SUPREME JUDICIAL COURT OF MAINE

Bank of America, N.A. v. Scott A. Greenleaf

2014 ME 89 (2014) · No. Cum-13-536 · Decided July 3, 2014

SUMMARY

The Maine Supreme Judicial Court vacated a foreclosure judgment in favor of Bank of America, holding that the Bank lacked standing because it failed to establish ownership of the mortgage. The court also concluded that, even if standing had been established, the Bank failed to prove the amount due because its payment-history exhibit was not adequately authenticated as a business record.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Gorman, J.; Alexander, J.; Silver, J.; Mead, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	July 3, 2014
DOCKET	Cum-13-536
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a judgment of foreclosure entered by the Bridgton District Court in favor of Bank of America, N.A.; the appellant challenged standing, proof of the foreclosure elements, evidentiary rulings, and the sanction imposed for violations of summary-judgment practice.
STANDARD OF REVIEW	Underlying facts concerning standing are reviewed for clear error, the ultimate standing determination is reviewed de novo, and evidentiary rulings concerning business records are reviewed for clear error as to factual findings and abuse of discretion as to the ultimate admissibility decision.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Scott A. Greenleaf v. Bank of America, N.A.

TOPICS

foreclosure · mortgages · standing · evidence · summary judgment

PRACTICE AREAS

foreclosure · mortgages · real estate · civil procedure · evidence

QUESTIONS PRESENTED

1. Whether Bank of America had standing to foreclose when it possessed the note endorsed in blank but failed to establish ownership of the mortgage.
2. Whether the Bank proved the statutory and evidentiary elements required for a foreclosure judgment.
3. Whether the trial court improperly admitted the payment-history printout as a business record.
4. Whether the notice of default and right to cure complied with 14 M.R.S. § 6111.
5. Whether the trial court imposed an inadequate or otherwise improper sanction for violations of Maine Rule of Civil Procedure 56(h).

HOLDINGS

1. A foreclosure plaintiff must establish a requisite legal interest in both the note and the mortgage. Possession of a note endorsed in blank established the Bank's status as holder of the note, but the Bank lacked standing because it failed to prove ownership of the mortgage.
2. A party in possession of a negotiable note endorsed in blank is a holder entitled to enforce the note, even though note enforcement does not by itself establish ownership of the mortgage.
3. A foreclosure plaintiff must establish the amount due, and a payment-history printout is inadmissible as a business record without adequate testimony from a custodian or qualified witness concerning the recordkeeping system and the witness's firsthand knowledge.
4. A notice of default must strictly comply with section 6111, including an itemization that states the precise amount required to cure the default during the cure period; directing the mortgagor to contact the servicer for an updated amount does not satisfy that requirement.
5. The trial court did not abuse its discretion in calculating the sanction imposed for the Bank's violations of Maine Rule of Civil Procedure 56(h).

KEY QUOTATIONS

> *"Rather, the mortgage conveyed to MERS only the right to record the mortgage as nominee for the lender, RMS."* (¶ 15)

> *"In the absence of any evidence that the Bank owned Greenleaf's mortgage, we conclude that the Bank lacked standing to seek foreclosure on the mortgage and accompanying note."* (¶ 17)

> *"Because the amount due as stated in the notice of default is the precise amount that the mortgagor has thirty-five days to pay in order to cure the default, the amount due is not, as the Bank suggests, open to any further accrual during that period."* (¶ 31)

> *"Judgment of foreclosure vacated. Order of sanctions for failure to comply with M.R. Civ. P. 56 affirmed."* (¶ 34)

FACTUAL BACKGROUND

In November 2006, Scott Greenleaf executed a $385,000 promissory note to Residential Mortgage Services, Inc. and signed a mortgage on Casco property naming RMS as lender and MERS as nominee. Bank of America later pursued foreclosure after succeeding to BAC Home Loans Servicing, which had been substituted as plaintiff. The Bank possessed the original note endorsed in blank, but the mortgage documents showed that MERS had only the limited authority to record the mortgage as nominee, and the Bank presented no independent assignment establishing ownership of the mortgage. The Bank also relied on a payment-history printout and a notice of default that did not strictly comply with Maine statutory requirements.

PROCEDURAL HISTORY

Bank of America, initially substituted for BAC Home Loans Servicing, LP, brought a foreclosure action in the District Court. The trial court dismissed the Bank's untimely summary-judgment motion, imposed a $625 personal sanction on counsel for violations of Maine Rule of Civil Procedure 56(h)(1), and after trial entered a foreclosure judgment for $551,414.36 plus fees and costs. The Supreme Judicial Court vacated the foreclosure judgment but affirmed the sanction order.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The foreclosure judgment was vacated. The order imposing sanctions for failure to comply with M.R. Civ. P. 56 was affirmed.

CASES CITED

- Bissias v. Koulovatos, 2000 ME 189, 761 A.2d 47
- Mortg. Elec. Registration Sys., Inc. v. Saunders, 2010 ME 79, 2 A.3d 289
- JPMorgan Chase Bank v. Harp, 2011 ME 5, 10 A.3d 718
- Bank of Am., N.A. v. Cloutier, 2013 ME 17, 61 A.3d 1242
- Wells Fargo Bank, N.A. v. Burek, 2013 ME 87, 81 A.3d 330
- Deutsche Bank Nat'l Trust Co. v. Wilk, 2013 ME 79, 76 A.3d 363
- Sturtevant v. Town of Winthrop, 1999 ME 84, 732 A.2d 264
- Arey v. Hall, 81 Me. 17, 16 A. 302 (1888)
- Chase Home Finance LLC v. Higgins, 2009 ME 136, 985 A.2d 508
- Bank of Me. v. Hatch, 2012 ME 35, 38 A.3d 1260
- McCollor v. McCollor, 2014 ME 39, 87 A.3d 761
- Beneficial Me. Inc. v. Carter, 2011 ME 77, 25 A.3d 96
- Smith v. Rideout, 2010 ME 69, 1 A.3d 441
- State v. Lewis, 401 A.2d 645 (Me. 1979)

- State v. Saulle, 414 A.2d 897 (Me. 1980)
- Savage v. Me. Pretrial Servs., Inc., 2013 ME 9, 58 A.3d 1138
- Camden Nat'l Bank v. Peterson, 2008 ME 85, 948 A.2d 1251
- Baker's Table, Inc. v. City of Portland, 2000 ME 7, 743 A.2d 237
- Culhane v. Aurora Loan Services of Nebraska, 708 F.3d 282 (1st Cir. 2013)