

The New Jersey Appellate Division Confirms The Premise That “The Law Does Not Compel One To Do a Useless Act: Equity Follows the Law”

June 27, 2014

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In a per curiam opinion dated June 25, 2014, the Appellate Division, following the principles of equity, declined to set aside a sheriff’s sale based on the defendants’ allegation of lack of notice of the sale in strict compliance with *Rule* 4:65-2. The Court affirmed Judge Levy’s ruling that an extension of the redemption period sufficed to remedy any alleged defect in notice. Mortgage Electronic Registration Systems, Inc. v. Eschenbach, 2014 WL 2864959 (Appellate Division June 25, 2014) Notwithstanding the allegation of lack of notice, the Judge Levy observed that the defendants’ failed to assert that they had the ability to redeem the property. Relying on the decision in United States v. Scurry, 193 N.J. 492 (2008), he determined that, rather than ordering a hearing to determine whether the defendants received actual notice of sale and whether the defendants had the ability to redeem, the defendants would be afforded sixty days to redeem. Judge Levy opined that it would not be practical to order a hearing if the defendants were not in a position to redeem. Judge Levy stated, “. . . the law does not compel one to do a useless act and that equity follows the law.” . Mortgage Electronic Registration Systems, Inc. v. Eschenbach, 2014 WL 2864959 The Appellate Division agreed and determined that the decision of Judge Levy was not an abuse of discretion and the motion to vacate the sale was properly denied. The Appellate Division referred to the Supreme Court’s decision in Scurry which explained, “it makes little sense to return the parties to the procedural juncture where the error first occurred”. United States v. Scurry, 193 N.J. at 506.