SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1778-15T4

ANNETTE BIVIANO, as Executrix of the ESTATE OF RONALD AVELLA, individually and derivatively on behalf of HIGHPOINT GARAGE, INC., AVELLA'S GARAGE, INC., HIGHPOINT REALTY, INC., 54TH STREET REALTY, INC., and 612 REALTY, INC.,

Plaintiff-Respondent,

v.

ROBERT AVELLA and STEVEN AVELLA,

Defendants,

and

ROBERT AVELLA and STEVEN AVELLA, individually and derivatively on behalf of HIGHPOINT GARAGE, INC., AVELLA'S GARAGE, INC., HIGHPOINT REALTY, INC., 54TH STREET REALTY, INC., and 612 REALTY, INC., and HIGH POINT CONTRACTING,

Defendants/Third-Party Plaintiffs,

v.

ANNETTE BIVIANO, as Executrix of the ESTATE OF RONALD AVELLA, PATRICK AVELLA, and ANTHONY BIVIANO,

Third-Party Defendants/
Respondents.

Submitted May 31, 2017 – Decided May 15, 2018

Before Judges Leone and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, General Equity Part, Hudson County, Docket No. C-000060-12.

Marino, Mayers & Jarrach, LLC, attorneys for appellants Ralph J. Torraco, C.P.A., and Ralph J. Torraco, P.A. (Joseph A. Marino, on the briefs).

Bruce E. Baldinger, attorney for respondents Annette Biviano and Anthony Biviano.

The opinion of the court was delivered by

LEONE, J.A.D.

Appellants Ralph J. Torraco, C.P.A., and Ralph J. Torraco, P.A., filed a writ of execution seeking to claim funds escrowed for payment to respondent Patrick Avella and the Estate of Ronald Avella (Estate) pursuant to a settlement agreement. Appellants claimed a right to those funds because, subsequent to the settlement agreement, they obtained a judgment against corporations in which the Estate and Patrick had been shareholders, and the funds were proceeds from the sale of some of the Corporations' assets. The trial court rejected appellants' claim. We affirm.

I.

Appellants challenge the trial court's October 2, 2015 order enforcing the settlement agreement and November 30, 2015 order denying reconsideration. The following facts are derived from the opinions attached to those orders.

Five cousins — brothers Robert and Steven Avella, brothers Patrick and Ronald Avella, and Alan Avella[1] — owned shares in five family-run corporations: Highpoint Garage, Inc.; Avella's Garage, Inc.; Highpoint Realty, Inc.; 54th Street Realty, Inc.; and 612 Realty, Inc. (collectively "the Corporations"). In 2005, Patrick and Ronald became disabled but maintained their ownership interest in the Corporations, while Steven and Robert ran the day-to-day operations of the Corporations.

In 2007, Alan transferred his ownership interest in the Corporations to Ronald and Patrick. Ronald died in May 2010 and his sister, respondent Annette Biviano, became executrix of his Estate.

On February 16, 2012, Biviano filed in Bergen County a complaint as executrix of the Estate, individually and on behalf of the Corporations, against Robert and Steven. The complaint alleged Robert and Steven mismanaged the Corporations. The

[1] Because of their common last name, we refer to each by his first name.

complaint sought the appointment of a special fiscal agent to effectuate the dissolution, liquidation, and sale of all assets held by the Corporations. Robert and Steven, individually and on behalf of the Corporations, filed a counterclaim and a third-party complaint against Patrick, Biviano, and her son Anthony Bivano. The case was transferred to Hudson County and Jack Wind, Esq., was appointed as special fiscal agent for the Corporations on May 31, 2012.

The case was settled on July 11, 2014, and a settlement agreement was executed on August 25, 2014. In the settlement agreement, the parties agreed the Corporations would pay the Estate and Patrick $253,445 each, "representing one-half of the net proceeds" (less corporate taxes owed) from the June 2013 sale of "the property previously owned by 54th Street Realty commonly known as 5419 Tonnelle Avenue, North Bergen," and the June 2013 sale of "the assets previously owned by Avella's Garage." The $701,000 proceeds of those sales was being held by the State and were expected to be released after the State reviewed the corporate tax returns for 54th Street Realty and Avella's Garage and subtracted the corporate taxes owed. "The Corporations shall effectuate payment to the Estate" and Patrick within ten days of "the date upon which the proceeds are released by the State."

In exchange, the settlement agreement provided that the Estate and Patrick would transfer all of their voting rights in the Corporations to Robert and Steven, and place all their shares in the Corporation in escrow with Wind, with the shares to be transferred to Robert and Steven when the State released the proceeds. The parties agreed to pay Wind and anyone retained by Wind.

In the August 25 settlement agreement, Robert and Steven agreed to indemnify and hold harmless the Estate and Patrick for environmental liabilities and taxes owed by Highpoint Realty and 612 Realty, including the properties at 608-610 22nd Street, 621-23 22nd Street, and 2207 West Street in Union City (collectively "the Highpoint/612 properties"). The agreement also provided that "should the remaining properties owned by Highpoint Realty and 612 Realty be sold before the release of the proceeds by the State," then "the net proceeds from the sale of those properties shall be placed in" Wind's escrow account.[2]

On November 24, 2014, appellants obtained a default judgment against Avella's Garage, Highpoint Realty, 54th Street Garage, and 612 Realty (collectively "the four corporations") and Steven,

[2] The Highpoint/612 properties were sold before the State released the balance of the escrow funds. However, the net proceeds of the sale were not placed in Wind's trust account, but were distributed directly to Robert and Steven.

holding them jointly, severally, and separately liable for $121,097. The default judgment was based on appellants' complaint filed March 28, 2014, and amended June 2, 2014, which alleged Steven individually and as managing agent for the four corporations signed a 2011 retainer agreement for appellants to provide accounting services, but appellants had not been paid for those services.

On December 5, 2014, appellants had the sheriff serve a writ of execution on Wind's trust account for the $121,097. At that time, the escrow account had no funds in it, as the State had not yet released the funds it was holding to satisfy the unpaid corporate taxes.

In June and July of 2015, the State released a total of $647,617.59 to Wind's escrow account. Wind paid out: $46,276.40 to Wind for his performance as special fiscal and escrow agent; $4,564.00 to Robert A. Kaye, Esq.; and $16,944.00 to Raymond Toscano, C.P.A.[3] After those payments were deducted, $570,490.19 remained in the escrow account.

Patrick filed a motion to enforce the settlement agreement. He requested disbursements to the Estate and himself of the

[3] Wind retained Kaye to perform legal services in connection with the case, and Toscano to file the four corporations' outstanding tax returns.

remaining escrow funds without deduction for the amount owed to appellants. The Estate joined in the motion. Appellants filed a letter and certification in opposition. Wind cross-motioned for counsel fees of $6,051.30 and $3,393.00 more for Toscano.

A hearing was held on September 4, 2015. On October 2, 2015, the trial court ordered: that the settlement agreement was to be specifically enforced; that Wind must distribute from the escrow account to the Estate and Patrick in equal one-half shares "the balance of the funds presently now on deposit, or to be deposited"; that appellants' writ of execution would not apply to the funds then deposited or to be deposited with Wind.

In accordance with that order, Wind disbursed all funds from the escrow account. Appellants later filed a motion for reconsideration, which the trial court denied on November 30, 2015. On December 14, 2015, they filed a timely appeal of both the October 2 and November 30, 2015 orders. See R. 2:4-3(b).

II.

Respondents Annette Biviano and Anthony Biviano argue appellants lack standing to appeal because they were not parties to the case. However, the motion to enforce the settlement agreement asked the trial court to declare that any funds in the trust account should not be used to satisfy the writ of execution from "Ralph J. Torraco, C.P.A. and Ralph J. Torraco, P.A."

Moreover, the court granted that relief against "Ralph J. Torraco, C.P.A. and Ralph J. Torraco, [P.A.]," after allowing appellants to file a brief in opposition and present argument at the hearing. The court also ruled on their motion for reconsideration as if they were a party.

Appellants argue they were de facto intervenors, citing Ross v. Ross, 308 N.J. Super. 132 (App. Div. 1998). In Ross, we held that a person "effectively intervened" by participating in the trial court and by appealing, making our and the trial court's judgments binding on the effective intervenor. Id. at 148-49.

In these circumstances, appellants have standing to appeal even without formal intervention. See DNI Nev., Inc. v. Medi-Peth Med. Lab, Inc., 337 N.J. Super. 313, 313 n.1 (App. Div. 2001). "It is well established that 'a party aggrieved by a judgment may appeal therefrom. It is the general rule that to be aggrieved a party must have a personal or pecuniary interest or property right adversely affected by the judgment in question.'" State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015) (quoting Howard Sav. Inst. v. Peep, 34 N.J. 494, 499 (1961)). Appellants have a pecuniary interest adversely affected by the trial court's orders, and are bound by them. Thus, we consider appellants' appeal.

III.

"Process to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order, shall be a writ of execution[.]" R. 4:59-1(a). A writ of execution may levy on "[m]oney belonging to a defendant" against whom the judgment has been obtained. N.J.S.A. 2A:17-15.

The December 2014 writ of execution informed the sheriff that appellants had obtained a judgment against Steven and the four corporations, and commanded the sheriff to satisfy the judgment "out of the personal property of the said Judgment debtor[s]." The trial court held that execution of the writ upon the funds in escrow would have been improper because it was directed at funds of the Estate and Patrick, not of Steven or the four corporations.

The trial court's ruling was supported by the language of the August 2014 settlement agreement. It provided that "[t]he Corporations shall make a single payment to the Estate," and an identical payment to Patrick, of the proceeds from the earlier sale of the properties of 54th Street Realty and Avella's Garage. Because those proceeds were "currently being held by the State of New Jersey," the Corporations were required to "effectuate payment to the Estate" and Patrick within ten days of "the date upon which the proceeds are released by the State of New Jersey."

Thus, the settlement agreement already required the proceeds to be paid to the Estate and Patrick once they were received from the State. The Corporations had no right to keep those proceeds, as they had already bargained them away in the settlement agreement.

"New Jersey has a 'strong public policy in favor of the settlement of litigation.'" Rodriguez v. Raymours Furniture Co., 225 N.J. 343, 359 (2016) (citation omitted). Because "'[t]he settlement of litigation ranks high in our public policy,'" New Jersey "courts 'strain to give effect to the terms of a settlement wherever possible.'" Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008) (citations omitted). "'An agreement to settle a lawsuit is a contract, which like all contracts, may be freely entered into and which a court, absent a demonstration of "fraud or other compelling circumstances," should honor and enforce as it does other contracts.'" Ibid. (citation omitted).

Appellants argue the proceeds were still the property of "54th Street Realty Inc." and "Avella's Garage Inc." They note the checks from the State were payable to those corporations at the "Margulies Wind Attorney Trust Acct." However, that trust account was set up by Wind to effectuate the payments to the Estate and Patrick required by the settlement agreement. Thus, by making its checks payable to the trust account, the State recognized that

the proceeds had to go to escrow rather than to the two corporations. That the State included the two corporations' names on the checks did not change to whom the proceeds belonged under the settlement agreement.

As the trial court found, the funds ultimately deposited in the escrow account were "those that pursuant to the settlement agreement belong to the Estate" and Patrick. As they were not the judgment debtors appellants obtained a judgment against, "the writ of execution d[id] not apply to the monies" subsequently deposited in the escrow account by the State.

IV.

In addition, the trial court found that the writ of execution did not allow appellants to seize the monies deposited six months later by the State "because at the time the writ was served there was no money whatsoever in the escrow account." The court properly relied on T & C Leasing, Inc. v. Wachovia Bank, N.A., 421 N.J. Super. 221 (App. Div. 2011).

In T & C Leasing, the plaintiff filed a writ of execution on a debtor's bank account, with a statement by the sheriff that it included "any other monies due or to become due[.]" Id. at 224 (internal quotation omitted). After additional money was deposited about five months later, the plaintiff claimed the bank "was required to turn over any additional funds deposited into the

account after the writ of execution was served until the underlying judgment was satisfied." Id. at 224-25. We held that the "levy was fixed in time as of the date the sheriff served the writ[.]" Id. at 230. We explained that a levy upon money "differs from Article 7 wage and related executions that create a continuing lien, N.J.S.A. 2A:17-50, in concept, policy and procedure." Id. at 228.

Here, as in T & C Leasing, "[t]he execution and levy contained no language evidencing an intention to create a continuing lien[.]" Id. at 230. Nor did appellants go through the procedures for a wage execution, which requires advance notice to the debtor who can object and demand a hearing prior to the wage execution. Id. at 229. Rather, this was "a levy on personalty" and money, which attaches only the property present at the time of execution. Id. at 229-30.

Wind alerted appellants when the State was paying money into the trust account. They "could have utilized the same writ of execution, which is valid for two years from the date of its issuance, and instructed the sheriff to return to [Wind] and make another levy," but they "chose not to do so." Id. at 230 (citation omitted). Thus, the levy did not prevent Wind from paying the later-deposited funds from the trust account to the Estate and Patrick. As the trial court found, appellants' argument that they

had a "levy on funds subsequent to the service of the writ is invalid."

V.

Nonetheless, appellants make various arguments why they had a right to the funds subsequently paid by the State into the escrow account for payment to the Estate and Patrick.

A.

First, appellants argue the four corporations had to pay them the escrowed funds under the statutory chapter governing corporate dissolutions, N.J.S.A. 14A:12-1 to -19. The Estate's complaint sought the Corporations' involuntary dissolution under N.J.S.A. 14A:12-7, automatic dissolution under N.J.S.A. 14A:12-1(1)(g), and voluntary dissolution under N.J.S.A. 14A:12-4, as well as the appointment of a receiver under N.J.S.A. 14A:14-2.[4]

However, instead of dissolving the Corporations, the settlement agreement essentially provided that, to settle the litigation, proceeds from the earlier sale of property belonging to Avella's Garage and 54th Street Realty would be paid to the Estate and Patrick in exchange for the transfer of their stock in all of the Corporations to Robert and Steven. Nothing in the

[4] No receiver was appointed. Thus, the escrowed proceeds were not held in custodia legis. See N.J. Realty Concepts, LLC v. Mavroudis, 435 N.J. Super. 118, 123-27 (App. Div. 2014).

settlement agreement suggested that any of the Corporations were dissolved.

Appellants also offered no proof that any of the Corporations had dissolved by any of the methods in N.J.S.A. 14A:12-1(1). Appellants did not show that a certificate of dissolution had been filed as required by N.J.S.A. 14A:12-1(1)(a)-(e) and (h). See N.J.S.A. 14A:12-2(2), -3, -4(6), -4.1(2), -5(1). Appellants provided no proof that the Superior Court had ordered the dissolution of any of the Corporations, N.J.S.A. 14A:12-1(f), or that the Secretary of State had repealed or revoked any of the Corporations' "certificate of incorporation for nonpayment of taxes or for failure to file annual reports," N.J.S.A. 14A:12-1(1)(g).[5] Nor did appellants show under N.J.S.A. 14A:12-1(1)(h) that Avella's Garage, 54th Street Realty, or any of the Corporations "has no assets, has ceased doing business and does not intend to recommence doing business, and has not made any distributions of cash or property to its shareholders within the last 24 months and does not intend to make any distribution

[5] The Estate's complaint alleged that Highpoint Garage had been ordered dissolved by the State but had not been formally dissolved, and that the corporate charters for Highpoint Garage, Highpoint Realty, and 54th Street Realty had been revoked for failure to file annual reports. However, the answer denied those allegations, and the settlement agreement did not admit the Estate's allegations.

following its dissolution." N.J.S.A. 14A:12-4.1(2)(c); see N.J.S.A. 14A:12-4.1(1). Without a showing that any of the four corporations had dissolved by one of the methods in N.J.S.A. 14A:12-1(1), appellants could not claim the proceeds from the sale of their assets by invoking the statutes addressing such dissolutions.

Nonetheless, appellants cite a dissolution statute providing: "Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall carry on no business except for the purpose of winding up its affairs by . . . (c) paying, satisfying and discharging its debts and other liabilities[.]" N.J.S.A. 14A:12-9(1); see Landa v. Adams, 162 N.J. Super. 318, 321 (App. Div. 1978). Even assuming this provision requires the payment of debts and liabilities by a dissolved corporation, appellants did not show any of the Corporations were dissolved.

Appellants cite another subsection of N.J.S.A. 14A:12-9 providing that "title to the corporation's assets shall remain in the corporation until transferred by it in the corporate name." N.J.S.A. 14A:12-9(2)(b). That provision addresses how a dissolved corporation "shall continue to function in the same manner as if

dissolution had not occurred." N.J.S.A. 14A:12-9(2). Appellants did not show the Corporations were dissolved.[6]

Appellants assert the payments to the Estate and Patrick violate a dissolution statute providing that "[a]ny assets remaining after payment of or provision for claims against the corporation shall be distributed among the shareholders according to their respective rights and interests." N.J.S.A. 14A:12-16. However, that statute applies only if the corporation is dissolved. See ERA Advantage Realty, Inc. v. River Bend Dev. Co., Inc., 284 N.J. Super. 92, 97-100 (Law Div. 1994).

Appellants cite another dissolution statute providing that "[a]t any time after a corporation has been dissolved, the corporation, or a receiver appointed for the corporation pursuant to this chapter, may give notice requiring all creditors to present their claims in writing." N.J.S.A. 14A:12-12(1). Even if this provision requires notice to creditors when a corporation is dissolved, no such notice was required here, because appellants

[6] Appellants also rely on case law predating the enactment of N.J.S.A. 14A:12-9, under which directors of a dissolved corporation became trustees, but N.J.S.A. 14A:12-9(2)(a) provides that "the directors of the corporation shall not be deemed to be trustees of its assets[.]" As its drafters stated in 1968: "This section represents a drastic departure from current New Jersey law," as it "eliminates the present statutory scheme of voluntary dissolution pursuant to which directors of dissolved corporations become trustees[.]" Pachman, Title 14A Corporations, Commissioners' Comment-1968 (2018).

did not show the Corporations were dissolved. Equally irrelevant is N.J.S.A. 14A:12-13, which bars creditors provided notice under N.J.S.A. 14A:12-12 from bringing claims against "a corporation in dissolution" or its shareholders unless the creditors fall within certain exceptions. See Pachman, Corporations, at 633.

Appellants cite another dissolution statute, which provides: "At any time after a corporation has been dissolved in any manner, a creditor . . . may apply to the Superior Court for a judgment that the affairs of the corporation and the liquidation of its assets continue under the supervision of the court." N.J.S.A. 14A:12-15. But appellants made no such application, and did not show the Corporations were dissolved.

New Jersey courts have applied these sections of N.J.S.A. 14A:12-1 to -19 only where a corporation was dissolved in one of the ways set forth in N.J.S.A. 14A:12-1(1). "This was not the situation in the case before us." Asbestos Workers Local Union No. 32 v. Shaughnessy, 306 N.J. Super. 1, 4 (App. Div. 1997). In Asbestos Workers, we found N.J.S.A. 14A:12-9(1) inapplicable even though a corporation's charter had been suspended for failure to file its annual report and pay the requisite fees. Id. at 2-4. We noted that treating non-dissolved corporations as dissolved merely because their corporate charters were suspended "could cause havoc in the business community." Id. at 3. The same would

be true if a corporation's sale of assets, without more, were treated as placing a corporation in dissolution.

As the trial court stated in denying reconsideration, "[t]his case does not involve corporate dissolution[.]" The court noted the four corporations against which appellants have a judgment "were never dissolved and continue to exist." Absent proof to the contrary, appellants' invocation of the dissolution statutes was inapposite.

B.

On appeal, appellants cite additional statutes, but they did not raise those statutes before the trial court, and we need not consider them. Zaman v. Felton, 219 N.J. 199, 226 (2014). In any event, the newly-cited statutes are equally inapplicable.

Appellants now cite a statute making directors liable if they transfer "assets to shareholders during or after dissolution of the corporation without paying, or adequately providing for, all known debts, obligations and liabilities of the corporation[.]" N.J.S.A. 14A:6-12(1)(c). Again, appellants have not shown the corporations have been dissolved. In any case, they neither showed the Estate or Patrick were directors of the Corporations, nor sought to sue them in that capacity.

Appellants now cite a statute providing that "[e]very transfer made and every obligation incurred by a corporation which

is or will be thereby rendered insolvent, is fraudulent as to creditors without regard to its actual intent if the transfer is made or the obligation is incurred without a fair consideration." N.J.S.A. 15A:14-10(a). However, appellants have not shown the settlement agreement lacked fair consideration. Rather, the settlement agreement involved an exchange of money to the Estate and Patrick in return for their stock in the Corporations and an end to two years of litigation.[7]

C.

In the trial court, appellants briefly argued that the motion to enforce the settlement agreement would aid and abet a violation of N.J.S.A. 25:2-1, -2, -3, -7, and -15. However, N.J.S.A. 25:2-1 addressed self-dealing trusts; N.J.S.A. 25:2-2 addresses transfers of "real estate"; N.J.S.A. 25:2-7 and -15 were repealed in 1989; and N.J.S.A. 25:2-3 required a showing which appellants failed to make, namely that the conveyance was "contrived in fraud, covin or collusion, with intent to hinder, delay or defraud creditors." The trial court made no comment regarding these inapplicable statutes. On appeal, other than citing "N.J.S.A. 25:2-2 et seq." without explanation, appellants make no arguments concerning these sections, and we do not address them. "An issue

[7] Appellants also now cite N.J.S.A. 14A:14-10(1), but it was repealed in 1989.

not briefed on appeal is deemed waived." Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

On appeal, appellants instead invoke the Uniform Fraudulent Transfers Act (UFTA), N.J.S.A. 25:2-20 to 25:2-34. In particular, they now claim violations of N.J.S.A. 25:2-25 and N.J.S.A. 25:2-27, based on the factors in N.J.S.A. 25:2-26. Because they did not cite those sections or present that argument to the trial court, we decline to address it. New Jersey "appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Neither of those exceptions applies.

It would be particularly inappropriate to address a UFTA claim raised for the first time on appeal. Under the UFTA, "[t]he person seeking to set aside the conveyance bears the burden of pro[of]," the "inquiries involve fact-specific determinations that must be resolved on a case-by-case basis," and the court "should balance the factors enumerated in N.J.S.A. 25:2-26." Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 476-77 (1999). "A court applying [the UFTA] must undertake a fact-sensitive inquiry,

analyzing the circumstances and terms of the transfer at issue." Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 326 (2017). By failing to raise the UFTA before the trial court, appellants prevented that court from making the fact-sensitive inquiry and fact-specific determinations, and balancing, all of which should be done by a trial court in the first instance.

D.

Appellants argue the trial court should have applied "the doctrine of equitable subordination," requiring the Estate and Patrick Avella, as shareholders, to subordinate their claims until the four corporations' creditors are paid in full. Appellants claim this "doctrine" is "imposed by N.J.S.A. 14A:6-12(1)(c), N.J.S.A. 14A:12-9(1)(c), and N.J.S.A. 25:2-2 et seq.," but as set forth above, those statutes are inapplicable.

As the trial court noted, appellants cited no cases supporting this "doctrine." The court believed appellants might be referring to the "[t]he judge-made doctrine of equitable subordination" in bankruptcy, which has been incorporated in 11 U.S.C. § 510(c)(1) of the federal Bankruptcy Code. United States v. Noland, 517 U.S. 535, 538-39 (1996). That doctrine traditionally required that a "creditor had engaged in 'some type of inequitable conduct,'" "that the misconduct have 'resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant,'

and that the subordination 'not be inconsistent with the provisions of the Bankruptcy Act.'" Id. at 539 (quoting In re Mobile Steel Co., 563 F.2d 692, 700 (5th Cir. 1977)); see also id. at 543.

The trial court also believed appellants might be referring to the situation where "a mortgagee who negligently accepts a mortgage without knowledge of intervening encumbrances will subrogate to a first mortgage with priority over the intervening encumbrances to the extent that the proceeds of the new mortgage are used to satisfy the old mortgage." Trus Joist Corp. v. Nat'l Union Fire Ins. Co., 190 N.J. Super. 168, 178-79 (App. Div. 1983) (referencing "equitable subordination"), rev'd, 97 N.J. 22, 29 (1984) (referring to this as "equitable subrogation").

Those doctrines are irrelevant here. As the trial court stated, "[t]his case is not about the priority of mortgages nor does it implicate the Bankruptcy Code." Moreover, appellants have not shown the Estate or Patrick engaged in any inequitable conduct or acted negligently.

E.

Finally, appellants argue the trial court should have made the escrow funds belonging to the Estate and Patrick attachable to pay the four corporations' debts because they were shareholders and insiders. However, courts generally "abide by 'the fundamental propositions that a corporation is a separate entity from its

shareholders, and that a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise.'" Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195 N.J. 457, 472 (2008) (citation omitted). "'[E]xcept in cases of fraud, injustice, or the like, courts will not pierce a corporate veil.'" Ibid. (citation omitted). "'[T]he party seeking an exception to the fundamental principle that a corporation is a separate entity from its principal bears the burden of proving'" such fraud or injustice. Ibid. (citation omitted).

Appellants offered no evidence that the four corporations were "either a fraud or a sham, or that [they] had failed to observe the requisite corporate formalities." Id. at 473. Appellants did not show that the four corporations had been "'used to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law.'" Id. at 472 (citation omitted). The trial court properly found "no evidence of 'fraud or injustice' that would justify a court order that would pierce the corporate veil to impose liability on the corporate principals." Indeed, in their reply brief, appellants argue that "[n]o one asked or argued for the piercing of any corporate veils," because appellants believed the escrowed funds still belonged to 54th Street Realty and Avella's Garage.

VI.

Appellants challenge the denial of reconsideration, but fail to make the required showings. "Reconsideration should be used only where '1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (alteration in original) (citation omitted). "[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Ibid.

Appellants' remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Accordingly, we reject appellants' challenges to the trial court's rulings. In reaching this conclusion, we are cognizant of the general policies "'favoring enforcement of judgments'" and "'lend[ing] the creditor all reasonable assistance for the enforcement of his claim, especially against a debtor who, though possessed of the means to pay, seeks to evade his obligation.'" N.J. Realty Concepts, 435 N.J. Super. at 130 (citation omitted). However, as discussed above, appellants failed to provide the evidence to support their theories to enforce the judgment naming

the four corporations and Steven against the escrowed money belonging to the Estate and Patrick.

Appellants allege the trial court left them as judgment creditors without a remedy. However, nothing in the trial court's opinions and orders or our opinion prevents appellants from proceeding against the four corporations, or against Steven, to collect the judgment obtained against them.[8] Nor do those orders and opinions prevent appellants from presenting the necessary evidence to pierce the corporate veil or invoke the dissolution or fraudulent conveyance statutes in an appropriate proceeding.

Affirmed.

[8] It is not clear that the four corporations lack any other assets. For example, the Estate's complaint and the answer of Robert and Steven agreed that 612 Realty had another asset, namely 612-616 22nd Street.