
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

FINANCE OF AMERICA REVERSE, LLC
v. STEPHANIE HENRY ET AL.
(AC 45836)

Elgo, Prescott and Keller, Js.

Syllabus

The substitute plaintiff, as trustee, sought to foreclose a mortgage on certain real property owned by the defendant H. The trial court rendered judgment of foreclosure by sale and set a date for the sale. After the court extended the sale date to June 25, 2022, H, on May 10, 2022, filed a motion to open the foreclosure judgment and again extend the sale date. The court denied the motion to open on May 31, 2022, twenty-five days before the sale date. On June 22, 2022, three days before the sale date, the court denied a motion H had filed for reconsideration of the denial of her motion to open. After the sale went forward on June 25, 2022, H filed a motion for an order seeking to nullify the sale. H claimed that the sale was in violation of the automatic appellate stay of execution that was in effect on June 25, 2022, under the applicable rule of practice (§ 61-11 (a)), following the court's denial of her motion for reconsideration on June 22, 2022. The trial court denied H's motion for order, reasoning that her motion for reconsideration was an "other similar motion" under § 61-11 (h) that had been filed fewer than twenty days before the sale date, thereby permitting the foreclosure sale to proceed without violating the automatic stay. The court thereafter approved the sale and deed. *Held* that the trial court abused its discretion when it denied H's motion for an order nullifying the foreclosure sale and thereafter approved the sale and deed: the court's May 31, 2022 denial of H's motion to open the foreclosure judgment and extend the sale date was an appealable final judgment that gave rise to both a twenty day period in which to appeal as well as an automatic appellate stay, pursuant to § 61-11 (a), of any action to enforce the judgment through June 22, 2022, when the extended appeal period would have expired, but, because H's motion for reconsideration of that denial was filed within that appeal period on June 7, 2022, a new appeal period arose, pursuant to the applicable rule of practice (§ 63-1 (c) (1)), that extended the automatic appellate stay to July 12, 2022, in accordance with § 61-11 (a), which thus rendered the foreclosure sale void ab initio; moreover, because the motion to open was denied more than twenty days before the June 25, 2022 sale date, the court improperly determined that the denial of that motion implicated § 61-11 (h), which, if applicable, would have permitted the sale to proceed despite the automatic stay; furthermore, contrary to the substitute plaintiff's assertion, the reconsideration motion's lack of a notation at the bottom of its first page identifying it as a motion filed pursuant to the applicable rule of practice (§ 11-11) was not a sufficient basis on which to render the reconsideration motion ineffective for the purpose of creating a new appeal period, as it is the content of the motion that is determinative of whether it creates a new appeal period and extends the appellate stay, this court having long considered the failure to adhere to such requirements as mere technical defects or clerical errors; accordingly, on remand, the trial court was directed to vacate the foreclosure sale and to set a new sale date.

Argued October 11—officially released December 12, 2023

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Hartford, where Wilmington Savings Fund Society, FSB, as Trustee of Finance of America Structured Securities Acquisition Trust 2019-HB1, was substituted as the plaintiff; thereafter, the court, *Robaina, J.*, rendered

judgment of foreclosure by sale; subsequently, the court, *Budzik, J.*, denied the named defendant's motions to open the judgment and for reargument; thereafter, the court, *Baio, J.*, granted the substitute plaintiff's motion to approve the sale and committee deed and report, and the named defendant appealed to this court. *Reversed; further proceedings.*

John A. Sodipo, for the appellant (named defendant).

Jeffrey M. Knickerbocker, for the appellee (substitute plaintiff).

PRESCOTT, J. The present appeal concerns the proper application of Practice Book § 61-11 (h),¹ which limits the effect of the automatic appellate stay that arises following the denial of a motion to open a foreclosure judgment if that denial occurs fewer than twenty days before a scheduled foreclosure auction. In particular, we address the interplay between Practice Book §§ 61-11 (h) and 63-1 (c) (1),² the latter of which governs when and how a new appeal period is created that, by implication, also extends any existing appellate stay of execution. See Practice Book § 61-11 (a) (automatic appellate stay of action to enforce or carry out judgment exists until time to appeal judgment expires).³

The defendant Stephanie Henry⁴ appeals, following the court's approval of a foreclosure sale, from the denial of her motion for an order "nullifying" that sale.⁵ The defendant claims that the foreclosure sale was conducted in violation of the automatic appellate stay that arose as a result of the denial of her motion to open and extend the sale date, and that the court improperly relied on Practice Book § 61-11 (h) as a basis for refusing to set aside the sale. In response, the substitute plaintiff, Wilmington Savings Fund Society, FSB, as Trustee of Finance of America Structured Securities Acquisition Trust 2019-HB1,⁶ asserts that the sale was properly conducted as ordered by the court and that the court correctly denied the defendant's motion for order and, subsequently, approved the sale. For the reasons that follow, we agree with the defendant that the property was auctioned in violation of the automatic stay. Accordingly, we reverse the judgment of the court and remand with direction to vacate the foreclosure sale and set a new sale date.

The record reveals the following relevant facts and procedural history. The original plaintiff, Finance of America Reverse, LLC, commenced the present residential mortgage foreclosure action in April, 2017. The defendant appeared as a self-represented party and later filed an answer to the complaint. The court rendered judgment of foreclosure by sale on July 24, 2017, setting a sale date of November 4, 2017. The defendant did not file an appeal challenging the merits of the foreclosure judgment.

The defendant successfully moved to open the judgment to extend the sale date on three separate occasions, with the court eventually setting a new sale date of October 13, 2018. The sale did not go forward, however, because the defendant filed a bankruptcy petition on October 10, 2018, which stayed the foreclosure proceedings. The United States Bankruptcy Court dismissed the petition on October 29, 2018.

The plaintiff subsequently filed a motion asking the trial court to update the debt, award additional attor-

ney's fees, and set a new sale date. The court granted the plaintiff's motion on July 22, 2019, updated the terms of the judgment, and set a new sale date of November 9, 2019. One day before the November sale date, however, the defendant filed a second bankruptcy petition. That petition was dismissed on May 29, 2020. Because the sale date once again had passed, the plaintiff filed a motion asking the court to update the debt, award additional attorney's fees, and set a new sale date. The court granted the motion on November 15, 2021, setting a new sale date of May 21, 2022.

On April 26, 2022, the defendant filed a motion to open asking the court to extend the sale date from May to October, 2022, because her daughters were graduating, one from high school and the other from college. The court granted the motion but extended the sale date only to June 25, 2022.

On May 10, 2022, the defendant filed the motion to open that is directly related to the issue raised in the present appeal. In that motion, the defendant stated, in relevant part, that "[m]y desire is to have [five] more months from the June [25, 2022] sale date. I still have equity left in the home and I have a buyer who is now willing and able to purchase the property who would let me and my children to continue living here." The plaintiff filed an objection to the motion to open. It argued in relevant part that the foreclosure action had been pending since 2017; that this was the defendant's fifth motion to extend the sale date; and that allowing the defendant an additional five months to pursue a private sale, during which time the plaintiff would continue to incur further financial losses, would be inequitable to the plaintiff. Twenty-five days prior to the scheduled sale date, the court, *Budzik, J.*, denied the motion to open, indicating in its order that the defendant had failed to appear for argument.

On June 7, 2022, the defendant filed a motion to reargue/reconsider the motion to open. Although she did not address her failure to appear, she reasserted that she had a qualified buyer for the property and attached a copy of an executed real estate sale agreement dated June 6, 2022. The plaintiff filed an objection to the motion to reargue/reconsider arguing that the defendant had failed to state a proper basis for granting reargument. On June 22, 2022, three days before the sale date, the court denied the defendant's motion without comment. The foreclosure sale went forward as scheduled on June 25, 2022, with the plaintiff as the highest bidder.

On July 14, 2022, the committee filed its report and a motion seeking acceptance of the report and approval of the sale and deed.⁷ That same day, the defendant, now represented by counsel,⁸ filed a motion for order asking the court to exercise its "supervisory powers at law and in equity to nullify the foreclosure sale in this

matter” In her motion, the defendant argued that an appellate stay was in effect on June 25, 2022, and therefore the sale violated Practice Book § 61-11 (a) and her right to due process under the state constitution. The defendant filed a memorandum of law in support of her motion for order. The plaintiff filed an objection to the defendant’s motion for order, arguing that “[t]here was no automatic stay/appeal period in place [and therefore] execution of the sale was not improper as alleged by the defendant.” The defendant filed a reply memorandum.

Judge Budzik issued an order on August 5, 2022, denying the defendant’s motion for order without comment except for a citation to Practice Book § 61-11 (h) with the following parenthetical: “In any action for foreclosure in which the owner of the equity has filed a motion to open or other similar motion, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled” (Internal quotation marks omitted.) The defendant filed a motion to reargue her motion for order, which the court denied on September 2, 2022. In its order denying the motion to reargue, the court further explained its rationale for denying the motion for order. The court stated that it viewed the defendant’s motion for reconsideration of the denial of the motion to open and extend the sale date as an “other similar motion” under Practice Book § 61-11 (h) because it sought the same relief as the motion to open—to delay the sale. Because the court’s denial of the motion for reconsideration came three days prior to the sale date, it concluded that Practice Book § 61-11 (h) applied and that the sale could proceed without violating the automatic stay.

On September 19, 2022, the court, *Baio, J.*, accepted the committee’s report, approved the sale and deed, and allowed the fees and expenses of the committee and appraiser. This appeal followed.⁹

The sole issue before us on appeal is whether the court improperly denied the motion for order and approved the sale because the sale was conducted in violation of an automatic appellate stay. The defendant argues that Practice Book § 61-11 (h) is inapplicable because her motion to open was denied more than twenty days before the foreclosure sale date and the denial of her subsequent motion to reargue extended the existing appellate stay so as to bar the sale.

The plaintiff agrees that the denial of the motion to open did not trigger Practice Book § 61-11 (h) but argues that the motion to reargue the denial of the motion to open did not result in a new appeal period because it was defective in form and, regardless of its direct applicability, § 61-11 (h) should be broadly construed as providing that a foreclosure sale is not a proceeding to enforce or carry out a judgment and thus

cannot violate the automatic stay. We agree with the defendant's argument and find the counterarguments advanced by the plaintiff unpersuasive. Accordingly, we reverse the judgment of the court approving the sale and remand the case with direction to set a new sale date.

We begin by setting forth our standard of review, followed by a discussion of the relevant rules of practice and other legal principles that guide our review in this matter. "A foreclosure action is an equitable proceeding. . . . The determination of what equity requires is a matter for the discretion of the trial court." (Internal quotation marks omitted.) *Federal Deposit Ins. Corp. v. Owen*, 88 Conn. App. 806, 811, 873 A.2d 1003, cert. denied, 275 Conn. 902, 882 A.2d 670 (2005). Thus, ordinarily, we would review a court's order regarding whether to grant an extension of a foreclosure sale date or to approve a completed sale under our abuse of discretion standard. See, e.g., *U.S. Bank Trust, N.A. v. Giblen*, 190 Conn. App. 221, 229, 209 A.3d 1266, cert. denied, 333 Conn. 903, 215 A.3d 159 (2019); *Centerbank v. Connell*, 29 Conn. App. 508, 511, 616 A.2d 282 (1992). Here, however, the defendant claims that the sale was conducted in violation of an automatic appellate stay and our resolution of that claim requires us to construe our rules of practice. Accordingly, the present appeal raises questions of law over which our review is plenary. See, e.g., *Deutsche Bank National Trust Co. v. Fraboni*, 182 Conn. App. 811, 821, 191 A.3d 247 (2018); see also *First Connecticut Capital, LLC v. Homes of Westport, LLC*, 112 Conn. App. 750, 766, 966 A.2d 239 (2009) ("[a]lthough the court in a foreclosure action exercises discretion, it must correctly apply the law").

"The interpretive construction of [our] rules of practice is . . . governed by the same principles as those regulating statutory interpretation. . . . In seeking to determine [the] meaning [of a statute or a rule of practice, we] . . . first . . . consider the text of the statute [or rule] itself and its relationship to other statutes [or rules]. . . . If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence . . . shall not be considered. . . . [If the provision] is not plain and unambiguous, we also look for interpretive guidance to the . . . history and circumstances surrounding its enactment, to the . . . policy it was designed to implement, and to its relationship to existing [provisions] and common law principles governing the same general subject matter We recognize that terms [used] are to be assigned their ordinary meaning, *unless context dictates otherwise*. . . . Put differently, we follow the clear meaning of unambiguous rules, because [a]lthough we are directed to interpret liberally the rules of practice, that liberal construction applies only to situations in which a strict adherence to them [will]

work surprise or injustice.” (Emphasis added; internal quotation marks omitted.) *Deutsche Bank National Trust Co. v. Fraboni*, supra, 182 Conn. App. 818–22.

It is axiomatic that, with limited exceptions not relevant here; see Practice Book § 61-11 (b) and (c); in noncriminal actions, which include mortgage foreclosure proceedings, an automatic appellate stay of any action to enforce or carry out an appealable judgment exists “until the time to file an appeal [from that judgment] has expired.” Practice Book § 61-11 (a). “[T]here are [generally] three appealable determinations in a case involving a foreclosure by sale: the judgment ordering a foreclosure by sale, the approval of the sale by the court, and the supplemental judgment [in which proceeds from the sale are distributed].” (Internal quotation marks omitted.) *Toro Credit Co. v. Zeytoonjian*, 341 Conn. 316, 322, 267 A.3d 71 (2021); see *id.* (recognizing that foreclosure is area of our law “in which we have held that certain steps along that road, although not literally final, inasmuch as the case goes on, are considered final judgments for purposes of appellate jurisdiction”).

In addition, this court has held that the denial of a motion to open a judgment of foreclosure by sale is also an appealable final judgment. See *First Connecticut Capital, LLC v. Homes of Westport, LLC*, supra, 112 Conn. App. 756 (recognizing that “appellate courts routinely afford review to appeals from the denial of a motion to open a judgment of foreclosure by sale” and collecting cases). This includes the denial of motions to open a foreclosure judgment solely for the purpose of extending the sale date.¹⁰ See, e.g., *Milford v. Recycling, Inc.*, 213 Conn. App. 306, 307–309, 278 A.3d 1119 (considering appeal in municipal tax lien foreclosure action taken from denial of motion to open seeking to extend sale date because defendant trustee had ongoing contract negotiations with willing buyer), cert. denied, 345 Conn. 906, 282 A.3d 981 (2022).

Practice Book § 61-11 (h) is a relatively new provision that, for policy reasons, was added to provide a limited exception to the automatic appellate stay.¹¹ The commentary to the new provision provides that it was intended “to address the problem of the ‘“perpetual motion machine’” recognized in *First Connecticut Capital, LLC v. Homes of Westport, LLC*, [supra, 112 Conn. App. 762], whereby a party could indefinitely delay conclusion of the foreclosure proceedings by filing repeated dilatory motions to open the foreclosure judgment.” Practice Book (2014) § 61-11 (h), commentary. In other words, Practice Book § 61-11 (h) operates as a deterrent to a foreclosure defendant’s dilatory motion practice by providing a limited exception to the automatic appellate stay provision that allows a scheduled sale of the property to proceed.

This court discussed Practice Book § 61-11 (h) in

Deutsche Bank National Trust Co. v. Fraboni, supra, 182 Conn. App. 811, stating: “Section 61-11 (h) addresses only a last minute motion to open filed by a foreclosure defendant to disrupt a scheduled foreclosure sale. It does not expand a foreclosure defendant’s rights to an automatic stay. To the contrary, it ‘stays’ only the filing of a motion to approve the sale ‘until the expiration of the appeal period following the denial of the motion [to open] without an appeal having been filed.’ . . . Consistent with our interpretation of § 61-11 (a), this language provides the defendant with relief [regarding the approval of the sale] only if he files a timely appeal.” (Citation omitted.) Id., 828–29.

Our rules effecting the automatic appellate stay, however, are not limited to Practice Book § 61-11 et seq. Practice Book § 63-1 contains provisions that govern the time in which to file an appeal (appeal period), including circumstances in which a new appeal period is created, which also has an impact on the appellate stay. Parties ordinarily have twenty days from the date that notice of an appealable judgment is given within which to file an appeal. Practice Book § 63-1 (a). If, however, a party files a motion within that “original” appeal period that, if granted, would render the appealable judgment ineffective, “a new twenty day period . . . for filing the appeal shall begin on the day that notice of the ruling [on such motion] is given” Practice Book § 63-1 (c) (1). An appeal from the judgment “may be filed either in the original appeal period, which continues to run, or in the new appeal period.” Practice Book § 63-1 (a).

To summarize, because it is well settled that the denial of a motion to open a judgment of foreclosure by sale is an appealable final judgment, a party may challenge the denial of a motion to open a foreclosure judgment either during the original appeal period or, *if a Practice Book § 63-1 (c) (1) motion is filed and denied*, during the resulting new appeal period. Moreover, any automatic appellate stay in effect as a result of the denial of a motion to open remains throughout the duration of the new appeal period. Except in the limited instances in which the exception provided for in Practice Book § 61-11 (h) is applicable, a foreclosure sale conducted while an appellate stay is in effect is void ab initio. See *First Connecticut Capital, LLC v. Homes of Westport, LLC*, supra, 112 Conn. App. 760–66; see also *RAL Management, Inc. v. Valley View Associates*, 88 Conn. App. 430, 439, 872 A.2d 462 (2005) (“Practice Book § 61-11 serves to stay proceedings to enforce or carry out the judgment . . . until the time to take an appeal has expired, thereby forbidding . . . a sale in a foreclosure by sale” (internal quotation marks omitted)), rev’d on other grounds, 278 Conn. 672, 899 A.2d 586 (2006).

Applying the foregoing in the present case, we con-

clude that the foreclosure sale on June 25, 2022, was conducted in violation of an appellate stay. On May 10, 2022, the defendant filed a motion to open the judgment of foreclosure by sale for the purpose of extending the June 25, 2022 sale date. The motion to open, which was filed more than twenty days after the latest updated foreclosure judgment was rendered on November 15, 2021,¹² sought only to postpone the sale date. Under the circumstances of this case, the granting of the motion to open, therefore, would not have rendered the foreclosure judgment ineffective, and, accordingly, the motion to open cannot reasonably be construed as the type of motion contemplated by Practice Book § 63-1 (c) (1).

We recognize that, as previously indicated; see footnote 2 of this opinion; one paragraph of Practice Book § 63-1 (c) (1) contains a nonexhaustive list of the types of motions that lead to the creation of a new appeal period, including motions that seek “*the opening or setting aside of the judgment . . .*” (Emphasis added.) The subsequent paragraph provides examples of motions that do not give rise to a new appeal period, which includes motions that seek “*reargument of a motion listed in the previous paragraph.*” (Emphasis added.) Practice Book § 63-1 (c) (1).

Reading the highlighted provisions out of context might lead to the conclusion that, although a new appeal period arises following the denial of a motion to open a judgment, the denial of a motion to reargue the denial of a motion to open can never give rise to another appeal period. That conclusion, however, would be incorrect, particularly under the circumstances of the present case. Stated simply, Practice Book § 63-1 (c) (1) was intended to limit parties to one opportunity for the creation of an additional appeal period in which to challenge any particular final judgment. Thus, motions seeking reargument of a motion that, if granted, would render the judgment at issue ineffective, cannot result in an additional appeal period. In the present case, the motion to open to extend the sale day was not filed within the twenty day appeal period challenging the judgment of foreclosure by sale and thus was not a § 63-1 (c) (1) motion. The denial of the motion to open to extend the sale day was itself an appealable final judgment. Accordingly, the motion to reargue the motion to open was the first § 63-1 (c) (1) motion filed, and its denial did create a new appeal period, thus extending both the time to appeal the denial of the motion to open and the attendant appellate stay of execution.

On May 31, 2022, which was twenty-five days prior to the sale date, the court issued notice denying the motion to open. Because the denial of a motion to open a judgment of foreclosure is an immediately appealable judgment, a twenty day period in which to appeal the judgment began to run. Simultaneously, an automatic

appellate stay of any action to enforce the judgment sprang into effect “until the time to file an appeal ha[d] expired.” Practice Book § 61-11 (a). The original twenty day appeal period and its attendant appellate stay would have expired on June 22, 2022, three days before the sale date. Moreover, because the motion to open was denied more than twenty days prior to the scheduled sale date, the denial of the motion to open did not directly implicate Practice Book § 61-11 (h), which, if applicable, would have permitted the sale to proceed despite the automatic stay. In other words, had the defendant taken no additional action, the appellate stay would have expired prior to the sale date and the foreclosure auction could have proceeded as scheduled. If the defendant had filed an appeal, the automatic stay would have continued until the appeal was finally resolved, and the sale date would have passed. Practice Book § 61-11 (a).

The defendant, however, on June 7, 2022, which was within the initial appeal period from the denial of her motion to open, filed a motion to reconsider/reargue the denial of the motion to open. If granted, that motion would have rendered the denial of the motion to open, and thus the court’s refusal to extend the sale date, ineffective. Thus, pursuant to Practice Book § 63-1 (c) (1), when the court denied the motion to reargue, a new appeal period in which to challenge the denial of the motion to open began to run and the automatic appellate stay that was then in effect was extended through the new appeal period in accordance with Practice Book § 61-11 (a). Consequently, the new appeal period and extended appellate stay of execution did not expire until July 12, 2022. The existence of the appellate stay and the inapplicability of Practice Book § 61-11 (h) should have precluded the committee from conducting the foreclosure sale on June 25, 2022. Accordingly, the court abused its discretion by failing to grant the defendant’s motion for order and, subsequently, approving the sale.

In its appellate brief, the plaintiff appears to acknowledge that, because the court denied the defendant’s motion to open more than twenty days before the scheduled sale date, Practice Book § 61-11 (h), by its clear and express terms, did not apply and, therefore, provided no authority to conduct the sale in violation of the automatic stay.

The plaintiff also appears to concede that the denial of the motion to open resulted in an appellate stay of execution and that the denial of a motion to reconsider that judgment ordinarily would have extended that appellate stay for an additional twenty days, which, under our precedent, would have rendered the sale date inoperable. Nevertheless, the plaintiff argues that the defendant’s motion to reargue failed to comply with a technical requirement in Practice Book § 11-11, which

provides that a motion that would result in a new appeal period must include a notation on the bottom of the first page “that such motion is a [Practice Book §] 11-11 motion.” The plaintiff argues, without providing any legal authority, that this procedural irregularity meant that the denial of the motion would not have resulted in a new appeal period and thus also could not have acted to extend the appellate stay. This court, however, has, as a matter of policy, long considered the failure to adhere to such requirements as a mere technical defect or clerical error. See, e.g., *Prioleau v. Agosta*, 220 Conn. App. 248, 253 and n.2, 297 A.3d 1012, 1017 (2023) (describing failure to include Practice Book § 11-11 notation on bottom of first page as a clerical error). Although failure to comply with the technical requirements of Practice Book § 11-11 may provide a proper ground for denying the motion, such failure is not a sufficient basis to render ineffective for the purpose of creating a new appeal period a motion that otherwise adheres to the substance of Practice Book § 63-1 (c) (1). See *Malloy v. Colchester*, 85 Conn. App. 627, 635, 858 A.2d 813 (noting that “our appellate courts have repeatedly eschewed applying the law in such a hyper-technical manner so as to elevate form over substance” (internal quotation marks omitted)), cert. denied, 272 Conn. 907, 863 A.2d 698 (2004). It is the content of the motion to reargue that is determinative of whether the motion creates a new appeal period and extends the automatic appellate stay. Here, the defendant’s motion clearly sought reconsideration of her motion to open and, thus, the denial of that motion created a new appeal period.¹³

The plaintiff further argues that, even if an appellate stay of execution was in place, this should not have barred the sale from proceeding because it is the approval of the sale, not the auction of the property, that cuts off a foreclosure defendant’s right of redemption and thus truly effectuates the judgment of foreclosure by sale. The present appeal, however, does not challenge the judgment of foreclosure by sale but the court’s judgment to not extend the sale date in light of the defendant’s argument that she had secured a willing buyer. Conducting the sale during the pendency of an appeal from the denial of a motion to open to extend the sale date would effectuate that judgment. We are unpersuaded by the plaintiff’s argument to the contrary.

Moreover, we reject the plaintiff’s argument that, although Practice Book § 61-11 (h) is admittedly inapplicable under the facts of this case, we should construe § 61-11 (h) broadly to mean that conducting a foreclosure sale is no longer an action that ever would violate the automatic stay. As we have indicated, we view the rule as providing a limited exception to the scope of the automatic stay, no more. Nothing in its plain language suggests otherwise or that it was intended to overturn well settled precedent of this court.

The judgment is reversed and the case is remanded with direction to vacate the sale and to set a new sale date.

In this opinion the other judges concurred.

¹ Practice Book § 61-11 (h) provides: “In any action for foreclosure in which the owner of the equity has filed a motion to open or other similar motion, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled notwithstanding the court’s denial of the motion, but no motion for approval of the sale shall be filed until the expiration of the appeal period following the denial of the motion without an appeal having been filed. The trial court shall not vacate the automatic stay following its denial of the motion during such appeal period.”

² Practice Book § 63-1 (c) (1) provides in relevant part: “If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion

“Motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; the setting aside of the verdict; judgment notwithstanding the verdict; reargument of the judgment or decision; collateral source reduction; additur; remittitur; or any alteration of the terms of the judgment.

“Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court’s decision; or reargument of a motion listed in the previous paragraph. . . .”

³ Practice Book § 61-11 (a) provides in relevant part: “Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. . . .”

⁴ In addition to Henry, the complaint named the following parties as additional defendants on the basis of their potential interests in the subject property: The United States Secretary of Housing and Urban Development, the Department of Revenue Services, and the Office of the Probate Court Administrator. These additional defendants were defaulted by the trial court for failure to appear and have not participated in this appeal. Accordingly, we refer to Henry as the defendant throughout this opinion.

⁵ Although captioned as a motion for order to nullify the sale, the defendant’s motion effectively objects to the court’s approval of the sale on the ground that the sale was invalid because it was conducted in violation of an appellate stay.

The defendant also nominally appeals from the denial of her subsequent motion to reconsider her motion for order but has raised no independent claims of error regarding that ruling.

⁶ In 2019, Wilmington Savings Fund Society, FSB, as Trustee of Finance of America Structured Securities Acquisition Trust 2019-HB1 (Wilmington), was substituted as the plaintiff for the original named plaintiff, Finance of America Reverse, LLC. We therefore refer in this opinion to Wilmington as the plaintiff.

⁷ The defendant never filed an appeal challenging the denial of her motion to open, and thus any automatic appellate stay expired along with the appeal period on July 12, 2022.

⁸ Counsel filed an appearance in lieu of the self-represented defendant on July 13, 2022.

⁹ After the appeal was filed, the plaintiff filed a motion asking the trial court “to terminate the appellate stay on this appeal and all future appeals” The defendant filed an objection to that motion. The trial court denied the motion, and the plaintiff did not seek review of that order by this court pursuant to Practice Book §§ 61-14 and 66-6. The plaintiff also filed a motion to dismiss the appeal as frivolous, which this court denied.

¹⁰ “In the context of an appeal from the denial of a motion to open judgment . . . [if] an appeal has been taken from the denial of a motion to open, but the appeal period has run with respect to the underlying [foreclosure] judgment, [this court] ha[s] refused to entertain issues relating to the merits

of the underlying case and ha[s] limited our consideration to whether the denial of the motion to open was proper. . . . When a motion to open is filed more than twenty days after the judgment, the appeal from the denial of that motion can test only whether the trial court abused its discretion in failing to open the judgment and not the propriety of the merits of the underlying judgment. . . . This is so because otherwise the same issues that could have been resolved if timely raised would nevertheless be resolved, which would, in effect, extend the time for appeal.” (Citation omitted; internal quotation marks omitted.) *USA Bank v. Schulz*, 143 Conn. App. 412, 416–17, 70 A.3d 164 (2013).

¹¹ Practice Book § 61-11 (g), addressing the filing of dilatory motions to open judgments of strict foreclosure, was added at the same time and both provisions took effect October 1, 2013. Practice Book § 61-11 (g) provides in relevant part: “In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, 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. . . .”

¹² Although the court granted a motion to open and extend the sale date on May 2, 2022, it did not alter any of the financial terms of the foreclosure judgment rendered on November 15, 2021. Cf. *RAL Management, Inc. v. Valley View Associates*, 278 Conn. 672, 690, 899 A.2d 586 (2006) (noting “substantive distinction between opening a judgment to modify or to alter incidental terms of the judgment, leaving the essence of the original judgment intact, and opening a judgment to set it aside”).

¹³ The trial court indicated that, because the motion for reconsideration essentially sought the same relief as the motion to open, it was an “other similar motion,” as that term is used in Practice Book § 61-11 (h). The plaintiff has not advanced this argument on appeal. Nevertheless, we reject the court’s interpretation of “other similar motion” as encompassing a timely Practice Book § 63-1 (c) (1) motion. Rather, we construe this language as simply indicating that a foreclosure defendant cannot escape application of Practice Book § 61-11 (h) by captioning its motion as something other than a motion to open.
