

BANKING ALERT

May 2021

New Jersey Appellate Division Affirms Trial Court's Grant of Summary Judgment in Residential Foreclosure Action

In *Wells Fargo Bank, N.A. v. Guilford*, 2021 WL 1904361 (N.J. App. Div. May 12, 2021), the Appellate Division affirmed the trial court's order deeming a foreclosure action uncontested and returning the matter to the Office of Foreclosure for entry of final judgment.

By way of factual background, the defendant, Duane F. Guilford ("Defendant"), obtained a loan from Option One Mortgage Corporation ("Option One") in the amount of \$585,000 in June 2005, which was secured by residential property located in Jersey City, New Jersey. (the "Property"). In November 2009, Option One assigned the mortgage to the plaintiff, Wells Fargo Bank, N.A. ("Plaintiff"). The assignment was recorded with the Hudson County Clerk's Office in December 2009. Defendant ultimately defaulted on the loan by failing to make an installment payment in March 2018. In April 2018, Plaintiff sent a notice of intent to foreclose. In November 2018, Plaintiff filed a foreclosure complaint, which Defendant answered in December 2018. In March 2019, Plaintiff moved for summary judgment, which relied on, in part, a certification from Plaintiff's loan servicer stating that Defendant had executed the mortgage, Plaintiff was in possession of the original note, Defendant had defaulted on the loan payments, and Plaintiff had sent the notice of intent to foreclose by certified mail, return receipt requested, to Defendant at the Property. In opposition, Defendant argued that Plaintiff lacked standing to proceed with the foreclosure as the Option One assignment was allegedly invalid. The trial court granted the motion for summary judgment, finding that the record established that Plaintiff had standing and complied with the requirements of the Fair Foreclosure Act. The trial court further found that Defendant had failed to plead particular facts that would support the affirmative defenses in the answer.

On appeal, the Appellate Division rejected Defendant's contention that Plaintiff had failed to adequately establish that Defendant was in default, noting that the loan servicer's certification was sufficient to establish no issue of material fact as to Defendant's default under the loan documents. Similarly, the Appellate Division found the loan

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servicer's certification established that the notice of intent to foreclose was properly served.

New York Amends its Rules for Attorney Trust, Special and Escrow Accounts in Connection with Overdraft Notices

Effective April 1, 2021, New York Rules of Professional Conduct 1.15 now requires that lawyers deposit funds with banks that have agreed to report dishonored checks and/or overdrafts on all attorney trust, special and escrow accounts. In addition, the new rules prohibit lawyers from carrying overdraft protection on these accounts. Lawyers must also alert their financial institutions that their attorney trust account is reportable under 22 NYCRR Part 1300.1, and that the bank's reporting obligations will apply to that account.

This addition to the requirement that a lawyer in possession of funds belonging to another person incidental to the practice of law must maintain funds in a separate fiduciary account is intended to help identify misuse of client funds. In its 39 years of existence, the New York Lawyers' Fund for Client Protection has reimbursed over \$233 million to over 9,000 eligible law clients for losses caused by dishonest lawyers. The reporting of bounced checks from escrow accounts and insurance company notification directly to the client when settlement checks have been forwarded to counsel have proved effective early warning alerts. Since 1992, New York's Dishonored Check Notice Reporting rule has been limited solely to trust account checks returned solely for insufficient rules. The "Bounced Check Rule" has been remarkably effective in detecting 327 lawyers who have been using client funds. Thus, the amendments to the rules provide even greater protection for the public and strengthen efforts by the judicial system to help lawyers observe their vital recordkeeping obligations set forth in Rule 1.15.

New Jersey Appellate Division Rejects Borrower's Standing Arguments in Foreclosure Action

In *Lakeview Loan Servicing, LLC v. Jolie Batista*, No. A-1558-19 (App. Div. May 13, 2021), Jolie Batista executed a note in the amount of \$255,290 secured by a mortgage on residential property that was eventually assigned to Lakeview Loan Servicing ("Lakeview"). The assignment was recorded. After Batista defaulted under the original loan and a subsequent loan modification agreement, Lakeview filed a complaint in foreclosure. The trial court entered final judgment for Lakeview and issued a writ of execution directing the sale of the property, which was later sold to a third-party at a sheriff's sale. Following the sale, the trial court denied Batista's motion to vacate the sale and her subsequent motion for reconsideration of the same.

Batista appealed and the Appellate Division affirmed the trial court's rulings. On appeal, Batista argued that Lakeview lacked standing to bring the foreclosure action. The Appellate Division started from the baseline that "[e]ither possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Looking to the record, the Appellate Division determined that Lakeview satisfied both methods for establishing standing. First, Lakeview possessed the note. Second, the assignment to Lakeview was "duly recorded on September 25, 2017, well before the foreclosure complaint was filed on September 6, 2018." Summary judgment for Lakeview was therefore appropriate.

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