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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-1011-20

CITY OF EAST ORANGE,

Plaintiff-Respondent,

v.

BLOCK 810, LOT 36 (#42)
ASSESSED TO:
N.E. REGISTRY, INC.,
112 WASHINGTON STREET,

Defendant-Appellant.

____

Argued January 26, 2022 – Decided April 12, 2022

Before Judges Rothstadt and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-011494-19.

Matthew M. Fredericks argued the cause for appellant N.E. Registry, Inc.

Elliott J. Almanza argued the cause for respondent (Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, attorneys; Keith A. Bonchi, of counsel and on the brief; Elliott J. Almanza, on the brief).

PER CURIAM

In this tax sale certificate foreclosure action, defendant N.E. Registry, Inc. appeals from the Chancery Division's October 30, 2020 order denying its Rule 4:50-1 motion to vacate a default judgment foreclosing on the property located at 112 Washington Street in East Orange, pursuant to the Tax Sale Law, N.J.S.A. 54:5-1 to -137. The Chancery judge, Jodi Lee Alper, entered the order after finding that defendant came to the court with unclean hands by submitting a clearly altered document in support of its motion and that defendant did not establish equitable relief should be entered based on excusable neglect or other exceptional circumstances.

On appeal, defendant challenges the denial of its motion to vacate by arguing that it demonstrated the excusable neglect required to vacate the judgement under Rule 4:50-1(a), and other "equitable considerations" under Rule 4:50-1(f), which supported granting the motion; and that the Chancery judge erred by not accepting defendant's value of its property.

After considering defendant's contentions in light of the record and the applicable principles of law, and for the reasons stated in this opinion, we affirm the denial of its motion to vacate.

I.

We summarize the facts as developed in the motion record. Defendant has owned the subject property since 1999. In 2017, defendant's sole shareholder, Carlotta Hall, experienced health problems, and defendant became delinquent in the payment of its real estate taxes owed to plaintiff City of East Orange.

After defendant continued to be delinquent, on June 7, 2018, plaintiff issued a tax sale certificate that included delinquent taxes from 2017. In response, defendant attempted to remit deficient, partial redemption to the tax office on August 24, 2018, which was promptly returned. Again, about four months later, in December, defendant attempted to remit deficient, partial payment to the tax office, which was again promptly returned. Notably, in addition to the amount being deficient, the checks arrived at the tax office torn in half.

Unpaid taxes would continue to accrue, and, on June 25, 2019, plaintiff filed this action seeking a judgment of foreclosure on numerous properties, including defendant's property. On August 16, 2019, plaintiff, through its counsel, sent a letter to defendant and other parties to the action, notifying them

of the action and instructing them "[w]e cannot calculate a redemption amount, nor can we collect any redemption money. That is handled by the Tax Office."

A public notice published the same day, also clarified:

> 2. Any person desiring to protect a right, title, or interest in the described land and/or any parcel thereof by redemption or to contest plaintiff's right to foreclose, must do so by paying the amount required to redeem as set forth below, plus interest to the date of redemption, and such costs as the court may allow, prior to the entry of judgment therein, or by filing an answer to the complaint setting forth the defendant's defense, within forty-five (45) days after the date of publication of this notice.
>
> 3. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcels of land described in the following tax foreclosure list.

In response, defendant requested and received from the City's tax office redemption amounts on August 21 and 22, which it did not remit on either day. No payment was made to satisfy the outstanding amount. By September 20, 2019, the amount defendant owed to plaintiff was $176,287.62.

After providing more time than required for defendant to file an answer, on October 8, plaintiff applied to the court for entry of a default judgment. On October 16, Hall, without counsel, filed a certification "in opposition to motion,"

asking for "a month to pay the balance to redeem the taxes."[1] On October 30, plaintiff filed its response.

Defendant's final attempted deficient remittal of redemption was sent to plaintiff's attorney on December 26, and again not for the full redemption amount. Plaintiff's attorney received defendant's checks on January 6, 2020, and returned them the same day via next day delivery with a letter, indicating the amount was insufficient and instructing defendant that "all redemptions must be made directly to the Municipal Tax Collector," "[t]he amount to redeem changes daily," "[defendant] should go to the Tax Collector's Office and request a redemption calculation as of the date that you intend to redeem," "[a]s of January 6, 2020, the amount to redeem was in excess of $206,034.39 plus costs and legal fees in the sum of $3,015.40," and "[i]f [defendant] [decided] to redeem the lien, [defendant] must provide to the Tax Collector exactly the amount to redeem."

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[1] Hall initially filed a certification "in opposition to motion" on September 19, 2019, and the same document was filed again on October 16, 2019. Notably, the fee paid initially was fifty dollars, consistent with the statutory filing fee for a foreclosure <u>motion</u>, pursuant to <u>Rule</u> 1:43, but then she paid $175 to file again in October, consistent with the statutory filing fee for a foreclosure <u>answer</u>, pursuant to <u>Rule</u> 1:43. It appears defendant failed to file an answer within forty-five days from publication of the notice, choosing to instead preemptively file an opposition to plaintiff's motion for entry of final judgment. Then, in October paid the filing fee for an answer, apparently to bolster its argument it filed an answer to plaintiff's complaint.

On January 15, 2020, the judge entered an order rejecting defendant's objection, after finding its request for additional time to redeem was not a valid basis to deny or delay the entry of final judgment. The judge's order also granted plaintiff's application for entry of final judgment, which was entered on February 27, 2020.

Despite not redeeming, on March 10, defendant's newly retained counsel expressed to plaintiff defendant's willingness to redeem, to which plaintiff replied "[it] [would] not agree to vacate its final judgment."

On April 7, plaintiff requested the court vacate final judgment against certain parties, which had, unlike defendant, remitted full redemption. These few parties did not include defendant, as it had not remitted full redemption. In its statement of reasons, the judge specified, "After Final Judgment was entered, plaintiff accepted full redemption" from certain parties.

On September 14, 2020, defendant filed a motion to vacate final judgment, which plaintiff opposed. In Hall's supporting certification, she stated she remitted checks to plaintiff in <u>December 2019</u>, which she claimed plaintiff returned on <u>February 24, 2020</u>; and she attached a copy of plaintiff's attorney's January 6, 2020 letter that was now dated February 24, 2020, as well as a printout of Homefacts.com's estimate of the property. In plaintiff's attorney's

opposing certification, he included a copy of the original January 6, 2020 letter, and brought to the judge's attention to defendant's attempted "fraud on [the] court."

After considering oral argument on defendant's motion on October 30, 2020, Judge Alper issued an oral decision accompanied by a written order, denying relief. The judge concluded defendant did not "set forth any basis for a relief under [R]ule 4:50." In doing so, she found defendant came to the court with unclean hands.

The judge stated she was "troubled by the fact that the defendant relies, in her moving papers, on a letter that had been sent by plaintiff's counsel returning purported redemption checks, which did not contain the entire redemption amount[, and] which contain a date that had clearly been altered." She described the circumstances surrounding plaintiff's attorney's January 6 letter and concluded as follows:

> The [c]ourt does find that that act, the act of including a clearly doctored letter, the implications of which made it appear that it was more than a month later that the defendant received back her attempted redemption checks and instructions to send those checks to the tax office that she received that letter and three days before the entry of final judgment.
>
> The [c]ourt finds that concerning the letter was attached to plaintiff's motion so -- to defendant's

> motion, so the suggestion that somebody other than [Hall], the tax payer, changed the date is immaterial because she relied on that letter in her motion. She attached it to her motion knowing, or she should certainly have known that the date of the letter she attached was clearly doctored from the actual date.
>
> So the Court finds that [Hall] comes to this court with unclean hands, whether or not she was the individual who made that change to the letter, the altered letter, she was most certainly the party who was relying on that letter by attaching it to her motion papers.

The judge also rejected any contention that Hall's unawareness that defendant could only redeem by remitting payment to the tax office did not amount to excusable neglect:

> The defendant has stated that she was ignorant of the law and the knowledge that payoff had to be made to the tax office and that partial redemption was not appropriate. It is well settled that ignorance of the law does not satisfy the excusable neglect standard and as established by the plaintiff, [Hall] had previously made tax payments directly to the tax office and therefore was clearly familiar with the process.

Additionally, the judge explained how defendant did not establish the value of the property to support its argument that plaintiff received a windfall:

> The defendant relies on the equities to seek a vacation of the judgment in this matter. However, the basis for the equities is not documented. The plaintiff relies on a value that is from an internet site for the property. The [c]ourt does not find the value of this

> commercial property to be established through a hearsay internet document.

Finally, the judge sympathized with Hall's health problems, despite not being provided any evidence of how they interfered with defendant's ability to pay its taxes. The judge stated the following:

> And regarding the medical conditions of [Hall], of course that's unfortunate, however the [c]ourt cannot rely on that as a reason for an individual not to timely pay taxes. Particularly in this case considering that the failure to pay went back to 2017, so three years, and in excess of $200,000 is owed to East Orange. It's unfortunate, but under these circumstances in weighing the equities the [c]ourt does not find a basis to vacate the judgment pursuant to Rule 4:50.

This appeal followed.

II.

A.

We begin our review by addressing defendant's Rule 4:50-1 motion to vacate the final default judgment. We review a trial judge's determination on a motion to vacate a default judgment under Rule 4:50-1 for "a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "The trial court's determination under the rule warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Id. at 467 (citing DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009)). To warrant

reversal, the movant must demonstrate that the motion judge's "decision [was] 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)); see also BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 124 (App. Div. 2021) (stating also "a trial court mistakenly exercises its discretion when it 'fails to give appropriate deference to the principles' governing the motion [or] relies 'upon a consideration of irrelevant or inappropriate factors'" (first quoting Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92, 100-01 (App. Div. 1998); and then quoting Flagg v. Essex Cnty. Prosecutor, 717 N.J. 561, 571 (2002))).

In this case, we also consider defendant's appeal against the backdrop of the Tax Sale Law. The Tax Sale Law is "liberally construed as remedial legislation to encourage the barring of the right of redemption[.]" Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 162 (App. Div. 2005); cf. Bron v. Weintraub, 42 N.J. 87, 91 (1964) (determining it "understandable that the Legislature found it fair to bar the right to redeem by a strict foreclosure"). It "evidences an intention to impose stricter limits upon the time and the grounds for vacating a judgment of foreclosure than would apply generally under Rule 4:50." Block 1508, 380 N.J. Super. at 166. Nevertheless,

"[a]lthough 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 land." Simon v. Cronecker, 189 N.J. 304, 319 (2007).

When the certificate holder is the municipality, a property owner has six months to redeem a tax certificate before a foreclosure action can be instituted. Id. at 337 n.16. "By delaying redemption until after the filing of a foreclosure action, the property owner must accept responsibility for the costs that will be incurred." Id. at 337 (citing N.J.S.A. 54:5-86). "Significantly, the property owner . . . [has] the right to redeem the tax sale certificate at anytime before the final date for redemption set by the court, N.J.S.A. 54:5-54, and 'until barred by the judgment of the Superior Court[,]' N.J.S.A. 54:5-86." Id. at 319 (citing R. 4:64-6(b) ("Redemption may be made at any time until the entry of final judgment . . . .")).

B.

We first address defendant's challenge to the trial judge's determination defendant was not entitled to relief pursuant to Rule 4:50-1(a), excusable neglect. According to defendant, the trial judge "gave insufficient deference" to defendant's excusable neglect. It supports this claim by relating its

circumstances with those in Tradesmens Nat'l Bank & Tr. Co. v. Cummings, 38 N.J. Super. 1, 3 (App. Div. 1955) and Arrow Mfg. Co. v. Levinson, 231 N.J. Super. 527, 532 (App. Div. 1989), where excusable neglect was found. Ultimately, defendant contends that the judge "should have found [d]efendant demonstrated excusable neglect" because it "responded to [p]laintiff's [c]omplaint and simultaneously objected" and because of the age and health of the sole shareholder of the company, "her status as a layman in the field of law," and "her willingness and diligent efforts to satisfy the tax lien at issue;" and that its meritorious defense is that it had a right to redeem as a party to the complaint. We disagree.

"[T]he party seeking to vacate [a default] judgment must meet the standard of Rule 4:50-1," which is: "On 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 or 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." Guillaume, 209 N.J. at 467 (quoting R. 4:50-1).

This is a more stringent standard than imposed by Rule 4:43-3 for setting aside an entry of default, Guillaume, 209 N.J. at 467, and, generally, courts

should grant relief under Rule 4:50-1 "sparingly, [and only] in exceptional situations." Badalamenti v. Simpkiss, 422 N.J. Super. 86, 103 (App. Div. 2011) (alteration in original) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994)). Relief under Rule 4:50-1 must "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." LVNV Funding, LLC v. Deangelo, 464 N.J. Super. 103, 109 (App. Div. 2020) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)).

"The 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, 198 N.J. at 262 (emphasis added). To obtain relief under Rule 4:50-1(a), a party must demonstrate a "meritorious defense" in addition to a "mistake, inadvertence, surprise, or excusable neglect." Guillaume, 209 N.J. at 467-68. "Only where a mistake of law is reasonable and there is some justification for a lack of determination of the correct law will the court grant equitable relief." Circle Chevrolet Co. v. Giordano, Halleran & Ciesla, 142 N.J. 280, 302 (1995), abrogated on other grounds by Olds v. Donnelly, 150 N.J. 424 (1997). However,

"ignorance of the law" is not a sufficient basis to find excusable neglect. Id. at 302-03; see also DiTrolio v. Antiles, 142 N.J. 253, 275-76 (1995). Simply put, "'[e]xcusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Guillaume, 209 N.J. at 468 (quoting Mancini v. EDS, 132 N.J. 330, 335 (1993)).

Here, we have no reason to disturb the Chancery judge's decision that defendant was not entitled to relief for excusable neglect. To say defendant was not familiar with the process of paying taxes is completely disingenuous. Defendant paid taxes on this property for nearly twenty years while it owned this commercial property. And, in recent years, the tax office and the plaintiff's attorney detailed the redemption process to defendant on several occasions. A mistake of law does not equate with ignorance thereof. Moreover, Hall admitted in her objection to plaintiff's application for the entry of final judgment that she needed more time to raise the funds to properly redeem. She was familiar with the process, but she simply did not have funds to redeem, and that is not a basis to grant relief under Rule 4:50-1(a) for excusable neglect.

Defendant also raises, for the first time on appeal, the argument that she responded to defendant's complaint. As this argument was not raised before the Chancery judge, we will not consider it now on appeal. See Zaman v. Felton,

219 N.J. 199, 227 (2014) ("declin[ing] to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available" (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973))). We only note, on the contrary, Hall certifies that she filed an objection to plaintiff's application for the entry of final judgment and does not state she filed an answer to plaintiff's complaint. Her alleged response is a "certification in opposition to motion"—not an answer—and, although Hall's certification was initially filed within her window to answer plaintiff's complaint, she did not pay the statutorily required filing fee to file an answer and her certification did not meet the requirements of an answer. In other words, even if defendant raised this argument before the Chancery judge, she would have found, as the judge did, that Hall's certification was an objection to plaintiff's motion for the entry of final judgment, and not a basis for relief under Rule 4:50-1(a). In any event, her answer, if considered as such, merely reinforced her inability to pay the full amount at that time.

Hall's health concerns are unfortunate, as Judge Alper noted, but insufficient to warrant upending the judge's decision. Notably, Hall did not submit any medical records or expert testimony in support of her claim that her health was the reason for her neglect, and the record is clear the reason she failed

to pay taxes was not because of her health, rather because she needed more time to raise the funds. Moreover, Hall was healthy enough to communicate with the tax office, file her certification in opposition of default judgment, and to make several attempts, though deficient, to redeem over the years.

Significantly, on appeal, defendant does little, if anything, to challenge Judge Alper's sound determination that Hall came to court with unclean hands. Hall submitted an altered version of plaintiff's counsel's letter returning defendant's deficient redemption and explaining the process to properly redeem the property. The date was clearly different, without explanation, when compared with the original version and delivery certification. Nevertheless, the letter was produced on defendant's behalf to make it appear it had not received its checks back from plaintiff's attorney with his instructions until a few days before the entry of final judgment, bolstering defendant's argument that it did not know how to properly redeem.

We agree with Judge Alper that defendant had unclean hands, which, alone should have barred any equitable relief. See Glasofer Motors v. Osterlund, Inc., 180 N.J. Super. 6, 13 (App. Div. 1981) (requiring denial of relief to a party who acted illegally or wrongfully pertaining to the matter in controversy).

Moreover, defendant failed to advance a meritorious defense required to grant relief under Rule 4:50-1(a). A mere right to redeem is not a meritorious defense when defendant failed to exercise that right by rendering full payment of taxes owed at any time prior to the entry of final judgment on February 27, 2020, when the judge explicitly barred defendant's right of redemption. See Cronecker, 189 N.J. at 319.

Under these circumstances, we have no reason to disturb the judge's denial of defendant's motion to vacate the default judgment.

C.

Next, we address defendant's challenge to Judge Alper's determination defendant was not entitled to relief for exceptional circumstances, pursuant to Rule 4:50-1(f). According to defendant, the judge "failed to give proper weight to the equitable considerations." Specifically, it contends plaintiff realized a "windfall" because the property has "a value many times in excess of the taxes allegedly owed." Defendant claims the judge abused her discretion by "rejecting [d]efendant's valuation of the [p]roperty," based on an estimate from the website "Homefacts.com." Finally, and for the first time on appeal, defendant claims its "good faith and diligent efforts to pay the taxes," were "unconscionably rejected," unlike "other similarly situated property owners."

Rule 4:50-1(f) permits a default judgment to be vacated for "any other reason justifying relief from the operation of the judgment," and "affords relief only when 'truly exceptional circumstances are present.'" Guillaume, 209 N.J. at 468 (quoting Little, 135 N.J. at 286). "In deciding if relief is warranted, a court may consider the movant's delay, the justification for its request, and potential prejudice to the responding party." BV001, 467 N.J. Super. at 126. In such exceptional circumstances, the rule is "as expansive as the need to achieve equity and justice" but granted sparingly, only to avoid a "grave injustice." Guillaume, 209 N.J. at 484 (first quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); and then quoting Little, 135 N.J. at 289). Each case brought under subsection (f) "must be resolved on its own particular facts." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (citing Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). The burden is on the movant to "demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Id. at 378.

Here, defendant failed to carry its heavy burden to establish relief, pursuant to Rule 4:50-1(f), was necessary to prevent an injustice, especially considering its unclean hands as previously discussed.

Moreover, defendant did not offer any credible evidence that plaintiff received a windfall from the default judgment. Defendant failed to provide an appraisal or other recognized valuation document, rather it provided simply an estimate printed out from a website. The website estimate was insufficient to establish the value of the property because expert or other recognized and reliable evidence is needed to determine the market value of a commercial property. See 160 W. Broadway Assocs., LP v. 1 Mem'l Drive, LLC, 466 N.J. Super. 600, 615 (App. Div.), certif. denied, 248 N.J. 232 (2021) (recognizing "as to issues of valuation, 'expert testimony is needed [because] the factfinder would not be expected to have sufficient knowledge or experience and would have to speculate without the aid of expert testimony'" (quoting Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001))); cf. VBV Realty, LLC v. Scotch Plains Twp., 29 N.J. Tax 548, 564 (Tax 2017) (recognizing the "pitfalls which exist with information reported on public websites" are that the information may be "based upon erroneous data or speculation"). In other words, defendant's windfall argument is baseless.

Defendant's remaining arguments are meritless. Defendant's belated willingness to pay the redemption amount, although a consideration, is not dispositive when a judge is determining whether a defendant demonstrated

exceptional circumstances warranting relief. If that willingness to pay was dispositive, every such motion would be granted. Cf. Arrow, 231 N.J. Super. at 532-33 (considering nature of statute violated, the defendant's willingness to pay and his liability stemming from piercing the corporate veil, and the corporate co-defendant did not challenge default judgment entered against it). Notably, unlike the defendants in Arrow, who violated a strictly construed penal statute, here defendant violated the Tax Sale Law, which is a "remedial" statute "liberally construed" "to encourage the barring of the right of redemption." Block 1508, 380 N.J. Super. at 162; see Princeton Off. Park, LP v. Plymouth Park Tax Servs., LLC, 218 N.J. 52, 65 (2014).

Finally, we turn to defendant's argument that its efforts to redeem were rejected by plaintiff while others were permitted to redeem. As this argument was not raised before Judge Alper, we will not consider it now on appeal. See Nieder, 62 N.J. at 234. We only note, any comparison to other defendants that properly redeemed is futile—defendant did not properly redeem—and it did not provide any support for a contention that plaintiff accepted improper redemption from others. See Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 99 (App. Div. 2012). On the contrary, plaintiff's attorney's certification in support of its motion to vacate final judgment against certain parties did not state that

plaintiff accepted payment after the court entered final judgment, rather that plaintiff simply accepted redemption, which it was statutorily obligated to do. See Cronecker, 189 N.J. at 319.

To the extent we have not specifically addressed defendant's remaining arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. 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