

# BANKING ALERT

February 2022

## ***New Jersey Appellate Division Rejects Borrower's Challenge to Foreclosure on Basis of Purported TILA Violation***

In *U.S. Bank National Association v. D'Ambrosia*, Docket No. A-0140-20 (N.J. App. Div. Feb. 23, 2022), the New Jersey Appellate Division refused to overturn an Order granting a bank summary judgment in a foreclosure action where the borrower sought to rescind the mortgage based on alleged inaccurate disclosures made by the lender.

In 2004, the defendant, David D'Ambrosia ("Borrower"), and his wife borrowed \$375,000 secured by a mortgage against property located in Jackson, New Jersey. Borrower ultimately defaulted on the loan in 2009. Thereafter, the note and mortgage were assigned to Household Finance Corporation III ("HFC"), which initiated a foreclosure action. In 2012, Borrower and HFC executed a consent order that required the parties to mediate in good faith. In late 2014, HFC offered Borrower a loan modification that required Borrower to make a partial reinstatement payment by January 1, 2015. Borrower, however, failed to make that payment. Six months later, Borrower inquired about a modification. HFC responded, stating that due to his failure to make the partial reinstatement payment, he no longer qualified for a modification and HFC would continue the foreclosure action. Nonetheless, and for reasons that were unclear from the record, HFC did not proceed to obtain a judgment of foreclosure in that action.

In August 2014, HFC assigned its rights in the note and mortgage to plaintiff's predecessor, Wilmington Savings Fund Society ("WSF"), which filed a foreclosure action in 2016. WSF filed a motion for summary judgment that Borrower opposed. In April 2018, the trial court granted WSF's motion for summary judgment and denied Borrower's cross-motion for leave to assert counterclaims. After finding that Borrower failed to dispute that the note and mortgage were valid and enforceable, the trial court turned to Borrower's proposed counterclaims, specifically Borrower's claims under RESPA and TILA, finding that the RESPA claim would not preclude entry of foreclosure, and that the TILA claim, which sought rescission, was untimely. The trial court subsequently denied Borrower's motion.

On appeal, the Appellate Division focused on Borrower's contention that he was entitled to rescission of the mortgage based on the proposed TILA claim. The Appellate Division disagreed, finding that Borrower's notice of rescission, which came fourteen years after the

### **In This Issue**

New Jersey Appellate Division Rejects Borrower's Challenge to Foreclosure on Basis of Purported TILA Violation

**Pg 1**

Owner of A Certificate of Deposit Seeking Payment Three Years After Maturity Must Rebut Presumption of Abandonment Under New Jersey Uniform Unclaimed Property Act

**Pg 2**

### **Office Locations**

#### **New Jersey**

210 Park Avenue  
2<sup>nd</sup> Floor  
Florham Park NJ 07932  
973.302.9700

#### **New York**

1185 Avenue of the Americas  
3<sup>rd</sup> Floor  
New York NY 10036  
212.763.6464

Follow Sherman Atlas on  
**LinkedIn** 

origination of the loan, was well beyond the three-year statute of limitations. In so doing, the Appellate Division rejected the Borrower's contention that Borrower was entitled to seek rescission by recoupment after the three-year statute of limitations expired as Congress plainly intended that recoupment of monetary damages would be treated differently than the remedy of rescission, which expires after three years.

**Owner of a Certificate of Deposit Seeking Payment Three Years  
After Maturity Must Rebut Presumption of Abandonment  
Under New Jersey Uniform Unclaimed Property Act**

In *Wilson v. PNC Bank National Association*, No. 21-cv-1131 (D.N.J. January 28, 2022) the District Court for the District of New Jersey denied plaintiff's motion for reconsideration of its dismissal and upheld its prior ruling that a holder of a certificate of deposit is required to rebut a presumption of abandonment when seeking payment more than three years after maturity.

Plaintiff Kurt Wilson ("Plaintiff") was executor of the estate of his late father, Roscoe C. Wilson, which owned ten certificates of deposit (the "Certificates"). Between 1975 and 1989, Roscoe Wilson purchased seven Certificates from Marine National Bank ("Marine") and three Certificates from Horizon National Bank ("Horizon"). (Marine was later acquired by Horizon, and Horizon later merged into defendant PNC Bank.) Roscoe Wilson passed away in 2002 and, in 2017, Plaintiff located the ten Certificates in his late father's papers. Shortly after the estate was admitted to probate in 2018, the Court authorized Plaintiff to serve as executor of his father's estate. As executor, Plaintiff brought the Certificates to defendant PNC Bank for payment, but PNC refused to redeem the Certificates.

In 2021, Plaintiff brought an action against PNC Bank asserting twenty counts, consisting of one state law breach of contract claim and one state law unjust enrichment claim for each of the ten Certificates. PNC Bank filed a motion to dismiss which the Court granted on July 28, 2021. In granting PNC Bank's motion, the Court ruled that Plaintiff was required to rebut the presumption of abandonment pursuant to the Uniform Unclaimed Property Act ("UUPA"), which states that a certificate of deposit is deemed abandoned three years after maturity. Plaintiff subsequently filed a motion for reconsideration of the Court's July 28, 2021 ruling.

In his motion for reconsideration, Plaintiff argued that the Court overlooked New Jersey Supreme Court precedent in *Pagano v. United Jersey Bank*, 143 N.J. 220 (1996). Specifically, Plaintiff argued that *Pagano* held that the UUPA's presumption of abandonment does not apply to the ordinary savings-account depositor because the owner of a savings account is entitled to expect that the funds will be indefinitely available. The District Court rejected Plaintiff's argument because *Pagano* was factually distinguishable from Plaintiff's case. Specifically, Roscoe Wilson did not have a depositor-bank relationship with respect to the Certificates. Rather, he was expected to take some action to protect his rights; namely, to cash the Certificates upon maturity. The District Court also cited the UUPA which states that a "time deposit -- like the Certificates here --"is presumed abandoned three years after [its] maturity." Thus, the Court refused to reconsider its prior dismissal of the action based on the New Jersey Supreme Court's holding in *Pagano*.

**Attorney Contact Information**

**Anthony J. Sylvester**  
Partner  
973.302.9713  
asylvester@shermanatlas.com

**Craig L. Steinfeld**  
Partner  
973.302.9697  
csteinfeld@shermanatlas.com

**Caitlin T. Shadek**  
Counsel  
973.302.9672  
cshadek@shermanatlas.com

**Anthony C. Valenziano**  
Counsel  
973.302.9696  
avalenziano@shermanatlas.com