

BANKING ALERT

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New Jersey Appellate Division Finds Parties Required to Arbitrate Despite Lack of Explicit Waiver

In *County of Passaic v. Horizon Healthcare Services, Inc.*, Docket No. A-0952-21 (N.J. App. Div. Feb. 8, 2023), the New Jersey Appellate Division sought to clarify the New Jersey Supreme Court's decision in *Atalese v. U.S. Legal Services Group, L.P.*, 219 N.J. 430 (2014), which holds that an arbitration provision in an agreement is unenforceable if it lacks an explicit waiver of access to the court system.

The plaintiff, the County of Passaic ("Plaintiff"), alleged that it entered into a contract for management of Plaintiff's health benefits with defendant Horizon Healthcare Services, Inc. ("Horizon") in 2009. Plaintiff filed an action in 2021 alleging, among other things, that Horizon breached the contract by failing to implement certain reduced reimbursement rates. Horizon subsequently moved to compel arbitration pursuant to the parties' agreement, which stated that "in the event of any dispute between the parties to this Agreement arising under its terms, the parties shall submit the dispute to binding arbitration under the commercial rules of the American Arbitration Association." The trial court agreed that the agreement required arbitration and compelled Plaintiff to arbitrate its claims.

On appeal, the Appellate Division initially noted that both federal and New Jersey law favor the resolution of disputes by way of arbitration and that, like any other agreement, an agreement to arbitrate will be enforced if there is mutual assent by the parties. In addressing whether *Atalese* precluded enforcement of the arbitration clause at issue, the Appellate Division held that the concern that was highlighted in *Atalese* – *i.e.*, "the nonexistence of a waiver of the important right to seek relief in court of law in contracts involving consumers and employees" not versed in legal terminology – was not applicable to sophisticated commercial entities often represented in contract negotiations by counsel and an "express waiver" was unnecessary in such circumstances.

In This Issue

New Jersey Appellate Division Finds Parties Required to Arbitrate Despite Lack of Explicit Waiver
Pg 1

New Jersey Appellate Division Affirms Trial Court's Order Vacating Final Judgment of Foreclosure
Pg 2

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New Jersey Appellate Division Affirms Trial Court's Order Vacating Final Judgment of Foreclosure

In *Carol L. Baron v. Lisa Youngbroder n/k/a Lisa Pedroli, et al.*, the New Jersey Appellate Division affirmed an order vacating the entry of final judgment of foreclosure against defendants.

Defendant Lisa Pedroli ("Ms. Pedroli") acquired certain real property on December 1, 2008. Lisa failed to pay the 2017 property taxes for the property and a tax sale was held on June 4, 2018. The tax certificate was sold to plaintiff Carol L. Baron ("Plaintiff") and recorded on the same day. Plaintiff thereafter paid the taxes from 2018-2020.

On June 4, 2020, Plaintiff commenced a foreclosure action against defendants Ms. Pedroli and her husband, Brian Pedroli (together, "Defendants"), and personally served them with the Complaint, but Defendants failed to answer. A request for entry of default was made on July 27, 2020. Thereafter, the trial court issued an Order setting the amount, time, and place of redemption of the tax sale certificate for October 23, 2020.

On October 22, 2020, Defendants filed a joint petition for Chapter 13 bankruptcy and an automatic stay of the foreclosure went into effect. As a result, Plaintiff filed an objection to the confirmation of Defendants' proposed plan. The bankruptcy was later dismissed on June 10, 2021 and Plaintiff moved for final judgment, which was entered on July 7, 2021.

Defendants subsequently moved to vacate the final judgment on October 4, 2021. During oral argument, Defendants explained that the 2017 taxes were unpaid because they had lost their jobs and were out of work because of COVID-19. In addition, Defendants argued that they had sufficient funds to redeem the tax sale certificate. The trial court allowed Defendants to provide evidence to support their allegations and rendered a decision granting Defendants' motion to vacate the default judgment. The trial court explained that Defendants had demonstrated that they had sufficient funds to pay the entire lien.

On appeal, Plaintiff argued that the lower court "ignore[d] the operative inquiry" relevant to Rule 4:50-1(a) and made "irrelevant" and "unsupported" factual findings. Plaintiff also asserted that the trial court erred when it ignored *Del Vecchio v. Hemberger*, 388 N.J. Super. 179 (App. Div. 2006) and permitted post-judgment redemption."

On appeal, the Appellate Division noted that, to be afforded the relief from a final judgment under Rule 4:50-1, a party must establish a meritorious defense, which the trial court found when it accepted Defendants' explanation for failing to pay the 2017 taxes and their proffer as to their ability to satisfy the judgment based on the source of the funds.

Next the Appellate Division addressed Plaintiff's reliance on *Del Vecchio*. The Appellate Division found that unlike in *Del Vecchio*, where the defendant was unable to secure funds to redeem the lien, Defendants had established they were able to do so prior to the scheduled sale.

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