

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0165-21**

**CHRISTIANA TRUST, as
Custodian GSRAN-Z, LLC,**

Plaintiff-Appellant,

v.

**MICHAEL P. KAWAN, his
heirs, devisees, and personal
representatives and his, her,
their, or any of their successors
in right, title and interest, GAIL
R. KAWAN, her heirs, devisees,
and personal representatives and
his, her, their, or any of their
successors in right, title and
interest, and TOMS RIVER
ANESTHESIA ASSOCIATES,**

Defendants,

and

MORDECHAY TZABARI,

**Defendant/Intervenor-
Respondent.**

Submitted October 24, 2022 – Decided November 17, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No. F-
008219-20.

Zucker Steinberg & Wixted, PA, attorneys for appellant
(David W. Sufrin, on the briefs).

Pickus & Landsberg, attorneys for respondent (Ryan M.
Sedlak, on the brief).

PER CURIAM

In this foreclosure action, plaintiff appeals from orders in which the court permitted Mordechay Tzabari (Intervenor) to intervene in the litigation and purchase the subject property and invalidated a consent order in which plaintiff and defendant Jenna Kawan¹ invalidated Intervenor's contract. We affirm.

Plaintiff purchased the tax sale certificate on the property in October 2016. In September 2020, plaintiff filed a complaint to foreclose on the property owner's right to redemption and to obtain title to the property. A notice of lis

¹ Defendants Gail and Michael Kawan, both deceased, were the original homeowners of the subject property. Defendant Jenna Kawan is their daughter and the administrator of Gail's estate. We refer to defendants collectively as Kawan.

pendens was filed and recorded in the Ocean County Clerk's Office, identifying the property, parties, and notice of the proceedings.

On October 15, 2020, Intervenor and Kawan executed a contract for the sale of the property. The purchase price was \$180,000. After redeeming the tax sale certificate and paying other liens and costs,² Intervenor estimated in a March 2021 certification that Kawan would "receive net cash of approximately \$124,000." Intervenor also advised the court that several real estate websites estimated the property's value at \$300,000-\$330,000. Intervenor stated the estimates were "highly inflated" because the property tax assessment was much lower and the condition of the house was poor, requiring extensive renovations. The assessed value of the property was \$270,000.

After learning of the contract, plaintiff offered Kawan \$190,000, \$10,000 more than Intervenor, for the property. Plaintiff and Kawan also executed a consent order that was signed by the court on March 9, 2021. The order stated

[t]he [contract with Intervenor], as well as any amendments, modifications and/or related documents . . . does not comply with New Jersey statutory and case law which required the Third-Party Investor to move to intervene in the pending foreclosure action and seek permission to redeem the subject Tax Sale Certificate.

² Defendant Toms River Anesthesia Associates had a lien against the property for \$2,379.63.

. . . Accordingly, the Contract is terminated, null and void and of no force and effect.

Intervenor moved to intervene on March 11, 2021. The court granted the motion on April 1 and stayed any further proceedings regarding the property until a determination was made regarding the validity of Intervenor's contract and the consent order.

The parties reconvened on May 19, 2021. Intervenor asked the court to vacate the consent order and for an order finding his contract was valid and binding on Kawan. Plaintiff and Kawan opposed the application. Plaintiff asserted "the contract [was] null and void as a result of [Intervenor's] failure to intervene timely," relying on Simon v. Cronecker, 189 N.J. 304 (2007).

In addressing the consent order, the court granted the application to vacate it, stating "it[is] axiomatic, that one cannot enter into a consent order . . . that affects the rights of a third party without having that third party participate in the consent order." The court also found Intervenor had not violated the precepts of Cronecker as Intervenor did not attempt to redeem the tax sale certificate prior to moving to intervene in the action. The court permitted Intervenor to proceed with the sale. If issues arose regarding the enforceability of the contract, the parties could present the appropriate applications.

Intervenor subsequently moved for a determination that the offered consideration was more than nominal. Intervenor argued that Kawan would net "approximately \$120,000, which is a fantastic sum of money." Although plaintiff conceded that neither of the pending offers was nominal, under Cronecker the court should look at "all factors" and "the more overarching purpose of Cronecker . . . [is] to get the most possible benefit for the homeowner."

The court issued an oral decision on June 11, 2021. It explained that third-party investors are not foreclosed from redeeming a tax sale certificate after the filing of a foreclosure action, so long as the third party "timely intervenes in the action and pays the property owner more than nominal consideration." The court found

[t]he legislature intended to extend judicial scrutiny to financial arrangements between the third-party investors and property owners during the post-foreclosure complaint process. The purpose of N.J.S.A. 54:5-89.1 is not to bar third-party investors from helping property owners in desperate need of financial assistance but rather to ensure that the third-party investors do not exploit vulnerable owners by offering only nominal consideration for a property interest.

The court further found that the \$120,000 Kawan would receive was not insubstantial as it represented forty-five percent of the assessed value of the

property. Therefore, the court granted Intervenor's motion and permitted the sale to go forward.

On appeal, plaintiff asserts the court erred in vacating the consent order because the intervention was untimely and in not approving the most beneficial offer.

Our review of the interpretation of a contract is de novo. Serico v. Rothberg, 234 N.J. 168, 178 (2018). We review the order permitting the Intervenor's sale to proceed for an abuse of discretion. Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 173 (App. Div. 2005). We will only reverse if the exercise of discretion was "'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

We start with the consent order. Plaintiff contends because Intervenor did not timely intervene in the foreclosure action, he was bound by the consent order which was already executed and in effect.

Plaintiff and Kawan executed the consent order before Intervenor became a party to the foreclosure action. Therefore, the provisions under Rule 4:42-1(d) governing consent orders were not applicable to Intervenor. He had not filed a

responsive pleading or entered an appearance in the action. Although the consent order indisputably intended to bind Intervenor to its contents as it voided the Intervenor/Kawan contract, Intervenor could not be bound to it under the Rule. Intervenor did not sign the order nor consent to its form and entry. See R. 4:42-1(d).

As we have stated, "[j]udgments or orders normally do not bind non-parties." North Haledon Fire Co. No. 1 v. Borough of North Haledon, 425 N.J. Super. 615, 628 (App. Div. 2012) (quoting In Re Application of Mallon, 232 N.J. Super. 249, 254 n.2 (App. Div. 1989)). The cases proffered by plaintiff to support its argument to the contrary are inapposite to the circumstances present here. We see no reason to disturb the judge's determination vacating the consent order.


We also reject plaintiff's assertion that Intervenor's untimely intervention should bind him to the consent order. Intervenor complied with the procedure established under Cronecker. He moved to intervene in the foreclosure action prior to attempting to redeem the tax sale certificate. See 189 N.J. at 336. And he applied to the court for a determination regarding the sufficiency of the consideration offered under the sales contract. See ibid.

Plaintiff further contends that the court should have considered which offer was most beneficial to Kawan. In addition, plaintiff seeks a ruling to require trial courts to order parties to participate in private sealed bid auctions when there are competing bids in a tax lien foreclosure matter.

Plaintiff's arguments are not the current status of the law. The analysis before the trial court is whether the presented offer is "more than nominal consideration." Id. at 311. The Cronecker Court instructed a trial judge to consider all circumstances in determining what is nominal, stating the amount given must be "not insubstantial under all the circumstances; it is an amount, given the nature of the transaction, that is not unconscionable." Id. at 335. Cronecker does not require a court to analyze and approve only the most beneficial offer.

Kawan executed a contract in which Intervenor offered \$180,000 to Kawan for the property. Intervenor certified to the court that he estimated Kawan would net \$124,000. The assessed value of the property was \$270,000. The court did not abuse its discretion in finding Intervenor's contract was not insubstantial and "certainly not unconscionable."

Affirmed.

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

CLERK OF THE APPELLATE DIVISION