

# BANKING ALERT

March 2024

## **New Jersey Appellate Division Affirms Dismissal of CFA Claim Against Mortgage Loan Servicer**

In *Owoh v. PHH Mortgage Services, LLC*, Docket No. A-1854-22 (N.J. App. Div. Mar. 14, 2024), the Appellate Division affirmed the dismissal of claims for common law fraud and for violation of the New Jersey Consumer Fraud Act (“CFA”) brought by a borrower against a mortgage loan servicer.

The plaintiff, Rotimi Owoh (“Plaintiff”), alleged that he was a debtor in a bankruptcy proceeding that was filed in the United States Bankruptcy Court for the District of New Jersey. During the pendency of the bankruptcy action, Plaintiff’s mortgage servicer, defendant PHH Mortgage Corporation (“PHH”), sent Plaintiff a monthly mortgage statement in August 2022 which included an “Assessed Expenses” charge in the amount of \$738.65. Thereafter, an order was entered by the bankruptcy court that declared that Plaintiff did not owe PHH \$1,400 legal fees. Based on that order, Plaintiff disputed the \$738.65 charge. In October 2022, PHH responded to Plaintiff and stated it was crediting Plaintiff’s mortgage loan in the amount of \$1,400 and that the “Assessed Expenses” would no longer be reflected on Plaintiff’s monthly mortgage statements. However, the next monthly mortgage statement dated November 1, 2022 included an “Assessed Expenses” charge in the amount of \$661.35.

Two weeks later, Plaintiff commenced an action against PHH alleging fraud and violation of the CFA, contending that PHH’s inclusion of the \$661.35 in the November monthly mortgage statement, despite its prior written representations that no “Assessed Expenses” charge would be included in any subsequent monthly mortgage statements was an unfair, fraudulent, and unconscionable business practice. In response, PHH moved to dismiss, arguing that Plaintiff failed to meet the heightened pleading standard under Rule 4:5-8(a) because Plaintiff failed to plead with any particularity and failed to allege any material misrepresentation or reliance. The trial court held oral argument, during which it was confirmed that Plaintiff never paid anything to PHH, and that the \$661.35 charge had since been removed from his monthly statement. The trial court ultimately granted the motion to dismiss, agreeing with PHH that Plaintiff had failed to meet the pleading requirements of Rule 4:5-8(a).

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On appeal, the Appellate Division agreed that Plaintiff had failed to plead each element of common law fraud with the requisite particularity and, specifically, failed to allege how he relied upon the erroneous charge to his detriment. As for the CFA claim, the Appellate Division affirmed the trial court's determination that Plaintiff had failed to plead with particularity what purported unlawful practice was committed by PHH that is actionable under the CFA.

### **New Jersey Appellate Division Affirms Dismissal of Claim Based on Dishonored Check and Award of Sanctions for Frivolous Litigation**

In *Triffin v. Travelers*, Docket No. A-0815-22 (N.J. App. Div. Mar. 26, 2024), the Appellate Division again affirmed the dismissal of a claim based on a dishonored check where the drawer was able to demonstrate that the instrument had been previously paid, as well as affirming an award of attorney's fees against the plaintiff based on a finding that the plaintiff's claim was frivolous.

The defendant, Travelers, issued a check in the amount of \$320.83 to defendant Steven Cranmer for payment on an insurance claim. Cranmer first electronically deposited the check into his account at a bank, and then, the next day, cashed the check at a check cashing service. When the check cashing service attempted to obtain payment from Travelers' bank, the check was dishonored as it had previously been paid when Cranmer electronically deposited the check at his bank. Triffin subsequently purchased the dishonored check.

Triffin filed a complaint against Travelers and Cranmer to recover the full amount of the check. In response, Travelers filed an answer and notified Triffin that the claim was frivolous. Travelers thereafter filed a motion for summary judgment based on the "previously paid defense" set forth in N.J.S.A. 12A:3-414(c), arguing that Travelers was not liable as the check was previously paid when Cranmer first deposited the check electronically. The trial court agreed that the defense applied, and further held that Travelers was entitled to sanctions against Triffin under Rule 1:4-8(a). Specifically, the trial court held that Triffin was repeatedly warned that the case was frivolous as he was provided with proof that Travelers had previously paid on the check. Ultimately, Travelers was awarded over \$31,000 in counsel fees and costs.

On appeal, the Appellate Division again rejected Triffin's contention that federal law required Travelers to provide the "original" check to support its claim that the "previously paid defense" applied. The Appellate Division also held that the trial court did not abuse its discretion in awarding counsel fees, noting that Triffin's refusal to withdraw his claim after being repeatedly advised that the claim was meritless was a sufficient basis to award counsel fees.

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