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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-5501-14T2

ROYAL TAX LIEN SERVICES,
L.L.C. d/b/a CRUSADER
LIEN SERVICES, L.L.C,

Plaintiff-Respondent,

v.

SYEDA FATIMA SHUAIB and
SYED TARIQ SHUAIB,

Defendants-Appellants,

and

HILLTOP FUEL HEATING & A/C,
and DISCOVER BANK,

Defendants.

Argued December 13, 2016 – Decided May 11, 2017

Before Judges Messano and Suter.

On appeal from the Superior Court of New
Jersey, Chancery Division, Camden County,
Docket No. F-9651-11.

Ahmed M. Soliman argued the cause for
appellants (Soliman & Associates, P.C.,
attorneys; Syed Tariq Shuaib, on the pro se
brief).

Adam D. Greenberg argued the cause for respondent (Honig & Greenberg, L.L.C., attorneys; Mr. Greenberg, on the brief).

PER CURIAM

This appeal is from the denial of a motion to vacate a Final Judgment of Tax Sale Certificate Foreclosure (Final Judgment) by defendant Syeda Fatima Shuaib (Syeda)¹. We exercise our original jurisdiction under Rule 2:10-5 and affirm the denial, although for reasons other than those expressed by the motion judge.

We relate only such facts as are necessary to the issues on appeal. Syeda and defendant Syed Tariq Shuaib (Syed) are brother and sister. They are the owners of a property located in Winslow Township, Camden County (the Property), which they purchased in 2003. Syed alleges the house on the Property was destroyed in 2006 by a storm, and was not restored until 2011. During that time, Syed disputed the amount of taxes due to Winslow Township. Syed acknowledged he stopped paying taxes on the Property in 2007.

Plaintiff, Royal Tax Lien Services, L.L.C. (Royal), purchased the Property's tax lien certificate from Winslow Township on December 9, 2008, for \$3,748.79. When the Property was not redeemed after two years, Royal gave written notice of its intention to foreclose to Syed and Syeda on September 28, 2011.

¹ We refer to the owners of the subject property by their first names only to avoid confusion because they have the same last name.

The notice was sent to an address in Paterson, Passaic County. Thereafter, on November 15, 2011, Royal filed a Summons and Complaint for Foreclosure of Tax Sale Certificate(s) (the complaint), naming Syed and Syeda as defendants.

Syed was personally served with the complaint on February 6, 2012, at the Paterson address, but he told the process server that Syeda was not living there at the time and that he had no forwarding address for her. Syed was defaulted on April 10, 2012, when he did not file an answer to the complaint.

After attempting personal service at the Paterson address in February, Syeda was served on June 14, 2013, by publication in a Camden County newspaper. The affidavit of diligent inquiry by Royal's attorney detailed Royal's efforts to obtain a current address. The search included an inquiry to the Post Office, which gave the Paterson address as "good as addressed"; the internet, which showed the Paterson address; the White Pages, which also showed the Paterson address; the Social Security death index, which had no record on file for Syeda; the local Board of Elections, which had no record; and an obituary website, which also was negative. Royal's counsel called an attorney for Syed, who did not have an address for Syeda, and called Syed, who promised to call back but never did. Having been served by publication, Syeda was defaulted on December 26, 2013.

On March 19, 2014, an order was entered setting the redemption amount as \$29,977.76 and requiring redemption by May 5, 2014, or the right to redeem would be extinguished under N.J.S.A. 54:5-87. This order was served on Syeda by publication on April 4, 2014. It was served on Syed by regular and certified mail to the Paterson address, although the certified mail was returned unclaimed. When neither Syed nor Syeda paid the redemption amount, the Final Judgment was entered on December 2, 2014.

There have been three motions filed to vacate the Final Judgment. The first was made by Syed and denied on January 9, 2015. That order was not appealed. The second motion to vacate was made by Robert Brown, an alleged partial owner of the Property, whose name does not appear on the deed. This motion was denied by order dated March 20, 2015. That order was not appealed. The third motion made by Syeda requested restraints, a declaration the Final Judgment was void, and redemption.² Syeda's motion was denied on June 26, 2015 without oral argument. The trial court later clarified its decision in a letter dated December 4, 2015. Finding that Syeda's motion was "not filed due to a deficiency for lack of []proper fee by Mr. Ahmed/Shuaib," the court stated the

² No one has included a copy of the Notice of Motion or Order to Show Cause in their appendix.

denial of the June 26 order "was not based on the merits of the Motion but . . . was denied because of the Notice of Deficiency."³

The Notice of Appeal (the Notice) filed in this matter provided that both Syed and Syeda appeal the June 26, 2015 order, but it is signed by Syed only. The appellate Case Information Statement (the CIS) is signed by Syed and not by Syeda. The brief in support of the appeal, although noting the names of Syed and Syeda on the cover, is signed only by Syed. Because Syeda did not sign the Notice, the CIS nor the brief, it is clear that Syeda has not appealed the June 26, 2015 order.

The June 26, 2015 order related to a motion that Syeda, not Syed, filed to vacate the Final Judgment. At oral argument, counsel for Syeda contended that Syed was not Syeda's agent in handling the affairs of the Property.⁴ Syed also is not an attorney. As such, Syed had no authority to file the appeal for his sister. "[O]nly an aggrieved party may appeal a judgment."

³ The Automated Case Management System (ACMS) reflects a fee paid on April 30, 2015, that appears to relate to Syeda's May 22, 2015 motion.

⁴ If Syed were Syeda's agent, then service of process on Syed would have been effective for Syeda. See R. 4:4-4(a)(4) (service of summons, writs and complaints may be effected "by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge of his or her duties in connection with the business or the management of the real property").

Spinnaker Condo. Corp. v. Zoning Bd. of City of Sea Isle City, 357 N.J. Super. 105, 111 (App. Div.) (citing Howard Sav. Inst. of Newark v. Peep, 34 N.J. 494, 499 (1961)), certif. denied, 176 N.J. 280 (2003).

Nevertheless, in certain circumstances, we "may exercise such original jurisdiction as is necessary to complete the determination of any matter on review." Price v. Himeji, L.L.C., 214 N.J. 263, 294 (2013) (quoting R. 2:10-5). "[T]he exercise of original jurisdiction is appropriate when there is 'public interest in an expeditious disposition of the significant issues raised[.]'" Ibid. (second alteration in original) (quoting Karins v. City of Atlantic City, 152 N.J. 532, 540-41 (1998)). Rule 2:10-5 also allows original jurisdiction to be used "to eliminate unnecessary further litigation, but discourage[s] its use if factfinding is involved." Ibid. (alteration in original) (quoting State v. Santos, 210 N.J. 129, 142 (2012)). As we aptly stated in Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011),

[r]esort to original jurisdiction is particularly appropriate to avoid unnecessary further litigation, . . . as where the record is adequate to terminate the dispute and no further fact-finding or administrative expertise or discretion is involved, . . . and thus a remand would be pointless because the issue to be decided is one of law and implicates the public interest.

[Id. at 523-24 (citations omitted).]

Here, there are no relevant facts in dispute, and we view it as unnecessary to further prolong issues of ownership regarding the Property by a remand to the trial court. We therefore affirm the June 26, 2015 order denying Syeda's motion to vacate the Final Judgment.

The only argument Syed makes to vacate the Final Judgment is that Syeda was not properly served with the tax foreclosure complaint when she was served by publication. Syed contends because the original deed from 2003 listed an address in Hasbrouck Heights for both Syed and Syeda, and because Royal did not search for an out-of-state driver's license or conduct a skip search, that Royal's search lacked appropriate due diligence.

Under Rule 4:4-5(a), a defendant who "cannot, after diligent inquiry as required by this rule, be served within the State," can be served by publication "once in a newspaper published or of general circulation in the county in which the venue is laid." R. 4:4-5(a)(3). "Service by publication is hardly favored and is the method of service that is least likely to give notice." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 353 (App. Div. 2004) (citing Modan v. Modan, 327 N.J. Super. 44, 48 (App. Div. 2000)) (other citation omitted). As "an alternative method of service of process . . . it must be consistent with due process." Ibid. "[T]he rule requires an affidavit that a diligent inquiry has been

made and that the defendant is not available for service within the State." Ibid. (citation omitted). The affidavit of "diligent inquiry must be carefully scrutinized." Ibid.

Syed relies on M & D as support for his argument that service on his sister was not adequate. In M & D, two brothers purchased a home together, but when the property taxes were not paid, the tax certificate was sold. Id. at 346. One brother was served with the complaint personally, but the second was served by publication. Id. at 347. We remanded because a search of the Division of Motor Vehicles records would have revealed the brother's in-state address. Id. at 353-54. We held there that even though service was effective on one of the brothers, the entire judgment of foreclosure was void because the other brother could have redeemed the property at any time had he been served. Id. at 356-57.

In contrast to M & D, Syeda lived out-of-state in New York. There is no indication that a search of the New Jersey motor vehicle records would have revealed the New York license or address. Further, Syed and his sister plainly communicated, otherwise he would not have had a copy of her New York driver's license included in his appendix. Syed never returned a call to Royal's counsel when he was asked for Syeda's address. Royal conducted an internet search with no results for Syeda's location,

aside from the Paterson property address. Syed did not show that Syeda's address could have been found; he only contended that other sources should have been checked. We are satisfied from our review of the record that service on Syeda by publication was sufficient.

Having been properly served by publication, Syeda did not answer the foreclosure complaint and the Final Judgment was entered. Syeda's motion to void the Final Judgment based on lack of service was filed under Rule 4:50-1. Having rejected the lack of service argument as insufficient, we are satisfied that Syeda's motion to void the Final Judgment was properly denied.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION