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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3044-22**

MARVA RUSSELL, Administrator  
of the Estate of GLORIA RUSSELL,

Plaintiff-Appellant,

v.

SAUL GRUBER, ESQUIRE,

Defendant-Respondent.

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Submitted April 24, 2024 – Decided June 6, 2024

Before Judges Currier and Susswein.

On appeal from the Superior Court of New Jersey, Law  
Division, Camden County, Docket No. L-3514-19.

James R. Radmore, attorney for appellant.

Javerbaum, Wurgaft, Hicks, Khan, Wikstrom and  
Sinins, PC, attorneys for respondent (Eric G. Khan, and  
Raymond M. Patella, on the brief).

PER CURIAM

This appeal arises from a legal malpractice lawsuit filed by plaintiff, Marva Russell, Administrator of the Estate of Gloria Russell, against defendant, Saul Gruber. However, the immediate dispute before us does not involve Gruber, but rather a law firm Gruber joined after the alleged malpractice—Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins (JW). JW was never sued and is not a party to the underlying legal malpractice action. Plaintiff appeals from a May 1, 2023<sup>1</sup> Law Division order entered by Judge Anthony M. Pugliese vacating a writ of execution plaintiff issued against JW's assets. Judge Pugliese ruled that because JW is not a party to the lawsuit and has no judgment against it, there is no legally cognizable basis for plaintiff to enforce its judgment against the law firm's assets. We agree and affirm.

We briefly summarize the relevant facts and procedural history. In January 2013, plaintiff retained Gruber regarding a January 2012 fall at a nursing home. At that time, Gruber was employed by his prior law firm. The alleged malpractice was committed before Gruber joined JW on January 1, 2015. The record establishes Gruber never opened a file related to the nursing home matter while employed by JW.

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<sup>1</sup> Judge Pugliese placed his oral opinion on the record on April 28, 2023.

Plaintiff initiated the malpractice action against Gruber in September 2019. JW is not named in the complaint and has not been added as a party to that action. Gruber submitted an offer of judgment that was accepted by plaintiff on August 18, 2020.

On February 10, 2023, plaintiff obtained a writ to require the Camden County Sheriff to execute against the assets of JW to satisfy the judgment entered against defendant. On February 17, 2023, Eric Kahn, managing partner for JW, wrote a letter to plaintiff's counsel informing him that: (1) there are no funds being held by JW that are owed to Gruber and (2) Gruber never held an equity interest in JW. Kahn stated there was no legal basis to recover from JW's assets because JW is not a party to the litigation and plaintiff does not have a judgment against JW.

JW never received a response to the February 17 letter. On February 28, 2023, J.W. sent another letter requesting plaintiff withdraw the writ of execution as to JW's assets. Plaintiff refused.

On March 30, 2023, JW filed a Motion to Quash or Vacate the Writ of Execution. As we have noted, on May 1, 2023, Judge Pugliese vacated the writ,

finding that the assets of JW—a non-party—were not subject to the judgment against defendant.<sup>2</sup> This appeal follows.

It is well-settled that "[a] successful plaintiff who obtains a judgment against a defendant may cause the personal property of the defendant/judgment debtor to be seized and sold and the proceeds applied to the judgment and costs by way of execution." Vitale v. Hotel California, Inc., 184 N.J. Super. 512, 518-19 (Law Div. 1982); see Borromeo v. DiFlorio, 409 N.J. Super. 124, 136-37 (App. Div. 2009). However, plaintiff cites no case law, statute, or Court Rule authorizing a judgment creditor to execute against the assets of anyone other than the judgment debtor. Here, JW is not a judgment debtor with respect to the judgment rendered against defendant. Plaintiff never named JW as a party and has no claim against JW. In these circumstances, the writ of execution against JW's assets was unauthorized and properly vacated.

We likewise reject plaintiff's argument that JW had an "agency" relationship with Gruber and that JW had "apparent authority" over him. That argument was not raised to the trial court. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) ("[O]ur appellate courts will decline to consider

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<sup>2</sup> The order denied sanctions against plaintiff, but authorized JW to seek sanctions if further invalid executions are made.

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.'"). But even if we considered plaintiff's contention on the merits, it would only be relevant to establishing liability against JW under some form of agency or respondeat superior theory. As we have noted, plaintiff never pursued any such theory, never named JW in the action that has since resolved and does not have a judgment against JW. Belatedly claiming an agency relationship with a non-party does not provide a basis to enforce a judgment against the non-party, non-judgment debtor.

To the extent we have not specifically addressed them, any additional arguments raised by plaintiff lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION