

STATE OF MAINE  
ANDROSCOGGIN, ss.

SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
Docket No. AND-14-277

_____	)
ONEWEST BANK, FSB,	)
	)
Plaintiff,	)
	)
v.	)
	)
RONALD S. LAROCHE,	)
	)
Defendant.	)
_____	)

RECEIVED  
MAR 17 2015  
Clerk's Office  
Maine Supreme Judicial Court

**APPELLEE ONEWEST BANK, FSB'S**  
**MOTION FOR RECONSIDERATION**  
**M.R.App.P. 14(b)**

**NOW COMES**, OneWest Bank, FSB, by and through its undersigned counsel, who respectfully requests that this Honorable Court reconsider that portion of its March 3, 2015 decision providing that upon remand to the District Court judgment enter for Defendant. Specifically, that instead of vacating judgment and ordering the entry of judgment in favor of Defendant on remand, this Court vacate judgment based upon its prior decision in *Bank of America v. Greenleaf*, 2014 ME 89 and from there remand for further proceedings. In support of this request, OneWest Bank, FSB, states as follows:

**I. BASED ON PROIR DECISIONS FROM THIS COURT AS A MATTER OF FAIRNESS & EQUITY THE REMAND ORDER SHOULD BE LIMITED TO VACATING DISTRICT COURT'S JUDGMENT ONLY**

As the Court noted in its March 3, 2015 Memorandum of Decision, at the trial court level the judgment of foreclosure in favor of OneWest Bank, FSB predated the decision in *Bank of America v. Greenleaf*, 2014 ME 89. Based on

the law as it existed at the time of trial, and the District Court's judgment for that matter, OneWest Bank, FSB relied upon an assignment of mortgage from MERS in order to satisfy its ownership of Defendant's mortgage under 14 M.R.S. §6321 and thereby its standing to foreclose. *HSBC Bank USA, N.A. v. Gabay*, 2011 ME 101, ¶3; *Bank of America v. Cloutier*, 2013 ME 17, ¶4; *Deutsche Bank National Trust Co. v. Wilk*, 2013 ME 79, ¶3. Only by applying the *Greenleaf* standard retroactively is it that the OneWest Bank, FSB's reliance on the MERS assignment at the time of trial, and by extension the District Court's judgment, can be regarded as an error of law.

Now the reason why OneWest Bank, FSB says this is not to try and take issue with the holding in *Greenleaf*, or the Court's later holding in *U.S. Bank National Association, as Trustee v. Mack*, 2014 ME 102. Rather, OneWest Bank, FSB brings these points to the Court's attention because they demonstrate how through no fault of its own, OneWest Bank, FSB found itself on appeal in the unenviable position of being judged against a legal standard that was not in place at the time of trial. Given this position, and while the *Greenleaf* standard may require that the District Court's June 3, 2014 judgment of foreclosure be vacated, as a matter of fairness and equity OneWest believes it is just and proper not to then have judgment enter for Defendant on remand.

This request is supported by this Court's decisions in *Mack* and *Greenleaf*. Specifically, in *U.S. Bank National Association, as Trustee v. Mack*, *supra*, this Court applied the *Greenleaf* holding retroactively. In doing so

however, this Court decided to limit the extent of its holding to vacating the prior entry of a judgment of foreclosure in favor of U.S. Bank National Association. Similarly, in *Greenleaf*, after finding that Bank of America, N.A. lacked the requisite standing to foreclose vis-à-vis an assignment of mortgage from MERS, the Court likewise limited the extent of its holding to vacating the prior entry of judgment. *Greenleaf*, 2014 ME 89, ¶17.

In this case however, even though like in *Mack* in particular, the appeal was pending at the time *Greenleaf* issued, this Court decided to not only vacate the District Court's judgment, but in doing so order the District Court on remand to enter judgment in favor of the Defendant. The point being that while the retroactive application of *Greenleaf* may have put OneWest Bank, FSB in an otherwise unenviable position, for the Court to not only have decided to vacate the District Court's judgment based on *Greenleaf* but in so doing also order the entry of judgment in favor of Defendant on remand, OneWest Bank, FSB's stands to potentially suffer significant prejudice because of the effect that a judgment for Defendant may have on its ability to re-foreclose at a later date. *Johnson v. Samson Construction Corp.*, 1997 ME 220. This prejudice is made all the more real because of the fact that OneWest Bank, FSB was never afforded the opportunity to try and cure its jurisdictional defect; a defect that only came into existence after the District Court's June 3, 2014 decision.

For these reasons, OneWest Bank, FSB respectfully requests that the Court reconsider that portion of its decision calling for the entry of judgment in favor of Defendant on remand.

**II. BECAUSE THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION THE ORDER ON APPEAL SHOULD BE LIMITED TO VACATING THE DISTRICT COURT'S JUDGMENT ONLY**

In so moving this Court to reconsider that portion of its decision ordering the District Court on remand to enter judgment in favor of Defendant, it bears considering whether the District Court can even take such action in the aftermath of *Greenleaf*. OneWest Bank, FSB's position is that because the District Court no longer has subject matter jurisdiction over OneWest Bank, FSB's foreclosure complaint in the aftermath of *Greenleaf*, it cannot enter a valid and binding judgment for the Defendant. For this reason OneWest Bank, FSB requests that the Court's March 3, 2015 Order should be limited to vacating the District Court's judgment. Here is why.

As this Court knows, in foreclosure cases a trial court's subject matter jurisdiction over the foreclosing-mortgagee's complaint is a function of the foreclosing-mortgagee's standing to foreclose. *Greenleaf*, 2014 ME 89, ¶9, citing to *JP Morgan Chase Bank v. Harp*, 2011 ME 5, ¶9 and *Mortgage Electronic Registration Systems, Inc. v. Saunders*, 2010 ME 79, ¶15. For example, in *Harp*, this Court held that "standing relates to the court's subject matter jurisdiction and may be raised at any time, including during an appeal." *Harp*, 2011 ME 5, ¶7.

In this case, based upon the retroactive application of the *Greenleaf* decision, the Court in its March 3, 2015 decision explicitly said in no uncertain terms that OneWest Bank, FSB "lacked standing to foreclose on the mortgaged premises." The significance of this being that without OneWest Bank, FSB

having the requisite standing to foreclose as of July 3, 2014, as of this same date the District Court can no longer lay claim to having subject matter jurisdiction over OneWest Bank, FSB's foreclosure complaint. *Greenleaf*, 2014 ME 89, ¶9, citing to *Harp*, 2011 ME 5, ¶9 and *Saunders*, 2010 ME 79, ¶15.

This in turn gives rise to the necessary question of if on remand the District Court is supposed to enter judgment in favor of Defendant, what effect will a judgment entered by a court without subject matter jurisdiction have. The short answer is that any such judgment will be void, and as such subject to an M.R.Civ.P. 60(b)(4) attack immediately upon entering on remand. *Coombs v. Government Employees Ins. Co.*, 534 A.2d 676 (Me.1987) ("If the court lack jurisdiction to render the judgment, then the judgment is void and must be set aside."); *Foley v. Adam*, 638 A.2d 718 ("A judgment is considered void if, inter alia, the court lacked personal or subject matter jurisdiction."); *Land Use Regulation Comm'n v. Tuck*, 490 A.2d 649, 652 (Me. 1985) (" We have previously determined that a party may move to set aside a judgment for voidness under Rule 60(b)(4) if the court which rendered it lacks jurisdiction of the parties or the subject matter, adjudicates issues beyond the scope of those submitted for decision, or acts in a manner inconsistent with due process."); *Town of Carmel v. McSorley*, 2002 ME 33, ¶5 ("A judgment is void and must be vacated if the court issuing the judgment lacks subject matter jurisdiction.").

Given the District Court's newfound jurisdictional limitations, OneWest Bank, FSB requests that this Court's March 3, 2015 Order be limited to vacating the District Court's judgment only.

**III. BECAUSE THE MARCH 5, 2015 ORDER ENTERED ON THE ISSUE OF STANDING TO FORECLOSE AND NOT THE MERITS OF THE CASE IT SHOULD BE LIMITED TO VACATING THE DISTRICT COURT'S JUDGMENT ONLY**

The admitted concern for OneWest Bank, FSB with that portion of the March 3, 2015 decision calling for the entry of judgment in favor of Defendant on remand, is that any such “judgment” will suggest that Defendant was somehow successful on the merits of the underline action. Simply put though, because this Court vacated the District Court’s judgment based on the change in law ushered in by *Greenleaf* and not the merits of the underline action, this Court’s March 3, 2015 decision should be limited to vacating the District Court’s judgment only.

To this point the case law interpreting the question of “prevailing party” in the context of awarding attorney’s fees is relevant. Specifically, in *Thanks But No Tank v. Department of Environmental Protection*, 2013 ME 114, ¶13 this Court held that “[w]e apply a functional analysis to determine which party prevailed.” Citing to *Flaherty v. Muther*, 2011 ME 32, ¶89. “By a functional analysis we mean that one must look at the lawsuit as a whole to determine which party was the winner and which the loser. *Thanks But No Tank*, 2013 ME 114, ¶13, citing to *Dodge v. U.S. service. Auto. Ass’n*, 417 A.2d 969, 975 (Me. 1980). “The determination of a successful party is to be based upon success upon the merits.” *Thanks But No Tank*, 2013 ME 114, ¶13.

Here, at the District Court level OneWest Bank, FSB was clearly the winner. Only by virtue of the intervening event that was the *Greenleaf*

decision, is it that OneWest Bank, FSB's title of winner, or prevailing party, has been vacated. While obvious, what this illustrates is how this Court's March 3, 2015 decision was not the result of Defendant persuading it that the District Court made an error of law in, for example, admitting a piece of evidence to call into question a determination by the District Court on the merits of the case, but rather because of a dramatic change in the law that fundamentally altered the jurisdictional stability of OneWest Bank, FSB's complaint. In short, this Court's March 3, 2015 had nothing to do with Defendant prevailing upon merits, but was instead the necessary byproduct of its decision in *Greenleaf*.

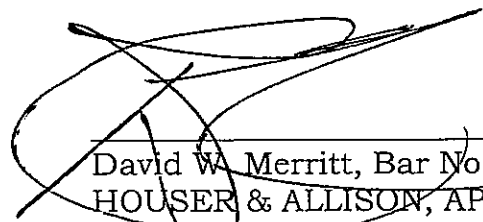
Because this Court vacated the District Court's judgment on the basis of its holding in *Greenleaf*, the question in turn becomes can this somehow bestow upon Defendant the title of "prevailing party", "successful party" or the party who had "success upon the merits" to warrant the "entry of judgment for LaRoche." *Thanks But No Tank*, 2013 ME 114, ¶13. Now in recalling the fact that *Greenleaf* links the standing of a mortgagee to foreclose with the subject matter jurisdiction of the trial court, in *Dutil v. Burns*, 1997 ME 1, ¶5 this Court held that "a dismissal for failure to comply with the statutory procedure is akin to a dismissal for insufficient service of process or lack of subject matter jurisdiction, and does not serve as an adjudication on the merits." Here admittedly there has not been a dismissal for want of subject matter jurisdiction, but what there has been is an implicit finding on the threshold issue of subject matter jurisdiction, which as noted in *Dutil* "does not serve as an adjudication on the merits." *Id.* at ¶5.

For this reason, OneWest Bank, FSB respectfully requests that this Court's March 3, 2015 Order be limited to vacating the District Court's judgment only.

**CONCLUSION**

For all of the reasons set forth herein, OneWest Bank, FSB respectfully requests that this Honorable Court reconsider that portion of its March 3, 2015 decision providing that upon remand the District Court enter judgment in favor of Defendant.

Respectfully requested,  
Plaintiff-Appellee,  
OneWest Bank, FSB,  
By its attorney,



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DATED: March 16, 2015

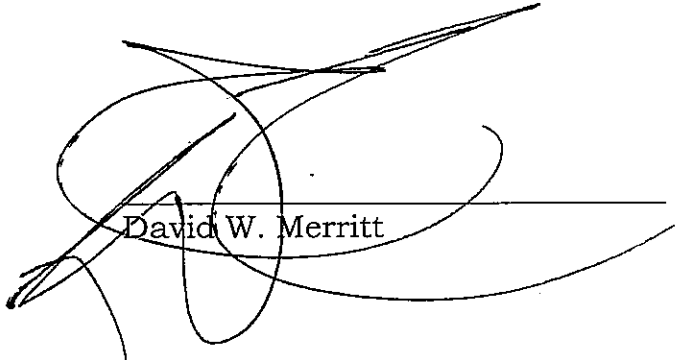


**CERTIFICATE OF SERVICE**

I, David W. Merritt, hereby certify that on this 16 day of March, 2015 I caused a true and accurate copy of the foregoing to be served on the below referenced individuals in the following manner: by first class mail, postage prepaid.

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