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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3531-21

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE
FOR THE HOLDERS OF THE
FIRST FRANKLIN MORTGAGE
LOAN TRUST 2006-FF9,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-FF9,

Plaintiff-Respondent,

v.

TREVOR SAHADATALLI,

Defendant-Appellant,

and

MRS.TREVOR SAHADATALLI,
HIS WIFE, ESHWAREE
SAHADATALLI, GAVIN
SAHADATTALLI, MRS.GAVIN
SHADATALLI, HIS WIFE,
WELLS FARGO BANK NA,
BANCO POPULAR NORTH
AMER, and STATE OF NEW
JERSEY,

Defendants.

Submitted September 28, 2023 – Decided November 9, 2023

Before Judges Vernoia and Walcott-Henderson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket
No. F-032098-14.

Trevor Sahadatalli, appellant pro se.

Parker McCay, PA, attorneys for respondent (Eugene
R. Mariano, on the brief).

PER CURIAM

In this mortgage foreclosure matter, defendant Trevor Sahadatalli appearing as a self-represented litigant,¹ appeals from a May 13, 2022 order denying his motion to vacate the sheriff's sale of mortgaged property located at 94-96 West End Avenue, Newark. Defendant also appeals from a June 24, 2022 order denying his motion for reconsideration. We reverse all orders on appeal.

We begin by summarizing the relevant history of this foreclosure action. On March 8, 2006, defendant executed a note and mortgage to plaintiff's predecessor in interest—NationPoint—in the sum of \$288,000.00, encumbering

¹ This is a foreclosure action against multiple defendants, but Trevor Sahadatalli, appearing pro-se, is the sole appellant appearing.

real property located at 94-96 West End Avenue, Newark. Thereafter, through a series of assignments, plaintiff became assignee of the mortgage.

On February 1, 2008, defendant defaulted on the note and mortgage. Six-and-a-half years later, plaintiff filed its foreclosure complaint. More than two years after the filing of the complaint, plaintiff's September 21, 2016 motion for final judgment was denied. The court later administratively dismissed the complaint without prejudice pursuant to Rule 4:64-8 after a period of inactivity during which the parties pursued loss mitigation. When the parties could not agree to terms, plaintiff filed a motion to reinstate the complaint that the court granted on February 1, 2018.

On March 15, 2018, plaintiff filed a motion for final judgment that the court denied for failure to submit the requisite proof of amount due. On March 27, 2018, before the court issued its ruling on plaintiff's motion, defendants made a motion to vacate final judgment, which was premature because final judgment had not yet been entered. On June 28, 2018, the court denied defendants' motion. On August 21, 2019, plaintiff again made a motion for final judgment, and on September 9, 2019, the court granted plaintiff's unopposed motion and entered final judgment.

On January 7, 2020, defendant Eshwaree Sahadatalli, filed for bankruptcy and the automatic stay which resulted from that filing prevented plaintiff from proceeding with a sale of the property. On February 27, 2020, the bankruptcy court dismissed Eshwaree Sahadatalli's petition. Thereafter, the matter was placed on hold by the foreclosure moratorium due to the COVID-19 pandemic. Following the lifting of the moratorium, plaintiff sought to schedule the sheriff's sale and defendant exercised his right to two statutory adjournments,² which moved the sale to March 8, 2022.

On that date, the Essex County Sheriff sold the property to 94-96 West End Ave Equities LLC (Equities) for \$373,000.00. Equities signed the Acknowledgment of Purchase and Conditions of Sale (Conditions of Sale), which reflects that the property was purchased for the sum of \$373,000.00 and confirms the sheriff received a deposit payment of \$75,000.00 on the date of sale.

According to plaintiff, the sale price was substantially less than the final judgment of \$620,990.16 and, thus, there were no surplus funds available to

² See N.J.S.A. 2A:17-36 (authorizing in pertinent part the sheriff to adjourn the sale of property subject to a final judgment of foreclosure two times "at the request of the debtor").

defendant. The record on appeal does not include any other evidence of additional payments made by Equities to the sheriff to complete the sale.

On March 11, 2022, defendant filed a motion to vacate final judgment pursuant to Rule 4:50-1(d) and (f). The following month, on April 8, 2022, defendant filed a motion to vacate the sheriff's sale. On April 14, 2022, the court entered an order denying defendant's March 11, 2022 motion to vacate final judgment. Defendant moved for reconsideration of the order denying his motion to vacate final judgment.

Subsequently, on May 13, 2022, the court entered orders simultaneously denying defendant's motion to vacate the sheriff's sale and his motion for reconsideration of the order denying his motion to vacate final judgment. A motion to reconsider the order denying defendant's request to vacate the sale followed, and on June 24, 2022, the court denied the application.

Defendant appealed from the court's orders. On August 3, 2022, the court sua sponte issued an amplification pursuant to Rule 2:5-1(b) of its denial of vacatur of the sale. The court found that in its prior orders—the May 13, 2022 and June 24, 2022 orders—it failed to address the extent of defendants' interest and rights as mortgagor and potential third-party beneficiary to the contract between plaintiff and Equities. Additionally, the court requested a limited

remand to give "the parties, the third-party bidder, and sheriff an opportunity to more fully explore and develop the record" on this issue.

On August 16, 2022, we issued a temporary remand order for the court "to consider and develop the record on the issues detailed in [its] August 3, 2022 amplification[.]" and for the proceedings to be completed by September 30, 2022.

Following the remand order, the court scheduled a case management conference with the parties for August 23 and in construing our remand order as a directive to reconsider the motion to vacate sale, if appropriate, listed the return date on the motion to vacate the sheriff's sale for September 23, 2022. As required by our remand order plaintiff and a principal from Equities attended the conference, but defendant did not. The court noted the principal from Equities explained that it intended to complete the sheriff's sale but for the legal proceedings after the sheriff's sale. A few weeks later, plaintiff submitted a supplemental brief but neither defendant, nor Equities submitted any additional briefs or documents for the court to consider.

On September 23, 2022, the return date of the motion to vacate the sale, and with defendant failing to appear, the court issued an amended amplification

reaffirming its May 13, 2022 and June 24, 2022 orders denying defendant's motion to vacate the sale and motion for reconsideration.

There, the court rejected defendant's argument that the sheriff's sale should be vacated because the sale to Equities had not been completed. The judge reasoned the delay in the completion of the sale was attributable to defendant's actions—the filing of motions challenging the judgment and sale—and those actions did not properly provide a basis on which to vacate the sale.

More particularly, the court explained:

[d]efendant ignores the import of their actions as an impediment to a more timely closing. . . . Nonetheless, between March 11, 2022, three days after the [s]heriff's sale, and May 20, 2022, [d]efendant filed four motions (i) to vacate the Final Judgment; (ii) to vacate the [s]heriff's sale; (iii) to reconsider the order denying vacation of the final judgment and (iv) to reconsider the order denying vacation of the [s]heriff's sale. The last of these motions was decided on June 24, 2022.

Thereafter, the court concluded that, despite the limited remand, "its determinations not to vacate the [s]heriff's sale and not to reconsider that decision were correctly made[.]"

On September 28, 2022, defendant filed an appeal of the May 13, 2022 and June 24, 2022 orders, arguing the court erred by denying his motion to

vacate the sheriff's sale because plaintiff failed to present any evidence that the property was actually sold to a successful bidder.

We review an order granting or denying a motion to vacate a sheriff's sale for abuse of discretion. United States v. Scurry, 193 N.J. 492, 502-03 (2008). An abuse of discretion arises "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (internal quotation marks omitted) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 4:65-5 governs sheriff's sales and objections to such sales. The Rule establishes a ten-day period for filing an objection to a sheriff's sale. R. 4:65-5; see Hardyston Nat'l Bank of Hamburg v. Tartamella, 56 N.J. 508, 512 (1970). "A sheriff's sale is automatically confirmed after ten days without an objection being filed." Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 316 (App. Div. 2002). A party may be allowed to file an objection "after the ten-day period and before conveyance of the deed," provided there is "some valid ground for objection." Id. at 317. Valid grounds include "fraud, accident, surprise, irregularity, or impropriety in the sheriff's sale." Ibid. (citing Orange Land Co. v. Bender, 96 N.J. Super. 158, 164 (App. Div. 1967)).

Immediately after a sale, the bidder is required to pay twenty percent of the purchase price. N.J.S.A 2A:50-64(4) (stating "the successful bidder at the sheriff's sale shall pay a [twenty] percent deposit in either cash or by a certified or cashier's check, made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale.").

After the ten-day redemption period, ibid., a sheriff's deed is issued, which by statute must include a thirty-day requirement for all surplus moneys to be brought before the court as the deed:

shall be in substantially the following form: . . . for that purpose a Writ of Execution should issue, directed to the Sheriff of the County of . . . commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into our said Court. . . . And that you have the surplus money, if any there be, before our said Superior Court of New Jersey, aforesaid at Trenton, within [thirty] days after pursuant to R. 4:59-1(a).

[Ibid. (emphasis added).]

Thus, the statute necessarily requires that the sale must be completed within thirty days as a surplus cannot be brought before the court otherwise.

The consequence of a failure to complete the sale is determined by the conditions set forth by the sheriff. See Pressler & Verniero, Current Court Rules, cmt. 5 to Rule 4:65-5 (citing Investors & Lenders v. Finnegan, 249 N.J.

Super. 586 (Ch. Div. 1991) ("Where the sale fails because of the inability of the purchaser to complete it, the rights and liabilities of the purchaser and all other parties in interest will be determined by the conditions of sale prescribed by the sheriff.")).

Generally, these conditions require that "[s]hould the high bidder at a sheriff's sale default, the sheriff must readvertise the sale." Finnegan, 249 N.J. Super. at 592 (Ch. Div. 1991). Here, the conditions of the sale provided that "[i]f the [p]urchaser fails to pay the balance due within [thirty] days, the [s]heriff will resell the property at the earliest possible sale date. The [f]ormer [p]urchaser will be held responsible for all costs and expenses incurred for the prior sale."

There is no dispute that defendant did not timely file the motion to vacate the sheriff's sale within ten days of sale to Equities. However, the issue here is whether the court erred in denying defendant's motion to vacate the sale because of perceived "irregularities" related to Equities failure to pay the bid balance to the sheriff within the thirty-day period prescribed in the Conditions of Sale.

We hold defendant's argument that Equities failed to pay the balance of the bid price within thirty days, as prescribed by the sheriff, is a violation of law

and Conditions of Sale, and thus, sufficient for the court to have vacated the sale.

Defendant challenges the validity of the sale of the foreclosed property to Equities arguing that as "the record lacks evidence of an executed sale, this has established 'irregularities in the conduct of the sale'. . . ." ³ Plaintiff does not dispute that Equities paid only the deposit of \$75,000.00 and not the balance due to complete the sheriff's sale. Instead, plaintiff argues that Equities' failure to pay the balance due is related to defendant's challenge to the sale—in the filing of four motions—including the motion to vacate the sale, and that defendant's actions cast doubt on Equities' ability to gain clear title to the property. However, plaintiff fails to cite any legal authority establishing that the filing of defendant's motions excused Equities' failure to remit the balance due on the bid to the sheriff in accordance with the Conditions of Sale.

Essentially, the judge found that defendant's motions—to vacate final judgment; vacate the sheriff's sale; for reconsideration of the order denying vacatur of final judgment and for reconsideration of the order denying vacatur

³ Although this term is not specifically defined by defendant, we consider that he used this term to establish a valid ground for objection based upon Equities' departure from the requirements set forth in the Conditions of Sale; the failure to timely pay the outstanding balance due on the bid.

of this sheriff's sale—operated as impediments to a more timely closing by Equities. The court reiterated this view in its amended amplification following the limited remand.

We reject the court's reliance on plaintiff and Equities' argument that the bid balance was not paid because defendant exercised his right to file motions, including a motion to vacate the sale of the property.

Additionally, the court erred by relying upon plaintiff's arguments about the impediment to closing the sale and by failing to give effect to the Conditions of Sale, which required Equities, as the successful bidder, to pay the balance of the bid to the sheriff within thirty days of sale. The language in the Conditions of Sale is clear: "the balance of the bid is due and payable within [thirty] days from the [d]ate of [s]ale." By failing to address this requirement, the court abused its discretion by inexplicably departing from the clearly established requirements for the sale set by the sheriff in the Conditions of Sale.

We also find the court's reliance on a statement made by a representative from Equities at the case management conference concerning their intent to proceed with the sale was error. In its amended amplification, the court discussed Equities' appearance at the August case management conference and that an unidentified representative stated Equities intended to proceed with the

sale. However, Equities did not elaborate further or intervene in this case, and it offered no certification or testimony for the court's consideration. The court's reliance on the unidentified representative's statement to conclude that Equities intended to complete the sale and remit the outstanding balance due is of no consequence because it is not supported by competent evidence. See *Rova Farms Resort, Inc. v. Inv'rs Ins. Co.*, 65 N.J. 474, 484 (1974) (quoting *Fagliarone v. Twp. of No. Bergen*, 78 N.J. Super. 154, 155 (App. Div. 1963) ("we do not disturb the factual findings and legal conclusions . . . unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]")). Thus, the court's reliance on the Equities' representative's unsubstantiated statement as a basis to deny defendant's motion constituted an abuse of discretion.

Because we conclude that the judge based his decision on an irrational and incomplete basis by failing to find that the sale did not comply with the requirements set forth in N.J.S.A. 2A:50-64(a)(4), and the Conditions of Sale, we are persuaded the judge abused his discretion by failing to set aside the sale given Equities' failure to complete the sale within thirty days. Accordingly, we


reverse the court's amended order denying defendant's motion to vacate the March 8, 2022 sale.

As we reverse the May 13, 2022 order denying defendant's motion to vacate the sheriff's sale, we need not reach the arguments regarding the denial of the motion for reconsideration.

To the extent we have not addressed any of defendant's arguments, we are satisfied that they are without sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Reserved and remanded for entry of an order to vacate the sale to Equities. 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