

**[New Jersey Federal Court Dismisses Mortgagor's Claims Against Former Counsel and Mortgagee in Connection with State Foreclosure Action](#)**

In *Harris v. Fein, Such, Kahn & Shepard*, Civil Action No. 2:20-cv-01574 (D.N.J. Jan. 21, 2021), plaintiff Rhonda Harris (“Harris”) executed a promissory note and mortgage in favor of Summit Bank, which was assigned to defendant JPMorgan Chase Bank (“Chase”). Chase retained defendant Fein, Such, Kahn & Sheppard (“Fein Such”) to file a foreclosure complaint against Harris in 2015. MTGLQ Investors, L.P. (“MTGLQ”) was substituted into the foreclosure action as the holder of the mortgage and final judgment was entered in MTGLQ’s favor. Harris moved to stay the sheriff’s sale and vacate the final judgment, which was denied in December 2017. In late December 2017, Harris retained Fitzgerald and Crouch to file a Chapter 13 bankruptcy action, which was filed on December 30, 2017. In November 2019, MTGQL mailed another notice of sheriff sale to Harris and the sale was held on February 13, 2020.

Plaintiff then filed a complaint in the District of New Jersey against Fein Such, MTGLQ, Shellpoint Mortgage Servicing Company (“Shellpoint”), Chase and Fitzgerald and Crouch. The Court noted that the Complaint was difficult to decipher but appeared to be for claims under the Fair Debt Collection Practice Act (“FDCPA”), state-law libel and slander, conspiracy, the Fair Credit Reporting Act, Truth in Lending Act, Securities Act of 1993, the New Jersey Consumer Protection Act, and violation of the Due Process Clause. All defendants moved to dismiss, arguing that the Complaint, on its face, indicated a lack of subject matter jurisdiction and that the Complaint failed to state a claim.

Applying the *Rooker-Feldman* doctrine, the Court held that it lacked subject matter jurisdiction. The *Rooker-Feldman* doctrine precludes a lower federal court from exercising jurisdiction over claims litigated or inextricably intertwined with claims already being litigated in state court. The Court found that Harris was seeking to challenge the validity of the mortgage and right to foreclose, which would invite “district court review and rejection of the foreclosure judgment.” Thus, the Court found it did not have subject matter jurisdiction.

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**Office Locations**

**New Jersey**

210 Park Avenue  
2nd Floor  
Florham Park NJ 07932  
973.302.9700

**New York**

1185 Avenue of the Americas  
3<sup>rd</sup> Floor  
New York NY 10036  
212.763.6464

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The Court then found *res judicata* and the Entire Controversy Doctrine precluded claims against Chase and MTGLQ. Finally, the Court found Harris' complaint failed to state a claim. The Court then permitted Harris thirty days to amend the Complaint in an attempt to cure the "numerous deficiencies."

**New Jersey Appellate Division Applies Equitable Subrogation Doctrine to Junior Mortgage Where Senior Mortgage Had Already Been Paid in Full**

In *New York Mortgage Trust 2005-3 Mortgage-Backed Notes v. Deeley*, No. A-1261-19 (App. Div. Feb. 12, 2021), the Appellate Division considered the priority of competing mortgages held by plaintiff New York Mortgage Trust and defendant Bank of America. In March 2005, Anthony and Catherine Deeley executed a \$664,000.00 mortgage in favor of First Interstate Financial Corp. ("First Interstate") on their residence in Beach Haven. The mortgage was recorded on March 23, 2005. A few months later, in June 2005, the Deeleys executed a mortgage to Fleet National Bank (Bank of America's predecessor in interest) securing a home equity line of credit. That mortgage was recorded on August 10, 2005.

The Deeleys later refinanced their primary mortgage. The Deeleys executed a \$726,000.00 mortgage to the New York Mortgage Company, which was recorded on September 26, 2005. The proceeds of the refinancing were used to pay off and discharge the First Interstate mortgage. In addition, as part of the transaction, the balance of the Fleet mortgage had been paid off. But the Fleet mortgage -- although paid off -- was never discharged. Subsequently, the Deeleys increased their line of credit secured by the mortgage Fleet mortgage and maintained a balance thereunder.

After the Deeleys defaulted on their mortgage, New York Mortgage Trust (the assignee of the mortgage from the refinancing transaction) filed a foreclosure complaint. The Deeleys did not contest the foreclosure. New York Mortgage Trust then moved for summary judgment, requesting that its mortgage be deemed a first lien under the doctrine of equitable subrogation. New York Mortgage Trust relied on a certification from the time of closing stating that the Fleet loan had been paid to a zero balance. Bank of America responded that there was actual knowledge of the Fleet mortgage, that the Fleet mortgage remained open, and that it was never discharged. The trial court determined that pursuant to the equitable subrogation doctrine New York Mortgage Trust's mortgage should be the priority lien and, in turn, granted New York Mortgage Trust's motion for summary judgment. After final judgment of foreclosure was entered, Bank of America appealed.

In a reported opinion, the Appellate Division started from the baseline that mortgage priorities are governed by the recording statutes. The general rule is that the party that recorded its mortgage first will usually prevail so long as it did not have actual knowledge of a prior interest. However, the Appellate Division explained that equitable considerations may temper the general rule, and, in certain situations, the doctrine of equitable subrogation allows parties that advance money to pay off a mortgage to inherit the priority position of the original lender. Adopting the Third Restatement of Property, the Appellate Division departed from prior precedent and determined that equitable subrogation may even be available if the new lender had actual knowledge of the prior interest where there has not been material prejudice to the intervening lender. The panel therefore held that "equitable subrogation is appropriate when loan proceeds from refinancing satisfies the first mortgage, the second mortgage is paid in full as part of the transaction, and the transaction is based on a discharge of the second mortgage, so long as the junior lienor, here defendant, is not materially prejudiced." Under those circumstances, the panel stated, subrogation should not be precluded by knowledge of the intervening lien.

In this case, the Appellate Division determined the refinancing resulted in the initial First Interstate mortgage being paid off and discharged and the Fleet mortgage having a zero balance. To the Appellate Division, the unexpected absence of a discharge of the Fleet mortgage should not unjustly enrich Bank of America. Because there was no resulting prejudice to Bank of America, equitable subrogation thus applied.

### [New Jersey Supreme Court Reverses New Jersey Appellate Division's Holding That Invalidated Mortgage Documents as Forgeries](#)

In *The Bank of New York Mellon v. Corradetti*, Docket No. A-81-19 (N.J. App. Div. Feb. 4, 2021), the New Jersey Supreme Court reversed a New Jersey Appellate Division decision that affirmed the trial court's ruling invalidating a mortgage that was allegedly signed by borrowers who were out of the country on the date the mortgage was allegedly executed and notarized.

Briefly stated, the plaintiff, Bank of New York Mellon ("BNY") filed a foreclosure complaint against defendants Marianne and Anthony Corradetti (together, "Defendants") on a \$1,779,000 mortgage loan received from BNY's predecessor Countrywide Home Loans, Inc. ("Countrywide") in 2006. BNY subsequently moved for summary judgment, relying on, among other things, the loan documents, the HUD-1 statement and the discharge of prior mortgages originated in 2003. Plaintiff also relied on exemplars of Defendants' purported signatures and an expert report from a forensic examiner who opined that the signatures on the 2006 note and mortgage were authentic. Defendants filed a cross motion for summary judgment and produced evidence showing they were on a religious pilgrimage to Croatia on September 25, 2006 – the date the note and mortgage were allegedly executed. Defendants also submitted a physician's certification explaining that Mr. Corradetti suffered from Alzheimer's disease and, thus, could not provide any information concerning facts pertinent to the matter. After oral argument, the trial court issued a written opinion denying both motions for summary judgment finding there was a genuine issue of material fact as to whether defendants executed the note and mortgage.

Following a bench trial, the trial court ruled in favor of Defendants, finding Ms. Corradetti's testimony to be credible and the mortgage document to be forgeries. Among other things, the trial court ruled that defendants were not unjustly enriched because BNY did not present credible evidence that the mortgage proceeds were used to satisfy prior mortgages. The Court entered an order granting judgment in favor of defendants and dismissing BNY's complaint. The Court later entered an amended order invalidating the 2006 Countrywide mortgage and note.

BNY appealed the trial court's denial of its motion for summary judgment and reconsideration. Specifically, BNY argued that the doctrine of equitable subrogation was applicable because the proceeds from the 2006 mortgage was used to pay the 2003 mortgages. After reviewing the evidence *de novo* the Appellate Division held that, to succeed under the doctrine of equitable subrogation, a lender must establish that the proceeds of its loan were used to satisfy the prior lienholder. Here, BNY failed to present competent evidence that the proceeds from the 2006 transaction were used to pay the 2003 mortgages. Further, the credibility of the HUD-1 statement as an accurate statement of the disposition of the mortgage proceeds presented fact issues that defeated the motion for summary judgment and the subsequent motion for reconsideration.

BNY also appealed the trial court's orders, entered after the bench trial, dismissing its claims and declaring the note and mortgage invalid. BNY argued the trial court's ruling was not supported by substantial credible evidence and resulted in a manifest of justice. After review of the evidentiary record, the Appellate Division found the trial court's

determination that Mrs. Corradetti's signature on the mortgage documents and HUD-1 was forged was "unassailable"—the evidence presented at trial established that defendants were not in the United States on September 25, 2006 when their purported signatures were notarized. The Appellate Division also upheld the trial court's finding that BNY failed to present any evidence showing the proceeds from the 2006 mortgage were used to satisfy the 2003 mortgages.

On appeal, the Supreme Court reversed the Appellate Division's decision in its entirety, relying largely on Judge Accurso's dissent in the Appellate Division. Specifically, the Supreme Court noted that the trial court curiously focused on what was "missing from the record," rather than the voluminous evidence put forth by BNY that supported its argument that the 2006 mortgage documents were valid. In addition, the Supreme Court highlighted that, for Defendants to prevail, the factfinder would have to find that it was "more likely that someone forged the Defendants' signatures on the loan documents, paid the closing fees for the 2006 mortgage, paid off Defendants' two earlier mortgages, made payments on the fraudulent mortgages for the next two and a half years to cover their tracks, and then forged the three-line letter when Defendants discovered the fraud." The Supreme Court remanded the matter to the trial court for retrial.

### **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

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