

U.S. BANK TRUST N.A.,
AS TRUSTEE FOR THE LSF9 MASTER PARTICIPATION TRUST

v.

EVEST LENDING, INC., et al.

Submitted on Briefs October 20, 2021
Decided October 28, 2021

Panel: STANFILL, C.J., and MEAD, GORMAN, JABAR, HUMPHREY, and HORTON,
JJ.

MEMORANDUM OF DECISION

U.S. Bank Trust, N.A., as Trustee for the LSF9 Master Participation Trust, appeals from a judgment of the Superior Court (York County, *O'Neil, J.*) dismissing its declaratory judgment complaint against Evest Lending, Inc., and several parties in interest for failure to state a claim upon which relief could be granted. *See* M.R. Civ. P. 12(b)(6). Contrary to U.S. Bank's contentions, (1) the court did not abuse its discretion in vacating an earlier dismissal by the court (*Douglas, J.*) upon finding insufficient proof that U.S. Bank's first motion to dismiss had been served on party in interest Michele Leo, *see* M.R. Civ. P. 5(b), (d) (Tower 2017); M.R. Civ. P. 60(b); *Haskell v. Haskell*, 2017 ME 91, ¶ 12, 160 A.3d 1176; (2) the court (*O'Neil, J.*) did not abuse its discretion in denying U.S. Bank's subsequently filed motion to voluntarily dismiss without prejudice, *see* M.R. Civ. P. 41(a)(2); *Minn. Mining & Mfg. Co. v. Barr Labs., Inc.*, 289 F.3d 775, 779, 784 (Fed. Cir. 2002); and (3) the court did not err in dismissing U.S. Bank's declaratory judgment action for failure to state a claim upon which relief could be granted, *see* M.R. Civ. P. 12(b)(6); *Beal Bank USA v. New Century Mortg. Corp.*, 2019 ME 150, ¶¶ 9-15, 217 A.3d 731; *Meridian Med. Sys., LLC v. Epix*

Therapeutics, Inc., 2021 ME 24, ¶ 2, 250 A.3d 122; *U.S. Bank Tr., N.A. v. Mackenzie*, 2016 ME 149, ¶ 11, 149 A.3d 267.

The entry is:

Judgment affirmed.

John A. Doonan, Esq., and Reneau J. Longoria, Esq., Doonan, Graves & Longoria, LLC, Beverly, Massachusetts, for appellant U.S. Bank Trust, N.A.

Scott D. Dolan, Esq., and Robert E. Mittel, Esq, MittelAsen, LLC, Portland, for appellee Michele Leo

York County Superior Court docket number CV-2018-95
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