MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court docket number Pen-24-436

U.S. BANK, N.A.

Plaintiff/Appellee

v.

RICHARD JEWETT

Defendant

UNIFUND CCR PARTNERS

Party-in-Interest/Appellant

ON APPEAL FROM NEWPORT DISTRICT COURT

District Court Docket No. NEWDC-RE-18-62

BRIEF FOR APPELLANT

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INTRODUCTION

This appeal presents the Law Court with the opportunity to clarify that its decision in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, 307 A.2d 1049, announced a Rule of Decision binding on all trial courts, and was not merely precatory. This is to say that where a plaintiff in a residential foreclosure action has not separately pleaded a claim for the unaccelerated amounts due under the note that could have been litigated with the foreclosure action, *Finch* does not allow a trial court, after ruling that a plaintiff has failed to satisfy the pre-condition of a statutorily compliant Notice of Right to Cure Default under 14 M.R.S. 6111(1), to dismiss the foreclosure action *without prejudice*.

Rather, the *Finch* Rule of Decision requires a trial court to order a disposition of the foreclosure action that preserves for parties-in-interest all preclusive effects resulting from a plaintiff's failure to separately plead a claim for the unaccelerated amounts due under the note that could have been litigated with the foreclosure action.

Further, this appeal seeks a clarification that the claim preclusion resulting from a plaintiff's failure to separately plead a claim for the unaccelerated amounts due under the note that could have been litigated with the foreclosure action means that the borrower has no further obligation to pay those unaccelerated amounts due as of the date of judgment.

Finally, this appeal discusses the need for the trial court to make a factual determination of the amount remaining due to the Bank, taking into account the provisions of the note and mortgage.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. On November 2, 1999, Defendants Richard S. Jewett and Shirley A. Jewett borrowed $90,403.50, at 8.5% interest per annum, a monthly payment of $695.12, with late fees of 10% of the monthly payment per the terms of a 30-year promissory note (A. 61) as secured by a mortgage on their home at 492 Miles Rd., Dixmont, Maine (A. 65).

2. The mortgage provides in Section 4(D) that "4. Secured Debt and Future Advances. The term 'Secured Debt' is defined as follows: . . . . D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument" (A. 66).

3. The promissory note provides in the paragraph titled "Payments By Lender" that "If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges" (A. 62).

4. Party-in-Interest/Appellant Unifund CCR Partners [hereinafter "Unifund"] recorded a judgment execution lien in the amount of $6,179.72 against Defendant Richard S. Jewett's interest in the mortgaged premises on August 27, 2012, as recorded in the Penobscot County Registry of Deeds at Book 12923, Page 54 (A. 53).

5. The mortgage was assigned to Plaintiff/Appellee U.S. Bank, N.A. [hereinafter the "Bank"] by Assignment of Mortgage recorded in said Registry of Deeds on June 19, 2018 and recorded at Book 14843, Page 271 (A. 83).

6. On July 27, 2018, the Bank mailed Defendants what purported to be notices of default and of the right to cure the default (A. 85) [hereinafter the "Notice"].

7. The Bank commenced its foreclosure action on 9/24/2018 (A. 3), alleging, *inter alia*, that Defendants had failed to make all monthly payments beginning 3/15/2016 (A. 53).

8. The Complaint did not contain a separate count seeking judgment against the Defendants for the unaccelerated amounts due under the promissory note (A. 51).

9. Party-in-Interest State of Maine appeared through counsel on 10/9/2018 (A. 4).

10. Unifund filed its Answer on 10/15/2018 (A. 4).

11. Defendant Richard Jewett filed his Answer on 11/2/2018 (A. 4).

12. Defendant Shirley Jewett filed her Answer on 11/5/2018 (A. 4-5).

13. The 8/29/2019 Mediation session did not resolve the foreclosure action and on 9/3/2019 the case was ordered restored to the docket with a Scheduling Order to issue after 9/29/2019 (A. 7).

14. The trial court issued a Scheduling Order on 12/17/2019 with a Discovery Deadline of 3/18/2020 (A. 8).

15. On 9/30/2021, the trial court ordered the case temporarily transferred to the Penobscot Count Superior Court for trial (A. 10).

16. Trial commenced in the Superior Court on 6/16/2023, but was continued due to Defendant Shirley Jewett's illness (A. 12).

17. Trial resumed and was completed on 10/11/2023 (A. 13).

18. The Bank's trial exhibit E summarized several items of mortgage costs and expenses that the Bank claimed were due from Defendants: Escrow Balance Due at Loan Transfer: $4,015.50; Insurance: $1,991.80; Taxes: $3,505.32; Corporate Advances: $12,880.62 (A. 71).

19. The corporate advances are itemized on page 11 of the Bank's trial exhibit E as "Fee Details." The total of the Fee Details is $15,072.00. Deducting the included amount of $2,191.38 for Late Charges yields $12,880.62 (A. 81).

20. The Bank and Unifund filed trial briefs on 11/13/2023 (A. 13).

21. Unifund filed a Reply trial brief on 11/22/2023 (A.13).

22. The Bank filed a Reply trial brief on 11/27/2023 (A. 13).

23. Unifund argued that the Bank had failed to prove three elements of its burden of proof: (1) that the Notice complied with the applicable statutory requirements, (2) the amount due, and (3) the order of priority (A. 36).

24. On 7/25/2024, the trial court issued its Judgment of Dismissal that dismissed the foreclosure action without prejudice (A. 14) [hereinafter the "Dismissal"].

25. In the Dismissal, the trial court analyzed Unifund's objections to the admissibility to certain of the Bank's trial Exhibits and ruled Plaintiff's Exhibits E

and F inadmissible "due to their lack of trustworthiness" under the business records exception and the integrated business records exception to the hearsay rule of evidence (A. 35).

26. The Discussion portion of the Dismissal cites *Finch* ¶¶ 51 and 39, and n.18, for the propositions that

> A plaintiff's failure to prove that the "notice of default, acceleration, and right to cure" complies with § 6111 results in the court "treat[ing] the lender's foreclosure claim as prematurely commenced, without proceeding further unless the lender has asserted a justiciable claim under the note for the unaccelerated balance due."
>
> The parties are accordingly "returned to the positions they occupied before the filing of the action (except as to any claim for an unaccelerated amount due that could have been litigated).
>
> Therefore, if a court determines a foreclosure plaintiff's notice is deficient under § 6111, the court must dismiss the foreclosure complaint without prejudice. Because a notice's deficiency may not be apparent until it is challenged in a pretrial motion or at trial, a court's finding that a notice is deficient results in dismissal without prejudice regardless of the action's procedural posture." (A. 37).

27. The trial court also found that the Notice was legally deficient because it did not state the precise amount due that Defendants were required to pay to cure their alleged default (A. 47).

28. The trial court also found that the Notice was legally deficient because it did not adequately inform the Defendants of their rights and of the action required to cure their alleged default (A. 47).

29. The trial court also overruled Unifund's objection to the admissibility of Plaintiff's (1) Trial Exh. A-1 (promissory note) (A. 22) and (2) Trial Exh. C-1

(assignment of mortgage) (A. 27), and, over Unifund's objection, ruled that the promissory note contained a valid Late Fees clause (A. 39).

30. The Dismissal was issued subject to certain conditions, among which was "If the Plaintiff files a future foreclosure action, the Plaintiff may not recover any late fees or interest that accrued on the debt in the period between the commencement of this present foreclosure action and its dismissal." (A. 48).

31. The Dismissal was entered on the court's docket on 7/29/2024 (A. 14).

32. Unifund timely filed a Motion to Alter or Amend Judgment on 8/8/2024 (A. 14).

33. The trial court dismissed Unifund's Motion to Alter on Amend Judgment on 9/4/2024 (A. 14).

34. Unifund filed a Notice of Appeal on 9/25/2024 (A. 14).

35. The trial court vacated its dismissal of Unifund's Motion to Amend or Alter Judgment on 10/14/2024 (A. 14).

36. Justice Horton issued an Order on 10/21/2024 permitting the trial court's action of vacating its dismissal of Unifund's Motion to Amend or Alter Judgment (A. 14-15).

37. With no discussion or analysis of the issues raised, the trial court "Denied" Unifund's Motion to Amend or Alter Judgment on 1/28/2025 (A. 50).

ISSUE PRESENTED FOR REVIEW

Issue Presented: Did the trial court err by dismissing the foreclosure action without prejudice?[1]

[1] As a party-in-interest, Unifund may defend against the foreclosure action. *Casco Northern Bank v. Estate of Grosse*, 657 A.2d 778, 781 (Me. 1995). Neither the Bank nor the trial court have disputed this axiom.

ARGUMENT

Standard of Review: De Novo[2]

I. *FINCH V. U.S. BANK, N.A.* ESTABLISHED A NEW RULE OF DECISION IN RESIDENTIAL FORECLOSURE CASES.

A. THE *FINCH* HOLDINGS:

Prior to *Finch* v. *U.S. Bank, N.A.*, 2024 ME 2, 307 A.2d 1049, the Law Court's decision in *Pushard v. Bank of America, N.A.*, 2017 ME 230, ¶ 36, 175 A.3d 103, held, quoting *Finch* ¶ 2, ". . . a foreclosure judgment for the borrower based on a mistake in the lender's notice of default renders the note and mortgage unenforceable and requires transfer of title to the borrower, 'free and clear of the [lender's] mortgage encumbrance.' "

Finch overruled *Pushard* in this regard:

> ". . . when a lender fails to comply with section 6111's requirements, the lender lacks the right to accelerate the note balance or commence a foreclosure action. We further conclude that when a lender lacks the right to accelerate the note, the note cannot be, and is not, accelerated anyhow by the commencement of a foreclosure action that the lender also lacks the right to commence." *Finch* ¶ 6.

Additionally, *Finch* emphasized that the doctrine of claim preclusion will bar recovery by a lender for the unaccelerated amounts due under the note that "*could have been litigated* in conjunction with a foreclosure action even where the

[2] The Law Court reviews questions of law *de novo*. *State v. O'Connor*, 681 A.2d 475, 476 (Me. 1996).

foreclosure claim itself *could not have been litigated* because of a section 6111 violation" (emphasis in original). *Finch* n.12.[3]

Finch's holding applying claim preclusion to unaccelerated amounts that could have been litigated is expressed further at ¶ 39:

> . . . we conclude that when a lender fails to prove in a foreclosure action that it has issued a valid notice of acceleration or fails to prove that the borrower has breached the parties' contract, **the parties are returned to the positions they occupied before the filing of the action** (except as to any claim for an unaccelerated amount due that could have been litigated). (emphasis supplied).[4]

Further at ¶ 51,

> When a court finds that a lender's notice of default, acceleration, and right to cure fails to comply with section 6111, the court should treat

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[3] *Finch* n.12 points out that 14 M.R.S. § 6111(1) does not apply to a lender's only claim for the unaccelerated amounts past due under the note. However, § 6111(1) does apply to any unaccelerated amounts due only under the mortgage, *e.g.*, inspection fees, insurance, taxes, and attorneys fees for the foreclosure lawsuit. In this case, such amounts claimed due under the mortgage were also due under the note, and hence could have been litigated separately from the foreclosure action. *See* Argument, section III, *infra*.

[4] The emphasized language paraphrases the essential holding of *Fed. Nat'l Mortg. Ass'n v. Thompson*, 912 N.W.2d 364 (Wis. 2018). In *Thompson*, an original foreclosure complaint was dismissed with prejudice due to the plaintiff's failure to present evidence of the original notice of intent to accelerate full payment. *Id.* 367. The effect of this dismissal with prejudice was to establish that ". . . [the borrower] was not in default for having missed installment payments. . ." *Id.* 371. Further,

> Thus, because it was never proved in the 2010 lawsuit that [the borrower] was in default, the entire balance of the note was never validly accelerated. In such circumstances, **the parties are placed back into the position they held before the commencement of the lawsuit**. [The borrower] was obligated to continue making installment payments **after** the dismissal of the 2010 lawsuit, and claim preclusion does not prevent [the lender] from suing [the borrower] for failing to make those payments. *Id.* 371-372. (cited in *Finch* ¶ 36) (emphasis supplied).

At trial, the Bank did not prove that Defendants were in default because its trial exhibits E & F were excluded from admission into evidence by the trial court's Judgment of Dismissal.

the lender's foreclosure claim as prematurely commenced, without proceeding further unless the lender has asserted a justiciable claim under the note for the unaccelerated balance due. [n.18]

[n.18] If no claim for the unaccelerated amount due has been asserted, *the effect of the judgment*, under the rule against claim-splitting and the claim preclusion doctrine, *is to bar any future claim for that amount because the claim could have been litigated regardless of the lender's failure to comply with section 6111*. (emphasis supplied).

Finally, at ¶ 52:

. . . the foreclosure *judgment* in favor of Finch does not bar a further foreclosure action or render the note and mortgage unenforceable, although it *precludes the Bank from recovering in the future any unaccelerated balance due on the note as of the date of the judgment*. (emphasis supplied).

This Argument refers to these Finch holdings as the Finch "Rule of Decision."

B. THE TRIAL COURT'S DISMISSAL WITHOUT PREJUDICE WAS ERROR.

In its Conclusion to the Judgment of Dismissal, the trial court wrote:

For the foregoing reasons, the Court finds that as a matter of law, the proper remedy is DISMISSAL WITHOUT PREJUDICE. *See Finch*, 2024 ME 2, ¶¶ 39, 51, 307 A.3d 1049.

As so referenced, the text of *Finch* ¶ 39, *see supra*, expressly conditions the parties' return to their positions "occupied before the filing of the action" with an

exception *"as to any claim for an unaccelerated amount due that could have been litigated* " (emphasis supplied). Clearly, the trial court mis-interpreted this language to permit it to order a dismissal without prejudice. The trial court did not understand that *Finch* was following *Thompson* in its use of the phrase "returned to the positions they occupied before the filing of the action."

Perhaps it is an understandable error. *See* the Restatement (Second) of Judgments § 20 (Am. L. Inst. 1982).

> § 20 Judgment for Defendant – Exceptions to the General Rule of Bar
> (1) A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff on the same claim:
> . . . .
> (b) When the plaintiff agrees to or elects a nonsuit (or voluntary dismissal) without prejudice or the court directs that the plaintiff be nonsuited (or that the action be otherwise dismissed) without prejudice. . .

However, as discussed *supra* n.4, *Finch* is based upon the *Thompson* rationale that the plaintiff's failure to prove the requisite default and notice of intent to accelerate still allows the plaintiff to exercise its contractual right to foreclose for a new default occurring after the trial court's decision.[5]

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[5] *Finch* does not explicitly follow *Thompson*'s conclusion that the lender, while not barred from a subsequent foreclosure, is limited to claiming a default occurring after the date of judgment. However, the effect of the Finch Rule of Decision is essentially the same. If the lender does not separately plead a count for unaccelerated amounts due under the note, claim preclusion will limit a further foreclosure to amounts coming due after the date of judgment. If the lender does separately plead a count for the unaccelerated amounts, and recovers a judgment, the doctrine of election of remedies will also limit a further foreclosure to amounts coming due after the date of judgment. "The fundamental purpose of the doctrine of election of remedies is to prevent double recovery for a single wrong or injury." *County Forest Products v. Green Mountain Agency, Inc*., 2000 ME 161, ¶ 46, 758 A.2d 59 (citing Andrew M. Horton & Peggy I. McGehee, Maine Civil Remedies § 2-3 at 23 (3d ed. 1996). If the lender obtains a judgment for the unaccelerated amounts, and then files a judgment lien on the subject real estate, that lien becomes a junior interest in a subsequent foreclosure, thereby creating the danger of a double recovery for the lender.

The *Finch* Rule of Decision does not authorize a dismissal without prejudice, because of the scope of such of a dismissal.[6] A "Dismissal Without Prejudice" is not a final judgment entitled to claim preclusion (*res judicata*). *U.S. Bank, N.A. v. Tannenbaum*, 2015 ME 141, ¶7, 126 A.3d 734, citing *Norton v. Town of Long Island*, 2005 ME 109, ¶¶14-20, 883 A.2d 889. Under a "Dismissal Without Prejudice", a plaintiff will be able to commence a further foreclosure action, inclusive of all amounts due under the note and mortgage, including amounts due prior to the date of the dismissal.

No doubt the trial court understood that the effect of its dismissal without prejudice was as not as broad as the relief accorded in *Finch*. Had it thought otherwise, it would not have conditioned the dismissal without prejudice so as to grant Defendants a modicum of relief from the monetary obligations imposed under the note. Per the Dismissal's "WHEREFORE" clause,

> If the Plaintiff files a future foreclosure action, the Plaintiff may not recover any late fees or interest that accrued on the debt in the period between the commencement of this present foreclosure and its dismissal.

Under the *Finch* Rule of Decision, Defendants would be relieved from their full obligations under the note, to include, minimally, all unpaid monthly installments of principal and interest, and late fees, due for the period before

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[6] Notably, *Finch* does not discuss the availability of a dismissal without prejudice as an acceptable disposition of the case. Nor does *Finch* criticize the "Judgment for Defendant" disposition of the underlying District Court foreclosure action.

commencement of suit through to the date of the trial court's decision following remand.

C. UNIFORMITY OF DECISION IS NECESSARY.

The Bank may well argue that *Finch* should be restricted to its fact pattern. The Law Court's decision arose from an underlying District Court decision awarding to Defendant Finch a judgment then thought to be "on the merits" with claim preclusive effects. Here, the trial court has opted to issue a dismissal without prejudice, with no pretensions to claim preclusion.

If the trial court's view is correct, other courts will follow. In these cases, the foreclosing plaintiff will be able to initiate a new foreclosure with no limit on the amounts pursued as due, except as to such equitable restrictions on the plaintiff's as the trial court may impose.

Still other trial courts will decide cases involving a deficient notice of default and right to cure by granting a judgment to the defendant. These cases will fall into the *Finch* mold: Foreclosing plaintiffs will be able to initiate a new foreclosure action, but they will be barred from pursuing all unaccelerated amounts due under the note as of the date of judgment.[7]

This dichotomy of remedy would, of course, be intolerable. A lack of uniformity will lead to unequal treatment. *See State v. Hewey*, 622 A.2d 1151,

[7] "If no claim for the unaccelerated amount due has been asserted, the effect of the judgment, under the rule against claim-splitting and the claim preclusion doctrine, is to bar any future claim for that amount because the claim could have been litigated regardless of the lender's failure to comply with section 6111." *Finch* n.18.

1153 (Me. 1993). *Finch* has promulgated a new Rule of Decision that is binding upon the lower courts. The trial court in this case committed an error of law by a disposition of the foreclosure action that did not preserve the *Finch* holdings.

II. DEFENDANTS HAVE NO OBLIGATION TO PAY THE UNACCELERATED AMOUNTS, DUE AS OF THE DATE OF JUDGMENT, WHICH ARE BARRED BY *FINCH*.

There is a significant difference between the relief available to Defendants under the *Finch* Rule of Decision and the trial court's Judgment of Dismissal. The trial court conditioned its dismissal without prejudice so as to restrict the Bank's ability to pursue a sub-set of interest and late fees, if it "files a future foreclosure action." On the other hand, under the *Finch* Rule of Decision, Defendants would no longer owe or be obliged to pay the Bank for all unaccelerated amounts due under the note, as of the date of judgment.

Finch established that the principle that the doctrine of claim preclusion, as well as the rule against claim-splitting, *supra* n.7, bars the Bank from a "future claim" for these amounts. However, in the context of this doctrine and rule, the bar arises because there has been an adverse judgment against the Bank due to its failure to pursue the unaccelerated amounts when it had the opportunity to do so.

This bar is not a sanction for misconduct. It is a recognition that the Bank failed to present and prove its claim for unaccelerated amounts. It is essentially no different from a case where the Bank did present its claim for unaccelerated amounts, and lost.

Finch overruled *Pushard v. Bank of America, N.A.*, 2017 ME 230, 175 A.2d 103, "to the extent that it [held] that the acceleration of a note balance can occur without the lender having proved that it has complied with the statutory and contractual requirements to accelerate." *Finch* ¶ 51. *Finch* also distinguished *Johnson v. Samson Constr. Corp.*, 1997 ME 220, 704 A.2d 866, since the foreclosure action in *Johnson* was dismissed with prejudice as a procedural sanction. The trial court did not decide whether the lender had properly accelerated the note balance and the case did not involve a residential mortgage subject to § 6111(1). *Finch* ¶ 26. However, *Finch* did not question *Johnson*'s rationale that Samson Construction Corp. was not obligated to pay the amount due on the underlying note after the dismissal with prejudice of the foreclosure action. *Johnson* ¶ 8, n.1.[8]

Pushard relied upon *Johnson*, albeit mistakenly in the belief that the underlying judgment against the bank in the *Pushard* foreclosure action was entitled to claim preclusion. As quoted in *Finch* ¶ 21, *Pushard* held that "the Pushards have no further obligation to make payments on the note." *Id.* ¶ 35.

The *Johnson* and *Pushard* rulings on this point are still good law: where a court's decision results in claim preclusion as to a creditor's claim that a defendant is indebted to it, that defendant no longer owes the debt.

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[8] "Johnson argues that if the dismissal with prejudice of his first suit bars a subsequent action on the note, Samson will receive a windfall. Such a windfall may occur in any case in which a party defaults on a procedural obligation." (citation omitted).

III. AS OF THE DATE OF JUDGMENT IN THIS CASE, DEFENDANTS WILL ONLY OWE THE BANK THE REMAINING PRINCIPAL BALANCE.

The Bank's trial exhibit E summarized several items of mortgage costs and expenses that the Bank claimed were due from Defendants:

Escrow Balance Due at Loan Transfer:	$4,015.50
Insurance:	1,991.80
Taxes:	3,505.32
Corporate Advances:	12,880.62[9]

Since § 6111(1) bars any enforcement of the mortgage unless a conforming Notice of Right to Cure Default has been given, under the *Finch* Rule of Decision, mortgage costs and expenses, *per se*, can not be separately pleaded in a foreclosure action as unaccelerated amounts due. *Finch* n.12.

However, in this case, mortgage costs and expenses become obligations under the promissory note. Section 4(D) of the mortgage provides:

> 4. Secured Debt and Future Advances. The term "Secured Debt" is defined as follows:
>
> . . . .
>
> D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the paragraph titled "Payments By Lender," the note provides:

> If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

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[9] The corporate advances are itemized on page 11 of trial exhibit E as "Fee Details." The total of the Fee Details is $15,072.00. Deducting the included late charges amount of $2,191.38 yields $12,880.62.

For Defendants and Unifund, these contractual terms mean that the *Finch* Rule of Decision will bar the Bank, as of the date of judgment, from claiming as due all the unaccelerated amounts due for the (1) installments of principal and interest; (2) late fees; (3) deferred payments of principal and interest, as well as the (4) mortgage costs and expenses set out in trial exhibit E, plus (5) all mortgage costs and expenses incurred from the 6/15/2023 projected payoff date of trial exhibit E until the date of judgment.

All that will remain due to the Bank from Defendants will be the principal amount due on the note as of the date of judgment.

As of March 2025, using a standard online amortization calculator, that remaining principal balance approximates $32,000.00[10]. Compare this amount to the $136,941.11 claimed due in the Bank's trial exhibit E as of 6/15/2023. The difference is approximately $105,000.00 even before additional amounts are added in for the nearly two-year period after 6/15/2023 to March 2025. Compare as well to the relief accorded Defendants by the trial court's condition to the Judgment of Dismissal: during the period from the date of commencement of the foreclosure action to the date of judgment, 9/20/18 through 7/29/24, approximately $33,589.42 of interest would have accrued. With late charges calculated at approximately

[10] The remaining balance due will be even less as of the future date when the trial court enters a Judgment for Defendants and Unifund following a remand from the Law Court.

$4,500.00, the total relief accorded Defendants by the Judgment of Dismissal approximates $38,000.00.[11]

[11] These figures have been calculated by rough estimation from the Bank's trial exhibits, using a principal balance claimed due of $67,495.05, an interest rate of 8.50%, a per diem for interest of $15.7180, a monthly payment of $695.12, and late fees of 10% of the monthly payment.

CONCLUSION

As discussed above, *Finch* promulgated a new Rule of Decision that is binding upon the lower courts. The trial court in this case committed an error of law by a disposition of the foreclosure action that did not preserve the *Finch* holdings.

Finch suggests that the proper disposition of a foreclosure action in a case like this is "Judgment for Defendant." *Finch* n.18. There is no need for elaboration on whether the Judgment is "with prejudice" in some respects or "without prejudice" in other respects, as the *Finch* Rule of Decision provides the full effects of the disposition.

Hence, Unifund requests the Law Court to vacate the trial court's Judgment of Dismissal of 7/29/24 and to remand the case for further specified proceedings consistent with the Law Court's decision.

These further proceedings should include a factual determination by the trial court of the amount remaining due to the Bank, taking into account the provisions of the note and mortgage. After the Law Court's decision, the Bank may well decide that a further foreclosure action is not in its best interests, and that it will simply await a refinancing or sale of the mortgaged premises to effect payment. And, of course, the Bank may have its own idea of what it is owed. Uncertainty on this point will likely lead to further delay and litigation.

Finally, the trial court's disposition should read "Judgment for Defendants Jewett."

Date: April 3, 2025

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