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NJ Courts Hand Financial Cos. 2 Bonuses In 2014

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This year, our federal and state courts have issued some interesting rulings that affect the balance of power between debtors, creditors and creditors' attorneys in New Jersey. In some aspects, our courts have made life easier for creditors. For example, it is now settled that a creditor need not produce an underlying account agreement to prove a breach of contract claim and can rely exclusively upon its own electronic records in doing so. In other aspects, our courts made life more difficult for creditors and their attorneys. For instance, there is now precedent which holds that attorneys collecting on the very debts mentioned above, while not needing to produce the underlying account agreement to prove their client's case, cannot, nevertheless, rely exclusively upon their client's electronic records in filing a complaint. Classically, this balancing act only goes to show how creditors and creditors' attorneys must walk a fine line when seeking to collect money that is owed. Here is a brief overview of some of the decisions from the past year that affect this area.

Lenders Can Prove a Breach of Contract Claim Without Producing a Contract

Initially, banks and financial institutions received some good news this year. On two occasions, the appellate division ruled that a creditor does not need to produce an underlying account agreement to establish a contract claim. New Century Financial Services Inc. v. Ahlam Oughla, 437 N.J. Super. 299 (App. Div. 2014); Cach of N.J. LLC v. Diamond, 2014 N.J. Super. Unpub. LEXIS 1739 at *1 (App. Div. July 16, 2014).

New Century Financial Services is the first example of this rule in action. There, a financial institution was seeking to collect monies lent to a debtor pursuant to a written contract. New Century Financial Services Inc., 437 N.J. Super. at 307 – 308. In proving its case, the financial institution presented electronic account statements containing a specific statement of the amount due. Id. at 324-332. The debtors objected to the creditor's reliance upon electronic statements in proving its case. Id.

Pushing this objection aside, the appellate division held that electronic account statements are sufficient to prove a contract claim. In justifying this ruling, the appellate division signified that electronic records, even those of a predecessor creditor, are "perfectly regular on [their] face and … issued in the regular course of business prior to the inception of any controversy between the parties." Id. at 327. Thus, the appellate division clearly held that electronic documents, standing alone, are reliable business records that can be used to prove a case. Later in the year, the appellate division confirmed the holding of New Century Financial Services in Cach of N.J. Inc., 2014 N.J. Super. Unpub. LEXIS 1739 at *1, *8 (App. Div. July 16, 2014). In affirming this principle there, the appellate division merely added that "business records may still be admitted even if they are the business records of an entity who is not a party to the case." Id.

Overall, the appellate division's decisions on contract claims show favorable treatment for financial institutions. The production of periodic electronic statements, even those from another creditor, are clearly sufficient to prove a contract claim. As such, financial institutions do not need to produce underlying account documents to prove their case and can move to judgment quicker.

Collection Attorneys Should Carefully Review All Documents

Even though creditors' lives may be easier, their attorneys are not as lucky. In June, the U.S. District Court for the District of New Jersey considered what proofs a creditor's attorney is required to review before filing a complaint seeking to collect a debt. Bock v. Pressler and Pressler LLP, 2014 U.S. Dist. LEXIS 88367 at *1 (D.N.J. June 30, 2014). Even though a creditor does not need to produce an underlying account agreement to prove its contract claim, our district court still held that an attorney's failure to review an underlying account agreement before filing a complaint would result in a violation of federal law. Bock, 2014 U.S. Dist. LEXIS 88367 at *3.

In Bock, the court considered whether an attorney's brief review of a complaint drafted by the attorney's support staff before filing it constituted a deceptive and misleading practice under the Fair Debt Collection Practices Act. Id. at *3. Notably, the creditor's attorney had reviewed and signed the complaint merely relying upon the accuracy of electronic records of his client. Id. at *57-*59. Ultimately, the court found that the attorney's failure to review the underlying account documents lead to a misleading and deceptive practice in that an average debtor could think that an attorney was actively advocating the creditor's case when an attorney was, in fact, not doing so. Id. at *55-*59. In deciding that reliance upon electronic records was insufficient, the court held that: "[t]he undisputed evidence confirms that Gulko [the attorney] [never] reviewed the basic materials like the underlying cardholder agreement to confirm that there was a legal basis to collect from Bock [the debtor], to confirm what law governed, and to confirm that venue was proper" Id. at *57.

Compared with New Century Financial Services and Cach of N.J., Bock presents an interesting contrast. It is clear that a creditor need not prove its claim through the production of the underlying account agreement; yet, the creditor's attorney must apparently, at least, review that account agreement before filing suit. Thus, there is some obvious tension in that an attorney is obligated to review certain account documents that may ultimately be unnecessary to prove a client's case.

Mortgage Lenders: Some Bad News

Besides providing some interesting decisions affecting general collection practice, this year also provided a compelling highlight in reference to the rights of mortgage lenders. A decision of interest in this area addresses a mortgage lender's time frame within which to bring a foreclosure action on an accelerated mortgage debt. In re: Gordon A. Washington, 2014 Bankr. LEXIS 4649 at *1 (Bankr. D.N.J. Nov. 5, 2014). Normally, a mortgage lender has 20 years to bring a foreclosure action. See N.J.S.A. § 2A:50-56.1. Nevertheless, in Washington, a lender faced the attack of a debtor seeking to set aside its lien in a bankruptcy case after only six years lapsed. Washington, 2014 Bankr. LEXIS 4649 at *1-*2. In that case, a mortgage lender accelerated the maturity date of the pertinent loan and failed to properly institute a foreclosure action within six years. Id. at *35-*36. The lender also failed to take any steps to decelerate the mortgage debt. Id. at *35.

Facing this background, the U.S. Bankruptcy Court for the District of New Jersey decided that the lender's right to bring a foreclosure action had expired and that, therefore, the lender was now in possession of a time-barred claim. Washington at *35-*36. In invalidating the lender's claim and mortgage lien, the court clearly held that a mortgage lender had six years, not 20, to bring a foreclosure action on an accelerated debt. Id. The court found it persuasive that "neither the Debtor nor the Defendants have taken any measures under the note or mortgage … to de-accelerate the debt, and the Defendants further failed to file a foreclosure complaint within 6 years of the accelerated maturity date." Id. More significantly, the court went on to find that "[d]efendants' claim … must be disallowed as unenforceable … and the underlying lien is deemed void." Id. Thus, a creditor who fails to decelerate a debt could void its own lien through inaction.

Washington provides a stern warning. A lender cannot allow a potential foreclosure to linger without proceeding to final judgment. If a creditor does not properly pursue its claim, then the lender may find that their lien is now invalid and they have a completely unsecured position.

Bankruptcy May Not be a Safe Haven

In some other news, a debtor's ability to avoid his or her financial obligations by filing a bankruptcy case may have taken a step back in our state. In Shafer, the U.S. Bankruptcy Court for the District of New Jersey considered whether a debtor filed a Chapter 13 bankruptcy petition in good faith when the case revolved around a dispute with a single creditor. In re: Shafer, 2014 Bankr. LEXIS 4019 at

*1, *2-*3 (Bankr. D.N.J. Sept. 18, 2014). In that case, the debtors had indisputably filed a petition for bankruptcy protection after their sole creditor commenced a collection action in state court. Id. The court decided that the debtors' bankruptcy case was properly dismissed. Id. at *10-*11. In dismissing the case, the court affirmed that "two-party disputes … have no place in bankruptcy." Id. at *5. Thus, a debtor's bankruptcy was to be dismissed when his or her sole motive for filing was to avoid collection by a single creditor. Id at *7-*9.

Shafer presents an interesting, potential sword for creditors threatened with bankruptcy. As Shafer shows, a debtor cannot simply file for bankruptcy to avoid paying a single creditor. A debtor must have some additional reasons to justify a filing. The Shafer decision shows that our courts will not merely rubber-stamp a debtor's decision to file for bankruptcy protection.

Closing Thoughts

This year, our courts have redefined the balance between debtors and creditors in some interesting ways. As it stands, a financial institution in New Jersey is now on stronger footing in two key ways. First, a financial institution can expedite its right to obtain a judgment in a collection action by merely presenting electronic account statements to support its judgment. A financial institution no longer needs to worry about producing the original account agreement when the terms and conditions of that agreement are not in dispute. Second, a financial institution may actually be able to challenge a debtor's right to file for bankruptcy protection when the matter at issue is really a two-party dispute. As such, a debtor will find it more difficult to file a bankruptcy for the purpose of avoiding payment on a single, large debt.

On the other hand, nondiligent financial institutions and their counsel found that our courts were also willing to eliminate any leeway for those that fail to properly exercise their rights. It is now clear that attorneys pursuing collection actions in New Jersey must do a full review of their client's file before filing a complaint in order to comply with federal law. It is also clear that a mortgage lender cannot accelerate a mortgage loan and then sit on its rights without potentially having its secure position converted to an unsecure position. Financial institutions now, more than ever, know that diligence is key.

In short, banks and financial institutions can look at 2014 as a year where those who diligently paid attention to their rights were rewarded.

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