

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

LAW COURT DOCKET NO. CUM-26-56

**U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE
CABANA SERIES IV TRUST,
APPELLEE**

v.

**MARCY KAMIN-CRANE,
APPELLANT**

On appeal from the Cumberland County Superior Court
Docket No. PORSC-RE-2018-00277

BRIEF OF THE APPELLEE

Joan M. Egdall (Bar No. 9490)
Counsel for the Appellee
DEMERLE & ASSOCIATES P.C.
10 City Square
Boston, ME 02129
617-934-7431
jegdall@demerlepc.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
STATEMENT OF FACTS.....	4
STATEMENT OF ISSUES.....	7
BRIEF ANSWERS.....	7
LEGAL ARGUMENTS	7
I. THE TRIAL COURT CORRECTLY FOUND THAT THE APPELLEE HAD NOT WAIVED ITS FORECLOSURE UNDER THESE FACTS.....	7
A. The trial court correctly found that the Appellant failed to meet her burden of proof to establish the affirmative defense of waiver.....	8
B. The trial court correctly applied the language 14 M.R.S.A. § 6321 and found no waiver by the Appellee.....	11
C. The trial court correctly found that the acceptance of the Appellant's post-complaint payments did not constitute a waiver.....	15
II. THE TRIAL COURT CORRECTLY FOUND THAT THE APPELLEE HAD PROVED ALL THE NECESSARY ELEMENTS, INCLUDING THE AMOUNT DUE, FOR THE COURT TO ENTER A JUDGMENT OF FORECLOURE.....	19
CONCLUSION.....	22
CERTIFICATE OF SERVICE.....	23

TABLE OF AUTHORITIES

Caselaw

<i>ABN AMRO Mortg. Group v. Willis</i> , 2003 ME 98, 829 A.2d 527.....	9, 15
<i>Am. Prot. Inc. Co. v. Acadia Ins. Co.</i> , 2003 ME 6, 814 A.2d 989.....	20,21
<i>Burr v. Jordan</i> , 2008 ME 87, ¶ 9, 948 A.2d 582.....	13
<i>Cent. Me. Power co. v. Devereux Marine, Inc.</i> , 2013 ME 37, 68 A.3d 1262.....	11
<i>Coastal Ventures v. Alsham Plaza, LLC</i> 2010 ME 63, 1 A.3d 416.....	8, 9, 15, 19
<i>Darling's v. Ford Motor Co.</i> , 1998 ME 232, 719 A.2d 111.....	14
<i>Dickau v. Vt. Mut. Ins. Co.</i> , 2014 ME, 158, 107 A.3d 621.....	14
<i>Desgrosseilliers v. Auburn Sheet Metal</i> , 2021 ME 63	13
<i>Finch v. U.S. Bank, N.A.</i> , 2024 ME 2, 307 A.3d 1049.....	21, 22
<i>Gray v. TD Bank, N.A.</i> , 2012 ME 83, 45 A.3d 735	20
<i>Hansen v. Sunday River Skiway Corp.</i> , 1999 ME 45, 726 A.2d 220	9
<i>HL 1, LLC v. Riverwalk, LLC</i> , 2011 ME 29, 15 A.3d 725	13
<i>Home Builders Ass'n of Me., Inc. v. Town of Eliot</i> , 2000 ME 82, 750 A.2d 566.....	11
<i>Johnson v. Samson Constr. Corp.</i> , 1997 ME 220, 704 A.2d 866	21
<i>Malenko v. Handrahan</i> , 2009 ME 96, 979 A.2d 1269	8
<i>MP Assocs. v. Liberty</i> , 2001 ME 22, 771 A.2d 1040, 1048-49	13
<i>Narowetz v. Bd. of Dental Prac.</i> , 2021 ME 46, 259 A.3d 771	10
<i>Patten v. Milam</i> , 480 A.2d 774 (Me. 1984)	9
<i>Savings & Loan Assoc. v. Tear</i> , 435 A.2d 1083 (Me. 1981).....	11, 12
<i>Sutherland v. Morrill</i> , 2008 ME 6, 940 A.2d 192	8, 19, 20

Statutes/Rules

14 M.R.S. § 6321.....	8, 10, 11, 12, 18
M.R.Civ.P. 52.....	7, 8, 9, 19

STATEMENT OF FACTS

On October 29, 2018, Wells Fargo Bank, N.A. – the original plaintiff in this matter – brought a complaint for foreclosure against Marcy Kamin-Crane (“Appellant”) in Cumberland Superior Court (the “trial court”). Appendix (“App.”) 4, 35-38. In the foreclosure action, Wells Fargo Bank, N.A. sought to foreclose a mortgage that it held on certain real property known as and numbered 9 Acorn Lane in Cumberland, Maine (the “Mortgage”). App. 36-38. On March 23, 2021, the trial court granted the motion of U.S. Bank Trust National Association as Trustee of the Cabana Series IV Trust (“Appellee”) to substitute itself for Wells Fargo Bank, N.A. as plaintiff in the foreclosure action. App. 10.

During the pendency of this case, the parties participated in several mediations. The first mediation was scheduled for January 12, 2019. App. 5. Prior to the mediation, Wells Fargo and the Appellant entered into a temporary payment plan (“TPP”) agreement that if successful, would result in a Loan Modification Agreement which would resolve the foreclosure matter. App. 168. Due to the Appellant’s acceptance of the TPP agreement, the parties filed a Consented to Motion to Continue

Mediation dated January 11, 2019, which was granted on January 15, 2019.

App. 5. As a result of the Motion and Order, mediation was stayed for 120 days to allow the Appellant to complete the TPP. App. 168. The Appellant made 2 of the 3 contemplated TPP payments. When the Appellant failed to make the 3rd TPP payment, the loan modification agreement was not completed. Subsequent to the TPP, whereby the Appellant was not successful, the parties attend multiple mediations, but the issue remained unresolved and the matter was returned to the docket on May 2, 2022. App. 6-12.

On June 20, 2025, the trial court – after several continuances and delays – held the trial of the foreclosure action via Zoom. App. 16. Appellee called John Pearce of SN Servicing Corporation to testify to the business records of the Appellee. App. 95, *et seq.* The trial court admitted – without objection from the Appellant – the following exhibits: promissory note (Exhibit A); Mortgage (Exhibit B); assignments of the Mortgage (Exhibit C); loan modification agreements (Exhibit D); Right-to-Cure Notice (Exhibit E); payment history (Exhibit F). App. 40-43, 44-61, 62-63, 64-79, 80-92 and 148-167, respectively.

After the Appellee rested its case, the Appellant made – and then withdrew – a motion for directed verdict on the affirmative defense of waiver. App. 32. The Appellant then testified. App. 32. Appellant focused her testimony on two (2) post-complaint payments that she made pursuant to the Mortgage, as modified, and the TPP agreement to the prior servicer in February 2019 and April 2019. App. 134-135; Transcript pp. 42:18-25, 43:1-2 and 48:4-8.

At the conclusion of the trial, the trial court asked counsel for the Appellant and Appellee to submit written closing statements on the issue of waiver. App. 30. On October 2, 2025, the trial court granted the Appellee judgment for foreclosure.¹ App. 29-34. This appeal followed.

¹ On October 17, 2025, the trial court docketed the Judgment of Foreclosure. App. 16.

STATEMENT OF ISSUES

1. Whether the trial court correctly found that the Appellant failed to meet her burden of proof to establish the affirmative defense of waiver.
2. Whether the trial court correctly found that the Appellee's testimony and evidence presented support the Appellee's judgment amount, including late fees.

BRIEF ANSWERS

1. Yes, the trial court correctly found that the Appellant failed to meet her burden of proof to establish the affirmative defense of waiver.
2. Yes, the trial court correctly found that the Appellee's testimony and evidence presented at trial support the Appellee's judgment amount, including late fees.

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT THE APPELLEE HAD NOT WAIVED ITS FORECLOSURE UNDER THESE FACTS.

The trial court correctly granted Appellee U.S. Bank Trust, National Association, as Trustee of the Cabana Series IV Trust's complaint for Foreclosure. The Appellants did not move under M.R.Civ.P. 52(a) or (b)

for the trial court to issue findings of fact or conclusions of law or amend its findings or conclusions to the Order. In the absence of a motion for further findings of fact and conclusions of law pursuant to M.R.Civ.P. 52(b), this Court will assume that the trial court found all the facts necessary to support the outcome to the extent that they are supported in the record. *Coastal Ventures v. Alsham Plaza, LLC* 2010 ME 63, ¶ 19, 1 A.3d 416, See *Malenko v. Handrahan*, 2009 ME 96, ¶ 37, 979 A.2d 1269, 1278; *Sutherland v. Morrill*, 2008 ME 6, ¶ 5, 940 A.2d 192, 193. Appellant Kamin fails to demonstrate that the trial court abused its discretion in making findings of fact and conclusions of law. For this reason, this Court should affirm the trial court's Order and Judgment for Foreclosure and Sale.

A. The trial court correctly found that the Appellant failed to meet her burden of proof to establish the affirmative defense of waiver.

This Court should affirm the trial court's judgment because the trial court correctly found that the circumstances of this case did not constitute a waiver under 14 M.R.S.A. § 6321, read as a whole. Furthermore, Appellant failed to meet her burden of proof to establish the affirmative defense of

waiver.² The rule is that a party asserting an affirmative defense has the burden of proving the applicability of the defense. *ABN AMRO Mortg. Group v. Willis*, 2003 ME 98, ¶ 5, 829 A.2d 527, 529, citing *Patten v. Milam*, 480 A.2d 774, 776 (Me. 1984) (stating that asserting a failure to comply with statutory notice procedures is an affirmative defense, placing the burden of proof on the party raising the defense); *Hansen v. Sunday River Skiway Corp.*, 1999 ME 45, P11 n. 2, 726 A.2d 220, 223 (stating that a party raising an affirmative defense has the burden of proof). In the instant case, the trial court found the following:

- The Appellant testified that she had been offered a loan modification upon successfully making three (3) trial payments.
- The Appellant made two (2) trial payments post-foreclosure pursuant to a loan modification agreement.
- The Appellant did not make the third trial payment.

² The trial court correctly found that the Appellee established all of the elements of proof for a foreclosure judgment. App. 30. The Appellant did not move under M.R.Civ.P. 52(a) or (b) for the trial court to issue findings of fact or conclusions of law or amend its findings or conclusions to the Order or Judgment for Foreclosure and Sale. In the absence of a motion for further findings of fact and conclusions of law pursuant to M.R.Civ.P. 52(b), this Court will assume that the trial court found all the facts necessary to support the outcome to the extent that they are supported in the record. *Coastal Ventures v. Alsham Plaza, LLC*, 2010 ME 63, ¶ 19, 1 A.3d 416.

- The Appellee did not offer “any evidence of a written agreement signed by the Plaintiff.”

App. 32-33.³ Based upon these factual findings, the trial court found that the final paragraph of 14 M.R.S.A. § 6321, the so-called “Waiver Rule,” allowed the Appellee to proceed with foreclosing the Mortgage, to wit:

The court concludes that the acceptance of the payments is not a waiver in these circumstances. The intent of the Legislature is to encourage parties to reach agreements to avoid foreclosure and bring homeowners into compliance ... [i]f the requirements of the previous paragraph applied, this paragraph would be mere surplusage ... [b]y adding this final paragraph, the goal of the Legislature was to allow flexibility in the interest of encouraging lenders to try and resolve cases.

App. 34, citing *Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, ¶ 24, 259 A.3d

771 (a court construes statutory language “to give effect to the intent of the

³ The evidentiary record is clear that the parties did enter into an agreement by which the Appellee (then, Wells Fargo Bank, N.A.) would pause the foreclosure of the Mortgage to allow the Appellant to make trial plan payments. App. 168, “Plaintiff’s Consented to Motion to Continue Mediation,” January 11, 2019 (the “Consented Motion”). In that Consented Motion, the Appellee requests that “the scheduled mediation be continued for 120 days to allow time for completion of the trial payment plan (TPP) offered by Plaintiff, which Defendant has indicated she wishes to accept. Completion of the TPP is a prerequisite to permanent loan modification.” Id. at ¶ 1. Consistent with the final paragraph of 14 M.R.S.A. § 6321, the Consented Motion further states that “[i]f the Defendant does not fully comply with the TPP, fails to continue making monthly payments that become due or does not execute the permanent loan modification documents, if offered, ... Plaintiff may have this case released from mediation and returned to the active foreclosure docket by written request.” Id. at ¶ 2. On January 15, 2019, the Trial Court granted the Consented Motion. App. 6.

Legislature, first by examining its plain language”), *Cent. Me. Power co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262 (“[a]ll words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed”) and *Home Builders Ass’n of Me., Inc. v. Town of Eliot*, 2000 ME 82, ¶ 8, 750 A.2d 566 (“[s]urplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force”).

B. The trial court correctly applied the language 14 M.R.S.A. § 6321 and found no waiver by the Appellee.

Upon review of the applicable statute, the trial court correctly found that upon reviewing the record, the Appellee had not waived its foreclosure. Appellant wants this Court to believe that the Legislature, in drafting the Waiver Rule, writes two (2) separate paragraphs that both require a written agreement concerning payments received post-commencement of foreclosure proceedings. Appellant’s Brief, (“AB”) p. 20 (“[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”).⁴

⁴ The Appellant relies on *Savings & Loan Assoc. v. Tear*, 435 A.2d 1083 (Me. 1981) for the argument that this Court has a “strict statutory rule regarding waiver.” AB, 22. The decision in

However, Appellant's protestations notwithstanding, the plain language of these two (2) paragraphs makes evident that only the first paragraph requires a written agreement because that is the only paragraph where the Legislature specified the mortgagee and mortgagor should enter into a written agreement. 14 M.R.S.A. § 6321 ("... unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted").

Meanwhile, the subsequent and final paragraph of 14 M.R.S.A. § 6321, the so-called "Stay Rule," – allowing an agreement to let a mortgagor make payments and get a stay of the foreclosure action – uses the word "agreement" three (3) separate times but the Legislature does not require the agreement to be in writing. *Id.* By the Appellant's own testimony, and by the filing of the Consented Motion and two subsequent Motions to

Tear is distinguishable, and in that case, the Defendants entered into a Purchase and Sale Agreement, not a mortgage, with the Plaintiff Bank and the Plaintiff bank was not seeking a statutory foreclosure. *Id.* at 1084. That case was decided before the language at issue in the case was added to § 6321 in 2007 (App. 176) and based on the Law Court's finding that the Plaintiff Bank accepted the payment pursuant to the Uniform Commercial Code and only the dishonor of the accepted instrument would vitiate the Bank's waiver of the late payment breach. *Id.* at 1086. The Court in *Tear* never had occasion to construe, and couldn't have anticipated, the Stay Rule paragraph the trial court relied on here.

Continue filed by the Appellant (App. 168-173)⁵, the Appellant entered into a temporary payment plan (“TPP”) agreement with Wells Fargo Bank, N.A. – i.e., an agreement – as a step towards a loan modification agreement, staying the foreclosure action. App. 134-135; Transcript pp. 42:18-25 and 43:1-4. “It is apparent that the Legislature knew how to create statutory language that allows [the intended result in other provisions] ... Consequently, the absence of such language [in this provision] demonstrates the Legislature’s intent [to provide a different result].” *Desgrosseilliers v. Auburn Sheet Metal*, 2021 ME 63, ¶ 15, *citing* *HL 1, LLC v. Riverwalk, LLC*, 2011 ME 29, ¶ 25, 15 A.3d 725.

As the Legislature requires a signed written agreement in the first paragraph, the Waiver Rule, but only an “agreement” in the second paragraph, the Stay Rule, the trial court reasonably concluded that when the applicable statute is read as a whole– and based upon the evidence provided – the Appellant failed to meet her burden on the affirmative defense of waiver. In interpreting a statute, the trial court's "single goal is

⁵ Admissions contained in a party’s pleadings are binding on those parties both at trial and on appeal. *Burr v. Jordan*, 2008 ME 87, ¶ 9, 948 A.2d 582; see also *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 28, 771 A.2d 1040, 1048-49 (holding that parties are generally bound by the stipulations to which they agree).

to give effect to the Legislature's intent in enacting the statute." *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME, 158, ¶ 19, 107 A.3d 621 (citation omitted). Initially, the trial court seeks to accomplish this goal by examining the plain meaning of the statutory language and considering the language in the context of the whole statutory scheme. *Darling's v. Ford Motor Co.*, 1998 ME 232, ¶ 5, 719 A.2d 111 (citations omitted).

The Waiver Rule and the Stay Rule in 14 M.R.S.A. § 6321 are not enumerated paragraphs, and a plain language interpretation should not be confused with a literal interpretation. *Dickau*, 2014 ME 158, ¶ 20, 107 A.3d 621 (citations omitted). "Rather, courts are guided by a host of principles intended to assist in determining the meaning and intent of a provision even within the confines of a plain language analysis." *Id.* (citation omitted). One of these principles is to take "into account the subject matter and purposes of the statute, and the consequences of a particular interpretation." *Id.* ¶ 21 (citation omitted); see also *Darling's v. Ford Motor Co.*, 1998 ME 232, ¶ 5, 719 A.2d 111 (the court avoids "statutory constructions that create absurd, illogical or inconsistent results") (citation omitted).

C. The trial court correctly found that the acceptance of the Appellant's post-complaint payments did not constitute a waiver.

The trial court reviewed the evidence and arguments made by the parties related to the acceptance of two post-foreclosure complaint TPP payments by the Appellant. It found that the “acceptance of the payments is not a waiver in these circumstances.” App. 34. Absent Rule 52 motion, this Court will assume that the trial court found all of the facts necessary to support the outcome to the extent that they are supported in the record. *Coastal Ventures v. Alsham Plaza, LLC*, at ¶ 19 (citations omitted). For this reason, this Court should affirm the trial court's Order and Judgment for Foreclosure and Sale in favor of the Appellee and against the Appellant.

Even if this Court determines that the Appellee required a written agreement with the Appellant in order to preserve its foreclosure action, this Court should affirm the trial court's judgment because the Appellant did not raise the issue at trial. By asserting the affirmative defense of waiver, Appellee had the burden of proving the applicability of the defense. *ABN AMRO Mortg. Group v. Willis*, 2003 ME 98, ¶ 5 (citations omitted). In the instant case, the Appellant testified briefly on direct to

establish that the Appellant made two (2) payments post-foreclosure complaint, as the following section from the trial transcript demonstrates:

Q: And then after the foreclosure started, did you try to do an additional loan modification?

A: Yes.

Q: And as part of trying to do that loan modification, did you ever send money to Wells Fargo?

A: Yes.

Q: Was it in 2019?

A: Yes.

Q: Wells Fargo ever send the money back?

A: No.

App. 134-135; Transcript pp. 42:18-25 and 43:1-2. And on cross-examination, the Appellant further testified to the following:

Q: So now it's your testimony that you made two payments in anticipation of a trial – a trial payment?

A: Not – not I – not in anticipation of. I was engaged in paying trial payments as part of the modification.

App. 139; Transcript p. 47:4-8. But the Appellant – who, again, is carrying the burden of establishing waiver as an affirmative defense – did not offer the trial court any evidence that there was no written agreement between the parties.

Furthermore, seven (7) days prior to the trial, the Appellee filed with the trial court and the Appellant an amended witness and exhibit list, with

stated issues for trial, with a proposed judgment and, copies of the exhibits for trial. App. 15. At trial, neither party raised the issue of a written and signed agreement concerning the post-foreclosure complaint TPP payments. When discussing written closing arguments, the trial court narrowed the scope as follows:

THE COURT: I...understand the facts. I mean, I think – well, I don't – I – my guess is that based on the evidence that's in front of me right now, there were two payments made in 2019. Attorney Egdall, do you disagree with that?

MS. EGDALL: No, that appears to be the case, Your Honor.

THE COURT: So the – question for me is what comes of that.

MR. STEED: And that's – and I said, well, yeah that's (indiscernible).

THE COURT: And Attorney Steed, you'd agree that Attorney Egdall doesn't have to sort of brief the whole thing. We're really just focused on this one issue.

MR. STEED: That's – that's what I think, too, Your Honor. Yes. And I think that was a decision you made.

App. 142, Transcript 50: 2-16. As this exchange makes clear, the parties agreed that the Appellant made two TPP payments in 2019. Id. The first reference of waiver was made after the Appellee had rested its case in chief. App. 130-131.

At the conclusion of the trial, there was no reference to a waiver and there was no discussion as to whether the Appellee needed to produce a written agreement with the Appellant in order to rebut the Appellant's affirmative defense of waiver – i.e., the trial court's statement to the parties that the “one issue” before the court is “what comes” of the Appellant making those two post-foreclosure complaint payments. App. 142. Therefore, because the Appellant failed to offer the trial court evidence of whether or not there was a written agreement between the Appellant and the Appellee regarding the two TPP payments, the Appellant failed to meet her burden of establishing an affirmative defense, this Court should affirm the trial court's judgment in favor of the Appellee.⁶

⁶ The Appellee notes that, if the Appellant had argued at trial that there was no written agreement between the Appellant and the Appellee regarding the two (2) 2019 payments, the Appellee would have directed the Trial Court to a written agreement between the parties – i.e., the Mortgage. In the Mortgage, the Appellant and the mortgagee make clear their agreement that the mortgagee can accept payments during foreclosure of the Mortgage and, further, that the mortgagee “may use such monies ... without affecting [mortgagee's] right to continue foreclosure and sale.” App. 58. Nowhere in the Waiver Rule does the statute require the mortgagor and mortgagee to enter into a contemporaneous written agreement regarding post-foreclosure complaint payments, only a written agreement. 14 M.R.S.A. § 6321. Therefore, even if this Court were to find that the written agreement provision of the Waiver Rule applies to the facts of this case and even if this Court were to find that the Appellant carried her burden on the affirmative defense of waiver, a written agreement between the parties exists to satisfy that requirement and overcome that affirmative defense.

B. THE TRIAL COURT CORRECTLY FOUND THAT THE APPELLEE HAD PROVEN ALL THE NECESSARY ELEMENTS, INCLUDING THE AMOUNT DUE, FOR THE COURT TO ENTER A JUDGMENT OF FORECLOURE.

The Appellant raises the issue of alleged improper late fees for the first time in this appeal.⁷ This Court should affirm the trial court's decision to award late fees to the Appellee because the Appellant fails to offer this Court a reasonable legal argument to the contrary. Appellant takes issue with the amount that the trial court awarded to the Appellee as judgment, but the Appellant failed to file a motion for further findings of fact and conclusions of law; therefore, this Court will assume that the trial court found all of the facts necessary to support the outcome to the extent that they are supported in the record. *Coastal Ventures v. Alsham Plaza, LLC*, at ¶ 19 (citations omitted). Had the Appellant filed a motion for findings of fact, asking the trial court to address whether late fees should have been included in the judgment amount, the matter could have been resolved at the trial. See *Sutherland* at ¶ 4, citing M.R.Civ.P. 52. Absent a Rule 52(a) motion, this Court will infer that the court found all the facts necessary to

⁷ As noted above, at the conclusion of the trial, the parties both agreed that the only issue to be briefed was the issue of the two post-complaint payments made by the Appellant. App. 142, Transcript 50: 2-16.

support its judgment of those inferred findings are supported by the evidence in the record. *Id.* at ¶¶ 4-5. Viewing the evidence and all inferences from the perspective most favorable to the court's judgment, as we must, this Court should find that evidence, including the Note, Mortgage, Loan Modification and Payment History, along with the testimony of the witness, is sufficient to support the trial court's findings of the amount due, including late fees. *Id.*, see also *Gray v. TD Bank, N.A.*, 2012 ME 83, ¶ 15, 45 A.3d 735.

In the instant case, however, the Appellant mistakenly cites *Am. Prot.Inc. Co.* for the proposition that “Whether a late-charge provision applies to an accelerated loan is a question of law, which this Court review de novo.” AB, 24; citing *Am. Prot. Inc. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989, 993. In that case, this Court that held the following:

Contract language is ambiguous when it is reasonably susceptible of different interpretations. If a court determines that the contract is unambiguous, then its interpretation is also a question of law. On the other hand, if the contract is ambiguous, then its interpretation is a question of fact for the factfinder.

Am. Prot. Inc. Co. v. Acadia Ins. Co., 2003 ME 6, ¶¶ 1 and 11 (citations omitted). It is unclear how the actual holding in this case supports the Appellant’s argument.

The Appellant pivots from *Acadia Ins. Co.* to *Finch* for the proposition that, upon acceleration of a loan, “[t]he obligations to pay each installment merge into one obligation to pay the entire balance of the note.” AB, pp. 24-25, citing *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). However, the Appellant misquotes this Court’s decision in *Finch*. Claiming that *Finch* supports her argument, the Appellant cites to the following language:

the entire debt be[comes] due, [and] the contract be[comes] indivisible. The obligations to pay each installment merge [] into one obligation to pay the entire balance on the note. 2024 ME 2, ¶ 22, 307 A.3d 1049 (quoting *Johnson v. Samson Constr. Corp.*, 1997 ME 220, ¶ 8, 704 A.2d 8660. Acceleration is a contractual remedy that, when exercised, “alter[s] the status of the contract.” *Id.* ¶ 35.

AB, 24-25. However, paragraph 2 of *Finch* makes no such holding but, instead, relates to the *Pushard* decision and its holding related to a notice of default that does not comply with the statute. citing *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 2. Further, *Finch* does not reference the *Johnson* case in

paragraph 2. *Id.* Meanwhile, the trial court's decision makes clear that the trial court heard the testimony and admitted the necessary evidence to issue a foreclosure judgment in favor of the Appellee. App., 30-34.

For these reasons, this Court should affirm the Trial Court's judgment in favor of the Appellee and against the Appellant, including the amount due on the Mortgage note, as modified.

CONCLUSION

Appellant failed to demonstrate any errors in the Trial Court's order granting the Appellee judgment of foreclosure and sale and, moreover, would have erred by finding the Appellee waived its foreclosure action. The Appellant did not meet her burden of proof for the affirmative defense of waiver, raised for the first time after Appellee rested its case. Furthermore, the arguments set forth in the Appellant's brief related to the amounts due to the Appellee as stated in the Judgment for Foreclosure and Sale are supported by the testimony and evidence presented at trial. For these reasons, this Court should affirm the Trial Court's order and Judgment for Foreclosure and Sale.

Dated: July 23, 2026

Respectfully submitted,

U.S. BANK TRUST, NATIONAL
ASSOCIATION, AS TRUSTEE OF THE
CABANA SERIES IV TRUST,

By its attorneys,

/s/ Joan M. Egdall

Joan M. Egdall, Esq. (#9490)
Demerle & Associates, P.C.
10 City Square
Boston, MA 02129
(617) 337-4444
JEgdall@DemerlePC.com

CERTIFICATE OF SERVICE

I, Joan M. Egdall, certify that on this day I caused to be served on electronic copy with two (2) paper copies of the Brief of the Appellee to be served upon the Clerk's acceptance and upon the following by regular mail and electronic mail:

Johy Z. Steed, Esq.
Island Justice
40 School Street
P.O. Box 771
Stonington, ME 04681
john@islandjusticelaw.com

/s/ Joan Egdall

Joan M. Egdall, Esq. (#9490)