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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3903-21**

NR DEED, LLC,

Plaintiff-Appellant,

v.

VINCENT F. ROSZKO, JR.
and HOPE COGAN ROSZKO,

Defendants-Respondents.

Argued June 6, 2023 – Decided August 1, 2023

Before Judges Gummer and Messano.

On appeal from the Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket No. F-
008421-20.

Jason A. Levine argued the cause for appellant
(Hangley Aronchick Segal Pudlin & Schiller, attorneys;
Jason A. Levine, of counsel and on the briefs).

Rebecca A. Hand argued the cause for respondents
(Cosner Law Group, attorneys; Rebecca A. Hand, on
the brief).

PER CURIAM

Defendants Vincent F. Roszko, Jr. and Hope C. Roszko owned residential property in Edison, New Jersey, and Highlands, New York. They became delinquent in paying their real estate taxes on the Edison property. In December 2016, Christiana Trust as Custodian GSRAN-Z, LLC, purchased tax sale certificate #16-00290 from the municipal tax assessor and commenced a tax foreclosure action against defendants in September 2020.¹

Responding pro se, Hope filed a letter and affidavit with the Chancery Court.² Hope explained that she lived at the New York property and Vincent lived at the Edison property, Vincent was disabled, and she was unaware of any tax delinquencies until 2019. Hope said the parties intended to sell their New York property, which would yield more than enough money to "cover the back taxes due," but due to the COVID-19 pandemic, they were unable to show the home. She also asserted that Vincent was the beneficiary of a trust formed by his uncle in Delaware. Hope attached a letter from Wilmington Trust, which indicated the trustee, Vincent's aunt, had recently died and the bank was

¹ Shortly before judgment was entered in its favor, Christiana Trust assigned its interest in the certificate and litigation to plaintiff, NR Deed LLC. The court subsequently substituted NR Deed LLC as plaintiff in the foreclosure action.

² We sometimes use the first names of defendants to avoid confusion. We intend no disrespect by this informality.

reviewing whether it would serve as alternate trustee. The bank valued Vincent's interest in the trust at approximately \$300,000 before taxes.

The Chancery judge entered an order on April 16, 2021, denying plaintiff summary judgment and ordering the parties to mediation, which was unsuccessful. In July 2021, defendants retained counsel, and, on August 16, 2021, the parties entered a consent order, which provided:

1. Defendants shall have [ninety] days from the date of this [o]rder to redeem the tax sale certificate (including all costs and fees required to redeem) which is the subject of this [f]oreclosure [a]ction.

2. If, within [ninety] days from the date of this [o]rder, defendants have not redeemed the tax sale certificate and paid all outstanding taxes and other costs due on the [t]ax sale [c]ertificate which is the subject of the above-captioned [f]oreclosure [c]omplaint, defendants shall immediately withdraw its/their answer and any responsive pleadings and shall be deemed to have consented in all respects to the entry of final judgment in favor of [p]laintiffs in the above-entitled matter.

Defendants failed to redeem the tax sale certificate within the ninety-day period.

Plaintiff proceeded toward final judgment in the ordinary course. On December 10, 2021, the judge entered an order setting the time, place, and

amount of redemption, and directing payment be made by February 8, 2022.³ Defendants failed to redeem the tax sale certificate, and, on March 8, 2022, the judge entered an order of final judgment by default against defendants.

On March 23, 2022, Hope submitted a pro se certification "attempting to essentially be a [m]otion to [v]acate [j]udgment."⁴ On May 2, 2022, defendants retained new counsel and the next day filed a formal motion to vacate the judgment pursuant to Rule 4:50-1.

Hope's certification in support of the motion laid out details of Vincent's disability and her own health problems, as well as explaining defendants also faced a tax lien on their property in New York. The certification said that Vincent's attempts to obtain the funds from his trust were thwarted by his aunt's death and the COVID-19 pandemic. Defendants believed that sufficient funds would be released from the trust to pay off both liens, but, by May 2021, when the trust made an initial distribution, the amount was sufficient to pay off only the New York lien. Hope stated defendants agreed to enter the consent judgment

³ The certificate was purchased in December 2016 for \$2507.73. The December 2021 redemption amount was \$55,021.73.

⁴ This document is not in the appellate record. We use the description provided by the Chancery judge during oral argument on defendants' subsequent motion to vacate the default judgment.

believing the balance of Vincent's trust funds would soon be released after receiving those assurances from Wilmington Trust.

Hope certified that her attempts to contact the attorney who had negotiated the consent order were fruitless because he had left the firm, and no one had contacted her about negotiating any further extension.⁵ Hope also certified that as of April 8, 2022, defendants had sufficient funds to pay off the Edison tax lien and that all taxes had been fully paid on the Edison property in 2020 and 2021. She stated that defendants intended to sell their New York property and reside in the Edison home.

Plaintiff opposed the motion. It argued that defendants presented no "legal basis" for vacating the final judgment, which had resulted from entry of the consent order. Plaintiff noted that defendants had elected to pay taxes on the New York property rather than pay what they owed to redeem the New Jersey certificate. Additionally, plaintiff contended that because the foreclosure litigation proceeded in the normal course and the court had set a date for

⁵ Plaintiff's counsel and defendants' prior counsel executed the consent order, which was signed by the judge. Defendants did not sign the order, and the thrust of Hope's certification was that defendants would not have agreed to its terms had they been made known to them. The judge did not address this contention, and, for our purposes, we consider the consent order to have been validly executed and entered by the court.

redemption, defendants received extra time in which to redeem but they had failed to do so.

The Chancery judge heard argument on defendants' motion on June 10, 2022. In an oral opinion that immediately followed, the judge granted the motion pursuant to Rule 4:50-1(f) (subsection (f)), permitting a judgment to be vacated for "any other reason justifying relief from the operation of the judgment or order." The judge found there was a prolonged delay in effectuating the transfer of Vincent's trust funds due to issues associated with the COVID-19 pandemic, "which [were] clearly not . . . within the control of . . . defendants." She noted the underlying reason or cause of the present situation was "very much tied to the significant medical issues" defendants faced, and defendants were "clearly blameless or faultless in th[is] regard."

The judge acknowledged defendants "acted very quickly after entry of the judgment [by] filing a . . . self-represented certification hoping to vacate the judgment [and] thereafter retaining counsel to more thoroughly pursue the ability to vacate the judgment." She noted the "prejudice to defendants would far outweigh any prejudice to plaintiff[] in that [defendants] are now ready, willing, and prepared to pay in full the redemption amount as set[,] . . . with all reasonable costs and fees." Finally, because the residence in question was

Vincent's primary residence, the judge reasoned it is "not just essentially the financial aspect of it[,] [but] also the issues relative to him having to find a new residence addressing all of his present issues."

The judge's June 10, 2022 order vacated the default judgment entered against defendants and gave them thirty days to redeem the property and reimburse plaintiff for payments it had made, and fees and costs it had incurred, after entry of the December 10, 2021 order fixing the time, place, and amount of redemption. Defendants made the requisite payments to redeem the certificate, which plaintiff accepted under a reservation of rights.

Recognizing the June 10, 2022 order was not a final order appealable as of right pursuant to Rule 2:2-3(a), the judge entered another order on August 17, 2022, dismissing the foreclosure complaint and entering final judgment in favor of defendants. This appeal followed.

I.

Before us, plaintiff contends it complied with the foreclosure process in the Tax Sale Law, N.J.S.A. 54:5-1 to - 137, and the judge failed to consider the statute's underlying policy goals when she vacated final judgment. Plaintiff also argues the judge "applied the wrong legal standard" in considering defendants' motion because she failed to consider judgment was entered pursuant to the

terms of the consent order, a contractual agreement "sanctioned by the court." Plaintiff asserts not only was this "legal error," but also that the judge's decision will "deter tax lien holders from entering into consent orders that can perpetually be vacated."

Defendants counter by arguing the judge appropriately weighed those factors courts should consider in evaluating a motion to vacate final judgment under subsection (f). Defendants maintain they established "extraordinary circumstances" justifying relief. Citing DEG, LLC v. Township of Fairfield, 198 N.J. 242 (2009), defendants also argue the judge applied the correct legal standard, noting it is "plain" from the judge's opinion that she "considered the existence of the consent order" and "correctly recognized . . . [d]efendants were ready and able to make payment to redeem the [t]ax [s]ale [c]ertificate," which was the relief plaintiff was entitled to receive under the consent order.

Having considered these arguments in light of the record and applicable legal standards, we affirm.

II.

A trial court's decision on a motion to vacate a final judgment under Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209

N.J. 449, 467 (2012). An abuse of discretion exists "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467–68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). We have also said an "[a]buse of discretion is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Seigelstein v. Shrewsbury Motors, Inc., 464 N.J. Super. 393, 404 (App. Div. 2020) (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)).

We recognize that "[i]n the absence of a factual dispute, the interpretation and enforcement of a contract, including a settlement agreement, is subject to de novo review by the appellate court." Savage v. Twp. of Neptune, 472 N.J. Super. 291, 306 (App. Div. 2022) (citing Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 612 (2020)). A consent judgment "is not strictly a judicial decree, but rather in the nature of a contract entered into with the solemn sanction of the court." Cnty. Realty Mgmt., Inc. v. Harris, 155 N.J. 212, 226 (1998) (quoting Stonehurst at Freehold v. Twp. Comm. of Freehold., 139 N.J. Super. 311, 313 (Law. Div. 1976)).

Nevertheless, contrary to plaintiff's arguments, consent judgments are not immune from the avenues of relief provided by Rule 4:50-1. The Court has specifically recognized that "a consent judgment may only be vacated in accordance with R[ule] 4:50-1." Ibid. (quoting Stonehurst, 139 N.J. Super. at 313). In DEG, LLC, the Court explained the relationship between consent judgments and Rule 4:50-1:

The rule does not distinguish between consent judgments and those issued after trial. So long as the judgment is final, the rule is applicable. Indeed, a consent judgment "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees."

Significantly, Rule 4:50-1 is not an opportunity for parties to a consent judgment to change their minds; nor is it a pathway to reopen litigation because a party either views his settlement as less advantageous than it had previously appeared, or rethinks the effectiveness of his original legal strategy. Rather, the rule is a carefully crafted vehicle intended to underscore the need for repose while achieving a just result. It thus denominates with specificity the narrow band of triggering events that will warrant relief from judgment if justice is to be served. Only the existence of one of those triggers will allow a party to challenge the substance of the judgment.

[198 N.J. 242, 261–62 (emphasis added) (quoting Rufo v. Inmates of the Suffolk Cnty. Jail, 502 U.S. 367, 378 (1992)).]

Ultimately, "equitable principles" "should . . . guide[]" a court's discretion in considering a motion to vacate judgment. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). Here, in considering defendants' motion, the judge properly focused her attention on subsection (f) and whether defendants were entitled to the equitable relief it provides.

Our task, therefore, is not to conduct de novo review of the terms of the parties' consent order. Rather, we must consider whether the judge clearly abused her discretion by vacating the default judgment pursuant to Rule 4:50-1(f).

III.

"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) (citing Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)). In balancing the two goals, "[a] court should 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.'" Ibid. (alteration in original) (quoting Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

Subsection (f) authorizes the court to "relieve a party . . . from a final judgment or order for . . . any . . . reason justifying relief from the operation of the judgment or order." As the Court explained more than fifty years ago and has reiterated time and again, "No categorization can be made of the situations which would warrant redress under subsection (f). . . . [T]he very essence of (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice." DEG, LLC, 198 N.J. at 269–70 (alteration in original) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)).

Nonetheless, subsection (f) "affords relief only when 'truly exceptional circumstances are present.'" Guillaume, 209 N.J. at 468 (quoting Little, 135 N.J. at 286). "Because R[ule] 4:50-1(f) deals with exceptional circumstances, each case must be resolved on its own particular facts." Baumann v. Marinaro, 95 N.J. 380, 395 (1984). When considering a motion for relief under subsection (f), "a court's obligation is '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.'" LVNV Funding,

LLC v. Deangelo, 464 N.J. Super. 103, 109 (App. Div. 2020) (quoting Manning, 74 N.J. at 120).

Here, the record adequately supports the judge's findings of extraordinary circumstances warranting relief from the final judgment in plaintiff's favor. She gave due consideration to the factors we outlined in Parker v. Marcus, 281 N.J. Super. 589 (App. Div. 1995). There, we said the "'important factors' to be considered in deciding whether relief . . . should be granted" under subsection (f) included "(1) the extent of the delay in making the application; (2) the underlying reason or cause; (3) the fault or blamelessness of the litigant; and (4) the prejudice that would accrue to the other party." Id. at 593 (citing Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 195 (App. Div. 1985)).

The judge found that defendants had moved quickly for relief after the judgment was entered, first filing a pro se objection and shortly thereafter retaining counsel. The judge also determined that defendants' access to Vincent's trust fund was "prolonged and delayed" because of the COVID-19 pandemic, and those events were beyond defendants' control. She further found that defendants had access to the funds in April 2022, essentially one month after entry of the judgment, and they had attempted to redeem the tax sale certificate but were unable to do so because plaintiff's judgment already had

been entered. The judge weighed the respective prejudice to defendants and plaintiff if the judgment was left in place or vacated.

We recognize plaintiff's contention that vacating the judgment was contrary to the public policy undergirding the Tax Sale Law. See Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 166 (App. Div. 2005) ("[T]he Tax Sale Law evidences an intention to impose stricter limits upon the time and the grounds for vacating a judgment of foreclosure than would apply generally under Rule 4:50"). However, as the Court explained in Simon v. Cronecker, "[a]lthough the primary purpose of the Tax Sale Law is to encourage the purchase of tax certificates, another important purpose is to give the property owner the opportunity to redeem the certificate and reclaim his land." 189 N.J. 304, 319 (2007); see also Sonderman v. Remington Constr. Co., 127 N.J. 96, 109 (1992) (stating, "The primary purpose of the [Tax Sale] Law is not to divest owners of their property, but to provide a method for collecting taxes." (citing Berkeley v. Berkeley Shore Water Co., 213 N.J. Super. 524, 552 (App. Div. 1986))).

Here, as the judge noted, plaintiff received the benefits due to a tax sale certificate holder and the benefits anticipated by the consent order, Edison

received the taxes it was due, and defendants were able to keep their property.

The judge did not mistakenly exercise her equitable powers in this case.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION