SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3182-20

REDSTONE CAPITAL GROUP, LLC,

Plaintiff-Appellant,

v.

FEE SIMPLE INVESTMENTS, LLC,

Defendant-Respondent,

and

STATE OF NEW JERSEY,

Defendant.

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Argued March 7, 2022 — Decided June 9, 2022

Before Judges Fasciale and Sumners.

On appeal from the Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-008281-20.

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

Justin M. Gillman argued the cause for respondent (Gillman, Bruton & Capone, LLC, attorneys; Justin M. Gillman, on the brief).

PER CURIAM

Plaintiff Redstone Capital Group, LLC appeals from a June 24, 2021 order granting defendant Fee Simple Investments, LLC's motion to vacate a May 13, 2021 final judgment of an in-rem tax foreclosure and permitting defendant to make redemption payments. Plaintiff also appeals from a June 2, 2021 order granting defendant's motion to temporarily restrain plaintiff from transferring title or making any significant alterations to the property pending defendant's motion to vacate. We reverse.

I

Defendant, comprised of two members, Oscar Peralta and Christopher Neuert, owns a property in Plumsted Township, consisting of two residential units and two commercial units, by virtue of a May 3, 2013 deed, recorded on May 8, 2013. After defendant failed to pay property taxes for three years, a tax sale certificate on the property was purchased by FNA DZ, LLC FBO WSFS on

December 27, 2017, in the amount of $5,560.35 with interest at a rate of eighteen percent. The certificate was subsequently assigned to plaintiff.

After serving defendant with a notice of intent to foreclose, plaintiff filed a foreclosure complaint on September 21, 2020. The complaint was served on Peralta, defendant's managing agent, personally and by certified and regular mail. Default was entered after defendant failed to file an answer. An order was subsequently entered fixing the amount, time, and place for redemption on February 9, 2021. After defendant failed to redeem, plaintiff filed and served upon defendant a motion to enter final judgment. Final judgment of tax sale certificate foreclosure was entered on May 13, 2021.

Eight days after entry of final judgment, defendant, supported by Neuert's certification, moved to vacate the judgment. Neuert maintained that due to the COVID-19 pandemic, one of the property's four tenants paid no rent from March 2020 to April 21, 2021. He further asserted that starting in July or August of 2020, defendant sought to refinance the property's debt, which would enable it to pay property taxes. Neuert also claimed "[i]t was not until after the entry of the [f]inal [j]udgment that [Peralta] advised me that he had previously received the [foreclosure] documents from this case[,] including the [o]rder [s]etting [r]edemption and . . . [p]laintiff's [m]otion to enter [f]inal [j]udgment." Neuert

admitted the notice of intent to foreclose, the foreclosure complaint, and the subsequent motions were properly served on Peralta, but claimed that he "would have taken more prompt action to resolve the issues" had he been served instead of Peralta. At no point did Neuert assert that COVID-19 caused any difficulty between he and Peralta communicating with each other during the foreclosure proceeding.

On May 26, 2021, defendant also filed an application for an order to show cause with temporary restraints pursuant to Rule 4:52-2. A week later, on June 2, the judge entered an order "temporarily restrain[ing] [plaintiff] from transferring title or making significant alterations, modifications, improvements, or other repairs to the [p]roperty." The order also provided

> [t]hat if . . . [p]laintiff determines that any emergent issue relating to the [p]roperty should arise which would affect the health, safety, and welfare of any party, . . . [p]laintiff shall seek the consent of . . . [d]efendant to take actions which may be agreed upon by the parties. Should the parties be unable to reach an agreement, . . . [p]laintiff may move before the [c]ourt to seek such limited relief.

Following oral argument on defendant's motion to vacate judgment, the motion judge rendered an oral decision vacating the final judgment of foreclosure on the condition that defendant pay the redemption amount to the tax collector and pay plaintiff's reasonable counsel fees and costs. The judge

later issued a June 24, 2021 order memorializing his oral ruling and mandating that defendant pay: (1) "$31,687.38 to the municipal tax collector within seven . . . days" to redeem the tax sale certificate owned by plaintiff; and (2) $5,471.94 to plaintiff's attorney "representing the reasonable attorney[']s fees and costs incurred by . . . [p]laintiff." The order's conditions were satisfied by plaintiff.

In a Rule 2:5-1(b) amplification letter, the judge stated that entry of final default judgment of foreclosure should be vacated under Rule 4:50-1(a)—mistake, inadvertence, surprise, or excusable neglect. The judge relied upon DEG, LLC v. Township of Fairfield, which held that the rule provides relief "situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment." 198 N.J. 242, 262 (2009). The judge determined there was excusable neglect because of: (1) defendant's significant financing issues due to tenants' non-payment of rent and the inability to evict them and find new rent-paying tenants due to the COVID-19 eviction moratorium; and (2) Peralta's failure to notify Neuert of the foreclosure proceedings, thereby preventing Neuert from redeeming the tax sale certificate.

In addition, the judge noted,

> it cannot be ignored that . . . [d]efendant's difficulty in . . . [refinancing] [wa]s, at leas[t] partly, a result of COVID[-19][,] . . . . [which] was exacerbated when [defendant's] non-paying tenants could not easily be

> replaced by paying tenants, affecting cash flow. See Apartment Ass'n of L.A. Cty., Inc. v. City of L.A., 500 F. Supp. 3d 1088, 1096 (C.D. Cal. 2020)[ ](citing[ ] Baptiste v. Kennealy, No. 1:20-CV-11335-MLW, 490 F. Supp. 3d 353, 2020 U.S. Dist. LEXIS 176264, 2020 WL 5751572, at *16 (D. Mass. Sept. 25, 2020) . . . .

The judge stated:

> The fact that [d]efendants may have had a history of financial difficulties and failure to pay taxes in other separate events is irrelevant to this application. This does not appear to be a case of simple carelessness but is based on Neuert's mistaken reliance on his business partner and the failure to properly communicate during these unique and unprecedented times. As a result, it is this [c]ourt's view that . . . [d]efendant has met its burden and established excusable neglect. Defendant has also established its ability to redeem as a meritorious defense.

In the alternative, the judge found that the same facts established cause under Rule 4:50-1(f)—any other reason justifying relief from the operation of the judgment or order—to vacate the tax foreclosure judgment. Applying subpart (f), the court stated:

> the equity in the [p]roperty and the action of [d]efendants within a short period of time after final judgment was entered are significant factors. The fact that there is equity in the [p]roperty does not dictate the result. The loss of equity in property alone[] is an insufficient basis to vacate [f]inal [j]udgment—if equity and value disparity were sufficient bases to vacate a tax foreclosure, then every single final judgment of tax foreclosure would be open to vacation

> since there is equity in every single tax-foreclosed property, and there is always a disparity between the values of the tax lien and the property. Our courts have concluded that equity is not dispositive. Morris Twp. v. Washington Heights Dev. Co., 137 N.J. Eq. 595, 597 (Ch. 1946) (where the court found equity in the property was not a relevant basis to vacate the judgment: "[a]ssuming that the taxes are much less than the value of the land such fact would not give this court jurisdiction to act in the premises[]") . . . .

Moreover, the judge explained that "to permit [d]efendant to redeem in this case does not undercut the incentives for participating in the tax sale nor prejudice . . . [p]laintiff."

Before us, plaintiff argues:

> I.
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> BACKGROUND ON THE TAX SALE LAW IN NEW JERSEY.
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> II.
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> DEFENDANT FAILED TO ALLEGE EXCUSABLE NEGLECT NOR WAS A MERITORIOUS DEFENSE PRESENTED, LET ALONE EXCEPTIONAL CAUSE. DEFENDANT WAS NOT ENTITLED TO RELIEF.
>
> A. There was no basis for relief under [Rule] 4:50-1(a).
>
> B. The foreclosure of corporate-owned property is not exceptional.
>
> C. Defendant was properly served.

II.

VACATING THE JUDGMENT CONSTITUTED EITHER A MISTAKEN EXERCISE OR ABUSE OF DISCRETION. (Not raised below as this is an appellate argument)[.]

IV.

AN ALLEGED DISPARITY IN VALUE OF A FORECLOSED PROPERTY AND THE DEBT IS NOT GROUNDS FOR RELIEF.

V.

DEFENDANT HAD FULL KNOWLEDGE OF THE ACTION YET FAILED TO ACT.

II

Vacating a tax foreclosure judgment is within the exercise of a trial judge's equitable powers. "Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case . . . ." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 476 (2012). "Foreclosure is a harsh remedy and equity abhors a forfeiture." Brinkley v. W. World Inc., 275 N.J. Super. 605, 610 (Ch. Div. 1994). That said, there are clear parameters governing a judge's powers to vacate a final judgment of tax foreclosure.

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; . . . 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.'" Guillaume, 209 N.J. at 467 (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

In the context of a default judgment, "[a] court should view 'the opening of default judgments . . . with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini, 132 N.J. at 334 (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964)). "In the tax sale certificate foreclosure context considerations of public policy and equity are also taken into account." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 350 (App. Div. 2004).

In general, the disposition of a motion under Rule 4:50-1 to vacate a judgment is entrusted to the discretion of the trial court. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). The trial court's decision to grant or deny such a motion should not be disturbed on appeal unless it represents a "clear abuse of

discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); see also Orner v. Liu, 419 N.J. Super. 431, 435 (App. Div. 2011). 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.'" Guillaume, 209 N.J. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

There was no "excusable neglect" under Rule 4:50-1(a) in this case because the facts did not establish defendant's default was "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Mancini, 132 N.J. at 335. There was also no extraordinary circumstances or "other reason justifying relief from the operation of the judgment" under Rule 4:50-1(f).

The tax sale certificate against the property had nothing to do with the tenants' inability to pay rent due to COVID-19. Defendant failed to pay property taxes, resulting in the issuance of a tax sale certificate on the property that was purchased on December 27, 2017. This was over two years before the COVID-19 pandemic took its economic toll on the state in March 2020.[1]

[1] As a result of the COVID-19 pandemic, Governor Phillip Murphy declared a public health emergency and state of emergency on March 9, 2020. Exec. Order

The trial judge's determination that there was excusable neglect for defendant's failure to redeem due to COVID-19 was not supported by the record. There was nothing in Neuert's certification in support of defendant's motion to vacate the foreclosure judgment that attributed Peralta's failure to notify Neuert about the foreclosure proceeding to COVID-19. Granted, the pandemic made the world topsy turvy, but there was no indication that either Peralta or Neuert could not communicate because one of them or someone they were caring for had fallen ill to COVID-19. The fact that defendant sought refinancing months prior to entry of foreclosure judgment suggests that its two members were in fact communicating.

The judge's reliance on DEG, LLC is misplaced. Unlike in DEG, LLC, where the failure to file an answer to the foreclosure complaint was attributable to someone else or a situation beyond the party's control, here, defendant's failure to file an answer and to redeem the tax sale certificate was due solely to its members' failure to communicate.

No. 103 (Mar. 9, 2020), 52 N.J.R. 549(a) (Apr. 6, 2020). On March 21, Executive Order 107 was signed, requiring all New Jersey residents to remain at home or at their place of residence unless they fell within one of the nine enumerated exceptions ("reporting to, or performing, their job," is exception number five). Exec. Order No. 107 (Mar. 21, 2020), 52 N.J.R. 554(a) (Apr. 6, 2020). The Governor also ordered "all non-essential retail businesses" to close because of the pandemic emergency. Ibid.

Moreover, we agree with plaintiff that Neuert's claim that he was unaware of the foreclosure proceeding until after final foreclosure judgment was entered on May 13, 2021, is belied by the record. On February 11, 2021—three months before final judgment—Neuert sent a text message to one of defendant's tenants stating: "Funny that you think the tax foreclosure will happen and you can avoid rent according to kids upstairs. That's a [s]cumbag maneuver and I thought higher of you." Thus, Neuert was aware of the foreclosure months before judgment was entered and did nothing to prevent its entry.

Lastly, we appreciate there is a disparity between the value of the property and the amount due under the foreclosure document, and foreclosure would be a significant financial loss to defendant members. But these factors have never been the sole ground for relief from a judgment. And given the noted principles that guide us, it does not warrant affirmance of the judge's orders.

In sum, we are constrained to conclude the motion judge mistakenly applied his discretion and, therefore, reverse the June 24, 2021 order vacating the May 13, 2021 final judgment of an in-rem tax foreclosure. We also remand for the judge to enter an order reinstating the final judgment and vacating the June 2, 2021 order temporarily restraining plaintiff from transferring title or making any significant alterations to the property.

Reversed. 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