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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1274-21

PC7 REO, LLC,

Plaintiff-Respondent,

v.

JOANNE JOHNSON,

Defendant-Appellant,

and

T10 UNISON SITE MANAGEMENT,  
LLC, GERIATRIC & MEDICAL  
SERVICES INC., MONMOUTH  
CO. BOARD OF SOCIAL  
SERVICES, CLARENDON  
NATIONAL INSURANCE  
COMPANY, STATE OF NEW  
JERSEY, MERCER COUNTY  
PROBATION SERVICES, NEW  
JERSEY DEPARTMENT OF  
BANKING AND INSURANCE,  
MEL'S SALES, MERCER  
COUNTY BOARD OF SOCIAL  
SERVICES, NEW CENTURY  
FINANCIAL SERVICES, INC.,  
ADVANCED IMAGING &  
RAD ASSOC, OVERLOOK

EMPLOYEES, BIG M T/A  
ANNIE SEZ, RANCOCAS  
ANESTHESIOLOGY, LIFELINE  
MEDICAL ASSOC, SOUTH  
JERSEY RADIOLOGY, ABC  
BAIL BONDS INC, CAPITAL  
ONE BANK USA, NA,  
HACKENSACK UNIVERSITY  
MEDICAL CENTER, CAVALRY  
PORTFOLIO SERVICES, LLC,  
VANZ LLC JUL09 SERIES 01,  
MIDLAND FUNDING, LLC,  
PALLIES AUTO SALES,  
SOCIETY HILL AT UNIVERSITY  
HEIGHTS,

Defendants.

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Argued May 22, 2023 – Decided June 9, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No. F-  
006215-20.

Brian L. Whiteman argued the cause on behalf of  
appellant Joanne Johnson (Whiteman Law Group, LLC;  
attorney; Brian L. Whiteman, on the briefs).

Robin I. London-Zeitz argued the cause on behalf of  
respondent (Gary C. Zeitz, LLC, attorney; Robin I.  
London-Zeitz, on the brief).

PER CURIAM

Defendant Joanne Johnson appeals from the January 11, 2022 order of the Chancery Division denying her motion pursuant to Rule 4:50-1 to vacate the default judgment in this tax sale certificate foreclosure matter. We affirm the trial court's order to the extent that it denied relief under Rule 4:50-1(a). However, in light of the recent decision of the United States Supreme Court in Tyler v. Hennepin Cnty., No. 22-166 (May 25, 2023), we remand the matter for reconsideration of Johnson's motion for relief under Rule 4:50-1(f).

I.

Johnson owned commercial property in Newark. Beginning in 2016, Johnson failed to pay local property taxes on the parcel. As a result, on December 29, 2017, the city sold a tax sale certificate for the property in the amount of \$56,859.73 to US Bank Cst for PC7 First. The certificate was later assigned to plaintiff PC7 REO, LLC (PC7), which paid all subsequent local property taxes due on the parcel.

On May 20, 2020, PC7 filed a complaint in the Chancery Division to foreclose the right to redeem the certificate. On December 29, 2020, the court entered a default against Johnson.

The court later set a final date on which to redeem the certificate. After that date passed without Johnson having redeemed the certificate, PC7 moved

for entry of a final judgment of foreclosure. Johnson cross-moved to extend the redemption date, arguing that the property has a fair market value of \$350,000, which exceeded the amount necessary to redeem the certificate. In a certification, Johnson expressed her intention to refinance the property to redeem the certificate and preserve the excess equity. In support of her claim that the property had a fair market value in excess of the redemption amount, Johnson relied only on an estimate she discovered on the website Zillow.com. Johnson also argued that she was not properly served with the foreclosure complaint, that the entry of default was faulty, and that she had been hospitalized with COVID-19 for eighteen days in December 2020, which prevented her from "acting sooner to protect [her] rights."

By the time the trial court heard Johnson's motion, the date to which she requested an extension had passed without her having offered proof of funds sufficient to redeem the certificate. However, on the day of oral argument on the motion, Johnson produced a contract for the sale of a different property she owned. Presumably, Johnson intended to redeem the certificate with the proceeds of that sale.

On August 19, 2021, the trial court issued an oral opinion denying Johnson's motion. The court found the evidence produced by PC7 of personal

service of the foreclosure complaint on Johnson to be credible. In addition, the court found that Johnson failed to raise the issue of service of the complaint until after passage of the final date to redeem the certificate set by the court.

With respect to Johnson's illness, the court found that her short hospitalization, seven months after the filing of the complaint, did not constitute excusable neglect for her failure to file an answer or redeem the certificate prior to entry of the final redemption date. The court also found that the contract of sale produced by Johnson on the return date of the motion was an insufficient basis to award relief. On September 14, 2021, the trial court entered a final judgment of foreclosure in favor of PC7.

On October 29, 2021, Johnson filed a motion pursuant to Rule 4:50-1(a) and (f) to vacate the final judgment. She argued, among other things, that the property has a fair market value of \$1,000,000, far in excess of the amount necessary to redeem the certificate.<sup>1</sup> She alleged that the necessary funds to redeem the certificate would be available to her from the closing of her sale of the other property within a week and she was prepared to redeem five business

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<sup>1</sup> Because PC7 paid all of the local property taxes due on the parcel after sale of the certificate, and given the certificate's interest rate, the amount necessary to redeem had risen to approximately \$250,000 by the time the motion to vacate the final judgment was filed. PC7 also alleged that it incurred additional costs of more than \$25,000 to secure the property.

days after entry of an order vacating the judgment. Johnson alleged that she is not a sophisticated investor, was not aware that the court had denied her prior motion to extend the redemption date, and was not informed by her attorney that she could lose her equity in the property. She argued that had she been provided effective representation, she would not have jeopardized the equity in the property. Johnson also asserted that it would be "unconscionable" for PC7 to "steal" the equity in the property beyond that necessary to redeem the certificate.

Johnson argued that she was "distracted" by her illness and the loss of family members during the COVID-19 pandemic. She also alleged that tenants at the property stopped paying rent during the pandemic, depriving her of income to redeem the certificate. She did not produce proof of these allegations.

In opposition to the motion, PC7 argued that Johnson was a sophisticated investor who owns four other income-producing properties with a cumulative value of \$5,000,000. According to PC7, Johnson's various properties have been encumbered in the past with at least eight tax sale certificates, two of which were the subject of foreclosure proceedings. In addition, Johnson previously retained counsel to file an answer in a tax sale certificate foreclosure proceeding. PC7 argued that Johnson collected rent at the subject property during the pandemic, but never attempted to redeem the certificate.

PC7 also argued that Johnson produced no evidence of her hospitalization or of the fair market value of the property. In addition, PC7 noted that Johnson did not certify that she had the funds to redeem the certificate, only that she expected to obtain the funds from the then-pending sale of other property.

On December 3, 2021, the trial court issued an oral opinion denying the motion. The court found that Johnson did not demonstrate excusable neglect or a meritorious defense warranting relief under Rule 4:50-1(a). The court found that Johnson understood the tax foreclosure process and elected to take no steps to redeem PC7's certificate in a timely manner. The court found that Johnson

was apparently either putting her head in the sand or pursuing a course of conduct that had been successful for her in the past where she waited until the last minute to pay taxes when it became necessary. And, in this case it appears that it caught up with her.

The court concluded that Johnson did not act "with reasonable prudence and due diligence in . . . making an attempt to redeem or in this case moving to set aside the final judgment." The court also found that Johnson's illness did not excuse her failure to file an answer or redeem the certificate. Finally, the court noted that Johnson's arguments regarding the legal advice she received was "abject hearsay" and that she "chose not to understand the impact of final judgment."

Apart from noting that Johnson provided no proof of the fair market value of the property, the court did not address whether relief was warranted under Rule 4:50-1(f) because of the potential loss of her equity in the property beyond that necessary to redeem the certificate. On January 11, 2022, the trial court entered an order memorializing its decision.

This appeal followed. Johnson argues the trial court erred in its application of Rule 4:50-1(a) and (f) and that its decision resulted in "a grave injustice" because PC7 would receive a "ridiculous windfall . . . by receiving a \$1,000,000 property [for] only \$250,000 in taxes . . . ." At oral argument before this court, Johnson's counsel stated that sufficient funds are on deposit in his attorney trust account and readily available to redeem the certificate.

## II.

Rule 4:50-1 "is designed 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." Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977). To balance these 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.'" Mancini v. EDS ex rel N.J. Auto. Full Ins.



Underwriting Ass'n, 132 N.J. 330, 334 (1993) (alterations in original) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964)).

The movant bears the burden of demonstrating a right to relief. Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425-26 (App. Div. 2003). All doubts, however, shall be resolved in favor of the party seeking relief. Mancini, 132 N.J. at 334. Equitable principles should influence a court's decision to vacate a default judgment. Hous. Auth. v. Little, 135 N.J. 274, 283 (1994); Pro. Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009).

We review a trial court's decision to deny a motion to vacate a default judgment under Rule 4:50-1 for abuse of discretion. Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 98 (App. Div. 2012). We will not reverse the trial court's decision unless it is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wall-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). Indeed, "[t]he trial court's determination under [Rule 4:50-1] warrants substantial deference," and the abuse of discretion must be "clear" to warrant reversal. Ibid.

In addition, the Tax Sale Law, N.J.S.A. 54:5-1 to -137, "shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by actions in the Superior Court to the end that marketable titles may thereby be secured." BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 127-28 (App. Div. 2021) (quoting N.J.S.A. 54:5-85). However, "that provision does not negate the specific textual provisions" of the Tax Sale Law "that protect property owners' from forfeiture." Id. at 128 (quoting Simon v. Cronecker, 189 N.J. 304, 322 n.10 (2007)). "Significantly, although the Tax Sale Law's main aim '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 [their] land.'" Ibid. (quoting Simon, 189 N.J. at 319). See also Sonderman v. Remington Constr. Co., 127 N.J. 96, 109 (1992) ("The primary purpose of the [Tax Sale] Law is not to divest owners of their property, but to provide a method for collecting taxes.").

N.J.S.A. 54:5-87 precludes a court from entertaining an "application . . . to reopen the judgment after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit."

We have interpreted N.J.S.A. 54:5-87 to permit relief from judgment, within three months, for any reason enumerated in Rule 4:50-1, Bergen-Eastern Corp. v. Koss, 178 N.J. Super. 42, 45 (App. Div. 1981), and

"then," meaning "thereafter," "only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit," Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 166 n.8 (App. Div. 2005) (emphasis omitted).

[BV001 REO Blocker, 467 N.J. Super. at 128.]

Thus, we concluded, tax sale foreclosure judgments, at least within the three-month statutory period, do not have a favored status over other types of judgments. Id. at 128-29.

We also held that wresting title to the property from the party in whose favor the tax foreclosure judgment was entered "is not the sort of 'prejudice' that a court must consider in weighing a request for relief." Id. at 129. In the absence of demonstrated prejudice, such as detrimental reliance on the judgment, the holder of the tax sale certificate will, upon redemption, be made whole by receipt of the repayment of the taxes and interest due on the property. Ibid.

Finally, we noted that a "lack of diligence in ensuring tax payments should not deprive [a property owner] of the opportunity to redeem after securing relief from the judgment." Id. at 130. All property owners whose failure to pay local property taxes "because of inattention, willful disregard, or impecuniousness," results in the issuance of a tax sale certificate are permitted to redeem their property if they pay the tax sale certificate holder what is due. Ibid. Thus, the

appropriate inquiry is "whether [the property owner's] conduct in failing to respond sooner to the tax foreclosure proceedings should be forgiven." Ibid. (citations omitted).

Rule 4:50-1 provides, in relevant part:

[o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . or (f) any other reason justifying relief from the operation of the judgment or order.

Under subsection (a) of the Rule, a "defendant seeking to set aside a default judgment must establish that his failure to answer was due to excusable neglect and that he has a meritorious defense." Deutsche Bank, 429 N.J. Super. at 98 (quoting Goldhaber v. Kohlenberg, 395 N.J. Super. 380, 391 (App. Div. 2007)). Excusable neglect refers to a default that is "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Ibid. (quoting Guillame, 209 N.J. at 468). The type of mistake warranting relief under the Rule is one that the party could not have protected themselves against. DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 263 (2009).

Having carefully reviewed the record, we find no basis on which to conclude that the trial court abused its discretion when it denied Johnson's

motion for relief under Rule 4:50-1(a). The record supports the trial court's findings that Johnson owns several income-producing properties and has experience with the tax sale certificate foreclosure process. The record also establishes that Johnson has previously filed an answer in a tax sale certificate foreclosure proceeding and has allowed tax sale certificates on her properties to go unredeemed until shortly before entry of a final judgment of foreclosure.

We agree, as well, with the trial court's conclusion that Johnson failed to produce proof that her hospitalization or the deaths of family members prevented her from filing an answer to the foreclosure complaint or from redeeming the certificate prior to entry of the final judgment. Johnson was represented by counsel, made a motion to extend the time to redeem the certificate, and executed a contract for the sale of other property all before entry of the final judgment. If, as Johnson alleges, the subject property has equity far beyond that necessary to redeem the certificate, she could have secured a loan to redeem in ample time to prevent entry of final judgment.

The record also supports the trial court's conclusion that Johnson produced no convincing evidence that she failed to answer the complaint or redeem the certificate because she received ineffective assistance of counsel. Johnson's allegations are based only on her hearsay statements, which are contradicted by

the fact that her counsel moved to extend the time to redeem the certificate, evincing knowledge that a failure to redeem by the date set by the court would result in entry of a foreclosure judgment.

We turn to Rule 4:50-1(f), a catch-all provision. Relief under subsection (f) of Rule 4:50-1 is available only when "truly exceptional circumstances are present." Little, 135 N.J. 274 at 286 (quoting Bauman v. Marinaro, 95 N.J. 380, 394 (1984)). "The movant must demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (citation omitted). "In such exceptional circumstances, [Rule] 4:50-1(f)'s 'boundaries are as expansive as the need to achieve equity and justice.'" Ibid. (quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). But "[t]he rule is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Guillaume, 209 N.J. at 484 (quoting Little, 135 N.J. at 289).

The trial court did not directly address subsection (f) of the rule or Johnson's argument that PC7 stands to gain an unconscionable windfall by obtaining equity in the property beyond that necessary to redeem the certificate.

A few days after oral argument, the Supreme Court issued its unanimous opinion in Tyler. In that matter, Tyler failed to pay taxes on her residential

property. Tyler, slip op. at 2. Under Minnesota law, after the taxes remained outstanding for a year, the county obtained a judgment against the property, transferring limited title to the State. Id. at 1. Tyler had three years to redeem the property and regain title by paying all taxes and late fees. Ibid. After she failed to redeem the property during that time, absolute title vested in the State. Id. at 1-2. At that point, the total outstanding taxes, penalties, and interest was \$15,000. Id. at 2. Pursuant to statute, the State sold the property, obtaining \$40,000, which extinguished Tyler's \$15,000 debt, and distributed the remaining \$25,000 to the county. Ibid. The county kept the \$25,000 for its own use. Ibid.

Tyler subsequently filed a putative class action alleging the county had unconstitutionally retained the excess value of her home. Ibid. She alleged that the county's retention of the \$25,000 constituted a taking under the Fifth Amendment and an excessive fine under the Eighth Amendment. Ibid.

Although Tyler was not successful in the district court or court of appeals, she prevailed before the Supreme Court. The Court rejected several arguments offered by the county in defense of its retention of the excess equity in Tyler's property. First, the Court found that Tyler had standing to allege a taking, even though the property may have been encumbered by other debts that exceeded the excess equity obtained by the county. Id. at 3-4. The Court noted that

although the tax sale extinguished the liens on Tyler's property, it did not extinguish her debts. Ibid. Thus, had Tyler recovered the \$25,000 she could have used it to reduce her outstanding liabilities. Id. at 4.

In addition, the Court found that Minnesota recognized that a property owner has a property interest in the equity in their property. Id. at 5. The Court concluded that the county

had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a "classic taking in which the government directly appropriates private property for its own use." Tyler has stated a claim under the Takings Clause and is entitled to just compensation.

[Id. at 5-6 (citation omitted).]<sup>2</sup>

In light of the holding in Tyler, we vacate the January 11, 2022 order to the extent it denied Johnson relief under subsection (f) of Rule 4:50-1 and remand for a determination by the trial court of: (1) whether Johnson has alleged a plausible claim that entry of the final judgment of foreclosure constituted a taking by Newark (through the prior sale of the certificate to PC7) of equity in

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<sup>2</sup> Because it found that Tyler had stated a plausible allegation of a taking under the Fifth Amendment and Tyler had conceded that just compensation for the taking would make her whole, the Court did not decide whether the county's retention of her excess equity constituted an excessive fine under the Eighth Amendment.



the property in excess of the amount necessary to redeem the certificate; and (2) if so, whether the prospect of such a taking warrants vacating the final judgment to permit Johnson to promptly redeem the certificate and avoid the creation of a claim for just compensation. We leave to the trial court the determination of whether Newark, the entity that we assume, without deciding, would be responsible for providing just compensation to Johnson in the event of a taking, should be joined as a party in this matter.<sup>3</sup>

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. 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

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<sup>3</sup> In the event the trial court determines that relief is not warranted under Rule 4:50-1(f) to avoid a taking of Johnson's property, it shall issue findings of fact and conclusions of law with respect to the other grounds for relief under subsection (f) previously raised by Johnson but not addressed in the court's December 3, 2021 oral opinion.