

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-15-223

U.S. BANK, N.A.,

Plaintiff

v.

JUDGMENT

TODD and LAURA
HUBBARD,

STATE OF MAINE
Cumberland ss Clerk's Office

Defendants

OCT 03 2016

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Jury-waived trial on the petition for mortgage reformation filed by plaintiff, U.S. Bank, N.A., was held on August 29, 2016. The plaintiff appeared through counsel. Defendants did not appear.

Plaintiff's representative, Diane Weinberger, testified. She is employed by Select Portfolio Services, the servicer for plaintiff. No effort was made to establish Ms. Weinberger's qualification to testify regarding the documents offered into evidence. M.R. Evid. 803(6); see Am. Express Bank FSB v. Deering, 2016 ME 117, ¶¶ 11, 13-14, __ A.3d __. Instead, she described the exhibits, which were offered into evidence without objection because defendants did not appear. (Pl.'s Exs. 1-8.) The exhibits included documents prepared by Encore Credit Corporation, Mortgage Electronic Registration Systems, Inc., the law firm of Coughlin, Rainboth, Murphy, & Lown, and, possibly, Vision Government Solutions, Inc. (Pl.'s Exs. 3-7.)

Ms. Weinberger next testified, without any foundation established, that the difference in language between the real estate description on page 3 of the mortgage and the description on schedule A was a mutual mistake. (Pl.'s Ex. 3.) She further testified that the intent of the quit claim assignment of mortgage from Encore Credit Corporation to plaintiff was a corrective assignment from the lender to plaintiff and

that by virtue of the corrective assignment, plaintiff was the owner of the note. (Pl.'s Ex. 5.) No original documents were presented. There was no testimony about ownership of the mortgage. Finally, Ms. Weinberger testified about action taken by defendants and about action plaintiff would or would not have taken. Based on this presentation, the court does not give significant weight to the documents or Ms. Weinberger's testimony. See M.R. Evid. 803(6)(E).

Plaintiff is required to establish it has standing to pursue the relief it seeks. See Bank of Am. v. Greenleaf, 2014 ME 89, ¶¶ 9-11, 96 A.3d 700. Plaintiff has not established that it has standing to reform the mortgage. Cf. Longley v. Knapp, 1998 ME 142, ¶ 18, 713 A.2d 939 (standing to reform deed requires that plaintiff was party or privy to original deed). The complaint must be dismissed without prejudice. See Homeward Residential, Inc. v. Gregor, 2015 ME 108, ¶ 24, 122 A.3d 947.

The entry is

Plaintiff's Complaint is DISMISSED without Prejudice.

Date: September 28, 2016


Nancy Mills
Justice, Maine Superior Court