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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-3695-16T1

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

ELYSE C. CAPALDI; MR. CAPALDI,
husband of ELYSE CAPALDI;
DOMINICK A. CAPALDI; and
MRS. DOMINICK CAPALDI, his wife;

Defendants-Appellants,

and

TD BANK, N.A.,

Defendant.

Submitted April 16, 2018 – Decided May 8, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey,
Chancery Division, Burlington County, Docket
No. F-031516-14.

David J. Khawam, attorney for appellants.

Phelan Hallinan Diamond & Jones, LLP,
attorneys for respondent (Brian J. Yoder, of
counsel and on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendants Dominick A. Capaldi and Elyse C. Capaldi appeal from an October 14, 2016 order of the Chancery Division, denying their motion to vacate final judgment and dismiss the foreclosure complaint filed by plaintiff Wells Fargo Bank, N.A.¹ We affirm.

In April 2007, defendants borrowed \$230,000 from MortgageIt, Inc. Defendants executed and delivered to MortgageIt a note promising to repay the loan. To secure payment of the loan, defendants executed a mortgage encumbering residential property located in Marlton. The mortgage was recorded in the county clerk's office on May 1, 2007. On May 10, 2013, Mortgage Electronic Systems, Inc., as nominee for MortgageIt, assigned the mortgage to plaintiff.

Defendants defaulted under the terms of the note in October 2013. Plaintiff served defendants with a notice of intent to

¹ Defendants' merits brief does not address denial of their motion to dismiss plaintiff's complaint. Issues that are not briefed with supporting legal arguments are deemed waived. N.J. Dep't of Env'tl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015).

Further, defendants' notice of appeal also references a March 28, 2017 order of the Chancery Division, adjourning the eviction to May 5, 2017, and extending the writ of possession through August 31, 2017. On May 4, 2017, defendants filed an emergent application seeking to stay the eviction, which we temporarily granted to consider the application. On May 5, 2017, we vacated the temporary stay of eviction, and denied defendants' application for a stay pending appeal.

foreclose on April 25, 2014. After defendants failed to cure the default, plaintiff filed a foreclosure complaint on August 1, 2014. Default was entered against the defendants on September 29, 2014. Pursuant to N.J.S.A. 2A:50-58, by correspondence dated January 7, 2015, plaintiff noticed defendants of its intention to move for final judgment, and the procedure to cure the loan. On January 21, 2015, defendants attempted to reinstate the loan. Because they submitted a personal check, in an insufficient amount, plaintiff did not accept payment. On July 10, 2015, final judgment was entered in favor of plaintiff.

On August 7, 2015, plaintiff assigned the mortgage to Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as trustee for BCAT 2015-13ATT ("Wilmington Savings"). A sheriff's sale was scheduled for December 10, 2015. Pursuant to N.J.S.A. 2A:17-36, defendants exercised two adjournments, postponing the sale to January 14, 2016.

Defendants further delayed the sheriff's sale by filing an emergent application with the Chancery Division, which adjourned the sale until February 25, 2016. Upon its submission of an assignment bid to the sheriff, plaintiff purchased the property.

In August 2016, more than five months after the sheriff's sale, and a year after entry of the final judgment, defendants

filed a motion to vacate the judgment pursuant to Rule 4:50-1(e) and (f). Defendants contended plaintiff improperly interfered in their attempts to redeem the property and seek a loan modification.

Following oral argument, the motion judge denied defendants' request and issued a written statement of reasons on October 14, 2016. Concluding defendants failed to provide the court with a legal basis to vacate final judgment, and noting the lack of evidence proffered by defendants demonstrating their attempts to redeem the property, or plaintiff's interference in any such attempted redemption, the motion judge denied defendants' motion.

Following the issuance of a writ of possession on November 22, 2016, an eviction was scheduled for March 29, 2017. A panel of this court denied defendant's emergent application to stay eviction, which was completed on August 28, 2017. This appeal followed.

On appeal, defendants argue they are entitled to relief pursuant to Rule 4:50-1(e) and (f), claiming plaintiff prevented them from exercising their statutory right of redemption, and vacating the judgment would allow them to continue seeking a loan modification.²

² The preliminary statement of defendants' merits brief claims the appeal "is based upon both standing and the objection to sheriff sale for bad faith and a violation to the rights of redemption of

Our scope of review of the trial court's ruling on a motion for relief from a judgment or order is exceedingly narrow. In a foreclosure context, a trial court's decision, pursuant to Rule 4:50-1, "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citations omitted).

An abuse of discretion occurs "when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (internal quotation marks and citation omitted). We have long recognized our task is to decide "only whether the trial judge pursued a manifestly unjust course." Gittleman v. Cent. Jersey Bank & Tr. Co., 103 N.J. Super. 175, 179 (App. Div. 1967). Further, the movant bears the burden of demonstrating his or her entitlement to relief. Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425-26 (App. Div. 2003).

Rule 4:50-1(e) provides, in pertinent part, that a party may be relieved from final judgment if "the judgment . . . has been satisfied, released or discharged . . . or it is no longer equitable that the judgment . . . should have prospective

homeowners." However, we need not reach defendants' standing argument because they failed to brief it.

application." A motion pursuant to subsection (e) "must be supported by evidence of changed circumstances," and "[t]he party seeking relief bears the burden of proving that events have occurred subsequent to the entry of a judgment that, absent the relief requested, will result in 'extreme' and 'unexpected' hardship[.]" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (citations omitted). This rule is "rooted in changed circumstances that call the fairness of the judgment into question." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 265-66 (2009).

Pursuant to Rule 4:50-1(f), a trial court may "vacate judgments for 'any other reason justifying relief from the operation of the judgment or order.'" Guillaume, 209 N.J. at 484 (quoting Rule 4:50-1(f)). Relief pursuant to this subsection is "available only when 'truly exceptional circumstances are present.'" Ibid. (quoting Little, 135 N.J. at 286). Thus, Rule 4:50-1(f) "is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. (quoting Little, 135 N.J. at 289).

We have considered defendants' contentions in light of the record and applicable law. We conclude they are without sufficient merit to warrant further discussion in a written opinion. R. 2:113(e)(1)(E). We affirm substantially for the reasons set

forth in the motion judge's cogent written statement of reasons. We add the following brief comments.

Defendants do not deny they executed the note and mortgage. Nor do they deny they have failed to pay the note since October 2013. The record shows plaintiff recorded the mortgage, assigned the mortgage to Wilmington Savings, and ultimately purchased the property at the sheriff's sale.

Further, defendants have not demonstrated "changed circumstances" warranting relief pursuant to Rule 4:50-1(e). In particular, while defendants claim they did not discover plaintiff assigned the note to Wilmington Savings until defendants retained counsel after the sheriff's sale, that assignment does not render the judgment void. See R. 4:34-3 (permitting an action to continue against the original party following transfer of interest).


Moreover, defendants were aware of the foreclosure action and pending sheriff's sale, having adjourned the sale twice. Pursuant to Rule 4:65-5, defendants were entitled to redeem the property within ten days of that sale. Other than their inadequate pre-judgment attempt to redeem the loan, defendants did not attempt to cure the default within the requisite timeframe.

We also are not persuaded defendants are entitled to relief from the final judgment pursuant to Rule 4:50-1(f). While

defendants contend vacating the judgment would allow them to continue seeking a loan modification, they have not presented any proof that they can redeem the judgment. Rather, as the motion judge aptly recognized, because "the property has already been sold, and the deed recorded, [p]laintiff would be substantially prejudiced" by vacating default 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