

349 Conn. 483

JUNE, 2024

507

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Wahba v. JPMorgan Chase Bank, N.A.

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delay.<sup>9</sup> Obviously, if the reviewing court so determines, and signals as much, the trial court would lack authority to entertain a request to order a foreclosure by sale on remand. Nothing in *Wahba I*, however, indicates that the Appellate Court intended to limit the exercise of the trial court's equitable powers on remand in this way. See 5 Am. Jur. 2d, supra, § 689 ("a court on remand . . . is ordinarily free to make an order or direction on questions not presented or settled by [an] appellate court which is not inconsistent with the appellate court's opinion" (footnote omitted)). We therefore conclude that the Appellate Court's remand order in *Wahba I* did not deprive the trial court of its equitable discretion to order a foreclosure by sale.

Although we have concluded that an appellate court's affirmance of a judgment of strict foreclosure and remand of the case to the trial court with direction only to set new law days does not necessarily preclude the trial court from considering a request to order a foreclosure by sale, we take this opportunity to instruct reviewing courts (including ourselves) that they should take care to craft remand orders that accurately reflect the scope

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<sup>9</sup> We are not persuaded by the defendant's contention at oral argument before this court that allowing the trial court to entertain a request for a judgment of foreclosure by sale when a reviewing court has affirmed a judgment of strict foreclosure and remanded the case with direction to set new law days would result in a "perpetual motion" machine. If there is evidence that a mortgagor is using successive appeals merely for the purpose of delay, there are tools to prevent such behavior. For example, Practice Book § 61-11 (g) provides that, if a mortgagor files more than two motions to open, "no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion." In addition, the rule provides that, even if the mortgagor files such an affidavit, the mortgagee may seek to terminate the automatic stay of execution pending appeal "by filing a motion requesting such relief accompanied by an affidavit stating the basis for [its] claim." Practice Book § 61-11 (g). Finally, most mortgages contain provisions requiring the mortgagor to pay the mortgagee's attorney's fees in the event of a foreclosure.

NOTE: These pages (349 Conn. 507 and 508) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 25 June 2024.

508

JUNE, 2024

349 Conn. 483

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Wahba v. JPMorgan Chase Bank, N.A.

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of the court’s ruling and its intent. Our goal should be to provide trial courts with precise guidance about what action we expect them to undertake on remand and not to require them to parse opinions or to speculate about an appellate court’s intent to determine what actions are or are not permitted on remand. For example, if a reviewing court affirms a judgment of strict foreclosure and remands the case to the trial court to set new law days but does not intend to prohibit the trial court from considering a party’s request to order a judgment by sale if warranted by a change in circumstances, the reviewing court should expressly manifest that intent in the rescript by remanding the case for further proceedings consistent with our opinion in the present case.<sup>10</sup>

### III

Finally, we address the plaintiff’s claim that the Appellate Court incorrectly determined that, even if the trial court had the authority on remand to order a foreclosure by sale, she was required to file a motion to open the judgment of strict foreclosure and to present evidence that the property’s value had substantially increased since the date of the original judgment before the court could exercise that authority. We agree with the plaintiff.

This claim presents a question of law subject to plenary review. See, e.g., *Traystman, Coric & Keramidas, P.C. v. Daigle*, 282 Conn. 418, 428–29, 922 A.2d 1056 (2007) (whether party followed proper procedure under governing statutes and rules of practice is question of law subject to plenary review).

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<sup>10</sup> We recommend that courts use the following rescript language in such situations: “The judgment is affirmed and the case is remanded for further proceedings according to law.” We also recommend including a citation to this decision, “See *Wahba v. JPMorgan Chase Bank, N.A.*, 349 Conn. 483, A.3d (2024),” in a footnote appended to the end of the rescript as support for the foregoing rescript language.