

APPENDIX A

**NOT FOR PUBLICATION WITHOUT THE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

This opinion shall not “constitute precedent of 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 NEGLIGENCE 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 APPELLATE DIVISION

APPENDIX B

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

ORDER ON MOTION

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

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

Motion by Appellant

Motion for Reconsideration

Denied

For the Court:

s/

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

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

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

Motion by Appellant

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 March 23, 2018 HON. MARYBETH ROGERS, J.S.C.	F-28081-16
---	-------------------

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 23rd 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.

RECEIVED
APPELLATE
DIVISION
APR 20 2018
SUPERIOR COURT
OF NEW JERSEY

APPENDIX F

Filed June 6, 2018 HON. MARYBETH ROGERS, J.S.C.	F-028081-16
---	--------------------

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 78th Street, North Bergen, New Jersey, and the Court having considered the matter and good cause having been shown:

IT IS on this 6th 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 78th 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 78th Street, North Bergen, New Jersey, and the Court having considered the matter and good cause having been shown:

IT IS, on this 7th 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 11th 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 8th day of August, 2019.

s/

CLERK OF THE SUPREME COURT

APPENDIX J

Your Name: Norman D. Cox Jr.

Address: 212 78th 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 78th Street, North Bergen, New Jersey, and the Court having considered the matter:

IT IS, on this 24th 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 78th 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 78th Street, North Bergen, New Jersey, and the Court having considered the matter:

IT IS, on this 24th 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.