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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-0749-21**

**M&T BANK, s/b/m to
HUDSON CITY SAVINGS
BANK,**

Plaintiff-Respondent,

v.

**H. SCOTT GURVEY,
MRS. H. SCOTT GURVEY,
fictitious spouse of H. SCOTT
GURVEY, and AMY GURVEY,**

Defendants-Appellants.

Argued December 7, 2022 – Decided April 20, 2023

Before Judges Haas and Gooden Brown.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-014035-18.

Amy R. Gurvey, appellant, argued the cause pro se.

Aaron M. Bender argued the cause for respondent (Reed Smith LLP, attorneys; Aaron M. Bender, of counsel and on the brief).

PER CURIAM

In this residential foreclosure action, defendants H. Scott Gurvey and Amy R. Gurvey, self-represented homeowners, appeal from Chancery Division orders entered on December 7, 2021, and February 18, 2022, entering final judgment of foreclosure in favor of plaintiff, M&T NY Bank Corporation (M&T), and denying defendants' motion to vacate entry of default judgment, respectively. We dismiss the appeal as moot.

The Gurveys have a lengthy history of protracted litigation in various courts. Pertinent to this appeal, in 2002, the Gurveys, a married couple, executed a note for \$561,600 in favor of Hudson City Savings Bank (HCSB) secured by a mortgage on their Montclair residential property. In 2015, M&T acquired HCSB in a merger and became the record holder of the mortgage.

As a result of significant water damage from broken pipes in the home, a property tax dispute developed between the Gurveys and Montclair Township, which led to the Gurveys filing a complaint against the Township in tax court challenging the Township's tax assessments on their home for tax years 2009, 2010, and 2011. While the tax court proceedings and associated appeals were ongoing, in a December 7, 2016 letter, M&T notified the Gurveys about delinquent property taxes due on their home and requested that payment be made

as required under the terms of the mortgage agreement. The Gurveys responded that no taxes were due because the Township could not collect taxes without the court's approval while the tax court litigation was ongoing.

In a January 31, 2017 letter, M&T informed the Gurveys that in accordance with the note and mortgage agreements, M&T had paid the outstanding tax liability to the Township, created an escrow account for the payment of future property taxes, and adjusted the Gurveys' monthly payment to reflect the changes going forward. Believing that the escrow account was wrongfully created, the Gurveys refused to make the adjusted payments and instead paid only principal and interest. As a result, M&T declared the Gurveys in default beginning May 1, 2017, and, on July 6, 2017, mailed them a Notice of Intention to Accelerate and Foreclose.

In response, the Gurveys filed a complaint and order to show cause against M&T in the Law Division seeking restraints and asserting, among other things, that M&T breached the mortgage agreement by "unilaterally creating an escrow account" and "tortiously interfered" with the Gurveys' tax litigation against the Township. The Gurveys' Law Division complaint is still pending and has been repeatedly amended to add various tort claims and numerous state and federal

statutory violations arising out of M&T's alleged mishandling of the Gurveys' mortgage.

While the Law Division action was pending, on July 5, 2018, M&T filed a foreclosure complaint against the Gurveys in the Chancery Division. The Gurveys removed the case to the United States District Court and filed their answer and counterclaims in the federal court. M&T moved to remand the matter back to state court, which motion was granted on March 29, 2019. The Gurveys filed two separate unsuccessful appeals of the remand order with the Third Circuit.¹

Following the remand, on September 23, 2020, M&T moved for entry of default on the ground that the Gurveys had not filed a contesting answer in the Chancery Division. Over the Gurveys' objection, the Chancery judge granted M&T's motion and entered default, finding there was no docketed answer on file in the state court. In a September 2, 2021 order, the judge also denied the

¹ The Gurveys filed two other federal actions related to the foreclosure, the first in June 2020 and the second in September 2021. The complaints asserted federal constitutional and statutory claims against M&T and various New Jersey state judges. The 2020 complaint was ultimately dismissed on abstention grounds. The 2021 complaint was administratively terminated pending the conclusion of the Law Division litigation, at which time the Gurveys can seek reinstatement of their federal claims.

Guveys subsequent motion to vacate the default pursuant to Rule 4:43-3, finding the Guveys failed to raise a meritorious defense.

Thereafter, M&T moved for final judgment while the Guveys filed a motion for leave to appeal the September 2, 2021 order denying their motion to vacate the entry of default. On November 12, 2021, we granted the Guveys' motion and summarily reversed the September 2, 2021 order. We remanded the case "to the trial court to consider whether an answer was filed" in state court, "and if not, if there was good cause to permit the filing of an answer once the case was remanded from [f]ederal [c]ourt."

Following additional motion practice, on December 7, 2021, the Chancery judge entered final judgment of foreclosure in favor of M&T. On January 31, 2022, the Guveys moved to vacate the final judgment pursuant to Rule 4:50-1, and, on February 18, 2022, the Chancery judge denied the motion. The Guveys subsequently moved to stay a Sheriff's sale of their property based on the home's pending sale to a private buyer. Ultimately, a stay was granted, and the home was sold to private buyers on July 6, 2022. After M&T received a pay-off of the mortgage note from the sale proceeds and discharged the debt, on M&T's motion, an order was entered on August 5, 2022, vacating the final judgment and dismissing the foreclosure action with prejudice. This appeal followed.

On appeal, the Gurveys raise the following points for our consideration:

I. CHANCERY ERRED IN FINDING THAT THE FORECLOSURE WAS UNCONTESTED WHEN AN ANSWER AND COUNTERCLAIM HAD BEEN FILED AND THE FEE PAID.

II. CHANCERY DENIED [THE GURVEYS] DUE PROCESS IN REFUSING TO HEAR THEIR OPPOSITION TO THE COMPLAINT IN FORECLOSURE INCLUDING 1) THAT THE PLAIN LANGUAGE OF THE MORTGAGE AGREEMENT DEMONSTRATED THAT NO DEFAULT EXISTED; 2) THAT NO PROPERTY TAXES, ALLEGEDLY PAID BY M&T, HAD EVER BEEN OWED AND; 3) THAT THE COMPLAINT WAS DEFECTIVE BECAUSE IT FALSELY CERTIFIED THAT THERE WAS NO OTHER LITIGATION PENDING BETWEEN THE PARTIES.

III. CHANCERY ERRED BY NOT CONSOLIDATING THIS CASE WITH THE LAW DIVISION CASE.

IV. ELECTRONIC FILING IN THE SUPERIOR COURT OF NEW [JERSEY] DISCRIMINATES UNCONS[T]ITUTIONALLY AGAINST PRO SE LITIGANTS.

As a threshold matter, we address M&T's mootness counter-argument.

M&T argues the appeal is moot because any claims the Gurveys could assert would be premised on either the mortgage or the foreclosure action, both of which were resolved when the Gurveys voluntarily satisfied the balance due to M&T. As such, M&T contends that "any ruling by this [c]ourt to vacate the

entry of final judgment will have no practical effect." Moreover, M&T notes that the Gurveys sold their home to a private buyer for \$1.2 million, which netted them "a profit of almost half a million dollars," negating any claim that the sale was forced.

The Gurveys counter that the appeal is not moot because the final judgment is plagued with procedural defects, including federal law violations. Additionally, the Gurveys assert that their appeal presents substantial issues, such as the administrative obstacles they faced as pro se litigants as well as M&T's alleged abuse of the judicial system. According to the Gurveys, these issues are of great public importance, are likely to reoccur, and are capable of evading review. Furthermore, the Gurveys disavow any voluntariness in the sale of their home or payment of the judgment balance, asserting that they completed the sale to avoid incurring the significant loss in equity that the sheriff's sale would have produced.

"An issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." In re N.J. Dep't of Env't Prot. Conditional Highlands Applicability Determination, 433 N.J. Super. 223, 234 (App. Div. 2013) (quoting Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006)). An appeal is not moot if "a party still

suffers from the adverse consequences . . . caused by [the prior] proceeding." Ibid. (alterations in original) (quoting N.J. Div. of Youth & Fam. Servs. v. A.P., 408 N.J. Super. 252, 262 (App. Div. 2009)). Even if an action becomes technically moot for want of an effective remedy, "courts may still decide a case when its issues are of 'great public importance,' or are 'capable of repetition,' 'yet [will] evade review.'" In re Civ. Commitment of C.M., 458 N.J. Super. 563, 568 (App. Div. 2019) (alteration in original) (citations omitted) (first quoting Oxford v. N.J. State Bd. of Educ., 68 N.J. 301, 303 (1975); then quoting In re Conroy, 98 N.J. 321, 342 (1985); and then quoting In re J.I.S. Indus. Serv. Co. Landfill, 110 N.J. 101, 104 (1988)).

In Mony Life Insurance Co. v. Paramus Parkway Building, Ltd., 364 N.J. Super. 92 (App. Div. 2003), a case involving a commercial mortgage foreclosure action, we determined that "the mere fact that defendant paid off the mortgage does not extinguish its right to challenge the judgment." Id. at 101. There, after the plaintiff obtained a final judgment of foreclosure, the defendant contracted with a third party to sell the subject property for "more than was owed under the mortgage" and, despite "disput[ing] the pay[-]off figure," used the proceeds from the sale to satisfy the pay-off amount due to the plaintiff. Id. at 99. In return, the plaintiff dismissed the foreclosure action with prejudice, discharged

the mortgage and lis pendens, and allowed the property to be sold. Ibid. We declined to dismiss the appeal as moot because the defendant claimed "the principal indebtedness was miscalculated" and the defendant had, in fact, paid the pay-off amount "under protest and without waiver of any of [its] rights and/or remedies." Id. at 99, 101 (alteration in original). Thus, we determined "unresolved issues yet exist as to the final judgment" that remained unaffected by the satisfaction of the mortgage. Id. at 101.

The circumstances presented here are distinguishable from Mony. The Gurveys neither dispute the pay-off amount nor paid it with an express reservation of their rights and remedies. Indeed, the relief sought by the Gurveys is a ruling vacating the final judgment of foreclosure and dismissing the foreclosure action with prejudice. However, that relief has already been granted and the Gurveys are no longer liable on the note and mortgage. Moreover, the Gurveys also have a pending complaint against M&T in the Law Division as well as a federal action in which the Gurveys have filed similar claims as the ones asserted against M&T in the now-dismissed foreclosure action. Thus, the Gurveys have a forum to advance their underlying claims against M&T. Under the circumstances, we are satisfied that appellate review would be inappropriate in this case.

Appeal dismissed as moot.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the text 'file in my office.' and partially over the title 'CLERK OF THE APPELLATE DIVISION'.

CLERK OF THE APPELLATE DIVISION