

Superior Court of New Jersey
Appellate Division

<p>CAROLYN BAILEY Plaintiff-Appellant</p> <p style="text-align:center">vs.</p> <p>ZUCKER, GOLDBERG & ACKERMAN, LLC; (A New Jersey Law Firm) MICHAEL S. ACKERMAN, ESQ. In His Role As Managing Partner for Zucker, Goldberg & Ackerman, LLC, And In His Individual Capacity JOHN DOES 1-100 Defendants-Respondents</p>	<p style="text-align:center">Civil Action</p> <p style="text-align:center">Docket No. A-000239-14</p> <p style="text-align:center">On appeal from: Order of the Law Division, Essex County Docket No. ESX-L-8231-13</p> <p style="text-align:center">Sat below: Hon. James S. Rothschild, Jr., J.S.C.</p>
---	---

BRIEF
OF PLAINTIFF-APPELLANT, CAROLYN BAILEY

Carolyn Bailey
Plaintiff-Appellant, *on the brief*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
TABLE OF CONTENTS TO APPENDIX	iii
INDEX TO TRANSCRIPTS	viii
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	3
LEGAL ARGUMENTS	
POINT 1: THE PREDISPOSITON AND MISCONDUCT OF THE TRIAL JUDGE IS A VIOLATION OF DUE PROCESS AND BASIS FOR REMAND AND FOR A NEW TRIAL	4
POINT 2: THE LOWER COURT FAILED TO PROPERLY ADDRESS DAMAGES TO GENERAL PUBLIC AND OTHER STAKEHOLDERS	6
POINT 3: THE LOWER COURT FAILED TO ESTABLISH AND CONSIDER THE IMPACT OR PROPORTION/DEGREE OF DEFENDANTS'-RESPONDENTS' ROLE AS A DEBT COLLECTOR	7
POINT 4: THE LOWER COURT FAILED TO ADDRESS DEFENDANTS' - RESPONDENTS' AND DEFENDANTS'- RESPONDENTS' ATTORNEYS' DECEPTION TO THE COURT	8
CONCLUSION	9

TABLE OF AUTHORITIES

Cases

John Hoffman v. Credit Suisse, Docket No. MER-C-_____, 2013 New Jersey Superior Court, Mercer County (Chancery Division) 6

In re Gordon A. Washington (Gordon A. Washington v. Specialized Loan Servicing, LLC, and The Bank of New York Mellon, Case No. 14-14573-TBA, Adv. Pro. No. 14-01319-TBA; US Bankruptcy Court New Jersey District; Decision November 5, 2014) 9

Elizabeth Perry v. Zucker Goldberg & Ackerman, LLC et al Case 2:13-cv-07701-WHW-CLW, US District Court (New Jersey); Filed 12/19/13 Settled May 2014

5

Statutes

N.J.S.A. 2A:53A-26 Affidavit of Merit

7

Rules

R. 2:10-2. Notice of Trial Errors

4

R. 2:10-5. Original Jurisdiction

3

R. 2:15. Advisory Committee On Judicial Conduct

3

Other Authorities/References

New Jersey Courts Disciplinary Summaries, Years 1984-2012

5

Disciplinary Request to New Jersey Supreme Court regarding Judge James S. Rothschild, Jr., dated October 1, 2014 (posted on HurtingHomeOwners.com [web site] and Twitter – HurtinHomeOwner)

4,5

PLAINTIFF-APPELLANT APPENDIX – VOLUMES 1 AND 2

DESCRIPTION OF DOCUMENTS

PAGE #

1	<p>Plaintiff-Appellant <u>Complaint</u> and Jury Demand (October 21, 2014)</p> <p>Exhibit A - Judge Kenneth Levy October 6, 2009 <u>Order</u> denying Wells Fargo Bank’s Motion for Final Judgment 023a-026a</p> <p>Exhibit B – October 22, 2009 Essex County Court Clerk recording of Wells Fargo Bank’s October 19, 2009 <u>Assignment</u> of Plaintiff-Appellant’s property to the US Bank RMBS, executed by Defendants-Respondents Michael Ackerman, Esq. 027a-029a</p> <p>Exhibit C – Copy \$500 April 19, 2013 Foreclosure Settlement check (Chump Change Check) 030a-031a</p> <p>Exhibit D – May 29, 2007 Essex County Court Clerk recording of Columbia Home Loan <u>Assignment</u> of Plaintiff- Appellant’s property to Wells Fargo Bank; executed September 26, 2005 by Marvin Weidner, Wells Attorney in Fact for Columbia Home Loan, but notarized on May 1, 2007 032a-035a</p>	001a-035a
2	Defendants-Respondents Answer	036a-046a
3	Plaintiff-Appellant Reply to Defendants-Respondents Answer, with Affirmative Defenses	047a-050a
4	Plaintiff-Appellant Notice of Appeal	051a-052a
5	Plaintiff-Appellant Appellate CIS and Rider	053a-056a
6	Plaintiff-Appellant Court Transcript Request	057a
7	Judge James S. Rothschild, Jr. June 20, 2014 <u>Order</u> granting Defendants-Respondents Motion to Dismiss pursuant to R. 4:6-2(e)	058a-059a
8	Judge James S. Rothschild, Jr. June 20, 2014 <u>Order</u> denying as moot Defendants-Respondents Motion to Dismiss for Plaintiff-Appellant’s failure to provide discovery	060a-061a

	PLAINTIFF-APPELLANT APPENDIX – VOLUME 1 OTHER PARTS OF RECORD DESCRIPTION OF DOCUMENTS	PAGE #
9	Judge James S. Rothschild, Jr. July 25, 2014 <u>Order</u> denying Plaintiff-Appellant Motion To Reconsider	062a
10	Certification of Transcript Completion and Delivery	063a
11	Plaintiff-Appellant CIS (Law Division)	064a
12	Track Assignment Notice	065a
13	Plaintiff-Appellant Civil Action <u>Summons</u> to Defendants-Respondents	066a
14	Plaintiff-Appellant Proof of Service (of Summons)	067a-069a
15	Defendants-Respondents CIS (Law Division)	070a
16	<p>Defendants-Respondents May 22, 2014 Notice of Motion to Dismiss pursuant to R. 4:6-2(E)</p> <p>Memorandum of Law in Support 076a-104a</p> <p>Exhibit A - Includes parts of record already reproduced 105a</p> <p>Exhibit B - Includes parts of record already reproduced 108a</p> <p>Exhibit C - Defendants-Respondents December 18, 2013 letter request that Plaintiff-Appellant dismiss her <u>Complaint</u> 109a-115a</p> <p>Exhibit D - Plaintiff-Appellant January 10, 2014 letter response to Defendants-Respondents request for dismissal; statement of damages and settlement terms 116a-118a</p> <p>Exhibit E – June 27, 2006 Wells Fargo Bank <u>Complaint</u> to Plaintiff-Appellant (Essex County Chancery Docket # F-11202-06) 119a-126a</p>	071a-141a

	PLAINTIFF-APPELLANT APPENDIX – VOLUME 1	PAGE #
	OTHER PARTS OF RECORD	
	DESCRIPTION OF DOCUMENTS	
	Exhibit F – Public Access Record of Wells Fargo’s litigation against Plaintiff-Appellant	127a-128a
	Exhibit G – Copy of <u>Lawrence v. Schneck</u>	129a-132a
	Exhibit H – Copy of <u>Nuveen Municipal Trust v Withumsmith</u>	133a-138a
	Form of Order	139a-140a
	Certification of Service	141a
	PLAINTIFF-APPELLANT APPENDIX – VOLUME 2	
17	Defendants-Respondents May 22, 2014 Notice of Motion to Dismiss for Plaintiff-Appellant failure to provide discovery	142a-182a
	Exhibit A - Includes parts of record already reproduced	150a
	Exhibit B - Defendants-Respondents February 14, 2014 discovery requests	152a-174a
	Exhibit C - Plaintiff-Appellant March 11, 2014 letter regarding the discovery requests	175a-176a
	Exhibit D - Defendants-Respondents March 11, 2014 reply to Plaintiff-Appellant refusal to provide discovery	177a-182a
18	Plaintiff-Appellant Certification in Opposition to Defendants-Respondents Motions to Dismiss	183a-202a
	Exhibit A – DEEP6FRAUD Diagram	191a-192a
	Exhibit B - Plaintiff-Appellant CIS (Law Division)	193a-194a

	<p style="text-align: center;">PLAINTIFF-APPELLANT APPENDIX – VOLUME 2</p> <p style="text-align: center;">OTHER PARTS OF RECORD</p> <p style="text-align: center;">DESCRIPTION OF DOCUMENTS</p>	PAGE #
	<p>Exhibit C – October 22, 2009 Essex County Court Clerk recording of Wells Fargo Bank’s October 19, 2009 <u>Assignment</u> of Plaintiff-Appellant’s property to the US Bank RMBS, executed by Defendants-Respondents Michael Ackerman, Esq. 195a-197a</p> <p>Exhibit D - Public Access Record of Wells Fargo’s litigation against Plaintiff-Appellant 198a-199a</p> <p>Exhibit E – October 9, 2012 Essex County Court Clerk recording of Wells Fargo Bank Corrective Assignment to US Bank dated September 14, 2012, executed by Sarah Bryan, VP) 200a-202a</p>	
19	Defendants-Respondents June 13, 2014 Letter Brief in support of Motion to Dismiss pursuant to R. 4:23-5(a)(1)	203a-205a
20	<p>Defendants-Respondents June 13, 2014 Letter Brief in support of Motion to Dismiss pursuant to R. 4:6-2(e)</p> <p>Supplemental Certification in support of Motion 211a-212a</p> <p>Exhibit A –October 27, 2006 Order to strike Plaintiff-Appellant Answer in Wells Fargo case 213a-215a</p> <p>Exhibit B –May 10, 2007 Order granting Plaintiff-Appellant Motion to Appeal Wells Fargo case 216a-217a</p> <p>Exhibit C – July 19, 2007 Order denying Plaintiff-Appellant Motion to Reconsider 218a-219a</p> <p>Exhibit D – January 18, 2008 Order denying Plaintiff-Appellant Motion to New Jersey Supreme Court 220a-221a</p> <p>Exhibit E – August 6, 2008 USDC-NJ Order remanding Plaintiff-Appellant Wells Fargo case to New Jersey Superior Court 222a-224a</p>	206a-243a

	PLAINTIFF-APPELLANT APPENDIX – VOLUME 2 OTHER PARTS OF RECORD DESCRIPTION OF DOCUMENTS	PAGE #
	Exhibit F – August 25, 2008 USDC-NJ Order denying Motion to Reconsider Order to Remand 225a-229a Exhibit G – January 29, 2009 Order denying Plaintiff-Appellant Appeal to Third circuit US Court of Appeals 230a-234a Exhibit H – March 9, 2009 Denial of Petition for Rehearing 235a-236a Exhibit I – Copy of <u>Whittingham v. Mortgage Elec Regis</u> 237a-243a	
21	Plaintiff-Appellant Second Certification in Opposition to Defendants-Respondents Motions to Dismiss	244a-249a
22	Defendants-Respondents June 19, 2014 letter reply to Plaintiff-Appellant Second Certification	250a-251a
23	Plaintiff-Appellant July 9, 2014 Notice of Motion to Reconsider	252a-253a
24	Plaintiff-Appellant Certification in support of Motion to Reconsider	254a-257a
25	Plaintiff-Appellant Letter Brief	258a
26	Defendants-Respondents July 16, 2014 Letter brief in Opposition to Plaintiff-Appellant Motion to Reconsider	259a-264a
27	Plaintiff-Appellant Certification in Reply to Defendants-Respondents Opposition to Motion to Reconsider Exhibit A – Public Access Record of Wells Fargo’s litigation against Plaintiff-Appellant 269a-270a	265a-275a

	PLAINTIFF-APPELLANT APPENDIX – VOLUME 2 OTHER PARTS OF RECORD DESCRIPTION OF DOCUMENTS	PAGE #
	Exhibit B – October 22, 2009 Essex County Court Clerk recording of Wells Fargo Bank’s October 19, 2009 <u>Assignment</u> of Plaintiff-Appellant’s property to the US Bank RMBS, executed by Defendants-Respondents Michael Ackerman, Esq.	271a-273a
	Exhibit C – Plaintiff-Appellant Sketch and summation of Zucker Goldberg RICO case	274a-275a

INDEX TO TRANSCRIPTS

Transcript Designation	Description
1T	Hearing on Motions to Dismiss – June 20, 2014
2T	Hearing on Motion to Reconsider – July 25, 2014

PRELIMINARY STATEMENT

An already noteworthy RICO case (Bailey v. Zucker Goldberg), morphed into one that could go down in the history books. Did The Honorable James S. Rothschild, Jr. actually delete or cause the deletion of a personally incriminating 20 seconds in the July 25, 2014 court recording of the Motion to Reconsider ???

(The RICO case related to Defendants'-Respondents' representation or misrepresentation on behalf of Wells Fargo Bank, US Bank, et al.)

Let the record (or missing record), speak for itself !

Should the New Jersey Appellate Court judges conclude that such a bizarre and illegal act likely occurred, then their deliberations regarding the case becomes a slam dunk: remand the case for a fresh start before a different trial judge.

Such an unheard of outrageous act is the ultimate violation of due process. In the event the Appellate Court somehow manages to walk across that mine field, there are enough other errors to form a basis for remand.

PROCEDURAL HISTORY

DOCUMENT/PROCEDURE	FILING DATE	APPENDIX PAGE(S)
Plaintiff-Appellant filed Complaint	October 21, 2013	001a-035a
Sheriff served Summons and Complaint on Defendants-Respondents	November 12, 2013	066a-069a
Defendants-Respondents filed an Answer and Affirmative Defenses	December 17, 2013	036a-046a
Plaintiff-Appellant filed Reply to Answer and Response to Affirmative Defenses	December 23, 2013	047a-050a
Defendants-Respondents filed two Motions To Dismiss	May 22, 2014	071a-141a 142a-182a
Plaintiff-Appellant filed Certification in Opposition	May 27, 2014	183a-202a
Defendants-Respondents filed Reply to Certification	June 13, 2014	203a-205a 206a-243a
Plaintiff-Appellant filed 2 nd Certification in Opposition	June 17, 2014	244a-249a
Defendants-Respondents filed a letter with Court re 2 nd Certification in Opposition	June 19, 2014	250a-251a
Court Order granted Motion To Dismiss pursuant to R 4:6-2(e), and denied as moot Motion to Dismiss for failure to provide discovery (following oral arguments)	June 20, 2014	058a-059a 060a-061a
Plaintiff-Appellant filed Notice of Motion to Reconsider and letter brief	July 9, 2014	252a-258a
Defendants-Respondents filed a letter brief in Opposition to Motion to Reconsider	July 16, 2014	259a-264a
Plaintiff-Appellant filed Certification in Reply to Opposition	July 21, 2014	265a-275a
Court Order denied Motion To Reconsider (following oral arguments)	July 25, 2014	062a

STATEMENT OF FACTS

Plaintiff-Appellant brought the lower court case in her individual capacity and in her role as a Private Attorney General on behalf of the general and investing public, and the Clerks of the Courts of New Jersey. Defendants-Respondents, Zucker Goldberg, is New Jersey's premier foreclosure mill establishment. As such, they engaged in a series of RICO acts which injured Plaintiff-Appellant, the general and investing public, and the Clerks of the Courts of New Jersey. Specifically, they caused fraudulent filings, presented fraudulent filings as if they were valid, and in numerous other ways misled Plaintiff-Appellant, the general and investing public, and the Clerks of the Courts of New Jersey. But for Judge Rothschild's unshakeable predisposition towards Defendants-Respondents, this case should have proceeded to trial. The decision on Defendants-Respondents Motions to Dismiss, at a minimum, should have been deferred until the completion of the discovery period.

STANDARD OF REVIEW

The suspect misconduct of Judge Rothschild regarding the missing 20 seconds of the court recording, is as plain and harmful an error as one can imagine. This is a matter over which the Appellate Division could choose to exercise original jurisdiction under R. 2:10-5. In the alternative, the Appellate Court could refer the case for review in accordance with R. 2:15. In addition, under R. 2:10-2 the Appellate Court can find that an unjust result occurred by Judge Rothschild dismissing the case prior to the completion of discovery, and by not permitting Plaintiff-Appellant to file an Amended Complaint.

LEGAL ARGUMENTS

POINT 1: THE PREDISPOSITION AND MISCONDUCT OF THE TRIAL JUDGE IS A VIOLATION OF DUE PROCESS AND BASIS FOR REMAND AND FOR A NEW TRIAL.

[Sub-heading: Willful Ignorance: Please Don't Shatter My Mirage !]

Below is an excerpt for Plaintiff's-Appellant's disciplinary complaint to the New Jersey Supreme Court regarding Judge Rothschild:

During the June 20, 2014 hearing on Defendants' -[Respondents'] Motions to Dismiss, Judge Rothschild declared:

"I don't think it was the fault of the Zucker firm. Let me be clear. I don't think they did anything wrong." (Transcript page # 17, lines 12-14) [1T]

I found Judge Rothschild's declaration very unsettling. I made a mental note of his predisposition.

I was completely blown away when at the beginning of the July 25, 2014 hearing on my Motion to Reconsider Judge Rothschild reiterated the same sentiment regarding Zucker Goldberg's "innocence", almost verbatim, with slightly more vigor. I was stunned. Thus, when I received my copy of the transcripts, the first item I sought was Judge Rothschild's July 25, 2014 profession of abiding faith towards Zucker Goldberg. I searched, and searched, and then searched some more. Since that entire transcript is only 10 pages long, my perusal did not consume much time. At that point I was in disbelief. How could I have recalled something so clearly that was now nowhere to be found ??? I calmed down and decided to listen to the CD-Audio of the proceedings. There was no sign of Judge Rothschild's affirmation to Zucker Goldberg's "innocence". I was beyond dumb-founded.

I carefully and slowly re-read the transcript. AH HA ! On page 9 of the July 25, 2014 transcript, Attorney Steven Kroll of Connell Foley, LLC, appearing for the Defendants, made a statement that reinforced and supported my own vivid recollection:

"And – and, lastly, Your Honor correctly pointed out that they [Defendants Zucker Goldberg] did nothing wrong." (Lines 17-18) [2T]

At that moment, I felt both gladness and sadness. I was relieved to no longer portray Gladys of TV comedy "Bewitched" fame. However, I was and remain both overwhelmed and disillusioned by the obvious implications of my unfortunate discovery.

Public records reveal that Zucker Goldberg is quite capable of doing a whole lot of wrong.

LEONARD B. ZUCKER [named partner of Defendants-Respondents]

“Admonished on April 23, 2012 (Unreported) for failure to make a reasonable effort to expedite litigation and to treat all persons involved in the legal process with courtesy and consideration. Respondent failed to file a stipulation of dismissal arising out of an improperly filed foreclosure complaint until a motion for summary judgment and a grievance had been filed against respondent. He also failed to properly supervise non-lawyer staff”. Page 14 NJ Disciplinary Summaries 1984-2012

http://www.judiciary.state.nj.us/oe/DisciplinarySummaries1984_2012.pdf

* * * * *

The Complaint in the recently settled Elizabeth Perry federal case also shows a less than flattering summation of Zucker Goldberg’s role as debt collector for predatory lenders such as Wells Fargo Bank.

Predatory banks are corporations. They have no hands or feet to carry out their dastardly deeds, except those of executive and their local representatives, such as Zucker Goldberg. The State of New Jersey sued Credit Suisse Bank over fraudulent securities. (Hoffman v Credit Suisse) Those same types of suspect securities are pervasive in the day-to-day cases handled by Zucker Goldberg.

But when you have made up your mind, facts are just such a nuisance.

If Judge Rothschild was aware that his proclivity towards Zucker Goldberg could cloud his judgment, he should have recused himself. If he was too out of touch with his emotion, then it is the responsibility of the Appellate Division to correct the injustice his predisposition has caused by remanding the case for proceedings before a different judge.

POINT 2: THE LOWER COURT FAILED TO PROPERLY ADDRESS DAMAGES TO GENERAL PUBLIC AND OTHER STAKEHOLDERS.

[Sub-heading: In New Jersey Private Attorney Generals are merely wind dummies.]

Judge Rothschild “displayed a surprising and incredible lack of curiosity”. [That phrase was oft repeated during a portion of the New Jersey Assembly 2014 “Bridgagate” hearings.] Judge Rothschild never responded to any filings seeking clarification over Plaintiff’s-Appellant’s role as a Private Attorney General. He did not bother to consider whether there was harm done to stakeholders other than Plaintiff-Appellant. That’s a very troubling non-response considering all the ongoing media coverage of the factors leading to The Great Recession et al. The Appellate Division should remand the case with instructions consistent with Plaintiff’s-Appellant’s pleadings regarding the damages done to the general and investing public, and the Clerks of the Courts of New Jersey.

POINT 3: THE LOWER COURT FAILED TO ESTABLISH AND CONSIDER THE IMPACT OR PROPORTION/DEGREE OF DEFENDANTS’-RESPONDENTS’ ROLE AS A DEBT COLLECTOR.

[Sub-heading: Just a Glimmer of Light !]

During the closing minutes of the July 25, 2014 hearing on the Motion to Reconsider, Judge Rothschild caught just a speck of light, a ray of enlightenment:

THE COURT: “*All right. I wouldn’t say they’re not debt collectors, they’re lawyers. I think I would more accurately say they’re debt collectors and lawyers...* [1T page 9]

That admission, of a sort, reopens the door to whether an Affidavit of Merit is required in this case. Plaintiff-Appellant repeatedly requested that Judge Rothschild permit discovery to reveal the proportion of Zucker Goldberg's role as debt collector versus Attorney. That is a novel case in New Jersey. NJSA 2A:53A-26 does **not** list debt collector as requiring an Affidavit of Merit. Is just a drop of Attorney blood sufficient to require an Affidavit of Merit ? This is a question that is likely to arise over and over at the trial level because of the tens of thousands of filings still pending from The Great Recession. The Appellate Division will likely face this issue again. This case presents a good opportunity to give guidance to the lower courts. This case should be remanded to resolve this issue.

POINT 4: THE LOWER COURT FAILED TO ADDRESS DEFENDANTS' - RESPONDENTS' AND DEFENDANTS' - RESPONDENTS' ATTORNEYS' DECEPTION TO THE COURT

[Sub-heading: Mystery Solved ?]

Judge Rothschild made special note of his disdain for egregious and predatory lenders such as Wells Fargo and US Banks, while failing to connect the dots to the lenders' debt collectors and legal representatives door steps. [1T and 2T] How is it possible that banks did so much wrong but yet their legal reps are pure as Caesar's wife ???

Federal Judge Michael B. Kaplan may have bridged the gap and solved the mystery of why the banks, the legal reps of the banks, and the legal reps to the legal reps of the banks, have been sooooo busy of late in New Jersey, trying to disguise the nature of fraudulent court filings. #DEEP6FRAUD [192a] may finally have a logical explanation – **THE 6 YEAR STATUTE OF LIMITATIONS**. Washington v. Specialized Loans is the key to unlock the fraudulent deeds leading up to Bailey v. Zucker Goldberg, if, and only if, the Appellate Division determines to take a harder look than did Judge Rothschild.

CONCLUSION

Will justice be served for Plaintiff-Appellant, and equities preserved for the general and investing public, and the Clerks of the Courts of New Jersey ? That now rest in the palms of the New Jersey Appellate Division.

The matter should be assigned to a new judge on remand.

Respectfully submitted,

Carolyn Bailey
Plaintiff-Appellant