

**[Third Circuit Affirms Dismissal of Wrongful Foreclosure Complaint](#)**

In *Martinez v. Bank of America, N.A.*, --- Fed. Appx. ---- (3d Cir. Nov. 9, 2016), the United States Court of Appeals for the Third Circuit affirmed a District Court’s dismissal of a federal court action challenging the bank’s ability to foreclose on a mortgage it did not originate. However, the Third Circuit disagreed with the District Court’s application of the *Rooker-Feldman* Doctrine, instead applying New Jersey’s Entire Controversy Doctrine to uphold the dismissal.

Defendants Bank of America, N.A. and Nationstar Mortgage, the respective owner and loan servicer of a note and mortgage executed by the plaintiff, initiated a foreclosure proceeding against the plaintiff in state court. Subsequent to the state court’s entry of summary judgment in favor of the defendants, Nationstar Mortgage and the plaintiff entered into a loan modification agreement, and the foreclosure action was dismissed. Prior to the dismissal, the plaintiff filed suit in federal court, challenging the defendants’ respective standing to enforce the terms of the mortgage. The District Court dismissed the action on the grounds that the *Rooker-Feldman* Doctrine precluded the plaintiff from attacking the validity of the state court’s summary judgment decision in federal court.

In affirming the District Court’s dismissal, the Third Circuit stated that *Rooker-Feldman* was inapplicable because, as a matter of law, there was no state court “final judgment” that the plaintiff sought to attack by way of federal court review. Instead, New Jersey’s Entire Controversy Doctrine, which requires a party to bring all related claims against any and all parties to a particular proceeding, required the plaintiff to file any claims, including the ones asserted in the federal court action, in the foreclosure action.

**[Federal Court Dismisses Amended Complaint Filed by Pro Se Plaintiffs Against Mortgage Lenders and Servicers](#)**

In *Zuniga v. America Home Mortgage*, 2016 WL 6647932 (D.N.J. Nov. 8, 2016), a group of eighty-seven *pro se* plaintiffs brought individual actions against a group of mortgage lenders and servicers under several theories of state and federal law. Having previously dismissed many of the plaintiffs and defendants to the action, the District Court was left to

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resolve a motion by defendants Ocwen Loan Servicing, Homeward Residential Servicing, Inc. and Wells Fargo Bank, N.A to dismiss the Second Amended Complaint filed by two of the plaintiffs.

The plaintiffs alleged, among other things, that the defendants colluded in transferring the loan without the approval of the plaintiffs. The plaintiffs further alleged that the defendants failed over the course of several years to negotiate a loan modification in good faith and then forced the plaintiffs into accepting the terms of a loan modification agreement that were appreciably different than the ones previously represented to the plaintiffs. Based on these allegations, the plaintiffs in the Second Amended Complaint asserted claims for negligent and intentional misrepresentation, violation of the New Jersey Consumer Fraud Act, unjust enrichment, and violation of Title XIV of the Dodd-Frank Act.

In dismissing the Second Amended Complaint with prejudice, the District Court noted that the allegations concerning misrepresentative statements in the Second Amended Complaint, even indulgently construed, were palpably insufficient to state claims for misrepresentation and violation of the New Jersey Consumer Fraud Act under Federal Rule of Civil Procedure 9(b). Specifically, the Second Amended Complaint failed to state who made the misrepresentative statements and what particular details were misstated to the plaintiffs. The District Court also dismissed the Dodd-Frank Act claim, noting that the plaintiffs' allegations of "property valuation inflation" were poorly pled and, in any event, the Dodd-Frank Act did not provide the plaintiffs a private right of action against the defendants.

#### ***Appellate Division Affirms Denial of Motion to Vacate Default in Foreclosure Action***

In *Bank of New York Mellon v. Smith*, 2016 WL 6610435 (N.J. App. Div. Nov. 9, 2016), the Appellate Division affirmed the denial of a motion to vacate a final judgment of foreclosure based on the defendant-borrower's contention that she was not properly served. After the plaintiff made three attempts to serve the defendant at an address the plaintiff obtained through a skip trace, the plaintiff successfully sent a copy of the summons and complaint by way of certified mail, return receipt requested and U.S. mail. After a final judgment of foreclosure was entered, the defendant unsuccessfully moved to vacate the default on the grounds of improper service and the plaintiff's alleged lack of standing to foreclose on the mortgage.

The Appellate Division rejected the defendant's appeal, stating that the New Jersey Court Rules permitted the plaintiff to use mailing as substituted service after having made a reasonable effort to serve the defendant personally. The Appellate Division also noted that the defendant failed to properly include all of the motion exhibits and certifications in the appendix on appeal. With regard to the standing argument, the Appellate Division cited to the plaintiff's assignment that was properly recorded and filed prior to the filing of the foreclosure complaint.

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

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