

BANKING ALERT

January 2024

New York Appellate Division Refuses to Vacate Judgment of Foreclosure and Sale

In *Deutsche Bank National Trust Co. v. Moses*, 2024 NY Slip Op 00294 (2d Dep't Jan. 24, 2024), the Second Department denied a borrower's attempt to vacate a judgment of foreclosure and sale based on insufficient service of process.

Plaintiff Deutsche Bank National Trust Co. ("Plaintiff") filed a foreclosure action in 2008, which was dismissed as abandoned pursuant to CPLR 3215. Thereafter, Plaintiff filed an application to vacate the dismissal and restore the action to the trial court's active calendar, which was granted without opposition in August 2018. In 2019, the trial court granted Plaintiff's motion to confirm a referee's report and for a judgment of foreclosure and sale and denied the cross-motion filed by the borrower, Anna Moses ("Defendant"), seeking to dismiss the complaint for lack of personal jurisdiction.

On appeal, the Second Department affirmed the trial court's determination that Defendant had failed to competently refute the statements in the affidavit of the process server and, as a result, Defendant had failed to "defeat the presumption of proper service." In rejecting Defendant's appeal, the Second Department noted that "unsubstantiated denials" are insufficient to rebut the presumption that service was properly effectuated.

New Jersey Appellate Division Finds Duplicate Copies of Checks Sufficient to Establish Defense to Dishonored Check Claim

In *Triffin v. One NJ Neptune 230 Management LLC*, A-3279-21 (N.J. App. Div. Dec. 22, 2023), the New Jersey Appellate Division affirmed the dismissal of a claim based on a dishonored payroll check.

In July 2021, defendant One NJ Neptune 230 Management LLC ("Neptune") issued to its employee, co-defendant Junior M. Matheo, a \$1,125.43 payroll check drawn on Neptune's account maintained at JPMorgan Chase Bank, N.A. ("Chase"). Matheo subsequently deposited the check into his PNC Bank account through a mobile electronic deposit and then endorsed the check and received a second payment at a check cashing business. Neptune issued a second payroll check in the amount of \$838.06 which was also drawn on Neptune's Chase account. Like the first check, Matheo deposited the check remotely into his PNC Bank account and

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obtained a second payment from the check cashing business. Chase denied payment to the check cashing business, stating that the checks had been presented twice. Thereafter, plaintiff Robert Triffin took an assignment of the check cashing business's rights to the checks and filed suit.

Neptune filed a motion to dismiss the complaint pursuant to Rule 4:6-2(e), arguing that it did not owe any funds because the checks had been paid. In support, Neptune submitted a certification of one of its vice presidents appending copies of the cashed, electronically-deposited checks. The trial court, after hearing argument, entered an order granting summary judgment and dismissing Triffin's claims. The trial court converted Neptune's motion to one for summary judgment based on materials outside of the complaint and held that there was no issue of triable fact as to whether Triffin was entitled to payment on the checks that had been previously honored.

On appeal, Triffin contended that the trial court erred in accepting Neptune's submission of copies of the electronically-deposited checks. The Appellate Division, however, rejected that argument, finding that Triffin had failed to raise a "genuine question" of "authenticity" regarding copies of the checks and noted that "duplicate" copies of the checks were sufficient to establish the previous payment defense under NJSA 12A:3-414(c).

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