

**[New Jersey Appellate Division Affirms Dismissal of Claim
Against Bank for Honoring Prison’s Endorsement of
Plaintiff-Prisoner’s Check](#)**

In *Harris v. Wallibillich*, A-2410-16T4 (N.J. App. Div. May 15, 2018), the New Jersey Appellate Division held that a bank could not be deemed liable for damages arising from its decision to honor a check endorsed by a prison for the benefit of the prisoner who was the payee on the check.

The prisoner, Golda Harris, received by mail a check from defendant PNC Bank in the amount of \$101.77 made payable to her. Prison officers seized the check and issued Ms. Harris a contraband notice as she was not authorized to receive the item. Subsequently thereafter, the prison endorsed the check and deposited the full amount into Ms. Harris’s inmate account. A couple of months later, Ms. Harris filed suit for damages against, among others, the prison and PNC Bank. PNC Bank moved for and successfully obtained summary judgment on Ms. Harris’s claims before the trial court.

On appeal, the Appellate Division affirmed the dismissal, finding that PNC Bank could not be held liable for honoring the prison’s endorsement of Ms. Harris’s check because N.J.S.A. 30:4-16.4 provides that any “money judgment” awarded to an inmate while in custody must be deposited into the inmate’s account at the prison. Because the check was deposited into that account, the Appellate Division held PNC Bank properly honored the check and, in any event, no damages resulted because the funds were in an account in Ms. Harris’s name at the prison.

**[New Jersey Appellate Division Upholds Final Judgment of
Foreclosure Despite Challenges to Service of Process](#)**

In *Wilmington Sav. Fund Soc., FSB v. Choi*, (N.J. App. Div. May 15, 2018), Wilmington initiated foreclosure proceedings against defendants Jung Hee Choi and Bong Jae Kim (“Defendants”) following their default on a mortgage loan. Defendants did not appear until Wilmington filed a motion for a final judgment of foreclosure. Defendants opposed the motion and moved to vacate their default, raising a host of issues, including that service was defective, that there was a fraudulent title

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search, that Wilmington failed to serve a notice of intent to foreclose on them thus depriving them of the ability to participate in federal and state programs to assist them in curing their default, and that the trial court erred in accepting Wilmington's proof of amount due. The trial court rejected each of those arguments and entered a final judgment of foreclosure, and the Appellate Division affirmed for substantially the same reasons.

The trial court determined that service was valid. Although Wilmington was unable to personally serve Defendants at the property, which was occupied by a tenant, Wilmington produced proof of service of the notice of intent to foreclose by both regular and certified mail. Wilmington further filed a certification of diligent inquiry, detailing its efforts to serve Defendants, and service was made by publication. Defendants also eventually appeared in the foreclosure proceeding in response to Wilmington's motion for a final judgment, which was also served by both regular and certified mail addressed to them at the property. The trial court thus declined to lift the default, reasoning that, in addition to failing to explain how they received the notice of motion for final judgment mailed to the property but not the complaint or any of the other notices mailed to the same address, Defendants failed to "provide any credible competent evidence that would challenge [Wilmington's] right to foreclose."

In the trial court's view, Defendants did not produce any evidence upending Wilmington's computation of the amount due; Defendants could only point to the misspelling of Bon Jae Kim's name as "Bong Jae Kim." The trial court rejected the contention that a typographical error in the schedule of amount due "negatively reflect[ed] on the trustworthiness of the content of the schedule." Because Defendants offered no proofs contesting the substance of the proof of amount due or any other material fact to be resolved, no hearing was necessary and Wilmington was entitled to proceed to a final judgment.

New Jersey Appellate Division Finds That Contesting Answer Was Properly Stricken And Foreclosure Action Was Timely Filed

In *U.S. Bank, N.A. v. Walker*, A-3489-16T2 (N.J. App. Div. May 14, 2018), defendant appealed from the entry of final judgment of foreclosure and order striking her contesting answer. Defendant admitted that in 2006 she executed and delivered a \$418,500 Note to plaintiff's predecessor, American Financial Resources, Inc., secured by a non-purchase money mortgage on her home to Mortgage Electronic Registration Systems, Inc., as nominee for the lender. Defendant further admitted she defaulted on the loan in September 2009, had not made any payments since that time, and that plaintiff served her with a notice of intent to foreclose thirty days before filing its foreclosure complaint.

Despite such admissions, defendant argued that plaintiff did not possess the original note. The trial court found that the certification submitted by an employee of plaintiff's servicer attesting to that fact fully complied with the personal knowledge requirement of R. 1:6-6.

The trial court also rejected defendant's argument that the six year statute of limitations in N.J.S.A. 12A:3-118(a) for "an action to enforce the obligation of a party to pay a note," applied. Instead, the trial court found that plaintiff's suit is controlled by N.J.S.A. 2A:50-56.1, which provides that a plaintiff must bring a foreclosure suit within "[s]ix years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, bond, or other obligation secured by the mortgage." The maturity date in plaintiff's note was 2036; thus, the trial court found the foreclosure action timely. The Appellate Division affirmed the trial court's decision without explanation, finding that the trial court properly considered the merits and ruled in accordance with the statute and the Court Rules.

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