19-P-434 Appeals Court

CARLOS N. GOMES vs. DARRELL HARRISON.

No. 19-P-434.

Bristol. January 3, 2020. - June 26, 2020.

Present: Blake, Neyman, & Hand, JJ.

Summary Process. Mortgage, Foreclosure. Notice, Foreclosure of mortgage. Real Property, Mortgage. Practice, Civil, Summary process, Standing, Summary judgment.

Summary Process. Complaint filed in the Southeastern Division of the Housing Court Department on February 23, 2016.

The case was heard by Anne Kenney Chaplin, J., on motions for summary judgment.

Michael M. McArdle for the defendant.
Raymond C. Pelote for the plaintiff.

HAND, J. The defendant in this postforeclosure summary process case argues that the plaintiff does not hold good title to the subject property, and so lacks standing to evict him. On the parties' cross motions for summary judgment, a judge of the Housing Court found no genuine issues of material fact as to the

plaintiff's superior right to possession of the property, and ordered the entry of judgment in the plaintiff's favor. The judge denied the defendant's motion. Because the plaintiff has, at a minimum, the standing of a good faith purchaser for value, we affirm.

Background. The defendant, Darrell Harrison, purchased the premises known as 88-90 Bartlett Street, Brockton (property), on April 7, 2004, for $310,000. On March 25, 2005, Harrison borrowed $300,000 from Washington Mutual Bank, FA (WAMU). Harrison's loan was secured by a mortgage on the property naming WAMU as mortgagee. The mortgage was recorded in the Plymouth County registry of deeds (Plymouth registry).

On September 25, 2008, WAMU was closed by the Federal Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) was appointed WAMU's receiver.[1] On October 27, 2008, an affidavit of Robert C. Schoppe as "Receiver in Charge for FDIC as Receiver of Washington Mutual Bank," dated October 2, 2008, was filed in the Land Court department of the Plymouth registry as document number 642423. The Schoppe

[1] No party has suggested that the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) bars Harrison's defenses, and the decisions would lend little support to such an argument. See Starkey v. Deutsche Bank Nat'l Trust Co., 94 Mass. App. Ct. 1, 9 (2018). See also Bolduc v. Beal Bank, SSB, 167 F.3d 667 (1st Cir. 1999) (FIRREA did not bar defenses against foreclosure).

affidavit stated: "Pursuant to the terms and conditions of a Purchase and Assumption Agreement between the FDIC as receiver of Washington Mutual and JP Morgan Chase Bank, National Association . . . , dated September 25, 2008 . . . , JP Morgan Chase acquired certain of the assets, including all loans and loan commitments, of Washington Mutual."

Notwithstanding that WAMU had gone into receivership in September 2008, Harrison was sent a "90 Day Right To Cure Notice" on "Washington Mutual" letterhead, dated February 9, 2009 (default notice). The default notice asserted that Harrison was in default of his loan obligations, and stated:

> "You have the right to cure the default by paying the total delinquency plus any additional monthly payments, late charges and fees that become due by the time we receive your payment. If the default is not cured by 05/10/2009, we intend to declare the entire loan principal balance, accrued interest, and other fees and costs due under the terms of your home loan immediately payable in full . . . . Further, we will take steps to terminate your ownership in the property by a foreclosure proceeding or other action to seize the home."

By assignment dated May 1, 2009, JP Morgan assigned Harrison's mortgage to "Bank of America, National Association as successor by merger to LaSalle Bank NA as trustee for Washington Mutual Asset-Backed Certificates WMABS Series 2007-HE2 Trust (the WMABS trust)." Harrison submitted evidence at the summary judgment stage suggesting that the loan secured by the subject mortgage was, however, never sold into the WMABS trust, and

that, thus, JP Morgan's May 2009 assignment was executed in error.[2] The May 2009 assignment, nonetheless, appeared in the property's chain of title, having been recorded in the Plymouth registry at book 37184, page 312. Moreover, that assignment included a notation specifically referencing the Schoppe affidavit and referring to it by the document number under which it was filed in the Land Court department of the Plymouth registry, thus expressly incorporating the Schoppe affidavit into the chain of title.

By assignment dated July 17, 2010, recorded in the Plymouth registry at book 39102, page 56, the WMABS trust assigned the property back to JP Morgan.[3] Thereafter, JP Morgan foreclosed Harrison's interest in the property by auction sale on April 5, 2012, and was the highest bidder at its own sale. By foreclosure deed dated June 4, 2012, and recorded in the

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[2] At summary judgment, Harrison contended that he also owned 74 Huntington Street, which was also encumbered by a mortgage securing a separate debt, and that the May 2009 assignment was the result of an error -- perhaps a botched effort to assign the mortgage on his 74 Huntington Street property. The motion judge held that, on the undisputed facts, there was no question that the assignments were effective to transfer the mortgage to the WMABS trust and then back to JP Morgan. We agree with the motion judge.

[3] Although any factual question on the efficacy of the assignments is not germane to the outcome we reach here, the assignments are relevant because they served to incorporate the Schoppe affidavit into the chain of title.

Plymouth registry at book 42531, page 71, JP Morgan, as assignee of the mortgage, conveyed the property to itself as purchaser at the auction. An affidavit of JP Morgan's foreclosure attorney, recorded with the foreclosure deed, attested that: (1) Harrison had not timely paid the principal and interest obligations referenced in the mortgage; (2) JP Morgan had complied with the notice by publication requirements of G. L. c. 244, § 14; and (3) the property was sold at auction to JP Morgan as the highest bidder. Two years later, by release deed dated June 9, 2014, JP Morgan conveyed the property to the plaintiff, Carlos N. Gomes, for $154,875. Gomes's deed was recorded in the Plymouth registry at book 44424, page 272.[4]

Gomes filed the instant summary process summons and complaint in the Housing Court on February 24, 2016.[5] In June 2016, the parties filed cross motions for summary judgment. Judgment for possession entered for Gomes on December 2, 2016, and Harrison's notice of appeal was timely filed ten days later. See G. L. c. 239, § 5.

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[4] At auction, JP Morgan had bid $146,970.90.

[5] This is the third attempt to evict Harrison. JP Morgan brought a summary process action against Harrison in November 2013, but that case was dismissed for lack of standing after JP Morgan sold the property to Gomes. Gomes then brought his own summary process action against Harrison in August 2014, but that case was dismissed without prejudice because Gomes had failed to serve Harrison with a notice to quit.

Discussion. "In reviewing the . . . grant of a motion for summary judgment, we conduct a de novo examination of the evidence in the summary judgment record . . . and view the evidence in the light most favorable to the part[y] opposing summary judgment[,] . . . drawing all reasonable inferences in [the nonmoving party's] favor" (quotations and citations omitted). Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016).

1. Preforeclosure title. At summary judgment, Harrison argued that he had marshaled sufficient evidence to demonstrate the existence of a genuine issue of material fact as to whether JP Morgan had obtained title to the subject mortgage from WAMU. He claimed that the mortgage title never passed to JP Morgan because WAMU no longer owned it by the date of the FDIC receivership.[6] See Sullivan v. Kondaur Capital Corp., 85 Mass. App. Ct. 202, 205 (2014) (Kondaur Capital) (foreclosing entity held legal authority to foreclose "only if it held a valid title to the mortgage at the time it gave the notice of foreclosure required under G. L. c. 244, § 14, and at the time it exercised

[6] Alternatively, Harrison claimed that even if WAMU held title at the relevant time, there is no evidence that Harrison's mortgage was among those assets JP Morgan chose to purchase. This position is directly contrary to the recorded and uncontroverted Schoppe affidavit, however, which states that JP Morgan acquired "all loans and all loan commitments" of WAMU.

the power of sale"). His argument hinged on the affidavit of his expert and, as we discuss, infra, excerpts from a 2013 deposition (taken in an unrelated case) of a WAMU vice president, Cynthia A. Riley.[7] We disagree with Harrison's assessment of the sufficiency of the evidence for reasons other than those described by the motion judge; in addition, even if an unrecorded assignment exists, such an instrument cannot defeat Gomes's title.

a. Evidence of transfer. The foreclosure auction at issue was conducted on April 5, 2012, predating the Supreme Judicial Court's decision in Eaton v. Federal Nat'l Mtge. Ass'n, 462 Mass. 569 (2012), issued on June 22, 2012. In Eaton, the court defined the word "mortgagee" in the applicable foreclosure statutes (e.g., G. L. c. 183, § 21, and G. L. c. 244, § 14) as "the person or entity then holding the mortgage and also either holding the mortgage note or acting on behalf of the note holder," with the result that in order to foreclose, the holder of the mortgage also had to hold the corresponding note or act on behalf of the note holder. Id. at 571. The Eaton court, however, exercised its discretion to make its decision

[7] The motion judge determined that the affidavit of Harrison's expert was "conclusory," and thus, insufficient to avoid summary judgment. See Mass. R. Civ. P. 56 (e), 365 Mass. 824 (1974); Graham v. Quincy Food Serv. Employee Ass'n & Hosp., Library and Pub. Employees Union, 407 Mass. 601, 610 n.4 (1990).

applicable only prospectively, so that it would "only . . . apply to foreclosures under the power of sale where statutory notice is provided after the date of this decision." Id.

Accordingly, before Eaton no presumption existed that where a note memorializing a home loan was transferred to a new holder, the mortgage title to the home was necessarily transferred with it. See Eaton, 462 Mass. at 576 ("in contrast to some jurisdictions, in Massachusetts the mere transfer of a mortgage note does not carry with it the mortgage . . . . As a consequence, in Massachusetts a mortgage and the underlying note can be split"). Even after Eaton, this court held in Kondaur Capital, 85 Mass. App. Ct. at 210, that "nothing in Massachusetts law requires a foreclosing mortgagee to demonstrate that prior holders of the record legal interest in the mortgage also held the note at the time each assigned its interest in the mortgage to the next holder in the chain." See Kondaur Capital, supra at 209-210 & n.13.

Giving Harrison the benefit of all reasonable inferences that can be derived from the evidence he supplied in support of his summary judgment motions, see Drakopoulos v. U.S. Bank, Nat'l Ass'n, 465 Mass. 775, 777 (2013), he has established (at most) a genuine dispute only as to whether his note may have been transferred by WAMU to another entity by means of WAMU's

blank endorsement and physical transfer,[8] see G. L. c. 106, § 3-201 (b), prior to the date of the FDIC receivership. Harrison has presented no evidence, however, that legal title to the mortgage was ever assigned or transferred to any other entity by or on behalf of WAMU. In short, even if we assume that WAMU transferred the note to a new holder prior to the FDIC receivership, Harrison, as the party with the burden of proof, has provided no evidence from which we can reasonably infer that WAMU also transferred the mortgage. On the contrary, a note and

[8] A copy of the note included in the record bears the blank endorsement of WAMU by Cynthia A. Riley, vice president. That endorsement is not dated. As to the physical transfer of the note, Harrison relied on excerpts from a 2013 deposition of Riley, taken in another case. Riley testified that she managed a "secondary delivery operations" department for WAMU, and that it "delivered on the deals that were made by secondary marketing." Riley stated that, as a general matter, in 2004 through 2006 after WAMU's loans were closed, the notes were shipped to her team, which would "go through the note review process, endorse them, send them to the custodian" within "a matter of days" of the closing. The meaning of the phrase "the custodian" is not illuminated in the deposition excerpt provided in the record, but Harrison contended at summary judgment that Riley was referring to the document custodians for various trusts to whom loans were sold by WAMU after closing. Nothing in the excerpted Riley deposition ties the general practice she described to Harrison's mortgage, however, and no evidence in the record, beyond Riley's general statement that endorsed notices were sent to "the custodian," provides any evidence that Harrison's note was ever physically transferred by WAMU to any other entity. Given these infirmities in the evidence, we are not persuaded by Harrison's argument that Riley's blank endorsement on his note indicates definitively that Harrison's "loan was sold prior to the FDIC's receivership of September 25, 2008 and any interest retained in the Harrison loan on and after that time was only as a servicer."

the corresponding mortgage may be held separately and transferred separately prior to foreclosure. See Kondaur Capital, 85 Mass. App. Ct. at 210. In fact, it was and remains the case that notes and mortgages associated with home loans are regularly held by separate entities prior to foreclosure when the original mortgagee is Mortgage Electronic Registration Systems, Inc. See Eaton, 462 Mass. at 572 nn.5 & 6, 586 n.27. See also Kondaur Capital, supra ("the legal interest in a mortgage permissibly may be separated from the beneficial or equitable interest in the debt it secures").

b. Failure to record. Even assuming arguendo that Harrison established an evidentiary "toehold" regarding whether an off-record assignment of the mortgage existed before the FDIC's receivership of WAMU, see Marr Equip. Corp. v. I.T.O. Corp. of New England, 14 Mass. App. Ct. 231, 235 (1982), such a dispute would not be material, and so could not salvage Harrison's claim, because an unrecorded assignment would not be enforceable against Gomes, as an unrelated party.

A real estate deed is effective on delivery to the grantee and enforceable as between the parties to that instrument regardless of whether it has been recorded. See Cooper v. Monroe, 237 Mass. 192, 198 (1921); Solans v. McMenimen, 80 Mass. App. Ct. 178, 181 (2011) (failure to record did not impair underlying transfer as between parties to transfer). Until

recorded, however, a deed (including a mortgage[9]) is not enforceable as against persons without actual notice of its existence. See Bank of Am., N.A. v. Casey, 474 Mass. 556, 560-561 (2016) (recording statute applies to mortgages and "requires that a mortgage be recorded in the appropriate registry of deeds in order to provide effective notice to anyone beyond the parties to the mortgage transaction and those with actual notice of it"); Aronian v. Asadoorian, 315 Mass. 274, 276 (1943) ("The recording statute, [G. L. c. 183, § 4,] . . . protects subsequent purchasers or attaching creditors without notice"); Solans, supra (unrecorded deed is exposed "to potential defeat by third parties protected by the recording statute").

"[A]n assignment of a mortgage is a transfer of legal title," and thus, the recording statute applies to such documents. U.S. Bank Nat'l Ass'n v. Ibanez, 458 Mass. 637, 654 (2011) ("A valid assignment of a mortgage gives the holder of that mortgage the statutory power to sell after a default regardless whether the assignment has been recorded[,] . . . [but] [w]here the earlier assignment is not in recordable form or bears some defect, a written assignment executed after

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[9] "[U]nder Massachusetts law the effect of a mortgage is to transfer legal title of the mortgage property from the mortgagor to the mortgage holder, and in that sense a mortgage is a document of title transfer that operates as a deed." Bank of Am., N.A. v. Casey, 474 Mass. 556, 561 n.10 (2016).

foreclosure that confirms the earlier assignment may be properly recorded"). It follows that, for an assignment prior to foreclosure to defeat the title acquired after foreclosure by a third person without knowledge of that assignment, the assignment must be recorded. In other words, even if an unidentified trust entity could claim ownership of Harrison's mortgage notwithstanding the foreclosure, that entity would be unable to defeat Gomes's title because it failed to record its interest prior to Gomes's purchase.

To the extent that Harrison suggests that after Gomes's purchase of the property, Gomes had reason to suspect that there were irregularities in prior owners' assignments of the note or mortgage assignments, such suspicions are of no moment. "If one purchases real estate in good faith for value, in ignorance of an infirmity in the title, the validity of his title will not be affected by what he afterwards learns respecting such infirmity." Flannagan v. Keefe, 250 Mass. 118, 122 (1924). Stated another way, an unrecorded instrument cannot destroy the "bona fides" of a subsequent purchaser even where that purchaser "had notice, knowledge of facts which might arouse suspicion." Richardson v. Lee Realty Corp., 364 Mass. 632, 634 (1974). Instead, where the purported title defect is an unrecorded instrument, "[a]ctual notice . . . is required, and actual notice has been strictly construed." Id. at 635. This makes

sense because "the holder of an unrecorded instrument could protect himself simply by recording it in the appropriate registry of deeds." Id. See Kondaur Capital, 85 Mass. App. Ct. at 208 (distinguishing foreclosing entity with actual knowledge from innocent third party purchaser for value).

As Gomes is protected by the recording statute, see G. L. c. 183, § 4, against any challenge to his title that could arise from an unknown, off-record, preforeclosure assignee of the mortgage, it follows that he is equally protected from a challenge brought by the mortgagor based on the same preforeclosure assignment.

Our conclusion that Gomes's title is not subject to challenge on the ground that an unknown third party may have held title to Harrison's mortgage prior to the date WAMU failed is bolstered by the existence of the Schoppe affidavit in Gomes's chain of title. As an innocent third party purchaser for value, Gomes was entitled to rely on that affidavit coupled with the absence of any prior assignment as providing a clear chain of title from Harrison to JP Morgan prior to the foreclosure date.[10] "Notice requirements are . . . a consequence

[10] We do not intend to suggest that the Schoppe affidavit was required for the receiver to transfer WAMU's interests in real estate to JP Morgan. See Demelo v. U.S. Bank Nat'l Ass'n, 727 F.3d 117, 125 (1st Cir. 2013) (holding that FDIC's "transfer of a mortgage, authorized by federal law, obviates the need for

of the intent of the registry laws to establish a record system on which purchasers can rely." Richardson, 364 Mass. at 635. "[P]urchasers should not be required to look beyond the registry of deeds further than is absolutely necessary." Id., quoting Swasey v. Emerson, 168 Mass. 118, 120 (1897). Gomes has the status of a bona fide[11] purchaser for value without knowledge of the alleged title defect and, thus, any off-record assignment of the mortgage that theoretically could exist cannot deprive him of standing to evict Harrison. See Pinti v. Emigrant Mtge. Co., 472 Mass. 226, 242 (2015) (where mortgagor with valid defense fails to initiate challenge to foreclosure, "the sale may well proceed and result in title passing to a bona fide purchaser without knowledge of the issue -- at which point, and depending on the nature of the defense, the mortgagor's right to redeem his or her home may well be lost").

2. Effectiveness of default notice. Harrison also claims Gomes lacks standing to seek possession of the property because, even if JP Morgan had title prior to the foreclosure, the

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the specific written assignment that state law would otherwise require"). We assert only that nothing in the chain of title to Harrison's mortgage should or could have led Gomes to believe that JP Morgan might not have been authorized to foreclose.

[11] Harrison makes no argument that Gomes had actual knowledge of his title claim, whether from any defense Harrison had asserted in the first summary process action or from any other source.

foreclosure was not effective because of problems with the default notice. Specifically, Harrison claims two defects (which we consider in the reverse of the order discussed in his brief). First, he argues that the default notice was defective because its substance was misleading insofar as the notice did not inform him that, under paragraph 19 of his mortgage, any curative tender of the amount he owed would have to be made five days before a scheduled foreclosure to prevent the auction sale from going forward. Second, he claims that the default notice was ineffective because it was purportedly sent by WAMU on a date after WAMU had gone into receivership and, thus, WAMU could not possibly have been the "Lender" as defined in the mortgage.

a. Notice's substance. As required by paragraph 22 of Harrison's mortgage, the default notice sent to Harrison specified "a date, not less than 30 days from the date the notice is given . . . by which the default must be cured." Specifically, the notice stated, "If the default is not cured by 5/10/2009, we intend to declare the entire loan principal balance, accrued interest, and other fees and costs due under the terms of your home loan immediately payable in full." Paragraph 22 of Harrison's mortgage also requires, however, that the default notice inform the borrower "of the right to reinstate after the acceleration and the right to bring a court

action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale."

Consistent with paragraph 22, the default notice stated, "you have the right to reinstate the loan after acceleration and to bring a court action to assert the non-existence of a default or any other defense to acceleration or sale." Paragraph 19 of Harrison's mortgage, however, sets forth details about the right to reinstatement after acceleration, including that the right must be exercised prior to the earliest of (1) "five days before sale of the [p]roperty pursuant to any power of sale contained in this [mortgage]," (2) any such period as applicable law specifies for termination of the right, or (3) entry of a judgment enforcing the mortgage. Harrison contends that the default notice was ineffective because it did not state that his right to reinstatement would terminate five days before the date of an auction sale, or on any earlier date that might apply under applicable law, or on the date of any judgment against him for foreclosure.

General Laws c. 183, § 21, allows foreclosure by public auction where the mortgagor is in default of a condition of the mortgage, and the mortgagee has "first compl[ied] with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale." Accordingly, in Pinti, 472 Mass. at 227, the court held that

"strict compliance with . . . paragraph 22" of a typical Massachusetts residential mortgage "was required as a condition of a valid foreclosure sale."

The Pinti case, however, involved a default notice that misleadingly suggested that the mortgagee would be required to bring a lawsuit to foreclose, even though Massachusetts is a nonjudicial foreclosure State. See Pinti, 472 Mass. at 229, 232, 237. That case did not involve any theory that a default notice sent pursuant to paragraph 22 must also include details about the reinstatement right set forth in paragraph 19.

Harrison claims that under his mortgage both the "right to cure the default and the right to reinstate after acceleration contain deadlines for the mortgagor to comply with, of which the mortgagor must be informed as part of the default notice that is a condition precedent to acceleration and foreclosure."

At bottom, however, Harrison's argument is premised on the rule announced in Pinti, 472 Mass. at 227, that "strict compliance" with the default notice provision set forth in paragraph 22 of a typical Massachusetts residential mortgage is required as a precursor to an effective foreclosure. Paragraph 19, in contrast to paragraph 22, does not require any notice at all. Accordingly, although Harrison invokes the text of a different paragraph of his mortgage (i.e., paragraph 19), his argument is nonetheless predicated on the theory that a default

notice "strictly compliant" with paragraph 22 is necessary to support an effective foreclosure. Essentially, Harrison argues that, implicit in paragraph 22's requirement that the default notice inform the borrower of the right to reinstatement is a requirement that the timing limitation on that right as described in paragraph 19 must also be included in the notice.[12]

We need not answer the question in this case for the simple reason that the foreclosure at issue here predates the authority on which Harrison relies, which authority was expressly made prospective in effect. Specifically, the notice to Harrison was dated February 9, 2009, and the foreclosure auction was held on April 5, 2012. Both dates are long before the Supreme Judicial Court handed down its opinion in Pinti on July 17, 2015, stating:

> "We conclude that in this case, because of the possible impact that our decision may have on the validity of titles, it is appropriate to give our decision prospective effect only: it will apply to mortgage foreclosure sales of properties that are the subject of a mortgage containing paragraph 22 or its equivalent and for which the notice of default required by paragraph 22 is sent after the date of this opinion."

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[12] This is not precisely the same question certified to the Supreme Judicial Court in Thompson v. JP Morgan Chase Bank, N.A., 931 F.3d 109 (1st Cir. 2019). In that case, the default notice stated affirmatively, "you can still avoid foreclosure by paying the total past-due amount before a foreclosure sale takes place." Id. at 111.

Pinti, 472 Mass. at 243. Later, in Aurora Loan Servs., LLC v. Murphy, 88 Mass. App. Ct. 726 (2015), and Federal Nat'l Mtge. Ass'n v. Marroquin, 477 Mass. 82 (2017), the effect of Pinti was extended to cases raising a Pinti issue that were pending on appeal at the time Pinti was decided, Aurora, supra at 730, and "cases pending in the trial court where the Pinti issue was timely and fairly raised before [the Supreme Judicial Court] issued [its] decision in Pinti," Marroquin, supra at 88. Because Harrison did not seek to adjudicate this alleged noncompliance with paragraph 22 of his mortgage until long after Pinti was decided, the "strict compliance" rule described in Pinti cannot be applied to his case.[13]

b. WAMU as "Lender." Finally, Harrison claims that the foreclosure was invalid because the default notice was not sent by the "Lender." See Eaton v. Federal Nat'l Mtge. Ass'n, 93 Mass. App. Ct. 216, 222-224 (2018). Specifically, Harrison argues that because WAMU was closed by OTS in September 2008, it could not have been the "Lender" as of February 9, 2009, the date of the default notice.

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[13] To the extent that even before Pinti, a default notice sent pursuant to paragraph 22 was required to substantially comply with the requirements of that paragraph, see Pinti, 472 Mass. at 232, we hold that the notice at issue here did so insofar as it stated, "you have the right to reinstate the loan after acceleration."

Harrison's mortgage defines the "Lender" as "Washington Mutual Bank, FA, a federal association," which is a bank "organized and existing under the laws of United States of America." The default notice, dated February 9, 2009, is on the letterhead of "Washington Mutual Bank." It supplies a toll free telephone number for "Washington Mutual," and an address in Louisville, Kentucky, to which payment can be sent to "Washington Mutual." Plainly, there is no discrepancy between the definition of "Lender" set forth in the mortgage and the default notice.

Harrison claims, however, that because OTS had closed WAMU in September 2008, WAMU could not have been his "Lender" as of February 9, 2009, and the default notice is fatally defective as a result. We disagree. The mortgage is dated March 25, 2005. On April 4, 2005, Washington Mutual Bank, FA, changed its name to "Washington Mutual Bank."[14] See JPMorgan Chase Bank, Nat'l Ass'n v. Simoulidis, 161 Conn. App. 133, 148 (2015). See also In re Bailey, 437 B.R. 721, 727 n.6 (Bankr., D. Mass. 2010). OTS closed WAMU and sold its assets to JP Morgan on September 25, 2008. The fact that WAMU was closed and JP Morgan acquired its assets from the FDIC does not mean that the name "Washington

[14] After that date, Washington Mutual Bank continued to be permitted to do business as Washington Mutual Bank, FA. See JPMorgan Chase Bank, Nat'l Ass'n v. Simoulidis, 161 Conn. App. 133, 148 (2015).

Mutual" was immediately unavailable for use, nor does it mean that WAMU improperly continued to operate after OTS closed it down.

In short, Harrison has not provided evidence sufficient to raise a question of fact concerning whether the default notice was properly sent by the "Lender." The mortgage's plain text provides that "Washington Mutual" is the "Lender"; Washington Mutual's letterhead was used on the default notice, and Harrison has provided nothing that could suggest that JP Morgan was not entitled to use the name "Washington Mutual" in conducting WAMU business as of February 9, 2009 -- just a few months after OTS had closed WAMU.

For all of the reasons set forth herein, the judgment is affirmed.

So ordered.