

VERNON T. WARK et. al.

v.

THOMAS V. WARK et. al.

and

AMERIQUEST MORTGAGE COMPANY

Submitted on Briefs March 24, 2003

Decided April 11, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,
and LEVY, JJ.

MEMORANDUM OF DECISION

Ameriqurest Mortgage Company appeals from a summary judgment of the District Court (Millinocket, *Stitham, J.*) foreclosing and ordering the sale of a home owned by mortgagors Thomas and Patricia Wark with the proceeds to go first to Vernon and Lillian Wark, the senior mortgagees, then to Ameriqurest, the junior mortgagee, and any surplus to Thomas and Patricia Wark.

Contrary to Ameriqurest's contentions, the court did not err in granting the summary judgment motion where, as here, Ameriqurest failed to comply with M.R.

Civ. P. 56(e) by opposing the motion with “affidavits or other materials setting forth by competent proof specific facts that would be admissible in evidence to show . . . that a genuine issue of fact exists.” *Bangor & Aroostook R.R. v. Daigle*, 607 A.2d 533, 535-36 (Me. 1992) (quoting 2 Field, McKusick & Wroth, *Maine Civil Practice* § 56.4, at 357 (2d ed. Supp. 1981)) (internal quotation marks omitted). Furthermore, the court’s entry of a summary judgment without hearing did not erroneously deny Ameriquest an opportunity to raise controverted factual issues. *See* M.R. Civ. P. 7(b)(1)(7). In addition, the court did not err when it considered, under the business records exception, records that Vernon and Lillian Wark kept concerning payments received from Thomas and Patricia Wark. *See* M.R. Evid. 803(6) (defining the exception liberally to include business “of every kind”); *Northeast Bank & Trust Co. v. Soley*, 481 A.2d 1123, 1125-26 (Me. 1984) (establishing the elements for satisfying the business records hearsay exception). Finally, because Ameriquest never opposed Vernon and Lillian Wark’s motion for immediate entry of final judgment, the court did not err when it certified the summary judgment as final. *See* M.R. Civ. P. 7(c)(3) (“A party failing to file a timely memorandum in opposition to a motion shall be deemed to have waived all objections to the motion.”).

The entry is:

Judgment affirmed.

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