

[Appellate Division Affirms Denial of Contempt Motion](#)

In *Triffin v. Jetro Holdings, LLC*, No. A-4371-14T2 (N.J. App. Feb. 14, 2017), the Appellate Division affirmed the trial court's denial of the plaintiff's motion seeking contempt against a bank that did not directly turnover to the plaintiff funds subject to a levy.

The plaintiff obtained a default judgment against Jetro Holdings LLC, and thereafter filed a request to execute on the judgment, seeking the issuance of a bank levy on JPMorgan Chase Bank, N.A. ("Chase").

Pursuant to a writ of execution, the county court officer levied on the funds (\$654.91) held by Chase. The plaintiff then filed a motion for an order for turnover of funds. In his proposed form of order, the plaintiff included language that the funds should be turned over by Chase directly to him. The trial court entered the proposed form of order, notwithstanding the New Jersey statute governing such orders which requires the bank to pay the funds to the court officer, and not the garnishee.

Chase did not pay the funds directly to the plaintiff, but instead sent the funds to the county court officer. In turn, the plaintiff filed an order to show cause seeking the entry of contempt against Chase for failure to comply with the Court's turnover order. The trial court denied the motion finding, among other things, that the plaintiff failed to include a verified complaint required under the Court Rules on an order to show cause. The plaintiff filed a notice of appeal seeking reversal of the denial. Four months after the notice of appeal was filed, the trial court issued a corrected turnover order that required Chase to turn the funds over to the county court officer, consistent with the New Jersey statute.

On appeal, the Appellate Division affirmed the decision but on different grounds. Specifically, the Appellate Division found that the plaintiff would be entitled to relief under Rule 1:10-3 upon a finding that Chase was a "willful violator" of the original order. However, the record did not reflect the fact that Chase willfully violated the original order because Chase's actions, while not consistent with the original order, were consistent with the statute, precluding a finding of willfully contumacious conduct.

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[Federal Court Dismisses Challenge To Foreclosure Judgment](#)

In *Ogbebor v. JPMorgan Chase, N.A.*, 2017 WL 449596 (D.N.J. Feb. 2, 2017), the District Court dismissed a number of claims against a mortgage lender, holding that they were barred by both the *Rooker-Feldman* and New Jersey's entire controversy doctrines. The case grew out of a foreclosure proceeding. The plaintiff-borrowers had engaged in negotiations with JPMorgan Chase Bank, N.A. ("Chase") about modifying their mortgage. Simultaneously, Chase initiated a foreclosure action, and plaintiffs defaulted. Plaintiffs then filed a motion to vacate the judgment, alleging that Chase never disclosed its intent to foreclose and made misrepresentations about modifying the mortgage loan when it had no intention of doing so. The state court denied the motion, explaining that plaintiffs knew about the foreclosure proceeding and allowed it to proceed uncontested. After the property was sold at a foreclosure sale, plaintiffs filed a motion to set aside the sale. The state court denied that motion too, reiterating that plaintiffs knew about the foreclosure proceedings, and explaining that the record did not support their claims that they were coerced into modification negotiations. Plaintiffs did not appeal.

Plaintiffs then filed a complaint in federal court, alleging breach of contract, violations of the New Jersey Consumer Fraud Act, and fraudulent misrepresentation against Chase. The complaint also alleged a violation of the Real Estate Settlement Procedures Act ("RESPA") against M&T Bank, which became the loan servicer after the foreclosure judgment but before the foreclosure sale.

The *Rooker-Feldman* doctrine barred the claims against Chase. The doctrine "strips the federal courts of jurisdiction over controversies that are essentially appeals from state-court judgments." (quoting *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 315 (3d Cir. 2014)). Because plaintiffs' claims against Chase impliedly challenged Chase's ability to foreclose, all of plaintiffs' claims against Chase attempted to attack the state-court foreclosure judgment. The breach of contract claim, for example, alleged the existence of a valid loan modification and thus presumed that the state court should not have entered a judgment of foreclosure. That claim was, according to the Court, "so inextricably intertwined with the foreclosure judgment that a favorable decision in this Court would require a finding that the state court was wrong in entering a foreclosure judgment for Chase." Moreover, plaintiffs' claims sounding in fraud clearly sought to undermine Chase's right to foreclosure and thus were likewise barred.

To the extent that the *Rooker-Feldman* doctrine did not bar plaintiffs' claims against Chase, New Jersey's entire controversy doctrine did. Applied to foreclosure actions, that doctrine required a borrower to raise all germane claims—that is, claims relating to the mortgage—in the foreclosure proceedings. Plaintiff's had the chance to raise their claims against Chase in the state-court actions but did not. The RESPA claim, however, was not barred by either the *Rooker-Feldman* or the entire controversy doctrine as it did not concern the liability of Chase to foreclose or the validity of the foreclosure action. Thus, the claim against M&T Bank was allowed to proceed.

[Appellate Division Upholds Sale Of Property By Receiver](#)

In *Central Jersey Bank v. Cohen*, 2017 WL 541112 (N.J. App. Div. Feb. 10, 2017), the Appellate Division considered whether the defendants were entitled to a fair market value credit for the sale of property done in connection with a pending foreclosure action. In 2007, the defendant, Imperial Marble & Granite LLC ("Imperial Marble") executed and delivered a note in the amount of \$600,000 to the plaintiff, Central Jersey Bank (the "Bank"), secured by a mortgage and security agreement for real property located in Irvington, New Jersey (the "Property"). In 2010, Imperial Marble defaulted on its obligations under the loan. The Bank initiated a collection action in the Law Division

which was unopposed; as a result, a default judgment against Imperial Marble in the amount of approximately \$593,000 was entered. The Bank also filed a foreclosure action, which Imperial Marble also failed to answer. After the initiation of the foreclosure action, Imperial Marble forwarded to the Bank an offer to purchase the Property from a third-party for \$540,000. Subsequently, the Bank moved for the appointment of a receiver, which would be authorized, among other things to complete the sale of the Property to a different third-party for the same amount, \$540,000. Imperial Marble did not oppose the application, which was granted. After satisfying tax liens and environmental remediation issues, the Bank received approximately \$221,000 in sale proceeds to apply to the outstanding loan deficiency of \$593,000.

Three years after completion of the sale, Imperial Marble moved before the Law Division for a fair market value credit, to have the Law Division judgment deemed satisfied, and to vacate the default judgment. The Court held a hearing and denied the motion, finding there was no basis to hold that the property's fair market value was higher than the sale price, and that the receiver was authorized to sell the Property for \$540,000, the same price that Imperial Marble accepted from a different potential buyer.

On appeal, the Appellate Division upheld the trial court's decision, finding that the motion was a collateral attack by Imperial Marble of an order issued in the Chancery Division. Additionally, the Appellate Division noted that there was nothing to suggest that the Bank realized a windfall from the sale in excess of the judgment.

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