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Use Caution when Relying on the Validity of Trustee Certificates

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Trust documents often state that third parties may rely without further inquiry on a trustee certificate signed by the person listed in the registry of deeds as trustee. It's also common for a trustee certificate to state that third parties can rely on the authority of the trustee without further inquiry. However, in a recent ruling in [Lisa A. Mackey v. Santander Bank, N.A. \(Docket No. 23-P-472\)](#), the Massachusetts Appeals Court held that a trustee certificate cannot be relied upon if public records show the signatory is not the trustee. This decision shows the importance of thorough title searches in trust-related transactions, as third parties cannot rely solely on trustee certificates when public records suggest otherwise.

In *Mackey v. Santander Bank*, Lisa Mackey and her husband, James, had created a realty trust in 1998 and transferred their marital home into the trust. James named himself trustee, and both he and Lisa were beneficiaries. The trust allowed only the trustee to mortgage the property. In 2000, James resigned as trustee, and his sister became the successor trustee. While his resignation was recorded at the registry of deeds, the trust document itself was not updated to reflect the change. Fast forward to 2008: James fraudulently signed a trustee certificate, falsely claiming he was still the trustee, and used it to secure a \$400,000 line of credit from Santander Bank. Santander conducted a title search but failed to catch the recorded resignation. Relying on James' false trustee certificate, the bank approved the mortgage. In 2015, James stopped making payments on the loan during his divorce proceedings with Lisa. Lisa later sued to invalidate the mortgage, arguing that James had no authority to sign on behalf of the trust.

The issue was whether there was a valid mortgage granted by a trustee, when in fact, James was not the acting trustee when the mortgage was granted. In its decision, the Appeals Court ruled in Lisa's favor. The court held that under Massachusetts General Laws Chapter 184, Section 35, third parties can rely on a trustee's certificate only if the signatory appears as the trustee in the public records. Because James' resignation as trustee was recorded and therefore discoverable, Santander Bank had constructive notice that he was no longer the trustee. Due to this constructive notice, Santander could not rely on the



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trustee certificate. As a result, the mortgage was deemed invalid.

The Mackey case serves as an important reminder that a trustee certificate is not always conclusive, and diligent title searches are critical in any transaction involving a trust. If something is recorded in public records, third parties are considered to have notice of it.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney [Yana Zheng](#) and [Danielle Justo](#).

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