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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1198-20**

TDJP PROPERTIES, LLC,

Plaintiff-Appellant,

v.

ADAR ALEPH, LLC, and DITMAS
PARK CAPITAL, LP,

Defendants-Respondents.

Argued November 3, 2021 – Decided April 13, 2022

Before Judges Fisher and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No.
F-011016-19.

Adam D. Greenberg argued the cause for appellant
(Honig & Greenberg, LLC, attorneys; Adam D.
Greenberg, on the briefs).

Patrick O. Lacsina argued the cause for respondent
Adar Aleph, LLC.

PER CURIAM

Plaintiff TDJP Properties, LLC (TDJP) appeals the denial of its motion for reconsideration. The Chancery Division granted co-defendant Adar Aleph, LLC's (Adar Aleph) motion to vacate default judgment in favor of TDJP pursuant to Rule 4:50-1, and subsequently denied TDJP's reconsideration motion. On appeal, plaintiff argues the motion court abused its discretion by denying the motion for reconsideration. TDJP's main argument on appeal is that defendant failed to meet its burden of proof to obtain relief from judgment under Rule 4:50-1. We agree and reverse the Chancery Division's order vacating the judgment of foreclosure. We reinstate the judgment of foreclosure in favor of plaintiff and find moot the order denying reconsideration.

I.

Adar Aleph owned property located in Barnegat. Adar Aleph took out a \$123,00 purchase money mortgage from co-defendant Ditmas Park Capital L.P. (Ditmas)¹, which was secured by the property. Adar Aleph defaulted on its loan payments and failed to pay several property tax installments. The Barnegat tax collector sold Adar Aleph's tax sale certificate to a corporate buyer, who later

¹ Ditmas has not filed a brief on appeal, and it did not enter an appearance before the motion court during Adar Aleph's motion to vacate or TDJP's motion for reconsideration. Our review of the record shows no dismissal of TDJP's claims against Ditmas as of the writing of this opinion.

assigned it to TDJP. TDJP initiated a foreclosure action on the property, and then served Adar Aleph with the summons and complaint. Adar Aleph failed to file an answer and default was entered. Adar Aleph failed to redeem the property, and judgment of foreclosure was entered.

Adar Aleph moved for vacation of the judgment pursuant to Rule 4:50-1, submitting a one-page certification from Marcus Elias, a managing member of Adar Aleph, alleging that the firm never received service of the foreclosure summons and complaint. Elias further alleged that Adar Aleph had no notice of the foreclosure action until August 2020, when it learned of its existence from co-defendant Ditmas. TDJP vigorously opposed the motion, arguing that Adar Aleph in fact had received service of the summons and complaint. TDJP argued that, if the trial court found Adar Aleph was not served, such an outcome was caused by Adar Aleph's deliberate attempt to avoid service of process by swapping registered agents after receiving the notice of intent to foreclose and quickly appointing an agent with an out-of-state address in violation of N.J.S.A. 42:2C-14.² TDJP argued that Adar Aleph's actions in switching registered agents represented an effort to thwart its attempt at service.

² Pursuant to N.J.S.A. 42:2C-14(a) and (c), a limited liability company "shall designate and continuously maintain" in New Jersey "an office, which need not

The trial court heard argument on the motion to vacate on October 16, 2022. The record shows that the hearing was brief. The court granted Adar Aleph's motion to vacate the foreclosure judgment, finding service was improper, but made no findings on the record to support its order. The court imposed certain conditions on Adar Aleph, requiring them to pay plaintiff's maintenance costs at the property from the date of final judgment until the date of Adar Aleph's motion to vacate. TDJP moved for reconsideration.

The reconsideration motion was heard November 13, 2020. The trial court considered the papers, heard argument, and made findings. The court found that: Adar Aleph changed its registered agent after receiving TDJP's notice of intent to foreclose; TDJP's service of the summons and complaint was "appropriate"; failure to serve Adar Aleph was not a basis to vacate summary judgment; Adar Aleph's certification that it never received notice of the complaint was sufficient to show excusable neglect; and Adar Aleph had a meritorious defense in that it had expressed a "willing[ness] to satisfy the entire tax sale certificate amount," as well as reimburse TDJP's "reasonable" ongoing

be a place of its activity in [the] State" and "an agent for service of process" who "shall be an individual who is a resident of [the] State" or a "person with authority to transact business in [the] State."

maintenance and related costs at the subject property. The trial court, finding that Adar Aleph had met its burden of showing excusable neglect and a meritorious defense under Rule 4:50-1(f), denied the motion for reconsideration.

TDJP appeals, arguing the trial court erred in denying reconsideration. It contends that Adar Aleph was served properly, despite its attempts to avoid service, and that Adar Aleph has failed to meet the standard for relief under Rule 4:50-1.

II.

We review a court's determination under Rule 4:50-1 for an abuse of discretion. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). Rule 4:50-1 states: "the court may relieve a party . . . from a final judgment . . . for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . (d) the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order." "The rule is 'designed to 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.'" U.S. Nat'l Bank Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citation and internal quotation marks omitted).

Rule 4:50-1(a) requires a showing of excusable neglect and a meritorious defense. Id. at 468. "'Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Ibid. (quoting Mancini v. EDS ex. rel. N.J. Auto. Fill Ins. Underwriting Ass'n, 132 N.J. 330, 335 (1993)).

With respect to Rule 4:50-1(f), the Supreme Court stated: "No categorization can be made of the situations which would warrant redress under [that subsection]. [T]he very essence of [subsection] (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 269-70 (2009) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)) (second alteration in original).

III.

We do not address TDJP's argument on appeal that Adar Aleph manufactured its case for excusable neglect by defeating service with a "shell game" of registered agents in violation of N.J.S.A. 42:2C-14. The trial court found, on reconsideration, that service of the summons and complaint on Adar Aleph was effective. We turn to the sole question remaining: did the trial court

have a sufficient basis in the record to find Adar Aleph met its burden under Rule 4:50-1 for relief?

The record is unclear as to which of the subsections of the rule were being argued, however, a close reading suggests that subsections (a), (d), and (f) were placed at issue by defendant.³ Subsection (a) requires the movant to show excusable neglect and a meritorious defense to obtain relief. See R. 4:50-1 (a). Here, the trial court's finding of service negates Adar Aleph's managing member's certification that the company never received notice of the foreclosure before August 2020. The record discloses no other fact alleged by Adar Aleph from which trial court could infer excusable neglect or support the finding that Adar Aleph made "an honest mistake that is compatible with due diligence or reasonable prudence." Guillaume, 209 N.J. at 468.

We turn to subsection (f). Given the trial court finding of service, we find nothing in the record which could be characterized as "exceptional circumstances" warranting relief under the rule. The record shows Adar Aleph failed to maintain the property, including allowing the utilities to be shut off and

³ To the extent Adar Aleph argued that the final judgment of foreclosure was void under Rule 4:50-1(d) because it was never served with the summons and complaint, we find that argument moot, given the motion court's finding of effective service.

failing to repair holes in the ceiling and roof. The record reveals no proofs from Adar Aleph which would overcome "the strong interest[] in finality of judgments and judicial efficiency." Guillaume, 209 N.J. at 467.

We conclude that the motion court mistakenly exercised its discretion in vacating the judgment against Adar Aleph, and we reverse. The motion court's order denying reconsideration is rendered moot, and the final judgment of foreclosure is reinstated.

Reversed.

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



CLERK OF THE APPELLATE DIVISION