STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-15-361

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE ON BEHALF OF SAIL
2006-3 TRUST FUND

v.

DEBRA J. REAGAN

ORDER ON MOTION FOR RELIEF

Debra J. Reagan has filed a motion for relief pursuant to M.R. App. P. 10 in connection with her appeal from a judgment entered in the District Court (Springvale, *Fritzsche, J.*) denying her motion for relief from a foreclosure judgment. U.S. Bank National Association as Trustee on behalf of SAIL 2006-3 Trust Fund (the Bank) has filed a response to Reagan's motion. After review by the members of the Court considering the appeal, Reagan's motion for relief is GRANTED.

I. BACKGROUND

On November 25, 2009, the Bank filed a complaint for foreclosure against Reagan in the District Court (Springvale), in which it alleged the following: In 2006, Reagan executed a promissory note in favor of Countrywide Home Loans, Inc. (Countrywide) and a mortgage securing the note on property in Sanford in favor of Mortgage Electronic Registration Systems, Inc., (MERS)

"acting solely as the nominee for [Countrywide]." In 2007, MERS, as nominee for Countrywide, purported to assign the mortgage to an entity called U.S. Bank National Association as Trustee for SAIL 2006-3. In 2009, that entity purported to assign the mortgage to the Bank. At some point, the Bank became the holder of the note. Reagan stopped making monthly mortgage payments in 2008.

Reagan filed a counterclaim alleging, among other things, that the Bank did not have standing to foreclose because MERS "had no rights to grant/convey [the] mortgage to the [Bank]" and "had no standing to grant/convey anything of its own accord," and that the Bank committed various forms of fraud by initiating the foreclosure action anyway.

The court (*Fritzsche, J.*) held a trial in September of 2012, at which Reagan again argued that the Bank did not have standing to foreclose. On January 3, 2013, the court entered judgments in favor of the Bank on its foreclosure complaint and on Reagan's counterclaim. The court then denied Reagan's motion for reconsideration. Reagan appealed and, citing our decision in *Mortgage Electronic Registration Systems, Inc. v. Saunders*, 2010 ME 79, 2 A.3d 289, argued that the Bank did not have standing to foreclose because MERS did not have authority to assign the mortgage. The Court affirmed the foreclosure judgment in a memorandum of decision issued on December 24, 2013,

see U.S. Bank, Nat'l Ass'n v. Reagan, Mem 13-139 (Dec. 24, 2013), and denied Reagan's motion for reconsideration.

In February of 2014, Reagan filed a complaint in the United States District Court for the District of Maine against the Bank and other defendants, claiming "various constitutional and statutory violations in connection with [her] case."[1] After that court dismissed her complaint in October of 2014, she appealed from the dismissal to the United States Court of Appeals for the First Circuit.

In March of 2015, in the Maine District Court (Springvale), Reagan moved for relief from the foreclosure judgment pursuant to M.R. Civ. P. 60(b)(5) and (6).[2] She pointed out that the provisions concerning MERS in her mortgage are identical to those at issue in *Saunders*, in which the Court determined that "[t]he only rights conveyed to MERS . . . are bare legal title to the property for the sole purpose of recording the mortgage and the corresponding right to record the mortgage with the Registry of Deeds." 2010 ME 79, ¶¶ 9-10, 2 A.3d 289.

After the Superior Court denied Reagan's motion, she initiated this appeal. Based on the unusual circumstances of this case, the Court ordered Reagan to file a motion for extraordinary relief pursuant to M.R. App. P. 10 and

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[1] Reagan's federal court complaint is not part of the record in this appeal.

[2] On her own motion, Reagan's appeal in the First Circuit Court of Appeals was dismissed shortly after she moved for relief from the foreclosure judgment in the Maine District Court.

the Bank to file a responsive memorandum showing cause why the Court should not conclude that it lacked standing to initiate and litigate this foreclosure action.

II. DISCUSSION

The Court reviews the denial of a Rule 60(b) motion "for an abuse of discretion that works a plain and unmistakable injustice against the defendant." *Cote Corp. v. Kelley Earthworks, Inc.*, 2014 ME 93, ¶ 14, 97 A.3d 127 (quotation marks omitted). "[A]bsent a showing of essentially different facts, the decision by an appellate court on a given issue is to be followed in the trial court once the case is remanded, and . . . the decision by an appellate court controls in subsequent proceedings in the same court." *Blance v. Alley*, 404 A.2d 587, 589 (Me. 1979) (footnote omitted). Reagan's argument that the Bank lacked standing to foreclose was apparently rejected at trial, on her motion for reconsideration of the judgment against her, on her direct appeal, and on her motion for reconsideration of her direct appeal. Her subsequent Rule 60(b) motion in the trial court, in which she asked the trial court to overrule our disposition of her first appeal, amounted to a collateral attack on a final judgment that we had already affirmed. Under these circumstances, although "the trial court may still possess some limited discretion to reopen the issue in

very special situations," *United States v. Bell*, 988 F.2d 247, 250-51 (1st Cir. 1993), it did not abuse that discretion by denying Reagan's motion.[3]

Reagan's only possible avenue for relief, therefore, is with this Court:

> If a party seeking relief from the judgment asserts error on the part of the Law Court, action by a single lower court judge seems repugnant to the higher dignity of the Law Court. The party in such a case should seek relief by a motion addressed to the Law Court's inherent power to correct its own obvious error.

3 Harvey, *Maine Civil Practice* § 60:12 at 302 (3d ed. 2015-2016). Based on the law of the case doctrine, an appellate court generally will decline to revisit its own prior decision in the same case. *Cohen v. Brown Univ.*, 101 F.3d 155, 167-68 (1st. Cir. 1996). Although "[l]aw of the case directs a court's discretion," however, "it does not limit the tribunal's power." *Arizona v. California*, 460 U.S. 605, 618 (1983). "[B]ecause the law of the case doctrine is a rule of policy and practice, rather than a jurisdictional limitation, it may tolerate a modicum of residual flexibility in exceptional circumstances." *Bell*, 988 F.2d at 251 (quotation marks omitted); *see also Blance*, 404 A.2d at 589 (explaining that the doctrine "merely expresses 'the practice of courts generally to refuse to reopen what has been decided, not a limit to their power'" (quoting *Messenger v. Anderson*, 225 U.S. 436, 444 (1912))); *Peterson v. Hopson*, 29 N.E.2d 140, 144

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[3] We do not reach the parties' arguments regarding the trial court's conclusion that Reagan's motion was untimely.

(Mass. 1940) ("The law of the case . . . does not deny the power of an appellate court to reconsider a point determined upon an earlier appeal in the same case.").

The "vexatious" question of whether an appellate court should strictly adhere to the law of the case in the face of error in its previous opinion, *Luminous Unit Co. v. Freeman-Sweet Co.*, 3 F.2d 577, 580 (7th Cir. 1924), involves balancing the interest of finality in litigation and the goal of administering justice, *see, e.g.*, *United States v. U.S. Smelting Ref. & Mining Co.*, 339 U.S. 186, 198 (1950); *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515 (4th Cir. 2003); *Conn. Gen. Life Ins. Co. v. Bryson*, 219 S.W.2d 799, 800 (Tex. 1949). As we stated in *Blance*, the power to reopen issues of law already decided "will necessarily be exercised sparingly, and only in a clear instance of previous error, to prevent a manifest injustice." 404 A.2d at 589 (quoting *White v. Higgins*, 116 F.2d 312, 317 (1st Cir. 1940)).

The Court is convinced that the extraordinary circumstances of this case warrant extraordinary relief. Instead of "sitting on her rights," Reagan pursued every possible avenue for relief. At virtually every stage of the proceedings, she argued that the Bank lacked standing to initiate the action because its ownership interest in the mortgage stemmed from an assignment by MERS that was ineffective to convey the ownership interest required for standing.

According to *Saunders*, which we decided over twenty-eight months before the foreclosure judgment against Reagan was entered, that argument was correct. 2010 ME 79, ¶¶ 9-11, 2 A.3d 289. In *Saunders*, we made clear that MERS, acting solely as a nominee for the lender, had no interest in the mortgage beyond the ability to record the mortgage in the Registry of Deeds. *Id.*; *see also JPMorgan Chase Bank v. Harp*, 2011 ME 5, ¶ 9, 10 A.3d 718 (noting, two years before the trial court entered the foreclosure judgment against Reagan, that a foreclosure plaintiff who owned the note but not the mortgage "would have been vulnerable to" a standing challenge). The notion that MERS could not assign an ownership interest greater than that which it held rests on age-old principles of property law, not on any recent development in our foreclosure jurisprudence. *E.g.*, *Arey v. Hall*, 81 Me. 17, 22, 16 A. 302 (1888) ("[T]he assignee can have no greater right . . . than the assignor."). Pursuant to *Saunders*, therefore, the Bank did not have standing to pursue this foreclosure action against Reagan, and the case was nonjusticiable. "Courts can only decide cases before them that involve justiciable controversies." *Lewiston Daily Sun v. Sch. Admin. Dist. No. 43*, 1999 ME 143, ¶ 12, 738 A.2d 1239; *see also Homeward Residential, Inc. v. Gregor*, 2015 ME 108, ¶¶ 15-24, 122 A.3d 947.

In this extraordinary case, the Court concludes that the administration of justice outweighs the important interest in finality of litigation. It is therefore

ORDERED that Reagan's motion for relief is GRANTED. It is further ORDERED that this Court's memorandum of decision deciding Reagan's first appeal, *U.S. Bank, Nat'l Ass'n v. Reagan*, Mem 13-139 (Dec. 24, 2013), is withdrawn. It is further ORDERED that the January 3, 2013, foreclosure judgment in the Bank's favor is vacated and the case is remanded to the District Court for entry of a dismissal of the Bank's foreclosure action without prejudice. *See Gregor*, 2015 ME 108, ¶¶ 15-24, 122 A.3d 947; *Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶¶ 6-9, 124 A.3d 1122.

DATED: August 11, 2016

For the Court,

Donald G. Alexander
Senior Associate Justice