

BANKING ALERT

December 2018

[New Jersey Appellate Division Upholds Dismissal of Borrower's Trespass Counterclaim Against Lender](#)

In *Deutsche Bank National Trust Company v. Patrick*, Docket No. A-2270-17T3, the New Jersey Appellate Division held that a borrower could not maintain a trespass claim against a lender that took steps to protect its interests in the mortgaged premises.

The relevant facts were not in dispute. In 2006, the borrower obtained a loan secured by a mortgage that stated, in relevant part, that the lender had the right to enter the property to protect its security in two instances: (1) in the event of a default; or (2) the property had been abandoned. One year later, the borrower defaulted. After this event of default, the lender had the property inspected several times and, in October 2007, determined that the property was vacant and appeared abandoned. As a result, the lender had the locks changed at the property. The borrower did not contact the lender about the changed locks until several months later in January 2008. The borrower asserted a trespass claim against the lender as a counterclaim in the foreclosure action initiated by the lender.

On appeal, the Appellate Division affirmed the trial court's dismissal of the trespass claim on two grounds. First, the borrower's claim of trespass was time-barred under the six-year statute of limitations governing such claims. The Appellate Division noted that the act of trespass, if any, occurred in late October 2007 when the lender changed the locks, but the borrower did not raise any such claim until July 2014 in the foreclosure action. Second, the Appellate Division held that there was no merit to the claim because, among other things, the lender had the unequivocal right to secure the premises upon either default or abandonment of the property and, based on the lender's several inspections of the property, it appeared abandoned. In particular, the record revealed that the utilities had been turned off in 2007 and that the borrower could not recall when he was last at his home.

[New Jersey Appellate Division Reverses Writ of Replevin to Title Owner of Vehicle](#)

In *Price v. Northfield Auto Body, Inc.*, Docket No. A-1279-17T2 (N.J. App. Div. Dec. 14, 2018), defendant Northfield Auto Body ("Northfield")

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Office Locations

New Jersey

210 Park Avenue
2nd Floor
Florham Park NJ 07932
973.302.9700

New York

1185 Avenue of the Americas
3rd Floor
New York NY 10036
212.763.6464

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appealed from an order issuing a writ of replevin in favor of plaintiff Henry Price (“Price”) and dismissing Northfield’s counterclaim.

The action arose from Price’s claim seeking return of a car stored at Northfield’s auto body shop. The car was purchased by Manny Melvin (“Melvin”) in 2015 and Price co-signed for the financing for the car. In September 2015, after an accident, the car was towed to Northfield for repairs. Melvin represented that he was trying to obtain funds to pay for the repairs and, therefore, Northfield allowed the car to remain on its lot. Melvin never paid for the repairs and Northfield informed Melvin that storage charges would be assessed. Eventually in fall 2016, Melvin fell behind on financing payments on the car. Price decided to pay off the loan and took title to the car on December 12, 2016. On that same day, Northfield sent a certified letter to Price that it considered the car abandoned and requested \$41,199.22 in storage fees. Price responded, demanding that Northfield release the car without payment of the storage fees.

In January 2017, Price filed a verified complaint for replevin demanding possession of the car and damages against Northfield for the diminution in the value of the car. Price also filed an order to show cause that Northfield was estopped from demanding storage fees because it assured Melvin that no storage fees would be assessed. Northfield filed a counterclaim asserting a lien pursuant to the Garage Keepers and Automobile Repairmen Act, N.J.S.A. 2A:44-20 to -31 (the “Act”), and demanding judgment for the storage fees. At the hearing on the OTSC, the judge found that Northfield had a valid garage keeper’s lien against Melvin and was not estopped from charging fees against Melvin. However, the judge found the lien improper because Price had not given consent to store the vehicle and, thus Northfield could not assert a lien against Price for unpaid storage fees. The judge *sua sponte* dismissed Northfield’s counterclaim and entered a writ of replevin in Price’s favor.

Northfield appealed. The Appellate Division found that Northfield had a possessory lien against the car, pursuant to N.J.S.A. 2A:44-21. It was undisputed that Northfield was a garage keeper in accordance with the Act; the car was towed at Melvin’s request; and Northfield sent a certified letter demanding payment of the storage fees. The Appellate Division found, however, that the trial judge incorrectly concluded that Price did not consent to the storage of the car. Nothing in the Act suggests that a subsequent lienholder is absolved from the imposition of a possessory lien. Indeed, Price took title to the car after the possessory lien attached. The Appellate Division reversed the trial court’s order granting a writ of replevin to Price. The Appellate Division then considered whether the judge’s *sua sponte* dismissal of Northfield’s counterclaim was in error. The Appellate Division found that the parties appeared before the trial judge prior to the exchange of discovery and the court considered the certification attached to Price’s complaint without allowing Northfield an opportunity through discovery to refute the claims in the certification. The Appellate Division held that the trial court improperly converted the hearing on the OTSC to a motion for summary judgment absent a formal filing, on notice, to Northfield. The Appellate Division reversed the trial court’s dismissal of Northfield’s counterclaim and reinstated the claim.

[Federal Court Holds That Rooker-Feldman Doctrine Bars Claims Related to Foreclosure Action](#)

In *Pitts v. Bayview Loan Servicing, LLC*, plaintiffs Genoeva and Isaac Pitts (“Plaintiffs”) filed a complaint in federal district court against Bayview Loan Servicing (“Bayview”) and its vice president, Robert Hall, alleging that the defendants defrauded them in obtaining a foreclosure judgment in New Jersey state court without disclosing that

Bayview had dissolved in 2010. Plaintiffs' suit followed after two nearly identical suits that they had previously filed in federal court were dismissed.

This case grew out of a state court foreclosure action against Plaintiffs concerning property Bridgeton, New Jersey, which ended with a final judgment of foreclosure. Plaintiff Genoveva Pitts then filed a federal action against Bayview, alleging that Bayview violated the Fair Debt Collection Practices Act ("FDCPA") on multiple occasions. After Bayview filed a motion to dismiss, which Ms. Pitts did not oppose, the Court dismissed the complaint. Ten days later, Ms. Pitts filed another federal complaint against Bayview, once again alleging that Bayview violated the FDCPA. Again, Bayview filed a motion to dismiss; Pitts did not file an opposition; and the Court dismissed the complaint with prejudice. Plaintiffs then filed the present complaint in federal court, alleging that Bayview lacked standing to foreclose, that the defendants committed "fraudulent concealment" by failing to disclose that Bayview was a dissolved entity, and that the mortgage was null and void because Bayview was not in possession of the original note. As in the two prior federal actions, the defendants filed a motion to dismiss, and Plaintiffs did not file any opposition.

The Court determined that the *Rooker-Feldman* doctrine barred Plaintiffs' claims. Broadly speaking, the *Rooker-Feldman* doctrine prevents federal courts from conducting appellate review of state court judgments. Because Plaintiffs' complaint alleged that the defendants defrauded them in obtaining a final judgment of foreclosure in state court, Plaintiffs were, in essence, asking the Court to negate or overturn the foreclosure judgment entered by the state court. Thus, the Court explained that "the only 'injury' Plaintiffs allege is the loss of Plaintiffs' home, which could not have occurred but for the Final Foreclosure Judgment issued by the Superior Court." In addition, the Court determined that New Jersey's entire controversy doctrine -- which requires litigants to assert all affirmative claims relating to the controversy between them in one action -- also barred Plaintiffs' claims. The claims that Plaintiffs asserted were related to the foreclosure action, and, thus, the Court determined that they should have been raised in that action.

If you have any questions about this Alert:

Attorney Contact Information

Anthony J. Sylvester
Partner
973.302.9713
asylvester@shermanwells.com

Craig L. Steinfeld
Partner
973.302.9697
csteinfeld@shermanwells.com

Caitlin T. Shadek
Associate
973.302.9672
cshadek@shermanwells.com

Anthony C. Valenziano
Associate
973.302.9696
avalenziano@shermanwells.com

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