

In the  
Supreme Court of the United States

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ANTHONY EMPOSIMATO,

*Petitioner,*

v.

STEPHEN N. NORTH,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
Superior Court of New Jersey, Appellate Division

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**PETITION FOR A WRIT OF CERTIORARI**

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December 21, 2023

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SUPREME COURT PRESS



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## QUESTIONS PRESENTED

Did the Superior Court and the Appellate Division of New Jersey violate the Defendant's constitutional rights by disregarding established precedent (consideration in contract law) mandated by the New Jersey Supreme Court (*Friedman v. Tappan Dev. Corp.*, 22 N.J. 523, 531) and, in doing so, undermine the uniform application of contract law across jurisdictions? "Ordinary Principles of a Contract" The U.S. Supreme Court upholds standards principles of a contract which include mutual assent, consideration, legality of purpose, and contractual capacity. These principles form the foundation of contract enforcement in the United States. "Ordinary Principles of a Contract" *M&G USA, v. Tackett*, 135 S.Ct. 926 (2015).

The Defendant contends that both the Superior Court and the Appellate Division failed to adhere to mandated law on consideration in a contract, as outlined by the New Jersey Supreme Court in *Friedman v. Tappan Dev. Corp.*, The Plaintiff failed to demonstrate any value given to the Defendant, a requirement for a valid contract.

The Questions Presented Are:

1. Was the Complaint filed in bad faith?

2. The Lower Court, specifically Judge Brennan, did not apply mandated law on consideration in a contract, relying on personal assumptions. The Appellate Court rubber-stamped the lower court's decision without addressing the Defendant's main defense, violating the obligation for a de novo review. The Defendant argues that the evidence presented is manifestly supported by clear and convincing evidence, citing *Balducci v. Cige*, 240 N.J. 574, 595 (2020).

3. The Appellate Court failed to address the central defense of the Defendant—consideration, mandated by the New Jersey Supreme Court. This oversight led to the court affirming the lower court's decision without a thorough examination.

4. New Jersey Contract law mandates de novo review (*Kieffer v. Best Buy*, 205 N.J. 213, 222-23). The Appellate Court neglected this obligation despite specific evidence submitted by the Defendant, which raises questions about the thoroughness of the examination.

## PARTIES TO THE PROCEEDINGS

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**Petitioner (Defendant and Appellee below)**

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- Anthon Emposimato

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**Respondent (Plaintiff and Appellant below)**

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- Stephen N. North

## LIST OF PROCEEDINGS

Supreme Court of New Jersey

No. 088462

Stephen N. North, *Plaintiff-Respondent*, v.  
Anthony Emposimato, *Defendant-Appellant*.

Date of Final Order: October 3, 2023

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Superior Court of New Jersey Appellate Division

No. A-3095-20

Stephen N. North, *Plaintiff-Respondent*, v. Anthony  
Emposimato, *Defendant-Appellant*.

Date of Final Opinion: June 8, 2023

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Superior Court of New Jersey Law Division,  
Morris County

Civil Action No. MRS-L-2332-18

Stephen N. North, *Plaintiff*, v.  
Anthony Emposimato, *Defendant*.

Date of Final Order: December 14, 2020

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## **PETITION FOR A WRIT OF CERTIORARI**

Respondent Anthony Emposimato, the Defendant in this case, respectfully petitions this court for a Writ of Certiorari to review the Superior Court of New Jersey, Appellate Division, affirming the Judgment of the Superior Court of New Jersey.



## **OPINIONS BELOW**

The decision by the New Jersey Court of Appeals (App.2a) to affirm the Superior Court judgment (App.5a, 7a) without applying mandated NJ Supreme Court Law Judgement Precedent which is subject to de novo review. There have been established legal decisions that should have been considered in this case of “de novo review” from *Kieffer v. Best Buy*, 205 N.J. 213, 222-23 (2011) that in this case should have warranted a fresh examination of the facts and legal issues rather than deferring to the lower court’s decision. The court should clarify “Ordinary Principles of a Contract” The U.S. Supreme Court generally upholds standards principles of a contract which include mutual assent, consideration, legality of purpose, and contractual capacity. These principles form the foundation of contract enforcement in the United States. “Ordinary Principles of a Contract” *M&G USA, v. Tackett*, 135 S.Ct. 926 (2015).



## **JURISDICTION**

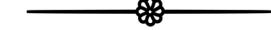
The New Jersey Supreme Court issued an order denying certification of review on October 3, 2023. (App.1a). This court has jurisdiction under code 28 U.S.C. § 1257(a).



## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **U.S. Const. amend. XIV, § 1.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## INTRODUCTION

The Superior Court of New Jersey affirmed by the Appellate Court has violated the Defendant's rights by not applying previously mandated N.J. Supreme Court law (Judgement Precedent) and denied protection of the law. With the erroneous decision by the Appeal court the court should clarify Ordinary Principles of a contract. (See Page 21 footnote 4) Most contract cases in federal court involve the application of state substantive law and so it is uncommon for the U.S. Supreme Court to expound on what it considers to be the contract principles to be applied in federal cases where no state's substantive law applies. In a unanimous decision the Court weighed in (Ordinary Principles of Contract Law).

It is unusual for the Court to accept contract law; it is usually left to the states. The Court ruled in favor of *M&G USA, LLC v. Tackett*, 135 S.Ct. 926 (2015) four justices concurring on separate opinion. They apply illusionary promise in an agreement or contract the court spelled out "Illusory Promises" Document does not apply where the promise is only illusory" The Court Described the preponderance of the illusory promises' doctrine. This discourages an interpretation contract that would render a promise illusionary because an illusionary promise cannot serve as consideration. Courts should use case-specific evidence to determine the intentions of the contracting parties and not the court's own general assumptions regarding their intentions.

The U.S. Supreme Court ruled the parties' intentions should be determined by considering circumstances that are directly relevant and external to the specific case at hand, which is the essence of "extrinsic" evidence or factors. In a trial brief there was clear and convincing evidence that the Plaintiff testified there was no consideration given to the defense. (trial brief submitted 8/18/2021 The Defendant filed a motion for reconsideration which was denied by the lower (Judge Brennan) court.<sup>1</sup> Both the Brief as well as the motion having

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<sup>1</sup> *Lawson v. Dewar*, 468 N.J. Super 128 (App Div. 2021) 256A, 3D 388,

"In the final analysis, we urge judges not to view reconsideration motions as hostile gestures. To be sure, some are frivolous, vexatious, or merely repetitious, and some constitute an unwarranted attempt to reverse matters previously decided solely because the prior judge is no longer available. But some reconsideration motions – those that argue in good faith a prior mistake, a change in circumstances, or the court's misinterpretation what was previously argued – present the court with an opportunity to either reinforce and better explain why the prior order was appropriate or correct a prior erroneous order. . . . think it possible you may be mistaken." The fair and efficient administration of justice is better served when reconsideration motions are viewed in that spirit and not as to be swatted aside."

The Defendant filed a motion for reconsideration on the matter with the Appeal Court on July 3rd, 2023, it was detailed along with a brief (submitted at trial) The clear and convincing evidence that should be considered in the Defense argument. It was turned over to the Court (Judges) in July 3rd 2023, July 4, 2023, was "Independence Day "on the morning of July 5, 2023, the Court Denied Defendant's motion. This reconsideration motion was 182 pages and was denied by the court in less than 24 hours. We must assume this clear and convincing evidence was never reviewed or considered. *Kieffer v. Best Buy*, 205 N.J. 213, 222-23 (2011.)

clear and convincing evidence, the Defendant did not receive consideration for the signing of the agreements. The United States Supreme Court noted in the same ruling (ordinary principles in a contract) that the Yard-Man inference distorted the attempt to ascertain the intention of the parties because its “assessment of likely behavior . . . is too speculative and too far removed from the context of any particular contract to be useful in discerning the parties’ intentions. The Plaintiff Mr. North in his deposition (9/15/2019) testified that the Defendants ego is what he received for signing of the agreement and that was Defendant’s Consideration.

The N.J. Supreme court ruled behavior cannot be used for consideration in a contract. The Superior Court of N.J. and the Appellate Court disregarded the rule, the clear and convincing evidence in the Deposition of the Plaintiff (9/15/2019) that there was no consideration given to the defendant. The Trial Judge cited in his oral decision his thoughts on Consideration given to the Defendant. Judge Brennans’ ruling was based on his personal suppositions on what the parties were thinking. The Lower court in their decision stated “but that loan documents themselves do recite consideration which is legally sufficient”.

The Defendant did not receive money, stock, real estate, or any interest in TMR. There was extrinsic evidence provided to the Lower Court and the Appeal Court which was ignored and swept aside. Judge Thomas delivered the opinion with four concurring justices. Judge Ruth Bader Ginsberg delivered the concurring opinion. Today decision rightly holds that courts must apply ordinary contract principles. But when the contract is ambiguous, a court may consider extrinsic evidence to determine the intentions of the

parties.” Extrinsic evidence deposition of Plaintiff 9/15/2019, 8 years of bank records subpoenaed by the plaintiff; J.P. Morgan, Wells Fargo and TD Bank for Defendant and TMR All funds deposited into TMR confirmed in by Plaintiff in his deposition of 9/15.2019 (see footnote 4 Page 21)

There is no share of stock issued to the defendant; all members are equal in ownership. This was a paper transfer at the request of Plaintiff to write offs taxes on an individual basis. There was no exchange of anything for the signing of the agreements, which the Plaintiff has confirmed in his Deposition of 9/15/2019 and his Affidavit, 11/20/2018.



## **STATEMENT OF THE CASE**

On March 12, 2010, the Tropical Marine, Recycling and Equipment was founded by Anthony Emposimato and Stephen North in the Commonwealth of Puerto Rico. Initial capital Investment was provided by Plaintiff Mr. North \$140,000 and the Defendant Anthony Emposimato 250,000. Both parties were aware that this was a risk, but both agreed it would be an opportunity to operate and manage a business that could be successful. The goal was to break down U.S. Naval ships and sell the scrap. The ships were docked at Roosevelt Rhodes in Puerto Rico which was a U.S. Navy base The Company was Closed in 2018, all bills and obligation were fully paid, and there was no liability to any member of TMR. There were agreements signed in 2013 four years after initial investment of the Plaintiff in 2010. He said he needed personal tax

write-offs and since the company was not profitable at the time, he wanted to take personal tax credits. He said when he took the tax credit, he would write off the Loans, And on March 25, 2017, he called a meeting to resolve the Loan agreements. At the meeting he kept his promise. He contacted his accountant to initiate the tax write off and he stated the “the loans are gone”. The agreements were written off and a new oral contract was formed. Mr. North made no further investments in TMR after the 2010 initial investment. The Company was fully capitalized past the 2010 investment by the Defendant. In other words, Mr. North was a member of the TMR for that period time of four years and would gain financially with no further investment.

In 2018 Mr. North Plaintiff and Defendant Anthony Emposimato had a personal falling out and several months later Mr. North filed a lawsuit against Defendant Anthony Emposimato. Mr. Emposimato was taken aback on this action and contacted Steve by text and phone call we should meet and resolve where this was coming from. Mr. North response was “see my attorney”. Steve did not want to talk about trying to resolve this, what he wanted was unwarranted personal revenge. This would be the backdrop of this litigation going forward for five years.

For over 60 years the New Jersey Supreme Court mandated that a contract to be enforceable must be a definite offer, acceptance of that offer and consideration. *Friedman v. Tappan Dev. Corp.*, 22, N.J. 523, 531 (1956) Thus without consideration there can be no Contract. In *Bank of P.A. v. Barclay Riding Acad. Inc.*, 93 N.J. 153, 170 (1983) cert. denied. *Barclay Equestrian Ctr.*

*Inc. v. Cont. Bank of P.A.*, 46 U.S. 994 (1983).<sup>2</sup> As specifically specified in the above cases Consideration required Element for Enforceable Contract. A simple way of defining consideration is to say that both sides must get something out of exchange and in doing so each person must give up something of value. According to the clear and convincing evidence presented

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<sup>2</sup> To avoid erroneous decision not to review all the evidence that was provided. The Defendant cites *Barclay Equestrian Ctr. Inc. v. Cont. Bank of P.A.*, 464 U.S. 994 (1983). The court should clarify. U.S. 464 U.S. 994 (1983) S CHARGE 1.19 — Page 1.19 1 of 6 BURDEN OF PROOF – CLEAR AND CONVINCING EVIDENCE (Approved 4/1988; Revised 8/2011) With regard to consideration in mandated by N.J. Supreme Court it is the obligation of Stephen North, Plaintiff, to prove those allegations by clear and convincing evidence. Clear and convincing evidence is evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence is so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear conviction of the truth of the precise facts in issue. The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence which causes you to be convinced that the allegations sought to be proved are true. Clear and convincing establishes a standard of proof falling somewhere between the traditional standards of “preponderance of the evidence” and “beyond a reasonable doubt.” It is an exception to the rule requiring proof by a preponderance of the evidence in civil cases and proof beyond a reasonable doubt in criminal cases. The lower court’s ruling was contrary to the past precedent which the Appeal court affirmed. There was clear and convincing evidence entered by the Defendant he did not receive any *i.e.*, money, real estate, stock, or any further interest in TMR. Four agreements that the Plaintiff failed to fulfill his obligation, contrary to the past precedent which the Appeal court affirmed. There was clear and convincing evidence entered by the Defendant he did not receive any *i.e.*, money, real estate, stock, or any further interest in TMR. Four agreements prove that the Plaintiff failed to fulfill his obligation.

as well as Plaintiff's testimony in his deposition of 9/15/2019 he admits there was no money given to Defendant all money was deposited in TMR Plaintiff Mr. North did not give anything of value to the Defendant. *i.e.*, money, stock, real estate, or any additional interest in LLC Tropical Marine Recycling and Equipment referred to in this document as (TMR) Anthony Emposimato and Steve North are members of the Company (TMR) and share equal standing.

The Lower Court and the Appeal Court of New Jersey has denied the Defendant equal rights, by not adhering the Defendant equal protection under the laws of the United States Constitution as well as the NJ Supreme Courts of "Judgment Precedent". The lower court did not apply Precedent to its decision, only their own assumptions. The United State Supreme Court "*M&G USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)) Courts should use case-specific evidence to determine the intentions of the contracting parties and not the court's own general suppositions regarding their intentions which is not in concert with the law provided." The Appeal Court rubber-stamped the Decision. This is the Superior Court making rules of consideration on its' own assumptions.

1. A contract on consideration has been decided by the NJ Supreme Court. The case of *Stephen A. North v. Anthony Emposimato*, there was no consideration for the Defendant. The Plaintiff presented contracts and no clear and convincing evidence that he fulfilled his obligation. There were no payments to the Defendant in accordance with the agreements. *Friedman v. Tappan Dev. Corp.*, 22 N.J. 523, (1956) (Defines Petition for Certification. 6:19-22) In particular *Cont'l Bank of Pa.*, defines "consideration" There has been clear and

convincing evidence presented by the Defendant to the Court followed up by three Briefs to the Appeal Court which has gone unchallenged by the Plaintiff. The case was decided by the assumption by the lower court, Judge Brennan and rubber stamped by the Appeal Court. The Defendant was not given equal protection under the laws of the U.S. Constitution. The NJ Supreme Court has decided on what consideration in a Contract must be. There has been Precedent Judgement established and ruled on Consideration in a contract. The Plaintiff did not perform as stated in the agreements.

There was clear and convincing evidence that there was no Consideration given to the Defendant. The lower court (Judge Brennan) ruled in favor of the Plaintiff. The New Jersey Supreme Court had ruled on the matter of Consideration in a contract. *Continental Bank of P.A.*, 93 N.J. at 171 *Friedman*, 22 N.J. at 533 *Friedman*, 22 N.J. at 533 *Cobin Contract*, 110 (1963 ed.) *Friedman v. Tappan Dev. Corp.*, 22 N.J. 523, 531 (1956) Based on the merits (Judgement Precedent), this case with clear and convincing evidence there that was no consideration given to the Defendant. The lower court ruled (Judge Brennan) that it is in the document you owe the money. The direct evidence in the record shows they were nonperforming agreements. The records show that the Defendant did not receive any money, stock, real estate, or any further interest in TMR. The agreements do not show the company TMR with additional interest gained by the Defendant. In fact, there is no mention of TMR throughout the document. It was a paper transfer at the request of the Plaintiff. The Defendant did not receive any value for the signing of the agreements. There was

direct testimony by the Plaintiff in his deposition of 9/15/2019 that all money was deposited into TMR which is an LLC of Puerto Rico equally held by Plaintiff and Defendant and proven that no personal money from TMR was used by the Defendant. Plaintiff testified Deposition 9/15/2019 that all funds from Plaintiff were deposited in TMR. The Plaintiff in the same deposition 9/15/2019 testified that the only consideration that the Defendant received was his ego, which behavior cannot be considered as any value/consideration in contract. New Jersey law. A motion for reconsideration (*see* footnote 1 page 3) was filed on January 7, 2021, and Oral Argument on this motion was denied by the lower court.

There have been 2 theories presented by the Plaintiff on how the Defendant received consideration.

1. The Plaintiff alleges It was my company and therefore that was my consideration. A brief was submitted by Defendant at trial 8/18/2021 concerning the foundation and structure of TMR. The Company TMR is an LLC and by law all members are treated equally Stephen A. North and Anthoiny Emposimato have the same standing within the LLC agreement. The Plaintiff changed his argument after the brief was filed.

2. In Counsels closing remarks at summation Plaintiff alleges Defendant misappropriated Companies funds and used the money personally which is Defendant's consideration for signing the agreements.

The Counsel for the Plaintiff changed from “it was my company” to “the Defendant had control of the bank accounts and used the money personally that was the Defendant’s consideration”. During the trial Counsel/Plaintiff had the opportunity to examine the

Defendant under oath regarding the use of funds by the Defendant but chose not to. The Plaintiff as well as Counsel subpoenaed 8 years of bank records for TMR and the Defendant, Anthony Emposimato thousands of entries (JP Morgan Chase, Wells Fargo, and TD Bank) and chose not to enter evidence with the bank records to prove Defendant used TMR funds. This decision by one of the largest and powerful Legal Firms in N.J. was intentional (Mr. Komyati, Principal as lead counsel, instructed his associate Andrew Mount to deliver that statement.) In the closing arguments of a trial counsel for either side is only permitted to summarize testimony or evidence included in trial. The lower court (Judge Brennan) disregards<sup>3</sup> this outright lie by counsel, alleging I took money that did not belong to me. This statement by counsel has been proven to be false by the clear and convincing evidence (bank records in Counsel's possession) presented. The records would prove the Defendant did not use a dime of TMR funds for his personal use or transfer. (Part of the record) Counsel has broken his legal ethics and code of conduct as an officer of the court.

There was no cash to the Defendant or personal bills paid. There was no deposit of any money or transfers into any entity other than TMR. There was no money misappropriated by the Defendant. But

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<sup>3</sup> New Jersey Rules of Civil Procedure, Civil procedure is to ensure courts work in a fair and orderly fashion. The rules give both parties the chance to build and present their case in a fair and equal manner. The court violated the rule and therefore made an unprecedent ruling which deprived the Defendant within its jurisdiction the equal protection of the laws. And therefore, violated the Fourteenth Amendment Section 1 of the United States Supreme Constitution.

Company, TMR did pay the Plaintiff's expenses which he confirmed in Plaintiff's deposition of 9/15/2019.

This clear and convincing evidence is set aside by the lower court with no explanation in their oral decision. I would have spoken up in my closing argument, but the court took the decision of The Defendant giving his summation first. Which is unprecedeted in NJ Superior Court. I questioned Judge Brennan on going first his response "yes you will go first". Unprecedeted in any court room in the United States of America. Counsel for Plaintiff in his closing making a false statement. This was not hyperbole it was a calculated statement knowingly that the Defendant would go first and would not be part of Defendant's challenging Counsel on his intentional false statement. It gives the Defendant great pause and suspicion on why the court would decide to make the Defendant go first. I have Researched the issue NJ Courts approach to Pro Se Litigant, and it provides me an eye-opening perspective on how the NJ Court System disregard and unfairly treat a Pro Se Litigant. The courts are prejudiced against not just me, but against all Pro Se Litigants.

Two things I would change if I could. I originally had requested a jury trial but the court during covid was restrictive and so they requested a bench trial which I agreed to. And this was a video trial which handcuffed the Defendant. The clear and convincing evidence provided by the Defendant (Plaintiff subpoenaed eight years of bank accounts of TMR and the Defendant) would have gone in favor of the Plaintiff in a Jury Trial. Just read the Plaintiff's testimony full of untruths which I have pointed out in several motions (part of the record) and the N.J. courts have gone silent on this evidence . . . I have been defending this

lawsuit for five years with one roadblock after another put in front of the Defendant. I fought off two summary judgments, which were decided by Trial Judge Ramsey of Superior Court in the Defendant's favor. The first Motion for Summary Judgments was filed on February 27, 2019, for Breach of Contract and was Denied by Judge Ramsey on April 17, 2019. The second motion was filed October 9, 2019, and the hearing took place at the request of the Plaintiff for Breach of Contract on December 6th, 2019, and the Plaintiff's motion was Denied in that same hearing of December 6th, 2019, by Judge Ramsey. It was soon after Judge Ramsey was removed from the case and Judge Brennan was assigned and everything changed. From that time forward there wasn't any significant ruling that went in favor of the Defense. I seek Justice from the United States Supreme Court under article fourteen Section 1 The court's unfound ruling was not supported by mandated ruling of the New Jersey Supreme Court.

#### Judge Brennan's Oral Trial Decision

1. Judge Brennan “The Defendant also argues that he received no consideration for the execution of the loan documents, but that loan documents themselves do recite consideration which is legally sufficient”.

The legitimacy of the Defendant's defense Consideration was not given to the Defense. This after the Plaintiff admitted in his deposition testimony that consideration was Defendant's behavior Judge Brennan simply states, “there was consideration, they are unpaid”. (Part of the record.)

Defendant cannot pay something he never received. The Plaintiff did not perform in accordance with the

agreements. The money was never paid to the Defendant and confirmed by the Plaintiff in his deposition of 9/15/2019. This testimony is in the brief submitted at trial. (part the record) A motion for Reconsideration was filed on 1/7/2021 on the Courts decision. Motion was denied and Judge Brennan would not allow oral argument, which Defendant has requested in his motion. Judge Brenna has denied Defendant's equal protection under the law to argue his case.

2. Judge Brennan “The money was also used in furtherance of TMR. and so there certainly was based on the record, consideration for the loans were made and for the Obligation of the Defendant.

There were two investments in 2010 and the agreements were signed in 2013 the original investments by the Plaintiff \$140,000 and Defendant 250,000 The) Courts should use case-specific evidence to determine the intentions of the contracting parties and not the court's own general suppositions regarding their intention's agreements were signed 3 years after the original investments at the request of the Plaintiff for personal tax relief. At the time of the signing the Plaintiff knew the Defendant did not have the funds but would write them off when due. But the lower court has got it all wrong regarding the record. Plaintiff invested 150,000 (after auditing it is now \$140000) dollars Defendant invested \$250,000. That would mean the Plaintiff gained 66% more than his initial investment in TMR and was supported by the Defendant's investment. There was no furtherance of by the Plaintiff's investment as Judge Brennan had decided. The Defendant increased Plaintiff's value in TMR while reducing his own. These are part of the record.

The Lower court, Judge Brennan did not apply mandated rules of the N.J. Supreme Court and the United States Supreme Court. In *Friedman v. Tappan Dev. Corp.*, 22 N.J. 523, 531 (1956) without consideration there can be no contract. (See footnote 2) Performance and Breach: Once a contract is formed, the parties are generally obligated to keep their promises. Failure to do so without legal justification constitutes a breach of contract. The compelling evidence provided to both the trial court and the appellate court unquestionably establishes that the Plaintiff violated the terms of the contract. Consistent with this, there was an absence of funds, stock, real estate, or any additional ownership interest in TMR. The Plaintiff continued as a member till 2017 where he gained that time, of four years without any other investment. All other funds to TMR were provided by the Defendant. The Records will show all the above evidence. Clear and convincing evidence The Lower court, Judge Brennan did not abide by the rules mandated by the N.J. Supreme Court and the United States Supreme Court as follows. The Plaintiff resigned in 2017 and simultaneously forgave the loans as promised on March 25, 2017, all part of the record. The record will show the above referenced evidence submitted in Brief submitted at trial 8/18/2020 as well as motion for reconsideration 1/7/2021 both containing Deposition of the Plaintiff.

Courts should use specific case specific evidence (See footnote 2) to determine the intentions of the contracting parties and not the courts own general suppositions regarding their intentions *M&G USA, LLC v. Tackett*, 135 S.Ct. 926 (2015) four justices concurring on separate opinion.



## REASONS FOR GRANTING THE PETITION

To avoid deprivation of due process fourteenth Amendment Section 1 of the United States Constitution the Appeal court made an erroneous decision not to apply standard review of the Judgment decided by the lower court, which is subject to de novo review. *Kieffer v. Best Buy.*, 205 N.J. 213, 222-23 (2011) In not doing so the Appeal Court violated the Defendant's rights of the 14th Amendment Section One. The Appeal Court has clear and convincing evidence in their possession a trial brief 8/18/2021 containing the deposition of the Plaintiff, brief, reply brief, supplemental brief, and a motion for reconsideration. The Defendant did not receive anything of value for the signing of the agreements under the rules of consideration in a contract *i.e.*, money, stock real estate, and any additional interest in TMR. The Plaintiff testified that my consideration was my ego, behavior is not accepted in N.J. Contract Law as Consideration. In the same deposition Plaintiff admits that all monies were deposited into TMR, and the Defendant did not receive any money. The Trial Brief also details the rights of each member of the LLC TMR and the Companies Structure. The Plaintiff's Counsel has alleged it was the Defendant's company and that was his consideration. Each individual member holds mutual value in an LLC.

After the brief was filed. Counsel changed his tactics and, in their closing, alleged that I used TMR money for personal use. And that was my consideration. They had eight years of subpoenaed bank records, and it was proven by the fact that the Defendant did not take a dollar for his own use, as stated previously aforementioned counsel violated his oath of office. The case should be reviewed and dismissed for that alone.

The Defendant is alleging Judge Brennan violated the Defendant's rights by ordering the Defendant to go first in closing when he knew I could not respond to Counsel's false claim in my summation. As indicated in Counsel never produced any evidence during trial or cross examined the Defendant on any misappropriations of TMR funds. The rule in any Federal Trial or state Trial you cannot summarize or bring forth in closing critical evidence which was not included in that trial. That is a violation of any court in these United States. By the clear convincing evidence, the defendant is alleging this was a trial that he was prejudiced against. An Erroneous trial by the Superior Court of N.J. have violated the Defendant his protection under the law Fourteenth Amendment Section 1 of the United States Constitution.

The Appeal court continues their affirming lower court's decision. Quote "we conclude after close examination of the record that Judge Brennan's fact findings are firmly anchored to the evidence and therefore our acceptance and difference". The only evidence the Plaintiff produced was the agreements that were nonperforming by his obligation to do so. The Plaintiff testified that the Defendant did not receive anything of value, only the Defendant's ego. The Plaintiff has failed to provide any clear and convincing evidence establishing burden of proof which must be met by the Plaintiff. The Appeal court has chosen not to address clear and convincing evidence submitted at trial in favor of the Defendant, which is subject to de novo review. *Kieffer v. Best Buy*, 205 N.J. 213, 222-23 (2011) Judge Brennan asserted the loans were due and owed. He never addressed that the funds were not given to the Defendant.

In the courts oral decision he just states they are unpaid. The Plaintiff failed to prove any monies were paid from the agreement. In fact, in his testimony the agrees they were not paid. The Plaintiff presented no evidence in their response to Defendant's brief to the Appeal Court that the Defendant received anything of value for the signing of the agreements. The agreements were for a paper transfer to the benefit of Plaintiff's tax purposes and added no value to the Defendant. Based on clear and convincing evidence the Defendant' did not receive consideration. The Appeal Court ruled affirming the judgement of the lower court while the evidence proves otherwise. Plaintiff admits all monies were deposited into the Company. Part of the records proven without any doubt the Defendant did not gain any value with the funds deposited into Company TMR. The Judge (Brennan stated in an oral decision). Plaintiff investment was able to advance the TMR and that was the Defendant's consideration. That does not hold up it was startup capital in 2010 agreements were signed 2013, The Plaintiff invested 150,000 (now 140,000 the amount changed from 150,000.) The Defendant invested \$250,000 in all 400,000 as startup capital. In fact, the Plaintiff gained 66% more than he invested in TMR supported by the Defendant's contribution to TMR and personally at the expense of the Defendant. This is all part of the record.

The Appeal Court affirmed everything the lower court decided. . . . while never testing consideration in the contracts. Interpretation of a contract is generally subject to *de novo* review, *Kieffer v. Best Buy.*, 205 N.J. 213, 222-23 (2011) The Appeal Court is categorically wrong by not reviewing clear and convincing evidence presented to the court and applying Standard de

novo review. They have violated the Defendant's 14th Amendment Section 1 of the United States Constitution. The defendant presented a motion for reconsideration to the Court of Appeals with additional facts 182 pages which the Appeal court swiped aside with less than twenty-four hours of submission. The Appeal Court has put the Defendant in a situation where he has no choice but to repeat what the Defendant has been pleading to the courts No Consideration was given supported by clear and convincing evidence which the Appeal Court has decided not to address. My pleas backed up by the evidence I have been defending myself for almost five years. I Faught off two summary judgments (Decided by Judge Ramsey of the Superior Court) the case was then turned over to Judge Brennan that is when the decisions of importance in this case began to be ruled in favor of the Plaintiff. The Appeal Court in its decision has not considered the facts and the clear and convincing evidence submitted by the Defendant. After reviewing that N.J. Supreme Court's decisions in cases concerning Consideration. It is clear to the Defendant they acted with specificity, making their rulings with actual case evidence.

The Appeal Court has not applied the same standard of review. I have provided clear and convincing evidence, *i.e.*, trial testimony, documents. depositions and a motion for reconsideration and the Appeal Court did not address consideration in the contract. The Appeal Court has rubber stamped the lower court's ruling. What is Consideration under NJ Contract law (it's not behavior like "be considerate to one another") It means something of value is being given Consideration can be money, something of economic value. All

parties to the contract must give consideration and need not be high. For example, here's a standard contract phrase that generally suffices to establish valid enforceable consideration. "For the sum of \$1.00 receipt of which is hereby acknowledged and for other good and valuable consideration, the parties agree as follows:". That phrase is good enough to generally find enough consideration to a contract to make that contract enforceable by New Jersey Law. The Defendant has proven by testimony and direct clear and convincing evidence that the Plaintiff has not performed in accordance with the agreements/contracts. There was no value of consideration given to the Defendant. The Plaintiff did not perform, and he has admitted so in his deposition of 9/15/2019.

The lower Court has made up their own suppositions on where there was consideration given to the Defendant. (United States Supreme Court, *M&G USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)) Courts should use case-specific evidence to determine the intentions of the contracting parties and not the court's own general suppositions regarding their intentions which is not in concert with the law. provided.") United States Supreme Court "*M&G USA, LLC v. Tackett*, 135 S.Ct. 926 (2015) "Ordinary Principles of a Contract". Justice

Thomas gave his opinion with four justices concurring.<sup>4</sup> The Defendant has proven by testimony and direct and clear convincing evidence that the Plaintiff has

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<sup>4</sup> Justice Thomas delivered the opinion of the Court. This case arises out of a disagreement between a group of retired employees and their former employer about the meaning of certain expired collective-bargaining agreements. The retirees (and their former union) claim that these agreements created a right to lifetime contribution-free health care benefits for retirees, their surviving spouses, and their dependents. The employer, for its part, claims that those provisions terminated when the agreements expired. The United States Court of Appeals for the Sixth Circuit sided with the retirees, relying on its conclusion in *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am. v. Yardman, Inc.*, 716 F.2d 1476, 1479 (1983), that retiree health care benefits are unlikely to be left up to future negotiations. We granted certiorari and now conclude that such reasoning is incompatible with ordinary principles of contract law. We therefore vacate the judgment of the Court of Appeals and remand for it to apply ordinary principles of contract law in the first instance.

Justice Ginsburg, with whom Justice Breyer, Justice Sotomayor, and Justice Kagan join, concurring.

Today's decision rightly holds that courts must apply ordinary contract principles, shorn of presumptions, to determine whether retiree health-care benefits survive the expiration of a collective-bargaining agreement. Under the cardinal principle<sup>6</sup> of contract interpretation, "the intention of the parties to be gathered from the whole instrument, must prevail." 11 R. Lord, WILLISTON ON CONTRACTS § 30:2, p. 27 (4th ed. 2012) (Williston). To determine what the contracting parties intended, a court must examine the entire agreement in light of relevant industry-specific customs, practices, usages, and terminology. *Id.*, § 30:4, at 55-58. When the intent of the parties is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further. *Id.*, § 30:6, at 98104. But when the contract is ambiguous, a court may consider extrinsic evidence to determine the intentions of the parties. *Id.*, § 30:7, at 116-124. There was extrinsic evidence provided to Appeal Court and ignored.

not performed in his part of the contracts which he is obligated to do so. A contract is an agreement resulting in obligation enforceable at law, it is a voluntary obligation proceeding from a common intention arising from an offer and acceptance". *Johnson and Johnson v. Charmley Drug Co.*, N.J. 526, 539 (1953). To be enforceable contract there must be a definite offer, acceptance of that offer and consideration. *Friedman v. Tappan Dev. Corp.*, 22 N.J. 523 531 (1956) Thus without consideration there can be no contract. *Contl. Bank of Pa. v. Barclay Riding Acad. Inc.*, 93 N.J. 153, 170 (1983), cert. denied, *Barclay Equestrian Ctr. Inc. v. Conti Bank of Pa.*, 464 U.S. 994 (1983) A simple way of defining consideration is to say that both sides must get something out of the exchange. *Contl. Bank of Pa.*, 93 N.J. at 170: *Friedman*, 22 N. J. at 533; 1 Corbin Contract 110 (1963 ed) Value consideration may take the form of either a detriment incurred by the promises or benefit received by the promisor. *Contl. Bank of Pa.*, 93 N.J. at 170; *Novak v. Cites. Serv. Oil Co. N.J. Super.*, 542, 549 (App. Div., 1977), aff'd, 159 N.J. (App Div.) cert. denied. 78 N.J. 396 (1978); 1 CORBIN CONTRACT §§ 121-122 (1983 ed)

There was no exchange by the Plaintiff or the Defendant therefore as the law provides there is not consideration and the contracts do not exist. If consideration is met there is no additional requirement of gain or benefit of he promisor, loss or detriment to the promise, equivalence in values exchanged, or mutual obligation. *Shabar v. Sanyo Bus. Sys. Corp.*, 111 N.J. at 289 (adopting Restatement (Second) of Contracts 79 (1979). In other words. Courts will not measure the adequacy of consideration. Rather, if both parties even received something nominal a court will fine the exis-

tence of consideration as a matter of law. The Defendant does not owe any money to the Defendant. Based on the clear and convincing evidence presented by the Defendant.<sup>5</sup> The Brethren: Inside the New Jersey Courts and the history of the court there is a prejudice against Pro Se Litigants. They rule 90% in favor of other party represented by legal Counsel. I believe the percentage is a lot higher with Powerful Legal firms such as Bressler, Amery, and Ross who represents the Plaintiff Stephen A. North in this case. Bressler, Amery and Ross are ranked 3rd Global 200. And hold tremendous political power among the Legal Community *i.e.*, Superior Court, Appeal Court and the New Jersey Supreme Court. As the Court is aware it is rare for Pro Se Litigants to be successful in their attempt to win in litigation. This is possibly due to not appearing in court, legal research, misunderstanding the law or issue facts that aren't relevant from a legal perspective, rules of procedure, rules of evidence, witness examination and Appellate Procedures. It is also that the courts push aside Pro Se litigation and see them as a nuisance. Each case should be taken on its own merits. Judge Brennan and his unfounded decision were prejudiced against the Defendant. Citing three situations as stated in the aforementioned. The 1st civil procedure rules in which Judge Brennan ordered the Defendant to go first in closing arguments. I can't

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<sup>5</sup>The Lower Court, relying on personal assumptions, overlooked the evidence presented before them. Despite compelling evidence indicating the nonperformance of the agreements/contracts, the Appellate Court affirmed the lower courts' decision. The defendant did not receive the specified funds outlined in the agreements, nor did they obtain any other valuable considerations, including real estate, stocks, or additional interests in TMR. *Balducci v. Cige*, 240 N.J. 574, 595 (2020).

find any case in NJ where that was ordered and is unprecedent in any court of theses United States, a violation of my Fourteenth Amendment Section 1 rights. 2nd, Judge Brennan did not grant oral argument to the Defendant. And 3rd, Judge Brennan applied his own supposition of what the parties were thinking and not following previous Precedent. Judgement of the New Jersey Supreme Court and the United States Supreme Court.

I as a Pro Se Defendant have presented in the above case clear and convincing evidence of the facts that have been duly entered into this litigation. (192 entries over a five-year period 2018 to the present day) The Defendant Pro Se Litigant. worked tirelessly to avoid all the above pit falls of a Pro Se Litigant. And have met all the requirements and rules of the Court. This case has national significant implications. and its most important that the United States Supreme Court will not permit the prejudice to continue against a person representing himself in any court in these United States. Every Pro Se Litigants seek Fair equal protection under the law. The case of *Stephen A. North v. Anthony Emposimato*, the courts failed to apply past precedent judgement and have a fair and equal trial under the law. I cite the rule *Stare Decisis* (Horizontal) which refers to courts adhering to their own precedent. The Plaintiff has failed to prove essential elements of the case. The document outlines several reasons why the Writ should be granted, mainly focusing on violations of due process under the Fourteenth Amendment. It accuses the Appeal Court of making an erroneous decision by not applying the standard review and violating the Defendant's rights. The Defendant argues that there is clear and convincing evidence,

including trial briefs, depositions, and a motion for reconsideration, showing that no consideration was given to the Defendant for signing the agreements.

The Defendant contests the Appeal Court's acceptance of the lower court's findings, emphasizing that the Plaintiff failed to provide clear and convincing evidence to meet the burden of proof. There are accusations that the lower court made suppositions on consideration and that the Appeal Court did not properly review the evidence.<sup>6</sup> The Defendant requests the court to grant a writ of certiorari to thoroughly examine the evidence and merits of the case.

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<sup>6</sup> The document expresses concern regarding procedural irregularities, notably the Defendant being directed to present closing arguments first and being denied the opportunity for oral argument. The Defendant contends that Judge Brennan's rulings demonstrated bias and transgressed the Fourteenth Amendment.

Typically, courts lack the necessary information to assess the sufficiency of consideration in contracts. In this specific case, however, the Appellate Court failed in its duty of a thorough examination and review through a *de novo* process. The Appellate Court had ample and evident extrinsic information clearly pointing to the lack of consideration for the Defendant. This raises questions about the diligence of their assessment.

The document concludes with an earnest plea for a review of the case, underscoring its national significance and stressing the imperative for equitable treatment of Pro Se litigants. Overall, it serves as a comprehensive argument delineating alleged violations of due process, failure to consider evidence, and procedural shortcomings, making a compelling case for the issuance of the Writ.



## CONCLUSION

For the foregoing reasons this petition should be granted.

Respectfully submitted,

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December 21, 2023