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BANKING ALERT

November 2018

U.S. District Court Applies Rooker-Feldman Doctrine to Plaintiff's Complaint Attacking Foreclosure Judgment

In *Blair v. State of New Jersey,* 2018 WL 5294514 (D.N.J. Oct. 25, 2018), the United States District Court for the District of New Jersey declined to hear a plaintiff's challenge to a foreclosure judgment based on the *Rooker-Feldman* doctrine.

The plaintiff obtained a loan secured by her home in December 2006. The mortgage was subsequently assigned to one of the defendants, Bank of New York Melon ("BNYM"), in 2009. Sometime prior to 2015, the plaintiff defaulted on her loan obligations by failing to make required monthly payments. In March 2015, BNYM filed a mortgage foreclosure action. The plaintiff defaulted and a final default judgment of foreclosure was entered in June 2016. After the plaintiff's attempt to vacate the judgment was denied, the plaintiff filed suit in federal court against BNYM, as well as several other defendants, including MERS, the prior nominee for the loan originator, the State of New Jersey, the state court judges who oversaw the foreclosure action, and the lawyers who represented the lender, claiming that the parties perpetrated a fraud against her in prosecuting the foreclosure action.

The defendants moved to dismiss the Complaint pursuant to Federal Rule 12(b)(1), arguing that the federal court lacked subject matter jurisdiction over the action pursuant to the *Rooker-Feldman* doctrine. The court concurred with the defendants' position and dismissed the Complaint, noting that the *Rooker-Feldman* doctrine squarely applied to the plaintiff's complaint, which sought the federal court's review and reversal of a state court judgment that was rendered prior to the filing of the federal lawsuit. The court found that the Complaint filed by the plaintiff was the exact type of collateral attack on state court orders that the *Rooker-Feldman* doctrine prohibits as a matter of law. Indeed, the court noted that the plaintiff sought injunctive relief, which "evince[d] Plaintiff's intention of filing this lawsuit in an apparent attempt to undue the Superior Court judgment."

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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
3rd Floor
New York NY 10036
212.763.6464

Follow Sherman Wells on
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New Jersey Appellate Division Affirms Bank's Standing to Foreclose

In *Wells Fargo Bank, N.A. v. Sparkman, et al.*, A-5418-15T3 (N.J. App. Div. Nov. 21, 2018), defendant Ato H. Sparkman ("Defendant") appealed the final judgment of foreclosure entered in favor of plaintiff Wells Fargo Bank, N.A., (the "Bank") arguing that the Bank lacked standing to foreclose.

In 2007, Defendant obtained a loan from the Bank secured by a mortgage on his property. Defendant stopped making payments in 2011 and the Bank brought a foreclosure action in 2012. Prior to filing the complaint in foreclosure, the Bank, as the originator of the loan, was the recorded mortgagee. In addition, a vice president for the Bank certified that the Bank "was in physical possession of the [n]ote on February 8, 2012, the date the [c]omplaint of [f]oreclosure was filed, and prior hereto." Finding no issues of material fact, the trial court entered final judgment of foreclosure against Defendant.

On appeal, Defendant argued that only Fannie Mae, as an investor, had the authority to foreclose, not the Bank. The Appellate Division noted the well-settled law in New Jersey that the only material issues to a foreclosure proceeding are the validity of the mortgage, the amount of indebtedness and the right of the mortgagee to resort to the mortgaged premises. The validity of the mortgage and amount of indebtedness were undisputed. With respect to the right of the mortgagee to resort to the mortgaged premises, the Appellate Division found that either possession of the note or an assignment of mortgage that predates the original complaint confers standing. The Appellate Division held that there was no dispute that the Bank was the recorded mortgagee at the time of the filing of the foreclosure complaint and was in physical possession of the note (although such possession was not required as the Bank was the record holder from the original mortgage). Accordingly, the Appellate Division affirmed the entry of final judgment of foreclosure.

New Jersey Appellate Division Upholds Modification of Loan Agreement Made in a Series of Emails

In *CAM Trust v. Revere High Yield Fund, LP*, No. A-1250-17T3, 2018 WL 5810296 (N.J. Super. Ct. App. Div. Nov. 7, 2018), the Appellate Division confirmed that the terms of a loan could be modified through a series of emails. Plaintiff CAM Trust ("Plaintiff") executed and delivered a Term Note and Term Loan and Security Agreement to defendant Revere High Yield Fund, LP ("Defendant") to evidence a loan in the principal amount of $3.5 million (the "Loan"). The Loan documents provided for interest payments only at 12% until the maturity date on March 30, 2016. The Loan was secured by four properties. Notably, if the Plaintiff missed a monthly interest payment, the Loan documents allowed for default interest on the principal at the rate of 24%.

Plaintiff did not make interest payments in January, February or March 2016. As Plaintiff was refinancing the loan, Defendant provided Plaintiff with a payoff statement, which calculated interest at the 12% non-default interest rate, and did not charge Plaintiff for any default interest at the 24% default rate. However, when Plaintiff completed the refinancing, Defendant recalculated the past due interest to include default interest at the 24% rate and applied $70,000 of the payment to default interest that allegedly accrued in January and February instead of applying it to the Loan balance.

The parties' representatives tried to resolve the dispute through a telephone conference. Following the call, in an email, Defendant's vice-president confirmed the parties' conversation and agreed to forego the collection of default interest if Plaintiff committed no additional defaults and paid the Loan in full by June 30, 2016; however, if the Loan went into default, Plaintiff would be responsible for the accrued default interest. Yet, after Plaintiff proceeded with the sale of one of the mortgaged properties, Defendant provided Plaintiff with another payoff statement that included the default interest. To release the lien on the property, Plaintiff paid the disputed amount.

Plaintiff filed a one-count complaint against Defendant, alleging that Defendant received $102,920.26 more than it should have because Defendant did not abide by the agreed-upon modification, *i.e.* -- that the default interest would be forgiven. The trial court granted Plaintiff's motion for summary judgment, explaining that "Plaintiff missed three loan payments, the parties exchanged emails indicating the default interest would not accrue if the new conditions set forth were met, Plaintiff upheld its end of the agreement by paying off the loan, Defendant breached the terms of the email communication by requiring default interest, and Plaintiff incurred monetary losses as a result." The Appellate Division affirmed. According to the panel, the trial court "correctly determined that the parties agreed that defendant would waive default interest if plaintiff committed no further defaults and paid off the loan by June 30, 2016." The fact that the modification took the form of an email did not make it invalid; the emails were "writings" sufficient to satisfy the statute of frauds.

If you have any questions about this Alert:

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
Associate
973.302.9672
cshadek@shermanwells.com

Anthony C. Valenziano
Associate
973.302.9696
avalenziano@shermanwells.com