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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-0272-16T2

TOWNSHIP OF MEDFORD, a  
Municipal Corporation of  
the State of New Jersey,

Plaintiff-Respondent,

v.

BLOCK 2909, LOT 8, assessed to  
WEBBER 23 HOLLY, LLC,

Defendant-Appellant.

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Submitted October 5, 2017 – Decided January 30, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from Superior Court of New Jersey,  
Chancery Division, Burlington County, Docket  
No. F-011484-15.

McNally & Associates, LLC, attorneys for  
appellant (Stephen B. McNally, of counsel and  
on the brief).

Christopher J. Norman, attorney for respondent.

PER CURIAM

In this tax sale foreclosure case, defendant Webber 23 Holly,  
LLC (Webber 23) appeals from the August 5, 2016 Chancery Division

order denying its motion to vacate the final judgment of foreclosure and extend the time for redemption. We affirm.

On November 10, 2011, Webber 23 acquired the subject property by quitclaim deed for \$1 from Philip Webber, the prior owner. On the same date, Webber executed an addendum to the deed acknowledging "an oil spill on the property from a leaking underground heating oil tank" requiring remediation as directed by the New Jersey Department of Environmental Protection (DEP). Webber "agree[d] to be responsible and bound to remediate the property post ownership transfer . . . at [his] sole cost and expense" and to "indemnify" Webber 23 "from any and all liability or loss . . . which may occur as a result of the oil spill." The deed was recorded on February 7, 2012. Michael and Cynthia McDonald owned and operated Webber 23.

Shortly after Webber 23 took title to the property, in accordance with its municipal ordinance, plaintiff Medford Township demolished the Webber dwelling as an unsafe structure and placed dumpsters on the property for the removal of substantial quantities of debris occasioned by the demolition. Michael<sup>1</sup> agreed to fill the dumpsters to minimize the amount of the Township's lien to recoup the demolition costs.

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<sup>1</sup> We refer to the McDonalds by their first names to avoid any confusion caused by their common surname. We intend no disrespect.

From the time Webber 23 acquired the property in 2011, no property taxes were paid on the property. On November 15, 2012, Medford Township purchased a tax sale certificate in the amount of \$21,192.92 for unpaid 2011 and 2012 sewer service charges and property taxes on the property. The certificate was recorded on January 24, 2013.

On March 30, 2015, the Township filed an in rem tax foreclosure complaint pursuant to N.J.S.A. 54:5-104.29 against Webber 23, the record owner of the property. An amended complaint was filed on April 13, 2015 to update the recording date of the tax sale certificate. Pursuant to Rule 4:64-7(b) and (c), on July 15, 2015, notice of the foreclosure was published in the local newspaper and notification was mailed by certified and ordinary mail to the prior owner, the record owner and its registered agent, Cynthia McDonald. On November 23, 2015, the Office of Foreclosure entered an uncontested final judgment.

Over six months later on June 7, 2016, Webber 23 moved to vacate the final judgment and revive the equity of redemption pursuant to Rule 4:50-1(a), (d), and (f). In a certification submitted in support of the motion, Cynthia stated that she and Michael "invested years and large sums of money"<sup>2</sup> to acquire and

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<sup>2</sup> In a supporting certification, Michael averred that they incurred over \$50,000 in expenses prior to the entry of final judgment.

clean-up the property. They removed the debris from the Township's unauthorized demolition of Webber's residence and remediated the contamination caused by the leaking underground storage tank, resulting in the issuance of an October 9, 2015 "No Further Action letter" from DEP. She averred that "Christopher Schultz, Medford Township Manager, had assured [them] that Webber [23] would not be responsible for any tax liens if [they] completed the remediation . . . and cleaning of debris from the structure on the [p]roperty."

Although Schultz resigned in August 2014 "in the midst of the remediation and clean-up of the [p]roperty[,]" Cynthia certified that "[t]hroughout the pendency of this matter, [they] were in continuous discussions with Township officials about resolving the open tax liens for the [p]roperty" but their "requests were continuously put off by Medford officials." She claimed that "Webber [23] ha[d] the ability to redeem the outstanding tax obligations."

Cynthia also averred that "Webber [23] did not receive proper notice of the commencement of the In Rem Foreclosure" and she "had no personal knowledge that there was a pending tax foreclosure." According to Cynthia, "[t]he certified mail card that was used as proof of service on [their] post office box has a signature that is unrecognizable" and "[t]he notice allegedly delivered to [her]

home on July 17, 2015 appear[ed] to be signed by [her] daughter" who "was visiting and does not reside at [her] residence." Moreover, her "daughter . . . never delivered the notice to [her]."

In opposition to the motion, Medford Township Manager, Kathy Burger, certified that from the time Webber 23 acquired ownership of the property, Webber 23 and the McDonalds "failed to pay any real property taxes due and owing on the Webber [p]roperty." According to Burger, Michael was granted meetings with Township officials

to convince Medford Township that his assistance in filling dumpsters with the demolition debris (done on his own accord), and in procuring a no further action letter from [DEP] regarding an underground storage tank (UST) removal, somehow entitled . . . him to a settlement on the amounts due and owing to Medford Township for outstanding real property taxes and the municipal lien to reimburse the municipality for its costs in the demolition of the Webber dwelling.

However, according to Burger, the offer was presented to and rejected by the Council on the ground that "all property owners must incur the costs of property ownership and maintenance (and environmental remediation, if necessary), including the payment of real property taxes." Burger acknowledged that the Township did not object to Michael offering to fill the dumpsters because he held title to the property at the time but averred that there was "[n]o written agreement(s) . . . between Medford Township and

defendant and/or Michael McDonald for any work he may have performed during his term of ownership of the Webber property subsequent to the demolition of the Webber dwelling."

Regarding notice, Medford's counsel certified that following the filing of the complaint, he published notice of the foreclosure in the local newspaper and mailed the notification by certified and ordinary mail to Webber 23's post office box address, Cynthia's home address, and Webber's home address. He received certified mailing receipts executed as received from all three mailings, and the ordinary mailing was never returned.

During oral argument on the motion, Webber 23's attorney conceded that Webber 23 did not pay the property taxes for four years and that there was no agreement with the Township to waive or reduce the property taxes due. However, he argued that the McDonald's efforts over a four-year period of cleaning-up the demolition debris and obtaining the No Further Action letter from the DEP, coupled with ongoing communications with Township officials to negotiate payment of the tax liens as well as improper service of the foreclosure complaint, entitled defendant to equitable relief from the final judgment of foreclosure.

In an August 5, 2016 order, Judge Paula T. Dow denied the motion. Judge Dow determined that defendant failed to show "excusable neglect, a meritorious defense[, ] or even a grave

injustice . . . ." In her statement of reasons accompanying the order, Judge Dow explained:

Although service was not properly executed in the form of personal service to an in-state corporation's registered agent, [p]laintiff's counsel did go to great lengths to effectuate service by publishing a 45[-]day notice in the Burlington County Times, mailing all documentation (including the complaint and subsequent documents) by certified mail to [d]efendant[']s[] business address and mailing all documentation by certified mail to Cynthia McDonald, as registered agent at her home address . . . . Defendant and its agents should have acquired knowledge of the foreclosure action between July 15, 2015, the first mailing of the complaint and summons, to November 23, 2015 during entry of final judgment, since [d]efendant asserts that there had been ongoing communication with [p]laintiff about the tax liens on the [p]roperty. Finally, [d]efendant and its co-owners should not have relied on the assertions of the township employees that taxes could be waived for cleaning up their own [p]roperty. Waiver of taxes is done only through official Township action or by code, regulations, or laws. On this record, an oral representation and [d]efendant's remediation of [p]roperty that it owns are insufficient to waive legally approximately \$75,000.00 in taxes and liens.

This appeal followed. On appeal, defendant renews the arguments rejected by Judge Dow. We affirm substantially for the reasons articulated by Judge Dow in her cogent statement of reasons. We add only the following comments.

Although N.J.S.A. 54:5-87 of the Tax Sale Law provides that "no application shall be entertained to reopen the judgment after three months from the date thereof," except for grounds of lack of jurisdiction or fraud in the conduct of the suit, Rule 4:50-1 governs a motion for relief from a tax sale foreclosure judgment, notwithstanding N.J.S.A. 54:5-87. See M & D Assocs. v. Mandara, 366 N.J. Super. 341, 351 (App. Div. 2004) (holding that Rule 4:50-1 is paramount).

Under Rule 4:50-1(a), a defendant must show excusable neglect and a meritorious defense. "'Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 468 (2012) (quoting Mancini v. Eds ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 335 (1993)). Under Rule 4:50-1(d), relief may be afforded if it can be shown that the judgment or order was void. Rule 4:50-1(f) permits courts to vacate judgments for "any other reason justifying relief from the operation of the judgment or order." Relief under Rule 4:50-1(f), however, is reserved for exceptional situations where "truly exceptional circumstances are present[.]" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). The rule

is limited to "situations in which, were it not applied, a grave injustice would occur." Id. at 289.

Our limited review recognizes that

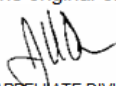
[t]he trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion. The Court finds an abuse of discretion when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis."

[Guillaume, 209 N.J. at 467 (internal citation omitted) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).]

Given the facts and equities of this case, we discern no abuse of discretion by Judge Dow.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION