

BANKING ALERT

December 2021

New York Foreclosure Moratorium Set to Expire on January 15, 2022

New York's foreclosure moratorium is set to expire on January 15, 2022. On September 1, 2021, the New York Legislature extended the moratorium, which effectively stayed foreclosure actions where the borrower submitted a financial hardship declaration. Currently, there is no proposed legislation in the New York Legislature seeking to further extend the moratorium.

New Jersey Appellate Division Affirms Final Judgment in Residential Foreclosure Action

In *U.S. Bank National Association v. Ramon Reyes*, Docket No. A-4341-19 (N.J. App. Div. Dec. 14, 2021) the Appellate Division affirmed final judgment in a residential foreclosure action and rejected defendant's claims that the judgment was improper because, among other things, he was not properly served with the complaint.

On October 24, 2006, defendant Ramon Reyes ("Defendant") executed a \$225,000 promissory note with Credit Suisse secured by a mortgage on his home. In 2011, the mortgage was assigned to plaintiff U.S. Bank National Association ("U.S. Bank"). Approximately five years later, in May 2016, U.S. Bank agreed to refinance the loan and increase the principal balance under the note to \$381,010.10. After Defendant failed to make his November 2018 payment, U.S. Bank filed a foreclosure complaint in March 2019.

After Defendant failed to respond to the complaint, U.S. Bank moved for the entry of default. In support of its application, U.S. Bank provided an affidavit of service demonstrating that Defendant was personally served with the complaint at his residence on April 2, 2019. The Court subsequently entered default on May 21, 2019.

On June 19, 2019, U.S. Bank moved for final judgment. In support of the motion, counsel for U.S. Bank certified that he mailed Defendant the notice of motion and all other necessary documents. On July 8, 2019, the Court entered final judgment of foreclosure in the amount of \$391,998.08, plus attorneys' fees of \$4,069.98.

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Nine months after the entry of final judgment, and after his property was sold at a sheriff's sale, Defendant filed a motion to vacate the final judgment under Rule 4:50-1(d). In support of his motion, Defendant claimed he did not receive any notice of the foreclosure

action and disputed that he was personally served. Defendant also challenged the validity of the note and mortgage and whether the loan was actually in default because Union County records did not show there was a valid conveyance of the note to U.S. Bank. The Court denied Defendant's application to vacate the final judgment, finding that Defendant's challenges to the service of the complaint amounted to "mere doubt" unsupported by any corroborating evidence. The Court also ruled that U.S. Bank established that it had a *prima facie* right to foreclose as it had standing, Defendant was in default, and it had established the amount due under the note. The Court also denied Defendant's subsequent motion for reconsideration.

Defendant filed an appeal of the trial court's decision and argued that the trial judge erred in denying his motion to vacate pursuant to Rule 4:50-1(d) and, for the first time, under section (f), because (1) he was not served with the complaint or provided the required notices under the Fair Foreclosure Act (FFA), (2) U.S. Bank failed to establish standing to prosecute the foreclosure as it did not possess the note, and (3) he was not in default. The Appellate Division affirmed the trial court's decision for the reasons set forth in the May 11, 2020 order denying the motion to vacate.

The Appellate Division also provided additional comments to amplify its decision and to address the arguments made for the first time on appeal. The Court held that subsection (f) of Rule 4:50-1 authorizes a court to relieve a party from judgment where "a grave injustice would occur." In this case, the Appellate Division was satisfied that a grave injustice would not occur because U.S. Bank established the validity of the mortgage, Defendant's default, the amount owed, and its right to foreclose. The appellate court also rejected Defendant's argument that he didn't receive notices under the FFA because the record established U.S. Bank's compliance with the FFA and, nevertheless, any alleged defects would not warrant vacating the final judgment under the facts presented.

The Appellate Division ultimately ruled that Defendant was properly served with the complaint and U.S. Bank's attorney provided multiple certifications attesting that it had sent Defendant updates of the proceedings, including an FFA notice to cure. Defendant had ample notice of the proceedings and failed to remedy his default. Accordingly, the Appellate Division found Defendant was not entitled to vacate the judgment.

Discharge of Mortgage in Foreclosure Action Did Not Have Preclusive Effect on Related Claims in Law Division Action

In *Wells Fargo Bank, N.A. v. Friedman, et al.*, A-0095-20, plaintiff Wells Fargo filed a foreclosure complaint against Milton Friedman in 2016 in the New Jersey Superior Court, Chancery Division. Mr. Friedman answered and filed a counterclaim to discharge the subject mortgage as void and recover damages for fraud. The Chancery Division transferred Mr. Friedman's counterclaims, as well as Wells Fargo's claims for an equitable lien, equitable subrogation, unjust enrichment, and claims on the underlying promissory notes, to the Law Division and retained jurisdiction over the claims for foreclosure and possession. In 2019, a trial was held in the Chancery Division action and the Chancery Court found that an employee of Wells Fargo's predecessor-in-interest forged Mr. Friedman's signature on the loan documents at issue. The Court entered an order dismissing the foreclosure and possession counts and entered judgment in favor of Mr. Friedman, thereby discharging the subject mortgage.

The Estate of Milton Friedman (the “Estate”) substituted in for Mr. Friedman who passed away during the pendency of the action. Both parties filed motions in the Law Division on the remaining claims and the Court entered judgment for the Estate and awarded it fees incurred in litigating the action. Plaintiff appealed. On appeal, the Appellate Division affirmed in part, and reversed and remanded in part. The Appellate Division affirmed the grant of summary judgment to the Estate on the equitable claims in the Chancery Division, but reversed and remanded the judgment in favor of the Estate on the legal claims in the Law Division and the award of legal costs and fees. The Appellate Division found that the equitable and legal claims had been bifurcated between the Chancery Division and the Law Division, and the judgment of the Chancery Division discharging the mortgage did not have a preclusive effect on the remaining legal claims between the parties.

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