

TD BANK, N.A.

v.

JOANN MCMULLIN et al.

Submitted on Briefs November 28, 2018
Decided December 6, 2018

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

MEMORANDUM OF DECISION

Joann McMullin appeals from a summary judgment of foreclosure entered by the Superior Court (Penobscot County, *A. Murray, J.*) in favor of TD Bank, N.A. (the Bank) on its complaint for foreclosure concerning real property located in Corinna. Title to the property had passed to McMullin, her brother, and her two sisters, after their mother's death.¹ For the reasons stated below, we affirm the judgment.

First, there is sufficient evidence in the record to support the finding that the Bank satisfied notice requirements when it sent notice to McMullin's address by certified mail addressed to the estate of McMullin's mother. *See* 14 M.R.S. § 6111 (2017). Second, even insofar as McMullin's mother is considered to have signed the secured promissory note as an accommodation party, she waived suretyship defenses pursuant to the terms of note.² *See*

¹ Only McMullin opposed the Bank's motion for summary judgment. Her brother is deceased, and the one sister that appeared in this action did not file any opposition to the Bank's motion.

² The court may have erred in finding that McMullin's mother was a maker and thus could not be an accommodation party when she signed the note as a borrower. *See* 11 M.R.S. § 3-1419(2) (2017);

11 M.R.S. § 1-1302(1) (2017); Restatement (Third) of Suretyship & Guaranty §§ 6, 48 cmt. d (Am. Law Inst. 1996). Third, the court did not err in admitting certain business records offered into evidence by the Bank. *See* M.R. Evid. 803(6); *Bank of Me. v. Hatch*, 2012 ME 35, ¶¶ 6-8, 38 A.3d 1260; *HSBC Mortg. Servs. v. Murphy*, 2011 ME 59, ¶ 10, 19 A.3d 815.

To the extent McMullin raises other issues on appeal, her contentions are either without merit or were not properly preserved for appeal, and we do not consider them further. *See Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003 (“In order to preserve an issue for appellate review, a party must timely present that issue to the original tribunal; otherwise, the issue is deemed waived.”).

The entry is:

Judgment affirmed.

Charles E. Gilbert, III, Esq., Gilbert & Greif, P.A., Bangor, for appellant Joann McMullin

Stephanie A. Williams, Esq., Andrea T. Holbrook, Esq., and David C. West, Esq., Duane Morris LLP, Portland, for appellee TD Bank N.A.

Penobscot County Superior Court docket number RE-2017-44
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First NH Bank v. Lawlor, 600 A.2d 1120, 1121 (Me. 1992) (“[O]ne may be considered an accommodation party even if he signs as a maker.”). However, the court’s analysis did not affect the outcome, and so any error was harmless. *See Starrett v. Starrett*, 2014 ME 112, ¶ 16, 101 A.3d 435.