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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-0546-22**

**PHH MORTGAGE
CORPORATION,**

Plaintiff-Respondent,

v.

**ABIODUN O. OKUBANJO
and OLADUNNI OKUBANJO,
his wife,**

Defendants-Appellants,

and

**BANK OF AMERICA, N.A.,
BAYVIEW LOAN SERVICING,
LLC, BRESSLER DUYK LAW
FIRM, and PATRICIA ZITO,**

Defendants.

Submitted July 10, 2023 – Decided July 13, 2023

Before Judges Haas and Vernoia.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No. F-
032105-10.

Abiodun O. Okubanjo, appellant pro se.

Romano Garubo & Argentieri, attorneys for respondent
(Emmanuel J. Argentieri, on the brief).

PER CURIAM

Defendant Abiodun O. Okubanjo appeals from an October 4, 2022 order denying his motion to vacate a final judgment of foreclosure. Having considered the record and applicable legal principles, and finding defendant's arguments on appeal are devoid of merit, we affirm.

On November 17, 2003, defendant executed a \$135,000 promissory note in favor of Fleet National Bank (FNB). Defendant's obligations under the note were secured by a mortgage on residential property in Irvington, New Jersey, granted to Mortgage Electronic Registration Systems, Inc. (MERS) as FNB's nominee.

In 2009, defendant defaulted under the note and mortgage. In a 2010 Assignment of Mortgage recorded with the Essex County Registrar, MERS as FNB's nominee assigned the mortgage to plaintiff PHH Mortgage Corporation. In June 2010, following the assignment, plaintiff filed a complaint in foreclosure against defendant. Defendant did not file a responsive pleading to the

complaint. On January 30, 2014, the court entered a final judgment of foreclosure.

In 2017, the court vacated the January 30, 2014 final judgment of foreclosure because plaintiff had filed a petition for bankruptcy on the day the judgment was entered. The court subsequently entered a final judgment of foreclosure on December 11, 2017. Defendant did not appeal from the December 11, 2017 final judgment.

More than four-and-one-half years later, in August 2022, defendant moved to vacate the final judgment pursuant to Rule 4:50-1. Defendant's supporting certification asserted various grounds for the requested relief, including claims: he was not served with plaintiff's request for entry of final judgment; plaintiff lacked standing; the note was not indorsed; the certification of the amount due is erroneous; the note was not properly authenticated; and he was not served with a notice of intent to foreclose.

In an October 4, 2022 order, the court denied defendant's motion to vacate the final judgment under Rule 4:50-1. The court found "defendant . . . failed to establish a sufficient legal or equitable basis" for the requested relief. The court further determined defendant failed to present a meritorious defense to the entry of the final judgment or excusable neglect warranting relief under the Rule.

The court also rejected defendant's claim plaintiff lacked standing, finding simply that plaintiff had "established standing[.]" The court also rejected defendant's assertion plaintiff failed to provide proper notice of its intention to foreclose, explaining plaintiff presented evidence confirming service of the notice on defendant.¹ Defendant appealed from the court's order denying his motion to vacate the final judgment of foreclosure.

"Generally, a decision to vacate a default judgment lies within the sound discretion of the trial court, guided by principles of equity." Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 293 (App. Div. 2021) (quoting Coryell, L.L.C. v. Curry, 391 N.J. Super 72, 79 (App. Div. 2006)). A court's denial of a motion to vacate a final judgment "will be left undisturbed 'unless it represents a clear abuse of discretion.'" Ibid. (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "[A]buse of discretion only arises on demonstration of 'manifest error or injustice[.]'" Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and when the trial court's

¹ The court also rejected defendant's apparent effort to seek refuge from the judgment by filing what the court described as his fourth petition for bankruptcy. We do not address that determination because defendant does not argue it was erroneous. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (finding an issue that is not addressed in a party's initial merits brief is deemed abandoned).

decision is "made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis[.]" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

The court did not abuse its discretion by denying defendant's Rule 4:50-1 motion. Defendant filed the motion more than four-and-one-half years after entry of the final judgment.² Although defendant does not identify the section of Rule 4:50-1 pursuant to which he sought relief, to the extent the motion is based on alleged mistake, inadvertence, surprise, or excusable neglect under Rule 4:50-1(a), newly discovered evidence under Rule 4:50-1(b), or fraud under Rule 4:50-1(c), it was properly denied as time-barred because it was not filed within one year after the final judgment was entered. R. 4:50-2. Similarly, because defendant does not argue the judgment has been satisfied, released, or

² Plaintiff argues we should affirm the denial of defendant's motion because defendant sought relief only from the January 30, 2014 final judgment, that judgment was vacated in 2017, and defendant never moved to vacate the operative December 11, 2017 final judgment. We are not persuaded by plaintiff's contention. Defendant's lack of precision in identifying the final judgment from which he sought relief does not obscure the fact that he sought relief from the operative final judgment of foreclosure, and, as the record shows, that is the 2017 final judgment.

discharged, any putative claim he is entitled to relief under Rule 4:50-1(e) was correctly rejected by the motion court.

Fairly read, defendant's pro se brief argues he was entitled to relief from the final judgment under Rule 4:50-1(d) because the final judgment is "void" and under Rule 4:50-1(f) for "any other reason justifying relief from the operation of the judgment or order." The basis for defendant's claim is limited to his contention plaintiff lacked standing to file and prosecute the foreclosure action.³ More particularly, defendant argues plaintiff did not have standing because the record lacks evidence plaintiff possessed the note and had been assigned the mortgage.

Defendant's factual claims pertaining to plaintiff's purported lack of standing, even if accepted as true, did not require that the court grant relief from the judgment under either Rule 4:50-1(d) or (f). As a matter of law, "a foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J.

³ Defendant does not argue the court erred by rejecting his claims the final judgment should be vacated because: plaintiff did not properly serve notices of intent to foreclose or of plaintiff's request for entry of final judgment; the note is not indorsed; the certification of the amount due is erroneous; and the note was not properly authenticated. We therefore deem those issues and arguments abandoned. Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5.

Super. 91, 101 (App. Div. 2012). Thus, the court did not abuse its discretion by rejecting any claim defendant was entitled to relief from the judgment because it was "void." See *ibid.*

A plaintiff's purported lack of standing, raised for the first time many years after entry of a final judgment, also does not support relief under Rule 4:50-1(f). As we explained in Russo, equitable considerations may properly bar a defendant from raising a standing argument after final judgment. Id. at 99-100. Defendant waited twelve years after service of the complaint, and four-and-one-half years after entry of final judgment, to first claim plaintiff lacked standing. Under those circumstances, "equitable considerations . . . justif[ied]" the court's rejection of "defendant's belated attempt to raise" the defense. Ibid. Indeed, following entry of the final judgment, title to the property was conveyed through a sheriff's sale.

"In foreclosure matters, equity must be applied to plaintiffs as well as defendants." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012). Where a defendant does not "raise the issue of standing until he had the advantage of many years of delay[,]" the court need not entertain the claim. Ibid. Here, defendant waited too long to raise the standing issue many years after final judgment was entered. We therefore find the court did not abuse

its discretion by denying defendant's motion under Rule 4:50-1(f) based on defendant's claim plaintiff lacked standing.⁴ See ibid. (affirming denial of relief from a final foreclosure judgment under Rule 4:50-1 where the defendant waited three-and-one-half years after the complaint was filed and two years after the default judgment was entered to challenge the plaintiff's standing).

We also observe that motions for relief from a final judgment under Rule 4:50-1(f) must be filed within a reasonable time. R. 4:50-2. Here, defendant offers no reason for his inordinate delay in challenging plaintiff's standing and for waiting more than four years following entry of the final judgment to seek relief under the Rule based on plaintiff's alleged lack of standing. Under any standard of reasonableness, defendant failed to timely file a motion under Rule 4:50-1(f) motion. See Romero, 468 N.J. Super. at 296-97 (finding a Rule 4:50-1(f) motion was not filed within a reasonable time where the defendant waited 359 days after becoming aware of the grounds for the motion to file it); see also Jackson Constr. Co. v. Ocean Twp., 182 N.J. Super. 148, 152 (Tax Ct. 1981)

⁴ We recognize the motion court did not deny defendant's motion because the final judgment is not "void" as a matter of law under Rule 4:50-1(d) and because the equities, and untimeliness of the motion, do not otherwise allow relief under Rule 4:50-1(f). We nonetheless affirm the court's order on those different grounds because "appeals are taken from orders and judgments and not from opinions[.]" Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001).

(finding a nine-month delay unreasonable under Rule 4:50-2). Thus, for reasons different than those relied on by the motion court, we affirm its denial of defendant's motion to the extent it sought relief under Rule 4:50-1(f). See Do-Wop Corp., 168 N.J. at 199.

To the extent we have not expressly addressed any other arguments that may be discerned from defendant's brief, we find they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION