

**Community Loan Fund of N.J., Inc. v Riedel**

2022 NY Slip Op 34956(U)

September 30, 2022

Supreme Court, Westchester County

Docket Number: Index No. 68882/2017

Judge: Linda S. Jamieson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the Statutory NYSCEF for appeals of 2022 of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**

-----X  
COMMUNITY LOAN FUND OF NEW JERSEY, INC.,

Index No.68882/2017

Plaintiff,

DECISION AND ORDER

-against-

STEVEN P. RIEDEL; CATHERINE L. RIEDEL;  
JPMORGAN CHASE BANK N.A., WASHINGTON  
MUTUAL BANK,

Defendants.

-----X

The following paper numbered 1 was read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1

Plaintiff brings its motion seeking clarification on whether the newly amended CPLR § 5004, which lowers the interest rate from 9% to 2% for all actions arising out of "consumer debt" applies to foreclosure matters. This appears to be an issue of first impression.

The statute in question provides, in relevant part, that interest shall accrue at nine per cent, except that "the annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant shall be two per centum per annum (i) on a judgment or accrued claim for

judgments entered on or after the effective date of . . . this section, and (ii) for interest upon a judgment pursuant to section five thousand three of this article from the date of the entry of judgment on any part of a judgment entered before the effective date of . . . this section that is unpaid as of such effective date." The amendment defines "consumer debt" as "any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer credit transaction. . . ."

A review of the legislative history of this statute shows that it refers only to debt collection actions, debt collectors, bank levies and wage garnishments. In none of the legislative history does it refer to foreclosure actions. This is because foreclosures are not debt collection actions but are instead actions to enforce mortgage liens. Indeed, the Second Department has explained that a "foreclosure action is properly characterized as an action to enforce a security interest in property, rather than to collect money directly from a debtor."

*Citibank, N.A. v. Yanling Wu*, 199 A.D.3d 48, 52, 154 N.Y.S.3d 327, 330 (2d Dept. 2021). By opting to proceed with the foreclosure action, a plaintiff has chosen not to collect on the note. *Aurora Loan Servs., LLC v. Lopa*, 88 A.D.3d 929, 930, 932 N.Y.S.2d 496, 497 (2d Dept. 2011) ("The holder of a note and mortgage may proceed at law to recover on the note or proceed in equity to foreclose on the mortgage, but must only elect one of these alternate remedies.").

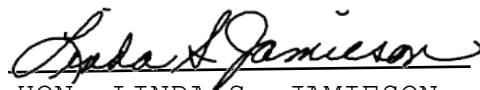
As the Court of Appeals has stated, a foreclosure action is one in equity, not at law. *Notey v. Darien Const. Corp.*, 41 N.Y.2d 1055 (1977). See also *Jamaica Sav. Bank v. M. S. Investing Co.*, 274 N.Y. 215, 219 (1937) ("an action to foreclose a mortgage is an action in equity. As incidental to the main relief sought, the court ever since 1830 may award judgment for the deficiency after sale. This relief is purely incidental, and a complaint asking such relief states only one cause of action.").

The Court thus finds that a foreclosure action is not an "action arising out of a consumer debt." The interest rate

remains at nine per cent.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
September 30, 2022



HON. LINDA S. JAMIESON  
Justice of the Supreme Court

To: Knuckles, Komosinski et al.  
Attorneys for Plaintiff  
565 Taxter Road, #590  
Elmsford, NY 10523

Peter Spino, Jr., Esq.  
Attorney for Defendant Steven Riedel  
7-11 South Broadway, Suite 308  
White Plains, NY 10601

Francis J. Malara, Esq.  
Referee  
245 Main Street  
White Plains, NY 10601