

KIMCO CAPITAL CORP.

v.

500 WESTBROOK, LLC, et al.

Submitted on Briefs September 27, 2012

Decided December 6, 2012

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

MEMORANDUM OF DECISION

500 Westbrook, LLC, appeals from a summary judgment entered in the Superior Court (Cumberland County, *Warren, J.*) in favor of Kimco Capital Corp. 500 Westbrook argues that the court erred by granting Kimco's motion for summary judgment on its claim seeking a judgment of foreclosure because genuine questions of material fact remained as to the enforceability of a default interest rate provision in the note pursuant to *Raisin Memorial Trust v. Casey*, 2008 ME 63, 945 A.2d 1211. We review the summary judgment record de novo, *see Budge v. Town of Millinocket*, 2012 ME 122, ¶ 12, --- A.3d ---, and we conclude here that the affidavit submitted by 500 Westbrook failed to create a genuine question of material fact as to the enforceability of the default rate clause, *see M.R. Civ. P. 56(h)(2)*; *see also Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 19, 864 A.2d 169 ("A cornerstone of the rationale for having a summary judgment process is that a trial is not warranted if a party cannot identify admissible evidence that establishes an actual factual dispute.")

The entry is:

Judgment affirmed.

On the briefs:

Richard P. Olson, Esq., Perkins Olson, P.A., Portland, for appellant 500
Westbrook LLC

Michael A. Nelson, Esq., Jensen Baird Gardner & Henry, Portland, for
appellee Kimco Capital Corp.

Cumberland County Superior Court docket number RE-2011-51
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