

[Cite as *US Bank Natl. Assn. v. Abbruzzese*, 2010-Ohio-2565.]

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

US BANK NATIONAL ASSOCIATION

Plaintiff-Appellee

-vs-

ANTHONY ABBRUZZESE, ET AL.

Defendants-Appellants

JUDGES:

Hon. Julie A. Edwards, P.J.  
Hon. Sheila G. Farmer, J.  
Hon. Patricia A. Delaney, J.

Case No. 08CAE050021

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,  
Case No. 2008CVE01-0010

JUDGMENT:

Reversed & Remanded

DATE OF JUDGMENT ENTRY:

June 4, 2010

APPEARANCES:

For Plaintiff-Appellee

PAMELA S. PETAS  
P.O. Box 42728  
Cincinnati, OH 45242

For Defendants-Appellants

BENJAMIN S. ZACKS  
JAMES R. BILLINGS  
ROBIN L. JINDRA  
33 South James Road  
3<sup>rd</sup> Floor  
Columbus, OH 43213

*Farmer, J.*

{¶1} On January 4, 2008, appellee, U.S. Bank National Association, filed a complaint in foreclosure against appellants, Anthony and Ruschele Abbruzzese and RRA Company, LLC, for defaulting on a promissory note and mortgage.

{¶2} On March 14, 2008, appellee filed a motion for summary judgment. On March 31, 2008, appellants filed a stipulated extension of time to file a response to the motion for summary judgment, extending its response time to April 10, 2008. By judgment entry and decree in foreclosure filed April 1, 2008, the trial court granted summary judgment to appellee.

{¶3} Appellants filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

I

{¶5} Appellants claim the trial court erred in granting summary judgment to appellee. Specifically, appellants claim the trial court erred in disregarding the stipulated extension of time to file a response to the motion for summary judgment. Given the specific facts sub judice, we agree.

{¶6} Appellee filed a motion for summary judgment on March 14, 2008. On March 21, 2008, appellee filed a notice of assignment of mortgage from Wilmington Finance, Inc. to appellee. On March 31, 2008, appellants filed a stipulated extension of time to file a response to the motion for summary judgment. Appellee's counsel agreed

with the stipulation per telephone confirmation. The stipulation permitted an extension of ten days or until April 10, 2008 for appellants to respond. On April 1, 2008, the trial court filed a judgment entry and decree in foreclosure, granting summary judgment to appellee.

{¶7} Civ.R. 56(C) does not provide any specific time for which a motion for summary judgment is to be heard. However, it clearly indicates that fourteen days should be given for a response: "The motion shall be served at least fourteen days before the time fixed for hearing. The adverse party, prior to the day of hearing, may serve and file opposing affidavits."

{¶8} The Court of Common Pleas for Delaware County provides the following for ruling on motions:

{¶9} "Except as otherwise ordered by the judge or magistrate, all motions are hereby set for a non-oral hearing to occur on the twenty-first day following the filing of the motion." Loc.R. 7.05 of the Court of Common Pleas of Delaware County.

{¶10} "Once the initial motion has been filed, any memorandum contra to the motion shall be filed and served upon opposing counsel no later than the fourteenth day following the filing of the motion. Failure to file and serve a memorandum contra may result in the Court granting the motion as filed and served. A reply memorandum may be filed and served upon opposing counsel within seven days after the date stated in the certificate of service in the memorandum contra. The dates and time periods set forth under this rule may be extended by the Court upon written application and for good cause shown. Where appropriate, the moving party shall submit separately a proposed

Judgment Entry to this effect." Loc.R. 7.07 of the Court of Common Pleas of Delaware County.

{¶11} We find that less than twenty-one days had lapsed from the filing of the motion for summary judgment and therefore, per local rules, the decision of April 1, 2008 was premature. Even though there was a stipulated extension, the trial court violated its own local rules.

{¶12} Appellee argues because appellants' obligation was discharged via U.S. Bankruptcy order dated August 6, 2009, the matter is moot. However, appellee concedes an "in rem" action is still viable against RRA Company, LLC. Only one debt of appellants was discharged. We find the issue is not moot vis-à-vis RRA Company, LLC.

{¶13} The sole assignment of error is granted.

{¶14} The judgment of the Court of Common Pleas of Delaware County, Ohio is hereby reversed.

By Farmer, J.

Edwards, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

US BANK NATIONAL ASSOCIATION	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ANTHONY ABBRUZZESE, ET AL.	:	
	:	
Defendants-Appellants	:	CASE NO. 08CAE050021

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio is reversed, and the matter is remanded to said court for further proceedings consistent with this opinion. Costs to appellee.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES