

Law Court Almost Ready to Hear Case on Potential *Greenleaf* “Fix”

Prepared by Preti Flaherty attorney Adam Shub on behalf of



Since the Law Court issued its decision in *Bank of America v. Greenleaf*, 2014 ME 89, plaintiffs seeking to foreclose have pursued a number of avenues for establishing ownership of the mortgage. One such avenue is to file a declaratory judgment action requesting that the trial court declare the note holder as the owner of the mortgage based on the equitable trust theory. Maine’s trial courts are mixed as to whether the equitable trust theory runs afoul of *Greenleaf*. Now, the Law Court is almost set to weigh in. *Beal Bank USA v. New Century Mortgage Corporation* (Pen-18-158).

In *Beal Bank*, the Superior Court ruled the equitable trust doctrine cannot overcome *Greenleaf*. Beal Bank argued its note holder status entitled it to ownership of the mortgage. Beal Bank cited longstanding case law in Maine for the proposition that “where there is separation of the note from the mortgage...the mortgagee becomes trustee for the holder of the note.” Beal Bank explained that it should be granted ownership of the mortgage as a trustee.

The Superior Court rejected Beal Bank’s case explaining that it would mean there is no separate analyses for holding the note and owning the mortgage because “the former would entail the latter.” The Superior Court reasoned it “flatly contradict” *Greenleaf* because it would have rendered meaningless the fact that the plaintiff in *Greenleaf* did not have a mortgage assignment.

The Law Court was scheduled to hear oral argument in February. However, on January 25, the Law Court issued an invitation for amicus briefing on underlying bankruptcy issues. Amicus briefs are due in early March with oral argument likely to be scheduled soon after.