
Superior Court of New Jersey
Appellate Division

Docket No. A-003403-24

MMG INVESTMENTS III, LLC,	:	CIVIL ACTION
	:	
<i>Plaintiff-Appellant,</i>	:	ON APPEAL FROM THE
	:	FINAL ORDER OF THE
vs.	:	SUPERIOR COURT
	:	OF NEW JERSEY,
	:	CHANCERY DIVISION,
527 ALMONESSON, LLC,	:	CAMDEN COUNTY
PRECISION DRYWALL	:	
SERVICES, LLC, JOSHUA R.	:	
STRAX, JAMES	:	Docket No. F-010668-22
BRUGGEWORTH AND TOBY C.	:	
SHIAVO,	:	Sat Below:
	:	
<i>Defendants-Respondents.</i>	:	HON. SHERRI L. SCHWEITZER, P.J.CH.

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED	iii
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	3
STATEMENT OF FACTS	6
(A.) The Precision Loan	6
(B.) The Almonesson Loan	7
(C.) Assignments of the Loans	13
(D.) The Defaults under the Precision Loan and the Almonesson Loan	16
ARGUMENT	17
POINT I	
THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING 527 ALMONESSON RELIEF FROM THE FINAL JUDGMENT OF FORECLOSURE UNDER RULE 4:50-1(f) TO CORRECT AN ALLEGED JUDICIAL ERROR. (Pa1).....	17
A. A Motion for Relief Under Rule 4:50-1 Is Not a Substitute for a Timely Appeal to Correct an Alleged Judicial Error. (Pa1)	17
B. 527 Almonesson Failed to Demonstrate the “Exceptional Circumstances” Required for Relief Under Rule 4:50-1(f). (Pa1)	20

POINT II

THE PARTIAL VACATUR OF THE FINAL JUDGMENT LIMITED AS TO 527 ALMONESSON, LLC IS IMPROPER BECAUSE IT CREATES AMBIGUITY AND PREJUDICE TO THE PLAINTIFF’S LIEN AND UNCONTESTED LIABILITY OF CO-DEFENDANTS. (Pa1).....22

POINT III

THE CHANCERY JUDGE’S PREVIOUS DECISION ON THE ISSUE OF CROSS-COLLATERALIZATION WAS NOT ERRONEOUS. (Pa1).....26

POINT IV

THE LATER-ENTERED LAW DIVISION JUDGMENT IS AN IN PERSONAM ACTION AND HAS NO PRECLUSIVE OR VACATING EFFECT ON THE FINAL FORECLOSURE JUDGMENT (IN REM). (Pa1)30

CONCLUSION31

**TABLE OF JUDGMENTS, ORDERS,
AND RULINGS BEING APPEALED**

Order Granting Motion for Relief from Judgment Pursuant to R. 4:50-
1(f), entered May 23, 2025Pa1
Oral Decision of May 23, 2025 (Transcript of Decision) 2T

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<u>Baumann v. Marinaro</u> , 95 N.J. 380 (1984)	21
<u>Colonial Bldg–Loan Ass’n v. Mongiello Bros., Inc.</u> , 120 N.J. Eq. 270, 184 A. 635 (Ch. Div. 1936).....	23
<u>Continental Bank v. Barclay Riding Academy, Inc.</u> , 93 N.J. 153, 459 A.2d 1163 (1983)	28, 29
<u>Di Pietro v. Di Pietro</u> , 193 N.J. Super. 533, 475 A.2d 82 (App. Div. 1984).....	22
<u>Eisen v. Kostakos</u> , 116 N.J. Super. 358 (App. Div. 1971)	31
<u>First Union Nat. Bank v. Penn Salem Marina, Inc.</u> , 190 N.J. 342, 921 A.2d 417 (2007)	30
<u>Hartford Ins. Co. v. Allstate Ins. Co.</u> , 68 N.J. 430 (1975)	18
<u>Hodgson v. Applegate</u> , 31 N.J. 29, 155 A.2d 97 (1959).....	18, 19
<u>Housing Authority of Town of Morristown v. Little</u> , 135 N.J. 274 (1994)	20
<u>In re T</u> , 95 N.J. Super. 228, 230 A.2d 526 (App. Div. 1967).....	21
<u>Ledden v. Ehnes</u> , 22 N.J. 501, 126 A.2d 633 (1956).....	30
<u>Lorusso v. Schaible</u> , A-3464-09T4, 2011 WL 4388355 (N.J. Super. Ct. App. Div. Sept. 22, 2011).....	26, 27, 28
<u>Montclair Sav. Bank v. Sylvester</u> , 122 N.J. Eq. 518, 194 A. 811 (1937).....	30, 31
<u>Posta v. Chung-Loy</u> , 306 N.J. Super. 182 (App. Div. 1997)	21

Slowinski v. Valley Nat. Bank,
264 N.J. Super. 172, 624 A.2d 85 (App. Div. 1993)..... 24

US Bank Nat. Ass’n v. Guillaume,
209 N.J. 449 (2012)..... 17

Va. Beach Fed. v. Bank of N.Y.,
299 N.J. Super. 181, 690 A.2d 1040 (App. Div. 1997)..... 22-23

Wash. Mut., FA v. Wroblewski,
396 N.J. Super. 144, 933 A.2d 32 (Ch. Div. 2007)..... 23

Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co. of New Jersey,
312 N.J. Super. 516, 711 A.2d 1354 (App. Div. 1998)17, 22

Statutes & Other Authorities:

N.J.S.A. 2A:50-2 30

Rule 4:5017

Rule 4:50-1 17, 21, 22, 25

Rule 4:50-1(f)*passim*

PRELIMINARY STATEMENT

This action arises from a mortgage foreclosure concerning two commercial loans, the Precision Loan and the Almonesson Loan, originally issued by Sovereign Bank, N.A. to two entities that share a common principal and guarantor. The Plaintiff, MMG REO III, LLC, as Assignee of MMG INVESTMENTS III, LLC (“MMG”), is successor-in-interest to the original lender. The Almonesson Loan Documents contain explicit language cross-collateralizing it with the Strax Guaranty of the Precision Loan. Upon a default under both loans, MMG’s predecessor in interest commenced this foreclosure action seeking to foreclose upon the cross-collateralized lien against the Mortgaged Premises. Defendant-Appellee 527 Almonesson LLC (“527 Almonesson”) and other defendants appeared in this action, through counsel, and argued that the Almonesson Loan and the Precision Loan were not cross-collateralized. The cross-collateralization issue was necessarily litigated and decided on the motion for summary judgment in this action, with the lower court finding that the cross-collateralization language in the Almonesson Loan Documents was “clear.” Summary judgment was thereafter granted to MMG’s predecessor in interest, and 527 Almonesson did not move for reconsideration or seek leave to appeal the decision. MMG’s predecessor in interest subsequently moved for Final Judgment, which motion was unopposed. On

February 8, 2024, a Final Judgment in Foreclosure was entered, and found the amount due to be the amount of the cross-collateralized lien of both the Almonesson Loan and the Precision Loan. 527 Almonesson did not move for reconsideration and did not appeal.

After almost a year, 527 Almonesson moved to vacate the Final Judgment in Foreclosure as against it only. MMG opposed the motion and, after oral argument, the lower court issued an Order vacating the Final Judgment in Foreclosure as against 527 Almonesson only. Respectfully, the lower court abused its discretion in granting the motion to vacate because (1) a motion to vacate is not a substitute for a timely appeal, and (2) 527 Almonesson did not demonstrate “exceptional circumstances” entitling it to the relief it sought. Further, the Order granting 527 Almonesson’s motion to vacate improperly partially vacated the Final Judgment in Foreclosure, leaving the Final Judgment in place against all other defendants, thereby creating significant procedural prejudice to MMG. Third, the lower court was correct in its finding that the Almonesson Loan and the Precision Loan were cross-collateralized. Finally, the later-entered law judgment has no preclusive effect on the Final Judgment in Foreclosure. Accordingly, MMG asks this Court to reverse the trial court’s Decision and Order that vacated the Final Judgment in Foreclosure against Defendant 527 Almonesson LLC only.

PROCEDURAL HISTORY

On October 5, 2022, this action was commenced in the Superior Court of the State of New Jersey, Chancery Division, County of Camden (Docket No. F-010668-22) against the defendants 527 Almonesson, LLC, Precision Drywall Services, LLC (“Precision”), Joshua R. Strax (“Strax”), James Bruggeworth (“Bruggeworth”), and Toby C. Shiavo (“Shiavo”) (Pa89). On or about February 17, 2023, MMG’s predecessor in interest filed an Amended Complaint in Foreclosure in the Foreclosure Action (Pa48-Pa65).

527 Almonesson and others appeared in this action via counsel by service of a Contesting Answer, which specifically raised the argument that the Almonesson Loan and the Precision Loan were not cross-collateralized (Pa196-Pa202).

On April 28, 2023, MMG’s predecessor in interest moved for summary judgment, asserting that the Almonesson Loan and the Precision Loan were cross-collateralized pursuant to the express terms of the loan documents (Pa204-Pa205). 527 Almonesson and other defendants duly opposed the Motion for Summary Judgment with the assistance of counsel, in which, 527 Almonesson specifically argued that the Almonesson Loan and the Precision Loan were not cross-collateralized (Pa22, Pa240-Pa242). On June 23, 2023, the Hon. Sherri L. Schweitzer, PJ. Ch., held oral argument on the Motion for Summary Judgment

(Pa90). At the conclusion of the oral argument, the lower Court found that the cross-collateralization clause contained in the Almonesson Loan Documents was “clear,” granted the Motion for Summary Judgment, and returned this action to the Office of Foreclosure to proceed as an uncontested matter (Pa90). An Order granting MMG’s predecessor in interest summary judgment and striking 527 Almonesson’s answer was also entered on June 23, 2023 (Pa74-Pa75).

On January 10, 2024, MMG’s predecessor in interest moved for a Final Judgment in Foreclosure (Pa246-248). The Motion for Final Judgment was duly served upon 527 Almonesson’s counsel of record (Pa251). 527 Almonesson did not oppose the Motion for Final Judgment (Pa91).

Despite the lack of opposition, the Office of Foreclosure initially denied the Motion for Final Judgment, stating “Missing mortgage for \$300k note signed by Precision, missing guarantee by 527 Almonesson, LLC cross-collateralizing the note” (Pa76, Pa91, Pa291). Counsel for MMG’s predecessor in interest contacted the Office of Foreclosure and advised that the issue of the cross-collateralization of the Almonesson Loan and the Precision Loan had already been litigated and decided on the Motion for Summary Judgment (Pa91, Pa289-Pa291). The Office of Foreclosure directed counsel to file a Certification to that effect on the docket, which Certification was filed and duly served on 527

Almonesson’s counsel of record with electronic notification (Pa80-Pa82, Pa91, Pa292).

On February 8, 2024, a Final Judgment in Foreclosure was entered against 527 Almonesson and other defendants for the aggregate sum of \$460,797.10, representing the combined, cross-collateralized lien against the Mortgaged Premises¹ (Pa83-Pa86). No appeal was taken therefrom, and the time to appeal expired (Pa92). A foreclosure sale was scheduled thereafter and, after exhausting its two statutory adjournments, and prior to the sale, 527 Almonesson filed for Chapter 11 Bankruptcy Protection (Pa92).

On February 3, 2025, 527 Almonesson, through new counsel, filed a motion for relief under Rule 4:50-1(f) to vacate the Final Judgment as against 527 Almonesson only (Pa13-Pa14). In its motion, 527 Almonesson essentially sought to reargue the cross-collateralization issue without presenting any new evidence, claiming that the Final Judgment in Foreclosure should be vacated as against them only because it was a “gross miscarriage of justice” (Pa68). MMG² opposed the motion to vacate, arguing, *inter alia*, that 527 Almonesson did not

¹ Subsequently, on June 27, 2024, the Law Division entered a separate Final Judgment by Default in an *in personam* action (Docket No. CAM-L-000036-23) (Pa95-Pa96).

² Following entry of the Final Judgment in Foreclosure, MMG INVESTMENTS III, LLC assigned its rights in this action, including the judgment, to its successor in interest, MMG REO III, LLC.

meet its burden on the underlying motion and that the Final Judgment in Foreclosure (as well as the June 23, 2023 summary judgment order) was correctly decided (Pa89-Pa99).

Following oral argument on May 9, 2025, the lower court reserved decision on 527 Almonesson's Motion to Vacate (1T 25:8-26:9³). On May 23, 2025, the Court granted the motion, partially vacating the Final Judgment against 527 Almonesson, only, based on a perceived judicial error, yet acknowledging that 527 Almonesson was technically "out of time" to challenge the previous cross-collateralization determination (2T 3:14-4:15).

MMG appeals from this May 23, 2025 Order, which improperly vacated the Final Judgment of Foreclosure against 527 Almonesson only.

STATEMENT OF FACTS

(A.) The Precision Loan

On or about December 12, 2011, Sovereign Bank, N.A. ("Sovereign") made a loan to Precision in the original principal amount of \$300,000.00 (the "Precision Loan") (Pa36-Pa37). To evidence its indebtedness under the Loan, on or about December 12, 2021, Precision executed and delivered to Sovereign a certain promissory note (the "Precision Note") in the original principal amount

³ 1T refers to the Motion Transcript, dated May 9, 2025, 2T refers to the Decision Transcript, dated May 23, 2025

of \$300,000.00 (Pa36-Pa37). To secure payment of the Precision Note, on or about December 12, 2011, Precision executed and delivered to Sovereign a Business Loan Agreement (Pa176-Pa182). To secure payment of the Precision Note, on or about December 12, 2011, Precision executed and delivered to Sovereign a Commercial Security Agreement (Pa183-Pa188), which security interest was duly perfected with the filing of UCCs (Pa189-Pa195). To secure payment of the Precision Note, on or about December 12, 2011, Strax executed and delivered to Sovereign a Guaranty, whereby Strax unconditionally and irrevocably guaranteed payment of the Precision Note, and agreed to be bound by all terms and conditions thereof (the “Strax Guaranty”)⁴ (Pa40-Pa43). To secure payment of the Precision Note, on or about December 12, 2011, Bruggeworth executed and delivered to Sovereign a Guaranty, whereby Bruggeworth unconditionally and irrevocably guaranteed payment of the Precision Note, and agreed to be bound by all terms and conditions thereof (the “Bruggeworth Guaranty”) (Pa44-Pa47).

(B.) The Almonesson Loan

On or about January 20, 2012, Sovereign made a loan to 527 Almonesson in the original principal amount of \$110,000.00 (the “Almonesson Loan”) (Pa103-Pa107). To evidence its indebtedness under the Almonesson Loan, on

⁴ On or about May 31, 2024, Strax received a Chapter 7 discharge.

or about January 12, 2012, 527 Almonesson executed and delivered to Sovereign Bank, N.A. a certain promissory note (the “Almonesson Note”) in the original principal amount of \$110,000.00 (Pa103-Pa107). The Almonesson Note explicitly provides:

As security for the prompt payment as and when due of all amounts due under this Note, including any renewals, extensions and/or modifications thereof, together with all other existing and future liabilities and obligations of the Borrower and any endorsers, sureties or guarantors (hereinafter “Obligor[s]”), to Lender, whether absolute or contingent, of any nature whatsoever and out of whatever transactions arising (hereinafter collectively referred to as the “Obligations”), in addition to any other security agreement or document granting Lender any rights in any of Obligor’s property for the purpose of securing the Obligations, Obligor hereby grants to Lender a lien and security interest in and to all property of Obligor, or any of them, which at any time Lender shall have in its possession, or which is in transit to it, including without limitation any balance or share belonging to Obligor, or Lender and any other amounts which may be owing from time to time by Lender to Obligor, or any of them. Said lien and security interest shall be independent of any right of set-off which Lender may have. Such right of set-off shall be deemed to occur at the time Lender first restricts access of Obligor to property in Lender’s possession, although such set-off may be entered upon Lender’s books and records at a later time.

(Pa103-Pa104) (emphasis added).

To secure payment of the Almonesson Note, on or about January 20, 2012, 527 Almonesson executed and delivered a mortgage (the "Mortgage") in favor of Sovereign Bank, N.A. in the original principal amount of \$100,000.00 (Pa23-Pa35). The Mortgage was recorded on January 26, 2012 in the Camden County Clerk's Office in Mortgage Book 9531, at Page 1202, et seq (Pa23-Pa35). The Mortgage encumbers all that certain real property commonly known as 527 Almonesson Road, Blackwood, New Jersey 08012, and also known as Lot 20 in Block 5805 as shown on the Tax Map of the Township of Gloucester, Camden County, New Jersey, including all improvements thereon, more particularly described therein and made a part hereof (the "Mortgaged Property") (Pa35).

The Mortgage provides:

The within Mortgage also secures any and all extensions, renewals and modifications of the Note, this Mortgage or any other Loan Documents including without limitation, any and all notes given in renewal of, substitution for, or in modification of the Note which is secured by this Mortgage. Modification means a change in the interest rate, due date, or other terms and conditions of the Debt. If the parties to this Mortgage agree to a change which is a modification as defined in L. 1991, c.364, this shall be subject to the priority provisions of the law. Advances made pursuant to the agreement secured by this Mortgage shall be "modifications" as defined in L. 1991, c.364, and the priority of this Mortgage shall be subject to that law.

(Pa33)

To secure payment of the Almonesson Note, on or about January 20, 2012, 527 Almonesson executed and delivered an Assignment of Leases, Rents and Other Agreements, which irrevocably, unconditionally and absolutely assigned, granted, transferred and set over any and all rights in and to the leases, subleases, licenses, rental contracts and any other agreements relating to any then existing or future tenancies on or in connection with the Mortgaged Property (the “Assignment of Leases”) (Pa110-Pa114). In the event of default under the terms of any loan document executed in connection with the Loan, Sovereign Bank, N.A., or its assignee, was provided the right to notify the tenants and all other obligors on the leases that all subsequent rents are to be paid directly to Sovereign Bank, N.A., its assignee or any appointed receiver (Pa110-Pa114). The Assignment of Leases was recorded on January 26, 2012 in the Camden County Clerk’s Office in Mortgage Book 9531, at Page 1215, et seq. (Pa110-Pa114).

To secure payment of the Almonesson Note, on or about January 20, 2012, Strax executed a Guaranty, whereby Strax unconditionally and irrevocably guaranteed payment of the Almonesson Note, and agreed to be bound by all terms and conditions thereof (the “Strax 527 Guaranty”)⁵ (Pa117-Pa121). To

⁵ Again, on or about May 31, 2024, Strax received a Chapter 7 discharge.

secure payment of the Note, on or about January 20, 2012, Shiavo executed a Guaranty, whereby Shiavo unconditionally and irrevocably guaranteed payment of the Almonesson Note, and agreed to be bound by all terms and conditions thereof (the “Schiavo 527 Guaranty”) (Pa122-Pa126). To secure payment of the Almonesson Note, on or about January 20, 2012, 527 Almonesson, Strax and Shiavo executed a Loan and Security Agreement (Pa127-Pa137). To secure payment of the Almonesson Note, on or about January 20, 2012, 527 Almonesson, Strax and Shiavo executed a Subordination Agreement (Pa138-Pa143).

In or about 2013, Sovereign merged with Santander Bank, N.A. f/k/a Sovereign Bank, N.A. (“Santander”). On or about January 23, 2017, 527 Almonesson executed and delivered to Santander a certain Modification Agreement (the “Modification Agreement”) which, *inter alia*, extended the maturity date of the Almonesson Loan (Pa144-Pa148).

On or about May 10, 2017, 527 Almonesson executed and delivered to Santander a certain Commercial Mortgage Modification and Extension Note (the “Modification Note”) in the original principal amount of \$91,179.16, payable over a term of fifteen (15) years, commencing on June 1, 2017 and continuing until May 1, 2032 (the “Maturity Date”). The Modification Note provides for an initial interest rate of 4.500% per annum, which shall change on May 1, 2022

and May 1, 2027 to 3.00% above the yield on United States Treasury Securities adjusted to a constant maturity of five (5) years (the "Interest Rate") (Pa152-Pa157). The Modification Note expressly provides:

As security for the prompt payment as and when due of all amounts due under this Note, including any renewals, extensions and/or modifications thereof, together with all other existing and future liabilities and obligations of the Borrower and any endorsers, sureties or guarantors (hereinafter "Obligor[s] "), to Lender, whether absolute or contingent, of any nature whatsoever and out of whatever transactions arising (hereinafter collectively referred to as the "Obligations"), in addition to any other security agreement or document granting Lender any rights in any of Obligor's property for the purpose of securing the Obligations, Obligor hereby grants to Lender a lien and security interest in and to all property of Obligor, or any of them, which at any time Lender shall have in its possession, or which is in transit to it, including without limitation any balance or share belonging to Obligor, or Lender and any other amounts which may be owing from time to time by Lender to Obligor, or any of them. Said lien and security interest shall be independent of any right of set-off which Lender may have. Such right of set-off shall be deemed to occur at the time Lender first restricts access of Obligor to property in Lender's possession, although such set-off may be entered upon Lender's books and records at a later time.

(Pa153) (emphasis added)

The Almonesson Loan Documents provide that if 527 Almonesson fails to make any payment of principal, interest, tax escrow or any other payment due

under the terms of the Loan Documents on the date it is due, such failure shall constitute an event of default (Pa104).

The Almonesson Loan Documents further provide that if there is “nonpayment when due of any amount payable ... under any obligation or indebtedness to Lender of Borrower or any person liable, either absolutely or contingently, for payment of any indebtedness, including endorsers, guarantors and sureties (each such person is referred to as an “Obligor”); such nonpayment shall constitute an event of default (Pa104). The additional loan documents that are collateralized by the Almonesson Loan are the Precision Loan Documents by virtue of Strax’s unconditional guaranty of both the Precision Loan and the Almonesson Loan. (Pa40-Pa43; Pa103-Pa104; Pa117-Pa121; Pa152-159)

(C.) Assignments of the Loans

As evidenced by the allonge affixed to the Precision Note and assignments of the UCCs, on or about March 30, 2021, Santander assigned all right, title and interest in the Precision Loan to CL45 MW Loan 1, LLC (“CL45”) (Pa38). Also on or about March 30, 2021, Santander assigned all right, title and interest in the Almonesson Loan to CL45 via allonge affixed to the Almonesson Note and Modification Note (Pa108, Pa158). By virtue of these conveyances and the Allonges, CL45 became the holder of the Precision Note, the Almonesson Note and Modification Note (Pa53).

On or about December 14, 2021, Santander executed and delivered an assignment of mortgage (the “CL45 Assignment of Mortgage”) in favor of CL45, thus transferring all right, title and interest in and to the Mortgage to CL45 (Pa160-Pa163). By virtue of the Assignment of Mortgage, CL45 became the holder of the Mortgage (Pa53). The Assignment of Mortgage was recorded in the Camden County Clerk’s Office on March 17, 2022, in Book 12021 at Page 1768, et seq (Pa160-Pa163).

On or about July 26, 2022, Santander executed and delivered an assignment of assignment of leases and rents (the “CL45 Assignment of Leases”) in favor of CL45, thus transferring all right, title and interest in and to the Assignment of Leases to CL45 (Pa164-Pa167). By virtue of the CL45 Assignment of Leases, CL45 became the holder of the Assignment of Leases (Pa53). The CL45 Assignment of Leases was recorded in the Camden County Clerk’s Office on September 9, 2022, in Book 12184 at Page 1015, et seq (Pa164-Pa167).

As evidenced by the allonge affixed to the Precision Note and assignments of the UCCs, on or about June 28, 2022, CL45 assigned all right, title and interest in the Precision Loan to MMG Investments III, LLC (“MMG III”) (Pa39). Also on or about June 28, 2022, CL45 assigned all right, title and interest in the Almonesson Loan to MMG III via allonge affixed to the

Almonesson Note and Modification Note. (Pa159). By virtue of these conveyances and the Allonges, MMG III became the holder of the Precision Note, the Almonesson Note and Modification Note (Pa54-Pa55).

Also on or about June 28, 2022, CL45 executed and delivered an assignment of mortgage (the “MMG Assignment of Mortgage”) in favor of MMG III, thus transferring all right, title and interest in and to the Mortgage to MMG III (Pa168-Pa171). By virtue of the Assignment of Mortgage, MMG III became the holder of the Mortgage (Pa54). The Assignment of Mortgage was recorded in the Camden County Clerk’s Office on September 9, 2022, in Book 12184 at Page 1019, et seq (Pa168-Pa171).

Also on or about June 28, 2022, CL45 executed and delivered an assignment of assignment of leases and rents (the “MMG Assignment of Leases”) in favor of MMG III, thus transferring all right, title and interest in and to the Assignment of Leases to MMG III (Pa172-Pa175). By virtue of the MMG Assignment of Leases, MMG III became the holder of the Assignment of Leases (Pa54). The MMG Assignment of Leases was recorded in the Camden County Clerk’s Office on September 9, 2022, in Book 12184 at Page 1023, et seq (Pa172-Pa175).

(D.) The Defaults under the Precision Loan and the Almonesson Loan

A default under the terms of the Almonesson Loan Documents occurred on or about April 12, 2021, when Strax, a guarantor of both the Almonesson Loan and the Precision Loan, defaulted on the Strax Guaranty (Pa57). Specifically, on or about April 12, 2021, and each and every payment due thereafter, Mr. Strax failed to pay the principal, interest and other payments due under the Strax Guaranty when due (Pa57).

A further default under the terms of the Almonesson Loan Documents⁶ occurred on or about October 1, 2022, and each and every month thereafter, by, among other things, failing to pay the monthly payment of principal, interest and other charges when same became due (Pa57). The Obligors failed to cure their default.

⁶ The Almonesson Note, the Mortgage, the Assignment of Leases, the Strax 527 Guaranty, the Shiavo 527 Guaranty, the Loan and Security Agreement, the Subordination Agreement, the Modification Agreement the Modification Note, the CL45 Allonge, the CL45 Assignment of Mortgage, the CL45 Assignment of Leases, the Allonge, the Assignment of Mortgage, the MMG Assignment of Leases and all related loan documents shall be referred to collectively herein as the “Almonesson Loan Documents.”

ARGUMENT

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING 527 ALMONESSON RELIEF FROM THE FINAL JUDGMENT OF FORECLOSURE UNDER RULE 4:50-1(f) TO CORRECT AN ALLEGED JUDICIAL ERROR. (Pa1)

The Trial Court’s determination to grant relief under Rule 4:50-1 is given substantial deference but must be reversed if it represents a “clear abuse of discretion.” See US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion is found where a decision “inexplicably departed from established policies” or rested on an “impermissible basis.” Id. Here, the Trial Court’s Order was improper because it contradicts binding guidelines and analogous precedents regarding the vacatur of judgments.

A. *A Motion for Relief Under Rule 4:50-1 Is Not a Substitute for a Timely Appeal to Correct an Alleged Judicial Error. (Pa1)*

The proper remedy for judicial error is a motion for reconsideration or a timely appeal, not a post-judgment motion after the appeal period has run. Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co. of New Jersey, 312 N.J. Super. 516, 519, 711 A.2d 1354, 1355 (App. Div. 1998) (noting that “[i]t is well established that an R. 4:50 motion may not be used as a substitute for a timely appeal” and that “[u]ntimely motions for reconsideration are governed by the same principle”). Indeed, even a “change in the law or in the judicial view of

an established rule of law is not such an extraordinary circumstance as to justify relief from a final judgment where the time to appeal has expired.” Hartford Ins. Co. v. Allstate Ins. Co., 68 N.J. 430, 434 (1975) (internal quotation marks omitted).

In Hodgson v. Applegate, the Supreme Court held that a trial court’s errors, in themselves, should not be reviewable through a motion to vacate a judgment because it would defeat the principles of expedition and finality and obliterate the time limit for appeals. 31 N.J. 29, 37, 155 A.2d 97, 101-102 (1959) (analyzing the predecessor to Rule 4:50-1(f)). In Hodgson, a judgment was entered against the defendants after a jury verdict. 31 N.J. at 32. Although represented by counsel at trial, the defendants neither moved for a new trial nor took an appeal from the original judgment within the statutory time limits for such relief. Id. at 33. The defendants, represented by new counsel, subsequently moved to vacate the judgment, on the grounds that, *inter alia*, the trial court made a mistake of law when charging the jury. Id. The trial court denied the motion to vacate, but the Appellate Division found reversible error in the trial court’s charge to the jury, stating that there was “such an extreme departure from the proper functioning of the adjudicative process in the trial court as to compel the conclusion that the defendants will be the victims of a manifest injustice if the judgment is permitted to stand.” Id. at 33-34. The Supreme Court reversed,

holding that, under the circumstances, discretion to grant relief under equitable principles was not appropriate where judicial errors formed the sole basis for attack on the judgment. Id.

Here, the proper procedure for 527 Almonesson to challenge an alleged error in the lower's Court's order granting the motion for summary judgment was either (1) a motion for reconsideration (R. 4:49-2) or (2) a timely appeal to the Appellate Division (R. 2:4-1). 527 Almonesson did not pursue either remedy. Indeed, during the oral argument for the motion to vacate, 527 Almonesson's counsel acknowledged that he was "out of time" to challenge the court's June 23, 2023 summary judgment order (1T 11:5), that he was essentially asking the court to vacate that order (1T 14:9-11,17)⁷ in addition to the Final Judgment in Foreclosure, and that none of the salient facts or circumstances had changed since that issue was litigated and decided by the lower court (T1 15:10-11). Indeed, the core of 527 Almonesson's argument on the motion to vacate (i.e., that the Precision Loan and the Almonesson Loan were not cross-

⁷ THE COURT: -- you answered my question, though. That essentially what you're asking me to do is vacate -- go back to the June of '23 order in a very very backdoor long -- long -- long winding road.

...

MR. WINTERHALTER: -- yes. Bottom line is yes.

collateralized) was the very basis of its opposition to the original summary judgment motion (Pa240-Pa242).

The lower court apparently revisited the merits of the prior summary judgment motion (1T 25:8-25)⁸ and, upon reaching its decision, stated that it was using equitable relief to correct its own perceived “mistake,” despite acknowledging that 527 Almonesson was “out of time” and “too late” to challenge the alleged judicial error (2T 4:5-13). The lower court, therefore, rested its vacatur decision solely on an impermissible basis—correcting an alleged judicial error after the appeal period had expired—which constitutes the precise prohibition on judicial discretion described by the Supreme Court in Hodgson. As such, the May 23, 2025 Order should be reversed and the Final Judgment in Foreclosure reinstated as to all defendants.

B. *527 Almonesson Failed to Demonstrate the “Exceptional Circumstances” Required for Relief Under Rule 4:50-1(f). (Pa1)*

Relief under the “catch-all” Rule 4:50-1(f) is an extraordinary remedy available only when “truly exceptional circumstances are present.” Housing Authority of Town of Morristown v. Little, 135 N.J. 274 (1994).

⁸ THE COURT: . . . I firmly believe that this is an application for reconsideration on a motion . . . I want to reread the original briefs that were filed.

In general, counsel’s error in litigation strategy or procedure, standing alone, does not rise to the level of “exceptional circumstances” necessary to set aside an unfavorable final judgment under Rule 4:50-1. In Baumann v. Marinaro, 95 N.J. 380 (1984), the New Jersey Supreme Court determined that the failures of defense counsel—including the inability to file a timely motion for a new trial—did not constitute “exceptional circumstances” necessary to justify setting aside a final judgment under Rule 4:50-1(f). The Baumann Court made clear that such procedural errors are simply “careless mistakes” evidencing a “lack of proper diligence.” *Id*; *see also* Posta v. Chung-Loy, 306 N.J. Super. 182, 206 (App. Div. 1997) (“[A]n attorney’s error of law is not sufficient to relieve a party from a final judgment or order.”); In re T, 95 N.J. Super. 228, 235, 230 A.2d 526 (App. Div. 1967) (“Mere carelessness or lack of proper diligence on the part of an attorney is ordinarily not sufficient to entitle his clients to [post-judgment] relief.”).

Here, 527 Almonesson had ample time, advice of counsel, and a full opportunity to challenge the cross-collateralization ruling through (1) its opposition to the motion for summary judgment, (2) a motion for reconsideration (10 days) or (3) a timely appeal (45 days). 527 Almonesson’s motion to vacate rested entirely on a perceived judicial error, and admittedly did not introduce any new facts or changed circumstances demonstrating entitlement

to relief. 527 Almonesson cannot dispute that it already had an opportunity to oppose and litigate the issue of the cross-collateralization of the loans through counsel, that it failed to timely move for reconsideration of the Order granting MMG's predecessor in interest summary judgment, or that it failed to timely appeal the Final Judgment in Foreclosure. 527 Almonesson's unexplained failure to exercise its remedies in disputing the lower court's June 23, 2023 summary judgment order does not constitute "exceptional circumstances" under Rule 4:50-1(f). Rather, the post-judgment motion to vacate was entirely predicated on re-arguing a settled legal issue, and cannot be used as a substitute for a timely appeal. Wausau Ins. Co., 312 N.J. Super. at 519 (citing Di Pietro v. Di Pietro, 193 N.J. Super. 533, 539, 475 A.2d 82 (App.Div.1984)). As such, the Court's finding in the May 23, 2025 Order that its prior decision was a "mistake," without more, was an extraordinary measure and exceeded judicial discretion under Rule 4:50-1. Therefore, the May 23, 2025 Order should be reversed and the Final Judgment in Foreclosure reinstated as to all defendants.

POINT II

THE PARTIAL VACATUR OF THE FINAL JUDGMENT LIMITED AS TO 527 ALMONESSON, LLC IS IMPROPER BECAUSE IT CREATES AMBIGUITY AND PREJUDICE TO THE PLAINTIFF'S LIEN AND UNCONTESTED LIABILITY OF CO-DEFENDANTS. (Pa1)

It is a "well-settled principle that a mortgage merges into the judgment of foreclosure." Va. Beach Fed. v. Bank of N.Y., 299 N.J. Super. 181, 188, 690 A.2d

1040 (App.Div.1997); *see also* Wash. Mut., FA v. Wroblewski, 396 N.J.Super. 144, 149, 933 A.2d 32 (Ch.Div.2007). As Chancellor Kays held in Colonial Bldg-Loan Ass'n v. Mongiello Bros., Inc., 120 N.J. Eq. 270, 276, 184 A. 635 (Ch.Div.1936):

It is quite obvious that such must be the law and that every party to the suit is bound thereby and has the right to assume that such decree represents the final determination of the debt and amount due thereunder as therein stated and that such debt draws legal interest from the date of its record and no more and that such decree cannot be considered as non-existent for the purpose of allowing a complainant and defendant to continue a contract which was settled by the entry of such decree which would effect the interest of another defendant who is not a party to such agreement. If this were not so other creditors of a defendant could never be sure that the defendant's rights and liabilities under a decree had been finally established.

Here, 527 Almonesson's motion to vacate improperly sought reversal of the Final Judgment in Foreclosure against 527 Almonesson only (Pa13-Pa14). In granting 527 Almonesson's motion, the lower court further abused its discretion by "striking" the Final Judgment in Foreclosure as against 527 Almonesson only (Pa1-Pa2), while leaving the Final Judgment in Foreclosure in effect against all other co-defendants (including the defendants solely related to the Precision Loan), because it improperly leaves the Appellant in a procedural limbo where there is an undisturbed Final Judgment in Foreclosure against every other defendant except the Mortgagor.

Furthermore, despite the partial vacatur of the Final Judgment in Foreclosure, the lower court's June 23, 2023 Summary Judgment Order on the issue of cross-collateralization remains undisturbed and in effect. It is well settled that the Law of the Case doctrine precludes relitigating an issue that has been previously decided in the course of the same litigation. *See, e.g., Slowinski v. Valley Nat. Bank*, 264 N.J. Super. 172, 179, 624 A.2d 85, 88 (App. Div. 1993) (“It has been generally stated that the ‘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, that decision should be the end of the matter”) (internal citations omitted).

Here, the Court's explicit finding on June 23, 2023, that the cross-collateralization provision was “clear”, was a dispositive ruling on the core liability of the defendants. This Order established the Law of the Case, that the Precision Loan and the Almonesson Loan are cross-collateralized, and remains undisturbed to date. Furthermore, the single, aggregate lien amount of \$460,797.10 was merged into a Final Judgment in Foreclosure, which ordered the sale of the Mortgaged Premises to satisfy that single lien. The Court's partial vacatur of the Final Judgment as to 527 Almonesson only, a single defendant

and the mortgagor and owner of the Mortgage Premises, undermines the finality of the overall lien established by the Final Judgment in Foreclosure, which remains undisturbed as to the other defendants to the action (including the entities and individuals liable on the Precision Loan). By “striking” the Final Judgment in Foreclosure against 527 Almonesson only, the Order does nothing but creates ambiguity as to the lien of both 527 Almonesson (who remains bound by the cross-collateralization decision under the Law of the Case doctrine) and the co-defendants (whose interests have already been finally adjudicated within the undisturbed portion of the Final Judgment in Foreclosure). Indeed, the practical effect of the May 23, 2025 Order is that there is no clear procedural path forward and it essentially forces MMG to re-litigate an action (that remains already reduced to a Final Judgment against every other defendant) against one single defendant, leaving open the possibility for inconsistent decisions. This result is procedurally and substantively improper, and severely prejudicial to the MMG, as it is precisely the situation final judgments are entered to avoid.

While Rule 4:50-1 permits relief “upon such terms as are just”, it is respectfully submitted that the relief granted by the May 23, 2025 Order is not “just”, and the lower court abused its discretion, in vacating the Final Judgment in Foreclosure with respect to only one party subject to the final judgment. Indeed, the Order does nothing but subject MMG to multiple legal battles,

forcing it to potentially relitigate the disturbed portions of the judgment and further challenging the settled nature of the lien, despite the underlying debt obligations remaining undisputed. As such, the May 23, 2025 Order should be reversed and the Final Judgment in Foreclosure reinstated as to all defendants.

POINT III

THE CHANCERY JUDGE'S PREVIOUS DECISION ON THE ISSUE OF CROSS-COLLATERALIZATION WAS NOT ERRONEOUS. (Pa1)

Notwithstanding 527 Almonesson's improper motion seeking to circumvent procedural rules, the lower court's June 23, 2023 Order was not clearly erroneous. In light of New Jersey law governing third-party mortgages and dragnet clauses, the earlier ruling correctly found the cross-collateralization agreement clear and enforceable. The subsequent motion to vacate incorrectly relied on non-binding, distinguishable precedent and fundamentally mischaracterized the nature of the express provisions of the Almonesson Loan Documents.

In its motion to vacate, 527 Almonesson relied heavily on Lorusso v. Schaible, A-3464-09T4, 2011 WL 4388355 (N.J. Super. Ct. App. Div. Sept. 22, 2011) to argue against the enforcement of the cross-collateralization clause. However, Lorusso is an unpublished opinion and, more critically, the facts and contracts presented there are fundamentally distinct from the case at bar.

In Lorusso, the Appellate Division affirmed that subsequent loan agreements superseded a *prior* general dragnet clause. The Lorusso court held that a cross-collateralization clause contained in an earlier mortgage agreement was enforceable. 2011 WL 4388355 at *10. The court focused on the ambiguity created when the lender later entered into separate, “self-contained” transactions, which included specific integration clauses and their own limited collateral provisions, but did not reference the prior debt. Id. at *9. Thus, the Lorusso court determined that the contractual language from the later transactions showed the parties did not intend for the new debt to be secured by the cross-collateralization clause from the earlier loan.

The instant case presents the opposite contractual sequence. The express cross-collateralization provision of the Almonesson Note and the Modification Note does *not* purport to limit the collateral solely to the Almonesson Note or Modification Note, nor does the lender rely on an ambiguous *prior* dragnet clause from an earlier instrument. Rather, the “Security Interest” clause in the Almonesson Note and Modification Note clearly denotes its express purpose *at the time the Almonesson Loan was issued*, and included broad dragnet language affirmatively expanding the scope of the existing debt secured by the 527 Almonesson Mortgage in exchange for the Almonesson Loan.

The clauses explicitly state that both the Almonesson Note and the Modification Note secure not only the borrower's debt, but "all other existing and future liabilities and obligations of the Borrower and any endorsers, sureties or guarantors (hereinafter 'Obligor[s]'), to Lender . . ." (Pa103-Pa104; Pa153). Therefore, unlike Lorusso, this is not a case where a prior general clause was superseded by a later specific contract; it is a case where the later contract intentionally and unambiguously expanded the scope of the mortgage lien to secure the liabilities of all Obligor[s], including the antecedent debt of the common guarantor, Joshua R. Strax. At the time of the origination of the Almonesson Loan, Mr. Strax was clearly an Obligor of 527 Almonesson's debt through the Strax 527 Guaranty, and was also liable to the Lender as a guarantor of the Precision Loan through the Strax Guaranty. Therefore, the two loans were effectively cross-collateralized under both the Almonesson Note and the Modification Note.

The legal principles established by the New Jersey Supreme Court in Continental Bank v. Barclay Riding Academy, Inc., 93 N.J. 153, 459 A.2d 1163 (1983), further support the lower court's original Summary Judgment ruling that the cross-collateralization was valid. In Continental Bank, the New Jersey Supreme Court addressed the enforceability of a third-party mortgage under circumstances analogous to the case at bar. Specifically, a mortgage was given

by a corporation to secure a pre-existing loan to a major shareholder of a related company. 93 N.J. at 158-162. The Supreme Court upheld the validity of the third-party mortgage, despite its unusual nature, holding that it was offered in exchange for valuable consideration. Id. at 173. The Court found that the mortgage was given in exchange for the lender’s “continued and expanded financial support of the [mortgagor shareholder’s] business ventures.” Id. at 174.

Here, both the Almonesson Note and the Modification Note were not gratuitous acts from the lender. MMG’s predecessor in interest (Sovereign) extended a Loan to 527 Almonesson, at the express request of said entity, and advanced the principal borrowed therein pursuant to the express terms of the Almonesson Loan Documents. This provided ample consideration to the Obligors as part of a continued financial relationship, which serves as the direct exchange for the expanded security interests established under the dragnet clause. The inclusion of the explicit “Obligor/Guarantor” language in the both the Almonesson Note and the Modification Note was the consideration for extending the Almonesson Loan. That provision ensured that in exchange for the credit accommodation, the lender was protected against all liabilities of the primary individuals involved. Accordingly, the lower court’s original Summary Judgment ruling correctly recognized the clarity and enforceability of this

bargained-for exchange, making the cross-collateralization proper, and not erroneous.

POINT IV

THE LATER-ENTERED LAW DIVISION JUDGMENT IS AN IN PERSONAM ACTION AND HAS NO PRECLUSIVE OR VACATING EFFECT ON THE FINAL FORECLOSURE JUDGMENT (IN REM). (Pa1)

527 Almonesson improperly relied on the subsequent Law Division Judgment for a lower debt amount to justify vacating the Foreclosure Judgment. To the contrary, the New Jersey Supreme Court has explicitly held that “[w]hen a bond and mortgage are used, the judgment in the foreclosure action is res judicata on a subsequent action on the bond.” First Union Nat. Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 351, 921 A.2d 417 (2007). In fact, under the statute fixing the order of proceedings (currently N.J.S.A. 2A:50-2), an earlier foreclosure judgment is also res judicata as to the *quantum* of the debt, provided that the obligor on the bond was made party to the foreclosure proceeding and was given an opportunity to litigate the issue. Montclair Sav. Bank v. Sylvester, 122 N.J. Eq. 518, 522, 194 A. 811 (1937). See also Ledden v. Ehnes, 22 N.J. 501, 508–09, 126 A.2d 633 (1956).

The Chancery and Law Division judgments are also fundamentally different in nature. A mortgage foreclosure final judgment is primarily an *in rem* action that establishes the amount of the lien and the right to sell the collateral

property. Montclair Sav. Bank, 122 N.J. Eq. at 521 (“A suit to foreclose a mortgage is essentially a proceeding in rem, ‘quasi in rem’ is a more accurate term”). See also, Eisen v. Kostakos, 116 N.J. Super. 358, 365 (App. Div. 1971) (“[t]he final judgment in an action to foreclose a real estate mortgage fixes the amount due under the mortgage and directs the sale of the real estate to raise funds to satisfy the amount due”).

Here, The Final Judgment in Foreclosure of February 8, 2024, fixed the amount of the lien at \$460,797.10. It is undisputed that 527 Almonesson appeared in this foreclosure action and had a full opportunity to litigate the amount of its debt. The Law Division Judgment of June 27, 2024, was an *in personam* judgment establishing personal liability of the various debtors, including 527 Almonesson, LLC, and the guarantors. The later-entered *in personam* judgment does not retroactively invalidate the prior, unappealed, and final *in rem* judgment, which was based on an explicit ruling of cross-collateralization.

CONCLUSION

For the foregoing reasons, the Plaintiff-Appellant MMG REO III, LLC, Assignee of MMG INVESTMENTS III, LLC, respectfully requests that this Honorable Court reverse the Order of the Chancery Division dated May 23, 2025, thereby reinstating the Final Judgment in Foreclosure dated February 8,

2024, against 527 Almonesson, LLC, and award such other relief as this Court deems just and equitable, including costs and fees incurred in prosecuting this appeal.

Respectfully submitted,

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Dated: October 22, 2025

Superior Court of New Jersey
Appellate Division

MMG INVESTMENTS III, LLC,	:	
	:	
<i>Plaintiff-Appellant</i>	:	
	:	
vs.	:	Docket No. A-003403-24
	:	
527 ALMONESSON, LLC,	:	
Precision Drywall Services, LLC,	:	
Joshua R. Strax, James Bruggeworth, and	:	On Appeal from a Final Order
Toby C. Shiavo,	:	of the Superior Court of
	:	New Jersey, Chancery Division
<i>527 Almonesson, LLC, only</i>	:	Camden County by
<i>Defendant- Appellee</i>	:	Hon.Sherri L. Schweitzer, P.J. Ch.
	:	Docket No. F-010668-22

BRIEF OF 527 ALMONESSON, LLC
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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	1
STATEMENT OF FACTS	5
ARGUMENT	
IT IS NOT AN ABUSE OF A TRIAL JUDGE’S DISCRETION WHEN SHE CORRECTS HER OWN RECOGNIZED ERROR UNDER N.J. RULE 4:50-1(f)	6
MMG’S CONTENTION THAT 527 ALMONESSON FAILED TO DEMONSTRATE EXCEPTION CIRCUMSTANCES IS WITHOUT MERIT.	12
VACATING THE FINAL JUDGMENT IN FORECLOSURE DOES NOT CREATE ANY AMBIGUITY NOR EFFECT LIABILITY OF CO-DEFENDANTS ON THE FORECLOSURE ACTION	13
JUDGE SCHWEITZER’S DETERMINATIONS ON THE FROM THE JUNE 23, 2023 SUMMARY JUDGMENT PROCEEDINGS WERE ERRONEOUS AND THE JUDGE RECOGNIZED THEY WERE	13
WHILE THE LAW DIVISION RULING HAS NO INDEPENDENT PRECLUSIVE EFFECT ON THE FINAL FORECLOSURE JUDGMENT IT DOES SUPPORT JUDGE SCHWEITZER’S CORRECTING HER ERROR ON PROPRIETY OF SPECIFIC LOAN OBLIGATION	14
CONCLUSION	16

TABLE OF AUTHORITIES

CASES

Bache–Wiig v. Fournier, 299 B.R. 245, 249 (Bankr.D.Me.2003)..... 13

Central Penn Nat'l Bank v. Stonebridge Ltd., 185 N.J.Super. 289, 302–03,
448 A.2d 498 (Ch.Div.1982) 13

Court Invest. Co. v. Perillo, 48 N.J. 334, 225 A.2d 352 (1966) 7

First Union National Bank v. Penn Salem Marina, Inc., 383 N.J. Super. 562, ____,
893 A. 2d 1, __ (2006)..... 13

Hodgson v. Applegate, 31 N.J. 29, 41, 155 A.2d 97 (1959) 7, 8, 9

Housing Authority of the Town of Morristown v. Little, 135 N.J. 274, 286,
639 A. 2d 286, 292 (1994)6

LoRusso v. Schaible, 2011 WL 4388355 (N.J. Superior Court, Appellate Division,
Sept. 22, 2011)6, 10

Lundgren v. Nat'l Bank of Alaska, 756 P. 2d 270, 278 (Alaska 1987)10

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132 N.J. 330, 334 (1993)6

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(1977)5, 6, 7, 8

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(1964))6

Montclair Savs. Bank v. Sylvester, 122 N.J.Eq. 518, 521, 194 A. 811
(E. & A.1937)13

Resolution Trust Corp. v. Berman Indus., Inc., 271 N.J.Super. 56, 62, 637 A.2d 1297
(Law Div.1993)13

Shammas v. Shammas, 9 N.J. 321, 88 A. 2d 204 (1952)9

Wong v. Beneficial Sav. & Loan Ass'n, 128 Cal Rep. 338, 342-343
(Cal. App. 1976)10

STATUTES AND RULES

New Jersey Civil Rule 4:50-1(f)1, 5, 9, 12

New Jersey Civil Rule 4:62-2 (Superseded)8

OTHER AUTHORITIES

29 New Jersey Practice, Mortgages §3.30, at 192
(Myron C. Weinstein (2 Ed., 2001)9

Restatement (Third) of Property: Mortgages §2.4 comment (1996)9

PRELIMINARY STATEMENT

This matter represents an appeal to this Court by MMG REO III, LLC as the successor in interest to MMG Investments III, LLC (“MMG”) of an Order issued by President Judge Sherri L. Schweitzer of the Superior Court of New Jersey, Camden Visinage, dated May 23, 2025. [Pa1]. The Order entered by Judge Schweitzer was as a result of a Motion filed on behalf of 527 Almonesson, LLC (“527 Almonesson”/Appellee) which sought to set aside a Final Judgment in Mortgage Foreclosure pursuant to New Jersey Civil Rule 4:50-1(f) against 527 Almonesson previously entered under Judge Schweitzer’s signature on February 8, 2024. [Pa13 et seq.].

PROCEDURAL HISTORY

The original Plaintiff in this proceeding was MMG Investments III, LLC (“MMG”). At the time of the commencement of the initial action on October 5, 2022, MMG was the successor in interest to two separate loans to two different entities originally issued by Sovereign Bank in 2011 and 2012. On December 12, 2011, Sovereign Bank entered a loan arrangement with Precision Drywall Services, LLC (“Precision”) providing a Loan in the original amount of \$300,000 for business operations of Precision. [Pa36, Pa176] The loan was secured by a pledge of certain assets of Precision and certain guarantees given by the two members of Precision. [Pa40, Pa183, Pa189] The sole Members giving a guaranty were Joshua Strax and James Bruggeworth. As further evidenced by the Certification considered by the lower court submitted in support of the relief sought by this Motion, 527 Almonesson has no interest in Precision and received no proceeds or benefit from this loan. [Pa21 at paragraph 11, Pa240]

On January 20, 2012, Sovereign Bank issued a separate loan in the amount of \$110,000.00 to 527 Almonesson, LLC for the re-financing of its existing real estate Mortgage

with PNC Bank on the property solely owned by 527 Almonesson, LLC located at 527 Almonesson Road in Blackwood, New Jersey. [Pa23] Josh Strax is also a Member of 527 Almonesson, LLC along with Toby Shiavo and Michael Neissner. [Pa19, 127]. The members of 527 Almonesson each guaranteed the repayment of the 527 Almoesson real estate loan. [Pa117, Pa122].

A decade later, beginning in late 2022, MMG, then succeeding to the interests of Sovereign Bank, commenced two separate legal actions in New Jersey State Courts related to the two loans given to the two different entities. MMG instituted a mortgage foreclosure proceeding in the Chancery Division for the Superior Court of Camden County claiming an alleged default in the payments of the Precision Loan was a basis to enable MMG the ability to foreclose on the 527 Almonesson Mortgage given to Sovereign Bank. At the time the Mortgage Foreclosure actions was initiated on the 527 Almonesson Loan, the mortgage payments were current. [Pa22 at paragraph 16]. Then on January 4, 2023, MMG instituted a separate action in the Law Division under docket number CAM-L-000036-23 against 527 Almonesson, Precision, and the respective individual members of each corporate entity under separate counts for the respective alleged liability of each entity to their separate loans.

On December 12, 2022, a contested answer to the Foreclosure Complaint was filed on behalf of 527 Almonesson, Precision Drywall Services, LLC, Joshua Strax, and James Bruggeworth. On February 17, 2023, MMG filed an Amended Foreclosure Complaint in the Chancery proceeding. [Pa48]. On April 28, 2023, MMG filed a Motion for Summary Judgment in the Chancery Division Action. Opposition to the Chancery Division Motion for Summary Judgment was filed on behalf of 527 Almonesson and other Defendants on June 6, 2023.

Josh Strax, the guarantor under both loans which were assigned by the former Sovereign Bank to MMG for the two separate business entities, filed a personal Chapter 7 Bankruptcy on June 12, 2023. A Discharge Order was entered in Mr. Strax's personal bankruptcy on May 31, 2024 absolving him of any personal liability of all then existing debts, including those under his two Sovereign Loan guarantees.

On June 23, 2023, the Superior Court, Chancery Division by Judge Schweitzer entered an Order granting certain relief under the MMG Motion including granting Summary Judgment in favor of MMG and striking the Answer filed in the Chancery Division on behalf of the listed Defendants. A transcript of the Summary Judgment proceeding before Judge Schweitzer is included in the Appellee's Appendix. [3T]. The Order dated June 23, 2023 referred the proceeding to the Office of Foreclosure. [Pa74].

Several months later, on January 9, 2024, MMG, through Counsel, sought Final Judgment in Foreclosure before the Office of Foreclosure. On February 5, 2024, the Office of Foreclosure denied MMG's request for Final Judgment due to the failure to provide a mortgage given by Precision to the purported for the separate Precision Loan. In response to this denial, on February 7, 2024, MMG, again through counsel, provided the Office of Foreclosure with counsel's own certification, without apparent service upon any opposition party, contending during oral argument some eight months prior her recollection was that she argued the 527 Almonesson Loan documents permitted cross-collateralization of loans and the Court was clear in its Order. [Pa289]. On February 8, 2024, in apparent reliance on this supplemental Certification, the Office of Foreclosure rescinded its directive of February 5, 2024 and issued an Order circumscribing Judge Schweitzer's signature filed in the Chancery Division granting

MMG a Final Judgment in Foreclosure in the amount of \$460,797.10 in the Chancery Action. [Pa83].

On June 27, 2024, completely contrary to the actions by the Office of Foreclosure, the Superior Court, by Judge Donald J. Stein in the Law Division entered a separate Order granting a Judgment by Default against the Precision entity on its specific loan identified in Count 1 of the Law Division Complaint in the amount of \$296,105.86 plus accruing interest and a separate Judgment in the amount of \$65,535.64 against the 527 Almonesson and one of its members limited to the real estate loan under Count 4 of the Complaint. [Pa85]. MMG sought to foreclose on the Final Judgment entered in the Chancery proceeding for the aggregate amount of both loan obligations. Prior to the scheduled Sheriff's Sale, 527 Almonesson, LLC filed its own Chapter 11 Bankruptcy on September 3, 2024 to protect and preserve its interests in the real property.

On November 5, 2024, MMG REO, LLC, as the successor in interest to MMG filed Proof of Claim with the Bankruptcy Court claiming to be secured for the obligations on both loans under the mortgage originally given by 527 Almonesson to Sovereign Bank on the refinancing of the real estate loan. 527 Almonesson filed an objection to this alleged claim as presented by MMG in the Bankruptcy Court. In a scheduled hearing on the Objection to the claim that the mortgage should cover both loans, the Bankruptcy Court determined the issue regarding the effect of the February 8, 2024 Final Judgment in Foreclosure must be decided by the New Jersey State Court. [Pa295].

On February 3, 2025, 527 Almonesson therefore presented its Motion before the Superior Court of New Jersey challenging the propriety of the entry of the Final Judgment in Foreclosure on February 8, 2024 as being improvidently entered and arguing the entry of the Order under the Court's signature represents a gross miscarriage of justice and was simply erroneous. The

Motion presented such facts and events which demonstrated circumstances which are exceptional, and argued the enforcement of the Final Judgment is unjust, oppressive and inequitable.

On May 9, 2025, Judge Schweitzer entertained oral argument on the 527 Almonesson Motion for Relief from the February 8, 2024 Final Judgment. [1T]. The Judge took the matter under advisement and set May 23, 2025 as the date for her ruling on the relief requested by the 527 Almonesson Motion. On May 23, 2025 Judge Schweitzer advised she was granting the Motion to set aside the Foreclosure Judgment. [2T]. The Judge noted she had made a mistake in her original decision set out during the summary judgment argument, and noted the decision created a completely unfair result. As a consequence, Judge Schweitzer entered the Order dated May 23, 2025 striking the Final Judgment in Foreclosure against 527 Almonesson dated February 8, 2024.¹

STATEMENT OF FACTS

Respondent adopts the Statement of Facts as set forth in the Brief of the Appellant consistent with N.J. Rule 2:6-4(a).

¹ 1T refers to the Motion Transcript, dated May 9, 2025. 2T refers to the Decision Transcript, dated May 23, 2025. Respondent has added 3T which is the Transcript from the argument and decision on the Motion for Summary Judgment conducted on June 23, 2023. This transcript is listed out of chronological order.

ARGUMENT

**IT IS NOT AN ABUSE OF A TRIAL JUDGE’S DISCRETION
WHEN SHE CORRECTS HER OWN RECOGNIZED ERROR
UNDER N.J. RULE 4:50-1(f)**

527 Almonesson, LLC brought a motion for relief from the February 8, 2024 Final Order issued by the Office of Foreclosure under Judge Schweitzer’s electronic conformed signature pursuant to New Jersey Rule 4:50-1. Rule 4:50-1 is designed to reconcile the strong interest in finality of judgments and judicial efficiency with the equitable notice that courts should have the authority to avoid an unjust result in any given case. *Manning Engineering, Inc. v. Hudson County Park Commission*, 74 N.J. 113, 120 (1977). To balance these goals “a court should view the opening of default judgments with great liberality and should tolerate every reasonable ground for indulgence to the end that a just result is reached.” *Mancini v. EDS ex rel. NJ Auto. Full Insurance Underwriting Ass’n*, 132 N.J. 330, 334 (1993), quoting *Marder v. Realty Construction Co.*, 84 N.J. Super. 313, 319 (App. Div.), *aff’d.*, 43 N.J. 508 (1964)).

Relief under subsection (f) is available only where there are “truly exception circumstances present.” *Housing Authority of the Town of Morristown v. Little*, 135 N.J. 274, 286, 639 A. 2d 286, 292 (1994). Courts of this State have repeatedly noted the broad parameters of a court’s discretion under subsection (f), and that a court should have authority under it to reopen a judgment where such relief is necessary to achieve a fair and just result. *Manning Engineering, supra.*, 113 N.J. at 122, 376 A. 2d at 122.

In the Chancery Court below, Judge Schweitzer was faced with this specific circumstance. Judge Schweitzer was skeptical at first, which is natural since no one wishes to recognize they were in error. The Judge expressed this concern during argument on the Motion

on May 9, 2025. [1T, p. 24-26] Relief from the Office of Foreclosure crafted Order was necessary to prevent a grave injustice and a plain erroneous conclusion. A party who gives a mortgage to secure the repayment of a loan, is not liable for the obligations of another loan if the mortgagee tenders a separate loan to another unrelated party. *See, generally LoRusso v. Schaible*, 2011 WL 4388355 (N.J. Superior Court, Appellate Division, Sept. 22, 2011). The Mortgage and Security Agreement dated January 20, 2012 was between 527 Almonesson, LLC as the “mortgagor” and Sovereign Bank as the “mortgagee.” [Pa23]. The Mortgage expressly stated the collateral pledged by the mortgage “was to secure the repayment of the \$110,000 loaned by the Mortgagee to the Mortgagor, ... as well as any and all other indebtedness of the **Mortgagor to the Mortgagee**, whether now existing or hereinafter arising.” [Pa.23]. 527 Almonesson, however, owes no responsibility or holds any connections to the separate loan previously given by Sovereign Bank to Precision Drywall Services, LLC. Precision Drywall Services, LLC is not the “Mortgagor” under the Mortgage. There is no cross-collateralization language in the 527 Mortgage documents which might possibly extend the lien of the 527 Mortgage to obligations of other borrowers (Precision).

After listening to the arguments on May 9, 2025, then reviewing the Motion, referenced documents and the transcript of the June 23, 2023 Summary Judgment argument before her Honor Judge Schweitzer realized she made an error in her original ruling. [2T, p. 3-4]. Judge Schweitzer could not have been clearer in concluding that she should never have entered [the June 23, 2023] Order. [2T, p.3, Ln.24-25]. She acknowledged in her ruling on the Motion for relief from the February 8, 2024 Judgment that she could not allow or know that a mistake was made and could not look the other way. She acknowledged it would be fundamentally unfair to

hold a party responsible for a loan which they had no association or responsibility to address. [2T, p.4, Ln 14-19].

A judge has the absolute right and obligation to correct their own admitted errors. The New Jersey Supreme Court clearly recognized this responsibility in *Manning Engineering, Inc. v. Hudson County Park Commission*, 74 N.J. 113, 376 A. 2d 1194 (1977). In *Manning*, the Supreme Court concluded that relief should be available under subsection (f) of the rule and noted it repeatedly stated the broad parameters of a court's discretion under subsection (f), and that a court should have authority under it to reopen a judgment where such relief is necessary to achieve a fair and just result. The Supreme Court in *Manning* fully recognized the Court's earlier decision in *Hodgson* which is cited by MMG in its Brief to this Court. [App. Brief at p. 18]. The *Manning* Court first cited to *Court Invest. Co. v. Perillo*, 48 N.J. 334, 225 A.2d 352 (1966):

Such a motion under (f) is addressed to the discretion of the trial court. That discretion is a broad one to be exercised according to equitable principles, and the decision reached by the trial court will be accepted by an appellate tribunal in the absence of an abuse of its discretion. No categorization can be made of the situations which would warrant redress under subsection (f).

The Court in *Manning* further noted as Justice Proctor stated in *Hodgson v. Applegate*, 31 N.J. 29, 41, 155 A.2d 97 (1959), the very essence of (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice. (48 N.J. at 341, 225 A.2d at 356).

MMG in their Brief to this Court rely principally on the New Jersey Supreme Court ruling in *Hodgson v. Applegate*, 31 N.J. 29, 155 A. 2d 97 (1959). [Brief of Appellant, at pp. 18 et seq.] Reliance on this decision is misplaced since the Court in *Hodgson* expressly limited its analysis of precluding review after the appeal period had run to only arguments pertaining to trial errors. In *Hodgson*, a jury verdict was entered and new counsel requested review due to an

improper jury instruction by the trial judge. The Court did rule that trial errors did not come within the permissible review under the former Rule 4:62-2. *Hodgson, id.*, at 31 N.J. at 41, 155 A. 2d at 104. Judge Schweitzer discovering she made factual and legal errors in her own decision is not trial error and in fact the exact circumstance which the Court in *Hodgson* expressly confirmed was not being decided by the Court (“We do not decide whether, in other cases, counsel’s failure to seek appropriate appellate remedies would be proper ‘reason’ for which relief under section (f) might be granted by the trial court.” *Hodgson, id.*, 31 N.J. at 41; 155 A. 2d. at 104.)

Judge Schweitzer granted the motion striking the Order which granted a Final Judgment in Foreclosure because she realized the basis of her ruling was completely wrong, based on erroneous presumption, and the consequence was to harm innocent and unrelated persons. Judge Schweitzer noted it would be fundamentally unfair to parties who did not guaranty a loan to have them be responsible for it. [2T] (*Transcript May 23, 2025*). The Chancery Court, as a court of equity, noted she must be guided by equitable principles. [2T,p.4., Ln. 8-13]. It is established law that a Motion in (Rule 4:50-1(f)) is addressed to the sound discretion of the trial court guided by equitable principles. *Hodgson, supra.*, 31 N.J. at 37, *citing to Shammass v. Shammass*, 9 N.J. 321, 88 A. 2d 204 (1952).

The Mortgage given by 527 Almonesson was given to secure the refinancing of the PNC real estate loan. There is no reference to any pre-existing loan given to another entity. 527 Almonesson did not guaranty any other debt, including the loan given by Sovereign Bank to Precision. Josh Strax is not the Mortgagor. Josh Strax does not own 527 Almonesson Road in Blackwood. This property is owned by the Mortgagor 527 Almonesson. There is no privity of

the loan given to Precision with the mortgage given by 527 Almonesson to secure its obligations under the separate real estate loan.

This is not a circumstance where the dragnet provisions of the subject mortgage can extend the pledge and security interests of the mortgage to another party. *29 New Jersey Practice, Mortgages* §3.30, at 192 (*Myron C. Weinstein* (2 Ed., 2001)). As noted both by the New Jersey Appellate Court, and the *Restatement (Third) of Property*, a dragnet clause holds that a mortgage may secure not only the debt incurred in the instant mortgage transaction, but in addition all other debts or obligations that are previously owed or may in the future be owed **to the mortgagee by the mortgagor**. *LoRosso, supra.*, at *5, citing to *Restatement (Third) of Property: Mortgages* §2.4 comment (1996) (*emphasis added*).

It is recognized that different states look at dragnet clauses differently. *LoRosso, Id.* at *6. The New Jersey Appellate Division notes some states look only to the clear and unambiguous language of the clause itself so that if the clause states that the collateral secured all debt now or hereinafter existing, the intent of the parties must be deemed to have secured all debt. *LoRosso, citing to multiple jurisdiction decisions, predominantly including Lundgren v. Nat'l Bank of Alaska*, 756 P. 2d 270, 278 (Alaska 1987). Other Courts, the New Jersey Appellate Court noted seek to determine what the parties actually intended. *LoRosso, citing to Wong v. Beneficial Sav. & Loan Ass'n*, 128 Cal Rep. 338, 342-343 (Cal. App. 1976). All the cases reviewed, however, analyzed the issue from different loans issued to the same mortgagor. Such is not the case in this proceeding. This case involves a prior loan being made by the mortgagee to a different entity.

The *LoRosso* Court noted it was required to analyze whether the specific debt at issue was secured by the subject mortgage. *LoRosso, Id.* at *7, citing to *Lundgren, supra.*, 756 P. 2d at

278. Interestingly, and applicable here, the Court noted there is a difference between antecedent and subsequent debts. A dragnet clause can only have a prospective effect. The rationale behind this statement is based on the knowledge that an antecedent debt is already owed by the borrower to the lender, therefore the parties would have no good reason not to identify the loan obligation in the subsequent security interest if they had truly intended the mortgage to have covered it.

LoRusso, citing to both Restatement, supra, and to Lundgren, supra. Here, there is absolutely no basis for Sovereign Bank, or any of its successors, to argue that the loan it issued to Precision, should somehow be protected by a mortgage given by some other party. The prior loan given to Precision has absolutely nothing to do with the mortgage refinancing loan Sovereign issued to the 527 Almonesson.

The Law Division Order granting the money judgments clearly recognized this distinction. One money Judgment of MMG Investments III, LLC for the \$300,000 loan facility was issued against the Precision entity and a separate money Judgment was issued against 527 Almonesson, LLC and its remaining guarantor on the real estate loan. The two entities are not one and the same.

MMG seeks to bootstrap the portion of its claim related to the Precision Loan as secured against the 527 Almonesson, LLC property through ancillary loan documents, however no such privity exists. In December 2021, when the Precision Loan was issued, there is no dispute the loan was collaterally secured by a personal guaranty given by Mr. Strax. Mr. Strax also provided a separate personal guaranty for the Debtor's Real Estate Loan as a member of that entity when the loan was issued a month later. The obligations created under the two Strax Guarantees does not affect the rights under a Mortgage given by the 527 Almonesson.

The Strax Guaranty on the 527 Loan only extends to the loan issued to the 527 Almonesson. The operative language set out in the Guaranty states that the guarantor assures prompt payment of monies owing by the Borrower to the Bank, not by anyone else who may owe monies to the same Bank. While the Strax Guaranty exposes Strax's assets individually, it does not affect the rights and property interests granted by 527 Almonesson under the Mortgage. Mr. Strax is not 527 Almonesson, LLC. The Strax Guaranty has no effect on the Mortgage. The Strax Guaranty does not elevate a Lender's claim to a lien on real property Mr. Strax has not given and does not own.

Finally, the Order entered by Judge Schweitzer on the Summary Judgment ruling is not specific at all regarding any amount of the Judgment. The transcript of the argument on summary judgment was not provided to the Office of Foreclosure with Counsel's Certification requesting the Office reconsider the initial denial to the entry of Final Judgment in Foreclosure. [Pa290-291]. Judge Schweitzer was completely within her right to grant relief from the February 8, 2024 Final Judgment when she realized a failure to consider the plain language and application of the separate loan documents caused an unjust, oppressive, inequitable result was and just plainly wrong. The Judge realized her decision was originally wrong, and it was completely within her discretion to correct her error to assure justice is properly accomplished.

**MMG'S CONTENTION THAT 527 ALMONESSON
FAILED TO DEMONSTRATE EXCEPTION CIRCUMSTANCES
IS WITHOUT MERIT**

MMG's second argument on appeal suggests 527 Almonesson failed to demonstrate exceptional circumstances warranting the Judge's review of matters pursuant to Rule 4:50-1(f). The argument reverts to the procedural contention that any challenge must come in the form of a

timely appeal or reconsideration motion. This argument is not different than MMG's first argument. The plain truth is it is exceptional for a Judge to make an error and then recognize and realize the gravely unjust consequence of such an error. Realizing the Court made such a mistaken conclusion, substantial justice and equity required her Honor correct the injustice.

**VACATING THE FINAL JUDGMENT IN FORECLOSURE
DOES NOT CREATE ANY AMBIGUITY NOR EFFECT LIABILITY OF
CO-DEFENDANTS ON THE FORECLOSURE ACTION**

MMG argues striking the Final Judgment in Foreclosure against 527 Almonesson somehow creates ambiguity as to other named defendants in the foreclosure proceeding. 527 Almonesson is the only party who holds title to the real property located at 527 Almonesson Road in Blackwood, New Jersey. 527 Almonesson is the only entity who gave a Mortgage to PNC Bank for its original acquisition of the property to secure the repayment of the particular loan. Vacating the Final Judgment in Foreclosure does not void the mortgage. The Mortgage for the real estate loan still exists and is secured upon the property.

The right to collect against other parties for obligations outside the mortgage is reflected in the Law Division action MMG separately instituted against all Defendants. Judge Donald Stein did grant money judgments in favor of MMG against those defendants who had liability on the Precision Drywall Loan obligation and a separate Judgment against those defendants who had liability under the real estate loan. 527 Almonesson does not and has never suggested its real property is not subject to the mortgage, just that its obligations and the property is limited solely to the separate real estate loan which was refinanced by Sovereign Bank and eventually assigned to MMG. None of the other parties named in either litigation matter has any interest in the real estate owned and titled in the name of 527 Almonesson.

A foreclosure action in the Chancery Court only pertains to rights against the real property subject to the mortgage lien. *First Union National Bank v. Penn Salem Marina, Inc.*, 383 N.J. Super. 562, 570, 893 A. 2d 1, 5 (2006). (*an action in foreclosure is quasi in rem, providing relief only against the property subject to the mortgage lien.*) citing to *Bache–Wiig v. Fournier*, 299 B.R. 245, 249 (Bankr.D.Me.2003); *Montclair Savs. Bank v. Sylvester*, 122 N.J.Eq. 518, 521, 194 A. 811 (E. & A.1937); *Resolution Trust Corp. v. Berman Indus., Inc.*, 271 N.J. Super. 56, 62, 637 A.2d 1297 (Law Div.1993); *Central Penn Nat'l Bank v. Stonebridge Ltd.*, 185 N.J. Super. 289, 302–03, 448 A.2d 498 (Ch.Div.1982).

**JUDGE SCHWEITZER’S DETERMINATIONS ON THE
FROM THE JUNE 23, 2023 SUMMARY JUDGMENT PROCEEDINGS
WERE ERRONEOUS AND THE JUDGE RECOGNIZED THEY WERE**

MMG’s third argument to this Court on appeal suggests Judge Schweitzer was not erroneous in the determinations during the June 23, 2023 argument on summary judgment despite the fact Judge Schweitzer, herself, determined she was. To adequately consider this argument, this Court would need first to consider what occurred during the argument. There was little or no substantive argument. [3T]. When the actual Mortgage document is reviewed however, it is clear the 527 Almonesson Mortgage to Sovereign Bank did not commit to be responsible for obligations owed to Sovereign Bank by any other entity. As stated above, the Mortgage and Security Agreement dated January 20, 2012 was between 527 Almonesson, LLC as the “mortgagor” and Sovereign Bank as the “mortgagee.” [Pa23]. The Mortgage expressly stated the collateral pledged by the mortgage “was to secure the repayment of the \$110,000 loaned by the Mortgagee to the Mortgagor, ... as well as any and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereinafter arising.” [Pa. 23].

This point was presented to Judge Schweitzer during the argument on the Motion for Relief from the Final Judgment in Foreclosure. [1T, p.9,13]. Upon hearing the substantive argument, and reviewing the actual documents, Judge Schweitzer understood the error made, and in order to effectuate substantial justice, saw it fully appropriate to vacate the Final Foreclosure Judgment which was entered under her signature. Judge Schweitzer recognize the practical effect of her June 23, 2023 was completely erroneous and caused an unjust result on innocent parties. [2T, p.3-4].

**WHILE THE LAW DIVISION RULING HAS NO INDEPENDENT
PRECLUSIVE EFFECT ON THE FINAL FORECLOSURE JUDGMENT
IT DOES SUPPORT JUDGE SCHWEITZER'S CORRECTING
HER ERROR ON PROPRIETY OF SPECIFIC LOAN OBLIGATION**

527 Almonesson references Judge Stein properly ruled in his Law Division Order that certain parties are responsible under the Precision Drywall Loan and separately other parties, including 527 Almonesson are liable under the 527 Real Estate Loan. The import of Judge Stein's Law Division action was that he, as a jurist, determined liability for the loans to each party who had liability under the specific loan, but did not conflate the responsibility to all parties. 527 Almonesson has no responsibility or liability under the Precision Loan and Judge Stein recognize this point. The same is true as to the original determination by the Office of Foreclosure when they denied the initial request for a Final Judgment in foreclosure in the amount requested by MMG's counsel because there was no evidence of liability nor mortgage for the obligations under the separate Precision Drywall Loan. The Office of Foreclosure, upon counsel's certification interpreting the Judge's statements in the summary judgment hearing led the Office of Foreclosure to ignore its questioning the deficiency of the basis for the claims and

entered the Final Judgment. The fact that both Judge Stein in the Law Division and the Office of Foreclosure actions made opposing conclusions on Judge Schweitzer's original determination provided fair impetus for the Chancery Court to correct its original erroneous actions which directly caused injustice. Judge Schweitzer, in vacating the February 8, 2024 Final Judgment in Foreclosure, corrected a wrong she had created, and in the process allowed proper justice to be done.

CONCLUSION

Only the 527 Almonesson, LLC has an interest in the real property. The plain reading of the Mortgage and the application of the facts and law mandate the exiting Mortgage Lien interest of MMG in the 527 Almonesson, LLC's property be limited to monies solely due under the real estate loan and any and all obligation on the Sovereign Bank Loan to Precision be wholly stricken. As a result, the Appeal presented by MMG of Judge Schweitzer's May 23, 2025 Order vacating the Final Foreclosure Judgment must be denied and the May 23, 2025 Order AFFIRMED.

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Dated: November 24, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-003403-24

MMG INVESTMENTS III, LLC,	:	CIVIL ACTION
	:	
<i>Plaintiff-Appellant,</i>	:	ON APPEAL FROM THE
	:	FINAL ORDER OF THE
vs.	:	SUPERIOR COURT
	:	OF NEW JERSEY,
	:	CHANCERY DIVISION,
527 ALMONESSON, LLC,	:	CAMDEN COUNTY
PRECISION DRYWALL	:	
SERVICES, LLC, JOSHUA R.	:	
STRAX, JAMES	:	Docket No. F-010668-22
BRUGGEWORTH AND TOBY C.	:	
SHIAVO,	:	Sat Below:
	:	
<i>Defendants-Respondents.</i>	:	HON. SHERRI L. SCHWEITZER, P.J.CH.

REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED	iii
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	2
ARGUMENT IN REPLY.....	2
POINT I	
THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY EMPLOYING RULE 4:50-1(f) TO PERMIT A COLLATERAL ATTACK ON AN UNAPPEALED JUDICIAL RULING ON THE MERITS	2
POINT II	
527 ALMONESSON’S OPPOSITION IGNORES KEY FACTS AND FAILS TO SHOW THAT THE INITIAL RULING ON CROSS-COLLATERALIZATION WAS A “GRAVE INJUSTICE”	6
POINT III	
527 ALMONESSON’S OPPOSITION FAILS TO ESTABLISH “EXCEPTIONAL CIRCUMSTANCES” REQUIRED UNDER RULE 4:50-1(f).....	8
POINT IV	
527 ALMONESSON’S OPPOSITION IGNORES THE SUBSTANTIAL PREJUDICE ACCRUED BY MMG AS A RESULT OF THE LOWER COURT’S PARTIAL VACATEUR OF THE FINAL JUDGMENT IN FORECLOSURE	9

POINT V

527 ALMONESSON’S REMAINING ARGUMENTS
REFERENCING EXTERNAL PROCEEDINGS ARE NOT
BINDING AND IRRELEVANT10

CONCLUSION11

**TABLE OF JUDGMENTS, ORDERS,
AND RULINGS BEING APPEALED**

Order Granting Motion for Relief from Judgment Pursuant to R. 4:50-
1(f), entered May 23, 2025Pa1
Oral Decision of May 23, 2025 (Transcript of Decision) 2T

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<u>Baumann v. Marinaro</u> , 95 N.J. 380 (1984)	5
<u>Continental Bank v. Barclay Riding Academy, Inc.</u> , 93 N.J. 153, 459 A.2d 1163 (1983)	7
<u>Court Inv. Co. v. Perillo</u> , 48 N.J. 334 (1966)	5
<u>Hodgson v. Applegate</u> , 31 N.J. 29, 155 A.2d 97 (1959)	3-4, 5
<u>Hous. Auth. of Town of Morristown v. Little</u> , 135 N.J. 274 (1994)	5
<u>Jansson v. Fairleigh Dickinson Univ.</u> , 198 N.J. Super. 190 (App. Div. 1985)	8
<u>Lorusso v. Schaible</u> , A-3464-09T4, 2011 WL 4388355 (N.J. Super. Ct. App. Div. Sept. 22, 2011) 7	7
<u>Manning Engineering, Inc. v. Hudson County Park Commission</u> , 74 N.J. 113, 376 A.2d 1194 (1977)	5
<u>Mayberry v. Maroney</u> , 558 F.2d 1159 (3d Cir. 1977)	5
<u>Parker v. Marcus</u> , 281 N.J. Super. 589 (App. Div. 1995)	8
<u>Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co. of New Jersey</u> , 312 N.J. Super. 516, 711 A.2d 1354 (App. Div. 1998)	2
Statutes & Other Authorities:	
R. 4:23-5	8
R. 4:50-1	2, 5
R. 4:50-1(a)	3
R. 4:50-1(f)	<i>passim</i>
R. 4:62-2	3

PRELIMINARY STATEMENT

The Plaintiff, MMG REO III, LCC, as Assignee of MMG INVESTMENTS III, LLC (“MMG”), respectfully submits this Brief in reply to the arguments made by Defendant-Appellee 527 Almonesson, LLC (“527 Almonesson”).

527 Almonesson fails to offer a legally sound justification for the lower court’s extraordinary and unwarranted vacatur of the Final Judgment in Foreclosure. The trial court’s decision to vacate the final judgment was a clear abuse of discretion because Rule 4:50-1(f) is an impermissible substitute for a timely appeal to correct a purported judicial error. Moreover, the lower court’s original finding of cross-collateralization was not in error as the explicit and unambiguous language of the Loan Documents extended the mortgage lien to include all obligations of the common guarantor, Joshua R. Strax, as “Obligor.” Accordingly, there was no “grave injustice” that required correction. Notwithstanding, 527 Almonesson completely dismisses the “exceptional circumstances” requirement for vacatur under 4:50-1(f) and presents no explanation whatsoever for its failure to bring timely challenges to the interlocutory order or final judgment. The partial vacatur of the final judgment creates ambiguity, violates the doctrine of merger, and severely prejudices

MMG’s established lien amount, further undermining any finding of “exceptional circumstances” required for vacatur.

PROCEDURAL HISTORY

MMG relies on the Procedural History set forth in the Brief on Behalf of Plaintiff-Appellant.

STATEMENT OF FACTS

MMG relies on the Statement of Facts set forth in the Brief on Behalf of Plaintiff-Appellant.

ARGUMENT IN REPLY

POINT I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY EMPLOYING RULE 4:50-1(f) TO PERMIT A COLLATERAL ATTACK ON AN UNAPPEALED JUDICIAL RULING ON THE MERITS. (Pa1)

It is settled law that a motion for relief from judgment under Rule 4:50-1 may not be used as a mere substitute for a timely appeal. Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co. of New Jersey, 312 N.J. Super. 516, 519, 711 A.2d 1354, 1355 (App. Div. 1998). Respectfully, this is precisely what occurred in the present case. 527 Almonesson’s arguments in opposition do not dispute this.

527 Almonesson had a full a fair opportunity to litigate the cross-collateralization issue at the trial court while represented by counsel (Pa237-Pa242). During the oral argument on the motion for summary judgment, the

lower court found the cross-collateralization language to be clear, and subsequently entered an Order granting MMG summary judgment and striking 527 Almonesson's Answer on June 23, 2023 (Pa74-Pa75). 527 Almonesson did not move for reconsideration of this Order within ten days and did not seek leave to appeal the interlocutory order. 527 Almonesson further did not oppose MMG's motion for a Final Judgment in Foreclosure, which was entered on February 8, 2024 in the aggregate sum of \$460,797.10, representing the cross-collateralized lien. 527 Almonesson was duly served with the Final Judgment in Foreclosure, and did not bring a motion to alter or amend the final judgment within ten days, and did not file a timely appeal from the Final Judgment within forty-five days. Instead, 527 Almonesson did nothing for almost an entire year before bringing the underlying motion to vacate under Rule 4:50-1(f) on February 3, 2025. No new evidence or changed circumstances were demonstrated in support of 527 Almonesson's motion to vacate. Indeed, nothing changed but the passage of time.

As recognized by 527 Almonesson (Db at 9), the New Jersey Supreme Court has specifically held that judicial "trial errors" in themselves do not properly invoke the discretionary power of a trial judge under the rules permitting relief from a judgment for a 'mistake' (Rule 4:50-1(a)) or 'any other reason justifying relief' (Rule 450-1(f)). Hodgson v. Applegate, 31 N.J. 29, 40-

41, 155 A.2d 97, 104 (1959) (analyzing the identical subsections of the precursor rule, R.R. 4:62-2). While the Hodgson court acknowledged that a motion under the rule is “addressed to the sound discretion of the trial court, guided by equitable principles,” it explicitly stated that “the trial court does not have a discretionary leeway in the review of its trial errors,” and that “trial errors can never in themselves justify relief under subdivision (f).” 31 N.J. at 37, 40, 155 A.2d at 102, 104.

527 Almonesson attempts to distinguish a “trial error,” such as a jury instruction, from the interlocutory order regarding cross-collateralization (which remains undisturbed to date- a fact undisputed by 527 Almonesson) it takes issue with in the present case (Db at 8-9). This distinction is misplaced, as the Hodgson court focused on the nature of the lower court’s ruling, rather than its procedural context. Indeed, the Hodgson court described “trial errors” as “matters, such as the *correctness of rulings on trial motions*, rulings on the admissibility of evidence, and on charges to the jury, [that] cannot be reviewed for errors without reference to the evidence in the case.” 31 N.J. at 40, 155 A.2d at 103 (emphasis added). Such matters are “open to controversy” when originally decided on the merits and thus, in themselves, are not subject to discretionary review on a motion for relief from a judgment after the time for

appeal has expired. To allow otherwise would render the time limits on appeals meaningless. Hodgson, 31 N.J. at 37, 155 A.2d at 102.

It is true that the boundaries of Rule 4:50-1(f) “are as expansive as the need to achieve equity and justice.” Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966). However, the Rule “does not present the court with a standardless residual discretionary power to set aside judgments.” Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 285 (1994), quoting Mayberry v. Maroney, 558 F.2d 1159, 1163 (3d Cir. 1977) (internal quotation marks omitted). Rather, “relief under subsection (f) of the *Rule* is available only in ‘exceptional circumstances.’” Hous. Auth. of Town of Morristown v. Little, 135 N.J. at 286, quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984). “Absent exceptional and compelling circumstances, failure to obtain relief through the usual channels of appeal is not a reason justifying relief under R. 4:50-1” Baumann, 95 N.J. at 393. MMG is aware of no example where a court’s de novo review of a litigated issue, without more, was proper under Rule 4:50-1(f) where the time for appeal had expired. Manning Engineering, Inc. v. Hudson County Park Commission, relied on by 527 Almonesson (Db at 8), is no different. See 74 N.J. 113, 123–25, 376 A.2d 1194 (1977) (finding reopening of judgment under Rule 4:50–1(f) warranted because of public policy to prevent recovery of damages for breach of illegal public contract). Accordingly, it was patently improper for the lower

court to vacate the final judgment under Rule 4:50-1(f) based solely on a de novo reexamination of the merits of its earlier interlocutory ruling regarding the cross-collateralization issue, and the Order should be reversed.

POINT II

527 ALMONESSON'S OPPOSITION IGNORES KEY FACTS AND FAILS TO SHOW THAT THE INITIAL RULING ON CROSS-COLLATERALIZATION WAS A "GRAVE INJUSTICE" (Pa1)

The Chancery Court's summary judgment order on the question of cross-collateralization was never properly challenged by 527 Almonesson and is thus not subject to review on this appeal. Nonetheless, MMG raises this underlying issue only to demonstrate that there was no "grave injustice" requiring vacatur of the Final Judgment. In opposition, 527 Almonesson fundamentally misrepresents the legal basis for cross-collateralization.

It is undisputed that Joshua R. Strax executed a personal Commercial Guaranty on the Precision Loan and later executed a separate Guaranty (the Strax 527 Guaranty) on the Almonesson Loan. As a guarantor of both, Strax is undeniably an "Obligor" under the explicit terms of both the Almonesson Note and the Modification Note, which explicitly secure "all other existing and future liabilities and obligations of the Borrower and any endorsers, sureties or guarantors (hereinafter 'Obligor[s]'), to Lender..." (Pa103-Pa104; Pa153). 527 Almonesson's opposition largely ignores this crucial fact. The Mortgage secures

both the Note and the Modification Note. (Pa33) Therefore, the explicit language of the Almonesson Note, the Modification Note, and Mortgage extended the security interest to cover the entire Obligations of Strax, which included the Precision Loan debt.

Appellee's argument that 527 Almonesson and Precision Drywall are separate entities (Db at 7) is a red herring designed to obscure the controlling contractual provisions. The cross-collateralization is triggered not by the identity of the two corporate borrowers, but by the explicit inclusion of the common guarantor's (Strax's) individual liabilities in the definition of the secured debt. This structure is fundamentally a valid third-party mortgage, supported by New Jersey Supreme Court precedent, Continental Bank v. Barclay Riding Academy, Inc., 93 N.J. 153, 459 A.2d 1163 (1983), which upholds mortgages given by one party (527 Almonesson) to secure the debt of a related party (Strax, the common principal/guarantor) in exchange for a credit accommodation. 527 Almonesson's reliance on a single, unpublished Appellate Division opinion, Lorusso v. Schaible, A-3464-09T4, 2011 WL 4388355 (N.J. Super. Ct. App. Div. Sept. 22, 2011), is misplaced and easily distinguishable.

POINT III

527 ALMONESSON’S OPPOSITION FAILS TO ESTABLISH “EXCEPTIONAL CIRCUMSTANCES” REQUIRED UNDER RULE 4:50-1(f) (Pa1)

527 Almonesson completely dismisses MMG’s argument that 527 Almonesson has failed to demonstrate “exceptional circumstances” required to vacate a judgment under Rule 4:50-1(f). 527 Almonesson contends that this issue “is not different than MMG’s first argument” and states only that it is “exceptional” for a Judge to make an error and then recognize and realize the “gravely unjust” consequence of such an error (Db at 13).

Contrary to 527 Almonesson’s position, a perceived injustice does not automatically demonstrate “exceptional circumstances” required to vacate a final judgment under Rule 4:50-1(f) long after the appeal period has expired. Rather, the factors considered are (1) the extent of the delay, (2) the underlying reason or cause, (3) the fault or blamelessness of the litigant, and (4) the prejudice that would accrue to the other party. Parker v. Marcus, 281 N.J. Super. 589, 593 (App. Div. 1995) (citing Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 195 (App. Div. 1985), superseded on other grounds by statute, R. 4:23-5).

Here, 527 Almonesson waited nearly one year following the Final Judgment in Foreclosure to bring its motion under Rule 4:50-1(f) – after a

foreclosure sale had been scheduled and after 527 Almonesson had filed for Chapter 11 Bankruptcy. 527 Almonesson has never presented any explanation for this delay and has not demonstrated that it is blameless in failing to bring a timely appeal. As established in MMG's Brief, mere carelessness or lack of proper diligence of counsel will not support a finding of "exceptional circumstances." Furthermore, 527 Almonesson's opposition only addresses its own perceived prejudice, and fails to recognize the substantial prejudice to MMG created by the partial vacatur of the Final Judgment in Foreclosure.

POINT IV

527 ALMONESSON'S OPPOSITION IGNORES THE SUBSTANTIAL PREJUDICE ACCRUED BY MMG AS A RESULT OF THE LOWER COURT'S PARTIAL VACATUR OF THE FINAL JUDGMENT IN FORECLOSURE (Pa1)

The original Final Judgment in Foreclosure fixed a single, aggregate lien amount of \$460,797.10 against the Mortgaged Property, representing the cross-collateralized debt. Under the merger doctrine, this final judgment extinguished the antecedent Mortgage and Note as separate, enforceable documents, merging them into the final judicial decree. Respectfully, 527 Almonesson's opposition evidences a fundamental misunderstanding of the effect of the entry of a Final Judgment. In particular, 527 Almonesson fails to explain how the court's *partial* vacatur of the Final Judgment in Foreclosure somehow revives the prior mortgage instrument, yet simultaneously leaves the binding judgment intact

against the co-defendants (including the entity and guarantors liable for the Precision Loan component). Indeed, 527 Almonesson cites to no statutory or case law for support of its argument. This fractured result undermines the finality that the merger doctrine is designed to protect, is highly prejudicial, and directly contradicts the equitable principles 527 Almonesson purports to invoke.

Moreover, 527 Almonesson offers no argument against the fact that the law of the case doctrine continues to govern this action, and it therefore concedes this fact. The crucial, undisturbed interlocutory Order of June 23, 2023 explicitly upheld the validity of the cross-collateralization clause and dismissed 527 Almonesson's Answer. The partial vacatur of the Final Judgment did not reverse the Summary Judgment Order on the merits. Again, this creates a procedural limbo where the parties are obligated to follow the June 23, 2023 order, yet MMG is left with a flawed, partial judgment in Foreclosure from which there is no clear path forward.

POINT V

527 ALMONESSON'S REMAINING ARGUMENTS REFERENCING EXTERNAL PROCEDINGS ARE NOT BINDING AND IRRELEVANT. (Pa1)

527 Almonesson argues that the Law Division Judgment and the Office of Foreclosure's initial denial of the application for Final Judgment support its position that the lower court's Order of June 23, 2023 regarding the issue of cross-collateralization was erroneous (Db at 15). Nonetheless, 527 Almonesson

concedes that the Law Division Judgment has “no independent preclusive effect” on the Final Judgment in Foreclosure at issue here (Db at 15) and is, therefore, irrelevant. Likewise, the Office of Foreclosure’s initial denial of the Final Judgment motion was merely a ministerial act, not a substantive judicial determination on the merits. Indeed, upon receipt of the certification that the Chancery Judge had already made a binding, judicial determination on the issue of the cross-collateralization of the Almonesson Loan and the Precision Loan, the Office of Foreclosure then correctly entered the Final Judgment based on the law of the case, which it is undisputed remains undisturbed to date. Therefore, neither the Law Division Judgment, nor the Office of Foreclosure’s initial denial, has any bearing on the merits at issue in the instant matter, and 527 Almonesson continues to raise these points in an attempt to manufacture support for their argument, which is otherwise unsupported by this Court’s jurisprudence.

CONCLUSION

The Order of the Chancery Division dated May 23, 2025, which vacated the Final Judgment in Foreclosure against Defendant-Appellee 527 Almonesson LLC, was a reversible abuse of judicial discretion based on an impermissible collateral attack on a litigated issue after the expiration of the appeal period. The original determination of cross-collateralization was not a “grave injustice”

and 527 Almonesson has otherwise failed to demonstrate any “exceptional circumstances” required for relief under Rule 4:50-1(f).

The Plaintiff-Appellant, MMG REO III, LLC, as Assignee of MMG INVESTMENTS III, LLC, respectfully requests that this Honorable Court reverse the Order of the Chancery Division dated May 23, 2025, thereby reinstating the Final Judgment in Foreclosure dated February 8, 2024, against all defendants.

Respectfully submitted,

/s/ Alana R. Bartley

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