

[Cite as *Matthews v. U.S Bank Natl. Assn.*, 2017-Ohio-7079.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105315

BRUCE B. MATTHEWS

PLAINTIFF-APPELLANT

vs.

U.S. BANK NATIONAL ASSOCIATION

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-868782

BEFORE: S. Gallagher, J., E.A. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: August 3, 2017

ATTORNEY FOR APPELLANT

A. Clifford Thornton
PDC Building, #305
3659 Green Road
Beachwood, Ohio 44122

ATTORNEYS FOR APPELLEE

Scott A. King
Richard A. Freshwater
Jessica E. Salisbury-Copper
Thompson Hine LLP
Austin Landing I
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342

SEAN C. GALLAGHER, J.:

{¶1} Plaintiff-appellant Bruce B. Matthews (“Matthews”) appeals the decision of the trial court to grant defendant-appellee U.S. Bank, N.A.’s motion for judgment on the pleadings and for summary judgment. Upon review, we affirm.

{¶2} On August 29, 2002, Bruce and Rhondalyn Matthews (“the Matthews”) executed a note payable to American Midwest Mortgage Corporation (“AMMC”). To secure payment on the note, the Matthews executed an open-end mortgage in favor of AMMC on real property located at 3372 Silsby Road, Cleveland Heights, Ohio (“the property”). In addition, the Matthews executed three loan modification agreements. Through a series of transactions, the note and mortgage were transferred and assigned to U.S. Bank, N.A. (“U.S. Bank”) as trustee for the GSMPS Mortgage Loan Trust 2005-RP3 (“the Trust”).

{¶3} On April 10, 2015, U.S. Bank filed a complaint in foreclosure. On August 20, 2015, Matthews sent a “notice of right to cancel” letter to U.S. Bank and AMMC. Matthews purported to rescind the mortgage under the Truth in Lending Act (“TILA”), claiming that full disclosures had not been provided by the lender.

{¶4} On August 29, 2016, judgment was awarded in the foreclosure action in favor of U.S. Bank as trustee for the Trust. The judgment was upheld on appeal in *U.S. Bank, N.A. v. Matthews*, 8th Dist. Cuyahoga No. 105011, 2017-Ohio-4075. In that action, the court rejected the argument that U.S. Bank failed to show it had standing to bring the foreclosure action and was the legal and proper holder of the note and mortgage. The

court found that “U.S. Bank presented evidence that, as of the time it filed its complaint, it was both entitled to enforce the note and was the current assignee of the mortgage” and that U.S. Bank had standing to bring the foreclosure action. *Id.* at ¶ 29, 31.

{¶5} On September 8, 2016, Matthews filed a complaint for money, declaratory judgment, damages, rescission, and other relief. Matthews alleged that U.S. Bank does not have any rights or interests with regard to the note and mortgage and “forever lost the ability to enforce, control or otherwise foreclose on the Property, including the right to assign or be assigned the alleged Mortgage” or “the ability to endorse or accept the endorsement of the Note and/or modifications.” Matthews asserted claims for breach of contract and unjust enrichment, and sought a declaratory judgment.

{¶6} U.S. Bank filed an answer, along with a combined motion for judgment on the pleadings and for summary judgment. U.S. Bank moved for summary judgment claiming (1) that res judicata applied, and (2) that the rescission provisions of TILA do not apply to purchase money mortgages. U.S. Bank sought judgment on the pleadings with regard to the substance of the claims asserted. U.S. Bank attached to its motion certified copies of the loan documents, documents from the foreclosure action, and the deed by which appellant took title to the property. The trial court granted the motion without opinion. This appeal followed.

{¶7} Appellant raises three assignments of error for review. Appellant claims that the trial court erred by dismissing all counts and not finding appellant entitled to rescission of the note and mortgage; by ostensibly ruling that appellant’s claims were

barred by res judicata and/or compulsory counterclaims; and by dismissing the breach of contract claim.

{¶8} We review a ruling on a motion for judgment on the pleadings de novo. *Thornton v. Cleveland*, 176 Ohio App.3d 122, 2008-Ohio-1709, 890 N.E.2d 353, ¶ 3 (8th Dist.). Motions for judgment on the pleadings are governed by Civ.R. 12(C), which states: “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” “In order to be entitled to a dismissal under Civ.R. 12(C), it must appear beyond doubt that [the nonmovant] can prove no set of facts warranting the requested relief, after construing all material factual allegations in the complaint and all reasonable inferences therefrom in [the nonmovant’s] favor.” *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 74, 2002-Ohio-1383, 765 N.E.2d 854.

{¶9} Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Argabrite v. Neer*, 149 Ohio St.3d 349, 2016-Ohio-8374, 75 N.E.3d 161, ¶ 14. Summary judgment is appropriate only when “[1] no genuine issue of material fact remains to be litigated, [2] the moving party is entitled to judgment as a matter of law, and, [3] viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach a conclusion only in favor of the moving party.” *Id.*, citing *M.H. v. Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶ 12.

{¶10} In this action, Matthews challenges the ability of U.S. Bank to enforce the note, the mortgage, and the loan modification agreements and its ability to foreclose on the property. Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus. The doctrine of res judicata applies to those who were parties in the prior action and to those who were in privity with them from collaterally attacking a previous judgment. *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 34-35. A borrower cannot collaterally attack a lender’s standing to bring a foreclosure action. *See Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 15, 16, 25. Appellant is precluded from collaterally attacking the foreclosure judgment.

{¶11} Further, res judicata can operate to preclude a party from asserting claims that should have been raised as compulsory counterclaims pursuant to Civ.R. 13(A) in an earlier action. *See Smith v. Bank of Am.*, 7th Dist. Mahoning No. 11-MA-169, 2013-Ohio-4321, ¶ 35-37; *Jarvis v. Wells Fargo Bank, N.A.*, 7th Dist. Columbiana No. 09 CO 6, 2010-Ohio-3283, ¶ 28. Appellant asserts that the earlier foreclosure action is distinct from his right to rescission. However, the claims herein arise from the same loan documents at issue in the foreclosure action and are logically related to that prior action.

Because the claims are compulsory counterclaims under Civ.R. 13(A) that should have been raised in the foreclosure action, they are barred by res judicata.

{¶12} In addition, we recognize that U.S. Bank was named in this action in an individual capacity, as opposed to its capacity as trustee for the trust. Even if U.S. Bank had been named in the correct capacity, appellant failed to plead viable claims. Appellant's claim for breach of contract fails to allege any provision of a contract that was breached. Insofar as appellant asserts the breach of contract claim is based upon his right to rescind and "was sufficient in that it alleged the application and violation of the applicable Ohio and federal law and statutory provisions," appellant fails to identify any applicable obligations imposed upon U.S. Bank. With regard to the unjust enrichment claim, there were written contracts governing the same subject matter. Finally, the rescission remedy under TILA does not apply to residential mortgage transactions used to purchase a home. 15 U.S.C. 1635(e)(1); *Hughes v. Deutsche Bank Natl. Trust Co.*, N.D.Ohio No. 5:16CV2245, 2017 U.S. Dist. LEXIS 27920, 7 (Feb. 28, 2017).

{¶13} The assigned errors are overruled.¹

{¶14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

¹ We find no merit to any of the additional arguments presented in appellant's brief, and we find the cases relied upon by appellant to be distinguishable.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR