

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ESSEX COUNTY
DOCKET NO.: ESX-L-8231-13
A.D. NO.: A-000239-14T4

CAROLYN BAILEY,)	
)	TRANSCRIPT
Plaintiff,)	OF
)	MOTION FOR
vs.)	RECONSIDERATION
)	
ZUCKER, GOLDBERG & ACKERMAN,)	
LLC, ET AL)	
)	
Defendants.)	

Place: Essex County Courthouse
470 Dr. Martin Luther
King, Jr., Blvd.
Newark, NJ 07102

Date: July 25, 2014

BEFORE:

HON. JAMES S. ROTHSCHILD, JR., J.S.C.

TRANSCRIPT ORDERED BY:

CAROLYN BAILEY
[REDACTED]
[REDACTED]

APPEARANCES:

CAROLYN BAILEY, PRO SE

STEVEN A. KROLL, ESQ. (Connell Foley, LLP)
Attorney for the Defendants

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I N D E X

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ARGUMENTS

By: Ms. Bailey

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By: Mr. Kroll

8

THE COURT

Decision

9

1 THE COURT: -- Goldberg & Ackerman.

2 MR. KROLL: Good morning, Judge.

3 THE COURT: Okay. Good morning. Appearance
4 of counsel.

5 COURT OFFICER: Ma'am, you have to step over
6 on that side, please.

7 MS. BAILEY: You would be the plaintiff, so
8 you would be on the left.

9 COURT OFFICER: Sit right there.

10 THE COURT: Okay. Sir, what is your name?

11 MR. KROLL: Good morning. Steven Kroll from
12 Connell Foley, LLP on behalf of the defendants, Zucker,
13 Goldberg, & Ackerman, and Michael S. Ackerman.

14 THE COURT: Ma'am, are you a lawyer?

15 MS. BAILEY: No, sir.

16 THE COURT: Your name is?

17 MS. BAILEY: Carolyn Bailey.

18 THE COURT: Okay.

19 C A R O L Y N B A I L E Y, PLAINTIFF, SWORN

20 THE COURT: Okay. What I wrote originally,
21 or what I decided originally was that if you want to
22 sue a lawyer you have to -- you need an affidavit of
23 merit, right?

24 MS. BAILEY: That was your order, sir.

25 THE COURT: And you're saying that they're

1 not --

2 MS. BAILEY: That they were not functioning
3 as a lawyer in this particular instance, they were
4 functioning as debt collectors. Their letters and
5 other correspondence indicated as such, that they were
6 functioning as debt collectors.

7 THE COURT: But they -- they filed legal
8 papers, didn't they?

9 MS. BAILEY: They did, but they're still as
10 their role as a debt collector.

11 THE COURT: You wrote here, "Defendant,
12 Zucker, Goldberg, seems on the verge of collapse."

13 MS. BAILEY: Yes, sir.

14 THE COURT: Should this happen the Court's
15 adverse rulings unto plaintiff will receive close and
16 unwelcome, excluding the general public governmental
17 elected authorities and (indiscernible). Harriet B.
18 Marcofolsa (phonetic)." So, wha -- what is all this
19 about?

20 MS. BAILEY: Okay. As a result of legal
21 research and so on, that is my determination, or at
22 least that is a very good possibility.

23 THE COURT: I didn't realize that Zucker,
24 Goldberg is on the verge of collapse.


25 MS. BAILEY: I won't tell, Your Honor.

1 MR. KROLL: Your Honor, as far as I know
2 they're -- they're act -- they have an active practice
3 and they're not on the verge of collapse, just -- just
4 so the record is clear.

5 THE COURT: I'm also, as a secondary
6 consideration, my primary one is -- is the affidavit of
7 merit. The secondary consideration, I think I have
8 noted you have been living rent free since 2006, right?

9 MS. BAILEY: I don't consider it rent free.
10 It's -- it's living under stress without making
11 payments for that length of time, but not hardly free
12 --

13 THE COURT: Well --

14 MS. BAILEY: -- in the general sense of the
15 case. And, in fact, as I pointed out in our last
16 hearing, it would seem very strange that a organization
17 as large as Wells Fargo, if in fact they had legal 
18 rights to property, would take years in order to make
19 the determination.

20 So, that I'm asking the -- the Court to
21 consider, why has it taken them so long if in fact they
22 have the legal rights they claim to have.

23 And my --

24 THE COURT: Well --

25 MS. BAILEY: -- position - -

1 THE COURT: -- I'm trying to understand this.
2 The foreclosure began in 2006.

3 MS. BAILEY: Yes, sir.

4 THE COURT: So, have you -- when -- when did
5 you stop making payments to the bank.

6 MS. BAILEY: It was in -- the last payment
7 that I sent them, which they did return, was in 2006.
8 They rejected a payment that I sent them. So, it
9 wasn't that I stopped making payments all together,
10 they returned the payment I sent them.

11 THE COURT: So, you -- you haven't paid a
12 bank for 8 years?

13 MS. BAILEY: I haven't paid the bank for 8
14 years, but I also, at this point don't even know who I
15 would make that payment to.

16 Wells Fargo does not have legal right to my
17 property, okay. And as I pointed out earlier, if they
18 did it wouldn't take them 8 years to come and get the
19 property.

20 THE COURT: I'm not saying that I'm happy
21 about what Wells Fargo did. I think the loan made
22 little or no sense. But, I'm trying to understand your
23 damages.

24 MR. KROLL: I --

25 THE COURT: 8 years of not paying the bank.

1 Do you pay the real estate taxes?

2 MS. BAILEY: That's a part of the escrow.

3 THE COURT: So, you haven't paid them either?

4 MS. BAILEY: No.

5 THE COURT: What were the real estate taxes
6 on this property?

7 MS. BAILEY: Approximately 4,000 a year.
8 Somewhere between 3,500 and 4,000, it's varied.

9 THE COURT: So, 4,000 (indiscernible) 32.
10 What were the mortgage payments?

11 MS. BAILEY: They were originally 1,518, they
12 upped them to 18 something.

13 THE COURT: 18,000 or 1,800 a month?

14 MS. BAILEY: 1,800.

15 THE COURT: 1,800 a month, a little over
16 20,000 right? Am I correct?

17 MR. KROLL: Yeah.

18 THE COURT: So, it sounds like you have not
19 paid 24,000 a year for 8 years. It's almost \$200,000.

20 MS. BAILEY: It's not quite that much, but
21 it's -- it's a large sum.

22 But the point of the matter is damages are
23 not just monetary amounts. Damages also take into
24 account other factors. And those are the kinds of
25 things that a jury would have the opportunity to

1 consider if this went to trial. And that's a part of
2 my position, that the amended complaint will in fact
3 highlight things that the original complaint did not,
4 although my position is the original complaint is
5 sufficient on its face to be able to move forward.

6 The issue of the affidavit of merit I spoke
7 on earlier, and I don't believe that it's valid in this
8 particular instance. There are no court cases that I'm
9 aware of. If, you know, the defendant's counsel knows
10 of some I will gladly look at them. I have found no
11 cases that say debt collectors require an affidavit of
12 merit.

13 MR. KROLL: Your -- Your Honor, could I be
14 heard?

15 THE COURT: Yes.

16 MR. KROLL: Your Honor, most importantly,
17 plaintiff hasn't filed or served a timely affidavit of
18 merit. Regardless of how she wants to characterize
19 them, they're a law firm. They were prosecuting a
20 foreclosure action.

21 She talks about the fact that they were
22 filing complaints and other things. They were -- this
23 was all legal services covered under an affidavit of
24 merit.


25 They're not debt collectors, they're

1 attorneys, and the affidavit of merit statute applies.

2 All of these arguments were raised in her
3 opposition for a motion, and the Court has already
4 rejected these arguments. So, she's simply rearguing
5 things that the Court has already rejected.

6 The other thing I would like to point out is
7 in our original motion we pointed out that all of the
8 actions that Ms. Bailey alleges that Zucker, Goldberg
9 engaged in all arise out of legal service they provide.
10 So, the New Jersey litigation privilege bars all of her
11 claims.

12 In addition to that, Your Honor is correct
13 that she hasn't suffered any actual damages because of
14 the fact that she hasn't paid her mortgage, despite the
15 fact that she doesn't dispute that she had loan
16 obligations that she hasn't paid.

17 And -- and, lastly, Your Honor correctly 
18 pointed out that they did nothing wrong. If she has
19 claims against the bank or anybody else, that's fine,
20 but there's no claims against the law firm.

21 THE COURT: All right. I wouldn't say
22 they're not debt collectors, they're lawyers. I think
23 I would more accurately say they're debt collectors and
24 lawyers. But as lawyers performing in litigation
25 function I'm 100 percent certain the loan would require

1 an affidavit of merit to sue them.

2 So, I'm going to deny the motion for
3 reconsideration. Thank you.

4 MS. BAILEY: Thank you, Your Honor. I also
5 give notice of my intent to appeal.

6 THE COURT: Say what?

7 MS. BAILEY: I give notice of my intent to
8 appeal.

9 THE COURT: Absolutely.

10 MS. BAILEY: Okay.

11 THE COURT: It's probably a good idea. I
12 don't think it will be reversed, but it's always
13 possible. And I think it's your right to do so, so I
14 wish you luck.

15 MS. BAILEY: Thank you very much, Your Honor.

16 COURT CLERK: The law clerk will bring you
17 copies of the order, you can have a seat.

18 MR. KROLL: Thank you. Thank you, Judge.

19 THE COURT: Thank you.

20 (Proceeding concluded)

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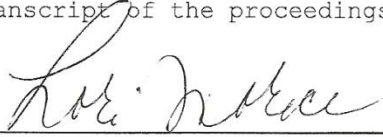
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Date: September 23, 2014