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CITIBANK, N.A., TRUSTEE (SACO 2007-2) *v.*
DEBRA LINDLAND, EXECUTRIX (ESTATE
OF MADLYN LANDIN), ET AL.
(SC 18885)

Rogers, C. J., and Zarella, Eveleigh, McDonald and Espinosa, Js.*

Argued March 19—officially released September 17, 2013

Barbara M. Schellenberg, with whom were *David A. Ball* and, on the brief, *Philip C. Pires*, for the appellants (defendants Robert Olsen and 17 Ridge Road, LLC).

Peter A. Ventre, for the appellee (plaintiff).

Opinion

ZARELLA, J. The principal issue in this certified appeal is whether the trial court had authority to open a judgment of foreclosure by sale and related supplemental judgments after title had passed to the purchaser when a series of errors by the court and the parties caused the purchaser to buy a property that, unbeknownst to him but actually known by the second mortgagee, was in fact subject to a first mortgage that was to be foreclosed shortly thereafter. The defendant Robert Olsen, the purchaser, and the defendant 17 Ridge Road, LLC, a limited liability company in which Olsen has a 50 percent ownership interest, both of whom the trial court permitted to join this action,[1] claim that the Appellate Court incorrectly concluded that the trial court lacked authority to open the judgments under the unique circumstances of the case. The plaintiff, Citibank, N.A., as trustee of SACO 2007-2, maintains that the Appellate Court correctly concluded that the trial court lacked authority to open the judgment of foreclosure and the supplemental judgments because title had vested in the purchaser. We reverse in part the judgment of the Appellate Court.

The record discloses the following facts and procedural history relevant to our resolution of the present appeal. The plaintiff, the mortgagee of the property at 17 Ridge Road in the town of Cromwell, initiated a foreclosure action against the named defendant, Debra Lindland, executrix of the estate of Madlyn Landin (estate), on May 5, 2008. In its complaint, the plaintiff alleged that the estate had defaulted on a mortgage loan secured by the subject property and disclosed that certain encumbrances, including a mortgage held by IndyMac Federal Bank, FSB (IndyMac), were prior in right to the plaintiff's mortgage. IndyMac, which was represented by the same counsel as the plaintiff, pursued a separate foreclosure action on its mortgage.

On July 10, 2008, the plaintiff filed a motion for judgment of strict foreclosure, along with a foreclosure worksheet in support of the motion. The plaintiff's foreclosure worksheet contained a significant computational error in that it represented that there was negative equity of $12,815.46. The actual amount of negative equity was, in fact, $72,815.46, a difference of $60,000.[2] Despite this error, the foreclosure worksheet accurately disclosed that (1) the property had a fair market value of $305,000, (2) encumbrances on the property ahead of the plaintiff's lien totaled $295,200, and (3) the debt arising out of the plaintiff's second mortgage was $82,615.46.

On August 4, 2008, the plaintiff's motion for judgment of strict foreclosure appeared on the short calendar. Citing a fair market value of $305,000 and an updated debt of $82,615.46, the trial court, *Holzberg, J.*, deter-

mined that there was substantial equity in the property and rendered judgment of foreclosure by sale. The court failed to recognize the existence of the IndyMac priority debt of $295,200. The plaintiff's counsel, who also represented IndyMac with respect to its prior mortgage, failed to bring this error to the court's attention.

The court scheduled a foreclosure sale for October 4, 2008. John J. Carta, Jr., an attorney, was appointed as the committee for sale. In the course of his appointment, Carta posted a sign outside of the property, arranged for newspaper advertisements announcing the foreclosure sale, and prepared a notice to bidders to be read at the foreclosure sale. Although the notice to bidders purported to disclose the "encumbrances and restrictions . . . prior in right to the mortgage being foreclosed," it listed only outstanding taxes that might be owed to the town of Cromwell because Carta, relying on the court's foreclosure orders, had concluded that the mortgage subject to the foreclosure sale was a first mortgage. The posted sign, newspaper advertisement, and notice to bidders thus made no reference to the IndyMac mortgage. Carta later testified that, if he had known that the property was subject to a prior mortgage, he would have disclosed this information in the notice to bidders.

Prior to the sale, Olsen contacted his attorney, Stephen Small, to inquire about the property. Small, in turn, contacted Carta for additional information. On the basis of his discussion with Carta, Small reported to Olsen that the mortgage being foreclosed was a first mortgage. Small did not perform a title search or inspect the court file, land, or probate court records.

With a bid of $216,000, Olsen was the successful bidder at the foreclosure sale on October 4, 2008, and delivered a deposit of $30,500. Carta prepared a bond for deed, executed by Olsen, which disclosed that taxes owed to the town of Cromwell were prior in right to the plaintiff's mortgage. The bond for deed, however, failed to disclose the existence of the prior IndyMac mortgage. The trial court, *Jones*, *J.*, approved the sale on December 10, 2008.

On December 22, 2008, in the separate foreclosure action brought by IndyMac relating to IndyMac's first mortgage on the property, a judgment of strict foreclosure was rendered. Law days were set for March 23, 2009, and subsequent days. Nevertheless, the plaintiff's counsel, who concurrently represented IndyMac and the plaintiff in their respective foreclosure actions involving the same property, did not bring this development to the attention of the court, the committee, or Olsen or his attorney.

Meanwhile, Small prepared for the closing by performing a title search, which revealed the existence of the IndyMac mortgage and lis pendens. Small did not

contact the parties or the court to clarify this situation, or request that the sale be set aside or postponed. Instead, Small reviewed an entry on the Judicial Branch website, which, due to a clerical error, incorrectly reported that the IndyMac mortgage had been satisfied. Small did not review the official court or land records, which would have revealed that the online entry was incorrect. Small thereafter issued a title insurance policy to Olsen that failed to except the IndyMac mortgage.

The closing took place on January 21, 2009. Olsen testified that he relied on Small's assurances of title in closing the sale. Olsen tendered the balance of the purchase price to Carta, who delivered the committee deed to Olsen. Olsen immediately transferred his interest in the property to 17 Ridge Road, LLC, by quitclaim deed.

Following the closing, on February 2, 2009, the plaintiff filed a motion for determination of priorities and for supplemental judgment. In support of the motion, the plaintiff submitted an affidavit of debt, which incorrectly represented that the plaintiff was "the holder and owner of the *first mortgage*" on the property, even though the plaintiff's counsel also represented IndyMac, the actual holder of the first mortgage, and therefore knew that IndyMac had obtained a judgment of strict foreclosure on December 22, 2008. (Emphasis added.) Thereafter, on February 26, 2009, the trial court ordered a disbursement of $91,854.27, which was paid to the plaintiff.[3] The estate filed a similar motion several weeks later, which the court granted. Disbursement was stayed on April 14, 2009, and the court continues to hold the balance of the proceeds.

In the weeks following the closing, the defendants cleaned and restored the property, and paid the outstanding municipal taxes. On April 12, 2009, however, Olsen attempted to enter the property but discovered that a lock box had been installed, which prevented his access. Shortly thereafter, Olsen learned that IndyMac had a prior mortgage on the property and had obtained a judgment of strict foreclosure in December, 2008, several weeks before the closing took place. Consequently, 17 Ridge Road, LLC's interest in the property, for which Olsen had paid $216,000, had been foreclosed.

In response, the defendants filed separate motions to be joined as parties in the present case, which the court, *M. Taylor*, *J.*, granted. On April 23, 2009, Olsen filed a motion to open and to vacate the judgment of foreclosure by sale and the supplemental judgments (motion to open) that had allocated his purchase moneys between the plaintiff and the estate. Counsel for 17 Ridge Road, LLC, indicated to the trial court that it was joining Olsen's motion to open.

The trial court conducted an evidentiary hearing on the motion to open before issuing a memorandum of

decision on August 5, 2010. Among those testifying was the plaintiff's expert witness, Dennis Anderson, an attorney with significant real estate and foreclosure experience, who opined that Small's representation of Olsen fell below the standard of care. Anderson acknowledged, however, that the plaintiff could not reasonably have expected to receive $91,854.27 in proceeds from the foreclosure sale and that such amount effectively constituted a windfall.

In its memorandum of decision, the court, *Holzberg, J.*, concluded that "the combination of Olsen's $216,000 loss and the undeserved windfall of approximately $100,000 each to the plaintiff and the . . . estate require equity to intervene," and therefore granted the motion to open. The trial court underscored the sui generis nature of this case, describing the "series of cascading mistakes" involved and predicting that such a "calamity" would never be repeated. With respect to the conduct of the plaintiff's counsel, which it found "highly relevant to the disposition of this matter," the trial court emphasized its significant concerns. The trial court noted in particular counsel's unquestionable awareness of the IndyMac foreclosure due to his concurrent representation of IndyMac, his failure to correct the court's mistaken impression despite this heightened awareness, and the affirmative representations during the supplemental judgment proceedings that the plaintiff was the holder of a first mortgage on the property. Specifically, the trial court explained that, "at the time of the entry of the judgment of foreclosure by sale, through and including the sale itself and subsequent closing, [the] plaintiff's counsel or his firm was fully aware of the existence of the [prior] IndyMac mortgage . . . . That knowledge is indisputable because the same counsel represented IndyMac in the foreclosure of its first mortgage and filed notice of lis pendens on the land records with respect to both foreclosures. Further, [the] plaintiff's counsel filed a series of motions for determination of priorities and supplemental judgment in the [present] action, in which [he] continued to incorrectly assert that [the plaintiff] was the holder of the first mortgage on the property . . . . Throughout the pendency of [the present] action, and as late as April 14, 2009, when the court granted the . . . estate's motion for supplemental judgment, [the plaintiff's] counsel inexplicably failed to raise the issue, despite multiple opportunities to correct the mistaken conclusion of the court, its committee, [Olsen] and [Olsen's] attorney as to the priority of the [plaintiff's] mortgage."

After granting the motion to open, the trial court instructed Olsen to file a proposed order "specifying with particularity the relief [that] he seeks by way of a final order," and invited all other parties to do so as well. In response, Olsen and 17 Ridge Road, LLC, jointly submitted proposed orders. The plaintiff then filed a

motion in opposition to these proposed orders, and the trial court never issued a final order.

The plaintiff appealed to the Appellate Court from the trial court's decision to grant the motion to open,[4] claiming that the trial court (1) improperly opened the judgments because it lacked authority to do so, and (2) incorrectly concluded that the defendants had standing to pursue their claims against the plaintiff. See *Citibank, N.A.* v. *Lindland*, 131 Conn. App. 653, 656, 666, 27 A.3d 423 (2011). The Appellate Court agreed with the plaintiff on both claims and reversed the trial court's decision. See id., 659, 670. Thereafter, the defendants appealed to this court, and we granted certification to appeal, limited to the following question: "Did the Appellate Court properly conclude that the trial court lacked the equitable authority to open a judgment of foreclosure by sale under the circumstances of this case?"[5] *Citibank, N.A.* v. *Lindland*, 303 Conn. 906, 31 A.3d 1180 (2011).

The defendants claim that the Appellate Court failed to recognize that they sought a remedy relating to the proceeds from the sale rather than the property; thus, even if the trial court were stripped of jurisdiction over the property when title vested in the purchaser, the court still possessed authority to allocate the proceeds at the supplemental judgment proceedings in accordance with the equities of the case. Relatedly, the defendants claim that the Appellate Court incorrectly concluded that they lacked standing to intervene in the supplemental judgment proceedings during which the amount that Olsen paid for the property was to be allocated.

The defendants further claim that the Appellate Court incorrectly concluded that the trial court lacked authority to open the judgment of foreclosure because of the extraordinary factual circumstances of the case, in which virtually all of the actors involved in the transaction made errors, including the court and the committee as an arm of the court. Equitable relief is necessary in the present case, the defendants maintain, to correct the court's own mistake and to prevent the plaintiff from obtaining an undeserved windfall, and the court is empowered to undertake such action when fraud, mistake, or surprise has inequitably infected the transaction. The defendants further note that, subject to certain equitable exceptions; see, e.g., *New Milford Savings Bank* v. *Jajer*, 244 Conn. 251, 260, 708 A.2d 1378 (1998); the legislature has, under General Statutes § 49-15, restricted the opening of judgments of *strict* foreclosure after title has vested in the encumbrancer, but no equivalent statutory proscription exists with respect to judgments of foreclosure by sale and the vesting of title in the purchaser. Thus, the defendants claim that the Appellate Court improperly expanded this rule without appropriately accounting for either this legislative dis-

tinction or the different status of a purchaser as compared to the holder of the equity of redemption.

The plaintiff, however, asserts that the Appellate Court correctly concluded that the trial court lacked authority to open the judgment of foreclosure in the present case after title had vested in the purchaser. Additionally, the plaintiff maintains that this appeal is moot because we did not grant certification on the issue of whether the Appellate Court correctly concluded that the defendants lacked standing; the plaintiff asserts that the Appellate Court therefore correctly and definitively resolved the issue of standing. The plaintiff alternatively maintains that, even if this court considers and resolves the standing question in favor of the defendants, equity cannot afford them relief under the facts of this case because the predicament facing the defendants was attributable, in part, to the conduct of their attorney and a lack of due diligence, and, therefore, was not "unmixed with negligence . . . ."[6] (Internal quotation marks omitted.)

I

Because the defendants' standing claim implicates our subject matter jurisdiction over this appeal; see, e.g., *Soracco* v. *Williams Scotsman, Inc.*, 292 Conn. 86, 90, 971 A.2d 1 (2009); we begin by considering that claim. Before reaching the substance of the standing claim, however, we address preliminarily the plaintiff's argument regarding whether this issue is appropriately before this court. Specifically, the plaintiff asserts that the manner in which we granted certification[7] does not allow for review of the Appellate Court's conclusion that neither Olsen nor 17 Ridge Road, LLC, had standing to join the present action as defendants and to seek to open the judgments. Accordingly, the plaintiff maintains that, under Practice Book § 84-9,[8] the defendants may not challenge the Appellate Court's determination that they lacked standing. We disagree.

As the defendants observe, this court did not grant certification with respect to the two distinct questions that they formulated[9] but, rather, recast those questions into a single, broader question involving the propriety of the Appellate Court's conclusions "under the circumstances of this case . . . ." *Citibank, N.A.* v. *Lindland*, supra, 303 Conn. 906. The defendants therefore contend that the certified question, as framed by this court, necessarily encompasses the Appellate Court's conclusions concerning standing and the trial court's authority to open the judgments, as both are intertwined under the unique factual circumstances of the present case. We agree with the construction of the certified question that the defendants advance and thus conclude that the issue of their standing is appropriately before us.

We also note that our framing of the certified question addressed the trial court's authority to consider the

motion to open the judgment of foreclosure and did not expressly refer to the supplemental judgments, whereas the question proposed by the defendants refers to "foreclosure judgments . . . ." The briefs of the parties and the decisions of the Appellate Court and the trial court have treated the issue as encompassing the motions to open the supplemental judgments, and, accordingly, we treat the motion to open the supplemental judgments as within the scope of, and ultimately dispositive of, the certified question.

We turn next to the issue of whether the Appellate Court correctly concluded that the trial court improperly had determined that the defendants had standing to be joined as defendants, and that their lack of standing deprived the trial court of jurisdiction to consider Olsen's motion to open and to grant any relief requested therein. It is well established that, "[i]f a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause. . . . A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Pond View, LLC* v. *Planning & Zoning Commission*, 288 Conn. 143, 155, 953 A.2d 1 (2008).

With respect to the applicable legal principles, we have explained that "[s]tanding is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 214, 982 A.2d 1053 (2009). Nevertheless, "[s]tanding is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Internal quotation marks omitted.) *Canty* v. *Otto*, 304 Conn. 546, 556, 41 A.3d 280 (2012). "These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy." (Internal quotation marks omitted.) *Pond View, LLC* v. *Planning & Zoning Commission*, supra, 288 Conn. 155. "Standing [however] requires no more than a colorable claim of injury . . . ." (Internal quotation marks omit-

ted.) *Electrical Contractors*, *Inc.* v. *Dept. of Education*, 303 Conn. 402, 411, 35 A.3d 188 (2012).

"It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. . . . There are two general types of aggrievement, namely, classical and statutory; either type will establish standing, and each has its own unique features." (Citations omitted.) *Soracco* v. *Williams Scotsman*, *Inc.*, supra, 292 Conn. 91–92.

"Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the [controversy], as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the [alleged conduct] has specially and injuriously affected that specific personal or legal interest." (Internal quotation marks omitted.) *Pond View*, *LLC* v. *Planning & Zoning Commission*, supra, 288 Conn. 156.

The Appellate Court nevertheless reasoned that, notwithstanding these principles, "a purchaser at a foreclosure sale who has consummated the closing . . . does not have standing to join the supplemental proceedings in order to seek the refund of his purchase price on the ground that a recorded, outstanding priority lien existed." *Citibank*, *N.A.* v. *Lindland*, supra, 131 Conn. App. 668–69. The Appellate Court further explained that "supplemental proceedings in a foreclosure action are not a means by which foreclosure sale purchasers, dissatisfied with the condition of the property purchased or the title to the property received, may seek either abatement or [a] refund of the purchase price." Id., 669. In the alternative, the Appellate Court also reasoned that, "even if a successful bidder at a foreclosure sale generally had a right to intervene in the supplemental proceedings to seek the return of his purchase price after taking title, which he does not, Olsen, who no longer had any individual interest in the property [because he had transferred it to 17 Ridge Road, LLC], could not pursue such right." Id., 670. Thus, under the Appellate Court's framework, there never would be a mechanism to correct the errors involved in this case because Olsen had transferred his interest in the property to 17 Ridge Road, LLC, and 17 Ridge Road, LLC, had not expended the funds used to purchase the property. See id.

The Appellate Court also explained that "[t]he purpose of supplemental proceedings is to adjudicate the rights of lienholders to the funds realized from the sale after the sale has been ratified by the court." Id., 669. This is indisputably an important function of supplemental proceedings, but, as the authors of a leading treatise explain, "[t]he supplemental judgment performs a variety of functions. Not only does it ratify and confirm the sale, but it also determines the priorities of the encumbrancers and finds the debt due to each,

as well as orders disbursement of the expenses of the sale and possession to the successful bidder." (Footnote omitted.) 2 D. Caron & G. Milne, Connecticut Foreclosures (5th Ed. 2011) § 20-4:3, p. 55; see also 1 D. Caron & G. Milne, supra, § 9-1, p. 435. This description of the purposes of the supplemental judgment procedure suggests that it is the mechanism to adjudicate all claims on the proceeds paid into the court and to determine their priorities. This would include the claims of the mortgager and the purchaser, in addition to those of lienors.

By way of analogy, if a successful bidder at a closing mistakenly pays more than the agreed on amount because of an accounting error, and the error is not discovered until after title has vested in the purchaser, the purchaser would have standing to intervene to recoup the overpayment during the supplemental proceedings. We see no reason why a more restrictive standing approach would be warranted under the facts of the present case, given that, in both instances, the purchaser seeks to correct a procedural error relating to the circumstances surrounding the purchase.

In the present case, Olsen possessed a specific legal interest in the funds used to purchase the property. As we noted previously, Olsen, as the purchaser, expended $216,000 to obtain the property, which he immediately transferred to 17 Ridge Road, LLC, of which he had a 50 percent ownership interest; within three months of the closing, that interest had been foreclosed, and neither Olsen nor 17 Ridge Road, LLC, had received any benefit from Olsen's acquisition. The supplemental judgments Olsen sought to open related to the distribution of the purchase moneys that Olsen had expended. Under the classical aggrievement test, in light of the fact that Olsen had caused the purchase moneys to be deposited with the court, which were subsequently allocated between the plaintiff and the estate, there can be little doubt that Olsen possessed a personal stake in the opening of the judgments and that he has demonstrated a colorable claim of injury. See, e.g., *Pond View, LLC* v. *Planning & Zoning Commission*, supra, 288 Conn. 155–56. Because "[s]tanding is not a technical rule intended to keep aggrieved parties out of court"; (internal quotation marks omitted) *Canty* v. *Otto*, supra, 304 Conn. 556; we conclude that the Appellate Court incorrectly determined that Olsen lacked standing under the circumstances of the present case.

With respect to the Appellate Court's conclusion that 17 Ridge Road, LLC, lacked standing, however; see *Citibank, N.A.* v. *Lindland*, supra, 131 Conn. App. 670; we do not disturb that conclusion because that issue has been improperly briefed and therefore abandoned. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis,

rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 124, 956 A.2d 1145 (2008); accord *State* v. *T.R.D.*, 286 Conn. 191, 213–14 n.18, 942 A.2d 1000 (2008).

The defendants devote little more than one page of their brief to their standing argument, the bulk of which provides support for Olsen's standing, not that of 17 Ridge Road, LLC. The defendants advance no specific reason why 17 Ridge Road, LLC, is aggrieved under the circumstances, other than to recite that it has been "divested of its ownership in the property." Indeed, rather than establishing *17 Ridge Road, LLC's* aggrievement directly, the defendants simply describe *Olsen's* injury and the inequity that would result if neither Olsen nor 17 Ridge Road, LLC, was able to seek reimbursement. Accordingly, we conclude that the defendants inadequately briefed the issue of 17 Ridge Road, LLC's standing to intervene as a defendant, and, therefore, the issue is deemed abandoned.

II

We turn next to the primary issue in this appeal, namely, whether the Appellate Court correctly concluded that the trial court lacked authority to open the judgment of foreclosure and related supplemental judgments in this case after title had vested in Olsen, the purchaser. It is well established that "[a] foreclosure action is an equitable proceeding . . . [and that] [t]he determination of what equity requires is a matter for the discretion of the trial court." (Internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Angle*, 284 Conn. 322, 326, 933 A.2d 1143 (2007). Similarly, the determination of whether to grant a motion to open a judgment rests in the trial court's sound discretion. See, e.g., *Priest* v. *Edmonds*, 295 Conn. 132, 138, 989 A.2d 588 (2010); see also *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 95, 952 A.2d 1 (2008) ("We do not undertake a plenary review of the merits of a decision of the trial court to grant or to deny a motion to open a judgment. The only issue on appeal is whether the trial court has acted unreasonably and in clear abuse of its discretion." [Internal quotation marks omitted.]).

The issue before us in the present case, however, is not whether the trial court properly exercised its discretion in granting the motion to open but, rather, whether the trial court had authority to do so under the circumstances of this case. See, e.g., *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 239–40, 796 A.2d 1164 (2002). This presents a question of law over which we exercise plenary

review. See id. ("Whether the trial court had the power to issue the order, as distinct from the question of whether the trial court properly exercised that power, is a question involving the scope of the trial court's inherent powers and, as such, is a question of law. . . . Accordingly, our review is plenary." [Citation omitted.]).

Olsen[10] advances several arguments in support of his position that the Appellate Court incorrectly concluded that the trial court lacked authority to grant the motion to open. Olsen claims that, in evaluating the trial court's authority to open the judgments, the Appellate Court improperly focused solely on the trial court's authority over the foreclosed *property*, rather than the *proceeds from the sale* implicated in the supplemental judgment proceedings, a portion of which is still being held by the court. Olsen further claims that the Appellate Court incorrectly concluded that the trial court lacked authority to open the judgments in the present case, asserting that, under this court's precedent, a trial court is authorized to open a judgment of foreclosure when equity so requires, and this court never has recognized the vesting of title as an absolute bar to the opening of a judgment of foreclosure by sale. Finally, Olsen asserts that the decision of the Appellate Court improperly narrowed the import of this court's decision in *Citicorp Mortgage, Inc.* v. *Burgos*, 227 Conn. 116, 629 A.2d 410 (1993), limiting it to cases of fraud, rather than to fraud, mistake, and surprise.

The plaintiff, by contrast, maintains that the Appellate Court correctly concluded that the trial court improperly had determined that it possessed authority to grant the motion to open in the present case because title had vested in the purchaser, which strips the court of its jurisdiction over the property. The plaintiff further asserts that, although the proceeds from the sale then take the place of the property, and the court has jurisdiction over the proceeds such that it may conduct supplemental proceedings to distribute the proceeds, the Appellate Court correctly concluded that a purchaser cannot intervene in supplemental proceedings to seek a refund of the purchase price because of the limited functions of such proceedings. Finally, in response to Olsen's claim regarding the Appellate Court's construction of our decision in *Burgos*, the plaintiff asserts that there was no mistake or surprise in the present case to justify equitable relief under *Burgos*. We agree with Olsen as to his supplemental judgment claim and, therefore, need not reach his remaining arguments.

With respect to the supplemental judgment proceedings, the Appellate Court observed that, "[o]nce title to the property vests in the purchaser, the property itself is placed beyond the power of the court. . . . At that point, the proceeds from the sale take the place of the property, and the court engages in whatever supplemen-

tal proceedings may be required to distribute those proceeds." (Citation omitted.) *Citibank, N.A.* v. *Lindland*, supra, 131 Conn. App. 663.

As Olsen explains, however, he does not seek any remedy relating to the property itself; it is the proceeds from the sale and the restitution thereof that is at issue. Thus, in Olsen's view, the trial court's authority over the property is immaterial because he does not seek title to the property, and the court's authority over the proceeds of the sale is clear.[11] See General Statutes § 49-27. We agree.

Although the Appellate Court acknowledged that the vesting of title did not strip the court of its jurisdiction over the proceeds from the sale; see *Citibank, N.A.* v. *Lindland*, supra, 131 Conn. App. 663; it nevertheless concluded that a purchaser could not intervene in supplemental proceedings to seek a return of the purchase price, even under the circumstances of the present case, because of the function of supplemental judgment proceedings. Id., 668–69. As we discussed previously, however, supplemental judgments serve many functions, some of which may indeed involve the purchaser. See 2 D. Caron & G. Milne, supra, § 20-4:3, p. 55 ("The supplemental judgment performs a variety of functions. Not only does it ratify and confirm the sale, but it also determines the priorities of the encumbrancers and finds the debt due to each, as well as orders disbursement of the expenses of the sale and possession to the successful bidder." [Footnote omitted.]); see also 1 D. Caron & G. Milne, supra, § 9-1, p. 435. Nothing about the nature of the supplemental judgment compels the conclusion that the court is stripped of its jurisdiction over the proceeds of the sale once the purchaser takes title to the property.

We therefore are persuaded that the supplemental judgment process comfortably accommodates a limited role for the purchaser under circumstances such as those in the present case. Moreover, because we concluded that Olsen did have standing to join the supplemental proceedings, we conclude that there is no jurisdictional barrier to the trial court's opening of the supplemental judgments in the present case. Because the relief that Olsen seeks relates to the proceeds from the sale, rather than to the property itself, and, therefore, would be addressed within the supplemental judgment process without regard to the status of the property, our conclusion that the trial court had jurisdiction to open the supplemental judgments in the present case obviates the need to resolve whether the Appellate Court correctly determined that the passing of title divested the trial court of jurisdiction to open the judgment of foreclosure by sale.[12] Accordingly, we reverse the judgment of the Appellate Court insofar as that court concluded that the trial court lacked authority to open the supplemental judgments.

III

A

As an alternative ground for affirmance, the plaintiff claims that the Appellate Court correctly concluded that the trial court lacked authority to open the judgment of foreclosure and related supplemental judgments in the present case because Olsen failed to file a timely motion to open the judgments as required under General Statutes § 52-212a,[13] thereby depriving the trial court of authority to consider such a motion. The plaintiff maintains that the trial court no longer was empowered to entertain a motion to open the judgment of foreclosure and the supplemental judgments as of four months after August 4, 2008, the date on which the trial court rendered judgment of foreclosure by sale.

In applying § 52-212a, the Appellate Court considered both August 4, 2008, and December 10, 2008, the date on which the committee sale was approved, and posited that the motions were untimely using either date. *Citibank, N.A.* v. *Lindland*, supra, 131 Conn. App. 661. Framing this restriction "as one affecting the court's substantive authority rather than . . . its jurisdiction,"[14] however; id.; the Appellate Court determined that it was "not presented with a situation in which the timeliness of the motion pursuant to § 52-212a is dispositive . . . ." Id. Instead, the Appellate Court relied on this court's statement that "[o]ur case law on [§ 52-212a] recognizes that, in some situations, the principle of protection of the finality of judgments must give way to the principle of fairness and equity." (Internal quotation marks omitted.) Id., quoting *Kim* v. *Magnotta*, 249 Conn. 94, 109, 733 A.2d 809 (1999); cf. *Connecticut Savings Bank* v. *Obenauf*, 59 Conn. App. 351, 356, 758 A.2d 363 (2000) ("[when] there is a judicial action of a trial court that requires a change in a judgment because it affects justice, an appellate court should effect that change" [internal quotation marks omitted]).

Although we agree that § 52-212a does not alter the outcome of this action, we analyze the time constraints in a manner different from the Appellate Court. As we noted in part II of this opinion, the defendants, in their briefs and at oral argument before this court, explained that Olsen sought only a return of the purchase price and did not seek any relief relative to the property itself. Thus, because the purchase price was allocated between the plaintiff and the estate during the supplemental judgment proceedings, rather than the proceedings leading to the judgment of foreclosure by sale, we conclude that February 26, 2009, the date on which the trial court rendered supplemental judgment and allocated $91,854.27 to the plaintiff, is the relevant date for purposes of § 52-212a. Cf. *Nelson* v. *Dettmer*, 305 Conn. 654, 672, 676, 46 A.3d 916 (2012) (evaluating

"when a judgment sought to be set aside is 'rendered or passed' under § 52-212a" and determining that four month period began on date of denial of motion to reargue, not date on which original judgment was rendered). Because Olsen filed his motion to open on April 23, 2009, which was well within four months of February 26, 2009, we conclude that § 52-212a did not limit the trial court's authority to open the supplemental judgments, which thereby could enable the court to order that the purchase price be returned to Olsen.

If we were instead to conclude that the date on which judgment of foreclosure by sale was rendered, rather than the date on which the supplemental judgment was rendered, governed the operation of § 52-212a, the results would prove anomalous and illogical. Under such an interpretation, a supplemental judgment that is rendered more than four months after the judgment of foreclosure is rendered—as in the present case—never could be opened. Yet, a supplemental judgment is, by definition, a type of judgment, and we cannot fathom why a motion to open could not be directed at a supplemental judgment just as it can be directed at any other judgment. This further supports our conclusion that the trial court's authority to open the supplemental judgments in the present case was not precluded by the four month limitation set forth in § 52-212a.

B

Finally, the plaintiff offers several other alternative grounds for affirming the judgment of the Appellate Court, all of which essentially depend on the plaintiff's assertion that the conduct of Olsen's counsel precludes the trial court from exercising its equitable authority.[15] Although the plaintiff frames these arguments in terms of challenging the trial court's authority to consider the motion to open, these claims instead appear to challenge the relief that the trial court may award to Olsen once the judgments are opened.

It is well established that our review is limited to appeals from final judgments. See General Statutes § 52-263. As we noted previously; see footnote 4 of this opinion; a decision on a motion to open a judgment ordinarily is not considered a final judgment from which an appeal may lie. See, e.g., *Nelson* v. *Dettmer*, supra, 305 Conn. 672. An exception applies when, as in the present case, the appeal challenges the trial court's authority to open the judgment. See id. The plaintiff's arguments regarding the purported negligence of Olsen's attorney and the effect of the lis pendens statute, however, seek to prevent the trial court from exercising its discretion to fashion an equitable remedy after having opened the judgment. Such issues are not properly before this court because the appeal was taken from the granting of the motion to open, and the trial court had not issued a final order. Accordingly, these additional arguments are beyond the scope of our review.[16]

We note that the record reflects the aforementioned "highly relevant" conduct of the plaintiff's counsel, who elected to remain silent in the face of a known mistake rather than to bring the error to the trial court's attention. As we noted previously, the plaintiff's counsel also represented IndyMac, and, therefore, was aware that IndyMac had obtained a judgment of strict foreclosure on December 22, 2008. Nevertheless, the plaintiff's counsel did not bring this fact to the attention of the court, the committee, or Olsen, the purchaser, prior to the closing on January 21, 2009. And yet, the plaintiff's counsel still sought a distribution of the proceeds of the sale, representing to the court in an affidavit of debt that the plaintiff was the holder of the first mortgage on the property. The conduct of the plaintiff's counsel in failing to correct the misimpression that his client was the holder of a first mortgage, and in affirmatively representing as much in subsequent submissions to the court for the purpose of obtaining a disbursement of the proceeds of the sale, raises significant concerns.[17] Accordingly, on remand, the trial court should conduct a hearing to determine whether such conduct warrants a referral to the Statewide Grievance Committee or an exercise of its disciplinary authority under Practice Book § 2-44.[18]

The judgment of the Appellate Court is reversed insofar as that court determined that Olsen lacked standing to intervene in the case and that the trial court lacked authority to grant Olsen's motion to open with respect to the supplemental judgments, and the case is remanded to the Appellate Court with direction to remand the case to the trial court with direction to grant Olsen's motion to open with respect to the supplemental judgments only and for further proceedings according to law; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

* This appeal was originally scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Palmer, Zarella, Eveleigh, McDonald, Espinosa and Vertefeuille. Justice Vertefeuille, however, has not participated in the argument of this case, and neither Justice Palmer nor Justice Vertefeuille has participated in the decision of this case.

[1] The named defendant, Debra Lindland, executrix of the estate of Madlyn Landin, did not take part in this appeal, nor did Lindland in her individual capacity, David Landin, Donna Hassler, Middlesex Hospital, or the Connecticut Department of Revenue Services, who also were named as defendants in the complaint. In the interest of simplicity, we hereinafter refer to Olsen and 17 Ridge Road, LLC, collectively as the defendants.

[2] The plaintiff's expert witness, Dennis Anderson, later acknowledged this error and agreed that the plaintiff had a duty to present the court with correct calculations.

[3] In the trial court's memorandum of decision on Olsen's motion to open the foreclosure judgment, the trial court clarified that it was unaware of the existence of the prior IndyMac mortgage when it rendered the supplemental judgments.

[4] "Although it is well established that an order opening a judgment ordinarily is not a final judgment [for purposes of appeal] . . . [t]his court . . . has recognized an exception to this rule [when] the appeal challenges the power of the court to act to set aside the judgment. . . . Thus, [a]n order of the trial court opening a judgment is . . . an appealable final judgment

[when] the issue raised is the power of the trial court to open [the judgment] in light of the four month limitation period of [General Statutes] § 52-212a." (Internal quotation marks omitted.) *Nelson* v. *Dettmer*, 305 Conn. 654, 672, 46 A.3d 916 (2012).

[5] Although the parties, the trial court, and Appellate Court use the phrase "equitable authority," we note that what is at issue is not the court's exercise of its discretion to open the judgment and grant whatever relief is appropriate but, rather, the court's authority to act. See part II of this opinion. Accordingly, we refer simply to the court's authority to open the judgment rather than its equitable authority.

[6] The plaintiff's arguments regarding the negligence of Olsen's attorney and the effect of the lis pendens statute do not address the trial court's authority to open the judgment but, rather, are directed at the relief that the defendants seek. Thus, for the reasons set forth in part III B of this opinion, these arguments are beyond the limited scope of our review in the present case.

[7] As we noted previously, our grant of certification in the present case was limited to the following question: "Did the Appellate Court properly conclude that the trial court lacked the equitable authority to open a judgment of foreclosure by sale under the circumstances of this case?" *Citibank, N.A.* v. *Lindland*, supra, 303 Conn. 906.

[8] Practice Book § 84-9 provides in relevant part: "The issues which the appellant may present are limited to those raised in the petition for certification, except where the issues are further limited by the order granting certification."

[9] In their petition for certification, the defendants requested that we consider the following questions: (1) "Did the Appellate Court improperly determine that the trial court lacked jurisdiction to open foreclosure judgments after title had vested, where the trial court acted on equitable grounds to [prevent] the foreclosing bank and defaulting mortgagor from receiving undeserved windfalls, and where the erroneous judgments resulted from a 'series of cascading mistakes' made by: 1) the trial court; 2) the committee; 3) the court clerk; 4) the foreclosing bank; 5) the bank's attorney; and 6) the purchaser's attorney?"

(2) "Did the Appellate Court improperly determine that a purchaser who was misled at a foreclosure sale and suffered a substantial monetary loss as a result, and that purchaser's company, which obtained title to the property contemporaneously with the purchaser, lacked standing to seek [a] refund of the purchase price paid for that property at the sale?"

[10] Because of our conclusion in part I of this opinion that the issue of 17 Ridge Road, LLC's standing has been abandoned, we hereinafter refer only to Olsen's claims.

[11] The court's authority with respect to the proceeds of the sale is expressly set forth in General Statutes § 49-27, which provides in relevant part: "The proceeds of each such sale shall be brought into court, there to be applied if the sale is ratified, in accordance with the provisions of a supplemental judgment then to be rendered in the cause, specifying the parties who are entitled to the same and the amount to which each is entitled. . . ."

[12] We note, however, that this court never has adopted this purported requirement, and the legislature likewise has limited the title based statutory restriction to the context of judgments of strict foreclosure. See General Statutes § 49-15. Moreover, despite this statutory bar, we previously have concluded that opening a judgment after title has vested in a strict foreclosure case is permissible if equity so requires. See *New Milford Savings Bank* v. *Jajer*, supra, 244 Conn. 257, 260. In *Jajer*, the plaintiff, New Milford Savings Bank, brought an action for foreclosure in which the plaintiff inadvertently referred to only two of the three properties included in the original mortgage conveyance. Id., 253. After the trial court rendered a judgment of strict foreclosure and title had vested in the plaintiff, the plaintiff became aware of the defect in its foreclosure action, which caused title to the omitted property to remain clouded. See id., 253–54. The trial court granted the plaintiff's motion to open the judgment of strict foreclosure and permitted it to amend its foreclosure complaint to include the inadvertently omitted parcel. Id., 254. The Appellate Court reversed the judgment of the trial court, concluding that, by operation of § 49-15, the trial court lacked the authority to open the judgment after title had vested absolutely in the plaintiff. Id., 254–55. This court reversed the Appellate Court's judgment, concluding that the trial court did have jurisdiction to open the judgment of foreclosure. Id., 260, 264, 268. We explained that "the equitable nature of foreclosure proceedings persuades us that § 49-15 does not preclude the trial court from

exercising its discretion to open the judgment of strict foreclosure in the circumstances of [the] case." Id., 257.

The court in *Jajer* also explained that "foreclosure is peculiarly an equitable action"; (internal quotation marks omitted) id., 256; and, therefore, "the trial court may examine all relevant factors to ensure that complete justice is done." (Internal quotation marks omitted.) *Citicorp Mortgage, Inc.* v. *Burgos*, supra, 227 Conn. 120.

[13] General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

[14] "[T]he issue of subject matter jurisdiction is distinct from the authority to act under a particular statute. Subject matter jurisdiction involves the authority of a court . . . to adjudicate the type of controversy presented by the action before it. . . . A court . . . does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Although related, the court's . . . authority to act pursuant to a statute is different from its subject matter jurisdiction. The power of the court . . . to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute." (Internal quotation marks omitted.) *Pereira* v. *State Board of Education*, 304 Conn. 1, 43 n.30, 37 A.3d 625 (2012).

[15] Specifically, the plaintiff offers the following additional grounds for affirming the judgment of the Appellate Court: (1) the negligence of Olsen's attorney; (2) the imputation of such negligence to Olsen under principles of agency; (3) the operation of the lis pendens statute, which gave Olsen and his attorney constructive notice of the first mortgage; and (4) the doctrine of superseding cause, under which the plaintiff claims that the negligence of Olsen's attorney, although not the sole cause of Olsen's loss, was the superseding cause of that loss.

[16] Even if we were to accept the plaintiff's arguments that these factors limited the trial court's authority to open the judgments in this case, we would regard with skepticism the plaintiff's assertion that equity precludes Olsen from obtaining any relief on the ground that Olsen's attorney, like virtually every actor but Olsen himself, made mistakes that contributed to Olsen's plight and the plaintiff's windfall. See, e.g., *Farmers & Mechanics Savings Bank* v. *Sullivan*, 216 Conn. 341, 354, 579 A.2d 1054 (1990) ("[s]ince a mortgage foreclosure is an equitable proceeding, either a forfeiture or a windfall should be avoided if possible"). In support of this position, the plaintiff relies on a long line of cases that have limited the application of equitable relief when the party seeking such relief has played a role in creating the predicament at issue. See, e.g., *Duncan* v. *Milford Savings Bank*, 134 Conn. 395, 401–403, 58 A.2d 260 (1948); *Palverari* v. *Finta*, 129 Conn. 38, 43, 26 A.2d 229 (1942); *Hoey* v. *Investors' Mortgage & Guaranty Co.*, 118 Conn. 226, 231, 171 A. 438 (1934); *Hayden* v. *R. Wallace & Sons Mfg. Co.*, 100 Conn. 180, 186–88, 123 A. 9 (1923); *Jarvis* v. *Martin*, 77 Conn. 19, 20–21, 58 A. 15 (1904). As we traditionally have explained, "[e]quity will not, save in rare and extreme cases, relieve against a judgment rendered as the result of a mistake on the part of a party or his counsel, unless the mistake is unmixed with negligence, or . . . unconnected with any negligence or inattention on the part of the judgment debtor, or . . . when the negligence of the party is not one of the producing causes." (Internal quotation marks omitted.) *Jarvis* v. *Martin*, supra, 21. Granting relief to Olsen in the present case, however, would not constitute a departure from this long established principle. Instead, we are of the view that the circumstances of the present case, which the trial court aptly described as "sui generis," constitute precisely the sort of "rare and extreme [case]"; *Jarvis* v. *Martin*, supra, 21; in which equity permits a court to provide relief in response to an egregious mistake. See *Lomas & Nettleton Co.* v. *Isacs*, 101 Conn. 614, 620–21, 127 A. 6 (1924) (observing that this court has "upheld the power of a court of equity to grant relief from the consequences of an innocent mistake, although the mistake was not unmixed with negligence . . . and although it was a mistake of law . . . [when] the failure to do so would allow one to enrich himself unjustly at the expense of another" [citations omitted]). This is particularly true in the present case given the "highly relevant" conduct of the plaintiff's counsel in creating these extraordinary circumstances and given the ease with which this predicament might have been averted if the plaintiff's counsel had addressed the court with greater accuracy.

[17] We express no view regarding the conduct of the plaintiff's counsel but merely recite facts from the record of this case that give us cause for concern.

[18] Practice Book § 2-44 provides in relevant part: "The superior court may, for just cause, suspend or disbar attorneys . . . ."