

**[U.S. Supreme Court Holds Defendant Criminally Liable Under Bank Fraud Statute for Stealing Customer's Funds](#)**

In *Shaw v. United States of America*, 2016 WL 7182235, 580 U.S. ---- (Dec. 12, 2016), the United States Supreme Court interpreted the reach of 18 U.S.C. § 1344(1), which makes it a crime for a person to “knowingly execut[e] a scheme...to defraud a financial institution.” In *Shaw*, the defendant was alleged to have obtained bank account numbers of a customer and transferred funds from those accounts to accounts he controlled. The defendant appealed his conviction under § 1344(1), arguing that the statute did not reach the facts of his case because he stole funds from a third-party (*i.e.*, the customer) and not the bank. The Ninth Circuit affirmed the conviction and the Supreme Court took the appeal on a petition for *certiorari*.

The United States Supreme Court unanimously affirmed the conviction, finding that the statute covered “schemes to deprive a bank of customer deposits” because a bank retains a property interest in a depositor’s funds when they are deposited into an account: “[w]hen a customer deposits funds, the bank ordinarily becomes the owner of the funds and consequently has the right to use the funds as a source of loans that help the bank earn profits[.]” The United States Supreme Court also rejected the defendant’s similar argument that he could not be liable under the statute because the bank did not suffer a pecuniary loss, noting that the statute did not require a showing of ultimate financial loss.

Finally, the United States Supreme Court remanded the matter back for further consideration in view of a jury instruction that could be interpreted to permit a conviction under the statute based on something less than proof that the “scheme must be one to deceive the bank *and* deprive it of something of value.” Because the statute requires demonstration of both of those elements, the matter was remanded back to the Ninth Circuit to determine whether the instruction was proper.

**[Appellate Division Affirms Discharge of Receiver After Settlement of Foreclosure Action](#)**

In *Investors Bank v. Trylon/Crest Construction, Inc.*, 2016 WL 5922751 (N.J. App. Div. Oct. 12, 2016), the Appellate Division affirmed the Trial Court’s discharge of a rent receiver over the defendant’s objection that the

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receiver was required to make certain payments to the defendant. In October 2008, the defendant borrowed \$5,200,000 from the plaintiff, Investors Bank (the “Bank”), secured by a first mortgage on property owned by the defendant. In addition, the mortgage granted the Bank the right to have a rent receiver appointed for the property. The defendant also executed, among other things, an indemnification agreement and an assignment of rents and leases.

In 2011, the defendant defaulted under the loan documents. The Bank filed a foreclosure action in 2012, as well as an action in the Law Division to enforce the note and guaranty. As part of its foreclosure action, the Bank alleged that the defendant misappropriated tenant security deposits, resulting in the Court appointing a receiver to manage the property. As part of the receivership, the receiver sent to all parties, including the defendant, monthly operating reports that were never questioned. The Bank and defendant subsequently settled the matters in November 2012. As part of the settlement, the Bank would sell the property and receive \$3,500,000 in satisfaction of the loan. After the defendant failed to execute the settlement agreement, the Bank moved in both the foreclosure and Law Division actions to enforce the settlement agreement. Those motions were granted. Ultimately, the property was sold for \$4,200,000, with the Bank receiving \$3,500,000 and the defendant receiving the balance.

The defendant filed a motion for reconsideration of the Trial Court’s Order to discharge the rent receiver, claiming that at closing, the defendant learned that there remained certain unpaid real estate taxes, water and sewer charges that the defendant claimed the Bank and/or the receiver should have paid, as well as security deposits that should have been paid by the receiver to the defendant. The Trial Court disagreed and denied the motion, and the defendant appealed. On appeal, the Appellate Division affirmed the Trial Court’s discharge of the receiver, noting that at no point did the defendant question any accounting or monthly operating report it received from the receiver during the pendency of the action. The Appellate Division also noted that a rent receiver’s authority is “purely contractual,” and “its purpose is to protect the mortgagee’s interests by imposing a court-supervised, disinterested person to collect the rents and pay expenses[.]” With that as a backdrop, the Appellate Division held that the rent receiver’s conduct was consistent with his obligations and the Trial Court’s instructions.

### **[Omnibus New York Foreclosure Law Takes Effect on December 20, 2016](#)**

Recent changes to New York’s foreclosure statutory scheme are set to go into effect on December 20, 2016. These wide-ranging revisions include the following amendments:

- Accelerating the foreclosure process by requiring that a sale take place within 90 days of the foreclosure judgment;
- Requiring the foreclosing plaintiff, if the successful bidder at the foreclosure sale, to place the property up for sale within 180 days of the execution of the deed or 90 days after the completion of construction or renovation;
- Defining “good faith” bargaining for the purposes of imposing statutory penalties in connection with the mandatory settlement conference process;
- Imposing property maintenance obligations on the foreclosing plaintiff at the inception of the foreclosure action; and
- Providing for an expedited process to foreclose on properties that are determined to be vacated or abandoned.

**If you have any questions about this Alert:**

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