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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2164-22

KEARNY FEDERAL SAVINGS
BANK,

Plaintiff-Respondent,

v.

100 WEST STREET, LLC,
STATE OF NEW JERSEY, and
RGS INVESTMENTS, LLC,

Defendants,

and

ROBERT SCHROEDER,
INTERNATIONAL SHIP
MANAGEMENT & AGENCY
SERVICE, MARGARET M.
SEIBECKER, PROJECT
IMPACT, LAURIE CORNELL,
CORNELL SPECIAL
ED CONSULTING, LANTELME &
ASSOC., RICHARD M. HODGMAN
CO CPA, HITACHI AMERICA,
LTD., ARZENO INSTITUTE, INC.,
and HARTEX, INC.,

Defendants-Respondents,

and

GRACE WONG,

Defendant-Appellant.

Submitted May 22, 2024 – Decided June 13, 2024

Before Judges Currier and Vanek.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-026493-12.

Harold C. Petzold, attorney for appellant.

Maggs, McDermott, & DiCicco, LLC, attorneys for
respondent Kearny Federal Savings Bank (Michael M.
DiCicco, of counsel and on the brief).

PER CURIAM

Defendant Grace Wong, a second mortgage holder on real property located in Hillsdale (the Property), appeals the entry of a March 7, 2023 order issuing an alias writ¹ authorizing a sheriff's sale to proceed after entry of a final

¹ An alias writ is "[a]n additional writ issued after another writ of the same kind in the same case." Black's Law Dictionary 1928 (11th ed. 2019). This is used to satisfy a judgment that has been unenforced or unsatisfied by a previous writ. In this matter, the alias writ was sought because the sale of the property did not occur within two years of the January 22, 2021 final judgment of foreclosure. See R. 4:59-1 (stating "[u]nless the court otherwise orders, every writ of

judgment of foreclosure. Because we find no error with the trial court's entry of the alias writ, we affirm.

We recount only the salient facts in the record material to our disposition. On August 31, 2009, plaintiff Kearny Federal Savings Bank loaned \$900,000 to defendant 100 West LLC (100 West), secured by a first mortgage on the Property. A subordinate mortgage on the Property securing a \$350,000 loan from Wong to 100 West was subsequently recorded.

On May 1, 2012, 100 West defaulted on repayment of plaintiff's mortgage. A few months later, plaintiff filed a complaint in the Chancery Division seeking a judgment of foreclosure based on the default. Although a final judgment of foreclosure was entered, it was vacated due to Wong's bankruptcy petition and then re-entered after the bankruptcy court provided plaintiff relief from the automatic bankruptcy stay. On January 22, 2021, the trial court re-entered final judgment of foreclosure on plaintiff's motion for summary judgment, ordered a writ of execution be issued, and directed that a sheriff's sale proceed.

The sheriff's sale of the Property was delayed due to the COVID-19 pandemic. As a result, plaintiff filed a motion for an alias writ to allow the

execution . . . shall be returnable within [twenty-four] months after the date of its issuance").

sheriff's sale to go forward after expiration of the writ of execution. Wong opposed the motion, arguing it had not been served on her co-defendant, 100 West, whose registration had been revoked by the State of New Jersey. Plaintiff presented proof 100 West received proper notice through service of the motion on the State of New Jersey, Department of the Treasury (the Treasury).

On March 7, 2023, the trial court granted the motion for issuance of the alias writ. In a written decision, the trial court found that since 100 West's registration was revoked, it was properly served with the motion through the Treasury pursuant to N.J.S.A. 2A:15-30.1. After filing a notice of appeal of the March 7, 2023 order, Wong's stay applications were denied and the Property was sold at a sheriff's sale on September 15, 2023.

I.

On appeal, Wong asserts plaintiff's affidavit evidencing service on the Treasury on behalf of 100 West was improper and, therefore, the trial court erred in issuing an alias writ and allowing the sheriff's sale to proceed.² We generally "do not resolve issues that have become moot due to the passage of time or intervening events." Wisniewski v. Murphy, 454 N.J. Super. 508, 518 (App.

² Although the trial court questioned whether Wong has standing to assert defective service on a co-defendant, there was no ruling on that issue for us to review.

Div. 2018) (quoting State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016)). Although neither party raises the mootness issue in their merits briefs, we consider sua sponte whether there remains a justiciable controversy for us to decide. See Bankers Tr. Co. of Cal., N.A. v. Delgado, 346 N.J. Super. 103, 106 n.1 (App. Div. 2001) (explaining that this court is empowered to "dismiss [a claim] on the ground that the issue raised on appeal is now moot" "in order to preserve judicial resources[] [and may] decline to consider moot issues" sua sponte).

Whether the issues on appeal are moot "is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010). "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)).

Wong seeks reversal of the March 7, 2023 order granting the issuance of the alias writ. However, after Wong filed this appeal and subsequent stay applications were denied, the Property was sold at a sheriff's sale. As a result,

even if we were to reverse the March 7, 2023 order, our decision would have no practical effect on any existing controversy. Nor is our review warranted because the argument raised on appeal is not of "substantial importance, likely to reoccur but capable of evading review." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996). Therefore, we dismiss Wong's appeal as moot.

II.

Despite our conclusion the appeal is moot, we address certain of Wong's arguments for purposes of completeness. We are unpersuaded that 100 West was deprived of due process since service of the motion for the alias writ was accomplished pursuant to the court rules.

"Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to the offend the interests of justice.'" Gripenburg v. Twp of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). When reviewing the facts of a case, we will apply a deferential standard to the findings of the trial court. Balducci v. Cige, 240 N.J. 574, 594 (2020).

We review questions of law de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019). "[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Ibid. (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"[T]he only constitutional requirement[] of service of process" is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." O'Connor v. Altus, 67 N.J. 106, 126 (1975) (quoting Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950)). "The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served" U.S. Bank v. Curcio, 444 N.J. Super. 94, 105 (App. Div. 2016) (quoting R. 4:4-4(a)). "If personal service cannot be effectuated 'after a reasonable and good faith attempt,' other methods are available." City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App. Div. 2007) (quoting R. 4:4-3(a)).

"The . . . rule for personal service upon an unincorporated association or entity, such as an LLC . . . is found in Rule 4:4-4(a)(5)." MTAG v. Tao Invs, LLC, 476 N.J. Super. 324, 334 (App. Div. 2023). Under Rule 4:4-4(a)(5) service

is proper "[u]pon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint . . . on an officer or managing agent or, in the case of a partnership, a general partner."

N.J.S.A. 14A:4-1 requires every corporation to appoint an agent for the service of process. If the entity fails to maintain a registered address or agent, service may be made on a state official or agency pursuant to N.J.S.A. 2A:15-30.1(b) which sets forth

If a business entity, foreign or domestic, is required to register with a State official or agency to transact business in this State and is required to register an address or an agent in this State for the service of process, process in any action in any court of this State directed to the business may be served on the State official or agency, if:

- (1) The business entity has failed to register or re-register as required by law; or
- (2) The business entity has failed to maintain a registered address or a registered agent in this State for service of process, as required by law.

Effective January 6, 2000, the Treasury replaced the Secretary of State as the state official or agency handling corporate filings and registrations. 30A N.J. Practice, Law of Mortgages § 30.26 (Myron C. Weinstein) (2d ed. 2000).

Therefore, service is statutorily authorized on the Treasury for corporations and other business entities such as 100 West, that have failed to maintain registration as required by law. Ibid.

We find no error with the trial court's determination that the motion for an alias writ was properly served on 100 West through the Treasury in accordance with N.J.S.A. 2A:15-30.1. Because it was undisputed that 100 West's charter had been revoked since 2015, the trial court correctly found that the motion was properly served on the Treasury pursuant to N.J.S.A. 2A:15-30.1(b). Wong's argument that plaintiff was required to serve the Secretary of State rather than the Treasury is contrary to prevailing law.

We decline to consider Wong's proofs outside the record that was before the trial court. Scott v. Salerno, 297 N.J. Super. 437, 447 (App. Div. 1997). Defendant submits an affidavit dated August 14, 2023 for the first time on appeal, alleging she spoke with State of New Jersey, Division of Revenue clerks who checked their records and stated no motion was received. The affidavit was not part of the record below and there was no motion filed to expand the record on appeal.³

³ We also note that the affidavit is likely inadmissible hearsay under N.J.R.E. 802, but we need not make that determination as our decision not to consider it rests on other grounds.

Wong's remaining arguments lack sufficient merit to warrant 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