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BANKING ALERT

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New Jersey Appellate Division Upholds Terms of Settlement Agreement in Foreclosure Action

In *Crown Bank v. Hotel Investors, LLC*, Docket No. A-2914-20, a commercial foreclosure action, defendant Hotel Investors, LLC ("Defendant") appealed from orders striking its answer, dismissing its defenses, and entering a final judgment of foreclosure.

On April 12, 2013, plaintiff Crown Bank ("Plaintiff") extended two commercial loans to Defendant to fund the construction of hotels secured by two mortgages. In 2015, Defendant defaulted by failing to pay its vendors for work performed on the construction projects. In February 2016, Plaintiff and Defendant entered into a loan modification agreement that, among other things, extended the maturity date. In December 2016, Plaintiff and Defendant entered into a second loan modification agreement after Defendant failed to remit four consecutive loan payments. The second modification again extended the maturity date of the loans and required Defendant to, among other things, retain a new contractor and obtain a certificate of occupancy. Between 2016 and 2018, Defendant defaulted on several agreements with contractors and subcontractors, resulting in numerous construction liens on the mortgaged premises. In September 2017, Plaintiff sent Defendant a letter agreeing to an additional modification to extend the construction completion date to March 2, 2018 (the "September 2017 letter").

Defendant subsequently defaulted by failing to: (1) pay real estate taxes; (2) pay off the loans by the maturity date; (3) satisfy the construction liens; (4) keep funds in escrow with Plaintiff; and (5) deliver SBA approvals. After declaring Defendant in default, Plaintiff filed a complaint to foreclose in October 2018 the two mortgages securing the loans. Thereafter, the trial court granted Plaintiff's motion to strike Defendant's contesting answer and referred the matter to the Office of Foreclosure.

In July 2019, the parties signed a letter agreement agreeing to a consent judgment (the "July Agreement"). In November 2019, Plaintiff filed an application for final judgment of foreclosure in the amount of $10,011,024.27, which included certifications of amount due, interest calculations, and itemized protective advances.

In This Issue

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Defendant, in contravention of the July Agreement, filed opposing papers that alleged: (1) Plaintiff was not entitled to the default interest retroactive to January 1, 2017 because Plaintiff allegedly waived such interest under the September 2017 Letter; and (2) Plaintiff's calculation of the principal amount due was overstated because it improperly included advance checks that were never negotiated by the contractors. In its reply, Plaintiff argued that the July Agreement entered by the parties was binding and Defendant waived its right to oppose Plaintiff's request for final judgment.

In March 2021, the trial court entered a final judgment of foreclosure and issued a writ of execution. The trial court found that the July Agreement was binding and fixed the amount due and owing. Defendant filed a motion for reconsideration in April 2021, asserting that the reasonableness of a retroactive interest rate was not considered by the trial court. Plaintiff opposed the motion and cross-moved to amend the final judgment and writ of execution to correct a clerical error. In May 2021, the trial court granted Plaintiff's cross-motion to amend the final judgment of foreclosure and writ of execution to reflect the correct amounts and denied Defendant's motion for reconsideration.

On appeal, Defendant argued that: (1) the trial court improperly awarded retroactive default interest; and (2) that the July Agreement should not be enforced. The Appellate Division found that the July Agreement was clear and unambiguous and allowed Plaintiff to, among other things, "proceed with the foreclosure uncontested…." Further, the Appellate Division noted that by entering into the settlement agreement in exchange for a discounted payoff amount, Defendant waived its right to contest the striking of its answer in the foreclosure action. Next, the Appellate Division considered Defendant's arguments concerning the default interest rate, and whether the rate was unenforceable. In finding for Plaintiff, the Appellate Division noted that default interest rates are commonly accepted as a means for lenders to offset a portion of the damages created by delinquent loans. As the parties initially agreed upon the default rate, the Appellate Division held that it is presumed to be reasonable. The Appellate Division also found that the amended judgment and writ of execution reflected the correct amounts due on the loans based on the default rate. The Appellate Division explained that the trial court's findings were supported by the record and its legal conclusions were consistent with applicable law. In addition, the Appellate Division noted that Defendant failed to cite any case law in support of its argument that the default rate should not be retroactive. Finally, as to the denial of Defendant's motion for reconsideration, the Appellate Division held that Defendant failed to demonstrate that the denial of its motion for reconsideration was an abuse of discretion.

New Jersey Federal Court Dismisses Discrimination Claim Against Bank Based on Closure of Plaintiff's Checking Account

In *Ruales v. Spencer Savings Bank,* 2022 WL 1773741 (D.N.J. Jun. 1, 2022), a federal district court granted a bank's motion for summary judgment on claims brought by a former customer claiming that the bank closed his checking account due to his nationality.

Plaintiff Miguel Ruales ("Plaintiff") opened a checking account with defendant Spencer Savings Bank (the "Bank") in August 2011. Six years later, the Bank advised Plaintiff that it was closing his account within thirty days. Plaintiff alleged that the Bank refused to provide him a reason for the account closure. The Bank claimed that it utilizes software that monitors all accounts and transactions that identifies irregular activity. With respect to Plaintiff, an "excessive use of bank checks" caused Plaintiff's account to be flagged and referred for review on multiple occasions. Bank employees testified that, after Plaintiff's account was flagged and reviewed, it was determined that Plaintiff was utilizing the account to complete irregular business transactions. Bank employees further testified that, when Plaintiff was asked about the transactions prior to the Bank closing the account, Plaintiff gave inconsistent answers as to the nature of his business activities. As a result, the Bank determined that the account should be closed. Plaintiff claimed, in the litigation, that he was depositing large sums of cash because his construction business was doing very well.

After the close of discovery, the Bank filed a motion for summary judgment seeking dismissal of the Complaint in its entirety, which asserted claims of negligence, violation of 42 U.S.C. §§ 1981 and 1983, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing. In finding for the Bank, the Court initially noted that Plaintiff's Section 1983 claim could not be sustained because the Bank is not a state actor. As for Plaintiff's claim of negligence, the Court held that Plaintiff had not identified any law or industry standard that would require a bank to provide reasons for the closure of a deposit account. The Court further found that, based on discovery, it was undisputed that the Bank, after much deliberation and review, closed Plaintiff's account in a manner consistent with the Bank's deposit agreement and, as a result, the Bank could not be found to have acted negligently for acting on its contractual rights.

The Court also dismissed Plaintiff's Section 1981 claim despite Plaintiff's contention that he was advised by a Bank employee that his account was closed due to the fact he was Hispanic. While Plaintiff suggested that this created a material issue of fact that precluded summary judgment, as well as some inconsistences in the testimony concerning which specific Bank employee ultimately made the determination that Plaintiff's account should be closed, the Court held that all "facts in the record relating to the account closure…are all on [the Bank's] side." In so doing, the Court held that minor inconsistences, such as which specific Bank employee made the determination, were not material. What was material, the Court noted, was whether the Bank "harbored, or acted upon, any bias towards [Plaintiff] on the basis of his national origin." On that front, the Court held that Plaintiff had provided no evidence that would raise a dispute that would require a trial on the issue.

Finally, the Court dismissed the remaining claims of breach of fiduciary duty and breach of the covenant of good faith and fair dealing. As to the former, the Court held that a bank-depositor relationship does not generally give rise to a fiduciary duty. The Court further held that, even if there were a general fiduciary duty, it could not include a general obligation to maintain an account for a customer as such a duty would be inconsistent with certain state and federal banking regulations that require the Bank to monitor accounts for suspicious activity. As for Plaintiff's breach of the covenant of good faith and fair dealing claim, the Court found that Plaintiff had not provided any evidence that the Bank acted in bad faith or denied Plaintiff the benefit of the parties' agreement as the agreement provided, among other things, that the Bank could close the account in its own discretion with reasonable notice.

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