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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-0763-21**

**GOLDSTAR ASSETS, LLC,**

**Plaintiff-Respondent,**

**v.**

**JUAN GONZALEZ,**

**Defendant-Appellant,**

**and**

**STATE OF NEW JERSEY,  
COUNTY OF MONMOUTH,  
COUNTY OF BERGEN, KEVIN  
HAGER, JOSE TAVERAS,  
and YANET VELEZ,**

**Defendants.**

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**Submitted November 15, 2022 – Decided January 19, 2023**

**Before Judges Sumners and Berdote Byrne.**

**On appeal from the Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No.  
F-016951-17.**

McNally & Associates, LLC, attorneys for appellant  
(Stephen B. McNally, on the brief).

Ragan & Ragan, PC, attorney for respondent (W. Peter  
Ragan, Sr., on the brief).

## PER CURIAM

This appeal arises from a Chancery Division order declining to vacate a final judgement of tax sale foreclosure against defendant. Defendant Juan Gonzalez argues he was never personally served the notice of motion to enter default and final judgment by default against him. He argues the trial court abused its discretion by failing to consider or improperly weighing evidence of the same when he moved to vacate out of time. Defendant also argues plaintiff Goldstar Assets, LLC failed to credit payments in bankruptcy that affected the final amount due on the tax sale certificate, and argues he was entitled to petition another bankruptcy proceeding, which the trial court failed to recognize. We find no merit to any of these arguments and affirm.

Defendant owned 590 Hunterdon Street in Newark, New Jersey, a three-family home where he resided since 2009. Taxes were assessed for the year 2010 in the amount of \$2947. Defendant did not pay those taxes, and on November 11, 2011, a tax sale was held. The resulting tax sale certificate was sold to a third party, not a party to this litigation, and recorded in the Essex

County Clerk's Office on November 23, 2011. The certificate was subsequently and ultimately assigned to plaintiff on July 16, 2015 and recorded on August 6, 2015.

The statutory two-year period from the date of sale elapsed without the tax sale certificate being redeemed, and with plaintiff still holding the certificate. See N.J.S.A. 54:5-86. On June 8, 2017, plaintiff served written notice of intent to foreclose, and on July 14, 2017, it initiated the foreclosure action. On July 25, 2017, defendant was personally served a copy of the foreclosure complaint at his address at 590 Hunterdon Street, basement apartment, in Newark. Defendant concedes he received personal service of the complaint.

On July 29, 2017, four days after being served the foreclosure complaint, defendant filed a bankruptcy petition, resulting in an automatic stay of the pending foreclosure action. Defendant did not file an appearance in the foreclosure matter. Plaintiff and defendant entered a consent order in the bankruptcy litigation. The consent order set forth a monthly payment schedule whereby defendant was required to remit monthly payments, including payments to remain current with post-petition taxes, to the trustee in bankruptcy, who applied the monies to redeem plaintiff.

Defendant ultimately defaulted on the payment schedule, and plaintiff obtained an order for relief from the bankruptcy stay on December 3, 2019. After the bankruptcy stay was lifted, plaintiff proceeded to prosecute the foreclosure action. On January 10, 2020, plaintiff moved to enter default against defendant out of time. That same day, plaintiff mailed, via certified and regular mail, the notice of motion to defendant at 590 Hunterdon Street, Newark, the same address where defendant was personally served the original tax sale foreclosure complaint. The certified mail was returned unclaimed, and the regular mail returned "unable to forward."

Default out of time was entered on February 20, 2020. The bankruptcy case was subsequently dismissed on March 10, 2020 and closed on April 14, 2020. Plaintiff subsequently moved to set the date, time, and place of redemption. Plaintiff again sent defendant the notice of motion papers via certified and regular mail, and the same were once again returned "unclaimed" and "unable to forward."

The trial court set May 12, 2020, as the date redemption at the tax collector's office in Newark. The amount to redeem, which was verified by a redemption statement issued by the City of Newark, was \$57,716.92. Plaintiff certified the trial court order setting date time and place of redemption was

served on defendant at the 590 Hunterdon address via regular mail because there was no record of it being returned to plaintiff's office.

May 12, 2020 elapsed without redemption occurring, and plaintiff moved for final judgment on June 22, 2020. Plaintiff attached a certification of mailing, including defendant's address, to accompany the notice of motion. Final judgment awarding plaintiff fee simple title to the property was entered July 28, 2020. Plaintiff certified in a subsequent certification that it mailed a copy of final judgment to defendant.

On November 4, 2020, more than three months after final judgment in the foreclosure action was entered, and more than six months after the bankruptcy case was dismissed, defendant attempted to resume redemption efforts by filing another bankruptcy petition. Defendant alleges he became aware of the final judgment in foreclosure when plaintiff objected to his bankruptcy plan on January 6, 2021.

On June 22, 2021, more than ten months after final judgment was entered, and more than five months after defendant became aware of the final judgment in foreclosure against him, he moved to vacate final judgment pursuant to Rule 4:50-1(a), arguing his failure to appear was due to excusable neglect because

plaintiff should have served the motions on his bankruptcy counsel,<sup>1</sup> or alternatively, the judgment was void because his lack of sophistication<sup>2</sup> and his forfeiture of equity justified relief. Defendant also asserts the trial court lacked jurisdiction to enter a final judgment in tax sale foreclosure pursuant to N.J.S.A. 54:5-87.

Defendant argues plaintiff purposefully misrepresented the redemption figure quoted in the redemption statement by not crediting payments in bankruptcy, in violation of N.J.S.A. 54:5-63.1. He states plaintiff knowingly and purposefully misquoted the redemption amount on the redemption statement as \$57,716.92, which does not reflect approximately \$27,941 in payments remitted to the trustee in bankruptcy for the purposes of redemption, and which constituted a valid defense and warranted reversal. Plaintiff rebuffed these accusations, claiming it obtained the verified tax redemption statement directly from the City of Newark.

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<sup>1</sup> It should be noted, because defendant never entered an appearance or defended the foreclosure action, he did not retain counsel in the foreclosure action until he moved to vacate the final judgment. Defendant's counsel for the bankruptcy case never represented him in the foreclosure action.

<sup>2</sup> Defendant does not argue he lacked capacity, but rather sophistication.

The trial court held oral argument on the motion on October 1, 2021. On October 8, 2021, the trial court denied the motion to vacate, finding "defendant was personally served at their 'basement apt' with the summons and complaint . . . On some date, [defendant] without notice to any party or the court moved to 'Unit 2, which is the upper floor.'" Regarding defendant's lack of sophistication arguments, the trial court also found "rather than enter an appearance in the foreclosure cause of action, defendant chose to 'almost immediately . . . retain a bankruptcy attorney.'" Despite the stay in bankruptcy, when defendant ultimately defaulted on his bankruptcy consent order, the court found "defendant never entered an appearance in the matter at bar and, instead, considered that they 'would probably need to re-initiate a bankruptcy . . . .'"

Regarding defendant's arguments about plaintiff's efforts to allegedly extricate more money than was owed in violation of relevant provisions of tax sale law, N.J.S.A. 54:5-63.1, which defendant argued was his valid defense, the trial court specifically inquired if defendant intended to redeem the tax sale certificate if the court vacated final judgment. Defendant clarified he had no intention of paying the correct redemption figure, but rather wished to continue his second petition in bankruptcy, which he filed after the final judgment in foreclosure was entered and after the first bankruptcy case was dismissed.

After oral argument the trial court denied the motion to vacate in a written statement of reasons. This appeal followed.

We affirm, substantially for the reasons set forth in the trial court's well-reasoned opinion and add only the following.

We review a trial court decision on whether to grant a motion to vacate a default judgment subject to an abuse of discretion standard. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). While we view "the opening of default judgments . . . with great liberality" the decision is ultimately "left to the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion." Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319, (App. Div. 1964)).

Personal jurisdiction is governed by Rule 4:4-4, which provides, in pertinent: "[t]he primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State . . . ." Additionally, once the trial court has jurisdiction, service of motions is not governed by the same service of process Rule 4:4-4, but instead, Rule 1:5-4(b) which states, "service by mail of any paper referred to in R. 1:5-1, when authorized by rule or court order, shall be complete upon



mailing of the ordinary mail." Additionally, Rule 1:5-1, which is explicitly referenced by Rule 1:5-4(b), governs when service is required, and provides "no service need be made on parties who have failed to appear except that pleadings asserting new or additional claims . . . shall be served upon them in the manner provided for service of original process." R. 1:5-1.

There was no defective service. Although bankruptcy automatically stays foreclosure litigation, it does not terminate the proceedings. To the extent defendant did not appear in the foreclosure action, he did so at his own risk, not because of defective service.

Moreover, with respect to defendant's arguments about his forfeiture of equity and alleged violations of the tax sale law, we acknowledge one important purpose of the tax sale law "is to give the property owner the opportunity to redeem the [tax sale] certificate and reclaim his land." Simon v. Cronecker, 189 N.J. 304, 319 (2007). As our Supreme Court recently reaffirmed, "the right to redeem shall exist and continue until barred by the judgment of the Superior Court . . . [and] redemption may be made at any time until the entry of final judgment." Green Knight Capital, LLC v. Calderon, \_\_\_ N.J. \_\_\_, \_\_\_ (2022) (slip. op. at 15) (first quoting N.J.S.A. 54:5-86(a) and then quoting Rule 4:64-6(b)). Defendant made no efforts to redeem before he was barred by final

judgment, and now seeks to vacate final judgment despite professing he is still unable to redeem.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION