

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. YOR 24-569

TOWD POINT MORTGAGE TRUST 2019-4,
U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE,
Plaintiff-Appellee,

v.

LESLIE BODWELL, et al.,
Defendant (Defaulted),

K & R HOLDINGS, INC.,
Party-in-Interest/Appellant.

On Appeal From a Judgment of the Superior Court

APPELLEE'S BRIEF

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Date: October 22, 2025

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INTRODUCTION

The Superior Court clearly had equitable jurisdiction to appoint a receiver under 14 M.R.S. § 6051(13) (“Equity jurisdiction. [Superior Courts] have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.”) The Superior Court’s equitable jurisdiction is frequently invoked by the state or municipalities when a commercial or residential property is being used for illegal purposes, is dangerous, replete with code violations or a blight to the neighborhood that has gone unaddressed. *See Bates v. Dept. of Behavioral & Development Servs.*, 2004 ME 154, at ¶ 86, 863 A.2d 890 (Me. 2004), citing *Department of Environmental Protection v. Emerson*, 563 A.2d 762 (Me. 1989)(Appointment of Receiver within the discretion of the trial judge), citing *Consolidated Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322, 326 (1st Cir. 1988); *Van Oss v. Premier Petroleum Co.*, 113 Me. 180, 189, 93 A. 72, 75 (Me. 1915)(Affirming Trial Court Order appointing Receiver). By virtue of the orders of appointment, the liens for the work done by an appointed receiver are generally paid first even ahead of a secured mortgage. For this reason, lenders who are vigilant about protecting their properties while the court process proceeds may likewise invoke the powers of the courts to obtain the appointment of a receiver to preserve and protect an asset, to protect and safeguard the community, to control the cash collateral generated from the asset, and/or to liquidate the asset to maximize

the recovery to lien holders. *See Fleet Bank of Maine v. Zimelman*, 575 A.2d 731, 733 (Me. 1990); *Belfast Sav. Bank v. Sanford & C.P. Ry. Co.*, 120 ME 108 (Me. 1921); *U.S. Bank N.A. v. SRA Augusta SPE, LLC*, No. 1:16-cv-00410-JDL, 2016 WL 6808132, *4 n. 9 (D.Me. 2016)(Upholding the Superior Court’s Order appointing a Receiver and reminding litigants that “[a] receiver is an officer of the court and as such does not owe allegiance to either party, but rather acts as a fiduciary on behalf of both parties.”), quoting *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994).

When a court-appointed Receiver takes custody of real estate or other assets the legal arrangement is a form of *custodia legis*, or “custody of the law.” *Cobb v. Camden Sav. Bank*, 106 Me. 178, 182 (1909); *Chalmers v. Littlefield*, 103 Me. 271, 282 (1907); *see also Davis v. Cox*, 356 F.3d 76, 93 (1st Cir. 2004). As recently recognized by the First Circuit, the Receiver, as an officer of the court, holds the assets for the court, not in a personal capacity, and has quasi-judicial immunity. *See Suny v. KCP Advisory Group LLC*, 2025 WL 2399187, *2 (1st Cir. Aug. 19, 2025).¹ Like the evacuation of residents from the failed nursing home at issue in *Suny*, the

¹ “Quasi-judicial immunity, as the name suggests, is an outgrowth of judicial immunity created to address the fact that certain judicial functions are performed by nonjudicial actors. It has two recognized applications. First, it applies to non-judges who act in a judicial capacity, meaning that they “exercise a discretionary judgment” in helping to resolve disputes between parties.” *Suny*, 2025 WL 2399187, at *2, citing *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993). Quasi-judicial immunity “extends to persons who, ‘irrespective of their title, perform functions essentially similar to those of judges . . . in a setting similar to that of a court.’” *Id.*, citing *Bettencourt v. Bd. of Registration in Med. of Mass.*, 904 F.2d 772, 782 (1st Cir. 1990)(emphasis omitted). “Second, quasi-judicial immunity has been extended to persons who ‘carr[y] out the orders of an appointing judge.’” *Id.*, citing *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989).

control and management of the property used in a failed drug operation at issue in this matter would without question fall “within this broad grant of authority” of the Superior Court of York. *Id.* at *5; *Wilmington Savings Fund Society, FSB v. Chen*, Docket No. 1:25-cv-00216-LEW, 2025 WL 2039828 *1 (D.Me. 2025) (Receiver appointed to take control of single-family home converted to a grow operation).²

As such, as outlined in more detail below, the Death Knell and Collateral Order exceptions to the rule precluding interlocutory appeals, often applicable in challenges to receivership appointments or denials, have no place here. *Cf. Zimelman*, 575 A.2d at 733. Those doctrines can support interlocutory review of receivership orders. However, such review is available only in exceptional circumstances. The Appellant’s appeal is based on a speculative hope with no practical expectation of recovery from the property. The Receiver’s attempted liquidation has demonstrated there is insufficient value to satisfy even the first lien.³ Under the circumstances here, there is no unique risk that money cannot replace. There is no income from this asset to which K & R Holdings Inc. (“K & R”) would

² See also Steve Robinson, *Chinese Imposter Points Up Mortgage Scheme Leveraged by Cannabis Cartels in Maine*, The Maine Wire (Aug. 27, 2025), <https://www.themainewire.com/2025/08/chinese-impostor-points-up-mortgage-scheme-leveraged-by-cannabis-cartels-in-maine/> (discussing the Order of Appointment in *Chen*).

³ Even if K & R is successful at thwarting the instant foreclosure based on a standing attack, this would not allow K & R to advance its lien position, if it holds a perfected lien, and the Debtor’s discharge precludes any other hope of recovery. See *Dream Capital v. Deutsche Bank*, 2020 WL 7066313, *4, n. 6 (D.Me. 2020) (Rejecting attempt of Second Mortgage holder to step ahead of the first Mortgage notwithstanding alleged issues with authority of signor of Quitclaim Assignment).

be entitled as a potential judgment creditor that is third in order of priority on title. If K & R has a perfected lien, as discussed at the hearing on November 5, 2024, and as set forth in the Order of Appointment, that lien would pass to the proceeds of the sale held by the Receiver. Record Appendix (“A.”) at 27, 19. The proceeds would not be held by Towd Point Mortgage Trust 2019-4, U.S. Bank National Association, as Indenture Trustee (“Towd Point”). They would not be subject to attachment. In the very unlikely event that this borrower were to file a *second* Chapter 7 bankruptcy, the proceeds would not become part of his bankruptcy estate unencumbered by the liens of the current secured creditors. Further, any sale order could explicitly state that the creditors’ liens shall attach to the proceeds in order of their priority and enjoin any further attachments of the proceeds without the Court’s permission. That sale order could then be recorded in the registry of deeds to provide constructive notice of the liens and the injunction. *See Barton v. Barbour*, 104 U.S. 126, 128 (1881)(clarifying what has become known as the *Barton Doctrine* of receiverships and emphasizing the unique, court-protected role of a receiver and the well-settled rule of law that a receiver cannot be sued without leave of the court that appointed them); *Muratore v. Darr*, 375 F.3d 140 (1st Cir. 2004). As made clear in *Barton*, the rule prohibiting lawsuits against receivers without leave of court applies to suits on a money demand or for damages, as well as to those that seek to recover property held by the Receiver under an order of the court. *See Barton*, 104 U.S. at 128.

Nevertheless, we are procedurally before the Law Court, and the matter is fully briefed. Towd Point's arguments will focus on addressing the substantive issues of whether the Trial Court abused its discretion in appointing this Receiver and in refusing to make further additional factual findings.

To this end, “a picture is worth a thousand words.” Here, a review of the color photographs in the Record Appendix alone should resolve any doubt that the Trial Court acted well within its discretion in appointing the Receiver to take control of the Property. (A. 120-22, 129-77). The Trial Court’s decision and authority to issue the Receivership Order is amply supported by the photographs documenting the modification of this residential home into a marijuana growing operation with particular emphasis on the large, abandoned grow rooms, (A. 120-22, 171-77), the extensive, clearly illegal, electrical modifications for powering lights, (A. 137, 146, 147, 156, 159, 170), the extensive mold throughout, (A. 154, 157, 161-69), the exterior ventilation, (A. 133), multiple heat pumps, (A. 135-36), and the drug paraphernalia and laminated growing instructions, (A. 155). It is clear that the Trial Court did not err in seeing the exigency of the circumstances and then appointing Attorney Campo as Receiver. The Trial Court addressed what was obviously a threat not only to the value of the asset, but also the health and safety of the community. This was well within the Trial Court’s discretion, particularly in light of K & R’s request to continue the damages hearing/trial on the merits because a scheduling

order did not issue and a pre-trial conference was not held in light of Bodwell's default. K & R insisted that the matter be delayed and that he was entitled to both a scheduling order and a pretrial conference. The Trial Court granted K & R's request but appointed a Receiver to address the compelling property issues and liquidate the asset. (A. 24, 29-31).

In determining whether the Trial Court abused its discretion in appointing a Receiver, it is important to consider that, at and prior to the Motion Hearing, both the second lien holder and Bodwell (the borrower who received his Chapter 7 bankruptcy discharge) expressed their consent via counsel to the appointment of a receiver and the foreclosure generally. (A. 23-25, 33-35).

The Trial Court did not abuse its discretion in appointing a Receiver when faced with K & R's request to delay the resolution of the matter. Further, the appointment was justified given the compelling public policy of addressing dangerous situations in Maine neighborhoods occupied by real people who live near these properties. The receivership preserves whatever value remains in the property. Attorney Campo was aggressive in acting pursuant to the Trial Court's order in marketing the property, getting the property under contract with a buyer willing to do the clean-up and address the violations, and in filing his Motion to Sell. Nevertheless, this interlocutory appeal was filed and continues to proceed, which further impacts the potential equity available to any lien holder at the end of the day.

The delay allows the blight on this North Berwick neighborhood to continue even though K & R's Motion to Dismiss the underlying foreclosure complaint (aggressively advancing a claim that the signor of the Quitclaim assignment did not sign as Member but as President and CEO of the failed entity) was heard and denied.

The Appellant's Brief presents three questions, which will be addressed in turn, but the overarching essence of this case is how, with both the borrower and the holder of the second mortgage consenting to both the *in rem* foreclosure of the lien and the appointment of a Receiver, can a Party-in-Interest, who *may* have a lien subordinate to all, be allowed to unnecessarily delay the process and thereby prejudicing all of the Parties involved. K & R cries the death knell exception, but the Appellee suffers the harm. The property's value is not sufficient to satisfy even the first mortgage. (A. 16, 47). K & R's arguments, even if successful, will not advance the position of its lien. *Dream Capital v. Deutsche Bank*, 2020 WL 7066313, at n. 6 (D.Me. 2020)(rejecting attempt of Second Mortgage holder to step ahead of the first Mortgage notwithstanding alleged issues with authority of signor of Quitclaim Assignment).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. On April 8, 2005, the Defendant, Leslie Bodwell (“Bodwell”), executed and delivered to Amerihome Mortgage Company, LLC, a Promissory Note in the amount of \$250,000.00 (“Bodwell Note”). (A. 91).

2. To secure the Bodwell Note, Bodwell gave first Mortgage on the property located at 249 Wells Street, North Berwick, ME 03906 (the “Property”) to Mortgage Electronic Registration Systems, Inc. as nominee for Amerihome Mortgage Company, LLC, dated April 8, 2005, and recorded in the York County Registry of Deeds in Book 14433, Page 0038 (“Bodwell Mortgage”). (A. 58-73).

3. The Bodwell Mortgage was assigned to BAC Home Loans Servicing, LP by virtue of an Assignment of Mortgage dated June 14, 2010, and recorded in the York County Registry of Deeds in Book 15886, Page 126. (A. 96).

4. On December 9, 2013, the Bankruptcy Court issued a Discharge in Bodwell’s Chapter 7 bankruptcy relieving him of his personal liability for payment of the debt owed under the Mortgage Loan, because he did not reaffirm the mortgage claim (bankruptcy case number 13-20892 in the District of Maine). (A. 25).

5. The Bodwell Mortgage was further assigned to Firstkey Mortgage, LLC by virtue of an Assignment of Mortgage dated November 13, 2020, and recorded in the York County Registry of Deeds in Book 18470, Page 357. (A. 97).

6. The Bodwell Mortgage was then further assigned to Towd Point Mortgage Trust 2019-4, U.S. Bank National Association, as Indenture Trustee by virtue of an Assignment of Mortgage dated November 13, 2020, and recorded in the York County Registry of Deeds in Book 18470, Page 358. (A. 98).

7. The transfer of all the rights contained in the Bodwell Mortgage, as modified by the 2012 Agreement, to Towd Point was further ratified and confirmed by the Quitclaim Assignment dated August 9, 2022, and recorded in the York County Registry of Deeds in Book 19089, Page 373 (“Quitclaim Assignment”). (A. 99).

8. Although Bodwell’s bankruptcy Discharge relieved him of his personal liability for the debt, his failure to make the monthly payment due on April 1, 2020, and all subsequent payments, nevertheless constitutes a default under Sections 3, 6 and 10 of the Bodwell Note, (A. 91-92), as modified, *see Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991)(recognizing that a mortgagee’s right to enforce a mortgage through foreclosure survives the mortgagor’s bankruptcy discharge), and as a result, Bodwell is in breach of the conditions of Sections 1 and 22 of the Bodwell Mortgage. (A. 45).

9. In accordance with 11 M.R.S.A. § 3-1201, *et seq.*, the Bodwell Note was endorsed, transferred and delivered to Towd Point, which remains the holder and owner of the Note and is in physical possession of the same. (A. 39)(The original Bodwell Note, which is in the custody of Doonan, Graves and Longoria, LLC as

counsel to and agent for Towd Point, was presented in Court at the Motion Hearing on November 5, 2024, wherein the Court specifically inquired, “you had a chance to review it and it does, to you, appear to be the original Note?” to which Attorney Greenberg confirmed “Yes, your honor.”).

10. Towd Point is also the holder of record of the Bodwell Mortgage by virtue of the Quitclaim Assignment, (A. 99), acknowledging the transfer of the loan from the originator.

11. On December 13, 2024, K & R filed a Motion to Dismiss the underlying action based on a challenge to the signing authority of the individual that executed the Quitclaim Assignment. (A. 13).

12. On March 6, 2025, the Trial Court denied K & R’s Motion to Dismiss thereby rejecting its challenges to the Quitclaim Assignment. (A. 16).

13. Ten lien holders were named in the initial Complaint; however, all except two have been dismissed or have defaulted. (A. 7, 8, 10, 12 and 13).

14. The Bank of New York Mellon FKA The Bank of New York as Trustee for the Certificateholders of CWHEQ Inc., Revolving Home Equity Loan Asset Backed Notes, Series 2007 G (“BONYM”), is a Party-in-Interest pursuant to a Mortgage, which is in second position behind the Bodwell Mortgage, in the amount of \$42,000.00, originally given to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Countrywide Home Loans, Inc., dated June 28, 2005,

and recorded in the York County Registry of Deeds in Book 14519, Page 768, and assigned to BONYM at Book 16369, Page 188, and at Book 17041, Page 660. (A. 45).

15. Appellant K & R was named as a Party-in-Interest based upon a Writ of Execution in the amount of \$13,900.43 dated August 3, 2010, against Defendant Bodwell's interest in the mortgaged premises, recorded in the York County Registry of Deeds at Book 15909, Page 869. (A. 46).

16. The Record of this matter to date is devoid of any documentation of K & R's compliance with Title 14, Sec 4651-A. Part (5) which requires that a specific notice be sent to the debtor within 20 days after recording the lien, and if it is not, the lien is void.

17. K & R filed a brief general denial Answer to the Complaint on August 23, 2023. (A. 5).

18. K & R's Answer did not include facts to establish that it has taken the necessary steps to perfect its lien pursuant to Title 14, Sec 4651-A (5). (A. 5).

19. Party-in-Interest Bank of New York Mellon filed its Answer to the Complaint on September 18, 2023. (A. 5).

20. No discovery requests were served, nor motions filed, between the date of K & R's Answer filed August 28, 2023, and August of 2024.

21. On August 1, 2024, the Trial Court scheduled a Damages Hearing for November 4, 2024. (A. 10).

22. On August 23, 2024, K & R filed a Motion to Continue the Hearing set for November 5, 2024. (A. 10).

23. On September 6, 2024, Towd Point filed its Opposition to the Motion to Continue. (A. 11).

24. K & R filed its Reply to the Opposition on September 18, 2024. (A. 11).

25. The Trial Court denied the Motion to Continue on September 20, 2024. (A. 11).

26. Towd Point filed a Motion for Order of Abandonment and Receivership, with Affidavit of Mathew Kelly, Statement of Material Facts and Proposed Order on October 24, 2024. (A. 11, 76-82, 83).⁴

27. At the outset of the Hearing, Judge Mulhern made it clear that he was concerned about the abandoned property, the fact that the Defendant and the Second Mortgage holder consented to both the Appointment of the Receiver and the Foreclosure and he listened to argument from Towd Point as well as K & R on the issues. (A. 23-36).

⁴ The Docket reflects the filing of Towd Point's Motion for Order of Abandonment and Receivership, with Affidavit and Statement of Material Facts and Proposed Order on October 24, 2024, A. 11, however in K & R's Appendix the Motion is included separately from the Affidavit and Proposed Order and the Statement of Material Facts.

29. During the hearing, in addition to his oral argument, K & R filed its Opposing Memorandum to the Motion for Order of Abandonment and Receivership. (A. 12, 31).

30. During the Hearing, following off the record discussion in open court aimed at settlement, there was substantial argument regarding the Motion to Appoint a Receiver particularly in light of K & R's request that the Damages Hearing not go forward because a Scheduling Order did not issue due to the Defendant's default, and K & R's request that the matter be set for a trial at a later date that the Court anticipated being scheduled in August of 2025. (A. 23-36).

31. The Trial Court also noted at the outset that Bodwell was granted a discharge in Bankruptcy and thus this is essentially an *in rem* foreclosure proceeding against the property. (A. 25).

32. After hearing argument from all parties, including the Second Mortgage holder who consented to the Motion, the Trial Court granted the Motion and ruled that, "if we're going to delay the final resolution of this, there should be some attempt to preserve the property." (A. 36-37).

33. The Trial Court requested a more detailed Order to include the name of the Receiver as well as his powers to secure, market and sell. (A. 36).

34. The Opposition to the Motion to Appoint the Receiver filed during the Hearing was docketed on November 6, 2024. (A. 12).

35. On November 12, 2024, Towd Point filed a Reply to the Opposition to the Motion to Appoint the Receiver supported by an Affidavit of Tash Massey, the Designated Broker and Owner of On Point Realty who personally observed and photographed the Property and confirmed its vacancy and the evidence of a large scale marijuana growing operation as evidenced by the photographs. (A. 129-177).

36. The Statement of Facts in the Appendix at 119-122 reflects the growing beds, electrical, lighting heat and ventilation. (A. 119-122).

37. The Reply and Affidavit in Support include numerous photographs that reflect the overgrown large yard and shrubbery covering the exterior of the home where upon closer examination are modified entry, exterior ventilation, electrical and multiple heat pumps. (A. 130-136).

38. The Reply Affidavit interior photos beginning with page 137 reflect severely modified electrical for the abandoned grow operation. (A. 137, 146, 147, 156, 157, 159, 164-169, 171-177).

39. The Reply interior photos also reflect extensive black mold in the insulation, ceilings, walls, basement, modified rooms throughout. (A. 138, 152, 154, 157, 158, 161-169).

40. The Reply interior photographs further reflect significant modification to plumbing throughout. (A. 157, 158, 161-163).

41. The Reply interior photographs further reflect drug paraphernalia, A. 155, laminated growing instructions, A. 144, trash and debris throughout, A. 137-150, 153, 157-159, and vines growing into the kitchen. (A. 144-145).

42. On November 12, 2024, Towd Point also filed the detailed Order of Appointment of the Receiver requested by the Court. (A. 12).

43. On November 12, 2024, Towd Point also filed the proposed Default Judgment of Foreclosure and Sale for the non-Answering Defendants. (A. 12).

44. On November 12, 2024, the Trial Court signed the Order Entering Default Judgment and said Order was docketed November 19, 2024. (A. 13).

45. On December 2, 2024, Towd Point filed a consented to Motion to enlarge time for filing its Motion for Summary Judgment. (A. 13).

46. On December 4, 2024, the Trial Court granted the Motion to enlarge time to file the Towd Point's MSJ to December 5, 2024, and K & R's deadline to January 5, 2024. (A. 13).

47. On December 5, 2024, Towd Point filed a second Motion to enlarge time to file its MSJ and on December 6, 2024, the Trial Court extended the MSJ deadlines for December 16, 2024, for Towd Point and to January 17, 2025, for K & R. (A. 13).

48. On December 6, 2024, more than 21 days after the proposed Order of Appointment was filed, the Trial Court endorsed the Order of Appointment, and the Order was entered on the Docket December 9, 2024. (A. 13).

49. The Order on Motion for Abandonment and Appointment of Receiver appointed Benjamin P. Campo, Jr., Esq. as Receiver of the mortgaged premises and delineated the Receiver's powers as 1) the authority to control, secure and maintain the premises, and further 2) the authority to clean and make necessary repairs and maintenance expenditures for the overall preservation of the property, and further 3) the authority to market and sell the property upon approval of any proposed purchase and sale agreement by this Honorable Court, and further 4) the Proceeds of any sale are to be held in escrow by the Receiver pending Order of this Court regarding distribution. (A. 19).

50. During the Hearing Attorney Greenberg specifically requested that "the Court to not grant the order before you, but await that order that there be a final order . . . can appeal." (A. 37).

51. Notwithstanding the fact that he had 23 days to file an objection to the form of proposed Order, and/or leave to file a Sur-reply to Towd Point's additional documentary submission, nothing was filed on the docket by K & R until the Motion to Dismiss was filed on December 13, 2024. (A. 13).

52. On December 16, 2024, K & R filed a Notice of Appeal and a Motion for Findings of Fact and Conclusions of Law. (A. 14).

53. On December 16, 2024, Towd Point also filed its Motion for Summary Judgment with Memo in Support, Affidavit of Cynthia Stevens, Affidavit of Kelli Steigenberger, Affidavit of Reneau Longoria, Statement of Material Facts and Proposed Judgment. (A. 14).

54. K & R's Motion to Dismiss, challenged the Quitclaim Assignment of Mortgage to Towd Point and alleged Towd Point lacks standing to foreclose. (A. 13).

55. K & R did not file a Motion for Summary Judgment. (A. 14).

56. On January 15, 2025, K & R filed an Opposition to Towd Point's Motion for Summary Judgment. (A. 15).

57. The Law Court issued an Order on February 12, 2025, allowing the Trial Court to consider the pending Motion to Dismiss. (A. 15, 88).

58. On February 28, 2025 the Trial Court docketed the Receiver's Second Motion to Approve Sale w/ Affidavit of Tasha Massey dated February 25, 2025. (A. 16).

59. The Trial Court issued its Order denying the Motion to Dismiss on March 6, 2025, as entered on the docket on March 7, 2025. (A. 16).

60. On July 10, 2025, the Trial Court denied the Motion for Additional Findings of Fact and Conclusions of Law filed contemporaneously with the Appeal. (A. 17).

61. The Trial Court's Order denying the Motion for Findings of Fact and Conclusions of Law stated, in pertinent part:

Because K & R Holdings filed a Notice of Appeal to the Law Court at the same time it filed its Motion for Findings, the Court refrained from taking any action on the Motion. . . . K & R Holdings Motion for Findings of Fact and Conclusions of Law is hereby DENIED. The Court made its findings on the record at the hearing on November 5, 2024, and in the Order for Abandonment and Appointment of Receiver. In this Court's judgment, those findings are sufficient for appellate review.

(A. 20).

ISSUES PRESENTED FOR REVIEW

1. Whether K & R has standing to challenge the Order of Appointment of a Receiver.
2. Whether K & R's interlocutory appeal is barred by the Final Judgment Rule and can that Rule be waived.
3. Whether the Trial Court abused its discretion in granting Towd Point's Motion to Appoint a Receiver.
4. Whether the Trial Court abused its discretion in denying K & R's Motion for additional findings of fact and conclusions of law.

ARGUMENT

A. K & R does not have Standing to Challenge the Order of Appointment of a Receiver.

“In Maine, foreclosure is a creature of statute.” *KeyBank Nat'l Ass'n v. Keniston*, 298 A.3d 800, 2023 ME 38 (Me. 2023), quoting *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 8, 96 A.3d 700 (Me. 2014); see 14 M.R.S. §§ 6101 - 6327 (2023). Maine’s foreclosure statute provides that “[a]fter breach of condition in a mortgage of first priority, the mortgagee . . . may proceed for the purpose of foreclosure by a civil action against all parties in interest.” 14 M.R.S. § 6321. The statute specifies that the term “[p]arties in interest” includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors.” *Id.* Recording a lien alone is not enough to entitle a lien holder to enforce its lien. The relevant statute, 14 M.R.S. § 4651-A(5), provides that a lien is void and loses its status as a perfected security interest unless, within twenty days of recording the lien, the judgment creditor sends written notice, which must meet the requirements of the statute, informing the debtor that the lien was recorded. In relevant part the statute provides:

- (5) Notice to judgment debtor. A lien created by this section becomes void and loses its status as a perfected security interest with respect to the right, title and interest of any particular judgment debtor and with respect to any other creditors of the judgment debtor unless the judgment creditor notifies the judgment debtor by certified or registered mail sent to the judgment debtor’s last known address on or before the 20th day

after filing or recording of the existence of the lien. The notice must contain the following:

- A. The fact that a lien has been filed; [PL 1987, c. 184, §23]
- B. The date and place the lien was filed; [PL 1987, c. 184, §23]
- C. The amount of the judgment and costs as stated in the execution; [PL 1987, c. 184, §23]
- D. The name of the judgment creditor and attorney, if any, including their addresses; and [PL 1987, c. 184, §23]
- E. The following statement: “To dissolve this lien, please contact (the creditor or the creditor’s attorney).” [PL 1997, c. 20, §1][PL 1997, c. 20, §1]

In challenging the foreclosure of a senior mortgage holder, it is the junior lienholder’s affirmative duty to establish its own standing by proving that the lien that it seeks to enforce was properly perfected in accordance with 14 M.R.S. § 4651-A(5). *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021)(“For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case—in other words, standing.” (internal quotations omitted)); *see also Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 7, 96 A.3d 700 (Me. 2014)(“Every plaintiff seeking to file a lawsuit in the courts must establish its standing to sue, no matter the causes of action asserted.”) While, generally, the issue of standing and an interest in the property are requirements to be considered in the context of the Plaintiff’s causes of action, for a Party-in-Interest to affirmatively challenge and ultimately thwart an *in rem* foreclosure or, in this case, an Order of Appointment of a Receiver, the Party-in-Interest likewise must establish its standing or a foothold interest in the property. *See Amoco Oil Co. v. Dingwell*,

690 F.Supp. 78, 84 (D.Me. 1988). Towd Point commenced its foreclosure action on August 9, 2023. (A. 5). It has been over two years and, despite being on notice of this deficiency, K & R has failed to provide any evidence, whether in its Answer, Motion to Dismiss or any of its recent filings, that would be sufficient to establish that it properly perfected its lien by sending notice to Bodwell in accordance with 14 M.R.S. § 4651-A(5).

B. K & R's interlocutory Appeal is Barred by the Final Judgment Rule.

To prevent delay resulting from piecemeal appeals, the Final Judgment Rule provides that non-final judgments and interlocutory orders are not immediately appealable. *See Ryan v. City of Augusta*, 622 A.2d 74, 77 (Me. 1993). This Appeal is clearly interlocutory and does not fall within any exception to the Final Judgment Rule as the appointment of a Receiver does not result in the irreparable loss of K & R's rights. *See Andrews v. Dept. of Envtl. Prot.*, 1998 ME 198, ¶4, 716 A.2d 212 (Me. 1998).

This is a matter of money – not custody of a child, qualified immunity or even continued occupancy by the borrower. (App. Br. at 15). The Court's clear statement that the “Proceeds of any sale are to be held in escrow by the Receiver pending Order of the Court regarding distribution,” (A. 19), was sufficient to ensure that any lien K & R has on the Property, would transfer to the proceeds to be held by the Court Appointed Receiver. Because the sale proceeds will be held in escrow by the

Receiver and the Court will determine how those proceeds will be distributed, K & R's argument suggesting that it will not be able to establish a perfected security interest in the proceeds under the Uniform Commercial Code without having control of the deposit account in which the proceeds are held is wholly insufficient to demonstrate any irreparable loss of rights so as to justify immediate appellate review of the Trial Court's interlocutory Order appointing the Receiver under the Death Knell Exception to the Final Judgment Rule.

K & R had twenty-three days to object to or suggest additions to the proposed order and filed nothing. (A. 12-13). K & R cannot now claim an exception to the Final Judgment Rule where it failed to act diligently in preserving its own interest.

Moreover, contrary to K & R's assertion that Towd Point would hold the sale proceeds in escrow, (App. Br. 19), pursuant to the Order of Appointment, the funds are to be held by the Receiver. (A. 19). Receivership funds are not held in a simple deposit account of a debtor, or even a creditor. They are held in the IOLTA account of the Court appointed Receiver. *Cobb*, 106 Me. at 182; *Chalmers*, 103 Me. at 282; *see also Suny*, 2025 WL 2399187, at *2, *citing Antoine*, 508 U.S. at 436, and *Davis*, 356 F.3d at 93. The only harm that K & R, and the rest of the Parties, will suffer results from the delay imposed by the instant appeal. The carrying costs associated with the Property, including payments for taxes, insurance and legal fees, will continue to accrue until the matter is resolved, even as the Receiver maintains the

contract for sale pending further direction from the Court. This appeal will only dilute the proceeds from the sale that will be available for distribution to the Parties following the closing and forestall efforts to address this abandoned drug house in a Maine neighborhood.

C. The Trial Court did not Abuse its Discretion in Granting Towd Point's Motion to Appoint a Receiver.

The Trial Court did not exceed its statutory or equitable authority in either confirming the obvious abandonment of the Property or in Appointing a Receiver to address the situation and preserve as much equity as possible. Viewing the documentation of the modification of this residential home into a marijuana grow operation with particular emphasis on the large abandoned grow rooms, (A. 120-22, 171-77), extensive, clearly illegal, electrical modifications for powering lights, (A. 137, 146, 147, 156, 159, 170), extensive mold throughout, (A. 154, 157, 161-69), exterior ventilation, (A. 133), multiple heat pumps, (A. 135-36), drug paraphernalia and laminated growing instructions, (A. 155), it is clear, given the exigency of the situation, that the Trial Court had the authority to address what was a threat not only to the value of the asset but to the health and safety of the community and to appoint Attorney Campo as Receiver to mitigate any potential harm. The Motion sought both confirmation of vacancy pursuant to 14 M.R.S. § 6327, which was clearly documented through “reasonable indicia of abandonment,” 14 M.R.S. § 6327(2)(B)(9), but also the appointment of a Receiver

to address the conversion of this home into a drug manufacturing operation. The vacancy and condition of this Property was a priority at the hearing, and the Trial Court first sought to build consensus to both preserve value for creditors and protect the community from the blight and danger inherent in a failed drug house. (A. 10). When K & R continued to object and press for a continuance based on alleged procedural errors arising out of the fact that the Trial Court did not issue a scheduling order or hold a pre-trial conference, the Trial Court used its equitable powers and granted the Motion to Appoint the Receiver declaring, “I think if we’re going to delay the final resolution of this, there should be an attempt to preserve the property.” (A. 36).

K & R argues in its Brief on Appeal, in essence, that because there is no specific Maine statute outlining the process for a Receiver to take control of a residential property that the appointment of this Receiver should be vacated. (App. Br. 23-27). This argument ignores the general equitable power of the Superior Court and over a century of Maine caselaw that supports said authority. 14 M.R.S. § 6051(13); *Bates v. Dept. of Behavioral & Development Servs.*, 2004 ME 154, ¶ 86, 863 A.2d 890 (Me. 2004) (“Appointment of a receiver is a matter within the discretion of the trial court”), *citing Department of Environmental Protection v. Emerson*, 563 A.2d 762, 767 (Me. 1989).

The right to preserve an asset, as well as the proceeds from that asset, is well-settled in Maine and not limited to the Federal District Courts. The Superior Court's general equitable powers to control its docket, act in equity and advance public policy in protecting Maine citizens and communities runs parallel. There is little doubt that if the Town of North Berwick were advancing the instant motion there would be no question of the Superior Court's authority to grant it.

The discretion of whether to appoint a Receiver is fact specific and made on a case-by-case basis and is not limited to dilapidated buildings. *U.S. Bank Nat'l Ass'n v. SRA Augusta SPE, LLC*, No. 1:16-cv-00410-JDL, 2016 WL 6808132, at *4 (D. Me. Nov. 17, 2016) ("This Court has inherent equitable power to appoint a receiver to manage or preserve property pending judgment,") *United States v. Quintana-Aguayo*, 235 F.3d 682, 686 & 686 n. 8 (1st Cir. 2000). "[T]he decision to appoint a receiver . . . lies within the discretion of the court." *Consolidated Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322, 326 (1st Cir. 1988).

Examples of successful appointments of Receivers to manage properties in Maine include the Order of Appointment from the U.S. District Court Judge Jon. D. Levy in *U.S. Bank v. Michael M. Cozzone, Jr., et al.*, Civil Action No. 2:22-cv-00357-JDL (Mar. 9, 2023). In *Cozzone*, the subject property was deteriorating, facing Town Code violation enforcement when the plaintiff requested that it be

appointed Receiver of the property. The Appointment was granted within the Foreclosure Judgment and Sale. *Id.*

Similarly, in *HSBC Bank USA, Nat'l Ass'n as Tr. v. Lombardo*, Civil Action No. 19-CV-00291-NT, 2023 WL 2503471, at *2 (D.Me. Mar. 14, 2023), the Court appointed a Receiver to take control of a property following the borrower's death and the "take over" of the property by an aggressive squatter. *Id.* In *Lombardo*, the Receiver not only secured the property but also worked to evict the squatter, clean up the debris and abandoned vehicles on the exterior of the property, clean out the interior of the property, as well as marketing the property.

As recognized in *Zimelman*, 575 A.2d at 733, the Court also has the discretion to appoint a Receiver to control the collateral and the cash that the collateral generates. Recent examples of Receivers being appointed to take control of assets that are being rented include the appointments in *U.S. Bank Trust, Nat'l Ass'n v. Gauthier*, Civil Action No. 23-CV-00380-JAW, 2024 WL 1953624, at *3-4 (D.Me. May 3, 2024), *citing Nissan Motor Acceptance Corp. v. Infiniti of Englewood, LLC*, Civil Action No. 18cv17228 (EP) (MAH), 2023 WL 5321035, at *5-6 (D.N.J. Aug. 17, 2023)(finding that the plaintiff lender had no adequate legal remedy and granting its motion to appoint a receiver to manage properties owned by multiple defendants when the lender had advanced more than \$1 million to pay delinquent taxes and was receiving no rent from unused properties); *U.S. Bank Trust, N.A. v. Leo*, No. 2:23-

cv-00459-NT, 2024 WL 478479, at *4-*6 (D.Me. Nov. 14, 2024), *adopted by* 2024 WL 5057625 (D.Me. Dec. 10, 2024)(appointing a Receiver “for the purpose of: maintaining the property to ensure its safe use by tenants for the habitation; collecting monthly rental payments from the tenants to be allocated for expenses toward maintenance, property insurance, and property taxes; and the marketing and sale of the property to satisfy the mortgage lien upon approval by the Court.”); *U.S. Bank Trust, N.A. v. Pretorius*, No. 2:22-cv-00240-JAW at 2, (D.Me. July 8, 2024)(“this Court finds that good cause exists to appoint a receiver in an effort to preserve Plaintiff’s interest in the subject property to avoid potential harm and potential diminished value of the subject property through the appointment of Benjamin P. Campo, Jr., Esq. as Receiver”).

The appointment of a Receiver to address the conversion of residential property into a marijuana grow operation is also not unprecedented in Maine. *See Wilmington Savings Fund Society, FSB v. Chen*, Docket No. 1:25-cv-00216-LEW, 2025 WL 2039828 (D.Me. July 21, 2025)(“The Court has inherent authority under Rule 66 of the Federal Rules of Civil Procedure to appoint a receiver to manage property pledged as security in order to preserve its value in the event of a judgment. *New York Cnty. Bank v. Sherman Ave. Associates, LLC*, 786 F. Supp. 2d 171, 174-75 (D.D.C. 2011)”). “The appointment of a receiver is an extraordinary equitable

remedy but is appropriate when the appointment is ancillary to the achievement of final, equitable relief.” *Wilmington v. Chen* at * 1. Judge Walker explained,

Factors that inform the Court’s discretion include “the imminent danger of the property being lost, concealed, injured, diminished in value, or squandered; the inadequacy of the available legal remedies; the probability that harm to [the] plaintiff by denial of the appointment would be greater than the injury to the parties opposing appointment; and, in more general terms, [the] plaintiff’s probable success in the action and the possibility of irreparable injury to his interests in the property.” 12 Richard L. Marcus, *Federal Practice and Procedure* § 2983, Westlaw (database updated Apr. 2023) (cleaned up).).

Id.

Where, as here, Maine is a title theory state, a foreclosure only terminates the equity of redemption. *Johnson-Toothaker v. Bayview Loan Servicing*, Civil Action No. 20-CV-00371-JDL, 2022 WL 3278883, at *4 (2022). In a title theory state, “a mortgage is a conditional conveyance vesting legal title to the property in the mortgagor, with the mortgagor retaining the equitable right of redemption and the right to possession.” *Id.*, quoting *Mortg. Elec. Reg. Sys., Inc. v. Saunders*, 2010 ME 79, ¶ 8, 2 A.3d 289 (Me. 2010).

In explaining the legal basis for the lender’s interest in the asset as well as the proceeds derived from that asset, the Court in *Tamir* explained,

What follows from these venerable principles is that even if MERS continued to hold legal title to the mortgages on Bramhall Street and Crescent View, as soon as HSBC and Citibank became the beneficial owners of those mortgages upon taking assignments of the accompanying promissory notes, they succeeded to the rights of the lenders to enforce the rent assignment provisions of those mortgages.

In re Tamir, Civil Action No. 14-CV-20368, 2017 WL 2799143, *2 (D.Me. 2017).

The First Circuit's decision in *Summers* explains that the underlying rational for a mortgage's independent enforceability stems from the fact it was given in a Mortgage title theory state. *Summers v. Fin. Freedom Acquisition LLC*, 807 F.3d 351, 355, 358 (1st Cir. 2015). In a Mortgage title theory state "the right to foreclose should be treated as separate and distinct from the right to collect the underlying debt." *Id.* at 358.

It is this same rationale that underpins the lender's right as owner and holder of the mortgage to protect and preserve its collateral. *See Consolidated Rail Corp. v. Fore River Railway Co.*, 861 F.2d 322, 326-327 (1st Cir. 1988)(court may exercise discretion to appoint a receiver upon considering fraudulent conduct, relative risks of harm, inadequacy of legal remedies, chance of success on merits, likelihood of irreparable injury, etc.); *see also Nat'l P'ship Inv. Corp. v. Nat'l Housing Dev. Corp.*, 153 F.3d 1289, 1291 (11th Cir. 1998)(appointment of Receiver in equity is an ancillary remedy).

K & R acknowledges the general equitable powers of the Superior Courts and this Court's power to affirm what it describes as an *alternative* "valid basis for judgment," (App. Brief at 24), and, notwithstanding the clear evidence of both abandonment and grave danger to both the Property and the surrounding community, nevertheless continues to press the merits of this appeal.

Towd Point clearly invoked, and the Trial Court responded to the plea to act based on the inherent equitable authority of the Superior Court. There are no magic words required to “turn on” the Trial Court’s equitable authority. Where, as here, K & R sought to delay the resolution of the *in rem* foreclosure, the Trial Court responded, addressed the practical issue before it, and acted well within its equitable authority.

D. The Trial Court did not Abuse its Discretion in Denying K & R’s Motion for Additional Findings of Fact and Conclusions of Law.

The Trial Court did not abuse its discretion in its determination to refrain from issuing further findings of fact and conclusions of law. This was not a close case – based on the photographic evidence, there is no doubt that this Property was vacant, converted to a marijuana grow house and subsequently abandoned. (A. 120-22, 130-77). The internal and external evidence of the same was compelling. (A. 120-22, 171-77). Bodwell’s consent, through his attorney, and the consent of the second lienholder further support the Court’s findings. (A. 18). In light of the fact that K & R served and filed its opposition informally during the hearing and formally following the hearing, it was appropriate that the Plaintiff file a Reply with even further photographic documentation of the Property’s condition to address any concerns beyond a shadow of doubt that the property was abandoned and appointment of a Receiver was necessary. (A. 127-77). Despite K & R’s protestations, the photographs taken by the same individual who was later retained

by the Receiver to market and sell the Property, who clearly had personal knowledge of the interior condition of the Property, were more than sufficient to support the Trial Court's Order. K & R did not seek leave of Court to file a Sur-Reply, did not timely object to the Proposed Order, and did not provide any contrary evidence showing that the Property was occupied and being cared for. (A. 12-13). As the Trial Court pointed out, the Notice of Appeal and Motion for additional Findings of Fact and Conclusions of Law were filed contemporaneously. (A. 20-21). At the hearing on the Motion to Appoint the Receiver, counsel for K & R only requested that the Court refrain from entering its Order granting the Motion until Towd Point filed a detailed Proposed Order of Appointment. (A. 37). The Trial Court not only complied with that request, but it also gave K & R twenty-three days to object or file additional motions. K & R did not timely object to the Proposed Order and did not file any further motions or other responses following the hearing. As such, the Trial Court did not abuse its discretion by denying the Motion for Additional Findings of Fact and Conclusions of Law.

CONCLUSION

K & R's lack of standing and meritless fight is depriving the second, and most likely the first, lienholder from potential proceeds that would help satisfy said liens and precluding the Receiver from addressing this abandoned drug house and protecting this Maine community. The Trial Court did not abuse its discretion in any

way in appointing the Receiver in this matter or in declining to enter further factual findings and conclusions of law.

WHEREFORE, Towd Point respectfully requests that this Honorable Court affirm the Trial Court's Orders.

Respectfully submitted,

Towd Point Mortgaged Trust 2019-4
By their attorney,

/s/ Reneau J. Longoria

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Dated: October 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October 2025, I have served a copy of the within Brief by email upon:

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