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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-2863-16T1

FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Plaintiff-Respondent,

v.

SUWAN HAHN,

Defendant-Appellant.

Submitted February 13, 2018 – Decided March 1, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Mercer
County, Docket No. LT-000566-17.

Kasuri Byck, LLC, attorneys for appellant
(Harrison Ross Byck, on the brief).

Fein, Such, Kahn & Shepard, PC, attorneys for
respondent (Douglas J. McDonough and Ashleigh
L. Marin, on the brief).

PER CURIAM

Defendant Suwan Hahn appeals from a February 17, 2017 judgment
of possession entered in favor of plaintiff Federal Home Loan
Mortgage Corporation. We affirm.

The following facts are taken from the record. On June 7, 2008, Willa Mae Sherman, the sole mortgagor and obligor under a mortgage and note associated with real property located in Ewing, which is the subject of this matter, died. On August 9, 2010, the mortgagee, CitiMortgage, Inc. (CitiMortgage), filed a foreclosure complaint on the property. Charles C. Sherman, Willa Mae's¹ executor and heir, as well as Timothy H. Sherman and Bruce K. Sherman as heirs, were each named defendants in order to foreclose any lien, claim, or interest they had in the property.

On March 28, 2010, Charles passed away. Thus, Charles was served with the foreclosure complaint via publication on September 21, 2010. On September 3, 2010, Timothy was served when a copy of the summons and complaint was served upon defendant, his fiancé. On September 2, 2010, Bruce was personally served as well.

Default was entered against Charles, Timothy, and Bruce in the foreclosure matter on November 16, 2010. Final judgment was entered in the foreclosure matter on December 12, 2014. On March 3, 2015, Timothy and Bruce filed a motion to vacate the judgment. The motion was denied by the Chancery Division judge in an order

¹ We utilize the parties' first names in order to differentiate them because they share a common surname. No disrespect is intended.

dated April 10, 2015. No appeal from the foreclosure judgment was taken.

On May 20, 2015, a sheriff's sale was held and CitiMortgage was the successful bidder. CitiMortgage then assigned its bid to plaintiff. A sheriff's deed recorded on October 14, 2015, conveyed the property to plaintiff.

On August 1, 2016, plaintiff received a writ of possession. The writ was sent to the Sheriff of Mercer County for execution. The writ was returned unexecuted because the Sheriff obtained a lease from a tenant at the property. Plaintiff thereafter received a copy of a lease agreement between Timothy as lessor, and defendant as lessee dated May 1, 2015. Notably, the lease agreement was dated three weeks after the Chancery Division order denied Timothy and Bruce's motion to vacate the foreclosure judgment, and two-and-one-half weeks prior to the sheriff's sale.

As the owner of the property, on January 20, 2017, plaintiff filed a landlord-tenant complaint against defendant. After a hearing, the trial judge entered a judgment of possession in plaintiff's favor against defendant for \$20,054.00. This appeal followed.

On appeal, defendant argues CitiMortgage did not properly serve Timothy with the complaint in the foreclosure action. Thus,

defendant claims the landlord-tenant judgment is invalid because plaintiff never received valid title to the residence.

A trial court's findings "should not be disturbed unless ' . . . they are so wholly insupportable as to result in a denial of justice[.]'" Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (alteration in original) (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div. 1960)). When the trial court's findings are "supported by adequate, substantial and credible evidence[,]" those findings should be upheld on appeal. Id. at 484 (citing N.J. Tpk. Auth. v. Sisselman, 106 N.J. Super. 358 (App. Div. 1969)).

"[O]ur appellate function is a limited one: we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Fagliari v. N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963); see also Rova Farms, 65 N.J. at 484. The function of this court is to determine whether there is "substantial evidence in support of the trial judge's findings and conclusions" Weiss v. I. Zapinsky, Inc., 65 N.J. Super. 351, 357 (App. Div. 1961).

Defendant challenges the judgment of possession in this landlord-tenant matter by arguing service of process in the foreclosure matter was invalid. We are not persuaded.

Rule 4:4-4 states:

Service of summons, writ and complaints shall be made as follows:

(a) Primary Method of Obtaining In Personam Jurisdiction. The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State . . . as follows:

(1) Upon a competent individual of the age of [fourteen] or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of [fourteen] or over then residing therein[.]

"[T]he term 'household,' . . . include[s] all competent persons over fourteen years who make their home with the person to be served[.]" Resolution Tr. Co. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 343 (App. Div. 1993). "The likelihood of prompt notice of the suit to defendant is the basis for permitting the substituted service." Warfield v. Fischer, 94 N.J. Super. 142, 147 (Law Div. 1967).

Here, defendant was Timothy's fiancé. As a competent member of Timothy's household, she was served with the summons and


foreclosure complaint, and thus accepted service on behalf of Timothy. Defendant has failed to present any evidence that demonstrates she was neither a member of the household or that the address of service was not Timothy's "dwelling or place of abode." Indeed, during the trial of this matter defendant's counsel, who also had represented Timothy, stated that Timothy had "been in the property" and "[Timothy and defendant] had made the mortgage payments for [twenty-seven and one-half] years." Therefore, the trial court's determination the foreclosure complaint was properly served was based upon adequate credible evidence in the record.

Furthermore, the record demonstrates, despite defendant's arguments to the contrary, that plaintiff is the record owner of the property and entitled to possession. "The foreclosure of a mortgage vests in the purchaser at the foreclosure sale a legal right to the property free of easements and encumbrances imposed upon it subsequent to the mortgage" Camp Clearwater, Inc. v. Plock, 52 N.J. Super. 583, 599 (Ch. Div. 1958). "The purchaser at the foreclosure acquire[s] the estate of the . . . mortgagee, and his title is absolute and indefeasible." Champion v. Hinkle, 45 N.J. Eq. 162, 166 (E. & A. 1888). After delivery of the sheriff's deed, the purchaser is entitled to collect all rent generated by the mortgaged property. See Thompson v. Ramsey, 72 N.J. Eq. 457, 461 (Ch. 1907).

As we noted, a judgment of foreclosure had been entered against the defendants, including Timothy, prior to defendant's entry into the lease agreement. No appeal was taken from that judgment. Moreover, defendant does not challenge the fact that CitiMortgage was the successful bidder at the sheriff's sale, or challenge the bid assignment from CitiMortgage to plaintiff. The record is also devoid of any objection filed during the sheriff's sale process. Therefore, the sheriff's deed granting plaintiff title is valid, and plaintiff could prosecute the landlord-tenant complaint. For these reasons, the judgment of possession granted in favor of plaintiff was not an abuse of discretion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION