[Cite as *U.S. Bank Natl. Assn. v. Liphart,* 2012-Ohio-1994.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

U.S. Bank National Association, et al.	Court of Appeals No. E-11-033
Appellant	Trial Court No. 2009 CV 0723
v.	
Kylene M. Liphart, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: May 4, 2012

* * * * *

James S. Wertheim and Monica Levine Lacks, for appellant.

Daniel L. McGookey, Kathryn M. Eyster and Lauren McGookey, for appellees.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas that granted appellees' Civ.R. 12(B)(6) motion to dismiss appellant's action seeking foreclosure on a residential property owned by appellees. For the reasons that follow, the judgment of the trial court is reversed.

{¶ 2} On August 25, 2005, appellees Kylene and Christopher Liphart executed a promissory note in favor of MILA, Inc., secured by a mortgage assigned to appellant U.S. Bank National Association ("U.S. Bank"), in order to finance the purchase of a home located in Milan, Ohio. When a dispute developed regarding payment on the note, appellant U.S. Bank filed an action seeking foreclosure against the property. In its amended complaint filed September 18, 2009, appellant alleged that it was the holder of the note. Appellees filed an answer and counterclaim on October 26, 2009, and then, on March 16, 2010, filed a motion to dismiss pursuant to Civ.R. 12(B)(6). Appellees' motion to dismiss asserted that U.S. Bank failed to "allege the elements of [its] claim with sufficient particularity so that reasonable notice is given to the opposing party." Specifically, appellees asserted that U.S. Bank failed to use the word "owner" in reference to the note and that ownership of the note was an essential element of the claim.

{¶ 3} On March 22, 2011, the trial court summarily granted appellees' motion and dismissed the complaint without prejudice, "based on Plaintiff's failure to allege in its complaint that it is the owner and holder of the subject note." (Emphasis in original.)

{¶ 4} Appellant now appeals, setting forth the following assignment of error:

> The trial court improperly dismissed U.S. Bank's Complaint in foreclosure on the ground that U.S. Bank did not allege that it was both the **holder and the owner** of the note – a requirement that is contrary to Ohio law. As established below, Ohio law is well settled that the ***holder*** of a note and mortgage is the real party in interest in a foreclosure action.

Further, Ohio affords three categories of individuals (including holders) the right to enforce an instrument, and does not require ownership for enforcement. (Emphasis in original.)

{¶ 5} Civ.R. 12(B)(6) motions "merely ascertain whether the complainant alleges the elements of the claim with sufficient particularity so that reasonable notice is given to the opposing parties." *In re Election Contest of Democratic Party Primary Held May 4, 1999*, 87 Ohio St.3d 118, 119, 717 N.E.2d 701 (1999). Pursuant to Civ.R. 12(B)(6), a defendant may move the trial court to dismiss an action when the plaintiff has "failed to state a claim upon which relief may be granted."

{¶ 6} It is well-established that appellate review of a disputed Civ.R. 12(B)(6) judgment is conducted pursuant to an independent, de novo standard of review. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992).

{¶ 7} In the case before us, appellees asserted in the trial court that appellant failed to allege an essential element of its claim—that U.S. Bank was the owner of the note in question—and that, therefore, the claim must be dismissed. The question before this court is simply whether the Ohio Rules of Civil Procedure require appellant to allege in its complaint that it is both the holder and owner of the note in question before it may

proceed on its action in foreclosure. We must conclude that such a requirement does not exist.

{¶ 8} Appellant's amended complaint, Count One, states as follows:

> 1. Plaintiff is the holder of a note, a copy of which is attached hereto as Exhibit "A". By reason of default under the terms of the note and the mortgage securing same, plaintiff has declared the debt evidenced by said note due, and there is due thereon from the defendants, Kylene M. Liphart and Christopher J. Liphart, $129,113.80, together with interest at the rate of 7.7500% per year from February 1, 2009, and as may be subsequently adjusted pursuant to the terms of the Note, plus court costs, advances, and other charges, as allowed by law.

{¶ 9} Because Ohio is a notice-pleading state, Ohio law does not ordinarily require a plaintiff to plead operative facts with particularity. *Ogle v. Ohio Power Co.*, 180 Ohio App.3d 44, 2008-Ohio-7042, 903 N.E.2d 1284, ¶ 5. "Rule 8(A) requires only a short and plain statement of the claim that gives the defendant fair notice of the plaintiff's claim and the grounds upon which it is based." *Id.*, citing *Illinois Controls, Inc. v. Langham*, 70 Ohio St.3d 512, 526, 639 N.E.2d 771 (1994). "Thus, a plaintiff is not required to plead the legal theory of the case at the pleadings stage and need only give reasonable notice of the claim." *Id.*, citing *State ex rel. Harris v. Toledo*, 74 Ohio St.3d 36, 37, 656 N.E.2d 334 (1995). Therefore, appellant's only burden in pleading herein was to state in plain and concise terms a claim upon which relief could be granted. "[T]hat each element of a

cause of action was not set forth in the complaint with crystalline specificity" does not render it fatally defective and subject to dismissal. *Border City Savings & Loan Assn. v. Moan*, 15 Ohio St.3d 65, 66, 472 N.E.2d 350 (1984).

{¶ 10} We note that appellees have cited this court's recent decision in *Aurora Loan Servs., L.L.C., v. Louis*, 6th Dist. No. L-10-1289, 2012-Ohio-384, in support of their argument that a plaintiff such as appellant herein must allege that it is both the holder and owner of the note. Our decision in *Louis*, however, can be distinguished from the case now before us since, in *Louis*, this court did not consider whether the terms holder and owner must be included in a complaint for foreclosure. *Louis* was an appeal from summary judgment; upon review, this court found in *Louis* that summary judgment was inappropriate because the bank had failed to demonstrate that no genuine of issue of material fact existed as to whether it was the holder of the note in question. Therefore, our decision in *Louis* has no bearing on the instant case.

{¶ 11} Based on the foregoing, we find that appellant provided fair and reasonable notice of its claim against appellees. Accordingly, appellant's sole assignment of error is found well-taken.

{¶ 12} On consideration whereof, the judgment of the Erie County Court of Common Pleas is reversed and remanded to the trial court for further proceedings. Costs of this appeal are assessed to appellees pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE