

**NOT FOR PUBLICATION WITHOUT THE
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-0863-22

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE
FOR FIRST FRANKLIN
MORTGAGE LOAN TRUST 2006-
FF11, MORTGAGE PASS-
THROUGH CERTIFICATES,
SERIES 2006-FF11,

Plaintiff-Respondent,

v.

TREVOR SAHADATALLI,

Defendant-Appellant,

and

ESHWAREE SAHADATALLI,
BANCO POPULAR NORTH
AMERICA, NEW CENTURY
FINANCIAL SERVICES, INC.,
ST. CLARE'S HEALTH SYSTEM,
and STATE OF NEW JERSEY,

Defendants.

Submitted September 28, 2023 – Decided November 1, 2023

Before Judges Vernoia and Walcott-Henderson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-001305-21.

Trevor Sahadatalli, appellant pro se.

McCalla Raymer Leibert Pierce, LLC, attorneys for
respondent (Djibril Carr, on the brief).

PER CURIAM

In this mortgage foreclosure matter, pro se defendant Trevor Sahadatalli¹ appeals from an August 16, 2022 order denying his motion to vacate final judgment of foreclosure of mortgaged property located at 287 Garside Street, Newark. Defendant also appeals from an October 7, 2022 order denying his motion for reconsideration. Finding no abuse of discretion by the court, we affirm all orders on appeal.

On May 27, 2006, defendant executed a note in favor of Nationpoint, a division of National City Bank of Indiana for \$427,500.00. To secure payment on the note, defendant and his wife, Eshwaree Sahadatalli, executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Nationpoint, a Division of National City Bank of Indiana, its successors and

¹ This is a foreclosure action against multiple defendants, but Trevor Sahadatalli, appearing pro-se, is the sole appellant.

assigns. The mortgage was recorded with the Essex County Register's Office on June 27, 2006.

On April 23, 2008, Mortgage Electronic Registration Systems, Inc. assigned the mortgage to Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF11. On May 14, 2008, the assignment was recorded in the Essex County Register's Office.

On July 1, 2018, defendant defaulted on the note and mortgage. On March 11, 2021, plaintiff filed a foreclosure complaint. On August 22, 2021, plaintiff's counsel filed a Certification of Inquiry in Support of Substituted Service by Certified and Ordinary Mail indicating a process server had attempted service at the Newark address. Counsel also certified that a skip trace search revealed a probable current address for defendant at 14 Hemlock Drive, Franklin.

A process server then attempted service at 14 Hemlock Drive, Franklin at various times, again to no avail. Plaintiff's counsel next certified that "[t]he certified mailing for [d]efendant . . . was unclaimed/returned to sender. The regular mail has not been returned to this office and is presumed delivered."

Defendant failed to file a contested answer to the complaint. On March 18, 2022, the Office of Foreclosure entered an uncontested final judgment of foreclosure in favor of plaintiff.

Defendant moved to vacate the final judgment of foreclosure within a week of the entry of the judgment. Five months later, on August 16, 2022, the court denied defendant's motion in an order stating:

On July 1, 2018, defendant failed to make the payment pursuant to the terms and conditions of the Note and Mortgage. Plaintiff has complied with the Fair Foreclosure Act, by mailing . . . defendant Notice of Intention to Foreclosure at least thirty (30) days in advance of filing a complaint for foreclosure.

Defendant did not file an answer in response to the [c]omplaint. On March 18, 2022, the Office of Foreclosure entered Final Judgment in favor of plaintiff.

Addressing defendant's arguments in that same order denying the motion to vacate, the court further stated:

Here, the defendant has not addressed why he failed to timely answer the plaintiff's complaint or offer any evidence to demonstrate that he has a meritorious defense. Indeed, "the only issues in a foreclosure action are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." (citation omitted.) Defendant does not deny that he entered into the mortgage agreement, nor does he challenge the amount of indebtedness, or that his failure to make the monthly payments on the mortgage gave plaintiff the contractual right to foreclose. Lastly, the defendant's claim that service of the [c]omplaint was improper is unfounded as defendant does not provide any evidence to support his assertion.

Weeks after receiving the court's order denying his motion, defendant filed a motion for reconsideration, which was also denied in an order dated October 7, 2022. In the accompanying statement of reasons, the court stated:

Here, the defendant claims that the plaintiff failed to properly accomplish service under [Rule 4:4-4(b)(1)(C)]. This argument does not warrant reconsideration, as plaintiff has established service of the complaint by certified and regular mail, the certified mail being unclaimed. Plaintiff supported its application for Final Judgment with a Certification of Inquiry in support of substituted service. That certification set forth in detail the efforts made to effectuate personal service and to determine the proper address of defendant.

The defendant ha[s] failed to state claims or evidence establishing that either the court acted unreasonably in denying defendants' motion to vacate or should consider new information previously unavailable.

On November 9, 2022, defendant filed an appeal from both orders.

Defendant raises several points on appeal including that the judge abused her discretion by ruling on his motions without making the required "findings of fact and memorandum of law or based upon an adequate explanation" pursuant to Rule 1:7-4 and the judge abused her discretion by denying the motion to vacate final judgment because he was never properly served with the

foreclosure complaint—citing Rule 4:43-3. Defendant also argues that he set forth a meritorious defense, citing Rule 4:50-1.

We review an order granting or denying a motion to vacate a final judgment of foreclosure for an abuse of discretion. United States v. Scurry, 193 N.J. 492, 502-03 (2008). An abuse of discretion arises "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

As a preliminary matter, we note that contrary to defendant's argument the court failed to make findings of fact and conclusions of law before denying his motions, the court in fact set forth its findings and legal analysis pursuant to Rule 1:7-4 with respect to both orders that are the subject of this appeal. This rule provides:

The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by [Rule] 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment.

We therefore conclude that although succinct, the court made findings of facts and stated its conclusions of law on the issues raised by defendant. Thus, defendant's argument is wholly without merit.

We next address the August 16, 2022 order, wherein the court discusses defendant's motion, stating:

Rule 4:50-1 permits the [c]ourt to relieve a party from a final judgment or order for certain reasons. It "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." (citation omitted.) Typically, a final judgment can only be vacated upon a showing of excusable neglect and a meritorious defense. (citation omitted.) To vacate a default judgment, the defendant "must show that the neglect to answer was excusable under the circumstances and that he has a meritorious defense."

Because the court's statement of reasons includes an analysis of Rule 4:50-1, we include the rule here. Rule 4:50-1 provides six grounds for vacating 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.]

In deciding whether to vacate a default judgment, a court "should be guided by equitable principles," Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994), which support the "notion that courts should have [the] authority to avoid an unjust result in any given case," Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977). "So guided, trial courts are to exercise their sound discretion and their decisions will not be disturbed absent an abuse of discretion." Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 541 (App. Div. 2003).

Under Rule 4:50-1, the court must engage in a fact-sensitive inquiry as it weighs "the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result."

See Mancini v. Eds ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993). In its statement of reasons on the motion to vacate final judgment, the court first considered defendant's failure to address or state why he failed to file an answer to the foreclosure complaint. From the record, it is the court's focus on the absence of any explanation for the failure to respond to the complaint that was the basis for its denial of the motion.

It is axiomatic that in a motion to vacate a final judgment entered by default, a litigant must address the failure to file an answer to a complaint; or otherwise take action within the thirty-five days required under our court rules. Rule 6:3-1; see Resolution Trust Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 340 (App. Div.1993); see also Jameson v. Great Atlantic and Pacific Tea Co., 363 N.J. Super. 419, 425-426 (App. Div. 2006) (holding that a defendant seeking to vacate a default judgment has the "overall burden of demonstrating that [his] failure to answer or otherwise appear and defend should be excused.").

Despite citing Rule 4:50-1, defendant did not specifically address, any of the enumerated bases for vacatur of the default judgment or explain the specific grounds supporting his request for relief. Nevertheless, we construe defendant's arguments to mean that he intended to assert that improper service of the

complaint is a meritorious defense to his failure to file a timely answer. However, based on this record, we reject defendant's argument that the court denied his motion "without a proper finding that [d]efendant had shown a meritorious defense worthy of a judicial determination" In other words, merely stating that he had a meritorious defense is insufficient because defendant failed to support this claim by presenting evidence supporting the putative defense.

Further, defendant's reliance upon Rule 4:43-3 as a basis to vacate a final judgment of foreclosure is also misplaced. Rule 4:43-3 provides:

A party's motion for the vacation of an entry of default shall be accompanied by (1) either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to Rule 4:6-2, and (2) the filing fee for an answer or dispositive motion, which shall be returned if the motion to vacate the entry of default is denied. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 4:50.

[R. 4:43-3.]

The requirements for setting aside an entry of default are governed by Rule 4:43-3. Where, as here, a judgment by default has been entered, motions to vacate default are considered in accordance with Rule 4:50-1. See M & D Associates

v. Mandara, 366 N.J. Super. 341, 350 (App. Div. 2004) (applying Rule 4:50-1 in the vacation of a foreclosure judgment).

Moreover, "it is generally recognized that the requirements for setting aside a default judgment under Rule 4:50-1 are more stringent than the "good cause" standard for setting aside an entry of default under Rule 4:43-3." N.J. Mfrs. Ins. Co. v. Prestige Health Grp., LLC, 406 N.J. Super. 354, 360 (App. Div. 2009); see also Bernhardt v. Alden Cafe, 374 N.J. Super. 271, 277 (App. Div. 2005) (alteration in original) (citing Mancini, 132 N.J. at 334) ("[A] defendant seeking to reopen a default judgment [because of excusable neglect] must show that the neglect to answer was excusable under the circumstances and that he has a meritorious defense.").

Although defendant did not expressly address the Rule 4:50-1 standard in his brief on appeal, he argues he was not properly served with the complaint and we consider whether that claim supports a finding of excusable neglect. We conclude that it does not.

The court addressed this issue in its August 16, 2022 statement of reasons by stating "defendant's claim that service of the [c]omplaint was improper is unfounded as defendant does not provide any evidence to support his assertion."

Again, the court further elaborated on this issue in its October 7, 2022 order denying defendant's motion for reconsideration, stating:

[h]ere, the defendant claims that the plaintiff failed to properly accomplish service under [Rule 4:4-4(b)(1)(C).] This argument does not warrant reconsideration, as plaintiff has established service of the complaint by certified and regular mail, the certified mail being unclaimed. Plaintiff supported its application for Final Judgment with a Certification of Inquiry in support of substituted service.

However, Rule 4:4-4(b)(1)(C) applies to out of state service, and the "[t]he primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served under Rule 4:4-3[.]" U.S. Bank Nat. Ass'n v. Curcio, 444 N.J. Super. 94, 106 (App. Div. 2016) (quoting R. 4:4-4(a)).

Rule 4:4-3(a) provides, in pertinent part:

If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by [Rule] 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The

party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service.

[R. 4:4-3(a).]

Further, Rule 4:4-7 provides, in pertinent part:

If service is made by mail, the party making service shall make proof thereof by affidavit which shall also include the facts of the failure to effect personal service and the facts of the affiant's diligent inquiry to determine defendant's place of abode, business or employment. With the proof shall be filed the affidavit or affidavits of inquiry, if any, required by [Rule] 4:4-4 and [Rule] 4:4-5.

[R. 4:4-7.]

Here, the court's analysis correctly follows the rules pertaining to in-State service by mail. The court found plaintiff's counsel filed a Certification of Inquiry in Support of Substituted Service by Certified and Ordinary Mail as to defendant that explained a process server had attempted service at the mortgaged property address to no avail. Counsel also certified that a skip trace search revealed a probable current address for defendant at 14 Hemlock Drive, Franklin, which is where he was subsequently served by certified and regular mail.

Applying Rule 4:4-3(a) and Rule 4:4-7, the court concluded plaintiff had established service of the complaint by certified and regular mail, the certified mail being unclaimed, but that the regular mail was not returned. The court found plaintiff supported its application with the required Certification of Inquiry in support of substituted service and that the certification "established a thorough search and several failed attempts at the address where defendant currently resides."

We find no error in the court's findings and conclusion that plaintiff effectuated proper service upon defendant by mailing the complaint via certified and regular mail—even though defendant failed to sign or retrieve the certified mail—and that he was deemed to have been served because the regular mail was not returned as undelivered. Defendant does not argue that the complaint was mailed to an incorrect address or that he did not receive it in the mail. Rather, he argues plaintiff did not properly serve the complaint, which is belied by the record showing proof of service by certified and regular mail in accordance with the Rules of Court.

Thus, to the extent defendant offers the lack-of-proper-service claim as the basis for excusable neglect, we reject the argument because the court correctly determined plaintiff presented evidence establishing proper service.

Similarly, to the extent defendant relies on lack of service of the complaint as a meritorious defense, we reject this argument for the same reasons. We find persuasive the court's conclusion that defendant offered and offers no defense at all to any of the essential elements of a foreclosure cause of action. As the judge stated, defendant did not contest the validity of the mortgage or the amount of indebtedness, or dispute that he failed to make monthly payments in accordance with the note. The judge correctly determined that defendant's claim that service of the complaint was improper was unfounded and unsupported by the record.

Accordingly, based upon this record, we perceive no abuse of discretion in the judge's denial of defendant's motion to vacate final judgment of foreclosure given that defendant failed to present any evidence as to either prong of the applicable standard to vacate a judgment under Rule 4:50-1 and the only argument made, the lack of proper service, was considered and properly rejected by the court because the only proofs presented established he was properly served.

Because we affirm the August 16, 2022 order denying defendant's motion to vacate final judgment of foreclosure, we need not reach defendant's arguments regarding the denial of the motion for reconsideration.

To the extent we have not addressed any of defendant's arguments, we are satisfied that they are without sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Affirmed as to all orders on appeal.

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



CLERK OF THE APPELLATE DIVISION