

THE BANK OF NEW YORK MELLON

v.

ROBERT J. MCKENNA et al.

Submitted on Briefs October 27, 2014  
Decided November 4, 2014

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

MEMORANDUM OF DECISION

Robert J. and Nancy L. McKenna appeal from a judgment of the District Court (York, *O'Neil, J.*) granting judgment for the McKennas after a trial on The Bank of New York Mellon's complaint of foreclosure. Contrary to the McKennas' contentions, the trial court did not abuse its discretion in denying their motion to amend the judgment and motion to reopen the evidence to admit evidence that the McKennas allege demonstrates that the Bank had committed fraud and/or fraud on the court. *See Smith v. Kennard*, 496 A.2d 660, 663 (Me. 1985). Because the trial court properly declined to reopen the proceedings to consider the fraud claims, it did not reach the issue of the alleged misconduct that the McKennas contend warranted dismissal of the action with prejudice. Accordingly, the trial court did not abuse its discretion by declining to dismiss the action with prejudice. *Cf. Thornton v. Adams*, 2003 ME 104, ¶ 8, 829 A.2d 517.

The entry is:

Judgment affirmed.

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**On the briefs:**

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Kennebunk, for appellant Robert J. McKenna and Nancy L.  
McKenna

Paula-Lee Chambers, Esq., and Marissa I. Delinks, Esq.,  
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appellee Bank of New York Mellon

York District Court docket number RE-2009-56  
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