

## APPENDIX A

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

**DOCKET NO. A-3679-17T4**

**THE MONEY SOURCE, INC.,**

**Plaintiff-Respondent,**

**v.**

**NORMAN D. COX, JR.,**

**Defendant-Appellant.**

Submitted February 7, 2019 – Decided March 4, 2019

Before Judges O'Connor and DeAlmeida.

On appeal from Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. F-028081-16.

Norman D. Cox, Jr., appellant pro se.

Stern & Eisenberg, PC, attorneys for respondent (Salvatore Carollo, on the brief).

**PER CURIAM**

In this mortgage foreclosure action, defendant Norman D. Cox., Jr., appeals from a March 23, 2018 order denying his motion to vacate a default judgment of foreclosure. He contends he was not served with the foreclosure complaint and, thus, the judgment must be vacated. He also asserts he is entitled to relief under Rule 4:50-1(a), we affirm.

## I

It is not disputed that, in November 2014, defendant borrowed \$453,632 from plaintiff The Money Source, Inc., d/b/a Endeavor American Loan Services, and executed a note to secure payment of such sum, together with interest and other amounts on the unpaid principal balance. Defendant also executed a mortgage on property in North Bergen to Mortgage Electronic Registration Services, Inc., as nominee for The Money Source.

The loan went into default on May 1, 2016. Four months later, Mortgage Electronic Registration Systems, Inc., as nominee assigned the mortgage to The Money Source, which filed a foreclosure complaint on October 14, 2016. Efforts to serve defendant in New Jersey were unsuccessful. Suspecting he lived out of state, The Money Source utilized search services to determine defendant's residence. Plaintiff determined defendant resided at a specific address in Brooklyn, where a process server served the summons, complaint, and other documents upon an adult at defendant's address. Defendant asserts he was not served, but the evidence indicates he was served in accordance with Rule 4:4-4.

Specifically, the affidavit of service signed by the process server states that, on November 4, 2016, he personally delivered the summons, complaint, and documents attached to the complaint to a "Neville Cox," noted to be twenty-one years or older, at 853 Empire Boulevard, Apartment D15, Brooklyn, New York. The affidavit further states he asked Neville Cox whether defendant was in the military and he replied that he was not, indicating he knew defendant.

In March 2017, plaintiff's attorney received a letter from an attorney dated March 3, 2017, who stated he represented defendant in connection with the sale of the mortgaged premises. Attached to the letter was a copy of a payoff statement plaintiff had previously sent to defendant. The payoff statement was sent to the same address where the process server handed the summons, complaint, and other documents to Neville Cox. Obviously defendant obtained the payoff statement at the Brooklyn address, because he gave it to his attorney. In addition, the defendant's attorney's letter indicates an awareness of the foreclosure proceeding.

Defendant failed to answer the complaint and final judgment was entered against him on May 11, 2017. In February 2018, defendant filed a motion to vacate judgment. On March 23, 2018, the trial court entered an order denying defendant's motion.

In a written decision attached to the order, the court noted it determined defendant had been properly served, as evidenced by the fact defendant's attorney received from defendant a document sent to the subject address in Brooklyn. Further, the court found there was

no basis under Rule 4:50-1(a) to vacate the default judgment. Citing Marder v. Realty Const. Co., 84 N.J. Super. 313, 318-19 (App. Div. 1964), the court observed defendant did not show his failure to file a responsive pleading was due to excusable neglect and the he had a meritorious defense.

## II

On appeal, defendant asserts the following arguments for our consideration:

**POINT I: THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO VACATE THE DEFAULT JUDGMENT ON THE GROUNDS OF EXCUSABLE NEGLECT PURSUANT TO RULE 4:50-1(a).**

- a. NEWLY DISCOVERED EVIDENCE. RESPONDENT DID NOT RECEIVE IN PERSONAM JURISDICTION BY SUBSTITUTED OR CONSTRUCTIVE SERVICE - NEVILLE COX WAS NOT A PERSON AUTHORIZED BY APPOINTMENT OR LAW TO RECEIVE SERVICE OF PROCESS ON DEFENDANT'S BEHALF, PURSUANT TO RULE 4:4-4(a)(1).
- b. APPELANT WAS NEVER SERVED WITH THE SUMMONS, COMPLAINT OR ANY NOTICES OF INTENTION TO FORECLOSE INVOLVING THIS ACTION.

“A default judgment will be considered void when a substantial deviation from service of process rules has occurred, casting reasonable doubt on proper notice.” Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003) (citing Sobel v. Long Island Entm’t Prod., Inc., 329 N.J. Super. 285, 293-94 (App. Div. 2000)). Whether a party has been served is a question of proof. A sheriff’s return of service is presumed correct, and may be rebutted only by clear and convincing evidence. Id. at 426. “[U]ncorroborated testimony of the defendant alone is not sufficient to impeach the return.” Goldfarb v. Roeger, 54 N.J. Super. 85, 90 (App. Div. 1959). Thus, a defendant’s bald assertion the sheriff’s return is incorrect does not overcome the presumption. Resolution Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super, 332, 344 (app. Div. 1993).

Rule 4:4-3 was amended in 2000 to permit service by private process servers who do not have an interest in the litigation. See Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:4-3 (2002). Consistent with this policy decision to entrust disinterested persons with the responsibility to serve process, the presumption of correctness extends to their affidavits of service as well.

Here, defendant’s mere assertion he was not served does not rebut the presumption arising from the process server’s affidavit of service. Uncorroborated assertions cannot overcome the presumption of correctness that attached to a process server’s affidavit of service. See Garley v. Waddington, 177 N.J. Super. 173, 180-81 (App. Div. 1981). When before the trial court, defendant did not provide evidence that refuted or at least challenged the

process server's claim he served an adult at the Brooklyn address, who just happened to have the same surname as defendant. Defendant also did not explain how he obtained the payoff statement sent to the Brooklyn address, which he subsequently gave to his own attorney. Accordingly, we cannot conclude the court erred when it denied the motion to vacate the default judgment.

We have considered defendant's remaining arguments, and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We merely note defendant did not proffer any reason that constitutes excusable neglect for failing to file an answer and did not identify a meritorious defense.

Affirmed,

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

s/

CLERK OF THE APPELATE DIVISION

## APPENDIX B

FILED, Clerk of the Appellate Division, March 01, 2019,  
A-003679-17, M-004471-18

### ORDER ON MOTION

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Superior Court of New Jersey  
Appellate Division  
Docket No. A-003679-17T4  
Motion No. M-004471-18  
Before Part B  
Judge(s): Amy O' Connor  
Patrick Dealmeida

The Money Source, Inc.

V

Norman Cox, Jr., ET AL

Motion Filed: 02/22/2019                    By: Norman Cox Jr.

Answer(s)

Filed:

Submitted to Court:                    February 28, 2019

### ORDER

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This matter having been duly presented to the court, it is, on this 1<sup>st</sup> day of March, 2019, hereby ordered as follows:

Motion by Appellant

Motion for Reconsideration

Denied

For the Court:

s/

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Amy O'Connor, J.A.D.

F-028082-16      Hudson  
Order – Regular Motion  
KAK

## APPENDIX C

FILED, Clerk of the Appellate Division, February 11,  
2019, A-003679-17, M-004471-18

### ORDER ON MOTION

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Superior Court of New Jersey  
Appellate Division  
Docket No. A-003679-17T4  
Motion No. M-004471-18  
Before Part B  
Judge(s): Amy O' Connor  
Patrick Dealmeida

The Money Source, Inc.

v

Norman Cox, Jr., et al

Motion Filed: 02/01/2019 By: Norman Cox Jr.

Answer(s)

Filed: 02/06/2019 By: The Money Source, Inc

Submitted to Court: February 07, 2019

### ORDER

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This matter having been duly presented to the court, it is, on this 11<sup>th</sup> day of February, 2019, hereby ordered as follows:

Motion by Appellant

10A

**Motion for Stay Pending Appeal** **Denied**

For the Court:

s/

Amy O'Connor, J.A.D.

F-028082-16      Hudson  
Order – Regular Motion  
KAK

## APPENDIX D

### Superior Court of New Jersey

### Appellate Division

### Disposition on Application for Permission to File Emergent Motion

Case Name: The Money Source, Inc. v. Norma Cox, Jr.

Appellate Division Docket Number: (if available):

A-3679-17T4; M-3981-18

Superior Court of New Jersey, Hudson County

Trial Court or Agency Below: Chancery Division

Trial Court or Agency Docket Number: F-028081-16

#### DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is **Denied** for the following reasons:

- The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- The threatened harm or event is not scheduled to occur prior to the time in which a motion with the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.

- The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- The application concerns an order entered during trial or on the eve of the trial as to which there is no *prima facie* showing that the proposed motion would satisfy the standards for granting leave to appeal.
- The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- Other reasons:  
Defendant does not identify what the newly discovered information is that he claims is in plaintiff's response to his motion, and why such information is material.

s/

Amy O'Connor, J.A.D.

February 7,2019

Date

## APPENDIX E

SWC F 02081-16 03/23/2018 Pg 1 of 6

Trans ID: CHC2018166911

Filed	F-28081-16
March 23, 2018	
<b>HON. MARYBETH ROGERS, J.S.C.</b>	

*The Court prepared this Order*

The Money Source, Inc.  
Plaintiff,  
v.  
Norman Cox Jr., et al.  
Defendants.

SUPERIOR COURT OF  
NEW JERSEY  
HUDSON COUNTY  
CHANCERY DIVISION  
Docket No.: F-28081-16  
*Civil Action*

**ORDER**

**THIS MATTER**, having been opened to the Court by Norman D. Cox Jr., pro se, ("Defendant"), on a Motion to Vacate Default Judgment, and the Court having considered the moving papers, and for good cause having been shown:

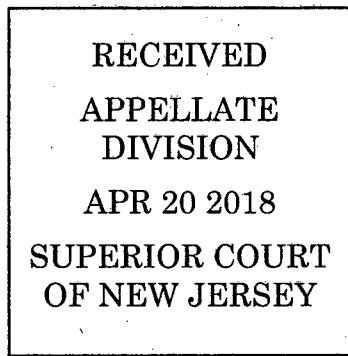
**IT IS** on this 23<sup>rd</sup> day of March, 2018, ORDERED:

**THAT** Defendant's Motion to Vacate Final Judgement is hereby **DENIED**,

**THAT** Defendant is to serve a copy of this Order upon all interested parties within seven (7) days of the date of the Order.

s/

**HON. MARYBETH ROGERS, J.S.C.**



**APPENDIX F**

**Filed**  
June 6, 2018

**F-028081-16**

**HON. MARYBETH ROGERS, J.S.C.**

**The Court prepared this Order**

**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: HUDSON COUNTY**

**The Money Source,  
Inc.,  
Plaintiff,  
vs.  
Norman D. Cox Jr.,  
Defendants.**

**Docket No. F-028081-16  
Civil Action**

**ORDER**

**THIS MATTER** having been opened to the Court by Norman D. Cox Jr., pro se defendant, of the foreclosed premises at 212 78<sup>th</sup> Street, North Bergen, New Jersey, and the Court having considered the matter and good cause having been shown:

**IT IS** on this 6<sup>th</sup> day of June, 2018 **ORDERED** as follows:

1. Defendant's Motion to Stay the Sheriff's sale pending appeal is DENIED; and
2. Defendant shall serve a copy of this Order upon all interested parties within seven (7) days of the date of this Order.

s/

**HON. MARYBETH ROGERS, J.S.C.**

APPENDIX G

Your Name: Norman D. Cox Jr.

Address: 212 78<sup>th</sup> Street

Phone: (831) 233-2226

Pro Se

FILED

JUN 07 2018

JEFFREY R. JABLONSKI, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION HUDSON COUNTY  
GENERAL EQUITY  
DOCKET NO: F-028081-16  
CIVIL ACTION  
ORDER TO STAY SHERIFF'S SALE

The Money Source, Inc.

PLAINTIFF,

v.

Norman D. Cox Jr.

DEFENDANT.

This matter having come before the Court to Stay the Sheriff's Sale by: Norman D. Cox Jr., *pro se* defendant, of the foreclosed premises at 212 78<sup>th</sup> Street, North Bergen, New Jersey, and the Court having considered the matter and good cause having been shown:

IT IS, on this 7<sup>th</sup> day of June, 2018 ORDERED AS FOLLOWS:

The Sheriff's Sale scheduled for June 7, 2018 is adjourned to July 5, 2018 upon the following terms and conditions:

- Defendant is required to present the Court with a valid mortgage commitment prior to the next date of sale;
- Defendant is required to present the Court with evidence of a valid closing date prior to the next date of sale;
- Other: *This emergent application is granted to permit the defendant to make whatever application he needs before the Appellate Division within the next 30 days before the sheriff sale.*
- There shall be no further adjournments of the Sheriff's Sale *for the reasons noted on the record on June 7, 2018.*

S/

JEFFREY R. JABLONSKI, J.S.C.

**APPENDIX H**

**SUPREME COURT OF NEW JERSEY**

**C-983 September Term 2018**

**082734**

The Money Source, Inc.,  
Plaintiff-Respondent,  
v.

**FILED**  
**JUN 13 2019**  
**s/**  
**CLERK**

Norman D. Cox, Jr.,  
Defendant-Petitioner, **ORDER**

A petition for certification of the judgment in A-003679-17 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 11<sup>th</sup> day of June, 2019.

**s/**

**CLERK OF THE SUPREME COURT**

**APPENDIX I**

**SUPREME COURT OF NEW JERSEY**

**M-1279/1280 September Term 2018**

**082734**

The Money Source, Inc.,

Plaintiff,

v.

**FILED**  
**AUG 9 2019**  
**s/**  
**CLERK**

Norman D. Cox, Jr.,

Defendant-Movant,

**ORDER**

It is ORDERED that the motion for reconsideration of the Court's order denying the petition for certification (M-1279) is denied, and it is further

ORDERED that the motion for stay (M-1280) is dismissed as moot.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 8<sup>th</sup> day of August, 2019.

**s/**

**CLERK OF THE SUPREME COURT**

**APPENDIX J**

Your Name: Norman D. Cox Jr.

Address: 212 78<sup>th</sup> Street

Phone: (831) 233-2226

Pro Se

FILED

OCT 24 2019

JEFFREY R. JABLONSKI, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION HUDSON COUNTY  
GENERAL EQUITY  
DOCKET NO: F-028081-16  
CIVIL ACTION  
ORDER DENYING STAY OF SHERIFF'S SALE

The Money Source, Inc.

PLAINTIFF,

v.

Norman D. Cox Jr.

DEFENDANT.

This matter having come before the Court to Stay the Sheriff's Sale by: Norman D. Cox Jr., pro se defendant, of the foreclosed premises at 212 78<sup>th</sup> Street, North Bergen, New Jersey, and the Court having considered the matter:

IT IS, on this 24<sup>th</sup> day of October, 2019 ORDERED AS FOLLOWS:

The Motion to adjourn the Sheriff's Sale scheduled for 10/24/19 is denied for the following reasons:

- The Motion is untimely;
- Defendant has failed to give adequate notice to all interested parties;
- Other: *for the reasons set forth on the record on 10/24/19*

s/

JEFFREY R. JABLONSKI, J.S.C.

**APPENDIX K**

Your Name: Norman D. Cox Jr.

Address: 212 78<sup>th</sup> Street

Phone: (831) 233-2226

Pro Se

FILED

OCT 24 2019

JEFFREY R. JABLONSKI, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION HUDSON COUNTY  
GENERAL EQUITY  
DOCKET NO: F-028081-16  
CIVIL ACTION  
ORDER DENYING STAY OF SHERIFF'S SALE

The Money Source, Inc.

PLAINTIFF,

v.

Norman D. Cox Jr.

DEFENDANT.

This matter having come before the Court to Stay the Sheriff's Sale by: Norman D. Cox Jr., *pro se* defendant, of the foreclosed premises at 212 78<sup>th</sup> Street, North Bergen, New Jersey, and the Court having considered the matter:

IT IS, on this 24<sup>th</sup> day of October, 2019 ORDERED AS FOLLOWS:

The Motion to adjourn the Sheriff's Sale scheduled for 10/24/19 is denied for the following reasons:

- The Motion is untimely;
- Defendant has failed to give adequate notice to all interested parties;
- Other: for the reasons set forth on the record on 10/24/19

s/

JEFFREY R. JABLONSKI, J.S.C.