

LaSALLE BANK NATIONAL ASSOCIATION, as trustee for SECURITIZED
ASSET INVESTMENT LOAN TRUST MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2004-4

v.

JOHN A. IOZZA

Submitted on Briefs June 30, 2011
Decided July 21, 2011

Panel: ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

John A. Iozza appeals from the entry of a summary judgment in the District Court (Springvale, *Foster, J.*) in favor of LaSalle Bank National Association as trustee for Securitized Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2004-4 (LaSalle Bank) on its complaint for foreclosure and sale of Iozza's property pursuant to 14 M.R.S. §§ 6321-6325 (2008).¹

On appeal, Iozza contends that the court should have granted his motion for relief from judgment pursuant to M.R. Civ. P. 60(b)(1), (2).² Because the court

¹ Title 14 M.R.S. §§ 6321-6325 (2008) has since been amended, but not in any way that affects the present case. *See* P.L. 2009, ch. 476, §§ B-5 to B-9 (effective Feb. 24, 2010); P.L. 2009, ch. 402, §§ 17-20 (effective June 15, 2009).

² We note that this Court had authority to dismiss Iozza's appeal because Iozza failed to comply with Rule 8 of the Maine Rules of Appellate Procedure. *See* M.R. App. P. 8(j) ("The failure to file an appendix, or the failure to include in the appendix any document required to be included as set out in this rule, may result in the dismissal of the appeal or other sanction."); *see also State v. Dominique*, 2011 ME 18, ¶ 1, 12 A.3d 53, 53; *State v. Ross*, 2004 ME 12, 841 A.2d 814, 814-15. Specifically, Iozza failed to include the court's ruling on his motion for relief from judgment in the appendix. *See* M.R. App. P. 8(g),

properly determined that M.R. App. P. 3(b) prohibited it from deciding the Rule 60(b) motion, and therefore “[took] no action” on that motion, there is no basis to address the merits of his motion on appeal, and we affirm the judgment.³ See M.R. App. P. 3(b); see also *Flaherty v. Muther*, 2011 ME 34, ¶ 7, 17 A.3d 663, 666 (“When final judgment is entered and an appeal is filed, [t]he trial court shall take no further action pending disposition of the appeal by the Law Court except in specifically enumerated circumstances.” (quotation marks omitted)); *Lund v. Lund*, 2007 ME 98, ¶ 20, 927 A.2d 1185, 1192; *Doggett v. Town of Gouldsboro*, 2002 ME 175, ¶¶ 5-6, 812 A.2d 256, 258; *Erickson v. State*, 444 A.2d 345, 348-49 (Me. 1982) (holding that a trial court had no authority to decide the plaintiff’s Rule 60(b) motion while an appeal was pending in this Court, and declining to address the merits of the plaintiff’s Rule 60(b) motion on appeal).

Iozza also appears to challenge the court’s entry of a summary judgment on the ground that LaSalle Bank is not the current holder of the promissory note and the mortgage. To the extent Iozza challenges the court’s entry of a summary judgment in favor of LaSalle Bank, the undisputed facts in the summary judgment record establish that LaSalle Bank is and has been the holder of the note and mortgage at all times relevant to this foreclosure proceeding. See M.R. Civ. P. 56(c); see also *Chase Home Finance LLC v. Higgins*, 2009 ME 136, ¶ 10, 985 A.2d 508, 510 (stating that this Court reviews “a grant of a motion for summary judgment de novo, viewing the evidence in the light most favorable to the party against whom judgment has been entered to decide whether the parties’ statements of material facts and the referenced record evidence reveal a genuine issue of material fact” (quotation marks omitted)).

The entry is:

Judgment affirmed.

(g)(3) (reciting that the “trial court decision, ruling or judgment that will be addressed in the appeal” shall be contained in the appendix). Additionally, Iozza failed to include the statements of material fact in the appendix, as required by M.R. App. P. 8(h)(1).

³ We note that the court should consider his motion after the disposition of this appeal.

John A. Iozza, pro se:

John A. Iozza
685 Broadway, Apt. #9
Malden, Massachusetts 02148

Attorney for Lasalle Bank National Association:

William B. Jordan, Esq.
Shapiro & Morley, LLC
707 Sable Oaks Drive, Suite 250
South Portland, Maine 04106

Springvale District Court docket number RE-2009-149
FOR CLERK REFERENCE ONLY