Superior Court of New Jersey

Appellate Division

Docket No. A-000360-24

GREEN LAGO, LLC, *Plaintiff-Respondent,* vs. ANY GARMENT CLEANERS NO. 3, LLC and CARLOS MARROQUIN, Individually, *Defendants,* - and - DRY CLEAN EXPRESS NO. 1, LLC and MATSAMY VASQUEZ, Individually, *Defendants-Appellants.*	:	CIVIL ACTION ON APPEAL FROM THE FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, UNION COUNTY DOCKET NO. UNN-L-1913-14 Sat Below: HON. DANIEL R. LINDEMANN, J.S.C.

BRIEF ON BEHALF OF DEFENDANTS-APPELLANTS

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Procedural History

Plaintiff Green Lago LLC filed a Complaint against Carlos Marroquin and his company, Any Garment Cleaners No. 3 LLC, for an alleged breach of a promissory note. Da41-Da50. Defendants Matsamy Vasquez and Dry Clean Express I LLC were not parties to this Complaint. Da41-Da50. The Complaint alleged that Defendants Carlos Marroquin and Any Garment Cleaners No. 3 LLC defaulted on a promissory note almost immediately after purchasing a dry cleaning business from Plaintiff. Da42. Plaintiff obtained a default judgment against Defendants Carlos Marroquin and Any Garment Cleaners No. 3 LLC in the amount of $542,250.61. Da51.

As part of its execution efforts, Plaintiff had a writ of execution issued and served upon Defendants Matsamy Vasquez and Dry Clean Express I LLC. Da52-Da57. The Sheriff did not return any service with a copy of any consulting agreement. Da52-Da57. Defendants Matsamy Vasquez and Dry Clean Express I LLC did not admit any debt as part of the Sheriff's attachment. Da52-Da57. Plaintiff did not direct the Sheriff Pursuant to N.J.S.A. 2A:17-62 to file any Complaint to recover monies under any consulting agreement. Da52-Da57.

Instead, Plaintiff filed a motion for turnover pursuant to N.J.S.A. 2A: 17-63 on January 17, 2019, despite the fact that Defendants did not admit the debt. Da58-64. The Motion was sent to Defendant Carlos Marroquin only. Da58.

Defendant Carlos Marroquin filed an Opposition to the Motion seeking to vacate the default judgment and/or transfer the proceeding related to the writ of execution to a Pending Lawsuit (the "Pending Lawsuit") brought by Green Lago LLC against Carlos Marroquin, Any Garment Cleaners No. 3, Matsamy Vasquez and Dry Clean Express I LLC. Da65-Da99. The Pending Lawsuit was originally filed in the Chancery Division on November 17, 2017 and later amended under Docket No. C-152-17. Da70-Da99. The Pending Lawsuit was transferred on July 16, 2020 to the Law Division under Docket No. L-2610-20. Da100. In the Pending Lawsuit, Defendants denied debts to Plaintiff and perfected their right to a jury trial on all matters. Da101-Da103.

On August 28, 2019, the Court granted the Motion of Plaintiff, denied the relief sought in the Opposition and ordered that the monthly payment due under the consulting agreement be paid over to the Sheriff until any debt under the consulting agreement was paid. Da104-Da106.

Thereafter, Plaintiff filed a motion against Defendant Carlos Marroquin in aid of litigant's rights on July 21, 2021. Da107-Da115. The Motion sought to increase the amount of the judgment to $1,116,943 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law. Da107-Da115. Defendant Carlos Marroquin filed an Opposition to the Motion on July 29, 2021 arguing that the lawful rate should be applied to

judgments and seeking to consolidate this action with the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da126-Da140.

On August 9, 2021, the lower court granted the Motion of Plaintiff, denied the relief sought in the Opposition and ordered that the monthly payment due under the consulting agreement be paid over to the Sheriff until any debt under the consulting agreement was paid. Da20-Da22.

On September 10, 2021, Carlos Marroquin filed for bankruptcy protection and served a suggestion of bankruptcy on the lower court. Da140. The debts of Defendant Carlos Marroquin were discharged in his bankruptcy. Da141.

On January 3, 2024, Plaintiff filed a motion against Defendant Carlos Marroquin in aid of litigant's rights. Da142-Da143. The Motion sought to increase the amount of the judgment to $1,116,943 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law and for the first time to amend the caption to include Matsamy Vasquez and Dry Clean Express I LLC. Da142-Da143. An Opposition to the Motion was filed on January 11, 2024 arguing that the lawful rate should be applied to judgments and there was no need to amend the caption as the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da152-Da160.

On April 12, 2024, the Court granted the Motion of Plaintiff, added Matsamy Vasquez and Dry Clean Express I LLC for the first time and increased

the amount of judgment to $1,625,900.68. Da16-Da19.

On September 10, 2024, Plaintiff filed another motion against Defendants in aid of litigant's rights. Da161-Da162. The Motion sought to increase the amount of the judgment to $1,625,900.68 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law and to amend the caption to include Matsamy Vasquez and Dry Clean Express I LLC. Da161-Da162. An Opposition to the Motion was filed on September 19, 2024 arguing that the lawful rate should be applied to judgments and there was no need to amend the caption as the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da170-Da179.

On September 13, 2024, the Court granted the Motion of Plaintiff in aid of litigant's rights adding attorney fees to the judgment and entering a final judgment in the case. Da5-Da11.

On September 27, 2024, the Court entered an Amended Final Judgment in the amount of $1,625,900.68 plus $21,132.50 in attorney fees. Da1-Da2.

The present appeal followed.

Factual Background

The present action and separate Pending Lawsuit both relate to the efforts of Plaintiff Green Lago LLC to collect on a debt owed by Carlos Marroquin and his company, Any Garment Cleaners No. 3 LLC. Da41-Da45. Plaintiff Green

Lago LLC filed a Complaint against Carlos Marroquin and his company, Any Garment Cleaners LLC for an alleged breach of a promissory note. Da41-Da45. Defendants were not parties to this Complaint. Da41-Da45. The Complaint alleged that Defendants Carlos Marroquin and Any Garment Cleaners LLC defaulted on a promissory note almost immediately after purchasing a dry cleaning business from Plaintiff. Da42.

The Complaint was allegedly served upon Defendant Carlos Marroquin at 1359 Brook Fall Avenue, Union, New Jersey. Da41. At the time of the service of the Complaint, Defendant Carlos Marroquin was not located at the address upon which service was made. Da65. Defendant Carlos Marroquin lived at 526 Harvard Avenue, Hillside, New Jersey 07205. Da65. This address was a matter of public record as Mr. Marroquin's address was listed with the Department of Motor Vehicles and it was on his driver's license. Da65.

Despite improper service, Plaintiff obtained a default judgment against Defendants Carlos Marroquin and Green Lago LLC in the amount of $542,250.61. Da46.

Besides filing the Complaint in this matter, Plaintiff brought a lawsuit against Carlos Marroquin, Any Garment Cleaners No. 3 LLC, Matsamy Vasquez and Dry Clean Express I LLC ("the Pending Lawsuit"). Da65-Da99. The Pending Lawsuit was originally filed in the Chancery Division on November 17,

2017 and later amended under Docket No. C-152-17. Da70-Da99. The Pending Lawsuit was transferred on July 16, 2020 to the Law Division under Docket No. L-2610-20. Da100. The Pending Lawsuit sought money damages against all Defendants based upon the business transaction that formed the basis of the present action. In the Pending Lawsuit, Defendants denied debts to Plaintiff and perfected their right to a jury trial on all matters. Da101-Da103.

Defendants plead defenses to the Pending Lawsuit, including that the debt was already paid by repossession of the secured equipment, that Plaintiff's improper actions in filing several related lawsuits against Defendants was improper and those damages offset any balance under the note that Plaintiff is attempting to collect, that Plaintiff has charged an improper post-judgment rate as damages in the lawsuit, that Plaintiff has failed to allege viable actions, and that Plaintiff has overcharged fees and costs for any claim of attorney fees. Da84-Da99.

Facing a jury trial on Defendants' defenses to Plaintiff's debt claims, Plaintiff decided to file a Writ of Execution in the present action against Defendants in an effort to avoid a jury trial on its claims. Da52-Da57. Plaintiff had a writ of execution issued and served upon Defendants Matsamy Vasquez and Dry Clean Express I LLC. Da52-Da57. The Sheriff did not return any service with a copy of any consulting agreement. Da52-Da57. Defendants

Matsamy Vasquez and Dry Clean Express I LLC did not admit any debt as part of the Sheriff's attachment. Da52-Da57. Plaintiff did not direct the Sheriff Pursuant to N.J.S.A. 2A:17-62 to file any Complaint to recover monies under any consulting agreement. Da52-Da57.

Instead, Plaintiff filed a motion for turnover pursuant to N.J.S.A. 2A: 17-63 on January 17, 2019, despite the fact that Defendants did not admit the debt. Da58-64. The Motion was sent to Defendant Carlos Marroquin only. Da58. Defendant Carlos Marroquin filed an Opposition to the Motion seeking to vacate the default judgment and/or transfer the proceeding related to the writ of execution to a Pending Lawsuit (the "Pending Lawsuit") brought by Green Lago LLC against Carlos Marroquin, Any Garment Cleaners No. 3, Matsamy Vasquez and Dry Clean Express I LLC. Da65-Da99.

The Pending Lawsuit was originally filed in the Chancery Division on November 17, 2017 and later amended under Docket No. C-152-17. Da70-Da99. The Pending Lawsuit was transferred on July 16, 2020 to the Law Division under Docket No. L-2610-20. Da100. In the Pending Lawsuit, Defendants denied debts to Plaintiff and perfected their right to a jury trial on all matters. Da101-Da103.

On August 28, 2019, the Court granted the Motion of Plaintiff, denied the relief sought in the Opposition and ordered that the monthly payment due under

the consulting agreement be paid over to the Sheriff until any debt under the consulting agreement was paid. Da104-Da106.

Thereafter, Plaintiff filed a motion against Carlos Marroquin in aid of litigant's rights on July 21, 2021. Da107-Da115. The Motion sought to increase the amount of the judgment to $1,116,943 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law. Da107-Da115. Defendants filed an Opposition to the Motion on July 29, 2021 arguing that the lawful rate should be applied to judgments and seeking to consolidate this action with the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da126-139.

On August 9, 2021, the Court granted the Motion of Plaintiff, denied the relief sought in the Opposition and ordered that the monthly payment due under the consulting agreement be paid over to the Sheriff until any debt under the consulting agreement was paid. Da20-Da22.

On September 10, 2021, Carlos Marroquin filed for bankruptcy protection and served a suggestion of bankruptcy with the court. Da140. The debts of Carlos Marroquin were discharged in his bankruptcy. Da141.

On January 3, 2024, Plaintiff filed a motion against Carlos Marroquin in aid of litigant's rights. Da142-Da151. The Motion sought to increase the amount of the judgment to $1,116,943 by charging 18% interest on the judgment instead

of the statutory rate applied to judgments under New Jersey law and for the first time to amend the caption to include Matsamy Vasquez and Dry Clean Express I LLC. Da142-Da151. Defendants filed an Opposition to the Motion on January 11, 2024 arguing that the lawful rate should be applied to judgments and there was no need to amend the caption as the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da152-Da160.

On April 12, 2024, the Court granted the Motion of Plaintiff, added Matsamy Vasquez and Dry Clean Express I LLC for the first time and increased the amount of judgment to $1,625,900.68. Da16-Da19.

On September 10, 2024, Plaintiff filed a motion against Defendants in aid of litigant's rights. Da161-Da169. The Motion sought to increase the amount of the judgment to $1,625,900.68 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law and requested attorney fees. Da161-Da169. Defendants filed an Opposition to the Motion on September 19, 2024 arguing that the lawful rate should be applied to judgments and there was no need to amend the caption as the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da170-Da179.

On September 13, 2024, the Court granted the Motion of Plaintiff in aid of litigant's rights adding attorney fees to the judgment and entering a final judgment in the case. Da5-Da11.

On September 27, 2024, the Court entered an Amended Final Judgment in the amount of $1,625,900.68 plus $21,132.50 in attorney fees.

The present appeal followed the improper rulings entered by Judge Lindemann.

Legal Argument

The Lower Court Erred in Granting Plaintiff Relief Against Defendants in This Case (Da1, Da3, Da5, Da7, Da12, Da14, Da16, Da20).

Standard of Review

An appellate court's review of rulings of law and issues regarding the applicability, validity or interpretation of laws, statutes, or rules is de novo. *In re Ridgefield Park Bd. of Educ.,* 244 N.J. 1, 17 (2020). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Rowe v. Bell & Gossett Co*., 239 N.J. 531, 552 (2019) (quoting *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995)). The lower court's orders are based upon applications of laws relating to the execution on a judgment and procedures that govern the attachment process which are reviewed by this appellate court de novo.

The lower court also made its ruling after review and analysis of both the promissory note and consulting agreement contracts in this case. An interpretation of a contract is reviewed by the appellate court de novo. *Serico*

v. Rothberg, 234 N.J. 168, 178 (2018); *Kieffer v. Best Buy*, 205 N.J. 213, 222 (2011).

The appellate court must also review the lower court's decision on jurisdiction and the application of the entire controversy doctrine which are also considered de novo. *YA Glob. Invs., LP v. Cliff*, 419 N.J. Super. 1, 8 (App. Div. 2011); *AmeriCare Emergency Med. Serv., Inc. v. City of Orange Township*, 463 N.J. Super. 562, 570 (App. Div. 2020).

I. The Default Judgment Forming The Basis of the Writ of Attachment At Issue in This Case Should Be Vacated (Da20).

All of Plaintiff's requested relief against Defendants in this case center around a writ of execution issued against Defendants based upon the default judgment entered against Defendant Carlos Marroquin. There is no doubt that the default judgment in this matter is void. "Generally, where a default judgment is taken in the face of defective personal service, the judgment is void." *Rosa v. Araujo*, 260 N.J. Super. 458, 462 (App. Div. 1992), *certif. denied*, 133 N.J. 434 (1993). A motion to vacate a default judgment for lack of service is governed by Rule 4:50-1(d), which authorizes a court to relieve a party from a final judgment if "the judgment or order is void." "If defective service renders the judgment void, a meritorious defense is not required to vacate the judgment under R. 4:50-1(d)." *Jameson v. Great Atl. & Pac. Tea Co.*, 363 N.J. Super. 419, 425 (App. Div. 2003), *certif. denied*, 179 N.J. 309 (2004). Also, issues of

jurisdiction may be raised at any time. *Macysyn v. Hensler*, 329 N.J. Super. 476, 481 (App. Div. 2000).

Although the movant bears the burden of demonstrating grounds to vacate a default judgment, *Jameson, supra,* 363 N.J. Super. at 425-26, where "'there is at least some doubt as to whether the defendant was in fact served with process, . . . the circumstances require a more liberal disposition of' the motion" to vacate a default judgment. *Davis v. DND/Fidoreo, Inc.*, 317 N.J. Super. 92, 100 (App. Div. 1998), certif. denied, 158 N.J. 686 (1999) (quoting *Goldfarb v. Roeger*, 54 N.J. Super. 85, 92 (App. Div. 1959)).

Here, service of process was defective and the judgment was void. The Complaint was allegedly served upon Defendant Carlos Marroquin at 1539 Brook Fall Avenue, Union, New Jersey. Da65. At the time of the service of the Complaint, Defendant Carlos Marroquin was not located at the addresses upon which service was made. Da65. Defendant Carlos Marroquin was located at 526 Harvard Avenue, Hillside, New Jersey. Da65. This address was a matter of public record as Mr. Marroquin's address was listed with the Department of Motor Vehicles and it was on his driver's license. Da65.

Plaintiff failed to serve Defendant Carlos Marroquin at his proper addresses. Proper service of the Complaint is a jurisdictional requirement. The appropriate remedy for the improper service is to vacate the judgment and allow

Defendants an opportunity to defend against the Plaintiff's claim concerning the debts owed by Carlos Marroquin.

II. The Lower Court Erred By Allowing Plaintiff to File Numerous Motions for Turnover of Funds Where Defendants Did Not Admit the Amount of Debt Due (Da1, Da3, Da5, Da7, Da12, Da14, Da16, Da20).

The remedies brought against Defendants all relate to the enforcement of rights under a writ of execution. Plaintiff had a writ of execution issued and served upon Defendants Matsamy Vasquez and Dry Clean Express I LLC. Da52-Da57. The Sheriff did not return any service with a copy of any consulting agreement. Da52-Da57. Defendants Matsamy Vasquez and Dry Clean Express I LLC did not admit any debt as part of the Sheriff's attachment. Da52-Da57. Plaintiff did not direct the Sheriff Pursuant to N.J.S.A. 2A:17-62 to file any Complaint to recover monies under any consulting agreement. Da52-Da57.

Instead, Plaintiff filed a motion for turnover pursuant to N.J.S.A. 2A: 17-63 on January 17, 2019, despite the fact that Defendants did not admit the debt. Da58-64. Pursuant to N.J.S.A. 2A: 17-63, after a levy upon a debt due or accruing to the judgment debtor from a third person, herein called the garnishee, the court may upon notice to the garnishee and the judgment debtor, direct the debt, to an amount not exceeding the sum sufficient to satisfy the execution, to be paid to the officer holding the execution or to the receiver appointed by the court, if and only if the garnishee admits the debt. The garnishees in this case,

Defendants did not return any response to the Sheriff admitting any debt. Under this scenario, it is incumbent upon the Plaintiff to direct that a lawsuit be filed against the garnishees by the Sheriff to determine any debt due. N.J.S.A. 2A:17-62.

The filing of the lawsuit allows the garnishees to deny the allegations related to the debt and raise affirmative defenses. The Defendants are not parties in the original Complaint and they are not parties to the promissory note which forms the basis of Plaintiff's claims. Da41-Da45; Da46-Da50. The only ground to hold Defendants liable for a judgment in favor of Plaintiff is the attachment of any monies due to Defendant Carlos Marroquin under a certain consulting agreement. In any action based upon enforcement of rights under the consulting contract, Defendants are constitutionally entitled to a jury trial. *Wood v. N.J. Mfrs. Insurance Co*., 206 N.J. 562, 575 (2011).

Allowing Plaintiff to evade Defendants' right to have a jury decide whether they have any debt under the consulting agreement would be unconstitutional. The lower court's entry of judgment against Defendants therefore violates Defendants' due process rights and the appellate court should therefore void the orders entered by the lower court.

When the Plaintiff filed a writ of execution against Defendants in this action based upon an alleged debt due by Defendants, there was already pending

an action between all of the parties in the Pending Lawsuit. Da70-Da99.

"The entire controversy doctrine embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court…." *Congdell v. Hosp. Ctr. at Orange*, 116 N.J. 7, 15 (1989) (citing N.J. Const. art VI, Section 2, Paragraph 4). The purpose of the doctrine includes the need for avoidance of waste, fairness to the parties and to avoid piecemeal litigation. *K-Land Corp. No. 28 v. Landis Sewage Auth.*, 173 N.J. 59, 70 (2002). The issues before the lower court were already being litigated in the Pending Lawsuit. The lower court erred by granting motions relating to obtaining a judgment against Defendants when the Pending Lawsuit would resolve the debt issue. The entire controversies doctrine therefore bars a party from commencing multiple lawsuits arising out of a single event or transaction. The lower court should not have granted relief against the Defendants outside of the separate Pending Lawsuit. *Manhattan Woods Golf Club, Inc. v. Arai*, 711 A.2d 1367 (N.J. App.), *cert. denied*, 156 N.J. 411 (1998).

The present action should have been consolidated with the Pending Lawsuit at a minimum to avoid inconsistent judgments and piecemeal litigation. Fairness also require that the Plaintiff's requested relief be denied and the action consolidated with the Pending Lawsuit so that Defendants may obtain discovery on the contested matters. Plaintiff would not have been prejudiced as it seeks

the same relief in the other court. The lower court therefore erred in denying Defendants' request to consolidate issues regarding amounts due under the consulting agreement with the Present Action.

III. The Lower Court Erred By Adding the Defendants to the Present Action Only after Entry of the Final Judgment Which Denied Defendants Their Due Process Rights By Preventing Them Taking Discovery And To Support Their Defenses to the Claims (Da1, Da3, Da5, Da7, Da12, Da14, Da16, Da20).

After the issuance of a writ of execution against Defendants to attach possible debts under a consulting agreement, Plaintiff filed a series of motions to establish ever higher amounts due to them and then to order turnover of funds from Defendants. Plaintiff filed such a turnover motion on January 17, 2019. Da58-64. The Motion was sent to Defendant Carlos Marroquin only. Da58. Plaintiff filed another motion against Carlos Marroquin in aid of litigant's rights on July 21, 2021. Da107-Da115. The Motion sought to increase the amount of the judgment to $1,116,943 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law. Da107-Da115. Defendant Carlos Marroquin filed an Opposition to the Motion on July 29, 2021 arguing that the lawful rate should be applied to judgments and seeking to consolidate this action with the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da126-Da139.

The lower court granted the motions of Plaintiff denied the relief sought

in the Opposition and ordered that the monthly payment due under the consulting agreement be paid over to the Sheriff until any debt under the consulting agreement was paid. Da20-Da22.

On September 10, 2024, Plaintiff filed another motion against Defendants in aid of litigant's rights. Da161-Da169. The Motion sought to increase the amount of the judgment to $1,625,900.68 by charging 18% interest on the judgment instead of the statutory rate applied to judgments under New Jersey law and for the first time to amend the caption to include Matsamy Vasquez and Dry Clean Express I LLC. Da161-Da169. An Opposition to the Motion on September 19, 2024 arguing that the lawful rate should be applied to judgments and there was no need to amend the caption as the Pending Lawsuit already addressing the issue of any amounts due to Plaintiff. Da170-Da179. On September 13, 2024, the Court granted the Motion of Plaintiff in aid of litigant's rights adding attorney fees to the judgment and entering a final judgment in the case. Da5-Da11. On September 27, 2024, the Court entered an Amended Final Judgment in the amount of $1,625,900.68 plus $21,132.50 in attorney fees.

Defendants were not parties to the present litigation and they were not added as Defendants until the final orders were entered in the matter. Since Defendants were not parties, they had no opportunity to take discovery and establish defenses to the motions which denied them due process. The lower

court erred in granting relief against Defendants before they were added to the case.

IV. The Lower Court Erred By Holding That Defendants were Responsible For Paying The Entire Amount of the Judgment Against Defendant Carlos Marroquin (Da1, Da3, Da5, Da7, Da12, Da14, Da16, Da20).

The lower court also erred when it found that Defendants Matsamy Vasquez and Dry Clean Express I LLC are fully responsible for the amount of the judgment entered against Defendant Carlos Marroquin. Plaintiff's judgment against Carlos Marroquin was based upon amounts due under a promissory note. Da46-Da50. Defendants are not parties to that agreement. Da46-Da50.

Any amounts due from Defendants must be based upon amounts due under the attached consulting agreement. As part of the sale of a dry cleaner to Defendants, a consulting agreement was entered into with Defendant Carlos Marroquin wherein certain monthly sums were to be paid for monthly consulting services to aid the operation of the store and provide information to assist the operators of the store. Da157-159. The consulting agreement was amended by the parties to provide that the monthly payments would continue after the initial term in the amount of $7,930.05 going forward until the full agreement amount was paid and monthly payments would be paid for months where consulting services were provided by Carlos Marroquin. Da160.

Defendants had made monthly payments under the terms of the consulting

agreement. A writ if execution was served by Green Lago LLC relating to payments that would be earned by Defendant Carlos Marroquin. After receipt of the writ of execution, earned payments were sent to the Sheriff of Union County, New Jersey for any earned payments. Da118-Da125.

The only obligations of Matsamy Vasquez and Dry Clean Express I, LLC under the consulting agreement relate to future payments when services are provided to them. Because of COVID and other circumstances, Defendant Carlos Marroquin was not been able to provide consulting services so certain payments were not yet earned. Da137-Da138. The orders entered by the lower court stated that monthly payments earned in the amount of $7,332.68 must be paid to the Sheriff up to the amount of the then judgment. Da20-Da22. There was never a finding that Matsamy Vasquez and Dry Clean Express I, LLC owe all of the $931,881.04 at once. Da20-Da22. Defendants were never initially found to be liable for the entire amount of the consulting agreement as of the time of the attachment of the consulting agreement by the writ of execution. Plaintiff's interpretation of the Order as somehow requiring Matsamy Vasquez and Dry Clean Express I, LLC to pay $931,881.04 is directly contradicted by the provision of the earlier orders that only $7,332.68 be paid monthly when due.

The consulting agreement was a bilateral contract only requiring monthly

payments when services were provided. *Sipko v. Koger, Inc.*, 214 N.J. 364, 380 (2013). When Carlos Marroquin moved to Texas and later filed for bankruptcy, he stopped providing any services to Defendants. Defendants thereafter had no liability to Defendant Carlos Marroquin after the bankruptcy filing and it was error for the lower court to find that Defendants could be liable for the entire amount of the judgment entered against Defendant Carlos Marroquin.

V. The Lower Court Erred In Determining The Rate of Interest on Any Judgment Against Defendants (Da1, Da3, Da5, Da7, Da12, Da14, Da16, Da20).

Plaintiff argued that it is entitled to post judgment interest in the amount of 18% yearly on any judgment against Defendants. The lower court orders set the interest rates on judgments against Defendants at this rate. Da12, Da14. The interest determination was error for two reasons. First, post judgment interest is set by court rule. Rule 4:42-11(a) sets the post judgment interest which may be recovered by the Plaintiff. "[T]he annual rate of interest shall equal the average rate of return, to the nearest whole or half-percent, for the corresponding preceding fiscal year terminating on June 30, of the state of New Jersey Cash Management Fund…." *Id.*

Plaintiff argued that the court may set a different post judgment rate if particular equitable reasons exist for doing so. None existed here. The statutory rate allows Plaintiff to recover its damages and maintain the present value of the

damages. Setting a post judgment rate of 18% would result in an unfair windfall by Plaintiff where Defendants had no contractual relationship with Plaintiff.

The consulting agreement did not have an 18% interest rate for payments made under it. Da157-da160. The 18% rate only applied to the promissory note involving Defendant Carlos Marroquin. The Defendants cannot be required to pay an exorbitant interest rate that they did not agree to pay and the entry of judgments by the lower court at this rate was an error of law.

Conclusion

For the reasons stated above, the orders and judgments entered in the lower court against Defendants should be vacated, this matter consolidated with the Pending lawsuit to determine any potential liability by Defendants/ Appellants and Plaintiff's requests for relief in this action against Defendants should be denied.

Dated: February 18, 2025

/s/ Ronald L. Daugherty

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BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

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PRELIMINARY STATEMENT

In July 2018, Green Lago, LLC levied on a contract between Matsamy Vasquez and his brother, Carlos Marroquin, pursuant to which Vasquez agreed to pay Marroquin $1.3 million for the purchase of a dry cleaning business in Union, New Jersey. The levy was a straight forward mechanism by which Green Lago enforced its January 2015 judgment against Marroquin.

The operation of the levy is simple: Vasquez owed money to Marroquin for the purchase of the Union, New Jersey dry cleaning business, and Marroquin owed money to Green Lago based on an unpaid promissory note issued by Marroquin in favor of Green Lago for which Green Lago obtained a judgment against Marroquin in 2015. Through the levy, Green Lago cut out the middleman such that Vasquez owes money directly to Green Lago. This concept was fully adjudicated and memorialized by Judge Dupuis in a May 2019 letter-decision and corresponding Order instructing Vasquez to turnover funds to Green Lago "in an amount of no less than $931,881.04." The order was subsequently corrected in August 2019 to direct Vasquez to turnover $7,332.68 per month until the $931,881.04 owed to Green Lago was paid in full. The 2019 turnover order was never appealed.

Since the entry of the turnover order, Vasquez has participated in and vehemently opposed every single one of Green Lago's subsequent motions by

asserting unsupported theories as to why he should not have to comply with the trial court's orders. His theories have been rejected by the trial court time and time again, and his arguments on appeal are no different. He drums up old arguments that are not properly before this Court and were already considered and rejected by the trial court years ago, without appeals taken on those decisions.

Before the Court now is an appeal of a September 2024 Amended Judgment in favor of Green Lago and against Vasquez and his solely-owned entity, Dry Clean Express No. 1, LLC, the Appellants here. That judgment was simply a product of a long line of Orders in Aid of Litigant's Rights dating all the way back to Judge Dupuis' May 2019 decision and corresponding August 2019 turnover order, all of which resulted from Vasquez's continued refusal to comply with the 2019 turnover order. Specifically, after Vasquez failed to comply with the 2019 turnover order, in September 2021, Judge Lindemann entered Judgment against Vasquez and DCE-1, which permitted Green Lago to enforce the trial court's turnover directive against Vasquez and DCE-1's personal assets. The trial court did so because there is no other remedy available when a garnishee refuses to comply with a turnover order. The 2021 Judgment against Vasquez and DCE-1 was never appealed.

The only difference between the 2021 Judgment and the 2024 Amended

Judgment is the 2021 Judgment is a line item in Judge Lindemann's September 2021 Order in Aid of Litigant's Rights. So in 2024, Judge Lindemann simply granted Green Lago's application to 1) update the judgment amount with post-judgment interest calculated at the rate allowed by Judge Dupuis in 2019 (18%), and 2) prepare a separate judgment document with an amended caption to include Vasquez and DCE-1 for the administrative purpose of enabling the clerks of court to actually docket the judgment against Vasquez and DCE-1.

When distilled to its essentials, this appeal is really just an end-around, circumventive, and last-ditch effort to appeal and reverse the 2019 levy and turnover order against Vasquez and DCE-1. For the reasons set forth in this brief, Appellants' arguments are not properly before this court, have already been rejected by the trial court years ago, and are meritless, anyway.

The standard of review for Orders in Aid of Litigant's Rights is whether the trial court abused its discretion. Appellants' arguments do not even come close to meeting that standard. Accordingly, the appeal should be dismissed and the 2024 Amended Judgment should otherwise be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

I. Background

On November 20, 2013, defendant, Any Garment Cleaners No. 3, LLC ("AGC-3"), purchased two dry-cleaning businesses from plaintiff, Green Lago, LLC ("Green Lago") for $465,573.44. (Da42).[2] As consideration for the purchase, AGC-3 executed a promissory note ("Note") in favor of Green Lago, pursuant to which AGC-3 agreed to make monthly payments until the purchase price was paid in full. (Da46). Defendant, Carlos Marroquin ("Marroquin"), the managing member of AGC-3, executed a personal guaranty for repayment of the Note ("Guaranty"). (Da44). Thereafter, neither AGC-3 nor Marroquin

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[1] Green Lago combines the Rule 2:6-2(a)(5) statement of facts and Rule 2:6-2(a)(4) procedural history as the two are inextricably intertwined in this case. Transcript references are as follows:

"1T" refers to the Transcript of Motion Hearing dated July 26, 2018 in a related fraudulent transfer proceeding, Green Lago, LLC, et al. v. Dry Clean Express, LLC, et al., Docket. No. UNN-C-152-17. This transcript was included in the present matter below as Exhibit K to the February 13, 2019 Certification of Frederick C. Biehl, III, which is located at Plaintiff-Respondent's Appendix 1-6.

"2T" refers to the Transcript of Motion Hearing, dated September 8, 2021.
"3T" refers to the Transcript of Motion Hearing, dated February 2, 2024.
"4T" refers to the Transcript of Motion Hearing, dated August 16, 2024.

[2] Under Rule 2:6-8, "Da" refers to Appellants-Defendants' Appendix.

made a single payment due under the Note and this lawsuit ensued as a result. (Da42).

II. Green Lago's Judgment against AGC-3 and Marroquin

On January 9, 2015, Green Lago secured a default judgment against defendants AGC-3 and Marroquin in the amount of $465,573.00, together with contract interest in the amount of $76,685.61 through December 15, 2014, for a total judgment of $542,258.61 ("2015 Judgment"), with post-judgment interest continuing to accrue thereafter. (Da51). The 2015 Judgment was never appealed.

III. Marroquin challenged service of the Complaint in 2019, and the Court rejected Marroquin's challenge

It was not until four years after entry of the Judgment, that Marroquin contended he was never served with a copy of the Summons and Complaint in opposition to Green Lago's January 17, 2019 Motion for an Order in Aid of Litigant's Rights pursuant to Rule 1:10-3. (Da65).

In response to Marroquin's opposition, on February 25, 2019, Green Lago submitted undisputed proof that i) service of the Summons and Complaint was effectuated in June 2014, ii) Marroquin knew about the action, iii) Marroquin hired counsel in June or July of 2014 to defend him, and iv) Marroquin's counsel

confirmed in July 2014 that Marroquin and AGC-3 were served with the Complaint. (Pa105-190). [3]

After a thorough analysis of the record, on May 7, 2019, Judge Dupuis issued a letter-decision rejecting Marroquin's argument, holding that he was in fact served, and otherwise denying Marroquin's application to vacate the 2015 Judgment ("May 2019 Letter Decision"). (Pa85-91). The May 2019 Letter Decision was never appealed and therefore, as explained below, it remains the key underlying predicate for all of the subsequent Orders in this case.

IV. Green Lago learned in post-judgment discovery that Marroquin sold the Union Store to his brother, Matsamy Vasquez, and that as of February 2018, Vasquez owed Marroquin $1,065,000 for the sale

During post-Judgment discovery, Green Lago discovered that, just a few days before entry of the 2015 Judgment, Marroquin sold a dry cleaning business located in Union, New Jersey ("Union Store") to his brother, Vasquez and Dry Clean Express No. 1, LLC ("DCE-1")—an entity solely owned by Vasquez. (Pa1-5). In April 2015, Marroquin testified that no payment was exchanged for the sale and Vasquez instead assumed approximately $1 million worth of various

[3] Pursuant to Rule 2:6-8, "Pa" refers to Plaintiff-Respondent's Appendix. We note that Vasquez conveniently left Green Lago's reply submission out of his Appellate Appendix. This is a theme throughout Vasquez's appellate submission, in which he intentionally omitted key aspects of the record in derogation of Rule 2:6-1(a)(1)(I).

purported debts of the Union Store in exchange for acquiring the business, as evidenced by an Asset Purchase Agreement dated January 5, 2015. (Pa85-91; Pa27; Da158-159).

However, in the related fraudulent transfer proceeding,[4] on July 26, 2018, Vasquez testified that on the same day he and Marroquin executed the Asset Purchase Agreement for the Union Store, the brothers *also* executed a "Consulting Agreement" pursuant to which Vasquez/DCE-1 agreed to pay Marroquin an additional $1,325,000 as consideration for the purchase of the Union Store, to be paid in 36 monthly installments of $7,930.05 at an interest rate of 1%, with a balloon payment of $1,075,650 at the end of the 36 months. (Pa91-95; Da158-159; 1T 18:2 – 22:16) (sometimes referred to hereinafter as the "Vasquez Receivable"). Thus, as of January 2018, the entire remaining balance was due and owing. (Da158-159).

Vasquez confirmed in his testimony that the "Consulting Agreement" was part of the purchase of the Union Store. (1T 19:3-16). He also testified that he had been issuing $2,500 checks to himself out of DCE-1, cashing them, and giving the cash to Marroquin as payment toward the purchase of the Union Store pursuant to the "Consulting Agreement," and that the balloon payment of

[4] The fraudulent transfer proceeding was transferred to the Law Division in July 2020 and was dismissed without prejudice in December 2021. See Docket No. UNN-L-2610-10.

$1,075,065 had not been paid. (1T 20:6 – 22:16). Through a series of checks, Vasquez showed payments of approximately $260,000, leaving a balance of $1,065,000 owed to Marroquin on the "Consulting Agreement." (Pa38-66).[5] Judge Dupuis' May 2019 Letter Decision and corresponding turnover order is predicated on Vasquez's own testimony and signed checks. (Pa85-91).

V. Green Lago levied on the Vasquez Receivable and in May 2019, Judge Dupuis entered an Order directing Vasquez to turnover to the Sheriff of Union County "an amount of no less than $931,881.04"

To recap, as of July 2018, Green Lago had secured the 2015 Judgment against Marroquin in the amount of $542,258.61, with post-judgment interest accruing since January 2015, (Da51), and Marroquin had sold the Union Store (worth approximately $2 million, see ((Pa1-5)), to his brother, Vasquez, for an assumption of $1 million worth of debt and another $1.3 million worth of installment payments (i.e. the "Consulting Agreement"). (Id.). In an effort to recover on the 2015 Judgment, on July 26, 2018, Green Lago caused a writ of execution to be served on Vasquez and DCE-1 directing Vasquez and/or DCE-1 to satisfy Green Lago's 2015 Judgment by paying Green Lago instead of paying Marroquin the amounts Vasquez owed Marroquin under the "Consulting Agreement." (Pa68-73). The writ of execution against Vasquez acted as a levy

[5] ($1,325,000 - $260,000 = $1,065,000).

on "[a]ny and all rights, credits, monies & effects in [his] hands due or to become due to Any Garment Cleaners, LLC & Carlos Marroquin." (Pa71).

When Vasquez failed to comply with the writ, on February 13, 2019, Green Lago moved for an Order in Aid of Litigant's Rights, including the turnover by Vasquez of the levied funds, (Pa1-84), which was defendants opposed, and eventually resulted in the trial court's May 2019 Letter Decision and entry of an Order dated May 20, 2019 ("May 2019 Turnover Order"). (Pa85-91). As part of this motion, Green Lago requested the trial court calculate post-judgment interest at the rate set forth in the Note between Green Lago and Marroquin, which was 18%, as a sanction for Marroquin's continued failure to satisfy the 2015 Judgment. (Pa1-5). Green Lago also requested the Court issue an updated writ of execution reflecting the 18% post-judgment interest calculation, such that the amount owed Green Lago as of January 9, 2019 totaled $931,881.04. (Id.). In May 2019, Judge Dupuis granted each of Green Lago's requests as follows:

i) post-judgment interest would accrue at the rate of 18%;

ii) the amount due Green Lago on the 2015 Judgment as of January 9, 2019, totaled $931,881.04;

iii) Vasquez and DCE-1 owed a balance of $1,065,000 on the "Consulting Agreement," and no further payments were to be made to Marroquin until Green Lago's Judgment had been paid in full;

iv) Green Lago had levied on the "Consulting Agreement," by virtue of the writ of execution served on July 26, 2018; and therefore,

v) Vasquez and DCE-1 were to turn over to the Sheriff of Union County "an amount of no less than $931,881.04," and the Sheriff was to turn over the same to Green Lago in satisfaction of Green Lago's Judgment. (Pa85-91).

On August 30, 2019, Judge Dupuis corrected the May 2019 Order simply to include an additional directive to Vasquez and DCE-1 to turn over to the Sheriff the amount of $7,332.68 per month until Green Lago's Judgment was paid in full ("August 2019 Turnover Order"). (Da104-106). Neither the May 2019 Letter Decision nor the corresponding August 2019 Turnover Order have been appealed and the time to do so expired nearly six years ago. This Order and decision remain in full force and effect today and Vasquez and DCE-1 continue to violate them.

VI. In September 2021, Judge Lindemann entered Judgment against Vasquez and DCE-1 personally to permit Green Lago to enforce the trial court's prior orders against Vasquez and DCE-1's personal assets due to Vasquez's continued failure to comply with Judge Dupuis' August 2019 Turnover Order

Although Vasquez and DCE-1 complied with the August 2019 Turnover Order for approximately eight months, by May 2020, Vasquez and DCE-1 stopped remitting payments to the Sheriff of Union County, leading to another Motion in Aid of Litigant's Rights filed by Green Lago on July 21, 2021. (Da107-113; Da135). In the July 2021 motion, Green Lago explained that as of July 9, 2021, $1,116,943.60 remained on the 2015 Judgment including post-judgment interest at the rate of 18%, which included a credit of $58,661.44 for the payments made by Vasquez until May 2020. (Da111-112; Da135).

Accordingly, through its July 2021 motion, Green Lago requested the trial court: i) compel Vasquez and DCE-1 to comply with the August 2019 Turnover Order by remitting the required monthly payments to the Sheriff, and ii) enter a judgment against Vasquez and DCE-1 due to their continued violations of the court's turnover directive to enable Green Lago to enforce the court's order against Vasquez and DCE-1's personal assets. (Da108). Both Marroquin and Vasquez opposed the motion, arguing, self-servingly, that no more money was due under the "Consulting Agreement," because Marroquin had not provided

any more consulting services, and therefore, nothing else needed to be paid to the Sheriff. (Da126-133).[6]

During oral argument on September 8, 2021, Judge Lindemann granted Green Lago's motion and dispelled Vasquez's position that no further amounts were due under the "Consulting Agreement" by i) emphasizing that the "Consulting Agreement" expired on January 15, 2018, prior to Judge Dupuis' May 2019 and August 2019 Orders, such that all amounts due under the Consulting Agreement (in particular the balloon payment) were already due and owing prior to Judge Dupuis' Orders, (2T 3:17 – 6:10), and ii) reading the plain language of Judge Dupuis' August 2019 Turnover Order, and explaining the August 2019 Turnover Order directed Vasquez to:

> pay $931,881.04 to the Sheriff. **Period.** It doesn't say [] upon the completion of certain conditions precedent, upon the consulting agreement actually requiring services, upon actual payments made for services under the consulting agreement. **It does not say that**.
>
> The Court is limited, bound, and privileged to enforce the record here. It is speaking with no ambiguity and with great clarity.
>
> (2T 33:11-19) (emphasis added).

Consistent with the above colloquy, by Order dated September 9, 2021, Judge Lindemann granted Green Lago's third motion in Aid of Litigant's Rights

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[6] This self-serving theory is contradicted by Vasquez's admission in his July 2018 testimony that the "Consulting Agreement" really operated as consideration for purchasing the Union Store. (Pa211).

("September 2021 Order"). (Da20-22).[7] In the September 2021 Order, Judge Lindemann allowed for two different mechanisms of relief for Green Lago against Vasquez and DCE-1. First, the trial court directed Vasquez and DCE-1 to comply with Judge Dupuis' August 2019 Turnover Order by remitting payment to the Sheriff of Union County. And second, the trial court entered judgment against Vasquez and DCE-1 in favor of Green Lago as line item number 2 in the order in the amount of $1,116,943.00 ("September 2021 Judgment") due to his continued failures to comply with the turnover directive. (Id.).

Accordingly, not only were Vasquez and DCE-1 required to turnover monthly payments of $7,332.68 to the Sheriff until the Judgment was paid in full, but (presumably with the expectation that Vasquez and DCE-1 would not make the monthly payments to the Sheriff despite this third Order directing them, which is exactly what happened) the trial court also allowed Green Lago to simultaneously pursue Vasquez and DCE-1's assets by enforcing its judgment directly against them. The September 2021 Order and Judgment were never appealed and remain in full force and effect as to Vasquez and DCE-1.

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[7] This Order was signed on September 9, 2021. For the avoidance of confusion, the Order states "IT IS on this 9th day of AUGUST 2021," but also indicates, "for the reasons set forth on the record on 9/8/21," meaning the trial court intended to write "AUGUST" rather than "SEPTEMBER." (Da21).

VII. Carlos Marroquin filed a bankruptcy, but Vasquez and DCE-1 did not, and therefore, the Bankruptcy Court determined that the automatic stay did not apply to Vasquez and DCE-1

Judge Lindemann's September 2021 Order is dated September 9, 2021, but it was uploaded to eCourts on September 10, 2021. On that same day, September 10, 2021, Carlos Marroquin filed a voluntary Chapter 7 petition for Bankruptcy in the Western District of Texas. (Da140). On August 23, 2023, Green Lago filed a motion in the Marroquin bankruptcy to Confirm the Absence of the Automatic Stay as to the amounts Vasquez and DCE-1 owed to Green Lago pursuant to the August 2019 Turnover Order (i.e. the "Vasquez Receivable"). (Da144-151); (Pa92-101).

Through the Motion to Confirm the Absence of the Automatic Stay, Green Lago asserted the Vasquez Receivable was not property of the bankruptcy estate because Green Lago levied on those funds and obtained a turnover order (the May and August 2019 Orders) two years prior to the bankruptcy filing, such that under New Jersey's law on levies, the Vasquez Receivable was and is Green Lago's property interest, not Marroquin's. (Pa92-101). In other words, once Green Lago levied on the amounts Vasquez owed Marroquin under the Consulting Agreement and the trial court directed turnover of the funds in the May 2019 Letter Decision and corresponding August 2019 Turnover Order,

Vasquez owed those monies directly to Green Lago regardless of the fact that he initially owed them to the Bankruptcy Debtor, Carlos Marroquin. (Id.).

On September 7, 2023, the Bankruptcy Court agreed with Green Lago and entered an order stating, "the automatic stay is inapplicable as to the Vasquez Receivable, because the same is not property of the estate," and "**Green Lago may continue enforcing any and all of its rights and remedies as to the Vasquez Receivable without further Court order.**" ("Bankruptcy Court Order"). (Pa102-104) (emphasis added).

On January 8, 2024, Marroquin (again, not Vasquez) received an order discharging his debts. (Da141). However, as illustrated above, as of the trial court's turnover directive (more than two years *before* the Marroquin bankruptcy), Vasquez owed "an amount of no less than $931,881.04" directly to Green Lago. (Da104-106). Marroquin's bankruptcy discharge, therefore, had no legal impact on the amounts Vasquez (not Marroquin) owes to Green Lago as a result of the May 2019 Letter Decision and corresponding August 2019 Turnover Order. This is confirmed by the Bankruptcy Court Order enabling Green Lago to "continue enforcing any and all of its rights and remedies as to the Vasquez Receivable without further Court order." (Pa102-104).

VIII. In April 2024, Green Lago obtained an administrative Order from Judge Lindemann directing Vasquez and DCE-1's again to comply with their obligations under the August 2019 Turnover Order and September 2021 Order and authorizing Green Lago to amend the case caption for the limited purpose of docketing its September 2021 Judgment against Vasquez and DCE-1

Having obtained the Bankruptcy Court Order, Green Lago returned to this action and filed a motion on January 3, 2024, which:

i) provided the trial court with the Bankruptcy Court Order;

ii) explained why Marroquin's bankruptcy had no impact on Green Lago's collection efforts against Vasquez and DCE-1;

iii) requested another Order in Aid of Litigant's Rights directing Vasquez and DCE-1 to comply with all prior court orders to remit payment to the Sheriff of Union County *for a fourth time*;

iv) requested another updated judgment amount of $1,625,900.68 based on the earlier orders calculating post-judgment interest at 18%; and

v) requested the trial court execute a standalone judgment document with an amended case caption for the administrative purpose of enabling Green Lago to enforce the September 2021 Judgment against Vasquez and DCE-1 by docketing the same as a statewide lien against them and obtaining the "J-" docket number, which is required for levies on personal assets. (Da144-151).

Vasquez and DCE-1 opposed the motion, arguing that Marroquin's bankruptcy discharge relinquished Vasquez and DCE-1 obligations as well and

that the September 2021 Order was void due to Marroquin's filing of Bankruptcy on the same day the order was uploaded onto eCourts. (Da152-156). At oral argument on February 2, 2024, Judge Lindemann dispelled Vasquez's position, explaining that the Bankruptcy Court Order serves as a "safe harbor for the [turnover] order that th[is] Court issued already. It gives [Green Lago] the right to enforce the [August 2019 Turnover Order] without worrying about impacting the bankruptcy jurisdiction." (3T 18:23 – 19:1).

Further clarifying why Marroquin's bankruptcy has no impact on Green Lago's rights against Vasquez and DCE-1, Green Lago explained during the February 2024 oral argument that the Vasquez Receivable cannot, as a matter of law, "go into the [bankruptcy] estate in order to be distributed to creditors. [The Vasquez Receivable is] a property interest of Green Lago. . . . [A]s of the date of the bankruptcy petition it was already Green Lago's property interest." (3T 20:8 - 21:3). The Bankruptcy Court Order simply confirms that legal proposition. (Pa102-104).

The trial court thereafter allowed additional briefing on Vasquez's arguments raised at oral argument but not in his brief. (3T 32:10 – 33:20). On April 12, 2024, Judge Lindemann ultimately all of Vasquez's arguments and granted Green Lago's motion, but directed Green Lago to submit a separate Order for Judgment against Vasquez and DCE-1 with the amended case caption

("April 2024 Order"). (Da16-19). In the Statement of Reasons, Judge Lindemann held, "The record, and the controlling law, reflects no protection by Bankruptcy law, Stay, or otherwise, that exempt, immunize, or otherwise protect Vasquez or preclude the relief sought herein." (Da19).

On May 23, 2024, the trial court entered the Order of Final Judgment against Vasquez and DCE-1, which Green Lago submitted pursuant to the trial court's direction in the April 2024 Order. (Da14). On July 8, 2024, Vasquez appealed the May 2024 Judgment; however, the notice of appeal was returned because the April 2024 Order allowed for an award of attorney's fees, which still needed to be determined by the trial court. (July 10, 2024 Letter from Joseph Orlando, Docket No. A-003436-23).

Accordingly, Green Lago submitted its application for attorney's fees, which the trial court ultimately granted on September 13, 2024. (Da5-13). Thereafter, on September 27, 2024, Judge Lindemann entered an Order Amending the Final Judgment to include the attorney's fees the court had awarded ("September 2024 Amended Judgment"). (Da1-2). Appellants now challenge the September 2024 Amended Judgment.

STANDARD OF REVIEW

Appellants' suggestion of a *de novo* standard review is incorrect. (Db10).[8] Instead, a much higher "abuse of discretion" standard is applicable here where the long line of orders being challenged are Orders in Aid of Litigant's Rights pursuant to Rule 1:10-3 resulting from the 2015 Judgment, which Appellants apparently also seek to vacate through this appeal.

A trial court's determination of whether to void a default judgment pursuant to Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). Likewise, an order granting a motion to enforce litigant's rights is reviewed under an abuse of discretion standard. N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296, 299 (App. Div. 2017). "An abuse of discretion occurs 'when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 299 (quoting Guillaume, 209 N.J. at 467).

LEGAL ARGUMENT

None of Appellants' arguments pertain to the September 2024 Amended Judgment from which they appeal. Instead, distilling Appellants' convoluted

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[8] Pursuant to Rule 2:6-8, "Db" refers to Defendant-Appellants' Brief.

brief to its essentials, this appeal is an improper attempt to challenge the trial court's May 2019 Letter Decision and corresponding August 2019 Turnover Order and its progeny of Orders in Aid of Litigant's Rights. The time to assert those challenges was years ago. This appeal should be dismissed on that basis also.

Specifically, Appellants' Point I fails to mention the September 2024 Amended Judgment, and instead, improperly challenges the 2015 Judgment. (Db11). Appellants' Point II similarly challenges only the May 2019 Letter Decision and corresponding August 2019 Turnover Order, again ignoring the September 2024 Amended Judgment. (Db13). Appellants' Points III challenges the September 2021 Judgment against Vasquez and DCE-1, and only mentions that the September 2024 Amended Judgment allowed for the caption to be changed for the administrative purpose of enforcing the September 2021 Judgment. (Db17-18). Point III, however, does not provide any basis to overturn the September 2021 Judgment upon which the September 2024 Amended Judgment is predicated. (Id.). Appellants' Point IV is another rehash of the stale argument that no further amounts are due under the "Consulting Agreement" because Marroquin has not earned them, which Judge Lindemann rejected in 2021. (Db18; 2T 33:11-19). Finally, Appellants' Point V challenges the post-judgment interest rate of 18%. (Db20). But that rate was allowed by

Judge Dupuis in the May 2019 Letter Decision and corresponding August 2019 Turnover Order. (Pa85-91).

Accordingly, this appeal should be outright dismissed. In any event, Green Lago addresses the substance of each of Appellants' Points and why they should be rejected in further detail below.

I. MARROQUIN WAS PROPERLY SERVED WITH THE SUMMONS AND COMPLAINT AND THE 2015 JUDGMENT IS NOT BEING, AND CANNOT BE, APPEALED

Appellants' Point I contends the underlying January 2015 Judgment against Marroquin should be vacated due to defective service of process. (Db11). The time for Marroquin to assert this argument was ten years ago. See Rule 2:4-1. In addition, Marroquin is not an appellant here. This challenge is not properly before this Court and should not be considered.

Regardless, Judge Dupuis already considered and rejected Marroquin's argument concerning lack of service in the May 2019 Letter Decision where the trial court denied Marroquin's four-year-old motion to vacate default. (Pa85-91). The trial court found service was effectuated based on undisputed proof that i) service of the Summons and Complaint was effectuated in June 2014, ii) Marroquin knew about the action, iii) Marroquin hired counsel in June or July of 2014 to defend him, and iv) Marroquin's counsel confirmed in July 2014 that Marroquin and AGC-3 were served with the Complaint. (Id.).

"A default judgment will be considered void when a substantial deviation from service of process rules has occurred, casting reasonable doubt on proper notice." Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). A "fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." O'Connor v. Abraham Altus, 67 N.J. 106, 126 (1975) (quoting Walker v. City of Hutchinson, 352 U.S. 112, 115-16 (1956)). Given all the evidence submitted, in particular that Marroquin's counsel confirmed service in July 2014 — five months before the 2015 Judgment — it is undisputable that Judge Dupuis correctly determined Marroquin was served. (Pa89-95).

II. THE MAY AND AUGUST 2019 TURNOVER ORDERS WERE PREDICATED ON VASQUEZ'S OWN TESTIMONY ABOUT THE AMOUNTS HE OWED MARROQUIN ON THE "CONSULTING AGREEMENT," AND THOSE ORDERS ARE NOT BEING, AND CANNOT BE, APPEALED

Appellants' Point II challenges the August 2019 Turnover Order because they claim Vasquez never "admitted the debt" to Marroquin with regard to the monies owed on the "Consulting Agreement." (Db13-14). Again, the August 2019 Turnover Order is not the subject of this appeal, and the time to appeal Judge Dupuis' 2019 decision was nearly six years ago. See, e.g., Citibank

(South Dakota), N.A. v. Razvi, 2009 WL 537509 (App. Div. March 5, 2009) (appeal of a turnover order).

In addition, Appellate Courts '"decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available."' Chirino v. Proud 2 Haul, Inc., 458 N.J. Super. 308, 318 (App. Div. 2017) (quoting State v. Witt, 223 N.J. 409, 419 (2015)), aff'd, 237 N.J. 440 (2019). Appellants' argument was not raised in response to Green Lago's 2019 turnover motion. See (Da65-69). As such, this challenge is not properly before this Court and should not be considered.

Nevertheless, the argument about whether Vasquez "admitted the debt" stems from the New Jersey statute on post-judgment levies and garnishments. The statute provides:

> After a levy upon a debt due or accruing to the judgment debtor from a third person, herein called the garnishee, the court may upon notice to the garnishee and the judgment debtor, and if the garnishee admits the debt, direct the debt, to an amount not exceeding the sum sufficient to satisfy the execution, to be paid to the officer holding the execution or to the receiver appointed by the court[.]
>
> N.J.S.A. 2A:17–63.

Even if this argument were properly before the Court, the levy and the trial court's turnover directives were predicated on Vasquez's own testimony from July 2018 about the amount due and owing on the "Consulting Agreement"

and Vasquez's production of a series of checks showing he paid $260,000 of the $1,325,000, leaving a balance of $1,065,000 due and owing as of January 2018. (Pa91-95; Da158-159; 1T 18:2 – 22:16). Those are Vasquez's admissions of the debt. Judge Dupuis analyzed this evidence in connection with New Jersey's laws and ruled in favor of Green Lago's turnover application, writing the thorough and thoughtful May 2019 Letter Decision. (Pa85-91).

It has also been long held "that where the garnishee does not expressly admit the debt but fails to deny it or stands without answer upon that question at the hearing, the failure to deny it is tantamount to an admission of its existence within the meaning of the statute." Beninati v. Hinchliffe, 126 N.J.L. 587, 589 (1941). Even if Vasquez had not actually "admitted the debt," his silence coupled with the evidence set forth above sufficed for the trial court to issue the May 2019 Letter Decision and corresponding August 2019 Turnover Order. Accordingly, there is simply no basis in law or in fact to overturn Judge Dupuis' May 2019 decision, let alone find it was amounted to an abuse of discretion.

III. THE SEPTEMBER 2021 JUDGMENT AGAINST VASQUEZ AND DCE-1 WAS SIMPLY ANOTHER MECHANISM BY WHICH GREEN LAGO WAS ABLE TO ENFORCE THE 2019 TURNOVER ORDER

Appellants' Point III asserts the trial court denied them due process by adding add them as named parties to the present action. (Db16). In Point III, Appellants are actually challenging the judgment entered against them

personally in September 2021 by arguing they were not parties to the original litigation.

The trial court entered the September 2021 Judgment as a line item to the September 9, 2021 Order in aid of litigants' rights, which read, "2. Judgment is hereby entered against Matsamy Vasquez and Dry Clean Express 1, LLC in the amount of $1,116,943.00 as of July 9, 2021, with interest accruing thereon in the amount of eighteen percent (18%) per annum." (Da20-22). The September 2021 Order was never appealed and Appellants' arguments challenging it now are not properly before the Court.

In any event, Green Lago only requested entry of judgment against Vasquez and DCE-1 after they had failed to comply with the August 2019 Turnover Order for nearly a year and Green Lago was left with no other mechanism to enforce the trial court's turnover order against Vasquez and DCE-1. (Da110-113). Pursuant to Rule 1:10-3, the court is able to fashion remedies and sanctions to remediate violations of prior court orders. See Pressler & Verniero, Current N.J. Court Rules, cmt. 4.4 on R. 1:10-3 (2025). The September 2021 Judgment was entered as a mechanism to remediate Vasquez and DCE-1's continued non-compliance with the trial court's August 2019 Turnover Order. Indeed, there really is no other conceivable way to enforce a turnover order when the garnishee fails to comply.

Despite their current claims of lack of due process, (Db16-17), *both* Vasquez and Marroquin participated in and opposed Green Lago's July 2021 motion for an Order in Aid of Litigant's Rights. (Da126). After a hearing on September 8, 2021, where the court rejected all the same arguments Vasquez and Marroquin are making here, (2T), Judge Lindemann granted Green Lago's motion and entered the September 2021 Order, which contained as a line item, the entry of judgment against them.

As set forth in Green Lago's January 2024 Motion in Aid of Litigant's Rights, (Da151), the September 2024 Amended Judgment from which Appellants now take an appeal, is nothing new to the case. It is simply an administrative papering of the September 2021 Judgment for the purpose enabling the clerks of court to actually docket the judgment against Vasquez and DCE-1. Appellants' Point III should therefore be rejected.

IV. IN 2019, JUDGE DUPUIS ORDERED VASQUEZ AND DCE-1 TO TURNOVER TO GREEN LAGO AN AMOUNT OF NO LESS THAN $931,881.04. THAT ORDER IS NOT UP FOR INTERPRETATION

As stated above, Appellants' Point IV is yet another rehash of the stale argument that no further amounts are due under the "Consulting Agreement" because Marroquin has not earned them, which Judge Lindemann rejected back in 2021. (Db18; 2T 33:11-19). At oral argument nearly four years ago, Judge

Lindemann correctly explained that the August 2019 Turnover Order directs Vasquez to:

> pay $931,881.04 to the Sheriff. **Period.** It doesn't say [] upon the completion of certain conditions precedent, upon the consulting agreement actually requiring services, upon actual payments made for services under the consulting agreement. **It does not say that**.
>
> The Court is limited, bound, and privileged to enforce the record here. It is speaking with no ambiguity and with great clarity.

(2T 33:11-19) (emphasis added); see also (Pa89-95; Da104-106).

Appellants' after-the-fact, self-serving interpretation of Judge Dupuis' May 2019 Letter Decision and August 2019 Turnover Order is irrelevant and directly at odds with the plain language of the Judge's decision and order. They never appealed Judge Dupuis' sound decision and may not do so now.

i. Marroquin's bankruptcy discharge did not somehow vitiate the effect of Judge Dupuis' August 2019 Turnover Order against Vasquez and DCE-1

At the end of Appellants' Point IV, without any citation to supporting law (because there is none), Appellants contend they had no further liability to Green Lago after Marroquin's bankruptcy discharge. (Db20). That argument is incorrect and mischaracterizes the interplay between Bankruptcy law and New Jersey State law on levies and property interests.

The August 2019 Turnover Order gave Green Lago rights directly against Vasquez and DCE-1, such that Marroquin's bankruptcy filing two years later is

completely irrelevant to Green Lago's rights against Vasquez and DCE-1. As both the Bankruptcy Court and the District Court for the District of New Jersey have explained, under New Jersey's levy statute, "[a]fter the turnover order is entered, a garnishee [Vasquez]. . . no longer owes money to the judgment debtor [Marroquin]. . . . Rather there is an obligation [of Vasquez] to turn that money over to the levying creditor [Green Lago]." In re Flores, 2011 WL 44910 at *2 (Bankr. D.N.J. Jan. 6, 2011); see also In re Paul, 2013 U.S. Dist. LEXIS 95652 at *13-14 (D.N.J. July 9, 2013) (holding under New Jersey law that as a result of the levy and subsequent turnover order, the garnishee "no longer owed the money in [the] accounts to Debtors," and instead owed the amounts directly to the levying creditor).

Indeed, this was the entire point of the Bankruptcy Court Order Confirming the Absence of the Automatic Stay as to the Vasquez Receivable, which authorized Green Lago to continue enforcing its rights against Vasquez and DCE-1. (Pa103-104). When a Chapter 7 debtor like Marroquin receives a discharge at the end of a bankruptcy proceeding, that discharge prevents creditors from seeking to recover against "property of the debtor," otherwise known as "property of the estate." 11 U.S.C. §524(a)(3); 11 U.S.C. §541. But the Bankruptcy Court confirmed that the "Vasquez Receivable" (i.e. the amounts

he is required to pay pursuant to the August 2019 Turnover Order) was explicitly **not** property of the estate. (Pa103-104).

Accordingly, as a matter of New Jersey State law on levies and the Bankruptcy Code's the definition of "property of the estate," Marroquin no longer had any property interest in the "Vasquez Receivable" as of the date of his Bankruptcy petition. The discharge of debts in January 2024 could not possibly have had any impact on Green Lago's rights against Vasquez and DCE-1 pursuant to the August 2019 Turnover Order because that Order created an obligation of Vasquez and DCE-1 directly to Green Lago.[9] Appellants' unsupported argument is incorrect, intended to confuse the Court, and should be rejected.

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[9] Nor could the filing of the Bankruptcy itself have impacted Green Lago's rights against Vasquez and DCE-1 because the automatic stay does not protect non-debtors like Vasquez and DCE-1. See Citizens First Nat. Bank of N.J. v. Marcus, 253 N.J. Super. 1, 4 (App. Div. 1991); Wedgeworth v. Fibreboard Corp., 706 F.2d 541, 544 (5th Cir. 1983). Marcus involved a lender who pursued an action against a corporation and the individual owner of the corporation where the individual owner/guarantor filed for bankruptcy and the question before the New Jersey Appellate Division was whether the trial court properly dismissed the lender's complaint against the non-debtor corporation. 253 N.J. Super. at 2. Reversing the trial court and concluding that the lender could pursue the non-debtor corporation during the pendency of the individual owner's bankruptcy, the Appellate Division held that "[t]he law is well settled that the automatic stay provided for by the bankruptcy law extends only to claims against the debtor himself and not against others, including sureties, whose liability to the creditor for the obligations of the debtor has an independent basis." So the September 2021 Judgment against Vasquez and DCE-1 remains fully enforceable.

V. JUDGE DUPUIS ALLOWED THE POST-JUDGMENT INTEREST RATE OF 18% IN THE MAY 2019 LETTER DECISION, WHICH IS NOT BEING, AND CANNOT BE, APPEALED

Appellants lastly argue in Point V the trial court erred in setting a post-judgment interest rate of 18% per annum because such a rate is not consistent with Rule 4:42-11(a). (Db20-21). But Judge Dupuis decided that rate as part of the May 2019 Letter Decision and pursuant to Rule 1:10-3, which, again, enables the court to fashion remedies to assist judgment creditors with enforcing their judgment against judgment debtors. As repeatedly stated throughout this brief, a challenge of any aspect of Judge Dupuis' May 2019 Letter Decision is not properly before this Court, and should have been advanced back in 2019.

Rule 4:42-11 states, "**Except as otherwise ordered by the court** . . . judgements . . . shall bear simple interest as follows." (Emphasis added). Judge Dupuis ordered otherwise because of how long the 2015 Judgment had gone unsatisfied by May 2019. In any event, Judge Dupuis already addressed this argument in the May 2019 Letter Decision and explained, "[t]he note dated November 20, 2013 signed by Marroquin . . . provided for eighteen percent interest in the event of default. R. 4:42-11(a) does not control. The parties agreed to a different rate of interest." (Pa89-95). The May 2019 Letter Decision allowing for post-judgment interest was not an abuse of discretion back in 2019

and it is not properly before the Court now. Appellants' Point V should be rejected.

CONCLUSION

For the foregoing reasons, Green Lago respectfully requests this Court dismiss the appeal as none of Appellants arguments are properly before this Court, and otherwise affirm the September 2024 Amended Judgment.

Dated: April 21, 2025

Respectfully submitted,

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Superior Court of New Jersey

Appellate Division

Docket No. A-000360-24

GREEN LAGO, LLC, *Plaintiff-Respondent,* vs. ANY GARMENT CLEANERS NO. 3, LLC and CARLOS MARROQUIN, Individually, *Defendants,* - and - DRY CLEAN EXPRESS NO. 1, LLC and MATSAMY VASQUEZ, Individually, *Defendants-Appellants.*	:	CIVIL ACTION ON APPEAL FROM THE FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, UNION COUNTY DOCKET NO. UNN-L-1913-14 Sat Below: HON. DANIEL R. LINDEMANN, J.S.C.

REPLY BRIEF ON BEHALF OF DEFENDANTS-APPELLANTS

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Introduction

This case involves significant due process violations and interferences with contract rights which will affect for all businesses in New Jersey. Appellee/Plaintiff Green Lago ("Appellee") was owed no debt by Appellants/Defendants Matsamy Vasquez and Dry Clean Express I ("Appellants"). After Green Lago, a predatory lender who victimized minority businesses, obtained an improper judgment against Carlos Marroquin and his company, Any Garment Cleaners No. 3, Green Lago began a campaign of destroying all of Carlos Marroquin's businesses in Middlesex, Passaic, and Union Counties. After executing upon Carlos Marroquin's businesses, bank accounts, and equipment, Green Lago turned its attention to attaching contracts with third party businesses. One of the targets was Appellant Matsamy Vasquez and his business called Dry Clean Express I.

The process for executing upon third party contracts is straightforward. The Sheriff serves a writ of execution upon a party. If that party does not admit the debt, the Sheriff is directed by statute to file a complaint to determine the amount of debt owed by the third party so that the amount of any debt could be determined. Green Lago could also add the third party as a defendant and plead claims against the third party. Either method would ensure that the third party's due process rights were protected when the amount of debt owed under the contract, if any, needed to be

determined. Neither method was followed in this case.

Green Lago instituted a series of motions to enforce litigant's rights against Carlos Marroquin in its default judgment case. The Court entered orders directing Carlos Marroquin to pay over monthly payments due under a bilateral consulting agreement with Appellants. As directed by Carlos Marroquin, Appellants paid over monthly payments to the Sheriff of Union County. Green Lago's unrelenting collection efforts chased Carlos Marroquin from New Jersey to Texas. Carlos Marroquin stopped performing under the consulting agreement which stopped earning him a monthly payment from Appellants. Carlos Marroquin then was forced to file for bankruptcy.

Green Lago then began filing a series of motions against Appellants in the default case without ever adding Appellants to the case, which would have allowed them to deny specific allegations about debts and plead defenses, including a lack of credit given for assets collected by Green Lago and Carlos Marroquin's failure to perform under the consulting agreement after moving to Texas which barred further payments by Appellants under the attached contract. This procedure violated Appellants' due process rights and it lead to a series of erroneous decisions that severely prejudiced Appellants.

I. Appellee Bypassed Required Attachment Procedures Violating Appellants' Due Process Rights.

Appellee's thirty-one page brief spends a significant amount of time discussing the lower court's rulings against Carlos Marroquin and subsequently Appellants, but barely touches upon Appellants' procedural due process arguments. Appellants point out that Appellee's remedies brought against Appellants all relate to the enforcement of rights under a writ of execution. Appellee had a writ of execution issued and served upon Appellants Matsamy Vasquez and Dry Clean Express I LLC. Da52-Da57. The Sheriff did not return any service with a copy of any consulting agreement. Da52-Da57. Appellants Matsamy Vasquez and Dry Clean Express I LLC did not admit any debt as part of the Sheriff's attachment. Da52-Da57. Appellee did not direct the Sheriff Pursuant to N.J.S.A. 2A:17-62 to file any Complaint to recover monies under any consulting agreement. Da52-Da57. All of these facts are essentially unchallenged by Appellee.

Pursuant to N.J.S.A. 2A: 17-63, after a levy upon a debt due or accruing to the judgment debtor from a third person, herein called the garnishee, the court may upon notice to the garnishee and the judgment debtor, direct the debt, to an amount not exceeding the sum sufficient to satisfy the execution, to be paid to the officer holding the execution or to the receiver appointed by the court, if and only if the

garnishee admits the debt. The garnishees in this case, Defendants did not return any response to the Sheriff admitting any debt. Under this scenario, it is incumbent upon the Plaintiff to direct that a lawsuit be filed against the garnishees by the Sheriff to determine any debt due. N.J.S.A. 2A:17-62.

All of the lower court's orders were entered into violation of the procedures required to protect third party attachments and they are therefore void.

To counter Appellee's deficiencies, they first argue that where a garnishee does not expressly admit the debt but fails to deny it or stands upon that question at hearing, the failure is tantamount to an admission of debt. Appellee cites *Beninati v. Hinchliffe,* 126 N.J.L. 587, 589 (1941) to support its position. Not only does *Beninati* not support Appellee's argument, the *Beninati* Court supports Appellants' positions.

After a judgment and levy upon a bank account, the judgment creditor had pleadings and a rule to show cause issued against the bank. *Beninati*, 126 N.J.L. at 587. Entry of the judgment made upon the failure to deny was reversed in *Beninati* finding that the presented evidence at the hearing had not established the specific amount of the debt. Moreover, the *Bellinati* Court held that the specific statutory procedural requirements for obtaining a judgment against a garnishee had not been met. "There are statutory proceedings by which disputing claimants to property has been made the subject of a levy may assert their claims and obtain judicial

determination", but the correct procedure was not followed. *Bellinati*, 126 N.J.L. at 590. This is precisely the same problem in the present case. Appellants were not properly added to this lawsuit and a separate complaint was not filed here. Without an admission in a legal proceeding, the Court lacked jurisdiction to enter a judgment.

II. Appellants Never Admitted Any Debt In This Proceeding and The Lower Court's Previous Orders Are Appealable.

Appellee argues that the Appellants somehow admitted the debt attached in this litigation by prior testimony is a separate lawsuit relating to this debt. Appellee's references to its own positions ignores Appellants' evidence that credits were not given for the value of executed equipment and not all of the amounts under the bilateral agreement were owed because of Carlos Marroquin's failure to perform. Defendants plead defenses to the separate lawsuit, including that the debt was already paid by repossession of the secured equipment, that Plaintiff's improper actions in filing several related lawsuits against Defendants was improper and those damages offset any balance under the note that Plaintiff is attempting to collect, that Plaintiff has charged an improper post-judgment rate as damages in the lawsuit, that Plaintiff has failed to allege viable actions, and that Plaintiff has overcharged fees and costs for any claim of attorney fees. Da84-Da99. These positions would have been raised in this lawsuit if Appellants had been sued by the

Sheriff in a Complaint or properly added to this lawsuit. Neither were done.

Appellee then falls back on a position that Judge Dupuis' 2019 decision entering an order against Carlos Marroquin to pay over payments under the consulting agreement had to be appealed by non-party Appellants back then. First, this order was entered against Carlos Marroquin who was a party to the lawsuit. Appellants were not added to the lawsuit until the final judgment entered against them in 2024. Appellee's citation to *Citibank (South Dakota), N.A. v. Razzi*, 2009 WL 537509 (App. Div. March 5, 2009) (an unpublished decision), does not support Appellee's position. In *Citibank*, the turnover order was entered against the defendant in the original action and it was a final order. Here, a final appealable order was not entered until September 27, 2024. This very court dismissed Appellants' attempt to file this appeal earlier as it ruled that all underlying issues were not resolved in this litigation until September 27, 2024 and the earlier appeal was based upon interlocutory orders. See Court Order entered by the Honorable Thomas W. Sumners, Jr., dated September 6, 2024 (attached hereto).

III. Appellee's Own Arguments Admit That the Subject Of The Consulting Agreement Debt Was Pending In a Prior Litigation and Appellee's Actions in This Proceeding Against Appellant Should Be Dismissed Under the Entire Controversies Doctrine.

When the Appellee filed a writ of execution against Defendants in this

action based upon an alleged debt due by Defendants, there was already pending an action between all of the parties in the separate lawsuit. Da70-Da99. This fact is not denied by Appellee, which actually relies upon testimony in the separate action. The separate action was originally filed in the Chancery Division on November 17, 2017 and later amended under Docket No. C-152-17. Da70-Da99. The separate action was transferred on July 16, 2020 to the Law Division under Docket No. L-2610-20. Da100.

"The entire controversy doctrine embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court…." *Congdell v. Hosp. Ctr. at Orange*, 116 N.J. 7, 15 (1989) (citing N.J. Const. art VI, Section 2, Paragraph 4). The purpose of the doctrine includes the need for avoidance of waste, fairness to the parties and to avoid piecemeal litigation. *K-Land Corp. No. 28 v. Landis Sewage Auth.*, 173 N.J. 59, 70 (2002). The issues before the lower court were already being litigated in the Pending Lawsuit. The lower court erred by granting motions relating to obtaining a judgment against Defendants when the separate lawsuit would resolve the debt issue. The entire controversies doctrine therefore bars a party from commencing multiple lawsuits arising out of a single event or transaction. The lower court should not have granted relief against the Defendants outside of the separate lawsuit. *Manhattan Woods Golf Club, Inc. v. Arai*, 711 A.2d 1367 (N.J. App.), *cert. denied*, 156 N.J.

411 (1998).

IV. The Lower Court's Decisions Run Contrary To Established Laws On Debts Owed Under Bilateral Contracts and Allowable Interest Governed By Contract Terms.

The Lower Court's rulings in this litigation seek to overturn well established authority under bilateral contracts and applicable interest applicable to judgments. To allow the lower court's decisions to stand would throw New Jersey consistent principles of contract interpretation and judgment enforcement into chaos. Such inconsistency may cause businesses to question whether they can properly predict the consequences of entering into contracts in New Jersey. Unless the lower court orders are overruled, the decisions might chill future business in New Jersey and substantially affect its commerce.

The only obligations of Matsamy Vasquez and Dry Clean Express I, LLC under the consulting agreement relate to future payments when services are provided to them. Because of COVID and other circumstances, Defendant Carlos Marroquin was not been able to provide consulting services so certain payments were not yet earned. Da137-Da138. The orders entered by the lower court stated that monthly payments earned in the amount of $7,332.68 must be paid to the Sheriff up to the amount of the then judgment. Da20-Da22. There was never a finding that Matsamy Vasquez and Dry Clean Express I, LLC owe all of the $931,881.04 at once. Da20-Da22. Defendants were never initially found to be

liable for the entire amount of the consulting agreement as of the time of the attachment of the consulting agreement by the writ of execution. Plaintiff's interpretation of the Order as somehow requiring Matsamy Vasquez and Dry Clean Express I, LLC to pay $931,881.04 is directly contradicted by the provision of the earlier orders that only $7,332.68 be paid monthly when due.

The consulting agreement was a bilateral contract only requiring monthly payments when services were provided. *Sipko v. Koger, Inc.*, 214 N.J. 364, 380 (2013). When Carlos Marroquin moved to Texas and later filed for bankruptcy, he stopped providing any services to Defendants. Defendants thereafter had no liability to Defendant Carlos Marroquin after the bankruptcy filing and it was error for the lower court to find that Defendants could be liable for the entire amount of the judgment entered against Defendant Carlos Marroquin. Without any basis in fact or law, Judge Lindemann's orders accelerated all potential future payments under the bilateral consulting agreement and entered an aggregate judgment against Appellants. Such decisions were arbitrary and not supported by any sound legal principles.

Appellee also argued that it is entitled to post judgment interest in the amount of 18% yearly on any judgment against Appellants. The lower court orders set the interest rates on judgments against Appellants at this rate. Da12, Da14. The interest determination was error for two reasons. First, post judgment

interest is set by court rule. Rule 4:42-11(a) sets the post judgment interest which may be recovered by the Appellee. "[T]he annual rate of interest shall equal the average rate of return, to the nearest whole or half-percent, for the corresponding preceding fiscal year terminating on June 30, of the state of New Jersey Cash Management Fund…." *Id.*

Appellee argued that the court may set a different post judgment rate if particular equitable reasons exist for doing so. None existed here. The statutory rate allows Appellant to recover its damages and maintain the present value of the damages. Setting a post judgment rate of 18% would result in an unfair windfall by Appellee where Appellants had no underlying contractual relationship with Appellee.

The consulting agreement did not have an 18% interest rate for payments made under it. Da157-da160. The 18% rate only applied to the promissory note involving Defendant Carlos Marroquin. The Appellants cannot be required to pay an exorbitant interest rate that they did not agree to pay and the entry of judgments by the lower court at this rate was an error of law.

Appellee's only rights against Appellants are based upon the contractual relationship between Carlos Marroquin and Appellants. Appellee has no right to modify the original contract to which Appellee was not a party. The lower court's erroneous decisions would make it impossible to predict with any certainty how

New Jersey would interpret contractual provisions and subject any contract to overburdening interest rates that could not be envisioned when the contracts were negotiated and entered into in New Jersey. This Court should not allow the erroneous lower court decisions to stand.

Conclusion

For the reasons stated above, the orders and judgments entered in the lower court against Appellants should be vacated, this matter either dismissed or consolidated with the separate lawsuit to determine any potential liability by Appellants.

Dated: 5/1/2025

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