

# BANKING ALERT

March 2022

## **New Jersey Appellate Division Overturns Final Judgment of Foreclosure Because of Question Over Possession of Note and Mortgage**

In *U.S. Bank National Association v. Rogers*, Docket No. A-1313-20 (N.J. App. Div. Mar. 18, 2022), the New Jersey Appellate Division ruled in favor of defendant, the widow of the borrower, and overturned a final judgment of foreclosure due to a material factual dispute over whether the plaintiff, U.S. Bank National Association (“US Bank”), was in possession of the note and mortgage when it filed the foreclosure action.

In 2006, Thomas Rogers (“Thomas”) executed and delivered a promissory note in the amount of \$190,800 to New Century Mortgage Corporation (“New Century”), which was secured by a lien on the home of Thomas and his wife, defendant Frances Rogers (“Frances”). Both Thomas and Frances executed a mortgage in favor of MERS as nominee for New Century that was duly recorded. New Century subsequently filed for bankruptcy and went into liquidation in 2007. While the mortgage was assigned by MERS to Bank of America, N.A. (“BOA”) in 2009, the record was unclear as to the disposition of the note signed by Thomas. Thomas ultimately defaulted on the loan in 2009 and BOA filed a foreclosure action that year. The foreclosure action was dismissed as Frances, after Thomas passed away, made payments on the loan that resulted in the dismissal of BOA’s foreclosure action in 2013.

In 2014, BOA assigned the mortgage to US Bank. Frances’s payments were insufficient to cure the prior default and, as a result, US Bank initiated a foreclosure action in July 2015. Frances filed an answer with counterclaims, and a motion to dismiss the foreclosure action. After Frances’s counterclaims were dismissed on motion, US Bank filed a motion for summary judgment in June 2016. The trial court granted the motion, striking Frances’s answer and affirmative defenses, and returning the case to the Office of Foreclosure as an uncontested matter. In finding for US Bank, the trial court found that US Bank was the holder of both the note and mortgage, and that both were duly assigned to US Bank in 2014. The trial court rejected Frances’s contention that US Bank failed to establish an unbroken chain of title, finding that the evidence submitted by US Bank was sufficient to establish possession of the note. Thereafter, final judgment of foreclosure was entered in favor of US Bank over Frances’s objections premised on, among other things, US Bank’s standing to foreclose.

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On appeal, the Appellate Division focused solely on the question of standing and the evidence provided by US Bank in support of its motion for summary judgment. While the Appellate Division acknowledged that US Bank's loan servicer had certified that US Bank was in possession of both the note and mortgage, the Appellate Division said such statements were "inconsistent" with the factual record on the motion. Specifically, the Appellate Division noted that the certification stated that US Bank was in possession of both the note and mortgage since 2006, which was inconsistent with BOA's prior foreclosure complaint in which BOA claimed to have been in possession of both the note and mortgage as of 2009. Also unresolved, the Appellate Division found, was what happened to the note after New Century's bankruptcy and liquidation. Thus, the Appellate Division remanded the matter back to the trial court as there was a material factual dispute over possession of the note. The Appellate Division, however, held that US Bank could renew its motion for summary judgment and attempt to demonstrate it possessed the note and mortgage on the date it filed the foreclosure complaint.

### **New Jersey Appellate Division Affirms Final Judgment of Foreclosure After Debtor Fails to Substantiate Objections to Proof of Amount Due**

In *Liberty Bell Bank v. Luis G. Rogers, et al.*, Docket No. A-2487-181 (N.J. App. Div. Mar. 1, 2022), the Appellate Division affirmed the trial court's March 1, 2019 judgment of foreclosure and order overruling objections of defendant Luis G. Rogers ("Defendant") to the proof of amount due provided by plaintiff Liberty Bell Bank ("Plaintiff").

Defendant owned and operated Lease Group Resources ("LGR"), an equipment leasing company that purchased copying machines and leased them to private businesses and governmental entities. In 2005, Plaintiff began providing financing services to LGR to purchase equipment secured by equipment leases. By May 2013, Defendant and LGR owed plaintiff \$3,713,704.52 and, on May 10, 2013, Defendant executed a commercial guaranty whereby he guaranteed the indebtedness of LGR to Plaintiff. To secure the guaranty, Defendant and his spouse executed and delivered a mortgage to Plaintiff encumbering the residential property located at 123 Colonia Road in Edgewater Park. Defendant subsequently defaulted on his obligations by, among other things, failing to make a payment in September 2013.

In December 2013, Plaintiff filed a foreclosure complaint against Defendant. After Defendant filed a contesting answer with counterclaim, Plaintiff moved to deem Defendant's answer as non-contesting. On June 30, 2014, the trial court granted Plaintiff's motion and deemed Defendant's answer non-contesting. After additional motion practice, the trial court granted Plaintiff a final judgment of foreclosure. Plaintiff consented to reducing the amount due by \$747,963.69 in order to "resolve" Defendant's objections to the amount due. On August 2, 2017, the trial court entered final judgment in favor of Plaintiff and against Defendant in the amount due of \$2,965,740.83.

In October 2017, after Plaintiff learned of additional judgment creditors, Plaintiff moved to vacate the final judgment and sought leave to file a new foreclosure action to include the additional judgment creditors. (The record shows that Plaintiff also commenced an action in federal court against Defendant for violations of the RICO Act, and ultimately obtained a \$10,632,186 judgment that was affirmed by the Third Circuit in February 2018.) After Plaintiff was granted leave to file a new foreclosure action, Defendant responded with an answer asserting counterclaims for conversion, unjust enrichment, negligence and undue influence. In November 2018, Plaintiff moved for summary judgment on Defendant's counterclaims. The trial court found Defendant's counterclaims were barred by collateral estoppel because the issues relating to the financial dispute between the parties were resolved by the federal court. Plaintiff subsequently moved for final judgment and, after Plaintiff again agreed to reduce the amount owed, the trial court entered final judgment in the amount of \$2,965,740.83.

On appeal, Defendant argued that the trial court erred in granting summary judgment and overruling his objections to Plaintiff's proof of claim. Specifically, Defendant argued that he provided sufficient evidence to demonstrate Plaintiff's proof of claim as to the amount due was incorrect. The Appellate Division disagreed. In upholding the trial court's ruling, the Appellate Division held that in contesting an amount due, a defendant must "address, with specificity, what amounts in plaintiff's proof of amount due is incorrect." Here, Defendant failed to present his objections with the required specificity to the amount due as certified by Plaintiff. Among other things, Defendant only provided copies of unauthenticated and incomplete documents such as emails and bank statements, and did not provide a certification in opposition to the amount claimed. Moreover, Defendant did not state what the correct amount should be. The Appellate Division ultimately found that Defendant did not provide "a scintilla of evidence in support of his claims." Thus, there was no genuine issue of material fact presented to the trial court to preclude the grant of summary judgment in favor of Plaintiff. Because Plaintiff satisfied all necessary requirements for the entry of summary judgment, and Defendant failed to provide the trial court with any documentation in support of his objections, the final judgment of foreclosure was affirmed in its entirety.

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