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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-1815-21  
A-2638-21

PENNYMAC HOLDINGS, LLC,

Plaintiff-Respondent,

v.

BARBOUR ESTATES, LLC,  
SCHENCK PRICE SMITH &  
KING, LLP, and UNITED STATES  
OF AMERICA,

Defendants,

and

IFEOMA E. EZEKWO, his/her heirs,  
devisees and personal representatives,  
and his, her, their or any of their  
successors in right, title and interest,

Defendant-Appellant.

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ARYMING ASSET HOLDING,

Plaintiff-Respondent,

v.

Unknown occupants residing at  
855-929 BROADWAY  
(a/k/a 869 BROADWAY),  
PATERSON, NEW JERSEY,

Defendants-Appellants.

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Submitted June 1, 2023 – Decided June 9, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Passaic County, Docket  
No. F-004490-14, and Law Division, Docket No.  
DC-009496-21.

Ifeoma Ezekwo, appellant pro se.

Powers Kirn, LLC, attorneys for respondent Aryming  
Asset Holding successor in interest to PennyMac  
Holdings, LLC, in A-1815-21 (Jeanette J. O'Donnell,  
on the brief).

Kessler Law, LLC, attorneys for respondent Aryming  
Asset Holding in A-2638-21 have not filed a brief.<sup>1</sup>

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<sup>1</sup> In a May 8, 2023 order, we vacated a prior order suppressing the brief on behalf of respondent Aryming Asset Holding (Aryming) in Docket No. A-2638-21. The order directed Aryming to "file its respondent's brief by no later than May 15, 2023" and stated, "[a]ny brief[] not timely submitted pursuant to this order will not be filed and will not be considered in the disposition of [Docket No. A-2638-21]." Because Armying failed to file its brief by the May 15 date, we entered a May 18, 2023 order suppressing its brief. Armying's May 25, 2023 motion to vacate the May 18, 2023 order is denied.

## PER CURIAM

In these matters, calendared back-to-back and consolidated for purposes of issuing a single opinion, defendant Ifeoma E. Ezekwo appeals from a January 31, 2022 order in a foreclosure action denying her motion to vacate a sheriff's sale held on October 5, 2021. She also appeals from an April 26, 2022 order for possession in an ejectment action and a June 23, 2022 order denying her motion for reconsideration. We affirm all orders on appeal.

These appeals stem from two separate actions against Ezekwo and other defendants.<sup>2</sup> Docket No. A-1815-21 involves a foreclosure action and Docket No. A-2638-21 involves an ejectment action.

In the foreclosure action, the only order on appeal is a January 31, 2022 order denying Ezekwo's motion to vacate the sheriff's sale. We summarize the history of the foreclosure action.

On January 18, 2005, defendant Barbour Estates, LLC, by Ezekwo as a managing member, executed a note with Washington Mutual Bank for a loan in the amount of \$707,000. To secure payment, Ezekwo executed a mortgage in favor of Washington Mutual Bank against real property known as 869 Broadway

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<sup>2</sup> The other defendants are not participating in these appeals.

in Paterson, New Jersey (property). On March 8, 2005, the mortgage was recorded.

On December 1, 2006, Ezekwo defaulted on the loan. She subsequently filed for Chapter 11 bankruptcy. In February 2010, the bankruptcy court issued an order confirming the debtor's plan to reorganize. The plan capitalized arrears due to Washington Mutual Bank and modified the loan, reflecting a revised sum of \$1.1 million payable over 360 months at five and one-half percent interest.

Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, assigned the mortgage to JPMorgan Chase Bank, National Association (JPMorgan). In September 2012, the mortgage was recorded. JPMorgan then assigned the mortgage to PennyMac Mortgage Investment Trust Holdings I, LLC in October 2013, and the mortgage was recorded. That entity subsequently changed its name to plaintiff PennyMac Holdings, LLC (PennyMac).

Ezekwo failed to make the required payments under the modified loan. Based on the default, PennyMac accelerated the sum due under the modified loan.

On February 6, 2014, PennyMac filed an action to foreclose its interest in the property. Ezekwo filed a contesting answer. PennyMac moved to strike

Ezekwo's answer. On August 1, 2014, the foreclosure judge granted summary judgment to PennyMac.

Ezekwo, through her then counsel, objected to PennyMac's request for the entry of final judgment. The foreclosure judge conducted several hearings, including a proof hearing. After hearing testimony during the proof hearing, the judge entered a judgment in favor of PennyMac in the amount of \$2,202,365.55, plus interest and costs of suit. A final judgment in foreclosure was entered on August 15, 2018.

Thereafter, there were a number of delays related to the prosecution of the foreclosure action, including bankruptcy petitions filed by Ezekwo and stay orders granted by the trial court. As a result of these delays, the sheriff's sale for the property was rescheduled and adjourned several times.

During the period of delay, PennyMac filed two applications with the foreclosure judge to recover additional funds. The additional funds included PennyMac's payment of real estate taxes, hazard insurance, and property inspections accruing after entry of the foreclosure judgment. On August 31, 2021, the judge entered an order directing the Passaic County sheriff to pay PennyMac's requested additional funds in the amount of \$272,683.42.

On September 1, 2021, PennyMac rescheduled the sheriff's sale for October 5, 2021. PennyMac advised Ezekwo of the new date and time for the sheriff's sale in a letter dated the same day by regular and certified mail to Ezekwo's provided address.

On October 5, 2021, Ezekwo filed an order to show cause to stay the sheriff's sale scheduled for later that same day. The foreclosure judge held a hearing on the stay application during the morning of October 5, 2021. Ezekwo participated in the hearing. On October 5, approximately two hours before the scheduled sale of the property, the judge denied the stay.

On October 5, 2021, the Passaic County sheriff sold the property at public auction to PennyMac for \$100. PennyMac assigned its bid for the property to Aryming. The sheriff issued Aryming a deed to the property on October 18, 2021, and the deed was recorded eight days later.

In November 2021, Ezekwo filed a motion to vacate the October 5, 2021 sheriff's sale. Aryming, as successor in interest of PennyMac, filed opposition to the motion.

On January 31, 2022, the foreclosure judge heard argument on Ezekwo's motion to vacate the October 5, 2021 sheriff's sale. In a January 31, 2022 order, the judge denied the motion, placing his reasons on the record.

Specifically, Ezekwo argued she had the financial means to pay her monthly mortgage obligation. Additionally, she asserted she was entitled to a mortgage modification. The foreclosure judge rejected these arguments.

The judge found there was "no evidence" of Ezekwo's "ability to pay the mortgage and to meet the obligation" when she appeared in court on October 5, 2021 and January 31, 2022. The judge cited Ezekwo's fifteen years of non-payment "despite the plan of reorganization or confirmed plan" by the bankruptcy court. He explained PennyMac paid the carrying costs for the property for fifteen years.

Additionally, the judge found Ezekwo had no right to a modification of her loan obligation under the case law. Nor was there any evidence of "a legitimate application or complete application pending for a modification."

Ezekwo also asked that the motion be adjourned because she wished to obtain an attorney despite filing the motion pro se. The judge declined to further delay the matter, noting he already adjourned the matter for several weeks at Ezekwo's request.

Regarding Ezekwo's argument that she did not receive notice of the October 5, 2021 sheriff's sale, the judge found Ezekwo filed an emergent application for a stay of the October 5, 2021 sheriff's sale and appeared before

him on that date. As a result, the judge explained Ezekwo knew her request for stay relief was denied and that the sheriff's sale would proceed at 2:00 p.m. on October 5.

Applying Rule 4:65-5, the judge stated "the sheriff [was] authorized to sell the property and to deliver a deed unless a motion for a hearing of an objection [was] served within ten days of the date of sale or any time thereafter before delivery of the conveyance." Because the sheriff's deed was dated October 18 and recorded on October 26, 2021, the judge held Ezekwo failed to file an objection to the sheriff's sale within ten days.

In addition to denying Ezekwo's motion as untimely, the judge found her motion failed on the merits as well. He explained Ezekwo failed to cite any independent grounds for equitable relief, "such as fraud, accident, surprise, [or] irregularity in the sale." The judge concluded the "matter has been delayed so long. The sale has now occurred. Title has been passed and the [c]ourt is not going to undo that process at this late juncture in light of the history [of the litigation]."

On appeal, Ezekwo renews her same arguments. As previously noted, the only order on appeal in the foreclosure action is the January 31, 2022 order



denying Ezekwo's motion to vacate the sheriff's sale. We limit our review to the January 31, 2022 order.<sup>3</sup>

We review an order granting or denying a motion to vacate a sheriff's sale for abuse of discretion. United States v. Scurry, 193 N.J. 492, 502-03 (2008). An abuse of discretion arises "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested 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)).

Rule 4:65-5 governs sheriff's sales and objections to such sales. The Rule establishes a ten-day period for filing an objection to a sheriff's sale. See Hardyston Nat'l Bank of Hamburg v. Tartamella, 56 N.J. 508, 513 (1970). "A sheriff's sale is automatically confirmed after ten days without an objection being filed." Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 316 (App. Div. 2002). A party may be allowed to file an objection "after the ten-day period and before conveyance of the deed," provided there is "some valid

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<sup>3</sup> Ezekwo failed to include citations to the record on appeal. See R. 2:6-2(a)(5) (requiring facts asserted in briefs on appeal be "supported by references to the appendix and transcript."). Ezekwo's status as a self-represented litigant does not relieve her of the obligation to comply with the Rule. See Venner v. Allstate, 306 N.J. Super. 106, 110 (App. Div. 1997). While we could decline to review Ezekwo's appeal, we elected to search the appellate record, excluding inadmissible evidence not presented to the trial court, to render our decision.

ground for objection." Id. at 317. Valid grounds include "fraud, accident, surprise, irregularity, or impropriety in the sheriff's sale." Ibid. (citing Orange Land Co. v. Bender, 96 N.J. Super. 158, 164 (App. Div. 1967)).

Here, Ezekwo failed to object to the sheriff's sale within the ten days under Rule 4:65-5. Ezekwo was aware of the October 5, 2021 sheriff's sale because she filed an application to stop the sale on that very date. As the sale was scheduled for 2:00 p.m. of October 5, the judge heard Ezekwo's stay application during the morning on October 5. Ezekwo was present in court when the judge issued his decision denying her motion and she received a copy of the judge's order before noon on October 5.

Despite receipt of the judge's decision denying stay relief and stating the sheriff's sale would proceed as scheduled on October 5, Ezekwo took no action within the ten-day period. Ezekwo's motion, submitted to the court on November 10, 2021, was not filed within ten days of the sheriff's sale or before the sheriff conveyed the deed to the property to Aryming. Thus, her motion was untimely.

Nor did Ezekwo present any evidence establishing fraud, accident, surprise, irregularity, or impropriety in the sheriff's sale to enlarge the ten-day time period. After reviewing the record, we are satisfied the foreclosure judge

did not abuse his discretion in denying Ezekwo's motion to vacate the sheriff's sale on procedural grounds as untimely and on the merits as failing to establish any equitable basis for entitlement to such relief.

We next consider Ezekwo's appeal from the April 26, 2022 order and writ for possession in the ejectment action and the June 23, 2022 order denying her motion for reconsideration. We summarize the facts in the ejectment action.

On October 26, 2021, after being assigned the bid to purchase the property from PennyMac, Aryming filed an ejectment action to remove an unknown occupant or occupants residing at the property. The ejectment action was held in abeyance pending the foreclosure judge's decision on Ezekwo's motion to vacate the sheriff's sale.

On April 26, 2022, the Special Civil Part judge held a hearing on Aryming's ejectment action and heard testimony from a representative of Aryming and Ezekwo. After finding Ezekwo's in-court testimony to be non-responsive, the judge relied on her sworn statements in a January 3, 2022 certification. In that certification, Ezekwo stated under oath that she did not occupy the property. According to her certification, Carlos Coronel resided at the property. Because she did not live at the property, the judge found Ezekwo

lacked standing to appear in the ejectment proceeding "as she [was] neither an occupant nor owner of the subject premises."<sup>4</sup>

The judge further determined an individual "remain[ed] in possession of the premises without color of title, interest, or claim of right" after receiving notice to vacate the property and therefore that individual illegally occupied the property. As a result, the judge entered "an order for possession and authorize[d] the issuance of a writ of execution."

Ezekwo filed a motion for reconsideration and an appeal from the April 26, 2022 order in the ejectment action. In her reconsideration motion, Ezekwo also sought recusal of the judge handling the ejectment action.

In a June 13, 2022 order, we "remanded for the trial court to reconsider [Ezekwo]'s reconsideration motion" and directed the remand to be completed by July 11, 2022.

In a June 23, 2022 order and written statement of reasons, the Special Civil Part judge denied Ezekwo's reconsideration motion. The judge found Ezekwo "[had] not raised any legal and cognizable arguments in support of the motion for reconsideration that were not previously considered." The judge

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<sup>4</sup> In the ejectment action, Ezekwo maintained that she owned the property. However, on October 26, 2021, Aryming became the record owner of the property.

stated, "[h]aving conducted a review of all competent evidence, this court is led to the ineluctable conclusion that [Ezekwo] has . . . filed a motion for reconsideration 'merely because of dissatisfaction with a decision of the [c]ourt' rather than because [the] court overlooked or improperly considered some legal authority or factual circumstances otherwise favorable to her position."

In denying the recusal motion, the judge found Ezekwo's representations in support of her motion "bewildering, conspiratorial, and fantastical." Additionally, the judge stated "based on the content of the pleadings submitted, [the] court is unable to conduct a cogent analysis under the criteria for recusal pursuant to Rule 1:12-1."

On appeal, Ezekwo presents the same arguments that she asserted in the foreclosure action. We limit our review to the April 26, 2022 and June 23, 2022 orders in the ejectment action.

We apply a deferential standard in reviewing factual findings by a trial judge. Balducci v. Cige, 240 N.J. 574, 594 (2020). In an appeal from a non-jury trial, we "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Gripenburg v. Twp. of Ocean, 220 N.J. 249, 254 (2015).

An action for ejectment is typically "brought by one out of possession of land against one who either is in possession thereof or who makes claim thereto, if the land be vacant." Funkhouser v. City of Newark, 182 F.Supp. 15, 17 (D.N.J. 1960) (citing Toth v. Bigelow, 1 N.J. 399, 406 (1949)). New Jersey affords landowners a statutory remedy under N.J.S.A. 2A:35-1, entitling "[a]ny person claiming the right of possession of real property in the possession of another, or claiming title to such real property . . . to have his rights determined in an action in the Superior Court."

The concept of standing "refers to a litigant's 'ability or entitlement to maintain an action before the court.'" N.J. Dept. of Env't. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 292 (App. Div. 2018) (quoting People for Open Gov't v. Roberts, 397 N.J. Super. 502, 508-09 (App. Div. 2008)). The general test for standing requires the party seeking relief have a personal stake in the controversy sufficient to assure adverseness and the controversy be capable of resolution by the court. Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436-37 (App. Div. 2011).

Here, Aryming filed suit for possession of the property because it held legal title to the property as a result of the foreclosure action. Aryming's representatives attempted to gain access to the property. However, an

unidentified occupant claimed he had the right of possession. Consequently, Aryming commenced the ejectment action to declare its right to the property and to remove the unknown occupant.

Ezekwo filed a responsive pleading in the ejectment action and the judge held a hearing. After hearing the testimony and reviewing a January 3, 2022 certification signed by Ezekwo, the judge found she was not an owner or occupant of the property and, therefore, lacked standing to oppose Aryming's ejectment action.

Based on our review of the record, Ezekwo lacked standing in the ejectment action. Ezekwo admitted she did not occupy the property. Additionally, as a result of the foreclosure action, Ezekwo no longer held title to the property. Absent possession of title or occupancy of the property, the judge properly determined Ezekwo lacked standing to oppose the April 26, 2022 order for possession and writ of execution for possession.

Because we affirm the April 26, 2022 order for possession in favor of Aryming in the ejectment action, we need not reach Ezekwo's arguments regarding the denial of her motion for reconsideration.

To the extent we have not addressed any of Ezekwo's arguments, we are satisfied they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed as to all orders on appeal.

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



CLERK OF THE APPELLATE DIVISION