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POPPY HOLDINGS, LLC, Plaintiffs, v. RUSLAN MILOV, his heirs, devisees and personal representatives or any of their successors in right, title and interest, 1-10, LINDA MILOV, spouse of Ruslan Milov; DIVISION OF CODES AND STANDARDS; THE STATE OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELLATE DOCKET NO. A-002549-22 TRIAL COURT DOCKET NO. PASSAIC-F-4127-21 Sat Below: Hon. FRANK COVELLO, J.S.C.

APPELLANT/DEFENDANTS' BRIEF

On the Brief:
Lisa C. Krenkel, Esq.

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Preliminary Statement

This matter involves an illegal Tax Foreclosure action in which the Defendants, Ruslan Milov and his wife, Lyudmila Milov's lost their rental property which they owned outright by Default Judgment entered on February 3, 2022. 48a. Defendants were never properly served with the Complaint for Tax Foreclosure and did not receive notice until Final Judgment of Default had already been entered. The Court below relied on misrepresentations by the proponents of the foreclosure throughout the proceedings. The Defendants further allege and provided proof that, on the morning of alleged service, they left with their children by car prior to the time of the alleged service for vacation and could not have been served. The proof of service in this case is highly irregular with the following fatal defects such that the presumption of validity that is normally applied to Affidavits of Service should not have been applied. In fact, the trial court applied an incorrect standard of proof and should have required the Plaintiff to prove by clear and convincing evidence that service of process was in fact obtained instead of transferring the burden onto Defendants to prove that they were not served. The defects in service in this case include:

1. The Affidavit of Service upon Ruslan Milov, the record owner, was notarized two months prior to the actual date of purported service of process. The purported date and time of service was August 23, 2021, yet

the Affidavit of Service is notarized for June 23, 2021. 14a. This defect was never cured either prior to the Default Judgment being entered or after.

2. The notary public who allegedly signed and attested to the Affidavits of Service had no actual contact either in person or telephonic with the process server in violation of notary rules, yet the notarized Affidavits were submitted in support of Final Judgment of Default anyway. This fatal defect was never explained or cured. The notary was not called to testify.
3. The GPS time stamp provided in an email from the owner of the process service company, Esquire Process Servicing, LLC (who never appeared in court to authenticate or explain the document) corresponds to service of process being made on August 28, 2031 which is obviously impossible.
4. The process server in question has no memory of this particular service.
5. The self-serving use of an in-house process service company further undermines the legitimacy of the service. In this case, the process service company, Esquire Process Servicing, LLC was not impartial as the company's office was located in the Plaintiff Tax Foreclosure business's office and the very same office as Plaintiff's-in-house counsel who prosecuted this tax foreclosure. To be clear the Plaintiff, the Plaintiff's attorney and the Process Server all shared the **same** office, not merely the same building, but the same office. Pursuant to Rule 4:4-3(a), a process

> server cannot have an interest in the litigation. An Affidavit of service filed by an in-house process service company, such as was used in this case, should not be afforded the same presumption of validity and the burden should have shifted to Plaintiff to prove that service was in fact made upon the defendants.

Had the Court applied the correct standard of proof, the presumption of validity would not have applied and the burden of proof of service would have shifted to the Plaintiffs. In that case, default judgment would have been overturned as the Court found merely that it was "possible" for the defendants to have been served at their home address. A mere possibility of service is not enough to prove service of process by clear and convincing evidence which should have been the standard.

In addition to the lack of service of process and the enumerated irregularities, the Court will see that the close knit business relationship and partnership between the Plaintiff tax foreclosure business, the process server, the alleged subsequent purchaser for value (who was nothing more than a business partner with knowledge of Defendant property owners desire to redeem) provides evidence of tax foreclosure collusion and fraud in a scheme designed to divest the defendants of their property which they owned outright without a mortgage.

Concise Statement of Facts and Procedural History

The Defendants appeal from the Default Judgment entered on February 3, 202 as it is void ab initio. 48a. They also appeal from the Order Denying their Motion to Vacate Default which was filed on April 27, 2023. 353a.[1]

On November 19, 1997, Mr. Ruslan Milov, purchased the subject property known as 79 Sherman Street, Passaic, New Jersey. 1a. There was no mortgage on the property. 100a. The property is a four-family house with four different units occupied by four longstanding tenants. T3, p. 114:8-14. These tenants have lived there for decades. T3, p. 115:9-10, T3, p.101, l-10. Since the foreclosure at issue, the same tenants continued to live at the property, none have been displaced. T3, p. 115:2-10

The original foreclosure Plaintiff was Trystone Capital Assets, LLC (hereinafter "Trystone"), located at 1608 Route 88, Suite 330, (at times using P.O. Box 1030) in Brick, New Jersey. Trystone purchased the Tax Lien Certificate #18-00193 on December 11, 2018 in the amount of $2,916.92 (two thousand nine hundred and sixteen dollars and 92 cents). 29a. With additional payments in 2018, Trystone' total redemption value is just over $20,694.64. 23a. Trystone has a large

[1] Defendants have combined the Statement of Facts and Procedural history as it is necessary to understand the sophisticated and complex relationship between the Plaintiff and Intervenors and what was happening in the background as the case progressed through entry of default judgment and the Motion to Vacate Default Judgment.

portfolio of Tax Sale certificates generally in excess of $30 million dollars and engages in the tax sale industry for investment purposes. 87a.

Anthony Velasquez, Esq. is in-house counsel for Trystone. 87a. His offices are located in the same space at 1608 Route 88, Suite 330, P.O. Box 1030, Brick, New Jersey. Plaintiff Trystone through their in-house counsel, Anthony Velasquez, Esq. filed the Foreclosure Complaint on the 2018 Tax Sale Certificate on August 9, 2021. 1a. The caption of the original tax foreclosure complaint was *Trystone Capital Assets, LLC v. Ruslan Milov and Mrs. Milov, spouse of Ruslan Milov*, Docket No. SWC-F-004127-21. 1a.

Paragraph 11 of the Foreclosure Complaint states as follows:

> "On June 30, 2021, the Plaintiff served written notice, by certified and regular mail with postage prepaid thereon, of Plaintiff's intention to file the within Complaint, which notice included the amount due on the tax lien or liens to be foreclosed herein as of the date of the note, to the last known addresses of the owner of record and all parties entitled to redeem in accordance with N.J.S.A. 54:5-97.1 and 54:5-54, as amended." Id.

Contrary to the representation in the Foreclosure Complaint, this Notice was never served upon Defendants. 3a. The preaction notice was allegedly mailed on June 30, 2021. 18a-19a. However, in his Certification in Support of Search Fees (18a), Plaintiff's proof of service shows that this notice was not delivered to the Defendants. 20a. It is undisputed that the certified mail was returned to the original sender on August 19, 2021 at 11:00 a.m. 20a.

On August 10, 2021, the day after the filing of the Foreclosure Complaint the Defendant, Ruslan Milov, owner of the property, paid Third Quarter Taxes for 2021. 262a. In fact, Defendant paid all of the taxes, in 2021. The only taxes paid by Plaintiff are from fourth quarter 2018, one quarter in 2019 and three quarters in 2020 and total $20,695.64 including interest, search and recording fees. 25a. Mr. Milov also embarked on major repairs to the property after the Tax Foreclosure Complaint was filed in that he put a new roof on the building. T3, p. 115:13-24.[2]

On August 23, 2021, Plaintiff filed a Motion to Correct the name of the Defendant indicating in his Certification that "the Defendant, Mrs. Milov, spouse of Ruslan Milov, was determined to be Linda Milov." 8a. The Certification cites no reason why or how this determination merely stating that "it was determined." Id. On September 7, 2021, the Court issued an Order correcting name of Defendant from Mrs. Milov to Linda Milov. 10a.[3]

On October 1, 2021, Plaintiff Trystone filed a Request to Enter Default (11a) and a Certification in Support of Default (12a-13a), attaching Affidavits of Service. The filed Affidavit of Service for Ruslan Milov alleges that he was served on August 23, 2021 at 9:25 a.m. by service upon individual named "Linda Milov, spouse of

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[2] The Court curtailed this line of questioning as not relevant which was error in that it was being offered to show Mr. Milov's state of mind as being unaware of the Tax Foreclosure Complaint. T3:115:19-p.116:24

[3] No such person exists as will be shown here in further detail.

Ruslan Milov wife". 14a. The Process server is William Sanchez and the Affidavit is Notarized with a date two months before alleged service, June 23, 2021. 14a. The second filed Affidavit of service purports to serve Linda Milov. 16a.

Also on October 1, 2021 the Plaintiff filed a Motion for An Order Fixing Amount, Time and Place for Redemption indicating taxes due on the Tax Sale Certificate of $20,694.64. 21a. On October 15, 2021, the Court entered an Order Setting Time, Place and Amount of Redemption for December 14, 2021. 30a. On November 15, 2021, Plaintiff filed a Motion to Substitute Plaintiff substituting Poppy Holdings, LLC for Trystone. 34a. Apparently on November 15, 2021, the same day, Trystone assigned the Tax Certificate at issue to their subsidiary Poppy Holdings, LLC which has the same address as both Attorney Velasquez and original Plaintiff Trystone. 38a. Trystone and Poppy Holdings, LLC are related businesses and Yitzchok "Ike" Schwab is the Portfolio Manager of both Trystone and Poppy Holdings, LLC (hereinafter "Poppy") 35a. An Order Substituting Plaintiff Poppy for Trystone was entered on December 1, 2021 and all future captions would reflect the case as *Poppy v. Milov et al*. 39a.

On January 1, 2022, Plaintiff Poppy filed a Motion to Enter Final Judgment. 40a. Final Judgment of Default was entered on February 3, 2022. Plaintiff filed a Certification of Mailing on February 7, 2022. 52a.

The Order to Show Cause and Motion to Vacate Default Judgment

On March 24, 2022 Defendant through prior counsel, Natalia Gourari, Esq. filed an Emergency Order to Show Cause pursuant to Rule 4:50-1 requesting Temporary Restraints and further requesting that the Default Judgment be vacated for lack of service and for any other relief the Court deems equitable and just. 52a. In support of their application, Defendant Ruslan Milov and his wife submitted Certifications stating that they were never served with the foreclosure action, were unaware of the proceeding and they were also not home at the time of the purported service as they left for vacation on the morning of alleged service. 55a.

The first Order to Show Cause filed by the Defendants on March 24, 2022 was erroneously filed with JEDS. 62a. The Order to Show Cause was then refiled via ecourts on March 29, 2022. 63a. The Court signed the Order to Show cause on April 11, 2022. 71a. The Amended Certification of Lyudmila Milov (Mrs. Milov) was filed on April 26, 2022 asserting she was not served and her name is not "Linda". 74a. She provided proof of the Milov family vacation, including an EZpass receipt showing that the Milov's vehicle passed through the East Orange Toll Plaza for the Garden State Parkway Southbound on August 23, 2021 (the date of purported service) at 9:36 a.m. 78a. Meanwhile, the defective Affidavit of Service placed service at the Milov home in Livingston at 9:25 a.m., which is impossible as these locations are over 14 to 22 minutes apart when driving with normal traffic per

Defendants expert report and testimony. 233a. Defendant Lyudmila Milov further provided a hotel receipt showing that they stayed in Virginia on August 23, 2021 and checked in to the hotel in Virginia at 3:04 p.m. 79a.

On April 27, 2022, 341 Connecticut, LLC filed a Cross Motion to Intervene. 80a. 341 Connecticut, LLC claimed to be a subsequent purchaser for value having purchased the property from Poppy for $375,000 by Deed dated March 3, 2022 and recorded on April 6, 2022. 82a An Order to Intervene as to 341 Connecticut, LLC was filed on May 5, 2022. 85a. On July 22, 2022, counsel for proposed Intervenor, Itta Jacobs, a purported mortgagor, filed a Notice of Appearance through counsel. 86a. An Order to Intervene as to Itta Jacobs was filed on August 22, 2022. 90a. A Case Management Order was entered on August 22, 2022. 91a.

On November 27, 2022 undersigned counsel substituted in for Natalia Gourari, Esq. as counsel for Defendants Milov. 93a. Prior to trial on March 28, 2023, undersigned counsel filed a Certification of Proof of Funds indicating that the $20,695.64 necessary to redeem the certificate was being held in her attorney trust account should the Court vacate the default judgment. 95a.

A plenary hearing on the Motion to Vacate Default Judgment was conducted in this matter on March 29, 2023, (T3) and then resumed and completed on April 20, 2023. T4.[4]

[4] References to the Transcripts are as follows:

The Court erred in denying the Defendants Motion to Vacate, stating, while questioning the standard to be applied, that "if the standard is clear and convincing evidence, its not clear and convincing evidence that the process was not served". T4, p.99:13-16. This is despite the uncontroverted testimony and report of Defendants' GPS expert who placed the process server a third of a mile away (by the Collins School), not at the Milov's home, at the time of alleged service if the Affidavit with all its errors and irregularities is allowed to stand. 233a. The process server whose name appeared on the Affidavit could not recall Mrs. Milov or anything about service at issue. T4, p. 8:18-21; T4, p. 20:14-23. Furthermore, EZ pass records, photos and testimony proved that Defendants left for vacation prior to the alleged service. The Court found that it was "within the realm of possibility" that service was effectuated. T4, p. 100:21-23.

On April 27, 2023, the Court signed an Order Denying Defendant's Motion to Vacate Default Judgment. 353a. A Notice of Appeal was filed on April 27, 2023. 354a. An Amended Notice of Appeal was filed on May 3, 2023. 360a.

T1 – Pretrial conference December 13, 2022
T2 – Pretrial conference January 3, 2023
T3 – Plenary hearing March 29, 2023
T4 – Plenary hearing April 20, 2023

Plaintiff's sale of the Property

Once Plaintiff had notice that Mr. Milov wished to redeem the tax Certificate, Plaintiff quickly transferred the subject property for $375,000 by Quitclaim Deed from Poppy Holdings, LLC to 341 Connecticut, LLC (Intervenor). 344a. The Deed is dated March 3, 2022 but was recorded on April 6, 2022. Id. The Deed was recorded after the Order to Show Cause had already been filed by Defendants Milov. A Mortgage was also recorded on April 6, 2022 between 341 Connecticut, LLC (Mortgagee) and Itta Jacobs (Intervenor) for $350,000. 351a. Frenkel's signature as to 341 Connecticut, LLC on the Mortgage Note was notarized by Liliam A. Thompson. 352a. Ms. Thompson was paid cash by Frenkel/341 Connecticut, LLC to contact Mr. Milov (without revealing her affiliation with him) to try to buy the property from him as will be detailed herein.

The Process Server

The Affidavits of Service in this case were filed on October 1, 2021. The purported Affidavit of Service on Ruslan Milov indicates service by William Sanchez on August 23, 2021 at 9:25 a.m. by serving "Linda" Milov, spouse of Ruslan Milov with a notary signature by Daisy Paison for June 23, 2021 (two months before service). 14a. The purported Affidavit of Service on Mrs. Milov indicates service was made on "Linda" Milov on August 23, 2021 at 9:25 a.m. by and the Notary stamp does have the correct date.

Mr. William Sanchez testified at the plenary hearing that he worked for Esquire Process Servicing (Esquire). T4, p.8:7-9. It was stipulated that the owner of Esquire Process Servicing, LLC (Esquire) is Brian Schwartz whose office is located in the same office as Plaintiff and Plaintiff's in-house counsel. 99a.

The process server William Sanchez testified that he had no independent recollection of the service of process, or whom he served. T4, p. 8:18-21, T4, p. 20:14-23. Although they were requested, Mr. Sanchez could not and did not produce any emails that his boss, Mr. Schwartz sent to him assigning him the service of process job for the Milovs. He received service jobs via email to his personal email, but he did not have them because he deleted them and he also had no notes regarding same. T4, p. 9:11-24. Mr. Sanchez uses an app on his phone for service and after service of process he has no control over the Affidavit. T4:17:19. He testified that he presses the button on the app within 30 seconds to a minute after service of process. T4:17:22-18:13. Mr. Sanchez also does not know if the affidavit can be edited. Id. At p. 20:7-13. In fact, Mr. Sanchez testified that after he pushes the button on the app, he does not talk to, Facetime or have any contact with the notary at all. T4, p. 23:3-13. Mr. Sanchez never had contact with the notary who signed the Affidavits whatsoever. Id.

GPS Expert

Defendants' expert witness David Burgess was called at the plenary hearing and was admitted as an expert in cellphone location services and engineering practice in Global Positioning Systems (GPS) and geographic information systems. T4, p.58, 15-22. Mr. Burgess also testified that it appeared that Esquire Process Servicing used a program called ServeManager. The only way he knew this was that at the deposition of William Sanchez, the purported process server, a document was emailed to Defendant's counsel by Brian Schwartz the owner of Esquire Process Servicing, LLC containing what purported to be a ServeManager report of the service of process. 247a. This email from Brian Schwartz was never testified to, no one appeared from Esquire to testify as to its accuracy or authenticity. In this document, there was a GPS timestamp for service and a GPS location. The Defendant's expert reviewed this document. 247a. Mr. Burgess testified that the GPS timestamp on this ServeManager report corresponds to the date of August 28, 2031. T3, p. 63:3-5. He indicated this is a mistake and is probably a mislabeling on the ServeManager report and that it is likely a UNIX timestamp. T3, p. 11-13. The time stamp on the Affidavits is labeled a GPS timestamp and is therefore incorrect. T3, p.65:1. The expert testified that most of the fields on the Affidavit can be edited except for the GPS location and the Timestamp. T3, p. 72:2-8. The GPS location indicated on the ServeManager report does not correspond with the Milov's

residence on Falcon Road but rather with the Collins School Parking lot which is more than a quarter of a mile away from the Milov residence by straight line but more if you were to take a road and drive there. T3, p. 67:6-12 and T3, p.70:1-7. Mr. Burgess indicated it did not seem likely that someone could effectuate service, immediately hit the button for service and make it to this parking lot in the time allotted. T3, p.70:1-13.

Mr. Burgess further authenticated the EZPass records and photos of the Delaware Memorial Bridge and family photos to indicate that in fact the Milovs were at the places they said that they were at the times indicated in the metadata on the photographs. T3, p. 73:12-20, T3:77:13-17. These records place the Milovs, within a reasonable degree of engineering certainty, at the East Orange Toll Plaza on date of service at 9:36 a.m. and on the Delaware Memorial Bridge at 11:28 a.m. on the same date. The Court allowed Google maps to be used for purposes of distance. T3, p. 91:23-25. Accordingly, Mr. Burgess opined that it was very unlikely that the Milovs were at 106 Falcon Road, Livingston at the time of the service in that they could not have left after 9:25 a.m. (time of service) and made it to the toll plaza 9.1 miles away on local roads in 11 minutes. T3, p.79:1-9. Mr. Burgess' expert report was admitted into evidence without objection. T3, p. 70:20-25. His expert report was authored dated December 15, 2022. 225a. Mr. Burgess opined that Mrs. Milov was not at the location of service on August 23, 2021 at 9:25 a.m. because she was

traveling in the family vehicle at that time. 234a. He based his opinion on the metadata of the photographs and the toll records from Ezpass which use GPS. Id. Plaintiffs did not call an expert and his testimony was uncontroverted.

Brian Schwartz of Esquire Process Servicing, LLC

Plaintiffs did not call Brian Schwartz from Esquire to testify at the plenary hearing as to the accuracy, veracity or authenticity of the Affidavit or the ServeManager report which was under his exclusive control and the fact that everything on the Affidavit except for GPS and GPS time was editable was not controverted. Mr. Schwartz was never produced to provide testimony on his relationship as in-house process server to Plaintiff tax foreclosure business and their in-house counsel. The notary public, Daisy Paison, who allegedly notarized the filed Affidavits was not called at the time of the hearing. The only testimony regarding notarization was from the process server William Sanchez who testified he had no contact with the notary at all which undermines the evidentiary weight of his Affidavits.

Additional Facts and Stipulations Relevant to this Case

On March 28, 2023 undersigned counsel filed Proposed Stipulations and Statements of Undisputed Facts detailing the close relationship between Ike Schwab the Portfolio Manager for Poppy and Trystone and Joshua Frenkel, the principal of 341 Connecticut. 99a. At the hearing on April 20, 2023, the parties agreed to the

Stipulations and Statement of Undisputed Facts stating that they agreed with the facts and the documents but disagreed with any conclusions which were made in the Certification - so without objection those stipulations to facts and documents were entered. T4, p.39-40.

Recitation of Stipulated Facts as to Plaintiff's Close Relationship with the Intervenors. 99a

1. Trystone and Poppy, LLC are related businesses and Yitzchok "Ike "Schwab is the Portfolio Manager of both Trystone and Poppy.

2. Trystone has a large portfolio of Tax Sale certificates generally in excess of $30 million dollars and engages in the tax sale industry for investment purposes.

3. TRYKO Holdings, LLC is the Managing Member of both Plaintiffs, Poppy and Trystone. 111a.

4. Trystone bought the tax lien in 2018 and Trystone filed the Lawsuit against Mr. Milov on 8/9/21. 99a and 1a.

5. There was no mortgage on the subject property prior to the foreclosure action. 110a.

6. After the filing of the Complaint, Trystone assigned the tax lien to their subsidiary company Poppy. 100a.

7. Anthony Velasquez, Esq. Counsel for Plaintiff is in-house counsel for Tryko, Trystone Capital and Poppy Holdings, LLC. 100a.

8. Plaintiff's counsel, Anthony Velasquez, Esq. submitted a Certificate dated August 17, 2022, in opposition to the Order to show cause to Vacate Default stating under penalty of perjury:

> "Defendant seems to imply that the buyer 341 Connecticut LLC is somehow related, or friendly, or associated with either Trystone or Poppy . . . There is no relationship whatsoever, they are not related and they do not do business. Trystone and/or Poppy have no knowledge of this buyer and have no association or business relations with it or its owner. This transaction is the only transaction that has occurred with this arms-length buyer." 87a.

9. Anthony Velasquez, Esq. in-house counsel's office is located at 1608 Route 88, Suite 330, Brick New Jersey. See all captions to all pleadings filed by Mr. Velasquez in this case. 1a., 99a.

10. Poppy Holdings, LLC Main Business address is also located at 1608 Route 88, Suite 330, Brick, New Jersey in the same building as Mr. Velasquez. 101a, 110a.

11. Mr. Velasquez used Esquire Process Servicing to serve the Tax Foreclosure Complaint in this case Defendants. 101a.

12. Esquire Process Servicing, LLC is owned by Brian Schwartz, with offices also located in the same office and suite as Anthony Velasquez, Esq., Trystone Capital and Poppy Holdings, LLC, to wit: 1608 Route 88, Suite 330, Brick, NJ. 101a, 125a.

13. Ike Schwab is also known by his Hebrew name of Yitzchok Schwab. 123a.

14. Accordingly, Plaintiff, Plaintiff's in-house counsel and the in-house process server are all located in the same office. 101a.

15. Joshua Frenkel is the owner of Clearview Equities, LLC see Frenkel Transcript p. 25:12-19. 101a, 150a.

16. Joshua Frenkel is a partner at Intervenor, 341 Connecticut, LLC the purchaser of the foreclosed property in this case and was produced as a representative of 341 Connecticut, LLC. Deposition of Joshua Frenkel, p. 16, line 2-10. 148a and 101a.

17. Ike Schwab and Joshua Frenkel have known each other for 20 years. 101a**,** 150a,

18. Ike Schwab on January 27, 2023, produced his Whats App messages with Joshua Frenkel. 167a. Audio was omitted and they appear in the format that they were produced. These messages are stipulated to be between Schwab and Frenkel and reveal that, contrary to Plaintiff's counsel's Certification under oath, there was, in fact, a close business and personal relationship between Mr. Schwab and Mr. Frenkel.

19. In addition to knowing each other for 20 years, Schwab and Frenkel have been doing business together at least since 2018 which is when the first WhatsApp messages appear to begin. 167a.

20. They speak monthly if not weekly about properties to buy and sell and the Frenkel/Schwab Whatsapp messages show they are doing business consistently together but through different corporate entities. 167a. Please note the messages contain typos and are reproduced "as is" with redactions for brevity.

21. In March of 2019, there is a discussion between Schwab and Frenkel of "new deals" and a "partnership" between the two men. 167a.

> [3/15/19, 5:51:33 PM] Frenkel Josh Frenkel: Good shaboss, ty for the gift
> [3/18/19, 12:14:56 PM] Frenkel Josh Frenkel: Can I come to talk new deals **partnership**?
> [3/25/19, 10:14:10 AM] Frenkel Josh Frenkel: Any new liens ? Partnership

22. The messages reveal that this is not the first claim where an owner of a property that was sold by Schwab to Frenkel claims that he was not served - in 2019, in a similar fact scenario to this one, an owner claimed he was not served. 173a. Frenkel asked Schwab if he could buy the property and then "fight him".

> [12/15/19, 7:46:47 PM] 🗝: He filed a motion
> [12/15/19, 7:53:16 PM] Frenkel Josh Frenkel: What kind? **He wasn't served?**
> [12/15/19, 7:53:30 PM] Frenkel Josh Frenkel: He has clear title?
> [12/15/19, 7:53:38 PM] 🗝: Claim he was out of the country
> [12/15/19, 8:09:49 PM] Frenkel Josh Frenkel: **I can buy and fight him?**
> [12/15/19, 8:10:13 PM] Frenkel Josh Frenkel: He is clear title ? He can get clear title
> [12/15/19, 8:10:34 PM] 🗝: He offered me a good settlement

> [12/15/19, 8:14:59 PM] 🗝: 125k
> [12/17/19, 7:17:20 PM] Frenkel Josh Frenkel: Would you let me buy it for 125k
> [12/17/19, 7:18:06 PM] Frenkel Josh Frenkel: **I have no risk , I can fight him and still get the 125k back (emphasis added)**

23. Frenkel has previously contacted Plaintiff's counsel Anthony Velasquez, Esq. at Schwab's direction and Velasquez (despite his Certification to the Court) is well aware of the relationship between the two men and their numerous companies. 176a.

> [6/23/20, 2:01:00 PM] Frenkel Josh Frenkel: I ordered chancery , ordered search , you know title companies take theirs time , can I give u DEPOSIT
> [6/23/20, 3:46:42 PM] 🗝: Send your attorney to contact Anthony

24. Previously in 2020, yet another divested Owner sued and claimed that she was defrauded – Frenkel asked Schwab what lawyer to use in the lawsuit. Schwab is actually directing Frenkel's choice of counsel and telling him next time to only "intervene" (which Frenkel did in the case at bar). Frenkel takes directions from Schwab in these exchanges. 180a.

> [9/21/20, 4:42:20 PM] Frenkel Josh Frenkel: adam sueing me
> [9/21/20, 5:51:51 PM] 🗝: Why?
> [9/21/20, 7:04:29 PM] Frenkel Josh Frenkel: Where should I sent you to review
> [9/21/20, 7:15:21 PM] 🗝: So what do you want from me? You keep dong this crap
> [9/21/20, 7:16:58 PM] Frenkel Josh Frenkel: No , that was from a long time ago I didn't know that companies are going and checking after 3 month , I am only doing intervening legally
> [9/21/20, 7:17:35 PM] Frenkel Josh Frenkel: **But that owner who live there is still there I didn't defraud her , she signed**

[9/21/20, 7:18:45 PM] Frenkel **Josh Frenkel: Which lawyer do I need to take ? What is the worst? If it's only the home I am ready to lose , but owner will lose** , I didn't give her money , instead Cheap rent/payment
[9/22/20, 9:29:23 AM] 🗝: https://ffhlaw.webs.com/willis-f-flower
[9/22/20, 9:29:32 AM] 🗝: Use flower
[9/22/20, 9:42:22 AM] Frenkel Josh Frenkel: Ty
[9/22/20, 9:42:36 AM] Frenkel Josh Frenkel: Or just try to settle?
[9/22/20, 9:42:55 AM] Frenkel Josh Frenkel: Give home the home and **next time only interve**ne
[9/22/20, 9:43:44 AM] Frenkel Josh Frenkel: I should tell him you sent me ?

25. Frenkel and Schwab discuss another deal where an owner is in a nursing home and he states "why didn't you title raid her"? Frenkel and Schwab discuss multiple properties at once during the discussion of title raiding. 183a.

[10/26/20, 12:43:33 PM] Frenkel Josh Frenkel: MY LAWYER DIDNT FILE YET , BAD
[10/26/20, 6:21:30 PM] 🗝: I don't think it's vacant you can fight him. I sent him an email saying I don't think it's vacant or abandon
[10/28/20, 11:31:30 AM] Frenkel Josh Frenkel: 1)1709 County Club Drive Cherry Hill Block 528.42 Lot 14 (Property in is BK)

2)709 S new Road Pleasantville Block 48 Lot 57 (Sheriff Sale Scheduled for 11/12/20)

3)216 Powelton Avenue Woodlynne Block 203 Lot 12 (currently in midsvc)

4)8221 River Road Pennsauken Block 1606 Lot 8 (can file OST 11/24)

5)2534 Sawmill Rd, Egg Harbor Township, NJ 08234 collect rent till motion for final / then i will pay you 5k and the taxes

6)20 kensington pl east orange
[10/28/20, 11:58:15 AM] Frenkel Josh Frenkel: are you good with Baron ? he has FJ on 5 ABACO ST BERKELEY
[10/28/20, 12:00:21 PM] 🗝: He's not selling it he's very smart guy

> [10/28/20, 12:00:41 PM] 🗝: **Why didn't you title raid her? She was in a nursing home**

26. 341 Connecticut, LLC (intervenor in this case) is also one of Frenkel's many corporations which purchased property from Schwab prior to 79 Sherman Street, Passaic (the subject property) at 1500 Oak Street. 195a.

> [1/13/22, 8:11:30 AM] Frenkel Josh Frenkel: Congratulations! Your payment is authorized. You're all set.
> 1. Confirm Details2. Summary
> Confirmation:Transaction completed successfully
>
> Payment Information
> Pay FromFrom Account:
> Clearview equities llc - *9313
> Beneficiary DetailsBeneficiary Name:
> Trystone Capital
>
> Amount:
> $10,003.90
> Payment Type:
> Expedited Payment
> Effective Date:
> 01/13/2022
> Message to Beneficiary:
> 1500 oak street
> Comments:
> Fee:
> $20.00
> [1/13/22, 8:53:41 AM] 🗝: Send me the name for the assignment and who you want me to transfer the file to
> [1/13/22, 9:58:50 AM] Frenkel Josh Frenkel: **341 Connecticut, LLC**

27. The first mention in the messages between Frenkel and Schwab about the Milov property, 79 Sherman Street, Passaic, is on February 13, 2022. This is

one of the many, many deals that the two close together over several years. Referring to Mr. Milov, Frenkel says "owner didn't pay" "wow" "is he crazy" and "locky [sic] you". 196a.

> [2/13/22, 8:48:44 AM] Frenkel Josh Frenkel: 79 Sherman Street can i buy for 400k
> [2/14/22, 10:24:59 AM] 🗝: Like when?
> [2/14/22, 10:25:04 AM] 🗝: Now?
> [2/14/22, 10:25:40 AM] Frenkel Josh Frenkel: yes
> [2/14/22, 10:25:56 AM] Frenkel Josh Frenkel: was the taxes paid or your final judgment is real
> [2/14/22, 10:33:29 AM] 🗝: I own it FJ is very real
> [2/14/22, 10:46:40 AM] Frenkel Josh Frenkel: wow locky you
> [2/14/22, 10:46:45 AM] Frenkel Josh Frenkel: can I buy it
> [2/14/22, 2:20:53 PM] Frenkel Josh Frenkel: ?
> [2/14/22, 2:21:00 PM] Frenkel Josh Frenkel: ?
> [2/14/22, 2:30:04 PM] 🗝: what do you want to pay?
> [2/14/22, 2:30:12 PM] 🗝: quit claim?
> [2/14/22, 2:37:17 PM] Frenkel Josh Frenkel: Yes
> [2/14/22, 2:53:59 PM] Frenkel Josh Frenkel: **79 Sherman Street** can i buy for 400k
> [2/15/22, 8:50:26 PM] Frenkel Josh Frenkel: Any deal closing
> [2/15/22, 8:50:29 PM] Frenkel Josh Frenkel: Lien
> [2/15/22, 8:50:34 PM] Frenkel Josh Frenkel: 4 fam
> [2/23/22, 9:51:35 AM] Frenkel Josh Frenkel: What's with **79 Sherman**
> [2/26/22, 10:22:29 PM] Frenkel Josh Frenkel: 552 Blackpoint Hillsborough may I buy your lien?
> [2/28/22, 11:14:59 AM] Frenkel Josh Frenkel: **79 Sherman selling?**
> [2/28/22, 11:15:14 AM] Frenkel Josh Frenkel: 247 Wilfred Hamilton can I see the redmtion?
> [2/28/22, 11:15:25 AM] Frenkel Josh Frenkel: 552 Blackpoint Hillsborough may I buy your lien?
> [2/28/22, 11:30:31 AM] 🗝: Are you ready?
> [2/28/22, 11:34:56 AM] Frenkel Josh Frenkel: yes , **is owner crazy didnt pay??**
> **[2/28/22, 11:35:07 AM] 🗝: Don't know**

[2/28/22, 11:35:29 AM] 🗝: Maybe He's Putins friend
[3/1/22, 8:41:56 AM] Frenkel Josh Frenkel: 1) 247 Wilfred Hamilton can I see the redmtion?
2) 552 Blackpoint Hillsborough may I buy your lien?
3) 79 Sherman can I buy

28. Frenkel and Schwab also discuss this matter in Whatsapp messages after the Motion to Vacate was filed, Schwab states "How can I help you on Sherman" "working on the process server". 201a. Again, Schwab is in the same office as the in-house process service company.

[5/10/22, 12:00:47 PM] Frenkel Josh Frenkel: william sanchas
[5/10/22, 12:16:51 PM] Frenkel Josh Frenkel: can i call you
[5/10/22, 8:21:26 PM] 🗝: How can I help you on Sherman
[5/10/22, 8:21:36 PM] 🗝: ?
[5/10/22, 9:06:48 PM] 🗝: Working on the process server
[5/10/22, 9:07:12 PM] Frenkel Josh Frenkel: Ty
[5/10/22, 9:07:57 PM] 🗝: Have him call www.esqps.com

29. Schwab even picked Frenkel's attorney and Frenkel for the second time, asked him who to use for a lawyer - Schwab told him who to use for this lawsuit and Frenkel did use W. Peter Ragan, Esq. to represent him as Intervenor in this lawsuit.

[12/6/22, 12:36:07 PM] 🗝: who are you using as a lwayer?
[12/6/22, 12:36:41 PM] Frenkel Josh Frenkel: Jackobowitz
[12/6/22, 12:36:58 PM] 🗝: change to Ragan
[12/6/22, 12:37:40 PM] Frenkel Josh Frenkel: Why
[12/6/22, 12:37:49 PM] 🗝: better lawyer
[12/6/22, 12:38:03 PM] Frenkel Josh Frenkel: Do I really need so expensive

Conclusion as to Stipulations and Fraud by the Plaintiff

The foregoing facts and documents were stipulated to at time of the hearing. T4, p. 40:8-23. Plaintiff's in-house counsel's Certification filed on August 17, 2022 stating as follows constitutes fraud on the Court:

> "Defendant seems to imply that the buyer 341 Connecticut LLC is somehow related, or friendly, or associated with either Trystone or Poppy. … There is no relationship whatsoever, they are not related and they do not do business. Trystone and/or Poppy have no knowledge of this buyer and have no association or business relations with it or its owner. This transaction is the only transaction that has occurred with this arms-length buyer." 87a.

Given the Whats app messages and the testimony this statement constitutes fraud and meets all the elements of fraud which would be required to overturn a judgment pursuant to Rule 4:50-1. The intervenor, 341 Connecticut, LLC through its principal, Joshua Frenkel has and had a close personal and business relationship with the Plaintiff Poppy Holdings, LLC and their tax portfolio manager Ike Schwab. Accordingly, 341 Connecticut LLC and their principal Joshua Frenkel are not bona fide purchasers for value without notice. Clearly this statement was designed to mislead the Court into believing that 341 Connecticut, LLC and Mr. Frenkel were simply an unknowing third party Buyer and that they should be afforded protection as a subsequent bona fide purchaser for value without notice. The evidence clearly shows otherwise.

Plaintiff Poppy/Schwab's Knowledge of Mr. Milov's Desire to Redeem Prior to Their Sale of the Property to Frenkel/341 Connecticut, LLC.

Defendants presented evidence that Mr. Milov, unaware of the tax foreclosure proceeding, emailed the Tax Collector requesting redemption figures on February 22, 2022 (19 days after default had been entered, but before the Plaintiff transferred the property). On February 22, 2022 at 3:50 p.m., the Passaic Tax Collector replied and copied Plaintiff's in-house counsel, Anthony Velasquez, Esq. as well as Ike Schwab (Poppy) on the email. The evidence showed that Plaintiff's knew when they sold the property to Frenkel/341 Connecticut, LLC that Mr. Milov was attempting to redeem the tax sale certificate and was unaware of the foreclosure proceeding. It was the tax assessor who, on February 22, 2022 informed Mr. Milov that a final judgment had been entered by stating "This email is to inform you that we are unable to provide figures for redemption on this certificate as the final judgement [sic] was entered on 02/07/22. As per the lienholder's attorney, redemption was barred as of this same date." 259a-260a. After gaining this knowledge Plaintiff Poppy/Schwab promptly (within days) transferred the property by purported Deed on March 3, 2022 to Frenkel/341 Connecticut, LLC. 344a. It was not recorded until April 6, 2022 again after the Order to Show had already been filed.

Offers to Purchase the Property

Prior to during and after the foreclosure proceeding which they knew about, Liliam Thompson, at the direction of Frenkel, contacted Defendant Ruslan Milov

via text message and offered to purchase the property for as high as $650,000.[5] Mr. Milov later found out, in the context of the litigation, that she was an "agent" of Frenkel/341 Connecticut, LLC. T3, p. 109:8—110:1. In text messages and over the phone with Ms. Thompson, she never once mentioned the word "tax foreclosure" to Mr. Milov. T3:118:15-21. Ms. Thompson testified at the plenary hearing for the Plaintiff and stated that she was not an "employee per se" of Mr. Frenkel, but that she "reaches out to owners to see if they know what's going on." T4:67:3-12. She repeatedly stated that she did not work for Mr. Frenkel and that she reached out to owners of distressed properties for free. T4. p.77:2-24. On cross-examination, she finally admitted "he'll [Frenkel] give me money. But I'm not on—I'm not an employee of his." T4, p.77:23-25. She later also admitted that "he gives me cash once in a while." T4, p.78:2. Ms. Thompson admitted that the text messages that Plaintiff showed during her direct testimony (which were never admitted into evidence) indicate that she offered to Mr. Milov $500,000 to buy the subject property and she even sent proof of funds (Frenkel's funds) to Mr. Milov regarding the intention to purchase the property from him. She admitted that those text messages never mentioned that she was affiliated with Mr. Frenkel. T4, p. 76:9-23. She further admitted that the text messages do not mention the pending tax foreclosure

[5] The text messages were shown by Plaintiff to Ms. Thompson at the hearing but were not admitted into evidence and for that reason they are not included here.

proceeding. T4, p. 74:15-24. She stated she "didn't think she had to say it." Id. Ms. Thompson did state that she told him verbally about the foreclosure proceeding over the phone. T4, p. 73:18-19. This fact was vehemently denied by Mr. Milov who has consistently maintained that he was not aware of the foreclosure proceeding, was not served and that he thought Thompson wanted to buy his property outright and not as part of the foreclosure of which he was unaware. T4, p.81:2-7. Mr. Milov also testified that he was aware there was a tax lien on the property from 2018. T3, p. 124:3-15. Milov testified that in the past he did have properties with tax liens against them and that as soon as he was notified of an intent to foreclose, he immediately redeemed the tax sale certificate. T3, p.124:3-15.

Frenkel indicated that he sent Lilliam Thompson to Mr. Milov, stating "I told her to approach Mr. Milov for this property." T4, p.59:9-24. Mr. Frenkel also admitted that he exchanged emails with Defendant Ruslan Milov on February 14, 2022 at 2:40 pm (after the Entry of default judgment) and offered to buy the property from Mr. Milov for $650,000. T4, p.56:9-11. He also admitted that he never mentioned the tax foreclosure to Mr. Milov during these negotiations. T4:12-17. Frenkel ended up purchasing the property from Plaintiff for $375,000 two weeks later a Deed that was filed after the Order to Show Cause and Motion to Vacate Final Judgment. 344a.

Mr. Frenkel, thirteen (13) minutes after emailing Mr. Milov and offering him $650,000 for the property, on February 14, 2022 at 2:53 p.m. (after Final Judgment), offered to buy the same property from Plaintiff Schwab/Poppy in Whats app messages for $400,000. 196a.

To be clear, Poppy paid $20,654 to redeem a tax sale certificate and take ownership of property without a mortgage that they sold days later for $375,000 to Frenkel who had just offered to buy it from the owner for $650,000. Frenkel and Schwab certainly are in business together with their in-house process server and business is good.

Proof submitted by Defendants that they were not served and were not home at time of service of process and that Dr. Milov's name is not "Linda" as appears on the filed the Affidavit of Service

The Defendant Dr. Lyudmila "Mila" Milov, a New Jersey licensed optometrist testified that she is the spouse of Ruslan Milov. T3, p.13-14. She provided a copy of her New Jersey Optometry license which is issued to the name "Lyudmila" Milov. 209a. She indicated that she and her husband resided at 106 Falcon Road, Livingston, New Jersey. T3:24:1-2. Dr. Milov further indicated that she has never gone by the name of "Linda" (name on Affidavit of Service) and that no one- not family, coworkers or patients call her "Linda". T3, p. 26:9-16. Her Nickname is "Mila" not "Linda". T3, p. 22:21-25. She testified that on the morning of August 23, 2021 (purported date of service) that she left for vacation with her

husband and children around 8:45 am, "a little bit before 9:00 a.m. T3, 27:20-22. The purpose of the trip was to celebrate her birthday which was on August 26, 2021. T3, 1-3.

Dr. Milov was clear that she was never served with a summons and Complaint on the morning of August 23, 2021 and that she was not home at the time of purported service. T3, 39:17-25. Ruslan Milov also testified that he was not served on August 23, 2021. T3:93:21-24. Mr. Milov testified that nothing unusual happened on the morning of August 23, 2021, and that no process server showed up at their house. T3:96:23-97:3.

The family vacation was to Chincoteague, Virginia and then to Maryland. Id at 27:1-12. After getting in the car before 9:00 a.m. (before alleged service), the family went to her brother in law's house to drop off a key so he could care for the family dog while they were away. T3, 28:20-29:7. The family then went to Dunkin Donuts but this was a cash transaction and she did not save cash transaction receipts for the trip nor does she normally save Dunkin Donuts receipts. T3:42:2-14. Dr. Milov explained that they took Shrewsbury Drive and then got on 280 and then on to the Parkway South to head to Virginia. T3, 28:15-20. Shrewsbury Drive is 30-35 MPH in that area. Id. Dr. Milov indicated that they then traveled through the East Orange Toll Plaza and onto the Garden State Parkway. T3, 28:8-17. A Map

was shown indicated that from the Milov home at 106 Falcon Road, Livingston to the East Orange Toll Plaza it is 9.1 miles taking 16 minutes. 210a.

Ruslan Milov testified that there is always traffic on that route and that the morning of August 23, 2021 there was Monday morning traffic. T3:96:5-15. He testified that it takes approximately 16-20 minutes to get from his home to the East Orange Toll Plaza. Id. The family took his wife's Volvo wagon on the trip with New Jersey license plate first three letters of ZHY. T3:97.

As evidence of the family trip, Defendants presented the following proof at the plenary hearing which was admitted into evidence as follows:

- EZ Pass records showing the Milov vehicle at the East Orange Toll Plaza on August 23, 2021 at 9:36 a.m. (remembering purported service was at 9:25 a.m., 9.1 miles away and some roads were 35 MPH, let alone the stop at her brother in laws to drop off the key and the stop at Dunkin Donuts). 264a.

- A photograph taken on the Delaware Memorial Bridge by Dr. Milov on August 23, 2021 at 11:28 a.m. as she testified her hobby is photographing bridges as she likes architecture. 211a, T3, 30:8-25. The photograph has a time stamp on it and the metadata was later verified as to location and time by Defendant's GPS expert Dr. David Burgess in his testimony at trial. T3:77:8-78:17.

- A photograph of Dr. Milov and her son taken at Chincoteague National Wildlife Refuge in Virginia on August 23, 2021 at 5:14 p.m. which is the same date as service. 214a.

- Other family photos taken in Virginia on August 24, 2021 were also introduced with time and GPS location stamps (215a, 216a).

- The family then continued on their trip and went from Virginia to Bethany Beach, Maryland and provided a family photo of her and her family in Bethany Beach, Maryland on August 26, 2021 with GPS and time data. 217a.

- Defendants provided a hotel receipt from the Marina Bay Hotel and Suites in Chincoteague, Virginia showing that a reservation deposit was made on August 22, 2021 (day before purported service) and that the Milov's stayed at the hotel from August 23, 2021 (day of purported service) through August 25, 2021. 218a. Their arrival time at the hotel was August 23, 2021 at 2:04 p.m. in Chincoteague, Virginia. 218a.

- Bethany Beach, Maryland Parking ticket issued on August 26, 2021 to Milov's Volvo Wagon with license plate ZHY57P including photo of the Milov's vehicle. 250a-252a.

- Chase Sapphire Credit card statement showing purchases in Chincoteague Virginia beginning on August 23, 2021, purchases in Bethany Beach, Maryland beginning on August 25, 2021 and for several days thereafter. 256a.

LEGAL ARGUMENT

Point I

Standard of Review for a Motion to Vacate Default Judgment (T4, p. 100:18-23)

The Order to Show Cause was filed and the Motion to Vacate is governed by Rule 4:50-1. The Defendants also argued fraud and equitable grounds and the fact that the process server was an interested party. The close relationship, indeed veritable partnership, between the Plaintiff tax foreclosure business, their in-house counsel, the in-house process service company and their business partner who became the subsequent Buyer certainly warrants review. This combined with the

errors on the Affidavit (one was notarized two months before service) and the complete and utter disregard for the Rules governing the notarization of documents in the State of New Jersey warrants reversal.

Rule 4:50-1 permits a party to motion to vacate a default judgment. Generally, "[a] motion under Rule 4:50-1 is addressed to the sound discretion of the trial court, which should be guided by equitable principles in determining whether relief should be granted or denied." Hous. Auth. of the Town of Morristown v. Little, 135 N.J. 274, 283 (1994). A motion to vacate a default judgment should be liberally granted to the extent that justice requires. State of Maine v. SeKap, S.A. Greek Co-op. Cigarette Mfg., S.A., 392 N.J. Super. 227, 240 (App. Div. 2007).

A motion to vacate a default judgment for lack of service is governed by Rule 4:50-1(d). BV001Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J.Super. 117, 125 (App Div. 2021); Jameson v. Great Atl. &Pac. Tea Co., 363 N.J.Super. 419, 425 (App. Div. 2003). A "trial court's determination under [*Rule* 4:50-1] warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012); *see also,* BV001 Blocker, LLC, 467 N.J.Super. at 124. "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible

basis.'" Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J.Super. 378, 382 (App. Div. 2015)).

Under *Rule* 4:50-1(d), "a default judgment is void if 'taken in the face of defective personal service,' if the defect is so significant that it 'cast[s] reasonable doubt on proper notice.'" BV001 REO Blocker, LLC, 467 N.J.Super. at 125 (quoting Jameson, 363 N.J.Super. at 425); *see also* Sobel v. Long Island Ent. Prods., Inc., 329 N.J.Super. 285, 292-93 (App. Div. 2000) (finding default judgments "will not be vacated for minor flaws in the service of process" but should be set aside "for a substantial deviation from the service of process rules").

Pursuant to *Rule* 4:4-3(a), a summons and complaint "shall be served . . . by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation." The person who served the complaint and summons must submit proof of service in the form of an affidavit. *Rs.* 4:4-3(a) and -7. Proof of service consistent with *Rule* 4:4-7 governing the Return of Service "raises a presumption that the facts recited therein are true." Resol. Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J.Super. 332, 343 (App. Div. 1993) (quoting Garley v. Waddington, 177 N.J.Super. 173, 180 (App. Div. 1981)); *see also* Jameson, 363 N.J.Super. at 426 (finding the submission of competent evidence in the form of an affidavit of service showing "compliance with the pertinent service

rule" is "*prima facie* evidence that service was proper"). The presumption can be "rebutted only by clear and convincing evidence that the return is false." Resol. Tr. Corp., 263 N.J.Super. at 344 (quoting *Garley*, 177 N.J.Super. at 180-81). The "uncorroborated testimony of the defendant alone is not sufficient to impeach the return." *Ibid.* (quoting Goldfarb v. Roeger, 54 N.J.Super. 85, 90 (App. Div. 1959)).

In this case, Milovs proved that they had left for vacation the morning of the alleged service through EZPass records and receipts. Most strikingly though, one of the Affidavits of Service is notarized two months prior to the actual date of service and is facially deficient. 14a. This was never corrected in the record and the Default judgment was based upon an Affidavit that was *prima facie* invalid. In addition, the process server himself admitted that he **never had contact with the notary who notarized the Affidavit.** This is contrary to the Notary Public regulations. Thus, the Affidavit is void and should not have been used as the basis to enter Default, let alone Default Judgment.

The Milovs did not have proper notice of this Foreclosure action and were not personally served with the Complaint. The Return of Service is facially defective and other facts exist to cast doubt upon its validity. It is well settled that a judgment entered without notice or service is constitutionally infirm. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise

interested parties of the pendency of the action and afford them the opportunity to present their objections." Mullane v. Central Hanover Bank Trust Co., 339 U.S. 306, 314 (1950). Failure to give notice violates "the most rudimentary demands of due process of law." Armstrong v. Manzo, 380 U.S. 545, 550 (1965). See also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980); Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969); Pennoyer v. Neff, 95 U.S. 714, 733 (1878). See also, Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84-85 (1988).

Point II

The Court improperly entered Default on Defective Affidavits (Court did not address these issues)

A Return of process is entitled to a presumption of validity and may be rebutted only by clear and convincing evidence, far more than a mere preponderance. A sheriff's return facially indicates compliance with R. 4:4-4(a), and consequently is *prima facie* evidence that service of process on [Defendant] in the suit was proper. The rule on this State is that a sheriff's return of service is part of the record and raises a presumption that the facts recited therein are true. While the presumption is rebuttable, it can be rebutted only by clear and convincing evidence that the return is false. Garley v. Waddington, 177 N.J.Super. 173, 180-181 (App.Div. 1981). See also Intek Auto Leasing, Inc. v. Zetes Microtech Corp., 268 N.J.Super. 426, 431-432 (App.Div. 1993), Goldfarb v. Roeger, 54 N.J.Super. 85, 92 (App.Div. 1959),

Hotovitsky v. Little Russian Greek Catholic St. Peter & Paul Church, 78 N.J.Eq. 576, 577 (E&A, 1911), Seymour v. Nessenbaum, 120 N.J.Eq. 24 (Ch. 1936), Blair v. Vetrano, 12 N.J.Misc. 462 (Sup.Ct.1934), Vredenburgh v. Weidman, 14 N.J.Misc. 285, 287.

The case at bar is unusual in that the Affidavit of Service on Ruslan Milov in this case is presumptively invalid and facially deficient. 14a. It was further served by an in-house Process Service Company that has an interest in the litigation in violation of Rule 4:4-3(a). The Affidavit of Service upon Ruslan Milov is notarized two (2) months prior to the Service date which is impossible. 14a. Furthermore, it does not appear that the Rules regarding electronic notarization of documents put in place pursuant to COVID-19 were followed at all.

Accordingly, all the indicia of reliability that would normally be present are not present in this case. Therefore, the Affidavit of Service is not entitled to a presumption of validity.

In addition, the unverified ServeManager report that was merely sent by email to Defendant's counsel by the in-house process server (who never testified to its authenticity) contains a GPS location which does not match the Defendant's home address and a GPS time stamp for the year 2031. The GPS coordinates provided by the in-house process server in the email alone simply do not support personal service

in this case. The Affidavits of Service do not appear on their face to be valid and thus are not entitled to that presumption of validity.

William Sanchez, whose name appears on the Affidavits of Service filed in this case (14a) testified that he has absolutely no independent recollection of the service made in this case. T4:p.21:8-11. The Court expressly recognized that he had no independent recollection of this particular service of process. T4:p.29:3-6. Mr. Sanchez testified that he had no contact with the notary in this case. T4, p. 23:3-13 Id. The Affidavits were not properly notarized and the notary was never called as a witness to explain the discrepancies or circumstances as to how she could have notarized a document signed by William Sanchez when she, according to his testimony, had absolutely no contact with him. This violates notary rules (even the relaxed rules in place during COVID) which allowed for telephone or video contact which did not occur in this case.

It should be noted that the Milovs have submitted proof, including expert testimony verifying EZPASS records, photographs and hotel records that they were on a family vacation out of State and had left that morning making it next to impossible for service to have been effectuated as detailed in the Affidavit.

Point III

The Court erred in affording the Affidavits of Service a presumption of validity and improperly shifted the burden onto the Defendants to prove by clear and convincing evidence that they were not served. (T4, p. 100:18-23)

In denying the Defendants Motion to Vacate, the Court improperly afforded the defective Affidavits a presumption of validity which improperly shifted the burden of proof to the Defendants to show that they were not served. As far as the timing of service and the family vacation proofs, the Court found that "when you play with—with a time here a little bit here a little here and there with what time the service may have been made" it was "within the **realm of possibility** that everything can fall into place." (*emphasis added*) T4, p. 100:18-23. The Court held that "if the standard is clear and convincing evidence, it's not clear and convincing evidence the process was not served." T4, p.99:14-16. The Court erred in affording the defective Affidavit a presumption of validity. If the Court had not done so, the burden would have shifted to Plaintiff to prove that Service of Process was effectuated which would have required much proof of much more than a "possibility" that the timing was correct which is what the Court held in this case. Finding that the Milovs were "possibly" served certainly does not meet the standard of proving service by clear and convincing evidence and is an abuse of discretion. Even if this Court finds that the presumption of validity should be applied to the Affidavits and shifts the burden of proof to the Defendants that service was not made, Defendants submit that they

did show by clear and convincing evidence that they were not served through GPS expert testimony and proof of their geolocation through Ezpass records and metadata in photographs.

The following errors on the filed Affidavits were never cured and are so irregular that they should not be afforded a presumption of validity. Default judgment should not have issued based upon these defective Affidavits as follows:

- Incorrect name of Defendant "Linda" as this person does not exist 14a.
- Notary stamp is two months prior to alleged service and is facially defective.14a.
- Process server testified he never spoke to the notary at all yet his signature was electronically notarized. T4, p. 23:3-13.
- Process server had no recollection of this service. T4:p.21:8-11
- ServeManager report was never authenticated but was only emailed by the in-house process service company to Defendants counsel. 247a.
- The preforeclosure notice was never served, yet the Certified Mail receipt showing the item was returned to sender was submitted in the Complaint as proof of service. 19-20a.

Point IV

The Court failed to address the fact that the notary had no contact with the process server and the defects in the Affidavits. (T4:97:12-20)

Although these issues were raised at the hearing, the Court in its ruling did not address the incorrect notary date (two months prior to alleged service), the incorrect GPS time stamp for the year 2031and the fact that the notary public, who

was not called to authenticate the documents, had no contact with the deponent process server at any time in violation of notary rules. The Court erred in granting the defective affidavits a presumption of validity under these circumstances. T4, p. 99:13-16. If the Court had not granted the presumption of validity to the Affidavits, the Plaintiff would have had to prove by clear and convincing evidence that the Milovs were served. This would have required calling the Process server company and the notary public to discuss the irregularities in the notarization. The process server's testimony was clear that his signature was notarized without any contact with the notary. This evidence was uncontroverted and appeared to be the regular practice of the process server William Sanchez with the in-house process service company, Esquire. This deficiency is fatal and renders both Affidavits void.

These defective Affidavits formed the basis of the Default Judgment that was entered in this case. The New Jersey Law on Notarial Acts, N.J.S.A. 52:7-10 et seq. requires notaries to be in the physical presence of the person signing the document to notarize their signature. The Act was amended by legislation signed on July 22, 2021 and allowed for Remote Notarial acts. N.J.S.A. 52:7-10.9. That change to the act did not go into effect until October 20, 2021, which is after the service, in this case. However, even if you apply those changes, the Affidavits were not properly notarized. The changes provided that if the signatory is not in the notary's physical

presence, the notary may nonetheless perform a notarial act using "communications technology."

Communications technology encompasses any electronic device or process that allows a notary and a remotely located individual to communicate with each other simultaneously by sight and sound or, if the individual is impaired as to sight, hearing or speech, facilitates communication between the notary and signatory. N.J.S.A. 52:7-10.10. The notary still needs personal knowledge or satisfactory evidence of the individual's identity. That was not done in this case and the Affidavits of Service which supported the Entry of Default Judgment are, therefore, presumptively invalid.

"The requirements of the rules with respect to service of process go to the jurisdiction of the court and must be strictly complied with. Any defects . . . are fatal and leave the court without jurisdiction and its judgment void." Driscoll v. Burlington-Bristol Bridge Co., *8 N.J. 433* , 493, 86 A.2d 201 (1952), *cert. den.,* 344 U.S. 838, 73 S.Ct. 25, 97 L.Ed. 652 (1952). Personal service is a prerequisite to achieving *in personam* jurisdiction, unless *R.* 4:4-4(a)(2) or *R.* 4:4-4(e) alternatives have been properly employed. *See Restatement, Judgments* 2d, §§ 2, 3 (1982).

It is clear that a court cannot exercise its power to the detriment of a litigant when *in personam* jurisdiction has not been established, and that such action would violate the Due Process Clause. *See, e.g.,* Peralta v. Heights Medical Center, Inc.,

485 U.S. 80, *108 S.Ct. 896, 99 L.Ed.2d 75* (1988); Berger v. Paterson Veterans Taxi, 244 N.J. Super. 200, 204-05 (App. Div. 1990)

When a court is satisfied on a *R.* 4:50-1(d) application that initial service of process was so defective that the judgment is void for want of *in personam* jurisdiction, the resulting void default judgment must ordinarily be set aside. Berger v. Paterson Veterans Taxi, 244 N.J. Super. 200, 205-06 (App. Div. 1990)

The defenses of lack of jurisdiction over the person, insufficiency of process and insufficiency of service of process are *words of art* taken from Federal Rule of Civil Procedure 12(b), *28 U.S.C.A. See Rules Governing All of the Courts of N.J., Comment* on *Rule* 3:12-2 (*Tent. Draft* 1948). Lack of jurisdiction over the person speaks for itself while "insufficient process or insufficient service of process precludes acquisition of jurisdiction over the person." Driscoll v. Burlington-Bristol Bridge Co*., 8 N.J. 433* (1952). Either one or all of these defenses abate the action because the court is powerless to render an effective judgment against one of the parties due to failure to obtain jurisdiction over the person. See Messenger v. United States,231 F.2d 328 (2 *Cir.* 1956); Bucholz v. Hutton*, 153 F. Supp. 62* (*D.C. Mont.* 1957); Fistel v. Christman*, 13 F.R.D. 245* (*D.C.W.D. Pa.* 1952); Rogers v. Dubac, 52 N.J. Super. 360, 363 (Law Div. 1958)

Rule 4:50-1 permits a court to relieve a party from a final judgment on the following grounds: "(a) mistake, inadvertence, surprise, or excusable neglect; . . . (d)

the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order." It is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have the authority to avoid an unjust result in any given case." Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

"It is elementary that service must be accomplished in accordance with pertinent rules in such a way as to afford notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Jameson v. Great Atlantic and Pacific Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). The primary way to obtain in personam jurisdiction over a defendant is by personal service. R. 4:4-4(a). Generally, "where a default judgment is taken in the face of defective personal service, the judgment is void." Rosa v. Araujo, 260 N.J. Super. 458, 462 (App. Div. 1992). A court may therefore vacate default judgment when the evidence of service casts a reasonable doubt that the party was properly served and on notice. See Jameson, 363 N.J. Super at 425.

In this case the Affidavits themselves cast reasonable doubt that the Milov's were properly served and on notice of this tax foreclosure action.

Point V

The Process server was not independent and had an interest in the litigation. (T4, p. 98:1-4).

The Plaintiff tax foreclosure business, the Plaintiff's in-house counsel and the process service company all share the same office which raises the presumption that the process service company, who is in control of everything on the Affidavit of Service, has an interest in the litigation contrary to Rule 4:4-3. The Court held that "potentially there's … a conflict. I don't find that there is such a conflict." T4, p. 98:1-4.

This is an issue of first impression as to whether or not the Plaintiff, Plaintiff's in-house counsel and the in-house Process server can all be located in the same office and still be afforded the presumption of validity – especially in a case where there are multiple indicia of unreliability on the Affidavits of service, proof that the persons served were elsewhere at the time of purported service and fatal errors in procedure such as failure to follow standard notarization protocol.

Defendants submit further that under the facts and circumstances of this case, this procedure of using an in-house process server who controls the Affidavits and a notary who has no contact with the person signing the document should be strongly disfavored and the service should therefore be invalidated to protect the Due Process rights of litigants such as Defendants. The process violates Rule 4:4-3(a).

Point VI

Plaintiff committed fraud and 341 Connecticut, LLC was not a *bona fide* purchaser for value without notice as they also committed fraud. (T4, p. 98:1-5)

The Court failed to examine the close personal business relationship between the Plaintiff Poppy/Schwab and Intervenor 341 Connecticut/Frenkel. The Court filed to address Plaintiff's attempts to obfuscate that relationship by making false statements to the Court under oath in their opposition to the Order to Show Cause. Plaintiff's counsel, Anthony Velasquez, Esq. filed a Certification under oath on August 17, 2022 and affirmatively misrepresented the relationship to the Court between Frenkel's business and Poppy/Trystone. 87a. Plaintiff's counsel stated that the businesses were not "friendly" and that "[t]here is no relationship whatsoever" and that they have "no knowledge of this Buyer….or business relations with it or its owner[Frenkel]" 87a. This is fraud upon the Court which should not be occasioned and, in and of itself, is enough to overturn the Judgment of Default. Contrary to Plaintiff's counsel's Certification (87a), Frenkel and Schwab were more than friendly for over 20 years and in contact with each other on almost a daily basis discussing sales of properties. These parties regularly did business together and even discussed a "partnership". 170a. Almost every statement in that Certification as to the relationship between the Poppy/Trystone is patently false and proven to be so by

the Whatsapp text messages which reveal the close business relationship and personal friendship between the parties.

The Plaintiff, for $20,695.64 took title to a mortgage-free income producing property that they sold days later for $375,000 to its business partner – the same business partner who was willing to buy the property just days earlier from the titled owner for $650,000. The transaction and sale from Poppy to 341 Connecticut did not take place until after Mr. Milov inquired of the Passaic Tax collector about redemption. The tax assessor notified the Plaintiff of his inquiry. The Deed was not recorded until after the Order to Show Cause to Vacate the Default Judgment had already been filed. It is clear that both Poppy and 341 Connecticut were well aware that Mr. Milov was attempting to redeem and unaware of the Default Judgment and moved quickly to transfer title.

Frenkel was in contact with Mr. Milov trying to buy the property and never once mentioned the tax foreclosure proceeding. Both the Plaintiff and the Intervenor have much to gain and did, in fact, profit greatly by working in concert with each other. In fact, it seems that they essentially split the spoils of their plundering and raiding of the title to Mr. Milov's property. Frenkel had actual or constructive notice of fraud. The WhatsApp messages are repleted with knowledge between these two that divested property owners were arguing fraud and lack of service and even discussed "title raiding" a woman in a nursing home in those messages. 183a.

Frenkel knew and participated in the machinations of this fraudulent tax foreclosure and thus cannot be said to be a bona fide purchaser for value without notice. Frenkel made material misrepresentations to Milov, even having his "agent" Ms. Thompson contact him without mentioning that she "worked" at the behest of Frenkel. She tried to buy the property for Frenkel without ever mentioning that she had knowledge of a pending tax foreclosure. Although she testified that she told him over the phone, her text messages do not support this position and she admitted that they do not mention the tax foreclosure proceeding of which she and Frenkel were well aware. She admitted that nowhere in the text messages did the word "tax foreclosure" appear because she "didn't think she needed to say it." T4, p.74:15-20. All the while, Frenkel and Schwab were doing business together as Schwab was proceeding with the tax foreclosure against Mr. Milov and Frenkel waited in the wings for a quick title to the property to divest the Defendants from their property. Certainly, this qualifies as fraud and a material misrepresentation of a presently or existing or past fact, they knew it was false, they intended that Mr. Milov rely on it and he reasonably relied on the fact that Frenkel and Thompson were genuinely interested in buying his property when they **knew** that their friend and business partner was in the process of foreclosing or even had already foreclosed. Mr. Milov, unaware of the proceeding, relied on their representations and lost his property to a Default

Judgment. This satisfies all of the elements of fraud which would be required to overturn the Judgment on a Rule 4:50-1 motion to vacate.

CONCLUSION

Taken together, it is clear that the Court's jurisdiction was undermined by numerous misrepresentations and errors concerning service such that Defendant Milov was wrongly deprived of his day in court by incestuous and predatory operators who do not qualify as bona fide purchasers for value.

The decision whether to grant or deny a motion to vacate a default judgment should be guided by equitable considerations. Prof'l Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009) (noting that "Rule 4:50 is instinct with equitable considerations")." The Tax Sale Law, N.J.S.A. 54:5-1 to 137, serves "as a framework to facilitate the collection of property taxes." In re Princeton Office Park LP v. Plymouth Park Tax Servs., LLC, 218 N.J. 52,61 (2014)(quoting Varsolona v. Breen Capital Servs. Corp., 180 N.J. 605, 620 (2004)). "Although the primary purpose of the Tax Sale Law is to encourage the purchase of tax certificates, another important purpose is to give the property owner the opportunity to redeem the certificate and reclaim his [or her] land." Simon v. Cronecker, 189 N.J. 304, 319 (2007).

"One of the maxims lying at the very foundation of equitable jurisprudence is that "equity will not suffer a wrong without a remedy."" Federal Title, c., Guaranty

Co. v. Lowenstein, 113 N.J. Eq. 200, 209 (N.J. 1933). Based on the foregoing, the Milov Defendants respectfully request this Court vacate the default judgment previously issued. Defendants have met the standard under Rule 4:50-1 by showing that the judgment is void as it is based upon defective Affidavits, the Plaintiff and Intervenor committed fraud, it is no longer equitable and for all the other equitable reasons as described herein. The Deed transferring the property from Poppy to 341 Connecticut, LLC should be voided and those business partners Schwab and Frenkel can be left to their own equitable remedies with respect to the Mortgage. The Milovs should then be allowed to redeem the tax sale certificate immediately.

Respectfully submitted,

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Dated: August 14, 2023

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POPPY HOLDINGS, LLC, Plaintiff, v. RUSLAN MILOV, his heirs, devisees and personal representatives or any of their successors in right, title and interest, 1-10; MRS. MILOV, spouse of Ruslan Milov; DIVISION OF CODES AND STANDARDS; THE STATE OF NEW JERSEY; Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION A-2549-22 Lower Court Dkt. F-4127-21 (Passaic County) Sat below: Hon. Frank Covello, J.S.C.

RESPONDENT POPPY HOLDINGS, LLC and TRYSTONE CAPITAL ASSETS, LLC'S BRIEF IN OPPOSITION TO APPEAL

Anthony L. Velasquez, Esq.

September 14, 2023

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PRELIMINARY STATEMENT

Appellant's brief is riddled with attempts to bad-mouth the Plaintiff-Respondent Poppy Holdings, LLC, who conducted the tax foreclosure and obtained judgment. It includes false, inflammatory and unsupported allegations of wrongful service of process. It alleges that the private service company Esquire Process Servicing somehow engaged in an illegal act of falsifying an Affidavit of Service submitted to Court, and falsely claims that such company is part of the undersigned attorney's law practice. But all of these claims and allegations were raised, argued and dismissed by the Trial Judge who heard the multi-day testimony, weighed the evidence and found that personal service of process was accurately completed. Appellant cannot overcome this conclusion, so resort is now made to personal attacks and an argument that the Trial Judge did not properly weigh the evidence.

But it cannot be ignored that Appellant failed to pay property taxes on this investment property (it has never been a personal residence) for years, Appellant acknowledged his knowledge and understanding of his delinquent status, and the evidence supported the Trial Judge's conclusion that service was proper. The judgment was proper, title legally vested in Respondent, and then the property was sold to a third-party buyer. The subsequent attempt to challenge service was rightly rejected.

The process server testified in full as to his personal service upon Appellant. He testified as to his actions and his data entry after serving the summons and complaint, including his GPS tracking which substantiated his service. He testified as to his prior history (19 years as a process server in the constable's office, Guaranteed Subpoena and then Esquire Process Servicing) and his current employment. Appellant's own expert witness testified as to the technical GPS data, which coincided with the process server's testimony. While Appellant tried to draw time/distance distinctions, the Trial Judge affirmatively addressed these differences, including the several hundred yards difference in GPS coordinates, and the testimony as to the time period it takes to drive to the toll booth. The judge also noted substantial deviations in the Appellant's version of events between deposition and trial. Testimony was heard from both the husband and wife (both home that day just prior to leaving for a weekend vacation). Nothing was ignored; nothing was dismissed. All of it was considered, weighed and affirmatively addressed by the Trial Judge who concluded that it all supported a finding of personal service.

Appellant did not redeem the taxes. Judgment was entered. The property was sold. When challenged, the *only grounds* raised by Appellant was service of the complaint. Appellant did not argue that he lacked knowledge of the delinquencies or default. Appellant did not argue that the equites of the case favored vacating

judgment and that equity in the property was so extensive that it would be improper to allow it either as an unlawful takings or otherwise. No evidence was even put forth as to property values, encumbrances, amounts due and/or amounts that might be lost/ gained. This argument was not argued, and it does not form part of the record. It cannot be maintained on appeal. The *only argument ever raised and made by Appellant* was against original service of process. The Court heard it, considered it and weighed it. The Court found service to be proper. This decision should not be disturbed upon appeal.

Appellant also raised a strange argument that the subsequent sale of the property from Respondent Poppy Holdings, LLC, to the third-party buyer 341 Connecticut, LLC, was not arms-length, so as to imply something wrongful, illegal and/or improper with the original service. But again, the Court heard this argument and dismissed the same after carefully weighing the evidence and testimony. Nothing was wrongful, conspiring, nefarious or improper. It was a business transaction between parties who were in a similar business industry and who live in the same town, but who did very little (if any) prior business together. After hearing and weighing the testimony, the Trial Judge found nothing improper. For this reason, the decision should be upheld on appeal.

STATEMENT OF FACTS

The Appellant has embellished the facts in the record, without support, and merely recites many of the empty allegations that were argued and rejected by the Trial Court. This counterstatement will clarify the facts, procedural history and omitted items that Appellant ignores – facts the Trial Court heard and relied upon when issuing its findings, conclusions and ultimate decision that service was valid thus upholding the foreclosure judgment.

Original Tax Foreclosure Action

This property is an investment property located in Clifton, NJ, previously owned by Appellant Ruslan Milov.[1] Appellant testified that this was one of many such properties, and while he had denied in his sworn certifications that he was familiar with tax foreclosures the testimony showed that he was and is repeatedly delinquent in paying his taxes, accruing tax liens and facing tax foreclosures on multiple properties over the course of the past decade. T3 101:11 to 102:14.[2] The testimony showed that he had, in fact, been faced with other tax foreclosures, knew about the

[1] Mr. Milov acquired the Property by deed in his sole name in 1998 but while already married to Lyudmila Milov. He remains married; thus Mrs. Milov is an owner. Mr. Milov's marital status was unknown at the time of the original complaint so a Jane Doe "Mrs. Milov, wife of Mr. Milov" was first named. But upon service and Mrs. Milov stating to the process server that she was married to Mr. Milov and that her name was "Linda", the complaint was amended to "Linda Milov, wife of Ruslan Milov."7a.

[2] Reference to the Trial Transcripts from 3/29/2023 is "T3" (as per Appellant's submission), and "T4" for the 4/20/2023 date.

process, and had familiarity with how to redeem and what to do in these situations. T3 101:11 to 102:14; See also Court's Decision at T4 100:2-10. With this subject property, the taxes had not been paid for the year 2018 and the tax collector issued a tax sale certificate (TSC #18-00193) in December, 2018. The lien holder Trystone Capital Assets, LLC (hereafter "Trystone"), held the TSC #18-00193 for over 2 years, paid subsequent taxes during that time period, and then not being redeemed, per *N.J.S.A.* 54:5-86 it began foreclosure procedures. 1a.[3] Prior to filing the complaint, the requisite pre-foreclosure notice (19a) was sent per *R.* 4:42-9(a)(5) via regular and certified mail at the registered address for the property on file with the tax collector – which the owner Mr. Milov confirmed as a continuing valid address where he receives mail to this very date at 572 Main Ave., Passaic, NJ. See also 3a, It is a business location operated and maintained by him, as confirmed in both deposition testimony and at trial.

No redemption was made within 30 days of the pre-foreclosure notice; so the foreclosure complaint was filed and served. 1a; 16a; 14a. Personal service upon Mr. and Mrs. Milov was effectuated through a process service company Esquire Process Servicing, who utilized its server William Sanchez to personally serve the Milovs. 16a; 14a. Mr. Sanchez testified in both deposition and at trial

[3] All citations to "a" pages refer to Appellant's Appendix.

that he served as a process server for about 20 years or so T4 8:7-17; T4 10:2-3. He testified as to his past employment and current employment. He testified regarding his actions and recollection of the events here. He testified that since he served hundreds of times per week, he did not recall specific details as to this specific job but that his notes and the electronic records were clear. He testified as to his standard actions and procedures for all of his service jobs, and that there was no known deviation here. T4 8:18 to 9:13; T4 17:10 to 19:22; T4 20:2 to 22:15; T4 24:18 to 25:22; T4 26:5-18; T4 28:17 to 29:21; T4 32:19 to 35:3. The Trial Judge noted his testimony to be fully credible, as part of the judge's decision making and rendering of the decision. T4 98:5-6.

Mr. Sanchez served process in this case at the home address of Ruslan and Lyudmila "Linda" Milov on August 23, 2021. Id., see also 16a. He testified that while he could not remember specific facts of this particular service out of thousands, he generally parked nearby and once he served he then returned to his car and normally he would then upload the service data immediately via his cell phone with GPS tracker information to the Esquire Process Servicing server after entering the data. Id. He testified that he usually did this within a couple minutes, sometimes right there and sometimes after (or while) driving a short distance away. Id. In this instance, the data included a physical description of Ms.

Milov that, at deposition and trial, matched her age, hair, eyes, height, weight and skin color, plus it noted on the Affidavit that she identified herself as "Linda" Milov and she said she was the wife of Ruslan Milov. 16a; 14a. Mr. Sanchez testified that he did not know the Milovs or conduct any research as to their identity – either before or after – through Google or any other search service. He had no personal knowledge of them; he said he never did that for anyone who he served. T4 30:3-11; T4 32:3-6.

After service, no response was received from the Milovs. The home address of the Milovs was used for all subsequent service of documents in the case, and this address was confirmed as a good, valid and continuing mail address to date. The Court received a motion to substitute the Jane Doe name as "Linda Milov", and this motion went to the Milov home address. 9a; 7a. The Court then entered default upon request, and upon motion (again delivered to the Milov home address) the Court ordered October 18, 2021, as the Order Setting Time, Date and Amount for Final Redemption. 24a; 21a; 33a. They did not redeem.

Trystone assigned its TSC #18-000193 to related company Poppy Holdings, LLC (hereafter "Poppy"), and a substitution of plaintiff motion was filed (again served at the Milov home) and this Order was entered on December 1, 2021. 34a; 37a; 39a. Final Judgment was applied for (again by a motion delivered to the Milov home) on

January 11, 2022, 40a; 43a; 44a; and was ultimately entered on February 3, 2022. This effectively ended the case. 48a; 51a.

Poppy then sold the property in an arms-length transaction for $350,000 to 341 Connecticut, LLC, on or about March 3, 2022. 82a-83a. See also T4 44:2-10 and J1.

Motion to Vacate Final Judgment and Discovery

On April 24, 2022, a motion to vacate was filed by the first attorney for the Milovs. 52a. It claimed that service of process was invalid. It claimed that on August 23, 2021, the Milov family states that they had already left for vacation several minutes before, and thus the Affidavit of Service must be invalid and fraudulent. Appellant's motion to vacate requested discovery as to the issue of service of process. This motion was heard long before the actual trial date. It was argued on May 5, 2022, and by Order dated May 20, 2022, the Court allowed discovery. 85a. 91a. The Court then said that after discovery, if necessary the Court would hold a plenary hearing, and it set a trial date for the same.

Discovery occurred throughout the remainder of 2022 and into the spring of 2023. It included not only written discovery (interrogatories, document demands and requests for admissions) but depositions of both Ruslan Milov and Lyudmila Milov; the process server William Sanchez; Ike Schwab who is the representative of Trystone and Poppy; Joshua Frankel who is the representative of the buyer 341 Connecticut; and the "GPS expert"

David A. Burgess for Appellant. (Another witness, Lilian Thompson, did not have her deposition taken but did testify at trial regarding her conversations and texts with the Appellant pre- and post-judgment.) During discovery Appellant's legal counsel withdrew and was replaced by new (its current) legal counsel.

Plenary Trial in March-April 2023 and Decision

Discovery was concluded in March, 2023, and the Court held trial over two (2) separate days on March 29 and April 20, 2023. Ultimately it denied the motion to vacate judgment. T4 97:12 to 101:7. Again, the only grounds upon which the Appellant sought relief was failed personal service of process. The Court found that service was proper. No argument was raised as to equity, property values, etc. The Court found service to be valid, the judgment to be proper, and the motion to vacate to be unfounded. It was denied. Id. The four (4) pages of the transcript at T4 97:12 to 101:7 set forth in detail the judge's analysis and decision.

The Appellant's arguments focused upon the process server's Affidavit and the time it states when successful service was made. Appellant introduced various evidence including GPS evidence from several toll booths, plus expert testimony from a GPS computer engineer, for the proposition that the Milovs could not have been at the Property when the process server says service occurred at 9:25am. But the Court's ultimate conclusion was that the testimony and the evidence were both accurate and did not contradict one

another – in that service was made at 9:25am and the car passed the toll some 11-15 minutes later (8.3 miles), which was entirely possible. Id. (During the trial, notation was made of the times, the distances and the maps/routes of travel.)

It is noted that Appellant attempts to claim foul play in the Affidavit of Service date entry, but the testimony clarified that date which originally said "June 23" on the affidavit was merely a typographical error and was corrected to "August 23" on the subsequent document. This was heard and accepted by the Trial Court judge who was there first-hand to evaluate the merits and credibility of the testimony. Moreover, the witness testified that he was aware that there were two (2) versions, one with the correct date. T4 35:20 to 36:17.

The Appellant's attack of this evidence and testimony as to the notarization of the document was heard, acknowledged and ultimately accepted by the Trial Court. Appellant's attempt to create an issue as to validity of the notarization was laid to rest by the Trial Judge who heard the testimony, reviewed the Affidavit of Service and accepted the document and the testimony of its creator. Indeed, the creator of the document whose signature was the one notarized, Mr. Sanchez, was at trial and he testified and confirmed first-hand (as he had done during deposition) that it was his document and his signature, so the attack as to the notarization had minimal impact, if any.

Note was also made of the fact that the name "Linda" was not the actual name of Mrs. Milov - who claims she never used the nickname Linda and always used her full name Lyudmila Milov. But again, Mr. Sanchez testified that he only writes what he learns through his communications with the person served, and that he had no prior knowledge of her or her name. T4 33:6-20; T4 30:3-11; T4 32:3-6. He wrote on the Affidavit what he heard or what he thought he heard. The Trial judge accepted this and affirmatively addressed it in his decision, that either the server heard the name incorrectly, or that a possible nickname was used quite close to the actual name. T4 98:22 to 99:16. The judge found this to be consistent, that both were telling the truth: Ms. Milov likely said her proper name Lyudmila, and Mr. Sanchez heard and recorded "Linda". T4 98:22 to 99:16. It was also clear that as a result of Linda being on the Affidavit, an amendment was made to the original complaint to replace the Jane Doe "Mrs. Milov" with the actual name of Linda Milov, wife of Ruslan Milov. 7a-10a. The only way this name Linda was learned was through Mr. Sanchez's service interaction with Mrs. Milov, and the Trial Judge ultimately heard this and accepted this testimony.

Importantly, the Court addressed the time-sequence of the service and the period allegedly required to reach the toll booth. T4 100:17 to 101:3. It was noted that during deposition no mention was made of a side trip to "Dunkin Donuts" but all of the sudden

at trial this side trip was raised in an effort to extend the period of time between service and the car passing the toll booth. T3 42:15-18. But again this was discounted by the Court who found that there were no receipts for the Dunkin Donuts, and that service was not inconsistent with passing through the toll booth at the stated time period. T4 101:1-3. The evidence aligned, and the Court made factual determinations as to its accuracy and credibility. It found no weighed evidence to defeat the lawful service of process. Finally, the Court found that there was no invalidity of service based upon the process server himself being somehow in what Appellants allege is collusion. The judge addressed this and dismissed it as simply untenable, including the allegation of office-sharing. T4 98:1-6. The judge found that the process server was there, spoke with someone who identified themselves as (what he heard as) Linda Milov, and that the evidence including the GPS coordinates places him there at the right date, right time and right location. T4 97:16 to T4 101:6. Thereafter Appellant filed this appeal. 354a.

On appeal, several factual errors made by Appellant need to be addressed. First, the testimony was clear from Mr. Frankel that Ike Schwab at Poppy has a portfolio of tax foreclosures and property sales, but that Mr. Frankel knows many, many investors and potential sellers just like Poppy. Mr. Frankel testified that he contacts dozens of lien holders all the time to inquire about

properties, availability, foreclosure statuses, possible assignments, possible sales and possible transactions. T4 61:4 to T4 62:19. He testified that he and Mr. Schwab have never had any partnership or business venture whatsoever; and the same for the other partners and the other entities; and their prior transactions were slim to none. T4 49:3 to T4 50:25. The text messages that Appellant claim as contradictory to the testimony of Mr. Frankel do not, in fact, contradict the testimony. The texts do not indicate that Mr. Frankel and Mr. Schwab were ever – and they are not - partners, working in collusion or conducting anything whatsoever except an arms-length, legal transaction. The texts show that Mr. Frankel attempted many times to reach out to Mr. Schwab, tried to obtain deals, tried to obtain foreclosure information, and ultimately (out of his hundreds of properties owned through many other sellers) he consummated this 1 sale plus another 1 or 2 subsequent assignments of tax liens. The records reflected the same.

While Appellant wants to use this to allege wrongdoing, nothing indicates that is wrongful. Even if the buyer and seller had done hundreds of transactions (far from the truth and not supported by any evidence), all that it would establish is that the seller was seeking to make a profit in its business venture, and this is clear (and admitted) because the seller is in business for the purpose of conducting business and making a profit.

Appellant wants to jump to the conclusion that because a seller seeks to make profit, then its actions must be deemed wrongful, illegal or nefarious. But nothing in the record indicates such, and the Court dismissed this claim.

This was the Court's conclusion after hearing all the evidence and viewing all the testimony. Appellants attempt to now re-frame Trystone and/or Poppy as suspicious cannot withstand scrutiny. This argument was already raised and dismissed by the Court.

Likewise, the attempt to cast dispersions upon the undersigned legal counsel fall flat for the same reasons. My law office has always maintained, and continues to maintain, only a professional relationship with the outside service company Esquire Process Servicing ("EPS"), which previously maintained a satellite office at my same location but which always operated separately. There was and is no collusion or wrongful conduct in using the EPS company for service or process; and even *R.* 4:4-3(a) allows service "by plaintiff's attorney or the attorney's agent" so I could have personally served the complaint myself or sent someone from my own office even if they were my own employee without it being deemed wrongful. I utilized a standard process service company EPS, who serves process for thousands of attorneys across the State. EPS sets up booths at ICLE seminars, attorney conferences, etc., and it advertises in the NJ Law Journal and other publications as a standard service company. I am not affiliated with EPS. The Trial

Court heard and acknowledged the arguments raised by Appellant as to alleged "self-dealing", but dismissed the same. T4 98:1-5. There is no new evidence and the Appellant simply re-states arguments that were heard and rejected by the Trial Judge.

As for the GPS testimony, the Court heard the Appellant's arguments including that of its expert witness. It did not exclude any testimony, and it fully heard weighed and addressed the conclusions. But nothing in the record swayed the Trial Judge who concluded that service occurred, and even considering the expert testimony and the time periods stated. Appellant argued, and continues to argue, that the GPS noted service at 9:25am on August 23, 2021, did not create a mandatory conflict with the Appellant's vehicle GPS at the toll booth which occurred shortly thereafter. T4 98:8 to T4 99:23. The Court concluded that such travel time was entirely possible, was within the realm of reason, and did not require that the Court reject that both things occurred – in that service occurred on that same morning followed by subsequent travel to the toll booth where a GPS signal was received. Judge Covello clearly recited this timeline on the record, and that he was not convinced by any of the GPS evidence Appellant presented that service was impossible. Id. Instead the timing was consistent with the GPS records and testimony, and Appellant's repeated attempt in their brief to now change this factual conclusion by the Court must be rejected. Id. The Court heard the evidence, considered it,

weighed it, and found it to be consistent with the time set forth on the Affidavit. Id.

In sum, all of the attacks raised by Appellant are repeat arguments that were made as to the facts presented at trial, which were heard. Factual determinations were made based upon credibility observations and determinations made by the trier of fact – the judge. The Appellants have gone through substantial effort to ignore some of the facts and present only those favorable to Appellant and smearing Respondent and Respondent's legal counsel; but the Court considered *everything* and made findings of fact and credibility. These were set forth on the record. The trial regarding these facts ended, and the judge concluded that service was proper and accurate. It was personal service. There was nothing credible that would result in the Court casting aside its conclusion of proper service, and the February 3, 2022 entry of judgment was upheld. This judgment is now 1 year and 7+ months old (at the time of this brief-writing). The property was sold and then refinanced by the buyer. There are no grounds to disturb the Trial Court's conclusions.

PROCEDURAL HISTORY

In 2018, property taxes against the subject property went unpaid and the tax collector of the City of Passaic sold Tax Sale Certificate #18-00193 to Trystone Capital Assets, LLC, who then recorded such TSC with the Passaic County Clerk's Office at Book M15448, Page 134. 1a-3a. No redemption occurred within 2 years, and on June 30, 2021, Trystone sent a 30-Day Pre-Foreclosure notice to the owner. 19a. Thereafter, and since no redemption occurred within 30 days but less than 120 days later per *R.* 4:42-9(a)(5), Trystone filed its tax foreclosure at F-4127-21 on August 9, 2021. 1a-6a.

The owners were served on August 23, 2021. 16a; 14a. No answer or response was filed, default was entered and the Court set the Order Setting Time, Date and Amount for Redemption as December 14, 2021. 30a. No party redeemed. Trystone assigned its TSC to Poppy, and the Court entered a Substitution of Plaintiff. 39a. Poppy then moved for Final Judgment and the Court entered the same on February 3, 2022. 48a.

Appellants then filed a motion to vacate on March 24, 2022, and sought discovery. 52a. The Court allowed discovery, which occurred throughout the remainder of 2022 and the beginning of 2023. The Court then held a plenary hearing over the course of 2 trial dates in March-April 2023, and ultimately denied vacature on

April 20, 2023. 353a. Appellants filed this appeal on April 27, 2023 (amended May 3, 2023). 354a; 360a.

LEGAL ARGUMENT

I. Appellants improperly ask this Appellate Court to discard the factual finding and conclusions of the Trial Court, when such finding are rational, credible and supported by the competent evidence in the record.

As set forth above in the recitation of facts, the Trial Court heard the evidence, made factual determinations and reached conclusions based upon rational, reasonable and credible support of the competent evidence within the record. It was all set forth, nothing was discarded, and nothing was a clear departure from the record-evidence. For this reason, the Appellate Court should not nullify, amend or vacate the Trial Judge's determinations.

> Considering first the scope of our appellate review of judgment entered in a non-jury case, as here, we note that our courts have held that the findings on which it is based should not be disturbed unless "* * * they are so wholly insupportable as to result in a denial of justice," and that the appellate court should exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter. *Greenfield v. Dusseault*, 60 *N.J. Super.* 436, 444 (App. Div. 1960), aff'd o.b. 33 *N.J.* 78 (1960). That the finding reviewed is based on factual determinations in which matters of credibility are involved is not without significance. *Brundage v. New Jersey Zinc Co.*, 48 *N.J.* 450 (1967). 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 (App. Div. 1963), and the appellate

> court therefore ponders whether, on the contrary, there is substantial evidence in support of the trial judge's findings and conclusions. *Weiss v. I Zapinsky, Inc.*, 65 *N.J. Super.* 351 , 357 (App. Div. 1961).”
>
> [*Rova Farms Resort v. Investors Ins. Co.*, 65 *N.J.* 474, 483-84 (1974).]

This quote is the first and foremost citation in the New Jersey Court Rules at *R.* 2:10-2, Comment 6 (Pressler and Verniero), regarding “review of judicial fact-finding”. It is the oft-quoted language that defines the appellate court’s standard of review when making determinations of whether the Trial Court’s factual determinations overstepped the evidence contained within the record. Here there is nothing in the record that would indicate the Trial Court made a determination “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice” or “wholly insupportable as to result in a denial of justice”. Any such conclusion is far-fetched and unreasonable on this clear record.

The rule referred to by the Courts cited above is *R.* 2:10-2 which says any error or omission “shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result”. Thus the Court must determine (a) whether there was any “error or omission” at the Trial Court, and then (b) whether such alleged “error or omission” was of the nature to “clearly produce an unjust result”.

Appellant here tries to lump multiple claims in part (a), and alleges that the Trial Court made errors/omissions by not reaching the following factual conclusions:

1. The GPS expert testimony and data indicates that service of process was impossible given the toll booth distance;

2. The process server was not independent but should be considered part of the Plaintiff's company and/or the Plaintiff's attorney office.

3. The buyer was not an arms-length buyer.

All 3 of these points were addressed, with factual determinations discussed, analyzed and decided by the Trial Court. Moreover, points 2 and 3 would not change the outcome even if the Trial Court concluded that Appellant's version of the facts were true. The end result would not have been capable of impacting or "producing an unjust result" on the question of whether service of process had been completed successfully. Error that is capable of producing an unjust result is error that is "noticeable, plain, harmful and reversible" as stated at *R.* 2:10-2, Comment 2.1, New Jersey Court Rules, 2023 (Pressler and Verniero). See also the "plain error standard" at *State v. Corby,* 28 *N.J.* 106 (1958).

The GPS data was addressed and found to be consistent with travel between the two points within the time period noted. The alleged office-sharing was also addressed, and the Court dismissed it. Moreover, the law permits service to be made "by a person

appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any competent adult not having a direct interest in the litigation." *R.* 4:4-3(a). Neither the company EPS nor the process server William Sanchez is part of the undersigned attorney's law office, but even if Mr. Sanchez was my employee the Court Rule allows it because service can be made by me or my agent. But most importantly, the Trial Judge addressed it. The conclusion was specific, direct and unequivocal. The Court transcript reads as follows as stated by the trial judge:

> The entire issue that this hearing was to determine is whether or not service of process upon the defendant was effectuated. What we have is a proof of service that indicates that service was effectuated. The issue -- I think that service was on August -- August 23rd of 2021. The issue -- the issue was mostly one of timing. Two -- two things. 1. That there was some sort of a -- an interest of the process server in this case and, therefore, it is unreliable. And that pursuant to court rules the affidavit of service doesn't -- doesn't enjoy a presumption of validity. I've -- I've looked at the documents. I understand what the argument is that -- that there's this office sharing situation that exists. That potentially there's -- there's a conflict. I don't find that there is such a conflict. And I found the testimony of the process server to be credible.
>
> [Trial Transcript, 4/20/2023, at T4 97:13 to 98:6.]

The Court then went on to evaluate what the process server did, where he was, the confirmation of this information by the GPS data, and the information that was on the Affidavit of Service. Here the Appellant argues that Affidavit of Service from Mr. Sanchez should be discounted because as a formal, official process

server Mr. Sanchez had so many files and so many service jobs over the course of so many years that he could not remember each one with accuracy. But the Court addressed this in its decision:

> Yes, his testimony was that he doesn't -- he doesn't remember. But that whatever -- whatever is in the affidavit is -- is what took place because that -- that's all that exists. He does many, many of these services a day, a year. And to try to pin him down -- I recognize that there was -- that there was testimony at a deposition that, you know, he thinks between 30 seconds and a -- a minute is when he would enter this GPS, push the GPS button, but he said today that it's, typically, under five minutes. So -- and -- and he testified that he didn't always do it right at the house or right at the business or the driveway, or whatever, he sometimes drove away. And, again, he has no idea what he did on this – on this particular instance.
>
> So who was served? Linda Milov, according to the affidavit. There's no such person. Where did that name come from? Well, her name is Lyudmila. I suspect that when the process server met with her, whether it was at the door, in the driveway, as she's putting things in the car, he asked her name. She said, "Lyudmila," and somebody might actually think she said Linda, and he wrote down Linda. The point is, and really the absolute uncontroverted evidence here is that at approximately the proper time on the proper day the process server was in that school parking lot, which is a very, very short distance from the house.
>
> What Miss Krenkel wants me to believe is that the process server would have been at that location at approximately the right time of service and he didn't actually serve the documents. That's just not credible. I just -- I don't believe that for one minute. And, certainly, if the standard is clear and convincing evidence, it's not clear and convincing evidence that process was not served. It's clear that the process server was there. He spoke to somebody and believed that somebody indicated her name was Linda Milov, and that's what he wrote, and the GPS coordinates proof. There's an expert who says you can't -- the only thing on that form that

> can't be tampered with is the GPS coordinates. He was there.
>
> [Trial Transcript, 4/20/2023, at T4 98:7 to 99:23.]

This analysis by the Trial Court includes much of what the Appellant tries to re-argue here, namely that the process server was somehow bias or engaged in some collusion or nefarious action so as to negate the validity of his service. The Court rejected it. The attempt to re-argue it and set forth facts as to the service company, its office, and some allegation of wrongdoing by plaintiff or plaintiff's counsel should be dismissed.

As to the buyer 341 Connecticut, the Trial Court heard testimony from the buyer that he was in the business of buying and selling distressed real estate, he acquired properties from many sellers including multiple companies that had tax lien portfolios, that this seller Poppy was one of the smaller tax lien companies that he dealt with, that he had little if any prior transactions with Poppy, and that he owned hundreds of properties and made hundreds of transactions years. Appellant argues that the Trial Judge should have concluded that the buyer and seller had an ongoing business relationship for years and had exchanged many texts back-and-forth inquiring into possible transactions and deals, so as to nullify the "arms-length" transaction conclusion.

But even if the Trial Court concluded that the buyer and seller had a significant, ongoing and friendly business

relationship with many past transactions (not true), such conclusion would not have changed the outcome of the Trial Court's conclusion as to the legitimacy of service of process more than 6 months before the buyer contracted with seller and then acquired the property.

The question before the Trial Court had nothing to do with what happened *after* the foreclosure was completed and when the property was sold; but the sole question was whether the foreclosure itself was properly initiated with legal service of process upon the Defendants – long before Poppy received its Final Judgment, acquired title and then sold the property to the third party buyer 341 Connecticut.

When reducing Appellant's argument to its most basic terms, the Appellant is attempting to say that seller Poppy's relationship with the buyer 341 Connecticut created an incentive to falsify the original service of process – assumedly for the reason of making a profit. But Poppy's entire business existence is admittedly for the purpose of conducting business to make a profit. Essentially all businesses exist for this reason (except "non-profit" entities). The relationship with the buyer does not impact this profit-making goal of Poppy; it always exists. The end goal of wanting to acquire and sell the property for profit was and is always at play. But there is nothing in the record to indicate

that some illegal, nefarious business methodology was employed so as to make such profit. There is no such evidence in the record.

The Trial Judge heard these arguments, weighed the evidence, and rejected the conclusion that the buyer's identity (whether arms-length or not) impacted the actions of the original service of process. To the contrary, the Court found that service was legal. The Court set forth further analysis into Mr. Milov's own testimony that he had walked the dog and then joined his wife to drive south for a weekend vacation. The Court noted that Mr. Milov testified that he had other investment properties, had faced multiple tax foreclosure actions, knew the process, knew the procedure, and likely just ignored this one. The Court said:

> We have the testimony of the defendant Ruslan Milov. Now, this isn't really on -- this part of it isn't necessarily on the issue of -- of the service of process. But what is striking to me is that he testified that there's no mortgage on the property. He -- he has missed some tax payments. He knew that there was a tax lien certificate on the property. And he has had tax foreclosures filed against him in the past, and he never filed an answer, and just went in and redeemed it. I think what happened here is that he did what he had done many other times and he missed it. I think there was service.
>
> When I look at the activities of the -- this family on the day of service, that -- that Mr. Milov was out walking a dog probably at the time that process was served and that's why he wasn't served personally, makes perfect sense to me. That's his own testimony. He's out walking a dog just before they left for their vacation. Was there enough time for them to get to the -- the toll plaza? I think there is. You know, when you play with -- with a time here a little here and there with what time the service may have been made, a

> little bit earlier than -- than what Miss Krenkel may have projected, it is absolutely within the realm of possibility that everything can fall into place.
>
> There's testimony, yet no evidence, that the family stopped anywhere before they got onto the Parkway. The Dunkin' Donuts testimony, there's no receipt, there's no indication, whatsoever, that that actually took place. So the bottom line is this; service of process was effected.
>
> [Trial Transcript, 4/20/2023, at T4 99:24 to 101:5.]

This part of the transcript says a great deal because it includes and acknowledges the GPS data and the expert testimony, which in actuality does not conflict with the timeline of being served and then getting to the toll booth in a reasonable time period. The judge said that it could, in fact, be done. Even within the trial itself, the testimony shows that the maps were discussed along with the distances and the relative time periods of travel, which make it all possible – not nearly "impossible" as argued by Appellant here.

All of this leads to a clear conclusion: these arguments being raised by the Appellant were heard, addressed and dismissed by the Trial Court. The Court received the full evidence and weighed it. The Court did not ignore anything. The Court did not make egregious error on anything. The Court's decision was rational, reasonable and fact-based. It was supposed by clear and convincing competent evidence within the record. It should not be overturned.

> "[I]n reviewing the exercise of discretion it is not the appellate function to decide whether the trial

> court took the wisest course, or even the better course, since to do so would merely be to substitute our judgment for that of the lower court. The question is only whether the trial judge pursues a manifestly unjust course." *Gittleman v. Central Jersey Bank Trust Co.*, 103 *N.J. Super.* 175, 179, 246 *A.*2d 757 (App. Div. 1967), rev'd on other grounds, 52 *N.J.* 503 , 246 *A.*2d 713 (1968).
>
> [*Gillman v. Bally Mfg. Corp.*, 286 *N.J. Super.* 523, 528 (App. Div. 1996.]

There was no "manifestly unjust" conclusion here by the Trial Judge. To the contrary, the decision was reasonable, rational and based upon the competent evidence in the record. As to such evidence in the record, when there is an evidentiary ruling by the Trial Court, the Appellate Court reviews it (again) for abuse of discretion. *Investors Bank v. Torres,* 243 *N.J.* 25, 48 (2020), citing *Hisenaj v. Kuehner*, 194 *N.J.* 6, 12 (2008). Here, there was no abuse because there was no evidence excluded below (nor evidence admitted below) that acted in a prejudicial way so as to harm the Defendant-Appellant. To wit, the Appellant makes no such argument here regarding admitted or excluded evidence, so certainly there is no grounds upon which to reverse from an evidentiary perspective. And from a factual finding/conclusion perspective, the Trial Court firmly set forth its reasons, rationale and basis. It was rooted in the competent record evidence. It does not violate or offend notions of manifest justice. It is reasonable. It is rational. It should not be set aside.

CONCLUSION

For the reasons set forth above, we ask that the Appellate Court affirm the Trial Court's decision.

Respectfully submitted,
/s/ Anthony L. Velasquez, Esq.
Anthony L. Velasquez, Esq., counsel
for Respondent Poppy Holdings, LLC and
Trystone Capital Assets, LLC 9/14/2023

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POPPY HOLDINGS, LLC, Appellant, v. RUSLAN MILOV, his heirs, devisees and personal representatives or any of their successors in right, title and interest, 1-10, LINDA MILOV, spouse of Ruslan Milov; DIVISION OF CODES AND STANDARDS; THE STATE OF NEW JERSEY. Respondents.	: SUPERIOR COURT OF NEW JERSEY : APPELLATE DIVISION : : Docket No.: A-002549-22 : : Lower Ct. Dkt. No. F-004127-21 : : (On appeal from the Order of : The Hon. Frank Covello, : P.J.Ch., NJ Superior Court, : General Equity, Passaic County.) : : :

RESPONDENT'S BRIEF AND APPENDIX IN RESPONSE TO APPELLANT'S BRIEF

On the brief: PATRICK O. LACSINA, SR. ESQ.
October 16, 2023

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PRELIMINARY STATEMENT

This matter flows from a tax foreclosure judgment obtained in the routine and ordinary course of procedure.

The facts are simple: Appellant failed to pay taxes on an investment property and the underlying tax foreclosure was commenced. Appellant was served, failed to answer or redeem, judgment was entered, and the investment property was sold to Respondent 341 Connecticut, LLC ("341 Connecticut").

At trial, Appellant moved to vacate judgment due to faulty service and fraud. T4 97:13-15.

Appellant sensationalized a mundane record to distract from an otherwise routine foreclosure case conducted with all due regularity. Appellant brought much sound and fury to the trial, making dramatic allegations of systemic fraud in this "illegal Tax Foreclosure." Appellant's Legal Brief, p. 1. Grounded only in imagination - not fact - Appellant accused everyone from the process server to the eventual third-party purchaser of the investment property and even Co-Respondent/Plaintiff's own counsel of fraud. 0099a-0109a.

The Trial Court was not swayed by these tactics and denied Appellant's motion to vacate judgment.

Having failed at the trial level, Appellant now attempts to further push the bounds of factual embellishment while still

ignoring the law in its new bid to vacate judgment. As the trial record and law confirms, the underlying tax foreclosure was routine and regular and the judgment should stand.

Accordingly, Respondent respectfully submits that the Trial Court's Order denying vacatur of the judgment be upheld.

PROCEDURAL HISTORY

Respondent incorporates Co-Respondent Poppy Holdings, LLC and Trystone Capital Assets, LLC's Procedural History in full.

COUNTER STATEMENT OF FACTS

Respondent incorporates Co-Respondent Poppy Holdings, LLC and Trystone Capital Assets, LLC's Statement of Facts in full subject to the following additions.

I. There is No Business Partnership Between Co-Respondents 341 Connecticut, LLC and Poppy Holdings, LLC/Trystone Capital Assets, LLC

Respondent Trystone Capital Assets, LLC ("Trystone") was the original Plaintiff in the underlying tax foreclosure bearing docket F-004127-21 ("Foreclosure"). 0039a. Poppy Holdings, LLC ("Poppy") substituted into the Foreclosure for Trystone on 12/1/2021. 0039a.

Mr. Ike Schwab is a partner of and a Portfolio Manager for Trystone and Poppy. Deposition of Ike Schwab, 0124a (10:8-9);

0126a (15:5-6); 0135a (53:9-10). At deposition, Mr. Schwab testified that Poppy and Trystone are "definitely not related" to Co-Respondent 341 Connecticut. Deposition of Ike Schwab, 0128a (26:9).

Mr. Joshua Frenkel is a managing member of 341 Connecticut. T4 43:15. At trial, Mr. Frenkel testified that he had no business interest in Poppy or Trystone. T4 49:22; 50:4. When asked if "he ever had any business relationship, partnership, or joint venture" with Mr. Schwab or Mr. Schwab's other partners, Mr. Frenkel answered "no way." T4 50:15.

A review of the 41 pages of Whatsapp Messages corroborates the testimony of Mr. Schwab and Mr. Frenkel that no business relationship, partnership, or joint venture exists between them individually or between their respective entities. 0167a-0208a.

At most, Mr. Schwab and Mr. Frenkel have merely conducted "arms-length transaction[s]." Deposition of Ike Schwab, 0124a (27-12; 28:13-15). Mr. Frenkel testified that he may have purchased up to four properties from Mr. Schwab's entities in the past ten years. T4 13-14.

II. Pertinent Background on Lyudmila Milov

Ms. Lyudmila Milov is the wife of Co-Appellant Ruslan Milov. T3 24:13-14. Ms. Milov has resided at the real property located

at 106 Falcon Road, Livingston, New Jersey for over twenty years. T3 24:2-4.

Ms. Milov is a female and was 46 years old when she testified at trial on 3/29/2023. T3 40:3-4. She stands at five feet and seven inches tall and weighs 160 pounds. T3 24:5-8. Photographs of Ms. Milov confirm she is a Caucasian female who had brown hair on or around 8/23/2021. 0215a.

III. William Sanchez Personally Served Lyudmila Milov

Mr. William Sanchez has personally served thousands of individuals in his twenty years as a process server. T4 10:3; 27:11. Mr. Sanchez's daily workload could include up to 15 to 20 processes. Deposition of William Sanchez, 0274a 7:12-13; 8:18.

Mr. Sanchez testified he does not know anything about the parties he is serving "prior to going to an address." T4 30:3-8. Mr. Sanchez further testified he does not search for the names of the parties prior to service as "[t]hat would take too long." T4 32:3-6.

Mr. Sanchez testified it is his regular practice to capture and put into his affidavits of service the "approximate age, approximate height, approximate weight, color, race, hair color" and relationship of the party being served at the time of personal service. T4 32:19-25; 33:1-15. Mr. Sanchez testified that he

inquires about the nature of the relationship between the individual being served to the defendant at the time of service. T4 33:11-13.

In the subject Affidavit of Service, Mr. Sanchez attests to the following facts:

- He successfully served the Summons and Complaint on Monday, August 23, 2021 at 9:25am on an individual at 106 Falcon Road, Livingston, New Jersey.
- The individual had the following physical characteristics:
    - Caucasian female
    - over the age of 45
    - had brown hair
    - had a height of five feet and six inches
    - weighed over 135 pounds
- The individual he served identified herself as "Mrs. Linda Milov." 0016a.

Mr. Sanchez testified at the bench trial that the factual contents of the Affidavit of Service were true. T4 33:16-20.

IV. Mr. Sanchez's Practice of Transmitting GPS Coordinates Away from the Exact Location of Service

Mr. Sanchez testified that after serving an individual, it is his practice to press a button on his cellular phone application that transmits his current GPS coordinates to a central database.

T4:16-21. Mr. Sanchez further testified that he does not immediately transmit the GPS coordinates after service. T4 18:5-24. Rather, Mr. Sanchez will drive and press the GPS coordinates transmission button at a location away from the service location. T4 18:5-24.

Mr. Sanchez further testified he has no control over the GPS coordinates. T4 14:19-21.

V. The Phenomena of GPS Drift

Mr. David Burgess, appellant's expert witness on GPS systems, discussed the feasibility that the GPS coordinates would not match the precise location of service. T3 80:13 to 85:8.

Under cross-examination by Trystone/Poppy's counsel, Mr. David Burgess testified to the "fairly normal" phenomena of a "drift." T3 81:17-84:19. Mr. Burgess testified that these drift "errors" result in mismatches between a reported set of GPS coordinates and the actual physical location from which those GPS coordinates were transmitted. T3 81:17-23.

Drift occurs for several reasons including, but not limited to GPS signals being blocked ("multipath") or "interference" with other equipment. T3 83:13-19.

LEGAL ARGUMENT

I. THE STANDARDS OF REVIEW (THE TRIAL COURT DID NOT ADDRESS THE STANDARDS)

a. R. 4:50-1 Applications

Relief from a final judgment or order, whether entered by trial or default, is available under R. 4:50 1. Middlesex Concrete Corp. v. Carteret, 32 N.J. Super. 226, 235 (App. Div. 1955).

R. 4:50-1(c) allows judgments to be vacated "for fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party."

R. 4:50-1(d) allows judgments to be vacated for being void.

R. 4:50-1(f) is a catch-all provision that authorizes a court to relieve a party from a judgment or order for "any other reason justifying relief from the operation of the judgment or order." "Because of the importance that we attach to the finality of judgments, relief under Rule 4:50-1(f) is available only when 'truly exceptional circumstances are present.'" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994); US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449 (2012).

b. The Standard of Review for R. 4:50-1 Applications

The decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear

abuse of discretion. Mancini v. EDS, 132 N.J. 330, 334 (1993); Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966). An appellate court must defer to the trial court's exercise of discretion unless the trial judge pursued a manifestly unjust course. Gillman v Bally Mfg. Corp, 286 N.J. Super. 525, 528 (App. Div. 1996).

The standard of review for findings of fact from bench trials require appellate courts to "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). Indeed, appellate courts should "not disturb the factual findings and legal conclusions of the trial judge" unless those factual findings were "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 84 (1974).

c. The Standard of Review for Fraud

The five elements of common law fraud are: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge of belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages. Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997).

The movant "must prove each element by clear and convincing evidence." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 336 (App. Div. 2013). Further, "common law fraud requires proof of reliance." Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 43 (App. Div. 2000).

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO VACATE FINAL JUDGMENT UNDER R. 4:50-1(D) BECAUSE APPELLANT WAS SERVED (T4 97:11 TO 101:6)

It is well settled that "a sheriff's return of service is part of the record and raises a presumption that the facts recited therein are true." Garley v. Waddington, 177 N.J. Super. 173 (App. Div. 1981). The party challenging the presumption of service must present "clear and convincing evidence that the return is false." Resol. Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 343–44 (App. Div. 1993), see also Goldfarb v. Roeger, 54 N.J. Super. 85, 89–90 (App.Div.1959).

Appellant's assertion that the Trial Court erred in affording the Affidavit of Service the presumption of validity and "improperly shifted the burden onto [Appellants] to prove by clear and convincing evidence that they were not served" ignores established judicial practice and case law. No legal authority exists that reverses the burden of proof to the serving party.

Here, Appellant presented six facts in its failed attempt to show personal service was not effectuated:

- Mr. Sanchez "had no recollection of" serving Mrs. Milov. Appellant's Legal Brief, p. 40.

- The Affidavit of Service stated that Mrs. Milov's name was "Linda" and not "Lyudmila." Appellant's Legal Brief, p. 40.

- The Affidavit of Service was "facially defective" because it was "notarized two months prior to the actual date of service." Appellant's Legal Brief, p. 35.

- The GPS location of the service did not exactly match the Defendant's home address. Appellant's Legal Brief, p. 37.

- The Appellants "left for vacation the morning of the alleged service .. [as evidenced by] E-ZPass and records and receipts." Appellant's Legal Brief, p. 35.

- The "Process Service Company .. [had] an interest in the litigation." Appellant's Legal Brief, p. 37.

The Trial Court correctly found that Appellant failed to present any clear and convincing evidence to rebut the presumption of validity that Mrs. Milov was served. T4 101:4-5. A review of

the record as it pertains to each of Appellant's factual contentions now follows.

a. The Trial Court Found that Mr. Sanchez Personally Served Mrs. Milov

After a two-day bench trial, the Trial Court found the "testimony of [Mr. Sanchez] to be credible" T4 98:5-6 and that "service of process was effected" on Mrs. Milov. T4 101:4-5.

First, the Trial Court found that it was immaterial that Mr. Sanchez did not remember the exact details of "this particular instance" of serving Ms. Milov. T4 98:7-8, 98:20-21.

Mr. Sanchez has effectuated thousands of services of process in his twenty years as a process server. T4 10:3; 27:11. Indeed, the Trial Court found that Mr. Sanchez "does many, many of these services a day" T4 98:10-11.

The Trial Court relied on Mr. Sanchez's credible testimony regarding the contents of his Affidavit of Service that was made based on Mr. Sanchez's personal knowledge contemporaneous with his personal service of Ms. Milov on 8/23/2021: "whatever is in the affidavit .. is what took place." T4:98:9-10.

Second, the Court found that Mr. Sanchez served "somebody [who] indicated her name was Linda Milov." T 99:18-19. Notwithstanding Appellant's contention that there was no one named "Linda Milov" at the subject location at the time of service,

Judge Covello correctly found that it was reasonable that Mr. Sanchez thought he heard Mrs. Milov respond "Linda" when he asked her name. Indeed, the phonetic similarity between "Linda" and "Lyudmila" is undisputed.

Finally, the fact that the initial Affidavit of Service had the incorrect date is of no consequence. 0014a. This was a mere clerical error as the Affidavit of Service was amended with the correct date. 0016a. More importantly, Mr. Sanchez – the Affiant – testified at the bench trial as to the facts in the Affidavit of Service. T4 8:18-21.

Appellant ignores the fact that Mr. Sanchez's Affidavit of Service matches the physical appearance of Mrs. Milov. 0016a; T3 40:3-4; T3 24:5-8. Moreover, the Affidavit of Service states that Lyudmila is "Mrs. Milov" – i.e., the spouse of Co-Appellant Ruslan Milov. 0016a.

The Affidavit of Service is consistent with Mr. Sanchez's testimony that it is standard practice to contemporaneously capture the physical appearance at the time of personal service and inquire of the person being served as to their relationship with the subject entity. T4 32:19-25, 33:1-20.

Accordingly, the record fully supported Trial Court's finding that Mrs. Milov was personally served.

b. The Trial Court Found that Personal Service Occurred on the Morning of 8/23/2021 at 106 Falcon Road, Livingston

The Trial Court further found that Ms. Milov was served at her home on the morning of 8/23/2021. T4 99:7-8.

First, Appellant's concerns that the GPS coordinates stamp indicate that service allegedly occurred "a third of a mile away" from Mrs. Milov's residence were addressed by the record. T4 87:4.

Mr. Sanchez testified that he does not immediately transmit his GPS coordinates after service but, rather, drives away and transmits the GPS coordinates at a later time. T4 18:5-24.

In fact, the Trial Court found that the time between service and Mr. Sanchez's GPS coordinates transmission could occur up to five minutes after service. T4 98:16. The Trial Court found that Mr. Sanchez in fact transmitted the GPS coordinates away from 106 Falcon Road, Livingston, New Jersey when he served Mrs. Milov. T4 98:10-21.

Clearly, such a delayed transmission would result in GPS coordinates that differ from the actual service location.

This is further supported by Mr. Burgess's extensive testimony on GPS coordinate "drift." T3 80:13 to 85:8. Appellant's own expert witness testified that "drift" refers to mismatches in GPS coordinates and the actual location from which those coordinates are sent. T3 81:17-84:19. According to Mr. Burgess, drift is a "fairly normal" occurrence. T3 81:17-84:19.

Mr. Sanchez's practice of **driving away from the precise service location** coupled with the "fairly normal" phenomena of "drift" neutralizes Appellant's assertion that the imprecise GPS coordinates nullifies service. Thus, the record wholly supported the Trial Court's factual finding that Mrs. Milov was served at a GPS location which was a "very, very short distance" from 106 Falcon Road, Livingston, New Jersey. T4 99:7-8.

Second, Appellant argued that personal service could not have occurred at 9:25am because an E-ZPass statement indicates Appellants went through the East Orange Toll Plaza at 9:36am, which is 9.1 miles away from 106 Falcon Road. T4 88:5-7.

This timing argument was found to be meritless. The Trial Court held that the "absolute uncontroverted evidence" was that Mr. Sanchez served Mrs. Milov at the "proper time on the proper day." T4 99:4-80.

Finally, after weighing the totality of evidence, the Trial Court found that personal service of Mrs. Milov as stated in the Affidavit of Service was "absolutely within the realm of possibility." T4 100:22-23. In an unambiguous and muscular ruling, Judge Covello neutralized Appellant's entire argument:

> "What Miss Krenkel wants me to believe is that the process server would have been at that location at approximately the right time of service and he didn't

actually serve the documents. **That's just not credible.. I don't believe that for one minute.** And, certainly, if the standard is clear and convincing evidence, **it's not clear and convincing evidence that process was not served.**" T4 99:9-16. (emphasis added).

Accordingly, the Trial Court correctly found that Mrs. Milov was personally served at her home the morning of 8/23/2021.

c. The Trial Court Found that Esquire Processing Servicing had No Conflict of Interest

Appellant maintains that the Trial Court "held that [there is] 'potentially.. a conflict'" between the process server and Co-Respondents Poppy/Trystone. Appellant's Brief p. 45.

This is a gross and intentionally misleading characterization of the Trial Court's findings.

The Trial Court mentioned this alleged conflict as a necessary introduction to its recital of Appellant's unfounded argument that the process server had an interest in the litigation. T4 98:1-5.

The record fully supports the Trial Court's finding that no potential or actual conflict exists between the process server and the Co-Respondents. T4 98:4-5. The only fact that Appellant put forth to support this baseless argument is that Esquire Process Servicing had a mere "office sharing" arrangement with Co-Respondents. T4 98:3. Appellant failed to establish any other

nexus between Esquire Processing Servicing and Co-Respondents.

Accordingly, the Trial Court correctly found that no conflict of interest existed between the process server and Co-Respondents Poppy and Trystone.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO VACATE FINAL JUDGMENT UNDER R. 4:50-1(C) BECAUSE THERE WAS NO FRAUD (T4 98:1-5)

Throughout the proceedings below, Appellant made numerous unfounded attempts to vacate final judgment on the basis of some fraudulent nexus between Co-Respondents Trystone and Poppy and Co-Respondent 341 Connecticut. 0099a – 0109a.

Appellant presented two facts in its failed attempt to show fraud between the Co-Respondents in this matter:

- Mr. Schwab and Mr. Frenkel, the respective principals of Trystone/Poppy and 341 Connecticut, have known each other for over twenty years. Appellant's Legal Brief, p. 18.

- 341 Connecticut was not a "bona fide purchaser" because the sale of the subject property was not an arms-length transaction. Appellant's Legal Brief, p. 18.

First, Appellant's allegations that Mr. Schwab and Mr. Frenkel were "more than friendly for over 20 years" and "regularly did business together" is false. Appellant's Legal Brief, p. 46.

Here, Mr. Schwab engaged in negotiation tactics against Mr. Frenkel to obtain a higher price. Deposition of Ike Schwab, 0124a (38:23-24). Further, Mr. Schwab confirmed he kept the subject transaction on a "short-leash" because Mr. Frenkel "re-traded" on prior transactions. Deposition of Ike Schwab, 0124a (39:14-16).

Mr. Schwab's statements do not show a "more than friendly" relationship with Mr. Frenkel. Rather, the record is clear that Mr. Schwab and Mr. Frenkel dealt with each other in the normal course that real estate investors deal with each other.

Second, the record is clear that 341 Connecticut's purchase of the subject property was at arms-length. Mr. Schwab testified under oath that this transaction was "absolutely an arms-length transaction." Deposition of Ike Schwab, 0124a (27:12). Co-Respondent 341 Connecticut paid $375,000.00 for the subject property. 0346a.

Indeed, a review of the messages between Mr. Schwab and Mr. Frenkel reveal an intensely bargained-for transaction with the goal of maximizing their respective positions in this arms-length real estate transaction. 0167a-208a.

Finally, Appellant fails to establish any of the required fraud elements under the Gennari test, much less present "clear and convincing evidence" of these elements.

A legal argument based on fraud makes no sense in this matter.

Any relationship between Co-Respondents is mutually exclusive with Appellant's failure to pay taxes on an investment property, which was eventually foreclosed.

Accordingly, there was no fraud in this matter and the Trial Court's decision must be upheld.

IV. THE TRIAL COURT'S ORDER DENYING APPELLANT'S MOTION TO VACATE FINAL JUDGMENT SHOULD STAND BECAUSE EQUITY PROTECTS THE INTERVENING RIGHTS OF INNOCENT THIRD PARTIES (TRIAL COURT DID NOT ADDRESS)

Applications to vacate judgments are equitably restrained when "**intervening rights of innocent third persons**" arise after the entry of judgment. First Mut. Corp. v. Samojeden, 214 N.J. Super. 122, 129, (App. Div. 1986)(emphasis added).

Moreover, Courts have especially protected the rights of bona fide purchasers for value in foreclosure matters. See New Brunswick Sav. Bank v. Markouski, 123 N.J. 402 (1991); Assoulin v. Sugarman, 159 N.J. Super. 393, 398 (App. Div.1978); Matter of Eagleson's Estate, 172 N.J. Super. 98 (1980); Coryell, L.L.C. v. Curry, 391 N.J. Super. 72 (2006).

Here, it is clear that Respondent 341 Connecticut is the owner of the subject property and Itta Jacobs holds a mortgage secured by the subject property. They are the exact "innocent third persons" whose intervening rights not only equitably restrain R. 4:50-1 applications but must be protected.

Accordingly, the Trial Court's decision to deny Appellant's Motion to Vacate Final Judgment was not only correct because service was appropriate, but because it also protected the intervening rights of 341 Connecticut and Itta Jacobs.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Appellate Court sustain the Trial Court's Order that is the subject of this appeal.

Respectfully submitted,
/s/ Patrick O. Lacsina, Sr. Esq.
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October 16, 2023

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POPPY HOLDINGS, LLC, Plaintiffs, v. RUSLAN MILOV, his heirs, devisees and personal representatives or any of their successors in right, title and interest, 1-10, LINDA MILOV, spouse of Ruslan Milov; DIVISION OF CODES AND STANDARDS; THE STATE OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELLATE DOCKET NO. A-002549-22 TRIAL COURT DOCKET NO. PASSAIC-F-4127-21 Sat Below: Hon. FRANK COVELLO, J.S.C.

APPELLANT/DEFENDANTS' REPLY BRIEF

On the Brief:
Lisa C. Krenkel, Esq.

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Appellants, Ruslan and Lyudmila Milov, submit this reply brief in reply to the briefs submitted by Plaintiff, Poppy Holdings, LLC (PHPb) and Intervenor, 341 Connecticut, LLC (341Ib). As the Court is aware, this matter involves Defendant's claims that they were not served and the Affidavit of Service that was filed in support of Default Judgment in this tax foreclosure matter was defective rendering the Default Judgment void.

LEGAL ARGUMENT

Point I

The trial court should not have afforded the Affidavits of Service a presumption of validity and applied the wrong burden of proof.

Defendant Milov has argued all along that the Affidavits of Service in this case should not be afforded the presumption of validity. T3, p.8:20-24 (Defense opening statement on the Motion). The Intervenor argues, incorrectly, that there is no legal authority to shift the burden of proof to the party who is the proponent of the Affidavit. Specifically, in their Brief, Intervenor argues that "[n]o legal authority exists that reverses the burden of proof to the serving party." 341Ib9. In fact, there is legal precedent for this premise. In Jameson v. Great Atl. & Pac. Tea Co., 363 N.J.Super. 419. 426-427 (App. Div. 2003), the Appellate Division addressed this very fact and stated:

> "In order for the sheriff's return to be established as false, clear and convincing evidence must be submitted. Resolution Trust Corp v.

> Associated Gulf Contractors, 263 N.J. Super. 332, 344 (App. Div.), certif. denied 134 N.J. 480 (1993); Garley v. Waddington, 177 N.J. Super. 173, 180-81 (App. Div. 1981); Seymour v. Nessanbaum, 120 N.J. Eq. 24, 25 (Ch. 1936)."
>
> If some evidence is presented tending to disprove the return [of service], but is not sufficient to establish that the return is false, the presumption is nevertheless eliminated from the case. "If the opposing party introduces evidence 'tending to disprove' the presumed fact, the presumption disappears." Ahn v. Kim, 145 N.J. 423, 439 (1996) (quoting N.J.R.E. 301).
>
> "A presumption . . . is no substitute for affirmative proofs." State v. Cuccio, 350 N.J. Super. 248, 257 (App.Div.), certif. denied, 174 N.J. 43 (2002). "The function of a presumption is to allocate the burden of producing evidence; it should not be used as a surrogate for substantive evidence or as a substitute for satisfying the burden of proof assigned by law." Id. at 257 (internal citations omitted). Thus, "a valid presumption can be used to establish a prima facie case, but the presumption normally disappears in the face of conflicting evidence." Biunno, Current N.J. Rules of Evidence, comment on N.J.R.E. 301 (2003) (quoting the 1991 Supreme Court Committee Comment).

In this case there was conflicting evidence regarding service of process, as well as numerous substantial deviations from standard service of process and notarization rules as follows:

1. The Affidavit of service upon Ruslan Milov was notarized two months *before* the alleged service of process. 14a. This Affidavit is facially defective.
2. The Notary who attested to the Affidavits of Service (according to the alleged process server himself) had no contact whatsoever with the Process Server whose signature she allegedly notarized. T4, p.23:3-13.
3. The Process Server had no recollection of this service and could not testify from personal knowledge. T4:p.21:8-11.
4. The GPS time stamp on the ServeManager report (provided to Defendants via email from the Process Server Company, Esquire Process Servicing, LLC who never testified to its authenticity) shows a GPS time stamp which corresponds to the year 2031. T3, p.63:3-5.
5. The In-house Process Server company, the Plaintiff and the Plaintiff's in-house counsel were located in the same office. The use of an in-house process server is highly irregular and is contrary to Rule 4:4-3(a) although this specific set of facts has never been addressed by our Courts.
6. The Milovs presented proof that they left for a family vacation prior to the time of service on the morning of the purported service and provided proof of this trip including photos taken, EZPass records, hotel and credit card receipts to prove that they were not at home at time of service.

7. The Tax Foreclosure Complaint asserts, in paragraph 11, that a preaction notice was served upon Ruslan Milov. 11a. In fact, the proof provided shows that there was no service and that this notice was not delivered to Defendants. 20a.
8. Unattested to service records provided by the in-house process sever contain GPS coordinates which correspond to a school parking lot - not Defendant's home as alleged in the Affidavits. T3, p.65:2-7.

These irregularities with the service of process should have eliminated the presumption of validity and the burden should have shifted to the Plaintiff to prove that service was effectuated. The trial Court applied an incorrect standard and instead improperly afforded the defective affidavits a presumption of validity while disregarding Defendants conflicting proofs and expert testimony.

Point II

The defective Affidavit was never "corrected"

Intervenor argues that the incorrect notary date on the Affidavit was "a mere clerical error …[that] was amended with the correct date. 16a" 341Ib12. This statement is incorrect and misrepresents the record in this case. The incorrect Affidavit of Service upon Ruslan Milov located at 14a in the Appendix is the only Affidavit of Service which was filed and submitted to prove service upon Ruslan Milov. This Affidavit is defective, alleges service upon "Linda" Milov (not his

wife's name) and is notarized two months before purported service. It was never cured. The Affidavit of Service located in the Appendix at 16a is the Affidavit of Service upon "Mrs. Milov, wife of Ruslan Milov" and alleges service at their home. These are two different affidavits referencing service upon two different people - there was no amendment or cure of the defective Affidavit at any time in the record. Plaintiff attempts to make this same argument in their brief arguing that "the affidavit was merely a typographical error and was corrected to "August 23" on the subsequent document." There is no reference to the record in this statement. This argument continues to be posited when this document does not exist and was never filed. The Affidavit as to Ruslan Milov is defective, continues to be defective and was never cured, corrected or refiled.

Of note, Footnote 1 to Poppy Holdings Brief indicates that Mr. Milov acquired the property "in his sole name in 1998." PHPb4. Dr. Lyudmila Milov testified that she has been married for twenty-three (23) years. T3, p.24. The evidence is contrary to their argument that he was married when he first purchased the subject property in 1998. This fact is significant because it shows that the default judgment should not have even issued based upon the defective Affidavit of Service on Ruslan Milov the sole owner of the property located at 79 Sherman Street, Passaic, New Jersey.

It is well settled law that when "a default judgment is taken in the face of defective personal service, the judgment is [generally] void." Jameson v. Great Atlantic and Pacif Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003)(quoting Rosa v. Araujo, 260 N.J. Super. 458, 462 (App. Div. 1992), certif. denied, 133 N.J. 434 (1993)). This judgment should have been voided by the trial court.

Point III

The process server had no recollection of the service of process.

The Briefs of the Plaintiff and the Intervenor seem to imply that the process server William Sanchez testified as to the facts of this particular service of process and the facts in the filed Affidavits of Service. To be clear, Mr. Sanchez had no independent recollection of this particular job. Mr. Sanchez testified that within a minute and a half to two minutes he hits the button to record the service of process. T4, p. 21:5-7. He was very clear that his testimony was not based upon a recollection of what actually happened on the date of service. T4, p.21:8-11. In fact the Court found that the process server "has no idea what he did on this – on this particular instance." T4, p. 98:19-21. The Defendant and Intervenor make much of the fact that the trial court found the process server's testimony to be credible but what did he actually find? The trial court held that "I found the testimony of the process server to be credible. Yes, his testimony was that he

doesn't--he doesn't remember. But whatever is in the affidavit is – is what took place because that --- that's all that exists." T4, p.98:5-10.

If the process server does not remember anything about this service and is testifying to what he usually does, and we look to the affidavit, does that mean that service was effectuated upon Ruslan Milov on the date the Affidavit was notarized, i.e. two months prior to the alleged date of service? Does it mean that the GPS time stamp provided for the year 2031 is also a valid recitation of the year? Accordingly, if we just look to the Affidavits which are facially defective and the testimony surrounding them that they were not properly notarized, as the trial court suggests, then it is clear that the Default Judgment should not have been entered upon these defective and deficient Affidavits. The court erred in affording the Affidavits a presumption of validity and the Court applied the wrong burden of proof when it denied the Motion to Vacate Default Judgment. The Default judgment is therefore void and there was no personal jurisdiction over defendant to even issue the default judgment.

As to the physical characteristics of the person that was served - "Linda" Milov, no such person exists. Defendant's wife's name is Lyudmila Milov and she goes by Mila – she has never been known by the name of Linda. T3, p. p. 26:3-8. The process server, Sanchez, testified to certain physical characteristics of this

Linda who was allegedly served but Sanchez admitted that he didn't know who he served, what she looked like or what she was wearing. T4, p.20:14-23.

It is important to note that the entire Affidavit is editable by the in-house process service company. This Affidavit was not filed at the time of service but was filed in support of the Motion in Support of Default on October 1, 2021 – any number of revisions or edits could have occurred that were out of the control of Sanchez and in the control of the in-house process server, Plaintiff and Plaintiff's counsel in that time period. Sanchez admits that once he presses the button he has no control over the affidavit and no access to it and he doesn't know if anyone can alter it. T4, p.19:16-p.20.

Point IV

Intervenor 341 Connecticut, LLC is not an innocent third party whose rights should be protected.

Intervenor argues that "equity protects the intervening rights of innocent third parties" 341Ib18. However, Intervenor knew that Mr. Milov did not know about the tax foreclosure. Intervenor (341 Connecticut/Joshua Frenkel) was emailing Defendant Milov offering him as much as $650,000 to buy the property. He also, and his agent, Ms. Thompson admitted that they sent him proof of funds (Frenkel's funds) when she offered to buy the subject property on his behalf. To state that Intervenor 341 Connecticut, LLC/Joshua Frenkel are innocent parties stretches the imagination and is contrary to the facts.

Defendants presented evidence that Mr. Milov, unaware of the tax foreclosure proceeding, emailed the Tax Collector requesting redemption figures on February 22, 2022 (19 days after default had been entered, but before the Plaintiff transferred the property). On February 22, 2022 at 3:50 p.m., the Passaic Tax Collector replied and copied Plaintiff's in house counsel, Anthony Velasquez, Esq. as well as Ike Schwab (Poppy) on the email. It was the tax assessor who, on February 22, 2022 informed Mr. Milov that a final judgment had been entered stating "This email is to inform you that we are unable to provide figures for redemption on this certificate as the final judgement [sic] was entered on 02/07/22. As per the lienholder's attorney, redemption was barred as of this same date." 259a-260a. After gaining this knowledge Plaintiff Poppy/Schwab promptly transferred the property by purported Deed on March 3, 2022 to Frenkel/341 Connecticut, LLC. 344a. It was not recorded until April 6, 2022 which is after the Order to Show had already been filed. Id.

Mr. Frenkel admitted that he exchanged emails with Defendant Ruslan Milov on February 14, 2022 at 2:40 pm (after the Entry of default judgment) and offered to buy the property from Mr. Milov for as much as $650,000. T4, p.56:9-11. He also admits that he never mentioned the tax foreclosure to Mr. Milov during these negotiations. T4:12-17. Mr. Frenkel, 13 minutes after emailing Mr. Milov and offering him $650,000 for the property, on February 14, 2022 at 2:53 p.m.,

offered to buy the same property from Plaintiff Schwab/Poppy in Whats app messages for $400,000. 196a. Frenkel knew about the tax foreclosure when he was emailing both Milov and Poppy Schwab. Frenkel and 341 Connecticut are not innocent purchasers. As soon as they found out that Mr. Milov was requesting to redeem Poppy/Schwab made arrangements to sell the property quickly to 341 Connecticut, LLC/Frenkel – this was clearly done to distance Mr. Milov from his property so that they could make the very argument that they are making now – that they are an innocent third party purchaser without knowledge.

To summarize the transactions, Poppy/Schwab paid $20,654 to redeem a tax sale certificate and take ownership of property without a mortgage via default judgment. They sold this property days later for $375,000 to Frenkel/341 Connecticut who had offered to buy it from the owner Mr. Milov for $650,000 two weeks before.

Mr. Milov filed an Order to Show Cause to Vacate the Default Judgment on March 24, 2022. 52a. Although the Deed is purportedly dated March 2, 2022 (346a), it was not recorded until April 6, 2022 (344a) which is after the Order to Show Cause had already been filed. It should be noted that Plaintiff stipulated that it has a large portfolio of tax sale certificates in excess of $30 million dollars. 99a. Intervenor 341 Connecticut, LLC through its principal, Joshua Frenkel was well aware of the situation prior to buying the property and knew the risk that he was

taking with regards to the property acquired by Tax Foreclosure from Schwab. This knowledge is evident when Frenkel (341 Connecticut) asked Schwab (Trystone/Poppy) the following in texts in the WhatsApp messages at 196a:

> [2/13/22, 8:48:44 AM] Frenkel Josh Frenkel: 79 Sherman Street can i buy for 400k
> [2/14/22, 10:25:40 AM] Frenkel Josh Frenkel: yes
> [2/14/22, 10:25:56 AM] Frenkel Josh Frenkel: was the taxes paid or your final judgment is real
> [2/14/22, 10:33:29 AM] 🗝: I own it FJ is very real
> [2/14/22, 10:46:40 AM] Frenkel Josh Frenkel: wow locky you [sic]

Frenkel is no stranger to the risks involved in buying a property from Mr. Schwab that has been acquired in a tax foreclosure. In a previous transaction, three years earlier, the pair discussed an owner who, like Mr. Milov, claimed he was not served at 173a-174a:

> [12/15/19, 7:46:47 PM] 🗝: He filed a motion
> [12/15/19, 7:53:16 PM] Frenkel Josh Frenkel: What kind? **He wasn't served?**
> [12/15/19, 7:53:30 PM] Frenkel Josh Frenkel: He has clear title?
> [12/15/19, 7:53:38 PM] 🗝: Claim he was out of the country
> [12/15/19, 8:09:49 PM] Frenkel Josh Frenkel: **I can buy and fight him?**
> [12/15/19, 8:10:34 PM] 🗝: He offered me a good settlement
> [12/15/19, 8:14:59 PM] 🗝: 125k
> [12/17/19, 7:17:20 PM] Frenkel Josh Frenkel: Would you let me buy it for 125k
> [12/17/19, 7:18:06 PM] Frenkel Josh Frenkel: **I have no risk , I can fight him and still get the 125k back (emphasis added)**

This is a clear example of the callous disregard for service and due process that Schwab and Frenkel have towards innocent owners who have not been served. They have done this to owners before and continue to do so with impunity operating under the belief that they, in their own words, have no risk. No protection should be afforded to those who do business with f disregard for the rights of others - they are not innocent third parties who need the protection of this Court.

There is a long established legal principle that equity will suffer no wrong without a remedy. Crane v. Bielski, 15 N.J. 342, 349 (1954). This Court has broad equitable powers to right this wrong.

Point V

GPS drift is not a factor in this case, GPS expert testimony proved that the Milov's were not home at the time of the alleged service and the service also was not effectuated at their home but at a school parking lot.

Intervenor alludes to the concept of GPS drift in his Brief to explain why the GPS coordinates of service that were provided do not match the Defendant's home at 106 Falcon Road, Livingston. 341IB56. Defendant's GPS expert, David Allen Burgess testified that based upon the GPS data that it was unlikely that the Milov's were at their home at 106 Falcon Road, Livingston at the time of alleged service on August 23, 2021 at 9:25 a.m. in the car travelling. T3, p.7-9-81. They could not have made it to the East Orange Toll Plaza at 9:36 a.m. which is 9.1 miles away on

local roads in 11 minutes. T3, p. 79:1-9. The expert David Allen Burgess testified that he reviewed the FAA reports for August of 2021 and there was no GPS drift. T3, p. 82:19-21. He further testified that "in this particular case, the land, cover, terrain and buildings around the given location in the Collins School Parking lot (place of service on the Affidavit) were not the types of conditions that would lead to severe multipath problems….and according to the information from the FAA for August 2021, there were no particular problems in the GPS network at this time" T3, p.69:5-13.

Point VI

The violation of the New Jersey Notarial Act has not been cured

The notary had no contact whatsoever with the process server either by telephone or in person. T4, p.23:3-13. This violates the New Jersey Law on Notarial Acts, N.J.S.A. 52:7-10 et seq. Based on this testimony alone, the Affidavits themselves are defective and should not have been afforded a presumption of validity.

Point VII

Appellant objects to any facts not in evidence and the testimony of counsel in the Appellate Brief

Plaintiff's Brief appears to contain certain arguments of Mr. Velasquez, Plaintiff's counsel, which are outside the record. Pages 1-3 of the Brief are devoid of references to the record. See PHPB1-3. His brief contains testimonial

statements such as "I utilized a standard process service company …. I am not affiliated with EPS" PHPB 14-15. There is further impermissible testimony from counsel in the Brief that "my law office has always maintained . . . and continues to maintain, only a professional relationship with the outside service company". Id. These statements are not only outside the record, but are incongruous with the stipulated facts (99a) and his own client's testimony. Mr. Schwab testified at his deposition (and it was further stipulated on the record) that Esquire Process Servicing, LLC's office was located in the same Suite as Plaintiff's office, along with that of Plaintiff's counsel. 134a, p. 48. The suite that they occupy has cubicles and a shared bathroom. 134a, p. 60. The facts are uncontroverted that process service company is located in the same suite as Plaintiff and Plaintiff's counsel, Velasquez. 134a, p.50:23-25.

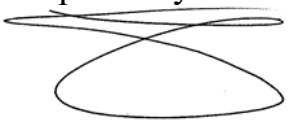
A pattern seems to be emerging. This attempt to recast the facts is similar to the misstatement made under penalty of perjury where Velasquez certified to the trial Court that 341 Connecticut, LLC is neither friendly or associated with Trystone/Poppy and that they do not do business and have no knowledge of each other. 87a. As was argued in the Defendant's Brief (Db46-48), and I will not belabor it here, this is and was completely untrue and is an example of yet another attempt to obfuscate the fact that all these parties are all interrelated and part of the same scheme in furtherance of unscrupulous Tax Foreclosure business practices.

Plaintiff's brief also impermissibly offers "testimony" outside the record to legitimize the relationship stating that the process service company sets up "booths at ICLE seminars" and "advertises in the NJ Law Journal". PHPb14. Velasquez attempts to recast his relationship with the in-house process server by stating that they "always operated separately" and "I utilized a standard process service company EPS". Id. These statements are not evidence and are not part of the record as are his denials of affiliations with the in-house process service company in this portion of his Brief. Counsel's insertion in the appellate brief of facts and personal testimony outside the record below is inappropriate. Rudbart v. Bd. Of Review, 339 N.J. Super. 118, 122-123 (App. Div. 2001). Appellant requests that these arguments be disregarded in their entirety.

CONCLUSION

For the foregoing reasons, the Court's denial of the Motion to Vacate should be overturned on appeal and the default judgment should be voided.

Respectfully submitted,



Lisa C. Krenkel, Esq.

Dated: October 30, 2023