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Raise All Related Claims During a Foreclosure Action

The entire controversy doctrine acts as a bar to borrowers' action involving claims germane to prior foreclosure

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In an unpublished decision issued by the Honorable Renee Marie Bumb of the United States District Court for the District of New Jersey, the court held that New Jersey's entire controversy doctrine precluded the borrowers' action against the lender and its servicer for their alleged improper business practices arising out of an alleged overcharge of the debt pay-off amount. The action against the lender and servicer was instituted after the lender's foreclosure action had concluded. In a victory for mortgage lenders and servicers, the court found that such claims were barred because they should and could have been raised in the earlier foreclosure action. *Napoli v. HSBC Mortg. Servs.*, No. 12-CV-222, 2012 U.S. Dist. LEXIS 121204 (D.N.J. Aug. 27, 2012).

By way of background, the entire controversy doctrine is a New Jersey procedural rule that stems from the long-established practice of, and preference for, a complete resolution of all related claims between parties in a single action, rather than in "separate, successive, fragmented, or piecemeal litigation." *Kent Motor Cars v. Reynolds & Reynolds*, 207 N.J. 428, 443 (2011). It mandates joinder of "virtually all causes, claims, and defenses relating to a controversy between the parties" by allowing courts to dismiss successive suits involving omitted claims that should have been joined in the prior action. *Cogdell v. Hosp. Ctr. at Orange*, 116 N.J. 7, 16 (1989). It is not the commonality of legal issues that governs the applicability of the entire controversy doctrine, but "whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts." *Ditrolio v. Antiles*, 142 N.J. 253, 271 (1995). "The ultimate goals to be advanced by the entire controversy doctrine are judicial economy, administrative efficiency, fairness to litigants, and the just resolution of disputes." *Crispin v. Volkswagenwerk*, 96 N.J. 336, 352 (1984).

The entire controversy doctrine "applies not only to matters actually litigated, but to all aspects of a controversy that might have been thus litigated and determined." *Mori v. Hartz Mountain Dev. Corp.*, 193 N.J. Super. 47, 56 (App. Div. 1983). However, "[t]he boundaries of the doctrine are not limitless." *Mystic Isle Dev. Corp. v. Perskie & Nehmad*, 142 N.J. 310, 323 (1995). "It remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases." *Brennan v. Orban*, 145 N.J. 282, 291 (1996). Thus, it would not bar claims that were "either unknown, unarisen or unaccrued at the time of the original action." *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59, 70 (2002) (quoting Sylvia Pressler, Current N.J. Rules, R. 4:30A cmts. 1 &

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2 (2002)).

In *Napoli*, borrowers Francis and Tanya Napoli received a loan from Equity Financial in September 2002. The loan was secured by a mortgage and note. Equity Financial assigned the mortgage to Mortgage Electronic Registration Systems, and the loan was serviced by HSBC Mortgage Services. In 2004, HSBC instituted a foreclosure action after the Napolis defaulted on their loan. In May 2006, judgment was entered in favor of HSBC and a sheriff's sale was scheduled for Aug. 16, 2006.

After final judgment was entered, but before the sheriff's sale was held, the Napolis sought to refinance their mortgage from a different lender and requested the balance due and owing from HSBC. HSBC informed the Napolis that they would need $177,106 to satisfy their loan. On Aug. 15, 2006, the day before the scheduled sheriff's sale, the Napolis filed an emergent application with the trial court seeking a two-week adjournment of the sale. In support, they argued that the pay-off amount that was provided to them was more than they anticipated and that their refinancing lender needed additional time to approve the higher amount quoted by HSBC. The court granted the borrowers' request for a stay of the sale. Prior to the adjourned foreclosure sale date, the Napolis paid the full amount due and retained their home.

After the foreclosure action had concluded, the Napolis brought a putative class action on behalf of themselves and other borrowers who they alleged had also been the victims of "illegal, fraudulent, and unconscionable business practices [by] the Defendants." The Napolis instituted the action in the Superior Court of New Jersey, but the case was removed to federal court by the defendants pursuant to the Class Action Fairness Act. The Napolis specifically alleged that they were wrongfully and fraudulently overcharged approximately $6,000 on their pay-off balance and asserted claims for: breach of contract; violation of the New Jersey Consumer Fraud Act; violation of the Truth in Consumer Contract, Warranty and Notice Act; and violation of the Uniform Commercial Code.

Although the defendants moved to dismiss the complaint on several grounds, the court concluded that the entire controversy doctrine barred the borrowers' claims and, therefore, dismissed the complaint with prejudice, without addressing the defendants' other arguments. The court explained that "it is bound to apply" New Jersey's entire controversy doctrine which requires parties to bring all claims, defenses and counterclaims "relevant to the underlying controversy in one legal action ...." (quoting *Coleman v. Chase Home Fin.*, 446 F. App'x 469, 471 (3d Cir. 2011)). The court explained that the doctrine precludes "parties from raising, in a subsequent proceeding, any claims it knew, or should have known about, during a prior proceeding." The court acknowledged that the preclusive effect of the doctrine is limited in the foreclosure context to the nonjoinder of germane counterclaims, but concluded that claims involving "payment and discharge, and incorrect computation of the amounts due" are germane to a foreclosure because they are related to the mortgage at issue. (Quoting *LaSalle Nat'l Bank v. Johnson*, 2006 WL 551563, at *2 (N.J. Super. Mar. 3, 2006)) (alteration in the original omitted). Because the Napolis knew about the alleged discrepancy in the pay-off balance during the foreclosure action (as evidenced by the reasons they provided in support of their application for the stay of the foreclosure sale), and because a dispute concerning the amount due on the mortgage is germane to the foreclosure, the court found that the Napolis were obligated to raise those claims during the foreclosure action.

The Napolis did not dispute that their claims were germane to the foreclosure, but they argued that they could not have asserted those claims in the foreclosure action because they did not receive their pay-off amount until after final judgment was entered. The court rejected their argument, holding that a foreclosure action does not conclude with a final judgment, but rather ends after the equity of redemption period expires by either the delivery of the sheriff's deed or the borrowers' payment of the full amount due before the sheriff's sale. The court explained that, until the equity of redemption period is cut off by either of those events, the trial court retains jurisdiction over the foreclosure action. Because the Napolis were notified of the pay-off amount, and paid the entire amount due before the redemption deadline, without any objections, the court found that the Napolis "had a full opportunity to assert their claims during the prior foreclosure action," and that equity mandated the dismissal of the complaint.

This decision is obviously helpful to lenders and servicers that are sued in New Jersey by borrowers in successive lawsuits following a foreclosure action. The entire controversy doctrine provides an important and additional procedural device to defend against postforeclosure actions involving claims that could have been brought in the foreclosure action. ■