futures "*investment contract.*"[30]

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28 ***Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co.***, 695 So. 2d 383, 386, 390 (Fla. 4th DCA 1997).

29 ***Am. Safety Ins. Serv., Inc. v. Griggs***, 959 So. 2d 322, 331–32 (Fla. 5th DCA 2007).

30 Not for pension, ***Intl. Bro. Teamsters v. Daniel***, 439 U.S. 551 (1979), or consumption, ***Utd. Hous. v. Forman***, 421 U.S. 837 (1975).

The issues of the domain, the temporary site, the emails transferred, indeed the significant discussions with Bratengen and Sonnad were noted by matters of trade secret by:
Citing, *Charles R. Adams III*, **Georgia Law of Torts** –

> When the unique thing is known only to its owner and those of his employees to whom it must be confided in order to apply it to the uses intended, it is known as a "trade secret."[31] **The Georgia Trade Secrets Act of 1990, O.C.G.A. §§ 10-1-760 et seq.**, provides the exclusive remedies for misappropriation of trade secrets.[32] A "trade secret" is defined by statute as:information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information:
> Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[33]

B. Antitrust Restraint

Jysk and counsels unjust enrichment was also argued ***presumptively***[34] in application of antitrust restraint theories by **15 U.S.C. § 1**. While the burden of proof for commerce acts such as by Sherman/ Lanham is substantial, essential elements[35] of the matter can be argued presumptively, given intentional and clear hostile takeover actions for the enhanced market of ***bydesignfurniture.com***. The essential elements in Sherman Act of: ***(a)*** concerted action and ***(b)***

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31 ***Vendo Co. v. Long***, 213 Ga. 774, 776, 102 S.E.2d 173 (1958); ***Taylor Freezer Sales Co. v. Sweden Freezer Eastern Corp.***, 224 Ga. 160, 160 S.E.2d 356 (1968); ***Outside Carpets, Inc. v. Industrial Rug Co.***, 228 Ga. 263, 185 S.E.2d 65 (1971); ***Thomas v. Best Mfg. Corp., Division of Tillotson Corp.***, 234 Ga. 787, 789, 218 S.E,2d 68 (1975).

32 **O.C.G.A. § 10-1-767**; ***Robbins v. Supermarket Equipment Sales, LLC.***, 290 Ga. 462(2), 722 S.E.2d 55 (2012).

33 **O.C.G.A. § 10-1-761(4)**. Georgia also has a criminal statute dealing in theft of trade secrets, **O.C.G.A. § 16-8-13**, but it has been held error to charge from this Code section in a civil case. ***Crews v. Wahl***, 238 Ga. App. 892, 900, 520 S.E.2d 727 (1999).

34 "*The term* ***presumption*** *involves a relationship between a proven or admitted fact or group of facts* ***(A)*** *and another fact or conclusion of fact* ***(B)*** *sought to be proved. The basic idea is that when* ***A*** *is established, then through a presumption it may be concluded that* ***B*** *occurred.*" defining rule of reason analysis. See *Fleming James, Jr., Geoffrey C. Hazard, Jr. & John Leubsdorf,* ***CIVIL PROCEDURE***, 198-204, 247-50, 420-23 (5th ed. 2001), note 3, at 423.

35 ***OBSERVATIONS ON EVIDENTIARY ISSUES IN ANTITRUST CASES***. *Remarks of J. Thomas Rosch Commissioner,* ***Federal Trade Commission before the EU Competition Law and Policy Workshop Florence, Italy***: "Sections 1 and 2 of the Sherman Act, for example, prohibit the willful creation or maintenance, but not the exploitation, of monopoly power, as well as attempts to monopolize. Article 82, on the other hand, prohibits a dominant firm from exploiting its power, and there is no counterpart to the attempted monopolization offense in Article 82.

anti-competitive effect[36] – are also structurally[37] evident, *prima facie*[38] given the difficult ***entry***[39] conditions for European firm Jysk into a nascent US eCommerce furniture market in early 2000s. Also, Jysk's purchase of **By Design** stores alone alone in 2006, does not provide the market reach that ***bydesignfurniture.com*** does. It should not be necessary to establish by direct evidence or by extensive reason ***analysis***[40] – Bratengen et al. and Jysk's conspiratory actions. Arguments against any defenses (such as ***efficiency***[41]), negation of affirmative defenses and limitations, are by Restatement (Second) of Torts, Section 525.[42] Bratengen's action show actual and intentional malice, that he lacked intent to honor the promise[43] to Dutta-Roy while kept promising him along.

C. Misappropriation

36 When direct evidence of anti-competitive effects is introduced, it is arguable that the various elements of offenses under **Section 1 and Section 2**, and even **Sections 3 and 7 of the Clayton Act**, tend to collapse into a **unitary inquiry**. Evidence that conduct has in fact **diminished competition** or is very likely to do so (as in case of mergers), such as lowered output, higher prices, lower product quality, less innovation, less consumer choice – will tend to establish both the requisite power and effects.

37 See *Hovenkamp*, supra note 215. *Hovenkamp* observes that "***Matsushita*** (475 U.S. 574 (1986)) *itself said very little about proof requirements when* ***structural evidence indicates that the offense is quite plausible and would be profitable for the defendants***."

38 For cases describing ease of entry as a defense that can rebut the ***prima facie*** case of anti-competitive effects, see ***Baker Hughes***, 908 F.2d at 987 ("*The existence and significance of barriers to entry are frequently, of course, crucial considerations in a rebuttal analysis.*") and ***United States v. Waste Management***, 743 F.2d 976, 981-83 (2d Cir. 1984) (explicitly discussing ease of entry as rebuttal evidence). For cases discussing efficiency as a defense that can rebut the prima facie case of anti-competitive effects, see ***H.J. Heinz***, 246 F.3d at 720-22; ***United States v. Long Island Jewish Med. Ctr.***, 983 F. Supp. 121, 137 (E.D.N.Y. 1997); ***Staples***, 970 F. Supp. at 1088-89; and ***FTC v. Univ. Health***, 938 F.2d 1206, 1222 (Eleventh Cir. 1991).

39 **1992 Merger Guidelines**, supra note 103, § 2. Current version: **1997 Merger Guidelines (rev.)**.

40 This is largely an accurate description of what the Supreme Court did in ***Chicago Board of Trade v. United States***, 246 U.S. 231 (1918), which is frequently cited as the benchmark for defining rule of reason analysis.

41 ***Broadcast Music, Inc. v. CBS***, 441 U.S. 1 (1979) at 20-21.

42 Liability for Fraudulent Misrepresentation

43 ***Coleman v. Sears, Roebuck & Co.***, 319 F. Supp. 2d 544 (W.D. Pa. 2003); ***Gouge v. BAX Global, Inc.***, 252 F. Supp. 2d 509 (N.D. Ohio 2003); ***Martens v. Minn. Mining & Mfg. Co.***, 616 N.W.2d 732 (Minn. 2000).

Dutta-Roy to Jysk, but Dutta-Roy's claims for equitable accounting is further affirmed by **O.C.G.A. § 10-1-763** in recovery of damages, by the preponderance of evidence shown, and argued in motions to District Court.

> (a) In addition to or in lieu of the relief provided by Code Section 10-1-762, a person is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. If neither damages nor unjust enrichment caused by the misappropriation are proved by a preponderance of the evidence, the court may award damages caused by misappropriation measured in terms of a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret for no longer than the period of time for which use could have been prohibited.
> (b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a) of this Code section.
> (c) In no event shall a contract be required in order to maintain an action or to recover damages for misappropriation of a trade secret.

By the central issue of the economic inducement reneged, Dutta-Roy also cites DN-139 citing Georgia Supreme Court's arguments:

> Georgia Supreme Court – "the right to use a trade name, which is sold to another in conjunction with the sale of the business and its good will, but in which a security interest is purportedly retained, can be reacquired by foreclosure. In addition to a trademark, a trade name along with the goodwill it represents, may be the subject of an Article 9 (U. C. C.) security interest." Reis v. Ralls, 250 Ga. 721, 301 S.E.2d 40, 35 D.C.C. Rep. Servo 951 (1983).

D. Significant Valuation of Secondary Property Over Primary Property

In arguing for unjust enrichment, Dutta-Roy went beyond the issue of fiduciary duty in the eCommerce agreement and argued for the market factors gained by Quick Ship when BazaarWorks first deployed ***By Design Coming*** and with, first Negandhi, then Dutta-Roy transferring emails.

The enhanced valuation of the secondary joint-venture asset, were also shown in the MAY.21.2019 motion by arguments in quasi-contract or quasi-fiduciary duty.

> Perhaps the most fundamental basis for permitting a plaintiff to seek a quasi-contract claim is due, at least in part, because that plaintiff lacks an express contract with the defendant. Baron v. Osman, 39 So. 3d 449, 451 (Fla. 5th DCA 2010). Since a lack of an express contract is required for an unjust enrichment claim, it follows that privity of contract is not required.

5. Equitable Accounting Process In Quantum Meruit *bydesignfurniture.com* and Garnishment Actions

In dismissing an equitable accounting process, NDGA stated:

> Likewise, the Defendant has not shown that he is entitled to an equitable accounting. "*The sufficiency of a petition for an equitable accounting depends 'upon whether the facts alleged showed that on an accounting the petitioner will likely be entitled to recover judgment for some amount.'*" ***Riverview Condominium Ass'n v. Ocwen Federal Bank***, FSB, 285 Ga. App. 7, 8 (2007) (quoting Charles S. Martin Distrib. Co. v. Roberts, 219 Ga. 525, 532 (1964)). Here, as discussed above, the Defendant has not presented any facts to suggest that an

equitable accounting of the ***bydesignfurniture.com*** website would lead to a recovery for the Defendant through either the Partnership Agreement or a fiduciary relationship.

And 11th Cir. has endorsed this by their SEP. 23 opinion noting:

Because Dutta-Roy has not shown that he is entitled to any damages, there is no evidence that would allow a fact finder to determine the amount he is owed. He is therefore not entitled to an equitable accounting. Therrell, 960 F.2d at 1565.

Just by the evidence cited in this cert, Dutta-Roy believes he significantly shown his contract and fiduciary arrangement in the joint-venture on ***bydesignfurniture.com*** that justifies an equitable accounting process. His sweat equity in quantum meruit by equitable principles argued has not been addressed. 11th Cir. has dismissed his equitable accounting claim stating:

With respect to Dutta-Roy's counterclaims, Jysk contended that Dutta-Roy's equitable claims for quantum meruit and unjust enrichment were barred by the applicable four-year statute of limitations because Dutta-Roy never rendered any services for Jysk after 2005. And Jysk argued that the rest of Dutta-Roy's counterclaims failed for lack of privity of contract.

Upholding of privity of contract is also inapplicable in that Dutta-Roy believes he has shown a quasi-contract, lack of an express contract, in continuation of the original BazaarWorks contract, by that the servers were purchased, by **By Design** personnel Bell, for go-live. By that fact, he met his consideration of the contract.

Perhaps the most fundamental basis for permitting a plaintiff to seek a quasi-contract claim is due, at least in part, because that plaintiff lacks an express contract with the defendant. Baron v. Osman, 39 So. 3d 449, 451 (Fla. 5th DCA 2010). Since a lack of an express contract is required for an unjust enrichment claim, it follows that privity of contract is not required.

This equity in accounting is also by the fiduciary relation shown in the joint-venture, confirmed by ***Atlanta Trust Co. v. National Bondholders Corp.***, 188 Ga. 761, 4 S.E. 2d 644 (1939) noting that "*Where a fiduciary relation exists, accounting in equity is proper.*" Also affirmed by decisions in that "*A court of equity has jurisdiction in all cases of an accounting and settlement between partners.*" ***Smith v. Hancock***, 163 Ga. 222, 136 S.E. 52 (1926).

In selling **By Design**, misappropriating ***bydesignfurniture.com***, Bratengen, Jysk and agents essentially refused to allow Dutta-Roy's participation in the $100B US furniture eCommerce business. Therefore, an equitable accounting is applicable in that "an accounting without dissolution will be granted where one partner refuses to allow another to participate in the business." ***Hogan v. Walsh***, 122 Ga. 283, 50 S.E. 84 (1905); **Zerounis v. Berry**, 199 Ga. 410, 34 S.E.2d 275 (1945). "*A prayer that one partner be compelled to pay another one-half of the net profit of the business includes a prayer for accounting.*" ***Bennett v. Woolfolk***, 15 Ga. 213 (1854).

These context in an equitable accounting procedure are set forth comprehensively by **O.C.G.A. § 23-2-70. et. seq** by:

O.C.G.A. § 23-2-70. Scope of equity jurisdiction over matters of account

Equity jurisdiction over matters of account shall extend to:
(1) Mutual accounts growing out of privity of contract;
(2) Cases where accounts are complicated and intricate;
(3) Cases where a discovery or writ of ne exeat is prayed and granted;
(4) Cases where the account is of a trust fund;
(5) Accounts between partners or tenants in common; and
(6) Cases where a multiplicity of actions would render a trial difficult, expensive, and unsatisfactory at law.

A. Collateral Damages by Void Judgments – 'Cases where a multiplicity of actions would render a trial difficult, expensive, and unsatisfactory at law'

In denying an equitable accounting process 11th Cir. has no mention of the '*multiplicity of cases*' enabled by the intertwined and supplemental cases noted by **28 U.S.C. §§ 1331, 1338**. 11th Cir. makes of mention of the state court garnishment actions. The intertwined supplemental actions in state court garnishment actions were specifically addressed in Dutta-Roy's AIB in section: Loss Causation by Fraudulent Misrepresentation In Intertwined Supplemental Issues.

Dutta-Roy argued that – '*By the **collateral**[44] issues and in pragmatic efficiency, this Court also has subject-matter jurisdiction also by **28 U.S.C. §§ 1331, 1338**, by aspects of federal **question**,[45] unfair competition, then by void[46] and **inconsistent**[47] District Court judgments, being so related[48] to the common nucleus[49] of Jysk claims – to address the state court claims in garnishment*

44 ***Void*** judgments are those that court had no power to render. ***Kalb v. Feuerstein***, 308 U.S. 433,438,60 S. Ct. 343, 84 L. Ed. 370 (1940) (bankruptcy proceedings may oust. state court of power to foreclose on property, and if state court acts anyway in these circumstances. its order is "*not merely erroneous but. . beyond its power, void, and subject to collateral attack*").

45 **MOORE'S FEDERAL PRACTICE 3D (HENCE MOORE'S): §103.43**: "*A plaintiff cannot avoid federal court simply by omitting a necessary federal question in the complaint; in such a case the necessary federal question will be deemed to be alleged in the complaint.*"

46 Relief from ***void*** judgment available at any time. E.g., ***Sea-Land Serv., Inc. v. Ceramica Europa II, Inc.***, 160 F.3d 849, 852 (1st Cir. 1998) (if judgment is void **for lack of personal jurisdiction**, **FRCivP 60(b)(4)** motion to set aside judgment may be made at any time).

47 Verdict must conform to pleadings and must not be inconsistent. ***Miller v. Ray***, 84 Ga. App. 251, 65 S.E.2d 923 (1951).

48 Citing *Matt D. Basil, Stephen R. Brown, Ashley M. Schumacher, Devin R. Sullivan,* **FEDERAL SUBJECT MATTER JURISDICTION OUTLINE**: Courts have interpreted the "*so related*" language to be satisfied when both the jurisdiction-invoking claim and the supplemental claim derive from a common nucleus of operative fact. **13D WRIGHT & MILLER § 3567.1, p. 337**.

49 The "*common nucleus*" test "*requires only that the jurisdiction-invoking claim and the supplemental claim have some loose factual connection.*" Id. at 349. "*This standard is broad and fact-specific, and should be applied with a pragmatic appreciation of the efficiency promoted by supplemental jurisdiction.*"

actions by Jysk, in the resulting early-termination damages by the Ezeilos and counsel, and the subsequent dispossessory action by Toniolo by which Dutta-Roy has essentially lost not only his income, but valuable time and property.'

In the context of the ACPA, the garnishment action is important in that since the 11th Cir. believes **the issue of domain is a contractual right the garnishments** should be disqualified. The fact is the garnishments alone resulted in significant real-estate damages to Dutta-Roy in much property and financial loss, much anxiety thereof, to then being evicted from his own home. The sum of these issues were argued in tortious interference to property personalty and contract. Here 11th Cir. again failed to apply the necessary judicial determination in implied contract theories for his multiplicity of losses in ***bydesignfurniture.com***, Royz-Dutta, LLC, his real-estate losses in Inman Unit and Daswani's Metropolis Unit.

Citing *Simeon Brier, Cozen O'Connor*, **A claim for unjust enrichment does not require privity of contract**:

> "Eventually, the plaintiff must decide upon which theory plaintiff seeks to recover a judgment upon, as an implied contract theory and an express contract theory become mutually exclusive as the litigation moves toward final resolution. This election of remedies principle should be considered by both the plaintiff and the defendant as the case progresses and may require a judicial determination if the plaintiff fails to clearly decide which theory plaintiff intends to proceed with at trial. Moreover, while often found in an express contract, an implied contract does not have a provision providing for the recovery of attorney's fees and costs."

6. Legal Malpractice and Conspiracy of Counsels

While 11th Cir. dismissed Dutta-Roy's litigation expenses, the opinion makes no mention of Dutta-Roy's legal malpractice or conspiracy claims against Jysk counsels GC Zipperman and counsels Fain and Joshi. The words do not appear in the 11th Cir.

> And because he is not entitled to damages or other relief, he is not entitled to attorneys' fees. [Citation Omitted].

GC Zipperman's ***scienter*** and ***fraudulent misrepresentation*** shown by the comparison of Bratengen email to his affidavit, if not *ipso facto* by his affidavit alone:

You can call me on my cell phone if you want to discuss it with me otherwise you can discuss it with my attorney, Barry Zipperman. *Ps. I also have a copy of your agreement and so does my attorney so bring it on. Kjell Ps. I also have a copy of your agreement and so does my attorney so bring it on. Kjell*	***Apdx-D8 (DN-68-3).para-2***: *I am a member of the State Bar of Georgia. I, together with my law firm, Davis, Zipperman, Kirschenbaum & Lotito, LLC, have represented Kjell Bratengen together with various companies in which he has held an ownership interest, including but not limited to Quick Ship Holding, Inc., and have served as general counsel for said companies from 1998 through the present. Specifically, I was general counsel for Quick Ship Holding, Inc. during calendar year 2000.*

While the issue of the fiduciary responsibility of GC Zipperman to Bratengen is an attorney-client privilege, as to whether he is permitted to disclose his knowledge on Bratengen's affairs, here it must not matter by disclosure above, and by fiduciary arguments already presented. That Bratengen's denial of partnership/ agency in ***bydesignfurniture.com*** is per se fraud, and Mr. Zipperman's denial of it is *per se* ***unprivileged negligence***:

> ".. when persons have held themselves out as partners in any manner, they are estopped by the doctrine of ostensible partnership to deny the existence of a partnership as to third persons who have relied on the representations.[50] ... Nor may a professional insulate himself from his own malpractice liability by use of a limited liability partnership or another business entity."

Disqualification of Jysk counsels Fain and Joshi were also argued by Counsel Joshi's representation of his sister-in-law Sonnad , directly and even indirectly by her current employment with Jysk and past employment with **By Design** in their marketing efforts. These are issues of the substantially related test that Jysk counsel did not submit.
Citing, Moore's:

> Whether the matters are the same or substantially related and the ongoing obligations of confidentiality are closely linked. The central focus of the substantial relationship test in most circuit is the factual contexts[51] of the prior and current representation. This typically requires an examination of the nature and scope of the prior representation and the nature of the current representation.[52] ...

Dutta-Roy's claim for legal malpractice was shown to be *sui generis* Citing, *Mark D. Link, Eric James Hertz*, **Georgia Law of Damages** –

> "... a claim for legal malpractice is sui generis insofar as the plaintiffs proof of damages effectively requires proof that he would have prevailed in the original litigation.[53] This requires the plaintiff in some fashion to prove that the underlying case would have had a different outcome more favorable to him[54] by showing that he would have obtained a favorable judgment[55] and that the judgment would have been collectable."[56]

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50 *Adams*, **Georgia Law of Torts**. **O.C.G.A. § 14-8-16**. See ***The Barnett Line of Steamers v. Blackmar & Chandler***, 53 Ga. 98, 1874 WL 3015 (1874); ***Davis v. Citizens'-Floyd Bank & Trust Co.***, 37 Ga. App. 275, 139 S.E. 826 (1927); ***Kaplan v. Gibson***, 192 Ga. App. 466, 385 S.E.2d 103 (1989).

51 Consider factual contexts. See. e.g . ***Briggs v. Aldi, Inc.***, 218 F. Supp. 2d 1260 (D. Kan. 2002); ***Koch v. Koch Indus., Inc.***, 798 F. Supp. 1525, 1536 (D. Kan. 1992).

52 Consider nature and scope. ***INA Underwriters Ins., Co. v. Nalibotsky***, 594 F. Supp. 1199, 1206 (E.D. Pa. 1984). (Court examines nature and scope of prior representation, nature of current representation, and) whether client might have disclosed confidences that could be relevant and detrimental in current action.

53 ***Nix v. Crews***, 200 Ga. App. 58, 59(2), 406 S.E.2d 566 (1991).

54 ***Houston v. Surrett***, 222 Ga. App. 207, 209, 474 S.E.2d 39 (1996) (en bane).

55 ***Allen Decorating, Inc. v. Oxendine***, 225 Ga. App. 84, 483 S.E.2d 298 (1997); ***Freeman v. Eichholz***, 308 Ga. App. 18(3), 705 S.E.2d 919 (2011).

56 ***Perry v. Ossick***, 220 Ga. App. 26, 467 S.E.2d 604 (1996); ***Morris v. Atlanta Legal Aid Soc., Inc.***, 222 Ga. App. 62, 65, 473 S.E.2d 501 (1996).

A chose of action by legal malpractice was requested in Dutta-Roy's EBP by ***Lucky Capital Mgmt., LLC v. Miller & Martin, PLLC***, No. 16-16161 (11th Cir. Jul. 3, 2018) (Lucky) by **O.C.G.A. § 44-12-24** was sought by 11th Cir.'s conclusion in Lucky, just by that "*Lucky next relies on a voicemail message from nValeo's outside accountant, Pam Duggar, to Hand in its attempt to establish that Miller & Martin was aware of Ritchie's improper withdrawals of nValeo's funds.*" The email evidence shown above is surely more concrete.

In overturning Dist. Court's argument that Miller & Martin did not owe a duty to ***Lucky***, 11th Cir. stated:

> Page-17: According to the district court, Lucky's inability to bring a fraudulent concealment claim against Miller & Martin because Miller & Martin did not owe a duty to Lucky precluded Lucky's civil conspiracy claim. However, the district court overlooked the fact that Ritchie owed a duty to Lucky because of Lucky's status as an investor in, and member of, nValeo. Lucky alleges that Miller & Martin conspired in assisting Lucky's breach of that duty.

Thus 11th Cir.'s holding in Miller & Martin's liability in aiding Lucky noted:

> In Georgia, a claim for aiding and abetting a breach of fiduciary duty requires a showing of each of the following elements: (1) through improper action or wrongful conduct and without privilege, the defendant acted to procure a breach of the primary wrongdoer's fiduciary duty to the plaintiff; (2) with knowledge that the primary wrongdoer owed the plaintiff a fiduciary duty, the defendant acted purposely and with malice and the intent to injure; (3) the defendant's wrongful conduct procured a breach of the primary wrongdoer's fiduciary duty; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff. Insight Tech., Inc. v. FreightCheck, LLC, 633 S.E.2d 373, 379 (Ga. Ct. App. 2006) (footnotes and citations omitted).

These and continued arguments in breach and aiding/ abetting fiduciary issues were completely ignored by the 11th Cir., contrarian to its own opinion in ***Lucky***, thus a significant cause in the issue of damages not addressed by sum of factors in – "**Damages in trade-secret misappropriation by O.C.G.A. § 10-1-762(d)**: *In no event shall a contract be required in order to maintain an action or to obtain injunctive relief for misappropriation of a trade secret* and **O.C.G.A. § 10-1-763(a)**: *In addition to or in lieu of the relief provided by* ***Code Section 10-1-762****, a person is entitled to recover damages for misappropriation – must also allow grant a chose of action by* ***O.C.G.A. § 44-12-24***."

Again the issue of whether 11th Cir. conducted a *de novo* review, whether the GC Zipperman's complicity is *ipso facto* by the email shown has not been answered.

Conclusion

The 11th Cir. initiates its Opinion noting:

> **Apdx-A2/ page-6/ para-2**: We **review a grant of summary judgment de novo and view all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party**. *Castleberry v. Goldome Credit Corp.*, 408 F.3d 773, 785 (11th Cir. 2005). Summary judgment is appropriate if the record evidence, including depositions, declarations, and affidavits, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a).

However the essential question here is – has the 11th Cir. conducted a review of the evidence *de novo*? Has the 11th Cir. reviewed the evidence, factual inferences by the substantial evidence presented?

Certiorari is applicable here, at least by **Supreme Court Rules 10(a)**, in that 11th Cir. has not corrected NDGA's conflicting opinion, not to mention the contrasting opinions from 11th Cir.'s own ***Virgilio*** and ***Lucky***.

The *de novo* standard is defined as:

> Under de novo review, the appellate court acts **as if it were considering the question for the first time**, affording no deference to the decisions below. Legal decisions of a lower court on questions of law are reviewed using this standard. This is sometimes also called plenary review or the "legal error" standard. It allows the appeals court to substitute its own judgment about whether the lower court correctly applied the law.

The 11th Cir. opinion shows it simply reiterated what NDGA adjudicated – never having asked any question on ***fraud***, ***fiduciary***, ***retroactive ACPA***, ***reverse-cybersquatting***, ***unjust enrichment***, ***legal malpractice*** – all substantially shown just by the en banc petition.

Neither the NDGA, nor the 11th Cir. addressed the question of mootness that need to be addressed in federal cases, and asked, does Jysk have a case against Dutta-Roy in the ACPA? How can damages be assessed against Dutta-Roy for pre-ACPA domain registration continuously held and then Jysk allowed to amend its claim to conform to the pleadings. 11th Cir. also did not argue the garnishment actions by contract – which is not allowed.

Whether by improper application ***register*** vs ***renew*** arguments in upholding the ACPA, whether by improper arguments in ***property*** vs ***contract*** arguments, ignoring the highest standard fiduciary right shown – NDGA's summary judgment **Apdx-B3 (DN-69)**, and damages by **Apdx-B2 (DN-88)** are ***void*** judgments and must not stand. Under the circumstances presented, Dutta-Roy humbly hopes that SCOTUS will see the irreparable injury to him in applying the necessary remedies in the unfair competition tortiously imposed upon him in the early 2000s and now. In the sum of matters presented from **Apdx-A2**, 11th Cir.'s note that '*Passing reference to a claim without support or citation without support or citation is not enough to preserve an issue*,' must not have any basis and therefore neither section 'II. A. Abandonment of Claims of Error and Counterclaims,' pages. 7 – 9.

As the Honorable SCOTUS will surely note, beyond the aspects of plain language of the laws violated, among the various tort clauses Dutta-Roy has already cited, essential elements of his Bill of Rights has been significantly eroded. By Amendment VII, '*In suits at common law, where the*

value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,' the circumstances for Dutta-Roy surely feel like it is he that is on trial in '*cruel and unusual punishments inflicted,*' in repeated denials on filings in seven Courts, by which he has lost family, his home, income and new venture, even a sense of his dignity. Dutta-Roy has tried repeatedly to bring the events to a quicker closure by his request for arbitration, fraud filings and in quoting Amendment VI, it feels he is the accused, even in this Civil case, still has not enjoyed '*the right to a speedy and public trial.*'

Petitioner Dutta-Roy respectfully requests that this Court grant the petition for writ of certiorari and or provide necessary guidance in resolving the significant issues noted.

Respectfully submitted,

*This **Monday, June 22, 2020**.*

By:

Petitioner

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