

# BANKING ALERT

May 2022

## **New Jersey Supreme Court Approves Increases to Jurisdiction Limits for Special Civil and Small Claims Matters**

In a Notice to the Bar dated May 11, 2022, the Administrative Director for New Jersey Courts advised that the Supreme Court has approved increases in the jurisdictional limits for the Special Civil docket from \$15,000 to \$20,000 and for the Small Claims docket from \$3,000 to \$5,000. The increases come after the state's Special Civil Part Practice Committee recommended increases to the jurisdictional limits in 2020. The new jurisdictional limits go into effect on July 1, 2022.

## **New York Supreme Court Denies Motion Requesting Stay of UCC Foreclosure Sale**

In *Lincoln Street Mezz II, LLC v. One Lincoln Mezz 2, LLC*, Index No. 530492/2021, the Supreme Court of the State of New York denied a motion filed by plaintiff Lincoln Street Mezz, LLC ("Plaintiff") seeking to stay the Uniform Commercial Code ("UCC") foreclosure sale of Plaintiff's interests in a corporation that indirectly owned real property in Boston (the "Property"). Specifically, Plaintiff argued that defendant One Lincoln Mezz 2 LLC ("Defendant") had failed to satisfy §9-627(b) of the UCC, which requires that the "disposition of the collateral" must be "made in a commercially reasonable manner" so that it is done "in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition"

There were four loans on the Property: a mortgage loan administered by Morgan Stanley Mortgage Capital Holdings LLC in the amount of \$535,000,000 and three subordinate mezzanine loans. The second-in-position mezzanine loan in the amount of \$125,000,000 was acquired by Defendant on June 24, 2021 (the "Loan"). Plaintiff defaulted on the Loan on November 10, 2021 and Defendant sent a notice to Plaintiff, pursuant to Article 9 of the Uniform Commercial Code, for the sale of Plaintiff's shares in the corporation that indirectly owned the Property. The sale was subsequently scheduled for December 20, 2021. In addition, the third-in-position mezzanine Lender, KTB CRE Debt Fund No. 7, A Korean Investment Trust ("KTB"), had previously scheduled a UCC

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foreclosure sale for December 21, 2021. As a result, Plaintiff filed a motion with the Court seeking to stay the December 20<sup>th</sup> sale.

In deciding against Plaintiff, the Court explained that in New York, “a disposition of collateral is commercially reasonable if made ‘in the usual manner on any recognized market . . . at the price current in any recognized market at the time of the disposition . . . or otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.’” To that end, the Court addressed Plaintiff’s arguments and found that the fact that there were two sale dates a day apart would not confuse bidders as only extremely well-funded and well counseled bidders would participate in these bids and there would be no likelihood of mistakes. The Court also rejected Plaintiff’s position that holding a hearing during the holiday season rendered the sale commercially unreasonable as a matter of law because the notices were publicized on November 11, 2021, well before the holiday season began.

The Court also explained that Plaintiff, to succeed on its claims, would need to demonstrate irreparable harm. Plaintiff maintained that it would be irreparably harmed because: (1) the agreement entered into with Defendant provides that where the lender acts unreasonably Defendant’s sole remedy would be to commencing an action seeking injunctive relief or declaratory judgment; and (2) the foreclosure sale would result in a loss of the Property, which could not be replaced with any money damages.

The Court determined that Plaintiff failed to assert how Defendant acted unreasonably and highlighted that Plaintiff simply noted in its complaint that it would have no effective remedy but for an injunction to protect its rights. Further, any argument by Plaintiff that the scheduling of the foreclosure sale date was unreasonable would also fail as the Court had already determined that the scheduled date was not unreasonable. As for Plaintiff’s second claim regarding the alleged loss of the Property, the Court explained that Plaintiff does not own the Property, rather Plaintiff owns one hundred percent of the shares of a corporation that indirectly owns the Property. As a result, the Court held that Plaintiff could not demonstrate it would suffer irreparable harm because the shares of the corporation, not the Property itself, would be sold if the sale took place as scheduled.

### **New Jersey Appellate Division Reverses Dismissal of Claims Against Guarantor**

In *Philip Blazeski v. Lander Property Consulting Group, LLC and Levi Kelman*, No. A-2630-20 (N.J. App. Div. April 25, 2022) the Appellate Division reversed the trial court’s dismissal of plaintiff’s claims against a guarantor of a note because the trial court failed to specify any findings of fact or conclusions of law to support its order of dismissal.

On April 18, 2020, plaintiff Philip Blazeski (“Plaintiff”) filed a complaint in the Law Division seeking to recover monies owed under a promissory note (“Note”). The Note, in the amount of \$500,000, was executed between Goce Blazeski and defendant Lander Property Consulting Group (“Lander”). The Note was secured by a payment guaranty (“Guaranty”) that was executed by defendant Levi Kelman. The Guaranty “unconditionally guaranteed” the payment of the obligation to Goce Blazeski and his successors and assigns. Plaintiff’s suit alleged three causes of action relating to the default under the Note: (i) breach of the Note against Lander, (ii) Breach of the Guaranty against Kelman, and (iii) unjust enrichment against Kelman.

In his complaint, Plaintiff alleged he was a successor-in-interest to Goce Blazeski via assignment of the Note on April 1, 2020. However, by its terms, the Note could not be assigned without the consent of both

Goce Blazeski and Lander. It was further undisputed that Lander never provided any such consent. Plaintiff's complaint did not contain any allegation that the Guaranty was ever assigned.

On May 26, 2020, defendants filed a motion for summary judgment in lieu of an answer. On April 14, 2021, the trial court granted defendants' motion for summary judgment and dismissed all three counts of Plaintiff's complaint. In granting the motion, the trial court considered section 14(b) of the Note that prohibited the assignment of the Note without the express written consent of Lander. Since it was undisputed that Lander did not consent to alleged assignment, the trial court held that Plaintiff did not have standing to sue to enforce the Note. Although the decision dismissed all three claims, the trial court did not make a record of any findings or conclusions with respect to counts two and three of the complaint.

In his appeal, Plaintiff challenged the trial court's dismissal of count 2 (breach of the Guaranty) and count three (unjust enrichment), arguing that both were assignable and that dismissal was erroneous as a matter of law. Plaintiff also argued that the trial court mistakenly applied the summary judgment standard under Rule 4:46 instead of the motion to dismiss standard under Rule 4:6-2(e). The Appellate Division attempted to review the trial court's dismissal of counts two and three *de novo*. However, the Appellate Division was unable to discern the basis of the trial court's decision and could not determine the standard applied by the trial court because there was "absolutely no discussion of counts two and three in the court's opinion attached to its order dismissing the case." The only discussion and legal conclusions in the trial court's opinion related to the assignment of the Note.

The Appellate Division ultimately ruled that the trial court failed to comply with Rule 1:7-4(a) because no findings of fact or conclusions of law were memorialized regarding the dismissal of counts two or three. In addition, the trial court did not supplement the record with its findings or reasons pursuant to Rule 2:5-1(b) after the appeal was filed. Thus, the Appellate Division reversed the trial court's decision relating to counts two and three and remanded the matter for the trial court to make the requisite findings of fact and conclusions of law in the record.

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