

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-14-198

TJW-CUM-01-06-15

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff

v.

ORDER

DANIEL BERUBE, et al,

Defendants

STATE OF MAINE
Cumberland ss. Clerk's Office

JAN 06 2015

RECEIVED

A trial was held in the above-captioned mortgage foreclosure action on January 5, 2015.

As stated on the record, the court reserved decision on one issue – (1) whether the notice of default offered as Exhibit E is admissible as a business record.¹

Based on *Beneficial Maine Inc. v. Carter*, 2011 ME 77 ¶¶ 14-16, 25 A.3d 96, the court concludes that Mr. Cooper’s testimony indicates that he has no firsthand knowledge about the recordkeeping practices of CitiMortgage and therefore is not a custodian or other qualified witness who can establish that Exhibit E is a business record admissible under M.R.Evid. 803(6).

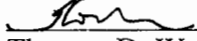
Defendants did not appear for trial, but the court cannot default them without determining that the notice requirements of 14 M.R.S. § 6111 have been strictly performed, and if Exhibit E is not admissible, the court cannot make that determination.

The entry shall be:

Judgment entered dismissing the complaint without prejudice. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

¹ The court also agreed that it would reconvene the trial at a later date to allow plaintiff to produce the original note in order to prove that it is the holder of the note. That will no longer be necessary.

Dated: January 6, 2015



Thomas D. Warren
Justice, Superior Court

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

CHARLES BOYLE ESQ
BENDETT & MCHUGH PC
30 DANFORTH STREET SUITE 104
PORTLAND ME 04101

Plaintiff's Attorney

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

DANIEL BERUBE
BARBARA BERUBE
20 ASHLEY LANE
PORTLAND ME 04103

Defendants