SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1236-21

ACT LIEN RUNOFF, LLC,

Plaintiff-Respondent/
Cross-Appellant,

v.

ISAIAS CRUZ, SEVERIANA CRUZ, his wife, FV-1, INC. IN TRUST FOR MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, BANKERS INSURANCE COMPANY, ACTION IMMIGRATION BONDS AND INSURANCE SERVICES, INC. and STATE OF NEW JERSEY,

Defendants,

and

ELKS HOME REALTY, LLC,

Intervenor-Appellant/
Cross-Respondent.

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Submitted September 28, 2023 – Decided October 23, 2023

Before Judges Gummer and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. F-030377-16.

Law Offices of Jeffrey S. Mandel LLC, attorneys for appellant/cross-respondent (Jeffrey S. Mandel, of counsel and on the briefs).

Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, attorneys for respondent/cross-appellant (Keith A. Bonchi, of counsel and on the brief; Elliott J. Almanza, on the brief).

PER CURIAM

In this tax-foreclosure action, intervenor Elks Home Realty, LLC (Elks) appeals from a March 29, 2021 order reinstating a previously-vacated final judgment and a December 10, 2021 order denying Elks's reconsideration motion. Plaintiff Act Lien Runoff, LLC (Act Lien) cross-appeals from an October 7, 2020 order granting Elks's motion to intervene and vacate the final judgment. Perceiving no abuse of discretion in the order allowing Elks to intervene and vacating the final judgment, we affirm that order. Because the judge abused his discretion in reinstating the final judgment when the only relief requested by Act Lien was an award of out-of-pocket expenses, we reverse the orders reinstating final judgment and denying the reconsideration motion.

I.

On May 23, 2006, Isaias Cruz and Severiana Cruz entered into a mortgage and note with Berkshire Financial Group, Inc. (Berkshire) in connection with property they had purchased in 1998 located at 15-17 Elk Street in Paterson, New Jersey (the property).[1] On that same day, Berkshire assigned the mortgage to New Century Mortgage Corporation (New Century). On June 5, 2006, New Century assigned the mortgage to FV-1, Inc., in trust for Morgan Stanley Mortgage Capital Holdings, LLC (FV-1). On June 7, 2006, FV-1 recorded the mortgage but not the assignment. On November 3, 2011, FV-1 recorded a lost assignment of mortgage affidavit regarding the May 23, 2006 assignment to New Century.

On March 4, 2008, Isaias and Severiana entered into a mortgage agreement with Bankers Insurance Company (Bankers) and Action Immigration Bonds and Insurance Services, Inc. (Action Immigration) as surety in connection with a $50,000 appearance bond for Alfonso Cruz. The mortgage was recorded on March 19, 2008.

[1] Because of their common last name, we use first names to refer to Isaias Cruz and Severiana Cruz for ease and clarity of reading. We intend no disrespect in doing so.

On May 1, 2013, FV-1 filed a mortgage-foreclosure complaint, naming Isaias, Severiana, Bankers, and Action Immigration as defendants. On May 7, 2013, FV-1 recorded a lis pendens. Pursuant to a January 30, 2014 assignment of mortgage, FV-1 assigned the mortgage to Christiana Trust, a division of Wilmington Savings Fund Society, as trustee for Stanwich Mortgage Loan Trust, Series 2013-20 (Christiana Trust). The assignment was not recorded. On April 6, 2015, the court issued an order in the mortgage-foreclosure case substituting Christiana Trust in place of FV-1 as the plaintiff. On February 29, 2015, Christiana Trust obtained a judgment of foreclosure by default.

On June 25, 2015, the City of Paterson purchased a tax sale certificate it had issued related to delinquent municipal liens concerning the property in the amount of $45, plus $16.14 in penalties. The tax sale certificate was recorded on March 21, 2016, and assigned by the City of Paterson to plaintiff on April 11, 2016. Despite the existence of the tax sale certificate, Christiana Trust, in a July 25, 2016 affidavit of consideration, which was to be attached to a Sheriff's Deed, represented that no mortgage or lien encumbered the property.

On September 28, 2016, a county record search regarding the property was performed for plaintiff. Although the search results referenced the 2006 mortgage, they showed no recorded ownership interest for Christiana Trust.

Plaintiff's counsel sent a letter dated October 6, 2016, to Isaias, Severiana, New Century, and Action Immigration, stating that the tax sale certificate could be redeemed for approximately $453.52 and notifying them plaintiff would commence a foreclosure action if the tax sale certificate was not redeemed within thirty days of the date of the letter. The letter was not addressed to Christiana Trust.

On November 9, 2016, plaintiff filed a foreclosure complaint based on the tax sale certificate. Plaintiff named Isaias, Severiana, FV-1, Bankers, and Action Immigration as defendants. It did not name Christiana Trust as a defendant. On November 18, 2016, plaintiff recorded a lis pendens.

On December 20, 2016, FV-1 filed a non-contesting answer and disclaimer of interest, in which it admitted the 2006 mortgage had been assigned to it and asserted that mortgage "was subsequently sold." FV-1 denied it "has or will deprive plaintiff of possession of the premises, as FV-1 disclaims any interest in the property." The record is devoid of any evidence indicating plaintiff, on receipt of FV-1's answer, made any effort to determine to whom FV-1 had sold the mortgage.

On January 17, 2017, Elks purchased the property for $220,000 at a sheriff's sale. On March 2, 2017, Elks recorded its deed and the July 25, 2016 affidavit of consideration.

Despite FV-1 disclaiming any interest and notifying the parties of its sale of the mortgage, on April 4, 2017, plaintiff moved for an order setting the time, place, and amount of redemption. Plaintiff did not notify Christiana Trust or Elks of that motion. An order was entered on May 4, 2017, setting a redemption date of June 19, 2017, and a redemption amount of $470.56, but directing that "[a]n exact redemption amount must be obtained from the municipal tax collector."

In June or July 2017, Elks ordered a few large garbage containers to be used to clean out the house. In August or September 2017, Elks's electrician performed some minor repairs.

On June 28, 2017, plaintiff moved for final judgment, even though it had known for over six months based on FV-1's answer that FV-1 had sold its mortgage and, thus, another party had interest in the property. The record is devoid of any indication plaintiff disclosed to the court in its motion that another unnamed party had an interest in the property by way of the mortgage sold by FV-1. Plaintiff did not send a copy of the motion to Christiana Trust or Elks.

Finding default had been entered against the named defendants and not having been told by plaintiff another unnamed party had an interest, the court granted the motion and entered final judgment on July 24, 2017, vesting plaintiff with fee simple title to the property. Neither Christiana Trust nor Elks were named in the final judgment. Plaintiff did not mail the final judgment to Christiana Trust or Elks. On August 2, 2017, plaintiff recorded the final judgment. About a year later, the court entered a writ of possession against Isaias and Severiana.

On January 11, 2019, Elks moved in the tax-foreclosure case to intervene and vacate the final judgment. In support of the motion, Elks submitted the certification of its managing member, Ramzy Saleh. Saleh certified he "was completely unaware [of] the tax foreclosure action" and had no actual or constructive notice of it; in purchasing the property at a sheriff's sale, he had relied on the affidavit of consideration, which stated no liens encumbered the property; and he was "fully prepared to redeem any amounts due from the tax lien certificate . . . ."

Plaintiff opposed the motion, submitting the certification of its managing director, Adam Taki. Taki certified plaintiff had been paying the property taxes and other municipal charges regarding the property since it acquired the property in July of 2017. According to Taki, plaintiff also paid for lead-paint

remediation, insurance, and other repairs. Plaintiff asked the motion judge to deny the motion or, alternatively grant it limited discovery or reimbursement of its expenses.

After hearing argument on March 2, 2020, the motion judge entered an order on October 7, 2020, granting Elks's motion to intervene and vacate the final judgment. In the order, the judge set forth deadlines for the exchange of written discovery and the completion of depositions, scheduled a case management conference, and denied without prejudice plaintiff's reimbursement request.

During the December 21, 2020 case management conference, the judge clarified that the October 7, 2020 order effectively reverted the property to Elks. The judge stated he would grant Elks the right to redeem the tax sale certificate, "subject to [plaintiff's counsel's] right to file a motion for these other expenses and costs/fees . . . ." The judge did not set the amount Elks had to pay to redeem, stating "I'm permitting the redemption, the matter's now how much [Elks] would have to come up with to . . . [it's] going to redeem, which is the principal and interest, and then what's this extra cost . . . ." The judge entered a case management order on December 31, 2020, permitting Elks to redeem the tax

sale certificate on or before February 1, 2021, and plaintiff to move to recover from Elks its out-of-pocket expenses.

On January 29, 2021, plaintiff moved "to recover out-of-pocket expenses." Plaintiff did not seek any other relief in its notice of motion. Plaintiff submitted a proposed form of order, which was entitled "order granting plaintiff's motion to recover out-of-pocket expenses from [Elks]," containing a paragraph granting the motion and a paragraph setting the amount of the out-of-pocket expenses and the date by which they had to be paid. In the third paragraph of the proposed order, plaintiff asked the judge to direct that: "If Elks Home Realty, LLC fails to timely make the payment in the foregoing paragraph, the final judgment previously vacated in this matter shall be re-entered upon certification to the court, with notice to [Elks]." In support of the motion, plaintiff submitted certifications from its counsel and from Taki, who provided information and documentation regarding plaintiff's expenses. Plaintiff did not request any relief relating to Elks's failure to redeem.

Based on those motion papers, Elks prepared and submitted its opposition to the motion. Apparently, plaintiff raised for the first time in its reply brief Elks's failure to redeem. Elks sought leave to file a sur-reply "to address

difficulties in various attempts to redeem the subject lien," but the judge denied that request.

On March 29, 2021, the judge heard argument on the "motion to recover out-of-pocket expenses." During the argument, however, the judge focused on the delay in Elks's redemption efforts. Elks's counsel detailed Elks's efforts to request a redemption statement from the city officials, who ultimately declined to provide one because of their understanding that final judgment of foreclosure had been entered as to the tax sale certification. Elks's counsel indicated the city officials did not "know what to do with [the judge's] first order" and suggested he "needed . . . perhaps a stronger order to go . . . to the city." Plaintiff's counsel then asked the judge to reenter final judgment. The judge responded, "I think . . . that's nice and clean." Counsel for Elks reminded the judge that the "hearing was to establish the additional costs that are still due to [and] owing to [plaintiff]." The judge responded, "I vacated . . . my prior order on the condition that you would get it redeemed by February 1st," and faulted counsel for not bringing to his attention the difficulty he had had with city officials regarding Elks's redemption efforts and for having "sat on" the issue. The judge entered an order that day reinstating the July 24, 2017 final judgment.

On April 14, 2021, Elks moved for reconsideration. In support of that motion, Elks submitted Saleh's certification. Saleh detailed his multiple efforts to redeem the tax sale certificate and testified that since entry of the October 7, 2020 order vacating the final judgment, he had maintained the property and Elks had paid the applicable taxes.

On May 17, 2021, the judge heard argument on Elks' reconsideration motion. On the issue of a redemption deadline, counsel for Elks contended:

> I don't feel it was really worded as a drop-dead date. . . . [B]ut in any event, . . . all these efforts that we're talking about, Judge, that's when this was all happening, when we're sending correspondence to the Tax Collector, my client is going out there. They're trying to comply with the [c]ourt's order as best they could.
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> And . . . I think . . . there was a lot of confusion because . . . they didn't see this as a lien being redeemed, because in their systems – the Tax Collector lays this out – in their systems they just see someone else owning . . . this property. So, . . . they didn't have the tools that they needed to issue a redemption.

On December 10, 2021, the judge entered an order and statement of reasons denying the reconsideration motion. The judge "did not doubt [Elks's] attempts to redeem" but found "it did not matter whether [Elks] did or did not try to redeem the [property] – the problem was that [Elks] never apprised the [c]ourt of its failed attempts to redeem the [property]." The judge acknowledged

that plaintiff had filed "a motion to recover out-of-pocket expenses" but found the basis of the motion to be "immaterial."

> [I]t is immaterial that [p]laintiff filed a [m]otion to [r]ecover-[o]ut-of-[p]ocket [e]xpenses and the [c]ourt instead entered [f]inal [j]udgment. On March 29, 2021, the [c]ourt entered [f]inal [j]udgment instead of granting or denying[] [p]laintiff's [m]otion to [r]ecover [o]ut-of-[p]ocket [e]xpenses because [Elks] failed to redeem the [s]ubject [p]roperty by February 1, 2021, and it never communicated any issues to the [c]ourt. Even if the December 31, 2020 [c]ase [m]anagement [o]rder was unclear as to the deadline for redemption, [Elks] should have sought clarification from the [c]ourt or requested an extension to redeem the [property].

On appeal, Elks argues the judge abused his discretion because "when on a motion that raised a limited issue seeking specific relief, [he] entertained and granted relief on a different issue raised in a reply brief" and because he reinstated the final judgment based on the failure of Elks's counsel to inform the judge sooner about the difficulties Elks had encountered in trying to determine the redemption amount. Elks also argues for the first time that the trial court lacked subject matter jurisdiction because the tax-foreclosure complaint failed to identify sufficiently satisfaction with the statutorily-required waiting period following issuance of a tax sale certificate to allow the filing of a complaint. In its cross-appeal, plaintiff argues the judge abused his discretion in granting Elks's motion to vacate judgment.

II.

"[W]e owe no deference to a trial court's interpretation of the law, and review issues of law de novo." Primmer v. Harrison, 472 N.J. Super. 173, 186 (App. Div. 2022) (quoting Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div. 2016), certif. denied, 253 N.J. 47 (2023)). We review a trial court's order on a reconsideration motion under an abuse-of-discretion standard. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)) (internal quotation marks omitted). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

Rule 1:6-2(a) requires a party making a motion to do so "by notice of motion" and to state "the grounds upon which it is made and the nature of the relief sought." The rule also requires the moving party to submit a proposed

form of order in accordance with Rule 4:42-1(a)(4), which requires the moving party to include in the proposed form of order "a separate numbered paragraph for each separate substantive provision of the . . . order." The purpose of the proposed form of order is to "more clearly define[] the precise nature of the relief sought in the motion." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 1:6-2 (2021).

The requirement that a movant set forth the basis of its motion in its notice of motion and proposed form of order is not "immaterial" as the motion judge found; it goes to the heart of our concept of due process. "At a minimum, due process requires notice . . . . To comport with due process, a judicial hearing requires notice defining the issues and an adequate opportunity to prepare and respond." McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 558-59 (1993); see also Nicoletta v. N. Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 162 (1978) ("The first prerequisite . . . of due process is fair notice, . . . so that a response can be prepared and the respondent fairly heard"); Avant v. Clifford, 67 N.J. 498, 525 (1975) ("The first requirement of procedural due process is notice"); MTAG as Cust for ATCF II, LLC v. Tao Invs., LLC, 476 N.J. Super. 324, 339 (App. Div. 2023) (finding "'[t]he critical components of due process are adequate notice [and] opportunity for a fair hearing . . . .'")

(quoting City of Passaic v. Shennett, 390 N.J. Super. 475, 485 (App. Div. 2007)); Schneider v. City of E. Orange, 196 N.J. Super. 587, 595 (App. Div. 1984) (finding "adequate notice" to be a "critical component[] of due process"), aff'd o.b., 103 N.J. 115 (1986). "Where the issue involves the forfeiture of a real property interest, adherence to procedural requirements must be scrutinized." MTAG, 476 N.J. Super. at 340.

Nothing in plaintiff's moving papers put Elks on notice that plaintiff would seek reinstatement of final judgment based on Elks's failure to redeem. Instead of giving Elks fair notice of that issue and an opportunity to respond, plaintiff apparently waited until its reply brief to raise the issue of Elks's failure to redeem and to ask the judge to reinstate the vacated final judgment. However, "it is improper to raise new issues in a reply brief." Pannucci v. Edgewood Park Senior Hous. – Phase 1, LLC, 465 N.J. Super. 403, 410 (App. Div. 2020).

Pursuant to Rule 1:6-5, a party opposing a motion has the right to submit "an answering brief." If the moving party omits a basis of its motion from its moving brief, notice of motion, and proposed form of order, it has failed to provide the opposing party with notice of that basis and has effectively deprived the opposing party of its right to submit "an answering brief" on that issue. And that is exactly what happened here. Moreover, instead of declining, as he should

have, to consider an argument raised for the first time in reply, the judge compounded his error by denying Elks's request to respond to that argument in a sur-reply.

In deciding the lack of notice to Elks was "immaterial," the judge misinterpreted the law. In reinstating final judgment based on an argument raised for the first time in reply, the judge abused his discretion in a way that was "manifestly unjust." Union Cnty. Improvement Auth., 392 N.J. Super. at 149. Accordingly, we reverse the March 29, 2021 order reinstating final judgment and the December 10, 2021 order denying Elks's reconsideration motion.

Elks raises on appeal two issues it admittedly did not raise before the motion judge: the judge's reliance on Elks's counsel's failure to inform the judge sooner about Elks's difficulties in trying to redeem and the court's purported lack of subject matter jurisdiction. "[A]ppellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)); see also

Berardo v. City of Jersey City, 476 N.J. Super. 341, 354 (App. Div. 2023). We address the second additional issue raised by Elks on appeal because it goes to the court's jurisdiction. We do not address the other issue regarding informing the judge sooner regarding redemption difficulties because it was not raised with the judge and because we do not need to reach it given our reversal of the March 29, 2021 and December 10, 2021 orders on other grounds.

Relying on language contained in N.J.S.A. 54:5-86(a), Elks contends the trial court lacked jurisdiction because plaintiff had to but failed to wait until "the expiration of the term of two years from the date of the sale of the tax sale certificate" to file its foreclosure complaint. In making that argument, Elks ignores the first sentence of the statute, which provides that "when the municipality is the purchaser of a tax sale certificate, the municipality, or its assignee or transferee, may, at any time after the expiration of the term of six months from the date of sale, institute" a foreclosure action, ibid., and the fact that the tax sale certificate at issue had been purchased by the City of Paterson, which subsequently assigned it to plaintiff. Thus, plaintiff's complaint was timely, and Elks's jurisdictional argument is without merit.

We turn now to plaintiff's cross-appeal of the October 7, 2020 order granting Elks's motion to intervene and vacate the final judgment. The motion

judge apparently did not issue an opinion or statement of reasons regarding the order. We, however, "review orders and not opinions." Brown v. Brown, 470 N.J. Super. 457, 463 (App. Div. 2022). We review and affirm the October 7, 2020 order.

Elks moved to intervene and vacate the July 24, 2017 final judgment. That judgment was entered by default. "A motion to vacate default judgment implicates two oft-competing goals: resolving disputes on the merits, and providing finality and stability to judgments." BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 123 (App. Div. 2021). It is well established that trial courts are to "view 'the opening of default judgments . . . with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS, 132 N.J. 330, 334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964)). "Although the movant bears the burden of demonstrating a right to relief, . . . a court should resolve '[a]ll doubts . . . in favor of the part[y] seeking relief.'" BV001 REO Blocker, LLC, 467 N.J. Super. at 123-24 (quoting Mancini, 132 N.J at 334).

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).

Applying that standard, we perceive no abuse of discretion in granting Elks's motion to intervene and vacate the final judgment entered by default. We recognize our holding in Woodmont Props., LLC v. Twp. of Westampton, 470 N.J. Super. 534 (App. Div. 2022), but this case is not about an unclosed property-purchase deal or a mortgage "foreclosure sale, which cut off any further right . . . to purchase the property." Id. at 536. Given the equitable considerations presented by Elks's motion and the liberal standard courts must apply in deciding motions to vacate default judgments, we conclude granting the motion was not beyond the judge's discretion and that plaintiff's arguments to the contrary are not persuasive. Accordingly, we affirm the October 7, 2020 order.

Affirmed as to the October 7, 2020 order; reversed as to the March 29, 2021 and December 10, 2021 orders; and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION