

BANKING ALERT

June 2024

[New York First Department Reverses Order Denying Lender's Motion for Summary Judgment in Action Against Borrowers](#)

In *Wells Fargo Bank, N.A. v. Bajana*, Case No. 2023-05593 (N.Y. App. Div. 1st Dep't June 18, 2024), the First Department reversed the trial court's denial of a motion for summary judgment in favor of the lender in an action against two borrowers seeking to enforce the lender's rights under the loan documents.

The plaintiff, Wells Fargo Bank, N.A. (the "Bank"), commenced an action against two borrowers arising from two defaulted mortgage loans secured by two separate properties. After bringing suit, the defendants answered and asserted counterclaims against the Bank. The Bank filed a motion for summary judgment seeking judgment in its favor to collect on the monies due and owing under the notes and dismissing the defendants' counterclaims. The trial court denied the motion, finding that the Bank had failed to establish its prima facie case.

On appeal, the First Department rejected the defendants' contention that the Bank's appeal was untimely, noting that the notice of appeal was filed less than thirty days after the order with notice of entry was electronically served on all parties.

The First Department further found that the trial court erred in finding that RPAPL 1301(3), which provides for the election of remedies, and RPAPL1371, which addresses deficiency judgments, were applicable to the matter as the subject properties were located in Florida, not New York, and therefore, the Bank was not precluded from bringing a suit for monetary damages against the borrowers after having previously foreclosed on one of the two properties in Florida.

The First Department also held that there were no factual issues that precluded summary judgment in the Bank's favor. In particular, the First Department held that the Bank had provided sufficient documentary evidence establishing that the defendants were in default of their loan obligations, as well as confirming the amount due and owing to the Bank.

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New York Second Department Refuses to Enforce Arbitration Provision Contained in Deposit Account Agreement Amendment

In *Donnelly v. Teachers Federal Credit Union*, Case No. 2022-00133 (N.Y. App. Div. 2d Dep't June 20, 2024), the Second Department affirmed a trial court order denying a bank's motion to compel arbitration of a class action and alternatively dismissing the matter due to lack of standing.

In 2020, the plaintiff filed a class action against the defendant, Teachers Federal Credit Union ("Teachers"), alleging that Teachers breached the parties' account agreement when it charged certain fees relating to the plaintiff's checking account. In response, Teachers filed a motion to compel arbitration of the dispute or, alternatively, to dismiss the action on the grounds that the plaintiff lacked standing. The trial court denied both aspects of Teachers' motion.

On appeal, the Second Department affirmed the trial court's decision, finding that Teachers could not enforce the arbitration provision contained in a December 2019 amendment to the parties' account agreement because, at the time the amendment was provided to the plaintiff, the plaintiff had already filed a related federal action challenging the disputed fees against Teachers. Additionally, the Second Department noted that, in January 2020, the plaintiff's counsel expressly rejected the arbitration amendment, defeating any contention that the plaintiff had "assented" to the arbitration amendment.

On the standing issue, the Second Department stated that Teachers could not defeat the plaintiff's standing to bring suit by unilaterally refunding the disputed fees to the plaintiff's bank account prior to the commencement of the action.

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