

CIVIL PRACTICE AND PROCEDURE**Mediation/Arbitration*****SUPREME COURT***

Atalese v. United States Legal Servs. Group, L.P., 2014 N.J. LEXIS 906 (N.J. Sept. 23, 2014)

Opinion by Albin, J.

An arbitration provision – like any comparable contractual provision that provides for the surrendering of a constitutional or statutory right – must clearly and unambiguously notify the consumer that he or she is waiving the right to seek relief in a court of law. The arbitration agreement in this case was unenforceable because it failed to notify plaintiff that, by entering into the agreement, she was surrendering her right to seek relief in a judicial forum.

APPELLATE DIVISION

N.J. Realty Concepts, LLC v. Mavroudis, 2014 N.J. Super. LEXIS 35 (App. Div. Mar. 19, 2014)

Opinion by Leone, J.S.C.

The Chancery Division's appointment of a special fiscal agent as the managing agent for a corporation does not place the property of the corporation in *custodia legis*. Appointment of a receiver would have placed the property in *custodia legis*, but the appointment of a special fiscal agent occurs with fewer procedural safeguards, endows the agent with more circumscribed powers, and provides less protection. Accordingly, rents due to the corporation could be reached by execution of a creditor's Law Division judgment against the corporation, and could be levied upon by the Sheriff.

A corporation's interest in rents from a property it owns with another corporation as tenants in common may be levied upon by a creditor of the corporation.

General***SUPREME COURT******APPELLATE DIVISION***

Sessner v. Merck Sharp & Dohme Corp., 435 N.J. Super. 347 (App. Div. 2014)

Opinion by Koblitz, J.A.D.

We were on the eve of filing a comprehensive opinion on the many issues raised in a voluminous record on appeal when counsel advised that the matter had settled. Upon further inquiry, we learned the parties had reached a settlement months ago. Despite our discretion to file an opinion when notified at such a late hour, we have withdrawn our opinion on the merits. We dismiss the appeal with the emphatic reminder that counsel must advise this court in a far timelier manner of a settlement or serious settlement discussions so that scarce judicial resources are not needlessly wasted.

***Midland Funding LLC v. Albern*, 433 N.J. Super. 494 (App. Div. 2013)**

Opinion by Fisher, P.J.A.D.

In this appeal, the court considered a procedural question: is a defendant who, in response to a complaint, moved for dismissal but did not file an answer after the motion was denied, entitled to notice of a plaintiff's request for default? Because *Rule* 4:43-1 does not expressly authorize an *ex parte* request for default in this unusual circumstance, and because the rules are based on a policy favoring the disposition of cases on their merits, the court reversed the denial of defendant's *Rule* 4:50 motion to vacate both the default and the default judgment later entered.