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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1015-21**

NAN SUNG CHU,

Plaintiff-Appellant,

v.

WEI ZHOU, XUNHUA WANG,
and MINHAO WANG,

Defendants-Respondents.

Submitted December 7, 2022 – Decided July 7, 2023

Before Judges Accurso, Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-5417-19.

Law Offices of Martin W. Chow LLC, attorneys for
appellant (Martin W. Chow, on the briefs).

Lindgren, Lindgren, Oehm & You, LLP, attorneys for
respondents (Christian R. Oehm, on the brief).

PER CURIAM

Plaintiff Nan Sung Chu appeals from an amended October 15, 2021 order denying his motion to vacate an August 28, 2020 order granting defendants Wei Zhou, Xunhua Wang, and Minhao Wang summary judgment. Although we agree with the judge's determination Rule 4:50-1(a) did not support vacating the August 28, 2020 order, we conclude the judge abused his discretion in refusing to vacate the order under Rule 4:50-1(f). We accordingly reverse and remand for further proceedings.

I.

In April 2017, plaintiff, then eighty-eight years old, agreed to sell his property in Ramsey, valued at approximately \$555,000, to defendants for \$390,000. Throughout the entirety of the transaction, plaintiff was represented by attorney Gregory Wang.¹ Plaintiff executed a power of attorney granting Gregory permission to act on his behalf with respect to the sale of his home to "Wei Zhou & Xunhua Wang," and "[e]nter into a [l]ease[a]greement . . . to lease back the [p]roperty," including "the power to decide[] . . . any appropriate terms and conditions of the lease."

¹ As Gregory Wang shares the same surname as defendants Xunhua Wang and Minhao Wang, we refer to them by their first names, intending no disrespect.

The sale contract expressly provided it was "contingent upon [plaintiff] and [defendants'] agree[ment] to a lease back . . . for two years." Prior to closing, Gregory executed the contract and also signed a residential lease agreement for a two-year lease which required plaintiff to pay defendants a monthly rent of \$2,000, and a \$3,000 security deposit.

Although Gregory did not attend the closing, plaintiff was present and signed the closing documents. As best we can discern from the record, on the day of the closing plaintiff also agreed to an additional provision in which he consented to sell defendants all his furniture. He also paid defendants a total of \$85,950, with \$73,950 representing payment of advanced rent, and \$12,000 as a security deposit.

Four months after the closing, plaintiff first asserted Gregory failed to explain the scope and meaning of the power of attorney, he was unaware of the leaseback aspect of the transaction, and he never agreed to sell his furniture to defendants. Plaintiff further claimed he only sold his home to defendants for a reduced price because they expressly promised he would be permitted to live at the residence for free until he died.

Plaintiff, represented by current counsel, filed a complaint in April 2018 alleging five counts against defendants: (1) breach of fiduciary duty; (2) fraud,

deceit and misrepresentation; (3) conversion; (4) "money had and received"; and (5) unjust enrichment. Plaintiff contended defendant Zhou breached a fiduciary duty owed to him as his housekeeper and "took advantage" of him based on both his age and "the confidential relationship of trust and confidence [that] exist[ed] between them to obtain possession of the real property [he] owned." Plaintiff further claimed defendants "fraudulently misrepresented, deceived and misled . . . plaintiff . . . into believing he signed a [c]ontract of [s]ale . . . provid[ed], however, that he could remain on the property until his passing," when in actuality he signed a leaseback agreement, and paid an additional sum of \$85,950 "without adequate or fair consideration."

Plaintiff also contended defendants converted his property under false pretenses and "appropriated [the property] for their own use." He further claimed defendants "wrongfully and unlawfully obtained" \$85,950 and refused to pay that money back to him. Finally, plaintiff maintained defendants "unlawfully enriched" themselves by "obtaining the real property from . . . [him] . . . at [the] unfair price of \$390,000."

In November 2018, the court dismissed plaintiff's complaint without prejudice for lack of prosecution. Plaintiff did not take any action to reinstate the complaint.

Six months later, in May 2019, defendants filed an eviction proceeding due to plaintiff's failure to pay rent pursuant to the lease agreement. In July 2019, the parties resolved the tenancy dispute by executing a consent judgment which permitted plaintiff to remain in the home on the condition he pay \$3,868 per month in rent. That same month, instead of seeking to reinstate the April 2018 dismissed complaint, plaintiff, again represented by current counsel, filed a new but nearly identical complaint.²

In October 2019, the court consolidated plaintiff's July 2019 complaint with the first eviction proceeding. That consolidation order was ultimately vacated due to plaintiff's failure to pay the required filing fee. In November 2019, plaintiff stopped making payments required by the consent judgment.

In response to plaintiff's July 2019 complaint, defendants filed an answer with affirmative defenses, and the parties thereafter engaged in discovery. Gregory was deposed regarding his representation of plaintiff during the property sale. Gregory stated that while he represented plaintiff, the two never executed a written retainer agreement. He also testified he explained all aspects of the real estate transaction to plaintiff, and nothing "led [him] to believe . . .

² The only material difference between the two complaints was the addition of a sixth count adding Xunhua as a "necessary and proper party."

[plaintiff] did not understand the terms of this transaction as a whole," including the executed power of attorney.

Gregory denied knowledge of any additional agreements including the prepayment of rent in the amount of \$73,950 or the \$12,000 security deposit. Rather, he stated he was aware only of the "monetary exchanges in accordance with the lease," specifically the aforementioned monthly rent of \$2,000, and \$3,000 security deposit. He further explained he initially planned to close the sale by mail because plaintiff said he did not want to attend the closing. Despite that understanding, plaintiff went to the closing without informing him, which explained why "all the closing documents were signed by [plaintiff] personally" even though Gregory possessed power of attorney. As a result, Gregory was only aware of "the lease and the sale and how rent[] [was] paid." He further stated the prepayment and other arrangements "must have transpired when [plaintiff] attended the closing . . . while [Gregory] was not there."

Finally, Gregory testified he had no involvement in the drafting of the furniture sale clause, and could not recall if his signature as power of attorney was placed on the schedule itemizing the furniture attached to the lease agreement. No other individuals were deposed, and discovery concluded in May 2020. Plaintiff took no steps to extend the discovery period.

In July 2020, defendants filed a motion for summary judgment seeking to dismiss all counts of the complaint. Although defendants served plaintiff's current counsel, plaintiff did not file opposition, nor did he seek an adjournment. On August 28, 2020, an initial motion judge entered summary judgment in defendants' favor, dismissed plaintiff's complaint with prejudice and awarded \$32,122.93 in compensatory damages for outstanding rent "for reasons stated in the moving papers."

In October 2020, defendants sought a writ of execution and a request for an amended judgment seeking additional compensatory damages for every month plaintiff failed to pay rent, which the same judge granted in a November 2020 order. In December 2020, defendants served plaintiff with the amended judgment and an information subpoena, to which he failed to respond. In February 2021, defendants filed a motion to enforce litigants' rights, which the judge granted.

Also in December 2020, defendants filed a second eviction proceeding pursuant to N.J.S.A. 2A:18-61.1(1)(3),³ for which they sought judgment of possession. The matter was heard in April 2021 before a different motion judge.

³ One of the statutory grounds for good-cause removal of a tenant is that "[t]he owner of a building of three residential units or less seeks to personally occupy a unit." N.J.S.A. 2A:18-61.1(1)(3).

Two days before the scheduled hearing, plaintiff filed a motion to vacate the August 28, 2020 summary judgment order.

On the day of the eviction proceeding, plaintiff requested a stay due to his motion to vacate, which the second motion judge denied. In doing so, the judge characterized plaintiff's actions so close to the hearing as a "delaying tactic." The judge further explained he previously requested on numerous occasions for plaintiff to file any necessary applications challenging the August 28, 2020 grant of summary judgment and received no response.

At the hearing, defendant Minhao testified that a notice to vacate was sent to plaintiff, but he refused to leave the property or pay rent. Minhao further stated he wanted plaintiff to move out because he and the other defendants desired to live in the home. Plaintiff's counsel attempted to cross-examine Minhao regarding the validity of the lease agreement, asserting plaintiff never signed the documents and the signatures were "forgeries." The judge precluded counsel from questioning Minhao, explaining the August 28, 2020 grant of summary judgment was the "law of the case."

Plaintiff also testified and stated he did not receive notice of the second eviction action. When his counsel attempted to question plaintiff regarding the validity of the sale and the lease agreement, the judge again precluded any such

examination, stating he would not allow the "relitigation" of matters determined by the August 28, 2020 summary judgment order.

After considering the testimonial evidence and the parties' submissions, the judge entered an order granting defendants' judgment of possession. Although the court acknowledged plaintiff would be able to file for a hardship stay, he found defendants owned the property and plaintiff received valid and adequate notice.

Days after the second motion judge's decision, plaintiff filed for bankruptcy under Chapter 13 of the United States Bankruptcy Code. After being alerted by plaintiff's counsel of the filing, on May 12, 2021, the first motion judge withdrew, sua sponte, plaintiff's April 2021 motion to vacate based on the automatic stay.⁴

Defendants filed an application to lift the stay, and plaintiff cross-moved, requesting it remain in effect as to the second eviction action, but argued the stay should be lifted with respect to his motion to vacate. Following a hearing, the bankruptcy court lifted the automatic stay as to all matters.

⁴ 11 U.S.C. § 362 (a)(1) requires a stay of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was . . . commenced before the commencement of the case."

In June 2021, plaintiff filed for a hardship stay. Following oral argument before the second motion judge, the judge determined that under N.J.S.A. 2A:42-10.6 plaintiff was required to pay back rent in order to obtain a hardship stay and scheduled a follow-up hearing for June 22, 2021 to determine plaintiff's compliance. A day prior to the scheduled proceeding, however, plaintiff filed an emergent motion before us seeking a stay of eviction, which we denied.

On June 22, 2021, the judge denied plaintiff's application for a hardship stay because he failed to pay all back rent. That same day, plaintiff filed another application before us for emergent relief, which we granted, temporarily staying his eviction. Two days later, we vacated our stay due to plaintiff's failure to file a timely motion and permitted the eviction to proceed. On June 28, 2021, the Supreme Court denied plaintiff's application to file an emergent motion to stay his eviction. That same day plaintiff was evicted from his former home and now resides with family members.

On August 30, 2021, plaintiff filed a new motion to vacate the August 28, 2020 summary judgment order under Rule 4:50-1(a) and (f), supported by his and his current counsel's certifications. Plaintiff argued his failure to file opposition to defendants' motion for summary judgment qualified as excusable neglect because he "was and continue[d] to be afraid of contracting COVID-19"

which inhibited him from "meet[ing] with anyone outside or inside . . . [his] home" including his counsel. Plaintiff further stated his "serious physical illnesses and other disabilities" prohibited him from responding to defendants' motion as his hearing impairment and dialect of Shanghainese required him to have "in-person meetings to fully communicate effectively," which he was unable to do as a result of the pandemic and the stay-at-home orders.

Plaintiff further argued his claims were meritorious. Specifically, plaintiff certified he was the "victim of elderly financial abuse" by defendant Zhou, as she took advantage of the relationship he had with her as his housekeeper. Further, plaintiff contended he only agreed to sell her his home at a discounted price under the express condition he be permitted to reside there until his death. Plaintiff maintained he did not understand the implications of the power of attorney and stated he believed it to be a "formality" necessary to finalize the sale. Plaintiff also certified he did not approve of the sale of all of his furniture or agree to pay the additional sum of \$85,950. Plaintiff's counsel also submitted a certification in which he explained he failed to oppose defendants' motion or communicate with the court because he was the "victim of anti-Asian hate crimes in June 2020" and as a result "underwent mental health

treatment . . . due to stress and anxiety related to the COVID-19 lockdowns, stay-at-home orders and . . . [the aforementioned] anti-Asian violence."

At oral argument before the first motion judge, plaintiff reprised many of the arguments detailed in the aforementioned certifications. Plaintiff's counsel argued relief was appropriate under Rule 4:50-1(a) because his failure to respond to defendants' motion or contact the court was based on his own fears related to the COVID-19 pandemic and the aforementioned anti-Asian "racial hatred." Counsel stated this resulted in his own "paraly[sis]" which impacted his representation of plaintiff. Counsel further argued plaintiff's motion was timely under subsection (a) as it was submitted within one-year of the August 28, 2020 summary judgment order.

As to Rule 4:50-1(f), plaintiff's counsel argued "but for the pandemic" he would have responded in a timely fashion as he would have been able to meet and confer with plaintiff. In addition, counsel argued plaintiff's motion was properly filed under subsection (f) because it was submitted within a reasonable amount of time following the grant of summary judgment, and further stated any perceived delay was due to the "contested litigation" surrounding the parties, including defendants' eviction actions, plaintiff's Chapter 13 petition, and the numerous emergent applications.

After considering the parties' submissions and oral arguments, the judge denied plaintiff's motion to vacate, concluding plaintiff failed to establish he was entitled relief under either Rule 4:50-1(a) or (f). The judge detailed his findings in an oral opinion in which he noted the August 28, 2020 order was not a default judgment but rather a judgment on the merits. The judge also determined there was no evidence of justifiable mistake, inadvertence, surprise, or excusable neglect under Rule 4:50-1(a) because the failure to file opposition to summary judgment was not due to any mistake of counsel as evidenced by counsel's appearance and participation on behalf of plaintiff with respect to the associated eviction proceedings. The judge also determined counsel's failure to file opposition was not due to inadvertence, but rather his inaction "was a conscious decision." Nor did he find any surprise, based on defendants' advanced notice of the summary judgment filing.

Finally, the judge found no evidence of excusable neglect, relying on counsel's "pattern" throughout the litigation and the associated eviction matters which evidenced a "lack of compliance." The judge found counsel's actions to be "calculated," and noted the failure to oppose defendants' summary judgment application was "not a one[-]time event." Instead, both counsel and plaintiff "appeared when they want[ed] to appear," and possessed "the ability to appear."

The judge also rejected plaintiff's arguments that the pandemic presented exceptional circumstances which would allow relief from summary judgment under Rule 4:50-1(f). Although he acknowledged the pandemic caused "some degree of frustration[] or worry," the judge found plaintiff's and counsel's failure to communicate with the court and go "incognito" inexcusable. He further noted plaintiff "pick[ed] and cho[se] what . . . plaintiff want[ed] to oppose, and when . . . [he] want[ed] to oppose it." Because plaintiff failed to provide the court with a "valid legal reason" to support vacating summary judgment, the judge denied plaintiff's motion, and issued a corresponding order. This appeal followed.

II.

Before us, plaintiff argues the judge abused his discretion in denying plaintiff's motion to vacate by "insert[ing] his own subjective beliefs and biases" in reaching his decision. Specifically, plaintiff argues the judge disregarded counsel's certifications that described both plaintiff's health ailments and counsel's emotional and psychological distress which explained their failure to oppose defendants' summary judgment application.

Plaintiff further maintains his motion to vacate was timely under both Rule 4:50-1(a) and (f), as it was filed within a year of the August 28, 2020 order,

pursuant to Rule 4:50-2. He also argues any alleged delay was "caused by the court's improvident dismissal of the first motion to vacate" and defendants' filing of eviction proceedings.

Plaintiff contends he satisfied Rule 4:50-1(a) as he both possesses meritorious defenses, "worthy of judicial determination," and because his failure to oppose defendant's motion for summary judgment was due to mistake, inadvertence, or excusable neglect. Specifically, plaintiff maintains the judge improperly granted summary judgment because plaintiff was induced to sign the sale and lease agreements due to fraud, undue influence, and misrepresentation and as a result, defendants converted his funds and property and unjustly enriched themselves.

Plaintiff also argues he failed to file a timely opposition to defendants' motion for summary judgment because he "mistakenly believed he was unable to oppose the motion" due to the court's COVID-19 stay-at-home orders. Further, plaintiff argues the judge's failure to find excusable neglect constituted an abuse of discretion because plaintiff did not possess an alternative method of communication with his counsel due to his age, physical ailments, and lack of a computer, email, fax machine, and internet. Relying on Housing Auth. of Morristown v. Little, 135 N.J. 274 (1994), plaintiff claims relief from the

summary judgment order should be granted under Rule 4:50-1(f), as the "unnecessary, and inequitable loss of [plaintiff's] home," qualifies as an exceptional circumstance and the court's decision ultimately violated his substantive and procedural due process rights.

We agree, in part, with plaintiff and determine the judge abused his discretion in denying plaintiff's motion to vacate summary judgment under Rule 4:50-1(f), as plaintiff established exceptional circumstances to warrant relief from the August 28, 2020 order.

III.

A motion to vacate based on Rule 4:50-1 "is within the sound discretion of the trial court and 'should be guided by equitable principles in determining whether relief should be granted or denied.'" M & D Assocs. v. Mandara, 366 N.J. Super. 341, 350 (App. Div. 2004) (quoting Little, 135 N.J. at 283). Although a court's decision regarding a motion to vacate is discretionary, deference is not appropriate when a decision is "made without rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012).

Rule 4:50-1 states that "[o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . or (f) any other reason justifying relief from the operation of the judgment or order." R. 4:50-1(a), (f). This Rule "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977).

For a party to successfully vacate a judgment under Rule 4:50-1(a), it must offer sufficient facts to establish a meritorious defense. Marder v. Realty Const. Co., 84 N.J. Super 313, 318 (App. Div. 1964). "A just, sufficient and valid defense to the original cause of action stated in clear unmistakable terms is a prerequisite to opening a judgment." Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953). This is necessary as the absence of a meritorious defense would "create a rather anomalous situation if a judgment were to be vacated on the ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense." Ibid. The meritorious defense must be "detail[ed]," and its absence could be "fatal" to a party's

application. Marder, 84 N.J. Super at 318-19. The defenses must be detailed enough to illustrate that if the judgment was relieved, it would not result in "futile proceeding[s]." Guillaume, 209 N.J. at 469 (quoting Schulwitz, 27 N.J. Super. at 561).

Under Rule 4:50-1(a), "[t]he four identified categories in subsection (a), when read together, as they must be, reveal an intent by the drafters to encompass situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment on a material point at issue in the litigation." DEG, LLC v. Township of Fairfield, 198 N.J. 242, 262 (2009). The mistakes contemplated by Rule 4:50-1(a) are those "intended to provide relief from litigation errors 'that a party could not have protected against.'" Id. at 263 (quoting Cashner v. Freedom Stores, Inc., 98 F.3d 572, 577 (10th Cir. 1996)). As such, the Rule may not be used as a vehicle to "convert a 'trial error' . . . into a 'mistake.'" Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co., 312 N.J. Super 516, 519 (App. Div. 1998).

Our Supreme Court has further defined excusable neglect as excusable carelessness "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Mancini v. EDS, 132 N.J. 330, 335 (1993). See also Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 98 (App.

Div. 2012). An application to vacate a judgment under subsection (a) must be filed within a reasonable amount of time, and "not more than one year after the judgment, order or proceeding was entered or taken." See R. 4:50-2. However, filing within one year does not automatically qualify as a reasonable amount of time. See Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011) (stating "the one-year period represents only the outermost time limit for the filing of a motion based on Rule 4:50-1(a), (b) or (c)). All Rule 4:50 motions must be filed within a reasonable time, which, in some circumstances, may be less than one year from entry of the order in question").

Relief under subsection (f) of Rule 4:50-1 is available only when "truly exceptional circumstances are present," because of the "importance that we attach to the finality of judgments." Little, 135 N.J. at 286 (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). Not only must the movant "demonstrate the circumstances are exceptional" but also that "enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999).

It has been described as a catch-all provision, and "its boundaries . . . [are] as expansive as the need to achieve equity and justice." DEG, 198 N.J. at 269-70 (quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). As such, the

application of this subsection "must be resolved on its own particular facts," Little, 135 N.J. at 286, and "no categorization can be made of the situations which warrant redress under [this] subsection," Perillo, 48 N.J. at 341. Unlike Rule 4:50-1(a), subsection (f) is not subject to the one-year filing requirement, rather an application under the Rule must be made within a reasonable amount of time. See R. 4:50-2.

IV.

We discern no abuse of discretion in the judge's determination that plaintiff failed to establish any of the enumerated categories under subsection (a). There is no evidence in the record to support an inference of any mistake or error that plaintiff or his counsel "could not have protected against." DEG, 198 N.J. at 263. Plaintiff's counsel admitted to receiving and being aware of defendants' motion for summary judgment, yet he did not respond, nor did counsel contact the court to request a stay, adjournment, or an extension. We also agree with the judge's conclusion that there is no evidence of inadvertence or surprise, as defendants provided the proper notice of their filing for summary judgment.

We conclude, however, the judge abused his discretion in denying plaintiff's motion under Rule 4:50-1(f), as the record demonstrates "truly

exceptional circumstances," Little, 135 N.J. at 286, warranting relief from the August 28, 2020 summary judgment order. In doing so, we acknowledge plaintiff and his current counsel's failure to oppose the summary judgment motion was hardly a model of diligence or zealous advocacy, and our decision should not be interpreted as an implicit or explicit expression of approval of their complete failure to communicate with the court or their conduct. Nonetheless, in order to "achieve equity and justice," DEG, 198 N.J. at 269-70, we are convinced the August 28, 2020 summary judgment order must be vacated, and the matter adjudicated after full briefing as its enforcement on the current record would surely result in "unjust, oppressive or inequitable" ramifications, Johnson, 320 N.J. Super. at 378.

We reach this result because based on the record before us, plaintiff sold his home at an extraordinarily discounted price for reasons the parties dispute. Plaintiff also contends he was unaware of the terms of the sale or the lease agreement or their import. Further, based on Gregory's own deposition, it is unclear what documents were executed by him as power of attorney, or why plaintiff appears to have sold his home and all of his furniture to defendants, to then immediately pay them over \$70,000 in advanced rent, which appears to be in excess of the terms of the purported lease to which plaintiff agreed. Finally,

the enforcement of the August 28, 2020 order resulted in the permanent loss of plaintiff's home, and all of his possessions, after paying defendants in excess of \$80,000.

We would also be remiss not to note, our analysis has, in part, been limited by the judge's failure to issue factual findings when granting summary judgment, instead summarily resting his decision on the "reasons stated in the moving papers." A party is entitled to a recitation of the reasons to grant summary judgment, even if that motion is unopposed. See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 302 (App. Div. 2009). Further, while it is permissible for a judge to rely on reasons argued by a party when reaching their decision, id. at 301, we have held that a simplistic reference to "the reasons set forth in [a party's] motion papers," is inadequate. See Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301-02 (App. Div. 2018). As a result, we simply cannot harmonize the seemingly inequitable details of the underlying sale on the current record.

We remand for the court to convene a case management conference within the next forty-five days to consider whether to direct plaintiff to file a response to defendants' summary judgment motion, or whether it will be treated as withdrawn to permit further discovery and to require defendants' file a new


summary judgment motion, and any other issue the court deems appropriate to address for the resolution of the matter.

Our opinion should not be interpreted as a comment on the ultimate merits of plaintiff's claims or defendants' summary judgment motion.

To the extent we have not addressed any of the parties' arguments it is because we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for further proceedings not inconsistent with this opinion.

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


CLERK OF THE APPELLATE DIVISION