

SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-001660-24

FULTON BANK N.A.

Plaintiff,

-v-

APPLE MOUNTAIN RECREATION,
INC. AKA MOUNTAIN RECREATION
INCORPORATED; JANET M.
KISZONAK, INDIVIDUALLY AND AS
EXECUTRIX OF THE ESTATE OF
ANDREW T. KISZONAK; NORTHFIELD
BANK, STATE OF NEW JERSEY;
UNITED STATES OF AMERICA

Defendants.

CIVIL ACTION

ON APPEAL FROM ORDER
ENTERED JANUARY 13, 2025
BY THE SUPERIOR COURT OF
NEW JERSEY, CHANCERY
DIVISION, WARREN COUNTY
F-001131-21

Sat Below:

Hon. Haekyoung Suh, P.J. Ch.

**BRIEF ON BEHALF OF NON-PARTY APPELLANT,
DEANE OLIVER**

LAW OFFICES OF PATRICK J. SPINA, ESQ.

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PRELIMINARY STATEMENT

This appeal involves the rights of a purchaser of a municipal tax sale certificate as against the rights of a foreclosing mortgage holder, and the priority interests of each.

Deane D. Oliver ("Oliver") purchased a tax sale certificate for the years 2017, 2018, 2019 and 2020 (the "Tax Sale Certificate") on property (the "Mortgaged Property") known as 369 Hazen Oxford Road, Belvidere, New Jersey; which Mortgaged Property was owned by Apple Mountain Recreation, Inc. ("Apple Mountain"), and was mortgaged on February 24, 2011 to Fulton Bank (formerly known as Skylands Community Bank) (the "Fulton Bank Mortgage").

On November 15, 2024, Oliver moved before the Superior Court of New Jersey, Chancery Division, Warren County, under R. 4:33-1 to intervene and under R. 4:50-1(f) for relief (the "Moton to Intervene/Motion for Relief") as to a certain Order entered by the Court on September 24, 2021 (the "September 2021 Order") (Aa8), which Order allowed Fulton Bank to sell the Mortgaged Property at Sheriff's sale without the lien of Oliver's Tax Sale Certificate. Aa78. It is without questions that Oliver was not, and had never been, a party to the underlying foreclosure action, as the Docket History (Aa38) confirms. Yet, the September 2021 Order substantially and negatively impacted Oliver's rights as

the holder of the Tax Sale Certificate without personal jurisdiction over him first being obtained.

Oliver thus asserts that his lien rights, as holder of the Tax Sale Certificate, were superior to the lien rights of the Fulton Bank Mortgage. The Court, as part of the September 2021 Order, violated his procedural and substantive rights as owner of the Tax Sale Certificate. The January 2025 Order (Aa1), which Order denied Oliver's application to intervene as of right and denied Oliver R. 4:50 relief as to the September 2021 Order, should be reversed, and Fulton Bank and Apple Mountain made to refund to Oliver that portion of the proceeds of the Sheriff's sale that should have been paid to discharge Oliver's Tax Sale Certificate. The January 2025 Order (Aa1) misconstrued Oliver's Motion to Intervene/Motion for Relief as seeking to "set aside the foreclosure sale." Oliver did not seek any relief against the foreclosure sale purchaser; instead, Oliver only sought relief against Fulton Bank, Apple Mountain and its principal, Andrew T. Kiszona, for disgorgement of the sale proceeds in an amount necessary to satisfy the Oliver Tax Sale Certificate. Oliver Certification, Aa85, ¶14.

PROCEDURAL HISTORY

In or about March, 2021, Fulton Bank commenced a foreclosure against Apple Mountain and others relative to the Fulton Mortgage, which at that time was a first mortgage on the Mortgaged Property (the “Foreclosure Action”). Oliver was not a party to the Foreclosure Action. Docket History. Aa38.

At the time of the commencement of the Foreclosure Action, Oliver had purchased the Tax Sale Certificate (having purchased same in 2019) (Oliver Certification, Aa85, ¶¶ 5 and 6); and thereafter paying subsequent real estate taxes on the Mortgaged Properties, as reflected in a July 2021 Redemption Worksheet prepared by the Municipality. Aa135.

In or about August 2021, Fulton Bank filed a motion to allow a Sheriff’s sale of the Mortgaged Property to proceed without the lien of the Tax Sale Certificate (the “Fulton Motion”). Aa42. Fulton Bank was thus aware of the Municipality’s sale of the Tax Sale Certificate to Oliver. Aa46, ¶7. The Fulton Motion asserted that the Tax Sale Certificate was inferior to the Fulton Mortgage, despite the fact that the Tax Sale Certificate was issued by the Municipality, and not retained by it, but instead sold to Oliver. Aa46, ¶10. The Docket History reflects that Fulton Bank did not seek to make Oliver a party; nor did Fulton Bank amend its Foreclosure Action to challenge the lien priority of Oliver’s Tax Sale Certificate. Aa38.

Upon receipt of the Fulton Motion, Oliver recorded the Tax Sale Certificate with the County Clerk. Aa78, ¶9; Aa106.

On September 24, 2021, the Chancery Division issued the September 2021 Order, and the Mortgaged Property was thereafter sold at Sheriff's sale on March 25, 2022 to a third-party purchaser for \$110,000.00. Aa111. Fulton Bank retained the full foreclosure sale proceeds, \$110,000.00 (the "Foreclosure Sale Proceeds").

On November 4, 2022, Apple Mountain moved for an Order of distribution of surplus funds. Docket History (Aa38, CHC 2022265608). On January 6, 2023, the Chancery Division awarded \$15,093.07 to be paid to Apple Mountain. Aa12. Also on January 6, 2023, the Court directed any remaining surplus funds to be paid to the United States of America. Aa121. No funds from the Sheriff's sale were paid to Oliver, or to otherwise discharge the Tax Lien Certificate.

On November 15, 2024, Oliver filed the Motion to Intervene/Motion for Relief. Aa78. In support of that Motion, Oliver filed a Certification (the "Oliver Certification"), Aa85, with exhibits, as well as a Certification of Counsel (the "Spina Certification") (Aa122), with exhibits, and a letter brief. Fulton Bank filed opposition on December 12, 2024. No other party filed any opposition or otherwise appeared below. Oliver filed a reply brief on December 17, 2024. The Chancery Division issued a Preliminary Decision on December 18, 2024 (Aa157), and invited

responses from counsel. Oliver filed an objection to the Preliminary Decision on December 20, 2024. Aa164.

The Chancery Division held oral Argument on January 6, 2025 (see transcript 1T, previously filed – Aa37). The Court entered the January 2025 Order on January 13, 2025. Aa1.

Oliver thereafter filed a timely Notice of Appeal and Appellate Case Information Statement on February 12, 2025 (Aa12); followed by an Amended Notice of Appeal on February 13, 2025 (Aa22) and a transcript request on February 12, 2025. Aa38. The Transcript of Oral Argument was filed with the Clerk of the Appellate Division on February 19, 2025. Aa37.

STATEMENT OF FACTS

The Tax Sale Certificate was sold to Oliver on December 23, 2019 for the sum of \$26,006.02; it represented 2017 and 2018 real estate taxes due on the Mortgaged Property. See Redemption Worksheet. Aa135. The Mortgaged Property was then owned by Apple Mountain. As of the date Oliver purchased the Tax Sale Certificate, Fulton Bank held the Fulton Bank Mortgage, which was an existing first mortgage on the Mortgaged Property, dated February 24, 2011, and securing the sum of \$100,000.00. Aa95. Oliver paid subsequent real estate taxes on the Mortgaged Property such that, as of July 22, 2021, the Municipality's Redemption Worksheet indicated that Oliver was owed the total sum of \$44,048.83, including interest to date. Aa135.

Oliver came to purchase the Tax Sale Certificate by virtue of his long-standing friendship with Andrew T. Kiszona ("Andrew"). Andrew and his family owned Apple Mountain, the company that, in 2019, owned the Mortgaged Property. Oliver Certification, Aa85, at ¶3.

In the Fall of 2019 Andrew approached Oliver and advised that he and Apple Mountain were substantially behind in real estate tax payments owed to the Municipality, and that the Municipality was about to sell the tax lien. *Id.* at ¶¶ 4 and 5. Andrew was afraid that the tax lien would be sold to someone who was "unfriendly" to Apple Mountain, and who would thereafter foreclose the tax

lien. Andrew promised that, at some point subsequent to 2019, he and Apple Mountain would return the \$26,006.02 that was then outstanding to Oliver. Andrew also promised that he and Apple Mountain would keep the existing loan with Fulton Bank current. Id.

Oliver was able to gather together enough money to pay \$26,006.02 and purchase the Tax Sale Certificate. Unfortunately, Andrew and Apple Mountain were thereafter unable to pay real estate taxes for 2019 or 2020, and Oliver advanced those monies, as well, directly to the Municipality. Id. at ¶6.

In or about August 2021, Oliver (as a non-party) was served with the Fulton Motion, which sought to somehow "discharge" the Tax Sale Certificate. Id. at ¶7. Oliver did not understand what this meant, nor did Oliver understand at that time that the Mortgaged Property was being foreclosed. Id.

Oliver did not have money to retain an attorney, but instead he read the Fulton Motion as indicating that Oliver was somehow remiss by not "filing" the Tax Sale Certificate with the County Clerk. Id. at ¶8. He was not aware, previously, that he had to do any such thing, since he understood, generally, that real estate taxes were a lien on real property, even ahead of an existing mortgage. Id.

Nevertheless, Oliver took the Tax Sale Certificate down to the County Clerk's Office and recorded it on August 31, 2021. Id. at ¶9. Oliver thought,

based upon his reading of the Fulton Motion, that he simply needed to record the Tax Sale Certificate. Id. Oliver did not think he needed to do anything else. Id.

In late September, early October 2021, Fulton Bank's attorney sent Oliver an additional package, which included a copy of the Chancery Division's September 2021 Order (Aa8) which allowed Fulton Bank to sell the Mortgaged Property "free and clear" of Oliver's Tax Sale Certificate. Oliver Certification, Aa85, ¶10. Oliver did not understand the Court's decision, nor did Oliver have funds available at that time to retain an attorney to review the decision. Id. Oliver did not comprehend that the September 2021 Order could allow Fulton Bank to sell the Mortgaged Property; nor that Oliver would not be reimbursed for what Oliver paid for any of the real estate taxes on the Mortgaged Property. Id.

Fulton Bank sold the Mortgaged Property at Sheriff's sale on March 25, 2022 for \$110,000.00 (Aa110), and kept the proceeds without paying the real estate taxes that were a lien on the Mortgaged Property. Fulton Bank did not reimburse Oliver for the Tax Sale Certificate. Oliver Certification. Aa85, at ¶10.

It was not until April 2023, when Oliver received papers filed in this matter by PC6REO, LLC (Docket History, Aa38, CHC 202386025), that he began to think about what happened to him and all the money that he paid in real estate taxes on the Mortgaged Property. Oliver Certification. Aa85, at ¶11. The papers filed PC6REO, LLC appeared to argue that the Chancery Division's September 2021 Order to allow Fulton Bank to sell the Mortgaged Property and

not reimburse Oliver for real estate taxes paid was somehow incorrect, and that the money he paid for real estate taxes should have been paid to him or should have continued to be a lien on the Mortgaged Property. Id.

Oliver thereafter was able to retain counsel, and filed the Motion to Intervene/Motion for Relief on November 15, 2024. Aa78. That Motion requested that Fulton Bank be ordered to reimburse Oliver for the sum represented by the Tax Sale Certificate as Oliver asserted that the real estate taxes represented by the Tax Sale Certificate were a first and paramount lien upon the Mortgaged Property. Id. Fulton Bank opposed Oliver's Motion to Intervene/Motion for Relief, and argued that the Chancery Division's September 2021 Decision was correct in all respects. (Docket History, Aa38, CHC 2024378331). Oliver, thereafter, filed a reply brief with the Chancery Division. (Docket History, Aa38, CHC 2024383592).

The Chancery Division provided a Preliminary Decision on Oliver's Motion to Intervene/Motion for Relief on December 18, 2024. Aa157. The Chancery Division invited comments by Oliver and by Fulton Bank as to that Preliminary Decision. Oliver provided the requested commentary to the Court. Aa164. Oliver advised the Court that, in Oliver's view, the statute relied upon by the Chancery Division and Fulton Bank to disallow Oliver's Tax Lien Certificate, N.J.S.A. 54:5-51, did not apply to the Fulton Bank Mortgage as Fulton Bank was not a "*bona fide* purchaser, lessee or mortgagee...." Instead, Oliver argued that N.J.S.A. 54:5-9 is

applicable as Oliver's Tax Sale Certificate had a super priority over then-in-effect mortgages, such as the Fulton Bank Mortgage. Aa164, at ¶1. Oliver further argued that the Tax Sale Certificate should attach to the proceeds of the Sheriff's sale that were received by Fulton Bank, and Fulton Bank should be required to disgorge same to Oliver. *Id.* at ¶1. Moreover, Oliver argued that, the Preliminary Decision did not address Oliver's contention that, in 2021, because Fulton Bank had not joined Oliver as a party in the Foreclosure Action, the Chancery Division's September 2021 Order was void as against him. *Id.* at ¶2. Oliver thereupon requested intervention as of right to challenge the Chancery Division's September 2021 Decision. *Id.* at ¶3.

The Chancery Division held oral argument on Oliver's Motion to Intervene/Motion for Relief on January 6, 2025, and issued a Final Decision and Order on January 13, 2025. Aa1. Therein, the Chancery Division denied Oliver's Motion to Intervene/Motion for Relief and ruled that N.J.S.A. 54:5-51 applied; and that Fulton Bank was entitled to sell the Mortgaged Property without the lien of the Tax Sale Certificate because Oliver had not timely recorded the Tax Sale Certificate. The Court further held that Oliver was not entitled to intervention as of right, determining that Oliver's application could only be maintained as "permissive intervention" under R. 4:33-2; and that Oliver was, nevertheless, precluded from relief under that Rule.

This appeal timely followed.

STANDARD OF REVIEW

An appellate court conducts a *de novo* review of a trial court's determination of legal issues, Ross v. Lowitz, 222 N.J. 494, 504 (2015), and its "application of legal principles to . . . factual findings." Lee v. Brown, 232 N.J. 114, 127 (2018) (quoting State v. Nantambu, 221 N.J. 390, 404 (2015)). If a trial judge makes a discretionary decision, but acts under a misconception of the applicable law, an appellate court need not defer to that exercise of discretion; instead, the court must adjudicate the controversy under the applicable law in order to avoid a manifest denial of justice. State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 154, 158 (App. Div. 1960). A "trial court's interpretation of the law and the consequences that flow from established fact are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Thus, a trial judge's legal conclusions and the application of those conclusions to the facts are subject to plenary review. Id. A similar standard applies to determine whether a court has acquired personal jurisdiction over a non-party. YA Glob. Invs., LP v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011).

Further, if a motion judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks foundation and it becomes an arbitrary act, not subject to the usual deference.

Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020); Alves v. Rosenberg, 400 N.J. Super. 533,563 (App. Div. 2008). In such a case, the reviewing court must instead adjudicate the controversy in the light of the applicable law in order that a manifest denial of justice be avoided. State v. Lyons, 417 N.J. Super. 215, 258 (App. Div. 2010); State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960).

LEGAL ARGUMENT

In September 2021, the Chancery Division accepted Fulton Bank's argument that N.J.S.A. 54:5-51 permitted Fulton Bank to avoid Oliver's Tax Sale Certificate; this was clear error, and void as a matter of law. Aa8.

There is no question on the record below that Fulton Bank knew of Oliver's existence, and the fact that he had paid real estate taxes on the Mortgaged Property for many years. Fulton Bank had that information well before the Sheriff's sale; but, nevertheless, Fulton Bank never moved as required by R. 4:64-1(b) to add Oliver as a "party" to the Foreclosure Action in order to secure *in personam* jurisdiction over him. Instead, Fulton Bank served Oliver with a sixteen (16) day motion (answerable in 8 days) which sought to eviscerate Oliver's property rights in and to the Tax Sale Certificate. Aa42. Remarkably, the Chancery Division in the September 2021 Order granted Fulton's application. Aa8. In short, no *in personam* jurisdiction over Oliver was acquired in the Foreclosure Action.

Furthermore, Oliver's Tax Sale Certificate had the status of a municipal tax lien (as the Tax Sale Certificate was sold by the Municipality to Oliver in December 2019, and it is undisputed that Oliver paid subsequent real estate taxes on the Mortgaged Property through 2020). Aa135. As such, N.J.S.A. 54:5-9 applies, not N.J.S.A. 54:5-51. N.J.S.A. 54:5-51 only applies to *bona fide*

subsequent purchasers, mortgagees or lessees, and not to a pre-existing mortgage, such as the Fulton Bank Mortgage; that Mortgage was subordinate in lien rights to municipal tax liens, whether or not the Municipality retained those liens or otherwise struck them off and sold them to a purchaser, such as Oliver. By virtue of that tax sale, Oliver was subrogated to the rights of the Municipality; and those rights were superior in nature to the rights of the preexisting Fulton Bank Mortgage.

As Oliver argued below, Oliver did not and does not seek to upset the Sheriff's sale of the Mortgaged Property; rather, all Oliver seeks is the return to him by Fulton Bank and Apple Mountain of the redemption amount for the Tax Sale Certificate. Oliver asserts that Fulton Bank and Apple Mountain were unjustly enriched in this matter, at Oliver's expense.

By its January 2025 Order, the Chancery Division again conflated, and misapplied, N.J.S.A. 54:5-1 and N.J.S.A. 54:5-9. By virtue of the latter statute, Oliver's Tax Sale Certificate had a super priority over the Mortgaged Property; by virtue of the former statute, Fulton Bank was not entitled to lien relief. Furthermore, by applying a "permissive intervention" standard under R. 4:33-2, the Chancery Division deprived Oliver of a right to intervene in the Foreclosure Action to protect his rights in and to the Sheriff's sale proceeds. It is ironic that, in 2021, the Chancery Division did not think that Oliver was entitled to be made a party to the Foreclosure Action in order for the Court to have jurisdiction over him, in violation of R. 4:64-

1(b)(11). But yet, in 2025, the Chancery Division denied Oliver the right to intervene to protect his interests in that very same Tax Sale Certificate.

Under the applicable standard of review, Oliver requests that this Court conduct a *de novo* review of the Chancery Division's January 2025 Order under N.J.S.A. 54:5-1 and N.J.S.A. 54:5-9, as well as under R. 4:33-1 and R. 4:33-2. Oliver respectfully submits that applying a *de novo* review standard would result in Oliver being entitled to intervene as of right in the Foreclosure Action; and, moreover, entitling Oliver to R. 4:50-1 relief as against Fulton Bank and Apple Mountain. By virtue of that relief, Fulton Bank and Apple Mountain should be required to disgorge to Oliver, from the Sheriff's sale proceeds, an amount equal to the redemption value of Oliver's Tax Sale Certificate, plus subsequent interest thereupon.

Put simply, absent the Chancery Division's September 2021 Order, Oliver would have been paid an amount equal to the then outstanding Tax Sale Certificate at the time of Sheriff's sale; that amount would have been deducted from either (a) the foreclosure sale proceeds or, instead, (b) the successful Sheriff's sale bidder would have reduced the amount of the winning bid by a sum equal to that outstanding under the Tax Sale Certificate. In any event, the existence and the lien of the Oliver Tax Sale Certificate should have been announced as part of the Sheriff's sale, and Oliver should have been paid the amount of the Tax Sale Certificate at the conclusion of that sale.

I. OLIVER'S TAX SALE CERTIFICATE HAS THE STATUS OF A MUNICIPAL TAX LIEN WHICH IS SUPERIOR TO THE FULTON BANK MORTGAGE; N.J.S.A. 54:5-51 DOES NOT APPLY AS FULTON BANK IS NOT A *BONA FIDE* PURCHASER OR MORTGAGEE FOR VALUE.

(raised below, Aa4)

Fulton Bank argued in September 2021 that N.J.S.A. 54:5-51 "demanded" that Oliver's Tax Sale Certificate be set aside, such that Fulton Bank could sell the Mortgaged Property "free and clear" from the obligation to pay real estate taxes. Aa42. In the September 2021 Order (Aa8), the Chancery Court agreed, despite the fact that the Fulton Bank Mortgage pre-dated the Tax Sale Certificate by nearly a decade; taxes for 2017 through 2020 had a super priority (by statute) over the Fulton Bank Mortgage; and further despite the fact that Fulton Bank was not a *bona fide* purchaser, lessee or mortgagee and was clearly not entitled to any relief under N.J.S.A. 54:5-51. Instead, N.J.S.A. 54:5-9 is applicable as Oliver's Tax Sale Certificate had a super lien priority over then-in-effect mortgages, such as the Fulton Bank Mortgage.

N.J.S.A. 54:5-51 speaks to a *bona fide* purchasers, lessees or mortgagees, whose instrument is recorded before the recording of a tax sale certificate. Thus, the express purpose of N.J.S.A. 54:5-51 is to protect *bona fide* mortgagees, lessees or transferees who pay value but have no knowledge of an existing lien. For example, a contract vendee for the purchase of real estate, who does not have actual knowledge (based upon county filings) of an outstanding tax lien on property, should not have

its fee rights interrupted by such unrecorded filings; the same could be said for a refinance mortgagee who provides refinancing without knowledge of an outstanding tax lien.

N.J.S.A. 54:5-51 does not, however, obviate the rights of a municipality to be paid for outstanding real estate taxes; nor does it obviate the rights of a purchaser of a tax sale certificate to stand in the shoes of, and be subrogated to the municipality's right to, collect real estate taxes. Thus, what N.J.S.A. 54:5-51 is intended to do is to protect an unknowing, subsequent third-party from paying "value" for a piece of property, or for a lien thereupon, "without knowledge" that there was tax sale certificate "struck off and sold" to a third party. That is why the statute uses the phrase "*bona fide* purchaser, lessee or mortgagee."

The phrase "bona fide purchaser for value" is defined as "someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title." *Black's Law Dictionary* 1491 (11th ed. 2019). Thus, "a *bona fide* purchaser is chargeable only with what appears in the record." Island Venture Assoc. v. N.J. Dep't of Env't Prot., 359 N.J. Super. 391, 397 (App. Div. 2003) (internal citations omitted).

Here, there is no question that Fulton Bank did not, subsequent to Oliver's purchase of the Tax Sale Certificate, part with any "value" with respect to the

Mortgaged Property. Rather, the record reflects that Fulton Bank lent money to Apple Mountain in 2011, and recorded the Fulton Bank Mortgage at that time. Aa127. Fulton Bank, thereafter, did not pay real estate taxes on the Mortgaged Property when Apple Mountain failed to timely pay same, and thereupon became indebted to the Municipality for those real estate taxes. In fact, the Redemption Worksheet was procured by Fulton Bank's foreclosure attorney before the Sheriff's sale. Aa52; Aa 47, ¶7. Hence, before the foreclosure was completed, and before the Mortgaged Property was struck off at Sheriff's sale, there is no question that Fulton Bank knew well of Oliver and the existence of a lien upon the Mortgaged Property, evidenced by the Tax Sale Certificate. Under no set of circumstances could or should Fulton Bank avoid the super priority of the outstanding real estate taxes on the Mortgaged Property (N.J.S.A. 54:5-9) - regardless of whether the municipality did or did not sell those outstanding taxes to a third-party, such as Oliver. Accordingly, as a purely legal matter, Fulton Bank cannot be a *bona fide* mortgagee for value - since Fulton Bank (a) did not lend any additional monies after the date of the Fulton Bank Mortgage, (b) knew well of Oliver's Tax Sale Certificate, but (c) nevertheless sought to improperly avoid the impact of same by virtue of a motion filed against a non-party to the Foreclosure Action – namely, Oliver.

Oliver thus stands in the shoes of the Municipality with respect to the Tax Sale Certificate. A third-party tax sale certificate holder, such as Oliver, who

purchases a tax sale certificate has "a lien on the premises" conveyed from "the lien interest of the taxing authority." Princeton Office Park, LP v. Plymouth Park Tax Service, LLC, 218 N.J. 52, 67 (2014) (quoting Savage v. Weisman, 355 N.J. Super. 429, 435-36 (2002)). A taxing authority bears a significant and consequential interest on behalf of its citizens "to realize taxes by returning property to the paying tax rolls without the necessity of first expending money to foreclose or bar the equity of redemption" as to property owner. Varsolona v. Breen Cap. Servs. Corp., 180 N.J. 605, 621 (2004). In New Jersey, all real property is subject to taxation. N.J.S.A. 54:4-1.

The New Jersey Legislature created New Jersey's Tax Sale Law (the "TSL"), N.J.S.A. 54:5-137, to establish the framework to facilitate the collection of property tax arrearages and address when a property is no longer on the tax paying rolls. Varsolona, 180 N.J. at 620. When the owner of real property fails to pay property taxes, the TSL grants the municipal government a continuous lien on the property for the unpaid taxes owed, plus any penalties and associated costs of collection. N.J.S.A. 54:5-6. By authorizing the sale of tax liens in the commercial market, the TSL permits the conversion of those liens into a stream of revenue for the taxing authorities, by providing a mechanism to transform a non-performing asset into cash without raising taxes. In re Princeton, 218 N.J. at 62. Thereby, a tax sale certificate is created when a municipality "enforce[s] its lien on the real estate the sale of tax

sale certificates on notice to the property owner and any mortgagee. N.J.S.A. 54:5-19 to 32.

The tax sale certificate may be sold to the public, the municipality or to the State of New Jersey. N.J.S.A. 54:5-30.1, 34 and 34.1. As a result, and under the TSL, a tax sale certificate holder obtains the right to: (1) "receive the sum paid for the certificate with interest at the redemption rate for which the property was sold"; (2) "redeem from the holder a subsequently issued tax sale certificate"; and (3) "acquire title by foreclosing the equity of redemption of all outstanding interests, including that of the property owner." In re Princeton, 218 N.J. at 63 (emphasis added). "A tax sale certificate" does not give rise to an outright conveyance of the property, but rather creates 'a lien on the premises and conveys the lien interest of the taxing authority'" to the tax lien certificate holder, such as Oliver. Id. at 67 (quoting Savage, 355 N.J. Super. at 436).

As a result of the TSL, the purchaser of a tax sale certificate, such as Oliver, "acquires a lien formerly held by the municipality's taxing authority, derived from the property owner's obligation to pay real estate taxes." In re Princeton, 218 N.J. at 67. As a third-party tax sale certificate purchaser, Oliver has the statutory right to commence an *in personam* foreclosure action seeking to bar the property owner's right of redemption two (2) years after the issuance of the tax sale certificate. N.J.S.A. 54:5-86; Savage, 355 N.J. Super. at 436. A third-party certificate holder

(such as Oliver) may file a foreclosure action up to "[twenty] years from the date of the sale." N.J.S.A. 54:5-79. The Court's September 2021 Order improperly divested Oliver of his statutory rights under the TSL; and the Court's January 2025 Order (Aa1) misconstrued applicable law and thereby failed to address that improper divestiture.

Accordingly, Oliver seeks redress for a clear wrong imposed upon him by Fulton Bank, Apple Mountain and Kiszonak. Oliver respectfully submits that his Motion to Intervene/Motion for Relief should have been granted, and Fulton Bank should not have been permitted, by virtue of the September 2021 Order (Aa8), to sell the Mortgaged Property free and clear of Oliver's Tax Sale Certificate. Oliver's argument was and is simple and straight forward: Fulton Bank's Mortgage is subject to the imposition of municipal real estate taxes and charges that subsequently accrued; and all such municipal charges are a "first lien" on the Mortgaged Property. N.J.S.A. 54:5-9, captioned "Municipal Liens Paramount," states as follows:

"Every municipal lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereupon, except subsequent municipal liens."

In contrast, the intent of N.J.S.A. 54:5-51 is to protect a subsequent bona fide purchasers, lessees or mortgagees who acquire their interests in the property after the date of the tax sale - if the tax sale certificate is not recorded with three

months. Oliver's Tax Sale Certificate was a senior lien to the Fulton Bank Mortgage pursuant to N.J.S.A. 54:5-9. Oliver's Tax Sale Certificate was required to be announced at that March 25, 2022 Sheriff's sale and could not, as a matter of law, be removed from the Mortgaged Property pursuant to N.J.S.A. 54:5-51. Oliver thus asks this Court to reverse the Chancery Division's January 2024 Order (Aa1), and grant Oliver R. 4:33-1 and R. 4:50-1 relief.

II. OLIVER SATISFIES THE STANDARD FOR INTERVENTION AS OF RIGHT, R. 4:33-1.

(raised below, Aa4)

In his arguments below, Oliver contended that Fulton Bank was obligated to join Oliver as a party in the underlying Foreclosure Action in order to address Fulton Bank's contention that the Fulton Bank Mortgage had a superior lien status to Oliver's Tax Sale Certificate, and that the said Tax Sale Certificate should be discharged of record pursuant to N.J.S.A. 54:5-51. Without acquiring personal jurisdiction over Oliver, the Chancery Division did not have the authority in September 2021 to address Fulton Bank's Motion which sought to supersede the lien priority of Oliver's Tax Sale Certificate.

Accordingly, in his Motion to Intervene/Motion for Relief, Oliver sought intervention as of right under R. 4:33-1, which provides that:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the

subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless the applicant's interest is adequately represented by existing parties.

The Rule is not discretionary, and a court must approve an application to intervene if the criteria are satisfied. N.J. Dept of Envl. Prot. v. Exxon Mobil Corp. 453 N.J. Super. 272, 286 (App. Div. 2018).

In the September 2021 Order (Aa8), the Chancery Division exercised jurisdiction over Oliver, a non-party to the Foreclosure Action. The foregoing despite the fact that Fulton Bank's counsel, in his filed certification (Aa46), identified Oliver and the fact that Oliver owned an outstanding tax sale certificate, with a value in excess of \$40,000. At no time did Fulton Bank seek to make Oliver a party to the Foreclosure Action, as Fulton Bank should have done under mandatory foreclosure joinder rules if Fulton Bank believed that its mortgage lien was superior to the lien of Oliver's Tax Sale Certificate. R. 4:64-1(b)(11). Instead, Fulton Bank sought, and the Chancery Division approved through September 2021 Order (Aa8), the divestiture of Oliver's inchoate rights in and to the municipal lien for unpaid real estate taxes.

By its January 2025 Order (Aa1), the Court denied Oliver's right to intervene as of right, instead finding that Oliver's application for intervention would be viewed under the "permissive intervention" procedures of R. 4:33-2. Oliver respectfully

submits that he should have been permitted to intervene in order to assert his claim against Fulton Bank. In its January 2025 Order, the Chancery Division failed to grant Oliver that basic relief. In effect, in 2021 the Chancery Division subjected Oliver to proceedings as if Oliver was a party (when he was not); and in 2025 when Oliver sought to intervene as a party to protect his rights, the Chancery Division said he had no right to do so. Simply put, the Chancery Division Judges got the results reversed.

III. OLIVER SATISFIES THE REQUIREMENTS OF R. 4:50-1(f) ENTITLING HIM TO THE REQUESTED RELIEF IN ORDER TO ACHIEVE EQUITY AND JUSTICE.

(raised below, Aa78, but not addressed by trial court)

Under R. 4:50-1(f), relief from a judgment "may be obtained at any time where the circumstances are exceptional . . . and enforcement of the order or judgment would be unjust, oppressive or inequitable. Pressler & Verniero, Current N.J. Court Rules, cmt. 5.6.1 on R. 4:50-1 (2023).

Thus, "[r]elief under [Rule 4:50-1(f)] is available in 'exceptional circumstances'" as "its boundaries 'are as expansive as the need to achieve equity and justice.'" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 290 (1994) (interior quote omitted). The 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." US Bank Natl Ass'n. v.

Guillaume, 209 N.J. 449, 467 (quoting Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

A court of equity is guided by the fundamental principle that equity will not suffer wrong without a remedy. Creane v. Bilski, 15 N.J. 342, 349 (1954). Where there has been a civil wrong, there ought to be a remedy; and if the law provides none, equity may take jurisdiction to correct the injustice. The absence of precedent does not preclude an equity court from granting such relief as the circumstances may require. Brisle v. O'Connor, 115 N.J. Eq. 360, 364-65 (Ch. Div. 1934).

Under the circumstances presented, equity and justice weigh heavily in favor of Oliver. The record is undisputed that Oliver advanced money for the benefit of both Fulton Bank and Apple Mountain, in order to pay priority real estate taxes on the Mortgaged Property for the years 2017 through 2020. Those payments totaled, as of July 2021 (i.e., before the Sheriff's sale) (see Redemption Worksheet, Aa135), in excess of \$44,000.00. Fulton's attorney in the Foreclosure Action was undeniably aware that Oliver's Tax Sale Certificate existed, and the quantum owed thereupon.

The Court's September 2021 Order (Aa8), declaring that Fulton Bank could list the Mortgaged Property for Sheriff's sale without regard to the lien of Oliver's Tax Sale Certificate, was clear error. N.J.S.A. 54:5-51 does not apply to Fulton Bank; instead, N.J.S.A. 54:5-9 is applicable, as the Oliver Tax Sale Certificate's lien on the Mortgaged Property was superior to that of the Fulton

Bank Mortgage. Oliver stands in the shoes, and is subrogated to the rights, of the Municipality with respect to real estate taxes on the Mortgaged Property; and those real estate taxes have a superior priority on all liens and encumbrances on the Mortgaged Property, including but not limited to the lien of the Fulton Bank Mortgage.

By his Motion to Intervene/Motion for Relief (Aa78), Oliver did not seek any relief against the purchaser of the Mortgaged Property at Sheriff's sale, as that purchaser presumably paid "market value" for the Mortgaged Property. Instead, Oliver took issue with Fulton Bank and with Apple Mountain, since Fulton Bank received the lion's share of the Sheriff's sale proceeds, and yet did not have to expend a penny on priority real estate taxes that should have, by right, statute and by common sense, been deducted from the purchase proceeds. Similarly, Apple Mountain, who received surplus funds from the Sheriff's sale in the amount of \$15,093.07 in 2023 (Aa123), also benefitted from the Court's September 2021 Order even though it is undisputed that Apple Mountain also failed to pay real estate taxes. Therefore, neither Fulton Bank nor Apple Mountain would have been prejudiced by the Chancery Division granting Oliver's Motion to Intervene/Motion for Relief. Had the Chancery Division done so, it would have promoted substantial justice and equity as, on this record, the only person/entity who was in any way harmed by the foreclosure sale of the Mortgaged Property was Oliver.

The quasi-contractual claim of unjust enrichment has two elements: (1) defendant received a benefit and (2) retention of the benefit of payment would be unjust. Goldsmith v. Camden Cnty. Surrogate's Off., 408 N.J. Super. 376, 382 (App. Div. 2009). A plaintiff must prove both elements and show he or she expected remuneration from the defendant at the time the plaintiff performed or that plaintiff conferred a benefit on the defendant and that the failure of remuneration enriched the defendant beyond his or her contractual rights. Thieme v. Aucoin-Thieme, 227 N.J. 269, 288 (2016). See also, VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994). Similarly, the Equitable Lien Doctrine recognizes that such liens may be created either by express agreement between the parties, or on the basis of right and justice according to "the dictates of equity and conscience, as where a contract of reimbursement could be applied at law." VRG Corp. 135 N.J. at 546 (internal citations omitted). More generally, "the theory of equitable liens has its ultimate foundation . . . in contracts, expressed or implied, which either deal with or in some manner relate to specific property, such a tract of land, particular chattels, or securities, a certain fund, and the like. Id., quoting 4 John N. Pomeroy, *A Treatise on Equity Jurisprudence* §1234. An equitable lien may be founded on "the dictates of equity and conscience, as where a contract of reimbursement could be implied at law and enforced by the action of *assumpsit*, or in certain cases where contribution or reimbursement is enforceable in equity, including those involving fraud and

mistake." Temple v. Clinton Trust Co., 1 N.J. at 219, 226 (1948). The entire doctrine of equitable liens or mortgages is "founded upon that cardinal maxim of equity which regards as done that which has been agreed to be, and ought to have been, done." Rutherford Nat'l Bank v. H.R. Bogle Co., 114 N.J. Eq. 571 (Ch. 1933).

Chancery Division's September 2021 Order effectively deprived Oliver of his rights in and to the Tax Sale Certificate; and thereby allowed Fulton Bank, Apple Mountain and Andrew Kiszonak to all be unjustly enriched, at Oliver's expense. Each of Fulton Bank and Apple Mountain, moreover, directly received proceeds from the Sheriff's sale which funds should have first been paid to Oliver to satisfy the outstanding real estate taxes on the Mortgaged Property.

CONCLUSION

The foregoing reasons, Deane D. Oliver respectfully requests that this Court reverse the Chancery Division's January 2025 Order, allow Oliver to intervene as of right to protect his interests and grant Oliver R. 4:50-1 relief. Thereby, the Foreclosure Action should be reopened, Fulton Bank and Apple Mountain should both be required to disgorge a portion of the foreclosure sale proceeds such that Oliver would be paid the redemption amount of the Tax Sale Certificate, with interest thereupon until the date of payment.

Respectfully Submitted,

/s/ Patrick J. Spina

PATRICK J. SPINA, ESQ.

**ATTORNEY FOR NON-PARTY APPELLANT,
DEANE D. OLIVER**

Dated: April 8, 2025

FULTON BANK, N.A.,

Plaintiff/Respondent,

vs.

APPLE MOUNTAIN RECREATION
INC. AKA APPLE MOUNTAIN
RECREATION INCORPORATED;
JANET M. KISZONAK
INDIVIDUALLY AND AS
EXECUTRIX OF THE ESTATE OF
ANDREW T. KISZONAK;
NORTHFIELD BANK; STATE OF
NEW JERSEY; UNITED STATES
OF AMERICA,

Defendant.

SUPERIOR COURT OF NEW
JERSEY

APPELLATE DIVISION

DOCKET NO.: A-001660-24

CIVIL ACTION

ON APPEAL FROM ORDER
ENTERED JANUARY 13, 2025 BY
THE SUPERIOR COURT OF NEW
JERSEY CHANCERY DIVISION,
WARREN COUNTY

Docket No. F-001131-21

Sat Below:

Hon. Haekyoung Suh, P.J. Ch.

**BRIEF ON BEHALF OF
RESPONDENT FULTON BANK, N.A.**

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STATEMENT OF FACTS

Apple Mountain Recreation, Inc. (“Apple Mountain”) is the owner of a certain property with an address located at 369 Hazen Oxford Road, Belvidere, New Jersey, Block 16, Lot 44 and 44Q (the “Property”) by virtue of a deed dated June 13, 1973 and recorded in the Warren County Clerk’s Office on June 22, 1973 in book 541, page 272. 044A. Apple Mountain owned other neighboring parcels including properties located at Hazen-Oxford Road, White, New Jersey, Block 16, Lot, 44.A and properties identified on the Oxford Township tax map as Block 24, Lots 61 and 62. 155A. Apple Mountain operated a golf course on the Property and neighboring parcels formerly known as Apple Mountain Golf Course.

On or about February 24, 2011, Apple Mountain, being indebted to Skylands Community Bank in the sum of \$100,000.00 executed a certain commercial promissory Note with a maturity date of February 24, 2021. 001A. To secure payment of the Note, on February 24, 2011, Apple Mountain delivered a mortgage dated the same date to Skylands Community Bank which secured the aforementioned loan to the Property (the “Mortgage”). 001A. Andrew T. Kiszona executed the mortgage in his capacity as president of Apple Mountain. 042A. On or about October 22, 2011, Fulton Bank of New Jersey became the successor by merger to Skylands Community Bank. 002A. Thereafter, on May

20, 2019 Fulton Bank of New Jersey became Fulton Bank, N.A. by merger and name change. 002A.

Unbeknownst to Fulton, Apple Mountain became delinquent on its real estate taxes for the years 2017-2018 for the Property and neighboring parcels. 026A. On or about December 20, 2019, Deane Oliver (“Oliver” or “Movant”), the appellant herein, purchased at public sale unpaid municipal liens in the amount of \$26,00.02 numbered #19-00002 (the “Tax Sale Certificate”). 026A. Oliver purchased the Tax Sale Certificate at the behest of his friend Andrew T. Kiszona. Aa086. Oliver did not submit the Tax Sale Certificate in accordance within three months in accordance with the requirements set forth in N.J.S.A. 54:5-51. Aa106. This Court should take judicial notice that on December 24, 2019, Oliver purchased tax sale certificates numbered 2019-008 and 2019-009, which certificates affect the property located at 353 Belvedere Avenue, Block 24, Lots 61 and 62, respectively, and which properties were owned at the time by Apple Mountain. Oliver paid real estate taxes for 2019 and 2020 directly to White Township on behalf of Apple Mountain for the Property. Aa086.

On or about January 24, 2018 and each month thereafter, Apple Mountain defaulted on its payments of principal due under the Note and Mortgage. 001A. Accordingly, Fulton accelerated the balance of the loan. 001A.

PROCEDURAL HISTORY

On or about March 3, 2021, respondent in the within matter, Fulton Bank, N.A. (“Fulton” or “Respondent”), initiated an *in rem* mortgage foreclosure action relative to the Property due to Apple Mountain’s default under the terms of the Note and Mortgage in the Superior Court of New Jersey, Chancery Division of Warren County filed under Case Number SWC-F-001131-21. 001A. Prior to initiating its mortgage foreclosure action, in accordance with R. 4:64-1, Fulton obtained a title search of the public record to identify parties which may have an interest in the Property. 001A. Accordingly, Fulton identified Northfield Bank, the State of New Jersey, and the United States of America all of whom are named defendants in the within foreclosure action. 001A. The Superior Court of New Jersey Chancery Division of Warren County entered judgment in favor of Fulton on July 14, 2021. 013A.

On or about July 20, 2021, in preparation for scheduling a sheriff’s sale of the Property, Fulton’s counsel contacted the White Township Tax Collector to make an inquiry as to the status of real estate taxes at which time counsel discovered that the unrecorded Tax Sale Certificate, which Tax Sale Certificate was held by Oliver. 172A. The Tax Sale Certificate was not identified on Fulton’s title report or subsequent title bringdown because Oliver did not submit the Tax Sale Certificate for recording within the time prescribed by law. Aa059

– Aa068. Accordingly, Fulton filed a Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate (the “Motion”) on August 20, 2021 in which Fulton requested to sell the subject Property free and clear of Oliver’s unrecorded Tax Sale Certificate. Aa042. Fulton by and through its counsel duly served Oliver with its Motion. Aa044. The court granted Fulton’s request to sell the Property free and clear of the Tax Sale Certificate and entered an Order to that effect on September 24, 2021, which order included a Statement of Reasons (the “Order”). Aa008. Fulton submitted the order for recording with the Warren County Clerk’s Office on December 22, 2021, which order marked the Tax Sale Certificate as cancelled of record. 131A.

The Property was subsequently sold at a Sheriff’s Sale on March 25, 2022 free and clear of the subject Tax Sale Certificate (the “Sheriff’s Sale”). 143A. Following the sale, Fulton deposited with the Court surplus funds following the Sheriff’s Sale with the Court in the amount of \$56,593.20. By orders dated January 6, 2023, the Superior Court of New Jersey Chancery Division of Warren County approved distributions of surplus funds from the Sheriff’s Sale in the amounts of \$32,278.99 and \$15,093.07 payable to the United States of America and Apple Mountain, respectively. 015A-016A.

On or about March 29, 2023, approximately one year after the Sheriff’s Sale took place, PC6REO, LLC filed a Motion to Set Aside Sale, Reform

Sheriff's Deed, and Vacate September 24, 2021 Order. 017A. Interestingly, PC6REO, LLC's motion *inter alia* requested to vacate the September 24, 2021 order which permitted Fulton to sell the Property free and clear of Oliver's Tax Sale Certificate. 023A. The court should judicial notice that on May 9, 2023 for "good and valuable consideration" Oliver assigned tax sale certificates numbered 2019-008 and 2019-009, which certificates affect 353 Belvedere Avenue, Block 24, Lots 61 and 62, respectively, to PC6REO, LLC by way of Assignment of Tax Sale Certificate dated May 9, 2023 and recorded in the Warren County Clerk's Office in book 1025, page 248. Ultimately, Fulton and PC6REO, LLC reached an agreement to reform the sheriff's deed by way of a consent to decree dated May 23, 2023, which consent order denied vacating the September 24, 2021 order. 163A.

On November 15, 2024, over three years after the Order was entered and over two and a half years after the Property was sold at Sheriff's Sale, Oliver filed his Motion to Intervene and Relief from this Court's September 24, 2021 Order Pursuant to R. 4:50-1(f). Aa78. On or about December 18, 2024, the Chancery Division issued a preliminary Decision with a statement of reasons. Aa157. Fulton and Oliver submitted their respective reply briefs. On January 6, 2025, the Chancery Division heard oral arguments from the Parties. On

January 13, 2025, the Chancery Division issued its Final Order denying Oliver's Motion to Intervene. Aa1.

Oliver's appeal followed.

STANDARD OF REVIEW

At issue before this Court is Oliver's Motion to Intervene and Relief from Judgment under Rule 4:50-1(f). Both Oliver's requests for intervention and relief from judgment are subject to an abuse of discretion standard of review. A party who has the right to redeem a tax sale certificate and which seeks to intervene in a foreclosure matter for the purpose of vacating a judgment is subject to a discretionary permissive intervention and not by right. Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 171-172 (App. Div. 2005). R. 4:33-2 sets forth the rules governing permissive intervention. The standard of review by an appellate court of a permissive intervention under R. 4:33-2 is an abuse of discretion standard. See. Asbury Park v. Asbury Towers, 388 N.J. Super. 1, 12 (App. Div. 2006). "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. The court finds an abuse of discretion when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 456, 38 A.3d 570, 573 (2012) (quoting Flagg v. Essex Couty Prosecutor, 171 N.J. 561, 571, 796 A.2d 182 (2002)).

On appeal, "[t]he decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of

discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). "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. The court finds an abuse of discretion when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 456, 38 A.3d 570, 573 (2012) (quoting Flagg v. Essex Couty Prosecutor, 171 N.J. 561, 571, 796 A.2d 182 (2002)).

LEGAL ARGUMENT

I. MOVANT IS NOT ENTITLED TO INTERVENE IN THIS MATTER UNDER RULE 4:33-1

Oliver argues that he is entitled to intervention by right under R. 4:33-1. Fulton asserts that Oliver's motion to intervene is discretionary subject to the permissive intervention standard governed by R. 4:33-2. Assuming *in arguendo* that Oliver qualifies as a party entitled to intervene by right under R. 4:33-1, Oliver still fails to meet the standard for intervention set forth in R. 4:33-1. R. 4:33-1 provides:

Upon timely application anyone shall be permitted to intervene in an action **if the applicant claims an interest relating to the property** or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. [emphasis added].

A. Movant has not Articulated an "Interest" of the Type Sufficient to Establish Entitlement to Intervention

New Jersey law provides that "[w]hen the certificate of sale is not made to the municipality, it shall, unless so recorded within three months of the date of sale, be void as against a bona fide purchaser, lessee or mortgagee whose deed, lease or mortgage is recorded before the recording of the certificate." N.J.S.A. 54:5-51.

Oliver does not have an interest in the Property which would entitle him to intervention in the within mortgage foreclosure action. Oliver asserts an interest in the Property by way of his purchase of the Tax Sale Certificate. However, any interest Oliver may have had in the Property is now extinguished. Oliver failed to record the Tax Sale Certificate within three months of the date of the sale as prescribed by N.J.S.A. 54:5-51.

Prior to initiating the within mortgage foreclosure action, in accordance with R. 4:64-1, Fulton conducted a public search for liens of record and named parties with recorded liens as defendants in the foreclosure action. Undoubtedly, Fulton would have named Oliver as a party to the within mortgage foreclosure action had he timely recorded the Tax Sale Certificate in accordance with N.J.S.A. 54:5-51. Oliver purchased the Tax Sale Certificate on December 20, 2019 yet did not submit it for recording until August 31, 2021 – after entry of Judgment in the within mortgage foreclosure action.

The plain language of N.J.S.A. 54:5-51 is clear that a Tax Sale Certificate not recorded within “three months from the date of sale” is void against a *bona fide* mortgagee whose mortgage is recorded before the recording of the certificate. N.J.S.A. 54:5-51. It was Oliver’s statutory obligation to record the tax sale certificate. Furthermore, it is Oliver’s responsibility to protect his own interest in doing so. Oliver’s failure to timely record the Tax Sale Certificate

renders his interest in and to the Property void as to Fulton's interest. Fulton certainly qualifies as a *bona fide* mortgagee as its mortgage was recorded in 2011 prior to the Tax Sale Certificate which was recorded on August 31, 2021.

B. Movant's Motion to Intervene is Untimely

"Whether intervention as of right should be granted may be determined by evaluating the extent to which a grant of the motion will unduly delay or prejudice the rights of the original parties." American Civil Liberties Union of New Jersey, Inc. v. County of Hudson, 352 N.J. Super. 44, 55, 799 A.2d 629, 635 (App. Div. 2005). "One who is interested in pending litigation should not be permitted to stand on the sidelines, watch the proceedings and express his disagreement only when the results of the battle are in and he is dissatisfied." Hanover v. Morristown, 118 N.J. Super. 136, 143, 286 A.2d 728, 732 (N.J. Super. 1972).

Here, Oliver's motion to intervene is certainly untimely. Oliver filed his motion to intervene over three years after entry of both the final judgment in the mortgage foreclosure action on July 14, 2021 and the Order granting Fulton's Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate. Fulton served Oliver with its Motion in 2021. Oliver acknowledges receipt of the same in his brief. Rather than respond to the Motion and attempt to intervene

in the within matter, Oliver untimely recorded the Tax Sale Certificate. Despite receiving notice, Oliver took no meaningful action to protect his interest.

In March of 2023, Oliver acknowledges receipt of PC6REO, LLC's Motion to Set Aside Sale, Reform Sheriff's Deed, and Vacate September 24, 2021 Order. PC6REO, LLC's motion *inter alia* sought to vacate the September 24, 2021 order. 023A. Oliver notes that it was at this time that he realized he may have a cognizable claim for recovery of the Tax Sale Certificate. Aa88. Notably, at or around this time, Oliver assigned his interest in tax sale certificates to PC6REO, LLC, which assignment demonstrates a deeper level of knowledge and involvement than Oliver has led the Court to believe. The fact remains that, despite knowledge and ample opportunity, Oliver took no action to protect his interest until November 15, 2024.

Oliver's motion to intervene requests *inter alia* that the Court vacate the September 24, 2021 order which permitted Fulton to sell the Property free and clear of Oliver's Tax Sale Certificate. Oliver's Motion further seeks that Fulton be required to "disgorge" proceeds it received from the Sheriff's Sale held on March 25, 2022. Such a relief would be prejudicial to Fulton now that it is over three and a half years removed from the date of the September 24, 2021 Order and over three years from the date of the Sheriff's Sale. Moreover, the funds

from the Sheriff's Sale have long since been distributed pursuant to Orders of Court dated January 6, 2023. 015A-016A.

II. MOVANT IS NOT ENTITLED TO INTERVENE IN THIS MATTER UNDER R. 4:33-2

“Where intervention of right is not allowed, one may obtain permissive intervention under R. 4:33-2.” American Civil Liberties Union of New Jersey, Inc. v. County of Hudson, 352 N.J. Super. 44, 55, 799 A.2d 629, 635 (App. Div. 2002). The standard for permissive interventions are set forth in R. 4:33-2, which provides:

Upon **timely application** anyone may be permitted to intervene in an action if the claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state or federal governmental agency or officer, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the agency or officer upon timely application may be permitted to intervene in the action. **In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.** [emphasis added].

R. 4:33-2.

A. Movant's Motion To Intervene Was Filed Post-Judgment And Is, Therefore, Subject to a Permissive Intervention Standard Under Rule 4:33-2

New Jersey case law is clear that a holder of a tax sale certificate, who has the right to redeem, is permitted to intervene in a foreclosure by right; however, intervention after entry of final judgment to seek a vacation of a judgment is permissive only. Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 171-172 (App. Div. 2005). New Jersey Courts have denied post-judgment intervention in a foreclosure action to assert rights to surplus funds which application was made after a sheriff's sale. See Morsemere Fed. Sav. & Loan Ass'n v. Nicolaou, 206 N.J. Super. 637 (App. Div. 1986). New Jersey Courts have found that an applicant for intervention may not be made a party in a foreclosure action post-judgment. New Home Bldg. & Loan Ass'n v. Wel-Bilt Const. Co., 98 N.J. Eq. 545, 545, 131 A. 523, 523, (Ch. 1926).

In the Superior Court, Appellate Division case Town of Phillipsburg v. Block 1508, Lot 12, during the course of a municipality's foreclosure on its tax sale certificates for a certain property located in the municipality, a party obtained by assignment an interest in tax sale certificates, which were prior in time to the municipality's certificates. 380 N.J. Super. at 168. The assignee recorded its assignment with the recorder's office within four days of receipt of

the same. Id. However, the assignee, despite being aware of the pending foreclosure action, did not immediately file a motion to intervene in the foreclosure action. Id. In the interim, the municipality obtained a judgment in its foreclosure action. Id. Shortly thereafter, within three months of entry of the judgment, the assignee filed its motion to intervene and vacate judgment. Id. at 169. The Superior Court permitted the assignee to intervene reasoning that it promptly filed its motion to intervene – within three months - but denied its request to vacate the judgment. Id. On appeal, the Appellate Division noted that the assignee’s “right to intervene, in an attempt to vacate a final judgment and exercise a right of redemption, was not absolute but discretionary.” Id. at 172.

Similarly, Oliver seeks to intervene in a foreclosure action after entry of final judgment, which Fulton obtained on July 14, 2021. 013A. The relevant order at issue which Oliver seeks to vacate was entered on September 24, 2021. Aa8. Unlike the assignee in the Town of Phillipsburg v. Block 1508, Lot 12, Oliver did not file his motion to intervene timely. The trial court denied Oliver’s motion to intervene reasoning that Oliver does not have sufficient interest in the property and that Oliver did not act promptly. Aa005. The question for this Court then becomes whether the Superior Court abused its discretion in denying Oliver’s motion to intervene. For the following reasons, Fulton asserts that the trial court did not abuse its discretion.

B. Movant's Motion to Intervene Considered Under the Standard of R. 4:33-2 is Untimely and Granting of Which Would Be Prejudicial to the Existing Parties.

In determining a party's motion to intervene, the Court may consider the promptness of the motion to intervene, whether intervention will cause undue delay, and the likelihood that permitting a party to intervene will further complicate litigation. See Grober v. Kahn, 88 N.J. Super. 343 (App. Div. 1965). Courts have found that an application to intervene made fourteen months after entry of judgment untimely and granting such intervention would be prejudicial to the existing parties. Hanover v. Morristown, 118 N.J. Super. 136, 149 (Ch. Div. 1972).

Oliver's motion to intervene is certainly untimely. Oliver filed his motion to intervene over three years after entry of both the final judgment in the mortgage foreclosure action on July 14, 2021 and the Order granting Fulton's Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate. Fulton served Oliver with its Motion in 2021. Aa44. Oliver acknowledges receipt of Fulton's Motion. Aa87. Rather than respond to the Motion and attempt to intervene in the within matter, Oliver untimely recorded the Tax Sale Certificate. Aa87.

In March of 2023, Oliver acknowledges receipt of PC6REO, LLC's Motion to Set Aside Sale, Reform Sheriff's Deed, and Vacate September 24,

2021 Order. Aa88. PC6REO, LLC's motion *inter alia* sought to vacate the September 24, 2021 order. 160A. Oliver notes that upon review of PC6REO, LLC's motion he realized he may have a cognizable claim for recovery of the Tax Sale Certificate. Aa88. Despite receipt of the notice of Fulton's Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate and PC6REO, LLC's motion, Oliver took no action. Notably, Oliver's assignment of tax sale certificates to PC6REO, LLC demonstrates a deeper level of knowledge and involvement than Oliver has led the Court to believe. The fact remains that, despite knowledge and ample opportunity, Oliver took no action until November 15, 2024.

Oliver's motion to intervene requests *inter alia* that the Court vacate the September 24, 2021 order which permitted Fulton to sell the Property free and clear of Oliver's Tax Sale Certificate. Oliver's Motion further seeks that Fulton be required to "disgorge" proceeds it received from the Sheriff's Sale held on March 25, 2022. Such a relief would be prejudicial to Fulton now that it is over three and a half years removed from the date of the September 214, 2021 Order and over three years from the date of the Sheriff's Sale. Moreover, the funds from the Sheriff's Sale have long since been distributed pursuant to Orders of Court dated January 6, 2023.

C. Movant's Motion to Intervene Should be Denied as Oliver Comes to Court with Unclean Hands

The Court may deny a motion to intervene if it determines that the prospective intervening party comes to court with unclean hands, fraud, or unconscionable conduct. Goodwin Motor Corp. v. Mercedes-Benz of N.A., Inc., 172 N.J. Super. 263 (App. Div. 1980). The trial court in its Statement of Reasons provided with its January 13, 2025 order found that Oliver came to court with unclean hands. The trial court's reasoning for such finding is that Oliver failed to record the Tax Sale Certificate in a timely manner within three months as provided by N.J.S.A. 54:5-51 and failed to respond to Fulton Motion in 2021, which prompted the court to conclude that "Mr. Oliver did not come to this matter with clean hands." Aa6.

Moreover, Oliver's attempt to plead ignorance is disingenuous. In March of 2023, Oliver in his brief acknowledges receipt of PC6REO, LLC's Motion to Set Aside Sale, Reform Sheriff's Deed, and Vacate September 24, 2021 Order. PC6REO, LLC in their motion essentially advocates Oliver's position set forth in his motion to intervene and vacate judgment. Despite receipt of the notice of Fulton's Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate and PC6REO, LLC's motion Oliver took no action. Notably, Oliver's assignment of his tax sale certificates to PC6REO, LLC demonstrates a deeper level of knowledge and involvement than Oliver has led the Court to believe.

III. MOVANT DOES NOT SATISFY THE REQUIREMENTS OF R. 4:50-1(f)

Rule 4:50 *et seq.* sets forth the basis on which a party may move for relief from judgment or order. A motion for Relief under Rule 4:50-1 is "granted sparingly," and in exceptional circumstances. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The decision whether to vacate a judgment on one of the six specified grounds is a determination left to the sound discretion of the trial court, guided by principles of equity." Id. R. 4:50-1 provides for relief from a judgment in six enumerated circumstances." In re Estate of Schiffner, 385 N.J. Super. 37, 38 (App. Div. 2006).

Subsection (f) of Rule 4:50-1, under which Oliver seeks relief, provides a broad catchall category in which relief may be granted in "exceptional circumstances." See Court Invest. Co. v. Perillo, 48 N.J. 334, 341 (1966). "Rule 4:50-1(f) allows relief for any other reason justifying relief from the operation of the order or judgment." In re Estate of Schiffner, 385 N.J. Super. 37, 38, 895 A.2d 1202, 1203 (App. Div. 2006). The Court will consider the totality of circumstances in determining whether to grant relief. See In re: Guardianship of J.N.H., 172 N.J. 440, 476 (2002). The application of Rule 4:50-1(f) is limited to "situations in which were it not applied, a grave injustice would occur." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994). A *pro se* litigant's negligence does not qualify as an exceptional circumstance. Back Brook v.

Klenert, 437 N.J. Super. 90, 99-100 (App. Div. 2014). Similarly, a party's inability to afford an attorney is not considered an exceptional circumstance. In re Estate of Schiffner, 385 N.J. Super. 37, 44 (App. Div. 2006).

R. 4:50-2 sets forth the appropriate time for filing a motion for relief from judgment or order which rules provides that "[t]he motion shall be made within a reasonable time, and for reasons (a), (b), and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken." The Court will consider the totality of the circumstances in determining whether the motion for relief from judgment was filed in a reasonable time. Moore v. Hafeeza, 212 N.J. Super. 399 (Ch. Div. 1986).

Oliver's motion to vacate judgment was not filed within a reasonable time. Oliver acknowledges that he received notice of Fulton's Motion to Sell Property Free and Clear of Unrecorded Tax Sale Certificate in August of 2021. Aa87. Rather than file a response to Fulton's motion, Oliver untimely submitted the Tax Sale Certificate for recording. Aa87. Oliver states that he did not understand the ramifications of Fulton's motion. Aa87-Aa88. However, *pro se* litigants are held to the same standards as attorneys. See Tuckey v. Harleysville Insurance Co., 236 N.J. Super. 221, 565 A.2d 419 (App. Div. 1989). Oliver further states he was unable to retain an attorney at that time. Aa87. Oliver offers no factual circumstances which precluded him from timely filing a motion to vacate

judgment. Oliver only offers vague self-serving allegations that he was unsure of the nature of the proceedings or was unable to hire an attorney – neither of which are exceptional circumstances under Rule 4:50-1(f).

In or around April of 2023, Oliver acknowledges that he received service of PC6REO, LLC’s Motion to Set Aside Sale, Reform Sheriff’s Deed, and Vacate September 24, 2021 Order. Aa88. Oliver states that it was at this time he realized that he may have a cognizable claim for recovery against either Fulton or Apple Mountain. Aa88. Yet, for twenty months following receipt of PC6REO, LLC’s motion, Oliver took no action.

CONCLUSION

For the foregoing reasons, Respondent, Fulton Bank, N.A., requests that Appellant Deane Oliver's appeal be denied.

Respectfully submitted,

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