

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO RE-08-58

BREAKAWAY INC.,

Plaintiff,

v.

TIMOTHY MACDONALD, ET AL

Defendant.

ORDER

Following the last conference and damages hearing held in this case, the Court has signed the proposed foreclosure order that plaintiff has submitted in this case. The Court deleted the portion of the order addressing attorney fees and will decide the issue after receiving written argument on the appropriate amount to be awarded because it could be argued that a portion was not incurred in the foreclosure action, but may have been incurred to defend unresolved counterclaims. At the conference, the Court indicated that it continued to study the propriety of its Order granting summary judgment to the plaintiff. The Court still concludes that its order in this regard was correct, especially after reviewing *Camden National Bank v. Crest Construction, Inc.*, 2008 ME 113, 952 A.2d 213. In *Crest*, the Law Court held that the bank, as mortgagee, owed no duty in negligence to Morrow, a mortgagor, but not a borrower. *Id.* at ¶ 11. Crest borrowed funds from plaintiff to build an addition on Morrow's home, the debt secured by a mortgage on the home and signed by Morrow only. When Crest defaulted, the bank was entitled to foreclosure. The Court also ruled that, under the circumstances, there was no fiduciary duty or confidential relationship between the bank and Morrow, *id.* at ¶ 15, and also ruled that there is no duty of good faith and fair dealing in the transaction because it is not governed by the U.C.C. *Id.* at ¶18.

The counterclaims remain pending. The Court will decide defendant Linda MacDonald's motion for summary judgment on her cross-claims against Timothy MacDonald after it receives proof that she has provided Mr. MacDonald a proper notice pursuant to M.R.Civ.P. (b) (1)(A). The parties shall submit brief written argument on the attorney fees issue within 14 days.

The clerk is directed to incorporate this Order into the docket by reference.

Dated: July 19, 2010



WILLIAM ANDERSON
JUSTICE, SUPERIOR COURT

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SUPERIOR COURT
PENOBSCOT, ss.
Docket No BANSC-RE-2008-00058

DOCKET RECORD

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Filing Document: COMPLAINT
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Minor Case Type: FORECLOSURE

Docket Events:

06/09/2008 TRANSFER - REMOVAL TO SUPERIOR COURT EDI ON 06/09/2008 @ 18:00
TRANSFERRED CASE: SENDING COURT CASEID BANDCRE200800094

FILING DOCUMENT - COMPLAINT FILED ON 04/16/2008