STATE SNAPSHOT | NEW JERSEY

Why the Difficulty in Obtaining a Rent Receiver?

CATHERINE APONTE, ESQ.
PARTNER
FRIEDMAN VARTOLO LLP
CAPONTE@FRIEDMANVARTOLO.COM

ONE OF THE MOST frequently inquired topics has become "can a rent receiver be appointed?" This question typically arises in commercial foreclosures wherein the underlying mortgages contain an explicit assignment of rent provision referred to as an "assignment of rents/leases" (hereinafter "AOR"). These AORs often lead to the mistaken assumption that New Jersey Courts will automatically grant an application for a receiver based upon the AOR.

While the AOR is given considerable weight in the Court's analysis, it is not a dispositive factor.1 The Court in Barclays Bank, P.I.C. v. Davidson Ave. Associates, explicitly found that the appointment of a rent receiver solely in enforcement of a contractual right is a usurpation of the chancery court's power.2 Emphasizing that the appointment of a rent receiver is within the sound judicial discre-

While the AOR is given considerable weight in the Court's analysis, it is not a dispositive factor.1 The Court in Barclays Bank, P.I.C. v. Davidson Ave. Associates, explicitly found that the appointment of a rent receiver solely in enforcement of a contractual right is a usurpation of the chancery court's power.

tion of the Court.3

Instead, the pertinent question for the court to weigh is whether the appointment of a receiver is needed to protect the mortgagee's security.4 In the Court's discretionary review of whether a mortgagee's security needs to be protected, factors for consideration are: (1) the inadequacy of the security to satisfy the mortgage debt, (2) the inability or lack of legal obligation of the mortgagor to respond for any deficiency, (3) failure to maintain the property, (4) failure to pay real estate taxes, (5) failure to maintain insurance for the property, (6) misappropriation of rents, and (7) failure to pay debt service.5 Further, while none of these factors are determinative individually, there are certain conditions which would make it near impossible for an application to be granted. For example, where the mortgagor is occupying the property as a residence, or the applicant is already in possession of the property. 6

Based upon the foregoing, the analysis for mortgagees considering whether to pursue a rent receiver are whether: (1) there is any equity in the property; (2) there are outstanding taxes owed; (3) there has been damage to the property or threat to harm the property; and (4) there is not proper insurance for the property. Starting a review with these factors will help a mortgage understand the likelihood that a court would find a need to protect its security. a