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APPROVAL OF THE APPELLATE DIVISION**

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-2601-21**

**ROSALIE ST. MARTINE,**

**Plaintiff-Appellant,**

**v.**

**WILMINGTON SAVINGS FUND  
SOCIETY, CHRISTIANA TRUST,  
and RACHEL FEWELL,**

**Defendants-Respondents.**

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Submitted March 28, 2023 – Decided June 15, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law  
Division, Cape May County, Docket No. L-0379-18.

Rosalie St. Martine, appellant pro se (Conrad J.  
Benedetto, on the brief).

Knuckles, Komosinski & Manfro, LLP, attorneys for  
respondents Wilmington Savings Fund Society and  
Christiana Trust (John E. Brigandi, on the brief).

**PER CURIAM**

Plaintiff appeals the trial court's denial of reconsideration of its order dismissing the amended complaint on statute of limitations grounds in this appeal involving plaintiff's alleged slip and fall while viewing a parcel of real estate that was advertised for sale. We find the motion for reconsideration was properly denied, and, although not before us, the complaint was properly dismissed, and affirm.

The record before us demonstrates the following: on January 7, 2004, co-defendant Rachel Fewell (Borrower) entered into a residential mortgage loan transaction with Wells Fargo Bank (Wells Fargo). The mortgage was secured by property located in Cape May (the Property). On November 19, 2015, Wells Fargo assigned the mortgage to Wilmington Savings Fund Society pursuant to a written assignment of mortgage, which was recorded with the county clerk on December 18, 2015. In its amended complaint, plaintiff alleges Christiana Trust is a subsidiary of Wilmington Savings Fund Society (Wilmington or, collectively, defendants).

On May 5, 2016, a foreclosure action was filed by Wilmington against Borrower for her failure to make payments due under the note and mortgage. Final judgment of foreclosure was entered in favor of Wilmington on June 7,

2017. Thereafter, the Property was sold at sheriff sale to Wilmington on November 15, 2017.

During the pendency of the foreclosure action and before the sheriff's sale, plaintiff alleges she slipped and fell while touring the Property on September 19, 2016, contending her fall was caused by a hazardous condition, not specifically alleged in the complaint, that was apparent to any party who owned or controlled the property and had a duty to maintain it in a safe condition.

Plaintiff filed a complaint on September 17, 2018, against Wells Fargo. Despite the assignment of the mortgage having been recorded in December 2015, and the deed recorded after the sheriff's sale in November 2017, Wilmington and Christiana Trust were not named as defendants in the original complaint. Instead, several fictitious defendants were named by stating "John Does 1-10 and ABC Corporations A-Z, are liable or may be liable for plaintiff's injuries but whose identities are unknown at the present."

Wells Fargo filed a motion for summary judgment seeking dismissal on April 12, 2019. Plaintiff failed to oppose the motion, and the entire action was dismissed on May 17, 2019, because the court found Wells Fargo had assigned its interest in the mortgage and the property in 2015, well before plaintiff's alleged injury.

Plaintiff filed a motion to restore the action and amend her complaint, which was granted on October 11, 2019. That decision allowed plaintiff to amend the complaint to name a non-fictitious defendant but cautioned that any future named defendant may contest the action on timeliness grounds.

Plaintiff subsequently amended the complaint on November 27, 2019, naming Wilmington and Christiana Trust as defendants. Plaintiff alleged she served Wilmington with the summons and complaint on December 18, 2019, and no answer or appearance was filed. Plaintiff then requested an entry of default against defendants, which was entered on February 11, 2020. However, on March 16, 2020, counsel for Wells Fargo filed a letter with the court informing its default against defendants was improper because plaintiff served Wells Fargo with the amended complaint, not defendants. Wells Fargo noted it had been dismissed from the case and was not permitted to accept service on behalf of defendants. As a result, the court vacated the default on May 21, 2020, and subsequently dismissed the action five months later, on October 16, 2020, for lack of prosecution.

Three months later, on January 22, 2021, plaintiff filed her second motion to reinstate the now amended complaint against defendants. The motion was granted on February 22, 2021.

Defendants were then served with the summons and amended complaint on March 5, 2021. On May 11, 2021, defendants filed a motion to dismiss plaintiff's complaint for failure to state a claim upon which relief could be granted. Same was granted on June 23, 2021. Plaintiff did not appeal that order. Instead, plaintiff filed a motion for reconsideration before the trial court, which was denied on September 10, 2021. Plaintiff then sought leave to file an untimely appeal of the decision denying her motion for reconsideration, which we granted on May 25, 2022.

We review a trial court's decision denying a motion for reconsideration pursuant to Rule 4:49-2 for abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2023).

Initially, we note plaintiff did not appeal the dismissal of the complaint, but in this appeal asks us to review that order. Our review is limited to the order being appealed from – the motion for reconsideration. Nevertheless, because

the motion for reconsideration is based upon whether the trial court's order dismissing the amended complaint against defendants was correct, we address the trial court's findings in the dismissal order substantively.

Defendants filed a motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e), claiming plaintiff's amended complaint was time-barred by the two-year statute of limitations for personal injuries found in N.J.S.A. 2A:14-2 because the amended complaint did not relate back to the original complaint. Rule 4:26-4 requires fictitious defendants named in a complaint be described with a minimum level of specificity. See R. 4:9-3 requiring the basis for the fictitious defendant's responsibility.

In opposing dismissal of the amended complaint, plaintiff failed to address defendant's arguments regarding the amended complaint's relation back to the original complaint and the lack of specificity in the original complaint. Instead, plaintiff made only cursory statements, alleging she only learned of defendants' involvement on November 27, 2019, when the court dismissed Wells Fargo as a party.

In granting defendants' motion for dismissal of the complaint, the court, noting the liberality required in determining whether a complaint states a claim, found the amended complaint was sufficient to state a claim that defendants

were mortgagees in possession at the time of plaintiff's alleged accident. However, it found the amended complaint did not relate back to the original complaint. Noting Viviano v. CBS, Inc., 101 N.J. 538, 548 (1986) requires a minimum level of specificity, including a specific description of the defendant and the basis for the missing defendant's responsibility, it found "plaintiff failed to identify the fictitious defendants with any degree of specificity." We concur.

Plaintiff's amended complaint contains no description of defendants nor the basis for their alleged responsibility. The sole statement "John Does 1-10 and ABC Corporations A-Z, are liable or may be liable for plaintiff's injuries but whose identities are unknown at the present" does not set forth a theory of liability against defendants as it fails to identify whether the ABC Corporations are realtors, cleaning services, landscaping services, security services, mortgagees, assignees, or something else. The trial court properly relied upon Baez v. Paulo, 453 N.J. Super. 422 (App. Div. 2018) to find plaintiff failed to demonstrate due diligence in seeking the identities of the fictitious defendants.

Baez involved two doctors whose names were readily ascertainable from a review of plaintiff's medical records but were not named as defendants in a malpractice complaint. Because the statute of limitations had run, the court precluded plaintiff from naming them in an amended complaint.

Defendants in this matter had access to the public record, which readily identified defendants as the mortgagees, prior to the filing of the initial complaint. The judgment of foreclosure and the sheriff's sale were also both recorded prior to plaintiff's original complaint being filed. Plaintiff additionally waited four months after the dismissal of the complaint against Wells Fargo to file a motion to restore the action and amend the complaint, although the dismissal was based on Wells Fargo's assignment to defendants. Finally, plaintiff failed to serve defendants for sixteen months after the amended complaint was filed. In sum, plaintiff failed to demonstrate due diligence in prosecuting the proper parties.

Plaintiff demonstrates no reason for us to conclude the trial court abused its discretion by failing to grant reconsideration. Motions for reconsideration of a final order of the trial court are governed by Rule 4:49-2. Rule 4:49-2 requires "a motion for rehearing or reconsideration seeking to alter or amend a judgment or order . . . . [to] state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." Reconsideration is a matter within the sound discretion of the court and is to be exercised "for good cause shown and in the service of the ultimate goal of substantial justice." Johnson v.



Cyklop Strapping Corp., 220 N.J. Super. 250, 263-64 (App. Div. 1987); see also Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). In Cummings, the Appellate Division held Rule 4:49-2 applies (1) when the court's decision is based upon incorrect reasoning; (2) when the court failed to consider evidence; or (3) if there is good reason for the court to reconsider new information. 295 N.J. Super. at 384.

"Furthermore, a motion for reconsideration is not an opportunity for a second bite at the apple. It is not a mechanism for unhappy litigants to attempt once more to air their positions and re-litigate issues already decided." Michel v. Michel, 210 N.J. Super. 218, 224 (Ch. Div. 1985). The prime function of a motion for reconsideration is to highlight "the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. See Fusco v. Board of Educ. of the City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) ("Reconsideration should be used only for those cases which fall into that narrow corridor in which either (1) the court has expressed its decision upon a palpably incorrect or irrational basis, or (2) it is obvious the court either did not consider or failed to appreciate the significance of probative, competent evidence." (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990))). Reconsideration is not a vehicle through which to raise new

arguments or to simply reprise the initial motion. Guido v. Duane Morris LLP, 202 N.J. 79, 87 (2010).

On reconsideration, plaintiff argued the court dismissed plaintiff's complaint for failure to make timely service of the amended complaint. Plaintiff failed to provide new information and failed to show the court overlooked or failed to consider any evidence. In her motion for reconsideration, she argued defendant never raised the issue of untimely service upon defendants in their motion to dismiss and it was improper for the trial court to dismiss the amended complaint on that basis. Plaintiff's claim is belied by the record. The trial court did not dismiss plaintiff's amended complaint for lack of timely service but rather because the amended complaint did not relate back to the original complaint and because plaintiff failed to exercise due diligence in identifying and prosecuting fictitious defendants. Defendants properly raised the issue of plaintiff's lack of due diligence in prosecuting the case, citing Baez v. Paulo.

We must note plaintiff has had many bites of this apple. As the torturous procedural history demonstrates, plaintiff's original complaint was filed on September 17, 2018 against Wells Fargo, two days before the two-year statute of limitations would have run, and was dismissed on May 17, 2019, when plaintiff failed to oppose Wells Fargo's motion for dismissal based on the

assignment to Wilmington, a fact any title search would have readily revealed. Despite knowing in May 2019 that defendants were the assignees, plaintiff did not file a motion to restore and amend the complaint until five months later, which was granted. The amended complaint, filed November 27, 2019, was not served upon defendants until March 5, 2021, a full sixteen months later and after another motion to restore. The amended complaint still failed to allege any facts claiming defendants had knowledge of a hazardous condition with respect to the premises. At every juncture, plaintiff failed to perform the due diligence necessary to prosecute its claims against defendants, even filing the appeal of the motion for reconsideration out of time.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION