

Law Court Strikes Foreclosure Judgment Involving Multiple Loan Servicers

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The Maine Supreme Judicial Court (“Law Court”) once again has put lenders on notice that the evidentiary standard for admitting inherited loan records will be strictly enforced. In *M&T Bank v. Plaisted*, 2018 ME 121 (decided on August 16, 2018), the Law Court vacated a \$600,000 foreclosure judgment on a commercial loan and declared that the borrower prevailed. The Bank’s witness, an employee of Bayview Loan Servicing, was not “qualified” to offer M&T’s business records into evidence, according to the Court.

The loan originated with InterBay Funding. It was then sold to Bayview Loan Servicing when it went into default. Then it was sold to M&T. The Bank’s witness was the litigation manager for Bayview. He testified that Bayview and M&T had a collaborative relationship where M&T processed payments and Bayview handled loss mitigation and foreclosure. He further testified that M&T used Bayview’s servicing platform and that Bayview is able to watch M&T update its system.

The Law Court explained that the litigation manager still did not satisfy the qualified witness standard for integrated business records. *See Beneficial Me. Inc. v. Carter*, 2011 ME 77 (requiring the witness to have personal knowledge of the practices of the record producing entity). The litigation manager had no firsthand knowledge of M&T’s business practices. He had never spoken to anyone at M&T and did not know where it was located. Significantly, it was not enough that the litigation manager was familiar with the electronic servicing platform - the same platform used by Bayview.

Beyond the necessity of having a qualified witness offer loan records, the Law Court offered guidance on how best to present evidence. The records should show how the total amount owed is calculated, itemized charges, the original amount of the loan, the schedule and due dates, and any payments made after default.

Plaisted reiterates how critical it is to plan ahead during the discovery phase with respect to the admissibility of loan records.