

## BANKING ALERT

October 2018

### [New Jersey Appellate Division Affirms Trial Court's Decision to Reform Mortgage to Include Different Property Than Identified In Mortgage](#)

In *U.S. Bank National Association v. Coleman*, the Appellate Division affirmed the trial court's reformation of a mortgage. The Defendants had an interest in three tracts of land in Rockaway: tract one (largely unimproved with a driveway); tract two (Defendants sold this tract in 1998); and tract three (improved with a house in which Defendants lived). In 2005, Defendants executed a \$932,000 note and secured their loan obligation with a mortgage on tract one (the driveway lot) and tract two (the lot Defendants sold in 1998). Defendants defaulted, and U.S. Bank instituted foreclosure proceedings. U.S. Bank filed a motion for summary judgment, seeking to reform the mortgage to include tract three, which contained the house. The trial court granted the motion, explaining that it was "clear" that "the intention of the parties, certainly the bank, was to provide a loan for both the front lot and the back lot." According to the trial court, "[no lender was] going to loan \$900,000 to a driveway lot." Thus, the court found the "loan was to cover the back lot and the front lot."

Defendants appealed, and the Appellate Division affirmed. The panel explained that, for a court to grant reformation, "there must be clear and convincing proof that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be," *i.e.* -- in cases involving mutual mistake, fraud, or unconscionable conduct. The panel agreed with the trial court that the mortgage was properly reformed to include tract three (the house lot). The panel relied on the fact that the house lot had been mortgaged just a few years earlier for a loan in a similar amount and it was included in multiple mortgages before that. In the panel's view, "[t]here was no evidence presented by defendants that the unimproved driveway lot was comparable collateral to the house lot." Further bolstering the case for reformation, the 2005 mortgage included tract two (the lot that Defendants sold several years earlier). To the panel, "[t]his showed unquestionably that both parties made a mistake on the 2005 mortgage because defendants sold [tract two] in 1998. Defendants could not have intended in good faith to have included it in the 2005 mortgage."

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### ***New Jersey Appellate Division Affirms Trial Court's Determination That Bank Had First Priority Purchase Money Mortgage in Priority Dispute***

In *Valley National Bank v. 561 Broadway, LLC*, A-1664-16T4 (N.J. App. Div. Oct. 24, 2018), the New Jersey Appellate Division affirmed the trial court's decisions on two separate motions: (1) a motion for reconsideration of the trial court's prior determination that the plaintiff's purchase money mortgage was a first priority lien; and (2) the defendant's motion to vacate the writ of execution the plaintiff obtained after the final judgment of foreclosure.

Defendant 561 Broadway ("Broadway") borrowed \$500,000 from the plaintiff, Valley National Bank ("Valley"), in May 2004. The loan was secured by a mortgage executed by Broadway that was recorded in June 2004. The loan was also personally guaranteed by another defendant, Robert Schroeder. Seven years later, Broadway executed a second mortgage to Steven Wong, which was recorded in January 2012. After both Broadway and Mr. Schroeder defaulted on their obligations to Valley, Valley initiated a foreclosure action, naming Mr. Wong as a defendant. Mr. Wong filed a contesting answer, claiming his mortgage was in first position. The trial court ultimately agreed with Valley that its mortgage had first priority, and granted summary judgment in favor of Valley. Thereafter, Mr. Wong assigned his rights in the mortgage to his wife, Grace Wong. After Mr. Wong had assigned his rights, Valley was required to file an amended foreclosure complaint because it had failed to identify its mortgage as a purchase money mortgage in the initial complaint. Valley then sought a final judgment of foreclosure, which Ms. Wong challenged by way of a motion seeking to vacate the trial court's prior determination that Valley's mortgage had priority. The trial court denied that motion. Undeterred, Ms. Wong continued to contest Valley's efforts to obtain a final judgment of foreclosure, which ultimately required a trial for Valley to demonstrate that its purchase money mortgage had priority over Ms. Wong's mortgage. The trial court agreed, and awarded Valley a final judgment of foreclosure, which Ms. Wong again challenged by way of a motion for reconsideration, claiming her husband's bankruptcy, which was filed after the mortgage was assigned, somehow stayed the foreclosure action. That motion was denied by the trial court. Ms. Wong then sought to vacate Valley's writ of execution. That motion, too, was denied by the trial court.

On appeal, the Appellate Division noted that motions for reconsideration should be granted sparingly. Against that backdrop, the Appellate Division determined that the trial court properly denied Ms. Wong's motion, noting that the priority of Valley's mortgage was not reasonably in dispute as New Jersey is a "race notice" state. The Appellate Division also rejected Ms. Wong's contention that the writ of execution should be vacated on the grounds that Valley did not serve a "file-stamped" copy of the final judgment of foreclosure. The Appellate Division noted that Valley did not need to serve a "file-stamped" copy because the final judgment of foreclosure was e-filed.

### ***New Jersey Appellate Division Holds That Alleged Lack of Standing is Insufficient to Vacate Final Judgment of Foreclosure***

In *Nationstar Mortgage, LLC v. Guenzel*, A-0912-16 (N.J. App. Div. Oct. 1, 2018), the New Jersey Appellate Division affirmed the Chancery Court's Order denying the motion of defendant-appellant Tedd Guenzel ("Defendant") to vacate the final judgment of foreclosure entered against him. Defendant argued that plaintiff Nationstar Mortgage, LLC ("Plaintiff") did not have standing to bring a foreclosure action because Fannie Mae was the "owner of the mortgage note" at issue, and Defendant challenged Plaintiff's proofs relating to the assignment and ownership of the note and mortgage and Defendant's default arguing that no proofs were presented. The Chancery Court denied the motion to vacate finding that that Defendant was not a party to the assignment of mortgage and, thus, could not

challenge the assignment and that Defendant was given the opportunity to challenge Plaintiff's proofs, but chose not to attend.

Defendant appealed arguing that the Plaintiff lacked standing to sue and there was a lack of evidence of default and the assignment of mortgage was invalid. The Appellate Division held that because Defendant was moving to vacate the foreclosure judgment under Rule 4:50-1(c) and (f), he either had to show that the judgment was the result of fraud (which must be specifically alleged) or the result of truly exceptional circumstances. Thus, the Appellate Division found that even if Defendant was correct that Plaintiff lacked standing to bring the complaint, in the "post-judgment context, lack of standing would not constitute a meritorious defense to the foreclosure complaint." The Appellate Division held that standing is "not a jurisdictional issue in our state court system and a foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." The Appellate Division found that, in any event, Plaintiff submitted sufficient proofs to establish standing – *i.e.*, possession of the note or an assignment of the mortgage that predates the original complaint.

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