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Admitted in
^ New Hampshire
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December 31, 2024

Matthew E. Pollack, Esquire
Executive Clerk of the Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, ME 04101

Re: In re Catherine Connors, Docket No. JD-24-2

Dear Matt:

Enclosed for filing in this matter is the Respondent Catherine R. Connors' Response to the Supreme Judicial Court Recommendation of Disciplinary Action.

Thank you for your assistance.

Very truly yours,

James M. Bowie
Bar No. 185

JMB:bcw
Enclosure
jbowie@thompsonbowie.com
cc: John A. McArdle, III, Committee Counsel

MAINE SUPREME JUDICIAL COURT		SITTING AS THE LAW COURT DOCKET NO. JD-24-2
IN RE CATHERINE CONNORS	)))))))	RESPONDENT CATHERINE R. CONNORS'S RESPONSE TO THE COMMITTEE ON JUDICIAL CONDUCT'S AMENDED REPORT TO THE SUPREME JUDICIAL COURT

NOW COMES Catherine R. Connors, through her undersigned counsel, and submits this response to the Amended Report filed by the Committee on Judicial Conduct seeking disciplinary action against Justice Connors for her participation in the *Finch* and *Moulton* appeals. Undersigned counsel submits this response to highlight issues that the Court should consider in resolving the various issues raised in the Amended Report.

BACKGROUND

On January 18, 2024, Attorney Thomas Cox submitted a complaint to the Committee on Judicial Conduct ("Committee") alleging that Justice Connors violated Rule 2.11(A) of the Code of Judicial Conduct for not recusing herself in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, 307 A.3d 1049 ("*Finch*") and *J.P. Morgan Mortg. Acquisition Corp. v. Moulton*, 2024 ME 13, 314 A.3d 134 ("*Moulton*").[1]

Attorney Cox was not involved in either *Finch* or *Moulton*. Despite the fact that some 13 different law firms participated in *Finch* and *Moulton*, either directly or by filing as amicus briefs, none of those firms, which included many of the most prominent firms dealing with foreclosure litigation for both lenders and debtors, moved to recuse Justice Connors while the cases were

[1] A copy of the docket and decision from *Moulton* is attached hereto as **Exhibit A**.

pending. Instead, the complaint was filed *after* Justice Connors's participation in the appeals had concluded, and *after* the Law Court issued its opinion in *Finch*.[2]

Justice Connors responded to the complaint on February 28, 2024. In doing so, she informed the Committee that, while no one had moved for her recusal in either *Finch* or *Moulton*, she nevertheless asked the Advisory Committee on Judicial Ethics whether she should recuse because, while in private practice, she filed an amicus brief on behalf of the Maine Bankers Association in *Fannie Mae v. Deschaine*, 2017 ME 190, 170 A.3d 230 ("*Deschaine*"), and represented Bank of America in *Pushard v. Bank of Am., N.A.*, 2017 ME 230, 175 A.3d 103 ("*Pushard*").

After careful review, the Advisory Committee on Judicial Ethics "unanimously opine[d]" that she did not need to recuse herself based on its analysis of Rule 2.11.

On October 10, 2024, the Committee issued its Report to the Maine Supreme Judicial Court recommending disciplinary action against Justice Connors based on an alleged violation of Rule 2.11. On November 14, 2024, the Supreme Judicial Court remanded the Committee's Report because it did not comply with Rule 3 of the Committee's Rules.

The Committee submitted its Amended Report on December 16, 2024. The Amended Report contains a single count, which alleges that Justice Connors violated Rule 2.11(A) by not recusing herself in *Finch* and *Moulton* because a reasonable person would question her impartiality

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[2] Courts that have had to decide whether a judge must recuse have noted the utility, and often necessity, of the timely filing of a motion to recuse. Such a motion not only forestalls the possibility of a disappointed litigant deciding to raise an issue of a judge's potential partiality after the fact when disgruntled with the result, but also serves the critical role of ensuring fairness not only to the participants, but to the tribunal and the process itself. A motion to recuse allows parties other than the judge whose recusal is sought to identify the specific issues that are alleged to result in either a conflict or the appearance of partiality, and allow the tribunal, the parties, and the justice to deal with those issues completely and explicitly. When a motion for recusal is not filed, and the judge involved is required to simply on his or her own make a decision as to whether or not recusal is appropriate, that jurist is deprived of the focused inquiry that a motion for recusal provides.

based on her involvement in *Pushard*.[3] The Amended Report does not acknowledge that a judge is obliged not to recuse to assure that the proceedings may have a timely conclusion for all parties. *See in re Michael M,* 2000 Me. 204, ¶¶ 14-15, 761 A.2d 865. Nor does it address the applicability of Rule 2.7 ("A judge shall hear and decide matters except where disqualification or recusal is required."); *see also* Rule 2.11 advisory notes to 2015 amend. (note entitled "The Obligation Not to Recuse Except When Necessary"). And while the Amended Report has a section titled "Conclusions of Law," it does not cite a single case in support of the alleged violation of Rule 2.11(A), much less a case holding that a judicial officer was required to recuse simply because that judicial officer had previously litigated legal issues in other cases separate and apart from the cases actually before the court.

The Amended Report seeks a public reprimand against Justice Connors and requests:

> the reprimand contain language, *inter alia*, stating that judicial candidates are to be candid at confirmation hearings and that representations by them at those hearings are to be honored particularly with respect to actual conflicts, the appearance of conflict and conformity with the Judicial Canon of Ethics in order to preserve the integrity of, and the public's confidence in, the judiciary in Maine.

Amended Report at 9. The Committee further requested that the Amended Report be referred to a panel of Maine Superior Court Justices or, alternatively, to a "panel of out of state judges." *Id.* at 10.

DISCUSSION

The Committee's Amended Report presents a question of first impression in Maine: in the absence of any other basis for finding a conflict, when does a judge's prior legal experience require

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[3] As the Committee apparently concedes in its Amended Report, there is no suggestion that Justice Connors had an actual conflict that would necessitate her recusal from either *Finch* or *Moulton*. She did not represent any of the parties involved in those appeals nor was she associated with the firms that filed appearances in those cases. As the Judicial Ethics Committee unanimously found, *Finch* and *Moulton* "are totally separate from the *Deschaine* and *Pushard* matters."

recusal under Rule 2.11(A) based upon a finding that the judge's impartiality might reasonably be questioned? Given that the answer to this question will provide guidance to Maine's judiciary, the question needs to be answered by the Maine Supreme Judicial Court.

The Maine Constitution provides that the "judicial power of this State shall be vested in the Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish." ME. CONST. art. VI, § 1. As the only court established by the Maine Constitution, "the Supreme Judicial Court has exclusive original jurisdiction over all judicial disciplinary matters." *Mitchell v. Judicial Ethics Comm.*, 2000 ME 83, ¶ 5, 749 A.2d 1282 (citing *In re Benoit*, 487 A.2d 1158, 1170 (Me. 1985); *see also In re Nadeau*, 2007 ME 21, ¶ 10, 914 A.2d 714 (same). Accordingly, this Court has long recognized that "it is incumbent upon the Supreme Judicial Court to exercise that part of the judicial power involved in prescribing the conduct of judges and imposing discipline upon them for misconduct." *In re Ross*, 428 A.2d 858, 868 (Me. 1981). The fact that the Supreme Judicial Court's jurisdiction over the discipline of judges was both original and exclusive was reiterated by the Court in the Introductory Note to the Maine Code of Judicial Conduct in 2017, citing to the most recent articulation of that concept in *In re Nadeau* 2018 ME 18, ¶ 12, 178 A.2d 495 (quoting *In re Nadeau* 2017 ME 121, ¶ 3 168 A. 3d 746).

The Court should reject the Committee's request that it abdicate its role as the exclusive arbiter of judicial disciplinary matters. Not only does the Committee fail to cite any Maine authority for this proposition, but it runs headlong into the fact that Maine's Constitution vests this Court with original and exclusive jurisdiction over this matter.

Furthermore, as noted above, the Committee seeks not only a reprimand in this matter, but also direction from the Court as to what is required of judicial candidates at confirmation hearings.[4]

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[4] Here, a review of Justice Connors's testimony demonstrates that while she agreed that she would recuse in cases involving her prior firm, Pierce Atwood, and cases in which she had represented litigants

These novel and important questions of policy that will provide guidance to judicial officers serving throughout the state must be addressed by the Maine Supreme Judicial Court. Those issues should not be delegated, particularly in the absence of any statutory or rule-based authority for doing so, to some other *ad hoc* grouping of inferior judicial officers, and certainly not to an *ad hoc* committee of judicial officers from jurisdictions other than Maine. If this case is to provide guidance to Maine judicial officers, that guidance needs to come directly from the Maine Supreme Judicial Court.

Finally, the Committee's allegation that Justice Connors violated Rule 2.11(A) because her "history of legal representation of banking interests and her involvement in the *Pushard* case would cause a reasonable person to question her impartiality by participating in the *Finch* and *Moulton* cases" runs the risk that litigants will seek to weaponize recusal by using judges' prior legal advocacy as a basis for disqualification. Indeed, as the Advisory Committee on Judicial Ethics remarked, such a rule would disqualify prosecutors and/or experienced criminal defense counsel from participating in criminal matters as a judge, would disqualify civil rights attorneys who became judges from participating in civil rights matters, and so on. Oftentimes judges are nominated to the courts because they have particular experience and even expertise in issues that are facing the judiciary. It would be anomalous for such experience to qualify a person to be on the bench, and then at the same time disqualify the person from hearing such issues as a judge.

Such a rule would suggest that an attorney's participation in the representation of a party as it relates to legal issues necessarily provides a reasonable basis for an imputation of bias to counsel by identifying them with the merits of their client's case or cause. Attorneys represent multiple parties, and often appear on multiple sides of issues. It is improper—and does not appear

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directly involved in the case, any other recusals would be based upon an analysis of the circumstances at the time the cases were presented.

to have any precedential basis in Anglo-American jurisprudence—to find that attorneys' representation of a party regarding a particular issue in separate and distinct litigation disqualifies them from participating as a judge in subsequent litigation involving the same or similar legal issues. Given the importance of this question and the risk that disappointed litigants may improperly use this type of issue-based recusal argument in future matters, the Maine Supreme Judicial Court must address the issues raised by the Amended Report.

CONCLUSION

For the reasons set forth above, we respectfully submit that this Court should adjudicate the issues raised in the Amended Report. Moreover, given that the Court has a complete record and there are no factual questions that need to be addressed, there is no need for a review by an initial single justice. Rather, the Court should set a schedule for briefing by the Committee as the moving party, a responsive brief on behalf of Justice Connors, and any such reply briefing the Court deems appropriate. Thereafter, the Court can then make a determination as to what, if any, oral argument is appropriate.

Respectfully submitted,

Date: December 31, 2024

James M. Bowie, Esq., Bar No. 185
Attorney for Justice Catherine Connors

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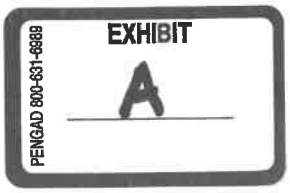

State of Maine
Supreme Judicial Court
Sitting as the Law Court

DOCKET RECORD

Docket No. Oxf-21-412

J.P. Morgan Mortgage Acquisition Corp.

v.

Camille J. Moulton

Type: All Other Civil
Track B
Notice of appeal filed in trial Court: 12/20/2021
Notice of appeal received in Law Court: 12/20/2021

Appeal from:
South Paris District Court
Docket/case no. RE-2019-02

Attorneys and unrepresented parties:

Appellant: Attorney for J.P. Morgan Acquisition Corp.
WILLIAM A. FOGEL ESQ.
BROCK & SCOTT PLLC
30 DANFORTH STREET, SUITE 104
PORTLAND ME 04101

Appellee: Attorney for Camille Moulton
KENDALL A. RICKER ESQ.
BOOTHBY, SILVER & RICKER, LLC
P.O. BOX 216 22 SCHOOL HOUSE HILL RD.
TURNER ME 04282

Trial court record:

Record due: 1/24/2022
Record filed: 1/20/2022

Briefing:

Appellant Brief due: 4/13/2022
Appellant Brief filed: 4/11/2022
Appendix due: 4/13/2022
Appendix filed: 4/11/2022
Appellee Brief due: 6/1/2022
Appellee Brief filed: 6/1/2022
Reply Brief filed: 6/21/2022

Consideration:

Set for: 2022-11-01 November Oral Argument
Occurred: 11/1/2022

Disposition:

Date of Disposition: 1/30/2024
Change: Chg of Result
Type: Signed Opinion

Decisions:

Decision Date: 1/30/2024
Decision No.: 2024 ME 13

Motion for reconsideration:

Date filed: 2/13/2024
Ruling: Denied

Mandate Issued on 3/19/2024

Other Entries/Text:

12/21/2021	12/20/2021	Notice of appeal Notice of appeal, docket record Entered by Kimberly Patterson, Associate Clerk
12/22/2021	12/22/2021	Docketing Notice Docketing notice issued. Copies to parties/counsel and trial court. Entered by Joel Biron, Deputy Clerk
1/31/2022	1/31/2022	Order Order Requiring Briefing on Timeliness of Appeal It is ORDERED that the parties must address in their briefs the issue of whether the notice of appeal filed on December 14, 2021, complied with M.R. App. P. 2A(b)(1). Copies to parties/counsel Ordered by Ellen Gorman, Associate Justice Entered by Joel Biron, Deputy Clerk
1/31/2022	1/31/2022	Briefing Schedule Briefing schedule issued and mailed to parties/counsel. Entered by Joel Biron, Deputy Clerk

2/14/2022	2/14/2022	Motion--Reconsider Procedural Order Appellants Motion to reconsider and alternative motion to suspend the rules to allow timeliness issue to be decided by motion Entered by Kimberly Patterson, Associate Clerk
3/2/2022 3/2/2022	Order	Order Vacating Order to Brief Issue of Timeliness of Appeal On January 31, 2022, this Court entered an order requiring the parties to brief the issue of whether the notice of appeal filed by J.P. Morgan Acquisition Corp. on December 14, 2021, was "signed" as required by M.R. App. P. 2A(b)(1), and therefore whether the appeal was timely. J.P. Morgan has filed a motion to reconsider the order of January 31 or, in the alternative, to suspend the rules to allow the timeliness issue to be decided before briefing of the appeal on the merits. Camille J. Moulton has not filed an opposition to the motion. The motion is GRANTED. The order of the Court dated January 31, 2022, is VACATED. J.P. Morgan's appeal is accepted as timely filed. Copies to parties/counsel by mail and email Ordered by Mark Horton, Associate Justice Entered by Joel Biron, Deputy Clerk
3/30/2022	3/30/2022	Order Order Rejecting Appendix On March 28, 2022, J.P. Morgan Acquisition Corp. filed an appendix that does not comply with M. R. App. P. 8 in at least the following ways: • The documents from pages 26 through 52 are discretionary and should come after all of the mandatory documents. M.R. App. P. 8(f)(3). • The motion to dismiss and the motion for summary judgment are mandatory documents and should immediately follow the complaint. M.R. App. P. 8(d)(5). • The parties' statements of material facts are also mandatory and should be included next, M.R. App. P. 8(e)(1), followed by the discretionary documents. It is therefore ORDERED as follows: 1. The appendix filed by J.P. Morgan is REJECTED. 2. J.P. Morgan must file, on or before April 13, 2022, an appendix that fully complies with M.R. App. P. 8. The deficiencies described above are not necessarily the only deficiencies; J.P. Morgan must ensure that the replacement appendix fully complies with the rules and not merely that the deficiencies indicated above are fixed. 3. Because J.P. Morgan's brief contains citations to the appendix, it must file, with the replacement appendix, a replacement brief that corrects the citations to the appendix but that makes no other changes. 4. The time for the appellee's brief is ENLARGED. The appellee's brief must be filed on or before June 1, 2022. Copies to parties/counsel by mail and email Ordered by Mark Horton, Associate Justice Entered by Joel Biron, Deputy Clerk
8/23/2022	8/23/2022	Other Invitation for amicus briefs posted, mailed and emailed to counsel Entered by Matthew E Pollack, Clerk

8/23/2022	8/23/2022	Correspondence To counsel from clerk informing them that Court is requesting supplemental briefing. Supplemental briefs due 9/27/22 Ordered by Matthew Pollack, Clerk Entered by Matthew E Pollack, Clerk
9/8/20229/8/2022		Motion--Waive rules (briefs, appendix, etc) Appellants Motion to suspend page limit for supplemental brief Entered by Kimberly Patterson, Associate Clerk
9/12/2022	9/12/2022	Order--Waive rules (briefs, appendix, etc) Order Enlarging Page Limit for Supplemental Briefs The motion is GRANTED. The parties' supplemental briefs may exceed 20 pages but must not exceed 40 pages. Copies to counsel Ordered by Mark Horton, Associate Justice Entered by Matthew E Pollack, Clerk
9/23/2022	9/23/2022	Motion--Enlarge time Consent Motion to Enlarge Time to File Supplemental Brief Entered by Kimberly Patterson, Associate Clerk
9/26/2022	9/23/2022	Order--Enlarge time The motion is GRANTED. The parties' supplemental briefs must be filed on or before September 29, 2022. Copies to parties/counsel by mail and email Ordered by Mark Horton, Associate Justice Entered by Joel Biron, Deputy Clerk
9/28/2022	9/27/2022	Motion--Admit attorney pro hac vice Marissa Delinks motion for pro hac, with verified application for pro hac Original filed 10/12/22 Entered by Kimberly Patterson, Associate Clerk
9/29/2022	9/29/2022	Order--Admit attorney pro hac vice--Grant Order Admitting Visiting Attorney The motion is GRANTED. Attorney Delinks is permitted to practice in this appeal as a visiting attorney *pro hac vice,* subjec to the provisions of M.R. Civ. P. 89(b). Attorneys Fouts and Olfene must remain associated with Attorney Delinks throughout this appeal and must appear at any oral argument at which Attorney Delinks argues. Copies to Attorneys Fouts and Olfene and to parties' counsel.

		Ordered by Mark Horton, Associate Justice Entered by Matthew E Pollack, Clerk
10/7/2022	10/7/2022	Correspondence Notice of oral argument sent to parties/counsel Ordered by Joel Biron, Deputy Clerk Entered by Joel Biron, Deputy Clerk
10/13/2022	10/13/2022	Motion Amicus Curiae Pine Tree Legal's Motion to participate in OA Entered by Kimberly Patterson, Associate Clerk
10/18/2022	//	Entered by ,
10/18/2022	10/17/2022	Opposition to motion Appellants opposition to motion to participate in OA Entered by Kimberly Patterson, Associate Clerk
10/18/2022	10/18/2022	Response to motion Amicus ME Bankers Association response to Motion to participate in OA Entered by Kimberly Patterson, Associate Clerk
10/24/2022	10/24/2022	Motion Appellant's Consent Motion to augment the record, and to take judicial notice of documents from a previous law court matter Entered by Kimberly Patterson, Associate Clerk
10/26/2022	10/24/2022	Order Order Denying Motion of Amicus Curiae to Present Oral Argument The motion is DENIED. The Court appreciates and will rely on the briefs of amici curiae. Copies to parties/counsel Ordered by Mark Horton, Associate Justice Entered by Joel Biron, Deputy Clerk
10/28/2022	10/27/2022	Order Order on Motion to Augment the Record or to Take Judicial Notice It is therefore ORDERED that the motion is GRANTED IN PART. The request to include the documents in the record on appeal is DENIED, but J.P. Morgan may provide the Court with eight copies of the documents in the form of a supplement of legal authorities so long as the Clerk of the Law Court receives eight copies of the supplement at or before noon on Monday, October 31, 2022. Copies to parties/counsel by mail and email Ordered by Mark Horton, Associate Justice Entered by Joel Biron, Deputy Clerk

1/30/2024	1/30/2024	Decision Issued today. Copies to parties/counsel Entered by Joel Biron, Deputy Clerk
2/13/2024	2/13/2024	Motion--Reconsider Final Decision Appellants Motion for Reconsideration filed. Fee paid. Entered by Kimberly Patterson, Associate Clerk
2/16/2024	2/16/2024	Opposition to motion Appellee's opposition to appellants motions Entered by Kimberly Patterson, Associate Clerk
3/19/2024	3/19/2024	Order Order on Motion to reconsider. Motion is GRANTED IN PART. See order for additional details. Copies to parties/counsel by mail and email Ordered by Matthew Pollack, Clerk Entered by Joel Biron, Deputy Clerk
3/19/2024	3/19/2024	Decision Revised decision issued today. Copies to parties/counsel by mail and email Entered by Joel Biron, Deputy Clerk
3/19/2024	3/19/2024	Clerk's Record File returned to trial court 1Z0535330392406394 Entered by Joel Biron, Deputy Clerk

MAINE SUPREME JUDICIAL COURT
Decision: 2024 ME 13
Docket: Oxf-21-412
Argued: November 1, 2022
Decided: January 30, 2024
Revised: March 19, 2024

Reporter of Decisions

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, CONNORS, and LAWRENCE, JJ., and HUMPHREY, A.R.J.
Majority: STANFILL, C.J., and JABAR, HORTON, CONNORS, and LAWRENCE, JJ.
Dissent: MEAD, J., and HUMPHREY, A.R.J.

J.P. MORGAN MORTGAGE ACQUISITION CORP.

v.

CAMILLE J. MOULTON

JABAR, J.

[¶1] J.P. Morgan Mortgage Acquisition Corp. appeals from a decision of the District Court (South Paris, *Ham-Thompson, J.*) granting Camille J. Moulton's motion for summary judgment on the ground that J.P. Morgan's notice of Moulton's right to cure did not meet the requirements of 14 M.R.S. § 6111 (2023). We affirm the court's conclusion regarding the defective notice but, consistent with our decision in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, --- A.3d ---, we vacate the portion of the judgment requiring J.P. Morgan to discharge the mortgage.

I. BACKGROUND

[¶2] The following facts are supported by the summary judgment record and presented in the light most favorable to J.P. Morgan as the nonprevailing party. *Lubar v. Connelly*, 2014 ME 17, ¶ 4, 86 A.3d 642.

[¶3] Moulton owns real estate in Buckfield subject to a March 18, 2009, mortgage, which secured payment of a $62,985 note. The real estate is Moulton's residence. The mortgage was executed in favor of Taylor, Bean & Whitaker Mortgage Corp. and was assigned to J.P. Morgan on March 21, 2018. Under the terms of the mortgage, when Moulton made a partial mortgage payment, the monthly payment would remain outstanding and the partial payment would be held in a suspense balance as a credit against the loan. The suspense balance would be applied as a payment only when it was enough to constitute a full payment, at which point it would be applied to the earliest outstanding monthly payment.

[¶4] After writing a check dated November 18, 2016, for $720.00, Moulton ceased making payments on the loan. The monthly payment due was $742.54. At that point, Moulton had an existing suspense balance from prior partial payments. Pursuant to the terms of the loan, $47.62 of the November 18, 2016, payment was added to the suspense balance to make a full

payment for the oldest outstanding payment due, and the remaining amount of the November 18 payment ($672.38) was held as a credit in suspense.

[¶5] J.P. Morgan sent Moulton a notice of default and right to cure on November 22, 2018. When the notice was sent, the loan was in default for failure to pay from October 2016 through November 2018. The notice provided that "the total amount to cure the default is $20,930.04," but also directed Moulton to "refer to the attached *Exhibit A* for the itemized breakdown of the total amount due." Exhibit A's itemized breakdown indicated $20,257.66 as the total amount due following the application of the $672.38 that the bank had been holding in suspense.

[¶6] On January 24, 2019, J.P. Morgan filed a complaint for foreclosure in District Court. *See* 14 M.R.S. § 6321 (2023). Moulton answered and requested mediation. Mediation was unsuccessful, and the matter was returned to the docket on August 21, 2019. Prior to trial, the case was continued due to the foreclosure moratorium under the CARES Act. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4022(c)(2), 134 Stat. 281, 491 (2020). On August 23, 2021, J.P. Morgan filed a motion to dismiss its complaint without prejudice pursuant to M.R. Civ. P. 41(a)(2). On September 13, Moulton

filed an opposition to the motion to dismiss and a motion for summary judgment. J.P. Morgan opposed the motion for summary judgment.

[¶7] On November 24, 2021, the court denied J.P. Morgan's motion to dismiss. The court granted Moulton's motion for summary judgment on the ground that the right-to-cure notice was deficient because it failed to clearly inform Moulton of the amount that she was required to pay to cure the default, and thus Moulton was entitled to judgment as a matter of law. The court went further, however, and declared that Moulton "holds title to the real property at issue, unencumbered by the mortgage and promissory note." The court also awarded her reasonable attorney fees and costs.

[¶8] J.P. Morgan timely appealed the final judgment.[1] M.R. App. P. 2B(c).

II. DISCUSSION

A. Standard of Review

[¶9] We review the trial court's ruling on a motion for summary judgment de novo, "considering the properly presented evidence and any reasonable inferences that may be drawn therefrom in the light most favorable to the nonprevailing party, in order to determine whether there is a genuine

[1] J.P. Morgan did not raise, and we therefore do not address, any issue regarding the court's denial of its motion to dismiss. Nonetheless, we note that such dismissal would be appropriate, especially in light of *Finch*, 2024 ME 2, --- A.3d ---.

issue of material fact and whether [the] party is entitled to a judgment as a matter of law." *Estate of Frost*, 2016 ME 132, ¶ 15, 146 A.3d 118.

[¶10] "A plaintiff seeking a foreclosure judgment must comply strictly with all steps required by statute." *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 18, 96 A.3d 700 (quotation marks omitted). To prevail in a foreclosure action under 14 M.R.S. § 6321, the plaintiff must prove eight conditions, including "properly served notice of default and mortgagor's right to cure in compliance with statutory requirements." *Greenleaf*, 2014 ME 89, ¶ 18, 96 A.3d 700; 14 M.R.S. § 6321 ("The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed.").

B. Notice of Right to Cure

[¶11] The trial court did not err when it determined that the right-to-cure notice was deficient because it did not clearly put Moulton on notice of what was required of her to cure the default. *See, e.g., Greenleaf*, 2014 ME 89, ¶¶ 29-31, 96 A.3d 700 (vacating foreclosure judgment because notice of default and right to cure specifying an amount to cure the default but also instructing the mortgagor to contact the mortgagee for an updated amount-to-cure figure was deficient); *JPMorgan Chase Bank, N.A. v. Lowell*,

2017 ME 32, ¶¶ 14-21, 156 A.3d 727 (holding that notice of default providing a value for late monthly payments and an additional value for "advances" was insufficient because the mortgagor would have to contact the mortgagee to determine what the amount to cure was and because the amounts stated indicated that the mortgagor was uncertain of the amount to cure); *U.S. Bank Trust, N.A. v. Jones*, 330 F. Supp. 3d 530, 537-38 (D. Me. 2018) (holding that notice containing an inaccurately inflated amount-to-cure is deficient when the mortgagee included an item in the notice that "a reader could have interpreted . . . as requiring a payment . . . more than that actually required to cure the borrower's default"). The notice itself overstated the amount required to cure the default by $672.38, the amount that J.P. Morgan was holding in suspense. J.P. Morgan thus failed to make a prima facie showing of strict compliance with section 6111 and in turn could not prove an essential element of foreclosure. *See Wells Fargo Bank, N.A. v. Girouard*, 2015 ME 116, ¶ 11, 123 A.3d 216.

[¶12] In *Finch v. U.S. Bank, N.A.*, we held that where a lender has not complied with the prerequisites to acceleration under section 6111, a court cannot conclude that initiation of a foreclosure action nevertheless accelerates the note balance. 2024 ME 2, ¶ 6, --- A.3d ---. Therefore, when a court enters summary judgment against a lender or dismisses the lender's foreclosure claim

due to a deficient notice of the right to cure under section 6111, the effect of the judgment or dismissal of the claim is to preclude any future claim for the unaccelerated balance due on the note as of the date of the judgment (unless the lender has asserted a separate claim for the unaccelerated balance due). *Id.* ¶¶ 51-52. It does not preclude the lender from bringing a future foreclosure claim based on a future default, nor does it discharge the entire mortgage or effect a transfer of title. *Id.* ¶ 52.

[¶13] Although the judgment on the claim for foreclosure based on the defective notice here is dispositive, we vacate that portion of the trial court's judgment "declaring that [Moulton] holds title to the real property at issue, unencumbered by the mortgage and promissory note" on another ground. There was no counterclaim for a declaratory judgment and thus no basis for the court to go beyond entry of the judgment in favor of Moulton by declaring the *effect* of its judgment. On a motion for summary judgment, the trial court could either enter a judgment of foreclosure or enter a judgment in favor of the defendant on the foreclosure complaint. Courts may not, however, opine on the effect of a judgment, its enforcement, or other post-judgment matters absent a specific cognizable claim for declaratory relief.

[¶14] We do not disturb the trial court's award of reasonable attorney fees for defending against the foreclosure claim given the deficient right-to-cure notice. *See id.* ¶ 51 ("The court should ordinarily also consider awarding attorney fees to the borrower pursuant to the applicable statute."); 14 M.R.S. § 6101 (2023) ("If the mortgagee does not prevail, . . . the court may order the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or any proceeding within the foreclosure action . . . .").

III. CONCLUSION

[¶15] Because we agree that the section 6111 notice was defective, we affirm that portion of the judgment. We vacate the portion of the judgment ordering discharge of the mortgage, however.

The entry is:

> Portion of judgment ordering discharge of the mortgage is vacated. The remainder of the judgment is affirmed.

MEAD, J., with HUMPHREY, A.R.J., joins, dissenting.

[¶16] Although we agree with the Court's observation that "[t]he trial court did not err when it determined that the right-to-cure notice was deficient because it did not clearly put Moulton on notice of what was required of her to cure the default," Court's Opinion ¶ 11, we depart, as we did in the dissenting opinion in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 63, --- A.3d ---, from the Court's treatment of the consequences of a flawed notice of right to cure. We would again conclude that the commencement of a foreclosure action seeking the entire amount due constitutes an acceleration of the debt, and a judgment of the trial court finding that the mortgagee has failed to satisfy one or more of the statutory elements for foreclosure constitutes a final judgment on the merits and bars relitigation of any matter related to the mortgage.

[¶17] We take this occasion, however, to point out that this case could and should have been dismissed based upon a threshold issue that is apparent on the summary judgment record—standing.

[¶18] When a defendant moves for summary judgment, a plaintiff ordinarily "bears the burden of making out her prima facie case as to every element." *Boivin v. Somatex, Inc.*, 2022 ME 44, ¶ 10 n.2, 279 A.3d 393. Particularly here, where one required element of proof—ownership of the

mortgage—is necessary to establish the threshold issue of standing, the obligation of a lender to make out a complete prima facie case is essential. *See Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶¶ 8, 17-18, 96 A.3d 700 (dismissing a foreclosure complaint for lack of standing for failure to provide proof of ownership of the note and mortgage and indicating that such proof is a necessary element). Although a "plaintiff may, in certain instances, satisfy the burden by putting forth prima facie evidence that establishes a genuine dispute of material fact as to only those elements that are challenged by a defendant's factual or legal argument," *Boivin*, 2022 ME 44, ¶ 10 n.2, 279 A.3d 393, this is not a situation in which that rule should be applied. *Cf. Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 9, 742 A.2d 933 (concluding that prima facie case as to elements not challenged by the defendant could be assumed in an attorney malpractice matter in which the plaintiff's standing as a client was clear and undisputed).

[¶19] Here, J.P. Morgan Mortgage Acquisition Corporation, in responding to Moulton's motion for summary judgment, failed to demonstrate its ownership of the mortgage. It relied entirely on Moulton's statement of material fact regarding the existence of (1) a purported mortgage assignment to J.P. Morgan by Mortgage Electronic Registration Systems, Inc. (MERS) and

(2) a purported quitclaim assignment from "Carrington Mortgage Services, LLC, as attorney in fact for Government National Mortgage Association for Taylor, Bean & Whitaker." As the trial court explained in a footnote in its judgment, neither of these documents—presented through Moulton's affidavit "[o]n information and belief"—established standing for two reasons. *See Collins v. State*, 2000 ME 85, ¶ 5, 750 A.2d 1257 (stating that an issue of standing may be raised by a court sua sponte because it is jurisdictional).

[¶20] First, the attempted assignment by MERS was fatally defective. The language used in the document is identical to the language in *Greenleaf*, 2014 ME 89, ¶¶ 12-17, 96 A.3d 700, we deemed insufficient to effectuate an assignment because MERS, the purported assignor, is a mere nominee for purposes of recording a mortgage and is not the entity holding the assignable interest in the mortgage.

[¶21] Second, the purported quitclaim assignment referenced in J.P. Morgan's statement of material facts is insufficient to demonstrate standing. It was executed by a representative of "Carrington Mortgage Services, LLC, as attorney in fact for Government National Mortgage Association for Taylor, Bean & Whitaker." Nothing in any of the statements of material facts or the referenced exhibits demonstrates the existence or nature of the relationship

between Taylor, Bean & Whitaker—the original lender—and Government National Mortgage Association. Nor do any statements or referenced exhibits demonstrate that Carrington Mortgage Services, LLC, had the power of attorney to act on behalf of Government National Mortgage Association "for" the original lender.

[¶22] Rather than dismissing the foreclosure complaint based on the lack of standing, the trial court here entered a summary judgment. When it did so, it understood the existing case law to hold that the consequence of its judgment would be akin to a dismissal with prejudice. *See Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶¶ 18-36, 175 A.3d 103; *Fed. Nat'l Mortg. Ass'n v. Deschaine*, 2017 ME 190, ¶ 37, 170 A.3d 230; *see also Bank of N.Y. v. Dyer*, 2016 ME 10, ¶ 11, 130 A.3d 966 (noting that a dismissal with prejudice operates as a ruling on the merits). *Deschaine* and *Pushard* have now been overruled, however, *see Finch*, 2024 ME 2, ¶ 51, --- A.3d ---, which makes it important for the Court to clarify the proper procedural response when a plaintiff has not provided proof of standing.[2] *See Dyer*, 2016 ME 10, ¶ 11, 130 A.3d 966 (stating that a party that

[2] We also disagree with the Court's holding that a dismissal or summary judgment for the borrower "due to deficient notice of right to cure" under 14 M.R.S. § 6111 (2023) precludes a plaintiff from bringing "any future claim for the unaccelerated balance due on the note *as of the date of the judgment* (unless the lender has asserted a separate claim for the unaccelerated balance due)." Court's Opinion ¶ 12 (emphasis added). We continue to regard a summary judgment as a judgment

lacked standing "never had the rights necessary to get through the courthouse door and pursue its claim in the first place" (alteration and quotation marks omitted)). When a party lacks standing, a complaint should be dismissed because the matter is not properly before the court for consideration on the merits. *See Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 8, 124 A.3d 1122 ("A plaintiff's lack of standing renders that plaintiff's complaint nonjusticiable—i.e., incapable of judicial resolution.").

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on the merits on the *full* amount due when a lender has accelerated a debt through a foreclosure action, *see Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 63, --- A.3d --- (Hjelm, A.R.J., dissenting), and we regard such a judgment on the merits as having a preclusive effect, as explained in the dissenting opinion in *Finch*:

> Not even seven years ago, in two separate but analytically related cases each decided unanimously, the Court held that a judgment entered against a mortgagee in a foreclosure action barred successive lawsuits seeking the same relief. *See Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶¶ 4, 35-36, 175 A.3d 103 (where the judgment in the first proceeding was based, in part, on a deficient notice of default); *Fed. Nat'l Mortg. Ass'n v. Deschaine*, 2017 ME 190, ¶¶ 7, 37, 170 A.3d 230 (where the prior judgment was issued as a sanction for the plaintiff's failure to comply with a pretrial procedural order). This conclusion is unremarkable because it treats mortgagees like any other claimant that had already sought relief but was unsuccessful—when a party loses its case through a final judgment arising from a failure of proof or some other reason that is dispositive, that party is barred from trying again. *See U.S. Bank, N.A. v. Tannenbaum*, 2015 ME 141, ¶¶ 6, 10, 126 A.3d 734. Today, the Court retreats from that principle. It does not do so because the law emanating from those cases has become antiquated. It does not do so because the law has changed. Rather, the Court does so simply because it now disagrees with the outcome of the cases we decided a short time ago.

2024 ME 2, ¶ 53, --- A.3d --- (Hjelm, A.R.J., dissenting). Here, however, there is no need for the majority to invoke *Finch* in any respect. We would not address the merits of the arguments regarding the adequacy of the notice provided under section 6111 because J.P. Morgan failed to show that it possesses the necessary interest in the mortgage to support its standing to foreclose, and the matter should be dismissed.

[¶23] The summary judgment entered here should therefore be vacated and the matter remanded for the court to dismiss the complaint for lack of standing. On remand, the trial court must determine whether the dismissal should be with or without prejudice. *See Green Tree Servicing, LLC v. Cope*, 2017 ME 68, ¶ 18, 158 A.3d 931 ("[E]ven when a court is without power to reach the merits of a complaint because the plaintiff lacks standing, the court is not divested of its inherent authority to dismiss the complaint with prejudice as a sanction for misconduct." (citations omitted)).

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South Paris District Court docket number RE-2019-2
FOR CLERK REFERENCE ONLY

MAINE SUPREME JUDICIAL COURT
Decision: 2024 ME 13
Docket: Oxf-21-412
Argued: November 1, 2022
Decided: January 30, 2024
Revised: March 19, 2024

Reporter of Decisions

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, CONNORS, and LAWRENCE, JJ., and HUMPHREY, A.R.J.
Majority: STANFILL, C.J., and JABAR, HORTON, CONNORS, and LAWRENCE, JJ.
Dissent: MEAD, J., and HUMPHREY, A.R.J.

J.P. MORGAN MORTGAGE ACQUISITION CORP.

v.

CAMILLE J. MOULTON

JABAR, J.

[¶1] J.P. Morgan Mortgage Acquisition Corp. appeals from a decision of the District Court (South Paris, *Ham-Thompson, J.*) granting Camille J. Moulton's motion for summary judgment on the ground that J.P. Morgan's notice of Moulton's right to cure did not meet the requirements of 14 M.R.S. § 6111 (2023). We affirm the court's conclusion regarding the defective notice but, consistent with our decision in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, --- A.3d ---, we vacate the portion of the judgment requiring J.P. Morgan to discharge the mortgage.

I. BACKGROUND

[¶2] The following facts are supported by the summary judgment record and presented in the light most favorable to J.P. Morgan as the nonprevailing party. *Lubar v. Connelly*, 2014 ME 17, ¶ 4, 86 A.3d 642.

[¶3] Moulton owns real estate in Buckfield subject to a March 18, 2009, mortgage, which secured payment of a $62,985 note. The real estate is Moulton's residence. The mortgage was executed in favor of Taylor, Bean & Whitaker Mortgage Corp. and was assigned to J.P. Morgan on March 21, 2018. Under the terms of the mortgage, when Moulton made a partial mortgage payment, the monthly payment would remain outstanding and the partial payment would be held in a suspense balance as a credit against the loan. The suspense balance would be applied as a payment only when it was enough to constitute a full payment, at which point it would be applied to the earliest outstanding monthly payment.

[¶4] After writing a check dated November 18, 2016, for $720.00, Moulton ceased making payments on the loan. The monthly payment due was $742.54. At that point, Moulton had an existing suspense balance from prior partial payments. Pursuant to the terms of the loan, $47.62 of the November 18, 2016, payment was added to the suspense balance to make a full

payment for the oldest outstanding payment due, and the remaining amount of the November 18 payment ($672.38) was held as a credit in suspense.

[¶5] J.P. Morgan sent Moulton a notice of default and right to cure on November 22, 2018. When the notice was sent, the loan was in default for failure to pay from October 2016 through November 2018. The notice provided that "the total amount to cure the default is $20,930.04," but also directed Moulton to "refer to the attached *Exhibit A* for the itemized breakdown of the total amount due." Exhibit A's itemized breakdown indicated $20,257.66 as the total amount due following the application of the $672.38 that the bank had been holding in suspense.

[¶6] On January 24, 2019, J.P. Morgan filed a complaint for foreclosure in District Court. *See* 14 M.R.S. § 6321 (2023). Moulton answered and requested mediation. Mediation was unsuccessful, and the matter was returned to the docket on August 21, 2019. Prior to trial, the case was continued due to the foreclosure moratorium under the CARES Act. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4022(c)(2), 134 Stat. 281, 491 (2020). On August 23, 2021, J.P. Morgan filed a motion to dismiss its complaint without prejudice pursuant to M.R. Civ. P. 41(a)(2). On September 13, Moulton

filed an opposition to the motion to dismiss and a motion for summary judgment. J.P. Morgan opposed the motion for summary judgment.

[¶7] On November 24, 2021, the court denied J.P. Morgan's motion to dismiss. The court granted Moulton's motion for summary judgment on the ground that the right-to-cure notice was deficient because it failed to clearly inform Moulton of the amount that she was required to pay to cure the default, and thus Moulton was entitled to judgment as a matter of law. The court went further, however, and declared that Moulton "holds title to the real property at issue, unencumbered by the mortgage and promissory note." The court also awarded her reasonable attorney fees and costs.

[¶8] J.P. Morgan timely appealed the final judgment.[1] M.R. App. P. 2B(c).

II. DISCUSSION

A. Standard of Review

[¶9] We review the trial court's ruling on a motion for summary judgment de novo, "considering the properly presented evidence and any reasonable inferences that may be drawn therefrom in the light most favorable to the nonprevailing party, in order to determine whether there is a genuine

[1] J.P. Morgan did not raise, and we therefore do not address, any issue regarding the court's denial of its motion to dismiss. Nonetheless, we note that such dismissal would be appropriate, especially in light of *Finch*, 2024 ME 2, --- A.3d ---.

issue of material fact and whether [the] party is entitled to a judgment as a matter of law." *Estate of Frost*, 2016 ME 132, ¶ 15, 146 A.3d 118.

[¶10] "A plaintiff seeking a foreclosure judgment must comply strictly with all steps required by statute." *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 18, 96 A.3d 700 (quotation marks omitted). To prevail in a foreclosure action under 14 M.R.S. § 6321, the plaintiff must prove eight conditions, including "properly served notice of default and mortgagor's right to cure in compliance with statutory requirements." *Greenleaf*, 2014 ME 89, ¶ 18, 96 A.3d 700; 14 M.R.S. § 6321 ("The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed.").

B. Notice of Right to Cure

[¶11] The trial court did not err when it determined that the right-to-cure notice was deficient because it did not clearly put Moulton on notice of what was required of her to cure the default. *See, e.g., Greenleaf*, 2014 ME 89, ¶¶ 29-31, 96 A.3d 700 (vacating foreclosure judgment because notice of default and right to cure specifying an amount to cure the default but also instructing the mortgagor to contact the mortgagee for an updated amount-to-cure figure was deficient); *JPMorgan Chase Bank, N.A. v. Lowell*,

2017 ME 32, ¶¶ 14-21, 156 A.3d 727 (holding that notice of default providing a value for late monthly payments and an additional value for "advances" was insufficient because the mortgagor would have to contact the mortgagee to determine what the amount to cure was and because the amounts stated indicated that the mortgagor was uncertain of the amount to cure); *U.S. Bank Trust, N.A. v. Jones*, 330 F. Supp. 3d 530, 537-38 (D. Me. 2018) (holding that notice containing an inaccurately inflated amount-to-cure is deficient when the mortgagee included an item in the notice that "a reader could have interpreted . . . as requiring a payment . . . more than that actually required to cure the borrower's default"). The notice itself overstated the amount required to cure the default by $672.38, the amount that J.P. Morgan was holding in suspense. J.P. Morgan thus failed to make a prima facie showing of strict compliance with section 6111 and in turn could not prove an essential element of foreclosure. *See Wells Fargo Bank, N.A. v. Girouard*, 2015 ME 116, ¶ 11, 123 A.3d 216.

[¶12] In *Finch v. U.S. Bank, N.A.*, we held that where a lender has not complied with the prerequisites to acceleration under section 6111, a court cannot conclude that initiation of a foreclosure action nevertheless accelerates the note balance. 2024 ME 2, ¶ 6, --- A.3d ---. Therefore, when a court enters summary judgment against a lender or dismisses the lender's foreclosure claim

due to a deficient notice of the right to cure under section 6111, the effect of the judgment or dismissal of the claim is to preclude any future claim for the unaccelerated balance due on the note as of the date of the judgment (unless the lender has asserted a separate claim for the unaccelerated balance due). *Id.* ¶¶ 51-52. It does not preclude the lender from bringing a future foreclosure claim based on a future default, nor does it discharge the entire mortgage or effect a transfer of title. *Id.* ¶ 52.

[¶13] Although the judgment on the claim for foreclosure based on the defective notice here is dispositive, we vacate that portion of the trial court's judgment "declaring that [Moulton] holds title to the real property at issue, unencumbered by the mortgage and promissory note" on another ground. There was no counterclaim for a declaratory judgment and thus no basis for the court to go beyond entry of the judgment in favor of Moulton by declaring the *effect* of its judgment. On a motion for summary judgment, the trial court could either enter a judgment of foreclosure or enter a judgment in favor of the defendant on the foreclosure complaint. Courts may not, however, opine on the effect of a judgment, its enforcement, or other post-judgment matters absent a specific cognizable claim for declaratory relief.

[¶14] We do not disturb the trial court's award of reasonable attorney fees for defending against the foreclosure claim given the deficient right-to-cure notice. *See id.* ¶ 51 ("The court should ordinarily also consider awarding attorney fees to the borrower pursuant to the applicable statute."); 14 M.R.S. § 6101 (2023) ("If the mortgagee does not prevail, . . . the court may order the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or any proceeding within the foreclosure action . . . .").

III. CONCLUSION

[¶15] Because we agree that the section 6111 notice was defective, we affirm that portion of the judgment. We vacate the portion of the judgment ordering discharge of the mortgage, however.

The entry is:

> Portion of judgment ordering discharge of the mortgage is vacated. The remainder of the judgment is affirmed.

MEAD, J., with HUMPHREY, A.R.J., joins, dissenting.

[¶16] Although we agree with the Court's observation that "[t]he trial court did not err when it determined that the right-to-cure notice was deficient because it did not clearly put Moulton on notice of what was required of her to cure the default," Court's Opinion ¶ 11, we depart, as we did in the dissenting opinion in *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 63, --- A.3d ---, from the Court's treatment of the consequences of a flawed notice of right to cure. We would again conclude that the commencement of a foreclosure action seeking the entire amount due constitutes an acceleration of the debt, and a judgment of the trial court finding that the mortgagee has failed to satisfy one or more of the statutory elements for foreclosure constitutes a final judgment on the merits and bars relitigation of any matter related to the mortgage.

[¶17] We take this occasion, however, to point out that this case could and should have been dismissed based upon a threshold issue that is apparent on the summary judgment record—standing.

[¶18] When a defendant moves for summary judgment, a plaintiff ordinarily "bears the burden of making out her prima facie case as to every element." *Boivin v. Somatex, Inc.*, 2022 ME 44, ¶ 10 n.2, 279 A.3d 393. Particularly here, where one required element of proof—ownership of the

mortgage—is necessary to establish the threshold issue of standing, the obligation of a lender to make out a complete prima facie case is essential. *See Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶¶ 8, 17-18, 96 A.3d 700 (dismissing a foreclosure complaint for lack of standing for failure to provide proof of ownership of the note and mortgage and indicating that such proof is a necessary element). Although a "plaintiff may, in certain instances, satisfy the burden by putting forth prima facie evidence that establishes a genuine dispute of material fact as to only those elements that are challenged by a defendant's factual or legal argument," *Boivin*, 2022 ME 44, ¶ 10 n.2, 279 A.3d 393, this is not a situation in which that rule should be applied. *Cf. Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 9, 742 A.2d 933 (concluding that prima facie case as to elements not challenged by the defendant could be assumed in an attorney malpractice matter in which the plaintiff's standing as a client was clear and undisputed).

[¶19] Here, J.P. Morgan Mortgage Acquisition Corporation, in responding to Moulton's motion for summary judgment, failed to demonstrate its ownership of the mortgage. It relied entirely on Moulton's statement of material fact regarding the existence of (1) a purported mortgage assignment to J.P. Morgan by Mortgage Electronic Registration Systems, Inc. (MERS) and

(2) a purported quitclaim assignment from "Carrington Mortgage Services, LLC, as attorney in fact for Government National Mortgage Association for Taylor, Bean & Whitaker." As the trial court explained in a footnote in its judgment, neither of these documents—presented through Moulton's affidavit "[o]n information and belief"—established standing for two reasons. *See Collins v. State*, 2000 ME 85, ¶ 5, 750 A.2d 1257 (stating that an issue of standing may be raised by a court sua sponte because it is jurisdictional).

[¶20] First, the attempted assignment by MERS was fatally defective. The language used in the document is identical to the language in *Greenleaf*, 2014 ME 89, ¶¶ 12-17, 96 A.3d 700, we deemed insufficient to effectuate an assignment because MERS, the purported assignor, is a mere nominee for purposes of recording a mortgage and is not the entity holding the assignable interest in the mortgage.

[¶21] Second, the purported quitclaim assignment referenced in J.P. Morgan's statement of material facts is insufficient to demonstrate standing. It was executed by a representative of "Carrington Mortgage Services, LLC, as attorney in fact for Government National Mortgage Association for Taylor, Bean & Whitaker." Nothing in any of the statements of material facts or the referenced exhibits demonstrates the existence or nature of the relationship

between Taylor, Bean & Whitaker—the original lender—and Government National Mortgage Association. Nor do any statements or referenced exhibits demonstrate that Carrington Mortgage Services, LLC, had the power of attorney to act on behalf of Government National Mortgage Association "for" the original lender.

[¶22] Rather than dismissing the foreclosure complaint based on the lack of standing, the trial court here entered a summary judgment. When it did so, it understood the existing case law to hold that the consequence of its judgment would be akin to a dismissal with prejudice. *See Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶¶ 18-36, 175 A.3d 103; *Fed. Nat'l Mortg. Ass'n v. Deschaine*, 2017 ME 190, ¶ 37, 170 A.3d 230; *see also Bank of N.Y. v. Dyer*, 2016 ME 10, ¶ 11, 130 A.3d 966 (noting that a dismissal with prejudice operates as a ruling on the merits). *Deschaine* and *Pushard* have now been overruled, however, *see Finch*, 2024 ME 2, ¶ 51, --- A.3d ---, which makes it important for the Court to clarify the proper procedural response when a plaintiff has not provided proof of standing.[2] *See Dyer*, 2016 ME 10, ¶ 11, 130 A.3d 966 (stating that a party that

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[2] We also disagree with the Court's holding that a dismissal or summary judgment for the borrower "due to deficient notice of right to cure" under 14 M.R.S. § 6111 (2023) precludes a plaintiff from bringing "any future claim for the unaccelerated balance due on the note *as of the date of the judgment* (unless the lender has asserted a separate claim for the unaccelerated balance due)." Court's Opinion ¶ 12 (emphasis added). We continue to regard a summary judgment as a judgment

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[¶23] The summary judgment entered here should therefore be vacated and the matter remanded for the court to dismiss the complaint for lack of standing. On remand, the trial court must determine whether the dismissal should be with or without prejudice. *See Green Tree Servicing, LLC v. Cope*, 2017 ME 68, ¶ 18, 158 A.3d 931 ("[E]ven when a court is without power to reach the merits of a complaint because the plaintiff lacks standing, the court is not divested of its inherent authority to dismiss the complaint with prejudice as a sanction for misconduct." (citations omitted)).

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