

[New Jersey Appellate Division Upholds Judgment Against Self-Represented Guarantor](#)

In *PNC Bank v. Grace S. Wong*, Docket No. A-3473-15T3 (N.J. App. Div. Jan. 16, 2018), the Appellate Division declined to vacate a judgment against a self-represented defendant arising from her default under a commercial line of credit with the plaintiff, PNC Bank (“PNC”).

PNC sued the defendant, Grace Wong, in the Law Division for defaulting on a commercial line of credit extended to Ms. Wong in 2008. Discovery was conducted in the matter, and included the exchange of interrogatories, thousands of pages of documents, and depositions. After the completion of discovery, PNC moved for summary judgment. Despite several extensions of time to permit Ms. Wong to file an opposition, no opposition was filed and the motion was ultimately granted as unopposed. The day after a final judgment was entered, Ms. Wong filed a notice of appeal, which was subsequently dismissed due to Ms. Wong’s failure to file a brief.

Exactly one year after the entry of final judgment, Ms. Wong filed a motion to vacate the judgment, rehashing several of the arguments previously raised, including that she was not at the closing of the loan at issue and that the Trial Court failed to give her sufficient time to file opposition. The Trial Court, in a detailed decision, denied the motion to vacate, noting that each and every argument raised was previously rejected and included no new information that would permit vacating the year-old judgment.

On appeal, the Appellate Division affirmed the matter, noting that the Trial Court’s detailed and thorough analysis of the motion was substantial and amply supported the denial of the motion.

[New Jersey Appellate Division Enforces Arbitration Clause Contained in Online Agreement](#)

In *Russo v. J.C. Penney Corporation, Inc.*, Docket No. A-3116-16T1 (N.J. App. Div. Dec. 13, 2017), the Appellate Division enforced an arbitration agreement and compelled arbitration.

Russo began working for J.C. Penney Corporation, Inc. (“JCPenney”) in 2014. At that time, new hires at JCPenney were required to complete an onboarding process, which included execution of JCPenney’s arbitration agreement. Along with other forms, the arbitration agreement was to be

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reviewed and completed online. The online agreement was one page, and it contained a hyperlink to the full text of the rules governing the arbitration policy. If clicked, a new browser would open with the rules. The rules explained the full scope of the arbitration policy, including what types of claims were subject to binding arbitration. The employee needed to sign the bottom of the one-page agreement to continue with the onboarding process.

JCPenney terminated Russo eight months after she was hired. Later, she filed a complaint in the Superior Court, alleging, among other things, that JCPenney violated the Law Against Discrimination and the Conscientious Employee Protection Act. JCPenney filed a motion to dismiss and compel arbitration. In response, Russo claimed that she did not electronically sign the agreement.

Following limited discovery on whether Russo completed the online form, the motion court determined that Russo read and understood the one-page arbitration agreement. However, the judge denied the motion to compel arbitration because the one-page agreement that Russo signed did not list the types of claims that would be subject to arbitration (such a description was contained in the hyperlinked rules). In denying JCPenney's motion for reconsideration, the motion court further determined that the agreement should have advised employees that the rules identified the claims to be resolved through binding arbitration.

The Appellate Division reversed and compelled arbitration. To start, the panel noted that, to be enforceable, an arbitration agreement need not recite the entire arbitration policy so long as it "refers specifically to arbitration in a manner indicating an employee's assent, and the policy is described more fully in an accompanying handbook or in another document known to the employee." Thus, the panel determined that the arbitration agreement at issue was enforceable; the one-page agreement advised Russo that she was agreeing to arbitrate disputes and referenced the rules, which were made available to Russo and described the complete arbitration policy in fuller detail.

The panel disagreed with the motion judge's legal conclusion that the agreement was invalid because it did not list the claims subject to binding arbitration. Highlighting that the claims subject to binding arbitration were described fully in the hyperlinked rules, and that plaintiff expressly acknowledged she had an opportunity to review the entire agreement, including the rules, the Appellate Division concluded that the agreement should be enforced.

[New Jersey Appellate Division Reverses Trial Court's Turnover of Funds in Joint Account](#)

In *Banc of America Leasing & Capital, LLC v. Fletcher-Thompson Inc.*, 2018 WL 259383 (N.J. App. Div. Jan. 2, 2018), plaintiff Banc of America Leasing & Capital, LLC ("BOA") obtained a default judgment in the State of Michigan in the amount of \$361,093.47, plus interest against defendants Fletcher-Thompson, Kurt Baur and Michael Marcineck. BOA domesticated the judgment in New Jersey. A writ of execution for a bank levy was issued to the Mercer County Sheriff, who served it on PNC Bank. The levy froze funds held in a joint account by Kurt Baur and his wife, Kristi Baur. BOA filed a motion for turnover of the funds in the joint account.

Prior to ruling on the motion, defendants entered into a consent order with BOA, whereby the funds in the joint account would be replaced with funds of defendants who would then pay monthly payments until the judgment was satisfied in full. Defendants defaulted on their agreement to make payments. BOA filed a renewed motion to turnover the funds, which the Baur's opposed, arguing that the funds in the joint account were solely Kristi's and primarily exempt pension payments. The Superior Court granted the motion finding that the agreement was breached and BOA was entitled to the funds.

The Baur's appealed and the Appellate Division reversed the lower court's ruling. The Appellate Division found that there is no question that when seeking a turnover from a joint account, the judgment creditor has the burden to prove that the moneys in the account are the individual property of the judgment creditor. Kristi certified and provided supporting documentation that the funds were solely hers and include exempt pension payments. BOA did not demonstrate that the funds were the property of the judgment debtor, Kurt, but instead that the parties' consent agreement controlled and defendants breached the agreement. The Appellate Division found that nothing in the agreement constituted a waiver of the Baur's right to dispute the bank levy and Kristi, who was not a party to the underlying litigation, nor a signatory to the agreement, did not forfeit her right to her sole funds deposited in the joint account. The Appellate Division then remanded the proceeding for a determination of the ownership of the funds in question.

WE ARE EXCITED TO SHARE THAT WE HAVE MOVED OUR NEW YORK OFFICE

Effective January 29th, our New York office has moved to:
 1185 Avenue of the Americas
 3rd Floor
 New York, NY 10036

We're located at Sixth Avenue, between 46th Street and 47th Street. Reception is located on the 3rd floor.

Our telephone number in New York remains the same: 212.763.6464.

We are looking forward to seeing you at our new location in New York.

If you have any questions about this Alert:

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