

# BANKING ALERT

December 2023

## **New Jersey Appellate Division Refuses to Vacate Sheriff's Sale On Motion Unsupported by Client Certification**

In *Nationstar Mortgage, LLC v. Tewari*, Docket No. A-2454-21 (N.J. App. Div. Dec. 13, 2023), the New Jersey Appellate Division declined to vacate a sheriff's sale where the borrowers' application was only supported by a certification from their counsel.

Plaintiff Nationstar Mortgage, LLC ("Nationstar") filed a foreclosure action against borrowers Ram P. Tewari and Gyan M. Tewari (together, "Defendants"). After obtaining a final judgment of foreclosure, a sheriff's sale was conducted and the property sold. Thereafter, Defendants' counsel filed a motion to vacate the sale but rather than submit an affidavit from Defendants, counsel submitted an attorney certification explaining that he had been unable to locate his clients for a period of time. In the certification, counsel further certified that he had been unable to communicate with his clients about the need to provide a new, unexpired credit card to Nationstar to process payments on a loan modification payment plan to avoid a final judgment of foreclosure.

The trial court denied the application, finding that the absence of a certification from Defendants based on personal knowledge was fatal to the motion and without a certification based on personal knowledge, the trial court "had no reason...to accept any explanation whatsoever" concerning Defendants' failure to make timely payments under the loan modification plan.

On appeal, the Appellate Division affirmed the trial court's determination, finding that Defendants' claim of "exceptional circumstances" was unsupported by a certification based on personal knowledge as required by Rule 1:6-6, and that Defendants' counsel's statements in the certification concerning what was reported to him by his clients was inadmissible hearsay.

## **New Jersey Appellate Division Finds That Joint Account Held by Husband and Wife is Subject to Levy**

In *Discovery Bank v. Mullen*, Docket No. A-2679-22 (N.J. App. Div. Dec. 13, 2023), the New Jersey Appellate Division held that a joint account held by a husband and wife was not exempt from a judgment levy against the husband.

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Plaintiff Discovery Bank (“Plaintiff”) obtained a judgment against defendant Steven Mullen (“Defendant”) in the amount of \$84,32.26 in June 2022. Thereafter, Plaintiff requested a bank levy on joint accounts maintained by Defendant and his wife at PNC Bank. After a writ of execution was served, funds totaling \$92,82.03 were levied, and Plaintiff filed a motion seeking a turnover of the funds. Defendant opposed the motion and claimed that the joint accounts at PNC Bank were exempt from levy. The only evidence submitted by Defendant in opposition were monthly statements for the joint accounts but no evidence concerning who contributed funds to the joint accounts.

The trial court ultimately granted Plaintiff’s motion, finding that the joint accounts were not exempt from levy pursuant to the Tenancy Act, N.J.S.A. 46:3-17 *et seq.*, which provides that marital property owned by spouses as tenants in the entirety cannot be partitioned or severed, but instead were subject to the Multiple-Party Deposit Account Act (“MPDAA”), N.J.S.A. 1716l-1 *et seq.* and, as such, could be levied against in satisfaction of the judgment against Defendant. Accordingly, the trial court, in the absence of proof showing the proportionality of contributions into the joint account, entered an order compelling turnover of the entirety of the funds held in the joint accounts.

On appeal, the Appellate Division held that the trial court was correct in applying the MPDAA to the joint accounts, noting that there was no evidence demonstrating that the joint accounts were owned by Defendant and his wife as “husband and wife.” In so doing, the Appellate Division rejected the suggestion that the Tenancy Act creates a presumption that a tenancy by the entirety was created when Defendant and his wife opened the joint accounts, or that it extends to bank accounts.

The Appellate Division, however, vacated the trial court’s determination that the entirety of the funds should be turned over, finding that the MPDAA mandates that the joint accounts be deemed equally owned by the joint accountholders and, as such, only half of the funds should be turned over absent a demonstration by Plaintiff that Defendant was the only contributor of funds to those accounts.

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