

<p>US BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR VRMTG ASSET TRUST,</p> <p>PLAINTIFF/RESPONDENT,</p> <p>V.</p> <p>BINYON RABINOWITZ; MRS. RABINOWITZ, SPOUSE OF BINYOMIN RABINOWITZ; POINT BAY FUEL INC.; AMERICAN EXPRESS BANK, FSB,</p> <p>DEFENDANT/APPELLANT.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002359-24</p> <p>ON APPEAL FROM</p> <p>SUPERIOR COURT CHANCERY DIVISION MONMOUTH COUNTY</p> <p>DOCKET NO. F-008762-23</p> <p>Hon. Gregory L. Acquaviva, J.S.C. Sat Below</p> <p>Date of Submission: September 16, 2025</p>
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BRIEF OF DEFENDANT/APPELLANT, BINYON RABINOWITZ

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TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	4
LEGAL ARGUMENT	8
POINT I	8
<u>THE COURT ERRED IN NOT CONSIDERING AND GRANTING THE MOTION FOR RECONSIDERATION</u>	
(The ruling relating to this section is located in the 1/27/25 transcript, page 2, lines 14-23)	
POINT II	12
<u>THE COURT ERRED IN NOT GRANTING THE MOTION TO VACATE BASED UPON R.4:50-1</u>	
(The ruling relating to this section is located in the 4/2/25 transcript, page 12, line 2 through page 21, line 17)	

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Order Denying final Judgment, 2/16/2024	Da14
Order Granting final Judgment, 12/2/25	Da25
Order Denying Reconsideration and Request to Vacate, 1/27/2025	Da38
Order Denying Second Motion to Vacate, 4/2/2025	Da61
Order Denying Stay of Sheriff Sale, 6/9/2025	Da62

TABLE OF AUTHORITIES

CASES

<u>Arias v. Elite Mortg. Group, Inc.</u> , 439 N.J.Super 273, 277 (App.Div.2015)	17
<u>Chinweatuegwu v. East Orange General Hospital</u> (App. Div. 2017 WL 5076364).	10
<u>Citibank, NA v. Martinez</u> , Superior Court of New Jersey, Appellate Division, March 15, 2016, Not Reported, 2016 WL 958198	16
<u>Cummings v. Bahr</u> , 295 N.J. Super. 374, 384 (App. Div. 1996)	10
<u>M & D Assocs. v. Mandara</u> , 366 N.J. Super. 341, 350 (N.J. App. Div. 2004) <u>cert. den.</u> 180 N.J. 151 (2004)	12
<u>Marder v. Realty Construction Co.</u> , 84 N.J.Super. 313, 319 (App. Div.1963)	12
<u>Miller v. Bank of America Home Loan Servicing, L.P.</u> , 439 N.J.Super. 540 (App.Div. 2015)	17
<u>Peralta v. Heights Medical Center, Inc.</u> 485 U.S. 80 (1988)	13

STATUTES - none

RULES

R.4:49-2	10
R. 4:50-1	12

PRELIMINARY STATEMENT

This case concerns the Appellant's efforts to vacate judgment by default in a residential foreclosure action. The Appellant, who was the owner of the subject residence, filed a motion for reconsideration and two motions to vacate, which were denied. As a result, this appeal has been filed.

The subject property was an investment property for lease. The lender entered into a modification agreement with the Appellant whereby three trial payments had to be made for the modification to become fully effective. The Appellant made all of the payments, then a dispute arose as to whether the Appellant received and/or sent back the final executed modification documents in time. The lender locked the owner out of the electronic loan portal, which resulted in the owner being denied access to proofs it needed to establish to the trial court what communications had occurred. The lender moved forward with foreclosure. It made an initial motion for default judgment, which was denied. The order stated that final judgment could not be entered unless the Complaint was amended to comply with law. The lender switched lawyers and re-filed the motion without amending the complaint. The motion was apparently granted despite the prior order forbidding the same, and the final order set the amount due in an amount well above what should have been owed.

The final judgment order never should have been entered. The Appellant should have an opportunity to defend, particularly as to the amount due, which was significantly inaccurate considering the below described circumstances.

PROCEDURAL HISTORY

The foreclosure Complaint was filed on or about 7/21/2023. (Da1-Da9). The Appellant was served via publication and entry of default was granted. On or about 1/3/24, the plaintiff moved for final judgment by default with the following words in the caption: “NOTWITHSTANDING THE DEFERRAL AGREEMENT NOT BEING RECITED IN THE COMPLAINT”. (Da10-Da13) The motion was not opposed. Despite no opposition being filed, the Court denied the motion via Order dated 2/16/2024, which specifically ruled, “**The deferral Agreement and any payments thereunder must be referenced in the Complaint.**” (Da14-Da15) On 3/21/2024, the plaintiff substituted attorneys. (Da16-Da17) On 11/7/2024, the plaintiff, through its new attorneys, filed a motion for final judgment by default against the Appellant. (Da18-Da21) No Amended Complaint had been filed by the plaintiff despite the court’s prior order. (See docket report, Da22-Da24) The court granted final judgment on 12/2/24. (Da25-Da30). The undersigned substituted as counsel for the Appellant on 12/17/24. (Da31) Appellant filed a Motion for Reconsideration and a Motion to Vacate Judgment (simultaneously) on 12/17/24, less than 20 days after final

judgment was entered. (Da32-Da37). The court denied the motions on 1/27/25 (Da38) The appellant filed another Motion to Vacate on 2/26/25 (Da38-Da50) On 2/27/25, the Appellant supplemented the motion with the proposed Answer of the Appellant, very detailed specific defenses and very specific counterclaims. (Da51-Da61) On 4/2/25, the court denied the second motion to vacate. (Da62) A notice of appeal was filed and the matter was docketed via Notice of Docketing on 4/8/2025. (Da64)

STATEMENT OF FACTS

The Statement of Facts incorporates the procedural history as set forth above as well as the following: The plaintiff offered Appellant a loan modification with specific terms, which included a three payment-trial period.

(Da39) The letter shows that the plaintiff wrote in bold “**You are approved for a Trial Period Plan to Modify Your Mortgage Payment**”. (Da39, Da45) In the same letter, page 4, the lender provided the specific terms of the modification, which included a principal amount of \$351,455.91 and an interest rate of 4.0%.

(Da39, Da47) In the same letter Page 5, the lender wrote to the Appellant how this offer could be accepted. It states in pertinent part, “**Step 2: To accept this offer:** You must make your first Trial Plan Payment by the first Payment Due Date designated below. If you fail to make the first Trial Period Plan payment by the first payment due date and we do not receive the payment by the last day of the month in which it is due, this offer will be revoked and we may refer your mortgage to foreclosure.” [underline added] On the same page, “Step 3”, the first trial plan payment was defined as **\$1,861.46 by 01/01/2023**. (Da39-40, Da45)

The same page reinforced the plan acceptance provisions in bold. It states in bold in the “Next Steps” paragraph dealing with the Trial Period Plan. It states in bold, “**We must receive each payment in the month in which it is due. If you miss a**

payment or do not fulfill any offer terms of your Trial Period Plan, this offer will end and your mortgage loan will not be modified.” [underline added]

Not only was the first payment timely made via wire on 1/3/23, well within the “month in which it is due” (thus legally constituting offer and acceptance of the modification), but the remaining payments were timely made as well. Thus, Appellant fulfilled his requirements to accept the modification and to sustain it.

The payments were made as follows from Appellant’s bank records:

01/03/2023 Online Domestic Wire Transfer A/C: Select Portfolio Servicing Inc W Valley City UT 84119-3284 US Ref: Attention Wire Retaining/Bnf/Attention Wire Retaining Trn: 3649713003Es \$1,861.46

01/31/2023 Orig CO Name:Select Portfolio Orig ID:1870465626 Desc Date: CO Entry Descr:Sps Sec:Web Trace#:021000028295477 Eed:230131 Ind ID:0023548357 Ind Name:Binyomin Y Rabinowitz Trn: 0318295477Tc \$1,876.46

02/28/2023 Orig CO Name:Select Portfolio Orig ID:1870465626 Desc Date: CO Entry Descr:Sps Sec:Web Trace#:021000025769583 Eed:230228 Ind ID:0023548357 Ind Name:Binyomin Y Rabinowitz Trn: 0595769583Tc \$1,876.46
(Da40)

The lender never objected in any fashion to the payments. The lender accepted all three payments and has not returned the payments. After this occurred, the lender switched servicers, failed to properly communicate with Appellant or his attorney and refused to follow the modification agreement. Despite numerous attempts by me to communicate, the lender, simply filed

its improper Motion for Final Judgment without amending the complaint (failing to mention the modification), and obtained a final judgment. (entire above paragraph, Da40-Da41)

The lender then switched servicers, which stated that all previous efforts and representations are moot. The new servicer has also been completely non-responsive despite multiple attempts. Appellant's prior attorney even made numerous attempts to reach the servicer to resolve the outstanding issues. He was also unable to obtain any communication from the servicer, and documented the same in a letter which he filed on e-courts, to preserve the record. (Da41)

Proof that Appellant was misled, are part of a "portal" on which documents relating to the loan were kept. The lender's prior servicer has deleted the documents from that portal and/or denied access. The documents are no longer available to Appellant to provide to the court to show what has been occurring. Appellant needed access to the loan portal during the foreclosure matter to support his position. (Da41)

The lender took repeated action against the property while Appellant was attempting to find a tenant which made it impossible for Appellant to find a tenant. For example, they repeatedly locked Appellant out to the property (changed the locks) even though they knew it was in good condition and in the process of being renovated to receive a certificate of occupancy. They cut the oil lines to the

furnace which caused Appellant to have to replace the whole furnace. They cut electric power lines. Multiple times when people came to do work or perform work or do required inspections, the lender had the building locked. The renovation which should have taken two months, and which would have led to rental and modification, took almost a year. The lender allowed the property to be subject to unpaid violations. The lender was aware that these actions would work against Appellant's ability to obtain a modification, by prohibiting its ability to show income from the property. (entire above paragraph, Da41-D42)

Appellant was represented by counsel. Appellant became aware of a court order where the lender had admitted that its Complaint was not sufficient for it to obtain a final judgment in foreclosure. Contrary to this Order, the plaintiff filed a motion anyway and Final Judgment was granted. Appellant was diligent in hiring counsel and has done nothing in bad faith. This is an important matter because it involves a very significant amount of money, as well as forfeiture of property rights. (entire above paragraph, Da41-42)

LEGAL ARGUMENT

I. THE COURT ERRED IN NOT CONSIDERING AND GRANTING THE MOTION FOR RECONSIDERATION

(The ruling relating to this section is located in the 1/27/25 transcript, page 2, lines 14-23)

On or about 1/3/24, the plaintiff moved for final judgment by default. The plaintiff knew at the time that its Complaint was legally deficient. Rather than amending the Complaint and re-serving it, the plaintiff asked the Court to overlook the legal requirement. The motion sought default judgment and contained in its title “NOTWITHSTANDING THE DEFERRAL AGREEMENT NOT BEING RECITED IN THE COMPLAINT”. (Da10-Da13) The motion was not opposed. Despite no opposition being filed, the Court denied the motion via Order dated 2/16/2024, which specifically ruled, “**The deferral Agreement and any payments thereunder must be referenced in the Complaint.**” (Da14-Da15) Again, rather than following the mandatory rules of foreclosure pleading, and the obvious order of the judge, the plaintiff switched attorneys, failed to amend the complaint, and re-filed its motion *without notifying the court of the prior order or its failure to include the deferral agreement in its Complaint.* On 11/7/20-24, the plaintiff, through its new attorneys, filed a motion for final judgment by default against the Appellant. (Da18-Da21) No Amended Complaint had been filed by the plaintiff despite the court’s prior order. (See docket report, Da22-Da24) The court granted final judgment on 12/2/24. (Da25-Da30).

Hopefully, the improper second motion for default judgment, and failure to notify the court of the prior order was simply an accidental oversight by

counsel, but it had a disastrous and prejudicial effect on the case. The plaintiff was able to skip a legally mandatory inclusion in its complaint, it was able to skip serving the Appellant with the Amended Complaint (none was even drafted), and it was able to disregard the clear order of Judge Bauman, P.J.Ch. requiring that no final judgment counsel be granted without proper amendment of the Complaint.

At oral argument for the Motion for Reconsideration, the Honorable Aquaviva ruled as follows:

It is not a Rule 4:49-2 motion for reconsideration. That's a final judgment and needs to be done within 20 days. As well, I don't know that that's necessarily applicable here. It's an ill-fit precedent governing. 4:49-2 makes clear it's not a second bite at the apple, nor is it an opportunity to submit new evidence. Rather, it's an avenue to point out facts and/or law that were overlooked or misapprehended by the court. No -- none such exists here. The 12 – December 2nd uncontested order for final judgment, although signed by Judge Zazzali-Hogan, functionally, is done by the office of foreclosure, largely done administratively, recommended by the Office to Judge Zazzali.

So really, the entirety of this motion is to expand a record that wasn't opposed, where nothing was punt in front of it. So, really, it's improper to use a motion to reconsideration to challenge an unopposed order. (1T:9:14-10:6)

Respectfully, the Honorable Aquaviva's ruling was incorrect. First, the motion for reconsideration was filed within 20 days of the order for final judgment, so it was timely. Second, the reconsideration motion did not expand upon the record. It simply pointed out the fatal and prejudicial flaw that the

order was contrary to law and contrary to a prior order. It appears that judge Aquaviva was aware that the prior order had not been properly considered, as he commented, “although signed by Judge Zazzali-Hogan, functionally, is done by the office of foreclosure, largely done administratively, recommended by the Office to Judge Zazzali.” (1T:9:24 to 1010:2) Even if it was considered, which it appears it was not, the order of final judgment was clearly wrong and a mistake.

A motion for reconsideration is made pursuant to R.4:49-2. The law surrounding motions for reconsideration is well-settled, as follows:

Reconsideration is reserved “for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.” Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

A party's motion for reconsideration “shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred.” R. 4:49–2. Chinweatuegwu v. East Orange General Hospital (App. Div. 2017 WL 5076364).

The issue of vacating the order based upon reconsideration seemed to be a clean and obvious issue. The denial of that motion, however cascaded into a series of events that have been costly and damaging to the Appellant. The Appellant made two motions to vacate (one with the Motion for Reconsideration and another one thereafter). The Appellant attempted to have the sheriff sale adjourned, but was denied. The Appellant had to pay to redeem the property. The payment was far more than would have been required had the foreclosure case been re-opened. The final judgment in default set the amount due, which was not correct. The Appellant attempted to assert its defenses and counsel drafted (and submitted) a proposed answer, specific defenses and counterclaim. However, those issues were never heard. The foreclosure case must be reopened so the decision the foreclosure court as to the amount due can be corrected and fair offsets and credits can be given. The Appellant even attempted to bring the matter in the Law Division to recoup its improper losses and the plaintiff asserted that the defenses had to be brought in the foreclosure action because they were “germane” to the foreclosure action. Thus, the Appellant has been completely denied a forum due to a boot-strap effect that resulted from the plaintiff’s improper motion for final judgment.

Even more, as set forth in the statement of facts, the plaintiff had locked the Appellant out of the loan portal while the foreclosure litigation was in progress.

Thus, it denied the Appellant the ability to obtain communications that could prove its substantive allegations. The result has simply been unjust. Had final judgment not been improperly entered, counsel for the Appellant could have obtained the necessary evidence through paper discovery and depositions.

II. THE COURT ERRED IN NOT GRANTING THE MOTION TO VACATE BASED UPON R.4:50-1

(The ruling relating to this section is located in the 4/2/25 transcript, page 12, line 2 through page 21, line 17)

R. 4:50-1 provides, in relevant part, that:

“[o]n motion...and upon such terms as are just, the court may relieve a party ... from a final judgment or order for the following reasons:

- a) mistake, inadvertence, surprise or excusable neglect;
- b) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- c) the judgment or order is void;
- d) any other reason justifying relief from the operation of the judgment or order.

An application to vacate default judgment is “**viewed with great liberality and every reasonable ground for indulgence is tolerated to the end that a just result is reached**” Marder v. Realty Construction Co., 84 N.J. Super. 313, 319 (App. Div.1963). An application to vacate judgment under R.4:50-1 falls within the “sound discretion of the trial court” and when exercising that discretion, the

court should be “guided by equitable principles in determining whether relief should be granted or denied.” M & D Assocs. v. Mandara, 366 N.J. Super. 341, 350 (N.J. App. Div. 2004) cert. den. 180 N.J. 151 (2004). Although the meritorious defense and excusable neglect conditions have been typically uniformly imposed on the setting aside of a default judgment, the conditions may not, as a matter of due process, be required if the default was procured on the basis of defective service of process. Peralta v. Heights Medical Center, Inc. 485 U.S. 80 (1988).

The final judgment should have been vacated based upon the above standard as well. As set forth above, it became apparent that the Complaint filed by the plaintiff was patently insufficient to support a judgment by default. The defendant became aware of a court order where the plaintiff had admitted in its own motion that its Complaint was not sufficient for it to obtain a final judgment in foreclosure. Despite this, the plaintiff made a motion for the court to allow final judgment without the need for amending the complaint. The court outright denied this application. Contrary to this Order, the plaintiff filed a motion anyway, and Final Judgment was granted. This was legally improper and a mistake by the court upon which relief should be granted. It certainly had the effect of creating a reasonable belief by the Appellant that judgment would not, and could not, be entered without an amended complaint. The defendant also had counsel at the time (counsel prior

to the undersigned) who had written to the court informing about the lack of communication from the lender relating to the loan modification. Thus, the defendant fairly and reasonably expected that an amended complaint would be filed, as required by the order, and that the defendant would have a chance to be served and respond. The fact that the Appellant hired a lawyer to appear in the case prior to the judgment also demonstrates that the Appellant was not sitting on its rights in bad faith. This is an excusable reason/excusable neglect for believing that final judgment would not be entered, and that Appellant would be given the opportunity to defend. This should have been given credence at the trial court level.

Moreover, the Appellant had certified that he had difficulty obtaining records relating to this case because they were kept in an electronic “portal” by the servicers. The Appellant certified that relevant documents have been wiped off of the portal and/or he had no access to them. Thus, Appellant was denied the ability to obtain proofs, particularly in the short time frame due to the acts of the plaintiff. That is unjust. *Appellant still cannot access all of the relevant proofs being withheld by the plaintiff and needs the opportunity to obtain the same.*

The Appellant, however, was able to certify to the court (with exhibits) that a loan modification was entered into between the parties where a three payment-trial period applied. This type of arrangement has been standard in the industry

for years and is nothing novel. A letter from the lender shows that the plaintiff wrote to defendant in bold **“You are approved for a Trial Period Plan to Modify Your Mortgage Payment”**. In the same letter, page 4, the lender provided the specific terms of the modification, which included a principal amount of \$351,455.91 and an interest rate of 4.0%. In the same letter, page 5, the lender wrote to the Appellant how this offer could be accepted. It states in pertinent part, **“Step 2: To accept this offer:** You must make your first Trial Plan Payment by the first Payment Due Date designated below. If you fail to make the first Trial Period Plan payment by the first payment due date and we do not receive the payment by the last day of the month in which it is due, this offer will be revoked and we may refer your mortgage to foreclosure.” [underline added] On the same page, “Step 3”, the first trial plan payment was defined as **\$1,861.46 by 01/01/2023**. The same letter reinforced the plan acceptance provisions in bold. It states in bold in the “Next Steps” paragraph dealing with the Trial Period Plan. It states in bold, **“We must receive each payment in the month in which it is due. If you miss a payment or do not fulfill any offer terms of your Trial Period Plan, this offer will end and your mortgage loan will not be modified.”** [underline added]

The Appellant certified in the trial court that not only was the first payment timely made via wire on 1/3/23, well within the “month in which it is due” (thus legally constituting offer and acceptance of the modification), but the remaining payments were timely made as well. Thus, the defendant fulfilled his

requirements to accept the modification and to sustain it. The payments were made as follows from the defendant's bank records:

01/03/2023 Online Domestic Wire Transfer A/C: Select Portfolio Servicing Inc W Valley City UT 84119-3284 US Ref: Attention Wire Retaining/Bnf/Attention Wire Retaining Trn: 3649713003Es \$1,861.46

01/31/2023 Orig CO Name:Select Portfolio Orig ID:1870465626 Desc Date: CO Entry Descr:Sps Sec:Web Trace#:021000028295477 Eed:230131 Ind ID:0023548357 Ind Name:Binyomin Y Rabinowitz Trn: 0318295477Tc \$1,876.46

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The lender never objected in any fashion to the payments. The lender accepted all three payments and has not returned the payments. After this occurred, the lender switched servicers, failed to properly communicate with the defendants and refused to follow the modification agreement. Despite numerous attempts by the defendant to communicate, the lender, simply filed its improper Motion for Final Judgment without amending the complaint (failing to mention the deferral agreement or modification), and obtained a final judgment. This constitutes a breach and consumer fraud. The case law is very clear.

The law against the lender is as follows:

In **Citibank, NA v. Martinez**, Superior Court of New Jersey, Appellate Division, March 15, 2016, Not Reported, 2016 WL 958198 (appended hereto), the

Appellate Division acknowledged that a lender’s failure to comply with its offer of a trial payment plan is actionable. The court held on page 2 of the opinion:

We have held in other cases involving a foreclosure that a temporary trial plan agreement under the Federal Home Affordable Mortgage Program (HAMP)¹ is a “unilateral offer” by the lender to provide a loan modification to homeowners provided they make all payments under the agreement on time and submit requested financial documentation to establish the accuracy of their financial representations. *Arias v. Elite Mortg. Group, Inc.*, [439 N.J.Super. 273, 279 \(App.Div.2015\)](#); *see also, Miller; supra*, 439 N.J.Super. at549.

... In *Miller, supra*, 439 N.J.Super. at 549, we held that the mortgagors were not precluded from pursuing various state law claims, including claims for breach of contract and violation of the Consumer Fraud Act arising from an underlying HAMP trial plan, even though there was no private right of action under HAMP.

In the prior decision **Arias v. Elite Mortg. Group, Inc.**, 439 N.J.Super 273, 277 (App.Div.2015), the court explained:

While there are no reported New Jersey cases addressing the contractual status of a TPP Agreement, case law suggests that an agreement that purports to bind a debtor to make payments while leaving the mortgage company free to give her nothing in return might violate the New Jersey Consumer Fraud Act (CFA), *N.J.S.A. 56:8-1* to -195. *See Gonzalez v. Wilshire Credit Corp.*, [207 N.J.557, 576-78, 25 A.3d 1103 \(2011\)](#). *Gonzalez* involved a different factual scenario from the one in this case. However, in *Gonzalez* the Court strongly signaled its disapproval of post-foreclosure financing deals that essentially turned debtors into “cash cows” without ever restoring their mortgages to current status. *Id.* [at 570, 582-83, 25 A.3d 1103](#).

Also, in **Miller v. Bank of America Home Loan Servicing, L.P.**, 439 N.J.Super. 540 (App.Div. 2015) the court held:

We agree with our Appellate Division colleagues and adopt the methodology outlined in *Arias*. We accept the holding and conclude HAMP's preclusion of a private right of action does not preempt pursuit of valid state law claims arising between the parties to a TPP. Although a borrower may not sue when a lender denies a loan modification because the borrower failed to meet HAMP's guidelines, which include the lender's evaluation of the borrower's financial stability, *id.* [at 279–80, 108 A.3d 21](#) (citing *Wigod, supra*, [673 F.3d at 562](#); *Young, supra*, [717 F.3d at 234](#)), we hold borrowers should not be denied the opportunity to assert claims alleging a lender failed to comply with its stated obligations under the TPP. Consequently, when the issuance of a loan modification agreement is explicitly made contingent upon the evaluation and satisfaction of all prescribed conditions precedent within a TPP, including the evaluation and timely satisfaction of all financial disclosures and obligations, the declination of a lender to present a loan modification agreement may be actionable. *See* *550 *id.* [at 276, 108 A.3d 21](#).

Per the above law, the Appellant has defenses and affirmative claims for the actions of the lender that occurred due to the failure to implement the modification after all TPP payments were made with no objection. These defenses were asserted multiple times in the trial court briefs and in the proposed pleading that was submitted to the court. The lender persisted in its course of action (with sheriff sale), causing the Appellant to have to pay the entire incorrect amount of the foreclosure judgment as well as other fees and charges. Had the lender acted appropriately, the final judgment in foreclosure would not have been entered or the amount due would have been dramatically less.

Even more, the lender asserted that the Appellant could not show that it returned the executed modification documents in a timely fashion. Respectfully, the court improperly relied upon this specious argument to deny the motion. The Appellant has asserted more than enough to establish a defense and affirmative

claims relating to the foreclosure and the amount due. The lender has asserted a dearth of available communications in favor of the Appellant's position while it was actively locking the Appellant out of the portal which contained the communications records. Again, that is simply unfair and the Appellant should have a right to have its attorney pursue this fact issue.

To make its actions even more unconscionable, the lender engaged in a pattern of bad faith actions that led to the impossibility of curing the default on the loan, or curing the lender's breach of the modification agreement. Such behavior is a breach of contract, breach of good faith and fair dealing, and consumer fraud. The lender ignored numerous communication attempts from the defendant. The lender switched servicers at the last moment, which acted as if the previous modification no longer counted, which was false. Then the new servicer refused communication and obtained final judgment. The new servicer was so unresponsive that the Appellant's prior attorney had to make numerous efforts on Appellant's behalf. He was also unable to obtain any communication from the servicer, and documented the same in a letter which he filed on e-courts, to preserve the record.

The Appellant is a consumer of the loan (and the modification) within the meaning of New Jersey's consumer fraud act. The Appellant was deceived by the lender in that he was led-on while the lender was taking action to collect trial payments from him, then breach the agreement. At the end, the lender switched servicers, which ignored all past representations and promises. They then failed to communicate to a bad faith degree and moved forward to obtain a judgment despite

failure of proper service, failure to draft a proper complaint, and through filing of a motion for final judgment in known direct contravention of an existing order, all while knowing they were in breach.

The Appellant was in fact diligent in hiring a lawyer when it became aware of the Complaint and has continually attempted to resolve the issue despite wrongful efforts by the lender to foreclose and increase the amount owed. This is an important matter because it involves a very significant amount of money, as well as forfeiture of property rights.

As such, it is respectfully requested that the appeal be granted and the matter be remanded to the foreclosure court so proper defenses and claims can be asserted; and so the order can be ultimately modified to reflect the proper amount due, if anything.

Respectfully submitted,

ROSELLI GRIEGEL LOZIER, PC

Dated: September 16, 2025

By: /s/Steven W. Griegel

Superior Court of New Jersey

Appellate Division

Docket No. A-002359-24

US BANK TRUST NATIONAL	:	CIVIL ACTION
ASSOCIATION, not in its capacity	:	
but solely as Owner Trustee for	:	ON APPEAL FROM A
VRMTG Asser Trust,	:	ORDER OF THE
	:	SUPERIOR COURT
<i>Plaintiff-Respondent,</i>	:	OF NEW JERSEY,
	:	CHANCERY DIVISION,
vs.	:	MONMOUTH COUNTY
	:	
BINYON RABINOWITZ;	:	
MRS. RABINOWITZ,	:	DOCKET NO. F-008762-23
SPOUSE OF BINYOMIN	:	
RABINOWITZ; POINT BAY	:	Sat Below:
FUEL INC.; AMERICAN	:	
EXPRESS BANK, FSB,	:	HON. GREGORY L. ACQUAVIVA,
	:	J.S.C.
<i>Defendant-Appellant.</i>	:	

BRIEF FOR PLAINTIFF-RESPONDENT

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Date Submitted: November 14, 2025



TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT.....	1
FACTUAL HISTORY AND PROCEDURAL POSTURE	2
STANDARD OF REVIEW.....	5
DISCUSSION.....	6
POINT I: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S FIRST MOTION TO VACATE FINAL JUDGMENT.....	6
A. Appellant failed to demonstrate a basis to vacate Final Judgment pursuant to R. 4:50-1 because Appellant was properly served with the Complaint and the motion for final judgment	8
B. Appellant’s desire for a loan modification is not a basis to vacate Final Judgment pursuant to R. 4:50-1	9
C. Respondent’s acts to protect its Security Interest are not a basis to vacate Final Judgment pursuant to R. 4:50-1	10
POINT II: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S FIRST MOTION FOR RECONSIDERATION.....	12
POINT III: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S SECOND MOTION TO VACATE JUDGMENT	13
A. Appellant failed to demonstrate a basis to vacate Final Judgment pursuant to R. 4:50-1	14
B. Appellant failed to demonstrate Exceptional Circumstances under R. 4:50-1(f).....	14

C. Appellant’s Second Motion is barred by Law of the Case Doctrine.....	17
CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<u>AC Ocean Walk LLC v. Blue Ocean Waters, LLC,</u> 478 N.J. Super 515 (App. Div. 2024).....	5
<u>Bank v. Kim,</u> 361 N.J. Super. 331 (App. Div. 2003).....	8
<u>Borough of Englewood Cliffs v. Trautner,</u> 478 N.J. Super 426 (App. Div. 2024).....	5-6
<u>Cherokee LCP Land, LLC v. City of Linden Plan Bd.,</u> 234 N.J. 403 (2018)	6
<u>Cummings v. Bahr,</u> 295 N.J. Super. 374 (App. Div. 1996).....	12
<u>Customers Bank v. Reitnour Investment Properties, LP,</u> 453 N.J. Super. 338 (App. Div. 2018).....	5
<u>D’Atria v. D’Atria,</u> 242 N.J. Super. 392 (Ch. Div. 1990).....	12
<u>DEG, LLC v. Twp. of Fairfield,</u> 189 N.J. 242 (2009)	5
<u>Deutsche Bank Trust Co. Americas v. Angeles,</u> 428 N.J. Super. 315 (App. Div. 2012).....	11
<u>Flagg v. Essex Cnty. Prosecutor,</u> 171 N.J. 561 (2002)	6
<u>Garley v. Waddington,</u> 177 N.J. Super. 173 (App. Div. 1981).....	9
<u>Hous. Auth. Of Morristown v. Little,</u> 135 N.J. 274 (1994)	5
<u>N.J. Bank v. Azco Realty Co.,</u> 148 N.J. Super. 159 (App. Div. 1977).....	5
<u>O’Connor v. Abraham Altus,</u> 67 N.J. 106 (1975)	7

Palombi v. Palombi,
414 N.J. Super. 274 (N.J. App. Div. 2010)..... 12

Sears Mortgage Corp. v. Rose,
134 N.J. 326 (1993) 5

State v. Hale,
127 N.J. Super. 407 (App. Div. 1974)..... 17

U.S. Bank v. Curcio,
444 N.J. Super. 94 (App. Div. 2016)..... 5, 9

United States v. U.S. Smelting Refin. & M. Co.,
339 U.S. 1896, 70 S.Ct. 537 (1950) 17

US Bank Nat. Ass’n v. Guillaume,
209 N.J. 449 (2012) *passim*

Wilson v. Ohio River Company,
236 F.Supp. 96 (S.D.W.Va 1964),
aff’d 375 F.2d 775 (4th Cir. 1967) 17

Statutes & Other Authorities:

Rule 4:43-1 7

Rule 4:43-2 7

Rule 4:43-3 7

Rule 4:49 7

Rule 4:49-2 5, 12

Rule 4:50-1 *passim*

Rule 4:50-1(f) 8, 14, 15

72 C.J.S. Process s 102b 9

Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:43-3..... 7

PRELIMINARY STATEMENT

Plaintiff-Respondent US Bank Trust National Association, not in its individual capacity but solely as owner trustee for VRMTG Asset Trust (hereinafter “Respondent”), respectfully submits this brief in opposition to the appeal of Defendant-Appellant Binyon Rabinowitz (hereinafter “Appellant”). Appellant seeks reversal of the orders of Hon. Gregory L. Acquaviva J.S.C., dated January 27, 2025 and April 2, 2025 (collectively, the “Orders”) denying Appellant’s motions to vacate final judgment and for reconsideration. The Orders should be affirmed because the trial court did not abuse discretion in denying the motions.

Appellant brought his first motion to vacate final judgment and for reconsideration (“First Motion”), on the grounds that he was attempting a work-out with the lender and for purported acts by the lender to sabotage his rental income. The trial court correctly denied the First Motion because Appellant failed to establish any basis under Rule 4:50-1 to vacate the judgment. Nor did Appellant establish that reconsideration was warranted. Appellant brought his second motion to vacate final judgment (“Second Motion”), on the grounds that he was offered a trial plan in 2023 and, again, that the lender sabotaged his rental income. The trial court correctly denied the Second Motion because Appellant failed to establish any basis under Rule 4:50-1 to vacate the judgment.

The trial court did not abuse discretion in denying either motion and the Orders should be affirmed in all respects.

FACTUAL HISTORY AND PROCEDURAL POSTURE

On July 11, 2007, Appellant executed and delivered to Fairmont Funding, LTD, New York Corporation, a note (“Note”) in the amount of \$260,000.00 which was secured by a mortgage (“Mortgage”) (collectively, the “Mortgage Loan”) on premises known as 444 Lakewood Farmingdale Road, Howell, NJ 07731 (hereinafter “Mortgaged Premises”). (Pa35-37, 47-62). The Mortgage was recorded in the Office of the Clerk of Monmouth County on July 25, 2007 in Book OR-8667 on Page 6342 *et seq.* (Pa47).

The Note and Mortgage were assigned by Mortgage Electronic Registration Systems, Inc. as nominee for Fairmont Funding, LTD, its successors and assigns, to GMAC Mortgage, LLC in an assignment of mortgage dated November 8, 2011 and recorded in the Office of the Clerk of Monmouth County on December 16, 2011 in Book OR-8922 on Page 7239. (Pa63). Thereafter, the Note and Mortgage were assigned by GMAC Mortgage, LLC to Ocwen Loan Servicing, LLC in an assignment of mortgage dated April 26, 2013 and recorded in the Office of the Clerk of Monmouth County on May 13, 2013 in Book 9013 on Page 2018 *et seq.* (Pa64-66). Thereafter, the Note and Mortgage were assigned by PHH Mortgage Corporation successor by merger to Ocwen

Loan Servicing, LLC to Select Portfolio Servicing, Inc. in an assignment dated July 2, 2019 and recorded in the Office of the Clerk of Monmouth County on July 18, 2019 in Book OR-9538 on Page 4138 *et seq.* (Pa67-69).

Appellant executed a loan modification agreement in favor of Ocwen Loan Servicing, LLC, on March 12, 2018 which established the principal amount due as \$315,927.49, reduced the per annum interest rate to 4% and extended the maturity date of the Mortgage Loan to December 1, 2057. (Pa74-87). Appellant defaulted under the terms of the Mortgage Loan by failing to make the payment due on January 1, 2022. (Da3, Pa22).

This foreclosure action was commenced by the filing of a complaint (“Complaint”) by Select Portfolio Servicing, Inc. on July 21, 2023. (Da1-9). Appellant was served with the Summons and Complaint via publication on August 10, 2023. (Pa134-135). On August 10, 2023, a copy of the Complaint, Notice of Absent Defendant published in the Asbury Park Press and a copy of the mediation documents were mailed to Appellant. (Pa133). Appellant failed to answer the Complaint or timely appear within thirty-five days after publication. (Pa143-144). Default was requested and duly entered on November 3, 2023. (Pa146-147).

Subsequent to the filing of this action, Select Portfolio Servicing, Inc. assigned the Note and Mortgage to Respondent in an assignment of mortgage

dated December 20, 2023 and recorded in the Office of the Clerk of Monmouth County on January 4, 2024 in Book OR-9673 on Page 3100 *et seq.* (Pa70-73). By order dated March 22, 2024, Respondent was substituted as plaintiff. (Pa1-2).

On July 17, 2024, Reuel E. Topas, Esq. filed a notice of appearance on behalf of Appellant. (Pa149). On November 7, 2024, Respondent filed a motion for final judgment, which was served on Mr. Topas. (Pa7-10). The motion was unopposed and on December 2, 2024, final judgment was entered in the amount of \$354,225.06 plus interest, fees and costs (hereinafter “Final Judgment”). (Pa154-159). On December 17, 2024, Appellant changed counsel and filed the First Motion, which Respondent opposed on January 9, 2025. (Pa92-161). By Order dated January 27, 2025, Hon. Gregory L. Acquaviva, J.S.C. denied the First Motion for the reasons stated on the record. (Da38). On February 26, 2025, Appellant filed the Second Motion, which Respondent opposed on March 6, 2025. (Pa162-166). By Order dated April 2, 2025, Hon. Gregory L. Acquaviva, J.S.C. denied the Second Motion for the reasons stated on the record. (Da61). A sheriff’s sale was scheduled for June 9, 2025. On June 6, 2025, Appellant filed a motion stay the sale, which was denied by Order dated June 9, 2025 (Da62) and the sale was held.

STANDARD OF REVIEW

“Foreclosure is an equitable remedy governed by the operation of traditional equitable principles...” U.S. Bank v. Curcio, 444 N.J. Super. 94, 113 (App. Div. 2016) (quoting N.J. Bank v. Azco Realty Co., 148 N.J. Super. 159, 166 ([App. Div. 1977])). “Because equitable remedies are largely left to the judgment of the court, which has to balance the equities and fashion a remedy, such a decision will be reversed only for an abuse of discretion.” Customers Bank v. Reitnour Investment Properties, LP, 453 N.J. Super. 338, 348 (App. Div. 2018) (citing Sears Mortgage Corp. v. Rose, 134 N.J. 326, 364 [1993]).

The trial court’s determination under Rule 4:50-1 warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion. US Bank Nat. Ass’n v. Guillaume, 209 N.J. 449, 467 (2012) citing DEG, LLC v. Twp. of Fairfield, 189 N.J. 242, 261 (2009); Hous. Auth. Of Morristown v. Little, 135 N.J. 274, 283 (1994). Similarly, motions for reconsideration, governed by Rule 4:49-2, are reviewed under an abuse of discretion standard. AC Ocean Walk LLC v. Blue Ocean Waters, LLC, 478 N.J. Super 515, 523 (App. Div. 2024).

An abuse of discretion requires the moving party to demonstrate a decision was “made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” Borough of

Englewood Cliffs v. Trautner, 478 N.J. Super 426, 437 (App. Div. 2024) quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (internal quotation marks omitted). However, the appellate court owes no special deference to the trial court’s conclusions of law or the legal consequences that flow from established facts. Cherokee LCP Land, LLC v. City of Linden Plan Bd., 234 N.J. 403, 414-15 (2018).

“Although the ordinary abuse of discretion” standard defies precise definition, it arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis. In other words, a functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue.” Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002).

DISCUSSION

POINT I: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S FIRST MOTION TO VACATE FINAL JUDGMENT.

The trial court did not abuse its discretion when it denied Appellant’s First Motion. As Hon. Gregory L. Acquaviva correctly noted on the record (1Tr. 9:7-13), Appellant was required to establish entitlement to relief under Rule 4:50-1. Appellant failed to demonstrate any of the factors pursuant to R. 4:50-1 as he was properly served with the summons and complaint and was represented by

an attorney who failed to object to final judgment. Appellant's desire for a loan modification and the lender's acts of property preservation, which were fully authorized under the Mortgage, did not render the judgment invalid or constitute extraordinary circumstances warranting vacatur of Final Judgment.

The requirements for setting aside default judgment under Rule 4:50-1 are more stringent than the "good cause" standard for setting aside an entry of default. O'Connor v. Abraham Altus, 67 N.J. 106, 129 (1975). As the Court held in US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012):

Our rules require a two step default process, and there is a significant difference between the burdens imposed at each stage. When nothing more than an entry of default pursuant to R. 4:43-1 has occurred, relief from that default may be granted on a showing of good cause. Rule 4:43-3; Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:43-3 (2012) (stating that "[t]he required good-cause showing for setting aside an entry of default pursuant to this rule is clearly a less stringent standard than that imposed by R. 4:50-1 for setting aside a default judgment"). When the matter has proceeded to the second stage and the court has entered a default judgment pursuant to Rule 4:43-2, the party seeking to vacate the judgment must meet the standard of Rule 4:50-1.

Rule 4:50-1, titled Grounds of Motion, states:

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and for which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment is void; (e) the

judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the judgment or order.

“Because of the importance that we attach to the finality of judgments, relief under Rule 4:50-1(f) is available only when ‘truly exceptional circumstances are present.’ In such ‘exceptional circumstances,’ Rule 4:50-1(f) is ‘as expansive as the need to achieve equity and justice.’ The rule is limited to ‘situations in which, were it not applied, a grave injustice would occur.’” U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 484 (2012) (internal citations and quotations omitted). “Relief from judgment under Rule 4:50-1(f) is not to be granted lightly.” Bank v. Kim, 361 N.J. Super. 331, 336 (App. Div. 2003).

A. Appellant failed to demonstrate a basis to vacate Final Judgment pursuant to R. 4:50-1 because Appellant was properly served with the Complaint and the motion for final judgment.

In Appellant’s First Motion, he claimed that he “was never served with the Complaint in this matter.” (Da34). However, Appellant admitted that he lives at 1 Arosa Drive, Lakewood, New Jersey 08701 (Da34), the address where Respondent attempted to serve him. (Pa118). After a diligent effort to serve Appellant at his home, Appellant was served via publication on August 10, 2023. (Pa117-135). As such, Appellant’s bald denial of service was insufficient to refute the Respondent’s proofs of service and Appellant was properly served

with the Complaint. See Garley v. Waddington, 177 N.J. Super. 173, 180-81 (App. Div. 1981) (citing 72 C.J.S. Process s 102b, p. 1145) (an uncorroborated denial of service is not sufficient to impeach the Respondent's affidavits of service).

Appellant was also served with Respondent's motion for final judgment via service on Appellant's attorney of record, Mr. Topas. (Pa7-10), who failed to file any objection. As such, Appellant failed to demonstrate that relief pursuant to R. 4:50-1 was warranted and the trial court did not abuse discretion when it denied Appellant's First Motion.

B. Appellant's desire for a loan modification is not a basis to vacate Final Judgment pursuant to R. 4:50-1.

Appellant claimed that he has been trying to obtain a loan modification but had difficulty getting any response from the lender. (Da34-35). However, the trial court correctly rejected this argument because Appellant's desire for loss mitigation is not a basis to vacate final judgment. Rather, the law is clear in New Jersey that dual-tracking, the act of exploring loss mitigation while pursuing the foreclosure, is permissible. See U.S. Bank Nat. Ass'n v. Curcio, 444 N.J. Super. 94 (App. Div. 2016) (defendant argues that plaintiff initiated the foreclosure action with unclean hands when it engaged in the practice of "dual tracking." Dual tracking is the practice of a mortgagor initiating foreclosure proceedings while also negotiating a mortgage modification. Our Supreme Court

has held that practice is lawful in New Jersey) citing U.S. Bank National Association v. Guillaume, 209 N.J. 449 (2012).

Moreover, New Jersey has a separate program, the Residential Foreclosure Mediation Program (hereinafter “Mediation” or “Program”), wherein the parties can explore loss mitigation with the assistance of a court-appointed mediator. Appellant was served with the Mediation documents on August 10, 2023 (Pa133) and failed to avail himself of the Program. Despite Appellant’s failure to participate in the Program, Respondent still reviewed Appellant for loss mitigation in good faith. Respondent produced a notice dated December 18, 2024 stating that Appellant’s request for loss mitigation could not be completed because the servicer did not receive the requested documentation in time. (Pa160). As such, Respondent established that it negotiated with Defendant in good faith at all times, but Appellant failed to complete his application. Based on the above, the trial court did not abuse discretion in denying Appellant’s motion to vacate final judgment.

C. Respondent’s acts to protect its Security Interest are not a basis to vacate Final Judgment pursuant to R. 4:50-1.

Appellant claimed that certain acts by the lender (including changing the locks, cutting the oil and electric power lines and allowing the Mortgaged Premises to be subject to unpaid violations) prevented him from securing a tenant and showing sufficient income to qualify for a modification. (Da35-36).

However, Appellant failed to submit any documentary evidence to support these claims, such as copies of violation notices or utility notices. Notwithstanding, the trial court correctly rejected this argument because Section 9 of the Mortgage permits Respondent to do whatever is reasonable to protect its Security Interest in the event of a default. The Mortgage states, in relevant part:

“If (a) Borrower fails to perform the covenants and agreements contained in this Security Agreement ... then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property... Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.” (Pa56).

As such, it was not an abuse of discretion for the trial court to deny Appellant’s First Motion. To the contrary, vacating Final Judgment would be a substantial prejudice to the Respondent as the Mortgage Loan had been in default for three years and Respondent was carrying the taxes and insurance for the Mortgaged Premises. See Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012) (“in foreclosure matters, equity must be applied to plaintiffs as well as defendants”). As such, the Order dated January 27, 2025 should be affirmed in its entirety.

POINT II: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S FIRST MOTION FOR RECONSIDERATION.

Rule 4:49-2 requires that a “motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court’s corresponding written opinion, if any.” See R. 4:49-2. Such a motion will only be granted for those cases which fall into “that narrow corridor” in which either: (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence. D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Said another way, a litigant must demonstrate that the court acted in an arbitrary, capricious, or unreasonable manner, before the court should engage in the actual reconsideration process. D’Atria, at 401. The magnitude of the error cited must be a “game-changer” for reconsideration to be appropriate. Palombi v. Palombi, 414 N.J. Super. 274, 289 (N.J. App. Div. 2010).

The court did not abuse its discretion when it denied reconsideration pursuant to R. 4:49-2. Although the court previously directed that the Complaint

be amended to plead a deferral agreement, this argument was never presented in objection to final judgment. As the court correctly noted on the record (1Tr. 9:3-6): “the entirety of this motion is to expand a record that wasn’t opposed, where nothing was in front of it. So, really it’s improper to use a motion to reconsider to challenge an unopposed order.” Since Respondent’s motion for final judgment was not opposed, there was nothing palpably incorrect or irrational that Hon. Zazzali-Hogan, P.J.Ch. based her decision upon; nor did she fail to consider or appreciate probative, competent evidence. As such, the trial court did not abuse discretion in denying reconsideration and the Order dated January 27, 2025 should be affirmed in its entirety.

POINT III: THE TRIAL COURT DID NOT ABUSE DISCRETION IN DENYING THE APPELLANT’S SECOND MOTION TO VACATE JUDGMENT

The trial court did not abuse its discretion when it denied Appellant’s Second Motion because Appellant failed to demonstrate any of the factors warranting vacatur of Final Judgment pursuant to R. 4:50-1. The record is clear that Appellant failed to return the signed final modification agreement to the lender and accordingly, the trial plan was denied. Additionally, Appellant failed to produce any proof of the lender’s purported acts of sabotage, but in any event, the lender was fully authorized to take said actions under the express terms of the Mortgage. The Second Motion was also barred by law of the case doctrine.

A. Appellant failed to demonstrate a basis to vacate Final Judgment pursuant to R. 4:50-1.

The trial court did not abuse discretion in denying Appellant’s Second Motion because Appellant failed again to meet the standard for vacatur of Final Judgment pursuant to R. 4:50-1. Appellant failed to demonstrate “mistake, inadvertence, surprise, or excusable neglect” under subsection (a) or newly discovered evidence which would alter the judgment and could not have been discovered by due diligence under subsection (b). Appellant did not argue the existence of fraud, misrepresentation, or misconduct of an adverse party under subsection (c) or that the judgment is void under subsection (d). Appellant did not claim that the judgment is satisfied, released or discharged, or that it is no longer equitable that the judgment or order should have prospective application pursuant to subsection (e). Nor did Appellant establish extraordinary circumstances warranting relief under subsection (f). As such, the Second Motion was correctly denied.

B. Appellant failed to demonstrate Exceptional Circumstances under R. 4:50-1(f).

Appellant fails to demonstrate entitlement to relief under R. 4:50-1(f), which requires a showing of “exceptional circumstances.” See U.S. Bank Nat’l Ass’n v. Guillaume, 209 N.J. 449, 484 (2012). Appellant claimed that he was awarded a trial plan by Select Portfolio Servicing (“SPS”) and that he remitted

the trial plan payments to SPS on 1/3/23, 1/31/23 and 2/28/23 (Da40). Appellant further claimed that “[a]fter this occurred, the plaintiff switched servicers, failed to properly communicate with me or my attorney and refused to follow the modification.” (Da40-41).

Appellant failed to demonstrate extraordinary circumstances warranting relief pursuant to R. 4:50-1(f). Notably missing from Appellant’s certification is any statement that he remitted a payment after February 28, 2023, or any claim that he timely executed the final loan modification agreement and returned it to the lender. Much to the contrary, Respondent demonstrated that the trial plan was denied because Appellant never returned signed the agreement. (Pa165-166). On April 21, 2023, SPS notified Appellant that it had not yet received the signed modification agreement. (Pa165). Appellant was required to return the signed agreement by May 5, 2023. The notice states:

On 3/27/2023, you were approved for a final Modification and the completed modification agreement was sent to you. As of the date of this letter we have not yet received back your signed modification agreement. It is a requirement that a signed modification agreement be received. If we do not receive your signed modification agreement by 05/05/2023 we will consider this as your non-acceptance of the modification and we will close out your request. The means your loan terms will revert back to the terms prior to the Modification. **IT IS IMPERATIVE THAT YOU RETURN THE SIGEND MODIFICATION DOCUMENTS IMMEDIATELY.** Failure to return the signed agreement by the date will result in your loss of your affordable payment and could result in your account being referred for future legal action. (Pa165).

On May 11, 2023, SPS notified Appellant that his request for assistance was considered withdrawn because he did not accept the offer by the established deadline. The notice states: “You were offered a Modification but did not accept the offer of loss mitigation assistance by the established deadline.” (Pa166). The loan modification was never finalized by Appellant, despite due notice and as such, exceptional circumstances are not present to warrant vacatur of Final Judgment. Certainly, the trial court did not abuse discretion in denying such relief. As the Court correctly noted on the record (2Tr. 19:4-14):

“There’s no evidence in this record that he ever took any steps to sign the loan modification and send it back. In fact, on May 11, 2023, the servicer sent him a letter stating that the loan modification was considered withdrawn due to his failure to take the last step and sign the modification. He didn’t do it. He did three out of four steps. He didn’t do four steps and, the words and means its conjunctive, you have to do it. He didn’t do it. He got to the – near the goal line, but he didn’t get across the goal line.”

Appellant also claimed that the “plaintiff switched servicers, failed to properly communicate with me or my attorney and refused to follow the modification” (Da40-41). Respondent refuted this claim by submitting correspondence from SPS that it was attempting to reach Appellant about the modification. (Pa165-166). Any suggestion by Appellant that the lender switched servicers, somehow causing Appellant’s to lose the modification, is meritless. (Pa165-166). Appellant’s claim that the “lender prior servicer has deleted the documents from that portal and/or denied my access” is also

unsubstantiated and meritless. After a service transfer is complete, a borrower would not be able to access their loan through the former servicer's portal.

Appellant also claimed, again, that the lender prevented Appellant from securing a tenant and showing sufficient income to qualify for a modification by changing the locks, cutting the oil and electric power lines and allowing the property to be subject to unpaid violations. (Da41-42). Setting aside that Appellant failed to submit any documentation to support this claim, Appellant never refuted that the lender's actions were permissible under Section 9 of the Mortgage. Thus, equity dictates that the Second Motion be denied. The trial court did not abuse discretion in denying the Second Motion and the Order dated April 2, 2025, should be affirmed in its entirety.

C. Appellant's Second Motion is barred by Law of the Case Doctrine

Law of the case doctrine "applies to the principle that where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit. This rule is based upon the sound policy that when an issue is once litigated and decided during the course of a particular case, the decision should be the end of the matter." State v. Hale, 127 N.J.Super. 407, 710-411 (App. Div. 1974) (citing Wilson v. Ohio River Company, 236 F.Supp. 96, 98 [S.D.W.Va 1964], *aff'd* 375 F.2d 775 [4th Cir. 1967]; United States v. U.S. Smelting Refin. & M. Co., 339

U.S. 1896, 198, 70 S.Ct. 537 [1950]). The trial court did not abuse discretion in denying the Second Motion under law of the case doctrine because Appellant's First Motion for the same relief was already denied.

CONCLUSION

Appellant failed to demonstrate that the Trial Court abused discretion in denying the First Motion to vacate final judgment and for reconsideration and the Second Motion to vacate judgment. As such, the Orders appealed from should be affirmed in all respects.

Dated: November 14, 2025

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