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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1437-20**

**TOWNSHIP OF MONROE,
A municipal corporation of New
Jersey,**

Plaintiff-Appellant,

v.

**BLOCK: 3704, LOT 9,
BLOCK: 3704, LOT 9.01, and
BLOCK 3704, LOT 9.02,
Assessed to: WYNGLOW FARMS,
LLC, 1 WINSLOW ROAD,**

Defendant-Respondents.

Argued February 2, 2022 – Decided May 6, 2022

Before Judges Whipple, Geiger, and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Gloucester County, Docket No.
F-015975-19.

Elliott J. Almanza argued the cause for appellants
(Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi
& Gill, attorneys; Keith A. Bonchi, of counsel and on
the briefs; Elliott J. Almanza, on the briefs).

Peter J. Boyer argued the cause for respondents (Hyland, Levin, Shapiro, LLP, attorneys; Peter J. Boyer, of counsel and on the brief; Stephen D. Samost, on the brief).

PER CURIAM

Plaintiff Township of Monroe appeals from a Chancery Division order vacating a default judgment in an in rem action to foreclose tax sale certificates. After carefully reviewing the record, we conclude that the Chancery court failed to make the necessary findings of fact and conclusions of law required to definitively decide whether to grant or deny defendant's motion to vacate the default judgment of foreclosure based on excusable neglect. We are, therefore, constrained to remand the matter for further judicial factfinding.

We discern the following facts and procedural history from the record. On September 26, 2019, plaintiff Township of Monroe filed this action to foreclose three tax sale certificates it held relating to three contiguous undeveloped properties. Those properties were owned by defendant Wynglow Farms. Defendant failed to file an answer or appear in the foreclosure proceedings, and on March 10, 2020, the trial court issued a Final Judgment of Foreclosure by default.

On April 7, 2020, defendant moved to vacate the Judgment of Foreclosure, claiming Wynglow was unaware of the foreclosure proceedings because of an "internal power struggle." Defendant asserted there was "excusable neglect" to justify vacating the default judgment. Plaintiff opposed the motion to vacate the default judgment and filed a cross-motion requesting discovery "in order to test the [veracity] of claims made in defendant's motion indicating that plaintiffs were unaware of proceedings leading to the . . . Final Judgment [of Foreclosure]"

On May 8, 2020, the trial court entered a one-page order granting defendant's motion to vacate but also granting plaintiff's request for additional discovery to determine whether there was excusable neglect. That order provides in its entirety:

THIS MATTER having come before the court on application of Defendant, to vacate final judgment. The Court having considered the matter, and for good cause shown:

IT IS on this 8th day of May, 2020, **ORDERED** that Defendant's motion to vacate is **GRANTED**. Plaintiff's request for discovery is **GRANTED**. The motion was decided on the papers. The record consists of Plaintiff and Defendant's written briefs.

The reasons for grant are as follows:

After review of all facts, this court finds that [d]efendant has presented a series of events that call into question whether [d]efendant was aware of the proceedings leading up to the entry of Final Judgment on March 10, 2020. As such, this court finds that the best way [to] determine the accurate facts, is to grant [d]efendant's motion to vacate and allow [p]laintiff time to conduct discovery in order to test the veracity of the claims made in [d]efendant's motion. As requested, [p]laintiff is permitted to depose, and serve written discovery on, [d]efendant's attorney, Terri Costa, and Sharon Labrosciano. Plaintiff is also permitted to conduct any necessary depositions with Zoom. Therefore, parties have until May 22, 2020 to propound interrogatories and request production of documents and admissions. Parties must file all required responses by June 15, 2020 and complete depositions by July 1, 2020. After completing discovery, [p]laintiff is free to refile a motion and present any additional facts to the court.

The parties commenced discovery pursuant to the May 8 order. After completing depositions, plaintiff made application to "reinstate the Final Judgment based on the court-ordered discovery."

On May 14, 2020, defendant's counsel contacted plaintiff requesting a tally of the amount required to redeem the properties. Although plaintiff had not yet communicated the final amount required, on May 19, 2020, defendant delivered to plaintiff three bank checks reflecting "the information set forth by the Township tax collector in the Certification submitted in opposition to [defendant] Wynglow's motion to vacate the foreclosure judgment"

On May 16 , 2020, plaintiff advised defendant that it "did not read the order as allowing [defendant] to redeem unless [plaintiff] decide[s] not to pursue discovery." On May 20, 2020, plaintiff's counsel nonetheless provided the Township tax collector's calculation of the amount necessary to redeem the properties. The Township's calculation of the amount required for redemption was \$49,648.51, \$16.57 more than defendant's calculation. The Township additionally identified an outstanding balance of \$4,899.40 in unpaid 2020 taxes, due May 22, 2020.

The following day, May 21, 2020, defendant delivered a check to cover the additional expense and taxes due, along with a letter with a breakdown of the payment. The letter also specified defendant's belief that the enclosed check, along with the three checks previously tendered, represented full satisfaction of the amount the tax collector had specified as necessary to redeem. On May 22, 2020, the Monroe Township tax collector returned defendant's letter, along with all four checks, via mail.

On May 27, 2020, defendant informed plaintiff that on June 12, 2020, it intended to file a motion to compel plaintiff to allow redemption. Plaintiff opposed the motion. On July 30, 2020, plaintiff filed a cross-motion to reinstate the Final Judgment of Foreclosure based on evidence produced during discovery

that suggested that defendant had been aware of the foreclosure proceedings and therefore was not entitled to vacation of the judgment of foreclosure due to excusable neglect.

On September 25, 2020, the court heard oral arguments on the motions. On September 26, 2020, the trial court entered an order granting plaintiff's motion to compel redemption of the properties at issue and denying plaintiff's motion to reinstate the final judgment of foreclosure.

On October 5, 2020, defendant's counsel forwarded a calculation of attorneys' fees along with the bills that were submitted to the Township. At that time, the total fee was \$14,295 and costs of \$2,493.31, for a total redemption amount of \$16,780.31. "On October 9, 2020, the court executed an order directing the Township to provide a written statement of all taxes due and owing together with a verified statement of counsel fees and costs."

The court did not hear oral arguments, and issued its decision orally on December 18, 2020. The court remarked that the only reason the interest had continued to accrue was because the Township had violated the order compelling it to allow redemption, and, therefore, should not be compensated for interest accrued during the delay its violation had caused.

Following Wynglow's redemption of the properties, Monroe Township filed this appeal.

Plaintiff-appellant raises the following points on appeal:

POINT I

THE TRIAL JUDGE'S DECISION TO VACATE THE FINAL JUDGMENT VIOLATES A COURT RULE AND LACKS ANY MEANINGFUL FOUND FACTS OR LEGAL ANALYSIS.

POINT II

THE TRIAL COURT DID NOT HAVE THE EQUITABLE DISCRETION TO DISREGARD THE STATUTE GOVERNING REDEMPTION AND THEREBY WAIVE MONTHS OF INTEREST FOR THIS DELINQUENT TAXPAYER.

We begin our analysis by acknowledging general legal principles governing this appeal. We review the denial of a motion to vacate default judgment for abuse of discretion. Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 98 (App. Div. 2012) (citing U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)); see also U.S. Bank Nat'l Ass'n v. Curico, 444 N.J. Super. 94, 105 (App. Div. 2016) (citation omitted) ("The decision whether to grant such a motion is left to the sound discretion of the trial court."). The trial court's decision is afforded "substantial deference" and the abuse of discretion must be clear to warrant reversal. Russo, 429 N.J. Super. at 98 (quoting DEG,

LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009)). An abuse of discretion occurs when a decision is made "without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (Rivera-Soto, J., dissenting) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

In this instance, the Chancery court's grant of plaintiff's motion for discovery was a tacit acknowledgment that the facts on record were insufficient to support a conclusive analysis of whether there was excusable neglect. However, so far as we can determine, the court never considered the evidence adduced in the court-ordered discovery process and never made findings of fact, based on that discovery record, concerning plaintiff's fact-sensitive contention that defendant was aware of the foreclosure proceedings. Accordingly, the court did not provide a "rational explanation" for its decision to grant defendant's motion to vacate the default judgment. Ibid.; compare R. 1:7-4(a) (required findings on motions), with R. 1:6-2(f) (record notation of findings of fact and conclusions of law explaining disposition of a motion).

We therefore deem it necessary to remand the matter for the Chancery court to make findings of fact and conclusions of law, based on evidence developed in the course of court-ordered discovery, regarding whether

defendant has established excusable neglect and whether defendant's motion to vacate the default judgment was properly granted. We leave to the discretion of the Chancery court (1) whether to convene a hearing to resolve disputed facts, (2) whether to require or permit oral argument, or (3) whether to rely on the written submissions of the parties. We offer no opinion on whether there was excusable neglect or on whether defendant's motion to vacate the default judgment should be granted or denied.

To expedite the resolution of this matter, we offer guidance on plaintiff's remaining contention on appeal that the Chancery court "erred when it granted [d]efendant's subsequent motion to 'confirm the redemption amount.'" Plaintiff contends the court improperly "waived months of delinquent interest" to which the Township was entitled under N.J.S.A. 54:5-59. That statute provides, in pertinent part:

[i]f the certificate of sale is held by the municipality, the amount required for redemption shall include all subsequent municipal liens, except so much of the taxes for the year in which the redemption is made as are not delinquent as of the date of redemption under the provisions of N.J.S.A. 54:4-66, with interest thereon at the rate chargeable by the municipality on delinquent taxes and costs; but with the consent of the governing body, redemption may be made in installments. . . . After the payment of the first installment, the municipality shall not assign the certificate or take any action to cut off or foreclose the right of redemption so

long as the installments shall be paid when due and no default shall exist in the payment of municipal liens accruing subsequent to the date of the payment of the first installment. If redemption is made after the claim of the municipality under any sale for the enforcement of the taxes or other municipal liens or charges has been apportioned, the amount required for redemption shall be the charge or charges as apportioned to the subdivision being redeemed, with interest and costs, including all subsequent municipal liens thereon, with interest from the date of such apportionment.

N.J.S.A. 54:5-61 further provides,

[t]he holder of the tax title shall be entitled to fees and expenses in ascertaining the persons interested in the premises sold, but such fees and expenses shall not exceed in all the sum of twelve dollars, and the holder shall also be entitled for his expenses, to such sums as he may have actually paid for recording the certificate. In addition, and upon compliance with the provisions of N.J.S.A. 54:5-62 the holder shall also be entitled for his expenses, to such sums as he may have actually paid for necessary advertising in a newspaper under this chapter and fees for services of notices necessarily and actually served. Such fees and expenses shall be separate, apart from and in addition to those fees permitted under section 7 of L. 1965, c. 187 (C.54:5-97.1) and N.J.S.A. 54:5-98. Upon redemption in accordance with N.J.S.A. 54:5-58, 54:5-59[, or] 54:5-60 the holder of the tax title shall be entitled to collect from the owner or other persons having a right of redemption pursuant to N.J.S.A. 54:5-54, additional sums in accordance with the following schedule: [w]hen the tax title certificate amount shall exceed the sum of two hundred dollars, the holder, upon redemption of the tax title shall be entitled to collect from the owner or other person having an interest in the

lands an additional sum equal to two per cent of the amount so paid for the tax title certificate.

N.J.S.A. 54:5-104.59(a) provides: "[a]ll costs and fees in the action shall be equitably apportioned and allocated to the several parcels of land affected by the action, and added to the amount required to redeem."

Plaintiff argues that the Chancery court had no authority to order what plaintiff characterizes as "partial redemption," that is, redemption for less than the full amount due, including fees, taxed costs, and accrued interest. See Lonsk v. Pennefather, 168 N.J. Super. 178, 182–84 (App. Div. 1979) (concluding that the Tax Sale Law makes no provision for partial redemption); In re Pryor, 366 N.J. Super. 545, 554 (App. Div. 2004) (noting that "[t]here is no statutory provision for partial redemption of a tax sale certificate") (citing Lonsk, 168 N.J. Super. at 182–83).

Under this statutory framework, a municipality holding a tax sale certificate is entitled to the full amount of redemption, including all accrued interest. We need not decide whether, under the statutory framework, a court is authorized to reduce the full amount that is required to consummate the redemption. For the purposes of the present appeal, it is sufficient to note that nothing in that framework precludes a Chancery court, in the exercise of discretion, from applying equitable principles in determining when the

redemption should be deemed to have occurred, and then using that date to calculate the interest that accrued for purposes of determining the final redemption amount. A Chancery court, in other words, may in its discretion apply equitable principles to determine the redemption date in accordance with its prior orders. Of course, any such application of equitable principles is contingent upon the court finding on remand that the default judgment of foreclosure was properly vacated based upon excusable neglect.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION