

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK COUNTY

NO. SJC-11234

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Plaintiff – Appellee

v.

OLIVER HENDRICKS

Defendant – Appellant

**BRIEF OF AMICI CURIAE THE REAL ESTATE BAR ASSOCIATION FOR
MASSACHUSETTS, INC. and THE ABSTRACT CLUB**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

STATEMENT OF INTEREST OF AMICI CURIAE.....1

ARGUMENT.....3

 I. THE SUMMARY PROCESS PLAINTIFF PRESENTED
 UNCONTROVERTED EVIDENCE DEMONSTRATING
 COMPLIANCE WITH MASS.GEN.LAWS ch.244, SEC. 14
 WHICH WAS PROPERLY CONSIDERED BY THE TRIAL
 JUDGE UNDER MASS.R.CIV. P.56.....3

 II. THE STATUTORY FORM AFFIDAVIT PROVIDES SUFFICIENT
 EVIDENCE OF LEGAL TITLE.....11

 A. THE PLAIN LANGUAGE OF THE STATUTE DECLARES
 THE MODEL FORECLOSURE AFFIDAVIT
 SUFFICIENT.....13

 B. ALLOWING THE TRIAL COURTS TO CONSIDER THE
 STATUTORY FORM AFFIDAVIT AS EVIDENCE OF
 LEGAL TITLE WOULD NOT PRODUCE RESULTS THAT
 ARE ABSURD OR CONTRARY TO THE INTENT OF
 THE LEGISLATURE.....14

 III. IF THE COURT DETERMINES THAT AN AFFIDAVIT
 TRACKING THE LANGUAGE OF THE STATUTORY FORM IS
 INSUFFICIENT OR INADMISSIBLE, IT SHOULD DO SO
 PROSPECTIVELY.....17

CONCLUSION.....21

RULE 16(k)CERTIFICATE.....22

CERTIFICATE OF SERVICE.....23

TABLE OF AUTHORITIES

Cases

Atkins v. Atkins, 195 Mass. 124 (1907)..... 14

Attorney Gen. v. School Comm. Of Essex, 387 Mass. 326
(1982). 13

Bank of New York v. Bailey, 460 Mass. 327 (2011)
..... 4, 10, 14-15

Blood v. Edgar's, Inc., 36 Mass.App.Ct. 402, 407 (1994) 21

Celotex Corp. v. Catrett, 477 U.S. 317 (1986)..... 10

Chevron Oil Co. v. Huson, 404 U.S. 97 (1971))..... 18

Commonwealth v. Keizer, 377 Mass. 264 (1979)..... 7

Commonwealth v. Savage, 31 Mass.App.Ct. 714 (1991)..... 16

Correllas v. Viveiros, 410 Mass. 314 (1991)..... 7

Da Silva v. Turner, 166 Mass. 407 (1896)..... 14

Department of Community Affairs v. Massachusetts State
College Bldg. Auth., 378 Mass. 418(1979) 13

Deutsche Bank Nat'l Trust Co. v. Gabriel, 81 Mass.App.Ct.
564 (2012), rev. den., 462 Mass. 1107 (2012). 4-5, 11-12

Eaton v. Federal Nat'l Mortgage Ass'n, 462 Mass. 569
(2012) 17-18

Godbout v. Cousens, 396 Mass. 254 (1985)..... 4, 8-9

Graham v. Quincy Food Serv. Employees Ass'n & Hosp.
Library & Pub. Employees Union, 407 Mass. 601 (1990) .. 7

Holt v. United States, 342 F.2d 163 (5th Cir. 1965)..... 7

Hughes v. Williams, 229 Mass. 467 (1918)..... 15

Keller v. O'Brien, 425 Mass. 774 (1997)..... 18

Knott v. Racicot, 442 Mass. 314 (2004)..... 19-20

<u>Kourouvacilis v. General Motors Corp.</u> , 410 Mass. 706	
(1991)	10
<u>Kung v. Fom Inv. Co.</u> , 563 F.2d 1316 (9th Cir. 1977).....	7
<u>Lewis v. Jackson</u> , 165 Mass. 481 (1896).....	5
<u>McIntyre v. Associates Fin. Servs. Co. Mass.</u> , 367 Mass.	
708 (1985)	18
<u>MacCormack v. Boston Edison Co.</u> , 423 Mass. 652, 657, 672	
N.E.2d 1 (1996)	20
<u>Madsen v. Erwin</u> , 395 Mass. 715 (1985).....	4, 6, 9
<u>Metropolitan Credit Union v. Matthes</u> , 46 Mass. App.Ct.	
326 (1999).....	4
<u>Ng Brothers Construction v. Cranney</u> , 436 Mass. 638, 648	
(2002)	9
<u>Over the Road Drivers, Inc. v. Transport Ins. Co.</u> , 637	
F2d. 816 (1st Cir. 1980)	7
<u>Papadopoulos v. Target Corp.</u> , 457 Mass. 368 (2010).....	18
<u>Payton v. Abbott Labs</u> , 386 Mass. 540 (1982).....	18
<u>Polaroid Corp. v. Rollins Env'tl. Servs. (NJ), Inc.</u> , 416	
Mass. 684 (1993)	7
<u>Powers v. Wilkinson</u> , 399 Mass. 650 (1987).....	18
<u>Regis College v. Town of Weston</u> , 462 Mass. 280 (2012) 7-10	
<u>Sheehan Constr. Co. v. Dudley</u> , 299 Mass. 51 (1937).....	5
<u>Tamerlane Corp. v. Warwick Ins. Co.</u> , 412 Mass. 486	
(1992)	20
<u>U.S. Bank Nat'l Ass'n v. Ibanez</u> , 458 Mass. 637 (2011)..	16
<u>White v. City of Boston</u> , 482 Mass. 250 (1998).....	13

<u>Whitinsville Plaza Inc. v. Kotseas</u> , 378 Mass. 85	
(1979).....	18

Statutes

Chapter 57 of the Acts of 1943.....	16
Mass. Gen. Laws ch. 183, § 8.....	12-14, 18
Mass. Gen. Laws ch. 244, §§ 11-17C.....	16
Mass. Gen. Laws ch. 244, § 14. 3, 8, 10, 12, 13-14, 16, 20	
Mass. Gen. Laws ch. 244, § 15.....	3-4, 11-12
Mass. Gen. Laws ch. 183, § 21.....	16
Mass. Gen. Laws ch. 244, § 35A.....	16
St. 1912, c. 502.....	15-16
Section 7425 (c) of the Internal Revenue Code.....	12

Other Authorities

G.L. c. 183, App. Form (12).....	3, 11-12
----------------------------------	----------

Rules

Mass.R.Civ.P. 56.....	6
Mass.R.Civ.P. 56(c).....	3-4, 6
Mass.R.Civ.P. 56(e).....	3, 6, 8-9

STATEMENT OF INTEREST OF AMICI CURIAE

The Amici Curiae submitting this brief ("Amici") are The Real Estate Bar Association for Massachusetts, Inc. (formerly known as the Massachusetts Conveyancers Association) ("REBA") and The Abstract Club. REBA is the largest specialty bar in the Commonwealth. It is a non-profit corporation that has been in existence for over 100 years and has more than 2,500 members who practice in cities and towns throughout the Commonwealth. The Abstract Club is a voluntary association of experienced lawyers who practice in the area of real estate law. It has been in existence for over 100 years and is limited by its by-laws to 100 members. REBA and The Abstract Club both work toward the improvement of real estate law and practice through educational programs. REBA also promulgates title standards, practice standards, ethical standards and real estate forms. The Amicus Committee is a joint committee of the two organizations comprised of real estate lawyers with many years of experience. The Amicus Committee, from time to time, files amicus briefs on important questions of law. On several occasions it has been requested to do so by the Massachusetts Supreme Judicial Court or the Appeals Court. All Committee members serve without compensation. The memberships of

REBA and The Abstract Club are keenly interested in the reliability of the land records of the Commonwealth. Members of the Amici represent a variety of parties who deal with real estate titles, including owners, buyers, sellers, mortgagors, mortgagees, tenants, landlords, title insurers, lien holders, and contractors. The central concern of the parties represented and advised by members of the Amici is certainty of title. The issues presented in the case now before the Court go to the very heart of the work of the conveyancing bar. This submission by the Amici deals with the effect the Court's decision will have on the conveyancing bar's ability to determine with greater certainty the state of ownership of real estate titles.

ARGUMENT

This Court has requested views regarding both the admissibility and sufficiency of the statutory foreclosure affidavit, found at Mass. Gen. Laws ch. 183, App. Form (12).¹ The Amici urge the Court to uphold the decision of the trial court granting summary judgment to the summary process plaintiff since: 1) the plaintiff presented uncontroverted evidence demonstrating compliance with the statutory foreclosure process; and 2) the statutory form attesting to compliance with the foreclosure process is deemed sufficient by statute. If the Court concludes that the statutory form is insufficient or inadmissible, it should do so prospectively.

I. THE SUMMARY PROCESS PLAINTIFF PRESENTED UNCONTROVERTED EVIDENCE DEMONSTRATING COMPLIANCE WITH MASS.GEN.LAWS ch.244, SEC. 14 WHICH WAS PROPERLY CONSIDERED BY THE TRIAL JUDGE UNDER MASS.R.CIV.P. 56.

A party moving for summary judgment has the initial burden of showing under Rule 56(c) that there is no dispute as to a material fact and that the party is entitled to judgment as a matter of law. Mass. R.

¹ The Court specifically queried "whether the mortgagee's affidavit containing a conclusory statement of compliance with G.L. c. 244, § 14, states sufficient facts to comply with the notice requirements included within the statutory power of sale set forth in that statute; to comply with M.R. Civ. P. 56 (e); to be admissible under G.L. c. 244, § 15. Whether the statutory power of sale form codified at G.L. c. 183 App., Form (12), originally drafted in 1912, is on its face insufficient."

Civ. P. 56(c); Godbout v. Cousens, 396 Mass. 254, 261 (1985). In making a determination as to whether summary judgment is appropriate, the court may consider "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." Mass. R. Civ. P. 56(c); Madsen v. Erwin, 395 Mass. 715, 719 (1985).

In a summary process action, a post-foreclosure plaintiff is "required to make a prima facie showing that it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded." Bank of New York v. Bailey, 460 Mass. 327, 334 (2011) (citing Lewis v. Jackson, 165 Mass. 481, 486-87 (1896) and Mass. Gen. Laws ch. 244 § 15); Deutsche Bank Nat'l Trust Co. v. Gabriel, 81 Mass.App.Ct. 564, 566 (April 10, 2012), rev. den., 462 Mass. 1107 (June 8, 2012). To prevail on summary judgment, the plaintiff in such a summary process action has the burden of showing there are no material facts in dispute regarding its legal title to property. Bailey, 460 Mass. at 334 (citing Metropolitan Credit Union v. Matthes, 46 Mass. App.Ct. 326, 330 (1999), Mass R. Civ. P. 56(c), 365 Mass. 824

(1974) and Sheehan Constr. Co. v. Dudley, 299 Mass. 51, 53-54 (1937)); Gabriel, 81 Mass.App.Ct. at 566.

In the case at bar, the summary process plaintiff ("FNMA") adequately pleaded the facts which demonstrated that it acquired legal title to the property at issue. In its Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment (App. at 15-20) ("Motion"), FNMA pleaded that it acquired absolute title to the subject property following a public foreclosure auction on June 23, 2010. (App. at 15, Motion at ¶2). It also noted that it registered a Massachusetts Foreclosure Deed by Corporation and Affidavit with applicable exhibits at the Suffolk County Registry District of the Land Court as Document Number 780104 on Certificate of Title Number 12751. (App. at 16, Motion at ¶3). In the Affidavit of John Whitehead and Exhibits A - D (App. at 21-49) ("Affidavit"), John Whitehead, the Asset Recovery Manager for FNMA, affirmed his personal knowledge of the foregoing facts. (App. at 21, Affidavit at ¶3.) The Affidavit also included a copy of the recorded foreclosure deed and affidavit of sale. (App. at 39-44.)

The Motion and Affidavit presented the facts necessary to satisfy FNMA's initial burden under Mass. R. Civ. P. 56(c) - namely, that it acquired legal title to the property at issue, and that a deed and affidavit showing its compliance with this process was recorded. (App. at 15-16, 39-44, Motion at ¶¶2-3, Affidavit at ¶3.) The Affidavit met the standards of Mass. Civ. P. 56(e) in that it was based on the affiant's personal knowledge and set forth such facts as would be admissible in evidence. Mass. R. Civ. P. 56(e); Madsen, 395 Mass. at 721.

Despite the weight of evidence presented, the summary process defendant ("Mr. Hendricks") in this appeal now only seeks to argue that FNMA did not meet its burden not because the foreclosing entity did not actually follow or send the notices required in the foreclosure process, but merely because he believes the recorded affidavit of sale was not specific enough. Mr. Hendricks' objection must be taken to fall short where the pleadings taken as a whole which may properly be considered in summary judgment demonstrate otherwise, and he offered no evidence to controvert the facts pleaded by FNMA.

This Court has "never been overly technical in [its] reading of what a judge should consider on a

motion for summary judgment" and has permitted trial courts to consider types of evidence that do not meet the criteria set forth in Rule 56. Correllas v. Viveiros, 410 Mass. 314, 317 (1991). To the extent that any doubt exists regarding whether a trial court should consider relevant evidence, "all doubt should be resolved in favor of admissibility." Commonwealth v. Keizer, 377 Mass. 264, 267 (1979) (quoting Holt v. United States, 342 F.2d 163, 166 (5th Cir. 1965)).

The essence of Mr. Hendricks' argument is that the provision of the affidavit of sale affirming that proper notices of the foreclosure were sent contains a conclusory statement that renders the affidavit inadmissible (Hendricks Br. at 9). "Conclusory allegations *unsupported by factual data*" may not be considered in summary judgment. Over the Road Drivers, Inc. v. Transport Ins. Co., 637 F.2d. 816, 819 (1st Cir. 1980) (quoting Kung v. Fom Inv. Co., 563 F.2d 1316, 1318 (9th Cir. 1977) (emphasis added)); Regis College v. Town of Weston, 462 Mass. 280, 293 (2012) (citing Polaroid Corp. v. Rollins Env'tl. Servs. (NJ), Inc., 416 Mass. 684, 696 (1993) and Graham v. Quincy Food Serv. Employees Ass'n & Hosp. Library & Pub. Employees Union, 407 Mass. 601, 610 n.4 (1990)).

In the Regis College case, the lower court had determined that the accompanying affidavits and materials were not sufficient to avoid summary judgment, finding that these materials were often "vague and amorphous." Regis College, 462 Mass. at 293. This Court reversed that determination, finding that while the materials were "hardly a model of specificity, the materials [were] nonetheless not so vague as to be impermissibly conclusory." Id. An affiant is entitled to aver to the truth of his or her statements. Godbout, 396 Mass. at 260.

In this case, although the subject affidavit of sale contains a conclusion ("I also complied with Chapter 244, Section 14 of the Massachusetts General Laws, as amended), that conclusion is supported by a statement of fact ("by sending the required notices certified mail, return receipt requested"). The affidavit of sale contains a conclusion that is supported by factual evidence that would be admissible at trial, which complies with the requirements of Mass. R. Civ. P. 56(e). The affidavit of sale is not impermissibly conclusory - it is specific in its statement of the fact that the required notices under Chapter 244, Section 14 were sent.

Once FNMA met this initial burden, it became incumbent on Mr. Hendricks to show with admissible evidence the existence of a dispute as to the fact that the notices were sent. Godbout, 396 Mass. at 260. "The [nonmoving party] cannot defeat summary judgment by claiming that the [moving party has] not presented evidence sufficient to warrant summary judgment; rather, the plaintiff must provide concrete evidence that supports a contrary determination." Ng Brothers Construction v. Cranney, 436 Mass. 638, 648 (2002).

Such evidence by a party opposing summary judgment, "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Godbout, 396 Mass. at 261-62 (citing Mass R.Civ. P. 56(e) and Madsen, 395 Mass. at 719); Regis College, 462 Mass. at 292. The argument advanced by Mr. Hendricks that summary judgment should not be entered against him because the notice provision of the affidavit is not sufficiently descriptive, is disingenuous where he is not otherwise disputing

notice. There was no error in the trial court's decision granting summary judgment to FNMA after it made its case in the absence of contrary evidence.

"A party moving for summary judgment who does not bear the ultimate burden of proof at trial may discharge the party's initial burden of production by demonstrating 'to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.'" Regis College, 462 Mass. at 291-92 (citing Kourouvacilis v. General Motors Corp., 410 Mass. 706, 715 (1991) and Celotex Corp. v. Catrett, 477 U.S. 317, 328 (1986)). Mr. Hendricks' lack of evidence is insufficient to defeat FNMA's supported motion for summary judgment.

The legal issue in summary process is whether the foreclosure process was complied with as set forth in Mass. Gen. Laws ch.244, § 14. Bailey, 460 Mass. at 334. The uncontroverted evidence in this case, properly considered by the trial court on summary judgment, affirmatively demonstrates that it was. The Amici respectfully urge the Court to affirm the trial court's decision.

**II. THE STATUTORY FORM AFFIDAVIT PROVIDES
SUFFICIENT EVIDENCE OF LEGAL TITLE.**

The Appeals Court recently considered the sole issue raised by Mr. Hendricks in this appeal - namely, the adequacy of the affidavit of sale - in its Gabriel decision. See 81 Mass.App.Ct. at 566. In Gabriel, as in this case, the post-foreclosure defendant contended that the affidavit of sale submitted by the bank in support of its motion for summary judgment did not satisfy the requirements of Mass. Gen. Laws ch. 244, § 15.² See 81 Mass.App.Ct. at 468.

In that case, the foreclosing bank had utilized in its affidavit language that closely tracked the model statutory form of the affidavit of sale found at Form 12 of the Appendix to the General Laws chapter 183, with small modifications.³ Mass. Gen. Laws ch.

² Affidavits of sale are mandated and governed by Mass. Gen. Laws ch. 244, § 15, which provides:

The person selling, or the attorney duly authorized by a writing or the legal guardian or conservator of such person, shall, after the sale, cause a copy of the notice and his affidavit, fully and particularly stating his acts, or the acts of his principal or ward, to be recorded in the registry of deeds for the county or district where the land lies, with a note or reference thereto on the margin of the record of the mortgage deed, if it is recorded in the same registry. If the affidavit shows that the requirements of the power of sale and of the statute have in all respects been complied with, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

³ Almost twenty years ago, REBA, one of the Amici submitting this

183, App. Form (12); Gabriel, 81 Mass.App.Ct. at 569-70. The Appeals Court noted that Mass. Gen. Laws ch. 183, § 8 provides that the statutory form "shall be sufficient," even if it is altered to suit the particular circumstances. Mass. Gen. Laws ch. 183, § 8; Gabriel, 81 Mass.App.Ct. at 568-69. In so doing, the Appeals Court specifically held that that the affidavit utilized in Gabriel was "as a matter of law 'sufficient' under G.L. c. 183, § 8, and accordingly also satisfied the requirements of G.L. c.244 § 15." Gabriel, 81 Mass.App.Ct. at 570.

The Amici urge the Court to follow the reasoning of the Appeals Court in finding the statutory affidavit sufficient, as the plain language of Mass. Gen. Laws ch. 183, § 8 is unambiguous, and following such a construction would not produce results that are absurd or contrary to the intent of the Legislature in the promulgation of such forms.

brief, published its own model foreclosure affidavit, the language of which was utilized in the Gabriel case, as well as in the present case. The language of REBA's affidavit closely tracks the statutory form at Mass. Gen. Laws ch. 183, Form (12), but includes the following additional provisions:

I also complied with Chapter 244, Section 14 of the General Laws, as amended, by mailing the required notices by certified mail, return receipt requested.

_(if checked) I also gave the Internal Revenue Service notice by mailing a Notice of Sale pursuant to Section 7425 (c) of the Internal Revenue Code.

**A. THE PLAIN LANGUAGE OF THE STATUTE
DECLARES THE MODEL FORECLOSURE AFFIDAVIT
SUFFICIENT**

As a matter of statutory construction, where "[t]he statutory language is plain and unambiguous", the Court is "constrained to follow it." White v. City of Boston, 428 Mass. 250, 253 (1998). The Court should only look past the plain language in limited circumstances "where following the Legislature's literal command would lead to an absurd result, or one contrary to the Legislature's manifest intention." Id. (citing Attorney Gen. v. School Comm. Of Essex, 387 Mass. 326, 336 (1982)). "A court cannot, however, resort to extrinsic sources to vary the plain meaning of a clear, unambiguous statute." Department of Community Affairs v. Massachusetts State College Bldg. Auth., 378 Mass. 418, 427 (1979).

Mass. Gen. Laws ch. 183, § 8 clearly and unambiguously declares that the model foreclosure affidavit and other statutory forms are "sufficient."⁴

⁴ Mass. Gen. Laws ch. 183, § 8 provides: "The forms set forth in the appendix to this chapter may be used and shall be sufficient for their respective purposes. They shall be known as "Statutory Forms" and may be referred to as such. They may be altered as circumstances require, and the authorization of such forms shall not prevent the use of other forms. Wherever the phrase "incorporation by reference" is used in the following sections, the method of incorporation as indicated in said forms shall be sufficient, but shall not preclude other methods."

If the statutory affidavit has become obsolete, then a legislative amendment is the appropriate remedy. Until and unless the statutory form is amended by the Legislature, the real estate bar should be permitted to rely without question on forms that have been declared sufficient by statute. As Mass. Gen. Laws ch. 183, § 8 is clear on its face, the Court may not consider extrinsic evidence, such as the history of amendments to Mass. Gen. Laws ch. 244, § 14, to find that the statutory form has become outdated or insufficient.

B. ALLOWING THE TRIAL COURTS TO CONSIDER THE STATUTORY FORM AFFIDAVIT AS EVIDENCE OF LEGAL TITLE WOULD NOT PRODUCE RESULTS THAT ARE ABSURD OR CONTRARY TO THE INTENT OF THE LEGISLATURE.

Although the statutory form affidavit may be considered as evidence of a post-foreclosure plaintiff's legal title, it has always been the case that the affidavit may be challenged by the introduction of contrary evidence. Atkins v. Atkins, 195 Mass. 124, 127 (1907) (citing Da Silva v. Turner, 166 Mass. 407, 412 (1896)). In post-foreclosure summary process proceedings, a defendant may challenge the plaintiff's legal title and the mortgagee's compliance with the statutory power of sale. Bailey,

460 Mass. at 333-334. A "title defense" includes any alleged failure of the mortgagee to send notice of the foreclosure sale in compliance with Mass. Gen. Laws ch. 244, § 14. Bailey, 460 Mass. at 333. However, the defendants carry the burden of raising and proving these allegations. Hughes v. Williams, 229 Mass. 467, 470, 118 N.E. 914 (1918) ("[T]he burden of proving [an affirmative defense]...rests upon the party asserting it.").

Permitting the trial courts to consider the statutory affidavit, or a version such as the REBA version which closely tracks the form, does not deprive defendants the opportunity to plead or otherwise raise, if appropriate, a viable summary process defense. As defendants in post-foreclosure summary process actions retain the right to challenge the affidavit and the foreclosing mortgagee's notice practices, a trial court's consideration of the statutory form affidavit will not produce results that are absurd or unreasonable.

Finally, the real estate bar's use of an abbreviated foreclosure affidavit comports with public policy and legislative intent. A typical foreclosure process follows a lengthy period of default during which

the borrower receives multiple notices, some of which may be required by statute, and an opportunity to cure the default condition.⁵ During the foreclosure process, the borrower receives a letter when the foreclosure is commenced, service of a Land Court complaint,⁶ and notice of sale both by publication and certified mail.⁷ If no alternative arrangements can be made, the foreclosure concludes with a public sale at the mortgagor's property.⁸ The process is extensive and to document in detail all of these steps would result in a dense, confusing affidavit that does not provide a meaningful improvement over the statutory form.

The Legislature's purpose in promulgating the statutory forms is evident from the title of the legislation resulting in the creation of such forms - "An Act to Shorten the Forms of Deeds, Mortgages, and Other Instruments Relating to Real Property." St.

⁵ See Mass. Gen. Laws ch. 244, § 35A. Although § 35A is a statutory requirement that must be complied with prior to commencing a foreclosure, it is not part of the statutory power of sale. See U.S. Bank Nat'l Ass'n v. Ibanez, 458 Mass. 637, 646, 941 N.E.2d 40 (2011) (statutory power of sale consists of Mass. Gen. Laws ch. 183, § 21 and Mass. Gen. Laws ch. 244, §§ 11-17C).

⁶ See Chapter 57 of the Acts of 1943.

⁷ Notice and publication requirements for foreclosures under statutory power of sale are set forth in G.L. c. 244, § 14.

⁸ See Mass. Gen. Laws ch. 183, § 21 (foreclosure under statutory power of sale requires a public auction).

1912, c. 502. See Commonwealth v. Savage, 31 Mass.App.Ct. 714, 716 n. 4 (1991) ("The title of an act is part of it and is relevant as a guide to legislative intent"). The title of the Act reflects the Legislature's desire to require the use of abbreviated real estate forms. Although foreclosure affidavits could be drafted to include greater detail regarding the notices of foreclosure sale or other statutory requirements, public policy as embodied in St. 1912, c. 502, does not require the use of extremely detailed affidavits. As such, the statutory form remains sufficient as a matter of law.

III. IF THE COURT DETERMINES THAT AN AFFIDAVIT TRACKING THE LANGUAGE OF THE STATUTORY FORM IS INSUFFICIENT OR INADMISSIBLE, IT SHOULD DO SO PROSPECTIVELY.

If the Court finds that the statutory form affidavit is somehow insufficient or that the trial courts may not consider the form as evidence of title, it should do so on a prospective basis. While the Court traditionally has given prospective effect to its decisions in very limited circumstances, those have included circumstances where the ruling announces a change that affects property law. Eaton v. Federal Nat'l Mortgage Ass'n, 462 Mass. 569, 588 (2012)

(citing Papadopoulos v. Target Corp., 457 Mass. 368, 385 (2010) and Payton v. Abbott Labs, 386 Mass. 540, 565 (1982)). In the property law context, the Court applies decisions prospectively out of "concern for litigants and others who have relied on existing precedents." Eaton, 462 Mass. at 588 (quoting Powers v. Wilkinson, 399 Mass. 650, 662 (1987)).

This Court has established the legal framework for analyzing whether a ruling should be prospective. In determining whether a decision should be prospective the Court looks at three factors: (1) whether a new principle has been established whose resolution was not clearly foreshadowed; (2) whether retroactive application will further the rule; and (3) whether inequitable results, or injustice or hardships, will be avoided by a holding of nonretroactivity. Keller v. O'Brien, 425 Mass. 774, 782 (1997) (citing McIntyre v. Associates Fin. Servs. Co. Mass., 367 Mass. 708, 712 (1985) and Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971)).

A ruling invalidating a statutory affidavit form in use since 1912 has never been foreshadowed. This is the case where such a rule has not been foreshadowed

by any prior appellate decision and is contrary to the plain meaning of Mass. Gen. Laws. Ch. 183, § 8.

Real estate practitioners in the Commonwealth have relied upon this form affidavit for decades in determining that a foreclosure is valid for the purpose of passing title. This Court has recognized the principle that the fact of bar reliance in the past must be given weight where a rule involving real estate is involved. Whitinsville Plaza Inc. v. Kotseas, 378 Mass. 85, 97-98 (1979)

Second, retroactive application of a rule invalidating the statutory form to real property titles obtained by foreclosure or having a foreclosure in the chain of title would not further the new rule. In most cases it would be impractical and sometimes impossible to go back and determine whether the affidavit was complete, accurate and "sufficient" over the past century. As a matter of equity and certainty of title to real property, such a requirement, if imposed, can only be fairly applied prospectively.

Finally, retroactivity is generally not appropriate where it would alter rights in Massachusetts contract and property law and impose hardship on unsuspecting parties. Knott v. Racicot,

442 Mass. 314, 324 (2004) (citing MacCormack v. Boston Edison Co., 423 Mass. 652, 657 (1996)). To disturb the contract rights and expectations of a sizeable class of parties who have bound themselves under the previous law would potentially result in hardship. Knott, 442 Mass. at 324.

Property owners whose title includes a foreclosed mortgage have a right to rely on title opinions based on the prior common law understanding and jurisprudence. Tamerlane Corp. v. Warwick Ins. Co., 412 Mass. 486, 490 (1992). If this Court overrules prior legal precedent relative to permitting reliance upon the statutory affidavit as evidence that Mass. Gen. Laws ch. 244, s.14 has been complied with, there would be a cloud on the title to virtually every foreclosed property in Massachusetts. Consumers who have purchased property at foreclosure sales relying on representations of the bar and title insurers as to the sufficiency of the existing affidavit would be unfairly prejudiced by retroactive application, as would any person whose title has a foreclosure in the chain. There would be a compelling inequity in any retroactive application of a decision which would divest such purchasers of their

respective titles. Blood v. Edgar's, Inc., 36 Mass.App.Ct. 402, 407 (1994). Imposing such hardship on such a sizeable class of unsuspecting parties who have bound themselves under prior law would not be warranted.

CONCLUSION

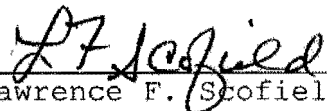
The legal issue in the lower court summary process proceedings was whether the plaintiff acquired legal title by compliance with the statutory foreclosure process. The trial court was entitled to consider the statutory form affidavit as evidence of legal title, as well as all the other evidence presented, as part of the summary judgment record. A summary process defendant, such as Mr. Hendricks, has the right to challenge evidence presented on summary judgment by the introduction of contrary evidence, but the defendant did not do so in this case. The Court should affirm the trial court on this ground. The Court should decline to invalidate a statutory form in use for a century as sufficient proof of title to foreclosed property in Massachusetts. This affidavit form has been relied on in good faith by the courts, the real estate bar and members of the public involved in real estate transactions in the Commonwealth to comply with Mass. Gen. Laws ch. 244, § 15 and

establish title to thousands of foreclosed properties since 1912.

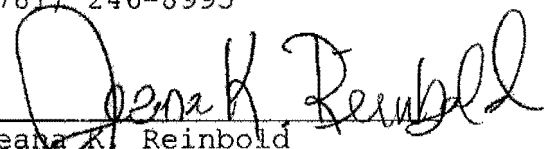
Respectfully submitted,

The Real Estate Bar
Association for
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By their attorneys,



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs.



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