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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2809-20**

LVNV FUNDING LLC,

Plaintiff-Respondent,

v.

RONALD MAIALETTI,

Defendant-Appellant.

Argued April 25, 2022 – Decided June 13, 2022

Before Judges Messano and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Warren County, Docket No. DC-002220-18.

Douglas S. Brierley argued the cause for appellant (Brierley & Humick, LLP, and Stephen S. Weinstein, attorneys; Douglas S. Brierley and Stephen S. Weinstein, on the briefs).

Donald V. Valenzano, Jr., argued the cause for respondent (Pressler, Felt & Warshaw, LLP, attorneys; Donald V. Valenzano, Jr., and Michael J. Peters, on the brief).

PER CURIAM

Defendant Ronald Maialetti appeals from the trial court's April 30, 2021 order denying his motion for reconsideration and to vacate a default judgment. Following our review of the record and applicable legal principles, we reverse and remand for discovery.

I.

We derive the following from the record. Plaintiff LVNV Funding LLC filed a Special Civil Part action against defendant for \$10,266.53, alleging defendant failed to repay a loan.¹ Plaintiff served the summons and complaint on September 25, 2019. Default judgment was entered on November 19, 2019. Defendant filed a pro se motion to vacate the default judgment on June 25, 2020. In support of his motion to vacate the default judgment, defendant certified he was a victim of identity theft and plaintiff had no proof of the debt. Defendant filed an answer on July 23, 2020, also indicating he never applied for nor received funds from the loan. The trial court denied the motion on August 25, 2020. It does not appear the court issued a written decision or placed findings on the record. Moreover, the trial court treated the application as a motion to vacate default, rather than an application to vacate default judgment.

¹ WebBank was the original creditor. There were three assignments of the debt prior to LVNV.

Specifically, the court's order stated, "[m]ovant's motion to vacate default is hereby denied because [he] failed to satisfy Rule 4:43-3. Movant fails to show good cause [to] warrant the court to set aside the entry of default."

After the trial court denied this motion, defendant retained counsel and filed a motion for reconsideration and to vacate default judgment on December 23, 2020. Although the court questioned whether it had a legal basis to consider the application pursuant to Rule 4:50-1 because of the time constraints for reconsideration motions under Rule 4:49-2, the court ultimately addressed the merits of the motion to vacate under Rule 4:50-1.

The trial court observed defendant had the burden of proving both excusable neglect and a meritorious defense in order to vacate the default judgment. The court noted that while defendant previously challenged proper service of the complaint, by the time the court rendered its decision on April 30, 2021, defendant was not disputing service. Because service of process was no longer an issue, the court determined defendant had "slept on his rights" and failed to establish excusable neglect.

The trial court indicated the central issue in the renewed application was whether defendant was a victim of identity theft, given his certification that he never took out the loan. Significantly, the court held that if defendant provided

"significant, competent evidence" showing he was the victim of identity theft under the meritorious defense prong, the court would be inclined to more liberally view the excusable neglect requirement under Rule 4:50-1 and "would be inclined to vacate the default judgment and set the matter down for trial." In addressing the meritorious defense prong, the court stated:

And I did want to make reference to [defendant's] certification because it has a big bearing on -- not only on [defendant's] credibility but on . . . the legal position that was staked by his lawyers in the early going of this motion that's before the court.

. . . .

But this is what I really want to make note of because it's very significant. At paragraph three, [defendant] says: And the claim by plaintiff and its attorneys that I spoke with someone from that office and admitted to the debt is absolutely false. I never called that office. I've never admitted anything of the sort to anyone.

. . . Prior to that time [May 2020] I knew nothing about the complaint filed in November 2018 or the judgment that followed.

That was [defendant's] statement. I don't find it to be credible. I think it's contradicted by . . . what was subsequently briefed and put in the papers by his attorneys, and it's obviously contradicted by the recordings that the plaintiff relies upon in opposing the motion to vacate the default judgment.

. . . .

So for all those reasons I'm required to deny the motion to vacate the default judgment and I'll enter an appropriate order.

The court ultimately found defendant had not "come forward with any competent evidence that he did not take out this loan." This appeal followed.

II.

Defendant contends the trial court misinterpreted and misapplied Rule 4:50-1(f) in denying his motion to vacate the default judgment. Defendant argues the trial court erred in making credibility findings based on the motion record and in concluding he offered insufficient proof of identity theft to establish a viable basis to vacate the default judgment. Defendant further asserts Rule 4:49-2 did not preclude the filing of a renewed motion to vacate default judgment under Rule 4:50-1.

Plaintiff counters that the trial court lacked jurisdiction to adjudicate the motion to vacate default judgment pursuant to Rule 4:49-2. Plaintiff submits the motion for reconsideration must be filed within twenty days of the final order, and the rule may not be relaxed or enlarged. See R. 1:1-2. Plaintiff avers even if the court were to consider defendant's Rule 4:50-1 application to vacate the default judgment, defendant failed to demonstrate both excusable neglect and a meritorious defense. Plaintiff contends the trial court properly determined

defendant's assertion of identity theft was unsubstantiated and insufficient to constitute a meritorious defense. Lastly, plaintiff alleges there are no exceptional circumstances to warrant relief pursuant to Rule 4:50-1(f), and the trial court made proper credibility findings based on conflicting certifications.

III.

A.

We find unpersuasive plaintiff's contention the trial court was divested of jurisdiction under Rule 4:49-2. Undoubtedly, "a motion to vacate is included within Rule 4:49-2." Baumann v. Marinaro, 95 N.J. 380, 391 (1984); see Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2019). However, whether the motion is properly considered under that rule or Rule 4:50-1 depends on the reasons asserted for the vacatur. That is, defendant is not necessarily foreclosed from seeking relief under Rule 4:50-1 simply because an application is filed outside of the time periods set forth in Rule 4:49-2. Rule 4:50-1 has its own unique provisions, and Rule 4:50-2 has its own time requirements. Plaintiff's argument would render Rule 4:50-1 moot. "In promulgating rules of practice, it was not intended to have one rule rendered meaningless by another." Hodgson v. Applegate, 31 N.J. 29, 37 (1959). Moreover, we previously held that a party is not prohibited from filing more

than one motion to vacate a default judgment under Rule 4:50-1 in appropriate circumstances, particularly in view of our court rules' overarching goal of promoting the fair and efficient administration of justice. Professional Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009).

In Baumann, the Court held a party may not invoke Rule 4:50-1 to circumvent the time limits contained in Rule 4:49-1. 95 N.J. at 392. However, the Court also determined parties are "not automatically foreclosed from relief under Rule 4:50-1 because they failed to make a timely motion under Rule 4:49-1." 95 N.J. at 393.² Relief under Rule 4:49-2 focuses on the substantive decision reached by the court in entering judgment. See Casino Reinvestment Dev. Auth. v. Teller, 384 N.J. Super. 408, 413 (App. Div. 2006) (holding a motion to vacate

² By its own terms, Rule 4:49-2 requires the movant to "state with specificity the basis on which [the application] is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred" To be successful under Rule 4:49-2, the movant must demonstrate "(1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." In re Belleville Educ. Ass'n, 455 N.J. Super. 387, 405 (App. Div. 2018) (alterations in original) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)).

that "requested reconsideration of the matter on its merits" was properly decided under Rule 4:49-2).

Here, defendant's application to vacate the default judgment did not focus on a contested, substantive issue such as the denial of an opposed summary judgment motion or jury verdict. After the court denied defendant's initial motion, defendant retained counsel, who attempted to verify the debt, and subsequently filed a motion to vacate default judgment. This renewed application can essentially be viewed as an initial motion to vacate default judgment given the initial motion was treated as a motion to vacate default. Under these circumstances, we do not find defendant's conduct in seeking to vacate the default judgment was a calculated attempt to circumvent Rule 4:49-2. Rather, defendant sought to vacate the default judgment and for the court to address the circumstances which resulted in the case being decided on procedural grounds as opposed to being adjudicated on its merits. As discussed below, although the trial court properly addressed the motion to vacate on its merits, the court misused its discretion in denying the application under Rule 4:50-1(f).

B.

"The trial court's determination under [Rule 4:50-1] warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

The motion judge is obligated to review a motion to vacate a default judgment "'with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" First Morris Bank & Tr. v. Roland Offset Serv. Inc., 357 N.J. Super. 68, 71 (App. Div. 2003) (alteration in original) (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)). "All doubts . . . should be resolved in favor of the parties seeking relief." Mancini, 132 N.J. at 334.

Rule 4:50-1 offers litigants a broad opportunity for relief from a final judgment or order:

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal

representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

[Ibid.]

If the relief is sought on contested facts, an evidential hearing must be held. Nolan v. Le Ho, 120 N.J. 465, 474 (1990).

To obtain relief from a default judgment under Rule 4:50-1(a), a defendant must demonstrate both excusable neglect and a meritorious defense. Dynasty Bldg. Corp. v. Ackerman, 376 N.J. Super. 280, 285 (App. Div. 2005). "'Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Guillaume, 209 N.J. at 468 (quoting Mancini, 132 N.J. at 335). To determine if a defense is meritorious, courts "[m]ust examine defendant's proposed defense" Bank of N.J. v. Pulini, 194 N.J. Super. 163, 166 (App. Div. 1984). "New

Jersey courts have always had the inherent equitable power to vacate judgments and, with respect to default judgments, have exercised great liberality in doing so in order for cases to be decided on the merits." Nowosleska v. Steele, 400 N.J. Super. 297, 303 (App. Div. 2008) (citing Loranger v. Alban, 22 N.J. Super. 336, 342 (App. Div. 1952)).

The failure to establish excusable neglect under Rule 4:50-1(a) does not automatically act as a barrier to vacating a default judgment pursuant to Rule 4:50-1(f) where the equities indicate otherwise. See Morales v. Santiago, 217 N.J. Super. 496, 504-05 (App. Div. 1987) (vacating judgment under Rule 4:50-1(f) after a proof hearing due to "misgivings" about the merits of plaintiff's claim even though defendant's attorney had not adequately presented defendant's case on the motion to vacate); see also Siwiec v. Fin. Res., Inc., 375 N.J. Super. 212, 218-20 (App. Div. 2005) (vacating judgment because even though defendant did not establish excusable neglect, under subsection (f), plaintiff's right to judgment presented a novel question of law and defendant was extended neither a notice of proof hearing nor a right to participate).

Subsection (f) of Rule 4:50-1, the "catchall" category, allows the court to vacate a final judgment for "any other reason justifying relief from the operation of the judgment or order." Ibid. "No categorization can be made of the

situations which would warrant redress under subsection (f) . . . [t]he very essence of [subsection] (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice." Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); see also DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 269-71 (2009). In order to obtain relief under subsection (f), the movant must demonstrate the circumstances are exceptional, and that enforcement of the order or judgment would be unjust, oppressive, or inequitable. Nowosleska, 400 N.J. Super. at 304-05; City of E. Orange v. Kynor, 383 N.J. Super. 639, 646 (App. Div. 2006). For relief under subsection (f), "strict bounds should never confine its scope." Hodgson, 31 N.J. at 41.

The trial court treated defendant's initial motion to vacate default judgment as a motion to simply vacate default. The court did not issue a written decision or render an oral opinion, so it is difficult to discern why the court denied the application.³ Accordingly, it is not clear if the court considered

³ As the Court stated in R.M. v. Sup. Ct. of N.J., 190 N.J. 1, 12 (2007), factual findings are "fundamental to the fairness of the proceedings and serve[] as a necessary predicate to meaningful review" Rule 1:7-4(a) provides that a "court shall, . . . find the facts and state its conclusions of law . . . on every motion decided by a written order that is appealable as of right." More particularly, Rule 1:6-2(f) provides, in relevant part, that:

defendant's certification disputing the debt or that an answer had been filed in which defendant denied receiving the loan. If the court recognized it was a motion to vacate default judgment, as opposed to a motion to vacate default, it may have given more weight to defendant's certification and answer denying the debt by evaluating the case under Rule 4:50-1.⁴ The disposition of this motion prevented defendant from seeking an adjudication on the merits. "We are also mindful of the well-established public policy disfavoring final dispositions

[i]f the court has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall indicate whether the findings and conclusions were written or oral and the date on which they were rendered.

. . . .

If no such findings have been made, the court shall append to the order a statement of reasons for its disposition if it concludes that explanation is either necessary or appropriate.

⁴ Additionally, defendant's initial pro se motion was filed only six months after judgment, and it is difficult to discern from the terse statement contained in the judge's order why, applying the more relaxed standards in addressing a motion to vacate default under Rule 4:43-3, the judge failed to find good cause. See, e.g., N.J. Mfr.'s Ins. Co. v. Prestige Health Grp., 406 N.J. Super. 354, 360 (App. Div. 2009) ("[T]he requirements for setting aside a default under Rule 4:43-3 are less stringent than . . . those for setting aside an entry of default judgment under Rule 4:50-1.").

based solely on procedural irregularities." SWH Funding Corp. v. Walden Printing Co., 399 N.J. Super. 1, 14 (App. Div. 2008).

On the renewed motion to vacate default judgment, we agree with the trial court that defendant failed to make a strong showing for excusable neglect under Rule 4:50-1(a). We part company with the trial court, however, regarding its analysis of defendant's meritorious defense. The court misused its discretion in determining defendant failed to establish a meritorious defense by applying a more rigorous standard than required under the case law, and by making credibility determinations based on conflicting certifications.

The trial court held defendant must come forward with "significant, competent evidence that he was the victim of identity theft." By imposing a "significant, competent evidence" standard, the court placed an undue burden on defendant not required under Rule 4:50-1. Defendant was not required to prove his defense on the motion to vacate the default, and it was sufficient that he articulated reasons that, if proven, would constitute a valid defense. T & S Painting & Maint., Inc. v. Baker Residential, 333 N.J. Super. 189, 193 (App. Div. 2000). Defendant repeatedly denied applying for the loan at issue or receiving any funds from the loan. His pro se July 2020 answer, similarly, denied plaintiff's allegations. The trial court dismissed these statements and

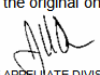
determined defendant had not come forward with "any competent evidence that he did not take out this loan." To prove a negative in this context is difficult, and it is not clear what proofs, other than a certification denying he ever applied for the loan, defendant could have advanced to satisfy the court. We find defendant's certification was sufficient to set forth a colorable, meritorious defense to plaintiff's claim.

The trial court further erred in making credibility findings on the motion record. We understand the trial court's frustration with defendant originally denying he ever contacted plaintiff's law firm about the loan, and later withdrawing that contention. However, the court should not have categorically determined defendant's other statements – regarding the issue of a meritorious defense – were necessarily suspect. It is axiomatic that trial courts should not decide contested issues of material fact on the basis of conflicting affidavits without considering the demeanor of witnesses at a hearing. Conforti v. Guliadis, 245 N.J. Super. 561, 565 (App. Div. 1991); see also Conrad v. Michelle & John, Inc., 394 N.J. Super. 1, 12-13 (App. Div. 2007) (holding a credibility issue requiring a fact finder's determination is raised by a witness's inconsistent or recanted sworn statements, and a judge cannot decide which of the two versions is more credible without a hearing or trial).

We recognize a defendant seeking to reopen a default judgment must show both excusable neglect and a meritorious defense under Rule 4:50-1(a). Siwiec, 375 N.J. Super. at 218. "In some circumstances, however, these requirements may be relaxed in the interest of justice under R[ule] 4:50-1(f)." Id. at 219. "Where either the defendant's application to reopen the judgment or the plaintiffs' proofs presented at the proof hearing raise sufficient questions as to the merits of plaintiffs' case, courts may grant the application even where defendant's proof of excusable neglect is weak." Id. at 220.

Viewing this matter indulgently, as required by Rule 4:50-1, we are satisfied the circumstances are sufficiently exceptional to entitle defendant to relief under Rule 4:50-1(f). Further, enforcement of the order or judgment would be unjust as a result of the trial court applying a higher standard than required for the meritorious defense prong, coupled with the court making improper credibility determinations on the motion record. Accordingly, we reverse and remand for discovery.⁵

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

⁵ Our court system has long been committed to the view that essential justice is better achieved when there has been adequate discovery so parties are conversant with all the available facts. Jenkins v. Rainer, 69 N.J. 50, 56 (1976).