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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-5016-16T2

PRO CAPITAL FUND II, LLC, BY ITS
CUSTODIAN US BANK,

Plaintiff-Appellant,

v.

JOSEPH C. SMITH, his heirs,
devisees and personal
representatives and their or any
of their successors in right,
title and interest; BERTHA
FOLLINS, Executrix and heir to
Lucy V. Smith, her heirs,
devisees and personal
representatives and their or any
of their successors in right,
title and interest; GWENDOLYN
MCQUEEN, heir to Bertha Follins,
her heirs, devisees and personal
representatives and their or any
of their successors in right,
title and interest; EARL E.
MCQUEEN, JR., heir to the Estate
of Gwendolyn McQueen and Earl E.
McQueen, Sr.; SHARI NOTTINGHAM,
heir to the Estate of Gwendolyn
McQueen and Earl E. McQueen, Sr.;
COLLEEN ALTHEA PHIPPS, aka ALTHEA
PHIPPS, heir to the Estate of
Earl E. McQueen, Sr., and STATE
OF NEW JERSEY,

Defendants-Respondents.

BANDI PROPERTY GROUP, LLC,

Intervenor-Respondent.

Submitted April 18, 2018 – Decided May 14, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Mercer County, Docket No.
F-030668-15.

Gary C. Zeitz, LLC, attorneys for appellant
(Amber J. Monroe, on the briefs).

Eastburn and Gray, PC, attorneys for
respondents Earl McQueen, Jr., and Shari
Nottingham (Michael T. Pidgeon, on the brief).

Burns & Isen, LLC and Hankin Sandman Palladino
& Weintrob, attorneys for intervenor-
respondent (Michael S. Burns, on the brief).

PER CURIAM

In this foreclosure action, plaintiff Pro Capital Fund II, LLC, appeals from the June 9, 2017 order permitting Bandi Property Group to intervene and redeem a tax sale certificate. After a review of the contentions in light of the record and the applicable law, we affirm.

In 2012, plaintiff purchased a tax lien secured by real property owned by defendants Estate of Gwendolyn McQueen, Earl McQueen, Jr., and Shari Nottingham (defendants). Plaintiff filed a complaint for foreclosure in September 2015. A November 14,

2016 order setting the date, time, place and amount of redemption set the final day to redeem the tax lien as December 29, 2016. The order further provided: "Anything to the contrary notwithstanding, redemption shall be permitted up until the entry of final judgment." The lien amount was \$83,124 plus accrued interest and \$1549.16 in costs.

Bandi filed a motion on January 11, 2017, to intervene in the foreclosure action and to redeem the property pursuant to a contract for sale executed between Bandi and defendants.¹ Bandi requested that the foreclosure unit not issue a final order in the foreclosure action during the pendency of the motion. Plaintiff opposed the motion, asserting that the application was deficient and lacked proper documentation. The court denied Bandi's motion in a February 17, 2017 order.²

Shortly thereafter, Bandi filed a second motion to intervene and redeem that included documentation regarding the property's market value, which the first motion lacked. Plaintiff opposed the motion. Defendants filed a cross-motion to extend the redemption date. In a reply brief, Bandi advised the court that

¹ The contract price was \$140,000.

² The order states that reasons were placed on the record in support of the court's denial of the motion without prejudice. The record does not contain a transcript of that hearing or decision.

it had reached a settlement with defendants, including terms extending the redemption date so that defendant might sell their property on the open market, and granting Bandi the right of first refusal to purchase the property at 10% less than the final accepted price. Defendants requested the court grant Bandi's motion as it permitted them to "rescue their equity by selling the [p]roperty on the open market."

Both Bandi and defendants withdrew their motions following the execution of a new contract for the sale of the property.³ Thereafter, Bandi filed another motion to intervene and redeem the tax lien and requested the court's approval of the contract. The motion was granted on June 9, 2017. The court determined that the motion to intervene was timely as it was filed prior to the entry of final judgment. It further held that the settlement reached between Bandi and defendants with the contract price of \$285,000 was "substantially more than nominal consideration." Upon Bandi's redemption of the tax sale certificate, the foreclosure action would be dismissed.

Plaintiff argues on appeal that the trial judge abused its discretion in granting Bandi's motion because it was untimely and

³ The new contract price was \$285,000.

did not satisfy the requisite elements for intervention under the circumstances. We disagree.

In considering a party's appeal from a decision of a trial judge regarding intervention in a tax sale foreclosure, the "issue . . . is whether the judge improperly exercised his discretion." Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 172 (App. Div. 2005); see also R. 4:33-2 (the court exercises its discretion in an application for intervention to determine "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties").

Plaintiff argues that the motion to intervene was untimely as it was filed after the expiration of the redemption period. Both the court rules governing foreclosure actions and the pertinent case law hold to the contrary. Rule 4:64-6(b) provides that redemption of a tax sale certificate "may be made at any time until the entry of final judgment." We have also permitted an application for permissive intervention under Rule 4:33-2 even after an entry of final judgment. See Phillipsburg, 380 N.J. Super. at 172. We are satisfied that the judge properly exercised his discretion to permit Bandi to intervene in the foreclosure matter.

Plaintiff further contends that the judge erred in permitting Bandi to intervene because the contract for the sale of the

property was an "unconscionable" manipulation of the "vulnerable" defendant property owners. Again, we disagree.

In Simon v. Cronecker, 189 N.J. 304, 318 (2007), our Supreme Court addressed the New Jersey Tax Sale Law, N.J.S.A. 54:5-1 to -137, (Act) and instituted protections for distressed property owners. Upon the filing of an action to foreclose a tax certificate on property, a third-party investor purchasing the property may not redeem the certificate without first complying with the Act, which delineates the competing rights of tax certificate holders and property owners. See Cronecker, 189 N.J. at 319-22. Under N.J.S.A. 54:5-89.1 and 54:5-98, a third-party investor must intervene in the foreclosure action before attempting to redeem a tax sale certificate. See id. at 320. The Court explained that "[t]he sale of a tax certificate is a conditional conveyance of the property to the purchaser, subject to a person with an interest in the property having the right to redeem the certificate, as prescribed by statute." Id. at 318. "Unless redemption occurs, however, a purchaser who forecloses on the tax certificate becomes the owner of the property in fee simple." Ibid. (citing N.J.S.A. 54:5-87).

There are no restrictions on how a third-party investor may arrange for the purchase of a property and pay the redemption on a tax certificate prior to the filing of a foreclosure complaint.

Id. at 320. "After the filing of the foreclosure complaint, however, both the property's sale and the redemption procedure are subject to court supervision, primarily to protect property owners from exploitation by third-party investors." Ibid. "To facilitate judicial review of the adequacy of the consideration offered to the owner, the Act requires that third-party investors who seek either directly or indirectly to acquire the property and redeem the tax sale certificate intervene in the foreclosure action." Ibid.

In the motion to intervene, the third-party investor must "establish that [it] has offered more than nominal consideration for the interest." Id. at 338. The Court has defined "more than nominal" consideration as "consideration that is not insubstantial under all the circumstances; it is an amount, given the nature of the transaction, that is not unconscionable." Id. at 335. When determining whether a buyer has offered more than nominal consideration, the Court explained that courts should look to a number of factors such as:

[T]he amount received by the owner in comparison to the property's fair market value and to his equity in the property[;] . . . a windfall profit to be made by the third-party[;] [and a] court should rightly be reluctant to strike-down a third-party financing arrangement that will provide some meaningful monetary relief to the property owner.

[Ibid.]

The property here was valued by the parties between \$250,000 and \$350,000. Bandi agreed to purchase the property for \$285,000, netting defendants \$135,000 after the redemption of the tax sale certificate. As we said recently in FWDSL & Assocs., LP v. Berezansky, 452 N.J. Super. 408, 414 (App. Div. 2017), our examination of the amount of consideration tendered must also be viewed from the property owner's standpoint. In addition to netting \$135,000, defendants were given a three-month rent-free use and occupancy.

We are satisfied that the trial judge's determination deeming the sales price "substantially more than nominal consideration" was amply supported by the credible evidence in the record, and complied with the Cronecker policy considerations. The offer extended in the first sales contract is of no consequence to the trial judge's ultimate decision to grant the motion. He properly considered all of the circumstances then before him and found them acceptable and favorable to the property-owner defendants.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION