

BANKING ALERT

New Jersey Will Introduce An Expanded Complex Business Litigation Program Statewide Beginning January 1, 2015

The New Jersey Judiciary's Complex Business Litigation Program, which has been operating in Bergen and Essex counties since 1996, will expand statewide beginning January 1, 2015. Chief Justice Stuart Rabner announced the expansion in a statement and order released on November 13, 2014. The Program handles complex commercial and construction litigation cases that have the potential for \$200,000 or more in damages.

The Program seeks to benefit litigants in commercial cases by establishing a designated group of experienced judges to manage complex business disputes. Judges assigned to the Program will be expected to issue a minimum of two written opinions every year in order to develop an authoritative body of business case law in New Jersey that will aid all parties in business litigation.

A case assigned to the Program will have one judge overseeing the matter from the beginning to the end. This will allow the assigned judge to have a better understanding of a case. In contrast, in ordinary cases filed in the Law Division, multiple judges may decide various motions and discovery matters before such cases are assigned to a trial judge.

In cases where the damages are estimated to be less than \$200,000, parties may make a motion to have their matters transferred to the Program if there are compelling or complex legal, factual and/or discovery issues. The Program excludes matters handled by general equity judges in the Chancery Division and litigation involving consumer actions, labor organizations, personal injury, eminent domain and cases where the government is a party.

The expansion of the Program has been positively received by commercial litigation attorneys in New Jersey, who have previously praised the Program's success in Bergen and Essex counties.

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*New Jersey District Court Abstains From Hearing Foreclosure Dispute Under
The Colorado River Abstention Doctrine*

In recognition of New Jersey's interest in protecting the authority of its judicial system, specifically in the context of foreclosure, the District Court of New Jersey in *Ruffolo v. HSBC Bank USA, N.A.*, No. CIV.A. 14-638 MAS, 2014 WL 4979699 (D.N.J. Oct. 3, 2014) dismissed a complaint lodged against HSBC Bank ("HSBC") pursuant to the abstention doctrine established by the United States Supreme Court in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

In December 2010, HSBC filed a foreclosure complaint against plaintiffs in the Superior Court of New Jersey. Plaintiffs filed an answer in the state court foreclosure action, which asserted affirmative defenses as to standing and fraud. In particular, plaintiffs alleged that in July 2009, HSBC made false and fraudulent representations to plaintiffs in an effort to persuade them to stop making loan payments "for 90 consecutive days," and once plaintiffs stopped making payments for 90 days, they "would be guaranteed to qualify and receive a novation or loan modification."

In January 2014, more than three years into litigation in the state court foreclosure action, plaintiffs, acting *pro se*, filed a complaint in the District Court of New Jersey claiming that HSBC and the law firm representing HSBC in state court violated plaintiffs' due process rights by instituting a foreclosure action and asserting counts against HSBC for, among other things, declaratory and injunctive relief, negligence, fraud and violation of the Fair Debt Collections Practices Act ("FDCPA").

HSBC and the law firm filed motions to dismiss; however, the District Court did not reach the merits of their arguments. Instead, the Court dismissed plaintiffs' complaint in its entirety without prejudice pursuant to the *Colorado River* doctrine.

The *Colorado River* doctrine is a discretionary doctrine that provides that federal district courts may abstain from hearing cases where two actions are "parallel," meaning the "parallel" state proceeding involves the same parties and substantially identical claims raising nearly identical allegations and issues. The United States Supreme Court in *Colorado River* recognized that a federal court may defer to pending state court proceedings based on considerations of wise judicial administration, conservation of judicial resources and comprehensive disposition of litigation.

In determining whether the *Colorado River* doctrine is at play, a court must decide the threshold issue of whether two actions are parallel. The District Court in *Ruffolo* found that the state court foreclosure action and plaintiffs' federal action are parallel since they both involve the same parties and contain substantially identical claims raising nearly identical allegations and issues. Specifically, the Court noted that in both actions, plaintiffs claim that HSBC does not have standing to foreclose and that HSBC and the law firm made fraudulent promises to plaintiffs to induce their default. Since both actions principally concern whether HSBC is entitled to foreclose on plaintiffs' property, they were deemed parallel for purposes of the *Colorado River* doctrine.

Once a court determines a parallel state proceeding is pending, the court must then consider six factors in weighing whether abstention under the *Colorado River* doctrine is appropriate:

- (1) which court first assumed jurisdiction over the property;
- (2) the inconvenience of the federal forum;

- (3) the desirability of avoiding piecemeal litigation;
- (4) the order in which jurisdiction was obtained;
- (5) whether federal or state law controls; and
- (6) whether the court will adequately protect the interests of the parties.

The District Court determined that all six of the foregoing factors weighed in favor of abstention. First, the state court initially obtained jurisdiction and had been overseeing the litigation of the foreclosure action for more than three years, and the state also has jurisdiction over plaintiffs' property, which is located in New Jersey. Second, since plaintiffs sought a declaration or injunction preventing HSBC from proceeding with the foreclosure of plaintiffs' property, any relief granted by the District Court would potentially nullify or contradict a state court ruling on the same issues and "would directly impact New Jersey's interest in protecting the authority of its judicial system." The District Court reasoned that a federal ruling that foreclosure is impermissible and a contemporaneous state court judgment allowing foreclosure "would throw into turmoil the parties' rights and obligations over plaintiffs' home and mortgage, as well as the comity between courts." Third, plaintiffs' claims and defenses are primarily based on state law, except for their FDCPA claim. Although the presence of federal-law issues is a major consideration weighing against abstention, the District Court determined that the state court is an adequate forum to review plaintiffs' FDCPA claim. Fourth, the District Court found that the state court is capable of protecting plaintiffs' interests, and plaintiffs' rights and claims could be vindicated in the state court foreclosure action or through the state appellate process. Lastly, the District Court noted that the state court is a more appropriate forum to resolve plaintiffs' claims since the state court is in the same county where both the property and plaintiffs are located.

The New Jersey District Court's abstention decision in *Ruffolo* is welcome news for banks in New Jersey who, after initiating state court foreclosure proceedings, find themselves in federal court defending against a property owner's claims contesting foreclosure.

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