

BELOW IS A SUMMARY OF THE CASE YOU ARE FILING WITH THE **APPELLATE DIVISION**.  
REVIEW ALL INFORMATION AND DOCUMENTS FOR ACCURACY PRIOR TO HITTING THE **SUBMIT** BUTTON  
ON THE NEXT PAGE.

**FILING ID #** 1572214 **TRIAL COURT DOCKET #** MON-L-3119-19  
**APPELLATE #** A-001164-22 **TRIAL COURT COUNTY** MONMOUTH  
**CASE TITLE** LARRY NIKOLA AND MEMORIAL PROPERTIES, LLC V. ALTICE USA, INC.; ALTICE  
USA NEWS, INC., A DIVISION OF ALTICE USA, INC., D/B/A NJ NEWS 12; NJ  
NEWS 12, WALTER KANE, INDIVIDUALLY AND AS AN EMPLOYEE OF ALTICE  
USA, INC., ROBERT BOYCE, FAY GIANARIS, HOLMDEL CEMETARY COMPANY,  
JEFFREY ACKERSON, JOHN DOE AND A  
**CASE TYPE** CIVIL **DISPOSITION DATE** 11/03/2022  
**CATEGORY** LAW-CIVIL PART  
**TRIAL COURT JUDGE** OWEN C. MCCARTHY, JSC

#### PARTY/ATTORNEY

PARTY NAME	PARTY ROLE	PARTY DESIGNATION	FIRM NAME - ATTORNEY NAME / ATTORNEY ROLE	ADDRESS
ALTICE USA, INC.;ALTICE USA NEWS, INC., A DIVISION OF ALTICE USA, INC., D/B/A NJ NEWS 12; NJ NEWS 12	DEFENDANT	RESPONDENT	ROBINSON MILLER LLC - KEITH J MILLER (ATTORNEY OF RECORD)	IRONSIDE NEWARK, 110 EDISON PLACE, STE 302 NEWARK, NJ 07102 973-690-5400 KMILLER@RWMLEGAL.COM
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LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	PLAINTIFF	APPELLANT	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY (ATTORNEY OF RECORD) FOX ROTHSCHILD LLP - FRUQAN MOUZON (CO- COUNSEL)	4020 QUAKERBRIDGE RD, MERCERVILLE, NJ 08619-0000 609-587-1199 KANDDFORECOURTS@GMAIL.COM; GTD@KATZANDDOUGHERTY.COM; MAH@KATZANDDOUGHERTY.COM
				49 MARKET ST, MORRISTOWN, NJ 07960-5122 973-992-4800 FMOUZON@FOXROTHSCHILD.COM; CTANCORDO@FOXROTHSCHILD.COM
MICHAEL BERARDI	DEFENDANT	RESPONDENT	MORRISON MAHONEY, LLP - NEIL A TORTORA (ATTORNEY OF RECORD)	WATERVIEW PLAZA STE 200, 2001 US HIGHWAY 46 PARSIPPANY, NJ 07054 973-257-3526 NTORTORA@MORRISONMAHONEY.COM; SELLIOTT@MORRISONMAHONEY.COM
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## DOCUMENTS

DOCUMENT / FILE NAME	FILING PARTY	FIRM NAME / ATTORNEY ATTENTION	CATEGORY / DOCUMENT TYPE	SOURCE	DATE POSTED	
NOTICE OF APPEAL	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - NOTICE OF APPEAL	SYSTEM GENERATED	12/12/2022	DE
CASE INFORMATION STATEMENT	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - CASE INFO STATEMENT	SYSTEM GENERATED	12/12/2022	DE
TRIAL COURT ORDER/JUDGMENT/DECISION (11/03/2022)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	12/12/2022	
TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	SYSTEM GENERATED	12/12/2022	DE
TRIAL COURT ORDER/JUDGMENT/DECISION	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	12/15/2022	
TRIAL COURT ORDER/JUDGMENT/DECISION	LARRY NIKOLA, MEMORIAL	KATZ & DOUGHERTY, LLC - GEORGE T	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	12/15/2022	

	PROPERTIES, LLC	DOUGHERTY			
TRIAL COURT ORDER/JUDGMENT/DECISION	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	12/15/2022
TRIAL COURT ORDER/JUDGMENT/DECISION	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	12/15/2022
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PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	12/15/2022
CASE INFORMATION STATEMENT	FAY GIANARIS	KATZ & DOUGHERTY, LLC - RUSSELL L MACNOW	APPELLATE DOCUMENTS - CASE INFO STATEMENT	SYSTEM GENERATED	12/20/2022
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NOTICE OF DOCKETING	Court		APPELLATE DOCUMENTS - COURT INITIATED NOTICES	INTERFACE	12/20/2022
CROSS APPEAL WITH ADDITIONAL PARTIES	ROBERT BOYCE	KATZ & DOUGHERTY, LLC - LOUIS E GRANATA	APPELLATE DOCUMENTS - CROSS APPEAL WITH ADDITIONAL PARTIES	SYSTEM GENERATED	12/21/2022
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CERTIFICATION OF TRANSCRIPT COMPLETION AND DELIVERY	Court		APPELLATE DOCUMENTS - CERT OF TRANS COMPLETION	INTERFACE	01/03/2023
CASE INFORMATION STATEMENT RESPONDENT UPLOAD	HOLMDEL CEMETERY COMPANY	GOLDBERG SEGALLA LLP - ELIZABETH ANNE CHANG	APPELLATE DOCUMENTS - CASE INFORMATION STATEMENT RESPONDENT UPLOAD	UPLOAD	01/03/2023
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PROOF OF SERVICE	JEFFREY ACKERSON	GOLDBERG SEGALLA LLP - ELIZABETH ANNE CHANG	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/03/2023
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TRIAL COURT ORDER/JUDGMENT/DECISION	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRIAL COURT ORDER/JUDGMENT/DECISION	UPLOAD	01/04/2023
PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/04/2023
(AMENDED) TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	SYSTEM GENERATED	01/05/2023
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PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/09/2023
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PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/18/2023
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TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	APPELLATE DOCUMENTS - TRANSCRIPT REQUEST FORM (TO ORDER OR AMEND PRIOR REQUEST)	SYSTEM GENERATED	01/30/2023
PROOF OF SERVICE	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/30/2023
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PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	KATZ & DOUGHERTY, LLC - GEORGE T DOUGHERTY	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	03/13/2023
TRANSCRIPT REQUEST FORM (TO	LARRY NIKOLA, FOX ROTHSCHILD LLP		APPELLATE DOCUMENTS - TRANSCRIPT REQUEST FORM (TO	SYSTEM	03/27/2023

ORDER OR AMEND PRIOR REQUEST)	MEMORIAL PROPERTIES, LLC	- FRUQAN MOUZON	ORDER OR AMEND PRIOR REQUEST)	GENERATED	
PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	03/27/2023
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APPELLANTS APPENDIX (Vol. 14)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
APPELLANTS APPENDIX (Vol. 13)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
APPELLANTS APPENDIX (Vol. 12)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
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APPELLANTS APPENDIX (Vol. 11)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
APPELLANTS APPENDIX (Vol. 10)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
APPELLANTS APPENDIX (Vol. 9)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
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APPELLANTS APPENDIX (Vol. 7)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
APPELLANTS APPENDIX (Vol. 6)	LARRY NIKOLA, MEMORIAL PROPERTIES, LLC	FOX ROTHSCHILD LLP - FRUQAN MOUZON	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/17/2023
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PROOF OF SERVICE	LARRY NIKOLA, MEMORIAL	FOX ROTHSCHILD LLP - FRUQAN MOUZON	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	04/17/2023

	PROPERTIES, LLC				
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APPELLANTS APPENDIX (Vol. 3)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/18/2023
APPELLANTS APPENDIX (Vol. 2)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/18/2023
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APPELLANTS APPENDIX (Vol. 1)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	04/18/2023
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(AMENDED) APPELLANTS BRIEF	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS BRIEF	UPLOAD	04/19/2023
PROOF OF SERVICE	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	04/19/2023
BRIEF DEFICIENCY LETTER	Court		APPELLATE DOCUMENTS - CASE MANAGEMENT DEFICIENCIES	INTERFACE	04/21/2023
MOTION TO DISMISS APPEAL (M-004629-22)	FAY GIANARIS	RUSSELL MACNOW, LLC - RUSSELL L MACNOW	MOTION - TO DISMISS APPEAL	SYSTEM GENERATED	04/27/2023
MOTION CERTIFICATION/SUPPORTING DOCUMENT	FAY GIANARIS	RUSSELL MACNOW, LLC - RUSSELL L MACNOW	MOTION SUPPORTING DOCUMENTS/ANSWERS/OPPOSITIONS/ATTACHMENTS - MOTION CERTIFICATION/SUPPORTING DOCUMENT	UPLOAD	04/27/2023
PROOF OF SERVICE	FAY GIANARIS	RUSSELL MACNOW, LLC - RUSSELL L MACNOW	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	04/27/2023
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(AMENDED) APPELLANTS APPENDIX (Vol. 1)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	05/01/2023
(AMENDED) APPELLANTS APPENDIX (Vol. 2)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	05/01/2023
(AMENDED) APPELLANTS APPENDIX (Vol. 3)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC		BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	05/01/2023
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(AMENDED) APPELLANTS APPENDIX (Vol. 6)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC	BRIEF AND APPENDIX - APPELLANTS APPENDIX	UPLOAD	05/01/2023	
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MISCELLANEOUS SUBMISSIONS (Vol. 2)	LARRY NIKOLA, FOX ROTHSCHILD LLP MEMORIAL - FRUQAN MOUZON PROPERTIES, LLC	APPELLATE DOCUMENTS - MISC SUBMISSIONS	UPLOAD	05/05/2023	
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RESPONDENT CROSS APPELLANT BRIEF	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	BRIEF AND APPENDIX - RESPONDENT CROSS APPELLANT BRIEF	UPLOAD	06/01/2023
RESPONDENTS APPENDIX (Vol. 1)	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	BRIEF AND APPENDIX - RESPONDENTS APPENDIX	UPLOAD	06/01/2023
PROOF OF SERVICE	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	06/01/2023
BRIEF DEFICIENCY LETTER	Court	APPELLATE DOCUMENTS - CASE MANAGEMENT DEFICIENCIES	INTERFACE	06/14/2023	
RESPONDENT CROSS APPELLANT BRIEF	ROBERT BOYCE	LOUIS E. GRANATA, PC - LOUIS E GRANATA	BRIEF AND APPENDIX - RESPONDENT CROSS APPELLANT BRIEF	UPLOAD	06/20/2023
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LETTER REQUEST FOR EXTENSION OF TIME TO FILE BRIEF	ALTICE USA, INC.;ALTICE USA NEWS, INC., A DIVISION OF ALTICE USA, INC., D/B/A NJ NEWS 12; NJ NEWS 12	ROBINSON MILLER LLC - KEITH J MILLER	APPELLATE DOCUMENTS - LTR REQ TO EXT/BRIEF	UPLOAD	07/06/2023
PROOF OF SERVICE	ALTICE USA, INC.;ALTICE USA NEWS, INC., A DIVISION OF ALTICE USA, INC., D/B/A NJ NEWS 12; NJ NEWS 12	ROBINSON MILLER LLC - KEITH J MILLER	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	07/06/2023
RESPONDENTS BRIEF	HOLMDEL CEMETERY COMPANY	GOLDBERG SEGALLA LLP - JOHN W MEYER	BRIEF AND APPENDIX - RESPONDENTS BRIEF	UPLOAD	07/10/2023
RESPONDENTS APPENDIX (Vol. 1)	HOLMDEL	GOLDBERG SEGALLA	BRIEF AND APPENDIX - RESPONDENTS APPENDIX	UPLOAD	07/10/2023



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LARRY NIKOLA and MEMORIAL  
PROPERTIES, LLC,

V.

ALTICE USA, INC.; ALTICE USA  
NEWS, INC., A DIVISION OF ALTICE  
USA, INC., D/B/A NJ NEWS 12; NJ  
NEWS 12, WALTER KANE,  
INDIVIDUALLY AND AS AN  
EMPLOYEE OF ALTICE USA, INC.,  
ROBERT BOYCE, FAY GIANARIS,  
HOLMDEL CEMETERY COMPANY,  
JEFFREY ACKERSON, JOHN DOE and  
ABC CORP.,

-----  
ROBERT BOYCE

V.

HOLMDEL CEMETERY COMPANY  
AND JEFFREY ACKERSON

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO.: A-001164-22

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH  
COUNTY  
DOCKET NO.: MON-L-3119-19

SAT BELOW:

HON. OWEN C. MCCARTHY, J.S.C.  
HON. MARA E. ZAZZALI-HOGAN  
J.S.C.

SUBMITTED: JULY 10, 2023

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**BRIEF ON BEHALF OF RESPONDENTS HOLMDEL CEMETERY  
AND JEFFREY ACKERSON**

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## **PRELIMINARY STATEMENT**

With respect to Respondents Holmdel Cemetary Company (“Holmdel Cemetary”) and Jeffrey Ackerson (collectively “Respondents”) this appeal presents two, relatively simple issues for this Appellate Panel’s consideration: (i) did the underlying plaintiffs meet their burden of sufficiently proving a prima facie case of a breach of the implied covenant of good faith and fair dealing to survive summary judgment, and (ii) was Cross-Appellant Boyce due indemnification? Respondents respectfully submit that the answer to both are a resounding “no.”

This appeal arises from what Appellants Larry Nikola and Memorial Properties, LLC (collectively “Plaintiffs” or “Appellants”) classify as defamatory and tortious conduct involving a web of alleged conspiracies. As pled, the underlying defendants’ goal was apparently to defund and destroy Memorial Properties, LLC by allowing either Cross-Appellant Robert Boyce (“Cross-Appellant” or “Boyce”) and/or Holmdel Cemetery to usurp its ownership, and gain all profits from the enterprise. The trial court evaluated a complete record and appropriately reached the conclusion that the claims could not survive summary judgment. That decision should stand.

According to Appellants, the decision of the motion judge to dismiss breach of the implied covenant of good faith and fair dealing (“GFFD”) was incorrect, and therefore, reversible for two reasons. Appellants contend that they had sufficiently

alleged damages and they contend that they provided sufficient proofs of material issues of fact to survive summary judgment. These arguments fail outright.

As for their first argument, Appellants' assertion of damages was fatally flawed. Discovery concluded on April 16, 2021. Respondents' Motion for Summary Judgment on the count of GFFD was granted a year later, on April 8, 2022. In the context of their motion for summary judgment and reconsideration, Appellants repeatedly conceded, as they must, that they had no expert to opine on damages, and could not articulate any remotely tangible amount of lost profits let alone any causal link outside of speculation and self-serving allegations. This concession clearly demonstrates, as Judge McCarthy noted, Appellants' failure to prove a prima facie case. Regardless, Appellants' apparent position is that they may nonetheless proceed with their damages claim on the theory that they are owed presumed damages, though they fail to articulate what the presumed damages are. Without evidence of damages, and an inability to articulate what supposed damages they are owed, Judge McCarthy was entirely correct to dismiss Appellants' claims.

As for their second point, Appellants contend that they should have survived Summary Judgement because their claim, *if proven, should* reach a jury. Of course, this puts the cart before the horse. The lack of evidence prompted the court to remove the claim from the hands of a jury yet, still, Appellants contend that their baseless claims should proceed to a fact-finder. Specifically, Appellants failed to identify any

evidence to prove that they had been deprived of any rights under the sales management contract, the governing document for purposes of their GFFD claim. At the close of discovery, the court evaluated all evidence of record as opposed to some hypothetical suggestion of a promise to prove a claim in the future. Against this backdrop, the court reached the clear conclusion that Appellants had failed to carry their burden of proof.

Finally, as more fully set forth herein, Cross-Appellant has not proven that he is entitled to indemnification and defense because there is no contract or binding document to create express indemnification. Likewise, implied indemnification is not available as there is no agreement or special relationship beyond that of simple employee. Cross-Appellant has failed to carry his burden. Accordingly, this Court should affirm.

Plaintiffs failed to plead a viable cause of action below, and Appellants have failed to identify any new, controlling, or even persuasive law or facts on appeal. This falls far short of the burden necessary to reverse.

### **PROCEDURAL HISTORY**

For purposes of brevity and efficiency, Respondents will focus only on those portions of the record pertinent to them. The impetus of this lawsuit is a March 6, 2019 “Kane in your Corner” news segment wherein Boyce, among others, allegedly



made defamatory statements concerning Plaintiffs that injured their business. (Pa15-59). Plaintiffs also allege tortious interference with contract and violation of GFFD.

Plaintiffs filed a Complaint on September 3, 2019. (Pa15). On October 15, 2019, Boyce filed an Answer and Third-Party Complaint naming Defendants as third-party defendants and seeking indemnification and defense for conduct allegedly occurring during his employment at Holmdel Cemetery. (Pa65).

On September 11, 2020, Plaintiffs filed an Amended Complaint naming Defendants as direct parties. (Pa269, 323). On February 18, 2022, Defendants filed a Motion for Summary Judgment seeking dismissal of GFFD. (Pa.950). On April 8, 2022, Judge McCarthy granted Defendants' motion. (Pa5). On July 14, 2022, Plaintiffs moved for reconsideration. (Pa1014). On August 5, 2022, Boyce moved for reconsideration of the Court's denial of his motion for summary judgment. (Ha1-6). On October 7, 2022, Plaintiffs' motion for reconsideration was denied, and Boyce's motion was granted. (Pa9, 11). During the motion hearing, the Court also dismissed Boyce's Third-Party Complaint against Defendants. Ibid.

On October 14, 2022, Boyce moved for counsel fees against Plaintiff for, among other things, frivolous litigation. (Da1-18). Defendants Holmdel Cemetery and Ackerson opposed only to the issue concerning alleged indemnification. (Ha7-

8). On November 3, 2022, the Court denied Boyce's Motion for counsel fees. (Da65).

### **STATEMENT OF FACTS**

Respondents note that Cross-Appellant has identified Appellants' failure to comply with Court rules, including long sections of unsupported assertions that fail to comply with R. 2:6-2(a). Respondents join in that objection but will not belabor the point herein. Instead, Respondents will recite the applicable factual history most pertinent to the claims dismissed against them for purposes of clarity.

As alleged, the March 6, 2019, "Kane in Your Corner" broadcast included "defamatory" statements from Boyce, an ex-employee of Respondents. (Pa15-59). Plaintiffs, the management company for Holmdel Cemetery, filed a Complaint on September 3, 2019, alleging myriad claims against Boyce, Altice (and subsidiaries), and Fay Gianaris. (Pa15-59). The allegations consisted mostly of accusations of intentionally tortious conduct including defamation, ostensibly theft, assault, fraud, and others. Id. Specifically, Altice, as the parent company of New Jersey News 12, was alleged to have intentionally defamed Plaintiffs, and Fay Gianaris, the daughter of an individual allegedly subject to one of the double sales, conspired with Boyce to defame Plaintiffs. On October 15, 2019, Boyce filed an Answer, and a third-party

Complaint against Holmdel Cemetery and its president - Jeffrey Ackerson - seeking indemnification and contribution. (Pa65-69).

Approximately one year later, on September 11, 2020, Plaintiffs filed an Amended Complaint, naming Holmdel Cemetery and Ackerson as direct defendants. (Pa269-323). Plaintiffs alleged the following against them: Tortious interference with economic interests, breach of contract, civil conspiracy to commit fraud, defamation, and, violation of the implied covenant of GFFD. Ibid. Over the course of the litigation, the court eventually dismissed each of these claims by way of dispositive motion practice. The dismissed claims are not the subject of this appeal for purposes of this Respondent, save for the allegation of the violation of the covenant of GFFD.

On February 18, 2022, Defendants filed a Motion for Summary Judgment seeking dismissal of GFFD. (Pa950; Ha9-20). With discovery closed, and a full record, Judge McCarthy granted Defendants' motion on April 8, 2022. (Pa5). Ultimately, the Court found "that plaintiff has been unable to demonstrate a prima facie case of a breach of the implied covenant of good faith and fair dealing." 1T56:11-13. Importantly, the court held that Defendants "never" violated the all-important sales management contract necessary to purportedly support the theory of implied breach. "While there's been multiple attempts to talk about defamation and

other claims that may exist against Mr. Boyce, I do not think the purpose of the implied covenant of good faith is a catch-all . . . to a claim.” Id. at 56:17-22.

[To] the extent there [were] defamation claims, that claim stands separate and distinct. A party cannot get duplicative damages by arguing a breach of the implied covenant of good faith and fair dealing, as well as defamation. Nor is there any evidence presented to this Court of anything that has deprived the plaintiffs of the benefit of the contract.

[Id. at 56:23-57:4.]

Of most import,

the plaintiff [had] admitted . . . that there are no economic loss[es]. The plaintiff cannot quantify with any specificity or the required certainty, what sales have been lost, what dollar amount has been lost as a result of the breach of the implied covenant of good faith and fair dealing.

[Id. at 57:12-17.]

Ultimately, “because there has not been a breach of contract, and the plaintiff has been unable to satisfy with the required certainty . . . [the] type of damages that could be presented to the jury,” Defendant’s Motion for Summary Judgment was thereafter granted. Id. at 58:23-59:2; see Sons of Thunder v. Borden, 148 N.J. 396 (1997).

On July 14, 2022, Plaintiffs moved for reconsideration. (Pa1014). On August 5, 2022, Boyce moved for reconsideration of the Court’s denial of his motion for summary judgment. (Pa1018). On October 7, 2022, Plaintiffs’ motion for

reconsideration was denied, and Boyce's motion was granted. (Pa9, 11). During the reconsideration hearing, Judge McCarthy expounded upon Plaintiffs' failure to meet their burden of proof, specifically with respect to damages.

The prior attorney was unable to articulate any damages that were suffered by the plaintiffs. . . . There was indication, well there was damages that may be in the future. This may affect future business relationships. And as part of my prior decision, the Court did indicate that to the extent that there were damages, there were problems in the future . . . .Plaintiff could not and he was offered at least four or five opportunities to articulate what . . . . damages were suffered by plaintiff. And everything seemed to fall back to, Judge, the only damages we have are presumed damages. The only, there's no expert report. I asked them about tax returns. I asked about any document that may support a financial harm suffered by the plaintiff. Even to the extent the business scenario, lost customers, either by Mr. Nikola or Memorial properties, what was the harm caused by this[?] And again, prior counsel just merely stated, presumed damages,

[2T9:17-10:16.]

With respect to Defendants' Motion for Summary Judgment as to Boyce' indemnification claim the Court determined "in light of the fact summary judgment has been granted to Mr. Boyce, his case was only a third party claim against you. With the case against Mr. Granata's client, Mr. Boyce, being dismissed, [Defendants' Motion for Summary Judgment] is moot as well." Id. at 15:18-23. Thus, the Court dismissed all remaining claims against Defendants.

During a subsequent hearing on November 3, 2022, the Court expanded upon the rationale for dismissal of Boyce’s indemnification claims. There the Court stated Defendants prior short-notice motion was “moot based upon the – the prior denial – dismissal of all claims. I still think that was floating around administratively; the motion that your firm filed on short notice. So that was rendered moot.” 3T13:23-14:3.

The instant appeal followed.

## **LEGAL ARGUMENT**

### **I. THE MOTION JUDGE APPROPRIATELY DISMISSED PLAINTIFFS’ CLAIMS OF THE BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING.**

#### **A. Standard of Review**

On appeal the Appellate Division reviews “a summary judgment decision de novo, applying the same legal standard as the trial court in determining whether the grant or denial of summary judgment was correct. Heyert v. Taddese, 431 N.J. Super. 388, 411 (App. Div. 2013) (citing Hinton v. Meyers, 416 N.J. Super. 141, 146 (App. Div. 2010)). Naturally, “summary judgment is appropriate where ‘there is no genuine issue as to any material fact challenged and . . . the moving party is entitled to judgment or order as a matter of law.’” Ibid. (citing R. 4:46-2(c)). “[F]or mixed questions of law and fact, [the court] gives deference . . . to the supported factual

findings of the trial court, but reviews de novo the lower court's application of any legal rules to such factual findings.” State v. Pierre, 223 N.J. 560, 577 (2015).

### **B. Appellants' Breach of Covenant Action Fails as a Matter of Law**

Appellants contend that they have sufficiently proven a breach of the covenant of GFFD and that summary judgment was improper. Appellants are incorrect. Summary judgment was the only logical conclusion given that Appellants failed to prove any breach of the underlying sales management agreement, bad conduct on behalf of Respondents, or any resulting damages caused by the deprivation of their expectations under the sales management agreement. As more fully set forth herein, the motion judge was correct in granting Summary Judgment, denying reconsideration, and finding Appellants had failed to carry their burden.

The covenant of GFFD implies that parties to a contract agree not to do anything that will destroy or injure the contractual rights of the other party. Brunswick Hills Racquet Club, Inc., v. Route 18 Shopping Center Assoc., 182 N.J. 210, 230-31 (2005). Good faith “is a concept that defies precise definition.” Id. at 224. While elusive, it is well settled that bad faith is the antithesis of good faith, and “[p]roof of ‘bad motive or intention’ is vital to an action for breach of the covenant.” Id. at 225 (quoting Wilson v. Hess, 168 N.J. 236, 251 (2000) (emphasis added)). A complaining party must “provide evidence sufficient to support a conclusion that the

party alleged to have acted in bad faith has engaged in some conduct that denied the benefit of the bargain originally intended by the parties.” Ibid. Actions that survive dismissal as a matter of law are those that provide evidence of actions “without legitimate purpose,” and “intentional misleading assertions.” Ibid. (citing Bak-A-Lum Cor. of Am. v. Alcoa Bldg. Products, Inc., 69 N.J. 123, 129-30 (1976)). Absent proof of “improper motive,” a claim for the breach of the covenant of GFFD may not proceed. Wade v. Kessler Institute, 172 N.J. 327, 341 (2002).

Against the backdrop of the applicable law and standard in New Jersey, dismissal was clearly required because Appellants failed to elicit any evidence that:

1. they were deprived of any rights under the sales management contract
2. that Respondents acted in “bad faith”, and
3. Appellants incurred recoverable damages.

Appellants allege that Respondents deprived them of their rights under the sales management contract. Importantly, however they have not and cannot identify any substantiated proof. In Sons of Thunder, 148 N.J. 396, 406 (1997) the jury awarded damages based upon the defendant purchaser’s conduct during the life of the contract including ceasing purchasing the applicable product, changing the price, and adding never agreed upon fees. This conduct conflicted with the purchasing parties’ intent. Ibid. Contrary to Appellants contention, and unlike Sons of Thunder,



Appellants have no evidence that Respondents intentionally manipulated the parties' contract after the fact nor otherwise interfered with the intent of the agreement. At summary judgment, again during reconsideration, and even here on appeal, Appellants have failed to identify any evidence of a breach of the sales management contract or that Respondents acted in bad faith. These failures on behalf of Appellants are dispositive.

In an apparent effort to establish the required element of bad faith, Appellants rely upon Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc., 182 N.J. 210 (2005). This citation is not helpful to Appellants' cause. The plaintiff in Brunswick evidenced bad faith on behalf of the defendant through proven manipulation, delay and stall tactics intended to deceive the plaintiff in allowing a purchase option expire. Id. at 219-22. Paramount in that determination was the plaintiff's ability to "provide evidence sufficient to support a conclusion that the party alleged to have acted in bad faith has engaged in some conduct that denied the benefit of the bargain originally intended by the parties." Id. at 225.

Critically, the proofs adduced in Brunswick are absent here. As opposed to the clear bad faith in Brunswick, Plaintiffs herein rely upon conclusory statements and reference to their Complaint, as opposed to admissible evidence to support their claim of Respondents' alleged bad faith. There is no citation to the record, and no

evidence put forth to satisfy proof of bad faith, or Appellants' being deprived of some benefit of the sales management agreement. Claims, absent evidence, cannot support themselves. Allegations of bad faith require a certain degree of specificity, 182 N.J. at 225, and Appellants' allegations contained in their Complaint does not approach the threshold necessary to survive after the conclusion of discovery. (Pa395-402). Without proof and evidence, elements both necessary and present in Sons of Thunder and Brunswick, the very law relied upon by Appellants establish their failure to plead a prima facie case against Respondents, and demonstrate their inability to identify any evidence the motion judge allegedly failed to consider.

Appellants final reference to Wilson v. Hess, 168 N.J. 236 (2000) leads to the same conclusion. The Supreme Court in Hess reversed and remanded back to the trial court based on a premature grant of summary judgment while discovery was ongoing. Id. at 240. Upon remand, our Supreme Court opined that discovery was ongoing and therefore the claim against those defendants was still "an unproven allegation." Ibid. Unlike Hess, and as stated above, of course discovery closed one year before the court dismissed Appellants' flawed claim of GFFD. Nonetheless, even assuming discovery was ongoing, Appellants have failed to produce one iota of evidence supporting their claim. Stated differently, even if the court were to somehow reopen discovery and permit Appellants more time, they have yet to articulate how that would change the ultimate result.

As Judge McCarthy stated at oral argument at the reconsideration motion, Appellants have provided no evidence of bad faith, and not a whit of evidence to substantiate any amount of loss. 2T9:17-10:16. Appellants provided no tax returns, no expert proof, and nothing other than repeated allegations that they were due “all foreseeable consequences” for a contract they could not sufficiently allege was breached. In short, Appellants lack at least two of the fundamental ingredients necessary to prove their claim: proofs of any wrongdoing on the part of Holmdel Cemetery and proofs that they suffered any damages whatsoever. For those reasons, this Court should affirm Judge McCarthy’s well-reasoned dismissal of Appellants’ breach of the covenant of GFFD.

## **II. BOYCE WAS NOT OWED INDEMNIFICATION OR DEFENSE**

Likewise, the court properly dismissed Boyce’s Third Party claims premised upon alleged indemnification “performed on behalf of his employer.” (Db13; Pa68). At the time, the motion judge determined there was nothing to be indemnified from, and no defense to be tendered. 2T13:23-14:3. As a matter of law and fact, Judge McCarthy was correct as Boyce was not entitled to indemnification or defense.

Pursuant to established New Jersey precedent, express indemnification may be available based upon contract or implied indemnification may be available based upon a “special legal relationship...and the liability of the third party is vicarious.”

Ramos v. Browning Ferris Industries, Inc., 103 N.J. 177, 189, 191 (1986).

“Examples of special relationship that will support a third party’s claim for indemnification include that of principal and agent, bailor and bailee, and lessor and lessee.” Ibid (citing Hagen v. Koerner, 64 N.J. Super. 580, 586-87 (App. Div. 1960)).

There is no contract that provides for indemnification. Moreover, there is no special relationship that would warrant indemnification, and Boyce has failed to provide any evidence that Respondents caused Boyce to be sued by Appellants, leaving Boyce’s citation to the Restatement Second of Torts irrelevant.

First, Boyce has not and cannot identify an existing contract that warrants Respondents to indemnify Boyce. He cites no contract or other binding document or agreement that would lead to any conclusion he could have been entitled to indemnification or defense. Boyce fails to articulate “contractual or statutory obligation [to] indemnify or defend [him] when sued individually,” and therefore cannot compel Respondents to indemnify or defend him. Wright, 169 N.J. at 443.

Second, Boyce cannot establish that due to a special relationship, he is entitled to indemnity. Granted, it is true that an employer in certain circumstances may be vicariously liable for the wrongs of its employees, that does not apply here. “Although as a general rule of tort law, liability must be based on personal fault,” an employer will be held vicariously liable “for the negligence of an employee causing

injuries to third parties, if, at the time of the occurrence, the employee was acting within the scope of his or her employment.” Haviland v. Lourdes Med. Ctr. Of Burlington Cnty., 250 N.J. 368, 379 (2022) (quoting Carter v. Reynolds, 175 N.J. 402, 408-09 (2003)). Even so “the mere fact that an employer can be held liable under the doctrine of respondeat superior for the acts of an employee does not . . . lead inexorably to the conclusion that the employer must, absent a contractual or statutory obligation, indemnify or defend the person when sued individually.” Wright v. State, 169 N.J. 422, 443 (2001) (quoting Michaels v. New Jersey, F. Supp. 230, 236, n.7 (D.N.J. 1997)).

Importantly, Boyce was not an employee at the time he made statements attributed to him on the Kane in Your Corner segment. (Pa954-55). This fact is independent and sufficient grounds for denying indemnification, but even if he was employed at the time, Boyce’s independent commentary during a television interview was clearly outside the scope of his employment. “An employer may be held liable for the intentional torts of his servant when they are reasonably connected with the employment and so within its ‘scope.’” Lehmann v. Toys ‘R’ Us, 132 N.J. 587, 619 (1993). Clearly, speaking to a news outlet about the conduct of another business is outside Boyce’s *prior* employment with Respondents. Given that Boyce was not employed at the time, and his comments could not be attributed to Respondents, dismissal of his claims was appropriate.

Boyce's sole authority for seeking implied indemnification and/or defense is a citation to the unreported case of Accounteks Net. Inc. v. CKR Law, LLP and Christian Montes, No. A-1067-20 (App. Div. May 9, 2023), which in turn relies on the Restatement, Second, of Torts. As discussed below, the cited portion of the Restatement is inapplicable here, and his claim for indemnification must fail as a matter of law.

Boyce's quotation of the restatement does not adequately convey the third-party exception to the American Rule. Boyce cherry-picked a quote from the Second Restatement to bolster his position, without conveying how the American Rule, when read in light of the Restatement Second, functions. When read in full, the Restatement actually refutes Boyce's position,

Beginning with the Restatement's commentary, comment "b." to § 914 of the Restatement Second of Torts states

When a cause of action or an alleged cause of action against the defendant in a proceeding exists only because of a tort of another, the defendant can notify the other to defend the proceeding and if the other fails to defend the defendant can either defend, subsequently recovering all reasonable expenses of the defense, or refuse to defend in which case he can recover from the tortfeasor the amount of any judgment against him.

The gist of this section of the Restatement means that when an innocent party is compelled to litigate a matter due to the wrongdoing of a third-party, the wrongdoer third-party may be required to pay counsel fees to the innocent party. The application of the Restatement's rule is further elucidated in the "Illustrations" section of the Restatement under Illustration 3.<sup>1</sup>

Applying the Restatement to the case at hand, Boyce would need to have been sued by Appellants due to the tortious conduct of Respondents to be due indemnification and costs. Boyce's claim fails as a matter of law because Respondents are not responsible for any of the conduct Plaintiff has alleged against Boyce. Boyce was not employed by Respondents on the date he spoke to Altice, and allegedly intentionally tortious conduct done in Boyce's individual capacity does not impute any wrongdoing on behalf of Respondents.

While Appellants have stated that Respondents directed Boyce to conduct tortious acts, there is no proof offered by Boyce or Appellants to prove these allegations. There remains no proof cited in the record, and no evidence following the close of discovery that shows that Respondents caused Boyce to be sued in any

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<sup>1</sup> Illustration 3 provides "A, who is B's agent, collects money due from C to B. Later A represents to B that C did not pay him and B brings suit against C for the amount supposed to be due. B can recover from A the expenses of suit as well as the amount received by A." In other words, because A lied to B, and caused B to institute a meritless action against C, B is due expenses from A.

way, shape, or form. Absent this, the Restatement Second of Torts provides no basis for Boyce's recovery, and his citation to same is improper.

### **CONCLUSION**

For the reasons set forth above, Respondents, Holmdel Cemetery Inc., and Jeffrey Ackerson respectfully request this Court affirm the motion judge's orders.

Respectfully submitted,

**GOLDBERG SEGALLA, LLP**  
*Attorneys for Respondents, Holmdel  
Cemetery Inc., and Jeffrey Ackerson*

By: */S/ John W. Meyer*  
*/S/ Seth L. Laver*  
John W. Meyer, Esq.  
Seth L. Laver, Esq.

Dated: July 10, 2023



LARRY NIKOLA and MEMORIAL  
PROPERTIES, LLC,

V.

ALTICE USA, INC.; ALTICE USA  
NEWS, INC., A DIVISION OF ALTICE  
USA, INC., D/B/A NJ NEWS 12; NJ  
NEWS 12, WALTER KANE,  
INDIVIDUALLY AND AS AN  
EMPLOYEE OF ALTICE USA, INC.,  
ROBERT BOYCE, FAY GIANARIS,  
HOLMDEL CEMETERY COMPANY,  
JEFFREY ACKERSON, JOHN DOE and  
ABC CORP.,

-----  
ROBERT BOYCE

V.

HOLMDEL CEMETERY COMPANY  
AND JEFFREY ACKERSON

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO.: A-001164-22

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH  
COUNTY  
DOCKET NO.: MON-L-3119-19

SAT BELOW:

HON. OWEN C. MCCARTHY, J.S.C.  
HON. MARA E. ZAZZALI-HOGAN  
J.S.C.

SUBMITTED: JULY 10, 2023

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**APPENDIX OF THE RESPONDENTS HOLMDEL CEMETERY  
AND JEFFREY ACKERSON  
(Pages Ha01 to Ha20)**

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**GOLDBERG SEGALLA LLP**

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*Attorneys for Respondents,  
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Of Counsel and On the Brief:

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Seth L. Laver, Esq. (Attorney ID No. 015412004)

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August 5, 2022

**Via Electronic Filing & Regular Mail**

Clerk of the Superior Court  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728

**Re: Larry Nikola, et al. v. Altice USA, Inc., et al.  
Robert Boyce v. Michael Berardi, et al.  
Docket No. MON-L-3119-19**

Dear Sir/Madam:

This office represents the Defendant, Third Party Plaintiff Robert Boyce ("Boyce"), movant on the Cross Motion for Reconsideration of Order entered January 21, 2022 denying his Summary Judgment application as to the claims made by the Plaintiffs for Defamation.

**Background:**

On December 23, 2021, Defendant, Robert Boyce ("Boyce") filed a Motion for Summary Judgment as to all claims made by Plaintiffs against him.

Plaintiffs, Larry Nikola ("Nikola") and Memorial Properties, LLC ("Memorial") submitted a certification of Michael Berardi

("Berardi") in opposition to the motion. (Exhibit A). Berardi is employed by the Plaintiff, Memorial, and is its Sales Agent at Defendant, Holmdel Cemetery ("Holmdel"). Plaintiffs also relied upon a posting by Boyce on his wife's Facebook page identified as N-25. (Exhibit B hereto and Exhibit C to Berardi's Certification).

The Motion, along with a motion filed by Plaintiffs to Amend the Complaint was argued before Hon. Owen C. McCarthy, J.S.C. on January 21, 2022. A copy of the Motion Hearing is annexed as Exhibit C. Argument on Boyce's motion for Summary Judgment begins at T:30.

In support of his application, Boyce submitted a transcript of a proceeding before the New Jersey Cemetery Board on May 14, 2015, wherein Berardi acknowledged there were double sales of grave sites at the Cemetery, based on faulty maps. He did not claim Boyce caused the faulty maps.

Boyce also submitted articles from the New York Times, Star Ledger and the Augusta Chronicle regarding Nikola and Memorial properties history of sales at different cemeteries resulting in Nikola paying \$60,000.00 "In penalties for improperly moving memorials, burying people under concrete pathways and without authorization, reclaiming graves that had been sold to others (double sales)." (New York Times, May 8, 1996) A Judge in Chatham County Court (Georgia) calling Nikola a "business predator" regarding his operation of a cemetery. (Augusta Chronical, August 11, 2015). And his operation at the Rosemont Cemetery in 1993, the Cemetery Board reported a \$500k payment to a family whose mother was buried "under water." The articles were submitted to provide the Court with an understanding of the Plaintiffs' "reputation" in the community.

In opposition to the motion, Plaintiffs relied on Berardi's certification to argue there is a genuine issue of material fact sufficient to defeat Robert Boyce's motion for Summary Judgment.

In his certification at ¶13, Berardi opined:

"Boyce's Comments on the 2019 NJ News 12 Podcast broadcast to the greater Metropolitan New York/New Jersey in 2019 were purely defamatory accusing Memorial Properties and its sales agent of intentionally false "double and triple" sales of the same graves to multiple purchasers for profit. Exhibit A, Podcast (N20) Paragraphs 49 to 64." (emphasis added)

Berardi's Exhibit A is a typed document without any indication as to its authenticity. It is not dated, it does not refer to the source, there is no certification by either a stenographer or any person as to its transcription.

Even if His Exhibit A were a transcript of a publication (a podcast) of what he alleges it to be, the Plaintiff, Memorial Properties is not accused or even mentioned, nor is Larry Nikola or Mr. Berardi, contrary to his assertion.

Mr. Berardi further alleges in ¶13 that:

"Boyce clearly identified Memorial Properties and me, its only sales agent, when accused Memorial Properties of fraudulent double sales and triple sales of graves in his NJ News Podcast and its Cablecast (Exhibit B)

Exhibit B is also a typed document titled "News 12 Aired Story," without any indication as to its authenticity. It is dated, it does not refer to its source, there is no certification by either a stenographer or any person as to its transcription. Here again, neither Nikola nor Memorial Properties is mentioned in the document. The majority of the exchange is between Kane and Fran Gianaris. She was a made a defendant by Plaintiffs and accused of making defamatory statements; however, the claims against her were dismissed.

Again, if the Exhibit were a transcript of a publication (a Cablecast) the only mention of Plaintiff, Memorial Properties was at #43 where it is alleged Kane referred to a written statement from the owner of memorial properties Larry Nikola where he states that Holmdel Cemetery is responsible for maintaining the maps.

It was argued that the Plaintiffs cannot identify any statements made Boyce that were defamatory.



**N25:** Plaintiffs claimed a post made by Boyce addressed to Governor Murphy on the Website "Ask Governor Murphy" was "arguably a defamatory statement" about Plaintiff, Memorial Properties. The post is identified as N25, and is annexed hereto as Exhibit B.

Boyce's comments in N25 are based on verifiable facts as set forth in testimony by Michael Berardi before the NJ Cemetery Board. Berardi acknowledged there were double sales and could not be confident that "other sales he made in the past couple of years are not double sales."

The Court questioned Plaintiffs' Counsel regarding the facts in the record regarding the admission by Berardi of double sales and the Plaintiffs' reputation (Exhibit C, T33:19-37:4) then shifted to other parts of the Motion, but never reached a conclusion or discussed the elements of Defamation or what facts create an issue for trial.

### **Law and Argument:**

#### **Defamation:**

"A defamation claim has three elements: 1) the assertion of a false and defamatory statement concerning another, 2) the unprivileged publication of that statement, and 3) fault amounting at least to negligence by the publisher." Leang v. Jersey City Board of Education, 198 N.J. 557, 585 (2009).

The Leang Court has provided three factors to determine if a statement has a defamatory meaning: 1) the content of the statement, 2) whether the statement is verifiable, and 3) the context in which the statement is made.

The Plaintiffs have not identified any statement(s) made by Boyce that can be determined to be false. Any reference to statements made while being interviewed on the NJ News program refer to the Cemetery, and not either of the Plaintiffs. If the Plaintiffs are to rely upon the Boyce's publication (N25) the truth of the matter was not disputed by Plaintiffs. Their own Sales

Agent, Berardi acknowledged the truth of the content, under oath before the New Jersey Cemetery Board. Additionally, the publications in the New York Times, the Newark Star Ledger and the Augusta Cornicle describes the Plaintiff, Larry Nikola's similar conduct.

When applying the facts as alleged by Plaintiffs, they failed to support a claim for defamation.

"A defamation claim has three elements: 1) the assertion of a false and defamatory statement concerning another, 2) the unprivileged publication of that statement, and 3) fault amounting at least to negligence by the publisher." Leang v. Jersey City Board of Education, 198 N.J. 557, 585 (2009).

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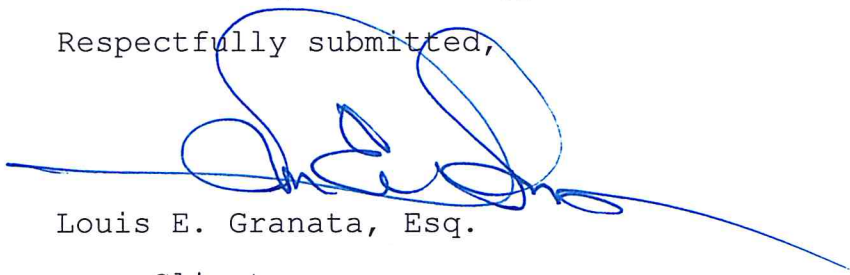
The content of any of Boyce's statements were/are verified.

The law of defamation embodies the important public policy that individuals should generally be free to enjoy their reputations unimpaired by false and defamatory attacks." The law, however, is not without its limits. Defamation-law principles must "achieve the proper balance between protecting reputation and protecting free speech. In that regard, "speech on 'matters of public concern' ... is 'at the heart of the First Amendment's protection. The same is true under our State Constitution. "[O]ur decisions, pronounced in the benevolent light of New Jersey's constitutional commitment to free speech, have stressed the vigor with which New Jersey fosters and nurtures speech on matters of public concern. In the same vein, speech related to matters of public concern occupies the highest rung of the hierarchy of First Amendment values. Such speech requires maximum protection. Thus, when alleged defamatory remarks touch on a matter of public concern, "the interests of free speech justify, and fairness to individual reputation permits, application of a strict and high burden of proof to establish actionable defamation. Within that context, a plaintiff asserting a defamation claim cannot rely on the doctrine of presumed damages absent a finding that the defendant published the statement "with knowledge that it was false or with reckless disregard of whether it was false or not. Rocci v. Ecole Secondaire MacDnald-Cartier, 165 N.J. 149 155-156 (2000)

As noted by the Court the doctrine of presumed damages is not applicable to the Plaintiffs here, as there is a strong public interest, the burial of deceased relatives and friends.

Although these arguments and exhibits were provided to the Judge McCarthy, he did not rule on any of the factual issues or the law, instead issued the Order Denying the Summary Judgment on the issue of Defamation, without an explanation or statement of reasons for the denial. For that reason, Defendant Boyce's motion for Reconsideration should be granted, and an Order Granting Summary Judgment on the issue of Defamation should be granted, as there is no genuine issue as to the material facts that are required to support a claim for defamation.

Respectfully submitted,



Louis E. Granata, Esq.

cc: Client  
All Counsel of Record.





John Meyer | Associate  
Direct 609.986.1315 | jmeyer@goldbergsegalla.com

October 17, 2022

**VIA E-COURTS**

Honorable Owen C. McCarthy, J.S.C.  
Monmouth County Superior Court  
71 Monument Park  
Freehold, NJ 07728

**Re: Larry Nikola et. al. v. Altice USA, Inc., et al.**  
**Docket No.: MON-L-3119-19**  
**Our File No. 16002.0299**

Dear Judge McCarthy,

Please accept this letter brief in lieu of a more formal brief in response to Third-Party Plaintiff Robert Boyce's ("Boyce") Motion for Sanctions. Defendants Holmdel Cemetery and Jeffrey Ackerson do not object to Boyce's Motion for Sanctions substantively, and take no positions on the merits of same. However, Defendants wish to add one piece of clarification. Within Boyce's Motion for Sanctions he states "After re-consideration the court granted summary judgment as to all claims against Boyce. That concluded the litigation as to all issues, **except Boyce's Third Party complaint for indemnification for the expenses he incurred defending Nikola's claims against him while employed by Holmdel Cemetery.**"

This is incorrect. Following an oral decision read into the record on October 6, 2022 this Court dismissed as moot Defendants pending Motion for Summary Judgment as to Boyce's indemnification claims. Having dismissed all claims from which indemnification could be sought, Boyce's indemnification claim was also dismissed. This was again confirmed when Boyce's attorney reached out to the Court to confirm the status of this matter with this Court. In an email to counsel, counsel for Boyce stated "I received a telephone call from Judge McCarthy's chambers,

October 17, 2022

Page 2

the Judge reviewed my letter and said the case was ‘Dismissed.’” See **Ex. “A,”** email to counsel dated October 11, 2022.

To the extent Boyce states their “indemnification” claim is not resolved, therefore, Defendants object. Boyce is aware the claim of indemnification was dismissed, and their current motion states otherwise despite the Court’s clear stance. Defendants, therefore, respectfully request this Court to maintain course and to not revive Boyce’s dismissed claim.

Respectfully submitted,

*John W. Meyer, Esq.*

John W. Meyer, Esq.

JWM:eac

cc: All Counsel of Record



### **PRELIMINARY STATEMENT**

Defendants Holmdel Cemetery and Jeffrey Ackerson (“Defendants” or “Moving Defendants”) hereby submit this brief in support of their motion for an order granting Summary Judgment dismissing the Amended Complaint filed by Plaintiffs, Larry Nikola and Memorial Properties, LLC (“Plaintiffs”). As set forth in more detail below, Plaintiffs cannot prove liability against Defendants Holmdel Cemetery and Jeffrey Ackerson for Breach of the Implied Covenant of Good Faith and Fair Dealing. Discovery has already ended. Even if all facts are viewed in the light most favorable to the non-moving party, no reasonable jury could find in favor of Plaintiffs based on all the discovery completed to date.

In support of their Breach of Good Faith and Fair Dealing Claim, Plaintiffs claim *solely* that Moving Defendants “have direct liability as co-defendants of Boyce, both as a tort and as a breach of the covenant of good faith and fair dealing, for resorting to false accusations with the purpose of fabricating a basis for terminating plaintiffs' sales management contract.” *See Exhibit A Compl.* at Count 4 ¶ 10. First, the claim for Breach of Good Faith and Fair Dealing against Jeffry Ackerson is not viable because he was never a party to the subject Sales Management Contract. Second, Plaintiffs have failed to articulate and provide evidence of Defendants acting in bad faith with the intent to deprive the Plaintiffs of rights or benefits under the contract. Lastly, Plaintiffs have failed to produce *any* evidence of damages flowing from the alleged Breach of Good Faith and Fair Dealing. *There simply can be no claim for Breach of Good Faith and Fair Dealing if there are no damages. See New Jersey Model Jury Charge 4.10J.*

Accordingly, Defendants respectfully requests that the Court grant their Motion for Summary Judgment.

## **I. STATEMENT OF FACTS**

1. Plaintiff Larry Nikola (“Nikola”) is a managerial employee of Memorial Properties, a cemetery management company operating under a certificate of authority issued by the New Jersey State Cemetery Board and subject to State regulation. *See Exhibit A Compl.* ¶ 1(a), (b); Count 1 ¶ 2.

2. Plaintiff Memorial Properties (“Memorial Properties”) contracts with various New Jersey based cemeteries, including Holmdel Cemetery (“Holmdel”), for the sale of internment spaces (e.g. graves, crypts, and/or mausoleums) to the public. *Id.* ¶ 1(a).

3. In 1985, Holmdel Cemetery contracted with Memorial Properties’ predecessor company, HMI, to be the agent for the sales of graves (“Sales Management Contract”). The contract remains in place today. *See Sales Management Contract* attached as Exhibit D.

4. While Memorial Properties is contractually responsible for internment space sales, Holmdel retains responsibility for maintenance of cemetery records and maps, which are used to ensure the availability of an internment space prior to its sale. *See Exhibit A* at ¶ 10.

5. Nikola serves in a dual capacity – as both a managerial employee of Memorial Properties, as well as a Board Member of Holmdel.

6. Defendant/Third Party Plaintiff Robert Boyce was employed as a Maintenance Supervisor at Holmdel Cemetery from September 12, 2005 until August 1, 2018 when he resigned. *Id.* ¶ 1(f).

7. On March 3, 2019, as part of the “Kane In Your Corner” news segment, NJ News 12 aired an approximately five-minute investigative report about consumer complaints that certain cemetery interment spaces at Holmdel Cemetery had been sold to multiple individuals without

their knowledge. As part of the Report, Kane interviewed Robert Boyce (“Boyce”), as well as Defendant Fay Gianaris (“Gianaris”).

8. On September 3, 2019, Memorial Properties and Nikola filed the subject Complaint against Robert Boyce and numerous news companies, Altice USA, Inc., Altice US News, Inc. d/b/a NJ News 12, NJ News 12, and Walter Kane for 1) Defamation per se, 2) Trespass, 3) Conversion of Property, and 4) Tortious interference with economic interests.

9. Among other things, Plaintiffs alleged that Robert Boyce threatened Nikola in his office, engaged in purposefully providing false information to sales agents, participated in a campaign of deceit and economic sabotage to inflict economic damage upon Plaintiffs and Holmdel Cemetery, fabricated complaints to the NJ Cemetery Board and to NJ News 12 in order to take control of Holmdel Cemetery by destroying the reputation of Memorial Properties and trespassed into the offices of Memorial Properties to create counterfeit documents. *See Exhibit A* at. ¶ 12-99.

10. Nikola and Memorial Properties allege that solely as a result of Boyce’s alleged actions, ***both Holmdel and Memorial Properties*** had a substantial decline in sales between 2010 continuing until after August 1, 2018. *See Exhibit A* at ¶ 33.

11. On October 15, 2019, Boyce filed a Third-Party Complaint against Moving Defendants, Holmdel Cemetery and Ackerson for indemnification and contribution. The Third Party Complaint alleges that Boyce, as an employee of Holmdel Cemetery Company, is entitled to indemnification and a defense for conduct performed during the course of his employment. *See Exhibit B Third-Party Compl.* ¶ 7-12.

12. On January 10, 2020, the Court dismissed the Plaintiffs’ claims against the news defendants.

13. Then, without any legal or factual basis, on September 11, 2020, Nikola and Memorial Properties filed an Amended Complaint seeking damages directly from Holmdel Cemetery and Ackerson (“Defendants”) for Breach of Contract, Civil Conspiracy to Commit Fraud, Defamation, Tortious Interference with Economic Interests and Punitive Damages. Thus, Moving Defendants were added as direct defendants after this time.

14. Nonsensically, even though Nikola and Memorial Properties allege that Boyce harmed both Holmdel and Nikola, *Nikola and Memorial Properties preposterously claims that Holmdel specifically authorized Boyce to hurt Holmdel.* It is unfathomable how Boyce would be acting on behalf of Holmdel to hurt Holmdel.

15. On May 14, 2021, the Court dismissed Plaintiffs’ claims for Breach of Contract and Punitive Damages.

16. On October 29, 2021, the Court dismissed Plaintiffs’ claims for Civil Conspiracy to Commit Fraud, Defamation and Tortious Interference with Economic Interests.

17. The only direct claim remaining from Plaintiffs’ Amended Complaint is Plaintiffs’ claim for Breach of Good Faith and Fair Dealing against Moving Defendants.

18. Plaintiffs have not produced *any* evidence of damages flowing from Moving Defendants’ alleged Breach of Good Faith and Fair Dealing.

### III. LEGAL STANDARD

“The purpose of summary judgment procedure is to provide a prompt, businesslike and inexpensive method of disposing of any cause in which an evaluation of the merits in the pleadings, affidavits, and stipulations, clearly shows an absence of any genuine issue of material fact requiring disposition at trial.” *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 530 (1995) (citing *Ledley v. William Penn Life Ins., Co.*, 138 N.J. 627, 641-42 (1995) (quoting *Judson v. Peoples Bank & Trust Co., of Westfield*, 17 N.J. 67, 74-75 (1954))).

When deciding a Summary Judgment Motion pursuant to R. 4:46-2:

“the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.”

*Brill*, 142 N.J. at 523. Moreover, “[t]he judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.” *Id.* at 540. (quoting *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1998)).

The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. *See* New Jersey Rule 4:46-2(c).

In *Brill*, the New Jersey Supreme Court adopted a less stringent summary judgment standard. The *Brill* Court synthesized the summary judgment standard with the directed verdict standard found in R. 4:40-2. The Court explained:



“The essence of the inquiry in each (summary judgment, R. 4:37-2(b), R. 4:40-1 and R. 4:40-2) is the same: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’”

*Id.* at 536. (quoting *Anderson*, 477 U.S. at 251-52, 106 S. Ct. at 2512). In sum, the *Brill* Court emphasized that the "thrust of [the] decision is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." *Id.* at 541.

It is well-established that when the movant demonstrates a right to summary judgment, the burden shifts to the opponent of the motion to show by competent evidence that a genuine issue of material fact exists. *See Robbins v. Jersey City*, 23 N.J. 229, 241 (1957); *James Talcott, Inc. v. Shulman*, 82 N.J. Super. 438, 443 (App. Div. 1964). A party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of the pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Wasielowski v. Sands Hotel & Casino*, 2005 WL 1088952 (D.N.J. May 10, 2005).

In this case, there are no questions of fact that need to be resolved by a jury. Plaintiffs’ claim for Good Faith and Fair Dealing is legally insufficient for several reasons. First, Defendant Jeffery Ackerson was never a party to the subject Sales Management Contract. Second, Plaintiffs have failed to show that the Moving Defendants acted in bad faith with the intent to deprive Plaintiffs of rights or benefits under the contract. Lastly, Plaintiffs have suffered no damages as a result of the alleged breach. Discovery is complete and there is not a single iota of evidence supporting Plaintiffs’ claim for Breach of Good Faith and Fair Dealing. Thus, no reasonable juror could find in favor of Plaintiffs.

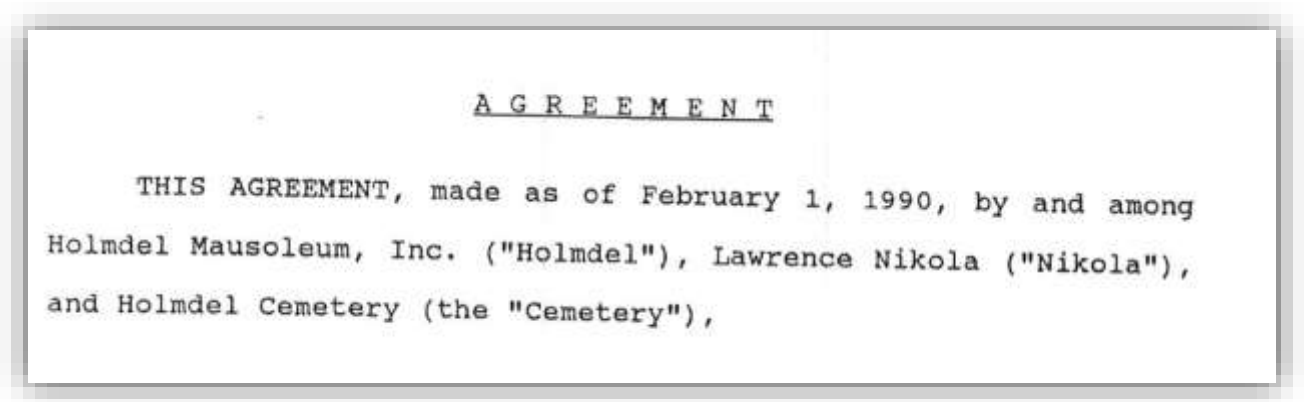
## II. LEGAL ARGUMENT

### A. PLAINTIFFS' CLAIM FOR BREACH OF GOOD FAITH AND FAIR DEALING IS LEGALLY INSUFFICIENT.

#### 1. Defendant Jeffery Ackerson Was Never A Party to the Sales Management Contract.

In New Jersey, there can be no Breach of the Implied Covenant of Good Faith and Fair Dealing unless the parties have a contract. *See Wade v. Kessler Institute*, 172 N.J. 327 (2002); *see also* New Jersey Model Jury Charge 4.10J.

Defendant Jeffery Ackerson was not a party to the subject Sales Management Contract:



*See Exhibit D* at 1.

Defendant Jeffery Ackerson was never a party to this contract and did not sign the contract. As such, Jeffery Ackerson cannot breach a contract or an implied covenant of good faith and fair dealing stemming from a contract to which he was not a party. Thus, Defendant Jeffery Ackerson is entitled to Summary Judgment dismissing Plaintiffs' Breach of Good Faith and Fair Dealing Claim.

#### 2. Plaintiffs' Claim Against Defendants for Breach of Good Faith and Fair Dealing Must Be Dismissed Because Plaintiffs Have Not Produced Any

**Evidence That Defendants Acted in Bad Faith with the Intent to Deprive Plaintiffs of Rights or Benefits Under the Contract.**

The Covenant of Good Faith and Fair Dealing calls for parties to a contract to refrain from doing anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract. *See Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc.*, 182 N.J. 210 at 230-231 (2005) (Landlord breached its Covenant of Good Faith and Fair Dealing when it withheld from tenant the fact that tenant had failed to comply with the terms of an option that it knew tenant intended to exercise). “Proof of ‘bad motive or intention’ is vital to an action for breach of the covenant [of good faith and fair dealing].” *Id.* at 225. (quoting *Wilson v. Amerada Hess Corp.*, 168 N.J. 236, 25 (2001)). “To state a claim for breach of the implied covenant of good faith and fair dealing a contracting party must allege that the accused acted in bad faith or engaged in ‘some other form of inequitable conduct in the performance of a contractual obligation.’” *Pactiv Corp. v. Perk-Up, Inc.*, 2009 U.S. Dist. LEXIS 72796, at \*34 (D.N.J. Aug. 18, 2009) (quoting *Black Horse Lane Assoc., L.P. v. Dow Chemical Corporation*, 228 F.3d 275, 289 (3rd Cir. 2000)). “[A]n allegation of bad faith or unfair dealing should not be permitted to be advanced in the abstract absent an improper motive.” *See Wade v. Kessler Institute*, 172 N.J. 327, 341 (2002).

In *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc.*, the Plaintiff, a tennis club tenant, failed to properly exercise the express terms of an option agreement to purchase the occupied premises from its commercial landlord. Plaintiff sued, alleging that the landlord’s evasive tactics caused the tenant to lose its option to buy the tennis club under the lease. During discovery, the Plaintiff provided evidence showing that over the nineteen months, the tenant repeatedly wrote and spoke with agents of the landlord for the purpose of setting the date and terms of the closing. The landlord's agents, through a series of written and verbal evasions, delayed

responding to the persistent requests of the tenant to close the deal. When the deadline for exercising the option passed, the landlord, for the first time, pointed out the deficiency to the tenant. In finding that the landlord had breached the Covenant of Good Faith and Fair Dealing, the Supreme Court clarified the proof standards for a breach of good faith and fair dealing claim: “Proof of ‘bad motive or intention’ is vital to an action for breach of the covenant.” *Id.* at 225. The Court also stated that the party claiming a breach “must provide evidence sufficient to support a conclusion that the party alleged to have acted in bad faith has engaged in some conduct that denied the benefit of the bargain originally intended by the parties.” *Id.*

Here Plaintiffs have not provided any evidence of any bad faith, let alone anything remotely similar to the evasive bad faith tactics shown in *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc.* Plaintiffs’ conclusory two sentence allegation in the Amended Complaint simply is not enough to support a claim for Breach of Good Faith and Fair Dealing. Plaintiffs’ have had countless opportunities to provide evidence that Defendants “expressly approved defendant Boyce’s acts of defamation and disparagement against Plaintiffs” however they have failed to do so. *See Exhibit A Compl.* at Count 4 ¶ 9. Furthermore, the record is clear that the Defendants’ never instructed or encouraged Boyce to make any defamatory statements:

Q Earlier there was testimony about negative talk in the community about Holmdel Cemetery and/or Memorial Properties. Did anyone at Holmdel Cemetery ever instruct you to speak negatively about Holmdel Cemetery and/or Memorial Properties?

A No.

Q Did Jeffrey Ackerson ever instruct you to speak negatively about Holmdel Cemetery and/or Memorial Properties?

A No.

*See Exhibit C at 166:1-19.*

Plaintiffs have not provided any evidence to refute Boyce's testimony or support their theory that Defendants "actively encouraged or rewarded such behavior." *See Exhibit A Compl.* at Count 4 ¶ 10. Plaintiffs' claim simply cannot proceed absent evidence of an improper motive or bad faith. Therefore, Plaintiffs' claim for Breach of Implied Covenant of Good Faith and Fair Dealing must be dismissed.

**3. Plaintiffs' Claim Against Defendants for Breach of Good Faith and Fair Dealing Must Be Dismissed Because Plaintiffs have not produced any evidence of damages.**

To proceed with a claim for Breach of the Implied Covenant of Good Faith and Fair Dealing a Plaintiff must show that because of the Defendant's actions, the Plaintiff was unable to realize the benefits of the contract. *See Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping*

*Center Assoc.*, 182 N.J. 210 (2005); *Wade v. Kessler Institute*, 172 N.J. 327 (2002); *see also* New Jersey Model Jury Charge 4.10J.

Plaintiffs have not produced any evidence of damages flowing from the alleged breach of Good Faith and Fair Dealing. To date, the Sale Management Contract remains in place. Plaintiff Nikola remains an active Board Member of Holmdel Cemetery and Plaintiffs' continue to earn sales commission as guaranteed under the contract. There can be no claim for a Breach of the Covenant of Good Faith and Fair Dealing if there are no damages. Therefore, Plaintiffs' Good Faith and Fair Dealing claims must be dismissed.

### III. CONCLUSION

For the reasons set forth above, Moving Defendants Holmdel Cemetery and Jeffrey Ackerson respectfully request that the Court grant their Motion for Summary Judgment dismissing claim for Breach of Good Faith and Fair Dealing, with prejudice.

#### **GOLDBERG SEGALLA LLP**

*Attorneys for Defendants Holmdel Cemetery and  
Jeffrey Ackerson*

By: /s/Earyn Edwards.  
EARYN J. EDWARDS, ESQ.

Dated: February 18, 2022

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Before Appellate Division,  
Superior Court of New Jersey  
DOCKET NO. **A-001164-22**

**CIVIL**

**LARRY NIKOLA AND MEMORIAL PROPERTIES, LLC  
V.**

**ALTICE USA, INC.; ALTICE USA NEWS, INC., A DIVISION OF ALTICE USA, INC., D/B/A  
NJ NEWS 12; NJ NEWS 12, WALTER KANE, INDIVIDUALLY AND AS AN EMPLOYEE  
OF ALTICE USA, INC., ROBERT BOYCE, FAY GIANARIS, HOLMDEL CEMETARY  
COMPANY, JEFFREY ACKERSON, JOHN DOE AND ABC CORP.  
AND  
ROBERT BOYCE**

**PROOF OF SERVICE**

I hereby certify that an original of the following documents, **RESPONDENTS BRIEF,  
RESPONDENTS APPENDIX (Vol. 1), PROOF OF SERVICE** were submitted and  
transmitted to the parties listed below in the following format:

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**BY MAIL:**

I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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Dated: **07/10/2023**

By: **S/ JOHN W MEYER, Esq.**