

STATE OF MAINE
OXFORD, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE 20 0011

NORWAY SAVINGS BANK

v.

ORDER

HEIRS OF DEMENKOW, *et. al.*

Before the court are Plaintiff's Request for Entry of Default and Motion for Default Judgment and Summary Judgment. For the reasons stated herein, the court cannot grant the Motion.

The mortgagor and property owner in this matter is deceased. His estate was not probated. His heirs include his mother and two sons, all of whom are Defendants and all of whom have been served. For the most part, the summary judgment motion is in order, but the following problems prevent the court from granting the motion.

Andrew Demenkow is in active military service. The Soldiers and Sailor's Relief Act does not allow the court to enter judgment against a member of the military who has failed to appear. 50 U.S.C. §3912, *Real v. Real*, 2010 ME 92, ¶ 13. The Plaintiff did not provide evidence of an "affirmative waiver" of the Act's protections. *Real*, ¶ 13; 50 USC § 3918. Therefore, the court cannot enter a judgment binding on Andrew without a waiver or some other finding.

Timothy Demenkow filed an Answer which prevents a default from being entered against him. The clerk includes a copy of that Answer with this order in case Plaintiff did not get a copy. Therefore, the court cannot default Timothy. The court can, however, grant summary judgment if it otherwise meets the requirement for a foreclosure. If Timothy wishes to oppose summary judgment, in which the Plaintiff seeks judgment


allowing them foreclose on the property and does not seek damages from any Defendant, he needs to file an objection within 21 days.

In addition, the court requires that counsel for the plaintiff confirm that this mortgage is not subject to any pandemic related order effecting foreclosures. Although the mortgage is not residential, the court requires that counsel affirmatively state that there is no state or federal pandemic order affecting this foreclosure.

Therefore, the motion and request for default are DENIED. The Motion for Summary Judgment is denied, but without prejudice to a supplemental filing to resolve these issues. The Defendants should be copied on any supplementation with the notices required by M.R.Civ.P. 7(b).

This Order is incorporated on the docket by reference pursuant to M.R.Civ.P. 79(a).

DATE: 11/26/2024



Thomas R. McKeon
Justice, Maine Superior Court