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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-2232-16T3

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,

Plaintiff-Respondent,

v.

MUYINDEEN OLAJIDE and  
SAFURATU B. OLAJIDE,<sup>1</sup>

Defendants-Appellants,

and

STATE OF NEW JERSEY; UNITED  
STATES OF AMERICA,

Defendants.

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Argued March 6, 2018 - Decided April 2, 2018

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No.  
F-000844-16.

Muyindeen Olajide, appellant, argued the cause  
pro se (Joshua W. Denbeaux, on the briefs).

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<sup>1</sup> Incorrectly designated as "husband and wife." During oral argument, we confirmed the Olajides are son and mother.

Brian P. Scibetta argued the cause for respondent (Buckley Madole, PC, attorneys; Richard P. Haber and Brian P. Scibetta, on the brief).

PER CURIAM

Defendants Muyindeen Olajide and Safuratu Olajide appeal from an August 18, 2016 Final Judgment of Foreclosure and a December 6, 2016 order denying their motion to vacate the Final Judgment of Foreclosure. We affirm.

On November 16, 2005, defendants entered into a \$295,365 mortgage loan (loan) with a predecessor-in-interest to plaintiff JPMorgan Chase Bank, National Association. On December 6, 2009, a fire occurred at defendants' home, which represented the security for the loan. That same month, defendants failed to make their monthly loan payment, triggering a default under the loan. Defendants did not make any loan payments after December 2009.

On September 19, 2014, plaintiff filed a foreclosure complaint based on defendants' default (the 2014 foreclosure action). Defendants filed a contesting answer and counterclaim. Plaintiff and defendants then moved for summary judgment in the 2014 foreclosure action. On July 7, 2015, the motion judge granted plaintiff's summary judgment motion. The 2014 foreclosure action judge determined defendants' answer failed to challenge the essential elements of the foreclosure action and the validity of

the loan documents. Further, the judge found defendants failed to rebut plaintiff's proofs as to default under the loan. The judge rejected each of defendants' affirmative defenses and counterclaims in a comprehensive twenty-one page written decision.

On January 11, 2016, plaintiff filed an identical foreclosure action (the 2016 foreclosure action).<sup>2</sup> Defendants attempted to file an answer and counterclaim asserting primarily the same defenses and allegations asserted in their response to the 2014 foreclosure action.<sup>3</sup> Defendants' answer and counterclaim were returned due to underpayment of the filing fee. As a result, default was entered in the 2016 foreclosure action. On July 21, 2016, plaintiff applied for final judgment in the 2016 foreclosure action. Defendants opposed plaintiff's request for final judgment and filed a motion to vacate the default.<sup>4</sup> On August 18, 2016, the court entered final judgment in the 2016 foreclosure action. On August 19, 2016, the 2014 foreclosure action was dismissed for lack of prosecution.

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<sup>2</sup> Plaintiff's counsel was unable to explain why plaintiff's prior counsel filed the 2016 foreclosure action when the 2014 foreclosure action remained pending.

<sup>3</sup> Defendants' proposed response to the 2016 foreclosure action included a defense that plaintiff could not pursue the 2016 foreclosure action while the 2014 foreclosure action was pending.

<sup>4</sup> Defendants' motion to vacate default was not filed with the court until August 19, 2016.

On December 6, 2016, the motion judge denied defendants' motion to vacate default judgment. The judge in the 2016 foreclosure action found that defendants met the excusable neglect prong for vacating default judgment, but failed to establish a meritorious defense. The judge concluded defendants' proposed responsive pleading in the 2016 foreclosure action asserted the identical defenses and counterclaims considered and rejected in the 2014 foreclosure action.

On appeal, defendants contend that the simultaneous foreclosure actions and the administrative dismissal of the 2014 foreclosure action deprived them of the opportunity to appeal the summary judgment order in the 2014 foreclosure action. Additionally, defendants claim the judge in the 2016 foreclosure action erred in determining defendants lacked a meritorious defense to the foreclosure.

We review a trial court's decision to deny a motion to vacate default judgment under Rule 4:50-1 pursuant to an abuse of discretion standard. U.S. Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 105 (App. Div. 2016). The decision to grant a motion to vacate default judgment "is left to the sound discretion of the trial court." Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993). "The trial court's determination . . . warrants substantial deference, and should not

be reversed unless it results in a clear abuse of discretion."  
U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012).

In accordance with Rule 4:50-1, a final judgment may be set aside due to "mistake, inadvertence, surprise, or excusable neglect" or "any other reason for justifying relief from the operation of the judgment." To vacate a final judgment based on excusable neglect, defendants must also present a meritorious defense. Guillaume, 209 N.J. at 468-69.

In the 2014 foreclosure action, the judge found defendants lacked a meritorious defense. Since defendants' proposed responsive pleading in the 2016 foreclosure action was the same as their responsive pleading in the 2014 foreclosure action, the 2016 foreclosure action judge adopted the reasoning of the 2014 foreclosure action judge, and denied defendants' motion to vacate default judgment. The judge in the 2016 foreclosure action found it would "be counterproductive to relitigate those issues, which have already been fully litigated" in the 2014 foreclosure action.

In denying defendants' motion to vacate default judgment, the 2016 foreclosure action judge applied the "law of the case" doctrine. The "law of the case" doctrine provides "that a legal decision made in a particular matter 'should be respected by all other lower or equal courts during the pendency of that case.'" Lombardi v. Masso, 207 N.J. 517, 538 (2011) (quoting Lanzet v.

Greenberg, 126 N.J. 168, 192 (1991)). The doctrine "is a non-binding rule intended to 'prevent relitigation of a previously resolved issue'" in the same case, "by a different and co-equal court." Id. at 538-39 (quoting In re Estate of Stockdale, 196 N.J. 275, 311 (2008)).

"The law of the case doctrine requires judges to respect unreversed decisions . . . by the same court or a higher court regarding questions of law." Sisler v. Gannett Co., 222 N.J. Super. 153, 159 (App. Div. 1987). "Prior decisions on legal issues should be followed unless there is substantially different evidence at a subsequent trial, new controlling authority, or the prior decision was clearly erroneous." Ibid. "For the determination of an issue to constitute the law of the case, . . . the issue must have been contested and decided." Lanzet, 126 N.J. at 192.

In this case, the 2016 foreclosure action judge properly exercised his discretion and applied the findings and legal conclusions of the 2014 foreclosure action judge based on the "law of the case" doctrine. Defendants' defenses to the 2016 foreclosure action were virtually identical to those analyzed and rejected by the judge in the 2014 foreclosure action. Defendants did not explain why the judge in the 2014 foreclosure action was incorrect. Defendants failed to offer any new facts, evidence,


or case law related to the 2016 foreclosure action. Nor did defendants explain why the judge in the 2016 foreclosure action erred in deferring to the findings of fact and conclusions of law in the 2014 foreclosure action. In the absence of any concrete arguments by defendants, we find that the 2016 foreclosure action judge did not abuse his discretion in following the ruling of a co-equal court regarding identical issues that were "contested and decided." Ibid.

Defendants argue the "law of the case" doctrine was inapplicable because the 2014 foreclosure action was not pending when the judge ruled in the 2016 foreclosure action and, thus, could not be the same case. Defendants' argument ignores the fact that the 2016 foreclosure action was identical to the 2014 foreclosure action and that defendants' proposed responsive pleading in the 2016 foreclosure action was almost identical to defendants' responsive pleading in the 2014 foreclosure action. On these facts, we find that the judge in the 2016 foreclosure action did not abuse his discretion by giving deference to the summary judgment ruling in the 2014 foreclosure action as a "prior ruling[] in the same case." Gonzales v. Ideal Tile Importing Co., 371 N.J. Super. 349, 355-56 (App. Div. 2004), aff'd, 184 N.J. 415 (2005).

We also reject defendants' claim that they were deprived of an opportunity to appeal the summary judgment order in the 2014 foreclosure action. Defendants had the opportunity to challenge the merits of the judge's order in the 2014 foreclosure action in this appeal, but failed to do so.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION