

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE UNDER
POOLING AND SERVICING AGREEMENT DATED AS OF NOVEMBER 1,
2006 SECURITIZED ASSET BACKED RECEIVABLES LLC TRUST
2006-WM3 MORTGAGE PASS-THROUGH CERTIFICATES SERIES
2006-WM3

v.

BONNIE J. MARTIN et al.

Submitted on Briefs October 10, 2012
Decided December 4, 2012

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

MEMORANDUM OF DECISION

Bonnie J. Martin and Terry Leach (collectively Martin) appeal from the judgment of the District Court (Rockland, *Westcott, J.*) vacating and dismissing the previously entered judgment of foreclosure in this action upon Deutsche Bank National Trust Company's filing of a waiver of foreclosure pursuant to 14 M.R.S. § 6323(1) (2011).¹ Martin contends that because the underlying foreclosure judgment had become final in 2008, the filing of a waiver in 2011 should not have been sufficient to cause the 2008 judgment to be vacated and the case dismissed. Currently, another foreclosure action involving the same property and the same parties is pending in the same court.

When a party who has obtained a judgment seeks to have that judgment vacated and the action dismissed, whether pursuant to the waiver of foreclosure statute, 14 M.R.S. § 6323(1), or otherwise, we review the court's action on that

¹ Deutsche Bank has filed a motion to dismiss this appeal. That motion is denied.

request for an abuse of discretion in the same manner as we review a ruling on a motion to amend a judgment, *see Ezell v. Lawless*, 2008 ME 139, ¶¶ 18-19, 955 A.2d 202, or a motion to set aside a default judgment, *see TD Banknorth, N.A. v. Hawkins*, 2010 ME 104, ¶ 9, 5 A.3d 1042. Here, no abuse of discretion is demonstrated in the court's vacating the judgment and dismissing the action. As the waiver statute notes, upon execution of a waiver of foreclosure, "all other rights of all other parties remain as if no foreclosure had been commenced." 14 M.R.S. § 6323.

The entry is:

Judgment affirmed.

On the briefs:

Patrick J. Mellor, Esq., Strout & Payson, P.A., Rockland, for appellants
Bonnie J. Martin and Terry Leach

Steven E. Cope, Esq., and William A. Fogel, Esq., Cope Law Firm,
Portland, for appellee Deutsche Bank National Trust Company as Trustee