

ERIC A. LAKE¹

v.

MICHAEL L. YATES

Submitted on Briefs February 27, 2002
Decided March 20, 2002

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER, and
CALKINS, JJ.

MEMORANDUM OF DECISION

Eric Lake appeals from the judgment of the Superior Court (Hancock County, *Hjelm, J.*) finding in favor of Michael Yates on Lake's attempt to collect from Yates on a loan guarantee. Lake contends that the Superior Court erred in considering evidence that exposure on Yates's guarantee was limited to any deficiency after foreclosure and sale of a mortgaged property, where no foreclosure had occurred.

Because the Superior Court did not err in considering the evidence of the limitation on Yates's exposure indicated in his negotiations with Bar

1. The original plaintiff in this case was Bar Harbor Banking and Trust Company (Bank). Eric A. and Julie C. Lake, State Street Bank and Trust Company, and John L. Merrill, Trustees under the will of the late Merrill, were named as parties-in-interest. Fiduciary Trust Company was later substituted as a party-in-interest for State Street Bank and Trust Company. Because the Bank assigned to the Lakes the mortgage at issue, the notes secured thereby, and all causes of action and other rights described in its complaint against Michael L. Yates, the Superior Court (*Mead, C.J.*) granted the Lakes' motion to be substituted as plaintiffs. The Lakes were divorced during the pendency of this litigation and Julie Lake's interest was set aside to Eric Lake (Lake) via a quitclaim deed with covenant.

State Street and Merrill were named as parties-in-interest because they were holders of a right of first refusal to the mortgaged property at issue. The case is renamed to reflect the currently contending parties.

Harbor Banking and Trust Co. and Yates's reliance on those limitations in agreeing to guarantee the loan refinancing, the Superior Court properly determined that the conditions for enforcement of the guarantee had not been met. Whether the evidence of the limitation on Yates's exposure constituted a contract with the bank was a question of fact for the court. *Gayer v. Bath Iron Works Corp.*, 687 A.2d 617, 620 (Me. 1996).

The entry is:

Judgment affirmed.

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