

WILMINGTON SAVINGS FUND SOCIETY, FSB

v.

MICHAEL A. MCBRIDE JR. et al.

Submitted on Briefs April 14, 2020
Decided April 23, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, and HORTON, JJ.

MEMORANDUM OF DECISION

Wilmington Savings Fund Society, FSB, as trustee of Upland Mortgage Loan Trust B, appeals from a summary judgment in favor of Michael A. McBride Jr. and Kristen McBride entered by the District Court (Lewiston, *Oram, D.C.J.*) on Wilmington's foreclosure complaint.¹ We affirm the judgment.

Wilmington owns a mortgage on the McBrides' real property and the corresponding mortgage note. In 2014, Wilmington sent the McBrides a notice of default and right to cure. *See* 14 M.R.S. § 6111 (2018). This notice overstated the McBrides' amount to cure by \$40,200. Wilmington thereafter filed a foreclosure complaint in which it sought to recover the entire unpaid balance of the McBrides' mortgage loan.

In the course of litigation (but not until several years after it filed the complaint), Wilmington discovered that the notice of default contained an incorrect amount to cure. Wilmington then filed a motion to dismiss its

¹ For simplicity, we refer to Wilmington and its predecessors-in-interest as "Wilmington."

complaint without prejudice pursuant to M.R. Civ. P. 41(a)(2). On appeal, Wilmington argues that the court (*Beliveau, J.*) abused its discretion in denying this motion. Contrary to Wilmington's arguments, we conclude that the court did not abuse its discretion in denying Wilmington's request for a dismissal without prejudice. *See TD Banknorth, N.A. v. Hawkins*, 2010 ME 104, ¶ 23, 5 A.3d 1042 (explaining that the purpose of Rule 41(a)(2) is to ensure that cases are "prosecuted with diligence").

Thereafter, the McBrides filed a motion for summary judgment asserting that they were entitled to a judgment in their favor because Wilmington failed to provide them with a notice of default that complied with the requirements of 14 M.R.S. § 6111. After the McBrides filed this motion, Wilmington sent the McBrides a letter notifying them that it was revoking its decision to accelerate the McBrides' mortgage loan. Wilmington argued that, in light of the letter it sent to the McBrides revoking the acceleration of the loan, the court should enter a judgment only as to the portion of the loan that was past due at the time Wilmington filed the foreclosure complaint.

Wilmington now contends that the court (*Oram, D.C.J.*) erred in granting the McBrides' motion for summary judgment as to the entire mortgage loan. The court did not err or abuse its discretion in denying this request. Wilmington did not move to amend its complaint to reflect its attempted revocation of acceleration, and even if it had, the court was well within its discretion to deny such a request. *See Montgomery v. Eaton Peabody, LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106 ("A motion to amend may be denied based on . . . undue delay . . . [or] undue prejudice . . .").

The entry is:

Judgment affirmed.

Stephen B. Segal, Esq., Verrill Dana, LLP, Portland and Gregg M. Barbakoff, Esq., Maurice Wutscher, LLP, Chicago, Illinois, for appellant Wilmington Savings Fund Society, FSB

Jonathan E. Selkowitz, Esq., Pine Tree Legal Assistance, Inc., Portland, for appellees Michael A. McBride Jr. and Kristen McBride

Lewiston District Court docket number RE-2014-193
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