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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1425-21**

**DAVID RAGO AUCTIONS,
INC., d/b/a RAGO ARTS &
AUCTION CENTER,**

Plaintiffs-Respondents,

v.

**DEXTER HUTCHISON and
IDYLLC STUDIOS,**

Defendants-Appellants.

Argued May 17, 2023 – Decided September 20, 2023

Before Judges Vernoia, Firko, and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Hunterdon County, Docket No. L-0526-19.

Robert J. Donaher argued the cause for appellants
(Herold Law, PA, attorneys; Robert J. Donaher, of
counsel and on the briefs).

Kasey T. Mahoney argued the cause for respondents
(Gordon Rees Scully Mansukhani, LLP, attorneys;
Ronald A. Giller, of counsel and on the brief; Kasey T.
Mahoney, on the brief).

PER CURIAM

In this matter involving the online auction sale of an antique Dominique chest, defendants appeal from a Law Division order denying reconsideration of a summary judgment order entered in favor of plaintiff, David Rago Auctions, Inc., that allowed its proper corporate name to be added to the judgment. The order also denied defendants', Dexter Hutchinson and Idyllic Studios, cross-motion to dismiss the complaint with prejudice. Defendants contend that because plaintiff conducted the auction under a trade name that was not registered in New Jersey in accordance with N.J.S.A. 14A:2-2.1, the motion court lacked jurisdiction over the proceedings that resulted in the initial grant of summary judgment warranting vacatur of the judgment and dismissal of the complaint. After considering defendants' arguments in light of the record, we disagree and affirm.

I.

The parties are antique dealers with a business relationship dating back to 2012. Plaintiff is a New Jersey based auction house located at 333 North Main Street in Lambertville that conducts online and in-person auctions of furniture and fine art. Defendant Dexter Hutchinson is a small business owner and

vintage furniture dealer based in Los Angeles, California, doing business as Idyllic Studios.

In August 2018, plaintiff sold the chest in question to defendants through an online auction with a \$275 winning bid as part of lot 697. A month later, defendants had the chest picked up at their expense from plaintiff's Lambertville facility and shipped to defendants' retail store in Los Angeles. At the time of the auction, David Rago Auctions, Inc. was a registered New Jersey corporation doing business under the trade name "Rago Arts & Auction Center."

Prior to the auction, plaintiff provided defendants with a contract containing "Terms of Sale," which all bidders must agree to in order to participate in the auction. The Terms of Sale were posted on Rago Arts & Auction Center's website, which included its phone number and email address—"info@ragoarts.com." The Terms of Sale includes the following provision:

§ 27. Rescission by the Auction House

In the event the Auction House receives notice of an adverse claim with respect to a sold Lot, the Auction House shall have the right (but not the obligation), in its sole and absolute discretion, to rescind the sale to you, upon written notice to you. Upon such notice, you will promptly return the purchased Lot to the Auction House[']s premises in the same condition as when you purchased it. Following our receipt of the Lot, we will then promptly refund you the full Purchase Price, including the Buyer[']s Premium and applicable taxes

paid. You will have no further recourse against the Auction House or the consignor, and the Auction House and the consignor shall not be liable for any damages.

In February 2019, plaintiff received notice of an adverse claim when the chest's owner, Elizabeth Ray, claimed that plaintiff was not authorized to sell the chest at auction and demanded its return from plaintiff. According to Ray, plaintiff rightfully possessed the chest at the time of the auction, but she never gave the auctioneer permission to sell the chest without a reserve or minimum price. Plaintiff's investigation revealed the chest was sold by mistake without authorization from Ray as a result of an error by a non-party warehouse that held the chest for appraisal purposes along with other items to be sold by plaintiff.

David Rago contacted Dexter Hutchinson and inquired whether Hutchinson still had the chest and if so, whether he could buy it back. Hutchinson asserts Rago did not disclose that Ray wanted the chest back and claims Rago instead misrepresented to him that a new buyer was interested in purchasing the chest. Because the chest was in poor condition, Rago and Hutchinson negotiated a tentative buy-back price that would have allowed Rago to regain the chest for \$1,700.

However, Hutchinson studied the chest more carefully and ascertained it may be a valuable item known as a "Dominique" that became popular in the

1920's and 1930's. Hutchinson learned from Ray the chest was an authentic Dominique chest and had a value of \$15,000 to \$20,000 in its current condition and could be worth as much as \$40,000 to \$50,000 if restored. Rago called Hutchinson and admitted the chest was mistakenly sold at the auction and offered to find a replacement chest, which was unacceptable to Hutchinson.

Plaintiff then notified defendants it was invoking its right to rescind the sale of the chest pursuant to Section 27 of the Terms of Sale and requested defendants return the chest. Defendants refused to do so. Multi-state litigation ensued.

The New York Litigation

In November 2019, more than a year after the auction, Ray filed an action against plaintiff in the Supreme Court of the State of New York seeking return of the chest. See Elizabeth Ray v. Rago Auctions.Com, Inc. d/b/a Ragoarts.com, et al., Index No. 160817/2019. Plaintiff—who is the defendant in the New York action—filed an answer with affirmative defenses. Defendants claim Ray's complaint pleads negligence against David Rago Auctions, and she is entitled to monetary relief, not a return of the chest, because defendants are bona fide purchasers of the chest. The New York litigation has been stayed by consent of the parties pending a decision from this court.

The New Jersey Litigation

In December 2019, plaintiff filed a two-count complaint against defendants in the Law Division alleging breach of contract and requesting injunctive relief—return of the chest to plaintiff, who could in turn return it to Ray, who allegedly wants the chest back for sentimental reasons. In lieu of filing an answer, defendants filed two motions to dismiss the complaint. The court denied both motions as premature because no discovery had been exchanged.¹ Defendants then filed an answer.

In June 2020, plaintiff moved for summary judgment, which was adjourned at defendants' request. However, defendants did not file opposition or a responding statement either admitting or disputing each of the facts in plaintiff's moving statement as required by Rule 4:46-2(b)² even though they

¹ No other information is provided in this record about the motions to dismiss, and the orders are not contained in the appendices.

² Rule 4:46-2(b) addresses the requirements for a party opposing a summary judgment motion:

A party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement. Subject to R[ule] 4:46-5(a), all material facts in the movant's statement which are

were represented by counsel. The court conducted oral argument on the motion and subsequently granted plaintiff's motion as unopposed. The court ordered defendants to "immediately return to [p]laintiff, at their own expense, the Dominique [c]hest." On August 28, 2020, a memorializing order was entered. Plaintiff's counsel contacted defendants' counsel to arrange for the return of the chest that same day, but defendants did not return the chest.

Plaintiff then moved to enforce litigant's rights against defendants seeking a return of the chest, and defendants' counsel cross-moved to be relieved as counsel. On October 29, 2020, the court heard argument on both motions. Defendants' counsel orally opposed plaintiff's motion to enforce litigant's rights but did not submit written opposition. The court granted both motions that day following argument. In granting plaintiff's motion, the court held "[p]laintiff had a clear contractual right to bring this action seeking a return of the

sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact. An opposing party may also include in the responding statement additional facts that the party contends are material and as to which there exists a genuine issue. Each such fact shall be stated in separately numbered paragraphs together with citations to the motion record.

Dominique [c]hest." The court was "satisfied that by the end of January 2020, at the latest, defendants were aware of plaintiff's claim" and "were aware that they had no substantive defense to the claim for return of the chest," and "were or should have been aware of their exposure to an award of counsel fees and costs."

The court also granted plaintiff's request for counsel fees and costs in the amount of \$19,588.69, and ordered defendants to pay a monetary fine to plaintiff in the amount of \$100 per day for each day thereafter defendants continued to violate the summary judgment order and not return the chest. The court noted in the addendum to its order that "[n]o substantive defense to the plaintiff's claim was ever presented on behalf of defendants." Plaintiff immediately served the order upon defendants at multiple known addresses by certified mail, return, receipt requested, which defendants signed and acknowledged on November 3, 2020. Defendants did not comply with and did not appeal from the August 28, 2020 or October 29, 2020 orders.

The California Litigation

After seven months passed without defendants returning the chest, plaintiff filed an application for entry of judgment in the Superior Court of California, County of Los Angeles, where defendants reside and are domiciled,

under the Sister-State Money Judgments Act, to perfect and enforce the October 29, 2020 New Jersey order and underlying August 28, 2020 order. Cal. Civ. Proc. Code § 1710.40(b). On December 21, 2020, the California court granted the application and entered judgment in California against defendants. Defendants did not comply with the California judgment and did not return the chest to plaintiff.

On January 29, 2021, the day plaintiff requested an officer aid in removing the chest from defendants, they filed a motion in the California court to vacate or stay enforcement of the sister-state judgment under Cal. Civ. Proc. Code § 1710.40(a), based on the following three reasons: (1) plaintiff's trade name, "Rago Arts & Auction Center," was not registered in New Jersey in violation of N.J.S.A. 14A:2-2.1 at the time the auction was held; (2) plaintiff's alleged "misconduct" in seeking to have the chest returned under false pretenses; and (3) defendants' dissatisfaction with their former counsel's representation in the New Jersey action.

Defendants contended the New Jersey judgment is unenforceable because "David Rago Auctions, Inc." transacted business under a different name, "Rago Arts & Auction Center." Defendants claimed plaintiff violated New Jersey law unless plaintiff also used the name "David Rago Auctions, Inc." in the

transaction, or its alternate name—"Rago Arts & Auction Center"—was registered with the Secretary of State pursuant to N.J.S.A. 14A:2-2.1(1). Defendants maintained that the Terms of Sale contract only contains the alternative name, "Rago Arts & Auction Center," and does not mention "David Rago Auctions, Inc." Thus, defendants contended before the California court that the New Jersey action was barred under N.J.S.A. 14A:2-2.1(6), which prohibits a corporation from "maintain[ing] any action or proceeding in any court of this State arising out of a contract or act in which it used such alternative name until it has filed such a certificate."

Defendants also alleged plaintiff is "guilty of misconduct" because it wrongfully sold "an item at auction to an innocent good-faith purchaser without authorization . . . and by making intentional misrepresentations to [Hutchinson] in an attempt to fraudulently induce him into selling back the [c]hest at an undervalued price."

Defendants also argued they were deprived of "an opportunity to be heard" in the New Jersey court because their counsel failed to: (1) engage in discovery; (2) reply to plaintiff's motion to dismiss; (3) oppose plaintiff's motion for summary judgment; (4) keep defendants informed about the status of the matter; (5) explain the implications of not opposing plaintiff's motion for summary

judgment; (6) explain the significance of the court's order; and (7) provide defendants with information about when and how to appeal. Defendants also requested the California court stay enforcement of the New Jersey judgment.

In opposition, plaintiff argued it was not using its trade name "in any deceptive fashion," and that the Terms of Sale nonetheless "constituted a valid, actionable contract." Plaintiff did not deny it failed to file the certificate of registration for Rago Arts & Auction Center. The California court stayed enforcement of its entry of the October 29, 2020 order pending briefing and a decision on defendants' motion.

On March 18, 2021, the California court vacated its December 21, 2020 order finding its order was not enforceable "in the state of rendition"—New Jersey—because "David Rago Auctions, Inc." transacted business under another name, "Rago Arts & Auction Center." The California court found defendants correctly pointed out that plaintiff's trade name was never registered with the New Jersey Secretary of State as required by N.J.S.A. 14A:2-2.1(1), which provides that:

(1) No domestic corporation, or foreign corporation which transacts business in this State within the meaning of section 14A:13-3, shall transact any business in this State using a name other than its actual name unless

(a) It also uses its actual name in the transaction of any such business in such a manner as not to be deceptive as to its actual identity . . .

(6) The failure of a corporation to file a certificate of registration or renewal of alternate name shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action or proceeding in any court of this State, but no such corporation shall maintain any action or proceeding in any court of this State arising out of a contract or act in which it used such alternate name until it has filed such a certificate.

The California court found there was "no dispute" that the Terms of Sale did not reference plaintiff's true corporate name, David Rago Auctions, Inc., but recited the alternative, unregistered name—Rago Arts & Auction Center. But, the California court acknowledged plaintiff's representation that David Rago Auctions, Inc. and Rago Arts & Auction Center "are the same entity" and the latter name was just a trade name used for business purposes. Because plaintiff did not file a certificate of registration of alternate name with the New Jersey Secretary of State when the complaint was filed, the California court concluded the action "appears to have been barred," and defendants met their burden by a preponderance of the evidence to show the New Jersey judgment "is unenforceable as [plaintiff] lacked standing to maintain the action in the first instance."

The California court noted "this issue was never raised before the New Jersey court despite [defendants'] filing of two motions to dismiss; . . . and the court does not know how the New Jersey court would have addressed this issue." Regarding plaintiff's alleged misconduct, the California court considered defendants' argument on this issue and a lengthy email chain submitted in support of their allegation. The California court rejected the misconduct argument because it noted the Terms of Sale "expressly provided" that plaintiff maintains the right to "rescind a sale notwithstanding that [defendants were] a 'good-faith purchaser.'" In addition, the California court emphasized defendants were "on notice of, and contractually provided for resolution of, adverse claims against property sold by [plaintiff]."

Finally, the California court was unpersuaded by defendants' incompetency of counsel argument, noting the "ineffectiveness of representation was attributable to Hutchinson's repeated failure to respond" to his counsel, and the alleged incompetence did not "rise to the level of a deprivation of due process." The California court denied defendants' motion to stay enforcement of the judgment because it granted defendants' motion to vacate the California judgment. A memorializing order was entered.

New Jersey Litigation–Post-California Enforcement

Thereafter, on March 19, 2021, plaintiff filed a certificate of registration in accordance with N.J.S.A. 14A:2-2.1 for Rago Arts & Auction Center and moved under Rule 4:50-1(f) to amend the August 28, 2020 order granting plaintiff summary judgment and the October 29, 2020 enforcement order to reflect its properly registered name nunc pro tunc. Plaintiff contended it cured the technical violation under N.J.S.A. 14A:2-2.1, and the name change did not affect the previous proceedings because plaintiff was a domestic corporation with standing to bring the action even though it was filed under its unregistered trade name. Plaintiff argued that since 2012, during its course of repeated business dealings with defendants, it has sent numerous invoices to defendants identifying David Rago Auctions, Inc. with the same Lambertville address on the invoices, and therefore, no deceit or prejudice inured to defendants. According to plaintiff, defendants paid the invoices directly by check to "David Rago Auctions, Inc." on multiple occasions, and thus, there was no deception.

Defendants opposed the motion and cross-moved to vacate the two orders maintaining the statutory violation of N.J.S.A. 14A:2-2.1, even if simply technical, barred plaintiff from recovery because the New Jersey court lacked subject matter jurisdiction over the original proceedings because plaintiff did

not file its complaint using its properly registered corporate name. Defendants argued plaintiff's violation of N.J.S.A. 14A:2-2.1 constituted a meritorious defense as to the circumstances surrounding the 2018 auction because the New Jersey court lacked subject matter jurisdiction because of the statutory violation involving plaintiff's trade name.

On July 16, 2021, the court granted plaintiff's motion to amend the judgment to reflect its proper name and rendered an oral opinion. The court found the question to be decided was whether plaintiff is required "to start all over again" in light of a cured technical violation under N.J.S.A. 14A:2-2.1. The court reasoned that "considering the facts and circumstances, the history of the case, [and] the legal positions of the parties, [the court] didn't find anything in the statutory language or in the case law that would support the contention . . . defendant[s] raised here, . . . plaintiff should be barred" and the case should be dismissed "with prejudice," or require such an outcome. The court emphasized defendants still had not presented "any real meritorious defense." An amended judgment was entered.

Defendants moved for reconsideration and for relief under Rule 4:50-1(f), reiterating their argument that under N.J.S.A. 14A:2-2.1, the court lacked subject matter jurisdiction when it initially decided the summary judgment

motion. On September 27, 2021, the court conducted oral argument on the reconsideration motion.

At the hearing, the court directed the parties to supplement their briefs on the issue of subject matter jurisdiction and address whether plaintiff had standing at the time summary judgment was entered in light of its unregistered trade name, whether the court can or should enforce the summary judgment order that was entered, and whether the judgment is void. Following extensive further briefing, on December 3, 2021, the court placed its reconsideration decision on the record.

The court emphasized there were "significant consequences" regarding defendants' delay in moving for relief and defendants cannot "raise lack of standing as a basis to . . . avoid a default judgment because [they] . . . didn't bring the motion within a reasonable time." The court reiterated its prior understanding that plaintiff wasn't aware it had violated the corporate registration requirements of N.J.S.A. 14A:2-2.1. The court noted this was a "technical violation" of the statute, an "oversight," or "inadvertent mistake," that warranted relief from enforcement under N.J.S.A. 14A:2-2.1(6). Specifically, the court rejected defendants' argument that plaintiff had to start "anew" in a proceeding on its claims and highlighted the protracted history of the litigation.

Under Rule 4:50-1(f), the court analyzed two issues: (1) whether defendants raised a meritorious defense to the complaint; and (2) whether defendants' cross-motion to vacate the judgment was filed in a timely manner. The court decided both issues in the negative. Regarding a meritorious defense, the court drew a distinction between subject matter jurisdiction and standing. The court concluded it never lacked subject matter jurisdiction because plaintiff had the right to file suit even in the face of a technical violation of N.J.S.A. 14A:2-2.1, because the violation only went to the issue of standing, and not subject matter jurisdiction.

The court declined to give full faith and credit to the California court's decision noting the California court did not address the standard for relief from a final judgment in New Jersey under Rule 4:50-1(f). In addition, the court reasoned that the California court limited its ruling to the standing issue only, not subject matter jurisdiction, and the ruling was not "well-articulated in any real sense."

The court highlighted that defendants knew or should have been aware of the potential standing defense sooner but waited until July of 2021—nearly three years after the auction took place—to move to set aside the judgment and the subsequent enforcement order. The court denied defendants' motion for

reconsideration and allowed plaintiff's amended judgment for possession of the chest to stand. The court then ordered the parties to discuss safekeeping of the chest, including securing a bond, pending the outcome of the appeal. The court also ordered defendants to preserve and care for the chest and prohibited plaintiff from pursuing any enforcement action in California or elsewhere pending appeal.

Defendants moved for a stay of the July 16, 2021 judgment granting possession of the chest to plaintiff pending an appeal. On January 26, 2022, following argument, the court granted defendants' motion.³ The court also ordered defendants to preserve the chest in its present condition and to post an \$8,000 bond representing the "fair market value" of the chest, although the record does not indicate how this amount was determined. This appeal followed.

Before us, defendants present the following arguments for our consideration:

(1) the court erred in granting plaintiff's motion to amend the judgment and denying defendants' cross-motion to vacate or dismiss because plaintiff was disqualified from maintaining this action due to its violation of the corporate registration requirements rendering the original judgment null and void;

³ The January 26, 2022 transcript is not contained in the record on appeal.

(2) the court erred by holding the statutory bar to suit did not deprive the court of subject matter jurisdiction;

(3) defendants properly moved to vacate the voided original judgment procedurally and within a reasonable period of time; and

(4) the California court's decision vacating the judgment must be respected as a matter of interstate comity.

II.

Relief under Rule 4:50-1, except for relief from default judgments, is "granted sparingly," and in exceptional circumstances. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); See U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (finding that 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").

III.

A.

We consider first defendants' argument the court erred in granting plaintiff's motion to amend the judgment and denying defendants' cross-motion to vacate the judgment or dismiss the complaint because plaintiff did not

properly register the trade name under which it engaged in the auction transaction. Defendants contend N.J.S.A. 14A:2-2.1 bars a corporate entity from filing or prosecuting a suit in any name other than the one properly registered with the Secretary of State. Defendants argue a corporation, such as plaintiff, using an alternative trade name, is statutorily prohibited from maintaining "any action or proceeding in any court of this State arising out of a contract or act in which it has used an alternative trade name until it has filed [the required] certificate," citing N.J.S.A. 14A:2-2.1(6).

Defendants contend that at the time the auction took place, "David Rago Auctions, Inc.," was a New Jersey corporation and was not permitted to transact business in New Jersey using any other name. However, the Terms of Sale only contain plaintiff's alternate name, "Rago Arts & Auction Center" and defendants argue plaintiff violated New Jersey law in bringing the action against defendants "despite being explicitly prohibited from doing so." Defendants contend plaintiff's non-compliance with N.J.S.A. 14A:2-2.1(1) and (6) was adjudicated in the California court, which found plaintiff's lack of standing was "essentially" a jurisdictional defect that was not waived despite the failure of defendants' counsel to raise standing as a legal defense.

Plaintiff counters defendants' merits brief fails to address the denial of reconsideration, and the issue is therefore waived. Plaintiff also argues defendants' inexcusable delay in challenging plaintiff's alternate trade name and defendants' misplaced reliance on case law interpreting foreign entities instead of domestic corporations, such as plaintiff, and their failure to acknowledge exceptions afforded to parties for per se violations of N.J.S.A. 14A:2-2.1, warrant affirmance.

There are multiple exceptions in the statute for per se violations. Relevant here, for example, N.J.S.A. 14A:2-2.1(1)(a), provides an exception if the corporation . . . "also uses its actual name in the transaction of the business in such a manner as not to be deceptive as to its actual identity" The legislative intent behind N.J.S.A. 14A:2-2.1 was "to create a public record of fictitious names used by corporations and thereby eliminate the possibility of deception." G.D. Searle & Co. v. Cohn, 455 U.S. 404, 418 (1982).

Plaintiff violated N.J.S.A. 14A:2-2.1. However, a violation of N.J.S.A. 2-2.1 does not automatically void a judgment obtained by an offending party. Moreover, a corporation's failure to comply with the statute does not permit the draconian remedy of voiding a judgment that was entered more than two years earlier where both parties were represented by counsel as was the case here.

We are convinced plaintiff never deceived defendants. When the auction of the chest took place, David Rago Auctions, Inc., was a duly formed New Jersey corporation and used its corporate name in the subject auction with defendants. And, the record shows defendants have conducted business with "David Rago Auctions, Inc." since 2012, and defendants were aware that "Rago Arts & Auctions Center" was its alternate name as evidenced by Rago's invoices. Rago certified in opposition to defendant's motion for reconsideration that Hutchinson received and paid invoices to Rago by making payments to "David Rago Auctions, Inc." with an address of 333 North Main Street in Lambertville. Hutchinson picked up the chest from Rago's Lambertville facility. Communications were exchanged between the parties over the past decade, which included person-to-person telephone communication between David Rago and Dexter Hutchinson.

Further, Rago and Hutchinson spoke directly to each other on the phone about the chest in an attempt to resolve the matter amicably before litigation ensued. Plaintiff has maintained its same Lambertville address throughout the course of dealings between the parties, and plaintiff's website addresses, info@ragoarts.com and "ragoarts.com," contain the name "Rago." It is plainly evident that David Rago has owned and controlled the company for many years

because his name appears in the corporate name, trade name, website addresses, invoices, and the Terms of Sale.

Defendants have not presented any evidence that they were tricked or misled by David Rago Auctions, Inc.'s use of its trade name at the time of the auction or throughout the litigation. Rago's name appears in the corporate name and the trade name. Defendants have never disputed these facts and never developed proofs to support a claim against plaintiff based on deception. Clearly, defendants were on notice that the company they were doing business with and the company that brought suit are the same entity.

As we explained in African Bio-Botanica v. Leiner, a tardy registration under N.J.S.A. 14A:2-2.1, "will require payment of back fees and, possibly, a penalty, but the failure to file 'shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action or proceeding in any court of this State.'" 264 N.J. Super. 359, 363 (App. Div. 1993).

We review an order denying reconsideration for abuse of discretion. Reconsideration "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Rather, "[r]econsideration should be

utilized only for those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Reconsideration is only to point out "the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." Palombi, 414 N.J. Super. at 288.

Accordingly, we will not disturb a trial judge's denial of a motion for reconsideration absent "a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). Such circumstances arise "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Pitney Bowes Bank, 440 N.J. Super. at 382.

In the present case, the court found, based on substantial credible evidence in the record, that defendants were informed they were dealing with Rago, whether under the corporate name or a trade name, which both contain the Rago name, as evidenced by the course of dealings between the parties dating back to 2012—six years before the auction took place—and that David Rago Auctions,

Inc. was a legitimately formed and active domestic corporation. In reality, the parties are auctioneers and have dealt with each other for a long time. Defendants never established that plaintiff concealed its corporate identity. There was no confusion as to who or what plaintiff is. Because defendants developed no proofs to support their claim that a technical violation of N.J.S.A. 14A:2-2.1 automatically voids a judgment, we conclude the court did not err in denying defendants' motion for reconsideration, denying defendants' motion to dismiss the complaint, and denying defendants' motion for Rule 4:50-1 relief.

B.

We next address defendants' argument that the court erred by holding the statutory bar to suit did not deprive the court of subject matter jurisdiction. Defendants interpret the California court's ruling on plaintiff's lack of standing due to its technical violation of N.J.S.A. 14A:2-2.1, to constitute a jurisdictional determination despite defense counsel's failure to raise lack of standing as a defense in the New Jersey action. Defendants maintain that standing is a jurisdictional issue that cannot be waived or consented to. Defendants also argue standing is governed by the real party in interest rule set forth in Rule

4:26-1,⁴ and since plaintiff lacked standing to sue, and there is no other real party in interest, the court could not adjudicate the matter.

Our courts have taken a "generous view of standing." In re New Jersey State Cont., 422 N.J. Super. 275, 289 (App. Div. 2011). Standing is an element of justiciability, not jurisdiction. Deutsche Bank Nat. Tr. Co. v. Russo, 429 N.J. Super. 91, 101-02 (App. Div. 2012). Defendants rely on Reynolds Offset Company, Inc. v. Alexander and Edith Summer to support their position that plaintiff's non-compliance with the applicable corporate registration requirements goes to the issue of subject matter jurisdiction, which is non-waivable and can be considered by the appellate court in the first instance if not presented to the trial court. 58 N.J. Super. 542, 547 (App. Div. 1959).

In Reynolds, we concluded New Jersey courts had no jurisdiction to grant relief to plaintiff who filed a breach of contract action because plaintiff was a New York corporation which was not authorized to do business in this State. The Reynolds court addressed the issue of the foreign corporation's ability to bring suit in this State absent a certificate authorizing it to do business in the

⁴ The real party in interest rule states in pertinent part: "Every action may be prosecuted in the name of the real party in interest" R. 4:26-1.

State. We considered the issue of jurisdiction in the first instance in spite of defendant's failure to raise the issue before the trial court.

Here, the court determined Reynolds—and the other cases relied on by defendants—to be irrelevant and defendants' reliance upon Reynolds to be misguided. The plaintiff in Reynolds, unlike plaintiff here, dealt with a New York corporation, and nonetheless, was not barred from maintaining an action in New Jersey despite not fulfilling all corporate statutory filing requirements. Reynolds, 58 N.J. Super. at 550. The motion court here duly found that while "there was dicta in the [Reynolds] case that was favorable to defendants, . . . it was not dispositive . . . of the standing or the jurisdictional issues that [are] before the court." The court scrutinized the cases cited by defendants distinguishing standing from subject matter jurisdiction and aptly concluded, and we agree, it did not lack subject matter jurisdiction.

The United States Constitution requires that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. A state must therefore enforce the judgment of a sister state, "if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment[.]" Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998).

Domestication of a foreign judgment is not an opportunity to collaterally attack the foreign judgment, except in very limited circumstances, such as the denial of due process in the state issuing the judgment. See Arnold, White & Durkee, Pro. Corp. v. Gotcha Covered, Inc., 314 N.J. Super. 190, 195-96 (App. Div. 1998). A denial of due process occurs when "the rendering state (1) lacked personal jurisdiction over the judgment debtor, (2) lacked subject matter jurisdiction, [or] (3) failed to provide the judgment debtor adequate notice and an opportunity to be heard." Sonntag Reporting Servs., Ltd. v. Ciccarelli, 374 N.J. Super. 533, 538 (App. Div. 2005) (alteration in original) (quoting In Sik Choi v. Kim, 50 F.3d 244, 248 (3d Cir. 1995)).

Absent a due process defense, a litigation pursued to judgment in a sister-state is "conclusive of the rights of the parties in the courts of every state as though adjudicated therein." Sonntag, 374 N.J. Super. at 538 (citing DeGroot, Kalliel, Traint & Conklin, P.C. v. Camarota, 169 N.J. Super. 338, 343 (App. Div. 1979)). Sister courts may inquire into due process defenses only if "those issues have not been litigated in the foreign court." Sonntag, 374 N.J. Super. at 538.

On appeal, defendants argue the California court's decision vacated the New Jersey judgment and must be respected as a matter of interstate comity and

full faith and credit. Defendants argue the court should have respected the California court's decision, reinstated the underlying New Jersey proceeding, and afforded defendants an opportunity to present their defense—that plaintiff's claimed entitlement to an open-ended right to rescind a sale that can be invoked months after the auction, is not supported by a reasonable interpretation of the Terms of Sale or facts and circumstances of this case. We disagree.

Cal. Civ. Proc. Code §1710.40 provides that "[a] judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister-state judgment[.]" See Cal. Civ. Proc. Code §1710.40(a). Notwithstanding, Cal. Civ. Proc. Code §1710.40 "does not create an opportunity to raise defenses to the merits of the underlying claims resolved in the sister-state judgment" and a "California court, in ruling on a motion to vacate entry of a sister-state judgment, may not retry the case." Casey v. Hill, 79 Cal. App. 5th 937, 977 (App. Ct. 2022). Consequently, defendants' motion to vacate the California entry of judgment "[wa]s not an appeal of the [New Jersey] judgment." Ibid.

Rather, the California courts' determination narrowly limited the denial of the enforcement of the New Jersey judgment and enforcement order within the State of California. Simply put, the California court merely vacated its entry of

judgment filed on December 21, 2020, and nothing more. The California court did not and could not vacate the New Jersey court's August 28 and October 29, 2020 orders and did not have authority or jurisdiction to do so. Arnold, White and Durheo, Pro. Corp. v. Gotcha Covered, Inc., 314 N.J. Super. 190, 195-96 (App. Div. 1996).

A cause of action to enforce a judgment is distinct from the cause of action upon which that judgment was entered. Milwaukee County v. M.E. White Co., 296 U.S. 268, 275 (1935). In a suit to enforce a money judgment, the validity of the original claim upon which the judgment was founded will not be analyzed. Ibid. The court here aptly determined the California court did not address the standard of relief from a final judgment. Moreover, the issue of standing was never addressed previously by the New Jersey court. Therefore, we conclude the court here properly declined to follow or abide by the California court decision, and there was no error in the motion court's refusal to do so.

C.

Defendants next argue they timely moved to vacate the "voided judgment" procedurally and within a reasonable period of time under Rule 4:50-1(f). Defendants contend that even if they were under such a duty, they discharged their duty by successfully vacating plaintiff's judgment in the California court

and through their cross-motion for dismissal or to vacate the judgment before the New Jersey court in response to plaintiff's motion to amend the judgment. Again, we disagree.

Defendants mischaracterized the California court's decision as voiding the New Jersey orders; the California court merely vacated its own order, which entered a sister-state judgment. The court here noted that defendants "knew all the facts to support [their] argument based upon . . . the adverse claim" and "[a]ll those facts were known to [defendants] by spring of 2020." The court also emphasized that even if defendants' delays in summer and early fall of 2020 were excusable, the court couldn't excuse the fact that defendants did "nothing from late October until January in California" and defendants didn't "do anything in New Jersey until June 2021 to attempt to set aside the judgments here." Moreover, the court explained if it were inclined to grant defendants' application, it "would have granted a substantial award of counsel fees to the plaintiff because, in balancing everything out . . . the defendant[s] here [were] guilty of . . . inexcusable delays that cost everybody, and certainly resulted in a tremendous consumption of judicial resources, both here in New Jersey and in California." We agree.

When considering Rule 4:50-1 as a basis for relief,

[n]o categorization can be made of the situations which would warrant redress under subsection (f) . . . the very essence of (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice.

[Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); see also Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994).]

The movant's right to relief depends on the totality of the circumstances, and the correctness or error of the original judgment is ordinarily an irrelevant consideration. See In re Guardianship of J.N.H., 172 N.J. 440, 476 (2002). Clearly, defendants attempted to make a "last ditch effort to relitigate the case," and the court did not abuse its discretion in finding defendants were not entitled to equitable relief. See Deutsche Bank v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2002). The court highlighted that defendants were aware of all the facts to support their adverse claim argument by spring of 2020, and even if the court was inclined to excuse defendants' delays during the pandemic in summer and early fall of 2020, their dilatoriness thereafter was inexcusable. We are satisfied that defendants have not advanced any compelling ground for relief under Rule 4:50-1(f), and the court did not abuse its discretion in denying defendants' cross-motion to vacate the judgment.

D.

Finally, defendants essentially reiterate that the October 29, 2021 order enforcing litigant's rights was voided by the California court on the basis plaintiff violated the corporate registration requirements of N.J.S.A. 14A:2-2.1 by engaging in the unauthorized conduct of business through an unregistered alternative trade name. According to defendants, this violation deprived plaintiff of standing to sue under N.J.S.A. 14A:2-2.1(f), and, under the authority of California law, the California court vacated the foreign sister state New Jersey judgment on the ground the judgment is not enforceable in the state of rendition. Defendants argue as a matter of interstate comity, the California court's decision must be respected. Again, we disagree.

Comity is "grounded in the policy of avoiding conflicts in jurisdiction, . . . and the general principle that the court which first acquires jurisdiction of an issue has precedence, in the absence of special equities." Fantony v. Fantony, 21 N.J. 525, 533 (1956). Here, New Jersey had jurisdiction first and adjudicated the matter. The California court could not retry the matter or conduct an appellate review of this State's orders and judgment. We reject defendants' argument that Cal. Civ. Proc. Code § 1710.40 can be interpreted to create an

opportunity to raise defenses to the merits of the underlying claims resolved in New Jersey. See Casey v. Hill, 79 Cal. App. 5th 937, 997 (Cal. Ct. App. 2022).

To the extent we have not specifically addressed any of defendants' arguments, it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E)

Affirmed. The trial court's stay is vacated.

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



CLERK OF THE APPELLATE DIVISION