

NIESCHMIDT LAW OFFICE
Attorney ID No.: 019121994
412 MONMOUTH STREET
HIGHTSTOWN, NEW JERSEY 08520
(609) 426-8807

NLO_LITIGATION@YAHOO.COM

ATTORNEY FOR APPELLANT/DEFENDANT WALTER SCHOENEFELD

	)	SUPERIOR COURT OF NEW
WILMINGTON SAVINGS FUND	)	JERSEY
SOCIETY, FSB NOT	)	APPELLATE DIVISION
INDIVIDUALLY, BUT SOLELY	)	DOCKET NO.: A-001667-24
AS TRUSTEE FOR RESIDENTIAL))	
MORTGAGE AGGREGATING TRUST)	)	CIVIL ACTION
)	
RESPONDENT/PLAINTIFF,	)	ON APPEAL FROM:
	)	SUPERIOR COURT OF NEW
V.	)	JERSEY - MERCER COUNTY
	)	DOCKET NO.: MER-F-9457-23
WALTER SCHOENEFELD, HIS/)	
HER HEIRS, DEVISEES AND	)	SAT BELOW: PATRICK J.
PERSONAL REPRESENTATIVES,	)	BARTELS, P.J.CH.
AND HIS/HER/THEIR OR ANY)	
OF THEIR SUCCESSORS IN)	
RIGHT, TITLE AND INTEREST,))	
MR. OR MRS. SCHOENEFELD)	
HUSBAND OR WIFE OF WALTER)	
SCHOENEFELD, THE SPOUSE,)	
DOMESTIC PARTNER OR CIVIL)	
UNION PARTNER OF WALTER)	
SCHOENEFELD,)	
)	
APPELLANT/DEFENDANT.	)	Submitted September 10,
	)	2025

APPELLANT' S/DEFENDANT' S LEGAL MEMORANDUM

On the Brief,

Michael H. Nieschmidt, Esq.

TABLE OF CONTENTS

TABLE OF CONTENTS.....3

TABLE OF TRANSCRIPTS.....4

TABLE OF JUDGMENTS, ORDERS AND RULINGS.....4

TABLE OF CITATIONS.....4

PROCEDURAL HISTORY.....6

STATEMENT OF FACTS.....9

LEGAL ANALYSIS.....16

I. THE TRIAL COURT ERRED IN FAILING TO CONTACT KEENAN OR DEFENDANT TO ASCERTAIN WHY THEY WERE NOT PRESENT AT THE JANUARY 21, 2025 STATUS CONFERENCE, AND TO RESOLVE THE SUBSTANTIAL DISPARITY IN PAYMENT NUMBERS. (Not Raised Below).....16

II. THE TRIAL COURT ERRED IN FAILING TO RECTIFY THE TRIAL COURT’S FAILURE TO SCHEDULE THE 1/22/25 MOTION FOR DISPOSITION PRIOR TO THE SHERIFF’S SALE, INSTEAD DENYING DEFENDANT ANY RELIEF.. (Da 24a-26a).....19

CONCLUSION.....21

TABLE OF TRANSCRIPT(S)

1T - Motion Hearing - January 6, 2025

2T - Status Conference - January 21, 2025

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Order, January 7, 2025.....Da 8a

Order Denying Stay of Sheriff's Sale, January 21, 2025.....Da 7a

Order Denying Motion to Stay Sheriff's Sale, January 23, 2025.....Da 18a

TABLE OF CITATIONS

STATUTES, REGULATIONS AND RULES OF COURT

R. 1:6-6.....17

R. 2:10-2.....19

R. 4:65-5.....20

CASES

Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc.,
1239 N.J. 499, 517 (1995).....18

Brisco v. O'Connor, 115 N.J. Eq. 360, 364-365 (Ch.
Div. 1934).....21

Britton v. Royal Arcanum, 46 N.J. Eq. 102, 112 (Ch.

Div. 1889)21

Connors v. Secton Studios, Inc., 270 N.J. Super. 390
(App. Div. 1994)18

Lombardi v. Masso, 207 N.J. 517, 542 (2011).17

Sears Roebuck & Co., 124 N.J. Eq. 403, 412 (E & A
1938)21

TREATISES

PROCEDURAL HISTORY

Plaintiff is Wilmington Savings Fund Society ("Plaintiff"). Defendant is Walter Schoenefeld ("Defendant"). Plaintiff was the owner of residential real property located at 57 Birch Avenue, Princeton, New Jersey 08540 ("Property"). Da 25a. Secondary to Plaintiff's Complaint in Foreclosure, Plaintiff obtained a July 2, 2024 Final Judgment For Foreclosure with Taxing of Costs in the total amount of \$1,019,498.32. Da 21a-23a.

Secondary to Defendant's December 6, 2024 Motion to Stay Sheriff's Sale ("12/6/24 Motion"), the Trial Court held oral argument on January 6, 2025 ("1/6/25 Hearing") and issued a January 7, 2025 Order directing Defendant to serve Plaintiff's counsel with documents confirming payments made, Staying the Sheriff's Sale, and scheduling a Status Conference for January 21, 2025. Da 8a.

Secondary to a January 21, 2025 Status Conference,

the Court Denied the 12/6/24 Motion. Da 7a. On January 22, 2025 Defendant filed a Motion to Stay Sheriff's Sale scheduled for 2:00 p.m. the same day ("1/22/25 Motion"). Da 24a-26a. The Trial Court did not upload or file the 1/22/25 Motion in the Trial Court's docket, or schedule the disposition thereof, until January 23, 2025. Da 31a. By Order dated January 23, 2025 the Trial Court Denied Defendant's application "given the sale occurred" the previous day. Da 18a.

Defendant filed a Notice of Appeal with Case Information Statement *pro se* on February 7, 2025. Da 1a-8a. Defendant filed another Notice of Appeal *pro se* on February 27, 2025. Da 9-12a. Transcripts for the January 21, 2025 Status Conference were delivered to the Court on March 27, 2025. Da 19a.

Nieschmidt Law Office, Michael H. Nieschmidt, Esq., entered an Appearance on Defendant's behalf on June 9, 2025. Da 13a. Defendant filed an Amended Case

Information Statement on July 2, 2025. Da 14a-18a.

STATEMENT OF FACTS

Plaintiff is Wilmington Savings Fund Society ("Plaintiff"). Defendant is Walter Schoenefeld ("Defendant"). Plaintiff was the owner of residential real property located at 57 Birch Avenue, Princeton, New Jersey 08540 ("Property"). Da 25a. Secondary to Plaintiff's Complaint in Foreclosure, Plaintiff obtained a July 2, 2024 Final Judgment For Foreclosure with Taxing of Costs in the total amount of \$1,019,498.32. Da 21a-23a.

Defendant filed the 12/6/24 Motion seeking a Stay of Sheriff's Sale. Da 30a. The Trial Court held oral argument at the 1/6/25 Hearing. 1T. Plaintiff's counsel appearing was Frank Keenan, Esq. Of the KLM Law Group ("Keenan"). T1 4:7-9. Defendant appeared *pro se* by telephone. 1T 4:10-11.

At the 1/6/2025 Hearing, Defendant represented that Defendant retained the Keaveney Law Group ("KLG") to represent Defendant in the foreclosure matter, paid KLG

\$5,280, and received zero representation from KLG. 1T 5:10-22. Defendant testified that Defendant paid Plaintiff approximately \$59,000 during the pendency of the Trial Court matter. 1T 5:7-8. Defendant's calculations indicated the reinstatement amount should be approximately just shy of \$70,000. 1T 5:13-15. Defendant testified that Defendant was in a position to bring the loan current, needed Plaintiff to provide the amount required to bring the loan current, and had requested this from Fay Servicing ("Fay"), Plaintiff's loan servicer. 1T 5:9-10. Defendant stated that Fay represented to Defendant that once Defendant brought the loan current, no sheriff's sale would take place. 1T 5:11-13.

Keenan represented that Plaintiff's records indicated a reinstatement amount in excess of \$1,000,000. 1T 6:18-19. Defendant represented that \$1,000,000 was incorrect. 1T 6:18-19.

The Trial Court asked Keenan when Defendant had

made the most recent payment to Plaintiff. 1T 8:19-21. Keenan represented that the most recent payment was May of 2022. 1T 8:23. Defendant represented that Defendant made \$67,000 in payments to Fay during the foreclosure litigation. 1T 9:21. Keenan represented that he knew nothing about any payments to Fay. 1T 10:4-8.

The Trial Court noted its confusion on the issue of payments made. 1T 12-13. The Trial Court noted Defendant's unfortunate issue with KLG, KLG's withdrawal and Defendant's *pro se* status. 1T 10:10-18. The Trial Court observed that it sounded as though Defendant made substantial payments to Plaintiff. 1T 10:19-20.

The Trial Court indicated that Keenan should find out who Defendant has been paying, as that might impact the Court's disposition of the 12/6/24 Motion. 1T 11:4-8. Keenan inquired of the Court as to whether Defendant could supply the Court or Keenan with record

of payments made. 1T 11:9-12. The Trial Court agreed with Keenan and implemented a process wherein Defendant would contact Keenan and provide Keenan with the proofs of payments to Fay, and the parties would attempt to resolve the issue. 1T 11:13-14. 1T 11:22-12:2. The Trial Court adjourned the sheriff's sale pending a review of the payments issue with the parties after the exchange of information. The Trial Court then scheduled a Status Conference for January 21, 2025 ("Conference"). 1T 11:24-25. 1T 12:7-15. 1T 13:9-17. 1T 18:6-19:12.

h. Keenan and Defendant exchanged contact information to accomplish the Court's directives. 1T 12:5-6. 1T 14:16-18:5.

Keenan did not appear for Plaintiff at the Conference, nor did Defendant, for reasons which are not in the record. 2T 4:8-14. Richard Abel, Esq. ("Abel") appeared for Plaintiff. 2T 4:8-9. The Trial Court noted the process of information exchange

detailed at the 1/6/25 Hearing, and that the Conference was for the purpose of discussing the status of the case. 2T 4:18-20.

The Trial Court asked Abel how Abel wanted to proceed. 2T 4:21-22. Abel represented that the sheriff's sale has been delayed for two months. 2T 5:13-14. Abel represented that Abel "wasn't entirely sure until about five minutes ago what was even going on with this supposed attempt to reinstate". 2T 5:14-17. Abel represented that Defendant "apparently sent Plaintiff eleven different checks totaling \$42,000 and change". 2T 17-18. Abel represented that "[t]he reinstatement amount, the last reinstatement figure that was provided on December 23rd, is \$140,000 plus. My client has advised us they are returning all of the checks because it's not nearly enough to reinstate the loan." 2T 5:19-23. Abel stated that Plaintiff objected to any further stays because "[t]his matter shows sufficient income", "the loan previously modified

the foreclosure", the mortgage amount is \$585,000 total debt for the loan right now almost double the original of the mortgage, and [Defendant] not appearing". 2T 6:1-9.

The Trial Court did not inquire as to why Keenan was not present, if the parties had complied with the Court's directives from the 1/6/25 Hearing concerning document exchanges and discussions, and if so, the outcome of that procedure. 2T. The Trial Court held that, for the reasons Abel placed on the record, the Trial Court would Grant Plaintiff's application to proceed with the sheriff's sale scheduled for January 22, 2025 at 2:00 p.m. 2T 6:10-7:1.

On January 22, 2025 Defendant filed the 1/22/25 Motion seeking to Stay Sheriff's Sale, noting thereon that the sale was scheduled for 2:00 p.m. that afternoon. Da 25a. Defendant certified that Defendant had made \$109,095.04 in payments to Fay through January 16, 2025, Fay had only credited Defendant for a far

smaller amount, and that Defendant needed Fay to give Defendant an exact accounting so that Defendant could reinstate the loan. Defendant requested an adjournment of the sheriff's sale to February 22, 2025. Da 25a.

For reasons which are not part of any record, the 1/22/25 Motion was not uploaded into the Trial Court's docket until May 23, 2025, with an incorrect filing date of May 23, 2025. Da 31a. The Trial Court did not entertain the 1/22/25 Motion until May 23, 2025, at which time the Trial Court Denied the application "given the sale occurred and the property sold to a third party". Da 18a. No record exists of the disposition of the 1/22/25 Motion except for the Trial Court's one page Order.

LEGAL ANALYSIS

I. THE TRIAL COURT ERRED IN FAILING TO CONTACT KEENAN OR DEFENDANT TO ASCERTAIN WHY THEY WERE NOT PRESENT AT THE JANUARY 21, 2025 STATUS CONFERENCE, AND TO RESOLVE THE SUBSTANTIAL DISPARITY IN PAYMENT NUMBERS.

The Record in this matter is bereft of what occurred in three (3) critical areas.

First, the record fails to indicate why Keenan and Defendant both did not appear at the Conference.

Keenan and Defendant were the individuals personally tasked by the Trial Court with implementing the Trial Court's procedure for resolving the payments issue.

One is left to wonder as to why both Keenan and Defendant did not appear.

Second, at the 1/6/25 Hearing the Trial Court implemented a directive for Keenan and Defendant to exchange payment documents and have communications to resolve the payments issue. At the Conference, the Trial Court did not attempt to ascertain the specific results from its directive at the 1/6/25 Hearing. Nor

did the Trial Court address the substantial discrepancies in the payments and reinstatement amounts as stated by Defendant and Keenan at the 1/6/25 Hearing, nor how those facts were also both markedly different than the payment and reinstatement facts to which Abel testified after only learning of the issue five (5) minutes prior to the Conference.

In Denying the 12/6/24 Motion at the Conference, the Trial Court essentially granted Summary Judgment to Plaintiff without a proper record as had unfolded at that point in time, and without construing the facts in the light most favorable to Defendant. *Lombardi v. Masso*, 207 N.J. 517, 542 (2011). The Trial Court's error included the Trial Court's acceptance of Abel's representations on the record about payments and reinstatement amounts though same were inadmissible for failing to comport with the requirements of R. 1:6-6.

In directing that the sheriff's sale proceed on January 22, 2025, the Trial Court *de facto* stripped

Defendant of the rightful opportunity to have the payments issue resolved. This was akin to a *with prejudice* dismissal for a discovery violation or a failure to appear violation. The Trial Court's treatment of Defendant's rights was an abuse of discretion. See, e.g., *Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc.*, 1239 N.J. 499, 517 (1995).

In the instant matter, the Trial Court had an obligation to at the very least inquire as to the open issues from Keenan and/or Defendant, prior to closing the Courthouse doors to Defendant. The sanction of allowing the sheriff's sale to proceed, resulting in Defendant's permanent loss of Defendant's property, was far, far too severe given the record in this case and a *pro se* litigant. *Connors v. Secton Studios, Inc.*, 270 N.J. Super. 390 (App. Div. 1994). Defendant was very participatory as may be gleaned from the Trial Court docket report, the transcript of the 1/6/25 Hearing and the filing of 1/22/25 Motion. 1T. This was not a

situation where a litigant who had not actively participated failed to show up at the only hearing.

Far from it.

II. THE TRIAL COURT ERRED IN FAILING TO RECTIFY THE TRIAL COURT'S FAILURE TO SCHEDULE THE 1/22/25 MOTION FOR DISPOSITION PRIOR TO THE SHERIFF'S SALE, INSTEAD DENYING DEFENDANT ANY RELIEF. Third, the record does not contain any information as to why the filed 1/22/25 Motion was not marked as filed in the Trial Court's docket, or scheduled for disposition, until January 23, 2025, subsequent to the sheriff's sale.

In failing to timely schedule and hear argument on the 1/22/25 Motion, the Trial Court committed reversible, plain error, which was of such a nature as to have been clearly capable of producing an unjust result. R. 2:10-2. The record in this matter establishes that the Trial Court should have provided a more just and equitable process than that which Defendant received.

The deed from the sheriff's sale could not be delivered to the successful purchaser until ten (10) days after the sheriff's sale. R. 4:65-5. Thus, the Trial Court erred in Denying the 1/22/2025 Motion simply based on the occurrence of the sheriff's sale the prior day. The Trial Court had the right to vacate the sheriff's sale under the facts and circumstances of this case if Defendant was properly making payments, or if there existed sufficient equity in the property to sell and payoff the lender. Those were factual issues for which Defendant did not receive the opportunity of a disposition despite timely filing the 1/22/25 Motion.

Upon a Remand, the Trial Court will be capable of fashioning a just and equitable remedy. It is not up to this Court to decide what an appropriate remedy will be in this case. That will be the province of the Trial Court upon Remand. Where there is a civil wrong, there ought to be a remedy; if the law provides none, equity may take jurisdiction in order to correct the

injustice. *Britton v. Royal Arcanum*, 46 N.J. Eq. 102, 112 (Ch. Div. 1889). An absence of precedent does not preclude an equity court from granting such relief as the circumstances require. *Brisco v. O'Connor*, 115 N.J. Eq. 360, 364-365 (Ch. Div. 1934). "A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence - either of primary right or of remedy merely." *Sears Roebuck & Co.*, 124 N.J. Eq. 403, 412 (E & A 1938).

CONCLUSION

Based upon the above facts and law, Defendant respectfully requests that the Court Reverse the Trial Court's Orders of January 21, 2025 and January 23, 2025 and Remand this matter to the Law Division-General Equity Part for issuance of Case Management Order and proper disposition of the open issues.

Respectfully submitted,

NIESCHMIDT LAW OFFICE

/s/ Michael H. Nieschmidt

For the Firm,

Michael H. Nieschmidt, Esq.

cc: Emmanuel Joseph Argentieri, Esq. via eCourts

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001667-24

WILMINGTON SAVINGS FUND SOCIETY,
FSB NOT INDIVIDUALLY, BUT SOLELY
AS TRUSTEE FOR RESIDENTIAL
MORTGAGE AGGREGATION TRUST;

Plaintiff-Respondent,

CIVIL ACTION

VS.

WALTER SCHOENFELD;
PIYAMAPORN SCHOENFELD

Defendant-Appellant

On Appeal from January 21, 2025
and January 23, 2025 Orders
Dissolving Temporary Restraints
and Denying Motion for a Stay of
Sale by Superior Court of New
Jersey, Chancery Division- Mercer
County, Docket No. F-9457-23

Sat Below Hon. Patrick J. Bartels
P.J.CH.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT WILMINGTON
SAVINGS FUND SOCIETY, FSB NOT INDIVIDUALLY, BUT SOLELY
AS TRUSTEE FOR RESIDENTIAL MORTGAGE AGGREGATION TRUST

Emmanuel J. Argentieri, Esquire
Attorney ID # 000481991
ROMANO GARUBO & ARGENTIERI
Counselors at Law, LLC
52 Newton Avenue
Woodbury, New Jersey 08096
(856) 384-1515
eargentieri@rgalegal.com
Attorney for Plaintiff-Respondent

TABLE OF CONTENTS

	Page
Preliminary Statement	2
Procedural History and Statement of Facts	3
Legal Argument	
I. THE APPEAL BEFORE THE COURT HAS BEEN RENDERED MOOT AND SHOULD BE DISMISSED BY VIRTURE OF THE PROPERTY BEING SOLD AT SHERIFF SALE ON JANUARY 22, 2025 AND THE DELIVERY OF THE SHERIFF DEED TO THE BUYER AT SALE.....	6
II. IN THE EVENT THIS APPEAL IS NOT DISMISSED FOR BEING MOOT THE TRIAL COURT PROPERLY DISSOLVED THE TEMPORARY RESTRAINTS ENTERED ON DECEMBER 9, 2024 TO ENABLE THE JANUARY 22, 2025 SHERIFF SALE TO BE HELD AND THE LOWER COURT PROPERTY DENIED DEFENDANT-APPELLANT’S MOTION FOR STAY OF A SALE WHICH ALREADY OCCURRED A DAY EARLIER AND THUS THE TWO LOWER COURT RULINGS SHOULD BE AFFIRMED.....	7
A). THE TRIAL COURT’S JANUARY 21, 2025 ORDER DENYING DEFENDANT-APPELLANT’S DECEMBER 6, 2024 MOTION FOR A STAY OF SHERIFF SALE AND DISSOLVING OF THE TEMPORARY RESTRAINTS ORIGINALLY ISSUED DECEMBER 10, 2024 SHOULD BE AFFIRMED.....	8

B). THE TRIAL COURT’S JANUARY 23, 2025 ORDER DENYING DEFENDANT-APPELLANT’S MOTION TO STAY THE JANUARY 22, 2025 SHERIFF SALE SHOULD BE AFFIRMED.....	13
Conclusion	14

TABLE OF AUTHORITIES

Cases

City of Atl. City v. Trupos
201 N.J. 447, 463, 992 A.2d 762 (2010)..... 8

Crowe v. DeGioia
90 N.J. 126 (1982).....10,11

Deutsche Bank National Trust Company v. Mitchell,
422 N.J. Super 214, 222 (App. Div. 2011) 7

Hardyston Nat’l Bank of Hamburg v. Tartamella
56 N.J. 508 (1970) 13

Hisenaj v. Kuehner
194 N.J. 6, 12, 942 A.2d 769 (2008) 8

Joye v. Hunterdon Cent Reg’l High Sch. Bd. of Educ.
176 N.J. 568, 583 (2003)7

Lombardi v. Masso
207 N.J. 517, 542 (2011)11

Marjarum v. Township of Hamilton
336 N.J. Super. 85, 92 (App. Div. 2000)6

Rubin v. Rubin
188 N.J. Super. 155, 159, 457 A.2d 12, 14 (App. Div. 1982).....12,13

State v. Gartland
149 N.J. 456, 464 (1997).....6

State v. Harvey
176 N.J. 522, 528 (2003).....6

Waste Mgmt. v. Union County Utils.
399 N.J. Super. 508, 519-520 (App. Div. 2008).....10

Preliminary Statement

The pending appeal arises out of a mortgage foreclosure action against the Defendant-Appellant's former investment rental property commonly known as 57 Birch Avenue, Princeton, NJ ("Property").

Defendant-Appellant is appealing two Orders entered by the trial Court; to wit; the lower Court's January 21, 2025 Order which dissolved temporary restraints issued in the lower Court's Order entered December 10, 2024 pursuant to Defendant-Appellant's Order to Show Cause to Stay a December 11, 2024 sale Plaintiff-Respondent had pending and the lower Court's January 23, 2025 Order which denied Defendant-Appellant's Motion filed on January 23, 2025 to stay the January 22, 2025 sheriff sale of Plaintiff-Respondent. [Da 7a and Da 18a]. Defendant-Appellant only attached the Orders of January 21, 2025 and January 23, 2025 without the court's reasons for same which he requested through counsel on July 3, 2025. [Pa001-Pa007]. The property was sold at the January 22, 2025 Mercer County sheriff sale to JB REO LLC and NJ Master 1 LLC ("TPP") for a prevailing bid of \$747,600.00.

The sheriff delivered his deed to the TPP which was recorded of public record on February 5, 2025 in DB 6582, page 137 et. seq., instrument #2025004100. [Pa008-Pa016]. TPP is the legal owner of the property pursuant to the aforesaid sheriff deed and the sheriff disbursed the sale proceeds of the

January 22, 2025 sale to Plaintiff-Respondent. No motion to vacate the January 22, 2025 sheriff sale was filed by Defendant-Appellant.

Procedural History and Statement of Facts¹

On July 24, 2007, Defendant-Appellant executed a Note in favor of Plaintiff-Respondent's predecessor-in-interest Chase Bank USA, N.A., a National Association in the principal amount of \$585,000.00 secured by a mortgage of same date and amount against the property. [Pa017-Pa046]. Plaintiff-Respondent became holder of the note and mortgage pursuant to a series of Assignments which were recorded with the Clerk of Mercer County. [Pa047-Pa064]. Defendant-Appellant defaulted under the note and mortgage effective with the May 1, 2022 payment and foreclosure commenced on August 8, 2023 with the filing of a foreclosure complaint. [Pa065-Pa083; Pa069 at ¶9]. On July 2, 2024 a final judgment in foreclosure was entered in favor of Plaintiff-Respondent in the amount of \$1,011,174.32 together with taxed costs of \$8,324.00. [Da 21a - Da-23a].

A sheriff sale was scheduled for December 11, 2024 but was stayed until January 9, 2025 by Court Order entered December 10, 2024 pursuant to an

¹ Plaintiff-Respondent has combined the Procedural History and Statement of Facts into one section in this brief as the two topics are inextricably woven and related such that combination of the two sections into one provides for a more fluid, efficient, and cogent recitation of this matter's procedural history and relevant facts.

application filed by Defendant-Appellant to stay said sale on December 6, 2024. [Pa084-Pa088]. The Court further set a status conference on January 6, 2025 to determine, presumably, if the temporary restraints enjoining Plaintiff-Respondent's sheriff sale would continue.²

On January 6, 2025, Defendant-Appellant appeared *pro se* at the status conference via zoom link as did Plaintiff-Respondent's counsel the firm of KML Law Group, P.C., Frank Keenan, Esq., appearing. Defendant-Appellant represented to the Court that he discharged his counsel. [1T page 4 line 2 to page 5 line 6]. The parties engaged in a colloquy with the Court, the essence of which, revolved around Defendant-Appellant's claim that he tendered sufficient funds to reinstate his mortgage account and cure the default. Based on the Defendant-Appellant's claims, the Court directed the parties to discuss the matter and for Defendant-Appellant to submit his alleged proof of payments to Plaintiff-Respondent.³ [1T page 10 line 12 to page 11 line 22]. The Court continued the injunction as to Plaintiff-Respondent's sale until January 22, 2025 pending the next status conference. The Court directed the

² Defendant-Appellant was represented by the Keaveney Legal Group LLC, Warren Levy, Esq. appearing, at the December 9, 2024 hearing on Defendant-Appellant's Order to Show Case to Stay the December 11, 2024 sale. [Pa003].

³ Plaintiff's servicing agent was Fay Financial LLC.

parties to appear for another status conference on January 21, 2025 to determine how the matter would proceed. [1T page 18 line 10 to line 18].

On January 21, 2025, Plaintiff-Respondent appeared at the status conference but Defendant-Appellant acting *pro se* did not appear despite being provided with a zoom link. [P007].

Plaintiff-Respondent's attorney represented to the Court that Defendant-Appellant had only tendered approximately \$42,000.00 in an attempt to cure a mortgage default that was in arrears in excess of \$140,000.00.⁴ [2T line 5 to line 23]. Accordingly, Plaintiff-Respondent requested that the injunctive relief issued pursuant to Defendant-Appellant's December Order to Show Cause be dissolved so its sale could be held on January 22, 2025. The Court granted Plaintiff-Respondent's request and dissolved the temporary injunction to enable the sheriff sale to occur. [2T line 10 to line 19; Da 7a and Pa002-Pa007].

As previously noted, the property was sold to the TPP at the January 22, 2025 sheriff sale. On January 23, 2025, Defendant-Appellant filed a motion to stay the sale. [Da 24a – Da 26a].⁵ The lower Court denied the motion on

⁴ The \$42,000.00 was returned to Defendant-Appellant by Plaintiff-Respondent. [2T line 21 to line 23].

⁵ Though the motion appears to have a January 22, 2025 time stamp "received" the cover page notes that a required filing fee was not received until January 23, 2025.

January 23, 2025 since it was mooted by the sale being completed on January 22, 2025. [Da 18a; Pa002-Pa007]. Defendant-Appellant thereafter filed the appeal *sub judice*.

Legal Argument

I. THE APPEAL BEFORE THE COURT HAS BEEN RENDERED MOOT AND SHOULD BE DISMISSED BY VIRTUE OF THE PROPERTY BEING SOLD AT SHERIFF SALE ON JANUARY 22, 2025 AND THE DELIVERY OF THE SHERIFF DEED TO THE BUYER AT SALE.

The subject property was purchased by TPP at the sheriff sale conducted January 22, 2025. The sheriff thereafter delivered his deed to the TPP. Thus, Defendant-Appellant has no interest in the property as TPP is the legal owner and vested with title. Pursuant to this event, Defendant-Appellant's appeal has been rendered moot. It is well settled in this jurisdiction that an appeal will be considered moot when due to attendant circumstances a court is unable to grant judicial relief. See, *Marjarum v. Township of Hamilton*, 336 N.J. Super. 85, 92 (App. Div. 2000). Our courts do not regard this principal lightly and endeavor to avoid rendering "advisory opinions or [the] exercise of... jurisdiction in the abstract. See, *State v. Harvey*, 176 N.J. 522, 528 (2003) (quoting *State v. Gartland*, 149 N.J. 456, 464 (1997)).

Until the filing fee is paid the motion would not be filed.

An exception to this fundamental principal of appellate review is that an appeal will be reviewed despite its mootness if “significant issues of public import appear.” *See, Deutsche Bank National Trust Company v. Mitchell*, 422 N.J. Super 214, 222 (App. Div. 2011) (quoting *Joye v. Hunterdon Cent. Reg’l High Sch. Bd. of Educ.* 176 NJ 568, 583 (2003)).

Clearly from the record before the Court this case does not have “significant issues of public import.” This matter is a foreclosure action between two parties which has no impact on the public at large or public policy. Accordingly, Plaintiff-Respondent requests that Defendant-Appellant’s appeal be dismissed and/or denied with prejudice as being moot and that this Court affirm the Orders entered by lower Court on January 21, 2025 and January 23, 2025.

II. IN THE EVENT THIS APPEAL IS NOT DISMISSED FOR BEING MOOT THE TRIAL COURT PROPERLY DISSOLVED THE TEMPORARY RESTRAINTS ENTERED ON DECEMBER 9, 2024 TO ENABLE THE JANUARY 22, 2025 SHERIFF SALE TO BE HELD AND THE LOWER COURT PROPERLY DENIED DEFENDANT-APPELLANT’S MOTION FOR A STAY OF A SALE WHICH ALREADY OCCURRED A DAY EARLIER AND THUS THE TWO LOWER COURT RULINGS SHOULD BE AFFIRMED.

Plaintiff-Respondent contends that both lower Court Orders being appealed by Defendant-Appellant should be affirmed pursuant to the facts of

record and controlling decisional law. Defendant-Appellant has presented no facts or law to warrant the pending appeal.

It is well-settled that “[i]n reviewing a trial court’s evidential ruling an appellate court is limited to examining the decision for abuse of discretion” *Hisenaj v. Kuehner*, 194 N.J. 6, 12, 942 A.2d 769 (2008). Likewise, the appellate review of legal conclusions reached by a lower court [is] subject to de novo plenary appellate review *City of Atl. City v. Trupos*, 201 N.J. 447, 463, 992 A.2d 762 (2010).

Against the long controlling legal principals cited above, Defendant-Appellant has failed to establish either an abuse of discretion by the lower Court in entering the two Orders being appealed or an error of law in rendering the subject decisions as is stated below. Thus, this appeal should be denied or dismissed with prejudice.

A). THE TRIAL COURT’S JANUARY 21, 2025 ORDER DENYING DEFENDANT-APPELLANT’S DECEMBER 6, 2024 MOTION FOR A STAY OF SHERIFF SALE AND DISSOLVING OF THE TEMPORARY RESTRAINTS ORIGINALLY ISSUED DECEMBER 10, 2024 SHOULD BE AFFIRMED.

On December 6, 2024, Defendant-Appellant filed a motion for a stay of the Plaintiff-Respondent sheriff sale. [Pa084-Pa087]. At a hearing conducted on December 9, 2024, at which Plaintiff’s counsel did not appear, the Court

issued a temporary injunction or stay of the sheriff sale which was scheduled for December 11, 2024 and continued the hearing for January 6, 2025. Likewise, the sheriff sale was adjourned to January 9, 2024. [Pa088]. Defendant-Appellant was represented by counsel Warren Levy at the December 9, 2024 hearing. *Supra* Footnote 2.

At the January 6, 2025 hearing Defendant-Appellant made representations to the Court that he had made significant payments to Plaintiff-Respondent to in effect cure his mortgage default. Based on the representations, the Court continued the temporary restraints concerning Plaintiff-Respondent's sheriff sale. The Court directed the parties to review proof of payment alleged by Defendant-Appellant and to report back to the Court on January 21, 2025. The sheriff sale was continued until January 22, 2025. [1T page 10 line 12 to page 11 line 22].

Defendant-Appellant failed to appear at the January 21, 2025 hearing. Plaintiff-Respondent's counsel did appear and reported to the Court that Defendant-Appellant had made approximately \$42,000.00 in payments but the amount required to cure the default totaled approximately \$140,000.00. Accordingly, the \$42,000.00 tendered by Defendant-Appellant was being returned to Defendant-Appellant. Counsel for Plaintiff-Respondent also requested that the restraints issued at the December 9, 2024 hearing on

Defendant-Appellant's motion for a stay of the sheriff sale be dissolved so Plaintiff-Respondent could have its sale conducted by the sheriff of Mercer County on January 22, 2025. The Court based on the record before it concurred and dissolved its restraints enjoining Plaintiff-Respondent from conducting its sheriff sale of the property. [2T page 5 line 9 through 2T line 19; Da 7a and Pa002-Pa007].

In rendering its ruling and dissolving the temporary restraints the trial Court held that Defendant-Appellant failed to satisfy the elements for injunctive relief stated in *Crowe v. DeGioia*, 90 N.J. 126 (1982). For injunctive relief to issue and/or continue a litigant must establish the following:

1. The applicant must show injunctive relief is necessary to prevent irreparable harm;
2. The applicant must establish that the legal right underlying the claim is unsettled;
3. The applicant must establish a likelihood of success on the merits of the appeal; and
4. The relative hardships to the parties reveals that a greater harm would occur if a stay is not granted than if it were. *Id.* at 133.

In particular, the Court determined Defendant-Appellant failed to satisfy a showing of a well-settled legal right. [Pa007]. Failure to satisfy one of the four requirements of *Crowe* is grounds to deny injunctive relief. *Waste Mgmt. v. Union County Utils.*, 399 N.J. Super. 508, 519-520 (App. Div. 2008).

Moreover, the elements for injunctive relief to issue or continue must be established clearly and convincingly. *Id.* at 520. Because continued injunctive relief required Defendant-Appellant to satisfy all four prongs of *Crowe*, and he did not, the lower Court correctly denied a continuance of a stay of the Plaintiff-Respondent's January 22, 2025 sheriff sale.

In Defendant-Appellant's brief, at page 17 he argues that the lower Court in rendering its January 21, 2025 decision erred as a matter of law by not construing facts in the light most favorable to Defendant-Appellant relying on *Lombardi v. Masso*, 207 N.J. 517, 542 (2011). However, Defendant-Appellant's position is not only without merit, it ignores the procedural posture and standard of review warranted at that juncture of this case.

The lower Court's ruling was not in the context of summary judgment. The ruling occurred in the context of a motion for injunctive relief. Thus, the correct legal standard to review the facts was that of *Crowe*, not *Lombardi*. The lower Court correctly held that based on the record before it, that Defendant-Appellant failed to satisfy the more stringent requirements for injunctive relief to issue or continue and the Court properly denied the continuation of an injunction dissolving the restraints issued in its December 10, 2024 Order to enable Plaintiff-Respondent to proceed with its sheriff sale on January 22, 2025.

Defendant-Appellant also contends that the Court erred in rendering a decision at the January 21, 2025 hearing because neither Defendant-Appellant nor counsel appearing at the January 6, 2025 hearing for the Plaintiff-Respondent were present. This position lacks merit. Plaintiff-Respondent's attorney appeared. It may not have been the same attorney at the firm but it was a firm attorney who had knowledge of the facts the Court wanted explored in its directive at the conclusion of the January 6, 2025 hearing. On the contrary, Defendant-Appellant simply chose not to attend the January 21, 2025 hearing to prosecute his case despite being on notice of same.

Defendant-Appellant argues that the Court had a duty to require the attorney appearing at the January 6, 2025 hearing for Plaintiff-Respondent and Defendant-Appellant to appear before the Court before issuing the January 21, 2025 Order dissolving the restraints staying the sheriff sale. Defendant-Appellant argues that by not doing so the Court in effect sanctioned Defendant-Appellant who was a *pro se* litigant. Appellant's brief at p. 18. Once again, Defendant-Appellant asserts a specious position not supported by the record in this case or controlling law. Our courts have long held that while *pro se* litigants are entitled to no less a degree of procedural solicitude than are represented litigants, so too is it true that *pro se* litigants are entitled to no greater rights than are litigants who are represented. *See; Rubin v. Rubin*, 188

N.J. Super. 155, 159, 457 A.2d 12, 14 (App. Div. 1982). In essence if you chose to proceed *pro se* you do so at your own risk.⁶

Accordingly, Plaintiff-Respondent respectfully submits that the lower Court's January 21, 2025 Order should be affirmed and Defendant-Appellant's appeal denied with prejudice.

B). THE TRIAL COURT'S JANUARY 23, 2025 ORDER DENYING DEFENDANT-APPELLANT'S MOTION TO STAY THE JANUARY 22, 2025 SHERIFF SALE SHOULD BE AFFIRMED.

This aspect of Defendant-Appellant's appeal is also void of any merit. The subject motion and resulting January 23, 2025 Order on appeal were filed after the sale concluded on January 22, 2025. Consequently, there was no sale to stay as the sale concluded a day earlier.⁷ It is well-settled under New Jersey law that once a sale is held the buyer is vested with equitable title subject to defeasance only if the mortgagor timely objects to the sale or exercises his right of redemption. *See; Hardyston Nat'l Bank of Hamburg v. Tartamella*, 56

⁶ As noted Defendant-Appellant had legal counsel Warren Levy, Esq. of the Keaveny Legal Group until the January 6, 2025 hearing at which time he informed the Court that he discharged the firm that represented him at the December 9, 2024 hearing and was proceeding *pro se*.

⁷ As noted above, even if Defendant-Appellant filed the motion on January 22, 2025, it appears on the face of the motion that the filing fee was not paid until January 23, 2025 at which point the motion was accepted for filing. Once again, a peril of choosing to proceed *pro se* and a consequence Defendant-Appellant must bear. *Rubin, Supra*.

N.J. 508 (1970). This was not done. Instead, Defendant-Appellant filed a motion to stay an already concluded sale. Thereafter, the sheriff delivered his deed to the buyer which vested it with legal title on February 5, 2025. [Pa008-Pa016].

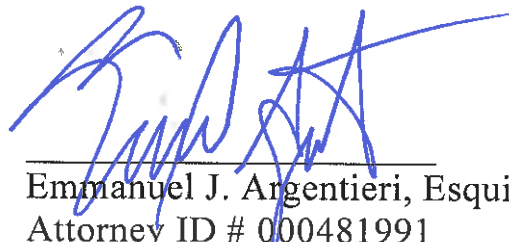
Accordingly, pursuant to the facts of record as applied to controlling law, the trial Court's January 23, 2025 Order should be affirmed and Defendant-Appellant's appeal denied with prejudice.

CONCLUSION

For the reasons set forth above, Plaintiff-Respondent respectfully requests that this Honorable Court affirm both the January 21, 2025 and January 23, 2025 Orders entered by the trial Court which were appealed by Defendant-Appellant and deny and/or dismiss this appeal with prejudice.

Dated: October 7, 2025

Respectfully submitted,



Emmanuel J. Argentieri, Esquire
Attorney ID # 000481991
ROMANO GARUBO & ARGENTIERI
Counselors at Law, LLC
52 Newton Avenue
Woodbury, New Jersey 08096
(856) 384-1515
eargentieri@rgalegal.com
Attorney for Plaintiff-Respondent