LVNV FUNDING LLC

Plaintiff / Appellant

vs

JONATHAN CARRASCO

Defendant / Respondent

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003901-23

ON APPEAL FROM
Order of the Superior Court
of New Jersey, Law Division
ESSEX COUNTY
SAT BELOW:
HON. ANNETTE SCOCA, J.S.C.

REPLY BRIEF FOR PLAINTIFF-APPELLANT LVNV FUNDING LLC

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Dated: August 29, 2025

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ARGUMENT IN REPLY

The trial court erred when it dismissed the Action due to improper service because the Sheriff's Return of Service is *prima facie* proof of service and Respondent's sole self-servicing Certification containing only conclusory statements that he did not reside at the address where service was effectuated, without any corroborating evidence to support his claims, was insufficient to rebut the presumption of service. The trial court incorrectly relied on Respondent's Certification when granting Respondent's Motion to Dismiss and deeming service improper.

"A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Manalapan Realty, LP v. Tw. Comm. Of Manalapan,* 140 N.J. 366, 378 (1995). Because the trial court did not make any factual findings and relied solely on Respondent's uncorroborated and conclusory Certification when dismissing the Action, the trial court's dismissal of the Action is wholly inconsistent with established law. Thus, this Court should not give any deference to the trial court's Order and overturn the trial court's May 8, 2024 and July 26, 2024 Orders. Regardless, even if the Court was to give credence to the self-serving Certification, the trial court still would have needed to have a

plenary hearing on service, which it failed to do. Thus, in the alternative, the Action should be remanded for a hearing to establish the validity of service.

I. THE TRIAL COURT ERRED WHEN IT GRANTED RESPONDENT'S MOTION TO DISMISS AND DENIED APPELLANT'S MOTION TO RECONSIDER BECAUSE RESPONDENT FAILED TO REBUT THE PRESUMPTION OF SERVICE VIA THE SHERIFF'S RETURN OF SERVICE

Respondent concedes that the Sheriff executed a Return of Service, attesting to service on Respondent. But, in attempting to avoid the legal consequences of this Return of Service, Respondent incorrectly argues that the Sheriff's Return of Service was insufficient to establish Respondent's residence and that the Sheriff's Return of Service is inadmissible hearsay. *See* Respondent's Brief, Point II. But, these arguments are red-herrings and lack merit.

A. The Sheriff's Return of Service Presumes Proper Service

Respondent confuses legal theories by arguing that the Return of Service fails to establish Appellant's residence. *See* Respondent's Brief, Point II(A)(1). But, the Return of Service is not utilized to establish a party's place of residence, but, instead, establishes that service was in fact effectuated. *See Garley v. Waddington,* 177 N.J. Super. 173, 180 (N.J. App. Div. 1981) ("[t]he sheriff's return facially indicates compliance with *R.R.* 4:4-4(a), and consequently is

prima facie evidence that **service of process** upon [plaintiff] in the Haggerty suit was proper.") (emphasis added).

Once service is effectuated and a return of service is executed, the return of service acts as *prima facie* proof of service. *Garley,* 177 N.J. Super. at 180-81 (N.J. App. Div. 1981) ("[t]he rule in this State is that a sheriff's return of service is part of the record and raises a presumption that the facts recited therein are true.").

Here, the trial court failed to consider that the Sheriff executed and filed a Return of Service and that the Return of Service is *prima facie* proof of service. *See Garley,* 177 N.J. Super. at 180. But indeed, Deamorim executed a Return of Service attesting that service was effectuated upon Respondent on December 22, 2023, via a *Rule* 4:4-4(a)(1). (PA-34). The Return of Service is not made to "establish" Respondent's residence, as Respondent would like this Court to hold, but, instead, the Return of Service attests to service upon Respondent.

Notably, Appellant is not arguing that the Return of Service establishes that venue for the case is proper in Essex, but, instead, that the Return of Service is *prima facie* proof of service, which Respondent failed to rebut and, because Respondent failed to rebut the Return of Service, the Action was improperly dismissed. *See* Point (2)(A)-(B) of Appellant's Brief; *see also* Point I(C), *infra.*

Because the trial court failed to consider the Return of Service, the trial court improperly dismissed the Action.

B. The Return of Service is Not Hearsay and Complies with the New Jersey Rules

Attempting to sidestep the *prima facie* evidence of service, Respondent argues that the Return of Service is inadmissible hearsay and fails to comply with the *Rule*. *See* Respondent's Brief, Point II(A)(2).

1. The Return of Service Complies with the *Rule*

Respondent attempts to categorize the Return of Service as an "Affidavit," and, because it was not "sworn to", then it fails to comply the Court's *Rule* as it pertains to returns of service.

Return of Service as provided for by *Rule* 4:4-7 does not mandate that a Sheriff execute a sworn affidavit. *See Rule* 4:4-7. Instead, *Rule* 4:4-7 specifically creates a carve out for sheriffs requiring any person or entity *other than* a sheriff to execute an affidavit: "If service is made by a person *other than* a sheriff or a court appointee, proof of service shall be by similar affidavit which shall include the facts of the affiant's diligent inquiry regarding defendant's place of abode, business or employment." *Rule* 4:4-7. *See Hillside Golf, Inc. v. Gino Inn, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *12 (N.J. Super. Ct. App. Div. July 22, 2010) ("[w]here service is performed by someone 'other than a sheriff or a court appointee, proof of service shall be' rendered by affidavit. . ."). *See also U.S. Bank N.A. v. Manley*, 2025

N.J. Super. Unpub. LEXIS 249, at *7 (N.J. Super. Ct. App. Div. Feb. 18, 2025) (same). Thus, the *Rule* is clear that sheriffs do not need to execute a sworn affidavit and the return of service is, by and of itself, sufficient.

Here, the Return of Service was not required to be notarized/sworn to as service was effectuated by the Sheriff's Officer, Deamorim. The Return of Service complies with the *Rule*, as it provides the name of the person served, the place, mode, and date of service. (PA-34).

Notably, the *Rule* further sets forth that "[f]ailure to make proof of service **does not affect the validity of service**." *Rule* 4:4-7. Therefore, even if the Sheriff's Return of Service was required to be notarized/sworn to, which it was not, the failure to do so does not affect the validity of service.

2. The Return of Service is Admissible Hearsay

N.J.R.E. 803(c)(8)(A) provides an exception to the hearsay rule and mandates that: "[t]he following are not excluded by the rule against hearsay . . . a statement contained in a writing made by a public official of an act done by the official or an act, condition, or event observed by the official if it was within the scope of the official's duty either to perform the act reported or to observe the act, condition, or event reported and to make a written statement."

Information contained in a return of service by the Sheriff, including the name, description, and statement(s) the person served provides regarding their relationship

to the party served, is part of the sheriff's duty in effectuating service and is not hearsay. *See Rule* 4:4-4(a)(1) and *Rule* 4:4-7. *See also N.J.R.E.* 803(c)(8)(A).

Despite this clear exception, Respondent argues that Deamorim is not a "public official" within the meaning of the Rules of Evidence because, first, that a "Sheriff" is not a "public official" and, second, that a "deputy sheriff" is "nothing more than a volunteer for the sheriff's department and thus is not a public official within the meaning of the evidence code." *See* Respondent's Brief, Point II(A)(2).

N.J.R.E. 801(f) defines a "public official" as "an official of the United States, its territories, the District of Columbia and states, as well as political subdivisions, regional and other governmental agencies thereof." A Sheriff (of which there is only one per that Unit/Office), or a Deputy Sheriff, are working under these titles and carrying out the work of a governmental agency, *i.e.* the Sheriff's Office. Thus, Respondent's claim is entirety without merit.

C. Respondent Failed to Rebut the Return of Service

The trial court incorrectly held that Respondent's Certification was sufficient to dismiss the Action for improper service. (PA1-PA8; T, *generally*).

Respondent concedes that the only rebuttal of service is the self-serving Certification of Respondent which merely states that he never lived at an address in Newark, but, instead, that he lived in Hudson County and, thus, these Certifications establish that service in Essex County was improper. *See*

Respondent's Brief, Point II(B). Both the trial court and Respondent are wrong based on well-settled law. *N.J. Re-Insurance Co. v. Saintphard,* 2007 N.J. Super. Unpub. LEXIS 308, at *17 (N.J. Super. Ct. App. Div. Oct. 31, 2007).

The presumption raised by a Sheriff's return of service "may only be rebutted by clear and convincing evidence that the return is false." *Hillside Golf, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *12 (citing *Goldfarb v. Roeger,* 54 N.J. Super. 85, 89-90 (N.J. Super. Ct. App. Div. 1959) (noting that generally the uncorroborated testimony of the defendant is not sufficient to impeach the return)); *Jameson v. Great Atlantic and Pacific Tea Co.*, 363 N.J. Super. 419, 426 (N.J. Super. Ct. App. Div. Oct. 20, 2003) ("[i]n order for the sheriff's return to be established as false, clear and convincing evidence must be submitted."); *Resolution Trust Corp. v. Associated Gulf Contractors, Inc.,* 263 N.J. Super. 332, 344 (1993) (holding defendant failed to rebut the presumption of service).

"Uncorroborated testimony of the defendant alone is not sufficient to impeach the return." *Goldfarb,* 54 N.J. Super. at 90; *Hillside Golf, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *16 ("[m]oreover, as noted above, Mr. Innarella's uncorroborated certification alone cannot overcome the presumption that the Affidavits show proper service."); *Garley,* 177 N.J. Super. at 181. Thus, a certification stating that the defendant never received the pleadings is not sufficient to overcome the presumption of the return of service. *N.J. Re-*

Insurance Co., 2007 N.J. Super. Unpub. LEXIS 308, at *17). Where the sole piece of evidence is an uncorroborated certification, the burden created by the Sheriff's return of service cannot be overcome. *Id.,* at *18 (denying motion to vacate default due to improper service where the mere certification denying service, without more, was insufficient to rebut the presumption of service via the sheriff's return of service).

Here, the trial court bases the entirety of the dismissal solely on the Certification of Respondent:

> [Respondent] provides the Court with a certification in which he certifies that he has no recollection of having ever lived in the City of Newark, or any other address in Essex County. Defendant also asserts that he does not, and never has, lived at the address of 99 Jabez Street, Newark, New Jersey 07105. Defendant asserts that he presently lives in Hudson County with his wife, where they have resided for over six years.

(PA5, ¶ 12). But, Respondent provided no corroborating evidence as to his actual residence. (PA39-PA41). Indeed, notably missing from any Certification submitted by Respondent is any proof of address with the Department of Motor Vehicles, United States Post Office, Tax Return, deed, lease, or, at the very least, a utility bill. (PA, *generally*). Instead, Respondent merely stated, in conclusory and uncorroborated terms, in his Certification in Support of his Motion to Dismiss, "I do not and have never lived at the address 99 Jabez Street, Newark, New Jersey 07105 . . . I presently live in Hudson County with my wife, where

we have resided for more than six years. As such, a copy of the summons and complaint was never properly served upon me since service was made at a residential address in Newark in Essex County, and I have never lived or worked at that address in Newark." (PA39-PA41, ¶¶ 5, 7-8). Notably, however, Respondent has never once provided his exact address at the time of service. *See, e.g.,* (PA49-PA51, ¶ 4: "at the time that the present lawsuit was filed against me I was still living on Bergen Avenue, Kearny, New Jersey at the same apartment complex, but in a different building address.").

Here, Respondent's uncorroborated and conclusory statements, alone, are insufficient to rebut the Return of Service. *Goldfarb,* 54 N.J. Super. at 90; *Hillside Golf, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *16; *Garley,* 177 N.J. Super. at 181.

Despite these uncorroborated statements, the trial court, thereafter, incorrectly shifts the burden of proof on Appellant to establish where Respondent resides. (PA1-PA8; T, *generally*). Specifically, the trial court held: "[t]he Court finds that dismissal is appropriate at this time. The record is devoid of any evidence that Defendant was a resident of 99 Jabez Street, Newark, New Jersey." (PA6, ¶ 13). Perplexingly, the Record is devoid of any evidence whatsoever of where exactly Respondent resided at the time of service, if it was not at 99 Jabez Street, Newark, New Jersey. (PA, *generally*). In acknowledging

this, the trial court stated, "[t]he record is also devoid of any evidence that [Respondent] resides in Hudson County." (PA6, ¶ 13). Even with this acknowledgement, the trial court then incorrectly relied on the conclusory statements made by Respondent in his Certification: "[h]owever, [Respondent] has provided a Certification that he is a resident of Hudson County and has lived at his address in Hudson County, New Jersey for over six years." *Id.* Relying on these conclusory statements, without any substantiation, is contrary to the law and, as a result, the trial court erred when it dismissed the Action. *Goldfarb,* 54 N.J. Super. at 90; *Hillside Golf, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *16; *Garley,* 177 N.J. Super. at 181. Double-downing on this position, the trial court incorrectly denied Appellant's Motion to Reconsider, shifting the burden of proof to Appellant to establish residence: "[Respondent] has submitted an affidavit in which they state they have never lived at the address which was served, that's the certification of Jonathan Carrasco, paragraph 46, attached to defendant's original moving papers. [Appellant] has offered no additional evidence proving defendant lived at 99 Dubas Street, Newark, New Jersey. [Appellant] does not offer any additional evidence beyond the affidavit of service to counter the claims by defendant." [T9-5-10]. This holding is contradictory to the law. *Goldfarb,* 54 N.J. Super. at 90; *Hillside Golf, Inc.,* 2010 N.J. Super. Unpub. LEXIS 1717, at *16; *Garley,* 177 N.J. Super. at 181.

Further, Respondent does not challenge service upon "Jess", the person who was served on behalf of Respondent as set forth in the Return of Service. *See* Respondent's Brief, *generally.* Notably, Respondent acknowledges that he knows Jess who resides at the property located at 99 Jabez Street, Newark, New Jersey and that the property is owned by Respondent's family – "[t]he property located at 99 Jabez Street, Newark is owned by and lived in by relatives of my wife. The person 'Jess' who was allegedly served with a copy of the summons and complaint is not even my wife'[s] sister, but rather a cousin of my wife's." (PA49-PA51, ¶¶ 6-7). The trial court acknowledged this very fact: "In the Certification attached to [Respondent's] Reply, he certifies that the property located at 99 Jabez Street, Newark, New Jersey is owned by the relatives of his wife, and the individual 'Jess' who allegedly accepted service of the Summons and Complaint is his wife's cousin." (PA6, ¶ 13).

These facts are like the facts of *Garley.* In *Garley,* defendant was served at 211 Cator Avenue where his "cousin" was purportedly served with process. Defendant argues that he was not a resident of that address nor did his cousin live there, but, instead his brother lived there. The Court held "even if we were to make the assumption that Garley's proof might be sufficiently clear and convincing to rebut or impeach the truth of the sheriff's statement that a 'cousin' was served, they clearly were not sufficient to rebut the fact that another member

of Garley's family, such as his brother, who resided at the 211 Cator Avenue address, might have accepted service for Garley, and that the reference to 'cousin' was either a mistake by the deputy sheriff or a misrepresentation by the person accepting service as to his relationship with Garley." *Garley,* 177 N. Super. at 181. Like *Garley,* here, Respondent concedes that service was effectuated upon "Jess," his wife's cousin, at the Newark Address. (PA49-PA51, ¶¶ 6-7).

Once Respondent failed to rebut the *prima facie* proof of service, the burden does not then shift back to Appellant to offer corroborating evidence as to the accuracy of the Return of Service. Instead, should the trial court have determined that Respondent rebutted *prima facie* proof of service, then it should have conducted a plenary hearing on the issue of service. *Horizon Blue Cross Blue Shield of N.J. v. Avolio,* 2010 N.J. Super. Unpub. LEXIS 2569, at *10 (N.J. Super. Ct. App. Div. Oct. 22, 2010) (holding "[b]ecause there is at least 'some doubt' as to whether Avolio and Wood-Ridge Chiropractic were served with summons and complaint, we conclude that the judge had to conduct a plenary hearing to determine not only the trust of the facts contained in the Affidavits of Service, but the truth of the process server's representation to plaintiff's counsel that he could not personally serve Avolio in October 2006, which formed the basis for the mail service, and the truth of the mail service as well.").

Therefore, the trial court incorrectly dismissed the action for improper service and, because it questioned whether service was proper, it failed to hold a plenary hearing as to the issue of service. (PA1-PA8; T, *generally*). In holding to the contrary, the trial court stated that it was permitted to dismiss the Action based solely on the Certification submitted by Respondent. [T10-3-6]. To support this position, the trial court cites to *First Nat'l Bank v. Viviani,* 60 N.J. Super. 221 (N.J. Super. Ct. App. Div. 1960). Specifically, the trial court held: "[f]urthermore, the court in First National Bank recognizes that the sufficiency of service may be raised by motion and resolved on affidavits. That 60 New Jersey Super at 224, 225." [T10-3-6]. But, *Viviani* holds contrary to what the trial court holds it does. In *Viviani,* the Court held: "[w]hile under the cited rule (*R.R.* 4:44-4) the challenge levelled against the sufficiency of the service may in an appropriate case be raised by motion and resolved on affidavits, this procedure may not be followed where, as here, sharp factual dispute exists." 60 N.J. Super. at 224-225. In so stating, the Court held: "[w]e are of the opinion and accordingly hold that the judgment in the instant case should not have been vacated on a consideration of the affidavits only, even though counsel did not ask for a formal hearing or for the opportunity to take depositions." *Id.* at 225. Thus, *Viviani* clearly held that, because there are factual disputes as to the residence of Respondent at the time of service, the Action should not have been

dismissed pursuant to Respondent's Certification alone, but, instead, the trial court should have ordered a plenary hearing.

For these reasons, this Court should reverse the May 8, 2024 and July 26, 2024 Orders, or, at the very least, remand to the trial court for a plenary hearing as to the issue of service.

CONCLUSION

For all the foregoing reasons, the trial court incorrectly dismissed the action and, therefore, this Court should reverse the May 8, 2024 or July 26, 2024 Orders in their entirety.

Respectfully submitted,
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Dated: August 29, 2025 By: */s/ Michael J. Peters*

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