

[New Jersey Appellate Division Reverses Dismissal of Complaint Seeking Repayment of Loans as Time-Barred](#)

In *Wong v. Schroeder*, Docket No. A-1416-18T3 (App. Div. Oct. 30, 2019), the Appellate Division reversed a trial court ruling dismissing the complaint of a lender alleging breach of contract in connection with a loan made to one of the defendants.

As alleged in the Complaint, in February 2010, the plaintiff made a \$350,000 loan to defendant 100 West Street, LLC (“100 West”), and a \$300,000 loan to defendant All Points International Distributors, Inc. (“All Points”). Both loans matured and were due in full ninety days after their execution. Eight years later, and more than two years after the applicable six-year statute of limitations, the plaintiff filed a *pro se* complaint seeking damages for the unpaid loans from 100 West and All Point, their principal, Robert G. Schroeder, and Schroeder’s attorney. While not explicitly pled, the complaint appeared to include allegations of fraudulent inducement, which the plaintiff claimed she only discovered in 2013.

The individual defendants filed a motion to dismiss the complaint with prejudice as time-barred, which was granted. A subsequent motion for reconsideration was filed and also denied. In denying the motion for reconsideration, the trial court rejected the contention that the statute of limitations was tolled until the plaintiff’s alleged discovery of the breach of contract in May 2013.

On appeal, the Appellate Division reversed, finding that the discovery rule, at least as it was pled in the complaint, applied and operated to toll the statute of limitations for the purposes of determining whether the complaint adequately pled a claim of breach of contract. In so doing, the Appellate Division noted that while the plaintiff’s “likelihood of establishing equitable tolling based on [her] inquiry made three years after the notes became due might be remote,” the plaintiff was entitled to all favorable inference from the allegations set forth in the complaint in deciding the motion to dismiss.

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Federal Court Dismisses Borrower's Complaint and Sanctions Borrower's Counsel for Vexatious Litigation

In *Wright v. JPMorgan Chase Bank, National Association*, JPMorgan Chase Bank ("JP Morgan") and Chase Home Finance LLC (together, "Defendants") sought to have plaintiff Charmaine Wright's ("Plaintiff") complaint dismissed, have Plaintiff labeled a vexatious litigant and to have her enjoined from filing new actions. The Court agreed and dismissed Plaintiff's complaint, enjoined her from initiating new actions in the Court, and imposed sanctions on Plaintiff's counsel.

Prior to filing the subject complaint in federal district court, Plaintiff filed four previous complaints against Defendants in three separate state court actions. Each of the prior versions of the complaint were dismissed. Plaintiff's complaints in the state court actions related to allegations that JPMorgan, on February 18, 2008, obtained a second mortgage on the property located at 3 Farragut Court, Willingboro, New Jersey and, on November 2, 2010, used a forged signature to obtain a loan modification effective January 1, 2011. Plaintiff also alleged impropriety in connection with a refinancing. The federal court complaint contained many of the same causes of action as the previous state court complaints, including violations of Regulation Z of the Truth in Lending Act, the Real Estate Settlement Procedures Act, Fair Debt Collection Practices Act, the New Jersey Consumer Fraud Act, the False Claims Act, the Racketeer Influenced and Corrupt Organizations Acts as well as criminal mail and wire fraud under 18 U.S.C. §§ 1341, 1343, 1344, & 1951(a) and N.J.S.A. § 2C:28-7.

Initially, the Court noted that Plaintiff's fraud claims were not viable, as those claims were brought under federal criminal statutes. As the Court explained, there is longstanding precedent that criminal statutes do not give rise to a private cause of action and a private party does not have a right to compel enforcement of criminal laws. The Court also determined that New Jersey's entire controversy doctrine barred the remainder of Plaintiff's claims. Broadly speaking, that doctrine, which is New Jersey's version of claim preclusion, requires litigants to assert all affirmative claims relating to the controversy between them in one action. The Court determined that (1) the allegations in each of Plaintiff's complaints clearly stemmed from purported misconduct in relation to the original mortgage in 2007, the refinance mortgage in 2008, and the modification agreement in 2011; (2) Defendants were both named as parties in the prior complaints; and (3) the types of claims asserted in the prior state court complaints were, in fact, similar (and in some cases identical) to the types of claims made in the instant complaint. Thus, the Court concluded that Plaintiff's present claims arose from the same series of transactions as the prior complaints and were thus barred by the entire controversy doctrine.

In addition, the Court sanctioned Plaintiff's attorney and had "no hesitation" deeming Plaintiff a vexatious litigant. To the Court, by filing a complaint that was nearly identical to the complaints that had been previously dismissed on multiple occasions in state court, and by including claims under federal criminal statutes, Plaintiff's attorney "demonstrate[d] conduct that [was] not only irresponsible and inexcusable" but also exhibited "a careless attitude shown to the judicial system." Similarly, Plaintiff showed a "willingness to repeatedly file new complaints related to the same transactions, despite a dismissal with prejudice." Accordingly, the Court enjoined Plaintiff from filing new actions related to her mortgage or the pending foreclosure without prior permission from the Court.

[Appellate Division Upholds Denial of Motion to Vacate Final Judgment of Foreclosure After Sheriff's Sale](#)

In *Capital One N.A. v. Laurence Franklin, et al.*, Docket No. A-0899-18T1 (N.J. App. Div. Nov. 4, 2019), the Appellate Division affirmed the Chancery Division's order denying the motion to vacate a final judgment of foreclosure and sheriff's sale filed by defendant Laurence Franklin ("Defendant").

On November 28, 2006, Defendant obtained a \$700,000 loan from Chevy Chase Bank and executed a promissory note to evidence the loan. To secure the note, Defendant executed a mortgage on his residence to Mortgage Electronic Registration System, Inc. (MERS), which was recorded on December 12, 2006. After a loan modification agreement in 2012, Defendant defaulted on the loan in July 2013 and failed to make any subsequent payments after that date.

The mortgage was assigned from MERS to plaintiff Capital One N.A. ("Capital One") on February 3, 2014. Capital One commenced a residential foreclosure action on February 21, 2014 and the assignment of the mortgage was later recorded on March 6, 2014. In February 2015, Capital One moved for entry of default judgment in the foreclosure action, which was not opposed by Defendant. A final judgment of foreclosure was entered in favor of Capital One on April 2, 2015.

The sheriff's sale of the mortgaged premises was initially scheduled for December 2016. However, the sale was delayed on several occasions due to, among other things, Defendant's filing of two separate Chapter 13 bankruptcy petitions (which were both later dismissed) and the parties' attempts to pursue loss mitigation options. The sheriff's sale ultimately took place on September 24, 2018, with Capital One being the successful bidder. After the sheriff's sale, Defendant filed a motion to stay the sale and to vacate the final judgment. Among other things, Defendant argued that Capital One lacked standing to bring the action in the first instance. In an oral decision, the motion judge denied Defendant's motion and an appeal followed.

On appeal, Defendant argued that exceptional circumstances existed which mandated that the final judgment of foreclosure be vacated pursuant to Rule 4:50-1(f). Among other things, Defendant argued that he was entitled to have the judgment and sheriff's sale vacated because (a) Capital One lacked standing to bring the action because it was a foreign entity not registered to conduct business in New Jersey and did not file a business report, and (b) Capital One lacked standing to foreclose because the assignment of the mortgage, which occurred after the foreclosure action was filed, was invalid. The Appellate Division rejected all of Defendant's arguments and affirmed the Chancery Division's ruling.

While acknowledging that Capital One was not the original lender, the Appellate Division held that the Foreign Banking Act of 1948 permits Capital One to obtain judgment and proceed to a sheriff's sale on a loan it acquired within the State of New Jersey. Moreover, the Appellate Division held that the Corporate Business Activities Reporting Act, which requires the filing of business activities reports, does not apply to foreign banks such as Capital One. The Appellate Division also held that Capital One had standing to initiate the foreclosure action since it "owned or controlled the underlying debt when the complaint was filed." Here, the note and mortgage were assigned from MERS to Capital One three weeks before the complaint was filed. The fact that the assignment was not recorded until thirteen days after the complaint was filed "did not affect plaintiff's standing."

Ultimately, the Appellate Division found the Chancery Division did not abuse its discretion when it denied Defendant's motion to vacate as Defendant did not meet his burden of demonstrating a meritorious defense and failed to demonstrate any exceptional circumstances or grave injustice that would result if the final judgment and sheriff's sale were not vacated.

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