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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION *v.* ROGER ESSAGHOF ET AL.
(AC 45109)

Elgo, Suarez and Bear, Js.

Syllabus

The plaintiff bank sought to foreclose a mortgage on the defendants' residential property in Weston after they had defaulted on a loan secured by a mortgage deed. The defendants had executed a promissory note in favor of W Co., secured by the mortgage deed, and, subsequently, the plaintiff acquired W Co. and its assets, including the defendants' loan. Following a bench trial in 2015, the trial court rendered a judgment of strict foreclosure in favor of the plaintiff and the defendants appealed to this court, which affirmed the judgment of the trial court. The defendants, on the granting of certification, appealed to our Supreme Court, which reversed in part the judgment of this court only as to the issue of the reimbursement of certain taxes and insurance premiums and ordered the case remanded to this court, with direction to remand the case to the trial court for the purpose of setting a new law day. On remand, the trial court denied the defendants' motion to dismiss, which was predicated on two alleged deficiencies with the statutory (§ 8-265ee) Emergency Mortgage Assistance Program (EMAP) notice provided by the plaintiff in 2009, a copy of which was introduced into evidence at the trial in 2015. The court then set new law days in accordance with the remand order from the Supreme Court, and the defendants appealed to this court, which held that the trial court properly denied the defendants' motion to dismiss that claimed that the court lacked subject matter jurisdiction over the foreclosure proceeding due to the plaintiff's noncompliance with the EMAP notice requirements set forth in § 8-265ee. The defendants, on the granting of certification, again appealed to the Supreme Court, which vacated the judgment of this court and remanded the case to this court with direction to reconsider its decision affirming the trial court's denial of the defendants' motion to dismiss in light of its decision in *Bank of New York Mellon* v. *Tope* (345 Conn. 662), in which the court concluded that, when the question of whether the plaintiff has standing to bring a foreclosure action turns on questions of fact, namely, whether the plaintiff has been vested with the right to enforce the note, the trial court should provide an opportunity to present evidence and to cross-examine adverse witnesses. *Held*:

1. The trial court properly denied the defendants' motion to dismiss, as the trial court properly declined to reach the merits of a claim that the defendants previously had asserted before the trial court in 2015, but abandoned in their appeal from the 2015 judgment: the record indicated that the issue of whether the plaintiff complied with the EMAP notice requirements was disputed by the parties during the 2015 trial and the court necessarily rejected the claimed deficiency in the notice when it rendered a judgment of strict foreclosure, and, when the defendants did not raise any claim of error with respect to the issue of the plaintiff's compliance with the EMAP notice requirements in their appeal from the 2015 judgment, they abandoned their claim; moreover, the procedural posture of the present case was distinguished from that of *Tope* because the defendants asserted and litigated their claim regarding EMAP compliance during the trial in 2015, the parties were permitted to present evidence on the question of whether the plaintiff provided proper notice to the defendants and the defendants were able to cross-examine a witness who testified as to the EMAP notice issue, and, accordingly, the concerns that underpinned our Supreme Court's decision in *Tope* were not present; furthermore, although the Supreme Court explained in *KeyBank, N.A.* v. *Yazar* (347 Conn. 381) that the EMAP notice requirement is a condition precedent to the commencement of a foreclosure action, it also expressly held that the notice requirement is not jurisdictional in nature, and, thus, the claim raised by the defendants did not implicate the subject matter jurisdiction of the trial court.

2. The defendants' claim that the plaintiff violated the EMAP notice requirement set forth in § 8-265ee because the notice was sent by W Co., the plaintiff's predecessor mortgagee, and not the plaintiff, was unavailing; the trial court found, and the evidence in the record substantiated, that W Co. provided proper EMAP notice to the defendants prior to the initiation of this foreclosure action; moreover, § 8-265ee requires mortgagees to provide an EMAP notice upon initiation of any foreclosure action, and whether EMAP notice was proper did not turn on the particular entity that sent the EMAP notice, as there was no substantive difference for purposes of the EMAP statutory scheme between a predecessor mortgagee and the plaintiff.

Argued April 25—officially released September 5, 2023

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendant JPMorgan Chase Bank, N.A., was defaulted for failure to appear; thereafter, the case was tried to the court, *Hon. Kevin Tierney*, judge trial referee; judgment of strict foreclosure, from which the named defendant et al. appealed to this court, *Lavine*, *Mullins* and *Mihalakos*, *Js.*; subsequently, the court, *Hon. Kevin Tierney*, judge trial referee, granted the plaintiff's motion for reimbursement of property taxes and insurance premiums, and the named defendant et al. filed an amended appeal; thereafter, this court affirmed the judgment of the trial court, and the named defendant et al., on the granting of certification, appealed to the Supreme Court, which reversed in part the judgment of this court; subsequently, the court, *Spader*, *J.*, granted the plaintiff's motion to reset law days and denied the motion to dismiss filed by the named defendant et al., and the named defendant et al. appealed to this court, *Elgo*, *Suarez* and *Bear*, *Js.*, which affirmed the judgment of the trial court, and the named defendant et al., on the granting of certification, appealed to the Supreme Court, which granted the petition, vacated the judgment of this court, and remanded the case to this court for reconsideration. *Affirmed.*

Ridgely Whitmore Brown, for the appellants (named defendant et al.).

Brian D. Rich, for the appellee (plaintiff).

Opinion

ELGO, J. This foreclosure action returns to us on remand from the Supreme Court. In our prior opinion, this court rejected the various claims raised by the defendants, Roger Essaghof and Katherine Marr-Essaghof,[1] who had appealed from the judgment of the trial court granting the motion of the plaintiff, JPMorgan Chase Bank, National Association, to reset the law days in accordance with a previous remand order of our Supreme Court. See *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 217 Conn. App. 93, 95, 287 A.3d 1124 (2022), vacated, 346 Conn. 909, 288 A.3d 1031 (2023). The defendants thereafter filed a petition for certification with the Supreme Court, in which they challenged only this court's conclusion that the trial court properly had denied their motion to dismiss predicated on the plaintiff's alleged noncompliance with the notice requirement of the Emergency Mortgage Assistance Program (EMAP) set forth in General Statutes § 8-265ee (a).[2]

By order dated February 16, 2023, our Supreme Court granted that petition, vacated the judgment of this court, and remanded the case to us "with direction to reconsider in light of [its] decision in *Bank of New York Mellon* v. *Tope*, 345 Conn. 662, 286 A.3d 891 (2022)."[3] See *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 346 Conn. 909, 288 A.3d 1031 (2023). This court then ordered the parties to file supplemental briefs on the impact of that decision on the present appeal and heard argument from the parties on April 25, 2023. On August 1, 2023, our Supreme Court released its decision in *KeyBank, N.A.* v. *Yazar*, 347 Conn. 381, 297 A.3d 968 (2023), which concerns the proper statutory construction of the EMAP notice requirement codified in § 8-265ee (a). Accordingly, this court ordered the parties to file supplemental briefs on the impact of *KeyBank, N.A.* v. *Yazar*, supra, 381, on this appeal. Having considered the defendants' claim in light of the foregoing, we affirm the judgment of the trial court.

The facts relevant to this appeal are not in dispute and were set forth by this court in *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 217 Conn. App. 93. "In May, 2006, the defendants executed an adjustable rate promissory note in favor of Washington Mutual Bank, F.A. (Washington Mutual) in the amount of $1.92 million.[4] The loan was secured by a mortgage deed executed by the defendants on residential property in Weston. On June 24, 2008, the defendants executed a loan modification; they defaulted on the loan shortly thereafter. In September, 2008, the plaintiff acquired Washington Mutual and its assets, including the defendants' loan.

"The plaintiff commenced this foreclosure action in March, 2009. Following a bench trial in 2015, the court

rendered a judgment of strict foreclosure in favor of the plaintiff. The court found that the total debt was more than $3.2 million, while the fair market value of the property was $1.65 million, and set the law days. From that judgment, the defendants appealed to this court.

"While that appeal was pending, the plaintiff filed a motion for equitable relief in the trial court, seeking reimbursement from the defendants for property taxes and homeowners insurance premiums paid during the pendency of the appeal. After hearing argument and receiving supplemental briefing from the parties, the court granted the plaintiff's motion. The defendants then amended their appeal to include a challenge to that determination. As a result, two distinct claims were presented to this court in the defendants' prior appeal: (1) whether the trial court improperly rejected their special defenses of fraudulent inducement and unclean hands; and (2) whether the trial court abused its discretion in ordering them to reimburse the plaintiff for property taxes and homeowners insurance premiums paid by the plaintiff during the pendency of the appeal. See *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 177 Conn. App. 144, 146, 171 A.3d 494 (2017), rev'd in part, 336 Conn. 633, 249 A.3d 327 (2020). This court rejected those claims and affirmed the judgment of the trial court in all respects. See id., 163.

"Our Supreme Court subsequently granted the defendants' petition for certification to appeal from that judgment, limited to the issue of whether this court properly had affirmed 'the judgment of the trial court ordering the defendants to reimburse the plaintiff for property taxes and homeowners insurance premiums in violation of the provisions of General Statutes § 49-14 . . . .' *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 328 Conn. 915, 915, 180 A.3d 962 (2018). . . .

"With respect to the certified issue, the Supreme Court concluded that 'the trial court abused its discretion because the relief it ordered is inconsistent with the remedial scheme available to a mortgagee in a strict foreclosure.'[5] Id., 635. With respect to the defendants' claim of judicial bias, the court refused to consider the merits of that contention, stating: 'We decline to consider the merits of the defendants' second claim because the defendants did not raise the disqualification issue before the trial court or the Appellate Court, and because it is outside the scope of the certified question.' Id., 639. The Supreme Court thus reversed in part the judgment of this court and ordered as follows: '[T]he case is remanded to that court with direction to reverse the trial court's order directing the defendants to reimburse the plaintiff for property taxes and homeowners insurance premiums and to remand the case to that court for the purpose of setting a new law day; the judgment of the Appellate Court is affirmed in all other

respects.' Id., 653.

"On August 13, 2021, the plaintiff filed a motion in the trial court to reset the law days in accordance with that remand order. In response, [on August 27, 2021] the defendants filed an objection to that motion as well as a motion to dismiss, in which they argued that the trial court lacked subject matter jurisdiction over the foreclosure action due to the plaintiff's alleged failure to comply with the EMAP notice requirement.[6] The court held a hearing on those motions on October 8, 2021. It thereafter issued a memorandum of decision in which it denied the defendants' motion to dismiss and set new law days in accordance with the remand order from the Supreme Court." (Footnotes in original.) *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 217 Conn. App. 96–99.

In its memorandum of decision, the court emphasized that, although the issue of the plaintiff's compliance with the EMAP notice requirement had been litigated at the trial held in 2015, the defendants did not raise that issue in their appeal from the judgment of strict foreclosure. The court stated: "After judgment entered and the defendants appealed the judgment, the argument of an invalid demand notice and/or EMAP notice from Washington Mutual instead of [the plaintiff] does not appear in their appellate papers. The defendants had a clear opportunity to challenge the notice on substantive (rather than admissibility) grounds at trial in 2015, but did not. They also had the opportunity to include this issue in their appeal but did not. Instead, they waited six years, after decisions from both our Appellate and Supreme Courts affirming the underlying decision after trial, to raise this issue anew. . . . As this is an issue that came up in trial—and was included in the defendants' trial brief—it was ripe for appeal, but the defendants did not preserve the issue for appellate review." Because the defendants' " 'newly raised' jurisdictional argument was previously argued" before the trial court in 2015 but thereafter abandoned on appeal, the court denied their motion to dismiss.

From that judgment, the defendants appealed to this court, which rejected the various claims raised by the defendants. See *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 217 Conn. App. 95. The defendants then petitioned for certification, challenging only this court's determination that the trial court properly denied their motion to dismiss. Our Supreme Court granted that petition, vacated the judgment of this court, and remanded the case to us "with direction to reconsider in light of this court's decision in *Bank of New York Mellon* v. *Tope*, [supra, 345 Conn. 662]." *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 346 Conn. 909. We now revisit that determination in accordance with the remand order.

In this appeal, the defendants claim that the EMAP

notice requirement operates as a "condition precedent" to a court's exercise of subject matter jurisdiction over a foreclosure action. Relying on the precept that an issue of subject matter jurisdiction may be raised at any time; see, e.g., *Oxford House at Yale* v. *Gilligan*, 125 Conn. App. 464, 473, 10 A.3d 52 (2010); the defendants claim that the court improperly denied their motion to dismiss. For two distinct reasons, we disagree.

I

At the outset, we note our agreement with the defendants that compliance with the EMAP notice requirement is a condition precedent to the commencement of a foreclosure action. As our Supreme Court recently explained, "[i]f a mortgagee fails to comply with § 8-265ee (a), it has failed to satisfy a mandatory condition precedent and, therefore, has failed to allege a claim on which relief can be granted." *KeyBank, N.A.* v. *Yazar*, supra, 347 Conn. 394. At the same time, our Supreme Court expressly held that "the EMAP notice requirement is not jurisdictional" in nature. Id., 396. The defendants' claim in this appeal, therefore, is not one implicating the subject matter jurisdiction of the trial court.

The defendants' August 27, 2021 motion to dismiss was predicated on an alleged deficiency with the EMAP notice provided by the plaintiff in 2009, a copy of which was introduced into evidence during the trial in 2015. In that motion, the defendants claimed that the notice furnished by the plaintiff was invalid because it bore the name of Washington Mutual, the plaintiff's predecessor in interest, rather than that of the plaintiff itself.[7]

The record before us indicates that the issue of whether the plaintiff complied with the EMAP notice requirement in this regard was disputed by the parties during the trial. The March 4, 2015 trial transcript contains the testimony of a witness, Wilkin Rodriguez, offered by the plaintiff regarding the notice provided to the defendants and the names used therein.[8] In their July 1, 2015 posttrial brief, the defendants specifically argued that the EMAP notice in evidence "was not from the plaintiff, it was from a nonexistent entity . . . which many months before the January, 2009 notice, had ceased to exist . . . . Its assets were sold to the plaintiff but the entity was gone." Significantly, the defendants at that time alleged that "[t]he notice was deficient for that reason." The defendants further argued that, as a result of that deficiency, "the plaintiff has failed to satisfy a condition precedent to mortgage foreclosure and the case should fail for that reason."

In rendering a judgment of strict foreclosure in favor of the plaintiff, the court necessarily rejected that claimed deficiency in the notice furnished by the plaintiff. See *Young* v. *Commissioner of Correction*, 104 Conn. App. 188, 190 n.1, 932 A.2d 467 (2007) (when

decision lacks specificity, Appellate Court presumes trial court made necessary findings and determinations supported by record on which judgment is predicated), cert. denied, 285 Conn. 907, 942 A.2d 416 (2008). The defendants thereafter did not request an articulation of the court's judgment in that regard. See *Orcutt* v. *Commissioner of Correction*, 284 Conn. 724, 739 n.25, 937 A.2d 656 (2007) ("in the absence of an articulation . . . [an appellate court will] presume that the trial court acted properly").

Because that claimed deficiency was at issue before the trial court in 2015, it was incumbent on the defendants to raise any claim of error with respect to the court's nonacceptance of that claim in their appeal from the 2015 judgment. That they failed to do. As a result, the defendants abandoned that claim. See *Marlborough* v. *AFSCME, Council 4, Local 818-052*, 309 Conn. 790, 795 n.5, 75 A.3d 15 (2013) (claim raised by party at trial deemed abandoned when trial court did not specifically address claim and party "has not raised that issue on appeal" before either Appellate Court or Supreme Court); *Czarnecki* v. *Plastics Liquidating Co.*, 179 Conn. 261, 262 n.1, 425 A.2d 1289 (1979) ("claims of error not briefed are considered abandoned").

The defendants' reliance on *Daley* v. *Hartford*, 215 Conn. 14, 574 A.2d 194, cert. denied, 498 U.S. 982, 111 S. Ct. 513, 112 L. Ed. 2d 525 (1990), is unavailing. *Daley* involved a contract dispute in which the trial court directed a verdict in favor of the defendant. Id., 15. This court subsequently determined that the interpretation of the collective bargaining agreement at issue was a question of fact to be resolved by a jury in a new trial, and thus remanded the matter to the trial court. Id., 16. On remand, the defendant filed a motion to dismiss for lack of subject matter jurisdiction, which the court denied. Id. When the defendant then appealed the propriety of that determination, the plaintiffs argued that the defendant was estopped from asserting such a claim due to its "failure to pursue a jurisdictional defense in the original action" before the matter was remanded for retrial. Id., 26–27, 29.

Our Supreme Court disagreed with the contention that a jurisdictional challenge could not be raised for the first time following a remand to the trial court. The court observed that, in certain circumstances, the principle that subject matter jurisdiction may be raised at any time "must be tempered by the countervailing force of the principle of finality" and noted that "[t]he essential problem is therefore one of selecting which of the two principles is to be given the greater emphasis." (Internal quotation marks omitted.) Id., 28; accord *Investment Associates* v. *Summit Associates, Inc.*, 309 Conn. 840, 855, 74 A.3d 1192 (2013) ("even litigation about subject matter jurisdiction should take into account the importance of the principle of the finality

of judgments, particularly when the parties have had a full opportunity originally to contest the jurisdiction of the adjudicatory tribunal" (internal quotation marks omitted)). The Supreme Court then emphasized that the defendant had *not* raised its jurisdictional claim in the original action or the prior appeal. *Daley* v. *Hartford*, supra, 215 Conn. 30. For that reason, the court concluded that "this [second] appeal . . . represents the first opportunity for an appellate court to rule directly upon the question of subject matter jurisdiction." Id. Accordingly, the court concluded that principles of finality did not preclude review of the defendant's jurisdictional claim.

The procedural posture of the present case is markedly different. This is not a case in which a party is seeking to raise a jurisdictional challenge for the first time on remand from our Supreme Court. See *Noble* v. *White*, 85 Conn. App. 233, 237, 857 A.2d 362 (2004). Here, the defendants contested the issue of the plaintiff's compliance with the EMAP notice requirement before the trial court in 2015, claiming that "the plaintiff ha[d] failed to satisfy a condition precedent to mortgage foreclosure and the case should fail" due to the fact that the EMAP notice to the defendants did not specify the plaintiff's name. The trial court did not agree and rendered a judgment of strict foreclosure in favor of the plaintiff. The defendants appealed from that judgment to this court, which offered the first opportunity for an appellate court to rule directly on that question of subject matter jurisdiction. Although the defendants later amended that appeal to include an additional claim; see *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 177 Conn. App. 150; they nevertheless did not raise any claim with respect to the issue of the plaintiff's compliance with the EMAP notice requirement. Moreover, unlike the defendant's claim in *Daley*, the claim raised by the defendants here does *not* implicate the subject matter jurisdiction of the trial court. See *KeyBank, N.A.* v. *Yazar*, supra, 347 Conn. 396.

For that reason, the present case more closely resembles *Connecticut Savings Bank* v. *Heghmann*, 193 Conn. 157, 474 A.2d 790, cert. denied, 469 U.S. 883, 105 S. Ct. 252, 83 L. Ed. 2d 189 (1984). In that case, the trial court rendered a foreclosure judgment in favor of the plaintiff bank, and the defendants, against whom judgment was rendered, appealed to our Supreme Court. Id., 158. That appeal later was dismissed, and the trial court thereafter opened the judgment for the purpose of setting a new sale date. Id. The defendants then filed a motion to open the judgment on various grounds, which the trial court denied. Id. The defendants again appealed to our Supreme Court, claiming that the trial court improperly denied their motion. The court rejected that claim, stating that "the arguments now being advanced by the defendants could have been asserted in that [prior] appeal . . . . [T]he defendants

are obliquely attempting to revive an appeal that has succumbed by being abandoned." (Footnote omitted.) Id., 159–60. The defendants in the present case likewise could have challenged the propriety of the trial court's rejection of their claim that the plaintiff had "failed to satisfy a condition precedent to mortgage foreclosure" due to defective EMAP notice in their previous appeal to this court.[9]

The fact that the defendants asserted and litigated their claim regarding EMAP compliance during the trial in 2015 also distinguishes the present case from *Tope*.[10] Following the rendering of a judgment of foreclosure by sale, the defendant in *Tope* moved to open the judgment and, days later, filed a motion for summary judgment, in which he raised a jurisdictional claim regarding the plaintiff bank's lack of standing to bring the foreclosure action. *Bank of New York Mellon* v. *Tope*, supra, 345 Conn. 666–67. After hearing argument from the parties, the court denied those motions. Id., 667. The defendant subsequently filed multiple motions to dismiss, as well as a motion to open and vacate the judgment of foreclosure by sale, predicated on that same ground, which were denied without an evidentiary hearing. Id., 667–70.

On appeal, our Supreme Court considered the question of whether "the trial court properly denied the defendant's motion to open, which challenged the subject matter jurisdiction of the court." Id., 676. In answering that question, the court emphasized that, "[i]n almost every setting [in which] important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. . . . When issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." (Internal quotation marks omitted.) Id., 682. The court thus concluded that, "[b]ecause the question of the plaintiff's standing to bring the foreclosure action in the present case turns on questions of fact, namely, whether the plaintiff has been vested with the right to enforce the note, the trial court should not have denied the motion to open but should have conducted an evidentiary hearing to determine whether the plaintiff had standing to bring the foreclosure action in the present case." Id., 682–83.

In the present case, a trial was held in 2015, at which the parties were permitted to present evidence on the question of whether the plaintiff provided proper notice to the defendants. At that trial, the defendants also were permitted to cross-examine Rodriguez, who testified on behalf of the plaintiff regarding the EMAP notice issue. See footnote 8 of this opinion. Because that issue was raised and litigated at the trial held in 2015, the concerns that underpinned the court's decision in *Tope* are not present here.

In Connecticut, parties generally are not permitted to "revive an appeal that has succumbed by being abandoned." *Connecticut Savings Bank* v. *Heghmann*, supra, 193 Conn. 159–60. In light of the foregoing, the trial court properly declined to reach the merits of a claim that the defendants previously asserted before the trial court in 2015 but abandoned in their appeal from the 2015 judgment.

II

The defendants' claim suffers an additional infirmity. The defendants argue that the plaintiff "clearly violated" the EMAP notice requirement because "[t]he EMAP notice was sent by Washington Mutual, not [the plaintiff]" and submit that such notice "must be sent by the foreclosing mortgagee, not a previous mortgagee." They are mistaken.

As our Supreme Court has explained, "§ 8-265ee requires mortgagees to provide a new EMAP notice upon initiation of *any* foreclosure action, including a successive foreclosure action predicated on the same default." (Emphasis in original.) *KeyBank, N.A.* v. *Yazar*, supra, 347 Conn. 402. The court further emphasized that "[t]here is no substantive difference for purposes of the EMAP statutory scheme between [a predecessor mortgagee] and the plaintiff. Our analysis does not turn on the particular entity that sent the EMAP notice; rather, what is of consequence is ensuring that an EMAP notice is sent prior to the initiation of any subsequent foreclosure action, as each foreclosure action must stand on its own EMAP notice." Id., 404. Because the trial court in the present case found, and the evidence in the record substantiates, that the plaintiff's predecessor mortgagee provided proper EMAP notice to the defendants prior to initiating this foreclosure action,[11] the defendants' claim is untenable.

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

In this opinion the other judges concurred.

[1] The plaintiff, JPMorgan Chase Bank, National Association, acquired Washington Mutual Bank, F.A., the originator of the note and mortgage from which this foreclosure action arises. Washington Mutual Bank, F.A., also held a junior lien with respect to the mortgage that was foreclosed in this action. As a result, JPMorgan Chase Bank, N.A., also was named as a defendant in this action. Because JPMorgan Chase Bank, N.A., was defaulted for failure to appear as a defendant and is not a party to this appeal in that capacity, we refer to Roger Essaghof and Katherine Marr-Essaghof collectively as the defendants.

[2] Although § 8-265ee has been amended since the events underlying this appeal; see, e.g., Public Acts 2009, No. 09-219, § 29; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] The Supreme Court's decision in *Bank of New York Mellon* v. *Tope*, supra, 345 Conn. 662, was officially released on December 20, 2022—the same day that our decision in *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, supra, 217 Conn. App. 93, was released.

[4] "As this court noted in the defendants' prior appeal, 'Roger Essaghof [is] a highly experienced real estate investor who had negotiated numerous residential and commercial mortgages . . . .' *JPMorgan Chase Bank*,

National Assn. v. *Essaghof*, 177 Conn. App. 144, 148, 171 A.3d 494 (2017), rev'd in part, 336 Conn. 633, 249 A.3d 327 (2020)." *JPMorgan Chase Bank*, *National Assn.* v. *Essaghof*, supra, 217 Conn. App. 97 n.3.

[5] "As the court explained, 'when the defendants defaulted on their payment obligations, and the plaintiff elected strict foreclosure as its remedy, the plaintiff chose a remedial scheme that prescribes a specific and exclusive process by which it could be made whole. At the conclusion of this process, assuming the defendants do not redeem, their equity of redemption will be extinguished by the passing of the law days, and absolute title to the property will vest in the plaintiff. If the debt exceeds the value of the property, the plaintiff may then pursue the difference from the defendants in a deficiency proceeding pursuant to § 49-14. The deficiency judgment is the only procedure available to the plaintiff to recover its mortgage debt, including payments advanced to pay real estate taxes and property insurance, in excess of the value of the property.' *JPMorgan Chase Bank*, *National Assn.* v. *Essaghof*, supra, 336 Conn. 650." *JPMorgan Chase Bank*, *National Assn.* v. *Essaghof*, supra, 217 Conn. App. 98 n.4.

[6] "More specifically, the defendants alleged that the EMAP notice furnished by the plaintiff in the present case (1) was not sent by certified mail and (2) bore the name of Washington Mutual, rather than the plaintiff." *JPMorgan Chase Bank*, *National Assn.* v. *Essaghof*, supra, 217 Conn. App. 99 n.5.

[7] The defendants also claimed that the notice provided in 2009 was defective because "when one searches the certified number . . . on the United States Postal Service's tracking website, [as the defendants' counsel] did on August 17, 2021, the website responds with a message indicating 'Label created, not yet in system.' " In our prior decision, this court concluded that the trial court properly rejected that claim. See *JPMorgan Chase Bank*, *National Assn.* v. *Essaghof*, supra, 217 Conn. App. 102–103. In their supplemental briefs filed with this court on March 23 and August 15, 2023, the defendants do not quarrel with that determination and confine their claim to whether the EMAP notice was defective because it "was sent by Washington Mutual, not [the plaintiff]."

[8] The March 4, 2015 transcript contains the following colloquy between the plaintiff's attorney and Rodriguez:

"Q. Can you tell me, after [the plaintiff] purchased the assets of Washington Mutual, whether [the plaintiff] continued to use the name of Washington Mutual for some time after?

"A. Yes. The Washington Mutual name was kept for servicing purposes for a while after the merger. It took a while to integrate the servicing platforms for the two companies so a lot of the customers were still receiving mail under the Washington Mutual name. We had several duplicate loan numbers and things of that nature that had to be straightened out before everybody began being serviced under [the plaintiff's name].

"Q. So, is it your understanding, based on that, that [the January 6, 2009 notice to the defendants] was issued by [the plaintiff] in the name of Washington Mutual?

"A. That's correct."

[9] That prior appeal was filed on December 16, 2015. The defendants filed an amended appeal to raise an additional claim unrelated to the EMAP notice issue on March 14, 2016.

[10] At oral argument before this court on April 25, 2023, the defendants' counsel was asked if "the EMAP issue was raised and litigated" before the trial court in 2015. Counsel answered in the affirmative. In their principal appellate brief, the defendants likewise acknowledge that, although the EMAP notice issue was ripe for appeal in 2015, they did not preserve that issue for appellate review.

[11] In their August 27, 2021 memorandum of law in support of their motion to dismiss, the defendants averred in relevant part that Washington Mutual "sent the [EMAP] notice" to them. The defendants also appended a copy of that notice as an exhibit to their August 27, 2021 motion to dismiss, which notice previously had been admitted into evidence as a full exhibit at trial on March 3, 2015. In its memorandum of decision, the trial court found that "[t]he EMAP notice was clearly sent by [Washington Mutual to the defendants] on January 6, 2009 . . . ." At oral argument before this court on October 6, 2022, the defendants' counsel was specifically asked if he was arguing that an EMAP notice "never was sent" to the defendants by Washington Mutual, the predecessor mortgagee. In response, counsel conceded that such notice was furnished to the defendants but argued that said notice was invalid because "it was never mailed by [the plaintiff]."