

# BANKING ALERT

AUGUST 2024

## **Federal District Court in Texas Finds FTC's Noncompete Ban Unlawful**

On August 20, 2024, a federal district court in Texas ruled that the final rule adopted by the Federal Trade Commission (“FTC”) that would have rendered virtually all noncompete agreements unenforceable was unlawful and struck down the ban.

*In Ryan, LLC v. FTC*, a group of challengers to the rule filed suit in the United States District Court for the Northern District of Texas seeking to strike down the ban. In early July 2024, the court granted a preliminary injunction enjoining enforcement of the rule, which was set to go into effect in September 2024.

On a motion for summary judgment filed by the plaintiffs, the court determined that the FTC lacked the statutory authority to issue and enact the challenged ban as the FTC could not issue rules governing unfair methods of competition and, in any event, the ban was arbitrary and capricious because it was “unreasonably overbroad without a reasonable explanation.” The court further held that the ruling had “nationwide effect” and that it would apply throughout the country.

After the ruling, the FTC announced that it is considering filing an appeal to the United States Court of the Appeals for the Fifth Circuit and that, despite the ruling, the FTC maintained the authority to initiate enforcement actions challenging noncompete agreements on a case-by-case basis.

## **New York Second Department Reverses Trial Court's Denial of Motion to Dismiss Foreclosure Complaint on Statute of Limitations Grounds**

In *Wells Fargo Bank, N.A. v. Brandt*, Case No. 2020-02767 (N.Y. App. Div. 2d Dep’t Aug. 14, 2024), the Second Department reversed a trial court’s decision denying a cross-motion for summary judgment to dismiss a foreclosure complaint on statute of limitations grounds.

By way of factual background, in September 2005, the defendant, Michael Brandt (“Brandt”), obtained a loan secured by residential property located in Bellerose Village, New York. In June 2009, the plaintiff, Wells Fargo Bank, N.A. (the “Bank”), commenced a foreclosure action, which was subsequently dismissed in March 2017 as a result of the Bank’s failure to comply with the pre-foreclosure notice requirements under RPAPL 1304. No appeal was taken from that order.

In September 2017, the Bank commenced a second action to foreclose. Brandt filed an

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answer asserting several affirmative defenses, including one based on the six-year statute of limitations. The Bank moved for summary judgment and Brandt cross-moved, arguing that the Complaint was barred by the six-year statute of limitations. The trial court granted the Bank's motion and denied Brandt's cross-motion.

On appeal, the Second Department found that the Bank had failed to comply with CPLR 205-a, which provides that "the original plaintiff...may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced" and that "service upon the original defendant is completed within such six-month period." This provision, as the Second Department noted, was implemented pursuant to the Foreclosure Abuse Prevention Act, and replaced the "savings" provision afforded by CPLR 205(a), which only required that service be "effected," not completed, within the six-month window. Based on that provision, the Second Department found that the Bank had failed to complete service upon Brandt within the six-month timeframe as service was not complete until October 23, 2017 and, accordingly, the re-filed action was untimely.

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