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Bank Unsuccessfully Argues Property Interest After Failed Foreclosure

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The U.S. District Court has rejected a Bank's claim that it still held a property interest in a borrower's home after a failed foreclosure attempt. *Girouard v. Wells Fargo Bank, N.A.*, 2018 WL 294417 (D. Me. Jun. 12, 2018).

The Court's opinion issued this month is among the first federal court opinions to interpret *Pushard v. Bank of America, N.A.*, 175 A.3d 103 (Me. 2017). In *Pushard*, the Maine Law Court ruled that a bank's failed foreclosure action resulted in the bank no longer having any enforceable interest in the note or mortgage.

In *Girouard*, the borrower filed a declaratory judgment action asking the Court for an order to compel Wells Fargo to file a discharge of the mortgage because Wells Fargo did not prevail in a prior foreclosure action. In response, Wells Fargo filed a counterclaim asking the Court to declare that notwithstanding the failed foreclosure it held title to the borrower's property. Wells Fargo argued that since Maine is a title theory state (meaning a mortgage is a conditional conveyance vesting legal title in the mortgagee/bank with the equity of redemption remaining in the mortgagor/borrower) the mortgage expressly conveyed title to Wells Fargo regardless of the failed foreclosure.

The Court found that Maine's Law Court would reject this argument in view of *Pushard*. The Court explained that if Wells Fargo were correct then a mortgagee or bank could always pursue a successive action on a mortgaged property after a failed foreclosure.

Girouard is the latest reminder to Maine mortgage holders of the consequences of failed foreclosure action.