

ALEXIS L. GASIOROWSKI ESQ. LLC  
Attorney ID No. 008722006  
171 Broad Street # 8069  
Red Bank, New Jersey 07701  
Tel: (908) 675-6860  
algasior@alexisgasirowskilaw.com  
*Attorney for Defendant James Visconti*

GREGORY M. VISCONTI,

Plaintiff,

v.

NJ GRANDE LLC

and

JAMES P. VISCONTI; and

NICHOLAS CIMMINO

Individually

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, GENERAL EQUITY,  
PASSAIC COUNTY

Docket No. PAS-L-0342-22

Civil Action

**CERTIFICATION OF JAMES P. VISCONTI  
IN SUPPORT OF MOTION TO  
CONSOLIDATE AND TO DEEM  
DEFENDANT'S ANSWERS TO ADMISSIONS  
ACCEPTED**

James P. Visconti, of full age, residing at 235 Delawanna Avenue, Clifton, New Jersey, hereby certifies as follows:

1. I am the defendant in the above matter, and I submit this Certification in Support of my application to consolidate this litigation with the case captioned Visconti vs. Cimmino, et. al., Docket No. PAS-C-0049-23, currently pending before the Honorable Frank Covello in the Chancery Division of Passaic County.

2. I am a fifty percent (50%) shareholder of NJ Grande LLC, (hereinafter "the LLC"), doing business as (d/b/a Grande Saloon (hereinafter "the Business. The Business, which is now closed after months of litigation in various divisions of the Passaic County Superior Court, operated as a bar and restaurant. **(Ex. A)**

3. Nicholas Cimmino, (hereinafter "Cimmino" or "Defendant") is also a fifty-percent shareholder in the LLC and the Business. Cimino is also my nephew.

4. Plaintiff, Gregory Visconti (hereinafter "Visconti"), filed the Complaint in this litigation based on the alleged default of a Note between himself and the LLC. Cimmino and I both signed that Note as personal guarantors. Visconti is also the landlord of the building that housed the business, and the Business was his tenant. Visconti is my brother, and Cimmino's uncle.

5. As set forth below, there have been numerous litigations filed in Passaic County since 2021 regarding the Business, the Lease, and the Note that is the subject of this Law Division matter.

6. This Law Division matter arises out of an alleged default on a promissory note between Visconti and the LLC. On or about November 15, 2018, the Business signed a Promissory Note (hereinafter "the Note") in the amount of Five Hundred and

Seventy-Two Thousand, Eight Hundred and Ninety-Seven Dollars (\$572,800.97) with Visconti. The purpose of the Note was to secure financing for the Business. Cimmino and I executed the Note as members of the LLC. We also guaranteed the Note personally **(Ex. B)**

7. Under the terms of the Note, the LLC is to pay to Visconti the sum of Five Hundred and Seventy-Two Thousand, Eight Hundred and Ninety-Seven Dollars (\$572,800.97), plus interest calculated at the rate of 8.00% per annum as interest only for five years. **(Id.)**

8. However, and as described below, the issues in dispute between Visconti, Cimmino, the LLC and I are far more procedurally and substantively complex than a simple default on the Note. Only in the last month has a sudden change of position by Cimmino, supported by evidence that may support allegations of fraud and other tortious acts by Visconti, come to light.

9. In or around late March/early April 2021, disputes arose between Cimmino and I regarding the operation and management of the Business. I retained Geoffrey Mott, Esq. to represent me, and Defendant retained Glen Peterson, Esq. to represent his interests.

10. On or about April 1, 2021, Cimmino, without a court order and without my consent as an equal shareholder/member of the LLC, involuntarily dissociated me from the LLC. In fact, Cimmino removed my name from the LLC. He then assumed exclusive control and management of the LLC and the Business, essentially converting

the LLC into a sole proprietorship. He committed numerous wrongful, fraudulent, and possibly illegal acts which deprived me of my ability to have access or usage of bank accounts, or information regarding the business operations, ledger books, debts, and assets.

11. During the time that I was absent from the Business, Cimmino repeatedly assured me that we were in good standing with Visconti under the terms of the Note, and that payments were being timely made. By email dated October 4, 2021, Visconti advised me that he had not received the interest payment for the month of October. Cimmino again assured me that the Business was not in default.

12. Then, I learned that Cimmino, exceeding the authority provided to him by the Operating Agreement of the Business, unilaterally consented to a judgment for the Note in favor of Visconti in the amount of Six Hundred and Twenty-One Thousand, Five Hundred and Fifty-Seven Dollars and Sixty Cents (\$557,557.60) based on the default on the Note. He did so without consulting with me, and contrary to the assurances he made to me that the interest payments were being made.

13. Based on the acts of Cimmino, on or about January 24, 2022, my prior attorney Geoffery Mott filed a Complaint in the Chancery Division of Passaic County captioned: James Visconti vs. Nicholas Cimmino, and NJ Grande, Docket No. C-0009-22. The

Complaint sought dissolution of the LLC, to grant me a 50% interest in the total value of the LLC and the Business, an accounting of the business, for the appointment of a receiver and other relief, and for Cimmino to reimburse me for all funds that he misappropriated.

14. On or about February 7, 2022, Visconti filed the within Complaint in the Law Division of Passaic County captioned Gregory M. Visconti vs. NJ Grande LLC, James P. Visconti and Nicholas Cimmino, Docket No. PAS-L-000342-22. That complaint alleges that no payments were made on the Note and seeks default.

15. Because Cimmino had wrongfully "ousted" me from the Business, I had no idea that Cimmino had allegedly failed to make any interest payments under the terms of the Note. Moreover, since Cimmino had fraudulently caused me to be removed from the business and its bank accounts, I had no ability to ensure that these payments were being made.

16. I retained my new counsel, Alexis L. Gasiorowski in or around December 2022. The discovery end date in this Law Division matter was on or around December 22, 2022. Mott did not produce my file to Ms. Gasiorowski. Ms. Gasiorowski filed an Order to Show Cause for production of the file and the file was eventually provided in January 2023. After it was confirmed that no discovery had been taken or exchanged in this Law Division matter, Ms. Gasiorowski filed a Motion to Extend the Discovery End Date

based on extraordinary circumstances. Even though the motion was unopposed, Judge Brogan denied the motion.

17. It was then determined that while there was a trial approaching in the Chancery matter for in or around April 2023, there had been no forensic accounting of the business, and discovery initiated by my prior attorney Mott was incomplete. While Robert Zak, CPA was retained to perform a forensic accounting in anticipation of the trial, Zak later advised counsel that his report would not be completed until a short window of time before the scheduled trial date.

18. Knowing that my allegations of fraud, embezzlement and misappropriation of funds could not be proven without a forensic accountant report, and in accordance with the terms of the Operating Agreement, I agreed to dismiss the Chancery litigation against Cimmino without prejudice and subject to a waiver of any statute of limitations, so that there could be a forensic accounting of the Business in accordance with the terms of the Operating Agreement.

19. On or about February 14, 2023, Visconti filed a Complaint in the Law Division, Special Civil Part, against Cimmino, the LLC and I captioned Gregory Visconti d/b/a Integrity Partners v. Nicholas Cimmino, et. al., Docket No. PAS-LT-0737-23. Gregory Visconti sought payment of unpaid insurance and rent. Ms. Gasiorowski filed a motion to consolidate the Landlord Tenant

matter with the Chancery Division matter. Last week, I consented to eviction. Visconti demonstrated significant bad faith in that litigation, which may be tantamount to fraud. While the Court had initially ordered that eviction would be granted several months ago if the several months of unpaid rent were not paid, when we appeared on the return date Mr. Mackiewicz argued that the Court had previously ordered NJ Grande to pay approximately \$30,000.00 in taxes to avoid eviction. This never happened. In fact, while the Lease is a triple net lease, Cimmino was able to offer evidence confirming that Visconti had always included the taxes in our monthly rent payments. Not only had the Court never issued such an Order, but Visconti's Complaint did not even allege a claim for unpaid taxes. The Court was not fooled. I recently consented to the eviction and withdrew the application that I had filed to consolidate the Landlord Tenant matter with the Chancery Matter.

20. Once Ms. Gasiorowski was notified by Zak that his draft report would be forthcoming, she immediately re-filed my Complaint against Cimmino and Spencer Bank on April 26, 2023. I have attached a copy of that Verified Complaint and the Case Information Statement, which notifies the Court for the need for consolidation and that I anticipated adding new parties, hereto as **Exhibit C**. In my application, I sought to have my partnership rights, including my ability to access and utilize the business

account at Spencer Savings Bank, immediately restored. I also sought to restrain and enjoin Cimmino from entering transactions on behalf of the LLC on an emergent basis. My complaint against Cimmino details the history of this Law Division litigation, and in Cimmino's fraudulent and deceitful conduct and representations regarding all matters regarding the LLC and, in pertinent part, the payment or nonpayment of the Note. (Id.)

21. Count Four of my Complaint asserts claims against Cimmino for fraud. Five of my Complaint seeks damages against Cimmino for his actions in failing to pay the interest payments under the Note as it pertains to this Law Division litigation. Count Six assert claims against Cimmino regarding the Lease with Visconti.

22. My Complaint also raises a cause of action against Spencer Savings Bank and Cimmino related to the fraudulent and wrongful removal of me from the LLC's business account at Spencer Bank. As detailed below, it appears from evidence submitted by Cimmino on June 2, 2023, that Visconti may be a necessary party to the claims against Spencer Bank.

23. By Order dated May 5, 2023, Judge Covello granted my application for emergent relief to have my rights to the LLC restored, and to restrain and enjoin Cimmino from entering any new transactions on behalf of the LLC without my written consent. The



Court also ordered Spencer Bank to restore my banking privileges with Spencer Bank. **(Ex. D)**

24. Only a few days after I filed my Verified Complaint and Order to Show Cause, Zak produced his DRAFT forensic accounting report of the LLC for only the year 2022 to counsel. Incredulously, Cimmino (who first assured me that interest payments were being timely made, then signed a consent judgment attesting to the default, and then retracted that consent claiming he acted under duress imposed on him by Visconti) represented to Zak that \$48,000.00 in cash from the business was in fact paid to Visconti as and for interest payments on the Note that is the subject of this Law Division litigation.

25. When Cimmino, Visconti and I appeared before the landlord-tenant court with our respective attorneys on or about May 8, 2023, Cimmino provided a handwritten certification stating that he had paid \$48,000.00 to Visconti in 2022 as and for interest payments on the Note and that would provide his proofs. He never did. No mention was ever made of any other interest payments to Visconti. Ms. Gasiorowski and Visconti's attorney followed up with Cimmino's attorney numerous times for the promised proofs and received no response.

26. By letter dated May 30, 2023, Visconti's attorney wrote to counsel advising that Visconti was "outraged by the accusation made by Mr. Cimmino, regarding the alleged \$48,000.00 in payments

in 2022." Visconti demanded a retraction, and advised that if one was not given immediately, he would submit a Certification to be used in all proceedings wherein Visconti essentially calls Cimmino a liar and denies any interest payments made to him. In that unsigned Certification, Visconti states "Since the October 2021 default I have not been paid anything on the Note." Attached to the unsigned Certification are copies of two consent judgments signed by Defendant.

27. Until being provided with counsel's letter, I was completely unaware that Cimmino had signed a second consent judgment in 2022. A copy of the Certification signed by Certification attesting to the \$48,000.00 in interest payments in 2022 is also attached thereto. **(Ex. E)**

28. Despite the requests of my attorney, Visconti refused to execute his proposed Certification. On Friday, June 2, 2023, Cimmino's counsel then forwarded my attorney a Certification signed by Cimmino which states for the first time since any litigation has been filed in any court that he has paid almost \$200,000.00 in cash to Visconti as and for interest payments on the Note since 2018. This would mean that at the time Visconti filed his Complaint in Law Division based on default of the interest payments, no cause of action had even accrued, and Visconti filed a false pleading with the Court. Cimmino further certified that it was Visconti who demanded that Cimmino make the payments to him, and into personal

bank accounts of Visconti and his girlfriend in cash for Visconti to hide monies from his ex-wife in his divorce litigation. In other words, according to Cimmino, Visconti asked Cimmino to help him perpetrate a fraud on his ex-wife, the Court, myself and potentially the Internal Revenue Service. **(Ex. F)**

29. Only after these documents were filed with the Court did Visconti eventually sign the Certification he had previously sent to counsel, denying the claims made by Cimmino that he had received interest payments. While Visconti's Certification denies interest payments were made, it is interesting that Visconti has not certified to a blanket denial of all allegations made in Cimmino's Certification; namely: (1) that Visconti advised Cimmino that interest payments were to be paid in cash; (2) the payments must be made in cash because his ex-wife was taking Visconti back to court for an increase in support payments and he did not want to have the monies recorded; (3) that Cimmino paid Visconti and/or his girlfriend almost \$200,000.00 in cash for whatever reason between 2018 and 2022; (4) that Visconti gave Cimmino instructions to make cash payments into the bank accounts of Visconti and his girlfriend Nancy Morris, for whatever reason; or (5) that Visconti did in fact receive cash monies from Cimmino either directly, or via his bank account and Ms. Morris' bank account.

30. Visconti has no explanation for why Cimmino would have the personal bank account information for both Visconti and Ms.

Morris if he was not making payments to one or both of them with cash from the LLC for whatever reason. This raises the question of whether there was an arrangement between Cimmino and Visconti for cash from the business to be exchanged for any other reason. **(Ex. G)**

31. I find it hard to believe that Cimmino would engage in a fraud conspiracy at Visconti's request unless he was receiving some form of consideration from Visconti. This needs to be investigated through discovery, as I may well have claims against Visconti.

32. I have questioned whether Cimmino and Visconti have had various "side deals" regarding the lease and the business. As set forth above, I was barred from seeking discovery on this issue in this Law Division matter when my application for an extension of the discovery end date was denied. Cimmino, whether by fear of Visconti or for other reasons, has also not been cooperative in disclosing information until now. In his Certification dated June 2, 2023, Cimmino also implicates Visconti for the first time in the tortious act of having me wrongfully removed from the business bank account. In fact, Defendant certifies that Plaintiff "instructed" him to cancel my banking privileges. **(Id.)** If in fact Cimmino's claims can be proven, Visconti would be a necessary party to the Chancery matter for any claims arising out of his actions including tortious interference with economic advantage/business and fraud. I am in the process of consulting with an attorneys and I intend to

file an application in the Chancery Matter to add Visconti as a party, if necessary.

33. On or about June 5, 2023, Cimmino's counsel Mr. Peterson issued subpoenas under the Chancery docket for the bank accounts of Visconti and his girlfriend Ms. Morris to substantiate Cimmino's claims. **(Ex. H)**

34. Trial in this Law Division matter was scheduled for June 19, 2023. This matter was adjourned until August based on a health issue with Ms. Gasiorowski, who only recently returned to work part-time.

35. It is my understanding that Mr. Pederson has not yet received a response to the subpoena that he served to retrieve Visconti's bank statements. On July 5, 2023, Mr. Pederson forwarded Ms. Gasiorowski a copy of the bank statements for Ms. Morris' bank account for the time period of January 1, 2020, to January 1, 2023. While the account shows numerous deposits, there are a total of three monthly deposits in amount of \$4,000.00, which is the exact amount of the monthly payments on the Note. This must be investigated through further discovery. Ms. Gasiorowski has redacted Ms. Morris' personal information from these statements because she is not a party to this litigation. An unredacted copy of these statements will be provided to counsel under separate cover and to the Court upon request. **(Ex. I)**

36. On June 9, 2023, Visconti filed a Certification with the Landlord Tenant Court in support of his request for emergent relief. In his Certification, Visconti now alleges that Ms. Morris "funded \$275,000.00 towards the funds used by the Defendants to buy the bar." **(Ex. J; Pg. 2-3)** This is news to me. Ms. Morris is not mentioned in the Note, the lease or to my knowledge any other contract between Visconti, Cimmino, the LLC and me. She is not listed as a plaintiff or interested party in this Law Division litigation. If Ms. Morris in fact "funded" approximately ½ of the loan to the business, then how can Visconti seek a judgment from this Court for the full amount? Ms. Morris is a necessary party that must be joined in this Law Division matter.

37 At a minimum, there is an indicium of fraud on the part of Visconti in this litigation, which has only been uncovered within the last month. There can be no question that for the Law Division and Chancery matters to be thoroughly and fairly litigated, and in the interests of judicial efficiency, these cases must be consolidated.

33. Counsel for all parties involved in the Chancery Matter recently had a Case Management Conference with Judge Covello setting forth dates for discovery and trial. Counsel conferenced with Judge Covello regarding the issue of consolidation, and all parties agreed to the Law Division matter being consolidated with the Chancery matter. It is my understanding that because of the

limited jurisdictional powers of the Law Division, the Chancery matter cannot be consolidated with the Law Division matter. Moreover, my request for an extension of the discovery end date in the Law Division matter was denied and the case is scheduled for trial in August. Therefore, I am filing to have this "first filed" Law Division matter consolidated with the Chancery matter.

34. It is important to emphasize that I had no way of knowing Cimmino would again change his position regarding payment or nonpayment of the interest on the Note on virtually the eve of trial. However, and because I only recently had my rights regarding the LLC restored by the Court where Cimmino (perhaps at the direction of or with the cooperation of Visconti) wrongfully "ousted" me from the LLC. The evidence Cimmino has provided clearly warrants me being provided to conduct discovery and fully investigate not only the merit of Visconti's claims but causes of action against Visconti. Where there is an indicium of fraud, Visconti should not be entitled to proceed to trial and possibly receive a judgment in the Law Division matter of more than one-half a million dollars, only for me to be foreclosed from seeking any claims against him. Moreover, it was not until June 9, 2023, that Visconti has now alleged that Ms. Morris funded \$275,000.00 towards the business.

35. Based on the above, I am respectfully requesting that the Court grant my application to consolidate this matter with the Chancery matter.

36. In the alternative, where trials in Passaic County are to be suspended effective July 31, 2023, I am asking that the Court either reopen discovery in this matter for a period of (90) days, or for a trial date to not be set in this Law Division matter for at least 90 days so that I can proceed with discovery in the Chancery Division and file any necessary claims against Visconti.

37. I am also asking that the Court exercise its discretion pursuant to the Rules of Court to deem my answers to admissions served by Visconti deemed accepted within time.

38. On May 16, 2023, Visconti's counsel Mr. Mackiewicz served my attorney with Requests for Admissions in this Law Division matter. My answers would be due within 30 days, or on or about June 16, 2023. **(Ex. K)**. Beginning in early May, my attorney developed a serious health condition that impaired her vision, amongst other symptoms and hardships. All counsel were aware of the onset of this health issue prior to this time as it had been an ongoing issue when we appeared in Landlord Tenant Court in May.

39. I have attached as **Exhibit L** a series of correspondence exchanged between Ms. Gasiorowski and Mr. Mackiewicz which demonstrates my attorney's efforts to resolve the issue of the



delay in my response to Admissions, due to circumstances outside of my control. By letter dated June 5, 2023, Ms. Gasiorowski wrote to counsel in accordance with the procedures set forth by the Court and requested consent or an adjournment of the trial in this Law Division matter scheduled for June 19, 2023. Ms. Gasiorowski notified counsel for the need for an adjournment based on her "health and ability to zealously advocate for [her] client." She also advised counsel that based on the recent submissions of Cimmino which required additional discovery, as well as the need to file an application for consolidation, she believed that the trial needed to be adjourned. Ms. Gasiorowski emphasized that the sole reason for her request at this time was due to her health and ability to prepare for an attend trial. (Id.)

40. It is my understanding that an attorney seeking an adjournment of a trial is supposed to first seek consent from her adversaries. That is what Ms. Gasiorowski did. While Mr. Pederson promptly responded on behalf of Cimmino and consented to the adjournment, Mr. Mackiewicz simply ignored the letter.

41. After that, Ms. Gasiorowski did in fact submit to this Court a detailed letter from her physician setting forth the status of Ms. Gasiorowski's health, the limitations that it placed on her ability to perform work duties, the need for an immediate hiatus from work, and the risk of permanent damage to her eyes if the physician's directions were not followed. Ms. Gasiorowski

will provide an additional copy of this note to the Court upon request.

42. By letter dated June 12, 2023, Ms. Gasiorowski dictated another letter to counsel regarding the adjournment request as well as notifying counsel that because of her health condition she was unable to meet the deadline of June 16, 2023, to provide answers to admissions. In that letter, Ms. Gasiorowski wrote "I am obviously unable to prepare answers to [the Admissions.] I have submitted a note from my doctor to the court which provides that I am suffering from a severe ocular condition, I am to take an immediate hiatus from work, I am unable to use a computer or review documents, and failure to follow these recommendations may result in permanent damage to my eyes." Ms. Gasiorowski asked Mr. Mackiewicz to consent to a fourteen-day extension of time to answer the admissions. (Id.) Mr. Mackiewicz did not have the courtesy to respond to this letter, either.

43. Based on the content of the letter to the Court submitted by Ms. Gasiorowski's physician, this trial was adjourned to August 9, 2023. By letter dated June 20, 2023, Ms. Gasiorowski again wrote to Mr. Mackiewicz, after placing several calls to him that were not returned and asked that he call her regarding the request for extension of time to answer admissions. She emphasized that she was just returning to work but was experiencing an exacerbation of symptoms with her eyes writing

emails. (Id.) Mr. Mackiewicz did not respond to that email, either.

44. By letter dated June 22, 2023, Ms. Gasiorowski again write to Mr. Mackiewicz and advised that she was doing her "best" to provide the Answers by June 23, 2023. Ms. Gasiorowski emphasized to Mr. Mackiewicz that this was the third time she had attempted to discuss the extension with him, and he simply would not respond. She notified counsel that where he was aware of her medical condition, and was simply refusing to respond to her emails, if he did not respond then she would have no alternative but to file an application with the Court in which she would seeks sanctions. (Id.)

45. With great effort, Ms. Gasiorowski was able to provide the responses to Admissions to Mr. Mackiewicz on June 26, 2023, ten calendar days after the due date and within the two-week extension that she had requested from Mr. Mackiewicz weeks earlier. Ms. Gasiorowski asked Mr. Mackiewicz whether he would accept them as timely, and he again would not respond. It was only after Ms. Gasiorowski followed up with an email stating that silence on her request they be accepted as timely did Mr. Mackiewicz respond that he would not accept the late submission. The trial has been adjourned to August. It is my understanding that effective July 31, 2023 there is a moratorium of civil trials

in Passaic County. There is no prejudice to Visconti by my late submission, which was unavoidable and faultless.

46. This "scorched earth" approach to litigation by Visconti, as evidenced by his attorney's conduct, is the main reason that all of these litigations have become so complicated and tortuous. I am not an attorney, but I cannot imagine how a litigant is able to use an attorney's documented health issue to his advantage.

47. Despite the fact that the discovery end date in this Law Division matter closed in December 2022, Visconti's counsel served additional subpoenas in this matter for bank records. However, he never provided copies of any documents received to opposing counsel. Ms. Gasiorowski has written to Mr. Maciewicz several times to request that he provides the documents in accordance with the Rules of Court. Ms. Gasiorowski asked that if no documents had been received, counsel simply confirm that fact. Mr. Maciewicz has failed to respond to these letters.

48. While I am well aware of Visconti's bad faith approach to litigation, Mr. Mackiewicz knows better. Such behavior should not be sanctioned by this Court. I am respectfully requesting that in addition to granting my request that my Answers to Admissions be deemed timely.

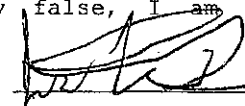
47. I thank the Court for taking the time to review my application.

litigation, Mr. Mackiewicz knows better. Such behavior should not be sanctioned by this Court. I am respectfully requesting that in addition to granting my request that my Answers to Admissions be deemed timely.

47. I thank the Court for taking the time to review my application.

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

7/25/23

  
James P. Visconti

July 25, 2023

