[Cite as *LSF6 Mercury REO Invests.Trust Series 2008-1 c/o Vericrest Fin., Inc. v. Locke*, 2012-Ohio-4499.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

LSF6 Mercury REO Investments Trust Series 2008-1 c/o Vericrest Financial, Inc.,	:	
Plaintiff-Appellee,	:	No. 11AP-757 (C.P.C. No. 09CVE-06-9188)
v.	:	(REGULAR CALENDAR)
David C. Locke et al.,	:	
Defendants-Appellants.	:	

D E C I S I O N

Rendered on September 28, 2012

Shapiro, Van Ess, Phillips & Barragate, LLP, and *Christopher G. Phillips,* for Wells Fargo Delaware Trust Company, N.A., as Trustee for Vericrest Opportunity Loan Trust 2010-NPL1.

David C. Locke, and *Marianne M. Locke,* pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} David C. and Marianne M. Locke, defendants-appellants, appeal the judgment of the Franklin County Court of Common Pleas, in which the court granted the motion for summary judgment filed by LSF6 Mercury REO Investments Trust Series 2008-1 c/o Vericrest Financial, Inc., ("LSF6"), plaintiff-appellee.

{¶ 2} On January 6, 2006, David executed a promissory note in favor of Wilmington Finance ("Wilmington"), a division of AIG Federal Savings Bank ("AIG"), for $310,500. Also on January 6, 2006, appellants executed a mortgage that secured the note

and encumbered the property located at 7742 Kate Brown Drive, Dublin, Ohio. The mortgage indicated that the lender was Wilmington, and Mortgage Electronic Registration Systems, Inc. ("MERS") was a separate corporation acting solely as nominee for the lender and the lender's successors and assigns.

{¶ 3} On June 20, 2007, MERS assigned the mortgage to The CIT Group/Consumer Finance, Inc. ("CIT"). On October 1, 2008, CIT assigned the mortgage to Deutsche Bank National Trust Company ("Deutsche") as Trustee on behalf of LSF6.

{¶ 4} On June 18, 2009, LSF6 filed the present foreclosure action alleging that it was the holder of the note and mortgage, appellants had defaulted on the note, it had declared the debt due, and appellants had failed to pay the total outstanding balance. LSF6 sought judgment in the amount of $245,628.59, plus interest, sums advanced for taxes and insurance premiums, and other costs.

{¶ 5} On December 17, 2009, Deutsche assigned the note and mortgage to LSF6.

{¶ 6} On April 12, 2010, LSF6 filed a motion for summary judgment, asserting it was the holder of the note and mortgage, appellants defaulted on such, and it was entitled to judgment as a matter of law. On September 10, 2010, appellants filed a motion to dismiss and a motion to dismiss for lack of standing. On September 14, 2010, appellants filed another motion to dismiss for lack of standing.

{¶ 7} On October 28, 2010, an in-camera review was held, at which LSF6 produced what it contended was the original note and mortgage. On December 6, 2010, appellants filed a motion to dismiss for "failure of contractual condition precedent."

{¶ 8} On July 15, 2011, the trial court issued a decision, in which the court, among other things, granted LSF6's motion for summary judgment and denied appellants' September 10 and 14, 2010 motions to dismiss. The court did not rule on appellants' December 6, 2010 motion to dismiss for "failure of contractual condition precedent." On August 8, 2011, the trial court issued a final judgment entry. Appellants, pro se, appeal the judgment of the trial court, asserting the following assignments of error:

> [I.] The Trial Court lacked subject matter jurisdiction to adjudicate the matter ab initio and subsequently failed to rule on appellants['] Motion To Dismiss for failure to meet contractual conditions precedent (Docket 12/06/2010)

> leaving this matter to be litigated at the time summary judgment was granted by the trial court (Docket 7/15/2011).
>
> [II.] Summary judgment was not appropriate or warranted because pending matters before the trial court remained to be litigated and genuine issues of material fact existed concerning whether conditions precedent to this action have been satisfied and whether the plaintiff-appellee was the party with standing to bring the claim due to questions raised regarding the validity of the Mortgage and Promissory Note being the "wet ink" originals.
>
> [III.] Roy Stringfellow had no signing authority as a VP of Deutsche Bank National Trust Company invalidating the assignment of note and mortgage to plaintiff-appellee and fatally clouding the chain of title of the note and mortgage.

{¶ 9} Appellants argue in their first assignment of error that the trial court lacked subject-matter jurisdiction because LSF6 failed to meet contractual conditions precedent, and the trial court erred when it failed to address this issue at the time of its granting of summary judgment. Pursuant to Civ.R. 56(C), summary judgment is proper if: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). Appellate review of a lower court's entry of summary judgment is de novo, applying the same standard used by the trial court. *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9thDist.1992). The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record that demonstrate an absence of genuine issues of material fact as to the essential elements of the non-moving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of his motion. *Id*. Once this burden is satisfied, the non-moving party has the burden, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. *Id*. The non-moving party may not rest upon the allegations or denials in the pleadings,

but must affirmatively demonstrate the existence of a genuine issue of material fact to prevent the granting of a motion for summary judgment. Civ.R. 56(C); *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988).

{¶ 10} In their December 6, 2010 motion to dismiss, appellants argued that LSF6 failed to provide them with a notice of default and intent to accelerate ("notice of default") and a confirmation of delivery of the notice of default that met the requirements of paragraph 22 of the mortgage. Paragraph 22 of the mortgage provides, in pertinent part:

> Acceleration Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument * * *. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceedings and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure.

Paragraph 15 of the mortgage, which is titled "Notices," provides, in pertinent part:

> Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means.

Accordingly, prior to accelerating the balance due and filing an action to foreclose the mortgage, LSF6 was required to provide notice that met the conditions precedent specified in paragraph 22 and the delivery requirements of paragraph 15.

{¶ 11} Appellants argue that the trial court erred when it failed to address whether LSF6 complied with the conditions precedent before granting summary judgment. When the terms of a note or mortgage require a notice of default be given, the notice is a condition precedent governed by the requirements of Civ.R. 9(C). *Lasalle Bank, N.A. v. Kelly*, 9th Dist. No. 09CA0067-M, 2010-Ohio-2668, ¶ 13, citing *First Financial Bank v. Doellman*, 12th Dist. No. CA2006-02-029, 2007-Ohio-222, ¶ 20. Pursuant to Civ.R. 9(C),

a plaintiff may generally allege that the conditions precedent to the filing of an action have been satisfied, and, in order to refute such an allegation and put conditions precedent at issue, the answering party must deny performance of the conditions "specifically and with particularity." However, where a plaintiff fails to allege compliance with conditions precedent, the answering party need not set forth a specific denial, and it is " 'sufficient that the [answering party] alleged that the bank failed to state a claim upon which relief may be granted.' " *LaSalle Bank* at ¶ 13, quoting *Doellman* at ¶ 21. Under such circumstances, like in the present case, compliance with conditions precedent is put at issue, and where the plaintiff moves for summary judgment, it has the burden of establishing the absence of this question by reference to materials set forth in Civ.R. 56. *See LaSalle Bank* at ¶ 13, and *Dresher* at 292-93.

{¶ 12} Appellants first contend that they were entitled to dismissal of the action, and LSF6 was not entitled to summary judgment, because LSF6 failed to answer their October 14, 2010 request for production of documents. Appellants sought discovery from LSF6 demonstrating that it sent to appellants a notice of default and confirmation of delivery of the notice of default that met the requirements of paragraph 22 of the mortgage. Appellants maintain that, because LSF6 cannot produce such a notice of default or confirmation of delivery thereof, its answer was evasive and incomplete pursuant to Civ.R. 37(A)(3), which constitutes a failure to answer and an admission that no such notice of default and confirmation of delivery exists.

{¶ 13} It is clear "that a foreclosure action brought by a lender who has failed to comply with the notice terms * * * may be dismissed." *Wells Fargo Bank, N.A. v. Walker*, 10th Dist. No. 09AP-947, 2010-Ohio-3698, ¶ 9. However, appellants here concede that LSF6 provided them a copy of a May 9, 2009 notice of default during an in-camera inspection on October 28, 2010, and also attached the notice of default to its November 16, 2010 notice of filing of supplemental affidavit in support of motion for summary judgment. This May 9, 2009 notice of default indicates it was sent by Vericrest Financial, Inc., formerly CIT, to David C. Locke "VIA CERTIFIED MAIL AND REGULAR MAIL" at the 7742 Kate Brown Drive address. The notice of default provided that the mortgage loan was in default; $8,551.90, plus any payments that would become due, must be paid by June 8, 2009, to cure the default; and that the failure to cure the default on or

before that date could result in acceleration of the sums secured and result in foreclosure and sale of the property. Nowhere do appellants contest that this notice did not comply in all respects with paragraph 22 of the mortgage.

{¶ 14} Therefore, appellants' actual argument is not that the May 9, 2009 notice of default was an incomplete or evasive answer under Civ.R. 37(A)(3) because it did not meet the requirements of paragraph 22. Instead, appellants' actual argument is that the notice letter did not meet the notice delivery requirements of paragraph 15 of the mortgage. In this regard, appellants assert that, because the notice of default indicates it was sent via certified mail, as well as regular mail, and there is no evidence of a certified-mail receipt indicating that the letter was sent, received, or refused, such did not comply with paragraph 15. However, paragraph 15 uses the disjunctive term "or," which indicates there were two alternative methods of delivery available to LSF6. Under the first method of delivery, notice is considered "given to" the borrower when it is mailed by first-class mail. The notice of default indicates it was mailed via regular mail, and LSF6 provided an affidavit from Kimberlee Robinson, an employee of Vericrest, who averred that the notice of default was delivered to appellants pursuant to the terms of the note and mortgage. Therefore, delivery of the notice via regular mail complied with the notice requirements of paragraph 15 upon mailing. Even though the notice of default indicates it was also sent via certified mail, and there is no evidence that it was "actually delivered to" appellants address via this method, once again, the delivery options in paragraph 15 are written in the alternative; thus, delivery of the notice via regular mail was completed pursuant to paragraph 15 when mailed, and any failure to provide confirmation of delivery via certified-mail service is irrelevant.

{¶ 15} Appellants then argue that, even if delivery of the notice of default via regular mail was considered completed when mailed pursuant to paragraph 15, under the "mailbox rule," the presumption of delivery may be rebutted, and appellants rebutted the presumption of delivery under the mailbox rule by averring that they never received the notice of default. It is true that there is generally a rebuttable presumption, sometimes called the "mailbox rule," that, once a notice is mailed, it is presumed to be received in due course. *See Weiss v. Ferro Corp.*, 44 Ohio St.3d 178, 180 (1989). However, in the present case, the mortgage explicitly provided that notice of default by regular mail would be

deemed "given to" the borrower "when mailed by first class mail." Therefore, the rebuttable presumption afforded by the mailbox rule is inapplicable because the contract between the parties clearly provides that notice by regular mail is considered completed "when mailed."

{¶ 16} This court came to the same conclusion in *Walker*. In that case, the homeowners opposed the summary judgment motion of Wells Fargo on the basis that Wells Fargo failed to provide timely notice of default. The mortgage in *Walker*, like in the present case, allowed notice of default to be given by first-class mail and provided that notice was deemed given when mailed. *Id*. at ¶ 10. The homeowner also averred in *Walker*, as in this case, that he never received notice of default by mail. However, this court concluded that, while appellant contested his actual receipt of the notice, notice of default was properly completed because the terms of the mortgage instrument specifically provided that notice of default via ordinary mail is deemed received when sent.

{¶ 17} Appellants attempt to distinguish *Walker* on the basis that, in *Walker*, we noted Wells Fargo submitted the affidavit of a bank employee averring that the notice was mailed on a certain date by ordinary U.S. mail. *Id*. at ¶ 11. Appellants point to Kimberlee Robinson's failure to aver in her affidavit in support of summary judgment that she had any firsthand knowledge of when the notice of default may have actually been sent or the method used for transmittal. However, we never found in *Walker* that any specific aspect of the bank employee's affidavit was the basis for our decision. Instead, we only pointed out the affidavit of the bank employee was submitted by Wells Fargo in support of its summary judgment motion and summarized its contents. *Id*. Notwithstanding, although Robinson's affidavit lacks detail on this point, her averment that "[p]ursuant to the terms of the Note and Mortgage, Vericrest notified Defendants David and Marianne Locke of the default as shown in the Notice of Default" is sufficient to support LSF6's claim that the notice of default was delivered consistent with the terms of the mortgage. *See U.S. Bank, N.A. v. Detweiler*, 191 Ohio App.3d 464, 2010-Ohio-6408, ¶ 55 (5th Dist.) (finding an affidavit attached to motion for summary judgment indicating "the defendant was served with notice of their default and notice of the plaintiff's intent to accelerate by letter" was sufficient to establish, under Civ.R. 56, compliance with the requisite conditions precedent before initiating the foreclosure process against the property). Thus, because

LSF6 did provide appellants a copy of the notice of default letter, as requested in appellants' request for production of documents, Civ.R. 37(A)(3) was not applicable. Therefore, appellants were not entitled to dismissal based upon this ground, and LSF6 was entitled to summary judgment on this issue. For these reasons, appellants' first assignment of error is overruled.

{¶ 18} Appellants argue in their second assignment of error that the trial court erred when it granted LSF6 summary judgment. In this assignment of error, appellants first reassert the arguments raised under their first assignment of error, which we have already rejected above. Appellants next argue that the record clearly showed that genuine issues of material fact were raised regarding the authenticity of the note and mortgage produced by LSF6 at the in-camera review on October 28, 2010. Appellants maintain that the documents proffered during the in-camera review were on 8 1/2" x 11" paper, while they contend the originals they signed at closing were on 8 1/2" x 14" paper. On this issue, the trial court found:

> Although Defendants argue the note and mortgage presented for the Court's in-camera review were not the original note and mortgage because the same were presented on letter-sized paper, but Defendants believe the original documents were executed on legal-sized paper, and although this matter was informally stayed to afford Defendants an opportunity to have the letter-sized originals inspected by Specklin Forensic Laboratories in Michigan, Defendants have failed to present any evidence, other than their belief, that the original "wet ink" documents that were presented for in-camera inspection are not the original note and mortgage.

{¶ 19} However, appellants contend that they did, in fact, present evidence to support their belief that the documents submitted by LSF6 were not the originals. In support, appellants point to (1) their November 29, 2010 affidavits, in which they each averred the note and mortgage they signed at closing were on 8 1/2" x 14" paper, and (2) the 8 1/2" x 14" copies of the note and mortgage provided to them at the time of closing, which they filed with their affidavit.

{¶ 20} We first note that it is unclear whether the trial court was aware of the affidavits or the copies of the mortgage and note appellants filed on November 29, 2010. These documents were filed separately and were not attached to any other pleadings,

which may explain why the court might have overlooked them. Importantly, they were not submitted by appellants in support of any of their several memoranda contra LSF6's motion for summary judgment.

{¶ 21} We also note that the 8 1/2" x 14" note and mortgage documents appellants submitted on November 29, 2010 do not bear any initials or signatures, but the copies of the documents that LSF6 claims to be the originals do contain signatures. In their affidavits, appellants offer to "produce the originals from which [these documents] were taken"; thus, it appears the "originals" to which appellants refer were not signed and initialed either. Appellants aver that the submitted documents were copies of the note and mortgage provided by Stoneybrook Financial Services, Inc. at closing, thereby raising the possibility that the documents were copied onto larger paper by Stoneybrook. Based on these issues, the record, in this respect, is insufficient to raise any genuine issue of material fact as to the authenticity of the note and mortgage submitted by LSF6.

{¶ 22} Furthermore, we point out there is no record of what transpired at the October 28, 2010 in-camera review. Thus, this court may not conduct any independent review based upon those events, adding further difficulty to our review of appellants' argument.

{¶ 23} Notwithstanding, appellants admit that they never submitted to the trial court the original 8 1/2" x 14" documents that they claimed to have in their possession. Although appellants indicate that they offered an inspection of such originals, it is clear the trial court never had before it the very evidence upon which appellants claim the trial court should have relied at the time it rendered its decision. In addition, although appellants filed a May 16, 2011 motion for an order of independent inspection of the alleged original note and mortgage submitted by LSF6, they never completed the inspection. The trial court indicated in its decision that it informally stayed the matter to allow appellants to conduct such an inspection, but appellants never did so. Appellants deny in their appellate brief that they were ever informed of such an informal stay. This court is without any evidence in the record to support appellants' claims but are left with only the trial court's conclusions in its judgment. We have no reason to question the trial court's statement, in this regard, absent some evidence in the record. For the foregoing

reasons, we find the trial court did not err when it granted summary judgment in this respect. Appellants' second assignment of error is overruled.

{¶ 24} Appellants argue in their third assignment of error that the December 17, 2009 assignment of the note and mortgage from Deutsche to LSF6 was invalid because the person who signed the assignment document on behalf of Deutsche, Roy Stringfellow, had no authority to sign on Deutsche's behalf. On this issue, the trial court made the following finding:

> The Court finds Plaintiff has satisfied its burden of establishing it is the owner and holder of the at-issue promissory note and mortgage. Despite Defendants' assertions to the contrary, Plaintiff has also established that Mr. Stringfellow had authority to execute the assignments of mortgage on behalf of MERS, The CIT Group/Consumer Finance, Inc., and Deutsche Bank National Trust Company, because Mr. Stringfellow: 1.) was an employee of The CIT Group/Consumer Finance, Inc[.], a member of MERS; 2.) he was appointed as assistant secretary and vice president of MERS; and 3.) he was therefore authorized to, among other things, "execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member."

{¶ 25} The evidence submitted by LSF6 to support its contention that it was the owner and holder of the note and mortgage was as follows: (1) an MERS corporate resolution resolving that the candidates on an attached list were employees of CIT, a member of MERS; appointing the persons named on the attached list as assistant secretaries and vice presidents of MERS; and granting the persons named on the attached list the authority to "execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member"; (2) an attached list of candidates, or "certifying officers," which included the name "Roy Stringfellow"; and (3) an MERS corporate resolution authorizing William C. Hultman, as secretary, to approve Members' nominations of their respective certifying officers of MERS.

{¶ 26} Appellants agree that Stringfellow might have been an employee of CIT, that CIT was a member of MERS, and Stringfellow was appointed as assistant secretary and

vice president of MERS pursuant to the corporate resolution. However, appellants disagree with the trial court's interpretation of the phrase "execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member." The trial court interpreted "registered to the Member" as granting authority for Stringfellow to sign for any member that may be a member of the MERS system, but appellants interpret "registered to the Member" as applying only to the subject member specified in the corporate resolution, which here is CIT. Appellants point out that the language is "the" member and not "any" member. Thus, appellants believe the proper reading of the phrase would be the following: "Roy Stringfellow may execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to [CIT]." Accordingly, appellants assert, Stringfellow's grant of authority from MERS was extinguished upon the transfer of the note and mortgage from CIT to Deutsche because the note and mortgage would no longer be "shown to be registered to the Member" after CIT's transfer to Deutsche.

{¶ 27} LSF6 counters that (1) appellants do not have standing to raise this argument because they are not parties to the assignment; (2) the transfer documents are valid on their face and, thus, are sufficient evidence to establish the transfer of interest; and (3) Stringfellow has been granted signing authority on behalf of various institutions, "as is common."

{¶ 28} We agree with LSF6's contention that appellants did not have standing to raise this argument because they are not parties to the assignment. Courts in two very recent cases have held that because the debtor is not a party to the assignment of the mortgage, she lacks standing to challenge its validity. *See, e.g.*, *Bank of New York Mellon Trust Co. v. Unger*, 8th Dist. No. 97315, 2012-Ohio-1950, ¶ 35, citing *Bridge v. Aames Capital Corp.*, Case No. 1:09 CV 2947 (N.D.Ohio 2010); *Chase Home Fin., L.L.C. v. Heft*, 3d Dist. No. 8-10-14, 2012-Ohio-876, ¶ 37, citing *Bridge*, citing *In re: Cook*, 457 F.3d 561 (6th Cir.2006). In *Bridge*, which was relied upon by the courts in both *Unger* and *Heft*, the plaintiff-homeowner claimed the originating lender, Aames Capital Corporation, defectively executed an assignment of the mortgage note to Deutsche Bank; thus, Deutsche could not foreclose on her property. Deutsche asserted the plaintiff lacked

standing to challenge the assignment of the mortgage. In granting Deutsche's motion to dismiss based upon plaintiff's lack of standing, the court in *Bridge* pointed out that there was no dispute between Deutsche and Aames as to whether the mortgage was properly assigned, and the plaintiff was the only party challenging the validity of the assignment. The court stated that other courts have routinely found that a debtor may not challenge an assignment between an assignor and assignee. *Id*., citing *Livonia Property Holdings v. Farmington Road Holdings*, 717 F.Supp.2d 724 (2010) (holding that the plaintiff borrower did not have standing to dispute the validity of an assignment between assignor and assignee because plaintiff was a non-party to those documents); *Ifert v. Miller*, 138 B.R. 159 (Bankr.E.D.Pa.1992). The court then found the plaintiff's role in the exchange between Aames and Deutsche and how it affects her contractual obligations was uninvolved and unaffected. *Id*., citing *In re: Halabi*, 184 F.3d 1335, 1338 (11th Cir.1999). The court further found that there was no dispute that the plaintiff stopped making payments on the loan, was in default on her loan, and was subject to foreclosure proceedings by the holder of the mortgage note. Whether that holder was Aames or Deutsche made no difference with respect to the obligations owed by the plaintiff under the mortgage contract. The mere fact that Deutsche would be permitted to proceed with the present foreclosure, while Aames would not, was legally immaterial to the plaintiff's contractual obligations. *Id*., citing *Livonia Property Holdings* (holding that borrower certainly has an interest in avoiding foreclosure, but the validity of the assignments does not affect whether borrower owes its obligations, but only to whom borrower is obligated). Therefore, regardless of the outcome of the litigation, the plaintiff was still in default on her mortgage and subject to foreclosure, and she had not suffered any injury as a result of the assignment between Aames and Deutsche. Accordingly, the court in *Bridge* found the plaintiff lacked standing to present such an argument.

{¶ 29} The court in *Unger* relied upon *Bridge*. As in *Bridge*, the court in *Unger* determined that the allegedly invalid mortgage assignments did not alter the homeowners' obligations under the note or mortgage. The assignee bank filed the foreclosure complaint based on the homeowners' default under the note and mortgage, not because of the mortgage assignments, and the homeowners' default exposed them to foreclosure regardless of which party actually proceeded with foreclosure. The court in

Unger found that the homeowners failed to show they suffered or will suffer any injury, the injury was traceable to the mortgage assignments, and it was likely a favorable decision would remedy the injury. Therefore, the court concluded that the assignee bank's motion for summary judgment was properly granted based upon the homeowners' lack of standing to challenge the mortgage assignments. We find these cases support the conclusion that appellants, in the present case, lacked standing to challenge the validity of the assignment of the note and mortgage from Deutsche to LSF6. For the foregoing reasons, we overrule appellants' third assignment of error.

{¶ 30} Accordingly, appellants' three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.

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