

BANKING ALERT

November 2023

New Jersey Appellate Division Reaffirms That Offer of Judgment Rule Does Not Apply To Involuntary Dismissal

In *J.P. Electric, Inc. v. Perez*, Docket No. A-0918-22 (N.J. App. Div. Nov. 2, 2022), the New Jersey Appellate Division held that a defendant was not entitled to its attorney's fees and costs under N.J. Court Rule 4:58-6 based on an involuntary dismissal of the plaintiff's claims.

Plaintiff J.P. Electric, Inc. ("Plaintiff") filed a complaint against defendant LPMG Construction Management, LLC ("LPMG"). After the filing of the complaint and before trial, LPMG made an offer of judgment pursuant to N.J. Court Rule 4:58-6 in the amount of \$5,000. Plaintiff rejected the offer and the parties proceeded to a bench trial. At the close of Plaintiff's case, LPMG made a motion for directed verdict, which the trial court granted. Thereafter, LPMG filed an application for attorney's fees and costs in the amount of \$50,000 pursuant to N.J. Court Rule 4:58-6. The trial court denied the motion, finding that N.J. Court Rule 4:58-6 does not permit an award of fees based on a complete dismissal of the plaintiff's claims.

On appeal, the Appellate Division affirmed the trial court's denial of the fee application, finding that N.J. Court Rule 4:58-6 does not apply where the claim is dismissed, or a no-cause verdict is returned. Because, as the Appellate Division noted, a motion for directed verdict results in a "dismissal of the action," N.J. Court Rule 4:58-6 did not apply and the fact that the involuntary dismissal happened mid-trial did not change that analysis.

New Jersey Appellate Division Affirms Dismissal of Claim Based on Dishonored Check

In *Triffin v. Jumpinjax Kids Corp.*, Docket No. A-0532-22 (N.J. App. Div. Nov. 22, 2022), the New Jersey Appellate Division affirmed the dismissal of a claim brought by the purchaser of a dishonored check on the grounds that the check had been presented for payment twice.

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Defendant JumpinJax Kids Corp. (“JumpinJax”) issued a payroll check drawn on its account maintained at defendant Bank of America, N.A. (“BOA”) to its employee, defendant Vaughnisha Scott (“Scott”), in the amount of \$623.63. Scott subsequently presented the check for payment twice, first for electronic deposit, which was paid by BOA, and then a second time for payment at United Check Cashing (“United”). BOA refused to pay on the check when presented by United because it was a duplicate presentment. Thereafter, United sold its rights in the check to plaintiff Robert Triffin (“Plaintiff”), who brought suit against JumpinJax and Scott.

Prior to trial, the trial court entered an order dismissing the case against JumpinJax, finding that JumpinJax had sustained its burden in demonstrating that it had already paid on the check and was not obligated to pay on it after it was presented a second time by Scott.

On appeal, Plaintiff argued that the federal Check Clearing Act preempted New Jersey state law on the matter of how an issuer can demonstrate whether a non-original check was paid, and that the trial court erred in assuming that JumpinJax possessed adequate records of a copy of the original check. The Appellate Division rejected these arguments, finding that Plaintiff was seeking to have the Court overturn its prior decision in *Triffin v. SHS Group*, 466 N.J. Super. 460 (App. Div. 2021), which previously held that a defendant was entitled to a dismissal on its “previously paid” defense when it presented evidence to the court that clearly demonstrated the check was processed and paid as a result of an electronic deposit.

Like in *SHS*, the Appellate Division noted that JumpinJax satisfied its evidentiary burden in the form of the check at issue, as well as the BOA bank statement showing the money was withdrawn after the check was presented the first time. The Appellate Division held that the federal Check Clearing Act, which addresses the negotiation of checks within the federal banking system, had nothing to do with the admission of evidence at trial sufficient to establish the “previously paid” defense.

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