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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-2703-16T1

BAC HOME LOAN SERVICING,  
LP, f/k/a/ COUNTYWIDE HOME  
LOANS SERVICING, LP,

Plaintiff-Respondent,

v.

GREGORY SKINNER and MRS.  
GREGORY SKINNER, his wife,

Defendants-Appellants.

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Submitted February 6, 2018 – Decided February 22, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,  
Chancery Division, Monmouth County, Docket No.  
F-046211-09.

Ira J. Metrick, attorney for appellants.

Phelan Hallinan Diamond & Jones, PC, attorneys  
for respondent BAC Home Loan Servicing, LP  
(Brian J. Yoder, on the brief).

Vastola & Sullivan, attorneys for respondents  
Luy Nguyen and Camhong Nguyen (John J.  
Sullivan, Jr., on the brief).

PER CURIAM

Plaintiff obtained a default judgment in an action to foreclose on a \$448,000 mortgage on a home owned by defendant Gregory Skinner. On October 3, 2016, the home was sold at sheriff's sale to a third party purchaser for \$362,000. After the ten-day redemption period expired, defendant filed a motion to set aside the sheriff's sale and vacate plaintiff's foreclosure judgment. On January 20, 2017, the Chancery Division denied defendant's motion, finding "no reason to vacate the sale" or judgment of foreclosure. Discerning no abuse of discretion, we affirm.

I

On May 12, 2006, defendant purchased a residence in Belmar; to finance the purchase, defendant executed a \$448,000 note to NJ Lenders Corp. (Lenders) and a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS) as Lenders' nominee. The note provided that failure to deliver the full amount of any monthly payment when due would constitute a default. In addition, an acceleration clause permitted Lenders to demand payment of the balance due on the principal if the lender did not receive payment within thirty days of the mailing of a notice of default.

After purchasing the home, defendant made payments for approximately three years; however, he failed to pay his April 1, 2009 installment. Defendant then received, "by certified mail,

return receipt requested, and regular first class mail," a notice of intention to foreclose, as required by N.J.S.A. 2A:50-56. The notice of intention stated that "[i]f the default is not cured within [t]hirty (30) days of the date of this letter, the mortgage payments will be accelerated and the mortgage will be considered in default, and we will immediately initiate foreclosure proceedings on your property." The notice further advised defendant of his "right to cure the default, and bring the loan payments current . . . until the entry of a foreclosure judgment."

After defendant failed to cure the default, plaintiff<sup>1</sup> filed a foreclosure complaint on August 27, 2009. On October 20, 2009, plaintiff received personal service of the summons and complaint at his dental office in New York City.

After defendant failed to file an answer or otherwise respond to the foreclosure complaint, the Chancery Division entered default. Before the entry of final judgment, defendant filed for bankruptcy. This initial bankruptcy petition was dismissed, as well as a second petition; however, defendant's third petition was granted on December 19, 2014, resulting in the discharge of defendant's personal liability on the subject mortgage loan. While the third bankruptcy was pending, plaintiff re-submitted its

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<sup>1</sup> MERS assigned the mortgage to plaintiff on August 26, 2009.

application for final judgment; however, the Office of Foreclosure denied the application and administratively dismissed the case in December 2013.

On March 24, 2015, plaintiff filed a motion to reinstate the foreclosure action to active status.<sup>2</sup> On the same date, plaintiff mailed the motion "via regular and certified mail" to: (1) defendant's former New York City dental office, where he previously had been personally served;<sup>3</sup> (2) defendant's bankruptcy attorney; and (3) defendant's Atlantic City residence. Defendant failed to respond, and on April 24, 2015, the Chancery Division granted plaintiff's motion.

Approximately three weeks later, plaintiff mailed defendant another notice of intention to foreclose to his Atlantic City address. Subsequently, plaintiff marked defendant's Atlantic City

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<sup>2</sup> On October 6, 2014, plaintiff assigned the mortgage to Hudson City Savings Bank, FSB (Hudson City). The February 23, 2016 final judgment and July 8, 2016 notice of sheriff's sale name Hudson City as plaintiff. The Chancery Division's April 24, 2015 order reinstating the case to active status provided that Hudson City "is substituted in the place" of BAC Home Loans Servicing, LP "as the party plaintiff." The parties fail to address why BAC Home Loans Servicing, LP remains the named plaintiff in the instant appeal; however, plaintiff's brief states it "continues to service the loan on behalf of the current holder, Hudson City," and defendant does not assert this oversight constitutes any basis to reverse the order under review.

<sup>3</sup> Defendant certified he "lost" this office in January 2010.

address "as a bad address and all further notices for [defendant] in the matter were sent to the mortgaged property" and defendant's prior New York City dental office. On February 23, 2016, the Office of Foreclosure entered judgment in favor of plaintiff in the amount of \$685,448.75. Over seven months later, on October 3, 2016, the Monmouth County Sheriff sold the property to a third party purchaser (TPP).

Defendant certified he first learned of the sheriff's sale a week later from his tenant, who resided at the property.<sup>4</sup> Beyond the ten-day redemption period, defendant filed a motion to set aside the sheriff's sale and to vacate the final foreclosure judgment.

On January 20, 2017, following oral argument, the Chancery judge denied the motion, explaining the reasons for her decision in an oral opinion; she entered a confirming order on the same date. Relying on United States v. Scurry, 193 N.J. 492 (2008), she held that the appropriate "remedy is not to vacate the sale"; instead, the appropriate "remedy is to extend the redemption period." However, noting defendant conceded he could not redeem the mortgaged property, and emphasizing the "wrinkle" the TPP

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<sup>4</sup> Defendant maintained the property as a rental property; he alleges that between 2013 and 2014, he spent \$150,000 to \$200,000 in renovations.

presented, the judge held "equity would favor the plaintiff and the [TPP]." She therefore found "no reason to vacate the sale," nor any basis to vacate the foreclosure judgment.

## II

Defendant appeals from the January 20, 2017 order. He denies actual notice of the sheriff's sale, stating that all notices after the motion to reinstate went to his prior dental office address in New York City and not his Atlantic City residence.<sup>5</sup> He contends plaintiff's failure to send notices to his home address deprived him of the opportunity to short-sell the property, pursue "loss mitigation," or otherwise avoid the sheriff's sale. He argues the Chancery judge erred in applying Scurry and holding the only available remedy was extending his right to redemption.

"[A]n application to open, vacate or otherwise set aside a foreclosure judgment or proceedings subsequent thereto is subject to an abuse of discretion standard." Id. at 502 (citation omitted). We find an abuse of discretion when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on impermissible bias." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citation omitted).

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<sup>5</sup> Defendant concedes plaintiff sent notices to the mortgaged property.

Rule 4:65-2 mandates that "notice of the [sheriff's] sale shall be posted in the office of the sheriff . . . where the property is located, and also, in the case of real property, on the premises to be sold . . . ." Additionally, "at least [ten] days prior to the date set for sale, [the party obtaining the order or writ shall] serve a notice of sale by registered or certified mail, return receipt requested," on "every party who has appeared" and the "owner of record."

Moreover, Rule 4:65-5, which governs motions to vacate a sheriff's sale, requires the service of such motions to occur "within ten days after the sale" or before the delivery of the sheriff's deed. "[A]s a matter of fundamental fairness, [Rule 4:65-2] must be construed as entitling interested parties to actual knowledge of the adjourned date upon which the sale actually takes place." First Mut. Corp. v. Samojeden, 214 N.J. Super. 122, 123 (App. Div. 1986). The power to void a sheriff's sale "is discretionary and must be based on considerations of equity and justice." First Trust Nat'l Assoc. v. Merola, 319 N.J. Super. 44, 49 (App. Div. 1999).

However, in Scurry, our Supreme Court explained that "unique circumstances" may warrant a departure from procedural formalities in foreclosure actions. 193 N.J. at 506. The Court's remedy for a notice failure included an extension of the redemption period.

Id. at 506-07. The Court remanded the case for the trial court to determine a "reasonable" time period for the defendant to redeem and a redemption amount, when the defendant's first notice of the foreclosure sale was the writ of possession. Id. at 495, 506. If the defendant were able to redeem, the court ruled "[the defendant] is to be afforded the opportunity [he or she] would have had if [he or she] properly had been noticed of the sheriff's sale of the property: the opportunity to purchase [his or her] property free and clear of all existing liens." Id. at 507. However, should the defendant not be able to redeem "within a reasonable period of time, . . . then there is no need to vacate the sheriff's sale and title will remain with plaintiff." Id. at 506.

We agree with the Chancery judge in limiting defendant's remedy to an extension of the redemption period. The record reflects defendant received actual notice of the motion to reinstate the foreclosure proceedings. Defendant sat on his rights for nearly seven years following service of the initial foreclosure complaint and for over eighteen months following service of plaintiff's motion to reinstate. In fact, defendant failed to file any response until after the sheriff's sale to a TPP. Moreover, notice of the sheriff's sale was mailed, via "regular and certified mail, return receipt requested" to the mortgaged




property. Thus, under these circumstances, extension of the redemption period was an appropriate remedy.

We are satisfied there was no abuse of discretion by the Chancery judge in denying the motion to vacate the sheriff's sale and final judgment.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION