SUPERIOR COIURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001560-23T4

SANTANDER BANK, N.A.

Plaintiff-Respondent

v.

ARTHUR ARDOLINO

Defendant-Appellant

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
CAMDEN, COUNTY

Honorable Michael J. Kassel, J.S.C.
Sat below

BRIEF AND APPENDIX
FOR
APPELLANT: ARTHUR ARDOLINO

ARTHUR ARDOLINO
APPELLANT
14 GALLEY WAY
LITTLE EGG HARBOR, NJ 08087
(732)-501-3144
ajardolino@cimple.com

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LIST OF PARTIES

Party Name	**Appellate Party Designation**	**Trial Court/ Agency Party Role**	**Trial Court/Agency Party Status**
Arthur Ardolino	Appellant	Defendant	Participated Below
Cimple		Defendant	Participated Below
Santander Bank	Respondent	Plaintiff	Participated Below

TABLE OF TRANSCRIPTS

Proceeding Type	Proceeding Date	Transcript Number
Court Hearing	10/19/2023	AD/T 557

SANTANDER BANK, N.A. V. ARTHUR ARDOLINO AND CIMPLE	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001560-23T4 Appeal **TO VACATE THE FINAL JUDGMENT BY DEFAULT GRANTED 5/4/2015.**

PRELIMINARY STATEMENT

Upon examination the trial court records from February 2015 through April 2015. that were archived from the NJ-e-Courts System, records prior to November of 2017, obtained in September of 2023 (Request (Pa1); PDF Random Dump (Pa4); and, Sorted Records (Pa5)) **it was discovered that matters of law were ignored** in the Affidavits of Service, in the Request to Enter Default Proof of Mailing, and in the Final Judgment by Default Proof of Mailing. That is, the Process Server, and the Plaintiff's Attorney and his Legal Assistant **knowing and willfully violated the law**. The trial court ERRED in granting the Final Judgment by Default in May of 2015 that denied the defendants of their right to due process of: (1) notice; (2) an opportunity to be heard; and, (3) an impartial tribunal. Based on these court records, the defendants **WERE NOT** properly served as a business entity and as an

individual. The defendants **DID NOT** receive the complaint and the summons, thereby denying the defendants their right to dispute the Complaint and to challenge the Summons. The defendants **DID NOT** receive proper notice, thereby denying them of their rights to oppose the Request to Enter Default and to oppose the Final Judgment by Default. Upon discovering these violations of law, the defendants filed a Motion to Vacate the Final Judgment by Default. At the October 19, 2023 hearing, the **Motion to Vacate the Final Judgment by Default** , supported by the defendants' joint brief, was DENIED by the trial court. Subsequently, the defendants filed a **Motion to Reconsider**, was DENIED, and then the **Motion for a Traverse Hearing,** supported by the business defendant's affidavit and brief (Pa40-42; Pa43-45), was DENIED, that would have allowed the defendants to cross-examine the individuals, under oath about the matters of law that they knowingly and willfully violated. On December 1, 2023, both motions were DENIED by the trial court; who also DENIED the defendants' request for an oral argument. At this time, the defendants ask this court to vacate the Final Judgement by Default that was granted by the trial court in error on May 4, 2015. Should this court decide to remand the matter back to the trial court for an Evidentiary Hearing, the defendants request that a different trial judge be assigned.

TABLE OF PROCEDURAL HISTORY

Date	Event/ Proceeding	Filed by		Result Number
Page				
2-6-2015	Complaint	Plaintiff	Filed	Pa8-12
2-11-2015	Summons	Plaintiff	Filed	Pa13
2-13-2015	Affidavits of Service	Plaintiff	Filed	Pa6 & Pa7
3-23-2015	Request to Enter Default	Plaintiff	Filed	Pa16
4-29-2015	Final Judgment by Default	Plaintiff	Filed	Pa17
5-4-2015	Final Judgement Order	Court Clerk	Entered	
8-10-2023	Request of Court Records	Defendant	Filed	Pa1
9-15-2023	PDF of Court Records	Defendant	Received	Pa4
9-18-2023	Motion to Vacate Judgment	Defendant	Filed	Pa19
10-19-2023	Court Hearing on Motion	Judge	Held	
10-19-2023	Vacate Judgment Order	Judge	Denied	Pa60
11-2-2023	Motion to Reconsider	Defendant	Filed	
11-8-2023	Motion for Travers Hearing	Defendant	Filed	Pa39
11-14-2023	Affidavit for Hearing	Defendant	Filed	Pa43-45
11-29-2023	Brief for Traverse Hearing	Defendant	Filed	Pa40-42
12-1-2023	Traverse Hearing Order	Judge	Denied	Pa61
12-1-2023	Reconsideration Order	Judge	Denied	Pa62

STATEMENT OF FACTS FOR DEFENDANT: ARTHUR ARDOLINO

The defendant, Arthur Ardolino, was the personal "Guarantor" on Business Line of Credit with Sovereign Bank as of March of 2003 (Pa38). Formed in 1982, the small family owned and operated business, Cimple Systems, Inc. (hereinafter

'Cimple'), continued to struggle from the Great Recession of 2008 (Defendant's Affidavit (Pa46-55)). In January of 2013, the defendant, Arthur Ardolino, was forced to sell his home, at 2201 River Road in Point Pleasant, NJ at a LOSS and move into an apartment at 1406 Barclay Blvd., Princeton NJ 08540. That home address of 1406 Barclay Blvd. was used by Plaintiff to file the Complaint (Pa8-12) and to issue the Summons (Pa13). The Process Server claims that he served defendant, Arthur Ardolino, at his home address on February 13, 2015 at 2:15 p.m. Upon examination of the Pre-Judgment Court Records, obtained in September of 2015 (Pa24), ***the following certification errors were discovered***: **(1)** On March 23, 2015 the Plaintiff's attorney Request to Enter Default and his Legal Assistant's Proof of Mailing (Pa16) were **WRONGLY sent** certified mail to the Cimple's business address of 116 Village Blvd., Princeton NJ **NOT TO** the defendant, Arthur Ardolino, home (adobe) address at 1406 Barclay Blvd., Princeton NJ; **(2)** On April 29, 2015 the Plaintiff's attorney Request to Enter Default and the Final Judgment by Default and his Legal Assistant's Proof of Mailing (Pa17) were again **WRONGLY sent** to Cimple's business address of 116 Village Blvd., Princeton NJ **NOT TO** the defendant, Arthur Ardolino, home (adobe) address of 1406 Barclay Blvd., Princeton NJ; **(3)** The description of the defendant was obtained from public

records, an identical match to his driver license, -- not from direct observed contact; and, **(4)** The individual defendant, Arthur Ardolino, Affidavit of Service (Pa7) **CONFLICTED** with the Affidavit of Service (Pa6) of the business defendant, Cimple Systems, Inc., because they were certified to be served by the Same Process Server, Tywayne Reed, on the Same Day, February 13, 2015 and at the Same Time, 2:15 p.m. at addresses physically miles and minutes apart. That's **IMPOSSIBLE!**

STATEMENT OF FACTS FOR DEFENDANT: CIMPLE SYSTEMS, INC.

The defendant, Cimple Systems, Inc., was the "Borrower" of Business Line of Credit with Sovereign Bank as of March of 2003 (Pa38). The Great Recession of 2008 caused millions of people to lose their life savings and millions of companies to go out-of-business (Defendant's Affidavit (Pa46-55)). It forced, Cimple Systems, Inc. to close its physical office at 600 Alexander Road ($4,400.00/mo., +2,200 sq. ft.), Princeton NJ and to contract with Regus Management in the Forrestal Village Complex beginning in April of 2008 for *a virtual mail only office* at 116 Village Blvd. ($175.00/mo., 0 sq. ft.), Princeton NJ. ***No officer or employee physically worked at that address*** – they then worked from home. *The officer described on the Affidavit of Service was taken from public*

records – not from observed contact of the defendant (Pa6).

Upon examination of the Pre-Judgment Court Records obtained in September of 2015 (Pa23), ***these certification errors were discovered***: Cimple's *virtual office* at 116 Village Blvd., Princeton NJ **WAS CLOSED** at the end of April 2014. In February of 2015, the Plaintiff uses that address to file the Complaint (Pa8-12) and to issue the Summons (Pa13). And then, the Process Server uses that address to serve the defendant, falsely claiming that he: *"Left a copy with a person authorized to accept service."* Fact One **(1)**, it **WAS NOT** served on an officer of the business defendant, Cimple Systems, Inc. Fact Two **(2)**, it **WAS NOT** served on an authorized agent of the business defendant. Fact Three **(3)**, the Plaintiff's Request to Enter Default and Proof of Mailing at the end of March of 2015 (Pa16) was sent certified mail to 116 Village Blvd., Princeton NJ 08540 that **NO LONGER EXISTED.** Four (**4**), the Plaintiff's Request for Final Judgment by Default and Proof of Mailing at the end of April of 2015 (Pa17) was also sent certified mail to 116 Village Blvd., Princeton NJ 08540 to an office that **NO LONGER EXISTED**, where an attempt by USPS to deliver certified mail to that business address in March of 2015 and again in April of 2015, to *a virtual office that was closed since April 2014*, **WERE NOT** accepted by Regus Management. And Fact Five (**5**), The

business defendant, Cimple Systems Inc., Affidavit of Service (Pa6) **CONFLICTED** with the Affidavit of Service (Pa7) of the individual defendant, Arthur Ardolino, because they were certified to be served by the Same Process Server, on the Same Day, February 13, 2015 and at the Same Time, 2:15 p.m. at addresses physically miles and minutes apart. That's **IMPOSSIBLE!**

In May of 2015, the Final Judgment by Default by the trial court was granted based on *defective* Affidavits of Service certifications by the Process Server in February of 2015 and based on the *improper* certifications submitted to the Court Clerk by the Plaintiff's Attorney and his Legal Assistant in March of 2015 and again in April of 2015.

POINT 1. THE TRIAL COURT ERRED IN GRANTING THE DEFAULT JUDGMENT

Because courts lack personal jurisdiction where service of process is improper, determining proper service is a threshold issue. Lampe v Xouth, Inc. 952 F.2d 607,700-01 (3d Cir, 1991). A court obtains personal jurisdiction over the parties when the complaint and summons are properly served upon the defendant. Effective service of process is therefore a prerequisite to proceeding in a case." U.S. v. One Toshiba Color Television, 213 F.3d 147, 156 (3d Cir. 2000). "[T]he entry

of a default judgment without proper service of a complaint renders that judgment void. "; Gold Kist, Inc. v. Laurinburg Oil Co., Inc. 756 F.2d. 14,19 (3d Cir. 1985). "A judgment entered when there has been no proper service of the complaint is, *a fortiori*, void and should be set aside. "The Plaintiff … bears the burden of proving sufficient service of process."; Grand Entm't Grp., Ltd. v. Star Media Sales, 988 F.2d 476, 488 (3d Cir. 1993). If there is bad service, there is NO time limit for asking the court to vacate a default judgment and NO other reasons needs to be provided.

However, the defendants' brief in support of their motion to vacate the Final Judgment by Default, did also establish that there was Excusable Neglect and that they did have a Meritorious Defense. (Pa20), where the brief was amended, prior to the court hearing on October 19, 2023, to add the defendants' history prior to the entry of the Final Judgment by Default on 5/4/2023 (Pa25-26) and to cite the many Court Cases found in support of the defendants' brief (Pa30-33).

The herein Statements of Fact for the defendants clearly show good cause, because matters of law were knowingly and willfully violated in the Affidavits of Service, in the Request to Enter Default and Proof of Mailing (Pa16), and in the Final Judgment by Default and Proof of Mailing (Pa17); respectively by the Process

Server, and by the Plaintiff's Attorney and his Legal Assistant. That is, their acts MISLED the court into granting a Final Judgment by Default in May of 2015. They CHEATED, denying the defendants their right to due process of: (1) notice; (2) an opportunity to be heard; and, (3) an impartial tribunal.

The Plaintiff's certifications submitted to the court, prior to the Final Judgment being granted, should have been checked and verified by the Plaintiff's attorney as well as the Court Clerk, who is also an attorney – not just rubber stamped. The Saldutti Law Group, a Collection Agency, their attorneys as Officers of the Court, know the law. It is their legal obligation to due diligence, to check and to verify the Process Server certifications as well as their Legal Assistants certifications to ensure that they fully and completely vetted and comply with the law prior to submitting to the Court Clerk. The trial court CANNOT assume, take for granted, that they are valid and credible.

*Why would an attorney knowingly **IGNORE** and willfully **VIOLATE the law***? It's simple, **TO GAIN AN ADVANTAGE!** When he CHEATS, he denies a defendant of his right to due process under the law. For instance, the Plaintiff's attorney knew as of February of 2014 that the defendants DISPUTED the action taken by Santander Bank (Pa34-37). By bad/improper service and/or notice, he

denied the defendants of their right to dispute the bank's claim filed in court a year later in February of 2015. And in another instance, the defendant, Arthur Ardolino, home address of 1406 Barclay Blvd. Princeton NJ was known when the Complaint and the Summons was filed with the Court in February of 2015. *Why then in March of 2015* would the **Request to Enter Default** and *why again in April of 2015* would the **Final Judgment by Default** be sent certified mailed to Cimple's business address of 116 Village Blvd., Princeton NJ – NOT the defendant's home address? Because once a Final Judgement by Default is granted by the court is it very difficult, nearly impossible, to have that judgment vacated. The SALDUTTI LAW GROUP attorneys know the law based on 100's and 1000's of court filings each year over many years. We argue that the Plaintiff's attorney knowingly and willfully **VIOLATED the LAW,** because once the case was is in Post-Judgment mode, he had a very wide latitude of what he could do, and what he could require the defendants to do, all done with enforcement by the court.

POINT 2. BREACH OF DUTY BY PLAINTIFF'S ATTORNEY.

For the trial court to grant a Final Judgment by Default, there is a legal step-by-step process that must be followed by the plaintiff's attorney, an officer of the court, and by extension the process server he hires and the legal assistant he employees with CARE to ensure that the defendant's rights are protected so that no defendant is unjustly caused harm. That is, the defendant's right to: (1) notice, (2) an opportunity to be heard; and, (3) an impartial tribunal. Certifications submitted to the court, currently only require that no statements made are WILLFULLY FALSE. All Certifications should also require that statements made KNOWINGLY COMPLY with the law. A simple example is that the business address is correct (it is not false), but to comply with the law an individual defendant's mail must be sent to his home address – NOT to the business address. A more complicated example is an affidavit of service on a business defendant is: *left a copy with a person authorized to accept service*, where the business no longer exists at that address – NOT legally left with an authorized person, therefore the business defendant was NOT legally served. It is the legal responsibility and duty of the Plaintiff's Attorney to check, verify and vet all statements made on the document, submitted to the court, are true and that the submission to the court complies with current law. Failure to

do so is a Breach of Duty of Care by the Plaintiff's Attorney that caused unjust harm to the defendants. The New Jersey Supreme Court first definitively held that attorneys may be liable for legal malpractice claims brought by non-clients [Petrillo v. Bachenberg, 139 N.J. 472,479 (1995)]. (Note: The defendants ARE NOT submitting new evidence. We are simply challenging the evidence in the court record from February of 2015 to April of 2015, based on certifications by the Plaintiff's Process Server, Attorney and his Legal Assistant, that led the court to grant a Final Judgment by Default 5/4/2015.)

The Final Judgment by Default is solely based on a series of Certifications by the Plaintiff that **MISLED** the court into granting judgment in May of 2015. The Complaint filed (Pa8-11) with the court on February 6, 2015 was the first document that misled the court, where the FIRST Count of the Complaint **IGNORES** several certified letters from February 2014 to September of 2014 to the Plaintiff in good faith effort to resolve the dispute, which the Plaintiff's Attorney knew of and had in his possession prior to filing the Compliant. Point in fact is that the letter dated September 4, 2014, sent to the CEO of the Plaintiff (Pa34-37), was Exhibit I in the Plaintiff's Attorney Brief for the October 19, 2023 hearing, which he submitted to DENY the defendants' motion to Vacate the Final Judgment by Default. That

September 4, 2014 letter enumerates the many attempts made by the defendant to resolve the disputed matter caused by the bank teller's error when entering the monthly interest payment into the Plaintiff's computer system in February 2014 for the defendant's Business Line of Credit. The Plaintiff's Attorney **IGNORED** the facts in those letters, when he filed the Complaint with the court, a year later, in February of 2015. The court was misled by the First Count of the Complaint, paragraph 10 that states: *"On or about February 21, 2014... the Defendants failed to comply with certain terms and conditions of the Line of Credit Agreement..."*

In the Second Count of the Complaint (Pa12), the Plaintiff's Attorney **IGNORED** the fact that the defendant continued to make monthly interest payments/bank fees on the Line of Credit from February of 2014 through August of 2014, totaling to $2,799.27 dollars, while the matter was being DISPUTED (Pa34-37) which was Exhibit F.1.2 of the Defendant's Brief in support his motion to Vacate the Judgment. Again, the court was misled by the Second Count, paragraph 4 states: *"Plaintiff... has made repeated demands... however, Defendants have ignored all such demands for repayment."*

The Affidavit of Service on the business defendant, Cimple Systems, Inc., (Pa6) by the Process Server, WAS NOT checked, verified or vetted by the Plaintiff's

Attorney prior to being submitted to the court, which MISLED the court to believe that the defendant was properly served. Had due diligence been done by the Plaintiff's attorney, he would have found out that the 116 Village Blvd., Princeton, NJ address was for Cimple a virtual mail only office with no physical office space, where no officer or employee worked at that location. Had he inquired by calling the business phone on Cimple's letter head of 1-800-4-CIMPLE, which he had in his possession, he would have received a message: "*the number that you are trying to reach is no longer in service.*" And, had he challenged the Process Server to identify the authorized agent that he left the paperwork with, he would have realized that was not possible since Cimple had no physical office space. If the paperwork was left with someone, he or she was not an authorized agent for Cimple Systems, Inc. Likewise, had the Process Server, called Cimple's phone number, he would have received the same "*no longer in service message*." Furthermore, had the Process Server in February of 2015 visited the Forrestal Village Office Complex of Princeton, the building located at 116 Village Blvd., he would have discovered from building management that Cimple was no longer at that address. *Both the Plaintiff's Attorney and the Process Server breached their duty of care that caused unjust harm to the defendants.*

POINT 3. ABUSE OF DISCRETION BY THE TRIAL COURT JUDGE

The trial judge chose to focus only on the Affidavits of Service, ignoring the other Plaintiff's defective certifications (not fulfilling their purpose) required by law to obtain a Final Judgment by Default, discovered by the defendants in September of 2023. He said of the Process Server: ***"At best it's a mistake in terms of the Affidavit of Service. At worst, it's a flat out lie."*** (See October 19, 2023 Court Hearing Transcript: Page 14, lines 5-7) – he made no attempt to seek the truth. Important, because if the latter, the Process Server lied, then the court has no jurisdiction and equally important the defendants were unjustly caused harm. Before ruling on the defendants' motion to vacate, he said: ***"Now, if Mr. Arthur Ardolino, never gets the paperwork and a default judgment is obtained, then I think you're – I think you're quite correct. At least, if a motion is made in a timely basis, that default judgment should be vacated. I agree with that."*** (See October 19, 2023 Hearing Transcript: Page 15, line 19-23) Mr. Ardolino said at the hearing: *"As I indicated in my brief, the facts are very clear. The first fact is that the – the – we never received the – we were never served."* (See October 19, 2023 Hearing Transcript: Page 4, Lines 11-14, 'we' referring to both defendants) The abuse of discretion occurred when the trial judge shifted blame to the defendants, ruling that

they should have obtained the court records sooner in June of 2020, when they first became aware of the judgment when they received the Ex Parte Order for Discovery. ***"My narrow ruling is, is that this – this motion is about three years too late."*** (See October 19, 2023 Court Hearing Transcript: Page 19, lines 10-12). The judge's decision was an abuse of discretion. His discretionary decision was made in plain error, where "in General Electric Co. v. jointer, 522 U.S. 136 (1997), the Supreme Court held that abuse of discretion is the proper standard to use when reviewing evidentiary rulings,.." If there is bad service, there is NO time limit for asking the court to vacate a default judgment (Please see **POINT 1. THE TRIAL COURT ERRORD IN GRANTING THE DEFAULT JUDGMENT** for court cases citied in support of NO time limit.)

When the hearing began on October 19, Mr. Ardolino requested to be sworn in. The trial judge responded: ***"I'm not – this is not – this is not an evidentiary hearing so I'm going to decline your request."*** (See Transcript Page 3, Lines 21-23) Later on in the hearing, he said: ***"But in fairness to you, if you should file an appeal, I am not making a factual determination that – that what – what you just represented to me is false."*** (See Transcript Page 12, Lines 24-25 and Page 13, Lines 1-2). And then later he said: ***"But in this particular situation, I am not making***

a determination that Mr. Ardolino was, in fact, served in 2015. In order for me to do that... I probably would hold an evidentiary hearing." (See Transcript Page 16, Lines 1-13). An Abuse of Discretion occurred when the trial court judge DID NOT hold an evidentiary hearing, but instead forced the defendants to file an appeal. The facts presented in Mr. Ardolino's brief, in support of his Motion to Vacate the Final Judgment by Default, warranted good cause, confirmed at the beginning of the hearing by the trial judge and then by the number of times he thereafter used the words 'evidentiary hearing.' " ***– if he files an appeal, the Appellate Division sends this back for an evidentiary hearing, I'll hold the evidentiary hearing."*** (See Transcript Page 16, Lines 15-16) ***" – if this case comes back on appeal and I'm – I'm instructed to hold an evidentiary hearing as to whether or not in fact — you did receive, ..."*** (See Transcript Page 18, Lines 18-20) ***"So I'm denying the motion and, Mr. Ardolino, if you appeal, if the Appellate Division remands it for an evidentiary hearing as to whether or not you were served in 2015, ..."*** (See Transcript Page 19, Lines12-15)

I argue, in conclusion, that the trial court erred in granting the Final Judgment by Default based on the certifications by the Process Server and by the Plaintiff's Attorney and his Legal Assistant – it should have never been granted. I also argue they Breached their Duty of Care to NOT cause unjust harm to the defendant when they knowingly and willfully violated the law. And, I argue that the trial judge abused his discretion by ruling that there is a time limit to vacate an invalid unjust judgment – there is NOT. I ask the Appellate Court to Vacate the Final Judgment by Default granted on 5/4/2015.

CERTIFICATION OF DEFENDANT

I certify that the foregoing statements made by me are true. I realize that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 8/13/2024

Arthur Ardolino

SANTANDER BANK, N.A. FORMERLY KNOWN AS SOVEREIGN BANK, Plaintiff-Respondent, v. CIMPLE SYSTEMS INC. Defendant AND ARTHUR ARDOLINO Defendant-Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001560-23; On appeal from: The Superior Court of New Jersey Camden County – Law Division Docket No. CAM-L-470-15; J-078065-15 Civil Action Sat Below: The Hon. Stephen J. Kassel, J.S.C.

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT SANTANDER BANK, N.A.

SALDUTTI LAW GROUP
Thomas B. O'Connell, Esq. - 031102008
1040 N. Kings Highway, Suite 100
Cherry Hill, NJ 08034
(856) 779-0300
toconnell@salduttcollect.com
Of Counsel and On the Brief

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PRELIMINARY STATEMENT

Plaintiff-Appellant Santander Bank, N.A. extended a commercial line of credit to Cimple Systems, Inc. that was personally guaranteed by Defendant-Appellant Arthur Ardolino. Upon default, Plaintiff filed a Complaint alleging breach of contract in 2015. The Affidavits of Service identify service upon an individual matching Ardolino's description at Ardolino's business and residence locations on the same date and time. After Defendant failed to file an Answer, Plaintiff obtained Default Judgment. Plaintiff served post-Judgment Information Subpoenas and Orders to Defendant's residence between 2015 and 2020, including acknowledged certified mail in 2015. Defendant acknowledges becoming aware of the Judgment as early as 2020, when he submitted multiple filings with the Court in response to Plaintiff's communications. In 2023, Defendant moved to vacate the Default Judgment. The trial court denied the motion, finding Defendant's failure to take immediate action upon admitted, actual knowledge of the Judgment was fatal to the application. The trial court also made findings that Defendant failed to present sufficient, credible evidence disputing being personally served. The trial court's findings were well-supported by the record. As Defendant cannot demonstrate any reversible error, the trial court's findings should be affirmed.

PROCEDURAL HISTORY

In February of 2015, Plaintiff-Respondent Santander Bank, N.A. ("Plaintiff") filed a Complaint against Defendant Cimple Systems, Inc. ("Cimple") and Defendant-Appellant Arthur Ardolino ("Defendant" or "Ardolino")[1] alleging breach of contract on a commercial loan (Da8-13).[2] The Process Server completed Affidavits of Service identifying personal service upon Ardolino, individually, and Ardolino, as the Corporate Officer on behalf of Cimple, on February 14, 2015 at 2:35 P.M. at 1406 Barclay Boulevard, Princeton, New Jersey and 116 Village Boulevard, Princeton, New Jersey, respectively (Da6-7). The Affidavits of Service identify Ardolino as a white sixty-five (65) year old male with gray hair, 5'7" height, and weighing 185 pounds (Da6-7).

On March 23, 2015, Plaintiff requested to enter default against Cimple and Ardolino (Da16).[3] On April 29, 2015,

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[1] As Cimple has not filed an appeal, Plaintiff refers to Ardolino only as Defendant throughout this brief.

[2] Plaintiff's brief uses the following citations:
Pa: Plaintiff-Respondent's Appendix
Da: Defendant-Respondent's Appendix (Although Defendant's appendix is marked "Pa" and cited as "Pa", Plaintiff refers to Defendant's appendix as "Da").
1T: October 19, 2023 motion hearing transcript
2T: November 28, 2023 motion hearing transcript
3T: November 30, 2023 motion hearing transcript

[3] The Request to Enter Default was served upon Ardolino and Cimple by regular mail at 116 Village Boulevard, Princeton, New

Plaintiff requested to enter Default Judgment against Cimple and Ardolino (Da17). On May 4, 2015, the trial court entered Default Judgment against Cimple and Ardolino (Pa1-2).

On June 1, 2020, the Law Division entered an Order directing Defendant to appear for supplemental proceedings and asset discovery (Pa66-67). On June 16, 2020, Plaintiff served the Order on Defendant (Pa64-65).

On June 25, 2020, Defendant requested an adjournment of the Court-ordered depositions and filed a copy of the correspondence with the Law Division (Pa69). Defendant's first correspondence from 2020 failed to dispute the validity of the Default Judgment (Pa69). Defendant failed to seek to vacate the Default Judgment at the time of filing this correspondence with the trial court (Pa69).

On July 18, 2020, Defendant sent a second communication regarding the Court-ordered asset deposition (Pa71-72). Defendant's second correspondence failed to dispute the validity of the Default Judgment (Pa71-72). Defendant failed to seek to

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Jersey (Da16). Defendant acknowledges Cimple had a business location there, but claims it had ceased operating as of the date the Request to Enter Default was sent there by first class mail. Defendant's filings with this Court in 2023 continue to identify 116 Village Boulevard, Princeton, New Jersey as the location for Cimple (Da23 & Da 39). Multiple UCCs were filed with the State of New Jersey identifying that location as Cimple's business address (Pa21-Pa23). Plaintiff sent correspondence to Defendant at that address in 2014, to which Defendant sent multiple responses (Pa25-Pa37).

vacate the Default Judgment at the time of filing this second correspondence with the Law Division (Pa71-72).

On July 31, 2020, Plaintiff provided additional dates to Defendant for the previously ordered post-Judgment asset depositions (Pa74). On August 6, 2020, Defendant sent a written response regarding Ardolino's health and COVID-19 (Pa76-77). Defendant filed the August 6, 2020 correspondence with the Law Division (Pa76-77). Defendant's third correspondence failed to dispute the validity of the Default Judgment (Pa76-77). Defendant failed to seek to vacate the Default Judgment at the time of filing this correspondence with the Law Division (Pa76-77).

On September 25, 2023, Ardolino filed a pro se motion on behalf of Defendants moved to vacate the Default Judgment (Pa3-9).[4] The motion included a Certification that "Affidavits of

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[4] The motion to vacate appears to have been prompted by Plaintiff's efforts to obtain post-Judgment discovery and financial information from Defendant's spouse. On April 17, 2023, Plaintiff served a subpoena for Ardolino's wife, Donna Ardolino, to appear and provide testimony (Pa95-96). Plaintiff thereafter moved to enforce the subpoena after Donna Ardolino's failure to comply (Pa 91-97). Prior counsel for Defendant entered an appearance and filed a cross-motion to quash the subpoena (Pa98-108). Prior counsel for Defendant certified

> 2. I was retained by the defendants and Donna Ardolino to represent them in connection with Plaintiff's efforts to conduct post-judgment discovery in enforcement of a judgment against the Defendants.

Service are defective." (Pa6). The motion failed to dispute default on the underlying loan, the indebtedness memorialized in the judgment, or even dispute being served (Pa6). The motion simply alleged the Affidavits of Service were "defective." (Pa6)

> 3. In an effort to cooperate with these efforts, Arthur Ardolino completed a personal information subpoena and a business one, to update the ones he had provided in the spring of 2022.
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> 4. These information subpoena answers were sent to Plaintiff's counsel in my letter of June 21, 2023.
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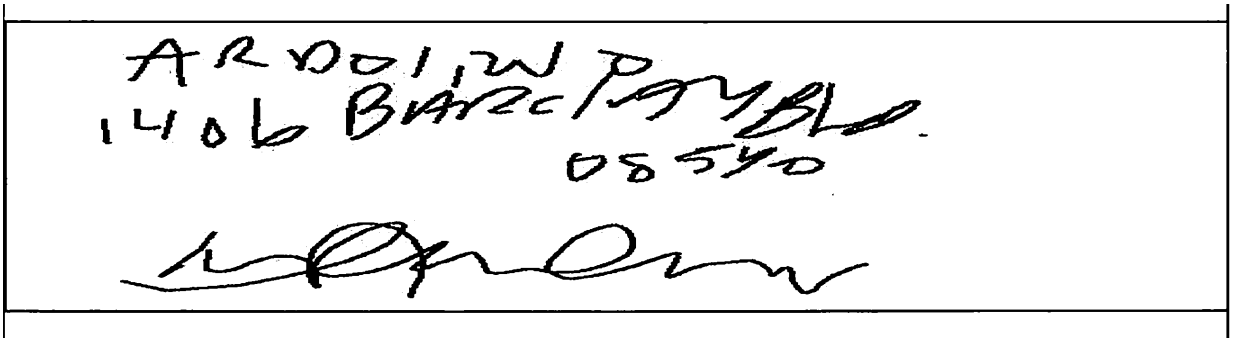
> . . . .
>
> 8. Although we oppose the deposition of Donna Ardolino, we do not contest the deposition of Arthur Ardolino, and I have already reached out to Plaintiff's counsel to schedule a date for same via zoom.
>
> 9. On July 7, 2023, I reached out to Plaintiff's counsel to discuss the facilitation of proper post-judgment discovery.
>
> [Pa102-103.]

During the pendency of the motions relating to the subpoena, prior counsel for Ardolino moved to withdraw (Pa109). On August 25, 2023, the trial court entered an Order permitting prior counsel for Ardolino to withdraw (Pa109). On September 29, 2023, the trial court denied the motion to quash and entered the Order enforcing the subpoena of Donna Ardolino (Pa110-111). Days before the motion was to be heard, Ardolino filed the pro se motion to vacate that is the subject of this appeal (Pa3-9).

Plaintiff filed opposition (Pa10-77).[5] Plaintiff's opposition included Plaintiff's post-Judgment motions and

[5] On May 14, 2015, Plaintiff served Information Subpoenas upon Defendants by regular mail to 1406 Barclay Boulevard, Princeton, New Jersey (Pa44). On July 7, 2015, Plaintiff filed a motion to hold Defendants in contempt for failing to respond to the Information Subpoenas (Pa39-46). Plaintiff served the motion by regular and certified mail to 1406 Barclay Boulevard, Princeton, New Jersey (Pa39-46). On July 13, 2015, the Law Division entered an Order directing Defendants to appear for asset depositions (Pa49-50). On July 17, 2015, Plaintiff served the Order upon Defendant by regular and certified mail to 1406 Barclay Boulevard, Princeton, New Jersey (Pa87). On July 20, 2015, the certified mail was signed for with the following electronic signature:



[Pa87.]

On August 26, 2015, Plaintiff moved to hold Defendants in contempt for failure to comply with the previously ordered asset depositions (Pa12). On January 14, 2016, the Law Division entered a bench warrant for Ardolino's arrest for failure to comply with post-judgment discovery (Pa12). On June 24, 2016, the Sheriff was denied entry to serve a Writ of Execution and levy upon goods and chattels at Ardolino's home (Pa52).

On September 2, 2016, Plaintiff moved to remove locks and doors (Pa12). On October 6, 2016, Plaintiff served the Order directing the Sheriff to remove locks and doors to Defendants (Pa53). On February 15, 2017, Plaintiff served an Order to sell Ardolino's interest in real property (Pa57). On November 2, 2017, Plaintiff moved to enforce the inspection of Ardolino's real property (Pa67). The Law Division granted the Order (Pa67). Plaintiff served the Order on Defendants (Pa67).

attempts to obtain asset discovery, including Defendants' failure to comply with multiple Orders prior to 2020 (Pa39-65). Plaintiff's opposition included the 2020 Order for post-Judgment asset depositions to which Defendants had responded by submitting three court filings regarding the scheduling of the depositions (Pa66-77).

The trial court heard oral argument (1T). Ardolino acknowledged becoming aware of the Default Judgment in June of 2020 (1T12:7). The trial court denied Defendants' motion and specified it was making no finding as to whether or not Defendants were personally served (1T12:25-13:2). The trial denied the motion for the reason that "[Y]ou were aware in June of 2020, and it wasn't until three years later that you filed this motion." (1T13:14-1T13:15). The trial court acknowledged that the Affidavits of Service may have been "mistaken" or a "lie," but the basis for the court's ruling was that Defendant had actual knowledge of the Judgment in 2020 and took no action for three years (1T16:20). The court reasoned:

> My ruling is based upon a more narrow problem I have. The information that this motion is essentially based on was available three years ago. This case has gone on now. It's – it's heated up since 2020. There probably wasn't a huge amount of activity from 2015 to 2020, but it's been eight years since the original default judgment was entered. And while there's no reason to rush these things when they don't have to be rushed, eight years is a long time for

courts to vacate default judgments when the judgment debtor had the information, the essential information in his possession to file the motion three years earlier. And I indicated earlier that I understand Mr. Ardolino has had some health and financial issues, but the information is not kept secret. The information was easily available three years ago. And of particular, importance is this.

And again, I don't – I don't want to prejudge what might be an evidentiary hearing six months from now or a year from now, who knows? But if Mr. Ardolino knew in 2020 that he was never served and didn't know about the lawsuit, he doesn't need to get the paperwork to file a motion to say, hey – and – and file a motion in June of 2020 or July of 2020, this is the first I've heard of this lawsuit and I have issues concerning the underlying debt, that type of thing. That wasn't done. That wasn't done. You don't – you don't necessarily need to have access to the affidavits –

MR. ARDOLINO . . . Your Honor . . . . .

. . . .

I did not know about this judgment until June of 2020 when my wife, it was very clear --

THE COURT: All right. . . .

. . . .

[I]f this case comes bank on appeal and I'm – and I'm instructed to hold an evidentiary hearing as to whether or not in fact you – you did receive, because remember the process server for all the problems in the affidavit service, he describes you – somehow he knew, I – I think you were about 65 back then, give or take. You – you have

> to admit the description of you is pretty on the nose.
>
> . . . .
>
> So, in any event, . . . my narrow ruling is this – this motion is about three years too late. All right? So I'm denying the motion.
>
> [1T16:20-1T20:13.]

The trial court noted there is "a difference between an affidavit of service and actual service." (1T14:3-7). Further, it would be "farfetched" for the amount of activity between 2015 and 2020 not to reach Ardolino's attention (1T14:14-16).

On October 19, 2023, the court entered an Order denying Defendant's motion to vacate (Da60).

On November 8, 2023, Defendant moved for reconsideration (Pa78-84). Defendant again certified the Default Judgment should be vacated "because affidavits of service are defective." (Pa81).[6]

On November 15, 2023, Plaintiff filed opposition to Defendant's motion for reconsideration (Pa85-90). Plaintiff's opposition included a signed certified mailing receipt of Plaintiff's service of the July 15, 2015 Order directing

[6] Defendant's certification did not dispute Defendant's residency at the service address of the Affidavit identifying service upon Defendant in his individual capacity (Pa81). Defendant's certification did not dispute service upon him at his residency (Pa81).

Defendant to appear for a post-Judgment asset deposition at the 1405 Barclay Boulevard, Princeton, New Jersey – the same location identified on the Affidavit of Service of Ardolino in his individual capacity (Pa87). The proof of mailing included the following information and electronic signature in 2015:

Tracking Number Information

Meter:	11642225	**Mailing Date:**	07/17/15 04:13 PM
Tracking Number:	9171969009350106250849	**Sender:**	22209
Current Status:	OK : Delivered	**Recipient:**	
Class of Mail	FC	**Zip Code:**	07728
Service:	ERR	**City:**	JERSEYVILLE
Value	$0.485	**State:**	NJ

Proof of delivery

ARDOLINO
1406 BARCLAY BLVD.
08540

[Pa87.]

On November 28, 2023, the court denied defendant's motion for reconsideration (2T). The trial court denied the motion, finding there had previously been extensive oral argument and

> He has a point that there may be a discrepancy in the process server's affidavits. But there's no question Mr. Ardolino was served, zero question. And I'm

> not going to relitigate it over and over and over and over again.
>
> [2T3:24-2T4:4.]
>
> He was served. That's the bottom line; he was served. Whether or not the process server was accurate or told the truth, whatever it is, is a different point.
>
> It's clear after I heard all the evidence back on October 19, Mar. Ardolino was served and it was a very, very old judgment.
>
> [2T5:18-24.]

After receiving some additional filings from Defendant, the court placed additional findings on the record on November 30, 2023 (3T). The trial court found:

> Mr. Ardolino is again challenging the process server and we discussed this back during rather extensive oral argument on October the 19th.
> It may be that the process server even made a mistake in his paperwork. He couldn't be in two places at once or was lying about it; that could be it. But there's no question that Mr. Ardolino was served. And my recollection is Mr. Ardolino has never certified that he never was served. Or, at a minimum, has never plausibly or credibly contended that he, in fact, wasn't served.
>
> The judgment in this case is now eight (8) years old.
>
> [3T4:20-5:8.]

The trial court entered an Order denying the motion for reconsideration (Da61). Defendant then filed this appeal.

STATEMENT OF FACTS

Plaintiff extended a commercial line of credit to Cimple, which Defendant personally guaranteed (Pa29). The commercial line of credit was payable upon demand (Pa31).

On February 21, 2014, Plaintiff notified Cimple and Defendant of events of default resulting in Plaintiff restricting the commercial line of credit which, at that time, had a balance of $99,746.80 (Pa29). On March 7, 2014, Plaintiff sent Cimple and Ardolino notice of default and demanded repayment over forty-eight (48) months according to the terms specified in the notice and demand (Pa31).

On April 4, 2014, Simple and Ardolino responded by requesting an extension of time on the demanded repayment (Pa33). On September 2, 2014, Plaintiff sent notice of default and demand for the entire, accelerated balance to be repaid immediately and in full (Pa35). The balance at that time was $100,447.20 (Pa35). On September 4, 2014, Defendant responded by demanding Plaintiff explain why it was taking the actions outlined in the September 2, 2014 notice and demand (Pa40).

STANDARD OF REVIEW

On appeal from the Law Division's decision, the appellate court's review "focuses on whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Robertson, supra, 228 N.J. at 148 (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). However, the trial court's legal rulings are considered de novo. Robertson, supra, 228 N.J. at 148 (2017). See Locurto, supra, 157 N.J. at 470 (1999) (appellate review of a de novo conviction in the Law Division following a municipal court appeal is "exceedingly narrow.").

LEGAL DISCUSSION

I. THE TRIAL COURT CORRECTLY FOUND DEFENDANT FAILED TO PRESENT SUFFICIENT CREDIBLE EVIDENCE DISPUTING PERSONAL SERVICE IN 2015

Defendant's certifications alleged "Defective Affidavits of Service" based upon two different addresses for service upon Ardolino at the same time. Nowhere in the Certifications did Ardolino dispute being served (3T5:6-8). Ardolino did not dispute residing at the address identified for the personal service upon him in his individual capacity. Plaintiff served post-Judgment orders and discovery to Ardolino's same residential address, including certified mail that was signed for less than three months after the entry of judgment in 2015.

Ardolino's claim that he responded to the 2020 Order for post-Judgment discovery as evidence that he would have responded to the Summons and Complaint is hollow. Ardolino failed to move to vacate the Judgment for three years. Prior post-Judgment service and Orders were sent to the same address.

Ardolino did not dispute that the Affidavits of Service correctly described his physical appearance by age, height, weight and hair color. The trial court remarked that the description seemed to fit him (1T20:10). The fact that the Process Server may not have updated the address for service of Ardolion, on behalf of Cimple, at the address for Cimple on file

with Plaintiff and the State does not invalidate the effectuation of service at Ardolino's residence.

Defendant's representation to the trial court that because he responded to Plaintiff's correspondence regarding his Court-ordered deposition in June of 2020, this was evidence that he would have responded if he knew of the Complaint, is particularly hollow. Defendant took no action with respect to the Judgment for three years. Defendant failed to comply with the post-Judgment Orders for discovery sent in 2020. Defendant only moved to vacate the Default Judgment after retaining counsel and Plaintiff attempted to subpoena his wife in 2023. Ardolino's belated "compliance" by responding to an Information Subpoena in 2023, and claiming to be available at that time, occurred only after Plaintiff was seeking to subpoena his wife. Ardolino's counsel furnished responses to the Information Subpoena and certified Ardolino did not contest his post-Judgment discovery obligations.

In short, the trial court correctly found that Defendant failed to present any credible evidence disputing personal service in 2015.

II. THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANT'S ADMITTED, ACTUAL KNOWLEDGE OF THE JUDGMENT IN 2020 WARRANTED DENIAL OF DEFENDANT'S MOTION TO VACATE FILED THREE YEARS LATER

An apparent discrepancy exists between the trial court's finding at the initial motion hearing and in denying summary judgment. At the initial motion hearing, the court relied upon Defendant's admitted, actual knowledge of the Judgment in 2020 to warrant denying the motion to vacate in 2023. The court stated it was making no finding as to whether or not Defendant was actually served. However, when denying Defendant's motion for reconsideration, the trial court found that Defendant was served and failed to present sufficient, credible evidence to dispute personal service in 2015.

The appeals court need not address the apparent discrepancy for multiple reasons. First, as set forth previously, the trial court was correct in finding that Defendant failed to present sufficient, credible evidence to dispute personal service in 2015. Second, the trial court's determination that Defendant's actual knowledge of the Judgment precluded Defendant from moving to vacate the Judgment three years later was correct for multiple reasons.

Here, Defendant never certified that he was not personally served in 2015. He simply certified that the Affidavits of Service identified service upon him at his business location and

residence at the same time. He did not dispute being the individual described in the Affidavits of Service. Although Defendant did not specify lack of service as a defense – only "defective affidavits of service" – our courts' application of laches to the type of delay exhibited by Defendant is consistent with the trial court's reasoning.

Consistent with the trial court's reasoning, Defendant should be estopped from challenging the Judgment three (3) years after Defendant's admitted, actual knowledge of the Judgment. "Laches is a defense when there is delay, unexplained and inexcusable, in enforcing a known right, and prejudice has resulted to the other party because of that delay." Wohlegmuth v. 560 Ocean Club, 302, 314 N.J. Super. 306 (App. Div. 1997) (quoting Gladden v. Public Employees' Retirement Sys. Trustee Bd., 171 N.J. Super. 363, 370-71 (App. Div. 1979). Indeed, "[H]e who is silent when conscience requires him to speak, shall not be permitted to speak when conscience requires him to be silent." Ibid. (quoting Besson v. Eveland, 26 N.J. Eq. 468, 472 (Ch. 1875).

In Wohlegmuth, the Appellate Division considered the issues of laches and estoppel, and reasoned:

> Although the judgment in Last [v. Audobon Park Associates, 227 N.J. Super. 602 (App. Div. 1988), certif. denied, 114 N.J. 491 (1989)] was voidable rather than void, Judge D'Annunzio there also cited the Kansas case

> of Ford v. Willits, supra, 237 Kan. 13, for the proposition that "**laches may be applicable to bar an action to set aside a void judgment.**"
>
> [Wohlegmuth, supra, 302 N.J. Super. at 316 (quoting Last, supra, 227 N.J. Super. at 608 (emphasis added).]

The Appellate Division applied the reasoning from Rosa, supra, 260 N.J. Super. at 458.

> In Rosa, this court found a waiver of the defendant's right to contest the judgment, notwithstanding the deficient service. Plaintiff should therefore also have been given an opportunity to prove waiver, as well as estoppel or laches, as bases to avoid the defense of lack of in personam jurisdiction.
>
> . . . .
>
> **[D]efendant may be estopped or barred by laches from challenging either the service of process or the judgment itself.**
>
> [Wohlegmuth, supra, 302 N.J. Super. at 317 (emphasis added).]

Here, Defendant acknowledges having actual knowledge of the Judgment in 2020. Defendant failed to take any action to challenge the Judgment. Plaintiff has been attempting to execute and obtain post-Judgment discovery for the past nine (9) years, including the service of a post-Judgment Order by certified mail signed for in 2015.

The statute of limitations for breach of contract is six years. N.J.S.A. 2A:14-1. This means that in the event Default

Judgment was vacated, or the trial court scheduled a plenary hearing on the issue of service, Plaintiff would be expected to present proofs relating to events that happened so long ago the statute of limitations would have expired on the underlying events. The prejudice is clear. While Plaintiff has expended time, money and resources in attempting to execute on its Judgment, Defendant continued to take no action – even after admitting being aware of the Judgment in 2020.

In short, laches prevents defendant from challenging the Judgment. The trial court was correct in denying Defendant's motion to vacate the Default Judgment.

III. BECAUSE DEFENDANT FAILED TO SATISFY THE ELEMENTS OF R. 4:50-1, THE TRIAL COURT CORRECTLY DENIED THE MOTION TO VACATE

A movant must show excusable neglect and a meritorious defense to vacate a default judgment. R. 4:50-1. Here, Defendant never disputed entering into the underlying loan or defaulting. Defendant failed to show any excusable neglect with respect to failing to file an Answer, as Defendant failed to certify that he was never served at his residence. Defendant failed to address the acknowledged receipt of post-Judgment correspondence sent by certified mail to his residence in 2015. Defendant acknowledged being aware of the Judgment in 2020. Defendant even retained counsel for assistance with complying with post-Judgment obligations in 2023, after Plaintiff was in the process of obtaining a Court Order enforcing the subpoena of Defendant's wife. In short, Defendant failed to demonstrate any grounds for relief under R. 4:50-1. The trial court correctly denied Defendant's motion.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Appellate Division affirmed the decision of the trial court in denying Defendant's motion to vacate Default Judgment and denying Defendant's motion for reconsideration.

Respectfully submitted,

SALDUTTI LAW GROUP

/s/ Thomas B. O'Connell

_____

THOMAS B. O'CONNELL, ESQ.
Attorney for Plaintiff-Respondent

SUPERIOR COIURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001560-23T4

SANTANDER BANK, N.A.

Plaintiff-Respondent

v.

ARTHUR ARDOLINO & CIMPLE

Defendants-Appellant

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
CAMDEN, COUNTY

Honorable Michael J. Kassel, J.S.C.
Sat below

REPLY BRIEF AND APPENDIX
FOR
APPELLANT: ARTHUR ARDOLINO

ARTHUR ARDOLINO
APPELLANT
14 GALLEY WAY
LITTLE EGG HARBOR, NJ 08087
(732)-501-3144
ajardolino@cimple.com

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SUPPORT COURT OF NEW JERSEY
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SANTANDER BANK, N.A.
V.
ARTHUR ARDOLINO AND CIMPLE

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TABLE OF AUTHORIES

LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court/ Agency Party Role	Trial Court/Agency Party Status
Arthur Ardolino	Appellant	Defendant	Participated Below
Cimple	Appellant	Defendant	Participated Below
Santander Bank	Respondent	Plaintiff	Participated Below

TABLE OF TRANSCRIPTS

Proceeding Type	Proceeding Date	Transcript Number
Court Hearing	10/19/2023	AD/T 557
Decision	11/28/2023	AD/T 368
Decision	11/30/2023	AD/T 368

SANTANDER BANK, N.A. V. ARTHUR ARDOLINO AND CIMPLE	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001560-23T4 Appeal DEFENDANTS REPLY BRIEF TO THE PLAINTIFF'S RESPONSE

PRELIMINARY STATEMENT: FILING OF THE REPLY-BRIEF

This Reply-Brief is being filed with this court on June 17, 2024 under protest based on the last-minute notice from this court on June 11, 2024 (Rb-1) that an attorney for the business defendant, Cimple, is required based on New Jersey Court Rule 1:21-1(c). A Notice of Motion for an Extension of Time (Rb-5) of 30 Days was filed with this court on June 12, 2024 (Rb-7). On June 14, 20204 the MOTION FOR EXTENSION OF TIME was confirmed by this court (Rb-8), but NO action was taken to grant or to deny the motion; despite several calls to the Appellate Court Clerk Office with no answer. Consequently, this Reply-Brief is being filed with the court by the defendant, ARTHUR ARDOLINO, who was the Guarantor on the Business Line of Credit by the Borrower, CIMPLE. The **same** Process Server and the **same** Plaintiff Attorney served the defendants, their bad/improper acts denied

each defendant of his rights under the law!

PRELIMINARY STATEMENT: PLAINTIFF'S-RESPONDENT BRIEF

The Plaintiff's-Respondent Brief DID NOT address (challenge or deny) the bad/improper acts identified in the Defendant's-Appellant Brief, from February of 2015 to the end of April 2015, by the Process Server, the Plaintiff's Attorney and his Legal Assistant that misled the trial court to grant, in ERROR, the Final Judgment by Default on 5/4/2015. The appeal to this court, to Vacate the Default Judgment, is based on undeniable and undisputed facts, in the court record, that those individuals **knowing and willfully violated the law** – NOT on new evidence, but on existing FACTS. Because of these conflicted acts, of possible perjury and fraud, the Defendants were denied their rights under the law of due process. That is, of: (1) notice; (2) an opportunity to be heard; and, (3) an impartial tribunal. **The result of these bad/improper acts caused unfair and unjust harm to the Defendants**.

You don't know, what you don't know, until you know it! The undisputed fact in the trial court record is that the defendants DID NOT respond until June of 2020 when they received an Ex Parte Court Order for Discovery (Rb-11), based on a Final Judgment by Default granted five (5) years earlier by the court on 5/4/2015.

To argue that the defendants knew at that point-in-time (June of 2020) the law and their rights under the law and that they failed to assert those rights is absurd. Due to financial circumstances, a closed business lost after 30 years and living on Social Security monthly payments, the defendants COULD NOT afford to hire an attorney. Reluctantly, the defendants complied with the court order, despite NOT recalling that they had received notice about the court ordered default judgment.

When the business failed after 30 years, there were many debts, but the defendants believed that those debts would be written-off based on the many successful and profitable years doing business with Cimple; most were, like the Business Line of Credit debt with Chase Manhattan Bank. It was much later, *expo facto,* that the defendants acquired knowledge about the law concerning judgments and their rights under the law, and whether a judgment was valid or not.

We ask this court to NOT make the same **implicit *Pro Se* bias error**. That error, made both by the trial court judge and the plaintiff's attorney, prevented the defendants from getting a fair and impartial hearing on their Motion to Vacate the Final Judgment by Default. The defendants have followed all the Rules of the Court that they were aware of, but that DOES NOT mean that they knew the law, *ipso facto*, and their rights under the law as would the plaintiff's attorney or the trial court

judge. Today, using the internet, defendants can acquire knowledge after the fact about the law and a defendant's rights under the law, but that knowledge is acquired, *expo facto*. To argue that the defendants were silent and did not assert their rights sooner is tantamount to saying a *Pro Se* defendant knows the law and his rights with the same knowledge as a bar approved experienced attorney. That's absurd.

STATEMENT OF FACTS: OBTAINING TRIAL COURT RECORDS

In June of 2020, the defendants received the Ex Parte Order for Discovery. In 30 years of running the business, the defendants NEVER BEFORE had a judgment filed against them. They DID NOT recall receiving notice of the judgment being filed against the business and him personally. Since Arthur Ardolino suffered his first stroke in May of 2010 and his second stroke in August of 2019, he was uncertain as to whether or not in 2015 they had received notice.

In April of 2023, eight (8) years after the 2015 judgment, the Plaintiff's Attorney, subpoenaed Donna Ardolino (Rb-13), after she inherited a small amount from her father, Joseph Palumbo, who died in July of 2021, where the sale of his home closed in May of 2022. In June of 2023, she hired Stephen Richardson to

quash the subpoena and to represent the defendants. However, in early August of 2023, Mr. Richardson asked to be released when the defendant, Arthur Ardolino, asked that he obtain a copy of his Affidavit of Service, because he did not recall being served, and a copy of the Final Judgment by Default (having not seen it). Since the court records were archived prior to November of 2017, he was unwilling to commit to that process, stating that he was only hired to squash the subpoena. So, upon his release, the defendant then requested the copies from the court himself.

The fact is that on August 8, 2023, the request for archived records (Pa-1) prior to November of 2017, by the defendant, Arthur Ardolino, was for two (2) records: his Affidavit of Service; and, the Final Judgment by Default granted on 5/4/2015. Nothing else. **He did not know**, **what he did not know**, until he received, on September 15, 2023, a PDF of over 100 pages with more than 40 documents. **NOT** *what he expected* and **NOT** *what he requested.* At first, he suspected that the Affidavits of Service were forged, because of the description of the defendant was taken from public records, an exact match from his driver's license. And Cimple's Affidavit of Service, because the business had no physical office space at 116 Village Blvd – it was a virtual office for mail only, no officer or employee of Cimple worked at that address. His suspicion was confirmed by the

fact that Affidavits of Service were certified by the Process Server as served on the same day and at the same time at locations miles and minutes apart, which is physically impossible. That's why in his letter to the trial judge on September 18, 2023 (Pa-18) he stated that the Affidavits of Service were DEFECTIVE, that is, NOT serving the purpose of delivering the Complaint and the Summons as well as other documents to the defendants. It was much later, after the court records were examined and researched, the defendants learned what was required by law for a default judgment to be granted by the trial court; that is, to be valid. The defendants' brief in support of the motion to Vacate the Final Judgment by Default was then prepared and mailed on 10/13/2023, where violated matters of law were raised.

In the defendants' brief to the trial court, Plaintiff's certifications in the court record were identified as bad/improper in the three step process of: (1st) First, the Process of Service; (2nd) Second, the Entry of the Default; and then; (3rd) Third, the Final Judgment by Default, filed with the trial court by the Plaintiff's attorney, then used by the trial court to grant the judgment. Based on the facts, discovered in the court records, the defendants were denied Due Process of Law: (a) Notice; (b) Opportunity to be Heard; and, (c) Impartial Tribunal. NO decision was made or NO thought was given, prior to receiving the trial court records on 9/15/2023, to

challenge the validity of the Final Judgement by Default granted on 5/4/2015; to assert to this court, otherwise, is simply FALSE.

POINT 1. THE TRIAL COURT ERRED IN GRANTING THE DEFAULT JUDGMENT

There are two (2) defendants in this case that are considered by law separate entities with equal rights under the law. A Final Judgment by Default was ordered by the Court against both defendants. The defendant, CIMPLE SYSTEMS, INC. was the "Borrower" of the Business Line of Credit with Sovereign Bank and ARTHUR ARDOLINO was the personal "Guarantor." (Pa-38) Both entities are entitled to ***due process under the law***. Cimple as a business, under N.J. Court Rules for a Business Entity. And, Arthur Ardolino as an individual, under N.J. Court Rules for an Individual Person. Both defendants must be served and properly informed by the respective court rules – **NOT just ONE, but BOTH!** If a defendant is NOT served or is NOT properly informed, he is denied of his rights of due process under the law. That is, of: (1) notice; (2) opportunity to be heard; and, (3) an impartial tribunal. If either of the defendants were denied ***due process under the law***, the court must vacate the Final Judgment by Default ordered on 5/4/2015..

The Plaintiff's-Respondent Brief failed to respond to the Pre-Judgment Certification Errors, undeniable facts in the Court Records, identified in the

Defendants'- Appellant Brief. The defendant, Cimple Systems, Inc., 116 Village Blvd was a virtual mail only address, not the company's place of business. No officer or employee ever worked at that address, so it was impossible for the Process Server to serve papers on an authorized agent of Cimple. The Plaintiff's Request to Enter the Default and his Proof of Mailing dated 3/23/2015 (Pa-16) was sent to an address that no longer existed, closed for ten (10) months. And, the Plaintiff's Request for the Final Judgment by Default and his Proof of Mailing dated 4/29/2015 (Pa-17) was again sent to an address that no longer existed, closed for more than ten (10) months. Also in the Defendants'- Appellant Brief, the defendant, Arthur Ardolino, the Plaintiff's Request to Enter the Default and his Proof of Mailing dated 3/23/2015 (Pa-16), were wrongly sent to the 116 Village Address – not to the defendant's home address at 1406 Barclay Blvd, which was the known address used by the Plaintiff on the Complaint and on the Summons. And, the Plaintiff's Request for the Final Judgment by Default and his Proof of Mailing dated 4/29/2015 (Pa-17) was again sent to the wrong address of 116 Village Blvd – not to the defendant's home address of 1406 Barclay Blvd, used by the Plaintiff on the Complaint and on the Summons.

These factual undeniable certification errors in the trial court record are

UNDISPUTED by the Plaintiff's-Respondent Brief. which are grounds for Final Judgment by Default to be vacated by this court, because the defendants were denied due process under the law.

POINT 2. BREACH OF DUTY BY PLAINTIFF'S ATTORNEY.

When a **Process Server falsely certifies** on the Affidavit of Service that the Process of Service was performed, that is, the Complaint and the Summons as well as other documents had been served, **he commits perjury, which is a crime**. When an **Attorney files a false document, he commits fraud, which is a crime**. And, when a **Co-Counsel Attorney knows and willfully conspires with others** to hide these crimes, **that's a conspiracy, which is a crime**.

It is the legal responsibility and duty of the Plaintiff's Attorney to check, verify and vet all statements made on the document, submitted to the court, are true and that the submission to the court complies with current law. Failure to do so is a Breach of Duty of Care by the Plaintiff's Attorney that caused unjust harm to the defendants. The New Jersey Supreme Court first definitively held that attorneys may be liable for legal malpractice claims brought by non-clients [Petrillo v. Bachenberg, 139 N.J. 472,479 (1995)]. (Note: The defendants HAVE NOT submitted any new evidence. We are simply challenging the evidence in the court

record from February of 2015 to the end of April of 2015, based on certifications by the Plaintiff's Process Server, Attorney and his Legal Assistant, that misled the court to grant a Final Judgment by Default 5/4/2015.)

The Plaintiff's-Respondent Brief DID NOT dispute the Statements of Facts for the defendants in the Defendants'-Appellant Brief, that matters of law were knowingly and willfully violated in the Affidavits of Service, in the Request to Enter Default and Proof of Mailing (Pa16), and in the Final Judgment by Default and Proof of Mailing (Pa17); respectively by the Process Server, and by the Plaintiff's Attorney and his Legal Assistant. That is, their acts MISLED the court into granting a Final Judgment by Default in May of 2015. **They CHEATED, denying the defendants their rights under the law.**

The Plaintiff's attorney knowingly and willfully **VIOLATED the LAW,** because once the case was is in Post-Judgment mode, he had a very wide latitude of what he could do, and what he could require the defendants to do, all done with enforcement by the court. The Plaintiff's-Respondent Brief offers a July 2015 POST-JUDGMENT mail receipt, not signed by him, after the Final Judgment was granted by the court. Why not offer signed PRE-JUDGMENT documents, received by the defendants of the Request to Enter the Default and of the Final Judgment by

Default? The **Plaintiff's attorneys CANNOT**, if it existed, they would. **It DOES NOT exist!** Without that proof, this court has no choice, but to vacate the judgment.

POINT 3. ABUSE OF DISCRETION BY THE TRIAL COURT JUDGE

When the Defendants-Appellants Brief was filed 4/22/2024, the Defendants were unaware of the existence of court decision transcripts on November 28th and 30th of 2023. Why? Because oral argument was denied by the trial judge and because the defendants were informed that the motions for a Traverse Hearing and for Reconsideration to Vacate the Judgment would be heard on December 1, 2023. When the Defendants-Appellants received notice, from the Appellate Court, after they filed their Brief, they immediately filed for the Court Transcripts. Upon the reading of these transcripts the Defendants heard for the first time, what the trial court said regarding the hearing on October 19, 2023. Now, in this Reply-Brief the Defendants, for the first time, CHALLENGE the memory of the trial court judge. That is, his MEMORY RECOLLECTION of that 10/19/23 hearing is WRONG!

When the hearing began on October 19, 2023, Mr. Ardolino requested to be sworn in. The trial judge responded: ***"I'm not – this is not –this is not an evidentiary hearing, so I'm going to decline your request."*** (See October 19, 2023

Hearing Transcript Page 3, Lines 21-23 and citied in the Defendants-Appellant Brief on p. 16.). And then later at the October 19, 2023 hearing he said: ***"But in this particular situation, I am not making a determination that Mr. Ardolino was, in fact, served in 2015. In order for me to do that…I probably would hold an evidentiary hearing."*** (See October 19, 2023 Hearing Transcript, Page 16, Line 9-13 and citied in the Defendants-Appellant Brief on p.17). And then the trial court judge continued, saying: ***"In other words, Mr. Ardolino invited me to swear him in, and if – if he files an appeal, the Appellate Division send this back for an evidentiary hearing, I'll hold an evidentiary hearing."*** (See October 19, 2023 Hearing Transcript, Page 17, Line 13-16).

The trial court **ERRED** when he said in the November 28, 2023 decision transcript: ***"It's clear after I heard all the evidence back on October 19, Mr. Ardolino was served and it is a very, very old judgment."*** (See November 28, 2023 Decision Transcript, Page 9, Lines 22-24). This statement CONTRADICTS what was said and what was done by the trial judge at the October 19, 2023 Hearing. And in the November 30, 2023 decision transcript, he said: ***"… on November 28, 2023, I denied the request for oral argument and I denied both motions. Now since that time, I got some additional letters from Mr. Ardolino. When he refers to this***

traverse, T-R-A-V-E-R-S-E hearing, I now think I understand what he means." (See November 30, 2023 Decision Transcript, Page 3, Lines 18-23). Mr. Ardolino's said in first letter dated 11-8-2023 (Rb-14): *"I DID NOT receive the Complaint and I DID NOT receive the SUMMONS, because the Affidavit of Service was NOT properly served, denying me of my rights. A Traverse Hearing will give me the opportunity to cross-examine under oath the process server, Twayne Reed. It will also give me an opportunity to present business records to support my claim in the cross-examination and to challenge his credibility."* In his second letter dated 11/14/23 (Rb-15), he enclosed his sworn affidavit that he **WAS NOT** served in support of his motion for a Traverse Hearing. The court changed the hearing date of the Traverse Motion from December 15th to December 1st. In his letter dated 11-30-23 (Rb-22), he informed the court that he WAS NOT notified by the e-Courts System. And, in his letter dated 11-29-23 (Rb-19), he filed his brief in Support of the Motion for a Traverse Hearing.

In the November 30, 2023, decision transcript the trial court judge said: ***"It may be that the process server even made a mistake in his paperwork. He couldn't be at two places at once or was lying about it; that could be it. But there's no question that Mr. Ardolino was served. And my recollection is Mr. Ardolino had***

never certified that he never was served. ***Or at minimum, has never plausibly or credibly contended that he, in fact, wasn't served."*** (See November 30, 2023 Decision Transcript, Page 4, Lines 24-25 and Page 5, Lines 1-6). That trail judge ERRED when he said that, ignoring Mr. Ardolino's sworn 11/14/2023 affidavit filed with the court.

The trial court judge and the Plaintiff's Attorney chose to narrowly focus only on the first step, the Affidavit of Service on the individual defendant, Arthur Ardolino. They both ignored, required by law of proper notice for the Defendant, the second step of the Request to Enter the Default and for the third step of the Final Judgment by Default. Each, step is separated by law with time to give the defendant the opportunity to respond, to contest or to dispute the court filing. That is, an opportunity by the defendant to be heard. The defendant DID NOT recall being served in 2015, and upon obtaining the court records, his suspicion was confirmed based on the corrupt forged bad and improper court records obtained. He did say: "We were not served" in the October 19, 2023 and he did identify in his brief, and at the hearing, bad/improper service and notice to the defendants. But the trial court judge ignored what was said at the hearing on 10/19/23. We ask this court not to ignore the existing ***"evidence-in-the-court"*** record from February 2015 through

April 2015, before the Final Judgment by Default was granted on 5/4/2015.

On October 18, 2023 the defendants uploaded to the NJ e-Courts System a letter to the trial judge, in preparation and in advance of the hearing on October 19, 2023. Enclosed in the letter was a document labelled: Defendant's History – Prior to Entry of Final Judgment by Default on 5/4/2015. First, the trial judge ERRED when he denied the defendants the opportunity to examine the existing court record prior to the entry of the default. And second, he ERRED again when he said on the record on November 30, 2023, that: *"And my recollection is Mr. Ardolino has never certified that he never was served. Or at minimum, has never plausibly or credibly contended that he, in fact, wasn't served."* (11/30/23 Decision Transcript p. 5 line 2-6). And third, he ERRED when he narrowly only focused on the Affidavit of Service on the defendant, which is the first step in the process of obtaining a judgment by default. He IGNORED the second step of Entry of the Default, where notice must be given to the defendant, with an opportunity to respond. And, he IGNORED the third step of Final Judgment by Default, where notice must be given to the defendant, with an opportunity to respond. On 10-17-23, before the hearing on October 19, 2023 (Pa 30-33) the defendants list several court cases that dealt with matters of law when not followed, similar to the problems in the court records

obtained by the defendant, ARTHUR ARDOLINO, on September 15, 2023, items 9-14. And, the trial judge ERRED when he FAILED to consider the certified facts (Pa 25-26) by the defendant, that he received, before the 10/19/23 hearing.

"Item 9. *As per the court records received this year on 9/15/2023*, in **February of 2015**, the **Complaint** dated 2/6/2015, the **Summons** dated 2/11/2015, and the **Affidavit of Service** dated 2/13/2015, were to Cimple Systems, Inc, at **116 Village Blvd.**, Princeton NJ 08540 – A **virtual office** that had been CLOSED for ten (10) months."

"Item 10. As per the court records received this year on 9/15/2023, in **February of 2015**, the Affidavit of Service, served on **Cimple Systems, Inc. at 116 Village Blvd**, Princeton, NJ 08540, and the Affidavit of Service served on **Arthur Ardolino at 1406 Barclay Blvd.**, Princeton, NJ 08540 were served on the **Same Day 2/13/2015** and at the **Same Time 2:35 p.m**. – **NOT possible**. And, the service on Cimple Systems, Inc. was to an unnamed general receptionist of many companies with physical and/or virtual offices at that location – **NOT** an authorized agent to receive said documents. "

"Item 11. In **March of 2015**, the **Request to Enter Default**, stamped 3/25/2015 by the court, as per the court records received this year on 9/15/2023, filed by William F. Saldutti with **Proof of Mailing**, submitted by his secretary, Coleen Flannery, dated 3/23/2015, is addressed to Cimple Systems, Inc., at 116 Village Blvd., Princeton, NJ and is addressed to the defendant, Arthur Ardolino, at 116 Village Blvd., Princeton, NJ, (**NOT his home address**), sent 'by certified mail, return receipt requested and regular, first class mail, with postage prepaid thereon."

"Item 12. In **April of 2015**, the **Request to Enter Default and Certification**, the **Final Judgment by Default**, stamped 5/4/2015 by the court, the **Affidavit of the Amount Due**, filed by William F. Saldutti III with **Proof of Mailing**, submitted by his secretary, Coleen Hannery, dated April 29, 2015, is addressed to Cimple Systems, Inc., at 116 Village Blvd, Princeton NJ, and is addressed to Arthur Ardolino at 116 Village Blvd., Princeton NJ (**NOT his Home Address**), sent "by

first class mail, with postage prepaid thereon."

"Item 14. Before **September 15 of 2023**, the defendant, Cimple Systems, Inc. and the defendant, Arthur Ardolino, **HAD NOT SEEN**: the Plaintiff's **COMPLAINT**, the **SUMMONS**, the CASE INFORMATION STATEMENT, RELATED CASE CERTIFICATION, the TRACK NOTIFICATION NOTICE or the LAWYERS REFERRAL LIST, **before** the **REQUEST TO ENTER DEFAULT** and the **FINAL JUDGMENT BY DEFAULT** were filed with the Court, as well as many other records from 2/5/2015 through 7/31/2017. "

The trial court judge ERRED when he said that the defendant, Mr. Ardolino, produced no credible evidence. The defendant, ARTHUR ARDOLINO, did identify existing evidence in the court record, from February of 2015 to the end of April of 2015, that he was denied due process of law before the judgment is issued.

For the trial court judge to say that the Mr. Ardolino provided no credible evidence that he was not served confirms to this court that he ERRED only focusing on the individual defendant's Affidavit of Service. He ERRED when he ignored matters of law that are required by the trial court to grant a judgment by default against the defendant. And he ERRED by ignoring the rights under the law for the business defendant, Cimple Systems, Inc. He acted in error, as if, there was only one defendant. There are two (2) defendants. Both have rights under the law. Without obtaining in the trial court a judgment against the "Borrower," the defendant, CIMPLE, obtaining in the trial court a judgment against the "Guarantor,"

the defendant, ARTHUR ARDOLINO, would be NOT be possible. This entire case legal foundation is based on the relationship between the two defendants, that is, the borrower and the guarantor. When the borrower is denied Due Process under the Law, it directly effects the legal standing of the case against the guarantor.

TABLE OF PROCEDURAL HISTORY from Appellant Brief filed 4/22/2024

Date	Event/ Proceeding	Filed by		Result Page Number
2-6-2015	Complaint	Plaintiff	Filed	Pa8-12
2-11-2015	Summons	Plaintiff	Filed	Pa13
2-13-2015	Affidavits of Service	Plaintiff	Filed	Pa6 & Pa7
3-23-2015	Request to Enter Default	Plaintiff	Filed	Pa16
4-29-2015	Final Judgment by Default	Plaintiff	Filed	Pa17
5-4-2015	Final Judgement Order	Court Clerk	Entered	
8-10-2023	Request of Court Records	Defendant	Filed	Pa1
9-15-2023	PDF of Court Records	Defendant	Received	Pa4
9-18-2023	Motion to Vacate Judgment	Defendant	Filed	Pa19
10-19-2023	Court Hearing on Motion	Judge	Held	
10-19-2023	Vacate Judgment Order	Judge	Denied	Pa60
11-2-2023	Motion to Reconsider	Defendant	Filed	
11-8-2023	Motion for Travers Hearing	Defendant	Filed	Pa39
11-14-2023	Affidavit for Hearing	Defendant	Filed	Pa43-45
11-29-2023	Brief for Traverse Hearing	Defendant	Filed	Pa40-42
12-1-2023	Traverse Hearing Order	Judge	Denied	Pa61
12-1-2023	Reconsideration Order	Judge	Denied	Pa62

I argue, in conclusion, that the trial court erred in granting the Final Judgment by Default against me, based on the certifications by the Process Server and by the Plaintiff's Attorney and his Legal Assistant – it should have never been granted. I also argue that the Process Server and the Plaintiff's Attorney Breached their Duty of Care to NOT cause unjust harm to me, the defendant, ARTHUR ARDOLINO. The certified facts in the trial court record show that the Process Server and the Plaintiff's Attorney knowingly and willfully violated the law; in other words, they CHEATED. And, I also argue that the trial judge abused his discretion by ruling that there is a time limit to vacate an invalid unjust judgment – there is NOT. And, the trial court judge's memory recollection is WRONG of the October 19, 2023 hearing as to what was said and as to what happened. When the court transcript of 10/19/23 is compared with the court transcripts of 11/28/23 and 11/30/23; the judge ERRED; he CONTRADICTS himself. I ask the Appellate Court to Vacate the Final Judgment by Default granted on 5/4/2015.

Should this court decide to remand the case back to the trial court for an evidentiary hearing, the defendant request that a different judge be assigned and the defendants request that it be on the matters of law, the 3-Step Process, to get a Final Judgment by Default – NOT just the Affidavits of Service on the Defendants.

CERTIFICATION OF DEFENDANT

I certify that the foregoing statements made by me are true. I realize that if any of the foregoing statements made by me are willfully false, I am subject to punishment under the law.

Dated: 6/17/2024

Arthur Ardolino