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APPROVAL OF THE APPELLATE DIVISION**

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-2924-15T2

CAROL L. BARON,

Plaintiff-Appellant,

v.

BARBARA RAILO WATTS, DIANE
RAILO, husband of DIANE RAILO,
KYLE RAILO, MRS. KYLE RAILO,
KELLY RAILO, MRS. KELLY RAILO,
CRAIG RAILO, BROOKE RAILO,
CAITLIN RAILO, husband of
CAITLIN RAILO, JENNIFER RAILO
HENDRICKSON, ROBERT G.
HENDRICKSON, PORTOFOLIO RECOVERY,
SHEILA METCALF, DARLENE M. CRANCE,
STATE OF NEW YORK, and STATE
OF NEW JERSEY,

Defendants.

Argued November 13, 2017 - Decided January 18, 2018

Before Judges Messano and Accurso.

On appeal from Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No.
F-037238-13.

Keith A. Bonchi argued the cause for
appellant (Goldenberg, Mackler, Sayegh,
Mintz, Pfeffer, Bonchi & Gill, attorneys;
Keith A. Bonchi, of counsel and on the
brief; Elliot J. Almanza, on the brief).

Reed Smith LLP, attorneys for respondent
Wells Fargo Bank, N.A. (Henry F. Reichner,
of counsel and on the brief).

PER CURIAM

Plaintiff Carol L. Baron filed a complaint to foreclose a tax sale certificate in 2013. Unbeknownst to her because misindexed, a mortgage held by Wells Fargo Bank, N.A. encumbered the property. Wells Fargo was thus not made a party to the tax sale proceeding. Baron's tax foreclosure was uncontested, and in March 2014, the court issued an order setting the time, place and amount for redemption.

In July 2014, Wells Fargo filed a complaint to foreclose its mortgage. Having discovered the pendency of the tax sale proceeding in the course of preparing its complaint, Wells Fargo sent the tax collector the full redemption amount of \$13,991.76 in August 2014. The deputy tax collector accepted the funds and sent Baron a redemption purchase order for signature. Having no proof of Wells Fargo's mortgage, Baron refused to sign the purchase order or release the tax sale certificate. Neither Baron nor the tax collector advised Wells Fargo, and the municipality did not return the redemption funds to the bank.

After obtaining final judgment in the tax foreclosure, Baron moved to intervene and dismiss Wells Fargo's mortgage foreclosure. The General Equity judge granted intervention and

denied the motion to dismiss without prejudice. Following discovery, the parties filed cross-motions for summary judgment. The judge denied Baron's motion to dismiss the mortgage foreclosure and granted Wells Fargo's motion to vacate the final judgment in the tax foreclosure proceeding.

In a well-reasoned opinion from the bench, the judge noted Baron was aware of Wells Fargo's deposit of the redemption funds before entry of final judgment in the tax foreclosure. The judge found Baron at that point could have either accepted the funds and been made whole or challenged Wells Fargo's status with the municipality. Baron did not dispute that had she challenged Wells Fargo's status and the bank moved to intervene in the tax foreclosure that intervention would have been permitted as of right. Given those undisputed facts, the court was satisfied "that equity should intervene in this very unusual circumstance."

Baron appealed. After the matter was fully briefed, we granted Baron's unopposed motion to supplement the record. She apprised us that five months after entry of the order vacating her tax sale judgment, Wells Fargo voluntarily dismissed its mortgage foreclosure complaint without prejudice and discharged its lis pendens on the property. Several months later, Wells Fargo cancelled its mortgage of record. Baron also advised that

she approached Wells Fargo after these events to inquire as to whether it would agree to reinstate her tax foreclosure judgment thereby mooting this appeal. The bank rebuffed her proposal.

Days before the scheduled oral argument, we received a letter from Wells Fargo's counsel advising the bank was "waiv[ing] its right to present oral argument." Counsel confirmed Wells Fargo dismissed its foreclosure and marked the mortgage satisfied during the pendency of this appeal. Counsel further advised that because the bank "no longer has an interest in the case or the property, it is of the view that it is not in a position to consent to the relief" Baron seeks on appeal. At argument, Baron's counsel asserted the bank's discharge of its mortgage undermined the rationale for the General Equity judge's decision to vacate her tax foreclosure judgment. He argued there is no reason to affirm an order entered to preserve the mortgagee's rights where the mortgagee has since voluntarily relinquished those rights.

Although we acknowledge the changed circumstances presented by the expanded record, we do not know all the facts and conclude we are in no position to reverse a soundly reasoned decision by the Chancery judge exercising his equitable powers on the basis of events occurring after the entry of the order appealed. Accordingly, we dismiss the appeal without prejudice

to permit Baron sixty days to file a R. 4:50 motion for relief from the order vacating final judgment in the tax foreclosure proceeding on notice to all interested parties. We do not retain jurisdiction.

Appeal dismissed.

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



CLERK OF THE APPELLATE DIVISION