

CONSUMER SHOULD HAVE LITIGATED ISSUES IN ORIGINAL FORECLOSURE ACTION

On January 31, the Superior Court of New Jersey Appellate Division [affirmed](#) the lower court's decision that a widower (plaintiff) should have raised improper foreclosure allegations during the final foreclosure action and cannot subsequently litigate the issues in a different forum. According to the opinion, in 2009, the bank initiated a foreclosure complaint against the plaintiff's husband (borrower) and the borrower raised no defenses to the complaint. The borrower then initiated a modification request, which the bank ultimately denied due to title liens, and a final foreclosure judgment was entered at the end of 2010. The borrower filed an appeal to the foreclosure action but the plaintiff ultimately withdrew it after the borrower died. The current litigation was filed after the final foreclosure judgment was entered and asserted, among other things, that the foreclosure was improper due to the modification curing the default. The lower court dismissed two of the plaintiff's claims because she was not a party to the original mortgage or modification attempt and granted summary judgment for the bank on the remaining claims because the "issue of the enforceability of the 2010 loan modification agreement is at the heart of plaintiff's claims and was directly related to the foreclosure action and should have been raised as part of that litigation." The appeals court agreed with the lower court's reasoning noting that the plaintiff "attempted to litigate the same issue in two forums."