

**[Appellate Division Rejects Standing Argument in Foreclosure Action](#)**

In *Bank of America, N.A. v. Guglielmi*, 2017 WL 1376779 (N.J. App. Div. Apr. 17, 2017), the New Jersey Appellate Division rejected a borrower's argument that the trial court erred in granting the bank's motion for summary judgment on the grounds that the bank did not have standing to pursue the action.

After the borrower defaulted on his loan obligation, which was secured by a mortgage on his home, the bank initiated a foreclosure action in February 2014. The borrower filed an answer, admitting that he signed the note and mortgage, but denying that the bank had standing to pursue the action because, as the borrower claimed, the bank was not in possession of the note. Following discovery, the trial court granted the bank's motion for summary judgment, rejecting the borrower's arguments that the presence of an additional investor demonstrated that the bank, the original lender, was not in possession of the note. In particular, the trial court noted that when the bank proves execution, recordation and non-payment, it has established a *prima facie* right to foreclose that cannot be controverted by vague denials or accusations.

The Appellate Division affirmed on the same substantive grounds, relying on the borrower's admission that he borrowed the funds, executed both the note and mortgage, and failed to make repayment. The Appellate Division also noted that the bank was able to demonstrate that the borrower's loan had never been assigned.

**[Appellate Division Upholds Settlement Agreement in Action Arising from Dishonored Check](#)**

In *Triffin v. Sunrise Banks*, No. A-3445-14T1 (App. Div. April 12, 2017), the plaintiff, Robert Triffin, agreed, in a series of emails, to settle claims against Sunrise Banks, The Tax Authority, and Jackson Hewitt stemming from a dishonored cashier's check for \$6,000. After the initial agreement was reached, Triffin's assistant emailed counsel for Sunrise Banks, stating the settlement check needed to be received on or before January 27, 2015. In response, counsel for Sunrise Banks noted that, in the initial emails about settlement, he explained to Triffin that he could not guarantee the timing of payment because of the involvement of other

**[In This Issue](#)**

Appellate Division Rejects Standing Argument in Foreclosure Action

**Pg 1**

Appellate Division Upholds Settlement Agreement Arising from Dishonored Check

**Pg 1**

Appeal on Denial of Rent Receiver Deemed Moot by Foreclosure Judgment

**Pg 2**

**[Office Locations](#)**

**[New Jersey](#)**

210 Park Avenue  
2nd Floor  
Florham Park NJ 07932  
973.302.9700

**[New York](#)**

54 W. 40<sup>th</sup> Street  
New York NY 10018  
212.763.6464

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defendants and that any payment was dependent on receipt of fully executed settlement documents from all parties, which Triffin had yet to provide. He further highlighted that Triffin unilaterally imposed the January 27, 2015 date post-settlement.

Triffin continued to reiterate his demand that the matter be resolved before January 27, 2015. On that date, the defendants forwarded a proposed global settlement release. Triffin responded by sending a different release -- one that was not a global release and did not name all defendants -- and stated that he would not entertain any settlement agreement other than the one he sent.

When a new settlement release was forwarded to him, Triffin rejected it. He had three objections: (1) he refused to "hold harmless or [indemnify] anyone for anything"; (2) he objected to the scope of the release; and (3) he refused to expend the time to have his signature notarized. He also called the agreement "prolix and certainly not an example of succinct legal writing." Triffin later imposed another unilateral settlement deadline -- February 6, 2015.

When that second deadline passed, Triffin filed a motion to reinstate the case, which he had previously advised the court was settled. Sunrise Banks filed a motion to enforce the settlement. The trial court determined that a valid and enforceable settlement was reached, denied Triffin's motion, and granted Sunrise Bank's cross-motion.

The Appellate Division affirmed. The panel started from the baseline that a settlement between parties in litigation is a contract. So long as the essential terms of the settlement are agreed upon, the panel explained, the mechanics can be fleshed out in a writing to be executed a later point. The panel further held that an agreement as to the essential terms was present: Triffin agreed to dismiss his claims against the defendants for \$6,000, and, although the precise language of the settlement agreement had not been finalized, the unresolved terms "were just 'the mechanics'" that could be filled in at a later date.

### **[Appeal on Denial of Rent Receiver Deemed Moot by Foreclosure Judgment](#)**

In *Mill Pointe Condominium Association, Inc. v. Rizvi*, 2017 WL 1365395 (N.J. App. Div. Apr. 13, 2017), the New Jersey Appellate Division declined to hear an appeal on the denial of a rent receiver application brought by a condominium association seeking reimbursement of unpaid condominium association fees on a foreclosed condominium unit.

After the condominium unit owner-borrower failed to pay his condominium association fee obligations, the condominium association initiated an action in the Law Division seeking the unpaid fees and obtained a judgment for those fees. The lender filed an action for foreclosure in the Chancery Division to foreclose on the condominium unit, naming the condominium association as a defendant. Having difficulty collecting on the judgment, the condominium association moved for a rent receiver in the Law Division. The lender objected, stating that the appointment of a rent receiver would frustrate the ability of the lender to proceed in the foreclosure action and force the lender to become a landlord for the benefit of the condominium association. The Law Division agreed with the lender and denied the motion without prejudice to the condominium association's right to seek a rent receiver in the foreclosure action. The condominium association appealed.

During the pendency of the appeal, a foreclosure judgment was entered and a sheriff's sale was scheduled. Based on the foreclosure judgment, the Appellate Division deemed the appeal moot as the judgment in the foreclosure action determined the lender's rights of priority and to have the property sold.

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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