

**United States District Court
District of Massachusetts (Springfield)
CIVIL DOCKET FOR CASE #: 3:25-cv-13553-MGM**

Sutton v. HarborOne Mortgage, LLC

Assigned to: Judge Mark G. Mastroianni

Cause: JS 44 Sec. IV - no matching citation currently in database

Date Filed: 11/24/2025

Jury Demand: Both

Nature of Suit: 190 Contract: Other

Jurisdiction: Federal Question

Plaintiff

Shannon K. Sutton

represented by **Todd S. Dion**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant

HarborOne Mortgage, LLC

represented by **Trevor James Brown**

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ATTORNEY TO BE NOTICED

09/30/2026	18	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered GRANTING IN PART AND DENYING IN PART 10 Motion To Dismiss; and DENYING 17 Motion for Hearing. Plaintiff Shannon K. Sutton brings this action against Defendant HarborOne Mortgage, LLC ("HarborOne") asserting claims for declaratory relief and breach of contract arising from a mortgage loan secured by real property located at 151 Gilbert Avenue, Springfield, Massachusetts. Plaintiff is the mortgagor and record owner of the property, and HarborOne is the
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mortgagee and lender. Plaintiff advances several theories in support of her claims.

Plaintiff alleges, among other things, that HarborOne accelerated the mortgage in violation of the notice provisions contained in the mortgage and contrary to 24 C.F.R. § 203.604(b), which generally requires a mortgagee to conduct, or make a reasonable effort to conduct, a face-to-face meeting with the mortgagor before three full monthly installments become unpaid. (Compl., Dkt. No. 1 14, 16.) As to 24 C.F.R. § 203.604, however, Plaintiff concedes in her opposition that HarborOne satisfied the regulation's face-to-face meeting requirement. (Dkt. No. 12 at 1.) Accordingly, any theory premised on HarborOne's alleged failure to comply with 24 C.F.R. § 203.604 is dismissed.

Plaintiff also challenges the accuracy of the April 10, 2025 notice sent by HarborOne. Paragraph 18 of the mortgage provides, in relevant part, that the "Lender is not required to reinstate if (i) lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceedings." (Compl., Dkt. No. 1 33.) Plaintiff contends that the April 10, 2025 notice affirmatively misstated her rights because it advised that, even after the cure or acceleration date, she could still avoid foreclosure by paying the total amount past due before a foreclosure sale and that she had the right to reinstate the loan after acceleration. According to Plaintiff, those representations were inconsistent with Paragraph 18, which permitted HarborOne, under certain circumstances, to refuse reinstatement. (*Id.* 32.) "[A]ny notice given pursuant to [the]... [m]ortgage, regardless of whether [it is a] hybrid [notice], must be accurate and not deceptive." *Carini v. Bristol Cnty. Sav. Bank*, 232 N.E.3d 713, 716, *review denied*, 235 N.E.3d 237 (Mass. App. Ct. 2024) (quoting *Thompson v. JPMorgan Chase Bank, N.A.*, 158 N.E.3d 35 (Mass. 2020)). In *Thompson*, the Supreme Judicial Court explained that "the longer time for reinstatement specified by [Mass. Gen. Laws ch.] 244, § 35A -- any time prior to the foreclosure sale -- constitutes controlling and applicable law that supersedes [any] conflicting provision[s] of the mortgage contract." *Thompson*, 486 158 N.E.3d at 38. *Carini*, however, makes clear that *Thompson*, does not govern every subsequent default. *Carini*, 232 N.E.3d at 716. Section 35A entitles a borrower to its statutory notice and right to cure only once during any five-year period. *Id.* (citing Mass. Gen. Laws ch. 244, § 35A (a)). As a result, borrowers who have already received a Section 35A notice and right to cure within the applicable five-year period are not entitled to another statutory notice and cure period during that same period. *Id.* (citing *Bank of New York Mellon v. Morin*, 136 N.E.3d 396 (Mass. App. Ct. 2019)). Any subsequent notice is "not required by § 35A

and need not be measured against that statute's provisions." *Id.* Here, as in *Carini*, Section 35 does not govern the April 2025 notice.

Instead, the notice must be evaluated under the terms of the mortgage itself and must still be accurate and nondeceptive. *See Pinti v. Emigrant Mortg. Co.*, 33 N.E.3d 1213, 1218 (Mass. 2015) ("[I]n light of the substantial power that the statutory scheme affords to a [mortgagee] to foreclose without immediate judicial oversight... one who sells under a power of sale must follow strictly its terms; the failure to do so results in no valid execution of the power.") internal quotation marks and citation omitted)). The complaint plausibly alleges that the April 2025 notice was inaccurate. Plaintiff alleges that HarborOne accepted a cure on February 28, 2025, thereby bringing the loan current. That cure occurred after the commencement of the 2022 foreclosure proceeding and approximately seven months before the foreclosure proceeding at issue here. If those allegations are true, Paragraph 18 may have permitted HarborOne to refuse reinstatement. Yet the April 2025 notice advised Plaintiff that she could avoid foreclosure by paying the amount due before the foreclosure sale and that she had a right to reinstate the loan after acceleration. At the pleading stage, those allegations plausibly support the inference that the notice overstated Plaintiff's reinstatement rights and was therefore potentially misleading. Accordingly, HarborOne's motion to dismiss is denied as to Plaintiffs misleading reinstatement-notice theory.

To the extent the complaint can be read to allege that HarborOne was required to provide a separate notice of acceleration before accelerating the loan, Plaintiff concedes in her opposition that no such notice was required. (Dkt. No. 12 at 16.) Accordingly, Plaintiffs separate acceleration-notice theory is dismissed.

Plaintiff's allegation that HarborOne failed to send the required notice of default before acceleration stands differently. That issue presents a factual dispute that cannot be resolved on a motion to dismiss. (Compl., Dkt. No. 1 22.) Although evidence of nonreceipt alone may be insufficient to rebut the presumption of receipt under the mailbox rule, it may nevertheless create a triable issue as to whether the notice was properly sent in the first instance. *See U.S. ex rel. Westmoreland v. Amgen, Inc.*, 812 F. Supp. 2d 39, 79 (D. Mass. 2011) ("[E]vidence of non-receipt is insufficient to rebut the presumption of receipt under the mailbox rule, but it does present a triable question of fact whether the letter was properly sent." (citation omitted)); *see also Lamonica v. Fay Servicing, LLC*, 352 F. Supp. 3d 138, 140-41 (D. Mass. 2018) ("It is certainly a reasonable inference that, since Plaintiff alleges to have not

	<p>received notice, one was never sent."). Accordingly, the motion to dismiss is denied as to Plaintiff's default-notice theory.</p> <p>In sum, Plaintiff may proceed on her (1) misleading reinstatement-notice theory and (2) default-notice theory. Plaintiffs (1) face-to-face meeting theory under 24 C.F.R. § 203.604 and (2) separate acceleration-notice theory are dismissed. The dismissal of those theories does not dispose of Plaintiffs breach of contract or declaratory relief claims in their entirety. In light of the court's resolution of the motion to dismiss, HarborOne's motion for a status conference concerning that motion (Dkt. No. 17) is denied as moot. (CR) (Entered: 10/02/2026)</p>
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