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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1957-20**

LILLIAN ZHANG,

Plaintiff-Appellant,

v.

**GOSHEN MORTGAGE REO,
LLC, NORMA I. VARGAS,
LEGION INSURANCE
COMPANY, COUNTY OF
PASSAIC, O'DONNELL,
O'HARA AND AMANTIA,
WOODBINE DEVELOPMENTAL
CENTER, and STATE OF NEW
JERSEY,**

Defendants.

ANNICETTE KESSELY,

Intervenor-Respondent.

Argued October 6, 2022 – Decided April 20, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-032381-16.

Michael R. Hahn argued the cause for appellant
(Simeone & Raynor, LLC, attorneys; I. Dominic
Simeone, Bryan T. Eggert, and Michael R. Hahn, on the
briefs).

David M. Schlachter argued the cause for intervenor-
respondent (Law Offices of David M. Schlachter, LLC,
attorneys; David M. Schlachter, on the brief).

PER CURIAM

In this tax sale certificate foreclosure matter, plaintiff Lillian Zhang appeals from three orders of the Chancery Division: (1) a January 29, 2020 order granting defendant-intervenor Annicette Kessely's motion to vacate a December 20, 2017 final judgment; (2) a March 27, 2020 order awarding Zhang attorney's fees and costs; and (3) a February 5, 2021 order dismissing Zhang's complaint. We affirm the January 29, 2020 and February 5, 2021 orders, affirm the March 27, 2020 order in part, reverse the March 27, 2020 order in part, and remand for the award of additional attorney's fees and costs to Zhang.

I.

On November 29, 2005, Kessely bought property comprised of two residential units in Newark. The purchase price was \$291,000.

On May 4, 2007, she recorded a mortgage on the property in the amount of \$296,000 and, on the same day, recorded a second mortgage in the amount of \$55,500. Kessely acknowledged that as of May 4, 2007, she extracted all of the money she originally paid for the property, as well as an additional \$60,000.

On July 1, 2009, Kessely defaulted on her mortgage payments. At that point, the bank began paying the local property taxes on the property. The bank subsequently filed a mortgage foreclosure action and, on August 8, 2013, title to the property passed to defendant Goshen Mortgage REO, LLC (Goshen) through a Sheriff's sale. The deed transferring title to Goshen was recorded with the county clerk.

On November 12, 2013, Kessely bought the property back from Goshen for \$85,000. She received a quit claim deed transferring title to the property to her. According to Kessely, Goshen told her that the deed would be recorded with the county clerk by the mortgage servicing company. The deed, however, was never recorded.

Kessely did not thereafter pay the local property taxes on the property. On September 18, 2014, Zhang purchased a tax sale certificate for the property from Newark for \$4,133.36 and a \$9,000 premium. On October 20, 2014, Zhang recorded the tax sale certificate with the county clerk.

On December 5, 2016, Zhang, who continued to pay the local property taxes on the parcel after purchase of the tax sale certificate, filed a complaint in the Chancery Division to foreclose on the certificate. She conducted a title search to identify all parties with a recorded interest in the property. Because the deed between Goshen and Kessely had not been recorded, Zhang found no evidence of Kessely's interest in the property in the county clerk's records. As a result, Zhang named Goshen, the last title owner in the county clerk's records, and six other interested parties, but not Kessely, as defendants in the foreclosure complaint.¹ While Zhang gave notice to all named defendants, she did not serve notice of the foreclosure complaint at the property. By September 28, 2017, all defendants, including Goshen, had defaulted.

The court set a deadline for redemption of the tax sale certificate in the amount of \$27,337.14. No party attempted to redeem and, on December 20, 2017, the court entered a final judgment of foreclosure in favor of Zhang vesting her with title to the property.

On March 15, 2018, Kessely moved pursuant to Rule 4:50-1(a) to vacate the final judgment. She alleged that she lived at the property and "monitored it

¹ The six defendants other than Goshen were creditors on judgments against a prior owner of the property. Those parties did not possess the right to redeem the tax sale certificate and have not participated in this matter.

closely" since 2013, and that she was unaware of the foreclosure action until she saw a for-sale sign at the property after entry of judgment. Kessely claimed that from 2013 to 2017, she knew that local property tax bills were not being mailed to her but did not understand why. She also knew the taxes were not being paid and alleged that she tried to pay the taxes, but the tax collector would not allow her to do so because Goshen was listed as the owner in the collector's records.²

Kessely produced no evidence that she made an effort to record the deed transferring ownership to her after she became aware that Goshen had not followed through on its promise. She instead continued to collect rental income from the property for several years without paying local property taxes or protecting her ownership interest in the parcel. Kessely alleged that she was prepared to redeem the certificate if the judgment was vacated.

Zhang opposed the motion. She submitted a certification contesting Kessely's claim that she lived at the property. According to Zhang, both units at the property were rented. She argued that Kessely was not entitled to relief

² The Legislature has established an orderly process through which municipal tax collectors are provided the names and addresses of the owners of real property. See N.J.S.A. 54:4-29 to -32. One such method is by the recording of a deed, which triggers the recording officer's obligation to obtain the name and address of the property owner, N.J.S.A. 54:4-30, and to forward that information to the tax collector within one week. N.J.S.A. 54:4-31.

because she was aware for many years that she was not paying taxes on her income-generating property and took no action to protect her interest.

On June 12, 2018, the court ordered a plenary hearing to consider two issues: (1) whether Kessely was an occupant of the property entitled to redeem the certificate and required to be named as a defendant in Zhang's complaint; and (2) if she was not an occupant of the property, whether her actions constituted excusable neglect entitling her to relief from the final judgment. The court ordered Kessely to move to intervene and to deposit in court any rent she received from the property while her motion was pending.

On July 2, 2018, Kessely moved to intervene. Zhang opposed the motion and cross-moved to enforce litigant's rights. She submitted evidence that Kessely lived in New York during the relevant period and failed to comply with the court's order to deposit the rent she received.

On August 3, 2018, the trial court held a hearing on the motions. The court determined that the record was insufficient to make a decision because Kessely did not produce evidence of her occupancy of the property. The court granted Kessely's request for an adjournment, and stated that it considered her motion to vacate the judgment as being conditioned on Zhang recovering the

attorney's fees and costs she incurred to obtain the judgment and in opposing the motion. The court stated if Kessely redeemed the certificate Zhang

won't be fully whole. For one thing, they've expended quite a bit of money on the attorney's fees. Certainly, they're going to get that if I – if I were to somehow reopen this. There's no doubt about that part of it. They get every penny of it.

But at this point I don't see a basis to do it because this is essentially an application to vacate final judgment. And you're making application to vacate final judgment [and] the conditions of such an application can be reimbursing the plaintiff for their counsel fees. Certainly, in this case there's no doubt they'd be entitled to all their counsel fees.

. . . .

But if I do allow the intervention, then it's going to be subject to paying plaintiff's counsel fees for going through this process.

On December 6, 2018, the court granted Kessely's motion to intervene.³

On February 19, 2019, Zhang again moved to enforce litigant's rights. She alleged Kessely failed to deposit rent from the property in court for the prior six months and owed \$14,700 to the trust account. Kessely opposed the motion.

³ The record does not contain an order resolving Zhang's cross-motion to enforce litigant's rights. In her brief, Zhang states that the cross-motion was denied.

On May 3, 2019, the court granted Zhang's motion in part. The court entered an order: (1) directing Kessely to deposit all rent received since March 2018, without deductions, in court; (2) directing Kessely to give Zhang a copy of all leases for the property since March 2018, proof of the dates Kessely occupied the property, and a certification stating she was the sole occupant of one of the units; and (3) giving Zhang management control of the property and direct access to rent received after June 1, 2019, which was to be deposited by her counsel in court. In lieu of sanctions, the court ordered Kessely to pay rent on the unit she claimed to be occupying in the amount needed to ensure the total rent received each month from the property was \$2,100.

On May 21, 2019, Zhang moved to enforce litigant's rights for a third time. She alleged Kessely had not deposited the correct amount of rent in court. According to Zhang, Kessely owed \$31,500 to the court but had deposited only \$14,000. Kessely opposed the motion.

On July 3, 2019, the court granted Zhang's motion. In a written opinion, it found Kessely failed to comply with the previous orders and required her to deposit \$17,500 in court. In a July 3, 2019 order, the court reiterated the relief previously granted to Zhang with respect to control of the property and awarded Zhang attorney's fees and costs on the motion. The court, however, did not enter

an amount of fees and costs awarded, instead directing Zhang to file proof of the amount of attorney's fees and costs she incurred.

On January 29, 2020, after a plenary hearing, the trial court issued a written decision granting Kessely's motion to vacate the final judgment pursuant to Rule 4:50-1(f). The court found that there was no dispute that the deed transferring title from Goshen to Kessely was valid and that she has a legitimate interest in the property within the meaning of N.J.S.A. 54:5-54, giving her the right to timely redemption of the tax sale certificate. The court also found that Kessely did not have a meaningful opportunity to exercise that right because she was not provided with notice of the foreclosure complaint as a result of the deed transferring the property to her not being recorded.

The court found credible Kessely's testimony that she was unfamiliar with the deed recording process and the effect that not recording a deed would have on notification and collection of local property taxes. In addition, the court found credible Kessely's testimony "that a third-party would properly record the deed and [that task] would not be her responsibility." Thus, the court concluded, Kessely was not at fault for the failure to record the deed or the resulting lack of notice of the foreclosure complaint. The court also appeared to find that Zhang was not at fault for failure to provide notice to Kessely.

The court found "no equity in a situation where the legitimate owner of a piece of real property could lose that property without being afforded the right to redeem it. The court finds such circumstances to be truly exceptional, and thus finds that vacating judgment pursuant to [Rule] 4:50-1(f) is warranted." A January 29, 2020 order memorializes the trial court's decision.⁴

Zhang subsequently moved for an award of \$28,590.09 in attorney's fees and costs. Those fees covered the period from March 15, 2018, the date Kessely moved to vacate the final judgment, to January 9, 2020, the date of the hearing on her motion.

Kessely opposed the motion. She argued that Rule 4:64-1 prohibits the award of attorney's fees in foreclosure matters and, if attorney's fees are permitted, Zhang did not qualify for an award because she was not a prevailing party. Kessely also argued that the trial court's remarks concerning the award of fees during oral argument on her intervention motion were dicta.

On March 27, 2020, the trial court granted Zhang's motion for attorney's fees and costs. The court, however, limited the award to the period from March 15, 2018, the date on which Kessely moved to intervene, to December 6, 2018,

⁴ Despite its prior order identifying the issues to be decided at the hearing, the trial court made no findings of fact with respect to whether Kessely occupied the subject property during the relevant period.

the date on which the court granted that motion. The court held that an award of fees and costs was permitted by Rule 1:2-4(a), which allows it to sanction a party who fails to give reasonable attention to a matter without just excuse. It appears the court was referring to Kessely's failure to produce relevant evidence at the August 3, 2018 hearing. The court also concluded that awarding fees and costs to Zhang is analogous to, and consistent with, the court's authority to grant relief from a final judgment pursuant to Rule 4:50-1 "upon such terms as are just."

The court did not explain why Zhang was not awarded attorney's fees and costs incurred in opposing Kessely's motion to vacate the default judgment after her motion to intervene was granted. Nor did the court address Zhang's request for the award of attorney's fees and costs for her successful motions to enforce litigant's rights after Kessely repeatedly failed to comply with court orders requiring her to deposit rent from the property in court. Notably, the court did not address the July 3, 2019 order granting Zhang attorney's fees and costs with respect to her third motion to enforce litigant's rights.

Applying the factors set forth in R.P.C. 1.5, the court found that the hourly rates and hours expended by Zhang's attorneys from March 15, 2018 to December 6, 2018, were reasonable. The court deducted the attorney's fees and

costs incurred by Zhang after December 6, 2018, and awarded her a total of \$10,706.62. The court determined that the award of attorney's fees and costs would not be included in the redemption amount for the certificate.⁵

Kessely ultimately redeemed the certificate for \$68,163.92. On February 5, 2021, the court entered a final order dismissing Zhang's complaint with prejudice and directing the city to return to her the \$9,000 premium paid at the time she purchased the certificate.

This appeal followed. Zhang argues the trial court: (1) abused its discretion by finding exceptional circumstances to warrant relief under R. 4:50-1(f); and (2) erred when it limited the award of attorney's fees and costs to the period March 15, 2018 to December 6, 2018.

II.

A.

We begin with Zhang's appeal of the January 29, 2020 order granting Kessely's motion to vacate the December 20, 2017 judgment. Rule 4:50-1 "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid

⁵ Ultimately, the court entered an order paying the attorney's fees and costs awarded in the March 27, 2020 order out of the funds deposited in court.

an unjust result in any given case." Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977). To balance these goals, "[a] court should view 'the opening of default judgments . . . with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330 334 (1993) (alterations in original) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964)).

The movant bears the burden of demonstrating a right to relief. Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425-26 (App. Div. 2003). All doubts, however, shall be resolved in favor of the party seeking relief. Mancini, 132 N.J. at 334. Equitable principles should influence a court's decision to vacate a default judgment. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); Pro. Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009). A decision to vacate a default judgment pursuant to Rule 4:50-1 rests within "the sound discretion of the trial court" and will not be disturbed on appeal "absent an abuse of discretion." Mancini, 132 N.J. at 334.

Our analysis of the validity of the January 29, 2020 order is guided by our recent decision in BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC,

467 N.J. Super. 117 (App. Div. 2021). In that case, a property owner moved pursuant to Rule 4:50-1(a) to vacate a default judgment of tax foreclosure. Id. at 122. The property owner, a limited liability company (LLC), entered into an executory contract to sell commercial property and the restaurant business its principal operated at the property. Id. at 121. The buyers agreed to make payments for the property over five years before taking title and to pay the local property taxes during that time. Ibid. They were permitted to operate the restaurant immediately. Ibid. Unbeknownst to the seller, the buyers did not pay the taxes on the property. Id. at 122. All delinquency notices were sent to the business address where they were intercepted by the buyers. Ibid. The municipality sold a tax sale certificate for the property without notice to the seller. Ibid.

A principal of the buyer fraudulently, and without notice to the seller, appointed himself as the registered agent of the LLC. Ibid. As a result, when the tax sale certificate holder filed a foreclosure complaint, it believed it had served the LLC through the imposter. Ibid. The seller remained in the dark when the court entered default, set the time, place and amount of redemption, and accepted a motion for entry of the final judgment of foreclosure. Ibid. The seller became aware of the foreclosure complaint one or two days prior to entry

of final judgment when it was preparing to sue the buyers, who had also defaulted on their payments for the property. Ibid.

Less than a week after entry of judgment, the seller moved to vacate, so it could file an answer and redeem the certificate. Ibid. The holder of the certificate opposed, arguing that it was entitled to rely on the information recorded with respect to the registered agent of the property owner and that the seller was not diligent in ensuring that the taxes on the property were paid. Id. at 123. The trial court denied the motion, concluding that because the seller was the title owner to the property it had an obligation to ensure that the taxes were paid, and that under Rule 4:50-1(a) the fraudulent acts of the buyer are not a valid defense to foreclosure. Ibid.

We reversed. Id. at 124. Noting the equitable principles favoring vacating the default judgment, we held that the trial court should have granted relief under Rule 4:50-1(f), which does not require a demonstration of a meritorious defense in order to obtain relief, even though the seller moved for relief under Rule 4:50-1(a), which does have such a requirement, U.S. Bank N.A. v. Guillaume, 209 N.J. 449, 469 (2012).⁶

⁶ In BV001 REO Blocker, as is the case here, "[g]iven the motion's timing, we need not guard against defendant repackaging a subsection (a) motion as a

Relief under subsection (f) of Rule 4:50-1 is available whenever "truly exceptional circumstances are present." Little, 135 N.J. at 286 (citation omitted). "The movant must demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (citation omitted). However, the rule's "boundaries 'are as expansive as the need to achieve equity and justice.'" Little, 135 N.J. at 290 (quoting Palko v. Palko, 73 N.J. 395, 398 (1977)). "In deciding if relief is warranted, a court may consider the movant's delay, the justification for its request, and potential prejudice to the responding party." BV001 REO Blocker, 467 N.J. Super. at 126 (citing Parker v. Marcus, 281 N.J. Super. 589, 593 (App. Div. 1995)).

We concluded that relief was warranted, even if service of the foreclosure complaint on the fraudulent registered agent was considered to be valid. Ibid. We noted our established precedent that "trial courts should treat a motion to vacate more liberally where there is 'doubt about [a] defendant['s] actual receipt of the process.'" Ibid. (quoting Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92,

subsection (f) motion to avoid Rule 4:50-2's one-year deadline for filing the former, but not the latter." Id. 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"))).

100 (App. Div. 1998)). In addition, we noted that "'the absence of evidence establishing willful disregard of the court's process' favors relief." Ibid. (quoting Davis, 317 N.J. Super. at 100).

We found that because the seller had no actual knowledge of the foreclosure complaint, her failure to answer was not willful. Ibid. We noted:

[a]lthough [the seller] certainly could have been more diligent in ensuring that taxes were paid, [it] was also the victim of [the] buyers' concealment of their default, and of the fraudulent change of registered agent. In other words, [the seller's] predicament was mainly another's doing. We have found relief appropriate when a litigant's failure to respond results from another's deceit.

[Ibid. (citing Parker, 281 N.J. Super. at 595).]

We also found that the seller's promptness in moving to vacate the default judgment militated in favor of granting relief. Ibid. We observed that "[t]he competing goal of promoting finality does not loom so large when the ink has barely dried on the final judgment. At that early stage, 'a plaintiff's expectations regarding the legitimacy of the judgment and the court's interest in the finality of judgments are at their nadir.'" Id. at 127 (quoting Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 545 (App. Div. 2003)).

We noted, as well, that the Tax Sale Law, N.J.S.A. 54:5-1 to -137, "shall be liberally construed as remedial legislation to encourage the barring of the

right of redemption by actions in the Superior Court to the end that marketable titles may thereby be secured." Id. at 127-28 (quoting N.J.S.A. 54:5-85). However, "that provision does not negate the specific textual provisions" of the Tax Sale Law "that protect property owners" from forfeiture. Id. at 128 (quoting Simon v. Cronecker, 189 N.J. 304, 322 n. 10 (2007)). "Significantly, although the Tax Sale Law's main aim 'is to encourage the purchase of tax certificates, another important purpose is to give the property owner the opportunity to redeem the certificate and claim [their] land.'" Ibid. (quoting Simon, 189 N.J. at 319). See also Sonderman v. Remington Constr. Co., 127 N.J. 96, 109 (1992) ("The primary purpose of the [Tax Sale] Law is not to divest owners of their property, but to provide a method for collecting taxes . . .").

N.J.S.A. 54:5-87 precludes a court from entertaining an "application . . . to reopen the judgment after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit."

We have interpreted N.J.S.A. 54:5-87 to permit relief from judgment, within three months, for any reason enumerated in Rule 4:50-1, Bergen-Eastern Corp. v. Koss, 178 N.J. Super. 42, 45 (App. Div. 1981), and "then," meaning "thereafter," "only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit," Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 166 n.8 (App. Div. 2005) (emphasis omitted).

[BV001 REO Blocker, 467 N.J. Super. at 128.]

Thus, we concluded, tax sale foreclosure judgments, at least within the three-month statutory period, do not have a favored status over other types of judgments. Id. at 128-29.

We also held that wresting title to the property from the party in whose favor the tax foreclosure judgment was entered "is not the sort of 'prejudice' that a court must consider in weighing a request for relief." Id. at 129. In the absence of demonstrated prejudice, such as detrimental reliance on the judgment, the holder of the tax sale certificate will, upon redemption, be made whole by receipt of the repayment of the taxes and interest due on the property. Ibid.

Finally, we noted that the seller's "lack of diligence in ensuring tax payments should not deprive [it] of the opportunity to redeem after securing relief from the judgment." Id. at 130. All property owners whose failure to pay local property taxes "because of inattention, willful disregard, or impecuniousness," results in the issuance of a tax sale certificate are permitted to redeem their property if they pay the tax sale certificate holder what is due. Ibid. Thus, the appropriate inquiry is "whether [the property owner's] conduct in failing to respond sooner to the tax foreclosure proceedings should be

forgiven." Ibid. (citations omitted). We concluded that the seller's failure to respond sooner to the tax foreclosure proceedings was excusable.

Applying those principles here, we conclude the trial court acted within its discretion when it granted Kessely's motion to vacate the December 20, 2017 default judgment. It is undisputed that Kessely did not receive notice of Zhang's foreclosure complaint, the setting of a redemption date by the court, or entry of the final judgment of foreclosure. It is also undisputed that it was the absence of notice that caused Kessely not to respond to the complaint or attempt to redeem the certificate before entry of final judgment.

There is support in the record for the trial court's conclusion that Kessely's failure to answer the foreclosure complaint was not willful and was primarily the fault of another. The court, which had the benefit of hearing Kessely's testimony, found her claim to have relied on Goshen's promise that it would arrange for the recording of the deed to be credible. The court also found Kessely's claim not to have understood the deed recording process or the effect that failing to record a deed would have on the collection of local property taxes to be credible. We are not in a position to second guess the trial court's credibility determinations, even though the record suggests that Kessely had

some sophistication with owning income-producing property and had previously recorded mortgages on the property.

While Kessely was aware for years that the deed had not been recorded, the trial court appears to have accepted her testimony that her attempts to pay the outstanding taxes on the parcel were rebuffed by the tax collector because she was, according to the records of the county clerk, not the title owner. Like the property owner in BV001 REO Blocker, Kessely could certainly have been more diligent in protecting her interest in the property – e.g. obtaining a copy of the deed and recording it herself or suing Goshen to compel it to fulfill its promise to arrange for the recording of the deed. However, as was the case in BV001 REO Blocker, Kessely's lack of diligence alone is insufficient to overcome the equitable considerations militating toward allowing a property owner to redeem a tax sale certificate about which she previously was unaware.

Those equities include Kessely's prompt motion to vacate the December 20, 2007 judgment – within three months of its entry and shortly after she became aware of the judgment.⁷ In addition, Zhang did not produce evidence of

⁷ We note that the trial court did not make a finding of fact with respect to when Kessely first saw the for-sale sign at the property, but it surely was after entry of the judgment, as Zhang would not have been in a position to list the property for sale prior to that time.

detrimental reliance on the judgment in the short time between its entry and Kessely's motion to vacate. Zhang was made whole – at least as far as her investment in the tax sale certificate – when Kessely redeemed the certificate for the full amount set by the court.⁸

Because the trial court did not err when it granted Kessely's motion to vacate the December 20, 2007 final judgment, it also did not err when it entered the February 5, 2021 order dismissing Zhang's complaint with prejudice after Kessely redeemed the certificate. We affirm both of those orders.

B.

We turn to Zhang's appeal of the March 27, 2020 order awarding her attorney's fees and costs. Kessely did not cross-appeal from the portion of the March 27, 2020 order awarding Kessely attorney's fees and costs for the period March 15, 2018 to December 6, 2018. We, therefore, affirm that portion of the order. We find, however, that the trial court misapplied its discretion when it

⁸ Kessely's history of not paying local property taxes, both after she defaulted on the mortgage, which resulted in the first foreclosure in favor of Goshen, and after she received title to the property from Goshen, which resulted in the second foreclosure judgment, does not influence our decision. As we noted in BV001 REO Blocker, in every instance in which a tax sale certificate has been issued, a property owner has not paid local property taxes, whether willfully, because of absence of diligence, or because of financial inability. Yet, in every such instance that property owner has a statutory right to redeem the certificate prior to entry of final judgment and to move to vacate a final judgment.

denied Zhang's application for the attorney's fees and costs she incurred from December 6, 2018 to January 9, 2020, including with respect to her successful motions to enforce litigant's rights.

The decision to award "attorney's fees rests within the sound discretion of the trial court." Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). "[F]ee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)); accord Berkowitz v. Berkowitz, 55 N.J. 564, 570 (1970). An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. and Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Although New Jersey generally disfavors the shifting of attorney's fees, a prevailing party may recover attorney's fees and costs if expressly provided by statute, court rule, or contract. Collier, 167 N.J. at 440 (citing N. Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999) and Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 504 (1983)). A trial court may award

attorney's fees and costs under Rule 4:50-1(f) where a party is compelled to oppose a motion to vacate a default judgment. As we explained,

[w]hen relief is given from a default judgment, the court is required to do so "upon such terms as are just." R. 4:50-1. Two concerns arise: providing reasonable security to the plaintiff; and providing compensation to the plaintiff for the fees and costs incurred in obtaining and defending the default judgment.

[Davis, 317 N.J. Super. at 101.]

We continued, a "plaintiff's incurrence of fees and costs resulting from [the] defendants' inexcusably neglectful failure to file a timely answer to the complaint" was grounds for the trial court to impose "as a condition of relief from the judgment [that the] defendants shall reimburse plaintiff for the attorneys' fees and court cost incurred in obtaining the default judgment and in opposing its vacation in the trial court and in this court on the appeal." Id. at 102. We noted that "[t]his approach accords with the general practice throughout the United States" and is supported by Rule 1:2-4. Ibid.

We have carefully reviewed the record and find error in the court's denial of Zhang's motion for attorney's fees and costs incurred after December 6, 2018. After the court granted Kessely's motion to intervene on December 6, 2018, Zhang continued to incur attorney's fees and costs to oppose Kessely's motion to vacate the final judgment. In addition, after December 6, 2018, Zhang twice

moved successfully to enforce litigant's rights because Kessely failed to comply with court orders to deposit rents in court. Zhang's motions helped to ensure that there were sufficient funds in court to pay the attorney's fees and costs awarded in the March 27, 2020 order.

The trial court did not explain its reasoning for circumscribing Zhang's award of attorney's fees and costs and we see no basis for doing so. It is Kessely's utter failure to ensure that her interest in the property was recorded, including taking the steps necessary to record her deed once she was aware that Goshen had not fulfilled its promise, that lead to the tax delinquency, sale of the tax certificate, entry of final judgment vesting title in Zhang without notice to Kessely, and, ultimately, the motions to enforce litigant's rights.

It was perfectly reasonable for Zhang to oppose Kessely's motion to vacate the final judgment and a misapplication of the trial court's discretion not to condition the grant of that motion on the award of attorney's fees and costs incurred by Zhang from December 6, 2018 to January 9, 2020, including with respect to her motions to enforce litigant's rights and her subsequent motion for attorney's fees and costs. A contrary decision would discourage investment in tax sale certificates and amount to an implicit acquiescence in Kessely's neglect of her duties as a property owner and taxpayer.

In calculating the amount of reasonable attorney's fees, "an affidavit of services addressing the factors enumerated by RPC 1.5(a)" is required. R. 4:42-9(b); Twp. of W. Orange v. 769 Assocs., LLC, 198 N.J. 529, 542 (2009). In addition, the trial court must determine the "lodestar," defined as the "number of hours reasonably expended" by the attorney, "multiplied by a reasonable hourly rate." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). "The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar." Furst, 182 N.J. at 22 (citing Rendine, 141 N.J. at 335-36 (1995)).

When determining the amount of attorney's fees and costs to be awarded for the period March 15, 2018 to December 6, 2018, the trial court found that the fees charged by Zhang's attorneys were reasonable. Kessely did not appeal that finding. Thus, the only factor remaining for the trial court to determine on remand is the reasonable number of hours Zhang's attorneys expended in the period December 8, 2018 to January 9, 2020, including on her motions to enforce litigant's rights, and subsequently on her motion for attorney's fees and costs. Once that finding is made the court will calculate the amount of attorney's fees and costs to award to Zhang for that period.

The January 29, 2020 and February 5, 2021 orders are affirmed. The March 27, 2020 order is affirmed to the extent that it awards attorney's fees and costs to Zhang for the period March 15, 2018 to December 6, 2018, and reversed to the extent that it denied the remainder of Zhang's application for attorney's fees and costs. We remand for the award of attorney's fees and costs to Zhang consistent with this opinion. 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