

**Superior Court of New Jersey**  
**Appellate Division**

<p>CAROLYN BAILEY Plaintiff-Appellant</p> <p style="text-align:center">vs.</p> <p>ZUCKER, GOLDBERG &amp; ACKERMAN, LLC; (A New Jersey Law Firm)</p> <p>MICHAEL S. ACKERMAN, ESQ. In His Role As Managing Partner for Zucker, Goldberg &amp; Ackerman, LLC, And In His Individual Capacity</p> <p>JOHN DOES 1-100 Defendants-Respondents</p>	<p style="text-align:center">Civil Action</p> <p style="text-align:center">Docket No. A-000239-14</p> <p style="text-align:center">On appeal from: Order of the Law Division, Essex County Docket No. ESX-L-8231-13</p> <p style="text-align:center">Sat below: Hon. James S. Rothschild, Jr., J.S.C.</p>
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**REPLY BRIEF**  
**OF PLAINTIFF-APPELLANT, CAROLYN BAILEY**

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Plaintiff-Appellant, *on the brief*

## REPLY BRIEF

By submission of Defendants'-Respondents' Opposition Brief, they and their legal reps have earned 3  $\frac{1}{2}$  PINOCCHIOS !

Prior to leaving page 1, they lapsed into the type of misleading/fraudulent omissions that became the hallmark of their Court filings throughout the underlying and current litigation. There is no shame. But more on those glaring errors will be highlighted starting in the bottom of the next page.

Reading the Opposition Brief was like watching the same movie 5 or 6 times in a row. The legal reps proved more than adept at doubling and tripling back over the same "point", ad nauseum. Therefore, this succinct analysis and critique will uncover the flaws in their 42 page missive, in order of presentation, with one exception.

My Appeal Brief began with a focus on Judge James S. Rothschild, Jr.'s misconduct and violation of my due process rights during in the lower Court proceedings. The Defendants'-Respondents' legal reps chose to try to bury that critical issue on pages 29-33 of their Opposition Brief. The first item of note is that Steven A. Kroll, Esq., of Connell Foley LLP, was in Court on July 25, 2014 representing the Defendants-Respondents. Since he also signed the Opposition Brief, he could have availed himself of that opportunity to declare: "I do **not** recall Judge

Rothschild saying XYor Z during the July 25, 2014 Court proceedings.” He made no such declaration or denouncement. One is left to ponder, wonder, and speculate as to why and why not.

And, as if that were not enough, Mr. Kroll provided no clarification of the source of his telling utterance: “*And – and, lastly, Your Honor correctly pointed out that they [Defendants Zucker Goldberg] did nothing wrong.*” (Page 9, Lines 17-18) [2T] That’s the link to the missing 20 seconds of the Court recording. Judge Rothschild made that very remark on July 25, 2014 at the beginning of the hearing, but now that section of the Court recording is inexplicably “Missing-In-Action” ! Please enlighten us, Mr. Kroll. Please.

In addition, in no way did I state or imply that Defendants-Respondents played **any** role in the deletion of the Court recording. I level that charge on Judge Rothschild or someone under his direction.

I had several options for reporting Judge Rothschild’s indiscretion. I chose to directly notify the New Jersey Supreme Court. That was a proper route, contrary to the contention of Mr. Sayles and Mr. Kroll in the Opposition Brief.

### **Page 1 Opposition Brief – Reply and Critique**

There is an humungous, gaping hole in Connell Foley’s rendition of the litigation history. The facts are that the underlying case, Wells Fargo Bank v. Bailey, came to a screeching halt on October 6, 2009 when Judge Kenneth S. Levy wised up to Zucker Goldberg’s fraud and shenanigans. He gave them opportunity after opportunity to come to Court and “explain” the

glaring irregularities in the May 29, 2007 “Assignment”, such as the 19 month gap between “execution” and notarization, signature of an Attorney-in-Fact to a defunct company, etc., etc., etc. (Pa 032-035) Zucker Goldberg declined his invitations, and Judge Levy denied the Motion for Final Judgment. (Pa 023-026) It is worth noting that Wells Fargo did **not** appeal Judge Levy’s ruling. Instead, less than 2 weeks later, with no notice to me, on October 19, 2009, Defendant-Respondent Michael S. Ackerman, Esq. misused his insular position within Zucker Goldberg to perform his Houdini maneuver of “assigning” my property to US Bank ! Now you see it, now you don’t !!! (Pa 027-029)

The accurate and complete outline of the procedural history to the underlying case is as follows:

**2006** Initial litigation of Wells Fargo Bank v. Bailey

**2007** Ongoing litigation

**2008** Ongoing litigation

**2009** October 6, 2009 Judge Levy denied Wells Fargo’s Motion for Final Judgment, with a 2 page letter of rebuke to Zucker Goldberg; (Pa 023-026)

October 19, 2009 Defendant-Respondent Michael S. Ackerman “Assignment” of my property from Wells Fargo to US Bank, without Notice to me.

(Recorded on October 22, 2009.) (Pa 027-029)

**2010** No litigation

**2011** No litigation

**2012** No litigation. **But without any Notice to me, Zucker Goldberg on January 4, 2012**

**filed a Second Amended Complaint on behalf of Wells Fargo Bank. How could that be, since Mr. Ackerman had recorded US Bank's "assigned" interest in my property over 2 years earlier on October 22, 2009 ??? (Pa 128)**

**2013** Again, without any Notice to me from Zucker Goldberg, on July 5, 2013 the New Jersey Superior Court dismissed Wells Fargo's Second Amended Complaint. (Pa 128)

On October 21, 2013 I filed the lower Court RICO action against Zucker Goldberg and Mr. Ackerman.

[NOTE: The odd twist in the 2012-2013 procedural history was unknown to me at the time I filed the original Complaint, but would become part of an Amended Complaint and included as RICO events, should the Appellate Court remand this case.]

So much for rotten, putrid fruit and red herrings !!! The pot dare not call the kettle black.

### **Page 2 Opposition Brief – Reply and Critique**

a) A telling RICO "indiscretion" of Zucker Goldberg came 2 weeks after Judge Levy's denial, and involves the sneaky, underhanded, surreptitious "Assignment" of my property to US Bank. But to let Zucker Goldberg's legal reps tell it, "Assignments" happen all the time. To paraphrase Mr. Kroll and Mr. Andrew C. Sayles, Esq.: "*We have seen soooo many fraudulent sham transfers, soooo often, by soooo many, that we should just consider fraud common place and ho-hum.*" Or something to that effect.

b) Let me be the first to make Zucker Goldberg and Connell Foley aware that consent of the Debtor, and Notice to the Debtor, are **not** one and the same. I have yet to receive a Notice of

the “Assignment”.

### **Page 3 Opposition Brief – Reply and Critique**

a) Damages are properly assessed **AFTER** discovery and fact finding. Both Judge Rothschild and the legal reps to Zucker Goldberg refuse to recognize any damages of any type inflicted by Zucker Goldberg on Plaintiff-Appellant, the general and investing public, or the Court Clerks of New Jersey. There’s just no shaking blind faith. Certainly all of the above listed stakeholders should be able to rely on the veracity of sworn Court filings. Or should we ???

b) Plaintiff-Appellant’s responses to the Motions to Dismiss and Motion to Reconsider did indeed raise new issues that would be highlighted in an Amended Complaint. But to no avail, because Judge Rothschild had decided that Zucker Goldberg was “innocent”, and that was that.

### **Pages 4-5 Opposition Brief – Reply and Critique**

a) The most tortured procedural history is that of The Great Recession, complete with #RoboSigningPart1. (To learn more about #RoboSigningPart2, A/K/A #DEEP6FRAUD, please visit – [www.HurtingHomeOwners.com](http://www.HurtingHomeOwners.com).)

b) The actual and accurate 2006-2013 procedural history, without the gaping omissions of Defendants-Respondents, is shown above as part of Page 1 Reply and Critique to the Opposition Brief.

### **Page 6 Opposition Brief – Reply and Critique**

Allegations in a Complaint should receive every benefit of doubt in the Plaintiff's favor. Instead, Judge Rothschild flipped that script and doubted or ignored any and all indications of RICO wrong doings on Zucker Goldberg's part. Amazing.

### **Page 7 Opposition Brief – Reply and Critique**

Footnote #1 – I am thrilled that Defendant-Respondents decided to slip in the tidbit about the ongoing case – US Bank v. Bailey. As it turns out, US Bank has violated New Jersey's Statute of Limitations by filing its Complaint more than 2 years toooo late !!! That's a stand-alone defense without wandering into the weeds over US Bank's questionable standing.

Footnote #2 – Judge Levy did a lot more than “merely enter an Order”. He slapped the wrists of Zucker Goldberg within his letter of rebuke. (Pa 023-026)

### **Page 8 Opposition Brief – Reply and Critique**

Plaintiff-Appellant would gladly prepare an Affidavit of DeMerit for Zucker Goldberg. There is an abundance of material and witnesses to its less-than-stellar reputation and conduct over the years as it gained the title of “New Jersey's #1 Foreclosure Mill” !

### **Page 9 Opposition Brief – Reply and Critique**

*“the Complaint failed to allege how...Defendants [Zucker Goldberg] **knew** this Assignment was false...”*

I had to stop for a laugh break. So who is suffering from delusion – the Defendants-Respondents, or their legal reps, or both ? How did Zucker Goldberg “know” ??? Zucker Goldberg “developed” various renditions of #DEEP6FRAUD. If I were not limited to 20 pages, I would go on and on. Suffice it to say, Mastermind Michael S. Ackerman, Esq. could write a book on “Ta-Da” techniques. Time may reveal that he contributed greatly to the 150 page Wells Fargo “Ta-Da” fraud manual cited in the Cynthia Carrsow Franklin case –

*NY Federal judge slams Wells Fargo for forged mortgage docs*

By Catherine Curan (New York Post January 31, 2015)

<http://nypost.com/2015/01/31/ny-federal-judge-slams-wells-fargo-for-forged-mortgage-docs/>

*Court probes Wells’ foreclosure steps again*

By Catherine Curan (New York Post June 7, 2014)

<http://nypost.com/2014/06/07/court-probes-wells-foreclosure-steps-again/>

*Two Judges Who Get It About Banks*

By Gretchen Morgenson (New York Times January 31, 2015)

<http://www.nytimes.com/2015/02/01/business/01gret.html>

[http://mobile.nytimes.com/2015/02/01/business/01gret.html?\\_r=2&referrer=](http://mobile.nytimes.com/2015/02/01/business/01gret.html?_r=2&referrer=)

## **Page 10 Opposition Brief – Reply and Critique**

a) Damages are properly assessed **AFTER** discovery and fact finding.

b) John Does are listed as unknown Defendants in my Complaint. They are the aiders and abettors.

c) Monetary equitable damages are assessed for inequities. And there are plenty of inequities on Defendants'-Respondents' part !

### **Page 11 Opposition Brief – Reply and Critique**

Consent of the Debtor, and Notice to the Debtor, are **not** one and the same. Court rules and procedures indicate I was and am still entitled to Zucker Goldberg's Notice of the October 22, 2009 "Assignment", the January 4, 2012 Second Amended Complaint by Wells Fargo, the Court's July 5, 2013 Dismissal, and Notice to any similar actions. I'm still waiting.

Footnote # 3 – During the lower Court proceedings, the legal reps went on and on regarding my supposed Statute of Limitations breach. Now they quietly withdraw that protest. Upon further consideration they also may come to see the errors in their insistence on an Affidavit of DeMerit !

### **Pages 12-14; 22 Opposition Brief – Reply and Critique**

a) Defendants-Respondents have done and continue to do plenty of wrong. Judge Rothschild's blind spot was in refusing to entertain even the slightest possibility of wrongdoing on Zucker Goldberg's part. Not only that, it was during the last minutes of the July 25, 2014 hearing that it dawned on Judge Rothschild that indeed, Zucker Goldberg was both a debt collector **and** a law firm. That was his light bulb moment. (*Page 9, Lines 21-24*) [2T] Even then, he did not recognize that discovery was needed to ascertain which hat Zucker Goldberg wore most

predominantly. A Complaint against a debt collector does **not** require an Affidavit of Merit or DeMerit.

b) Attorneys can paint houses as well as do estate planning, but **N.J.S.A. 2A:53A-26** determines whether an Affidavit of Merit is needed. My Amended Complaint and other filings upon remand, will clarify the application.

### **CONCLUSION**

It is tempting to go on and on, but I have already touched on the significant high and low points of the Opposition Brief, depending on the perspective of the reader. There is no perceived benefit in duplicating the redundancy of the legal reps to the Defendants-Respondents. I therefore strongly encourage the New Jersey Appellate Division to take a longer, harder look at the allegations in my Complaint, and at additional ‘irregularities’ such as the January 4, 2012 Second Amended Complaint filed by Zucker Goldberg on Wells Fargo’s behalf when Wells Fargo no longer had any legal interest in my property. If you do so, you are unlikely to reach the same conclusion as Judge Rothschild: “*Zucker Goldberg did nothing wrong.*”

Please remand this case for a fresh look. The matter should be assigned to a new judge on remand.

Respectfully submitted,

Carolyn Bailey  
Plaintiff-Appellant

February 10, 2015