

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Estate of Norman Cloutier

Appellant

v.

Community Loan Servicing, LLC

Appellees

ON APPEAL FROM A JUDGMENT OF THE BIDDEFORD DISTRICT COURT

No. BIDDC-RE-2019-62

BRIEF OF APPELLEE COMMUNITY LOAN SERVICING, LLC

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NATURE OF THE CASE

Following a finding in favor of Community Loan Servicing, LLC (hereinafter, “CLS”) resulting in a judgment of foreclosure against the Estate of Norman Cloutier (hereinafter, “the Estate”) this appeal has been brought by the Estate claiming that the trial court erred in finding that CLS owned the mortgage it was seeking to foreclose. Specifically, the Estate posits that the trial court erred in finding that the power of attorney under which the assignment of mortgage into CLS from Manufacturers and Traders Trust Company, a/k/a M&T Bank (M&T) was signed, 1) does not apply to the mortgage on its face, and 2) must have been recorded in Maine in order to be effective.

The first issue raised by the Estate amounts to an attack on the trial court’s finding of fact with regard to the Limited Power of Attorney’s (“LPOA”) applicability to the mortgage loan at issue in this matter. The trial court welcomed and CLS presented witness testimony as to the authority under which the assignment of mortgage was signed. CLS also presented a copy of the LPOA documenting the signing authority for the assignment. The second issue raised by the Estate is, by its admission, a question that has not been decided by this Honorable Court to date. Though the Estate suggests that the question of whether a power of attorney must be recorded in Maine in order to be effective, “comes up regularly in foreclosure actions”, CLS counters that it is simply the broader issue

of whether an assignment of mortgage was signed with proper authority generally that is typically at issue in foreclosure actions. Though appellate case law is not plentiful on this point, the cited trial court cases will support CLS's description of the landscape in these matters. The law supports that the trial court's judgment must remain unperturbed.

STATEMENT OF FACTS

CLS generally does not dispute the facts as presented in the Appellant's Brief filed by the Estate ("Estate's Brief") however, submits its own statement of facts to supplement those presented by the Estate. As presented by the Estate, the subject mortgage was given by Norman Cloutier to Business Credit Corp., a New York Corporation dated February 27, 2007 and recorded March 7, 2007 in Book 15101 at Page 123, in the York County Registry of Deeds (the "Mortgage") against the real property located at 205 Saco Avenue, Old Orchard Beach, ME 04064 (the "Property"). App. at 111. The foreclosure complaint was filed with the trial court initially in the name of Manufacturers and Traders Trust Company, also known as M&T Bank (M&T) against Norman Cloutier on October 3, 2019. Complaint, App. at 16. Norman Cloutier was replaced as a Defendant on July 1, 2022, following his death and the filing of a Suggestion of Death with the trial court replacing him with Holly Norman, Personal Representative of the Estate of Norman Cloutier. Docket, App. at 7. Thereafter, the Manufacturers and Traders Trust Company, also known as M&T Bank (M&T) assigned the Mortgage to CLS by Assignment of Mortgage dated June 6, 2023, and recorded June 8, 2023, in Book 19251 at Page 496 in in the York County Registry of Deeds (the "Assignment"). The Assignment was executed by "Manufacturers and Traders Trust Company, also known as M&T Bank (M&T) by Community Loan Servicing, LLC F/K/A Bayview Loan Servicing, LLC". App.

at 144. CLS then moved to be substituted as plaintiff, providing as exhibit to its motion a copy of the Assignment on September 1, 2023. App. at 7. No opposition was filed and CLS's motion was granted on November 1, 2023. App. at 7.

No opposition to CLS's authority to assign the mortgage was raised by the Estate until the date of foreclosure trial on November 6, 2025, when then counsel for the Estate indicated that the Assignment could not be admitted into evidence without the accompanying power of attorney. Docket, App. at 7. *See also* Tr. Nov. 6, 2025, 22:11-20. In response to the objection raised to the Assignment, counsel for CLS responded indicating 1) 33 M.R.S 353-A validates a recorded assignment of mortgage which has been on title for more than two years even when a statutory requirement is missing therefrom, 2) physical evidence of a power of attorney is not required in Maine as witness testimony confirming that authority exists via power of attorney is sufficient, and 3) if the court decided it wanted to review the power of attorney, it was in counsel's possession and could be presented to the court at that time. *See* Tr. Nov. 6, 2025, 22:22-23:20. CLS then presented the Power of Attorney as requested by the Estate, though the trial court did not confirm the presentation was a necessary showing. *See* Tr. Nov. 6, 2025, 24:12-13. The CLS witness testified that it was his understanding that Community Loan Servicing, formerly known as Bayview Loan Servicing, LLC had a power of attorney relationship with M&T and would therefore have authority to sign an

assignment of mortgage where M&T was the assignor. *See* Tr. Nov. 6, 2025, 26:3-11. The CLS witness also reviewed the LPOA and the Assignment and testified that as an employee at Community Loan Servicing, he was aware it had a power of attorney to execute that particular assignment of mortgage. *See* Tr. Nov. 6, 2025, 27:15-18. On cross-examination, counsel for the Estate did not ask the CLS witness any questions about the “2011 Default Management Agreement” (“DMA”) referred to in the LPOA. On its face, and even in the Appellant’s Statement of Facts, the LPOA’s language does not indicate that it applies only to “loans defined in the 2011 DMA” as suggested in the Estate’s Brief. The LPOA indicates that it,

is ***given pursuant to*** a certain Default Management Agreement by and between M&T and Bayview dated as of September 30, 2011
Now therefore, M&T does hereby constitute and appoint Bayview [now known as CLS] the true and lawful attorney-in-fact of M&T and in M&T's name, place and stead with respect to each Defaulted Loan that is in a loss mitigation or other workout status, in foreclosure and/or bankruptcy or is classified as real estate owned (REO) and serviced by Bayview pursuant to the Agreement for the following, and only the following purposes.

The LPOA does not indicate that there is a list of loans defined in the DMA. The CLS witness did not indicate that there was a list of loans defined in the DMA and counsel for the Estate did not elicit any testimony from the CLS witness regarding the DMA.

The trial court was able to enter judgment of foreclosure in favor of CLS in the amount of \$958,303.44 after finding that CLS owned the Mortgage upon a full

review of the Assignment, CLS witness testimony and LPOA. Judgment, App. at 12. This Honorable Court is now presented with the Estate's appeal of that Judgment.

SUMMARY OF THE ARGUMENT

This Law Court is presented with an appeal of the final Judgment of Foreclosure entered by the trial court entered against the Estate in favor of CLS. As grounds for its appeal, the Estate challenges the finding that CLS had standing to foreclose based on authority for signature on the assignment of mortgage from Manufacturers and Traders Trust Company, also known as M&T Bank (M&T) to Community Loan Servicing, LLC dated June 6, 2023, and recorded June 8, 2023, in Book 19251 at Page 496 in in the York County Registry of Deeds (the

“Assignment”) which was executed by “Manufacturers and Traders Trust Company, also known as M&T Bank (M&T) by Community Loan Servicing, LLC F/K/A Bayview Loan Servicing, LLC”. App. at 144. The Estate’s two issues presented for review are 1) the presented LPOA did not apply to the mortgage loan at issue because an agreement referenced therein was not part of the record and 2) the assignment of mortgage was invalid because the LPOA under which it was signed was not recorded in a registry of deeds in Maine.

The Estate’s most recent attempt to delay the final resolution of this matter must fail and is without merit. First, the Estate’s reliance on *U.S. Bank, N.A. v. Carney*, 2018 Me. Super. LEXIS 10, is misguided and miscited. The case itself provides support for a trial court’s discretion to rely on witness testimony or other evidence regarding the authority to execute an assignment of mortgage. The Estate instead cites the Superior Court case as well as the validation statute and Title Standard as proof that the trial court misapplied law in finding that the recorded assignment of mortgage, along with witness testimony and submitted LPOA were sufficient to prove standing here. While the issue of standing is reviewed de novo and the Statement of Issues in the Estate’s Brief are presented as purely standing issues, the Brief goes on to challenge the admission of evidence at length. The Estate fails however, to present an argument that the trial court abused its discretion on the evidentiary matters at hand related to witness testimony that it

could rely on to find signing authority or the admission of the limited power of attorney. *See State v. Bennett*, 658 A.2d 1058, 1062 (Me.1995).

Secondly, the Estate's argument that *Carney and Carrington Mortgage Services, LLC v. Gionest*, No. 2:16-cv-00534 (D. Me. Mar. 19, 2020), have confirmed that powers of attorney are required to be recorded in Maine in order to be used in signing an assignment is unavailing. None of the cases the Estate cited had any other proffer of witness testimony or unrecorded power of attorney offered into evidence to prove signing authority. The analysis likewise cannot align with 18-C M.R.S. § 5-906(4) and 18-C M.R.S. § 5-906(6) regarding the validity of out of state powers of attorney. The Estate seeks to invalidate a foreclosure judgment and countless recorded assignments of mortgage on record in Maine by asking this Court to ignore existing statute relating to validity of out of state powers of attorney to adopt a rule which unilaterally ignores and invalidates instruments solely because proof of authority has not been recorded in Maine. The Estate's argument cannot withstand de novo review.

ARGUMENT

I. The Trial Court's Finding That CLS Owned the Note and the Mortgage and Was Entitled to Foreclosure Judgement Was Appropriate.

a. Standard of Review

The Estate properly cites *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 7, 96 A.3d 700, for the proposition that questions of law like standing are presented to this Court for de novo review. Similarly, the trial court's factual findings are indeed reviewed for clear error. *Homeward Residential, Inc. v. Gregor*, 2017 ME 128, ¶ 14, 165 A.3d 357. Relevant to this issues in this matter however, “[w]hen the determination of any question rests in the judicial discretion of the trial court, the exercise of that discretion cannot be reviewed by an appellate court unless it is

made to appear that the decision was clearly wrong or that it was based upon some error in law.” *Rioux v. Portland Water Dist.*, 132 Me. 307, 309, 170 A. 63, 64 (1934).

b. The Record Supports the Trial Court’s Finding of Standing Which Can Withstand De Novo Review.

The Estate’s argument in its Brief challenges the standing of CLS to foreclose on the Mortgage based on a challenge to the Assignment which ultimately served as the basis for standing and the Judgment entered in the underlying matter. The Estate’s claim is based on its allegation that there was no evidence that the LPOA provided proper authority for the signer of the Assignment. The Estate further asserts that the LPOA must be recorded in Maine in order to be effective. Both of the arguments presented by the Estate fail to disrupt the Assignment and witness evidence submitted by CLS at the Trial held on November 6, 2025.

i. Witness Testimony of Mr. Cooper Was Sufficient To Establish Authority to Execute the Assignment.

The Estate’s Brief relies heavily on *U.S. Bank, N.A. v. Carney*, 2018 Me. Super. LEXIS 10, for the proposition that that evidence of a power of attorney must be recorded evidence, however, the Estate’s reliance on the instructive weight of the Superior Court case is misguided. *Carney* provides a window into what a trial court may consider when determining whether an entity had authority

to execute an assignment of mortgage. In *Carney*, no such evidence of authority was presented to the court for consideration. The court analyzed:

The trial record does not contain any evidence of a power of attorney **or other evidence, such as testimony from its witness**, regarding Nationstar's legal authority to execute the assignment. And there is no evidence of a power of attorney in the trial record or filed at the registry of deeds. *Id.* at 5. (Emphasis added.)

At the trial in this matter, CLS presented witness testimony through Mr. Kenneth Cooper (“Mr. Cooper”). Neither the use of Mr. Cooper as a witness for CLS, nor his basis for information based on business record review is contested here. The Estate only questions the scope of Mr. Cooper’s testimony however, the Estate has not established that Mr. Cooper’s testimony was not sufficient for the trial court to make a finding of signing authority as suggested by *Carney*. Since *Carney* suggests that there is other evidence like witness testimony that can establish legal authority to execute an assignment of mortgage, the trial court could use its discretion to place weight on the testimony of Mr. Cooper here. Although standing generally is being reviewed de novo, as noted above, “[w]hen the determination of any question rests in the judicial discretion of the trial court, the exercise of that discretion cannot be reviewed by an appellate court unless it is made to appear that the decision was clearly wrong or that it was based upon some error in law.” *Rioux v. Portland Water Dist.*, 132 Me. 307, 309, 170 A. 63, 64 (1934).

Mr. Cooper was asked at trial, “Is it your understanding that Community Loan Servicing, formerly known as Bayview Loan Servicing, LLC, had a power of attorney relationship with M&T?”, to which he confirmed that was his understanding. *See* Tr. Nov. 6, 2025, 26:3-6. Mr. Cooper was then asked, “So if Bayview executed an assignment of mortgage in which M&T was the assignor, would — would it have properly been able to do it pursuant to a power of attorney?”, to which Mr. Cooper also responded, “Yes.” *See* Tr. Nov. 6, 2025, 26:7-11. Following this testimony by Mr. Cooper, counsel for CLS preserved on the record the argument that testimony alone is sufficient to establish signing authority to execute an assignment of mortgage in Maine. *See* Tr. Nov. 6, 2025, 26:12-14. The Estate has not made an argument that the trial court abused its discretion on the evidentiary matter of consideration of Mr. Cooper’s testimony.

ii. Mr. Cooper Did Not Testify As To The Legal Effect Of The Power of Attorney.

The Estate first assumes that CLS was required to submit the LPOA as evidence of signing authority for the Assignment. Next, the Estate assumes that there is an additional showing that is required in order for the trial court to find that the LPOA, along with Mr. Cooper’s testimony, can be relied upon to establish signing authority. The Estate challenged the reference in the LPOA to a “Default Management Agreement.”

The Estate's Brief recites bits and pieces of Mr. Cooper's testimony with regard to the LPOA and whether it could be tied to the loan at issue in this case. The full discussion in the Transcript spans from Line 7 of Page 29 to Line 21 on Page 32 of the November 6, 2025, Transcript. From the full discussion in the Transcript including what preceded the questions to Mr. Cooper, this Honorable Court can understand that what was being gleaned from witness testimony was not the legal conclusion of what the effect of the LPOA was, but rather whether the witness could offer testimony as to the existence of authority to sign under a power of attorney. Counsel for the Estate had argued that the signer's authority needed to be established by the witness by confirming and validating the contents of the 2011 DMA. The Estate's Cross-Examination began to touch on the contents of the LPOA, at which point Mr. Cooper indicated he had not seen the document, which was remedied and questioning continued. *See* Tr. Nov. 6, 2025, 55:22-57:14. Likewise, the lines of Cross-examination in the Estate's Brief are truncated. The full Cross-examination discussion related to the LPOA in the Transcript spans from Line 19 of Page 57 to Line 21 on Page 32 of the November 6, 2025, Transcript.

Maine Rule of Evidence 701 provides: "If a witness is not testifying as an expert, opinion testimony is limited to opinions that are: (a) Rationally based on the witness's perception; and (b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue." Mr. Cooper's testimony consistently

noted his understanding based on business records that there was signing authority for the execution of the Assignment. He testified that there was a power of attorney to execute the Assignment. When pressed on the particular LPOA presented as Exhibit C5, he both confirmed that there was nothing specific in it that tied it to the loan in this case but perceived it to give signing authority for this Assignment. Intimate knowledge and personal participation in the procurement of the LPOA or even review of business records related to the procurement of the LPOA is not necessary to establish the existence of signing authority. The origination of the authority is not integral to the knowledge that authority has been vested in the signer of the Assignment. The Estate's argument related to Mr. Cooper's testimony that he did not "know about the LPOA's procurement" is a red herring that only serves to confuse the issues of this case.

The same applies to all references to a requirement for knowledge of the 2011 DMA. It is the artful mischaracterization of the 2011 DMA that has allowed this case to continue to languish. As noted in the Statement of Facts above, contrary to the Estate's Brief, the LPOA's language does not indicate that it applies only to "loans defined in the 2011 DMA". Rather, the LPOA indicates that it,

is ***given pursuant to*** a certain Default Management Agreement by and between M&T and Bayview dated as of September 30, 2011
Now therefore, M&T does hereby constitute and appoint Bayview [now known as CLS] the true and lawful attorney-in-fact of M&T and in M&T's name, place and stead with respect to each Defaulted

Loan that is in a loss mitigation or other workout status, in foreclosure and/or bankruptcy or is classified as real estate owned (REO) and serviced by Bayview pursuant to the Agreement for the following, and only the following purposes.

The LPOA goes on to list the circumstances where signature and action is permitted. Nowhere does this language suggest that the 2011 DMA provides a definitive and static list of loans to which the LPOA applies. Rather, the language appears to suggest that the LPOA is given to facilitate the relationship between the Bayview (now known as CLS) and M&T wherein loans in defaulted status are subject to the Default Management Agreement. This conclusion was not solicited through witness testimony nor did it need to be. As such, any objection raised to the LPOA for lack of foundation and failure to apply Rule 602 was rightfully overruled at trial when the Court considered the objections raised. *See* Tr. Nov. 6, 2025, 32:3-12. Though The Estate baldly claims that the trial courts admission of the LPOA over its objection was an abuse of discretion, it fails to establish how the standard for abuse has been met. Discretion in rulings on evidentiary issues “is considered abused ... if the ruling arises from a failure to apply principles of law applicable to a situation resulting in prejudice.” *State v. Bennett*, 658 A.2d 1058, 1062 (Me.1995). Mr. Cooper testified that he knew CLS was authorized to sign the Assignment because he knew a power of attorney had been granted providing such authority. Additionally, regardless of when Mr. Cooper saw the LPOA

submitted as C5 here, he was able to make a rational assessment of what it appeared to say on its face.

Furthermore, the Estate's reliance on Mr. Cooper's testimony being legal opinion is misplaced. Mr. Cooper did not state any legal conclusion. Each statement made by the witness was carefully qualified based solely on his personal knowledge or the knowledge he obtained based on review of business records. Moreover, if Mr. Cooper's observations of the LPOA are viewed as lay person testimony, they are admissible under Rule 701(a). It is neither a legal conclusion nor an expert opinion that a power of attorney between two parties appears to convey authority. That perception of a lay person may be wrong or it may be correct, but it is for the trial court to determine the weight of that testimony. Similarly, if the trial court felt it needed to reach the issue of the legal effect of the LPOA to resolve the matter of standing in this case, it was for the Court to construe from its text not from conclusory statements of witness testimony. *Acadia Ins. Co. v. Buck Contr. Co.*, 2000 ME 154, ¶¶ 8-9, 756 A. 2d 515. There is nothing in the record of this case as reflected in the Judgment or the Transcript of the Trial that suggests that "the Court relied on Mr. Cooper's opinion in finding that CLS owned the Mortgage" as the Estate's Brief posits. The trial court could have made its finding based on Mr. Cooper's testimony alone without regard to the LPOA at all or firmly within the confines of Rule 701 giving Mr. Cooper's testimony only the

weight of a lay witness. This analysis would have been in line with the analysis of the court in *U.S. Bank Trust v. Ray*, Cumberland County Superior Court, RE-16-0128., where the authority of the signer under power of attorney for the assignment of mortgage was questioned by the borrower defendant as well. The court in *Ray* outright denied the unsubstantiated challenge to the signing authority and did not require additional evidence of a recorded or unrecorded power of attorney.

iii. A Power of Attorney Does Not Need To Be Recorded to Be Legally Valid And Support Standing To Foreclose.

The Estate next argues that the Assignment signed by CLS as attorney-in-fact under Limited Power of Attorney (LPOA) is ineffective to convey any interest in the Mortgage because it is not recorded in a Maine registry of deeds. Here again, the Estate relies on *U.S. Bank, N.A. v. Carney*, 2018 Me. Super. LEXIS 10, which cites a real estate law restatement for the proposition that to be effective a power of attorney when utilized to convey a mortgage must be recorded in the registry of deeds. The Estate does concede that besides *Carney*, which was favorably cited by *Carrington Mortgage Services, LLC v. Gionest*, No. 2:16-cv-00534 (D. Me. Mar. 19, 2020), there is no case law or statute which addresses the need for a power of attorney to be recorded in Maine in order to be effective. Thereafter the Estate's Brief cites statutes that relate to the recording of instruments, but fails to address the validity of the underlying instrument. Pursuant to 18-C M.R.S. § 5-906(4), "A power of attorney executed other than in this State is valid in this State if, when the

power of attorney was executed, the execution complied with: A. The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 5-907.” Relevant to the arguments presented in this matter, 18-C M.R.S. § 5-906(6), “Copy. Except as otherwise provided by statute other than this Part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.”

If the Estate and the *Carney* rule were to be adopted, a valid power of attorney would cease to be valid, and an instrument would be deemed to have been unauthorized and invalid, simply because a power of attorney was not recorded in Maine. Legislation related to recording provisions and marketability of title assist in ensuring that title to property remains clear however, do not serve to undermine the legal validity of the instruments which are likewise statutorily valid under Maine law as the LPOA is here. Outside of *Carney*, the Estate’s primary argument rests in the Validation Statute, 33 M.R.S. § 353-A(4), which cures, “title defects” which have given title insurers pause historically in issuing policies without case law to rely on. 33 M.R.S. § 353-A(4) specifically, provides for a defect to be cleared on title when no power of attorney has appeared on title for 20 years **after** a conveyance has been on record. The Estate’s only other support lies in Me. Title Standard No. 302 which amounts to a recommendation as to best practices but in no way is canon upon which any court or attorney is meant to presume the efficacy

of an instrument of signing authority. However, “title standards ...are simply a benchmark for whether title is marketable.” *Almeder v. Town of Kennebunkport*, 217 A.3d 1111, 1121, 2019 ME 151; *Citing Dowling v. Salewski*, 2007 ME 78, ¶ 16, 926 A.2d 193. The Estate paints the recording of a power of attorney as a requirement in line with *Carney*, but does not grapple with the fact that pursuant to 18-C M.R.S. § 5-906(4) and 18-C M.R.S. § 5-906(6), the trial court was within its discretion to find that there was a legally valid power of attorney in this state to support a finding of signing authority. Were the Estate’s argument and their interpretation of *Carney*, to be adopted here a valid assignment of mortgage which meets all statutory requirements for an assignment, and which is properly signed in the presence of a notary public in another state, by a duly authorized attorney-in-fact can be stripped of its authorization and validity simply because evidence of the power of attorney is not recorded in Maine-regardless of the fact that evidence of signing authority is presentable or is recorded in another state. It is the fact that this “*Carney* rule”, as the Estate has coined it, disregards the other evidence of the power of attorney’s existence that flies in the face of 18-C M.R.S. § 5-906(6) and frankly misinterprets the language of *Carney* itself.

Lastly, to the extent that there is any merit to the Estate’s argument that a power of attorney should be recorded to support an assignment of mortgage, counsel for CLS argued at trial that 33 M.R.S 353-A(2) should be applied in the event that the

trial court found that there was any issue with the Assignment. 33 M.R.S 353-A(2) provides,

Discharge or assignment of mortgage. A duly recorded satisfaction piece or instrument made and recorded for at least 2 years in the registry of deeds of the county or district in which the real property is located with the intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage intended to be canceled and discharged or assigned, but not drawn in accordance with statutory requirements is considered valid.

The Assignment was recorded on June 8, 2023, more than 2 years prior to the date of trial on November 6, 2025. The trial court could reasonably find that the Assignment was validated pursuant to 33 M.R.S 353-A(2) as argued by counsel for CLS.

CONCLUSION

For the reasons stated in its brief as presented here, Community Loan Servicing, LLC requests this Honorable Court uphold the Superior Court's Judgment of Foreclosure entered on the docket.

CERTIFICATION

The undersigned hereby certifies that a copy of the within brief and accompanying appendix was served electronically to all appearing parties.

Date: July 14, 2026

Signed: /s/Eva M. Massimino
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Brock & Scott, PLLC