SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0856-20

CITY OF EAST ORANGE,

Plaintiff-Respondent,

v.

BLOCK 174, LOT 18.1 (#16)
ASSESSED TO: NADEN, LLC,
122 NORTH MAPLE AVENUE,
EAST ORANGE,

Defendant-Appellant.

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Argued January 26, 2022 – Decided April 12, 2022

Before Judges Rothstadt and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-011494-19.

Russell M. Finestein argued the cause for appellant Naden, LLC (Finestein & Malloy, LLC, attorneys; Russell M. Finestein, on the briefs).

Elliot J. Almanza argued the cause for respondent (Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, PC, attorneys; Keith A. Bonchi, of counsel and on the brief; Elliot J. Almanza, on the brief).

PER CURIAM

In this tax sale certificate foreclosure action, defendant Naden, LLC appeals from the Chancery Division's August 28, 2020 order denying its Rule 4:50-1 motion to vacate a February 27, 2020 default judgment entered in favor of plaintiff City of East Orange. Defendant also appeals from the court's October 30, 2020 order denying its Rule 4:49-2 motion for reconsideration.

On appeal, defendant argues that Chancery Division Judge Jodi Lee Alper erred when she failed to make a finding of fact as to whether the tax collector received a check sent by the settlement agent at the closing on defendant's purchase of the subject property, which was intended to redeem the outstanding tax sale certificate, and which would have rendered the entered judgment void under Rule 4:50-1(d). Defendant also argues that the Chancery judge abused her discretion by finding that its failure to file an answer was not based on excusable neglect under Rule 4:50-1(a), even though defendant relied on advice from its attorney and the settlement agent that the payment towards the outstanding tax sale certificate had been sent to the City. It also contends that the judge failed, under Rule 4:50-1(f), to balance the equities between the parties by not considering the financial loss that it would incur and the windfall the City would realize by taking title to a property that was worth substantially more than

the amount due on the tax sale certificate. Also, defendant argues that the judge erred by failing to impose a constructive trust that would have ameliorated its financial losses, and by failing to consider new evidence provided in its reconsideration motion under Rule 4:49-2, which demonstrated that the tax collector received, but likely misplaced, the check that should have redeemed the tax sale certificate.

We have considered defendant's arguments in light of the record and the applicable principles of law. We affirm Judge Alpers's orders because the record amply supports her conclusion that defendant did not establish excusable neglect or a meritorious defense to vacate the judgment, failed to demonstrate the two-prong standard for the creation of a constructive trust, and the judge's conclusions were not arbitrary, capricious, or unreasonable, especially in light of defendant's avoidable failure to cure its default in payment or to respond to the complaint in this action.

I.

The facts derived from the record on appeal are summarized as follows. Defendant purchased Block 174, Lot 18.1, also known as 122 North Maple Avenue, East Orange, in October 2018 for $120,000. Part of the purchase price, which was financed through a mortgage loan, was to be applied toward

satisfaction of two outstanding tax sale certificates in the amounts of $35,951.07 and $21,090.64.

According to defendant, a few days after the closing, the settlement agent for the closing sent two checks to the City's tax collector in the amounts necessary to redeem the tax sale certificates. However, according to the City, the tax collector only received one check in the amount of $35,961.67 for one tax sale certificate. The City deposited the check and applied the check to redeem the one certificate. According to the City, a check in the amount $21,090.64 for the other certificate was never received because it was not deposited by the tax collector, and thus, that certificate remained outstanding.

In May 2019, while defendant's principal was at the tax collector's office, he learned that the $21,090.64 tax sale certificate was still outstanding. Despite that information, defendant attempted to pay only the taxes for the subsequent quarters and did not tender payment of the $21,090.64 due on the one tax sale certificate. For that reason, the tax collector rejected the payment for the current taxes.

For the next three months, defendant took no action toward satisfying the amount owed under the outstanding certificate. However, in August 2019, defendant requested, on three occasions, information from its attorney and the

closing's settlement agent about its payment of the $21,090.64 tax sales certificate. According to defendant, it was assured that the payment was made. Based on that advice, defendant never made any attempt to pay the outstanding amount necessary to redeem the certificate. Moreover, defendant never tendered further payment of any taxes that became due.

Thereafter, the City filed its foreclosure complaint. Defendant failed to answer or otherwise respond. The court entered a default and defendant received notice that a default judgment was about to be entered. By that time, defendant had learned from the settlement agent and its attorney that the missing check had not been cashed by the City. Nevertheless, defendant again took no action. The court entered a default judgment in favor of the City on February 27, 2020.

In April 2020, defendant filed a motion to vacate the final judgment under Rule 4:50-1. In response, the Chancery judge initially directed the parties to conduct limited discovery, including depositions, related to defendant's purported payment of the outstanding tax sales certificate and subsequent taxes, and then file supplemental submissions regarding same.

After the parties completed discovery, the Chancery judge held a second hearing, on August 25, 2020, where she considered the parties' oral arguments regarding defendant's tax payments and defendant's arguments about it making

an "honest mistake," its establishment of "excusable neglect," and for the first time, a motion for an alternative relief—the creation of a constructive trust under Simon v. Cronecker, 189 N.J. 304 (2007).

After considering all arguments, Judge Alper issued an oral decision, denying defendant's motion to vacate the final default judgment. In her decision, the judge stated the following:

> I am denying the defendant['s] motion to set aside the final judgment. I do find that the defendant has unclean hands considering that he made no attempt to pay ongoing taxes after he purchased the property in October [] 2018. It was merely serendipity in May [] 2019 that he happened to check up on this property and learned that he had not purchased it freely and clearly in October [] 2018, but as I stated earl[ier] he paid no taxes for the last quarter of 2018, nor did he pay any taxes for the first two quarters of 2019.
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> I also find no excusable neglect under [R]ule 4:50-1(a). Neglect is excusable when it is attributable to[,] "[a]n honest mistake that is compatible with due diligence or reasonable prudence[.]" . . . Mancini [v. EDS, 132 N.J. 330 (1993)]. . . .
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> Even if the defendant honestly believed that he purchased the property free and clear of tax liens in October 2018, by May [] 2019 he knew otherwise and waited until April [] 2020 subsequent to final judgment being entered in February 2020 to file this motion. After learning in May 2019 of the delinquencies[,] defendant received the foreclosure notice in August [] 2019 and six delinquency notices, but still failed to

> make any meaningful action or file an answer to the foreclosure complaint.
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> As to the defendant's claim that his attorney and the title agent advised him that he need[not] worry or answer the foreclosure complaint, it is established that an attorney's lack of diligence or an attorney's carelessness does not establish excusable neglect[] . . . . Baumann[v.] Marinaro, [95 N.J. 380 (1984)]. [F]or those reasons[, I am denying] the motion to vacate the final judgment . . . .

The Chancery judge also denied defendant's motion for the creation of a constructive trust. She did so "as a result of the arguments made by [the City]," including that the City is not a wrongdoer. She also observed that the Court in Cronecker, created a constructive trust under a different context and she was unaware of any case law that applied the remedy under the circumstances present in this case. Thereafter, on August 28, 2020, the judge entered an order consistent with her oral opinion.

Defendant filed a motion for reconsideration under Rule 4:49-2, on September 15, 2020. The motion was supported by a supplemental certification from the settlement agent and attached a newly discovered letter to demonstrate that the settlement agent sent the tax collector two checks to pay the sales tax certificates.

Judge Alper considered the matter on October 30, 2020, after which she denied defendant's motion. In her oral decision placed on the record that day, the judge found that after considering the standards governing reconsideration motions, her "prior decision was [not] palpably incorrect." She rejected the notion that the settlement agent's letter was "new evidence" because defendant was afforded a "significant discovery period" where it could have discovered and produced it before she made her decision on the motion to vacate. Nonetheless, she found the letter does not explain "where, if any place, th[e] check got lost," and even if defendant had timely presented the letter, the outcome would have been the same "because of the whole record as a result of [defendant's] choice not to contest the foreclosure" at the outset. This appeal followed.

II.

A.

We begin our review by addressing defendant's Rule 4:50-1 motion to vacate the final default judgment. We review a trial judge's determination on a motion to vacate a default judgment under Rule 4:50-1 for "a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "The trial court's determination under the rule warrants substantial deference, and

should not be reversed unless it results in a clear abuse of discretion." Id. at 467 (citing DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009)). To warrant reversal, the movant must demonstrate that the motion judge's "decision [was] 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)); see also BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 124 (App. Div. 2021) (finding that "a trial court mistakenly exercises its discretion when it 'fails to give appropriate deference to the principles' governing the motion [or] relies 'upon a consideration of irrelevant or inappropriate factors'" (first quoting Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92, 100-01 (App. Div. 1998); and then quoting Flagg v. Essex Cnty. Prosecutor, 717 N.J. 561, 571 (2002))).

In this case, we also consider defendant's appeal against the backdrop of the Tax Sale Law, N.J.S.A. 54:5-1 to -137. The Tax Sale Law is "liberally construed as remedial legislation to encourage the barring of the right of redemption[.]" Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 162 (App. Div. 2005); cf. Bron v. Weintraub, 42 N.J. 87, 91 (1964) (determining it "understandable that the Legislature found it fair to bar the right to redeem by a strict foreclosure"). It "evidences an intention to impose stricter

limits upon the time and the grounds for vacating a judgment of foreclosure than would apply generally under Rule 4:50." Block 1508, 380 N.J. Super. at 166. Nevertheless, "[a]lthough the primary purpose of the Tax Sale Law is to encourage the purchase of tax certificates, another important purpose is to give the property owner the opportunity to redeem the certificate and reclaim his land." Cronecker, 189 N.J. at 319.

When the certificate holder is the municipality, a property owner has six months to redeem a tax certificate before a foreclosure action can be instituted. Id. at 337 n.16. "By delaying redemption until after the filing of a foreclosure action, the property owner must accept responsibility for the costs that will be incurred." Id. at 337 (citing N.J.S.A. 54:5-86). "Significantly, the property owner . . . [has] the right to redeem the tax sale certificate at anytime before the final date for redemption set by the court, N.J.S.A. 54:5-54, and 'until barred by the judgment of the Superior Court[,]' N.J.S.A. 54:5-86." Id. at 319 (citing R. 4:64-6(b) ("Redemption may be made at any time until the entry of final judgment . . . .")).

B.

Defendant argues that the "threshold" and "material fact issue" in this case is "whether a payment made by the property owner to redeem a tax sale

certificate was received by the City prior to the entry of [the] foreclosure judgment." It contends, that "if the City received both checks, then . . . it had no business commencing a foreclosure action against the [p]roperty." According to defendant, had the Chancery judge "determined that both checks were received, then redemption was accomplished," defendant's conduct after the filing of the complaint, "which admittedly included a failure to answer the complaint and pay taxes as they accrued," would have been irrelevant, and the "judgment would be void" under Rule 4:50-1(d).

In support of this contention, defendant relies, as it did for the first time on reconsideration,[1] on United Orient Bank v. Lee, 208 N.J. Super. 69 (App. Div. 1986) and argues that because the checks were accompanied by a transmittal letter with "specific and clear" instructions as to the application of the two checks, "[i]f . . . there was only one check in the envelope, representing funds insufficient to cancel both certificates," then the tax collector "was duty-bound to return the check or to at least contact the settlement agent" regarding

[1] Raising an argument for the first time on reconsideration does not constitute a proper presentation of an issue. A party is not permitted to use a motion for reconsideration as a basis for presenting new facts or arguments that could have been provided in opposition to the original motion. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

the missing check. Defendant also contends that because the City did not provide a certification by the person who actually opened the envelope sent by the settlement agent, defendant sufficiently rebutted the City's evidence that the check was not received. Thus, according to defendant, the Chancery judge "should have found, as a fact, that two checks were received by the City and therefore redemption had been accomplished as to both certificates, requiring the judgment to be vacated."

We conclude defendant's contentions in this regard are without any merit. As it concedes, and regardless as to whether the tax collector received the checks sent by the settlement agent, defendant became aware that one tax sales certificate was still outstanding, months after its purchase of the property, and yet never paid the outstanding amount, thereby providing the City with the right to initiate foreclosure proceedings. Thereafter, defendant ignored the foreclosure proceedings and still did not take any action to satisfy the outstanding certificate or file an answer or otherwise address the impending foreclosure. As such, the entry of the default judgment was not unjust nor was it void.

We are not persuaded otherwise by defendant's reliance on United Orient Bank. In that case, unlike here, the recipient of the check actually "endorsed

and deposited" the subject check and applied it in a manner inconsistent with the maker's instructions. United Orient Bank, 208 N.J. Super. at 73. Here, the check was never deposited, and defendant became aware of that fact a few months after the settlement agent's letter was sent.[2] Yet, defendant never tendered payment of the amount owed at any time thereafter.

C.

Defendant next argues that even assuming that the Chancery judge had found that the City did not receive the two checks, if the judge's decision is "left undisturbed[it] would validate a forfeiture that is both substantial and harsh." While defendant "in retrospect, regret[s its] failure to treat the foreclosure action as a legal proceeding that carried serious consequences," which caused the entry of the judgment, it argues that if the Chancery judge's decision is not reversed, the impact of its failure will cause a substantial monetary loss, permitting the City to receive much more than it is actually owed for the tax sale certificate and interest. According to defendant, the City will receive a windfall with a

[2] In its motion for reconsideration, defendant produced as "newly discovered evidence," a copy of an unsigned letter enclosing the two checks "in the amounts of $21,090.64 and $35,961.67 representing payment for the tax lien payment amounts of [122 North Maple Avenue]." According to the settlement agent's certification, the letter was drafted by a "former employee" and discovered in their "business records."

property that is worth over $200,000.[3] Defendant advances this argument without citation to any legal authority.

We conclude that defendant's argument in this regard is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Suffice it say, as the Chancery judge found, and we have already described, defendant had multiple opportunities before the entry of the final judgment to remedy the mistake it made in reliance upon assurances made by the settlement agent and its attorney, which were continuously belied by the fact no funds had been deposited toward the outstanding tax sale certificate.

D.

Next, we consider defendant's arguments grounded in the relief available to a litigant under Rule 4:50-1(a) and (f). Repeating the same factual arguments mentioned above, it notes that the judge improperly rejected its excusable neglect argument under subsection (a). According to defendant, it "had a credible and detailed explanation for what the [judge] apparently mistook for insouciance."

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[3] We note that the record on appeal indicates that the defendant modified its mortgage note several times, making its mortgage debt approximately $544,330. However, defendant, neither during oral argument before the Chancery court nor in its appeal briefs relies on the enormity of this amount in making its equity arguments.

Moreover, defendant argues that the judge improperly relied on distinguishable case law, Baumann, 95 N.J. at 394, "which implicated the legal malpractice of movant's lawyer," to support her decision. In this regard, it argues that the "neglect" was not its attorneys, but its own neglect and "admits, with the benefit of hindsight, that an answer to the City's complaint should have been filed." Nonetheless, it argues that "its neglect should be considered excusable because it was based upon assurances of fact, not legal advice, that it received from counsel and other professionals involved" that led to its "mistaken belief."

As to Rule 4:50-1(f), it argues that relief from the operation of the judgment should have been granted because "leaving the judgment in place would be abhorrent to principles of equity, because it would sanctify a substantial forfeiture and result in an unwarranted windfall to the City." Despite that result, according to defendant, the Chancery judge denied relief because defendant had "unclean hands" by its failure to pay any taxes going forward as they became due.

We are not persuaded by either contention.

i.

"[T]he party seeking to vacate [a default] judgment must meet the standard of Rule 4:50-1," which is: "On motion, with briefs and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect . . . or (f) any other reason justifying relief from the operation of the judgment or order." Guillaume, 209 N.J. at 467 (quoting R. 4:50-1).

This is a more stringent standard than imposed by Rule 4:43-3 for setting aside an entry of default, id. at 467, and, generally, courts should grant relief under Rule 4:50-1 "sparingly, [and only] in exceptional situations[.]" Badalamenti v. Simpkiss, 422 N.J. Super. 86, 103 (App. Div. 2011) (alteration in original) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994)). Relief under Rule 4:50-1 must "reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." LVNV Funding, LLC v. Deangelo, 464 N.J. Super. 103, 109 (App. Div. 2020) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)).

To obtain relief under Rule 4:50-1(a), a party must demonstrate a "meritorious defense" as well as a "mistake, inadvertence, surprise, or excusable neglect." Guillaume, 209 N.J. at 467-68. "The four identified categories in subsection (a), when read together, as they must be, reveal an intent by the drafters to encompass situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment on a material point at issue in the litigation." DEG, 198 N.J. at 262 (emphasis added). "Only where a mistake of law is reasonable and there is some justification for a lack of determination of the correct law will the court grant equitable relief." Circle Chevrolet Co. v. Giordano, Halleran & Ciesla, 142 N.J. 280, 302 (1995), abrogated on other grounds by Olds v. Donnelly, 150 N.J. 424 (1997). However, "ignorance of the law" is not a sufficient basis to find excusable neglect. Id. at 303; see also DiTrolio v. Antiles, 142 N.J. 253, 275 (1995). Simply put, "'[e]xcusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Guillaume, 209 N.J. at 468 (quoting EDS, 132 N.J. at 335).

Defendant's argument is unpersuasive because defendant took no action that was consistent with due diligence. In its argument, defendant ignores that it must overcome two hurdles to vacate a final judgment: (1) excusable neglect

in its failure to answer or appear, and (2) a meritorious defense. Even though it is not equivalent to proof of payment, the purported materiality of whether both checks were received by the tax collector is, at best, a "meritorious defense," which nonetheless does not satisfy "excusable neglect" for failing to answer the foreclosure complaint. EDS, 132 N.J. at 335; Woodrick v. Jack J. Burke Real Est. Inc., 306 N.J. Super. 61, 78 (App. Div. 1997) (explaining that even if defendant did have a plausible meritorious defense, it did not show excusable neglect and therefore the judgment should not be vacated), appeal dismissed, 157 N.J. 537 (1998). See also Morales v. Santiago, 217 N.J. Super. 496, 505 (App. Div. 1987) (explaining that "having a meritorious defense is ordinarily not a ground for setting aside a default judgment").

Indeed, an excuse for not answering a complaint must be grounded and "compatible with due diligence or reasonable prudence." EDS, 132 N.J. at 335. "Everybody knows that taxes must be paid." Bron v. Weintraub, 42 N.J. 87, 91 (1964). Defendant was aware of this very fact because it or its principal owns multiple properties. It concedes that it knew that the tax sale certificate on the property was not paid as early as May 2019. Moreover, it admittedly knew that a partial tax payment was insufficient. But even after receiving the foreclosure notice, again, it inexplicably took no action to answer the complaint or pay the

outstanding amount. And, its assertion that it called its attorney and settlement agent and they informed defendant that payment was sent to redeem the tax sale certificate is unavailing because defendant received a verbal confirmation from the tax collector's office, the foreclosure notice, and multiple tax delinquency notices that although sent, no payment was received. Indeed, it knew in May 2019 and then even one month before the entry of the default judgment that the check sent by the settlement agent was not cashed. Defendant chose to rely on its attorney and settlement agent despite the tax collector's multiple notices of its tax delinquency. "[A] party who simply misunderstands or fails to predict the legal consequences of his deliberate acts cannot later, once the lesson is learned, turn back the clock to undo those mistakes." DEG, 198 N.J. at 263 (alteration in original).

Because "equity aids the vigilant, not those who sleep on their rights," Goodyear Tire & Rubber Co. v. Kin Props., Inc., 276 N.J. Super. 96, 103 (App. Div. 1994) (quoting Dunkin' Donuts of Am. v. Middletown Donut Corp., 100 N.J. 166, 182 (1985)), and because the record amply supported the Chancery judge's conclusion, we find that there was no basis to grant defendant relief from the final judgment under Rule 4:50-1(a).

ii.

Rule 4:50-1(f) permits a default judgment to be vacated for "any other reason justifying relief from the operation of the judgment," and "affords relief only when 'truly exceptional circumstances are present,'" Guillaume, 209 N.J. at 468 (quoting Little, 135 N.J. at 286). "In deciding if relief is warranted, a court may consider the movant's delay, the justification for its request, and potential prejudice to the responding party." BV001, 467 N.J. Super. at 126. In such exceptional circumstances, the rule is "as expansive as the need to achieve equity and justice" but granted sparingly, only to avoid a "grave injustice." Guillaume, 209 N.J. at 484 (first quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966); and then quoting Little, 135 N.J. at 289). Each case brought under subsection (f) "must be resolved on its own particular facts." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (citing Baumann, 95 N.J. at 395). The burden is on the movant to "demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Ibid.

In this case, there is no equitable ground for vacating a default judgment because defendant's investment losses, no matter how unfortunate they may be, do not present a circumstance that is "truly exceptional," especially in the

context of the need for finality of judgments under Rule 4:50-1(f). Little, 135 N.J. at 286 ("The party seeking relief bears the burden of proving that events have occurred subsequent to the entry of a judgment that, absent the relief requested, will result in 'extreme' and 'unexpected' hardship."). See also Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188 (App. Div. 2006) (explaining that there is no equitable ground for vacating a tax foreclosure judgment even in the face of unfortunate tragic circumstances).

Indeed, defendant had ample opportunity to cure its tax delinquency before the complaint was filed, and again before the default judgment was entered. And its neglect to do so does not create equitable ground for vacating the final default judgment. See Del Vecchio, 388 N.J. Super. at 188 (affirming the trial court's denial of a Rule 4:50-1 motion because, among other reasons, defendants had "ample time to effect a cure of" their tax delinquency).

Defendant contends that not vacating the judgment here is contrary to our recent decision in BV001. According to defendant, in that case we "invalidated" "the proposition that nonpayment of taxes should be a bar to relief from a tax-sale judgment." We disagree.

Defendant's reliance on BV001 is misplaced. In BV001, a case in which "[t]he owner did not know the tax sale certificate existed until judgment was

entered," 467 N.J. Super. at 121, we reversed a Chancery judge's decision because there, in denying relief under Rule 4:50-1(f), the judge "mistakenly conclud[ed] that if [the] defendant lacked a defense to the tax sale or the right to foreclosure," the property owner "was not entitled to relief from the judgment and a chance to redeem," id. at 124. We acknowledged that although the property owner should "have been more diligent in ensuring that taxes were paid, she was also the victim of [another's] concealment [and] fraudulent change of registered agent." Ibid. Therefore, relief was appropriate "whe[re] a litigant's failure to respond results from another's deceit" and promptly moves for relief because "[t]he competing goal of promoting finality does not loom so large when the ink has barely dried on the final judgment." Id. 126-27.

We also observed that a "defendant's lack of diligence in ensuring tax payments should not deprive defendant of the opportunity to redeem after securing relief from the judgment" because the proper inquiry was "whether [the] defendant's conduct in failing to respond sooner to the tax foreclosure proceedings should be forgiven" in light of the circumstances. Id. at 130 (emphasis added) (second alteration in original). We went on to comment that,

> [e]very defendant in a tax-sale foreclosure action has failed to pay its taxes — because of inattention, willful disregard, or impecuniousness. Yet, the Tax Sale Law preserves for such defaulting taxpayers the right to

> redeem their property, if they pay the tax-sale-certificate holder what is due. Defendant does not ask the court to "ignore statutory requirements." Rather, defendant asks only that the court vacate the judgment so it can exercise its legal right to redeem. Under the exceptional circumstances of this case, the trial court should have granted its request.
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> [Ibid. (emphasis added).]

Contrary to defendant's argument, BV001 does not preclude the trial court from considering a property owner's failure to make tax payments when denying a Rule 4:50-1 motion. Ibid. Instead, we properly framed the inquiry: looking at the reasons behind the defendant's actions or inactions in answering the complaint and determining whether such behavior, under subsection (f), warranted relief. Id. at 124. We held that equity was best served by vacating the judgment because the defendant did not willfully sleep on her rights and "raced" to the courthouse as soon as she learned of the default judgment. Id. at 122, 127. In other words, equitable conduct begets equity. See Yeiser v. Rogers, 19 N.J. 284, 289 (1955) ("He that hath committed iniquity shall not have equity.").

The same cannot be said of defendant's conduct here. As previously noted, it knew of the tax delinquency long before the foreclosure complaint was filed. It did not then make payment to satisfy the debt. Then, it was properly

served with the foreclosure notice and chose to rely on information that it knew was incorrect and inexplicably did not respond. It was served with a notice that a default judgment loomed, and still, it did nothing.

Simply stated, defendant has never explained why a stop payment was not placed on the alleged missing check and the sums needed to satisfy the tax obligation was not immediately paid the first moment that defendant learned the check was not received, or if it was, had not been deposited by the City. That simple effort would have avoided all of the problems defendant brought onto itself by its inaction. Under these circumstances, we conclude defendant has not advanced any equitable grounds for vacating the final foreclosure judgment under Rule 4:50-1(f).

III.

Next, we address defendant's contention that the judge abused her discretion in her "refusal to impose a constructive trust." Here, again, defendant argues that if the judgment is not vacated, the City will not only recover the $35,961.67 needed to redeem the tax sale certificate payment, but it will also own a property worth $200,000. It contends that the "[i]mposition of a constructive trust on the [p]roperty would prevent [the] unjust enrichment of the City and at the same time ameliorate the stinging effects of the forfeiture." It

explains that although the judge denied relief because there was no case law supporting the remedy in this type of case, "the case law is clear that there is no archetypal case for which the remedy is designed." In addition, it insists that the "acquisition of property need not be wrongful for the [constructive trust] remedy to be available" to avoid unjust enrichment in this type of case. According to defendant, Cronecker, 189 N.J. at 304, is demonstrative, not because of the similarity of the facts in this case, but "to illustrate that a constructive trust can be used in any kind of case . . . including a tax sale foreclosure . . . that implicates unjust enrichment." We disagree.

"A constructive trust is a remedial device through which the 'conscience of equity' is expressed; it will be imposed when a person has acquired possession of or title to property under circumstances which, in good conscience, will not allow the property's retention." Thompson v. City of Atl. City, 386 N.J. Super. 359, 375-76 (App. Div. 2006) (quoting Flanigan v. Munson, 175 N.J. 597, 608 (2003), aff'd as modified, 190 N.J. 359 (2007)). "In imposing a constructive trust, a court must find that a 'wrongful act' caused the property to come into the hands of the recipient and that the recipient will be 'unjustly enriched' if it is not returned." Id. at 376 (quoting Flanigan, 175 N.J. at 608). See also D'Ippolito v. Castoro, 51 N.J. 584, 588 (1968) (explaining the two-step test and "that a

constructive trust will be impressed in any case where to fail to do so will result in an unjust enrichment" but requires a finding of "some wrongful act" on the part of the property recipient). "In that circumstance, the court of equity converts the recipient into a trustee and requires that he account for the res in whatever manner the court deems fair and just." Thompson, 386 N.J. Super. at 376.

Contrary to defendant's contention, there must be a finding of wrongfulness in the City's behavior. The record does not support such finding. Id. at 376-77.

We also reject the claim of unjust enrichment by the City. "To demonstrate unjust enrichment, [defendant] must show both that [the City] received a benefit and that retention of that benefit without payment would be unjust" and that defendant "expected remuneration." VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554, (1994).

On its motion to vacate, defendant did not provide any evidence that demonstrated that the City was unjustly enriched or that there was an expectation of remuneration should his property be foreclosed. To be sure, any enrichment that the City may realize is not unjust because it was borne out of defendant's failure to redeem the tax certificates before the default judgment was entered

not through some misdeed by the City. Thus, defendant fails to meet the two-part test necessary for the creation of a constructive trust.

IV.

Finally, we address defendant's motion for reconsideration under Rule 4:49-2. A motion for "[r]econsideration is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice." Cummings, 295 N.J. Super. at 384 (first alteration in original) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). In determining whether such an abuse has taken place, a reviewing court should be mindful that reconsideration is not to be utilized by a party just because of their "dissatisfaction with a decision of the [c]ourt." Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (alteration in original) (quoting D'Atria, 242 N.J. Super. at 401).

Reconsideration is appropriate when (1) "the [c]ourt has expressed its decision based on a palpably wrong or irrational basis," or (2) "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (alterations in original) (quoting D'Atria, 242 N.J. Super. at 401). "[T]he magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Palombi v. Palombi, 414 N.J.

Super. 274, 289 (App. Div. 2010). "[I]f a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application, the [c]ourt should, in the interest of justice (and in the exercise of sound discretion), consider the evidence." D'Atria, 242 N.J. Super. at 401-02. Nonetheless, because "motion practice must come to an end," the court must both be "sensitive and scrupulous in its analysis of the issues [on] reconsideration." Ibid.

Here, defendant contends that the Chancery judge failed to appreciate our holding, as defendant understood it, in BV001, and that the judge "admittedly did not consider the probative, competent evidence before [her] on the issue of whether both checks were received." According to defendant, the judge refused to consider the settlement agent's transmittal letter as new evidence.

We find defendant's contentions in support of reconsideration to be without any merit. As already explained, defendant's reliance on United Orient Bank was inapposite and the contents of the transmittal letter from the settlement agent in 2018 did not warrant vacating the judgment in light of defendant's failure to cure its default at any time after May 2019 up through the entry of judgment, or to even file an answer to the complaint in this matter.

To the extent we have not specifically addressed any of defendant's remaining arguments, we conclude they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION