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**NOT FOR PUBLICATION WITHOUT THE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-4694-17T2**

LYNX ASSET SERVICES,
LLC,

Plaintiff-Respondent,

v.

YVONNE BOWERS, SR.,

Defendant-Appellant.

Submitted June 15, 2020 – Decided June 30, 2020

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No. C-
000191-17.

Yvonne Bowers, Sr., appellant pro se.

Joshua Gerard Curtis, attorney for respondent.

PER CURIAM

Defendant Yvonne Bowers, Sr., appeals a number of orders entered in this action, which plaintiff Lynx Asset Services LLC commenced to discharge a

notice of lis pendens defendant placed on property previously foreclosed on in an earlier lawsuit. We find no merit in defendant's arguments and affirm.

The lack of merit in defendant's arguments is revealed by the procedural history. In April 2009, Wachovia Bank, NA, filed a foreclosure action against defendant after she defaulted on a loan secured by a mortgage on her property in Belleville. Defendant did not respond to the complaint, and a judgment of foreclosure was entered in November 2010. Plaintiff substituted into the case for Wachovia in 2011 and, after several adjournments, a sheriff's sale was scheduled for late November 2011. On the day of the sale, defendant applied for an order that would stop it. The court denied the application and the sale occurred.

A week later, defendant moved to vacate the default judgment and sheriff's sale. The motion was denied. In April 2012, defendant moved a second time to vacate the default judgment and to dismiss the foreclosure action. That motion was also denied. Defendant filed a pleading entitled "motion to compel" in May 2012 that she later withdrew.

In July 2012, defendant filed a notice of appeal, seeking our review of the denial of her second motion to vacate. For reasons expressed in an unpublished opinion, we rejected her arguments and affirmed. Lynx Asset Services, LLC v.

Bowers, No. A-5101-11 (App. Div. Sept. 9, 2013). The Supreme Court denied defendant's petition for certification. 217 N.J. 303 (2014). Defendant followed that with a motion for reconsideration; the Court denied that motion as well.

Years later, in February 2017, defendant submitted to the Supreme Court a motion seeking a "temporary restraining order and preliminary injunction to prevent the sale of [the] property." These papers and defendant's filing fee were returned to her unfiled for reasons expressed by the Supreme Court in a March 28, 2017 letter. Another submission to the Supreme Court was similarly rejected a week later.

Undeterred, defendant filed a notice of lis pendens on the property, prompting plaintiff to commence this action in July 2017, seeking a discharge of the lis pendens and an order barring defendant from further attempting to encumber the property in the future. After defendant answered the complaint, plaintiff moved for summary judgment. The judge entered an order on January 5, 2018, that discharged the lis pendens but dismissed the rest of plaintiff's claims. Plaintiff moved later in the month for an order barring defendant from filing any further notices of lis pendens or taking any other action to challenge plaintiff's title to the property. On February 15, 2018, the assignment judge

denied the motion because plaintiff had not previously obtained relief under Rule 1:4-8.

In March 2018, defendant filed a motion alleging a "fraud on the court and violation of Consumer Fraud Act and denial of due process and equal protection." A few weeks later, plaintiff sent to defendant a Rule 1:4-8 letter, asserting that her motion was frivolous and advising that plaintiff would move for sanctions if it prevailed on defendant's motion.

Defendant did not withdraw her motion, which was denied on April 13, 2018. The following month, plaintiff moved for sanctions under Rule 1:4-8. On June 1, 2018, the judge granted plaintiff's motion and awarded plaintiff \$6120 in fees. Defendant moved for reconsideration of the sanctions order, but filed a notice of appeal of the April 13 and June 1, 2018 orders before the reconsideration motion was heard. On June 22, 2018, the judge denied reconsideration, and defendant filed an amended notice of appeal to include, as a matter to be reviewed, the June 22, 2018 order.

In August 2018, defendant filed another notice of appeal, seeking review of the January 5, 2018 order. Plaintiff moved to dismiss this appeal as time-barred, and we granted that motion on March 18, 2019. Defendant then unsuccessfully moved in the Supreme Court for leave to appeal our March 18,

2019 order. 238 N.J. 470 (2019). The Court also denied defendant's later motion for reconsideration. 240 N.J. 385 (2020).

In appealing, defendant argues:

- I. TRIAL JUDGE ABUSED HIS DISCRETION BY DISCHARGING THE LIS PENDENS WHILE CASE WAS STILL PENDING.
- II. THE TRIAL JUDGE ABUSED HIS DISCRETION BY DENYING THE MOTION FOR FRAUD ON THE COURT BASED ON THE SHERIFF SALE NOT CHALLENGED.
- III. TRIAL JUDGE ABUSED HIS DISCRETION BY DENYING FRAUD ON THE COURT BASED ON THE ENTIRE CONTROVERSY DOCTRINE AND COLLATERAL ESTOPPEL.
- IV. TRIAL JUDGE ABUSED HIS DISCRETION BY DENYING THE MOTION FOR DENIAL OF DUE PROCESS AND EQUAL PROTECTION.
- V. TRIAL JUDGE ABUSED HIS DISCRETION BY DENYING THE MOTION FOR CONSUMER FRAUD ACT BASED ON THE FACT [THAT] THE CHANCERY DIVISION GRANT MONEY.
- VI. TRIAL JUDGE ABUSED HIS DISCRETION BY GRANTING THE MOTION FOR SANCTIONS.
- VII. TRIAL JUDGE ABUSED HIS DISCRETION BY DENYING RECONSIDERATION BASED ON BAD FAITH AND UNCLEAN HANDS.

VIII. TRIAL JUDGE ABUSED HIS DISCRETION BY
NOT PROCEEDING TO A PLENARY HEARING
AND SUPPLEMENTING THE RECORD.

After close examination of the record, we find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). As the record unmistakably reveals, the property was conclusively foreclosed on. This circumstance made impermissible defendant's attempts to place a cloud on title to the property. The motion judge properly discharged the notice of lis pendens and later, when defendant filed a frivolous motion, properly sanctioned her.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

SUPREME COURT OF NEW JERSEY
M-541/542/543/544/633
September Term 2020
084824

Lynx Asset Services, LLC,
Plaintiff,

v.

O R D E R

Yvonne Bowers, Sr.,
Defendant-Movant.

It is ORDERED that the motions for leave to file a notice of petition for certification as within time (M-541), for an extension of time within which to file a petition for certification (M-542), and the miscellaneous motion “requesting permission to submit the petition for certification without an original signature” (M-633) are granted; and it is further

ORDERED that the motion to supplement the record (M-543) is denied; and it is further

ORDERED that the motion for stay (M-544) is dismissed as moot.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
19th day of January, 2021.



CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
C-409 September Term 2020
084824

Lynx Asset Services, LLC,

Plaintiff,

v.

ORDER

Yvonne Bowers, Sr.,

Defendant-Petitioner.

A petition for certification of the judgment in A-004694-17
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
19th day of January, 2021.



CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-428/429 September Term 2019
082802

Lynx Asset Services, LLC.,

Plaintiff,

v.

FILED

ORDER

JAN 17 2020

Yvonne Bowers, Sr.,

Heather J. Bates
CLERK

Defendant-Movant.

It is ORDERED that the motion for leave to file a motion for reconsideration as within time (M-428) is granted; and it is further

ORDERED that the motion for reconsideration of the Court's order denying the motion for leave to appeal (M-429) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
14th day of January, 2020.

Heather J. Bates
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
10a M-1132 September Term 2018
082802

Lynx Asset Services, LLC.,

Plaintiff-Respondent,

v.

Yvonne Bowers, Sr.,

Defendant-Movant.

FILED

JUN 21 2019

Heather J. Baker
CLERK

ORDER

It is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
18th day of June, 2019.

Heather J. Baker

CLERK OF THE SUPREME COURT

ORDER ON MOTION

LYNX ASSET SERVICES, LLC.
V.
YVONNE BOWERS SR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004694-17T2
MOTION NO. M-004752-18
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
ROBERT J. GILSON

MOTION FILED: 02/27/2019 BY: LYNX ASSET SERVICES
ANSWER(S) 03/12/2019 BY: YVONNE BOWERS SR.
FILED:

SUBMITTED TO COURT: March 14, 2019

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
18th day of MARCH, 2019, HEREBY ORDERED AS FOLLOWS:

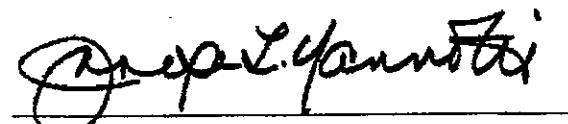
MOTION BY RESPONDENT

MOTION FOR PARTIAL DISMISSAL OF
APPEAL GRANTED AND OTHER

SUPPLEMENTAL:

Appellant's brief shall be accepted for filing as is; however, the court will not consider any request for relief with regard to the trial court's order of January 5, 2018. Respondents brief shall be filed within thirty (30) days after the date of this order.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

ORDER ON MOTION

LYNX ASSET SERVICES, LLC.
V.
YVONNE BOWERS SR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004694-17T2
MOTION NO. M-007978-17
BEFORE PART T
JUDGE(S): THOMAS W. SUMNERS JR.
ROBERT J. GILSON

MOTION FILED: 06/15/2018

BY: YVONNE BOWERS SR.

ANSWER(S) 08/17/2018
FILED:

BY: LYNX ASSET SERVICES

SUBMITTED TO COURT: August 23, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
30th day of August, 2018, HEREBY ORDERED AS FOLLOWS:

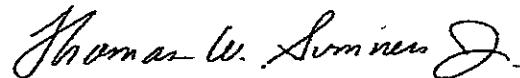
MOTION BY APPELLANT

MOTION FOR STAY OF SANCTIONS
PENDING APPEAL
MOTION FOR FURTHER RELIEF

DENIED
DENIED

SUPPLEMENTAL:

FOR THE COURT:



THOMAS W. SUMNERS JR., J.A.D.

C-000191-17 ESSEX
ORDER - REGULAR MOTION
PM

Jun-22 2018

Prepared by the Court

LYNX ASSET SERVICES LLC,

Plaintiff,

vs.

YVONNE BOWERS SR.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

DOCKET NO.: C-191-17

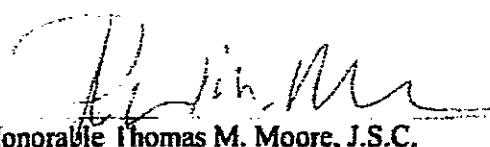
CIVIL ACTION

ORDER

THIS MATTER being opened to the Court by Defendant Yvonne Bowers Sr., pro se, and the Court having considered the papers submitted in support of and in opposition to Defendant's motion for reconsideration, a stay of sanctions pending reconsideration, and to supplement the record, having heard the arguments of Plaintiff's counsel and Ms. Bowers, for good cause shown, and for the reasons stated on the record on June 22, 2018:

IT IS on this 22nd day of June, 2018

ORDERED that Defendant's motion is denied.


Honorable Thomas M. Moore, J.S.C.

JUN - 1 2018

Hon. Thomas M. Moreo, J.S.C.

Prepared by the Court

LYNX ASSET SERVICES LLC, vs. YVONNE BOWERS SR.,	Plaintiff, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY DOCKET NO.: C-191-17 CIVIL ACTION ORDER
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THIS MATTER being opened to the Court by Joshua Curtis, Esq., counsel for Plaintiff, and the Court having considered the papers submitted in support of and in opposition to Plaintiff's motion for sanctions under Rule 1:4-8, and having heard the arguments of Plaintiff's counsel and Defendant, for good cause shown, and for the reasons stated on the record on June 1, 2018:

IT IS on this 1st day of June, 2018

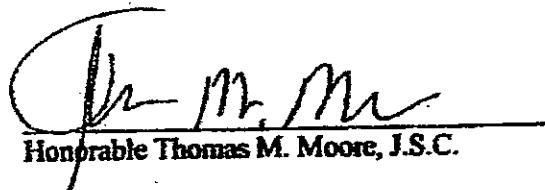
ORDERED that Plaintiff's motion is granted to the extent provided herein; and it is further

ORDERED that Defendant's "Motion for Fraud on the Court and Violation of [the] Consumer Fraud Act and Denial of Due Process and Equal Protection" filed in March of 2018 (the "Motion for Fraud") violates Rule 1:4-8(a)(1) because it needlessly increased the cost of litigation. The Motion for Fraud needlessly increased the cost of litigation because the Court had entered summary judgment in Plaintiff's favor on January 5, 2018 and Defendant did not file an appeal or a motion for reconsideration; and it is further

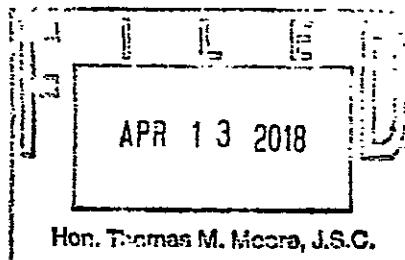
ORDERED that the Motion for Fraud was frivolous under Rule 1:4-8(a)(2). Given the procedural history of this action and the foreclosure lawsuit bearing docket number F-23081-09, the well-settled law on the issue of collateral estoppel, and the deadline for challenging a sheriff's sale under Rule 4:65-5, the Court finds that it was not objectively reasonable for Defendant to make the assertions and arguments that she made in the Motion for Fraud; and it is further

ORDERED that Defendant is sanctioned in the amount of \$ 6,124.00 in attorneys' fees and \$ 50 in costs for Plaintiff's opposition of the Motion for Fraud and filing of this motion; and it is further

ORDERED that Plaintiff's counsel shall serve a copy of this Order upon Defendant within ten days of the entry of this Order.



Honorable Thomas M. Moore, J.S.C.



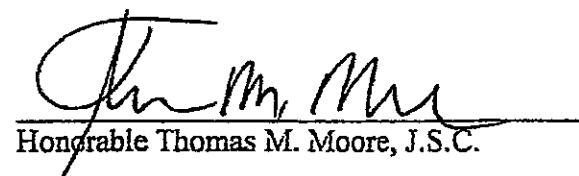
Prepared by the Court

LYNX ASSET SERVICES LLC, vs. YVONNE BOWERS SR.,	Plaintiff, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY DOCKET NO.: C-191-17 CIVIL ACTION ORDER
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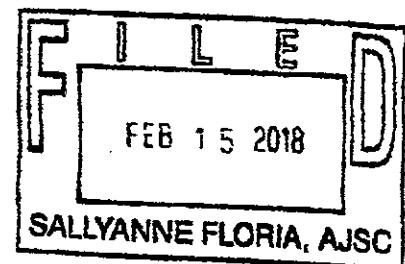
THIS MATTER being opened to the Court by Defendant Yvonne Bowers Sr., pro se, and the Court having considered the papers submitted in support of and in opposition to Defendant's motion for fraud on the Court, violation of the Consumer Fraud Act, and denial of due process and equal protection, and having heard the arguments of Plaintiff's counsel and Defendant, for good cause shown, and for the reasons stated on the record on April 13, 2018:

IT IS on this 13th day of April, 2018

ORDERED that Defendant's motion for fraud on the Court, violation of the Consumer Fraud Act, and denial of due process and equal protection is denied.



Honorable Thomas M. Moore, J.S.C.

ORDER PREPARED AND FILED BY THE COURT

LYNX ASSET SERVICES, LLC,

Plaintiff,

vs.

YVONNE R. BOWERS, SR.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:ESSEX COUNTY
GENERAL EQUITY

Civil Action

DOCKET NO.: ESX-C-191-17

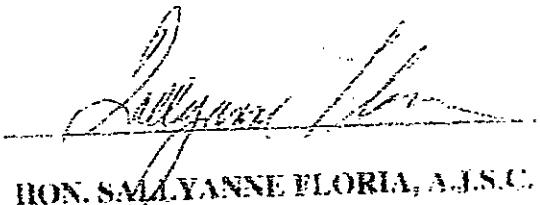
ORDER

THIS MATTER, having been opened to the Court by Joshua G. Curtis, Esq., attorney for Plaintiff, on notice to Yvonne Bowers, Sr., Defendant, for an Order barring Defendant from filing future applications or other papers in the above-captioned matter, all as set forth more particularly in Plaintiff's Notice of Motion dated January 16, 2018, and the Court having considered the papers in support and opposition thereto, and for good cause shown,

IT IS on this 15th day of February, 2018:

1. **ORDERED**, that Plaintiff's motion be and hereby is DENIED without prejudice as Plaintiff has not satisfied the requirements of Rosenblum v. Borough of Closter, 333 N.J. Super. 385 (App. Div. 2000); and it is further

2. ORDERED, that all further proceedings shall occur in the Essex Vicinage, Chancery Division, General Equity Part.



HON. SALLYANNE FLORIA, A.J.S.C.

STATEMENT OF REASONS

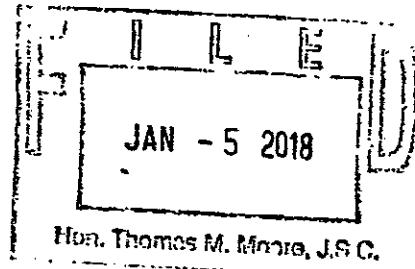
This application is, in essence, a request by Plaintiff for a Rosenblum order. In Rosenblum, the Appellate Division recognized that, in certain instances, an Assignment Judge may preclude the filing of a Complaint without her prior approval "when the plaintiff's prior litigation demonstrates a pattern of frivolous pleadings." Id. at 387. The remedy of enjoining a party is also applicable to the filing of motions. See Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) ("courts have the inherent authority, if not the obligation, to control the filing of frivolous motions") (emphasis added) (citing Rosenblum, 333 N.J. Super. at 387); see also Zehl v. City of Elizabeth Bd. of Edce., 426 N.J. Super. 129, 139 (App. Div. 2012). An Assignment Judge has the authority to enter a Rosenblum order when a litigant: (1) has a history of frivolous filing; and (2) has been undeterred by traditional sanctions from filing frivolous litigation. See Rosenblum, 333 N.J. Super. at 387. Before a Rosenblum order can be entered, an Assignment Judge must find the complaint at issue to be meritless. Rosenblum, 333 N.J. Super. at 391-92.

Here, Plaintiff seeks a Rosenblum order based upon the numerous applications filed by Defendant. Plaintiff has not demonstrated in its application that "traditional sanctions for frivolous litigation have provided no deterrent to [Defendant Bowers]." Rosenblum, 333 N.J. Super. at 387. Accordingly, it is improper for the Court to enter a Rosenblum order unless and until Plaintiff demonstrates that traditional sanctions, such as monetary penalties, have been imposed and have not deterred the Defendant from pursuing frivolous litigation. "When the imposition of sanctions fails, injunctive relief may be warranted." Parish, 412 N.J. Super. at 54.

Any other issues raised in parties' submissions are to be decided by the Essex Vicinage, Chancery Division, General Equity Part.

JOSHUA G. CURTIS, ESQ.
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Fax: (201) 488-3380
Email: joshuagcurtis@gmail.com
Attorney for the Plaintiff

20a



LYNX ASSET SERVICES LLC,

Plaintiff,

v.

YVONNE BOWERS SR.,

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
ESSEX COUNTY

Docket No.: ESX-C-191-17

Civil Action

ORDER GRANTING PLAINTIFF SUMMARY
JUDGMENT

THIS MATTER, having come before the Court upon application of the Plaintiff's counsel, Joshua G. Curtis, Esq., seeking an Order granting summary judgment to the Plaintiff; on notice to the pro se Defendant, Yvonne Bowers Sr.; and this Court having considered the papers submitted by counsel in support of this motion and any response thereto; and having heard oral argument; and good cause thus appearing,

It is on this 5th January 2018 day of December 2017

ORDERED that the Plaintiff's motion for summary judgment is granted; and it is further

ORDERED that the Essex County Registrar shall immediately discharge that certain Notice of Lis Pendens dated March 29, 2017, and recorded by the Defendant, Yvonne Bowers Sr., on March 30, 2017, at 1:49:33 p.m., in respect of the property commonly known as 44 Tappan Avenue in Belleville, Essex County, New Jersey; and it is further

~~ORDERED that Bowers is barred from filing any future actions, motions, or Notices of Lis Pendens challenging Lynx's title in the property at 44 Tappan Avenue in Belleville, Essex County, New Jersey, without first obtaining the express permission of this Court; and it is further~~

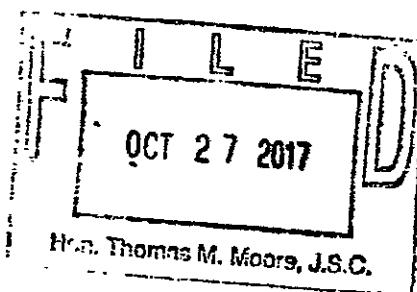
~~ORDERED that the Plaintiff's counsel shall serve a copy of this Order upon counsel for the Defendants within ____ days of its entry.~~



Hon. Thomas M. Moore, JSC

JOSHUA G. CURTIS, ESQ.
Attorney ID # 003612005
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Court Plaza South—West Wing
Suite 210
Hackensack, New Jersey 07601
Tel: (201) 463-4770
Fax: (201) 488-3380
Email:joshuagcurtis@gmail.com
Attorney for the Plaintiff

22a



LYNX ASSET SERVICES LLC,

Plaintiff,

v.

YVONNE BOWERS SR.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
ESSEX COUNTY

Docket No.: ESX-C-191-17

Civil Action

ORDER CONVERTING THIS MATTER
TO A SUMMARY ACTION IN
ACCORDANCE WITH RULE 4:67-1(b)

THIS MATTER, having come before the Court upon application of the Plaintiff's counsel, Joshua G. Curtis, Esq., seeking an Order granting leave to proceed summarily in accordance with New Jersey Court Rule 4:67-1(b); on notice to the Defendant, Yvonne Bowers Sr.; and this Court having considered the papers submitted by counsel in support of this motion and any response thereto; and good cause thus appearing,

It is on this 27th day of October 2017

ORDERED that this matter is hereby converted to a summary action in accordance with Rule 4:67-1(b); and it is further

either file a dispositive motion by Nov 30, 2017 or

ORDERED that the parties shall appear for trial before this Court at 10th o'clock

am on Jan 3, 2018 ^{10th AM, 2017; and it is further;}

ORDERED that the Plaintiff's attorney shall serve a copy of this Order upon the Defendant within 1 days of this Order.

IF a dispositive motion is filed, it shall be heard on Jan 3, 2018 at 10th A.M.

Tom M. Moore
Hon. Thomas M. Moore, JSC

This motion was: opposed

unopposed

Ordered that

Defendant's Motion for Summary Judgment is denied.

SUPREME COURT OF NEW JERSEY
M-1320/1321 September Term 2013
073499

LYNX ASSET SERVICES, LLC,

PLAINTIFF,

v.

FILED

JUN 26 2014

ORDER

YVONNE R. BOWERS, SR.,

DEFENDANT-MOVANT.

Mark Neary
CLERK

It is ORDERED that the motion for leave to file a motion for reconsideration as within time (M-1320) is granted; and it is further

ORDERED that the motion for reconsideration of the orders denying the motion for a stay and the petition for certification (M-1321) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 24th day of June, 2014.

The foregoing is a true copy
of the original on file in my office.

Mark Neary

CLERK OF THE SUPREME COURT
OF NEW JERSEY

Mark Neary
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-849/850/851
September Term 2013
073499

LYNX ASSET SERVICES, LLC,
PLAINTIFF-RESPONDENT,

FILED

v.

ORDER

YVONNE R. BOWERS, SR.,
DEFENDANT-MOVANT.

APR 11 2014

Stuart Rabner
CLERK

It is ORDERED that the motions to expand the record
(M-849), to remove from State (M-850), and for a stay pending
appeal (M-851) are denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 8th day of April, 2014.

Stuart Rabner
CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

A-005101-11

Stuart Rabner
CLERK OF THE SUPREME COURT
OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
C-763 September Term 2013
073499

LYNX ASSET SERVICES, LLC,

PLAINTIFF-RESPONDENT,

v.

ON PETITION FOR CERTIFICATION

YVONNE R. BOWERS, SR.,

DEFENDANT-PETITIONER.

FILED

APR 11 2014

M. J. Bowers
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-005101-11
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 Jaynee LaVecchia, Presiding Justice,
at Trenton, this 8th day of April, 2014.

M. J. Bowers
CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

M. J. Bowers
CLERK OF THE SUPREME COURT
OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
M-762 September Term 2013
073499

LYNX ASSET SERVICES, LLC,

PLAINTIFF,

v.

YVONNE R. BOWERS, SR.,

DEFENDANT-MOVANT.

FILED

FEB 14 2014

ORDER

Mark Curran
CLERK

It is ORDERED that the motion for leave to file a notice of petition for certification and petition for certification as within time is granted.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 11th day of February, 2014.

The foregoing is a true copy
of the original on file in my office.

CLERK OF THE SUPREME COURT

Mark Curran
CLERK OF THE SUPREME COURT
OF NEW JERSEY

LYNX ASSET SERVICES, LLC, Plaintiff-Respondent,

v.

YVONNE R. BOWERS, SR., Defendant-Appellant.

DOCKET NO. A-5101-11T2

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**Submitted September 3, 2013
Decided September 9, 2013**

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

Before Judges Harris and Fasciale.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-23081-09.

Yvonne R. Bowers, Sr., appellant pro se.

The Law Office of Michael A. Alfieri, attorney for respondent (Mr. Alfieri, on the brief).

PER CURIAM

Defendant appeals from a May 14, 2012 order denying her motion to dismiss plaintiff's residential foreclosure complaint. The order essentially denied defendant's second motion to vacate a foreclosure judgment and set aside a sheriff's sale. We affirm.

Page 2

In July 2007, defendant executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Accredited Home Lenders, Inc. (AHL), regarding the property. In January 2009, defendant defaulted on her mortgage payment. In March 2009, defendant remained in default and received a notice of intent to foreclose (NOI). In April 2009, MERS assigned the mortgage to Wachovia Bank, N.A.

(Wachovia), defendant failed to cure the default, and Wachovia filed a foreclosure complaint, which defendant ignored.

In June 2009, defendant received a copy of the complaint, and in September 2009, the court entered default. In November 2009, Wachovia's counsel notified defendant that Wachovia would seek a final judgment if defendant remained in default on her mortgage payments. In February 2010, Wachovia filed a motion with the Office of Foreclosure (OOF) for entry of judgment. On November 23, 2010, the OOF granted the motion as unopposed and entered a final judgment.

In December 2010, Wachovia assigned the mortgage to MCM Capital Homeowners Advantage Trust IX (HAT). In June 2011, HAT assigned the mortgage to plaintiff. In August 2011, plaintiff notified defendant about the assignment, and in September 2011, the court permitted plaintiff to amend the complaint to strike Wachovia's name from the caption and add its own name. The

Page 3

Sheriff then scheduled the sheriff's sale for March 26, 2011, but defendant obtained eleven adjournments. In November 2011, the court denied defendant's request to stay the sale and the property was sold.

In December 2011, defendant moved to set aside the sale and vacate the judgment contending, among other things, that she had not been served with the complaint. On March 9, 2012, the court denied defendant's motion, but ordered plaintiff to re-serve the NOI to ensure full compliance with the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -73. In March 2012, plaintiff complied with the court order. Thereafter, defendant remained in default on her mortgage payments.

In or around April 2012, defendant filed her second motion to vacate the judgment and

set aside the sale. On May 11, 2012, the judge conducted oral argument and issued a lengthy oral decision. On May 14, 2012, the judge issued an order denying defendant's motion. This appeal followed.

On appeal, defendant raises the following points:

- A. [THE] DISTRICT COURT ERRED IN INSISTING [PLAINTIFF] WAS A NONHOLDER IN STANDING.
- B. [THE] DISTRICT COURT ERRED IN ALLOWING PLAINTIFF TO CORRECT THE [NOI].

Page 4

- C. [THE] DISTRICT COURT ERRED BY STATING A PROMISSORY NOTE DOES NOT HAVE TO BE ENDORSED.

We focus primarily on defendant's contention regarding her appeal from the order essentially denying the vacation of the foreclosure judgment.

Our standard of review is well-settled. As Justice Patterson reiterated in US Bank National Ass'n v. Guillaume, 209 N.J. 449, 467 (2012), a "party seeking to vacate [a default] judgment" in a foreclosure action must satisfy Rule 4:50-1 which states that

[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; (b) newly discovered evidence which would probably alter the judgment or order and which by

due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or

Page 5

otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

The rule 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." Guillaume, supra, 209 N.J. at 467 (internal quotation marks omitted).

We afford "substantial deference" to the trial judge and reverse only if the judge's determination amounts to a clear abuse of discretion. Ibid. An abuse of discretion is when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (internal quotation marks omitted). We conclude that defendant has not demonstrated that she is entitled to relief under Rule 4:50-1. As such, the judge did not abuse her discretion.

Regarding Rule 4:50-1(a), defendant must show excusable neglect and a meritorious defense. See Guillaume, supra, 209 N.J. at 469. "Excusable neglect" may be found when the default was "attributable to an honest

mistake that is compatible with due diligence or reasonable prudence." Id. at 468 (quoting Mancini v. EDS, 132 N.J. 330, 335 (1993)). A motion under

Page 6

subsection (a) must be made within one year of the judgment. R. 4:50-2. Here, defendant filed an untimely motion to vacate the judgment. The court entered the judgment on November 23, 2010, and she filed her first motion to vacate on December 6, 2011, after the property was sold.

Nevertheless, defendant has not shown excusable neglect. The judge found that defendant received proper notice of the complaint on June 21, 2009. Plaintiff provided no credible reason for ignoring the complaint and waiting to vacate the unopposed judgment of foreclosure. Moreover, defendant filed her second motion to vacate the judgment thirty-four months after service of the complaint and seventeen months after entry of the judgment.

Even if defendant showed excusable neglect, defendant is unable to show, on the merits, that she is entitled to vacate the judgment pursuant to Rule 4:50-1(d). "As a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt." Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)); accord Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010). Plaintiff produced proof that Wachovia obtained the note and assignment of the mortgage before

Page 7

Wachovia filed the complaint. Thus, Wachovia had standing to file the complaint. And, pursuant to Rule 4:64-2(d), plaintiff's counsel filed the necessary affidavit before entry of judgment.

We also note that "[a] Rule 4:50-1(d) motion, based on a claim that the judgment is void, does not require a showing of excusable neglect but must be filed within a reasonable time after entry of the judgment." Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 98 (App. Div. 2012); see R. 4:50-2. Under certain circumstances, "equitable considerations may justify a court in rejecting a foreclosure defendant's belated attempt to raise as a defense the plaintiff's lack of standing." Russo, supra, 429 N.J. Super. at 100. Such is the case here.

We stated in Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012), that

[i]n foreclosure matters, equity must be applied to plaintiffs as well as defendants. Defendant did not raise the issue of standing until he had the advantage of many years of delay. Some delay stemmed from the New Jersey foreclosure system, other delay was afforded him through the equitable powers of the court, and additional delay resulted from plaintiff's attempt to amicably resolve the matter. Defendant at no time denied his responsibility for the debt incurred nor can he reasonably argue that Deutsche is not the party legitimately in possession of the property. Rather, when all hope of further delay expired, after his home was sold and

Page 8

he was evicted, he made a last-ditch effort to relitigate the case. The trial court did not abuse its discretion in determining that defendant was not equitably entitled to vacate the judgment.

Like Angeles, defendant failed to deny responsibility for her debt, contributed to the substantial delay by filing numerous adjournment requests, waited to file her motion to vacate until after the sale of the property, and provided no reasonable explanation for her delay.

Furthermore, in Russo, *supra*, 429 N.J. Super. at 101, we held, based on Guillaume and Angeles, that "even if [the] plaintiff did not have the note or a valid assignment when it filed the complaint, but obtained either or both before entry of judgment, dismissal of the complaint would not have been an appropriate remedy . . . because of [the] defendants' unexcused, years-long delay in asserting that defense." There, defendants challenged plaintiff's standing to file the foreclosure complaint because it did not take an assignment of the mortgage until after the complaint was filed. Id. at 96. We concluded, "in this post-judgment context, that lack of standing would not constitute a meritorious defense to the foreclosure complaint." Id. at 101. "[S]tanding is not a jurisdictional issue in our State court system and, therefore, a foreclosure judgment obtained by a party that lacked standing is not 'void' within

Page 9

the meaning of Rule 4:50-1(d)." Ibid. The same rationale applies here. Hence, standing issues aside, plaintiff had a legal right to enforce the note, pursuant to the Uniform Commercial Code, at the time its assignor obtained the judgment. See Ford, *supra*, 418 N.J. Super. at 597.

Finally, defendant is not entitled to relief pursuant to Rule 4:50-1(f). Subsection (f) permits a judge to vacate a default judgment for "any other reason justifying relief from the operation of the judgment or order," and "is available only when truly exceptional circumstances are present." Guillaume, *supra*, 209 N.J. at 484 (internal quotation marks omitted). The applicability of this subsection is

limited to "situations in which, were it not applied, a grave injustice would occur." Ibid. (internal quotation marks omitted). On this record, defendant has not shown any such "exceptional circumstances."

After a thorough review of the record and consideration of the controlling legal principles, we conclude that defendant's remaining arguments are without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). Affirmed.

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

CLERK OF THE APPELLATE DIVISION

Notes:

On February 8, 2013, we received defendant's reply brief entitled in part, "motion of fraud." Defendant contended in her reply brief that plaintiff is guilty of fraud, conspiracy, and falsification of records. We reject these contentions and conclude that they are without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

A-5101-11T2

FILED
APPELLATE DIVISION
January 9, 2013



CLERK

ORDER ON MOTION

LYNX ASSET SERVICES, LLC
VS
YVONNE R. BOWERS, SR.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005101-11T2
MOTION NO. M-002056-12
BEFORE PART D
JUDGE(S): PAULETTE M. SAPP-
PETERSON
WILLIAM E. NUGENT

MOTION FILED: 12/05/2012
ANSWER(S) 12/14/2012
FILED:

BY: YVONNE R. BOWERS SR.
BY: LYNX ASSET SERVICES

SUBMITTED TO COURT: December 27, 2012

ORDER

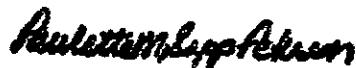
THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
8th day of January, 2013, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR DEFAULT	DENIED
MOTION FOR CHANGE OF VENUE AND	DENIED
JUDGE	

SUPPLEMENTAL:

FOR THE COURT:

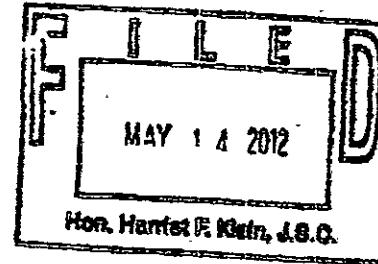


I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION

PAULETTE M. SAPP-PETERSON, J.A.D.

F-023081-09 ESSEX
ORDER - REGULAR MOTION
SRB



LAW OFFICE OF MICHAEL A. ALFIERI
 30 Freneau Avenue
 Matawan, New Jersey 07747
 732-360-9266
 Attorney for Plaintiff

Plaintiff
 LYNX ASSET SERVICES LLC

VS.
 Defendant
 Yvonne R. Bowers, Sr.; et als.

: SUPERIOR COURT OF NEW JERSEY
 : CHANCERY DIVISION
 : ESSEX COUNTY
 : DOCKET NO. F-23081-09
 :
 : ORDER DENYING
 : DEFENDANT'S APPLICATION TO
 : DISMISS

This matter being opened to the court by the Defendant, Yvonne R. Bowers, Sr.,
 Pro Se, an Application to Dismiss the Foreclosure and Michael A. Alfieri, Esq. attorney
 for Plaintiff, Lynx Asset Services, LLC and the Court having heard arguments of the
 parties; and for the reasons set forth on the record
 on May 11, 2012,

IT IS ON THIS 4th DAY OF May, 2012

ORDERED THAT the Defendant's motion to dismiss the foreclosure be and is
 hereby denied; and it is further.

ORDERED THAT within 7 days of this Order, the plaintiff serve a
 copy of this Order upon the Defendant in the above entitled action.

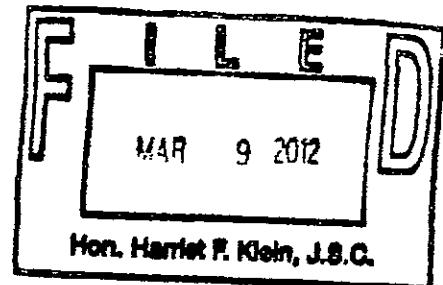
Hanif Klein

JCH

This Motion was:

Opposed
 Unopposed

YVONNE R BOWERS, Pro Se
 83 WOODBINE AVENUE
 NEWARK, NJ 07106
 862-236-6437



LYNX ASSET SERVICING, LLC

(Plaintiff)

VS.

YVONNE R BOWERS, et al

(Defendant)

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION -
 ESSEX COUNTY

DOCKET NO.: F-23081-09

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court by Yvonne Bowers, the defendant in the above-captioned matter; and the Court having considered the motion papers, and arguments of both parties; and for good cause, it is hereby *for the reasons set forth on the record*

ON THIS 9th day of March, 2012.

1. ORDERED that the ~~sale of the mortgage premises heretofore held on the 29th day of November, 2011, by the Sheriff of Essex County~~ be and the same is ~~vacated~~ ^{DENIED}; however, plaintiff shall cure the defective Notice of Intent by re-servicing a notice in compliance with law.
2. ORDERED that the Sheriff of Essex County return to the court the execution issued in upon defendant and shall forbear for the period required by the Fair Foreclosure Act.

(This action marked unsatisfied and that such execution)

3. ORDERED that the Certification of Amount Due and Certification in Support of Order
Substituting Plaintiff are and hereby stricken;

4. ORDERED that the Final Judgment heretofore entered in this action be and is hereby
VACATED; *Denied*

5. ORDERED that Default is hereby VACATED;

6. ORDERED that the Complaint filed by Wachovia Bank, NA is hereby DISMISSED
without prejudice; and

7. ORDERED that Defendant shall serve a copy of this Order on counsel of record within
7 days of receipt by Defendant.

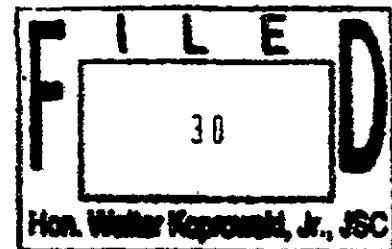
This motion was:

Opposed Unopposed

Howard Klein
HAROLD P. KLEIN, A.G.C.

973 648 2146

LAW OFFICE OF MICHAEL A. ALFIERI
30 Freneau Avenue
Matawan, New Jersey 07747
732-360-9266
Attorney for Plaintiff



Plaintiff : SUPERIOR COURT OF NEW JERSEY
LYNX ASSET SERVICES LLC : CHANCERY DIVISION
VS. : ESSEX COUNTY
Defendant : DOCKET NO. F-23081-09
Yvonne R. Bowers, sr.; et als. : ORDER DENYING APPLICATION TO
: STAY SHERIFF'S SALE

This matter being opened to the court by the Defendant, Yvonne R. Bowers, Sr., Pro Se, an Application to Stay the Sheriff's Sale presently scheduled for November 29, 2011 and Michael A. Alfieri, Esq. attorney for Plaintiff, Lynx Asset Services, LLC and the Court having heard arguments of counsel;

IT IS ON THIS 30th DAY OF November 2011

ORDERED THAT the Application to Stay the Writ of Sheriff's Sale is denied; and it is further.

ORDERED THAT within 10 days of this Order, the plaintiff serve a copy of this Order upon any defendant in the above entitled action.



A handwritten signature in black ink, appearing to read "W. J. Chisholm".

P.J.Ch

REASONS PLACED ON FILE RECORD ON 11/29/11

FILED Sep 13, 2011

LAW OFFICE OF MICHAEL A. ALFIERI
30 Frenneau Avenue
Matawan, New Jersey 07747
732-360-9266
Attorney for Plaintiff

Plaintiff	:	SUPERIOR COURT OF NEW JERSEY
LYNX ASSET SERVICES LLC	:	CHANCERY DIVISION
	:	ESSEX COUNTY
VS.	:	DOCKET NO. F-23081-09
Defendant	:	
	:	
YVONNE R. BOWERS, SR.	:	ORDER SUBSTITUTING PLAINTIFF

This matter being opened to the court by Law Office of Michael A. Alfieri, attorney for plaintiff, and it appearing that the plaintiff be substituted to LYNX ASSET SERVICES LLC by right of assignment of Mortgage dated June 14, 2011 and for good cause shown;

IT IS ON THIS 13TH DAY OF SEPTEMBER, 2011

ORDERED AND ADJUDGED that:

1. The Complaint in this action be and is amended by striking the name of Wachovia Bank, NA. as the party plaintiff.
2. Lynx Asset Services LLC be and is substituted in the place and stead of Wachovia Bank, NA. as party plaintiff and all subsequent pleadings filed with the court shall use the name of the substituted plaintiff in the caption.
3. The Superior Court is directed to change, as herein modified, the name of the party plaintiff on the automated case management system docket.
4. A copy of this order shall be served on all appearing parties within Seven (7) days of the date of this order.

Mary C. Jacobson, P.J.Ch.

MARY C. JACOBSON, P.J.Ch

Respectfully Recommended
R. 1:34-6 OFFICE OF FORECLOSURE

PLUESE, BECKER & SALTZMAN
 Attorneys At Law
 20000 Horizon Way
 Suite 900
 Mount Laurel, New Jersey 08054
 (856) 813-1700
 Attorneys for Plaintiff
 File Number: 64074

WACHOVIA BANK, NA

PLAINTIFF

v.

YVONNE R. BOWERS, SR., ~~ET AL~~

DEFENDANTS

FILED

NOV 29 2010

SUPERIOR COURT
 CLERK'S OFFICE

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 ESSEX COUNTY
 DOCKET NO.: F-23081-09

CIVIL ACTION
 FINAL JUDGMENT

This matter being opened to the Court by Plaintiff, by and through Counsel, Pluese, Becker & Saltzman, Sanford J. Becker, Esquire appearing, and it appearing that Summons and Complaint, have been duly issued and returned served upon the following Defendants, who have filed an Answer, which does not dispute the priority or validity of the Plaintiff's mortgage: none.

And it further appearing that service of the said Summons and Complaint, have been made upon the following Defendants, in accordance with the Rules of this Court, and default having been entered against said Defendants: Yvonne R. Bowers, Sr.

And it appearing from the Plaintiff's Note/Bond, Mortgage, and Assignment of Mortgage, if any, having been presented and marked as exhibits by the Court, and proofs having been submitted of the amount due on Plaintiff's mortgage and on the subsequent encumbrances of the following Defendants, whose priority cannot be determined at this time and must await surplus money proceedings, if any: none

and sufficient cause appearing;

IT IS on this 23rd day of November 2010, ORDERED and ADJUDGED that the Plaintiff is entitled to have the sum of \$292,490.53 together with the interest computed at the contract rate of 7.25% on 280,917.03, being the principal sum in default (Including advances, if any) from 9/30/09 to 11/23/10 and lawful interest thereafter on the total sum due Plaintiff,

6-299115
 DNI:23081-09
 FN:64074 BOWERS

together with costs of this suit to be taxed, including a counsel fee of \$ 3,074.91, and raised and paid in the first place out of the mortgaged premises; and it is further

ORDERED that the Plaintiff, its assignee or purchaser duly recover against the following Defendants: Yvonne R. Bowers, Sr., and all persons or entities taking, holding, or claiming under said Defendants, the possession of the premises mentioned and described in the said Complaint, with appurtenances, and that a Writ of Possession issue thereon, and it is further,

ORDERED and ADJUDGED that the mortgaged premises be sold to raise and satisfy the several sums of money due, in the first place to the Plaintiff, Wachovia Bank, NA the sum of \$292,490.53 with interest thereon as aforesaid, and the plaintiff's costs to be taxed, with lawful interest thereon, and that an execution for that purpose duly issued by this Court to the Sheriff of Essex County, commanding said Sheriff to make sale according to law of the mortgaged premises described in the Complaint, and from the moneys arising from said sale, that said Sheriff pay in the first place to the Plaintiff, Wachovia Bank, NA said Plaintiff's debt, with interest thereon as aforesaid and said plaintiff's costs with interest thereon as aforesaid, and Defendant's debt with interest thereon as aforesaid and said Defendant's costs with interest thereon as aforesaid, and in case more money shall be realized by the said sale that shall be sufficient to satisfy such several payments as aforesaid, that such surplus be brought into this Court to abide the further Order of this Court and that the Sheriff aforesaid make a report of the aforesaid sale without delay required by the Rules of this Court; and it is further

ORDERED and ADJUDGED that the Defendants in this cause and each of them, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to said mortgaged premises described in the Complaint, when sold as aforesaid by virtue of this Judgment; and it is further.

Notwithstanding anything herein to the contrary, this judgment shall not affect the rights of any person protected by the New Jersey Tenant Anti-Eviction Act, N.J.S.A. 2A:18-61.1, et seq., the

right of redemption given the United States under 28 U.S.C. section 2410, the limited priority rights for the aggregate customary condominium assessment for the six-month period prior to the recording of any association lien as allowed by N.J.S.A. 46:8B-21 or rights afford by the Service Members Civil Relief Act, 50 U.S.C. app. 501 et seq. or N.J.S.A. 38:23C-4.

Respectfully recommended
R. 1:34-6 OFFICE OF FORECLOSURE

Mary C. Jacobson, P.J.Ch.
MARY C. JACOBSON, P.J.Ch.

**Additional material
from this filing is
available in the
Clerk's Office.**