

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

OneWest Bank

Court of Appeals No. F-11-021

Appellee

Trial Court No. 09CV000336

v.

Matthew Yevtich, et al.

DECISION AND JUDGMENT

Appellants

Decided: December 31, 2012

* * * * *

Jason A. Whitacre and Laura C. Infante, for appellee.

Grace Doberdruk, for appellants.

* * * * *

SINGER, P.J.

{¶ 1} Appellants appeal the denial of their motions for relief from summary judgment and to dismiss for want of subject-matter jurisdiction in a foreclosure action in the Fulton County Court of Common Pleas.

{¶ 2} On February 15, 2006, appellants, Matthew O. and Kathi Yevtich, borrowed money from BankUnited, FSB. The loan was secured by a mortgage on appellants' home in Delta, Ohio.

{¶ 3} On September 24, 2009, appellee, OneWest Bank, FSB, filed to foreclose the mortgage. Appellee's complaint stated that the original note could not immediately be found. A copy of the 2006 mortgage was attached. Appellee subsequently filed a copy of the original note.

{¶ 4} On May 14, 2010, appellee moved for summary judgment. Attached to its motion was an assignment of mortgage from the FDIC, as receiver for BankUnited, to appellee. This assignment was executed on January 13, 2010.

{¶ 5} When the trial court granted appellee summary judgment, appellants interposed motions to set aside, pursuant Civ.R. 60(B), and to dismiss for want of jurisdiction, pursuant to Civ.R. 12(B)(1). This appeal followed the trial court's denial of both of these motions. Appellants assert the trial court's rejection of these motions was erroneous.

{¶ 6} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and hereby render our decision.

{¶ 7} Subsequent to oral argument on this matter, the Supreme Court of Ohio released an opinion dispositive of this matter. In *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, Slip Opinion No. 2012-Ohio-5017, ¶ 28, the court held that a party that failed to establish an interest in the mortgage or the note at the time it filed suit had no standing to invoke the jurisdiction of the court. Moreover, a litigant cannot cure a lack of standing after the commencement of the suit by later obtaining an interest in the subject of the litigation. *Id.* at ¶ 39.

{¶ 8} Since appellee did not obtain a justiciable interest in this suit until the mortgage was assigned to it in January 2010, it lacked standing to invoke the subject-matter jurisdiction of the court when it filed its complaint in September 2009.

Appellants' Civ.R. 12(B)(1) motion should have been granted. Accordingly, appellants' sole assignment of error is well-taken.

{¶ 9} On consideration whereof, the judgment of the Fulton County Court of Common Pleas is reversed. Pursuant App.R. 12(B) and *Schwartzwald* at ¶ 40, the underlying suit is dismissed without prejudice. It is ordered that appellee pay the court costs of this appeal 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

Stephen A. Yarbrough, J.

JUDGE

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
