[Cite as *Chase Home Fin., L.L.C. v. Yost*, 2012-Ohio-5322.]

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

Chase Home Finance, LLC successor by merger to Chase Manhattan Mortgage Corporation	Court of Appeals No. E-12-004
	Trial Court No. 2011 CV 0160
Appellant	
v.	
Larry R. Yost, et al.	**DECISION AND JUDGMENT**
Appellee	Decided: November 16, 2012

* * * * *

Anne Marie Sferra and Nelson M. Reid, for appellant.

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

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Chase Home Finance, appeals the judgment of the Erie County Court of Common Pleas, which dismissed appellant's complaint. For the reasons set forth below, we reverse.

A. Facts and Procedural Background

{¶ 2} On June 22, 2001, appellee, Larry Yost, received a $92,000 loan from Flagstar Bank in order to finance the purchase of a home located at 10811 Angling Road, Wakeman, Ohio 44889. In exchange for the loan, Yost executed a promissory note in the amount of $92,000 plus 7.5 percent interest per year payable to Flagstar Bank. The note was secured by a mortgage for the same amount. The mortgage was recorded with the Erie County Recorder's office. Thereafter, the mortgage was assigned to Chase Manhattan Mortgage Corporation, to which Chase is a successor by merger. The assignment of mortgage was also recorded.

{¶ 3} In 2006, Chase and Yost entered a loan modification agreement. This agreement provided, among other things, that Yost owed Chase $92,523.21 and would pay the amount due, plus interest, in monthly installments. When Yost failed to make the promised monthly payments, Chase filed its complaint in foreclosure.

{¶ 4} In its complaint, Chase pleaded that it is the holder of the note and the mortgage. Chase also attached copies of the following documents to the complaint: (1) the note, (2) the mortgage, (3) the assignment of the mortgage to Chase, and (4) the loan modification agreement between Yost and Chase. The note contains an indorsement that reads "PAY TO THE ORDER OF Chase Manhattan Mortgage Corporation WITHOUT RECOURSE" and is signed by Flagstar Bank's senior vice president and its first vice president.

{¶ 5} Yost filed an answer in which he asserted a general denial and numerous affirmative defenses. The answer was followed by Yost's motion to dismiss for failure to state a claim pursuant to Civ.R. 12(B)(6). The trial court granted Yost's motion to dismiss on December 1, 2011. This timely appeal followed.

B. Assignment of Error

{¶ 6} Chase raises the following sole assignment of error for review:

> The trial court erred in dismissing Chase's complaint for foreclosure under Civ.R. 12(b)(6) for failure to allege that it is the holder and owner of the note; the relevant inquiry is not "ownership" but whether Chase is a person entitled to enforce the note.

II. Analysis

{¶ 7} We review an order granting a Civ.R. 12(B)(6) motion to dismiss de novo. *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). In our review, we must accept the factual allegations in the complaint as true and make all reasonable inferences in favor of the non-moving party. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, 816 N.E.2d 1061, ¶ 11. The motion should be granted when it is beyond doubt from the complaint that the plaintiff cannot prove a set of facts entitling him to recover. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491,

2006-Ohio-2625, 849 N.E.2d 268, ¶ 11, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

{¶ 8} In Yost's motion to dismiss, he argued that a foreclosing plaintiff must allege that it is both the holder *and* owner of the note in order to prevail on a foreclosure action. The trial court agreed with Yost and, on December 1, 2011, granted his motion to dismiss. Three months later, we issued our decision in *U.S. Bank, N.A. v. Coffey*, 6th Dist. No. E-11-026, 2012-Ohio-721.

{¶ 9} In *Coffey*, we answered the question of whether the holder of a note must also allege that it is the owner of the note in order to survive a Civ.R. 12(B)(6) motion to dismiss. We began our analysis by pointing out that "Civ.R. 17(A) requires that 'a civil action must be prosecuted by the real party in interest.'" *Id.* at ¶ 13.

{¶ 10} The threshold requirement of standing depends upon whether the plaintiff has a real interest in the subject matter of the action. *State ex rel. Dallman v. Court of Common Pleas, Franklin Cty.*, 35 Ohio St.2d 176, 298 N.E.2d 515 (1973), syllabus. We have previously stated that the holder of the note and mortgage is the real party in interest in a foreclosure action. *Deutsche Bank Natl. Trust Co. v. Greene*, 6th Dist. No. E-10-006, 2011-Ohio-1976, ¶ 13. Further, the holder of an instrument is a "person entitled to enforce" the instrument under R.C. 1303.31.

{¶ 11} Yost argues that Chase must also allege it is the owner of the note and mortgage. However, we rejected this argument in *Coffey*, where we stated that a plaintiff "[is] not additionally required to plead that it [is] the 'owner' of the note and mortgage in

its complaint." *Coffey*, 6th Dist. No. E-11-026, 2012-Ohio-721, at ¶ 18. In *Coffey*, we reversed the trial court's judgment granting Coffey's motion to dismiss since U.S. Bank satisfied the pleading requirements of Civ.R. 8(A) by pleading that it was a holder of the note.

{¶ 12} Here, Chase has pleaded in its complaint that: (1) it is the holder of the note, (2) Yost is in default and owes $93,607.94 plus interest, (3) Chase is the holder of the mortgage securing the payment of the note, and (4) Chase is entitled to have the mortgage foreclosed. In our review, we must accept as true the factual allegations made by Chase in its complaint, including the allegation that it is the holder of the note and mortgage. Just as in *Coffey*, Chase's allegations in the complaint were sufficient to demonstrate that Chase is entitled to relief. Thus, we find that the trial court erred by granting Yost's motion to dismiss under Civ.R. 12(B)(6).

{¶ 13} Accordingly, Chase's sole assignment of error is well-taken.

III. Conclusion

{¶ 14} Based on the foregoing, the judgment of the Erie County Court of Common Pleas is hereby reversed. This case is remanded to the trial court for further proceedings consistent with this decision. Costs are hereby assessed to the appellee in accordance with 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.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE