

BANKING ALERT

April 2020

[New Jersey and New York COVID-19 Court Updates](#)

In New Jersey, on April 24, 2020, the New Jersey Supreme Court issued an omnibus order to resume the operations for some court activities. Foreclosure motions or judgments received after March 1, 2020 will not be reviewed or recommended until further notice, and the suspension of evictions of residential tenants continues. Jury trials, landlord-tenant trials and grand jury proceedings, which have been suspended since mid-March, will continue to be suspended through May 31, 2020. Most extensions of discovery deadlines and tolling of time periods will end as of May 10, 2020. The court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice.

In New York, on April 13, 2020, New York Governor Cuomo extended the suspension of the statute of limitations from April 19, 2020 until May 7, 2020. As of April 6, 2020, the New York Court System implemented a “virtual court” model in all trial courts in each of New York State’s counties to address essential court matters. On April 8, 2020, the Chief Administrative Judge provided for the expansion of virtual court operations and remote access to additional, nonessential court matters. Specifically, effective Monday, April 13, 2020, Judges are permitted to: (1) review case inventories and schedule telephonic and audiovisual conferences with attorneys and others where such conferences will facilitate resolution of disputed issues or the case as a whole. Specifically, effective April 13, 2020, Judges will be permitted to: (1) schedule conferences at the request of an attorney for ongoing matters; (2) address discovery disputes and other ad hoc concerns, and (3) decide fully submitted motions. The existing prohibition on the filing of new, nonessential matters, or filing of papers by parties in pending non-essential matters, will continue.

[In This Issue](#)

[New Jersey and New York COVID-19 Court Updates](#)

Pg 1

[New Jersey Appellate Division Rejects Plaintiff’s Attempt to Relitigate Priority of Bank’s Mortgage](#)

Pg 1

[New Jersey Appellate Division Affirms Ruling That Right to the Reinstatement of Mortgage Ends with the Entry of Final Judgment of Foreclosure](#)

Pg 2

[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

Follow Sherman Wells on

LinkedIn  Twitter 

[New Jersey Appellate Division Rejects Plaintiff's Attempt to Relitigate Priority of Bank's Mortgage](#)

In *Wong v. Valley National Bank*, No. A-2396-18T3 (App. Div. March 19, 2020), plaintiff Grace Wong challenged the priority of a purchase-money mortgage held by Valley National Bank (“Valley”). In a prior foreclosure action, the Appellate Division had affirmed the Chancery Division’s determination that Valley’s mortgage had priority over Ms. Wong’s lien, rejecting her contention that Valley obtained its mortgage by fraud and that the mortgage was not, in fact, a purchase-money mortgage. Following the sheriff’s sale of the property, Ms. Wong filed the instant action against Valley, once again alleging that Valley materially misrepresented the nature of the mortgage in the foreclosure action and, thus, should not have been granted priority over her later-filed lien.

The trial court granted Valley’s motion to dismiss, reasoning that Ms. Wong’s complaint was simply a repacked set of allegations that she had raised in the prior foreclosure action. The court explained that Ms. Wong “had ample opportunity to prove and plead her claims at every level of the New Jersey judicial system, and the claims have been determined to be without merit.” The court accordingly dismissed Ms. Wong’s claims with prejudice. Ms. Wong appealed, and the Appellate Division affirmed substantially for the reasons set forth by the trial court in its decision, adding only that Ms. Wong’s claims were clearly barred by the doctrines of res judicata and collateral estoppel.

[New Jersey Appellate Division Affirms Ruling That Right to the Reinstatement of Mortgage Ends with the Entry of Final Judgment of Foreclosure](#)

In *Bayview Loan Servicing, LLC v. Thomas Rauch, et al.*, A-4384-18T1 (N.J. App. Div. April 1, 2020), the Appellate Division upheld a trial court order that refused to vacate a sheriff’s sale, holding that a mortgagor’s right to reinstatement of the mortgage was extinguished by the entry of final judgment.

Plaintiff Bayview Loan Servicing, LLC (“Bayview”) was the assignee of a mortgage on real property in New Milford that was owned by defendants Thomas and Dawn Rauch (together, “Defendants”). Bayview commenced a foreclosure action against Defendants in October 2017 and, after Defendants defaulted, moved for a final judgment of foreclosure.

In July 2018, while Bayview’s application for final judgment was pending, counsel for Defendants requested a reinstatement amount from Bayview. Bayview provided a reinstatement amount of \$43,709.88, but no payment was made by Defendants. Final judgment was subsequently entered on August 10, 2018.

After the entry of final judgment, Defendants once again requested a reinstatement amount from Bayview. On September 5, Bayview advised that the reinstatement amount was \$49,087.93, if received by September 24, 2018. No payment was made by that date but, on October 16, 2018, Defendants forwarded a check to Bayview’s counsel in the amount of \$36,000 and advised that the balance “should be forthcoming.” Bayview returned the check and advised that a partial payment was unacceptable.

In December 2018, Defendants again requested a payoff amount. At the time, a Sheriff’s sale was scheduled for February 1, 2019. Anticipating a payoff from Defendants, Bayview postponed the Sheriff’s sale until March 1, 2019. Bayview, however, failed to provide Defendants with notice that the Sheriff’s sale was adjourned. After no payoff was made, the March 1, 2019 Sheriff’s sale was held, and the property was sold to the highest bidder. After the sale, Defendants once again requested an updated reinstatement amount.

Upon learning that the property was sold at the Sheriff's sale, the Defendants applied for an order to show cause. The trial court ruled that Defendants had no right to reinstate the loan once final judgement was entered. Nevertheless, to remedy any harm caused by the lack of notice of the postponement of the sheriff's sale, the judge (i) stayed the recording of the Sheriff's deed, (ii) temporarily enjoined purchaser's efforts to obtain possession of the property; (iii) extended the redemption period for ten days; and (iv) scheduled a conference for ten days later. After Defendants filed a motion for reconsideration, the judge extended the restraints for an additional 30 days to allow for consideration of Defendants' claim they were entitled to reinstate the mortgage after the entry of final judgment.

After the thirty-day period expired, Defendants argued that certain post-judgement communications with counsel gave rise to a New Jersey Consumer Fraud Act Claim against Bayview. The trial court denied Defendants' motion for reconsideration in a thorough oral opinion and Defendants subsequently appealed.

The Appellate Division affirmed the trial court's decision and held that Defendants' right to reinstate or cure their default ended with the entry of final judgment. The Appellate Division also noted that, despite the lack of notice to Defendants of the postponed Sheriff's sale, the trial court "balanced the equities" by preserving the Sheriff's sale while extending the right of redemption through May 2019 so as to "ameliorate any harm caused" to Defendants by the lack of notice. The Appellate Division further noted that, despite having the right of redemption extended through the period of reconsideration, Defendants never exercised the right.

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

Counsel

973.302.9672

cshadek@shermanwells.com

Anthony C. Valenziano

Counsel

973.302.9696

avalenziano@shermanwells.com

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon with regard to any particular facts or circumstances without first consulting an attorney.

© 2020 Sherman Wells Sylvester & Stamelman LLP. All Rights Reserved.

4826-2842-6171, v. 1