

**NOT FOR PUBLICATION WITHOUT THE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-3526-22**

**BOILING SPRINGS SAVINGS
BANK,**

Plaintiff-Respondent,

v.

**KMTJ, LLC, and THEODORE
J. DELEN,**

Defendants,

and

KAREN DELEN,

Defendant-Appellant,

and

5 DOGWOOD, LLC,

**Defendant/Third-Party
Plaintiff-Respondent.**

Submitted May 29, 2024 – Decided June 4, 2024

Before Judges Natali and Puglisi.

On appeal from the Superior Court of New Jersey,
Chancery Division, Hudson County, Docket No. F-
033145-15.

Karen Delen, appellant pro se.

Respondents have not filed a brief.

PER CURIAM

Defendant Karen Delen challenges a January 6, 2023 Law Division order that: 1) deemed abandoned certain personal property located within foreclosed premises in Secaucus; and 2) awarded use and occupancy fees in the amount of \$42,000.00 to the successful third-party bidder at the Sheriff's sale, 5 Dogwood, LLC (5 Dogwood), and entered a lien in that amount against any surplus funds due to defendant from the sale.

From the scant record before us, it appears the Secaucus property was formerly owned by defendant and defendant Theodore Delen,¹ and was used by them to operate a pizzeria. After final judgment was entered in the foreclosure proceedings, the property was sold to 5 Dogwood at a Sheriff's sale. Defendant was ultimately evicted from the premises but apparently refused to remove her

¹ Theodore Delen has not participated in this appeal.

personal property. Accordingly, 5 Dogwood moved to deem that property abandoned, and for use and occupancy fees.

In support of its motion, counsel for 5 Dogwood submitted a certification in which he explained defendants operated the pizzeria on the first floor of the Secaucus property. The commercial foreclosure action was filed on October 1, 2015 and resulted in a final judgment against defendant on March 29, 2016.

Subsequently, a Sheriff's sale was held on May 12, 2022, in which as noted, 5 Dogwood was the successful bidder. After satisfying its bid on June 23, 2022, and obtaining a Sheriff's deed to the property, 5 Dogwood sought and obtained a writ of possession.

Pursuant to that writ, the Hudson County Sheriff scheduled a lockout for October 26, 2022 at 10:00 a.m., but the same day, Theodore Delen filed an emergent application for a stay of removal. After an emergency hearing, the court denied the application but permitted defendants until December 6, 2022 to remove their personal property from the premises. Separately, defendant moved to vacate the writ which the court denied on December 2, 2022.

Counsel further attested that since the October 26, 2022 hearing, 5 Dogwood and defendants were in "constant communications to seek the removal of defendants' personal property" and despite numerous attempts to schedule a

time for defendants to remove their property, they repeatedly failed to appear at the agreed upon times, or at all. 5 Dogwood's counsel maintained as a result of defendant's inactions, it could neither use the space nor rehabilitate the premises in order to list it for rent, despite owning the property since May 2022. Rather, its counsel reported defendants continued to operate their business from May 2022 to October 2022 without paying any rent.

According to counsel, at the time of the motion the fair market rental value of the premises was approximately \$6,000 per month. 5 Dogwood accordingly maintained it was entitled to the fair market rental value from June 2022 through and including December 2022, for a total of \$42,000 at \$6,000 per month.

Further, counsel certified based on a report from the Sheriff's sale, the sale generated surplus funds in the amount of \$85,229.40, and because there were no other apparent liens on the property, defendants would be entitled to those surplus funds. 5 Dogwood thus sought use and occupancy fees of \$42,000 be entered as a lien against the surplus funds owed to the defendants. It also asked any property left at the premises be deemed abandoned.

In response, defendant submitted a December 23, 2022 letter to the court in which she requested that the court deny 5 Dogwood's application and instead permit her "until January 31, 2023, to remove [the] ... [p]roperty at the subject

premises." In support, she submitted letters from the medical director of the Vanguard Medical Group in Verona who stated defendants tested positive for COVID-19 on December 3 and December 9, 2022.

The court denied defendant's application in the January 6, 2023 order under review. In that order, the motion judge explicitly denied defendant's "request for an extension to remove property until January 31, 2023" because she failed to establish "good cause given the history of the post-judgment events in this case."

Before us, defendant contends the judge entered the January 6, 2023 order in error because she misapplied N.J.S.A 2A:50-73, and failed to provide sufficient factual findings and legal conclusions contrary to Rule 1:7-4. We reject these arguments as we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We offer only the following brief comments.

After protracted pre- and post-judgment foreclosure proceedings, with which the judge was fully familiar, defendant did not contest any of the facts contained in 5 Dogwood's counsel's certification. Instead, she submitted only a December 23, 2022 letter seeking a brief extension to remove her property supported by correspondence from her physician that asserted defendants had

COVID-19 for an indeterminate period in early December 2022. Defendant did not specifically rebut any of the factual allegations in the moving papers with respect to the abandonment issue or the use and occupancy fees.

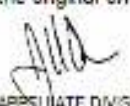
With respect to defendant's ostensible request for yet more time to remove her personal property from the premises, the motion judge understandably and properly found defendants failed to take advantage of the numerous opportunities and extension to remove their personal belongings and property and those failures established the lack of good cause and supported denying defendant's request for more time. Under the circumstances, we find no violation of Rule 1:7-4.

Finally, defendant's citation to N.J.S.A 2A:50-73 is misplaced. That statutory provision, contained within the New Jersey Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -73, permits the filing of a summary mortgage foreclosure action in Superior Court when the record establishes the demised premises are "vacant and abandoned" consistent with the statute and the mortgagee otherwise complies with the statute and the Rules, including Rule 4:64-1A. Here, the order under review does not address the underlying foreclosure judgment or the premises itself, but rather defendant's personal property that inexplicably remained in the Secaucus property after final judgment, the Sheriff's sale,

transfer of the deed to the successful third-party purchaser, the conclusion of eviction proceedings, and multiple opportunities to remove all items from the premises.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION