

WRONGFUL DEATH – BRIEF IN SUPPORT OF FINAL SUMMATION

NATURE OF THIS PROCEEDING

The matter before the Court is a proof hearing on plaintiff's complaint. Plaintiff, Joseph Luongo, Jr. has filed the civil complaint in this matter against defendant, Ernest Gisler for the wrongful death of Joan Gisler. Joan Gisler was the sister of plaintiff and the wife of defendant. Defendant has refused to provide responsive answers to interrogatories nor any documentation in response to plaintiff's request for the production of documents. Furthermore, defendant has refused to appear for the taking of his deposition.

Defendant's answer was stricken by order of the court in this matter and default has been entered. The nature of this proceeding is to determine the extent of damages for wrongful death (First Count of the complaint) and the survivor action (Second Count). In this hearing the defendant was allowed "limited participation", without the right to call witnesses. See, Levin v. Levin, 129 N.J. Super 142 (App.Div. 1974).

In this proceeding, the court has the discretion to require plaintiff to present some form of proof of liability. The standard of proof required is that plaintiff must show a "bare sufficiency" of the evidence. The court should not engage in the weighing of evidence or finding of facts but only determining if such bare sufficiency of evidence has been offered by the plaintiff. See, Douglas v. Harris, 35 N.J. 270, 276 (1961) and Heimbach v. Mueller, 229 N.J. Super. 17

(App.Div. 1988). See also, Kolczycki v. City of East Orange, 317 N.J. Super. 505, 514-15 (App.Div. 1999) where the court, in following Heimbach stated:

Where the trial court undertakes to exercise such discretion, the court should ordinarily apply the prima facie standard to plaintiff's proofs, thus not weighing evidence or finding facts but only determining bare sufficiency. Id. at 514-15. (Emphasis supplied).

In Heimbach, the court noted that New Jersey follows the federal practice in establishing standards to be applied at a proof hearing. They include the following:

1. The court should indulge the inference that the information sought by plaintiff in discovery, which was in defendant's sole possession and which defendant refused to produce, would be beneficial to plaintiff.

2. The defendant's default effectively admitted every allegation of fact in plaintiff's complaint which was susceptible of proof by legitimate evidence except:

- a. Allegations which were made indefinite or erroneous by other allegations of the complaint;
- b. Allegations which were contrary to facts of which the court would take judicial notice, or
- c. Allegations which were contrary to uncontroverted material in the file of the case.

3. The trial court cannot deny plaintiff a default judgment on the ground that the court does not believe plaintiff's proofs rather than because some element of the cause of action was missing or the right to recovery was barred by some rule of law whose applicability was evident from the proofs of the complaint.

4. So long as the facts as painted by the complaint might have been the case, they may not now be successfully controverted by the defaulted defendant.

5. If the court determines that there has been a failure of proof which can be remedied, the trial court should point out the omissions and give plaintiff the opportunity to remedy them through a continuation of the hearing. Id.

From the beginning of this litigation up to the commencement date of this proof hearing, defendant Gisler had not asserted his privilege against self incrimination. At the commencement of this proof hearing, however, defendant's counsel advised this court that defendant was asserting this privilege. This posture by defendant, however, does not help him. He nevertheless, remains subject to the same sanctions as any other litigant refusing to make discovery. See Levin v. Levin, 129 N.J. Super 142 (App.Div. 1974) where Judge Meanor, speaking for the court addressed the ramifications of the defendant's refusal to provide discovery based upon his assertion of his privilege against self incrimination, stated:

Defendant, however, remains subject to the same sanctions as any other litigant who refuses to make discovery, R. 4:23, short of being held in contempt for refusal to answer. It appears to be the general, although not the universal, rule that failure to make legitimate discovery in a civil case on the ground of self-incrimination permits imposition of the usual sanctions. Citing Mahne v. Mahne, 124 N.J.Super. 23, 304 A.2d 577 (Ch.Div.1973), certif. granted 64 N.J. 326, 315 A.2d 414 (1973); Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J.Super. 527, 231 A.2d 854 (App.Div.1967), ... Id. at 144.

In addition to the inference to be drawn by the trial court that the information sought in discovery by plaintiff would in fact have been beneficial to plaintiff, this Court should also draw an adverse interest against defendant. The adverse interest to be drawn against defendant is that he "could not truthfully deny that his participation...." in the death of Joan Gisler mandates that he be held accountable for damages. See, Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 534 (App.Div. 1967). See also, Levin v. Levin, 129 N.J. 145, Perry v. Crunden, 79 N.J. Super. 285, 191 A.2d 316 (Cty.Ct.1963), and Fox v. Fox, 76 N.J. Super. 600, 185 A.2d 230 (Ch.Div.1962).

SUMMARY OF FACTS AS EVIDENCED BY THE TESTIMONY

On the evening of September 13, 1994 defendant Ernest Gisler telephoned Toni Russo from his home in Wayne, New Jersey. Toni Russo lived nearby and was the closest friend to his wife, Joan E. Gisler. Gisler appeared upset and told Toni Russo to come to his house immediately that something had happened to Joan. (Testimony of Toni Russo).

Upon arriving within a few minutes, Gisler brought Toni Russo to his bedroom. Lying on the bed was the body of Joan Gisler. She had been savagely attacked with a knife. She was dead. (Testimony of Toni Russo).

Joan had been stabbed 43 times. There were stab wounds to her neck (11), chest (24) and right abdomen. These wounds were deep, with an average penetration of 5" to 7" to the chest and 3" to 5" to the neck.

There were also five (5) separate stab wounds to the left hand and wrist which the medical examiner described as "defensive type wounds." (P-4 autopsy of Joan E. Gisler).

There were no signs of forced entry into the house and Ernest Gisler reported that nothing was missing. Several valuable pieces of jewelry were found lying on a dresser next to Joan's bed. Around Joan's neck was a gold necklace containing a three carat diamond. In addition, as stated in the autopsy report (P-4), there were three (3) gold chain bracelets on the victim's wrist, two (2) of which contained diamond stones. Robbery was therefore ruled out as a motive for the murder. (Testimony of Passaic County Detective and Senior Investigator of the major Crime Unit James W. Wood).

Lying on the rug next to the bed was a stiletto type knife which was open and covered with blood. There was also blood in the bed, on the wall and on the interior front door knob. No fingerprints (including those of Joan and Ernest Gisler) were found anywhere in the bedroom leading the investigator to conclude that the room had been wiped clean of fingerprints. (Testimony of Det. Wood and P-5)).

Joan Gisler had lived with her husband Ernest Gisler in an upper middle class home in Wayne, New Jersey. She had no children and, except for Ernest Gisler, her sole surviving heir at law is her brother, plaintiff Joseph J. Luongo, Jr. Joan's mother died in 1983 and her father died on July 3, 1994, just two (2) months prior to her death. (Testimony of plaintiff).

On September 15, 1994 Detective wood interviewed Ernest Gisler for the first, and only time. Gisler related that he left his house about 7:00 a.m. and his wife was already awake. He met one of his

workers outside of his house and both left together and they went to a diner and then to his new job site, a nursing home in Wayne. He then traveled to pick up a table and delivered it to a friend in Connecticut. The friend was not home at the time the table was delivered nor was there any indication that the individual had been expecting Gisler. After leaving the table, Gisler traveled to get his hair cut in Yonkers, N.Y. and then went back to the office of his construction company in Carlstadt, New Jersey. He stayed at his office until he left for the day to return home. Upon returning home, he found his wife's body. (Testimony of Det. Wood).

Gisler advised Detective Wood during the interview that he had no financial or marital problems.

Ernest Gisler very quickly told the police and others that he believed that plaintiff Joseph Luongo was responsible for Joan's death. He said that the motive was money over their father's estate. (Testimony of Detective Wood & Richard Grosso). On September 16, 1994 Detective Wood and members of the Wayne Police Department interrogated Joseph Luongo and gave him a polygraph examination. They concluded that he was being truthful with them and that he had no involvement in his sister's death. (Testimony of Det. Wood).

During the next two weeks, Detective Wood and Detectives Docks and Mackey from the Wayne Police Department interviewed all known friends and relatives of Joan and Ernest Gisler. These individuals included Toni and James Russo (friend & cousin), Brendan Suter., Isabel Bernardes and Shawn Ogden (employee and former employee of Ernest Gisler), Xiaoli Zhen (commonly referred to as "Lilly June") who

purported to be a business associate of Ernest Gisler and Theresa Ogden.

From these interviews Detective Wood concluded that Ernest Gisler had not been truthful. His marriage to Joan Gisler was on the rocks. She was planning to divorce him and he had consulted with a divorce attorney. Furthermore, Ernest Gisler was in serious financial trouble. (Testimony of Detective Wood as corroborated by the testimony of Brendan Suter., Theresa Ogden Coward, Toni Russo, Joseph Luongo, Patricia Luongo, Mary Ellen DiMeo and Richard Grosso of the Lakeview Skilled Nursing & Rehab Center).

On September 26, 1994 Ernest Gisler was again asked to respond to the Wayne Police Department for an interview. Prior to speaking with Gisler, Detective Wood was informed by an attorney for Gisler that he would no longer speak to the police. To this day, neither Ernest Gisler or anyone acting on his behalf has offered any information, assistance or concern nor have they made any inquiry into the progress of the murder investigation. To this day, Ernest Gisler remains uncooperative with the police in the search for Joan's killer. (Testimony of Detective Wood).

On September 28, 1994 Captain Frank Failla of the Passaic County Prosecutor's office received information from Chief Bob Martin of the Hudson County prosecutor's Office regarding this homicide investigation. Through a confidential informant, Detective Wood became aware that a \$50,000.00 contract had been put out on the victim by her husband and that two men, Joseph Cicero and Ciro Spina were involved in setting up the killing. A review of papers found by Detective Wood in the Gisler home disclosed a small slip of paper

containing the names and phone numbers of Cicero and Spina. (Testimony of Detective Wood).

Joseph Cicero was interviewed by Detective Wood. He denied any involvement or knowledge regarding the murder of Joan Gisler. He took a polygraph test and was advised by Detective Wood that he was not telling the truth. He then engaged an attorney and has since refused to speak with the police about Ernest Gisler or this murder. (Testimony of Detective Wood).

In furtherance of the information provided by the Hudson County Prosecutor's office, Detective Wood interviewed Ciro Spina at Spina's office on December 14, 1994. While Spina was very nervous, he denied any knowledge of Joan Gisler's murder.

In his deposition in the litigation between Joseph Luongo and Ernest Gisler in Bergen County, Ciro Spina asserted his right against self incrimination to all questions relating to the murder of Joan Gisler. In the instant matter, he took another course of action. He chose to lie. The story devised by Cicero and Spina was that Cicero introduced Gisler to Spina in order for Gisler to obtain business referrals from Spina. In fact what happened was that Spina, without any plumbing experience whatsoever, wound up with a lucrative plumbing contract for the nursing home construction job in Wayne along with Joan's Mercedes convertible. According to Spina, the job was uneventful and he finished the job while receiving periodic payments from Gisler. In fact, according to the property owner, Richard Grosso and his comptroller Mr. Sloan, the plumbing work was a nightmare and the owner had to take over the job because Gisler went bankrupt. (Testimony of Detective Wood). The bankruptcy is confirmed by the

Charles Jones judgment search (P-8). Detective Wood testified that on October 11, 1994 his office was contacted by an attorney Howard Stern who had a client named Howard Morris who wished to speak with the authorities about the murder investigation. Mr. Morris has since died.

Wood further testified that Mr. Morris met with Detective Wood and advised him that he had known Ernest Gisler for four (4) years and Gisler started talking about a divorce about three (3) years ago. Gisler told him that he no longer was having sex with his wife and she was always putting him down and had complete control over his money.

Morris stated that a condominium located at 8650 Kennedy Boulevard, East, Apartment 1-H in North Bergen was purchased by Gisler under Morris' name. The purchase was made by Gisler for "Lilly June". Gisler had asked Morris to place the condo in the name of Morris' daughter, Jill Morris so that Joan Gisler would not find out about it. According to Detective Wood's testimony, Morris stated that Gisler was paying the mortgage on the condo by having his secretary, Isabel Bernardes, make payments by postal money order or bank checks. This testimony was thoroughly corroborated by the condo records entered into evidence (P-9 (a through e)).

Morris advised Detective Wood that after Joan's death, Gisler told him not to speak with him over the telephone because it was being tapped, so they met on Tuesdays at the Plaza Diner in Fort Lee. He also told Morris that he had borrowed \$50,000.00 from a 'Mob" guy who owns a bar in Hoboken and there is \$7,000.00 a month interest due on this loan and that three (3) days after his second payment was late,

his wife was killed. This \$50,000.00 amount was the same number which the police learned Gisler had paid to have his wife killed.

Morris further told Detective Wood that after his wife's wake on Sunday evening, Gisler came to Morris' apartment at about 11:00 p.m. and asked him not to mention anything to anyone about the condo purchased for "Lilly June".

Ernest Gisler's conduct immediately after his wife's murder evidenced his complete lack of sorrow over the tragic loss of his wife. On the evening of September 13, 1994 while outside his home, he refused to speak with the victim's brother Joseph Luongo, his wife Patricia Luongo or Joan's cousin James Russo. As testified by Joseph Luongo, Ernest Gisler has not said a word to him or to his wife since. He refused to make any funeral plans or go near any of Joan's family at the wake or funeral. He refused to pay for the funeral or the grave stone. Yet, while he expressed no sadness or upset to any of Joan's family and friends or to his own friends, such as Brendan Suter, he went to work the day after the first day of the wake and drove to Moonachie to show up at Joseph Cicero's home in the early hours of the morning to emotionally carry on about the murder of his wife, even though Cicero was hardly an acquaintance. (Testimony of plaintiff, Patricia Luongo, James and Toni Russo, and Joseph Cicero). This testimony offered by Cicero makes little sense little sense, however, since he knew that the police who aware that Gisler came to his home that morning, he had to come up with some story to justify it.

During the months prior to Joan Gisler's murder, the person closest to Ernest Gisler was Brendan Suter. Suter worked for Gisler

and during the work week, they spent most of each day together. On October 17, 1994, Suter met with Detective Wood and provided information to him about the Gislers. Suter testified at the trial of this matter and the substance and accuracy of his testimony was corroborated by the testimony of Detective Wood from the statement taken by the detective on October 17th. Suter testified that he knew Gisler so well and Gisler's conduct after Joan's death lead him to conclude that he was involved in the murder.

Suter testified that, contrary to what Gisler had told the police, he often borrowed money from people to keep his business afloat. Gisler also cashed in stocks belonging to him and his wife and, without her knowledge, he forged her signature in order to cash them. Suter became aware of a check received from the State of New Jersey in excess of \$200,000.00 payable to Joan and Ernest Gisler. He testified that Ernest Gisler had someone forge Joan's name on the check so Joan would not find out about it. This testimony was corroborated by the testimony of Detective Wood who obtained copies of checks issued to the Gislers from the State of New Jersey involving a condemnation award for a piece of real estate. (See P-6). While the total award, as indicated by the attachments in P-6, was for \$765,000.00, the check in the amount of \$245,438.36 had Joan's forged signature thereon. This check was deposited into Ernest Gisler's business account, Decor Structure, Inc. Joan Gisler never saw this money. She had told her brother that she received about \$200,000 from the settlement from the State of New Jersey. The act of having Joan Gisler's signature forged was further confirmed by the testimony of Mary Ellen DiMeo who admitted that she signed Joan's signature on a

mortgage application, at Ernest Gisler's direction and without Joan's knowledge.

Brendan Suter testified about the relationship between Gisler and Lilly June. He stated that Gisler was attracted to oriental women and Gisler had solicited Suter's assistance in finding an oriental woman through a New York dating service known as "East Meets West." Suter detailed how, just months before Joan's death in the winter of 1994, while Joan was in Florida, Ernest Gisler moved Lilly June into the marital home in Wayne. Gisler had blinds installed on the windows of the home and he would have Lilly June hide her presence in his vehicle when she came to and left the house so as to be undetected. Suter noted that Gisler was concerned that Toni and James Russo might discover Lilly June because they lived nearby.

Suter's testimony corroborated the statements obtained by Detective Wood from Howard Morris about the condo purchased for Lilly June in North Bergen. He also testified that Gisler had spent a substantial amount of money and time renovating the condo before Lilly June would move into it. Furthermore, Detective Wood confirmed that Lilly June only lived at the condo a short period of time before she moved out and Gisler stopped paying the mortgage causing the bank to foreclose.

Brendan Suter attended the wake for Joan Gisler both Saturday and Sunday nights. During this time he saw no evidence of sadness or grief on Ernest Gisler's part as he kept with a few of his friends in the back of the funeral home. He remembered that Gisler was more occupied with financial concerns and how he commented that he might

not get the full value out of the sale of the home now since Joan was murdered in it.

Since Joan's funeral, Ernest Gisler had contacted Brendan Suter several times. On the day after Joan's funeral, Gisler expressed concern to Suter that they should get their stories straight about Lilly June, regarding bringing her into the Wayne home and buying the condo in North Bergen for her. Soon thereafter, Gisler tried to convince Suter that he and Joan had a very good relationship, contradicting everything Suter knew to be true. He told Suter that the police suspected Joseph Luongo as the killer and that Gisler's phone lines were being tapped so they should be careful. He indicated to Suter that if he was involved in Joan's murder, he would have had a few things taken so it would look like a robbery.

Suter knew of Joseph Cicero and although he was unaware of any business dealings between Gisler and Cicero, he testified about the free work done by Gisler's crew on Cicero's house in Moonachie. Suter found Gisler's desire to do free work on Cicero's house to be strange. Furthermore, although Suter was very close to Gisler even after he left his employ, he knew nothing about Ciro Spina.

The testimony of Brendan Suter about the relationship between Joan and Ernest Gisler substantially contradicted the statements given by Ernest Gisler to the police. He testified that Ernest hated and resented Joan. Gisler spoke in anger of killing his wife and even commented out loud at a bar that he was looking for someone to kill her. Gisler's comments about placing a snake in the swimming pool was not a joke. It was the venom of Ernest Gisler spewing out of him. It

culminated when he finally found someone to assist him in having Joan killed.

Theresa Ogden Coward testified that her former husband, Shaun Ogden, had worked for Ernest Gisler in a similar capacity as Brendan Suter prior to Suter's employ. While in the presence of Gisler and her husband, she heard Gisler speak of his hatred for his wife. On one occasion, while riding with Gisler in his vehicle, Gisler became violently angry about Joan and said he wanted to kill her. Mrs. Coward also testified of being at a diner with Shaun Ogden and Ernest Gisler when Gisler complained bitterly about his wife and discussed sneaking Lilly June into the house in Wayne.

Detective Wood is a seasoned and experienced homicide detective. It was a short time after Joan Gisler's murder, that all evidence pointed towards Ernest Gisler as being responsible. The only question was whether he did it himself or have someone else do his dirty work. Susan Contos had advised him that she saw a man walking towards the front door that morning so there was separate evidence that Gisler had hired the killer. When the information was received about two individuals who were otherwise strangers to the situation, Cicero and Spina, the pieces of the puzzle began to fit together rapidly for the Prosecutor's office. The next logical step was to give to Ernest Gisler the opportunity to either confirm or refute what was becoming very obvious, that he was at the heart of Joan's murder.

Detective Wood testified that if Gisler did hire someone to kill his wife, as the information provided to him indicated, he probably did not know the person who actually carried it out, since the arrangements were made by someone else. With this in mind, the idea

was developed to have someone pose as the "hitman" and approach Gisler saying he was not paid for the job. The plan was approved by the County Prosecutor, and Investigator Leonard Marsh of that office's Organized Crime Unit was selected to act as the "hitman".

On November 9, 1994 with surveillance and back-up personnel in place at Gisler's business in Carlstadt and Investigator Marsh wired and a video being made, the scenario took place. The videotape (P-3) and a transcript (P-11) were entered into evidence. Ernest Gisler was put to the test and he failed miserably.

This videotape speaks for itself. It is Ernest Gisler's chilling admission of his involvement in the death of his wife.

When approached in public by the man who, that less than two (2) months ago murdered his wife by stabbing her 43 times saying that he is looking for the balance of his money, Gisler's response is simply "Tomorrow".

Gisler did not run, nor scream, nor shout, nor take any defensive or protective actions. He gestured with his hand as if to tell the individual to be quiet. And then Gisler, without any indication of fear or concern for his safety, responds, "Listen to me...Tomorrow morning he's there. The cops are right around the corner. They're right around the..."

Perhaps Gisler had not made his point perfectly clear to the man posing as his wife's murderer, so he then added with emphasis and warning, "There's a guy on the other corner. There's a...there's a truck over there with people in there. You hear me."

Gisler's demeanor and his tone of voice speak volumes. A normal and logical reaction to being confronted by your wife's killer would

be fear or alarm. Gisler showed none, except perhaps for some concern that this man might be caught by the police. So when the killer said "I want my God Damn money...", Gisler's response is, "Don't come around here saying something like that. I am tellin you there's police around the corner here."

As the killer emphasized that he was to be paid \$25,000 and only received \$5,000 and that if he didn't get the rest of the money owed to him, "somebody's gonna drop a fuckin dime with the God Damn police department...", the following exchange takes place:

Ernest Gisler: "I'm meetin' him tomorrow.

Inv. Marsh: "Meetin' who?"

Ernest Gisler: "My friend. Okay?"

Finally, as he turns his back to his wife's killer and without concern for his safety, Gisler walks away and comments, "Just keep talkin' you fool. Good Bye. . . . see your friend."

Detective Wood testified that the killing was actually done by a "wannabe" who was looking to gain a reputation as a hired killer. He characterized the act as not being very professional. In retrospect and looking at the numerous contradictions in the words and conduct of Gisler, Cicero and Spina, the Detective's characterization is not surprising.

ANALYSIS OF THE ISSUES RELATING TO LIABILITY

MOTIVE: One person alone had the motive to kill Joan Gisler. That person was her husband, Ernest Gisler. His motive was twofold, money and hatred. The testimony presented overwhelmingly demonstrates Gisler's motive for causing the death of his wife. Examples of such testimony area as follows:

Brendan Suter:

Gisler admitted to him that he hated his wife, stating that "If my wife was dead, I wouldn't have these problems."

Gisler commented on several occasions about having his wife "killed".

Suter observed the continuously strained relationship between Joan and Ernest Gisler and testified that on one occasion, Gisler spoke about putting a snake in the swimming pool while Joan was swimming.

Gisler commented to him about not wanting to go to Florida during the winter to be with his wife because he couldn't stand to be with her.

Gisler was having considerable financial problems and was constantly borrowing money.

On occasions, he saw Gisler speaking on the telephone with Joan and begging her for money.

Gisler complained to him constantly that he blamed his wife for not helping him financially.

Gisler told him that he spoke with an attorney about divorcing Joan but found out that if he did, he would not receive any share of the money and assets from her father's estate.

Gisler was secretly taping Joan's telephone conversations in order to obtain information which he might be able to use against her.

He was aware that Gisler had caused his wife's signature on the State of New Jersey check to be forged. Suter remembered that the amount of the check was in excess of \$200,000.

He was also aware that Gisler had forged Joan's signature on stocks and took the proceeds.

Suter was aware of Gisler's infatuation with oriental women. Gisler told him that at a bachelor party he became attracted to oriental women. Suter assisted Gisler in contacting a New York dating service called "East Meets West" where Gisler met "Lilly June".

Soon after Gisler met Lilly June she moved into the apartment above his office at the building he and Joan owned in Carlstadt.

After Joan went to Florida for the winter months in 1994, Ernest Gisler moved "Lilly June" into their home in Wayne. He had window blinds installed so that she would not be seen and he changed the locks. When she entered and left the premises, Lilly June would hide in Gisler's vehicle so that she would not be seen.

Suter was aware of Gisler's relationship with Howard Morris as they met on various occasions at the Plaza Diner. At these meetings and based on other conversations he had with Gisler, Suter learned of Gisler's plan to buy a condo for Lilly June but place it in the name of Morris' daughter so that Joan would not find out. Suter was also aware of the substantial renovation work Gisler had done on the condo but that Lilly June did not like it and moved out soon after she began to live there. Suter also became aware of the fact that after Lilly June moved out of the condo, Gisler stopped making the mortgage payments and the bank foreclosed on the mortgage.

He was surprised over Gisler's interest in helping Joe Cicero since Cicero could not provide any business benefits to him. Gisler told Suter that Cicero was "connected" and Gisler had construction work done on Cicero's house in Moonachie at no charge.

Despite his close relationship with Ernest Gisler, Gisler never spoke to him about Ciro Spina. Gisler had confided in Suter and

discussed all aspects of his business with Suter. If there was any truth to the testimony of Cicero and Spina as to how and why Gisler made the connection with Spina, Suter would have known about it. The reason Gisler did not mention Spina was because he could not discuss with Suter or anyone else, except Cicero, what Spina was going to do for him.

The names of Joseph Cicero and Ciro Spina were not pulled out of the air by Detective Wood. Their own testimony in this hearing demonstrated their involvement. While they have had over six years to get their stories straight, they were pathetically inept in their lies before this court. They could not even agree as to when, how and from whom Spina found out about Joan Gisler's murder. And during all of this time throughout the past five years with the newspapers having reported that Spina and Cicero were accused and had exercised their rights against self incrimination during their depositions, they never spoke to each other.

Suter knew Ernest Gisler as well as anyone. He testified that he attended the wake for Joan Gisler both Saturday and Sunday nights. During this time he saw no evidence of sadness or grief on Ernest Gisler's part and he remembered how Gisler was more concerned with financial matters than grieving over his wife's murder.

Suter also testified that since Joan's funeral, Ernest Gisler had contacted him several times. On the day after Joan's funeral, Gisler expressed concern to Suter that they should get their stories straight about Lilly June, regarding bringing her into the Wayne home and buying the condo in North Bergen for her. Soon thereafter, Gisler tried to convince Suter that he and Joan had a very good relationship,

contradicting everything Suter knew to be true. He told Suter that the police suspected Joseph Luongo as the killer and that Gisler's phone lines were being tapped so they should be careful. He indicated to Suter that if he was involved in Joan's murder, he would have had a few things taken so it would look like a robbery.

Brendan Suter knew Ernest Gisler well. He had spent more time with him while in his employ than anyone. He knew of the strong motives of hatred and money and that Ernest Gisler was involved. He therefore, felt compelled to contact the police and testify in this case.

Toni Russo:

She was married to Joan's cousin, James and for years she had been Joan's closest friend. They lived nearby and either saw or spoke with each other daily. She was aware of the strained marriage between Joan and Ernest and that Joan was very unhappy.

She had observed instances of conflict between Joan and Ernest and knew that Joan was considering divorce. Joan had told Toni that she was going to leave Ernest after she returned from Florida.

Toni Russo presently lives in Florida. She came back to New Jersey to testify that Ernest Gisler showed no grief immediately after Joan's murder. While he stayed the night at her home after Joan's body was discovered, he expressed no sorrow. The day after Joan's death, Gisler left the Russo home saying that he had to go to work. He never came back. He would not speak to any of Joan's family members and wanted no part of arranging for her wake and funeral. Toni's husband James and Joan's brother Joseph made the funeral

arrangements and when Ernest refused to obtain a grave stone for Joan's grave, she and her husband purchased one.

On the second day of Joan's wake, Ernest arrived late. He refused to be near Joan's casket nor receive any mourners, leaving the task to Joan's family.

Despite the closeness between Joan and Toni, Ernest never spoke with Toni or her family after Joan's funeral.

James Russo:

He corroborated much of his wife's testimony as outlined above. The only contact he had with Gisler after the funeral was when Gisler sued him soon thereafter saying that he had some of Joan's jewelry and a coin collection, which he did not have.

He testified of Ernest Gisler's suspicious behavior and his refusal to speak with or look at any of Joan's family members the night of the murder and afterwards.

He also testified of the layout of the Gisler home, the front door entrance and the gate on the side of the house which required that a button be pressed. He noted that one had to know where the button was and that when the gate was opened, it made a loud clanking noise.

He commented during his testimony that while Joan had excellent business sense, Ernest was always spending money he did not have.

Patricia Luongo:

Her testimony corroborated the testimony of James and Toni Russo.

The discord between Joan and Ernest had intensified throughout the past years and became uncomfortable for others to be in their presence.

On the evening of Joan's murder, she and her husband went to the Gisler home in Wayne. Ernest sat in a car with another individual and refused to speak with or look at her or her husband.

Joan and Ernest had no children and their possessions were very important to them. Their home was opulent and it was apparent that money was a big factor in their relationship. Joan had told Patricia that she kept her money "on the side", implying that she kept funds separate and away from her husband.

Like the other witnesses who knew Joan, Mrs. Luongo testified that Joan was well liked and respected. She was intensely proud of her brother and his family. Except for Joan's poor relationship with Ernest, Joan had no enemies or anyone who disliked her.

Joseph Luongo, Jr.:

He testified of the many private conversations he had with his sister over her relationship with her husband. She told Joseph that concerning Ernest's financial problems, she was "tired of bailing him out", commenting to her brother, "You don't know what I go through."

Joan advised her brother that she had placed assets in her own name, including stocks, money funds and the condo in Florida. In addition, with the funds to be received from her father's estate, Joan had no intent to share any of this with Ernest nor use it to once again rescue him from his financial problems.

Joan was a strong willed person who told people what was on her mind. She was quite forceful and complained bitterly about her husband. Joan told her brother that she was going to seek a divorce

from Ernest. In all probability, she told Ernest the same thing emphasizing that he would not get any of her father's money.

Joseph testified about an incident in the spring of 1994 when Ernest vehemently expressed disdain for Joan and her family. Joseph telephoned his sister to suggest that she come back to New Jersey to help with Ernest's financial problems and their personal relationship but Joan dismissed the matter.

On the evening of Joan's murder, Ernest would not look at or speak with Joseph. Ernest refused to make the funeral arrangements or pay the bill. Joseph was required to take care of this matter.

Since the evening of Joan's death, Ernest has not spoken with nor attempted to communicate with Joan's family. Soon after Joan's death, Ernest sued Joseph for jewelry and a coin collection he said Joseph and James Russo took from his home. Joseph testified that there was no coin collection and the only jewelry he had was a few pieces of his mother's jewelry.

He further testified that his father died less than two months before Joan. His father's estate consisted of a house which was sold for \$194,000 and several money accounts totaling approximately \$125,000.

Joan lived closer to her dad than Joseph and had the bank accounts in the joint names of her father and her. Their father's intent was that they each receive $\frac{1}{2}$ of his estate, as evidenced by his will, and before her death Joan wanted to divide the bank accounts with Joseph. Joseph told her to wait because he did not need the money at the time and perhaps they would need it to pay the expenses on the house until it sold and then for taxes after it sold. Joan was murdered before

she had a chance to do anything with the money. Within months after Joan's death, Ernest sued Joseph in Bergen County alleging that because the accounts Joan had with her father were joint accounts, all of this money now belonged to him. The trauma of losing his father and sister within less than two months time was overwhelming to Joseph and he agreed to allow Ernest to take most of the money from his father's bank accounts along with ½ of the proceeds from the sale of his father's house.

Since Joan's death, Joseph Luongo has contacted Detective Wood on a daily basis in order to find out if any progress has been made in bringing her killers to justice. Along with Joseph and Detective Wood most of the individuals who knew Joan and Ernest are certain of his involvement in her murder. One of the major reasons is the overwhelmingly strong motive he had to kill her.

Joseph Luongo described the heavy metal front door with the door knob in the center which Gisler had installed on his house in Wayne. Susan Contos testified that she saw a male walking towards the front door of the house on the morning of September 13, 1994. This door according to plaintiff, his wife and the Russos was always locked. Entrance was usually gained through the rear of the house. But the morning of September 13, the situation was different. Joan was killed in her bed. Only one person that morning could have purposely unlocked the front door, Ernest Gisler. Why? Because he knew that someone would be entering through the front door that day to kill his wife. The testimony shows that the killer left the way he came in because of the blood on the door knob. Why were there no fingerprints of anyone in the Gisler bedroom? The person with the blood on his

hands would not have taken the time to wipe down the room. Someone else did. That person was meticulous and wanted to be sure that the killer did not make a mistake and leave a fingerprint. That person was the one who found the victim. It was Ernest Gisler.

Joan Gisler possessed money and other assets in her name which Gisler desperately needed and immediately took after Joan's death. In addition to her interests in the Wayne home and Carlstadt property, Joan had stocks, cash and the condo in Florida she owned in her name. With the exception of approximately \$80,000 frozen from the sale of Joseph Luongo's Sr.'s home, Ernest Gisler obtained everything else belonging to Joan.

Theresa Ogden Coward:

Theresa Ogden Coward testified that her former husband, Shaun Ogden, worked for Ernest Gisler she heard Gisler speak of his hatred for his wife. She testified that on one occasion, while riding with Gisler in his vehicle, Gisler became violently angry about Joan and said he wanted to kill her. Mrs. Coward also testified how Gisler complained bitterly about his wife and sneaking Lilly June into the house in Wayne.

Detective James Wood:

Ernest Gisler made himself available to speak with Detective Wood only once. During this interview he said that he had no financial problems. He also stated that his relationship with his wife was good and there were no marital problems. Both of these statements directly

relate to his motive for having her killed. Both of these statements were totally untrue.

After interviewing many of the friends, relatives and associates of Joan and Ernest Gisler, Detective Wood concluded that Gisler had lied to him in almost every aspect. These were not small, insignificant lies. They were substantial and critical because they went to the heart of Gisler's motive to kill his wife. The Gislers disliked each other immensely. Their marriage was not based on love but convenience. And Ernest Gisler was in serious financial trouble. After Joan's father died in July, Gisler knew that if he did not strike now, he would lose everything. With the substantial amount of money he offered to have someone kill Joan, he found the help he needed.

Detective Wood testified that on October 11, 1994 his office was contacted by the attorney for Howard Morris who wished to speak with him about the murder of Joan Gisler. Morris knew Gisler for four (4) years and Gisler started talking about a divorce three (3) years earlier. Gisler told him that he no longer was having sex with his wife and she was always putting him down and had complete control over his money.

Wood learned from Morris about a condominium located in North Bergen which was purchased by Gisler for Lilly June under Morris' name so that Joan would not find out about it. Gisler made the mortgage payments by postal money order or bank checks until Lilly June moved in and out of it within a few days complaining of the noise. Thereafter, Gisler left his friend holding the bag on the

mortgage as he stopped making payments and allowed the property to go into foreclosure.

After Joan's death, Gisler told Morris not to speak with him over the telephone because it was being tapped. He also told Morris that he had borrowed \$50,000.00 from a 'Mob" guy who owns a bar in Hoboken and there is \$7,000.00 a month interest due on this loan and that three (3) days after his second payment was late, his wife was killed.

Detective Wood also testified that Morris told him that after his wife's wake on Sunday evening, Gisler came to Morris' apartment at about 11:00 p.m. and asked him not to mention anything to anyone about the condo purchased for Lilly June.

The investigation quickly pointed to one person as being responsible for Joan's murder, her husband, Ernest Gisler. The evidence pointed to the fact that he killed her himself. Then the information came to the police about the Cicero/Spina connection. There was one way to test its accuracy. Through the videotaped scenario orchestrated by Detective Wood, Ernest Gisler would be given the opportunity to state his involvement or lack of it in Joan's murder.

Gisler's conduct on November 9, 1994 was nothing less than his explicit admission that he hired someone to murder his wife. Through his words and conduct, he clearly confirmed the accuracy of the information received by the Passaic County Prosecutor's office. There is no other explanation because there can be no other explanation.

The photograph of Ernest Gisler and Lilly June (P-10) also speaks for itself. His relationship with Lilly June developed before Joan's

death and continued afterwards. Gisler moved to California with Lilly June and as of this day, he still lives there.

Richard Grosso:

He testified that based upon a personal recommendation, he had contracted with Ernest Gisler to do the construction work for the addition to his health care facility in Wayne. It became a financial disaster with Gisler hiring and not paying subcontractors and hiring the totally incompetent plumbing subcontractor, Ciro Spina.

Grosso testified that on September 12, 1994, the night before the homicide, he went to the Gisler home by himself in the evening. He had gone there to drop off building permits and a check for some permits but he ended up leaving everything in a mailbox because as he was approaching the house he could hear a man and a woman inside having a loud argument and he did not want to knock on the door. He recognized the voice of the man as Ernest Gisler.

Sometime in 1994 before Joan's death, Gisler told Mr. Grosso that he was trying to sell his home at 48 Pleasantview Drive in Wayne. Grosso was given the impression from Gisler that Joan was in Florida and he did not believe that Joan knew he was looking to sell the home.

While Gisler told the police that he was not having any financial problems, Richard Grosso's testimony directly contradicts Gisler. He had paid Gisler almost \$600,000 by the end of January 1995 and ended up having to finish the work himself and pay many of the subcontractors whom Gisler had failed to pay. He discovered that some suppliers of materials for the nursing home told him that Gisler was having supplies, billed to Grosso, sent to the home of Simon Weber, Gisler's accountant. Grosso confirmed the truth of this when he discovered

that Gisler was doing construction work on Weber's home using materials from the Job he was doing for Mr. Grosso.

A critical factor in Grosso's testimony is the manner in which it totally contradicted the testimony of Ciro Spina. Spina tried to show that he was a legitimate subcontractor who entered into a business relationship with Gisler and did his work in an uneventful manner. In fact, his testimony was a lie. How did Gisler pay Spina for setting up the killing of his wife? Was it partially through Joan's Mercedes convertible or through this sham plumbing job or by cash or a combination of all of them? We may never know for sure because Gisler and Spina will not tell us. Furthermore, because Gisler refused to provide any financial records in discovery, we cannot trace all of the money he received as a result of Joan's death. We do know, however, from the testimony of Grosso and his comptroller Sloan, most of the money taken by Gisler from the nursing home construction job did not go to Decor Structure. It went to a bank in Chinatown.

OPPORTUNITY, MEANS & ALIBI:

There is a bitter irony in the fact that the death of Joan Gisler was, in all probability, prompted by the death of her father. Gisler was in financial trouble and she no longer agreed to help him out. Joan was going to divorce him and then he discovered that if she did, he would not be entitled to any portion of her inheritance from her father. This was confirmed by the testimony of Brendan Suter that Gisler had spoken with a lawyer who advised him of this fact. Within a few months of September 1994, Joan would have taken the money from her father's estate and left for Florida.

The window of opportunity became shortened and Gisler needed to act on it. When he found someone, who, for a price, would do the unspeakable act for him, he seized the opportunity.

Except for Ernest, Joan lived home alone. Her patterns were predictable. Joan would have been home, probably in her bedroom and unsuspecting of any attack. It was easy for Ernest Gisler to set up the situation once he found out when the killing was going to take place. When he left the home the morning of September 13th, he left the front door and rear sliders unlocked. The house was like a maze and it may have been difficult for the killer to find Joan's bedroom; that is, unless the killer knew where to look.

In many situations, alibi acts as a defense. In this case, however, it further confirms Gisler's involvement. He made sure he left town and that others saw him. And he publicized his alibi quickly and continuously. He mentioned his alibi at the murder scene. He told the police. He brought it up to Brendan Suter, Howard Morris and Richard Grosso. The alibi was a big part of his plan but he overplayed it to such an extent that it became a red flag.

LACK OF OTHER SUSPECTS:

The motive, means and opportunity of Ernest Gisler to kill his wife are overwhelming and clearly indicative of his involvement in her death. There are no other suspects.

1. No one else besides Ernest Gisler had a motive to murder Joan, except for the individuals paid by him to actually do the act. Joan had no enemies or disputes with anyone except for her husband. Her relationships with her friends and other family members were good.

This was not a spur of the moment situation with a stranger in which alcohol or drugs were involved. The murder was committed in her home, in her bedroom. Except for her husband and anyone who may have been a part of his plan to kill her, no one else had access to her home.

2. Detective Wood testified that immediately robbery was ruled out as a motive for the murder. There were no signs of forced entry into the house and Ernest Gisler reported that nothing was missing. Several valuable pieces of jewelry were found lying on a dresser next to Joan's bed. Around Joan's neck was a gold necklace containing a three carat diamond. In addition, there were three (3) gold chain bracelets on the victim's wrist, two (2) of which contained diamond stones. (P-4 autopsy). The theory proffered by the attorneys for Gisler and Cicero at this hearing that robbery was evident by the missing wedding band on Joan's finger is ludicrous.

3. During cross examination Detective Wood also dismissed the idea that Joan was murdered by a loanshark to whom Ernest Gisler owed money. This theory defies logic. The only indication of a loanshark came from Gisler to Howard Morris. Detective Wood testified that Howard Morris advised that after Joan's death, Gisler told Morris that he had borrowed \$50,000.00 from a 'Mob" guy who owns a bar in Hoboken and there is \$7,000.00 a month interest due on this loan and that three (3) days after his second payment was late, his wife was killed. It is coincidental This \$50,000.00 amount was the same number which the police learned Gisler had paid to have his wife killed. There was never a shred of evidence presented by Gisler or any of his lawyers to the Prosecutor that Joan Gisler may have been killed by a

loanshark. That is because there is none. And there is none before this court in this hearing.

4. In planning his wife's death and formulating his alibi, Gisler also had to come up with a plan to shift the blame for Joan's murder to someone else. The only person he could come up with was Joan's brother, Joseph Luongo. Gisler quickly told the police and anyone else who would listen to him that he believed that plaintiff was responsible for Joan's death. Gisler espoused this theory to Brendan Suter, Richard Grosso, Howard Morris and in court papers in the Bergen County litigation with Joseph Luongo.

Gisler said that the motive was money over the estate of Joseph Luongo, Sr. This theory offered in his defense makes no sense. The amount of liquid assets in the accounts of Joseph Luongo, Sr. was approximately \$125,000. The only testimony before this court is that Joan wanted to split this money with her brother but Joseph told her to wait, in case they needed it for taxes or expenses to carry their father's house until it was sold. The death of Joan guaranteed that the money would legally pass to her husband via her will and Joseph would receive nothing. It was therefore, Ernest Gisler, alone, who would benefit financially from Joan's death and the assets she would receive from her father's estate.

On September 16, 1994 Detective Wood and members of the Wayne Police Department interrogated Joseph Luongo and gave him a polygraph examination. They concluded that he was being truthful with them and that he had no involvement in his sister's death. (Testimony of Det. Wood). Even posting a \$50,000 reward which continues to this day, Joseph's actions in spending his time and energy over the past six

years to have Joan's killer arrested further support the fallacy of Gisler's assertion.

Ernest Gisler planned the death of his wife, including making sure he had an alibi and someone to point to with a motive. He didn't fool anyone, especially Detective Wood. The only part of his plan that has worked so far is that his co conspirators, out of their own self-preservation, are not talking.

SELF INCRIMINATING CONDUCT OF ERNEST GISLER:

While Ernest Gisler may have planned the death of his wife, his self-incriminating conduct leads to the inescapable conclusion that he did not do a very good job. Examples of the conduct of Ernest Gisler which pointed the finger directly back at him regarding Joan's death include:

1. His relationship with Lily June both before and after Joan's death. He sneaked Lily June into his home while Joan was in Florida. He bought a condo for her, renovated it and when she did not like it, he hurt his friend Howard Morris and let the mortgage go into foreclosure. The photograph of Gisler and Lilly June (P-10) demonstrates their personal relationship. Before Joan's death, Gisler had discussed in the presence of Theresa Ogden Coward the financial prospects of an import-export business in the Philippines. After Joan's death, when Gisler left New Jersey and moved to California, he moved there with Lilly June. They engaged in an import export business together and spent much time in the Philippines.

2. Gisler had Joan's name forged on the State of New Jersey check in the amount of \$245,438.36 and he placed the money in his

business account. (P-6). Based upon the testimony of Joseph Luongo as to how much money Joan told him she received from the condemnation, she never knew about this amount of money. In addition, Gisler had Joan's signature forged on loan papers for the Carlstadt property. (Testimony of Mary Ellen DiMeo).

3. Ernest Gisler showed no sadness, no grief nor any respect for his wife after her death. While her wake and funeral meant little to him, her money did.

4. Since the day of Joan's death, Ernest Gisler nor anyone on his behalf, has made inquiry to the authorities into the investigation of her murder. He has not cooperated in the investigation and has refused to speak with the police. When given the opportunity to speak in this litigation, he has refused.

5. Ernest Gisler wanted his wife dead and made comments to this effect to Brendan Suter and Theresa Ogden Coward.

6. Gisler told the police that he had no financial problems which would give him a motive for Joan's murder. His actions indicate otherwise. For example, as evidenced from the Charles Jones judgment search (P-8) showed that three years before Joan's death a judgment was entered against Gisler's company, Decor Structure for \$15,050. Less than two months after Joan's death the State of New Jersey entered a judgment against Decor for \$33,171. Neither of these judgments have been satisfied to date. Furthermore, in less than a year after Joan's murder, Gisler filed a petition in bankruptcy for Decor showing assets of \$1,000 and liabilities of \$141,862. This bankruptcy was filed in the face of Gisler having sold Joan's condo in Florida, liquidated her asset accounts and having received over

\$600,000 from Mr. Grosso despite the fact that he had not paid many subcontractors and suppliers nor finished the construction job. He then hid the money by putting it in a bank in Chinatown.

7. In the presence of Brendan Suter, Gisler spoke of having his wife killed. It was his desire and when he found someone to help him out it became his plan.

FAILURE TO RESPOND TO DISCOVERY:

Interrogatories and the Notice to Produce (P-22) propounded on Gisler sought information on such issues as:

1. The information and witnesses Gisler would produce to defend the charges to Count I of plaintiff's complaint that Gisler "did plan, conspire and arrange [with others] for the murder of his wife Joan E. Gisler or was otherwise an accessory to said murder." (Interrogatory questions 1 through 5,7 & 9).

2. The information and witnesses Gisler would produce to defend the charges to Count III of plaintiff's complaint that Gisler "did criminally and intentionally cause or participate in causing the death of Joan E. Gisler" (Interrogatory questions 1 through 5, 7 & 9).

3. The names, addresses and phone numbers of individuals having knowledge concerning the events forming the subject matter of this lawsuit. (Interrogatory questions 6 & 9).

4. All of the personal and business financial information of Ernest and Joan Gisler including where and to whom the assets and monies went after Joan's death. (Notice to Produce items 1 through 11).

The questions which would have been asked of Gisler had he appeared for his deposition would address in detail the following areas among others:

1. Gisler's financial situation before and after Joan's death;
2. Gisler's relationship with his wife;
3. Where and to whom did all of his and Joan's money and assets go?
4. Gisler's relationship with Lilly June before and after Joan Gisler's death.
5. Gisler's relationship with Ciro Spina;
6. Gisler's relationship with Joseph Cicero;
7. Gisler's relationship with Howard Morris;
8. Gisler's relationship with Robert Ryan and Shaun Ogden;
9. Explanation of the videotape of November 9, 1994;
10. The people he met and spoke with within the weeks before Joan's death.

Under the Courts' decisions in Douglas v. Harris, 35 N.J. 270, 276 (1961) and Heimbach v. Mueller, 229 N.J. Super. 17 (App.Div. 1988), the defendant's default effectively admitted every allegation of fact in plaintiff's complaint which was susceptible of proof by legitimate evidence. The inference to be drawn by this court under the holding of Douglas v. Harris, 35 N.J. 270, 276 (1961), is that the information sought in discovery by plaintiff would in fact have been beneficial to plaintiff. This court must also draw the adverse interest against defendant that he "could not truthfully deny that his participation...." in the death of Joan Gisler mandates that he be

held accountable for damages. See, Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 534 (App.Div. 1967). See also, Levin v. Levin, 129 N.J. 145, Perry v. Crunden, 79 N.J. Super. 285, 191 A.2d 316 (Cty.Ct.1963), and Fox v. Fox, 76 N.J. Super. 600, 185 A.2d 230 (Ch.Div.1962).

Furthermore, while Gisler did not assert any privilege against self incrimination during the discovery process, doing so now does not help him. He nevertheless, remains subject to the same sanctions as any other litigant refusing to make discovery. See Levin v. Levin, 129 N.J. Super 142 (App.Div. 1974).

**THIRD COUNT III OF PLAINTIFF'S COMPLAINT -
UNDER THE DECISIONS OF THE COURTS OF EQUITY IN
THIS STATE AND THE PROVISIONS OF N.J.S.A.. 3B:7-
1, ET SEQ., DEFENDANT IS PRECLUDED FROM RECEIVING
ANY ASSETS OF THE ESTATE OF
JOAN E. GISLER.**

One, who intentionally causes the death of another, cannot profit from his own wrongdoing. Swavely v. Prudential Insurance Co. of America, 10 N.J. Misc. R. 1 (1931). In Swavely, the court held that it would exercise its equitable powers to impose a constructive trust on monies obtained by the beneficiary of the decedent's life insurance policy where the beneficiary was responsible for the intentional killing of the insured. Judge Oliphant stated the reasoning behind the law:

The underlying principle is obvious. It is the policy of the law to protect human life, and to that and (sic) to discourage rather than encourage, the unlawful taking of it. Id. at 4.

Two years later in Merrity v. Prudential Ins. Co. of America, 110 N.J.L. 414 (E&A 1933), the Court of Errors and Appeals followed the

reasoning of the court in Swavely and commented that, "The rule may be considered generally and thoroughly settled." Id at 415. In Whitley v. Lott, 134 N.J. Eq. 586 (1944) the court followed Merrity in denying a claim by the heirs of an individual who killed his wife and then took his own life. His heirs claimed that they were innocent parties and they had a right to take from his wife's estate even though her death was brought about by the intentional acts of her husband. The Court denied them recovery, relying on the policy of the common law that "no one should be allowed to profit by his own wrong." Id. at 589.

The court noted that this legal principle "has been accorded a very general application in equity and indeed, also at law.", and further commented:

The doctrine itself, so essential to the observance of morality and justice, has been universally recognized in the laws of civilized communities for centuries and is as old as equity. Its sentiment is ageless.
Id. at 589.

This issue was addressed by the New Jersey Supreme Court in Neiman v. Huff, 11 N.J. 55 (1952), where Chief Justice Vanderbilt, speaking for the court, opined:

"To permit the murderer to retain title to the property acquired by his crime as permitted in some states is abhorrent to even the most rudimentary sense of justice. It violates the policy of the common law that no one shall be allowed to profit by his own wrong 'nullus commodum capere potest de injuria sua propria.'" See Merrity v. Prudential Insurance Co., 110 N.J. L. 414 (E. & A. 1933), and Swavely Prudential Insurance Co., 10 N.J. Misc. 1 (Sup. Ct. 1931). Id at 60.

Former Justice Pashman, sitting as Judge of the Equity Court in the case of In re Estate of Kalfus, 81 N.J. Super 435 (Ch.Div. 1963), summarized the scope of the common law rule:

The analogous situations which have arisen in this State are felonious homicide of (1) a testator by a devisee, (2) a tenant by the entirety by his spouse, and (3) an insured by the beneficiary under the policy. In all three situations our courts have held the wrongdoer to be divested of any rights he or she might have had if the natural course of events had been allowed to follow.

In Small v. Rockfeld, 66 N.J. 231 (1974), the plaintiff brought a wrongful death action, on behalf of her grandchildren, against the spouse of her deceased daughter, alleging that he caused her daughter's death in a manner which was either intentional, reckless or grossly negligent. The New Jersey Supreme Court again followed the general rule, that a person who murders another is barred from claiming a share of the estate of the deceased. The court recognized the strong public policy behind the general rule and rejected the husband's defenses of interspousal and intrafamilial immunity, holding that a constructive trust could be imposed upon any property unjustly obtained by the husband. The court also noted that while the defendant had never been criminally charged with his wife's killing, that fact did not preclude the civil relief requested by the plaintiff. Id. at 245.

In D'Arc v. D'Arc, 164 N.J. Super 226 (Ch. Div. 1978), the Chancery Court cited Small v. Rockfeld as authority in applying this rule of unjust enrichment in the context of a matrimonial action.

In D'Arc, the Court held that where the wealthy wife had proven by a preponderance of the evidence that her husband sought to solicit her murder, his request for alimony would be barred. Relying on the court's decision in Small, the court questioned: "Should such a bar vanish if the attempt to murder one's spouse was unsuccessful?" D'Arc, 164 N.J. Super. 240. In answering its own question, the court stated:

Here the "fault" is an attempt by Dr. D'Arc to commit one of the most heinous crimes known to mankind-- murder. . . . [W]here a spouse has committed an act that is so evil and outrageous that it must shock the conscience of everyone, it is inconceivable that this court should not consider his conduct when distributing the marital assets equitably.

The obligation of this court is to implement the purpose of law, which is to do justice, and not to mechanically apply established principles of law, even when they compel an absurd result. To ignore the facts of this case would be tantamount to permitting Dr. D'Arc to obtain through the back door that which he is barred from taking through the front door.

Id. at 241-42.

Under the principle of law established by these cases and the extent to which it has been applied, it is clear that the policy against unjust enrichment by the wrongdoer is followed closely by the courts. The common law in this state is well established and if the proofs show that plaintiff has been involved in the intentional killing of his wife, he cannot be rewarded for his conduct. He must

be denied all claims to both the estate of the decedent and the estate of his wife.

In addition to the above referenced decisions of the courts of this State, the provisions of the New Jersey Wills and Probate Act, N.J.S.A. 3B:7-1 et seq. will apply to the case at bar to preclude Ernest M. Gisler from receiving any financial gain as the result of his wife's death. N.J.S.A. 3B:7-1 bars recovery by way of testamentary devise or intestate succession, and N.J.S.A. 3B:7-2 prohibits a surviving joint tenant from recovering through his own wrongful act.

One of the earliest cases to address the provisions of the New Jersey Wills and Probate Reform Act was In re Karas, 192 N.J. Super 107 (Law Div. 1983), aff'd as mod., 197 N.J. Super. 642 (App.Div. 1984). In Karas, the victim's husband caused her death. He was indicted, tried and acquitted of her murder. In applying the provisions of N.J.S.A. 3B:7-2, the Court held that the statutory provision did not change the court's common law authority to impose a constructive trust on the husband's one-half interest. The court further held that even if the husband was acquitted in the criminal case, which required a more substantial burden of proof, the equity court would, nevertheless, conduct a hearing to determine if the killing was intentional.

The court in Karas emphasized the continued reliance by the courts of New Jersey on the compelling equity principles found in the common law decisions, stating:

There is nothing in the Probate Reform Act of 1978 to indicate an intent to invert the strong public policy expressed in Neiman v. Huff, 11 N.J. 55, 60 (1952). There was no statement accompanying the

legislation to indicate such intent; no commentators have suggested that conclusion. Under those circumstances it is presumed that the legislature did not intend to change the pre-existing common law. Blackman v. Iles, 4 N.J. 82, 89 (1950). Before such intent may be found it must appear clearly and plainly from the legislation. (citing Blackman at 89).
Id. at 112.

The court concluded:

The principle remains the same--the killer may not benefit financially from his wrongful and awful act.
Id. at 113.

The intent of the New Jersey Legislature, through the enactment of the Wills and Probate Reform Act was to follow the Uniform Probate Code which restated the prevailing common law in New Jersey and throughout the country. The common law decisions remain totally viable today and must be applied in conjunction with the statutory law in assessing the rights of the parties. It is a well established principle relating to statutory construction that, unless there is a specific statement of a different legislative intent, statutes are to be construed in accordance with the principles of common law, and there is an inference in the law that a statute does not intend to make any change to the common law other than specifically stated. See State v. Western Union Tel. Co., 12 N.J. 468, 486 (1953), app. disp. 346 U.S.869, 74 S.Ct. 124 (1953); In re Estate of Vadlamudi, 183 N.J. Super. 342 (Law. Div. 1982).

The provisions of N.J.S.A. 3B:7-1 and 3B:7-2 and the substantial body of common law are clearly applicable to the case at bar. Plaintiff has demonstrated far beyond the "bare sufficiency" standard

of evidence required that Ernest Gisler was involved in the intentional killing of his wife. Accordingly, plaintiff is entitled to the relief requested under the Third Count of the complaint.