CIVIL PRACTICE AND PROCEDURE

I. Civil Procedure & Practice

a. Affidavit of Merit Statute

b. Discovery

c. Mediation/Arbitration

d. General

SUPREME COURT

4-3-17 Michael Conley, Jr. v. Mona Guerrero, 228 N.J. 339 (2017)
Opinion by Solomon, J.

In this case, because Buyers received actual notice of disapproval within the three-day attorney-review period by a method of communication commonly used in the industry, the notice of disapproval was valid. The Court also exercises its constitutional authority over the practice of law and finds that an attorney's notice of disapproval of a real estate contract may be transmitted by fax, e-mail, personal delivery, or overnight mail with proof of delivery. Notice by overnight mail will be effective upon mailing. The attorney-review period within which this notice must be sent remains three business days.

3-30-17 Motorworld, Inc. v. William Benkendorf, et al., 228 N.J. 311 (2017)
Opinion by Patterson, J.

The record reveals no reason to abandon the corporate form. By virtue of the Release, Motorworld received no value at all, let alone value commensurate with the loss of its sole asset: a debt in the amount of $600,000 plus accumulating interest and penalties. The disputed transfer was not made for "reasonably equivalent value" under N.J.S.A. 25:2-27(a), and plaintiffs established all elements of a constructively fraudulent transfer.

2-21-17 Bound Brook Board of Education v. Glenn Ciripompa, 228 N.J. 4 (2017)
Opinion by Timpone, J.

The arbitrator impermissibly converted the second charge of unbecoming conduct into one of sexual harassment. The re-characterization of Count II erroneously tasked the Board with substantiating charges it did not file with evidence it did not proffer. The arbitrator's review was not "consonant with the matter submitted," Grover v. Universal Underwriters Ins. Co., 80 N.J.

221, 231 (1979); rather, he "imperfectly executed his powers" as well as exceeded his authority by failing to decide whether Count II stated a successful claim of unbecoming conduct in support of termination. N.J.S.A. 2A:41-8(d). The arbitrator's award is therefore invalid.

1-24-17 Andrew McCarrell v. Hoffmann-La Roche, Inc., 227 N.J. 569 (2017)
Opinion by Albin, J.

Section 142 of the Second Restatement is now the operative choice-of-law rule in New Jersey for resolving statute-of-limitations conflicts because it will channel judicial discretion and lead to more predictable and uniform results that are consistent with the just expectations of the parties. Based on a choice-of-law analysis under section 142, New Jersey's limitations period governs, and therefore McCarrell's action was timely filed. The Court therefore reinstates McCarrell's verdict and damages award and remands to the Appellate Division for consideration of the unaddressed issues remaining on appeal.

APPELLATE DIVISION

07-12-17 JOHN SMITH VS. ARVIND R. DATLA, M.D., ET AL.,
451 N.J. Super. 82 (App. Div. 2017)
Opinion by Geiger, J.S.C. (temporarily assigned)

This interlocutory appeal presents novel statute of limitations issues. Plaintiff sued defendants for monetary damages and attorney's fees for (1) invasion of privacy for harmful public disclosure of private facts, (2) violation of the AIDS Assistance Act, N.J.S.A. 26:5C-1 to -14, and (3) medical malpractice arising out the defendant-doctor's alleged disclosure that plaintiff was HIV-positive in the presence of a third party without plaintiff's consent. Defendants moved to dismiss plaintiff's complaint because it was filed more than one year after the disclosure event.

The trial court denied defendants' motion, holding that a two-year statute of limitations applied to all three causes of action. The appellate panel affirmed, agreeing that each of plaintiff's causes of action were subject to the two-year statute of limitations imposed by N.J.S.A. 2A:14-2, not the one-year statute of limitations for defamation imposed by N.J.S.A. 2A:14-3.

07-10-17 OCWEN LOAN SERVICES, LLC VS. MARLA WUEBBENS QUINN,
450 N.J. Super. 393 (App. Div. 2017)
(NEWLY PUBLISHED OPINION FOR JULY 10, 2017)
Opinion by Carroll, J.A.D.

In 2004, defendants David and Louisa Wuebbens conveyed their home to their daughter, Marla Wuebbens Quinn, while retaining life estates in the property. In 2005, Quinn and defendants executed a $260,000 mortgage on the property in favor of plaintiff's assignor, IndyMac Bank, F.S.B. (the 2005 mortgage). In 2007, Quinn refinanced the mortgage loan for $380,000 with IndyMac (the 2007 mortgage) and used the proceeds, in part, to satisfy the 2005 mortgage. IndyMac's title commitment failed to disclose defendants' recorded life estate interests in the property. As a result, defendants did not execute the 2007 mortgage.