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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-2385-16T2

MD SASS MUNICIPAL FINANCE PARTNERS,  
V., LLC by and through its collateral  
trustee U.S. Bank, N.A., successor in  
interest to Wachovia Bank, N.A.,

Plaintiff-Respondent,

v.

CESAR MELENDEZ, MRS. MELENDEZ, spouse  
of Cesar Melendez,  
TRENTON BUSINESS ASSISTANCE CORP.,  
UNITED STATES OF AMERICA,  
CITIMORTGAGE INC. a/k/a CITICORP  
MORTGAGE, INC., ELRAC, INC.,  
CAMDEN COUNTY BOARD OF SOCIAL  
SERVICES, STATE OF NEW JERSEY,  
JPMORGAN CHASE BANK, N.A. s/b/m/t  
CHEMICAL BANK OF NEW JERSEY,  
ANMAR AMBULANCE, INC., CENTURY 21  
REAL ESTATE, LLC, SLOMINS, INC.,  
and HELMI JOUDEH,

Defendants,

and

ARNOLD N. KIMMEL, Trustee Under  
the Revocable Trustee Agreement  
dated June 8, 1990,

Defendant-Appellant.

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Submitted January 30, 2018 – Decided February 15, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,  
Chancery Division, Mercer County, Docket No.  
F-050731-10.

Maselli Warren, P.C., attorneys for appellant  
(Paul J. Maselli, of counsel and on the brief;  
Shawn D. Edwards, on the brief).

Respondent has not filed a brief.

PER CURIAM

Appellant Arnold N. Kimmel, Trustee under the Revocable Trustee Agreement dated June 8, 1990, appeals from an order entered on January 20, 2017, which denied his motion for the disbursement of surplus funds from a sheriff's sale. We affirm.

The following facts are taken from the record. Appellant sold commercial property in Trenton to defendant, Carmen Natal-Melendez (Natal-Melendez) on February 27, 2004. Natal-Melendez financed the sale by a purchase money mortgage, secured by a mortgage note. Natal-Melendez defaulted on the note and unbeknownst to appellant, had previously conveyed her fee simple interest in the property, subject to the mortgage, to Cesar Melendez (Melendez) by deed. As a result of Natal-Melendez's default, appellant filed a foreclosure complaint on March 11, 2009 against her and all junior lienholders. Appellant did not pursue the foreclosure or obtain a final judgment.

On October 15, 2010, respondent MD Sass Municipal Finance Partners, V., LLC filed a complaint for foreclosure of the tax sale certificate. Final Judgment was entered in favor of respondent, fixing the amount due to respondent as \$25,926.13, granting interest at the statutory rate of \$9.50 per day from September 2011 to April 30, 2012, and \$500 for attorney's fees. The property was ordered to be sold by the Mercer County Sheriff to satisfy the total amount due, \$28,449.63.

Appellant and respondent then entered into an agreement for the assignment of the tax sale certificate. Pursuant to the agreement, appellant received the assignment and agreed to pay respondent the redemption amount as of August 13, 2012, plus an additional premium for a total of \$44,400.36. Appellant paid respondent, and respondent executed and delivered an assignment of bid for the sheriff's sale to appellant.

The property was sold to appellant at the sheriff's sale for \$105,000. Appellant was credited \$27,513.58 for the amount due on the final judgment. After the final judgment and Sheriff's costs and fees were paid, there remained a surplus of \$72,473.46. Appellant then sold the property for \$195,000, and after the broker's commission and closings costs were deducted from the sale, appellant realized \$118,018.74.

Appellant filed a motion for disbursement of the surplus funds pursuant to Rule 4:64-3 and Rule 1:34-6(15), which the motion judge denied on January 20, 2017. The judge found appellant was not entitled to the surplus funds because he "voluntarily chose to forego his own foreclosure action rather than redeem [respondent's] tax sale certificate and proceed to judgment." The motion judge found appellant compounded the problem by purchasing the property at sheriff's sale and then "sell[ing] the property for what . . . appears to be less monies than what was still owed to him at the time by [Natal-Melendez]." The judge found the tax lien foreclosure extinguished appellant's lien on the property. Thus, the motion judge concluded appellant "is neither a judgment creditor [nor] a lienholder with regard to the subject property." This appeal followed.

We begin by reciting our standard of review. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Rather, our review is de novo. Dep't of Env'tl. Prot. v. Kafil, 395 N.J. Super. 597, 601 (App. Div. 2007).

Appellant argues the motion judge erred in concluding appellant was not entitled to the surplus funds pursuant to N.J.S.A. 2A:50-37. Specifically, appellant claims the judge erred

by distinguishing between a mortgage lien and a judgment lien, and holding that only a judgment would entitle appellant to the surplus funds under the statute. Appellant further argues the judge erroneously relied upon a rule adopted by the Foreclosure Unit in the Office of the Clerk of the Superior Court, which prohibits an individual who purchases a property at sheriff's sale from applying for surplus funds under the merger doctrine. Lastly, appellant argues he should receive the funds because he did not recoup the funds owed to him by Natal-Melendez through the subsequent sale of the property. Thus, appellant argues there would be no windfall to him if he received the surplus funds.

N.J.S.A. 2A:50-37 states:

The moneys arising from a [sheriff's] sale . . . shall be applied to pay off and discharge the moneys ordered to be paid, and the surplus, if any, shall be deposited with the court and the same shall be paid to the person or persons entitled thereto, upon application therefor, as the court shall determine.

[emphasis added].

Therefore, it follows that individuals "entitled" to the surplus funds may petition the court for distribution pursuant to Rule 4:64-3 and Rule 1:34-6(15).

"It is generally acknowledged that surplus funds take on the character of the land, at least with respect to junior

encumbrancers whose liens existed at the time of the foreclosure." Morsemere Fed. Sav. & Loan Ass'n v. Nicolaou, 206 N.J. Super. 637, 642 (App. Div. 1986). Additionally, subsequent judgment creditors may also apply for surplus funds. Id. at 643. In Morsemere we held that lienholders at the time of and subsequent to a foreclosure, even if they defaulted in the foreclosure, were entitled to surplus funds. Id. at 637.

Here appellant was not entitled to the surplus funds because he lacked any rights to the property as either a judgment creditor or lienholder. Indeed, appellant's failure to pursue the foreclosure on the note to Natal-Melendez precluded any opportunity to obtain a judgment and a lien on the property, and thus a right to the surplus funds. For these reasons, we conclude the motion judge correctly interpreted N.J.S.A. 2A:50-37. Because we affirm the judge's holding respecting the statute, we do not address appellant's argument that the motion judge improperly relied on rules adopted by the Foreclosure Unit.

Finally, we disagree that appellant's failure to recoup the funds owed by Natal-Melendez warrants distribution of the surplus funds to appellant, and that a distribution of these funds to him would not constitute a windfall. As we noted, appellant misapprehends the purpose of N.J.S.A. 2A:50-37. Because the surplus funds stand in lieu of the property, those who are entitled

to the funds under the statute are judgment creditors and lien holders against the property. Here, after appellant acquired and then sold the property following the sheriff's sale, he relinquished the ability to assert a claim against the property, and only possessed the right to pursue Natal-Melendez under the terms of the mortgage note.

Indeed, because a mortgage is "a form of 'security for the payment of a debt,'" individuals may pursue a money judgment to recover "full payment of the underlying debt[.]" Brunswick Bank & Tr. v. Affiliated Bldg. Corp., 440 N.J. Super. 118, 125 (App. Div. 2015) (quoting J.W. Pierson Co. v. Freeman, 113 N.J. Eq. 268, 271 (E. & A. 1933)). As the motion judge noted, appellant "has a right to pursue a claim against the original mortgagee[.]" but appellant does not "have a right to ask this Court to award [him] monies from surplus funds which stand in lieu of property." We have no basis to disturb the motion judge's ruling.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION