

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3545-22**

**JEFFERSON CAPITAL SYSTEMS,
LLC, a/s/o BLUESTEM BRANDS,
INC/SANTANDER CONSUMER
USA,**

Plaintiff-Respondent,

v.

DEBORAH A. GLOVER,

Defendant-Appellant.

Argued June 5, 2024 – Decided June 18, 2024

Before Judges Firko and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. DC-006533-17.

Mark H. Jensen argued the cause for appellant (Kim Law Firm LLC, attorneys; Yongmoon Kim and Mark H. Jensen, on the briefs).

Jay I. Brody argued the cause for respondent (Sessions Israel & Shartle, attorneys; Aaron R. Easley and Jay I. Brody, on the brief).

PER CURIAM

Defendant Deborah A. Glover appeals from a June 20, 2023 order denying her motion to vacate a wage execution and default judgment entered in favor of plaintiff Jefferson Capital Systems, LLC, a/s/o Bluestem Brands, Inc/Santander Consumer USA.¹ We affirm.

I.

We derive the following facts from the record. In June 2017, Jefferson filed a collection action against defendant for \$1,070.06. Defendant was the account holder of a credit card or line of credit upon which she defaulted. The complaint states Jefferson "is the current owner of the debt and retains all rights, title and interest to the debt," and that the debt "originated with Bluestem Brands, Inc/Santander Consumer USA." The return of service indicated a copy of the summons and complaint was mailed to defendant's home address in Paterson, via regular and certified mail, return receipt requested. The regular mail was not returned, and the certified mail was returned as "unclaimed."

Having failed to respond to the complaint, plaintiff moved for, and the court entered, default judgment against defendant for the underlying debt plus costs, totaling \$1,127.06, plus post-judgment interest, on November 7, 2017. On

¹ We use "plaintiff" and "Jefferson" in our opinion interchangeably.

February 17, 2023, plaintiff moved for an execution against defendant's wages because a balance of \$1,285.62 remained outstanding. On March 16, 2023, the court granted plaintiff's request for a wage execution.

Nearly six years after the 2017 entry of final judgment, defendant filed a motion to vacate the wage execution and final judgment pursuant to Rule 4:50-1(d) and (f). In her moving certification, defendant stated she was never served with the summons or complaint. Defendant certified in 2017, she was "living in the same apartment" as she does now, which consists of "about fifty (50) units." Defendant stated "the outside door of the building is kept locked at all times," and in 2017, "the building was having an ongoing problem with the mail delivery."

In addition, defendant certified the "lockbox on the locked outside door was constantly getting vandalized and destroyed" and postal workers "could not enter the building." Defendant stated her mail was "stolen or lost" because mail would be left "in a pile on the floor in the common area," and other tenants' mail got "opened, trashed, and stolen." Defendant certified that she "would sometimes go several days without getting any mail."

Defendant also certified her attorneys explained to her that "when Jefferson sued [her] and tried to take money from [her], Jefferson was suing

[her] illegally and without a New Jersey license." Defendant stated she "did not know that Jefferson had to be licensed by the New Jersey Consumer Finance Licensing Act [CFLA].²" Defendant claimed plaintiff had no legal right to collect the consumer debt because plaintiff failed to obtain the required licensure under the CFLA. Plaintiff opposed the motion.

On June 30, 2023, the motion judge conducted oral argument. After considering the parties' submissions and arguments, the motion judge denied the motion and issued an order and written statement of reasons.

The motion judge found the motion was not filed within a reasonable time. The motion judge determined the court's service of the summons and complaint was effective under Rule 6:2-3(d) because "[d]efendant does not state that the regular mail was returned," and the postal service did not indicate the mail was not delivered. In addition, the motion judge did "not view the allegation that [p]laintiff was unlicensed as an extraordinary circumstance necessitating the default judgment be vacated six years after being entered." A memorializing order was entered. This appeal followed.

On appeal, defendant contends the motion judge abused her discretion under Rule 4:50-1(d) and (f) by denying the motion because the default

² N.J.S.A. 17:11C-1 to -49.

judgment was void under the CFLA. In support of her argument, defendant relies on LVNV Funding, LLC v. Deangelo, 464 N.J. Super. 103 (App. Div. 2020), and unpublished cases. We reject defendant's arguments.

II.

A.

First, we address the standards of review which guide our analysis. "We review a motion under Rule 4:50-1 to vacate final judgment under an abuse of discretion standard." 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339, 366 (App. Div. 2023) (citing U.S. Bank Nat'l. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)). "Although the ordinary abuse of discretion standard defies precise definition, it arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (internal quotation marks omitted). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." Ibid.

When a court has entered a default judgment, the party seeking to vacate the judgment must meet the standard of Rule 4:50-1:

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: . . . (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.

[Guillaume, 209 N.J. at 467 (quoting R. 4:50-1).]

Moreover, motions pursuant to Rule 4:50-1 (d), (e), and (f) "shall be made within a reasonable time, . . . after the judgment, order or proceeding was entered or taken." R. 4:50-2. "The rule[s are] 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." Guillaume, 209 N.J. at 467 (internal quotation marks omitted).

"We have explained that a reasonable time is determined based upon the totality of the circumstances" Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 296 (App. Div. 2021). The judge "has the discretion to consider the circumstances of each case." Ibid.

We are convinced defendant's reliance on Deangelo is misplaced and does not control our opinion on appeal. Moreover, applying well-established principles to this matter, we are satisfied the motion judge did not abuse her

discretion in finding defendant's motion was not filed within a reasonable time—more than five years after default judgment was entered—and affirm the order denying the motion. See Rogan Equities, Inc. v. Santini, 289 N.J. Super. 95, 114 (App. Div. 1996) (stating "[i]t is clear that in some circumstances a motion to vacate a void judgment can properly be denied as untimely.").

Defendant first contends that she was not served the summons and complaint; therefore, the judgment is void pursuant to Rule 4:50-1(d). Jefferson counters defendant's motion is untimely, and that she was properly served pursuant to Rule 6:2-3(d). We agree.

Generally, service is governed by Rule 4:4-4. However, Rule 6:2-3(b) sets forth the "Manner of Service" for lawsuits pending in the Special Civil Part:

Service of process within this State shall be made in accordance with [Rule] 6:2-3(d) or as otherwise provided by court order consistent with due process of law, or in accordance with [Rule] 4:4-5. Substituted service within this State shall be made pursuant to [Rule] 6:2-3(d). Substituted or constructive service outside this State may be made pursuant to the applicable provisions in [Rule] 4:4-4 or [Rule] 4:4-5.

Thus, service had to be made in accordance with the "service-by-mail" procedure provided in Rule 6:2-3(d). See T & S Painting & Maint., Inc. v. Baker Residential, 333 N.J. Super. 189, 191 (App. Div. 2000). Rule 6:2-3(d) pertinently provides:

(1) Initial Service. The clerk of the court shall simultaneously mail such process by both certified and ordinary mail.

(4) Effective Service. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless the mail is returned to the court by the postal service with a marking indicating it has not been delivered, such as "Moved, Left No Address," "Attempted-Addressee Not Known," "No Such Number/Street," "Insufficient Address," "Not Deliverable as Addressed-Unable to Forward," or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "unclaimed" or "refused," service is effective provided that the ordinary mail has not been returned. Process served by mail may be addressed to a post office box. Service shall be effective when forwarded by the postal service to an address outside the county in which the action is instituted. Where process is addressed to the defendant at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed.

[R. 6:2-3(d)(4) (emphasis added).]

The record shows service of process was proper in accordance with Rule 6:2-3(d)(4) because the certified mail containing the summons and complaint was marked "unclaimed" and "unable to forward." Rule 6:2-3(d)(4) provides

that if the certified mailing is returned to the court marked "unclaimed"—as was the case here—service will be deemed effective if the ordinary mail was not returned. Defendant acknowledged that she resided at the address where service was made. She has not provided any evidence or proof that the regular mail was returned. Thus, service was effective, and we conclude the motion judge did not abuse her discretion in finding plaintiff complied with Rule 6:2-3(d)(4).

B.

Finally, defendant contends Jefferson lacked the licensure required to acquire and enforce the debt at all times relevant to the underlying collection lawsuit. Specifically, defendant argues the alleged debt was void the moment Jefferson acquired the account and, subsequently, Jefferson lacked the legal right or authority necessary to attempt collection or enforcement of the account. Jefferson again counters defendant's motion is untimely, and the motion judge correctly determined the allegation it was unlicensed did not constitute an extraordinary circumstance warranting the vacatur of the default judgment and wage execution. We agree.

Relief under Rule 4:50-1(f) is available only when "truly exceptional circumstances are present," because of the "importance that we attach to the finality of judgments." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286

(1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). 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).

Rule 4:50-1(f) has been described as a catch-all provision, and in "exceptional cases its boundaries are as expansive as the need to achieve equity and justice." DEG, LLC v. Township of Fairfield, 198 N.J. 242, 269-70 (2009) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). As such, the application of this subsection "must be resolved on its own particular facts," Baumann, 95 N.J. at 395, and "[n]o categorization can be made of the situations which would warrant redress under subsection (f)," Perillo, 48 N.J. at 341.

Relief was properly denied under Rule 4:50-1(f). We also reject defendant's newly minted argument that Jefferson's alleged lack of licensure under the CFLA 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)." Defendant's claim cannot prevail as she may not enforce the CFLA's license requirement because the Legislature did not provide a private right of action under the CFLA. See Francavilla v. Absolute Resols. VI, LLC, 478 N.J. Super. 171, 180 (App. Div. 2024) (stating "[t]he [Maryland Consumer Debt

Collection Act] also contains a private right of action, while New Jersey's CFLA does not."). Instead, the Legislature determined that a "consumer lender" who violated the licensing provision of the CFLA would "be guilty of a crime of the fourth degree," N.J.S.A. 17:11C-33, and authorized the Commissioner of Banking and Insurance to punish those who violate any provision of the CFLA by, for example, refusing to issue a license or imposing penalties in accordance with the statute, N.J.S.A. 17:11C-18.

Defendant again relies on Deangelo and contends it is "[a]nalogous to the instant action, [because it] involved a debt collector's enforcement of an alleged debt it had no legal right or authority to collect." In Deangelo, the defendant filed a Rule 4:50-1(f) motion to vacate an eight-year-old default judgment. 464 N.J. Super. at 105. The motion judge stated in the opinion:

that plaintiff violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p, because it failed to commence the suit "within four years after the cause of action . . . accrued," N.J.S.A. 12A:2-725(1). The judge, however, also found that defendant's neglect in failing to respond to the complaint was inexcusable. In weighing these conflicting circumstances, the judge concluded that plaintiff's breach of the Fair Debt Collection Practices Act outweighed defendant's inexcusable neglect; relying on Rule 4:50-1(f), the judge granted the motion and dismissed the time-barred complaint.

[Id. at 106.]


However, as previously mentioned, Deangelo is distinguishable from this matter because it deals with the Fair Debt Collection Practices Act, which provides a private right of action. The CFLA does not provide a similar mechanism for action and enforcement to anyone other than the Commissioner of Banking and Insurance. See N.J.S.A. 17:11C-18.

For the first time in her reply brief, defendant raises a new argument that she is not asserting a private right of action under the CFLA but utilizing the CFLA as an affirmative meritorious defense against enforcement of the judgment. Defendant contends the motion judge did not consider the "totality of the circumstances under which the judgment was obtained." A party may not raise new issues in its reply brief. See R. 2:6-5; State v. Smith, 55 N.J. 476, 488 (1970). Therefore, we do not address defendant's argument.

To the extent we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION