

# BANKING ALERT

September 2023

## **New Jersey Appellate Division Affirms Dismissal of Action Arising From Dishonored Check After Trial**

In *Triffin v. Garden State Pain Control Center, P.A.*, Docket No. A-1930-21 (N.J. App. Div. Sept. 19, 2023), the New Jersey Appellate Division affirmed the dismissal of a claim arising from a dishonored check purchased by plaintiff Robert Triffin (“Plaintiff”).

At issue was a dishonored check dated February 24, 2017 in the amount of \$436 made payable to Gulviana Ortega (“Ortega”) and issued by defendant Garden State Anesthesia Associates, P.A. (“Garden State”). The check was ultimately dishonored and referred to its maker on March 8, 2017. Plaintiff subsequently purchased the dishonored check and filed suit against, among others, Garden State. At trial, Garden State introduced bank records showing that the check was originally negotiated on February 27, 2017. Specifically, the trial court, over Plaintiff’s objection, entered into evidence a bank statement that contained a page with a copy of the front and back of the canceled check, finding that the statement was admissible under NJRE 1003.

Based on this document, the trial court found in favor of Garden State, and held that because Garden State’s bank had already paid on the check on February 27, 2017, it was under no obligation to pay a second time.

On appeal, the Appellate Division rejected Plaintiff’s contentions that the trial court erred in admitting a copy of the canceled check, noting that the Appellate Division could not disturb the findings of a judge in a bench trial unless “they are so wholly insupportable as a result in a denial of justice.” Under that standard, the Appellate Division held that it had no reason to disturb the trial court’s “well-reasoned” decision on the matter.

## **New Jersey Appellate Division Affirms Dismissal of Consumer Fraud Class Action Against Debt Collector**

In *Jennifer Woo-Padva v. Midland Funding, LLC*, Docket No. A-1996-21 (N.J. App. Div. Sept. 21, 2023), the New Jersey Appellate Division affirmed the dismissal of consumer fraud claims brought against a debt collector.

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Plaintiff Jennifer Woo-Padva (“Plaintiff”) paid in full a credit-card debt that she initially owed to HSBC Bank (“HSCB”) after defendant Midland Funding LLC (“Midland”) purchased Plaintiff’s defaulted account.

In a class action complaint, Plaintiff claimed Midland violated the New Jersey Consumer Fraud Act (“CFA”) and was unjustly enriched by collecting on that debt because Midland was not then licensed pursuant to the New Jersey Consumer Finance Licensing Act (“CFLA”). Plaintiff filed suit under the Uniform Declaratory Judgments Act based on the purported violation of the CFLA>

On May 24, 2017, Plaintiff filed a proposed class-action complaint, alleging, among other things, that Midland was a "collection agency" that had "filed numerous lawsuits. . . to collect the consumer debts allegedly owed by New Jersey consumers on defaulted credit accounts at a time when [it] was not properly licensed" under the CFLA. Pertinent to this matter, Midland did not obtain a consumer lending license in New Jersey before January 6, 2015.

Plaintiff based her complaint on: (1) the letters Midland sent Plaintiff through its agents, which caused her to make payments on the debt; and (2) Midland’s purchase of an account on which Plaintiff had defaulted. Plaintiff also noted that Midland filed a lawsuit against Plaintiff based on her debt, causing her to make payments on it, which ultimately resulted in Plaintiff entering into a consent judgment.

Midland first moved to strike the class allegations in Plaintiff’s complaint, which was granted on August 4, 2020. The trial court granted the motion in an Order and dismissed the class allegations with prejudice. Further, the trial court held that Plaintiff could not represent “a class which included those individuals with judgments rendered against them.”

Nine months later, Plaintiff moved to file an amended complaint, seeking in part to redefine the proposed class and subclass. In a June 2, 2021 Opinion and Order, the trial court denied the motion "as to the class action claims" as untimely, prejudicial, and futile because plaintiff’s proposed amendment was "in direct contravention" of the August 4, 2020 Order and opinion striking the class allegations. Thereafter, Plaintiff moved and Midland cross-moved for summary judgment.

The trial court granted Midland’s cross-motion finding (1) that Midland was not a consumer lender and did not require a license pursuant to the CFLA; (2) Plaintiff’s claims were not covered by the CFA because Midland had not offered to sell Plaintiff any services or merchandise; and (3) Plaintiff had not suffered an ascertainable loss pursuant to the CFA.

Plaintiff appealed from Orders which granted Midland’s motion to strike the class allegations in the complaint, denied her motion for leave to amend her class action allegation, denied her summary-judgment motion, and granted Midland’s cross-motion for summary judgment.

On appeal, the New Jersey Appellate Division found that Plaintiff did not have a right to a private right of action under the CFLA and, as such, could not circumvent the lack of a private right of action by seeking relief under the Uniform Declaratory Judgments Act.

Second, to prevail on a CFA claim, the Appellate Division noted that a plaintiff must establish unlawful conduct, an ascertainable loss, and a causal relationship between the two. Here, because Plaintiff did not demonstrate that Midland had engaged in unlawful conduct under the CFA or that she suffered an ascertainable loss, the Appellate Division affirmed the grant of summary judgment on Plaintiff’s CFA claim.

Further, the Appellate Division explained that a plaintiff may establish the unlawful-conduct element of a CFA claim by either an affirmative act, which requires no showing of intent, or by an omission, which requires a showing "the defendant acted with knowledge, and intent is an essential element of the fraud." The Appellate Division found that Plaintiff did not base her CFA claim on a misrepresentation made to induce her into purchasing credit, but on an alleged misrepresentation made after she had obtained the credit-card account from HSBC and after she had incurred the debt at issue. Accordingly, Plaintiff was not "lured into a purchase" by an action or representation by Midland.

Finally, the Court determined that "an ascertainable loss under the CFA is one that is quantifiable or measurable, not hypothetical or illusory." Plaintiff was unable to establish an ascertainable loss because Plaintiff paid a debt she admittedly owed and received a letter confirming the balance on her account had been paid in full. Any speculation that HSBC would potentially seek payment from Plaintiff was deemed too hypothetical to support a finding of an ascertainable loss.

Accordingly, the Appellate Division perceived no genuine issue of material fact and affirmed the January 21, 2022 Order granting Midland's cross-motion for summary judgment.

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