

PAUL FICHTNER

v.

ALLAN J. NOWICKI et al.

Submitted on Briefs May 21, 2025
Decided June 10, 2025

Panel: MEAD, HORTON, LAWRENCE, DOUGLAS, and LIPEZ, JJ.

MEMORANDUM OF DECISION

Allan J. Nowicki and party-in-interest Dianne M. Nowicki appeal from a judgment of foreclosure entered by the Superior Court (Somerset County, *Mullen, C.J.*) concerning seller-financed real property that they purchased from Paul Fichtner.¹ We conclude that on this record, the court, which viewed the evidence admitted at trial in the Nowickis' favor, did not clearly err in finding by a preponderance of the evidence that they had "paid no more than \$35,296.88 in interest on the Note," and then applying that finding to ascertain the amount due on the mortgage.² *See Wells Fargo Bank, N.A. v. Burek*, 2013 ME

¹ Fichtner's complaint for foreclosure included an alternative count alleging unjust enrichment, which the court dismissed as moot given its judgment in Fichtner's favor on the foreclosure claim. The Nowickis do not appeal from the court's judgment in favor of Fichtner on their counterclaim alleging fraud.

² The court's figure represents the maximum amount paid by the Nowickis that is supported by the evidence. Although the parties' uncertain recordkeeping led the Nowickis to speculate that perhaps there could have been additional payments, there was no evidence of any additional payments beyond those credited by the court.

87, ¶ 17, 81 A.3d 330 (“We review a trial court’s factual findings underlying a judgment of foreclosure for clear error”); 14 M.R.S § 6321 (2025).

The entry is:

Judgment affirmed.

Jana L. Kenney, Esq., and Gregory P. Braun, Esq., Bergen & Parkinson, LLC,
Kennebunk, for appellant Allan J. Nowicki

Bruce B. Hochman, Esq., Micah A. Smart, Esq., and Emma S. Pooler, Esq., Eaton
Peabody, Portland, for appellee Paul Fichtner

Somerset County Superior Court docket number RE-2022-9
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