SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1944-21

PC4REO, LLC,[1]

Plaintiff-Respondent,

v.

JOHN T. KEMP, a/k/a JOHN KEMP,

Defendant-Appellant,

and

DENISE CHILINSKAS, VIST BANK, s/b/m/t MADISON BANK, a division of LEESPORT BANK, GELT FINANCIAL CORPORATION, and JOANNE AUNGST,

Defendants.

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[1] In the first amended complaint, plaintiff is designated as, "Pro Cap 4 LLC, Firstrust Bank, by its custodian US Bank" (Pro Cap 4). On March 2, 2020, Pro Cap 4 assigned the tax sale certificate in the matter under review to plaintiff PC4REO, LLC, resulting in a change in the caption. We refer to Pro Cap 4 and PC4REO, LLC interchangeably as plaintiff in our opinion.

Argued March 22, 2023 – Decided June 8, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Camden County, Docket No. F-024686-18.

Gary Schafkopf argued the cause for appellant (Matthew B. Weisberg, on the briefs).

Robin London-Zeitz argued the cause for respondent (Gary C. Zeitz, LLC, attorneys; Robin London-Zeitz, on the brief).

PER CURIAM

In this residential tax foreclosure matter, defendant John T. Kemp appeals from the denial of his motions to vacate the final judgment entered by way of default in favor of plaintiff and for reconsideration of that decision. Based on our review of the record, we are convinced the court correctly determined defendant did not establish an entitlement to relief from the final judgment under Rule 4:50-1 and did not err in denying reconsideration. We affirm.

I.

On May 31, 2006, defendant acquired a deed to 1316 Kings Highway in Haddon Heights. The deed was recorded six weeks later. On October 19, 2006, defendant executed a promissory note in the principal amount of $85,000 to defendant Vist Bank (Vist), and a promissory note in the principal amount of

$210,000 to defendant Gelt Financial Corporation (Gelt). Defendant's obligations under the notes were secured by mortgages to Vist and Gelt, and were recorded in the Camden County Clerk's Office. In 2009, defendant began living at the property.

On October 18, 2016, plaintiff's predecessor, Pro Cap 4, purchased tax sale certificate no. 16-00025 from the City of Haddon Heights's tax collector, which is secured by defendant's property. Defendant claims since October 2016, he has experienced "severe hardship including multiple surgeries, bankruptcy, divorce, death in the family, and job . . . loss as a result of the pandemic." The tax sale certificate was recorded on December 23, 2016, with the Camden County Clerk's office. The tax sale certificate was for taxes due in 2015 and included a premium in the sum of $16,600.[2] Defendant attempted to obtain "traditional" financing on multiple occasions to satisfy the tax lien without success.

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[2] N.J.S.A. 54:5-33, in relevant part, states:

> Any premium payment shall be held by the [tax] collector and returned to the purchaser of the fee if and when redemption is made. If redemption is not made within five years from date of sale[,] the premium payment shall be turned over to the treasurer of the municipality and become a part of the funds of the municipality.

On June 28, 2018, defendant conveyed the property to himself and co-defendant Denise Chilinskas for the amount of $1 by way of a quitclaim deed, which was recorded on July 9, 2018, in the Camden County Clerk's office. On October 30, 2018, Chilinskas conveyed her interest in the property to defendant and co-defendant Joanne Aungst for the sum of $500 by way of a quitclaim deed, which was recorded on November 13, 2018, in the Camden County Clerk's office.

On December 17, 2018, Pro Cap 4 filed a tax sale certificate foreclosure complaint and an amended complaint two months later to foreclose defendant's right to redeem the certificate and declare itself owner of defendant's Kings Highway property. On March 28, 2019, defendant, who was self-represented at the time, filed a contesting answer disputing plaintiff's claim to the property, alleging Chilinskas did not have an ownership interest in the property, and asserting various defenses. On May 1, 2019, defendant filed a Chapter 13 petition in bankruptcy, case no. 19-18909, which was dismissed four months later.

On May 23, 2019, on notice to defendant, Pro Cap 4 filed a motion for summary judgment, entry of default, and to strike defendant's answer. Defendant did not oppose the motion. On June 21, 2019, the court granted Pro

Cap 4's motion for summary judgment, struck defendant's answer, and entered default against him. Pro Cap 4 thereafter moved for entry of judgment, again on notice to defendant, and to set the date, time, place, and amount of redemption. Defendant did not oppose the motion. Accordingly, the court set February 28, 2020, as the last date for defendant to redeem the tax sale certificate.

On March 24, 2020, plaintiff moved for final judgment, which defendant did not oppose. On June 29, 2020, the court entered final judgment in favor of plaintiff, barring defendant's right to redeem and vesting title to defendant's Kings Highway property in plaintiff.

On October 27, 2021, plaintiff filed a complaint for ejectment in the Law Division, Special Civil Part,[3] seeking to acquire possession of the property. Defendant and his counsel appeared at the ejectment hearing on November 12, 2021. Five days later, the court entered an order for possession in the ejectment proceeding. On December 2, 2021, defendant filed a motion to vacate the default and final judgment. His counsel's certification alleged defendant had suffered "severe hardship" that prevented him from satisfying the tax sale certificate but Blue Hub Capital, "a non-profit foreclosure avoidance specialty

[3] Docket No. CAM-DC-9723-21.

financier," is "willing and able to refinance the subject property to pay the tax certificate in its entirety." An uncertified mortgage loan "commitment" from Blue Hub Capital was attached to defendant's counsel's certification. According to counsel, defendant could not obtain the "necessary approvals from Blue Hub Capital" sooner because the lending service had temporarily closed as a result of the COVID-19 pandemic. Counsel also stated defendant had gathered "$60,000 in cash, which is reserved for payment towards the amount due" on the tax sale certificate. Defendant did not submit an affidavit or certification based upon his own personal knowledge in support of the motion to vacate the default and final judgment.

In opposition, plaintiff's counsel argued defendant waited eighteen months to file his motion, and he did not establish equitable grounds for relief. Plaintiff's counsel pointed out that defendant failed to submit a certification based upon his first-hand personal knowledge setting forth the legal and factual basis in support of his motion. Instead, plaintiff's counsel argued defendant's counsel annexed an uncertified letter from a mortgage lender to defense counsel's certification in support of the motion. The attachment from Blue Hub Capital, dated November 30, 2021, stated defendant and Chilinskas were approved for a $125,000 first mortgage loan with a 7.5% interest rate. The

document explained it was an "approval to move to the next stage of [its] program" and was "not a loan commitment." The approval was also subject to a final underwriting review, conditioned upon defendant verifying "payoff and discharge of all existing liens on [the] subject property," and Blue Hub Capital closing in "first lien position with no subordinate financing."

Plaintiff's counsel certified that plaintiff was owed a total amount of $111,095.40 as of January 7, 2022, and the property was encumbered by more than $421,000 in debt.[4] According to defendant's counsel, the property was worth between $350,000 and $400,000.

On January 7, 2022, the court held oral argument on defendant's motion and rendered a decision on the record. Initially, the court indicated it might grant defendant forty-five days to provide proof of his ability to satisfy the tax sale certificate. However, the court changed its mind and ultimately denied defendant's motion finding he failed to demonstrate an entitlement to relief from the final judgment under Rule 4:50-1. The court noted the final judgment was more than a year old; defendant's circumstances were not compelling; and he did not personally certify he had the funds to redeem the tax sale certificate.

[4] At the January 7, 2022 hearing, plaintiff's counsel claimed defendant owed close to $128,000 in total, including the $16,600 premium plaintiff paid for the tax sale certificate.

In addition, the court rejected defendant's request to carry his motion so that he could obtain funding to redeem the tax sale certificate. After being advised that Blue Hub Capital was in the process of approving defendant for a mortgage but did not move to intervene as required by our Supreme Court's holding in Simon v. Cronecker, 189 N.J. 304, 322 (2007), the court denied defendant's motion. Plaintiff's counsel maintained the court had already docketed a pending writ of execution. A memorializing order was entered.

On January 11, 2022, the Law Division entered plaintiff's writ of possession. That same day, defendant filed a Chapter 7 petition in bankruptcy, case no. 22-10386, arguably to avoid being removed from the property. On January 31, 2022, defendant filed a motion for reconsideration of the January 7, 2022 order. The motion was not filed within twenty days as required by Rule 4:49-2.[5] Defendant's counsel argued reconsideration was warranted because defendant had the funds—$111,095.40—to satisfy the tax sale certificate; the writ of execution had not yet been docketed; and Cronecker was inapplicable

[5] Rule 4:49-2 requires "a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than [twenty] days after service of the judgment or order upon all parties by the party obtaining it." Here, defendant's motion for reconsideration was filed four days late. Nonetheless, the court decided the motion on the merits.

because that case only applied to investment buyers and not to third-party lenders, such as Blue Hub Capital.

Further, defendant's counsel maintained that even if the court applied the holding in Cronecker, Chilinskas was willing and able to pay off the tax sale certificate from her 401(k) plan, a loan she had taken out, and her personal funds. In opposition, plaintiff's counsel asserted that defendant still had never personally certified he had the funds to redeem the tax sale certificate, a notable omission in light of his recently filed Chapter 7 bankruptcy petition.

On February 18, 2022, the court heard oral argument on defendant's motion for reconsideration. The court denied the motion because there "was nothing new" the court did not consider previously in the motion to vacate final judgment. In addition, the court found defendant failed to show Chilinskas's purported offer to satisfy the tax sale certificate—a "newly presented fact"—constituted "exceptional circumstances" under Rule 4:50. The court emphasized the motion to vacate final judgment was made eighteen months after its entry, and the tax lien is "five years old." A memorializing order was entered. On February 28, 2022, the Bankruptcy Court dismissed plaintiff's Chapter 7 petition.

On appeal, defendant contends the court erred by denying his motion to vacate the final judgment under Rule 4:50-1(a) and (f), and Cronecker is not applicable to this matter. Defendant also asserts the court erred in denying his motion for reconsideration. We disagree.

II.

A decision on a motion to vacate a judgment under Rule 4:50 is one committed to the sound discretion of the trial court, guided by general equitable principles. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994), which we will not disturb absent "clear abuse of discretion," Carrington Mortg. Servs., LLC v. Moore, 464 N.J. Super. 59, 67 (App. Div. 2020) (quoting Little, 135 N.J. at 283). Motions made under Rule 4:50-1 "must be filed within a reasonable time." Deutsche Bank Nat'l Tr. v. Russo, 429 N.J. Super. 91, 99 (App. Div. 2012) (quoting Deutsche Bank Tr. Co. Americas v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012)). A Rule 4:50 motion based on excusable neglect is barred if it is filed more than one year after a foreclosure judgment is entered. Ibid.

Although the three-month period for reopening a tax sale judgment under the Tax Sale Law, N.J.S.A. 54:5-1 to -137, based on lack of jurisdiction or fraud, reflects the Legislature's intent "to impose stricter limits upon the time and the

grounds for vacating a judgment of foreclosure than would apply generally under Rule 4:50," Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 166 (App. Div. 2005), the law is long-since settled that Rule 4:50, not the statute, controls motions to reopen tax foreclosure judgments, Borough of New Shrewsbury v. Block 115, Lot 4, 74 N.J. Super. 1, 8-9 (App. Div. 1962); see also BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 128 (App. Div. 2021).

Defendant primarily moved to reopen the final judgment here under Rule 4:50-1(a), due to "mistake, inadvertence, surprise, or excusable neglect." He also relied upon subsection (f), the "catch-all" category, that allows a court to reopen a judgment or order for "any other reason justifying relief." Both Rule 4:50-1(a) and (f) require the defendant to show a meritorious defense to reopen a judgment. See Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 294-95 (App. Div. 2021) ("The meritorious defense requirement is only waived upon proof that the default was obtained through defective service of process."). In the matter under review, defendant does not contest service of process as to any pleadings, motions, or other court filings, and we conclude he has not presented either excusable neglect or a meritorious defense.

A. Rule 4:50-1(a)

Defendant claims he presented a reasonable explanation for the delay in filing his motion. He contends he "had funding available after extraordinary circumstances prevented him from satisfying the tax [sale] certificate sooner." Despite that representation in defendant's merits brief, and before the motion court, he produced no legally competent evidence to support his contention. Defendant's counsel described defendant's steps to satisfy the tax sale certificate by working with Blue Hub Capital. But nowhere in counsel's certification is there any documented proof that Blue Hub Capital had approved a loan for defendant. Counsel only makes a general statement that Blue Hub Capital "remains willing and able to refinance the subject property and to pay the tax [sale] certificate in its entirety." This does not constitute excusable neglect under Rule 4:50-1(a).

"'Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 468 (2012) (quoting Mancini v. EDS ex rel. N.J. Auto Full Ins. Underwriting Ass'n, 132 N.J. 330, 335 (1993)). The record is also bereft of any evidence or reason that defendant waited eighteen months to file a motion to vacate final judgment. We conclude

defendant does not satisfy the due diligence standard required under Rule 4:50-1(a).

B. Rule 4:50-1(f)

"[R]elief under Rule 4:50-1(f) is available only when 'truly exceptional circumstances are present'" because of the significance applied to the finality of judgments. Guillaume, 209 N.J. at 484 (quoting Little, 135 N.J. at 286). Application of the rule is "limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. (quoting Little, 135 N.J. at 289). The importance of finality "must be 'weighed in the balance with the equally salutary principle that justice should be done in every case.'" Nowosleska v. Steele, 400 N.J. Super. 297, 304 (App. Div. 2008) (quoting Hodgson v. Applegate, 31 N.J. 29, 43 (1959)).

"Our courts have long adhered to the view that subsection (f)'s boundaries 'are as expansive as the need to achieve equity and justice.'" Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 98 (App. Div. 2014). The one-year bar that applies to subsection (a) motions does not limit subsection (f) claims, but litigants may not repackage a subsection (a) claim as one brought under subsection (f) to avoid the one-year bar. BV001 REO Blocker, LLC, 467 N.J. Super. at 124-25 (citing Baumann v. Marinaro, 95 N.J. 380, 395 (1984) (stating

that relief is available under subsection (f) "only when the court is presented with a reason not included among any of the reasons subject to the one[-]year limitation")).

In BV001 REO Blocker, LLC, we granted the defendant's subsection (f) motion because it "presented compelling reasons for its failure to answer the foreclosure complaint; it promptly moved to vacate the default judgment; and it was prepared to redeem the property." 467 N.J. Super. at 121. The "compelling reasons" in that case stemmed from fraud perpetrated by property buyers that prevented the defendant from learning about the default. Id. at 121-22.

Guided by these principles, we conclude the court here did not exceed its discretion in refusing to vacate the judgment based on Rule 4:50-1(f). Contrary to defendant's arguments, he did not demonstrate an ability "to reverse the merits of the default judgment" or that he had the ability to satisfy the tax sale certificate. We reiterate defendant never filed a certification detailing the alleged "severe hardship" he experienced the past five years, and he provided no proof to substantiate his claim. Moreover, defendant did not certify as to why he waited eighteen months to move for relief and failed to provide competent proof he had the funds necessary to redeem the certificate.

Defendant's arguments supporting his claim for relief under Rule 4:50-1(f) are devoid of any showing "a grave injustice would occur" if relief from the final judgment is not granted. See Guillaume, 209 N.J. at 484 (internal citation omitted). The court aptly recognized defendant failed to sustain his burden of establishing an entitlement to relief under Rule 4:50-1(f) and correctly denied defendant's motion to vacate judgment. Defendant's motion for reconsideration, which was untimely, was likewise not supported by certifications made on personal knowledge setting forth only facts admissible in evidence, which the affiant is competent to testify in accordance with Rule 1:6-6. In light of our decision, we need not address defendant's argument that Cronecker is inapplicable here.

Affirmed.