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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-1297-16T2

EMIGRANT MORTGAGE  
COMPANY, INC.,

Plaintiff-Respondent,

v.

GINA GENELLO and FRANK  
GENELLO,

Defendants-Appellants,

and

PALISADE COLLECTION,

Defendant.

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Submitted March 13, 2018 – Decided June 1, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No.  
F-045130-08.

Dunne, Dunne & Cohen, LLC, attorneys for  
appellants (Frederick R. Dunne, III, of  
counsel and on the brief).

Knuckles Komosinski & Manfro, LLP, attorneys  
for respondent (John E. Brigandi, on the  
brief).

PER CURIAM

Defendants Gina and Frank Genello (defendants) appeal from an October 21, 2016 Chancery Division order denying their motion to vacate the sheriff's sale of their home, which occurred on September 13, 2016. Because they did not receive notice of the adjourned date of the sheriff's sale, defendants argue the trial court decision constituted an abuse of discretion and resulted in "a miscarriage of justice." We affirm.

On May 31, 2007, Gina Genello executed a promissory note to plaintiff Emigrant Mortgage Company (Emigrant) for \$383,500, and defendants secured the loan with a non-purchase money mortgage on their home in West Caldwell. Beginning in June 2008, defendants stopped making their monthly payments under the note and mortgage. Emigrant filed a foreclosure action on November 13, 2008, after defendants failed to cure their default. Defendants filed an answer and counterclaim.

On September 16, 2010, the parties entered into a forbearance agreement, whereby defendants withdrew their answer and counterclaim with prejudice, allowing the foreclosure to proceed uncontested in exchange for a six-month stay of the foreclosure proceedings. The agreement provided for an additional three-month stay if defendants found a buyer for their home. The agreement did not require defendants to make regular monthly payments, only

monthly escrow payments. Thereafter, the court dismissed the case, assuming it had settled.

Emigrant then filed a motion to restore the action. Defendants opposed the motion, which the court granted on March 21, 2016, but on the condition that Emigrant not seek default interest when it applied for final judgment.

On December 4, 2014, Emigrant filed a motion for final judgment. On July 22, 2015, the court entered final judgment against defendants for \$673,220.99 and ordered the sale of the property. Defendants filed a motion for reconsideration, which the court denied on August 7, 2015. Defendants appealed from the final judgment and order denying reconsideration, and we affirmed. Emigrant Mortg. Co. v. Genello, No. A-0292-15 (App. Div. Dec. 2, 2016).

On May 26, 2014, Emigrant sent correspondence to defendants advising of the sheriff's sale date. Defendants requested two adjournments pursuant to N.J.S.A. 2A:17-36, which postponed the sale until July 5, 2016. On that date, defendants filed a Chapter 7 bankruptcy petition, resulting in another postponement of the sheriff's sale. A lack of supporting documentation lead to the dismissal of defendants' bankruptcy proceeding, and the rescheduling of the sheriff's sale for September 13, 2016. Emigrant did not notify defendants of the new sale date.

On September 13, 2016, Emigrant purchased the property at the sheriff's sale for \$100. Upon learning of the sale, defendants filed a motion to vacate the sale on September 22, 2016, arguing the sale was unfair and prejudicial absent further notice by Emigrant. The judge denied defendants' motion but extended their redemption period to November 1, 2016. Defendants now appeal on the same grounds.

On appeal, defendants seek reversal of the order denying their motion to vacate the sheriff's sale, arguing that our decision in First Mutual Corp. v. Samojuden, 214 N.J. Super. 122 (App. Div. 1986) requires this result. In Samojuden, we held that our court rules, "as a matter of fundamental fairness[,] . . . must be construed as entitling interested parties to actual knowledge of the adjourned date upon which the sale actually takes place." Id. at 123.

We review the trial court's denial of defendants' motion to vacate the sheriff's sale under an abuse of discretion standard. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). The Court finds an abuse of discretion when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

We recognize that a court of equity may set aside a sale and provide the defendant with notice of another sheriff's sale. First Trust Nat'l Ass'n v. Merola, 319 N.J. Super. 44, 49 (App. Div. 1999). "The general rule is that when insufficient notice of a sheriff's sale is given, the preferred remedy is that which restores the status quo ante to the greatest extent possible." New Brunswick Sav. Bank v. Markouski, 123 N.J. 402, 425 (1991). The court may void the sale if the party promptly seeks relief, was unaware of the pending sale, and no innocent third parties would be prejudiced. Ibid. (citation omitted).

However, the remedy to void the sale requires "some evidence of actual prejudice to an interested party." G.E. Capital Mortg. Servs., Inc. v. Marilao, 352 N.J. Super. 274, 283 (App. Div. 2002). The power to void the sale is "discretionary and must be based on considerations of equity and justice." First Trust Nat'l Ass'n, 319 N.J. Super. at 49. We defer to that exercise of discretion, absent a mistake of law or an abuse of discretion. Ibid.

Independent of statutes or court rules, the court may grant equitable relief to set aside a sheriff's sale or to order redemption when irregularities occur in the conduct of the sale, such as fraud, accident, mistake or surprise. Orange Land Co. v. Bender, 96 N.J. Super. 158, 164 (App. Div. 1967). While we held in Samojeden that fundamental fairness entitles all "interested

parties to actual knowledge of the adjourned date upon which the sale actually takes place," we did not hold that the absence of such notice requires the court to vacate the sale in every case. 214 N.J. Super. at 123.

Here, the trial court carefully exercised its discretion by crafting a remedy of extending the redemption period by ten days rather than vacating the sheriff's sale. The court balanced the equities of the parties, noting the lengthy history of this matter, where defendants had not made any mortgage payments in over eight years, while Emigrant "paid the taxes . . . paid the insurance," without "access to the collateral" securing its mortgage loan. In addition, the court noted, "There's no . . . evidence to indicate . . . there was going to be a purchase at the sale or [that] some modification . . . was underway." The court further noted that defendants were effectively on notice that the sheriff's sale would be rescheduled after the bankruptcy court dismissed their petition. In essence, the court found that Emigrant's failure to provide formal notice did not prejudice defendants. Indeed, the court gave defendants ten days to redeem the property, but they failed to make the redemption. On this record, we find no abuse of discretion in the trial court's decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION