

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. RE-14-142

BANK OF AMERICA, N.A.,

Plaintiff

v.

ORDER

CHARLENE CONNORS, et al,

Defendants

The court understands that defendant Charlene Connors eventually did appear for a judicial settlement conference, that a settlement was not reached, and that settlement efforts have continued since the conference, but those have been unsuccessful.

Before the court, therefore, is plaintiff's motion to dismiss its foreclosure action without prejudice, which is opposed by defendant, who seeks a dismissal with prejudice. Based on the Law Court's ruling in *Homeward Residential Inc. v. Gregor*, 2015 ME 108 ¶ 24, 122 A.3d 947, the plaintiff's foreclosure action is dismissed without prejudice.

However, the court previously allowed Connors to assert a counterclaim for breach of contract. *See* order dated July 14, 2014. As far as the court can tell, (1) that counterclaim would survive as a counterclaim for a declaratory judgment that the plaintiff's breach forecloses it from pursuing a foreclosure action and (2) there is still a live dispute between the parties on that issue.

Accordingly, while the complaint is dismissed without prejudice, this action shall proceed on the counterclaim. The court intends to set the counterclaim for trial at its next civil term.

STATE OF MAINE  
Cumberland. ss. Clerk's Office


JUN 17 2016

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The entry shall be:

Plaintiff's motion to dismiss its foreclosure complaint without prejudice is granted. The remaining claim to be resolved in this action is defendant's counterclaim for breach of contract. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: June 16, 2016

  
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Thomas D. Warren  
Justice, Superior Court