

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Plaintiffs/Appellees

v.

JASON D. SMITH,

Defendants/Appellees

and

KEYBANK NATIONAL ASSOCIATION,

Party-in-Interest/Appellant

SYNCHRONY BANK; LAURA L. SMITH

Parties-in-Interests/Appellees

ON APPEAL FROM A JUDGMENT OF THE PENOBSHOT COUNTY
SUPERIOR COURT

REPLY BRIEF OF APPELLANT KEYBANK NATIONAL ASSOCIATION

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Dated: April 20, 2026

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INTRODUCTION

KeyBank National Association (hereinafter, “KeyBank”), hereby submits its reply brief in compliance with M.R.App.P. 7A(c) to respond solely to new arguments raised by Defendant Jason D. Smith (hereinafter, “Smith”) in his filed brief (hereinafter, “Smith’s Brief”). Notably, Smith’s Brief both presents new arguments and mischaracterizes the issues presently before this Honorable Court.

ARGUMENT

I. Smith’s Brief Presents a New Argument Never Raised At Trial And Not Found By The Trial Court Below.

Smith’s Brief argues that the KeyBank Affidavit was hearsay and was therefore inadmissible. This argument is not only a new argument in the context of this appeal, but Smith likewise did not argue that the KeyBank Affidavit was hearsay at trial. Moreover, the Court’s Findings of Fact and Conclusions of Law dated July 31, 2024, and entered on August 6, 2025, did not find that the KeyBank Affidavit was hearsay. App. at A23. The Superior Court never reached the issue of the sufficiency of the contents of the KeyBank Affidavit and it was not a defect of the affidavit that led to a finding of inadmissibility. Rather the Superior Court, as noted in KeyBank’s Brief noted, “The Court was inclined to accept the Affidavit, as that is how such parties-in-interest generally preserve their rights.... Affidavits are accepted in connection with motions for summary judgment, but when a case

proceeds to trial, evidence from a witness(es) is necessary, absent agreement to the admissibility of the Affidavit.” App. at A23.

Smith’s Brief misunderstands the issues presented for appeal and therefore has presented new arguments in his brief. The Trial Court found that KeyBank could not rely on an affidavit to preserve its interests in the Property, despite affidavits being the general method by which such parties preserve their rights. App. at A23. KeyBank has appealed that finding asking this Honorable Court to consider two issues: 1) whether Smith’s objection to KeyBank’s Affidavit six months after its filing was timely and therefore appropriately considered by the Trial Court, and 2) whether the Superior Court’s finding that KeyBank was required to present a witness at trial without notice that its affidavit would not be accepted and contrary to general practice amounted to an impermissible sanction. As the sufficiency of the statements within the KeyBank Affidavit were never reached at the trial court level and the Superior Court did not make a finding that the KeyBank Affidavit was hearsay, argument to that point here is outside the scope of this appeal and impermissible. “The Law Court, except for questions of jurisdiction, is not bound to travel outside the scope of the points on appeal and will consider only the errors specifically assigned for review.” *Desmond v. Persina*, 381 A.2d 633, 636 (Me. 1978).

II. Smith's Brief Attempts to Reframe and Mischaracterize KeyBank's Appeal.

Smith attempts to suggest in his brief that there is no time limitation to raise an objection if that limitation is not set forth in the Maine Rules of Civil Procedure. He claims that because the, "affidavit was not filed in support of a motion...it did not trigger the application of the time limits set forth in M.R.Civ. P. 7(c) for an objection to a motion." Smith Brief P. 4. KeyBank's presented argument in its brief was clear-- that Smith was required to submit a timely objection to allow for the timely and orderly administration of justice. An objection raised six months after filing on the eve of trial is certainly not timely. KeyBank's submitted argument was supported by cited case law in its Brief and will not be relitigated here. Despite ample time to research and present a cogent argument, Smith's Brief does not grapple with the arguments raised in KeyBank's Brief.

Smith's Brief instead focuses on conjecture as to what may have been the outcome if the Superior Court decided to default KeyBank and what could have been the outcome if a trial had occurred in February 2025 rather than December 2025. Such discussion is outside the scope of this appeal and is irrelevant to the findings of the Superior Court. Smith ignores however, that he only requested default after the KeyBank Affidavit was on record for half a year and withdrew his request for default after being promised a duplicate copy of the same. *See* Tr. June

4, 2025, 9:14-11:4. Moreover, Smith's argument serves only to distract from KeyBank's actual argument which was that its affidavit should have been accepted as filed as there was no timely objection raised against its submission and the Superior Court's representation was that it was inclined to accept the KeyBank Affidavit.

Smith's Brief also does not respond in substance to KeyBank's argument offered in its Brief that both Smith and the Superior Court conceded has been general practice for a party in interest to preserve its interest in a property by affidavit as KeyBank did below. Smith did not address that it is *this conceded deviation* that KeyBank contests in its Brief. Rather, Smith clings to an unsupported statement that somehow because 14 M.R. S. § 6322 contemplates the appearance of additional parties in a foreclosure case, each party is required to present a full case for the sufficiency of their lien and present witnesses for their claimed amounts due—regardless of whether the affidavit has been objected to in a timely fashion or not. The Superior Court's holding suggests this outcome when it held that it would not allow an affidavit at trial however, its holding does not speak for the interpretation of Section 6322 Smith propounds in his Brief. Smith again seeks to expand the holding of the Superior Court below and the purview of the instant appeal; impermissibly so.

Notably, Smith did not respond substantively to KeyBank's raised arguments related to the Superior Court's representations that it was inclined to rely on the KeyBank Affidavit upon which KeyBank relied up to the date of Trial.

CONCLUSION

For the reasons stated in its brief and supported in its reply brief as presented here, KeyBank National Association requests this Honorable Court reverse the Superior Court's Judgment of Foreclosure entered on the docket on August 6, 2025, and dated July 31, 2025, including the Judgment as to KeyBank National Association and enter judgment allowing KeyBank's claim.

CERTIFICATION

The undersigned hereby certifies that a copy of the within brief and accompanying appendix was served electronically to all appearing parties.

Date: April 20, 2026

Signed: /s/Eva M. Massimino
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