UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1101

IN RE: ANDY LUU TRAN,

Debtor,

_____

ANDY LUU TRAN,

Appellant,

v.

CITIZENS BANK, N.A., f/k/a RBS Citizens; HERBERT JACOBS,

Defendants - Appellees.

_____

OPENING BRIEF FOR APPELLANT
(corrected

ON APPEAL FROM AN ORDER OF THE BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS, AS AFFIRMED BY
THE DISTRICT COURT

FOR THE APPELLANT:
David G. Baker, Esq.
255 Massachusetts Avenue #614
Boston, MA. 02115
(617) 340-3680
CA # 43815

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

JURISDICTIONAL STATEMENT

This is an appeal from orders/decisions of the Bankruptcy Court for the District of Massachusetts, as affirmed by the district court, granting summary judgment against Mr. Tran and finding that the pre-petition transfer of his equity of redemption, post-foreclosure, from a mortgage encumbering title to his home was not avoidable, based on an affidavit of sale rather than a deed. Such orders are final and immediately appealable pursuant to 28 USC §158(a)(1) and (b). In re Atlas IT Export Corp., 761 F. 3d 177, 182 (1st Cir. 2014), *citing, inter alia*, In re Bullard, 752 F. 3d 483 (1st Cir. 2014), *aff'd,* 135 S.Ct. 1686 (2015). The bankruptcy court had jurisdiction pursuant to 28 USC §1334 by reference from the District Court pursuant to 28 USC §157(a). Venue is appropriate pursuant to 28 USC §1408 since Mr. Tran lives in Massachusetts. The District Court entered its judgment on January 23, 2024, and a Notice of Appeal to this court was filed the same day.

Issues Presented and Standard of Review

This court reviews findings of fact for clear error and conclusions of law de novo. Interpretation of the statutory provisions of the bankruptcy code is a question of law which the court reviews de novo. See In re Soares, 107 F. 3d 969, 973 (1st Cir. 1997). This court affords no deference to the district

court's opinion, see In re Kupperstein, 943 F. 3d 12, 21 (1st Cir. 2019), and reviews the bankruptcy court's order independently, Grella v. Salem Five Cent Sav. Bank, 42 F. 3d 26, 30 (1st Cir. 1994).

In objecting to Jacobs' motion to dismiss this appeal, Tran posited three substantial questions (subject to revision or addition herein), all of which are questions of law:

1. After an affidavit or memorandum of sale is executed and until a valid foreclosure deed is recorded, what is the nature of a mortgagor's "ownership of the equity"?
2. Is "ownership of the equity" sufficient to support an avoidance action in a bankruptcy case pursuant to 11 USC §522(h)?
3. If the affidavit or memorandum, in proper form, is recorded together with a void (because unnotarized) foreclosure deed, does the affidavit or memorandum cure the defect in the deed?

STATEMENT OF THE CASE

On September 13, 2022, Mr. Tran commenced a chapter 13 bankruptcy case; he had received a chapter 7 discharge on February 25, 2020, in a prior case. On the next day, he commenced an adversary proceeding for the purpose of avoiding an unperfected prepetition transfer of his interest in his home by

way of a foreclosure sale. Appellee Herbert Jacobs filed an answer on November 21, 2022, and Citizens Bank (the foreclosing mortgagee) filed an answer on October 6, 2022. Pre-petition, a foreclosure deed was recorded in the Middlesex South Registry of Deeds on September 8, 2022, at book 80686, page 187.

However, it is undisputed that no *notarized* deed complying with G. L. c. 183, § 29, et seq., was recorded pre-petition. There was only an Affidavit of Sale, which is not the same thing and not a part of the deed. The deed that was recorded was missing a notarization altogether, not merely the required signatures, as in In Re Mbazira, 15 F. 4th 106 (1st Cir. 2021) (in which there was a notary certificate, but it was not signed by the mortgagor/debtor; affirming the bankruptcy court's avoidance of the mortgage). *See also* In re Pereira, 791 F. 3d 180, 185 (1st Cir. 2015) (citing the bankruptcy court's decision In re Mbazira with approval). Tran and his husband continue to reside in the property.

The bankruptcy court held, essentially, that an Affidavit of Sale attached to the unnotarized deed sufficed to give a third party constructive notice of the conveyance of the property to appellee Herbert Jacobs. For the reasons given within, Mr. Tran believes that this is an error of law; there are no factual disputes that need to be addressed herein.

The bankruptcy court denied a timely motion for reconsideration. Mr. Jacobs has filed a motion to dismiss this appeal on the ground that there is no substantial question of law presented. Mr. Tran has objected to that motion.

SUMMARY OF THE ARGUMENT

Mr. Tran's argument is straightforward: an unnotarized deed should not be recorded, but if it is, it is void and gives no notice to anyone, constructive or otherwise. A memorandum or affidavit of sale is not a deed. Because the memorandum or affidavit of sale is required to be recorded with the deed, it lives or dies (so to speak) with the deed; that is, if the deed is void, so is the memorandum or affidavit (hereinafter solely "affidavit").

The district court was critical of Mr. Tran's focus on the deed. That is an error of law because it improperly elevates the affidavit to the same status as a deed, and it is the deed that matters, not the affidavit. There is no case law in Massachusetts approving of the result below. Indeed, it is directly contrary to the relevant statutory provisions and case law. Furthermore, in any foreclosure, there are two transfers: the transfer of the mortgagor's equity of redemption to the high bidder; and the transfer of title to the property by the

mortgagee conveying a deed to the buyer after the consideration is paid.

Thus, both the bankruptcy court and the district court erred and should be reversed.

ARGUMENT

In his motion to dismiss this appeal, Jacobs asserts that the following, apparently in its entirety, constitutes the "uncontested" material facts as stated by Judge Young:

> Tran granted Citizens Bank N.A. f/k/a RBS Citizens, N.A. ("Citizens Bank") a mortgage on his property. Citizens Bank foreclosed on the property and sold it to Jacobs who was the highest bidder at the foreclosure auction sale. Citizens Bank and Jacobs executed a memorandum of sale. Subsequently, and prepetition, an Affidavit of Sale and a foreclosure deed, **the latter of which Tran alleges is defective**, were recorded. When asked to vacate the property, Tran filed for bankruptcy.

(emphasis added). Tran does, indeed, allege that the deed is defective, and there is no question of law or fact on that point. A copy of the deed is in the appendix. It is nose-on-the-face plain that it is defective because it was not notarized[1]. Judge Young correctly looked to this court's decision in In re Mbazira, 15 F. 4th 106 (1st Cir. 2021)[2], for guidance as to the effect of an unnotarized deed. The Mbazira court held that an unnotarized mortgage essentially is void and

[1] It may have been notarized before being recorded, but as recorded, it is not notarized, and that is all that matters, at least for notice purposes.
[2] The undersigned represented Ms. Mbazira at all stages of that litigation.

cannot give notice of anything, consistent with Massachusetts law. A mortgage, in effect, is a deed in that it transfers legal title to the property to the mortgagee, Galiastro v. Mortgage Electronic Registration Systems, Inc., 467 Mass. 160, 166 (2014), so the reasoning in Mbazira applies in this case.

The courts below, and Mr. Jacobs, all focus on the effect of a foreclosure auction and the execution of a memorandum or affidavit of sale at the conclusion of the auction. Courts in the Commonwealth have exacerbated the interpretive problem by using language that muddies the issue, particularly by saying that the execution of the memorandum or affidavit "extinguishes" the mortgagor's equity of redemption. All well and good so long as it is understood that the equity of redemption is not *entirely* extinguished – it is merely transferred to the high bidder at the auction or to the mortgagee, if no high bid was received. The high bidder (if there is one) still must pay the consideration, i.e., the amount of the bid, before he can receive a foreclosure deed. Thus so long as a bankruptcy case is filed prior to the recording of a valid (i.e., notarized) foreclosure deed, a debtor may avoid the transfer since it is unperfected. In re Mularski, 565 B.R. 203 (Bankr. D. Mass. 2017). Foreclosure of a debtor's equity of redemption is a "transfer". 11 USC §101(54).

Thus while a *mortgagor's* equity of redemption arguably is "extinguished" upon the execution of an affidavit or memorandum of sale:

> Until the contract of sale is completed the mortgagor has an equity in the property, but it is not strictly accurate to designate this interest as an equity of redemption. The mortgagor, after a valid auction sale under a power of sale in the mortgage deed, has no right to redeem, although he has an ownership of the equity.

White v. Macarelli, 267 Mass. 596, 599 (1929). A contract of sale is "completed" when the consideration is paid and the deed delivered and recorded. This language – in a case cited by Judge Young – was largely ignored by him and the bankruptcy court. The court in Beal v. Attleborough Savings Bank, 248 Mass. 342 (1924), said: "The auction sale was in effect a mere contract for a sale. The sale was not executed until the deed was delivered, when the title passed to the purchaser". Judge Young correctly notes that subsequent courts have (as stated above) muddied the waters about what that phrase means, but where Judge Young erred is in elevating what is arguably *dicta* in subsequent Massachusetts cases, especially the Appeals Court, and federal court cases, that seem to explain and/or distinguish that phrase, and ultimately apparently elevating it beyond its plain meaning.

A memorandum or affidavit of sale, in the statutory form, is not a deed.

> The purposes of a statutory form are those of any affidavit of foreclosure sale: to be recorded *with the foreclosure deed* and "secure the preservation of evidence that the conditions of the power of sale named in the deed have been complied with." Field v. Gooding, 106 Mass.310, 312 (1871). See Atkins v. Atkins, 195 Mass. 124, 127 (1907); G. L. c. 244, § 15.
>
> An affidavit that meets the requirements of G. L. c. 244, § 15, does nothing more. Such an affidavit is not conclusive proof of compliance with G. L. c. 244, § 14. See Atkins v. Atkins, *supra*. It is merely "evidence that the power of sale was duly executed."

Federal National Mortgage Association v. Hendricks, 463 Mass. 635 (2012) (emphasis added). Affidavits of sale are "not conclusive proof of compliance with G.L. c. 244 §14." Id. The courts below erred in essentially holding otherwise. The meaning of a statute is determined by "examin[ing] the statute as a whole, giving due weight to design, structure, and purpose as well as to aggregate language." In re Hart, 328 F. 3d 45, 48 (1st Cir. 2003). The courts below erred by conflating an affidavit with a deed.

Reverting now back to White v. Macarelli, *supra,* the court held that when the auction is completed by execution of a memorandum or affidavit of sale, the mortgagor no longer has an "equity of redemption", but has an ownership of the equity.

After an affidavit or memorandum of sale is executed and until a valid foreclosure deed is recorded, what is the nature of a mortgagor's "ownership of the equity"?

"Equity", in this context, means the value of the property above any valid and subsisting liens, including mortgages, as well as a possessory right. A mortgagee cannot claim ownership of the unencumbered value of the property. In a properly completed foreclosure, that value is known as the "surplus", Duclersaint v. Federal National Mortgage Association, 427 Mass. 809 (1998), which would be an unencumbered property right. *See also* Lam v. PNC MORTG., 130 F. Supp. 3d 429, 440 (D. Mass. 2015) (quoting Duclersaint), and Flores v. OneWest Bank, FSB, 172 F. Supp. 3d 391, fn.5 (D. Mass. 2016) (also quoting Duclersaint, and citing Mass. Gen. Laws ch. 183, § 27). Numerous bankruptcy courts have held that this "equity" is sufficient to require that a creditor seek relief from the automatic stay of 11 USC §362 before proceeding to evict the mortgagor. *See, e.g.*, In re Sullivan, 551 BR 868 (Bankr. D. Mass. 2016).

Jacobs' citation to In re Crichlow, 322 B.R. 229 (Bankr. D. Mass. 2004), does not help his cause since Crichlow pertained to a debtor's right to cure mortgage arrears in a chapter 13 case after a foreclosure; it had nothing to do with avoidance of the transfer of the equity of redemption. It is also incorrect in limiting the post-auction equity to rights in the surplus since, as argued above and several courts have held, the new owner must seek relief from the automatic stay before evicting the debtor since the debtor has a possessory right in the property.

Is "ownership of the equity" sufficient to support an avoidance action in a bankruptcy case pursuant to 11 USC §522(h)?

In his reply to the objection to his motion to dismiss this appeal Jacobs answers this question with a flat "No", without explanation. Without an explanation, his answer is useless and not proper appellate advocacy. The "settled appellate rule [is] that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." US v. Zannino, 895 F. 2d 1, 17 (1st Cir. 1990).

11 USC 522(h) states, in full:

> **(h)** The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—
>
> **(1)** such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and
>
> **(2)** the trustee does not attempt to avoid such transfer.

As argued above and cases have consistently held, a mortgagor has an "equity" in the property even after a foreclosure auction, until the property is conveyed by a valid deed and an eviction judgment is entered. Property rights in bankruptcy are determined by reference to state law unless some federal interest requires otherwise, Butner v. United States, 440 US 48 (1979), and there is no federal interest at stake

here. There is no reasonable dispute that Mr. Tran could have exempted his home under applicable state law if the transfer had been avoided by the trustee, who did not attempt to do so, so it was proper for him to attempt the avoidance.

The answer, then, should be "Yes".

If the affidavit or memorandum, in proper form, is recorded together with a void (because unnotarized) foreclosure deed, does the affidavit or memorandum cure the defect in the deed?

Jacobs says that the notarization of the deed is irrelevant. That cannot be right. An unnotarized deed is void and cannot give notice of anything. In Re Mbazira, 15 F. 4th 106 (1st Cir. 2021) (unnotarized mortgage deed). As argued above at page 9, an affidavit of sale does nothing more than affirm that the power of sale was duly executed, and is not a deed of conveyance in and of itself. Beal v. Attleborough Savings Bank, 248 Mass. 342 (1924).

Jacobs' citation to In re Piper, 291 B.R. 20 (Bankr. D. Mass. 2003) is inapposite because it pertains to a tax lien, which the court held could not be avoided via 11 USC 522(h). The lien in this case is a mortgage encumbering title to Mr. Tran's home, and there is no dispute that he can exempt it under either state law or bankruptcy law and thus avoid the foreclosure. 11 USC §522(d). Thus the answer to the question should be "No".

CONCLUSION

The courts below erred as a matter of law by holding that Mr. Tran could not avoid the transfer of his equity of redemption to Mr. Jacobs. Clearly, he can avoid the transfer since he could exempt his home under state or bankruptcy law. They should be reversed and the case remanded for entry of an order avoiding the transfer.

April 4, 2024

Respectfully submitted,
Andy Luu Tran, appellant
By his attorney,

/s/ David G. Baker
David G. Baker, Esq.
255 Massachusetts Avenue #614
Boston, MA 02115
BBO# 634889
617-340-3680

Certificate of Service

The undersigned states upon information and belief that the within corrected Opening Brief was served on the person(s) named below by the court's CM/ECF system on the date set forth above.

/s/ David G. Baker
David G. Baker, Esq.

Lawson Williams on behalf of appellee Citizens Bank N.A. f/k/a RBS Citizens N.A.
lawson.williams@brockandscott.com, WBECF@brockandscott.com

John F. Willis on behalf of appellee Herbert Jacobs -
john.willis@fnf.com

Certificate of Compliance With Type-Volume Limit,Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. 32 because this document contains 2,653 words in the section commencing with the Jurisdictional Statement and ending just before the signature line.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a monospaced typeface using Courier New 12 point type on a Macintosh computer using Microsoft Word.

Respectfully submitted,

/s/ David G. Baker
David G. Baker, Esq.

ADDENDUM

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: ANDY LUU TRAN, Debtor	Chapter 13 Case No. 22-40664-CJP
ANDY LUU TRAN Plaintiff v. CITIZENS BANK N.A. F/K/A RBS CITIZENS N.A. AND HERBERT JACOBS Defendants	AP No. 22-04019-CJP

ORDER

The debtor-plaintiff Andy Luu Tran (the "Debtor") commenced this adversary proceeding to seek to avoid the transfer of his interest in real property located at 47 Clinton Street, Framingham, Massachusetts (the "Property") as an "unperfected pre-petition transfer" because of a defect in the recorded foreclosure deed. *See* Compl. [Dkt. No. 1]. After each of the defendants, Citizens Bank N.A. f/k/a RBS Citizens N.A. ("Citizens"), the foreclosing lender, and Herbert Jacobs ("Jacobs"), the purchaser at foreclosure, answered the complaint, the Debtor sought judgment on the pleadings, *see* Motions for Judgment on the Pleadings [Dkt. Nos. 6 and 16, respectively], which, with the assent of all parties at the conclusion of a hearing held on December 30, 2022 (the "Hearing"), the Court converted to motions for summary judgment (together, the "Debtor's Motions"). The parties were given an opportunity to file supplemental

pleadings, including briefing, concise statements of material facts, and replies. Jacobs filed a cross motion for summary judgment [Dkt. No. 29] ("Jacob's Motion"), and Citizens requested that this Court enter summary judgment in its favor in the Response filed at Dkt. No. 35 ("Citizen's Response"). Upon consideration of the Debtor's Motion, Jacob's Motion and Citizen's Response, and all related responses, replies, briefs, affidavits and other documents filed on the docket, in addition to the arguments made by counsel at the Hearing, I conclude that no further hearings are necessary in order to determine the motions and no facts are in dispute that are material to my determination. For the reasons that follow, I grant summary judgment in favor of Citizens and Jacobs and against the Debtor.

Facts

The facts necessary for determining this matter are drawn from the statements of uncontested facts filed separately by Jacobs, *see* Statement of Material Facts [Dkt. No. 33] ("Jacob's Material Facts Statement"), or incorporated in other pleadings by the Debtor and Citizens, those facts in the complaint that the defendants admit are true, and the documents attached to Jacob's Material Facts Statement as authenticated by the affidavit of his counsel, John F. Willis, in support of Jacob's Motion [Dkt. No. 32] (the "Willis Affidavit"). I also take judicial notice of the docket and pleadings in the Debtor's chapter 13 bankruptcy case and this adversary proceeding.[1]

The parties do not dispute that Citizens conducted an auction of the Property at which Jacobs was the high bidder and that a memorandum of sale (the "Memorandum of Sale") was executed by Citizens and Jacobs before the Debtor filed his petition. *See* Jacob's Material Facts Statement, Ex. C. An affidavit (the "Affidavit of Sale") that states that Citizens complied with

[1] A court may take judicial notice of its own docket. *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 196 F.3d 1, 8 (1st Cir. 1999).

the notice requirements of Mass. Gen. Laws ch. 244, § 14 was recorded approximately five (5) days before the Debtor filed his petition. *See* Jacob's Material Facts Statement, Ex. B; *see also* Willis Aff., ¶¶ 2-3. The Affidavit of Sale also confirms the identity of the highest bidder and the purchase price of the Property at the foreclosure. *See id.* (providing "[p]ursuant to said notice at the time and place therein appointed, to wit, August 16, 2022 at 12:00 PM where and when Citizens Bank, N.A. f/k/a RBS Citizens, N.A. caused to be sold the mortgaged premises at public auction by Matthew J. Katz, a duly licensed auctioneer of Landmark Auction Company, to the highest bidder being Herbert Jacobs for TWO HUNDRED THIRTY-FIVE THOUSAND and 00/100 Dollars ($235,000.00)"). A foreclosure deed was also recorded concurrently with the Affidavit of Sale that did not include the signature page. *Id.*

Discussion

Summary judgment is appropriate if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of a material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), made applicable by Fed. R. Bankr. P. 7056. "A genuine issue is one supported by such evidence that a reasonable jury, drawing favorable inferences, could resolve in favor of the nonmoving party." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (quotations and citation omitted). A disputed fact is material if it "might affect the outcome of the suit under the governing law" and those facts "that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where there are cross-motions for summary judgment, courts "employ the same standard of review, but view each motion separately, drawing all inferences in favor of the nonmoving party." *Fadili v. Deutsche Bank Nat'l Trust Co.*, 772 F.3d 951, 953 (1st Cir. 2014) (citation omitted).

The legal issue presented in this case is whether, under these facts, a trustee in bankruptcy (and, thus, the Debtor having standing under 11 U.S.C. § 522(h)[2]) could avoid the prepetition transfer of the Property as a hypothetical good faith purchaser by virtue of § 544 "strong-arm" powers. *See* 11 U.S.C. §§ 522(h) and 544.

In *In re Mularski*, Judge Hoffman provided a thoughtful overview of the rights and interests of a mortgagor in Massachusetts and how those rights and interests are impacted when a mortgagee exercises a statutory power of sale provided in a mortgage. *Weiss v. U.S. Bank, N.A. (In re Mularski)*, 565 B.R. 203, 205-08 (Bankr. D. Mass. 2017). I adopt that analysis and restate that, because Massachusetts is a "title state," the debtor conveyed title to the property to Citizens at the time he granted the mortgage subject to his right of redemption. It is settled law that, when a foreclosure auction concludes with an accepted bid and the execution of a memorandum of sale, a mortgagor's equity of redemption is extinguished. *See In re Crichlow*, 322 B.R. 229, 236 (Bankr. D. Mass. 2004) (citing *Outpost Café Inc. v. Fairhaven Sav. Bank*, 3 Mass. App. Ct. 1, 7 (1975) ("Because the equity of redemption was barred at least as early as the point of signing the memorandum of sale, the property was sold at that point and the mortgagee was unable to tender after that point)); *see also In re Grassie*, 293 B.R. 829, 831 (Bankr. D. Mass. 2003); *In re Dow,* 250 B.R. 6, 8 (Bankr. D. Mass. 2000). A foreclosure sale is not "completed" by delivery of the deed; delivery of the deed implicates certain limited rights that may be retained by a mortgagor

---

[2] Unless otherwise noted, all section references herein are to Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code" or "Code").

Section 522(h) allows debtor to avoid certain transfers of exempt property provided: "(1) the trustee could have brought such an action; (2) the trustee did not bring the action; (3) the transfer was involuntary and the debtor did not conceal the property or the debtor could have avoided the transfer under § 522(f)(2); and (4) the debtor could have exempted such property had the trustee actually avoided the transfer." *Giacchetti v. Everhome Mortg. (In re Giacchetti)*, 584 B.R. 441, 447 (Bankr. D. Mass. 2018) (quoting *Callanan v. Int'l Fid. Ins. Co. (In re Callanan)*, 190 B.R. 137, 139 (Bankr. D. Mass. 1995)).

of entitlement to receive residual amounts after the mortgage has been satisfied with recording of the deed. *See In re Crichlow*, 322 B.R. at 237 (citing *White v. Marcarelli*, 267 Mass. 596, 166 N.E. 734 (1929)). These limited rights do not revive an extinguished equity of redemption. *See id*.

Could a trustee, cloaked with the status of a good faith purchaser under § 544(a)(3), avoid the transfer of equitable title to Citizens? "'To be good against the trustee, a transfer of an interest in the debtor's real property must be so far perfected as to be effective against a bona fide purchaser of that real estate from the debtor under nonbankruptcy law….'" *In re Mularski*, 565 B.R. at 205-06 (quoting Ginsberg & Martin on Bankruptcy, § 9.01 (Westlaw 2016)). In *In re Mularski*, where the memorandum of sale, affidavit of sale, and foreclosure deed were executed prepetition, but the affidavit of sale and foreclosure deed were not recorded until after the petition date, the court determined that there was no constructive notice of the transfer under Massachusetts law, and the trustee could state a claim to avoid the transfer of the equity of redemption. Judge Hoffman speculated that, if a foreclosing mortgagee recorded an affidavit providing notice that the foreclosure sale had been conducted as contemplated by Mass. Gen. Laws ch. 244, § 15, that would arguably "put the world on notice … so that failure to record the foreclosure deed itself might not present difficulties." *In re Mularski*, 565 B.R. at 208 n.2 (citation omitted).[3]

The Court does not have to reach whether the incomplete foreclosure deed conveying the property to Jacobs could provide constructive notice because the Affidavit of Sale that was

[3] In *In re Giacchetti*, in the context of a motion to dismiss addressing claim preclusion and the debtor's standing to assert surviving claims not precluded, Judge Hoffman concluded where a memorandum of sale was executed, but the sale was not completed and a foreclosure deed not recorded, that "[t]hus, a bankruptcy trustee cloaked with the status of a bona fide purchaser under Bankruptcy Code § 544(a)(3) may avoid the transfer of a debtor's interest in property at a foreclosure sale if the deed was not recorded prior to the bankruptcy filing." 584 B.R. at 448. In that case, presumably no affidavit of sale had been recorded, and the decision references no other form of constructive notice.

recorded did provide constructive notice to a hypothetical good faith purchaser for purposes of §§ 522(h) and 544, and, as such, a trustee could not avoid the transfer (extinguishment) of the Debtor's equity of redemption on the Property.[4] "As between the debtor as mortgagor and the bank as mortgagee, the foreclosure sale effected a transfer of the debtor's equitable title in the property to the bank. Transfer of legal title, however, occurred only between the bank as seller (under the mortgage's power of sale) and the [buyer] as purchaser. As to that transfer [the debtor] was a stranger." *In re Mularski*, 565 B.R. at 207.[5] Judgment shall enter in favor of Citizens and Jacobs on the complaint.

Dated: August 7, 2023

By the Court,

Christopher J. Panos
United States Bankruptcy Judge

[4] Because the Court has determined the extinguishment of the equity of redemption could not be avoided, it need not reach recovery under § 522(i).

Additionally, the Debtor raises an issue of Citizens' lack of good faith with respect to the conduct of foreclosure in the complaint and claims to reserve on that issue in connection with his summary judgment briefing. Notwithstanding the argument in the briefing that questions the validity of the foreclosure sale, there is no basis in the summary judgment record to support that contention and mere argument does not preclude summary judgment. Rule 56.1 of the Local Rules of the District of Massachusetts states that "[m]aterial facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties," which "shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation." D. Mass. L.R. 56.1, as made applicable by MLBR 7056-1. The Debtor has not provided evidence in the summary judgment record that a material fact exists as to whether the foreclosure sale was conducted in accordance with statutory requirements.

[5] I do not opine on whether the Debtor's potential rights with respect to occupancy, an accounting, and to surplus proceeds, if any, after execution of a valid memorandum of sale and the recording of an affidavit of sale, but before recording of a foreclosure deed, implicate the automatic stay provided by § 362(a).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: ANDY LUU TRAN, Debtor	Chapter 13 Case No. 22-40664-CJP
ANDY LUU TRAN Plaintiff v. CITIZENS BANK N.A. F/K/A RBS CITIZENS N.A. AND HERBERT JACOBS Defendants	AP No. 22-04019-CJP

JUDGMENT

The above-captioned adversary proceeding (the "Adversary") having been commenced by the filing of a Complaint by the debtor-plaintiff Andy Luu Tran (the "Plaintiff") against the defendants, Citizens Bank N.A. f/k/a RBS Citizens N.A. and Herbert Jacobs (together, the "Defendants"), and the Court having entered an order granting summary judgment to the Defendants on the Complaint, JUDGMENT is hereby entered in favor the of the Defendants and against the Debtor.

Dated: August 11, 2023

By the Court,

Christopher J. Panos
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: ANDY LUU TRAN, Debtor	Chapter 13 Case No. 22-40664-CJP
ANDY LUU TRAN Plaintiff v. CITIZENS BANK N.A. F/K/A RBS CITIZENS N.A. AND HERBERT JACOBS. Defendants	AP No. 22-04019-CJP

ORDER ON MOTION FOR RELIEF FROM JUDGMENT

The debtor-plaintiff Andy Luu Tran (the "Plaintiff") seeks relief from the judgment (the "Judgment") entered in favor of the defendants, Citizens Bank N.A. f/k/a RBS Citizens N.A. and Herbert Jacobs (together, the "Defendants"), resulting from the granting of the summary judgment requests of the Defendants dismissing the Plaintiff's complaint pursuant to which he sought to avoid the transfer of his interest in real property located at 47 Clinton Street, Framingham, Massachusetts pursuant to 11 U.S.C. §§ 522(h) and 544. The Plaintiff alleges the Judgment was based on manifest errors of law and should be vacated. Alternatively, the Plaintiff asks the Court to certify a direct appeal to the United States Court of Appeals for the First Circuit ("First Circuit") or to certify the question of "[w]here a deed purporting to convey real property lacks notarization and thus was 'improvidently recorded', Allen v. Allen, 86 Mass. App. Ct. 295

(2014), may an Affidavit of Sale cure that defect and serve the same purpose as a deed?" to the Massachusetts Supreme Judicial Court ("SJC"). Mot. for Relief from J. at 1.

Given the timing of the motion, the Court examines the reconsideration request under Fed. R. Bankr. P. 59(e), as made applicable to this proceeding by Fed. R. Bankr. P. 9023. As stated by the United States Bankruptcy Appellate Panel for the First Circuit:

> Rule 59(e) does not state the grounds on which relief may be granted, and courts have "considerable discretion" in deciding whether to grant or deny a motion under the rule. *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 55 (1st Cir. 2008). It is well settled in the First Circuit that to meet the threshold requirements of Rule 59(e), the motion "must demonstrate the 'reason why the court should reconsider its prior decision' and 'must set forth facts or law of a strongly convincing nature' to induce the court to reverse its earlier decision." *In re Arroyo*, 544 B.R. at 756–57 (quoting *In re Pabon Rodriguez*, 233 B.R. at 219). The movant must either clearly establish a manifest error of law or fact or must present newly discovered evidence that could not have been discovered during the case. *See Banco Bilbao Vizcaya Argentaria P.R. v. Santiago Vázquez (In re Santiago Vázquez)*, 471 B.R. 752, 760 (1st Cir. B.A.P. 2012) (citing *Aybar v. Crispin–Reyes*, 118 F.3d 10, 16 (1st Cir. 1997)); *see also Marie*, 402 F.3d at 7 n.2 (citations omitted). "A motion for reconsideration is not the venue to undo procedural snafus or permit a party to advance arguments it should have developed prior to judgment, nor is it a mechanism to regurgitate old arguments previously considered and rejected." *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (citations omitted) (internal quotations omitted). "In practice, [Rule] 59(e) motions are typically denied because of the narrow purposes for which they are intended." *In re Arroyo*, 544 B.R. at 757 (citation omitted).

Nieves Guzman v. Rentas (In re Nieves Guzmán), 567 B.R. 854, 863 (B.A.P. 1st Cir. 2017).

The Plaintiff has not clearly established a manifest error of law and simply reiterates theories that were previously considered and rejected. For example in highlighting the Plaintiff's belief that the Court's application of certain dicta in *In re Mularski*, 565 B.R. at 203 (Bankr. D. Mass. 2017) to the facts of this case is misplaced, particularly since the court in *In re Mularski* cited to *Cerrato v. BAC Home Loans Servicing (In re Cerrato)*, 504 B.R. 23, 33 (Bankr. E.D.N.Y. 2014) from a jurisdiction with judicial foreclosures, the Plaintiff acknowledges he

previously raised this same argument noting "[a]s stated in a previous memorandum."[1] The Plaintiff made no substantive changes in his overall arguments and did not point to overlooked controlling decisions that might have materially affected the Court's prior ruling, which considered and applied Massachusetts law in determining avoidance claims under federal law. For those reasons, the Motion is denied.

The Court also declines to certify this matter for a direct appeal to the First Circuit or to certify the question presented by the Plaintiff to the SJC. While the Judgment includes rulings on issues as to which there is no controlling authority with respect to a narrow question of avoidance rights under the unique facts and circumstances of this case, the Court applied established state law and the Plaintiff may pursue appellate remedies and seek certification from reviewing courts. In the view of this Court, the question proposed for certification overlooks the rulings underlying the Judgment, which focus on constructive notice and the legal effect of extinguishment of the Debtor's equity of redemption in relation to an asserted avoidance action.

Dated: August 29, 2023

By the Court,

Christopher J. Panos
United States Bankruptcy Judge

[1] While the Plaintiff views the reference in *In re Mularski* to *In re Cerrato* as being disqualifying, this Court considered the application of the proposition for which it was cited for by inference in the *In re Mularski* decision in the context of Massachusetts law.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANDY LUU TRAN, Plaintiff-Appellant, v. CITIZENS BANK N.A. F/K/A RBS CITIZENS, N.A., and HERBERT JACOBS, Defendant-Appellees.	)	CIVIL ACTION NO. 23-40128-WGY

YOUNG, D.J. January 23, 2024

MEMORANDUM & ORDER

I. INTRODUCTION

This case comes before this Court as an appeal from a bankruptcy court order and judgment. The appellant, Andy Luu Tran ("Tran"), asks this Court to reverse the Bankruptcy Court's decision, while the appellee, Herbert Jacobs ("Jacobs"), requests the Court affirm the same.

Tran granted Citizens Bank N.A. f/k/a RBS Citizens, N.A. ("Citizens Bank") a mortgage on his property. Citizens Bank foreclosed on the property and sold it to Jacobs who was the highest bidder at the foreclosure auction sale. Citizens Bank and Jacobs executed a memorandum of sale. Subsequently, and

prepetition, an Affidavit of Sale and a foreclosure deed, the latter of which Tran alleges is defective, were recorded. When asked to vacate the property, Tran filed for bankruptcy and initiated an adversary bankruptcy proceeding, contending that he still retained the equity of redemption over the mortgaged property, and could avoid the transfer of his equity of redemption because the foreclosure deed's defects rendered the transfer void as incompliant with the Commonwealth's applicable notice requirements.

Having reviewed the entire record, including the bankruptcy court docket, see Bankruptcy Docket, ECF No. 2 ("Bankruptcy Docket"), this Court holds that Tran's equity of redemption extinguished at the conclusion of the foreclosure auction sale upon the execution of a memorandum of sale between Citizens Bank and Jacobs. This Court also holds that the Affidavit of Sale relating to the auction sale that was properly recorded provided constructive notice to third parties such that Tran is unable to avoid the transfer and the extinguishment of his equity of redemption. Accordingly, and for the reasons stated below, this Court affirms the Bankruptcy Court's decision.

II. PROCEDURAL HISTORY

On September 13, 2022, Tran filed for Chapter 13 bankruptcy. Statement of Material Facts ¶ 6, Bankruptcy Docket

No. 33 ("Material Facts").[1] On September 14, 2022, Tran filed a complaint in the Bankruptcy Court, seeking to recover his real property located at 47 Clinton Street, Framingham, Massachusetts (the "Property"), which was subject to a mortgage encumbering title to the Property, with Tran as the mortgagor and Citizens Bank as the mortgagee. See Compl. to Avoid Unperfected Pre-Petition Transfer, Bankruptcy Docket No. 1 ("Compl.").

After both Citizens Bank and Jacobs responded to the Complaint, Tran moved for judgment on the pleadings, which the Bankruptcy Court, following a hearing and with the assent of all parties, converted into a motion for summary judgment. See Order 1, Bankruptcy Docket No. 38 ("Bankruptcy Court Decision"). The parties were given an opportunity to provide supplemental pleadings, which they did, and Citizens Bank and Jacobs moved for summary judgment in their favor. Id. at 1-2.

On August 7, 2023, the Bankruptcy Court granted summary judgment in favor of Citizens Bank and Jacobs and against Tran. Id. at 2. In reaching that conclusion, the Bankruptcy Court held that Tran was unable to avoid the prepetition transfer of the Property because his equity of redemption over the Property had extinguished when the foreclosure auction concluded with the

[1] As noted in the Bankruptcy Court Decision, the Statement of Material Facts state "uncontested facts" on which the Bankruptcy Judge, among other submissions, relied in his decision. See Bankruptcy Court Decision 2.

execution of a memorandum of sale. Id. at 4. The Bankruptcy Court held further that the delivery of a deed was not required to "complete[]" the foreclosure sale and that the execution of a memorandum of sale was sufficient to complete foreclosure and thus extinguish Tran's equity of redemption as mortgagor. Id. Finally, while acknowledging that the foreclosure deed was incomplete, as it lacked proper notarization, id. at 5 (referring to "the incomplete foreclosure deed"), the Bankruptcy Court nonetheless held that it did not need to reach the issue of whether an incomplete deed gave rise to the necessary constructive notice to third parties to effectuate the transfer of the equity of redemption, id. at 5-6. The Bankruptcy Court also held that the recordation of the Affidavit of Sale provided constructive notice to a hypothetical bona fide purchaser. Id. at 5-6. For these reasons, the Bankruptcy Court concluded that the equity of redemption on the Property, once belonging to Tran as the mortgagor, had been lawfully extinguished. Id. at 6. Subsequently, on August 29, 2023, the Bankruptcy Court denied Tran's motion for relief from judgment. See Order on Mot. for Relief from J., Bankruptcy Docket No. 44.

Tran then filed this appeal, contending that his equity of redemption extinguished, not upon the execution of a memorandum of sale at the close of the foreclosure auction, but at the time of the transfer of the deed, which in this case was defective

and therefore incapable of extinguishing said equity of redemption. See Opening Br. of Appellant ("Appellant's Br."), ECF No. 7. The parties properly briefed the issue. See Opening Br. of Appellee ("Appellee's Br."), ECF. No. 8; Reply Br. for Appellant ("Appellant's Reply"), ECF No. 9; Surreply of Appellee ("Appellee's Surreply"), ECF No. 13; Reply to Mot. Leave to File Surreply ("Appellant's Surreply"), ECF. No. 11; Herbert Jacobs' Resp. to Debtors' Citation of Suppl. Authority ("Appellee's Resp. Suppl. Authority"), ECF No. 14.

The Court has carefully reviewed the entire record pertaining to this case as well as the orders and judgments entered by the Bankruptcy Court before preparing this opinion.

III. FACTS ALLEGED

The material facts in this case are uncontested. Bankruptcy Court Decision 2. On May 27, 2008, Tran granted a mortgage on the Property to Citizens Bank. Material Facts ¶ 1. Citizens Bank foreclosed on the mortgage and on August 16, 2022, Jacobs purchased the property at a foreclosure auction. Id. ¶ 2. On the same day, Citizens Bank and Jacobs signed a memorandum of sale in connection with the purchase. Id. ¶ 3. On August 22, 2022, a foreclosure deed regarding the purchase was signed. Id. ¶ 4. The deed and an Affidavit of Sale relating to the sale and purchase was recorded on September 8, 2022. Appellant's Br. 2; Appellee's Br. 5. Days later, on

September 12, 2022, Jacobs served Tran a notice to vacate the Property. Appellee's Br. 5. Tran then filed for Chapter 13 bankruptcy on September 13, 2022, and a day later, on September 14, 2022, an adversary proceeding was initiated in the Bankruptcy Court, which has given rise to the present appeal. Id.; see also Compl.; Appellant's Br. 2.

Crucially, Tran takes issue with the foreclosure deed relating to the sale and purchase of the Property by Citizens Bank and Jacobs, signed on August 22, 2022, and recorded on September 8, 2022. To be sure, Tran agrees that the deed was recorded prior to Tran's Chapter 13 petition, and therefore prepetition. Appellant's Br. 2 ("Pre-petition, a foreclosure deed was recorded . . . ."). He argues, however, that the deed was defective and therefore unable to put third parties on constructive notice of the Property's conveyance to Jacobs. To that end, Tran makes three specific arguments.

First, Tran contends that the deed was deficient because it was not notarized, rendering it incompliant with applicable laws of the Commonwealth. Id. at 2 (mentioning the lack of a "notarized deed" (emphasis in original) and that "[t]he deed that was recorded was missing a notarization altogether"); id. at 4 (arguing that the deed has a "latent defect"); see also Appellant's Reply 2 (arguing that the "deed is void and was 'improvidently recorded'"); Compl. ¶ 10 (arguing that the deed

"as recorded lacks an acknowledgment as required" by the laws of Commonwealth and therefore "was 'improvidently' recorded, and is no effect as a transfer of title").

Second, Tran argues that the deed, because it was "improvidently recorded," does not provide constructive notice to third parties of the extinguishment of his equity of redemption, and therefore, that he retains the equity of redemption over the Property. See, e.g., Appellant's Br. 4 (arguing that the lack of notarization "prevents the deed from giving constructive notice to anyone"); id. at 5 (contending that "the deed was improvidently recorded and does not give constructive notice"); Appellant's Reply 2 (contending that "the equity of redemption was not extinguished" (emphasis in original)); Appellant's Surreply 2 (asking this Court to remand the Bankruptcy Court Decision "for entry of judgment in Tran's favor, avoiding the transfer of Mr. Tran's equity of redemption").

Third, Tran argues that the Affidavit of Sale, attesting to the sale and purchase of the Property by Citizens Bank and Jacobs, signed on August 22, 2022, and recorded on September 8, 2022, cannot be substituted for a properly executed and recorded deed, and therefore cannot be regarded as having given constructive notice to third parties of the sale that would extinguish his equity of redemption on the Property.

Appellant's Br. 2 ("There was only an Affidavit of Sale, which is not the same thing [as a notarized deed.]"); id. at 5 (arguing that the "Affidavit of Sale does not cure the latent defect" and that "the deed was improvidently recorded and does not give constructive notice"); Appellant's Reply 2 (arguing that "an 'affidavit' is not a 'deed'"); id. ("Whether the affidavit was 'properly recorded' is irrelevant."); id. ("All that the affidavit gives notice of is that the equity of redemption was sold, not that the property was conveyed.").

In response, Jacobs contends that "there is no need to reach [the] issue" of whether the deed was defective and void. Appellee's Surreply 3 n.1. This, Jacobs argues, is because the execution and recording of a deed is not necessary to extinguish Tran's equity of redemption; said equity extinguishes, Jacobs contends, as of the moment of the foreclosure auction sale's conclusion, of which third parties were put on constructive notice via the proper execution and recording of the Affidavit of Sale relating to the foreclosure sale. Appellee's Br. 8 (arguing that "[t]he [e]quity [o]f [r]edemption [w]as [e]xtinguished [a]t [t]he [f]oreclosure [a]uction"); id. at 10 (arguing that "[t]he [a]ffidavit [o]f [s]ale [p]rovides [c]onstructive [n]otice [o]f [t]he [f]oreclosure [s]ale"); see also Appellee's Surreply 3 n.1 (approvingly citing the Bankruptcy Court Decision's holding that "the Affidavit of Sale

that was recorded did provide constructive notice" (quoting Bankruptcy Court Decision 5-6)).

IV. ANALYSIS

Tran asks this Court to review and reverse the Bankruptcy Court Decision as "a manifest error of law." Appellant Br. 7. In essence, the parties' contentions require this Court to determine the precise moment at which a mortgagor's -- here, Tran's -- equity of redemption over a mortgaged property legally extinguishes.

First, Tran asks the Court to reverse the Bankruptcy Court's holding that his equity of redemption extinguished at the conclusion of the foreclosure auction and not when the deed was recorded. See Bankruptcy Court Decision 4 ("It is settled law that, when a foreclosure auction concludes with an accepted bid and the execution of a memorandum of sale, a mortgagor's equity of redemption is extinguished."); id. ("A foreclosure sale is not 'completed' by delivery of the deed . . . ."). Jacobs contends that Tran's equity of redemption extinguished when the foreclosure auction was concluded. See Appellee's Br. 2.

Second, Tran asks the Court to reverse the Bankruptcy Court's holding that the execution and recording of the Affidavit of Sale put third parties on constructive notice of the conclusion of the foreclosure auction, thus extinguishing

Tran's equity of redemption. See Bankruptcy Court Decision 5-6 (holding that "the Affidavit of Sale that was recorded did provide constructive notice . . . and as such, a trustee could not avoid the transfer (extinguishment) of [Tran's] equity of redemption over the Property" (footnote omitted)).

All parties agree that the central issues here are properly categorized as issues of law. Appellant's Br. 1; Appellee's Br. 4.

As articulated in greater detail below, this Court agrees with the Bankruptcy Court, and, therefore, rejects this appeal.

A. Standard of Review

This Court reviews a bankruptcy court's conclusions of law de novo, and its findings of fact subject to a "clearly erroneous" standard. See Sharfarz v. Goguen, 691 F.3d 62, 68 (1st Cir. 2012); Stoehr v. Mohamed, 244 F.3d 206, 207-08 (1st Cir. 2001). A bankruptcy court's entry of summary judgment, as is the case here, warrants de novo review. See Sharfarz, 691 F.3d at 68; Autism Intervention Specialists, LLC v. Aoude, 654 B.R. 41, 46 (D. Mass. 2023).

Since the issues presented on appeal in this case are matters of law, this Court will exercise de novo review. Cf. DeNadai v. Preferred Cap. Mkts., 272 B.R. 21, 27 (D. Mass. 2001) ("The parties agree that there is no dispute as to a material

fact and that the present appeal presents only legal issues subject to de novo review.").

B. The Bankruptcy Court Correctly Held that the Equity of Redemption Extinguishes Upon Execution of a Memorandum of Sale.

1. Generally

The crux of the legal issue presented in this appeal is when in time a mortgagor's equity of redemption extinguishes. Tran argues that said equity does not extinguish at the conclusion of a foreclosure auction, but rather when the highest bidder at the auction pays the consideration "and the deed is delivered, and not before." Appellant's Reply 2 (emphasis in original). Jacobs contends that the equity of redemption extinguishes at the conclusion of the foreclosure auction, of which third parties were put on constructive notice via a signed and recorded Affidavit of Sale, and not when the deed is delivered. See Appellee's Br. 8-9. The Bankruptcy Court Decision sides with Jacobs, holding that "[i]t is settled law that, when a foreclosure auction concludes with an accepted bid and the execution of a memorandum of sale, a mortgagor's equity of redemption is extinguished." Bankruptcy Court Decision 4. For the reasons explained below, this Court agrees with the Bankruptcy Court.

The Commonwealth subscribes to the so-called "title theory" of mortgage law. See, e.g., United States Bank Nat'l Ass'n v.

Ibanez, 458 Mass. 637, 649 (2011) ("In a 'title theory state' like Massachusetts, a mortgage is a transfer of legal title in a property to secure a debt."); Lemelson v. United States Bank Nat'l Ass'n, 721 F.3d 18, 23 (1st Cir. 2013) ("It is beyond dispute that Massachusetts subscribes to the 'title theory' of mortgage law."); Culhane v. Aurora Loan Servs. of Nebraska, 708 F.3d 282, 292 (1st Cir. 2013) (describing the Commonwealth as "a title theory state"). In the Commonwealth, therefore, the grant of a mortgage transfers legal title to the mortgaged property from the mortgagor to the mortgagee, but the equity of redemption, that is, the mortgagor's right to recover property prior to a foreclosure, is not subject to transfer by the mere grant of a mortgage. Bevilacqua v. Rodriguez, 460 Mass. 762, 774 (2011) ("In Massachusetts, a 'mortgage splits the title in two parts: the legal title, which becomes the mortgagee's, and the equitable title, which the mortgagor retains.'" (quoting Maglione v. BancBoston Mtge. Corp., 29 Mass. App. Ct. 88, 90 (1990)); see also Lemelson, 721 F.3d at 27. Rather, the mortgagor retains the equity of redemption until and unless the mortgagee forecloses on the mortgaged property. At issue here is the precise timing of such foreclosure that extinguishes a mortgagor's equity of redemption.

The relevant provision before the Court is the concluding clause of Massachusetts General Laws, chapter 244, section 18,

which provides that the equity of redemption continues "unless the land has been sold pursuant to a power of sale contained in the mortgage deed." Mass. Gen. Laws ch. 244, § 18 (emphasis added). The parties disagree as to the exact moment at which the foreclosure sale mentioned in the provision occurs.

2. Beal is Not Applicable to the Present Appeal

Both parties cite to caselaw to support their respective contentions as to timing. Tran essentially cites to Beal v. Attleborough Savings Bank, 248 Mass. 342 (1924), a decision by the Commonwealth's Supreme Judicial Court, to assert that a foreclosure auction's conclusion and the execution of a sale and purchase agreement do not suffice to extinguish the equity of redemption, and that the proper transfer of a deed is required. See Appellant's Reply 2. In Beal, the Supreme Judicial Court held that the mortgagor retained the equity of redemption after the auction sale and until the delivery of the deed to the purchaser. 248 Mass. at 343 ("The auction sale was in effect a mere contract of sale. The sale was not executed until the deed was delivered, when the title passed to the purchaser."); id. at 345 ("Up to that time [i.e., delivery of the deed], the plaintiff had an equity of redemption . . . .").

Jacobs, on the other hand, mainly cites to Outpost Cafe, Inc. v. Fairhaven Savings Bank, 3 Mass. App. Ct. 1 (1975), which is a decision by the Massachusetts Appeals Court. See

Appellee's Br. 8-10. Outpost Cafe held that "'foreclosure is complete' at the time of the auction sale[,]" 3 Mass. App. Ct. at 5 (quoting Way v. Mullett, 143 Mass. 49, 53 (1886)), and that the right of redemption is therefore barred from the moment of the conclusion of the auction sale, id. at 7 ("[P]laintiff's equity of redemption was barred . . . at least as early as the point in time when the memorandum of sale was executed with the purchaser at the foreclosure sale.").

Tran, recognizing a possible tension between these two cases, in that Outpost Cafe "call[s] Beal into question" on the question of the timing of extinguishment, Appellant's Reply 2 n.2, asserts that Beal, as a ruling by the highest state court in the Commonwealth, to wit, the "Supreme Judicia[l] Court[]," "effectively overrules Outpost [Cafe], at least in part," id. In response, Jacobs contends that Beal, decided in 1924, could not have overruled Outpost Cafe, decided in 1975, because Beal predated Outpost Cafe by 51 years. Appellee's Surreply 2.

Subsequently, Tran acknowledged that overruling was an "infelicitous choice of words," Appellant's Surreply 1, but he still argues that Beal, although earlier in time, by virtue of being the decision of the Supreme Judicial Court, ought control to the extent it conflicts with the decision in Outpost Cafe, a decision by the Massachusetts Appeals Court, id. Tran further argues that so long as the Supreme Judicial Court did not

overrule its own precedent, Beal remains good law, and that the Appeals Court cannot "discredit" a decision by the Supreme Judicial Court. Id.

The Supreme Judicial Court is the "final arbiter" of the laws of the Commonwealth. Genereux v. Raytheon Co., 754 F.3d 51, 57 (1st Cir. 2014); see also Commonwealth v. Vasquez, 456 Mass. 350, 356 (2010) ("[The Supreme Judicial Court] is the highest appellate authority in the Commonwealth, and our decisions on all questions of law are conclusive on all Massachusetts trial courts and the Appeals Court."). Consequently, and further, the Commonwealth's Appeals Court, in its own words, is "bound to follow the decisions of the Supreme Judicial Court." Commonwealth v. Colon, 52 Mass. App. Ct. 725, 730 n.1 (2001). Therefore, until and unless overruled by the Supreme Judicial Court, Beal cannot be overruled by Outpost Cafe, a decision by an intermediate appellate court of the Commonwealth. The Supreme Judicial Court has not overruled Beal, and conversely, has approvingly cited it as recently as 2001. See Kelley v. Neilson, 433 Mass. 706, 714 n.16 (2001); see also Appellant's Surreply 1 (mentioning Kelley's reference to Beal). Thus, Beal remains in force.

That Beal remains in force, however, is not to suggest, as Tran does, that it is controlling in the present case. To be sure, Beal does include language suggesting that the equity of

redemption would not be extinguished by the close of an auction sale but rather would be retained by the mortgagor until conveyance. See Beal, 248 Mass. at 343, 345. Subsequent cases by the Supreme Judicial Court, however, have distinguished that language in Beal. Most notably, and as Jacobs also points out, Appellee's Surreply 2, the Supreme Judicial Court clarified a few years after Beal, in a decision written by the Justice who had written the Beal opinion, that "[Beal] is not an authority for the contention that the right to redeem continues until the conveyance is made." White v. Macarelli, 267 Mass. 596, 599 (1929). White thus states that Beal cannot be cited as authority for the contention that the equity of redemption extinguishes not at the conclusion of a foreclosure auction sale but when conveyance takes place via the transfer and recording of a duly executed deed. Id.

In addition, while Tran correctly observes that Beal has been continuously and approvingly cited by courts, including the Supreme Judicial Court, citations to Beal following White have followed White's clarification that Beal ought not be cited for the contention that the equity of redemption survives an auction sale and until conveyance. See, e.g., Kelley, 433 Mass. at 714 n.16; Laurin v. De Carolis Constr. Co., 372 Mass. 688, 691 (1977); Kattor v. Adams, 323 Mass. 686, 689 (1949). These subsequent citations to Beal have recruited that case in aid of

the proposition that the mortgagor is entitled to rents and profits received by the mortgagee during the time intervening between the auction sale and the delivery of the deed to the purchaser, which has no bearing on the equity of redemption and the precise time at which it extinguishes. See, e.g., Kelley, 433 Mass. at 714 n.16; Laurin, 372 Mass. at 691; Kattor, 323 Mass. at 689.

For the foregoing reasons, Tran cannot rely on Beal to argue that the equity of redemption over the Property did not extinguish when the memorandum of sale was executed at the conclusion of the foreclosure auction.

3. Other Cases Establish That the Equity of Redemption Extinguishes When a Memorandum of Sale is Executed

Having established Beal's inapplicability to the present dispute concerning the precise time at which the equity of redemption extinguishes, this Court now proceeds to survey other cases that provide guidance. Caselaw from both this District and the Commonwealth amply demonstrates that the equity of redemption is extinguished at the conclusion of a foreclosure auction sale as of the moment a memorandum of sale is executed.

The Court begins with a survey of how the timing question has been treated by the courts of the Commonwealth. In Outpost Cafe, upon which Jacobs repeatedly relies, see, e.g., Appellee's Br. 8-10, the Commonwealth's Appeals Court held that "the

plaintiff's equity of redemption was barred . . . at least as early as the point in time when the memorandum of sale was executed with the purchaser at the foreclosure sale." 3 Mass. App. Ct. at 7. Subsequent decisions by the Appeals Court have continued to follow Outpost Cafe's holding. See, e.g., Boston Redevelopment Auth. v. Boston Priv. Bank & Tr. Co., 2020 Mass. App. Unpub. LEXIS 746, at *2-3 (Mass. App. Ct. Aug. 6, 2020) ("Many of the rights of the mortgagor, such as the right of redemption, terminate upon execution of the memorandum of sale."); Guempel v. Great Am. Ins. Co., 11 Mass. App. Ct. 845, 849 (1981). One decision, tellingly, held that Outpost Cafe's holding that the equity of redemption extinguishes upon the execution of a memorandum of sale is "well-settled." Housman v. LBM Fin., LLC, 80 Mass. App. Ct. 213, 220 (2011) ("It is well-settled that the power of sale is exercised at the time of the actual sale and terminates the owner's equity of redemption.").

More importantly, the Supreme Judicial Court has agreed with the Commonwealth's Appeals Court on this point. Approvingly citing Outpost Cafe, the Supreme Judicial Court held that "[t]he execution of the memorandum of sale terminated the plaintiffs' equity of redemption." Williams v. Resolution GGF Oy, 417 Mass. 377, 384 (1994). As such, the interpretation by the Commonwealth's intermediate appellate court that a mortgagor's equity of redemption extinguishes as of the moment a

memorandum of sale is executed at an auction sale has been affirmed by the highest court in the Commonwealth.[2] That the Supreme Judicial Court has agreed with Outpost Cafe's holding in Williams renders unmeritorious Tran's contention that Outpost Cafe is an "outlier." Appellant's Surreply 2. On the contrary, Outpost Cafe, as approvingly cited by the Supreme Judicial Court in Williams, provides the controlling statement as to when a mortgagor's equity of redemption extinguishes in the Commonwealth -- and the statement is that such equity extinguishes "when the memorandum of sale was executed with the purchaser at the foreclosure sale." Outpost Cafe, 3 Mass. App. Ct. at 7.

This Court now proceeds to survey caselaw from the district in which it sits. The bankruptcy courts in this district that have been called upon to confront this issue of timing have, not surprisingly, followed the courts of the Commonwealth. As early as 1997, merely three years after the Supreme Judicial Court

[2] Williams, which affirmed Outpost Cafe's interpretation, was decided in 1994. In 2005, a bankruptcy court confronting the same question of when does the equity of redemption extinguish observed that "were the Supreme Judicial Court confronted with the issue of when is a property, or rather the equity of redemption, sold at a foreclosure sale, it would conclude that the sale occurs when the memorandum of sale is signed." In re Crichlow, 322 B.R. 229, 238 (Bankr. D. Mass. 2005) (Hillman, J.). Through Williams, the Supreme Judicial Court has indeed had the opportunity to provide its interpretation on this issue.

expressed agreement with Outpost Cafe's holding in Williams, a bankruptcy court noted that "[i]t is well-settled under Massachusetts law that where a foreclosure sale is properly conducted, the redemption rights of a mortgagor terminate as early as the execution of the memorandum of sale." In re Theoclis, 213 B.R. 880, 882 (Bankr. D. Mass. 1997) (Boroff, J.). Subsequent bankruptcy court decisions from this district have expressed agreement. See, e.g., In re Kaplan, No. 06-41771-JBR, 2006 WL 3757711, at *3 (Bankr. D. Mass. Dec. 19, 2006) (Rosenthal, J.) ("Property sold at foreclosure under a power of sale in a mortgage terminates a mortgagor's right to redeem the property."); In re Grassie, 293 B.R. 829, 831 (Bankr. D. Mass. 2003) (Hillman, J.) ("The power of sale is a completed sale that occurs upon the execution of the memorandum of sale. The execution of the memorandum of sale terminates a debtor's equity of redemption."); In re Dow, 250 B.R. 6, 8 (Bankr. D. Mass. 2000) (Queenan, J.) (holding that "under Massachusetts law redemption rights still exist until the execution of a memorandum of sale following the bidding process"); id. ("My colleagues in this district have come to the same conclusion in cases where the memorandum of sale was executed prior to the bankruptcy filing.").

More specifically, expressing agreement with the cases surveyed above, it was held in at least one bankruptcy court

case that the contention of "a foreclosure sale being actually completed by delivery of a deed" was unmeritorious, as the sale was completed by the execution of a memorandum of sale. In re Crichlow, 322 B.R. at 237. This responds directly to Tran's contention that the equity of redemption is transferred "when the high bidder pays the consideration and the deed is delivered, and not before." Appellant's Reply 2 (emphasis in original).

Tran unpersuasively cites to a case from this district in further aid of his contention concerning timing. See Appellant's Surreply 1-2 (discussing Zagarella v. Caliber Home Loans, No. CV 18-12414-NMG, 2019 WL 3021261 (D. Mass. June 7, 2019) (Bowler, M.J.)). Zagarella contains no holding or dictum that explicitly implicates the question of timing. See Appellee's Resp. Suppl. Authority 1-2. In fact, if anything, Zagarella references decisions by the courts of the Commonwealth that in turn have acknowledged that a mortgagor's equity of redemption extinguishes at the foreclosure auction sale when a memorandum of sale is executed. See, e.g., Zagarella, 2019 WL 3021261, at *5 (referring to Housman, which, among other things, approvingly quotes Outpost Cafe and other decisions that have held that the equity of redemption extinguishes upon the execution of a memorandum of sale).

Finally, this Court also takes note that on the question of timing, other sessions in this district, too, have uniformly followed the courts of the Commonwealth. See, e.g., Dickey v. United States Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr., No. CV 19-12504-FDS, 2020 WL 4474273, at *5 (D. Mass. Aug. 3, 2020) (Saylor, C.J.), aff'd, No. 20-1866, 2021 WL 7627516 (1st Cir. Nov. 1, 2021) ("Furthermore, under Massachusetts law, a mortgagor's equity of redemption is extinguished at the time the foreclosure sale is concluded, not when the deed is recorded."); Shaw v. Bank of America, NA, No. 10-CV-11021, 2015 WL 224666, at *10 (D. Mass. Jan. 15, 2015) (Casper, J.) ("BOA is correct that the equity of redemption is extinguished by the memorandum of sale."). Moreover, one of the sessions of this Court, like the observations made by the Commonwealth's courts, described the rule as being "well-settled." Barbosa v. Wells Fargo Bank, N.A., No. CIV.A. 12-12236-DJC, 2013 WL 4056180, at *9 (D. Mass. Aug. 13, 2013) (Casper, J.) (quoting Housman, 80 Mass. App. Ct. at 220-21).

This Court therefore concludes it well-settled by both the courts of the Commonwealth and in this district that in the Commonwealth, a mortgagor's equity of redemption extinguishes upon the execution of a memorandum of sale at the auction sale. Tran's contentions to the contrary are rejected.

In the present appeal, as the record establishes, a

memorandum of sale -- stylized as such -- was executed on August 16, 2022, at 12:13 P.M. See Answer to Compl. Filed by Herbert Jacobs 12-17, Bankruptcy Docket No.15 ("Answer to Compl. Filed by Herbert Jacobs"). Further, the memorandum of sale, signed by both Citizens Bank and Jacobs, clearly describes the Property and mentions the purchase price. See id. Tran, in his submissions, has not alleged that the memorandum of sale is defective. See Bankruptcy Court Decision 2 ("The parties do not dispute that Citizens conducted an auction of the Property at which Jacobs was the high bidder and that a memorandum of sale . . . was executed by Citizens and Jacobs before [Tran] filed his petition.").

4. Tran's Equity of Redemption Extinguished Upon the Execution of the Memorandum of Sale

As has been consistently and continuously interpreted by the Commonwealth's courts, therefore, the memorandum of sale that was duly executed on August 16, 2022, Material Facts ¶ 2, and prior to Tran's petition for bankruptcy that was filed on September 13, 2022, id. ¶ 6, extinguished Tran's equity of redemption.

This Court therefore affirms the Bankruptcy Court Decision holding that Tran's equity of redemption extinguished prepetition. See Bankruptcy Court Decision 4 ("It is settled law that, when a foreclosure auction concludes with an accepted

bid and the execution of a memorandum of sale, a mortgagor's equity of redemption is extinguished"); id. at 5 (referring to Tran's equity of redemption as "an extinguished equity of redemption").

C. The Bankruptcy Court Correctly Held That the Affidavit of Sale Provides Constructive Notice of the Foreclosure Auction Sale.

The second and related issue that arises in this appeal concerns the question whether Tran can avoid the transfer (extinguishment) of his equity of redemption. Section 522(h) of the Bankruptcy Code grants debtors the possibility to avoid a transfer of their property -- in this case, their equity of redemption -- if "such transfer is avoidable by the trustee under section 544" and if "the trustee does not attempt to avoid such transfer." 11 U.S.C. § 522(h)(1)-(2); see also In re Piper, 291 B.R. 20, 23 (Bankr. D. Mass. 2003) (Kenner, J.) ("Section 522(h) of the Bankruptcy Code permits the debtor to exercise the trustee's avoidance powers under §§ 544(a) and 545 in certain circumstance: where, by exercise of the avoidance power, the debtor would recover an asset that he or she can claim as exempt."). Section 544, as interpreted by the Supreme Court, "set[s] out circumstances under which a trustee can avoid unrecorded liens and conveyances." Merit Mgmt. Grp., LP v. FTI Consulting, Inc., 583 U.S. 366, 371 (2018). One of those circumstances arises when a trustee may

avoid any obligation incurred by the debtor that is voidable by "a real or hypothetical bona fide purchaser, regardless of any actual knowledge of the obligation by the trustee." United States Bank, N.A. v. Desmond (In re Mbazira), 15 F.4th 106, 111 (1st Cir. 2021) (describing 11 U.S.C. § 544(a)(3)).[3] "Thus, [under this section,] the trustee can only void a mortgage obligation if it did not have constructive notice of the encumbrance." Id.

The question before this Court is whether a good faith purchaser would have been put on constructive notice of the transfer (extinguishment) of Tran's equity of redemption to Citizens via the execution of the memorandum of sale. If the question is answered in the affirmative, that is, if there is constructive notice, Tran, cloaked as a bona fide purchaser under Section 544(a)(3), cannot avoid the transfer; if answered in the negative, that is, in the absence of constructive notice, he can. As explained in more detail below, this Court concludes that there is constructive notice in the present case, and consequently, that Tran cannot avoid the transfer

[3] Section 544(a)(3) is the specific "strong-arm" power Tran attempts to use to avoid the transfer of the equity of redemption. The other two powers in 11 U.S.C. § 544(a)(1) and 11 U.S.C. § 544(a)(2), respectively, are not at issue here. See also Bankruptcy Court Decision 5 (phrasing the legal question as whether "a trustee, cloaked with the status of a good faith purchaser under § 544(a)(3), [could] avoid the transfer of equitable title").

(extinguishment) of the equity of redemption.

Tran contends that the deed relating to the foreclosure auction sale is defective, Appellant's Br. 2, "flawed and void," and thus unable to give effect to the transfer of Tran's equity of redemption over the Property. Appellant's Surreply 2. Tran's contention rests on his understanding that a defective deed lacking an acknowledgment, as he argues is the case here, cannot provide constructive notice. See, e.g., Appellant's Br. 6. He also asserts that Jacobs concedes the defective nature of the deed. See, e.g., Appellant's Reply 2. Jacobs, on the other hand, submits that there is no need to reach the issue of the allegedly defective deed. See Appellee's Surreply 3 n.1. This is because, Jacobs contends, the Affidavit of Sale that was recorded on September 8, 2022 (and thus prepetition), Appellant's Br. 2; Appellee's Br. 5, evidencing the execution of a memorandum of sale at the foreclosure auction, provided constructive notice to third parties that Tran's equity of redemption had extinguished. See, e.g., Appellee's Br. 6, 10-11. This Court agrees with Jacobs.

Without going into the details of the allegedly defective deed,[4] it is important to note that this Court already concluded

[4] The Bankruptcy Court did not reach the issue of the allegedly defective deed either. See Bankruptcy Court Decision 5-6. It did, however, note that "[a] foreclosure deed was also

above, see supra Section IV.B.4, that Tran's equity of redemption extinguished via the execution of a memorandum of sale at the conclusion of the foreclosure auction sale. Thus, for Tran to successfully avoid the transfer (extinguishment) of his equity of redemption, he must persuade the Court that third parties were not put on notice of the conclusion of the auction sale.

This Court remains unpersuaded by Tran's focus on the deed, because, as the courts of the Commonwealth whose decisions were surveyed earlier in this opinion make abundantly clear, the prompt delivery of a non-defective deed is not the instrument or the process through which one's equity of redemption is extinguished. Rather, it is the execution of a memorandum of sale that extinguishes said equity. As such, for purposes of extinguishing a debtor's equity of redemption and ensuring that the debtor cannot avoid such extinguishment via Section 544(a)(3), it suffices that third parties are put on constructive notice of the due conclusion of a foreclosure auction and not of the deed. See In re Mularski, 565 B.R. 203, 208 n.2 (Bankr. D. Mass. 2017) (Hoffman, J.) (noting that "prompt compliance" with the Commonwealth's requirement that an Affidavit of Sale be recorded in the registry of deeds following

---

recorded concurrently with the Affidavit of Sale that did not include the signature page." Id. at 3.

a foreclosure sale "would put the world on notice that the foreclosure sale had been consummated, so that the failure to record the foreclosure deed itself might not present difficulties"); see also Bankruptcy Court Decision 5 (adopting the reasoning in In re Mularski);[5] Appellee's Br. 10 ("It was not necessary to record a foreclosure deed to provide constructive notice of the foreclosure sale because the foreclosure is complete at the time of the auction sale." (quotations and

---

[5] Tran takes issue with the Bankruptcy Court's reliance on In re Mularski by arguing that the latter's statement regarding an affidavit of sale sufficing for purposes of putting third parties on constructive notice as to the foreclosure sale is "speculative dicta." Appellant's Br. 7 (referring to In re Mularski's use of the word "[a]rguably," 565 B.R. at 208 n.2, as a preface to its observation that an affidavit of sale would put third parties on notice). There is nothing barring this Court from taking notice of the decisions of other courts, including those statements that are more appropriately categorized as dicta, in arriving at its own conclusion. Further, in In re Mularski, neither the affidavit of sale nor the foreclosure deed was recorded prepetition, 565 B.R. at 208 n.2 ("In this case, because none of the foreclosure documents were recorded before the filing of the bankruptcy petition, I need not decide what documents must be on record to perfect the transfer of an equity of redemption vis-à-vis third parties." (emphasis in original)). The present appeal is easily distinguishable from the fact pattern in that case, as both the deed, notwithstanding its alleged defects, and the Affidavit of Sale were recorded prepetition. Tran further points to In re Mularski's partial reliance on a case from a sister court in New York with a different mortgage foreclosure regime, id. (citing In re Cerrato, 504 B.R. 23, 33 (Bankr. E.D.N.Y. 2014)). See Appellant's Br. 6-7. Again, there is nothing barring courts, especially in the absence of relevant "Massachusetts decisional authority," In re Mularski, 565 B.R. at 207, from looking to decisions of other courts.

citations omitted)).

The recorded Affidavit of Sale, see Answer to Compl. Filed by Herbert Jacobs 9-10, does exactly that: it puts third parties on notice that the foreclosure auction, whose conclusion upon the execution of a memorandum of sale extinguished Tran's equity of redemption, indeed happened. See, e.g., Chaves v. United States Bank, N.A., 335 F. Supp. 3d 100, 107 (D. Mass. 2018) (Wolf, J.) (holding that defendants' "recorded Affidavit of Sale establishes a prima facie case that they have complied with the statutory requirements for conducting a foreclosure by power of sale, including the notice requirements of § 14"); see also Fannie Mae v. Hendricks, 463 Mass. 635, 642 (2012) (holding that "where the Affidavit of Sale is in the statutory form or meets the particular requirements of § 15, a plaintiff has made a prima facie case").

To be sure, the Commonwealth's courts have held that all that a recorded affidavit of sale does is to make a prima facie, not conclusive, case of compliance with the Commonwealth's relevant notice requirements. See, e.g., Fannie Mae, 463 Mass. at 641. If and when such a prima facie case has been made, however, it is "incumbent" upon the mortgagor to "counter with his own affidavit or acceptable alternative[.]" Chaves, 335 F. Supp. 3d at 107; Fannie Mae, 463 Mass. at 642.

In the present appeal, Tran has not contested the Affidavit

of Sale evidencing the conclusion of the foreclosure auction via a duly executed memorandum of sale. Appellant's Reply 2 (asserting that Jacobs mistakenly "focusses [sic] on the Affidavit, which is simply wrong"). Having reviewed the Bankruptcy Docket, this Court observes that the Affidavit of Sale contains the seller and the purchaser's names and their signatures, correctly identifies the Property and the purchase price, is notarized, notes compliance with the requirement to publish notice of the sale in a local newspaper three times, and is accompanied by a note of general compliance with the Commonwealth's applicable notice requirements. See Answer to Compl. Filed by Herbert Jacobs 9. In the absence of any evidence proffered by Tran that the Affidavit of Sale is defective, the Court concludes that the affidavit's prepetition recording provided constructive notice to bona fide third parties. See Chaves, 335 F. Supp. 3d at 107 ("Therefore, by submitting an Affidavit of Sale in the statutory form defendants have demonstrated prima facie compliance with the § 14 notice requirements."). As such, Tran is unable to avoid the transfer of his equity of redemption.

In summary, it is settled that in the Commonwealth a mortgagor's equity of redemption extinguishes upon the execution of a memorandum of sale at the conclusion of a foreclosure auction sale. The courts of the Commonwealth have further held

that an affidavit regarding such sale that complies with the applicable statutory requirements is prima facie evidence that such sale occurred, which puts third parties on notice that such sale occurred. Therefore, Tran can neither argue that he still retains his equity of redemption on the Property nor that he is able to avoid the transfer of such equity by contending that the foreclosure deed contains defects.

V. CONCLUSION

For the foregoing reasons, this Court **AFFIRMS** the Bankruptcy Court. Bankruptcy Docket Nos. 38, 40, 44.

SO ORDERED.

/s/ William G. Young
WILLIAM G. YOUNG
JUDGE
of the
UNITED STATES[6]

[6] This is how my predecessor, Peleg Sprague (D. Mass. 1841-1865), would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 45 years.