# The Appellate Advocate:

## A Recap of Recent Decisions by NJ's Appellate Courts

**Spectrum Capital North Bergen, LLC v. Crown Bank**
**No. A-3581-22**

Appeals from summary-judgment decisions are always interesting. On the one hand, the appellate standard is de novo—which means the appellate judges review the summary-judgment decision as though they themselves are the trial judge evaluating the motion in the first instance. On the other hand, this means you are bound by the fact record presented to the trial court. The Appellate Division only considers the summary-judgment evidence, unless you can succeed on an argument to supplement that record.

With all that in mind, this case asks an important question: What happens when a single line in a contract—bolded, but seemingly overlooked—changes the fate of a multimillion-dollar deal.

In February 2020, Spectrum Capital North Bergen, LLC set out to secure financing for a commercial hotel property. Crown Bank seemed to be the perfect partner, offering a loan of $16 million, a portion of which would come through an SBA loan. On the surface, it was a simple proposition. Spectrum would provide a $35,000 deposit, and as long as the bank approved the loan, the process would move forward. There was no mention that SBA approval was a strict requirement for closing.

By March 2020, things seemed to be progressing. Crown Bank approved the loan and issued a commitment letter, asking for an additional $216,150 in fees. The commitment letter included language that the deal could close without SBA approval if Spectrum submitted a complete application. Spectrum paid the fee, apparently believing the path forward was clear.

But then came that five-letter nightmare: COVID. A global pandemic can change many things, but what it did most profoundly in this case was slow everything down. The hotel's appraisal was completed in June, but the bank's feasibility study—critical for final approval—was delayed. Despite these obstacles, Spectrum pressed on, opening the hotel in September 2020 under a temporary certificate of occupancy.

At this point, Spectrum believed the loan was still on track, while Crown Bank—perhaps reacting to the uncertainty of the pandemic economy—seemed to be growing more cautious. This subtle gap became a chasm when Crown Bank offered a 90-day extension. Within that extension letter was a sentence in bold: "**Prior to closing [Spectrum] must obtain SBA approval for the 504 loan.**"

What had once been an unmentioned implication was now a hard condition. And here lies a central truth. The most important sentences in contracts are not always the loudest ones—but the ones that quietly change the rules.

Spectrum couldn't secure SBA approval in time. The deadline came and went, the deal unraveled, and Crown Bank kept the fees—money that, from Spectrum's perspective, felt unfairly earned. So Spectrum sued.

At the trial level, the judge focused on the technical reality (as Spectrum might frame it) or in other words the proverbial "four corners of the contract" (as Crown Bank probably sees things): The extension letter was a modification with terms to which Spectrum had agreed. Case dismissed.

For us lawyers who are always in the market for potential arguments to raise in contract disputes, Spectrum's appellate arguments are a veritable buffet:

1.SBA approval wasn't a "real" condition. It wasn't required under the original deal, so why should it suddenly become mandatory?

2.The commitment letter was an illusion. Crown Bank had too much discretion, making the contract fundamentally unfair.

3.The bank acted in bad faith. They moved the goalposts, making it impossible for Spectrum to succeed.

4.The bank violated consumer protection laws. Their actions amounted to deceptive business practices.

Unfortunately for Spectrum, the Appellate Division mirrored the trial court and focused immediately on the extension letter. The extension letter—particularly that bolded condition—changed everything. SBA approval was now a non-negotiable requirement, and Spectrum didn't meet it. Whatever might have been true before no longer mattered.

The judges were similarly unmoved by the argument that the contract was illusory. Crown Bank had earned its fees by processing the loan. This wasn't a vague promise—it was a concrete business deal. And as for bad faith? There was no evidence that the bank acted arbitrarily or to deliberately harm Spectrum. Even the Consumer Fraud Act claim failed to hold up. To prove consumer fraud, Spectrum needed to show unlawful conduct, measurable harm, and a causal link—a trifecta Spectrum simply couldn't establish.

At the end of the day, this opinion is exactly what you hope to get when you see the headline that the Appellate Division decided an appeal from summary judgment in a commercial dispute. You get a thoughtful Appellate Division opinion that reads like a roadmap for handling commercial issues in your own cases—a roadmap that can be used whether you are driving through the Law Division or the Appellate Division.

## About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.

973-540-7333
tjc@spsk.com

## About Schenck Price

Founded in 1912 as a two-person law firm in Morristown, New Jersey, Schenck Price has entered its second century as a full-service firm with 80+ attorneys in its New Jersey and New York offices. Our Firm's long history of legal excellence in the areas of litigation, corporate transactions and governance, construction, health care, trust and estate planning, real estate, family law, banking, and environmental law has expanded as the Firm has grown.

Schenck Price
SCHENCK PRICE SMITH & KING, LLP