

# BANKING ALERT

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## **New Jersey Appellate Division Reverses Trial Court and Dismisses Foreclosure Action With Prejudice as Untimely**

In *Wilmington Savings Fund Society, FSB v. Pfefferkorn*, A-813-21 (N.J. App. Div. Mar. 22, 2023), the Appellate Division reversed the trial court's dismissal of a foreclosure action without prejudice and held that the action should have been dismissed with prejudice on statute of limitations grounds.

In September 1998, defendants Dennis and Janice Pfefferkorn (together "Defendants") borrowed \$87,600 from Ivy Mortgage Corporation ("Ivy"), which was secured by a mortgage on Defendants' home located in Toms River (the "Property"). In December 2020, Wilmington Savings Fund Society, FSB ("Wilmington") commenced a foreclosure action. In the Complaint, Wilmington alleged that it had obtained a proper assignment of the promissory note in 2012, but acknowledged that it was not the holder or assignee of the mortgage. Rather, Wilmington alleged that Ivy had assigned the mortgage to Delta Funding Corporation, which was defunct, and Wilmington had not been able to obtain an assignment as a result. Wilmington further alleged that Defendants' default dated back to August 2008, when Defendants missed a monthly payment. Defendants filed a contesting answer which asserted, among other things, statute of limitations as an affirmative defense.

Wilmington moved for summary judgment in July 2021. In support of the motion, a representative of Wilmington's loan servicer attested that Wilmington possessed the note, not the mortgage, and provided a loan history summary that showed only Defendants' missed payment in August 2008. No other payment history was provided. In opposition, Defendants certified that they had failed to make any payments on the loan after June 1999 and that, after having filed for bankruptcy, the note was discharged in March 2002. During oral argument, the trial court questioned whether Wilmington was in possession of any documentation evidencing a payment history for the loan besides what was provided, and adjourned argument to provide Wilmington a chance to locate such documentation. The day before argument was to continue, Wilmington advised the trial court that, because it could not locate

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any further payment history, it was going to dismiss the foreclosure action without prejudice. The next day, at oral argument, Defendants opposed the application, stating the matter should be dismissed with prejudice. The trial court disagreed, and dismissed the matter without prejudice.

On appeal, Defendants argued that the trial court erred in entering an order dismissing the matter without prejudice as Defendants, on summary judgment, had submitted proofs in support of their summary judgment motion evidencing that Wilmington's claims were time-barred. After outlining the requirements of Rule 4:37-1, which governs voluntary dismissals, the Appellate Division held that the trial court erred in dismissing the action without prejudice because (1) Wilmington had not filed a formal motion as required by the Rule; and (2) the trial court did not conduct any analysis concerning, among other things, Defendants' interests, Wilmington's motives, or how the dismissal would affect "the efficient administration of justice." Rather than remand for further proceedings, however, the Appellate Division dismissed the matter with prejudice because the record established that Defendants had demonstrated the action was barred by the twenty-year statute of limitations. Because Defendants made their last payment in June 1999, the December 2020 foreclosure action was untimely as it was commenced more than twenty years after Defendants' default.

### **New Jersey Appellate Division Reverses Trial Court's Denial of Motion to Vacate Final Judgment of Foreclosure**

In *U.S. Bank, N.A. v. Reynoso*, A-2123-21 (N.J. App. Div. Mar. 29, 2023), the Appellate Division reversed a trial court's order denying a motion to vacate final judgment of foreclosure and remanded the proceedings to the trial court for further consideration.

In October 2009, defendant Melvin Reynoso ("Defendant") borrowed \$245,471, which was secured by his home in Long Branch, New Jersey. In 2015, Lakeview Loan Servicing, LLC ("Lakeview") became the holder of the note and mortgage. Defendant defaulted on his loan in 2016, and Lakeview served Defendant with a notice of intent to foreclose. In March 2016, Lakeview commenced a foreclosure action. Default was entered and, after Lakeview assigned its interest in the note and mortgage to U.S. Bank, N.A. ("US Bank"), final judgment of foreclosure was entered in September 2017. Defendant did not oppose that application. The sheriff's sale of the property was adjourned twice but ultimately scheduled for February 2018. That sale was cancelled after Defendant filed for bankruptcy. US Bank obtained relief from the automatic stay in November 2018, and Defendant's bankruptcy case was dismissed in February 2020. The sheriff's sale was scheduled for April 2020 but was canceled due to COVID-19 pandemic. Nearly two years later, in January 2022, Defendant moved to vacate the final judgment of foreclosure on the grounds that US Bank did not possess standing and was not a proper party to foreclose on the mortgage. US Bank timely opposed. In March 2022, the trial court denied the application without an oral or written opinion. The order denying the motion, instead, stated that the order was "denied...based on opposition."

On appeal, Defendant argued that the trial court failed to comply with Rule 1:7-4 when the trial court did not provide a written or oral decision setting forth a basis for its decision on the motion. The Appellate Division noted that, while a motion to vacate final judgment of foreclosure is subject to an abuse of discretion standard, the trial court's failure to express its reasons for rejecting Defendant's application "with particularity" was required under Rule 1:7-4. The practice of requiring the trial court to provide its reasoning, the Appellate Division stated, is to ensure fairness and "enable meaningful appellate review." Accordingly, the Appellate Division reversed the denial of the motion and remanded the matter to the trial court for further proceedings, specifically that the trial court provide findings of fact and conclusions of law. The Appellate Division did not express any view of the merits of Defendant's motion.

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