SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1789-20

PC8REO, LLC,

Plaintiff-Respondent,

v.

BLOCK 3031, LOT 1,
90-100 INGRAHAM PL,
CITY OF NEWARK,
STATE OF NEW JERSEY,
ASSESSED TO: BRR
INGRAHAM PL LLC,

Defendant-Respondent.

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TOORAK CAPITAL
PARTNERS, LLC,

Appellant.

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Argued January 24, 2022 – Decided April 22, 2022

Before Judges Mayer and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-006690-20.

Morgan C. Fiander argued the cause for appellant (Polsinelli PC, attorneys; Morgan C. Fiander, on the briefs).

Robin I. London-Zeitz argued the cause for respondent PC8REO, LLC (Gary C. Zeitz, LLC, attorneys; Robin I. London-Zeitz, on the brief).

David M. Schlachter argued the cause for respondent BRR Ingraham PL LLC.

PER CURIAM

In this tax sale certificate foreclosure action, defendant BRR Ingraham PL, LLC ("BRR") and its lender, appellant Toorak Capital, LLC ("Toorak"),[1] appeal from the Chancery Division's February 8, 2021 order denying their Rule 4:50-1 motion to vacate a default judgment foreclosing on property at 90-100 Ingraham Place in Newark ("Property"), pursuant to the Tax Sale Law, N.J.S.A. 54:5-1 to -137. Before us, Toorak and BRR both argue the court abused its discretion when it denied their motion to vacate final judgment. For the foregoing reasons, we vacate the February 8, 2021 order and remand for further proceedings.

[1] Despite Toorak never filing a motion to intervene pursuant to Rule 4:33-1 or -2, the court characterized it as an "interested party" in its February 8, 2021 order, presumably based on its status as mortgagee for the Property. As neither plaintiff nor defendant objected to Toorak's participation at the trial court or before us, we address its arguments on the merits.

I.

We discern the following facts from the motion record. BRR purchased the Property on June 24, 2019, which was secured by a mortgage and loan issued by Envision Funded, LLC. The mortgage was thereafter assigned to Toorak, and after BRR failed to pay municipal liens on the Property, the City of Newark Tax Collector ("Tax Collector") sold the tax lien certificate at a public sale to PRO CAP 8, LLC/Procapital MGT II ("Procap"), subject to BRR's right of redemption. On June 18, 2020, plaintiff[2] filed a foreclosure action pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-104.29 to -104.75, specifically, N.J.S.A. 54:5-86(b), alleging that the tax sale certificate was eligible to be foreclosed upon immediately, and BRR had failed to exercise its redemption rights.

Plaintiff later published notice of the in rem foreclosure action on September 11, 2020 in The Star-Ledger. The notice stated that BRR could contest the foreclosure by answering the complaint within forty-five days or redeem the tax lien by paying $13,802.70 prior to the entry of final judgment. That same day, plaintiff also sent BRR, Envision Funded and Toorak a letter via

[2] We refer to Procap and PC8REO, LLC as "plaintiff" interchangeably, because, as detailed infra at p. 6, the tax lien certificate was later assigned from Procap to the current plaintiff, PC8REO, LLC.

first class and certified mail notifying them of The Star-Ledger publication and of the forty-five-day deadline for redeeming the tax lien. The notice specifically informed BRR and its lenders that plaintiff would move for entry of final judgment if the tax lien was not timely redeemed, or if they failed to contest the foreclosure.

Plaintiff also mailed notice of the in rem foreclosure action to BRR, Envision Funded and Toorak via first class and certified mail, as permitted by N.J.S.A. 54:5-104.48 and Rule 4:64-7(c). Plaintiff certified that none of the first class mail was returned and signatures on the return mail receipts indicate BRR received notice at the Property and at its Brooklyn, New York address. Toorak's agents similarly signed for the mail at its Summit, New Jersey and Wilmington, Delaware addresses on September 15, 2020. On September 16, 2020, plaintiff also posted notice at the Property and in various public locations throughout the City, as required by Rule 4:64-7(d).

Next, plaintiff retained Dino M. Cavalieri, a licensed building inspector, to evaluate the Property. Cavalieri's inspection report determined that "at least one installment of property tax remains unpaid and delinquent" and stated that various conditions on the Property indicated it was "in need of rehabilitation," including "boarded and missing windows" and "graffiti all over [the] building."

As such, plaintiff submitted that Cavalieri's inspection established the Property as abandoned under N.J.S.A. 55:19-81.

On October 6, 2020, plaintiff filed a motion to certify the Property as abandoned. The court later granted plaintiff's application and noted the motion was unopposed. In its accompanying statement of reasons, the court considered Cavalieri's report, determined that it was unrefuted, and designated the Property abandoned in accordance with N.J.S.A. 55:19-81 and N.J.S.A. 54:5-86(b).

Plaintiff certified that it served the complaint on BRR, Envision Funded, and Toorak via first class and certified mail on October 9, 2020.[3] Toorak maintained it became aware of the foreclosure action in "approximately" October 2020, and retained Cold River Land, LLC, to redeem the tax certificate. Cold River is a third-party tax management company located in Georgia and regularly hired by Toorak for these purposes.

In an effort to redeem BRR's property rights, Cold River claimed it first faxed an inquiry to the Tax Collector on October 22, 2020, requesting information as to how to satisfy the tax lien. Cold River thereafter stated it received payment instructions from the City on December 1, 2020, which it understood permitted it until December 31, 2020 to redeem the certificate in

[3] We note that it took plaintiff nearly four months to serve the complaint.

order to avoid foreclosure. Although these instructions are not contained in the record, Cold River and Toorak maintain that the thirty-seven-page document received was "confusing", as it contained information on numerous unrelated properties, and "it took some time for Cold River to discern what the document was and the relevant portions therein."

On November 17, 2020, the Tax Collector executed an affidavit of non-redemption, in which it stated that BRR failed to redeem the tax lien certificate and further noted that it had received a copy of the notice of foreclosure. On November 20, 2020, plaintiff's counsel moved to substitute PC8REO, LLC, as plaintiff. Notice of the motion was sent to all parties that same day via first class mail. The court later granted the motion, noting that PC8REO, LLC was the rightful holder of the tax sale certificate.

After successfully moving for entry of default, plaintiff filed an application for final judgment on November 20, 2020, which the court granted on December 8, 2020, thereby extinguishing BRR's right of redemption. The order stated that notice of the foreclosure action had been provided in accordance with relevant statutes and Rules and was published both at the Property and in conspicuous places throughout the City as required under Rule

4:64-7(d). The court further noted that BRR failed to file an answer and plaintiff was therefore vested with an "absolute and indefeasible [fee simple] estate."

Plaintiff served BRR and Toorak with the final judgment on December 11, 2020, via first class mail. That same day, Cold River sent a second request for payment instructions to the City. For its part, Toorak remitted payment to the City on December 18, 2020, but the City rejected its payment. Toorak stated it sent payment "in accordance with the instructions received" and relied upon the reported "valid through" December 31, 2020 date on the instructions, believing that "final judgment could not and would not be entered" until that day.

On December 23, 2020, two weeks after the entry of final judgment, Toorak filed a motion to vacate final judgment. The motion was supported by an "attorney statement" from its counsel, Morgan Fiander, Esq., and a notarized affidavit from Amber Hedgecock Watts, a Senior Account Manager at Cold River. Watts attested that "[Toorak] retained Cold River to obtain information on the tax lien certificate, specifically the amount due and how to redeem the certificate."[4]

[4] The affidavit incorrectly noted that Cold River was retained by "Normandy Capital Trust," an unrelated entity. Neither the court nor the parties addressed this apparent oversight or raised it as a substantive concern.

Watts further stated that Toorak learned of the pending tax foreclosure in October 2020, and asserted that Toorak retained Cold River to "obtain information on the tax lien certificate, specifically the amount due and how to redeem the certificate." She also attested that Toorak, through Cold River, took steps to attempt to redeem the tax lien "in accordance with the instructions given" by the City.

BRR joined Toorak's motion and submitted an initial and supplemental affidavit from Mosche Wachsman, its owner and registered agent, as well as a certification from its counsel, David Schlachter, Esq. Wachsman stated that he checked the Property "regularly," and did not see any postings on the Property notifying him of the pending foreclosure proceeding. He further attested he was not aware of the action until "late December 2020." Further, Wachsman stated that he was never served with notice "at the LLC's address (in Lakewood, New Jersey)," but did not explain how he received notice of the final judgment.

Wachsman also noted that he understood that tax foreclosures "usually take two years from the date of default," and was told as much "by [an unidentified individual] at the Tax Office in Newark." Finally, he disputed that the Property was abandoned, claiming it was undergoing renovations that had been delayed because of the COVID-19 pandemic.

Schlachter stated he was "familiar with the facts from a review of the file and discussions with [his] client," and noted that "[t]he address for the LLC is in Lakewood, New Jersey." He asserted that the complaint was "never served on any party [and] was not even mailed to the property." Schlachter further explained that the Brooklyn address was an "apartment [that] ha[d] been rented by someone else since July 2020." Finally, Schlachter attested that the Property was not abandoned because it was under construction.

The court held oral arguments on February 5, 2021. The court first indicated concern about the affidavits and certifications submitted by the parties and noted deficiencies with respect to the "factual underpinnings" of those proofs. With respect to Toorak, the court noted that Watts failed to explain the source of her personal knowledge. As to BRR, the court similarly stated that Wachsman's initial affidavit failed to specify that he had personal knowledge of the matter.

The court also discussed the various subsections of Rule 4:50-1 with the parties. The court expressed doubt that Toorak or BRR established "excusable neglect" under subsection (a), noting that Toorak failed to provide any evidence that it had made "continual" efforts to reach the Tax Collector's office. The

court also reasoned that relief under subsections (e) and (f) was likely not warranted because it "just [did not] know what anybody did."

The court did express concern, however, that BRR and Toorak had not yet received notice of final judgment before Toorak sent payment to the Tax Collector, and final judgment may have been entered "as the check was crossing in the mail." Further, the court contemplated an equitable result may be appropriate, because not only would the City be made whole, plaintiff would also be "reimbursed the tax lien and all the expenses, the attorney's fees and all the expenses on the property." The court explained that Toorak and BRR would therefore be left to resolve the matter in foreclosure court.[5]

Finally, the court considered BRR's argument that it had never received notice, either at the Property or BRR's new address in Lakewood. The court noted BRR failed to raise these arguments when the motion to vacate was initially filed, and never notified the City that its address had changed. The court appeared to dismiss the issue, noting it was satisfied "there [was] plenty of notice [and] plenty of service here."

[5] At the hearing, Fiander explained that BRR defaulted on its mortgage payments and Toorak had filed a foreclosure action against it.

After evaluating the parties' submissions and oral arguments, the court denied defendants' motion to vacate in a February 8, 2021 order and accompanying statement of reasons. The Court explained that the Watts affidavit did not comply with the Rule 1:6-6, and "provided no basis [to support the] conclusion that [s]he was competent to testify as to any of those factual assertions." The court further found that the Fiander statement was deficient because it was not based on her personal knowledge, and therefore concluded that the "submitted statement, affidavits, and certifications ha[d] no evidential value." The court also concluded that neither the Watts affidavit nor the Fiander statement satisfied the requirements for certifications in lieu of oaths under Rule 1:4-4(b).

As to BRR, the court similarly found that the Wachsman affidavits and Schlachter certification failed to satisfy Rules 1:4-4(b) and 1:6-6. The court explained that neither the Wachsman affidavits nor the Schlachter certification satisfied the personal knowledge requirement of Rule 1:6-6 because they contained hearsay statements. The court also concluded that the Schlachter certification improperly attested to facts within the primary knowledge of BRR, contrary to our holding in Deutsche Bank Nat. Tr. Co. v. Mitchell, 422 N.J. Super. 214, 226 (App. Div. 2011).

Only Toorak filed a notice of appeal challenging the court's February 8, 2021 order. After BRR failed to file a notice of appeal or a timely brief, we entered a suppression order on August 26, 2021, mandating that "no brief or other papers on behalf of [BRR] will be accepted for filing except a motion vacate this order." BRR later filed a motion to vacate, and in a January 20, 2022 order, we allowed it to file only a respondent's brief as "it did not file a notice of appeal and therefore [wa]s not a co-appellant." We also permitted BRR to participate in oral arguments.[6]

II.

Toorak and BRR argue the court committed error when it concluded that the Watts and Wachsman affidavits, the Fiander statement and the Schlachter certification submitted in support of their motion failed to comply with Rules 1:4-4(b) and 1:6-6. We agree with the court that the Fiander statement and Schlachter certification failed to comply with Rules 1:4-4(b) and 1:6-6. We are satisfied, however, that the court erred when it concluded the Watts and

[6] After we entered the January 20, 2022 order, plaintiff filed a motion to suppress BRR's brief. By way of this opinion, we deny that application and consider the brief subject to the limitations noted in our January 20, 2022 order. We reach this result to expedite the proceedings and to enable the trial court to address the Rule 4:50-1 issues on the merits and provide supplemental findings as we direct in this opinion.

Wachsman affidavits failed to comply either Rule, and conclude these affidavits should have been considered by the court.

We defer to a trial court's evidentiary ruling absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021). We do so because "the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that deferential standard, we "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)).

Rule 1:4-4 governs the form of affidavits. It first requires affidavits to "run in the first person and be divided into numbered paragraphs as in pleadings." R. 1:4-4(a). The Rule also provides that:

> [i]n lieu of the affidavit, oath or verification required by these rules, the affiant may submit the following certification which shall be dated and immediately precede the affiant's signature: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."
>
> [R. 1:4-4(b).]

The Rule 1:4–4(b) verification requirement allows certifications to be filed in lieu of more formal affidavits. State v. Parmigiani, 65 N.J. 154, 156 (1974); Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 1:4–4(b) (2015). The "allowance of certification in lieu of oath was admittedly intended as a convenience[,] but it in nowise reduced the solemnity of the verification or declaration of truth." Parmigiani, 65 N.J. at 157; see also State v. Angelo's Motor Sales, Inc., 125 N.J. Super. 200, 207 (App. Div. 1973) ("Certification is only another way of swearing or affirming.").

Rule 1:6-6 governs the substance of an affidavit. It provides:

> If a motion is based on facts not appearing of record, or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination or hear the matter wholly or partly on oral testimony or depositions.
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> [R. 1:6-6 (emphasis added).]

Certifications "based upon information provided to [the affiant]" and those made "to the best of [his or her] knowledge and belief" do not satisfy the personal knowledge requirement of Rule 1:6-6. Claypotch v. Heller, Inc., 360 N.J. Super. 472, 489 (App. Div. 2003). Moreover, we have previously stated

that "affidavits in which the affiant fails to identify specifically his position, or explain the source of his personal knowledge of the facts to which he attests, or attempts to authenticate attached documents without explaining precisely what each is and how it came into the affiant's hands should be rejected." New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 332 (App. Div. 2014). Critical documents which are alleged to support facts upon which a motion is based must be submitted "to the court by way of affidavit or testimony." Celino v. Gen. Accident Ins., 211 N.J. Super. 538, 544 (App. Div. 1986); see also Mazur ex rel. Armstrong v. Crane's Mill Nursing Home, 441 N.J. Super. 168, 180 (App. Div. 2015) (explaining that Rule 1:6–6 requires documents relied upon to support a motion be incorporated by reference in an affidavit or certification).

Based on these principles, we disagree with the court's conclusion that the entirety of the affidavits were deficient. First, we are satisfied that the Watts affidavit complied with Rules 1:4-4 and 1:6-6. Watts asserted that she was retained by Toorak to "obtain information on the tax lien certification" in her position as Senior Account Manager with Cold River, and plaintiff does not dispute this. These statements are sufficient under the "personal knowledge" requirement of Rule 1:6-6, as Watts' knowledge was clearly based upon facts within her knowledge in her capacity as Toorak's agent.

In addition, we disagree with the court's conclusion that Watts' affidavit failed to satisfy the formalities required by Rule 1:4-4(b). The affidavit ran in the first person, was divided into numbered paragraphs, and was notarized, and therefore satisfied the conditions for affidavits under Rule 1:4-4(a). Thus, it did not fall within the purview of Rule 1:4-4(b).

We are further satisfied that the Wachsman affidavits contained competent evidence under Rules 1:4-4 and 1:6-6. Wachsman attested that he is the owner both BRR and the Property. He further stated that he personally went to the Tax Collector's office on December 2, 2020 based on his understanding that he had to pay the lien in person, but found the office to be closed. Wachsman also attested that he checked the Property regularly but as noted, had not seen any postings related to the foreclosure. He also stated that the Brooklyn address was a rented apartment, where someone with "no connection" to him was living.

Further, Wachsman disputed that the Property was abandoned, and explained that it was under construction with a property manager living on the premises. Similar to the Watts affidavit, Wachsman's affidavit was written the

first person, divided into numbered paragraphs, and notarized, thereby satisfying the conditions for affidavits under Rule 1:4-4(a).[7]

We discern no error, however, in the court's conclusion that the Fiander statement and the Schlachter certification failed to comply with Rules 1:4-4(b) and 1:6-6. First, the Fiander document, titled as a "statement," was not an affidavit, nor did it include the required language for attorney certifications under Rule 1:4-4(b). We also note that the statement failed to satisfy the "personal knowledge" requirement of Rule 1:6-6, as Fiander did not attest to any communication with Cold River regarding its redemption efforts. Rather, she explained only that she was an associate with the firm hired by Toorak and failed to specify the source of her knowledge. See Claypotch, 360 N.J. Super at 489; Wells Fargo Bank v. Ford, 418 N.J. Super 592, 599-600 (App. Div. 2011) (finding a certification that plaintiff relied upon in support of its motion for summary judgment was not properly authenticated because it did not allege that the affiant had personal knowledge, did not give any indication how he obtained the alleged knowledge, and did not indicate the source of his knowledge).

[7] We note, however, that certain portions of Wachsman's January 12, 2021 affidavit contained inadmissible hearsay statements, which the court properly excluded from consideration, such as his reference to statements made by an unspecified person in the Tax Collector's office.

Further, Fiander improperly certified to facts within the primary knowledge of Cold River, such as its "multiple attempts to obtain the payoff information." As we stated in Mitchell, 422 N.J. Super. at 226, "[a]ttorneys in particular should not certify to facts within the primary knowledge of their clients."

Similarly, we are satisfied that the court did not abuse its discretion when it concluded the Schlachter certification failed to comply with Rules 1:4-4 and 1:6-6. While Schlachter stated he was "familiar with the facts from a review of the file and discussions with [his] client," he failed to include the certification language required by Rule 1:4-4(b), and attested to facts within the primary knowledge of BRR, also contrary to our holding in Mitchell, 422 N.J. Super. at 226.

Because the court concluded that these submissions did not constitute competent evidence, it denied the motion to vacate without addressing the merits of the Rule 4:50-1 motion. As we have discussed, and as detailed infra, at Part III, the Watts and Wachsman affidavits contained competent evidence that should have been considered by the court. These submissions detailed critical

information relevant to a Rule 4:50-1 analysis, such as issues related to Toorak's redemption efforts, and the abandoned status of the Property.[8]

III.

As noted, Toorak and BRR argue the court erred in denying their application for relief under Rule 4:50-1. Toorak insists the "understaffed, unresponsive office" of the Tax Collector "thwarted" its redemption efforts and ignored Cold River's original request for payoff instructions. For its part, BRR maintains the sale of the tax lien was improper in the first instance, as the Property was never abandoned and it never received notice of the foreclosure action. Both parties further emphasize that vacating the final judgment promotes an equitable result, as plaintiff would be made whole, Toorak's mortgage would be restored, and defendant would retake ownership of the Property.

[8] We note that according to Toorak, plaintiff, in opposing the motion to vacate, did not challenge the sufficiency of the Watts and Wachsman affidavits, the Fiander statement or the Schlachter certification. Rather, the court raised these issues sua sponte at oral argument. To the extent the court had questions regarding the factual support for these submissions, the better course would have been for the court to exercise its discretion under Rule 1:6-6 and require the witnesses to testify, subject themselves cross examination, or submit supplemental materials. See R. 1:6-6; State of Maine v. SeKap, S.A. Greek Co-op. Cigarette Mfg. Co., S.A., 392 N.J. Super. 227, 243 (App. Div. 2007) ("While determination of the issue may be made upon affidavits, our Court Rules specifically allow for oral testimony, depositions and cross-examination when affidavits do not suffice.").

We consider these arguments 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, while "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." Simon v. Cronecker, 189 N.J. 304, 319 (2007).

"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). In addition, a property owner has "the right to redeem the tax sale certificate at anytime before the final date for redemption set by the court and 'until barred by the judgment of the Superior Court.'" Id. at

319 (internal citation omitted) (quoting N.J.S.A. 54:5-86); see also R. 4:64-6(b) ("Redemption may be made at any time until the entry of final judgment . . . .").

Under N.J.S.A. 54:5-86(b), a plaintiff holding a tax sale certificate for a property that meets the Abandoned Property Rehabilitation Act (APRA), N.J.S.A. 55:19-78 to -107, definition of "abandoned" may bring an action under the In Rem Tax Foreclosure Act. Specifically, the Act allows "any municipality or abandoned property certificate holder" to bring an action in rem "to bar rights of redemption." N.J.S.A. 54:5-104.32. The filing must include a certification by the public officer or the tax collector that the property is abandoned. N.J.S.A. 54:5-86(b). The Legislature added Section 86 to allow any tax lien holders, other than just municipalities, to institute such actions, "but only with respect to abandoned properties." L. 2015, c. 16 (Oct. 2, 2014). It was also written to allow these actions "in a more streamlined manner . . . by subjecting tax lien holders to less stringent notice requirements." Id.

Rule 4:50-1 provides six grounds that warrant relief from a final judgment:

> (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under [Rule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic),

> misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.
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> [R. 4:50–1.]

A party seeking to vacate a final judgment in a foreclosure action must satisfy one of the aforementioned grounds for relief set forth in Rule 4:50-1. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "The decision whether to vacate a judgment under Rule 4:50-1 is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "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," meaning the lower court's decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Guillaume, 209 N.J. at 467; see also BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 124 (App. Div. 2021).

The Rule "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have the authority to avoid an unjust result in any given case." Manning Eng'g, Inc. v. Hudson Cty. Park Comm'n, 74 N.J. 113, 120 (1977). The rule is limited to "situations in which, were it not applied, a grave injustice would occur." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994). Under the Rule, the movant bears the burden of demonstrating his or her entitlement to relief. See Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super 419, 425-26 (App. Div. 2003).

The four categories under subsection (a) "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, LLC v. Twp. of Fairfield, 198 N.J. 242, 262 (2009). This part of the Rule is intended to provide relief from litigation errors "that a party could not have protected against." Id. at 263 (quoting Cashner v. Freedom Stores, Inc., 98 F.3d 572, 577 (10th Cir. 1996)).

"To prevail under Rule 4:50-1(a), the [movants] are further compelled to prove the existence of a 'meritorious defense.'" Guillaume, 209 N.J. at 469. As we held in Schulwitz v. Shuster, "[i]t would create a rather anomalous situation

if a judgment were to be vacated on the ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense." 27 N.J. Super. 554, 561 (App. Div. 1953).

Rule 4:50-1(f), the so-called catchall provision, "is available only when 'truly exceptional circumstances are present.'" Little, 135 N.J. at 286 (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). "[T]he very essence of (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." Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966). We have further recognized "important factors" to be considered in deciding whether relief in such circumstances should be granted, including "(1) the extent of the delay in making the application; (2) the underlying reason or cause; (3) the fault or blamelessness of the litigant; and (4) the prejudice that would accrue to the other party." Parker v. Marcus, 281 N.J. Super. 589, 593 (App. Div. 1995).

As noted, the court based its decision on the inadequacies in the parties' submissions and did not address relief under Rule 4:50-1. While we acknowledge the court did engage in a colloquy with counsel at oral argument, such comments do not satisfy Rule 1:7-4(a). See Pardo v. Dominquez, 382 N.J. Super. 489, 492 (App. Div. 2006) (rejecting "the suggestion that a judge's

comment or question in a colloquy can provide the reasoning for an opinion which requires findings of fact and conclusions of law"). We accordingly remand for the court to address the Rule 4:50-1 arguments on the merits. In order to assist the court on remand, we briefly address the parties' arguments under Rule 4:50-1.

First, the court should consider whether BRR and Toorak's efforts to redeem the tax lien are "compatible with due diligence or reasonable prudence" under Rule 4:50-1(a), Mancini v. EDS on Behalf of New Jersey Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 335 (1993), and make factual findings with respect to Toorak and BRR's efforts to "protect[] against" final judgment. DEG, LLC, 198 N.J. at 263 (quoting Cashner, 98 F.3d at 577). As noted, the Watts affidavit detailed Cold River's efforts to redeem the lien beginning in October 2020, including its first request sent to the City on October 22, 2022, only thirteen days after Toorak had been served with the complaint.

In her affidavit, Watts further stated that the instructions received from the City on December 1, 2020, nearly five weeks after Cold River sent the original request, did not clearly delineate how to redeem the tax lien on the Property. Watts further asserted that payment was attempted only seventeen days later, on December 18, 2020, because Cold River and Toorak believed the

instructions indicated the redemption deadline as December 31, 2020. For his part, Wachsman also attested to his efforts to obtain information from the Tax Collector's office.

The court should also address whether relief under Rule 4:50-1 was appropriate based upon the determination that the Property was abandoned. As noted, the court entered an order certifying the Property as abandoned after Cavalieri's inspection report noted various conditions on the Property indicated it was "in need of rehabilitation." Wachsman's affidavit, however, explained that these conditions were the result of ongoing renovations, and the boarded windows noted in the inspection report were an incomplete representation of the state of the Property.

In addition, a threshold requirement before a property is deemed abandoned under N.J.S.A. 55:19-81 is the absence of proof that it was lawfully occupied for six months. Wachsman attested, however, that BRR had a property manager living on the premises in one of the apartments. This affidavit can fairly be read to support the conclusion that this individual was lawfully residing in the residence at some period during the relevant six-month period before the court designated the Property as abandoned.

These factual questions are not inconsequential. The propriety of the court's abandonment designation was a critical determination in the foreclosure proceedings, as it necessarily informs whether vacating the default judgment was appropriate under Rule 4:50-1. This is so because a private tax lien holder—like plaintiff—must wait two years from the certificate's acquisition to file a foreclosure complaint, N.J.S.A. 54:5-86(a), unless the property is certified as abandoned within the meaning of APRA, in which case the foreclosure action may be commenced "any time" after the certificate's acquisition. See N.J.S.A. 54:5-86(b).

Further, the court should consider Toorak's prompt filing of the application, only fifteen days after final judgment was entered. Parker, 281 N.J. Super. at 593. This "promptness in moving for relief" may support relief from judgment under Rule 4:50-1(f). See Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 541 (App. Div. 2003) (affirming relief from judgment "when examined against the very short time period between the entry of default judgment and the motion to vacate"); Morales v. Santiago, 217 N.J. Super. 496, 504-05 (App. Div. 1987) (reversing the denial of a motion to vacate because, among other factors, "[s]ellers moved to vacate the judgment soon after it was entered").

Finally, we address and reject BRR's contention that it is entitled to Rule 4:50-1 relief because it allegedly never received notice of the foreclosure action until the entry of final judgment. Specifically, BRR maintains that various notices sent to the Property were returned undelivered and the Brooklyn address was incorrect, as it had been "rented by someone else since July 2020." BRR further argues it did not receive posted notice at the Property because there is "no way for a mail carrier to knock on [the property manager's] door as it requires inside access, which at the time, the mail-carrier did not try to access because of the look of the building, or could not, because [BRR] secured the building."

Rule 4:64-7(b) governs notice for in rem tax foreclosure matters. That Rule requires, in relevant part, that a plaintiff "publish once a notice of foreclosure in a newspaper generally circulated in the municipality where the lands affected are located . . . ." R. 4:64-7(b). Service by publication is "hardly favored," however, as it is the "method of service that is least likely to give notice." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 353 (App. Div. 2004) (citing Modan v. Modan, 327 N.J. Super. 44, 48 (App. Div. 2000)).

Rule 4:64-7(c) also governs service for in rem tax foreclosure matters. It requires a plaintiff to serve a copy of the foreclosure notice "on each person

whose name appears as an owner in the tax foreclosure list at his or her last known address as it appears on the last municipal tax duplicate" within seven days of the date of publication of the notice of foreclosure. R. 4:64-7(c). The Rule specifies that such service must be made "in the manner provided by R. 4:4-4(a)(1) or (c) or by simultaneously mailing to the last known address by registered or certified mail, return receipt requested, and by ordinary mail." Ibid.

Under Rule 4:64-7(d), "within [fifteen] days after the date of the publication of the notice," a plaintiff must also post a copy "in the office of the tax collector of the plaintiff municipality and in the office of the county recording officer of the county in which the land to be affected by the action is, and in [three] other conspicuous places within the taxing district in which the land is located." The Rule also requires plaintiff to mail a copy of the notice of foreclosure "by ordinary mail, to the Attorney General." R. 4:64-7(d).

Here, we are satisfied that the dictates of due process were met consistent with Rule 4:64-7(b), (c) and (d). Under subsection (b), notice of the in rem tax foreclosure complaint was published in The Star-Ledger. Under subsection (c), plaintiff mailed notices of foreclosure to both BRR and Wachsman, by certified and regular mail. Signed mail receipts indicate notice of the foreclosure action

was delivered to the Brooklyn address on September 14, 2020. These notices were sent to the LLC's address and the address for Wachsman on Spencer Street, in Brooklyn, New York. BRR contends the Brooklyn address was incorrect, and notice should have been sent to an indeterminate address in Lakewood, New Jersey, without providing any explanation or documentary support that this address is the LLC's mailing address, or a proper address for service.

We note that the Spencer Street address is listed on the tax lien certificate, signed by the Tax Collector, as the address of the last tax duplicate for BRR. In addition, the promissory note and mortgage security agreement with Envision Funded, both signed by Wachsman and later transferred to Toorak, identify Spencer Street as BRR's office address as of June 24, 2019, only six months before default. Further, Toorak, BRR's own lender, sent notice of its motion to vacate to the Spencer Street address. Accordingly, there is nothing in the record to suggest Wachsman's correct address was in Lakewood, and BRR has provided no proofs to establish a change in address for purposes of notice under N.J.S.A. 14A:4-3.

Notice was also posted in accordance with Rule 4:64–7(d) in at least three conspicuous locations in the taxing district where the land is located, including the Essex County Clerk's Office, the Tax Collector's Office, the John F. Kennedy

Recreation Center, the Newark Post Office, and Washington Park Station. Further, plaintiff posted notice at both the Tax Collector's office and the Essex County Register's Office in accordance with Rule 4:64-6(d).

In sum, on remand, the court should issue findings of fact and conclusions of law with respect to the propriety of vacating the December 8, 2020 order under Rule 4:50-1, with the exception of any issues related to the sufficiency of service. To the extent we have not specifically addressed any of the parties' arguments, it is because we conclude they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded. We do not retain jurisdiction.