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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2954-21**

BLITEI, LLC,

Plaintiff-Appellant,

v.

HAJNALKA KOVACS and PETER
KOVACS, her husband, CITIBANK,
N.A. [now CITIBANK, NATIONAL
ASSOCIATION], as trustee for
WAMU SERIES 2007-HE4 TRUST,
WAMU SERIES 2007-HE4 TRUST,
MIDLAND FUNDING LLC,
DISCOVER BANK, and CITIBANK
SOUTH DAKOTA N.A., n/k/a
CITIBANK NATIONAL
ASSOCIATION,

Defendants,

and

CHATEAU APARTMENTS LLC,

Defendant-Respondent.

Submitted March 8, 2023 – Decided May 5, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Mercer County, Docket No.
F-003108-21.

Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi
& Gill, LLC, attorneys for appellant (Keith A Bonchi,
of counsel and on the briefs; Elliott J. Almanza, on the
briefs).

Howard D. Lipstein, attorney for respondent.

PER CURIAM

In this action to foreclose a tax sale certificate, plaintiff Blitei, LLC, appeals two Chancery Division orders: (1) a February 18, 2022 order denying plaintiff's motion to bar redemption and impose a constructive trust and granting defendant Chateau Apartments LLC's cross-motion to redeem; and (2) a May 27, 2022 final order of dismissal. We affirm.

I.

On April 5, 2021, the City of Trenton assigned plaintiff tax certificate no. 17-2026, which encumbered real property located at 321 Academy Street. Prior to foreclosing on the property, plaintiff conducted a foreclosure search which revealed Rajendra Gupta owned a prior tax certificate, no. 17-0012, on the property. Plaintiff filed a foreclosure complaint on June 14, 2021, naming Gupta as a defendant, as well as a lis pendens, which it recorded on July 8, 2021.

On June 30, 2021, Gupta assigned certificate no. 17-0012 to defendant for \$3000.¹ Plaintiff discovered the assignment while conducting a search for additional recorded interests in the property between the filing of the complaint and the recording of the lis pendens. Accordingly, plaintiff filed an amended complaint naming defendant on August 10, 2021.

Two days later, defendant attempted to redeem plaintiff's certificate pursuant to N.J.S.A. 54:5-54² by tendering the necessary redemption funds to the tax collector. Plaintiff rejected defendant's attempt to redeem and moved to

¹ The amount required to redeem certificate no. 17-0012 as of June 30, 2021, was \$1,027.65.

² N.J.S.A. 54:5-54 provides:

Except as hereinafter provided, the owner, his heirs, holder of any prior outstanding tax lien certificate, mortgagee, or occupant of land sold for municipal taxes, assessment for benefits pursuant to R.S. 54:5-7 or other municipal charges, may redeem it at any time until the right to redeem has been cut off in the manner in this chapter set forth, by paying to the collector, or to the collector of delinquent taxes on lands of the municipality where the land is situate, for the use of the purchaser, his heirs or assigns, the amount required for redemption as hereinafter set forth.

[N.J.S.A. 54:5-54 (emphasis added).]

bar redemption and impose a constructive trust. Defendant filed a cross-motion to permit redemption.

At oral argument, plaintiff relied on Simon v. Cronecker, 189 N.J. 304 (2007), and its companion case, Simon v. Rando, 189 N.J. 339 (2007), and argued defendant forfeited its redemption right by failing to seek court approval of its post-complaint acquisition of certificate no. 17-0012 prior to its attempt to redeem. According to plaintiff, such court approval is necessary to ensure defendant paid "fair market value" for the property interest, as required by N.J.S.A. 54:5-89.1.³ As defendant tendered redemption monies prior to judicial review of the underlying assignment, plaintiff asserted the appropriate remedy under Cronecker was to bar redemption and impose a constructive trust.

After oral argument and a period of limited discovery, the court denied plaintiff's motion and granted defendant's cross-motion in an oral opinion. The court rejected plaintiff's arguments and found its reliance on Cronecker and Simon misplaced, as plaintiff named defendant in its amended complaint. Contrary to plaintiff's contention, the court concluded "Cronecker supports

³ N.J.S.A. 54:5-89.1 provides, in part, that a person claiming an interest in a property subject to foreclosure due to unpaid taxes shall not "have the right to redeem the lands from the tax sale whenever it shall appear that the person has acquired such interest in the lands for less than fair market value after the filing of the complaint."

defendant's argument that it was not required to intervene." The court specifically relied on language from Cronecker, which states, "[a]ny person not named in the complaint must move to intervene in the action." See 189 N.J. at 336.

Further, relying on our opinion in Green Knight Capital, LLC v. Calderon, 469 N.J. Super. 390 (App. Div. 2021), aff'd as modified, 252 N.J. 265 (2022),⁴ the court determined "defendant's prior attempt to redeem the certificate at the tax collector's office does not bar his application for redemption" because the court "ha[d] not set a final date for redemption." The court also rejected plaintiff's contention defendant evaded judicial review of its interest in certificate no. 17-0012, as defendant was named in the complaint and the court "ha[d] determined whether defendant paid more than nominal consideration for its property interest." Accordingly, the court concluded "defendant must be permitted to redeem the tax certificate."

The court entered a conforming order on February 18, 2022, and a final order of dismissal on May 27, 2022. As noted, plaintiff appeals both orders.

⁴ At the time of the trial court's opinion, our opinion in Green Knight Capital was pending certification to the Supreme Court. The Court has since affirmed our opinion as modified. 252 N.J. at 277.

II.

Before us, plaintiff reprises its argument that granting defendant a right of redemption contravenes Cronecker and Rando, which, it maintains, unequivocally required defendant "to obtain the court's permission for its post-complaint acquisition of a redeemable interest[] prior to tendering redemption." According to plaintiff, that it named defendant in its amended complaint is an inconsequential distinction from those cases, as defendant "still had an obligation to apply to the court to establish the substantive ['fair market value'] component of N.J.S.A. 54:5-89.1 before tendering redemption." Stated differently, plaintiff argues "[d]efendant's failure to obtain approval prior to redeeming should have doomed its motion, to the identical extent as in Rando and Cronecker."

Similarly, plaintiff maintains the court erroneously "absolve[d] [d]efendant of having to obtain court approval prior to tendering redemption." Finally, it contends the court committed reversible error in relying on our opinion in Green Knight Capital, as that opinion constituted, "at best[,] unsettled law."

Resolving the parties' dispute over whether defendant's attempt to redeem vitiated his redemption right is a question of law, which we review de novo.

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We have considered plaintiff's arguments in light of the record and the applicable law and conclude they are without merit. As both parties substantially rely on Cronecker and Rando, we begin with a discussion of those cases. We then turn to our Supreme Court's recent opinion in Green Knight Capital, which affirmed as modified our opinion and which also provides a thorough recounting of the procedural requirements necessary for redemption of the tax sale certificates at issue in this appeal.

In Cronecker, when plaintiffs, holders of tax sale certificates, instituted a foreclosure action on the defendants' properties, "[a] third-party investor contracted to purchase [the] defendants' properties and arranged for the redemption of the tax certificates, without intervening first in the foreclosure action." 189 N.J. at 310. The Court articulated both a procedural and a substantive requirement for redemption by an undisclosed third-party who obtains a property interest after a foreclosure complaint has been filed:

In balancing the conflicting interests in these cases, we now hold that the Tax Sale Law does not prohibit a third-party investor from redeeming a tax sale certificate after the filing of a foreclosure action, provided that the investor timely intervenes in the action [(the procedural requirement)] and pays the property owner more than nominal consideration for the property [(the substantive requirement)].

[Id. at 311.]

Accordingly, the Court determined, "because the third-party investor here did not intervene in the foreclosure actions before arranging for redemption of the tax certificates, the investor will not be permitted to profit from the transactions. To protect defendants' interests, we impose constructive trusts, allowing plaintiffs to succeed in the third-party investor's place." Ibid.

With respect to the necessary procedural requirement before redemption can occur, the Court observed "the applicable statute and court rule clearly require that after the filing of a foreclosure action, a person seeking to redeem a tax certificate must be a party to that action." Id. at 335. The Court explained "N.J.S.A. 54:5-98 provides that 'after the complaint has been filed redemption shall be made in that cause only, provided notice of the suit has been filed in the office of the tax collector.'" Id. at 336 (emphasis in original). It also noted "the requirement that a person, directly or indirectly, seeking to redeem a tax certificate 'be admitted as a party to such action' permits judicial oversight of the adequacy of consideration offered for the property interest." Ibid. (quoting N.J.S.A. 54:5-89.1).

The Court further explained, "[w]hen a person attempts to redeem a tax certificate, the tax collector need only look to the foreclosure complaint for the

names of persons with an interest in the property." Ibid. Therefore, "[a]ny person not named in the complaint must move to intervene in the action. Without the court's approval, that person is not entitled to redeem the tax certificate." Ibid. The Court concluded, "a third-party investor who acquires a property interest subject to the action must intervene to establish that [they have] offered more than nominal consideration for the interest." Id. at 338.

In Rando, the Court extended Cronecker's holding to circumstances in which a third-party investor purchased a prior tax sale certificate and attempted to redeem without intervening after a foreclosure complaint had been filed. 189 N.J. at 341. The Court reiterated its holding in Cronecker that "unless [a] third-party investor who acquires an interest in the subject property first receives court approval, the investor has no right to participate, directly or indirectly, in the redemption of a tax certificate." Ibid.

The Court explained the procedural requirement that a third-party investor intervene in a foreclosure action "before attempting to redeem the certificate at the tax collector's office" follows from a plain reading of N.J.S.A. 54:5-98's limitation that "[a]fter the complaint has been filed redemption shall be made in that cause only." Id. at 343 (emphasis omitted). It also noted because tax sale certificates represent a property interest, they "must be purchased for more than

nominal consideration by a third-party investor." Id. at 343-44 (citing N.J.S.A. 54:5-89.1). Accordingly, as the third-party investor purchased the tax sale certificates for the requisite consideration, the Court held that had it "timely intervened in the tax sale foreclosure action, with the court's approval it then could have redeemed [the] plaintiffs' subsequently acquired tax certificates." Id. at 344.

As noted, in Green Knight Capital our Supreme Court addressed N.J.S.A. 54:5-98's procedural requirement as applied in Cronecker and Rando. The Court specifically analyzed "whether a party that acquires an interest in property subject to a tax sale foreclosure action must lose the opportunity it has acquired because of its attempt to redeem the tax sale certificate before moving to intervene." 252 N.J. at 267. Phrased differently, the Court addressed "the consequences of a failure to comply with th[e] procedural requirement." Id. at 273.

In that case, after the plaintiff, a holder of a tax sale certificate, filed a foreclosure complaint, an investor purchased the underlying property from the defendant and attempted to redeem the plaintiff's certificate. Id. at 268. The plaintiff rejected the redemption and moved to bar redemption. Green Knight Capital, 469 N.J. Super. at 392. Only then did the investor move to intervene

and permit redemption. Id. at 392-93. On appeal, we distinguished Cronecker and Rando because the investor intervened "before the entry of an order setting the last date for redemption." Id. at 396. We held the investor was therefore permitted to redeem. The Supreme Court granted certification. Green Knight Capital, 252 N.J. at 269.

In light of the investor's pre-intervention attempt to redeem, the plaintiff contended "Cronecker created an unrelaxable rule precluding the investor's redemption." Id. at 268. Although it acknowledged the procedural requirement "was not precisely met," the Court rejected that contention as well as the plaintiff's related argument the procedural requirement necessitated strict compliance such that the investor's noncompliance relegated it to an inferior position. Id. at 273. The Court explained:

The Tax Sale Law does not announce — and we are satisfied it does not envision — the rule of strict compliance urged by Green Knight; it requires only that once a foreclosure action is commenced redemption must "be made in that cause only," N.J.S.A. 54:5-98, a limitation that compels the investor to intervene first, but without stating or suggesting there must be a consequence for any mistake. Changes in the law over time counsel against adopting a strict view of this procedural requirement.

[Id. at 273-74.]

Although "the investor must always intervene before being allowed to redeem," the Court reasoned the investor's pre-intervention redemption attempt did not "put[] the tax sale certificate holder in [a] worse position than it would have possessed had the error not occurred." Id. at 275. It further explained the Legislature enacted the procedural requirement to prevent a "last-minute investor" from redeeming "without the trial court's imprimatur," a circumstance not present in that case where "the timing of the parties' motions permitted the chancery judge to completely oversee the disposition of their competing claims in a manner envisioned by the Tax Sale Law." Id. at 275.

In sum, the Court affirmed the proposition "that intervention must precede any attempt to redeem," but concluded a premature attempt to redeem does not vitiate a fairly acquired redemption right when "the parties had the benefit of the chancery judge's full consideration of their competing legal and equitable arguments." Id. at 276. The Court therefore affirmed our judgment, but departed from our holding that a "purchaser, upon acquiring a property interest, must intervene in the foreclosure action 'before the entry of an order setting the last date for redemption,'" as it found no such deadline imposed by the Tax Sale Law or our court rules. Id. at 276-77 (citation omitted).

Against this backdrop, we are satisfied defendant did not forfeit its redemption right by tendering redemption monies to the tax collector prior to receiving court approval. As noted, defendant was a party to the foreclosure action before it attempted to redeem. Contrary to plaintiff's contention, we find that fact a meaningful distinction from the circumstances presented in Cronecker and Rando.

Although Cronecker and Rando hold intervention must precede an attempt to redeem, the Court explained that obligation followed from the plain language of N.J.S.A. 54:5-98 that required a post-complaint redemption "be made in that cause only." Cronecker, 189 N.J. at 336; Rando, 189 N.J. at 343. Indeed, in Cronecker, the Court specifically stated "a person seeking to redeem a tax certificate must be a party to that action," 189 N.J. at 335 (emphasis added), and "any person not named in the complaint must move to intervene in the action[.]" id. at 336 (emphasis added). According to the Court, such a requirement ensures "judicial oversight of the adequacy of consideration offered for the property interest." Ibid.

By requiring non-parties to intervene in the foreclosure action as a requisite to redemption, the Court in Cronecker was clearly concerned with non-parties attempting redemption without judicial oversight. See ibid. We

therefore do not read Cronecker and Rando as precluding defendant from redeeming, as it was a party to the foreclosure action and its redemption was subject to judicial review. Simply, defendant was "in th[e] cause" when it attempted to redeem. N.J.S.A. 54:5-98.

We also reject plaintiff's contention that defendant somehow evaded court approval of its acquisition of tax sale certificate no. 17-0012 as completely belied by the court's judicial review of that transaction. After rejecting defendant's redemption attempt, plaintiff moved to bar defendant's redemption as procedurally improper and, in the alternative, requested limited discovery to investigate the circumstances surrounding defendant's acquisition of certificate no. 17-0012. The court granted that discovery request, and after completing discovery, plaintiff failed to advance any argument defendant paid less than fair market value to acquire the certificate. The court nevertheless addressed the issue and concluded "defendant has paid more than nominal consideration for its interest." Notably, plaintiff does not contend defendant paid less than market value or that the court failed to adequately address that issue.

Further, even were we to accept defendant prematurely attempted to redeem, we are satisfied barring redemption and imposing a constructive trust would be an inappropriate remedy under Green Knight Capital. As noted, Green

Knight Capital rejected the proposition that a premature redemption attempt necessarily invalidates a party's right to redeem, instead recounting the proper inquiry as whether the redemption was appropriately subject to judicial review. See 252 N.J. at 275

This case does not involve any of the chicanery where a "last-minute investor" attempts to redeem "without the trial court's imprimatur." Ibid. Rather, like in Green Knight Capital, the court "completely over[saw] the disposition of [the parties'] claims in a manner envisioned by the Tax Sale Law," and the parties benefited from the court's "full consideration of their competing legal and equitable arguments." Id. at 275-76. In light of the court's considerable review, defendant's attempt to redeem before seeking court approval placed plaintiff in no worse position than it would have been had defendant sought judicial review prior to tendering redemption monies. See id. at 275. Defendant's redemption attempt therefore did not vitiate its fairly-acquired redemption right. See id. at 276.


Finally, we find no merit to plaintiff's contention the court's reliance on our then certification-granted opinion in Green Knight Capital constituted reversible error. To the extent the court relied upon our opinion in that case and determined defendant's redemption attempt was procedurally proper because it

was made before the court set a final date for redemption, we depart from that portion of the court's reasoning in light of the Supreme Court's opinion in Green Knight Capital.⁵ See id. at 277. We otherwise affirm both the February 18, 2022 and May 27, 2022 orders.

To the extent we have not specifically addressed any of plaintiff's arguments, it is because we conclude they lack sufficient merit to require discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

⁵ "We are free to affirm the trial court's decision on grounds different from those relied upon by the trial court." State v. Heisler, 422 N.J. Super. 399, 416 (App. Div. 2011).