

BORDER TRUST COMPANY

v.

MICHAEL I. PETERSON et al.

Submitted on Briefs June 30, 2011

Decided July 19, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Michael I. Peterson and Antoinette Peterson appeal from the entry of a summary judgment by the District Court (Wiscasset, *Tucker, J.*) granting Border Trust Company a judgment for foreclosure and sale pursuant to 14 M.R.S. §§ 6321-6325 (2010). While the Petersons do not dispute that they are in default for failure to make payments required by the mortgage note, they contend on appeal that the court erred in entering summary judgment because the notice of right to cure the default sent by Border Trust did not contain language indicated by the terms of their mortgage. Review of the notice of right to cure discloses that it substantially complied with the notice requirements stated in the mortgage documents and that it also complied with the notice requirements stated in 14 M.R.S. § 6111(1-A) (2010), applicable to mortgages on primary residences, although the property at issue is not the Petersons' primary residence. The only notice statement indicated in the mortgage documents, but missing from the notice of right to cure, was the statement that the Petersons had the right to: (1) defend against the foreclosure action; (2) argue that they had kept all of the promises and agreements indicated in the mortgage document; and (3) present any other defenses. As the Petersons continued to be in default on the mortgage and, with the assistance of counsel, promptly appeared and asserted defenses in this matter, it

is evident that they have not been prejudiced by Border Trust's failure to include language regarding the Petersons' right to defend in the notice of right to cure and that, as the trial court determined, the failure to include this language was not a material breach of the mortgage contract. *See Jenkins, Inc. v. Walsh Bros. Inc.*, 2001 ME 98, ¶ 13, 776 A.2d 1229, 1234 (defining material breach of a contract as a non-performance of a duty "so material and important as to justify the injured party in regarding the whole transaction as at an end"). The trial court properly determined that there was substantial compliance with the mortgage contract and entered summary judgment accordingly.

The entry is:

Judgment affirmed.

**Attorney for Michael I. Peterson
and Antoinette Peterson:**

Robert L. Guillory, Esq.
Shankman & Associates
11 Lisbon Street
Lewiston, Maine 04240

Attorney for Border Trust Company:

Craig H. Nelson, Esq.
L. Dennis Carrillo, Esq.
Doyle & Nelson
150 Capitol Street, Suite 2
Augusta, Maine 04330

**Attorney for Sheepscot Harbour Village
& Resort Condominium Association:**

Michelle R. Santiago, Esq.
Hopkinson & Abbondanza
511 Congress Street, Suite 801
Portland, Maine 04101