

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR
WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES
WMALT 2005-3

v.

ADAM MACK

Submitted on Briefs July 1, 2014
Decided July 24, 2014

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

MEMORANDUM OF DECISION

Adam Mack appeals from a judgment of foreclosure entered in favor of U.S. Bank National Association (Bank) in the District Court (Portland, *Moskowitz, J.*) after a bench trial. Mack contends that the Bank lacked standing to foreclose because it failed to demonstrate that it owns Mack's mortgage. We agree.

We recently clarified in *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, ¶¶ 8-9, 12 & n.9, --- A.3d ---, that standing to foreclose requires ownership of the mortgage. Here, as in *Greenleaf*, the Bank claims ownership of the mortgage through an assignment from Mortgage Electronic Registration Systems, Inc. (MERS). *See id.* ¶¶ 2, 4, 13. MERS did not own the mortgage, however, and could assign only its bare right to record the mortgage as the lender's nominee. *See id.* ¶¶ 13-17 (interpreting mortgage language substantially identical to that in this case); *Mortg. Elec. Registration Sys., Inc. v. Saunders*, 2010 ME 79, ¶¶ 9-11, 15, 2 A.3d 289 (same). In the absence of a valid assignment of ownership of the mortgage, *see Greenleaf*, 2014 ME 89, ¶¶ 15, 17, --- A.3d ---; *Wells Fargo Bank, N.A. v. Burek*, 2013 ME 87, ¶¶ 5, 21 & n.7, 81 A.3d 330, the Bank lacked standing to foreclose.

The entry is:

Judgment vacated.

On the briefs:

Joshua Klein-Golden, Esq., Clifford & Golden, PA, Lisbon Falls, for
appellant Adam Mack

Adam J. Shub, Esq., and Jonathan G. Mermin, Esq., Preti Flaherty
Beliveau & Pachios, LLP, Portland, for appellee U.S. Bank, N.A.

Portland District Court docket number RE-2008-406
FOR CLERK REFERENCE ONLY