

BANKING ALERT

September 2021

New York Extends Foreclosure Moratorium and Alters Hardship Declaration Process

On September 1, 2021, the New York Legislature extended the foreclosure moratorium until January 15, 2022.

In doing so, the New York Legislature amended the law to provide lenders with the ability to challenge a hardship declaration provided by a borrower. Prior to this recent amendment, the filing of a hardship declaration automatically stayed any foreclosure proceeding and the lender did not have the ability to contest its legitimacy.

Under the amendment, in a foreclosure action that is already pending, the lender can file a motion requesting a hearing to challenge the borrower's assertion that it is suffering a financial "hardship" due to COVID as defined by the law. The Court would then have a hearing to determine whether the stay should be continued until January 15, 2022.

If a Complaint has yet to be filed, the lender can file a Complaint, but, as part of its filing, the lender would have to attest that it does not believe the hardship declaration is valid. The lender can then file a motion and request a hearing to determine whether the stay should be continued until January 15, 2022.

Third Circuit Determines That Court-Appointed Receivers Are Entitled to Quasi-Judicial Immunity

In *Trinh v. Fineman*, Docket No. 20-1727 (3d Cir. Aug. 17, 2021), the United States Court of Appeals for The Third Circuit joined several other circuits in ruling that court-appointed receivers are entitled to absolute, quasi-judicial immunity when they act within the court's authority.

Plaintiff Lan Tu Trinh filed a complaint in the United States District Court for the Eastern District of Pennsylvania against David Fineman, a receiver appointed by the Court of Common Pleas of Philadelphia County, in a matter regarding the dissolution of Trinh's beauty school. The original complaint alleged that Fineman did not provide a proper accounting of the escrow account and accused him of theft. The District Court dismissed the complaint, sua sponte, for lack of subject matter jurisdiction. On appeal, the Third Circuit affirmed the District Court's opinion but remanded to allow Trinh the opportunity to amend her complaint.

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Trinh filed an amended complaint in which she alleged that Fineman, as receiver, was abusing his court-appointed powers. After determining that the amended complaint “arguably raised a § 1983 claim,” the District Court dismissed Trinh’s amended complaint and held that a court-appointed receiver should be afforded quasi-judicial immunity.

On appeal, the Third Circuit affirmed the District Court’s decision. In reaching its decision, the Third Circuit noted that the Supreme Court has recognized certain common law immunities afforded to certain officials, including judges, when faced with § 1983 claims. The Third Circuit further noted that, when the nature of an official’s function is akin to that of a judge (e.g., hearing examiners, administrative law judges, prosecutors and grand jurors), quasi-judicial immunity should apply to the role. In this case, the Third Circuit reasoned that, because a receiver functions as an “arm of the court,” the policies underlying judicial immunity also support immunity for court-appointed receivers. Accordingly, the Third Circuit joined the First, Second, Fifth, Sixth, Ninth, Tenth and Eleventh Circuits in holding that court-appointed receivers are entitled to quasi-judicial immunity when they act within the authority provided by the Court.

In affirming the lower court’s dismissal, the Third Circuit Court further found that Fineman was duly appointed by the state court and that the judge was aware of, and approved, all of Fineman’s expenditures. Thus, Fineman was entitled to quasi-judicial immunity because he was acting at all times “at the court’s request.” Finally, the Third Circuit found that Trinh failed to show that Fineman acted outside of his authority in any way. Therefore, the panel reasoned that “the policy behind immunity for receivers ‘to prevent vexing suits against public officials’ who are simply performing their duties” was applicable here.

United States District Court Denies Cross-Motions for Summary Judgment on UCC Conversion Claim

In *Weyant v. The Phia Group LLC*, 2021 WL 3667714 (S.D.N.Y. Aug. 17, 2021), a federal district court denied cross-motions for summary judgment on Plaintiff’s UCC conversion claim. Plaintiff was a participant in the Orange-Ulster School Districts Health Plan (the “Plan”). Defendant INDECS was the claims administrator for the plan. Defendant The Phia Group, LLC (“Phia”) was the authorized agent of INDECS for the purposes of subrogation and reimbursements efforts on behalf of the Plan. Plaintiff was injured in an accident and the Plan provided \$16,057.19 in medical benefits (the “Plan Benefits”), which Plaintiff returned under protest. Defendants asserted a lien on certain settlement funds Plaintiff recouped in a separate action relating to the accident. Plaintiff contested the validity of the lien and objected to the repayment of the Plan Benefits. Plaintiff’s counsel emailed Phia’s claims handler and advised her that his client contested the lien. Ultimately, Plaintiff sent Phia a check for \$16,057.19 representing the full amount of the lien, with a letter stating that Plaintiff reserved the right to contest the validity of the lien and payment was made under protest. Plaintiff testified that she made the payment because she was afraid of losing her health insurance.

Plaintiff then brought a class action against the defendants seeking full entitlement to the Plan Benefits. The only remaining claim was Plaintiff’s claim for UCC conversion. Both parties moved for summary judgment. The United States District Court for the Southern District of New York granted summary judgment in favor of the defendants, finding that Plaintiff failed to exhaust her administrative remedies. On appeal, the United States Court of Appeals for the Second Circuit vacated the dismissal and remanded the matter.

On remand, the parties disputed whether Plaintiff’s conversion claim arose under New York’s UCC, under New York common law, or both. The District Court held that the check at issue is a negotiable instrument within UCC Article 3 such that all sections of Article 3 -- including UCC § 3-419 on conversion -- apply. Plaintiff then challenged the applicability of Article 3 on the grounds that the check did not contain an unconditional promise to pay. The District Court disagreed. Plaintiff’s cover letter with the check stated that acceptance of the check constituted an agreement that the payment was involuntary, and that Plaintiff had

not surrendered her right to contest the lien. But these conditions, the District Court noted, were not on the check itself and did not affect its negotiability. Next, the District Court found that although a UCC conversion claim pursuant to § 3-419 does not displace an otherwise viable common law conversion claim, “a plaintiff cannot bring a common law conversion claim as an alternative to a failed UCC conversion claim under § 3-419, but the two claims can co-exist if the UCC claim is viable.” The District Court found that an issue of fact precluded summary judgment on both the UCC § 3-419 conversion claim and the common law conversion claim. Specifically, the District Court found a material issue of fact as to whether Plaintiff made a demand for return of the check, and relatedly, whether the payment was made voluntarily. The District Court found the evidence conflicting as to both questions and denied summary judgment because a reasonable jury could find that Plaintiff made at least an implied demand for return of the check at the time it was delivered and did not make the payment voluntarily. Finally, the defendants asserted as a defense to liability that they are “holders in due course” and the District Court found a material issue of fact existed as to what the defendants knew of the transaction and the reason(s) why Plaintiff objected to the repayment at the time she remitted the check.

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