

STATE OF MAINE  
ANDROSCOGGIN, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. RE-16-04

CHARLES D. FINCH,  
Plaintiff

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MAY 24 2018

ANDROSCOGGIN  
SUPERIOR COURT

ORDER ON DEFENDANT'S  
MOTION FOR LEAVE TO FILE  
AN AMENDED ANSWER

v.

U.S. BANK, N.A.,  
Defendant.

Before the Court is Defendant's motion for leave to file an amended answer. Plaintiff has opposed this motion, and a hearing was held on March 6, 2018. For the following reasons, Defendant's motion is granted.

I. Background

Plaintiff filed its complaint in this matter on January 7, 2016, requesting in general a declaratory judgment that Defendant is obligated to discharge its mortgage on Plaintiff's property following a foreclosure trial wherein judgment was entered in favor of Plaintiff. Following months of litigation that resulted in an order issued by this Court setting aside a default judgment that had been entered against Defendant, Defendant filed its answer on October 3, 2016. On May 9, 2017, this matter was stayed pursuant to a joint motion by the parties in light of the pending decision from the Law Court in *Pushard v. Bank of Am., N.A.*, 2017 ME 230, 175 A.3d 103. That opinion was issued on December 12, 2017. On January 5, 2018, Defendant filed the current motion requesting leave to amend its answer in order to add a counterclaim for unjust enrichment.

II. Standard of Review

Maine Rule of Civil Procedure 15(a) provides that, after a responsive pleading has been served, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

Although this is a liberal standard, the court may deny a motion to amend if it finds the movant has acted with undue delay or in bad faith, if the grant of the motion would cause unfair prejudice to the non-movant, or if amendment would be futile. See *Montgomery v. Eaton Peabody LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106; *Longley v. Knapp*, 1998 ME 142, ¶ 19, 713 A.2d 939; *Diversified Foods, Inc. v. First Nat'l Bank of Boston*, 605 A.2d 609, 616 (Me. 1992). When “a proposed amended complaint would be subject to a motion to dismiss, the court is well within its discretion in denying leave to amend.” *Glynn v. City of S. Portland*, 640 A.2d 1065, 1067 (Me. 1994).

### III. Discussion

Plaintiff has conceded that Defendant’s proposed amendment would not cause undue delay or unfair prejudice, but instead argues that Plaintiff’s motion should be denied due to futility of amendment. At oral argument, Plaintiff relied on a decision issued by the Federal District Court for the District of Maine to argue that Defendant’s proposed amendment would be futile because Defendant’s attempt to bring an unjust enrichment claim under the promissory note is barred by *res judicata*. *Nationstar Mortg., LLC v. Nelson*, No. 2:14-cv-00507-JDL, 2016 U.S. Dist. LEXIS 136660, at \*12, \*17-18 (D. Me. Oct. 3, 2016).<sup>1</sup> However, this question has not come squarely before the Law Court. In *Pushard*, the Court noted the Defendant bank had filed a counterclaim for unjust enrichment, but the Court did not reach the issues of the justiciability or merits of the

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<sup>1</sup> *Res judicata* “bars the relitigation of claims if: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been, litigated in the first action.” *Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶ 20, 175 A.3d 103 (quoting *Wilmington Trust Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 7, 81 A.3d 371). Like in *Pushard*, “at issue in this case is the third element—whether, given the judgment in the foreclosure action, the Bank could bring an action on the note or mortgage other than one that would present matters that were, or might have been, litigated in the foreclosure action.” *Id.*

counterclaim because it had been dismissed without prejudice earlier in the proceedings. *Pushard*, 2017 ME 230, ¶ 36 n.14, 175 A.3d 103.

Defendant has directed the Court to *Knope v. Green Tree Servicing, LLC*, 2017 ME 95, 161 A.3d 696, for the proposition that an action brought under a promissory note is not necessarily barred by a prior foreclosure judgment. In *Knope*, the Law Court observed:

Were the note and the mortgage contract treated, under the law, as one unit, or as related transactions involving the same parties, then actions on the note would always have to be joined and adjudicated with actions on the mortgage. Parties could not achieve a dismissal of claims asserted under an insufficiently assigned mortgage, because the claims asserted under the note would have to be considered in a unitary proceeding, barring final judgment until liability under the note had been adjudicated. ... Related claims between the same parties and involving the same transaction must be joined in the same action. ... Actions under the mortgage may be treated as separate and distinct from actions under the note because notes are unsecured and separate from mortgages, presenting different issues that may, sometimes, be adjudicated in separate proceedings.


*Id.* ¶¶ 21-22 & n.4. Although *Knope* did not involve the effect of a final judgment, the Law Court's language implies that a judgment concerning foreclosure of a mortgage does not necessarily bar a later action brought under the promissory note. Thus, because the Law Court has not directly decided this issue, at this early stage of the proceeding, this Court is unwilling to find Defendant's proposed counterclaim is futile as a matter of law. As there has been no showing of undue delay or unfair prejudice, the Court finds no reason to deny Defendant's motion.

#### IV. Conclusion

For the foregoing reasons, Defendant's motion for leave to file an amended answer is GRANTED. The Clerk is directed to incorporate this Order into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: \_\_\_\_\_

5/24/18

  
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Mary Gay Kennedy  
Justice, Superior Court