NEW JERSEY SUPREME COURT OVERRULES APPELLATE DIVISION REQUIRING DISMISSAL OF FORECLOSURE ACTIONS WITH TECHNICALLY DEFICIENT NOIs.

New Jersey's Supreme Court has examined its statutes regarding notices of intent to foreclose ("NOIs"), and has overruled the Appellate Division's 2011 decision holding that a failure to technically comply with the relevant NOI statutes would mandate the dismissal of any pending foreclosure action.

The February 27, 2012 decision by New Jersey's Supreme Court in U.S. Bank National Association as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3 v. Guillaume, 2012 WL 603307 (2012) provides trial courts in New Jersey with two additional remedies beyond dismissal without prejudice in instances which did not precisely adhere to the statutory requirements. After Guillaume, when faced with a technically defective NOI, a trial court may now choose to (1) order the service of a corrected NOI, (2) impose another remedy appropriate to the circumstances of the case, or (3) dismiss the foreclosure action, without prejudice.

The New Jersey NOI Statutes and the Overruled 2011 Appellate Division Decision

N.J.S.A. 2A:50-56 requires a lender to send a written NOI at least 30 days prior to acceleration of the maturity of any residential mortgage obligation or the commencement of an action to foreclose a residential mortgage. N.J.S.A. 2A:50-56(a). The NOI must clearly state the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default. N.J.S.A. 2A:50-56(c)(11).

For practical purposes, many NOIs issued prior to the 2011 Appellate Division decision in Bank of New York v. Laks, 422 N.J. Super. 201 (App. Div. 2011) did not include contact information for the lender which would ultimately be foreclosing on the borrower in default. Oftentimes, and in Laks, the NOI would include contact information for the loan servicer which was servicing the loan, rather than the name and address of the lender/plaintiff.

The Laks court held that dismissal without prejudice was the only appropriate remedy in instances where the NOI did not strictly adhere to N.J.S.A. 2A:50-56(c)(11). As a result of the practice of not including the future plaintiff's contact information in the NOI, many NOIs were technically deficient and trial courts were left with no choice but to dismiss foreclosure actions that had been commenced and were pending. This is no longer the case.

Analysis of *Guillaume* and Additional Remedies Now Available to Foreclosing Plaintiffs

In Guillaume, the New Jersey Supreme Court overruled the Laks holding to the extent that other remedies are now available to the trial courts in instances where the NOI violates N.J.S.A. 2A:50-56(c)(11). In Guillaume, the first NOI sent out in May 2008 by the plaintiff listed the name of the loan servicer rather than the lender, and the Supreme Court found that this did not substantially comply with N.J.S.A. 2A:50-56(c)(11. After an entry of default (November 2008) and final judgment (May 2009) had been entered against the Guillaumes, the trial court attempted to permit the plaintiff to cure the defects in the May 2008 NOI, and instructed the plaintiff to issue a NOI in November 2009 which complied with N.J.S.A. 2A:50-56(c)(11). Plaintiff's November 8, 2009 NOI set forth the name of the lender, but not the address. The trial court then ordered that an additional NOI be provided to the Guillaumes, which was sent on July 15, 2010. This NOI also identified the name of the lender, but not the address. However,

this NOI also set forth the relationship between the lender and the servicer, identified the payment necessary to cure the default, and instructed the borrowers to contact the loan servicer to discuss any dispute with respect to the amount due. The Supreme Court found that each of the NOIs failed to strictly comply with N.J.S.A. 2A:50-56(c)(11), but held that dismissal of the foreclosure action without prejudice is not the only available remedy. Instead, trial courts now have the option of (1) ordering the service of a corrected NOI, (2) imposing another remedy appropriate to the circumstances of the case, or (3) dismissing the foreclosure action without prejudice.

Impact of *Guillaume* on Pending Foreclosures

The Guillaume holding is insightful in that it states that NOIs which identify a loan servicer rather than a lender are technically in violation of N.J.S.A. 2A:50-56(c)(11). However, in those instances where NOIs have previously been sent out identifying the loan servicer rather than the lender, dismissal of the foreclosure action without prejudice is no longer the only available remedy. Instead, corrective NOIs, which properly identify the name and address of the lender, contact information for the servicer, the amount due, and instructions to contact the servicer regarding potential disputes over the amount due should be sent out while the foreclosure action is still pending. These corrective NOIs could be presented to judges in the trial courts, and be used to persuade those judges to allow the foreclosure action to continue rather than being dismissed without prejudice.