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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-4910-16T4

U.S. BANK CUSTODIAN/PFS
FINANCIAL 1, LLC,

Plaintiff-Respondent,

v.

JOSEPH DERRICO, MRS. JOSEPH
DERRICO, wife of Joseph Derrico,
WILBUR CORPORATION, RENEE LONGO,
CLAYTON BLOCK COMPANY, RALPH
CLAYTON AND SONS, FINAL TOUCH
SITE WORK IRRIGATION AND
LANDSCAPING CO., INC., EAGLE
PAVING CORP. t/a SUFFOLK REDI-MIX,
FORD MOTOR CREDIT COMPANY d/b/a
JAGUAR CREDIT, JOSE MOSQUERA and
STATE OF NEW JERSEY,

Defendants,

and

SOVEREIGN BANK, n/k/a SANTANDER
BANK, NA,

Defendant-Appellant.

Argued telephonically March 14, 2018 –
Decided April 18, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Mercer County, Docket No.
F-012350-16.

Thomas B. O'Connell argued the cause for
appellant (Saldutti Law Group, attorneys;
Thomas B. O'Connell, on the brief).

Bruce S. Luckman argued the cause for
respondent (Sherman, Silverstein, Kohl, Rose
& Podolsky, PA, attorneys; Bruce S. Luckman,
on the brief).

PER CURIAM

This appeal involves a dispute between the holder of a tax sale certificate and a lender. Plaintiff, U.S. Bank Custodian/PFS Financial 1, LLC, purchased a tax sale certificate for unpaid taxes on commercial property. Defendant, Sovereign Bank n/k/a Santander Bank, N.A. (Sovereign), had previously made a commercial loan to the owners of the property and had secured the loan with a mortgage on the property. When plaintiff initiated a foreclosure action to recover the amount owed on the tax sale certificate, Sovereign, as well as the owners of the property, failed to take any action and, as a result, plaintiff acquired title to the commercial property by default judgment.

Sovereign appeals from a June 23, 2017 order denying its motion to vacate the final judgment of foreclosure, contending that it would be unfair not to vacate the final judgment. We

affirm because the Chancery Division did not abuse its discretion in denying the motion to vacate the final judgment.

I.

The material facts are not in dispute. In November 2006, Sovereign loaned \$506,000 to Joseph Derrico, his wife, and their business entity, Two Waiters, LLC (collectively, Derrico). The loan was secured by a mortgage on commercial property in Ewing, New Jersey.

Derrico defaulted on the loan, and as of November 1, 2016, owed Sovereign over \$425,000. In late November 2016, Sovereign filed a complaint in a separate action against Derrico seeking to recover the amount owed on the note.

Meanwhile, Derrico also had failed to pay the taxes on the mortgaged property. In January 2014, Ewing sold a tax sale certificate on that property to plaintiff for \$18,606.38. On May 2, 2016, plaintiff filed a complaint to foreclose on the tax sale certificate and named Derrico and Sovereign as defendants. The complaint was served on both defendants, and both Derrico and Sovereign failed to respond.

In December 2016, plaintiff filed a request for default. In January 2017, a motion for entry of an order setting time, place, and amount of redemption was filed and served on defendants.

Subsequent to that motion, an order fixing the time, place, and amount of redemption was entered by the court and served on Sovereign on February 24, 2017. Again, Sovereign took no action.

On April 27, 2017, plaintiff filed a motion for final judgment, which also was served on defendants. The amount owed to plaintiff under the tax sale certificate was \$107,466.54. Sovereign still took no action, and a final judgment of foreclosure was entered on May 16, 2017, and served on defendants.

On June 1, 2017, Sovereign moved to vacate the final judgment of foreclosure. Sovereign acknowledged that it had been served properly with the complaint and other filings, but contended that due to "human error" the complaint was not forwarded to its Special Assets Manager, who was in charge of the matter. Sovereign also acknowledged that the complaint and other notices had been delivered to its legal department. After hearing oral argument, on June 23, 2017, the Chancery Division entered an order denying Sovereign's motion and left the final judgment in place.¹

Meanwhile, on June 5, 2017, plaintiff had transferred the property to a third party. On August 11, 2017, defendant filed a

¹ While this appeal was pending, Derrico filed a motion to remand the matter so that he could move to vacate the final judgment. We denied that motion.

motion to stay the final judgment pending appeal. The Chancery Division denied that motion in an order dated September 19, 2017.

Sovereign, thereafter, filed a notice of appeal from the June 23, 2017 order.

II.

On appeal, Sovereign contends that due to "human error" it was effectively unaware of the foreclosure proceedings. Accordingly, it argues that the Chancery Division abused its discretion in denying its motion to vacate because enforcing the judgment would result in an inequitable "windfall" to plaintiff.

A party seeking to vacate a final judgment in a foreclosure action must satisfy one of the grounds for relief set forth in Rule 4:50-1. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). That rule provides six grounds that warrant relief from a final judgment:

(a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under [Rule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should

have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

[R. 4:50-1.]

"The trial court's determination under the rule warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Guillaume, 209 N.J. at 467.


Defendant argues that it is entitled to relief under Rule 4:50-1(f). Subsection (f) permits relief for "any other reason justifying relief from the operation of the judgment or order," and "is available only when truly exceptional circumstances are present." Id. at 484 (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)). The rule is limited to "situations in which, were it not applied, a grave injustice would occur." Little, 135 N.J. at 289.

No such circumstances are present here. Both plaintiff and Sovereign are financial institutions that are well-versed in foreclosure proceedings. Sovereign concedes that plaintiff's service was proper at every stage of the foreclosure action. Indeed, Sovereign was given notice of the action prior to final judgment at least three times and, due to its internal error, did not respond. That error, however, does not excuse Sovereign's untimeliness.

Enforcing the judgment will not result in an inequitable "windfall" to plaintiff. Rather, Sovereign's forfeiture is a consequence of its failure to assert its rights relating to the mortgaged property. The circumstances, while unfortunate, are not "exceptional" so as to afford Sovereign equitable relief. We, therefore, discern no abuse of discretion in the decision not to vacate the final judgment of foreclosure.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION