Sherman Atlas Sylvester & Stamelman

BANKING ALERT

April 2024

Federal Trade Commission Adopts Final Rule That Would Prohibit Most Noncompete Agreements

Despite significant opposition, on April 23, 2024, the Federal Trade Commission ("FTC") voted to adopt a proposed final rule that would prohibit most noncompete agreements. Originally proposed in January 2023, the final rule adopted by the FTC is set to take effect within 120 days.

The final rule, if permitted to take effect, renders all existing noncompete agreements unenforceable as to all workers except those that are "senior executives" as defined by the final rule. Per the final rule, "senior executives" are those workers who (i) receive over $151,164 a year in compensation, and (2) are in a "policy-making position, i.e., a president, chief executive officer, or similar role, or any other officer who has "policy-making authority."

The final rule prohibits any new noncompete agreements being entered into, including any noncompete agreements with "senior executives."

Under the final rule, employers must notify their current and former employees that their noncompete agreements are unenforceable.

Critically, the final rule does not preclude employers from utilizing other means to protect confidential proprietary information and trade secrets, such as non-disclosure and non-solicitation provisions, or utilizing "garden leave" arrangements with workers leaving a company.

The final rule is already facing legal challenges so its implementation may be delayed.

New Jersey Appellate Division Finds Bank's Breach of Contract Claim Pursuant to HELOC Agreement Was Timely Filed

In *Bank of America, N.A. v. Thomas Maher*, Docket No. A-1708-22 (N.J. App. Div. Apr. 23, 2024), the New Jersey Appellate Division affirmed a trial court's order granting summary judgment to a lender seeking collect the amounts due and owing under a HELOC agreement with a borrower.

In This Issue

Office Locations

New Jersey

210 Park Avenue
2nd Floor
Florham Park NJ 07932
973.302.9700

New York

1185 Avenue of the Americas
2nd Floor
New York NY 10036
212.763.6466

Follow Sherman Atlas on Linkedin

In May 2006, Countrywide Bank, N.A. extended a home equity line of credit to defendant Thomas Maher ("Maher"), which was secured by a second mortgage on Maher's residential property in Monmouth Beach. On May 17, 2006, Maher made an initial draw of approximately $992,000 against the line of credit. Subsequently thereafter, Maher made monthly payments between June 2006 and July 2014. At the time Maher stopped making payments in July 2014, the unpaid principal balance was over $785,000. In March 2015, Countrywide's successor by merger, Bank of America, N.A. ("BOA"), exercised its right under the loan documents to accelerate the loan and demand the entire unpaid principal balance be paid immediately. The property that secured BOA's loan was ultimately foreclosed upon by Maher's senior lender and sold at sheriff sale in 2017.

In September 2019, BOA sent Maher a notice of default and, in January 2021, filed a complaint against Maher alleging breach of contract. After a series of motions and the completion of discovery, BOA filed a motion for summary judgment. Maher not only opposed BOA's motion, but filed a cross-motion to dismiss, arguing, among other things, that BOA's suit was time-barred.

The trial court granted BOA's motion and entered judgment in BOA's favor, finding that Maher executed the loan documents, received the funds, and had failed to pay the debt back.

On appeal, the Appellate Division considered whether BOA's 2021 complaint was timely filed. In so doing, the Appellate Division noted that a six-year statute of limitations governed BOA's breach of contract claim. In particular, the Appellate Division determined that with regard to an installments contract, the statute of limitations begins anew after each missed installment payment up and until the lender accelerates the debt, at which point the six-year statute of limitations begins to run. The Appellate Division affirmed the trial court's determination that the six-year statute of limitations on BOA's claim began to run on March 23, 2015 when BOA accelerated the debt and, as such, BOA's January 2021 complaint was timely filed.

Attorney Contact Information

Anthony J. Sylvester
Partner
973.302.9713
asylvester@shermanatlas.com

Craig L. Steinfeld
Partner
973.302.9697
csteinfeld@shermanatlas.com

Tyler J. Kandel
Partner
973.302.9502
tkandel@shermanatlas.com

Anthony C. Valenziano
Partner
973.302.9696
avalenziano@shermanatlas.com

Lauren Watson
Counsel
973.302.9510
lwatson@shermanatlas.com