Helping Homeowners Pay Their Mortgages and Stay in Their Homes in Contested Foreclosure Cases

by Margaret Lambe Jurow and Rebecca Schore

For most people, a family's home is its most significant asset. At the same time, it is far more than just an economic asset. It is a place to live and raise a family. It is also a symbol of having achieved a level of success and a piece of the American dream. Since many people live paycheck to paycheck at all income levels, the loss, even for a short time, of a job can have disastrous consequences. It is the express public policy of the state of New Jersey to provide "homeowners...every opportunity to pay their home mortgages, and thus keep their homes."[1]

Only 'Contested' Cases are Heard by a Chancery Judge

New Jersey is a judicial foreclosure state, though as a practical matter the majority of cases proceed to judgment and foreclosure sale with no actual judicial involvement. Foreclosure cases are the last category of cases that are filed centrally in Trenton rather than at the county court.[2] Court rules establish which cases would be considered 'contested' and which would be considered 'uncontested.'[3] Contested cases are referred to the local chancery judges. For the most part, uncontested cases remain in Trenton for the processing and entry of judgment without an individual judge's review. Historically, nearly 94 percent of all residential foreclosure cases are deemed uncontested.

The Fair Foreclosure Act, enacted in 1995, imposes a pre-suit requirement that the lender serve the homeowner with a notice of intention to foreclose, which must include specific information.[4] In addition to the requirements of the Fair Foreclosure Act, the foreclosure plaintiff must demonstrate it owns or controls the underlying debt and that it is the mortgagee.[5]

In contested cases, defective notices of intention to foreclose and defective mortgage assignments and improperly indorsed notes were often raised together with other defenses, but in uncontested matters such defects in the establishment of the basic *prima facie* case of foreclosure often flew under the radar.[6] In late 2010, these irregularities came to local and national attention and the New Jersey Supreme Court took measures to ensure the courts were not entering judgments even in uncontested matters without proper proof of compliance with the Fair Foreclosure Act and other laws.[7] The New Jersey Supreme Court initiated an unprecedented order to show cause process to address some of the problems *en masse*.[8] It also issued some emergent rules requiring the submission of affidavits and certifications related to the allegations made in the foreclosure complaint.[9]

A New Wave of Foreclosures

The volume of foreclosure complaints steadily increased from 2005 to 2010. In 2010, approximately 60,000 cases were filed in New Jersey. In 2011, there was a lull in foreclosure filings in New Jersey that coincided with national and local investigations into mortgage pleading improprieties. In 2011, new foreclosure complaint filings decreased from 60,000 to only about 11,000. Any lull in the filing of foreclosure complaints ended by last year, if not earlier. In 2012, 31,000 more foreclosure cases were filed. In 2013, more than 49,000 new foreclosure cases were filed. This increase seems to be continuing into 2014, where in the first six weeks of the year more than 5,000 new foreclosure cases were filed. The authors believe it is fair to say the volume of foreclosure cases and the long duration of the recession has wearied the public, the

foreclosure professionals and judges and especially families still confronting the foreclosure of their home.[10]

In addition to the renewed volume of new cases, many of the 60,000 cases started in 2010, and tens of thousands of earlier filed cases pending in 2010, have simply been abandoned by the foreclosing plaintiffs. Over the past year, the court has undertaken a massive effort to dismiss these inactive cases.[11] Although thousands of cases have been dismissed for lack of prosecution, many have been or will be refiled. Unfortunately, homeowners do not receive notice of the dismissal and may be confused to receive a summons and complaint initiating a new foreclosure action, possibly in the name of a new plaintiff.[12] It is not uncommon for homeowners to receive so many successive mortgage-related notices with slight differences in them that, combined with solicitations, they begin to resemble spam or junk mail. Overwhelmed, homeowners sometimes find it difficult to respond to court notices promptly.

Curing the Mortgage—Getting Credit for Damages Caused at Origination or During Servicing

The Fair Foreclosure Act provides homeowners a right to cure the default and reinstate their mortgages if they fall behind regardless of whether the foreclosure is contested or uncontested.[13] The right to cure extends from initial default through to the entry of foreclosure judgment and beyond judgment if the homeowner seeks relief in bankruptcy.[14] In an uncontested case, the amount of the cure is generally not disputed, though it is not uncommon that even in uncontested cases excessive fees are sought. The right to cure is lost once the sheriff's sale takes place, but the homeowner's right to redeem continues for at least 10 days after the sheriff's sale, and longer in some circumstances.[15] The right to redeem is the right to pay the full amount of the foreclosure judgment, though in some circumstances the court may modify or extend that right for cause.[16]

In some cases, the homeowner may have defenses or counterclaims that may reduce or eliminate the amount required to cure the mortgage or may give rise to equitable relief such as reformation of the mortgage loan itself. Asserting these defenses and counterclaims, and sometimes third-party complaints, will make the matter contested. Contested matters are the ones that end up before the chancery judges in the vicinage. A matter is deemed contested if, in his or her answer, the homeowner asserts a defense to the validity of the mortgage or the note or a defense to the obligation underlying the mortgage or some wrongdoing at origination or servicing misconduct that would impact the alleged default under the note or mortgage or the amount due. A homeowner's defenses may include violations of the Consumer Fraud Act or other state or federal consumer protection statutes in the origination of the loan, in the servicing of the loan, or in both.[17]

Although only germane counterclaims may be brought in response to a foreclosure complaint, as a practical matter most homeowner counterclaims are germane because they relate either to the origination or the servicing of the loan and not to some other unrelated matter.[18] Given that the purpose of the action is to ascertain the amount due on the mortgage and the mortgagee's right to foreclose and satisfy the amount due through a sheriff's sale of the home, the term "germane" has been held to refer to claims that affect the validity of the mortgage, the quantum of the debt, and the right to a foreclosure judgment.[19] No prohibition exists barring third-party complaints in foreclosure proceedings, though it is reasonable to assume any such complaint must meet the requirement that it must be germane.

Asserting Defenses, Counterclaims, Third-Party Claims on Behalf of Homeowners

New Jersey courts liberally construe the germane requirement, and will consider claims to be germane where failure to do so would leave the mortgagor without a defense to the foreclosure action. In *Associates Home Equity v. Troup*, the Appellate Division held that the mortgagor's recoupment defense (asserted by way of counterclaim) was germane insofar as "without the defense, the mortgagee could simply take the mortgaged premises, leaving the borrower without a remedy." Significantly, in *Troup* the defendants not only counterclaimed against the foreclosing mortgagee (the current holder of the loan), but also brought a third-party complaint alleging predatory lending claims and consumer fraud against a home-repair contractor and the lender that originated the loan. In permitting the third-party complaint to proceed, the Appellate Division implicitly recognized it was germane to the foreclosure action.[20]

In *Leisure Technology-Northeast, Inc. v. Klingbeil*, the Appellate Division held that the defendant's affirmative defense of fraud and counterclaim of breach of contract—both allegedly committed by the mortgagee *subsequent* to execution of the mortgage—were germane to the foreclosure action when the mortgagor claimed they caused the mortgage default.[21] Failure to bring germane counterclaims may bar them in a later suit.[22]

In the matter of *Joan Ryno Inc. v. First National Bank of South Jersey,* a post-foreclosure action by the former mortgagor against the former mortgagee for damages resulting from breach of a loan commitment, suit was barred by the entire controversy doctrine when its subject matter would have been germane to the foreclosure because it would have given the plaintiff a defense to the foreclosure.[23]

Even claims that are not germane or

directly addressed to the foreclosure plaintiff or its predecessor may be required to be adjudicated before allowing a foreclosure to take place. In *Sovereign Bank v. Kuelzow,* a storm severely damaged the defendants' home, rendering it uninhabitable. Their insurance company denied the claim for benefits under the policy, and the defendants were forced to sue the insurance company to recover. In the meantime, the mortgagee instituted foreclosure proceedings against the defendants. Even though the insurance dispute was not germane to the foreclosure action, insofar as the mortgagors had no claims against the mortgagee, and the insurance dispute was not related to the amount or validity of the mortgage, the defendants did not attempt to join the insurance dispute with the foreclosure action. Foreclosure judgment entered, a sheriff's sale was conducted, and the mortgagee purchased the property at sale. Although the mortgagors sought a stay of the delivery of the sheriff's deed pending the outcome of the insurance dispute, the chancery court "was singularly unimpressed with the interrelationship between the foreclosure action and the insurance litigation," and refused to grant the stay. The Appellate Division reversed, recognizing that the interests of justice would not be served by allowing the mortgagee to capitalize on the lack of coordination between the two cases.[24]

The defenses and counterclaims related to foreclosure matters are generally fact specific and complex causes of action. Chancery judges, however, are expected to bring contested foreclosure cases to conclusion within one year. This can be a very short time frame, particularly if the complaint is not served promptly, which many are not. This can result in a very short discovery scheduled. Moreover, many judges are skeptical that any homeowner might have a defense to a foreclosure, having heard countless homeowner entreaties related to hardship and inability to pay. Since these do not form a defense to a foreclosure action, if these are the defenses raised, there is no need to engage in a lengthy discovery period.

Aside from hardship, the focus in recent years has also been on the standing of the foreclosure plaintiff, and is not raised until after mediation and other loan modification efforts have been exhausted. Many judges bristle at defenses that simply state lenders are in general sloppy and 'bad,' focusing on standing and robo-signing issues without telling the court what particular harm occurred to the homeowner. In the authors' experience, this is not because the homeowner does not have a story of harm to tell, but rather because he or she, or his or her counsel, has focused merely on note and mortgage issues without explaining the rest. It is important to state facts related to the individual homeowner's harm in the defenses and counterclaims so the judge can read the story before the initial case management conference.

Asserting Defenses, Counterclaims and Third-Party Complaints Even If Loan Modification is Under Negotiation

Homeowners are well advised to assert their defenses and counterclaims on time, with specificity, and to serve discovery requests with their responses.[25] Anything that even hints of an attempt on the part of the homeowner to delay will not be greeted warmly. However, well-pled allegations and testimony of the homeowners concerning their defenses will stand out and gain the attention of the chancery judges. For example, Judge Peter Doyne in Bergen County recently issued an opinion on cross-motions for summary judgment in the matter of *U.S. National Bank Association v. Oscar Montesdeoca,* in which he noted:

> As chancery courts become more and more inundated with contested foreclosure matters, this case stands out from the others. Separate and apart from the polemics that 'banks are bad' or financial institutions are evil, or generic allegations of predatory lending, this case presents specified, detailed allegations of predatory lending which, if proven to be accurate, would compel a court of equity to consider the appropriate remedy.[26]

Judge Doyne denied summary judgment and, following a trial in the case, denied foreclosure relief to the plaintiff, granting judgment in favor of the homeowner reforming his mortgage. Judge Doyne rejected the lender's contention that because the homeowner knew the terms of the loan he was receiving as of the date of closing, the consequences of accepting the loan should fall solely on his shoulders. Rather, Judge Doyne found:

> it is apparent [the] defendant was offered a loan by [the] plaintiff which he could not conceivably afford. Defendant and his family exemplify the ideals which underlie the basic tenets of opportunity so valued in this country. Together, defendant and his family struggled to make payments on a loan which inevitably must have, and did, end in default....In this court's experience of handling foreclosure matters for approximately ten years, this is the first time someone has concretely demonstrated a case of predatory lending. The court is wary of tenuous assertions of fraudulent lending practices and generic refrains suggesting 'banks are evil.' Such is not the case here. The loan transaction from which this litigation arises is an exemplar of predatory lending.[27]

Origination claims such as those asserted by Mr. Montesdeoca are still available as defenses and counterclaims

even if the originator has transferred the obligation. As a general rule, the assignee of a mortgage is subject to any claims and defenses the borrower could have asserted against the original contracting party.[28] If the underlying note is not a negotiable instrument, this is the end of the analysis. The assignee of a mortgage is liable to the same extent as the assignor. If the underlying note is a negotiable instrument, the Uniform Commercial Code controls, and the general rule is the same: The transferee of the negotiable instrument takes the instrument subject to the defenses of the maker.[29]

The holder in due course doctrine is a narrowly limited exception to this general rule. A holder in due course is one who "took the instrument for value, in good faith...and without notice that any party has a claim or defense in recoupment described in subsection a. of 12A:3-305."[30] The burden is upon the alleged holder to establish all the elements of the holder in due course privilege, which are: 1) that the instrument is negotiable; 2) that he or she is in physical possession of the note endorsed to its order or in blank; 3) that he or she took it for value; 4) that he or she took it in good faith; and 5) that he or she took it without notice that it was overdue, had been dishonored, or was subject to any defenses.[31]

Often the securitized trusts that are seeking to foreclose were so closely connected to the originator that they can never be holders in due course. In *Unico v. Owen,* the New Jersey Supreme Court established the "close-connectedness" test as a method of assessing good faith, holding that a financer's purchase of a note does not meet the test of good faith negotiation where the connection between the seller and financer is "intimate."[32] The *Unico* Court held that:

> when it appears from the totality of the arrangements between a dealer and financer that the financer has had a substantial voice in setting standards for the underlying transaction, or has approved the standards established by the dealer, and has agreed to take all or a predetermined or substantial quantity of the negotiable paper which is backed by such standards, the financer should be considered a participant in the original transaction and therefore not entitled to holder in due course status.[33]

Servicing Misconduct May Also Be a Defense, Counterclaim or Third-Party Claim and Reduce or Eliminate Arrears or Give Rise to Equitable Reformation

As the foreclosure crisis has worn on and many homeowners have tried desperately to modify their loans, many have encountered servicing misconduct that may provide a defense to foreclosure.[34] For example, many people have received temporary loan modifications, made the required payments and been improperly denied permanent loan modifications. Most of these people simply want the benefit of the bargain and the deal they made. Others have been wrongly denied modifications when they plainly qualify under a program. Some have been encouraged to default under their mortgages in order to qualify for a loan modification, causing harm to their credit score, only to be denied a modification at a later date and to have the increased fees and costs make the cure out of reach.

The New Jersey Supreme Court recently recognized that servicing misconduct is actionable under the New Jersey Consumer Fraud Act.[35] Since the foreclosure plaintiff should be the holder of the note and the mortgagee, not the servicer of the loan, homeowners may want to join the current or prior servicer as a party in addition to seeking to hold the plaintiff responsible for the actions of its agent.

Reducing or Eliminating the Cure Amount and Reforming the Mortgage to Allow Homeowners to Resume Mortgage Payments

If the homeowner proves his or her defenses or counterclaims and the damages associated with them, the amount of the cure required to reinstate the mortgage may be greatly reduced or eliminated. In addition, some of the statutes giving rise to the defenses or counterclaims provide for an award of counsel fees to the homeowner. Additionally, foreclosure is an equitable remedy subject to the well-known maxim of equity that "he who comes into equity must come with clean hands."[36] Thus, the doctrine refuses equitable relief to a plaintiff whose own conduct bearing on the transaction causes the relief sought to become inequitable.[37]

Where lender and/or servicer misconduct warrants it, the chancery judge can grant equitable relief, such as mortgage reformation or equitable loan modification.[38] As a court of equity, the Chancery Division has the unique ability to craft equitable remedies that do justice to all parties. In so doing, the court may essentially impose a loan modification that is fair and provides homeowners with the "opportunity to pay their mortgages and keep their homes."[39] ⚖

Endnotes

1. The Fair Foreclosure Act, N.J.S.A. 2A: 50-54.
2. Scott T. Tross, *New Jersey Foreclosure Law & Practice*, 1-1, 6-1, 11-1 (2013).
3. R. 4:64-1.
4. N.J.S.A. 2A: 50-54; *U.S. Bank Nat'l Assn v. Guillaume,* 209 N.J. 449 (2012).
5. *Wells Fargo Bank v. Ford,* 418 N.J. Super. 592 (2011).
6. *Cho Hung Bank v. Kim,* 361 N.J. Super. 331 (App. Div. 2003); *Bank of New York v. Laks,* 422 N.J. Super. 201 (App. Div. 2011) *rev'd in part* by *U.S.*

Bank Nat'l Assn v. Guillaume, 209 N.J. 449 (2012).

7. Dec. 20, 2010, Notice to the Bar, Emergent Amendments to Rules 1:5-6, 4:64-1 and 4:64-2, and Supreme Court Administrative Order available at available at lsnj.org/Foreclosure122210.aspx; Legal Services of New Jersey Report and Recommendations to the New Jersey Supreme Court Concerning False Statements and Swearing in Foreclosure Proceedings, Nov. 4, 2010, available at lsnj.org/Foreclosure122210.aspx.
8. *Id. See also* April 4, 2012, Supreme Court Administrative Order and pleadings related thereto, available at judiciary.state.nj.us/superior/documents.htm.
9. R. 4:64-2.
10. "New Jersey faces an unprecedented increase in mortgage foreclosures [,]" and "[t]he high incidence of foreclosures has had a negative financial and social blight effect on many New Jersey communities, with social dislocation, declining housing values, neighborhood blight, homelessness, and a general decline in neighborhood morale and safety." *See* Administrative Office of the Courts, New Jersey Foreclosure Mediation (Oct. 2009), *available at* judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf; *U.S. Bank Nat. Ass'n v. Williams*, 415 N.J. Super. 358, 366 (App. Div. 2010).
11. R. 4:64-8.
12. Although the Court Rules and Fair Foreclosure Act require service on defendants in foreclosure matters at certain junctures of the case, regardless of whether they have responded to the complaint in any way—uncontesting answer, default, contesting answer that has been stricken. R. 4:64- 1. Unfortunately, these rules requiring service upon homeowners in uncontested matters are not commonly followed.
13. N.J.S.A. 2A: 50-54. Once a residence is the subject of a foreclosure action, a homeowner-mortgagor "shall have the right at any time, up to the entry of final judgment [of foreclosure]...to cure the default" by satisfying arrearages that accumulated on their mortgage debt and bringing their loan current. N.J.S.A. 2A:50–57(a).
14. N.J.S.A. 2A:50-53 *et seq*; N.J.S.A. 2A:50-59.
15. Following entry of a final judgment of foreclosure, a homeowner-mortgagor has 10 days to object to the confirmation of the sale, R. 4:65–5, and the right to redeem by paying the mortgage obligation in full. *Hardyston Nat'l Bank v. Tartamella,* 56 N.J. 508 (1970); *Carteret Sav. & Loan Ass'n., F.A. v. Davis,* 105 N.J. 344, 348–49 (1987).
16. *See, e.g., U.S. ex rel. Department of Agriculture v. Scurry*, 193 N.J. 492 (2008).
17. In connection with predatory lending origination claims, see for example, *Associates Home Equity Servs. v. Troup*, 343 N.J. Super. 254 (App. Div. 2001) (*quoting* Daniel S. Ehrenberg, If the Loan Don't Fit, Don't Take It: Applying the Suitability Doctrine to the Mortgage Industry to Eliminate Predatory Lending, 10 *J. Affordable Housing & Community Dev. L.* 117, 119-20 (Winter 2001)); *Nowosleska v. Steele*, 400 N.J. Super. 297 (App. Div. 2008); *O'Brien v. Cleveland,* 423 B.R. 477, 488 (B.R. D.N.J. 2010); New Jersey Home Ownership Security Act (HOSA), N.J.S.A 46:10B-22 (legislative recognition that lending without regard for ability to repay is an unconscionable commercial practice.); The Mortgage Mess: Unscrupulous Lenders, Unsuspecting Borrowers. Attorney General Blumenthal targets 'Appalling Practices' that 'Left Lives in tatters' available at abcnews.go.com/WN/story?id=3582673&page=1; Christopher L. Peterson, *Predatory Structured Finance*, Vol. 28, No. 5 *Cardozo Law Review* 2185 at 2187-2188 (2007) (citations omitted). In connection with the servicing or subsequent performance under the loan see, *Gonzalez v. Wilshire Credit Corp.*, 207 N.J. at 557, 576 and 586 (2011) ("A consumer who can prove (1) an unlawful practice, (2) an 'ascertainable loss' and (3) a causal relationship between the unlawful conduct and the ascertainable loss is entitled to legal and/or equitable relief, treble damages and reasonable attorney's fees....The Legislature already has made the policy decision that the greater good that flows from the remedies available under the CFA outweighs any negligible negative effect that it might have on commerce." Diane Thompson, Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications, 86 *Wash. L. Rev*. 755 (2011); Adam J. Levitin, Tara Twomey, Mortgage Servicing, 28 *Yale J. on Reg*. 1 (2011).
18. Rule 4:64-5 requires a party to obtain leave of court in order to join "non-germane" counterclaims and cross-claims with foreclosure matters.
19. *See, Associates Home Equity, Inc. v. Troup,* 343 N.J. Super. 254, 272 (App. Div. 2001) (*citing Resolution Trust Co. v. Berman Industries, Inc.,* 271 N.J. Super. 56, 62 (Law Div. 1993) and *Central Penn. National Bank v. Stonebridge Limited*, 185 N.J. Super. 289, 302 (Ch. Div. 1982)); *see also Sun NLF Limited Partnership v. Sasso*, 313 N.J. Super. 546 (App. Div. 1998) (counterclaims and defenses of fraud and breach of contract against previous mortgagee were germane when they would have been a valid defense to foreclosure).
20. *Id*.
21. 137 N.J. Super. 353 (App. Div. 1975),

cert. denied, 78 N.J. 340 (1978).

22. The germane requirement represents an exception to the entire controversy doctrine, R. 4:30A, which holds that all claims emanating from a transaction or related series of transactions must be joined in a single proceeding or they will be deemed forfeited. *Joan Ryno Inc. v. First National Bank of South Jersey*, 208 N.J. Super. 562 (App. Div. 1986); *In re Lewison Brothers,* 162 B.R. 974 (Bank. D.N.J. 1993) (where claims raised would have given the parties a defense to the foreclosure action they were germane to the foreclosure action and the entire controversy doctrine barred litigation in an action for damages in the Law Division).
23. 208 N.J. Super. 562 (App. Div. 1986).
24. 297 N.J. Super. 187 (App. Div. 1997).
25. The vast majority of both reported and unreported recent cases concerning foreclosure have arisen in cases in which the defendant did not submit a timely contesting answer. Most cases on appeal arise from the chancery judge's denial of a homeowner's motion to vacate a default judgment often years after it has been entered. This has by and large been unsuccessful and homeowners and their counsel are well advised to file an answer asserting the specific defenses and counterclaims timely. *Compare Wells Fargo Bank v. Ford,* 418 N.J. Super. 592 (2011) and *U.S. Nat'l Bank v. Montesdeoca*, BER-F-24093-12 (Ch. Div. Sept. 27, 2013) (unpublished) with *Deutsche Bank Nat'l Trust Co. v. Mitchell*, 422 N.J. Super. 214 (App. Div. 2011) and *Deutsche Bank Nat'l Trust Co. v. Russo*, 429 N.J. Super. 91 (App. Div. 2012). *But see U.S. ex rel. Department of Agriculture v. Scurry*, 193 N.J. 492 (2008).
26. *U.S. Nat'l Bank v. Montesdeoca,* BER-F-24093-12 (Ch. Div. Sept. 27, 2013) (unpublished opinion on cross motions for summary judgment).
27. *Id.* (Ch. Div. Dec. 4, 2013) (unpublished trial decision).
28. N.J.S.A. 46:9-9 provides:

    > All mortgages on real estate in the State and all covenants and stipulations therein contained, shall be assignable at law by writing, whether sealed or not, and any such assignment shall pass and convey the estate of the assignor in the mortgaged premises, and the assignee may sure thereon in his own name, but in any such action by the assignee, there shall be allowed all just set-offs and other defenses against the assignor that would have been allowed in any action brought by the assignor and existing before notice of such assignment.

29. N.J.S.A. 12:3-305; N.J.S.A. 12A:3-308(b).
30. N.J.S.A. 12A:3-302(a)(2).
31. N.J.S.A. 12A:3-302; *Wells Fargo Bank v. Ford,* 418 N.J. Super. 592 (2011). *See also, Bank of North Carolina, NA v. Rock Island Bank,* 630 F.2d 1243 (7th Cir. 1980); *Manufacturers & Traders Trust Co. v. Murphy,* 369 F. Supp. 11 (W.D. Pa. 1974), *aff'd,* 517 F.2d 1398 (3d Cir. 1975); *Northside Bank of Tampa v. Investors Acceptance Corp.* 278 F. Supp. 191 (W.D. Pa. 1968); *In re AppOnline.Com, Inc.*, 290 B.R. 1 (E.D. N.Y. Bankr. 2003). N.J.S.A. 12A:3-302. *See also, Bank of North Carolina, NA v. Rock Island Bank,* 630 F.2d 1243 (7th Cir. 1980); *Manufacturers & Traders Trust Co. v. Murphy*, 369 F. Supp. 11 (W.D. Pa. 1974), *aff'd,* 517 F.2d 1398 (3d Cir. 1975); *Northside Bank of Tampa v. Investors Acceptance Corp.* 278 F. Supp. 191 (W.D. Pa. 1968); *In re AppOnline.Com, Inc.,* 290 B.R. 1 (E.D. N.Y. Bankr. 2003).
32. *Unico v. Owen*, 50 N.J. 101 (1967).
33. *Unico*, 50 N.J. 101 at 122-123.
34. Empirical evidence demonstrates that servicers routinely deny homeowners loan modifications even when a loan modification is economically advantageous to the homeowner, the community and the loan's investors. *See, e.g.,* Adam J. Levitin and Tara Twomey, Mortgage Servicing, 28 *Yale J. on Reg.* 1 (2011); Thompson, *supra* note 17.
35. *Gonzalez v. Wilshire Credit Corporation*, 207 N.J. 557 (2011).
36. *See, e.g., Associated East Mortgage Co. v. Young*, 163 N.J. Super. 315, 330 (Ch. Div. 1978).
37. *Heritage Bank v. Ruh,* 191 N.J. Super. 53 (Ch. Div. 1983).
38. *See, One West Bank, FSB v. Capo*, BER-F-5952-09 (Ch. Div. July 20, 2010); *Avelo Mortgage, LLC v. Jeffrey*, 2010 WL 2795050 (App. Div. July 15, 2010).
39. The Fair Foreclosure Act, N.J.S.A. 2A: 50-54.

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