

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Docket No. RE-12-256
TDW - cum - 8/14/2013

UNITED STATES OF AMERICA, acting
through THE RURAL HOUSING
SERVICE, USDA, f/k/a FARMERS
HOME ADMINISTRATION,

Plaintiff

v.

ORDER ON MOTION
FOR SUMMARY JUDGMENT

MARK W. CHASE and THERESA
MCCLURE,

Defendants

Before the court is plaintiff's motion for summary judgment in an action for foreclosure brought pursuant to 14 M.R.S. § 6321 et seq. The plaintiff's motion is subject to Rule 56(j), which imposes detailed requirements for granting summary judgment in foreclosure actions. M.R. Civ. P. 56(j).¹ The court must also determine if the mortgage holder has set forth in its statement of material facts the minimum facts necessary for summary judgment in a residential mortgage foreclosure. *Chase Home Fin. LLC v. Higgins*, 2009 ME 136, ¶ 11, 985 A.2d 508.

The plaintiff fails to meet the requirements for a summary judgment of foreclosure, as the plaintiff failed to attach the referenced exhibits to the Affidavit

¹ M.R. Civ. P. 56(j) states, in part:

No summary judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed; (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage; and (iii) mediation, when required, has been completed or has been waived or the defendant, after proper service and notice, has failed to appear or respond and has been defaulted or is subject to default.


of Laurie Bures. Along with other referenced materials, the plaintiff failed to provide copies of the note, mortgage, and notice of default. The Plaintiff's Affidavit states that these exhibits are attached thereto but in the absence of the attachments, the only evidence offered consists of Ms. Bures's statements as to the contents of business records, and her statements are hearsay.

This court cannot consider materials in the file that are not properly introduced. *See* M.R. Civ. P. 56(h)(4). The Law Court has held that trial courts should not independently search a record to find evidence to support a party's claim when that claim is insufficiently referenced in that party's statement of material facts. *HSBC Bank USA, N.A. v. Gabay*, 2011 ME 101 ¶ 17, 28 A.3d 1158.

The entry shall be:

Plaintiff's motion for summary judgment is denied. The Clerk is directed to incorporate this order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: 14 August 2013



Hon. Thomas D. Warren
Justice, Superior Court

UNITED STATES OF AMERICA VS MARK W CHASE ET AL
UTN:AOCSSr -2012-0068623

CASE #:PORSC-RE-2012-00256

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