

No. Cum-26-56

**SUPREME JUDICIAL COURT OF MAINE
Sitting as the Law Court**

Marcy Kamin-Crane et al.

Appellant

v.

U.S. Bank National Association

Appellee

**On Appeal from the Cumberland Superior Court, Maine, No.
PORSC-RE-2018-277**

BRIEF OF THE APPELLANT

John Z. Steed, Esq. Bar No. 5399
Island Justice, LLC
P.O. Box 771
Stonington, ME 04681
(207) 200-7077
john@islandjusticelaw.com

COUNSEL FOR THE APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
I. INTRODUCTION.....	4
II. STATEMENT OF THE CASE	5
III. STATEMENT OF ISSUES PRESENTED.....	9
IV. SUMMARY OF ARGUMENT.....	10
V. ARGUMENT	13
A. Under the “Waiver Rule” in 14 M.R.S. § 6321, a foreclosure is waived if the lender accepts payments from the borrower after commencing the foreclosure.	13
1. The mortgagee in this case waived the foreclosure by accepting payments during the foreclosure and no exception to the Waiver Rule applies.....	13
2. The “Stay Rule” in 14 M.R.S. § 6321 is very limited; it simply permits the parties to a foreclosure to ask the court to stay proceedings to allow the mortgagor to catch up on arrears.	15
3. The court erred in interpreting the Stay Rule as a “broad exception” to the Waiver Rule.....	16
a. The Waiver Rule is unambiguous.	18
b. The Waiver and Stay Rules are easily harmonized and create no surplusage when read together.....	19
4. The mortgagee waived its foreclosure, and the judgment should be entered for Ms. Kamin-Crane.	21
B. Even if the foreclosure was not waived, the trial court erred in awarding Cabana late fees that Cabana charged after the loan was accelerated and no more monthly payments were due. 23	
VI. CONCLUSION	27
CERTIFICATE OF SERVICE	28

TABLE OF AUTHORITIES

Cases

<i>Am. Prot. Ins. Co. v. Acadia Ins. Co.</i> , 2003 ME 6, 814 A.2d 989	25
<i>Arey v. Hall</i> , 81 Me. 17, 16 A. 302 (1888).....	15
<i>Associated Builders, Inc. v. Coggins</i> , 1999 ME 12, 722 A.2d 1278	22
<i>Bank of America, N.A. v. Greenleaf</i> , 2014 ME 89, 96 A.3d 700	15
<i>Burnham v. Austin</i> , 105 Me. 196, 201, 73 A. 1089 (1909).....	22
<i>Casco N. Bank, N.A. v. Edwards</i> , 640 A.2d 213 (Me. 1994)	24
<i>Cent. Me. Power Co. v. Devereux Marine, Inc.</i> , 2013 ME 37, 68 A.3d 1262	18
<i>Chase v. Edgar</i> , 259 A.2d 30 (Me. 1969).....	19
<i>Cyr v. Madawaska Sch. Dep't</i> , 2007 ME 28, 916 A. 2d 967	19
<i>Damon v. S.D. Warren Co.</i> , 2010 ME 24, 990 A.2d 1028	19
<i>Finch v. U.S. Bank, N.A.</i> , 2024 ME 2, 307 A.3d 1049.....	26
<i>Graves v. Brockway-Smith Co.</i> , 2012 ME 128, 55 A.3d 456	19
<i>Home Builders Ass'n of Me., Inc. v. Town of Eliot</i> , 2000 ME 82, 750 A.2d 566	18
<i>Howard v. White</i> , 2024 ME 9, 308 A.3d 213.....	18
<i>Interstate Indus. Uniform Rental Serv., Inc. v. Couri Pontiac, Inc.</i> , 355 A.2d 913 (Me. 1976).....	22
<i>Johnson v. Samson Constr. Corp.</i> , 1997 ME 220, 704 A.2d 866.....	26
<i>MaineToday Media, Inc. v. State</i> , 2013 ME 100, 82 A.3d 104	19
<i>Savings & Loan Ass'n v. Tear</i> , 435 A.2d 1083 (Me. 1981)	13, 22, 23
<i>Sturtevant v. Town of Winthrop</i> , 1999 ME 84, 732 A.2d 264.....	15
<i>Town of China v. Althenn</i> , 2013 ME 107, 82 A.3d 835	18
<i>Walker v. Walker</i> , 2005 ME 21, 868 A.2d 887).....	18

Statutes

14 M.R.S. § 6204	23
14 M.R.S. § 6321	passim

Other Authorities

P.L. 2007, ch. 391 § 9.....	23
-----------------------------	----

I. INTRODUCTION

This is an appeal from a foreclosure judgment on a residential mortgage and addresses two issues: waiver of foreclosure under what we refer to as the “Waiver Rule” in 14 M.R.S. § 6321 and a mortgagee demanding late fees imposed after filing foreclosure and accelerating the loan.

As to the waiver issue, it is about the sufficiency of the mortgagee’s evidence at trial. As to the issue of late fees being charged after acceleration, it appears this is the first time this issue has been addressed by this Court or any other court in the state. Both issues might be thought of as demonstrating a certain disregard, by the Cabana Series IV Trust, for the formalities of a foreclosure on a person’s home in Maine.

II. STATEMENT OF THE CASE

A. Nature of the case and course of proceedings below.

This is an appeal from a foreclosure judgment on a residential mortgage. It is about the sufficiency of the mortgagee's evidence at trial regarding the waiver of the foreclosure by acceptance of payments after filing the foreclosure under 14 M.R.S. § 6321.

B. Statement of facts.

Marcy Kamin-Crane borrowed \$273,654.00 from Wells Fargo in 2010 to buy the home she has lived in since (Mortgage, App. at 44).

History of Mortgage Ownership and Servicing

The mortgage was assigned by Wells Fargo to Fannie Mae on November 17, 2015 (Assignment, App. at 62); reassigned by Fannie Mae back to Wells Fargo on March 23, 2016 (Assignment, App. at 63); assigned, after the foreclosure was filed, by Wells Fargo to U.S. Bank Trust, N.A., as Trustee of the Igloo Series IV Trust (Igloo) on September 27, 2019 (Assignment, App. at 145); and finally assigned by U.S. Bank as Trustee of Igloo to U.S. Bank as Trustee of the Cabana Series IV Trust on February 3, 2020 (Cabana) (Assignment, App. at 146). Wells Fargo Home Mortgage was the servicer until September 24, 2019, when

servicing was transferred to SN Servicing Corporation (Transcript, 5:23–5:24, App. at 97; 19:9–19:22; App. at 111).

Default and Post-Filing Payment History

Ms. Kamin-Crane's mortgage went into default on June 1, 2018, when the mortgage was held by Wells Fargo Bank, N.A. Wells Fargo, as the then-mortgagee, commenced this foreclosure on October 31, 2018 (Docket, App. at 4). Servicing was transferred from Wells Fargo to the current servicer, SN Servicing Corporation, on September 24, 2019 (Transcript, 5:23–5:24, App. at 97).

While the foreclosure was pending and before servicing was transferred to SN Servicing, Wells Fargo accepted two payments from Ms. Kamin-Crane and applied them to her loan balances. The first was on February 27, 2019, and the second was on April 1, 2019 (Pay History, App. at 155-156). Wells Fargo never returned the two payments to Ms. Kamin-Crane, and — critical to this case — produced no agreement signed by Ms. Kamin-Crane explaining the terms of the agreement under which Wells Fargo accepted the payments.

Ms. Kamin-Crane testified at trial that she made the payments, understanding them to be trial payments toward a hoped-for loan

modification, but she could say no more about the details of the parties' agreement (Transcript, 44:8–44:14, App. at 136). That the parties had agreed to some sort of trial payment plan is also reflected in a motion to continue, dated January 11, 2019, filed by Wells Fargo, and two motions from Ms. Kamin-Crane asking that mediation be rescheduled, on June 8, 2019, and September 9, 2019 (Motions, App. at 168-172). All three motions, none of which were part of the trial record, mention that the parties are attempting to resolve the case through trial payment plans. Cabana, however, introduced no signed agreement or other proof that any agreement about the payments was ever signed by Ms. Kamin-Crane or that it referred to the Waiver Rule.

When SN Servicing Corporation took over servicing the loan in 2019, it started charging Ms. Kamin-Crane a \$10 monthly late fee (Pay History, App. at 148-151). At trial, Cabana's corporate witness, an employee of SN Servicing, said that SN Servicing regularly charges late fees while foreclosures are pending and that they were allowed to do so, and that, regardless, the \$260 in fees they were demanding from Ms. Kamin-Crane was "minuscule." (Transcript, 21:3-21:9, App. at 113).

The trial court entered judgment for Cabana. This appeal followed the trial court's March 11, 2026, grant of Ms. Kamin-Crane's Motion to Extend Time to File Notice of Appeal.

III. STATEMENT OF ISSUES PRESENTED

A. Whether the trial court erred in granting judgment for Cabana when the evidence at trial was that the foreclosure had been waived by the mortgagee accepting payments from Ms. Kamin-Crane and where there was no evidence of any of the articulated exceptions to waiver under 14 M.R.S. § 6321.

B. Whether the trial court erred in finding that Ms. Kamin-Crane was liable for late fees imposed by the Cabana Series IV Trust after the loan had been accelerated and no more monthly payments were due or payable under the loan.

IV. SUMMARY OF ARGUMENT

The mortgagee waived its foreclosure under the plain language of 14 M.R.S. § 6321. It accepted payments after the foreclosure was filed and did not return the money; no evidence of an agreement signed by Ms. Kamin-Crane was presented at trial. The case rests on the straightforward application of straightforward statutory language. The “Waiver Rule” says:

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgage constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt.

14 M.R.S. § 6321. There was evidence presented at trial that Ms. Kamin-Crane made the payments as part of a trial payment plan. Cabana, however, failed to present any agreement signed by Ms. Kamin-Crane. The trial court so found and acknowledged that "if the court were only to apply this portion of the statute, the Defendant has proven a waiver." (Order, App. at 33).

The trial court went on to reason that the following paragraph containing the “Stay Rule” created a "broad exception" to the Waiver Rule that excused Cabana’s failure of proof in presenting evidence of a signed agreement from Ms. Kamin-Crane. (*Id.*, App. at 34). The Stay Rule reads:

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed.

14 M.R.S. § 6321.

The Stay Rule creates no broad exception to the Waiver Rule, and the two are readily harmonized. The Stay Rule is a permissive procedural mechanism — a way for the parties to formalize a cure agreement to bring a mortgage “up to date,” ask a court to stay the proceedings while the mortgagor performs, and allow the mortgagee to resume the foreclosure if there is a default under the agreement, after notice to the mortgagor. Given the Waiver Rule, it would be wise to put any such stay agreement in writing and have the mortgagor sign it

before accepting any payments, but it is hard to conceive of any conflict between the two rules.

On this record, the foreclosure is waived as a matter of law. *Savings & Loan Ass'n of Bangor v. Tear*, 435 A.2d 1083 (Me. 1981), requires reversal and entry of judgment for Ms. Kamin-Crane.

V. ARGUMENT

A. Under the “Waiver Rule” in 14 M.R.S. § 6321, a foreclosure is waived if the lender accepts payments from the borrower after commencing the foreclosure.

A foreclosure is waived if the lender accepts payments from the borrower after commencing the action. The statute says it quite plainly:

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgage constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt.

14 M.R.S. § 6321. As discussed in Section 4 below, some version of this rule has existed for over a century. This current version of the “Waiver Rule” makes clear that accepting payments from a mortgagor after filing a foreclosure waives the foreclosure unless certain exceptions are met.

1. The mortgagee in this case waived the foreclosure by accepting payments during the foreclosure and no exception to the Waiver Rule applies.

Wells Fargo commenced this foreclosure on October 31, 2018.

(Docket, App. at 4). Wells Fargo accepted two payments from Ms.

Kamin-Crane in February and April of 2019. (Pay History, App. at 155-156). The mortgage was subsequently assigned to Cabana. Cabana is bound by Wells Fargo's prior acts waiving the foreclosure. See 14 M.R.S. § 6321 (acceptance of payment after commencement of foreclosure "by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure"); *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, ¶ 16, 96 A.3d 700 (an assignor "grant[s] to [its assignee] only what [it] possess[es]" and "could not . . . grant[] to another person or entity any greater interest in the mortgage than that" it holds); *Sturtevant v. Town of Winthrop*, 1999 ME 84, ¶ 11 n.4, 732 A.2d 264 ("an assignee has no greater rights than his assignor"); *Arey v. Hall*, 81 Me. 17, 22, 16 A. 302 (1888) ("the assignee can have no greater right . . . than the assignor").

There are only two exceptions to the rule that post-filing payments constitute a waiver: either the money is returned within 10 days, or there is an agreement, signed by the mortgagor, that says otherwise. 14 M.R.S. § 6321. Neither exception was proved at trial. The trial court so found, saying "[i]t is undisputed the Plaintiff accepted the two payments and did not return them," and that "[t]he Plaintiff has

not offered any evidence of a written agreement signed by the [Defendant]." (Order, App. at 33).

Reading the Waiver Rule's terms against those undisputed facts, the court concluded: "if the court were only to apply this portion of the statute, the Defendant has proven a waiver." *Id.* The inquiry should have ended there. Waiver was proven. The trial court erred in going on to reason that a separate and independent paragraph in § 6321—the Stay Rule—created a “broad exception” to the Waiver Rule. (*Id.*, App. at 34).

2. The “Stay Rule” in 14 M.R.S. § 6321 is very limited; it simply permits the parties to a foreclosure to ask the court to stay proceedings to allow the mortgagor to catch up on arrears.

The Stay Rule, the final unnumbered paragraph of § 6321, reads:

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed.

14 M.R.S. § 6321.

The rule addresses one particular scenario, quite distinct from a loan modification: the parties to a pending foreclosure agree that the mortgagor will bring the loan current over time, the foreclosure is stayed while the mortgagor performs, and — if the mortgagor does not perform as agreed — the mortgagee may ask the court to resume the proceeding after first giving the mortgagor notice. It is a permissive procedural mechanism for pausing and restarting a foreclosure around a cure agreement.

The Stay Rule does not apply to the facts of this case. There is no evidence that either party requested a stay of foreclosure to allow Ms. Kamin-Crane to catch up on arrears. There is no evidence that the parties entered into any agreement of the kind the Stay Rule contemplates, much less evidence of its terms. And there is no evidence that Wells Fargo or Cabana ever gave Ms. Kamin-Crane the notice the Stay Rule requires before resuming the proceeding. The mortgagees invoked none of the Stay Rule's machinery at any point in this case, and the record reflects none of it.

3. The court erred in interpreting the Stay Rule as a “broad exception” to the Waiver Rule.

Maine's courts interpret statutes "to give effect to the intent of the Legislature, first by examining its plain language." *Howard v. White*, 2024 ME 9, ¶ 11, 308 A.3d 213. "Statutes are ambiguous only if reasonably susceptible to different interpretations; otherwise, they are to be interpreted according to their plain meaning." *Town of China v. Althenn*, 2013 ME 107, ¶ 6, 82 A.3d 835. "All words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed." *Howard*, 2024 ME 9, ¶ 11, 308 A.3d 213 (quoting *Cent. Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262). "Surplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force." *Id.* (quoting *Home Builders Ass'n of Me., Inc. v. Town of Eliot*, 2000 ME 82, ¶ 8, 750 A.2d 566). The Court accordingly "examine[s] the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Id.* (quoting *Walker v. Walker*, 2005 ME 21, ¶ 11, 868 A.2d 887).

a. The Waiver Rule is unambiguous.

A statute is ambiguous, and the Court looks beyond its plain language, only when it is "reasonably susceptible of different interpretations." *Damon v. S.D. Warren Co.*, 2010 ME 24, ¶ 10, 990 A.2d 1028. In order for a statute to be ambiguous, it has to lend itself to competing interpretations, and the competing constructions must each be reasonable. *See Graves v. Brockway-Smith Co.*, 2012 ME 128, ¶ 10, 55 A.3d 456 (treating competing readings as ambiguity-creating only where each is rooted in the text). The Court interprets unambiguous text directly, "unless the result is illogical or absurd." *MaineToday Media, Inc. v. State*, 2013 ME 100, ¶ 6, 82 A.3d 104 (*citing Cyr v. Madawaska Sch. Dep't*, 2007 ME 28, ¶ 9, 916 A. 2d 967). As the Court put it long ago: "[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning." *Chase v. Edgar*, 259 A.2d 30, 32 (Me. 1969).

At the risk of being redundant, the Waiver Rule reads:

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgage constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt.

14 M.R.S. § 6321.

The rule is straightforward. Specific conditions, if met within a specific timeframe, generate a specific result. Nothing in the Waiver Rule is reasonably susceptible to a second interpretation.

b. The Waiver and Stay Rules are easily harmonized and create no surplusage when read together.

The Stay Rule reads:

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed.

14 M.R.S. § 6321.

The Stay Rule is permissive. It allows the parties to enter into a cure agreement; it permits a stay of the proceeding while the borrower

performs; and it prescribes the procedure for resumption upon default — notice to the borrower, then resumption "at the point at which it was stayed." *Id.* The rule says nothing about waiver, and it does not interfere with the Waiver Rule.

Parties to a foreclosure can enter into any number of workout arrangements. If they want to make and accept payments during the pendency of the action without waiving the foreclosure, the Waiver Rule tells them how: obtain a written agreement signed by the mortgagor. With a signed agreement from the party making payments, the parties can enter into any sort of payment scheme they like—temporary rental pending a move, a trial payment plan under a loan modification, a cure agreement as contemplated by the Stay Rule, or anything else they might conceive of. If they enter into a cure agreement under the Stay Rule, they can petition the court to stay the proceeding while the borrower performs. A mortgagee would be wise to put any agreement in writing, have the mortgagor sign it, and bring it to trial if the mortgagor defaults.

The trial court reasoned that finding waiver would run contrary to the intent of the Legislature and that following the plain meaning of the Waiver Rule would create surplusage. It erred in so reasoning.

4. The mortgagee waived its foreclosure, and the judgment should be entered for Ms. Kamin-Crane.

At common law waiver is "a voluntary or intentional relinquishment of a known right." *Associated Builders, Inc. v. Coggins*, 1999 ME 12, ¶ 8, 722 A.2d 1278; see also *Interstate Indus. Uniform Rental Serv., Inc. v. Couri Pontiac, Inc.*, 355 A.2d 913, 919 (Me. 1976). When waiver is established, judgment should be entered for the non-waiving party. *Associated Builders*, 1999 ME 12, ¶¶ 8–9 (affirming summary judgment for defendants where plaintiff waived its right to enforce forfeiture by accepting late payment); *Burnham v. Austin*, 105 Me. 196, 201, 73 A. 1089 (1909) (affirming that, on proof of plaintiff's waiver, the trial court's "directing a verdict for defendant was correct"); *Savings & Loan Ass'n of Bangor v. Tear*, 435 A.2d 1083, 1087 (Me. 1981) (finding waiver, reversing foreclosure judgment for bank and remanding "for entry of judgment for defendants").

In the foreclosure context, Maine has taken the additional step of making a strict statutory rule regarding waivers. That strict application is demonstrated in *Tear*. In *Tear*, this Court found that a bank that accidentally accepted a single payment from a mortgagor, and failed to return it, had waived its foreclosure. *Id.* at 1086. After the foreclosure had been filed, a teller, accidentally, and after being instructed not to, accepted a single payment from Mr. Tear by money order. *Id.* at 1085. The bank caught the error the same day and mailed the money order back to Mr. Tear, but only after a teller had stamped it with a restrictive endorsement. *Id.* The trial court entered judgment for the bank, reasoning that the prompt return of the money prevented any acceptance and any operation of waiver. *Id.* This Court reversed, finding that a restrictive endorsement had rendered the instrument "a worthless piece of paper" that "could not be returned to the drawee bank for a refund," thus making the return of the funds ineffective. *Id.* at 1086. Because the bank had accepted a payment and had not returned the money, the Court "reverse[d] and remand[ed] for judgment for the defendant/mortgagors." *Id.*

The Waiver Rule itself was not discussed in *Tear*. It appears to have been a foregone conclusion in that case that if the bank accepted a payment after the foreclosure, it meant the foreclosure was waived. An older version of the Waiver Rule in 14 M.R.S. § 6204 was in effect when *Tear* was decided. So, presumably, *Tear* was decided under 14 M.R.S. § 6204, which had codified the waiver-by-acceptance-of-payment rule in 1923. See *Casco N. Bank, N.A. v. Edwards*, 640 A.2d 213, 216 (Me. 1994) ("The portion of section 6204 that provides for waiver by acceptance of payment was enacted in 1923. P.L. 1923, ch. 73."). The waiver paragraphs of § 6204 migrated to § 6321 in 2007 as part of the Legislature's broader revision of the foreclosure statutes during the mortgage crisis in that year. P.L. 2007, ch. 391, § 9. (App. at 175). The substance of the rule — and the remedy when it is established — has existed and been codified in statute for generations.

The result of a waiver in *Tear*, and the result of a waiver reflected throughout Maine's waiver jurisprudence, is that judgment should be entered for the non-waiving party.

B. Even if the foreclosure was not waived, the trial court erred in awarding Cabana late fees that Cabana charged after the loan was accelerated and no more monthly payments were due.

The judgment, in error, awards Cabana \$260 in late fees that were imposed in violation of the parties' contract after the loan was accelerated. (Judgment, App. at 23). The note does not authorize late charges after acceleration. Whether the late-charge provision applies to an accelerated loan is a question of law, which this Court reviews de novo. *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989, 993.

The parties' contract only permits a late charge when a monthly payment is overdue and only authorizes a single late charge per missed payment:

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(Note, ¶ 6(A), App. at 41).

After acceleration, there are no more monthly payments due or payable on the loan because "the entire debt bec[omes] due, [and] the contract bec[omes] indivisible. The obligations to pay each installment merge[] into one obligation to pay the entire balance on the note." *Finch*

v. U.S. Bank, N.A., 2024 ME 2, ¶ 22, 307 A.3d 1049 (quoting *Johnson v. Samson Constr. Corp.*, 1997 ME 220, ¶ 8, 704 A.2d 866). Acceleration is a contractual remedy that, when exercised, "alter[s] the status of the contract." *Id.* ¶ 35. After acceleration, then, there are no longer any monthly installments due under the contract, so a monthly payment cannot be missed.

Wells Fargo accelerated this loan, and the mortgagees have litigated the loan as though it were accelerated throughout. They sued for the entire balance rather than for past-due installments (Complaint, ¶ 14, App. at 37) and sought to recover the full principal balance of \$337,263.81 at trial. (Transcript, 8:10-8:13, App. at 100).

The fees at issue were all charged after that acceleration. The \$260 in late fees began to accrue when SN Servicing took over servicing, while the foreclosure was pending, and there were 26 individual \$10.00 late fees. (Pay History, App. at 148-151). The servicer's witness confirmed the fees were charged while the loan was already in foreclosure and that SN Servicing charges late fees on accelerated loans as a matter of practice — "[n]ot always, but it can." (Transcript, 21:6-21:10, App. at 113).

Because the note authorizes a late charge only on an overdue monthly payment, and acceleration merged the monthly installments into a single accelerated debt, the \$260 award rests on charges the note does not authorize, and which SN Servicing had no right to charge. If this Court does not find waiver, Ms. Kamin-Crane asks that the case be remanded with instructions to enter a revised judgment excluding the unlawful late fees.

VI. CONCLUSION

Based on the foregoing, Ms. Kamin-Crane asks that this Court vacate the judgment for Cabana Series IV Trust and remand to the trial court to enter judgment for Ms. Kamin-Crane. In the alternative, Ms. Kamin-Crane asks that the Court vacate the portion of the judgment awarding late fees charged after acceleration of the loan and remand for entry of an appropriate judgment.

Date: June 4, 2026

Respectfully Submitted,

/s/ John Z. Steed
John Z. Steed, Esq. #5399
Island Justice, LLC
P.O. Box 771
Stonington, ME 04681
(207) 200-7077
john@islandjusticelaw.com

CERTIFICATE OF SERVICE

I, John Z. Steed, hereby certify that on June 4, 2026, I caused a true and accurate copy of the foregoing Brief of the Appellant and accompanying Appendix to be served upon counsel for the Appellee by electronic mail, addressed as follows:

Joan Egdall, Esq.
Demerle & Associates
10 City Square
Boston, MA 02129
617-934-7431
JEgdall@DemerlePC.com

/s/ John Z. Steed

John Z. Steed, Esq.