

RICHARD E. HAMILTON SR.

v.

BANK OF AMERICA, N.A. et al.

Submitted on Briefs June 4, 2009
Decided June 16, 2009

Panel: ALEXANDER, and LEVY, SILVER, and GORMAN, JJ.

MEMORANDUM OF DECISION

Richard E. Hamilton Sr. appeals from a judgment of the Superior Court (Androscoggin County, *Wheeler, J.*), dismissing his complaint against Bank of America, N.A., et al., for lack of standing and failure to state a claim pursuant to M.R. Civ. P. 12(b)(6).

Contrary to Hamilton's contentions, he does not have standing to bring claims for breach of contract (Counts I and II) concerning the first mortgage between his son and Bank of America as he was not a party to the contract and his claims are solely derivative. *See Stull v. First Am. Title Ins. Co.*, 2000 ME 21, ¶ 11, 745 A.2d 975, 979. Further, there are no alleged facts that might demonstrate that he was an intended third-party beneficiary of that mortgage. *See Fleet Bank of Me. v. Harriman*, 1998 ME 275, ¶¶ 6-7, 721 A.2d 658, 660.

As to his other twelve claims, viewing the complaint in a light most favorable to Hamilton as we must, the facts alleged are not sufficient to establish the required elements of each of the various causes of action or are otherwise not actionable. *See Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830, 832 (“We examine the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.”) (quotation marks omitted).

Hamilton's complaint fails to state any claim upon which relief may be granted and was properly dismissed.

The request for sanctions against Hamilton is denied.

The entry is:

Judgment affirmed.

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