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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0183-21**

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

**AMY DONINGTON and
BERGEN SQUARE
CONDOMINIUM ASSOCIATION,**

Defendants-Respondents,

and

**NEW JERSEY HOUSING
AND MORTGAGE FINANCE
AGENCY,**

Defendant,

and

BOROUGH OF RED BANK,

Intervenor-Respondent.

**SEYMOUR INVESTMENTS, LLC,
a/k/a SEYMORE INVESTMENTS,**

LLC,

Appellant.

Argued December 21, 2022 – Decided January 10, 2023

Before Judges Enright and Puglisi.

On appeal from the Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
F-046003-14.

Larry S. Loigman argued the cause for appellant.

Leslie G. London argued the cause for respondent
Borough of Red Bank (McManimon, Scotland &
Baumann, LLC, attorneys; Leslie G. London, of
counsel and on the brief; Ted Del Guercio, III, and
Jessica F. Silva, on the brief).

PER CURIAM

In this foreclosure action, appellant Seymour Investments, LLC (Seymour), challenges a September 8, 2021 enforcement order entered in favor of defendant/intervenor respondent Borough of Red Bank (Borough). We vacate and remand for further proceedings consistent with this opinion.

In December 2001, Amy Donington, the foreclosed mortgagor in this action, took title to property located in Red Bank at 108 Dr. James Parker Boulevard, Unit D7 (the property). The property was an affordable housing unit.

An Affordable Housing Agreement (AHA) signed by Donington was recorded with the deed and provided, in part:

Any affordable housing owner-occupied property that is acquired by a . . . purchaser at a foreclosure sale conducted by the holder of the first purchase money mortgagee shall be permanently released from the restrictions and covenants of this [AHA]. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to foreclosure with regard to the first purchase money mortgagee

In October 2014, plaintiff Wells Fargo Bank, N.A. (Wells Fargo) commenced a foreclosure action against Donington; eleven months later, final judgment was entered in Wells Fargo's favor. In June 2017, the property was subject to a sheriff's sale and title was vested in Seymour.

The Borough was not a named party to the foreclosure action, but it subsequently intervened in the action by way of a consent order (CO) dated March 16, 2018¹ to protect "its interests in seeing the [p]roperty [was] disposed of as an affordable housing unit." Under the CO, Seymour agreed any sale of the property would be in "conformance with . . . New Jersey's Affordable Housing requirements and restrictions, including those appearing of record and applicable to the [p]roperty." Counsel for the Borough, Seymour and Wells

¹ Seymour was incorrectly referenced as "Seymore Investments" in the CO.

Fargo agreed to the form and entry of the CO, as evidenced by their signatures on the CO.

Following entry of the CO, Seymour did not sell the property to a qualified affordable housing purchaser. Accordingly, in July 2021, the Borough moved to enforce the CO against Seymour, arguing Seymour had "not complied with the obligation to re-sell the [p]roperty in accordance with the applicable affordable housing restrictions, . . . as required" under the CO.

Seymour's counsel wrote to the trial court on August 26, 2021, asking to adjourn the motion for forty-five days from its original return date of September 3, 2021. In his letter, Seymour's attorney explained he had "not entered an appearance in th[e] case" and was looking for successor counsel for Seymour because the attorney who handled the matter in 2018 no longer represented Seymour. Counsel further stated, "I would ordinarily request a shorter time but, with most of September set aside for religious observances, [forty-five] days would be appropriate."

Four days later, counsel for the Borough wrote to the judge, acknowledging Seymour's request for an adjournment to allow Seymour to retain successor counsel. The Borough's attorney stated, "[t]he Borough consents to carrying the pending motion one . . . more cycle — to . . . September

24, 2021." She also noted, "the Borough does not consent to any additional time beyond that."

The judge entered an order on September 8, 2021, granting the Borough's motion "based on the moving papers that were not opposed."² Under the September 8 order, the judge directed Seymour to "immediately submit an application to the Borough's Affordable Housing Administrative Agent, to re-sell [the property] to a qualified housing purchaser." Further, the order stated, "if Seym[our] fails to comply with this order . . . within ten . . . days . . . then the [B]orough shall be designated . . . to do so and make application in Seym[our]'s name." The order made no mention of Seymour's adjournment request nor the fact the Borough agreed to adjourn the motion to September 24.

On appeal, Seymour raises two arguments for our consideration: (1) the trial court denied Seymour "an opportunity to be heard" and present "a substantive argument against enforcement of . . . prior orders"; and (2) "the affordable housing restrictions on the property expired by their own terms." Because we agree with Seymour's first contention, we need not address its second argument.

² Seymour was mistakenly referenced in the September 8 order as "Seymore Investments."

As a threshold matter, we note a "trial court's decision to grant or deny an adjournment is reviewed under an abuse of discretion standard." State ex rel. Comm'r of Transp. v. Shalom Money St., LLC, 432 N.J. Super. 1, 7 (App. Div. 2013). Further, we will not reverse the denial of an adjournment request to allow a party to retain counsel of their choosing "absent a showing of an abuse of discretion which caused [the party] a 'manifest wrong or injury.'" State v. Hayes, 205 N.J. 522, 537 (2011) (citation omitted).

"[C]ourts have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, but they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief." J.D. v. M.D.F., 207 N.J. 458, 480 (2011). In deciding whether to grant a request for an adjournment to enable a party to retain successor counsel, "the trial court must strike a balance between its inherent and necessary right to control its own calendar and the public's interest in the orderly administration of justice, on the one hand," and a party's right to have sufficient time to retain that party's choice of counsel. Hayes, 205 N.J. at 538. Some factors a trial court may consider in this regard include:

the length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; whether the requested

delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the [party seeking the adjournment] contributed to the circumstance which gives rise to the request for a continuance; whether the [party seeking the postponement] has other competent counsel prepared to try the case . . . ; the complexity of the case; and other relevant factors which may appear in the context of any particular case.

[Ibid. (citations omitted).]

Here, the September 8 order was entered without an explanation as to why Seymour's request for a forty-five-day adjournment to retain successor counsel was not accommodated. Further, the September 8 order does not mention Seymour's request for a continuance or the Borough's agreement to adjourn the motion to September 24. Accordingly, we are constrained to vacate the challenged order and remand this matter to allow the judge to reschedule the Borough's motion and permit Seymour a reasonable amount of time to respond to it.³ Any order resulting from our remand should be accompanied by a statement of the judge's factual findings and legal conclusions flowing from such findings. R. 1:7-4(a).

³ Notably, during appellate argument, the Borough's counsel confirmed it was not opposed to allowing Seymour an opportunity to respond to its enforcement motion.

In sum, we vacate the September 8 order, remand this matter for further proceedings consistent with our opinion, and decline to address the remaining issues on appeal.

Vacated and remanded. 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