

## **NEW JERSEY TRIAL COURT FINDS FORECLOSURE ACTION BARRED BY SIX-YEAR STATUTE OF LIMITATIONS**

Addressing an issue of first impression, a trial court in *Anim Investment v. Shaloub*, BER-F-30508-15 (Ch. Div. Jun. 30, 2016), found that an assignee of a mortgage was barred from foreclosing on the secured property under N.J.S.A. 2A:50-56.1(a). According to the foreclosure complaint, defendants George and Kathleen Shaloub (the “Shaloubs”) borrowed \$178,000 from Mina Investment Company in 1990. The Shaloubs subsequently defaulted on their first payment that year. After obtaining the loan by assignment, Anim Investment filed a foreclosure action in August 2015. While the parties initially agreed that the 20-year statute of limitations should be applied to the action, the parties disputed whether the default date should be the date of the first missed payment, November 1990, or the maturity date, October 1995. In finding that the foreclosure action was time-barred, the trial court rejected the parties’ agreement that the 20-year statute of limitations applied, instead citing to N.J.S.A. 2A:50-56.1(a), as recently amended by the Legislature in 2009 to codify the decision in *Security National Partners v. Mahler*, 336 N.J. Super. 101 (App. Div. 2000), which provides for a six-year statute of limitations running from the maturity date of the note.

The trial court found that there was nothing in the legislative history or in the statute that limited subsection (a) of the statute to claims for damages, i.e., enforcement of the note obligation, as opposed to foreclosure actions against the secured property. The trial court also rejected the plaintiff’s argument that the six-year statute of limitations set forth in subsection (a) was consistent with N.J.S.A. 12A:3-118(a) of the UCC, which provides for a six-year statute of limitations to proceed on a claim under a note, evidencing the Legislature’s intent that subsection (a) only applied to causes of action for damages on a note. The trial court stated that this argument ran contrary to the Appellate Division’s decision in *Security National Partners*, which expressly held that an action for foreclosure and for seeking damages arising from the underlying note pursuant to the UCC were uniquely different. The trial court also rejected the contention that its holding effectively read out of N.J.S.A. 2A:50-56.1 the other two statutes of limitation governing foreclosure actions as also set forth in the statute.