SUPREME JUDICIAL COURT OF MAINE

# The Bank of New York Mellon v. Danielle Shone et al.

The Bank of New York Mellon v. Danielle Shone, 2020 ME 122 (2020) · No. Cum-19-48 · Decided October 22, 2020

## SUMMARY

The Maine Supreme Judicial Court addressed the admissibility of integrated business records under Maine Rule of Evidence 803(6) in a residential foreclosure action. The court reaffirmed that records received from another entity may be admitted without testimony about the originating entity's practices if the receiving business integrated, verified, and relied on the records, subject to a showing that the records are trustworthy. The court vacated the judgment for the defendants and remanded for the trial court to reconsider admission of the default notices and certificate of mailing under that standard.

## CASE DETAILS

| | |
|---|---|
| COURT | Supreme Judicial Court of Maine |
| WRITING FOR THE COURT | Horton, J.; Mead, J.; Gorman, J.; Jabar, J.; Humphrey, J.; Clifford, A.R.J. |
| JURISDICTION | Maine |
| DECIDED | October 22, 2020 |
| DOCKET | Cum-19-48 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | The Bank appealed from a Cumberland County Superior Court judgment entered for the mortgagors after the court excluded a notice of default and right to cure as an insufficiently authenticated business record. The Law Court vacated the judgment and remanded. |
| STANDARD OF REVIEW | Foundational findings supporting admissibility are reviewed for clear error, and the ultimate evidentiary admissibility determination is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE | published precedential opinion |
| PARTIES | The Bank of New York Mellon v. Danielle Shone, Michael Buck |

## TOPICS

hearsay evidence foreclosure mortgages appellate procedure

## PRACTICE AREAS

Evidence Real estate Mortgage foreclosure Civil procedure Appellate procedure

## QUESTIONS PRESENTED

1. What foundational showing is required under Maine Rule of Evidence 803(6) to admit a business record created by one entity and later integrated into the records or operations of another entity?
2. Whether the notice of default and right to cure could be admitted without testimony concerning the originating law firm's recordkeeping practices.
3. Whether the Superior Court's foreclosure judgment should be vacated and the matter remanded for reconsideration of the exhibit's admissibility.

## HOLDINGS

1. A record received from another business may be admitted under Rule 803(6) without testimony about the originating business's practices if the proponent establishes that the receiving business integrated the record into its own records, verified or otherwise established the accuracy of the record's contents, and relied on the record in conducting its operations, unless the opponent shows that the record is insufficiently trustworthy.
2. The Superior Court's exclusion of the Bank's exhibit was based on the superseded requirement that the Bank present first-hand testimony about the originating law firm's practices; the judgment therefore had to be vacated and the matter remanded for the trial court to determine whether the exhibit satisfied the integration, verification, and reliance criteria.

## KEY QUOTATIONS

> *"We conclude that a record that one business has received from another is admissible under Rule 803(6) without testimony about the practices of the business that created the record, provided, first, that the proponent of the evidence establishes that the receiving business has integrated the record into its own records, has verified or otherwise established the accuracy of the contents of the record, and has relied on the record in the conduct of its operations, and, second, that the opponent of admission has not shown that the record is nonetheless not sufficiently trustworthy to be admitted."* (¶ 1)

> *"Because we today reaffirm the integrated records approach that we adopted in Soley, under which such foundational evidence is unnecessary, we must vacate the judgment and remand the matter for the trial court to determine, based on the current record, whether the Bank's exhibit, which includes the two purported notices of default and a separate purported U.S. Postal Service certificate of mailing, meets the integration, verification, and reliance criteria for admission in evidence as an integrated record."* (¶ 30)

## FACTUAL BACKGROUND

In 2005, Michael Buck obtained a loan from America's Wholesale Lender, secured by a mortgage executed by Buck and Danielle Shone on property in Portland. The Bank alleged that it later acquired the note and mortgage and that Buck stopped making payments in 2008. At trial, the Bank offered a notice of default and right to cure allegedly sent by the law firm retained by Bayview Loan Servicing, along with a purported Postal Service certificate of mailing. The Bank's witness, a Bayview litigation manager, lacked personal knowledge of the law firm's procedures for creating and mailing the notice.

### PROCEDURAL HISTORY

The Bank commenced a residential foreclosure action in 2015. After a 2018 bench trial, the Superior Court excluded the Bank's notice of default and certificate of mailing because the Bank failed to establish the originating law firm's recordkeeping practices, and entered judgment for Shone and Buck. The court denied the Bank's motion to alter or amend the judgment or for a new trial, and the Bank appealed.

### DISPOSITION

```
reversed_and_remanded
```

### REMAND INSTRUCTIONS

The Superior Court must determine, based on the current record and any further argument or reopened record it deems appropriate, whether the exhibit containing the notices of default and the purported Postal Service certificate of mailing satisfies the integration, verification, and reliance criteria for admission as an integrated business record. If admitted, the trial may resume on all issues in contention.

### CASES CITED

- Northeast Bank & Trust Co. v. Soley, 481 A.2d 1123 (Me. 1984)
- U.S. Bank Tr., N.A. v. Jones, 925 F.3d 534 (1st Cir. 2019)
- MRT Constr. v. Hardrives, Inc., 158 F.3d 478 (9th Cir. 1998)
- N.L.R.B. v. First Termite Control Co., 646 F.2d 424 (9th Cir. 1981)
- Boca Investerings P'ship v. United States, 128 F. Supp. 2d 16 (D.D.C. 2000)
- U.S. Bank, N.A. v. Christmas, No. 26695, 2016 Ohio App. LEXIS 205 (Ohio Ct. App. Jan. 22, 2016), vacated on other grounds, 54 N.E.3d 1267 (Ohio 2016)
- United States v. Sokolow, 91 F.3d 396 (3d Cir. 1996)
- United States v. Ullrich, 580 F.2d 765 (5th Cir. 1978)
- Air Land Forwarders, Inc. v. United States, 172 F.3d 1338 (Fed. Cir. 1999)
- United States v. Adefehinti, 510 F.3d 319 (D.C. Cir. 2007)
- United States v. Childs, 5 F.3d 1328 (9th Cir. 1993)
- United States v. Doe, 960 F.2d 221 (1st Cir. 1992)
- United States v. Jakobetz, 955 F.2d 786 (2d Cir. 1992)
- United States v. Parker, 749 F.2d 628 (11th Cir. 1984)
- United States v. Carranco, 551 F.2d 1197 (10th Cir. 1977)
- State v. Fitzwater, 227 P.3d 520 (Haw. 2010)

- Pizza Corner, Inc. v. C.F.L. Transp., Inc., 792 N.W.2d 911 (N.D. 2010)
- Leen Co. v. Web Elec., Inc., 611 A.2d 83 (Me. 1992)
- State v. Radley, 2002 ME 150, 804 A.2d 1127
- Beneficial Maine Inc. v. Carter, 2011 ME 77, 25 A.3d 96
- M & T Bank v. Plaisted, 2018 ME 121, 192 A.3d 601
- Deutsche Bank Nat'l Tr. Co. v. Eddins, 2018 ME 47, 182 A.3d 1241
- KeyBank Nat'l Ass'n v. Est. of Quint, 2017 ME 237, 176 A.3d 717
- Wilmington Sav. Fund Soc'y, FSB v. Abildgaard, 2020 ME 48, 229 A.3d 789
- Am. Express Bank, FSB v. Deering, 2016 ME 117, 145 A.3d 551
- State v. Abdi, 2015 ME 23, 112 A.3d 360
- HSBC Mortg. Servs., Inc. v. Murphy, 2011 ME 59, 19 A.3d 815
- Bank of Am., N.A. v. Greenleaf, 2014 ME 89, 96 A.3d 700