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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-2633-20

TLF NATIONAL TAX LIEN
TRUST 2017-1,

Plaintiff-Respondent,

v.

JOSE RODRIGUEZ,

Defendant-Appellant,

and

MRS. JOSE RODRIGUEZ,
wife of JOSE RODRIGUEZ,
DEUTSCHE BANK NATIONAL
TRUST COMPANY AS TRUSTEE
ON BEHALF OF MORGAN
STANLEY ABS CAPITAL I INC.
TRUST 2006-HE5, MORTGAGE
PASS-THROUGH CERTIFICATES,
SERIES 2006-HE5, AMERICAN
GENERAL FINANCIAL
SERVICES, INC., THE
PRUDENTIAL PROPERTY AND
CASUALTY CO., WELDON
MATERIALS, INC., PORKY
PRODUCTS INC., and STATE OF
NEW JERSEY,

Defendants.

Submitted June 2, 2022 — Decided June 13, 2022

Before Judges Mawla and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Union County, Docket No.
F-016988-19.

Jose Rodriguez, appellant pro se.

Honig & Greenberg, LLC, attorneys for respondent
(Adam D. Greenberg, on the brief).

PER CURIAM

Defendant Jose Rodriguez appeals from an April 29, 2021 order denying his motion to vacate a final judgment of foreclosure entered in favor of plaintiff TLF National Tax Lien Trust 2017-1. We affirm.

In 2009, defendant failed to pay real estate taxes on a property in Plainfield. As a result, a tax sale occurred in December 2009 and a certificate was sold for \$1,122.20. In March 2015, the certificate was assigned to US Bank as custodian for PFS Financial 1 and subsequently assigned to plaintiff on July 19, 2018.

On July 26, 2019, plaintiff served a pre-foreclosure notice via regular and certified mail at defendant's address, as it appeared on the tax rolls.

Acknowledgment of the notice was signed for by "Jose Rodriguez." Defendant did not redeem the certificate. Plaintiff filed a foreclosure complaint on October 18, 2019.

Plaintiff's attempts to serve defendant personally failed because he moved. In October 2020, plaintiff requested the court enter default judgment against defendant and filed a certification of diligent inquiry and proof of publication with the court.

The certification detailed the efforts to serve defendant at the property address and stated a new family had moved in and had no knowledge of defendant or his whereabouts. Plaintiff also sent an inquiry to the Plainfield U.S. Postmaster who responded defendant had no change of address on record. Plaintiff inquired with a credit reporting agency, which provided two other Plainfield addresses for defendant. When plaintiff sent a process server to those addresses, they learned defendant was previously a resident at one of the locations and no longer resided there, and that he was unknown at the second location. Plaintiff sent a second inquiry to the Postmaster regarding the two new addresses discovered for defendant. The Postmaster advised there was no change of address for one location, but that the second location "was good as addressed." An internet search for defendant did not locate him. As a result, on

August 20, 2020, plaintiff published notice of its suit in the Star Ledger and sent notice to the property address and the two other addresses it identified; none of the mailings were returned.

In November 2020, following entry of default, plaintiff moved to fix the amount, time, and place for redemption of the certificate, serving defendant at his last known addresses by regular and certified mail. The court granted the motion and plaintiff subsequently served the order by mail and publication. On February 4, 2021, plaintiff moved for final judgment. The court entered a final judgment of foreclosure on March 4, 2021.

On April 5, 2021, defendant moved to vacate the judgment pursuant to Rule 4:50-1(a), (d), and (f). He alleged plaintiff's complaint was invalid because it failed to establish it was the owner of the tax certificate. He claimed he was deprived of due process because the personal service was "defective," he did not receive the summons and complaint by certified mail, and therefore the judgment was void for lack of personal jurisdiction. As a result, defendant argued he had a meritorious defense because he disputed the validity of the tax certificate, the assignment chain of title, and plaintiff's ownership of the certificate. Plaintiff's opposition noted although it "properly performed its

foreclosure, it [was] willing to allow . . . [d]efendant to redeem the property from tax sale and then vacate the judgment."

Following oral argument, the motion judge issued an oral opinion. The judge concluded defendant was properly served, noting he had signed the pre-foreclosure notice and was subsequently served with the foreclosure complaint by publication pursuant to Rule 4:4-5(a)(3). Further, he determined defendant did not demonstrate a meritorious defense by challenging the tax sale because he did not object to it at the time of the tax sale.

On appeal, defendant repeats the arguments raised in the motion to vacate. He claims the motion judge abused his discretion and did not explain why he found there was no excusable neglect and a meritorious defense warranting relief from the judgment pursuant to Rule 4:50-1(a), (d), and (f).

A court's determination under Rule 4:50-1 warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion occurs when a decision is "made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 4:50-1 permits a court to relieve a party from a final judgment on the following grounds: "(a) mistake, inadvertence, surprise, or excusable neglect; . . . (d) the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order." It is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have the authority to avoid an unjust result in any given case." Guillaume, 209 N.J. at 467 (quoting Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

"The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this state pursuant to [Rule] 4:4-3[.]" R. 4:4-4(a). "If personal service cannot be effectuated 'after a reasonable and good faith attempt,' other methods are available." City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App. Div. 2007) (quoting R. 4:4-3). "[I]n personam jurisdiction may [also] be obtained by mail under the circumstances and in the manner provided by [Rule] 4:4-3." R. 4:4-4(a). "A party's good faith effort to personally serve a defendant must be 'described with specificity in the proof of service.'" Shennett, 390 N.J. Super. at 483 (quoting R. 4:4-3). Ordinarily, an affidavit of diligent inquiry that evinces an earnest effort to serve a defendant personally satisfies these

requirements. Sablic v. Croatia Line, 315 N.J. Super. 499, 505-06 (App. Div. 1998). If a defendant cannot be located following a diligent inquiry, service may be effectuated by publication as prescribed by Rule 4:4-5(a)(3).

Pursuant to these principles, we conclude the motion judge did not abuse his discretion and affirm substantially for the reasons expressed in his opinion. We add the following comments.

Excusable neglect has been defined as excusable carelessness "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Mancini, 132 N.J. at 335. "[T]he showing of a meritorious defense is a traditional element necessary for setting aside . . . a default judgment[.]" Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:43-3 (2022). A meritorious defense is necessary to prevail under Rule 4:50-1(a) to avoid vacating a judgment "on the ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense. The time of the courts, counsel and litigants should not be taken up by such a futile proceeding." Guillaume, 209 N.J. at 469 (quoting Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953)).


Contrary to defendant's arguments, he provided no objective evidence countering the clear chain of title and plaintiff's ownership of the certificate.

Further, at oral argument, defendant acknowledged he had to pay the taxes, but blamed it on a "problem with the mortgage[,]" providing no objective evidence supporting or explaining his representations. Defendant admitted he stopped paying the taxes and never explained why he failed to redeem the certificate, despite the opportunity to do so over a twelve-year period. For these reasons, defendant lacked the meritorious defense of excusable neglect and the ability to challenge the foreclosure judgment via Rule 4:50-1(a).

Finally, as explained and as detailed in the judge's opinion, plaintiff properly effectuated the service of process on defendant. Therefore, the judgment was not void under Rule 4:50-1(d). Additionally, the record does not substantiate the exceptional circumstances defendant must show to warrant relief pursuant to Rule 4:50-1(f), based on the challenges he has raised regarding the chain of title, service of process, or entry of the final judgment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION