

WELLS FARGO BANK, N.A.

v.

LINDA C. BENOIT et al.

Argued November 12, 2024

Decided December 5, 2024

Panel: STANFILL, C.J., and HORTON, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Wells Fargo Bank, N.A., appeals from an order by the Superior Court (Hancock County, *R. Murray, J.*) dismissing its foreclosure complaint against Linda C. and Todd C. Benoit because of a deficient notice of default and right to cure as required by 14 M.R.S. § 6111(1) (2024). Wells Fargo contends that Linda and Todd were judicially estopped from challenging evidence and cross-examining witnesses during the foreclosure proceeding because of their stated intent to surrender the property at issue during a bankruptcy proceeding that preceded the foreclosure action by several years.

Wells Fargo never denied that its notice of default and right to cure did not meet the requirements set forth in 14 M.R.S. § 6111(1), nor did it address this point on appeal. A proper notice of default and right to cure is an affirmative obligation on the party seeking foreclosure. *See Chase Home Fin. LLC v. Higgins*, 2009 ME 136, ¶ 11, 985 A.2d 508. Therefore, the trial court did

not err in finding that Wells Fargo did not meet the statutory requirements necessary to foreclose.¹

Wells Fargo is precluded from any future claim for the unaccelerated balance due on the note as of the date of the court's judgment. The mortgage is not discharged, however, and Wells Fargo is not precluded from bringing a separate foreclosure claim based on a future default. *See J.P. Morgan Mortg. Acquisition Corp. v. Moulton*, 2024 ME 13, ¶ 12, 314 A.3d 134.

The entry is:

Judgment affirmed.

Adam J. Shub, Esq. (orally), Preti, Flaherty, Beliveau & Pachios, LLP, Portland, for appellant Wells Fargo Bank, N.A.

John Z. Steed, Esq. (orally), Island Justice Law, Stonington, for appellees Linda C. and Todd C. Benoit

Hancock County Superior Court docket number RE-2017-01
FOR CLERK REFERENCE ONLY

¹ Because Wells Fargo did not argue that it met its statutory obligations, we do not address the judicial estoppel issue with respect to this case. However, we note that the application of judicial estoppel in circumstances like those present here—when the debtor indicated an intention to surrender the property at issue during a previous bankruptcy proceeding—would prevent the debtor from challenging the creditor's right to initiate a foreclosure action but would not prevent the debtor from challenging whether the creditor met the statutory requirements to obtain a judgment of foreclosure and sale in the foreclosure action.