

MTK FOOD SERVICES, INC., d/b/a	:	SUPREME COURT OF NEW JERSEY
THE PALACE RESTAURANT	:	Docket No.: 081610
	:	
Plaintiff-Appellant,	:	
v.	:	Civil Action
	:	
SIRIUS AMERICA INSURANCE	:	On Appeal from Appellate Division
COMPANY; NORTH AMERICAN RISK	:	Interlocutory Order Dated June
SERVICES; SPENCER B. ROBBINS,	:	29, 2018
ESQ.; ROBBINS & ROBBINS, LLC;	:	
JOHN AND JANE DOES 1-10	:	App. Div. Docket No.: A-1309-17
(fictitious names); COMPANIES	:	
1-10 (fictitious names);	:	<u>Sat Below:</u>
CRAWFORD CLAIMS MANAGEMENT	:	Richard S. Hoffman, J.A.D.
SERVICES; and JOHN AND JANE	:	Robert J. Gilson, J.A.D.
DOES 11-20 (fictitious names);	:	Jessica R. Mayer, J.A.D.
ALLIED WORLD ASSURANCE COMPANY	:	
(U.S.) INC.; DARWIN SELECT	:	Law Division
INSURANCE COMPANY; ABC	:	Monmouth County
INSURANCE COMPANY (a	:	Docket No. L-1227-12
fictitiously named company	:	
that may be responsible for	:	<u>Sat Below:</u>
all or part of the judgment);	:	Hon. Joseph P. Quinn, J.S.C.
ARCHER & GREINER, P.C.;	:	
RICHARD GRUNGO, JR., ESQ.;	:	
JAVERBAUM WURGAFT HICKS KAHN	:	
WIKSTROM & SININS, P.C.; AND	:	
DAVID WIKSTROM, ESQ.	:	
	:	
	:	
Defendants/Respondents.	:	

BRIEF OF AMICUS CURIAE NEW JERSEY STATE BAR ASSOCIATION

OF COUNSEL:

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ON THE BRIEF

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PRELIMINARY STATEMENT

Amicus curiae New Jersey State Bar Association (NJSBA) submits this brief in opposition to plaintiff MTK Food Services, Inc. d/b/a The Palace Restaurant's (MTK) motion for leave to appeal the Appellate Division's June 29, 2018 decision and Order.

In this case, the Appellate Division correctly applied the Restatement (Second) of Conflict of Laws § 142 (1988) and McCarrell v. Hoffman-La Roche, 227 N.J. 569 (2017) to hold that Pennsylvania's two-year statute of limitations governs plaintiff's legal malpractice claim against defendants Archer and Grungo. The court properly held that the maintenance of a New Jersey bar license by Mr. Grungo, without more, is insufficient to provide New Jersey with a "substantial interest" in the maintenance of a malpractice claim arising out of his representation in a Pennsylvania lawsuit. The Appellate Division's decision avoids unfair prejudice to New Jersey licensed attorneys simply by reason of that license, and promotes principles of comity and uniformity in decision-making. There is no reason for this Court to accept MTK's invitation to disturb the ruling.

Furthermore, MTK has not demonstrated that Supreme Court intervention is required to "prevent irreparable injury." At this juncture, there already has been appellate review on the merits of the trial court's decision. In addition, there is no

"irreparable harm" because plaintiff maintains a legal malpractice cause of action against other defendants and, after final judgment, appellate rights as to the entire action.

LEGAL ARGUMENT

I. THE APPELLATE DIVISION CORRECTLY APPLIED SECTION 142 OF THE RESTATEMENT (SECOND) OF CONFLICTS OF LAWS AND THERE IS NO REASON TO DISTURB THE PANEL'S WELL-REASONED DECISION ON AN INTERLOCUTORY BASIS

The Appellate Division's decision was well reasoned and a correct statement of applicable New Jersey law.

In its written opinion, the Appellate Division properly identified the narrow issue before the Court as to whether Pennsylvania's two-year or New Jersey's six-year statute of limitations applies to plaintiff's legal malpractice claim against the Archer defendants. (See Pa8).¹ The Appellate Division correctly noted that "[t]he only pertinent connection to New Jersey - that Grungo, a New Jersey licensed attorney, worked in a New Jersey office - falls short of establishing a substantial interest for New Jersey to apply its statute of limitations here." (see Pa11). The court further noted that Grungo's New Jersey licensure "bears no relation to the malpractice allegation" and, thus, does not mandate that New Jersey's statute of limitations period override that of Pennsylvania, where the representation, lawsuit and relevant conduct occurred. (Pa12).

¹ The designation "Pa" refers to plaintiff-appellant's Appendix submitted to the Supreme Court with its motion for leave to appeal.

The Appellate Division's decision reflects the correct application of the "substantial interests" test articulated in Section 142 of the Restatement (Second) of Conflict of Laws and the legal principles of McCarrell. It properly relies on this Court's decisions in McCarrell, supra, 227 N.J. 569, Heavner v. Uniroyal, Inc., 63 N.J. 130 (1973), and Gantes v. Kason Corp., 145 N.J. 478 (1996), to hold that mere licensure or incorporation in New Jersey is insufficient to provide New Jersey with a "substantial interest" under Section 142. (See Pall). Further, the court's decision promotes fairness and principles of comity, and advances predictability and uniformity in decision-making.

Importantly, under the Appellate Division's decision, attorneys holding New Jersey licenses will not be placed in an unfair position relative to their colleagues in other states who are not barred in New Jersey. It avoids the untenable situation in which a New Jersey attorney practicing in another state would be required to defend against a malpractice claim arising out of representation occurring in that jurisdiction, while co-counsel not barred in New Jersey would not because of that other state's shorter limitations period. Furthermore, the Appellate Division's ruling promotes the public policies of other jurisdictions that have enacted shorter statutes of limitations to regulate legal representation occurring within their borders.

The Appellate Division's ruling is sound and provides no basis for granting leave to appeal under the circumstances.

II. PLAINTIFF'S MOTION FOR LEAVE TO APPEAL DOES NOT DEMONSTRATE IRREPARABLE HARM AS REQUIRED UNDER THE RULES

Pursuant to Rule 2:2-2(b), "[a]ppeals may be taken to the Supreme Court by its leave from interlocutory orders . . . Of the Appellate Division when necessary to prevent irreparable injury." This standard "expresses the immediacy and urgency which justify prompt Supreme Court review." Pressler, Current N.J. Court Rules, comment 3 on R. 2:2-2. Notably, this standard is significantly more stringent than the standard on a motion for leave to appeal an interlocutory order to the Appellate Division, which permits that court to grant the motion "in the interest of justice." See R. 2:2-4.

MTK has failed to demonstrate that Supreme Court review is now necessary to prevent irreparable harm. Here, there has been appellate review of the merits of the trial court's decision. In addition, the Appellate Division's ruling only bars MTK's claim against the Archer defendants. MTK has an avenue of relief on its claims. Plaintiff has not cited to any case in which the New Jersey Supreme Court has granted a plaintiff's motion for leave to appeal under similar circumstances. MTK's reliance on cases

in which the Appellate Division granted leave to appeal under the "interest of justice" standard is misplaced.

When, as here, the Appellate Division has reviewed the trial court's decision and issued a substantive ruling on the merits finding that the plaintiff's legal malpractice is barred only with respect to one group of defendants, the irreparable harm standard is not met. MTK's motion should be denied for failure to meet the required elements for Supreme Court intervention.

CONCLUSION

For the foregoing reasons, amicus curiae NJSBA respectfully requests that this Court deny plaintiff MTK's motion for leave to appeal and invitation to disturb the Appellate Division's ruling.

Respectfully submitted,
New Jersey State Bar Association

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Dated: July 30, 2018