

**NOT FOR PUBLICATION WITHOUT THE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-3743-21**

**WEST COAST SERVICING,
INC.,**

Plaintiff-Respondent,

v.

CHARLES IKEME,

Defendant-Appellant,

and

**FRANCIA FIGARIS, LORIE
SAUNDERS, and STATE OF
NEW JERSEY,**

Defendants.

Submitted February 15, 2023 – Decided July 13, 2023

Before Judges Accurso and Vernoia.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-007542-19.

Charles Ikeme, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant Charles Ikeme appeals from a July 22, 2022 order in this residential foreclosure action denying his motion to set aside the sheriff's sale. Because we find no error in the decision, we affirm.

What little we know about this foreclosure comes from the trial court's Rule 2:5-1(b) amplification, filed two weeks after the appeal was docketed, but, unfortunately, the day after defendant filed his merits brief.¹ The trial judge recounted that he'd ordered the initial October 28, 2021 sheriff's sale in this case set aside based on the sheriff's failure to announce the mortgage foreclosed was the second mortgage on the property, and thus the property was being sold subject to the first mortgage lien.

Following defendant's successful application to stay the sale rescheduled for April 12, 2022, the property was finally sold on May 24, 2022, when it was struck off to a third-party bidder. Defendant moved to set aside the sale three

¹ The clerk's office issued the scheduling order in this case on August 11, 2022, eight days after defendant filed his appeal, setting September 22 as the date for defendant to file his merits brief. Defendant filed his merits brief on August 25, and the trial court filed its amplification on August 26. See R. 4:65-5.

days later, thereby halting transfer of the sheriff's deed. See R. 4:65-5. The court denied defendant's motion on June 24, 2022, rejecting as "misplaced" his argument that the sale should be set aside because the sheriff "failed to comply with the pluries writ of execution . . . in accordance with N.J.S.A. 2A:50-64(a)(3)(a)."²

Defendant filed another motion three days after the court denied his first motion, again objecting to the sale and seeking to set it aside. This time, defendant contended the court should vacate the sale because the third-party bidder had only lodged a \$48,000 deposit with the sheriff and had not paid the balance of its \$240,000 winning bid within thirty days as required by the terms of sale. The judge rejected defendant's claim that the winning bidder's failure to tender the remainder of its bid constituted an irregularity requiring the sale to be set aside. Instead, the judge denied the motion and ordered the bidder to deliver the balance due on his bid, along with any interest and fines, no later than August 5, 2022. In addition to those terms, the judge noted in the order that although defendant requested oral argument on the motion, even if

² A pluries writ of execution is the writ or writs issued after an initial writ and an alias writ have been returned. See Vitale v. Hotel Cal., Inc., 184 N.J. Super. 512, 519 (Law Div. 1982). N.J.S.A. 2A:50-64(a)(3)(a) provides "[t]he sheriff shall conduct a sale within 150 days of the sheriff's receipt of any writ of execution issued by the court in any foreclosure proceeding."

uncontested, and confirmed the motion would be heard on Friday, July 22, he failed to appear for oral argument. The bidder tendered the remainder of its bid the following Monday, July 25, 2022.

Defendant appeals, contending the trial court's denial of his second motion to set aside the sheriff's sale with only the terse statement at the foot of the order that the bidder would be allowed an additional two weeks to complete its bid violated Rule 1:7-4, which requires the court to find facts and state its conclusions of law for every written motion order appealable as of right.

As already noted, the trial judge filed an amplification of the reasons for his hand-written notation on the July 22, 2022 order from which defendant appeals, pursuant to Rule 2:5-1(b). See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 300 (App. Div. 2009) (noting the requirement of the Rule that the court within fifteen days of receipt of the notice of appeal, now thirty, shall file and "mail to the parties a written opinion stating findings of fact and conclusions of law" if no statement of reasons was provided with the order). In that amplification, the judge explained that "merely eclipsing" the thirty-day deadline for a bidder to pay the balance of its bid "is not enough to invalidate the sale" in every circumstance.

Besides noting that this was the foreclosure of a second mortgage, requiring time for the amount owed on the first mortgage to be verified, the judge reminded that defendant had filed two motions objecting to the sale and seeking to set it aside, "one three days after the Sheriff's sale." The judge found those motions "obviously impeded the closing and delivery of the Sheriff's deed," which delivery cannot be made while an objection to the sale is pending before the court. See R. 4:65-5; Hardyston Nat'l Bank v. Tartamella, 56 N.J. 508, 513 (1970). The judge concluded that given defendant's efforts to delay the transfer of the sheriff's deed to the third-party bidder, defendant "cannot now be heard to complain that the closing should have occurred sooner."

We have no doubt the court would have explained to defendant its reasons for denying his motion and allowing the successful bidder a short period to complete the sale had defendant appeared for the oral argument he requested. Further, we note defendant has now been in possession of the court's reasons for almost a year and has not requested the opportunity to supplement his brief to address the court's amplified findings.

Although the Chancery court has the power to vacate a sheriff's sale, its exercise is limited to situations where there is "fraud, accident, surprise,

irregularity in the sale, and the like, making confirmation inequitable and unjust to one or more of the parties." Crane v. Bielski, 15 N.J. 342, 346 (1954) (quoting Karel v. Davis, 122 N.J. Eq. 526, 530 (E. & A. 1937)). Because defendant failed to demonstrate such circumstances here, we affirm the denial of his motion to vacate the sale.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION