SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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Docket No. A-004148-23

UNIFUND CCR LLC, AAO FIRST NATIONAL BANK OF OMAHA,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SPECIAL CIVIL PART, BERGEN COUNTY
v.	:	
CHRISTINE GARABEDIAN,	:	Trial Court Docket No. BER-DC-12379-18
Defendant-Appellant.	:	
	:	Sat Below: HON. JOSEPH G. MONAGHAN, J.S.C.
	:	DATE: January 9, 2025

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Pilot Receivables Management ("PRM"), LLC and Distressed Asset Portfolio III, LLC's ("DAP") conceal their unlawful consumer loan business and collect void debts through their licensed affiliate Unifund CCR, LLC ("Unifund"), while hiding their unlicensed criminal activity from New Jersey courts and consumers. They do so in order to avoid obtaining and complying with the licensure requirements under the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1 to -49.

DAP retains title and ownership of the account but assigns it for "collection purposes only" to Unifund to conceal DAP's unlicensed status and that the debt is void from consumers like Christine Garabedian. Ms. Garabedian was not aware of this scheme but later learned of the illegal activity through her attorneys. She then moved to vacate the default judgment, but the trial court denied her relief.

The NJCFLA states that "[n]o person shall engage in business as a consumer lender . . . without first obtaining a license or licenses under this act." N.J.S.A. 17:11C-3(a). Here, it is undisputed that unlicensed debt buyers engaged in the consumer loan business by purchasing the credit account allegedly extended to Garabedian. The same unlicensed entities—PRM and DAP—then used their affiliate Unifund to enforce the account, all the while

concealing their unlicensed status. As a result of the purported creditors' violations of the NJCFLA's licensure provisions, the contract governing Garabedian's alleged account became void. The NJCFLA provides that:

> A consumer lender who violates or participates in the violation of any provision of section 3 . . . of this act, shall be guilty of a crime of the fourth degree. A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, *shall be void and the lender shall have no right to collect or receive any principal, interest or charges . . . .*"

N.J.S.A. 17:11C-33(b) (emphasis added). Thus, the Garabedian's alleged debt was void prior to initiation of the collection lawsuit by Unifund.

Unifund later sought and obtained a default judgment against Garabedian while concealing that unlicensed DAP still retained title and interest in the account. Garabedian moved to vacate under *R.* 4:50-1(d) and (f)—arguing the default judgment is void under the NJCFLA. However, the trial court denied Garabedian's Motion, reasoning that the Motion was not filed within a reasonable time and that the relief sought by Garabedian was barred by the doctrine of laches. However, because the trial court employed an equitable doctrine to bar a matter from being heard on the merits, despite Unifund's deceit and violations of a remedial consumer protection statute, the trial court's July 19, 2024 Order (Da64) denying Garabedian's Motion to

Vacate Default Judgment should be reversed and the matter remanded for further proceedings.

PROCEDURAL HISTORY

On July 31, 2018, Unifund filed its collection Complaint its name, demanding a judgment against Garabedian in the amount of $7,044.47, together with interest and costs of suit. *See* Compl. (Da1).

On February 8, 2019, Unifund sought entry of default judgment. (Da2-Da6). Default Judgment was entered four days later on February 12, 2019. (Da7).

On April 12, 2019, Garabedian, while *pro se*, entered an objection to the Application for Wage Execution mailed to her on or about April 4, 2019. (Da8). The Objection attaches Unifund's Application for Wage Execution (Da11), though the same Application does not appear on the trial court docket. The Objection also attaches a letter from Garabedian's debt settlement firm, Berkeley Law Group ("BLG"), which BLG sent to Unifund on or about March 4, 2017, wherein BLG demanded that all future communications related to Garabedian's alleged debt be sent to BLG. (Da10).

After the judgment was satisfied by way of Garabedian's completion of the BLG payment program, a Warrant of Satisfaction was entered on April 10, 2023. (Da15).

After retaining counsel, Garabedian moved to vacate the default judgment, asserting that the judgment and the account upon which it is based are void due to violations of the NJCFLA committed in the acquisition and collection of the alleged debt. (Da17-Da48).

On June 24, 2024, Unifund opposed Garabedian's Motion. (Da49). In support of its Opposition, Unifund attached a Certification of its Client Services and Media Operations Manager, Jessica Stevens ("Stevens Cert."). (Da52).

On July 19, the trial court entered an Order denying Garabedian's Motion. (Da64).

Garabedian timely filed her Notice of Appeal on August 30, 2024. (Da66).

STATEMENT OF FACTS

Sometime prior to the filing of the collection Complaint, unlicensed Pilot Receivables Management, LLC ("PRM") allegedly purchased a pool of defaulted consumer debts for a fraction of their face value, including Garabedian's alleged credit account. *See* Compl. ¶ 4 (Da1); *see also* Certification of Counsel in Support of Garabedian's Motion to Vacate Default Judgment ("Kaweblum Cert.") ¶ 1-3. Thereafter, the account was purchased or otherwise acquired by unlicensed Distressed Asset Portfolio III, LLC ("DAP").

Ibid. PRM, DAP, and Unifund are affiliated entities. *See* Stevens Cert. ¶¶ 13-14 (Da53). Thereafter, the void debt was placed with Unifund "for collection purposes only" to "conduct[] litigation in [Unifund's] name" while "[DAP] retain[s] title and ownership of such Receivables." *See* Stevens Cert. ¶ 15; *see also* Exhibit 1 annexed to the Stevens Cert. at 8 (Da62). Unifund then filed a collection lawsuit against Garabedian in Unifund's name while concealing that DAP retains title and ownership of the debt. Unifund then obtained a default judgment, which Garabedian subsequently satisfied. *See* collection Complaint (Da1); Request for Entry of Default Judgment (Da2); Warrant of Satisfaction (Da15); T1 27:10-18; 31:9-22.

However, the default judgment obtained against Garabedian stems from an action that Unifund had no right or authority to bring. By purchasing or otherwise taking assignment of the debt, PRM and DAP engaged in the "consumer loan business" as defined at N.J.S.A. 17:11C-2. However, PRM and DAP were not licensed as consumer lenders at the time they took possession of or placed the account with Unifund for collection. *See* Compl. ¶ 4 (Da1); *see also* Kaweblum Cert. ¶ 1-3. N.J.S.A. 17:11C-33(b) plainly stated that contracts governing accounts purchased and/or enforced in violation of the NJCFLA's licensure provisions "shall be void and the lender shall have no right to collect or receive any principal, interest or charges . . . ." Thus, based on the plain

language of N.J.S.A. 17:11C-33(b), the assignments or purchases and any rights to the account were void and unenforceable as of the date the PRM and/or DAP purchased or took assignment of the same.

LEGAL ARGUMENT

POINT I. THE STANDARD OF REVIEW (Raised Below T1)

R. 4:50-1 is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." *Mancini v. EDS ex rel. New Jersey Auto. Full Ins. Underwriting Ass'n*, 132 N.J. 330, 334 (1993) (quoting *Baumann v. Marinaro*, 95 N.J. 380, 392 (1984) (internal quotation marks omitted)).

The standard is abuse of discretion and the trial court's factual findings are owed deference, *i.e.*, this Court "may not disturb judge-made fact findings 'unless . . . convinced they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" *LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 108 (App. Div. 2020) (quoting *Rova Farms Resort, Inc. v. Inv'rs Ins. Co.*, 65 N.J. 474, 484 (1974)).

"However, the opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end

that a just result is reached." *Marder v. Realty Constr. Co.*, 84 N.J. Super. 313, 319 (App. Div. 1964) (citing *Foster v. New Albany Machine & Tool Co.*, 63 N.J. Super. 262 (App. Div. 1960)). For example, "[e]ven where a defendant admits liability, a reopening of the judgment for purposes of assessing damages is proper where the defendant provides a reasonable assertion to the effect that it is not liable for the amount of damages claimed by the plaintiff. *Id.*

Thus, "[i]n weighing these circumstances, [the Court] cannot lose sight that a court's power to vacate a judgment is based on equitable principles." *DeAngelo*, 464 N.J. Super. at 109.

When examining a trial court's exercise of discretionary authority, the trial court must be reversed "when the exercise of discretion was 'manifestly unjust' under the circumstances." *Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth.*, 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting *Union Cnty. Improvement Auth. v. Artaki, LLC*, 392 N.J. Super. 141, 149 App. Div. 2007)).

POINT II. THE TRIAL COURT ABUSED ITS DISCRETION IN EMPLOYING AN EQUITABLE DOCTRINE TO BAR GARABEDIAN'S REQUESTED RELIEF (Raised Below: T1)

"[L]aches is an equitable doctrine" which may only be enforced when the allegedly prejudiced party acted in good faith. *Fox v. Millman*, 210 N.J.

401, 417 (2012); *Knorr v. Smeal*, 178 N.J. 169, 173 (2003); *Chance v. McCann*, 405 N.J. Super. 547, 567 (App. Div. 2009). "But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay . . . the validity of that defense must be tried upon principles substantially equitable." *Lavin v. Bd. of Educ.*, 90 N.J. 145, 152 (1982) (quoting *Hall v. Otterson*, 52 N.J. Eq. 522, 535 (1894)).

Here, it is not disputed that PRM and DAP were not licensed under the NJCFLA when they purchased Garabedian's alleged debt and placed the account with Unifund, who subsequently filed the collection Complaint in Unfund's name to conceal that the unlicensed DAP still retained title and ownership. PRM, DAP, and Unifund violated remedial consumer protection statutes in the attempted purchase and enforcement of Garabedian's void account while deceiving the court and Ms. Garabedian.

The trial court based its application of laches on the purported prejudice Unifund would have suffered had Garabedian's Motion to Vacate been granted; however, the trial court did not provide reasoning as to how Unifund would have been prejudiced beyond experiencing a delay. *See* T1 36:6-37:2. Garabedian's Motion to Vacate did not seek dismissal of Unifund's claims, but rather sought to open the suit to be litigated on the merits. *See* Garabedian's proposed Answer, *generally*. (Da27). Thus, the possible expiration of the

statute of limitations is of no consequence to an analysis of prejudice and/or laches here—Unifund would have remained free to pursue its claims should the Motion to Vacate have been granted. Without an explanation as to the trial court's finding of prejudice, there can be no finding that Garabedian's requested relief is barred by laches. "The mere passage of time, of course, does not constitute laches . . . . laches consists of two elements: Inexcusable delay . . . and prejudice to the respondent resulting from such delay. The Court should consider the equities of the case and not rely merely upon the lapse of time." *Allstate Ins. Co. v. Howard Sav. Institution*, 127 N.J. Super. 479, 489 (Ch. Div. 1974) (quoting *Finley v. United States*, 130 F. Supp. 788, 794, 796 (D.C.D.N.J. 1955)) (internal quotation marks and citations omitted).

Thus, the trial court's application of laches to bar Garabedian's sought after relief—despite Unifund's violations of the NJCFLA and Garabedian's intent to litigate Unifund's claims—constitutes reversible error. Thus, the trial court's July 19, 2024 Order should be reversed.

POINT III. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING GARABEDIAN'S MOTION BECAUSE GARABEDIAN'S ALLEGED DEBT WAS ACQUIRED AND ENFORCED IN VIOLATION OF A REMEDIAL CONSUMER PROTECTION STATUTE (Raised Below: T1)

Generally, a motion pursuant to *R.* 4:50-1(d) and/or *R.* 4:50-1(f) must be made within a reasonable time. *See R.* 4:50-2. However, this Court has ruled

that a void judgment may be moved against under subsections (d) and (f) of *R.* 4:50-1 at any time. *See Berger v. Paterson Veterans Taxi*, 244 N.J. Super. 200 (App. Div. 1990). This could not be more true here where Unifund actively conceals DAP's illegal conduct.

Here, the trial court ruled that Garabedian's Motion was not filed within a reasonable time. *See* T1 34:5-14. However, as asserted by Garabedian and corroborated by the evidence on record,[1] PRM and DAP lacked the licensure required to acquire and enforce the debt at all times relevant to this action. Thus, DAP could not place or assign the account to its affiliate Unifund for collection purposes—the contract governing the account had already been voided. But DAP did just that while concealing itself as the true owner—DAP had its affiliate Unifund file the collection lawsuit in Unifund's name even though DAP retained title and ownership in the debt.

In adjudicating Garabedian's Motion to Vacate Default Judgment, the trial court reasoned that violations of the NJCFLA do not rise to the level of extraordinary circumstances under *R.* 4:50-1(f). However, this Court has held previously that violations of a remedial consumer protection statute give rise to exceptional circumstances under *R.* 4:50-1(f).

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[1] *See* Kaweblum Cert. ¶ 1-3 (Da20-Da21); *see also* Exhibit A annexed to the Kaweblum Cert. (Da24-Da26).

In *LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 105 (App. Div. 2020), this Court affirmed the trial court's granting of a motion to vacate a default judgment pursuant to *R.* 4:50-1(f). Analogous to the instant action, *DeAngelo* involved a debt collector's enforcement of an alleged debt it had no legal right or authority to collect. The debt in *DeAngelo* was time-barred. Thus, enforcement violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq*. Here, the debt is void due to PRM's and DAP's violations of the NJCFLA. But, unlike the defendant in *DeAngelo* who "inexcusably ignored a judgment on that time-barred claim—he waited eight years and lied about his identity—before seeking relief," Garabedian did not engage in calculated and/or inexcusable neglect or wait 8 years. *See DeAngelo*, 464 N.J. Super. at 109. She was merely deceived.

DeAngelo went on to say that "[t]he Supreme Court has determined that [*R.* 4:50-1(f)] permits relief even when a defendant's response or failure to respond to a complaint was found, as here, *to be inexcusable*." *Deangelo*, 464 N.J. Super. at 109 (emphasis added) (citing *Mancini*, 132 N.J. at 334). "In such instances, subsection (f)'s boundaries are 'as *expansive as the need to achieve equity and justice*.'" *DeAngelo*, 464 N.J. Super. at 109 (emphasis added) (quoting *Court Inv. Co. v. Perillo*, 48 N.J. 334, 341 (1977)).

While acknowledging that *Mancini* "provides the applicable framework"

for motions brought pursuant to *R.* 4:50-1(f), the *DeAngelo* court acknowledged significant "factual differences" between the defendant in *Mancini* and defendant Deangelo, stating that the defendant's neglect in *Mancini* was "found inexcusable, but neither willful nor calculated." *Deangelo*, 464 N.J. Super. at 109 (quoting *Mancini*, 132 N.J. at 336). However, the court noted DeAngelo's neglect to be both "inexcusable and calculated." *Id.* DeAngelo "waited eight years and lied about his identity—before seeking relief." *Id.* As should be so here, the court in *DeAngelo* reasoned that by attempting to collect a debt that it had no legal right to collect, the plaintiff acted in bad faith and was thus not entitled to relief. *Id.*

Here, unlike *DeAngelo*, Garabedian has engaged in no deliberate and/or calculated deception. Unlike PRM, DAP, and Unifund who engaged in a scheme to have licensed Unifund initiate a collection lawsuit on behalf of unlicensed DAP while representing in the collection Complaint that Unifund was the creditor of Garabedian's alleged account. Even if the Court were to find *R.* 4:50-1(d) to be an inappropriate mechanism by which to vacate the default judgment against Garabedian, the provisions of *R.* 4:50-1(f) in the context of *Mancini* and *Deangelo* dictate that PRM's and DAP's violations of the NJCFLA void the unlawfully obtained account upon which the judgment is based.

DeAngelo "ultimately viewed the decision as turning not on which of the parties acted worse *but on the weight of the competing public policies*." *Id.* Though the Court must consider "the strong interests in finality of judgments and judicial efficiency," the Court must weigh the same against the public policy motivating the legislation of the NJCFLA, *to wit*, protecting New Jersey residents by ensuring that only qualified and regulated entities can engage in the "consumer loan business." *See Baumann*, 95 N.J. at 392; N.J.S.A. 17:11C-2; N.J.S.A. 17:11C-3; N.J.S.A. 17:11C-33(b). The public policy interests furthered by the NJCFLA are readily apparent when examining the NJCFLA legislative and statutory history.

The NJCFLA was originally enacted in 1996 as part of the New Jersey Licensed Lenders Act ("NJLLA"). *See* N.J.S.A. 17:11C-1; *see also* 1996 N.J. ALS 157; 1996 N.J. Laws 157; 1996 N.J. Ch. 157; 1997 N.J. A.N. 2513. The NJCFLA, NJLLA, and their predecessor, the New Jersey Consumer Loan Act ("NJCLA") "prohibit[] deceptive lending practices generally" and directly regulated the consumer loan business in New Jersey, inclusive of determining the validity of consumer loan contracts. *See Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271 (1997). The NJCFLA continues to mandate ongoing requirements for licensees and applicants in order to ensure effective regulation of the consumer loan business in New Jersey." *See, e.g.,* N.J.S.A.

17:11C-7 (requires character and fitness examination, including criminal background checks); N.J.S.A. 17:11C-16 (sets net worth and liquidity requirements for licensees and applicants); N.J.S.A. 17:11C-37 (sets interest caps for loans); N.J.S.A. 17:11C-40 (limits secured collateral); N.J.S.A. 17:11C-42 (requires availability of books and records for inspection). Under the NJLLA, N.J.S.A. 17:11C-33(b) provided that if a violation of the Act occurred, "the typical remedy, obtainable . . . by individual consumers, is voiding of the contract . . . ." *Lemelledo*, 150 N.J. at 272.

The NJCFLA was amended in 2009 and separated from the mortgage-based provisions included in the now repealed NJLLA.[2] Since 2009, there have been no published authorities which analyzed the issue of voidness under the NJCFLA as it relates to enforceability of consumer loan contracts that were acquired in direct violation of the NJCFLA's licensure provisions. *See* N.J.S.A. 17:11C-2.

[2] "Prior to revision by L. 2009, c. 53, both mortgage lending and the consumer loan business were covered by provisions compiled at 17:11C-1 through 17:11C-49, enacted by L. 1996, c. 157 and known as the "New Jersey Licensed Lenders Act." Under the 2009 legislation, revised provisions pertaining to mortgage lending are compiled at new sections 17:11C-51 through 17:11C-89, to be known as the "New Jersey Residential Mortgage Lending Act," while provisions pertaining to the non-mortgage consumer loan business are compiled at existing sections 17:11C-1 through 17:11C-49, to be known as the "New Jersey Consumer Finance Licensing Act." N.J.S.A. 17:11C-1 (Editor's Notes).

Still, the NJCFLA's application with respect to debt buyers and collectors has been interpreted by our federal sister courts in the United States District Court for the District of New Jersey several times in recent years. The federal decisions indicate that, similar to DeAngelo, violations of the NJCFLA support claims for violations of the FDCPA. In *Veras v. LVNV Funding, LLC*, 2014 U.S. Dist. LEXIS 34176, at *16-19 (D.N.J. March 17, 2014), the District Court held that the plaintiff had properly alleged a claim under the FDCPA because LVNV was not licensed under the NJCFLA. The District Court further held that since the law required LVNV to be licensed, LVNV was not the lawful owner of the debt. *Id.* at *19; *see also Lopez v. Law Offices of Faloni & Associates, LLC*, 2016 U.S. Dist. LEXIS 124730, at *13 (D.N.J. Sept. 14, 2016) (Where the District Court held that a debt buyer had to be licensed under the CFLA and opined, "a debt collector's representation in a collection complaint that it had the right to collect a debt when, in fact, it lacked the license required to initially purchase the debt, would violate, at minimum, FDCPA section e(10)."); *Valentine v. Unifund CCR, Inc.*, 2021 U.S. Dist. LEXIS 44747, at *12 (D.N.J. Mar. 10, 2021) (a debt buyer who allegedly purchased a defaulted Capital One credit card debt to meet the definition of a consumer lender under the CLFA); *Arroyo v. Stoneleigh Recovery Assocs., LLC*, 2019 U.S. Dist. LEXIS 138287, at *13 (D.N.J. Aug. 14, 2019) (assignee

of Capital One debt had to be licensed); *Tompkins v. Selip & Stylianou, LLP*, 2019 U.S. Dist. LEXIS 21937 (D.N.J. Feb. 11, 2019) (assignee of Juniper Bank credit card debt had to licensed); *Latteri v. Mayer*, 2018 U.S. Dist. LEXIS 85926, at *6 (D.N.J. May 22, 2018) (motion to dismiss denied where plaintiff alleged defendant violated the FDCPA when it attempted to collect a debt on behalf of a debt buyer who was an unlicensed consumer lender); *Valentine v. Mullooly, Jeffrey, Rooney & Flynn LLP*, 2022 U.S. Dist. LEXIS 118399, at *13 (D.N.J. July 6, 2022) ("Courts in this District have invoked that part of the NJCFLA—the part reading: "directly or indirectly engag[es] . . . in the business of buying, discounting or endorsing notes"—when classifying debt collection practices as falling within the "consumer loan business.""; *Peralta v. Ragan*, 2022 U.S. Dist. LEXIS 234300, at *6-7 (D.N.J. Dec. 30, 2022) ("Court agrees with the reasoning set forth in *Valentine*, and finds . . . that [First Portfolio] is a consumer lender' under the NJCFLA."); *New Century Fin. v. Trewin*, 2018 N.J. Super. Unpub. LEXIS 1688, *9-10 (Ch. Div. May 24, 2018) (Where the court vacated a years old default judgment and held that it was "***satisfied that the judgment obtained by plaintiff's predecessor is void, by virtue of [the loan assignor's] unlicensed status***. N.J.S.A. 17:11C-33(b)." (emphasis added)).

Though the area of law is still developing in the Superior Court of New

Jersey, on April 26, 2023, the Honorable Keith E. Lynott, J.S.C. issued an Order and Statement of Reasons in *McQueen v. Fein, Such, Kahn & Shepard, P.C.*, ESX-L-1439-22, 2023 N.J. Super. Unpub. LEXIS 640 (Law Div. April 26, 2023).[3] In denying the defendant's motion to dismiss, Judge Lynott addressed the licensure requirements of the CFLA:

> The question of whether the Plaintiff has stated a viable claim for relief turns ultimately upon whether Razor and the other assignees of the Plaintiff's credit card account and debt were functioning as a "consumer lender" and/or "sales finance company" under the NJFCLA at the time they accepted assignment of such account and debt and/or sought to enforce and collect the same and were thereby required to secure a license. If they were so obligated, the Plaintiff has stated a viable claim for relief under the FDCPA as against FSK&S, inasmuch as one could reasonably conclude in such circumstances that the letter FSK&S sent to the debtor was misleading and/or unconscionable because it did not report that the serial creditors were unlicensed at the time they accepted assignment of the debt and/or initiated legal proceedings against the debtor in the Bergen County Action and that the debt was void.
>
> Thus, presuming a license was required and not obtained at the time of the first assignment of the debt, one could conclude that McQueen's account and resulting debt were rendered void. There is no provision

[3] *McQueen* also expressly analyzed and contradicted the only other unpublished case in this jurisdiction to address the application of the NJCFLA's licensure provisions to alleged debts stemming from credit accounts, *Woo-Padva v. Midland Funding LLC*, 2022 N.J. Super. Unpub. LEXIS 96 (N.J. Sup. Ct. Bergen Cty. Jan. 21, 2022), *aff'd on other grounds*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 (App. Div. Sep. 21, 2023).

> in the statute that explicitly permits a cure after the fact and no case law cited on this record affording a licensee the right to revive a void contract or debt by securing the license.

McQueen, ESX-L-1439-22, 2023 N.J. Super. Unpub. LEXIS 640, at *9-10.

Judge Lynott went on to say:

> The NJCFLA requires a "consumer lender" to obtain a license and defines a "consumer lender" as (in relevant part) a person who should be licensed to engage in the "consumer loan business". . . . The Court must interpret and apply statutory text according to the plain, ordinary meaning of its terms. It must also construe such text in the context of relevant definitions or other provisions of the statute examined in their entirety. It is required to interpret in a manner that is consonant with the statutory purpose and that does not produce an absurd or nonsensical result.
>
> The Court finds that the plain, ordinary meaning of the term "notes", as used in this statutory definition, encompasses a debt obligation arising–as here–from an underlying credit card account. A dictionary definition of "note" is a "written promise to pay a debt." Note, MERRIAM-WEBSTER . . . An open-ended credit card agreement of the type Razor and its predecessor assignees acquired is such a written promise to pay a debt.
>
> But the statute captures within the definitions of "consumer lender" and "consumer loan business" a wide range of other participants in consumer lending. As a result of the second sentence of the definition, the statutory coverage extends not only to those making or extending loans, but those that solicit such loans, those that assist in the procurement or negotiation of the same and those that purchase or acquire "notes." The purpose of the second sentence of the definition is pellucid – to

> expand the scope of the statute and its licensure and other requirements well beyond the entities that actually provide the credit ab initio.
>
> It is in this context that one must examine the explicit text that the statutory scheme encompasses those in the business of "buying, discounting or endorsing notes." Because the statutory definition includes (i) those that initiate consumer loans by issuing credit cards and credit card agreements; and (ii) via the second sentence, intended to broaden the coverage, those engaged in purchasing "notes," there is no reason to suppose that the Legislature intended by use of that term to limit the same to negotiable promissory notes as defined and addressed in the Uniform Commercial Code and thereby exclude from the coverage of the statute purchasers of credit card accounts. Put differently, as the statute and licensing requirement apply to original credit card issuers, there is ample reason to suppose that the Legislature intended to include purchasers of credit card accounts within the scope of a provision – the second sentence – that brings within its reach the purchasers of consumer loans.

McQueen, ESX-L-1439-22, 2023 N.J. Super. Unpub. LEXIS 640, at *11-14. As indicated by the numerous cases cited above, the violations of the NJCFLA at issue here are comparable to violations of the FDCPA (and, in many cases, support affirmative claims for violations of the FDCPA) in that they are violations of remedial consumer protection statutes motivated by underlying policy interests.

Lastly, enforcement of Garabedian's alleged debt would constitute enforcement of a contract entered into in violation of New Jersey's licensing

statute. *See Accountemps Div. of Robert Half, Inc. v. Birch Tree Grp., Ltd.*, 115 N.J. 614, 626 (1989) (holding "[o]ur courts have consistently held that public policy precludes enforcement of a contract entered into in violation of [the State's] licensing statute[s]"). Similarly, in *Insight Global, LLC v. Collabera, Inc.*, 446 N.J. Super. 525, 531-32 (Ch. Div. 2015), the Chancery Division examined the limit on the ability of an unlicensed entity to seek relief from a court. *Insight Global* held that an unlicensed party has no right to bring claims before the court and public policy prohibits enforcement of a contract entered into in violation of a licensing statute. *Insight Global, LLC*, 446 N.J. Super. at 531-32. Courts in New Jersey and many other states have consistently refused to aid or ratify illegal activities.

Thus, the trial court's July 19, 2024 Order must be reversed due to its "inexplicabl[e] depart[ing] from established policies." *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 467 (2012)

CONCLUSION

For the foregoing reasons, Defendant-Appellant Christine Garabedian respectfully requests that the July 19, 2024 Order denying the Motion to Vacate Default Judgment be reversed.

Respectfully submitted,

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Dated: January 9, 2025

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Docket No. A-004148-23

UNIFUND CCR LLC, AAO FIRST NATIONAL BANK OF OMAHA,	:	CIVIL ACTION
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION: SPECIAL CIVIL PART, BERGEN COUNTY
v.	:	
CHRISTINE GARABEDIAN,	:	
Defendant-Appellant.	:	Trial Court Docket No. BER-DC-12379-18
	:	Sat Below: HON. JOSEPH G. MONAHGAN, J.S.C.
	:	DATE: January 9, 2025

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

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PRELIMINARY STATEMENT

The trial court followed clear precedent and made a rational decision based in established principles under New Jersey law to deny Defendant-Appellant Christine Garabedian's ("Garabedian" or "Defendant") Motion to Vacate the Default Judgment rendered against her in the Superior Court of New Jersey, Law Division, Bergen County. It is indisputable that Garabedian's Motion to Vacate was untimely under Rule 4:50-2 and that her delay was inexcusable. Indeed, Garabedian filed her Motion to Vacate six years after the default judgment was entered, even though she knew of the judgment against her within months of its entry.

Despite her delay, Garabedian argues on appeal that the trial court incorrectly denied her Motion to Vacate because it applied the doctrine of laches without identifying prejudice to Unifund CCR, LLC AAO First National Bank of Omaha ("Unifund" or "Respondent") beyond significant delay, and because Pilot Receivables Management, LLC ("Pilot") and Distressed Asset Portfolio III, LLC's ("DAP III's") lack of a license under the New Jersey Consumer Finance Licensing Act ("NJCFLA") constituted an "exceptional circumstance" that necessitated vacating the default judgment.

Garabedian's arguments fail. As discussed in detail below, New Jersey law is extremely deferential to a trial court's determination of a motion to vacate

a default judgment. The trial court here properly denied Garabedian's Motion to Vacate the Default Judgment, and there is no legitimate suggestion that the trial court abused its discretion in coming to its decision. To the contrary, the trial court followed the plain reading of Rule 4:50-1 and Rule 4:50-2 and New Jersey law generally in denying Garabedian's Motion to Vacate. Garabedian's counsel already attempted and failed to vacate other default judgments in similar cases, and the decisions across the Appellate Division have all reached the same conclusion: relief under Rule 4:50-1 is improper absent truly exceptional circumstances, and lack of licensure under the NJCFLA does not constitute an exceptional circumstance.

The Court should reach the same result here and affirm the trial court's July 19, 2024 decision to deny Garabedian's Motion to Vacate. More specifically, the Court should hold that the trial court correctly determined that 1) Garabedian's unexplained delay is inexcusable, and 2) Garabedian cannot rely on the NJCFLA because there is no private right of action under the statute, and such reliance does not constitute an exceptional circumstance justifying Garabedian's failure to move to vacate the default judgment within a reasonable time.

COUNTERSTATEMENT OF FACTS

Pilot and DAP III are passive debt buyers. (Da 54). Pilot and DAP III do not manage or undertake collection of accounts they purchase or otherwise service the accounts. Instead, they assign the account to an affiliate, Unifund, for servicing and collection. (Da54). Garabedian incurred a debt that she owed to First National Bank of Omaha (the "Debt") in the amount of $7,282.36. *See* Compl. ¶ 1 (Da1). Pilot and DAP III ultimately acquired the Debt and assigned it to Unifund for servicing and collection. *See* Compl. ¶¶ 1-4 (Da1).

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On July 31, 2018, Unifund initiated a lawsuit against Garabedian. *See* Compl. ¶¶ 1-4 (Da1). Garabedian was successfully served with the summons and complaint one month after the lawsuit was filed, but Garabedian failed to respond or otherwise appear in the lawsuit. (Da1-Da6). Accordingly, on February 8, 2019, Unifund filed a Request to Enter Default Judgment. (Da6). On February 12, 2019, the trial court properly entered a default judgment against Garabedian in the amount of $7,282.36. (Da7). On April 12, 2019, Garabedian entered an objection to the wage garnishment that resulted from the default judgment. (Da8-Da9). The Debt was ultimately deemed satisfied, notice of which was filed on April 10, 2023. (Da15-Da16).

On June 19, 2024 – over five years after the trial court entered judgment – Garabedian filed a Motion to Vacate the Default Judgment under Rule 4:50-1. (Da20-Da23). Garabedian argued that the trial court should vacate the default judgment against her because the Debt was null and void due to Pilot and DAP III's alleged failure to comply with the licensure requirement of the NJCFLA. (Da20-Da23). Unifund opposed Garabedian's Motion to Vacate the Default Judgment because she failed to satisfy the requirements of Rule 4:50-1(f), and enforcement of the judgment would violate the CFLA. (T1 33:1-5). The trial court heard oral argument on July 19, 2024, and denied Garabedian's Motion to Vacate on the same day. (Da64-Da65).

LEGAL ARGUMENTS

POINT I. STANDARD OF REVIEW (RAISED BELOW T1)

New Jersey appellate courts review a motion to vacate final judgment pursuant to Rule 4:50-1 under an abuse of discretion standard. *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 467 (2012). The trial court's determination of a motion to vacate a default judgment warrants substantial deference and "should not be reversed unless it results in a clear abuse of discretion." *Id.*, citing *DEG, LLC v. Twp. of Fairfield*, 198 N.J. 242, 261 (2009); *Hous. Auth. of Morristown v. Little*, 135 N.J. 274, 283 (1994). Appellate courts find clear abuse of discretion only "when a decision is 'made without a rational explanation,

inexplicably departed from established policies, or rested on an impermissible basis.'" *Id*., quoting *Iliadis v. Wal-Mart Stores, Inc*., 191 N.J. 88, 123 (2007). In other words, the abuse of discretion standard favors leaving a trial court's decision undisturbed absent exceptional circumstances.

Here, the trial court was well within its discretion and properly denied Garabedian's Motion to Vacate the Default Judgment. There is no legitimate suggestion that the trial court denied Garabedian's Motion to Vacate without a rational explanation, that it inexplicably departed from established policies, or rested on any impermissible basis.

POINT II. THE TRIAL COURT CORRECTLY DENIED GARABEDIAN'S MOTION TO VACATE THE DEFAULT JUDGMENT BASED ON HER UNTIMELY REQUEST FOR RELIEF (RAISED BELOW T1)

Garabedian first argues that the trial court misapplied the doctrine of laches because it did not identify the specific prejudice to Unifund beyond significant delay, and that the mere passage of time cannot constitute laches. (Db8-Db9).[1] Garabedian's position is incorrect, and she failed to demonstrate that the trial court denied the untimely relief requested without any rational explanation.

Although the trial court cited laches as a basis for denying Garabedian's Motion to Vacate the default judgment, it found first and foremost that the plain

[1] Hereinafter, "Db" refers to Garabedian's appellate brief.

reading of Rule 4:50-1(f) warranted denial of the same. Namely, the trial court found specifically that Garabedian failed to show excusable neglect, failed to present a meritorious defense, and failed to move for relief within a reasonable time, as required by Rule 4:50-2. (T1 33-35). The trial court's findings under Rule 4:50-1 and Rule 4:50-2 are sufficient on their own to deny relief.

Only after establishing that Garabedian's motion is barred by Rule 4:50-1(f) and Rule 4:50-2, the trial court stated that, "[i]f nothing else, laches applies" because "laches precludes relief when there is an unexplainable and inexcusable delay in exercising a right, which results in prejudice to another party." (T1 36:2-8). Regardless of whether the trial court discussed laches to inform the timeliness inquiry under Rule 4:50-2 or relied on the doctrine as an independent ground for relief, the trial court appropriately held that Garabedian's Motion to Vacate the default judgment fails.

Indeed, as the trial court recognized, and as discussed further below, Garabedian cannot reasonably argue that her Motion to Vacate the default judgment was timely. Garabedian willfully failed to seek relief for nearly six years, even though she knew about the judgment against her a few months after it was entered. Furthermore, Unifund experienced prejudice as a result of Garabedian's delay because it continued to rely on the default judgment and pursue collect efforts on Garabedian's Debt until it was fully satisfied in 2023.

New Jersey law is clear that in deciding a motion to vacate, there is a "strong interest in finality of judgments and judicial efficiency" that must be balanced "with the equitable notion that courts should have authority to avoid an unjust result in any given case." *Guillaume*, 209 N.J. 449, 467, quoting *Mancini v. EDS*, 132 N.J. 330, 334, (1993). The balance of these interests is squarely within the trial court's discretion. *Id.* Granting Garabedian's Motion to Vacate would have run afoul of the underlying interests in finality and judicial efficiency, and it would prejudice Unifund to vacate the judgment.

A. Garabedian Inexplicably Delayed Seeking Relief for Nearly Six Years

Under Rule 4:50-2 or the doctrine of laches, Garabedian inexcusably delayed seeking relief. Laches is "invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party." *Knorr v. Smeal*, 178 N.J. 169, 180-81 (2003) (internal citations omitted). Whether to apply the doctrine of laches "'depends upon the facts of the particular case and is a matter within the sound discretion of the trial court.'" *Mancini* at 436 (quoting *Garrett v. Gen. Motors Corp.*, 844 F.2d 559, 562 (8th Cir. 1988)). "The period of laches should be computed by considering the earliest moment in time when the right to the relief being sought could have been asserted." *Santander Bank, N.A. v. Cimple Sys., Inc.*, No. A-1560-23, 2024 N.J. Super. Unpub. LEXIS 2892,

at *10 (Super. Ct. App. Div. Nov. 21, 2024), citing *Flammia v. Maller*, 66 N.J. Super. 440, 453 (App. Div. 1961).

Here, Unifund initiated its collection lawsuit against Garabedian on July 31, 2018 and successfully served Garabedian with the summons and complaint one month later. (Da1-Da6). Garabedian failed to respond to the lawsuit or take any action regarding the default judgment for **nearly six years**. (Da20). The timing is significant because, not only was Garabedian aware of the collection lawsuit against her when it was filed in 2018 (as evidenced by successful service of process), but it is clear that Garabedian knew about the default judgment only two months after the trial court entered judgment against her. Indeed, the trial court entered default judgment on February 12, 2019, and on April 12, 2019, Garabedian entered an objection to the wage garnishment that resulted from the judgment. (Da9). Therefore, Garabedian could have moved to vacate the judgment at least as early as April 2019, but inexplicably waited until June 19, 2024 to take any action. Despite Garabedian's significant delay, her brief fails to identify any valid justification. Garabedian's inexcusable and unexplained delay, despite knowledge of the judgment against her, warrants denial of her motion as untimely.

B. Unifund Experienced Prejudice as a Result of Garabedian's Inexplicable Delay

Garabedian cannot deny that her delay was inexcusable and untimely. Instead, she argues that the trial court failed to identify the prejudice that resulted beyond experiencing delay, while ignoring the prejudice that Unifund experienced as a result of her delay. (Db8). Furthermore, Garabedian attempts to circumvent the language and purpose of Rule 4:50-1 and omits pertinent language from cases she cites for the proposition that "the mere passage of time… does not constitute laches…" (Db8-(Db9).

Unifund experienced prejudice as a result of Garabedian's six-year delay because, in the time between the default judgment entry and Garabedian's Motion to Vacate, Unifund reasonably relied on the default judgment by continuing to pursue collection efforts on the Debt. On April 10, 2023, Unifund's efforts were ultimately successful when the Debt was deemed satisfied – five years after Unifund initiated the collection lawsuit. (Db 15-16).

The Appellate Division has held that laches applies and prejudice results under similar circumstances: "[T]o vacate [the j]udgment would do [a] grave injustice . . . . Now some five or six years later[,] to reconstruct the [d]efault would be almost impossible. . . . [P]eople's memories certainly lapse, and reconstructing these types of issues are exceptionally difficult." *RP Leasing Assocs. v. Kennedy*, No. A-6357-08T2, 2010 N.J. Super. Unpub. LEXIS 1858,

at *13 (Super. Ct. App. Div. Aug. 3, 2010)(regarding a motion to vacate a default judgment on the defendants' failure to pay money owed pursuant to a lease agreement). Similarly here, reversing the default judgment nearly six years later would result in prejudice to Unifund because it already spent five years diligently collecting pursuant to the judgment, and Garabedian's lapse in filing her Motion to Vacate would significantly complicate the undoing of those efforts.

Furthermore, New Jersey law is clear that when deciding a motion to vacate, there is a "strong interest in finality of judgments and judicial efficiency" that must be balanced "with the equitable notion that courts should have authority to avoid an unjust result in any given case." *Guillaume*, 209 N.J. 449, 467, quoting *Mancini*, 132 N.J. 330, 334. This determination is squarely within the trial court's discretion. *Id.* The Appellate Division repeatedly acknowledges this strong interest in affirming a trial court's decision to deny a motion to vacate like Garabedian's motion. *See Portfolio Recovery Assocs., LLC v. Chartonavich*, No. A-1088-23, 2024 N.J. Super. Unpub. LEXIS 2537 (Super. Ct. App. Div. Oct. 21, 2024); *N.A.R., Inc. v. Ritter*, No. A-0322-23, 2024 N.J. Super. Unpub. LEXIS 1313 (Super. Ct. App. Div. June 24, 2024); *Asset Acceptance, LLC v. Toft*, No. A-2827-22, 2024 N.J. Super. Unpub. LEXIS 820 (Super. Ct. App. Div. May 8, 2024); *Midland Funding LLC v. Williams*, No. A-

2961-22, 2024 N.J. Super. Unpub. LEXIS 466 (Super. Ct. App. Div. Mar. 21, 2024); *Jefferson Capital Sys., LLC Inc/Santander Consumer USA v. Glover*, No. A-3545-22, 2024 N.J. Super. Unpub. LEXIS 1248 (Super. Ct. App. Div. June 18, 2024).

The trial court acted well within its discretion to consider the factors involving Garabedian's delay, prejudice caused by the delay, and the underlying interests of finality and efficiency, and conclude that she waited too long. Garabedian failed to demonstrate how the trial court abused its discretion in balancing these interests, and the trial court had ample justification to deny Garabedian's Motion to Vacate.

Furthermore, Garabedian quotes case law regarding the doctrine of laches out of context, when in reality, the cases do not support her position. (Db9, citing *Allstate Ins. Co. v. Howard Sav. Inst.*, 127 N.J. Super. 479, 489 (Super. Ct. 1974)(quoting *Finley v. United States*, 130 F. Supp. 788, 796 (D.C.D.N.J. 1955)). Garabedian cites one portion of *Allstate* for the proposition that the passage of time alone does not constitute laches. (Db9). However, she fails to include the rest of the quote: "To deserve that category, the delay must be for a length of time which, unexplained and unexcused, is altogether unreasonable under the circumstances, and has been prejudicial to the party asserting it or

renders it very doubtful that the truth can be ascertained and justice administered." *Allstate Ins. Co.*, 127 N.J. Super. at 489.

Just as the remainder of the quote from *Allstate,* Garabedian's inexcusable, unexplained, and unreasonable delay in moving to vacate the default judgment is exactly what occurred here. Whether the trial court specifically relied on laches or not, the trial court heard oral argument from both parties and correctly determined, within its sound discretion, that the delay here is not reasonable. Finality and the stability of the default judgment outweigh Garabedian's inexplicable six year delay in seeking relief, and Unifund would face prejudice as a result of vacating the judgment. Accordingly, this Court should affirm the trial court's decision to deny Garabedian's Motion to Vacate the Default Judgment.

C. The NJCFLA Does Not Bar the Application of Laches

Finally, Garabedian suggests that the trial court misapplied the doctrine of laches because DAP III and Pilot were unlicensed when they purchased the Debt. (Db8). Although unclear how DAP III and Pilot's licensure status is relevant to the application of laches, New Jersey law plainly forecloses Garabedian's attempt to avail herself to the provisions of the NJCFLA, which is explained more fully in the following section.

POINT III. THE TRIAL COURT DECIDED CORRECTLY THAT GARABEDIAN CANNOT RELY ON THE NJCFLA TO VOID THE DEFAULT JUDGMENT AGAINST HER (RAISED BELOW T1)

Garabedian spends the majority of her brief arguing that the trial court abused its discretion by denying her Motion to Vacate because DAP III and Pilot were unlicensed when Unifund sued her. (Db9-Db20). Garabedian acknowledges the trial court's finding that she did not file her Motion to Vacate within a reasonable time as required by Rule 4:50-2, but attempts to justify her failure to do so based on DAP III and Pilot's unlicensed status. (Db10). More specifically, Garabedian argues that the lack of a license rendered the default judgment void. (Db10). Garabedian's argument fails because it clearly contradicts New Jersey law, and her reliance on the *DeAngelo* case, *LVNV Funding, LLC v. Deangelo*, 464 N.J. Super. 103 (Super. Ct. App. Div. 2020), is misplaced. The trial court decided correctly that Garabedian cannot rely on the NJCFLA to void the default judgment against her.

A. The Trial Court Decided Correctly That Garabedian Failed to Move Pursuant to Rule 4:50-1 Within the Reasonable Time Required By Rule 4:50-2

As an initial matter, and as Garabedian acknowledges, a motion pursuant to Rule 4:50-1 must be filed within a reasonable time after entry of the default judgment. *See* R. 4:50-2. "Reasonable time" depends on the totality of the circumstances of each case, and the trial court judge has discretion to consider

such circumstances. *N.A.R., Inc.*, 2024 N.J. Super. Unpub. LEXIS 1313, at *5-6, quoting *Romero v. Gold Star Distrib., LLC*, 468 N.J. Super. 274, 296, 257 A.3d 1192 (App. Div. 2021).

Subsection (f) of Rule 4:50-1 is a "catch-all provision," and relief under subsection (f) is available only when "'truly exceptional circumstances are present,' because of the 'importance that we attach to the finality of judgments.'" *Id.*, quoting *Little*, 135 N.J. 274, 286 (quoting *Baumann v. Marinaro*, 95 N.J. 380, 395 (1984); *see also Glover*, 2024 N.J. Super. Unpub. LEXIS 1248, at *9. Not only must the movant "demonstrate the circumstances are exceptional," but also that "enforcement of the judgment or order would be unjust, oppressive or inequitable." *Johnson v. Johnson*, 320 N.J. Super. 371, 378 (App. Div. 1999).

Here, there are no exceptional circumstances. As explained above, Garabedian waited nearly six years to seek relief from the judgment, despite her knowledge of the lawsuit and the judgment against her. Rule 4:50-2 clearly requires that a motion under the rule must be made within a reasonable time. Garabedian does not even try to justify her delay except to assert that she was unaware of DAP III and Pilot's licensure status until she "learned" as much through her attorneys. Her explanation fails to justify why she deliberately chose to ignore the complaint prior to judgment, or why it took nearly six years

to hire counsel and move to vacate the default judgment. Garabedian's failure to act within a reasonable time pursuant to Rule 4:50-2 warrants denial of her Motion to Vacate, and the trial court correctly decided that she failed to move within a reasonable time. Moreover, as discussed below, Garabedian's argument for an exceptional circumstance under the NJCFLA to justify her untimeliness is plainly incorrect.

B. Pilot and DAP III's Lack of Licensure is Immaterial and Does Not Constitute an Exceptional Circumstance

It is indisputable that Garabedian failed to move under Rule 4:50-1 within the reasonable time required by Rule 4:50-2. Apparently recognizing this hurdle, Garabedian attempts to rely on a narrow exception to the general rule by claiming "violations of a remedial consumer protection statute give[s] rise to exceptional circumstances under *R*. 4:50-1(f)." (Db10). In other words, Garabedian argues that Pilot and DAP III's lack of a license constitutes an exceptional circumstance that renders the default judgment null and void. (Db10). However, the Appellate Division already discredited this same position that Garabedian raises in this appeal: "We reject defendant's newly minted argument that [Respondent's] alleged lack of licensure under the NJCFLA is the 'exact sort of exceptional circumstance this [c]ourt has ruled necessitates the vacating of a default judgment pursuant to *R*[*ule*] 4:50-1(f).'" *N.A.R., Inc.*, 2024

N.J. Super. Unpub. LEXIS 1313, at *10; *see also Glover*, 2024 N.J. Super. Unpub. LEXIS 1248, at *10.

Notably, the same law firm that represents Garabedian advanced the same legal theory in both *N.A.R., Inc.* and *Glover*. In both cases, the Appellate Division held that the NJCFLA cannot not provide an express or implied private right of action, "the lack of licensure under the NJCFLA is not a meritorious defense to plaintiff's collection suit," and that litigants like Garabedian cannot vacate a judgment pursuant to Rule 4:50-1 in reliance on the NJCFLA. *N.A.R., Inc*., 2024 N.J. Super. Unpub. LEXIS 1313, at *9; *Glover*, 2024 N.J. Super. Unpub. LEXIS 1248, at *8. The decisions in *N.A.R., Inc.* and *Glover* are consistent with other Appellate Division decisions that have repeatedly held that there is no private right of action under the NJCFLA.[2]

Furthermore, the Appellate Division also already rendered Garabedian's reliance on *Deangelo* as misplaced. Both *N.A.R., Inc.* and *Glover* explained that *DeAngelo* is distinguishable because, although *DeAngelo* involved a R. 4:50-

[2] *See also Woo-Padva v. Midland Funding*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550, at *9 (Super. Ct. App. Div. Sep. 21, 2023)(same, dismissing Plaintiff's declaratory judgment and injunctive relief claims because "Plaintiff cannot circumvent the lack of a private right of action by seeking relief under the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-50 to 62."); *Delgado v. LVNV Funding, LLC*, 2024 N.J. Super. Unpub. LEXIS 713, at *10-14 (same); *Valentine v. Unifund CCR, LLC*, No. A-000835-23, 2023 N.J. Super. Unpub. LEXIS 4234, *13 (Super. Ct. App. Div. Oct. 4, 2023)(same).

1(f) motion to vacate a default judgment, it dealt with the Fair Debt Collection Practices Act, which provides a private right of action. *N.A.R., Inc*., 2024 N.J. Super. Unpub. LEXIS 1313, at *9; *Glover*, 2024 N.J. Super. Unpub. LEXIS 1248, at *8. The NJCFLA unequivocally does not provide a private right of action, and therefore, cannot be used as a mechanism for relief under Rule 4:50-1. *Id*. This discredits Garabedian's reliance on *DeAngelo* in the clearest possible terms. The trial court properly found that Garabedian failed to move pursuant to Rule 4:50-1 within a reasonable time, and that the alleged violations of the NJCFLA do not rise to the level of exceptional circumstances. Accordingly, this Court should affirm the trial court's decision to deny Garabedian's Motion to Vacate the Default Judgment.

C. Garabedian Cannot Circumvent the NJCFLA's Lack of a Private Right of Action to Void the Debt

Finally, Garabedian argues that enforcement of her Debt is improper because it constitutes enforcement of a contract in violation of New Jersey's licensing statute. (Db19-Db20). This argument is nothing more than a reiteration of her previous attempt to avail herself of the provisions of the NJCFLA for which she lacks a private right of action. There is undisputedly no private right of action under the NJCFLA, and Garabedian cannot circumvent the NJCFLA's private right of action in order to void her Debt. *See Glover*, 2024 N.J. Super. Unpub. LEXIS, at *10, citing *Francavilla v. Absolute Resols.*

VI LLC, 478 N.J. Super. 171, 180 (Super. Ct. App. Div. Mar. 14, 2024)(finding a private citizen "may not enforce the CFLA's license requirement because the Legislature did not provide a private right of action under the CFLA.").[3]

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's decision to deny Garabedian's Motion to Vacate the Default Judgment.

Respectfully submitted,

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Dated: March 12, 2025

[3] *See, e.g., Francavilla* (the NJCFLA does not contain a private right of action); *N.A.R., Inc.*, 2024 N.J. Super. Unpub. LEXIS 1313 (same); *Woo-Padva*, 2023 N.J. Super. Unpub. LEXIS 1550, at *9 (Super. Ct. App. Div. Sep. 21, 2023)(same, dismissing Plaintiff's declaratory judgment and injunctive relief claims because "Plaintiff cannot circumvent the lack of a private right of action by seeking relief under the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-50 to 62."); *Delgado*, 2024 N.J. Super. Unpub. LEXIS 713, at *10-14 (same); *Valentine*, 2023 N.J. Super. Unpub. 4234, at *13 (same)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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Docket No. A-004148-23

UNIFUND CCR LLC, AAO FIRST NATIONAL BANK OF OMAHA,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SPECIAL CIVIL PART, BERGEN COUNTY
v.	:	
CHRISTINE GARABEDIAN,	:	Trial Court Docket No. BER-DC-12379-18
Defendant-Appellant.	:	
	:	Sat Below: HON. JOSEPH G. MONAGHAN, J.S.C.
	:	DATE: January 9, 2025

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Plaintiff-Respondent Unifund CCR, LLC's ("Unifund") Brief largely fails to address the violations of the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1 to -49, that provide the basis for Garabedian's relief here. In sum, Unifund asserts that the trial court correctly applied an equitable doctrine in the face of undisputed violations of a remedial consumer protection statute. Unifund further asserts that aside from the trial court's application of laches, Garabedian cannot point to the undisputed violations of the NJCFLA for an arguable lack of a private right of action. However, Garabedian is not claiming a right of action—she is simply pointing to Unifund's lack of a legal right as a defense, as well as to Unifund's unlawful behavior to inform the relevant equity analysis here. Thus, for the reasons explained herein, the trial court's July 19, 2024 Order (Da64) denying Garabedian's Motion to Vacate Default Judgment should be reversed and the matter remanded for further proceedings.

REPLY ARGUMENT

POINT I. GARABEDIAN'S MOTION WAS FILED WITHIN A REASONABLE TIME WHEN CONSIDERING THE TOTALITY OF CIRCUMSTANCES

Unifund first argues that the trial court applied the doctrine of laches only as a secondary bar to Garabedian's Motion to Vacate Default Judgment. Unifund asserts that the trial court "found first and foremost that the plain

reading of Rule 4:50-1(f) warranted denial of the [Motion]." Pl.'s Br. at 5-6. Unifund argues that "the trial court found specifically that Garabedian failed to show excusable neglect, failed to present a meritorious defense, and failed to move for relief within a reasonable time, as required by Rule 4:50-2." *Id.* at 6. However, excusable neglect and a meritorious defense are not requirements for a motion under *R.* 4:50-1(d)[1] or *R.* 4:50-1(f)[2]—the authorities Garabedian relied upon for her Motion to Vacate.

While motions under subsections (d) and (f) must be brought within a 'reasonable time,' as per *R.* 4:50-2, this Court has "explained that a reasonable time is determined based upon the totality of the circumstances . . . ." *Romero v. Gold Star Distribution, LLC*, 468 N.J. Super. 274, 296 (App. Div. 2021). Further, the 'reasonable time" in which a motion under *R.* 4:50-1(d) or (f) can be brought "could be more or less than one year after the judgment, depending on the circumstances." *Ibid.* (citing *Garza v. Paone*, 44 N.J. Super. 553, 557-58 (App. Div. 1957)).

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[1] "[A] meritorious defense is not required to vacate the judgment under *R.* 4:50-1(d)." *Jameson v. Great Atl. & Pac. Tea Co.*, 363 N.J. Super. 419, 425 (App. Div. 2003).

[2] "[T]he so-called catchall provision, which permits relief in 'exceptional situations.'" *LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 109 (App. Div. 2020). "In such instances, subsection (f)'s boundaries are 'as expansive as the need to achieve equity and justice.'" *Ibid.* (quoting *Court Inv. Co. v. Perillo*, 48 N.J. 334, 341 (1977)).

Here, the trial court reasoned that "since [Garabedian] in fact paid the debt and received the benefit after the payment of the debt of the warrant of satisfied judgment," having known about the judgment for six years, Garabedian's Motion was not filed within a reasonable time even if the judgment "was void *ab initio*" due to violations of the NJCFLA (which were largely undisputed). T1 34:5-9; 35:4-6. However, as argued in Unifund's Brief, the Court's interest in finality of judgment and judicial efficiency "must be balanced 'with the equitable notion that courts should have authority to avoid an unjust result in any given case.'" Pl.'s Br. at 7 (quoting *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 467 (2012); *Mancini v. EDS ex rel. New Jersey Auto. Full Ins. Underwriting Ass'n*, 132 N.J. 330, 334 (1993)). Here, the principles of justice and equity cannot be served by ratifying Unifund's unlawful collection practices. After all, it is axiomatic that "equity follows the law." *Monmouth Lumber Co. v. Indem. Ins. Co.*, 21 N.J. 439, 451 (1956); *see also In re Estate of Shinn*, 394 N.J. Super. 55, 67 (App. Div. 2007). The aforementioned maxim "prevent[s] the issuance of a remedy that is inconsistent with recognized statutory or common law principles . . . . it remains well-established that equity will not create a remedy that is in violation of law . . . ." *In re Estate of Shinn*, 394 N.J. Super. at 67.

Rewarding violations of a remedial protection statute like the NJCFLA

not only contravenes its intended purpose of generally prohibiting deceptive practices in the consumer credit industry,[3] but also undermine the equitable principles that courts are tasked to uphold. *See LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 110 (App. Div. 2020) (Where the Court found that the Fair Debt Collection Practices Act's intended purpose of curbing abusive collection practices outweighed the interest in the finality of judgments and vacated an eight-year-old judgment). And, as explained in Garabedian's opening Brief, non-parties Pilot Receivables Management ("PRM"), LLC and Distressed Asset Portfolio III, LLC ("DAP") concealed their violations of the NJCFLA by retaining ownership of consumer accounts while unlicensed, then conducting litigation through their licensed affiliate, Unifund. *See* Def.'s Opening Br. at 4-5. DAP's and PRM's concealment of their involvement necessarily delayed the relief sought by Garabedian (which was entirely predicated on DAP's and PRM's violations of the NJCFLA). Thus, when considering Garabedian's Motion in light of the totality of circumstances, Garabedian sought relief within a reasonable time.

POINT II. LACHES IS AN EQUITABLE DOCTRINE THAT SHOULD NOT BE EMPLOYED TO REWARD VIOLATIONS OF THE LAW

With respect to the doctrine of laches, Unifund argues that the trial court

[3] *See Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271 (1997).

correctly applied an equitable doctrine to sanction violations of a remedial consumer protection statute. Indeed, "laches is an equitable doctrine" which may only be enforced when the allegedly prejudiced party acted in good faith. *Fox v. Millman*, 210 N.J. 401, 417 (2012); *Knorr v. Smeal*, 178 N.J. 169, 173 (2003); *Chance v. McCann*, 405 N.J. Super. 547, 567 (App. Div. 2009). In response to Garabedian's arguments that the trial court's finding of prejudice was in error,[4] Unifund asserts that the delay it experienced, in and of itself, is enough to satisfy the prejudice requirement for an application of laches. *See* Pl.'s Br. at 9. Citing to an unpublished, non-binding case (without mentioning contrary unpublished decisions), Unifund further argues that it "would be almost impossible" to "reconstruct the default [judgment] . . . some five or six years later." *Ibid.* However, all of the alleged proofs that Unifund utilized to obtain the default judgment remain on the trial court docket. 'Reconstructing the default judgment' would thus entail accessing publicly available

[4] "The trial court based its application of laches on the purported prejudice Unifund would have suffered had Garabedian's Motion to Vacate been granted; however, the trial court did not provide reasoning as to how Unifund would have been prejudiced beyond experiencing a delay. Garabedian's Motion to Vacate did not seek dismissal of Unifund's claims, but rather sought to open the suit to be litigated on the merits. Thus, the possible expiration of the statute of limitations is of no consequence to an analysis of prejudice and/or laches here—Unifund would have remained free to pursue its claims should the Motion to Vacate have been granted." Def.'s Opening Br. at 8-9 (internal citations omitted).

documents.

Conspicuously absent from Unifund's Brief are any published authorities holding that delay alone is sufficient for a showing of prejudice with respect to laches. On the contrary, the New Jersey Supreme Court has explained that the "changing conditions of either or both parties" inform the laches analysis. *Cty. of Morris v. Fauver*, 153 N.J. 80, 105 (1998); *Lavin v. Bd of Educ.*, 90 N.J. 145, 151 (1982). Unifund's condition and/or legal position remains largely unchanged since the entry of the judgment.

Finally, "[i]t is assumed that the party to whom laches is imputed has knowledge of his rights, and sufficient opportunity to assert them in the proper forum." *Dorchester Manor v. Borough of New Milford*, 287 N.J. Super. 163, 172 (Super. Ct. 1994). As explained in Garabedian's opening Brief and reiterated above, PRM and DAP concealed their violations of the NJCFLA from Garabedian by retaining ownership of her alleged account while conducting litigation through Unifund. Thus, Garabedian could not have asserted her rights earlier because the underlying violations of the NJCFLA were intentionally hidden from her. Thus, the trial court's application of laches to bar Garabedian's sought after relief constitutes reversible error and the trial court's July 19, 2024 Order should be reversed.

POINT III. THE PRIVATE RIGHT OF ACTION UNDER THE NJCFLA IS IMMATERIAL TO THE ASSERTION OF A DEFENSE[5]

In arguing that the Court should ignore DAP's and PRM's violations of the NJCFLA, Unifund asserts that said violations are "immaterial" and "do[] not constitute . . . exceptional circumstance[s]." Pl.'s Br. at 15. Notwithstanding the fact that DAP's and PRM's violations of the NJCFLA are undoubtedly material because they render Garabedian's alleged debt void, Unifund's argument is premised entirely on its assertion that the NJCFLA cann be asserted by Garabedian as a defense because of a purported lack of a private right of action. But Garabedian is not asserting a 'right of action,' she is simply pointing to DAP's, PRM's, and Unifund's lack of a legal right. Thus, the private right of action under the NJCFLA is immaterial here. *But even if it weren't*, Unifund has failed to address the factors that determine that the NJCFLA is privately enforceable.

First, there is ample evidence that that NJCFLA confers a private right of action, not the least of which being a reading of *Lemelledo*, *supra*, in conjunction with Section 1 of the NJCFLA. N.J.S.A. 17:11C-1 states that "Sections 1 through 49 [C.17:11C-1 through C.17:11C-49] of this act,

[5] On April 11, 2025, the New Jersey Supreme Court granted a Petition for Certification in the matter captioned as *Diana v. LVNV Funding, LLC, et al.*, Supreme Court Case No. 089939, App. Div. Case No. A-1000-23, to determine whether the NJCFLA provides a private right of action.

previously known and cited as the "New Jersey Licensed Lenders Act," shall be known and may be cited as the "New Jersey Consumer Finance Licensing Act." In *Lemelledo*, the New jersey Supreme Court explained that the "typical remedy" for for a violation of the New Jersey Licensed Lenders Act ("LLA"), "obtainable . . . by individual consumers, is voiding of the contract." *Lemelledo*, 150 N.J. at 272. Though the LLA also "allow[ed] for treble damages by aggrieved consumers." *Ibid.* There is no evidence that the name change indicated by N.J.S.A. 17:11C-1 also excised the private right of action from the statute. Even if *Lemelledo* did not provide binding guidance, additional binding authority from New Jersey's highest court requires a structured analysis informed by the legislative and statutory history of the NJCFLA.

"The seminal case in New Jersey to consider whether a state statute confers an implied private right of action is *In re State Comm'n of Investigation*." *R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 273 (2001) (internal pin cite omitted). "There, the Court considered whether the plaintiffs, who were being investigated by the State Commission of Investigation (SCI), could be granted an injunction to enforce the SCI's statutorily mandated confidentiality obligations." *Ibid.* To weigh the foregoing, *In re Resolution* adopted the test articulated by the United States Supreme

Court in *Cort v. Ash*, 422 U.S. 66 (1975). Unifund's Brief does not cite to **any** authority where the *In re Resolution*/*Cort* test was applied to the NJCFLA.

To determine whether a statute confers an implied private right of action, the Court must "consider whether: (1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272. "Those factors were established by the United States Supreme Court in *Cort v. Ash*, 422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975) and adopted by [the New Jersey Supreme] Court in *In re State Comm'n of Investigation*,[6] 108 N.J. 35, 41, 527 A.2d 851 (1987)." Although varying weight is given to each one of those factors, "the primary goal has almost invariably been a search for the underlying legislative intent." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272-73. (quoting *Jalowiecki v. Leuc*, 182 N.J. Super. 22, 30, (App.Div.1981)).

Turning to the first factor of the *In re Resolution*/*Cort* test—whether Garabedian is a member of the class for whose special benefit the statute was

[6] Cited herein as: *In re Resolution of State Com. of Investigation*, 108 N.J. 35 (1987).

enacted—"that is, does the statute create a . . . right in favor of [Garabedian]?" *Cort*, 422 U.S. at 78. It is undisputable that the NJCFLA creates rights and protections for consumers by mandating "[licensed] business[s] will be operated honestly, fairly, and efficiently within the purposes of [the NJCFLA]" N.J.S.A. 17:11C-7(c). The NJCFLA requires character and fitness examinations for licensees, including criminal background checks, to ensure that potential bad actors do not engage in credit transactions with consumers. *See* N.J.S.A. 17:11C-7. N.J.S.A. 17:11C-16 sets net worth and liquidity requirements for licensees and applicants to ensure transparency and adequate capitalization. N.J.S.A. 17:11C-37 sets interest caps for consumer loans. N.J.S.A. 17:11C-40 limits what and how much secured collateral can be demanded from consumers. And N.J.S.A. 17:11C-42 requires availability of books and records for inspection to ensure compliance in consumer facing transactions. These are just some of the NJCFLA's provisions established to benefit and protect consumers such as Garabedian by remedying deficiencies in prior law. Thus, the first factor weighs in favor of private enforcement.

The second factor of the *In re Resolution*/*Cort* test asks whether there is any evidence that the Legislature intended to create a private right of action. The statutory and legislative history provides ample evidence that the Legislature intended that the NJCFLA protect consumers by, *inter alia*,

conferring a private right of action. *See In re Resolution*, 108 N.J. at 41-42. The NJCFLA declares "[n]o person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act." N.J.S.A. 17:11C-3(a).

> A consumer lender who violates or participates in the violation of any provision of section 3 . . . of this act, *shall be guilty of a crime of the fourth degree*. A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges. . . ."

N.J.S.A. 17:11C-33(b) (emphasis added). Defining unlicensed activity as a consumer lender as a fourth-degree crime is consistent with the legislative intent of the NJCFLA, a remedial consumer protection statute designed to combat fraud, usury, and other criminal and predatory behavior in the consumer credit industry in New Jersey. Remedial consumer protection statutes like the NJCFLA are enacted to address holes in contemporaneously existing law. And the purpose of the NJCFLA is illustrated by, *inter alia*, the provisions requiring annual criminal background for licensees and ensuring ongoing compliance with the same, as well as those provisions that evidence the NJCFLA's history of private enforcement by aggrieved consumers. *See*, *e.g.*, N.J.S.A. 17:11C-7(e); N.J.S.A. 17:11C-11; N.J.S.A. 17:11C-33(b); N.J.S.A. 17:11C-43.

N.J.S.A. 17:11C-18 codifies the enforcement power granted to the Commissioner of Banking and Insurance. And though Defendants argue that those enforcement powers are the lone vehicle for relief, the mechanism of state enforcement was not intended to limit the individual rights of aggrieved consumers. Indeed, if the Legislature intended for the NJCFLA to exclude any and all private enforcement, the Legislature would have said so—either through one of the statutory progressions of the NJCFLA or in one of its many revisions.

The present-day iteration of the NJCFLA originated as the New Jersey Small Loan Law ("NJSLL") or Small Loan Act. The NJSLL was enacted in 1914 to address the widely predatory and substantially unregulated consumer loan industry in New Jersey, primarily focusing on small loans to natural persons.

> The small loan business has long been the subject of study, legislation and judicial determination. *See Gallert, Hilborn and May*, *Small Loan Legislation* (Russell Sage Foundation, 1932); *Hubachek*, *Annotations on Small Loan Laws* (Russell Sage Foundation, 1938); *Law and Contemporary Problems* (Winter, 1941). New Jersey was one of the five large industrial states which early adopted general acts designed to regulate and control the business of making small loans. Thus *P.L.* 1914, *c.* 49 provided for the licensing of small loan companies and granted power to the Commissioner of Banking and Insurance to reject an application for license because of lack of character or fitness of the applicant. In 1916 the Russell Sage Foundation submitted its first draft of a Uniform Small Loan Law which adopted the regulatory philosophy of the New Jersey act and some of its provisions.

Family Fin. Corp. v. Gough, 10 N.J. Super. 13, 19 (App. Div. 1950); *see also Ryan v. Motor Credit Co.*, 132 N.J. Eq. 398, 401 (1942) ("However remedial our Small Loan Act may be . . . it was certainly not designed to reward or encourage fraud. The underlying reason for the drastic provisions of the act for the protection of the borrower is his credulity and susceptibility to oppression by reason of his necessitous circumstances." The NJSLL—like the NJCFLA—was meant to police the consumer credit industry and allowed for enforcement by the Commissioner as well as individual consumers.

The NJSLL was superseded by the New Jersey Consumer Loan Act ("NJCLA") in 1962. The NJCLA's espoused goal was to "prohibit [] deceptive lending practices generally, N.J.S.A. 17:10-13 (replaced by N.J.S.A. 17:11C-20)." *Lemelledo*, 150 N.J. at 271. "If a violation of the CLA [was] proven, the typical remedy, obtainable by the Department of Banking and Insurance **or by individual consumers, is voiding of the contract**," though the NJCLA **also provided for awards of damages to aggrieved consumers**. *Lemelledo*, 150 N.J. at 272 (emphasis added). The codified statutory mechanism of enforcement by which an individual consumer voided an unlawful loan contract and/or pursue treble damages was N.J.S.A. 17:11C-33(b)—the same provision of the same statute cited by Garabedian here. *Ibid*.

Between 1962 and 1983, the NJCLA was amended seven times—many of the amendments added mortgage-based provisions, such as the Secondary Mortgage Loan Act of 1970. *See* 1996 N.J. ALS 157; 1996 N.J. Laws 157; 1996 N.J. Ch. 157; 1997 N.J. A.N. 2513. "On January 8, 1997, the Governor signed the New Jersey Licensed Lenders Act, which combine[d] the [NJ]CLA with two mortgage-related statutes.[7] L. 1996, c. 157 (codified at N.J.S.A. 17:11C-1 to -49)." *Lemelledo*, 150 N.J. at 262 n.1. When the NJCLA was combined with the New Jersey Residential Mortgage Lending Act ("NJRMLA"), N.J.S.A. 17:11C-51 to -89, under the umbrella of the Licensed Lenders Act ("NJLLA"), the consumer- lending based provisions formerly known as the NJCLA became known as the "Consumer Finance Licensing Act."

Like the NJSLL and NJCLA the NJCFLA (under the umbrella of the NJLLA) allowed for a private right of action by individual consumers in addition to the enforcement remedies of the Commissioner. Though N.J.S.A. 17:11C-18 retains a codification of the Commissioner's authority to oversee licensure under the NJCFLA (as it did under the NJLLA), it does not disallow private actions by aggrieved consumers—nor has it ever. In 2010, the NJLLA,

[7] The New Jersey Residential Mortgage Lending Act ("NJRMLA"), N.J.S.A. 17:11C-51 to -89.

N.J.S.A. 17:C-1 to -49, was divided, separating the NJRMLA, N.J.S.A. 17:11C-51 to -89, from the NJCFLA. The NJRMLA and NJCFLA were now their own respective standalone statutes. Subsection 18 remained combined with the consumer lending provisions, as it had been for several decades. And reasonably so—the provisions of subsection 18 relate only to the Commissioner's authority relative to licensure to act as a "consumer lender" or "sales finance company" and do not address mortgages or real property. *See* N.J.S.A. 17:11C-2; N.J.S.A. 17:11C-3; N.J.S.A. 17:11C-18. Thus, when reviewing the history of the NJCFLA, the evidence indicated that the Legislature intended the NJCFLA to be privately enforceable.

Additional evidence exists in the statutory text—N.J.S.A. 17:11C-33(b) continues to expressly allow for treble damages—a remedy not included under the Commissioner's authority in N.J.S.A. 17:11C-18. Further, N.J.S.A. 17:11C-18(i) limits the Commissioner's authority to civil penalties "not exceeding $25,000." Thus, if an aggrieved consumer's pecuniary damages exceeded $25,000.00 and the only available recourse were through the Commissioner's express powers in Section 18, there would be no ability for recovery, relief, or penalization *beyond* the $25,000.00 limit. However, the NJCFLA defines a "[c]onsumer loan" as, inter alia, "a loan of **$50,000** or less made by a consumer lender." N.J.S.A. 17:11C-2 (emphasis added). Without

private enforcement, the NJCFLA would allow for a gap in penalties/protections for loans in between $25,000.01 and $50,000.00. *But that is not how we interpret statutes.* Courts must avoid statutory interpretations that yield unreasonable or absurd results and/or render other statutory language superfluous. *N.J. Republican State Comm. v. Murphy*, 243 N.J. 574, 592 (2020); *In re Johnny Popper, Inc.*, 413 N.J. Super. 580, 589 (App. Div. 2010). The Legislature's intent for the NJCFLA to be privately enforceable is further evidenced by the private right of action conferred by the NJCLA and the NJLLA, explained above. Thus, it is clear that the second factor of the *In re Resolution/Cort* test weighs in favor of private enforcement.

The final factor asks whether it would be consistent with the underlying purposes of the legislative scheme to infer the existence of a private right of action. The unpublished cases relied on by Unifund have cited the existence of the Commissioner's enforcement remedies at the dispositive factor under prong three, despite failing to acknowledge the legislative and statutory history as the polestar, and wholly contrary to the statute's lifetime of dual enforcement remedies. But reading the statute to be privately enforceable in conjunction with the Commissioner's enforcement powers (related primarily to issuance, enforcement, and revocation of licensure) would further, rather than frustrate, the NJCFLA's underlying purpose of curtailing deceptive practices

in the consumer credit industry. As discussed above, without private enforcement, the NJCFLA would allow for a gap in penalties/protections for loans between $25,000.01 and $50,000.00. Thus, without conferring a private right of action, the legislative scheme would not "obviate[] the plaintiffs' need for a private cause of action." *In re Resolution*, 108 N.J. at 44. Further, unlike the statute at issue in *In re Resolution*, N.J.S.A. 52:9M-8, which requires that any evidence or information related to improper investigative disclosure violations "shall be immediately brought by the commission to the attention of the Attorney General," the NJCFLA has no such requirement for 'immediate' and mandatory enforcement. To say nothing of prosecutorial resources, all of the Commissioner's enforcement remedies in Section 18 are discretionary, determining what the Commissioner "may" do rather than what shall occur as a result of a violation. Again, without conferring a private right of action, the legislative scheme would not obviate Garabedian's need for a private right of action. *Ibid.* Lastly, we must consider whether "extrapolation of the implicit private cause of action that the plaintiffs propose would frustrate, rather than further, the legislative scheme that underlies" the NJCFLA. *Ibid.* at 45. Given the protections discussed in the analysis of the first test factor above, it is reasonable to infer that private enforcement would promote further policing of the consumer credit industry, thereby prohibiting deceptive lending practices

and furthering the underlying purposes of the NJCFLA. Thus, the third test factor weighs in favor of private enforcement. The totality of evidence applied to the *In re Resolution*/*Cort* test indicates that the NJCFLA confers an implied private right of action. Thus, PRM's, DAP's, and Unifund's violations of the NJCFLA provide a basis for vacatur of the default judgment unlawfully obtained against Garabedian.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Christine Garabedian respectfully requests that the July 19, 2024 Order denying the Motion to Vacate Default Judgment be reversed.

Respectfully submitted,

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