SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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Docket No. A-001088-23

PORTFOLIO RECOVERY ASSOCIATES, LLC, as assignee of HSBC BANK NEVADA N.A. / CAPITAL ONE BANK (USA) N.A.,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION, BERGEN COUNTY
v.	:	Trial Court Docket No. BER-L-5641-23
TERRY A. CHARTONAVICH,	:	
Defendant-Appellant.	:	Sat Below: HON. MARY F. THURBER, J.S.C.
	:	DATE: April 4, 2024

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

"No 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).

It is undisputed that Plaintiff Portfolio Recovery Associates, LLC ("PRA") was not licensed pursuant to the New Jersey Consumer Finance Licensing Act ("NJCFLA") when they attempted to take assignment of the HSBC Bank Nevada N.A./Capital One Bank (USA) N.A. credit account allegedly belonging to Defendant Chartonavich. Thus, the contract governing the alleged debt was void upon assignment to PRA pursuant to N.J.S.A. 17:11C-33(b).

Upon assignment of the void account, PRA initiated a collection lawsuit against Chartonavich in the Special Civil Part of the Bergen County Law Division. Like any person without a legal education, Chartonavich was

unaware of the NJCFLA and its licensure requirements, let alone the fact that PRA was unlicensed and enforcing a void debt. Moreover, due to the severity of Chartonavich's psychiatric diagnoses, Chartonavich was unable to understand and/or fully appreciate the nature or the cause of the legal proceedings against him.

PRA later sought default judgment on the void debt and, on or about September 12, 2017, default judgment was entered against Chartonavich. However, as mentioned above, at all times relevant to the collection action, PRA had no legal right to collect, enforce, or attempt to collect or enforce Chartonavich's alleged consumer debt as PRA failed to obtain the required licensure necessary to engage in the "consumer loan business" pursuant to the NJCFLA. *See* N.J.S.A. 17:11C-2; N.J.S.A. 17:16C-1(f); N.J.S.A. 17:11C-3; N.J.S.A. 17:11C-33(b).

On September 20, 2023, Chartonavich moved to vacate the legally void default judgment. On October 26, 2023, the trial court denied Chartonavich's Motion to Vacate. In so doing, the trial court incorrectly reasoned that the NJCFLA did not afford a private right of action, that an ostensible lack of a private right of action precludes asserting the NJCFLA as an affirmative defense, and that the CFLA has no motivating interests of public policy. However, as explained herein, the trial court failed to analyze the legislative

intent and history of the NJCFLA as it relates to Defendant's unlicensed collection activity and Chartonavich's defenses. Accordingly, the trial court's October 26, 2023 Order (Da58) denying Chartonavich's Motion to Vacate should be reversed.

PROCEDURAL HISTORY

On or about June 28, 2017, PRA filed a Collection Complaint (Da1) in the Special Civil Part of the Bergen County Law Division, docket number BER-DC-10267-17 ("Collection Lawsuit"), demanding a judgment against Chartonavich in the amount of $7,663.52, together with costs of suit.

On or about September 12, 2017, PRA moved for entry of default judgment (Da3) in the Collection Lawsuit—which was subsequently entered on September 12, 2017. (Da12).

On July 19, 2023, while venued in the Special Civil Part under docket number BER-DC-10267-17, Chartonavich moved to vacate the default judgment (Trans ID: SCP20232201177). On August 2, 2023, Chartonavich's Motion was granted (Trans ID: SCP20232374558).

On August 4, 2023, PRA moved for reconsideration of the trial court's August 2, 2023 Order (Trans ID: SCP20232403792).

While PRA's Motion for Reconsideration was pending, on September 6, 2023, Chartonavich moved to transfer the matter from the Special Civil Part to

the Law Division. (Da13).

On September 8, 2023, while Chartonavich's Motion to Transfer was pending, the trial court entered an Order granting PRA's Motion for Reconsideration based on defective service of Chartonavich's Motion, thereby reinstating the default judgment against Chartonavich (Trans ID: SCP20232809122).

On September 20, 2023, Chartonavich renewed his Motion to Vacate Default Judgment in the Collection Lawsuit. (Da15).

On October 6, 2023, Chartonavich's Motion to Transfer to the Law Division was granted and the matter was docketed as BER-L-5641-23. (Da56). Due to the fact that the default judgment had been reinstated while the Motion to Transfer was pending, the renewed Motion to Vacate Default Judgment was adjudicated in the Law Division.

On October 26, 2017, the trial court entered an Order denying Defendant's Motion to Vacate (Da58).

On December 8, 2023, Chartonavich filed his Notice of Appeal (Da63), later amending the same on December 13, 2023. (Da67).

STATEMENT OF FACTS

Sometime prior to the initiation of this action—and without a license under the NJCFLA—PRA allegedly acquired a pool of default consumer debts

allegedly purchased for a fraction of their face value, including Chartonavich's alleged HSBC Bank Nevada N.A./Capital One Bank (USA) N.A. credit account. As PRA was unlicensed under the NJCFLA (*see* Da55), Chartonavich's account and the contract governing the same were void upon assignment to PRA. *See* N.J.S.A. 17:11C-33(b). Thereafter, in an attempt to collect the void debt, PRA commenced a collection lawsuit against Chartonavich by filing a collection Complaint (Da1) in the Special Civil Part of the Bergen County Law Division, later obtaining a default judgment. (Da3). However, due to the severity of Chartonavich's psychiatric diagnoses—requiring in-patient treatment—he was unable to fully understand and/or appreciate the nature of the action against him or the cause of the legal proceedings. Moreover, the default judgment obtained against Chartonavich stems from an action that PRA had no right or authority to bring. By purchasing or otherwise taking assignment of the debt, PRA engaged in the "consumer loan business" as defined at N.J.S.A. 17:11C-2; however, PRA was not licensed as a consumer lender at the time it took possession of or attempted to enforce Chartonavich's account. *See* LVNV's License Verifications from the New Jersey Department of Banking and Insurance ("NJDOBI") Licensing Services Bureau (Da55). As a result of PRA's unlicensed status, the assignments or purchases and any rights to the account were void *ab initio* and

unenforceable as of the date PRA purchased or took assignment of the account, pursuant to the NJCFLA at N.J.S.A. 17:11C-33(b), which states, in pertinent part, that a contract for a loan acquired in violation of the act "shall be void and the lender shall have no right to collect or receive any principal, interest or charges. . . ."

LEGAL ARGUMENT

POINT I. THE STANDARD OF REVIEW (Raised Below: Da60)

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, 269-70 (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." *Marder*, 84 N.J. Super. at 319. 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 ERRED IN HOLDING THAT AN OSTENSIBLE LACK OF A PRIVATE RIGHT OF ACTION UNDER THE CFLA PRECLUDES ASSERTION OF THE CFLA AS AN AFFIRMATIVE DEFENSE (Raised Below: Da61)

In denying Chartonavich's Motion to Vacate, the trial court reasoned that the "NJCFLA does not confer a private statutory cause of action. Only the Commissioner of Banking and Insurance has the authority to pursue claims for violations of the NJCFLA. N.J.S.A. 17:11C-18." (Da61-Da62). However, N.J.S.A. 17:11C-18 does not state that "[o]nly the Commissioner . . . has the authority to pursue claims for violations of the NJCFLA." N.J.S.A. 17:11C-18 merely provides for the Commissioner's authority and available remedies under the NJCFLA. Importantly, all of the NJCFLA's statutory predecessors (discussed *infra*) provided for enforcement by the Commissioner of Banking and Insurance *and provided for an implied private right of action*. To suddenly read private enforcement out of the NJCFLA would not be consistent with the NJCFLA statutory structure, its legislative intent, or its legislative history.

In addressing the private right of action under the NJCFLA, the District Court in *Veras v. LVNV Funding, LLC*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176, at *24 (D.N.J. Mar. 17, 2014) reasoned that in order to determine whether the NJCFLA implies a private right of action, "the Court must consider . . . whether there is any evidence that the Legislature intended to create a private cause of action under the statute and whether implication of a private cause

of action in this case would be consistent with the underlying purposes of the legislative scheme." *Id.* (quoting *In re Resolution of State Com. of Investigation*, 108 N.J. 35, 41 (1987) (internal quotation marks omitted)). Indeed, "the primary goal in determining whether a statute implies a right of action has almost invariably been a search *for the underlying legislative intent*." *Veras*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176, at *24 (emphasis added) (quoting *R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 272-73 (2001) (internal quotation marks omitted)).

With respect to the legislature's intent in enacting the NJCFLA, the NJCFLA's intended mechanisms of enforcement, and the history of the same, the Court must consider the NJCFLA's predecessors for context. The present-day iteration of the NJCFLA originated as the New Jersey Small Loan Law ("NJSLL") in 1914. *See Family Fin. Corp. v. Gough*, 10 N.J. Super. 13, 19 (App. Div. 1950).[1] The NJSLL was superseded by the New Jersey Consumer Loan Act ("NJCLA"), which was subsumed by the New Jersey Licensed Lenders Act ("NJLLA"), N.J.S.A. 17:C-1 to -49., in 1997.[2] The NJLLA was superseded by the New Jersey

[1] "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." *Family Fin. Corp.*, 10 N.J. Super. at 19.

[2] "On January 8, 1997, the Governor signed the New Jersey Licensed Lenders Act, which combines the CLA with two mortgage-related statutes. *L.* 1996, *c.* 157 (codified at N.J.S.A. 17:11C-1 to -49)." *Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 262 n.1 (1997).

Residential Mortgage Lending Act ("NJRMLA"), N.J.S.A. 17:11C-51 to -89, and the NJCFLA in July of 2010. The NJSLA, NJCLA, and NJLLA were all enacted to, *inter alia*, curtail predatory and usurious lending practices, limit what property could be held as collateral, and ensure that only qualified, regulated, licensed entities would enter the marketplace as consumer lenders or sales finance companies in New Jersey. The NJCLA, "which prohibit[ed] deceptive lending practices generally," "as incorporated in the Licensed Lenders Act . . . allow[ed] for treble damages by aggrieved consumers, N.J.S.A. 17:11C-33b, and summary revocation of a lender's license, N.J.S.A. 17:11C-48a." *Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271-72 (1997). Though the "typical remedy" was a "*voiding of the contract*" by "*individual consumers*." *Id.* (emphasis added).

The entire legislative history of every iteration of the NJCFLA has allowed for a private right of action by individual consumers *in addition to the enforcement remedies of the Commissioner*. Indeed, the NJCLA's statutory mechanism of enforcement by which an individual consumer voided an unlawful loan contract and/or pursued treble damages was N.J.S.A. 17:11C-33(b)—*the same provision of the same statute* which Chartonavich asserts has voided his unlawful contract in the instant action. Additionally, though N.J.S.A. 17:11C-18 codifies the Commissioner's authority to oversee licensure under the NJCFLA, it does not disallow private actions by aggrieved

consumers—nor did any of its predecessors, *despite their also providing for the Commissioner's authority to oversee licensure and pursue independent prosecutions*. In fact, N.J.S.A. 17:11C-33(b) continues to explicitly allow for treble damages—a remedy not included under the Commissioner's authority in N.J.S.A. 17:11C-18. N.J.S.A. 17:11C-18(i) further limits the Commissioner's authority to civil penalties "not exceeding $25,000." Therefore, in the absence of a private right of action, an unlicensed consumer lender could limit liability on consumer loans exceeding $25,000 since penalties are capped at $25,000. Notwithstanding superfluous remedies in the absence of a private right of action, if the legislative intent and history of the NJCFLA are the polestars for an implied private right of action, then there must exist a private right of action under the NJCFLA.

Even assuming *arguendo* that no private right of action exists under the NJCFLA, said assumption does not foreclose asserting the NJCFLA as an affirmative defense to vacate an unlawfully obtained default judgment. In sum, the trial court erred by conflating an offensive application of the NJCFLA with a defensive application. In *New Century Fin. v. Trewin*, the Chancery Division analyzed a motion to vacate a default judgment obtained by the plaintiff debt collector. 2018 N.J. Super. Unpub. LEXIS 1688 (Ch. Div. May 24, 2018). The *Trewin* court acknowledged its obligation to "consider the entirety of the

circumstances under which the judgment was obtained" and vacated a years old default judgment due to violations of the NJCFLA, like the violations PRA committed here. *See Trewin*, 2018 N.J. Super. Unpub. LEXIS 1688 at *7. The *Trewin* court further reasoned that "defendant is not seeking to utilize the CFLA as a sword, by asserting a private right of action under the statute. Instead, defendant is asserting the right to utilize the CFLA as a shield against enforcement of a judgment which defendant contends was void *ab initio*." *Id*. at *6-7. By that rationale, the court determined that a private right of action under the NJCFLA was of no consequence in a motion to vacate 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)." *Id*. at *8, 9-10. Thus, the trial court's determination regarding the viability of Chartonavich's ability to bring offensive claims, if allowed to answer, has no effect on whether Chartonavich met the standards for vacatur under *R.* 4:50-1(d) or *R.* 4:50-1(f). Thus, as a private right of action is of no consequence to an affirmative defense, the trial court's Order denying Chartonavich's Motion to Vacate Default Judgment should be reversed due to PRA's violations of the NJCFLA and the inequitable nature of allowing PRA to profit from illegal, unlicensed debt collection activity.

POINT III. THE TRIAL COURT ERRED IN HOLDING THAT THE CFLA DOES NOT FURTHER INTERESTS OF PUBLIC POLICY (Raised Below: Da61)

As discussed *supra*, the NJCFLA's statutory predecessors had nearly the same statutory structure as the contemporary NJCFLA—*to wit*, they provided for a private right of action (including treble damages and voiding of unlawful contracts) in conjunction with the Commissioner's enforcement. Nothing in the NJCFLA suggests that the legislature intended the Act's remedies to be unavailable to private citizens. To suddenly read private mechanisms of enforcement out of the NJCFLA would be tantamount to legislation by the judiciary. Interpreting the NJCFLA as the legislature clearly intended requires viewing the NJCFLA in its historical context, *i.e.*, acknowledging that the statute has always afforded private enforcement. Further, the violation of a remedial consumer protection statute (such as the NJCFLA) in the attempted collection of an alleged consumer debt is the *exact* sort of exceptional circumstance this Court has ruled necessitates the vacating of a default judgment pursuant to *R.* 4:50-1(f).

In *DeAngelo*, 464 N.J. Super. at 105, this Court examined 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.

Plaintiff LVNV (a debt buyer like PRA here) attempted to collect a time-barred debt from defendant DeAngelo in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq*. However, the defendant in *DeAngelo* "inexcusably ignored a judgment on that time-barred claim - he waited eight years and lied about his identity - before seeking relief." *DeAngelo*, 464 N.J. Super. at 109.

The Court 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)).

In denying Chartonavich's Motion to Vacate—specifically pursuant to *R.* 4:50-1(f), the Rule's equitable catchall provision, in the context of *DeAngelo*—the trial court opined that "[Chartonavich] does not have the benefit of [the FDCPA's] countervailing policy interest." (Da61). However, the trial court completely failed to analyze the public policy interests motivating the CFLA, which are in turn furthered by its enforcement. As explained herein, the contemporary CFLA began as the New Jersey Small

Loan Law ("NJSLL"). And every iteration of the CFLA since the NJSLL had had the goals of prohibiting deceptive lending practices, limiting usurious interest rates, limiting what property could be used as secured collateral, limiting what entities could offer consumer credit or possess consumer accounts, and ensuring that only qualified, licensed entities were able to enter the consumer lending marketplace. *See, e.g., Ryan v. Motor Credit Co.*, 132 N.J. Eq. 398, 399-400 (1942); *Family Fin. Corp.*, 10 N.J. Super. at 19-20; *Lemelledo*, 150 N.J. at 271-72. By reasoning that the CFLA—a remedial consumer protection statute—was not motivated by any interests of public policy and did not serve to further the same without analyzing the CFLA's legislative intent, legislative history, or jurisprudence acknowledging what interests motivated the enactment of the CFLA, the trial court abused its discretion. *To wit*, considering PRA's unlawful conduct, the trial court's Order denying Chartonavich's Motion to Vacate Default Judgment was manifestly unjust under the circumstances. Thus, the October 26, 2023 Order denying Defendant's Motion to Vacate should be reversed.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Terry A. Chartonavich respectfully requests that the October 26, 2023 Order denying the Motion to Vacate Default Judgment be reversed.

Respectfully submitted,

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Dated: April 4, 2024

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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket number: A-1088-23

PORTFOLIO RECOVERY ASSOCIATES, LLC, as assignee of HSBC BANK NEVADA N.A. / CAPITAL ONE BANK (USA) N.A.,	:	**CIVIL ACTION**
Plaintiff/Respondent,	:	APPEAL FROM FINAL JUDGMENT ENTERED IN SUPERIOR COURY OF NEW JERSEY, BERGEN COUNTY, LAW DIVISION
v.	:	
TERRY A. CHARTONAVICH,	:	Trial Court Docket No.: BER-L-5641-23
Defendant/Appellant	:	
	:	Sat below: Hon. Mary F. Thurber, J.S.C.
	:	Date of submission: May 6, 2024

BRIEF AND APPENDIX OF PLAINTIFF/RESPONDENT

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Procedural History

On June 28, 2017, Portfolio Recovery Associates, LLC, Plaintiff/Respondent herein, (hereinafter "Plaintiff"), filed a complaint in the Special Civil Part of the Bergen County Law Division, ("the complaint") (Da1), naming as defendant Terry A. Chartonavich, Defendant/Appellant herein, (hereinafter "Defendant.") Defendant failed to answer or otherwise appear to defend and, based upon this default, Plaintiff moved for entry of default judgment on September 12, 2017. (Da3) Judgment in favor of Plaintiff was entered on September 14, 2017. (Da12).

Almost six (6) years later, on June 7, 2023, Defendant moved to vacate the default judgment. Defendant's motion to vacate default judgment was denied by order entered July 7, 2023.

On July 19, 2023, Defendant filed a second motion to vacate default judgment. This motion was not properly served upon Plaintiff's counsel. The motion judgment was granted as unopposed by order entered August 2, 2023.

On August 4, 2023, Plaintiff moved for reconsideration of the court's August 2, 2023 order vacating default.

On September 6, 2023, Defendant moved to transfer the matter from the Special Civil Part to the Law Division. (Da13)

On September 8, 2023 Plaintiff's motion for reconsideration was granted, thereby reinstating the default judgment against Defendant.

On September 20, 2023 Defendant filed a third motion to vacate default judgment on. (Da15).

On October 6, 2023 Defendant's motion to transfer the matter from the Special Civil Part to the Law Division was granted. (Da56).

On October 26, 2023 Defendant's third motion to vacate default judgment was denied by order of the trial court in the Law Division, the matter having been transferred from Special Civil Part to Law Division as noted above. (Da58).

On December 8, 2023, Defendant filed the instant appeal by filing a Notice of Appeal (Da63), later amending the same on December 13, 2023 to correct the caption. (Da67).

Statement of the Material Facts

Defendant was sued and failed to respond to the suit, resulting in a judgment entered against him. Defendant thereafter failed to take any action regarding this judgment for almost six (6) years.

Defendant then sought to vacate the default judgment under R. 4:50-1. In each of the three motions to vacate default judgment Defendant filed, Defendant asserted grounds under R. 4:50-1(a), (d), (e), and (f). However, on appeal Defendant's entire argument rests solely on his assertions the judgment in question was void because Plaintiff allegedly failed to comply with N.J.S.A. 17:11C-3 (a subsection of the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to -49, ("NJCFLA" or "CFLA")).

Instead, the trial court roundly rejected Defendant's argument that the underlying debt is void, holding "the NJCFLA does not confer a private statutory cause of action." (Da58) Finding that only the Commissioner of the Department of Banking and Insurance has authority to pursue claims for violations of the NJCFLA, citing N.J.S.A. 17:11C-18, the trial court held: "Defendant cannot secure a judicial determination that the debt is void, because defendant cannot circumvent the lack of a private cause of action under the NJCFLA . . . " (Da58)

Having found Defendant abandoned his argument regarding R. 4:50-1(a), the trial court held that Defendant could not establish the underlying debt was void and thus could not satisfy R. 4:50-1(d), (e), or (f).

The plain reading of the statute supports the trial court's analysis. Nothing in the cases cited by Defendant, largely unreported and therefore not precedential, points to an error by the trial court, even those cases in which a similarly long delay in moving to vacate default was present. Because Defendant cannot avail himself of the provisions of the statute upon which he has based his argument, his arguments are without basis in fact or law.

LEGAL ARGUMENT

I. THE STANDARD OF REVIEW

Defendant/Appellant Chartonavich (hereinafter "Defendant") asserts the standard of review for this matter is abuse of discretion. Plaintiff/Respondent Portfolio Recovery Associates, LLC (hereinafter "Plaintiff") respectfully recommends that the standard of review in this matter is a de novo review of the trial court's statutory interpretation and an abuse of discretion review for the findings of fact and conclusions of law.

An appellate court's review of the trial court's rulings of law, interpretations of laws, statutes and court rules is a de novo review. State v. Fuqua 234 N.J. 583, 591 (2018) (statutory interpretation) ; State v. Dickerson 232 N.J. 2, 17 (2018) (interpretation of court rules). Judge Thurber's rulings of law are reviewed under this standard. Questions pertaining to statutory interpretation are legal in nature, State v. S.B., 230 N.J. 62, 67 (2017) (citing State v. Revie, 220 N.J. 126, 132 (2014)), so "[w]e review such decisions de novo, 'unconstrained by deference to the decisions of the trial court or the appellate panel,'" ibid. (quoting State v. Grate, 220 N.J. 317, 329 (2015)).

Finding of facts and legal conclusions made by the trial judge should be reviewed under the "abuse of discretion" standard. Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence. New Jersey Turnpike Authority v. Sisselman, 106 N.J.Super. 358, (App.Div.1969), certif. den. 54 N.J. 565, (1969).

> "It has otherwise been stated that 'our appellate function is a limited one: we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Fagliarone v. Twp. of No. Bergen, 78 N.J.Super. 154, 155, 188 A.2d 43, 44 (App.Div.1963), Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484, 323 A.2d 495, 500 (1974)"

State of New Jersey v. Fuqua, 234 N.J. 583 (2018)

II. THE TRIAL COURT CORRECTLY HELD DEFENDANT MAY NOT USE THE PROVISIONS OF THE NJCFLA OFFENSIVELY OR DEFENSIVELY TO VOID THE JUDGMENT

Defendant seeks to avail himself of either an explicit or an implied right of action under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 *et seq.* (hereinafter "NJCFLA" or "the Act") in order to declare the judgment void. However, the plain language of the NJCFLA does not provide a private statutory cause of action, and no court has found an implied private

statutory cause of action. The trial court was therefore correct in its conclusion that Defendant may not rely on the NJCFLA to have the judgment declared void.

The NJCFLA is a licensing statute. It provides a framework to obtain a consumer lending license, N.J.S.A. 17:11C-7, and for the management of same. Among other regulatory details, it governs how long the license lasts, N.J.S.A. 17:11C-11, how to transfer a license, N.J.S.A. 17:11C-12, whether a branch office of the lender needs a separate license, N.J.S.A. 17:11C-9, and the recordkeeping requirements of lenders. N.J.S.A. 17:11C-19.

The NJCFLA also contains enforcement and penalty provisions. Critically, and Plaintiff asserts, dispositively, all authority to invoke or enforce those provisions is vested solely in the Commissioner of the Department of Banking and Insurance. See, N.J.S.A. 17:11C-18. Under this statute section, the Commissioner of the Department of Banking and Insurance has authority to refuse to issue a license and may revoke, suspend or refuse to renew a license, N.J.S.A. 17:11C-18(a), may "access and examine books, accounts, records and other documents" N.J.S.A. 17:11C-18(f), and conduct investigations, which may include the subpoena of witnesses and documents." N.J.S.A. 17:11C-18(g).

The remedies available to the Commissioner against persons engaging in prohibited practices or transactions are broad, thorough, and can be harsh. The Commissioner may impose a civil penalty of up to $25,000, N.J.S.A. 17:11C-18(i), and may bar the wrongdoer from acting as a lender, owner, or employee for up to ten years. N.J.S.A. 17:11C-18(j). There is also a penalty provision in N.J.S.A. 17:11C-33 which provides that violations of certain provisions of the NJCFLA constitute a crime of the fourth degree.

The complete regulatory structure places the ability and right to enforce the Act solely with the Commissioner of Banking and Insurance. There is no private statutory cause of action created, explicitly, or implicit in the statute and therefore Defendant cannot avail himself of the NJCFLA to have the judgment declared void.

A. THE NJCFLA DOES NOT PROVIDE AN EXPLICIT PRIVATE STATUTORY CAUSE OF ACTION TO VOID A JUDGMENT

The trial court reviewed the NJCFLA and concluded there is no private cause of action created in the NJCFLA. (Da61). The plain language of the statute supports this conclusion.

The Appellate Division recently addressed the private right of action under the NJFLA issue in Woo-Padva v. Midland Funding, LLC, No. A-1996-21, 2023 WL 6157245 (N.J. Super. Ct. App. Div. Sept. 21, 2023). (Pa1) There

the plaintiff claimed that the debt collector did not have a license to collect debt and therefore the underlying debt was void and not collectable pursuant to the NJCFLA. The court noted

> The Legislature, however, did not provide a private right of action under the CFLA – and plaintiff does not contend otherwise. 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 CFLA, N.J.S.A. 17:11C-18. 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. See In re Resol. of State Comm'n of Investigation, 108 N.J. 35, 46 (1987) (dismissing cause of action seeking a judgment declaring a party had violated a statute because plaintiffs did not have a private right of action under the statute); Excel Pharmacy Servs., LLC v. Liberty Mut. Ins., 825 F. App'x 65, 70 (3d Cir. 2020) ("But it is well settled that parties cannot bring a declaratory judgment action under a statute when there is no private right of action under that statute.").

Woo-Padva v. Midland Funding, LLC, No. A-1996-21, 2023 WL 6157245 at 4.

Further support for this position can be found in the two unreported cases upon which the Defendant relies: New Century Fin. v. Trewin, 2018 N.J. Super.

Unpub. LEXIS 1688 (Ch. Div. May 24, 2018) (Da71), where the court begins its analysis of this issue by first "...acknowledging that no private right of action exists under the CFLA,,," Trewin at 8, (Da73a); and Veras v. LVNV Funding No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176 (D.N.J. Mar. 17, 2014) (Da74), where the court noted "A review of the NJCFLA reveals that the Legislature did not provide for a private right of action in order to enforce the requirements of the Act." Veras v. LVNV Funding, LLC, No. CIV. 13-1745 RBK/JS, 2014 WL 1050512, at 8 (D.N.J. Mar. 17, 2014).

In interpreting a statute, the court will "give words 'their ordinary meaning and significance,'" acknowledging that the "statutory language is 'the best indicator of [the Legislature's] intent.'" Tumpson v. Farina, 218 N.J. 450, 467 (2014) (alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). The court will "not presume that the Legislature intended a result different from what is indicated by the plain language or add a qualification to a statute that the Legislature chose to omit." Id. at 467-68, 95. Finally, the court will only resort to extrinsic evidence, such as legislative history and committee reports, in the event that the statutory language at issue is ambiguous. Id. at 468.

The plain language of the NJCFLA creates no cause of action for an individual, but instead clearly and explicitly rests all authority in the

Commissioner of the Department of Banking and Insurance., who alone has the right and the power to enforce the NJCFLA.

B. THE NJCFLA DOES NOT PROVIDE AN IMPLIED PRIVATE STATUTORY CAUSE OF ACTION TO VOID A JUDGMENT

Defendant seeks to avoid the clear lack of a private enforcement right in the Act by arguing the legislative history of prior New Jersey consumer lending statutes implies such a right. Plaintiff notes first that the court will only resort to extrinsic evidence, such as legislative history and committee reports, in the event that the statutory language at issue is ambiguous. Tumpson v. Farina, supra, at 468.

Implying a right in a statute where none is made explicit is to be done sparingly. The New Jersey Supreme Court has stated

> New Jersey courts have been reluctant to infer a statutory private right of action where the Legislature has not expressly provided for such action.

R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co., 168 N.J. 255, 271, (2001).

Defendant seeks to create the impression that there is a direct line of statutes from 1914 until today dealing with consumer lending, and that those statutes and their legislative history infer a private cause of action. However, as

with the lack of an explicit cause of action in the NJCFLA, Defendant's claim fails here as well because there is no support for his position in the language of the laws he cites.

Specifically, the Small Loan Act, (NJSA 17:10-5 et seq., repealed by L. 1996c. 157 section 55 effective July 1 1997), did not contain a private cause of action for enforcement of the lending license, but simply provided the Commissioner with authority to issue licenses. No legislative history is mentioned by Defendant indicating an inferred right, nor has he mentioned any court that has inferred such a private right.

Defendant further relies upon the New Jersey Consumer Loan Act (hereinafter "NJCLA"), (N.J.S.A. 17:10-19 to 26, Repealed by L. 1996, c. 157 section 55, Effective July 1 1997) but, again, the NJCLA did not provide for a private cause of action, and no legislative history is mentioned by Defendant indicating an inferred right, nor has he mentioned any court that has inferred such a private right. Nor does the New Jersey Licensed Lenders Act, N.J.S.A. 17:16C-1 et seq. provide for a private cause of action by implication, and no legislative history is mentioned by Defendant showing an inferred right, nor has he mentioned any court that has inferred such a private right.

In further support of his assertion that there is an implied private cause of action, in a statute that is bereft of language indicating such a right, Defendant cites Veras v. LVNV Funding, LLC, No. CIV. 13-1745 RBK/JS, 2014 WL 1050512, at 8 (D.N.J. Mar. 17, 2014), arguing it sets forth the standard to apply to determine whether there is an implied cause of action. (Db8). Noticeably absent from Defendant's reference to the case is the court's ruling in the matter, which held:

> In light of the fact that the Legislature has drafted an extensive statutory scheme that tasks the Commissioner with the sole responsibility of enforcing the requirements of the Act, the Court concludes "that it would be inappropriate to construe the Act as impliedly authorizing a private cause of action." *Castro*, 370 N.J.Super. 282, 851 A.2d 88, 94–95; *see also* 2B Sutherland Statutory Construction § 55:3 (7th ed.) (stating that "[s]tatutes are not extended by implication when language is specific and not subject to reasonable doubt [, and] [c]ourts will not indulge implications which in effect are necessarily contrary to or incompatible with the spirit and purpose of an enactment.").

Veras v. LVNV Funding, LLC, No. CIV. 13-1745 RBK/JS, 2014 WL 1050512, at *9 (D.N.J. Mar. 17, 2014)

Defendant relies only on one unpublished Chancery Division case, New Century Fin. v. Trewin 2018 N.J. Super. Unpub. LEXIS 1688 (Ch. Div. May 24,

2018) (Da71) for the proposition that there can be defensive application of the statute. Reliance on this case is misplaced. In the first instance, the decision and opinion in Trewin was vacated by order dated July 23, 2018, (Hun-DC-960-17)), meaning there is effectively no opinion to rely upon. Even assuming, arguendo, that this unpublished, vacated order carried any weight, the only language in the opinion related to the issue at hand is the bare statement that there could be a defensive application of the NJCFLA, but the judge provided no explanation of his reasoning other than a reference to the NJCFLA. The weight to be given to this opinion, if any weight at all, is negligible.

Nothing proffered by Defendant supports his assertion that these prior consumer lender licensing statutes provided a private cause of action, and no case cited by Defendant has found an implied right of action.

In summary, the plain language of the NJCFA neither explicitly or implicitly creates nor allows any private cause of action, but instead by its clear terms rests all authority in a single entity, the Commissioner of the Department of Banking and Insurance. Defendant cannot avail himself of any of the provisions in the Act to void the judgment in this matter. As noted by the trial court "[o]nly the Commissioner of Banking and Insurance has authority to pursue claims for violation of the NJCFLA." (Da61-62) The plain language of

the NJCFLA, then, is a complete bar to Defendant's claims that the judgment is void based upon the NJCFLA.

III. THE TRIAL COURT CORRECTLY BALANCED THE COMPETING POLICIES INVOLVED

At the heart of the appeal is Defendant's motion to vacate default judgment, filed pursuant to R. 4:50-1. Defendant couches the argument in his point heading III as an error by the trial court in holding the NJCFLA does not further interests of public policy. This a misstatement of the trial court's analysis and ruling. Instead, the trial court, as noted above, found Defendant could not rely on the NJCFLA to claim the judgment was void and therefore Defendant was entitled to relief under R. 4:50-1(d), (e), and (f). The public policy argument, as addressed by Defendant, and the trial court's findings of fact and conclusions of law are discussed separately below.

A. THE PUBLIC POLICY ARGUMENT

Defendant argues that the trial judge erroneously held that the NJCFLA does not further an interest of public policy. That is incorrect. The trial court did not hold that the policy of the NJCFLA was impacted in this matter at all. The court had no reason to explore the policy underpinning the NJCFLA, instead finding dispositively that there is no violation of the Act that Defendant could rely upon to void the judgment. As a result, the court held, the judgment was not

void. The trial court had no reason to discuss the policy behind the NJCFLA, especially in light of the clear language of the Act. The court would only need to review said policies if it found that the Act had been violated but, instead, the court specifically found that the Act did not void the judgment.

In support of his argument regarding the interests of public policy, Defendant cites LVNV Funding v. DeAngelo, 464 N.J. Super 103 (App. Div. 2020). Defendant notes DeAngelo held that even egregiously bad behavior on the part of the defendant/borrower can be excused if there is a countervailing interest of public policy, in that case limiting violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. ("FDCPA.") Defendant's intent is to liken Defendant's six-year delay in challenging the instant judgment with DeAngelo's delay.

LVNV filed suit against DeAngelo on a debt after the statute of limitations for initiating suit has expired. Nine years later, DeAngelo filed a motion to vacate the judgment. The trial judge determined that the complaint was time-barred by the statute of limitations and thus the action was a violation of the FDCPA. The trial court weighed the competing policies involved and reached a decision that the judgment should be vacated. The Appellate Court stated:

> Despite the problematic conduct and motivation of both parties, the judge ultimately viewed the decision as turning not on which of the parties acted worse but on the weight of the competing public policies. On

> defendant's side was plaintiff's commencement of a time-barred claim in violation of federal policy, which strongly favors the curbing of "abusive debt collection practices." 15 U.S.C. § 1692(a). The countervailing state policy urged by plaintiff is what the Supreme Court referred to as "the strong interests in finality of judgments and judicial efficiency." Baumann, 95 N.J. at 392, 471 A.2d 395; see also Mancini, 132 N.J. at 334, 625 A.2d 484. Both these policies cannot be served here; one must give way to the other. The judge determined that the interest in curbing abusive collection practices outweighed the interest in the finality of judgments. In the final analysis, we cannot conclude that the choice the judge made constitutes an abuse of the discretion provided by Rule 4:50-1(f).

LVNV Funding, LLC v. DeAngelo, 464 N.J. Super. 103, 110 (App.Div. 2020).

In the instant matter, the trial court correctly distinguished DeAngelo, holding:

> The compelling factor identified by the trial court in that case was the court's conclusion the debt was void due to violations of the FDCPA and the finding that the policy interests of curbing abusive collection practices outweighed the policy interest of protecting finality of judgments" Here defendant does not have the benefit of that countervailing policy interest. The court rejects defendant's argument that the underlying debt is void.

(Da61a)

The court in DeAngelo weighed the policies behind a violation of the FDCPA with the policy favoring the finality of judgments. Here the trial court

was not confronted with these two competing policies as there is no violation of a federal statute involved. The trial court found that there was no violation of the Act, so there was no need to consider the policies behind the Act. Without the countervailing policy of curbing aggressive debt collection practices to consider, the court favored the policy of the finality of judgments and denied the motion to vacate judgment. The court found that because the judgment is not void, the defendant has not satisfied the requirements of sections (d), (e) or (f) of R4:50-1 and also did not prove the motion to vacate was filed within a reasonable time. The trial court's decision is a sound, reasonable decision based on the facts of the instant matter. The Judge's decision is certainly not an abuse of discretion.

B. THE TRIAL COURT'S FINDINGS OF FACT WITH REGARD TO DEFENDANT'S MOTION TO VACATE DEFAULT WERE SUPPORTED BY ADEQUATE, SUBSTANTIAL AND CREDIBLE EVIDENCE

The findings of fact and legal conclusions made by the trial judge in ruling on the underlying motion should be reviewed under the "abuse of discretion" standard i.e., they are considered binding on appeal when supported by adequate, substantial and credible evidence. New Jersey Turnpike Authority v. Sisselman, supra at 362.

Defendant's sought relief from the default judgment under R. 4:50-1(a), (d), (e), and (f). The trial court found Defendant did not address subsection (a) in his moving papers and was therefore deemed to have abandoned the request for relief under that subsection of the Rule. (Da60).

Defendant's arguments related to R. 4:50-1(d) and (e) are addressed above, as the claim that the judgment was void was based upon statutory interpretation. As Plaintiff notes above, the clear language of the statute leaves this claim or defense unavailable to Defendant, who therefore cannot obtain relief under R. 4:50-1(d) - void judgment- or (e) - the judgment has been vacated or it is no longer equitable that the judgment should have prospective application.

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." Housing Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984).) The grant or denial of a motion brought under *R.* 4:50–1(f) is addressed to the motion judge's sound discretion. Authority of Town of Morristown v. Little, supra, at 286. Each case brought under a *R.* 4:50–1(f) motion must be resolved on its own particular facts. Baumann, supra, at 395.

A similar issue arose in the case cited by Defendant, Midland Funding LLC v. Williams No. A-2961-22, 2024 WL 1202732 (N.J. Super, AppDiv, 2024). (Pa7) There the plaintiff debt collector obtained judgment against the defaulting defendant borrower. Seven years after entry of the judgment, the defendant moved to vacate the default under R4:50-1 (d) and (f). Defendant claimed that the debt collector did not have a license under the NJCFLA. The court rejected the challenge to the judgment, indicating the trial court did not abuse its discretion in denying the motion under as the complaint was served properly and the judgment was validly entered.

On appeal, the court analyzed the motion to vacate under R. 4:50-1 (f) and likewise found no abuse of discretion. The Appellate Division panel noted the trial judge

> "...rejected defendant's claim that Midland's alleged failure to obtain the necessary license was "an extraordinary circumstance necessitating the default judgment be vacated more than ten years after being entered and satisfied." As the court correctly observed, "[d]efendant had plenty of opportunity to contest the default judgment by filing a motion to vacate soon after it was entered..."

Midland Funding LLC v. Williams, supra at 5.

In the instant matter, Defendant waited nearly six years to challenge the judgment. R. 4:50-2 requires that any motion under R. 4:50-1 be filed within a "reasonable time". Defendant's excuse for the delay was provided in the form a

certification submitted with the third motion to vacate default, and is part of the record, although it has been redacted (termed "Deleted" in the eCourts docket) because of the personal and private nature of the facts. Defendant's Statement of Facts does glancingly reference this, stating that "due to the severity of Chartonavich's psychiatric diagnoses, Chartonavich was unable to understand and/or fully appreciate the nature or the cause of the legal proceeding against him." (Db2) Defendant further states "However due to the severity of Chartonavich's psychiatric diagnoses-requiring in-patient treatment, he was unable to fully understand and/or appreciate the nature of the action against him or the cause of the legal proceeding" (Db5).

While Defendant makes these broad assertions, there is nothing in the record to explain how the diagnosis prevented Defendant from answering the complaint in a timely manner and how it prohibited Defendant from filing a motion to vacate judgment for six years. Nor does Defendant argue in his brief the excuse for the nearly six-year delay, other than the references noted above.

Defendant's certification failed to provide the requisite proof, by failing to explain how Defendant's condition caused or led to the delay in filing. However, Defendant did not address the matter in his appellate brief and, like the claims brought under R. 4:50-1 (a), appears to have abandoned this claim, and the Court is left unguided by Defendant on this point.

Plaintiff notes finally that Defendant was required to show both excusable neglect and a meritorious defense. "Generally, a defendant seeking to reopen a default judgment must show that the neglect to answer was excusable under the circumstances and that he has a meritorious defense. Marder v. Realty Const. Co., 84 N.J. Super. 313, 318 (App. Div.), aff'd, 43 N.J. 508 (1964). *See also* US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449 (2012). Carelessness may be excusable when attributable to an honest mistake that is compatible with due diligence or reasonable prudence. Diprospero, supra, at 395; Mancini v. EDS on Behalf of New Jersey Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330 (1993).

Here, as argued above, Defendant's failure to explain why he failed to file the motion to vacate default until nearly six years after the judgment is fatal to a claim that his carelessness was excusable neglect. There is no attempt to explain the delay, beyond reference to a medical condition, and no attempt to tie the specifics of Defendant's condition to the six years of delay.

Looking at the lack of excusable neglect and the six-year delay for which Defendant proffered only a broad explanation, the trial court held Defendant "cannot establish that six years is a "reasonable time" within which to have brought this motion." Plaintiff respectfully suggests this conclusion of law is well within the trial court's discretion.

IV. CONCLUSION

The trial court's statutory analysis is supported by the plain language of the statute, giving Defendant no basis upon which to declare the judgment void based upon the NJCFLA. The plain language of the NJCFA neither explicitly or implicitly creates nor allows any private cause of action, but instead by its clear terms rests all authority to pursue claims for a violation in a single entity, the Commissioner of the Department of Banking and Insurance, and Defendant cannot avail himself of any of the provisions in the Act to void the judgment in this matter. Nor has Defendant provided the requisite grounds for the grant of the requested relief, having failed to show the motion to vacate judgment was filed within reasonable time or how there was excusable neglect in the nearly six-year delay or any other basis for the grant of the requested relief.

For these and the foregoing reasons, Plaintiff respectfully recommends the findings and rulings of the trial court should be affirmed.

Respectfully submitted,

s/ Thomas M. Murtha, Esq
Thomas M. Murtha, Esq.
Attorney for Plaintiff/Respondent, Portfolio Recovery Associates, LLC

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

❖ ❖ ❖

Docket No. A-001088-23

PORTFOLIO RECOVERY ASSOCIATES, LLC, as assignee of HSBC BANK NEVADA N.A. / CAPITAL ONE BANK (USA) N.A.,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION, BERGEN COUNTY
v.	:	Trial Court Docket No. BER-L-5641-23
TERRY A. CHARTONAVICH,	:	
Defendant-Appellant.	:	Sat Below: HON. MARY F. THURBER, J.S.C.
	:	DATE: May 29, 2024

REPLY BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Plaintiff-Respondent Portfolio Recovery Associates, LLC ("PRA") has argued in their Brief that Defendant-Appellant Terry A. Chartonavich's arguments on appeal fail due the ostensible lack of a private right of action included in the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1, *et seq.* However, PRA's arguments largely ignore the statutory predecessors and history of the NJCFLA as they relate to private enforcement by aggrieved consumers. Given that the statutes preceding the NJCFLA (which are largely comprised of the same codifications as the current NJCFLA), allowed for private enforcement, it is reasonable to infer that the legislature also intended for the NJCFLA to allow for private enforcement in addition to and conjunction with the enforcement remedies provided to Commissioner of Banking and Insurance.

Moreover, applicable jurisprudence shows that even in the absence of a private right of action, violations of the NJCFLA (akin to PRA's undisputed violations here) give rise to a dispositive affirmative defense. PRA's arguments fail to address an assertion of the NJCFLA as an affirmative defense and largely conflate offensive claims to a defensive application of the same. Thus, Chartonavich submits his Reply to the Brief submitted by PRA.

REPLY ARGUMENT

POINT I. CHARTONAVICH HAS CORRECTLY ASSERTED PRA'S VIOLATIONS OF THE NJCFLA AS AN AFFIRMATIVE DEFENSE TO THE VOID DEFAULT JUDGMENT

PRA's Brief argues that, because there is ostensibly no private right of action under the NJCFLA, Chartonavich cannot assert PRA's failure to be licensed as a means to vacate the default judgment obtained on Chartonavich's void debt. However, PRA's arguments ignore the fact that "[t]he absence of a private right of action is irrelevant to the instant application . . . defendant is not seeking to utilize the CFLA as a sword, by asserting a private right of action under the statute. Instead, defendant is asserting the right to utilize the CFLA as a shield against enforcement of a judgment which defendant contends was void *ab initio*." *New Century Fin. v. Trewin*, 2018 N.J. Super. Unpub. LEXIS 1688, *8 (Ch. Div. May 24, 2018) (Da71). Indeed, "Defendant may raise [Plaintiff's] unlicensed status under the CFLA as a shield against enforcement of plaintiffs judgment." *Id.* at *6-7. Thus, as in *Trewin*, the Court here should find that "the judgment obtained by [Defendant] is void, by virtue of [Defendant's] unlicensed status." *Id.*, 2018 N.J. Super. Unpub. LEXIS 1688, at *9 (citing N.J.S.A. 17:11C-33(b)).

PRA's Brief largely fails to address the distinction between PRA's NJCFLA violations being asserted as an affirmative defense and asserting

NJCFLA violations as a basis for affirmative claims. Though PRA's Brief addresses *Trewin*, it does so only to argue that "[t]he decision and opinion in *Trewin* was [sic] vacated by order dated July 23, 2018 . . . meaning there is effectively no opinion to rely on." PRA's Br. 18. However, PRA's arguments conspicuously omit that Judge O'Neill's Opinion in *Trewin*, 2018 N.J. Super. Unpub. LEXIS 1688, was not vacated as bad law, but rather as the result of a settlement agreement. *See* July 19, 2018 Stipulation of Settlement in *New Century Fin. v. Trewin*, HNT-DC-960-17 (Dra1). Thus, the reasoning and analysis in *Trewin* has not in any way been abrogated. Moreover, PRA fails to mention that the Stipulation of Settlement in *Trewin* also dismissed the plaintiff's complaint with prejudice. Thus, were the Court to accept PRA's argument that the Stipulation of Settlement "mean[s] there is effectively no opinion," consistency demands that PRA's Complaint (Da1) also be dismissed with prejudice.

PRA further argues that "the only language in the [*Trewin*] opinion related to the issue at hand is the bare statement that there could be a defensive application of the NJCFLA, but the judge provided no explanation of his reasoning. . . ." PRA's Br. 18. However, a reading of *Trewin* shows that the court analyzed the plaintiff's NJCFLA violations in the context of the meritorious defense requirement for the defendant's motion under *R.* 4:50-1.

Trewin, 2018 N.J. Super. Unpub. LEXIS 1688, at *8-10. Thus, in contrast to the PRA's assertions, the *Trewin* court provided both reasoning and analysis into assertion of the NJCFLA as an affirmative defense—PRA has failed to respond to the same.

PRA goes on to argue that the decisions in *Woo-Padva v. Midland Funding*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 (App. Div. Sep. 21, 2023) (Pa1), and *Veras v. LVNV Funding, LLC*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176 (D.N.J. Mar. 17, 2014) (Da74) should be dispositive in favor of PRA here. PRA's Br. 13, 17. Notwithstanding that *Woo-Padva* is subject to a pending Petition for Certification to the New Jersey Supreme Court, neither *Woo-Padva* nor *Veras* analyzed the NJCFLA as an affirmative defense in the context of a motion to vacate default judgment. *Woo-Padva* and *Veras* analyzed violations of the NJCFLA as predicate offenses to violations of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.* and federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, respectively. Further, *Veras* went on to hold that misrepresenting the legal status of the debt when the was voided by the NJCFLA violates the FDCPA. Thus, a private right of action is not required in order for the courts to enforce a statute, especially in this instance. The analysis and holding in *Trewin* is much more analogous and applicable to

the case at bar than *Woo-Padva* and/or *Veras*.

Lastly, PRA asserts that the NJCFLA's statutory predecessors, i.e., the New Jersey Small Loan Law ("NJSLL"), the New Jersey Consumer Loan Act ("NJCLA"), and the New Jersey Licensed Lenders Act ("NJLLA"), did not "provide for a private cause of action . . . no legislative history is mentioned by Defendant, nor has he mentioned any court that has inferred such a private right." PRA's Br. Given that there is a distinction to be drawn between statutory predecessors and legislative predecessors, a brief history of the NJSLL, NJCLA, and NJLLA can be found at p. 9-11 of Chartonavich's opening Brief. Chartonavich's opening Brief also cites multiple cases[1] in which the statutory predecessors of the NJCFLA have been enforced by individual consumers. In fact, *Lemelledo v. Benefit Mgmt. Corp.*, cited on p. 9-10 of Chartonavich's opening Brief, discusses the NJCLA's replacement by the NJLLA and the private remedies that were available under the same:

> If a violation of the CLA is proven, the typical remedy, obtainable by the Department of Banking and Insurance ***or by individual consumers, is voiding of the contract . . . The [NJ]CLA, as incorporated in the Licensed Lenders Act, now allows for treble damages by aggrieved consumers***, N.J.S.A. 17:11C-33b, and summary revocation of a lender's license, N.J.S.A. 17:11C-48a.

[1] *See, e.g., Family Fin. Corp. v. Gough*, 10 N.J. Super. 13 (App. Div. 1950); *Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 272 (1997).

Lemelledo, 150 N.J. at 272 (emphasis added).

As shown above, PRA's assertions that "[Chartonavich] has [not] mentioned any court that inferred such a private right" under the NJSLL, NJCLA and/or NJLLA are without merit. In actuality, PRA has failed to respond to the arguments in Chartonavich's opening Brief. The fact remains that, if the statutory and legislative history and intent of the NJCFLA are the polestars for the inclusion vel non of an implied private right of action, then the foregoing cases suggest that the NJCFLA—like the NJCLA and NJLLA—must afford an implied private right of action. And, as explained above, even in the absence of a private right of action, Chartonavich may properly assert PRA's violations of the NJCFLA as an affirmative defense. Thus, PRA's arguments fail and the October 26, 2023 Order (Da58) denying Chartonavich's Motion to Vacate should be reversed.

POINT II. THE PUBLIC POLICY INTEREST IN FINALITY OF JUDGMENTS IS OUTWEIGHED BY PRA'S VIOLATIONS OF THE NJCFLA

In its Brief, PRA argues:

> Defendant argues that the trial judge erroneously held that the NJCFLA does not further an interest of public policy. That is incorrect. The trial court did not hold that the policy of the NJCFLA was impacted in the matter at all. The court had no reason to explore the policy underpinning the NJCFLA, instead finding dispositively that there is no violation of the Act that Defendant could rely upon to void the judgment. As a

> result, the court held, the judgment was not void. The trial court had no reason to discuss the policy behind the NJCFLA, especially in light of the clear language of the Act. The court would only need to review said policies if it found that the Act had been violated but, instead, the court specifically found that the Act did not void the judgment.

PRA's Brief 19-20.

First, if the "clear language of the [NJCFLA]" addressed the private right of action as PRA claims, there would be no need to analyze an implied private right of action here. There is no language in the NJCFLA that addressed the private right of action. Second, the trial court specifically held that Chartonavich's reliance on *LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 110 (App. Div. 2020), was misplaced as "[Chartonavich] does not have the benefit of th[e] [FDCPA's] countervailing policy interest," i.e., curbing abusive debt collection practices. *See* October 26, 2023 Statement of Reasons p. 2 (Da61); *see also* 15 U.S.C. § 1692(a); 15 U.S.C. § 1692(d). The trial court ***did not find***, however, that PRA had not violated the NJCFLA, as PRA argues. Indeed, PRA has ***never disputed*** its lack of licensure or the NJCFLA's licensure requirements for "consumer lender[s]." *See* N.J.S.A. 17:11C-2; N.J.S.A. 17:11C-3.

In contradiction, after asserting that the trial court did not address Chartonavich's arguments regarding the public policies motivating the

NJCFLA,[2] PRA goes on to cite and repeat the trial court's reasoning addressing the same:

> The court in *DeAngelo* weighed the policies behind a violation of the FDCPA with the policy favoring the finality of judgments. Here the trial court was not confronted with these two competing public policies as there is no violation of a federal statute involved. The trial court found that there was no violation of the [NJCFLA], so there was no need to consider the policies behind the [NJCFLA].

See PRA's Br. 21-22.

The trial court did not find that PRA did not violate the NJCFLA—PRA's lack of licensure under the NJCFLA has never been disputed. Nor did the trial court find that a "federal statute" must be violated in order to implicate concerns of public policy. Like PRA, the trial court erred by determining that PRA's violations of the NJCFLA did not present a "countervailing policy interest," while ignoring the policy interests furthered by the NJCFLA, explained above.

As explained in Chartonavich's opening Brief, *DeAngelo* involved vacatur of an eight-year-old judgment in the face of calculated and inexcusable

[2] "[E]very iteration of the [NJ]CFLA since the NJSLL had the goals of prohibiting deceptive lending practices, limiting usurious interest rates, limiting what property could be used as secured collateral, limiting what entities could offer consumer credit or possess consumer accounts, and ensuring that only qualified, licensed entities were able to enter the consumer lending marketplace." Chatonavich's opening Br. 15.

neglect by defendant DeAngelo. *DeAngelo*, 464 N.J. Super. at 109. The court in *DeAngelo* vacated the default judgment because it found that plaintiff LVNV's collection of a time-barred debt in violation of the FDCPA outweighed the interest in finality of judgment. *Id.* Here, we have a comparable remedial consumer protection statute, i.e., the NJCFLA, enacted to further similar public policy interests (i.e., prohibiting deceptive and predatory practices related to loans and consumer credit to ensure that only licensed entities enter the marketplace), which PRA violated to unlawfully obtain a default judgment against Chartonavich. Worse than suing on a time-barred debt—which remains valid although unenforceable[3]—here, PRA sued on a void debt, which has no legal significance by definition. Thus, the trial court erred in holding that vacatur of the unlawful judgment is improper, despite PRA's violations of the NJCFLA. Similarly, PRA's arguments fail to address the public policies motivating the NJCFLA, especially in the context of *DeAngelo*.

Considering the trial court's reasoning with respect to *DeAngelo* and the FDCPA, the trial court erred by failing to acknowledge and/or analyze the cases in this jurisdiction and our federal sister court for the District of New

[3] *See, e.g., Midland Funding LLC v. Thiel*, 446 N.J. Super. 537 (App. Div. 2016).

Jersey which stand for the proposition that violations of the NJCFLA also give rise to violations of the FDCPA.

Though the area of law is still developing and, at this time, there are no published cases analyzing this issue, the Honorable Keith E. Lynott, J.S.C. issued an Order and Statement of Reasons on April 26, 2023 in a case entitled *McQueen v. Fein, Such, Kahn & Shepard, P.C.*, ESX-L-1439-22, 2023 N.J. Super. Unpub. LEXIS 640 (Law Div. April 26, 2023) (Dra21), which analyzed the NJCFLA's licensure requirements and the application of the same in great depth.

> 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.
>
> . . .
>
> [The NJCFLA] 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. . . . 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 *9-15.

In *Arroyo v. Stoneleigh Recovery Assocs., LLC*, 2019 U.S. Dist. LEXIS 138287, at *11-13 (D.N.J. Aug. 14, 2019) (Dra5), the District Court held that an assignee of an allegedly defaulted Capital One credit card debt had to be licensed under the NJCFLA, that unlicensed entities were precluded from demanding or collecting interest on a charged off account, and that said violations support affirmative claims for violations of the FDCPA.

In *Latteri v. Mayer*, 2018 U.S. Dist. LEXIS 85926, at *6 (D.N.J. May 22, 2018) (Dra12), the District Court denied defendant debt collector's motion to dismiss the Complaint wherein plaintiff alleged FDCPA violations based on defendant's attempts to collect an alleged debt while unlicensed as a consumer lender under the FDCPA.

In *Lopez v. Law Offices of Faloni & Associates, LLC*, 2016 U.S. Dist. LEXIS 124730, at *13 (D.N.J. Sept. 14, 2016) (Dra16), the District Court held that a debt buyer had to be licensed under the NJCFLA 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)."

In *Peralta v. Ragan*, 2022 U.S. Dist. LEXIS 234300, at *5-8 (D.N.J. Dec. 30, 2022) (Dra27), the District Court denied the defendants' motion to dismiss and held that defendant debt buyer's failure to be licensed under the NJCFLA supported plaintiff's claims for violations of the FDCPA.

In *Tompkins v. Selip & Stylianou, LLP*, 2019 U.S. Dist. LEXIS 21937, at *7-11 (D.N.J. Feb. 11, 2019) (Dra32), the District Court held that defendant debt buyer's attempts to collect an alleged debt while unlicensed under the NJCFLA supported claims under the FDCPA. *See also Id*. at *2 (collecting cases within the District of New Jersey holding that "a debt collector's failure

to obtain a license pursuant to the [NJCFLA] can constitute a violation of the FDCPA").

In *Valentine v. Mullooly, Jeffrey, Rooney & Flynn LLP*, 2022 U.S. Dist. LEXIS 118399, at *13 (D.N.J. July 6, 2022) (Dra37), the District Court denied defendants' motion to dismiss plaintiff's FDCPA claims and held that "[c]ourts 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.'"

In *Veras*, *supra*, 2014 U.S. Dist. LEXIS 34176, at *18 (D.N.J. March 17, 2014) (Da74), the District Court denied defendant's debt buyer's motion to dismiss and stated that "it would strain logic to conclude that if a debt collector is prohibited from engaging in debt collection activity in a state, he avoids the risk of liability under the FDCPA so long as he conceals this fact and does not make any representation that he actually has debt collection authority."

Given the above cases, violations of the NJCFLA have been placed on equal footing with violations of the FDCPA. The trial court erred by misapplying the holding in *DeAngelo* and holding that the NJCFLA neither provides for nor furthers interests of public policy. PRA's arguments similarly

fall short as they also fail to analyze the public policies motivating the NJCFLA, violations of the FDCPA, the comparable offenses that give rise to both, and the resulting analyses of the same.

Lastly, PRA cites to *Midland Funding LLC v. Williams*, No. A-2961-22, 2024 N.J. Super. Unpub. LEXIS 466 (App. Div. Mar. 21, 2024) (Pa7), to argue that Chartonavich's Motion to Vacate was untimely, having been filed six years after the entry of default judgment. *Williams* is analogous to the case at bar in that it involved a plaintiff's violations of the NJCFLA and a subsequent motion pursuant to *R.* 4:50-1(d) and *R.* 4:50-1(f). However, PRA erroneously states that the defendant in *Williams* moved to vacate a default judgment obtained in violation of the NJCFLA "[s]even years after the entry of judgment." PRA's Br. 24. In actuality, the defendant in *Williams* moved to vacate the unlawful default judgment eleven years after it was entered—making the default judgment in *Williams* nearly twice the age of the default judgment here. *Id.* at *1-2. Thus, with respect to timeliness, *Williams* is entirely distinguishable from the instant action. Moreover, unlike the case at bar, *Williams* did not involve a defendant suffering from psychiatric illness, which must inform the Court's analysis into Chartonavich's excusable neglect here. *See* PRA's Br. 25.

Thus, for all the foregoing reasons, the October 26, 2023 Order (Da58)

denying Defendant's Motion to Vacate should be reversed.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Terry A. Chartonavich respectfully requests that the October 26, 2023 Order (Da58) denying the Motion to Vacate Default Judgment be reversed.

Respectfully submitted,

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