

APPENDIX

SEPARATE ORDERS FROM THE LOWER COURTS

Connecticut Superior Court LLICV166014383-S

U.S. Bank Trust, N.A. as Trustee for LSF9 Master Trust v. O'Brien, Mark E. et al.

Summary Judgment Motion by Plaintiff denied. 6/4/2018. "There is a genuine issue of material fact as to whether notice of default and the intent to accelerate was properly given." [John David Moore, J].

Summary Judgment Motion by Plaintiff denied. 12/7/2017. "...the Plaintiff has not met his burden of showing that is the holder of the promissory note." [John Pickard, J].

Order of Strict Foreclosure. 5/20/2019. [John Pickard, J].

DOCKET NO: LLICV166014383S

**U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9
MASTER V. O'BRIEN, MARK E. ET AL**

**SUPERIOR COURT JUDICIAL DISTRICT OF
LITCHFIELD AT TORRINGTON 5/20/2019 ORDER**

The following order is entered in the above matter:

ORDER: This case was brought by the plaintiff, U.S.

Bank Trust, N.A., as Trustee for LSF9 Master
Participation Trust, to foreclose on a mortgage
encumbering property at 114 Wetmore Avenue in
Winsted, Connecticut (“the property”). The current
defendants are Mark E. O’Brien (“Mr. O’Brien”),
Kathleen M. O’Brien, Thomas J. O’Brien, and the
State of Connecticut, Department of Revenue
Services. Mr. O’Brien has appeared on his own
behalf, but the other defendants are non-appearing.
The non-appearing defendants were defaulted for
failure to appear on February 17, 2017. The matter
was tried to the court on February 27, 2019. The
plaintiff presented testimony from witnesses and
submitted documentary evidence. Mr. O’Brien
appeared at the trial, cross examined witnesses and
was heard. The other defendants did not appear for

trial. The plaintiff and Mr. O'Brien submitted post-trial briefs, the last of which was filed on March 27, 2019. The operative complaint is dated December 2, 2016. Mr. O'Brien filed an answer dated February 27, 2017 in which he admits that on December 16, 2004 Caroline S. O'Brien borrowed \$50,000 from Fleet National Bank ("Fleet") as evidenced by a promissory note and that, to secure the note, she mortgaged the property to Fleet. He also admits that Fleet merged with and into Bank of America, NA. and that the mortgage was assigned to the plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust. He denies that the plaintiff is the party entitled to collect the debt and enforce the mortgage. Based on military affidavits on file, the court finds that the defendants, Kathleen M. O'Brien and Thomas J. O'Brien, are not in the military service of the United States. The court heard

evidence from Joseph Grella, a real estate appraiser. Based on his testimony, the court finds that the value of the property is \$110,000. The court next heard from Phillip Luna, an employee of Caliber Home Loans, Inc.. Caliber is a mortgage loan servicer which services the loan being foreclosed upon. Mr. Luna is in charge of a portfolio of loans including this one. The issue before the court is whether Mr. Luna's testimony is sufficient to prove that the plaintiff owns the loan and is entitled to prosecute this foreclosure. The plaintiff offered into evidence affidavits to establish that on June 23, 2009 the amount of the loan was increased to \$119,000 and that a new promissory note was signed by Caroline S. O'Brien acting by her attorney in fact, Kathleen M. O'Brien; that this promissory note was lost and that a good faith effort has failed to locate it; that the mortgage securing this note was duly assigned to the

plaintiff; and that the note is in default and the total debt due to the plaintiff is \$184,358.02. Despite the defendant's objections to these affidavits, the court admitted them as full exhibits and will not revisit this decision. The court finds that Mr. Luna's testimony is admissible and persuasive. The arguments made by Mr. O'Brien in his memorandum of law are rejected. Most of them rely on citations to internet articles which were not introduced into evidence. He makes allegations of fact which are not based on any evidence offered or admitted at the trial. Based on the evidence which was admitted the court finds that the plaintiff is the party entitled to collect the debt reflected by the lost note and is the party entitled to enforce the mortgage. The court finds that the note and mortgage are in default by virtue of nonpayment of the monthly installment due on April 28, 2011 and every month thereafter, and

that the plaintiff has exercised its option to accelerate the loan. A comparison of the total debt and the value of the property reveals that there is no equity. Therefore, the LLICV166014383S 5/20/2019

Page 1 of 2 court orders a judgment of strict foreclosure with the first law day being Monday, August 5, 2019. The plaintiff is awarded an appraisal fee of \$450, title search fee of \$225, and attorneys fees of \$2,975.

/s/ JOHN PICKARD, J

Appeal denied:

STATE OF CONNECTICUT

APPELLATECOURT

Date: Hartford, March 10, 2020

To the Chief Clerk of the Appellate Court.

The Appellate Court has decided the following case:

U.S. BANK TRUST, N.A., TRUSTEE v. MARK E. O'BRIEN ET AL.

Opinion Per Curiam.

Docket No. AC 43004

Trial Court Docket No. LLICV166014383S

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

Alexandra D. DiPentima,

Chief Judge

Motion for Reconsideration en banc denied:

APPELLATE COURT

STATE OF CONNECTICUT

AC 43004

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST v. MARK E.
O'BRIEN, ET AL.

APRIL 15, 2020

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT,
FILED MARCH 19, 2020, FOR RECONSIDERATION
EN BANC, HAVING BEEN PRESENTED TO THE
COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

/S/ SUSAN REEVE DEPUTY CLERK

**Petition for certification to appeal from the
Appellate Court 196 Conn. App 903 (AC43004) is
denied. 6/10/2020:**

SUPREME COURT
STATE OF CONNECTICUT
PSC-190465

U.S. BANK TRUST N.A., AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST v. MARK E.
O'BRIEN ET AL.

CORRECTED ORDER ON PETITION FOR
CERTIFICATION TO APPEAL

The defendant Mark E. Obrien's petition for
certification to appeal from the Appellate Court, 196
Conn App 903 (AC 43004), is denied.

Mark E. O'Brien, self-represented, in support of the
petition.

Adam L. Avallone, in opposition.

Decided June 10, 2020

By the Court,

/s/ L. Jeanne Dullea

Assistant Clerk-Appellate

**Motion for Stay pending Petition for Writ of
Certiorari United States Supreme Court.
Denied. 7/31/2020:**

APPELLATE COURT
STATE OF CONNECTICUT
AC 43004

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST v. MARK E.
O'BRIEN ET AL.

JULY 31, 2020

O R D E R

THE MOTION OF THE DEFENDANT-
APPELLANT, FILED JULY 14, 2020, FOR STAY
PENDING PETITION FOR WRIT OF CERTIORARI
UNITED STATES SUPREME COURT, HAVING
BEEN PRESENTED TO THE COURT, IT IS
HEREBY ORDERED DENIED.

BY THE COURT,
/S/PETER D. KEANE
ASSISTANT CLERK-APPELLAT

