COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT
NORTHERN DISTRICT

HSBC BANK, USA, NATIONAL ASSOCIATION[1]

V.

RONALD P. HOWE and others[2]

NO. 15-ADMS-10016

In the MALDEN DIVISION:

Justice: Yee, J.
Docket No. 1350SU0237
Date of Decision Appealed: January 29, 2015
Date of Entry in the Appellate Division: May 27, 2015

In the APPELLATE DIVISION:

Justices: Swan, P.J., Coven & Singh, JJ.
Sitting in: Boston, Massachusetts
Date of Hearing: October 30, 2015
Date Opinion Certified: February 19, 2016

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1 As Trustee of Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA4.

2 Patricia Howe and Jeannette Howe.

Boston, MA 02111

OPINION

SWAN, P.J. In July, 2012, HSBC Bank, USA, National Association, as a trustee ("HSBC"), purchased at a mortgage foreclosure sale a parcel of land on Hadley Street in Malden ("the premises"). The mortgage was granted by Patricia, Jeannette, and Ronald P. Howe[3] ("the Howes"), and was held by HSBC at the time of the sale. Eight months later, HSBC commenced an action in summary process in Malden District Court to evict the Howes, who responded with an answer and counterclaim. A series of motions followed.[4] At issue here, the Howes filed motions to strike an affidavit of sale executed pursuant to G.L. c. 244, § 15, and later for summary judgment for possession, both of which the court allowed. HSBC has appealed from that judgment. In reaching his decision, the motion judge wrote two thorough and thoughtful memoranda stating that HSBC had not been legally assigned the mortgage, that the affidavit of sale was defective, and that the attorney overseeing the foreclosure acted without a written authorization under seal. We reach a contrary conclusion, however, and address each question in order.

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3 In the mortgage, the Howes appear as Jeannette E. Howe, unmarried, Patricia Howe, married, and Ronald P. Howe, Jr., married.

4 The Howes moved to strike an affidavit of sale executed pursuant to G.L. c. 244, § 15, which was allowed. At the same time, the court heard HSBC's motion for summary judgment, demanding possession for HSBC and dismissal of the Howes' counterclaims relating to the condition of the premises on the ground that no landlord-tenant relationship existed; that motion was denied as to possession on the ground that HSBC proved no compliance with G.L. c. 244, § 35A, and was allowed as to the counterclaims. HSBC thereafter filed a motion for reconsideration on the basis of *U.S. Bank Nat'l Ass'n v. Schumacher*, 467 Mass. 421 (2014), which held that G.L. c. 244, § 35A, is not part of the mortgage foreclosure process. *Id.* at 422. The motion judge acknowledged that his decision was wrong, but permitted the Howes to amend their answer to allege that "the violation of § 35A rendered the foreclosure so fundamentally unfair that [they are] entitled to affirmative equitable relief, specifically the setting aside of the foreclosure sale 'for reasons other than failure to comply strictly with the power of sale provided in the mortgage.'" *Id.* at 433 (Gants, J., concurring), quoting *Bank of Am., N.A. v. Rosa*, 466 Mass. 613, 624 (2013). HSBC also requested reconsideration of the earlier allowance of the Howes' motion to strike the affidavit of sale; that request was denied, for reasons discussed below. Finally, the motion judge heard the Howes' motion for summary judgment for possession; their motion was allowed. Separate judgment was entered for possession to the Howes, and it is this judgment that is the subject of this appeal.

Validity of the mortgage assignment. In granting the Howes' motion for summary judgment for possession, the judge found that "HSBC was not the mortgagee on the date of the notices and foreclosure, since the [Howes'] mortgage was not assigned in compliance with the HSBC Trust Pooling and Service Agreement ('PSA')." By way of background, on July 25, 2007, HSBC, Wells Fargo Asset Securities Corporation ("the Depositor"), and Wells Fargo Bank, N.A. ("Wells Fargo") executed the PSA, by which the Depositor assigned to HSBC a series of mortgage loans to be serviced by Wells Fargo. Both Wells Fargo and HSBC covenanted to conduct their activities in accordance with so-called REMIC provisions.[5] The PSA provided that the loans were to be assigned to HSBC by July 25, 2007 (defined in the PSA as "the Closing Date"), and that it was to be construed in accordance with New York law "without regard to conflicts of laws principles."

The Howes granted the mortgage in the premises to Wells Fargo by an instrument dated April 30, 2007, and filed in the Southern Middlesex Registry District of the Land Court four days later. Wells Fargo assigned the mortgage and the note secured thereby to HSBC by an instrument dated October 5, 2010, and filed three days later. The assignment was signed and acknowledged by Andrew S. Harmon, of Harmon Law Offices, P.C., acting under a prior limited power of attorney.[6] In their motion, the Howes alleged, and the motion judge agreed, that the assignment was void, since it occurred after the Closing Date.

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5 "A real estate mortgage investment conduit (REMIC) is a species of investment vehicle, used to pool mortgage loans and issue mortgaged-backed securities. The REMIC holds commercial and residential mortgages in trust, and issues interests in these mortgages to investors. IRS regulations confer preferred tax status on REMICs, as compared to other mortgage-backed securities, and also require that REMICs be limited in how and when REMICs can acquire mortgages. See 26 U.S.C. §§ 860A-860G." *ClearVue Opportunity XV, LLC v. Sheehan*, 2015 Mass. App. Div. 125, 138 n.26. A REMIC is defined by the Internal Revenue Code as an entity, among other things, "as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments." 26 U.S.C. § 860D(a)(4).

6 The assignment contains a marginal reference to a limited power of attorney previously filed. The Howes do not dispute the validity of the power or the authority of Andrew S. Harmon to execute the assignment.

The assignment of mortgages is governed by G.L. c. 183, § 54B, which provides that an

> "assignment of mortgage . . . or . . . a power of attorney given for that purpose or for the purpose of servicing a mortgage, and in either case, any instrument executed by the attorney-in-fact pursuant to such power, if executed before a notary public . . . whether executed within or without the commonwealth, by a person . . . acting under such power of attorney on behalf of [the entity holding such mortgage], . . . shall be binding upon such entity and shall be entitled to be recorded, and no vote of the entity affirming such authority shall be required to permit recording."

The assignment from Wells Fargo to HSBC satisfied this mandate and was "'otherwise effective to pass legal title' and cannot be shown to be void," *Bank of N.Y. Mellon Corp. v. Wain*, 85 Mass. App. Ct. 498, 503 (2014), quoting *Culhane v. Aurora Loan Servs. of Neb.*, 708 F.3d 282, 291 (1st Cir. 2013), at least as to its statutory form. Thereafter, a mortgagor has no standing to challenge the validity of the assignment except as "to claims that a defect in the assignment rendered it void, not merely voidable. . . . Thus, where the foreclosing entity has established that it validly holds the mortgage, a mortgagor in default has no legally cognizable stake in whether there otherwise might be latent defects in the assignment process." *Id.* at 502. See *Sullivan v. Kondaur Capital Corp.*, 85 Mass. App. Ct. 202, 206 (2014) (no standing unless "purported foreclosure was void by reason of [the mortgagee's] lack of legal authority to conduct it"); *Culhane*, *supra* at 291, citing *Service Mtge. Corp. v. Welson*, 293 Mass. 410, 413 (1936) ("[A] mortgagor does not have standing to challenge shortcomings in an assignment that render it merely voidable at the election of one party but otherwise effective to pass legal title."), and *Murphy v. Barnard*, 162 Mass. 72, 77 (1894).

The motion judge found that the assignment was void under a New York statute, specifically, EPTL 7-2.4,[7] which states, "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by

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[7] The citation refers to the New York Estates, Powers and Trusts Law. EPTL 1-1.1 states, "A section of this law may be cited by article, part and section number, to wit, EPTL 1-1.1, which refers to article 1, part 1, section 1, without being preceded by the word article, part or section or the symbol §."

any other provision of law, is void." The PSA refers to the mortgage loans that are to

be included in the trust estate as being received by the Closing Date. While nowhere in the PSA is there any provision that the receipt by HSBC of a mortgage assignment after the Closing Date contravenes the trust, the PSA requires the trustee, HSBC, to comply with federal REMIC qualifications, including having "substantially all of [its] assets" consisting "of qualified mortgages and permitted investments" as "of the close of the 3rd month beginning after the startup day." 26 U.S.C. § 860D(a)(4).

In finding the assignment void, the motion judge relied on an unpublished opinion of a New York trial court, which denied a mortgage holder's motion for summary judgment in a judicial foreclosure proceeding involving a similar REMIC pooling and servicing agreement; that court held, "Under New York Trust Law, every sale, conveyance or other act of the trustee in contravention of the trust is void. [EPTL 7-2.4]. Therefore, the acceptance of the note and mortgage by the trustee after the date the trust closed, would be void." *Wells Fargo Bank, N.A. v. Erobobo*, 972 N.Y.S.2d 147 (N.Y. Sup. Ct., Kings Co. 2013).[8] Since the motion judge's decision, however, the Appellate Division of the New York Supreme Court reversed the trial court in *Erobobo*, concluding that the "mortgagor whose loan is owned by a trust, does not have standing to challenge the plaintiff's possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the PSA." *Wells Fargo Bank, N.A. v. Erobobo*, 127 A.D.3d 1176 (N.Y. 2015), leave to appeal dismissed, 25 N.Y.3d 1221 (2015), citing *Bank of N.Y. Mellon v. Gales*, 116 A.D.3d 723, 725 (N.Y. 2014), and *Rajamin v. Deutsche Bank Nat'l Trust Co.*, 757 F.3d 79, 86-87 (2d Cir.

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The Kings County Supreme Court also found that the assignment from the mortgagee to the trustee of the pooling and servicing agreement rather than to the named depositor, who would then assign to the trustee, further violated the terms of the agreement and was void for that reason as well. A similar circumstance occurred here: Wells Fargo assigned directly to HSBC rather than to the Depositor. The Howes have not challenged that aspect of the assignment. In any event, the subsequent appellate history of the New York decision in *Erobobo* appears to moot any claim on that ground.

2014). And another judge sitting in the same court as the trial judge in *Erobobo* disagreed with his colleague, noting in an unpublished opinion that "acts may be ratified by the trust's beneficiaries and 'are voidable only at the instance of a trust beneficiary or a

person acting in his behalf.'" *U.S. Bank Nat'l Ass'n v. Duthie*, 3 N.Y.S.3d 287 (N.Y. Sup. Ct., Kings Co. 2014), quoting *Rajamin*, *supra* at 90.[9] In fact, "the weight of New York authority is contrary to [the] contention that any failure to comply with the terms of the PSAs rendered [the] acquisition of [mortgagors'] loans and mortgages void as a matter of trust law. Under New York law, unauthorized acts by trustees are generally subject to ratification by the trust beneficiaries." *Rajamin*, *supra* at 88, citing *King v. Talbot*, 40 N.Y. 76, 90 (1869) ("The rule is perfectly well settled, that a *cestui que trust* is at liberty to elect to approve an unauthorized investment, and enjoy its profits, or to reject it at his option."[10]).

The rationale for this result appears obvious: the beneficiaries of a trust, in this case the REMIC investors, are the parties affected by an unauthorized acceptance of a mortgage loan, especially if it impacts their tax status, and should therefore be given the opportunity, in such a case, to seek its avoidance, whereas a mortgagor whose loan has been assigned has no such beneficial interest and has no objective reason to avoid. Thus, given that the PSA is to be governed by New York law "without regard to conflicts of laws principles" and applying New York law as New York courts have, the assignment was not void as it relates to the Howes, who, in turn, not being beneficiaries of the trust, were without standing to challenge it.

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A second unpublished opinion advanced by the Howes, *Aurora Loan Servs., LLC v. Mendenhall*, 992 N.Y.S.2d 157 (N.Y. Sup. Ct., Suffolk Co. 2014), presents a view similar to that of the New York trial court in *Erobobo* and, if appealed, would in all probability meet a similar fate. Indeed, it was this decision that the trial court in *Duthie, supra*, specifically declined to follow.

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"[A]n alternative name for the beneficiary is '*cestui que trust,*' an elliptical phrase meaning 'he [for] whose [benefit the] trust [was created].'" G. Williams, Learning the Law 10 (11th ed. 1982), quoted in Black's Law Dictionary 277 (10th ed. 2014).

Challenges to assignments in violation of New York pooling and servicing agreements have been consistently declined in Massachusetts, as noted in *ClearVue Opportunity XV, LLC v. Sheehan*, 2015 Mass. App. Div. 125, 138-140, and cases cited. In the view of the United States District Court, "'New

York case law . . . makes clear that [EPTL] 7-2.4 is not applied literally in New York' and . . . that 'even if it is true that the Note was transferred to the Trust in violation of the PSA, that transaction . . . is merely voidable.'" *Koufos v. U.S. Bank, N.A.*, 939 F. Supp. 2d 40, 57 n.2 (D. Mass. July 2, 2013). Analyzing further, "If New York law were to apply here, the Court finds persuasive the detailed analysis of this issue in *Bank of Am. Nat'l Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, 981 N.E.2d 1, 8-10, 366 Ill. Dec. 936, (Ill. App. Ct. 2012) (noting apparent contradictions under New York law, but ultimately concluding that *ultra vires* trust transactions are voidable rather than void)." *Koufos v. U.S. Bank, N.A*, 939 F. Supp. 2d 40, 49 n.5 (D. Mass. March 21, 2013). The Southern District of this Appellate Division, after an extensive review of the *Erobobo* history as well as state and federal trial court opinions[11] in the Commonwealth, concluded that "the transfer of the mortgage into the trust in violation of the PSA would not invalidate the assignment." *ClearVue Opportunity XV, LLC, supra* at 139-140. We agree.[12]

Affidavit of sale. In allowing the Howes' motion for summary judgment, the motion judge in part based his decision on his earlier striking of HSBC's affidavit of sale, executed under G.L. c. 244, § 15, which states:

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11 This includes *Halacy v. Wells Fargo Bank, N.A.*, U.S. Dist. Ct., No. 12-11447 (D. Mass. Nov. 21, 2013), which held, on facts similar to the assignment of the Howes' mortgage, that "even assuming that the [post-Closing Date] transfer of the [mortgagors'] mortgage into the trust was done in violation of the PSA, such violation would not invalidate the assignment."

12 We should note also that the restriction on post-Closing Date assignments in the pooling and servicing agreement in *ClearVue Opportunity XV, LLC* was explicit, stating that the trustee shall not "accept any contributions to any Trust REMIC after the Closing Date." *Id.* at 139. The PSA in the instant case, or at least so much of it as reproduced in the record appendix and the Howes' supplemental appendix, has no such explicit restriction.

> "The person selling, or the attorney duly authorized by a writing or the legal guardian or conservator of such person, shall, after the sale, cause a copy of the notice and his affidavit, fully and particularly stating his acts, or the acts of his principal or ward, to be recorded in the registry of deeds for the county or district where the land lies, with a note or reference thereto on the margin of the record of the mortgage deed, if it is recorded in the same registry. If the affidavit shows that

> the requirements of the power of sale [set forth in G.L. c. 183, § 21] and of the statute [G.L. c. 244, § 14] have in all respects been complied with, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed."

HSBC's affidavit of sale was executed by Andrew P. Osofsky, Esq. ("Osofsky") of Harmon Law Offices, P.C., as attorneys for HSBC. Osofsky averred that the Howes' mortgage having not been paid, the "office," meaning the law firm, "caused to be published" a notice of sale for three successive weeks in the Malden Evening News, a newspaper with a general circulation in that city, that the "office" complied with G.L. c. 244, § 14, requiring the certified mailing of the notice, and that, after a series of postponements, HSBC sold the premises by public auction to the highest bidder, namely, itself. The Howes argue that the affidavit of sale did not comport with the statutory short form, to wit:

> "_____ named in the foregoing deed, make oath and say that the principal _____ interest _____ obligation _____ mentioned in the mortgage above referred to was not paid or tendered or performed when due or prior to the sale, and that I published on the _____ day of _____, 19 ___, in the _____, a newspaper published or by its title page purporting to be published in _____ aforesaid and having a circulation therein, a notice of which the following is a true copy. (INSERT ADVERTISEMENT)
>
> "Pursuant to said notice at the time and place therein appointed, I sold the mortgaged premises at _____ public auction by _____, an auctioneer, to _____, above named, for _____ dollars, bid by him, being the highest bid made therefor at said auction.
>
> "Sworn to by the said _____, 19 ___, before me _____."

G.L. c. 183, Appendix Form 12.

The difference between Osofsky's affidavit and the statutory short form is that instead of his own actions in the first person as reflected in the form, Osofsky is here reciting the actions of his law firm and his client, HSBC. While we took issue with such non-first person recitations in *HSBC Bank USA, Nat'l Ass'n v.*

Galebach, 2012 Mass. App. Div. 155, the Supreme Judicial Court later decided *Federal Nat'l Mtge. Ass'n v. Hendricks*, 463 Mass. 635 (2012), which held that "an uncontroverted affidavit attesting to the statutory form 'Affidavit of Sale under Power of Sale in Mortgage,' G.L. c. 183, § 8, & Appendix

Form 12 (statutory form), is sufficient to show compliance with the power of sale for the purpose of establishing the right of possession by motion for summary judgment in a summary process action." *Id.* at 635-636.[13] The Court went on, "[W]here the affidavit of sale is in the statutory form or meets the particular requirements of § 15, a plaintiff has made a prima facie case." *Id.* at 642. Osofsky's affidavit does not differ materially from that which was approved by the Appeals Court in *Deutsche Bank Nat'l Trust Co. v. Gabriel*, 81 Mass. App. Ct. 564 (2012), rev. denied, 462 Mass. 1107 (2012). There, the affiant, Francis J. Nolan, of Harmon Law Offices, P.C., as Attorney in Fact for Wells Fargo Bank, N.A., stated that the bank caused the notices to be published, that "I," i.e., the affiant himself, complied with the G.L. c. 244, § 14, mailing, and that the bank sold the property -- a composite of first- and third-person activity. *Id.* at 569 n.15. The Appeals Court wrote that the affidavit

> "omitted no material information from the statutory form, and its only additions were those pertinent to the specific facts of the foreclosure sale of the property at issue in this case. A comparison of the text of the model form . . . with that of Attorney Nolan's affidavit . . . shows the limited differences between the two. Indeed, the defendants point to no specific or significant difference between Attorney Nolan's affidavit and the statutory form. Attorney Nolan's affidavit was, therefore, as a matter of law 'sufficient' under G.L. c. 183, § 8, and accordingly

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Assuming that *Galebach* has not been impliedly overruled by *Hendricks*, we think the ultimate defect in the affidavit of sale in *Galebach* was not just that the affiant -- the bank's vice president -- was reciting the acts of her employer rather than hers but that everything presented in the affidavit was based "upon information contained in our books and records as they are kept in the ordinary course of business and certain information provided to us by our attorneys for this matter." The affidavit was based on hearsay, not what the affiant or the bank did, but what documents of the bank and its attorneys' information said the bank did. Here, by contrast, Osofsky, HSBC's attorney, was presumably in charge of the foreclosure and could attest to his firm's and client's actions.

also satisfied the requirements of G.L. c. 244, § 15."

Id. at 569-570. Accord *ClearVue Opportunity XV LLC*, *supra* at 133-135.

The fact that the affidavit recites acts of a third party for whom the affiant is working rather than those of the affiant himself is simply the result of changing economic conditions. The statutory form was drafted in 1913, see 1 Crocker's Notes on Common Forms § 589 (Mass. Cont. Legal Educ. 10th ed. 2013), at a time when mortgagors and mortgagees, as well as buyers and sellers, were often individuals.

Thus, the form designates the mortgagee ("I"), as well as the highest bidder at the foreclosure sale ("him"), as individuals. Today, mortgage lenders are almost always institutions, which commonly bid in at their own foreclosure sales. An institution cannot refer to itself as "I" and, if bidding at its own sale, as "him." Indeed, the section prescribing the use of all the statutory short forms in the Appendix to G.L. c. 183 foresees this eventuality: "[The forms] may be altered as circumstances require, and the authorization of such forms shall not prevent the use of other forms." G.L. c. 183, § 8. See, e.g., *Lewis v. Jackson*, 165 Mass. 481, 486 (1896) (affidavit of sale using the word "it" instead of "they" when referring to default in payment of principal, interest, and taxes "is obviously a grammatical error which does not affect the meaning"). Accordingly, Osofsky's affidavit complied with the provisions of G.L.
c. 183, § 8, and Appendix Form 12, and of G.L. c. 244, § 15, and should not have been stricken. With Osofsky's affidavit back before the motion judge, it will thereafter be "incumbent on [the Howes] to counter with [their] own affidavit or acceptable alternative demonstrating at least the existence of a genuine issue of material fact to avoid summary judgment against [them]," *Hendricks*, *supra* at 642, or to show defects in the foreclosure sale as a defense at trial.[14]

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Statute 2015, c. 141, effective December 31, 2015, has revised G.L. c. 244, § 15, to provide for challenges to

Attorney's authorization. The other alleged defect in the affidavit of sale cited by the court below is that HSBC submitted no evidence that Osofsky or his firm was acting for HSBC under a written authorization under seal. Section 14 of G.L. c. 244, provides that the statutory power of sale may be exercised by the "mortgagee . . . or the attorney duly authorized by a writing under seal." HSBC as the mortgagee was "empowered to exercise the statutory power of sale," *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 647 (2011), and the operative documents -- including the mortgage assignment from Wells Fargo to HSBC, the published notice of sale, the foreclosure deed, the notices to quit, the summary process complaint, and indeed the recitation in the affidavit of sale itself -- all indicate that it was HSBC

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the validity of foreclosure sales in cases such as this one.

acting as the foreclosing entity, and that Osofsky was acting merely as the lawyer for HSBC. We have held that an authorizing instrument is unnecessary where "the mortgagee, conducted the foreclosure with the assistance of attorneys who acted on its behalf." *Federal Nat'l Mtge. Ass'n v. Rogers*, 2015 Mass. App. Div. 68, 73. See *Fairhaven Sav. Bank v. Callahan*, 391 Mass. 1011, 1012 (1984), aff'g 1983 Mass. App. Div. 179 (G.L. c. 244, § 14, was not violated by failure to have mortgagee's instructions to lawyers "under seal"[15] where mortgagee conducted foreclosure with assistance of attorneys who prepared legal documents); *Federal Nat'l Mtge. Ass'n v. Isaac*, 2014 Mass. App. Div. 223, 224-225.[16]

In any event, Osofsky did have authorization. It came in the form of a written power of attorney, cited by the motion judge,[17] but with whose analysis of it we disagree. The power was executed by Wells Fargo, acting as attorney-in-fact for HSBC.[18] It was dated October 10, 2012, after the auction (on July 17, 2012), but before the passing of the foreclosure deed (December 26, 2012). It appointed "any attorney employed by" Harmon Law Offices, P.C. to "mak[e] entry upon the premises" for purposes of foreclosure, to "bid on [HSBC's] behalf" and "further to execute documents necessary and directly incidental to the foreclosure auction." The instrument also ratified "any and all previous actions taken by . . . any said attorney . . . pursuant to said purposes." Any requirement for a written authorization was

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Stepping back from their argument in the court below, the Howes now concede, as they must, that such a writing requires no seal: "No instrument purporting to affect an interest in land shall be void because it is not sealed or does not recite a seal." G.L. c. 183, § 1A.

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While we are guided by our own and other precedents, we are mindful that the Supreme Judicial Court is considering this point anew in *Federal Nat'l Mtge. Ass'n v. Rego*, SJC-11927, a direct appeal from the Housing Court. The Court solicited amicus briefs and conducted oral argument on November 3, 2015.

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The power of attorney was inexplicably omitted from the record appendix. The Malden District Court has provided us with a copy.

18

HSBC had previously appointed Wells Fargo as its attorney-in-fact to execute documents relating to the Howes' mortgage and other security interests that HSBC held in its trust capacity, by a Limited Power of Attorney dated December 17, 2007, and filed on May 2, 2008.

satisfied.

The summary judgment entered for the defendants is reversed, and the action is returned to the Malden District Court for further proceedings consistent with this opinion.

HON. ALLEN G. SWAN, Presiding Justice
HON. MARK S. COVEN, Justice
HON. SABITA SINGH, Justice

This certifies that this is the Opinion
of the Appellate Division in this case.
A True Copy, Attest:

_____

Brien M. Cooper, Clerk