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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-4693-15T1

BANK OF AMERICA, N.A.,

Plaintiff-Respondent,

v.

CHRISTOPHER J. ARTEAGA and  
VIVIANA J. ARTEAGA, his wife,  
each of their heirs,  
devisees, and personal  
representatives, and his,  
her, their, or any of their  
successors in right, title,  
and interest; BERGENWOOD  
COMMONS ASSOCIATION, INC.,  
and PORTFOLIO RECOVERY  
ASSOCIATES,

Defendants.

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Submitted September 6, 2017 – Decided November 15, 2017

Before Judges Alvarez and Gooden Brown.

On appeal from the Superior Court of New  
Jersey, Chancery Division, Hudson County,  
Docket No. F-015602-14.

Law Offices of Abe Rappaport, attorney for  
appellant 4521 Smith Unit 6-1C Associates, LLC  
(Kevin J. Bloom, on the briefs).

Powers Kirn, LLC, attorney for respondent  
(Jeanette J. O'Donnell, on the brief).

PER CURIAM

Appellant third-party bidder, 4521 Smith Unit 6-1C Associates, LLC, moved to vacate an April 1, 2016 Chancery Division order setting aside a Sheriff's sale on the ground that appellant failed to complete the sale. The trial court denied appellant's motion on June 28, 2016. Appellant now appeals from the June 28, 2016 order, arguing it was never served with plaintiff Bank of America's motion papers to set aside the Sheriff's sale. Appellant also argues that the court erred in finding that its motion was filed out of time. We disagree and affirm.

We derive the following facts from the record. On April 21, 2014, plaintiff filed a foreclosure complaint and obtained a final judgment in its favor on March 17, 2015. On December 17, 2015, a Sheriff's sale was conducted of the foreclosed-upon property, and appellant was the successful bidder with a bid of \$116,000. Under the terms of the sale, appellant was required to "pay 20% of the purchase price at the close of the sale" with the balance to be paid within thirty days. The sale terms also specified that "[i]f the purchaser fails to comply with any of the conditions of sale, the property will be sold a second time, the former purchaser being held responsible for all losses and expenses[,]" and "[t]he deposit . . . to be retained by the Sheriff to be disbursed by court order."

Appellant failed to complete the sale by paying the balance by the due date as required under the terms of the sale. On January 20, 2016, plaintiff sent appellant a letter requesting that the sale be completed within ten days of the date of the letter or plaintiff would move to set aside the sale. When appellant failed to comply, on March 10, 2016, plaintiff moved to vacate the Sheriff's sale, which was granted by the court in an April 1, 2016 order.

On May 10, 2016, appellant moved to vacate the April 1, 2016 order to allow it to complete the sale, certifying that it did not receive a copy of plaintiff's motion and did not therefore have an opportunity to oppose it. In opposing appellant's motion, plaintiff certified that the moving papers were sent via regular and certified mail to the same address as the April 1, 2016 order. Plaintiff averred that while the certified mail "was returned unclaimed[,] the regular mail was not returned." On June 28, 2016, the court denied appellant's motion.

In the statement of reasons accompanying the June 28, 2016 order, the court characterized appellant's motion as essentially seeking reconsideration of the court's April 1, 2016 order. As a result, the court determined that pursuant to Rule 4:49-2, appellant's motion for reconsideration was out of time because it "was served and filed on May 10, 2016, [thirty-nine] days after

the [c]ourt's [o]rder granting [p]laintiff's motion to vacate the Sheriff's [s]ale." Because Rule 4:49-2 requires a motion for reconsideration to be filed "no later than [twenty] days after the service of the [o]rder[,]" the court denied appellant's motion "as untimely."

Nonetheless, the court considered appellant's motion on the merits, but rejected appellant's argument "that service was not properly effectuated[.]" The court found plaintiff's assertion that it did not receive the original motion to vacate "disingenuous[,]" as [appellant's] counsel received a copy of the [April 1, 2016] [o]rder, which was sent to the same address as the motion." The court concluded there was "no basis in fact or law to overturn its April 1, 2016 [o]rder[,]" particularly given the fact that appellant was "now seeking to complete the sale after forfeiting their deposit." This appeal followed.

On appeal, appellant raises the following points for our consideration:

POINT I

APPELLANT'S MOTION WAS NOT FILED OUT OF TIME.

POINT II

PLAINTIFF'S ORDER TO SET ASIDE SHERIFF'S SALE  
MUST BE VACATED BECAUSE APPELLANT NEVER  
RECEIVED THE MOTION.

### POINT III

PRINCIPLES OF EQUITY COMPEL THE COURT NOT TO SET ASIDE A SHERIFF'S SALE WHERE THE SUCCESSFUL BIDDER DESIRES TO COMPLETE THE SALE.

In Point I, appellant argues that the court erred in considering its motion as a motion for reconsideration pursuant to Rule 4:49-2, instead of a motion to be relieved from a judgment or order pursuant to Rule 4:50-1. Appellant asserts that, in so doing, the court erroneously rejected its motion as untimely. Rule 4:49-2 requires "a motion for rehearing or reconsideration seeking to alter or amend a judgment or order [to] be served not later than [twenty] days after service of the judgment or order upon all parties by the party obtaining it." Pursuant to Rule 1:3-4(c), "[n]either the parties nor the court may . . . enlarge the time specified by . . . [Rule] 4:49-2[.]" Reconsideration is appropriate only in those cases "in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). We review a court's determination of a motion for reconsideration under an abuse of discretion

standard. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).

Rule 4:50-1 authorizes a court to relieve a party from a final judgment or order for reasons such as: mistake, inadvertence, surprise, or excusable neglect, R. 4:50-1(a); certain newly discovered evidence, R. 4:50-1(b); fraud, misrepresentation, or other misconduct of an adverse party, R. 4:50-1(c); the fact that the judgment or order is void, R. 4:50-1(d); or the fact that the judgment has been satisfied, released or discharged, R. 4:50-1(e). Rule 4:50-1(f) is a catch-all provision that authorizes a court to relieve a party from a judgment or order for "any other reason[.]" "All Rule 4:50 motions must be filed within a reasonable time, which, in some circumstances, may be less than one year from entry of the order in question." Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div.), certif. denied, 208 N.J. 369 (2011); R. 4:50-2. We also review a court's determination of a Rule 4:50-1 motion under an abuse of discretion standard. Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999).

Appellant's May 10, 2016 motion was captioned "Notice of Motion to Vacate Order" and indicated that appellant would seek "an [o]rder to vacate the order setting aside the [S]heriff's sale that was entered on April 1, 2016." The notice of motion stated that in support of the motion, appellant would rely upon the

accompanying "[c]ertification" and "letter brief." Nowhere in the notice of motion, supporting certification, or letter brief did appellant refer to Rule 4:50-1. Nowhere in its merits brief does appellant suggest that it specifically asked the trial court to consider its motion under Rule 4:50-1. Under these circumstances, we conclude the court did not err by considering the motion under Rule 4:49-2 and denying it as untimely filed.


In Point II, appellant renews its argument that although the motion papers were sent to appellant via regular and certified mail, the certified mail was returned to plaintiff as undelivered. As a result, appellant asserts the court erred in finding that service was properly effectuated. We disagree. It is fundamental that a party is entitled to notice of any motion, including a dispositive motion. See Pressler & Verniero, Current N.J. Court Rules, comment 2 on R. 1:6-2 (2018) ("It is virtually axiomatic that . . . all motions must be on notice to the adverse party."); see also R. 1:6-3. However, Rule 1:6-3(c) provides that if service of motion papers "is by ordinary mail, receipt will be presumed on the third business day after mailing." Here, there is ample evidence in the record to support the court's conclusion that service was properly effectuated.

Finally, in Point III, appellant argues that because it fully intended to complete the purchase of the property, principles of

equity require reversal so that it may be permitted to complete the purchase without the need for the Sheriff's office to institute an additional and unnecessary Sheriff's sale. We have considered this argument and reject it as without 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