

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

JPMC SPECIALTY MORTGAGE LLC, f.k.a. WM SPECIALTY MORTGAGE LLC,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	<b>CASE NO. 2014-A-0048</b>
- vs -	:	
JAMES F. COCHRAN, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2010 CV 01254.

Judgment: Affirmed.

*Stephen D. Williger, Richard A. Freshwater, and John C. Allarding*, Thompson Hine LLP, 3900 Key Center, 127 Public Square, Cleveland, OH 44114 (For Plaintiff-Appellee).

*David N. Patterson*, 33579 Euclid Avenue, Willoughby, OH 44094 (For Defendants-Appellants).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellants, James and Barbara Cochran, appeal from the July 3, 2014 judgment of the Ashtabula County Court of Common Pleas, confirming a foreclosure sale. On appeal, appellants raise a standing argument. For the reasons that follow, we affirm.

{¶2} On March 29, 2004, Mr. Cochran executed a promissory note in the amount of \$117,300 in favor of Argent Mortgage Company, LLC. The note was secured by a mortgage, signed by Mr. and Mrs. Cochran, against property located at 1906 Lafevre Road, Geneva, Ashtabula County, Ohio 44041. The mortgage was recorded one week later. On January 4, 2007, the mortgage was assigned to appellee, JPMC Specialty Mortgage LLC, f.k.a. WM Specialty Mortgage LLC (“JPMC”). The assignment was recorded one week later. On November 7, 2008, the parties entered into a loan modification agreement that increased the amount owed to \$153,708.21.

{¶3} On December 2, 2010, JPMC filed a complaint against appellants seeking the balance due on the promissory note (\$165,987.26) and to foreclose on the mortgage that secured its repayment.<sup>1</sup> Attached to the complaint were the note, mortgage, January 4, 2007 assignment, and loan modification agreement. Appellants filed an answer on January 14, 2011. The trial court referred the matter to mediation which was unsuccessful.

{¶4} On June 6, 2012, JPMC filed a motion for summary judgment.<sup>2</sup> Appellants did not oppose that motion. On April 30, 2013, the trial court granted the summary judgment motion and entered a decree of foreclosure and judgment against appellants in the amount of \$165,987.26 plus interest. The foreclosure decree included Civ.R. 54(B) “no just reason for delay” language, thereby making it a final appealable order. Despite timely service, appellants did not appeal that entry.

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1. The complaint also named State of Ohio, Department of Taxation, Coach Truck & Tractor, LLC, and Velocity Investments, LLC as defendants. However, none are named parties to this appeal.

2. In support, JPMC filed affidavits from its Vice Presidents, Lanier M. Jeffrey and Candace Reichardt.

{¶5} On June 20, 2013, the trial court entered an order of sale which was subsequently set for October 15, 2013 at 10:00 a.m. One week before the scheduled sheriff's sale, appellants filed two motions. The first motion requested that the court stay the sale. The second motion requested that the court set aside the foreclosure decree under Civ.R. 60(B). JPMC filed a brief in opposition.

{¶6} At 9:23 a.m. on October 15, 2013, 37 minutes before the foreclosure sale was set to occur and before the trial court ruled on appellants' October 8 motions, Mr. Cochran filed for voluntary bankruptcy protection under Title 11, Chapter 13 of the United States Code in the United States Bankruptcy Court, Northern District of Ohio, Case No. 13-42245. However, the subject property was sold at 10:00 a.m. because appellants failed to provide timely notice of the bankruptcy filing.

{¶7} After the sheriff's sale but before its confirmation, JPMC provided the trial court with notice of Mr. Cochran's bankruptcy proceeding. Thereafter, the trial court stayed the foreclosure action. On February 4, 2014, upon Mr. Cochran's request, the Bankruptcy Court dismissed his case, thereby validating the October 15, 2013 foreclosure sale and permitting the action to proceed.

{¶8} On March 4, 2014, appellants filed a motion to stay execution of the judgment and confirmation of the sheriff's sale. The trial court denied appellants' motion the next day.

{¶9} On March 13, 2014, the trial court also denied appellants' Civ.R. 60(B) motion and ordered the confirmation of the foreclosure sale to proceed. On April 2, 2014, appellants filed an appeal with this court, Case No. 2014-A-0019. However, upon appellants' later request, this court dismissed that appeal on May 27, 2014.

{¶10} On July 3, 2014, the trial court confirmed the foreclosure sale. Appellants filed the instant appeal from that order, Case No. 2014-A-0048, and assert the following assignment of error:

{¶11} “The trial court erred to the prejudice of the Appellants by entering judgment in favor of the Appellee and denying the Motion to Set Aside as the Appellee failed to proffer competent, credible evidence to properly and sufficiently establish standing and that it was the real party in interest.”

{¶12} At the outset, we note that under App.R. 4(A), our jurisdiction to entertain an appeal is limited to those judgments timely appealed. See *JPMorgan Chase Bank v. Rhodes*, 11th Dist. Lake No. 2013-L-117, 2014-Ohio-2706, ¶14.

{¶13} As stated, appellants never appealed the foreclosure decree, despite its Civ.R. 54(B) “no just reason for delay” language. Instead, appellants filed a Civ.R. 60(B) motion, over five months after the foreclosure decree and more than 34 months after the filing of the complaint, which was denied by the trial court. Appellants did appeal the denial of their motion for stay and the denial of their Civ.R. 60(B) motion in Case No. 2014-A-0019. However, upon a subsequent request made by appellants, this court dismissed that appeal.

{¶14} Thereafter, the trial court confirmed the foreclosure sale on July 3, 2014. The present appeal, Case No. 2014-A-0048, was filed from that order. In fact, the only judgment attached to their notice of appeal is that July 3, 2014 order. However, appellants do not assign error relating to the order of confirmation. Rather, appellants raise a single assignment alleging that JPMC lacked standing to foreclose the mortgage.

{¶15} Mortgage foreclosure cases, more than any other subject matter of litigation in the past several years, returned the requirement of establishing “standing” to the procedural forefront of litigation. For over 15 years, standing challenges were addressed by foreclosure attorneys and Ohio courts by relying on *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70 (1998), a plurality opinion holding that a lack of standing does not deprive the court of subject matter jurisdiction and can be cured under Civ.R. 17. *Id.* at 77.

{¶16} Following a split among the districts, the Supreme Court of Ohio in 2012 ultimately dismissed the *Suster* analysis as non-binding, noting its plurality status. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017. The Court held in *Schwartzwald* that the issue of standing can be raised at anytime during the pendency of the proceedings. *Id.* at ¶22. Pursuant to *Schwartzwald*, standing is required to present a justiciable controversy and is a jurisdictional requirement. *Id.* at ¶21-22. The Court held that since standing is required to invoke the trial court’s jurisdiction, standing is determined *as of the filing of the complaint*. *Id.* at ¶24. The mortgage holder must establish an interest in the mortgage *or* promissory note in order to have standing to invoke the jurisdiction of the common pleas court. *Id.* at ¶28. The Court further held that “a litigant cannot pursuant to Civ.R. 17(A) cure the lack of standing after commencement of the action by obtaining an interest in the subject of the litigation and substituting itself as the real party in interest.” *Id.* at ¶39.

{¶17} Arguments have been made that *Schwartzwald* is ambiguous. However, the issue of whether or not *Schwartzwald* equates standing with a lack of subject matter jurisdiction has most recently been addressed by the Supreme Court of Ohio in *Bank of*

*Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275. In clarifying its holding in *Schwartzwald*, the Court in *Kuchta* held that while standing is a jurisdictional requirement in that a party's lack of standing will prevent him from invoking the court's jurisdiction over his action, a party's ability to invoke the court's jurisdiction involves the court's jurisdiction over a particular case, not subject matter jurisdiction. *Id.* at ¶22.

{¶18} Specifically, the Court in *Kuchta* stated the following at ¶17-23:

{¶19} “\* \* \* It is true that the issue of subject-matter jurisdiction can be challenged at any time and that a court's lack of subject-matter jurisdiction renders that court's judgment void ab initio. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, \* \* \* ¶11. But \* \* \* a court of common pleas that has subject-matter jurisdiction over an action does not lose that jurisdiction merely because a party to the action lacks standing.

{¶20} “The general term ‘jurisdiction’ can be used to connote several distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Id.* at ¶11-12. The often unspecified use of this polysemic word can lead to confusion and has repeatedly required clarification as to which type of ‘jurisdiction’ is applicable in various legal analyses. \* \* \*

{¶21} “Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87 \* \* \* (1972). A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *Suster*, [*supra*, at] 75; *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881). A court's jurisdiction over a particular case refers to the court's authority to proceed or rule on a case that is within the court's subject-matter

jurisdiction. *Pratts* at ¶12. This latter jurisdictional category involves consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void. *Id.* at ¶12.

{¶22} “\* \* \* Ohio’s common pleas courts are endowed with ‘original jurisdiction over all justiciable matters (\* \* \*) as may be provided by law.’ Article IV, Section 4(B), Ohio Constitution. Jurisdiction has been ‘provided by law’ in R.C. 2305.01 \* \* \*. \* \* \* We have also long held that actions in foreclosure are within the subject-matter jurisdiction of a court of common pleas. *Robinson v. Williams*, 62 Ohio St. 401, 408, \* \* \* (1900) \* \* \*.

{¶23} “\* \* \*

{¶24} “Standing is certainly a jurisdictional requirement; a party’s lack of standing vitiates the party’s ability to invoke the jurisdiction of a court—even a court of competent subject-matter jurisdiction—over the party’s attempted action. *Schwartzwald* at ¶22; *Tubbs Jones*, 84 Ohio St.3d at 77 \* \* \*; *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 178, \* \* \* (1973). But an inquiry into a party’s ability to *invoke* a court’s jurisdiction speaks to jurisdiction over a particular case, not subject-matter jurisdiction.

{¶25} “A determination of standing necessarily looks to the rights of the individual parties to bring the action, as they must assert a *personal* stake in the outcome of the action in order to establish standing. *Ohio Pyro, Inc. v. Ohio Dep’t. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, \* \* \* ¶27. Lack of standing is certainly a fundamental flaw that would require a court to dismiss the action,

*Schwartzwald* at ¶40, and any judgment on the merits would be subject to reversal on appeal. But a particular party's standing, or lack thereof, does not affect the subject-matter jurisdiction of the court in which the party is attempting to obtain relief. *Tubbs Jones* at 77." (Emphasis sic.) (Citations and parallel citations omitted.)

{¶26} As stated, appellants filed the present appeal from the July 3, 2014 order confirming the sale. Generally, the only arguments properly before this court would be those related to the procedures employed in the sale and whether the court abused its discretion in confirming the sale. *Deutsche Bank Natl. Co. v. Caldwell*, 8th Dist. Cuyahoga No. 100594, 2014-Ohio-2982, ¶18. Appellants' sole assignment of error, however, concerns JPMC's alleged lack of standing to foreclose the mortgage. Nevertheless, because standing "can be raised at any time during the pendency of the proceedings," we will consider appellants' standing argument. *Schwartzwald, supra*, at ¶22.

{¶27} The record establishes that Mr. Cochran executed a promissory note in favor of Argent Mortgage Company, LLC on March 29, 2004. The note was secured by a mortgage, signed by Mr. and Mrs. Cochran. The mortgage was recorded one week later. On January 4, 2007, the mortgage was assigned to JPMC. The assignment was recorded one week later. On November 7, 2008, the parties entered into a loan modification agreement which increased the amount owed. On December 2, 2010, JPMC filed a complaint against appellants. Attached to the complaint were the note, mortgage, January 4, 2007 assignment, and loan modification agreement.

{¶28} Upon review, because the mortgage was assigned to JPMC before it filed its complaint, JPMC had standing to foreclose. See *Bank of New York Mellon Trust*

*Co., N.A. v. Hentley*, 8th Dist. Cuyahoga No. 99252, 2013-Ohio-3150, ¶25 (“a party may establish its interest in the suit, and therefore have standing to invoke the jurisdiction of the court when, at the time it files its complaint of foreclosure, it *either* (1) has had a mortgage assigned or (2) is the holder of the note.”); *Schwartzwald, supra*, at ¶28.

{¶29} Appellants also attack the sufficiency and credibility of the affidavits submitted by JPMC in support of its motion for summary judgment.

{¶30} Civ.R. 56(E) states in part: “Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.”

{¶31} Mr. Jeffrey’s and Ms. Reichardt’s affidavits indicate that they are Vice Presidents of JPMC and are authorized to make the affidavits on its behalf. As such, they have access to and are able to review the business records relating to appellants’ loan. Mr. Jeffrey and Ms. Reichardt averred that they were over the age of 18 and competent to testify; had reviewed JPMC’s records; that they had personal knowledge of how the records were kept and maintained; that the records were kept in the ordinary course of regularly-conducted business activities; that the documents attached to their affidavits were true and accurate copies; and that JPMC was assigned the mortgage prior to and at the time of filing the complaint. They also provided information about appellants’ default and the sums owed as a result of that default. Attached to their affidavits were copies of the note and mortgage.

{¶32} We find Mr. Jeffrey’s and Ms. Reichardt’s affidavits sufficient under Civ.R. 56(E). Given their identities as company vice presidents, it was reasonable for the trial

court to infer that they had personal knowledge of the facts in their affidavits. See *JPMorgan Chase Bank, N.A. v. Burden*, 9th Dist. Summit No. 27104, 2014-Ohio-2746, ¶14. Contrary to appellants' assertions, we fail to find that the trial court committed any error.

{¶33} For the foregoing reasons, appellants' sole assignment of error is not well-taken. The judgment of the Ashtabula County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.