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SYLVESTER & STAMELMAN LLP

BANKING ALERT

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New Jersey Appellate Division Affirms Dismissal of Guarantors' Counterclaims Asserted After the Parties Settled the Matter

In *Valley National Bank v. Patyrak Realty, LLC*, Docket No. A-3423-17T1 (N.J. App. Div. Apr. 29, 2019), the New Jersey Appellate Division affirmed the trial court's order dismissing the borrowers' "supplemental" counterclaims brought after the parties had agreed to resolve the matter.

In 2007, Patyrak Realty, LLC (the "Borrower") borrowed $750,000 from Valley National Bank (the "Bank") secured by a mortgage on commercial property located in Warren Township (the "Property"). The loan obligation of the Borrower was also personally guaranteed in full by the Borrowers' principals, James and Deborah Patyrak (together, the "Patyraks"). In 2011, the loan went into default. To enforce its rights under the loan documents, the Bank initiated two actions, one seeking to foreclose on the mortgage and obtain possession of the Property, and another on the note and the guaranties executed by the Patyraks. In 2013, final judgment of foreclosure was entered in favor of the Bank in the amount of approximately $902,000, together with interest, and counsel fees of $7,500. A sheriff's sale was conducted later that year, with the Property selling for $810,000. After setting aside the sheriff's commission and related costs, the Bank received approximately $778,000.

After receiving the net proceeds from the sale of the Property, the Bank moved for summary judgment in the action on the note and guaranties on the Bank's affirmative claims, as well as seeking to dismiss the Patyrak's counterclaims for consumer fraud and violation of federal and state banking laws. As part of the motion for summary judgment, the Bank sought a judgment in the amount of approximately $290,000, which represented the amount outstanding on the loan after accounting for the sale proceeds from the Property. In opposition, the Patyraks disputed the amount claimed to be due and owing. The trial court agreed with the Bank and entered judgment in favor of the Bank in the amount of $290,940.21. The trial court also granted the Bank's motion dismissing the Patyraks' counterclaims.

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Office Locations

New Jersey
210 Park Avenue
2nd Floor
Florham Park NJ 07932
973.302.9700

New York
1185 Avenue of the Americas
3rd Floor
New York NY 10036
212.763.6464

Follow Sherman Wells on
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On appeal, the Appellate Division affirmed the trial court's order dismissing the Patyraks' counterclaims, but reversed the grant of summary judgment in favor of the Bank on its affirmative claims solely on the issue of the amount due to the Bank, which the Appellate Division remanded back to the trial court for further proceedings. After the remand, the Bank filed a motion to reduce the amount of the judgment to $124,234.50, while the Patyraks filed a motion to vacate the entire judgment. In the interim, the Bank took steps to collect on its judgment, docketing the judgments in New Jersey, Michigan and Florida. While those motions were pending, the Patyraks' counsel reached out to the Bank's counsel and inquired as to whether the Bank would cease collection efforts in Michigan and Florida if the Patyraks paid the Bank $124,234.50. The Bank stated that it would, and the Patyraks advised the trial court that the matter had been resolved. Warrants of satisfaction were subsequently filed in all three jurisdictions, including New Jersey. Six months later, however, in May 2017, the Patyraks, through new counsel, filed a motion to file "supplemental" counterclaims asserting that the Bank abused process, engaged in consumer fraud, fraud, and had breached the terms of the guaranties. After the trial court permitted the Patyraks to file the counterclaims, the Bank moved for summary judgment, which the trial court granted, finding that the Patyraks had settled all remaining claims with the Bank after paying the Bank $124,234.50.

On appeal, the Appellate Division held that the parties had entered into a settlement to resolve the entire matter, noting that while there was no written agreement, the parties clearly had a "meeting of the minds" over the terms, *i.e.*, payment of $124,234.50 in exchange for satisfaction of the outstanding judgment. That the parties had agreed to a settlement to resolve the entire matter was expressed by the Patyraks' counsel to the trial court, when he advised that the "dispute ha[d] been resolved."

Plaintiff-Borrower Survives Motion to Dismiss FDCPA Claims Against Law Firm That Filed Underlying Foreclosure Action

In *Lloyd v. Pluese, Becker & Saltzman*, Case No. 18-cv-9420 (D.N.J. May 9 2019), plaintiff Carol Lloyd ("Plaintiff") filed claims against defendant Pluese, Becker & Saltzman ("PBS"), the law firm which represented the mortgage lender in the underlying state foreclosure action, for alleged violation of the Fair Debt Collection Practices Act ("FDCPA"). PBS moved to dismiss.

As required on a motion to dismiss, the District Court accepted the following facts pled by Plaintiff as true. Plaintiff purchased the property at issue in 1996. Plaintiff's mortgage lender, New Jersey Housing and Mortgage Finance Agency ("HMFA") asserted that Plaintiff has been in default for nine years. According to Plaintiff, around July 2013, HMFA gave the case to PBS to file a foreclosure complaint, despite knowing that federal regulations require a face-to-face meeting between the lender and borrower prior to bringing a foreclosure action. After the state foreclosure action was dismissed for lack of prosecution and on May 19, 2017, PBS, on behalf of HFMA, filed a motion to reinstate the foreclosure. In the federal action, Plaintiff alleged that PBS was a debt collector under FDCPA and that the motion to reinstate violates the FDCPA.

PBS filed a motion to dismiss based on the following arguments: (1) the claims are barred by the *Rooker-Feldman* doctrine; (2) the claims are barred by the entire controversy doctrine; (3) the claims are barred by res judicata and issue preclusion; and (4) the claims are frivolous pursuant to Fed. R. Civ. P. 11.

The District Court found that the *Rooker-Feldman* doctrine does not apply prior to entry of final judgment in the state court foreclosure litigation. The District Court found no dispute that a final judgment of foreclosure had not been entered in HMFA's state foreclosure action. The District Court then found that the FDCPA claims against PBS are not germane to the foreclosure action as they are premised on actions taken by a non-party after the foreclosure case was filed, distinguishing the case from FDCPA claims against a mortgage lender or servicer that are germane. Thus, the District Court found the entire controversy doctrine does not apply.

The District Court then found insufficient evidence to support PBS's argument that the issue of HMFA's admitted failure to conduct a face-to-face meeting was litigated several times in the state foreclosure action and HFMA prevailed every time. The District denied the issue preclusion argument without prejudice. The District Court then found that PBS's Rule 11 motion was premature because PBS has not – as of yet – prevailed on any of its arguments in support of dismissal and denied the application without prejudice.

New Jersey Passes Into Law a Series of Reforms Directed at Foreclosure Process

On April 29, 2019, Governor Murphy signed into law a package of nine foreclosure reform bills.

The reform package includes, among other things, a bill that requires that a notice of intent to foreclose be sent at least 30 but not more than 180 days in advance of taking that action. Previously, the notice needed only to be sent 30 days in advance of a residential mortgage lender initiating a foreclosure or other legal action to take possession of a residential property.

One bill was aimed at the rights of common interest communities. Under prior law, the New Jersey Condominium Act allowed condominium associations the right to collect up to six months of unpaid assessments on foreclosure of a condominium unit, and a portion of the association lien held limited priority over prior recorded mortgages. The new law expanded that authorization to include other forms of common interest community associations, not just condominium associations, with the exception of cooperatives. The new law provides that "[a]n association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any monies duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and any late fees, fines, expenses, and reasonable attorney's fees imposed or incurred in the collection of the unpaid assessment." Moreover, the law clarified that the six-month limited priority could be cumulatively renewed on an annual basis for up to five years, with a separate six-month limited priority for each year that a lien is recorded. Thus, if the foreclosure process last for several years, common interest associations can collect six months of assessments for each year the lien is renewed, for up to five years.

Another bill expedites the foreclosures of vacant and abandoned property. Among other things, the bill widened the definition of vacant and abandoned properties to ensure that foreclosure sales of such properties are conducted within ninety days a foreclosure judgment; allowed a representative of a common interest community association to certify that a property is vacant; and authorized a lender to apply for a special master to sell the property within ninety days if becomes apparent that the sheriff cannot comply with the ninety-day requirement.

If you have any questions about this Alert:

Attorney Contact Information

Anthony J. Sylvester
Partner
973.302.9713
asylvester@shermanwells.com

Craig L. Steinfeld
Partner
973.302.9697
csteinfeld@shermanwells.com

Caitlin T. Shadek
Counsel
973.302.9672
cshadek@shermanwells.com

Anthony C. Valenziano
Counsel
973.302.9696
avalenziano@shermanwells.com