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

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4584-15T3

NTL CAPITAL, LLC,

Plaintiff-Respondent,

v.

MICHAEL ANTUONO, ANA Z.  
ANTUONO, Husband and Wife,

Defendants-Appellants,

and

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., as nominee for  
FREEDOM MORTGAGE CORPORATION,  
P & N MECHANICAL, INC., VINCENT  
GIFFORD, NY URBAN REAL ESTATE  
INVESTMENT, INC. and TRENT R. PUGH,

Defendants.

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Submitted October 19, 2017 – Decided December 15, 2017

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,  
Chancery Division, Monmouth County, Docket No.  
F-008144-11.

Johnson & Associates Attorneys at Law, PC,  
attorneys for appellants (Adrian J. Johnson,  
on the briefs).

Budd Lerner, PC, attorneys for respondent  
(James B. Daniels, of counsel; Tod S. Chasin,  
of counsel and on the brief).

PER CURIAM

Plaintiff, NTL Capital, LLC, filed this foreclosure action against defendants, Michael Antuono and his wife, Ana Antuono, based upon a mortgage given by defendants to secure a commercial loan made to Michael.<sup>1</sup> Defendants appeal from the Chancery Division's May 13, 2016 order denying their motion to vacate the final judgment and for leave to file an answer. They argue that the court abused its discretion by denying their motion because the court did not investigate their claims of fraud and forgery, and they proved excusable neglect and exceptional circumstances that warranted vacating the judgment. We disagree and affirm, substantially for the reasons stated by Judge Patricia Del Bueno Cleary in her April 29, 2016 oral decision.

The salient facts are undisputed and are summarized as follows. In September 2011, plaintiff filed this action against defendants alleging Michael's default in his obligation to make

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<sup>1</sup> We refer to defendants by their first names to avoid any confusion caused by their common last name.

mortgage payments as of January 2010.<sup>2</sup> The complaint further alleged that Michael's debt was secured by a mortgage on defendants' property that was executed by both defendants. Defendants did not respond to the complaint, and the court entered default in May 2014 and a final judgment of foreclosure on April 23, 2015.

Defendants filed a motion to vacate the final judgment, arguing they established good cause for failing to respond to the complaint and a meritorious defense. They blamed their failure to respond on their attorney, a longtime family friend, who represented them in other matters and testified for them in plaintiff's Law Division action on the same debt. Defendants claimed that they were unaware that he "failed to take any action throughout the course of the proceeding[s]" until they were "served with a notice from the Sheriff." According to defendants, they were less focused on the foreclosure matter as Ana and their daughter were diagnosed with serious illnesses.

Defendants also addressed their alleged defenses. They asserted that plaintiff failed to follow procedures required for

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<sup>2</sup> Simultaneously, plaintiff filed a parallel action in the Law Division on the promissory note executed by Michael. During the Law Division bench trial, defendants raised claims of fraud, and did not assert them again until this appeal. Plaintiff prevailed at trial, and the court issued a money judgment against Michael.

entry of a default and that plaintiff did not have standing to sue. Defendants did not argue any defense based on fraud or forgery. However, in a supporting certification, Michael alleged that Ana's signature was forged on the mortgage. Ana, however, never filed a certification confirming the allegation.

At oral argument, defendants' counsel reasserted the claims of excusable neglect. Addressing defendants' defenses, counsel argued defects in the procedures followed by plaintiff in obtaining the default and alluded to a claim that plaintiff lacked standing. There was no mention of any fraud or forgery.

Judge Cleary found that defendants failed to establish excusable neglect, finding defendants' argument that their attorney avoided communicating with them during the foreclosure action to be implausible. Judge Cleary stressed that counsel had a longstanding attorney-client relationship with defendants, and noted that he appeared as a witness for defendants at trial in the Law Division action. The judge also found no merit to defendants' alleged defenses.

On appeal, defendants argue that they established grounds pursuant to Rules 4:43-3, 4:50-1(a), (c) and (f) that required the court to vacate the final judgment of foreclosure. We disagree.


We conclude from our review that defendants failed to establish that Judge Cleary's denial of their motion was a "clear

abuse of [her] discretion," US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). Defendants' arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

Defendants' claims of excusable neglect based on their attorney's inaction were unsupported and, even if defendants' attorney was inattentive to their matter, his lack of diligence did not establish excusable neglect. See Guillaume, 209 N.J. at 467. Also, defendants never argued a claim of fraud before Judge Cleary, other than alleging a forgery in a passing unsupported statement in Michael's certification. For that reason, we do not consider it on appeal. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014). Even if they had argued forgery as a meritorious defense, Michael's certification alone was insufficient to establish the claim or even a need for the court to investigate the claim's veracity. Bald allegations do not give rise to proof necessary to meet the standard necessary to set aside a final judgment. See Del Vecchio v. Hemberger, 388 N.J. Super. 179, 187 (App. Div. 2006).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION