

BANKING ALERT

May 2020

[New Jersey Chancery Court Refuses to Vacate Sheriff's Sale Based on Borrower's Incomplete Loss Mitigation Application](#)

In *Wells Fargo Bank, N.A. v. William J. Munier, et al.*, Docket No. F-15036-18 (N.J. Ch. Div. April 21, 2020), the court denied a defendant borrower's motion to vacate a Sheriff's sale despite the borrower's claim that he had a loss mitigation application on file with the plaintiff bank more than thirty-seven days prior to the Sheriff's sale.

The Real Estate Settlement Procedures Act ("RESPA"), 12 C.F.R. 1024.1 to 1024.41, prohibits a servicer from conducting a foreclosure sale if a borrower submits a complete loss mitigation application more than thirty-seven days before the scheduled sale date. Under RESPA, the servicer must evaluate the file within thirty days of receipt of the completed application. If, during its evaluation, the servicer discovers certain documents are needed, it must request the information and treat the application as complete until the borrower is given a reasonable opportunity to complete the application.

In this case, plaintiff Wells Fargo Bank, N.A. ("Plaintiff") initiated a foreclosure action against defendant borrowers Jean A. Forty-Munier and William J. Munier (together, the "Borrowers") on July 19, 2018, and default was subsequently entered against the Borrowers on November 7, 2018. On July 5, 2019, Plaintiff obtained an uncontested order for Final Judgment of Foreclosure in the amount of \$877,781.85. However, it was disclosed that Ms. Forty-Munier passed away on or about April 2019. After withdrawing its original Writ of Execution due to Ms. Forty-Munier's passing, an Alias Writ of Execution later issued on October 24, 2019.

On November 20, 2019, Mr. Munier filed a motion to vacate the Final Judgment and the Writ of Execution in order to add Ms. Forty-Munier's heirs as parties to the litigation. It was later revealed, however, that Mr. Munier was Ms. Forty-Munier's only heir and the motion to vacate was denied. After dismissing Ms. Forty-Munier from the action, Plaintiff obtained an Amended Final Judgment and Writ of Execution, and a Sheriff's sale was scheduled for February 28, 2020.

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On the day of the Sheriff's sale, Mr. Munier filed an emergent application to stay the sale for 45 to 60 days on the grounds that he submitted a loss mitigation application that was undergoing an "escalated review." After balancing the equities, the Court concluded there was no good cause to delay the foreclosure sale, and the property was sold to a third-party bidder that same day.

Mr. Munier later filed a motion to vacate the sale on the grounds that he submitted a complete loss mitigation application to Plaintiff more than thirty-seven days prior to the Sheriff's sale date of February 28, 2020. However, the record revealed that a loss mitigation application was received by Plaintiff on January 24, 2020 – less than thirty-seven days before the sale. Moreover, on January 30, 2020, Plaintiff notified Mr. Munier that his application was incomplete due to two missing documents and that submission of these two documents was required by February 18, 2020. The record further revealed several additional emails from Plaintiff to Mr. Munier reminding him of the February 18, 2020 deadline. Despite clear notice from Plaintiff, Mr. Munier did not complete his application prior to the date of the sale.

The court found that Mr. Munier was given ample opportunity to complete his application, yet it remained incomplete, facially or otherwise. The RESPA prohibition against proceeding with a foreclosure sale pending evaluation of a complete loss mitigation application, therefore, did not apply in this case. Accordingly, the court refused to disturb the Sheriff's sale.

Federal Court Dismisses Action Stemming From Foreclosure Judgment Pursuant to Rooker-Feldman Doctrine

In *Jones v. Bank of America, N.A., et al.*, No. 19-8959 (D.N.J. Apr. 17, 2020), the District Court for the District of New Jersey dismissed an action stemming from a state court foreclosure action for lack of jurisdiction. Plaintiff Barbara Jones ("Ms. Jones") and her husband James Jones owned a property in Willingboro, New Jersey. In 2001, Mrs. Jones obtained a loan secured by a mortgage on the Property. Ms. Jones alleged that the mortgage loan was "fraud in factum" and unenforceable and, yet, she made timely payments on the mortgage loan until 2006.

In 2006, defendant Countrywide Home Loans ("CHL"), the holder of the mortgage, brought a foreclosure action against Ms. Jones in the Superior Court of New Jersey. CHL was represented by the law firm Powers Kirn in the state foreclosure action. In the foreclosure action, Ms. Jones argued that the mortgage was invalid. On December 17, 2007, CHL obtained a final judgment in the state foreclosure action and the state court found the mortgage to be valid. After final judgment was entered, Ms. Jones repeatedly delayed the sale of the Property and filed for bankruptcy on three different occasions. A sheriff's sale of the Property was finally conducted on March 1, 2018.

In March 2019, Ms. Jones filed an action in the United States District Court for the District of New Jersey against Bank of America, NA, CHL, Deutsche Bank National Trust Company and Powers Kirn alleging eighteen counts relating to the mortgage transaction, including federal claims. Powers Kirn filed a motion to dismiss, arguing that Ms. Jones' claims were barred by the *Rooker-Feldman* doctrine and entire controversy doctrine, among other things. The District Court granted the motion to dismiss Jones' federal claim based on application of the *Rooker-Feldman* doctrine, which holds that a federal court cannot exercise subject matter jurisdiction over a case if it would result in "overturn[ing] an injurious state-court judgment. The District Court noted that Ms. Jones' federal statutory claims stemmed from the allegation that the foreclosure had been unlawfully obtained. The District Court then dismissed any state law claims for lack of subject matter jurisdiction after declining to extend supplemental jurisdiction.

Appellate Division Declines to Vacate Final Judgment of Foreclosure Against Defaulted Defendant

In *Wells Fargo Bank, N.A. v. Hauke*, 2020 WL 1950770, Docket No. A-3366-18T2 (N.J. App. Div. Apr. 23, 2020), the Appellate Division affirmed several trial court orders arising from a foreclosure action brought by plaintiff Wells Fargo Bank, N.A. (“Plaintiff”), in which Plaintiff obtained a final judgment of foreclosure against defendant Paul R. Hauke (“Defendant”).

In June 2007, Defendant obtained a loan in the amount of \$550,000 secured by property he owned located in Point Pleasant, New Jersey. Plaintiff ultimately became the assignee and holder of the note and mortgage. Defendant defaulted on the loan when he failed to make payments due as of June 2008. After Plaintiff provided the requisite notice of intent to foreclose to Defendant, Plaintiff initiated a foreclosure action on June 21, 2017. Thereafter, Defendant purportedly evaded service, requiring Plaintiff to serve the complaint on Defendant by way of regular and certified mail delivered to the mortgaged property and a post office box used by Defendant. Plaintiff also provided a certification of diligent inquiry regarding its efforts to serve Defendant personally. Upon application by Plaintiff, the trial court entered default against Defendant after he failed to answer. Two weeks after default was entered, Defendant moved to vacate the default, which was denied by the trial court. Three subsequent motions for reconsideration filed by Defendant were also denied. In October 2018, Plaintiff obtained a final judgment of foreclosure over Defendant’s objection as to the amount due and owing under the loan.

On appeal, Defendant challenged these rulings on the grounds that the trial court failed to recognize his “meritorious defense” under the Truth in Lending Act and that, even assuming Defendant had no meritorious defense, the default should have been vacated due to a lack of due process. Defendant also challenged the trial court’s thirty-page written amplification of its prior decisions, which was issued in May 2019, more than a month after entering final judgment and several months after the trial court had denied multiple motions filed by Defendant challenging the entry of default. Defendant argued that the written amplification was not timely under *R. 2:5-1(b)* as it was issued more than fifteen days after the trial court received notice of Defendant’s appeal. The Appellate Division summarily dismissed the substantive challenges to the trial court’s decisions and stated that the procedural challenge that the written amplification was provided more than fifteen days after the notice of appeal was received by the trial court, resulted in no prejudice to Defendant as Defendant received the written amplification several months prior to filing his brief on appeal.

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