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DCAGC Mgmt. Corp. v. Gallucio, 2007 N.J. Super. Unpub. LEXIS 1393 (Copy citation)

Superior Court of New Jersey, Appellate Division
October 23, 2007, Submitted; November 8, 2007, Decided
DOCKET NO. A-4043-06T5

Reporter: 2007 N.J. Super. Unpub. LEXIS 1393 | 2007 WL 3292541

DCAGC MANAGEMENT CORP., Plaintiff-Respondent, v. JAMES GALLUCIO, Defendant-Appellant, and
CLAUS W. NEPLL; FIRST NATIONAL ACCEPTANCE CORP. and STATE OF NEW JERSEY, Defendants.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [1] On appeal from Superior Court of New Jersey, Chancery Division, Passaic County,
Docket No. F-15917-06.

Core Terms

final judgment, certif, vacate, exceptional circumstances, redeem

Counsel: Ralph P. Allocca, attorney for appellant.

Lee B. Roth Law Offices, attorneys for respondent (Michael P. **O'Grodnick**, on the brief).

Judges: Before Judges FUENTES and GRALL.

Opinion

PER CURIAM

Defendant James Gallucio appeals from a denial of his motion to vacate a final judgment foreclosing his right to redeem property from the lien of a tax sale certificate. The final judgment vests title to the property in plaintiff, DCAGC Management Corporation. We affirm substantially for the reasons stated by Judge McVeigh in her oral decision of March 2, 2007.

The grant or denial of a motion to vacate a final judgment is left to the sound discretion of the trial court. *Hous. Auth. of the Town of Morristown v. Little*, 135 N.J. 274, 283, 639 A.2d 286 (1994); *Court Inv. Co. v. Perillo*, 48 N.J. 334, 341, 225 A.2d 352 (1966); *M & D Assocs. v. Mandara*, 366 N.J. Super. 341, 350, 841 A.2d 441 (App. Div.), *certif. denied*, 180 N.J. 151, 849 A.2d 184 (2004). Defendant sought relief pursuant to paragraph (f) of *Rule 4:50-1*, which requires a showing of "exceptional circumstances" warranting relief to meet the demands of equity and justice. See *Baumann v. Marinaro*, 95 N.J. 380, 393-95, 471 A.2d 395 (1984); [2] *Court Inv., supra*, 48 N.J. at 341.

There were no exceptional circumstances shown. Defendant acknowledged that he was aware of the foreclosure proceeding and elected not to participate. He claimed that he decided to withhold payment of taxes on the property and declined to redeem prior to entry of judgment because a lien against the property had been filed by the holder of a judgment against him. We fail to see how defendant's decision, which served no purpose other than to preserve his funds, tips the balance of equities relevant to this action in his favor. Accordingly, we reject defendant's claim that Judge McVeigh erred in denying his application.

Defendant also argues that the judge's decision referenced facts asserted in plaintiff's brief on the motion and not supported by competent affidavit or certification. After review of the record and the decision, we are convinced that those facts were not essential to the decision, which was based on Judge

McVeigh's conclusion that it would be inequitable to vacate the judgment and permit defendant to benefit from his informed decisions.

Affirmed.

Content Type: **Cases**

Terms: **"o'grodnick"**

Narrow by: **None**

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