

[New Jersey Appellate Division Finds Bank Had Standing and Timely Filed Foreclosure Action](#)

In *Wells Fargo Bank, N.A. v. Richard Marino*, A-3581-16T3 (N.J. App. Div. Apr. 4, 2018), the Appellate Division affirmed an order granting a bank summary judgment on a foreclosure complaint and the denial of the borrower's motion to dismiss the complaint. The borrower, defendant Richard S. Marino, borrowed \$357,000 from Option One Mortgage Corporation in 2003 secured by a mortgage on residential property in Springfield Township. Ultimately, Option One Mortgage Corporation assigned its rights and interests in the note and mortgage to the plaintiff, Wells Fargo Bank, N.A. ("Wells Fargo"). Mr. Marino did not dispute that he defaulted under the terms of the loan documents in August 2007. Seven years later, Wells Fargo's authorized agent sent a notice of intent to foreclose to Mr. Marino. Mr. Marino did not cure the default, and a foreclosure action was initiated in January 2015. Mr. Marino filed a contesting answer asserting several affirmative defenses, including that Wells Fargo's complaint was barred by the statute of limitations and that Wells Fargo lacked standing to bring a foreclosure action. Cross-motions for summary judgment were filed and the trial court denied Mr. Marino's motion, granted Wells Fargo's motion, and struck Mr. Marino's answer and affirmative defenses. Upon transfer to the Foreclosure Unit, a final judgment of foreclosure was entered in March 2017.

On appeal, Mr. Marino focused his argument on (1) lack of standing; and (2) statute of limitations. As to standing, the Appellate Division agreed with the trial court's determination that, based on the certification provided in support of its motion, Wells Fargo properly established standing consistent with New Jersey case law, *i.e.*, by demonstrating that it was an assignee by assignment of the mortgage prior to the filing of the complaint and acquisition of the note prior to the filing of the complaint. With respect to the statute of limitations, the Appellate Division disagreed with Mr. Marino's contention that subsection (a) of N.J.S.A. 2A:50-56-1, and its six-year statute of limitations, was applicable. Instead, the Appellate Division noted that subsection (c), providing for a twenty-year statute of limitations from the date of default, applied and the action was timely filed.

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New Jersey Appellate Division Reverses Trial Court's Decision That Notice of Intent to Foreclose Need Not be Served on Debtor's Estate in Case of Reverse Mortgage

In *Nationstar Mortgage, LLC v. Armstrong*, A-3795-16T1 (N.J. App. Div. Mar. 20, 2018), defendant John Armstrong, acting on behalf of his mother, obtained a reverse mortgage in his mother's name, secured by her home in Cranford, New Jersey. Defendant signed his mother's name to the loan documents as her "attorney in fact." Defendant's mother died shortly after obtaining the mortgage.

On October 5, 2009, plaintiff sent a notice to defendant advising him of the options available for the estate to satisfy the loan balance and avoid foreclosure. The estate failed to satisfy the loan balance, and plaintiff filed a foreclosure action naming defendant's mother and her heirs, which was later amended to add defendant and his wife. Defendant filed an answer, which the trial court dismissed and, ultimately, the court entered a final judgment of foreclosure. Defendant raised the issue, among others, of plaintiff's failure to serve a notice of intent to foreclose (NOI). The trial court agreed with plaintiff's argument that when the mortgagor on a reverse mortgage dies, the lender has an absolute right to obtain the property, with no right to cure, and therefore a NOI is not required.

Defendant appealed the trial court's final judgment of foreclosure. The Appellate Division rejected plaintiff's argument that it was not required to serve a NOI because the residential mortgage at issue was a reverse mortgage. The Appellate Division stated that the Fair Foreclosure Act (FFA) requires a lender to serve a NOI before accelerating a residential mortgage loan or instituting a foreclosure action. The Appellate Division determined that the statute contains no exception for a reverse mortgage and reading such an exception into the statute would be contrary to the fundamental purpose of allowing property owners to avoid losing their property to foreclosure. The Appellate Division rejected plaintiff's argument that the NOI need not be served because the mortgagor's death on a reverse mortgage cannot be cured. The Appellate Division determined that the FAA does not require by its terms that the default be cured prior to sending a NOI, but, in any event, the default could be cured in this instance by payment of the mortgage balance by the estate.

The Appellate Division then determined that it had some discretion with regard to the appropriate remedy for failure to serve a NOI. In this instance, the Appellate Division determined that a brief stay of the foreclosure proceeding for thirty days to give defendant a chance to pay off the mortgage would be appropriate.

"Law of the Case" Doctrine Preserves Foreclosure Ruling in Favor of Bank

In *JPMorgan Chase Bank, N.A. v. Olajide*, A-2232-16T3 (N.J. App. Div. Apr. 2, 2018), the Appellate Division refused to set aside a final judgment of foreclosure based on the "law of the case" doctrine. In *Olajide*, the defendants borrowed approximately \$300,000 secured by a mortgage on their home. Four years later, a fire occurred at the home and, that same month, the defendants failed to make their monthly loan payment, triggering a default. No loan payments were made after this default. Five years later, in September 2014, the bank initiated a foreclosure action and the defendants filed an answer. In July 2015, the trial court granted the bank's motion for summary judgement and struck the defendants' answer for failing to challenge whether the bank was able to provide valid loan documents or demonstrate the necessary elements of a foreclosure action.

For reasons unknown to the bank's counsel on appeal, the bank initiated an identical foreclosure action against the defendants in January 2016. The defendants, however, defaulted and filed no response. In support of a motion to vacate a default judgment of the 2016 foreclosure action, the trial court held that the defendants lacked a meritorious defense because the proposed answer that the defendants intended to file was the same exact answer the trial court in the 2014 foreclosure action had stricken. A final judgment of foreclosure was ultimately obtained in the 2016 foreclosure action, while the 2014 foreclosure action was dismissed for lack of prosecution.

On appeal, the Appellate Division considered the defendants' contentions that (1) the dismissal of the 2014 foreclosure action deprived the defendants of the right to appeal the summary judgment in that matter; and (2) the trial court erred in finding that the defendants lacked a meritorious defense to the 2016 foreclosure action. With regard to the 2016 foreclosure action, the Appellate Division held that the trial court was correct in finding that the defendants lacked a meritorious defense based on the "law of the case" doctrine; specifically, the defendants had already litigated and lost on the merits in the 2014 foreclosure action as to whether they had a meritorious defense. The Appellate Division noted that the bank filed an identical complaint and the defendant had filed an identical proposed answer, and that the trial court, acting within its discretion, applied the "law of the case" doctrine as a result of those prior findings. With regard to the defendants' "lost" appeal, the Appellate Division held that the defendants simply failed to raise any argument as to the 2014 foreclosure action in the pending appeal and, thus, waived their right to do so.

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