SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0423-20

AVATAR CAPITAL FINANCE, LLC,

Plaintiff-Respondent,

v.

NASSAU MARINA HOLDINGS, LLC, DEBRA YOUNG-MERCANTANTI and LOUIS F. MERCANTANTI, JR.,

Defendants-Appellants,

and

CT CORPORATION SYSTEM, as representative, CORPORATION SERVICE COMPANY, as representative, and THE STATE OF NEW JERSEY,

Defendants.

Argued January 31, 2022 – Decided May 12, 2022

Before Judges Fasciale and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-005429-19.

Bruce D. Greenberg argued the cause for appellants (Lite DePalma Greenberg & Afanador, LLC, attorneys; Bruce D. Greenberg and Catherine B. Derenze, on the briefs).

Thomas Kamvosoulis argued the cause for respondent (Brach Eicher, LLC, attorneys; Charles X. Gormally, of counsel and on brief; Edward A. Velky, on the brief).

PER CURIAM

In this commercial mortgage foreclosure matter, defendants Nassau Marina Holdings, LLC (Nassau Marina), Debra Young-Mercantanti, and Louis F. Mercantanti, Jr., appeal from a September 29, 2020 order denying their motion to set a redemption amount for the final judgment in foreclosure with post-judgment interest calculated at the legal rate set forth in Rule 4:42-11(a), and granting plaintiff Avatar Capital Finance, LLC's cross-motion to amend the final judgment of foreclosure to reflect a post-judgment interest rate at the mortgage contract default interest rate of 18.99 percent. Based on our review of the record in light of the applicable legal principles, we vacate the court's order and remand for further proceedings in accordance with this opinion.

I.

In August 2018, Nassau Marina borrowed $4,200,000 from plaintiff. The terms of the loan are set forth in a loan agreement and a separate promissory note that required Nassau Marina to make "interest only" monthly payments commencing on October 1, 2018, with the unpaid principal due September 1, 2019. Nassau Marina agreed to pay 8.99 percent interest prior to the occurrence of an event of default and to pay interest at the lesser of 18.99 percent "or the maximum amount allowed under applicable law" following default. Defendants Debra Young-Mercantanti and Louis F. Mercantanti, Jr. executed the loan agreement and separate agreements guaranteeing Nassau Marina's repayment of the sums due under the note.

Defendants' obligations were secured by a mortgage on properties owned by Nassau Marina located in Toms River and Lacey Township and a security interest in fixtures, fittings, equipment, and other items. Nassau Marina also executed an assignment of rents and other contracts, permits, licenses, and agreements to plaintiff in the event of a default.

On October 29, 2018, Nassau Marina defaulted on the mortgage and note by failing to make the first payment. Under the terms of the note, and as a result

of the default, the unpaid principal balance, unpaid interest, and all other amounts due under the note immediately became due and payable.

In March 2019, plaintiff filed a complaint in foreclosure. Defendants filed a contesting answer, and plaintiff subsequently filed a motion for summary judgment. In an August 16, 2019 order granting plaintiff summary judgment, the court determined "[p]laintiff is entitled to interest at the default rate of 18.99 [percent] per annum . . . pursuant to the terms of the [n]ote and [m]ortgage," and the court directed the Office of Foreclosure "to include default interest at the rate of 18.99 [percent] allowable under the [n]ote and [m]ortgage within any [f]inal [j]udgment in [f]orclosure which it recommends for entry by" the court. The order did not state whether the 18.99 percent rate applied to the calculation of the redemption amount to be included in the final judgment, to post-judgment interest, or both.

Plaintiff then moved for entry of a final judgment in foreclosure, asserting plaintiff was due "the sum of $4,281,169.10 as of August 20, 2019." Plaintiff submitted a schedule of the items comprising the amount due showing an unpaid principal balance of $3,682,930, $18,879 in late charges, and $247.47 in "[net] [a]dvances through August 20, 2019." The schedule also included a total of $579,097.23 for interest at the 18.99 percent contract default rate from

December 1, 2018 through August 20, 2019.[1] Plaintiff also sought $7,500 in counsel fees and $1,905 in taxed costs. Plaintiff's counsel's certification supporting the motion for entry of the final judgment notes that the court's August 16, 2019 order "confirm[ed] [p]laintiff's entitlement to default interest at the rate of 18.99 [percent]," but neither the certification nor any of the other submissions supporting the motion refers to post-judgment interest.

On September 17, 2019, the Office of Foreclosure rejected a final judgment in foreclosure proposed by plaintiff that included post-judgment interest at the 18.99 percent contract default rate. A notation by the Office of Foreclosure on the proposed judgment states the judgment was denied because it "has no authority to recommend entry of judgment based on a total due that includes default interest of more than [five percent] above the regular rate provided in the note." The notation further states plaintiff should "apply to [the] judge for [a] higher rate or revise the schedule to correct [or] remove [the] item."

[1] The schedule calculated the interest due through August 20, 2019, with the amount of $274,148.72 based on the 8.99 percent pre-default rate, and an additional $304,948.51 in interest for the difference between the pre-default rate and the 18.99 percent default rate. The total of the two sums, $579,079.23, constitutes interest from December 1, 2018, through August 20, 2019, at the contract default interest rate of 18.99 percent.

The record does not include any pleadings or papers submitted to the court by the parties that address the Office of Foreclosure's denial and notation or that constitute an application for the "higher rate" of interest. However, on September 19, 2019, two days after the Office of Foreclosure's rejection of the proposed judgment that included the 18.99 percent post-judgment interest rate, the court entered an order noting that on September 17, 2019 "plaintiff's application for final judgment was denied for proposed deficiencies," and that "all matters have been resolved." The order further states the court "considered the recommendation of the Office of Foreclosure" and, for "good cause shown," the court determined the denial of plaintiff's application for final judgment "be set aside and is of no effect."[2]

On the same day, September 19, 2019, the court entered the final judgment in foreclosure. Unlike the prior proposed judgment that was rejected by the Office of Foreclosure, the final judgment, which was in a form prepared and submitted by plaintiff, awarded interest at the 18.99 percent mortgage contract default rate but only "through the date of . . . judgment." Thus, the final judgment did not provide for post-judgment interest at the 18.99 percent contract

[2] As noted, the record does include any pleadings or submissions made to the court upon which it concluded good cause had been shown.

default rate. Instead, the final judgment set post-judgment interest at the "lawful interest [rate] computed" following entry of the judgment "on the total sum due [p]laintiff until the same be paid and satisfied." The parties agree the lawful interest rate referred to in the final judgment is the post-judgment rate specified in Rule 4:42-11(a), which was 4.5 percent when the final judgment was entered on September 19, 2019.

On September 19, 2019, the court also issued a writ of execution to the Ocean County Sheriff directing the sale of the mortgaged properties. The writ of execution, which was also in a form prepared and submitted by plaintiff, further provided that following the sale of the properties, plaintiff was to be paid the redemption amount set forth in the final judgment with 18.99 percent interest through the date of judgment "and lawful interest thereafter on all sums due . . . until the same be paid and satisfied." Thus, the final judgment and writ of execution, both of which were prepared by plaintiff, provided for the 18.99 percent contract default rate of interest only through the date of judgment, and the lawful rate of interest under Rule 4:42-11(a) following entry of the judgment.

The sheriff's sale of the property was scheduled for February 25, 2020. On February 14, 2020, plaintiff obtained summary judgment in the Law Division against Nassau Marina and Louis F. Mercantanti, Jr. on its claims against them

for the sum due under the note.[3] In their briefs on appeal, the parties agree the amount of the judgment, $4,518,192.44, includes interest at the 18.99 percent contract default rate through the date of the order.[4] The order makes no provision for post-judgment interest.

In a subsequent order entered months later, Debra Young-Mercantanti consented to entry of a judgment against her, again in a form of judgment prepared by plaintiff's counsel.[5] The order provided for a $4,518,192.44 judgment with post-judgment interest at the legal rate "as provided in [Rule] 4:42-11 from February 14, 2020," the date of the judgment previously entered against Nassau Marina and Louis F. Mercantanti, Jr.

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[3] The Law Division action is captioned, Avatar Capital Finance, LLC v. Nassau Marina Holdings, LLC, Debra Young-Mercantanti, and Louis F. Mercantanti, Jr., and bears docket number OCN-L-0715-19.

[4] Although the parties agree the order included an interest award at the 18.99 percent contract default rate through the date the judgment was entered, the order included in the record on appeal does not expressly provide for either pre- or post-judgment interest.

[5] When the consent judgment in the Law Division matter was entered against Debra Young-Mercantanti on July 30, 2020, the plaintiff in the matter was no longer Avatar Capital Finance, LLC. Instead, the plaintiff was Avatar Capital Finance, LLC's assignee, Avatar NJ Marinas, LLC. The entities shared the same counsel.

The sheriff's sale of the properties, which was scheduled for February 24, 2019, was adjourned to March 24, 2020, in accordance with N.J.S.A. 2A:17-36.[6] The sale was adjourned for a second time, until April 21, 2020, but the record does not make clear the reason for the second adjournment. Plaintiff asserts the second adjournment was at defendants' request, and it cites a March 11, 2020 letter from the Ocean County Sheriff to plaintiff's counsel in support of the contention. However, the letter does not state defendants requested the second adjournment or provide the reason for the adjournment.[7] The parties agree the sheriff's sale was thereafter adjourned and delayed due solely to the COVID-19 pandemic.

[6] In pertinent part, N.J.S.A. 2A:17-36 authorizes a sheriff "selling real estate by virtue of an execution [to] make five [thirty-day] adjournments of the sale, two at the request of the lender, two at the request of the debtor, and one if both the lender and debtor agree."

[7] The letter simply declares "the Sheriff's Office is adjourning" the March 24, 2020 sale. The letter, which is addressed only to plaintiff's counsel, also notes that "[i]f this is a first request for an adjournment your second request might not be granted." (Emphasis added). The inclusion of the notation, in a letter sent to plaintiff's counsel, suggests plaintiff made the adjournment request, but we do not find that was the case. We observe only that the record presented on appeal does not permit a determination as to the reason for the adjournment of the March 24, 2020 sheriff's sale.

In July 2020, defendants obtained refinancing of the sums due under the note and mortgage and requested a payoff figure of the amount due plaintiff. Plaintiff provided a payoff figure that included post-judgment interest at the contract default rate of 18.99 percent through the payoff date. Defendants moved for an order setting a redemption amount that included post-judgment interest at the legal rate in Rule 4:42-11(a) as set forth in the final judgment in foreclosure. Plaintiff cross-moved to amend or alter the September 19, 2019 final judgment in foreclosure to provide for post-judgment interest at the 18.99 percent default contract rate "as reflected in t[he] [c]ourt's August 16, 2019 [o]rder [g]ranting [s]ummary [j]udg[]ment in favor of [p]laintiff."[8]

In a September 25, 2020 order, the court granted defendants' motion to set the redemption amount with post-judgment interest at the legal rate under Rule 4:42-11(a), and the court denied plaintiff's cross-motion for an amendment or modification of the final judgment in foreclosure to include post-judgment interest at the contract default rate. During argument before the court, it found the issue presented was "whether there are sufficient equities such that [it]

[8] As noted, the August 16, 2019 order granting plaintiff summary judgment in the foreclosure action includes an award of interest at the 18.99 percent interest rate, but the order does not provide for post-judgment interest at that rate or refer to post-judgment interest in any manner.

should grant" plaintiff's request for a retroactive application of the contract default rate in the determination of the redemption payoff amount. In its decision from the bench, the court found the mortgage agreement merged with the judgment upon its entry and that once a party obtains a judgment it is generally entitled to only post-judgment interest under Rule 4:42-11(a). The court also found plaintiff suffered prejudice by its inability to execute on the judgment but that was due to the delay in the sheriff's sale resulting from the COVID-19 pandemic. The court further found there was no evidence defendants unfairly profited from whatever delay there was in the repayment of the amount due. The court concluded the equities therefore weighed in favor of denying plaintiff's cross-motion for a modification or amendment of the final judgment in foreclosure to provide for post-judgment interest at the 18.99 percent contract default rate.

Four days later, on September 29, 2020, the court sua sponte issued an order vacating the September 25, 2020 order, granting plaintiff's cross-motion, and amending the final judgment in foreclosure with post-judgment interest at the 18.99 percent contract default rate. In a written statement of reasons, the court found our decision Interchange State Bank v. Rinaldi, 303 N.J. Super. 239 (App. Div. 1997), established four factors a court must consider in weighing the

equities to determine whether to impose post-judgment interest at a contract rate instead of the legal rate set forth in Rule 4:42-11. The court interpreted the decision to "provide[] four elements for the application of post-judgment contract interest." The court found the elements include: a commercial foreclosure; there is a disparity between the contract and legal interest rates; the creditor has a pre-judgment debt secured by sufficient collateral to pay the entire amount due; and there is some prejudicial delay. The court found each of those elements extant here and determined post-judgment interest should be at the 18.99 percent contract default rate. Defendants appeal from the court's order.

II.

Rule 4:42-11(a) provides for imposition of post-judgment interest on money judgments in any cause of action. Brown v. Davkee Inc., 324 N.J. Super. 145, 147 (App. Div. 1999). In pertinent part, Rule 4:42-11(a) states that "[e]xcept as otherwise ordered by the court or provided by law, judgments, awards, and orders for the payment of money . . . shall bear simple interest" at the rates specified in subsection (a)(i) to (iii) of the Rule.

Rule 4:42-11(a) vests a court with discretion to impose post-judgment interest at rates different than those otherwise specified in the Rule, where it "would be 'fair and equitable'" to do so. Interchange State Bank, 303 N.J. Super.

at 261. A court abuses its discretion when its "decision is 'made without a rational explanation, inexplicably departed from established policies or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. INS, 779 F.2d 1260, 1265 (7th Cir. 1985)).

Defendants argue the court abused its discretion by erring as a matter of law in granting plaintiff's motion to correct or modify the final judgment to include post-judgment interest at the contract default rate. Defendants contend the court's application of the contract default rate violates the well-settled principle that a mortgage merges into the final judgment of foreclosure and, as a result, the mortgage terms—including the agreed upon contract default interest rate—are extinguished upon entry of the final judgment. See Realty Asset Props., Ltd. v. Oldham, 356 N.J. Super. 16, 21 (App. Div. 2002) ("Under the doctrine of merger, the mortgage contract is merged into the final judgment of foreclosure and the mortgage contract is extinguished."); see also Virginia Beach Fed. v. Bank of New York/Nat'l Cmty. Div., 299 N.J. Super. 181, 188 (App. Div. 1997) (rejecting a mortgagee's claim for expenses incurred following entry of a final judgment of foreclosure "[i]n light of the well-settled principle that a mortgage merges into the judgment of foreclosure").

We agree that under the merger doctrine, the terms of the mortgage were extinguished upon entry of the final judgment in foreclosure. Oldham, 356 N.J. Super. at 21. Following entry of the final judgment, plaintiff no longer had an enforceable contractual right to the default rate of interest. Instead, following entry of the judgment, "the mortgage contract interest rate [was] replaced by the post-judgment rate permitted under the rules of court" for a judgment creditor. Ibid. Plaintiff's entitlement to post-judgment interest was not, and is not, governed by the terms of the mortgage. Plaintiff is entitled to post-judgment interest on the final judgment but only to the extent permitted under the applicable rules. Ibid. As we explained in Shadow Lawn Savings & Loan Ass'n v. Palmarozza, a mortgagee is entitled to the contract rate of interest prior to entry of final judgment, and "[a]fter entry of judgment interest will run at the legal rate 'except as otherwise ordered by the court and except as may be otherwise provided by law,'" as permitted in accordance with Rule 4:42-11(a). 190 N.J. Super. 314, 318 (App. Div. 1983) (quoting R. 4:42-11(a)).

Plaintiff argues it is entitled to post judgment interest at the contract default rate because that is the rate defendants agreed to pay in the event of a default, and defendants' default was not cured until their post-judgment payment of the agreed upon principal and interest due under the mortgage. We rejected

the same argument in R. Jennings Manufacturing Co., Inc. v. Northern Electric Supply Co., Inc., noting it ignores the distinction "between a contract creditor with a judgment and one without a judgment." 286 N.J. Super. 413, 417 (App. Div. 1995). We explained "[t]he former," like plaintiff here, "is not a contract creditor at all but a judgment creditor subject to" Rule 4:42-11(a). Ibid. We further noted a post-judgment mortgagee is not a contract creditor because the "judgment extinguishes the original cause of action and makes available a new cause of action on the judgment, which constitutes a higher form of security," and we explained that "is the basis for the disparate interest rates applied by the cases to contract claims prior to, and after, judgment." Ibid.

Nonetheless, we recognized Rule 4:42-11(a) granted a trial court "the right . . . to set a post-judgment interest figure at a different rate than that provided in the rule if [the court] finds particular equitable reasons for doing so." Id. at 418. We further instructed that, in making the post-judgment interest decision, the court "should determine whether it would be equitable to allow interest to run on the judgment at the contract rate to avoid prejudice to the judgment creditor caused by delays in satisfying the judgment." Ibid. Relevant to the inquiry, a court must "scrutiniz[e] the conduct of both parties subsequent to the initial entry of judgment," including "what actions [the judgment creditor]

took or could have taken to obtain satisfaction of the judgment sooner and what, if anything, [the judgment debtor] did to forestall such satisfaction." Ibid.

In Interchange State Bank, we rejected a trial court determination that a post-judgment interest award is limited to the legal rate set forth in Rule 4:42-11(a). 303 N.J. Super. at 260-61. We noted that "[w]hen the legal rate is less than the contract rate it may be equitable to allow interest to run on the judgment at the contract rate to avoid prejudice to a mortgagee caused by delays in satisfying the judgment." Id. at 261 (quoting Shadow Lawn Sav. & Loan Ass'n, 190 N.J. Super. at 318). We found that "while case law suggests . . . fixing post-judgment interest at the legal rate is the standard," whether the post-judgment interest should be awarded at the contract rate or legal rate "incorporates an equitable component" that must be considered and determined by the court under Rule 4:42-11(a). Id. at 264.

Based on the circumstances in Interchange State Bank, we explained "the mere fact [a mortgagee] has succeeded and been awarded judgment should not necessarily confer a benefit on defendants by reducing their interest rate, especially where defendants expressly stated in the trial court that they intended to . . . appeal and seek a stay of enforcement of the judgment by reason thereof." Ibid. We also noted that a factor that favored application of the legal rate in R.

Jennings Manufacturing Co.—the judgment afforded the plaintiff "a higher form of security" than the unsecured book account upon which the plaintiff sued—is not extant where a mortgagee obtains a judgment that is secured by collateral in which the mortgagor has equity in excess of the judgment amount. Id. at 265 (quoting R. Jennings Manufacturing, Co., 286 N.J. Super. at 417.)

We further stated that "[a]ny over[-]secured judgment creditor . . . should, generally, be awarded post-judgment interest at the contract rate," but we did not reverse the court's award of the legal rate of post-judgment interest even though there was no dispute the plaintiff was over-secured, and by a substantial amount. Ibid. Thus, we did not hold that a mortgagee is always entitled under Rule 4:42-11(a) to post-judgment interest at the contract rate against a foreclosed commercial mortgagor simply because the mortgagor has equity in the foreclosed property that exceeds the total of the judgment amount and accrued interest at the contract rate.

Instead, we remanded to the trial court with the instruction, gleaned from our decision in R. Jennings Manufacturing, Co., that the court must "determine whether it would be equitable to allow interest to run on the judgment at the contract rate to avoid prejudice to the judgment creditor caused by delays in satisfying the judgment." Id. at 266 (quoting R. Jennings Manufacturing, Co.,

286 N.J. Super. at 418). We also directed that in its assessment of the equities, the trial court must "review the actions taken by each party in their respective attempts to obtain a timely satisfaction of the judgment or, if applicable, forestall such satisfaction." Ibid.

Here, the trial court interpreted our decision in Interchange State Bank to require consideration of four elements in determining whether to impose post-judgment interest in a foreclosure matter at the contract rate instead of the legal rate set forth in Rule 4:42-11(a). More particularly, and as noted, the trial court found Interchange State Bank "provides four elements for the application of post-judgment contract interest," including whether there was a commercial foreclosure, the contract rate is higher than the legal rate, the mortgagee is over-secured because the mortgagor has sufficient equity in the secured property to pay the principal due and contract rate, and there is some prejudicial delay. In addition to its distillation of what it characterized as those four elements permitting imposition of the contract rate, the motion court also recognized that our remand order in Interchange State Bank required consideration of whether it would be equitable to impose post-judgment interest at the contract rate interest and a review the parties' efforts to obtain a timely satisfaction of the judgment or forestall satisfaction of the judgment.

In its analysis, however, the motion court limited its consideration of the equities to the four factors it gleaned from our decision in Interchange State Bank. It did not consider all the pertinent equities, including those we directed the trial court consider on remand in Interchange State Bank. By doing so, the court constructed a paradigm that is not supported by our decision in Interchange State Bank, and which would require imposition of the contract rate in every commercial foreclosure case in which the contract interest rate is higher than the legal rate, the mortgage is over-secured, and there was some post-judgment delay in the payment of the judgment.

Our holding in Interchange State Bank does not support such a result. If it did, we would not have remanded to the trial court in that case to consider under Rule 4:42-11(a) whether it is equitable to impose the contract rate based on all the extant circumstances and to consider the efforts, if any, of the parties to obtain, or avoid, satisfaction of the judgment. Interchange State Bank, 303 N.J. Super. at 266; see also R. Jennings Manufacturing, Co., 286 N.J. Super. at 418. We therefore reject the court's conclusion the four factors it gleaned from Interchange State Bank are dispositive of whether a contract rate shall be imposed instead of the legal rate, and we reaffirm that a court must weigh the

equities and engage in the analysis we required of the remand court in Interchange State Bank in the exercise of its discretion under Rule 4:42-11(a).

To be sure, the four factors the trial court gleaned from Interchange State Bank are pertinent to the analysis of the equities. But the court's myopic focus on those factors caused it to ignore possible equities that arguably favor imposition of the legal rate. For example, the court did not consider that plaintiff submitted the final judgment of foreclosure that expressly provided for the contract default rate only until entry of judgment, and for post-judgment interest at the legal rate. Nor did the court consider that, as the record suggests, plaintiff submitted the final judgment without post-judgment interest at the contract rate for the purpose of obtaining court approval of the judgment following the Office of Foreclosure's rejection of the prior proposed judgment plaintiff had submitted that included post-judgment interest at the contract rate.

Additionally, plaintiff did not challenge the judgment and did not move for its modification or correction under either Rule 1:13-1 or Rule 4:50-1 immediately following its entry. It was not until July 2020, ten months after entry of the September 19, 2019 final judgment, when defendants sought a payoff figure, that plaintiff unilaterally, and in a manner contrary to the express terms of the final judgment it had submitted to the court and the court entered,

insisted on payment of post-judgment interest at the contract rate. The record does not disclose the reason for defendants' delay in seeking a modification or amendment of the final judgment, and perhaps defendants would have moved more quickly to obtain the financing necessary to satisfy the judgment amount if they had known they could not rely on the final judgment plaintiff submitted to the court and the court entered. Indeed, in its resolution of its claims against defendants in the Law Division suit on the amounts due under the note, plaintiff agreed to post-judgment interest under the legal rate in Rule 4:42-11(a).

Similarly, although the court found the delays caused by the COVID-19 pandemic constituted an equity supporting post-judgment interest at the legal rate when it entered its initial September 25, 2020 order denying plaintiff's request for post-judgment interest at the contract default rate, in its sua sponte decision reversing its order, the court did not consider that equity at all. Nor did the court explain how that equity, which it found to exist four days earlier, was no longer extant. As noted, the court instead focused solely on what it erroneously discerned is a singular four-factor dispositive standard under Interchange State Bank. As we have explained, however, where a court determines to award post-judgment interest under Rule 4:42-11(a) at a rate

different than the legal rate, the court must consider and weigh the equities. The court abused its discretion by not fully doing so here.

We do not refer to those possible equities as findings of fact or conclusions of law, to suggest a particular result on remand, or to limit in any manner the remand court's consideration of any equities supported by the evidence that the parties may argue support their respective positions concerning the appropriate post-judgment rate of interest. We recognize plaintiff may dispute the evidence or facts, or argue based on other evidence, facts, and circumstances that the equities do not favor imposition of the legal rate. We refer to the evidence merely to illustrate that the court must consider all the equities, and not just the four referenced in Interchange State Bank, in exercising its discretion to award post-judgment interest at the contract rate instead of the legal rate otherwise required under Rule 4:42-11(a).

We therefore vacate the September 29, 2020 order and remand for the court to consider all the equities pertinent to a determination of the post-judgment interest rate under Rule 4:42-11(a). This opinion should not be interpreted as an expression of an opinion on the merits, which the remand court must determine based on the record presented, any supplement to the record

allowed by the court in its discretion, and any additional arguments presented by the parties.

On remand, the court shall also address, consider, and make findings of fact and conclusions of law on defendants' argument plaintiff is judicially estopped from obtaining the amendment or modification of the final judgment to allow for post-judgment interest at the contract rate. The motion court did not address the argument in either its September 25, 2020 bench opinion and order or in its September 29, 2020 written statement of reasons and order. We need not address the issue in the first instance, see Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301-02 (App. Div. 2018) (explaining, in the summary judgment context, our de novo standard of review of an issue does not relieve the trial court of deciding the issue or permit or require that we address the issue "tabula rasa"), and remand for the court to consider and decide that issue as well.

We also observe plaintiff's cross-motion to amend or modify the final judgment was made pursuant to Rule 1:13-1 and Rule 4:50-1, but the court made no findings of fact or conclusions of law, see Rule 1:7-4, supporting its decision under either of those Rules. On remand, the court shall consider and address the applicable standards under those Rules and make the necessary findings and

conclusions of law supporting its determination as to plaintiff's entitlement, if any, to relief under those Rules.

In sum, we vacate the court's September 29, 2020 order granting plaintiff's cross-motion to set the post-judgment interest at the contract default rate of 18.99 percent and denying plaintiff's motion to set the post-judgment interest rate at the legal rate under Rule 4:42-11(a). We remand for further proceedings in accordance with this opinion.

Vacated and remanded for further proceedings. We do not retain jurisdiction.