

BANKING ALERT

November 2020

[New Jersey Appellate Division Affirms Dismissal of Claim Over Dishonored Check](#)

In *Robert J. Triffin v. Attorney Trust Account of the Law Offices of Ramon A. Camejo*, Docket No. A-4966-18T3 (N.J. App. Div. Nov. 19, 2020), the Appellate Division affirmed the dismissal of a claim brought by an assignee of a dishonored check against the check's drawer.

The plaintiff asserted a claim under the Uniform Commercial Code (the "UCC") against the drawer of a dishonored check in the amount of \$1,625.14, claiming that the drawer was liable to pay plaintiff, as assignee, the amount of the dishonored check. The trial court dismissed the matter after trial, finding that the business records presented at trial demonstrated that the drawer's bank account had already been debited the amount of the check before the check had been presented to the assignor of the check for payment.

Citing Section 3-414(c) of the UCC, Appellate Division affirmed the dismissal, noting that the facts demonstrated at trial discharged the drawer-defendant from liability. Specifically, Section 3-414(c) states that "[i]f a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained."

The Appellate Division also declined to comment on whether the plaintiff, who was unable to serve the payee of the check with process, may have had additional available remedies against other parties, including the banks that processed the transactions.

[New Jersey Appellate Division Rejects Untimely Challenges to Summary Judgment in Foreclosure Action](#)

In *Ditech Financial f/k/a Green Tree Servicing v. Bornstein*, Docket No. A-3809-17T1 (App. Div. Nov. 18, 2020), Gregory Bornstein executed an interest-only adjustable rate note secured by a mortgage against residential property in Chesterfield, New Jersey. After a series of assignments, Green Tree Servicing held the mortgage. Bornstein defaulted on his obligations under the note and mortgage, and Green Tree filed a foreclosure complaint. Bornstein filed a contesting answer

[In This Issue](#)

New Jersey Appellate Division Affirms Dismissal of Claim Over Dishonored Check

Pg 1

New Jersey Appellate Division Rejects Untimely Challenges to Summary Judgment in Foreclosure Action

Pg 1

New Jersey Appellate Division Affirms Denial of Motion to Vacate Judgment of Foreclosure

Pg 2

[Office Locations](#)

[New Jersey](#)

210 Park Avenue
2nd Floor
Florham Park NJ 07932
973.302.9700

[New York](#)

1185 Avenue of the Americas
3rd Floor
New York NY 10036
212.763.6464

Follow Sherman Wells on

LinkedIn  Twitter 

along with various counterclaims. Eventually, after extensive motion practice, Green Tree filed a motion for summary judgment on its foreclosure claim and a motion to dismiss Bornstein's counterclaims.

The trial court granted summary judgment, striking Bornstein answer and defenses. The trial court determined that Green Tree had a right to foreclose the mortgage and that Bornstein's arguments that Green Tree lacked standing and that the assignment of the mortgage was defective were not factually supported. In addition, the trial court found that Bornstein's various counterclaims, including claims under the Consumer Fraud Act and the Truth in Lending Act, were not supported by any evidence. Bornstein subsequently filed a motion for reconsideration, which the trial court denied for similar reasons. More than two years after the court granted summary judgment, Bornstein filed a motion to "vacate default judgment and stay sheriff's sale." A different judge denied the motion, reasoning that the motion was untimely and that Bornstein was recycling prior arguments. Moreover, Bornstein could not show that he had any legal right to postpone the sheriff's sale, given that his arguments attacking the validity of the foreclosure had been rejected on several occasions. Bornstein filed another motion for reconsideration. After the trial court denied that motion, Bornstein appealed.

The Appellate Division affirmed, determining that the trial court did not abuse its discretion in denying Bornstein's motions to vacate the judgment and reconsideration. Initially, the Appellate Division explained that Bornstein's motion was untimely: he did not challenge the orders granting summary judgment and denying reconsideration for over two and a half years. A motion under Rule 4:50-1 must be made within a reasonable time, and he did not provide any explanation for his delay in contesting the summary judgment order. Additionally, the Appellate Division stated that each of Bornstein's arguments aimed at vacating the judgment were considered and rejected in prior orders. In short, there was nothing new in Bornstein's motions; he was simply trying to relitigate the summary judgment motion. The Appellate Division accordingly saw no abuse of discretion.

[New Jersey Appellate Division Affirms Denial of Motion to Vacate Judgment of Foreclosure](#)

In *Capital One, N.A. v. Lewis Wu*, Docket No. A-4020-18T3 (App. Div. Nov. 19, 2020), the Appellate Division affirmed the Chancery Division's Order denying defendant's fourth motion to vacate the final judgment of foreclosure.

On January 23, 2018, a final judgment of foreclosure was entered based on the Chancery Court's finding that plaintiff properly served defendant and established plaintiff's obligation, mortgage and assignment of mortgage, and accepting plaintiff's proof of amount due. Defendant appealed, and the Appellate Division found defendant's argument unpersuasive and affirmed for the same reasons expressed by the Chancery Court. While the first appeal was pending, defendant filed an emergent application to stay the sheriff's sale, which was denied, and the Appellate Division also denied defendant's request to file an emergent application. Defendant then filed a motion to vacate the foreclosure judgment, which was denied. Defendant then appealed that order arguing there was no service of the Notice of Intent to Foreclose or the foreclosure complaint, he was not granted an opportunity to argue before the Chancery Court and his motion to vacate was timely.

The Appellate Division affirmed the Chancery Division, noting that, under Rule 4:50-2, a motion to vacate must be filed "within a reasonable time" and defendant did not raise his insufficient service argument to the trial court until at least thirteen months after entry of the judgment. Thus, his motion was not filed within a reasonable time under Rule 4:50-2.

Attorney Contact Information

Anthony J. Sylvester
Partner
973.302.9713
asylvester@shermanwells.com

Craig L. Steinfeld
Partner
973.302.9697
csteinfeld@shermanwells.com

Caitlin T. Shadek
Counsel
973.302.9672
cshadek@shermanwells.com

Anthony C. Valenziano
Counsel
973.302.9696
avalenziano@shermanwells.com

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon with regard to any particular facts or circumstances without first consulting an attorney.
© 2020 Sherman Wells Sylvester & Stamelman LLP. All Rights Reserved.

4850-8529-2499, v. 1